

**SUPERSEDING STEP I CONSENT AGREEMENT
BETWEEN
DAVID WALTER MASSIE, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO
CASE NO. 11-CRF-092**

This Consent Agreement is entered into by and between David Walter Massie, M.D., [Dr. Massie], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Massie enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, for "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," and Section 4731.22(B)(15), Ohio Revised Code, "a violation of the conditions of limitation placed by the board upon a certificate to practice."
- B. The Board and Dr. Massie enter into this Consent Agreement in lieu of further formal proceedings based upon the allegations set forth in the Notice of Opportunity for Hearing issued on September 14, 2011, attached hereto as Exhibit A and incorporated herein by this reference. The Board expressly reserves the right to institute additional formal proceedings based upon any other violations of R.C. Chapter 4731., whether occurring before or after the effective date of this Consent Agreement.
- C. Dr. Massie admits that his license to practice medicine and surgery in the State of Ohio, license number 35.049431, was indefinitely suspended for not less than 18 months pursuant to his November 14, 2007 Step I Consent Agreement. In addition, Dr. Massie's license was permanently revoked and such permanent revocation stayed pursuant to his April 14, 2010 Superseding Step I Consent Agreement, which also placed his license on an indefinite suspension for not less than one year.
- D. Dr. Massie states that he is not licensed to practice in any other state or jurisdiction.

- E. Dr. Massie admits to the factual and legal allegations as set forth in the September 14, 2011, Notice of Opportunity for Hearing, which is attached as Exhibit A.
- F. Dr. Massie specifically acknowledges that he understands that the Board intends to pursue by separate disciplinary action for any violations including but not limited to violations of Sections 4731.22(B)(15) and/or (B)(26), Ohio Revised Code, that occurred on or after September 14, 2011, the date upon which the aforementioned Notice of Opportunity was issued, even if such violations arise from or are related to the same common nucleus of operative fact as outlined within said Notice and/or this Consent Agreement. Dr. Massie further states and acknowledges he understands that subsequent Board Orders may supersede this Step I Consent Agreement and may result in further discipline, up to and including permanent revocation of his license to practice medicine in Ohio.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Massie knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

- 1. The certificate of Dr. Massie to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one year. The previous suspension of Dr. Massie's certificate to practice medicine and surgery in the State of Ohio for an indefinite period of time but not less than one year pursuant to the April 14, 2010 Superseding Step I Consent Agreement is hereby terminated upon the effective date of the instant Superseding Step I Consent Agreement.

Obey all Laws

- 2. Dr. Massie shall obey all federal, state, and local laws.

Sobriety

- 3. Dr. Massie shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Massie's history of chemical dependency. Further, in the event that Dr. Massie is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Massie shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Massie received; the medical purpose for which he received said drug; the date such drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within thirty days of the date said drug

is so prescribed, dispensed, or administered to him, Dr. Massie shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.

4. Dr. Massie shall abstain completely from the use of alcohol.

Absences from Ohio

5. Dr. Massie shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed. Further, the Secretary and Supervising Member of the Board shall have the discretion to grant a waiver of part or all of the monitoring terms set forth in this Consent Agreement for occasional periods of absence of fourteen days or less. In the event that Dr. Massie resides and/or is employed at a location that is within fifty miles of the geographic border of Ohio and any of its contiguous states, Dr. Massie may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Massie is able to otherwise maintain full compliance with all other terms, conditions and limitations set forth in this Consent Agreement.

Releases; Quarterly Declarations and Appearances

6. Dr. Massie shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Massie's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Massie further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.
7. Dr. Massie shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his April 2010 Superseding Step I Consent Agreement with the Board, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

8. Dr. Massie shall appear in person for an interview before the full Board or its designated representative on the date his appearance would have been scheduled pursuant to his April 2010 Superseding Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Drug Testing Facility and Collection Site

9. Dr. Massie shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Massie shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board, and shall include Dr. Massie's drug(s) of choice.

Dr. Massie shall abstain from the use of any substance and the consumption of poppy seeds or any other food or liquid that may produce a low level positive result in a toxicology screen. Dr. Massie acknowledges that he understands that the consumption or use of such substances, including but not limited to substances such as mouthwash or hand cleaning gel, may cause a positive drug screen that may not be able to be differentiated from intentional ingestion, and therefore such consumption or use is prohibited under this Consent Agreement.

All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site pursuant to the global contract between said facility and the Board, that provides for the Board to maintain ultimate control over the urine screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code, and the screening process shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 10 below, to approve urine screenings to be conducted at an alternative drug testing facility and/or collection site or a supervising physician, such approval shall be expressly contingent upon the Board retaining ultimate control over the urine screening process in a manner that preserves the aforementioned confidentiality of all positive screening results.

Dr. Massie shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. Massie shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Consent Agreement. Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Consent Agreement.

Further, within thirty days of the effective date of this Consent Agreement, Dr. Massie shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug testing facility and/or collection site in order to facilitate the urine screening process in the manner required by this Consent Agreement. Further, Dr. Massie shall promptly provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Massie and the Board-approved drug testing facility and/or collection site. Dr. Massie's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Consent Agreement.

Dr. Massie shall ensure that the urine screening process performed through the Board-approved drug testing facility and/or collection site requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Massie and the Board-approved drug testing facility and collection site shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Massie shall ensure that the Board-approved drug testing facility and/or collection site provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.

In the event that the Board-approved drug testing facility and/or collection site becomes unable or unwilling to serve as required by this Consent Agreement, Dr. Massie must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 10 below, as soon as practicable. Dr. Massie shall further ensure that the Board-approved drug testing facility and/or collection site also notifies the Board directly of its inability to continue to serve and the reasons therefore.

Dr. Massie acknowledges that the Board expressly reserves the right to withdraw its approval of any drug testing facility and/or collection site in the event that the Secretary and Supervising Member of the Board determine that the drug testing facility and/or collection site has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

10. Dr. Massie and the Board agree that it is the intent of this Consent Agreement that Dr. Massie shall submit his urine specimens to the Board-approved drug testing facility and collection site chosen by the Board. However, in the event that utilizing said Board-approved drug testing facility and/or collection site creates an extraordinary hardship upon Dr. Massie, as determined in the sole discretion of the Board, then subject to the following requirements, the Board may approve an alternate drug testing facility and/or collection site, or a supervising physician, to facilitate the urine screening process for Dr. Massie:

- a. Within thirty days of the date upon which Dr. Massie is notified of the Board's determination that utilizing the Board-approved drug testing facility and/or collection site constitutes an extraordinary hardship upon Dr. Massie, he shall submit to the Board in writing for its prior approval the identity of either an alternate drug testing facility and collection site, or the name of a proposed supervising physician, to whom Dr. Massie shall submit the required urine specimens. In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Massie's residence or employment location, or to a physician who practices in the same locale as Dr. Massie. Dr. Massie shall ensure that the urine screening process performed through the alternate drug testing facility and/or collection site, or through the supervising physician, requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Massie acknowledges that the alternate drug testing facility and collection site, or the supervising physician, shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.
- b. Dr. Massie shall ensure that the alternate drug testing facility and/or collection site, or the supervising physician, provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.
- c. In the event that the designated alternate drug testing facility and/or collection site, or the supervising physician, becomes unable or unwilling to so serve, Dr. Massie must immediately notify the Board in writing. Dr. Massie shall further ensure that the previously designated alternate drug testing facility and collection site, or the supervising physician, also notifies the Board directly of the inability to continue to serve and the reasons therefore. Further, in order to ensure that there will be no interruption in his urine screening process, upon the previously approved alternate drug testing facility, collection site, or supervising physician becoming unable to serve, Dr. Massie shall immediately commence urine screening at the Board-approved drug testing facility and collection site chosen by the Board, until such time, if any, that the Board approves a subsequent alternate drug testing facility, collection site, or supervising physician, if requested by Dr. Massie.
- d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Massie's designated alternate drug testing facility and/or collection site, or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any

such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

11. All screening reports required under this Consent Agreement from the Board-approved drug testing facility and/or collection site, or from the alternate drug testing facility and/or collection site or supervising physician, must be received in the Board's offices no later than the due date for Dr. Massie's quarterly declaration. It is Dr. Massie's responsibility to ensure that reports are timely submitted.
12. The Board retains the right to require, and Dr. Massie agrees to submit, blood, urine, breath, saliva and/or hair specimens for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Massie, or for any other purpose, at Dr. Massie's expense upon the Board's request and without prior notice. Dr. Massie's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.

Rehabilitation Program

13. Dr. Massie shall continue to maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Massie shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Massie's quarterly declarations.

14. Immediately upon completion of any required treatment for chemical dependency, Dr. Massie shall enter into an aftercare contract with a Board-approved treatment provider and shall maintain continued compliance with the terms of said aftercare contract, provided that, where the terms of the aftercare contract conflict with the terms of this Consent Agreement, the terms of this Consent Agreement shall control.

CONDITIONS FOR REINSTATEMENT

15. The Board shall not consider reinstatement or restoration of Dr. Massie's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Massie shall submit an application for reinstatement or restoration, as appropriate, accompanied by appropriate fees, if any.
 - b. Dr. Massie shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the

provisions of his certificate. Such demonstration shall include but shall not be limited to the following:

- i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Massie has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical abuse/dependence, as set forth in Rules 4731-16-02 and 4731-16-08, Ohio Administrative Code, completed consecutively.
- ii. Evidence of continuing full compliance with, or successful completion of, a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
- iii. Evidence of continuing full compliance with this Consent Agreement.
- iv. Three written reports indicating that Dr. Massie's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

Two reports shall be made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Massie. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Dr. Massie shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Massie, and any conditions, restrictions, or limitations that should be imposed on Dr. Massie's practice. The reports shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. Massie. Prior to the examination, Dr. Massie shall provide the psychiatrist with copies of the patient records from any prior evaluations and /or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling, and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. Massie's practice; and the basis for the psychiatrist's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

- v. Prior to submitting his application for reinstatement or restoration, Dr. Massie shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.
 - vi. In the event that the Board initiates future formal proceedings against Dr. Massie, including but not limited to issuance of a Notice of Opportunity for Hearing, Dr. Massie shall be ineligible for reinstatement until such proceedings are fully resolved by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.
- c. Dr. Massie shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board within 180 days of the date upon which all the above-specified conditions for reinstatement or restoration have been completed or, if the Board and Dr. Massie are unable to agree on the terms of a written Consent Agreement, then Dr. Massie further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code. The Board shall provide notice to Dr. Massie that said hearing has been scheduled, advising Dr. Massie of his hearing rights, and stating the date, time, and location of the hearing at which the Board will present its evidence, after which the Board will make a determination of the matter by Board Order.

Further, upon reinstatement of Dr. Massie's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Massie shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Massie has maintained sobriety.

REQUIRED REPORTING BY LICENSEE

16. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall provide a copy of this Consent Agreement to all employers or entities with which he is

under contract to provide health care services (including but not limited to third party payors) or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Massie shall promptly provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. In the event that Dr. Massie provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Massie shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Massie shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

17. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Massie further agrees to provide a copy of this Consent Agreement at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Massie shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
18. Dr. Massie shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Massie chemical dependency treatment or monitoring. Further, Dr. Massie shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the

return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

19. Dr. Massie shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

DURATION/MODIFICATION OF TERMS

The above-described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties. In the event that the Board initiates future formal proceedings against Dr. Massie, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Dr. Massie and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Massie appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Massie acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Massie hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

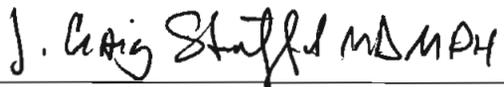
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Massie acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



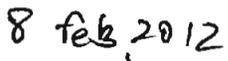
DAVID WALTER MASSIE, M.D.



J. CRAIG STRAFFORD, M.D., M.P.H.
Secretary



DATE



DATE



TERRI-LYNNE SMILES
Attorney for Dr. Massie



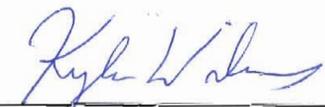
JACK C. AMATO, M.D.
Supervising Member



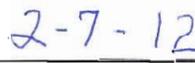
DATE



DATE



KYLE C. WILCOX
Assistant Attorney General



DATE

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
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September 14, 2011

Case number: 11-CRF- 092

David Walter Massie, M.D.
1130 West Cook Drive
Mansfield, OH 44906

Dear Doctor Massie:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about November 15, 2007, you entered into a Step I Consent Agreement Between David Walter Massie, M.D., and the State Medical Board of Ohio, in lieu of formal proceedings based upon your violation of Sections 4731.22(B)(26) and (10), Ohio Revised Code.

On or about April 14, 2010, you entered into a Superseding Step I Consent Agreement Between David Walter Massie, M.D., and the State Medical Board of Ohio [April 2010 Consent Agreement], in lieu of formal proceedings based upon your violation of Sections 4731.22(B)(26), (15) and (10), Ohio Revised Code. Under the terms of the April 2010 Consent Agreement, your certificate to practice medicine and surgery was permanently revoked, however such permanent revocation was stayed, and your certificate was suspended for an indefinite period of time, but not less than one year from the effective date of the agreement. You have been subject to all probationary terms, conditions and limitations contained in the April 2010 Consent Agreement, a copy of which is attached hereto and incorporated herein.

- (2) Paragraph 3 of the April 2010 Consent Agreement provides as follows:

[You] shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed or administered to [you] by another so authorized by law who has full knowledge of

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[your] history of chemical dependency. Further, in the event that [you are] so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, [you] shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug [you] received; the medical purpose for which [you] received said drug; the date such drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within thirty days of the date said drug is so prescribed, dispensed, or administered to [you], [you] shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.

Despite this provision in the April 2010 Consent Agreement:

- (a) Urine screens collected from you on the following dates tested positive for oxycodone and oxymorphone and were subsequently GC/MS confirmed for both substances: June 11, 2010; June 16, 2010; June 26, 2010; July 2, 2010; July 7, 2010; July 14, 2010; August 30, 2010; September 2, 2010; March 23, 2011; March 28, 2011; April 6, 2011; April 8, 2011; April 14, 2011; April 26, 2011; May 3, 2011; May 6, 2011; May 9, 2011; May 20, 2011; June 20, 2011; June 21, 2011; June 27, 2011; July 12, 2011; July 22, 2011; July 27, 2011; August 11, 2011; August 12, 2011; and August 22, 2011.
- (b) On or about July 3, 2010, you provided a representative of the Board a copy of a prescription for oxycodone that was written for you on June 1, 2010. Despite your having provided a copy of such prescription, you did not notify the Board in writing within seven days that you had been prescribed oxycodone, nor did you provide a copy of the written prescription within thirty days of the date the oxycodone was prescribed.
- (c) On or about April 6, 2011, you provided a representative of the Board copies of two prescription labels for oxycodone and OxyContin. Despite your having provided copies of such prescription labels, the labels had critical information cut off and blacked-out, including the date such prescriptions were prescribed and the identity of the prescriber. You subsequently provided information on or about August 19, 2011, which indicates that you received a prescription for OxyContin on March 22, 2011, however you did not notify the Board in writing within seven days that you had been prescribed the OxyContin or the identity of the prescriber.
- (d) On or about August 19, 2011, you provided a representative of the Board a copy of your medication history dating back to March 22, 2011, which includes a prescription for OxyContin written for you on March 22, 2011; prescriptions for oxycodone and OxyContin written for you on April 18,

2011; prescriptions for oxycodone and OxyContin written for you on May 16, 2011; prescriptions for oxycondone and OxyContin written for you on June 6, 2011; prescriptions for oxycodone and OxyContin written for you on July 11, 2011; and prescriptions for oxycodone and OxyContin written for you on August 5, 2011. Despite your having provided such prescription information, you did not notify the Board in writing within seven days of each such prescription that you had been prescribed oxycodone and OxyContin, nor have you provided the identity of the prescriber of all such prescriptions. Further, with the exception of the prescriptions written on August 5, 2011, you did not provide copies of the written prescriptions within thirty days of the date the oxycodone and OxyContin were prescribed.

- (3) Paragraph 4 of the April 2010 Consent Agreement provides that you shall abstain completely from the use of alcohol.

Despite this provision of the April 2010 Consent Agreement:

- (a) On or about August 5, 2010, an officer from the Mansfield Police Department in Mansfield, Ohio, stopped your vehicle, in which you were riding as a passenger. During the investigative traffic stop, the officer noted that you had glassy, bloodshot eyes, slurred speech and that you smelled of alcohol. Upon exiting the vehicle, the officer observed you to be unsteady on your feet and used the vehicle for support. You admitted to the officer that you had too much to drink and were unable to drive the vehicle yourself. The officer issued a citation to the driver who was driving with a suspended driver's license, and released both passengers to a sober individual.
- (b) Urine screens collected from you on the following dates tested positive for the presence of ethyl glucuronide and ethyl sulfate, metabolites of alcohol, and were subsequently GC/MS confirmed for both substances: January 11, 2011; April 6, 2011; April 14, 2011; May 9, 2011; July 22, 2011; and August 12, 2011.

- (4) Paragraph 7 of the April 2010 Consent Agreement provides that you "shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement[,] and the "quarterly declarations must be received in the Board's offices on or before the first day of every third month."

Despite this provision, you have failed to timely provide quarterly declarations to the Board that were due on or about July 1, 2010; January 1, 2011; April 1, 2011; and July 1, 2011.

- (5) Paragraph 8 of the April 2010 Consent Agreement requires that you appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement, and that subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board.

You were scheduled to appear in person for an interview with a designated representative of the Board on April 12, 2010. Upon informing the Board that you would be unable to make your scheduled appearance because you were registered to take the SPEX that day, a Board representative provided a different date and time for your appearance. Despite the above provision of the April 2010 Consent Agreement, you failed to appear for the rescheduled interview, and also failed to notify the Board that you would not be appearing for the rescheduled interview, nor were you excused by the Board from scheduled interview.

- (6) Paragraph 9 of the April 2010 Consent Agreement requires that you provide random urine specimens for screening for drugs and alcohol. Further, paragraph 9 requires, in pertinent part, that:

[You] shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. [You] shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board, and shall include [your] drug(s) of choice.

* * *

All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site pursuant to the global contract between said facility and the Board, that provides for the Board to maintain ultimate control over the urine screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code, and the screening process shall require a daily call-in procedure. . . .

* * *

[You] shall submit, at [your] expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by [you] shall be negative, except for those substances prescribed, administered, or dispensed to [you] in conformance

with the terms, conditions and limitations set forth in this Consent Agreement. Refusal to submit such specimen, or failure to submit such specimen on the day [you] are selected or in such manner as the Board may request, shall constitute a violation of this Consent Agreement.

- (a) Despite the requirements of the April 2010 Consent Agreement, you failed to call in at all on or about May 15, 2010; September 3, 2010; September 4, 2010; September 19, 2010 through October 14, 2010; April 12, 2011; and August 28, 2011.
- (b) Further, despite the requirements of the April 2010 Consent Agreement, you called in late and/or failed to call in at all on dates scheduled for you to provide a urine specimen, resulting in no specimen being collected on or about September 20, 2010; September 21, 2010; October 7, 2010; October 9, 2010; and August 24, 2011.
- (c) Further, despite the requirements of the April 2010 Consent Agreement, you called in late on or about April 29, 2010; May 5, 2010; and June 8, 2011.
- (d) Further, despite the requirements of the April 2010 Consent Agreement, you called in and were notified that you were required to submit a urine specimen yet you failed to submit a urine specimen as required on or about April 26, 2010; April 30, 2010; May 4, 2010; August 23, 2010; October 18, 2010; October 21, 2010; November 29, 2010; December 23, 2010; January 15, 2011; February 4, 2011; February 11, 2011; April 5, 2011; April 20, 2011; June 1, 2011; and July 1, 2011.
- (e) Further, despite the requirements of the April 2010 Consent Agreement, you failed to provide at least four urine specimens per month during the following months of 2010:
 - April
 - May
 - September
 - October
 - November
 - December

Additionally, you failed to provide at least four urine specimens per month during the following months of 2011:

- January
- February
- June
- July

- (7) Paragraph 13 of the April 2010 Consent Agreement provides that you shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, and you “shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board’s offices no later than the due date for [your] quarterly declarations.” Despite the aforementioned provision, you have failed to provide the Board with acceptable documentary evidence of continued compliance with participation in an alcohol and drug rehabilitation program from September 3, 2010 through November 21, 2010 and January 5, 2011 through March 12, 2011.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (7) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) through (7) above, individually and/or collectively, constitute “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/AMM/fib
Enclosures

CERTIFIED MAIL #91 7199 9991 7030 3309 0290
RETURN RECEIPT REQUESTED

cc: Terri-Lynne Smiles
1650 Lake Shore Drive
Suite 225
Columbus, OH 43204

CERTIFIED MAIL #91 7199 9991 7030 3309 0283
RETURN RECEIPT REQUESTED

**SUPERSEDING STEP I
CONSENT AGREEMENT
BETWEEN
DAVID WALTER MASSIE, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

RECEIVED
STATE MEDICAL BOARD
NOV 15 2007

This Consent Agreement is entered into by and between David Walter Massie, M.D., [Dr. Massie], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Massie enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" Section 4731.22(B)(15), Ohio Revised Code, "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice;" and/or Section 4731.22(B)(10), Ohio Revised Code, based upon "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed."

- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(B)(15), Ohio Revised Code, as set forth in Paragraph E, below, and based upon the violations of Sections 4731.22(B)(26) and (10), Ohio Revised Code, to wit: Section 2925.22, Ohio Revised Code, Deception to Obtain a Dangerous Drug, and Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, as set forth in Paragraph E herein and in the Step I Consent Agreement Between David Walter Massie, M.D., and the State Medical Board of Ohio, effective November 15, 2007 [November 2007 Step I Consent Agreement], a copy of which is attached hereto and incorporated herein. The Board expressly reserves the right to

institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Superseding Step I Consent Agreement. Such express reservation includes, but is not limited to, violations based upon any methods used by Dr. Massie to obtain controlled substances or drugs for self-use other than as specifically described in the November 2007 Step I Consent Agreement or in Paragraph E herein; and/or criminal acts other than as specifically referenced therein or herein, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, any criminal offense(s) other than specifically described therein or herein pertaining to Dr. Massie's felonious conduct in obtaining drugs for self-use.

- C. Dr. Massie admits that his license to practice medicine and surgery in the State of Ohio, License # 35.049431, was indefinitely suspended, but not less than eighteen months, pursuant to the terms of the November 2007 Step I Consent Agreement. Dr. Massie further admits that his certificate to practice medicine and surgery in the State of Ohio remains suspended to date.
- D. Dr. Massie states that he is not licensed to practice in any other state or jurisdiction.
- E. Dr. Massie admits that he is presently subject to a license suspension and monitoring by the Board pursuant to the November 2007 Step I Consent Agreement which was based upon Dr. Massie having shared a portion of patients' Oxycontin prescriptions and having been diagnosed as being dependent on Oxycontin.

Dr. Massie admits that the November 2007 Step I Consent Agreement requires that he abstain from personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of his history of chemical dependency. Despite this requirement, Dr. Massie admits that he has provided urine screens that have been intermittently positive for oxycodone, although he has failed to provide documentation from a treating physician indicating that the medication was prescribed, dispensed or administered with full knowledge of his history of chemical dependency. Additionally, Dr. Massie admits that he submitted screens on May 19, 2008, and June 11, 2008, which tested positive for cocaine, and that his supervising physician attributed one of those screens to be falsely positive due to Dr. Massie's use of topical anesthetics used just prior to a transesophageal echocardiogram.

Dr. Massie admits that the November 2007 Step I Consent Agreement requires that he shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board, ensure that his supervising physician provides quarterly reports to the Board, and ensure that the quarterly reports are timely submitted. Despite these requirements, Dr. Massie admits that he missed urine screens for the weeks of December 21, 2008; December 28, 2008; and January 4, 2009; and has failed to submit documentation of any urine screens from January 22, 2009, through July 19, 2009, as well as August 2, 2009, to date, with the exception of one screen in November 2009, and

two screens in December 2009. Further, Dr. Massie admits that he has not ensured that his supervising physician provide quarterly reports to the Board, and acknowledges that the Board has received only one report from his supervising physician since the effective date of the November 2007 Step I Consent Agreement.

Dr. Massie admits that the November 2007 Step I Consent Agreement requires him to abstain completely from the use of alcohol, and from any food or liquid that may produce false results in a toxicology screen. Despite this requirement, Dr. Massie admits that he ingested over-the-counter cough syrup, shortly before, on and just after December 8, 2009, which produced a positive screen result. Dr. Massie asserts that prior to his positive urine screen, he did not check whether the cough syrup contained alcohol, but admits that he violated the conditions of a limitation placed by the Board upon his certificate to practice, in violation of Section 4731.22(B)(15), Ohio Revised Code, in that he failed to abstain from the use of any liquid that may produce false results in a toxicology screen.

Dr. Massie admits that despite mandatory quarterly appearances before the Board or its designated representative as required by the November 2007 Step I Consent Agreement, he nonetheless missed personal appearances scheduled for August 11, 2009, and March 9, 2010. Further, Dr. Massie admits that during the weeks of June 29, 2008, and August 10, 2008, he did not fully comply with participation in an alcohol and drug rehabilitation program, which is also a requirement of the November 2007 Step I Consent Agreement.

Further, while he has no memory of committing the following acts, Dr. Massie acknowledges that the Board possesses sufficient evidence to establish that after the November 15, 2007 effective date of the November 2007 Step I Consent Agreement, on or about November 17, 2007, he called in a prescription for a patient for Lunesta 5mg, 30 count, and on or about February 27, 2008, he called in a prescription for himself for two tablets of Motrin 800 mg.

Further, although Dr. Massie denies that he has relapsed by intentionally using alcohol and/or drugs, he acknowledges that the aforementioned unexplained positive urine screens scientifically confirm a relapse, as that term is defined by Rule 4731-16-01, Ohio Administrative Code.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Massie knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

PERMANENT REVOCATION, STAYED; SUSPENSION

1. The certificate of David Walter Massie, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Massie's certificate shall be SUSPENDED for an indefinite period of time, but not less than one year from the effective date of this Superseding Step I Consent Agreement. The previous suspension of Dr. Massie's certificate to practice medicine and surgery in the State of Ohio for an indefinite period of time, but not less than eighteen months, stemming from the November 2007 Step I Consent Agreement, is hereby terminated upon the effective date of the instant Superseding Step I Consent Agreement.

Obey all Laws

2. Dr. Massie shall obey all federal, state, and local laws.

Sobriety

3. Dr. Massie shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Massie's history of chemical dependency. Further, in the event that Dr. Massie is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Massie shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Massie received; the medical purpose for which he received said drug; the date such drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within thirty days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Massie shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.
4. Dr. Massie shall abstain completely from the use of alcohol.

Absences from Ohio

5. Dr. Massie shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed. Further, the Secretary and Supervising Member of the Board shall have the discretion to grant a waiver of part or all of the monitoring terms set forth in this Consent Agreement for occasional periods of absence of fourteen days or less. In

the event that Dr. Massie resides and/or is employed at a location that is within fifty miles of the geographic border of Ohio and any of its contiguous states, Dr. Massie may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Massie is able to otherwise maintain full compliance with all other terms, conditions and limitations set forth in this Consent Agreement.

Releases; Quarterly Declarations and Appearances

6. Dr. Massie shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Massie's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Massie further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.
7. Dr. Massie shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
8. Dr. Massie shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Drug Testing Facility and Collection Site

9. Dr. Massie shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Massie shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board, and shall include Dr. Massie's drug(s) of choice.

Dr. Massie shall abstain from the use of any substance and the consumption of poppy seeds or any other food or liquid that may produce a low level positive result in a toxicology screen. Dr. Massie acknowledges that he understands that the consumption or use of such substances, including but not limited to substances such as mouthwash or hand cleaning gel, may cause a positive drug screen that may not be able to be differentiated from intentional ingestion, and therefore such consumption or use is prohibited under this Consent Agreement.

All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site pursuant to the global contract between said facility and the Board, that provides for the Board to maintain ultimate control over the urine screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code, and the screening process shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 10 below, to approve urine screenings to be conducted at an alternative drug testing facility and/or collection site or a supervising physician, such approval shall be expressly contingent upon the Board retaining ultimate control over the urine screening process in a manner that preserves the aforementioned confidentiality of all positive screening results.

Dr. Massie shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. Massie shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Consent Agreement. Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Consent Agreement.

Further, within thirty days of the effective date of this Consent Agreement, Dr. Massie shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug testing facility and/or collection site in order to facilitate the urine screening process in the manner required by this Consent Agreement. Further, Dr. Massie shall promptly provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Massie and the Board-approved drug testing facility and/or collection site. Dr. Massie's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Consent Agreement.

Dr. Massie shall ensure that the urine screening process performed through the Board-approved drug testing facility and/or collection site requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Massie and the Board-

approved drug testing facility and collection site shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Massie shall ensure that the Board-approved drug testing facility and/or collection site provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.

In the event that the Board-approved drug testing facility and/or collection site becomes unable or unwilling to serve as required by this Consent Agreement, Dr. Massie must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 10 below, as soon as practicable. Dr. Massie shall further ensure that the Board-approved drug testing facility and/or collection site also notifies the Board directly of its inability to continue to serve and the reasons therefore.

Dr. Massie acknowledges that the Board expressly reserves the right to withdraw its approval of any drug testing facility and/or collection site in the event that the Secretary and Supervising Member of the Board determine that the drug testing facility and/or collection site has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

10. Dr. Massie and the Board agree that it is the intent of this Consent Agreement that Dr. Massie shall submit his urine specimens to the Board-approved drug testing facility and collection site chosen by the Board. However, in the event that utilizing said Board-approved drug testing facility and/or collection site creates an extraordinary hardship upon Dr. Massie, as determined in the sole discretion of the Board, then subject to the following requirements, the Board may approve an alternate drug testing facility and/or collection site, or a supervising physician, to facilitate the urine screening process for Dr. Massie:
 - a. Within thirty days of the date upon which Dr. Massie is notified of the Board's determination that utilizing the Board-approved drug testing facility and/or collection site constitutes an extraordinary hardship upon Dr. Massie, he shall submit to the Board in writing for its prior approval the identity of either an alternate drug testing facility and collection site, or the name of a proposed supervising physician, to whom Dr. Massie shall submit the required urine specimens. In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Massie's residence or employment location, or to a physician who practices in the same locale as Dr. Massie. Dr. Massie shall ensure that the urine screening process performed through the alternate drug testing facility and/or collection site, or through the supervising physician, requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by

a reliable person. In addition, Dr. Massie acknowledges that the alternate drug testing facility and collection site, or the supervising physician, shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

- b. Dr. Massie shall ensure that the alternate drug testing facility and/or collection site, or the supervising physician, provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.
 - c. In the event that the designated alternate drug testing facility and/or collection site, or the supervising physician, becomes unable or unwilling to so serve, Dr. Massie must immediately notify the Board in writing. Dr. Massie shall further ensure that the previously designated alternate drug testing facility and collection site, or the supervising physician, also notifies the Board directly of the inability to continue to serve and the reasons therefore. Further, in order to ensure that there will be no interruption in his urine screening process, upon the previously approved alternate drug testing facility, collection site, or supervising physician becoming unable to serve, Dr. Massie shall immediately commence urine screening at the Board-approved drug testing facility and collection site chosen by the Board, until such time, if any, that the Board approves a subsequent alternate drug testing facility, collection site, or supervising physician, if requested by Dr. Massie.
 - d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Massie's designated alternate drug testing facility and/or collection site, or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
11. All screening reports required under this Consent Agreement from the Board-approved drug testing facility and/or collection site, or from the alternate drug testing facility and/or collection site or supervising physician, must be received in the Board's offices no later than the due date for Dr. Massie's quarterly declaration. It is Dr. Massie's responsibility to ensure that reports are timely submitted.
12. The Board retains the right to require, and Dr. Massie agrees to submit, blood, urine, breath, saliva and/or hair specimens for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Massie, or for any other purpose, at Dr. Massie's expense upon the Board's request and without prior notice. Dr. Massie's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such

specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.

Rehabilitation Program

13. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Massie shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Massie's quarterly declarations.

14. Immediately upon completion of any required treatment for chemical dependency, Dr. Massie shall enter into an aftercare contract with a Board-approved treatment provider and shall maintain continued compliance with the terms of said aftercare contract, provided that, where the terms of the aftercare contract conflict with the terms of this Consent Agreement, the terms of this Consent Agreement shall control.

CONDITIONS FOR REINSTATEMENT

15. The Board shall not consider reinstatement or restoration of Dr. Massie's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Massie shall submit an application for reinstatement or restoration, as appropriate, accompanied by appropriate fees, if any.
 - b. Dr. Massie shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Massie has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical abuse/dependence, as set forth in Rules 4731-16-02 and 4731-16-08, Ohio Administrative Code, completed consecutively.
 - ii. Evidence of continuing full compliance with, or successful completion of, a post-discharge aftercare contract with a treatment provider approved under

Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.

- iii. Evidence of continuing full compliance with this Consent Agreement.
- iv. Three written reports indicating that Dr. Massie's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

Two reports shall be made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Massie. Prior to the assessments, Dr. Massie shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Massie, and any conditions, restrictions, or limitations that should be imposed on Dr. Massie's practice. The reports shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. Massie. Prior to the examination, Dr. Massie shall provide the psychiatrist with copies of patient records from any prior evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling, and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. Massie's practice; and the basis for the psychiatrist's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

- v. Prior to submitting his application for reinstatement or restoration, Dr. Massie shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.

- vi. In the event that the Board initiates future formal proceedings against Dr. Massie, including but not limited to issuance of a Notice of Opportunity for Hearing, Dr. Massie shall be ineligible for reinstatement until such proceedings are fully resolved by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

- c. Dr. Massie shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board within 180 days of the date upon which all the above-specified conditions for reinstatement or restoration have been completed or, if the Board and Dr. Massie are unable to agree on the terms of a written Consent Agreement, then Dr. Massie further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code. The Board shall provide notice to Dr. Massie that said hearing has been scheduled, advising Dr. Massie of his hearing rights, and stating the date, time, and location of the hearing at which the Board will present its evidence, after which the Board will make a determination of the matter by Board Order.

Further, upon reinstatement of Dr. Massie's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Massie shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Massie has maintained sobriety.

REQUIRED REPORTING BY LICENSEE

- 16. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Massie shall promptly provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. In the event that Dr. Massie provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Massie shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Massie shall provide the Board with one of

the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

17. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Massie further agrees to provide a copy of this Consent Agreement at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Massie shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
 18. Dr. Massie shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Massie chemical dependency treatment or monitoring. Further, Dr. Massie shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
 19. Dr. Massie shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.
-

DURATION/MODIFICATION OF TERMS

The above-described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties. In the event that the Board initiates future formal proceedings against Dr. Massie, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Dr. Massie and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Massie appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Massie acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

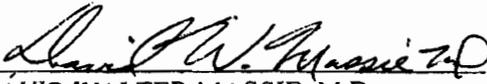
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Massie hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Massie acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



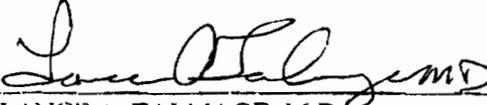
DAVID WALTER MASSIE, M.D.

4/4/10
DATE



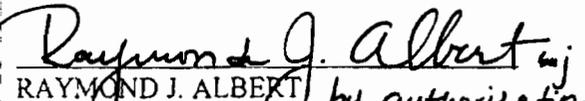
TERRI LYNN SMILES
Attorney for Dr. Massie

4/12/10
DATE



LANCE A. TALMAGE, M.D.
Secretary

4-14-10
DATE



RAYMOND J. ALBERT
Supervising Member *by authorization*

April 14, 2010
DATE



ANGELA M. McNAIR
Enforcement Attorney

4/12/10
DATE

STATE MEDICAL BOARD
OF OHIO
NOV -8 A 8 31

STEP I
CONSENT AGREEMENT
BETWEEN
DAVID WALTER MASSIE, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between David Walter Massie, M.D., Dr. Massie, and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Massie enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" and/or Section 4731.22(B)(10), Ohio Revised Code, based upon "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed."

- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Sections 4731.22(B)(26) and (10), Ohio Revised Code, to wit: Section 2925.22, Ohio Revised Code, Deception to Obtain a Dangerous Drug, and Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, as set forth in Paragraph E below. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, violations based upon any methods used by Dr. Massie to obtain controlled substances or drugs for self-use other than as specifically described herein, criminal acts other than as specifically referenced herein, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, any criminal offense(s) other than specifically described herein pertaining to Dr. Massie's felonious conduct in obtaining drugs for self-use.

Additionally, Dr. Massie states that he understands that the Board will pursue, by separate action, any violations beyond the particular criminal acts specifically set forth in Paragraph E, below, including, but not limited to, any matters related to drug use by others, any matters related to trafficking in drugs, and any matters related to aiding and abetting and/or complicity, even if such violations arise from the same common nucleus of operative facts as outlined within this Consent Agreement. Dr. Massie further states and acknowledges that he understands that subsequent Board actions may supersede this Consent Agreement and may result in further discipline, up to and including permanent revocation of his license to practice medicine and surgery in Ohio.

- C. Dr. Massie is licensed to practice medicine and surgery in the State of Ohio, License # 35.049431.
- D. Dr. Massie states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
- E. Dr. Massie admits that he is dependent on Oxycontin, that he initiated self-detoxification during the weekend of August 10-12, 2007, and subsequently voluntarily entered the chemical dependency program at the Cleveland Clinic Foundation [CCF] on or about August 16, 2007, for management of Oxycodone dependence. Dr. Massie further admits he left the inpatient program at CCF on August 20, 2007. Dr. Massie admits that he is impaired in his ability to practice medicine and surgery in accordance with acceptable and prevailing standards of care due to habitual or excessive use or abuse of alcohol or drugs, and that an inpatient level of care was recommended.

Dr. Massie admits he has had a history of neck injuries resulting in a two level cervical fusion in 1991. Dr. Massie further admits that he first used Oxycontin when he ruptured his neck during the autumn of 2002. Dr. Massie states that his doctors opined that pain management was the best choice and Dr. Massie was started on Oxycontin for his pain. On February 28, 2007, Dr. Massie states that his father passed away after being hospitalized with inoperable heart disease. Dr. Massie states that during this time, his physician increased his dosage of Oxycontin from 40 to 80 mg. a day.

Dr. Massie admits that as his tolerance to Oxycontin increased, he entered into arrangements with patients to give him a portion of their Oxycontin prescription. Dr. Massie asserts that he never self-prescribed Oxycontin, never obtained a full prescription from a patient, nor did he ever write prescriptions for fictitious patients. Further, Dr. Massie specifically denies obtaining controlled substances for self-use by any other methods and attests that, other than the aforementioned occasional sharing of a portion of patients' Oxycontin prescriptions, he never directly or indirectly involved others in any of his efforts to obtain controlled substances for self-use.

Dr. Massie admits that he has abused alcohol, consuming one to two six-packs of beer per week and/or a bottle of wine two or three times per week. Dr. Massie further admits

that he used Amphetamine and Klonopin every other week after his father's death. Dr. Massie asserts that the Klonopin was from an old prescription written by his family doctor, and the Amphetamine were samples left over from his father's practice.

Dr. Massie states that he is currently facing numerous health issues and that he will return to the Cleveland Clinic Rehabilitation Program as soon as he is physically able based upon his other medical problems. Dr. Massie states that he has not previously had any treatment for chemical dependency.

Dr. Massie further admits that prior to his admission to CCF, he was under the care of a psychiatrist and psychologist, and that on or about July 1, 2007, he voluntarily ceased the active practice of medicine based upon the advice of his mental health providers. Dr. Massie further admits that after abandoning inpatient treatment at CCF on or about August 20, 2007, he subsequently suffered a stroke on or about August 25, 2007. Dr. Massie acknowledges that due to his failure to complete a minimum of twenty-eight days of inpatient or residential treatment at CCF, he is required to successfully complete any required inpatient treatment, to include at least twenty-eight days of inpatient or residential treatment for chemical dependence, completed consecutively, at a Board-approved treatment provider.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Massie knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Massie to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than eighteen months.

Sobriety

2. Dr. Massie shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Massie's history of chemical dependency.
3. Dr. Massie shall abstain completely from the use of alcohol.

Releases: Quarterly Declarations and Appearances

4. Dr. Massie shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and

all parties that provide treatment or evaluation for Dr. Massie's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Massie further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.

5. Dr. Massie shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the sixteenth day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Dr. Massie shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

7. Dr. Massie shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Massie shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Dr. Massie shall abstain from consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen.

Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Massie shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Massie. Dr. Massie and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen

is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Massie shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Massie must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Massie shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Massie's quarterly declaration. It is Dr. Massie's responsibility to ensure that reports are timely submitted.

8. The Board retains the right to require, and Dr. Massie agrees to submit, blood or urine specimens for analysis at Dr. Massie's expense upon the Board's request and without prior notice.

Rehabilitation Program

9. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Massie shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. Massie's quarterly declarations.

CONDITIONS FOR REINSTATEMENT

10. The Board shall not consider reinstatement of Dr. Massie's certificate to practice medicine and surgery until all of the following conditions are met:

- a. Dr. Massie shall submit an application for reinstatement, accompanied by appropriate fees, if any.
- b. Dr. Massie shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Massie has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical dependence, as set forth in Rules 4731-16-02(B)(4) and 4731-16-08(A)(13), Ohio Administrative Code, completed consecutively.
 - ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Three written reports indicating that Dr. Massie's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

Two reports shall be made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Massie. Prior to the assessments, Dr. Massie shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Massie, and any conditions, restrictions, or limitations that should be imposed on Dr. Massie's practice. The reports shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. Massie. Prior to the examination, Dr. Massie shall provide the psychiatrist with copies of patient records from any prior evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating

psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling, and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. Massie's practice; and the basis for the psychiatrist's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement.

- c. Dr. Massie shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Massie are unable to agree on the terms of a written Consent Agreement, then Dr. Massie further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of Dr. Massie's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Massie shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Massie has maintained sobriety.

11. In the event that Dr. Massie has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Massie's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

12. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Massie shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
13. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any

professional license. Dr. Massie further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Massie shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

14. Dr. Massie shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Massie chemical dependency and/or psychiatric or psychological evaluation, treatment or monitoring.

The above-described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Massie appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Massie acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Massie hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

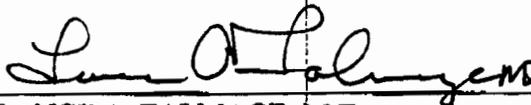
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Massie acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



DAVID WALTER MASSIE, M.D.



LANCE A. TALMAGE, M.D.
Secretary

11/5/07
DATE

11-14-07
DATE



DENNIS J. NIERMANN, ESQ.
Attorney for Dr. Massie



RAYMOND J. ALBERT
Supervising Member

11/7/07
DATE

11/15/07
DATE



ANGELA MCNAIR
Enforcement Attorney

11/8/07
DATE

STATE MEDICAL BOARD
OF OHIO
2007 NOV - 8 A 8 31

**SUPERSEDING STEP I
CONSENT AGREEMENT
BETWEEN
DAVID WALTER MASSIE, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

RECEIVED
STATE MEDICAL BOARD OF OHIO
NOV 15 2007

This Consent Agreement is entered into by and between David Walter Massie, M.D., [Dr. Massie], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Massie enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" Section 4731.22(B)(15), Ohio Revised Code, "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice;" and/or Section 4731.22(B)(10), Ohio Revised Code, based upon "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(B)(15), Ohio Revised Code, as set forth in Paragraph E, below, and based upon the violations of Sections 4731.22(B)(26) and (10), Ohio Revised Code, to wit: Section 2925.22, Ohio Revised Code, Deception to Obtain a Dangerous Drug, and Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, as set forth in Paragraph E herein and in the Step I Consent Agreement Between David Walter Massie, M.D., and the State Medical Board of Ohio, effective November 15, 2007 [November 2007 Step I Consent Agreement], a copy of which is attached hereto and incorporated herein. The Board expressly reserves the right to

institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Superseding Step I Consent Agreement. Such express reservation includes, but is not limited to, violations based upon any methods used by Dr. Massie to obtain controlled substances or drugs for self-use other than as specifically described in the November 2007 Step I Consent Agreement or in Paragraph E herein; and/or criminal acts other than as specifically referenced therein or herein, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, any criminal offense(s) other than specifically described therein or herein pertaining to Dr. Massie's felonious conduct in obtaining drugs for self-use.

- C. Dr. Massie admits that his license to practice medicine and surgery in the State of Ohio, License # 35.049431, was indefinitely suspended, but not less than eighteen months, pursuant to the terms of the November 2007 Step I Consent Agreement. Dr. Massie further admits that his certificate to practice medicine and surgery in the State of Ohio remains suspended to date.
- D. Dr. Massie states that he is not licensed to practice in any other state or jurisdiction.
- E. Dr. Massie admits that he is presently subject to a license suspension and monitoring by the Board pursuant to the November 2007 Step I Consent Agreement which was based upon Dr. Massie having shared a portion of patients' Oxycontin prescriptions and having been diagnosed as being dependent on Oxycontin.

Dr. Massie admits that the November 2007 Step I Consent Agreement requires that he abstain from personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of his history of chemical dependency. Despite this requirement, Dr. Massie admits that he has provided urine screens that have been intermittently positive for oxycodone, although he has failed to provide documentation from a treating physician indicating that the medication was prescribed, dispensed or administered with full knowledge of his history of chemical dependency. Additionally, Dr. Massie admits that he submitted screens on May 19, 2008, and June 11, 2008, which tested positive for cocaine, and that his supervising physician attributed one of those screens to be falsely positive due to Dr. Massie's use of topical anesthetics used just prior to a transesophageal echocardiogram.

Dr. Massie admits that the November 2007 Step I Consent Agreement requires that he shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board, ensure that his supervising physician provides quarterly reports to the Board, and ensure that the quarterly reports are timely submitted. Despite these requirements, Dr. Massie admits that he missed urine screens for the weeks of December 21, 2008; December 28, 2008; and January 4, 2009; and has failed to submit documentation of any urine screens from January 22, 2009, through July 19, 2009, as well as August 2, 2009, to date, with the except of one screen in November 2009, and

two screens in December 2009. Further, Dr. Massie admits that he has not ensured that his supervising physician provide quarterly reports to the Board, and acknowledges that the Board has received only one report from his supervising physician since the effective date of the November 2007 Step I Consent Agreement.

Dr. Massie admits that the November 2007 Step I Consent Agreement requires him to abstain completely from the use of alcohol, and from any food or liquid that may produce false results in a toxicology screen. Despite this requirement, Dr. Massie admits that he ingested over-the-counter cough syrup, shortly before, on and just after December 8, 2009, which produced a positive screen result. Dr. Massie asserts that prior to his positive urine screen, he did not check whether the cough syrup contained alcohol, but admits that he violated the conditions of a limitation placed by the Board upon his certificate to practice, in violation of Section 4731.22(B)(15), Ohio Revised Code, in that he failed to abstain from the use of any liquid that may produce false results in a toxicology screen.

Dr. Massie admits that despite mandatory quarterly appearances before the Board or its designated representative as required by the November 2007 Step I Consent Agreement, he nonetheless missed personal appearances scheduled for August 11, 2009, and March 9, 2010. Further, Dr. Massie admits that during the weeks of June 29, 2008, and August 10, 2008, he did not fully comply with participation in an alcohol and drug rehabilitation program, which is also a requirement of the November 2007 Step I Consent Agreement.

Further, while he has no memory of committing the following acts, Dr. Massie acknowledges that the Board possesses sufficient evidence to establish that after the November 15, 2007 effective date of the November 2007 Step I Consent Agreement, on or about November 17, 2007, he called in a prescription for a patient for Lunesta 5mg, 30 count, and on or about February 27, 2008, he called in a prescription for himself for two tablets of Motrin 800 mg.

Further, although Dr. Massie denies that he has relapsed by intentionally using alcohol and/or drugs, he acknowledges that the aforementioned unexplained positive urine screens scientifically confirm a relapse, as that term is defined by Rule 4731-16-01, Ohio Administrative Code.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Massie knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

PERMANENT REVOCATION, STAYED; SUSPENSION

1. The certificate of David Walter Massie, M.D., to practice medicine and surgery in the State of Ohio shall be **PERMANENTLY REVOKED**. Such permanent revocation is **STAYED**, and Dr. Massie's certificate shall be **SUSPENDED** for an indefinite period of time, but not less than one year from the effective date of this Superseding Step I Consent Agreement. The previous suspension of Dr. Massie's certificate to practice medicine and surgery in the State of Ohio for an indefinite period of time, but not less than eighteen months, stemming from the November 2007 Step I Consent Agreement, is hereby terminated upon the effective date of the instant Superseding Step I Consent Agreement.

Obey all Laws

2. Dr. Massie shall obey all federal, state, and local laws.

Sobriety

3. Dr. Massie shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Massie's history of chemical dependency. Further, in the event that Dr. Massie is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Massie shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Massie received; the medical purpose for which he received said drug; the date such drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within thirty days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Massie shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.
4. Dr. Massie shall abstain completely from the use of alcohol.

Absences from Ohio

5. Dr. Massie shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed. Further, the Secretary and Supervising Member of the Board shall have the discretion to grant a waiver of part or all of the monitoring terms set forth in this Consent Agreement for occasional periods of absence of fourteen days or less. In

the event that Dr. Massie resides and/or is employed at a location that is within fifty miles of the geographic border of Ohio and any of its contiguous states, Dr. Massie may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Massie is able to otherwise maintain full compliance with all other terms, conditions and limitations set forth in this Consent Agreement.

Releases; Quarterly Declarations and Appearances

6. Dr. Massie shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Massie's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Massie further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.
7. Dr. Massie shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
8. Dr. Massie shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Drug Testing Facility and Collection Site

9. Dr. Massie shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Massie shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board, and shall include Dr. Massie's drug(s) of choice.

Dr. Massie shall abstain from the use of any substance and the consumption of poppy seeds or any other food or liquid that may produce a low level positive result in a toxicology screen. Dr. Massie acknowledges that he understands that the consumption or use of such substances, including but not limited to substances such as mouthwash or hand cleaning gel, may cause a positive drug screen that may not be able to be differentiated from intentional ingestion, and therefore such consumption or use is prohibited under this Consent Agreement.

All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site pursuant to the global contract between said facility and the Board, that provides for the Board to maintain ultimate control over the urine screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code, and the screening process shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 10 below, to approve urine screenings to be conducted at an alternative drug testing facility and/or collection site or a supervising physician, such approval shall be expressly contingent upon the Board retaining ultimate control over the urine screening process in a manner that preserves the aforementioned confidentiality of all positive screening results.

Dr. Massie shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. Massie shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Consent Agreement. Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Consent Agreement.

Further, within thirty days of the effective date of this Consent Agreement, Dr. Massie shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug testing facility and/or collection site in order to facilitate the urine screening process in the manner required by this Consent Agreement. Further, Dr. Massie shall promptly provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Massie and the Board-approved drug testing facility and/or collection site. Dr. Massie's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Consent Agreement.

Dr. Massie shall ensure that the urine screening process performed through the Board-approved drug testing facility and/or collection site requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Massie and the Board-

approved drug testing facility and collection site shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Massie shall ensure that the Board-approved drug testing facility and/or collection site provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.

In the event that the Board-approved drug testing facility and/or collection site becomes unable or unwilling to serve as required by this Consent Agreement, Dr. Massie must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 10 below, as soon as practicable. Dr. Massie shall further ensure that the Board-approved drug testing facility and/or collection site also notifies the Board directly of its inability to continue to serve and the reasons therefore.

Dr. Massie acknowledges that the Board expressly reserves the right to withdraw its approval of any drug testing facility and/or collection site in the event that the Secretary and Supervising Member of the Board determine that the drug testing facility and/or collection site has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

10. Dr. Massie and the Board agree that it is the intent of this Consent Agreement that Dr. Massie shall submit his urine specimens to the Board-approved drug testing facility and collection site chosen by the Board. However, in the event that utilizing said Board-approved drug testing facility and/or collection site creates an extraordinary hardship upon Dr. Massie, as determined in the sole discretion of the Board, then subject to the following requirements, the Board may approve an alternate drug testing facility and/or collection site, or a supervising physician, to facilitate the urine screening process for Dr. Massie:
 - a. Within thirty days of the date upon which Dr. Massie is notified of the Board's determination that utilizing the Board-approved drug testing facility and/or collection site constitutes an extraordinary hardship upon Dr. Massie, he shall submit to the Board in writing for its prior approval the identity of either an alternate drug testing facility and collection site, or the name of a proposed supervising physician, to whom Dr. Massie shall submit the required urine specimens. In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Massie's residence or employment location, or to a physician who practices in the same locale as Dr. Massie. Dr. Massie shall ensure that the urine screening process performed through the alternate drug testing facility and/or collection site, or through the supervising physician, requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by

a reliable person. In addition, Dr. Massie acknowledges that the alternate drug testing facility and collection site, or the supervising physician, shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

- b. Dr. Massie shall ensure that the alternate drug testing facility and/or collection site, or the supervising physician, provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.
 - c. In the event that the designated alternate drug testing facility and/or collection site, or the supervising physician, becomes unable or unwilling to so serve, Dr. Massie must immediately notify the Board in writing. Dr. Massie shall further ensure that the previously designated alternate drug testing facility and collection site, or the supervising physician, also notifies the Board directly of the inability to continue to serve and the reasons therefore. Further, in order to ensure that there will be no interruption in his urine screening process, upon the previously approved alternate drug testing facility, collection site, or supervising physician becoming unable to serve, Dr. Massie shall immediately commence urine screening at the Board-approved drug testing facility and collection site chosen by the Board, until such time, if any, that the Board approves a subsequent alternate drug testing facility, collection site, or supervising physician, if requested by Dr. Massie.
 - d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Massie's designated alternate drug testing facility and/or collection site, or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
11. All screening reports required under this Consent Agreement from the Board-approved drug testing facility and/or collection site, or from the alternate drug testing facility and/or collection site or supervising physician, must be received in the Board's offices no later than the due date for Dr. Massie's quarterly declaration. It is Dr. Massie's responsibility to ensure that reports are timely submitted.
12. The Board retains the right to require, and Dr. Massie agrees to submit, blood, urine, breath, saliva and/or hair specimens for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Massie, or for any other purpose, at Dr. Massie's expense upon the Board's request and without prior notice. Dr. Massie's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such

specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.

Rehabilitation Program

13. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Massie shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Massie's quarterly declarations.

14. Immediately upon completion of any required treatment for chemical dependency, Dr. Massie shall enter into an aftercare contract with a Board-approved treatment provider and shall maintain continued compliance with the terms of said aftercare contract, provided that, where the terms of the aftercare contract conflict with the terms of this Consent Agreement, the terms of this Consent Agreement shall control.

CONDITIONS FOR REINSTATEMENT

15. The Board shall not consider reinstatement or restoration of Dr. Massie's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Massie shall submit an application for reinstatement or restoration, as appropriate, accompanied by appropriate fees, if any.
 - b. Dr. Massie shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Massie has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical abuse/dependence, as set forth in Rules 4731-16-02 and 4731-16-08, Ohio Administrative Code, completed consecutively.
 - ii. Evidence of continuing full compliance with, or successful completion of, a post-discharge aftercare contract with a treatment provider approved under

Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.

- iii. Evidence of continuing full compliance with this Consent Agreement.
- iv. Three written reports indicating that Dr. Massie's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

Two reports shall be made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Massie. Prior to the assessments, Dr. Massie shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Massie, and any conditions, restrictions, or limitations that should be imposed on Dr. Massie's practice. The reports shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. Massie. Prior to the examination, Dr. Massie shall provide the psychiatrist with copies of patient records from any prior evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling, and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. Massie's practice; and the basis for the psychiatrist's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

- v. Prior to submitting his application for reinstatement or restoration, Dr. Massie shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.

- vi. In the event that the Board initiates future formal proceedings against Dr. Massie, including but not limited to issuance of a Notice of Opportunity for Hearing, Dr. Massie shall be ineligible for reinstatement until such proceedings are fully resolved by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

- c. Dr. Massie shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board within 180 days of the date upon which all the above-specified conditions for reinstatement or restoration have been completed or, if the Board and Dr. Massie are unable to agree on the terms of a written Consent Agreement, then Dr. Massie further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code. The Board shall provide notice to Dr. Massie that said hearing has been scheduled, advising Dr. Massie of his hearing rights, and stating the date, time, and location of the hearing at which the Board will present its evidence, after which the Board will make a determination of the matter by Board Order.

Further, upon reinstatement of Dr. Massie's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Massie shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Massie has maintained sobriety.

REQUIRED REPORTING BY LICENSEE

- 16. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Massie shall promptly provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. In the event that Dr. Massie provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Massie shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Massie shall provide the Board with one of

the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

17. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Massie further agrees to provide a copy of this Consent Agreement at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Massie shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
18. Dr. Massie shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Massie chemical dependency treatment or monitoring. Further, Dr. Massie shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
19. Dr. Massie shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

DURATION/MODIFICATION OF TERMS

The above-described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties. In the event that the Board initiates future formal proceedings against Dr. Massie, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Dr. Massie and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Massie appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Massie acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Massie hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Massie acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



DAVID WALTER MASSIE, M.D.

DATE 4/4/10



TERRI LYNN SMILES
Attorney for Dr. Massie

DATE 4/12/10



LANCE A. TALMAGE, M.D.
Secretary

DATE 4-14-10



RAYMOND J. ALBERT
Supervising Member *by authorization*

DATE April 14, 2010



ANGELA M. McNAIR
Enforcement Attorney

DATE 4/12/10

STEP I **STATE MEDICAL BOARD**
OF OHIO
CONSENT AGREEMENT
BETWEEN **2001 NOV -8 A 8:31**
DAVID WALTER MASSIE, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between David Walter Massie, M.D., Dr. Massie, and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Massie enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," and/or Section 4731.22(B)(10), Ohio Revised Code, based upon "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed."

- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Sections 4731.22(B)(26) and (10), Ohio Revised Code, to wit: Section 2925.22, Ohio Revised Code, Deception to Obtain a Dangerous Drug, and Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, as set forth in Paragraph E below. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, violations based upon any methods used by Dr. Massie to obtain controlled substances or drugs for self-use other than as specifically described herein, criminal acts other than as specifically referenced herein, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, any criminal offense(s) other than specifically described herein pertaining to Dr. Massie's felonious conduct in obtaining drugs for self-use.

Additionally, Dr. Massie states that he understands that the Board will pursue, by separate action, any violations beyond the particular criminal acts specifically set forth in Paragraph E, below, including, but not limited to, any matters related to drug use by others, any matters related to trafficking in drugs, and any matters related to aiding and abetting and/or complicity, even if such violations arise from the same common nucleus of operative facts as outlined within this Consent Agreement. Dr. Massie further states and acknowledges that he understands that subsequent Board actions may supersede this Consent Agreement and may result in further discipline, up to and including permanent revocation of his license to practice medicine and surgery in Ohio.

- C. Dr. Massie is licensed to practice medicine and surgery in the State of Ohio, License # 35.049431.
- D. Dr. Massie states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
- E. Dr. Massie admits that he is dependent on Oxycontin, that he initiated self-detoxification during the weekend of August 10-12, 2007, and subsequently voluntarily entered the chemical dependency program at the Cleveland Clinic Foundation [CCF] on or about August 16, 2007, for management of Oxycodone dependence. Dr. Massie further admits he left the inpatient program at CCF on August 20, 2007. Dr. Massie admits that he is impaired in his ability to practice medicine and surgery in accordance with acceptable and prevailing standards of care due to habitual or excessive use or abuse of alcohol or drugs, and that an inpatient level of care was recommended.

Dr. Massie admits he has had a history of neck injuries resulting in a two level cervical fusion in 1991. Dr. Massie further admits that he first used Oxycontin when he ruptured his neck during the autumn of 2002. Dr. Massie states that his doctors opined that pain management was the best choice and Dr. Massie was started on Oxycontin for his pain. On February 28, 2007, Dr. Massie states that his father passed away after being hospitalized with inoperable heart disease. Dr. Massie states that during this time, his physician increased his dosage of Oxycontin from 40 to 80 mg. a day.

Dr. Massie admits that as his tolerance to Oxycontin increased, he entered into arrangements with patients to give him a portion of their Oxycontin prescription. Dr. Massie asserts that he never self-prescribed Oxycontin, never obtained a full prescription from a patient, nor did he ever write prescriptions for fictitious patients. Further, Dr. Massie specifically denies obtaining controlled substances for self-use by any other methods and attests that, other than the aforementioned occasional sharing of a portion of patients' Oxycontin prescriptions, he never directly or indirectly involved others in any of his efforts to obtain controlled substances for self-use.

Dr. Massie admits that he has abused alcohol, consuming one to two six-packs of beer per week and/or a bottle of wine two or three times per week. Dr. Massie further admits

that he used Amphetamine and Klonopin every other week after his father's death. Dr. Massie asserts that the Klonopin was from an old prescription written by his family doctor, and the Amphetamine were samples left over from his father's practice.

Dr. Massie states that he is currently facing numerous health issues and that he will return to the Cleveland Clinic Rehabilitation Program as soon as he is physically able based upon his other medical problems. Dr. Massie states that he has not previously had any treatment for chemical dependency.

Dr. Massie further admits that prior to his admission to CCF, he was under the care of a psychiatrist and psychologist, and that on or about July 1, 2007, he voluntarily ceased the active practice of medicine based upon the advice of his mental health providers. Dr. Massie further admits that after abandoning inpatient treatment at CCF on or about August 20, 2007, he subsequently suffered a stroke on or about August 25, 2007. Dr. Massie acknowledges that due to his failure to complete a minimum of twenty-eight days of inpatient or residential treatment at CCF, he is required to successfully complete any required inpatient treatment, to include at least twenty-eight days of inpatient or residential treatment for chemical dependence, completed consecutively, at a Board-approved treatment provider.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Massie knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Massie to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than eighteen months.

Sobriety

2. Dr. Massie shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Massie's history of chemical dependency.
3. Dr. Massie shall abstain completely from the use of alcohol.

Releases: Quarterly Declarations and Appearances

4. Dr. Massie shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and

all parties that provide treatment or evaluation for Dr. Massie's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Massie further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.

5. Dr. Massie shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the sixteenth day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Dr. Massie shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

7. Dr. Massie shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Massie shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Dr. Massie shall abstain from consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen.

Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Massie shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Massie. Dr. Massie and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen

is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Massie shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Massie must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Massie shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Massie's quarterly declaration. It is Dr. Massie's responsibility to ensure that reports are timely submitted.

8. The Board retains the right to require, and Dr. Massie agrees to submit, blood or urine specimens for analysis at Dr. Massie's expense upon the Board's request and without prior notice.

Rehabilitation Program

9. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Massie shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. Massie's quarterly declarations.

CONDITIONS FOR REINSTATEMENT

10. The Board shall not consider reinstatement of Dr. Massie's certificate to practice medicine and surgery until all of the following conditions are met:

- a. Dr. Massie shall submit an application for reinstatement, accompanied by appropriate fees, if any.
- b. Dr. Massie shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Massie has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical dependence, as set forth in Rules 4731-16-02(B)(4) and 4731-16-08(A)(13), Ohio Administrative Code, completed consecutively.
 - ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Three written reports indicating that Dr. Massie's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

Two reports shall be made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Massie. Prior to the assessments, Dr. Massie shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Massie, and any conditions, restrictions, or limitations that should be imposed on Dr. Massie's practice. The reports shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. Massie. Prior to the examination, Dr. Massie shall provide the psychiatrist with copies of patient records from any prior evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating

psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling, and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. Massie's practice; and the basis for the psychiatrist's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement.

- c. Dr. Massie shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Massie are unable to agree on the terms of a written Consent Agreement, then Dr. Massie further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of Dr. Massie's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Massie shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Massie has maintained sobriety.

11. In the event that Dr. Massie has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Massie's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

12. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Massie shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
13. Within thirty days of the effective date of this Consent Agreement, Dr. Massie shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any

professional license. Dr. Massie further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Massie shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

14. Dr. Massie shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Massie chemical dependency and/or psychiatric or psychological evaluation, treatment or monitoring.

The above-described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Massie appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Massie acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Massie hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Massie acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



DAVID WALTER MASSIE, M.D.



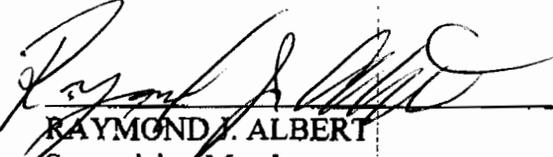
LANCE A. TALMAGE, M.D.
Secretary

11/5/07
DATE

11-14-07
DATE



DENNIS J. NIERMANN, ESQ.
Attorney for Dr. Massie



RAYMOND J. ALBERT
Supervising Member

11/7/07
DATE

11/15/07
DATE



ANGELA MCNAIR
Enforcement Attorney

11/8/07
DATE

STATE MEDICAL BOARD
OF OHIO
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