

4. Respondent asserts that the answer filed by the State "invites a formal response from Dr. O'Rourke" and that this will lead to "a (theoretically never-ending) cycle of pleadings and responses." This exaggerated claim is without merit.

5. The hearing committee is required to make written findings of fact and recommendations for disposition of the matter before it. 26 V.S.A. §1359. The Vermont Supreme Court has explained that findings of fact "are required in order that [a] board will adequately communicate how the result was arrived at, not only for the parties, but also for the reviewing court." *Potter v. Hartford Zoning Board of Adjustment*, 137 Vt. 445, 447 (1979) (internal quotation and citation omitted). Findings must be sufficient to inform interested persons of the reasons for the decision. *Id.*

6. Accurate written findings are the necessary foundation for a Board decision and an order in this case. Clear written findings necessarily require careful consideration of the evidence in the record by the administrative board and facilitate any subsequent judicial review. See 2 K. Davis, *Administrative Law Treatise* §16.05. Findings of fact without evidentiary support or findings that are based on the "argumentative assertions of counsel" result in decisions being set aside and remanded for rehearing. *Baird v. Eldridge*, 132 Vt. 618 (1974). In the case at hand, the State's answer to Respondent's proposed findings of fact is a fair response and correction of the inaccuracies and argumentation contained in Respondent's submission.

7. Dr. O'Rourke need not reply to the State's written answer to his proposed findings unless he wishes to argue that the State's has somehow misrepresented the record. No "never ending" cycle of pleadings will follow. Ultimately, the hearing panel will give the pleadings of the parties only such weight as they are entitled to, when measured directly

against the evidentiary record. The State's only interest here is in seeing that an accurate, clear recitation of findings supports the decision and order of the Board of Medical Practice in this matter and that justice is done.

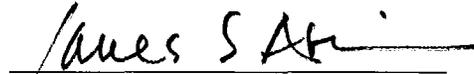
WHEREFORE, the State of Vermont moves that the Board hearing committee (a) consider and rely on the State's Proposed Findings of Fact and its previously submitted answer to Respondent's proposed findings; and (b) deny Respondent's Motion to Strike as unsupported by authority and unnecessary.

Dated at Montpelier, Vermont, this 21st day of November, 2006.

STATE OF VERMONT

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by:



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