

**STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE**

In Re: )  
          DAVID S. CHASE, M.D. )                   Docket No. MPC 15-0203, et al.  
                                  Respondent )

BOARD: Sharon L. Nicol, Public Member  
          John B. Webber, Esq., Public Member  
          James D. Cahill, M.D., Physician Member  
          Toby Sadkin, M.D., Physician Member  
          Hon. Hilton H. Dier, Jr., Ad Hoc Member

PRESIDING OFFICER: Phillip J. Cykon, Esq.

APPEARANCES: Joseph Winn, Esq.; Assistant Attorney General  
                  Michael Duane, Esq.; Assistant Attorney General  
                  Eric S. Miller, Esq. Counsel for Respondent.  
                  David S. Chase, M.D.

**BOARD FINAL JUDGMENT ORDER**

**BACKGROUND**

On September 11, 2006, the Hearing Committee (Committee) of the Vermont Board of Medical Practice (Board) began the contested administrative hearing on the Amended Specification of Charges dated May 13, 2005, and filed by the Vermont Attorney General’s Office against David S. Chase, M.D. (Respondent). Subsequent hearing days were held on September 12, 21, 25, 26; October 2, 3, 23, 24, 26; November 8, 20, 30; December 4, 18 of 2006; and January 4, 8, 9, 30; February 8 of 2007. During the hearing, the Committee heard extensive testimony by both fact witnesses and expert witnesses and received numerous exhibits offered by both the State and the Respondent. Both sides presented closing statements at the end of the hearing. The Committee listened carefully and was afforded the opportunity to ask questions of the witnesses, including the Respondent. The parties submitted extensive proposed findings and memoranda in support. During their deliberations, the Committee did a significant amount of work reviewing the testimony and evidence admitted at the hearing. Upon consideration and deliberation of the above-stated material, the Committee reported its Findings of Fact, Conclusions of Law, and Proposed Decision to the Board pursuant to 26 V.S.A. § 1355(b).

The Hearing Committee Report was served upon the parties to this matter, and in accordance with 3 V.S.A. § 811, each party adversely affected had the opportunity to file exceptions, and present briefs and oral arguments to the Board. Respondent filed “Respondent’s Exceptions to the Hearing Committee Report” and Memorandum dated 9/7/07 and

“Respondent’s Reply Memorandum to the State’s Request to Amend the Hearing Committee Report” dated 10/5/07. The State filed “State of Vermont’s Request to Amend Report of Hearing Committee” and Memorandum in Support dated 9/7/07 and “Response of State of Vermont to Respondent’s Exceptions” dated 10/5/07.

Oral arguments were presented by the parties to the Board on November 7, 2007. At the close of arguments, the Board went into deliberative session to consider the record of evidence and the above-stated material and deliberate on the pending matter. On December 10, 2007, the Board entered its Rulings on the Parties’ Exceptions to the Hearing Committee Report and its Findings of Fact, Conclusions of Law, Judgment, and Order of the Board on the Charges of Unprofessional Conduct.

In that Order, the Board requested the parties to submit written memorandum regarding what disciplinary sanction, if any, should be imposed by the Board. The parties subsequently filed the following documents:

1. Respondent’s Penalty Recommendations, dated 1/24/08;
2. State of Vermont’s Memorandum in Support of Sanction of Revocation, dated 1/24/08;
3. Respondent’s Opposition to the State’s Memorandum in Support of the Sanction of Revocation, dated 2/5/08;
4. State of Vermont’s Motion to Strike, dated 2/11/08;
5. Respondent’s Opposition to Vermont Attorney General’s Motion to Strike, dated 2/13/08.

Subsequent to the Board’s December 10, 2007 Order, Board Member Alex Northern resigned from the Board and moved out-of-state. In order to meet the statutory quorum requirements, on January 25, 2008, John B. Webber, Esq., Public Member, was designated to replace Mr. Northern on the Hearing Board.

### **PRELIMINARY RULING**

The Board has reviewed the documents filed by the parties regarding sanctions. First of all, the Board denies the State’s motion to strike the Respondent’s Opposition to the State’s sanction memorandum. The Board requested information from the parties in order to give both sides ample opportunity to address what, if any, sanction should be imposed. The Board finds that the State has not been prejudiced by the additional material filed by Respondent. Consequently, the Board has reviewed all material submitted by the parties. Secondly, Respondent, in both his January 24 and February 5 memoranda, requested further hearing regarding sanctions. For reasons explained below, that request is denied. Extensive opportunity to be heard has been afforded to both parties.

### **SANCTION DECISION**

The Board has reviewed this material and has considered the entire record of this case, all of which has presented the Board with a substantial amount of information upon which to base

its decision regarding sanctions. In particular, the Board has considered its determination that Respondent's use of the term "dense" to describe certain cataracts, his failure to adequately discuss with patients whether their vision was meeting their needs or whether it was compromising their lives, and his practice regarding giving second opinions constituted gross failures to exercise the proper standard of care in those instances. The Board did not find Respondent's description of the cataracts as dense to be deliberately false, but it did conclude that this inaccurate description in each of the cases was a gross departure from the standard of care and a failure to practice competently. Similarly, the Board did not find that inaccurate notations on patient medical records were deliberate falsehoods, but it did conclude that these notations generated confusion regarding second opinions and important information about the condition of patients' eyes. After considering the evidence relevant to Respondent's second opinion statements, the Board specifically found that there was conflicting evidence about these statements, and that Respondent's explanation concerning his statements, to specific patients and in general, was simply not credible. The Board has found that this conduct constituted unprofessional conduct in several instances. An extensive analysis of witness credibility was undertaken in this case. The record establishes that during numerous days of hearings, the Committee listened to and observed each witness testify. Respondent had the opportunity to cross-examine each witness at length concerning previous statements and testimony. The Committee was able to compare witness testimony to information contained in medical records. Based on all of this, the Committee made specific findings as to the credibility of each witness, all of which the Board has adopted.

In mitigation, the Board has considered Respondent's assertion that he has practiced for many years treating numerous patients who have not complained about his practice of medicine. Although not relevant or material to the specific allegations contained in the Specification of Charges, Respondent had proffered the favorable testimony from several of Respondent's former patients. Indeed, common sense would indicate that there are many patients who were completely satisfied with the medical care they received from Respondent, and the Board has considered that inference. Respondent, through the evidence submitted at the hearings, and through his written submissions subsequent to the hearing, has provided the Board with a bounty of material explaining his perspective and underlying circumstances regarding the conclusions of unprofessional conduct. Furthermore, the Board is mindful of the numerous counts in the Amended Specification of Charges that the Board found were not supported by the evidence. The Board has been careful to exclude the counts for which no unprofessional conduct was found and has not considered those allegations during its deliberations of the record. The Board is also fully cognizant that the disciplinary hearing is structured as an adversary proceeding in which both sides are expected to vigorously present their respective cases within the bounds of the law. By this process, the Board feels that both parties had full opportunity to present the relevant evidence to the Board, and it is solely upon that evidence that the Board has rendered its judgment. For these reasons, Respondent's request for further hearing regarding sanctions is denied, as previously stated.

In exercising its discretion as to what sanction, if any, should be imposed, the Board must act "solely for the purpose of protecting the public." 26 V.S.A. § 3101; *Perry v. Vermont Medical Practice Board*, 169 Vt. 399, 403 (1999). Applying this principle, and after deliberating upon the evidence, the Findings of Fact and Conclusions of Law, the supporting memoranda of

the parties, and the arguments of the parties, the Board renders its decision regarding sanctions and issues the order as set forth below.

### **JUDGMENT AND FINAL ORDER**

Based upon the evidence in the record and the resulting Findings of Fact and Conclusions of Law, IT IS ORDERED BY THE BOARD that:

1. This Order shall incorporate the Findings of Fact, Conclusions of Law, Judgment, and Order of the Board on the Charges of Unprofessional Conduct entered on December 10, 2007.
2. Respondent's lapsed license to practice medicine in Vermont is **CONDITIONED**. Reinstatement of Respondent's license is conditioned upon demonstration that the following requirements have been satisfied:
  - A. Respondent must attend and successfully complete the following three courses in the Case Western Reserve University School of Medicine Continuing Medical Education Program:
    1. Intensive Course in Medical Ethics, Boundaries, and Professionalism,
    2. Intensive Course in Medical Record Keeping with Individual Preceptorships,
    3. Intensive Course in Physician Communication.

Respondent shall document his attendance and successful completion of these courses by submitting to the Board and allowing full access to the Board of all the relevant certifications, documentations, evaluations, and/or recommendations regarding his coursework.

- B.
  1. In conjunction with the above-required coursework, Respondent shall engage a consultant with expertise and training in the procedures, methods, technologies, content, and standards pertaining to the sound and effective creation of medical records by practitioners in treatment settings similar to Respondent's practice. Respondent shall submit for the Board's prior approval a plan for the consultant's examination and review of all aspects of Respondent's medical record keeping, including factors such as the method of individual entries, internal organization, consistency, content, level of detail, legibility, and usefulness of these records to other practitioners. The Board will review the proposed plan and determine whether or not it is approved with reasonable promptness.
  2. The plan shall require the consultant described above to prepare and simultaneously submit to both Respondent and the Board of Medical Practice a detailed written report of findings and observations, recommendations for needed change or improvement, and suggestions for follow-up, including coursework, training, and possible adoption for new methods or technologies for record keeping. Respondent shall promptly review such written report and respond in

writing to the Board, stating his agreement or disagreement with its content and outlining such remedial steps as he proposes to take in response. Respondent shall promptly pursue all reasonable recommendations by the consultant for needed study, training, and/or coursework related to his medical record keeping.

3. Respondent shall be responsible for arranging for a follow-up review by the consultant, to take place and be completed no later than six months after the date of completion of the consultant's report referred to above. Such review shall examine the medical records at Respondent's practice, Respondent's methods for creating such records, their content, and office policies and procedures relating to such records.

4. The consultant after completion of the above follow-up review shall promptly prepare and simultaneously submit to both Respondent and the Board a written report of findings and observations, recommendations for needed change or improvement, and suggestions for follow-up by Respondent. Such report shall be submitted within 30 days of completion of the follow-up review. Respondent agrees to promptly pursue all reasonable recommendations by the consultant for additional needed study, training, and/or coursework.

5. Respondent's records shall clearly indicate any involvement his staff has had in providing patient care and the manner in which non-physician staff members have been supervised in the provision of said care.

6. Respondent agrees to require all individuals working in his practice who have contact with patients to participate in education and training programs relating to medical record keeping and to participate in the consultant's reviews of Respondent's record keeping and reviews of the procedures for record keeping within his office.

7. The Board at any time, at its sole discretion, following reasonable notice, may inspect and review patient medical records maintained in his office, interview office staff, make photo copies, and may employ an independent reviewer to examine and comment on Respondent's medical record keeping.

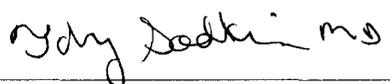
C. If the Board reinstates Respondent's license, in addition to compliance with the plan set forth in Paragraph 2B above, Respondent must successfully complete one year of supervised medical practice, approved in advance by the Board and beginning immediately following license reinstatement. Respondent shall meet at least weekly with a supervising peer physician, who shall be a licensed, board certified ophthalmologist. The supervising physician may practice in the same office with Respondent or may practice independent of Respondent's practice. The supervision shall focus on the main areas of Respondent's conduct that formed the basis of the findings of unprofessional conduct: the ethical concerns raised by the second opinion statements, the inaccurate notations entered on patient medical charts, and the lack of meaningful interaction and communication

with patients. The supervising physician shall provide written quarterly reports to the Board indicating that the required meetings for supervision and consultation have taken place at least weekly. Such reports shall address the substance and results of the supervision and Respondent's practice activities in regard to the areas of concern mentioned above. The Board may communicate with the supervising peer physician as needed to obtain additional information or to verify written reports.

4. Respondent shall bear the costs of this ORDER.
5. Upon reinstatement of Respondent's license, Respondent's failure to comply with any provision of this ORDER may constitute unprofessional conduct under 26 V.S.A. § 1354(25).
6. Upon satisfactory completion of the above-stated conditions, Respondent may petition the Board for removal of such conditions. Removal of such conditions from Respondent's license shall be at the sole discretion of the Board.
7. The ORDER is effective as of the date of entry shown below.

UNANIMOUSLY APPROVED by Hearing Board Members Sharon L. Nicol, Public Member; John B. Webber, Esq., Public Member; James D. Cahill, M.D., Physician Member; Toby Sadkin, M.D., Physician Member and Hearing Board Chair; and Hon. Hilton H. Dier, Jr., Ad Hoc Member.

Signed on behalf of the Hearing Board pursuant to 3 V.S.A. § 812(b):

  
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Toby Sadkin, M.D., Physician Member  
Hearing Board Chair

4-2-08  
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Date

Filed with Board Office:

4/4/08  
\_\_\_\_\_  
Date

Date of Entry: 4/4/08