

**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

**REPLY MEMORANDUM IN SUPPORT OF STATE OF VERMONT'S  
MOTION TO RECONSIDER AND SECOND MOTION IN LIMINE**

In his opposition to the State's motion to dismiss, Respondent makes several arguments that require a response. First, the Respondent's characterization of the State's motion as "nothing more than an opportunity to relitigate an issue that it has twice argued and twice lost" (Respondent's Memorandum in Opposition to Motion to Reconsider and Motion in Limine, pp. 4-5, hereinafter cited to as Resp. Mem., p. \_\_) is in error. The central concern of the State is that the issue was not litigated. The Committee made the decision to proceed without benefit of briefing or extensive hearing after Respondent expressed concerns about the Respondent's opportunity to present evidence. Yet the impact of the Committee's decision, as argued previously, profoundly affects the State's ability for a meaningful opportunity to present its case, as guaranteed by the Due Process Clause.

Second, the Respondent's contention that his cross-examination of the Respondent does not go beyond the scope of the State's examination is wholly untenable. Resp. Mem., p. 6. The very concern expressed by Respondent's counsel was that the State "was focusing on these little slivers [of patient records] in a way

that [Respondent] think[s] provides a very misleading picture of what's going on.” Transcript, *In re David S. Chase*, Dk. Nos. MPC 15-0203, *et al.*, September 12, 2006, pp. 120. Respondent, therefore, wanted an opportunity to present evidence regarding “other portions of the record that provide ample support for a lot of the things that are in the chart.” *Id.* In order to accomplish this goal, Respondent, of necessity, must go beyond the scope of the State’s cross. The result is that Respondent has been given the opportunity to present a good portion of the Respondent’s case-in-chief at the same time the State is presenting its case-in-chief. The State’s meaningful opportunity to present its evidence is severely hindered and compromised. As argued previously, the Committee’s decision does not affect the Respondent’s case in the same manner.

Third, the State is not disavowing its previous position that flexibility in administrative procedures is recommended under the Due Process Clause. Resp. Mem., p. 6. Flexibility of process is an important aspect of administrative proceedings. However, such flexibility is utilized “to insure that [the parties] are given a meaningful opportunity to present their case.” *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976). In the present case the State’s right to a meaningful opportunity to present its case has been grossly impeded for the sake of flexibility.

Finally, the Respondent’s argument that he should be allowed to be cross-examined by his own attorney is without legal support. The cases cited to by Respondent allow, in some circumstances, the examination of a friendly witness with leading questions. However, the State has been unable to find any authority

for the argument that a *party* can be cross-examined by his own attorney with leading questions. Indeed, as noted in the State's original memorandum, the advisory note to F.R.E. 611(c) uses the cross-examination of a party by his own attorney as a cross-examination in form only and therefore leading questions should not be allowed.

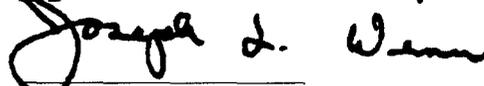
### CONCLUSION

For the reasons argued above and previously, the State requests the Committee to reconsider its decision regarding the State's presentation of evidence and **REVERSE**. Further, the State's Second Motion in Limine must be **GRANTED**.

Dated at Burlington, Vermont this 20th day of September, 2006.

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STATE OF VERMONT**

BY



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