

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Docket No. 13-17230

Richard M Fleming

Plaintiff - Appellant

vs.

UNITED STATES OF AMERICA

Defendant - Appellee

From the United States District Court
For the District of Nevada, Reno, 3:13-CV-00154-MMD-VPC

Appellant's Reply Brief

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Date submitted: 7 March 2014

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Reply Statement of Facts and Matters of Law

Plaintiff filed for remedies on 26 March 2013 pursuant to 28 U.S.C. § 2241 for violations by defendant of the International Treaty on Civil and Political Rights (ICCPR), including complaints and documentation of service upon the defendant. The District Court immediately notified the parties of the active case, assigned the case number (ER:7) and submitted standing orders to both parties. The statutory time limits for this case were thereby established by the District Court and defendant failed to file timely or object to the complaints or the MSJ with statement of undisputed facts (SUFs) within the statutory time limits established by Congress or within the responsive pleading itself, filed 127 days later. Pursuant to Nevada Local Rules, the Fed. R. Civ. P. and *Bowles v. Russell*, 551 U.S. 205, 214-15 (2007) the statutory time limits cannot be changed and failure to file timely is consent to the MSJ with SUFs.

Defendant perseveringly discusses other cases, none of which demonstrate a crime has been committed. Defendant and prior courts have NEVER disputed the absence of a crime nor do they deny the imprisonment of plaintiff in violation of the ICCPR treaty. Rather, defendant claims the ICCPR treaty has an “expressed understanding” that the treaty is not self-executing. Defendant and Courts, including the SCOTUS have erred in calling this an “expressed understanding” when the statement was a pre-ratification “declaration” which pursuant to Federal

Courts does not affect treaty interpretation or action by the Courts. Post declaration, the treaty was ratified by the United States Senate and the position of the U.S. Government as expressly stipulated to on the U.S. and World record, is that having learned from prior errors, the United States did NOT ratify the treaty UNTIL it was determined that no additional legislation was required to provide for domestic effect of law. The Ninth Circuit has held that a treaty is by definition self-executing when additional legislation is not required to provide for domestic effect of law. No Court, including an Appellant Court or the SCOTUS has been made aware of this official position promulgated by the U.S. Government; viz. that the ICCPR treaty was ratified ONLY AFTER all the necessary legislation was in place to provide for domestic effect of law, hence making the treaty self-executing by Court definition.

Federal Courts have held there are two requirements for ICCPR remedies in U.S. Federal Court. First, the plaintiff must be a U.S. citizen and secondly, the violation of the treaty must occur within U.S. jurisdiction by the U.S. Government. Defendant concedes that this was an action taken by the U.S. Government within U.S. jurisdiction. Defendant does not deny plaintiff's U.S. citizenship. Accordingly the U.S. Senate has called for action to be taken against other nation states, when these nations violate the civil rights of their citizens as proscribed by the ICCPR treaty. Federal Courts have held that Court limitations to date have

been the result of the failure of plaintiff's to meet the two requirements of U.S. citizenship and U.S. jurisdiction. *This is the first ICCPR treaty case presented to the Ninth Circuit Court of Appeals involving a violation of a U.S. citizen's ICCPR treaty rights by the U.S. Government within U.S. jurisdiction.*

Plaintiff accordingly submits this ICCPR case to the Ninth Circuit Court of Appeals for remedies as defined by the ICCPR treaty, as signed by the President of the United States and ratified by the United States Senate and stipulated to by the U.S. Government as having all the necessary legislation in place to provide for domestic effect of law. Such actions making it the supreme law of the land and enforceable by U.S. Federal Courts designed to prevent the recurrence of atrocities upon U.S. citizens, which were committed upon British citizens under King James II as permitted by the British Courts of which my ancestor was a part and as permitted by the German Courts under the dictatorship of Adolf Hitler and the Federal Government of Nazi Germany.

Plaintiff additionally submits that defendant failed to file timely and failed in the responsive pleading to deny or oppose any of the complaints or the MSJ with SUFs and as such, according to the SCOTUS, the Ninth Circuit Court of Appeals, the Northern Nevada Local Rules and the Fed. R. Civ. P. has consented to the granting of the motion for summary judgment with remedies as defined in this case. Defendant's actions accordingly represent bad-faith as defendant and

defense counsel have intentionally, knowingly and deceitfully attempted to manipulate the statutory time limits of this case.

ARGUMENT

- I. The Ninth Circuit Court of Appeals and the Northern Nevada District Court are the appropriate subject matter jurisdictions for these ICCPR treaty violations pursuant to 28 U.S.C. §2241.

On 26 March 2013, plaintiff filed suit against the United States of America (supra) under 28 U.S.C. § 2241 for violation of plaintiff's rights under the International Covenant on Civil and Political Rights (ICCPR) treaty, with "nine" complaints noted and service of suit made upon defendant that same date (ER:1-6). The Court subsequently notified defendant on 27 March 2013 with standing orders (ER:8-10) served upon both parties after assigning the case number (ER:7) as admitted to by defendant (Answer Br. p. 69). Defendant acknowledges this is the correct jurisdiction for said suit. *Accordingly, this is the first ICCPR case filed with the Ninth Circuit Court of Appeals involving violation of the ICCPR treaty by the defendant within U.S. jurisdiction involving a U.S. Citizen.*

- II. Defendant has never denied the MSJ with SUFs and defendant demonstrates bad-faith by trying to manipulate the statutory time limits.

The defendant was served (supra) with complaints and notification of suit on 26 March 2013 according to instructions provided by the Federal Court and the

U.S. Federal Court website.

“To begin a civil lawsuit in federal court, the plaintiff files a complaint with the court and "serves" ... the defendant.”

(<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/HowCourtsWork/CivilCases.aspx>) (26 March 2013).

The motion was noted by the District Court to be “ripe” on that date (Answering Br. p. 69). Both the Nevada Local Rules (LR 7-2) and the Fed. R. Civ. P. 12 specifies a statutory limit of 60 days for timely response. Defendant failed to file timely, with it’s response filed on 1 August 2013, 127 days after service by plaintiff, 126 days after being served by the District Court as to the filing of suit and assignment of case number and 125 days after receiving Court orders.

The responsive pleading of 1 August 2013 did not oppose or dispute a single complaint or item within the MSJ with SUF’s, thereby consenting [Nevada Local Rule 7-2(d) and AO440] as previously established to the granting of MSJ with SUFs and default judgment. Pursuant to Fed. R. Civ. P. 56(a), the District Court should have granted the MSJ. Defendant demonstrates bad-faith in it’s response to statutory time limits as established by Congress and the Nevada Courts as defendant and defense counsel intentionally, knowingly and deceptively tried to alter the statutory time limits, when the record very clearly shows defendant was notified of the complaints and civil suit filed against them on 26 March 2013 (ER:1-6) with a ripe motion.

(b) It is not candid or fair for a practitioner knowingly to misstate or

misquote ... or to mislead his opponent 49 C.F.R. § 1103.27

Accordingly, plaintiff not only asks the Court to award the default judgment filed by plaintiff but that appropriate disciplinary actions be taken to correct defense counsel and defendant's misconduct toward this Court and the District Court.

III. The dismissal of this case by the District Court is unrelated to the irrelevant obfuscatory material presented by defendant, which is essentially a copy and past of 25% of the argument from other material, further demonstrating bad-faith and desperation on the part of the defendant.

The District Court's dismissal of this case, did NOT rule there had been a failure to demonstrate, that a crime had not been committed and defendant has NEVER disputed the facts and matters of law submitted by plaintiff proving no crime was committed. Consequently, pages 6-16 (defendant's entire statement of the case) and pages 33-40 (Exhibits A-D) of the defendant's Answer Brief are moot and irrelevant to the case discussion, further demonstrating bad-faith on the part of the defendant to intentionally, knowingly and deceptively obfuscate the records and attempt to shift the Courts attention from the District Court's erroneous dismissal of this case.

It also raises an issue of bad-faith when one-quarter of the defendant's argument in the answering brief (pages 9-16) subsists of nothing more than an

almost identical copy of that which defendant submitted to the District Court on 1 August 2013 (Pp. 6-7), which did not address the ICCPR case submitted to the Court, beginning with “B. Fleming’s 2010 Habeas Proceeding” through “C. Fleming’s 2011/2012 Habeas Proceeding.” The “Excerpts of Record” Pp. 32-63 are nothing more than a replication of documents previously filed by the defendant, without new information and which have nothing to do with the Motion to Dismiss by the District Court or other issues submitted by plaintiff, under consideration here.

The additional discussion by defendant regarding the FTCA after stating defendant was responding to suit filed by plaintiff, either shows an extreme disinterest, disrespect for the Court or a bad-faith effort to intentionally further obfuscate the record.

(a) A lawyer **shall not knowingly**:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. (emphasis added) (Rule 3.3 Candor toward the Tribunal, Ann. Mod. Rules Prof. Cond. s. 3.3)

However, since the defendant has introduced this undisputed irrelevant issue, plaintiff has attached relevant evidence (appendix A) edifying that the holographic plea clearly demonstrates that no crime has been committed. Again however, this is not the issue before the Court and defendant’s peripheral

obfuscation is irrelevant.

IV. The ICCPR treaty is a self-executing treaty pursuant to this Courts definition, having the necessary implemented legislation in place to provide for domestic effect of law at the time the treaty was ratified on 8 June 1992, as stipulated to by the U.S. Government. The ICCPR treaty provides for remedies within U.S. Federal Courts for U.S. citizen rights in U.S. jurisdiction. Declarations do NOT affect the treaty, do not change U.S. citizen rights under the treaty, nor do they bind the courts!

The Federal Courts have held that treaty declarations do NOT affect treaty implementation or interpretation. A *declaration* is NOT an “expressed *understanding*”.

... **The Senate's declaration is not law.** ... the Senate's power under Article II **extends only to the making of reservations**.... (emphasis added) See *INS v. Chadha*, 462 U.S. 919, ... *Igartua-De La Rosa v. U.S.*, 417 F.3d 145, 190-91 (1st Cir. 2005)

This Court has held that a treaty is self-executing once it has domestic effect of law and no further legislation is required.

A treaty is self-executing when it is automatically enforceable in domestic courts without implementing legislation. (emphasis added) *Serra v. Lappin*, 600 F.3d 1191, 1197 (9th Cir. 2010)

The Second restatement of Foreign Relations takes the same position.

(1) A treaty made on behalf of the United States in conformity with the constitutional limitations indicated in § 118, that manifests an intention that it shall become **effective as domestic law** of the United States at the time it

becomes **binding on the United States** (a) is **self-executing** in that it is **effective as domestic law** of the United States. [Restatement (Second) of Foreign Relations Law § 141 (1965)]

It is the position of the United States Government, a position made crystal clear and placed on the U.S. and World records, that the ICCPR treaty was NOT ratified until it was determined that the necessary legislation was in place to provide domestic effect of law.

121. Duly ratified treaties are binding on the United States ...“supreme Law of the Land” under Article VI, cl. 2 of the U.S. Constitution. **As a matter of U.S. domestic law**, When such legislation is necessary in order to implement U.S. obligations under a treaty, the United States practice with respect to certain treaties has been to enact the necessary legislation before depositing its instrument of ratification. **In other instances, the United States does not take any new legislative action to accompany its ratification because the substantive obligations set forth in a particular treaty are already reflected in existing domestic law.** For example, because the human rights and fundamental freedoms guaranteed by the International Covenant on Civil and Political Rights (other than those to which the United States has taken a reservation) have long been protected as a matter of federal constitutional and statutory law, it was not considered necessary to adopt special implementing legislation to give effect to the Covenant’s provisions in domestic law (emphasis added). Thus, that important human rights treaty was ratified in 1992 shortly after the Senate gave its advice and consent. (Common Core Document of U.S.; Fourth Periodic Report to U.N. Committee on Human Rights concerning ICCPR. December 2011)

These documents, which are part of the U.S. and World Record, are easily and readily accessible by all including the defendant, but have not yet been presented to the Federal Courts in ICCPR cases. This is either through commission or omission by the defendant in violation of the defendant’s and defense counsels

obligation to the Court as officers of the Court. These documents make it crystal clear that the U.S. Federal Government has stipulated that no additional legislation was required at the time of ratification to provide for domestic effect of law, thereby making the treaty self-executing pursuant to this Court's definition of self-executing.

For a Federal Court to hear an ICCPR case the case must involve both a violation of the ICCPR treaty by the defendant within U.S. jurisdiction and that wrong must have been committed against a U.S. citizen. As established in Federal Courts, cases like *Cornejo v. County of San Diego*, 504 F.3d 853 (9th Cir. 2007) and *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), the cases which defendant (Answering Br. Pp. 17-19) and defense counsel use and which the District Court used to justify its dismissal of this case, are irrelevant and not applicable, as they do not involve U.S. citizens.

[N]o court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an **alien** (emphasis added). *Dhiab v. Obama*, CIV.A. 05-1457 GK, 2013 WL 3388650 (D.D.C. 2013)

...the Court feels just as constrained now, as it felt in 2009, to deny this Petitioner's Application for lack of jurisdiction. The Court also feels constrained, however, to note ...Petitioner has set out in great detail ... force-feeding of prisoners violates Article 7 ... International Covenant on Civil and Political Rights *Dhiab v. Obama*, CIV.A. 05-1457 GK, 2013 WL 3388650 (D.D.C. 2013)

The position of the D.C. District Court has been affirmed by other Federal Courts.

A trial of Mr. Hicks in either of these forums would likely have met the procedural **requirements** of U.S. law as stated in the **ICCPR ... and provides remedies** for the accused if the government violates those procedural rights.

... nothing in U.S. law that relieves this commission from the responsibility of providing the procedural safeguards **required by U.S. law as stated in the ICCPR**... an accused's procedural safeguards at trial set forth in these treaties the U.S. has ratified **apply to a military commission just as they do to trials in federal court** (emphasis added)

The commission has the power and **duty** to examine the actions of the government in this case, **and formulate a remedy** ... (emphasis added)
Title: U.S. of Am., 2004 WL 3088501 (D.O.T.C.A.B. Oct. 23, 2004)

These Federal Courts have held that only U.S. citizens have ICCPR rights and remedies within U.S. jurisdiction and U.S. Federal Courts, noting that cases involving non-U.S. citizens cannot be addressed based pursuant to the ICCPR treaty. The defendant perseveringly and erroneously refers to both of these cases (Answering Br. Pp. 17-19), as does the District Court in its decision to dismiss. Both cases are irrelevant as they do not refer to U.S. citizens and therefore any discussion and subsequent action take by the Court is in error. The fact that defendant and defense counsel have not previously brought these documents and applicable cases (*Dihab* inter alia) to the attention of the Court, again displays bad-faith as officers of the Court. The ICCPR treaty is applicable only for U.S. citizens whose civil rights under the treaty have been violated by the U.S. Government in U.S. jurisdiction.

V. The legal standard for stating a claim has been met!

The Legal Standard for stating a claim pursuant to the District Court (Answering Br. Pp. 65-66) ORDER of 29 October 2013, were met under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), the Fed. R. Civ. P. 8(a)(2) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007). The two elements required by the District Court being (1) the Truth of the matters asserted within in the MSJ and SUFs. Defendant having failed to object to these statements of fact, “a judge must accept as true all of the factual allegations contained in the complaint.” [*Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007)].

Secondly, also as noted in *Erickson* and referred to by the District Court, is that the Court must reasonably conclude defendant is liable. Given the ICCPR treaty liability of the defendant (supra), this element has also been met. The District Court having emphasized *Erickson* in its decision, defendant fails to even discuss *Erickson*. Again, defendant perseverates upon two errors it has previously committed, i.e. it focuses on the FTCA and on non-U.S. citizen cases, neither of which are relevant here.

VI. Defendant has failed to specifically oppose other issues raised by plaintiff.

Defendant and defense counsel fail to provide anything specific other than to deny it's failure to file timely, which as discussed supra, is a blatant attempt to alter the Court record as evidenced by documentation of defendant being served on 26

March 2013 with complaints and notification of suit filed pursuant to violations of the ICCPR treaty (ER:1-6). The record is clear - the case was filed and defendant served in accord with the procedures established by the Federal Courts.

The only other argument is that the motions “defy easy categorization due to varied relief requested.” This is not an argument or a defense against such motions. Defendant has failed to provide a single defense to the Issues Presented.

The government has completely failed to address those arguments. Its failure to address those arguments is an implicit recognition that the arguments are well taken and cannot be rebutted. *UNITED STATES OF AMERICA, Plaintiff-Appellee, v. Geary Wayne WATERS, Defendant-Appellant*, 2010 WL 6834477 (C.A.9), 2-3

Hence, defendant admits the arguments are well taken and cannot be rebutted.

CONCLUSION

The District Court erred in all eleven issues presented in the opening brief and defendant’s answering brief was essentially non-responsive as noted supra. The founding fathers understood the wrong of their British ancestors and sought to prevent the repetition of these atrocities and established habeas corpus as statutorily defined in this instance as 28 U.S.C. § 2241 to prevent imprisonment of U.S. citizens in U.S. jurisdiction when there is a violation of a treaty. Following the repetition of these criminal acts by Nazi Germany as allowed by the German Courts at the time, the post World War II international community including the United States, established the ICCPR treaty inter alia to make certain citizens of the world would not again be abused by their governments.

The U.S. being no exception, the treaty was signed by the President of the United States on 5 October 1977 and ratified by the Senate of the United States on 2 April 1992. The U.S. Government has expressly and explicitly stipulated, based upon recognition of its prior failings, that the ICCPR treaty was not ratified UNTIL all the necessary legislation was in place to provide for domestic effect of law, making the treaty enforceable by U.S. Federal Courts as a self-executing treaty as defined by the Federal Courts to provide remedies to U.S. citizens.

Plaintiff recognizes that others have failed to bring this documentation to the attention of the U.S. Federal Courts either through commission, omission or both. It would appear to again fall upon the Fleming Family and the Ninth Circuit Court of Appeals to step forward where others have failed, to secure these Civil rights for the American people as made applicable under the ICCPR treaty. Defendant has failed to respond, within the statutory time limits established by Congress and held by the SCOTUS as without exception, to a single complaint filed in this case resulting in defendants consenting to the MSJ with SUFs and the granting of default judgment. Defendant with and through defense counsel has failed to make this Court and the Northern Nevada District Court aware of the evidence documenting that this treaty was not ratified until all the necessary legislation was in place to provide for domestic effect of law; full well knowing that this meant the treaty was self-executing according to this Courts legal definition.

Defendant with and through defense counsel has also attempted to manipulate the time limits of this case knowing full well that the case was filed with complaints and service upon defendant on 26 March 2013 as noted in defendant's own Excerpts of Record.

Plaintiff requests that this Court forthwith (1) grant the MSJ with SUFs with remedies as requested by plaintiff in the District Court given defendant's consent as defined, (2) confirm that the ICCPR treaty is self-executing under this Court's previously held legal definition, that a treaty is self-executing when all legislation is in place to provide for domestic effect of law, given the Federal Governments explicitly expressed written stipulated admission that the treaty was only ratified after knowing that all necessary legislation was in place to provide for domestic effect of law, and (3) reprimand defendant and defense counsel for attempting to withhold and conceal evidence from this court, which as an officer of the Court, they are obligated to make the Court aware of, as well as the intentional, knowing and deceptive misrepresentation of statutory time limits in this case as documented by service upon them and the Court record.

Respectfully submitted

This 7th Day of March 2014

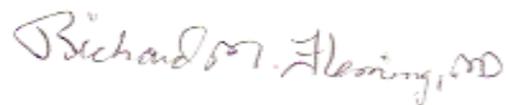


Richard Max Fleming, M.D. (*Pro se*)

CERTIFICATION OF SERVICE UPON DEFENDANT

I certify the above statements are true and that Mr. Greg Addington, Assistant U.S. Attorney, was served by Priority Mail at 100 West Liberty Street, Suite 600, Reno, Nevada 89501.

Dated: 7 March 2014

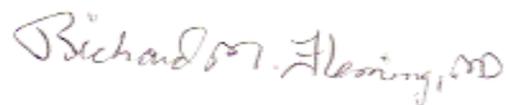
A handwritten signature in cursive script that reads "Richard M. Fleming, MD". The signature is written in dark ink and is positioned above a horizontal line.

Richard Max Fleming, M.D. (*Pro se*)

CERTIFICATE OF COMPLIANCE

Pursuant to the Fed. R. Appl P. 32 (a)(7)(c) and the Ninth Circuit Rule 32-1, the attached reply brief is proportionately spaced and has a typeface of 14 font and contains 3828 words.

Dated: 7 March 2014

A handwritten signature in cursive script that reads "Richard M. Fleming, MD".

Richard Max Fleming, M.D. (*Pro se*)

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Docket No. 13-17230

Richard M Fleming

Plaintiff - Appellant

vs.

UNITED STATES OF AMERICA

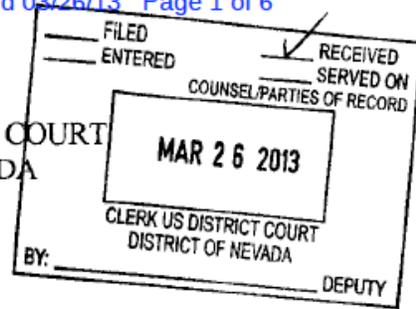
Defendant - Appellee

From the United States District Court
For the District of Nevada, Reno, 3:13-CV-00154-MMD-VPC

EXCERPTS OF RECORD

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Case 3:13-cv-00154-MMD-VPC Document 1-1 Filed 03/26/13 Page 1 of 6



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Richard M. Fleming, MD,)
)
 Claimant,)
)
 V.)
)
United States of America)
)
 Respondent.)

**TORT CLAIM AND MOTION
FOR
SUMMARY JUDGMENT**

3:13-cv-154

Issue

The United States of America through its District Court for the Northern District of Nevada has denied Claimant his international civil rights by **procedural actions contrary to law**. Having been found guilty in Federal court and being in Federal custody while he had committed no crimes, on November 23, 2011, Claimant petitioned for summary judgment for the reversal of his conviction and for compensation, as mandated by *treaty*:

"No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time." (*International Covenant on Civil and Political Rights (Ratified 8 June 1992) Article 15(1)*)

"When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction **shall be compensated** according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him." (Id, Article 14(6))

The facts set forth in the motion for summary judgment, that there was no crime, have never been disputed. Had the Nevada Court followed the law, Claimant's motion would have been granted. The conviction would have been set-aside with compensation for damages. The Nevada

Court's actions leave Claimant convicted and barred from the practice of his profession, nuclear cardiology, for life. He is entitled to the relief set forth by international law:

"Each State Party to the present Covenant undertakes:(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that **the violation has been committed by persons acting in an official capacity;**" (*Id*, Article 2(3))

The violation of Claimant's rights arises from the official acts of the Nevada District Court and summary judgment is sought on the procedural violations of said Court.

Statement of Undisputed Facts

Complaint 1. On or about November 23, 2011, Claimant submitted a petition and motion for summary judgment pursuant to treaty provisions (*Supra*). That motion has never been heard, a violation of the treaty law:

"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his **rights and obligations in a suit at law**, everyone shall be entitled to a **fair and public hearing by a competent, independent and impartial tribunal** established by law." (*Id*, Article 14(1))

Complaint 2. The Court was the court most competent to rule in that the motion for summary judgment relied in part on the precedents it had itself established that there is no Medicare fraud if the defendant has relied on the instructions set forth by Medicare. (*U.S. v. Prabhu*, 442 *F.Supp.2d* 1008 (*D. Nev. 2006*)) Nevada No. 2:04-CV-0589-RCJ-LRL. Yet the Court transferred the case to Nebraska, thus denying hearing on the motion.

Complaint 3. The law is perfectly clear that **motion for summary judgment halts all other actions** and requires the court solely to limit its actions to balancing the factual claims of the movant against the factual response of the respondent to the claims of undisputed facts set forth by

movant in his motion and the **court must show, on the record, reasons for granting or denying motion.**

"Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. **The court shall grant summary judgment if the movant shows that there is no genuine dispute** as to any material fact and **the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.**" (Fed R. Civ. P. 56(a))

Complaint 4. The Court had no authority to transfer the case since motion for summary judgment limits a court solely to granting or denying the motion until it has done so.

"it is clear enough from our recent cases that at the summary judgment stage **the judge's function is not himself to weigh the evidence** and determine the truth of the matter but to determine whether there is a genuine issue for trial. As Adickes, supra, and Cities Service, supra, indicate, there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. Cities Service, supra, 391 U.S., at 288-289, 88 S.Ct., at 1592." (Anderson v. Liberty Lobby, 477 U.S. 242, 249-250. (106 S.Ct. 2505, 91 L.Ed.2d 202)

Complaint 5. The Clerk of Court violated the law by refusing to make entry of default upon receipt of the affidavit required by law.

"Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, **the clerk must enter the party's default.**" (Fed R. Civ. P., Rule 55(a))

Complaint 6. The Court not only violated Federal law by failing to grant motion (*Supra*) but also violated Nevada local rules.

"The failure of a moving party to file points and authorities in support of the motion shall constitute a consent to the denial of the motion. **The failure of an opposing party to file points and authorities in response to any motion shall**

constitute a consent to the granting of the motion," (Nevada Local Rule LR 7-2(d))

Complaint 7. The Court failed to make timely response to the petition, making no response for over four months and then transferring the case to Nebraska where the Undisputed Facts of the Motion for Summary Judgment were also not disputed.

"A court, justice or judge entertaining an application for a writ of habeas corpus shall **forthwith** award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto. The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within **three days** unless for good cause additional time, not exceeding **twenty days**, is allowed." (28 US § 2243)

The Supreme Court defines *forthwith*:

"In matters of practice and pleading it is usually construed, and sometimes defined by rule of court, as **within twenty-four hours.**" (*Dickerman v. Northern Trust*, 176 U.S. 181, 193)

Complaint 8. The Court which, by law had jurisdiction, transferred the case to the District of Nebraska which, by law, lacked jurisdiction.

"We turn now to the second subquestion. District courts are limited to granting habeas relief "within their respective jurisdictions." 28 U. S. C. § 2241(a). We have interpreted this language to require "nothing more than that the court issuing the writ have jurisdiction over the custodian." *Braden*, 410 U. S., at 495. Thus, jurisdiction over Padilla's habeas petition lies in the Southern District only if it has jurisdiction over Commander Marr. We conclude it does not.

Congress added the limiting clause—"within their respective jurisdictions"—to the habeas statute in 1867 to avert the "inconvenient [and] potentially embarrassing" possibility that "every judge anywhere [could] issue the Great Writ on behalf of applicants far distantly removed from the courts whereon they sat." *Carbo v. United States*, 364 U. S. 611, 617 (1961). Accordingly, with respect to habeas petitions "designed to relieve an individual from oppressive confinement," the traditional rule has always been that the Great Writ is "issuable only in the district of confinement." *Id.*, at 618.

Other portions of the habeas statute support this commonsense reading of § 2241(a). For example, if a petitioner seeks habeas relief in the court of appeals, or from this Court or a Justice thereof, the petition must "state the reasons for not making application to *the* district court of the district in *which the applicant is held.*" 28 U. S. C. § 2242 (emphases added)." (*Rumsfeld v. Padilla*, 542 US 426,442 (2004))

Complaint 9. From the language of the statutes and discussions it is clear that a major intent of the law, 28 USC § 2241, is to assure that trial will occur in the location where a litigant is in custody so that the litigant can appear at trial. By transferring the case contrary to law the Court denied Claimant the right to appear in court to defend his rights.

Claimant stands convicted of a felony because of the Court's unlawful actions and failures to act. He is entitled to just compensation pursuant to treaty (*ICCPR, Supra*).

Just compensation

This case originated on or about January 15, 2007. Claimant has been convicted of a felony, which bars him from a medical license for life, though it remains undisputed that he committed no crime. He prays for just compensation for damages for loss of his right to practice his profession for life and for other effects thereof. According to Government sources, the median annual income for Cardiology was determined to be \$379,975, that is, \$31,665 per month as surveyed in 2008 (http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/AMGA_08_data.pdf, Accessed March 23, 2013). Since Claimant received Board Certification in Nuclear Cardiology in 1996 he has published extensively in the medical literature and lectured internationally. Thus, his earning potential was substantially, but of undetermined amount, above the median. For damages to his medical specialty career and his reputation, Claimant asks for compensation for life in the amount of \$31,665.00 per month beginning January

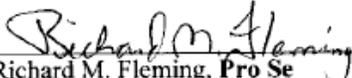
15, 2007.

Prayer

Claimant prays for just compensation as set forth above.

Motion for summary judgment is a pre-trial action as distinguished from motion for directive verdict, which applies after trial begins. It asks whether the facts justify going to trial, that is, going before a jury. (*Anderson supra*). If the present motion for summary judgment is denied, then claimant asks it indeed go to jury trial.

I certify the above statements are true and further certify copy was served on Respondent by hand delivery to the office of the Federal Attorney in Reno, Nevada on March 26, 2013


Richard M. Fleming, **Pro Se** Reno, Nevada, March 26, 2013.
1697 Lone Oak Trail, Reno, NV 89523
rmfind7@hotmail.com
775-770-4328

Case 3:13-cv-00154-MMD-VPC Document 2 Filed 03/27/13 Page 1 of 1

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF NEVADA

BRUCE R. THOMPSON U.S. COURTHOUSE
AND FEDERAL BUILDING
400 SOUTH VIRGINIA STREET #301
RENO, NV
89501
(775) 686-5800

LANCE S. WILSON
DISTRICT COURT EXECUTIVE/CLERK

CYNTHIA JENSEN
CHIEF DEPUTY, LAS VEGAS

JAKE HERB
CHIEF DEPUTY, RENO

DATE: March 27, 2013

TO: Richard M. Fleming

1697 Lone Oak Trail
Reno, NV
89523

Dear Richard M. Fleming:

Please be advised that the papers you recently sent the court have been received. Your case against defendant UNITED STATES OF AMERICA has been assigned case number 3:13-cv-00154-MMD-VPC . It is necessary for you to include this case number on all future papers sent to the court for this case. Any correspondence with the court regarding this case should be mailed to the Clerk's Office and not directly to the assigned judges. You will receive a copy of all orders filed in this case.

Sincerely,

LANCE S. WILSON,
CLERK OF COURT

United States District Court for the District of Nevada

United States District Judge Miranda Du's Civil Standing Order

This Order establishes requirements and procedures for all civil cases assigned to Judge Du.

Filings

1. PDF Format

In accordance with Special Order 109 (III)(F)(1) counsel are directed to file documents in a searchable PDF format, with the exception of exhibits and/or attachments. While not required by the Local Rules, Judge Du appreciates receiving exhibits and/or attachments which have also been scanned and Optical Character Recognition (OCR) performed, making the exhibits and attachments searchable as well. Counsel is directed to refer to the above rule for further instruction.

2. Exhibits

To the extent practical, counsel should append exhibits to court filings separately in the Court's CM/ECF system. Exhibits should generally not be attached together as one file; rather, each exhibit should be appended separately.

Courtesy Copies

All courtesy copies of filings should be delivered to the Clerk's office.

Communications with the Court

All inquiries about pending matters before Judge Du should be directed to Judge Du's Courtroom Deputy, Peggie Vannozi, by calling (702) 464-5429, or via email at Peggie_Vannozi@nvd.uscourts.gov. Counsel and parties should refrain from contacting Judge Du's chambers directly.

Motion Practice – Prioritization of Motions

- Non-dispositive Motions: Non-dispositive motions will generally be referred to the Magistrate Judge assigned to the case.
- Dispositive Motions: Jurisdictional motions such as Motions to Remand and Motions for Lack of Personal or Subject Matter Jurisdiction will be addressed

before other motions in an effort to diminish the need for the parties to engage in unnecessary discovery.

- Motions are decided in the order in which they are filed, unless a particular motion requires a decision on an expedited basis.

Request for Extension

Extension requests must comply with LR 6-1(b) and must include the current deadline as well as the requested extension. In addition, immediately below the title of the stipulation or motion, there must be a statement identifying the total number of extensions sought to date, not just the number of extensions for a particular pleading or brief (i.e., whether the request is the first or second or third request sought in the case).

Request for Stay

When a request for stay is granted, any pending motions will automatically be DENIED without prejudice. When the stay is lifted, any party may move to reinstate the previously pending motions. Additional briefing is not required but is permissible.

Hearings or Oral Argument

Motion hearings will not be automatically scheduled. Requests for a hearing may simply be asserted on the front page directly under the title of the motion, response or reply: (Hearing Requested). However, motions will generally be resolved without a hearing if no just cause is presented.

Technology Policy

Cell phones, iPads, laptops and printers are allowed in the courtroom to assist attorneys to review their calendars for scheduling of future court hearings and to assist with presentation of evidence or argument during hearings or trial. Other devices which cause feedback or otherwise interfere with the court recording equipment may not be used at all.

Civil Trial Dates

Trial will be scheduled after conclusion of the settlement conference or submission of joint pre-trial order, to the extent no settlement is reached. While the Court will try to accommodate the dates provided by the parties in their Joint Status Report or Joint Pre-Trial Order, trial will be scheduled based on the first available trial stack on the Court's calendar.

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Order Regarding Trial

Judge Du's standard Order Regarding Trial will be filed in every case as soon as it is scheduled for trial. Parties should direct questions about the ORT or questions about other trial related matters directly to Judge Du's Courtroom Deputy, Peggie Vannozzi, by calling (702) 464-5429, or via email at Peggie_Vannozzi@nvd.uscourts.gov.

Settlement & Pretrial Conferences

Generally, a case will be referred to the assigned Magistrate Judge for a settlement conference pursuant to Local Rule 16-5 after dispositive motions are fully briefed. In those cases, Judge Du will usually stay the ruling and provide the parties an opportunity to participate in the settlement conference before the dispositive motions are addressed. If no dispositive motions are filed, the case will generally be referred for a settlement conference as soon as the Joint Pretrial Order is filed. However, parties may file a written request for an early pretrial conference pursuant to Local Rule 16-2.

IT IS SO ORDERED.

DATED: December 18, 2012


MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Docket No. 13-17230

Richard M Fleming

Plaintiff - Appellant

vs.

UNITED STATES OF AMERICA

Defendant - Appellee

From the United States District Court
For the District of Nevada, Reno, 3:13-CV-00154-MMD-VPC

**APPENDIX A
Civil Suit - Actual Innocence**

Richard M. Fleming (Pro se)
7000 Mae Anne Avenue, # 523
Reno, NV 89523
775-770-4328
rmfmd7@hotmail.com

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Richard Max Fleming, M.D.,)	
)	
Petitioner,	)	05771 CVCV 009488
)	
v.	)	Memorandum of Law
	)	Demonstrating a subpar, arbitrary and
Iowa Board of Medical Examiners,	)	capricious investigation of the Facts and
	)	Matters of law by respondent.
Respondent.)	

This Memorandum of Law is provided to the Court in response to the Court Order electronically filed 5 February 2014. Contrary to Federal and State Law, Petitioner has not yet received a written copy of this order or any of respondent's motions to date, by mail, fax or by email. Petitioner previously filed a Memorandum of Law as ordered by the Court as noted on the Court docketed records. The Court granted respondent's motion on 5 February 2014, to strike facts relevant to this case and the subpar investigation by respondent. This motion to strike was filed 76 minutes before respondent's memorandum of law was due. These facts were and remain a part of the public record, including material previously submitted to this Court, which are a part of the Court's permanent record as previously filed with and accepted by the Court. This case was filed pursuant to I.C.A. § 17A.19 in accord with all time limits after failing all administrative efforts; Iowa Admin. Code 653-24.2 (17A, 147, 148, 272C),

therefore petitioner has surrendered no legal rights or actions having filed in accord with the instructions provided to petitioner by this Court. Pursuant to the Iowa statute, “substantial evidence” and the requirement for the Court to review the “record...as a whole” is defined thusly.

(1) “Substantial evidence” means the quantity and quality of evidence that would be **deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.**

(3) “When that record is viewed as a whole” means that the adequacy of the evidence in the record before the court to support a particular finding of fact **must be judged in light of all the relevant evidence in the record cited by any party** that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, ... the relevant evidence in the record supports its material findings of fact.
(emphasis added) Iowa Code Ann. § 17A.19 (West)

Petitioner has therefore filed an Interlocutory Appeal of said order to strike these relevant facts and denial of petitioner’s objections with the Iowa Court of Appeals on 6 February 2014. Accordingly, respondent was served as noted on the Court records. Notwithstanding, the District Court has ordered an amended schedule to which this memorandum of law, facts and matters of law, which are already part of the complete public record as a whole and said Court documents comply with; but to which respondent has intentionally and with scienter decided to ignore in it’s “investigation” and decision making process, making respondent’s

investigation subpar, arbitrary and capricious.

STATEMENT OF CASE AND FACTS

In April of 2009, Petitioner agreed to a holographic plea to protect his children from the physical and mental abuse they were sustaining from their biological mother. The Iowa Board of Medical Examiners began actions against Petitioner following communications from Petitioner's ex-wife (Ms. Haag) beginning on or about 14 May 2009, just weeks following entry of the holographic plea (*infra*).

This information had been obtained through communications with a HHS agent (Ms. Palmer) who had used the power of her office to obtain personal information about Dr. Fleming and communicate this information to Ms. Haag on multiple occasions to assist with divorce proceedings. Ms. Haag reported she would rather receive no alimony and see Dr. Fleming lose his medical license, than for Dr. Fleming to have his license and pay her alimony. Dr. Fleming has made multiple efforts to communicate with respondent and place before them the necessary facts and matters of law which are not only part of the public record, but which proves (1) the holographic plea does not state a crime and (2) there has been no medical malpractice. Consequently, there is no basis for the respondent's actions.

Respondent has refused to consider many if not all of these documents

including (a) material showing that the Petitioner had billed as directed by CMS, (b) findings of a Federal Court which has held that when physicians bill according to Medicare and Medicaid rules, the physician cannot be guilty of a crime for billing according to those rules and (c) documentation that the Court does not deny Dr. Fleming's actual innocence, only his use of 28 USC § 2241 for establishing innocence, which is verbatim the original habeas corpus act passed by the Founding Father to comply with Article I § 9 of the U.S. Constitution. This Court's documents and correspondence with Dr. Fleming show, respondent denied being served in this case and attempted to have this case dismissed for not having been served. The Court records now reflect documentation, provided by Dr. Fleming showing respondent had in fact been served and any claim to the contrary is blatantly false.

Respondent did not reasonably, substantially, independently investigate the claims made against Dr. Fleming, even when the facts and matters of law were placed on their lap. Instead respondent relied upon personal information provided to it from biased parties with an interest in further harming Dr. Fleming, instead of reading or listening to the actual recordings and court documents, which are themselves publically available to all. The few Court documents present, which were part of the respondent's records, showed the litigation had in fact not ended; despite respondent concluding the opposite. Again, this erroneous conclusion was

made in the face of available public records showing the contrary; records from which a reasonable person would have concluded differently. After refusing to consider Dr. Fleming's documentation of facts and matters of law, respondent capriciously elected to penalize Dr. Fleming by trying to force him to take billing classes, ethics classes, pay civil fines and have his medical practice monitored for five years.

These punitive actions were taken after having prevented Dr. Fleming from being able to afford such penalties, by requiring him to abstain from practicing medicine despite having a medical license to do so and thereby preventing him from making a living for himself, his family or having the funding necessary to pay such penalties. The actual facts and matters of law, which are part of the public record, demonstrate that respondent is responsible for a subpar, arbitrary and capricious investigation, selectively ignoring information (*viz. scienter*), which a reasonable person would find relevant to determining whether a crime or medical malpractice had been committed to which action would be indicated. *Scienter, et, dum habeat a subpar egit, pro arbitrio et libidine quaestio est, quae in rem essent, reus erit.*

ISSUES PRESENTED

1. Was respondent's investigation subpar, arbitrary and capricious when a reasonable person would have found the information provided by

- petitioner to have clearly demonstrated that independent of any other decisions and misinformation, that petitioner had neither committed a crime or medical malpractice, thereby making respondents actions unreasonable, arbitrary, capricious and punitive?
2. Was respondent's motion to strike documents which are part of the public record and the Court's granting of that motion, in violation of Iowa Code § 22 in addition to promoting a subpar, arbitrary and capricious investigation?
 3. Did respondent substantially investigate the claims made against Dr. Fleming, when the holographic record does not state a crime and a reasonable person would find the information provided by Dr. Fleming to be relevant in determining the facts and matters of law?
 4. Did respondent substantially investigate the claims made against Dr. Fleming, when the record shows he billed according to Medicare and Medicaid guidelines and Federal Courts have held that billing in accord with the instructions with those Federal guidelines **cannot** constitute a crime?
 5. Did respondent substantially investigate the claims made against Dr. Fleming, when the record shows that the original trial court does not deny Dr. Fleming's actual innocence?

6. Did respondent substantially investigate the claims made against Dr.

Fleming, when the record shows respondent concluded that litigation had ceased as of 24 June 2011, when in fact the public records show litigation has not yet ceased, demonstrating respondent provided a substantially subpar investigation and review of the facts before it?

7. Did respondent substantially investigate the claims made against Dr.

Fleming, when the record shows Dr. Fleming currently has a civil suit before the Courts for indemnification for wrongs committed by the U.S. Government and nonetheless concluded that all litigation has ceased three years ago, based upon a failure to investigate the public record and depending upon personal hearsay information provided by a biased individual seeking to further harm Dr. Fleming?

8. Did respondent substantially investigate the claims made against Dr.

Fleming, when Dr. Fleming was subsequently asked to present his information at more than one *Society of Nuclear Medicine* meeting, including a presentation where attendees received continuing medical education credit and where physicians and scientists from around the world confirmed that the method promulgated by Dr. Fleming (viz. FHRWW[©]) (1) is more accurate in detecting heart disease than that promoted by respondent's biased source of information, who does not

qualify as an expert in the field, (2) safely and effectively reduces patient and staff time to perform the study, (3) reduces medical costs and (4) reduces radiation exposure of patients and healthcare workers alike, thereby reducing risk of subsequent cancers and other health risks; when FHRWW[©] does not constitute a crime but an advancement in medical care?

9. Did respondent substantially investigate the claims made against Dr.

Fleming, when they failed to prove a crime had been committed or that there has been any medical malpractice, yet concluded his holographic plea constituted a crime and subsequently punished him?

10. Did respondent reject, oppose or dispute any of the facts and matters of law established by Dr. Fleming, which are part of the public record, or did they act with scienter?

11. Did respondent make conclusions not supported by facts and/or matters of law, in both the original response to Dr. Fleming (4 February 2010) and again 9 February 2012, when it demanded Dr. Fleming attend certain ethics and billing classes and demanded civil fines and a five year probation of Dr. Fleming's active medical license, when the facts and matters of law show no crime has been committed and Dr. Fleming had

been deprived of earning a living for himself or his family by the conditions placed upon him by respondent?

12. Has respondent acted in *bad faith* by intentionally and maliciously not responding to Dr. Fleming's documentation that (a) the holographic plea does not state a crime, (b) the litigation has not ended, (c) Dr. Fleming provided proof of actual innocence, (d) respondent depended upon personal statements made by Dr. Fleming's ex-wife and an HHS agent who provided information obtained in her official capacity/position with HHS, for use by the ex-wife in divorce proceedings, (e) Dr. Fleming provided facts and matter of law showed no crime or medical malpractice had been committed?

ARGUMENT

The authority granted by the people of Iowa through the legislature to the Iowa Board of Medical Examiners under Iowa rules and statutes requires that the investigation of a physician include all materials relevant to determining if there is just cause for revocation of a medical license. To accomplish this, the Iowa Court of Appeals has determined that such investigation must include facts and matters of law, which would allow a reasonable person to determine if action should be taken; viz. does all the relevant evidence indicate beyond a reasonable doubt that the physician poses a threat to the safety and care of his/her patients as a result of

medical malpractice or criminal activity. When respondent fails to investigate the facts and matters of law relevant to allow an independent reasonable person to make such a determination, then such investigation is subpar and should be reversed.

This investigation should begin with the holographic plea and the facts surrounding it, since this is the basis for respondent's actions. As a matter of law, a physician cannot be guilty of having committed a crime when he bills according to guidelines established by the Federal Government; PERIOD. That same physician cannot be guilty of a crime, when there is no evidence of data fabrication and independent investigation by one of the leading experts in the world from Iowa State University shows the data are not fabricated, while in addition the Office of Research Integrity (ORI) fails to find any indication of data fabrication.

Having conducted a subpar investigation as defined by the Iowa Court of Appeals (*infra*), respondent then punished Dr. Fleming, while scientists and physicians from other countries were embracing his methods and receiving continuing medical education credit for attending his seminars.

I. Respondent's investigation was and remains inadequate, subpar, arbitrary and capricious.

The primary issue before this Court is not what another Court may or may not have concluded something based upon the information it considered. Rather, it

is the failure of the respondent and this Court to consider all the facts and matters of law in this case, particularly those, which are already part of the public record.

Open records are routinely disclosed ... 653 Iowa
Admin. Code r. 1.9(1). Doe, II v. Iowa Bd. of Medical
Examiners, 1996 WL 34451358

As *Doe, II v. IBME* demonstrates, it is in fact the respondent who has promoted the disclosure of such public record, yet now when it works to their disadvantage, they would ask the Court to take the opposite position. These efforts by the respondent to now hide and not investigate or consider this public information, with the facts and matters of law relevant in this case, represents an intentional concealing of substantial evidence. Respondent cannot have it both ways without the abandonment of *stare decisis*. Clearly evidence is not substantial if it would not result in a different decision by a reasonable trier of *facts*.

“Evidence is not substantial when a reasonable mind would find the evidence inadequate to reach the conclusion reached by the agency.” *Id.* (internal quotations omitted). “We are bound by the agency's factual findings unless a contrary result is demanded as a matter of law.” *Id.* (internal quotations omitted). *Smoker v. Iowa Bd. of Med.*, 834 N.W.2d 83 (Iowa App. 2013)

However, evidence is “substantial” pursuant to Iowa law, when such evidence would lead a neutral, detached and reasonable individual to conclude differently than the respondent.

“**Substantial evidence**” is statutorily defined as: [T]he quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when

the consequences resulting from the establishment of that fact are understood to be serious and of great importance. Iowa Code § 17A.19(10)(f)(1). (emphasis added) *Collins v. IBME*, (No. 3-847/13-0477, Filed January 9, 2014).

Such “a neutral, detached and reasonable person” would independently form his/her conclusion(s) based upon the available facts and matters of law, particularly those that are part of the public record, which if eliminated from the record would change one’s conclusion(s). Using only respondent’s records, as bound by *Smoker*, a reasonable person is not provided with the necessary relevant information to conclude the facts and matters of law in this case. Hence, **the investigation is subpar.**

A medical analogy from my medical training would be during morning rounds when attending physicians reviewed the care and treatment of patients provided by fellows and residents the night before. Attending physicians would want to know the results of tests in making independent informed reasonable decisions about patient care and management. If the information was missing, they went looking for it and they certainly didn’t tolerate the concealment of information. This type of behavior is itself unethical and reprehensible.

Physicians are responsible for the treatment they provide to patients based upon their assessment of the results of diagnostic studies, not the interpretation of these tests by other physicians. THIS IS THE BUCK STOPS HERE APPROACH!
As the patient’s physician, you not someone else, are responsible for the care and

treatment of that person. You cannot blame someone else for interpreting the test differently. It's your patient, not the other persons and you are independently responsible for your actions, not them. E.g. the failure of another physician to detect a cancer or a collapsed lung or heart failure does not alleviate you from the responsibility of independently and reasonably looking at (1) the x-ray and (2) then the patient and (3) anything else that is relevant even if someone else failed to consider it before you decide if there is or isn't heart disease, cancer or a collapse lung that could kill the person. Such is the case here. Simply having facts and matters of law ignored by someone else, even if it is another Court, doesn't alleviate respondent or this Court from conduct a thorough investigation of the facts and matters of law.

A failure by others to review ALL the facts and matters of law, does not relieve the respondent of the responsibility of doing so, particularly when a reasonable person would find those facts and matters of law relevant to forming their own independent conclusion. The respondent has failed to investigate the facts and matters of law presented to it by Dr. Fleming and have acted in an arbitrary and capricious manner. It is simply unreasonable to ignore facts and matters of law that are handed to you, especially when those facts and matters of law are a part of the public record. Such information would be considered relevant and important, if not critical to a reasonable person in their decision making

process.

Agency action is considered **arbitrary or capricious** when the decision was made without regard to the law or facts. Agency action is **unreasonable** if the agency acted in the face of evidence as to which there is no room for difference of opinion among reasonable minds . . . or not based on substantial evidence. *Doe v. Iowa Bd. of Med. Exam'rs*, 733 N.W.2d 705, 707 (Iowa 2007) (internal quotation marks and citations omitted). (emphasis added) *Tobin v. IBME*, (No 3-1012/13-0294, Filed January 9, 2014)

The materials presented to the respondent by Dr. Fleming, which were submitted to this Court in the prior Memorandum of Law and the Motion for Summary Judgment (MSJ) with Statement of Undisputed Facts (SUFs), demonstrated there simply were no crimes, nor medical malpractice. The respondent has not addressed these points but has attempted to obfuscate the record. Petitioner hereby presents facts and matters of law (*infra*), which are part of the public record, which reasonable minds could not disagree on; viz. that they prove petitioner committed no crimes or medical malpractice and as such, respondent acted punitively, arbitrarily and capriciously toward Dr. Fleming, concluding erroneously from an investigation, which a reasonable minded individual would conclude was subpar, missing relevant information required to intelligently determine the facts and matters of law necessary to make an informed decision.

The facts which respondent does not deny but refused to investigate and consider in it's decision making process, show Dr. Fleming billed using the codes

as directed by the U.S. Government; a fact, which defense counsel failed to present at trial. Hence, this relevant information was not considered previously, as defense counsel did not present it. The facts also show there was no data fabrication. The record clearly established (4:07-cr-03005; Doc. No. 117, 1:24:40; 1:43:30) this as a fact during Dr. Carriquiry's testimony and subsequent sidebar discussions. During a side bar discussion, the Court clearly stated, the jury did not need to know the "whole picture" (4:07-cr-03005; Doc. No. 117, 1:18:00-1:29:00) with defense counsel concerned about being made a witness. The Court responded in this discussion with "by pulling the wool over the juries eyes" (1:26:00) comments.

As a result of this side bar discussion, defense counsel admitted he plagiarized data using Dr. Fleming's data as a template and then entered into an erroneous stipulation that defense counsel's "plagiarized data" actually represented "fabricated data" (fake data). While the Court kept referring to the "fake data" and did not identify the defense counsel as the source of the "fake data" so the jury didn't know it was defense counsels plagiarism of Dr. Fleming's data. Such data when actually fabricated/plagiarized after real (Dr. Fleming's) data statistically looked exactly like the real data it emulates; a point particularly relevant in proving Dr. Fleming's actual innocence given the experts testimony. Nonetheless, the Court would not allow (1) a mistrial, (2) withdraw of defense counsel or (3) for defense counsel to be placed on the witness stand (docket 117 &

118) proving it was his data to be questioned, not Dr. Fleming's. Efforts by Dr. Fleming to pursue ineffective assistance of counsel were chastised by the trial Court [*Fleming v. U.S.*, 4:10-cv-3217 (2010)].

I now warn Dr. Fleming that the filing of any additional ethics grievances against Mr. Hansen with the Nebraska Counsel for Discipline or with this Court or otherwise will subject Dr. Fleming to substantial sanctions. Those sanctions may include, but are not limited to, holding Dr. Fleming in contempt of court or revoking or modifying his probation. The continued abuse of the legal process will not be tolerated.

Such a statement by the Court resulted in Dr. Fleming immediately seeking no further action to prove ineffective assistance of counsel due to fear of incarceration. While efforts to address ineffective assistance of counsel would appear to have been handled differently in Iowa, petitioner was not in Iowa and is nonetheless fearful of being personally punished should he ever proceed further with efforts to prove ineffective assistance of counsel.

Finally, we have recognized that when claims of ineffective assistance of counsel are properly raised in a postconviction relief application, "an evidentiary hearing on the merits is ordinarily required." *Foster v. State*, 395 N.W.2d 637, 638 (Iowa 1986); *see also Watson v. State*, 294 N.W.2d 555, 556 (Iowa 1980); *State v. Smith*, 282 N.W.2d 138, 143 (Iowa 1979). "**Such a hearing affords the parties an opportunity to adversarially develop all of the relevant circumstances attending counsel's performance, including those circumstances and considerations which may be pertinent but are not a part of the criminal record.**" *Watson*, 294 N.W.2d at 556. Manning's claims, even if the district court deems them improbable, **require that he be allowed to present**

whatever proof he may have to support those claims.

See id. at 557. (emphasis added) *Manning v. State*, 654 N.W.2d 555, 562 (Iowa 2002)

As a consequence, following the trial court statements (*supra*) in 2010, Dr. Fleming immediately became apprehensive and has continued to be fearful about the imminent harm to himself and his children should they be returned to their abusive mother, if the Court were to punish him further. Therefore, the Court has removed Dr. Fleming's option of addressing ineffective assistance of counsel. Consequently, Dr. Fleming has ceased any and all attempts to address the ineffective assistance of counsel issue as directed by the Court in an effort to protect his children. However, failure to consider all the facts and the "whole picture" elsewhere does NOT absolve the respondent or this Court from considering the "whole picture" with its facts and matters of law. As a result, Dr. Fleming has focused his efforts on 28 USC § 2241 and matters of law and facts, including but not limited to the *International Covenant on Civil and Political Rights* (ICCPR). This fact alone invalidates respondent's position that it has substantially investigated this case, when respondent thusly concluded that all litigation has stopped and there is a final judgment, thereby justifying respondent's conclusions and punishment of Dr. Fleming—independent of other facts or matters of law showing litigation has not concluded and Dr. Fleming has not committed a crime or medical malpractice.

A reasonable person would conclude that the facts and matters of law submitted to this Court and which are part of the public record, but which have been ignored by the respondent, are both relevant and in fact necessary in determining that Dr. Fleming has neither committed a crime nor medical malpractice. These facts and matters of law are relevant to this case independent of any other case, past, present or future. The facts and matters of law clearly demonstrate that Dr. Fleming's work is being recognized world wide as a paradigm shift in the diagnosis and treatment of both breast cancer (B.E.S.T. imaging[©] TX 7-451-243; Patent Pending) and heart disease (FHRWW[©] TX 7-446-683; Patent Pending), just as his "Inflammation and Heart Disease[©]" theory (TX 7-451-243) advanced the understanding, treatment and prevention of heart disease. Respondent's actions are unconscionable, arbitrary, capricious and myopic.

The deliberate decision by respondent to exclude facts and matters of law which have been repeatedly submitted to respondent and which are readily available from the public record and to decide with scienter not investigate these facts and matters of law, represents a clearly subpar investigation as previously held by the Iowa Court of Appeals and defined in *Smoker v. Iowa Board of Medicine* (2013). It further represents an intentional, arbitrary and capricious effort by respondent to harm Dr. Fleming and to not investigate the facts and matters of law relevant to this case. The respondent would argue that if another

Court has previously decided that the following animal in the picture below is a cow because it has four legs and is domesticated, that every other Court and the respondent itself must now also conclude this is a cow.



However, a reasonable, independent, neutral and detached individual would want to know additional facts which others had not looked at, particularly when additional facts reveal the animal is ridden, using a saddle and bridle. Based upon the respondent's approach, their investigation ends with "this is a cow and you must conclude this is a cow because someone else said so". While the saying goes "a rose by any other name is a rose", just saying this doesn't make a horse a cow. Inadequate is inadequate, no matter how many times the respondent denies it.

II. The holographic plea to which respondent refers to in it's investigation and decision making process does not state a crime and the district Court does not deny

Petitioner's actual innocence.

A person cannot be guilty of a crime, when the actions committed or omitted do not define a crime. On 23 April 2009, following the death of his father and the abuse of a daughter and both sons, one son in particular who had recently been battered by Petitioner's ex-wife, Petitioner entered into a holographic plea. The holographic plea specifically states the following.

What acts did you do that cause you to think you are guilty of the charge(s) to which you want to plead GUILTY?

¿Cuáles son los actos que cometió que, a su parecer, lo hacen culpable del (los) cargo(s) al (los) cual(es) quiere declararse CULPABLE?

I billed for 78465 when I did not do a rest & stress tomographic study. I submitted this claim on May 30, 2002 knowing I did not do two tomographic studies. On March 8, 2004 I used Federal Express to deliver documents that falsely reported 60 people in the soy chip study.

Dr. Fleming specified "on the record" that the reason he was entering into this plea was to protect his children, particularly the youngest child. The plea specifically notes two items including (1) the use of billing code 78465 to bill when a rest and stress image was not obtained and (2) that the report represented 60 people when that was not the actual number in the study. Neither of these two statements constitutes a crime!

(a). The billing code used by Dr. Fleming is the correct billing code pursuant to the Federal Government's billing instructions for the nuclear imaging performed by Dr. Fleming. As such this billing could not legally be a crime as a matter of law.

Dr. Fleming freely admitted that the procedure he performed included a comparison of stress-stress images, which demonstrated the *redistribution* of nuclear isotopes following *stress* of patients. Dr. Fleming is a World Renown Nuclear Cardiologist who has published and presented more than 100 times in the United States, Canada, Europe and Asia, has published several medical textbook chapters and recently edited a Cardiology textbook (see Appendix A). He is a peer reviewer for more than a dozen medical journals and is a grant reviewer for the Federal Government and has presented at CDC sponsored conferences at the CDC request. His recognized paradigm shifting work has included (1) heart disease is due to inflammation and not just cholesterol, (2) that coronary angiograms are frequently misread and the reasons why this is so and what to do about it, (3) why nuclear studies as currently done using the rest-stress approach is incorrect 35% of the time and misses more than 100,000 Americans with heart disease every year; particularly those who are critically ill, who will then go home and die after being told they have no heart disease. Dr. Fleming holds several copyrights with patents pending resulting from these scientific (see CV in appendix A) breakthroughs.

In June of 2011 after the Iowa Board of Medicine concluded the case was no longer active, despite Dr. Fleming presenting evidence to the respondent to the contrary, Dr. Fleming was asked to present his findings at the International *Society of Nuclear Medicine* Conference in San Antonio, TX. During that meeting, Dr.

Fleming presented lectures where attendees received Continuing Medical and Technical Education Credit for Physicians, Nurses and Technologist/Technicians, respectively. The following year, researchers from Europe and Asia confirmed Dr. Fleming's results, showing that the most critically ill individuals will be misdiagnosed using the rest-stress approach. People who will be told they have no heart disease, only to go home and die from massive heart attacks.

In contrast, Dr. Fleming's stress-stress method (FHRWW; Fleming-Harrington Redistribution Wash-in Washout[©]) accurately diagnoses these individuals, saving 100,000 lives per year in addition to time, money and reducing radiation use and risks. Efforts to have respondent consider these documents were rejected, even though Dr. Fleming sent them to respondent on multiple occasions. It is this very method, which Dr. Fleming admitted to performing and billing using billing code 78465. The holographic plea does not state, the billing is wrong!

While Physicians are instructed in the practice of Medicine and not billing codes, Dr. Fleming never admitted that the billing of his stress-stress imaging under billing code 78465 was a crime or even wrong. Instead, Dr. Fleming admitted that he did not do a rest-stress approach to imaging. In fact, as FHRWW[©] (stress-stress) imaging has demonstrated, using a rest-stress approach would be unconscionable given the 35% error rate and the associated morbidity/mortality including people like Tim Russert who died from a massive heart attack after being

told he had no heart disease on his rest-stress study. This 35% error rate is accepted in the peer reviewed medical literature and as noted in a Medical textbook where FHRWW[©] is considered to be the Platinum Standard of Care for Nuclear Cardiology (ISBN: 978-953-307-366-8). It has also been published and featured as the cover in the Federal Governments only peer reviewed medical journal, the Federal Practitioner.

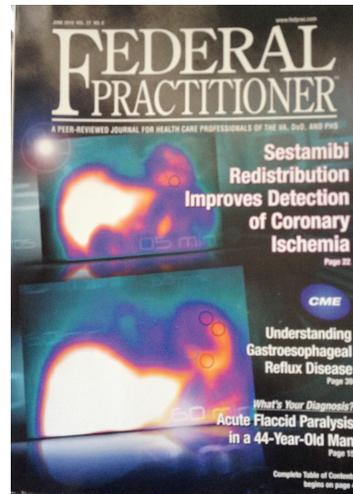
13
Fleming-Harrington Redistribution Wash-in Washout (FHRWW): The Platinum Standard for Nuclear Cardiology

Richard M. Fleming and Gordon M. Harrington
 FHRWW
 USA

1. Introduction

Since its advent in 1955, Nuclear Cardiology has undergone multiple changes in technology including detectors, computers, changes in protocols, various approaches to stress including physiologic and pharmacologic methods, changes in the type of isotopes utilized and finally concerns over the distribution of radioactive isotopes and efforts to improve the detection of heart disease while reducing radiation dose to both patients and health care workers alike. We will divide this chapter into five sections. First, we will review the work that led to the discovery that the technetium-99m isotopes, the Gallium-201, redistribution. Secondly, we will look at currently employed Cardiac imaging using Single Photon Emission Computed Tomography (SPECT) cameras for detecting Ischemic Heart Disease (IHD). Thirdly, we will consider how these isotopes are injected, distributed and redistributed within Cardiac tissue. Fourth, we will look at how single injection stress-rest imaging can not only increase the accuracy of SPECT imaging of the heart, detecting the most critically diseased coronary vessels while reducing the amount of radioactive isotopes injected into the patient, who will subsequently expose others to this radiation and finally, we will look at how rest-stress comparisons of isotope redistribution can be used to differentiate between viable and non-viable damaged myocardial tissue using SPECT cameras. At the completion of this chapter, clinicians and scientists alike will (1) better understand the physics of SPECT imaging of the heart, (2) will better understand the kinetics of technetium-99m isotopes (which are applicable to Gallium-201 and other isotopes), given differences in redistribution times, (3) be able to better detect heart disease with special emphasis placed on ischemic heart disease, while addressing issues of patient radiation safety (4) be able to differentiate viable from non-viable cardiac tissue and (5) be able to utilize SPECT cameras to extract both anatomic and physiologic information, not currently possible with single isotope injection, single camera imaging systems, including Positron Emission Tomography (PET), Magnetic Resonance Imaging (MRI) and/or Computed Tomography (CT). Current imaging with PET cameras, cannot be completed rapidly enough to allow for measurements of redistribution properties of PET isotopes, nor is it clear if any of these isotopes (ammonia, Rb-82, etc) actually have redistribution properties, while MRI and Computed CT currently are only able to yield anatomic information and are unable to measure physiologic redistribution of isotopes. This chapter will describe the recent

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Given that Dr. Fleming conducted FHRWW[©] stress-stress imaging, the next question is whether the use of 78465 is the correct billing code or a criminal act. According to the Federally accepted facts and public record, the correct use of imaging codes used to bill for nuclear cardiac imaging pursuant the Governments own expert Ms. Merlino, which the respondent failed to investigate despite its relevance to this case, shows that what Dr. Fleming actually did was a 78460 and a 78464.

Myocardial Perfusion Imaging (MPI) CPT 78460-78465	
CPT®	Description
78460	Myocardial perfusion imaging, (planar) single study, at rest or stress (exercise and/or pharmacologic), with or without quantification
78461	Myocardial perfusion imaging, multiple studies, (planar) at rest and/or stress (exercise and/or pharmacologic), <u>and redistribution</u> and/or rest injection, with or without quantification
78464	Myocardial perfusion imaging; tomographic (SPECT), single study (including attenuation correction when performed), at rest or stress (exercise and/or pharmacologic), with or without quantification
78465	Myocardial perfusion imaging; tomographic (SPECT), multiple studies (including attenuation correction when performed), at rest and/or stress (exercise and/or pharmacologic) <u>and redistribution</u> and/or rest injection, with or without quantification

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Accepting that 78460 and 78464 is what Dr. Fleming did, which Ms. Merlino has defined, the next logical question is to ask is, “what is the correct billing code” to use, when one does a 78460 and 78464? According to the Federal Government’s own R-5 “**Medicare Advantage Medical Policy Bulletin**” instructions for properly billing a 78460 and 78464 is to bill as Dr. Fleming did; viz as 78465. Thus, the holographic plea states a fact, which is not a crime. In fact, it would have been a crime for Dr. Fleming to bill any other way!!!

“Code 78465 is used when 78460 or 48461 (since you would do one or the other) **and** 78464.” For those not fluent in nuclear cardiology, Ms. Merlino’s own slide makes it clear that one is either doing 78460 OR 78461, not both since multiple 78460’s equals a 78461.

Medicare Advantage Medical Policy Bulletin

Section:	Radiology
Number:	R-5
Topic:	Cardiac Radionuclide Imaging
Effective Date:	October 1, 2008
Issued Date:	January 26, 2009

Coding Guidelines

Use code 78478 with codes 78460, 78461, 78464, 78465.

Use code 78480 with codes 78460, 78461, 78464, 78465.

Use code 78496 in conjunction with code 78472.

Codes indicating multiple studies (Codes 78461, 78465, 78473) must be submitted with a quantity of one regardless of whether a one or two day protocol was used.

Code 78461 includes code 78460.

Code 78465 includes codes 78460, 78461, and 78464.

Again, the respondent refused to consider or investigate this information, even though a reasonable, neutral and detached individual would find this relevant to considering a billing crime question!

As noted in the holographic plea, this is exactly what Dr. Fleming did. The Federal Courts have held that physicians who bill according to the instructions provided are not guilty of filing a false claim and the Government CANNOT prove falsity as a *matter of law*.

...a Defendant **does not “knowingly” submit a “false” claim** when his conduct is consistent with **a reasonable interpretation** of ambiguous **regulatory guidance**. *See, e.g., United States ex rel. Swafford v. Borgess Med. Ctr.*, 98 F.Supp.2d 822, 831-32 (W.D.Mich.2000) *U.S. v. Prabhu*, 442 F. Supp. 2d 1008, 1029 (D. Nev. 2006)

...a Defendant does not knowingly submit false claims when he **follows Government instructions regarding the claims**. *See United States ex rel. Butler v. Hughes Helicopters, Inc.*, 71 F.3d 321 (9th Cir.1995); *Wang v. FMC Corp.*, 975 F.2d 1412, 1421 (9th Cir.1992) *U.S. v. Prabhu*, 442 F. Supp. 2d 1008, 1029 (D. Nev. 2006)

Courts have routinely ruled that where, at worst, all that exists are disputed legal issues regarding whether a service was properly billed, **the Government cannot prove falsity as a matter of law.**²² (emphasis added)

U.S. v. Prabhu, 442 F. Supp. 2d 1008, 1031 (D. Nev. 2006)

Dr. Fleming conducted multiple studies comparing the redistribution of nuclear isotopes under stress-stress conditions to more accurately detect breast cancer and heart disease while reducing costs, time, radiation exposure and deaths. Five major U.S. Universities have already agreed to begin working with and in fact are now working with Dr. Fleming and these protocols to improve the detection of breast cancer and heart disease. Dr. Fleming billed these studies in accord with Federal instructions and the Courts have held that as a matter of law, such actions cannot constitute a crime. Any reasonable person would find this information relevant in determining that no crime or medical malpractice has ever been committed and therefore that the respondent failed to substantially investigate petitioner's case.

(b). The statement that the number of study participants in the FedEx package was 60, does not constitute a crime.

When unable to prove a legal point with facts or matters of law, this issue has been one of overwhelming obfuscation. Interestingly enough, ALL of Dr. Fleming's data went to the Nebraska Board of Medicine, who admitted they had not inventoried nor bated stamped what was sent to them. Subsequently they could not guarantee they had all the data. As already noted, defense counsel had entered into a false stipulation, which further obfuscated the record and confused Dr.

Fleming as to what was actually being done. With advice of counsel, Dr. Fleming stated that the number of participants in the FedEx package did not equal sixty. This is a correct statement and does not constitute a crime.

The weight of the package as documented by the shipping record showed that the package exceeded the weight of documents for sixty participants. There was no statement that any data had been fabricated nor a crime committed and respondent itself has noted in its records that there were 52 participants noted in the study, raising a question of 8 individuals. The Office of Research Integrity (ORI) specifically noted there was nothing about the Carrquiry report or the data within it, including Dr. Fleming's, which indicated any fraudulent material.

ORI is a regulatory office, but our jurisdiction is strictly limited by 42 CFR 93 (<http://ori.dhhs.gov/>). We do not investigate fraud. We investigate misconduct in research funded by the Public Health Service (PHS) and **only** the PHS. Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

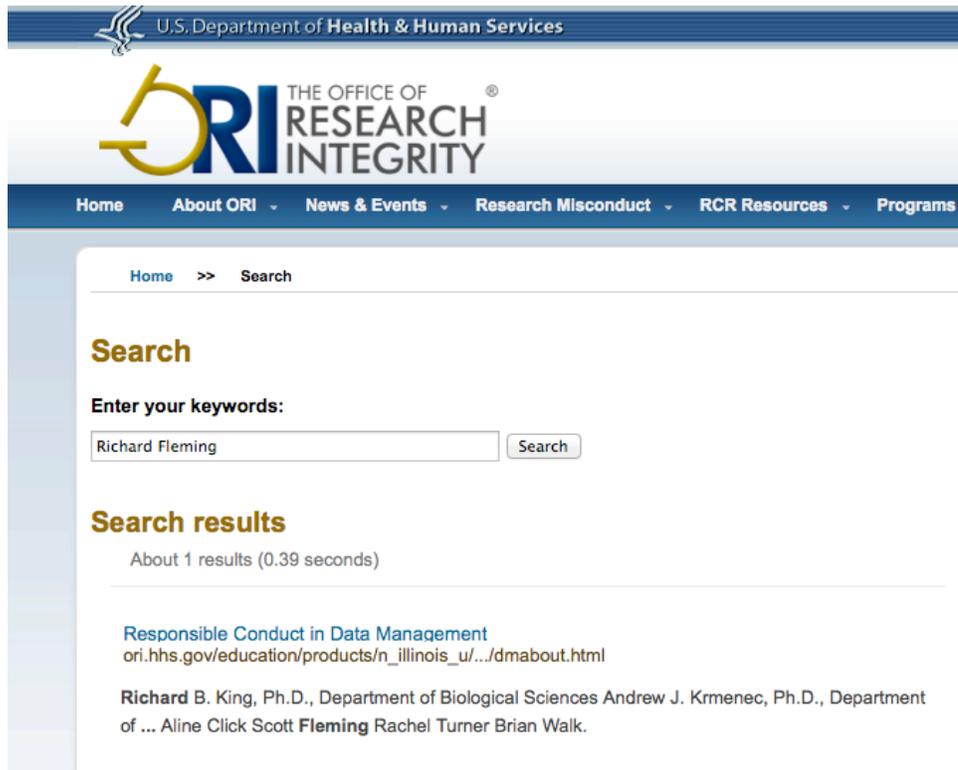
ORI's mission "is to promote integrity in research programs of the Public Health Service, both intramural and extramural, including **responding to allegations of research misconduct**.

Dr. D... is as confused as I am, given the information you have given us, [including data and data analysis] why the HHS OIG has charged you with research fraud. Emphasis added (ORI direct correspondence).

Fabrication is a very specific crime and the Office of Research Integrity

notes every instance of Fabrication it is involved in the investigation of.

Respondent did not substantively investigate this either! As noted (infra) by doing a thorough site search of ORI, which any junior high school student could do, there are no reported incidents of fabrication by Dr. Richard Fleming following ORI's involvement in this case.



The Office of Research Integrity (ORI) which is part of HHS (immediately supra) and the remainder of the Federal Government are very specific about what constitutes data fabrication; which further shows the error as a matter of law in the stipulation entered (supra) following the sidebar discussion.

§ 93.103 Research misconduct.

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research

results.

(a) **Fabrication** is **making up data** or results and recording or reporting them.

(b) **Falsification** is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(c) **Plagiarism** is the appropriation of **another person's** ideas, processes, results, or words without giving appropriate credit.

(d) Research misconduct does not include honest error or differences of opinion.

The ORI report echoed the evaluation of the report generated by the Iowa State University World Expert on Statistical Analysis of Data; viz. Professor Alicia L. Carriquiry, Ph.D. She too concluded that Dr. Fleming's data had not been fabricated or falsified and "that the data were innocent." The full report has been provided to respondent, who has again refused to consider this information by one of the leading experts in the World on research validity/fraud. The trial court record also has Dr. Carriquiry noting the research data is "innocent" of fraud. Dr. Carriquiry further notes:

Overall, there is simply no data-driven evidence that the Fleming data set is other than would be expected under a legitimate study. Haphazard falsification

Neither (1) the holographic plea, (2) the HHS-ORI site, nor (3) the Carriquiry report notes any evidence of data fabrication! The obfuscation of defense counsel's plagiarized data but falsely stipulated to as fake/fabricated data, resulted in total confusion, which would have been clarified had defense counsel

been required to take the witness stand. The facts clearly show there is nothing to indicate the data is anything but real legitimate data. The respondent has NOT provided any substantive information to the contrary nor to support its actions taken as a result. A reasonable, neutral, detached individual would find these facts and matters of law, critical in determining whether Dr. Fleming had committed any wrong doing.

(c). The trial Court does not deny Dr. Fleming's actual innocence.

On multiple occasions, Dr. Fleming has maintained that no crimes had been committed. Efforts to address this include (1) asking for professional review and evaluation of defense attorney by the Ethics Committee, (2) submitted appeals, (3) filing under 28 U.S.C. § 2255 and (4) 28 U.S.C. § 2241. The original trial Court stopped efforts by Dr. Fleming to have an Ethical Review of defense counsel by the Nebraska Counsel on Discipline, stating:

“This court has adopted its own ethical standards, and we have specifically declined to adopt other codes of professional responsibility such as those promulgated by the State of Nebraska.” *Fleming v. U.S.*, 4:10-cv-3217 (2010)

The trial Court has prevented Dr. Fleming from further establishing “ineffective assistance of counsel” through his request for the Nebraska Counsel on Discipline to investigate. *Fleming v. U.S.*, 4:10-CV-03217 (2012). Consequently, Dr. Fleming has not filed additional ethics grievances following the Courts statement

as discussed previously.

I now warn Dr. Fleming that the filing of any additional ethics grievances against Mr. Hansen with the Nebraska Counsel for Discipline or with this Court or otherwise will subject Dr. Fleming to substantial sanctions. Those sanctions may include, but are not limited to, holding Dr. Fleming in contempt of court or revoking or modifying his probation. The continued abuse of the legal process will not be tolerated.

The trial Court does not deny Petitioner's actual innocence; only that it should have been raised as a 28 U.S.C. § 2255 and not a 28 U.S.C. § 2241.

...Fleming's habeas action must be dismissed...a habeas action under § 2241 cannot be used as a substitute for a § 2255 motion. *Fleming v. U.S.*, 4:10-cv-03217 (2010).

However, a 28 U.S.C. § 2241 may be used for violation of treaty law, making it applicable for actual innocence. The Court made the following statement a year after the respondent reported that Dr. Fleming's litigation was closed. Failure to determine that litigation was still occurring and stating that all litigation had ceased, is yet another example of this subpar investigation by respondent.

"Fleming may be able to challenge his sentence or conviction in § 2241 petition..." *Fleming v. Wolfe*, 4:12-cv-03036 (2012)

Dr. Fleming's indemnification against the U.S. is currently before another Court, which has applicable jurisdiction, with the U.S. (defendant) failing to object to a single point made in the motion for summary judgment (MSJ) and statement

of undisputed facts (SUFs) relevant to that case, which is also part of the public record. Failure of defendant to deny the complaints, facts and matters of law in said action, is further “substantial evidence” as defined supra, for someone to determine that Dr. Fleming has NOT committed a criminal act. Yet, respondent failed to investigate this too. There is simply no evidence of billing fraud OR data fabrication and the district court does not deny Dr. Fleming’s actual innocence. Any reasonable person would find this information not only relevant, but also critical in determining that Dr. Fleming has committed no crime, or medical malpractice and therefore respondent has again failed to substantially investigate petitioner’s case. The investigation was subpar, arbitrary and capricious.

III. Respondent has not substantially demonstrated a need for Dr. Fleming to (a) take a medical billing course, (b) be placed on a probation for monitoring of medical practice, (c) take a professional ethics course, (d) pay a civilly liability of \$10,000, (e) be bound by any requirements stipulated to by the respondent in the 9 February 2012 decision or any other decision it has made.

If the facts and matters of law demonstrate to a reasonable, neutral, detached individual that there had not been a crime, then the punitive actions taken by respondent would be unreasonable. Failure to investigate to find these facts and matters of law demonstrates a subpar investigation. It is the failure of the respondent to consider these facts and matters of law, submitted by Dr. Fleming

but repeatedly ignored, which have lead to the erroneous conclusions and subsequent decision to punish Dr. Fleming.

Based upon the 9 February 2012 decision by the respondent, Dr. Fleming was disciplined based upon conclusions drawn by respondent from the holographic writing. Respondent's documents show it is this holographic plea, which is the reason for discipline as noted on page 4 of file number 02-09-283 of respondent's documents. As previously noted, this holographic record does not state a crime.

I billed for 78465 when I did not do rest & stress tomographic study. I submitted this claim on May 30, 2002 knowing I did not do two tomographic studies. On March 8, 2004 I used Federal Express to deliver documents that falsely reported 60 people in the soy chip study.

Based upon the facts and as a matter of law as discussed supra, Dr. Fleming has not violated the law nor committed a crime. Dr. Fleming obtained two sets of images following stressing of patients undergoing cardiac imaging to determine the extent of possible heart disease. The method employed (FHRWW[®]) has been demonstrated in the peer reviewed medical literature and at International Medical and Physics Conferences (see Appendix A) as being more diagnostically accurate than rest-stress imaging and is now copyrighted by the U.S. Government with patents pending.

Dr. Fleming has also demanded FDA action (FDA-2011-P-0596) to reduce unnecessary deaths associated with the rest-stress approach. This too is part of the

public record. Furthermore, the records demonstrate that the actual instructions for billing the procedure performed by Dr. Fleming required him to bill for the procedure exactly as he billed. Federal Courts (*Prabhu supra*) have held that as a matter of law, billing in accord with these directions, such as Dr. Fleming has done, does NOT and CANNOT constitute a crime. Therefore, requiring Dr. Fleming to take a billing course is unconscionable since (1) Dr. Fleming is not a coder or certified biller, (2) he is not the final determinant of what codes will be entered since he does not enter the computer data for billing and never has and (3) since the billing code used was actually the correct (*supra*) code to begin with, it is unconscionable that taking a billing course would result in the use of a different code.

The monitoring of Dr. Fleming's medical practice for five years has not been associated with any substantive findings or reason by respondent for doing so. FHRWW[©] which was developed by Dr. Fleming has already been demonstrated to provide a higher standard of care than rest-stress imaging. Clearly, a reasonable, neutral, detached mind would favor the use of the more accurate method (FHRWW[©]) and not the inferior rest-stress method, which results in greater costs, patient and provider exposure to radiation, time and a 35% error rate. However, if respondent and respondent's counsel wishes to use the rest-stress approach, Dr. Fleming has no objection to their doing so. He simply doesn't wish to hear them

complain about their bad results afterwards.

As demonstrated in peer reviewed medical journals and multiple specialty medical conferences, practitioners using the rest-stress approach are using the inferior method providing lower quality of care to patients and patient families. According to the most recent Iowa Appellate Court review, the respondent must demonstrate medical malpractice (*Smoker v. Iowa Board of Medicine*, No. 3-222/12-1216 Filed April 24, 2013), which it failed to do! In fact there is nothing in the respondent's record to show malpractice of any kind. A superior method appropriately billed-YES.

Similarly, respondent would demand that Dr. Fleming take a Professional Ethics course. Since Dr. Fleming did not violate his Professional Ethics, this course would have no corrective value. The Court should find it particularly interesting that Dr. Fleming notified respondent that he was then taking a law school Professional Ethics course. Respondent replied by stating that an ethics course provided in law school would be inadequate. The Court may wish to discuss this with respondent and it's counsel, for the implication is clear to Dr. Fleming.

Respondent additionally demanded that Dr. Fleming not work as a physician while it considered what to do. Efforts by Dr. Fleming to provide information that a reasonable, neutral, detached person would want to know in making relevant

decisions were continually rejected by respondent. Thus following more than a quarter of a century of medical experience, while being considered a world expert, Dr. Fleming's work was put on hold in the United States. Meanwhile physicians and scientists from other Nations studied and verified Dr. Fleming's findings and began using them to improve detection of heart disease and breast cancer for the citizens in their countries.

During this time, Dr. Fleming continued to serve as (1) a grant reviewer for the Federal Government, (2) wrote multiple peer reviewed papers based upon his work, (3) presented as a Medical Expert on his findings on National and International Television programs, (4) provided legal testimony as an Expert Witness, (5) continued to serve as a peer reviewer for more than a dozen medical journals, (6) authored multiple books, (7) published several medical textbook chapters and was (8) the medical editor-in-chief of a recent cardiology text book. Dr. Fleming also (9) submitted testimony for Congressional Review and (10) has been granted several copyrights with patents pending on improved detection, treatment and monitoring of both heart disease and breast cancer. A reasonable, neutral, detached person would have to wonder why the United States Federal Government would continue to ask Dr. Fleming to serve in these capacities if he had actually committed a crime.

Despite decades of experience and expertise, the respondent made it

impossible for Dr. Fleming to provide for his family, little lone pay the unsubstantiated civil and penalty fees, now being imposed by respondent when no facts or matter of law indicate a civil liability should even exist.

As detailed passim, respondent did not substantially investigate the facts or matters of law in this case. Rather, respondent depended upon certain individuals determined to cause personal and professional damage and harm to Dr. Fleming and his family. The investigation and subsequent actions taken by respondent are subpar, arbitrary and capricious.

IV. In bad faith, respondent has (a) failed to substantially investigated this case, (b) depended upon reports from an ex-wife and HHS agent, who had established a personal relationship focused on destroying Dr. Fleming, (c) denied being served in this case and (d) failed to prove medical malpractice while asserting it was an issue for license revocation. This bad faith demonstrates not only the failure of the respondent to attempt to provide the type of substantial evidence required in this investigation, but a malicious approach to be punitive without just cause.

On multiple occasions, Dr. Fleming attempted to make respondent aware of his actual innocence including the actions taken by Dr. Fleming, to improve the quality and outcome of patient care as well as his efforts to have the FDA address the morbidity and mortality associated with rest-stress imaging. This included providing several publications and presentations made by Dr. Fleming. Dr.

Fleming also submitted (1) a Letter to Respondent on 21 February 2012, (2) a statement of undisputed facts before the Court on 23 November 2011, (3) Medicare Validation of proper billing on 27 February 2012, (4) the motion for reconsideration on 27 March 2012, (5) the 2012 *Society of Nuclear Medicine* Poster presentation of FHRWW[©], (6) the 2012 *Society of Nuclear Medicine* Poster presentation of FHRWW[©] as independently verified by Keimyung University School of Medicine, (7) the Dept. of HHS appeal regarding information on FHRWW[©], (8) Correspondence with HHS Secretary Sebellius of 26 June 2012, (9) the District Court motion of 20 July 2012, (10) the *International Covenant on Civil and Political Rights* with MSJ and SUFs of actual innocence and indemnification for damages, (11) the Memorandum and Order of 11 May 2012, and (12) discovery pursuant to Fed. R. Civ. P. regarding the R-5 Medicare Policy and *U.S. v. Prabhu* rulings.

Respondent has refused to investigate or consider any of this information, which clearly demonstrate no crime had been committed and that physicians elsewhere in the world were confirming FHRWW[©] and beginning to apply it to improve patient care and management. The respondent has taken a position of authority to determine which tests are diagnostically useful and which are not, without the expertise or investigative evidence to know which is which. Neither the respondent nor Ms. Palmer is an expert in this field. Finally, respondent's

actions are obfuscating the facts and matters of law relevant in this case.

Respondent cannot strike these documents from the public record as they are already a part of the public record and respondent can no longer utilize the ostrich approach and pretend they are looking at a cow instead of a horse. As noted supra, respondent cannot demand that public records must be considered in one case but not in another. This violates the principle of *stare decisis*.

The focus of respondent is instead based upon information obtained from an ex-wife and HHS agent. This information as proven by the facts and as noted in the States own Exhibit E-1(8) is substantively flawed and devoid of substantial facts and matters of law. The HHS agent used the investigative powers of her office to obtain information and provide this information to Dr. Fleming's now ex-wife, for use in the divorce action. Consequently, Dr. Fleming's children were exposed to further physical and emotional abuse, until late in 2009 when the Family Court of Papillion, NE finally granted Dr. Fleming custody of his youngest child, who was the only child still remaining with the ex-wife. The report also shows the agent provided false information to Mary Nelson at the Iowa Board, stating Petitioners case was over and that he had failed to request further litigation.

“Dr. Fleming’s deadline to appeal the Judgment has passed and he did not file an appeal and there are no matters relating to the case that are pending at this time.”
(File 02-2009-0283 from Iowa Board of Medicine Investigative Report.)

This statement is blatantly false and there is no evidence presented by respondent to demonstrate they investigated the validity, or lack of validity to this statement or any other information obtained during their “investigation.”

Respondent took this misinformation as factual, relied upon it and finally acted upon it. The public record shows this was false! Efforts by Dr. Fleming to provide factual documents refuting the misinformation and trying to provide respondent with the necessary information available for their investigation, were ignored and refused by the respondent. This included but was not limited to *inter alia* incorrect statements about medical licensure, board certification, et cetera.

Unquestionably, both the HHS agent and Ms. Haag (ex-wife) have attempted to destroy Dr. Fleming’s career *inter alia* and having focused elsewhere, now turned their attention to the respondent. Even after respondent had been notified that the ex-wife had physically and verbally abused Dr. Fleming’s children, the respondent failed to act to consider the validity of Dr. Fleming’s information and the invalidity of information they received from Ms. Haag and the HHS agent.

Furthermore, the HHS agent, failed to take action within Nebraska proper where the physical and mental abuse of the Fleming children was occurring. Eventually, Dr. Fleming got to see black and white photographs of his abused children, resulting from a failure of authorities to act upon Dr. Fleming’s concerns

– until it was too late to prevent the physical and psychological damage done to his children! Dr. Fleming has also been “privileged” to see these photographs along with the non-physical scars and psychological damage done to his children after the Family Court finally awarded him custody. Two of his children continue to live with him while the third lives independent and away from her mother.

Further proof of blatant bad faith demonstrated by respondent was provided by the Court on 7 March 2013, when Dr. Fleming received notification from the Court that respondent had reported to the Court that they had not been served pursuant to Iowa Rule of Civil Procedure 1.302(5). As shown in Appendix B, the respondent presumably denied having received these documents, resulting in Dr. Fleming submitting documentation to the Court showing respondent had in fact been served. These are part of the permanent Court records and are not subject to removal.

On 7 July 2013, also shown in Appendix B, Dr. Fleming identified a number of other issues demonstrating respondent’s *bad faith* and *non-responsive conduct* showing unashamedly subpar efforts to substantially determine either factual truth or matters of law. Finally, Dr. Fleming’s response submitted on 2 May 2013 (Appendix C) established additional details showing failures on the part of respondent to substantially investigate this case, as well as his request that the Court take certain actions in response to respondent’s behavior. Respondent has

repeatedly tried to ignore the information submitted to it by the Dr. Fleming and choose instead to make conclusions, based upon the biased unsubstantiated information provided by these two witnesses, who have continually been shown to provide incorrect information. Appendix B and C are part of the permanent record.

Finally, Appendix D discusses the issue of Medical Malpractice, which like the facts and matter of law discussed passim yielded no substantial information by respondent to support this either. Since, the HHS agent's comments regarding the medical value of tests, for which she is not qualified to testify as an expert witness, have no substantive investigative value from which a reasonable person could make a probative decision, Dr. Fleming need only draw the Court's attention to this attached documentation, to prove the HHS agent's information is both irrelevant and unreasonable and was not substantially investigated by the respondent. Again, the information in these appendices is already a part of the public record and cannot be placed back in the genie's bottle.

Such *reckless*, *disrespectful* and *deceitful* behavior by respondent to remove from the record that which is already a part of the public record, as well as the repeated failure to substantively investigate this case including the misinformation provided by the HHS agent and Ms. Haag, as has been repeatedly shown here more than qualifies as behavior which is reckless and in bad faith on the part of the respondent. The federal codes define reckless as behavior, which is not *reasonable*

and prudent.

(a) No person shall ... or in a manner other than what is reasonable and prudent ... having regard to the actual and potential hazards existing. 32 C.F.R. § 263.6

The SCOTUS has also held that *reckless* behavior exists when the party knowingly disregards the facts before it, as has the respondent.

if (1) he is reckless as to the fact ... he is aware. . . but **disregards the ... fact** ... and (2) knowingly (emphasis added) *U.S. v. Bailey*, 444 U.S. 394, 409 (1980)

The Iowa Supreme Court has further held that the use of “uneven bargaining power” also represents bad faith. Respondent coerced Dr. Fleming to not practice medicine during this subpar investigation.

2. Due to the “uneven bargaining power ... extra leverage the tort of bad faith would provide to even the positions;” *Dolan v. Aid Ins. Co.*, 431 N.W.2d 790, 791 (Iowa 1988)

When bad faith is present, the SCOTUS has held that remedies for the Petitioner are available.

...entitled to \$917,684.82 ...that, together, constituted bad faith-specifically, the government's litigation of the issues of consent, privilege, and contributory negligence in bad faith and the government's prelitigation conduct. *Rodriguez v. U.S.*, 542 F.3d 704, 712-13 (9th Cir. 2008)

The substantive evidence provided by Dr. Fleming, which respondent has failed to consider or investigate, demonstrates that both the facts and the matters of

law, clearly demonstrate that Dr. Fleming has not committed a crime and that medical malpractice has not occurred. The respondent has failed to investigate, obtain or evaluate this information before making its decision to discipline Dr. Fleming. As noted (*supra*), as a *matter of law*, no crimes were committed and the Iowa Court of Appeals has held that the Iowa Board of Medicine must provide substantial evidence for a reasonable mind to reach the agencies conclusion.

... **“Evidence is not substantial when a reasonable mind would find the evidence inadequate to reach the conclusion reached by the agency.”** *Id.* (internal quotations omitted). “We are bound by the agency's factual findings unless a contrary result is demanded as a matter of law.” *Id.* (emphasis added) (internal quotations omitted). *Smoker v. Iowa Bd. of Med.*, 834 N.W.2d 83 (Iowa App. 2013)

In the absence of convincing a reasonable person they would agree with the respondent after reviewing the relevant facts and matters of law submitted to respondent by Dr. Fleming, but which the respondent repeatedly ignored, a reasonable person would conclude that the respondent failed in its investigation and did not provide the readily available facts and matters of law which substantially addresses the petitioner's case. As defined by the Iowa Court of Appeals, this subpar investigation fails the respondent's obligation as defined by state statute and should be reversed. It furthermore demonstrates a reckless bad faith approach by the respondent.

V. Respondent has failed to file an objection to or disagree with any of the following facts, which are both (1) a part of the public record and (2) should be granted to petitioner as a matter of law.

When the respondent fails to object to facts and matters of law submitted to a Court and when as a matter of law, petitioner should be granted judgment as a result, the Court should grant said judgment and damages to petitioner. This case began almost five years ago and respondent has failed to object (*infra*) to any of the following statement of undisputed facts (SUFs).

1. Respondent failed to substantially investigate the accusations made against Dr. Fleming, as required by *Smoker v. Iowa Board of Medicine*, No. 3-222/12-1216.
2. Respondent demonstrated bad faith in its investigation of Dr. Fleming, demonstrating willful, wanton and malicious actions with scienter.
3. The holographic plea stipulated to by Dr. Fleming does not state a crime.
4. Respondent unjustifiably and unreasonably depended upon two individuals with a vendetta and failed to investigate sources of validated facts and matters of law, which are part of the public record.
5. Respondent prevented Dr. Fleming from providing for his family by prohibiting his practicing Medicine.

6. Respondent failed to substantially investigate Dr. Fleming's medical care and failed to demonstrate medical malpractice or concerns with patient care and management.
7. Respondent failed to investigate FHRWW[©] to determine if Dr. Fleming had developed a better method for detecting heart disease, reducing morbidity, mortality, costs, time and radiation exposure of patients and health care providers.

Respondent argues that a MSJ is "generally not allowed" quoting *City of Sioux City v. GME*. However, a full reading of the case shows that the Court held that such a motion *is allowed* for consideration of the "facts" of the case.

Despite this general disapproval of summary judgment motions on judicial review of contested case proceedings, we have allowed such a motion to be considered as a motion for review on the merits **when the facts of the case were not in dispute**. (emphasis added) *Dillehay*, 280 N.W.2d at 424. *City of Sioux City v. GME, Ltd.*, 584 N.W.2d 322, 324 (Iowa 1998)

Respondent has never provided specific facts to dispute petitioner's SUFs as required (infra) by the Court. The Iowa Supreme Court further went on to support the use of default judgment noting this did NOT exceed the statutory agency authority.

We conclude the district court correctly applied the law in reaching its conclusion. ... does not violate Iowa Code ... **and is not in excess of the agency's statutory**

authority. ... a procedural rule designed to assure smooth operation of the agency and provide greater procedural protections to litigants. ... The district court correctly upheld the agency action and the entry of default judgment against the City is affirmed. (emphasis added) *City of Sioux City v. GME, Ltd.*, 584 N.W.2d 322, 326-27 (Iowa 1998)

The respondent has not refuted, objected nor disagreed with a single item within the SUFs, the prior submitted Memorandum of Law, nor the previously submitted MSJ. The Iowa Supreme Court has held that respondent must provide specific facts in showing a dispute in the MSJ and SUFs to demonstrate a dispute.

When a motion for summary judgment is made ... an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him. *Schulte v. Mauer*, 219 N.W.2d 496, 499 (Iowa 1974)

The respondent has NOT provided such specific facts nor has the respondent denied the MSJ, SUFs nor the Memorandum of Law originally filed with its appended material. Respondent simply decided to talk about other obfuscatory issues in the hope that the Court would not notice.

‘The purpose of the summary judgment is to enable a party to obtain judgment promptly and without expensive trial where there is no fact issue to try. *Jensen v. Voshell*, 193 N.W.2d 86, 88 (Iowa 1971). See also *Gruener v. City of Cedar Falls*, 189 N.W.2d 577, 580 (Iowa 1971). *Schulte v. Mauer*, 219 N.W.2d 496, 499 (Iowa 1974)

The respondent has failed to factually object to the prior MSJ or to the SUFs (supra). The time limit for respondent to object has long since passed. As such, this Court should immediately grant judgment for Dr. Fleming.

These facts and matters of law which are part of the public record, substantively, procedurally and substantially support the SUFs as specified and demonstrate beyond a reasonable doubt that respondent failed to provide a substantial investigation as defined in *Smoker v. Iowa Board of Medicine*, No. 3-222/12-1216. Judgment should be immediately granted to Dr. Fleming.

VI. Respondent prevented Dr. Fleming from earning a living to care for his family during respondent's subpar investigation as well as preventing Dr. Fleming from providing care for his patients, which they had come to rely upon.

On 7 October 2010, Dr. Fleming agreed not to practice medicine while respondent investigated this case. However, respondent did not investigate this case to find the type of facts and matters of law, which would allow a reasonable person to probatively understand the facts and matters of law in this case. Instead, respondent arbitrarily and capriciously took the word of two individuals who sought to harm Dr. Fleming and his children. Respondent failed to investigate the public record. Respondent failed to investigate facts and matters of law provided by Dr. Fleming.

Having lost his ability to provide for his family, including food, shelter,

clothing and education, Dr. Fleming nonetheless continued to demonstrate and litigate his innocence, in addition to making his knowledge available to other physicians and scientists around the world, allowing for the improved detection and treatment of people with heart disease and breast cancer. As noted in Appendix E, this knowledge and compassion has even been recognized and commended by Senator Charles Grassley; ranking member of the U.S. Judiciary Committee. This is also a part of the public record.

While the Court can return Dr. Fleming's active medical license and perhaps partially restore his and his children's confidence in the justice system, it will never be able to compensate for the emotional and financial damage done to the Fleming family. Dr. Fleming will not be able to reestablish his medical career and he now asks for damages caused by the bad faith and subpar, inadequate, arbitrary and capricious investigation by respondent. Dr. Fleming continues to feel an obligation to reduce the unnecessary deaths associated with the diagnostic methods, which miss critically ill individuals and fail to adequately monitor treatment effect, resulting in unnecessary morbidity and mortality of Iowans and other American citizens.

With the encouragement of others to do so, Dr. Fleming will continue to work toward the full implementation of these methods in the United States in an effort to continue to improve the quality of medical care provided to Americans,

just as other countries are now implementing these methods developed by Dr. Fleming in their countries; in the same fashion he did to overcome the ignorance associated with the cause of heart disease (i.e. inflammation vs. cholesterol alone).

Dr. Fleming *again* asks this court to find that the respondents answers and actions were and continue to be non-responsive and in bad-faith, and for the original petition for immediate stay, reversal and granting of damages in keeping with recent Iowa Appellate Decisions (*Smoker v. Iowa Board of Medicine*, No. 3-222/12-1216 Filed April 24, 2013) be made and to base the award on the Federal Governments calculations (http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/AMGA_08_data.pdf, Accessed March 23, 2013) beginning with the date respondent required cessation of medical licensure activity, per diem for life. Based upon this Federal Government report, actual damages are \$379,975 per annum with a calculated monthly payment of \$31,665. These damages began 7 October 2010 equaling \$1,266,585 as of 6 February 2014.

SUMMARY

As Friedrich Nietzsche stated “People don’t want to hear the truth because they don’t want their illusions destroyed.” So it is with the respondent and respondent’s collaborators in the obfuscation of the facts and matters of law, which a reasonable person would find not only relevant but also necessary to determine the

error in respondent's hearsay testimony. Dr. Fleming is not asking this Court to alter another Courts decision. That is currently being addressed elsewhere, where there is appropriate jurisdiction for doing so! Rather, Dr. Fleming is asking this Court to rule on (a) the subpar, arbitrary and capricious investigation of the respondent as clearly established by the facts and matters of law, which are a matter of public record and the subsequent harm that has occurred as a result of respondent's commission and (b) the omissions resulting from the scienter ignoring of such public records/information. The holographic pleading does not and never has stated a crime and as a matter of law and facts, the Courts have ruled that physicians following the Government instructions on billing codes cannot be found guilty of a crime. No defendant and no respondent, including this one, have EVER refuted this!!!

Dr. Fleming and other scientists and physicians around the world have demonstrated that FHRWW[©] is more accurate in the detection of heart disease, uses less radiation, takes less time and saves an estimated 100,000 to 140,000 American lives every year by finding the critical disease so often missed by rest-stress imaging. The billing code for that procedure is clearly defined by the Federal Government, supra. FHRWW[©] has been independently confirmed and utilized in both Europe and Asia. The soy work too has been independently confirmed!

These findings, results and billings are no more a crime than washing hands to prevent neonatal mortality in hospitals. This example is particularly apropos since it

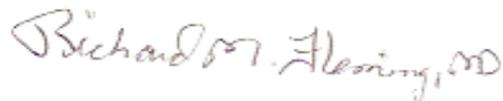
was another physician with Scottish ancestry who lost his medical license by insisting that the death rate of newborns could be dramatically reduced by “hand washing” instead of opening windows in the hospital to remove the “miasma” which everyone then “knew” was the cause of the newborn deaths. In the end, this physician lost his medical license but was correct. When hospital personal washed their hands between handling different infants, neonatal mortality plummeted. The same is true of FHRWW[©]. The only question, is whether the Iowa Courts will allow the respondent to make the same mistake, or whether the Court will learn from history and avoid making the same mistake. Knowledge represents advancements, not crimes. The University of Iowa College of Medicine encouraged us to advance the field of medicine. The time for pretense is over. Cometh the hour!

The respondent has now made it a crime to advance medical care and treatment. The use of the misinformation from and the actions taken by individuals with vendettas against Dr. Fleming does not equal a substantive investigation by the respondent into the facts or matters of law. The action and inaction taken by respondent equals a blatantly subpar, arbitrary and capricious investigation into the facts and matters of law in this case. Dr. Fleming asks that this Court issue an order for compensation by reversing the actions taken by the respondent, a formal public letter of apology from respondent, as well as financial compensation which as of 6 February 2014 is calculated at \$1,266,585 per Federal report (supra) with an

additional \$31,665 to be paid monthly for life, as noted supra for respondents actions, as well as any other damages the Court deems appropriate.

Date: 26 February 2014

Respectfully submitted,

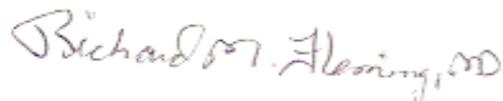


Richard Max Fleming, M.D.
7000 Mae Anne Avenue, # 523
Reno, Nevada 89523
rmfmd7@hotmail.com

CERTIFICATION

I CERTIFY THAT THIS DOCUMENT HAS BEEN SERVED ON THE RESPONDENT BY FAX TO MS. JULIE J. BUSSANMAS AT 5152814209.

Date: 26 February 2014



Richard Max Fleming, M.D.

Appendix A

CURRICULUM VITAE

NAME: Richard M. Fleming, M.D.
F.A.S.N.C. (Diplomate), F.A.C.P., F.A.S.A.
Preventive & Nuclear Cardiologist, Internist,
Researcher & Author
Concord Law Student

CURRENT POSITION: Cardiologist, Reno, NV & Cardiovascular
Consultant

PRESENT TITLES: Nuclear & Preventive Cardiologist
Reno, NV

BIRTH DATE: 02/17/56

CHILDREN: Stephanie Erin Fleming
Christian Michael Fleming
Matthew Ryan Fleming

CITIZENSHIP: USA.

EDUCATIONAL EXPERIENCE**UNDERGRADUATE EDUCATION:**

University of Iowa, Iowa City, Iowa, Undergraduate Studies, Jan. - May
1976.

Hawkeye Institute of Technology, Waterloo, Iowa, Emergency Medical
Technician – Ambulance (07-29-07), 1977 - 1978.

University of Northern Iowa, Cedar Falls, Iowa, BA. General
Science/Physics, Biology, Psychology; Minor in Chemistry, Graduated *Cum
Laude*, 1980.

GRADUATE EDUCATION:

University of Northern Iowa, Cedar Falls, Iowa, Graduate Studies in Psychology, 1980 - 1981. Prof. Gordon Harrington (Mentor)

DOCTORATE EDUCATION:

University of Iowa Medical School, Iowa City, Iowa, Medical Doctorate, *Graduated with Honors Program - Internal Medicine*, 1986.

Concord Law School, January 2010- December 2013.

Honors 2010 and 2012.

2012 Legal Analysis and Writing Award for Best Memorandum of Law for Defendant.

POSTGRADUATE TRAINING:

Internship, University of Iowa Program B, 1986-1987

Internal Medicine Residency, Creighton University, Omaha, Nebraska, 1987 - 1989.

Cardiology Fellowship, University of Texas at Houston, Houston, Texas 1989 - 1992. Dr. K. Lance Gould (Mentor-PET)

Institute for Nuclear Medical Education, Boulder, Colorado, 1991.

Principles of Radiation Physics
Medical Radiation Instrumentation
Medical Radiation Protection
Radiopharmaceuticals and Chemistry.

Cardiolite Clinical Training Program (Nuclear Cardiology) - 1991

Positron Emission Tomography (PET) Certification 1991 - 1992

TEACHING POSITIONS

UNDERGRADUATE

Instructor, (Classes through Department of Physical Education),

Cardiopulmonary Resuscitation and First Aid, University of Northern Iowa, Cedar Falls, Iowa 1976 - 1979.

Laboratory Instructor, Department of Biology, University of Northern Iowa, Cedar Falls, Iowa 1977 - 1980.

GRADUATE

Graduate Teaching Assistant, Department of Psychology, University of Northern Iowa, Cedar Falls, Iowa 1980 - 1981.

MEDICAL SCHOOL

Phlebotomist and Trainer, University of Iowa Hospitals and Clinics, Iowa City, Iowa 1982-1983.

CPR – Basic (Affiliate Faculty) and ACLS (I/T) Assistant for classes at University of Iowa, Iowa City, Iowa, 1982-1984.

CARDIOLOGY

Clinical Instructor/Cardiology Fellow, Department of Cardiology, University of Texas Health Science Center at Houston, Houston, Texas, 1989-1992.

Director of Nuclear Cardiology and Lipid Research, the Center for Clinical Cardiology & Research, Iowa, 1992–1995.

Development Effort of a Nuclear Technologist Program for Methodist College, Omaha, NE, with Pat Sullivan, July 1998-April 1999.

Clinical Service Association, Department of Cardiology, Creighton University, Omaha, NE, 1999-2004.

The Fleming Heart & Health Institute, Omaha, NE, 1999-2004

Veterans Administration Health Care System, February 2005 – Present.
Gulf Coast Veterans Health Care System, Biloxi, MS, 2005-2007
VA Central Iowa Health Care System, Des Moines, IA, 2005-2008
VA Sierra Nevada Health Care System, Reno, NV, 2005-2007

Exercise Stress Testing Certification Director for IM Residents,
2005-2007

Electrocardiogram Conference Director for IM Residents,
Morning Report, 2006-2007

Nuclear Cardiology Reviewer, January 2006-2007

Physician Services Contractor – Inspecting Military Medical Facilities, 2007

Cardiologist, Cardiovascular Institute of Southern Missouri, Poplar Bluff,
MO, 2008-2009

Cardiology Consultant. Reno, NV. 2005-Present.

RADIATION ONCOLOGY

Adjunct Assistant Professor, Radiation Oncology Department, University of
Nebraska Medical Center, Dr. Charles Enke, September 1, 2000 – December
5, 2005.

PHYSICS

Adjunct Professor, Department of Physics, Hampton University, Hampton,
VA Proposed 2005, Studies in Development with FH Washout.

HOSPITAL, CLINIC, CONSULTATIVE or INSTITUTE APPOINTMENTS

STAT Care Physicians, Houston, Texas 1990-1992

San Jacinto Methodist, Baytown, TX 1991-1992

Twelve Oaks Hospital, Houston, TX 1990-1992

Gulf Coast Hospital (now closed), Houston, TX 1990-1992

Westbury Hospital, (now Cornerstone Hospital of Houston), Houston, TX
1990-1992

Center for Clinical Cardiology and Research, 1992-1995

Delaware County Memorial Hospital, Manchester, Iowa, 1992-1993

Virginia Gay Hospital, Vinton, Iowa 1992-1993

Acute Care, Inc., Ankeny, Iowa 1993-2002

Sartori Memorial Hospital, Cedar Falls, Iowa 1993-1994

Pella Community Hospital, Pella, Iowa 1994-1994

Buena Vista Regional Medical Center, Storm Lake, Iowa 1994-1996

Marshalltown Medical and Surgical Center, Marshalltown, Iowa 1994-1994

Consultants in Cardiology (clinic facility known as Midlands Medical

Clinic), Dr. Vincent Miscia, Omaha, Nebraska, 1994-1995
Floyd Valley Hospital, LeMars, Iowa, 1995-1996
Our Lady of Lourdes Hospital (now Faith Regional), Norfolk, Nebraska
1995-1996
Heartland Medical Clinic, Omaha, Nebraska, 1995 - 1996
Saint Joseph's Hospital, Omaha, Nebraska, 1987 - 1989
Medical Director & President, Integrated Physicians of Nebraska, PC, 1996-
1999
Columbus Community Hospital, Columbus, NE. Consulting Physician,
1998 - 2002.
MDS Harris Consultant, Lincoln & Omaha, NE 1998-1999
Shenandoah Memorial Hospital, Shenandoah, IA, 1998-2001
Missouri Valley Hospital (now Alegen Health Community Memorial
Hospital),
Missouri Valley, IA, 2000-2001
The Fleming Heart & Health Institute, Omaha, NE, 1999 – 2004
Creighton University Medical Center, Omaha, NE, 1999-2004.

The Camelot Foundation (Not-for-Profit), 2000-2005
University of Nebraska Medical Center, Adjunct Professor,
Department of Radiation Oncology, Omaha, NE, 2000-2005.
Hampton University, Center for Advanced Instrumentation, Adjunct
Professor, Department of Physics, Hampton, VA, Proposed 2005
Veterans Administration Hospital, Biloxi, Mississippi. 2005-2007.
Veterans Administration Hospital, Des Moines, Iowa. 2005-2008.
Veterans Administration Hospital, Reno, Nevada, 2005-2007
Inspector for Military Medical Facilities, 2007
Poplar Bluff Regional Medical Center, 2008 - 2009

LICENSURES

Iowa License # 26135, July 1, 1987-2014
Nebraska License # 17502, August 10, 1987- Oct 1, 2004 (Inactive)
Texas License #H7414, June 12, 1990 - Feb 28, 2004. (Inactive)
Illinois License #036-108577, February 11, 2003 – July 31, 2005 (Inactive)
Oklahoma License #24141, July 23, 2004 – July 1, 2005 (Inactive)
Missouri License #2005031306, September 26, 2005 (Inactive)
Radioactive Material License L04513 Texas, 1991
Radioactive Material License 0232-1-57-M2 Iowa, 1992
Radioactive Material License 01-91-01 Nebraska, 1999-2004.

CERTIFICATION EXAMINATIONS

Flexner Examination, Iowa State Board of Medical Examiners Components I & II, June 1986.

American Board of Internal Medicine September 12, 1990 (#126107)
Re-certification started 2005

Hazard Communication Training, UTHSCH, Jan. 1990

Nuclear Medical Education 1991

Medical Radiation Protection (Completion & Competency)
Radiopharmaceuticals and Chemistry (Completion & Competency)
Principles of Radiation Physics (Completion & Competency)
Medical Radiation Instrumentation (Completion & Competency)

Technetium generator eluting, quality control and disposal, 1991

Fundamentals of PET and Computer Applications, March 1992

Interpretation of Percent Diameter Stenosis from Coronary Arteriograms, (#001)
April 1994

Board Certified/Diplomate in Nuclear Cardiology, October 22, 1996 (#125)
The Certification Council of Nuclear Cardiology (CCNC).
www.cbnc.org/status.cfm

PROFESSIONAL ORGANIZATIONS

Premedical

Beta Beta Beta Biological Honor Society, Delta Iota, 1978.

Officer of Tri-Beta Biology Honor Society, University of Northern Iowa, 1978 - 1981.

Medical School

Caduceus Medical Education, University of Iowa College of Medicine,

Vice - President 1981
President 1982.

Law School

American Constitution Society, March 2010.

Student Bar Association, March 2010.

Vice-President Candidate, Concord Law School. 2010.

Scientific Societies

Physicians for Social Responsibility, 1982 - 1987.

American Association for the Advancement of Science, Member, 1992 - 1998

New York Academy of Sciences. Full Member 1994 - 1996

American Medical Student Association 1981 - 1998.

American Medical Association, 1986 - 1998, 2006 - Present. 01803861800

Member of the American Board of Radiation Safety (ABMRSO) Officers, 1992 - 1998.

Fellow of the American College of Angiology, 1990.

American Association for Nuclear Cardiology Full Member, 1992 - 1996.

Founding Fellow American Society of Nuclear Cardiology, 1996.

Fellow International College of Angiology, 1994.

Fellow American College of Physicians/American Society of Internal Medicine, 2000.

Fellow American Society of Angiology, 2006.

Specific Invited Medical Colleges

American College of Physicians 1986

Associate 1986 - 1991

Member 1991 - 2000 (00025926)

Fellow 2001 – Present.

Fellow American College of Angiology 1992

Fellow International College of Angiology 1994

Diplomate - American Society of Nuclear Cardiology 1996

International Society for Heart Research 1996

Fellow of the American College of Physicians-American Society of Internal
Medicine,
2000.

Fellow of the American Society of Angiology, 2006

Medical Societies

American Medical Association 1986 - 1999

Texas State Medical Society 1990 - 1992

Harris County Medical Society (Texas) 1990 - 1992

American College of Angiology 1992

Iowa State Medical Society 1993 - 1995

International College of Angiology 1994

American Society of Nuclear Cardiology 1996.

International Society for Heart Research 1996

Non-Medical Organizations

Promise Keepers 1994

The Omaha Club 1996 - 2000

The Greater Omaha Chamber of Commerce 1999

Committee Chair Pack 60 Cub Scouts 2001 - 2003

Committee Chair Troop 461 Boy Scouts 2002 – 2003

Board of Trustees, Mid-America Council, BSA, 2003 – 2004

Knights of Columbus, 4th degree, 2003.

American Heart Association

American Heart Association - Iowa Heart Affiliate, 1976 - 1989.

Basic Life Support Instructor, 1976 - 1981.

Basic Life Support Instructor - Trainer, 1981 - 1986, and 1992 - 1994

Advanced Cardiac Life Support Instructor, 1986 - 1988, 2006 - Present.

President of the Pottowattamie Unit, Iowa Heart Association, 1988 - 1989.

Physician Cholesterol Education Faculty - Iowa Heart Association, 1988 - 1989.

American Heart Association - Nebraska Affiliate 1995 - 1996

American Heart Association, Member on **the National Council on Circulation**, 1990 - Present.

Nominated for **National Council - Nutrition Committee**, American Heart Association. September 2001.

Advanced Cardiac Life Support, *Experienced Provider*, November 2006 -

2012.

Advanced Cardiac Life Support, *Experienced Provider Faculty*. 2007-
Present

COMMITTEES

Policy Committee for the Iowa Heart Association, Standards for Performing and Certifying in BCLS, 1988 - 1989

Call for Help Committee, Iowa Heart Association, 1988 - 1989

Member for Proposed Board of American Association for Nuclear Cardiology (AANC), 1992 - 1997

Member of the American Board of Medical Radiation Safety Officers (ABMRSO). 1992 - 1997

American Heart Association - Nebraska Affiliate
Program Committee for Douglas County, 1995 - 1997
Program Committee for Sarpy County, 1995 - 1997

Board Member of Nebraska Heart Association
Douglas County March 1995 - 1997
Sarpy County March 1995 - 1997

Training and Credentialing Committee - American Society of Nuclear Cardiology
CCNC Examination Committee 1997 - 2002
CCNC Sub-Chairman 1997 - 2002

Member of Advisory Board, University of Northern Iowa, College of Natural Sciences Industrial Advisory Board, 1997 – 2005.

Our Healthy Community Partnership - Health Advisory Board 1997 - 1999.

Roundtable member for National Meeting "Build a Better Bridge: Improving working relations, communications, and referrals between traditional and alternative health care." American Chiropractic Association Headquarters, Arlington, VA, March 23, 1998.

Advisor for the TriCor (fenofibrate) Advisory Meeting - April 17, 1998, Chicago, IL (Abbott)

Board Member of the National Training and Credentialing Committee American Society of Nuclear Cardiology (with ACC and AHA) 1999 - 2002.

International College of Angiology **Board Member**, July 2000 - 2001.

Co-Chairman of Membership Committee for the International College of Angiology, July 2000 - 2001.

Consultant to Advisory Meeting: "Increasing Cardiac Oxygen Efficiency: The Missing Piece in the Management of Chronic Ischemic Heart Disease." New Orleans, LA, November 11, 2000.

Nominated to **Editorial Board** Preventive Cardiology, October 2001.

Advisory Board Member for The American Breast Cancer Guide, February 2002.

Lipid consultant board. Abbott pharmaceutical company. May 10-11, 2002.

Reviewer for Lipid abstracts for American Heart Association, 2001 – Present.

ICU Education Committee, Sierra Nevada Health Care System. 2006 - 2007.

PBRMC (Poplar Bluff Regional Medical Community) D2B (Door-to-Balloon) Cath Lab Activation Protocol Committee. 2008.

HONORS, AWARDS AND RECOGNITIONS

Iowa High School Science Student, *Physics* Competition, 1973 - 1974.

American Association of Retired Persons, Medical Scholarship, 1985 - 1986.

Senior Honors in Internal Medicine, University of Iowa, 1985- 1986.

Allen Memorial Foundation Service Award, Allen Memorial Hospital, Waterloo, Iowa 1989.

American Heart Association, *Iowa Affiliate Faculty Award*, 1989.

Who's Who Among Rising Young Americans, 1991

Nomination and Approval for Fellowship, American College of Angiology. 1992

Recommended to Governor of Iowa as Future Member of the Iowa State Board of Health. 1994 and 2000.

Nomination and Approval for Fellowship, International College of Angiology. 1994.

Nominated for the Young Investigator Award. Presentation 41st Annual World Assembly, American College of Angiology. San Antonio, Texas October 1994.

Invited to present on lipid management at the 5th World Congress on Heart Failure, Washington, DC, May 1997

Strathmore's Who's Who - July 1997, Lifetime Member

Advisory Panel to Graduate Dean of Sciences, University of Northern Iowa, July 1997.

Nominated for the John B. Chang International College of Angiology Award, 1998.

Co-Chair *Atherosclerosis Session*, 40th Annual World Congress, the International College of Angiology Meetings, Lisbon, Portugal, 28 June - 3 July, 1998

National Advisory Board for America Talks Health Network - Expert in Field of Cardiology. April 1998.

KRTK FM 97.1 Nationally Syndicated Radio Talk Program America Talks Health", "Award for 1998 Breakthroughs in Heart Disease" Dr. Keith

Robinson, Houston, TX 23 January 1999.

Co-Chair *Coronary Artery Disease* - I Session, 41st Annual World Congress, the International College of Angiology Meetings, Sapporo, Japan 7 July 1999

Co-Chair *Basic Research* - I Session, 41st Annual World Congress, the International College of Angiology Meetings, Sapporo, Japan 7 July 1999

Chairman *Atherosclerosis* Session, 41st Annual World Congress, the International College of Angiology Meetings, Sapporo, Japan 7 July 1999

Co-Chair Prognostic Implications of Risk Factor Modification, American College of Cardiology meetings, Anaheim, CA, March 2000.

Honorary Lecturer at the American College for Advancement in Medicine, the Denham Harman Lecture, Inflammation and Coronary Artery Disease (The Fleming Unified Theory of Vascular Disease), Dallas, TX, May 5, 2000.

Invited presenter for the USDA Research Program on Health and Nutrition Effects of Popular Weight-Loss Diets Public Meeting. Request for Deputy Secretary Dr. Kennedy to present both **Oral and Written Testimony** entitled "*Obesity and Related Health Problems are the Result of Too Many Calories and Too Much Saturated Fat Regardless of the Misconceptions Promoted by Many Popular Weight Loss Programs*". January 11, 2001. USDA South Agriculture Building, Jefferson Auditorium, Washington, DC.

Abstract Evaluator for University of Nebraska Medical School 5th Annual Cardiovascular Disease Symposium, Omaha, NE February 9, 2001.

Keynote speaker at the 5th Annual International Congress of BioEnergetic Medicine. Orlando, Fl., May 26, 2001.

Abstract grader for "Lipid Disorders and Lipoprotein Metabolism" to be presented at the American Heart Association Scientific Sessions. June 2001.

Member of the Selection Team for "Lipid Disorders and Lipoprotein Metabolism" for the November 2001 Scientific Sessions of the American Heart Association. July 2001.

Co-Chair and Moderator for "Cholesterol-Rich Lipoprotein Metabolism" session, 2001 Annual Scientific Sessions of the American Heart Association. Anaheim, CA, USA, 14 November 2001.

Reviewer for the Asia - Pacific Forum "The Genomics Revolution: Bench to Bedside to Community" and the 42nd Annual Conference on Cardiovascular Disease Epidemiology and Prevention." Honolulu, Hawaii, USA, 23-26 April 2002.

Member of the Selection Team for "Lipid Disorders and Lipoprotein Metabolism" for the Scientific Sessions of the American Heart Association. 2002, 2003 and 2004.

Invited Guest of the American Dietetic Association, 85th ADA Annual meeting, Philadelphia, PA 19-22 October 2002.

Physician of the Year Award 2003, Washington, DC, February 25, 2003.

Co-Chair for Health and Nutrition Session, American Oil Chemists Society, Kansas City, MO, May 7, 2003.

Member of ABC news expert group on Diet and Nutrition. 2004 – Present.

Member of ABC news expert group on Cardiovascular Disease 2005 – Present.

Second place/runner-up poster presentation, "What effect do isocaloric low-fat, low-carbohydrate and moderate-fat diets have on obesity and inflammatory coronary artery disease?" 8th International Conference, Vascular Endothelium: Translating Discoveries into Public Health Practice. Sponsored by the CDC, Crete, Greece, 29 June 2005.

Invited member of Speakers Bureau for Society of Nuclear Medicine (Molecular Imaging) 19 March 2008.

Nominated for Board of Directors, Cardiovascular Disease for the American Society of Nuclear Medicine. April 2011.

Chair. Session 302: Cardiac CT, SPECT/PET, Angiography and Cardiac Magnetic Resonance. 4th Annual International Conference of Cardiology.

Guangzhou, China, Dec. 2-4, 2012.

Moderator Chair for Toronto International Pharmacy Symposium. Toronto, Canada, September 27-29, 2012.

Certificate of Excellence ABM International Science and Technology Development, Inc. Toronto, Canada, September 28, 2012.

Reno 100 Most Influential People. Superhero award for work in Medicine including *B.E.S.T.* and *FHRWW* Imaging. June 27, 2013.

SERVICE TO COMMUNITY (Including talks, radio, TV and newspaper):

Training/Lectures:

CPR Instructor Participation in the Allen Hospital Cardiac Rehabilitation Program, Waterloo, Iowa, 1976 - 1977.

Emergency Medical Technician and Member of the University of Northern Iowa Rescue Squad, Cedar Falls, Iowa, 1976 - 1980.

Basic Cardiopulmonary Resuscitation Classes, American Heart Association, Iowa Affiliate, 1976 - 1989.

Faculty Lecturer for the Physicians Cholesterol Education Program, 1988 - 1989.

Hypercholesterolemia and Its Treatment, University of Texas at Houston, Internal Medicine Residents, October 18, 1990.

Hypercholesterolemia and Coronary Heart Disease, Second Annual Family Practice Medicine for the 90's, October 25, 1990.

Reversal Therapy and Coronary Heart Disease, Second Annual Family Practice Medicine for the 90's, October 25, 1990.

An Update on Nuclear Cardiology, Cedar Rapids and Community Physicians, Cedar Rapids, Iowa November 30, 1992.

Faculty for the Fifth Annual Cedar Rapids Heart Symposium for the

Practicing Primary Care Physician. Medical Case Studies. February 26, 1993.

Modifying Your Risk Factors After Your Heart Attack or Coronary Artery Bypass Operation. Iz Lewis Zipper Club, Omaha, Nebraska, February 22, 1995.

Heart at Work Program presented at Midlands Community Hospital, April 12, 1995

Co-Chairman for the Smith Barney American Heart Walk, Nebraska Heart Association, AHA, 1995 and 1996.

West Omaha Rotary Club, Omaha, NE, "Heart Disease" Talk, August 22, 1997.

River City Reagents, Omaha Club, Omaha, NE, September 5, 1997.

Free Public Seminar "How Changing Your Diet Could Help You Live Longer", Embassy Suites Hotel, Omaha, NE, September 28, 1997.

River Oaks Country Club Lecture Series, Coronary Artery Disease and How to Bypass Your Bypass. Houston, TX. October 3, 1997.

Unique Books of River Oaks, Houston, TX, Talk (Hosted by Dr. Denton and Mrs. Cooley), October 3, 1997. Invited guests included: President and Mrs. Bush, Mr. David Brinkley.

The University of Northern Iowa, Cedar Falls, IA, "Nuclear Cardiology and Heart Disease." Lantz Auditorium, October 11, 1997.

The Writers Harvest, National Benefit to aid with Hunger and Poverty, Sponsored by Barnes & Nobles Nationally, Omaha, NE, October 23, 1997.

Our Healthy Community Partnership - Public Health Policies for Douglas and Sarpy County, Nebraska. November 1997.

The Alternative Healing Expo at the Phoenix Center & Unity Church of Omaha, "How to Bypass Your Bypass". The Truths and Falacies of Diet, Nutrition and Disease. January 24, 1998.

Womens Health Fair at Aksarben, Cholesterol Screening and Discussion of Womens Risk for Heart Disease, Omaha, NE, February 21, 1998.

National Advisory Board for America Talks Health Network - Expert in Field of Cardiology, Houston, TX, April 1998.

Houston Rotary Club, Galleria, Talk "Heart Disease, What Causes It and What You Can Do About It.", Houston, TX, April 13, 1998. Invited Guests include Judge McSpadden.

Houston Forum Speakers Bureau, "The Pathogenesis of Vascular Disease, Where Are We Headed?" Houston, TX, April 16, 1998.

Hickory Hills Elementary School, Papillion, NE, Talk with second and fourth grade students about Heart Disease and Writing, 17 September 1998.

Papillion - LaVista Public Schools Community Connection, "Students Learn About the Heart." Papillion - LaVista, NE, October 1998.

District 66 Schools, "Smoking Cessation Program/Class" for High-School Students, Omaha, NE, January-May (Spring Semester) 1999.

"How Does Your Heart Work", A presentation to third graders at Hickory Hills Elementary School, February 9, 2000.

The Human Heart, A presentation to fifth graders at Hickory Hills Elementary School, February 21, 2000.

"How do the heart and lungs work." Hickory Hills Elementary School, Papillion, NE 20 February 2001.

"What is the Heart" Walnut Creek Elementary School, Papillion, NE, 20 February 2001.

Smoking and Other Recreational Drug Use. How to Respond to Peer Pressure and Just Say NO! Hickory Hills Elementary School, Papillion, NE 19 October 2001.

"How nutrition affects your heart and health." UNMC LIFeStyle Enhancement Center. 24 January 2002.

"How your heart and lungs work together and keep you healthy." 5th grade Hickory Hills Elementary School, Papillion, NE, 4 March 2002.

"What do your Heart and Lungs look like?" 3rd grade Walnut Creek Elementary School, Papillion, NE, 5 March 2002.

"What does your heart look like?" 3rd grade Hickory Hills Elementary School, Papillion, NE, 21 March 2002.

"Dissecting the Human Heart and Lungs. What do they look like and how do they work?" American Legion Post 32 and Mid America Council BSA, March 26, 2002.

"Stem Cell Research & Cloning: Should Cloning Be Legalized" Panel Discussion at the University of Northern Iowa, Cedar Falls, IA, 19 April 2002.

"Becoming an Author & How Your Heart Works." Third Graders at Walnut Creek and Hickory Hills Elementary Schools, Papillion, NE, 28 March 2003.

"Investigating How Your Heart and Lungs Work. Do you have one or two hearts?" Fifth Graders at Hickory Hills Elementary School, Papillion, NE, 4 April 2003.

"United We Stand" Tribute to US Military Personnel. With Video tape from Lee Greenwood (God Bless the USA) and letters of support from President George W. Bush and Vice-President Richard B. Cheney. 15 May 2003, Bellevue, NE.

"Understanding the risk factors of heart disease and their treatment." Dimensions in Clinical Medicine for Creighton Medical Students, Omaha, NE, 24 April 2003.

FH Washout protocol. The New Standard of Care coming from the Biggest little City in the World. Sierra Nevada Cardiology Associates, Reno, NV. 21 January 2009

Radio Interviews:

"For the Health of It!" Emergency Room Management of Acute Myocardial Infarction. The Cardiologists Perspective. KCFI Radio, January 28, 1994.

KFAB 1110 Radio, Omaha, NE, Interview with Gary Saddlemeyer and Mary O'Keefe, June 6, 1997.

KKCD FM/CD 105.9 Radio, Omaha, NE, Interview with Otis 12 and Liz Adams, June 20, 1997.

WMT Radio Interview, Cedar Rapids, IA, Mike Grim, July 17, 1997.

KCCK Radio Interview, Cedar Rapids, IA, Nancy York, July 17, 1997.

University of Northern Iowa, Public Radio Interview, Cedar Falls, IA, July 19, 1997.

University of Northern Iowa, Cedar Falls, IA, Presentation: "How to Bypass Your Bypass", July 19, 1997.

WHO AM talk radio 1040, Des Moines, IA, Interview, Jan Michelson, July 25, 1997.

KGBI 100.7 FM Interview, Omaha, NE, Heath Kramer and Jeff Kaiser, August 6, 1997.

KFOR 1240 AM Radio, Interview, Cathy Blythe, September 4, 1997.

KNSF News Talk Radio, Wichita, KS, Interview with Dr. Galichia and Kyle Graham, September 6, 1997.

KCSR Radio, Chadron, NE, Interview with Celeste Lee - Part I, September 6, 1997.

KCSR Radio, Chadron, NE, Interview with Celeste Lee - Part II, September 9, 1997.

KMUW PBS Radio Station, Wichita, KS, Interview, Lou Stephens, September 11, 1997.

KCUR FM 89.3, University of Missouri - Kansas City, Kansas City, MO, Interview on "the Walt Bodine Show", Walt Bodine, September 17, 1997.

WIBW AM Radio, Interview, Topeka, KS, Sam Elliott, September 18, 1997.

KCMO Radio, Interview, Kansas City, MO, Russ Johnson, September 19, 1997.

KEFM K-Lite 96.1 FM, Radio Interview, "Outta Bed with Jack & Fred", Omaha, NE, September 22, 1997.

KGBI 100.7 FM, Interview, Omaha, NE, Heath Kramer and Jeff Kaiser, September 22, 1997.

KRTK FM 97.1 Radio, Interview, "America Talks Health", Dr. Keith Robinson, Houston, TX, October 3, 1997.

Crawford Broadcasting Systems, Syndicated Radio Talk Show, Irvine, TX, "Positron Emission Tomography for Heart Disease and Cancer", November 7, 1997.

KIOS 91.5 FM, UNMC Public Affairs National Public Radio Interview, Tom O'Connor, November 12, 1997.

Healthy Living, Nationally Syndicated Radio Talk Show, Fort Myers Florida, Dr. Brad Rachman, Three One Hour Interviews "Diet and Heart Disease", aired throughout Holiday Season December 1997 - January 1998.

KRTK FM 97.1 Radio, Interview, "America Talks Health", Dr. Keith Robinson, Houston, TX, April 3, 1998.

KRTK FM 97.1 Nationally Syndicated Radio Talk Show, Interview, "Heart Disease and What You Can Do About It", Dr. Keith Robinson, Houston, TX, July 22, 1998.

KRTK FM 97.1 Nationally Syndicated Radio Talk Show, Interview, "What Causes Heart Disease and Strokes", Dr. Keith Robinson, Houston, TX, August 5, 1998.

KRTK FM 97.1 Nationally Syndicated Radio Talk Program "America Talks Health", "Breakthroughs in Heart Disease" Dr. Keith Robinson, Houston,

TX 23 January 1999.

KFAB AM 1110 Co-Anchor with Mary O'Keefe for Drive Time Radio, Omaha, NE, 11 February 1999.

KFAB AM 1110 Co-Anchor with Mary O'Keefe for Drive Time Radio, Omaha, NE, 11 February 1999.

"The Fleming Unified Theory of Vascular Disease and the American Diet." Here's to Your Health Syndicated AM Radio Talk Program with Deborah Ray and Dr. Carron. June 5, 2000.

"The Fleming Unified Theory of Vascular Disease and the American Diet." AM Radio Talk Program with Dr. Dennis Courtney, Pittsburg, PA. June 21, 2000.

"The American Diet and Heart Disease." AM Radio Talk Program with Dr. Dennis Courtney, Pittsburg, PA. July 17, 2000.

"High-Protein Diets and Heart Disease." Here's to Your Health Syndicated AM Radio Talk Program with Deborah Ray and Dr. Carron. October 19, 2000.

WBYU 1450 AM Talk Radio, "Diagnosis and Treatment of Heart Disease and Breast Cancer and the Impact of Diet." Bob and Jan Carr Show, New Orleans, LA, November 13, 2000.

"The Cheney Syndrome" Canadian Broadcasting Corporation. Dr. Brian Goldman. Healthnetwork, Toronto, Canada. July 2-6, 2001.

Breast Enhanced Scintigraphy Testing, Breast Cancer and It's Treatment. WTIX AM 690. Host Susan Burdicker 16 October 2001.

Vibrant Life Radio Talk Show with Drs. Tim Arnott and Diehl. 18 December 2003 Syndicated Radio.

The Debra Ray Show "Inflammation and Heart Disease" 5 January 2004 Syndicated Radio.

"How inflammation causes serious illness." By: Mike Carruthers of

“Something you should know.” 20 January 2004. Syndicated Radio.

The Frankie Boyer Radio Program “How diet affects heart disease through inflammation.” 21 January 2004 - Syndicated Radio.

Dr. Tim Arnott Radio Program Life Talk Radio “Stop Inflammation Now!” 22 January 2004. Syndicated Radio.

Gary Null radio program “Inflammation and Heart Disease” 23 January 2004 Syndicated Radio.

WTAM AM talk radio with Bill Willis, Cleveland, OH, “Hidden Heart Dangers” 16 April 2004.

www.talknetradio.com, “Diets from ‘A’ Atkins to ‘Z’ Zone, Harvey S. Bartnof, MD, 25 May 2004.

WBAI-FM, New York, NY, “Stop Inflammation Now!” “Natural Living” The Gary Null syndicated radio program, February 3, 2005.

WROL-AM, WSRO-AM, Boston, MA, “Stop Inflammation Now!” “The Frankie Boyer Show”, Syndicated radio program, February 4, 2005.

“Health Radio Network” “Dr. Mike’s Look Younger, Live Longer Health Radio Show” February 5, 2005

WSRO-AM, Boston, MA, “Stop Inflammation Now!”, “Frankie Boyer Show”, February 7, 2005

1060-AM, Boston, MA, “Stop Inflammation Now!”, “Frankie Boyer Show”, February 7, 2005.

WGFS-AM radio “HealthLine” with Steve Aldridge, Atlanta, GA, February 7, 2005.

“Health Talk Radio”, “The Deborah Ray Show”, “Stop Inflammation Now!” February 8, 2005

CKLW-AM 800, Detroit/Windsor, ON, “The Health Report” with Melanie Deveau, February 14, 2005

KFCD-AM, Dallas, TX, “Stop Inflammation Now!”, “The Kevin McCarthy Show”, February 17, 2005.

WBAJ Radio, The John Sebastian Show, Detroit, MI, March 1, 2005.

WBCB-AM, “Family Matters” with Anthony Mustello, Philadelphia, PA, March 9, 2005.

CNN radio national, *espaniol*, “Inflammation and Heart Disease”, with Maria Desax-Guerrero, March 9, 2005.

WWOW-AM, “Louie Free Radio Show”, Cleveland, OH, March 21, 2005.

WEEU-AM, “Healthy Living with Nature’s Garden” with Susanne Fiori, Reading, PA, March 21, 2005.

Marshall Radio, “PM Pages”, with Liz Gunderson, Marshall, MN, April 4, 2005.

“The Beyond Health Show” with Raymond Francis, April 5, 2005
KYCY 1550 AM, San Francisco, CA
WWNN 1470 AM, Southeastern, FL
KMYL 1190 AM, Phoenix, AZ

“Your Second 50 Years in Radio Show” with Hedi Headley,
www.carefreepr.com/2nd50years.html, April 12, 2005
KKNT Phoenix, AZ
KLAV Las Vegas, NV
KAAA, KZZZ, etc.

WOR-AM radio, “Health Talk with Dr. Ronald Hoffman”, New York/National, April 12, 2005.

World Talk Radio (VoiceAmerica.com)/”Health Matters” with host Shoshanna Bennett, www.worldtalkradio.com/archive.asp?aid=3908, April 16, 2005.

Creative Health & Spirit Radio Show, with Linda Mackenzie, Los Angeles, CA, June 8, 2005.

KKOH 780 AM with Jim Fannin. Obama-Biden Transition Team Health Care Discussion. December 22-28, 2008.

KUNR Public Radio with Danna O'Conner, Obama-Biden Transition Team Health Care Discussion. December 22-28, 2008.

Diet & Lifestyle: Key to Improving your health. LoadedTV.com
<http://www.youtube.com/watch?v=zy0wtb3Iy7U&feature=share>.
Reno, NV. January 26, 2013.

Getting Fit with Brian & Traci, Tavares Productions, Reno, NV. May 4, 2013.

Discussing Breast Cancer and BRCA1 and BRCA2 genetic testing – Angelina Jolie's decision for Prophylactic Bilateral Mastectomy. Broad View Program with Lady Jay Davis host. Reno, NV May 18, June 22, 2013.
<http://www.youtube.com/watch?v=zy0wtb3Iy7U&feature=share>

Television Interviews:

Channel 7, KETV Interview on Cholesterol, Omaha Nebraska, February 14, 1988. Taken from Channel 7, KETV Interview on Cholesterol, Omaha, Nebraska, February 13 - 17, 1989.

KTRK, Channel 13, PET Imaging, with Dr. James (Red) Duke, Houston, Texas, February 17, 1991.

KTRK, Channel 13, Heart Rhythms with Dr. James (Red) Duke, Houston, Texas, July, 15, 1991.

Channel 6, WOWT Interview on Treatment of Hyperlipidemias in the Elderly Patient, Omaha, Nebraska, January 26, 1995.

KMTV 3 Television Interview with Trina Creighton, May 6, 1997.

KPTM FOX 42 Television Interview with Susan, June 13, 1997.

ABC News 8, Lincoln, NE - Linda Van Hoosen, June 22, 1997.

COX Cable Channel 23, Omaha, NE with Michael Braunstein, June 24,

1997.

WOWT Ch 6 - NBC Television, Omaha, NE with Sue Bagerly, July 7, 1997.

KGAN 2 Television Interview, Cedar Rapids, IA, Michelle Hall, July 17, 1997.

KWWL Ch 7 Television Interview, Waterloo, IA, Heather King, July 17, 1997.

WOI - TV 5 Interview, Des Moines, IA, Scott Smith, July 25, 1997.

WHO TV - 13 Interview, Des Moines, IA, Lori Graves, July 25, 1997.

KCCI TV - 8 Interview, Des Moines, IA, John Hoya, July 25, 1997.

KCTV CBS - Ch 5 TV Interview, Fairway (Kansas City), MO, Lori Tubbs, August 1, 1997.

WOWT Ch 6 - NBC TV Interview, Omaha, NE, Sue Bagerly, August 5, 1997.

KETV Ch 7 Television Interview, Omaha, NE, Carol Klauss, August 7, 1997.

COX Cable Ch 23 Television Interview, Omaha, NE Michael Braunstein, August 11, 1997.

KMTV 3 Television Interview, Omaha, NE, Trina Creighton, August 13, 1997.

NBC Ch 5 Affiliate, Chicago, IL, Interview Program, Lisa Ripson, August 30, 1997.

KWCH TV - 12, Wichita, KS, Interview, Susan Arensman, September 12, 1997.

KAKE TV - 10 ABC Affiliate, Wichita, KS, Interview, Mike Luen, September 12, 1997.

KSNW TV - 3, Wichita, KS, Interview, Kathy Ivy, September 12, 1997.

KTKA 49 ABC Affiliate, Television Interview, Topeka, KS, Felicia Rolfe, September 18, 1997.

KSNT TV - 27, NBC Affiliate, Interview, Topeka, KS, Jody Shields, September 18, 1997.

FOX 42 Television, Interview, Kansas City, MO, Mike Walter, September 19, 1997.

KPRC Ch 2 - TV, Interview, Houston, TX, Melissa Block, October 4, 1997.

KTVO - TV, Ottumwa, IA, Angela Height, October 10, 1997.

Cox Cable Public Access Ch 23, Omaha, NE, "Integrating Medicine and the 21st Century" - Parts I and II (2 hours), Michael Braunstein, November 4, 1997.

Cox Cable Public Access Ch 23, Omaha, NE, Interview "Heart Disease and Healthcare in the United States - Part I", Mary Matthews, November 18, 1997.

Cox Cable Public Access Ch 23, Omaha, NE, Interview "Heart Disease and Healthcare in the United States - Part II", Mary Matthews, December 2, 1997.

Cox Cable Public Access Ch 23, Omaha, NE, Interview "Heart Disease and Healthcare in the United States - Part III", Mary Matthews, December 16, 1997.

Cox Cable 23, "The Fleming Unified Theory of Vascular Disease" Host: Michael Braunstein, April 1999.

Fox 42 News, "Holiday Binging & Holiday Dieting", Omaha, NE, December 30, 1999.

Cox Cable 23, "The New Doctors" Host: Michael Braunstein, February 15, 1999.

The results of high protein diets on heart disease. Fleming Data presented at the request of Dr. Dean Ornish. **Good Morning America**, New York, NY,

7 August 2000.

"Diagnosing and Treating Heart Disease", Fox 42 News, Omaha, NE, August 18, 2000.

High Protein Diets and Heart Disease, **The Today Show** with Katie Couric, New York, NY, October 6, 2000.

Study sheds doubt on Atkins Diet, **MSNBC** Home Page Segment, New York, NY, October 6, 2000.

Channel 8, Documentary on Breast Cancer, New Orleans, LA, November 13, 2000.

"Breast Cancer" **Discovery Network Canada**. Original components filmed in June 2001. Sydney Suissa

"Breast Enhanced Scintigraphy Testing" **PBS** Special Part II Breast Cancer taping scheduled for Oct-Nov 2001 with Clara Wilkenson executive producer. Pending release filmed: 2002.

"Reversing the Aging Process. The Role of Diets and Heart Disease" Filming November 3, 2001 in San Diego, CA. Pending release filmed: 2002.

"Hidden Heart Disease. Could a simple, inexpensive test save your life?" **20/20 - ABC Network** 16 April 2004.

"Could simple heart test save your life?" **ABCNEWS.com** Q & A posting 21 April 2004.

Big Story: "Doctor holds health care discussion to help Obama." December 29, 2008.

"Wake Up Call" Diet & Lifestyle: Key to Improving Your Health. With Brian Perry. January 23, 2013. www.loadedtv.com

"Can You See My Breast Cancer?" A documentary of Breast Cancer detection and stories from survivors. Produced by John Pocino, Terry Thomas and Chad Brown. Directed by John Pocino. Discovery

documentary.

<https://www.facebook.com/photo.php?v=10151555337863360&set=vb.570608359&type=2&theater>. May 19, 2013.

Newspaper Articles:

TIMES Newspaper, Papillion Nebraska, Teresa Hoffman, June 4, 1997.

Lincoln Journal Star "Omaha doctor's heart book a cautionary tale." by David Swartzlander, June 21, 1997.

Omaha World Herald, Omaha, NE, Donnette Dunbar, June 30, 1997.

TIMES Newspaper, Papillion Nebraska, Teresa Hoffman, July 9, 1997.

TIMES Newspaper, Papillion Nebraska, "Papillion doctor's diet book can cut cholesterol." Teresa Hoffman, July 16, 1997.

Waterloo-Cedar Falls Courier, Waterloo, IA, "Heart Smart", Staci Schmit, July 16, 1997.

The Des Moines Register, Des Moines, IA, "The Cholesterol Connection", Melinda Voss, July 21, 1997.

Cedar Rapids Gazette, Cedar Rapids, IA, "Eating for a Healthy Heart", Elizabeth Kutter, August 4, 1997.

The Catholic Voice, Northeast Nebraska Newspaper, "Meet the Author", August 8, 1997.

Pitch Weekly Newspaper, Kansas City, MO, "Omaha doctor takes a different path in heart disease research." Patrick Dobson, August 21-27, 1997.

Pioneer Press, Glenview (Chicago), IL, Virginia Girst, August 30, 1997.

The Reader, Omaha, NE "How to Bypass Your Bypass", Michael Braunstein, September 4-11, 1997.

The Wichita Eagle, Wichita, KS, "Omaha doctor to talk about healthy

hearts." Karen Shideler, September 9, 1997.

The Topeka Capitol-Journal, Topeka, KS, "The bypass bypass", September 15, 1997.

University of Northern Iowa (UNI) Special Report, Cedar Falls, IA, "Richard Fleming: teaching heart-happy living." September 24, 1997.

TIMES Newspaper, Papillion Nebraska, Local doctor to host healthy living seminar, September 24, 1997.

University of Northern Iowa (UNI) Special Report, Cedar Falls, IA, "Richard Fleming: teaching heart-happy living." September 24, 1997.

TIMES Newspaper, Papillion Nebraska, Local doctor to host healthy living seminar, September 24, 1997.

The Daily Nonpareil Newspaper, Council Bluffs, IA, "Heart of the Matter: Cardiologist tackles cholesterol head on." Carla Chance, October 6, 1997.

Ottumwa Courier, Ottumwa, IA, "Cardiologist to examine questions from the heart." Judy Kreiger, October 7, 1997.

Omaha Magazine, Omaha, NE, Article on Cholesterol, Nuclear Cardiology and Heart Disease, Jan Bass, January - February Issue 1998.

The Informer, "Heart of Learning" Papillion - LaVista, NE, Fall 1998.

The Reader, Omaha, NE "One for the Heart - What a Tangled Web We Weave", Michael Braunstein, February 11-17, 1999.

The Times, "Heart Smart: Local Doctor Has One-of-a-Kind Clinic", by: Jamie Nelson Hestermann, Papillion, NE, March 17, 1999.

Waterloo Cedar Falls Courier, Waterloo, IA, "Ex-resident using expertise to probe two diseases at once." EXCLUSIVE, by: Heather Lilienthal, April 22, 1999.

The Midlands Business Journal, "Early Diagnosis Prompts Opening of Fleming Institute", by: Wendy Clark, Greater Omaha, Lincoln (NE) and

Council Bluffs (IA), Vol 25, No 17, April 30 - May 6, 1999.

Omaha World-Herald, "So Long Cigarettes", by: Kristi Wright, Omaha, NE, May 25, 1999.

"Nuclear Imaging: Helping to detect breast cancer"/"The debate over nuclear imaging." by Theresa Cha, The Lincoln Journal Star, Lincoln, NE, March 14, 2000.

"The New Doctors. Medicine Meets Healing on the Road to Health." by Michael Braunstein. Healing Arts Directory. March 15, 2000.

"Breast Cancer Update. Mammograms: Who Needs Them? Well, Maybe Nobody." by Michael Braunstein. Healing Arts Directory. March 15, 2000.

"High-Protein diet can hurt heart." by Theresa Cha, The Lincoln Journal Star, Lincoln, NE, August 6, 2000.

"Waterloo native sets the diet world on end." Meta Hemenway, Waterloo Cedar Falls Courier August 13, 2000.

"Doctor on 'Today' to take shot at fad diet." Meta Hemenway-Forbes, Waterloo Cedar Falls Courier October 5, 2000.

"Surprising study. Success in a controlled diet for local teens. by Ridgely Ochs, Newsday, Long Island, NY, October 13, 2000.

"Breast Cancer article" The Globe and Mail (**Canadian National Newspaper**) article by Mr. Paul Taylor (Health Editor). Original Interview June 27, 2001.

"Nuclear medicine fits bill for problem breast diagnosis. Scintimammography and PET show promise for detecting primary cancer, recurrence, and metastases. By: Karen Sandrick. Diagnostic Imaging. September 2001.

"Questions about stem cell issue dominate UNI panel discussion." article by Terry Hudson, Waterloo Daily Courier, April 21, 2002.

"Experts Declare Story Low on Saturated Facts." by Sally Squires, science

writer for The Washington Post, August 27, 2002.

“Dieters charge Atkins led to heart ills.” By: Reuters Press. MSNBC news. 20 November 2003.

“Area woman – Atkins diet has great risks.” By: David Montero, Ventura County Star, Ventura, California, 3 January 2004.

“The Dynamic Duo” Stat Medicine Feature story. Lincoln Journal Star by Marc Andersen, 13 January 2004.

“Chewing the fat.” The Australian: The heart of the Nation. By Giles Whittell. February 13, 2004.

“The Heart Doctor Diet: Heart disease is Britain’s biggest killer. Here, a top cardiologist reveals how a revolutionary detox can halt years of damage in just 7days.” The Daily Mail, London, England, March 9, 2004.

“Defend against Britain’s biggest killer.” Life & Style (The London Web site of the year 2004). March 9, 2004.

"Eat to save your life." Daily Mail, by Michael Joseph, March 17, 2004.

“An open letter to Victorian Health Minister Bronwyn Pike” by: Anthony Pike, <http://www.lowcarb.com.au/health/letter-Pike.htm>, March 29, 2004.

“Medical privacy weighed against Atkins diet doubts.” By: Linda Gross, Advance for Health Information Professionals. March 30, 2004.

“Health Matters: Chronic inflammation – rocking the medical world. By: Mairi Ross, Sedona Labs – Dietary supplements for better health. April 4, 2004.

“Simple blood test could detect potentially fatal condition.” ABC action news report. April 16, 2004.

“Anti-inflammatory Eating”, The Washington Post, by Katherine Tallmadge, January 26, 2005.

“Detecting new risks for heart disease”, The Los Angeles Times, by Shari

Roan, February 28, 2005.

“New heart-disease risk factors sought. Research shows promising finds.”
By: Shari Roan, Los Angeles Times, March 5, 2005.

“New Research Shows Increased Risk of Cardiovascular Disease from Low-Carb Diets.” By Charna Cummings, The Wheat Foods Council, June 30, 2005.

ABC News. Kellogg’s Bad Apple Cartoon Causes Food Fight. Advocacy Group Says Cereal Ad is Misleading. By Michael Silverman, July 21, 2005.

ABC News Health. A Less-Fatty Big Apple? By Ryan Stanton, MD, September 27, 2006.

“Fire in your Arteries” by: Karen Ansel, RD, Best Life Magazine, February 16, 2007.

“Low-Carb Diets: Hidden Dangers?” by: Thomas Fahey EdD and Shoshana Pritzker. For Women! Fitness Rx. May 7, 2010.

“Meetings set on Reno-area health care.” By Frank X. Mullen, Jr. Reno Gazette-Journal. December 28, 2008.

“Forum set on health proposals: Freedom of Choice Act among discussion topics.” By Frank X. Mullen, Jr. Reno Gazette-Journal. December 29, 2008.

“Northern Nevadans weigh in on national health-care reform.” By Frank X. Mullen, Jr. Reno Gazette-Journal. January 4, 2009.

“Nuclear stress test accuracy can be improved, study says.” By Shari Roan, LA Times, July 22, 2010.

Non-medical Journal Reports/Magazines:

"Taking Diet to Heart" Today’s Health and Wellness Magazine. by: Susan Perry Jan/Feb 2001.

"Your Ready to Start Exercising: Is Your Heart?" Today’s Health and

Wellness Magazine. by: Susan Hawthorne May/June 2001.

“Your big new threat: Inflammation” USA Weekend. By: Jean Carper. 9 March 2003.

“Can Fat be Good for You?”, by: Janis Graham, Good Housekeeping, August 2003.

“Anti-inflammation Diet: A cure wrapped in plants.” Today’s Health and Wellness Magazine. By: Lynn Madsen. Jan/Feb 2004.

“Vital & Fit: The latest on cancer prevention.” Let’s Live. By: Vera Tweed. February 2004.

“Stop Inflammation Now!”, New Living Magazine, New York, New York, 9 April 2005. www.newliving.com

“Health know-how. Cellular inflammation.” First for Women Magazine, 23 May 2005.

Self Magazine article on Inflammation, February of 2006.

Big Brains Cutting-Edge Medical Technologies. Raising the Standard of Care: Northern Nevada’s Medical Technology. By: Jennifer R. Baumer. RLife Magazine. February 2009.

Low-Carb Diets: Hidden Dangers? For Women! Fitness Rx. By: Thomas Fahey EdD and Written by Shoshana Pritzker. 7 May 2010.

Medical Journal Reports:

"Time to rethink angina, role of SPECT imaging. by Conni Ford Bergmann, Cardiology Today, 2000;3(7).

Preventive Cardiology: "High-protein diets may lead to CAD progression." by Conni Ford Bergmann, Cardiology Today, 2000;3(11):42.

"Diet and Nutrition in Your Practice. Cautioning Patients about Extreme Diets." by Charlotte LoBuono. Patient Care, 2001;Aug 15, 28-46.

"Nuclear Medicine Fits Bill for Problem Breast Diagnosis: Scintimammography and PET show Promise for Detecting Primary Cancer, Recurrence, and Metastasis. Breast Enhanced Scintigraphy Testing" Diagnostic Radiology Imaging. Special Session by: Karen Sandrick, 2001;Sept: 49-52.

"Non-invasive assessment of heart disease." Diagnostic Radiology Imaging. December 2001.

"New Research Supports Whole Soy's Role In Breast Health" Dr. Christiane Northrup's Health Wisdom for Women. June 2002, 9:6-8.

"Novel Imaging Technique Reveals Breast Benefits of Soy Supplementation." by Erik L. Goldman (editor-in-chief). Holistic Primary Care April 15, 2002; pp. 1 and 6.

"Why the confusion about low- and high-fat diets?" by Richard M. Fleming, MD, special to Today in Cardiology. Cardiology Today 2002;5(9):26.

"Best Case" American Society of Nuclear Cardiology: Imaging Update. January 2009:4.

"Study: Nuclear stress tests need to be simplified." SNM SmartBrief, July 23,2010.

WEB EXCLUSIVES Feature: Single sestamibi injection may suffice for ischemic detection. HealthImaging.com 4 August 2010.

Imaging Feature Story: "Innovations in myocardial perfusion imaging reveal potential life-saving strategy." By Brain Ellis Cardiology Today 2010;13(9):1,10.

Lessons learned from the Moly Shortage: Is the crisis over? By: Manjula Puthenedam. Molecular Imaging. October 4, 2010.
http://www.molecularimaging.net/index.php?option=com_articles&view=article&id=24421:lessons-learned-from-the-moly-shortage-is-the-crisis-over.
<http://www.nxtbook.com/nxtbooks/trimed/mii1010/index.php?startid=13#/14>

PRESENTATIONS AT HOSPITALS, UNIVERSITIES AND MEDICAL CONFERENCES:

Cardiopulmonary and Trauma Instructor, University of Iowa College of Medicine Freshman and Sophomore Classes on Emergency Medicine, Iowa City, Iowa 1981 - 1983.

Faculty for Basic Life Support Classes for Hospital Staff and Employees (Physicians, Residents, Nurses and Ancillary personnel), University of Iowa Hospitals and Clinics, Iowa City, Iowa, 1983 - 1986.

Faculty for Advanced Cardiac Life Support classes, University of Iowa Hospitals and Clinics, (Physicians, Residents, Nurses and Ancillary personnel), Iowa City, Iowa, 1985 - 1986.

Faculty for Advanced Cardiac Life Support classes, Residents in Internal Medicine, Surgery, Family Practice and Pediatrics, Des Moines, Iowa, 1986 - 1987.

Development and Institution of the Cardiopulmonary Rehabilitation Risk Factor Modification and Cardiopulmonary Stress Testing Program with Dr. Francisco Fuentes, Hermann Hospital, Houston, Texas, 1989 - 1990.

Presentation of Atrial Fibrillation, It's Causes, Symptoms and Treatment. *For Hermann Hospital's Children's Miracle Network Telethon.* Donation by Marion-Merrell Dow Pharmaceuticals, May 1992.

Nuclear Cardiology, **Grand Rounds** at St. Luke's Hospital, Cedar Rapids Iowa, August 27, 1992.

Interpreting Results of Coronary Arteriography. Sartori Hospital, Cedar Falls, Iowa. March 9, 16, and 30, 1994.

Sartori Health Notes "Home Safe Home" A Publication for Sartori Works Clients, Sartori Memorial Hospital, July 1994.

"Angina" Erhling Berquist Hospital, USAF (SAC), Omaha, Nebraska January 1995

"What to Expect in the Treatment of Hyperlipidemia." **Grand Rounds**,

Bergan Mercy Hospital, 11 April 1995.

"Cardiac Risk Factor Update: How to Bypass Your Bypass." Creighton University Family Practice Department **Core Lecture**, January 6, 1998.

University of Nebraska Medical Center (Omaha, Kearney, Grand Island & Plattsmouth). Family Practice **Grand Rounds**. "The Role of Diet in Prevention of Coronary Artery Disease." January 21, 1998.

"The Pathogenesis of Vascular Disease" Primary Care Physicians, Sioux Falls, SD, September 24, 1998.

"The Role of Lipids in the Pathogenesis of Vascular Disease", *Invited Lecturer* for the 16th Annual North Central Heart Fall Symposium, September 25, 1998.

"Noninvasive Assessment of Heart Disease in Women." First Annual Heartland Chapter Symposium. Alegent Health Bergan Mercy Medical Center, April 24, 1999.

"Fleming Unified Theory of Heart Disease" Erhling Berquist Hospital, USAF (SAC), Omaha, Nebraska. 2 September 1999.

"Nuclear Cardiology: When and How to Use It to Take Care of Your Patient", Erhling Berquist Hospital, USAF (SAC), Omaha, Nebraska, 8 October 1999.

"Dual Use Procedure for Detecting Breast Cancer and Heart Disease" Erhling Berquist Hospital, USAF (SAC), Omaha, Nebraska. 4 January 2000.

"What is Nuclear Cardiology?", Omaha Chapter of Professional Coders, 18 January 2000.

"Nuclear Cardiology - The New Millenium" Erhling Berquist Hospital, USAF (SAC), Omaha, Nebraska. 28 January 2000.

"Is the patients chest pain due to angina? The role of Nuclear Cardiology" The 51st Annual Conference for the North Dakota Society of Radiologic Technologists (NDSRT) and the American College of Radiologists (ACR). Fargo, ND. 28 April 2001.

"The Pathogenesis of Vascular Disease" The Fifth Annual International Congress of BioEnergetic Medicine. Orlando, Fl. May 26, 2001.

"Case Examples of Treating Heart Disease" The Fifth Annual International Congress of BioEnergetic Medicine. Orlando, Fl. May 26, 2001.

"Breast Enhanced Scintigraphy Testing (B.E.S.T.): Increased Accuracy in Detecting Breast Cancer Accomplished by Combining Breast and Cardiac Imaging" **Reading with the Experts Presentation.** 48th Annual Scientific Sessions for the Society of Nuclear Medicine, Toronto, Ontario, Canada. June 26, 2001.

"Myocardial Perfusion Imaging Using High-Dose Dipyridamole (HDD) Defines Angina: The Difference Between Coronary Artery Disease (CAD) and Coronary Lumen Disease (CLD)" **Reading with the Experts Presentation.** 48th Annual Scientific Sessions for the Society of Nuclear Medicine, Toronto, Ontario, Canada. June 27, 2001.

"Breast enhanced scintigraphy test (B.E.S.T.) demonstrates improvement in breast inflammation in women consuming soy protein." **Invited Presenter** at the 4th International Symposium on the Role of Soy in Preventing and Treating Chronic Disease. San Diego, CA, USA. 4 November 2001.

"How diet influences diabetic risk factors for heart disease, including triglycerides, homocysteine and (TG/HDL) insulin resistance. 8th Annual Diabetes Expo, Phoenix, AZ, 1 May 2004.

"How do popular diets influence cardiovascular risk factors." Cardiac catheterization conference, University of Colorado Health Sciences Center, 4 May 2004.

"How do popular diets influence cardiovascular disease risk factors." Keynote lecturer for The Pritikin Center, 6 May 2004.

"Carbohydrates: A Simple and Complex Problem. How diets of varying carbohydrate content influence weight loss and the INFLAMMATORY CVDRFs responsible for coronary artery disease. 1st Nutrition News Forecast for the American Dietetic Association, Chicago, IL, 13 May 2004.

"Examining Heart Disease and Obesity: Does Treating One Automatically

Treat the Other.” Cardiovascular Disease Grand Rounds, University of Iowa College of Medicine. 1 December 2004.

“Can Dieting and Exercise Break the Cycle of Obesity, Inflammation and Heart Disease?” University of Missouri-Columbia Cardiology Conference, Columbia, MO, 22 June 2005.

What is MPI and When Should I Order It? Reno VAH Noon Conference, Reno, NV, 10 August 2005.

Non-invasive Cardiology for Medical Students: Understanding Echocardiography and Nuclear Cardiology. University School of Medicine, Reno, NV, 26 August 2005.

Reading Electrocardiograms. A Lecture Series: What can they tell us about the patient? Reno VAH/Univ. School of Med Reno, Internal Medicine, Noon conference. Reno, NV, 15 March 2006.

Echocardiography. What Does the Nurse Practitioner Need to Know? 25 April 2006.

Acute Coronary Syndromes and Electrocardiograms. Internal Medicine CME conference, CIHVAH, Des Moines, IA, 11 July 2007.

Advancements in Nuclear Cardiology: Sequential Imaging Unmasks Vulnerable Plaque, Internal Medicine Residents Conference, Renown Medical Center, Reno, NV, 12 June 2008

'Sequential Stress Imaging Unmasks CAD Missed by 60 Minute Imaging Only: How to More Accurately Find Your Patients Heart Disease.' Kneibert Clinic, Poplar Bluff, MO 22 August 2008.

'Blumgart and Fleming-Harrington. Why Sequential Imaging is More Important in the Detection of Heart Disease than Single Imaging Only Following Stress.' Board Room, Poplar Bluff Regional Medical Center. Poplar Bluff, MO. 27 August 2008.

FH Washout Protocol. The New Standard of Care coming from the Biggest Little City in the World. Renown Medical Center, January 21, 2009.

Multiple SPECT Images at 5 and 60 Minutes Following Stress are Critical in Clinical Decision Making! Poplar Bluff Education Symposium, Cape Girardeau County Area Medical Society. Poplar Bluff, MO, February 21, 2009.

RIA-FHRWW: Why Heart Disease is so Frequently Misdiagnosed. Why are 35-40% of all nuclear heart tests WRONG, Accounting for 70,000-100,000 U.S. Deaths per Year. University of Northern Iowa, Cedar Falls, Iowa, August 20, 2012.

SPECIFIED LECTURES

IMPACT Communications, Inc. Hypertension in the Older Patient: Integrating New Guidelines into Clinical Practice (Pfizer), March 1998 - April 1999.

American Heart Association, Nebraska - Speaker's Bureau 1996 - 1999.

The Importance of Treating Both Hypercholesterolemia and Hypertriglyceridemia. (Abbott) - April 1998 - Present.

Faculty Lecturer "the Treatment of Hypercholesterolemia or mixed dyslipidemia". (SmithKline Beecham) August 1998 - Present.

Faculty Lecturer "Hypercholesterolemia and Lipid-Lowering Therapy (Novartis) November 1998 - 2000.

Invited Speaker for the Society of Nuclear Medicine (Molecular Imaging) Speakers Bureau, 19 March 2008 - Present.

MODERATOR OF GOVERNMENT EVENTS

Obama-Biden Transition Team, Health Care Community Discussion, Reno, Nevada, December 29, 2008.

PEER REVIEW MEDICAL JOURNAL Reviewer, editor and grant reviewer

Contributing Editor for the *American Journal of Physiologic Imaging*, 1992-1993.

Cardiology/Nuclear Cardiology Reviewer *Mayo Clinic Proceedings* 1997 - Present.

Member of Editorial Board, *International Journal of Angiology* May 1997 - 2002.

Member of Editorial Board, *HeartDrug*, December 1999 - 2000.

Lancet Reviewer, 2002 – Present.

Angiology, the Journal of Vascular Disease, Editorial Board/Reviewer, 2002 – Present.

Member of World Association of Medical (WAME) Editors, 2002 – Present.

The Journal of Nutrition, 2003 – Present

Circulation, 2004 – Present

U.S. Department of Health and Human Services, Health Resources and Services Administration, Grant Reviewer for Cardiovascular Critical Care, Cancer, and Nutrition. 2006 -Present.

Stroke, 2006 – Present.

Journal of Cardiovascular Pharmacology and Therapeutics, 2008 – Present.

Evidence Based Complementary and Alternative Medicine (ecam), 2009 – Present.

The American Journal of Medicine, 2009 – Present.

The Journal of Nuclear Medicine, 2009 – Present.

The International Journal of Cardiology, 2009 – Present.

The International Journal of Cardiovascular Imaging, 2010 – Present.

The American Journal of Preventive Medicine, 2012 – Present.

Minerva Cardioangiologica, 2013 – Present.

Health Physics Journal, 2013 – Present.

REVIEWER AND EDITOR FOR NON-MEDICAL JOURNALS

NON-MEDICAL Journals

Contributing writer for *Strictly Health*, *Strictly Business*, and *Strictly Women*, Lincoln, NE 1997.

Member of Medical Advisory Board for Today's Health and Wellness Magazine, December 2000- Present.

GRANT REVIEWER

U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA). January 2012 - Present.

RESEARCH GRANTS AND STUDIES

Teboroxime research project with SPECT Imaging, Squibb Diagnostics, 1989-1992.

Parke-Davis Phase IV Clinical Investigator for the "ADOPT Study" 1991 - 1992.

Phase IV Studies with Norvasc 1992 - 1993.

Phase III Trials "The Safety and Efficacy of Cardizem CD for the Treatment of Stable Angina Pectoris" 1992 - 1993.

The Evaluation of CardioTec Resting Washout in Comparison to 201-Thallium in Patients Scheduled for Coronary Arteriography. 1993

GUSTO Investigator in Iowa, 1992 - 1994

PAREXEL Alive (AzimiLide Post Infarct SurVival Evaluation Trial) study
Principal Investigator 1998 - 1999

(IVD) and Tissue Viability. Filed June 11, 2013.

Rapid Image Analysis – Fleming Harrington Redistribution Wash-in Washout Method Differentiation of Inflammatory Vascular Disease (IVD) and Tissue Viability. Application No. 13/986,869. Filed June 10, 2013.

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Fleming-Harrington Redistribution Wash-in Washout (FHRWW) including stress-stress detection of inflammatory coronary artery disease. 1-655815511. Started 9-1-2011. Effective 9-16-2011, #TX 7-446-683.

Inflammation and Heart Disease; Fleming Unified Theory of Vascular Disease. 1-655833842. Started 9-1-2011. Effective 9-16-2011, TX 7-451-244.

Breast Enhanced Scintigraphy Testing (BEST); BEST Imaging. 1-655833872. Started 9-1-2011. Effective 9-16-2011, TX 7-451-243.

Stenosis Flow Reserve (SFR), Coronary Flow Reserve (CFR); Quadratic Coronary Flow Reserve (QCFR). 1-655833951. Started 9-1-2011. Effective 9-16-2011, TX 7-451-241.

PUBLICATIONS

Non-Medical Publications

The Value of Vitamins. *Strictly Health* Nov/Dec 1997

Does Someone You Love Have Heart Disease? *Strictly Health* Jan/Feb 1998.

Women and Heart Disease. *Strictly Business* February 1998.

The Evolution of Medicine. *The Reader*. February 1998.

Integrated Physicians of Nebraska, PC. Some Questions and Answers with Richard M. Fleming, M.D. *Journal of the American Chiropractic Association*. March 1998.

PRELIMINARY PHASE RESEARCH PRESENTED LOCALLY

"A Study on the Effects that 13 H-Diabenzo(a,i)-carbazole, Benzo(a)pyrene and Dibenzothiophene have on the Growth of Tetrahymena pyriformis." Undergraduate work at the University of Northern Iowa, Cedar Falls, Iowa, Department of Biology, Professor Barton Bergquist, 1979 - 1980.

"Avoidance and Anxiety Reactions." Undergraduate and Graduate work at the University of Northern Iowa, Cedar Falls, Iowa, Department of Psychology, Professor John Sommerville, Dean of the Graduate College, 1982 - 1983.

"Sodium and Hypertension Studies" Senior Medical Student/Honors Program in Internal Medicine. Drs. William Lawton and Allyn Mark, University of Iowa College of Medicine. 1985 - 1986.

**FEDERAL PUBLISHED REPORTS
INCORPORATING MY PUBLISHED DATA**

Grady D, Chaput L, Kristof M. Diagnosis and treatment of coronary heart disease in women: Systematic review of evidence on selected topics. Evidence report/technology assessment Number 81. (Prepared by the University of California, San Francisco-Stanford evidence-based practice center under Contract No. 290-97-0013.) AHRQ Publication No. 03-E037. Rockville, MD: Agency for Healthcare Research and Quality. May 2003. www.ahrq.gov

Bruening W, Lauenders J, Pinkney N, Kostinsky H, Schoelles K, Turkelson C. Comparative Effectiveness Review. Number 2: Effectiveness of Noninvasive Diagnostic Tests for Breast Abnormalities. (Prepared for the Agency for Healthcare Research and Quality, U.S. Dept of Health and Human Services). AHRQ Publication No. 06-EHC005-EF, February 2006. www.ahrq.gov

**EUROPEAN POSITION PAPER ON ATHEROSCLEROSIS
INCORPORATING FLEMING PUBLISHED DATA**

Reiner Z, and the *European Atherosclerosis Society*. *2009 Position Paper* incorporating: (1) Fleming RM, Harrington GM. "What is the Relationship between Myocardial Perfusion Imaging and Coronary Artery

Disease Risk Factors and Markers of Inflammation?" *Angiology* 2008;59:16-25. (2) **Fleming RM**, Harrington GM, Baqir R, Jay S, Sridevi Challapalli, Avery K, Jim Green. The Evolution of Nuclear Cardiology takes Us Back to the Beginning to Develop Today's "New Standard of Care" for Cardiac Imaging: How Quantifying Regional Radioactive Counts at 5 and 60 Minutes Post-Stress Unmasks Hidden Ischemia. *Methodist DeBakey Cardiovascular Journal (MDCVJ)* 2009;5(3):42-48. And (3) **Fleming RM**, Harrington GM, Jay S, Challapalli S. Fleming-Harrington Redistribution Washin-Washout (FHRWW) protocol correctly identifies ischemia by measuring quantitative differences in regional radioactive isotope levels at 5 and 60 minutes post-stress. Submitted NEJM.

WORKS IN PROGRESS PRESENTATIONS

Fleming RM., Kirkeeide RL, Taegtmeyer H, Adyanthaya A, Cassidy DB, Goldstein RA. Feasibility of SPECT Perfusion Imaging with Technetium 99m - Teboroxime: Comparison to Thallium - 201 and Quantitative Coronary Arteriography. 37th Annual Society of Nuclear Medicine Meeting, Washington, DC. June 19 - 22, 1990.

PROFESSIONAL AND MEDICAL JOURNALS

Bergquist BL. Dandelion Floral Stems: A Model for Teaching Cellular Tonicity. *the American Biology Teacher*, 1981;43(1):45-47.

Sommerville JW, Barrios FX, **Fleming RM.**, Reiher TC, Fish NL. Differences in Characteristics Preferred by College Students for Academic Advisors, Vocational Counselors and Psychotherapists: A Preliminary Report. *Perceptual and Motor Skills*, 1982;54:29-30.

Fleming RM., Kirkeeide RL, Taegtmeyer H, Adyanthaya A, Cassidy DB, Goldstein RA. A Comparison of Technetium 99-m Teboroxime Tomography to Automated Quantitative Coronary Arteriography and Thallium - 201 SPECT. *J Am Coll. Cardiol.* 1991;17:1297-1302.

Fleming RM., Kirkeeide RL, Smalling RW, Gould KL. Patterns in Visual Interpretation of Coronary Arteriograms as Detected by Quantitative Coronary Arteriography. *J Am Coll. Cardiol.* 1991;18:945- 951.

Fleming RM, Gibbs HR, Swafford J. Using Quantitative Coronary

Arteriography to Redefine SPECT Sensitivity and Specificity. *Am J Physiol. Imag.* 1992;7:59-65.

Fleming RM, Detecting Coronary Artery Disease Using SPECT Imaging: A Comparison of Thallium-201 and Teboroxime. *Am J Physiol Imag* 1992;7(1):20-23.

Fleming RM, Harrington GM. Quantitative Coronary Arteriography and it's Assessment of Atherosclerosis. Part 1. Examining the Independent Variables. *Angiology* 1994;45(10):829-833.

Fleming RM, Harrington GM. Quantitative Coronary Arteriography and it's Assessment of Atherosclerosis. Part 2. Calculating Stenosis Flow Reserve Directly from Percent Diameter Stenosis. *Angiology* 1994;45(10):835-840.

Fleming RM, Rose CH, Feldmann KM. Comparing a High Dose Dipyridamole SPECT Imaging Protocol with Dobutamine and Exercise Stress Testing Protocols. *Angiology* 1995;46(7):547-556.

Fleming RM, Ketchum K, Gaede R. Treating Hyperlipidemia in the Elderly. *Angiology* 1995;46(12):1075-1083.

Fleming RM, Gaede, R. Teaching Physicians and Health Care Providers to Accurately Read Coronary Arteriograms. *Angiology* 1996;47(4):349-359.

Fleming RM, Ketchum K, Gaede R. Assessing the Independent Effect of Dietary Counseling and Hypolipidemic Medications on Serum Lipids. *Angiology* 1996;47(9):831-840.

Fleming RM, Feldmann KM. Comparing a High Dose Dipyridamole SPECT Imaging Protocol with Dobutamine and Exercise Stress Testing Protocols. Part II: Using High-Dose Dipyridamole to Determine Lung-to-Heart Ratios. *Intern J Angiol* 1998;7:325-328.

Fleming RM, Feldmann KM. Comparing a High Dose Dipyridamole SPECT Imaging Protocol with Dobutamine and Exercise Stress Testing Protocols. Part III: Using Dobutamine to Determine Lung-to-Heart Ratios, Left Ventricular Dysfunction and a Potential Viability Marker. *Inter J of Angiol* 1999;8:22-26.

Fleming RM. The Fleming Unified Theory of Vascular Disease: A Link Between Atherosclerosis, Inflammation, and Bacterially Aggravated Atherosclerosis (BAA). *Angiol* 2000; 51: 87-89.

Fleming RM. The Clinical Importance of Risk Factor Modification: Looking at Both Myocardial Viability (MV) and Myocardial Perfusion Imaging (MPI) *Intern J Angiol* 2000;9:55-69.

Fleming RM. The Natural Progression of Atherosclerosis in an Untreated Patient with Hyperlipidemia: Assessment via Cardiac PET. *Intern J Angiol* 2000;9:70-73.

Fleming RM. Shortcomings of coronary angiography. Letter to the Editor. *Cleve Clin J Med* 2000;67:450.

Fleming RM, Boyd L, Forster M. Reversing Heart Disease in the New Millennium - The Fleming Unified Theory, *Angiology* 2000;51(10):617-629.

Fleming, RM. The Effect of High Protein Diets on Coronary Blood Flow. *Angiology* 2000;51(10):817-826.

Fleming RM. High-Dose Dipyridamole and Gated Sestamibi SPECT Imaging Provide Diagnostic Resting and Stress Ejection Fractions Useful for Predicting the Extent of Coronary Artery Disease. *Angiology* 2002;53(4):415-421.

Fleming RM. A Tate-en-Tate Comparison of Ejection Fraction and Regional Wall Motion Abnormalities as Measured by Echocardiography and Gated Sestamibi SPECT. *Angiology* 2002;53:313-321.

Fleming RM. Coronary Artery Disease is More than Just Coronary Lumen Disease. *Amer J Card* 2001;88:599-600.

Fleming RM. Breast enhanced scintigraphy test demonstrates improvement in breast inflammation in women consuming soy protein. American Society for Nutritional Sciences. *J Nutr.* 2002;132:575S.

Fleming RM. Mitochondrial Uptake of Sestamibi Distinguishes Between Normal, Inflammatory Breast Changes, Pre-cancers and Infiltrating Breast

Cancer. Integrative Cancer Therapies 2002;1(3):229-237.

Fleming RM, Dooley WC. Breast Enhanced Scintigraphy Testing (B.E.S.T.) Distinguishes Between Normal, Inflammatory Breast Changes and Breast Cancer. A Prospective Analysis and Comparison with Mammography. Integrative Cancer Therapies 2002;1(3):238-245.

Fleming RM. The Effect of High, Moderate and Low Fat Diets On Weight Loss and Cardiovascular Disease Risk Factors. Preventive Cardiology 2002;V(III):110-118. [<http://www.medscape.com/viewarticle/438769>]

Fleming RM. Caloric intake, not carbohydrate or fat consumption, determines weight loss. Am J Med 2003;114:78.

Fleming RM. Angina and coronary Ischemia are the result of coronary regional Blood Flow Differences. J Amer Coll Angiol 2003;1:127-42.

Fleming RM. Using C-Reactive Protein as a Marker of Bacterially Aggravated Atherosclerosis in Acute Coronary Syndromes. J Amer Coll Angiol 2003;1:165-71.

Fleming RM. How Valid is Reader Interpretation of Cardiac Positron Emission Tomography (in process).

Fleming RM. What effect, if any, does soy protein have on breast tissue? Integrative Cancer Therapies 2003;2:225-8.

Fleming RM. Are there differences in breast tissue as a result of hormone replacement therapy? Can BEST imaging distinguish these differences? Integrative Cancer Therapies 2003;2:229-34.

Fleming RM. Do women taking hormone replacement therapy (HRT) have a higher incidence of breast cancer than women who do not? Integrative Cancer Therapies 2003;2:235-7.

Fleming RM. The Hippocratic Oath! (in process)

Fleming RM. Breast Enhanced Scintigraphy Test demonstrates improvement in breast disease after daily consumption of soy protein. J. Nutr. May 1, 2004.

Fleming RM. The effect of ephedra and high fat dieting – a cause for concern! A case report. *Angiology* 2007; 58:102-5.

Fleming RM. The Longitudinal Effects of Fenfluramine-Phentermine Use. *Angiology* 2007;58:353-9.

Nielson C, **Fleming RM.** Blood glucose and cerebrovascular disease in non-diabetic patients. *Angiology* 2007;58(5):625-9.

Fleming RM, Author's response to "Longitudinal effects of Fenfluramine-Phentermine Use." *Angiology* 2008;58(6):774.

Fleming RM, Harrington GM. "What is the Relationship between Myocardial Perfusion Imaging and Coronary Artery Disease Risk Factors and Markers of Inflammation?" *Angiology* 2008;59:16-25.

Fleming RM. Improving our Reading of True Percent Diameter Stenosis and Stenosis Flow Reserve from Visually Reported Percent Diameter Stenosis Obtained at the Time of Cardiac Catheterization. (in process)

Fleming RM. The Importance of Physiologic Information Derived from Cardiac PET in Assessing Coronary Artery Disease in Three People with "Normal" Coronary Angiograms. (in process)

Fleming RM, Harrington GM, Ayoob KT. Heart Benefits and Harms of Diet Counseling: A randomized controlled trial. (in process)

Fleming RM, Harrington GM, Jay S, Avery K. Case 20 – Cardiac viability measured using resting FH Washout of Sestamibi. Sestamibi is not superglue. ASNC Best Cases 23 March 2009, http://www.asnc.org/section_62.cfm

Fleming RM, Harrington GM, Baqir R, Jay S, Sridevi Challapalli, Avery K, Green J. The Evolution of Nuclear Cardiology takes Us Back to the Beginning to Develop Today's "New Standard of Care" for Cardiac Imaging: How Quantifying Regional Radioactive Counts at 5 and 60 Minutes Post-Stress Unmasks Hidden Ischemia. *Methodist DeBakey Cardiovascular Journal (MDCVJ)* 2009;5(3):42-48.

Fleming RM, Harrington GM, Baqir R, Jay S, Challapalli S, Avery K,

Green J. Renewed Application of an Old Method Improves Detection of Coronary Ischemia. A Higher Standard of Care. *Federal Practitioner* 2010;27:22-31.

Fleming RM, Harrington GM, Avery K, Baqir R, Jay S, Challapalli S, Green J. Sestamibi kinetics may distinguish between viable and infarcted myocardium. *Medscape Radiology* 2010 WebMD, LLC. 29 September 2010. (<http://www.medscape.com/viewarticle/729277>)

Fleming RM. Reducing patient radiation exposure AND answering the question of “Does the patient actually have heart disease?” *Ann Intern Med* 13 October 2010. <http://www.annals.org/letters/?first-index=&hits=25&days=&submit=Go>
http://www.annals.org/content/153/7/425.abstract/reply#annintmed_el_125906

Fleming RM, Harrington GM. The Nuclear Imaging Uncertainty Principle. Do Nuclear Cameras Really Work? *Nature Precedings* 14 October 2010 (18:33 GMT). Posted to Biotechnology, Chemistry. <http://precedings.nature.com/documents/5013/version/1>

Fleming RM. Inflammation and Heart Disease. The Wisdom of listening to our Colleagues! *Ann Intern Med* 19 October 2010. <http://www.annals.org/letters/>
http://www.annals.org/content/153/8/499.abstract/reply#annintmed_el_125941

Fleming RM, Harrington GM. Sestamibi Redistribution Identifies Vulnerable Coronary Plaques. The State of the Art! *Ann Intern Med* 21 October 2010. <http://www.annals.org/letters/> <http://www.annals.org/content/153/6/387>

Fleming RM. Defining Dietary Outcomes Based Upon End Organ Damage. *Annals of Intern Med* 18 November 2010. http://www.annals.org/content/153/5/289.abstract/reply#annintmed_el_126073

Fleming RM, Harrington GM, Baqir R, Jay S, Sridevi Challapalli, Avery K, Green J. The Evolution of Nuclear Cardiology takes Us Back to the Beginning to Develop Today’s “New Standard of Care” for Cardiac Imaging: How Quantifying Regional Radioactive Counts at 5 and 60 Minutes Post-Stress Unmasks Hidden Ischemia. *Methodist DeBakey Cardiovascular Journal (MDCVJ)* 2009;5(3):42-48. [reprinted by permission, *ANZSNM* 2011;41(4):6-11.

Fleming RM, Harrington GM. FHRWW stress SPECT protocol reduces radioactive dosage and increases ischemia detection. ANZ Nuclear Medicine 2010;41(4):24-232.

Fleming RM, Harrington GM, Baqir R, Jay S, Challapalli S, Avery K, Green J. Renewed Application of an Old Method Improves Detection of Coronary Ischemia. A Higher Standard of Care. Review Article. ANZSNM Gamma Gazette 2011;1:50-58.

Fleming RM, Harrington GM, Jay S, Avery K. FHRWW Rest SPECT Viability Imaging – Cardiac viability measured using resting FHRWW Redistribution of Sestamibi: The Scientific Evidence proves “Sestamibi is not Superglue.” ANZ Nuc Med March 2011 (in press).

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12 February 2014

Appendix B

15 March 2013

Carla Schemmel, District Court Judge
Fifth Judicial District of Iowa
Polk County Courthouse
500 Mulberry Street
Des Moines, IA 50309

Re: Order setting deadline of service, Case # 05771 CVCV009488

Dear Judge Schemmel,

I have received the Court order (supra) of March 7, 2013. My understanding is that the court requires evidence that the Defendant has been served pursuant to Iowa Rule of Civil Procedure 1.302(5).

Rule 1.302 Original notice; form and service.

A notice to the defendant, respondent, or other party against whom an action has been filed shall be served in the form and manner provided by this rule...

Rule 1.302(5) Original notices may be served by any person who is neither a party nor the attorney for a party to the action. A party or party's agent may take an acknowledgment of service and deliver a copy of the original notice ... and may mail a copy of the original notice when mailing is required or permitted under any rule or statute.

As noted with the original filing I attested to a "Certificate of Service Upon Respondent" (attached), which was mailed to the respondent's attorney on 13 November 2013. Also attached hereto is a copy of the delivery confirmation receipt # 0311 2550 0002 9709 6899, which as confirmed by the online "Track & Confirm" service provided by the United States Postal Service (also attached) was delivered at 10:50 am on November 15, 2012. The delivery confirmation numbers match.

I am not certain why the court believed there was no documentation that the defendant was not served. I hope this provides the necessary evidentiary proof that this has been done. Please let me know if you require any further information or documentation.

Cordially,

Dr. Richard M. Fleming

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

RICHARD M. FLEMING, M.D.)	
	)	CASE NO. 05771 CVCV009488
Petitioner,)	
)	
v.	)	Answer to Respondents
	)	Request to Resist Stay
IOWA BOARD OF MEDICAL)	
EXAMINERS)	
)	
Respondent.)	

The petitioner, Dr. Richard M. Fleming has received respondents request to resist stay and finds it both **non-responsive** and made in **bad-faith**. The answer demonstrates bad faith:

1. Dr. Richard M. Fleming has received respondent’s request to resist stay, dated May 30, 2013, on June 3, 2013. The original petition for Judicial Review by this court was submitted November 13, 2012 and received by both the court and the respondent on November 15, 2013 as previously verified to this court. In accord with 17A.19(6) “Within thirty days after filling of the petition, or within further time allowed by the court, the agency shall transmit ... “ There is no record on the courts docket that an extension was allowed by the court. The respondent has taken 202 days to submit these documents and has not timely filed in accord with the Iowa Code. At this time, there is no record on the Iowa Court Docket Search

(<https://www.iowacourts.state.ia.us/ESAWebApp/TIndexFrm>) that the court has yet received these documents.

2. The court notified Dr. Fleming by an order dated March 12, 2013 that respondent had not received the original petition for “immediate stay, reversal and damages” as filed (supra). Dr. Fleming notified the court that the respondent had in fact been served and that there was U.S. Postal Documentation of said receipt of documents. Respondent has now submitted the “request to resist” (supra) without further communication from Dr. Fleming, raising the question regarding what would appear to be a denial by the respondent that the original petition was received, when in fact they were.

3. The request by respondent appears to be a form letter type response. Page 1, item 2 notes that “Dr. Butt seeks a stay...” Petitioner would argue that the use of such a form type letter indicates that this is the usual type of response by the respondent and not one specifically addressing petitioner. A form letter with the name of another physician on it suggests a cut and past approach to filing this document with the court.

4. Statements by the respondent regarding the original court documents, shows that the respondent did not independently verify the accuracy of what it has stated and shows that the respondent did not note that the original indictment was withdrawn

by the prosecutor. Failure to review the records prior to reporting the statement of facts, indicates bad-faith on the part of the respondent.

The answer is non-responsive:

1. The respondent only reiterates the original indictment, when the original indictment was withdrawn as shown by the findings of fact in the original case. According to the most recent Iowa Appellate Court review, the respondent must demonstrate medical malpractice (*Smoker v. Iowa Board of Medicine*, No. 3-222/12-1216 Filed April 24, 2013), which it did not do. In fact there is nothing on the record of the respondent to show malpractice of any kind.

To avoid any confusion and the possible appearance that petitioner does not object to the points made by the respondents non-responsive and bad-faith answer, I will answer all seven points mentioned by respondent, to assert disagreement with the respondent's answer and my further demonstrate my concern for the bad-faith non-responsive answer made by the respondent. I believe it further demonstrates a willful, wanton, malicious disregard made with scienter as established in the "Addendum on Probative Failure of Investigative Report" made by respondent.

1. Items 1-3 are reiterations made to the original indictment and are non-responsive to the issue of medical malpractice, which the Court of Appeals

has determined to be the decisive factor (*Smoker v. Iowa Board of Medicine*, No. 3-222/12-1216 Filed April 24, 2013). Furthermore, the demonstrate that respondent did not read the actual court documents.

2. Item 2 is nothing more than a reiteration with the exception that it demonstrates bad-faith on the part of the respondent for reasons set out supra.
3. Item 4 is nothing more than a stating of the Iowa Code without the correct use of quotation marks indicating further form letter type response without proper format and respect to this court.
4. Item 6 is missing without reason to believe it exists, given the continuity of subject matter in 5 and 7. This further indicates a form letter type response. *Both items 3 and 4 indicate bad-faith to the petitioner.*
5. Item 7 is nothing more than a notation of the case applicable to item 5.
6. Item 5(a) “The extent to which the applicant is likely to prevail when the court finally disposes of the matter.” According to the recent appellate court decision, the respondent must demonstrate that there has been medical malpractice. (*Smoker v. Iowa Board of Medicine*, No. 3-222/12-1216 Filed April 24, 2013). The respondent has not done this. Therefore, the petitioner is likely to win.

7. Item 5(b) “The extent to which the applicant will suffer irreparable injury if relief is not granted.” The respondent has prevented Dr. Fleming from practicing medicine, for which he is Internationally known. This damage to reputation and career is irreparable. Dr. Fleming is unable to provide for himself and more importantly for his two sons who live with him. The damages for a Cardiologist without additional training in nuclear imaging have been established by the Federal Government as \$379,975 per year. This would undoubtedly be more for a Nuclear Cardiologist, which requires additional training. (http://www.cms.gov/Medicare/Medicare-Fee-for-Service/Payment/AcuteInpatientPPS/Downloads/AMGA_08_data.pdf Accessed March 23, 2013). The respondent has prohibited Dr. Fleming from working as an Iowa licensed physician and providing for his family since October 22, 2010.
8. Item 5(c) “The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.” It is the respondent who has failed to demonstrate medical malpractice (*Smoker v. Iowa Board of Medicine*, No. 3-222/12-1216 Filed April 24, 2013) and has attacked Dr. Fleming. The respondent should not be rewarded for doing so; particularly given item 5(d) infra. An immediate stay, reversal and awarding of damages

to Dr. Fleming does not harm the respondent. Rather, it provides appropriate remedies to Dr. Fleming.

9. Item 5(d) “The extent to which the public interest relied on by the agency is sufficient to justify the agency’s action.” Petitioner would agree that the public interest is key. On that point alone, the respondent should be penalized for its actions. The goal is to provide for the quality of medical care. The respondent has taken actions, which have made it more difficult for Iowans to receive the best possible medical care in the area of nuclear cardiac diagnostic imaging. That is what the petitioner has attempted to do. The development of the FHRWW^{© (pat. pend.)} imaging protocol has been shown to reduce diagnostic errors, saving 70,000-90,000 lives per year in the U.S. alone, reduce healthcare costs, reduce time, reduce radiation injected into patients and exposed to hospital staff. The method has been presented at multiple Society of Nuclear Medicine (SNM) International Conferences, been used for lectures during SNM conferences for continuing medical education (CME) credit required by respondent and other state medical boards for physicians to maintain their medical licensure, and has been confirmed by physicians in England and South Korea at the 2010 and 2011 SNM meetings. Additionally, it has been published in the following peer reviewed medical literature and medical textbooks. In fact, it is the

respondent who is adversely affecting the health of the Iowa public; not Dr. Fleming.

10. References of peer reviewed published work on FHRWW © (pat. pend.) showing that Dr. Fleming's method more accurately detects heart disease and reduces deaths caused by rest-stress imaging misdiagnosis:

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In addition, Dr. Fleming would like to point out that the Respondent repeatedly refers to Dr. Fleming as having been convicted of fraud in Federal court. At no point has respondent's answer and request, specified the alleged fraud and on 28 *USC* § 2255 and 28 *USC* § 2241 appeals, by Dr. Fleming, the Trial Judge has never asserted fraud. On the contrary, the Judge has acknowledged the weight of the evidence and of the testimony holding Dr. Fleming innocent. The ruling on these appeals was that Dr. Fleming had waived his Constitutional rights by entering into his plea agreement and the appeal was denied because it entailed the claim of innocence, a Constitutional right. Before the Iowa Board of Medicine, Dr. Fleming claims innocence under Iowa law and not as a Constitutional claim.

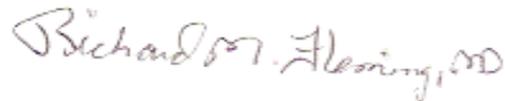
Dr. Fleming asks this court to find that the respondents answer is both non-responsive and in bad-faith, and for the original petition for Immediate Stay, Reversal and Damages be granted in keeping with recent Iowa Appellate Decisions (*Smoker v. Iowa Board of Medicine*, No. 3-222/12-1216 Filed April 24, 2013) and

to base the award on the Federal Governments calculations

[\(http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/](http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/)

[AcuteInpatientPPS/Downloads/AMGA_08_data.pdf](#), Accessed March 23, 2013).

Respectfully submitted,



Richard M. Fleming, M.D.
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Tele: (775) 770-4328
Email: rmfmd7@hotmail.com

AFFIDAVIT

I certify that this document has been electronically served on the Iowa Board of Medicine by email on June 7, 2013 (kent.nebel@iowa.gov; mark.bowden@iowa.gov) and served by certified mail to Ms. Theresa O'Connell Weeg, State of Iowa, Department of Justice, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319.

Date: June 7, 2013



Richard M. Fleming, M.D.

Appendix C

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

RICHARD M. FLEMING, M.D.)	
	)	CASE NO. 05771 CVCV009488
Petitioner,)	
)	
v.	)	Addendum on Probative Failure
	)	of Investigative Report
IOWA BOARD OF MEDICAL)	
EXAMINERS)	
)	
Respondent.)	

An Associated Press story (published in the Iowa City Press-Citizen, April 24, 2013) reported the Iowa Court of Appeals "blasted the board [Iowa Board of Medicine] for conducting a "blatantly subpar investigation" [quote from Appeals Court decision]. This Addendum sets forth deficiencies in the Investigative Report for the current case.

The Report willfully, wantonly, maliciously, and with scienter, recites the original health insurance indictment against defendant when the record shows the Government withdrew that original indictment.

The Report willfully, wantonly, maliciously, and with scienter, recites the original health research indictment against defendant alleging fabrication of data when the record shows the Nebraska Board of Medicine indicated it had lost the records in question and it was not their practice to date stamp or maintain inventories of data. The company contracting for the clinical study also reported it had lost the research records delivered to it pursuant to contract. On the trial record, the Federal Express records indicated 62 sets of records were delivered, 60 as contracted for and two alternates to provide for dropouts or other data losses. Affirmatively Professor Alicia Carriquiry, Associate Provost, and Director of Graduate Studies in Statistics at Iowa State University testified the data were not fabricated using standards used by the Office of Research Integrity. The Iowa State Statistical Laboratory has been ranked in the top half dozen statistical consulting and training centers in the world for almost a century. The Government offered no expert testimony. Under *U.S. v. Prabhu*, 442 F. Supp. 2d 1008 (D. Nev. 2006), there is no fraud if expert testimony supports a billing, even if other experts disagree.

The Report willfully, wantonly, maliciously, and with scienter, represents Defendant pleaded guilty when he entered a holographic plea that he performed a procedure which was best described by CPT Code 78460 and CPT Code 78464 in combination and that he billed under CPT Code 78465. Special Agent Palmer testified this is not a valid combination, though the Medicare Manual (Medicare Advantage Medical Policy Bulletin, R-5) specifies CPT 78465 is the proper billing for the combination. There can be no fraud if the physician follows Medicare instructions (Id).

The Report willfully, wantonly, maliciously, and with scienter, supports the ex-wife's complaint in a custody dispute where Special Agent Palmer provided her with detective services. The Report does not note that at his sentencing hearing, Defendant indicated he was entering a plea because he had custody of his minor child and he could not risk any possible outcome which might prevent him from carrying out his parental responsibilities.

The Report willfully, wantonly, maliciously, and with scienter, represents that Defendant made no appeal. A 28 U. S. C. 2255 appeal was entered and was in progress on the date of the Investigative Report, October 7, 2009. It had been concluded by the mid-November dates upon which the investigators initialed the Report. The ruling on this action did not dispute Defendant's claim there was no crime nor any of the evidence submitted. Rather, the Court ruled Defendant had waived his Constitutional rights by his plea agreement and thus was barred from any Constitutional claim of innocence. The claim before the Board of Medicine, that there was no crime, is not a Federal Constitutional claim and should proceed on the evidence.

There is *no evidence of inadequate patient care*, therefore, in accord with *Smoker v. Iowa Board of Medicine*, Case No 3-222/12-1216, the court should find for Dr. Fleming and reverse the ruling of the Iowa Board of Medicine. Dr. Fleming additionally requests the court to award *punitive/exemplary damages* for damage to personal and professional reputation and employment.

Date: May 2, 2013

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775-770-4328

AFFIDAVIT

I certify that this document has been electronically served on the Iowa Board of Medicine by email on May 2, 2013 (kent.nebel@iowa.gov; mark.bowden@iowa.gov).

Date: May 2, 2013

Richard M. Fleming, M.D.

Appendix D

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

RICHARD M. FLEMING, M.D.)	
	)	CASE NO. 05771 CVCV009488
Petitioner,)	
)	
v.	)	Absence of any medical malpractice
)	
IOWA BOARD OF MEDICAL)	
EXAMINERS)	
)	
Respondent.)	

The petitioner, Dr. Richard M. Fleming has received respondents “supplemental transmission of certified copy of agency record – IV. Hearing transcript” on 19 July 2013.

This “supplemental” copy is *again* both **non-responsive** and in **bad faith** given it’s failure to *again* demonstrate any issue of medical malpractice (*Smoker v. Iowa Board of Medicine*, No. 3-222/12-1216 Filed April 24, 2013). The entire document notes the term malpractice only twice. First on page 40, line 2, where there is **no medical malpractice** supported by the government. The emphasis being that “there were no crimes committed of any sort” and of note, there has been no Tort of “medical malpractice” filed. The second instance is on page 46, line 15 where **legal malpractice** is mentioned in regard to the attorneys involved in the case, not the petitioner.

Dr. Fleming *again* asks this court to find that the respondents answers are both non-responsive and in bad-faith, and for the original petition for Immediate Stay, Reversal and Damages be granted in keeping with recent Iowa Appellate Decisions (*Smoker v. Iowa Board of Medicine*, No. 3-222/12-1216 Filed April 24, 2013) and to base the award on the Federal Governments calculations

(http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/AMGA_08_data.pdf, Accessed March 23, 2013).

Dated: 20 July 2013

Respectfully submitted,



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AFFIDAVIT

I certify that this document has been electronically served on the Iowa Board of Medicine by email on June 20, 2013 (kent.nebel@iowa.gov; mark.bowden@iowa.gov) and electronically served on Ms. Julie J. Bussanmas (jbussanmas@ag.state.ia.us).

Date: 20 July 2013, 2013



Appendix E

REPLY TO:

- 135 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1501
(202) 224-3744
e-mail: grassley.senate.gov/contact.cfm
- 721 FEDERAL BUILDING
210 WALNUT STREET
DES MOINES, IA 50309-2140
(515) 288-1145
- 150 1ST AVENUE NE
SUITE 325
CEDAR RAPIDS, IA 52401
(319) 363-6832

United States Senate

CHARLES E. GRASSLEY
WASHINGTON, DC 20510-1501
July 29, 2011

REPLY TO:

- 103 FEDERAL COURTHOUSE BUILDING
320 6TH STREET
SIOUX CITY, IA 51101-1244
(712) 233-1860
- 210 WATERLOO BUILDING
531 COMMERCIAL STREET
WATERLOO, IA 50701-5497
(319) 232-6657
- 131 WEST 3RD STREET
SUITE 180
DAVENPORT, IA 52801-1419
(563) 322-4331
- 307 FEDERAL BUILDING
8 SOUTH 6TH STREET
COUNCIL BLUFFS, IA 51501-4204
(712) 322-7103

Dr. Richard M. Fleming
1697 Lone Oak Trail
Reno, Nevada 89523

Dear Dr. Fleming:

Thank you for taking the time to contact me with your thoughts and concerns. As your Senator, it's important for me to hear from you.

I appreciate receiving the article that you wrote regarding improving medical care, reducing radiation exposure, and using other ways to diagnose heart disease. I read your article titled Practicing Medicine Without a License. Your article mentioned that the federal government's protocol to conduct a nuclear study of the heart, using a radiotracer, is to use the two injection rest-stress approach. The assertion in your article suggests depending on this method leads to about 100,000 deaths per year due to many diagnoses being missed. The vivid story about the veteran in the article truly drove home your passion regarding this issue. Your attempt to improve medical care as a provider and through education regarding improving testing methods should be commended. Please feel free to contact Rodney Whitlock if you would like to talk about your thoughts further. He is a member of my staff who handles health care issues and he can be reached at Rodney_Whitlock@grassley.senate.gov. As a senior member of the Senate Committee on Finance, I will continue to look for legislative vehicles to improve health care services and testing implemented and regulated by the federal government.

By sharing your views with me, Iowans play a vital role in this process. Hearing from you enables me to be a better U.S. Senator, and I very much appreciate the time you took to inform me of your concerns.

Sincerely,

Chuck
Charles E. Grassley
United States Senator

CEG/mh

I assume you get back to Iowa sometimes "O nee an Iowa always and owan" CEG

RANKING MEMBER,
JUDICIARY

Committee Assignments:
AGRICULTURE
BUDGET
FINANCE

CO-CHAIRMAN,
INTERNATIONAL NARCOTICS
CONTROL CAUCUS