

IN THE MATTER OF	*	BEFORE THE BOARD OF
	*	
PAUL DANIEL MILLER, D.O.	*	PHYSICIAN QUALITY
License Number H26154	*	
	*	ASSURANCE
	*	Case Numbers 89-0031,
	*	89-0815, and 89-0816

\* \* \* \* \*

#### FINAL ORDER

#### FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

#### BACKGROUND

Certain information having come to the attention of the Board of Physician Quality Assurance of Maryland (the "Board"), the Board, pursuant to the Medical Practice Act, Health Occupations Article, Annotated Code of Maryland, ("HO") §14-504, voted to charge Paul Daniel Miller, D.O., ("Respondent") with

Is guilty of immoral conduct in the practice of medicine. §14-504(a)(3) HO and

Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State. §14-504(a)(22) HO

Notice of the charge and the allegations supporting the charge was given to Respondent by letter dated July 5, 1989. The Board also voted to summarily suspend Respondent's license pursuant to §10-405, State Government Article, Annotated Code of Maryland. However, the Respondent agreed to voluntary surrender his license under §14-503 HO pending the resolution of the outstanding charges against him. The issuance of the summary

suspension was stated. A hearing was scheduled before the Office of Administrative Hearings and Appeals on August 7 and 8, 1989. Due to the Respondent's agreement to stipulate to the factual allegations in the charging document, to plea guilty to the charge of §14-504(a)(3) and plea no contest to the charge of §14-504(a)(22), the hearing before the Office of Hearings and Administrative Appeals was cancelled. A hearing before the Board on disposition of the case was held on Wednesday, July 26, 1989. The following Board members were present at the beginning of the hearing: Rose Mary Hatem Bonsack, M.D.; Peter E. Dans, M.D.; Frank A. Gunther, Jr.; Claude David Hill, M.D.; Lawrence Alan Jones, M.D.; David P. Largey, M.D.; John T. Lynn, M.D.; Christine J. Moore; John Franklin Strahan, M.D.; James Andrew Sumner, M.D.; John D. Stafford, M.D., and Israel H. Weiner, M.D., Chair. Because of the length of the Board hearing, several Board members needed to be excused, Drs. Dans and Largey, Mr. Gunther and Ms. Moore. The following Board members were not present for the Board meeting on July 26, 1989: Bernard S. Kleiman, M.D.; Reynaldo L. Lee-Llacer, M.D., and Shelia K. Riggs. Board members who were not present subsequently read the entire hearing transcript. Board members who had not been present for the entire hearing read the transcribed portion of the hearing for which they had been absent. At the Board meeting on Wednesday, September 27, 1989, all Board members were present and voted on the proposed findings of facts, conclusions of law and sanction

in this case. Respondent and the State were given notice of the proposed decision and an opportunity to file exceptions and make argument to the Board on October 11, 1989. Respondent filed exceptions on October 10, 1989. The State filed no exceptions.

Respondent and the State argued before the Board on Wednesday, October 11, 1989. The following Board members were present: Rose Mary Hatem Bonsack, M.D.; Ira N. Brecher, M.D.; Peter E. Dans, M.D.; Frank A. Gunther, Jr.; Claude D. Hill, M.D.; Bernard S. Kleiman, M.D.; Reynald L. Lee-Llacer, M.D.; John T. Lynn, M.D.; Christine J. Moore; Sheila Riggs; John F. Strahan, M.D.; James A. Sumner, M.D.; John D. Stafford, M.D., and Israel H. Weiner, M.D. Lawrence A. Jones, M.D. was absent. The Board accepted all exceptions filed by Respondent and they are incorporated herein. At all proceedings, Barbara Hull Foster, Assistant Attorney General, counsel for the Board, advised the Board.

On July 26, 1989, the State, through its attorney, Debra G. Woodruff, Assistant Attorney General, Administrative Prosecutor, presented the following evidence:

Stipulation as to the Charges

Testimony from Larry Beck, President of Garrett County Memorial Hospital.

A summary of the discharges by physicians with privileges at Garrett County Memorial Hospital, Fiscal Year 1988-1989.

A hand written summary of Deliveries in Garrett County Memorial Hospital for calendar year 1988.

The Respondent, through his attorney, Robert E. Watson, Esquire, presented the following evidence:

Testimony from Peter Martin Hartmann, M.D., a Board certified Family Practitioner, and Board eligible psychiatrist from University of Maryland School of Medicine.

Karl Schwalm, M.D., a partner of Respondent.

Robert A. Goralski, M.D., a partner of Respondent.

Cheryl Miller, Respondent's wife.

Paul Daniel Miller, M.D., Respondent.

Ms. Woodruff and Mr. Watson made opening statements. Ms. Woodruff submitted on the record, and Mr. Watson made a closing argument.

After considering all evidence, exceptions and argument, by a majority vote of the full authorized members, the Board makes the following decision:

FINDINGS OF FACT

By clear and convincing evidence the Board finds that:

1. On or about February 2, 1981, Respondent was licensed to practice medicine in the State of Maryland.  
(Stipulation)

2. Respondent was licensed to practice medicine in Maryland until July 5, 1989, when he surrendered his license to practice medicine in Maryland and other jurisdictions.

3. From approximately 1982 until July 5, 1989, Respondent practiced family medicine in Oakland, Garrett County, Maryland.

4. As part of Respondent's practice, Respondent practiced gynecology, obstetrics and counselled patients.

5. Respondent delivered 89 babies in the calendar year 1988 at Garrett County Memorial Hospital.

6. During the fiscal year 1988-1989, Respondent admitted and cared for 550 patients in Garrett County Memorial Hospital.

7. Since Respondent started practicing in Garrett County, Respondent has provided free medical services to the Garrett County High School football team and Garrett County Crossroads.

8. Respondent had the largest practice in Garrett County and was available to his patients at all hours except when he was on vacation. Respondent often saw patients at home.

9. Sometime in 1982, Patient A sought care from Respondent. At the conclusion of each visit, Respondent kissed Patient A on the cheek. Sometime in 1983, at the conclusion of the visit, Respondent kissed Patient A on the lips. Patient A never returned for care by Respondent.<sup>1</sup> (Stipulation)

10. In September 1983, Patient A's sister, Patient B sought care from Respondent. At the conclusion of the visit, Respondent asked Patient B when she was going to see her

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<sup>1</sup> The Board's records contain the names of the patients. However, to protect patient confidentiality, the names of the patients are coded.

sister. Respondent told Patient B: "Give her this for me," and Respondent "kissed" Patient B. (Stipulation)

11. In September 1983, Patient C was treated by Respondent in the Emergency Room. After Respondent completed the procedure, the nurse left the examining room and Respondent kissed Patient C on the lips. Respondent called Patient C at home and told her that he loved her. Respondent told Patient C to have an affair if she was having marital problems. (Stipulation)

12. On May 28, 1988, Patient D sought care from Respondent. Respondent prescribed Imipramine and suggested counseling. Respondent said that he could provide counseling to Patient D. Patient D met Respondent and after several minutes discussing Patient D's problems, Respondent removed patient D's clothing and attempted to have sex with Patient D. Respondent told Patient D that she should have an affair. (Stipulation)

13. Sometime in 1986, Patient E sought care from Respondent. Respondent called Patient E at home and told her that he dreamed about her. After Patient E confided that she was having marital problems, Respondent suggested that Patient E have an affair. In February 1987, Patient E went to Respondent's office after regular hours and Respondent removed Patient E's blouse and fondled her breasts. Respondent and Patient E kissed for approximately one hour. Respondent explained that his wife did not understand him. One week later, Respondent and Patient E

engaged in sex annd continued to have sex for approximately 14 months. (Stipulation)

14. Respondent disclosed to the Board that he had sexual relations with five (5) other patients. Tr. pages 139-140.

15. In the summer of 1988, Respondent learned that he was being investigated as a result of a complaint filed regarding his sexual behavior with one of his patients. (Tr. 143 - Exception 1)

16. Respondent sought counseling and entered treatment with Dr. Hartmann in January 1989. (Tr. 40 - Exception 2)

17. Respondent has seen Dr. Hartmann for individual therapy and marital counseling since January 1989. (Tr. 55 - Exception 3)

18. Dr. Hartmann was one of Respondent's professors in medical school and knew that Respondent was chief resident in family practice. Dr. Hartmann's opinion was that Respondent was considered a competent physician.

19. Counseling is part of the curriculum in the Family Practice Residency at University of Maryland School of Medicine.

20. The opinion of Respondent's treating psychiatrist is that Respondent's behavior was not a result of a psychiatric illness but resulted from his failure to have normal psycho-sexual development and his failure to observe boundary lines.

21. The opinion of Respondent's treating psychiatrist is that Respondent has made progress in dealing with the factors that led to his having sexual relations with his patients, and did not deny the inappropriateness and harm caused by his actions.

22. The opinion of Respondent's treating psychiatrist is that it is highly unlikely that Respondent will engage in sexual relations with patients again because Respondent is not denying his actions, Respondent's has insight into his problems, and Respondent will be returning to a small town where his actions will be closely monitored.

23. Respondent's partners, Drs. Schwalm and Goralski are willing to have Respondent return to practice.

24. Respondent's partners, Drs. Schwalm and Goralski expressed the willingness of their other partners to have Respondent return to practice.

25. Dr. Goralski's opinion is that Respondent's patients were extremely loyal to him and would return to him, even knowing of his behavior.

26. Respondent's wife believes that since Respondent had entered therapy, his behavior had changed.

27. Respondent's wife does not believe Respondent will engage in sexual or exploitative relations with patients again.

28. Respondent knows that his behavior was wrong, against professional standards, and harmed his patients.



29. The testimony of Drs. Hartmann, Schalwm, and Goralski and Respondent's wife was credible and trustworthy.

30. The testimony of Respondent was credible insofar as the Board believes that Respondent recognizes the immorality of his conduct, the breach of medical standards by his conduct, and the potential harm to his patients caused by his conduct.

31. The relationship between a family practitioner and his/her patients is one of trust in which the patient is dependent, vulnerable and relies upon the physician.

32. The relationship between an obstetrician and his/her patients is one of trust in which the patient is dependent, vulnerable and relies upon the physician for accurate advice and counsel.

33. The relationship between a physician counselor is one of trust in which the patient is dependent, vulnerable and relies upon the physician for accurate advice and counsel. The patient can be easily exploited and all caution should be exercised not to exploit this trust.

34. There is no valid medical treatment that involves sexual contact between a patient and a treating family practitioner, obstetrician or counselor during the course of medical treatment.

35. There is no valid medical treatment that involves suggesting a patient have an affair to resolve marital problems.

36. Sexual contact with a patient by a family practitioner, obstetrician or counselor is exploitative and can harm the patient.

37. Respondent's behavior towards Patients A, B, C, D, and E reflects numerous breaches of medical ethics, and violations of professional standards governing the appropriate practice of family practitioners and similarly situated Maryland practitioners.

38. Respondent violated the trust and dependency placed in him by Patients A, B, C, D and E.

39. A standard for delivery of quality surgical and medical care in Maryland is to **NOT** engage in sexual relations with patients.

40. A standard for delivery of quality surgical and medical care in Maryland is to **NOT** to suggest extra-marital affairs to resolve marital problems.

41. As a medical review committee, as defined in §14-601 HO, and as the regulatory Board governing the practice of medicine in Maryland, the Board is an appropriate peer review body to determine whether a licensee has failed to meet appropriate standards for the delivery of quality medical and surgical care in Maryland.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, by a majority of the full authorized membership of the Board considering this

case, there is clear and convincing evidence for the Board to determine that as a matter of law that Respondent committed the following acts:

Is guilty of immoral conduct in the practice of medicine. §14-504(a)(3) HO and

Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State. §14-504(a)(22)

#### ORDER

Upon the foregoing Findings of Fact and Conclusions of Law, it is this 16th day of October, 1989, by a majority of the full authorized membership of the Board considering this case

**ORDERED** that Respondent's license to practice medicine in Maryland be **REVOKED**; and be it further

**ORDERED** that after June 1, 1990, Respondent may file a Petition for Reinstatement of Respondent's License conditioned upon Respondent submitting evidence of the following:

1. That Respondent **IMMEDIATELY** entered into intensive psychotherapy with Dr. Hartmann or a psychiatrist approved by the Board.

2. That Respondent **IMMEDIATELY** signed a release allowing the Board to forward to Respondent's therapist a copy of Respondent's testimony.

3. That Respondent is following the psychiatrist's recommendations and continuing in therapy until such time that

the therapist certifies to the Board in writing that the Respondent should be discharged, and the Board approves of the cessation of therapy.

4. That Respondent **IMMEDIATELY** sign a release in order to allow his therapist to file monthly progress reports with the Board, including a summary of his treatment until October 1, 1989 and a report thereafter monthly, and to permit the therapist to report to the Board if Respondent misses an appointment without cause and/or is not following the therapist's recommendations.

5. That Respondent's therapist agreed in writing to file progress reports with the Board to indicate the number and type of appointments Respondent had with the therapist (including missed appointments) and to inform the Board if Respondent terminates therapy prior to approved termination.

6. That on or about May 1, 1990 Respondent submit to an evaluation by a psychiatrist selected by the Board. The evaluation by the psychiatrist will include not only an evaluation of Respondent but a review of the case against Respondent, the record at the hearing, the progress reports of the therapist and a consultation with Respondent's treating psychiatrist.

7. That the evaluation by the Board's selected psychiatrist is satisfactory and indicates that Respondent can return to the practice of medicine without posing a danger to his patients.

8. That Respondent shall start and successfully complete an ethics course in medical ethics approved by the Board; and

9. That there are no outstanding complaints from patients regarding sexual conduct after January 1, 1989; and be it further

**ORDERED** that Respondent will bear any costs involved in complying with the Order except the cost of the evaluation by the Board selected psychiatrist; and be it further

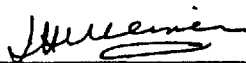
**ORDERED** that Respondent will bear the burden of proving by clear and convincing evidence that his license to practice medicine should be reinstated; and be it further

**ORDERED** that in the event that Respondent's petition for reinstatement of his license to practice medicine in the State of Maryland is granted, the Board may impose whatever conditions the Board thinks necessary to protect public safety, health and welfare; and be it further

**ORDERED** that in no event will Respondent's Petition for Reinstatement be granted prior to July 5, 1990.

10/16/89

Date

  
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Israel H. Weiner, M.D.  
Chair

**NOTICE OF RIGHT TO APPEAL**

Pursuant to §14-508 of the Health Occupations Article, there is a right to take a direct judicial appeal. Any appeal

shall be made as provided for judicial review of a final decision in the Administrative Procedure Act, State Government Article and the B Rules of Maryland Procedure, 1989.

10/16/89

Date

Israel H. Weiner

Israel H. Weiner, M.D.  
Chair