

**STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE**

In re: Richard E. Kast, MD                    )  
  )     Docket Nos. MPS 087-0818 & MPS 121-1018  
  )

**SPECIFICATION OF CHARGES**

NOW COMES the State of Vermont, by and through Attorney General Thomas J.

Donovan, Jr., and alleges as follows:

1. Richard E. Kast, MD (“Respondent”) holds Vermont medical license number 042.0008320 originally issued by the Vermont Board of Medical Practice (“the Board”) on May 1, 1991. Respondent is a psychiatrist with a private practice in Burlington, Vermont.
2. Jurisdiction in this matter vests with the Board pursuant to 26 V.S.A. §§ 1353-1354, 1370-1376, 3 V.S.A. §§ 809-814, and other authority.

**I.     Background**

**Docket Number MPS 087-0818**

3. The Board commenced an investigation of Docket Number MPS 087-0818 in August of 2018 as the result of the filing of a complaint from Patient A alleging that Dr. Kast made multiple inappropriate comments during two psychiatric office visits at his private psychiatric practice in Burlington, Vermont. This matter was assigned to the South Investigative Committee of the Board (“the Committee”).
4. Patient A alleged that, during office visits on June 7, 2018 and July 18, 2018, Respondent made offensive and inappropriate statements to her. Those comments included the statements: “Your stepmother must have given good head;” “She [Patient A’s daughter] doesn’t have OCD she just has a screw loose like her mother;” and “like

the doctor who lusts after the nurse's tits and wishes he could boink the hell out of her.”

Respondent is also reported to have made an unsupported comparison between bisexuality and pedophilia.

5. Such statements by Respondent to Patient A were not directly relevant to the assessment and treatment context and were carried beyond what is necessary to assess any relevant issues. As a result of these statements, Patient A terminated her relationship with Respondent.
6. Respondent's statements to Patient A in this type of clinical situation are contrary to the subscribed ethics in practice as stated by the American Psychiatric Association.

**Docket Number MPS 121-1018**

7. The Board opened Docket Number MPS 121-1018 upon receipt of information concerning Respondent's prescribing practices. This matter was also assigned to the Committee.
8. The Committee obtained, via subpoena, records of Respondent's treatment of Patient B and Patient C. An extensive review of Respondent's documented treatment of Patient B and Patient C was conducted.
9. Respondent starting prescribing Tramadol, an opioid, to Patient B in February of 2016. He began prescribing Hydrocodone, also an opioid, to Patient B in January of 2018. Both opioids were prescribed for the treatment of chronic pain.
10. Hydrocodone is classified by the Drug Enforcement Agency (“DEA”) as a Schedule II controlled substance which has a high potential for abuse and may lead to severe psychological or physical dependence. Tramadol is classified by the DEA as a Schedule IV controlled substance.

Failure to Follow Requirement of the Vermont Rule Governing the Prescription of Opioids  
for Pain and the Vermont Prescription Monitoring System (“VPMS”) Rule

11. The first documented prescription of Tramadol to Patient B was on February 29, 2016. Respondent did not query the Vermont Prescription Monitoring System (“VPMS”) prior to writing the initial prescription of this opioid as required by section 6.2.1 of the VPMS Rule<sup>1</sup> and Rule 5.1.3 of the Vermont Rule Governing the Prescribing of Opioids for Chronic Pain (effective date August 1, 2015).
12. Respondent prescribed Hydrocodone to Patient B on January 24, 2018, February 5, 2018, March 2, 2018, and March 28, 2018. As described below, Respondent did not adhere to numerous VPMS Rules and requirements of the Vermont Rule Governing the Prescribing of Opioids for Pain (effective date July 1, 2017).
  - a. Respondent did not query VPMS prior to writing the initial Hydrocodone prescription for 15 pills as required by Section 6.2.1 of the VPMS Rule.<sup>2</sup>
  - b. Section 4.3.3 of the Vermont Rule Governing the Prescribing of Opioids for Pain required Respondent to obtain a signed informed consent from Patient B prior to prescribing an opioid for pain to the patient for the first time during a course of treatment. Respondent’s records did not include a signed informed consent from Patient B related to the prescribing of Hydrocodone.

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<sup>1</sup> Section 6.2.1 of the VPMS Rule, effective date of August 1, 2015, provides that VPMS must be queried “the first time the provider prescribed an opioid Schedule II, III or IV controlled substance written to treat chronic pain.”

<sup>2</sup> Section 6.2.1 of the VPMS Rule, effective date July 1, 2017, provides that VPMS must be queried “the first time the provider prescribed an opioid Schedule II, III, or IV controlled substances written to treat pain when such a prescription exceeds 10 pills or the equivalent.” Providers are also required to make this query by section 4.2 of the Rule Governing the Prescribing of Opioids for Pain, effective date July 1, 2017, and must document this information in a patient’s medical record per section 6.2.1.3 of the Opioid Rule when the prescription is for chronic pain.

- c. Rule 6.1 of the Vermont Rule Governing the Prescribing of Opioids for Pain contains requirements regarding screening, evaluation and risk assessment for patients who are receiving opioids for the treatment of chronic pain. Respondent's continued prescribing of Hydrocodone to Patient B for pain lasting longer than 90 days was not in compliance with Rules 6.1.1 and 6.1.3 as he did not document a thorough non-psychiatric medical evaluation and physical examination, and he did not document an evaluation of the benefits and relative risks of use of opioids.
- d. Rule 6.2 of the Vermont Rule Governing the Prescribing of Opioids for Pain contains requirements regarding what a prescriber must consider and document in the patient's medical records prior to prescribing an opioid for the treatment of chronic pain. Prior to prescribing Hydrocodone to Patient B to treat his chronic back pain, Respondent did not document that he asked Patient B whether he/she currently, or had recently been, dispensed methadone or buprenorphine or prescribed and taken any other controlled substances. Respondent's documentation also does not include a signed Controlled Substance Treatment Agreement, as required by this Rule.
- e. Section 7.2 of the Vermont Rule Governing the Prescribing of Opioids for Pain requires the prescriber to co-prescribe naloxone for all patients receiving an opioid prescription if there is a concurrent prescription for benzodiazepines. Respondent prescribed Clonazepam, a benzodiazepine, to Patient B concurrently with the Hydrocodone prescription in January,

February and March of 2018. There is no documentation in Patient B's medical records that Respondent prescribed naloxone during the relevant time period.

13. Respondent prescribed Tramadol to Patient C on June 4, 2018. His documentation does not include a rationale or justification for prescribing this medication. Additionally, Respondent did not document discussions with Patient C regarding universal precautions related to his initial prescribing of Tramadol as required by Section 4.0 of the Vermont Rule Governing the Prescribing of Opioids for Chronic Pain including obtaining a signed informed consent.

#### Prescription of Controlled Substances Outside of Scope of Practice

14. Respondent's prescription of Hydrocodone and Tramadol, DEA controlled substances for pain, to Patients B and C were outside the scope of his psychiatric practice and training. Respondent does not have board certification and/or training in a non-psychiatric medical specialty that includes treatment of pain with DEA scheduled controlled substances within the scope of that specialty.

#### Absence of Documentation of Medical Treatment

15. The records of Respondent's treatment of Patient B and Patient C have gaps in treatment from mid-2014 to early 2016. However, other records indicate that Respondent provided treatment to both patients during this timeframe.
16. There are no records of Respondent's treatment of Patient B from May of 2014 through March of 2016. However, the records reference Tramadol and Clonazepam prescriptions between December of 2014 and April of 2015, and the prescribing history shows prescriptions for controlled substances written by Respondent in January,

February and March of 2016. With regard to Patient C, there are no records of Respondent's treatment from May 2014 to January 2016, except for one listing of prescription medications in December 2014.

## **II. State's Allegations of Unprofessional Conduct**

### **Count 1**

17. Paragraphs 1 through 16, above, are restated and incorporated herein by reference.

18. Respondent's inappropriate and unprofessional statements made to Patient A during the July 7<sup>th</sup> and 18<sup>th</sup>, 2018 psychiatric office visits constitute a gross failure to use and exercise 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 has occurred. Each individual comment namely (a) "Your stepmother must have given good head;" (b) "She [Patient A's daughter] doesn't have OCD she just has a screw loose like her mother;" and (c) "like the doctor who lusts after the nurse's tits and wishes he could boink the hell out of her," as well as (d) his unsupported comparison between bisexuality and pedophilia, constitutes a separate gross violation of the standard of care. Such conduct by Respondent thereby constitutes multiple violations of 26 V.S.A. § 1354(a)(22) and is unprofessional.

### **Count 2**

19. Paragraphs 1 through 16, above, are restated and incorporated by reference.

20. Respondent's failure to query VPMS prior to his initial prescribing of Hydrocodone for chronic pain on January 24, 2018 to Patient B constitutes a failure to practice competently by the performance of unacceptable patient care and by the failure to conform to the essential standards of acceptable and prevailing practice, which constitutes one or more

violations of 26 V.S.A. § 1354(b)(1)-(2) and is unprofessional.

21. Respondent also failed to comply with provisions of State rules governing the practice of medicine, namely Rules 6.2.1.3 and 4.2 of the Vermont Rule Governing the Prescribing of Opioids for Pain and VPMS Rule 6.2.1, effective dates July 1, 2017, which constitutes one or more violations of 26 V.S.A. § 1354(a)(27) and is unprofessional.

**Count 3**

22. Paragraphs 1 through 16, above, are restated and incorporated by reference.

23. Respondent's failure to comply with the universal precautions related to his initial prescribing of Hydrocodone to Patient B by failing to obtain a signed informed consent as required by Section 4.3.3 of the Vermont Rule Governing the Prescribing of Opioids for Pain constitutes a failure to practice competently by the performance of unacceptable patient care and by the failure to conform to the essential standards of acceptable and prevailing practice, which constitutes one or more violations of 26 V.S.A. § 1354(b)(1)-(2) and is unprofessional.

24. Respondent further failed to comply with provisions of State rules governing the practice of medicine, namely Rule 4.3.3 of the Vermont Rule Governing the Prescribing of Opioids for Pain effective date July 1, 2017, which constitutes one or more violations of 26 V.S.A. § 1354(a)(27) and is unprofessional.

**Count 4**

25. Paragraphs 1 through 16, above, are restated and incorporated by reference.

26. Respondent's failure to obtain a signed Controlled Substances Treatment Agreement from Patient B prior to the initial prescribing of Hydrocodone for chronic pain constitutes a failure to practice competently by the performance of unacceptable patient care and the failure to conform to the essential standards of acceptable and prevailing practice, which

constitutes one or more violations of 26 V.S.A. § 1354(b)(1)-(2) and is unprofessional.

27. Respondent further failed to comply with provisions of State rules governing the practice of medicine, namely Rules 6.2.1.5 of the Vermont Rule Governing the Prescribing of Opioids for Pain effective date July 1, 2017, which constitutes one or more violations of 26 V.S.A. § 1354(a)(27) and is unprofessional.

**Count 5**

28. Paragraphs 1 through 16, above, are restated and incorporated by reference.

29. Respondent's failure to conduct a thorough non-psychiatric medical evaluation and physical examination and his failure to conduct an evaluation of the benefits and relative risks of the use of opioids prior to prescribing Hydrocodone to treat Patient B's chronic pain in January of 2018 constitutes a failure to practice competently by the performance of unacceptable patient care and the failure to conform to the essential standards of acceptable and prevailing practice, which constitutes one or more violations of 26 V.S.A. § 1354(b)(1)-(2) and is unprofessional.

30. Respondent further failed to comply with provisions of State rules governing the practice of medicine, namely Rule 6.1.1 and Rule 6.1.3 of the Vermont Rule Governing the Prescribing of Opioids for Pain effective date July 1, 2017, which constitutes one or more violations of 26 V.S.A. § 1354(a)(27).

**Count 6**

31. Paragraphs 1 through 16, above, are restated and incorporated by reference.

32. Respondent's failure to document that he asked Patient B, prior to the initial prescribing of Hydrocodone in January of 2018, whether he/she currently, or had recently been, dispensed methadone or buprenorphine or prescribed and taken any other controlled substances



constitutes a failure to practice competently by the performance of unsafe or unacceptable patient care and the failure to conform to the essential standards of acceptable and prevailing practice, which constitutes one or more violations of 26 V.S.A. § 1354(b)(1)-(2) and is unprofessional.

33. Respondent further failed to comply with provisions of State rules governing the practice of medicine, namely Rule 6.2.1.4 of the Vermont Rule Governing the Prescribing of Opioids for Pain effective date July 1, 2017, which constitutes one or more violations of 26 V.S.A. § 1354(a)(27) and is unprofessional.

**Count 7**

34. Paragraphs 1 through 16, above, are restated and incorporated by reference.

35. Respondent's failure to co-prescribe naloxone to Patient B during the time that he was prescribing an opioid (Hydrocodone) and a benzodiazepine (Clonazepam) concurrently constitutes a failure to practice competently by the performance of unacceptable patient care and the failure to conform to the essential standards of acceptable and prevailing practice, which constitutes one or more violations of 26 V.S.A. § 1354(b)(1)-(2) and is unprofessional.

36. Respondent further failed to comply with provisions of State rules governing the practice of medicine, namely Rule 7.2 of the Vermont Rule Governing the Prescribing of Opioids for Pain effective date July 1, 2017, which constitutes one or more violations of 26 V.S.A. § 1354(a)(27) and is unprofessional.

**Count 8**

37. Paragraphs 1 through 16, above, are restated and incorporated by reference.

38. Respondent's failure to query VPMS prior to his initial prescribing of Tramadol to Patient B on February 29, 2016, constitutes a failure to practice competently by the

performance of unacceptable patient care and the failure to conform to the essential standards of acceptable and prevailing practice, which constitutes one or more violations of 26 V.S.A. § 1354(b)(1)-(2) and is unprofessional.

39. Respondent further failed to comply with provisions of State rules governing the practice of medicine, namely Rule 5.1.3 of the Vermont Rule Governing the Prescribing of Opioids for Pain, effective date August 1, 2015, and Section 6.2.1 of the VPMS Rule, effective date August 1, 2015, which constitutes one or more violations of 26 V.S.A. § 1354(a)(27) and is unprofessional.

**Count 9**

40. Paragraphs 1 through 16, above, are restated and incorporated by reference.

41. Respondent's prescription of Tramadol to Patient C in June 2018 without documenting a rationale or justification of the prescribing constitutes a failure to practice competently by the performance of unacceptable patient care and the failure to conform to the essential standards of acceptable and prevailing practice, which constitutes one or more violations of 26 V.S.A. § 1354(b)(1)-(2) and is unprofessional.

**Count 10**

42. Paragraphs 1 through 16, above, are restated and incorporated by reference.

43. Respondent's failure to comply with the universal precautions related to his initial prescribing of Tramadol to Patient C in June 2018 including the failure to obtain a signed informed consent as required by Section 4.3.3 of the Vermont Rule Governing the Prescribing of Opioids for Pain constitutes a failure to practice competently by the performance of unacceptable patient care and the failure to conform to the essential standards of acceptable and prevailing practice, which constitutes one or more violations of 26 V.S.A. § 1354(b)(1)-(2) and is

unprofessional.

44. Respondent further failed to comply with provisions of State rules governing the practice of medicine, namely Rule 4.3.3 of the Vermont Rule Governing the Prescribing of Opioids for Pain effective date July 1, 2017, which constitutes one or more violations of 26 V.S.A. § 1354(a)(27) and is unprofessional.

**Count 11**

45. Paragraphs 1 through 16, above, are restated and incorporated by reference.

46. Respondent's prescribing of Hydrocodone and Tramadol, DEA controlled substances for pain, to Patient B and C were outside of, and exceeded, the scope of his psychiatric practice and training and constitutes a gross failure to use and exercise 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 has occurred. Such conduct by Respondent thereby constitutes multiple violations of 26 V.S.A. § 1354(a)(22) and is unprofessional.

**Count 12**

47. Paragraphs 1 through 16, above, are restated and incorporated by reference.

48. Respondent's failure to keep records of his treatment of Patient B from May 2014 through March 2016 despite evidence that he provided treatment during this timeframe constitutes a gross failure to use and exercise 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 has occurred. Such conduct by Respondent thereby constitutes multiple violations of 26 V.S.A. § 1354(a)(22) and is unprofessional.

**Count 13**

49. Paragraphs 1 through 16, above, are restated and incorporated by reference.

50. Respondent's failure to keep records of his treatment of Patient C from May 2014 through January 2016, with the exception of one list of prescriptions in December 2014, despite evidence that he provided treatment during this timeframe constitutes a gross failure to use and exercise 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 has occurred. Such conduct by Respondent thereby constitutes multiple violations of 26 V.S.A. § 1354(a)(22) and is unprofessional.

WHEREFORE, Petitioner, the State of Vermont, moves the Board to issue an Order placing the following **conditions** on Respondent's Vermont medical license:

(1) Respondent shall be prohibited from prescribing opioids for any reason under any circumstances.

(2) Respondent shall pay an administrative penalty of a minimum of \$5,000.00 in accordance with 26 V.S.A. § 1374(b)(2)(A);

(3) Respondent shall complete AMA PRA Category 1 continuing medical education courses on the topics of medical documentation/recordkeeping and medical ethics, boundaries and professionalism; and

(4) Take any additional disciplinary action against the medical license of Respondent Richard E. Kast, MD permitted by 26 V.S.A. §§ 1374(b) and/or 1398 as it deems proper.

Dated at Chelsea, Vermont this 12th day of March, 2021.

STATE OF VERMONT

THOMAS J. DONOVAN, JR  
ATTORNEY GENERAL

E-SIGNED by Megan Campbell  
on 2021-03-12 15:15:21 EST

By:

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Megan Campbell  
Assistant Attorney General  
109 State Street  
Montpelier, VT 05609

The foregoing Specification of Charges, filed by the State of Vermont, as to Richard E. Kast, MD, Vermont Board of Medical Practice docket numbers MPS 087-0818 and MPS 121-1018 are hereby issued.

Dated at South Burlington, Vermont this 18th day of March 2021.

VERMONT BOARD OF MEDICAL PRACTICE

**David K. Herlihy** Digitally signed by David K. Herlihy  
Date: 2021.03.18 11:48:56 -04'00'

By:

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David K. Herlihy  
Executive Director  
Vermont Board of Medical Practice