

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov



November 12, 2008

Robert Wayne Miller, M.T.
9 Robinson Street
Savannah, OH 44874

RE: Case No. 08-CRF-092

Dear Mr. Miller:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 2008, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in cursive script that reads "Lance A. Talmage, M.D.".

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3686 5514
RETURN RECEIPT REQUESTED

Cc: Madison Correctional Institute
Register # A552901
P. O. Box 740
London, OH 43140
CERTIFIED MAIL NO. 91 7108 2133 3934 3686 5521
RETURN RECEIPT REQUESTED

Mailed 11-14-08
~~11-13-08~~

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 2008, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Robert Wayne Miller, M.T., Case No. 08-CRF-092, as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.



Lance A. Talmage, M.D.
Secretary

(SEAL)

November 12, 2008

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

CASE NO. 08-CRF-092

ROBERT WAYNE MILLER, M.T. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 12, 2008.

Upon the Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

PERMANENT REVOCATION OF CERTIFICATE: The certificate of Robert Wayne Miller, L.M.T., to practice massage therapy in the State of Ohio, shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon mailing of the notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.
Secretary

November 12, 2008

Date

2008 OCT 15 P 2:32

**REPORT AND RECOMMENDATION
IN THE MATTER OF ROBERT WAYNE MILLER, L.M.T.
Case No. 08-CRF-092**

The Matter of Robert Wayne Miller, L.M.T., was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on September 30, 2008.

INTRODUCTION

Basis for Hearing

By letter dated July 9, 2008, the State Medical Board of Ohio [Board] notified Robert Wayne Miller, L.M.T., that it had automatically suspended his certificate to practice massage therapy in Ohio pursuant to Section 4731.22(I), Ohio Revised Code. Additionally, the Board notified Mr. Miller that it intended to determine whether to take further disciplinary action against his certificate. The Board based its action on an allegation that Mr. Miller had pleaded guilty and been found guilty of one felony count of Gross Sexual Imposition in violation of Section 2907.05(A)(4), Ohio Revised Code.

The Board alleged that Mr. Miller's plea of guilty constituted "a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as set forth in Section 4731.22(B)(9), Ohio Revised Code. Accordingly, the Board advised Mr. Miller of his right to request a hearing in this matter. (State's Exhibit 1 at 1-2)

By letter received on August 4, 2008, Mr. Miller requested a hearing. (State's Exhibit 1 at 8)

Appearances at the Hearing¹

Nancy H. Rogers, Attorney General, by Karen A. Unver, Assistant Attorney General, on behalf of the State of Ohio.

EVIDENCE EXAMINED

Testimony Heard

No witnesses were presented.

¹Mr. Miller requested a hearing, but he did not appear at the hearing or submit a written statement.

Exhibits Examined

State's Exhibits 1: Procedural exhibits.

State's Exhibit 2: Indictment in the Court of Common Pleas of Huron County, Ohio, in *State of Ohio v. Robert W. Miller*, Case No. CRI-2008-0128. [Redacted in part to obscure unconvicted charges and a social security number.]

State's Exhibit 3: Judgment Entry of Sentencing in *State v. Miller, supra*. [Redacted in part to obscure a social security number.]

State's Exhibit 4: Section 2907.05, Ohio Revised Code.

State's Exhibit 5: Plea of Guilty and Judgment Entry Accepting Plea in *State v. Miller, supra*.

SUMMARY OF THE EVIDENCE

All exhibits and the transcript, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

1. Robert Wayne Miller, L.M.T., received a massage therapy certificate from the Board in January 2008. (Ohio E-License Center, Sept. 30, 2008, <<https://license.ohio.gov/Lookup>>)
2. In January 2008, in the Court of Common Pleas of Huron County, Ohio, Mr. Miller was charged in *State of Ohio v. Robert W. Miller*, Case No. CRI-2008-0128, on three criminal counts. Count 3 of the indictment states that, between June and August 2007, Mr. Miller "unlawfully did have sexual contact with another, not the spouse of the offender when the other person is less than thirteen years of age whether or not the offender knows the age of the other person, in violation of Section 2907.05(A)(4) of the Ohio Revised Code, Gross Sexual Imposition, (a felony of the third degree) * * *." (State's Exhibit 2)
3. On May 28, 2008, Mr. Miller pleaded guilty to Count 3 and was convicted of Gross Sexual Imposition in violation of Section 2907.05(A)(4), Ohio Revised Code. (State's Exhibit 5)
4. In August 2008, Mr. Miller was sentenced to four years of incarceration, required to pay a fine of \$500, placed on five years of post-release control, and classified as a Tier II Sex Offender. Additionally, he was given credit for 219 days jail time. (State's Exhibit 3)

FINDINGS OF FACT

1. In January 2008, the Board issued a massage-therapy certificate to Robert Wayne Miller, L.M.T.

2. On May 28, 2008, in the Court of Common Pleas, Huron County, Ohio, Mr. Miller pleaded guilty and was found guilty in *State of Ohio v. Robert W. Miller*, Case No. CRI-2008-0128, to one count of Gross Sexual Imposition, in violation of Section 2907.05(A)(4), Ohio Revised Code, a felony of the third degree. The facts underlying his guilty plea included that the victim was less than 13 years old. He was subsequently sentenced to four years of incarceration and classified as a Tier II Sex Offender, among other things.
3. On July 9, 2008, the Board automatically suspended Mr. Miller's massage-therapy certificate pursuant to Section 4731.22(I), Ohio Revised Code.

CONCLUSION OF LAW

The plea of guilty of Robert Wayne Miller, L.M.T., as set forth in Finding of Fact 2, constitutes a "plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony" as set forth in Section 4731.22(B)(9), Ohio Revised Code.

PROPOSED ORDER

It is hereby ORDERED, that:

PERMANENT REVOCATION OF CERTIFICATE: The certificate of Robert Wayne Miller, L.M.T., to practice massage therapy in the State of Ohio, shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



Gretchen L. Petrucci
Hearing Examiner

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 12, 2008

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

Dr. Varyani announced that the Board would now consider the Reports and Recommendations and the Proposed Findings And Proposed Order appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of Maryam Bakhshandeh, M.D.; Brenda Louise Banks, M.D.; Donald E. Higgs, M.D.; Robert Wayne Miller, L.M.T.; Steven Edward Schwartz, P.A.; and Robert Nelson Wachsberger; and the Proposed Findings & Proposed Order in the matter of Lynda Lee Dean, M.T. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

Dr. Varyani asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye

Dr. Mahajan - aye
Dr. Steinbergh - aye
Dr. Varyani - aye

Dr. Varyani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. They may, however, participate in the matters of Dr. Abdelhady and Dr. Tessema, as those cases are not disciplinary in nature and concern only the doctors' qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

The original Reports and Recommendations and the Proposed Findings and Proposed Order shall be maintained in the exhibits section of this Journal.

ROBERT WAYNE MILLER, L.M.T.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF ROBERT WAYNE MILLER, L.M.T. DR. MAHAJAN SECONDED THE MOTION.

.....

A vote was taken on Dr. Steinbergh's motion:

ROLL CALL:

Mr. Albert	- abstain
Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

NOTICE OF AUTOMATIC SUSPENSION AND OPPORTUNITY FOR HEARING

July 9, 2008

Case number: 08-CRF-092

Robert Wayne Miller, L.M.T.
18 1/2 South Garden Street
Norwalk, OH 44857

Dear Mr. Miller:

Pursuant to Section 4731.22 (I), Ohio Revised Code, you are hereby notified that your license to practice massage therapy in the State of Ohio has been automatically suspended as of May 28, 2008, by operation of law pursuant to Section 4731.22 (I), Ohio Revised Code. This automatic suspension is based upon your plea of guilty to one count of Gross Sexual Imposition, a violation of Section 2907.05(A)(4), Ohio Revised Code, a felony of the third degree as detailed below. Continued practice after this suspension shall be considered practicing without a certificate.

Furthermore, in accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about May 28, 2008, in the Court of Common Pleas, Huron County, Ohio, you pled guilty to one count of Gross Sexual Imposition, a violation of Section 2907.05(A)(4), Ohio Revised Code, a felony of the third degree. The facts underlying your guilty plea included that the victim was less than thirteen years old.

Mailed 7-10-08

Robert W. Miller, L.M.T.

Page 2

Your plea of guilty as alleged in paragraph (1) above, constitutes “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing this notice.

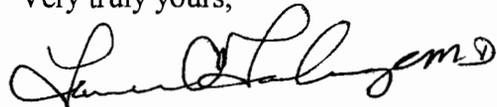
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board shall, in your absence and upon consideration of this matter, enter a final order permanently revoking your certificate to practice massage therapy.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lance A. Talmage", with a stylized flourish at the end.

Lance A. Talmage, M.D.
Secretary

LAT/DPK/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3691 3253
RETURN RECEIPT REQUESTED