

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In Re: Michael Schorsch, M.D.

Docket No. MPC 96-0910

Decision and Order

Procedural History

On September 18, 2012, the State of Vermont (State) filed an eleven count Specification of Charges against Dr. Michael Schorsch, M.D., (Dr. Schorsch) alleging specific violations of 26 V.S.A. § 1354 (a) (4), (22) and (27) as well as violations of 26 V.S.A. § 1354 (b) (2). A Status Conference was held approximately one month later, on October 24, 2012 in Burlington, Vermont.

On January 22, 2013, a Hearing Committee (Committee), composed of Patricia Hunter, Sarah McClain and Joshua Plavin, M.D. heard testimony at a merits hearing in this matter in Randolph, Vermont, 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). Dr. Schorsch represented himself. Assistant Attorney General Kurt A. Kuehl represented the State. Atty. Robert V. Simpson, Jr. served as Hearing Officer.

The State called two witnesses - John Brooklyn, M.D. and Paula Nenninger. It had 18 exhibits admitted into evidence. It filed proposed findings and conclusions of law on February 20, 2013. Dr. Schorsch testified on his own behalf and had 1 exhibit admitted. He did not file any post hearing documents.

The Committee met to deliberate on March 4, 2013 in Randolph, Vermont.

Summary of the State's Charges

Nine of the eleven counts¹ filed against Dr. Schorsch are based on his alleged unprofessional conduct in the treatment of nine patients² with buprenorphine for opiate addiction. More specifically, it alleges that with respect to each of the nine patients Dr. Schorsch violated 26 V.S.A. § 1354 (a)(22) by failing on repeated occasions to “use and exercise the degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions.” The State maintains that this conduct, which allegedly included, failure to “perform and document a comprehensive history and physical examination” before treating patients with buprenorphine and “failure to administer regular urine drug testing to monitor treatment” as well as failure to obtain written treatment agreements from patients, also constituted a violation of 26

¹ Count 1 and Counts 3-10

² The Patients are identified as Patients A, B, C, D, E, F, G, H and I in order to protect their privacy. The Committee members and the hearing officer were not given the names, or any other “identifying information” about the patients.

V.S.A. § 1354 b) (2) - “failure to conform to the essential standards of acceptable and prevailing practice.” (Violations of 26 V.S.A. §1354 (a) (22) and 26 V.S.A. § 1354 b)(2) are referred to throughout as “failure to meet the standard of care.”)

There are two additional counts charging unprofessional conduct. Count 2 alleges that Dr. Schorsch terminated treatment of patient A without providing “an appropriate plan to taper her use of buprenorphine” and that this, in turn, constituted “patient abandonment” in violation of 26 V.S.A. §1354 (a) (4). Count 11 charges that Dr. Schorsch violated a federal rule (21 C. F. R. 1304) by failing to keep a federally-mandated inventory of the buprenorphine stored at his office and that this, in turn, violated 26 V.S.A. §1354 (a) (27) which says that a physician who fails to comply with federal rules governing the practice of medicine engages in unprofessional conduct.

Although the State reports that Dr. Schorsch’s Vermont medical license expired on November 30, 2012, it requests that the Board of Medical Practice (Board) “suspend or revoke” Dr. Schorsch’s Vermont medical license “or take such other disciplinary action as the Board deems proper to protect public health, safety or welfare.” State’s Proposed Findings of Fact and Conclusions of Law (State’s PFD), dated February 20, 2013

Findings and Conclusions of Law

1. Dr. Schorsch held Vermont medical license number 042-0006839 from its issuance by the Board on August 11, 1982 until its expiration on November 30, 2012.
2. The Board has jurisdiction in this under of 26 V.S.A. §1317, 1353-57, 1360; 3 V.S.A. §§809-814.
3. The Board opened an investigation in this matter on September 20, 2010 upon receiving a complaint from Patient A- one of Dr. Schorsch’s former patients. State’s Exhibit 1

Board Investigator Paula Nenninger

4. Board Investigator Paula Nenninger and an investigator from the New Hampshire Board of Medicine interviewed Dr. Schorsch at his office in Lebanon, New Hampshire on December 8, 2010. Hearing Transcript (T) at p.125, 125
5. During the course of the interview, Dr. Schorsch made several statements to investigators concerning his treatment of patients with buprenorphine for opiate addiction. He said that he:
 - Does “verbal contracts” with patients agreeing to buprenorphine treatment T at 128:1-5
 - Does not “believe in” pill counts T128: 17-19
 - Is “not a fan of” urine drug screens” in buprenorphine treatment T at 128:20-21
 - Keeps buprenorphine in his office and treats his patients in his office T at 103:1-105:9, 127: 9-13

6. Dr. Schorsch was cooperative with investigators and eventually provided copies of patient medical records (patients A-I) requested by the Investigator Nenninger. T at 130:10-19, State's exhibits 6-14

Dr. John Brooklyn,

7. Dr. Brooklyn was retained by the State to provide an expert opinion as to whether Dr. Schorsch's treatment of Patients A-1 met the standard of care in Vermont for "buprenorphine prescribing and the treatment of opiate dependence." T at 12:9-21, Exhibit 15
8. Dr. Brooklyn is an expert in treating opiate addiction and has particular expertise in "in-office" treatment of opiate addiction with buprenorphine. Dr. Brooklyn:
 - Graduated from the University of Vermont (UVM) with a Medical Degree in 1992 and has been Medical Director of the UVM Substance Abuse Treatment Center since that time T at 14 and 15
 - Has been in charge of UVM research into the use of buprenorphine in the treatment of opiate addiction since 1992—research which played an important role in securing buprenorphine approval by the FDA in 2003 T at 15: 6-17
 - Has been board certified in addiction medicine since 2002 and is certified by the American Society of Addiction Medicine (ASAM) to serve not only as a medical review officer; but also, to train and mentor other physicians in buprenorphine prescribing T at 13:24-25 and 14:1-18
 - Has served as Vermont trainer for physicians, including Dr. Schorsch, in buprenorphine prescribing State's Exhibit 15 at 2
 - Has prescribed buprenorphine at the Community Health Center in Burlington, Vermont since the drug was approved by the FDA in 2003 T at 15:23-25

Standard of Care

9. The Vermont Buprenorphine Practice Guidelines (Guidelines), published in August 2003, set forth the standard of care for Vermont physicians providing in-office treatment for opiate dependence with buprenorphine. T at 20: 6-16, State's Exhibit 17
10. The Standard of Care for treating opiate dependence with buprenorphine requires the physician to take a comprehensive patient history before determining whether to treat a patient with buprenorphine. The history should document opiate history, other drug history, psychiatric history, medical history and treatment history. T at 25:1-5, Exhibit 17 at 5
11. The Standard of Care for treating opiate dependence with buprenorphine requires that the physician conduct a physical examination of the patient before determining whether to treat him/her with buprenorphine.

- The physical examination should seek to determine, and document, whether there are any indications of complications of drug use such as puncture marks on the skin and any physical indications the patient is in drug withdrawal (e.g. “runny eyes,” sniffing) T at 18:8-13, Exhibit 17 at 5
 - The examination should also include laboratory testing for complications of drug use (e.g. hepatitis and STDs) as well as urine testing to determine whether there are opiates in the patient’s system. T at 18:14-17
12. The Standard of Care for treating opiate dependence with buprenorphine requires that the physician use an “objective screening tool” to determine whether buprenorphine treatment is appropriate (e.g. a checklist with “10 factors” to consider whether office-based buprenorphine treatment is appropriate) T at 25:10-24, State’s Exhibit 17 at Appendix (10)
 13. The Standard of Care for treating opiate dependence with buprenorphine requires that a patient execute a form consenting to buprenorphine treatment before a physician begins such treatment. T at 22:11-14, State’s Exhibit 17 at 6
 14. The Standard of Care for treating opiate dependence with buprenorphine requires that a patient execute a buprenorphine treatment contract before a physician begins such treatment. T at 24:1-8, State’s Exhibit 17 at 6
 15. The Standard of Care for treating opiate dependence with buprenorphine requires that a physician obtain a urine drug screen to determine whether the patient has opiates in his/her system before a physician begins treatment with buprenorphine. T at 18:14-17, T at 26:10-17
 16. The Standard of Care for treating opiate dependence with buprenorphine requires that a physician obtain regular, random urine drug screens to determine whether a patient is complying with his/her treatment. T at 26:16-24, T at 116:20-25
 17. The Standard of Care for treating opiate dependence with buprenorphine requires that a physician use an objective instrument to adjust for adjustment of a patient’s buprenorphine dose. T at 28:12-29:5
 18. The Standard of Care for treating opiate dependence with buprenorphine requires that a physician refer a patient to counseling or provide counseling to the patient during the patient’s treatment with buprenorphine. T at 27:21-28:11
 19. The Standard of Care for treating opiate dependence with buprenorphine requires that a physician limit the number of prescriptions s/he will refill when the patient reports pills have been lost, stolen or lost. T at 57:6-10

20. The Standard of Care for treating opiate dependence with buprenorphine requires that a physician document in the patient's medical records the treatment the physician has provided. T at 76:18-23

Count 1- Patient A

The State alleges Dr. Schorsch violated 26 V.S.A. § 1354 (a)(22) and 1354 (b)(2) in his treatment of Patient A by failing on repeated occasions to meet the standard of care for Vermont physicians providing in-office treatment for opiate dependence with buprenorphine.

21. Dr. Schorsch treated Patient A for opiate addiction with buprenorphine between September 28, 2009 and May 27, 2010. State's Exhibit 6
22. Dr. Schorsch did not obtain either a consent to buprenorphine treatment form or a buprenorphine treatment contract from Patient A before treating her with buprenorphine for opiate dependence. If he had any oral consent and/or agreement, Dr. Schorsch failed to document it. T at 22:2-14 and T at 24:1-3, State's Exhibit 6
23. Dr. Schorsch did not complete and document a comprehensive patient history for Patient A before treating her with buprenorphine for opiate dependence. T at 24:16-21
24. Dr. Schorsch did not complete and document a comprehensive physical examination of Patient A before treating her with buprenorphine for opiate dependence. T at 16-21
25. Dr. Schorsch did not use an objective screening document in assessing whether it was appropriate to treat Patient A for opiate dependence with buprenorphine. T at 25:13-24
26. Dr. Schorsch did not obtain a urine drug screen to determine whether there were opiates in her system before treating Patient A with buprenorphine for opiate dependence. T at 26:3-6
27. Dr. Schorsch did not obtain regular, random urine drug screens to determine whether Patient A was complying with her treatment. T at 26:3-6
28. Dr. Schorsch did not use an objective screening document in determining whether to adjust dosages of buprenorphine for Patient A. T at 28;12-29:5

Conclusion of Fact and Law: The State met its burden of proof with respect to Count 1. It proved by a preponderance of the evidence that Dr. Schorsch failed on repeated occasions in his treatment of Patient A to meet the standard of care for Vermont physicians treating opiate dependence with buprenorphine.

Count 2 – Patient A

The State alleges that Dr. Schorsch engaged in unprofessional conduct by terminating treatment of patient A without providing “an appropriate plan to taper her use of buprenorphine” and that this, in turn, constituted “patient abandonment” in violation of 26 V.S.A. §1354 (a) (4)

29. The standard of care for a physician who is discontinuing treatment of an opiate dependent patient is for the physician to:
 - Advise the patient as to why s/he is being dismissed as a patient
 - Advise the patient that the physician will continue to treat the patient for an additional 30 days
 - Provide the patient with a treatment schedule for the period during which the patient is being “weaned off” the physician’s treatment
 - Provide the patient with a list of other physicians who may treat him/her T at 31:9-21

30. On May 27, 2010, Dr. Schorsch advised Patient A that she need to find a new physician. His record for that day says: “Needs to find a new bup provider as I don’t feel she is ready to work to recovery.” Dr. Schorsch’s record also says that he wrote Patient A a prescription for forty-two eight milligram buprenorphine pills with instructions to take one and one half pills per day and taper as tolerated. He also wrote that he had provided Patient A with a list of doctors who could provide her with buprenorphine treatment. State’s Exhibit 6

Conclusion of Fact and Law: The State did not meet its burden of proof with respect to Count 2. The State did not prove by a preponderance of the evidence that Dr. Schorsch’s conduct constituted abandonment of Patient A as provided in 26 V.S.A. §1354 (a) (4).

Count 3 – Patient B

The State alleges Dr. Schorsch violated 26 V.S.A. § 1354 (a)(22) and 1354 (b)(2) in his treatment of Patient B by failing on repeated occasions to meet the standard of care for Vermont physicians providing in-office treatment for opiate dependence with buprenorphine.

31. Dr. Schorsch began treating Patient B with buprenorphine for opiate addiction on June 21, 2006. State’s Exhibit 7

32. Dr. Schorsch did not obtain either a consent to buprenorphine treatment form or a buprenorphine treatment contract from Patient B before treating her with buprenorphine for opiate dependence. If he had any oral consent and/or agreement, Dr. Schorsch failed to document it. T at 46:10-12, T at 46:16-21, State’s Exhibit 7

33. Dr. Schorsch did not complete and document a comprehensive patient history for Patient B before treating her with buprenorphine for opiate dependence. T at 47:16-21

34. Dr. Schorsch did not complete and document a comprehensive physical examination of Patient B before treating her with buprenorphine for opiate dependence. T at 47:16-21
35. Dr. Schorsch did not use an objective screening document in assessing whether it was appropriate to treat Patient B for opiate dependence with buprenorphine. T at 48:1-8
36. Dr. Schorsch did not obtain a urine drug screen to determine whether there were opiates in her system before treating Patient B with buprenorphine for opiate dependence. T at 49:1-8
37. Dr. Schorsch did not obtain regular, random urine drug screens to determine whether Patient B was complying with her treatment. T at 49:1-8
38. Dr. Schorsch did not use an objective screening document in determining whether to adjust dosages of buprenorphine for Patient B. T at 57:11-58:19
39. The standard of care for treatment of opiate dependence with buprenorphine requires that a physician refill no more than one prescription after a patient has reported pills were lost, damaged or stolen. T at 57:6-10
40. Dr. Schorsch refilled prescriptions after Patient B reported her prescriptions were lost, stolen or destroyed on eight separate occasions: July 5, 2007; April 2, 2008; May 2, 2008; May 28, 2008, July 12, 2008, August 14, 2008, February 1, 2010 and June 16, 2010. Dr. Schorsch refilled Patient B's prescriptions on each of these occasions. T at 54:6-56:16, State's Exhibit 7

Conclusion of Fact and Law: The State met its burden of proof with respect to Count 3. It proved by a preponderance of the evidence that Dr. Schorsch failed on repeated occasions in his treatment of Patient B to meet the standard of care for Vermont physicians treating opiate dependence with buprenorphine.

Count 4- Patient C

The State alleges Dr. Schorsch violated 26 V.S.A. § 1354 (a)(22) and 1354 (b)(2) in his treatment of Patient C by failing on repeated occasions to meet the standard of care for Vermont physicians providing in-office treatment for opiate dependence with buprenorphine.

41. Dr. Schorsch began treating Patient C with buprenorphine for opiate addiction on October 5, 2010. State's Exhibit 8
42. Dr. Schorch did not obtain either a consent to buprenorphine treatment form or a buprenorphine treatment contract from Patient C before treating her with

buprenorphine for opiate dependence. If he had any oral consent and/or agreement, Dr. Schorsch failed to document it. T at 68:19-25, T at 69:2-8, Exhibit 8

43. Dr. Schorsch did not complete and document a comprehensive patient history for Patient C before treating her with buprenorphine for opiate dependence. T at 69:9-21, T at 76:16-23, Exhibit 8
44. Dr. Schorsch did not complete and document a comprehensive physical examination of Patient C before treating her with buprenorphine for opiate dependence. T at 69:14-15, Exhibit 8
45. Dr. Schorsch did not obtain a urine drug screen to determine whether there were opiates in her system before treating Patient C with buprenorphine for opiate dependence. T at 70:1-10, Exhibit 8
46. Dr. Schorsch did not obtain regular, random urine drug screens to determine whether Patient C was complying with her treatment. T at 70:1-8, 73:9-15, Exhibit 8
47. Dr. Schorsch did not use an objective screening document in determining whether to adjust dosages of buprenorphine for Patient C. T at 70:17-71:13, Exhibit 8

Conclusion of Fact and Law: The State met its burden of proof with respect to Count 4. It proved by a preponderance of the evidence that Dr. Schorsch failed on repeated occasions in his treatment of Patient C to meet the standard of care for Vermont physicians treating opiate dependence with buprenorphine.

Count 5- Patient D

The State alleges Dr. Schorsch violated 26 V.S.A. § 1354 (a)(22) and 1354 (b)(2) in his treatment of Patient D by failing on repeated occasions to meet the standard of care for Vermont physicians providing in-office treatment for opiate dependence with buprenorphine.

48. Dr. Schorsch began treating Patient D with buprenorphine for opiate addiction on November 9, 2009. State's Exhibit 9
49. Dr. Schorsch did not obtain either a consent to buprenorphine treatment form or a buprenorphine treatment contract from Patient D before treating him with buprenorphine for opiate dependence. If he had any oral consent and/or agreement, Dr. Schorsch failed to document it. T at 79:1-8, T at 79:9-16, State's Exhibit 9
50. Dr. Schorsch did not complete and document a comprehensive patient history for Patient D before treating him with buprenorphine for opiate dependence. T at 79:17-22

51. Dr. Schorsch did not complete and document a comprehensive physical examination of Patient D before treating him with buprenorphine for opiate dependence. T at 79:17-22
52. Dr. Schorsch did not use an objective screening document in assessing whether it was appropriate to treat Patient D for opiate dependence with buprenorphine. T at 80:5-9
53. Dr. Schorsch did not obtain a urine drug screen to determine whether there were opiates in his system before treating Patient D with buprenorphine for opiate dependence. T at 80:13-16
54. Dr. Schorsch did not obtain regular, random urine drug screens to determine whether Patient D was complying with his treatment. T at 80:13-24
55. Dr. Schorsch did not use an objective screening document in determining whether to adjust dosages of buprenorphine for Patient D. T at 81:6-10

Conclusion of Fact and Law: The State met its burden of proof with respect to Count 5. It proved by a preponderance of the evidence that Dr. Schorsch failed on repeated occasions in his treatment of Patient D to meet the standard of care for Vermont physicians treating opiate dependence with buprenorphine.

Count 6-Patient E

The State alleges Dr. Schorsch violated 26 V.S.A. § 1354 (a)(22) and 1354 (b)(2) in his treatment of Patient E by failing on repeated occasions to meet the standard of care for Vermont physicians providing in-office treatment for opiate dependence with buprenorphine.

56. Dr. Schorsch began treating Patient E with buprenorphine for opiate addiction on January 29, 2010. State's Exhibit 10
57. Dr. Schorsch did not obtain either a consent to buprenorphine treatment form or a buprenorphine treatment contract from Patient E before treating her with buprenorphine for opiate dependence. If he had any oral consent and/or agreement, Dr. Schorsch failed to document it. It was particularly important that Patient E understand the nature of the treatment she was about to undergo because she was pregnant. T at 85: 6-9, T at 85:14-17, T at 85:20-86-3, State's Exhibit 10
58. Dr. Schorsch did not complete and document a comprehensive patient history for Patient E before treating her with buprenorphine for opiate dependence. T at 86: 4-9, Exhibit 10

59. Dr. Schorsch did not complete and document a comprehensive physical examination of Patient E before treating her with buprenorphine for opiate dependence. T at 86:4-9, Exhibit 10
60. Dr. Schorsch did not use an objective screening document in assessing whether it was appropriate to treat Patient E for opiate dependence with buprenorphine. T at 86:13-18, Exhibit 10
61. Dr. Schorsch did not obtain a urine drug screen to determine whether there were opiates in her system before treating Patient E with buprenorphine for opiate dependence. T at 86:19-25, Exhibit 10
62. Dr. Schorsch did not obtain regular, random urine drug screens to determine whether Patient E was complying with her treatment. T at 86:19-25, Exhibit 10
63. Dr. Schorsch did not use an objective screening document in determining whether to adjust dosages of buprenorphine for Patient E. T at 88:16-25, Exhibit 10

Conclusion of Fact and Law: The State met its burden of proof with respect to Count 6. It proved by a preponderance of the evidence that Dr. Schorsch failed on repeated occasions in his treatment of Patient E to meet the standard of care for Vermont physicians treating opiate dependence with buprenorphine.

Count 7- Patient F

The State alleges Dr. Schorsch violated 26 V.S.A. § 1354 (a)(22) and 1354 (b)(2) in his treatment of Patient F by failing on repeated occasions to meet the standard of care for Vermont physicians providing in-office treatment for opiate dependence with buprenorphine.

64. Dr. Schorsch began treating Patient F with buprenorphine for opiate addiction on January 20, 2009. State's Exhibit 11
65. Dr. Schorsch did not obtain either a consent to buprenorphine treatment form or a buprenorphine treatment contract from Patient F before treating her with buprenorphine for opiate dependence. If he had any oral consent and/or agreement, Dr. Schorsch failed to document it. T at 92:5-8; 92:9-14, State's Exhibit 11
66. Dr. Schorsch did not complete and document a comprehensive patient history for Patient F before treating her with buprenorphine for opiate dependence. T at 92:19-93:10, Exhibit 11
67. Dr. Schorsch did not complete and document a comprehensive physical examination of Patient F before treating her with buprenorphine for opiate dependence. T at 92:19-93:10, Exhibit 11

68. Dr. Schorsch did not use an objective screening document in assessing whether it was appropriate to treat Patient F for opiate dependence with buprenorphine. T at 93:11-15 , Exhibit 11
69. Dr. Schorsch did not obtain a urine drug screen to determine whether there were opiates in her system before treating Patient F with buprenorphine for opiate dependence. T at 93:19-21, Exhibit 11
70. Dr. Schorsch did not obtain regular, random urine drug screens to determine whether Patient F was complying with her treatment. T at 93:19- 94:3 , Exhibit 11
71. Dr. Schorsch did not use an objective screening document in determining whether to adjust dosages of buprenorphine for Patient F. T at 94:8-11, Exhibit 11

Conclusion of Fact and Law: The State met its burden of proof with respect to Count 7. It proved by a preponderance of the evidence that Dr. Schorsch failed on repeated occasions in his treatment of Patient F to meet the standard of care for Vermont physicians treating opiate dependence with buprenorphine.

Count 8 –Patient G

The State alleges Dr. Schorsch violated 26 V.S.A. § 1354 (a)(22) and 1354 (b)(2) in his treatment of Patient G by failing on repeated occasions to meet the standard of care for Vermont physicians providing in-office treatment for opiate dependence with buprenorphine.

72. Dr. Schorsch began treating Patient G with buprenorphine for opiate addiction on May 2, 2009. State's Exhibit 12
73. Dr. Schorsch did not obtain either a consent to buprenorphine treatment form or a buprenorphine treatment contract from Patient G before treating her with buprenorphine for opiate dependence. If he had any oral consent and/or agreement, Dr. Schorsch failed to document it. T at 95:5-10, 95:14-17, State's Exhibit 12
74. Dr. Schorsch did not complete and document a comprehensive patient history for Patient G before treating her with buprenorphine for opiate dependence. T at 95:23-96:6, Exhibit 12
75. Dr. Schorsch did not complete and document a comprehensive physical examination of Patient G before treating her with buprenorphine for opiate dependence. T at 95:23-96:6, Exhibit 12
76. Dr. Schorsch did not obtain a urine drug screen to determine whether there were opiates in her system before treating Patient G with buprenorphine for opiate dependence. T at 96:7-11, 96:6- 100:8, Exhibit 12

77. Dr. Schorsch did not obtain regular, random urine drug screens to determine whether Patient G was complying with her treatment. T at 96:7-11, 96:6-100:8, Exhibit 12
78. Dr. Schorsch did not use an objective screening document in determining whether to adjust dosages of buprenorphine for Patient G. T at 96:22-25, Exhibit 12

Conclusion of Fact and Law: The State met its burden of proof with respect to Count 8. It proved by a preponderance of the evidence that Dr. Schorsch failed on repeated occasions in his treatment of Patient G to meet the standard of care for Vermont physicians treating opiate dependence with buprenorphine.

Count 9-Patient H

The State alleges Dr. Schorsch violated 26 V.S.A. § 1354 (a)(22) and 1354 (b)(2) in his treatment of Patient H by failing on repeated occasions to meet the standard of care for Vermont physicians providing in-office treatment for opiate dependence with buprenorphine.

79. Dr. Schorsch began treating Patient H with buprenorphine for opiate addiction on October 30, 2008. State's Exhibit 13
80. Dr. Schorsch did not obtain either a consent to buprenorphine treatment form or a buprenorphine treatment contract from Patient H before treating her with buprenorphine for opiate dependence. If he had any oral consent and/or agreement, Dr. Schorsch failed to document it. T at 105:18-22, 106:1-5, State's Exhibit 13
81. Dr. Schorsch did not complete and document a comprehensive patient history for Patient H before treating her with buprenorphine for opiate dependence. T at 106:7-23, State's Exhibit 13
82. Dr. Schorsch did not complete and document a comprehensive physical examination of Patient H before treating her with buprenorphine for opiate dependence. T at 106:7-10, State's Exhibit 13
83. Dr. Schorsch did not use an objective screening document in assessing whether it was appropriate to treat Patient H for opiate dependence with buprenorphine. T at 106:24-107:3, State's Exhibit 13
84. Dr. Schorsch did not obtain a urine drug screen to determine whether there were opiates in her system before treating Patient H with buprenorphine for opiate dependence. T at 107:7-13, State's Exhibit 13
85. Dr. Schorsch did not obtain regular, random urine drug screens to determine whether Patient H was complying with her treatment. T at 107:7-13, State's Exhibit 13

86. Dr. Schorsch did not use an objective screening document in determining whether to adjust dosages of buprenorphine for Patient H. T at 107:23-108:2, State's Exhibit 13

Conclusion of Fact and Law: The State met its burden of proof with respect to Count 9. It proved by a preponderance of the evidence that Dr. Schorsch failed on repeated occasions in his treatment of Patient H to meet the standard of care for Vermont physicians treating opiate dependence with buprenorphine.

Count 10-Patient I

The State alleges Dr. Schorsch violated 26 V.S.A. § 1354 (a)(22) and 1354 (b)(2) in his treatment of Patient I by failing on repeated occasions to meet the standard of care for Vermont physicians providing in-office treatment for opiate dependence with buprenorphine.

87. Dr. Schorsch began treating Patient I with buprenorphine for opiate addiction on August 30, 2003 and continued to treat Patient I with buprenorphine through at least December 3, 2013. State's Exhibit 14 at 1 and 36
88. Dr. Schorsch did obtain a consent to buprenorphine treatment form and a buprenorphine treatment contract from Patient I before treating him with buprenorphine for opiate dependence. T at 110:8-18, State's Exhibit 14
89. Dr. Schorsch did complete and document a comprehensive patient history for Patient I before treating him with buprenorphine for opiate dependence. T at 110:8-18, 79:17-22
90. Dr. Schorsch did complete and document a comprehensive physical examination of Patient I before treating him with buprenorphine for opiate dependence. T at T at 110:8-18, State's Exhibit 14
91. Dr. Schorsch did use an objective screening document in assessing whether it was appropriate to treat Patient I for opiate dependence with buprenorphine. T at 110:19-24, State's Exhibit 14
92. Dr. Schorsch did not obtain a urine drug screen to determine whether there were opiates in his system before treating Patient I with buprenorphine for opiate dependence. T at 110:25-111:16, State's Exhibit 14
93. Dr. Schorsch did not obtain regular, random urine drug screens to determine whether Patient D was complying with his treatment. T at 110:25-111:16, State's Exhibit 14
94. Dr. Schorsch did not use an objective screening document in determining whether to adjust dosages of buprenorphine for Patient D. T at 111:22-112:1, State's Exhibit 14

95. Although Dr. Schorsch's treatment of Patient I generally complied with the standard of care outlined in Vermont's Buprenorphine Practice Guidelines when he began treatment in August 2003, the record of Patient I's treatment over the next seven years tends to support Dr. Schorsch's testimony that as his buprenorphine practice grew from 30 to 80-90 patients, he made a conscious choice not to comply with the standard of care set out in the guidelines. T at 145:18-22, T at 146:2-7, State's Exhibit 14, Exhibit 17

Conclusion of Fact and Law: The State met its burden of proof with respect to Count 10. It proved by a preponderance of the evidence that Dr. Schorsch failed on repeated occasions in his treatment of Patient I to meet the standard of care for Vermont physicians treating opiate dependence with buprenorphine.

Count 11

The State charges that Dr. Schorsch violated a federal rule (21 C. F. R. 1304) by failing to properly keep a federally-mandated³ inventory of the buprenorphine stored at his office and that this, in turn, violated 26 V.S.A. §1354 (a) (27) which says that a physician who fails to comply with federal rules governing the practice of medicine engages in unprofessional conduct.

96. Dr. Schorsch did not keep receipts of his buprenorphine purchases in his office records because he felt he could always call the pharmacy he bought it from and get the pharmacy to produce the receipt for his purchase. T at 205:14-23
97. In May of 2012, DEA investigators found a deficiency in Dr. Schorsch's record-keeping for failure to properly maintain buprenorphine purchase records as required by federal regulations. T at 204:24-205:11

Conclusion of Fact and Law: The State met its burden of proof with respect to Count 11. It proved by a preponderance of the evidence that Dr. Schorsch failed to comply with a federal rule governing the practice of medicine and this, in turn, is a violation of 26 V.S.A. §1354 (a) (27)

Dr. Schorsch's Response to the State's Evidence

Dr. Schorsch pointed out that he did follow the Buprenorphine Guidelines when he began treating patients with the drug. He cited his treatment of Patient I as an example. "That's how I used to do all my charts . . . with consents, with daily—a notation of progress about induction, a formal history and physical." T at 145:8-12 However, he testified that as his practice grew from 30 patients to 80-90 patients⁴, it became "impossible" for him to continue record keeping as he had with Patient I. T at 145:18-22 While Dr. Schorsch readily admits that he is "aware of what

³ 21 CFR 1304.04 (f) and (g) require treatment providers to maintain "readily retrievable" records.

⁴ Vermont's Buprenorphine Practice Guidelines (August 1, 2003) say "no more than 30 patients to be treated at one time per physician." Exhibit 17 at 3 The 2010 version of the Guideline says that federal rules were amended in 2006 to permit a qualified physician to treat up to 100 patients at a time. Vermont Buprenorphine Practice Guidelines (January 1, 2010) at 6

the requirements are,” he maintains that given the realities of his practice⁵, it is simply “not a reasonable choice” for him to comply with these requirements. T at 146:2-7

Later Dr. Schorsch emphasized that while he admits that there are “deficiencies” in his “charting,” he disagrees very strongly with “any implication that it has in any way compromised or undermined his ability to care for these patients,” (T at 177:20 -178:3) And he went on later to explain his fundamental disagreement with Dr. Brooklyn. Dr. Schorsch believes that strict adherence to the practice Dr. Brooklyn advocates, tends to limit availability of buprenorphine to people who need it, and could benefit from it: “. . . I believe that this stuff should be available just like condoms, just like reading glasses. The idea that this medication is – needs to be prescribed by people, let alone with a special license, as though this was some rocket science, okay, we’re fundamentally different on this feeling. I believe as much Suboxone is available in the community is better.” T at 184:16-25

Dr. Schorsch told the Hearing Committee that he would reject any requirement that he take a “refresher course” or submit to “peer oversight.” He closed his testimony as follows: “So if it turns out that I am judged harshly for what I am unwilling to do rather than judged appreciatively for what I have been able to do, then that’s where we will have to leave things.” T at 214:24-215:16

Summary

The State has proven ten of its eleven allegations of unprofessional conduct against Dr. Schorsch. It proved that Dr. Schorsch engaged in unprofessional conduct by failing to meet the standard of care (violation of 26 V.S.A. § 1354 (a) (22) and 1354 (b) (2)) in his in-office buprenorphine treatment of all nine patients (A-I) identified in the State’s Specification of Charges. It also proved that Dr. Schorsch violated a federal regulation governing the practice of medicine, thereby violating 26 V.S.A. § 1354 (a) (27). This violation also constitutes unprofessional conduct.

The State has asked the Board to order suspension or revocation of Dr. Schorsch’s medical license in Vermont or that the Board “take such other disciplinary action as the Board deems proper to protect public health, safety, or welfare.” State’s Proposed Findings of Fact and Conclusions of Law at 1 and 41

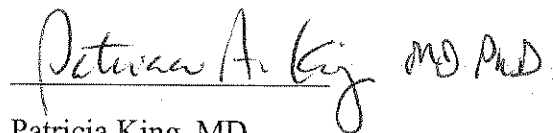
The State reported that Dr. Schorsch’s license to practice medicine in Vermont expired on November 30, 2012.

⁵ Dr. Schorsch testified that he practices “much more in a war zone than Dr. Brooklyn does.” T at 148:8-9

Order

The Board adopts the proposed Findings of Fact and Conclusions of Law developed by the Hearing Committee as set out in pages 1-15 above and, under the authority provided in 3 V.S.A. § 814(d) and 26 V.S.A. § 1361(b) issues the following ORDER:

1. Any right Dr. Schorsch has to renew or reinstate his license to practice medicine in Vermont is suspended until he has successfully completed the education requirements set out in #2(below).
2. Dr. Schorsch shall not be eligible to have his Vermont Medical License reinstated until he has paid for, and successfully completed, the Professional/Problem-Based Ethics (ProBE) Program offered by The Center for Personalized Education for Physicians. Dr. Schorsch shall report in person to the Board's Central Committee upon successful completion of the ProBE Program.
3. In the event Dr. Schorsch's license to practice medicine in Vermont is reinstated, Dr. Schorsch shall have a conditioned license. The conditions are:
 - Dr. Schorsch's medical practice shall be reviewed monthly for three years by a monitor, pre-approved by the Board, and paid for by Dr. Schorsch.
 - The monitor shall file quarterly reports with the Board.
 - Each of the monitor's reports shall advise the Board specifically as to whether Dr. Schorsch is meeting the standard of care in his practice specialty with a particular emphasis on whether patient records are properly documented.



Patricia King, MD
Board Chair

May 1, 2013