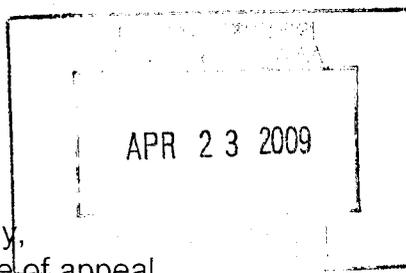


1088

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: Mitchell R. Miller, M.D.
a/k/a Mitch Miller

Docket No.: MPC 76-1100



NOTICE OF APPEAL UNDER PART 18.1

A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the director of the Office of Professional Regulation, Vermont Secretary of State's Office, as provided by 3 V.S.A. Section 130a.

NOTICE: UNDER THE ADA, a DISABLED PERSON MAY FILE A COMPLAINT WITH AN APPROPRIATE FEDERAL AGENCY, 28 CFR 35.170-35.190. and Ms. Ericson requests that the U.S. DOJ, DEA, ODC accept this as such.

Standing as an aggrieved party: Ms. Cris Ericson was a patient of Dr. Mitchell R. Miller for three years from 2006 until 2009. The State of Vermont Board of Medical Practice Notice to Patients states that Dr. Miller will not be able to provide medical care for patients or prescribe medications.

Ms. Cris Ericson, 879 Church Street, Chester, VT 05143 (802)875-4038
Served Notice by mailing copies in the U.S. Mail to:

- (1) State of Vermont Assistant Attorney General James S. Arisman, Office of the Attorney General
109 State Street, Montpelier, Vermont 05609-1001
- (2) Office of Professional Regulation, VT Secretary of State
26 Terrace, Montpelier, VT 05609-1101
- (3) Dr. Mitchell R. Miller, 70 Main Street, Ludlow, Vermont 05149
- (4) Joseph T. Rannazzisi, ODC, U. S. Department of Justice, DEA Headquarters, 8701
Morrissette Drive, Springfield, VA 22152
Springfield, VA 22152
- (5) Vermont Board of Medical Practice, 108 Cherry Street, P.O. Box 70, Burlington, VT 05402

MOTION BY AGGREIVED PARTY TO THE STATE OF VERMONT
TO REQUEST THAT THEY VACATE AND/OR DISMISS
THE SUMMARY SUSPENSION
OF DR. MITCHELL R. MILLER'S LICENSE TO PRACTICE MEDICINE

At this time, the Board cannot dismiss the charges,
BUT THE STATE OF VERMONT
CAN AND SHOULD DISMISS THE CHARGES DUE TO ALLEGED
PROCEDURAL DEFECTS AND DISCRIMINATION UNDER THE ADA.
http://healthvermont.gov/hc/med_board/actions.aspx

PROCEDURAL DEFECTS:

(1) Procedural defect: QUESTION OF FRAUDULENT ASSERTION IN THE PLEADINGS:

Rule 15.1 (d) Summary Suspension: the committee may find that certain alleged misconduct poses

so grave a threat to the public health, safety, or welfare that emergency action must be taken.

In re: Mitchell R. Miller, M.D., a/k/a Mitch Miller, Docket No.: MPC 76-1100
What "emergency"? What "threat to public health, safety, or welfare"?

(2) Procedural defect: QUESTION OF FRAUDULENT BASIS FOR CHARGES: Summary of State's 3 page SPECIFICATION OF CHARGES,

I. BACKGROUND and ALLEGATIONS

Three pharmacists complained that Dr. Miller wrote "large" quantities of pain killers,

which is an unconstitutionally vague and subjective term, and one of the pharmacists alleged that one patient "might" be diverting prescriptions into the community in illegal sales. Page 3. "there was no evidence of drug diversion by the patient."

(3) Procedural defect: Federal QUESTION OF JURISDICTION OF PHARMACISTS

TO DECIDE THE QUANTITY OF PRESCRIPTION PAINKILLERS A PATIENT CAN BE PRESCRIBED; AND A QUESTION OF JURISDICTION OF THE STATE OF VERMONT TO DECIDE THE QUANTITY OF PRESCRIPTION PAINKILLERS A PHYSICIAN MAY PRESCRIBE UNDER HIS FEDERAL REGISTRATION FOR DISPENSING CONTROLLED SUBSTANCES.

http://www.deadiversion.usdoj.gov/21cfr/cfr/1306/1306_04.htm

(4) Procedural defect: QUESTION OF INSUFFICIENCY IN THE PLEADINGS. THE STATE OF VERMONT accuses Dr. Miller of violations of three statutes in "and/or" language, so no reasonable adult can determine which side of each "and/or"

allegation he is allegedly "guilty" of; and the State of Vermont has NO JURISDICTION to allege violations of the one federal statute quoted in the State's pleadings, 21 CFR 1306.04.

Furthermore, the State's 55 COUNTS involve only two statutes, 26 V.S.A. Section 1354 and 26 V.S.A. Section 1398 and one that is fictitious or is not listed at <http://www.leg.state.vt.us> under Vermont Statutes, "26 V.S.A. Section 4214(a);and/or(b)". These statutes are repeated

in multiplications using ten patients; so there are actually only two possible alleged state violations, neither of which constricts a medical doctors's federal registration to write prescriptions, and neither of which requires a medical doctor to force patients to sign "contracts"; therefore, the State's pleadings are insufficient to state any valid cause of action against

Dr. Mitchell R. Miller.

(5) Procedural Defect: Social Security Disability recipients, including Ms. Cris Ericson, in Vermont have a right to 14th Amendment protection for Equal Treatment Under the Law the same as Social Security Disability recipients in other States. The State of Vermont has NO JURISDICTION to violate their protections under Federal Laws of the Americans with Disabilities Act which provide NO AUTHORITY FOR DRUG TESTING DISABLED PERSONS WHO HAVE NEVER BEEN CONVICTED OF AN ILLEGAL DRUG CRIME.

BOARD ACTIONS http://healthvermont.gov/hc/med_board/actions.aspx

These DISABLED persons are 'PROTECTED' UNDER THE ADA, and as such, have a cause of action against the State of Vermont in Federal Court, and a right to ask for federal legal counsel to be appointed to them to COUNTER sue Vermont for abusive threatening them and BECAUSE THE STATE OF VERMONT USED DR. MILLER TO TRY TO extort "contracts" from them, listed in the State's SPECIFICATION OF CHARGES: page 6. "o. Use of Narcotic Contracts"..."prescribing contracts"; page 9. "narcotic contracts"; page 12. "narcotics contract"; page 18. "narcotics contract"; page 23. "narcotics contract"; page 27. "narcotics contract"; page 30. "narcotics contract"; page 33. "narcotics contract"; page 36. "narcotics contract" and "prescribing contract"; page 38. "narcotics contract"; page 41. "narcotics contract" and "prescribing contract"; page 46. "narcotics contract" and "prescribing contract"; therefore, isn't it clear that Mr. James Arisman, Assistant Attorney General for the State of Vermont, is accusing Dr. Miller of FAILURE TO EXTORT CONTRACTS FROM DISABLED PATIENTS?

Isn't it true that 3% of medical test results are in error in the U.S.A. on an average, and that if a drug urine test were in error, a patient could have their home, bank account and car confiscated and be left homeless and destitute before being able to prove their innocence due to an error in the test result? Patients with stress related illnesses do not need to be attacked by their doctors!

CODE OF FEDERAL REGULATIONS <http://www.gpoaccess.gov/>
28 CFR 15.104 NON DISCRIMINATION ON THE BASIS OF DISABILITY
IN STATE AND LOCAL GOVERNMENT SERVICES

PROHIBITION AGAINST DISCRIMINATION

PART 35 NONDISCRIMINATION ON THE BASIS OF DISABILITY
IN STATE AND LOCAL GOVERNMENT SERVICES, SUBPART B GENERAL
REQUIREMENTS

SEC. 35.130 GENERAL PROHIBITIONS AGAINST DISCRIMINATION

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from

participation in or be denied the benefits of the services, programs, or activities of a public

entity, or be subjected to discrimination by any public entity (SUCH AS THE STATE OF VERMONT AND SUCH AS THE VERMONT BOARD OF MEDICAL PRACTICE AND SUCH AS THE VERMONT PHARMACY BOARD!).

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through CONTRACTUAL, licensing, or other arrangements, on the basis of disability,

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the

aid, benefit, or service that is NOT EQUAL TO THAT AFFORDED OTHERS;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as

effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to

reach the same level of achievement as that provided to others;

(iv) PROVIDE DIFFERENT or separate aids, benefits, or services to individuals with disabilities

OR TO ANY CLASS OF INDIVIDUALS WITH DISABILITIES THAN IS PROVIDED TO OTHERS

unless such action is necessary to provide qualified individuals with disabilities with aids, benefits,

or services that are as effective as those provided to others'

(v) Aid OR PERPETUATE DISCRIMINATION AGAINST A QUALIFIED INDIVIDUAL WITH A

DISABILITY BY PROVIDING SIGNIFICANT ASSISTANCE to an agency, organization or person THAT DISCRIMINATES ON THE BASIS OF DISABILITY in providing that aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) OTHERWISE LIMIT A QUALIFIED INDIVIDUAL WITH A DISABILITY IN THE ENJOYMENT OF ANY RIGHT, (SUCH AS TO MEDICAL TREATMENT AND PRESCRIPTIONS), PRIVILEGE,

ADVANTAGE, OR OPPORTUNITY ENJOYED BY OTHERS RECEIVING THE AID, BENEFIT, OR SERVICE.

(2) A public entity may not deny a qualified individual with a disability the opportunity to

participate in services, programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A PUBLIC ENTITY MAY NOT, DIRECTLY OR THROUGH CONTRACTUAL OR OTHER

ARRANGEMENTS, UTILIZE CRITERIA OR METHODS OF ADMINISTRATION:

(i) That have the effect of SUBJECTING QUALIFIED INDIVIDUALS WITH DISABILITIES TO

DISCRIMINATION ON THE BASIS OF DISABILITY;

(ii) That have the purpose or effect OF DEFEATING OR SUBSTANTIALLY IMPAIRING

ACCOMPLISHMENT OF THE OBJECTIVES OF THE PUBLIC ENTITY'S PROGRAM WITH

RESPECT TO INDIVIDUALS WITH DISABILITIES (BY MAKING DISABLED PEOPLE FEEL SO THREATENED AND INTIMIDATED BY BEING TREATED LIKE CRIMINALS ON PROBATION THAT THEY SIMPLY DO NOT GO TO A MEDICAL DOCTOR AT ALL BECAUSE GOING TO A MEDICAL DOCTOR IS NOW LIKE GOING TO A PRISON PROBATION PROGRAM!);

or (iii) That PERPETUATE DISCRIMINATION of another public entity if both public entities

are subject to common administrative control (VERMONT SECRETARY OF STATE DEBORAH MARKOWITZ WHO HAS ALREADY DISCRIMINATED AGAINST CRIS ERICSON IN THE 2008 POLITICAL CAMPAIGN SEASON, REPEATEDLY! <http://crisericson.com>) or are agencies of the same State.

(6) A public entity MAY NOT ADMINISTER A LICENSING OR CERTIFICATION PROGRAM IN A MANNER THAT SUBJECTS QUALIFIED INDIVIDUALS WITH DISABILITIES TO

DISCRIMINATION ON THE BASIS OF DISABILITY, NOR MAY A PUBLIC ENTITY ESTABLISH

REQUIREMENTS FOR THE PROGRAMS OR ACTIVITIES OF LICENSEES OR CERTIFIED

ENTITIES THAT SUBJECT QUALIFIED INDIVIDUALS WITH DISABILITIES TO DISCRIMINATION ON THE BASIS OF DISABILITY.

Sec. 35.131 Illegal use of drugs.

(c) Drug Testing. (1) This part does not prohibit a public entity from adopting or administering

reasonable policies or procedures, including but not limited to drug testing, DESIGNED TO

ENSURE THAT AN INDIVIDUAL WHO FORMERLY ENGAGED IN THE ILLEGAL USE OF DRUGS

IS NOT NOW ENGAGING IN CURRENT ILLEGAL USE OF DRUGS.

(2) NOTHING IN PARAGRAPH (C) of this section shall be construed to encourage, prohibit,

restrict, OR AUTHORIZE THE CONDUCT OF TESTING FOR THE ILLEGAL USE OF DRUGS.

QUESTION: ISN'T it a FEDERAL JURISDICTION QUESTION, AND NOT THE JURISDICTION OF THE STATE OF VERMONT MEDICAL BOARD TO DETERMINE

that under 28 CFR Section 35.131 (c)(1) drug testing is designed ONLY to ensure

that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs, and that means that ONLY DISABLED persons convicted of a drug crime can be drug tested UNDER THE ADA?

28 CFR Section 25.131 (a) (2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual WHO IS NOT ENGAGING IN CURRENT ILLEGAL USE OF DRUGS

(iii) IS ERRONEOUSLY REGARDED AS ENGAGING IN SUCH USE.

28 CFR 35.130 No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, OR BE SUBJECTED TO DISCRIMINATION BY ANY PUBLIC ENTITY.

Therefore, it is very clear that ONLY disabled persons who have been proven and convicted in a court of law to have PREVIOUSLY ENGAGED in the illegal use of drugs CAN BE DRUG TESTED!

Question: Is the "contract" the Vermont Assistant Attorney General refers to an UnConstitutional contract because it violates Warrantless Searches and Seizures provision of the U.S. Constitution; and are patients aggrieved by being subjected to warrantless searches and seizures victims of extortion under duress of threat that they will be denied medical treatment?

The Supreme Court found that the State of Georgia had gone too far in requiring that all candidates for State office pass a drug test. Chandler v. Miller, 520 U.S. 305 (1997). Georgia failed to show justification of a special need.

No greater public interest exists than protecting a citizen's rights under the Constitution!
Legal Aid Soc. of Hawaii v. Legal Services Corp., 961 F. Supp. 1402, 1419 (D. Hawaii 1997).

Question: Isn't it true that when a medical doctor demands that a patient take a drug urine test for illegal drugs that are a federal crime to use, then the act of asking or demanding the patient take the drug urine test, is in and

of itself a criminal charge against the patient, for which the medical doctor has no jurisdiction to charge the patient of a federal crime?

Question: Isn't it true that it is a violation of the United States Constitution and a warrantless search and seizure for a medical doctor to demand that a patient provide their urine for a drug test for illegal drugs?

Question: Isn't it true that no patient would submit to a drug urine test for illegal drugs which are illegal under federal law, unless they were submitting under extortion and under duress of the threat that the doctor would refuse to provide necessary medical treatment and prescriptions necessary to function?

Question: Isn't it a violation of the Americans with Disabilities Act to threaten patients with extortion, under duress, that if they don't take a drug urine test for illegal drugs, and give up their Constitutional right to not suffer warrantless searches and seizures of their body fluids, that is so frightening and so threatening to a disabled person to be called a criminal by their medical doctor, that this is so abusive a medical practice, for the doctor to act as a criminal investigator and prosecutor and judge, and treat innocent disabled people as criminal suspects, while the medical doctor has no federal investigator's license and no federal jurisdiction to charge his patients with federal crimes for which it is the purpose and the only purpose of the "contracts" for the drug urine tests, that this is so unconscionable and abusive as to clearly violate the Americans with Disabilities Act?

CONCLUSION: Aggreived 3rd Party as a Patient, Ms. Cris Ericson, hereby makes a Motion to request that the State of Vermont Vacate or Dismss the Summary Suspension of Dr. Mitchell R. Miller's medical license because the State of Vermont has the Authority and Jurisdiction at this moment to Dismiss or Vacate the Summary Suspension; BECAUSE otherwise, disabled adults need to file counter charges in Federal Court to protect themselves from abuse and discrimination by the State of Vermont.

Cris Ericson

April 23, 2009

*Cris Ericson
April 23, 2009*

Signed: Ms. Cris Ericson
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