

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: William A. O'Rourke, Jr., M.D.)
) Docket No.: MPN 19-0302
)

RESPONDENT'S MEMORANDUM IN OPPOSITION TO
STATE'S MOTION TO STRIKE

The State, after subjecting the Board of Medical Practice to a vapid, eleven-page memorandum opposing Dr. O'Rourke's request to immediately serve his suspension, the outcome the State itself sought in its Exceptions to the Hearing Panel Report, now files a nine-page motion which can only be described as, to use Attorney Arisman's term, folderol.

The email which generated the State's motion is attached as Exhibit A. As the Board can see, Attorney Arisman was copied with the email to Attorney Cykon meaning there was nothing "ex parte" about it. On the contrary, Attorney Arisman's overwrought reaction is more proof of the irrational and borderline hysterical approach the State has taken in this matter.

For his part, Dr. O'Rourke does not presume to tell the Board whether or not it should "limit and control e-mail communications regarding pending matters" as urged by the State. He does note, however, that it is most unlikely that a lawyer of Attorney Cykon's experience and expertise will be "improperly influenced" by email. Indeed, the record in this matter includes email to counsel from Attorney Cykon regarding substantive matters, including his candid acknowledgement of relatively minor drafting errors in the Hearing Panel Report. Not surprisingly, the State had no objection to the use of email at that time. Then again, as Dr. O'Rourke's pending motion demonstrates, consistency has not been the hallmark of the State's position here.

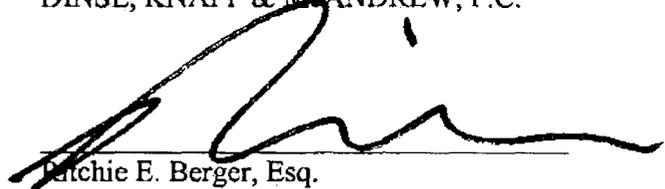
Dmse.
Knapp & McAndrew, PC
209 Battery Street
PO Box 988
Burlington, VT 05402-0988
(802) 864-5751

Dr. O'Rourke respectfully requests that the Board deny the State's Motion to Strike dated April 9, 2007.

DATED at Burlington, Vermont this 9th of April, 2007.

DINSE, KNAPP & McANDREW, P.C.

By:



Ritchie E. Berger, Esq.
Attorney for Respondent

cc: James Arisman, Esq.
Philip Cykon, Esq.

Dinse,
Knapp & McAndrew, P.C.
209 Battery Street
P.O. Box 988
Burlington, VT 05402-0988
(802) 864-5751

From: Ritchie Berger (internal)
Sent: Fri 4/6/2007 12:01 PM
Rcvd: Fri 4/6/2007 12:01 PM
To: Debbie Williams
CC:
Subject: FW: State's Reply to Respondent's motion

From: Ritchie Berger
Sent: Friday, April 06, 2007 11:19 AM
To: 'Phil Cykon'; 'Langlais, Peggy'; Arisman, James; 'James Arisman'
Subject: State's Reply to Respondent's motion

Phil: I believe the State's reply is intentionally, untimely and should therefore not be submitted to the Board. Thank you. REB.

Ex. A

From: Ritchie Berger (internal)
Sent: Fri 4/6/2007 12:56 PM
Rcvd: Fri 4/6/2007 12:56 PM
To: Ritchie Berger; 'Phil Cykon'; 'Langlais, Peggy'; 'Arisman, James'; 'James Arisman'
CC:
Subject: RE: State's Reply to Respondent's motion

Phil: Not only is State's reply untimely, but it includes, no great surprise, numerous inaccuracies. I do not intend to file a memorandum addressing them as I trust you will carefully review Mr. Arisman's statutory references. I must state, however, that I never referred to the March 27 "proceeding" as "folderol," State's reply at 2; heck, I don't even know what the word, if it is one, means! Thank you. REB.

From: Ritchie Berger
Sent: Friday, April 06, 2007 11:19 AM
To: 'Phil Cykon'; 'Langlais, Peggy'; Arisman, James; 'James Arisman'
Subject: State's Reply to Respondent's motion

Phil: I believe the State's reply is, intentionally, untimely and should therefore not be submitted to the Board. Thank you. REB.

Ex - A