

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.	)	CASE NO. 95-08-1736
	)	
MERLIN J. KILBURY, M.D.	)	
Medical License No. 9907,	)	
	)	
Defendant.	)	

FINAL ORDER

This cause came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on January 20, 1996, at the office of the Oklahoma State 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 in person, pro se, waived his right to legal counsel and agreed to proceed without counsel.

The Oklahoma Board of Medical Licensure and Supervision heard sworn testimony, reviewed exhibits, heard argument of counsel, and being fully advised in the premises, the Board of Medical Licensure and Supervision finds and orders as follows:

FINDINGS OF FACT

1. That Defendant, Merlin J. Kilbury, M.D., holds Oklahoma Medical License No. 9907.
2. That the Oklahoma 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 during 1995, Defendant did undertake a conspiracy to unlawfully obtain controlled dangerous substances for his own personal use by a variety of methods, to include but not be limited to, the following, to-wit:
  - (a) Giving prescriptions for controlled dangerous substances to patients and having the patients fill the prescriptions and return medication to the Defendant for his personal use.
  - (b) Defendant made telephone orders for controlled dangerous substances using the name of his office mate Dr. Frank Hubbard, D.O., when in fact Dr. Hubbard did not initiate the prescription.
  - (c) Defendant telephoned in prescriptions to the pharmacy for one of his patients but then the Defendant picked up the drugs himself for his own use.
  - (d) Defendant practiced medicine in the Emergency Room of Cushing Regional Hospital in an impaired state and then

refused to provide a urine sample on demand of the hospital administrator as per his hospital contract.

- (e) Defendant failed to keep accurate patient records on controlled dangerous substances obtained by fraud.
- (f) Defendant wrote false prescriptions for controlled dangerous substances to his house-keeper, the secretary of a physician friend, various patients, and his wife, for the purpose of obtaining controlled dangerous substances for his personal use and addiction.
- (g) Defendant wrote prescriptions for controlled dangerous substances for patients without sufficient examination and the establishment of a valid physician/patient relationship.
- (h) Defendant acted as the principal in a scheme to defraud the public, use habit-forming drugs, and practice medicine and surgery without reasonable skill and safety.
- (i) Defendant prescribed controlled dangerous substances in excess amounts for himself and others without medical need and clearly in excess of the amount considered good medical practice and in accord with published standards in that there was no medical need and thus any amount of CDS prescribed was excessive.

4. That Defendant averaged taking 10 to 12 tablets of CDS per day, but on occasion, when he became stressed out, he took as many as 20 tablets per day and did at a later time make arrangements to check into a substance abuse treatment center.

5. That Defendant's conduct herein is a continuation of the pattern and practice of conduct that was the subject of prior Oklahoma Board of Medical Licensure and Supervision case against Defendant Kilbury, Case No. 88-7-618.

6. That Defendant Kilbury is perpetuating significant harm to public health, safety and welfare by the acts and omissions set forth in the above allegations.

#### CONCLUSIONS OF LAW

1. That Merlin J. Kilbury, M.D., holding Oklahoma Medical License No. 9907, is in violation of the Oklahoma Medical Practice Act, 59 O.S. Supp. 1994, Sec. 509, Paragraphs 1, 5, 8, 9, 10, 11, 12, 13, 14, 16, and 17, to-wit:

- "1. Procuring, aiding or abetting a criminal operation."
- "5. Habitual intemperance or the habitual use of habit-forming drugs."
- "8. Conviction or confession of a crime involving the violation of the anti-narcotic or prohibition laws and regulations of the federal government or the Board of Health laws and regulations of the State of Oklahoma."
- "9. Dishonorable or immoral conduct which is likely to deceive or defraud the public."
- "10. The commission of any act which is a violation of the criminal laws of this state when such act is connected with the physician's practice of medicine. A complaint, indictment or confession of a

criminal violation shall not be necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine shall be unprofessional conduct."

- "11. Failure to keep complete and accurate records of purchase and disposal of controlled drugs or of narcotic drugs."
- "12. The writing of false or fictitious prescriptions for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs."
- "13. Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship."
- "14. The violation or attempted violation, direct or indirect, of any of the provisions of this Act, either as a principal, accessory or accomplice."
- "16. The inability to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition."
- "17. Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards."

2. That Defendant Kilbury is also in violation of the rules and regulations promulgated by this Board, specifically Rule 435:10-7-4, Paragraphs 1, 2, 3, 5, 6, 11, 17, 18, 19, 24, 25, 26, 27, 33, 39, 40, and 44, to-wit:

- "(1) Indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs."
- "(2) Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards."
- "(3) The habitual or excessive use of any drug which impairs the ability to practice medicine with reasonable skill and safety to the patient."
- "(5) Purchasing or prescribing any regulated substance in Schedule I through V, as defined by the Uniform Controlled Dangerous Substances Act, for the physician's personal use."

- "(6) Dispensing, prescribing or administering a controlled substance or narcotic drug without medical need."
- "(11) Conduct likely to deceive, defraud, or harm the public."
- "(17) Being physically or mentally unable to practice medicine and surgery with reasonable skill and safety."
- "(18) Practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery."
- "(19) The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery."
- "(24) Prescribing, selling, administering, distributing, ordering, or giving any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes."
- "(25) Except as otherwise permitted by law, prescribing, selling, administering, distributing, ordering, or giving to a habitue or addict or any person previously drug dependent, any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug."
- "(26) Prescribing, selling, administering, distributing, ordering, or giving any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug to a family member or to himself or herself. Provided that this paragraph shall not apply to family members outside the second degree of consanguinity or affinity. Provided further that this paragraph shall not apply to medical emergencies when no other medical doctor is available to respond to the emergency."
- "(27) Violating any state or federal law or regulation relating to controlled substances."
- "(33) Failure to report to the Board surrender of a license or other authorization to practice medicine and surgery in another state or jurisdiction, or surrender of membership on any medical staff or in any medical or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section."
- "(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."
- "(40) The inability to practice medicine and surgery with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs,

narcotics, chemicals, or any other type of material or as a result of any mental or physical condition."

"(44) Abuse of physician's position of trust by coercion, manipulation, or fraudulent representation in the doctor/patient relationship."

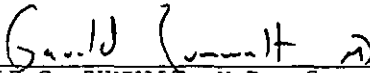
ORDER

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

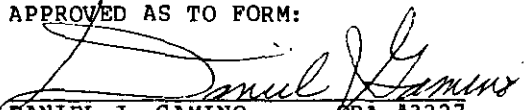
1. That Oklahoma Medical License No. 9907 of the Defendant, Merlin J. Kilbury, M.D., should be and is hereby REVOKED.

2. That a copy of this Order should be forwarded to Defendant so his record is complete.

DATED this 25 day of January, 1996.

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

APPROVED AS TO FORM:

  
DANIEL J. GAMINO DBA #3227  
Daniel J. Gamino & Associates, P.C.  
3315 NW 63  
Oklahoma City, OK 73116  
(405) 840-3741  
ATTORNEY FOR PLAINTIFF

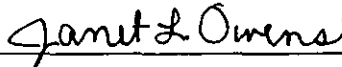
CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed, postage prepaid thereon, this 26 day of January, 1996, to:

MERLIN J. KILBURY, M.D.

1529 Lakeview Drive

Cushing, OK 74023

  
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