

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

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

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Docket No.: MPC 76-1100

STIPULATION AND CONSENT ORDER

The State of Vermont, by and through Attorney General William H. Sorrell, and the undersigned Assistant Attorney General, James S. Arisman, and Respondent Mitchell R. Miller, M.D., stipulate and agree as follows in the above-captioned matter.

1. Mitchell R. Miller, M.D., Respondent, holds Vermont medical license No. 042-0009508, issued by the Board of Medical Practice ("the Board") on July 3, 1997. Respondent is a board-certified family practice physician.

2. The Vermont Board of Medical Practice on April 1, 2009 entered an order summarily suspending Respondent Miller's license to practice medicine, following a motion from the State and the filing of a specification of charges. The Board's order of summary suspension remains in effect at this time.

3. The Vermont Board of Medical Practice possesses jurisdiction in this matter pursuant to 26 V.S.A. §§ 1353-1361, 1398, and other authority.

I. Background.

A. MPC 76-1100.

4. On or about November 9, 2000, the Vermont Board of Medical Practice opened a complaint (Docket No. MPC 76-1100) involving Respondent Miller, based on information

provided by the Vermont Office of Professional Regulation¹ regarding his prescribing of DEA schedule controlled pain medications for a specific patient. Subsequently a Medical Board investigator interviewed three area pharmacists in November 2000 regarding Respondent's prescribing. The Medical Board investigator also interviewed Respondent during the Board's review of this matter. Respondent later wrote to the investigator and described the clinical needs of the patient in question as "chronic low back pain" and stated that there was no evidence of drug diversion by the patient. Respondent provided his full cooperation with the Board's investigation.

5. During late 2000 and early 2001, the Board subpoenaed and reviewed medical records for a number of patients who had received DEA schedule controlled pain medications prescribed by Respondent Miller.

B. Meetings with Central Investigative Committee.

6. On June 18, 2001, Respondent Miller met in person with members of the Medical Board's Central Investigative Committee to discuss his treatment of pain and prescribing of pain medications for specific patients. Board Docket Number MPC 76-1100 remained open.

7. On January 9, 2004, Respondent again met in person with the members of the Medical Board's Central Investigative Committee to discuss his prescribing practices. During the meeting, Dr. Miller agreed to provide the Board with detailed written assurances regarding the manner in which he would henceforth prescribe DEA schedule controlled pain medications for his patients.

C. April 26, 2004 Letter of Assurance.

8. Respondent signed a letter, dated April 26, 2004, addressed to the Chair of the Committee and acknowledged the Committee's concerns regarding aspects of his prescribing of

1. A unit within the Office of the Vermont Secretary of State, regulating licensed professionals other than physicians and attorneys.

controlled substances for his patients. Dr. Miller voluntarily committed himself in that letter to take a series of steps with regard to his prescribing and his treatment of pain, including entering specific written documentation in each patient's chart regarding (a) evaluation of the patient's pain; (b) the medical basis for prescribing controlled substances for management of pain; and (c) a plan of treatment. He also agreed not to accept new patients who were likely to require treatment for chronic pain. Dr. Miller also agreed to follow the Board's written policy on prescribing for and the treatment of pain, including the use of "prescribing contracts".

D. The State's Specification of Charges.

9. On March 31, 2009, the State of Vermont filed a Specification of Charges in Docket Number MPC 76-1100 alleging that Respondent Miller's recordkeeping and prescribing of DEA schedule controlled substances for 10 specific patients had failed to comply with the provisions set forth in writing in his Letter of Assurance. The subject patients had received care and prescribing at Dr. Miller's medical office in Ludlow, Vermont. The Board did not investigate Dr. Miller's prescribing at any other location, and no allegations were received by the Board that Dr. Miller's prescribing in any other setting was in question.

10. The State, *inter alia*, alleged in its charges that Respondent accepted and cared for new chronic pain patients, in disregard of his April 26, 2004 Letter of Assurance. The State also alleged that Respondent's patient care and record keeping for specific patients had demonstrated insufficient concern regarding possible patient drug seeking and diversion and insufficient attention to the potential for dependency among these patients. The State also alleged that Respondent's medical records for these patients inadequately documented that he had taken a sufficient medical history, his medical basis for prescribing and refilling prescriptions for these patients, and the results of physical examinations and pain evaluation.

11. The State alleged that Respondent's office notes for the 10 specific patients inadequately documented the rationale for the continuation of his prescribing of controlled substances, consideration of possible side effects, and preparation of current treatment plans for the patients. The State alleged that Dr. Miller in some cases did not make use of "narcotics contracts" with his patients or did not update such contracts to reflect his current prescribing of controlled substances.

12. On April 1, 2009, the Board of Medical Practice entered a summary suspension of Respondent Miller's Vermont medical license, following an *ex parte* hearing on the State's charges. Since that date, Dr. Miller has vigorously disputed the factual and legal bases for the Board's suspension order.

13. Dr. Miller has not previously been the subject of any formal disciplinary action by the Vermont Board of Medical Practice. In the past, Respondent Miller has cooperated with the Board by meeting with its Central Investigative Committee, speaking with the Board's investigators, and by voluntarily providing to the Board his 2004 Letter of Assurance regarding his prescribing of DEA schedule controlled substances, treatment of pain, and medical record keeping.

14. Dr. Miller disputes many aspects of the State's allegations and its legal theories but does not contest that if this matter had proceeded to hearing, a finding adverse to him could have been entered by the Board, pursuant to 26 V.S.A. § 1354 and/or § 1398 , on one or more of the State's charges against him. Thus, to minimize time, expense, and uncertainty and to resolve this matter expeditiously for all, Dr. Miller has determined that he will not proceed to contest the State's charges through an evidentiary hearing and, as such, has chosen to enter into this agreement with the Board of Medical Practice. Dr. Miller enters no further admission here. Dr. Miller has concluded that this agreement is acceptable and in the best interest of all parties. Dr. Miller agrees that the allegations in Paragraphs 1 through 14, if credited, provide an

adequate legal basis for the actions by the Board that are set forth within this agreement. Any and all representations herein by Respondent are made solely for the purposes of this agreement.

15. Thus, consistent with Dr. Miller's wish to continue to cooperate fully with the Vermont Board of Medical Practice in its responsibilities, he acknowledges and agrees that he is knowingly and voluntarily agreeing to this Stipulation and Consent Order. He further acknowledges that he has had advice of counsel and representation in the matter presently before the Board and in reviewing this Stipulation and Consent Order. Respondent agrees that he is well satisfied with all legal counsel and representation he has received in this matter.

16. Dr. Miller agrees and understands that by executing this document he is waiving any right to contest the State's charges at hearing, to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with any evidence against him, to cross-examine adverse witnesses, and to offer evidence of his own to contest the State's charges.

II. Agreement.

17. The parties to this Stipulation and Consent Order agree that appropriate disciplinary action in this matter in general terms shall consist of the following:

A. Suspension of Respondent's license to practice medicine for a period of 6 months. The Board and the Respondent agree that the six month term of suspension was served from April 1, 2009 to October 1, 2009. However, Respondent understands and agrees that he shall not return to practice until the evaluations set forth in paragraphs 21 and 24 have been completed and without the formal, written approval of the Board of Medical Practice, consistent with the terms set forth in this agreement. Following his return to practice, Respondent agrees that his practice of medicine shall be subject to his full compliance with all the terms and conditions of licensure set forth herein.

B. Respondent acknowledges that substantial or repeated failure by him to comply with the terms and conditions herein may constitute unprofessional conduct and may result in such further disciplinary action as the Board may deem appropriate under the circumstances and in light of this agreement.

C. Respondent's license to practice medicine shall be designated as "conditioned" for a period of five years, and Respondent shall comply fully and in good faith with each of the terms and conditions of licensure set forth below, wherever he may practice, until such time as he has been relieved of those conditions herein by express written order of the Vermont Board of Medical Practice.

A. Introduction.

18. Respondent agrees that he has read and carefully considered all terms and conditions herein with assistance of counsel and agrees to accept and be bound by these while licensed to practice medicine in the State of Vermont or elsewhere and to be bound by these until such time in the future as he may be expressly relieved of these conditions, in writing, by the Vermont Board of Medical Practice.

19. Respondent's license to practice medicine in the State of Vermont shall be conditioned for five years, following entry of the Board's Order approving the terms of this agreement. The Board, in its sole discretion, may consider and determine a petition from Respondent for relief from or modification of these conditions, no sooner than 36 months after the effective date of this Stipulation and Consent Order, unless another provision of this Stipulation and Consent Order allows a petition for specific modification at an earlier date.

B. Functional Evaluation; Care.

20. Respondent agrees to cooperate fully and in good faith with such evaluation and assessment as are required by this agreement. Respondent agrees to sign such limited authorizations and/or waivers of confidentiality as set forth in this agreement. Respondent agrees the Board may disclose to reviewers, evaluators, or assessors, such information in its possession, in whole or in part, and as the Board may deem appropriate, in its sole discretion,

with regard to Respondent, for the purpose of evaluation and assessment. Respondent shall be provided copies of all such written material and shall be reasonably permitted to provide his own statement or other supplemental material for consideration. Respondent agrees to sign all necessary waivers of confidentiality so as to permit the evaluators described in paragraphs 21, 24, and 50 of this Agreement and the Vermont Board of Medical Practice to exchange information, without limitation, that is related to the instant matter before the Board and this agreement.

21. Respondent agrees that he shall promptly participate in an independent, comprehensive psychological or psychiatric evaluation, addressing the issues identified to the evaluator by the parties. The professional carrying out this evaluation shall be a fully-licensed, board-certified practitioner with M.D. or Ph.D. qualifications. The parties shall confer regarding the practitioner to be chosen, and, if possible, the parties shall mutually agree on the evaluator. In the event the parties cannot agree on the evaluator, they shall submit their respective proposed evaluators to the Board for selection.

22. The evaluation, *inter alia*, shall set forth any recommended practice limitations and any recommendations for follow-up care or training. Respondent understands and agrees that results of such evaluation results shall be provided to the Board by written report. Respondent agrees to abide by all recommendations for further care or training contained in the report. The Board or its agents also may communicate directly with the evaluator(s) regarding the written evaluation results and conclusions. Respondent agrees to execute all waivers necessary to facilitate the sharing of such information between the evaluator and the Board.

23. Respondent agrees he shall bear all costs of care and treatment, assessment, tests, evaluation, and reporting.

C. Assessment of Medical Competencies.

24. Respondent agrees to cooperate fully and in good faith in an independent

assessment of his medical knowledge, clinical decision making, interpersonal and communication competencies, documentation skills, and practice systems, with concurrent identification through the evaluation process of any areas of appropriate educational follow-up. The parties have agreed upon the Center for Personalized Education for Physicians (CPEP) of Denver, Colorado as the appropriate assessor. In the unlikely event CPEP evaluation is impractical or unavailable the parties shall confer and may agree on a similar evaluator. If the parties are unable to agree, the Board shall make such determination. Such assessment shall be carried out by the assessor at the location designated by the assessor.

25. Respondent understands that such assessment shall include preparation of a written report of findings that identifies areas of strength and makes recommendation as to any areas of need, provider care, and educational/training follow-up. Respondent agrees that he shall follow and comply with all reasonable recommendations from such assessment. Respondent shall bear all costs related to such assessment and any recommended follow-up steps or education/training.

D. Confidentiality of Information.

26. The parties agree that all records or materials prepared pursuant to this agreement for the purposes of evaluation or assessment, as described above shall be treated as confidential, absent an evidentiary hearing on the merits under 26 V.S.A. §§ 1355-1361. See 26 V.S.A. § 1317 (accessibility and confidentiality of disciplinary matters).

E. Practice Site.

27. Respondent agrees that upon return to practice and during the length of this agreement, he shall practice medicine only in a structured group practice setting in which he shall have regular contact and interaction at that site with at least one other physician, as well as other providers and support staff. Respondent shall petition the Board in advance for formal, written approval of any proposed structured group practice setting and of the

physician(s) with whom he proposes to practice.² The parties agree that such approval may be considered and determined by the Board or its investigative committee to which Docket No. MPC 76-1100 is assigned.

28. Such approval shall not be unreasonably withheld by the Board or the investigative committee, and the petition shall be decided promptly at the next scheduled meeting of the full Board or the investigative committee, and in any event within 30 days of submission to the Board. Respondent agrees that he shall not practice medicine or see patients at any other site or location without the written approval of the Board of Medical Practice. Moreover, Respondent agrees that he shall not practice medicine in any form or manner outside the scope of his employment agreement or affiliation with such a group practice setting. Respondent understands and agrees that during the life of this agreement, any physician assistant for whom Respondent is the primary supervising physician, may prescribe only those drugs that Respondent himself is authorized to order under the terms of this agreement. See Board Rule 7.4.

29. Respondent agrees that he shall provide a complete copy of this Stipulation and Consent Order to any and all licensed practitioners with whom he is associated in practice, to any prospective employer or site with which he may be affiliated, and to any State medical board or other licensing authority in any location or jurisdiction where he may seek to practice or where he may make application, so long as this agreement remains in effect.

F. Supervision.

30. In addition to practicing in a structured group practice setting, as described

2. Under the terms of this agreement, Respondent could propose as a practice site a nursing home or extended care facility, so long as he was not the only physician affiliated with the site and Respondent would have regular contact with such other physician.

above, Respondent agrees that he also shall engage in regular, face-to-face communication with a Board-approved Supervising Physician so long as this requirement remains in force. The Supervising Physician shall hold an unrestricted Vermont medical license and shall be a board-certified family practice physician, internist, or equivalent specialist. The Supervising Physician may be a member of or affiliated with the Respondent's practice. Respondent agrees that other practitioners or providers within his practice setting may communicate without limitation with this Supervising Physician and/or with the Board regarding Respondent's care of patients, any problems arising with respect to patient care, and Respondent's ability to practice medicine safely and competently.

31. Respondent shall petition in writing for Board advance approval of the individual who is proposed to act as his Supervising Physician. The parties agree that such approval may be considered and determined by the Board or its investigative committee to which Docket No. MPC 76-1100 is assigned. The Board or the investigative committee shall decide such petition promptly at its next regularly scheduled meeting, and in any event within 30 days of its submission to the Board, and the Board or its investigative committee will not unreasonably withhold its approval. Respondent acknowledges that the Board may later disapprove any Supervising Physician at any time, upon reasonable grounds.

32. Respondent agrees that he shall meet and confer with the Supervising Physician on-site, at least monthly for at least two hours, for a period of at least one year, beginning on the date he returns to practice. The Supervising Physician shall discuss with Respondent his practice, care of patients, and any problems, concerns, or questions relating to patient care. Respondent shall maintain his own written record of the dates of all such meetings, their duration, and subjects addressed. Respondent shall be responsible for the prompt preparation of all patient medical records, as well as copies of prescriptions as otherwise set forth in this

agreement, and shall ensure that these are available for immediate inspection, review, and/or copying by the Supervising Physician.

33. If the approved Supervising Physician resigns or is no longer available, Respondent shall within 30 calendar days of such resignation or unavailability, petition the Board or its designee for approval of the name and qualifications of a replacement Supervising Physician. The parties agree that such approval may be considered and determined by the Board or its investigative committee to which Docket No. MPC 76-1100 is assigned. The Board or its assigned investigative committee shall act with reasonable promptness on any such petition, and within 30 days on any such proposal submitted by Respondent. If Respondent fails to submit the name of a replacement Supervising Physician within 30 days of the resignation or unavailability of the Supervising Physician, Respondent shall cease and desist from all practice of medicine and all prescribing until a replacement Supervising Physician has been approved by the Board or its investigative committee and actually has assumed this responsibility.

34. Respondent agrees that he personally shall be responsible for ensuring that the Supervising Physician for the first six months following his return to practice shall provide monthly written documentation to the Board that the required meetings occurred and informing the Board of any concerns the Supervising Physician has regarding Respondent's skills, knowledge, and ability to practice of medicine safely and competently. Following the initial six month period, the Supervising Physician shall submit such reports to the Board on a quarterly basis for the next six months. During the remaining term of this agreement, the Supervising Physicians shall submit such reports on a bi-annual basis unless problems or concerns arise regarding Respondent's skills, knowledge, and practice of medicine, in which

case such problem shall be promptly reported to the Board. The terms and conditions set forth in this paragraph are material terms of this agreement.

35. Respondent understands and agrees that failing to maintain all records, failing to make available records for inspection and/or copying, and otherwise failing to comply with the provisions of Paragraphs 30-34, above, may be deemed to be violations of this agreement. Respondent understands and agrees that such failure may result in further disciplinary action by the Board, including suspension or revocation.

36. The parties agree that one year after Board approval of this agreement, Respondent may petition the Board in writing for possible modification of the supervisory requirements set forth above. The Board in its sole discretion may approve or disapprove such petition or grant it in part.

G. DEA Scheduled Drugs.

37. Respondent agrees that he shall not prescribe any DEA schedule II or III pain medications, expressly including opiate and opioid medications within these schedules, prior to the passage of at least 12 months following the effective date of the Board's approval of this agreement. Respondent further agrees that he shall not personally dispense, distribute, or otherwise make available to any patient or person any DEA schedule II or III pain medications, expressly including opiate and opioid medications within these schedules, including any samples, during the same period.

38. Pursuant to the requirements of the above paragraph, Respondent understands and agrees that during the first 12 months of this agreement, he may only recommend to another physician that a prescription for a DEA schedule II or III pain medication, expressly including opiate and opioid medications within these schedules, be written for a patient,

stating in writing the basis and reason for such recommendation. Respondent shall retain copies of all such written recommendations, enter a corresponding note in the patient's records, and make a copy of all such recommendations available to the Board upon its request. Any costs related to this requirement shall be borne by Respondent.

39. Respondent agrees that following the passage of at least 12 months from the effective date of this agreement, he may petition the Board for permission to resume directly prescribing DEA schedule II and III pain medications, expressly including opiate and opioid medications within these schedules, for patients. Such petition shall be accompanied by statements from Respondent's Supervising Physician attesting to the appropriateness of such resumption of the direct prescribing of DEA schedule II and III pain medications, expressly including opiate and opioid medications within these schedules. Respondent agrees that the Board, in its sole discretion, may approve or disapprove any such petition from Respondent.

H. Prescribing Requirements Following Approval of Respondent's Petition.

40. Respondent agrees that he has read, understands, and shall abide by the provisions of (a) the Vermont Board of Medical Practice written *Policy for the Use of Controlled Substances for the Treatment of Pain* and appendices (Board approvals dated December 7, 2005 and January 4, 2006); and (b) Vermont Board of Pharmacy Rule 9.5 (requirements for written prescriptions; effective January 1, 2010). Respondent agrees that his care of patients and prescribing of controlled substances at all times shall be consistent with the requirements of each of these promulgations. In this regard, Respondent expressly agrees that he shall require any patients being prescribed DEA schedule II or III pain medications, expressly including opiate and opioid medications within these schedules, more than once, to read, date, and sign a written prescription contract consistent with Appendix B to the Board's *Policy for the Use of Controlled Substances*.

41. During the term of this agreement, Respondent agrees that he will not accept or treat patients who presently require or who can reasonably be expected to require treatment with DEA schedule II or III pain medications, expressly including opiate and opioid medications within these schedules, for chronic pain while under his care. Respondent agrees that any patient who requires treatment for acute pain shall not be prescribed DEA schedule II or schedule III pain medication, expressly including opiate and opioid medications within these schedules, for a period longer than 14 days for the same underlying medical condition. Respondent agrees that patients who newly require treatment for chronic pain and who require prescriptions for DEA schedule drugs for a period longer than 14 days or who recurrently require the prescribing of such drugs for acute pain shall be promptly referred to another practitioner for care.³ Such referrals may include Respondent's practice partner(s), if appropriate.

42. The parties agree that after receiving Board approval to prescribe DEA schedule II and III pain medications, expressly including opiate and opioid medications within these schedules, Respondent shall be permitted to prescribe such medications for periods of longer than 14 days only for those patients who have been diagnosed in writing by another consulting or treating practitioner as requiring longer term prescriptions to address chronic malignant pain or to effectuate hospice care. Any such prescribing and its medical basis shall be clearly documented in each patient's medical records.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

3. The Vermont Board of Medical Practice *Policy for the Use of Controlled Substances for the Treatment of Pain* provides the following definitions that are incorporated by reference as part of this agreement:

a. **Pain** is an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

b. **Acute Pain** is the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated within invasive procedures, trauma and disease. It is generally time-limited.

c. **Chronic Pain** is a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathological process that causes continuous or intermittent pain over months or years.

43. During the life of this agreement, Respondent agrees that he shall not provide medical care for or prescribe any drug or substance for any individual whom he previously has identified to the Board of Medical Practice as having been treated by him as a "chronic pain" patient.

44. Respondent agrees to ongoing Board monitoring of his prescribing and agrees that the Board or its agents may review his patient charts and prescribing records at any time, upon reasonable notice, to examine the basis for prescribing for patients and the adequacy of his record keeping. Respondent agrees he shall comply promptly with any Board subpoenas for patient and prescribing records and shall immediately produce such records upon request by the Board.

45. Respondent agrees he shall fully and at all times comply with the provisions of Board Rule 4.3. In the unlikely event that such a circumstance might occur, Dr. Miller shall promptly report to the Board in writing any emergency prescriptions ordered by him, as defined by Rule 4.3.

H. Medical Record Keeping.

46. During the life of this agreement Respondent agrees that each patient for whom he prescribes controlled substances shall have a clearly written and current diagnostic assessment and treatment plan which shall be entered in the patient's chart and updated as necessary following each patient visit. Patient charts shall be made immediately available for review by the Board at any time, upon request and reasonable notice, while conditions remain on Respondent's license to practice medicine. Each treatment plan shall include specific entries regarding the patient's diagnosis or condition and a clearly stated rationale for prescribing any controlled substance for the patient.

47. Each controlled substance that is prescribed for a patient shall be clearly noted in a medication flow chart and in writing in the patient's medical record, with the medical basis for each date of prescribing clearly indicated in the office note. The medical records of patients cared for or prescribed for by Respondent shall be made available promptly and may be reviewed at any time by the Board or its agents upon request and with reasonable notice pursuant to 18 V.S.A. § 4218(c), other applicable authorities, and the terms and conditions herein.

48. Respondent agrees that all written prescriptions by him for DEA schedule II and III pain medications, expressly including opiate and opioid medications within these schedules, shall be prepared or copied as follows during the life of this agreement. A copy of each written prescription shall be promptly placed in a chronologically-ordered file which shall be made available for review by the Board or its agents, at any time and without prior notice, upon request. A second copy of the written prescription shall be retained within the patient's chart. This requirement does not apply to prescriptions that may be ordered and orally conveyed to a pharmacy by telephone, but such prescriptions shall be recorded in writing consistent with the requirements of Paragraphs 46-48.

49. Respondent expressly acknowledges and agrees he may prescribe only for bona fide patients who are seen by Respondent as part of his office practice, in a hospital setting, or other institutional setting and for whom a written medical record has been prepared, recording such prescribing.

I. Required Consultation Regarding Medical Record Keeping.

50. Respondent agrees to propose for the Board's prior consideration and approval, the name and c.v. of a consultant with expertise, skills, and training in the procedures, methods, technologies, content, and standards pertaining to the sound creation and utilization of medical records by practitioners. Respondent shall submit for the Board's prior approval a

plan for the consultant's examination and review of Respondent's medical record keeping, including factors such as the method of individual entries, internal organization, reliability of preparation, consistency, content, level of detail, legibility, and usefulness of these records to other practitioners. The parties agree that such approvals may be considered and determined by the Board or its investigative committee to which Docket No. MPC 76-1100 is assigned. Respondent shall bear the costs of all such consultation under the terms of this Stipulation and Consent Order.

51. Within 90 days of Respondent's return to practice, the consultant described above, who shall have been approved in advance by the Board or its investigative committee, shall first review the medical records of at least 20 patients on-site at Respondent's office. The consultant then shall spend a minimum of one day working directly with Respondent and discussing with him the content of his patient medical records and any aspects requiring attention. The consultant shall orally provide an immediate preliminary report and any recommendations to Respondent at the close of this review.

52. Within 45 days of the above chart review, the consultant described above shall prepare and simultaneously submit to both Respondent and the Board of Medical Practice a detailed written report of findings and observations, recommendations for any needed change or improvement, and suggestions for possible adoption of other methods or technologies for record keeping. Respondent agrees that he shall promptly review such written report and respond in writing to the Board, stating his agreement or disagreement with its content and outlining such steps as he may propose to take in response. Respondent agrees to promptly pursue all reasonable recommendations by the consultant related to his medical record keeping. At its choosing, the Board may comment upon Respondent's proposed remedial actions. All aspects of the initial consultant review, as described above, shall be completed within six months of Respondent's return to work.

53. Respondent agrees he shall be responsible for arranging for a follow-up review by the same approved consultant, to take place and be completed within one year of the date of completion of the consultant's initial written report referred to above. Such review again shall examine the medical records at Respondent's practice, Respondent's methods for creating such records, their content, and office policies and procedures relating to such records. The consultant shall review the medical records of at least 10 patients which were created after the initial consultation referred to above, spending a minimum of one day working on-site with Respondent and his records. The consultant shall orally provide an immediate preliminary report and recommendations to Respondent at the close of this on-site, follow-up review.

54. The consultant after completion of the above follow-up review shall promptly prepare and simultaneously submit to both Respondent and the Vermont Board of Medical Practice a written report of findings and observations, recommendations for needed change or improvement, and suggestions for follow-up by Respondent. Such report shall be completed and submitted within 30 days of completion of the follow-up review. Respondent shall promptly advise the Board of his agreement or disagreement with the content of this follow up review or its recommendations. Respondent agrees to promptly pursue all reasonable recommendations by the consultant.

55. Respondent understands and agrees that the Board of Medical Practice at any time, at its sole discretion and upon reasonable notice, may inspect and review patient medical records maintained in his office, interview office staff, make photo copies, and, if deemed necessary, may employ at its own expense an independent reviewer to further examine and comment on Respondent's medical record keeping. Respondent agrees to cooperate fully with and to facilitate the work of any such independent review.

J. Education.

56. Respondent agrees that during the life of this agreement he shall satisfactorily

complete each calendar year, at his own expense, at least 25 hours of continuing medical education coursework or programs qualifying for credit in Category I of the Physician's Recognition Award of the American Medical Association, in subjects relating to Dr. Miller's practice and the purposes of this agreement. However, during the first calendar year following Board approval of this agreement, Respondent agrees he shall complete at least 50 hours of continuing medical education coursework or programs qualifying for credit in Category I of the Physician's Recognition Award of the American Medical Association in subjects relevant to the purposes of this agreement or his practice.

57. Respondent shall be responsible for ensuring that documentation of and evaluations of Respondent's participation in and satisfactory completion of such coursework are promptly forwarded to the Board of Medical Practice for its review. Such documentation must be provided in a manner and form satisfactory to the Board and in no case later than 30 days after receipt of such documentation by Respondent. Respondent shall bear all costs.

K. Meetings with Board or Investigative Committee.

58. Respondent agrees that he shall meet with the Board or the Central Investigative Committee, if requested, following reasonable notice, for the purpose of discussing his compliance with this agreement and aspects of his medical practice. Respondent shall have the right to be accompanied by and assisted by legal counsel of his choosing during any such meeting.

III. Other Terms and Conditions.

59. Respondent has read and carefully considered all terms and conditions herein and agrees to accept and be bound by these until such time as he may be expressly relieved of these or they are modified, in writing, by the Vermont Board of Medical Practice. The Board, in its sole discretion, may consider and approve a petition from Respondent at a later date for modification and/or relief from the terms and conditions herein. Unless otherwise provided

herein, Respondent agrees that he shall not present such a petition prior to the passage of at least 36 months from the date of Board approval of this agreement. If Respondent is unable to obtain employment as a physician due to the conditions or restrictions contained in this agreement, he may present a petition for modification of such conditions or restrictions to the Board prior to the passage of 36 months. The Board shall retain sole discretion to grant or deny such a petition, in whole or in part.

60. This Stipulation and Consent Order is conditioned upon its acceptance by the Vermont Board of Medical Practice. If the Board rejects any part of this document, the entire agreement shall be considered void. If approved by the Board, Respondent agrees to be bound by the terms and conditions of this agreement pending further proceedings or order of the Board of Medical Practice.

61. Respondent agrees that the Board of Medical Practice shall retain jurisdiction to enforce the terms and conditions of this agreement until it is modified or Respondent is relieved of its terms and conditions in writing. Respondent understands that failure by him to abide by any of the terms and conditions of this Stipulation and Consent Order may be deemed to constitute unprofessional conduct under 26 V.S.A. § 1354(a)(25) and other authorities and could subject Respondent to such further disciplinary action as the Board may deem appropriate.

62. Respondent expressly acknowledges and agrees that engaging in unprofessional conduct, as set forth in 26 VSA §§ 1354 & 1398 may constitute evidence of a violation by him of this agreement and may be sufficient to support findings by the Board that the present terms and conditions of this agreement are inadequate to protect the health, safety and welfare of the public, and thus, could result in a motion by the State for the immediate suspension of Respondent's Vermont medical license.

63. The parties agree that this Stipulation and Consent Order shall be a public document, shall be made part of Respondent's licensing file, and shall be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank, the Federation of State Medical Boards, and other licensing, certifying, or privileging entities.

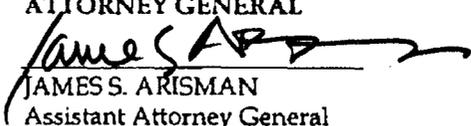
64. The parties agree that if the Board does not accept this agreement in its current form, Respondent and the State shall retain the option of proceeding to an evidentiary hearing on the merits of the State's Specification of Charges in this matter. However, should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board, the parties request that the Board enter an order conditioning Respondent's license to practice medicine as set forth above, that such license be subject to each of the terms and conditions as set forth herein.

Dated at Montpelier, Vermont, this 30th day of November 2009.

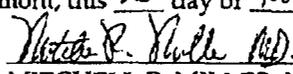
STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

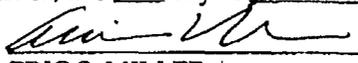
by:


JAMES S. ARISMAN
Assistant Attorney General

Dated at Chester, Vermont, this 25th day of November, 2009.


MITCHELL R. MILLER, M.D.
Respondent

Dated at Burlington, Vermont, this 30th day of November, 2009.


ERIC S. MILLER,
Counsel for Respondent

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