

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

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

RESPONDENT’S SUPPLEMENTAL PROPOSED FINDINGS OF FACT AND LAW

The Hearing Panel of the Vermont Medical Practice Board (“the Board”) recommends that the full Board find in favor of the Respondent, David S. Chase M.D., on all charges contained in the State’s Amended Superseding Specification of Charges in the above-captioned matter. In support of its recommendation, the Panel relies on the following *supplemental* findings of fact and law, and urges the full Board to adopt these findings, in addition to the findings set forth previously, in support of its decision.

662. The American Board of Eye Surgeons/American College of Eye Surgeons provides all of its certified ophthalmologists with literature announcing their membership in the organization and encourages them to use that literature to advertise their expertise to their patients. (Freeman, 1/8/07 at 87; B. Chase at 171-72.) Dr. Chase never utilized any of the literature provided to him by ACES/ABES because he was totally opposed to advertising. (B. Chase at 171-72.)

663. The plaque commemorating Dr. Chase’s certification by ACES/ABES hung in the patient waiting room, not in Dr. Chase’s examination lanes or office. (B. Chase at 177, 184.)

664. Two of the State’s own ophthalmologist witnesses confirmed that once a patient has decided to have cataract surgery, there is no reason to wait to perform the surgery, other than the patient’s and the doctor’s convenience. (Morhun at 135; Guilfoy at 177.) Even performing surgery just four days after the recommendation is appropriate. (Irwin at 202.)

665. Prior to visiting with Dr. Chase's nurse to receive her informed consent presentation, Ms. Salatino went to lunch with her husband, who had already had cataract surgery from Dr. Chase. (Salatino at 50-51.)

666. Dr. Watson does not tell his patients that they have early cataracts so as to not cause them stress that he feels is unwarranted. (Watson 129-30.)

667. "The assessment of functional status is a pertinent part of the patient's history and can be obtained by means of an *interview or a questionnaire*." (Ex. 503B, AAO PPP at 13.) Cataract-specific lifestyle questionnaires "provide a standardized approach to assess the patient's function, which can be analyzed and compared across time periods." (*Id.*)

668. Dr. Chase and his technicians often used quotation marks to indicate that a symptom or comment was a direct quote from a patient. (*See, e.g.*, Exs. 501-JK-1-001; 501-SL1-1-002, 004, 005; 501-MM-1-003, 004, 005, 006, 013; 501-JT-1-008.)

669. In determining that a cataract was visually significant, Dr. Chase took into account not only the physical characteristics of the cataract, but also the patient's symptoms and her vision test scores, including her CST with BAT scores. (Chase, 9/11/06 at 194-97; 9/12/06 at 86-87.)

670. Dr. Cavin wrote in Mr. Augood's charts (without using quotation marks) that his glare symptoms were "more a nuisance than a problem." (Ex. 501-WA-2-002.) Dr. Cavin admitted that this is likely not what Mr. Augood told him, but rather constituted his own characterization of the severity of the patient's complaints. (Cavin at 243-44.)

671. In providing his testimony, Dr. Freeman demonstrated that he correctly understood the manner in which Dr. Chase performed his Snellen and CST with BAT testing, as well as the way he recorded it in his charts. (*See, e.g.*, Freeman, 12/8/06 at 137-39, 174-75, 182-85, 200-02.) Dr. Freeman also understood that Dr. Chase used the descriptor "dense" to designate cataracts that were visually significant, rather than physically dense. (Freeman, 12/8/06 at 143.) He correctly interpreted Dr. Chase's notation of "second opinion given" to mean that Dr. Chase had delivered the first portion of his informed consent presentation. (Freeman, 12/8/06 at 150-54.)

672. Refractions taken by an autorefractor, while helpful as a starting point for a manual refraction, are not perfectly accurate, particularly with respect to cataract patients. (Freeman, 1/8/07 at 38-39; Chase, 9/11/06 at 155-56.)

673. It is difficult to perform a proper refraction. Ophthalmologists in training take a full year's course to learn how to do it well. (Chase, 9/11/06 at 154-56.)

674. Helena Nordstrom testified under oath at her deposition that she did not have dry eyes at the time she saw Dr. Chase, but instead falsified her symptoms to obtain artificial tears for her rabbit. (Ex. 817.) At the hearing, when she was also under oath, Ms. Nordstrom testified that she was seeking artificial tears for her own dry eyes or, alternatively, for her mother's dry eyes. (Nordstrom at 21-23, 31-34.)

675. At her deposition, Ms. Nordstrom testified under oath that Dr. Chase told her to get a glucose tolerance test "in relation to the cataract surgery." (Ex. 818.) At the hearing, and also under oath, Ms. Nordstrom first testified that she did not know why Dr. Chase had ordered the blood sugar test, stating: "I did not understand the relation." (Nordstrom at 64.) She later testified that he did explain the relationship, (Nordstrom at 67), only to again reverse course and say, "He did not tell me." (Nordstrom at 67.) She finally settled on her original answer, stating: "Okay. It was related." (Nordstrom at 68.)

676. Ms. McGowan's chart contains only one CST with BAT test result for each visit. (Ex. 501-MM-1-073, 074, 076, 078.)

677. Dr. Javitt testified that it is perfectly acceptable to have a technician record preliminary test results on sticky notes, which are discarded in favor of the ophthalmologist's own test results. He and many other ophthalmologists engage in this practice. (Javitt at 85-87.)

678. The results of the Snellen testing performed by the State's testifying ophthalmologists, which was almost always performed without dilation, often conformed very closely to the results of Dr. Chase's post-dilation Snellen testing of the same patients. For instance, Dr. Chase measured Jane Corning's post-dilation Snellen visual acuity as 20/20 in the right eye and 20/25 in the left. Dr. Irwin measured Ms. Corning's Snellen vision before dilation, and also recorded it as 20/20 in the right eye and 20/25 in the left. (*Compare* Ex. 501-JC-1-017 to 501-JC-2-002; *compare also* Ex. 501-MG-1-047 to 501-MG-2-002; 501-MM-1-073 to 501-MM-2-002; 501-JS-1-064 to 501-JS-2-002.)

Dated at Burlington, Vermont, this 16th day of March, 2007.

SHEEHEY FURLONG & BEHM P.C.
Attorneys for DAVID S. CHASE, M.D.

By:  _____

Eric S. Miller
R. Jeffrey Behm
30 Main Street
P.O. Box 66
Burlington, VT 05402
(802) 864-9891

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