

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2
3 In the Matter of

4 **JOHN W. HOWLEY, M.D.**

5 Holder of License No. 22390
6 For the Practice of Allopathic Medicine
7 In the State of Arizona.

Board Case No. MD-04-0026A

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

(Letter of Reprimand and MAP
Probation)

8
9 The Arizona Medical Board ("Board") considered this matter at its public meeting
10 on October 14, 2004. John W. Howley, M.D., ("Respondent") appeared before the Board
11 with legal counsel Steve Myers and Neil Alden for a formal interview pursuant to the
12 authority vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue the
13 following findings of fact, conclusions of law and order after due consideration of the facts
14 and law applicable to this matter.

15 **FINDINGS OF FACT**

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

18 2. Respondent is the holder of license No. 22390 for the practice of allopathic
19 medicine in the State of Arizona.

20 3. On January 5, 2004 the Board received information that Respondent had
21 been arrested for an extreme driving under the influence ("DUI"). Respondent did not
22 report this arrest to the Board. Respondent was interviewed by Michel Sucher, M.D., the
23 Board's contracted addiction medicine specialist and Board Staff on March 8, 2004. At
24 the conclusion of the interview Dr. Sucher recommended that Respondent present to a
25 Board approved facility for an evaluation. Respondent agreed to this recommendation
and presented to Sierra Tucson for an evaluation on March 27, 2004. Respondent was

1 found to be alcohol dependent and Sierra Tucson recommended he complete inpatient
2 treatment.

3 4. Respondent complied with this recommendation and entered treatment at
4 Sierra Tucson on April 4, 2004. During this time Respondent had voluntarily removed
5 himself from practice by signing an Interim Consent Agreement for Practice Restriction.
6 Sierra Tucson reported that Respondent was open during his treatment and participated
7 completely.

8 5. At its May teleconference meeting the Board vacated the Interim Consent
9 Agreement for Practice Restriction. At this same meeting Respondent and the Board
10 entered an Interim Consent Agreement for Participation in the Board's Monitored
11 Aftercare Program ("MAP").

12 6. Board Staff reported that Respondent has been fully compliant with the
13 terms of his interim MAP agreement. Respondent testified that his December 24, 2003
14 DUI arrest has been very embarrassing for him personally, professionally and for his
15 family members. Respondent stated that he regretted that conduct and assumes
16 responsibility for it. Respondent stated that on the night of the DUI he was not on call
17 and was at a neighborhood house for a Christmas party. Respondent stated that he was
18 pulled over in his driveway. Respondent stated that he was unaware he was required to
19 report the DUI to the Board and takes responsibility for his failure to do so. Respondent
20 stated that he contacted an attorney in Flagstaff regarding the DUI and was never
21 advised to notify the Board.

22 7. Respondent testified that his experience in MAP has been very positive and
23 he is quite enthusiastic about the program. Respondent stated that the statutory label of
24 "habitual intemperance" does not fit his situation. Respondent stated that when he
25 entered the Interim Consent Agreement for Participation in MAP it was a stressful

1 situation in his life and he has come through that. Respondent stated that he
2 understands the Board's position regarding public safety, but the appearance of his
3 consent agreement on the Board's website resulted in his being dropped by seven
4 insurance carriers. Respondent testified that as a result, several patients had to leave his
5 practice. Respondent stated that he believed that if a letter of reprimand that references
6 the "habitual intemperance" statutory subsection appears on his record he will face
7 further consequences to his practice.

8 8. Respondent testified that in Flagstaff where he practices there is a limited
9 number of cardiologists – there is only one other full-time cardiologist besides himself and
10 one part-time cardiologist in Page where he also practices. Respondent stated that the
11 BlueCross BlueShield patients who had to leave his practice are either going to Salt Lake
12 City or Phoenix for care and he does not believe that is good for the patients.
13 Respondent testified that he prides himself on the strong relationship he has with his
14 patients and he cares about them. Respondent believes a Letter of Reprimand will hurt
15 him personally and professionally and will hurt his care of his patients.

16 9. Respondent was asked if the December 2003 DUI was his second DUI.
17 Respondent testified it was and the first was approximately twelve years ago when he hit
18 a deer with his car in the Adirondack Mountains in New York. Respondent testified that
19 the charge was changed to reckless driving. Respondent was asked if he received any
20 treatment for alcohol dependency at that time. Respondent stated he had not.
21 Respondent was asked if that incident set off any red flags for him. Respondent testified
22 that assuming the responsibility of drinking and driving set off a big red flag for him.

23 10. Respondent was asked if he had the same experience of many who enter
24 treatment - that his alcohol consumption was greater than he was willing to admit, at least
25 when he first went into treatment. Respondent testified that after treatment, or entering

1 treatment at Sierra Tucson, he became acutely aware of potential problems. Respondent
2 stated that he potentially minimized things. Respondent testified that, to put things in
3 perspective, the first day he entered Sierra Tucson it was a very intimidating process and
4 he is now a better person for it. Respondent stated that he was very anxious, very
5 nervous and was being asked a lot of very personal and deliberate questions. As a
6 result, he may have minimized things.

7 11. Respondent was asked about his continued use of alcohol for
8 approximately two more months after his December 2003 arrest and whether he believed
9 he would have continued to use alcohol if the Board had not intervened. Respondent
10 testified that he did not have a crystal ball to look into that and he was grateful in a way
11 that he had the DUI in the sense that it was his own personal responsibility and there was
12 no related motor vehicle accident. Respondent stated that the subsequent events had
13 improved him and he feels better for himself, he has more self-confidence. Respondent
14 added that he could not predict what would have occurred had he not been in the Board's
15 program.

16 12. Respondent was asked when he first became aware of the statutory
17 change that required he report his DUI arrest. Respondent testified that he became
18 aware when he was notified by the Board and immediately drafted a letter explaining the
19 situation and the circumstances of the event.

20 **CONCLUSIONS OF LAW**

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

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

1 who are impaired by alcohol or drug abuse. Respondent shall remain in MAP for five
2 years from the effective date of this Order. Respondent's participation in MAP may be
3 unilaterally terminated with or without cause at the Board's discretion at any time after the
4 issuance of this Order.

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

11 **3. 12 Step or Self-Help Group Meetings.** Respondent shall attend ninety 12-
12 step meetings or other self-help group meetings appropriate for substance abuse and
13 approved by the Board, for a period of ninety days beginning not later than either (a) the
14 first day following Respondent's discharge from chemical dependency treatment or (b) the
15 date of this Order.

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

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

1 and from health care providers to whom the PCP refers Respondent from time to time.
2 Respondent shall request that the PCP document all referrals in the medical record.
3 Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and
4 provide a copy of this Order to the PCP. Respondent shall also inform all other health
5 care providers who provide medical care or treatment that Respondent is participating in
6 the Board's rehabilitation program.

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

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

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

- 22 a. Name and dosage of *Medication* taken or administered;
- 23 b. Date taken or administered;
- 24 c. Name of prescribing or administering physician;
- 25 d. Reason *Medication* was prescribed or administered.

1 This paragraph does not authorize Respondent to take any *Medication* other than in
2 accordance with paragraph 6.

3 **9. No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol or
4 any food or other substance containing poppy seeds or alcohol.

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

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

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

1 from MAP.

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

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

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

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

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

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

24 **19. Relapse, Violation.** In the case of chemical dependency relapse by
25 Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent

1 shall promptly enter into an Interim Consent Agreement that requires, among other things,
2 that Respondent not practice medicine until such time as Respondent successfully
3 completes an inpatient or residential treatment program for chemical dependency
4 designated by the Board or Staff and obtains affirmative approval to return to the practice
5 of medicine. Prior to approving Respondent's request to return to the practice of medicine,
6 Respondent may be required to submit to witnessed biological fluid collection, undergo
7 any combination of physical examination, psychiatric or psychological evaluation and/or
8 successfully pass the special purpose licensing examination or the Board may conduct
9 interviews for the purpose of assisting it in determining the ability of Respondent to safely
10 return to the practice of medicine. **In no respect shall the terms of this paragraph**
11 **restrict the Board's authority to initiate and take disciplinary action for violation of**
12 **this Order.**

13 **20. Notice Requirements.**

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

24 (B) Respondent is further required to notify, in writing, all employers,
25 hospitals and free standing surgery centers at which Respondent currently has or in the

1 future gains employment or privileges, of a chemical dependency relapse, use of drugs or
2 alcohol in violation of this Order and/or entry into a treatment program. Within seven days
3 of any of these events Respondent shall provide the Board written confirmation of
4 compliance with this notification requirement.

5 (C) Respondent shall immediately submit to the Board under penalty of
6 perjury, on a form provided by the Board, the name(s) and address(es) of all employers
7 and all hospitals and free standing surgery centers at which Respondent currently holds
8 privileges to practice. Respondent is further required to, under penalty of perjury, on a
9 form provided by the Board, immediately notify the Board of any changes in employment
10 and of any hospitals and free standing surgery centers at which Respondent gains
11 privileges after the effective date of this Order.

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

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

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

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

24 II. DEFINITIONS

25 "**Medication**" means "prescription-only drug, controlled substance, and over-the

1 counter preparation, other than plain aspirin and plain acetaminophen."

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

4 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

5 Respondent is hereby notified that he has the right to petition for a rehearing or
6 review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or
7 review must be filed with the Board's Executive Director within thirty (30) days after
8 service of this Order and pursuant to A.A.C. R4-16-102, it must set forth legally sufficient
9 reasons for granting a rehearing or review. Service of this order is effective five (5) days
10 after date of mailing. If a motion for rehearing or review is not filed, the Board's Order
11 becomes effective thirty-five (35) days after it is mailed to Respondent.

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

14 DATED this 12th day of January, 2004^{5^{TEW}}.



16 THE ARIZONA MEDICAL BOARD

17
18 By TC Miller
19 Timothy C. Miller
20 Executive Director

21 ORIGINAL of the foregoing filed this
12th day of January, 2004^{5^{TEW}} with:

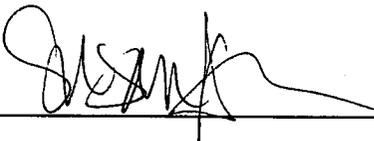
22 Arizona Medical Board
23 9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

24 Executed copy of the foregoing
25 mailed by U.S. Certified Mail this 12th
day of January, 2004^{5^{TEW}}, to:

1 Steve Myers
Myers & Jenkins PC
2 3003 N Central Ave Ste 1900
3 Phoenix AZ 85012-2910

4 Neil Alden
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5 2901 North Central Avenue, Suite 1900
Phoenix, Arizona 85012-2763

6 John W. Howley, M.D.
7 Address of Record

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