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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.

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

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

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

12 8. Pursuant to NRS 633.527(2), an osteopathic physician who fails to report to the
13 Board regarding the institution of a medical malpractice action against him, may be fined up to
14 \$5,000.00 for each such violation, in addition to any other fines or penalties permitted by law.

15 **COUNT ONE**

16 **(Unprofessional and Unethical Conduct re: False
17 Renewal Application)**

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

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

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

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

12. Just above its signature block, this document also requires all renewing

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1 licensees to attest to the following:

2 By acknowledging this statement, answering the above renewal
3 questions, and affirming that I have met the continuing education
4 requirement for license renewal, I am stating under penalties of
5 perjury that all information and answers provided in this renewal
6 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).

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

10 14. In completing this document, Respondent answered in the negative concerning
11 malpractice claims being filed against him. In other words, Respondent attested that within
12 the past twelve (12) months (i.e., during the period spanning January 7, 2007 through January
13 7, 2008) he had no "claims, settlements, or judgments involving professional liability
14 (malpractice)" asserted against him.

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

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

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

28 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

1 through January 7, 2008, Respondent's answers on his January 7, 2008, renewal application
2 were untruthful. A print out of the January 7, 2008, renewal application for 2008 is attached
3 hereto as Exhibit "C."

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

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

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

13 22. Respondent's conduct as described in this Count, further represents a violation
14 of NRS 633.741(3), and constitutes a Category D felony which should, therefore, be punished
15 as provided in NRS 193.130.

16 COUNT TWO

17 (Failure to Report Lawsuit within 45 Days)

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

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

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

28 26. Pursuant to NRS 633.527(2), the Board may find James D. Carpenter, D.O., as

1 having violated NRS 633.527(1)(a) and may fine him \$5,000 for each such violation in addition
2 to any other fines or penalties permitted by law.

3 **COUNT THREE**

4 **(Failure to Report License Revocation)**

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

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

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

13 30. James D. Carpenter, D.O., failed to report to the Board within 45 days of May 10,
14 2006, that his license to practice osteopathic medicine in the State of Ohio had been revoked.

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

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

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

23 2. That, pursuant to NRS 633.651, Respondent, JAMES D. CARPENTER, D.O., be
24 publicly reprimanded and/or the license of Respondent, JAMES D. CARPENTER, D.O., be
25 revoked, suspended, limited to a specified branch of osteopathic medicine, or placed on
26 probation with conditions and terms as the Nevada State Board of Osteopathic Medicine may
27 deem just and proper and which are not inconsistent with law.

28 3. That Respondent, JAMES D. CARPENTER, D.O., be ordered to pay reasonable

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1 attorney's fees and costs of the investigation and the administrative and disciplinary
 2 Proceedings pursuant to NRS 822.400, which allows a regulatory body to "recover from a
 3 person [such] reasonable attorney's fees and costs that are incurred by the regulatory body as
 4 part of its investigative, administrative and disciplinary proceedings against the person"

5 4. That a fine be levied against JAMES D. CARPENTER, D.O., in the amount of
 6 \$5,000 for failure to report a medical malpractice claim as required by NRS 633.527(1)(a) and
 7 \$5,000 for his failure to report the Ohio license revocation as required by NRS 633.527(1)(d).

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

10 DATED this 30 day of October, 2008.

12 NEVADA STATE BOARD OF
 13 OSTEOPATHIC MEDICINE

14 By: Paul Kalekas
 15 PAUL KALEKAS, D.O.
 16 Investigating Member of the
 17 Nevada Board of Osteopathic Medicine

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18 Submitted by:
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