

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. )

ORDER MODIFYING  
TERMS OF PROBATION

This cause came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on May 19, 1990, at the office of the Oklahoma Board of Medical Licensure and Supervision, 5104 N. Francis, Suite C, 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 Merlin J. Kilbury, M.D., Defendant, appeared pro se, waived his right to legal counsel, and agreed to proceed without counsel.

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 following notice and hearing on October 20, 1989, Defendant's Oklahoma Medical License No. 9907 was suspended and subsequently reinstated by the Secretary of the Oklahoma Board under a period of probation of five years and began that probation in January, 1990, under enumerated terms and conditions.
4. That Defendant has been in compliance with terms and conditions of probation since their imposition.
5. That the Defendant desires legal authority to write controlled dangerous substances for patients who are hospitalized and agrees that any such prescriptions shall be written on duplicate, serially-numbered pads, and to make the copies available to Investigators of the Oklahoma State Board of Medical Licensure and Supervision at their request.
6. That evidence indicates said request may be granted without endangering public health, safety and welfare.

CONCLUSIONS OF LAW

1. That the Defendant is under the lawful jurisdiction of the Oklahoma Board of Medical Licensure and Supervision and the modification of terms of probation may be done by the Board within their discretion.

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 continued on a period of probation of five (5) years from January, 1990, to the Oklahoma Board of Medical Licensure and Supervision under the following terms and conditions as modified and republished, to-wit:

- (a) That during the period of probation Defendant may prescribe controlled dangerous substances to hospital in-patients, to include prescriptions written while the patient is in the hospital for use after the patient leaves the hospital, and that such prescriptions of controlled dangerous substances may be made only on serially-numbered duplicate prescription pads and Defendant shall make the copies available to Investigators of the Oklahoma State Board of Medical Licensure and Supervision at their request.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.

- (g) 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.
- (h) 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.
- (i) Defendant shall appear before the Board en banc or a designated member thereof whenever requested to do so.
- (j) 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.
- (k) 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.
- (l) 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.
- (m) 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.
- (n) 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.
- (o) That Defendant shall not prescribe, administer, dispense or use any pharmaceutical agent normally used for veterinary purposes, specifically including but not limited to Ketamine.
- (p) 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.


(q) 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.

2. 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.

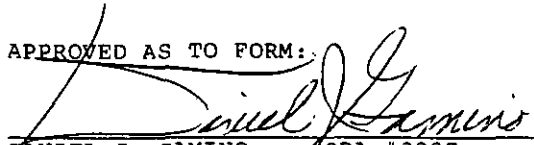
3. The Defendant further agrees that failure to meet any of the above terms of probation will constitute cause for the staff of the Board to initiate additional proceedings to suspend or revoke Defendant's Oklahoma Medical License upon additional due notice.

4. 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 24 day of May, 1990.

  
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  
Oklahoma City, OK 73116  
(405) 840-3741  
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed, postage prepaid thereon, this 25 day of May, 1990, to:

MERLIN J. KILBURY, M.D.  
1432 Will Rogers Drive  
Cushing, OK 74023

