

EXHIBIT

SEP 15 2006

STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE

In Re:	)	MPC 15-0203	MPC 110-0803
	)	MPC 208-1003	MPC 163-0803
	)	MPC 148-0803	MPC 126-0803
	)	MPC 106-0803	MPC 209-1003
David S. Chase	)	MPC 122-0803	MPC 89-0703
	)		MPC 90-0703
Respondent	)		MPC 87-0703

**MOTION TO RECONSIDER AND MEMORANDUM**

Now comes the State of Vermont (“State”) and, by and through undersigned counsel, moves the Hearing Committee (“Committee”) appointed by the Vermont Board of Medical Practice (“Board”) to reconsider its decision of September 12, 2006 allowing the intermittent cross-examination of Respondent during the State’s presentation of its case.

**MEMORANDUM**

At hearing in the above-captioned matters on September 12, 2006, The Committee, without a formal motion before it, decided that Respondent’s counsel would be allowed to cross-examine Respondent as to each patient charged when the State had indicates that it is ready to examine the respondent on another patient. The Committee’s decision unduly impedes the State in the presentation in the presentation of its case while having no corresponding effect on Respondent’s presentation of his case. Perhaps more importantly, the novel nature of the procedure adopted by the Committee creates a host of procedural and substantive issues which will hinder, not facilitate, the goal the Committee seeks to achieve—

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

efficient access by the Committee to the evidence it needs to determine if Respondent engaged in unprofessional conduct.

Due process requires that that the Committee in these proceedings ensures that:

[T]he procedures be tailored, in light of the decision to be made, to the capacities and circumstances of those who are to be heard to insure that they are given a meaningful opportunity to present their case.

*Mathews v. Eldridge*, 424 U.S. 319, 349 (1976). It is not just Respondent who has meaningful opportunity to present his case. Under *Mathews*, the State, as “one of those to be heard,” is entitled to the same precise opportunity. The Committee’s decision to allow Respondent’s counsel to cross examine counsel at numerous stages in the presentation of the State’s case precludes the State from presenting its case without hindrance, thereby denying the State the right of a meaningful opportunity to present evidence ensured by the Due Process clause.

The State’s right to present evidence in a meaningful manner is further compromised by the fact that the Committee’s decision as to how the State’s evidence is to be presented in no way impacts the Respondent in the presentation of his case. Respondent, when his time comes, will be allowed to present his evidence in a traditional manner, unencumbered except as to objections by the State. The State does not seek a tactical advantage in the presentation of its case. The State only requests the same opportunity to present its case in the same manner as Respondent.

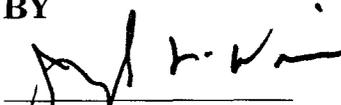
The Committee's decision has ramifications that not only undermine the State's right to a meaningful opportunity to present its case but will also impede the Committee from achieving its goal of receiving evidence in an efficient manner. The State is very concerned that the innovative approach adopted by the Committee as to the presentation of the State's case will, because it is so unique, create procedural and substantive issues. For example, soon after the Committee made its decision the issue arose as to whether the State was entitled to redirect. Another issue that will certainly arise is the process to be followed when the State in its direct examination asks follow-up or clarifying questions regarding a patient about whom the State has previously questioned Respondent and after Respondent's counsel has completed his cross. The resolution of these issues will divert the Committee's attention away from hearing the State's evidence and severely impede the Committee from achieving its goal of efficiently receiving the relevant information efficiently and quickly.

**CONCLUSION**

For the reasons argued above, the State requests the Committee to reconsider its decision regarding the State's presentation of evidence and **REVERSE.**

Dated at Burlington, Vermont this 15<sup>th</sup> day of September, 2006.

**WILLIAM SORRELL  
ATTORNEY GENERAL  
STATE OF VERMONT  
BY**

  
\_\_\_\_\_  
Joseph L. Winn  
Assistant Attorney General