

**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

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF STATE OF VERMONT'S
MOTION TO RECONSIDER**

The State of Vermont ("State") has moved the Committee to reconsider its decision of September 12, 2006 allowing the intermittent cross-examination of Respondent during the State's presentation of its case. The State has argued that 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 impediment to the State's right to a meaningful opportunity to present its case is compounded when the Committee considers the concerns expressed by Respondent's attorney that led to the Committee's decision to proceed in this manner. At the hearing on September 12, 2006, Respondent's attorney stated:

MR. MILLER: I've got -- I have -- I have a concern about how the examinations are being conducted, focusing on just very narrow portions of the record when there are other portions of the record that provide ample support for a lot of the things that are in the chart. I guess it's the state's prerogative to ignore the good evidence, but I think that particularly given the amount of time that's going to elapse between the time the state examines Dr. Chase and the time we examine Dr. Chase that it's important to point out things like this person complained of trouble with night vision and driving at night on the two prior visits to Dr. Chase, but

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

instead they're focusing on these little slivers in a way that I think provides a very misleading picture of what's going on.

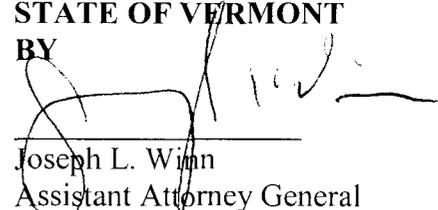
Transcript, *In re David S. Chase*, Dk. Nos. MPC 15-0203, *et al.*, September 12, 2006, pp. 119-120. Respondent in his statement clearly expressed a desire to cross-examine Respondent about matters *not* testified to in the examination of Respondent by the State and therefore go beyond the limits of examination. By allowing the Respondent to proceed in this fashion, the Committee has allowed the Respondent to present a great deal of his case-in-chief in the midst of the State's presentation of its evidence. Such a result compromises the right of the State, guaranteed under *Mathews v. Eldridge*, a meaningful opportunity to present its case.

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**.

Dated at Burlington, Vermont this 18th day of September, 2006.

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



Joseph L. Winn
Assistant Attorney General

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