

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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In The Matter Of
:
LYNN SIMON, M.D.
(Certificate No. MD 013348)
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:
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No. 10-I-640

**CONSENT
ORDER**

An investigation was conducted by the Investigating Officer ("I/O") of the Louisiana State Board of Medical Examiners (the "Board") of the prescription writing and medical practices of Lynn Simon, M.D. ("Dr. Simon"), a physician licensed to practice medicine in this state and at all times pertinent engaged in the practice of psychiatry in and around Baton Rouge, Louisiana. The investigation revealed that Dr. Simon prescribed legally controlled substances without legitimate medical justification and in other than a legal or legitimate manner, engaged in practices that were indicative of medical incompetence and unprofessional conduct, and that were contrary to the prevailing and usually accepted standards of medical care.

More particularly, the investigation revealed that Dr. Simon issued prescriptions for OxyContin, a Schedule II narcotic analgesic, in the names of several residential patients of a substance treatment/detoxification facility. The prescriptions were provided to and upon the request of an unlicensed member of the facility's staff purportedly to be administered to the patients for opiate detoxification. Dr. Simon knew, or should have known¹ that OxyContin is not an approved drug protocol for opiate detoxification, and that its use as such is inconsistent with the prevailing and accepted standards of medical care. Dr. Simon did not conduct face-to-face

¹Dr. Simon's license was previously the subject of administrative disciplinary action by the Board for prescribing a Schedule II controlled substance (Dilaudid), allegedly for out-patient detoxification of opiates. The physician's license was subsequently reinstated with restrictions on his Schedule II and III controlled substance authority and thereafter fully reinstated by the Board in 1994. See: *Final Decision*, In the Matter of Lynn Simon, M.D., La. St. Bd. Med. Exam. (July 26, 1984), *Consent Order* (Mar. 7, 1991), *Superseding Consent Order* (Jan. 9, 1993), and *Superseding Order* (Dec. 22, 1994).

evaluations of each of the patients before issuing the prescriptions in question, nor was there any indication that the medication was actually administered to the patients to whom it was prescribed. Indeed, some of the prescriptions were written after the patient had already been discharged from the facility and were apparently no longer in need of detoxification.²

The results of the investigation indicate to the satisfaction of the I/O that a basis exists to initiate formal administrative proceedings against Dr. Simon, pursuant to the Louisiana Medical Practice Act, La. Rev. Stat. §§37:1261-92 (the "Act").³

As evidenced by his subscription hereto, but without admitting any violation of the Act or any other law or regulation or the Board's rules, and for purposes of this Consent Order only, Dr. Simon acknowledges the foregoing information and that such information obtained in the investigation could provide a basis to initiate formal administrative proceedings against his license pursuant to the Louisiana Medical Practice Act, constituting cause for such action against the physician's license to practice medicine in the state of Louisiana as the Board may deem appropriate.

Recognizing his right to written notification of any charges that may be asserted against him as a result of this investigation, as well as the right to administrative adjudication of such charges, at which time he would be entitled to be represented by legal counsel, to call witnesses and to present evidence in defense or in mitigation of the charges made and to a decision thereon by the Board based upon written findings of fact and conclusions of law, pursuant to La. Rev. Stat. §§49:951 *et seq.*, Dr. Simon, nonetheless, hereby waives his rights to notice, formal adjudication and written decision and, pursuant to La. Rev. Stat. §49:955(D), consents to entry of the Order set forth hereinafter. Furthermore, Dr. Simon acknowledges that he hereby waives any right to which he may be entitled pursuant to the Louisiana Administrative Procedure Act, La. Rev. Stat. §§49:951 *et seq.*, or to which he otherwise may be afforded by any law to contest his agreement to or the force and effect of the Board's investigation or this document in any court or other forum. By his subscription hereto, Dr. Simon also hereby authorizes the I/O to present this Consent Order to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation and he waives any objection to such disclosures under La. Rev. Stat. §49:960. Dr. Simon expressly acknowledges that the disclosure of such information to the Board by the I/O shall be without prejudice to the I/O's authority to proceed with the filing and adjudication of any administrative charges that may subsequently be filed in this matter against him, or to the Board's capacity to adjudicate such complaint should the Board decline to approve this Consent Order.

²During the course of the investigation Dr. Simon was asked and agreed to voluntarily refrain from prescribing oxycodone to any patient until the investigation was concluded.

³Pursuant to La. Rev. Stat. §37:1285A, the Board may take action against the license of a physician as a result: (6) '[P]rescribing a legally controlled substance without legitimate medical justification or in other than a legal or legitimate manner;' (12) '[P]rofessional or medical incompetency;' (13) '[U]nprofessional conduct;' and (14) '[C]ontinuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state.'

Based upon the foregoing information and upon the recommendation of the I/O with respect to this matter, the Board has concluded that its responsibility to ensure the health, safety and welfare of the citizens of this state, pursuant to La. Rev. Stat. §37:1261, will be effectively served by entry of the order set forth hereinafter by consent. Accordingly, in consideration of the foregoing and pursuant to the authority vested in the Board by La. Rev. Stat. §37:1285 and La. Rev. Stat. §49:955(D);

IT IS ORDERED that the license of Lynn Simon, M.D. to engage in the practice of medicine in this state, as evidenced by Certificate No. MD 013348 is hereby, effective as of the effective date of this Order, suspended for a period of six (6) months; and

IT IS FURTHER ORDERED that the foregoing Order of suspension is hereby stayed, and the license of Lynn Simon, M.D. to practice medicine in this state is hereby, effective as of the effective date of this Order, placed *on probation* for a period of five (5) years ("the probationary term"); *provided, however*, that such license and Dr. Simon's continuing exercise of the rights and privileges granted thereby, shall be conditioned upon and subject to his acceptance and strict compliance with the following terms, conditions and restrictions:

(1) **Prescription, Dispensation, Administration of Controlled Substances Prohibited.** Dr. Simon shall not, for as long as he holds a license to practice medicine in this state, prescribe, dispense or administer any narcotic medication which may be classified, defined, enumerated or included in 21 C.F.R. §1308, La. Rev. Stat. §40:964, or any substance which may hereafter be designated a narcotic by inclusion in such regulations and statute. This prohibition shall survive the term of probation set forth in this Order and remain in force and effect until and unless modified by subsequent written Order of the Board in its sole discretion.

(2) **Limitation on Practice.** During the probationary term Dr. Simon shall engage in the practice of medicine only in a clinical setting pre-approved by the Board or its designee.

(3) **Prohibitions on Practice/Management of Chronic Pain or Obesity.** Dr. Simon shall not engage in the management of chronic pain or obesity with controlled substances. More specifically, Respondent shall not hold himself out as being engaged in the treatment of or actually undertake to treat, either individually or in conjunction with any other physician, any patient for the long-term management of chronic pain or obesity with controlled substances nor shall he receive any remuneration from, have any ownership interest in or association with any clinic or practice setting or arrangement that renders care and/or treatment to patients for chronic pain or obesity or any clinic that advertises or holds itself out to the public as a clinic or practice for the care and/or treatment of patients for the management of chronic pain or obesity. Until and unless

otherwise modified by the Board, in its sole discretion, the restrictions contained in this provision shall remain in effect so long as Respondent shall hold a license to practice medicine in this state.

(4) Collaboration With Nurse Practitioners, Supervision of Physician Assistants. On and after the effective date of this Order Dr. Simon shall neither enter into nor continue in a collaborative or supervisory practice agreement with a mid-level provider *e.g.*, a nurse practitioner or physician assistant. Unless and until modified by the Board, in its sole discretion, this condition shall survive the probationary term and remain in force and effect so long as Dr. Simon holds a license to practice medicine in this state. This restriction shall not preclude Dr. Simon from employing nurses or other medical personnel to assist him in his practice, as long as he is present and directing their activities appropriate to their level of expertise and ability.

(5) Continuing Medical Education - Professionalism and Medical Ethics. Within the first year of the probationary term, Dr. Simon shall provide written confirmation that he has attended and successfully completed one or more courses of study in the area of medical ethics and professionalism. All such courses shall not be less than 20 credit hours and shall be acceptable to and pre-approved by the Board or its designee.

(6) Payment of Fine. Within one-hundred and eighty (180) days from the effective date of this Order Dr. Simon shall pay the Board a fine in the amount of *three thousand* (\$3,000.00) *dollars*.

(7) Notification. Dr. Simon shall provide a complete copy of this Order to each hospital, clinic, facility or other employer or prospective employer at which or for whom he provides services as a physician in this state.

(8) Sanction. By his subscription hereto Dr. Simon acknowledges that his receipt of written notification from the Board that it has received any report which indicates his failure to comply with the requirements set forth by this Order in any respect shall, without the need for formal hearing or for providing him with any right to which he may otherwise be entitled pursuant to the Louisiana Administrative Procedure Act, La. Rev. Stat. §§49:951 *et seq.*, or which otherwise may be afforded to him by law, constitute his irrevocable consent to the immediate suspension of his license to practice medicine in this state by the Board pending the issuance of a decision and final resolution of administrative proceedings with respect to the information made the basis of such report.

(9) Probation Monitoring Fee. Dr. Simon shall pay the Board an annual probation monitoring fee of three hundred (\$300.00) *dollars*. Payment of the

initial fee shall be due not later than sixty (60) days from the effective date of this Order. All subsequent annual payments shall be due on or before the anniversary date of the initial fee payment.

(10) Cooperation with Board's Medical Consultant/Probation and Compliance Officer. Dr. Simon shall immediately notify the Board's Probation and Compliance Officer of any change in his current home and professional addresses and telephone numbers and he shall direct all matters required pursuant to this Consent Order to the attention of the Probation and Compliance Officer with whom he shall cooperate on all matters and inquiries pertaining to his compliance with the terms and conditions hereof. Dr. Simon shall also make himself available upon reasonable notice for personal interviews with the Director of Investigations or Probation Officer of the Board or their designated representatives for the purpose of discussing his then-current compliance with the terms of this Order.

(11) Absence from State/Practice/Effect on Probation. Should Dr. Simon at any time during the probationary term be absent from the state of Louisiana, relocate to and/or take up residency in another state or country, or discontinue practicing medicine for a period of thirty (30) days or more, or should he fail to renew his license to practice medicine in this state, he shall advise the Board in writing. In such instance the probationary term and all of its terms, conditions and restrictions shall be deemed interrupted and extended and shall not commence to run again until Dr. Simon notifies the Board in writing that he has returned to, relocated or taken up residency in, resumed the practice of medicine in this state, or renewed his Louisiana medical license. In such instance, Dr. Simon shall not receive credit toward completion of the probationary term for the time during which he was absent from the state of Louisiana or while he was not engaged or licensed to practice medicine in this state.

(12) Probationary Term, Certification of Compliance, Termination of Probation. As a condition to reinstatement of his license without probation, Dr. Simon shall provide the Board with an affidavit certifying that he has complied with all terms, conditions and restrictions of this Order. In addition he shall contact and request an appearance before the Board or its designee so that it may consider his compliance with the terms of this Order. The probationary term and all of its terms, conditions and restrictions shall be extended and continued in full force and effect pending Dr. Simon's compliance with the requirements of this provision.

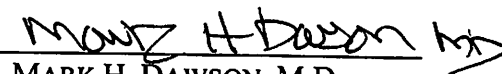
IT IS FURTHER ORDERED that the failure of Lynn Simon, M.D. to fully comply with the foregoing terms, conditions and restrictions of this Order may give rise to such further action against his license to practice medicine in this state as the Board may deem appropriate, as if such failure were enumerated among the causes provided in La. Rev. Stat. §37:1285.

IT IS FURTHER ORDERED that this Consent Order shall be, and shall be deemed to be, a public record.

Signed at New Orleans, Louisiana, and effective this 14 day of March,
2011.

**LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS**

BY:



MARK H. DAWSON, M.D.

President

STATE OF LOUISIANA
PARISH OF East Baton Rouge

**ACKNOWLEDGMENT
AND CONSENT**

I, LYNN SIMON, M.D., hereby acknowledge, approve, accept and consent to entry of the above and foregoing Order, this 16th day of February, 2011.

Lynn Simon M.D.
LYNN SIMON, M.D.

WITNESSES:

Sherry Daigle
Signature

Sherry Daigle
Printed Name

57625 Epwin Dr, Plaquemine, LA 70764
Address

Leah A. Benwick
Signature

Leah A. Benwick
Printed Name

11011 CAL Rd #75 Baton Rouge, LA 70809
Address

Sworn to and subscribed before me at Baton Rouge, Louisiana this 16th day of February, 2011, in the presence of the two stated witnesses.

Deborah J. Juneau
Notary Public (Signature and Seal)

Deborah J. Juneau Bar No. 26354
Printed Name/Notary or Bar Number



Deborah Johnson Juneau
Notary Public
State Of Louisiana
LA Bar Roll No. 26354
My Commission is for Life