

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: Louis J. Frank, M.D.,

))
Docket No. MPC 135-1209

Vermont Medical License

))
and MPC 44-0410

Number: 042-0006770

AMENDED SPECIFICATION OF CHARGES

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

1. Louis J. Frank, M.D., holds Vermont Medical License Number 042-0006770, issued in 1980, and was Board Certified in Anesthesiology in 1991. Respondent currently practices psychiatry in St. Johnsbury, Vermont.

2. Jurisdiction vests in the Vermont Board of Medical Practice ("Board") by virtue of 26 V.S.A. §§1353, 1354, & 1398 and 3 V.S.A. §§129, 129a, & 814(c).

I. Background.

3. The Board opened the above-captioned matter on January 4, 2010, following a complaint to the Medical Practice Board (hereafter "Board") by Respondent's former employer. The complainant alleges "questionable prescribing practices" and "the use of Methadone for chronic pain" management in patients with a diagnosis of "opiate dependence." The complaint also alleges that the "foundation for diagnosis of chronic pain [is] not substantiated in [the] record."

4. In his response to the allegations, Respondent asserted that this matter "is a clear-cut case of scape-goating." Further, that all of the patients he treats for chronic pain have an established foundation to support the management of chronic pain with

Methadone.

5. In the course of his investigation, Board Investigator Philip Ciotti spoke with the complainant, Respondent, Dr. Todd Mandell, Mr. Mark Beattie, Dr. Rick Edelstein, former and present patients in Respondent's care and pharmacists. He also obtained medical records by subpoena for several of Respondent's patients. Investigator Ciotti prepared three affidavits in support of the charges contained herein. Exhibits #1, #2 and #3 are attached hereto and incorporated into the State's Specification of Charges.

II. Allegations and Specification of Charges

6. In Respondent's reply to allegations of improper prescribing made by former employer, North East Kingdom Human Services (hereafter "NEKHS"), Respondent listed, by name, four patients for whom the prescribing of Methadone for treatment of chronic pain was appropriate. Those patients are identified here as PATIENT #5, PATIENT #6, PATIENT #7 and PATIENT #8. Respondent also conceded that further prescribing of Methadone was not warranted as to PATIENT #1, PATIENT #2, PATIENT #3, and PATIENT #4.

Charges in this matter rely on Respondent's treatment of PATIENTS identified as #9, #10, #4, #11, #5, #12, #1, #2, #14, #15, #16 and #3.

PATIENT #9

7. Paragraphs #1 through #5 above are incorporated herein by reference.

8. Board Investigator Philip Ciotti reviewed Patient #9's medical record. Patient #9 is a female patient initially seen on April 22, 2008 and evaluated by Respondent. His diagnosis was bipolar depression and poly-substance abuse. In October 2008,

Respondent prescribed Suboxone and diagnosed her as "opiate dependent" following her "de-tox" at Valley Vista. Two months later he discontinued the Suboxone and prescribed Methadone for "chronic pain." Patient #9 continued on Methadone for "pain" and the dosage was increased from 5mg to 10mg in January of 2009. The patient's history of opiate dependence is well documented. However, there is no mention of pain complaints by the patient, and no history of illness or physical injury to support the management of chronic pain with Methadone.

COUNT 1

Contrary to Vermont law, 26 V.S.A. §1354 (31)(b)(1)(2) Respondent performed unsafe or unacceptable patient care; and/or failed to conform to the essential standards of acceptable and prevailing practice. Respondent's prescribing of Methadone for Patient #9 was unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing practice. The law defines unprofessional conduct as the "failure to conform to the essential standards of acceptable and prevailing practice." The Respondent treated Patient #9 for opioid/opiate addiction with Methadone under the guise of treating "chronic pain." 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 2

Contrary to Vermont law, 26 V.S.A. §1354 (22) Respondent failed to exercise on repeated occasions, that 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, whether or not actual injury to a patient occurred. Respondent prescribed Methadone for the treatment of chronic pain without a physical examination or adequate diagnostic study to support Patient #9's complaint of "chronic pain." Respondent discontinued Patient #9's treatment with Suboxone and began treatment with Methadone. Respondent failed to exercise the degree of care, skill and proficiency commonly exercised by a skillful and prudent physician in a similar practice under similar conditions. Respondent's actions are unprofessional conduct as to Patient #9. 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 3

Contrary to Vermont law, 26 V.S.A. §1354 (18) Respondent did consistently prescribe Methadone for treatment of Patient #9's drug dependence, not management of chronic pain. This is an improper utilization of services and unprofessional conduct by Respondent. 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 4

Contrary to Vermont law, 26 V.S.A. §1354 (8) Respondent did willfully create a false record for each and every prescription written for Methadone. Respondent created a false record by writing on the face of each prescription "CHRONIC PAIN," when each prescription was actually written for management of Patient #9's drug dependence. Each

prescription was willfully written to deceive the pharmacist as to the true purpose of prescription. This willful filing of a "false report or record" is unprofessional conduct by Respondent. 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 #10

9. Paragraphs #1 through #8 above are incorporated herein by reference.

10. Board Investigator Philip Ciotti reviewed Patient #10's medical record. Patient #10 is a thirty year-old male seen initially in October 2008 with a chief complaint of depression, opiate dependence and depression secondary to "severe chronic pain resulting from discopathy." Respondent prescribed Methadone and Celexa. One month later Patient #10 received an early refill of Methadone "due to the theft of meds from patient." Between October of 2008 and December of 2009, Patient #10 received six increases in his Methadone dosage "for better pain control." Respondent wrote 22 prescriptions for Methadone for treatment of chronic pain. These prescriptions are unsupported by entry in the medical record to document complaints of pain.

When asked by Board Investigator Ciotti regarding Patient #10 and whether treatment for chronic pain was justified in the medical record, Respondent said the patient had "X-rays on file or an MRI" or he never would have prescribed for pain. Three MRI studies were found. However, two were ordered by other physicians and radiology reports were only requested after Respondent was questioned by Dr. Edelstein about

documentation to support treatment with Methadone. The third MRI was a prostate study ordered by Respondent and irrelevant to chronic pain complaints.

COUNT 5

Contrary to Vermont law, 26 V.S.A. §1354 (31)(b)(1)(2) Respondent performed unsafe or unacceptable patient care; and/or failed to conform to the essential standards of acceptable and prevailing practice. Respondent's prescribing of Methadone for Patient #10 was unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing practice. The law defines unprofessional conduct as the "failure to conform to the essential standards of acceptable and prevailing practice." The Respondent treated Patient #10 for opiate addiction with Methadone under the guise of treating "chronic pain." The Respondent's treatment of Patient #10 was 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 6

Contrary to Vermont law, 26 V.S.A. §1354 (22) Respondent failed to exercise on repeated occasions, that 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, whether or not actual injury to a patient occurred. Respondent prescribed Methadone for the treatment of chronic pain without a physical examination or adequate diagnostic study to support Patient #10's complaint of "chronic pain."

Respondent's actions are unprofessional conduct as to Patient #10. 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 7

Contrary to Vermont law, 26 V.S.A. §1354 (18) Respondent did consistently prescribe Methadone for treatment of Patient #10's drug dependence under the guise of treating chronic pain. This is an improper utilization of services and unprofessional conduct by Respondent. 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 8

Contrary to Vermont law, 26 V.S.A. §1354 (27) and federal law, Respondent did consistently prescribe Methadone for treatment of Patient #10's drug dependence under the guise of treating chronic pain. Treatment of opiate dependence with Methadone, if done outside a controlled clinical setting, is contrary to federal law. Respondent failed to comply with federal law that governs the practice of medicine. Respondent's failure to comply with the law 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 9

Contrary to Vermont law, 26 V.S.A. §1354 (8) Respondent did willfully create a false record for each and every prescription written for Methadone. Respondent created a

false record by indicating on the face of each prescription "CHRONIC PAIN," when each prescription was actually written for management of Patient #10's drug dependence. Each prescription was willfully written to deceive the pharmacist as to the true purpose of prescription. This willful filing of a "false report or record" is unprofessional conduct by Respondent. 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 #4

11. Paragraphs #1 through #10 above are incorporated herein by reference.

12. Board Investigator Philip Ciotti reviewed Patient #4's medical record.

Patient #4 is a fifty seven year-old female first seen by Respondent in May of 2008. Patient #4 was previously under the care of Dr. Barton. Respondent diagnosed Patient #4 with bipolar depression, opiate dependence, and hypothyroidism. Patient #4 did not complain of chronic pain or injury. Her medications were listed as Buspar, Neurontin, Seroquel, and Suboxone for the opiate dependence. In November of 2008 she was discontinued from Suboxone and prescribed Methadone by Respondent. The office notes indicate Methadone prescribed for "chronic pain," but it does not state where the pain originates or what part of the body is affected by pain. From December of 2008 through December of 2009 Patient #4 was seen ten times by Respondent. While treated by Respondent, Patient #4 was prescribed Methadone without a physical examination or discussion of pain in the record. In December of 2009 another physician took over the care of Patient #4 and began a "step-down" process to replace Methadone with Suboxone. In January 2010,

Respondent stated that "Patient #4 is back under his care and receiving 20 mg of Methadone daily." When questioned by the Board Investigator as to the nature of patient #4's pain, Respondent noted an MRI from November of 2009 as support for treatment of chronic pain. The radiologist's report stated "mild degenerative disc disease of the cervical spine with no evidence of spinal stenosis ... mild diffuse facet degenerative disc disease ... noted on the right L5-S1."

On April 9, 2010 Respondent presented himself to the Vermont Board of Medical Practice, Central Investigative Committee. Dr. David Clauss, M.D., a physician-member of the board, "questioned Respondent about the apparent pattern of patients being put on Methadone without any physical exam¹ noted or findings other than a vague note indicating pain." Dr. Clauss went through Patient #4's chart nearly page by page with Respondent. Dr. Clauss posed the question why the patient would go from Suboxone treatment with a diagnosis of opiate addiction and then be placed on Methadone for chronic pain? Dr. Clauss asked Respondent to identify the location and nature of the pain in this case. Respondent was unable to do so. Dr. Clauss alleged that Respondent was actually treating patients for opiate addiction and not truly for pain. Respondent denied the allegation.

COUNT 10

Contrary to Vermont law, 26 V.S.A. §1354 (31)(b)(1)(2) Respondent performed unsafe or unacceptable patient care; and/or failed to conform to the essential standards of acceptable and prevailing practice. Respondent's prescribing of Methadone to replace Suboxone for Patient #4 was unsafe or unacceptable patient care and failed to conform to

¹ See Affidavit of Board Investigator Ciotti, August 2010.

the essential standards of acceptable and prevailing practice. The law defines unprofessional conduct as the "failure to conform to the essential standards of acceptable and prevailing practice." The Respondent treated Patient #4 for opioid/opiate addiction with Methadone under the guise of treating "chronic pain." 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 11

Contrary to Vermont law, 26 V.S.A. §1354 (22) Respondent failed to exercise on repeated occasions, that 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, whether or not actual injury to a patient occurred. Respondent prescribed Methadone for the treatment of chronic pain without a physical examination or adequate diagnostic study to confirm Patient #4's complaint of "chronic pain." Respondent's actions are unprofessional conduct as to Patient #4. 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 12

Contrary to Vermont law, 26 V.S.A. §1354 (18) Respondent did consistently prescribe Methadone for treatment of Patient #4's drug dependence, discontinuing Suboxone. This is an improper utilization of services and unprofessional conduct by Respondent. 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 13

Contrary to Vermont law, 26 V.S.A. §1354 (27) and federal law, Respondent did consistently prescribe Methadone for treatment of Patient #4's drug dependence.

Treatment of opioid/opiate dependence with Methadone, if done outside a controlled clinical setting, is contrary to federal law. Respondent failed to comply with federal law that governs the practice of medicine and 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.

COUNT 14

Contrary to Vermont law, 26 V.S.A. §1354 (8) Respondent did willfully create a false record for each and every prescription written for Methadone. Respondent created a false record by indicating on the face of each prescription "CHRONIC PAIN," when each prescription was actually written for management of Patient #4's drug dependence. Each prescription was willfully written to deceive the pharmacist as to the true purpose of prescription. This willful filing of a "false report or record" is unprofessional conduct by Respondent. 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 #11

13. Paragraphs #1 through #12 above are incorporated herein by reference.

14. Board Investigator Philip Ciotti reviewed Patient #11's medical record.

Patient #11 is a twenty seven year-old male first seen in May 21, 2008 by an Advance Nurse Practitioner (APRN) when he presented to the "crisis team" for help with opiate dependence. On May 22, 2008, Dr. Frank begins care of Patient #11, noting PTSD as well as opiate dependence. Patient #11 "has been using fentanyl patches to control reported chronic back pain as well as treating his emotional symptoms." The chart notes "patient stated he wanted to get off narcotics" (detox and discontinue fentanyl patches). On July 21, 2008 Patient #11 was prescribed Methadone by Dr. Frank for "chronic pain and to assist in controlling mood." On July 28, 2008 the Methadone was increased due to complaints of pain. Methadone was continued and x-rays of the hip, knees, and spine were ordered. In September of 2008 the x-rays were read as "OK." Methadone continued until June of 2009 when it was discontinued and replaced with Dilaudid. Two months later, in August 2008, Respondent placed Patient #11 back on Methadone. On November 23, 2009 Methadone was discontinued after a consult with Dr. Ziobrowski, a primary care provider in St. Johnsbury. Dr. Ziobrowski concluded there was insufficient clinical justification to support prescribing Methadone for pain.

As to Patient #11, Respondent told Board Investigator Ciotti that after meeting with his prior employer and Dr. Todd Mandell that he agreed that his "prescribing of Methadone was not appropriate." During the period that Respondent treated Patient #11 he wrote 20 prescriptions for "CHRONIC PAIN" unsupported by clinical findings in the

record to support treatment for pain.

COUNT 15

Contrary to Vermont law, 26 V.S.A. §1354 (31)(b)(1)(2) Respondent performed unsafe or unacceptable patient care; and/or failed to conform to the essential standards of acceptable and prevailing practice. Respondent's prescribing of Methadone for Patient #11 was unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing practice. The law defines unprofessional conduct as the "failure to conform to the essential standards of acceptable and prevailing practice." The Respondent treated Patient #11 for opiate addiction under the guise of treating "chronic pain." 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 16

Contrary to Vermont law, 26 V.S.A. §1354 (22) Respondent failed to exercise on repeated occasions, that 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, whether or not actual injury to a patient occurred. Respondent prescribed Methadone for the treatment of chronic pain without a proper physical examination or adequate diagnostic study to confirm Patient #11's complaint of "chronic pain." Respondent's actions are unprofessional conduct as to Patient #11. 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 17

Contrary to Vermont law, 26 V.S.A. §1354 (18) Respondent did consistently prescribe Methadone for treatment of Patient #11's drug dependence, not management of chronic pain. This is an improper utilization of services and unprofessional conduct by Respondent. 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 18

Contrary to Vermont law, 26 V.S.A. §1354 (8) Respondent did willfully create a false record for each and every prescription written for Methadone. Respondent created a false record by indicating on the face of each prescription "CHRONIC PAIN," when each prescription was actually written for management of Patient #11's drug dependence. Each prescription was willfully written to deceive the pharmacist as to the true purpose of prescription. This willful filing of a "false report or record" is unprofessional conduct by Respondent. 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 #5

15. Paragraphs #1 through #14 above are incorporated herein by reference.
16. Board Investigator Philip Ciotti reviewed Patient #5's medical record. He was first seen by Respondent on September 9, 2009. Patient #5 was diagnosed by Respondent as having "mood disorder secondary to chronic pain, atypical

depression, atypical anxiety and opiate dependence." Upon entering Respondent's care, Patient #5 was taking Cymbalta and had recently discontinued Suboxone. Patient #5 had a history of prior surgery to the shoulder with hardware in place. Respondent noted a discussion with Patient #5's prior primary care physician back in Arizona. On September 11, 2009 Respondent continued Patient #5's Cymbalta and began Methadone. On September 28, 2009 Respondent increased the Methadone dosage. In December of 2009 another physician assumed the care of Patient #5. Note that it was Patient #5's treatment that triggered the action against Respondent by his former employer, North East Kingdom Human Services², ultimately leading to his resignation or dismissal.

COUNT 19

Contrary to Vermont law, 26 V.S.A. §1354 (31)(b)(1)(2) Respondent performed unsafe or unacceptable patient care; and/or failed to conform to the essential standards of acceptable and prevailing practice. Respondent's prescribing of Methadone for Patient #5 was unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing practice. As such, Respondent's treatment was unprofessional conduct in regard to Patient #5. The law defines unprofessional conduct as the "failure to conform to the essential standards of acceptable and prevailing practice." The Respondent treated Patient #5 for opioid/opiate addiction with Methadone under the guise of treating "chronic pain" for prior shoulder surgery. Such treatment is unprofessional conduct. The

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² On or near December 30, 2009, a confrontation occurred between Dr. Frank and NEKHS Medical Director Dr.

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COUNT 20

Contrary to Vermont law, 26 V.S.A. §1354 (22) Respondent failed to exercise on repeated occasions, that 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, whether or not actual injury to a patient occurred. Respondent prescribed Methadone for the treatment of chronic pain without a physical examination or adequate diagnostic study to confirm Patient #5's complaint of "chronic pain." Respondent's actions are unprofessional conduct as to Patient #5. 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 21

Contrary to Vermont law, 26 V.S.A. §1354 (18) Respondent consistently prescribed Methadone for treatment of Patient #5's drug dependence. This is an improper utilization of services and unprofessional conduct by Respondent. 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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Edelstein regarding Respondent's prescribing of Methadone. According to Mr. Beattie from NEKHS, Respondent prescribed Methadone for Patient #5 after agreeing to no longer treat patients for chronic pain.

COUNT 22

Contrary to Vermont law, 26 V.S.A. §1354 (27) and federal law, Respondent did consistently prescribe Methadone for treatment of Patient #5's drug dependence. Treatment of opioid/opiate dependence with Methadone, if done outside a controlled clinical setting, is contrary to federal law. Respondent failed to comply with federal law that governs the practice of medicine. Respondent's treatment of Patient #5 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 23

Contrary to Vermont law, 26 V.S.A. §1354 (8) Respondent did willfully create a false record for each and every prescription written for Methadone. Respondent created a false record by indicating on the face of each prescription "CHRONIC PAIN," when each prescription was actually written for management of Patient #5's drug dependence. Each prescription was willfully written to deceive the pharmacist as to the true purpose of prescription. This willful filing of a "false report or record" is unprofessional conduct by Respondent. 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 #12

17. Paragraphs #1 through #16 above are incorporated herein by reference.

18. Board Investigator Philip Ciotti reviewed Patient #12's medical record. Patient #12 was assessed by Respondent on September 10, 2008 and diagnosed with a mood disorder and opiate dependence. The patient had recently de-toxed from opiates over the past few weeks and continued on Suboxone maintenance. On October 29, 2009 Patient #12's chart notes that the patient had "relapsed" and had not taken Suboxone. Patient #12 complained of pain and Respondent prescribed Methadone "for pain and to improve mood." The chart is silent as to the source or location of the pain and there are no diagnostic studies ordered. On November 13, 2008 Patient #12's Methadone dosage was increased for complaint of "pain." August 8, 2009 the chart notes "Methadone continued." (NOTE, there was an unexplained gap in the documented visits in chart. It was unclear if patient really had not been seen in 7 months or if chart was incomplete. There were no further entries.)

Respondent wrote a total of 26 prescriptions for Methadone during his treatment of Patient #12. Respondent wrote for "CHRONIC PAIN" on each prescription. The medical record does not document the origin or cause of Patient #12's pain.

COUNT 24

Contrary to Vermont law, 26 V.S.A. §1354 (31)(b)(1)(2) Respondent performed unsafe or unacceptable patient care; and/or failed to conform to the

essential standards of acceptable and prevailing practice. Respondent's prescribing of Methadone for Patient #12 was unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing practice. The law defines unprofessional conduct as the "failure to conform to the essential standards of acceptable and prevailing practice." The Respondent treated Patient #12 for opiate addiction under the guise of treating "chronic pain." 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 25

Contrary to Vermont law, 26 V.S.A. §1354 (22) Respondent failed to exercise on repeated occasions, that 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, whether or not actual injury to a patient occurred. Respondent prescribed Methadone for the treatment of chronic pain without a physical examination or diagnostic study to confirm Patient #12's complaint of "chronic pain." Respondent's actions are unprofessional conduct as to Patient #12. 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 26

Contrary to Vermont law, 26 V.S.A. §1354 (18) Respondent did consistently

prescribe Methadone for treatment of Patient #12's drug dependence, not the legitimate management of chronic pain. This is an improper utilization of services and unprofessional conduct by Respondent. 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 27

Contrary to Vermont law, 26 V.S.A. §1354 (8) Respondent did willfully create a false record for each and every prescription written for Methadone. Respondent created a false record by indicating on the face of each prescription "CHRONIC PAIN," when each prescription was actually written for management of Patient #12's drug dependence. Each prescription was willfully written to deceive the pharmacist as to the true purpose of prescription. This willful filing of a "false report or record" is unprofessional conduct by Respondent. 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 #1

19. Paragraphs #1 through #18 above are incorporated herein by reference.

20. Patient #1 was first seen by Respondent September 18, 2008 on referral from a therapist for "mood symptoms." The record does not indicate a physical examination of any kind. Patient #1's initial diagnosis was "atypical mood disorder, mood disorder secondary to chronic pain, opiate dependence and PTSD." She was taking no medication at the time, but had received "massive doses of Oxycontin" in the past for

treatment of pain following motor vehicle accidents in 1984 and 1985. Respondent immediately began treatment with Methadone and Geodon. On November 17, 2009 Methadone is discontinued after consult with Larry Berry and a "lack of DEFINITIVE indication for opiates based on a review of records including MRI studies." In December 2009 Respondent stated in his first response to the Medical Board that Patient #1 "was not a patient requiring Methadone" and she had been weaned. Respondent asserts that diagnostic imaging, either x-ray or MRI, validate Patient #1's medical condition, justifying Methadone for management of chronic pain. Board Investigator Ciotti reviewed Patient #1's medical records and no x-rays or MRIs were found.

During the period that Respondent treated Patient #1 he wrote 19 prescriptions for Methadone for "CHRONIC PAIN." These prescriptions are unsupported by Patient #1's medical record.

COUNT 28

Contrary to Vermont law, 26 V.S.A. §1354 (31)(b)(1)(2) Respondent performed unsafe or unacceptable patient care; and/or failed to conform to the essential standards of acceptable and prevailing practice. Respondent's prescribing of Methadone for Patient #1 was unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing practice. The law defines unprofessional conduct as the "failure to conform to the essential standards of acceptable and prevailing practice." The Respondent treated Patient #1 for opiate addiction under the guise of treating "chronic pain." 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 29

Contrary to Vermont law, 26 V.S.A. §1354 (22) Respondent failed exercise on repeated occasions, that 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, whether or not actual injury to a patient occurred.

Respondent prescribed Methadone for the treatment of chronic pain without a physical examination or diagnostic study to confirm Patient #1's complaint of "chronic pain."

Respondent's actions are unprofessional conduct as to Patient #1. 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 30

Contrary to Vermont law, 26 V.S.A. §1354 (18) Respondent did consistently prescribe Methadone for treatment of Patient #1's drug dependence, not for the legitimate management of chronic pain. This is an improper utilization of services and unprofessional conduct by Respondent. 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 31

Contrary to Vermont law, 26 V.S.A. §1354 (8) Respondent did willfully create a false record for each and every prescription written for Methadone. Respondent created a

false record by indicating on the face of each prescription "CHRONIC PAIN," when each prescription was actually written for management of Patient #1's drug dependence. Each prescription was willfully written to deceive the pharmacist as to the true purpose of prescription. This willful filing of a "false report or record" is unprofessional conduct by Respondent. 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 #2

21. Paragraphs #1 through #20 above are incorporated herein by reference.

22. Patient #2 is a male patient first seen by Respondent on January 26, 2009.

Patient #2's diagnosis was mood disorder secondary to chronic pain, atypical bipolar disorder and opiate dependence. The initial assessment notes a history of chronic back pain since a motor vehicle accident in 2007. Respondent notes that Patient #2 was "presenting for treatment amidst severe self medication." Respondent notes a history of cocaine use and that patient had taken opiates as recently as 2 days previous. Respondent placed Patient #2 on Methadone, 5mg twice daily. There is no documentation of any kind of physical examination. Three days later, January 29, 2009 Methadone is increased to 10 mg twice daily. On February 16, 2009 Patient #2 reported being assaulted by his ex-girlfriend's boyfriend and received facial trauma. He claimed he took 4 additional Methadone tablets "due to discomfort." On July 8, 2009 Medications are discontinued due to "poor impulse control" and "drug seeking behavior." Patient #2 became angry and said he "would get drugs on the street." One week later Respondent resumed Methadone

10 mg twice daily because "pain level increased without Methadone." On August 27, 2009 Respondent increased Methadone dosage to 10 mg twice daily and 15 mgs at night due to "chronic back pain due to disc disease." On September 3, 2009 Methadone dosage was again increased for "improved mood and better pain control." On November 13, 2009 the medical record indicates another increase in Methadone dosage. On the same date the record indicates Patient #2 engaged in prescription fraud by obtaining Vicodin from a dentist. The medical record states that at "next visit" patient will be advised he will no longer receive Methadone and will be offered residential detox.

During the period that Respondent treated Patient #2 he wrote 12 prescriptions for Methadone for "CHRONIC PAIN." The medical record does not justify or support treatment of chronic pain.

COUNT 32

Contrary to Vermont law, 26 V.S.A. §1354 (31)(b)(1)(2) Respondent performed unsafe or unacceptable patient care; and/or failed to conform to the essential standards of acceptable and prevailing practice. Respondent's prescribing of Methadone for Patient #2 was unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing practice. The law defines unprofessional conduct as the "failure to conform to the essential standards of acceptable and prevailing practice." The Respondent treated Patient #2 for opiate addiction under the guise of treating "chronic pain." 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 33

Contrary to Vermont law, 26 V.S.A. §1354 (22) Respondent failed to exercise on repeated occasions, that 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, whether or not actual injury to a patient occurred. Respondent prescribed Methadone for the treatment of chronic pain without a physical examination or diagnostic study to confirm Patient #2's complaint of "chronic pain." Respondent's actions are unprofessional conduct as to Patient #2. 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 34

Contrary to Vermont law, 26 V.S.A. §1354 (18) Respondent did consistently prescribe Methadone for treatment of Patient #2's drug dependence, not for the legitimate management of chronic pain. This is an improper utilization of services and unprofessional conduct by Respondent. 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. 36

COUNT 35

Contrary to Vermont law, 26 V.S.A. §1354 (8) Respondent did willfully create a false record for each and every prescription written for Methadone. Respondent created a false record by indicating on the face of each prescription "CHRONIC PAIN," when each

prescription was actually written for management of Patient #2's drug dependence. Each prescription was willfully written to deceive the pharmacist as to the true purpose of prescription. This willful filing of a "false report or record" is unprofessional conduct by Respondent. 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 #3

23. Paragraphs #1 through #22 above are incorporated herein by reference.

24. Patient #3 was initially assessed by MA Catherine Hinchey on 10/21/08, 11/18/08 and 11/25/08. These evaluations document past and present issues of substance abuse and anger management issues. Patient #3's history of substance abuse includes smoking free-based cocaine, and the abuse of Vicodin and Percocet bought off the street. He admitted that he still smokes marijuana and has a history of substance abuse. In this evaluation the medical record also documents Patient #3 becoming angry at his Primary Care Provider, Dr. David Brody, because Dr. Brody said there was nothing wrong with the patient's back and he refused to prescribe pain medication. The expected outcome of treatment was stated for "Patient #3 to gain more control of managing his extreme mood changes without the use of substances." This assessment is countersigned by NEKHS Staff Psychiatrist Louis Jay Frank, M.D.

Respondent first assessed Patient #3 on 2/26/09 with a diagnosis of Post Traumatic Stress Disorder, Bi-Polar Depression and history of substance abuse.

Respondent notes Patient #3 has been unemployed "due to a back injury several years

earlier." He also notes Patient #3 is a weekly user of THC. There is no documentation in the record to reflect any physical examination by Respondent on February 26, 2009. On June 12, 2009 Respondent prescribed Methadone for Patient #3, 5mg twice daily with an added diagnosis of "mood disorder due to chronic pain." There is no physical examination recorded. Six days later, on June 18, 2009, Patient #3's chart indicates "medications continued" and "increase in chronic pain with resulting increase in mood symptoms, disc herniation confirmed via MRI at NVRH; report confirmed by me [Respondent]." Board Investigator Ciotti reviewed Patient #3's complete medical record and found no MRI report. According to Ciotti "it is unclear how Dr. Frank 'confirmed' this [disc herniation]" without an MRI or x-ray.

During the period that Respondent treated Patient #3 he wrote 11 prescriptions for Methadone, writing on each prescription for "CHRONIC PAIN." The medical record does not support the diagnosis of chronic pain.

COUNT 36

Contrary to Vermont law, 26 V.S.A. §1354 (31)(b)(1)(2) Respondent performed unsafe or unacceptable patient care; and/or failed to conform to the essential standards of acceptable and prevailing practice. Respondent's prescribing of Methadone for Patient #3 was unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing practice. The law defines unprofessional conduct as the "failure to conform to the essential standards of acceptable and prevailing practice." The Respondent treated Patient #3 for opiate addiction under the guise of treating "chronic

pain." 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 37

Contrary to Vermont law, 26 V.S.A. §1354 (22) Respondent failed to exercise on repeated occasions, that 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, whether or not actual injury to a patient occurred. Respondent prescribed Methadone for the treatment of chronic pain without a physical examination or diagnostic study to confirm Patient #3's complaint of "chronic pain." Respondent's actions are unprofessional conduct as to Patient #3. 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 38

Contrary to Vermont law, 26 V.S.A. §1354 (18) Respondent did consistently prescribe Methadone for treatment of Patient #3's drug dependence, not for the legitimate management of chronic pain. This is an improper utilization of services and unprofessional conduct by Respondent. 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 39

Contrary to Vermont law, 26 V.S.A. §1354 (8) Respondent did willfully create a

false record for each and every prescription written for Methadone. Respondent created a false record by indicating on the face of each prescription "CHRONIC PAIN," when each prescription was actually written for management of Patient #3's drug dependence. Each prescription was willfully written to deceive the pharmacist as to the true purpose of prescription. This willful filing of a "false report or record" is unprofessional conduct by Respondent. 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 #14

25. Paragraphs #1 through #24 above are incorporated herein by reference.

26. On April 6, 2010 Board Investigator Philip Ciotti interviewed a witness in St. Johnsbury while attempting to locate a former patient of Respondent. This witness, after reviewing Ciotti's credentials, asked if she could discuss a possible medical malpractice issue. Having Ciotti's permission, this witness stated that her husband, age 43, passed away recently. She said that Respondent, a psychiatrist, acted as PATIENT #14's primary care provider and failed to accurately monitor and manage his hypertension. She later filed a written complaint with the Board of Medical Practice alleging that Respondent failed to follow and treat PATIENT #14's hypertension, resulting in his premature death. She stated that according to her husband, Respondent told PATIENT #14 that if he had back pain he could be prescribed Methadone and asked "you have back pain, don't you?" The medical record indicates that PATIENT #14 was prescribed Methadone in January of 2009 for chronic pain, but that he did not care for it and returned the unused Methadone

tablets to Respondent for destruction. The medical record shows that Respondent changed PATIENT #14's diagnosis to "mood disorder secondary to chronic pain." The chart documents Respondent's justification for prescribing Methadone in a single sentence: "pt has chronic pain secondary to previous diagnosis." In her complaint to the Medical Practice Board, the complainant states that her husband did not suffer from chronic pain.

During the period that Respondent treated PATIENT #14, Respondent wrote a single prescription for Methadone that is unsupported by documentation to the medical record.

The medical record documents PATIENT #14's twenty-six encounters with Respondent from January of 2008 through January 2010, when he passed away. Of the 26 office visits to Respondent between March 2009 and November 2009, PATIENT #14 has 12 documented entries with no physical examination and no vital signs noted. One entry, dated October 16, 2009 states "will obtain BP/P next visit." There were no blood pressures taken for half the encounters documented despite the fact that PATIENT #14 was diagnosed as hypertensive and was being treated with Ritalin, Lopressor and HCTZ.

COUNT 40

Contrary to Vermont law, 26 V.S.A. §1354 (31)(b)(1)(2) Respondent performed unsafe or unacceptable patient care; and/or failed to conform to the essential standards of acceptable and prevailing practice. Respondent's prescribing of Methadone for Patient #14 was unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing practice. The law defines unprofessional conduct as the "failure to conform to the essential standards of acceptable and prevailing practice." The

Respondent treated Patient #14 for "chronic pain" which is not substantiated in the medical record. 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 41

Contrary to Vermont law, 26 V.S.A. §1354 (22) Respondent failed exercise on repeated occasions, that 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, whether or not actual injury to a patient occurred. Respondent prescribed Methadone for the treatment of chronic pain without a physical examination or diagnostic study to confirm Patient #14's complaint of "chronic pain."

COUNT 42

Contrary to Vermont law, 26 V.S.A. §1354 (22) Respondent failed to exercise on repeated occasions that 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, whether or not actual injury to a patient occurred. Respondent failed to meet the standard of care in regard to treatment of hypertension for PATIENT #14. Respondent's actions are unprofessional conduct as to PATIENT #14. 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 43

Contrary to Vermont law, 26 V.S.A. §1354 (8) Respondent did willfully create a false record for a prescription written for Methadone for PATIENT #14. Respondent created a false record by indicating on the face of a prescription "CHRONIC PAIN," when it was actually written for management of Patient #14's psychiatric symptoms or some other purpose known only to Respondent. The medical record for PATIENT #14 does not support a diagnosis of chronic pain. The prescription was willfully written to deceive the pharmacist as to the true purpose of the prescription, whatever that may have been. This willful filing of a "false report or record" is unprofessional conduct by Respondent. 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.

26. Paragraphs #1 through #25 above are incorporated herein by reference.

27. On December 23, 2009, Board Investigator Philip Ciotti began an investigation into Respondent's prescribing practices following a complaint filed with the Medical Practice Board. According to Ciotti: "I was advised by NEKHS that several of Respondent's patients, in the course of obtaining new providers, made certain disclosures" that NEKHS felt were "concerning." In the course of the investigation, Investigator Ciotti spoke with area pharmacists who all had glowing things to say regarding Respondent. It was disclosed that Respondent would personally deliver prescriptions to the pharmacy, that he would occasionally make co-pays for indigent patients and that he requested pharmacists and patients alike refer to him as "Louis."

On March 11, 2010 I met with Respondent at his office. He insisted I refer to him

as Louis instead of Dr. Frank. Respondent admitted that he did drop off prescriptions in person and occasionally pay a patient's medication co-pay. He also stated that he gave his personal contact telephone number to patients freely and that he is available "24/7." Near the conclusion of the interview Respondent disclosed to Ciotti that he is openly gay. Ciotti states in his Affidavit of September 27, 2010 that he did not understand the purpose of this disclosure and thought it was out of context to the discussion.

Physician boundary misconduct is behavior that exploits the physician-patient relationship by taking advantage of the vulnerable nature of that relationship. Psychiatrists in particular deal with a vulnerable patient population and should require more clearly defined boundaries than physicians in other specialties. Conduct that begins as a mere boundary impropriety can evolve into ingratiating conduct by the physician who may eventually seek a quid pro quo for his kindness. What becomes unprofessional conduct under Vermont law involves a course of conduct by the physician that may include gestures, expressions, suggestive comments, non-diagnostic/non-therapeutic touching, and inappropriate comments about or to the patient. It may also include financial components such as forgiveness of charges for medical service, paying a pharmacy bill, paying a patient's cab fare or providing employment opportunities. This is conduct that fails to conform to the essential standards of acceptable and prevailing practice and is unprofessional.

PATIENT #15

On July 15, 2010 Board Investigator Ciotti spoke with Respondent's PATIENT #15. PATIENT #15 returned Investigator Ciotti's telephone call. When Ciotti asked PATIENT #15 to tell him about his interactions with Dr. Frank, PATIENT #15 replied

that Respondent helped him when Medicaid “screwed-up” his medication. He went on to state that “Louis” was “a great guy” and he was glad he was in practice. When asked if Dr. Frank had ever provided him with cab fare, he said Dr. Frank paid his cab fare one time after he lost his driver’s license for nonpayment of child support. PATIENT #15 stated that he followed Dr. Frank to his new practice and was hired by Dr. Frank to put office numbers on the door of his new practice.

COUNT 44

Contrary to Vermont law 26 V.S.A. Section 1854(31)(b)(2), Respondent’s conduct toward PATIENT #15 does not conform to the essential standards of acceptable and prevailing practice. Respondent’s actions are unprofessional conduct as to PATIENT #15.

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 #16

On June 23, 2010 Board Investigator Ciotti spoke with PATIENT #16 by telephone. PATIENT #16 is a 41 year-old male who reported some things to NEKHS about Respondent that made him “uncomfortable.” According to PATIENT #16 he reported his experience with Respondent to Gail Middlebrook, Director of Outpatient Services at NEKHS, and requested that Respondent no longer act as his therapist.

Using notes of Gail Middlebrook, Ciotti asked PATIENT #16 if he could read the report and comment as to whether or not it was accurate. PATIENT #16 agreed. The alleged statements by Respondent as reported to Gail Middlebrook to PATIENT #16

were:

- a) "Off the clock we should have dinner or coffee."
- b) "You are a good looking guy and a beautiful human being."
- c) "If you keep giving me handshakes and hugs like that I won't need to charge you."
- d) "If you get bills in the mail just rip them up."
- e) While not able to cite exact words used by Respondent, PATIENT #16 said Respondent told him about a gay relationship in his past and that he said he "almost committed suicide."

In addition to the above statements reported to Gail Middlebrook, PATIENT #16

interjected with the following statements during the June 23, 2010 interview with

Investigator Ciotti.

- a) "I'm 41 years old. I look like a Dartmouth student. I'm a good looking guy and I know when I'm being hit on. I started to feel a vibe after the 5th or 6th visit."
- b) "Dr. Frank despises my wife. He met her only once and then he didn't want her to come to therapy anymore. He didn't want her around."
- c) "Dr. Frank told me that his last relationship was with a man and it didn't go well and he almost jumped off a roof. I thought 'how did he get into this profession?' I told him I had enough problems of my own and Dr. Frank told me 'everyone has problems.' I felt very uncomfortable about Dr. Frank telling me about his personal love life. I'm straight and always have been and this felt like he was hitting on me. At first when he complimented me it made me feel good. Like he was 'putting me on a pedestal.' But after he told me he was gay it really made me feel uncomfortable when he would compliment my looks and body."
- d) "Dr. Frank told me during a visit that we could be 'closer than just friends.' I told him he should be careful because I had a recorder in my pocket and he should be careful what he says. Dr. Frank said it was illegal. I said I was joking but didn't want him to be saying those kinds of things."
- e) "I think some of the things Dr. Frank said to me made my mental health issues worse because I think he was trying to 'change me.'"

COUNT 45

Contrary to Vermont Law 26 V.S.A. Section 1854(24), Respondent has violated 18

V.S.A. 1852(1) that right of patients to be treated with consideration and respect at all times

and under all circumstances with recognition of his or her personal dignity. Through inappropriate and non-therapeutic questions and comments, Respondent violated the rights of PATIENT #16. Respondent's actions toward PATIENT #16 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.

COUNT 46

Contrary to Vermont law 26 V.S.A. Section 1854(31)(b)(2), Respondent's conduct toward PATIENT #16 does not conform to the essential standards of acceptable and prevailing practice. Respondent's actions are unprofessional conduct as to PATIENT #16.

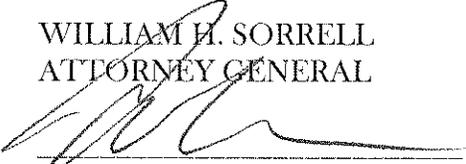
The Vermont Board of Medical Practice possesses authority to suspend or revoke the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

Dated at Montpelier, Vermont, this 17 day of February, 2011.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by:


TERRY LOVELACE
Assistant Attorney General