

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: William A. O'Rourke, M.D.

)
)
)
)

MPN 12-0302

STATE'S MOTION IN LIMINE

NOW COMES the State of Vermont, by and through Attorney General William H. Sorrell and undersigned Assistant Attorney General, James S. Arisman, and moves *in limine* that in the evidentiary hearing in the above matter that the Board of Medical Practice (hereinafter, "the Board") enter a procedural order providing for the efficient and orderly conduct of the hearing. Board Rule 16.3; and see *State v. Hooper*, 151 Vt. 42, 44 (1988) (motion *in limine* on evidentiary questions prevents disruptions that might render proceedings incoherent; motion *in limine* intended to curb unfair prejudicial effect of questions asked or statements made). In support of its motion *in limine*, the State submits the following.

1. The State of Vermont on or about May 13, 2005 filed with the Board of Medical Practice an Amended Specification of Charges in this matter. The Board issued these charges on May 19, 2005. The State's charges against Respondent consist of 7 counts of alleged unprofessional conduct. The factual basis for each count of unprofessional conduct is concretely set forth in the Specification of Charges.

2. The State bears the burden of proof in the hearing on these factual allegations. The State must establish by a preponderance of the evidence its proof as to each allegation. The State moves that the proceedings be conducted consistent with the

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

requests below, so as to protect the record in this matter, avoid confusion, and ensure fairness to the parties.

II. State's Requested Rulings.

3. The State moves the Board for a ruling that the hearing on the State's Specification of Charges be conducted as a bifurcated proceeding, pursuant to the provisions of 26 V.S.A. §§1360 & 1361.

4. The State urges that the allegations of unprofessional conduct against Respondent be heard and decided first, based only on the facts and evidence relevant to the specific charges. The State urges that other evidence not directly relevant to the Specification of Charges be ruled inadmissible at this first phase of the proceedings to prevent danger of unfair prejudice, confusion of the issues, delay, and the presentation of cumulative evidence outweighing any probative value. V.R.E. 401-403.

4. The State moves that any evidence relevant to possible entry of a disciplinary sanction be admitted only after closure of all evidence on the State's Amended Specification of Charges. 26 V.S.A. §§1360 & 1361. In imposing a sanction, the Board may reprimand, condition, limit, suspend, or revoke the license of the Respondent. 26 V.S.A. §1361(b). Only in consideration of such an order of discipline, should evidence of reputation, mitigation, etc. then be received and weighed against the proof of unprofessional conduct already presented. Board Rule 16.3.

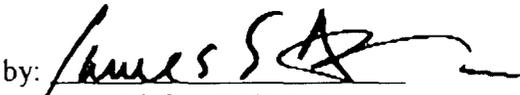
5. The State further moves for a ruling that the testimony of any witness not timely disclosed by either party be excluded and not be heard.

WHEREFORE, the State of Vermont respectfully moves that its motion *in limine* be **GRANTED** and that the Board of Medical Practice conduct the hearing on the State's Amended Specification of Charges consistent with the State's requests, as set forth above.

Dated at Montpelier, Vermont this 19th day of October 2006.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
JAMES S. ARISMAN
Assistant Attorney General

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609