

ORIGINAL

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

AGAINST

PETER J. LICATA, D.O.,

RESPONDENT.

NV STATE BOARD OF
OSTEOPATHIC MEDICINE
Case No.: AD 08-05031

MAR 04 2009

Filed:

Barbara
FILED
For Executive Director

AMENDED 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 PETER J. LICATA, D.O., hereinafter referred to as "Respondent" or "Licata," has violated the provisions of said chapter, hereby issues its formal Complaint, stating the Investigative Board Member's charges and allegations, as follows:

Jurisdiction/General Allegations

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 and NRS 633.511(2)(i) allows for the initiation of disciplinary proceedings if the licensee is convicted of any offense involving moral turpitude.

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 . . .
- (o) Making or filing a report which the licensee knows to be false.
- (p) Failure of a licensee to file a record or report as required by law

4. NAC 633.350 states, in part, that it is unethical conduct if a Licensee:

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- 1 (3) Willfully makes and files false reports, records or claims in
the licensee's practice. . . .
- 2 (9) Engages in any other conduct that the Board determines
3 constitutes unfitness to practice osteopathic medicine.

4 5. Pursuant to NRS 633.741(3), a person who gives either false or forged evidence
5 of any kind to the Board in connection with an application for a license, or renewal thereof, is
6 guilty of a Category D felony and shall be punished pursuant to NRS 193.130.

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

12
13 **COUNT ONE**

14 **(Unprofessional and Unethical Conduct)**

15 7. The allegations set forth in paragraphs 1 through 6 of the Jurisdiction section of
16 this complaint are incorporated herein by reference, as though set forth in full.

17 8. At the relevant times mentioned herein, Licata was the owner, sole officer, and
18 resident agent of Osteopathic Medical Associates of Nevada, which was located at 5410 W.
19 Sahara Avenue, Las Vegas, Nevada. As such, Licata was the responsible person, i.e., had
20 the duty, to assure that all applicable taxes on behalf of the Osteopathic Medical Associates of
21 Nevada facility were paid in a timely fashion.

22 9. The United States of America filed a complaint against Licata alleging that he
23 collected employment taxes during the year 2002, 2003, 2004, and 2005 on behalf of the
24 Osteopathic Medical Associates of Nevada facility, but failed to pay the taxes over to the
25 Internal Revenue Service ("IRS"). It was alleged that failure to pay over the taxes is a
26 violation of Title 26 of United States Code Section 7215(a).

27 10. In March 2006, Licata entered into a Plea Agreement in which he agreed that
28 the amount of taxes collected and not deposited with the IRS was more than \$80,000 but less

1 than \$200,000, and that he was "pleading guilty because the defendant [Licata] is guilty of the
2 charged offense."

3 11. By collecting employment taxes on behalf of his medical facility, and thereafter
4 willfully and intentionally failing to pay the same to the IRS on behalf of the medical facility,
5 such is unprofessional conduct as it was intended to deceive the government of such taxes
6 and did deceive the individuals from whom such taxes were collected (NRS 633.131(1)(f)(1)).

7 12. By failing to file the appropriate and accurate returns and/or reports with the
8 government concerning such taxes due and owing on behalf of Licata's medical practice, such
9 taxes being collected but not remitted to the government, such is unethical conduct and a
10 violation of NAC 633.350(3) and NAC 633.350(9).

11 13. By failing to file the appropriate and accurate returns and/or reports with the
12 government concerning such taxes on behalf of his medical practice, such taxes being
13 collected but not remitted to the government in a timely fashion, such is unprofessional
14 conduct pursuant to NRS 633.131(1)(o) and NRS 633.131(p).

15 **COUNT TWO**

16 **(Failure to Inform the Board)**

17 14. The allegations set forth in paragraphs 1 through 6, inclusive, of the Jurisdiction
18 section of this complaint and paragraphs 5 through 13, inclusive, of Count One of this
19 complaint are incorporated herein by this reference as though more specifically set forth
20 herein.

21 15. That since the entry of the plea agreement in March 2006, Licata has annually
22 renewed his license to practice osteopathic medicine in the State of Nevada for the years
23 2007 and 2008.

24 16. That a question contained in the renewal application states:

25 In the past year have you been investigated for, charged with, convicted of,
26 or plead guilty or nolo contendere to any offense or violation of any federal, state
27 or local law, . . . which is a misdemeanor, gross misdemeanor or felony.

28 17. In response to the above quoted question, Licata answered in the negative.

18. Just above the signature block, the renewal documents also require licensees

1 who are renewing to attest to the following:

2 By acknowledging this statement, answering the above renewal questions,
3 . . . I am stating under penalties of perjury that all information and answers provided
4 in this renewal application are true and correct. . . . I understand that it is a category
5 D felony to provide false information to the Board pursuant to NRS 633.741(3).

6 19. Based upon the Plea Agreement, Licata acknowledged and agreed that he was
7 "pleading guilty because the defendant [Licata] is guilty of the charged offense."

8 20. Based upon the Plea Agreement, Licata provided false and incorrect information
9 to the Board on the license renewal applications for the years 2007 and 2008; and the failure
10 to respond truthfully on the renewal applications are willful acts of dishonesty by Licata which
11 merits the imposition of discipline against him. Such willful acts of dishonesty and deceit with
12 respect to completely and truthfully answering the questions contained within the Board's
13 renewal applications are violations of NRS 633.131(1)(a); and discipline is warranted.

14 21. Respondent's conduct, and lack of candor and truthfulness, as described herein,
15 constitutes "unprofessional conduct" pursuant to NRS 633.131(1)(a) and NRS
16 633.131(1)(f)(1).

17 22. Respondent's conduct, and lack of candor and truthfulness, as described herein,
18 further constitutes "unethical conduct" pursuant to NAC 633.350(3) and NAC 633.350(9).

19 23. Respondent's conduct, and lack of candor and truthfulness, as described herein,
20 further represents a violation of NRS 633.741(3), and constitutes a Category D felony which
21 should, therefore, be punished as provided in NRS 193.130.

22 **COUNT III**

23 (Failure to Submit Fingerprints)

24 24. The allegations set forth in paragraphs 1 through 6, inclusive, of the Jurisdiction
25 section of this complaint, paragraphs 7 through 13, inclusive, of Count One of this complaint,
26 and paragraphs 14 through 23, inclusive, of Count II of this complaint, are incorporated herein
27 by this reference as though more specifically set forth herein.

28 25. The complaint in this matter was served via certified mail on December 10,
2008. The "Track & Confirm" notification from the U.S. Postal Service indicates that the

1 complaint sent via certified mail #7006 2760 0000 0870 7989 was delivered at 12:27 pm on
2 December 11, 2008 in Las Vegas, Nevada.

3 26. Pursuant to NRS 633.625(1), an "osteopathic physician against whom the Board
4 initiates disciplinary action pursuant to this chapter shall, within 30 days after the osteopathic
5 physician's receipt of notification of the initiation of the disciplinary action, submit to the Board
6 a complete set of his fingerprints and written permission authorizing the Board to forward the
7 fingerprints to the Central Repository for Nevada Records of Criminal History for submission
8 to the Federal Bureau of Investigation for its report."

9 27. Pursuant to NRS 633.625(2), the "willful failure of an osteopathic physician to
10 comply with the requirements of subsection 1 constitutes additional grounds for disciplinary
11 action and the revocation of the license of the osteopathic physician."

12 28. Respondent, Licata, had until January 10, 2008 within which to submit a
13 "complete set of his fingerprints" to the Board for submission to the Central Repository for
14 Nevada Records of Criminal History and subsequent submission to the Federal Bureau of
15 Investigation. Respondent, Licata, failed to do so.

16 29. Based upon the failure of Respondent Licata to comply with NRS 633.625,
17 additional discipline is hereby requested and that discipline is the revocation of his license to
18 practice osteopathic medicine in the State of Nevada.

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

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

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

