

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re:	)	MPC 15-0203	MPC 110-0803
	)	MPC 208-1003	MPC 163-0803
David S. Chase,	)	MPC 148-0803	MPD 126-0803
	)	MPC 106-0803	MPC 209-1003
Respondent.	)	MPC 122-0803	MPC 89-0703
	)		MPC 90-0703
	)		MPC 87-0703

**DR. CHASE'S MOTION TO EXCLUDE PHOTOCOPIES
OF MEDICAL RECORDS FROM EVIDENCE**

Now comes the Respondent, David S. Chase, M.D., by and through counsel, and hereby moves the Board to exclude from evidence photocopies of Dr. Chase's original medical records, and to allow admission only of the originals of these records. Dr. Chase has no objection to the use of electronic or hard copies of those records for demonstrative purposes and for use in examining witnesses, but he objects to the formal admission of anything but the originals. In support of his request, Dr. Chase relies upon the following incorporated Memorandum of Fact and Law.

MEMORANDUM OF FACT AND LAW

I. Introduction.

The most important documentary evidence in this case will be Dr. Chase's medical records. The State alleges that those medical records were falsified to support Dr. Chase's surgery recommendations. Dr. Chase contends that those records are accurate and exonerate him of any wrongdoing. Dr. Chase organized his original medical records in a particular manner. That original organization is important to his claims that his records are not misleading. However, when it seized and photocopied Dr. Chase's records, the State made no effort to reproduce their original organization. As a result, the photocopies provided by the State do not accurately represent the arrangement of the originals. In addition, certain portions of Dr. Chase's medical records, as well as their organization, cannot be easily and accurately reproduced in photocopies. The Vermont

Rules of Evidence therefore require that only the original medical records be admitted into evidence. The Board should render a pretrial ruling to that effect.

II. Factual Background.

The State contends, among other things, that Dr. Chase recommended and performed unnecessary cataract surgery and falsified his medical records in order to justify his surgical decisions. It alleges that Dr. Chase's medical records provide an inaccurate picture of his patients' visual function. Dr. Chase strongly denies those accusations and believes that his medical records support his surgery recommendations.

Dr. Chase's original medical charts are arranged in a particular and purposeful way. Each chart is composed of three separate parts contained within a patient folder. The first part is clipped to the front inside cover of the folder and normally contains most of the patients' vision test scores, including their clearly labeled CST with BAT test slips, Snellen test results, and autorefractor test slips. Because they are clipped to the inside front cover, those results are located in the position that a reader would ordinarily view first. The prominence of these clearly labeled test results is important to Dr. Chase's defense, because the State contends that Dr. Chase recorded his vision test results in a misleading manner in other, less prominent, portions of the chart in order to justify surgery.

The second portion of each chart consists of the voluminous exam notes, operative notes, patient histories, patient questionnaires, and other forms on which Dr. Chase, his technicians, and the patients recorded relevant information during each patient visit. These pages occupy the center of each patient folder and are normally arranged in reverse chronological order. The exam notes that the State alleges contain misleading vision test scores are located in this less prominent portion of the chart.

The third part of each chart is clipped to the back inside cover of the folder and includes correspondence and other miscellaneous information. Because the charts were purposefully organized in this way for ease of use by Dr. Chase and his employees, the records become much more difficult to use and understand when the arrangement of their component parts is altered.

Shortly after this case began, the State seized virtually all of Dr. Chase's medical charts for patients on whom he had performed surgery. Upon Dr. Chase's Motion, the Superior Court required the State to photocopy all of the seized charts and to provide those photocopies to the Respondent. In photocopying the charts, the State made no effort to reproduce their original arrangement. As a result, the State's photocopies do not begin to replicate the originals in important respects. For instance, copies of the clearly labeled CST with BAT test slips are normally buried in the photocopies, and are further separated from the corresponding exam notes, thereby making these exam notes more difficult to interpret. Recognizing the importance of the organization of the original records, in the federal criminal trial the Court ordered the government to reassemble dozens of charts in their original order after the federal prosecutor had disassembled them without the knowledge or permission of Dr. Chase or the Court.

It is not just the State's initial copying effort that fails to accurately capture the originals. Any photocopy that does not exactly replicate the arrangement of the originals, including clipping test results and other important information inside the front cover of a patient folder, does not properly or accurately portray the original evidence, which depends on those organizational factors. It would be very difficult and time consuming to attempt to construct photocopies that employ the same clipped arrangement, paper sizes, and precise order of the originals —all of which contribute to the records' clarity. Accordingly, to the Respondent's knowledge, neither party has attempted to do so.

III. Discussion.

The best evidence rule, codified in Vermont Rule of Evidence 1002,¹ requires that “[t]o prove the content of a writing, recording, or photograph, the original . . . is required, except as otherwise provided in these rules or by statute.” V.R.E. § 1002. “The purpose of the rule traditionally has been the prevention of inaccuracy and fraud in the transmission of the all-important written word.” V.R.E. § 1002, Reporters Notes. Yet, the best evidence rule is not absolute. Vermont Rule of Evidence 1003 provides that a duplicate is admissible to the same extent as the original unless “in the circumstances it would be unfair to admit the duplicate in lieu of the original.” V.R.E. § 1003. Thus, simply stated, a duplicate is only admissible in lieu of an available original if it would be fair to substitute the duplicate for the original.

Here, admission of duplicates of the original medical charts would be unfair to Dr. Chase. The original charts were arranged in a specific way to allow Dr. Chase and his employees to provide the highest quality care. That arrangement directly contributes to the clarity of the information contained within them. Most importantly, the charts’ original arrangement places the clearly labeled CST with BAT test slips, Snellen test results, and autorefractor slips prominently in the charts. Those test scores accurately portray the results of the vision tests that Dr. Chase and his technicians performed and make clear the nature of each test. The placement of these accurate and clearly labeled test results in the front of the chart also usually places them in close proximity to the exam notes that the State alleges are incomplete or misleading, thereby calling into serious question the State’s belief that Dr. Chase purposefully falsified his medical records to mislead others.

In contrast, the copies made by the State, and any copy that does not preserve the precise arrangement of the originals, compromises the clarity of the records. It often places the clearly labeled test results in a less prominent position. It often destroys the proximity between the test

¹ The Vermont Rules of Evidence are generally applicable to these proceedings by virtue of 3 V.S.A. § 810(1).

slips and Dr. Chase's exam notes. It generally makes the records more difficult to understand. As a result, any alteration of the arrangement of the charts works to the disadvantage of Dr. Chase, who contends that his charting was proper, and to the advantage of the State, which claims that it was not.

In order to facilitate an efficient hearing, the parties will no doubt need to use and refer to photocopies and electronic copies of records for demonstrative purposes and when examining witnesses. Dr. Chase has no objection to such use. However, under the best evidence rule as codified in the Vermont Rules of Evidence, only the original records may be admitted into evidence for use by the Board in its deliberations.

IV. Conclusion.

For the reasons set forth above, the Board should only allow the original medical charts to be formally admitted into evidence.

Dated at Burlington, Vermont, this 25 day of May, 2006.

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