

**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

**MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO RECONSIDER**

Respondent David S. Chase ("Respondent") asks the Hearing Committee ("Committee") to reconsider the following evidentiary rulings made by the Committee in an order issued July 12, 2006: (1) Exclusion of testimony of former patients who are not subject of the Amended Superceding Specification of Charges; (2) Exclusion of expert testimony of Arthur Ginsberg and David Evans; (3) Denial of Respondent's motion compel production of exculpatory evidence; (4) Denial of Respondent's motion to exclude testimony of complaining witnesses who did not sign medical releases at Respondent's request. Respondent has failed to demonstrate that the Committee erred in its ruling on these issues and the Respondent's motion must be denied.

**I. COMMITTEE CORRECTLY RULED THAT TESTIMONY OF FORMER PATIENTS WHO ARE NOT SUBJECT OF CHARGES IS IRRELEVANT.**

Consistent with authority cited by the State in its motion in limine, the Committee ruled that testimony of former patients who are not the subject of the Amended Specification of Charges is irrelevant. Respondent seeks to make such testimony relevant by arguing that such testimony is relevant to Respondent's belief as to the benefit of surgery and Respondent's intent and motive. Respondent consistently fails to understand that Respondent's beliefs, motives and intent are not relevant to a hearing on the merits. The merits hearing is solely concerned with

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Respondent's *conduct* not his state of mind. If the Committee determines that Respondent's conduct was unprofessional, evidence of motive, intent, or subjective belief as to the benefit of surgery *may be* relevant at the sanction hearing. At the merits portion of the hearing, however, testimony of the experiences of other patients does not have a tendency to prove or disprove whether Respondent's conduct in his treatment of the twelve patients that for the bases of the charges was unprofessional.

Nor does the exclusion of the testimony of former patients violate Respondent's due process rights. Respondent correctly asserts that he is entitled to "present relevant witnesses in his own defense." Respondent's Motion to Reconsider, p. 7. The key word is "relevant." As the authority cited to by the State in its motion in limine indicates, and as the Committee concluded after two days of deliberation, the testimony of the former patients is not relevant. The Respondent's motion to reconsider this issue must be denied.

## **II. COMMITTEE'S RULING TO EXCLUDE TESTIMONY OF ARTHUR GINSBURG AND DAVID EVANS AS REDUNDANT WAS CORRECT.**

In challenging the Committee's decision to exclude the expert testimony of Arthur Ginsburg and David Evans, Respondent offers no new argument as to why the Committee's decision was in error. Respondent simply reiterates the same arguments he made in opposition to the State's motion. In making its ruling, the Committee had before it the deposition testimony of Arthur Ginsburg and David Evans and Respondent's offer of proof with respect to the testimony of these two experts. After two days of deliberation, the Committee concluded that the testimony of these two experts would be duplicative of the testimony of Drs. Javitt and Freeman. Respondent has offered nothing new that requires the Committee's reconsideration.

The Respondent's motion to reconsider the exclusion of testimony of Arthur Ginsburg and David Evans must be denied.

**III. DENIAL OF RESPONDENT'S MOTION TO EXCLUDE TESTIMONY OF COMPLAINING PATIENTS WHO DID NOT SIGN RELEASES AND MOTION TO COMPEL PRODUCTION BY STATE ARE ISSUES PREVIOUSLY DECIDED BY THE BOARD AND NEED NOT BE REVISITED.**

Respondent raises yet again two issues in his motion for reconsideration that have been previously addressed by the Board of Medical Practice. Respondent again argues that the State has an expansive obligation to produce certain undefined documents. The Respondent has made this argument in one form or another since almost the inception of these proceedings. The Board has ruled on the issue numerous times and there is no reason for reconsideration nor does the Respondent offer any.

Also addressed by the Board in previous rulings is the Respondent's argument that patient-complainants who have not provided Respondent with a release cannot testify at hearing. The Board has rejected the Respondent's argument as has the Committee. There is no reason to revisit the issue and Respondent motion for reconsideration on these issues must be denied.

For all the reasons argued above, Respondent's motion for reconsideration must be **DENIED.**

Dated at Burlington, Vermont this 1<sup>st</sup> day of August, 2006.

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