

1 BEFORE THE BOARD OF MEDICAL EXAMINERS

2  
3 IN THE STATE OF ARIZONA

4 In the Matter of

5 **DAVID ERNEST JEAL, M.D.**

6 Holder of License No. 12359  
7 For the Practice of Medicine  
8 In the State of Arizona.

**No. 01F-12359-MDX**

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER FOR  
LICENSE REVOCATION**

9 On August 17, 2001, this case came before the Arizona Board of Medical  
10 Examiners ("Board") for oral argument and consideration of the Recommended Decision  
11 of the Administrative Law Judge ("ALJ") containing proposed findings of fact, conclusions  
12 of law. David Ernest Jeal, M.D. ("Respondent") did not appear and was not represented  
13 by counsel. The State was represented by Assistant Attorney General, M. Elizabeth  
14 Burns. The Board was advised by its legal advisor, Christine Cassetta, Assistant Attorney  
15 General.

16 The Board, having considered the ALJ's recommendation, and the entire  
17 administrative record in this case, hereby issues the following Findings of Fact,  
18 Conclusions of Law, and Order.

19 **FINDINGS OF FACT**

20 1. Respondent, an anesthesiologist, is the holder of License #12359 for the  
21 practice of Allopathic Medicine in the State of Arizona.

22 2. On December 15, 1998, Respondent voluntarily entered into a "Rehabilitation  
23 Stipulation and Order with the Board whereby Respondent agreed to enter into the  
24 Board's Monitored Aftercare Program. The order came as a result of Respondent  
25

1 commendably seeking help through the Board with his chemical dependence problem with  
2 alcohol.

3 3. As part of the agreement, Respondent agreed to not consume any alcohol while  
4 a part of the program.

5 4. During March 2001, Respondent was working on staff at Boswell Memorial  
6 Hospital. On March 2, 2001, Respondent reported for work at Boswell and began treating  
7 patients. At approximately 9:00 a.m., one of the secretaries at the hospital, Melissa  
8 Delgado, noticed alcohol on Respondent's breath. She reported her observation to the  
9 Director of Surgery Services at Boswell, Rita Borden. After receiving this report, Borden  
10 advised Mr. Gary Tucker, Vice President of Patient Services at Boswell, and George  
11 Perez, Executive Vice President of Boswell.  
12

13 5. Mr. Perez and Mr. Tucker met with Respondent regarding the secretary's  
14 observation. Respondent agreed to provide a urine sample for testing purposes. At  
15 approximately 10:00 a.m., Respondent provided a urine sample in the presence of Mr.  
16 Tucker. The sample was analyzed at approximately 10:45 a.m. The results showed that  
17 Respondent had 74.85 milligrams/deciliter of ethanol, an elevated result.

18 6. After the results of the analysis were obtained, Mr. Perez and Mr. Tucker then  
19 again met with Respondent to discuss the results. At that same time, approximately 11:45  
20 a.m., Respondent voluntarily agreed that he would not treat any patients at Boswell  
21 Hospital. In fact, Respondent had already agreed with Rita Bolton that he would not  
22 conduct either of the two pain treatment procedures that remained for him to complete that  
23 day. To that end, Respondent had told Bolton that he would arrange for another doctor to  
24 complete one of the procedures and that Respondent would cancel the other procedure.  
25

1           7. Despite voluntarily agreeing to stop treating patients, Respondent nevertheless  
2 returned to the Surgery department after leaving Mr. Tucker and Mr. Perez. He then  
3 performed a pain blocking treatment on a patient at approximately 1:00 p.m. even though  
4 he had earlier agreed not to do so.

5           8. At the hearing in this matter, Dr. Michael Sucher testified regarding his expertise  
6 in the area of addiction medicine and his contact with Respondent in this case. Dr.  
7 Sucher is a licensed physician who currently serves as a medical consultant for the Board  
8 the area of addiction medicine. Dr. Sucher's training, education, and experience as  
9 related through his testimony at the hearing qualify him to testify as an expert in the area  
10 of addiction medicine.  
11

12           When Respondent entered into the Medical Aftercare Program, Dr. Sucher was  
13 assigned to him to be his monitoring physician. On the day of the incident, Dr. Sucher  
14 spoke to Respondent and Respondent indicated that he had consumed a full bottle of wine  
15 on the evening before the incident.

16           Dr. Sucher testified that the amount of alcohol present in the analysis was a  
17 significant amount of alcohol. Dr. Sucher also testified that the fact of consuming alcohol  
18 while under a monitoring agreement, combined with Respondent's acknowledged  
19 chemical dependence on alcohol as well as the fact that Respondent had consumed such  
20 a large amount of alcohol on the evening before the March 2, 2001 incident was or could  
21 be indicative of a relapse. Finally, Dr. Sucher stated, and the Board finds, that physicians  
22 who relapse into chemical abuse involving alcohol pose a danger when treating patients.  
23

24           9. At the hearing, Respondent also testified. He stated that he had only had one  
25 glass of wine the night before the March 2, 2001 incident at Boswell. This was in direct

1 contradiction to his earlier statement to Dr. Sucher that he had consumed a bottle of wine.  
2 In addition, as Dr. Sucher testified, Respondent's urine analysis result on March 2, 2001  
3 belies such a statement. Respondent's contention that he consumed only one glass of  
4 wine is not credible. Of greater concern is the fact that Respondent adhered to this  
5 position in light of the clear contrary evidence. Respondent is found not to have testified  
6 credibly at the hearing.

### 7 CONCLUSIONS OF LAW

8  
9 1. In this matter, the Board carries the burden to prove by a preponderance of the  
10 evidence that the allegations contained in the complaint are true.

11 2. The Board has carried that burden in this matter. The credible testimony in this  
12 matter, as demonstrated in the Findings of Fact above, shows that on the evening  
13 preceding March 2, 2001, Respondent consumed a bottle of wine in direct contravention of  
14 the stipulation agreement he had entered into in 1998. This constitutes unprofessional  
15 conduct pursuant to A.R.S. § 32-1401(25)(r)("[v]iolating a formal order, probation, consent  
16 agreement or stipulation issued or entered into by the Board or its executive director under  
17 the provisions of this chapter.").

18 3. Furthermore, based on the fact of the incident of drinking despite the  
19 requirements of the stipulation agreement, and the testimony of Dr. Sucher, the Board  
20 finds that Respondent is or may be relapsing into his chemical dependency upon alcohol.  
21 Respondent's chemical dependency constitutes conduct that may be harmful or  
22 dangerous to the public. This constitutes unprofessional conduct pursuant to A.R.S. § 32-  
23 1401(25)(q)("[a]ny conduct or practice which is or might be harmful or dangerous to the  
24 health of the patient or the public.").

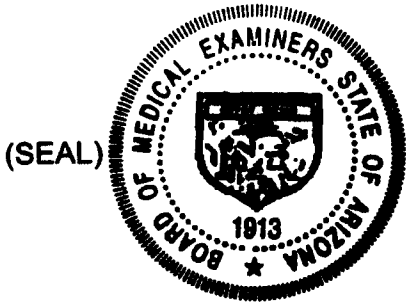
1 4. Given Dr. Sucher's testimony, as well as Respondent's refusal to acknowledge  
2 any problem as demonstrated by his course of testimony at the hearing before the  
3 Administrative Law Judge, it appears imperative that Respondent's medical license be  
4 revoked in order to protect patients and the public.

5 **ORDER**

6 License Number 12359 issued to Respondent is revoked 30 days after the effective  
7 date of this Order. Respondent shall not submit an application for a new license less than  
8 five years after the date of revocation.

9 DATED this 22<sup>nd</sup> day of August, 2001.

10 BOARD OF MEDICAL EXAMINERS  
11 OF THE STATE OF ARIZONA



17 By: Claudia Foutz  
18 CLAUDIA FOUTZ  
19 Executive Director  
20 TOM ADAMS  
21 Deputy Director

22 Original of the foregoing filed this  
23 22 day of August, 2001, with:

24 Arizona Board of Medical Examiners  
25 9545 East Doubletree Ranch Road  
Scottsdale, AZ 85258

Copy of the foregoing filed this  
21 day of August, 2001, with:

Cliff J. Vanell, Director  
Office of Administrative Hearings  
1400 W. Washington, Ste. 101  
Phoenix, AZ 85007

Executed copy of the foregoing mailed  
by Certified Mail this

1 22 day of August, 2001, to:

2 David Ernest Jeal  
3 10401 West Thunderbird Road  
4 Phoenix, Arizona 85029-4602  
5 Sun City, Arizona 85351

6 Executed copy of the foregoing mailed  
7 this 22 day of August, 2001, to:

8 Elizabeth Burns, Assistant Attorney General  
9 Office of the Attorney General  
10 1275 W. Washington  
11 Phoenix, AZ 85007  
12 Attorney for the State

13 Executed copy of the foregoing hand delivered  
14 this 22 day of August, 2001, to:

15 Christine Cassetta, Assistant Attorney General  
16 Arizona Board of Medical Examiners  
17 9545 East Doubletree Ranch Road  
18 Scottsdale, AZ 85258  
19 Legal Advisor to the Board

20 Amade Dieli

21 Board Operations  
22  
23  
24  
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