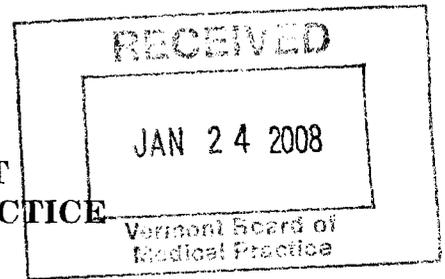


**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**



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

**STATE OF VERMONT'S MEMORANDUM IN SUPPORT OF SANCTION
OF REVOCATION**

INTRODUCTION

In the above-captioned cases the Vermont Board of Medical Practice ("Board") concluded that Respondent David Chase ("Respondent") was guilty of 21 counts of unprofessional conduct in his care of ten patients. The Board gave the parties thirty days to submit memoranda outlining their respective positions with respect to the issue of sanctions. The State takes the position that the only appropriate sanction that can adequately protect the public is revocation of Respondent's license.

ARGUMENT

Pursuant to 26 V.S.A. §1361, the Board has the authority to impose a sanction of revocation, suspension, limitation of practice or public reprimand. The purpose of the imposition of these sanctions is not to punish the licensee but to protect the public health, safety, and welfare. Rules of the Vermont Board of

Medical Practice 1.1; See also 26 V.S.A. §3101(professional regulation exists solely for the purpose of protecting the public); *Moheet v. State Board of Registration for the Healing Arts*, 154 S.W. 3d 393, 404 (Mo. App. W.D. 2004)(License discipline cases are not intended to punish physicians . . . but are intended to protect the public). In determining the type of sanction necessary to protect the public, the Board may consider not only the gravity of Respondent's offenses but also Respondent's attitudes towards the unprofessional conduct charged as reflected in the type of defense Respondent presented to the Board. *Devers-Scott v. Office of Professional Regulation*, ___ Vt. ___, 918 A.2d 230, 247, 2007 VT 4, ¶56 (2007) (Midwife's failure to appreciate the seriousness of her acts and omissions and repeated attempts to deflect blame onto her clients and others were proper considerations in determining sanction). The findings and conclusions of the Board and the Respondent's approach to the presentation of his defense at hearing, including his own testimony, demonstrate not only that Respondent's unprofessional conduct undermines the integrity of the medical profession but also constitutes a serious threat to the public's safety. The only appropriate sanction that can protect the public is revocation of Respondent's license.

The Board's findings depict conduct that was serious and not isolated. The Board found in ten of the eleven cases presented that Respondent had failed to adequately determine the patient's need for surgery by failing to engage the patient's in a thorough and adequate discussion as to how the patient's vision

was affecting the patient's life. This failure to thoroughly and adequately collaborate with the patient resulted in inaccurate entries in the patient's records regarding the patient's symptoms. Finally, the Board found that Respondent misled his patients with respect to obtaining a second opinion and with respect to Respondent's expertise in cataract surgery in relation to other ophthalmologists.

Based on these findings the Board concluded that Respondent had engaged in serious acts of unprofessional conduct. The Board ruled in all ten cases that Respondent's conduct demonstrated a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary, skillful, careful, and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22). The Board also concluded with respect to seven of the same ten patients that Respondent's conduct constituted both a performance of unacceptable patient care and a failure to conform to the essential standards of acceptable and prevailing practice, thereby constituting a failure to practice competently under 26 V.S.A. §1354(b). The Board concluded with respect to four of the patients, that Respondent's confusing, misleading, and improper statements as to whether the patients should obtain a second opinion were made when patients were concerned about their eyesight and were vulnerable. The Board ruled that Respondent's conduct in this regard fell below the personal and moral standards of a physician and therefore constituted unprofessional conduct under 26 V.S.A. §1398.

Coupled with the Board's findings and conclusions chronicling unprofessional conduct consistently engaged in by Respondent over the course of many years are Respondent's lack of both insight and accountability. Faced with the evidence of his repeated instances of unprofessional conduct, Respondent has exhibited a disturbing inability to acknowledge responsibility for, or understand the seriousness of, his actions. Instead, Respondent mounted a defense characterized by an unnerving vindictiveness toward the State's witnesses that included former patients and fellow ophthalmologists. During the course of the hearing, Respondent subjected his former patients and his colleagues to unnecessary, protracted, and, at times, hostile cross-examination. This tactic sought to portray the patients as either addled or lying or both. Respondent sought to paint the State's physician witnesses as incompetent and old-fashioned in their treatment of patients while Respondent (to use his own counsel's comparison) was a Galileo or Copernicus in the field of ophthalmology.

The Respondent's own lack of candor is another important factor the Board must consider in fashioning a sanction to protect the public. The Board specifically found that Respondent's explanation of his statements to patients regarding second opinions to be not credible. Faced with a Respondent who gave testimony under oath that was not credible, the Board is compelled to have serious misgivings about Respondent's ability to be candid with the Board and with patients when his own interests are at stake.

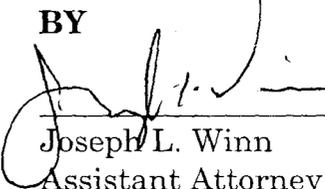
When all of these factors are assessed together -- the continued acts of unprofessional conduct, the failure of Respondent to be accountable for such conduct, and the Respondent's lack of candor with the Board regarding such conduct -- it is clear the only adequate sanction that can protect the public is revocation. Certainly a public reprimand is wholly inadequate to protect the public, given the breadth of Respondent's conduct and Respondent's attitude towards that conduct. Moreover, the Respondent's conduct is not the result of incompetence that can be ameliorated with a license or suspension conditioned on requirements of continuing medical education or professional oversight. Respondent's conduct is the result of deficiencies in Respondent's practice of medicine and treatment of patients that Respondent refuses to acknowledge. In the absence of such acknowledgement, the only sanction that can protect the public is revocation.

CONCLUSION

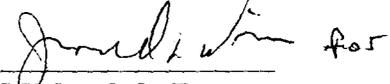
For reasons argued above and in all previous submissions, the State requests the Board impose a sanction of **REVOCATION** of Respondent's license with an eight-year period before Respondent can reapply for licensure.

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

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



Joseph L. Winn
Assistant Attorney General

 for

Michael O. Duane
Assistant Attorney General