

**STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE**

In re: Louis J. Frank, M.D.,	)	
	)	Docket No. MPC 135-1209
Vermont Medical License	)	
Number: 042-0006770	)	and MPC 44-0410

**SECOND 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

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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, #3 and #17.

### **PATIENT #9**

7. Paragraphs #1 through #6 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 (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 (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 exam<sup>1</sup> 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 (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 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 (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 Services<sup>2</sup>, ultimately leading to his resignation or dismissal.

COUNT 19

Contrary to Vermont law, 26 V.S.A. §1354 (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 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 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

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05609 <sup>2</sup> On or near December 30, 2009, a confrontation occurred between Dr. Frank and NEKHS Medical Director Dr.

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.

#### 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

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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.

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 (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 (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 (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.

#### 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 (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 (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."

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 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

28. Paragraphs #1 through #27 above are incorporated by reference herein.

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.

29. Paragraphs #1 through #28 above are incorporated by reference herein.

#### COUNT 44

Contrary to Vermont law 26 V.S.A. Section 1854 (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.

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 5<sup>th</sup> or 6<sup>th</sup> 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.'"

30. Paragraphs #1 through #29 above are incorporated by reference herein.

#### 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 (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.

31. Paragraphs #1 through #30 above are incorporated by reference herein.

#### PATIENT #17

PATIENT #17 is a patient of Respondents currently incarcerated at the Northeast Regional Correctional Facility in St. Johnsbury for want of bail in a domestic assault and sexual battery case. Deputy States Attorney Ben Luna contacted Investigator Ciotti and Assistant Attorney General Terry Lovelace on or about March 3, 2011, with a new matter regarding Respondent and alleged boundary violations with an inmate/patient.

It is the practice of correctional facilities to record all inmate calls. Inmates cannot receive telephone calls from outside of the facility, but they are allowed to make collect telephone calls at certain times.

According to Luna, Detective Jennifer McGarvin of the St. Johnsbury Police suspected that PATIENT #17 might be attempting to contact the victim in his pending criminal case. Detective McGarvin's concern was that PATIENT #17 may contact the victim and attempt to dissuade her from testifying against him. She listened to the recorded conversation of PATIENT #17's calls and discovered that many of those call were made by PATIENT #17 to Respondent. Detective McGarvin recognized Respondent's name from articles in the Caledonian Record in December 2010. She believed these calls from an inmate's psychiatrist were non-therapeutic in nature and not protected by the doctor/patient privilege. She also thought the calls could be evidence of criminal activity. She made a

report to Deputy States Attorney Luna. Luna then contacted the Medical Board. Through prescription records Board Investigator Ciotti verified an established doctor/patient relationship between Respondent and PATIENT #17. Respondent treated PATIENT #17 for opiate addiction with Suboxone, Ritalin and other drugs.

Below is a partial transcript of what Detective McGarvin heard in the recorded telephone conversations:

11/15/2010	Respondent offers to get PATIENT #17 released into his custody.
11/19/2010	Respondent discusses PATIENT #17's request that Respondent obtain a loan to post bail, but says "I would, but I don't have that kind of money."
11/21/2010	Respondent says "I sent you \$40 last night" and "I'm going to do whatever I can for you and fuck anybody who doesn't like it." They discuss PATIENT #17 moving in with Respondent.
11/22/2010	Respondent and PATIENT #17 discuss release into Respondent's custody.
12/09/2010	PATIENT #17 asks "can you send me a few bucks?" Respondent states "I know four guys sitting in jail because some bitch lied to them ... that's why I'm telling you that women are not the answer" and "I want to send you some money ... keep the money for yourself."
12/12/2010	PATIENT #17 and Respondent discuss money and cost of accepting collect calls.
12/16/2010	Respondent says he's putting money into PATIENT #17's account.
12/22/2010	Respondent complains about article in the Caledonian Record. PATIENT #17 says "If you're hitting on people ..." Respondent replies

“listen, you’ve got first choice you know that; you’ve always had first choice.”

12/29/2010 PATIENT #17 asks and Respondent agrees to send money.

12/30/2010 Respondent tells PATIENT #17 “listen honey you’re bankrupting me calling me collect every night.”

01/09/2011 Respondent advises PATIENT #17 to not accept a plea deal.

COUNT 47

Psychiatrists are held to a higher ethical standard because they treat a vulnerable population. Once a doctor/patient relationship is established, boundaries are recognized to preserve the therapeutic nature of the relationship. Depositing money into PATIENT #17’s account, accepting collect calls, advising PATIENT #17 on legal matters and engaging in provocative or romantic conversations establishing a relationship with a patient are all prohibited boundary violations. The American Psychiatric Association has established boundary rules for psychiatrist. *See Principles of Medical Ethics with Annotation Especially Applicable to Psychiatry, Peter B. Gruenberg, M.D. (2010) available on the American Psychiatric Association’s (APA) website.*

Contrary to Vermont law 26 V.S.A. Section 1854 (b)(2), Respondent’s conduct toward PATIENT #17 as described above does not conform to the essential standards of acceptable and prevailing practice. Respondent took actions that exceeded the bounds of an established doctor/patient relationship. Respondent’s actions are unprofessional conduct as to PATIENT #17.

The Vermont Board of Medical Practice possesses authority to suspend or revoke

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

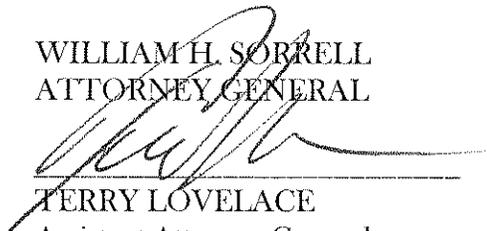
WHEREFORE, Petitioner, the State of Vermont, brings its Specification of Charges under 26 V.S.A. §1356, alleging unprofessional conduct by Respondent, and moves the Board of Medical Practice and its Secretary to set this matter for a contested hearing as provided for in 26 V.S.A. §1357. Allegations contained in Petitioner's Second Amended Specification of Charges are brought under Medical Practice Board Rules and/or 26 V.S.A. §§ 1354 –1361 and/or § 1398. Petitioner seeks a contested hearing, findings of fact, conclusions and order to take such disciplinary action available under 26 V.S.A. §1361, as the board determines is proper and as warranted by the facts as to the medical license of Respondent, Louis J. Frank, M.D.

Dated at Montpelier, Vermont, this 4<sup>th</sup> day of May, 2011.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

by:

  
TERRY LOVELACE  
Assistant Attorney General

Foregoing Charges Issued: Margaret Funk Makin  
Secretary, for the Board of Medical Practice

Signed and Dated at Randolph, Vermont this 4<sup>th</sup> day of May 2011.

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		with I'm down." Amanda/Brandie is listening. "If Brandie tells the truth about me not doing this, I'll be out sooner." NOTE AT THE BAIL HEARING LAFLEUR SAID AMANDA IS BRANDIE. IT'S PROBABLY PICKED UP ON THE COURT TAPE.	
Bobbie Sue (VCR)		4706_138; "I've been the one driving her everywhere." DW's office advised not to be taking her everywhere because looks bad in eyes of State's Attorneys office. Brandie was visiting me just before I got arrested. P17 - "I don't know why she recanted her statement." Brandie should be calling Suzie Carr to find out how to recant. BS - I was in the police station with her. P17 - "We've got the proof that I didn't do this." "We have tapes, emails, doctors . . . that she's a pathological liar." P17 "Tell Amanda I love her and that I miss the children." P17 - "I never put my hands on that woman in anger." "I only grabbed Melissa" BS - mentions "Junior" - Legare's son. P17 - Am I on speaker phone? BS - Amanda is sleeping in the bedroom . . . "stop! Stop!" P17 - wants to talk to Amanda. BS - puts P17 on speaker phone so "Amanda" can hear.	3
Bobbie Sue		6046_138; P17 - am I on speaker? P17 - Just got to help Brandie. I love her. P17 - play on Brandie and Amanda. "I can't believe she would do something like this to me." "Amanda" get on the phone and P17 speaks to her. 11:50; A/BL - told her "charge me with" - Evidence she was talking to Brandie.	4
Bobbie Sue		7824_103: "How's Amanda and the young ones?" BS corrects herself with an "I" "we" statement. 1:50 "I'm glad you've got Amanda there." .30 - "She's afraid of me leaving her." "Tell Amanda I love her."	2
Bobbie Sue		5404-118; P17 - Is Amanda up yet? Go get her so I can talk to her. Wants to get Amanda on visiting list. Kids pissing on toilet. Talking to Amanda, I do lover her (Brandie); he's talking to Brandie pretending she's Amanda. P17 - I don't even swear at her or her kids. Call is roughly ten days after arrest. Taking his pills. I sat here for three days before I got my pills (what are they?). Tineka says I cannot live with BL and children bc of violence. Violent tendencies re [REDACTED] "I was always the one being abused by Melissa."	4

Bobbie Sue	7107_138; 19:10 P17- "If she needs a little something; you know those other things you hooked her up with before. (BS is hooking BL up with drugs) You know the deal. Three a week. Has it been a week yet?" (P17, - asks to speak with Amanda. 6:00 she comes on. Voice is clearly Brandie P17's. "I hope Brandie has something real bad happen to her about this . . ."	4
Bobbi Sue	3761_118; saw BL the day P17 arrested; What happened with the restraining order?; is Amanda still there? Amanda smoking just outside BS car; P17 speaks with her (Brandie) 12:28 have you heard from your source that tells you about Brandie? Funny. Heard about hearing in a couple weeks. Ref future bail reduction hearing; hopes drop charges. "You don't even ask me about it; 15:55 Just throw me in jail. You just throw me in jail."	3
Bobbie Sue (VCR)	6289_103; at pool. Amanda - she did go get a restraining order. Bobbie Sue going to talk to girl I put in my note. THE GAME. She got the note today. Talking about BS in third person. Think he's talking to Brandie/Amanda. Wrote you and BS a letter. Staying there? BS received letter. Amanda - 7:28; I'm getting really pissed off; you can't be trusted.	
Bobbie Sue (Key slip up by Bobbie Sue) (VCR)	0587_138; "Brandie said you hung up on her." That's what I meant to say Amanda said you hung up on her. 6:32 - I know if you did it you'd admit to it; I wouldn't admit it to the state. 12:14 - Talking to "Amanda" again. Fuck Brandie.	5
Bobbie Sue	8922_103; Copy of restraining order on Dave . 2:45 talking to BS and Amanda. 7:20 - Dave aint hurt Amanda (slip up again). Why would Dave hurt Amanda?	4
Bobbie Sue	2452_118; 15:35 - calls are getting to Amanda; take it easy on her.	3
Amanda/Brandie - entire call with Legare (VCR)	4217_138; Amanda "I talked to Brandie" P17, did you talk to her source? Amanda - refers to smoking cigarette; 6:00; somebody is supposed to get money to Amanda. You got everything you need? Ciggs. 44 - P17: "I'm the victim."	4
Bobbie Sue (VCR)	7130_118; Refs re Amanda. BS refers to meeting covertly. 11:03 - Amanda: Days work stacking sodas.	

Mother?	9224-118:	1
Brandy/Amanda (VCR x 2) (subpoena the letter(s))?	8274_118 P17 - "I wrote you a letter." - BL is very upset about this - "just be nice to her - pretend?" Brandie caught a glimpse of a letter LaFleur had written to BS that said this. P17 - "I love you and want to be with you the rest of my life." 10:15 - P17 suggests we may want to marry Brandie/Amanda. 14:00 but they're going to read it. 15:25 - Brandie - "I just really hope you're not pretending."	4
Brandie/Amanda (VCR x 2)	9561_118; P17 - "I wrote you a letter that has all my feelings in it"; 7:10 - "Yes, I've had anger problems in the past, but that's because I was on heavy, heavy drugs."	4
Brandie/Amanda (VCR)	5717_118; 4:32 - P17 identifies tattoos on BL - "You have one on your back, right?" BL - "One on my leg; I have two on my back." P17 - the truth will come out in the end; it always does. (Use this at trial) 8:00 "I really did know if Brandie ever cheated on me but I heard it from other people"; 15:45 BL - "I got your letter today";	5
Brandie/Amanda (VCR)	5582_138; P17 - lying to Brandie about phones; 3:15 "if you need a couple of them other things tell her (Brandie's mother); BL that's a fucking story; there's only one left; 20 got taken; someone came in our house; she gave me those and that's it. I'm not allowed to see anything; (MISSING PILLS); 7:00 - do little little like quarter; BL - I don't want to get you all amped up. 7:00 BL - I have to prove to you that I love you; BL - discussing her trying to lose weight. 9:30 - BL says she could walk to the courthouse for P17's arraignment. This cuts against all the argument that Bobbi Sue needed to give her rides to recant her statement. Discussing his arraignment shortly thereafter;	4
Bobbie Sue; Travis - disclose as witness for his role in finding and destroying letters.	5278_138; What's the deal with my medicine? Robbed? You should know by who. Two days ago; it was in my lock box; both bottles of my medicine; stuff that was in my lunch box; that gone too? Yep. Money in the lock box. Obviously she stole it. BS - Every letter he (P17) wrote to Bobbie Sue is now missing. I told Travis to get rid of the letters. Get them letters back. She can keep everything else. There were 20 - 30 pills. Other bottle still in there. 6:13 - somebody would have taken both of them cuz they're both pretty much narcotics: riddilin and suboxone; 6:55 - I don't need that shit anyways; but, when I get out I'll just have to get a new	5

			prescription from the doc; but; that's not good; 7:05 – fuck her (Brandie); so much for how much he loves her, eh!?! Get them letters. 8:00 before they leave the house; everything searched; I want them letters back; I don't care about anything else; I want them letters back; once you get them destroy em; those letters cannot leave that house; they can't. I don't want anyone else having them. Travis – yea we'll take care of it (collect and destroy the letters); “she can keep the pills” – ILLEGAL DISTRIBUTION. Other suspect – Travis's dad? <b>15:00 “Brandie didn't know”</b> ; BL - we took the boys and Amands to the gym. NAMES? BS 16:00 your very last one I still have. P17, – how many did I write you? 3? BS – yea I still have those. P17 – when I write destroy those or get rid of them, get rid of it.	
Brandie/Amanda (VCR)			6467_138; missing letters and pills; they know it was you; there going to go through all you shit before you leave; 4:32 I want to spend the rest of my life with you. 6:40 BS “Your sister gave me a total of three (pills) since I've been here; I have one left”; 7:45 – BL – I just want to go home. (Where they holding her?) Falsely accusing her just like his claims for cheating.	5
Bobbie Sue / Amanda (VCR)			7113_138; tomorrow's Monday and that's when your public defender comes back (What day did Doug return?); 5:15 How big is this lock box? “ <b>small lock box</b> with key that opens it. Not hid too well. Key like right next to it; on top shelf next to some stuff. Never leave the key with the lock box. 9:10 Amanda/Brandie -	2
Bobbie Sue / (VCR) Amanda			2294_138; BS - And she didn't take the <b>letters</b> because I just found them; tell her I love her and miss her (Amanda/Brandie); 4:45 – she didn't steal the pills, the pot . . . don't say those words; you found those other things; found them in my closet; stashed them somewhere else; do you miss him? – she/BL was there in this convo. She said she does love you; <b>12:43 – can hear BL voice</b> ; 14:39 BL on phone	2
Louis Frank	10/24/10		3883_138; discussing letters mailed to each other;	1
Bobbie Sue	10/24/10		9957_138; short call.	1
Amanda/Brandie (VCR)	10/24/10		0004_138; back door cracked open; <b>BS - “What Brandie, if I don't give you any money; are you going to change you story?”</b> (goes to issue of motive to recant) P17 – think about what you say! “I haven't had anything since your brother's been gone.” 15:39 BL “I've been running around, making sure everything's gotten fixed;	5

Bobbie Sue	10/24/10	2145 138; "Gave letters to Travis to read"	2
Bobbie Sue	10/25/10	1251_118; Discussing the contraband in the lunch box; "I could never prove it" – Brandie cheating on P17; I've never investigated in on it. Yet "She's untrustworthy."	1
Amanda/Brandie (VCR)	10/25/10	3225_103; BL – "I'm sick. My throat hurts; I think I caught Junior's cold." Direct link this is Brandie Legare.	5
Bobbie Sue	10/25/10	0373_138; P17 wants BS to call Louis Frank because he will no longer receive his suboxone.	1
Bobbie Sue	10/25/10	6707_118; P17 spoke with Dawn from prisoner rights foundation. Dr. Lewis to call her and let her know why he needs it.	1
Amanda/Brandie (VCR)	10/25/10	7870_118; - 7:00 no way they can prove I ever fucked your butt – clearly talking to Brandie. I've never even fucked your butt. (CONTRADICTS OTHER PARTS OF THE RECORD) You you you. Recordings?	5
Amanda/Brandie (VCR)	10/25/10	5136 138;	1
Louis Frank	10/25/10	5750_138; Re P17's "meds" Suboxone	2
Bobbie Sue	10/26/10	7898_138; Re Louis Frank; Discussion of guards accusing P17 of bringing meds back. "I've never gone two days without it before."	1
Amanda/Brandie (VCR)	10/26/10	6097_118; 8:17 P17 – she knows I never fucked her in "your" ass. I never did that. "Where's the rape kit?" How would he know about that? I never so much as ever laid a hand on you." 14:55 "You know I've never fucking hit YOU." "If it's unwanted people say no."	
Amanda/Brandie (VCR)	10/26/10	2681 138;	1
Bobbie Sue	10/27/10	4012_138; 8:00 P17 – "not supposed to contact her per conditions of release."	
Amanda/Brandie (VCR)	10/27/10	1269_18; yesterday was my last pill. Discussion about running out of pills. Bobbie Sue is checking whether I can technically speak with you by law. If they find out I'm speaking to you and I'm not supposed to then I'm beat. I have a feeling they're going to be listening. They can use the calls against him. BL - "I've not gotten one letter from you."	1
Bobbie Sue	10/27/10	0597_103; 7:15 RF says he's detoxing; 9:00 ref to Suboxone;	1
Bobbie Sue (VCR)	10/28/10	0292_103; BS – vic of rape would not want to see you in jail; "tell Amanda and the kids I love them."	1

Louis Frank	10/30/10	9786_138; Referencing the search warrant execution; ref they stopped giving R17 suboxone this last Monday;	1
Bobbie Sue	10/31/10	9807_138; BS discussing what police took during search warrant; "I still have the computer;" Ones from that night with you and Brandie. "I've got weeks of Brandie just me going to work and me turning on the recorder." BS is reading emails to P17. 18:40 "Yea, I did threaten her" but goes on to correct I never threatened her with violence, "I only threatened to leave her."	5
Bobbie Sue	10/31/10	0796_138; around 6:00 admits he was verbally mean to BL. 9:10 Advises BL to destroy a tape re key to box;	1
Bobbie Sue	10/31/10	8614_138;	1
Bobbie Sue (VCR)	10/31/10	5501_138; 7:10 wants his phone back and smashed to little pieces; "When I get out it's going to be the same way; make her understand that." Directing third party contact. "Make sure she knows that I don't like it." Advises BS to "smash up the phone" right in front of BL to "let her know that I'm not playing games any more." Towards end of recording. Directing abusive and harassing behavior.	3
Bobbie Sue (VCR) 3 <sup>rd</sup> party contact directed	10/31/10	6761_138; advises Bobbi Sue to call Brandie to tell her to answer the phone regardless of what number comes through.	3
Bobbie Sue	11/1/10	5724_139;	1
Bobbie Sue	11/1/10	3262_139; directs Bobbie Sue to print and mail every email sent from BL to .he wants. Did she do this?	
Bobbie Sue	11/2/10	4511_139; 3:30 P17, - "we all know I have an attitude" because I've always been hurt and beat all my life.	1
Bobbie Sue	11/2/10	8155_139;	1
Bobbie Sue	11/2/10	5208_139; cussing at Bobbie Sue for failing to go to court re RFA	1
Bobbie Sue	11/3/10	9960_139;	1
Bobbi Sue	11/3/10	5677_139; BS says she's going to mail P17 emails from his computer; possibly ones we don't have.	1
Bobbie Sue	11/4	0618_118; BS says she mailed emails to P17; "Yes I had to record every time I was fricking away from her because." Supports theory of manipulation	3
Louis Frank	11/4	0794_139; malfunction call	1

Louis Frank	11/4	1234 103;	1
Bobbie Sue	11/4	9807_139; 5:52 - "I want you to be her friend Bobbie Sue . . . I want you to spend every fucking second with her . . . because when she's with you she's not with him." We need her to tell the truth to the judge . . .	2
Bobbie Sue (VCR?)	11/5	3009_139; "I went to her house and pounded on her door for 10 minutes . . . Yell through the door and tell her . . . don't give up . . . tell her she needs to . . ." 8:35 - directs contact at _____ : trailer park.	1
Bobbie Sue (VCR?)	11/5	8894_139; Directs contact again "Leave a note on her door to call you . . . I have your car . . ." P17 telling BS to contact BL about what to do.	1
Bobbie Sue (VCR)	11/5	6327_139; BL - "I went there . . ." Joyce just called "Tell her I know she has been with Dave; tell her if I hear it again, I don't want anything to do with her . . ." Directs BS to take her to the house to get her car." Tell her . . . 4:22 BS - Do not take this out on my I'm doing what you're telling me to do.	3
Bobbie Sue (VCR)	11/5	8820_139; "open the fucking door" yea I told her that; open the door to get your car or it's going to the pound" Knocked on bedroom window;	3
Bobbie Sue	11/5	5777_139;	1
Bobbie Sue	11/6	1750_139;	1
Bobbie Sue	11/7	4001_139; "I talked to Brandie again, and she's coming to stay with us because she has nowhere to go." Travis picking up on her way back from work.	1
Bobbie Sue	11/7	4082_139;	1
Bobbie Sue	11/8	9677_139;	1
Bobbie Sue	11/8	2490_139;	1
Bobbie Sue	11/8	7718_139; BS ref emails sent "Friday;"	1
Bobbie Sue	11/9	8206_139;	1
Bobbie Sue	11/10	5083_139;	1
Bobbie Sue	11/10	0217_118;	1
Bobbie Sue	11/11	2951_118;	1
Louis Frank	11/11	2076_127;	1
Bobbie Sue	11/11	8207_139;	1
Bobbie Sue?	11/12	6286_139; P17 - 3:30 speaks to running out of medicine; BS went to BL house 4	2



Louis Frank	11/15	5604 103 - offers to bring out P17 under "my recognizance." Says will call Doug P17 Should be receiving package sent by Frank.
Louis Frank	11/17	8055 139 - misc
Louis Frank	11/19	1970 139 - Discussion of Frank borrowing money to bail out P17. Frank says he would but does not have that kind of money.
Louis Frank	11/20	7095 118 -
Louis Frank	11/21	1745 127 - "I sent you \$40 last night." Discussion of P17 moving in with Frank. I'm going to do whatever I can for you and "fuck anybody who doesn't like it." Frank.
Louis Frank	11/22	2884 127 - Discussion about release into Frank's custody.
Louis Frank	12/02	3926 118 - To P17. - "You could be released to my custody."
Louis Frank X	12/04	5886 104 - misc
Louis Frank X	12/09	7886 139 - P17 - Can you send me a few bucks? LF - I'll put it on the thing tonight. "I know 4 guys sitting in jail because some bitch lied to them... that's why I'm telling you that maybe women are not the answer." "I want to send you some money... keep the money for yourself."
Louis Frank X	12/12	7886 104 - Sending P17 money discussion regarding paying for phone calling.
Louis Frank	12/16	5229 139 - Misc chatter; more on LF putting \$ or P17's jail account
	12/22	2974 118 - LF complaining about Caledonian article. P17 - "If you're hitting on people..." LF - "Listen, you've got first choice you know that; you've always had first choice."
Louis Frank	12/28	2249 139 - P17 asks for money and LF agrees to send some.
Louis Frank	12/30	5343 139 - LF - "Listen honey you're bankrupting me calling me collect every night."
Louis Frank	01/04	4171 139 - Misc chatter.
Louis Frank	01/05	2287 139 - Discussion money for P17's account.
Louis Frank	01/09	7196 104 - Advises P17 not to take plea deal offered on Orleans charge. LF spews about charges against him to
Louis Frank	01/13	9737 118 -
Louis Frank	01/23	6168 104 - LF to P17 - "You got the \$30 I sent you."