1 BEFORE THE ARIZONA STATE BOARD OF MEDICAL EXAMINERS 2 CASE NO. MD-02-0193 In the Matter of: 3 JOHN E. MURNANE, M.D. COMPLAINT AND INTERIM ORDER Holder of License No. 17325 5 For the Practice of Allopathic Medicine In the State of Arizona, 6 Respondent. 7 8 INTRODUCTION The above-captioned matter came on for discussion before the Arizona Board of 10 Medical Examiners ("Board") on May 1, 2002. The Board voted to adopt to restrict 11 Respondent's license number 17325. The Board considered restricting Respondent's license 12 and following the review of information obtained, pursuant to A.R.S. §§ 32-1451, and 13 having considered the information in the matter and being fully advised, the Board enters 14 the following Interim Findings of Fact, Conclusions of Law and Order for Restriction of 15 License, pending formal hearings or other Board action. 16 **INTERIM FINDINGS OF FACT** 17 The Arizona State Board of Medical Examiners ("Board") is the duly constituted 1. 18 authority for licensing and regulating the practice of allopathic medicine in the State 19 of Arizona. 20 John E. Murnane, M.D. ("Respondent") is the holder of a License No. 17325 for the 2. 21 practice of allopathic medicine in the State of Arizona. 22 The Board initiated an investigation in March, 2002, after receiving a notice that 3. 23 Respondent had a positive urine test for alcohol on March 23, 2002. 24 On November 17, 2000, the Board received Respondent's license renewal form. 4. 25 Respondent answered "yes" to the following question: "Have you been treated for 26

- 5. Respondent entered into a Stipulated Rehabilitation Agreement (SRA) with the Board on December 15, 2000, and began participating, on a confidential basis, in the Board's Monitored Aftercare Program (MAP). At the time Respondent signed the SRA, he was living in Virginia and participating in the Virginia Health Practitioner's Intervention Program.
- 6. Respondent moved to Arizona in May 2001 and began participating in the Arizona MAP.
- 7. The "Relapse, Violation" term of the SRA provided that if Respondent had a chemical dependency relapse, used drugs or alcohol in violation of the SRA, Respondent would agree to not practice medicine until such time as he successfully completed an inpatient or residential treatment program for chemical dependency designated by the Board or staff and obtained the affirmative approval of the Board to return to the practice of medicine.
- 8. On March 23, 2002, Respondent submitted to a random biological fluid testing as required by the SRA.
- 9. Southwest Laboratories, Inc. confirmed the March 23, 2002 biological fluid test as positive for Ethanol.
 - 10. On March 26, 2002, the MAP Medical Director informed Respondent of the positive biological fluid drug screen and advised him to immediately stop practicing medicine and to enter into a staff approved treatment center for evaluation and/or treatment within fourteen days as required by the SRA.
 - 11. Respondent acknowledged to the Medical Director that he drank alcohol in violation of the SRA and agreed not to practice medicine.

- 13. The Board did not approve the modifications and Respondent refused to sign the agreement.
- 14. On April 22, 2002, the Board's Compliance department left a message on Respondent's 24-hour telephone number instructing him to provide a urine sample within 2 hours. There is no record at Southwest Laboratories that Respondent complied with this requirement of the SRA.
- 15. On April 22, 2002, Compliance spoke with Respondent's group therapist and was advised that Respondent had not attended group therapy sessions for the preceding two weeks although weekly attendance was required by the SRA.
- 16. Based upon the foregoing paragraphs 1 15, the Board finds that it has been presented with sufficient substantial and reliable information concerning Respondent's professional conduct to conclude that, pending formal administrative hearing, the public health, safety and welfare imperatively requires emergency action by the Board against Respondent's license to practice medicine in the State of Arizona.

INTERIM CONCLUSIONS OF LAW

- 1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to A.R.S. § 32-1432.02.
- 2. The Respondent's conduct and the circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(r) (violating a formal order, probation, consent agreement or stipulation issued or entered into by the Board

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or its executive director under the provisions of this chapter).

Pursuant to A.R.S. § 32-1451(D), and based upon the foregoing Interim Findings of 3. Fact and Conclusions of Law, the public health, safety and welfare imperatively require emergency action.

ORDER

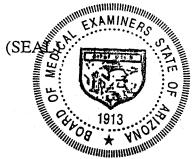
Based upon the foregoing Interim findings of Fact and Conclusions of Law, set forth above:

IT IS HEREBY ORDERED THAT:

- John E. Murnane, M.D., the holder of a License No. 17325 to practice allopathic 1. medicine in the State of Arizona is suspended pending a formal hearing before a hearing officer from the Office of Administrative Hearings.
- The Interim Findings of Fact and Conclusions of Law constitute written notice to 2. Respondent of the charges of unprofessional conduct made by the Board against him. Respondent is entitled to a formal hearing to defend these charges within sixty (60) days of the issuance of this Order.
- The Board's Executive Director is instructed to refer this matter to the Office of 3. Administrative Hearings for scheduling of an administrative hearing to be commenced no later than sixty (60) days from the date of the issuance of this Order, unless stipulated and agreed otherwise by Respondent.

DATED this $\frac{\sqrt{31}}{2}$ day of May, 2002.

BOARD OF MEDICAL EXAMINERS OF THE STATE OF ARIZONA



NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that a Formal Hearing on the Summary Suspension Order concerning License No. 17325 will be held before Administrative Law Judge Lewis Kowal on June 19, 2002, commencing at nine o'clock a.m. at the Office of Administrative Hearings located at 1400 W. Washington Street, Suite 101, Phoenix Arizona and continuing on successive days until concluded concerning the matters set forth in this Complaint and Notice of Hearing, at which time and place, evidence, testimony and argument in support of the charge set forth in the Complaint will be presented. A transcript of the hearing, together with a written report of the findings, conclusions and recommended decision of the Administrative Law Judge, will be submitted to the Board for its consideration and determination of this matter. If the Board finds that your conduct constitutes unprofessional conduct, or that you are mentally or physically unable to safely practice medicine, you shall be subject to censure, probation, suspension or revocation of your license, or any combination thereof, for such time, including permanently, and under such conditions as the Board deems appropriate and just, as provided in A.R.S. § 32-1451.

Within twenty (20) days of service of this Complaint and Notice of Hearing upon you, you are requested to file with the Board and the State's attorney a written Answer to the Complaint. Your Answer should contain specific admissions or denials of the allegations of the Complaint, and may contain concise factual allegations which you contend constitute a ground or grounds for defense.

If you desire to make a defense to the charges at the hearing, you may appear at the hearing in person and may be represented by legal counsel and may at that time cross-examine the witnesses against you and present testimony of witnesses, evidence and argument in your own behalf. If you desire to waive hearing on the Complaint and not contest the facts therein alleged, you may file an Answer consisting of a declaration that the

material allegations of the Complaint are admitted. 1 The Office of Administrative Hearings requires that the following notice be included 2 in the Notice of Hearing: 3 Pursuant to Arizona Revised Statutes 41-1092.01, your hearing 4 will be conducted through the Office of Administrative Hearings, an independent agency. Please find enclosed a copy 5 of the procedures to be followed. DATED AND EFFECTIVE this 2 day of May, 2002. 6 7 8 BOARD OF MEDICAL EXAMINERS OF THE STATE OF ARIZONA 9 10 HILLIAM HOLD 1913 11 By: 12 13 14 15 Original of the foregoing mailed for filing this 2 day of May, 2002, with: 16 Office of Administrative Hearings 17 1400 W. Washington, Suite 101 Phoenix, Arizona 85007 18 COPY of the foregoing mailed by U.S. 19 Certified Mail this 2 day of May, 2002, to: 20 John A. Murnane III, M.D. 21 3204 E. Desert Cove Avenue Phoenix, Arizona 85028-2736 22 Respondent 23 Richard Klauer, Esq. 301 E. Bethany Home Road, C250 24 Phoenix, Arizona 85012

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