

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. )

Case No. CV-306-00

Filed 8-20-01

  
Executive Director

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10 **FINDINGS OF FACT, CONCLUSIONS OF LAW**  
11 **AND ORDER**

12 DATE: JULY 14, 2001

13 TIME: 10:00 A.M.

14 THIS MATTER having come before the NEVADA STATE BOARD OF OSTEOPATHIC  
15 MEDICINE ("BOARD") on May 5, 2001 and July 14, 2001, in Las Vegas, Nevada, upon the  
16 Complaint filed by the Investigating Board Member, Rudy Manthei, on April 12, 2001 against LEO J.  
17 CAPOBIANCO, the Investigating Board Member being represented by its attorney, Charlotte  
18 Matanane Bible, Assistant Chief Deputy Attorney General, and LEO CAPOBIANCO being present on  
19 May 5, 2001 and not represented by counsel, and not present on July 14, 2001 but represented by Dr.  
20 Mondora, and the BOARD having duly considered the evidence presented in the form of testimony and  
21 exhibits which were admitted without objection, and having considered the papers and pleadings on file  
22 in this matter and oral argument of the parties, the BOARD makes the following Findings of Fact and  
23 Conclusions of Law pursuant to the requirements of NRS 233B.125:

24 **FINDINGS OF FACT**

25 1. At all times relevant hereto, Respondent, LEO J. CAPOBIANCO, was licensed in the state of  
26 Nevada by the Nevada State Board of Osteopathic Medicine, pursuant to the provisions of Chapter 633  
27 of the Nevada Revised Statutes.  
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1           2. On March 3, 1999, in the United States District Court for the Southern District of New  
2 York, LEO CAPOBIANCO pled guilty to Counts 1 and 2 as charged in the information brought by the  
3 United States Attorney in Case no. 99 Cr. 135. The information charged LEO CAPOBIANCO with  
4 health care fraud and conspiracy, violations of 18 § USC 1035, 18 USC § 1347, 18 USC §371 and 18  
5 USC § 2. A violation of 18 USC § 1347, health care fraud, can be punished by fine or imprisonment up  
6 to 10 years and is a Class C felony pursuant to 18 USC § 3559 (a)(3).

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

20           4. LEO CAPOBIANCO, in pleading guilty to the allegations and violations set forth in the  
21 information, did admit to committing health care fraud by devising a scheme to defraud the Medicare  
22 Program by filing false claims for services that were not rendered, and obtaining money for said false  
23 claims.

24           5. On or about January 25, 2001, pursuant to a supplemental information in Case no. S1 99 Cr.  
25 135 (LAK), LEO CAPOBIANCO was charged with and pled guilty to a violation of 18 USC § 1001 for  
26 making a false statement knowingly to a government agent.

27           6. LEO CAPOBIANCO admitted to the following: While being questioned by a U.S. Attorney  
28 in July 2000, as a cooperating witness for the government, the U.S. Attorney asked LEO

1 CAPOBIANCO whether or not he had informed the Nevada State Board of Medicine of his pending  
2 criminal status in New York. LEO CAPOBIANCO told the U.S. Attorney that he had when in fact he  
3 had not. CAPOBIANCO repeated this false statement to another U.S. Attorney and two FBI  
4 investigators. CAPOBIANCO knew the statement was false.

5 7. LEO CAPOBIANCO filed his application for licensure with the Nevada State Board of  
6 Osteopathic Medicine on or about December 10, 1999. In said application, LEO CAPOBIANCO  
7 answered "no" to question 32 which asked whether he had ever been arrested, investigated, charged,  
8 convicted of, pled nolo contendere to any offense, misdemeanor or felony in any state, the United  
9 States, or a foreign country.

10 8. Prior to signing and submitting his application for licensure to the BOARD, LEO  
11 CAPOBIANCO knew that he had been investigated and charged of an offense or felony in New York  
12 by the federal government.

13 9. LEO CAPOBIANCO willfully made a false statement in applying for a license to practice  
14 osteopathic medicine.

15 10. At the disciplinary hearing before the BOARD, LEO CAPOBIANCO did not deny any  
16 of the facts supporting the criminal violations to which he pled guilty.

17 11. On May 17, 2001, LEO CAPOBIANCO was sentenced for the criminal violations for  
18 the health care fraud, conspiracy and making a false statement to a federal officer to four (4) months  
19 incarceration to be followed by a three-year period of supervised release, the first four months of  
20 release to be in-home detention for said crimes. CAPOBIANCO was also ordered to pay restitution in  
21 the amount of \$97,985.09

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

25 13. Unprofessional conduct includes engaging in any professional conduct which is intended to  
26 deceive or the BOARD by regulation has determined is unethical. NRS 633.131(1)(f).

27 14. Unprofessional conduct includes willfully making a false or fraudulent statement or  
28 submitting a forged or false document in applying for a license to practice osteopathic medicine. NRS

1 633.131(1)(a).

2 15. The conduct of LEO CAPOBIANCO which resulted in his criminal convictions constitute  
3 unprofessional conduct pursuant to NRS 633.131(1)(a),(c) and (f).

4 16. On February 27, 2001, the New York State Board for Professional Medical Conduct, New  
5 York State Department of Health, entered a Surrender Order to Respondent in File Number BPMC 01-  
6 44 based upon an agreement with Respondent whereby Respondent agreed not to contest the four  
7 specifications set forth in the Statement of Charges issued February 9, 2001. The Statement of Charges  
8 were based on the federal health care fraud charges.

9 17. The surrender of LEO CAPOBIANCO's license to practice osteopathic medicine in the  
10 state of New York is a suspension of a license to practice osteopathic medicine in another jurisdiction.

11 18. LEO CAPOBIANCO was a cooperating witness for the government and received a  
12 downward departure from the sentencing guidelines as a result. The penalty LEO CAPOBIANCO  
13 receives by the federal court is a penalty that will ensure that he does not commit a similar crime in the  
14 future.

15 19. The BOARD's responsibility is to protect the public. The crime for which LEO  
16 CAPOBIANCO has been convicted is not a crime that is related to his professional competence and  
17 does not affect the health and safety of the public.

#### 18 CONCLUSIONS OF LAW

19 20. The conduct engaged in by LEO CAPOBIANCO constitutes unprofessional conduct  
20 pursuant to NRS 633.131(1)(a), (c) and (f) and is a violation of NRS 633.511(1).

21 21. The action against LEO CAPOBIANCO's license in another jurisdiction and the resulting  
22 surrender of said license constitutes a violation of NRS 633.511(3).

#### 23 ORDER

24 IT IS HEREBY ORDERED pursuant to NRS 633.651, upon unanimous vote of the three BOARD  
25 members present and eligible to vote on the matter, that in light of the circumstances of this case, that the  
26 license of LEO CAPOBIANCO shall be suspended from the time of his incarceration on July 2, 2001 for a  
27 period of 6 months followed by 6 months of monitoring to be determined by the BOARD and the  
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1 completion of a CME course in Medicare/Medicaid fraud and abuse within such time and the payment of  
2 costs in the amount of \$3,529.50.

3 Dated this 17<sup>th</sup> day of August, 2001.

4 NEVADA STATE BOARD OF OSTEOPATHIC  
5 MEDICINE

6 BY:   
7 Bruce Bannister, Vice Chairman

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