

1 **NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

2 In the Matter involving
3 SALVATORE LoBELLO, License
4 No. 196,

Respondent.

) CASE NO. AD1012001

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

FEB 17 2011

FILED

5 **AMENDED FORMAL ADMINISTRATIVE COMPLAINT**

6
7 COMES NOW the Nevada State Board of Osteopathic Medicine ("Board") by and
8 through the Investigative Board Member ("IBM") C. Dean Milne, D.O., and Deputy Executive
9 Director/Chief of Enforcement Barbara Longo, and for their Amended Complaint against
10 Salvatore LoBello, D.O. ("Dr. LoBello") allege as follows:

11 **General Jurisdiction**

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13 1. That Respondent is licensed in active status to practice osteopathic medicine in
14 the State of Nevada by the Board; and at all times alleged herein, was so licensed by the
15 Board pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes and Chapter
16 633 of the Nevada Administrative Code.

17 2. That NRS 633.511 provides that unprofessional conduct is a ground for the
18 initiation of disciplinary proceedings.

19 3. That NRS 633.131(1) defines "unprofessional conduct," in part, as follows:

- 20 (f) Engaging in any:
 - 21 (1) Professional conduct which is intended to deceive or
 - 22 which the board by regulation has determined is unethical;
 - 23 (2) Medical practice harmful to the public or any conduct
 - 24 detrimental to the public health, safety or morals which does
 - 25 not constitute gross or repeated malpractice or professional
 - 26 incompetence.
- 27 (g) Administering, dispensing or prescribing any controlled
- 28 substance or any dangerous drug as defined in chapter 454
- of NRS, otherwise than in the course of legitimate
- professional practice or as authorized by law. . . .
- (k) Willful disobedience of the regulations of the State Board of
- Health, the State Board of Pharmacy or the State Board of
- Osteopathic Medicine
- (q) Failure of a licensee to make medical records of a patient available for
- inspection and copying as provided by NRS 629.061.

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1 4. That NAC 633.350 states that a licensee engages in "unethical conduct" if he
2 engages in any other conduct that the Board determines constitutes unfitness to practice
3 osteopathic medicine.

4 5. That NRS 633.151 states that the "purpose of licensing osteopathic physicians
5 and physician assistants is to protect the public health and safety and the general welfare of
6 the people of [the State of Nevada]. Any license issued pursuant to this chapter is a
7 revocable privilege, and a holder of such a license does not acquire thereby any vested
8 right."
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10 6. That NRS 633.625 states, in part as follows:

11 1. **Any licensee against whom the Board initiates disciplinary action**
12 **pursuant to this chapter shall, within 30 days after the licensee's receipt of**
13 **notification of the initiation of the disciplinary action, submit to the Board**
14 **a complete set of fingerprints and written permission** authorizing the Board
to forward the fingerprints to the Central Repository for Nevada Records of
Criminal History for submission to the Federal Bureau of Investigation for its
report.

15 2. **The willful failure of a licensee to comply with the requirements of**
16 **subsection 1 constitutes additional grounds for disciplinary action and the**
17 **revocation of the license of the licensee.** (Emphasis added.)

18 7. That NRS 633.651 states, in part, as follows:

19 1. If the Board finds a person guilty in a disciplinary proceeding, it shall by
order take one or more of the following actions:

20 a. Place the person on probation for a specified period or until further
order of the Board.

21 b. Administer to the person a public reprimand.

22 c. Limit the practice of the person to, or by the exclusion of, one or more
specified branches of osteopathic medicine.

23 d. Suspend the license of the person to practice osteopathic medicine
for a specified period or until further order of the Board.

24 e. Revoke the license of the person to practice osteopathic medicine.

25 f. Impose a fine not to exceed \$5,000 for each violation,

26 g. Require supervision of the practice of the person,

27 h. Require the person to perform community service without
compensation,

28 i. Require the person to complete any training or educational
requirements specified by the Board,

 j. Require the person to participate in a program to correct alcohol
or drug dependence or any other impairment.

The order of the Board may contain such other terms, provisions or conditions as the

1 Board deems proper and which are not inconsistent with law.
2 2. The Board shall not administer a private reprimand.

3 **COUNT ONE**
4 **(Unprofessional & Unethical Conduct / lack of**
5 **DEA & Pharmacy Board registrations/certifications)**

6 8. That the allegations and representations found in Paragraphs 1 through 7,
7 inclusive, of this Amended Complaint are incorporated herein by this reference as though
8 such allegations were more fully set forth herein.

9 9. That the Drug Enforcement Agency ("DEA") registration for Dr. LoBello expired
10 on the 31st day of October, 2007.

11 10. That Dr. LoBello's registrations for dispensing and/or prescribing controlled
12 substances with the Nevada State Board of Pharmacy expired on the 31st day of October,
13 2008.

14 11. That pursuant to 21 C.F.R. §1306, a physician is required to not only have a
15 controlled substance/dangerous drug registration in the state in which the physician is
16 prescribing, but the physician must also have a registration with the DEA. Satisfying one
17 portion of the two-prong requirements is insufficient for purposes of writing and/or issuing
18 prescriptions for controlled substances.

19 12. That Dr. LoBello wrote and/or issued two prescriptions for controlled
20 substances (soma – carisoprodol) during January, 2010 as well as wrote and/or issued other
21 prescriptions for controlled substances during the months of June and August 2010, without
22 the required registrations with the DEA and the Nevada State Board of Pharmacy
23 ("Pharmacy Board"); and such is unprofessional conduct inasmuch as his DEA registration
24 expired on October 31, 2007 and his registration with the Pharmacy Board expired on the
25 31st day of October, 2008.

26 13. That Dr. LoBello has, more specifically, engaged in unprofessional conduct by
27 reason of the following acts: (a) he deceived the public by writing and/or issuing prescriptions
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1 for controlled substances during the months of January, June, and August 2010, when he
2 did not have the DEA authority to do so nor the Pharmacy Board's authority to do so; (b) by
3 writing and/or issuing such prescriptions without compliance with the Federal Code of
4 Regulations during the months of January, June, and August, 2010, he has engaged in
5 medical conduct that is harmful and/or detrimental to the public's health, safe, and morals,
6 and does not comply with the standards of care and prescribing requirements for osteopathic
7 physicians practicing in the State of Nevada; and (c) by writing and/or issuing prescriptions
8 as noted herein without a DEA or Pharmacy Board registration, Dr. LoBello has violated NRS
9 chapter 454 and the federal regulation identified herein. Based upon such unprofessional
10 conduct as described in this paragraph, discipline is warranted pursuant to NRS 633.511 and
11 such discipline is set forth in NRS 633.651.

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13 14. That Dr. LoBello has more specifically engaged in unethical conduct by reason
14 of the following acts: (a) he deceived the public by writing and/or issuing prescriptions for
15 controlled substances during the months of January, June, and August 2010, when he did
16 not have the DEA authority to do so nor the Pharmacy Board's authority to do so; (b) by
17 writing and/or issuing such prescriptions without compliance with the Federal Code of
18 Regulations during the months of January, June, and August, 2010, he has engaged in
19 medical conduct that is harmful and/or detrimental to the public's health, safe, and morals,
20 and does not comply with the standards of care and prescribing requirements for osteopathic
21 physicians practicing in the State of Nevada; and (c) by writing and/or issuing prescriptions
22 as noted herein without a DEA or Pharmacy Board registration, Dr. LoBello has violated NRS
23 chapter 454 and the federal regulation identified herein. Based upon such unethical conduct
24 as described in this paragraph, discipline is warranted pursuant to NRS 633.511 and such
25 discipline is set forth in NRS 633.651.

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COUNT TWO
(Failure to provide fingerprints)

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2 15. That the allegations and representations found in Paragraphs 1 through 7,
3 "Jurisdiction," inclusive, and Paragraphs 8 through 14, Count One, of this Amended
4 Complaint are incorporated herein by this reference as though such allegations were more
5 fully set forth herein.

6 16. That on February 1, 2011, the Board wrote a courtesy correspondence to Dr.
7 LoBello regarding the statutory requirement to provide fingerprints to the Board pursuant to
8 NRS 633.625. Such correspondence was not returned to the Board as undeliverable and
9 was sent to Dr. LoBello's last known address pursuant to the Board's records/files. The
10 recognized presumption is that he received the correspondence.

11 17. That as of the date of the filing of this Amended Complaint, Dr. LoBello has not
12 submitted fingerprints to the Board; and such is a violation of NRS 633.625.

13 18. That pursuant to NRS 633.625, "willful failure of a licensee to comply with the
14 requirements [to submit fingerprints] constitutes additional grounds for disciplinary action and
15 the revocation of the license of the licensee" and the Board is respectfully requesting for the
16 revocation of Dr. LoBello's osteopathic medical license.

COUNT THREE
(Failure to Provide Medical Records)

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19 19. That the allegations and representations found in Paragraphs 1 through 7,
20 "Jurisdiction," inclusive; Paragraphs 8 through 14, inclusive of Count One; and Paragraphs 15
21 through 18, inclusive of Count Two, of this Amended Complaint are incorporated herein by
22 this reference as though such allegations were more fully set forth herein.

23 20. That on January 4, 2011, Dr. LoBello was requested via correspondence sent to
24 his last known address, according to the records/files of the Board, to provide medical records
25 pertaining to certain patients by January 17, 2011. That the said correspondence was not
26 returned to the Board, nor were the records provided to the Board as requested to do so
27 pursuant to NRS 629.061.

28 21. That NRS 629.061 requires that "each provider of health care shall make the

1 health care records of a patient available” to any “authorized representative or investigator of
2 a state licensing board during the course of any investigation authorized by law.” By the
3 Legislature's use of the word “shall,” it has mandated that health care providers comply with
4 this statute; and by not providing the records as requested to do so, Dr. LoBello has violated
5 NRS 629.061 for which disciplinary action is authorized.

6 22. That on February 1, 2011, further correspondence was sent by the Board to Dr.
7 LoBello at his last known address according to the records/files of the Board; and Dr. LoBello
8 has not signed for or accepted that certified letter in an apparent attempt to avoid process.

9 23. That pursuant to NRS 633.131(1)(q), failure to make records available to the
10 Board is “unprofessional conduct” for which discipline may be imposed.

11 **COUNT FOUR**
12 **(Fees & Costs Due to the Nevada Board)**

13 24. That the allegations and representations found in Paragraphs 1 through 7,
14 “Jurisdiction,” inclusive; Paragraphs 8 through 14, inclusive of Count One; Paragraphs 15
15 through 18, inclusive of Count Two; and Paragraphs 19 through 23, inclusive of Count Three,
16 of this Amended Complaint are incorporated herein by this reference as though such
17 allegations were more fully set forth herein.

18 25. That NRS 622.400(1) states that a “regulatory body [such as this Board] may
19 recover from a person reasonable attorney’s fees and costs that are incurred by the
20 regulatory body as part of its investigative, administrative and disciplinary proceedings against
21 the person if the regulatory body” either enters a final order or enters into a settlement
22 agreement.

23 26. That based upon the above-cited statutory authority, fees and costs incurred by
24 the Board in its investigation and prosecution of this matter are warranted.

25 27. That based upon Dr. LoBello’s violations of various provisions of NRS and NAC
26 chapters 633, the Board is entitled to reimbursement of its fees and costs incurred in the
27 investigation of this matter in the amount of \$10,000.00.
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PRAYER

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2 WHEREFORE, the Investigative Board Member, C. Dean Milne, D.O., of the Nevada
3 State Board of Osteopathic Medicine and Barbara Longo, Deputy Executive Director-Chief of
4 Enforcement for the Board, pray as follows:

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

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9 2. That, pursuant to NRS 633.651, Respondent, Salvatore LoBello, D.O., be
10 publicly reprimanded and/or the license of Respondent, Salvatore LoBello, D.O., be revoked,
11 suspended, limited to a specified branch of osteopathic medicine, or placed on probation with
12 conditions and terms as the Nevada State Board of Osteopathic Medicine may deem just and
13 proper and which are not inconsistent with law;

14 3. That Respondent, Salvatore LoBello, D.O., be ordered to (a) pay all reasonable
15 investigative fees incurred by the Board and attorney's fees and costs incurred during the
16 investigation as well as (b) pay all Board investigative and attorneys' fees and costs incurred
17 during the administrative and disciplinary proceedings;

18 4. That Dr. LoBello be ordered to pay fines pursuant to NRS 633.651 of up to
19 \$5,000 per violation as identified herein; and

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