

LICENSE NO. H-4018

IN THE MATTER OF
THE LICENSE OF
HERBERT WAIN LINDLEY, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 24 day of August, 2007, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Herbert Wain Lindley, M.D. ("Respondent").

On May 2, 2007, Respondent appeared in person, with counsel Linda G. Scoggins, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. Harry Deckard represented Board staff. The Board's representatives were Michael Arambula, M.D., a member of the Board, and Sharon J. Barnes, a member of the District Review Committee.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the "Act") or the Rules of the Board.
2. Respondent currently holds Texas Medical License No. H-4018. Respondent was originally issued this license to practice medicine in Texas on August 26, 1988. Respondent is also licensed to practice in Arkansas, Indiana, Kentucky, Minnesota, Oklahoma, and Wyoming.

3. Respondent is primarily engaged in the practice of psychiatry. Respondent is board certified in this specialty by the American Board of Psychiatry, a member of the American Board of Medical Specialties.

4. Respondent is 56 years of age.

5. Respondent has not previously been the subject of disciplinary action by the Board.

6. S.H., a 16 year-old male with a diagnosis of bi-polar disorder, received mental health services, medication management by Respondent, and counseling at the Helen Farabee Center, a Mental Health and Mental Retardation (MHMR) facility in Bowie, Texas.

7. Respondent had seen S.H. on one occasion prior to March 16, 2006. On that date, he elected to perform a physical examination in response to complaints of abdominal pain. Respondent saw S.H. on two occasions after the March 16, 2006 examination.

8. During the March 16, 2006 examination, the Respondent inappropriately exceeded the physician-patient boundaries with SH by performing a genital examination without adequate explanation of the indication for the examination.

9. Additionally, Respondent failed to appropriately document that he, in fact, performed a physical examination on S.H., nor did he adequately document the findings of the examination in the medical record.

10. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent's cooperation, through consent to this Agreed Order, pursuant to the provisions of Section 164.002 the Act, will save money and resources for the State of Texas. To avoid further investigation, hearings, and the expense and inconvenience of litigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.

3. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 165, which requires the maintenance of adequate medical records.

4. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

5. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

6. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that:

1. Respondent shall obtain 8 hours of ethics courses or ethics programs each year for 3 years. This ethics education is not limited to medical ethics. Respondent shall deliver

documentation of attendance and/or successful completion of this requirement for ethics education to the Director of Compliance for the Board on or before each anniversary date of the entry of this Order.

2. Respondent shall pay an administrative penalty in the amount of \$500.00 within 30 days of the entry of this Order. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas Medical Board and shall be submitted to the Director of Compliance for the Board for routing so as to be remitted to the Comptroller of Texas for deposit in the general revenue fund. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

3. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice.

4. Respondent shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Respondent pursuant to the Act.

5. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice address within 10 days of the address change. This information shall be submitted to the Permits Department and the Director of Enforcement for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

6. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, and to injure the public, and shall constitute a basis for disciplinary action by the Board against

Respondent pursuant to the Act. Respondent agrees that 30 days notice of a Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action.

7. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants.

8. Anytime Respondent performs a physical examination on any patient, Respondent shall have a chaperone present in the room during the examination of the patient who is able to directly observe Respondent. Respondent shall make a notation on the patient's chart indicating that a chaperone was present, and Respondent shall ensure that the chaperone initials the entry made by Respondent to indicate that the chaperone was present and observed the examination or treatment.

9. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following entry of this Order. If, after the passage of the 12-month period, Respondent wishes to seek amendment or termination of these conditions, Respondent may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition without further appeal or review. Petitions for modifying or terminating may be filed only once a year thereafter.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, HERBERT WAIN LINDLEY, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER

CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 17 OCT, 2007.

Herbert Wain Lindley
HERBERT WAIN LINDLEY, M.D.
Respondent

STATE OF Oklahoma §
COUNTY OF Oklahoma §

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 17th day of October, 2007.

Christina C. Hampton
Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 15 day of November, 2007.

Roberta M. Kalafut
Roberta M. Kalafut, D.O., President
Texas Medical Board