

STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE

In re: William A. O'Rourke, Jr., M.D.     )  
  )     Docket No.: MPN 19-0302  
  )

**RESPONDENT WILLIAM A. O'ROURKE, JR., M.D.'S  
REQUESTS TO FIND AND CONCLUSIONS OF LAW**

NOW COMES Respondent, William A. O'Rourke, Jr., M.D., by and through his attorneys, Dinse, Knapp & McAndrew, P.C., and submits the following proposed findings of fact and conclusions of law.

**INTRODUCTION**

For nearly 50 years William A. O'Rourke, Jr. M.D. has served the people of Rutland County with compassion and competence. In the apt words of retired Rutland High School Principal Mary Fregosi, Dr. O'Rourke is a "doctor's doctor" who cares for all of his patients, whether physician, ex-Governor, or unemployed, with the highest degree of respect and concern. Dr. O'Rourke acknowledges that he should have completed the Case Western Reserve University course sooner than he did. For that he apologizes. Respectfully, however, to punish Dr. O'Rourke beyond what he has endured over the past four years is unnecessary and would be fundamentally unfair. This prosecution has become a persecution of a good and decent man and the time has come for it to end.

On behalf of Dr. O'Rourke, we respectfully request that the State's Amended Specification of Charges dated May 13, 2005, be dismissed.

**FINDINGS OF FACT**

1. William A. O'Rourke, Jr., M.D., was born and raised in Rutland, Vermont. He attended the University of Vermont School of Medicine, followed by military service and a

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residency in Infectious Disease at Georgetown University Medical Center. Subsequently, in 1958, Dr. O'Rourke returned to Rutland, Vermont, to practice internal medicine, with a subspecialty in infectious disease, and has continued to do so to the present time.

2. Dr. O'Rourke has served the people of Rutland County in many capacities including as a dedicated physician, City Health Officer, and in numerous educational and charitable capacities. Aside from the present situation, Dr. O'Rourke has never had any difficulty with or faced charges by the Vermont Board of Medical Practice. To the contrary, years ago Dr. O'Rourke served on that Board.

3. While practicing medicine in Rutland, Dr. O'Rourke raised five children who, in turn, have provided him with 15 grandchildren.

4. At the outset of the hearing the State withdrew and dismissed Count V of the Amended Specification of Charges dated May 13, 2005. In so doing, the State effectively conceded that it could not prove Dr. O'Rourke's care and treatment of "Patient A" was in any way unprofessional or in violation of 26 V.S.A. § 1354.

5. Notwithstanding that concession by the State, the Board Hearing Panel has learned the genesis of the present dispute. Respondent's Exhibit A, Dr. O'Rourke's letter to the Board of Medical Practice dated June 27, 2002, outlines precisely the factual circumstances surrounding his renewal of a pain management prescription for Patient A on November 9, 2001. As the Hearing Panel now understands, there was *nothing* medically unorthodox, harmful, or inappropriate in Patient A receiving the medication at issue. Indeed, neither the pharmacist, the patient, nor the patient's physician husband had *any* complaint regarding the professional courtesy extended by Dr. O'Rourke in renewing the prescription. On the contrary, it was only Investigator Philip Ciotti who felt that there was "a suspicious circumstance"

surrounding that prescription, and who on March 4, 2002, “opened” a complaint against Dr. O’Rourke. When asked at the Hearing why he simply did not contact Dr. O’Rourke and ask him to explain that prescription, Mr. Ciotti’s response was that doing so would “not be good detective work.” That answer demonstrates the root of the present case; the “cops and robbers” approach Mr. Ciotti has brought to bear. Thus, instead of according a respected, long-standing member of the Vermont medical community the courtesy of a visit or phone call, Mr. Ciotti chose to initiate a complaint against Dr. O’Rourke. (Respondent’s Exhibit C).

6. In response to that Complaint, Dr. O’Rourke understandably turned to his brother, Joseph O’Rourke, Esq., for assistance. The present dispute arises from the State’s charge that Dr. O’Rourke did not comply with State’s Exhibit 1. Prior to addressing the substance of those charges, Respondent notes that it is the State’s burden to prove each and every element of the charges it has brought. Here, the Order which Dr. O’Rourke is charged with having violated, as introduced into evidence by the State as Exhibit 1, is undated and unentered and therefore cannot serve as a basis for any of the pending charges and they must be dismissed as a matter of law.

7. Even without that jurisdictional infirmity, the State’s Amended Specification of Charges should be rejected. As discussed, Count V of those charges has been withdrawn and dismissed. Count IV is equally devoid of merit. Dr. O’Rourke’s July 15, 2004, letter to Patricia King, M.D., was in no way “dishonorable and/or unprofessional conduct” as charged by the State. At worst, it was a clumsy, but obviously sincere, effort by Dr. O’Rourke to speak “physician-to-physician” about the importance to his patients and the Rutland medical community of his attendance at the course on Infectious Diseases in order for him to stay current in a field where he was, and remains, the sole practitioner in his community. This

overwrought and unsupportable charge demonstrates the extent to which the State has chosen to reach in its efforts to punish Dr. O'Rourke.

8. Counts VI and VII of the Amended Specification of Charges likewise present a thinly disguised and gratuitous attempt to punish Dr. O'Rourke, rather than a reasoned, objective dispute. There is no evidence that Dr. O'Rourke failed to produce any requested records or documents on a timely basis when requested by the Board. On the contrary, the evidence establishes that it was only on March 16, 2005, that Mr. Ciotti ever sought records from Dr. O'Rourke and he did so when he knew or should have known that Dr. O'Rourke and his nurse (who happens to be his wife) were in Florida. Instead, Mr. Ciotti barged into Dr. O'Rourke's office, intimidated the bookkeeper, Linda Lewis, leaving her in tears. Mr. Ciotti attempted to insulate himself from the consequences of his unnecessary and inappropriate behavior by authoring a self-serving "Report of Investigation" the same date, after learning of Ms. Lewis's complaint, purporting to memorialize the "chit chat" and "little chuckle" that he allegedly enjoyed with Ms. Lewis. (Respondent's Exhibit D). This is not the first time that Mr. Ciotti has engaged in questionable behavior as a representative of the Board; he conceded that the Board reinstated a physician's license because of grave concerns about an affidavit prepared by Mr. Ciotti and relied on to secure an emergency suspension of that license. The Board should find Mr. Ciotti's overzealous conduct to be unnecessary, unwarranted, and counterproductive. Indeed, Mr. Ciotti conceded that whenever he contacted Dr. O'Rourke's counsel seeking information it was promptly provided, including the records at issue. (State's Exhibit 6). Accordingly, Counts VI and VII of the Amended Complaint should be dismissed.

9. The State's remaining allegations of unprofessional conduct, Counts I, II, and III of the Amended Specification of Charges fail as a matter of law, as discussed above, due to the

State's failure to enter into evidence a valid, binding Order. Even aside from that jurisdictional defect, these counts fail as a matter of fact and controlling law. It is clear that Dr. O'Rourke's delay in attending the Case Western Reserve University course was not "dishonorable" and he did not make "false and fraudulent representations" as is alleged by the State. Dr. O'Rourke is a man of the highest integrity and honor as testified to by former Governor Thomas Salmon, former Rutland High School principal Mary Fregosi, and respected oncologist, H. James Wallace, Jr., M.D. Dr. O'Rourke's plan to take the course when initially available in May 2004, was derailed by the life threatening injuries experienced by his brother Joseph O'Rourke in an automobile accident that spring, and his lengthy rehabilitation. Dr. O'Rourke thereafter repeatedly tried to demonstrate to the Board that the Infectious Disease course offered every December was vitally important to the Rutland community; but his pleas fell upon deaf ears. On December 22, 2004, Investigator Ciotti telephoned Dr. O'Rourke and was told by Dr. O'Rourke that he planned to attend the Case Western Reserve University course when it was next offered (in May 2005). (Respondent's Exhibit B). The State's response was to file, on February 10, 2005, a Specification of Charges against Dr. O'Rourke, directly resulting in the present impasse. Notwithstanding the filing of those charges, and an Amended Specification of Charges on May 13, 2005, Dr. O'Rourke in fact attended and satisfactorily completed the Case Western Reserve University course in May 2006.

10. The State conceded in its closing argument that Dr. O'Rourke is a competent, compassionate physician providing the highest quality of care to his patients. The Board heard from some of those patients; older and younger physicians, a retired High School Principal, a former Governor, a respected businessman; to a man and woman Dr. O'Rourke's patients establish, far more eloquently than Dr. O'Rourke could on his own behalf, the depth of his

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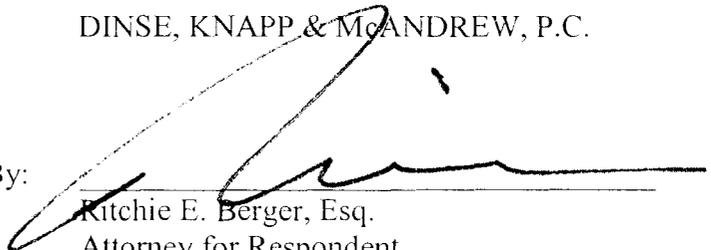
devotion to his patients and the practice of medicine. The State's request that Dr. O'Rourke's license be suspended is unjustified and unfair. Dr. O'Rourke has endured punishment far disproportionate to his purported "crime" and this prosecution has long since turned into an irrational pursuit of punishment for the sake of punishment. It should end now.

WHEREFORE, it is respectfully requested by Respondent William A. O'Rourke, Jr., M.D., that the State's Amended Specification of Charges be dismissed in their entirety.

DATED at Burlington, Vermont this 1st day of November, 2006.

DINSE, KNAPP & McANDREW, P.C.

By:



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