

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In Re:	)	MPC 15-0203	MPC 110-0803
	)	MPC 208-1003	MPC 163-0803
	)	MPC 148-0803	MPC 126-0803
	)	MPC 106-0803	MPC 209-1003
David S. Chase	)	MPC 140-0803	MPC 89-0703
	)	MPC 122-0803	MPC 90-0703
Respondent	)		MPC 87-0703

**MEMORANDUM IN OPPOSITION TO RESPONDENT'S PROFFER OF
WITNESS TESTIMONY AND SUMMARY EXHIBITS**

Employing a tactic that can only be described as utter gamesmanship, Respondent requests the Hearing Committee (“Committee”) to reconsider its previous ruling of December 18, 2006, excluding the testimony of Ellen Flanagan and Brianne Chase. Despite the fact that Respondent has had more than a month to file such a motion, Respondent has waited until three working days before the final day of testimony to file his motion. Respondent also seeks at the eleventh hour to have admitted summary charts of patients who were not offered surgery. The Respondent’s proffer should be denied because the proffered evidence is irrelevant and because granting the Respondent’s proffer will unduly delay resolution of the proceedings.

Respondent’s proffer vividly demonstrates Respondent’s inability or outright refusal to understand the nature of these proceedings. The issues before the Committee are Respondent’s treatment of the eleven patients who filed complaints with the Vermont Board of Medical Practice. The proceeding is not a criminal trial

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of fraud. Neither Respondent's general office procedures nor the number of patients Respondent did not attempt to pressure into surgery that was not medically indicated have any relevance to Respondent's treatment of the eleven patients. The proffer reflects Respondent's attempt to minimize the experiences of the eleven patients by burying those experiences underneath generalities that are wholly irrelevant to issues of unprofessional conduct the Committee must decide.

Not only is the evidence proffered by the Respondent irrelevant, but also the proffer as to witness testimony, if granted, will only serve to delay these proceedings. If the Committee allows evidence of general office practice in the Respondent's case then the State will present a rebuttal case to show that general office practice was used to justify surgery that was not medically indicated. Whether such evidence could have been offered in the State's case in chief is of no moment. *Morrison v. Air California*, 101 Nev. 233, 236, 699 P.2d 600, 602 (Nev. 1985) (When a party to a proceeding offers evidence which is designed to counteract new matters introduced by the adverse party, the party offering the rebuttal evidence is entitled to have the rebuttal evidence admitted, even when the evidence might have been offered in the case in chief).

In considering the Respondent's motion, the Committee should take into account the timing of the motion. Respondent had more than a month to raise the issues in his proffer and instead inexplicably waited until just before the final day of evidence to bring the issues forward. Respondent could have informed the presiding officer in a status conference on January 24, 2007 (a conference requested by

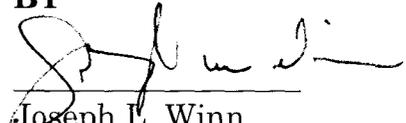
Respondent) that these issues were going to be raised but failed to do so. The timing of the filing, the resulting delay, and, most importantly, the irrelevancy of the proffered evidence all require the Committee to deny Respondent's proffer.

CONCLUSION

For all the reasons argued above, the Respondent's proffer of witness testimony and summary exhibits must be **DENIED**.

Dated at Montpelier, Vermont this 25th day of January, 2007.

**WILLIAM SORRELL
ATTORNEY GENERAL
STATE OF VERMONT
BY**



Joseph L. Winn
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