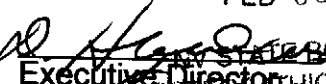


1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
2 **IN THE MATTER OF THE COMPLAINT**)
3 **AGAINST**)
4 **LEO J. CAPOBIANCO, D.O., Lic. #958**)
5 **RESPONDENT.**)

Case No.: PB0910003
RECEIVED
Filed: FEB 03 2010

Executive Director
NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

7 **SETTLEMENT AGREEMENT AND ORDER**

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
10 between Rota Rosaschi, MPA, Investigative Board Member ("Ms. Rosaschi" or "Investigative
11 Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through
12 the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Leo Capobianco, D.O.
13 ("Dr. Capobianco") (collectively referred to as "the Parties").

14 **II. RECITALS**

15 As a preamble to this Agreement, the Parties agree to the following:

- 16
- 17 A. WHEREAS, the Board, through the Investigative Board Member ("IBM"), ascertained
18 certain information regarding a voluntary surrender of Dr. Capobianco's osteopathic
19 medicine license in Pennsylvania in January/February 2004 and in August 2004, the
20 State of California stayed revocation of Dr. Capobianco's osteopathic medicine license
21 but placed him on probation for a period of 5 years upon commencing a medical
22 practice in California. The information was ascertained as a result of the Board's staff
23 due diligence in investigating its applicants/licensees.
- 24 B. WHEREAS, the IBM alleged that Dr. Capobianco failed to timely notify the Board of the
25 disciplinary actions by the States of California and Pennsylvania, i.e., within 45 days of
26 such action. Such failures are violations of NRS 633.527. Furthermore, the IBM has
27 alleged that Dr. Capobianco responded "no" in his 2005 renewal application, submitted
28 in 2004, when questioned about whether or not any state agency had investigated
and/or charged him with any violation of the licensing board's rules and regulations.
Based upon the actions by the States of California and Pennsylvania, the response
should have been "yes."
- C. NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the
Board: (a) any action for malpractice against the osteopathic physician **not later than**
45 days after the osteopathic physician receives service of a summons and
complaint for the action; (b) any claim for malpractice against the osteopathic
physician that is submitted to arbitration or mediation not later than 45 days after the
claim is submitted to arbitration or mediation; (c) any settlement, award, judgment or

1 other disposition or any action or claim described in paragraphs (a) or (b) not later than
2 45 days after the settlement, award, judgment or other disposition; and (d) any
3 sanctions imposed against the osteopathic physician that are reportable to the
4 National Practitioner Data Bank not later than 45 days after the sanctions are
5 imposed. NRS 633.527(2) states that should the Board find "that an osteopathic
6 physician has violated any provision of this section, the Board may impose a fine of
7 not more than \$5,000 against the osteopathic physician for each violation, in
8 addition to any other fines or penalties permitted by law." (Emphasis added.)

This statute was added to the law in 2003. By the use of the word "shall" by the
Nevada State Legislature in this statute, the Legislature intended to mandatorily require
all osteopathic physicians to report any of the four (4) events mentioned in the statute.

- 9 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
10 . . . statement . . . in applying for a license to practice osteopathic medicine or in
11 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
12 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
13 proceeding; and pursuant to NRS 633.651, such discipline may include a fine, public
14 reprimand, the suspension of the license to practice osteopathic medicine in the State
15 of Nevada, and even the revocation of the license to practice osteopathic medicine in
16 the State of Nevada.
- 17 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
18 person reasonable attorney's fees and costs that are incurred by the regulatory body as
19 part of its investigative, administrative and disciplinary proceedings against the person
20 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 21 F. WHEREAS, the parties have agreed to informally settle this matter, rather than
22 requiring the Board to file a formal disciplinary complaint.
- 23 G. WHEREAS, the parties understand that this Agreement will be signed by the respective
24 parties and will then be offered to the Board for the entire Board's approval at the next
25 Board meeting, with the recommendation of the Investigating Board Member that this
26 matter be settled. The Agreement shall not become effective until it has been
27 approved by a majority of the Board and endorsed by a representative member of the
28 Board.
- H. WHEREAS, Dr. Capobianco understands that the Board is free to accept or reject this
Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed
and a hearing scheduled on the same. The Board members who review this matter for
approval of this Agreement may be the same members who ultimately hear the
disciplinary complaint if this Agreement is not approved by the Board. Dr. Capobianco
hereby agrees to waive any rights he might have to challenge the impartiality of the
Board to hear the disciplinary complaint, based on prior knowledge obtained by the
Board through consideration of this Agreement, if after review by the Board, this
Agreement is rejected. Furthermore, if the Board does not accept the Agreement, it
shall be regarded as null and void.
- I. WHEREAS, Dr. Capobianco acknowledges that the Board will retain jurisdiction over
this matter until all terms and conditions set forth in this Agreement and Order have
been met to the satisfaction of the Board.
- J. WHEREAS, Dr. Capobianco acknowledges that the Board had a reasonable basis to
believe that the statutes and/or regulations regulating the practice of Osteopathic
Medicine in the State of Nevada may have been violated.
- K. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding
and to save further costs and expenses, Dr. Capobianco has elected to enter into this
Agreement to resolve this matter, and only the matters identified herein.

- 1 L. WHEREAS, Dr. Capobianco acknowledges that once accepted by the Board, this
2 Agreement and all associated documentation become a matter of public record (with
3 the exception of medical information related to the patient).
- 4 M. WHEREAS, Dr. Capobianco has had the opportunity to obtain the advice from
5 competent counsel of his choice concerning the terms and conditions of this Agreement
6 and the execution thereof. No coercion has been exerted upon Dr. Capobianco, nor
7 have any promises been made other than those reflected in this Agreement. Dr.
8 Capobianco freely and voluntarily entered into this agreement, motivated only by a
9 desire to resolve the issues addressed herein. Dr. Capobianco has executed this
10 Agreement only after a careful reading of it and a full understanding of all its terms.
- 11 N. WHEREAS, Dr. Capobianco is fully aware of his rights to contest the charges pending
12 against him. These rights include: representation by an attorney at his own expense,
13 the right to a public hearing on any charges or allegations filed, the right to confront and
14 cross-examine witnesses called to testify against him, the right to present evidence on
15 his own behalf, the right to compulsory process to secure the attendance of such
16 witnesses, the right to testify on his own behalf, the right to receive written findings of
17 fact and conclusions of law supporting the decision on the merits of the complaint and
18 the right to obtain judicial review of the Board's decision. Should the Board accept this
19 Agreement, Dr. Capobianco voluntarily waives these rights.
- 20 O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
21 of the State of Nevada.
- 22 P. WHEREAS, this Agreement and Order contains a complete description of the
23 agreement between the parties and it supersedes any previous agreements between
24 the parties. All material representations, understandings and promises of the parties
25 are contained in this Agreement. Any modifications must be set forth in writing, signed
26 by all the parties, and approved by the Board.

27 III. TERMS OF THE AGREEMENT

- 28 A. Dr. Capobianco acknowledges that the failure to timely report allegation is true with
respect to his California and Pennsylvania licenses. Such failures are violations of
NRS chapter 633 and discipline is permissible under Nevada law. In exchange for
the Board not pursuing an administrative action against Dr. Capobianco for the
untimely reporting, and Dr. Capobianco not pursuing subsequent reviews by the
appropriate appellate Courts, the parties have agreed to resolve the current matter,
and only this matter. **ADDITIONALLY, THE BOARD ACKNOWLEDGES, AND
THE PARTIES DO HEREBY AGREE, THAT A DISCIPLINARY ACTION WILL
NOT AND HAS NOT BEEN FILED BY THE BOARD; AND THAT THE PARTIES
HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE BEING ASSESSED
FOR THE NON-REPORTING VIOLATION, I.E., NOT FOR ANY ALLEGATIONS
REGARDING UNPROFESSIONAL CONDUCT AND/OR REGARDING THE
PHYSICIAN'S COMPETENCY, WHICH CLAIM OF UNPROFESSIONAL
CONDUCT/INACCURATE RENEWAL APPLICATION HAS BEEN WAIVED BY
THE BOARD.**
- B. Dr. Capobianco agrees to pay the sum of Two Thousand, Five Hundred Dollars
(\$2,500.00) as the fine imposed for having violated NRS 633.527(1) for the failure to
timely report the actions by the state boards of California and Pennsylvania. This
sum includes all fees and costs incurred by the Board up to and including the
approval of this settlement agreement by the Board at its next scheduled board
meeting pursuant to NAC 633.470(2)(b)(6). Such amount shall be payable in the

1 amount of \$1,250.00 per month beginning on the 20th day of January, 2010, and
2 such amount shall continue to be due thereafter on the 20th day of each month, until
3 the full amount of Two Thousand, Five Hundred Dollars is paid.

- 4 C. Should Dr. Capobianco fail to satisfy and pay the indebtedness of \$2,500.00 in a
5 timely manner as discussed herein, Dr. Capobianco understands and agrees that
6 he will be considered in default of this Agreement, and this agreement will be null
7 and void, with the Respondent receiving credit for payments made to date. The
8 Board may take whatever action it deems appropriate, including but not limited to
9 reducing the balance to judgment pursuant to NRS chapter 353C.
- 10 D. The Respondent, Dr. Capobianco, agrees to bear his own fees and costs, including
11 the fees and expenses of his own attorney(s) if applicable.
- 12 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
13 the parties hereto and their respective heirs, personal representatives, assigns and
14 successors in interest of each party.
- 15 F. This Agreement and Order shall be construed in accordance with the laws of the
16 State of Nevada.
- 17 G. This settlement agreement consists of six (6) pages and embodies the entire
18 agreement between the Board and the osteopathic physician. It may not be altered,
19 amended or modified without the express consent of the parties, and any
20 subsequent alteration, amendment, or modification shall be in writing and subject to
21 approval by the Board.
- 22 H. In consideration for the execution of this Agreement, Dr. Capobianco hereby
23 releases and forever discharges the State of Nevada, the Board of Osteopathic
24 Medicine, and the Nevada State Attorney General's Office (as counsel for the
25 Board), and each of their representatives, investigators, and employees, in their
26 individual and representative capacity (collectively the State of Nevada Agencies)
27 from any and all manner of actions, causes of actions, suits, debts, judgments,
28 executions, claims, and demands whatsoever known or unknown, in law and in
equity, that he may have had, now has, may have had, or claim to have against any
and all of the persons and entities named in this paragraph arising out of, or by
reason of, the investigation of the allegations raised in this matter, the settlement
thereof, and other matters relating thereto.
- I. Dr. Capobianco, for himself, his heirs, executors, administrators, successors and
assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada
State Board of Osteopathic Medicine, the Nevada Attorney General's office and
each of their members, agents and employees in their individual and representative
capacities against any and all claims, suits, demands, actions, debts, damages,
costs, charges, and expenses, including court costs and attorney's fees against any
persons or entities as well as all liability, losses, and damages of any nature
whatsoever that the persons and entities named in this paragraph shall have or may
at any time sustain or suffer by reason of this investigation, this settlement, or its
administration.
- J. This document may be prepared in multiple counterparts. Each counterpart,
whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
shall be deemed an original hereof if executed by each of the Parties hereto.

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1 K. **LASTLY**, by executing this agreement, Respondent Physician hereby expressly,
2 knowingly, and intentionally waive the 21-working days notice requirement pursuant
3 to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on
4 the agenda for the Board's approval in the month of January, 2010.

5 LEO CAPOBIANCO, D.O.

6 *Leo Capobianco*
7 Osteopathic Physician

8 Dated: 1/8/10

9 NEVADA STATE BOARD OF
10 OSTEOPATHIC MEDICINE

11 NEVADA STATE BOARD OF
12 OSTEOPATHIC MEDICINE

13 BY: _____
14 Rota Rosaschi, MPA,
15 Investigating Board Member

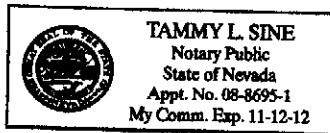
16 By *Dianna Hegeduis*
17 Dianna Hegeduis, Executive Director -
18 Board Counsel

19 Dated: _____

20 Dated: 1-8-2010

21 **ACKNOWLEDGEMENT**

22 On this the 8th day of January, 2009, the said LEO CAPOBIANCO,
23 D.O., personally appeared before me, a notary public, and signed the above document, freely
24 and voluntarily, and under no duress.



26 *Tammy L. Sine*
27 Notary Public

28 **ORDER OF THE BOARD**

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Capobianco fail to comply with any terms
or conditions of this Agreement, Dr. Capobianco will be in breach of this Agreement; and this
Agreement will be null and void. The Board may take whatever action it deems appropriate,
including but not limited to proceeding with the administrative action against Dr. Capobianco.

1 K. **LASTLY**, by executing this agreement, Respondent Physician hereby expressly,
2 knowingly, and intentionally waive the 21-working days notice requirement pursuant
3 to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on
4 the agenda for the Board's approval in the month of January, 2010.

5 LEO CAPOBIANCO, D.O.

6 _____
7 Osteopathic Physician

8 Dated: _____

9 NEVADA STATE BOARD OF
10 OSTEOPATHIC MEDICINE

11 NEVADA STATE BOARD OF
12 OSTEOPATHIC MEDICINE

13 BY: Rota Rosaschi

14 By _____

15 Rota Rosaschi, MPA,
16 Investigating Board Member

17 Dianna Hegeduis, Executive Director -
18 Board Counsel

19 Dated: 12/18/09

20 Dated: _____

21 **ACKNOWLEDGEMENT**

22 On this the _____ day of _____, 2009, the said LEO CAPOBIANCO,
23 D.O., personally appeared before me, a notary public, and signed the above document, freely
24 and voluntarily, and under no duress.

25 _____
26 Notary Public

27 **ORDER OF THE BOARD**

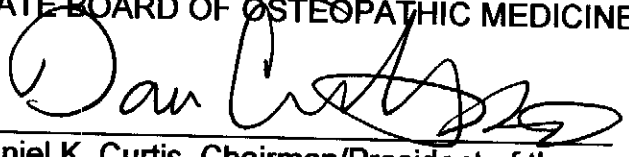
28 **IT IS SO ORDERED.**

IT IS FURTHER ORDERED that should Dr. Capobianco fail to comply with any terms
or conditions of this Agreement, Dr. Capobianco will be in breach of this Agreement; and this
Agreement will be null and void. The Board may take whatever action it deems appropriate,
including but not limited to proceeding with the administrative action against Dr. Capobianco.

1 Should this Agreement become null and void by Dr. Capobianco's failure to comply with terms
2 or conditions of this Agreement, the Board may not only pursue an administrative action
3 against Dr. Capobianco, but the Board may also seek the maximum fees, fines, and costs.

4 DATED this 2nd day of February, 2010.

5 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

6 BY: 

7 Dr. Daniel K. Curtis, Chairman/President of the
8 Board

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