

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

**FILED**

NOV 09 2006

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

Plaintiff, )

v. )

DAVID EARL LINDEN, M.D., )  
LICENSE NO. 14324 )

Defendant. )

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 06-05-3103

**FINAL ORDER OF SUSPENSION**

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on November 3, 2006, at the office of the Board, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Elizabeth A. Scott, Assistant Attorney General, appeared for the plaintiff and defendant appeared in person and through counsel, Andrew Harrison.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony of witnesses, and being fully advised in the premises, found that there is clear and convincing evidence to support the following Findings of Fact, Conclusions of Law and Orders:

***Findings of Fact***

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. The Board has jurisdiction over this matter, and notice has been given in all respects in accordance with law and the rules of the Board.
3. Defendant, David Earl Linden, M.D., holds Oklahoma license no. 14324 and practices as a psychiatrist in Oklahoma City, Oklahoma.

3. Beginning in or around 1999 and continuing through 2003, Defendant engaged in sexual intercourse with JBE. Defendant engaged in these sexual acts at the same time he was prescribing dangerous drugs to this individual. During the course of the relationship, JBE contracted genital herpes. Defendant admitted that he had been infected with genital herpes prior to his relationship with JBE and that he did not disclose this to JBE until several months after they began their sexual relationship.

4. During the course of their sexual relationship, Defendant gave JBE prescriptions for birth control pills and for other health issues. A review of Defendant's records reveals that he kept no record of this prescribing to JBE, that he did not perform a sufficient examination prior to prescribing medications, and that he failed to maintain an office record which accurately reflects the evaluation, treatment and medical necessity of treatment of the individual.

5. On or about May 16, 2006, the Board's investigator interviewed Defendant. When questioned about JBE, Defendant admitted having a sexual relationship with her.

6. Beginning in or around 2004 and continuing through March 2006, Defendant engaged in sexual intercourse with TDE. Defendant engaged in these sexual acts at the same time he was prescribing controlled dangerous drugs and other dangerous drugs to this individual. During the course of the sexual relationship, TDE contracted genital herpes. Defendant admits that he infected TDE with genital herpes.

7. A review of pharmacy records and Defendant's own admissions reveals that during 2005 and 2006, Defendant or his physician assistant prescribed controlled dangerous substances and other dangerous drugs to TDE, including one (1) prescription for Hydrocodone, a Schedule III controlled dangerous substance, one (1) prescriptions for Butalbital, two (2) prescriptions for Promethazine, one (1) prescription for Imitrex, one (1) prescription for Topamax, and one prescription for Cyclobenzaprine. A review of Defendant's records reveals that he kept no record of these prescriptions to TDE, that he did not perform a sufficient examination prior to prescribing the medications, and that he failed to maintain an office record which accurately reflects the evaluation, treatment and medical necessity of treatment of the individual.

8. Defendant additionally admits that in April 2006, he authorized two (2) prescriptions for Acyclovir for TDE to treat her herpes. He admits that these two (2) prescription were authorized by him in the alias name of "Brook Smith", but that they were for the use of TDE.

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

- A. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. § 509 (8) and OAC 435:10-7-4 (11).



- B. Committed an act of sexual ... misconduct or exploitation related or unrelated to the licensee's practice of medicine and surgery in violation of OAC 435:10-7-4 (23).
- C. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship in violation of 59 O.S. §509(12).
- D. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).

### *Conclusions of Law*

1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (the "Act") and its applicable regulations. The Board is authorized to enforce the Act as necessary to protect the public health, safety and welfare.

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

- A. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. § 509 (8) and OAC 435:10-7-4 (11).
- B. Committed an act of sexual ... misconduct or exploitation related or unrelated to the licensee's practice of medicine and surgery in violation of OAC 435:10-7-4 (23).
- C. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship in violation of 59 O.S. §509(12).
- D. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).

3. The Board further found that the Defendant's license should be **SUSPENDED** based upon any or all of the violations of the unprofessional conduct provisions of 59 O.S. §509 (8) and (12) and OAC 435: 10-7-4 (11), (19) and (23).

*Order*

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

1. The license of Defendant, David Earl Linden, M.D., Oklahoma license no. 14324, is hereby **SUSPENDED** as of the date of this hearing, November 2, 2006 for a period of **FORTY-FIVE (45) DAYS**.

2. At the conclusion of the term of suspension, Defendant shall be placed on **PROBATION** for a period of **THREE (3) YEARS** under the following terms and conditions:

A. Defendant will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Oklahoma State Board of Medical Licensure and Supervision. Any question of interpretation regarding said Act shall be submitted in writing to the Board and no action based on the subject of the question will be taken by Defendant until clarification of interpretation is received by Defendant from the Oklahoma State Board of Medical Licensure and Supervision.

B. Upon request of the Board Secretary, Defendant will request all hospitals in which he anticipates practicing to furnish to the Board Secretary of the Oklahoma State Board of Medical Licensure and Supervision a written statement regarding monitoring of his practice while performing services in or to that hospital.

C. Defendant will furnish to each and every state in which he holds licensure or applies for licensure and hospitals, clinics or other institutions in which he holds or anticipates holding any form of staff privilege or employment, a copy of the Board Order stipulating sanctions imposed by the Oklahoma State Board of Medical Licensure and Supervision.

D. Defendant will not supervise allied health professionals that require surveillance of a licensed physician.

E. Defendant will execute such releases of medical and psychiatric records during the entire term of probation as necessary



for use by the Compliance Consultant or other Board designee to obtain copies of medical records and authorize the Compliance Consultant or other Board designee to discuss Defendant's case with Defendant's treating physicians and/or physicians holding Defendant's records.

F. Defendant will authorize in writing the release of any and all information regarding his treatment with the Center for Marital and Sexual Health and Stephen B. Levine, M.D., the Behavioral Medicine Institute of Atlanta and Gene Abel, M.D., and any other records of his medical, emotional or psychiatric treatment to the Oklahoma State Board of Medical Licensure and Supervision.

G. Defendant will abide by the terms and recommendations of the Behavioral Medicine Institute of Atlanta and the Center for Marital and Sexual Health, including but not limited to completion of a full course of cognitive-behavioral treatment with a strong relapse prevention program.

H. Defendant will enter and continue treatment with a therapist approved in writing by the Board Secretary. Defendant will authorize in writing the release of any and all records of that treatment to the Board or its designee. Defendant shall additionally submit quarterly reports from his therapist to the Board Secretary for his review. The reports shall reflect feedback from Defendant's staff and from his patients, as well as feedback from polygraph testing every six (6) months, to confirm that Defendant has not been involved in behavior that involves professional sexual misconduct or inappropriate prescription writing. Defendant's therapist shall be required to read the report from the Behavioral Medicine Institute of Atlanta and to verify to the Board Secretary that they have done so. If at any time the therapist believes that Defendant poses a safety risk to his patients, the therapist shall immediately notify the Board. Defendant will remain in treatment with his therapist until both the therapist and the Board Secretary authorize his release from treatment.

I. Within the first year of probation, Defendant shall complete a Prescribing Class at a facility approved in advance by the Board Secretary on prescribing and required record keeping. Defendant shall provide to the Board Secretary proof of completion of said class.

J. Within the first year of probation, Defendant shall complete a Boundaries Class at a facility approved in advance by the Board

Secretary. Defendant shall provide to the Board Secretary proof of completion of said class.

K. Defendant will keep the Oklahoma State Board of Medical Licensure and Supervision informed of his current address.

L. Defendant will keep current payment of all assessments by the Oklahoma State Board of Medical Licensure and Supervision for prosecution, investigation and monitoring of his case, which shall include but is not limited to a one hundred dollar (\$100.00) per month fee during the term of probation, unless Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.

M. Until such time as all indebtedness to the Oklahoma State Board of Medical Licensure and Supervision has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

N. Defendant shall make himself available for one or more personal appearances before the Board or its designee upon request.

O. Defendant shall submit any required reports and forms on a timely, accurate and prompt basis to the Compliance Coordinator or designee.

P. Failure to meet any of the terms of this Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing.

3. During the term of probation, Defendant shall complete **THREE HUNDRED (300) HOURS OF COMMUNITY SERVICE** to be approved in advance in writing by the Board Secretary.

4. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and costs, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.

5. Defendant's suspended license shall not be reinstated unless Defendant has reimbursed the Board for all taxed costs and expenses incurred by the State of Oklahoma.

Dated this 9 day of November, 2006.



Gerald C. Zumwalt, M.D., Secretary  
Oklahoma State Board of  
Medical Licensure and Supervision

**CERTIFICATE OF SERVICE**

I certify that on the 9 day of November, 2006, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Andrew T. Harrison, Herrold Herrold & Co., P.C., 300 ONEOK Plaza, 100 West 5<sup>th</sup> Street, Tulsa, OK 74103-4212 and to David Earl Linden, P.O. Box 16337, Oklahoma City, OK 73113.



Janet Swindle