BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT
AGAINST
JAMES DANIEL CARPENTER, D.O.,
RESPONDENT.

Case No.: AD0803018
Filed:

Executive Director

COMPLAINT

Pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes, and by virtue of the authority vested in it by said chapter, the Investigative Board Member of the Nevada Board of Osteopathic Medicine, having a reasonable basis to believe that JAMES D. CARPENTER, D.O. hereinafter referred to as "Respondent," has violated the provisions of said chapter, hereby issues its formal Complaint, stating the Investigative Board Member's charges and allegations, as follows:

1. Respondent is licensed in active status to practice medicine in the state of Nevada, and at all times alleged herein, was so licensed by the Board of Osteopathic Medicine of the State of Nevada pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes.

2. NRS 633.511(1) provides that unprofessional conduct is grounds for the initiation of disciplinary proceedings.

3. NRS 633.131(1) defines "Unprofessional conduct" as follows:
   (a) Willfully making a false statement or submitting a forged or false document in applying for a license to practice osteopathic medicine.
   (f) Engaging in any:
       (1) Professional conduct which is intended to deceive or which the Board by regulation has determined is unethical.

4. NAC 633.350 states, in part, that it is unethical conduct if a licensee:
   (3) Willfully makes and files false reports, records or claims in the licensee's practice.
   (9) Engages in any other conduct that the Board determines constitutes unfitness to practice osteopathic medicine.
5. Pursuant to NRS 633.741(3), a person who gives either false or forged evidence of any kind to the Board or any of its members in connection with an application for a license is guilty of a Category D felony and shall be punished as provided in NRS 193.130.

6. Pursuant to NRS 193.130(d), a Category D felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. In addition to any other penalty, a court may impose a fine of not more than $5,000, unless a greater fine is authorized or required by statute.

7. Pursuant to NRS 633.527(1), an osteopathic physician "shall report to the Board . . . (c) any action for malpractice against the osteopathic physician not later than 45 days after the osteopathic physician receives service of a summons and complaint for the action . . . ."

8. Pursuant to NRS 633.527(2), an osteopathic physician who fails to report to the Board regarding the institution of a medical malpractice action against him, may be fined up to $5,000.00 for each such violation, in addition to any other fines or penalties permitted by law.

COUNT ONE
(Unprofessional and Unethical Conduct re: False Renewal Application)

9. The allegations set forth in paragraphs 1 through 8 are incorporated herein by reference, as though set forth in full.

10. All licensees of the Nevada State Board of Osteopathic Medicine must renew their Osteopathic medical licenses for the next calendar year by timely submitting a renewal application.

11. This renewal document requires all renewing licensees to answer "Yes" or "No" to the following question:

In the past year, have you had any claims, settlements, or judgments involving professional liability (malpractice)? If YES, please attach a separate sheet listing EACH claim, settlement or judgment listing the plaintiff, defendant, insurer, and disposition of the claim.

12. Just above its signature block, this document also requires all renewing
licensees to attest to the following:

By acknowledging this statement, answering the above renewal questions, and affirming that I have met the continuing education requirement for license renewal, I am stating under penalties of perjury that all information and answers provided in this renewal application are true and correct. I understand that it is a Category D felony to provide false information to the Board pursuant to NRS 633.741(3).

13. On January 7, 2008, Respondent completed and submitted his renewal application as required by the Board, and NRS chapter 633, in order to renew his license to practice Osteopathic Medicine for the 2008 calendar year.

14. In completing this document, Respondent answered in the negative concerning malpractice claims being filed against him. In other words, Respondent attested that within the past twelve (12) months (i.e., during the period spanning January 7, 2007 through January 7, 2008) he had no “claims, settlements, or judgments involving professional liability (malpractice)” asserted against him.

15. Respondent then signed this document attesting, among other things, that “under penalties of perjury that all information and answers provided in this renewal application are true and correct . . . .”

16. On August 14, 2007, Case No. A546406 in Department VI of the Eighth Judicial District Court in and for Clark County, Nevada was commenced. The case is entitled Israel Bari as Plaintiff and further lists “James D. Carpenter, D.O., and Eye & Cosmetic Surgery Center of Nevada, LLC,” as Defendants. A copy of that complaint is attached hereto as Exhibit “A.”

17. According to Blackstone, on November 13, 2007, Defendants, Dr. James D. Carpenter and Eye & Cosmetic Surgery Center of Nevada, LLC, filed a motion to dismiss the Plaintiff’s Complaint, but the Motion was denied. Thereafter, Dr. Carpenter and his Eye & Cosmetic Surgery Center of Nevada, LLC, responded to the Plaintiff’s complaint. A copy of the Blackstone print out, listing case activity, is attached hereto as Exhibit “B.”

18. Because Case No. A546406 represents an instance where Respondent has sustained a claim of malpractice against him during the period spanning January 7, 2007
through January 7, 2008, Respondent's answers on his January 7, 2008, renewal application were untruthful. A print out of the January 7, 2008, renewal application for 2008 is attached hereto as Exhibit "C."

19. Because Respondent went so far as to retain counsel to defend himself and his practice in Case No. A548406, including the filing of a motion to dismiss and thereafter an Answer with affirmative defenses therein, Respondent's failure to disclose this matter on his renewal application was a willful act of dishonesty on Respondent's part which merits the imposition of discipline against him.

20. Respondent's conduct as described in this Count, constitutes "unprofessional conduct" pursuant to NRS 633.131(1)(a) and NRS 633.131(1)(f)(1).

21. Respondent's conduct as described in this Count, further constitutes "unethical conduct" pursuant to NAC 633.350(3) and NAC 633.350(9).

22. Respondent's conduct as described in this Count, further represents a violation of NRS 633.741(3), and constitutes a Category D felony which should, therefore, be punished as provided in NRS 183.130.

**COUNT TWO**

(Failure to Report Lawsuit within 45 Days)

23. The allegations set forth in paragraphs 1 through 22 are incorporated herein by this reference, as though set forth in full herein.

24. As indicated above, on August 14, 2007, Case No. A548406 in Department VI of the Eighth Judicial District Court in and for Clark County, Nevada was commenced. The case is entitled Israel Barl as Plaintiff and further lists "James D. Carpenter, D.O., and Eye & Cosmetic Surgery Center of Nevada, LLC," as Defendants. The summons and complaint were served on Respondent.

25. Respondent James D. Carpenter, D.O., failed to report the filing of a medical malpractice action to the Board within 45 days of receipt of the summons and complaint; and such failure to report is a blatant violation of NRS 633.527(1)(a).

26. Pursuant to NRS 633.527(2), the Board may find James D. Carpenter, D.O., as
having violated NRS 633.527(1)(a) and may fine him $5,000 for each such violation in addition
to any other fines or penalties permitted by law.

COUNT THREE

(Failure to Report License Revocation)

27. The allegations set forth in paragraphs 1 through 26 are incorporated herein by this
reference as though they were set forth in full herein.

28. NRS 633.527(1)(d) mandates that all Osteopathic physicians report to the Board
"[a]ny sanctions imposed against the osteopathic physician that are reportable to the National
Practitioner Data Bank not later than 45 days after the sanctions are imposed."

29. On May 10, 2006, the Ohio State Medical Board revoked the license of James D.
Carpenter, D.O., based upon actions taken by the Nevada State Board of Osteopathic
Medicine. The revocation is a reportable event to the National Practitioner Data Bank.

30. James D. Carpenter, D.O., failed to report to the Board within 45 days of May 10,
2006, that his license to practice osteopathic medicine in the State of Ohio had been revoked.

31. Pursuant to NRS 633.527(2), the Board may find James D. Carpenter, D.O., as
having violated NRS 633.527(1)(d) and may fine him $5,000 for each such violation in
additional to any other fines or penalties permitted by law.

WHEREFORE, the Investigative Member of the Board of Osteopathic Medicine prays
as follows:

1. That the Nevada State Board of Osteopathic Medicine appoint a hearing officer
in this matter and that such hearing officer conduct a hearing on this Complaint as provided by
statute.

2. That, pursuant to NRS 633.661, Respondent, JAMES D. CARPENTER, D.O., be
publicly reprimanded and/or the license of Respondent, JAMES D. CARPENTER, D.O., be
revoked, suspended, limited to a specified branch of osteopathic medicine, or placed on
probation with conditions and terms as the Nevada State Board of Osteopathic Medicine may
deem just and proper and which are not inconsistent with law.

3. That Respondent, JAMES D. CARPENTER, D.O., be ordered to pay reasonable
attorney's fees and costs of the investigation and the administrative and disciplinary
Proceedings pursuant to NRS 822.400, which allows a regulatory body to "recover from a
person [such] reasonable attorney's fees and costs that are incurred by the regulatory body as
part of its investigative, administrative and disciplinary proceedings against the person . . . ."

4. That a fine be levied against JAMES D. CARPENTER, D.O., in the amount of
$5,000 for failure to report a medical malpractice claim as required by NRS 633.527(1)(a) and
$5,000 for his failure to report the Ohio license revocation as required by NRS 633.527(1)(d).

5. And that such other and further relief be granted as the Hearing Officer deems
appropriate under the circumstances.

DATED this 30 day of October, 2008.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: [Signature]
PAUL KALEKAS, D.O.
Investigating Member of the
Nevada Board of Osteopathic Medicine

Submitted by:
Catherine Cortez Masto
Attorney General

By: [Signature] 11-13-08
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