

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

FILED

NOV 16 2006

IN THE MATTER OF THE )  
APPLICATION OF )

MERLIN J. KILBURY, M.D. )

FOR TERMINATION OF PROBATION )  
FOR OKLAHOMA MEDICAL LICENSE )  
NO. 9907 )

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 88-7-618

**ORDER DENYING TERMINATION OF PROBATION**

This matter came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision on November 2, 2006, at the Board's office, 5104 North Francis, Suite C, Oklahoma City, Oklahoma 73118, pursuant to notice given as required by law and rules of the Board.

Merlin J. Kilbury, M.D., appeared in person, *pro se*, thereby waiving his right to legal counsel at the hearing.

The Board *en banc* heard testimony, reviewed the exhibits 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 an indefinite term of probation that commenced on January 7, 1997.
3. On September 24, 1998, Dr. Kilbury requested that the terms of his probation be modified to allow him to practice medicine and surgery at the Veterans Hospital in Muskogee, Oklahoma in addition to facilities within the Oklahoma Department of Corrections. The Board granted his requested modification.
4. On January 21, 1999, Dr. Kilbury requested that the terms of his probation be modified to allow him to seek employment outside the Department of Corrections and to allow the Board Secretary to approve new employment opportunities prior to the time Dr. Kilbury

begins practice. Dr. Kilbury also requested that the terms of his probation be modified to allow him to prescribe controlled substances in an institutional setting for his surgical patients. The Board granted the requested modification.

5. On July 17, 2003, Dr. Kilbury requested that the terms of his probation be modified to allow him to prescribe Schedule III-V controlled dangerous substances at his places of employment, which will be known by the Board Secretary. The Board granted the requested modification.

6. On November 3, 2005, Dr. Kilbury requested that the terms of his probation be modified to allow him to prescribe Schedule II controlled dangerous substances in the emergency room setting only. The Board granted the requested modification.

7. On November 2, 2006, Dr. Kilbury requested that his probation be terminated so that his position in the recovery group would be strengthened.

8. The proposed termination of Dr. Kilbury's probation does not afford sufficient practice limitations or controls to assure that Dr. Kilbury can practice medicine with reasonable skill and safety.

#### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction to hear requests for termination of probations under 59 Okla. Stat. §480 *et seq.*

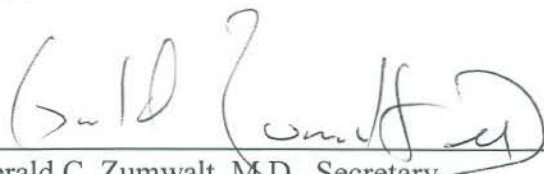
2. The Board may impose practice parameters and other restrictions as necessary to protect the health, safety and welfare of the public under 59 Okla. Stat. §480 *et seq.*

#### **ORDER**

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

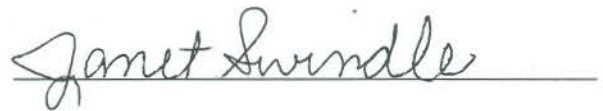
1. Dr. Kilbury's request for termination of his probation is **DENIED**.
2. A copy of this written order shall be sent to Dr. Kilbury as soon as it is processed.

Dated this 16 day of November, 2006.

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

**Certificate of Service**

On the 17 day of November, 2006, a true and correct copy of this order was mailed, postage prepaid, to the Merlin J. Kilbury, Drumright Regional Hospital, 610 W. Truck Bypass, Drumright, OK 74030.

A handwritten signature in cursive script, reading "Janet Swindle", is written over a solid horizontal line.

Janet Swindle