BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

Case No. MD-14-0651A

ORDER FOR LETTER OF
REPRIMAND AND PROBATION;
AND CONSENT TO THE SAME

BRANDON Z. MASSEY, M.D.

Holder of License No. 35576
For the Practice of Allopathic Medicine
In the State of Arizona.

Brandon Z. Massey, M.D. ("Respondent"), elects to permanently waive any right to a hearing and appeal with respect to this Order for a Letter of Reprimand and Probation; admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of this Order by the Board.

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 number 35576 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-14-0651A after receiving a notification from Respondent's attorney that a surgery he was scheduled to perform on a minor patient was canceled due to concerns expressed by the anesthesiologist and others that Respondent was impaired. As a result and after Respondent's self-report, the hospital suspended Respondent's privileges.

4. On May 16, 2014, 15 year-old male patient RE was seen in the pediatric unit of the ER after suffering a significant laceration of his hand. RE was evaluated by the ER physicians, and Respondent was contacted for a hand surgery consultation. Respondent was not on-call at the time, but agreed to see RE. Respondent took a history, performed a physical examination and developed a surgical plan for RE. Respondent offered to repair the laceration under local anesthetic. RE's mother declined, and it was agreed that the
repair would be performed in the operating room under general anesthesia. Surgery was
scheduled for later that evening, since RE had recently eaten.

5. Respondent had dinner reservations in between the time he consulted with
RE and the time of the scheduled surgery, at which time Respondent consumed alcohol.
Respondent failed to report to the operating room on time for the surgery. Staff began
attempts to contact Respondent, who eventually sent a text message to the operating
room staff indicating that he was on his way.

6. Respondent arrived at the hospital and was observed to be impaired. The
Chief Medical Officer spoke with Respondent, the surgery was canceled, and
arrangements were made to transfer RE for care. Respondent later admitted that he was
unfortunately impaired at the time.

7. On May 21, 2014, the hospital's Medical Executive Committee discussed the
incident and recommended suspending Respondent's surgical and admitting privileges. It
was also recommended that Respondent undergo a behavioral health evaluation and that
the matter be reported to the Board.

8. Board staff referred Respondent for an assessment with the Board's
Physician Health Program ("PHP") Contractor. On May 29, 2014, Respondent underwent
the PHP assessment and was deemed safe to practice while enrolled in and compliant
with PHP for a period of two years for abuse track monitoring. On June 18, 2014,
Respondent entered into an Interim Consent Agreement for PHP participation.

9. The standard of care prohibited Respondent from attempting to perform an
operation while impaired. Respondent deviated from the standard of care by preparing to
operate on a patient while impaired.
10. No actual patient harm occurred as a result of Respondent's actions. Potential patient harm was identified in that there was potential for medical errors to be committed by an impaired surgeon.

CONCLUSIONS OF LAW

a. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

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

c. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(q) ("[A]ny conduct that is or might be harmful or dangerous to the health of the patient or the public.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.

2. Respondent's license is placed on Probation for a period of two years.

3. Respondent shall promptly enroll in and participate in the Board’s Physician Health Program ("PHP") for a period of two years.

4. Respondent shall not consume alcohol or any food or other substance containing poppy seeds or alcohol.

5. Respondent shall not take any illegal drugs or mood altering medications.

6. All prescriptions for controlled substances shall be approved by the PHP prior to being filled except in an Emergency. Controlled substances prescribed and filled

1 Respondent's PHP participation is retroactive to June 18, 2014.
in an emergency shall be reported to the PHP within 48 hours. Respondent shall take no
Medication unless Respondent's Primary Care Physician ("PCP") or other health care
provider to whom the PCP refers Respondent prescribes and the PHP approves the
Medication. Respondent shall not self-prescribe any Medication. "Medication" means a
prescription-only drug, controlled substance, and over-the counter preparation, other than
plain aspirin, plain ibuprofen, 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.

7. Respondent shall submit to random biological fluid, hair and nail testing for
two years from the date of this Order (as specifically directed below) to ensure compliance
with PHP.

8. Respondent shall provide the PHP 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, hair and/or nail testing to ensure compliance with PHP. 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 PHP. Respondent shall comply with all requirements for
biological fluid, hair and/or nail collection. Respondent shall pay for all costs for the testing.

9. Respondent shall provide the PHP with written notice of any plans to travel
out of state.

10. Respondent shall successfully complete a PHP approved 36 hour
alcohol/drug awareness education class.
11. Respondent provides full consent for the PHP to discuss the Respondent's case with the Respondent's PCP or any other health care providers to ensure compliance with PHP.

12. The relationship between the Respondent and the PHP is a direct relationship. Respondent shall not use an attorney or other intermediary to communicate with the PHP on participation and compliance issues.

13. Respondent shall be responsible for all costs, including costs associated with participating in PHP, at the time service is rendered or within 30 days of each invoice sent to the Respondent. An initial deposit of two months PHP fees is due upon entering the program. Failure to pay either the initial PHP deposit or monthly fees 60 days after invoicing will be reported to the Board by the PHP and may result in disciplinary action up to and including revocation.

14. Respondent shall immediately provide a copy of this Order to all employers, hospitals and free standing surgery centers where Respondent currently has or in the future gains or applies for employment or privileges. Within 30 days of the date of this Order, Respondent shall provide the PHP with a signed statement of compliance with this notification requirement. Respondent is further required to notify, in writing, all employers, hospitals and free standing surgery centers where Respondent currently has or in the future gains or applies for employment or privileges of a violation of this Order.

15. 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 monitoring state’s program to provide written quarterly reports to the PHP regarding Respondent's attendance, participation, and monitoring. The monitoring state’s program
and Respondent shall immediately notify the PHP if Respondent is non-compliant with any aspect of the monitoring requirements or is required to undergo any additional treatment.

16. The PHP shall immediately notify the Board if Respondent is non-compliant with any aspect of the monitoring requirements or this Order.

17. In the event of the use of drugs or alcohol by Respondent in violation of this Order, Respondent shall promptly enter into an Interim Consent Agreement for Treatment at a PHP approved facility. Following the successful conclusion of treatment, Respondent shall enter into an Interim Consent Agreement for full participation in PHP. 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.

18. Prior to the termination of Probation, Respondent must submit a written request to the Board for release from the terms of this Order. Respondent's request for release will be placed on the next pending Board agenda, provided a complete submission is received by Board staff no less than 14 days prior to the Board meeting. Respondent’s request for release must provide the Board with evidence establishing that he has successfully satisfied all of the terms and conditions of this Order. The Board has the sole discretion to determine whether all of the terms and conditions of this Order have been met or whether to take any other action that is consistent with its statutory and regulatory authority.

19. This Order supersedes any and all Consent Agreements previously entered into by Respondent and the Board regarding this matter.

20. The Board retains jurisdiction and may initiate new action against Respondent based upon any violation of this Order.
DATED AND EFFECTIVE this 4th day of June, 2015.

ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Executive Director

CONSENT TO ENTRY OF ORDER

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent acknowledges he has the right to consult with legal counsel regarding this matter.

2. Respondent acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

3. By consenting to this Order, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Order in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Order.

4. The Order is not effective until approved by the Board and signed by its Executive Director.

5. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.
6. Upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Respondent may not revoke the consent to the entry of the Order. Respondent may not make any modifications to the document. Any modifications to this original document are ineffective and void unless mutually approved by the parties.

7. This Order is a public record that will be publicly disseminated as a formal disciplinary action of the Board and will be reported to the National Practitioner's Data Bank and on the Board's web site as a disciplinary action.

8. If any part of the Order is later declared void or otherwise unenforceable, the remainder of the Order in its entirety shall remain in force and effect.

9. If the Board does not adopt this Order, Respondent will not assert as a defense that the Board's consideration of the Order constitutes bias, prejudice, prejudgment or other similar defense.

10. Any violation of this Order constitutes unprofessional conduct and may result in disciplinary action. A.R.S. § 32-1401(27)(r) ("[v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter.") and 32-1451.

11. Respondent acknowledges that, pursuant to A.R.S. § 32-2501(16), he cannot act as a supervising physician for a physician assistant while his license is on probation.

12. **Respondent has read and understands the conditions of probation.**

BRANDON Z. MASSEY, M.D.  
DATED: 5-22-15
EXECUTED COPY of the foregoing mailed
this 14th day of June, 2015 to:

Dan Cavett
Cavett & Fulton, PC
6035 E Grant Road
Tucson, AZ 85712
Attorney for Respondent

ORIGINAL of the foregoing filed
this 4th day of June, 2015 with:

Arizona Medical Board
9545 E. Doubletree Ranch Road
Scottsdale, AZ  85258

Board Staff