

**STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE**

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

)  
)  
)  
)

Docket No.: MPC 76-1100

**MOTION FOR SUMMARY SUSPENSION**

The State of Vermont, Petitioner, by and through Attorney General William H. Sorrell, and the undersigned Assistant Attorney General, James S. Arisman, moves for summary suspension of the Vermont medical license of Respondent Miller for the reasons set forth herein and others that may be produced at a hearing on this motion.

1. Mitchell R. Miller, M.D., Respondent, holds Vermont medical license No. 042-0009508, originally issued by the Board of Medical Practice on July 3, 1997. Respondent is a Board-certified family practice physician. Respondent has a private practice medical office located in Ludlow, Vermont.

2. Respondent also provides medical care as an employee of Prison Health Services, Inc., a corporation based in Tennessee.

3. The Vermont Board of Medical Practice possesses jurisdiction in this matter pursuant to 26 V.S.A. §§ 1353-1361, 1398, and 3 V.S.A. § 814(c).

**I. Background.**

4. On or about March 31, 2009, the State of Vermont filed with the Vermont Board of Medical Practice a detailed Specification of Charges against Respondent Miller. Those charges consist of 336 numbered paragraphs of allegations setting forth the factual basis for 55 counts alleging unprofessional conduct by Respondent Miller. The State's charges against

Respondent are based on (a) review by the Board of Medical Practice of the medical records of numerous patients, with the records of 10 specific patients at being at issue in the State's charges; (b) review of narcotic prescriptions written by Respondent; (c) review of records produced to the Medical Board by pharmacists; and (d) interviews of Respondent by the Medical Board investigator. The Affidavit of Board Investigator Ciotti is attached as Exhibit A.

5. Respondent's involvement with the Board of Medical Practice began in 2001 when the Board opened a complaint against Respondent. The complaint related to Respondent's prescribing of large quantities of narcotics for a patient.

6. Respondent met with the Board's Central Investigative Committee in 2001 and 2004 regarding his narcotics prescribing practices.

7. In 2004, Respondent wrote to the Central Committee's then-Chair, David W. Clauss, M.D., and provided a detailed, five-page Letter of Assurance setting forth a series of written promises and commitments to the Board regarding his future prescribing of narcotics, record keeping, treatment of pain, and his care of chronic pain patients.

8. Respondent flagrantly ignored and failed to abide by the promises and commitments he made in his 2004 Letter of Assurance, knowing that the Letter had been accepted and relied upon by the Board. Respondent acted in bad faith in signing and presenting to the Board of Medical Practice his 2004 Letter of Assurance with its detailed promises and commitments regarding his medical practice and prescribing of narcotics.

9. Respondent repeatedly abused his prescriptive authority by prescribing large quantities of powerful narcotics for patients while repeatedly failing to document in patient charts that he had prescribed these narcotics. In other instances, Respondent failed to document patient symptoms and/or his medical basis for prescribing narcotics for patients.

10. Respondent on repeated occasions (a) failed to perform and/or document the taking of proper medical histories from patients; (b) failed to perform and/or document physical examinations of patients; and (c) failed entirely to prepare and maintain proper medical records documenting his care of patients for whom he prescribed large quantities of powerful narcotics.

11. Respondent repeatedly failed to document that he had evaluated a patient's pain before prescribing narcotics for the patient.

12. Respondent repeatedly provided patients with "early refills" of powerful narcotics for patients without indicating that he was doing so and without documenting the medical basis justifying such early prescribing of narcotics.

13. Respondent failed to document that he had carefully considered as a patient medical problem possible dependency and/or adverse side effects resulting from the large quantities of narcotics he was prescribing.

14. Respondent ignored or failed to recognize indications of possible drug-seeking behavior, diversion, and abuse of the narcotics by the patients for whom he was prescribing.

15. Respondent failed to produce to the Board all patient medical records that were required by subpoenas served upon him by the Board.

16. Respondent repeatedly failed to produce to the Board copies of all narcotics prescriptions he wrote, contrary to the terms of his 2004 Letter of Assurance.

17. The State's Specification of Charges against Respondent Miller alleges pervasive misconduct, heedlessness, and indifference as to his professional responsibilities and the impact of his narcotics prescribing on his patients and on the Vermont public. Respondent has provided deficient and unacceptable medical care to his patients.

18. Respondent continued to accept and prescribe narcotics for new chronic pain patients, although he agreed not to do so in his 2004 Letter of Assurance. Respondent when directly questioned on this point admitted to having done so. Medical Board investigation determined from medical records, prescriptions, and pharmacy records that Respondent, in fact, had prescribed narcotic painkillers for protracted periods for at least 25 new patients in violation of his commitments.

19. Respondent continued to engage in the above misconduct even while under the investigation (and close scrutiny) of the Board of Medical Practice.

20. Respondent made false and/or misleading statements to the Board during its investigation of his narcotics prescribing. Respondent's Letter of Assurance to the Board, in fact, was a sham and consisted of a series of misrepresentations made to the Board. Respondent repeatedly made false and/or misleading statements to the Board's investigator about having closed his office, about how many patients he was continuing to treat and prescribe for, and the identities of these patients. Respondent also falsely stated that he was regularly consulting with a well-known expert on the treatment of pain and reviewing patient charts with her. In fact, never consulted with this expert and had never met her.

21. Respondent announced the closing of his office more than a year ago. However, Respondent has continued to care and prescribe for a small coterie of patients at his medical office, which is in a state of apparent disuse and undergoing renovation. Throughout the winter the office driveway was unplowed and the front walkways unshoveled, with visitors being forced to enter at the rear of the building. Dr. Miller's office sign has been removed from the building and a "for sale" sign has stood in front for months. There is no sign or other indication to the public that the building is the site of a physician's office. Area pharmacists

have indicated that they understood that Respondent had closed his office but also have noted that Respondent's prescribing for patients has not stopped. The number of patients being cared for by Respondent at his office now appears to be fewer than 10 in number. However, in March 2009, Respondent actually added as a "new" patient, an individual who had earlier terminated her patient relationship with Respondent after a dispute with him. Respondent previously had prescribed narcotics for this returned patient. In fact, Respondent prescribes narcotics for most, if not all, of the small number of remaining patients for whom he is still providing care at his office.

22. Respondent is an employee or contractor for Prison Health Services, Inc. and currently provides medical care to incarcerated inmates within in one or more secure prison facilities. As such, Respondent's deficient and unacceptable practices and patient care represent a danger to the many individuals whose medical care is provided by or overseen by Respondent in this setting.

## **II. The State's Motion.**

23. The State's motion for summary suspension is founded on the evidence developed by Board of Medical Practice investigation of Respondent's deficient care of patients, improper prescribing of narcotics, and failure to prepare and maintain proper medical records. Respondent's has admitted that he failed to abide by material provisions of the April 26, 2004 Letter of Assurance that he signed and presented to the Vermont Board of Medical Practice.

24. In light of the seriousness of the pervasive misconduct alleged in the State's detailed Specification of Charges, including Respondent's lack of veracity and his wholesale failure to honor his written commitments, the Board of Medical Practice is authorized to and bears the responsibility for protecting the health, safety, and welfare of patients and the public

through summary suspension of the medical license of Respondent Miller. Such emergency action imperatively is required to protect the public health, safety, and welfare. There is no alternative set of conditions or assurances that would protect the public health, safety, and welfare, given Respondent's unwillingness or inability to abide by his written commitments.

25. Respondent's continuing possession of a Vermont medical license, and with it the authority to prescribe narcotics, constitutes an immediate and continuing danger to the health, safety, and welfare of both patients and the public within this State. The Board of Medical Practice by statute is responsible for regulation of the profession of medicine. In the instant circumstances, the State urges the Board to carry out these responsibilities through summary suspension of the Vermont medical license of Respondent Miller, so as to protect patients and public.

26. A hearing on the merits, on the charges already filed by the State, will provide Respondent the opportunity to present any evidence he may possess with regard to the serious allegations at hand and will provide him the opportunity to put the State to its proof. In the interim, however, patients and the public will remain unprotected if no order of suspension is entered and Respondent is permitted to retain his authority to prescribe narcotics and practice medicine in the State of Vermont.

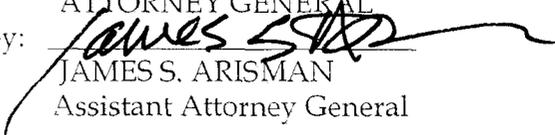
27. In sum, for the reasons set forth above, compelling circumstances now imperatively require emergency action by the Board of Medical Practice, to protect the public health, safety, and welfare, by entering an order of **summary suspension** of Respondent Miller's license to practice medicine, pending further proceedings and an evidentiary hearing before the Board. 3 V.S.A. § 814(c).

Petitioner, the State of Vermont, respectfully moves the Board of Medical Practice for SUMMARY SUSPENSION of the Vermont medical license of Mitchell R. Miller, M.D., a/k/a Mitch Miller, and moves the Board for immediate entry of a written finding that protection of the public health, safety, and welfare imperatively requires such action, pursuant to 3 V.S.A. § 814(c), pending further proceedings or action in this matter.

Dated at Montpelier, Vermont this 31<sup>st</sup> day of March 2009.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

by:   
JAMES S. ARISMAN  
Assistant Attorney General

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



treatment of pain, and record keeping. I also have reviewed medical records and other documentation relevant to Respondent's prescribing of narcotics for numerous patients, specifically including the 10 patients whose medical care is at issue in the State's Specification of Charges against Respondent Miller.

5. I submit this affidavit concerning the unprofessional conduct of Respondent Miller, including his improper prescribing of powerful narcotics for 10 specific patients, whose medical records I have personally reviewed. I do so in regard to possible summary suspension of Respondent's license to practice medicine due to the danger and risk of harm he presents to patients and the public.

6. I have carefully reviewed both the State's Specification of Charges against Respondent Miller and the State's Motion for Summary Suspension of Respondent's Vermont medical license. Both pleadings accurately represent and are consistent with the content of the Board's files in this matter and the facts known to me by investigation. I have concluded from such evidence that Respondent Miller's continuing possession of a valid Vermont medical license at this time, in fact, represents an imminent danger to the public health, safety and imperatively requires the emergency action of summary suspension of licensure.

7. During my investigation of this matter, Respondent Miller without good explanation failed to produce all patient medical records when sought by subpoena or otherwise requested by the Board. Respondent also failed to produce copies of numerous narcotics prescriptions written by him for patients when requested, contrary to his agreement with the Board. Respondent also repeatedly made false and/or misleading statements of a material nature

regarding closure of his practice, the number of patients who nonetheless remained in his care, and the identity of all such patients. Respondent also made a false or misleading statement regarding a pending criminal matter [REDACTED] Respondent later contradicted this statement during an interview I conduct with him during my investigation.

8. In sum, my review of the record in this matter, including Respondent's medical records, narcotics prescriptions, pharmacy records, and my several interviews of Respondent has led me to several conclusions. Respondent's medical records appear in many cases to be substantially incomplete, inaccurate, or missing pertinent information and data that would be expected, particularly given the level of detail promised by Respondent in his April 26, 2004 Letter of Assurance. Further, Respondent appears repeatedly failed to act with due care in treating his patients and in prescribing large quantities of powerful narcotics for them. He also appears to have repeatedly and seriously abused his prescriptive authority. Finally, Respondent's statements during the Board's investigation regarding his care of patients and his prescribing practices have on more than one occasion proved to be false or misleading. As such, it appears that there is no assurance or conditions of licensure that would protect the public against the danger represented by Respondent, if he were permitted to continue to practice medicine and prescribe narcotics, without the interruption of a summary suspension of licensure and a hearing on the State's serious allegations of professional misconduct.

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

  
PHILIP J. CIOTTI, INVESTIGATOR  
Vermont Board of Medical Practice

ABOVE AFFIDAVIT OF PHILIP J, CIOTTI, INVESTIGATOR  
SUBSCRIBED AND SWORN TO BEFORE ME:

Philip J. Ciotti 3/30/09

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires 2/10/2011