STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: Karen Preis, M.D.	)	Docket Nos. MPS 135-1108
	)	MPS 46-0409
	)	MPS 42-0410
	)	MPS 55-0610

SPECIFICATION OF CHARGES

NOW COMES, the State of Vermont, by and through Attorney General William H. Sorrell and undersigned Assistant Attorney General, Terry Lovelace, and alleges as follows.

1. Karen Preis, M.D., (hereafter "Respondent") holds license No. 042-0004451, issued by the Vermont Board of Medical Practice (hereafter "Board").

2. Respondent practices child and adolescent psychiatry in her office in South Burlington, Vermont.

3. Jurisdiction in these matters vests with the Vermont board of Medical Practice pursuant to 26 V.S.A. §§ 1353-1361 and 3 V.S.A. §§ 809-814.

Background

4. Respondent's disciplinary history with the Vermont Board of Medical Practice dates back to 1992, and includes the following:

a. In Docket Number MPS 01-0192, the parents of Respondent's patient complained to the Board on January 6, 1992, alleging that they had requested copies of their child's medical records from Respondent for a year without success. Six months later the matter was closed when the Board notified Respondent: "*... after a thorough investigation of Complaint MPS 01-0192, the Board has decided not to take action at this time ....*"

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b. In Docket Number MPS 38-0494, a very similar complaint was filed with the Board on March 27, 1994, by parents who alleged that Respondent failed to provide a written psychiatric evaluation for their child, despite multiple requests. On November 16, 1994, Respondent appeared before the South Investigative Committee and was ordered to produce the written psychiatric evaluation for the complainants and the Board within thirty days. On December 23, 1994, Respondent's office notified the South Investigative Committee that Dr. Preis' evaluation was complete and would be mailed to the complainants on the week of January 2, 1995. The Board did not receive a copy of the evaluation but the matter was closed.

c. On April 11, 1995, MPS 38-0494 was resolved through a Stipulation and Consent Order (See attached Exhibit #1). The allegations were unprofessional conduct by "Respondent's repeated failure to provide her patients with requested psychiatric records which they were entitled to in a timely fashion. By stipulation the parties agreed that the appropriate disciplinary action against Respondent would be a public reprimand. The parties also agreed that *"[I]f the Board receives any further complaints of a similar nature the Board will impose more serious conditions."*

d. Shortly after June 21, 2000, the board closed two cases against Respondent, MPS 11-0200 and MPS 39-0500. Both cases allege failed to provide copies of medical records and a summary of diagnosis and treatment. See attached Exhibit #2.

I. Respondent Falsely Claims Status of "Good Standing" In Regard to her Vermont Taxes

5. Paragraphs #1 though #4 above are restated and incorporated by reference.

6. Docket Number MPS 135-1108 opened on November 26, 2008, when the Board was notified by the Vermont Department of Taxes (hereafter "Tax Dept.") that Respondent failed to file taxes for the years 2006 and 2007, and was not in "good standing" as required by Vermont law,

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32 V.S.A. §3113. The Tax Dept. requested the Board to initiate proceedings to suspend Dr. Preis' medical license as required by law.

7. Under law, an individual is in "good standing" with respect to any and all taxes payable only when:

a) No taxes are due and payable and all returns have been filed";
b) "the liability for any taxes due and payable is on appeal";
c) "the person is in compliance with a payment plan approved by the commissioner"; or
d) "the agency [the Board of Medical Practice] finds that requiringimmediate payment of taxes due and payable would impose an unreasonable hardship[1], See 32 V.S.A. § 3113(g).

8. Board Investigator Paula Nenninger confirmed with the Dept. of Taxes that Respondent was not in good standing for years 2006 and 2007 at the time of her license renewal and had not filed an appeal with the Dept. of Taxes. Upon review of Respondent's License Application dated November 25, 2008, it was noted that Respondent claimed that she was in good standing as to any taxes owed to the State of Vermont.

9. Respondent's Medical License Application, on page 15, requires the applicant to answer truthfully under penalty of perjury:

> "... I certify under the pains and penalties of perjury, that I am in good standing with respect to or in full compliance with a payment plan approved by the Commissioner ...The maximum penalty for perjury is 15 years in prison, a $10,000 fine, or both."

Respondent signed her renewal application on November 25, 2008, and submitted it to the Board (See attached Exhibit #3).

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[1] Whether or not immediate payment of a tax obligation would constitute an undue hardship depends on the sum owed in taxes. Unless and until returns are filed and it is determined how much, if any, tax is owed to the State of Vermont, it is impossible to make a determination as to what constitutes an unreasonable hardship.

10. Vermont law, 32 V.S.A. §3113(h) provides:

> "Any person who knowingly makes or subscribes any ... statement or other document ... which is verified by an unsworn written declaration ... made under the pains and penalties of perjury and which is not true and correct as to every material matter shall be fined not more than $10,000 and imprisoned for not more than 15 years."

11. Respondent, by submitting a renewal application that was not correct as to a material fact, violated Vermont law, 32 V.S.A. §3113(h) as follows:

a) Respondent's false assertion that she was in good standing was "verified by an unsworn written declaration" when she submitted her signed license renewal application.

b) Respondent's assertion was an "untrue and incorrect statement as to a material fact;" she was not in good standing in regard to her Vermont tax obligation when she certified her application on November 25, 2008.

c) Respondent was clearly warned that her signature was given under the pains and penalties of perjury[2].

12. Vermont law, 26 V.S.A. §1354(a)(1), is clear: "*Fraudulent or deceptive procuring of a license*" constitutes unprofessional conduct.

13. On the date Respondent certified she was in good standing, Respondent either knew or should have known that she did not file tax returns for the years 2006 and 2007, and could not have been in good standing. A year earlier, Respondent was sent notice by the Tax Dept. on December 7, 2007, advising her that they had not received her 2006 tax return, See Exhibit #4.

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[2] See Vermont Dept. of Health, Applicant's Statement Regarding Taxes, page 15, "STATEMENT OF APPLICANT - I certify that the information stated by me in this application is true and accurate to the best of my knowledge and that I understand providing false information or omission of information is unlawful and may jeopardize my license/certification/registration status."

14. Respondent's conduct was fraudulent by certifying under penalty of perjury that she was in good standing as to her Vermont taxes at the time of her application, when in fact she was not.

15. Respondent's fraud and deception duped the Board into renewing her medical license contrary to Vermont law, 32 V.S.A. §3113(b), which states:

> No agency shall grant, issue or renew any license ... (including a license to practice a profession) ... to any person unless such person shall first sign a written declaration under pain and penalties of perjury, that the person is in good standing [in regard to Vermont taxes].

16. Respondent's conduct as set forth in Paragraphs #6 through #15 above is contrary to Vermont law and constitutes unprofessional conduct as follows:

Count I

Contrary to Vermont law, 26 V.S.A. §1354(a)(1), Respondent provided an answer that was not materially true and accurate; and/or provided materially false information; and/or omitted material information and, thereby, fraudulently or deceptively procured a medical license from the Board of Medical Practice. Such conduct is unprofessional. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

Count II

Vermont law, 26 V.S.A. §1398, provides that:

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> The board may refuse to issue the license provided for in section 1391 of this title to persons who ... by false or fraudulent representations, have obtained or sought to obtain practice in their profession.

By certifying that she was in "good standing" on her 2008 medical license renewal application, Respondent made a false or fraudulent misrepresentation to obtain a license to practice medicine and engaged in unprofessional conduct that is the basis for suspension or revocation of her Vermont medical license. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

Count III

Vermont law, Vermont Medical Practice Board, Rule 3.1 states: "Licensees have a continuing obligation during each two year renewal period to promptly notify the Board of any change or new information regarding their responses to licensure questions of the renewal application ... Failure to do so may subject the licensee to disciplinary action by the Board." When Respondent failed to file her Vermont tax returns on April 15, 2006 and April 15, 2007, she had a duty to contact Dept. of Health immediately to inform them of a change to her status since she submitted her prior application. Under 26 V.S.A. §1354(a)(27), Respondent's failure to comply with a state rule governing the practice of medicine constitutes unprofessional conduct under Vermont law. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to

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practice medicine of a physician who has been found to have engaged in unprofessional conduct.

Count IV

Contrary to Vermont law, 26 V.S.A. §1354(31)(b)(2), Respondent, by failing to timely file tax returns for 2006 and 2007 when due and thereafter filing for renewal of her Vermont medical license, failed to conform to the essential standards of acceptable and prevailing practice. Such conduct is unprofessional. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

II. Patient Abandonment

17. Paragraphs #5 through #16 above are restated and incorporated by reference.

18. The Board opened a complaint against Respondent on April 22, 2009, as Docket Number MPS 46-0409. The complainant is a former patient identified as "EP." In his complaint to the Board, EP stated that he had been treated by Respondent for "about five years" and alleges that Respondent did not return his calls to reschedule an appointment. He asserts that he left a message for Respondent that he needed a call-back for a new appointment date, and was "surprised" that no one returned his calls. He stated he assumed it was a "communication error." In his complaint dated March 5, 2009, EP states:

> I think I made about 6 or 7 calls. After about a month of not hearing anything from her whatsoever, I gave up. It has been about a year and I have yet to receive any explanation or communication of any kind from Dr. Preis.

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19. EP had an established doctor/patient relationship with Respondent. The doctor/patient relationship forms one of the foundations of contemporary medical ethics. An established doctor/patient relationship may be terminated by either party. A physician is not required to treat any patient for whom he or she believes they cannot continue to provide care. However, the physician must give the patient notice of the termination.

20. In terminating the doctor/patient relationship without notice, Respondent's conduct meets all of the elements necessary to find patient abandonment[3]: (1) the termination of the doctor/physician relationship was initiated by Respondent, not by the patient; (2) the termination was done without notice and without giving the patient sufficient time to find another provider, and; (3) the patient needed additional care.

21. Despite leaving "six or seven messages" for Respondent, EP claims he has never received a return call. After a year of not hearing from Respondent complainant deduced that the Respondent had terminated his care and just "gave up."

22. EP stated to Investigator Nenninger in a telephone interview on June 3, 2010, that he eventually replaced Respondent with his primary care physician to provide medication and continued with psychotherapist to meet his needs for ongoing medical care.

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[3] In the *New Expanded Webster's Dictionary*, abandonment is defined as: "A total desertion." (Patterson, 1991, p. 5) *Taber's Cyclopedic Medical Dictionary* clarifies what abandonment means in the health care setting: "The abandoning, without adequate warning, of a patient needing further medical care by the person responsible for that care." (Thomas, 1993, p. 1)

23. Investigator Nenninger spoke to EP's psychotherapist, Nancy Judd from Burlington. When asked whether having EP's medical records would have been of help to her in EP's treatment, she said that they absolutely would have helped. Ms. Judd also said that she made two attempts to procure EP's records from Respondent without success.

24. Respondent's conduct as set forth in Paragraphs #17 through #23 above is contrary to Vermont law and constitutes unprofessional conduct as follows:

Count V

Contrary to Vermont law, 26 V.S.A. §1354(a)(4), Respondent's conduct, as set forth in Paragraphs #17 through #23 above, is patient abandonment and constitutes unprofessional conduct. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

Count VI

Contrary to Vermont law, 26 V.S.A. §1354(31)(b)(1), Respondent's conduct, as set forth in Paragraphs #17 through #23 above, is a failure to practice competently on multiple occasions and unacceptable patient care, and as such, constitutes unprofessional conduct. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

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III. Refusal to Produce Medical Records

25. Paragraphs #17 through #23 above are restated and incorporated by reference.

Patient E.P.

26. EP, the complainant aggrieved in Paragraphs #17 through #24 above, brings a second allegation against Respondent in the same case and under the same docket number. EP alleges that Respondent refuses to provide copies of his medical records.

27. In her initial correspondence opening the case, Board Investigator Paula Nenninger requested Respondent to "supply copies of EP's medical records."

28. On November 19, 2009, EP spoke with Board Investigator Paula Nenninger and requested the Board's help to obtain his medical records from Respondent.

29. Over the next thirteen months Investigator Nenninger's efforts to obtain EP's medical records from Respondent include:

a) April 22, 2009 - initial request for records of patient E.P.
b) June 5, 2009 - request in person at Respondent's office for E.P. records
c) June 24, 2009 - left voicemails requesting E.P. records
d) July 1, 2009 - telephone conversation with Respondent requesting E.P. records
e) July 15, 2009 - written request for E.P.'s records via mail
f) September 23, 2009 - Subpoena served by Investigator Ciotti requesting records for E.P. and requiring Respondent to appear personally before the South Investigative Committee at 2:00 p.m. on October 21, 2009 - she did not show and did not respond to the records request
g) March 25, 2010 - Investigator Nenninger meets with Respondent in person at her office and reminds her that the

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Board is still waiting on records for complainant EP. Respondent replies that she has "not had time to find them yet."

h) March 26, 2010 - Written notice to Respondent reminding her of her conversation with Investigator Nenninger and demand for EP's medical records.

i) April 28, 2010 - Respondent contacted in person at her office by Investigator Nenninger. When asked about progress toward finding EP's medical records, Respondent replied "*I have to find the notes.*"

j) May 21, 2010 - Subpoena requesting E.P.'s medical records served by Investigator Nenninger personally at Respondent's office. When asked about her progress in locating EP's medical records, Respondent stated that she "*still needs to deal with her mortgage*" and has not worked on getting this chart ready for the South Committee.

30. Respondent's conduct as set forth in Paragraphs #25 through #29 is contrary to Vermont law as follows:

Count VII

Contrary to Vermont law, 26 V.S.A. §1354(a)(10), which states that unprofessional conduct may be found where there is a: "failure to make available promptly ...when given proper request and direction ... copies of that person's records in the possession or under the control of the licensed practitioner." Despite eight formal requests and two subpoenas over thirteen months, Respondent has refused and still refuses to produce the medical records of her patient, EP. Respondent's multiple and repeated failures to act as detailed in Paragraphs #25 through #29 above, constitute unprofessional conduct. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

Count VIII

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Contrary to Vermont law, 26 V.S.A. §1354(a)(31)(b)(2), which states that in regard to unprofessional conduct: "The Board may also find that a failure to practice competently by reason of any cause ... *on multiple occasions* constitutes unprofessional conduct [Emphasis added]. Failure to practice competently includes, as determined by the Board ... failure to conform to essential standards of acceptable prevailing practice." By Respondent's refusal or failure to produce medical records for a patient under her care for five years, Respondent has failed conform to essential standards of acceptable prevailing practice. Such conduct is unprofessional conduct. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

Patient N.N.

31. Paragraphs #17 through #29 above are restated and incorporated by reference.

32. The Board opened on a new complaint, MPS 55-0610, against Respondent on June 9, 2010. The complainant, identified as N.N., alleges that Respondent failed to respond to numerous requests for a copy of her medical records and did not return her telephone calls.

33. Investigator Nenninger contacted N.N. for a telephone interview on May 7, 2010. When N.N. was asked if Respondent advised her about her license suspension, N.N. said she was not informed about Respondent's suspended license until after her prescriptions were rejected by a pharmacy. According to N.N., Respondent told her that she could no

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longer write prescriptions because of "tax problems." In her complaint to the Board, N.N. stated "I had to go to the E.R., and freaked out, because I had no one" and "eventually, PA Lensing refilled my prescriptions." N.N. also said that she "liked Dr. Preis" but "had been trying to get off some of her medication, with no help from Dr. Preis" and decided to move her care to an APRN in Rutland. N.N. said "Dr. Preis was supportive of that move."

34. On May 21, 2010 Investigators Paula Nenninger and Philip Ciotti met with Dr. Preis. When asked, Respondent admitted that she has not returned N.N.'s phone calls for over a month. The Respondent explained she didn't return N.N.'s calls because, "I don't have time" and "she is on my list of call backs, but it is not a high priority." Respondent said "when you're dealing with thirty messages you just can't get to all of them." At the end of the interview I served a subpoena for the records of N.N.

35. In her complaint, N.N. alleges that once she left Respondent's care, Respondent quit returning her telephone calls. N.N. complained to Investigator Nenninger that she left messages for Respondent that she needed her records moved to her new provider. She stated in her complaint, "I left message after message, I can't tell you how many times I have called her" but Dr. Preis "never returned a call" and "I also wrote a note to Dr. Preis requesting my records, but I have never received them." N.N. stated to Investigator Nenninger that it has "been hard for her new provider to evaluate her care without medical records" and a

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medication history. N.N. requested the Board's assistance to obtain a copy of her medical records.

36. Respondent's conduct as set forth in Paragraphs #31 through #35 is contrary to Vermont law as follows:

Count IX

Contrary to Vermont law, 26 V.S.A. §1354(a)(10), which states that unprofessional conduct may be found where there is a: "failure to make available promptly ... when given proper request and direction ... copies of that person's records in the possession or under the control of the licensed practitioner." Despite both written and oral requests by her former patient, Respondent has refused and still refuses to produce the patient's medical records. Respondent's continued failure to act on her patient's requests constitutes unprofessional conduct. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

Count X

Contrary to Vermont law, 26 V.S.A. §1354(a)(31)(b)(2), which states that in regard to unprofessional conduct: "The Board may also find that a failure to practice competently by reason of any cause ... *on multiple occasions* constitutes unprofessional conduct [Emphasis added]. Failure to practice competently includes, as determined by the Board ... failure to conform to essential standards of acceptable prevailing practice." By Respondent's refusal or failure to produce medical records for a patient

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under her care, Respondent has failed to conform to essential standards of acceptable prevailing practice. Such conduct does not conform to essential standards of acceptable prevailing practice and is unprofessional conduct. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

IV. Illegal Practice of Medicine

37. Paragraphs #17 through #36 above are restated and incorporated by reference.

38. On April 16, 2009, the Board opened an investigation in Docket No. MPS 42-0410. The Complainant is identified as "Eva," an MSW at Champlain Elementary School in Burlington. In her complaint, Eva alleges that Respondent "appeared to be actively practicing medicine without a license."

39. Vermont law defines the practice of medicine at 26 V.S.A. §1311(1):

> A person who advertises or *holds himself or herself out to the public as a physician,...* or who assumes the title or uses the words or letters "Dr.," "Doctor" ... or "M.D." in connection with his or her name ..., implying that he or she is a practitioner of medicine ... in any of its branches... or shall hold herself out to the public as one skilled in the art of curing or alleviating disease *or shall prescribe, direct, recommend, or advise ... any drug, medicine or other agency or application for treatment ... shall be deemed*

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a physician, or practitioner of medicine or surgery. [Emphasis added]

40. On April 28, 2010, Board Investigator Nenninger met with Respondent and asked if she attended the January 26, 2010 school meeting. Respondent admitted that she had, and that the meeting occurred during her period of suspension. She described her role at the meeting as a "facilitator for the care of the family" and that she was "sharing information." She denied that she was providing treatment.

41. On April 28, 2010, Board Investigator Nenninger asked Respondent who had invited her to attend the January 26, 2010 school meeting. Respondent replied that she had not been invited, rather she "heard about the meeting" in a telephone conversation with her patient "KJ," who was also one of the attendees at the school meeting.

42. The January 26, 2010 school meeting concerned only three individuals: a mother, KJ, and her two minor children, "AC," and "NC" respectively. At the time, all three were patients under Respondent's care.

43. On May 3, 2010, Board Investigator Paula Nenninger interviewed the complainant, Eva. She said that she first met the Respondent at a January 26, 2010 meeting held at Champlain Elementary School in Burlington. At that meeting, Eva alleged that the Respondent:

a) Introduced herself as a doctor and "made it very clear that she (Dr. Preis) was a doctor," although at the end of the meeting Dr. Preis announced to those still present that she did not currently have a medical license "because of a tax matter."

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b) "Attended the school meeting offering treatment recommendations and appeared to be actively practicing medicine" and "did a lot of the talking."

c) "Would go off on unrelated tangents of all kinds during the meeting" and that Eva became frustrated at Respondent's inability to stay on-topic.

d) "Spoke about past and present medication, diagnosis and trauma within the family" and "gave medical advice and treatment recommendations regarding the child to attendees."

e) Eva stated that Respondent "had an unkempt appearance" and "seemed as though she had not bathed in quite some time."

44. When asked about the allegation that she was practicing medicine despite her suspension when she attended the January 26, 2010 school meeting, Respondent stated that she brought up the issue of her license suspension, "I believe I brought it right up, that I had no license."

45. Respondent's conduct as set forth in Paragraphs #38 through #44 constitute a violation of Vermont law as follows:

Count XI

Contrary to Vermont law, 26 V.S.A. §1354(a)(25), Respondent committed unprofessional conduct when she failed to comply with the board's order suspending her from the practice of medicine from November 5, 2009 through February 18, 2010. The law defines unprofessional conduct as a "failure to comply with an order of the board or violation of any term or condition of a license which is restricted or conditioned by the board." At the time of her participation in the January 26, 2010 school meeting, Respondent's license was suspended.

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Respondent's active participation in the care of her three patients while suspended from the practice of medicine is the unlawful practice of medicine and it is unprofessional conduct. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

Count XII

Contrary to Vermont law, 26 V.S.A. §1354(b)(2) Respondent's conduct fails to conform to the essential standards of acceptable and prevailing practice and constitutes unprofessional conduct. The law defines unprofessional conduct as the "failure to conform to the essential standards of acceptable and prevailing practice." Respondent knew that her medical license was suspended when she chose to attend the January 26, 2010 school meeting. Respondent was aware that the focus of the meeting was the care of just three persons, all of whom were current patients in her practice. Respondent's active participation at the school meeting is a failure to conform to the essential standards of acceptable and prevailing practice. Such actions constitute unprofessional conduct. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

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Count XIII

Respondent's conduct violates Vermont law, 26 V.S.A. §1354(a)(27), which provides: "failure to comply with provisions of state or

federal statutes or rules governing the practice of medicine" constitutes unprofessional conduct. Respondent's conduct fails to comply with state statutes and rules governing the practice of medicine as follows:

1. Vermont law, 26 V.S.A §1314(a) states: "A person who, not being licensed, advertises or holds ... herself out to the public ... not being licensed ... shall be imprisoned for not more than three months or fined not more than $200..."
2. Vermont law, 26 V.S.A. §§1311, 1314, 1400(b) which state "A person who, not being licensed, advertises or holds himself out to the public as described in §1311 of this title, or who, not being licensed , practices medicine or surgery as defined in Section 1311 of this title ...."
3. Board of Medical Practice, Rule 2.1 states: "No one may practice medicine in the state unless licensed by the Board, or when exempt under 26 V.S.A. §1311."
4. Board of Medical Practice, Rules 3.2 and 3.3., which state: "The physician must halt the practice of medicine until the license has been reinstated."

Respondent held herself out to be a physician at the school meeting and provided treatment recommendations and advice. By failing to comply with Vermont law, Respondent's conduct is unprofessional. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

Count XIV

Contrary to Vermont law, 26 V.S.A. §1354(b)(1) Respondent failed to "practice competently by performance of ... unacceptable patient care" when she attended the school meeting and provided advice and treatment

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recommendations for her patients. Medical care from a person not licensed, absent an exception, is "unacceptable patient care." By her continuous practice of medicine during her period of suspension and by providing unlawful medical care Respondent committed unprofessional conduct. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

Count XV

Contrary to Vermont law, 26 V.S.A. 1354(a)(22) Respondent practiced medicine on January 26, 2010 when she attended the school meeting, despite having been suspended. Her conduct was unprofessional. Respondent's active patient care despite being suspended "constituted a gross failure to use and exercise the degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same conditions, whether or not actual harm to the patient occurred." The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

V. Prescribing While License Suspended

46. Paragraphs #38 through #45 above are restated and incorporated by reference.

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47. In April 2010, Board Investigator Paula Nenninger obtained a prescription dated November 10, 2009, written by Respondent and filled at Kinney Drugs in Middlebury, See Exhibit #5. The prescription was for

Adderall, a class II controlled substance. On the date the prescription was written, Respondent's medical license was suspended.

48. When Respondent was asked by Board Investigator Paula Nenninger why she wrote a prescription during her period of license suspension, Respondent replied that she is "allowed to write prescriptions ahead of time," and claimed the prescription was actually written prior to her November 5, 2009 license suspension.

49. Prescribers may lawfully post-date prescriptions, however federal law clearly defines a method to follow. Prescriptions must be dated on the day the patient is seen and the prescription is written, See 21 C.F.R. §1306.05. If the prescriber's intent is to allow the patient to fill the prescription at a later date, he or she must still date the prescription on the day written and must write across the bottom: "DO NOT FILL UNTIL _____," See 21 C.F.R. 1306.12.

50. By failing to date the prescription when written and/or failing to include the "DO NOT FILL UNTIL" language as discussed in Paragraph #49 above, the prescription written by Respondent may be presumed to have been written on November 10, 2009. Respondent's medical license was suspended from November 5, 2009 until February 18, 2010. Therefore the prescription was written by Respondent during her period of suspension and is unlawful.

51. Alternatively, if as Respondent claims, the prescription was written prior to her November 5, 2009 suspension and post-dated for later use, it was inappropriately written and is contrary to federal law, 21 C.F.R. §1306.05, which requires the prescription be dated when signed and to include the "DO NOT FILL UNTIL" language.

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52. Respondent's conduct as described in Paragraphs #47 through #51 above is contrary to Vermont law as follows:

Count XVI

Vermont law, 26 V.S.A. §1354(a)(27), requires physicians to comply with state and federal law governing the practice of medicine. It states: "failure to comply with provisions of federal or state statutes or rules governing the practice of medicine shall constitute unprofessional conduct." The prescription written by Respondent on November 10, 2009 was either:

(a) written prior to the issue date of November 10, 2010 for future use, and thereby not written on the date it was signed and missing the required "DO NOT FILL UNTIL" language, contrary to federal laws 21 C.F.R. §1306.12 and 21 C.F.R. §1306.05; or

(b) written on the date signed and issued by Respondent while her license was suspended, contrary to Vermont law 26 V.S.A. §1354(a)(25), failure to comply with the Board's order suspending Respondent's medical license.

Respondent's prescription written on November 10, 2009, must fall into either subparagraph (a) or (b), and violates federal or state law governing the practice of medicine and constitutes unprofessional conduct. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

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GENERAL
Montpelier,
Vermont 05609

Count XVII

Vermont law, 26 V.S.A. §1311(1) provides that prescribing medication by an unlicensed person is the unlawful practice of medicine. If Respondent wrote the November 10, 2009 prescription during her period of suspension, she "presented herself as a physician or practitioner of medicine" and engaged in the unlawful practice of medicine. Such actions are unprofessional conduct. The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

WHEREFORE, petitioner, the State of Vermont, moves the Board of Medical Practice, pursuant to 26 V.S.A. §§ 1356–1361 and/or § 1398, to revoke or take such other action, as provided by statute and as shall be warranted by the facts., as to the medical license of Respondent, Karen Preis, M.D.

Dated at Montpelier, Vermont this 6th day of July, 2010.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: _____
TERRY LOVELACE
Assistant Attorney General

Foregoing Charges Issued: Margaret Fink Martin

Secretary, for the Board of Medical Practice

Signed and Dated at Randolph, Vermont this 7 day of July 2010.

Office of the
ATTORNEY
GENERAL
Montpelier,
Vermont 05609

Response to section II

Question #5

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

IN RE: KAREN PREIS, M.D.	)	Docket No. MPS38-0494

STIPULATION AND CONSENT ORDER

NOW COMES Karen Preis, M.D., Respondent in the above-captioned matter, and the State of Vermont, by and through Linda A. Purdy, Assistant Attorney General, and agree and stipulate to the following facts, conditions and disposition in this matter:

1. Karen Preis, M.D. (Respondent), holds License Number 42-0004451 issued by the Vermont Board of Medical Practice (Board) which license is subject to disciplinary action under 26 V.S.A. Chapter 23.

2. Respondent waives service of a formal specification of charges, see 26 V.S.A. §1356, and waives her right to a formal hearing before the Board of Medical Practice (Board), waives her right to cross-examine witnesses with respect to this matter, and voluntarily enters into this Stipulation and Consent Order. See 26 V.S.A. §1357.

3. On January 6, 1992, a complaint was filed with the Vermont Board of Medical Practice for Respondent's failure to provide written documentation of a psychiatric evaluation of a patient in Respondent's care after repeated requests by the

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Vermont 05609

EXHIBIT
#1

patient's parents to do so over a twelve month period. (See MPS01-0192).

4. On July 9, 1992, a letter was sent to Respondent by the Vermont Board of Medical Practice indicating that "...after a thorough investigation of Complaint MPS01-0192, the Board has decided not to take action at this time..." (emphasis added).

5. On March 27, 1994 another similar complaint was filed with the Vermont Board of Medical Practice in that Respondent had failed to provide a psychiatric evaluation of a patient in Respondent's care despite repeated requests by the patient's parents to do so over a two month period of time. (See MPS38-0494).

6. On November 16, 1994, Respondent appeared before the South Investigative Committee and was ordered to produce the report which was the subject of the March 27, 1994, complaint to the Board within 30 days.

7. On December 23, 1994, a letter was received by the South Investigative Committee from Ann Foley, Respondent's Office Manager, that said report was completed by Dr. Preis, and would be typed and sent the week of January 2, 1995.

8. To date, the South Investigative Committee has not received this report or any further communication regarding Respondent's compliance with the request made at the November 16, 1994 meeting.

9. Respondent's repeated failure to provide her

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patients with requested psychiatric records which they are entitled to in a timely fashion falls below the degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful, and prudent physician engaged in similar practice under the same or similar conditions pursuant to 26 V.S.A. §1354(22).

10. The parties agree that appropriate disciplinary action against Respondent would consist of a public REPRIMAND as based upon the above-described unprofessional conduct. See 3 V.S.A. §129(4).

11. The parties agree that this Stipulation and Consent Order imposes the following conditions on Respondent's license and that these conditions are fair and reasonable given the above circumstances.

a. Respondent shall file the written report which is the subject of the March 27, 1994 complaint with the Medical Board within fourteen (14) days from the time the Board approves this Stipulation.

b. If the Board receives any further complaints of a similar nature the Board will impose more serious conditions or sanctions.

12. The parties agree that, upon acceptance of this Stipulation by the Board of Medical Practice, this Stipulation and Order shall be a public document and may be reported to other licensing authorities.

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Vermont 05609

13. Any failure to comply with any of the terms of this Stipulation and Order may constitute unprofessional conduct pursuant to 26 V.S.A. §1354(25) and may subject Respondent's license to summary suspension, revocation, additional conditions, or such other sanction as the Board may determine necessary.

14. This Stipulation and Consent Order is conditioned on acceptance by the Board. If the Board rejects any part of this Stipulation and Consent Order, the entire agreement shall be considered void.

15. Respondent may petition the Board for the removal of license conditions after a period of two years from the Date of the ORDER in this matter, otherwise, the ORDER will remain in effect. Such petition shall be in a manner and form approved by the Board, and shall include such information and evaluations as may be required by the Board at that time.

Dated: March 9, 1995

STATE OF VERMONT

JEFFREY L. AMESTOY
ATTORNEY GENERAL

by: _____
LINDA A. PURDY
Assistant Attorney General

Office of the
ATTORNEY
GENERAL
Montpelier,
Vermont 05609

Dated: April 11, 1995

Received 4/5/95

by: Karen Preis, MD
Karen Preis, M.D.

ASSIGNED BOARD MEMBER CASE SUMMARY

Docket #: MPS 11-0200

Board Reviewer: Wallace

Respondent: Karen Pries, MD

Complainant: [redacted]

Summary of complaint: [redacted] complained about several aspects of her interactions with Dr. Pries. 1) She requested a copy of her records & a summary of diagnoses & treatment. 2) Billing errors including being billed for time spent on discussing her bill. 3) Being lock out of a scheduled appointment.

1) [redacted] states that she first requested a copy of her records & a summary of her diagnoses & treatment on July 20, 1998. Again on July 28, 1998, August 26, 1999, September 11, 1999, December 9 & 15, 1999. The summary was deferred until after the January 2000.

2) She submits an "Explanation of Benefits" for services on 07/06/99 that has the wrong billing code and another three that have charges for the same dates. A statement that suggests that there were two charges for the same office visit.

3) [redacted] attached a copy of the appointment card for the date & time of the disputed office visit.

Summary of investigation: Dr. Preis's response states that [redacted] suffers from a very serious psychiatric illness characterized as "Borderline Personality Disorder with Transient Psychotic Episode" & other "Serious Biological Disorders." She submitted a copy of the complainant's complete record and copies of several letters & the summary that she had sent to the patient. She defended her approach to dealing with the request for records & summary from a therapeutic standpoint & dealt with it satisfactorily in verbal format for a number of years. When she felt it was a real request, she provided them as rapidly as she could. There were delays because of her own illness and office problems.

The South Committee reviewed the extensive material submitted by Dr. Preis. The South Committee also had Dr. Preis & her attorney in on June 21, 2000 for a lengthy interview concerning both this case & MPS 39-0500. We

EXHIBIT #2

discussed this case and also reviewed the previous complaints made against her including a previous stipulation concerning records signed on 04/11/95. At the time we interviewed Dr. Pries she seemed rather emotionally fragile and depressed. She indicated that she was just recovering from an incredibly intense 5-year period of covering another friend's psychiatric practice through his terminal illness. His practice was very poorly organized and required much more that just taking on a double patient load. The extra time it took to reorganize his records & billing led to some disarray in her practice. She has just found other physicians to takeover the last of her friend's caseload.

The Committee was concerned about the size and organization of her practice and her mental health. The Committee suggested that Dr. Preis have a psychiatric evaluation & that was accomplished in December 7, 2000. The Psychiatric evaluator submitted a report to the Committee through her attorney. The evaluation concluded that Dr. Preis had no psychiatric dysfunction and provided good quality care to her patients. The Committee made suggestions that would improve her office efficiency and record keeping.

The South Committee lacked the expertise to fully evaluate the psychiatric background for the diagnosis and treatment aspects of the complaint & therefore sought a consultant. In spite of serious efforts on the part of the investigators, it took an inordinate period of time to find a consultant and a longer than expected time to receive the written opinion.

The consultant stated that patients with the type of psychiatric illness that this complainant had were difficult to manage and consultation from another psychiatrist would have been appropriate & might have been supportive of Dr. Preis' treatment. He found no evidence of unprofessional conduct in this case. The consultant agreed for the most part in her dealing with the issue of providing a copy of the records and a written summary to this type of patient, but that at some point the request becomes a demand & the records need to be given to the patient immediately. He was also critical of her hand written records, as they were difficult to interpret because of legibility and style.

Conclusion: The South Committee found no conclusive evidence of unprofessional conduct and recommends that the case be closed with a special letter # 3.

Close out letter used (any comments about what investigative committee wanted the letter to impart):

Letter Special Letter # 3 stating that we had concerns about the management of this very difficult case even though it was within

the standard of care. A second psychiatric opinion might have been helpful to both the patient & to her. We also had reservations about the quality of her records. We strongly recommend improvements in record documentation and office management. Notes need to be legible to others and are best if typewritten. It was suggested to her that she have an evaluation of her office practice by a consultant from both clinical & administrative points of view. We made an additional recommendation that she participate in a CME course in psychiatric record keeping and office management. The cumulative effect of multiple complaints that show some deficiencies but do not reach the level of unprofessional conduct can result in a more serious recommendation in the future.

Signed:

H. James Wallace, Jr., M.D.

STATE OF VERMONT

EXHIBIT 1

Vermont Department of Health - Board of Me[illegible]al Practice

APPLICANT'S STATEMENT REGARDING CHILD SUPPORT, TAXES, UNEMPLOYMENT COMPENSATION CONTRIBUTIONS

[illegible]u must answer questions 1, 2, and 3.

Regarding Child Support

Title 15 § 795 requires that: A professional license or other authority to conduct a trade or business may not be issued or renewed unless the person certifies that he or she is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed. "Good standing" means that less than one-twelfth of the annual support obligation is overdue; or liability for any support payable is being contested in a judicial or quasi-judicial proceeding; or he or she is in compliance with a repayment plan approved by the office of child support or agreed to by the parties; or the licensing authority determines that immediate payment of support would impose an unreasonable hardship. (15 V.S.A. § 795)

1. You must check one of the two statements below regarding child support regardless whether or not you have children:

   ☒ I hereby certify that, as of the date of this application: (a) I am not subject to any support order or (b) I am subject to a support order and I am in good standing with respect to it, or (c) I am subject to a support order and I am in full compliance with a plan to pay any and all child support due under that order.

   or

   ☐ I hereby certify that I am NOT in good standing with respect to child support dues as of the date of this application and I hereby request that the licensing authority determine that immediate payment of child support would impose an unreasonable hardship. Please forward an "Application for Hardship".

Regarding Taxes

Title 32 § 3113 requires that: A professional license or other authority to conduct a trade or business shall not be issued or renewed unless the person certifies that he or she is in good standing with the Department of Taxes. "Good standing" means that no taxes are due and payable and all returns have been filed, the tax liability is on appeal, the taxpayer is in compliance with a payment plan approved by the Commissioner of Taxes, or the licensing authority determines that immediate payment of taxes would impose an unreasonable hardship. (32 V.S.A. § 3113)

2. You must check one of the two statements below regarding taxes:

   ☒ I hereby certify, under the pains and penalties or perjury, that I am in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont as of the date of this application. ~~(The maximum penalty for perjury is fifteen years in prison, a $10,000.00 fine or both).~~

   or

   ☐ I hereby certify that I am NOT in good standing with respect to taxes due to the State of Vermont as of the date of this application and I hereby request that the licensing authority determine that immediate payment of taxes would impose an unreasonable hardship. Please forward an "Application for Hardship".

Regarding Unemployment Compensation Contributions

Title 21 § 1378 requires that: No agency of the state shall grant, issue or renew any license or other authority to conduct a trade or business (including a license to practice a profession) to, or enter into, extend or renew any contract for the provision of goods, services, or real estate space with any employing unit unless such employing unit shall first sign a written declaration, under the pains and penalties of perjury, that the employing unit is in good standing with respect to or in full compliance with a plan to pay any and all contributions or payments in lieu of contributions due as of the date such declaration is made. For the purposes of this section, a person is in good standing with respect to any and all contributions or payments in lieu of contributions payable if: (1) no contributions or payments in lieu of contributions are due and payable; (2) the liability for any contributions or payments in lieu of contributions due and payable is on appeal; (3) the employing unit is in compliance with a payment plan approved by the Commissioner; or (4) in the case of a licensee, the agency finds that requiring immediate payment of contributions or payments in lieu of contributions due and payable would impose an unreasonable hardship.

3. You must check one of the three statements below regarding unemployment contributions or payments in lieu of unemployment contributions:

   ☒ I hereby certify, under the pains and penalties of perjury, that I am in good standing with respect to or in full compliance with a payment plan approved by the Commissioner of Employment and Training to pay any and all unemployment contributions or payments in lieu of unemployment contributions to the Vermont Department of Employment and Training due as of the date of this application. (The maximum penalty for perjury is 15 years in prison, a $10, 000.00 fine or both.)

   or

   ☐ I hereby certify that I am NOT in good standing with respect to unemployment contributions or payments in lieu of unemployment contributions due to the Vermont Department of Employment and Training as of the date of this application and I hereby request that the licensing authority determine that requiring immediate payment of unemployment contributions or payments in lieu of unemployment contributions would impose an unreasonable hardship. Please forward an Application for Hardship.

   or

   ☐ I hereby certify that 21 V.S.A. § 1378 is not applicable to me because I am not now, nor have I ever been, an employer.

Social Security #* [redacted] Date of Birth [redacted]

* The disclosure of your social security number is mandatory, it is solicited by the authority granted by 42 U.S.C. § 405 (c)(2)(C), and will be used by the Department of Taxes and the Department of Employment and Training in the administration of Vermont tax laws, to identify individuals affected by such laws, and by the Office of Child Support.

STATEMENT OF APPLICANT

I certify that the information stated by me in this application is true and accurate to the best of my knowledge and that I understand providing false information or omission of information is unlawful and may jeopardize my license/certification/registration status.

Signature of Applicant Karen Freiano Date 11/25/08

EXHIBIT 1

State of Vermont
Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Agency of Administration

PO Box 429
Montpelier, VT 05601
(802) 828-2506

June 7, 2010

Terry J. Lovelace, Esq.
Attorney General's Office
109 State Street
Montpelier, VT 05602

Re: Karen Preis, MD

Dear Terry:

Enclosed is correspondence to Dr. Preis you requested. This information is provided pursuant to 32 V.S.A. 3102(10). It may only be used for the purposes stated in said statute and is confidential taxpayer information. As of November 25, 2008, Ms. Preis had not filed her 2006 or 2007 Vermont income tax returns.

Sincerely,

Will S. Baker
Assistant Attorney General

RECEIVED
JUN - 9 2010
STATE OF VERMONT
ATTORNEY GENERAL'S OFFICE

EXHIBIT
#4

VERMONT

December 7, 2007

[redacted]

[redacted]

In reviewing our records, we do not find your Vermont personal income tax return for tax year 2006, although you did file an extension request for that year. If you were either a Vermont resident or had Vermont income, and you were required to file a Federal return, you must file a Vermont return. Please help us bring your account up to date by:

Filing a Vermont income tax return for the tax year 2006 along with a copy of the corresponding Federal income tax return and schedules; **or**

Sending us a copy of the Vermont return you filed, including copies of any cancelled checks for Vermont income tax payments made; **or**

Providing information, in writing, as to why you were not required to file a Vermont income tax return.

Please respond within 30 days of the date of this letter. After that time, if we have not heard from you, the Department will send you a bill estimating your Vermont personal income tax liability using the best information available. An estimated assessment is authorized by Title 32 Vermont Statutes Annotated, Section 5864(b). Estimated assessments, as well as late filed returns, are subject to interest and applicable penalties. Please be sure to provide social security numbers for you and your spouse or civil union partner (if applicable) on any correspondence or return.

If you need forms, they are available on the Tax Department Website at www.state.vt.us/tax or by calling our forms request line at 802-828-2515.

If you have any questions, please contact the Vermont Department of Taxes at P. O. Box 1645, Montpelier, VT 05601-1645 or call 802-828-2865. Our FAX number is 802-828-2720.

Thank you for your attention to this request.

Sincerely,

Maria Cano

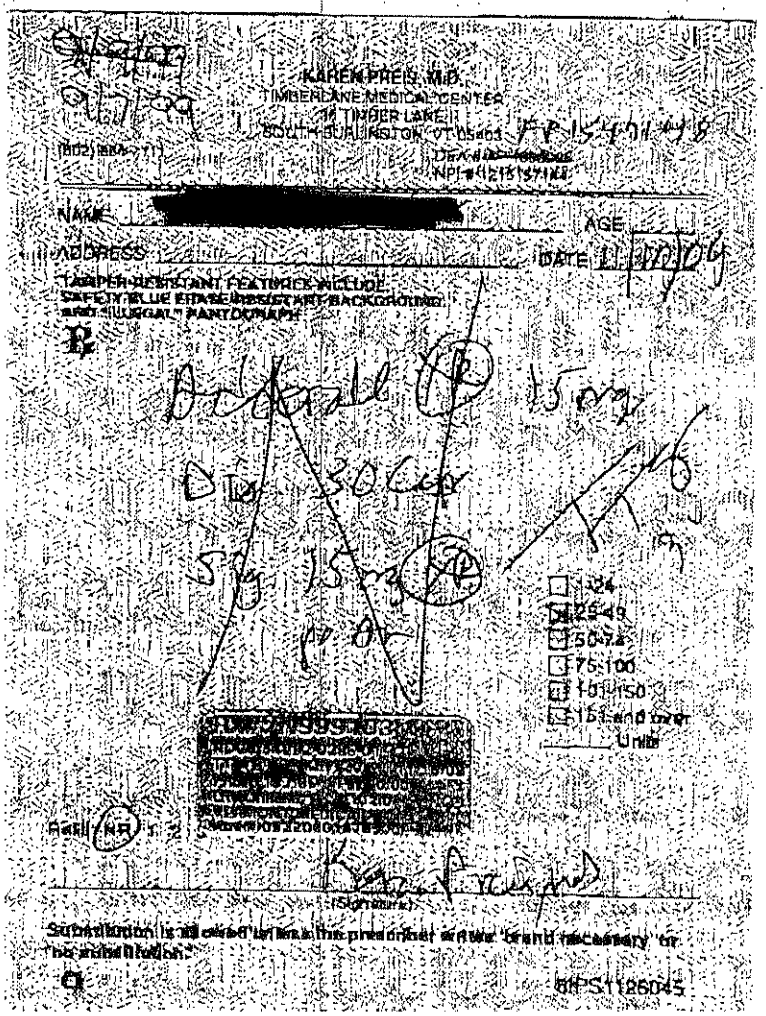
Maria Cano
Internal Audit Section Chief

00000010

Attn: Paula Nenninger
From: Sara Little, R.Ph
Kinneys-Middlebury

Here is a copy of the Rx you requested.

Thanks!


KAREN PREIS, M.D.
TIMBERLANE MEDICAL CENTER
16 TIMBER LANE
SOUTH BURLINGTON, VT 05403

NAME [redacted] AGE
ADDRESS DATE 11/10/04

TAMPER RESISTANT FEATURES INCLUDE
SAFETY BLUE ERASE RESISTANT BACKGROUND
AND "LUNGAL" PANTOGRAPH

Rx

Dolorale 15 mg
Dis 30 Cap
Sig 15 mg

1-24
25-49
50-74
75-100
101-150
151 and over
Units

Refill NR 1 2

(Signature)

Substitution is allowed unless the prescriber writes "brand necessary" or "no substitution."

8PS1126045

EXHIBIT #5