

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

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,)	
OKLAHOMA STATE BOARD OF)	
MEDICAL LICENSURE AND)	
SUPERVISION,)	
)	
Plaintiff,)	
v.)	
)	
MERLIN J. KILBURY, M.D.,)	CASE NO. 88-7-618
Medical License No. 9907,)	
)	
Defendant.)	

FINAL ORDER

This cause came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on October 20, 1989, at the office of the Oklahoma State Medical Association, 601 N.W. Expressway, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Daniel J. Gamino, Attorney, appeared for the Plaintiff; and Richard L. Reeh, Attorney, Richard Reeh & Associates, Tulsa, Oklahoma, appeared on behalf of the Defendant, Merlin J. Kilbury, M.D.

The Board of Medical Licensure and Supervision en banc heard testimony, reviewed exhibits, and being fully advised in the premises, the Board of Medical Licensure and Supervision therefore finds as follows:

FINDINGS OF FACT

1. That Defendant, Merlin J. Kilbury, M.D., holds Oklahoma Medical License No. 9907.
2. That the Board of Medical Licensure and Supervision en banc has jurisdiction over the subject matter herein and that notice has been given in all respects as required by law and the rules of the Board.
3. That the Defendant voluntarily sought in-patient treatment for substance abuse at Atlanta, Georgia, and therefore did not appear in person.
4. That on or around September 15, 1989, Dr. Kilbury did sign a Voluntary Submittal to Jurisdiction after being fully aware of the Complaint and Citation served upon him and after acknowledging legal service thereof.
5. That before signing the Voluntary Submittal to Jurisdiction Dr. Kilbury was advised and understood his right to appear before the Oklahoma Board of Medical Licensure and Supervision en banc for evidentiary hearing, pursuant to 59 O.S. Supp. 1988, Sec. 504-507, on allegations raised in the Complaint and Citation.
6. After carefully considering the allegations made in the Complaint and Citation, weighing the potential evidence and discussing the matter thoroughly with his attorney, the Defendant waived his right to an evidentiary hearing before the Oklahoma Board of Medical Licensure and Supervision. Defendant did stipulate that there was adequate evidence, if believed, to persuade the Board that disciplinary action should be taken

against him. Therefore, the Defendant chose not to contest the allegations and did voluntarily submit to the jurisdiction of the Oklahoma Board of Medical Licensure and Supervision in this action.

7. That the Defendant did surrender to staff members of the Oklahoma Board of Medical Licensure and Supervision his Oklahoma Medical License No. 9907 and his wallet identification card that would expire on June 30, 1990. That the Defendant submitted to his attorney his Oklahoma State Bureau of Narcotics and Dangerous Drug Control Certificate No. 13611 and his Controlled Substance Registration Certificate No. AK2594299 from the United States Drug Enforcement Authority.

CONCLUSIONS OF LAW

1. That the Board does have lawful jurisdiction over the Defendant by virtue of his voluntary execution of the Voluntary Submittal to Jurisdiction dated September 15, 1989; and under the legal authority of the Oklahoma Medical Practice Act, 59 O.S. Supp. 1988, Sec. 481 et seq., may impose the following sanctions.

ORDER

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

1. That the Defendant, Merlin J. Kilbury, M.D., holding Oklahoma Medical License No. 9907, should be and is hereby SUSPENDED from practice as a physician and surgeon in the State of Oklahoma. That the suspension will remain in force and effect until the Defendant presents evidence of successful completion of in-patient treatment to the Secretary of the Oklahoma Board of Medical Licensure and Supervision. The Board Secretary is specifically authorized to reinstate the Defendant's medical license upon receipt and review of satisfactory evidence that the Defendant has successfully completed all in-patient treatment as directed by the Board.

2. That upon reinstatement by the Secretary of his Oklahoma medical license, Defendant shall begin a period of probation of five (5) years, unless earlier modified by the Board, on its own motion or on the motion of the Defendant, under the following terms and conditions:

- (a) That during the period of probation Defendant will not prescribe, administer or dispense any medications for his personal use, or for personal use of his spouse or family, to specifically include controlled dangerous substances.
- (b) That during the period of probation Defendant will abstain from consuming alcohol or any substance, specifically including but not limited to, controlled dangerous substances, which would adversely affect his ability to practice medicine and surgery as interpreted by the Oklahoma State Board of Medical Licensure and Supervision.
- (c) That during the period of probation Defendant will take no medication except that which is authorized by a physician treating him for a legitimate medical need and Defendant shall have an affirmative duty to inform any physician treating him of Defendant's previous use of alcohol and controlled dangerous substances.

- (d) That during the period of probation and voluntary suspension, Defendant shall notify the Board in writing within ten days of each instance of the name and address of each treating physician, the nature of the illness, and of the type, amount, and direction for administration of any controlled dangerous substance prescribed, dispensed, or administered.
- (e) During the period of probation Defendant will submit biological fluid specimens to include, but not limited to, blood and urine, for analysis, upon request of any investigator or other agent representing the Oklahoma State Board of Medical Licensure and Supervision, and Defendant will pay for testing and analysis of those specimens.
- (f) Defendant will advise his employer, whether hospital, clinics or group, of the terms and conditions of this probation, and further the Defendant shall comply with all terms and conditions imposed by his employer, to include but not be limited to, providing biological fluid specimens for analysis by his employer.
- (g) Defendant will not prescribe, administer or dispense any schedule drugs or controlled dangerous substances.
- (h) Defendant agrees to not practice medicine or surgery until such time as the Board en banc or the Secretary reviews the evidence of Defendant's successful completion of in-patient treatment and issues an appropriate order, and in addition, the Defendant does hereby tender and deliver to the Board his Oklahoma Medical License, and his wallet identification card showing evidence of his Oklahoma Medical License. Defendant agrees to allow his counsel to retain Defendant's registration certificate with the U.S. Drug Enforcement Authority and the Oklahoma Bureau of Narcotics and Dangerous Drugs and to provide an affidavit of such retention and custody to the Board staff.
- (i) During the period of probation Defendant will furnish to the office of the Oklahoma State Board of Medical Licensure and Supervision all current legal addresses and any change of address in writing.
- (j) Defendant shall appear before the Board en banc or a designated member thereof whenever requested to do so.
- (k) During the period of probation Defendant will submit to the Investigative Division of the Oklahoma State Board of Medical Licensure and Supervision any required reports and forms on a timely and prompt basis.
- (l) Pursuant to Section 26, H.B. 1478, 1987 Legislature, Defendant shall promptly pay upon receipt of invoice from the Investigation Division of the Board the

cost of investigation, prosecution and probation of this case, beginning within six months of completion of in-patient treatment.

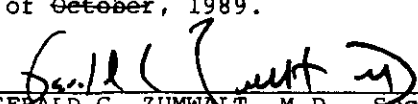
- (m) That violation of any of the terms and conditions of probation shall be grounds for additional charges to be presented to the Board after due notice to the Defendant.
- (n) Defendant will comply with all terms and conditions of all sanctions imposed by the District Court of Tulsa County in Case No. CF-89-2133.
- (o) Defendant's spouse will continue psychological counseling determined necessary by Dr. Eric Nelson, 2622 E. 21, Tulsa, Oklahoma 74114, and shall provide the Board an Authorization for release of medical/psychological information in order that the Board may have progress information available.
- (p) That Defendant shall not prescribe, administer, dispense or use any pharmaceutical agent normally used for veterinary purposes, specifically including but not limited to Ketamine.
- (q) During the period of probation Defendant shall notify any hospital where he holds staff privileges, or clinic, or group where he practices, of the terms and conditions of this Board Order and supply a copy thereof.
- (r) During the period of probation Defendant will meet regularly with members of the Oklahoma State Medical Association Physician Recovery Committee and will fulfill any requirements or terms thereof.

3. That the jurisdiction of the Board in this individual proceeding will continue in this matter until the terms and conditions of probation are modified or withdrawn by the Oklahoma State Board of Medical Licensure and Supervision, either on their own motion or on the motion of the Defendant.

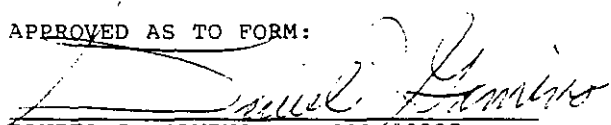
4. The Defendant further agrees that failure to meet any of the above terms of probation will constitute cause for the staff of the Board to initiate additional proceedings to suspend or revoke Defendant's Oklahoma Medical License upon additional due notice.


5. The Defendant further agrees that in the event Investigators of the Oklahoma State Board of Medical Licensure and Supervision discover any other facts relating to his professional activities, whether in the State of Oklahoma or any other jurisdiction, then the Board staff retains the right to present those matters to the Board for their consideration, after additional notice to the Defendant.

DATED this 2 day of ^{November} ~~October~~, 1989.


GERALD C. ZUMWALT, M.D., Secretary
State Board of Medical Licensure
and Supervision

APPROVED AS TO FORM:


DANIEL J. GAMINO OBA #3227
Daniel J. Gamino & Associates, P.C.
3315 NW 63
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ATTORNEY FOR PLAINTIFF


RICHARD REEH OBA #7473
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1217 South Galveston Ave.
Tulsa, OK 74127
(918) 583-7865
ATTORNEY FOR DEFENDANT

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed, postage prepaid thereon, this 3 day of ~~October~~, 1989, to:
November

RICHARD REEH
Richard Reeh & Associates
1217 South Galveston Ave.
Tulsa, OK 74127

Recd: Richard Reeh
