



## DUI: Rules of the Road

■ JOHN SHUFELDT, MD, JD, MBA, FACEP

Oh crap! The flashing red lights illuminating the interior of Eric's car snapped him back to reality. He had lived through a tough year—passed his family medicine boards, finished residency, separated from his wife and ultimately went through a contentious divorce. Eric's first post-graduate job ended poorly after he was caught up in owner infighting and left as the practice he joined dissolved.

Suffice it say, Eric needed a drink or two. To celebrate a new start, he and a few friends from his residency program hit the town for a mellow night of dinner and a few drinks. When he was sufficiently relaxed and refreshed, he bid his friends goodnight and headed home. His new job was in an urgent care center and he wanted to make sure he was well rested before his 12-hour shift.

While Eric was driving home, he texted his ex-wife to simply say goodnight and that he was sorry for the way everything transpired. While texting, his car swerved a bit into the next lane. Fortunately, he realized his mistake and immediately put his phone down. About two blocks from Eric's apartment, the road he was traveling on ended at a "T" intersection. It was a quiet night and no traffic was approaching from his left, so after double checking, he rolled slowly through the stop sign, made a quick right turn, and headed into the parking lot surrounding his complex.

Eric's car was bathed in stark white light as an officer walked up to him while he was attempting to get out of his car. The officer politely said, "Sir, since you are already out of the car, please keep your hands where I can see them. Do you know why I stopped you?" After waiting a few moments, the officer continued, "I stopped you because you crossed into the lane next to you and then proceeded to roll through the stop sign." As Eric attempted to explain, the officer raised his hand as if to say "halt" and then said, "Sir, have you been drinking?"

Eric responded honestly that he had 3 beers with his

friends. At that point, the officer proceeded to ask him pointed questions about his alcohol consumption during the evening. Eric concluded his final answer with, "Oh, by the way, I'm a doctor." To which the officer responded, "Help me understand how that is relevant? Are you telling me this because you are on your way to an emergency?"

The interaction went downhill from there. Next, the officer requested that Eric perform a Horizontal Gaze Nystagmus (HGN) test and then a Field Sobriety Test (FST). According to the officer, Eric flunked both. Next, the officer performed an intoxilyzer (breath alcohol test), which demonstrated a blood alcohol level of .07—slightly below the limit in Eric's state. Despite the fact that his level was below the cutoff, Eric was handcuffed, read his Miranda rights, placed in the back of the squad car, and driven down to the police station to be booked.

Most states have enacted very tough DUI laws and Eric's state was no exception. He ultimately worked through all the issues, but not before spending thousands on an attorney's fees, fines, and alcohol counseling through a medical board-mandated program. He now has to list the DUI on every mal-practice insurance form, state medical board, and medical staff privilege form he completes.

### Learning from Eric's mistakes

In retrospect, how should Eric have altered his actions? The obvious answer is "don't drink and drive."

If a situation like Eric's happened to you, here are a few things to consider. First, if you are a medical provider, most states have mandatory reporting requirements. In other words you must notify the medical board. If the board learns of the citation, and you have not notified them, you will be dealt with more severely.

Many physicians believe that a DUI charge will not impinge on their medical license because it relates to behavior in their personal life, not their professional practice. The reality is that the Board is permitted to regulate a physician's "personal life" conduct, at least to a certain extent.

Courts have held that the Medical Board has the authority to discipline physicians for illegal activity not directly associ-



**John Shufeldt** is principal of Shufeldt Consulting and sits on the Editorial Board of *JUCM*. He may be contacted at [jshufeldt@shufeldtconsulting.com](mailto:jshufeldt@shufeldtconsulting.com).

**Table 1. A Quick Guide to BAC by Weight in Pounds and Number of Drinks.**

Men	80 lbs	100 lbs	120 lbs	140 lbs	160 lbs	180 lbs	200 lbs	220 lbs
<b>1 drink</b>	0.05	0.04	0.03	0.03	0.02	0.02	0.02	0.02
<b>2 drinks</b>	0.06	0.08	0.06	0.06	0.05	0.04	0.04	0.04
<b>3 drinks</b>	0.15	0.12	0.10	0.08	0.07	0.06	0.06	0.05
<b>4 drinks</b>	0.19	0.16	0.13	0.11	0.10	0.09	0.08	0.07
<b>5 drinks</b>	0.24	0.19	0.16	0.13	0.12	0.11	0.10	0.09
Women	80 lbs	100 lbs	120 lbs	140 lbs	160 lbs	180 lbs	200 lbs	220 lbs
<b>1 drink</b>	0.06	0.05	0.04	0.03	0.03	0.03	0.02	0.02
<b>2 drinks</b>	0.12	0.09	0.08	0.07	0.06	0.05	0.05	0.04
<b>3 drinks</b>	0.18	0.14	0.12	0.10	0.09	0.08	0.07	0.07
<b>4 drinks</b>	0.24	0.19	0.16	0.14	0.12	0.11	0.10	0.09
<b>5 drinks</b>	0.30	0.24	0.20	0.17	0.15	0.13	0.12	0.11

ated with the quality of their medical care, on the theory that those activities relate to the professional qualifications inherent in holding a medical license. Essentially, courts have justified this practice on the theory that activities outside the practice of medicine reflect on a physician's ability to practice medicine.

Please check the laws in your state for specific reporting requirements.

To give you an example of penalties under state law, here are the fines in Arizona for first-time DUI offenses:

■ **Standard DUI: Blood alcohol content (BAC) over 0.08 (three drinks for most men and two drinks for most women [Table 1])**

- Mandatory jail time of 10 days - No plea bargaining (second offense - 30 to 90 days)
- Mandatory suspension of driver's license for 90 days (second offense - 1 year)
- Mandatory installation of ignition interlock device in car for 1 year (Cost: \$1,000 plus \$100 per month)
- Court fees - \$1,500 (second offense - \$3,000), points, increased insurance, attorney fees, etc.

■ **Extreme DUI: BAC over 0.15**

- Mandatory jail time of 30 days - No plea bargaining (second offense - 60 to 120 days)
- Mandatory suspension of driver's license for 90 days (second offense - 1 year)
- Mandatory installation of ignition interlock device in car for 1 year (Cost: \$1,000 plus \$100 per month)
- Mandatory alcohol monitoring - 30 days (second offense - 90 days plus 30 days of community service)
- Mandatory vehicle impoundment - 30 days
- Court fees - \$2,500 (second offense - \$5,000), points, increased insurance, attorney fees, etc.

■ **Super Extreme DUI: BAC over 0.20**

- Mandatory jail time of 45 days - No plea bargaining (second offense - 180 days)
- Mandatory suspension of driver's license for 90 days (second offense - 1 year)
- Mandatory installation of ignition interlock device in car for 18 to 24 months (Cost: \$1,000 plus \$100 per month)
- Mandatory alcohol monitoring - 30 days (second offense - 90 days plus 30 days of community service)
- Mandatory vehicle impoundment - 30 days
- Probation - 0 to 1 year (second offense - 0 to 5 years)
- Court fees - \$3,000 (second offense - \$6,000), points, increased insurance, attorney fees, etc.

■ **Felony DUI - 0.08 or above but with a MINOR in the car less than 16 years old**

- Felony charge
- Mandatory jail time of 30 days - No plea bargaining
- Suspended driver's license for 3 years
- Ignition interlock device - Installed in car for 18 months or possible loss of car (\$1,000 plus \$100 per month)
- Fees (up to \$150,000), points, increased insurance, attorney fees, etc.
- Possible probation for up to 5 years

Anyone under age 21 who is pulled over in Arizona and has had ANY alcohol (even the day before they turn 21) is subject to the above rules plus loss of their driver's license for a minimum of 2 years with no plea bargain available and a record for 7 years.

Here are some other things to consider:

- Depending on the police department, you have about an

85% chance that the encounter with a police officer is being videotaped and recorded.

- The BAC is not affected by whether a person can handle alcohol. It is a chemical formula based on your blood content, not how you act.
- If you have a BAC lower than 0.08 but fail the field sobriety test, you can be charged with a DUI.
- The BAC is at its highest 2 hours after the last drink is taken. The BAC will not start going down until 2 hours after the last drink (that means stalling at the police station will probably not help).
- The most common infraction for which people are pulled over, especially at night, is a wide left or right turn.
- When the police department has a DUI task force in place in an area, they will basically pull over everyone who is driving through that area, regardless of whether they have done something wrong.

If you are ever pulled over and the officer asks you to get out of the car, there is a good chance you will be arrested unless you have had absolutely nothing to drink. The premise is he or she would not have asked you to get out of the car unless he suspected you were impaired. The main purpose of the field sobriety test and the questioning (every question) is designed to gain evidence that you were “even slightly impaired.”

For example, you could fail the FST, go to the substation and blow a 0.06 and still get a DUI because they have proven that you were slightly impaired. The field sobriety test is very, very difficult to pass even stone cold sober. It is also a subjective test and no one—except the police officer and you—know what really happened.

Here is what Eric should have said (if he was sure he had only one or two drinks) when the officer asked why he was pulled over: “I do not know.” (People will occasionally respond, “I rolled through the stop sign.” That statement is admissible in court).

If you are stopped and an officer inquires about alcohol consumption and you have been drinking, you can politely say, “I had a couple of drinks.” Give the officer your driver’s license, registration and proof of insurance. If the officer then asks you to take an FST, you can politely tell the officer that you do not want to answer any more questions nor do the FST or HGN until you have talked with a lawyer. When asked why you can say, “I have been told by my lawyer that these are things you look at to see if I am impaired. I am not impaired, so if you are asking me to do these, I want to speak to my lawyer before consenting.” The officer may get upset and continue to ask you questions. Stay polite and firm (your right to not speaking is protected by the Constitution and the fact that you did not speak cannot be used against you in court). You will likely be handcuffed and taken to the police station for a blood test. When you get to the police substation, they will take away your cell phone and put you into a room with a phone and a

telephone directory. Do not take a breath, blood or urine test until you have talked with a lawyer.

If you don’t have a lawyer, you should then find a “24-hour lawyer” from the telephone directory. You will probably get an answering service which will tell you that the lawyer will call you back shortly. You should tell the police officer that fact. You should then follow the lawyer’s advice, which will probably be to take the blood test but not answer any questions or do any agility tests. Ask to be released to obtain an independent blood test at a hospital. It probably will not help your defense, but at least you may not spend that night in jail.

**Take-home points**

- Although you will probably never need one, carry the name of a criminal defense attorney and a 24-hour phone number with you.
- If you are stopped, follow the advice above.
- Check your state’s reporting requirements for the medical or nursing boards. Chances are that your state has reporting requirements.
- Always, always, always be very polite and keep your hands very visible. (I work with police officers and they have a thankless job none of us would want). They are used to dealing with individuals who are less than thrilled by their presence. Don’t joke around and don’t be overly defensive.
- You can admit to having consumed alcohol, just don’t admit to a quantity. If you don’t admit to drinking at all, and the police officer smells it on your breath, you are a “liar” in the officer’s mind and will give him/her a reason to dig deeper.
- Have your license, insurance card, and registration easily reachable. Officers are trained to observe for manual dexterity.
- If an officer asks you to step out of the car, he or she will be watching your balance and to see if you are holding onto the door to steady yourself. Police officers have the right to demand that you step out of the vehicle.
- Don’t let passengers interject. Your passengers should be quiet and very observational. If the passengers are obnoxious, they will destroy their credibility as your character witnesses.
- It is not illegal to “drink and drive.” It is illegal to drive while impaired. Most individuals who are stopped are not arrested. Do not give an officer grounds to investigate further.
- I would not say things like, “I’m a doctor, etc.” Generally speaking, no good will come from that statement.
- If you are planning on drinking while you are out, take a cab. You have worked too hard to risk your career over a few bad choices. ■