

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

FILED

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

MAY 29 1998

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Plaintiff, )

v. )

Case No. 98-02-1975

~~RICHARD KENT LUNDY, O.T.A.,~~ )  
O.T.A. LICENSE NO. ~~338~~ )

Defendant. )

**VOLUNTARY SUBMITTAL TO JURISDICTION AND ORDER**

Plaintiff, the State of Oklahoma, ex rel. the Oklahoma State Board of Medical Licensure and Supervision (the "Board"), by and through its attorney, Susan Moebius Henderson, Assistant Attorney General for the State of Oklahoma and the staff of the Board, as represented by the Secretary of the Board, Gerald C. Zumwalt, M.D., and the Executive Director of the Board, Lyle Kelsey, and the Defendant, Richard Kent Lundy, O.T.A. License No. 338, who appears in person and with his attorney, Robert Sisson, proffer this Agreement for acceptance by the Board *en banc* pursuant to Section 435:5-1-5.1 of the Oklahoma Administrative Code ("OAC").

Agreement and Acknowledgment by Defendant

By voluntarily submitting to jurisdiction and entering into this Order, Defendant pleads guilty to the allegations in the Complaint and Citation filed herein on February April 16, 1998 and acknowledges that hearing before the Board would result in some sanction under the Occupational Therapy Practice Act (the "Act").

Defendant, Richard K. Lundy, O.T.A., states that he is of sound mind and is not under the influence of, or impaired by, any medication or drug and that he fully recognizes his right to appear before the Board for evidentiary hearing on the allegations made against him. Defendant hereby voluntarily waives his right to a full hearing, submits to the jurisdiction of the Board and agrees to abide by the terms and conditions of this Order. Defendant acknowledges that he has read and understands the terms and conditions stated herein.

## Parties' Agreement and Stipulations

Plaintiff, Defendant and the Board staff stipulate and agree as follows:

### *Findings of Fact*

1. Defendant, Richard Kent Lundy, O.T.A., holds Oklahoma license no. 338.

2. Defendant presently is authorized to practice under Order of the Board lawfully entered February 8, 1996. That order provides, *inter alia*:

...

5. During the period of this agreement, Lundy will submit biological fluid specimens to include but not limited to [sic], blood and urine for analysis, immediately upon request of Board or its designee and Lundy will pay for the analysis thereof.

6. During the period of this agreement, Lundy will take no medication except that which is authorized by a physician treating him for a legitimate medical need. Lundy has the affirmative duty to inform any and every doctor treating him of this agreement immediately on commencement of treatment by providing to said doctor a copy of this agreement.

3. The agreement was modified on September 26, 1997 when the Board entered a Final Order modifying the terms and conditions of the agreement after determining, by clear and convincing evidence, that Defendant violated the original agreement by testing positive for a controlled dangerous substance. As modified, the agreement requires Defendant to submit to monthly random urine screens for a period of one year. The remaining terms of the original agreement were continued without modification.

4. On October 6, 1997 a urine sample was collected from Defendant for analysis by an approved laboratory. The drug screen tested positive for the following controlled dangerous substances: Hydrocodone, Dihydrocodeine and Phentermine. The positive Phentermine sample was confirmed by a second independent laboratory approved by the Board.

5. On October 6, 1997 Defendant advised the Complainant that his specimen would test positive for Lortab, but was unable to furnish information necessary to verify a valid prescription for it. Subsequent to the filing of the Complaint and Citation against him, Defendant provided additional information and documentation to Complainant which enabled Complainant to verify a valid Lortab prescription for Defendant. The hydrocodone and dihydrocodeine found in Defendant's sample are consistent with Lortab.

6. At no time did Defendant report the use of or furnish to the Board a valid prescription for Phentermine.

7. The acts and omissions described above are likely to endanger the health, welfare, or safety of the public.

8. Defendant has violated paragraph 6 of his agreement with the Board and is subject to discipline pursuant to Oklahoma Administrative Code §435:5-1-7 and 59 Okla. Stat. §888.9.

9. Defendant has engaged in the following additional unprofessional conduct as set forth in OAC §435:10-7-4, paragraphs (3), (11) and (39), as follows:

- A. The habitual or excessive use of any drug which impairs the ability to practice with reasonable skill and safety to the patient.
- B. Conduct likely to deceive, defraud, or harm the public.
- C. Violation of any of the provisions of the Medical Practice Act or the rules and regulations of the Board or of an action, stipulation or agreement of the Board.

10. Defendant also has violated OAC §435:30-1-10(7) by violating the provisions of his practice act and its applicable rules and regulations.

11. The Board has jurisdiction of the subject matter herein, and proper notice has been given as required by law and the rules of the Board.

### *Conclusions of Law*

1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Occupational Therapy Practice 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, Richard Kent Lundy, O.T.A., License No. 338, by reason of the above facts, is guilty of unprofessional conduct under the Occupational Therapy Practice Act and the rules of Board in that:

- A. Defendant violated paragraph 6 of his agreement with the Board and may be disciplined pursuant to OAC §435:5-1-7.
- B. Defendant violated 59 Okla. Stat. §888.9, as follows:

2. Engaging in unprofessional conduct as defined by the rules established by the Board, or violating the Code of Ethics adopted and published by the Board;
  - ...
  4. Violating any lawful order, rule or regulation rendered or adopted by the Board; and
  5. Violating any provisions of this act.
- C. Defendant has engaged in unprofessional conduct as further defined by the Board in OAC §435:10-7-4, paragraphs (3), (11) and (39), as follows:
- ...
- (3) The habitual or excessive use of any drug which impairs the ability to practice with reasonable skill and safety to the patient.
  - ...
  - (11) Conduct likely to deceive, defraud, or harm the public.
  - ...
  - (39) Violation of any of the provisions of the Medical Practice Act or the rules and regulations of the Board or of an action, stipulation or agreement of the Board.
- D. Defendant also has violated OAC §435:30-1-10(7) by violating the provisions of his practice act and its applicable rules and regulations.

***Order***

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

1. The Board *en banc* hereby adopts the agreement of the parties in this Voluntary Submittal to Jurisdiction.
2. Pursuant to the parties' voluntary agreement and submittal to jurisdiction, Richard Kent Lundy, O.T.A., holding Oklahoma License No. 338, should be and is hereby **SUSPENDED**

until such time as he successfully completes an inpatient treatment program of at least 28 days at a facility approved by the Board.

3. Defendant must apply for reinstatement upon the completion of his treatment program.

4. The parties further agree that as a condition of any reinstatement Defendant will be placed upon PROBATION for a period of five (5) years and will be subject to the following terms and conditions during the period of probation:

- a. Defendant will conduct his practice in compliance with the Occupational Therapy Practice Act as interpreted by the Board. Any question of interpretation regarding the Act or this Order 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 Board.
- b. Defendant will furnish to each and every state in which he holds licensure or applies for licensure and to each and every hospital, clinic or other institution in which he holds or anticipates holding any form of staff privileges or employment a copy of this Order stipulating sanctions imposed by the Board.
- c. Defendant will submit for analysis biological fluid specimens, including but not limited to, blood and urine, upon request of the Board or its designee, and Defendant will pay the costs attendant thereto.
- d. Defendant will take no medication except that which is authorized by a physician treating him for a legitimate medical need. Defendant will have the affirmative duty to inform any and every doctor treating him of this Order prior to initiation of treatment.
- e. Defendant will have the affirmative duty not to ingest any other substance which will cause a body fluid sample to test positive for prohibited substances.
- f. Defendant will comply with the recommendations and post-care contract of his inpatient treatment


program and will undertake all necessary or recommended subsequent treatment.

- g. Defendant will keep the Board informed of his current practice and residence addresses.
- h. Defendant will keep current payment of all assessments made by the Board for costs of prosecution, investigation and monitoring of his case.
- i. Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.
- j. Defendant will execute such releases of medical, counseling and psychiatric records as necessary for use by the Compliance Consultant to obtain copies of such records and will authorize the Compliance Consultant to discuss Defendant's case with Defendant's treating physicians, counselors and/or others holding Defendant's records.
- k. All employment or practice sites will be submitted to the Occupational Therapy Advisory Committee of the Board for approval prior to the beginning of Defendant's employment or relocation of practice site.
- l. Defendant will authorize and cause all hospitals, clinics, facilities, institutions or other work sites at which he anticipates he will practice to furnish the Board with quarterly written reviews based on monitoring his practice while performing services at that site.
- m. Defendant will notify the Board or its designee of entry into any rehabilitation, assessment, or evaluation program and shall provide to the Board or its designee written authorization for any and all records associated with said treatment, assessment or evaluation.

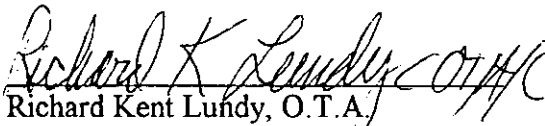
- n. Defendant shall actively participate in NA and/or AA programs and shall provide a completed monthly self-report to the Board.


5. Promptly upon receipt of an invoice for such charges, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and investigation costs, and shall keep current all payments for monitoring his compliance with this agreement.


Dated this ~~12/12~~ day of May, 1998.

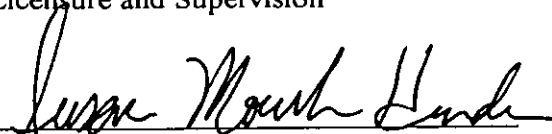
  
Eric E. Frische, M.D., Vice President  
Oklahoma State Board of Medical  
Licensure and Supervision

**AGREED AND APPROVED:**

  
Richard Kent Lundy, O.T.A.  
License No. 338

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

  
Robert Sisson OBA #013081  
1831 Westminster Place  
Nichols Hills, OK 73120  
405/848-7045

  
Susan Moebius Henderson, OBA #11858  
Assistant Attorney General  
State of Oklahoma  
5104 N. Francis, Suite C  
Oklahoma City, OK 73118  
405/848-6841


Attorney for Defendant,  
Richard Kent Lundy

Attorney for the Oklahoma State Board  
of Medical Licensure and Supervision

CERTIFICATE OF MAILING

This is to certify that on this 1st of June 1998, a true and correct copy of this order was mailed, postage prepaid to:

Richard Kent Lundy, O.T.A.  
2500 W. Pennington Ave.  
Edmond, OK 73003

  
\_\_\_\_\_  
Janet L. Owens, Secretary