

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

FILED

FEB 12 1999

IN THE MATTER OF)
THE APPLICATION OF)
MERLIN J. KILBURY, M.D.)
FOR MODIFICATION OF)
PROBATION TERMS FOR)
LICENSE NO. 9907)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

ORDER MODIFYING PROBATION

This matter came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on January 21, 1999, at the Board office, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, pursuant to notice given as required by law and rules of the Board.

Applicant, Merlin J. Kilbury, M.D., holding Oklahoma medical license no. 9907, appeared in person without counsel, thereby waiving his right to legal representation.

The Board sitting *en banc* after hearing testimony, reviewing the request and other materials presented, and being fully apprised of the premises, made the following Findings of Fact, Conclusions of Law and Orders:

FINDINGS OF FACT

1. The Board *en banc* has jurisdiction over the subject matter herein, and notice has been given in all respects as required by law and the rules of the Board.
2. Dr. Kilbury currently holds medical license no. 9907 under terms of probation that commenced January 10, 1997.
3. The current terms of probation restrict Dr. Kilbury's practice to the Veterans Hospital in Muskogee, Oklahoma and other facilities within the Oklahoma Department of Corrections. At the present time, Dr. Kilbury is seeking employment outside the Department of Corrections and has requested that the Board delegate the authority to the Board Secretary to approve new employment opportunities prior to the time that Dr. Kilbury begins practice.
4. Dr. Kilbury has also requested that the terms of probation be modified to allow Dr. Kilbury to prescribe controlled substances in an institutional setting for his surgical patients.
5. Dr. Kilbury presented sufficient evidence to support the requested modifications.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this matter pursuant to 59 O. S. § 480 *et seq.*
2. Dr. Kilbury has presented satisfactory evidence to justify the requested modifications so long as he provides the Board with information requested to enable the Board to monitor his prescriptions of controlled substances.

ORDER

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

1. Dr. Kilbury's application to modify the terms of his probation is **GRANTED**.
2. Dr. Kilbury's probation shall continue under the following terms and conditions as modified and restated below:
 - A. Dr. Kilbury will not prescribe, administer, dispense or possess any controlled dangerous substances or addictive drugs except for pain medications prescribed to his surgical patients in an institutional setting only. No other controlled dangerous substances or addictive drugs may be prescribed, administered, dispensed or possessed by Dr. Kilbury.
 - B. Dr. Kilbury will keep duplicate, serially numbered prescriptions of all controlled dangerous substances and addictive drugs readily retrievable, in numerical order and will furnish copies to investigators or other authorized agents of the Board immediately upon request.
 - C. Dr. Kilbury will maintain and provide to the Board or its designee immediately upon request a list of patients to whom he has prescribed any controlled dangerous substances or addictive drugs as authorized above.
 - D. During the period of probation, Dr. Kilbury will not authorize any personnel under his supervision to initiate an order for a prescription to be issued.
 - E. During the period of probation, Dr. Kilbury will not allow the independent practice of medicine by any personnel under his supervision or employ.

- F. Dr. Kilbury will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Oklahoma Board of Medical Licensure and Supervision. Any question of interpretation regarding the Act shall be submitted in writing to the Board or its designee, and no action based on the subject of the question will be taken by Dr. Kilbury until clarification of interpretation is received by Dr. Kilbury from the Board or its designee.
- G. During the period of probation, Dr. Kilbury will request all hospitals in which he anticipates practice to furnish to the Board a written statement regarding monitoring of his practice while performing services in or to that hospital.
- H. During the period of probation, Dr. Kilbury will furnish to each and every state in which he hold licensure or applies for licensure and to all hospitals, clinics or other institutions in which he holds or anticipates holding any form of staff privilege a copy of the Board order stipulating sanctions imposed by the Board.
- I. During the period of probation, Dr. Kilbury will submit biological fluid specimens including, without limitation, blood and urine, for analysis, upon request of the Board or its designee, and Dr. Kilbury will pay for the analysis thereof.
- J. During the period of probation, Dr. Kilbury will not prescribe, administer or dispense any medications for personal use.
- K. During the period of probation, Dr. Kilbury will take no medication except that which is authorized by a physician treating him for a legitimate medical need. Dr. Kilbury has the affirmative duty to inform any and every doctor treating him of the Board order immediately upon initiation of treatment.
- L. During the period of probation, Dr. Kilbury will affiliate with a program approved by the Board for continuing rehabilitation and will authorize in writing the release of any and all information, including but not limited to medical and/or psychiatric records, regarding treatment or

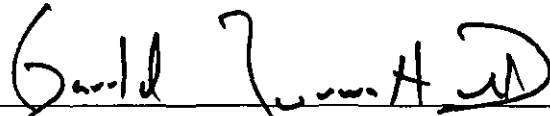
rehabilitation to this Board.

- M. During the period of probation, Dr. Kilbury will keep the Board informed of his current address.
- N. During the period of probation, Dr. Kilbury will keep current payment of all assessment by the Board for prosecution, investigation and monitoring of his case.
- N. Until such times as all indebtedness to the Board has been satisfied, Dr. Kilbury will reaffirm such indebtedness in any and all bankruptcy proceedings.
- O. Dr. Kilbury will practice medicine and surgery only after obtaining prior approval from the Board Secretary of the particular practice setting, scope of practice and practice location.

3. Unless specifically modified by this order, all remaining terms and conditions of probation shall remain in full force and effect.

4. A copy of this written order should be sent to Dr. Kilbury as soon as it is processed.

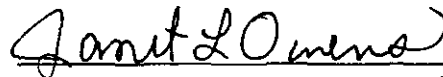
Dated this 12 day of February, 1999.



Gerald C. Zumwalt, M.D., Secretary
Oklahoma State Board of Medical
Licensure and Supervision

Certificate of Service

On the 12 day of February, 1999, a true and correct copy of this order was mailed, postage prepaid, to Merlin J. Kilbury, M.D., 4308 S. Peoria, Tulsa 74105
Box 702



Janet Owens