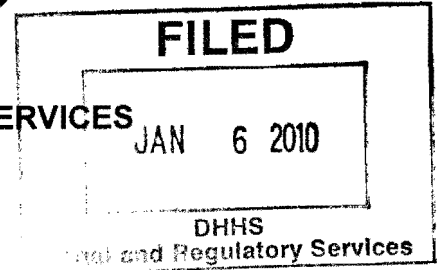


THE DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH  
STATE OF NEBRASKA



STATE OF NEBRASKA, ex rel. JON )  
BRUNING, Attorney General, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RICHARD M. FLEMING, M.D., )  
 )  
Defendant. )

PETITION FOR  
DISCIPLINARY ACTION

The Plaintiff alleges as follows:

**ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

1. Jurisdiction is based on NEB. REV. STAT. §§ 38-183, 38-184, 38-186 (Reissue 2008), and 71-150 (Reissue 2003).
2. At all times relevant herein, the Defendant, Dr. Richard M. Fleming, M.D., has been the holder of license #17502 (currently inactive) which was issued by the Nebraska Department of Health and Human Services Division of Public Health ("Department") for his practice as a medical doctor.
3. The Department is the agency of the State of Nebraska authorized to enforce the laws of Nebraska regulating the practice of medicine.
4. The Nebraska Board of Medicine and Surgery considered the investigation of this matter and made its recommendation to the Attorney General, which recommendation has been considered. Such matters are privileged pursuant to NEB. REV. STAT. §§ 38-1,105, 38-1,106 (Reissue 2008), 71-168.01(7) and 71-168.01(8) (Reissue 2003).
5. Defendant submitted bills to insurance companies in 2002 for medical procedures and diagnostic heart tests he did not actually perform. Defendant obtained

payment from a soy food company in 2004 for product testing work he had not performed, lied about whether he had performed the services he was paid for, and created and submitted false documents in order to cover up the fact he had not done the work for which he had been paid.

6. On August 20, 2009, Defendant was convicted of federal felony Health Care Fraud (18 U.S.C. 1347) and federal felony Mail Fraud (18 U.S.C. 1341). He was sentenced to five years probation with six months home detention, including electronic monitoring. He was ordered to pay restitution of \$107,244.24. Defendant is permanently excluded from Medicare, Medicaid, Tricare, and all other federal health care programs.

#### **FIRST CAUSE OF ACTION**

7. Paragraphs 1 through 6 are incorporated herein by reference.

8. NEB. REV. STAT. §§ 38-178(23), 38-179 (Reissue 2008) and 71-147 (10) (2006 Cum. Supp.) provide that a professional license may be disciplined, revoked, or suspended for unprofessional conduct.

9. NEB. REV. STAT. §§ 38-179(3) (Reissue 2008) and 71-148(4) (Reissue 2003) define unprofessional conduct as obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents.

10. Defendant's conduct constitutes unprofessional conduct and is grounds for discipline.

#### **SECOND CAUSE OF ACTION**

11. Paragraphs 1 through 10 are incorporated herein by reference.

12. NEB. REV. STAT. §§ 38-178(23), 38-179 (Reissue 2008) and 71-147 (10) (2006 Cum. Supp.) provide that a professional license may be disciplined, revoked, or suspended for unprofessional conduct.

13. NEB. REV. STAT. §§ 38-179(15) (Reissue 2008) and 71-148(22) (Reissue 2003) define unprofessional conduct as such other acts as may be defined in rules and regulations adopted and promulgated by the board of examiners in the profession of the applicant, licensee, certificate holder or registrant with the approval of the Department.

14. Title 172 Chapter 88-013.21 Regulations Governing the Practice of Medicine and Surgery defines unprofessional conduct as any conduct or practice outside the normal standard of care which is or might be harmful or dangerous to the health of the patient or the public.

15. Title 172 Chapter 88-013.22 Regulations Governing the Practice of Medicine and Surgery defines unprofessional conduct as charging a fee for services not rendered.

16. Defendant's conduct constitutes unprofessional conduct and is grounds for discipline.

### **THIRD CAUSE OF ACTION**

17. Paragraphs 1 through 16 are incorporated herein by reference.

18. NEB. REV. STAT. §§ 38-178(5) (Reissue 2008) and 71-147(4) (2006 Cum. Supp.) provide that a professional license may be disciplined for conviction of a misdemeanor or felony under Nebraska law or federal law, which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession.

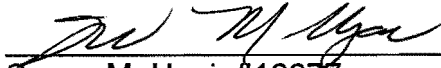
19. Defendant's federal felony convictions are grounds for discipline.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays that the Chief Medical Officer set this matter for hearing, order appropriate disciplinary action pursuant to NEB. REV. STAT. § 71-155 (Reissue 2003), and tax the costs of this action to the Defendant.

STATE OF NEBRASKA ex rel. JON BRUNING,  
Attorney General,  
Plaintiff,

BY: JON BRUNING, #20351  
Attorney General

BY:   
\_\_\_\_\_  
Susan M. Ugai, #16677  
Assistant Attorney General  
2115 State Capitol  
Lincoln, NE 68509  
(402) 471-2682

Attorneys for the Plaintiff.