

1 repair would be performed in the operating room under general anesthesia. Surgery was
2 scheduled for later that evening, since RE had recently eaten.

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

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

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

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

21 9. The standard of care prohibited Respondent from attempting to perform an
22 operation while impaired. Respondent deviated from the standard of care by preparing to
23 operate on a patient while impaired.

1 in an emergency shall be reported to the PHP within 48 hours. Respondent shall take no
2 *Medication* unless Respondent's Primary Care Physician ("PCP") or other health care
3 provider to whom the PCP refers Respondent prescribes and the PHP approves the
4 *Medication*. Respondent shall not self-prescribe any *Medication*. "Medication" means a
5 prescription-only drug, controlled substance, and over-the counter preparation, other than
6 plain aspirin, plain ibuprofen, and plain acetaminophen. "Emergency" means a serious
7 accident or sudden illness that, if not treated immediately, may result in a long-term
8 medical problem or loss of life.

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

12 8. Respondent shall provide the PHP in writing with one telephone number that
13 shall be used to contact Respondent on a 24 hour per day/seven day per week basis to
14 submit to biological fluid, hair and/or nail testing to ensure compliance with PHP. For the
15 purposes of this section, telephonic notice shall be deemed given at the time a message to
16 appear is left at the contact telephone number provided by Respondent. Respondent
17 authorizes any person or organization conducting tests on the collected samples to
18 provide testing results to the PHP. Respondent shall comply with all requirements for
19 biological fluid, hair and/or nail collection. Respondent shall pay for all costs for the testing.

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

22 10. Respondent shall successfully complete a PHP approved 36 hour
23 alcohol/drug awareness education class.

1 11. Respondent provides full consent for the PHP to discuss the Respondent's
2 case with the Respondent's PCP or any other health care providers to ensure compliance
3 with PHP.

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

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

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

20 15. In the event Respondent resides or practices as a physician in a state other
21 than Arizona, Respondent shall participate in the rehabilitation program sponsored by that
22 state's medical licensing authority or medical society. Respondent shall cause the
23 monitoring state's program to provide written quarterly reports to the PHP regarding
24 Respondent's attendance, participation, and monitoring. The monitoring state's program
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1 and Respondent shall immediately notify the PHP if Respondent is non-compliant with any
2 aspect of the monitoring requirements or is required to undergo any additional treatment.

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

5 17. In the event of the use of drugs or alcohol by Respondent in violation of this
6 Order, Respondent shall promptly enter into an Interim Consent Agreement for Treatment
7 at a PHP approved facility. Following the successful conclusion of treatment, Respondent
8 shall enter into an Interim Consent Agreement for full participation in PHP. In no respect
9 shall the terms of this paragraph restrict the Board's authority to initiate and take
10 disciplinary action for violation of this Order.

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

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

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

2
3 ARIZONA MEDICAL BOARD

4 By Patricia E. McSorley
5 Patricia E. McSorley
6 Executive Director

7 **CONSENT TO ENTRY OF ORDER**

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

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

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

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

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

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

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

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

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

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

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

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23
24 
BRANDON Z. MASSEY, M.D.

DATED: 5-22-15

1 EXECUTED COPY of the foregoing mailed
this 4th day of June, 2015 to:

2
3 Dan Cavett
4 Cavett & Fulton, PC
5 6035 E Grant Road
6 Tucson, AZ 85712
7 Attorney for Respondent

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

10
11 Arizona Medical Board
12 9545 E. Doubletree Ranch Road
13 Scottsdale, AZ 85258

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Mary Barber
Board Staff