

ORIGINAL

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

1
2
3 IN THE MATTER OF THE COMPLAINT
4 AGAINST
5 HARVEY Z. HOFFMAN, D.O.,
6 RESPONDENT.
7
8

Case No.: AD 070104 A

Filed:



Executive Director
**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

AUG 21 2008

COMPLAINT

FILED

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10 Pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes, and by
11 virtue of the authority vested in it by said chapter, the Investigative Board Member of the
12 Nevada Board of Osteopathic Medicine, having a reasonable basis to believe that HARVEY Z.
13 HOFFMAN, D.O. (hereinafter referred to as "RESPONDENT," has violated the provisions of
14 said chapter, hereby issues its formal Complaint, stating the Investigative Board Member's
15 charges and allegations, as follows:
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17 1. RESPONDENT is licensed in active status to practice medicine in the state of
18 Nevada, and at all times alleged herein, was so licensed by the Board of Osteopathic
19 Medicine of the State of Nevada pursuant to the provisions of Chapter 633 of the Nevada
20 Revised Statutes.

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

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Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

1 3. NRS 633.131(1) defines "Unprofessional conduct" as follows:

2 (a) Willfully making a false statement or submitting a forged or false
3 document in applying for a license to practice osteopathic medicine.

4 (f) Engaging in any:

5 (1) Professional conduct which is intended to deceive or
6 which the Board by regulation has determined is
unethical.

7 (k) Willful disobedience of the regulations of the State Board of
8 Health, the State Board of Pharmacy or the State Board of
Osteopathic Medicine.

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10 4. Pursuant to NAC 633.350, a licensee engages in unethical conduct if he:

11 (3) Willfully makes and files false reports, records or claims in
12 the licensee's practice

13 (8) Fails to comply with an order of the board

14 (9) Engages in any other conduct that the Board determines
15 constitutes unfitness to practice osteopathic medicine.

16 5. Pursuant to NRS 633.741(3), a person who gives either false or forged evidence
17 of any kind to the Board or any of its members in connection with an application for a license
18 is guilty of a Category D felony and shall be punished as provided in NRS 193.130.

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

23 7. Pursuant to NRS 633.527, an osteopathic physician "...shall report to the Board
24 ... (c) any settlement, award, judgment or other disposition of any action or claim...not later
25 than 45 days after the settlement, award, judgment or disposition..."

26 8. Pursuant to NRS 633.527(2), an osteopathic physician who fails to report to the
27 Board regarding the disposition of a malpractice action against him, may be fined up to
28 \$5,000.00 for each such violation, in addition to any other fines or penalties permitted by law.

COUNT ONE

(Unprofessional and Unethical Conduct)

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

5 10. Upon information and belief, RESPONDENT was a named Defendant in the
6 matter of LEMENN, et al v. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, et al.,
7 Case No. CV-S-01-255-PMP-RJJ, in the United States District Court for the District of
8 Nevada, filed on April 5, 2001 (hereinafter, the "LEMENN ACTION")

9 11. Upon further information and belief, RESPONDENT was brought into the
10 LEMENN ACTION by way of a First Amended Complaint filed on or about October 21, 2002.

11 12. Upon further information and belief, RESPONDENT was dismissed from the
12 LEMENN ACTION by way of a Stipulation and Order for Dismissal With Prejudice filed on or
13 about October 28, 2003.

14 13. Pursuant to NRS 633.527, RESPONDENT was required to disclose the
15 resolution of his involvement in the LEMENN ACTION to the Nevada State Board of
16 Osteopathic Medicine within forty-five (45) days of the settlement (i.e., on or before December
17 12, 2003).

18 14. RESPONDENT failed to disclose the resolution of his involvement in the
19 LEMENN ACTION to the Nevada State Board of Osteopathic Medicine at any time.

20 15. RESPONDENT'S conduct as described herein, should, therefore, be punished
21 as provided in NRS 633.527(2).

22 16. RESPONDENT'S conduct as described herein, also constitutes "unprofessional
23 conduct" pursuant to NRS 633.131(1)(f)(1) and NRS 633.131(1)(k).

24 17. RESPONDENT'S conduct as described herein, further constitutes "unethical
25 conduct" pursuant to NAC 633.350(8) and NAC 633.350(9).

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COUNT TWO

(Unprofessional and Unethical Conduct)

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

19. Upon information and belief, RESPONDENT was a named Defendant in the matter of TALARICO v. PRISON HEALTH SERVICES, INC., et al., Case No. CV-S-02-0173-RLH-PAL, in the United States District Court for the District of Nevada, filed on February 6, 2002 (hereinafter, the "TALARICO ACTION").

20. Upon further information and belief, RESPONDENT was dismissed from the TALARICO ACTION after the Plaintiff in that matter accepted an Offer of Judgment lodged by four (4) of the five (5) named Defendants including RESPONDENT. A Stipulation and Order of Dismissal as to RESPONDENT and three (3) other parties was then filed on or about February 9, 2004.

21. Pursuant to NRS 633.527, RESPONDENT was required to disclose the resolution of his involvement in the TALARICO ACTION to the Nevada State Board of Osteopathic Medicine within forty-five (45) days of the settlement (i.e., on or before March 25, 2004).

22. RESPONDENT failed to disclose the resolution of his involvement in the TALARICO ACTION to the Nevada State Board of Osteopathic Medicine at any time.

23. RESPONDENT'S conduct as described herein, should, therefore, be punished as provided in NRS 633.527(2).

24. RESPONDENT'S conduct as described herein, also constitutes "unprofessional conduct" pursuant to NRS 633.131(1)(f)(1) and NRS 633.131(1)(k).

25. RESPONDENT'S conduct as described herein, further constitutes "unethical conduct" pursuant to NAC 633.350(8) and NAC 633.350(9).

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1 **COUNT THREE**

2 **(Unprofessional and Unethical Conduct)**

3 26. The allegations set forth in paragraphs 1 through 25 are incorporated herein by
4 reference, as though set forth in full.

5 27. Each December, all licensees of the Nevada State Board of Osteopathic
6 Medicine must renew their licenses by way of a "First and Final Re-Registration Notice".

7 28. This document requires all renewing licensees to answer "Yes" or "No" to the
8 following question:

9
10 In the past year, have you had any claims, settlements, or
11 judgments involving professional liability (malpractice)? If YES,
12 please attach a separate sheet listing EACH claim, settlement or
13 judgment listing the plaintiff, defendant, insurer, and disposition of
14 the claim.

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

17 By my signature, I certify that I am the person named in this
18 application for registration renewal of a license to practice
19 Osteopathic Medicine in the State of Nevada and that all
20 statements herein are true. Further, I acknowledge that knowingly
21 making a false statement in this renewal application is a felony as
22 well as grounds for discipline up to and including revocation of
23 licensure.

24 30. On November 22, 2004, RESPONDENT completed the "First and Final Re-
25 Registration Notice" as required by the Board, in order to renew his license to practice
26 Osteopathic Medicine for the 2005 calendar year.

27 31. In completing this document, RESPONDENT answered Question 4 Required
28 For Renewal, in the negative. In other words, RESPONDENT attested that within the past
twelve (12) months (i.e., during the period spanning November 22, 2003 through November
22, 2004) he had no "claims, settlements, or judgments involving professional liability
(malpractice)" asserted against him.

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1 32. RESPONDENT then signed this document attesting, among other things, that
2 "...all statements herein [were] true..."

3 33. As described above, RESPONDENT was dismissed from the TALARICO
4 ACTION on or about February 9, 2004.

5 34. Because the TALARICO ACTION represents an instance where RESPONDENT
6 had obtained a settlement of a claim of malpractice against him during the period spanning
7 November 22, 2003 through November 22, 2004, RESPONDENT'S answers on his
8 November 22, 2004, "First and Final Re-Registration Notice" were untruthful.

9 35. RESPONDENT'S conduct as described herein, constitutes "unprofessional
10 conduct" pursuant to NRS 633.131(1)(a) and NRS 633.131(1)(f)(1).

11 36. RESPONDENT'S conduct as described herein, further constitutes "unethical
12 conduct" pursuant to NAC 633.350(3) and NAC 633.350(9).

13 37. RESPONDENT'S conduct as described herein, further represents a violation of
14 NRS 633.741(3), and constitutes a Category D felony which should, therefore, be punished as
15 provided in NRS 193.130.

16 COUNT FOUR

17 (Unprofessional and Unethical Conduct)

18 38. The allegations set forth in paragraphs 1 through 37 are incorporated herein by
19 reference, as though set forth in full.

20 39. Upon information and belief, RESPONDENT was a named Defendant in the
21 matter of SHIPLEY v. EMSA CORRECTIONAL CARE, et al., Case No. CV-S-00-1428-RLH-
22 RJJ, in the United States District Court for the District of Nevada, filed on May 17, 2001
23 (hereinafter, the "SHIPLEY ACTION").

24 40. Upon further information and belief, RESPONDENT was dismissed from the
25 SHIPLEY ACTION after the Plaintiff in that matter accepted a settlement offer from all named
26 Defendants including RESPONDENT. A Stipulation and Order to Dismiss Case With
27 Prejudice as to RESPONDENT and all other parties was then filed on or about March 30,
28 2004.

1 41. Pursuant to NRS 633.527, RESPONDENT was required to disclose the
2 resolution of his involvement in the SHIPLEY ACTION to the Nevada State Board of
3 Osteopathic Medicine within forty-five (45) days of the settlement (i.e., on or before May 14,
4 2004).

5 42. RESPONDENT failed to disclose the resolution of his involvement in the
6 SHIPLEY ACTION to the Nevada State Board of Osteopathic Medicine at any time.

7 43. RESPONDENT'S conduct as described herein, should, therefore, be punished
8 as provided in NRS 633.527(2).

9 44. RESPONDENT'S conduct as described herein, also constitutes "unprofessional
10 conduct" pursuant to NRS 633.131(1)(f)(1) and NRS 633.131(1)(k).

11 45. RESPONDENT'S conduct as described herein, further constitutes "unethical
12 conduct" pursuant to NAC 633.350(8) and NAC 633.350(9).

13 **COUNT FIVE**

14 **(Unprofessional and Unethical Conduct)**

15 46. The allegations set forth in paragraphs 1 through 45 are incorporated herein by
16 reference, as though set forth in full.

17 47. On November 22, 2004, RESPONDENT completed the "First and Final Re-
18 Registration Notice" as required by the Board, in order to renew his license to practice
19 Osteopathic Medicine for the 2005 calendar year.

20 48. As stated above, in completing this document, RESPONDENT answered
21 Question 4 Required For Renewal, in the negative. In other words, RESPONDENT attested
22 that within the past twelve (12) months (i.e., during the period spanning November 22, 2003
23 through November 22, 2004) he had no "claims, settlements, or judgments involving
24 professional liability (malpractice)" asserted against him.

25 49. RESPONDENT then signed this document attesting, among other things, that
26 "...all statements herein [were] true..."

27 50. As described above, RESPONDENT was dismissed from the SHIPLEY ACTION
28 on or about March 30, 2004.

1 51. Because the SHIPLEY ACTION represents an instance where RESPONDENT
2 had obtained a settlement of a claim of malpractice against him during the period spanning
3 November 22, 2003 through November 22, 2004, RESPONDENT'S answers on his
4 November 22, 2004, "First and Final Re-Registration Notice" were untruthful.

5 52. RESPONDENT'S conduct as described herein, constitutes "unprofessional
6 conduct" pursuant to NRS 633.131(1)(a) and NRS 633.131(1)(f)(1).

7 53. RESPONDENT'S conduct as described herein, further constitutes "unethical
8 conduct" pursuant to NAC 633.350(3) and NAC 633.350(9).

9 54. RESPONDENT'S conduct as described herein, further represents a violation of
10 NRS 633.741(3), and constitutes a Category D felony which should, therefore, be punished as
11 provided in NRS 193.130.

12 **COUNT SIX**

13 **(Unprofessional and Unethical Conduct)**

14 55. The allegations set forth in paragraphs 1 through 54 are incorporated herein by
15 reference, as though set forth in full.

16 56. Upon information and belief, RESPONDENT was a named Defendant in the
17 matter of BENNETT v. HOFFMAN, et al., Case No. CV-N-01-0557-DWH-RAM, in the United
18 States District Court for the District of Nevada, filed on March 19, 2002 (hereinafter, the
19 "BENNETT ACTION").

20 57. Upon further information and belief, RESPONDENT was dismissed from the
21 BENNETT ACTION after the Plaintiff in that matter accepted a settlement offer from all named
22 Defendants including RESPONDENT. A Stipulation and Order to Dismiss as to
23 RESPONDENT and all other parties was then filed on or about March 12, 2004.

24 58. Pursuant to NRS 633.527, RESPONDENT was required to disclose the
25 resolution of his involvement in the BENNETT ACTION to the Nevada State Board of
26 Osteopathic Medicine within forty-five (45) days of the settlement (i.e., on or before April 26,
27 2004).

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1 59. RESPONDENT failed to disclose the resolution of his involvement in the
2 BENNETT ACTION to the Nevada State Board of Osteopathic Medicine at any time.

3 60. RESPONDENT'S conduct as described herein, should, therefore, be punished
4 as provided in NRS 633.527(2).

5 61. RESPONDENT'S conduct as described herein, also constitutes "unprofessional
6 conduct" pursuant to NRS 633.131(1)(f)(1) and NRS 633.131(1)(k).

7 62. RESPONDENT'S conduct as described herein, further constitutes "unethical
8 conduct" pursuant to NAC 633.350(8) and NAC 633.350(9).

9 **COUNT SEVEN**

10 **(Unprofessional and Unethical Conduct)**

11 63. The allegations set forth in paragraphs 1 through 62 are incorporated herein by
12 reference, as though set forth in full.

13 64. On November 22, 2004, RESPONDENT completed the "First and Final Re-
14 Registration Notice" as required by the Board, in order to renew his license to practice
15 Osteopathic Medicine for the 2005 calendar year.

16 65. As stated above, in completing this document, RESPONDENT answered
17 Question 4 Required For Renewal, in the negative. In other words, RESPONDENT attested
18 that within the past twelve (12) months (i.e., during the period spanning November 22, 2003
19 through November 22, 2004) he had no "claims, settlements, or judgments involving
20 professional liability (malpractice)" asserted against him.

21 66. RESPONDENT then signed this document attesting, among other things, that
22 "...all statements herein [were] true..."

23 67. As described above, RESPONDENT was dismissed from the BENNETT
24 ACTION on or about March 12, 2004.

25 68. Because the BENNETT ACTION represents an instance where RESPONDENT
26 had obtained a settlement of a claim of malpractice against him during the period spanning
27 November 22, 2003 through November 22, 2004, RESPONDENT'S answers on his
28 November 22, 2004, "First and Final Re-Registration Notice" were untruthful.

1 69. RESPONDENT'S conduct as described herein, constitutes "unprofessional
2 conduct" pursuant to NRS 633.131(1)(a) and NRS 633.131(1)(f)(1).

3 70. RESPONDENT'S conduct as described herein, further constitutes "unethical
4 conduct" pursuant to NAC 633.350(3) and NAC 633.350(9).

5 71. RESPONDENT'S conduct as described herein, further represents a violation of
6 NRS 633.741(3), and constitutes a Category D felony which should, therefore, be punished as
7 provided in NRS 193.130.

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

3 1. That the Nevada State Board of Osteopathic Medicine conduct a hearing on this
4 Complaint as provided by statute;

5 2. That, pursuant to NRS 633.651, Respondent, HARVEY Z. HOFFMAN, D.O., be
6 publicly reprimanded and/or the license of Respondent, HARVEY Z. HOFFMAN, D.O., be
7 revoked, suspended, limited to a specified branch of osteopathic medicine, or placed on
8 probation with conditions and terms as the Nevada State Board of Osteopathic Medicine may
9 deem just and proper and which are not inconsistent with law;


10 3. That Respondent, HARVEY Z. HOFFMAN, D.O., be ordered to pay reasonable
11 attorney's fees and costs of the investigation and the administrative and disciplinary
12 proceedings.

13 DATED this 17TH day of December, 2007.

14
15 By: 
16 DANIEL K. CURTIS, D.O.,
17 Investigating Member of the
18 Nevada Board of Osteopathic Medicine

18 Submitted by:

19 CATHERINE CORTEZ MASTO
20 Attorney General

21 By: 
22 Richard I. Dreitzer
23 Deputy Attorney General
24 555 E. Washington Avenue, Suite 3900
25 Las Vegas, Nevada 89101
26 (702) 486-3165
27
28