

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In Re:)
 DAVID S. CHASE,) Docket No. MPC 15-0203, et al.
 Respondent)

**DECISION ON RESPONDENT’S MOTION
TO RECONSIDER DECISION ON PRE-HEARING MOTIONS**

Respondent filed a motion dated 7/26/06 for the Board to reconsider its decision on pre-hearing Motions dated 7/12/06. The State filed a memorandum in opposition dated 8/7/06. The Board Hearing Committee met via telephone conference on 8/15/06 in order to deliberate on and decide the motion to reconsider. Sharon L. Nicol, Public Member; Alexander Northern, Public Member; and Dewees H. Brown, Ad Hoc Physician Member served on the Hearing Committee. Phillip J. Cykon, Esq. served as Presiding Officer for the Committee.

The Board had previously met and deliberated on 6/29/06 and 7/6/06 concerning the pre-hearing motions filed by Respondent. The Board reviewed all legal arguments and supporting material submitted by Respondent and rendered its decision. The Board again reviews some of these issues and addresses them in the order and as stated by Respondent in his motion to reconsider.

A. “The Board Should Allow Dr. Chase To Present His Own Patient Witnesses In Order To Directly Address The Issues Made Relevant By The State.”

The Board affirms its prior ruling excluding this evidence. The testimony of patients who are not subjects of the pending allegations is not relevant to Respondent’s conduct in relation to the patients who are subjects of the allegations. It is excluded under V.R.E. 402 and 3 V.S.A. § 810(1).

B. “The Testimony Of Drs. Evans and Ginsburg Is Relevant And Non-Cumulative.”

The Board affirms its prior ruling excluding the testimony of David Evans and Arthur Ginsburg. The State’s motion to exclude the expert testimony from James Freeman, M.D. and from Jonathan Javitt, M.D. was denied. It appears that Respondent will be able to elicit the medical and scientific testimony from those physicians relevant to whether Respondent’s actual use of CST and BAT was appropriate in the twelve particular cases before the Board. Testimony from Mr. Evans and Mr. Ginsburg, as previously decided, would be cumulative and unduly repetitious, and is excluded under V.R.E. 403 and 3 V.S.A. § 810(1).

C. “The Board Did Not Rule On Dr. Chase’s Request That The State Produce All Material Exculpatory Information And Witness Statements In Its Possession.”

As has been previously decided several times, a Board licensee is entitled to receive certain information under 26 V.S.A. ' 1318(e) and Board Rule 19.1. Respondent is entitled to

have access to the material set forth in that statute and rule. Material exculpatory information, including witness statements, that is in the State's possession, custody, or control should be provided to Respondent. The State proceeds at its own peril if it fails to provide such information.

D. "Applicable Caselaw Strongly Supports The Exclusion Of Those Complaining Patients Who Refuse To Provide Dr. Chase Access To Their Medical Records."

This issue has been raised several times before. The Board affirms its prior decision to deny such exclusion. Respondent bases this request on law related to civil malpractice actions, actions covered by the Vermont Rules of Civil Procedure, and criminal cases. Unlike the cases cited by Respondent, this case involves whether or not Respondent engaged in unprofessional conduct as set forth in the particular Vermont statutes. The Board does not have the authority to order patients to release their current medical records. The Board states again that the combination of rights and procedures that have been and are being provided to Respondent prior to the hearing on the merits, and that which will be provided at the merits hearing comply with Vermont law and go beyond the administrative hearing contemplated by the U.S. Supreme Court in Goldberg v. Kelly, 397 U.S. 254 (1970) and Mathews v. Eldridge, 424 U.S. 319 (1976). Respondent will have full opportunity to cross-examine witnesses and introduce his own evidence at the disciplinary hearing, at which the State must prove its allegation by a preponderance of the evidence. Exclusion of testimony of patients who will not provide their current medical records is not supported by the law cited by Respondent and would not serve to protect the Vermont public.

The Board will take this opportunity to remind both parties that this proceeding is not a criminal case or a civil medical malpractice case, and for that reason, use of terms such as "prosecution", "guilt", and "innocence" do not serve to help the Board in its responsibility to examine all the evidence and determine whether or not Respondent has engaged in acts of unprofessional conduct. Many pre-hearing issues have been raised and decided, and it is now time for the hearing on the merits. The Board trusts that both parties at the hearing on the merits will present relevant evidence in an efficient and professional manner.

SO ORDERED BY THE BOARD HEARING COMMITTEE.

WRITTEN ORDER PREPARED BY PRESIDING OFFICER PURSUANT TO BOARD RULE 16.2 AND 16.3, AND IN ACCORDANCE WITH THE DELIBERATIONS OF THE BOARD HEARING COMMITTEE

Phillip J. Cykon

August 21, 2006

Phillip J. Cykon, Esq., Presiding Officer

Date