

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

FILED

NOV 14 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. 06-05-3103

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

Defendant.)

FINAL ORDER OF PROBATION
AND ADMINISTRATIVE FINE

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on November 6, 2008, 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, testimony of witnesses, and reviewing the pleadings filed, 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.* 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.

2. Defendant, David Earl Linden, M.D., holds Oklahoma medical license no. 14324.

3. On or about November 3, 2006, after examining the exhibits introduced and hearing

the testimony of the witnesses, the Board entered a Final Order of Suspension whereby Defendant was **SUSPENDED** for forty-five (45) days beginning November 3, 2005, to be followed by a three (3) year term of **PROBATION**. Defendant's suspension and probation were based upon sexual misconduct and prescribing medications without a sufficient examination and the establishment of a valid physician patient relationship. The Order provides that Defendant shall be on **PROBATION** as follows:

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.

4. The provisions cited above have not been modified or deleted but remain in full force and effect as terms and conditions of Defendant's licensure under the terms of the Final Order of Probation.

5. Although Defendant has been on probation since January 19, 2007, he never submitted to a polygraph examination as required by his Board order prior to the filing of the Complaint at issue. Defendant additionally has not submitted quarterly reports from his therapist, and the reports which have been submitted do not reflect feedback from Defendant's staff and his patients.

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

A. Violated any provision of the medical practice act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of 59 O.S. §509(13) and OAC 435:10-7-4(39).

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. Violated any provision of the medical practice act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of 59 O.S. §509(13) and OAC 435:10-7-4(39).

3. The Board further found that the Defendant's license should be placed on probation and be subject to an administrative fine based upon any or all of the violations of these unprofessional conduct provisions.

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 placed on **PROBATION** for an additional **THREE (3) YEARS** beginning at the conclusion of his first term of probation, which was set to expire on January 19, 2010, and continuing until January 19, 2013, 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. Defendant will keep the Oklahoma State Board of Medical Licensure and Supervision informed of his current address.

J. 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.

K. 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.

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

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

N. 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.

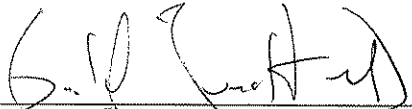
2. Defendant shall pay an **ADMINISTRATIVE FINE** in the amount of \$15,000.00, to be paid on or before February 6, 2009.

3. During the period of probation, failure to meet any of the terms of probation will constitute cause for the Board to initiate additional proceedings to suspend or revoke Defendant's license, after due notice and hearing.

4. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and investigation costs.

5. A copy of this written order shall be sent to Defendant as soon as it is processed.

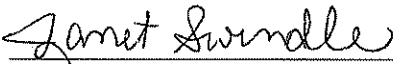
Dated this 14 day of November, 2008.



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

CERTIFICATE OF SERVICE

I certify that on the 14 day of November, 2008, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order of Probation and Administrative Fine to Andrew T. Harrison, Herrold Herrold & Co., P.C., 300 ONEOK Plaza, 100 West 5th Street, Tulsa, OK 74103-4212 and to David Earl Linden, P.O. Box 16337, Oklahoma City, OK 73113.



Janet Swindle