

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE:

BOBBY ANDERSON MILLER, II, M.D.

CONSENT ORDER

The West Virginia Board of Medicine [“Board”] and Bobby Anderson Miller, II, M.D., [Dr. Miller], freely and voluntarily enter into the following Consent Order pursuant to West Virginia Code §30-3-14, *et seq.*:

FINDINGS OF FACT

1. Dr. Miller holds an active license to practice medicine in the State of West Virginia, License No. 14302, which was initially issued in 1985. His address of record with the Board is in Huntington, West Virginia.
2. On March 12, 2013, the West Virginia Board of Medicine received a complaint with respect to Dr. Miller alleging that Dr. Miller improperly accessed, or directed to be improperly accessed, the West Virginia Board of Pharmacy Controlled Substance Monitoring Program database.
3. Dr. Miller’s practice includes forensic psychiatry. In that capacity, he was retained in November 2012 to render an opinion regarding the testamentary capacity of a decedent in a will contest litigation matter.
4. Dr. Miller never treated or prescribed medication for the decedent.

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5. As part of his evaluation of the decedent, Dr. Miller directed his “nurse paralegal” to obtain the decedent’s records from the Board of Pharmacy’s Controlled Substance Monitoring Program database using his prescriber number.

6. Dr. Miller avers that he “commonly obtain[ed] this type of record for use in forensic evaluations,” typically with a release from the individual, but has since ceased this practice and now only obtains such records pursuant to “an express court order authorizing that access.”

7. Medical practitioners may access data maintained by the West Virginia Board of Pharmacy in the Controlled Substance Monitoring Program database under very limited circumstances. W. Va. Code R. §15-8-7; W. Va. Code R. §11-10-1 *et. seq.*

8. Absent a valid court order, data from the Controlled Substance Monitoring Database about specific individuals may be released to prescribing practitioners or their duly authorized agents only “for the purpose of providing treatment to their patients.” W. Va. Code R. §15-8-7.4; W. Va. Code R. §11-10-1.

9. The Board and Dr. Miller voluntary enter into this Consent Order to resolve the complaint against Dr. Miller and to protect the public interest.

CONCLUSIONS OF LAW

The Board and Dr. Miller stipulate to the following conclusions of law:

1. Dr. Miller’s license to practice medicine and surgery in the State of West Virginia is subject to regulation and discipline by the West Virginia Board of Medicine, the “regulatory and disciplinary body for the practice of medicine and surgery”

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for physicians, podiatrists and physician assistants in West Virginia. W.Va. Code §30-3-5 and §30-3-7(a).

2. The Board has a mandate to ensure “a professional environment that encourages the delivery of quality medical services” to protect the public interest. W.Va. Code §30-3-2.

3. The West Virginia Medical Practice Act sets forth conduct which may render an individual unqualified for licensure or subject to discipline or other restrictions upon licensure. W.Va. Code §30-3-14. Pursuant to W.Va. Code §30-1-8(c), the Board has promulgated legislative rules that “delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct and/or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.” W. Va. Code R. §11-1A-12.

4. Probable cause may exist to substantiate disciplinary charges against Dr. Miller pursuant to W. Va. Code §§ 30-3-14(c)(17) and W.Va. Code R. §§11-1A-12.1(e),(j), and (bb) and W. Va. Code R. §11-10-1 *et. seq.*

5. It is appropriate and in the public interest to waive further investigation and the commencement of proceedings against Dr. Miller and to proceed without the filing of charges, or a formal Complaint and Notice of Hearing, subject to compliance by Dr. Miller with the provisions of this Consent Order.

6. It is appropriate to impose upon Dr. Miller’s license the restrictions, limitations, conditions and accommodations set forth in the Order herein below and contingent upon Dr. Miller’s compliance with the terms of this Consent Order.

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7. This Consent Order sets forth reasonable and appropriate restrictions, limitations, conditions and accommodations upon the practice of medicine and surgery by Dr. Miller in West Virginia.

CONSENT

By signing his name to this Consent Order, Bobby Anderson Miller, II, M.D., acknowledges that he understands and agrees with the following:

1. Dr. Miller has read and understands this entire Consent Order;
2. Dr. Miller agrees that he has been given adequate time and opportunity to review and consider the terms set forth in this Consent Order;
3. Dr. Miller understands that he has the right to legal representation in this matter, at his own expense, and agrees that he has been afforded adequate time and opportunity to exercise his right to consult with counsel regarding the legal effect of this Consent Order;
4. Dr. Miller understands that this Consent Order is a legally binding Order of the West Virginia Board of Medicine that affects his rights and privileges;
5. Dr. Miller acknowledges that he is fully aware that, without his consent, no permanent legal action may be taken against him except after a hearing held in accordance with West Virginia Code § 30-3-14(h) and §29A-5-1, *et seq.*;
6. Dr. Miller is aware of his legal rights in this matter, including the right to a formal hearing before the West Virginia Board of Medicine; the right to be represented by counsel, at his own expense; the right to confront and cross-examine witnesses against him; the right to present evidence and testify on his own behalf; the

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right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; and the right to appeal under Chapters 29A and 30 of the West Virginia Code in the event of a final order or decision adverse to him;

7. Dr. Miller knowingly and voluntarily waives all such rights;

8. Dr. Miller agrees to the entry of this Consent Order relative to his practice of medicine in the State of West Virginia;

9. Dr. Miller acknowledges that if he violates any of the terms of this Consent Order, further action may be taken against his license by the Board, as permitted by law; and

10. Dr. Miller understands that this Order is a public document which will be available for public inspection, will be accessible through the Board's website, and will be a permanent part of his historical file with the Board. Matters contained herein may be reported to other jurisdictions, the West Virginia Board of Pharmacy, the Federation of State Medical Boards and as otherwise required by law.

ORDER

WHEREFORE, on the basis of the foregoing stipulated Findings of Fact and Conclusions of Law, and with the consent of Dr. Miller, the West Virginia Board of Medicine hereby ORDERS as follows:

1. Dr. Miller is hereby assessed a **CIVIL FINE** of one thousand dollars (\$1,000.00) for accessing to West Virginia Controlled Substances Monitoring Program database for a purpose inconsistent with his authority to do so. Such fine shall be paid to the Board, in full, by Dr. Miller on or before October 14, 2013. Any failure by Dr. Miller to submit full payment of this fine by October 14, 2013, shall constitute a material breach

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of this Order, and may subject Dr. Miller to additional disciplinary action pursuant to West Virginia Code §30-3-14.

2. Dr. Miller agrees to read and comply with all laws and rules of the Board, W. Va. Code R. §11-10-1 *et. seq.*, and the West Virginia Board of Pharmacy, W. Va. Code R. §15-8-1 *et. seq.*, pertaining to practitioner access to the West Virginia Controlled Substance Monitoring database, so that he is fully aware of the limits upon his authority to access the database.

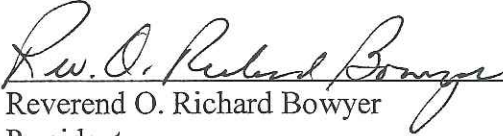
3. Within ten days of the entry of this Order, Dr. Miller shall submit to the Board written certification, with his original and dated signature, that he has read and fully understands W. Va. Code R. §11-10-1 *et. seq.*, and W. Va. Code R. §15-8-1 *et. seq.*, and that, in particular, he is aware of the circumstances under which he may access the West Virginia Controlled Substance Monitoring database, and how to properly designate someone to access the database on his behalf.

4. Dr. Miller shall not access the West Virginia Controlled Substance Monitoring database to obtain information on any individual for whom he is not currently a prescribing practitioner, absent a valid and appropriate order from a court of competent jurisdiction. When accessing the database as a prescribing practitioner, Dr. Miller shall only do so in accordance with W. Va. Code R. §11-10-1 *et. seq.*

5. This Consent Order shall be deemed entered and effective upon the date of its full execution by the parties. Full execution shall occur on the date the last signature is affixed hereupon.

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Bobby Anderson Miller, II, M.D.

WEST VIRGINIA BOARD OF MEDICINE


Reverend O. Richard Bowyer
President

Date: 9/30/13


Teresa Frazer, M.D.
Secretary

Date: 10/10/13


ACCEPTANCE

I, BOBBY ANDERSON MILLER, II, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT ORDER. I HAVE BEEN GIVEN SUFFICIENT TIME AND OPPORTUNITY TO CONSIDER THIS CONSENT ORDER, AND I UNDERSTAND THE EFFECT IT WILL HAVE UPON MY LICENSE TO PRACTICE MEDICINE AND SURGERY IN WEST VIRGINIA.

BY SIGNING THIS CONSENT ORDER, I HAVE WAIVED CERTAIN RIGHTS, BUT I DO SO KNOWINGLY AND VOLUNTARILY, AND I DO NOT WISH TO ASSERT THOSE RIGHTS IN THIS MATTER.

I UNDERSTAND THAT I HAVE THE RIGHT TO LEGAL COUNSEL, AND I HAVE BEEN PROVIDED WITH AMPLE TIME TO SEEK LEGAL ADVICE REGARDING MY ACCEPTANCE OF THIS CONSENT ORDER.

I AM SIGNING THIS CONSENT ORDER VOLUNTARILY, AND I UNDERSTAND THE POTENTIAL CONSEQUENCES OF VIOLATING THIS CONSENT ORDER.


Bobby Anderson Miller, II, M.D.
Date: 9/26/13

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STATE OF West Virginia

COUNTY OF Cabell, to-wit:

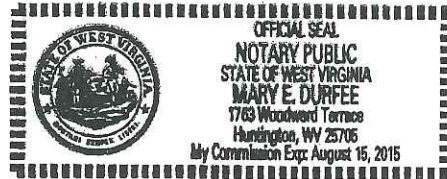
I, Mary E. Durfee, a Notary Public for said county and state do hereby certify that Bobby Anderson Miller, II, M.D., whose name is signed herein above has this day acknowledged the same before me.

Given under my hand this 26 day of September, 2013.

My Commission expires August 15, 2015

Mary E. Durfee

Notary Public





State of West Virginia *Board of Medicine*

REV. O. RICHARD BOWYER
PRESIDENT

TERESA FRAZER, MD
SECRETARY

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MICHAEL L. FERREBEE, MD
VICE PRESIDENT

ROBERT C. KNITTLE
EXECUTIVE DIRECTOR

October 21, 2013

Bobby Anderson Miller, II, M.D.
Forensic Psychiatry PLLC
919 Sixth Avenue
Huntington, WV 25701

Re: West Virginia Board of Medicine
Consent Order dated 10/10/2013

Dear Dr. Miller:

This letter will confirm that the Board of Medicine considers you to have fulfilled all obligations set forth in the Consent Order which you entered into with the West Virginia Board of Medicine on October 10, 2013. As of the date of this letter, the West Virginia Board of Medicine considers the above-referenced matter to be closed.

In accordance with the statute, the Consent Order, with a copy of this letter attached, remains a permanent part of your historical record maintained by the Board.

Should you have any questions or concerns please feel free to contact me at 304-558-2921, ext. 70005.

Sincerely,


Robert C. Knittle
Executive Director

RCK/trg