

BOARD OF MEDICAL PRACTICE

In Re: Mitchell M. Miller, MD

Docket No. MPC 76-1100 VT

Physician License 042-0009508

SUPPLEMENTAL AFFIDAVIT OF PHILIP J. CIOTTI

Now comes Affiant, Philip J. Ciotti, Senior Investigator, Vermont Board of Medical Practice, and, under penalties of perjury, does depose and state that I have reasonable grounds to believe that **Mitchell M. Miller DOB 12/15/1958** has violated **VT Title 26 VSA 1354 (7) Conduct Which Evidences Unfitness To Practice Medicine, (9) Willful Omission To File Or Record Medical Reports Required By Law, (27) Failure To Comply With Provisions Of Federal Or State Statutes Or Rules Governing The Practice Of Medicine.**

On 12MAR09 at 1630 hrs. I met with Dr. Miller at his office in Ludlow, VT. This was to pick up copies of charts that were being subpoenaed again. Approx ½ the charts were ready and he was copying the remainder as I arrived. We had made arrangements the previous week for this pick up.

While waiting for the charts I asked about which patients were on pain contracts and which were not. (Dr. Miller's letter agreement required that all patients should be on contracts but my investigation was disclosing otherwise). Dr. Miller told me that the patients with contracts were [REDACTED], [REDACTED], and [REDACTED]. Other patients receiving pain medications without contracts were [REDACTED]

[REDACTED] These were patients whose charts were being subpoenaed. This conversation did not encompass all patients being treated for chronic pain the last few years, just these selected patients due to the volume of medications being prescribed to them. I asked specifically about [REDACTED] contract because it was quite old and out of date as to medications prescribed. Dr. Miller told me they updated his contract at one point but it was only verbal.

I asked Dr. Miller what criteria he used as to who should be on a contract and who should not. His first response was "well my thinking has

recent subpoena was for a certain time frame it is possible that the contract was signed prior to the requested date.)

Since my meeting with Dr. Miller I found that [REDACTED] was given prescriptions earlier in the day on 12MAR09, which he did not include when I was there in the evening to pick up her chart. This was a prescription for #30 Oxycodone 15MG and #15 Duragesic Patches 100 mcg to be taken 1 every 48 hours. What I pieced together from pharmacy investigations is as follows:

9MAR09 Dr. Miller wrote a prescription for #7 Duragesic 100 mcg patches to apply 1 every 48 hrs. This was filled at [REDACTED] Pharmacy and paid for by MEDICAID. (According to [REDACTED] she has documented proof that she only obtained 5 out of the 7 because the pharmacy had short supply).

12MAR09 Dr. Miller wrote a prescription for #30 Oxycodone 15mg tabs. This was filled at [REDACTED] Pharmacy and paid for by MEDICAID

12MAR09 Dr. Miller also wrote a prescription for #15 Duragesic 100 mcg patches to apply 1 every 48 hours.

16MAR09 [REDACTED] filled the 12MAR09 Duragesic prescription at [REDACTED] Pharmacy in [REDACTED]. This was paid for by cash, (approx. \$831)

23MAR09 [REDACTED] filled another prescription for #7 Duragesic 100 mcg patches at [REDACTED] Pharmacy and these were paid again by MEDICAID. This particular prescription was also written on 12MAR09 with a note "to be filled after 3/23/09"

On 31MAR09 I spoke to [REDACTED] on the phone and asked her about these prescriptions. She told me that on the 9th she only got 5 patches and then got the other 2 on the 13th. She agreed that these were paid for by MEDICAID.

I asked about her going to [REDACTED] and filling another #15 patches just 4 days later. She said she needed them and did pay \$831 or so. I said you had that kind of cash on you? She said that she used her debit card and she had tax return money in her account. She said it was rejected by MEDICAID. She said she was going to keep her receipt and try later to recoup her money. She said she had a big fight with her boyfriend [REDACTED] over this. He was mad she paid for the prescription.

I asked her why she needed these anyway since she would have been early on the patches. She told me that she often wears two and would run out. She said that since Dr. Miller has scaled her back she gets sick and has to take

two. I asked her if Dr. Miller knows this. She said she has told him before and he told her she shouldn't. She said he scaled her back to 75's and they didn't do it. She said she needs Oxycodone AND the patches. She said she gets so sick that she can't work or function. I asked her what happens when she runs out early, what does Dr. Miller say or do. She told me that he would tell her "there's nothing he can do but he might give me 50 mcg patches to get by or 30 mg Oxy's." She said he "used to be all right about this but recently he's more reluctant". I asked her about the time not long ago when we were both arrived in his office at the same time. She said she was afraid that he thought we both came in together. She said he seemed nervous. She said he had called her to come down and he could see me really quick. (I arrived very early for my scheduled appointment with him that day). I asked what happened when he took her in the exam room. I asked if he examined her and commented that you were in and out of there in less than two minutes. She said "it has been like that since day one, he never really checks me". But she added that he did seem nervous with me there.

I asked what she was wearing for patches right now and if she was running low. She said, no I'm fine I have 100 and a 75. I asked where she got the 75. She said she had some extra left over and she was good for a while. I asked her if she was addicted. She said "I don't want to say I'm addicted. But you know he never told me that I would get addicted. Pharmacists like at [REDACTED] told me I take too many pain meds and now I'm on such high doses that I get sick when he scales me back." She said "if I don't wear a patch I feel like I'm dying." I'm going to go to [REDACTED] and have surgery and go to the Pain clinic there and they are going to taper me. I know I'm going to get sick but it shouldn't be too bad. I want to be off these." I asked if she was drug dependant. She said, "That's a better word". I asked what she weighed she told me 115 pounds. She said that she has already been told she takes too much pain medication for her weight.

I asked what time on 12MAR09, she got her prescriptions. She said she didn't actually pick them up herself. She said she couldn't get out of work during the day so her boss picked them up for her. [REDACTED] She said Dr. Miller was going to leave them stuck in the door if he had to leave his office because he was only going to be there a short time that afternoon.

I spoke to [REDACTED] on the phone. She verified that on the afternoon of 12MAR09 she went to Dr. Miller's office and picked up a sealed envelope from Dr. Miller himself at the back door of the office. She said it was her understanding that there were prescriptions in the envelope but she didn't open it. She also understood that it was pre-arranged for her to pick them up and that Dr. Miller was expecting her.

On 27APR09 approx 930 hrs. I met with VSP Det Sgt Mark Francis in [REDACTED] to discuss some recent prescription activity of [REDACTED] and prescriptions from Dr. Miller. [REDACTED] had been to several area pharmacies with Fentanyl prescriptions from Dr. Miller dated just prior to his suspension. At least one prescription had been confiscated by a pharmacist because they suspected it was altered.

We went to [REDACTED] residence but she was not home. We called her cell phone and spoke to her. She advised that she, her boyfriend and her children were staying in [REDACTED] at the [REDACTED] for a few days. She agreed to meet us at [REDACTED] in [REDACTED] at 1230hrs.

We went to [REDACTED] and she met us as agreed. We spoke outside under a tree about her activities since the end of March 2009 regarding prescriptions and medical treatment. [REDACTED] advised that she had obtained two prescriptions for Fentanyl patches from Dr. Miller on 30MAR09. She said she went to his office to get them. He had just recently returned from his vacation. She said that both prescriptions were dated 30MAR09 but one read words to the effect of "do not fill before 17APR09". She said that she saw Dr. Miller make copies of these prescriptions on his FAX machine before he gave them to her.

A few days later she went to [REDACTED] Pharmacy to fill the first prescription. She said they kept it without filling it. She said she next went to the [REDACTED] ER where she was given a prescription for 3 Duragesic Patches to use one every 48 hours. She filled this prescription on 7APR09.

[REDACTED] advised that on 11APR09 she went to the [REDACTED] ER. There she obtained another 3 Fentanyl Patches to be used one every 48 hours.

[REDACTED] later attempted to fill the prescription that had the "do not fill before" language at [REDACTED] in [REDACTED]. This prescription was not filled as the pharmacist questioned its validity suggesting it might have been altered. [REDACTED] was adamant that she did not alter this prescription in any way.

[REDACTED] told us that she is now being treated by Dr. [REDACTED] in [REDACTED]. The only drug she is getting is Suboxone. [REDACTED] said she does not believe that she is a "drug addict" but that she is "drug dependant". [REDACTED] told us that she believes that Dr. Miller prescribed in a manner that caused her to be drug dependant. She said that she had a rough time for a while and was sick not getting narcotics but that Dr. [REDACTED] treatment with the Suboxone is now working and she feels good and is happy to not have to take narcotics.

██████████ also told me that she has spoken to Dr. Miller at least twice since he lost his license. She said that he called her several weeks ago to see how she was doing and to apologize to her that he could not continue to treat her. ██████████ was "sick" at the time being weaned off the narcotics. She said she asked Dr. Miller to provide her records to Dr. ██████████. She said that Dr. Miller called her again only a week ago. He again asked her how she was doing. She said he also asked her if anyone from the Medical Board contacted her. She said that she told him "no". She said that he told her that if anyone from the Medical Board contacted her, that she did not have to speak to us. She said she asked again for a copy of her records and that Dr. Miller told her he had to get them together as some were at his home and some were in the office. ██████████ signed a current medical release form for me and told me that she believes now that Dr. Miller didn't do her any favors in the way he prescribed for her and that she was doing better in her present treatment.

A review of the "Contract for use of Controlled Medications" signed by ██████████ on 8/10/2005 indicates that she would only obtain Oxycodone 15mg and Oxycontin 40mg. There was no indication for Fentanyl. Dr. Miller did not provide a contract for ██████████ any newer than 8/10/2005.

On 4MAY09, I spoke to ██████████, pharmacist at ██████████. ██████████ told me that according to her records, in the month of March 2009 Dr. Miller wrote a Suboxone prescription with 5 refills to ██████████ on 24MAR09. He also wrote two prescriptions to ██████████ on 24MAR09. Those prescriptions were for 120 Percocet and for 30 Dilaudid 2mg. ██████████ was not one of the patients that Dr. Miller had disclosed that he was currently treating for pain.

I also spoke to the ██████████ Pharmacist Mgr at ██████████ Pharmacy in ██████████. She told me that during the month of March 2009, Dr. Miller wrote prescriptions to ██████████ ██████████ was prescribed the following:

3/2/09 Oxycodone 15mg Quantity 120 to take 1-2 four times per day as needed for moderate breakthrough or incident pain

3/6/09 Oxycodone 30mg Quantity 60 to take 1-2 three times per day as needed for moderate to severe breakthrough pain

Prescription written 3/6/09 with the notation "to fill 3/15/09" Oxycodone 40mg Quantity 90 to take 1 three times per day

Prescription written 3/6/09 with the notation "to fill 3/20/09" Oxycodone 30mg Quantity 60 to take 1-2 three times per day as needed for moderate to severe breakthrough pain

Prescription written 3/6/09 with the notation "to fill 4/10/09" Oxycontin 40mg Quantity 90 to take three times per day

3/6/09 (although actually filled 3/24/09), Oxycodone 15mg Quantity 120 to take 1-2 four times per day as needed for mild to moderate breakthrough pain

3/31/09 Oxycodone 30mg Quantity 60 to take 1-2 three times per day as needed for moderate to severe breakthrough pain

Prescription written 3/31/09 with the notation "to fill on or after 4/7/09" Oxycodone 30mg Quantity 60 to take 1-2 three times per day as needed for moderate to severe breakthrough pain

I asked [REDACTED] if any of these prescriptions would be considered "early refills". She said no because of the changes in dosages. I asked if this was typical prescribing that she would see from a physician treating pain. He said no, that Dr. Miller was the only person that would prescribe like this and that she did not understand the rationale behind it. She said it was her belief based on her experience that this patient was out of control and she wondered if the patient manipulated Dr. Miller. She said that [REDACTED] was under control now. She said he was being treated by Dr. [REDACTED] of [REDACTED] and that he was only getting 40mg Oxycontin and no longer getting any short acting pain medications.

I spoke to [REDACTED], Pharmacist at [REDACTED] Pharmacy. I asked him about the status of Dr. Miller patients since dr. miller lost his license. He told me that they only saw [REDACTED]. He said that [REDACTED] was now being treated with Suboxone only by Dr. [REDACTED] of [REDACTED].

I called [REDACTED] on the phone and identified myself and asked her if we could speak about Dr. Miller and her treatment. She consented. I asked her if she was continuing to get pain medications from another physician. She said no. she said that she was now seeing [REDACTED] MD of [REDACTED]. She said that Dr. [REDACTED] prescribed something starting with the letter G. I suggested Gabapentin. She said she believed that was what it was but that she actually decided to take nothing. She said she went through withdrawal by choice. I asked why. She told me that her house was broken into and she had drugs, money and jewelry stolen. She said "I found out from the police that my drugs had a lot of street value and I didn't want that stuff in my house anymore". She said she was sick for a couple weeks but that she toughed it out. She said it was like having a bad case of the flu and it was not easy to get off the drugs. She said

that she likes [REDACTED] but that [REDACTED] doesn't believe in taking a lot of drugs. She said [REDACTED] is "no nonsense." [REDACTED] told me she was probably better without the narcotics because she gets really depressed in the winter and has Seasonal Affective Disorder and the drugs made her even more depressed. I asked her if Dr. Miller knew that and she said yes. I asked if he was treating her for that and she no because she was only see him on the Worker's Comp injury only. I asked if she ever saw her records from Dr. Miller and she said no. I asked if she had any of her records from Dr. Miller sent to [REDACTED] and she said no. She also said she really liked Dr. Miller. She said she thought had got into bad trouble by being with some bad people. She said she thinks he is so compassionate that there were probably people that took advantage of him. She said she has known Dr. Miller for a long time having first [REDACTED] together at the [REDACTED]. She said "maybe he blew it, but he should get another chance". I asked [REDACTED] if she has spoken to Dr. Miller since he lost his license. She told me that a week or so ago he called her and asked her to meet him for coffee. She said she did. She said he seemed very sad. He apologized to her that he could not treat her any more. She said she asked him a lot of questions but that he was evasive. She said he asked if her anyone from the Medical Board had spoken to her. She said no. I asked if he had expressed any thoughts on what she should do if contacted. She said no. She asked me what to do. She said she didn't want to get him into any more trouble. I suggested that she simply be honest with whoever might ask her about this case.

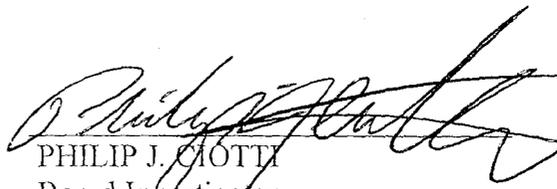
I obtained prescription records from THE PHARMACY in [REDACTED]. I found that Dr. Miller had been continuing to prescribe for [REDACTED]. [REDACTED] had been one of chronic pain patients. On 3DEC08 Dr. Miller had FAXED to the Medical Board, a list, written in his own hand updating the status of his chronic pain patients. At that time he listed [REDACTED] as "transferred 12/08".

THE PHARMACY sent me a patient profile indicating that Dr. Miller prescribed the following since 12/08:

1/03/09 Lorazepam .5mg #15
1/07/09 Lorazepam .5mg #15
1/08/09 Tramadol 50mg #90
1/09/09 Lisinopril 10mg #30
1/13/09 Fluticasone 50mcg spray
1/14/09 Albuterol .083% nebulizer

1/15/09 Trazodone 100mg #30
1/17/09 Benzonatate 200mg #15
1/17/09 Butilbital/ APAP/CAF #15
1/22/09 Butilbital/ APAP/CAF #15
1/25/09 Lorazepam .5mg #15
2/19/09 Tramadol 50mg #56
2/25/09 Tramadol 50mg #56
3/03/09 Tramadol 50mg #56
2/25/09 Tramadol 50mg #56
3/08/09 Prednisone 10mg #15
3/08/09 Cephalexin 500mg #30
3/10/09 Tramadol 50mg #60
3/13/09 Temazepam 15mg #6

Dated at Burlington, Vermont this 6th day of May , 2009.

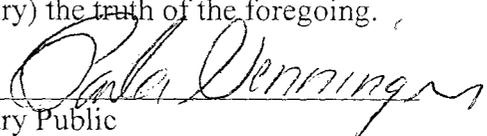


PHILIP J. CIOTTI
Board Investigator,
Vermont Board of Medical Practice

At Randolph, VT, this 6 day of May, 2009, personally appeared before me Philip Ciotti

and made oath to (affirmed under penalty of perjury) the truth of the foregoing.

Before me:


Notary Public

My commission expires

3/10/10