BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **JEFFREY LIVOVICH, M.D.** Holder of License No. 29563 For the Practice of Allopathic Medicine In the State of Arizona.	Board Case No. MD-04-0058A **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** (MAP Probation)

The Arizona Medical Board ("Board") considered this matter at its public meeting on December 1, 2004. Jeffrey Livovich, M.D., ("Respondent") appeared before the Board with legal counsel Michael Guinan for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue the following findings of fact, conclusions of law and order after due consideration of the facts and law applicable to this matter.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license No. 29563 for the practice of allopathic medicine in the State of Arizona.

3. The Board was notified in mid-January 2004 that Respondent would be leaving an in-patient drug recovery program after being treated for a substance abuse relapse. Respondent previously underwent treatment in 1994 and was monitored by the Physician Health Program of another state in which he was licensed. On January 15,

2004 Respondent entered an Interim Consent Agreement with the Board limiting his practice to administrative medicine[1].

4. Respondent testified that he voluntarily presented for treatment and notified Michel Sucher, M.D., the Board's contracted addiction medicine specialist, of his relapse. Respondent testified that he was highly motivated to be in recovery. Respondent noted that his abstinence has been monitored since he left the treatment facility and he has been fully compliant. Respondent testified that he has a strong commitment to sobriety and that he welcomed the Board's support in helping him remain sober.

5. Respondent testified that he is a pain management specialist and is recognized as an expert in the field. Respondent noted that he is working for a large insurer and is the subject matter expert for pain and anesthesia. Respondent stated that he is very active in his specialty and has presented nationally at major meetings of professional societies, including the American Academy of Pain Medicine. Respondent noted that he was on the task force for pain rehabilitation programs at the American Pain Society. Respondent also noted that he has also published articles in the journals of major societies.

6. In response to a query from the Board, Respondent testified that he originally underwent treatment in 1994 and remained sober for six years. Respondent testified that he had a lot of time to think about what triggered his relapse to chemical dependency. Respondent noted it had been a very stressful period of time. Respondent stated that he had been asked to move to Arizona for a specific employment opportunity and, after he had purchased a home in Arizona, the opportunity dissolved. Respondent was also commuting to and from the Bay area and he grew away from the strong set of support he had. Respondent testified that his relapse served him well in that he now

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[1] The Interim Consent Agreement was vacated by the Board at the conclusion of the interview.

knows that the support mechanism is not an option for him, but a daily need and he has to be an active participant.

7. Respondent testified that he does not see patients in his pain management practice. Respondent was asked how he could be an expert in the field if he did not do hands-on patient care. Respondent noted that he completed a fellowship in pain medicine and had served as an attending physician in pain services. Respondent noted that his practice then became more population based. Respondent testified that he has always kept up with the knowledge base and that in his current practice he designs better policies to support appropriate treatment and direct large populations of people to appropriate care. Respondent testified that he did not intend to return to the practice of anesthesia and asked that the Board not restrict his practice because a restricted license would have an adverse impact on his employment. Respondent also testified that he did not intend to return to active clinical practice.

8. In response to queries from the Board regarding whether a practice restriction was necessary at this time, Dr. Sucher noted that, as one of the Medical Directors of the Board's Monitored Aftercare Program, he would be in frequent contact with Respondent and would be aware of any change in Respondent's practice. Dr. Sucher noted that he would inform the Board if at any time he believed a restriction was necessary. Dr. Sucher stated that he did not believe a restriction was necessary at this time. Dr. Sucher also noted that when Respondent relapsed he immediately sought help from the other state's program and followed all of their recommendations, including that he undergo treatment. Dr. Sucher also stated that Respondent contacted him during treatment and met with him immediately after. Dr. Sucher noted that all of Respondent's actions to date indicate he has a strong desire to be and remain sober and to be a productive member of the medical community.

CONCLUSIONS OF LAW

1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27[2])(f)("[h]abitual intemperance in the use of alcohol or habitual substance abuse.")

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that:

1. Respondent is placed on Probation for 5 years with the following terms and conditions:

a. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation. The declarations shall be submitted on or before the 15th of March, June, September and December of each year, beginning on or before June 15, 2005.

b. Respondent will inform Board Staff of any change in his practice status.

c1. Participation. Respondent shall promptly enroll in and participate in the Monitored Aftercare Program ("MAP") for the treatment and rehabilitation of physicians who are impaired by alcohol or drug abuse. Respondent shall remain in MAP for five

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[2] Formerly A.R.S. § 32-1401(26). Renumbered effective August 25, 2004.

years from the effective date of this Order. Respondent's participation in MAP may be unilaterally terminated with or without cause at the Board's discretion at any time after the issuance of this Order.

2. **Group Therapy.** Respondent shall attend MAP's group therapy sessions one time per week for the duration of this Order, unless excused by the MAP group therapist for good cause such as illness or vacation. Respondent shall instruct the MAP group therapist to release to the Board, upon its request, all records relating to Respondent's treatment and to submit monthly reports to the Board regarding attendance and progress. The reports shall be submitted on or before the 10th day of each month.

3. **12 Step or Self-Help Group Meetings.** Respondent shall attend ninety 12-step meetings or other self-help group meetings appropriate for substance abuse and approved by the Board, for a period of ninety days beginning not later than either (a) the first day following Respondent's discharge from chemical dependency treatment or (b) the date of this Order.

4. Following completion of the ninety meetings in ninety days, Respondent shall participate in a 12-step recovery program or other self-help program appropriate for substance abuse as recommended by the MAP group therapist and approved by the Board. Respondent shall attend a minimum of three 12-step or other self-help program meetings per week.

5. **Board-Approved Primary Care Physician.** Respondent shall promptly obtain a primary care physician and shall submit the name of the physician to Board Staff in writing for approval. The Board-approved primary care physician ("PCP") shall be in charge of providing and coordinating Respondent's medical care and treatment. Except in an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP and from health care providers to whom the PCP refers Respondent from time to time.

Respondent shall request that the PCP document all referrals in the medical record. Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and provide a copy of this Order to the PCP. Respondent shall also inform all other health care providers who provide medical care or treatment that Respondent is participating in the Board's rehabilitation program.

6. **Medication.** Except in an *Emergency*, Respondent shall take no *Medication* unless the PCP or other health care provider to whom the PCP makes a referral *prescribes the Medication*. Respondent shall not self-prescribe any *Medication*.

7. If a controlled substance is prescribed, dispensed, or is administered to Respondent by any person other than PCP, Respondent shall notify the PCP in writing within 48 hours. The notification shall contain all information required for the medication log entry specified in paragraph 8. Respondent shall request that the notification be made a part of the medical record. This paragraph does not authorize Respondent to take any *Medication* other than in accordance with paragraph 6.

8. **Medication Log.** Respondent shall maintain a current legible log of all *Medication* taken by or administered to Respondent and shall make the log available to the Board and its Staff upon request. For *Medication* (other than controlled substances) taken on an on-going basis Respondent may comply with this paragraph by logging the first and last administration of the *Medication* and all changes in dosage or frequency. The log, at a minimum, shall include the following:

a. Name and dosage of *Medication* taken or administered;

b. Date taken or administered;

c. Name of prescribing or administering physician;

d. Reason *Medication* was prescribed or administered.

This paragraph does not authorize Respondent to take any *Medication* other than in

accordance with paragraph 6.

9. **<u>No Alcohol or Poppy Seeds</u>.** Respondent shall not consume alcohol or any food or other substance containing poppy seeds or alcohol.

10. **<u>Biological Fluid Collection.</u>** During all times that Respondent is physically present in the State of Arizona and such other times as Board Staff may direct, Respondent shall promptly comply with requests from Board Staff, the MAP group therapist, or the MAP director to submit to witnessed biological fluid collection. If Respondent is directed to contact an automated telephone message system to determine when to provide a specimen Respondent shall do so within the hours specified by Board Staff. For the purposes of this paragraph, in the case of an in-person request, "promptly comply" means "immediately". In the case of a telephonic request, "promptly comply" means that, except for good cause shown, Respondent shall appear and submit to specimen collection not later than two hours after telephonic notice to appear is given. The Board in its sole discretion shall determine good cause.

11. Respondent shall provide Board Staff in writing with one telephone number that shall be used to contact Respondent on a 24 hour per day/seven day per week basis to submit to biological fluid collection. For the purposes of this section telephonic notice shall be deemed given at the time a message to appear is left at the contact telephone number provided by Respondent. Respondent authorizes any person or organization conducting tests on the collected samples to provide testing results to the Board and the MAP director.

12. Respondent shall cooperate with collection site personnel regarding biological fluid collection. Repeated complaints from collection site personnel regarding Respondent's lack of cooperation regarding collection may be grounds for termination from MAP.

13. **Payment for Services. Respondent shall pay for all costs, including personnel and contractor costs, associated with participating in MAP at the time service is rendered or within 30 days of each invoice sent to Respondent.**

14. **Examination.** Respondent shall submit to mental, physical, and medical competency examinations at such times and under such conditions as directed by the Board to assist the Board in monitoring Respondent's ability to safely perform as a physician and Respondent's compliance with the terms of this Order.

15. **Treatment**. Respondent shall submit to all medical, substance abuse, and mental health care and treatment ordered by the Board, or recommended by the MAP director.

16. **Obey All Laws**. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in the State of Arizona.

17. **Interviews.** Respondent shall appear in person before the Board and its Staff and committees for interviews upon request, upon reasonable notice.

18. **Address and Phone Changes, Notice.** Respondent shall immediately notify the Board in writing of any change in office or home addresses and telephone numbers. Respondent shall provide Board Staff at least three business days advance written notice of any plans to be away from office or home when such absence would prohibit Respondent from responding to an order to provide a biological fluid specimen or to communications from the Board. The notice shall state the reason for the intended absence from home or office, and shall provide a telephone number that may be used to contact Respondent.

19. **Relapse, Violation**. In the case of chemical dependency relapse by Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent's license shall be summarily suspended and the matter referred to formal

hearing for revocation of his license. In the alternative, Respondent may surrender his license. A.R.S. § 32-1451(T). **In no respect shall the terms of this paragraph restrict the Board's authority to initiate and take disciplinary action for violation of this Order.**

20. <u>Notice Requirements</u>.

(A) Respondent shall immediately provide a copy of this Order to all employers and all hospitals and free standing surgery centers at which Respondent currently has privileges. Within 30 days of the date of this Order, Respondent shall provide the Board with a signed statement of compliance with this notification requirement. Upon any change in employer or upon the granting of privileges at additional hospitals and free standing surgery centers, Respondent shall provide the employer, hospital or free standing surgery center with a copy of this Order. Within 30 days of a change in employer or upon the granting of privileges at additional hospitals and free standing surgery centers, Respondent shall provide the Board with a signed statement of compliance with this notification requirement.

(B) Respondent is further required to notify, in writing, all employers, hospitals and free standing surgery centers at which Respondent currently has or in the future gains employment or privileges, of a chemical dependency relapse, use of drugs or alcohol in violation of this Order and/or entry into a treatment program. Within seven days of any of these events Respondent shall provide the Board written confirmation of compliance with this notification requirement.

(C) Respondent shall immediately submit to the Board under penalty of perjury, on a form provided by the Board, the name(s) and address(es) of all employers and all hospitals and free standing surgery centers at which Respondent currently holds privileges to practice. Respondent is further required to, under penalty of perjury, on a

form provided by the Board, immediately notify the Board of any changes in employment and of any hospitals and free standing surgery centers at which Respondent gains privileges after the effective date of this Order.

21. **Public Record.** This Order is a public record.

22. **Out-of State.** In the event Respondent resides or practices as a physician in a state other than Arizona, Respondent shall participate in the rehabilitation program sponsored by that state's medical licensing authority or medical society. Respondent shall cause the other state's program to provide written reports to the Board regarding Respondent's attendance, participation, and monitoring. The reports shall be due on or before the 15th day of March and September of each year, until the Board terminates this requirement in writing.

23. This Order supersedes all previous consent agreements and stipulations between the Board and Respondent.

24. The Board retains jurisdiction and may initiate new action based upon any violation of this Order.

II. DEFINITIONS

"***Medication***" means "prescription-only drug, controlled substance, and over-the counter preparation, other than plain aspirin and plain acetaminophen."

"***Emergency***" means "a serious accident or sudden illness that, if not treated immediately, may result in a long-term medical problem or loss of life."

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a

rehearing or review. A.A.C. R4-16-102. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

DATED this 10 day of FEBRUARY, 2005.

THE ARIZONA MEDICAL BOARD

By _____
TIMOTHY C. MILLER, J.D.
Executive Director

ORIGINAL of the foregoing filed this 10th day of February, 2005 with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

Executed copy of the foregoing mailed by U.S. Certified Mail this 10th day of February, 2005, to:

Michael Guinan
Bryan Cave, L.L.P.
Two North Central Avenue – Suite 2200
Phoenix, Arizona 85004-4406

Jeffrey Livovich, M.D.
Address of Record

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