

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In Re: John R. Bookwalter, M.D.

Docket No. MPC 19-0209

Proposed Decision and Order

Procedural History

The State of Vermont has petitioned the Vermont Board of Medical Practice (“Board”), pursuant to 26 VSA §§ 1351-61, to find that John R. Bookwalter, M.D has engaged in unprofessional conduct and to take such disciplinary action as the Board considers appropriate. The State filed a sixty-seven count Specification of Charges on May 4, 2011 alleging Dr. Bookwalter (“Respondent”) had engaged in unprofessional conduct in violation of three provisions of 26 VSA § 1354 .

Hearing

A hearing committee (“Committee”), consisting of Margaret Funk Martin, Harvey S. Reich, M.D. and Michael Drew, M.D. conducted hearings in this matter on August 22 and September 14, 2011, pursuant to 3 VSA §§ 809-14 and 26 VSA § 1355, to consider whether the State could prove its allegations by a preponderance of the evidence as required under 26 VSA § 1354 (c). Respondent represented himself. Assistant Attorney General Terry Lovelace represented the State of Vermont. Atty. Robert V. Simpson, Jr. served as Presiding Officer.

The State called two witnesses - Phillip Ciotti, Board Investigator and Edward Saltzman, M.D. The State introduced ten exhibits, including patient records of twenty-five of Respondent’s patients. Respondent testified. He also called Thomas Bookwalter and Marilyn Bookwalter to testify on his behalf. Respondent introduced eight exhibits ranging from patient records to letters of support from his patients. The evidence was closed on September 14, 2011.

Respondent filed a nine-page document entitled “Response to Charges” on September 14, 2011. The State filed Proposed Findings of Fact, Conclusions of Law and Order on September 20, 2011.

The Committee deliberated on September 21, 2011 in Rutland, Vermont.

Summary of State’s Allegations

The first fifty-five counts (1-55) focus on Respondent’s treatment of twenty-five patients¹ for obesity. Respondent treated these patients with several drugs, including thyroid hormones, on a number of occasions in an effort to help them lose weight.

¹ Patients A-Y

Counts 1-25

The State contends Respondent improperly prescribed thyroid hormones in his weight-loss treatment of all twenty-five patients. That is, it alleges that Respondent engaged in unprofessional conduct by performing “unsafe or unacceptable patient care” in violation of 26 V.S.A. § 1354 (b) (1) (performing unsafe patient care) “and/or” failing to conform to “the essential standards of acceptable and prevailing practice” in violation of 26 V.S.A. § 1354 (b) (2) (violating essential standards of practice) with respect to each of these twenty-five patients.

Counts 26-42

The State alleges further that Respondent engaged in unprofessional conduct in office encounters with seventeen² of these twenty-five patients by failing to “take or record vital signs.” That is, according to the State, Respondent failed to “use and exercise on repeated occasions, that degree of proficiency which is commonly exercised by the ordinary, careful and skillful, careful and prudent physician engaged in similar practice” under “similar conditions” in violation of 26 V.S.A. § 1354 (a) (22) (violating the standard of care).

Counts 43-55

In these counts, the State charges that Respondent engaged in unprofessional conduct by failing to order laboratory tests for twelve patients³ for whom he had prescribed thyroid hormones. The State maintains that Respondent should have ordered laboratory tests to determine thyroid hormone levels of these patients and that this, in turn was necessary to insure that the thyroid hormones prescribed by Respondent were not endangering the health of the patient. Once again the State contends Respondent failed to “use and exercise on repeated occasions, that degree of proficiency which is commonly exercised by the ordinary, careful and skillful, careful and prudent physician engaged in similar practice” under “similar conditions” in violation of 26 V.S.A. § 1354 (a) (22) (violating the standard of care).

Counts 56-67

These counts focus on two of Respondent’s immediate family members – F1 and F2. Counts 56-61 allege Respondent engaged in unprofessional conduct by prescribing DEA Schedule IV drugs to immediate family members in violation of Board Rule 4.3 and 26 V.S.A. § 1398 . Counts 62-67 claim that Respondent engaged in unprofessional conduct by “willfully” failing to document the fact that he had prescribed Schedule IV drugs (counts 56-61) in patient medical records as required by law in violation of 26 V.S.A. § 1354 (a) (9).

² Patients: A, C, H, I, J, K, L, M, N, O, P, Q, S, T, U, V and Y.

³ Patients: C, E, H, I, J, K, O, S, T, U, V and Y.

State's Proposed Sanction

The State asks that the Board act "without delay" and revoke Respondent's license to practice medicine with leave to reapply after seven years. State's Findings of Fact and Conclusions of Fact and Law (F&C), pp. 30-31

Summary of Respondent's Reply to the State's Allegations

Respondent admits most of the State's factual allegations. However, in his "Response to Charges" (RC) filed on September 14, 2011, he argues that obesity is a national health problem and that conventional medical treatments have failed to address. Dr. Bookwalter believes he has helped many of his patients and although his practice is unconventional; it is not "unsafe."

Counts 1-25 – Although Dr. Bookwalter admits he prescribes the particular drugs the State alleges for obesity treatment, he argues that he does not engage in unsafe practice because he prescribes these drugs "carefully" and in "low doses." RC 3 He says he is guided by five principles in selection of drugs: (1) be effective in low doses and stop a drug when it fails to be effective any longer; (2) have minimal adverse effects; (3) not be addictive; (4) be used in as short a period of time as possible and (5) be inexpensive as possible - for people in the obesity group, cost is a significant consideration.

Id

Respondent argues that while he *does* have clearly defined "essential standards" for his obesity practice, there are no essential standards for those engaged in conventional treatment of obesity. He says the hallmarks of his practice are: (1) extensive counseling and education of patients and (2) monitoring of prescribed medications to insure that they are working as intended and doing no harm. RC 4 He admits that the "thoroughness" of his record keeping has "fallen short of the mark" and that he is committed to improving this phase of his practice. *Id*.

Dr. Bookwalter does not commit to discontinuing his practice of prescribing thyroid hormones for obesity. Instead he intends to instigate a system of patient waivers, or "sign off forms," that are intended to explain: (1) the risk posed by each medication and (2) the reason the drug is being prescribed as a "temporary aid" to getting started in a "new eating program." RC 5

Counts 26-42 – Respondent says that "in retrospect I recognize that taking vital signs is a good idea" and that he has "incorporated routine vital signs for the people in the obesity group." RC 4

Counts 43-55 - Respondent points out that ordering laboratory tests is too costly for many of his obesity patients and does not commit to ordering lab tests even in situations where he is prescribing thyroid hormones. Respondent plans to explain the reason and the costs for tests and leave the final decision to the patient. Unless the patient decides otherwise, Respondent will only commit to ordering lab tests in situations where he can "honestly relate the lab test to a condition" that will be "reimbursed." RC 5

Counts 56-61 - Respondent says that he did not know that he could not prescribe DEA Schedule IV drugs for immediate family members. He says he has stopped doing it. RC 9

Counts 62-67 – He responds to these counts by claiming that his failure to document the Schedule IV prescriptions that he wrote for family members “was not willful; it was an error.”
Id

Recommended Findings of Fact and Conclusions of Law

After considering all evidence admitted at the hearing, the Committee recommends that the Board adopt the following Findings of Fact, Conclusions of Law and Order.

1. Dr. John R. Bookwalter, M. D. (Respondent) holds license #MPC 042-0004468, issued by the Vermont Board of Medical Practice on November 29, 1971.
2. Respondent practices medicine in Brattleboro, Vermont. His specialty is general surgery. He also performs gastric by-pass surgery for weight control and sees patients who are seeking to lose weight.

Board Investigator Philip Ciotti

3. Board Investigator Philip Ciotti testified that he received a call on February 10, 2009 from a pharmacy inspector for the New Hampshire Board of Pharmacy. The inspector told Ciotti about a complaint she received from a pharmacist in Laconia, NH concerning a Vermont M.D., John R. Bookwalter. She gave Ciotti the pharmacist’s name. Transcript, 8/22/11 (T) 11-12
4. Ciotti testified that he contacted the Laconia pharmacist that same day. The pharmacist said that three of Dr. Bookwalter’s patients were being prescribed Phentermine and they did not appear to be overweight. She described one of the patients as “wicked skinny.” She said although the three patients all have primary care physicians, they were driving 100 miles or more to be treated by Dr. Bookwalter. T 12-13
5. Ciotti went to Respondent’s office in Brattleboro on April 29, 2009 with a subpoena for “25 or 26 medical records” of patients identified through pharmacy profiles. T 20-21
6. Medical records for the 25 patients were redacted and reassigned an alphabet character. These 25 became patients “A” through “Y” as identified in State’s Exhibit 2. (Testimony of Respondent, T 22)

Dr. Edward Saltzman

7. Dr. Edward Saltzman testified on September 14, 2011 as an expert witness without objection from Respondent. Dr. Saltzman has been at Tufts University since 1992. He was Medical Director of the Tufts out-patient obesity program until 2009. He testified that at present his clinical work is limited to “in-patient treatment of nutrition issues.” He has provided lectures and training to physicians on the use of medication in the treatment of obesity. Transcript, September 14, 2011 (T2) 18-19
8. Dr. Saltzman began by reviewing the content of State’s Exhibits 10 which was admitted without objection from Respondent.

9. Exhibit 10 consisted, in part of package inserts for the drugs Synthroid and Armour Thyroid.

- The package insert for Synthroid says, in part:

“Synthroid Safety Facts” – “Important Safety Facts”

“Thyroid hormones, including SYNTHROID, should not be used either alone or in combination with other medicines for the treatment of obesity or weight loss. In patients with normal thyroid levels, doses of SYNTHROID within the typical range used for hormone replacement are not effective for weight loss. Larger doses may result in serious or even life-threatening effects, especially when used in combination with certain other drugs used to reduce appetite.” Exhibit 10 - 1

- The package inset for Armour Thyroid says, in part:

WARNINGS

Drugs with thyroid activity, alone or together with other therapeutic agents, have been use for the treatment of obesity. In euthyroid patients, doses with the range of daily hormonal requirements are ineffective for weight reduction. Larger doses may produce serious or even life-threatening manifestations of toxicity... Exhibit 10 p. 2

- **Laboratory Tests** - Treatment of patients with thyroid hormones requires the periodic assessment of thyroid status by means of appropriate laboratory tests besides full clinical evaluation. . . *Id*

10. Respondent testified in response that he felt that the warnings in the package inserts were largely a “legal document” designed to protect the drug company from legal liability. T2 36-37 He had testified earlier with regard to other package insert warnings that “. . . again, the package inserts are legal documents so that these guys are protecting them and putting the responsibility for misuse on me, which I accept.” T 46

11. Dr. Saltzman’s testified flatly : “ I do not believe that thyroid hormones used for the treatment of hypothyroidism or other thyroid conditions have a place in the treatment of obesity in that the standard of practice with drug treatment of obesity does not include thyroid hormones.” T2 28

12. He explained that one of the problems with “thyroid-induced weight loss” is that it can accelerate “loss of other tissues such as muscle” and “longer term” it can cause osteoporosis, impairment of heart “pump function” and/or loss of “lean mass” or “fat mass.” T2 33

13. With regard to the need for laboratory tests with prescribing thyroid hormones, Dr. Saltzman testified that regardless of the thyroid hormone prescribed, it is necessary to do laboratory testing to “assess thyroid status.” T2 34

14. Later, when Respondent raised the issue that the cost of laboratory tests for many patients was too high⁴, Dr. Saltzman testified that, nonetheless, testing should at least be done at least when there are “dose adjustments “and that ultimately, “I would not offer the treatment without lab tests.” T2 49, 61
15. Dr. Saltzman testified that he could “not think of any justification” for “not taking or recording vital signs “as a way of demonstrating that at least “the heart rate side effects aren’t being manifested.” T2 53

I. Counts 1-54

Patient A

16. The State alleged that Respondent in engaged in unprofessional conduct in his treatment of Patient A because he prescribed thyroid hormones for obesity treatment (Count 1 –failed to meet essential standards of practice) and failed to meet the standard of care met by competent physicians engaged in a similar practice under similar conditions because Respondent failed to take Patient A’s vital signs at office encounters (Count 26- failed to meet standard of care).
17. Respondent admitted that he had prescribed “thyroid” and that he had not taken vital signs for Patient A. T 41, 55-56
18. Dr. Saltzman testified that Respondent’s use of thyroid medications to treat obesity and Respondent’s failure to take vital signs each failed to meet the standard of care for drug treatment of obesity. T2 53

Conclusion of Fact and Law: The State met its burden of proof with respect to Counts 1 and 26.

Patient B

19. The State alleged that Respondent engaged in unprofessional conduct in his treatment of Patient B in that he prescribed Metformin for obesity treatment (Count 2 – failed to meet essential standards of practice)
20. Dr. Satlzman testified that Respondent’s treatment of Patient B did meet the standard of care because Respondent was aware of the patient’s height and weight when he prescribed Metformin. T2 65 – 68

Conclusion of Fact and Law - The State has not met its burden with respect to Count 2.

⁴ Cost of “thyroid panel” is between \$500 and \$1000. T2 p.35

Patient C

21. The State alleged that Respondent engaged in unprofessional conduct by: (1) prescribing Armour Thyroid for obesity treatment in Patient C (Count 3- failed to meet essential standards of practice); (2) failing to take vital signs (Count 27 – failed to meet standard of care) and (3) failing to order laboratory tests (Count 43 – failed to meet standard of care).
22. Respondent admitted that he had prescribed Armour Thyroid as well as Metformin, Phentermine, Topamax, cod liver oil, failed to order lab tests to monitor thyroid levels and had not taken vital signs. T 73, 75
23. Dr. Saltzman testified that Respondent's treatment of obesity patients, including patient C, with Armour Thyroid did not meet the essential standards of accepted practice and that his failure to take vital signs or order lab tests failed to meet the standard of care. T2 83

Conclusion of Fact and Law - The State met its burden on Counts 3, 27 and 43.

Patient D

24. The State alleged that Respondent engaged in unprofessional conduct by prescribing Armour Thyroid for treatment of obesity in Patient D (Count4 –failed to meet the essential standards of practice).
25. Respondent admitted prescribing Armour Thyroid for patient D. T 93
26. Dr. Saltzman testified that Respondent's use of Armour Thyroid in treating Patient D failed to meet the standard of care. T2 85

Conclusion of Fact and Law – The State met its burden on Count 4.

Patient E

27. The State alleged that Respondent engaged in unprofessional conduct by prescribing Armour Thyroid for treatment of obesity in Patient E (Count 5 - failure to meet essential standards) and by failing to order laboratory tests (Count 44 – failed to meet standard of care).
28. Respondent admitted prescribing Armour Thyroid for obesity treatment. T 105
29. Dr. Saltzman testified after reviewing Patient E's treatment records that Respondent's treatment of Respondent was "improper" in that he prescribed Armour Thyroid for the treatment of obesity, failed to take vital signs and failed to order lab testing. T2 87-88

Conclusions of Fact and Law – The State met its burden on Counts 5 and 44.

Patient F

30. The State alleged that Respondent engaged in unprofessional conduct by prescribing "thyroid" for obesity treatment of Patient F (Count 6 - failure to meet essential standards).

31. Respondent admitted prescribing Armour Thyroid for Patient F's obesity treatment. T 119
32. Dr. Saltzman testified that Respondent's use of Armour Thyroid for Patient F's obesity treatment was not "proper." T2 89-90

Conclusions of Fact and Law – The State met its burden on Count 6.

Patient G

33. The State alleged that Respondent engaged in unprofessional conduct by prescribing Armour Thyroid for obesity treatment of Patient G (Count 7 –failed to meet essential standards).
34. Respondent admitted that he prescribed Armour Thyroid for obesity treatment of Patient G. T 124
35. Dr. Saltzman testified that Respondent's use of Armour Thyroid for obesity treatment of Patient G failed to meet the essentials standards of acceptable and prevailing practice. T2 96-97

Conclusions of Fact and Law - The State met its burden on Count 7.

Patient H

36. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient H by: (1) prescribing Armour Thyroid for obesity treatment (Count 8- failed to meet essential standards of practice); (2) failing to take vital signs (Count 28 – failed to meet standard of care) and (3) failing to order laboratory tests (Count 45 – failed to meet standard of care).
37. Respondent admitted that he prescribed Armour Thyroid for the obesity treatment of Patient H and that he failed to take vital signs or order laboratory tests. T 127-28
38. Dr. Saltzman testified that the "standard of care was not met" because Respondent prescribed Armour Thyroid for the obesity treatment of Patient H, failed to take vital signs and failed to order "thyroid function tests." T2 99-101

Conclusions of Fact and Law-The State met its burden on Counts 8, 28 and 45.

Patient I

39. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient I by: (1) prescribing Armour Thyroid for obesity treatment (Count 9- failed to meet essential standards of practice); (2) failing to take vital signs (Count 29 – failed to meet standard of care) and (3) failing to order laboratory tests (Count 46 – failed to meet standard of care).
40. Respondent admitted that he prescribed Armour Thyroid for obesity treatment of Patient I and that he failed to take vital signs and order laboratory tests. T 129

41. Dr. Saltzman testified that Respondent failed to meet the “standard of practice” in his treatment of Patient I because he prescribed Armour Thyroid for obesity treatment, failed to take vital signs and failed to order lab tests. T2 103-04

Conclusions of Fact and Law- The State met its burden on Counts 9, 29 and 46.

Patient J

42. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient J by: (1) prescribing Armour Thyroid for obesity treatment (Count 10- failed to meet essential standards of practice); (2) failing to take vital signs (Count 30 – failed to meet standard of care) and (3) failing to order laboratory tests (Count 47 – failed to meet standard of care).
43. Respondent admitted that he prescribed Armour Thyroid for obesity treatment of Patient J and that he had not ordered lab tests or taken vital signs. T 133-34
44. Dr. Saltzman testified that Respondent was “outside the standard of care” when he prescribed Armour Thyroid for obesity treatment of Patient J and that he was likewise “outside the standard of care” for failing to take vital signs or order lab tests. T2 106-07

Conclusions of Fact and Law– The State has met its burden on Counts 10, 30 and 47

Patient K

45. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient K by: (1) prescribing “thyroid” for obesity treatment (Count 11- failed to meet essential standards of practice); (2) failing to take vital signs (Count 31 – failed to meet standard of care) and (3) failing to order laboratory tests (Count 48 – failed to meet standard of care).
46. Respondent admitted that he had prescribed “thyroid” for obesity treatment of Patient K and that he did not order lab tests and that he “probably” did not take vital signs. T 139-40
47. Dr. Saltzman testified that Respondent had not met the standard of care in prescribing Armour Thyroid for the obesity treatment of Patient K and the fact that Respondent did not take vital signs or order lab tests “was not consistent with” the standard of care. T2 109-10

Conclusions of Fact and Law – The State met its burden on Counts 11, 31 and 48.

Patient L

48. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient L by: (1) prescribing Armour Thyroid for obesity treatment (Count 12- failed to meet essential standards of practice) and (2) failing to take vital signs (Count 32 – failed to meet standard of care).
49. Respondent admitted that he prescribed Armour Thyroid for obesity treatment of Patient L and that he failed to take vital signs. T 141

50. Dr. Saltzman testified that Respondent's failure to take vital signs of Patient L was not consistent with the standard of care. T2 11-12

Conclusions of Fact and Law - The State has met its burden on Counts 12 and 32.

Patient M

51. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient M by: (1) prescribing Phentermine and Metformin for obesity treatment (Count 13- failed to meet essential standards of practice) and (2) failing to take vital signs (Count 33 – failed to meet standard of care).
52. Respondent admitted that he prescribed Metformin and Phentermine for obesity treatment of Patient M and that he failed to take vital signs. T 141-43
53. Dr. Saltzman testified that Respondent had met the standard of care in prescribing the medications he did. But, he also testified that Respondent's failure to take vital signs of Patient M did not meet the standard of care. T2 113-14

Conclusions of Fact and Law – The State has not met its burden on Count 13. It has met its burden on Count 33.

Patient N

54. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient N by prescribing Armour Thyroid for obesity treatment (Count 14- failed to meet essential standards of practice) and (2) failure to take vital signs (Count 34 –failure to meet standard of care).
55. Respondent admitted that he had prescribed Armour Thyroid for obesity treatment of Patient N and that he failed to take vital signs. T 142-43
56. Dr. Saltzman testified that Respondent did not meet the standard of care when he prescribed Armour Thyroid for obesity treatment of Patient N and when he failed to take vital signs. T2 115-16

Conclusions of Fact and Law - The State met its burden on Count 14 and Count 34.

Patient O

57. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient O by: (1) prescribing Armour Thyroid for obesity treatment (Count 15- failed to meet essential standards of practice); (2) failing to take vital signs (Count 35 – failed to meet standard of care) and (3) failing to order laboratory tests (Count 49 – failed to meet standard of care).

58. Respondent admitted that he had not taken vital signs for Patient O and failed to order lab tests specific to thyroid. Another physician had ordered tests and they were within normal range. T145-46
59. Dr. Saltzman testified that Respondent had prescribed Armour Thyroid for Patient O and that Respondent had been “outside the standard of care” in doing so. He also testified that Respondent was outside the standard of care both for failing to take vital signs and failing to order lab tests specific to thyroid. T2 117-18

Conclusions of Fact and Law – The State met its burden on Counts 15, 35 and 49.

Patient P

60. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient P by: (1) prescribing Phentermine for obesity treatment (Count 16- failed to meet essential standards of practice) and (2) failing to take vital signs (Count 36 – failed to meet standard of care).
61. Respondent admitted prescribing Phentermine for obesity treatment of Patient P and that he failed to take vital signs. T 147
62. Dr. Salzman testified that Respondent met the standard of care for treatment of obesity in prescribing Phentermine. But, he also said that Respondent was “outside the standard of practice” when he failed to take vital signs. T2 119-20

Conclusions of Fact and Law – The State failed to meet its burden on Count 16. It met its burden on Count 36.

Patient Q

63. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient Q by: (1) prescribing Armour Thyroid for obesity treatment (Count 17- failed to meet essential standards of practice) and (2) failing to take vital signs (Count 37 – failed to meet standard of care).
64. Respondent admitted that he did not take Patient Q’s vital signs. T 148
65. Dr. Salzman testified, after reviewing Patient Q’s medical records, that Respondent acted “outside the standard of practice” in prescribing Armour Thyroid for obesity treatment and in failing to take vital signs. T2 121-22

Conclusions of Fact and Law – The State met its burden on Counts 17 and 37.

Patient R

66. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient R by prescribing Phentermine for obesity treatment (Count 18- failed to meet essential standards of practice).
67. Respondent admitted prescribing Phentermine for obesity treatment of Patient R. T 149

68. Dr. Saltzman testified that Respondent met the standard of care in prescribing Phentermine for obesity treatment of Patient R. T2 128-29

Conclusions of Fact and Law – The State did not meet its burden on Count 18.

Patient S

69. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient S by: (1) prescribing Armour Thyroid for obesity treatment (Count 19- failed to meet essential standards of practice); (2) failing to take vital signs (Count 38 – failed to meet standard of care) and (3) failing to order laboratory tests (Count 50 – failed to meet standard of care).
70. Respondent admitted that he prescribed Armour Thyroid for the obesity treatment of Patient S and that he failed to take vital signs and order lab testing. T 149-50
71. Dr. Saltzman testified that Respondent did not meet the essential standards of acceptable and prevailing practice because Respondent prescribed weight loss medication for a patient with a Body Mass Index (BMI) under 30. He also testified that Respondent failed to meet the standard of care because he failed to take vital signs or order lab tests. T2 129-30

Conclusions of Fact and Law - The State met its burden on Counts 19, 38 and 50.

Patient T

72. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient T by: (1) prescribing Armour Thyroid for obesity treatment (Count 20- failed to meet essential standards of practice); (2) failing to take vital signs (Count 39 – failed to meet standard of care) and (3) failing to order laboratory tests (Count 51 – failed to meet standard of care).
73. Respondent admitted that he prescribed Armour Thyroid for obesity treatment of Patient T and that he failed to take her vital signs or order lab tests. T 150-51
74. Dr. Saltzman testified that Respondent ‘s treatment of Patient T fell “outside the standard of practice” because he prescribed Armour Thyroid for obesity treatment and that his failure to take vital signs and order lab tests also fell outside the standard of care. T2 132-33

Conclusions of Fact and Law - The State met its burden on Counts 20, 39 and 51.

Patient U

75. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient U by: (1) prescribing thyroid hormones for obesity treatment (Count 21 failed to meet essential standards of practice); (2) failing to take vital signs (Count 40 – failed to meet standard of care) and (3) failing to order laboratory tests (Count 52 – failed to meet standard of care).

76. Respondent admitted that he prescribed “thyroid” for obesity treatment of Patient U and that he failed to take her vital signs or order lab tests. T 151-53
77. Dr. Saltzman testified that Respondent’s treatment of Patient U fell “outside the standard of practice” because Respondent prescribed thyroid hormones for treatment of obesity, failed to order lab tests and failed to take vital signs. T2 134-36

Conclusions of Fact and Law - The State met its burden on Counts 21, 40 and 52.

Patient V

78. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient V by: (1) prescribing Armour Thyroid for obesity treatment (Count 22 failed to meet essential standards of practice); (2) failing to take vital signs (Count 41 – failed to meet standard of care) and (3) failing to order laboratory tests (Count 53 – failed to meet standard of care).
79. Respondent admitted that he had prescribed Armour Thyroid for the obesity treatment of Patient V and that he failed to take her vital signs or order lab tests. T 154
80. Dr. Saltzman testified that Respondent’s treatment of Patient V fell “outside the standard of care” because he prescribed Armour Thyroid for obesity treatment, failed to take vital signs or order lab tests. T2 138-40

Conclusions of Fact and Law - The State met its burden on Counts 22, 41 and 53.

Patient W

81. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient W by prescribing Armour Thyroid for obesity treatment (Count 23 failed to meet essential standards of practice).
82. Respondent admitted that he prescribed Armour Thyroid for the obesity treatment of Patient W. T 154-55
83. Dr. Saltzman testified that Respondent’s treatment of Patient W fell “outside the scope of the standard of practice” because Respondent prescribed Armour Thyroid for the treatment of obesity. T2 143

Conclusions of Fact and Law - The State met its burden on Count 23.

Patient X

84. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient X by prescribing Armour Thyroid for obesity treatment (Count 24 failed to meet essential standards of practice).
85. Respondent admitted that he prescribed Armour Thyroid for the obesity treatment of Patient X. T 155

86. Dr. Saltzman testified that Respondent's treatment of Patient X fell outside the scope of acceptable practice because Respondent prescribed Armour Thyroid for the treatment of obesity. T2 145-46

Conclusions of Fact and Law - The State met its burden on Count 24.

Patient Y

87. The State alleged that Respondent engaged in unprofessional conduct in the treatment of Patient Y by: (1) prescribing Armour Thyroid for obesity treatment (Count 25 failed to meet essential standards of practice); (2) failing to take vital signs (Count 42 – failed to meet standard of care) and (3) failing to order laboratory tests (Count 54 – failed to meet standard of care).
88. Respondent admitted that he had prescribed Armour Thyroid for the obesity treatment of Patient Y and that he failed to take lab studies or order lab tests. T 156
89. Dr. Saltzman testified that Respondent's treatment of Patient Y fell "outside the scope of usual practice" because he prescribed Armour Thyroid for obesity treatment, failed to take vital signs or order lab tests. T2 147-48

Conclusions of Fact and Law - The State met its burden on Counts 25, 42 and 54.

II. Counts 56-67

Counts 56-61 allege⁵ that Respondent violated Board Rule 4.3 by prescribing Schedule IV drugs for immediate family members (F1 and F2). In Counts 62-67 the State alleged that Respondent had willfully failed to record that he had written the prescriptions cited in Counts 56-61 in patient records as he was required to do under the law. The State charged this was a violation of 26 V.S.A. § 1354 (a) (9).

Violations of Board Rule 4.3- Prescriptions for Immediate Family Members

90. Count 56 - The State met its burden on this count because Respondent admitted that he prescribed Phentermine, a Schedule IV drug, for F1 on June 3, 2006. T 169
91. Count 57 – The State has met its burden on this count because Respondent admitted that he prescribed Ambien, a Schedule IV drug, for F2 on February 25, 2006. T168
92. Count 58 – The State has met its burden on this count because Respondent admitted that he prescribed Diazepam, a Schedule IV drug, for F2 on February 25, 2006. T 170
93. Count 59 – The State has met its burden on this count because Respondent admitted that he prescribed Lunesta, a Schedule IV drug, for F2 on September 19, 2006. T 169

⁵ The State presented no evidence on "Count 55."

94. Count 60 – The State has met its burden on this count because Respondent admitted that he prescribed Ambien, a Schedule IV drug, for F2 on September 19, 2006. T 168
95. Count 61 – The State has not met its burden on this count because the prescription allegedly written for F2 on November 20, 2006 was for Rozerem which is not a Schedule IV drug.

Violations of 26 V.S.A. § 1354 (a) (9) - Failure to Record Prescriptions As Required By Law

The State did not meet its burden of proof on counts 62-67. The Committee found that although Respondent admitted that he had not included the fact that he had prescribed the drugs identified in Counts 56-61 in any medical record, the State did not prove that Respondent had “willfully” failed to make such a record as “required by law.”⁶

Board Review and Order

The Hearing Committee (Committee) assigned by the Vermont Board of Medical Practice (Board) conducted hearings in this matter on August 22 and September 14, 2011. The Committee submitted its Proposed Findings, Conclusions and Order to the full Board on September 29, 2011. The Committee’s proposals were sent to Dr. Bookwalter the same day.

The Board held a hearing to consider the Committee’s recommendations as provided in 26 VSA § 1355 (b) on October 5, 2011 in Randolph, Vermont.

The State was represented by Assistant Attorney General Susanne Young. Dr. Bookwalter represented himself.

The focus of the hearing was the Committee recommendation that the Board limit Dr. Bookwalter’s medical license to the practice of his specialty, general surgery, and order him to close his obesity treatment practice within 30 days.

Dr. Bookwalter asked the Board⁷ to allow him to continue to treat patients for obesity. He insisted that his practice is safe and that he is serving patients that other physicians have ignored. He said that he would address the Committee’s primary objection by agreeing to “not prescribe thyroid medication as an adjunct to obesity treatment until such treatment is justified by independent peer review studies.”

The State urged the Board to accept the Committee’s recommendations without amendment.

The Board deliberated for approximately twenty minutes. It then voted unanimously in public session to issue the following Order⁸ after adopting the “Findings and Conclusions” (above) proposed by the Committee.

⁶ The State also failed to prove Count 67 because Rozerem is not a Schedule IV drug.

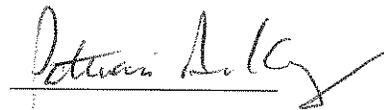
⁷ The Committee assigned to investigate the charges against Dr. Bookwalter was not present for the hearing. It did not take part in the Board’s deliberations or vote.

⁸ The Board’s Order adopted the language of the Committee’s proposed order with one exception. It dropped the word “acute” from section 1 (a) in the proposed order.

Order

1. Dr. Bookwalter's Vermont State medical license is amended to limit his practice to his specialty, general surgery, and is specifically conditioned on his compliance with the following requirements:
 - (a) Dr. Bookwalter's practice is limited to evaluation, treatment and follow-up for general surgical conditions;
 - (b) Dr. Bookwalter is specifically prohibited from providing non-operative services other than those directly related to post-surgical complications resulting from surgical procedures performed by Dr. Bookwalter, the surgeon he assisted or is providing coverage for;
 - (c) Dr. Bookwalter shall end his obesity treatment practice within 30 days of receipt of this Order;
 - (d) Dr. Bookwalter shall not engage in and shall end any and all aspects of his practice not delineated in 1 (a) above, within 30 days of receipt of this Order.
 - (e) Dr. Bookwalter is required to keep specific, detailed medical records, including subjective, objective, assessment and plans, for each of his patients and to make these records available to the Board or its designee(s) at any time from the date of this Order forward;
 - (f) Dr. Bookwalter shall not prescribe medication for himself, or his immediate family.

2. If the Board determines at any time that Respondent has not complied with any of the conditions set out in 1 (a-f) above, the Board may immediately initiate proceedings to suspend and revoke Dr. Bookwalter's medical license.



Patricia King, M. D., PHD
Chair

Signed Date: October 10, 2011
Effective Date: October 5, 2011