

**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 AMEND NOTICE OF HEARING AND MEMORANDUM**

Now comes the State of Vermont and, by and through undersigned counsel, moves the Hearing Committee (“Committee”) appointed by the Vermont Board of Medical Practice (“Board”) to further amend the Amended Notice of Hearing in the above-referenced matters by adding the following paragraph:

If Respondent fails to appear for the hearing scheduled September 11, 2006, the State may proceed to present evidence concerning the Amended Superceding Specification of Charges. In the alternative, the State may request that the Board treat the allegations contained in the Amended Superceding Specification of Charges as proved and that judgment be entered on default under 3 V.S.A. § 809(d) and Board Rule 16.1(c).

**MEMORANDUM**

By this motion the State requests the Committee to amend further its Amended Notice of Hearing, dated August 4, 2006, to include the language set forth above in the State’s motion. Board Rule 16.1 (c) states that the allegations in the Amended Superceding Specification of Charges may be treated as proven “[i]f the respondent does not respond to charges *or* appear at hearing.” The Rule’s use of the disjunctive “or” indicates that the Respondent could still be found in default if he fails to appear personally at the hearing, notwithstanding that Respondent has answered the charges. The State’s position is that Respondent must personally appear and

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that appearance by Respondent's counsel alone is not sufficient to avoid default. Due Process requires that Respondent be notified of the consequences of his failure to appear personally.

**WHEREFORE**, the State's motion to amend notice of hearing must be **GRANTED** and the Amended Notice of Hearing of August 4, 2006, be amended further forthwith.

Dated at Burlington, Vermont this 17<sup>th</sup> day of August, 2006.

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

  
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Joseph L. Winn  
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