



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 28, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
433 River Street – 4th Floor
Troy, New York 12180

Barry Gold, Esq.
Thuillez, Ford, Gold & Johnson, LLP
90 State Street
Albany, New York 12207

Bruce Alan Miller, M.D.
901C Pacific Avenue
Virginia Beach, Virginia 23451

RE: In the Matter of Bruce Alan Miller, M.D.

Dear Parties:

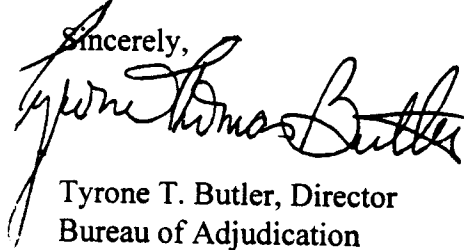
Enclosed please find the Determination and Order (No. 00-134) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

COPY

In the Matter of

Bruce Alan Miller, M.D. (Respondent)

Administrative Review Board (ARB)

**A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)**

Determination and Order No. 00-134

**Before ARB Members Grossman, Lynch, Pellman, Price and Briber
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner):
For the Respondent:**

**Robert Bogan, Esq.
Barry A. Gold, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct under the New York Education Law due to the Respondent's conviction in Virginia for Heroin possession. The Committee voted to revoke the Respondent's License to practice medicine in New York (License), citing the Respondent's long history of drug abuse and his failure in numerous treatment programs. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2000), the Respondent asks the ARB to overturn the Committee's Determination and to leave in place the 1991 Voluntary License Surrender (Surrender) by the Respondent. The Surrender could allow the Respondent to return someday to medical practice, if he can prove he no longer suffers any incapacity to practice. After reviewing the record and the briefs from the parties, we affirm the Committee's Determination revoking the Respondent's License.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(9)(a)(ii) (McKinney Supp. 2000) due to his conviction for committing a crime in Virginia, that if committed in New York, would constitute a crime under New York Law. The Petitioner commenced the action pursuant to N.Y. Pub. Health Law § 230(12)(b)(McKinney Supp. 2000), through an Order by the Commissioner of Health, that suspended the Respondent from practice in New York immediately. A hearing followed before the BPMC Committee who rendered the Determination now on review.

The Committee determined that the Respondent suffered a history of drug addiction that dated back to 1987 and that in 1991, the Respondent surrendered his License voluntarily as an impaired physician. The Committee found that in January 1999, the Circuit Court for the City of Norfolk Virginia found the Respondent guilty for Possession of Heroin. The Committee also found that the Respondent had been in and out of treatment programs without success. The Committee concluded that the Respondent has been wandering aimlessly for the past nine years and has shown no responsibility for his life. The Committee stated that they could find no valid reason for not revoking the Respondent's License.

Review History and Issues

The Committee rendered their Determination on May 1, 2000. This proceeding commenced on May 15, 2000, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's response brief. The record closed when the ARB received the response brief on June 22, 2000.

The Respondent contends that the Committee imposed an excessive penalty and the Respondent faults the Committee for the reasoning underlying their Determination. The Respondent argues that the Committee erred in concluding that the Respondent had wandered

aimlessly for nine years and that the Committee erred in concluding that revocation constitutes a presumptive penalty, unless the Respondent can prove otherwise. The Respondent contends that the Committee drew their bad impressions about the Respondent from the questions the Committee asked rather than from the proof at the hearing. The Respondent states that the Committee treated the Respondent's addiction improperly as a weakness rather than a disease. The Respondent argues that he has re-entered treatment and is treating his addiction successfully with methadone. The Respondent noted that he has never:

- diverted drugs from a patient,
- altered prescriptions,
- stole prescriptions, and/or,
- forged prescriptions.

The Respondent points out, that under his 1991 License Surrender, he may return to practice after proving his recovery at an BPMC hearing. The Respondent asks the Review Board to consider a sanction that begins if the Respondent regains his License and that would impose strong supervisory requirements thereafter.

In response, the Petitioner argues that the record reveals a doctor who has become an addict and continues to suffer addiction after years in treatment. The Petitioner argues that the Committee made an entirely correct determination in the interest of protecting the public.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Determination that the Respondent's Virginia conviction constitutes misconduct under N.Y. Educ. Law §6530(9)(a)(ii) (McKinney Supp. 2000). Neither party challenged the Committee's

Determination on the charges. We also affirm the Committee's Determination revoking the Respondent's License, although we will substitute our own reasoning for the Committee's

We agree with the Respondent that the Committee's Determination left the impression that the Committee imposed on the Respondent the burden to prove that the Respondent's conduct warranted a penalty other than revocation. We also agree that questions from the Committee indicated that Committee Members considered the Respondent's addiction as other than a disease. We hold, however, that the record demonstrates that the Committee imposed the appropriate penalty on the facts in this case.

The Respondent argued that revocation constituted an overly harsh penalty for heroin possession. We hold that the Committee and the ARB may look at factors in this case other than the criminal conviction in determining the appropriate penalty. We may also consider the Respondent's past drug history, his attempts at treatment and his attempts to retain his knowledge and skills for practicing medicine.

The Respondent also faulted the Committee for failing to consider a remedy other than revocation. Although N.Y. Pub. Health Law § 230-a (McKinney Supp. 2000) offers several options for penalties for misconduct, the ARB concludes that either revocation, or continuing the Surrender with tight License restrictions if the Respondent ever regained the License, constitute the only alternatives worth considering on the facts in this case. The Respondent's brief raised no other alternatives.

The Respondent entered into a voluntary surrender of his New York License nine years ago. That Surrender gave the Respondent the opportunity to enter treatment and then to appear eventually before a BPMC Committee to try to establish his fitness to return to practice. In the nine years since the Surrender, the Respondent has been in and out of treatment and the record reveals no meaningful effort by the Respondent to take continuing medical education courses to retain his medical knowledge and skills. The Respondent's criminal conviction in Virginia

demonstrates that he reverted to addiction, despite the opportunity over several years that the Surrender offered the Respondent to overcome his addiction and eventually return to medicine. The past addiction history, the reversion to addiction and the failure to focus on returning to medicine demonstrate to the ARB that continuing the surrender will provide an inadequate sanction in case.

We vote unanimously to revoke the Respondent's License. The opportunity to return to medicine over the last nine years has failed to aid the Respondent in fighting his addiction. The Respondent should turn now to a life without medicine and concentrate on remaining in treatment and regaining a life without addiction.

ORDER

NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

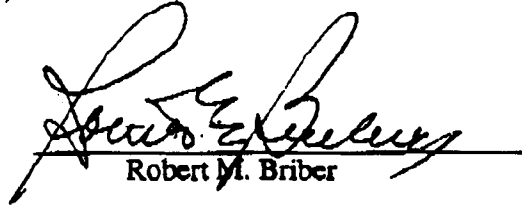
1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB **AFFIRMS** the Committee's Determination to revoke the Respondent's License.

**Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.**

In the Matter of Bruce Alan Miller, M.D.

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Dr. Miller.

Dated: August 16, 2000

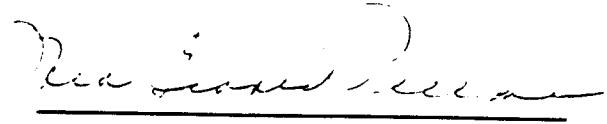


Robert M. Briber

In the Matter of Bruce Alan Miller, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Miller.

Dated: June 11, 2000

A handwritten signature in cursive script, appearing to read "Thea Graves Pellman", written over a horizontal line.

Thea Graves Pellman

In the Matter of Bruce Alan Miller, M.D.

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Dr. Miller.

Dated: 8/19, 2000

A handwritten signature in cursive script, appearing to read "Winston S. Price", is written above a solid horizontal line.

Winston S. Price, M.D.

In the Matter of Bruce Alan Miller, M.D.

**Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Miller.**

Dated: August 14, 2000

 M.D.

Stanley L. Grossman, M.D.

In the Matter of Bruce Alan Miller, M.D.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Dr. Miller

Dated: August 8, 2000

Therese G. Lynch M.D.

Therese G. Lynch, M.D.