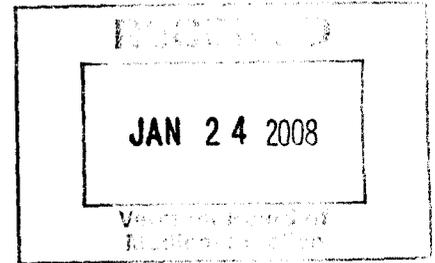


STATE OF VERMONT
BOARD OF MEDICAL PRACTICE



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 PENALTY RECOMMENDATION

Respondent, Dr. David S. Chase, submits the following Memorandum in support of his position that the Board should impose no further penalty in this matter and should instead reinstate his license to practice medicine.

I. Introduction.

Over four-and-one-half years ago, this Board summarily suspended Dr. Chase's medical license based solely on the State's allegations that he was knowingly recommending and performing unnecessary cataract surgeries and purposefully falsifying his medical records to hide his misdeeds. That summary suspension, and the resulting publicity, permanently destroyed Dr. Chase's medical practice and ended his 35-year career as an eye surgeon. He has not practiced medicine since and will never be able to reopen his ophthalmology practice.

On December 10, 2007, this Board dismissed all of the State's charges that Dr. Chase had knowingly recommended or performed unnecessary cataract surgery or purposefully falsified his records in any way, ruling that those charges were unsupported by the evidence. Simply put, the Board rejected every one of the allegations that the State relied upon in order to summarily suspend Dr. Chase's license and end his career.

The Board cannot restore the career stolen from Dr. Chase by the State's reckless behavior and unsupported allegations. Nor can it give back the last four years of Dr. Chase's life or the hundreds of thousands of dollars he has spent defending himself against charges that ultimately proved to be baseless. It can, however, recognize that the penalty that has already been imposed upon Dr. Chase through these Board proceedings is far in excess of that called for by the Board's findings of unprofessional conduct and far more severe than this Board's precedents allow. The Board should refuse to impose any additional discipline on Dr. Chase and should restore his lapsed license. If the Board intends to impose *any* additional penalty on Dr. Chase--even in the form of a reprimand, condition, or license limitation--the Respondent requests an evidentiary hearing regarding the proposed penalty.

II. Factual Background.

On July 21, 2003, the State asked this Board to summarily suspend Dr. Chase's license based on allegations that he was recommending and performing unnecessary cataract surgeries and purposefully falsifying his medical records. At a non-evidentiary hearing held on just three hours' notice, Dr. Chase informed the Board that the State's charges were ill-informed, reckless, and false. He asked the Board to avoid taking the draconian and effectively irreversible step of summarily suspending his license. He even offered to voluntarily cease performing cataract surgery until the Board had an opportunity to investigate the State's allegations. The State rejected Dr. Chase's offer and demanded that his license be suspended immediately. Based on the State's representations, the Board did just that. The summary suspension and its purported bases were widely reported in the press, immediately destroying Dr. Chase's medical practice.

In the following months, the Respondent discovered evidence demonstrating that the Board's investigator had falsified the most important evidence used to suspend his license. He

also brought to the Board's attention the undisputed fact that the Assistant Attorney General prosecuting the case against him had unethically discouraged relevant witnesses from speaking with the Respondent's lawyers. As a result, on March 31, 2004, the Board rescinded its summary suspension order. The very day that Dr. Chase's license was reinstated, however, the State informed the Respondent that it would immediately move to re-suspend that license on an emergency basis, relying on the same mistaken allegations of unnecessary cataract surgery. In response to the State's threats, and based on this Board's decision that the pending disciplinary charges against Dr. Chase were unaffected by the falsified evidence, Dr. Chase agreed that he would not return to practice while this disciplinary action was pending. Of course, as a practical matter, he had no practice to which he could return. Dr. Chase's license has since lapsed, and he did not engage in the futile exercise of seeking renewal or reinstatement during the pendency of this case.

Based directly upon the State's allegations to this Board, the federal government brought a 72-count criminal indictment against Dr. Chase in September 2004, charging that he had knowingly recommended and performed cataract surgeries. Those charges, too, were highly publicized. In December 2005, after a three-month jury trial, Dr. Chase was exonerated of all of the criminal charges. Following his acquittal, Dr. Chase again urged the State to dismiss the administrative charges against him. The State again refused.

The State's 110-count Amended Superceding Specification of Charges necessitated a merits hearing that stretched over four months and consumed enormous resources on the part of the Board, the State, and Dr. Chase. After finally hearing all of the State's evidence, on December 10, 2007 the Board dismissed as unsupported all of the State's charges that Dr. Chase recommended or performed unnecessary cataract surgery. It similarly dismissed as lacking in

evidentiary support all of the State's charges that Dr. Chase purposefully falsified his charts. The Board roundly rejected the State's fundamental theory that Dr. Chase's CST and BAT testing was nothing more than hocus pocus designed to justify surgery his patients did not need. The Board made no finding that a single patient was harmed by Dr. Chase's cataract practices. All told, the Board dismissed 90 of the 110 charges the State blindly pursued against Dr. Chase. In making its findings, the Board essentially agreed with the position Dr. Chase had taken four-and-one-half years earlier when he warned that the summary suspension of his license was an enormous and costly mistake.

Of course, the Board did find against Dr. Chase on 20 of the State's 110 counts of unprofessional conduct. The Board found that Dr. Chase committed unprofessional conduct when he: (1) described his patients' cataracts as "dense" in order to convey that the cataracts were visually significant; (2) failed to "thoroughly and adequately" discuss his patients' vision and visual needs with them in a "collaborative" way; and (3) confused and misled his patients through reference to second opinions regarding cataract surgery, both in his discussions with patients and through chart notations. It is those charges, and those charges alone, that the Board must weigh in assessing any appropriate additional penalty in this matter.

III. Discussion.

The Board should impose no additional penalty upon Dr. Chase and should reinstate his license immediately upon receiving his completed application for reinstatement. The Board has already exacted the ultimate professional price from Dr. Chase, even though he has been exonerated of the most serious charges against him. The penalty he has already incurred is far greater than any imposed by this Board for even the most egregious unprofessional conduct.

While the Board cannot change that fact, it can finally bring these proceedings to an end by refusing to punish Dr. Chase any further.

A. The State Has Already Exacted The Ultimate Professional Price From Dr. Chase.

Dr. Chase spent more than 35 years building his successful ophthalmology practice. The State's motion for summary suspension destroyed that practice in a single day. The summary suspension and resulting publicity similarly destroyed Dr. Chase's professional reputation. The State's charges of unnecessary cataract surgery also robbed him of a peaceful retirement, as well as much of his retirement savings.

Although the summary suspension was formally lifted in eight months, its effects were permanent. By the time Dr. Chase successfully overturned the summary suspension, his practice and reputation were long past the point of resuscitation. Moreover, the very moment that Dr. Chase won reversal of the summary suspension, the State threatened to summarily suspend his license again, forcing him to give up any hope of practicing during the following four years. During those four years, Dr. Chase was required to devote substantial portions of his time and his money to defending himself against criminal and administrative charges that ultimately proved to be baseless; he could not have practiced during that period even if he had retained his license. As a result, Dr. Chase has endured a de facto four-and-one-half year license suspension already.

Dr. Chase will continue to be subject to an effective lifetime ban on reopening his medical practice. Even now, if Dr. Chase were to regain his license, he would not be able to rebuild or reopen his practice. Licensure will not restore his standing and reputation in the medical community. It will do nothing to fill his depleted savings accounts. It will merely allow him to call himself a doctor again and to re-engage in professional education - a right he has earned over a long and distinguished career. It is no exaggeration to say that Dr. Chase has

received a professional death sentence. Nothing the Board does, or doesn't do, can change these facts.

B. Dr. Chase's Penalty Is Already Far More Severe Than This Board Has Imposed In More Serious Cases.

This Board's precedents also demonstrate that the penalty Dr. Chase has already incurred is far more severe than those routinely handed down to address misconduct much more serious than that found by the Board here. The Board found that Dr. Chase did not engage in any purposeful misconduct. It made no finding that any patient was harmed or put at risk by his cataract practices. Yet, in past cases where patients have been directly harmed by physicians' purposeful misconduct, the Board has imposed penalties that do not begin to approach the severity of the eight month summary suspension, much less the four-and-one-half year de facto license suspension, and the effective lifetime ban on practicing imposed on Dr. Chase.

For instance, in In re: Gary L. Waring, M.D.; Docket Nos. MPS 13-0200 and MPS 10-0201, the respondent was accused of preparing purposefully misleading medical records to suggest that he had examined patients when in fact he had not. He was further alleged to have unnecessarily delayed the examination and treatment of a patient suffering from pneumonia, and telephoned the hospital to which the patient was admitted to order the administration of Ativan, despite having not yet examined the patient or even come to the hospital. The Board did not suspend the physician's license, but instead conditioned it for two years.

In re: Stewart P. Manchester, M.D.; Docket Nos. MPC 24-0203 and MPC 75-0702, the respondent was alleged to have repeatedly failed to respond to requests for a consult with a nursing home patient who was suffering from bedsores, causing a worsening of the condition that later required amputation. In another incident, the respondent improperly prescribed

Methadone to a patient. The respondent's license was conditioned for a period of thirty-six months.

In In re: Ajaz Iqbal, M.D.; Docket No. MPC 16-0202, the respondent, a psychiatrist, saw the complainant at the respondent's own home. The complainant understood that she was seeing the respondent for psychiatric treatment. Intermittently during a conversation with the complainant, which the complainant could reasonably have understood to be a component of her psychiatric care, the respondent touched complainant's breasts, despite her objections. He later showed her scenes from a pornographic movie. Again, despite her objections, the respondent kissed and fondled the complainant, and later engaged in sexual intercourse with her. After an initial summary suspension of the physician's medical license, the Board suspended the respondent's license for thirty-six months, *but the suspension was stayed* and the physician was allowed to continue his practice, with limitations and conditions.

In re: Lloyd L. Thompson, III, M.D.; Docket No. MPC 85-0802, the respondent was accused of purposefully administering Noreuron, a neuromuscular blocking agent, to an end-of-life patient who had his breathing tube removed, intentionally halting the patient's breathing and thereby hastening his death. The Board did not "recognize any legitimate indication for the introduction of neuromuscular blocking agents when mechanical ventilation is being withdrawn from a dying patient." *Id.* ¶ 33. It concluded that physicians' improper use of such drugs "erode[s] respect for human life and the integrity of the medical profession." *Id.* ¶ 34. Nonetheless, the Board did not suspend the physician's license; it conditioned his license for one year, during which the doctor was allowed to continue his practice.

Finally, in In re: Phil A. Atiken, M.D.; Docket No. MPS 20-0402, the respondent ophthalmologist was accused of touching a female patient's breasts and attempting to kiss her

during an examination. His license was not suspended. Instead, it was conditioned for thirty months, during which he was allowed to continue to practice.

As these cases show, the penalty already incurred by Dr. Chase is far in excess of any penalty this Board has imposed in cases of purposeful unprofessional conduct far more serious and dangerous than the non-purposeful conduct found by the Board in this case. Any additional penalty, whether in the form of a reprimand, condition, or license limitation, would only increase the wide disparity between the treatment afforded Dr. Chase and the treatment afforded other respondents by the State and the Board.

IV. Conclusion.

For the reasons set forth above, Dr. Chase requests that the Board impose no further penalty in this matter and reinstate his license to practice medicine when, after the Board's final decision, he submits a complete application for reinstatement. If the Board proposes *any* additional penalty, Dr. Chase requests an evidentiary hearing on the nature of the proposed penalty.

Dated at Burlington, Vermont, this 24th day of January, 2008.

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