

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

FILED

APR - 4 2008

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff)

v.)

Case No. 08-03-3460

HERBERT WAIN LINDLEY, M.D.,)
OKLAHOMA MEDICAL LICENSE NO. 13390,)

Defendant.)

COMPLAINT

COMES NOW the plaintiff, the State of Oklahoma ex rel. the Oklahoma State Board of Medical Licensure and Supervision (the "Board"), by and through its attorney, Elizabeth A. Scott, Assistant Attorney General, and for its Complaint against the Defendant, Herbert Wain Lindley, M.D., Oklahoma medical license no. 13390, alleges and states as follows:

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.*

2. Defendant, Herbert Wain Lindley, M.D., holds Oklahoma medical license no. 13390 and is a practicing psychiatrist in the State of Oklahoma.

3. On or about November 15, 2007, Defendant was disciplined by the State of Texas based upon the following findings:

- a. During 2006, S.H., a 16 year old male patient with a diagnosis of bi-polar disorder, received mental health services and medication management by Defendant, as well as counseling at the Helen Farabee Center, a mental health and mental retardation facility in Bowie, Texas.
- b. On March 16, 2006, while treating Patient S.H., Defendant elected to perform a physical examination in response to complaints of abdominal pain.
- c. During the March 16, 2006 examination, Defendant inappropriately exceeded the physician-patient boundaries with Patient S.H. by performing a

genital examination without adequate explanation of the indication for the examination.

- d. Defendant performed the genital examination without anyone else present and without gloves.
- e. Defendant failed to document that he had in fact performed a genital examination on the patient, nor did he document the findings of the examination in the medical record.

4. Based on these findings, the Texas Medical Board disciplined Defendant and ordered that he pay an Administrative Fine, that he obtain CME in ethics over a three (3) year period, and that he be required to have a chaperone present in the room with him when he performs a physical examination on any patient. With respect to the chaperone, the Texas Medical Board ordered that both Defendant and the chaperone were required to initial the patient chart to show that the chaperone was present and observed the examination or treatment of the patient.

5. Defendant is guilty of unprofessional conduct in that he:

- A. Was subject to disciplinary action of another state or jurisdiction based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section pursuant to OAC 435:10-7-4(31).

Conclusion

WHEREFORE, plaintiff requests that the Board conduct a hearing, and upon proof of the allegations contained herein, impose such disciplinary action as authorized by law, up to and including the revocation or suspension of the Defendant's special training license to practice as a physician and surgeon in the State of Oklahoma, the assessment of costs and fees incurred in this action, and any other appropriate action with respect to Defendant's license to practice as a physician and surgeon in the State of Oklahoma.

Dated this 4th day of April, 2008 at 9:00 a.m.

Respectfully submitted,

Elizabeth A. Scott
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Oklahoma State Board of Medical
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