

**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 SUPPORT OF STATE OF VERMONT'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Before the Hearing Committee ("Committee") are numerous counts of unprofessional conduct alleged against Respondent David Chase ("Respondent") by the State of Vermont ("State"). The State has alleged, through the specific counts, that Respondent pressured patients into undergoing cataract surgery that was not medically indicated and falsifying records to support the Respondent's decision to perform cataract surgery. In deciding the cases before it, the Committee should bear in mind that the primary goal of the Vermont Board of Medical Practice ("Board") is to protect the public by maintaining the integrity of the medical profession. In these proceedings, the Committee has heard the public speak in the persons and voices of eleven people who were patients of Respondent. For the reasons set forth below, the credibility and persuasiveness of the testimony of the eleven patients and seven physicians presented by the State of Vermont ("State") require the Committee to adopt the State's Proposed Findings of Fact and Conclusions of Law and recommend to the Board that Respondent has engaged in numerous and egregious acts of unprofessional conduct.

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

In order for the Committee to adopt the State's Proposed Findings of Fact and Conclusions it must determine that the State has proved its charges by a preponderance of the evidence. The State has met this burden. Indeed, Respondent in his case offered little relevant evidence to counter the State's proof. Instead, the Respondent, in his case, has attempted to create an alternate reality. Because of its implications to the ethical practice of medicine, the Committee must reject the alternate reality created by Respondent.

I. UNREBUTTED TESTIMONY OF ELEVEN PATIENTS DEMONSTRATES BY A PREPONDERANCE OF EVIDENCE THAT RESPONDENT PRESSURED PATIENTS INTO UNDERGOING SURGERY THAT WAS NOT MEDICALLY INDICATED.

The testimony of the eleven patients in this case described essentially the same experiences with Respondent, although with certain variations. Eight of the eleven patients—Helena Nicolay, Marylen Grigas, Donald Olson, Jane Corning, Janet Kerr, Bill Pierson, Franklin Cole, and Joseph Touchette—described a situation where they were attending what they believed was a routine exam. In the course of the appointment Respondent begins discussing cataract surgery and attempts to schedule the patient for surgery—usually within the next week or two and, in Ms. Grigas's case, the following day. Contrary to the Preferred Practice Patterns of American Academy of Ophthalmology and the practice of every other physician who testified, there was no discussion between the patient and Respondent concerning how the patient's vision was affecting their life. In fact, except for minor symptoms, none of these patients were experiencing visual

problems such that their vision was no longer meeting their needs—the leading indication for considering cataract surgery. Notwithstanding the fact that, with all of these patients, their vision was meeting their needs, Respondent pressured these patients into undergoing cataract surgery.

With the three remaining patients—Judith Salatino, Susan Lang, and Margaret McGowan---Respondent exerted a different kind of pressure. Over the course of several appointments, Respondent would consistently raise the issue of cataract surgery, leading the three patients to believe surgery was indicated. As with the other patients, there was never a discussion between the Respondent and patient as whether or not the patient’s vision was meeting her needs. At the appointment where each of the three finally agreed to surgery, Respondent showed each patient a result of a Contrast Sensitivity Test with Brightness Acuity Testing. Respondent never explained what the test was or what the results indicated. Respondent told two of the patients that if they were truck drivers, they would not be eligible to drive. All three patients underwent surgery on one of their eyes.

Many of the eleven patients testified that Respondent discouraged them from getting a second opinion. When discussing second opinions, Respondent would refer to his certification from the American College of Eye Surgeons (“ACES”) and tell many of the patients that he was the only doctor in the area with such a certification. Respondent led the patients to believe that getting a

second opinion would be waste of time because he had a special expertise that other doctors did not.

The testimony of the eleven patients concerning their experiences with Respondent is largely unrebutted by Respondent. Respondent offered no direct testimony that that the experiences described by the eleven patients did not occur exactly as described. Indeed, Respondent did not take the stand in his own case to offer a counter explanation to the testimony of the eleven patients.

Based on the unrebutted testimony of the eleven patients, the Committee must recommend to the Board that Respondent engaged in unprofessional conduct by pressuring patients into undergoing cataract surgery when such surgery was not medically indicated.

II. RESPONDENT'S EXPLANATIONS OF THE PATENTLY FALSE ENTRIES IN PATIENT RECORDS IS NOT CREDIBLE.

The State has proven by a preponderance of the evidence that Respondent falsified records in order to justify cataract surgery. The Respondent falsified records by entering into the record complaints the patient never made (e.g. can't see to drive safely at night due glare), by creating diagnosis that had no basis in fact ("dense nuclear cortical cataracts"), by indicating that a second opinion was given when one was not, and by stating that a patient wanted surgery when in fact the patient did not want surgery. The explanations offered by Respondent for these patently false entries are not credible and must be rejected by the Committee in their recommendations to the Board. Also not credible is Respondent's explanation as to why, in some of these cases, he used the CST with

BAT result as an indicator of the patient's visual acuity when that result was always indicated poorer vision.

With respect to entry of complaints such as can't see to drive safely at night due to glare, Respondent conceded that the patients never told Respondent that they were having such difficulties. Instead, Respondent states that these entries were based on his impressions or conclusions. Tr., 9/12/06, Chase Test., p. 109; Tr., 9/21/06, Chase Test., pp. 63-64; Tr., 9/21/06, Chase Test., p. 154; Tr., 9/21/06, Chase Test., p. 158; Tr., 9/12/06, Chase Test., pp. 206-207; Tr., 9/21/06, Chase Test., p. 207; Tr., 9/25/06, Chase Test., p. 77; Tr., 9/25/06, Chase Test., pp. 140-141; Tr., 9/25/06, Chase Test., p. 158; Tr., 9/26/06, Chase Test., p. 4. Yet Respondent never provided any clinical explanation as to how he arrived at these conclusions or impressions. Indeed, when Committee Member Northern asked Respondent about his use of the term "impression" Respondent recanted his use of the term notwithstanding he had used it throughout his previous testimony. Tr., 9/26/06, Chase Test., pp. 10-11.

Similarly, Respondent conceded that his use of the term "dense" to describe a cataract was not used to describe the physical appearance of the cataract but instead to describe a cataract that was, in Respondent's opinion, visually significant. Yet, Respondent never offered any clinical explanation as to how he determined a cataract was visually significant. Further Respondent never offered a reason why he could not have entered in the chart an objective description of the

cataract along with his subjective assessment of the significance of the cataract and the basis of that assessment.

Respondent's explanation of his recording of CST with BAT results to indicate a patient's visual acuity is also not credible. Respondent's explanation of the use of the CST with BAT result was that such result was more indicative of the patient's functional vision. But Respondent never offered a clinical explanation, in a case specific manner, why the result was more indicative of the patient's functional vision. As with his explanations of "dense" and complaints such as can't see to drive safely at night, all Respondent offers is conclusory statements without clinical explanations.

The entries "second opinion given" and "wants cataracts removed" are false on their face and not susceptible to explanation. There were no second opinions given and the patients either did not want cataract surgery or only wanted surgery because they were led to believe such surgery medically indicated.

All of these entries were made in order to justify Respondent's decision to perform cataract surgery that was not medically indicated. The explanations offered by Respondent are clearly explanations composed after the fact and are not credible. The State has demonstrated by a preponderance of the evidence that Respondent falsified patient records to justify surgery that was not medically indicated.

III. RESPONDENT'S DEFENSE IS AN ALTERNATIVE REALITY WHICH THE COMMITTEE MUST REJECT BECAUSE OF ITS IMPLICATIONS TO THE ETHICAL PRACTICE OF MEDICINE.

In his case-in-chief, Respondent offered little relevant evidence dealing directly with the specific cases that were the bases of the charges against him. The only relevant testimony was offered by Dr. Freeman. However, the foundation of Dr. Freeman's opinions was almost exclusively Respondent's records for the eleven patients. Because relevant entries for the patient's records are, as discussed in Section II above, false or misleading, Dr. Freeman's testimony cannot be given great weight. The bulk of Respondent's case-in-chief- was devoted to creating an alternate reality that the Committee must reject because of its implications to the ethical practice of medicine.

There are two components to the Respondent's alternative reality that, if adopted by the Committee, would have serious implications for the ethical practice of medicine. The first component is a standard less approach to medical record keeping. Respondent apparently seeks to justify his use of the term "dense" and his attribution to patients of complaints they did not have because there is a certain amount of subjectivity in medical treatment. Taking this reasoning to its logical conclusion, a doctor could justify any entry in a chart, no matter how removed from reality because there is an element of subjectivity in medical treatment. The result would be record keeping that is without meaning or requirement that the record be an honest attempt to accurately describe a patient's physical condition,

The second and more concerning component of the Respondent's alternative reality is the removal of the patient from decisions regarding his or her health care. What Respondent seeks to justify in these cases is his usurpation or attempted usurpation of patient autonomy. Respondent made a unilateral decision in each of these cases to perform cataract surgery even when the patient's vision was meeting his or her needs. Respondent will no doubt point to the Beaver Dam Study to justify the surgical decision even in the absence of patient complaints. Should the Committee endorse this justification the result would be a decision-making process regarding a patient's health that reduces the patient's involvement to a nullity and allows the doctor, as Respondent did or attempted to do in these eleven cases, to be the final arbiter of patient health care. The Committee must reject the alternative reality offered by Respondent.

Dated at Montpelier, Vermont this 7th day of March, 2007.

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



Joseph L. Winn
Assistant Attorney General