

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

2
3 IN THE MATTER OF THE COMPLAINT)

4 AGAINST)

5 LEO J. CAPOBIANCO, D.O.)

6 RESPONDENT.)
7)
8)

Case No. CV-306-00

Filed 4/12/01


Executive Director

9
10 **COMPLAINT**

11 Pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes, the Investigating
12 Board Member of the Nevada Board of Osteopathic Medicine, by and through its counsel Frankie Sue
13 Del Papa, Attorney General, by Charlotte Matanane Bible, Assistant Chief Deputy Attorney General,
14 having a reasonable basis to believe that Leo J. Capobianco, D.O. has violated the provisions of said
15 chapter hereby issues a formal complaint against Respondent pursuant to NRS 633. 621 as follows:

16 1. Respondent, Leo J. Capobianco, is licensed in the state of Nevada and at all times alleged
17 herein was so licensed by the Nevada State Board of Osteopathic Medicine, pursuant to the provisions
18 of Chapter 633 of the Nevada Revised statutes.

19 2. NRS 633.511(1) provides that unprofessional conduct is grounds for disciplinary action.

20 3. NRS 633.511(3) provides that the suspension of the license to practice osteopathic medicine
21 by any other jurisdiction is grounds for disciplinary action.

22 **COUNT I**

23 4. Allegations contained in Paragraphs 1-3 are incorporated herein as if enumerated in full.

24 5. On March 3, 1999, Leo Capobianco pled guilty to Counts 1 and 2 as charged in the criminal
25 information brought by the United States Attorney for the State of New York in case No. 99 w3CR 135
26 (LAK) in the United States District Court, Southern District of New York. The information charged
27 Leo Capobianco with health care fraud and conspiracy, violations of 18 USC § 1035, 18 USC § 1347,
28 18 USC §371 and 18 USC § 2. A violation of 18 USC § 1347, health care fraud, can be punished by

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1 fine or imprisonment up to 10 years and is a Class C felony pursuant to 18 USC § 3559 (a)(3).

2 6. The facts supporting the violations are as follows: From 1997 through on or about June 10,
3 1998, Leo Capobianco, together with co-conspirators, did unlawfully, willfully and knowingly devise a
4 scheme to defraud the Medicare Program through submission of false claims to the private insurance
5 carriers administering the Medicare Program on behalf of the Federal Government and for obtaining
6 money and property by means of false and fraudulent pretenses. The materially false and fraudulent
7 statements and representations made were the bases for false and misleading claims seeking
8 reimbursement for: (1) services that were not rendered; (2) different, and often more costly, services
9 than were actually rendered; (3) services that were rendered at the homes of beneficiaries but which
10 were claimed were rendered in an office; (4) services that no licensed doctor had determined were
11 medically necessary; and (5) services that were provided by unsupervised medical personnel. Dr.
12 Capobianco and his co-conspirators billed Medicare over ten million dollars in the manner set forth
13 above.

14 7. Unprofessional conduct includes directly or indirectly giving to or receiving from any
15 person, corporation or other business organization any fee, commission, rebate or other form of
16 compensation for any professional services not actually and personally rendered. NRS 633.131(1)(c).

17 8. Unprofessional conduct includes engaging in any professional conduct which is intended to
18 deceive or the board by regulation has determined is unethical. NRS 633.131(1)(f).

19 9. Leo Capobianco, in pleading guilty to the allegations and violations set forth in the
20 information, did admit to committing health care fraud which was intended to and did defraud and
21 deceive the Medicare Program, by filing false claims for professional services that were not actually
22 and personally rendered, for the purpose of obtaining money as a fee or compensation for said false
23 claims.

24 10. Such conduct constitutes unprofessional conduct pursuant to NRS 633.131(1)(c) and (f) and
25 is a violation of NRS 633.511(1).

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COUNT II

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2 11. Allegations contained in Paragraphs 1-6 are realleged and incorporated herein as if
3 enumerated in full.

4 12. On or about January 25, 2001, Leo Capobianco was charged with and pled guilty to a
5 violation of 18 USC § 1001 for making a false statement knowingly to a government agent.

6 13. Leo Capobianco admitted to the following: While being questioned by a U.S. Attorney in
7 July 2000, as a cooperating witness for the government, the U.S. Attorney asked Leo Capobianco
8 whether or not he had informed the Nevada State Board of Medicine of his pending criminal status in
9 New York. Leo Capobianco told the U.S. Attorney that he had when in fact he had not. Capobianco
10 repeated this false statement to another U.S. Attorney and two FBI investigators. Capobianco knew the
11 statement was false.

12 14. Leo Capobianco filed his application for licensure with the Nevada State Board of
13 Osteopathic Medicine on or about December 10, 1999. In said application, Leo Capobianco swore that
14 his answers to the questions were true and correct. Capobianco answered "no" to question 32, "Have
15 you ever been arrested, investigated, charged, convicted of, pled nolo contendere to any offense,
16 misdemeanor or felony in any state, the United States, or a foreign country?"

17 15. On March 1, 1999, Leo Capobianco did appear in court and pled guilty to two felony counts
18 of a criminal information brought by the U.S. Attorney for the State of New York for health care fraud.

19 16. When Capobianco signed and submitted his application for licensure to the Board, Leo
20 Capobianco knew that he had been investigated and charged of, and pled guilty to, an offense or felony
21 in New York by the federal government.

22 17. Leo Capobianco willfully made a false statement in applying for a license to practice
23 osteopathic medicine.

24 18. Unprofessional conduct includes willfully making a false or fraudulent statement or
25 submitting a forged or false document in applying for a license to practice osteopathic medicine. NRS
26 633.131(1)(a).

27 19. Said conduct constitutes unprofessional conduct pursuant to NRS 633.131(1)(a) and is a
28 violation of NRS 633.511(1).

1 COUNT III

2 20. Allegations contained in Paragraphs 1-6 and 12-16 are realleged and are incorporated herein
3 as if enumerated in full.

4 21. On February 9, 2001, the State of New York, Department of Health, State Board for
5 Professional Medical Conduct issued a Statement of Charges containing factual allegations as follows:

6 22. From on or about early 1997 through on or about late 1997 Leo Capobianco submitted false
7 claims for reimbursement for services that were not rendered, different and more costly services than
8 were actually rendered, services that were rendered at the homes of beneficiaries that were claimed to
9 be rendered in an office, services that no licensed doctor had determined were medically necessary, and
10 services that were provided by unsupervised medical personnel.

11 23. Four (4) specifications were set forth charging the following violations based on the
12 allegations set forth above: (1) New York Education Law §6530(2) for practicing the profession
13 fraudulently; (2) New York Education Law §6530 (20) for conduct in the practice of medicine which
14 evidences moral unfitness to practice medicine; (3) New York Education Law § 6530 (21) for willfully
15 making or filing a false report or failing to file a report required by law or by the department of health
16 or the education department or willfully impeding or obstructing such filing, or inducing another person
17 to do so; (4) and New York Education Law § 6530 (32) by failing to maintain a record for each patient
18 which accurately reflects the evaluation and treatment of the patient.

19 24. On February 27, 2001, the New York State Board for Professional Medical Conduct, New
20 York State Department of Health, entered a Surrender Order to Respondent in File Number BPMC 01-
21 44 based upon an agreement with Leo Capobianco whereby Capobianco agreed not to contest the four
22 specifications set forth in the Statement of Charges.

23 25. NRS 633.511(3) provides that the suspension of the license to practice osteopathic medicine
24 by any other jurisdiction is grounds for disciplinary action.

25 26. The surrender of Leo Capobianco's license to practice osteopathic medicine is a suspension
26 of his license by another jurisdiction.

27 27. Such facts constitute a violation of NRS 633.511(3).

28 WHEREFORE, the Office of the Attorney General prays that the Nevada State Board of

1 Osteopathic Medicine conduct a hearing on this complaint as provided by statute, and after such
2 hearing, that Leo Capobianco's license be placed on probation, limited, conditioned, suspended or revoked
3 pursuant to NRS 633.651(2) as may be deemed just and proper by the Board.

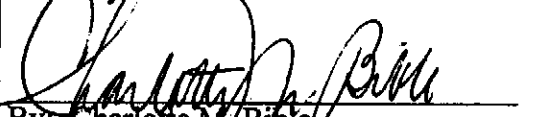
4 DATED this 12th day of April, 2001.

6 INVESTIGATING MEMBER OF THE NEVADA
STATE BOARD OF OSTEOPATHIC MEDICINE

7
8 By: 
9 RUDY MANTHEL, CHAIRMAN

10 Submitted by:

11 FRANKIE SUE DEL PAPA
12 Attorney General

13 
14 By: Charlotte M. Bible
15 Assistant Chief Deputy Attorney General
16 555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
(702) 486-3102

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on the 12th day of April, 2001, I mailed a true and accurate copy of the
19 foregoing Complaint via certified first-class mail return receipt requested, postage prepaid to:

20
21 Leo J. Capobianco, D.O.
22 5701 W. Charleston Boulevard, Suite 107
23 Las Vegas, Nevada 89146
24

25 
26 An Employee of the Nevada State Board of Osteopathic Medicine

27 Return Receipt No. 700015300005 4344 0921
28

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AGAINST
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RESPONDENT.

Case No. CV-306-00
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Executive Director

NOTICE OF HEARING

To: **Leo J. Capobianco, D.O.**

NOTICE IS HEREBY GIVEN that a Complaint has been filed pursuant to Chapter 633 of the Nevada Revised Statutes charging you with three counts of violations of NRS 633.511(1) and NRS 633.511(3).

A copy of said complaint is served upon you with this Notice of Hearing.

YOU ARE HEREBY NOTIFIED that a hearing before the Nevada Board of Osteopathic Medicine on the Complaint has been set to commence at 10:00 a.m. on May 5, 2001 or as soon thereafter as it may be heard on that date, in the Conference Room at Nevada Eye and Ear, 2598 Windmill Parkway, Henderson, Nevada 89014.

YOU ARE HEREBY FURTHER NOTIFIED that you have the right to be heard and to appear in person or by counsel and to present evidence and witnesses on your behalf at the aforesaid time and place fixed for the hearing on the Complaint and charges.

YOU ARE FURTHER NOTIFIED that possible sanctions authorized in NRS 633.651 include:

1. Probation for a specified period or until further order of the Board.
2. A public or private reprimand.
3. Limitation of the practice to, or by the exclusion of, one or more specified branches of

1 osteopathic medicine.

2 4. Suspension of the license to practice osteopathic medicine for a specified period or until
3 further order of the Board

4 5. Revocation of the license to practice osteopathic medicine.

5 6. Any other terms, provisions or conditions the Board deems proper and which are not
6 inconsistent with law.

7
8
9 DATED this 12th day of April, 2001.

10
11 INVESTIGATING MEMBER OF THE
12 NEVADA STATE BOARD OF
13 OSTEOPATHIC MEDICINE

14 By: 
15 RUDY MANTHEI, CHAIRMAN

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on the 12th day of April, 2001, I mailed a true and accurate copy of the
18 foregoing Complaint via certified first-class mail return receipt requested, postage prepaid to:
19

20 Leo J. Capobianco, D.O.
21 5701 W. Charleston Boulevard, Suite 107
22 Las Vegas, Nevada 89146
23

24
25
26 
27 An Employee of the Nevada State Board of Osteopathic Medicine

28 Return Receipt No. 7000 1530 0005 4344 0921

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