

IN AND BEFORE THE OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE AND SUPERVISION

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,)
OKLAHOMA BOARD OF)
MEDICAL LICENSURE AND)
SUPERVISION,)

Plaintiff,)

vs.)

EUGENE MASSAD MASSAD, M.D)
Medical License No. 6481,)

Defendant.)

CASE NO. 99-03-2067

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**VOLUNTARY SUBMITTAL
TO JURISDICTION AND ORDER**

NOW on this ~~1~~ ^{April} day of ~~May~~, 1999, there comes on before the Oklahoma State Board of Medical Licensure and Supervision, the above styled and numbered cause of action. The Defendant, Eugene Massad Massad, M.D. the undersigned, states that he is of sound mind and not under the influence of any medication or drug or impaired thereby and that the Defendant fully recognizes his right to appear before the Oklahoma State Board of Medical Licensure and Supervision, for evidentiary hearing on the allegations against the Defendant herein. Of his own volition and decision, the Defendant waives his right to appear before the Oklahoma State Board of Medical Licensure and Supervision en banc for a full hearing and pleads no contest to the allegations as set forth in the Complaint. Further, the Defendant, Eugene Massad Massad, M.D, believes that a hearing before the Oklahoma State Board of Medical Licensure and Supervision en banc would result in some sanction invoked by the Board under the Medical and

Surgical Licensure and Supervision Act. Therefore, Defendant, **Eugene Massad Massad, M.D.**, hereby voluntarily and of his own volition submits to the jurisdiction of the Board, acknowledges the allegations set forth herein and agrees to abide by the conditions and terms of the Order.

FINDINGS OF FACT

1. Defendant, **Eugene Massad Massad, M.D.**, holds Oklahoma Medical License No. 6481.

2. On or around August 22, 1998, the Texas State Board of Medical Examiners in Case No. C-3144 styled In the Matter of the License of Eugene Massad Massad, M.D., did enter an Agreed Order. That Agreed Order included the following Findings of Fact and Conclusions of Law, to-wit:

“4. After reviewing several of Respondent’s patients’ medical records, a Board consultant has found Respondent’s record keeping to be illegible, poorly organized, and grossly inadequate.

5. Respondent treated patient G.B. Respondent continued to prescribe Valium to patient G.B. even after Respondent learned that patient G.B. had forged a Valium prescription. Respondent’s treatment of patient G.B. involved the overprescribing of Valium and below standard treatment of chronic pain.

6. Respondent treated members of his family. These treatments involved the prescription of appetite suppressants. Respondent’s medical records for the treatment of his family were below standard.

7. Respondent treated patient L.M. Respondent treated patient L.M. with Vicodin and Xanax in an inappropriate and nontherapeutic manner.

8. Respondent treated patient L.P. Respondent's treatment of patient L.P.'s overweight problems while ignoring patient L.P.'s hypertriglyceridemia and abnormal liver function was grossly inappropriate and nontherapeutic. Respondent maintains that patient L.P. was an alcoholic and that Respondent assisted him in gaining substance abuse treatment.

9. Respondent maintains that since the time of Respondent's treatments of the patients referenced above, he has limited his practice to industrial/occupational medicine under the supervision of another physician. Respondent also maintains that he now keeps well-organized and complete medical records as a matter of course.

CONCLUSIONS OF LAW

1. Respondent has violated Section 3.08(18) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, which authorizes the Board to take disciplinary action against Respondent based on Respondent's professional failure to practice medicine in an acceptable manner consistent with public health and welfare."

4. As a result of the aforesaid Findings of Fact and Conclusions of Law, the Texas State Board of Medical Examiners issued a Suspension of the Defendant' medical license. However, the Suspension was STAYED and Defendant was placed on probation for a period of five years under enumerated terms and conditions that included the following, to-wit:

"1. Respondent shall limit his practice of medicine to occupational medicine, family practice or a practice in a facility approved in advance and in writing by the Executive Director of the Board.

2. Respondent's practice of bariatric medicine shall include, at a minimum, performance of an appropriate physical and psychological evaluation, appropriate laboratory testing, discussion of treatment risk factors with the patient, follow-up care, monitored prescribing practices, and maintenance of proper medical records. Respondent must ultimately evaluate the risks involved in the treatment of the patient in light of the benefits received by the patient, particularly regarding the prescribing of medication; and the analysis of risk versus benefit should be fully disclosed to the patient.

3. Respondent shall attend at least fifty (50) hours per year of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association or by the American Osteopathic Association. At least one (1) course shall be in the area of Risk Management. Each year Respondent shall submit to the Board proof of the prior year's CME attendance by the Order's anniversary date. Respondent shall submit proof to the Board of CME hours attended in the current year even though such may not meet the 50-hour requirement. A copy of the attendance certificate issued or a detailed report which can be readily verified by the Board shall satisfy this requirement.

4. Respondent shall maintain adequate medical records on all patient office visits, consultations, surgeries performed, drugs provided, and treatment rendered by Respondent. These records will include at a minimum, the patient's name and address, vital signs and statistics, chief complaints, history and physical findings, diagnosis and basis for diagnosis, treatment plan for each patient visit or operative procedure, a notation of all medications prescribed or otherwise provided to the patient including the quantity, dosage, and

rationale for providing the medications, and detailed records of all follow-up visits. Each visit shall be noted in the patient record and dated accordingly. Respondent shall make all patient medical records available for inspection and copying upon the oral or written request of Board consultants, investigators, compliance officers, attorneys, or the Executive Director of the Board.

5. Respondent shall maintain a logbook of all prescriptions written by Respondent for controlled substances or dangerous drugs with addictive potential or potential for abuse in chronological order by date issued. This logbook shall be made available for inspection by compliance officers, investigators, and other representatives of the Board during regular office hours without notice to Respondent. For each prescription or refill, Respondent shall legibly record in the logbook the specific dosage and amount of medication authorized, the time and date of the prescription, the patient's name, the number of refills authorized, and the medical basis for the prescription and number of authorized refills.

6. For purposes of this Agreed Order, dangerous drugs with addictive potential or potential for abuse shall include, but shall not be limited to, Nubain, Soma, Phenergan, Talwin, Propofol, Butalbital, and their trademark or generic equivalents in any form, as well as any chemical or chemical combination substantially similar or equivalent to such drugs.

7. Except as otherwise provided for by the terms of this Agreed Order, Respondent shall not treat or otherwise serve as a physician for Respondent's immediate family, and Respondent shall not prescribe, dispense, or administer controlled substances, dangerous drugs with

addictive potential or potential for abuse to Respondent or Respondent's immediate family. Respondent may self-administer or administer to Respondent's immediate family only such drugs as prescribed by other physicians for a legitimate medical purpose and in compliance with the orders and directions of such physicians.

8. Respondent shall become familiar with and comply with all statutes, rules, and regulations, both State and Federal, pertaining to the prescribing, administering, dispensing, supplying, storing, and disposal of dangerous drugs and controlled substances.

9. Respondent shall personally appear before the Board, a committee of the Board, or a panel of Board representatives, at least one (1) time each year that Respondent is under the terms and conditions of this Agreed Order. Such appearances shall be for the purpose of reporting on and addressing issues related to Respondent's compliance with the terms and conditions of this Agreed Order.

10. To verify that Respondent has complied with and is in compliance with the terms and conditions of this Agreed Order, Respondent shall fully cooperate with the Board and the Board staff, including but not limited to, Board attorneys, investigators, compliance officers, consultants and other such employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Agreed Order. Failure to cooperate as required by this paragraph and the terms of this Agreed Order shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

11. Respondent shall give a copy of this Agreed Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Respondent has privileges, has applied for privileges, or applies for privileges.

12. The time period of this Order shall be extended for any period of time in which Respondent subsequently resides or practices medicine outside the State of Texas, is in official retired status with the Board, or for any period during which Respondent's license is subsequently cancelled for nonpayment of licensure fees. If Respondent leaves Texas to live or practice medicine elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. Upon Respondent's return to practice in Texas or Respondent's relicensure, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order when Respondent left the practice of medicine in Texas, retired, or had his or her license cancelled for nonpayment of licensure fees."

A complete copy of the Agreed Order is attached hereto and marked Exhibit A.

CONCLUSIONS OF LAW

1. The Oklahoma State Board of Medical Licensure and Supervision has jurisdiction in the matter.

2. The Defendant, **Eugene Massad Massad, M.D.**, holding Oklahoma Medical License No. 6481, is in violation of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. Supp. 1998, Sec. 509(11), (17), and (19), and violation of rules and

regulations promulgated by this Board, specifically Rule 435:10-7-4, paragraphs (2), (6), (26) and (31), to-wit:

- (a) Failed to keep complete and accurate records of purchase and disposal of controlled drugs or of narcotic drugs in violation of 59 O.S. Supp. 1998, Sec. 509(11).
- (b) Prescribed, dispensed or administered controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standards in violation of 59 O.S. Supp. 1998, Sec. 509(17), and violation of Board Rule 435:10-7-4(2) and (6).
- (c) Failed to maintain an office record for each patient which accurately reflected the evaluation, treatment, and medical necessity of treatment of the patient in violation of 59 O.S. Supp. 1998, Sec. 509(19).
- (d) Prescribed, administered, distributed, ordered, or gave any drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member in violation of Board Rule 435:10-7-4(26).
- (e) Disciplinary action of another state or jurisdiction against a licensee based upon acts of conduct by the licensee similar to acts or conduct that would constitute grounds for action in Oklahoma in violation of Board Rule 435:10-7-4(31).

ORDER

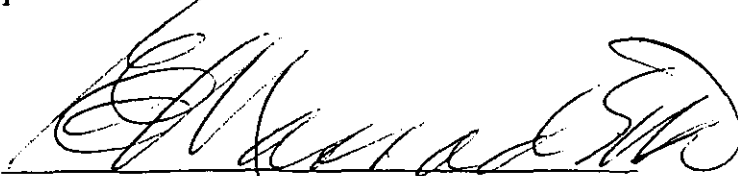
IT IS THEREFORE ORDERED by the Oklahoma State Board of Medical Licensure and Supervision that:

1. The Defendant, **Eugene Massad Massad, M.D.**, holding Oklahoma Medical License No. 6481, should be and is hereby PUBLICLY REPRIMANDED for conduct set forth above.

2. To verify that Defendant has complied with and is in compliance with the terms and conditions of this Voluntary Submittal to Jurisdiction and Order, Defendant shall fully cooperate with the Board and the Board staff, including but not limited to, Board attorneys, investigators, compliance officers, consultants, and other such employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Defendant's compliance with this Voluntary Submittal to Jurisdiction and Order. Failure to cooperate as required by this paragraph and the terms of this Voluntary Submittal to Jurisdiction and Order shall constitute a basis for disciplinary action against Defendant pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

3. Defendant shall give a copy of this Voluntary Submittal to Jurisdiction and Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Defendant has privileges, has applied for privileges, or applies for privileges.

4. Defendant agrees to pay costs of the investigation and prosecution.



EUGENE MASSAD MASSAD, M.D.
Oklahoma Medical License No. 6481

4-7-99
Date



GERALD C. ZUMWALT, M.D.
Secretary/Medical Advisor
Oklahoma Board of Medical
Licensure and Supervision

4-30-99
Date

ERIC E. FRISCHE, President
Oklahoma Board of Medical
Licensure and Supervision

Date

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was on the date below and in the method shown, served on the following:

<input checked="" type="checkbox"/>	Mailed with postage prepaid thereon
<input type="checkbox"/>	FAXED
<input type="checkbox"/>	Hand-delivered

EUGENE MASSAD MASSAD, M.D.
13545 Webb's Chapel Road
Farmers Branch, TX



EXHIBIT A

IN THE MATTER OF
THE LICENSE OF
EUGENE MASSAD MASSAD, M.D.

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BEFORE THE
TEXAS STATE BOARD
OF MEDICAL EXAMINERS

AGREED ORDER

On this the 22 day of August, 1998, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session the matter of the license of Eugene Massad Massad, M.D. ("Respondent"). On April 14, 1998, Respondent appeared in person with counsel. Odis R. Hill, at an Informal Settlement Conference/Show Compliance Proceeding in response to a letter of invitation from the staff of the Board.

The Board was represented at the Informal Settlement Conference/Show Compliance Proceeding by Peter Chang, M.D., and Penny Angelo, members of the Board. Upon recommendation of the Board's representatives, and with the consent of Respondent, the Board makes the following findings of fact and conclusions of law and enters this Order as set forth herein:

FINDINGS OF FACT

1. Respondent, Eugene Massad Massad, M.D., holds Texas medical license C-3144.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied.
3. Respondent is not certified by the American Board of Medical Specialties, but is primarily engaged in the practice of occupational medicine.
4. After reviewing several of Respondent's patients' medical records, a Board consultant has found Respondent's record keeping to be illegible, poorly organized, and grossly inadequate.
5. Respondent treated patient G.B. Respondent continued to prescribe Valium to patient G.B. even after Respondent learned that patient G.B. had forged a Valium prescription.

Respondent's treatment of patient G.B. involved the overprescribing of Valium and below standard treatment of chronic pain.

6. Respondent treated members of his family. These treatments involved the prescription of appetite suppressants. Respondent's medical records for the treatment of his family were below standard.

7. Respondent treated patient L.M. Respondent treated patient L.M. with Vicodin and Xanax in an inappropriate and nontherapeutic manner.

8. Respondent treated patient L.P. Respondent's treatment of patient L.P.'s overweight problems while ignoring patient L.P.'s hypertriglyceridemia and abnormal liver function was grossly inappropriate and nontherapeutic. Respondent maintains that patient L.P. was an alcoholic and that Respondent assisted him in gaining substance abuse treatment.

9. Respondent maintains that since the time of Respondent's treatments of the patients referenced above, he has limited his practice to industrial/occupational medicine under the supervision of another physician. Respondent also maintains that he now keeps well-organized and complete medical records as a matter of course.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Board concludes the following:

1. Respondent has violated Section 3.08(18) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, which authorizes the Board to take disciplinary action against Respondent based on Respondent's professional failure to practice medicine in an acceptable manner consistent with public health and welfare.

2. Section 4.02(h) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

3. Section 4.02(i) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Civil Evidence for purposes of civil litigation.

4. Section 4.12 of the Act authorizes the Board to take action in regard to Respondent and Respondent's medical license as set forth below.

ORDER

Based on the above findings of fact and conclusions of law, the Board ORDERS that Respondent's Texas medical license is hereby SUSPENDED; however, the suspension is STAYED and Respondent is placed on PROBATION under the following terms and conditions for five (5) years from the date of the signing of this Agreed Order by the presiding officer of the Board:

1. Respondent shall limit his practice of medicine to occupational medicine, family practice or a practice in a facility approved in advance and in writing by the Executive Director of the Board.

2. Respondent's practice of bariatric medicine shall include, at a minimum, performance of an appropriate physical and psychological evaluation, appropriate laboratory testing, discussion of treatment risk factors with the patient, follow-up care, monitored prescribing practices, and maintenance of proper medical records. Respondent must ultimately evaluate the risks involved in the treatment of the patient in light of the benefits received by the patient, particularly regarding the prescribing of medication; and the analysis of risk versus benefit should be fully disclosed to the patient.

3. Respondent shall attend at least fifty (50) hours per year of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association or by the American Osteopathic Association. At least one (1) course shall be in the area of Risk Management. Each year Respondent shall submit to the Board proof of the prior year's CME attendance by the Order's anniversary date. Respondent shall submit proof to the Board of CME hours attended in the current year even though such may not meet the 50-hour requirement. A copy of the attendance certificate issued or a detailed report which can be readily verified by the Board shall satisfy this requirement.

4. Respondent shall maintain adequate medical records on all patient office visits, consultations, surgeries performed, drugs provided, and treatment rendered by Respondent. These records will include at a minimum, the patient's name and address, vital signs and statistics, chief complaints, history and physical findings, diagnosis and basis for diagnosis, treatment plan for each patient visit or operative procedure, a notation of all medications prescribed or otherwise provided to the patient including the quantity, dosage, and rationale for providing the medications, and

detailed records of all follow-up visits. Each visit shall be noted in the patient record and dated accordingly. Respondent shall make all patient medical records available for inspection and copying upon the oral or written request of Board consultants, investigators, compliance officers, attorneys, or the Executive Director of the Board.

5. Respondent shall maintain a logbook of all prescriptions written by Respondent for controlled substances or dangerous drugs with addictive potential or potential for abuse in chronological order by date issued. This logbook shall be made available for inspection by compliance officers, investigators, and other representatives of the Board during regular office hours without notice to Respondent. For each prescription or refill, Respondent shall legibly record in the logbook the specific dosage and amount of medication authorized, the time and date of the prescription, the patient's name, the number of refills authorized, and the medical basis for the prescription and number of authorized refills.

6. For purposes of this Agreed Order, dangerous drugs with addictive potential or potential for abuse shall include, but shall not be limited to, Nubain, Soma, Phenergan, Talwin, Propofol, Butalbital, and their trademark or generic equivalents in any form, as well as any chemical or chemical combination substantially similar or equivalent to such drugs.

7. Except as otherwise provided for by the terms of this Agreed Order, Respondent shall not treat or otherwise serve as a physician for Respondent's immediate family, and Respondent shall not prescribe, dispense, or administer controlled substances, dangerous drugs with addictive potential or potential for abuse to Respondent or Respondent's immediate family. Respondent may self-administer or administer to Respondent's immediate family only such drugs as prescribed by other physicians for a legitimate medical purpose and in compliance with the orders and directions of such physicians.

8. Respondent shall become familiar with and comply with all statutes, rules, and regulations, both State and Federal, pertaining to the prescribing, administering, dispensing, supplying, storing, and disposal of dangerous drugs and controlled substances.

9. Respondent shall personally appear before the Board, a committee of the Board, or a panel of Board representatives, at least one (1) time each year that Respondent is under the terms and conditions of this Agreed Order. Such appearances shall be for the purpose of reporting on and

addressing issues related to Respondent's compliance with the terms and conditions of this Agreed Order.

10. To verify that Respondent has complied with and is in compliance with the terms and conditions of this Agreed Order, Respondent shall fully cooperate with the Board and the Board staff, including but not limited to, Board attorneys, investigators, compliance officers, consultants, and other such employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Agreed Order. Failure to cooperate as required by this paragraph and the terms of this Agreed Order shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

11. Respondent shall give a copy of this Agreed Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Respondent has privileges, has applied for privileges, or applies for privileges.

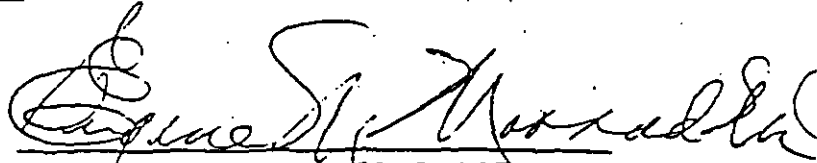
12. The time period of this Order shall be extended for any period of time in which Respondent subsequently resides or practices medicine outside the State of Texas, is in official retired status with the Board, or for any period during which Respondent's license is subsequently cancelled for nonpayment of licensure fees. If Respondent leaves Texas to live or practice medicine elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. Upon Respondent's return to practice in Texas or Respondent's relicensure, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order when Respondent left the practice of medicine in Texas, retired, or had his or her license cancelled for nonpayment of licensure fees.

THIS ORDER IS A PUBLIC RECORD.

I, EUGENE MASSAD MASSAD, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS

THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND,
VERBAL, WRITTEN OR OTHERWISE.

DATED: 5-26, 1998.

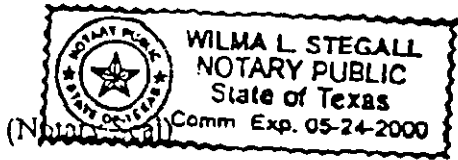

EUGENE MASSAD MASSAD, M.D.
RESPONDENT

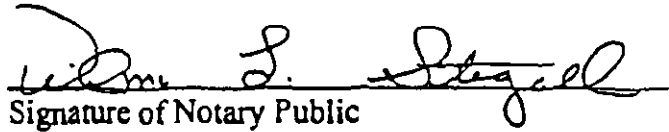
STATE OF Texas
COUNTY OF Dallas

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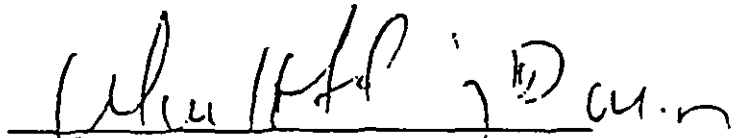
BEFORE ME, the undersigned Notary Public, on this day personally appeared Eugene Massad Massad, M.D., known to me to be the person whose name is subscribed to this instrument, an Agreed Order, and who after being by me duly sworn, on oath, stated that he executed the same for all purposes expressed therein.

Given under my hand and official seal and office this 26th day of May, 1998.




Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 22 day of August, 1998.


William H. Fleming, III, M.D., President
Texas State Board of Medical Examiners