

**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. CHASES'S MOTION TO REQUIRE THE STATE TO PROVIDE AN UPDATED
WITNESS LIST AND ORDER OF CALL**

Now comes the Respondent, David S. Chase, M.D., by and through counsel, and hereby moves the Board to require the State to provide him with an updated witness list and anticipated order of call in advance of trial.

Over two-and-one-half years ago, on September 16, 2003, the State provided Dr. Chase with its original witness list. That list includes fourteen patients, nine former staff members, and one expert witness, among others. In total, the State has identified 26 witnesses. Although it is unclear from the State's disclosure, the State also appears poised to call approximately ten more physicians and optometrists who provided second opinions to Dr. Chase's former patients.

The State's allegations against Dr. Chase have changed twice since that disclosure. Both parties now understand their cases better than they did then. Indeed, the State has recently represented to the Board and to the Respondent that it intends to streamline its case. It has also indicated in the past that it does not intend to call certain of the witnesses on its list.

In preparation for the merits hearing in this case, on March 20, 2006, Dr. Chase asked the State to provide him with its best estimate of how many witnesses it actually intended to call at trial and to identify those witnesses. (*See* 3/20/06 E-mails between Eric Miller to Joe Winn, attached hereto as Exhibit A.) The purpose of Dr. Chase's reasonable request was to allow him to efficiently prepare for trial, to avoid preparing to cross-examine witnesses whom the State already knows will

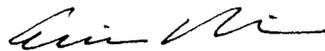
never be called at trial, and to allow the trial itself to proceed as efficiently and quickly as possible. The State flatly refused, without explanation, to provide Dr. Chase with any additional information regarding its anticipated trial witnesses. (*See id.*)

The State's outright refusal to cooperate with the Respondent's efforts to efficiently prepare and try this case requires Board intervention. If Dr. Chase is required to prepare to cross-examine every witness on the State's list, even though the State knows that many of them will never be called at trial, he will be forced to bear enormous unnecessary burden and expense. And if the Respondent does not know who the State will call at trial, and is therefore less able to prepare to conduct efficient cross-examinations, that fact will inevitably slow the proceedings, to the detriment of all involved. The Government's refusal to provide this straightforward information smacks of gamesmanship toward the Respondent and disrespect for the Board's valuable time.

In order to facilitate the efficient conduct of trial and to ensure that Dr. Chase does not bear an unfair burden, the Board should require both parties to designate which witnesses they currently intend to call at the merits hearing. Those disclosures should be made at least one month before the hearing begins. In addition, the parties should be required to provide one another with their anticipated order of call at least two days before each hearing day.

Dated at Burlington, Vermont, this 24 day of May, 2006.

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