

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD FLEMING,

Defendant.

4:07CR3005

NOTICE OF INTENT TO DESTROY  
EXHIBITS

COMES NOW the United States of America, by and through the undersigned Assistant United States Attorney, and provides notice of its intent to destroy exhibits:

1. The United States District Court returned exhibits pertaining to defendant Richard Fleming to this office on April 24, 2009, and August 24, 2009. ([Filing 140](#), [Filing 180](#)). The United States has maintained custody of the following exhibits from the November 6, 2007, suppression hearing: Exhibit 1 – copy of letter sent from Scott Calkins dated 10/29/03, Exhibit 2 – copy of letter sent from Scott Calkins dated 11/7/03, Exhibit 3 – copy of letter sent from Scott Calkins dated 12/3/03, Exhibit 4 – copy of letter sent from Scott Calkins dated 1/19/04, and Exhibit 5 copy of letter sent from Scott Calkins dated 1/22/04, and from the April 6-10, April 13-17, and April 22-23, 2009 trial – Exhibit 1 – glossary of terms, Exhibit 2 – diagram of heart, Exhibit 3 – diagram of normal and blocked arteries, Exhibit 4 – diagram of left ventricle: infarction, ischemia, injury, Exhibit 5 – illustration of blood flow – rest and stress with defect, Exhibit 6 – diagnostic patterns: myocardial perfusion, Exhibit 7 – photo of SPECT camera, Exhibit 8 – illustration of how SPECT camera functions, Exhibit 9 – Video : raw cine images, rest and stress, Exhibit 10 – illustration of cardiac tomography, Exhibit 11 – SPECT image: stress and rest slices, Exhibit 12 – video: 3D wall motion – whole heart, Exhibit 13 – myocardia anatomy visualized on planar images, Exhibit 14 – three planar images, stress and rest, Exhibit 15 – planar image, Exhibit 16a – protocol: tomographic SPECT studies, rest and stress, using dipyridamole and thallium, Exhibit 16b – protocol: tomographic SPECT studies, rest and stress, using dipyridamole and sestamibi, Exhibit 17 – packet of documents CG (Count 1), Exhibit 17a - FHHI medical records, Exhibit 17b - Syncor records, Exhibit 17c - FHHI billing sheet, Exhibit 17d - Blue Cross Blue Shield records, Exhibit 18 - Packet of Documents DW (Count 2), Exhibit 18a - FHHI medical records, Exhibit 18b - Syncor records, Exhibit 18c - FHHI billing sheet, Exhibit 18d - Medicare records, Exhibit 18e - Blue Cross Blue Shield records, Exhibit 19 - Packet of Documents DR (Count 3), Exhibit 19a - FHHI medical records, Exhibit 19b - Syncor records, Exhibit 19c - FHHI billing sheet, Exhibit 19d - Blue Cross Blue Shield records, Exhibit 20 - Packet of Documents NT (Count 4), Exhibit 20a - FHHI medical records, Exhibit 20b - Syncor records, Exhibit 20c - FHHI billing sheet, Exhibit 20d - Medicare records, Exhibit 20e - Medicaid records, Exhibit 21

- Packet of Documents JS (Count 5), Exhibit 21a - FHHI medical records, Exhibit 21b - Syncor records, Exhibit 21c - FHHI billing sheet, Exhibit 21d - Medicare records, Exhibit 21e - Blue Cross Blue Shield records. Exhibit 22 - Packet of Documents SW (Count 6), Exhibit 22a - FHHI medical records, Exhibit 22b - Syncor records, Exhibit 22c - FHHI billing sheet, Exhibit 22d - Medicare records, Exhibit 22e - Medicaid records, Exhibit 23 - Packet of Documents DE (Count 7), Exhibit 23a - FHHI medical records, Exhibit 23b - Syncor records, Exhibit 23c - FHHI billing sheet, Exhibit 23d - Medicare records, Exhibit 23e - Blue Cross Blue Shield records, Exhibit 24 - Packet of Documents SE (Count 8), Exhibit 24a - FHHI medical records, Exhibit 24b - Syncor records, Exhibit 24c - FHHI billing sheet, Exhibit 24d - Medicare records, Exhibit 24e - Blue Cross Blue Shield records, Exhibit 25 - Packet of Documents CM (Count 9), Exhibit 25a - FHHI medical records, Exhibit 25b - Syncor records, Exhibit 25c - FHHI billing sheet, Exhibit 25d - Medicare records, Exhibit 25e - Medicaid records, Exhibit 26 - Packet of Documents KM (Count 10), Exhibit 26a - FHHI medical records, Exhibit 26b - Syncor records, Exhibit 26c - FHHI billing sheet, Exhibit 26d - Blue Cross Blue Shield records, Exhibit 27 - Patient packet reflecting 2002 rest and stress protocol, Exhibit 27a - FHHI medical records, Exhibit 27b - Syncor records, Exhibit 27c - FHHI billing sheet, Exhibit 27d - Medicare records, Exhibit 27e - Blue Cross Blue Shield records, Exhibit 28 - Purple drug order form, Exhibit 29 - Fleming 2002 protocol, Exhibit 30 - Planar image thymus & heart (labeled rest), and tomographic study, Exhibit 31 - FHHI billing sheet corresponding to Exhibit #30, Exhibit 32 - 2002 CPT Codes 78460-78465, Exhibit 33 - Health Insurance Claim Form (HCFA - 1500), Exhibit 34 - Emails between Fleming and Tabor regarding financial concerns, Exhibit 34A - Emails dated 10-29-03 and 11-21-03 between Tabor and Fleming, Exhibit 34B - Email dated 12-2-03 between Tabor and Fleming, Exhibit 34C - Emails dated 12-2-03 between Tabor and Fleming, Exhibit 34D - Emails dated 1-22-04 between Tabor and Fleming, Exhibit 34E - Email dated 2-28-04 between Tabor and Fleming, Exhibit 34F - Email dated 4-6-04 between Tabor and Fleming, Exhibit 35 - Fax from Tabor to Fleming, proposed agreement 10/01/2003, Exhibit 36 - \$10,000 check dated 10/01/03 from Physicians Pharmaceuticals to FHHI for "weight loss study", Exhibit 37 - Email dated 10/03/03 from Fleming to Tabor with attached letter outlining "chips study", Exhibit 38 - \$10,000 check dated 10/17/03 from Physicians Pharmaceuticals to FHHI for "chips study", Exhibit 39 - Email dated 10/17/03 with attached letter dated 10/13/03 from Fleming to Tabor, Exhibit 40 - Email dated 10/17/03 from Tabor to Fleming, Exhibit 41 - fax from Fleming to Tabor on 10/23/03, regarding proposal for soy study, Exhibit 42 - Email dated 10/23/03 from Fleming to Tabor with attached soy study protocol, Exhibit 43 - Email dated 10/23/03 from Tabor to Fleming with protocol sample, Exhibit 44 - Emails dated 10/24/03 between Fleming and Tabor with attached soy study protocol drafts, Exhibit 45 - Emails dated 10/27/03 and 10/28/03 between Tabor and Fleming, Exhibit 46 - \$5,000 check dated 11/04/03 from Physicians Pharmaceuticals to FHHI for "weight loss study", Exhibit 47 - \$10,000 check dated 12/02/03 from Physicians Pharmaceuticals to FHHI, Exhibit 48 - Physicians Pharmaceuticals vendor report, Exhibit 49 - Email dated 12/02/03 from Tabor to Lamphier with copy to Fleming with attached soy study protocol, Exhibit 50 -

Email dated 12/09/03 from Tabor to Fleming regarding consent form and statistical significance, Exhibit 51 - Email dated 12/09/03 from Tabor to Fleming regarding consent form sample, Exhibit 52 - Email dated 12/15/03 from Fleming to Tabor regarding consent form, Exhibit 53 - Email dated 12/15/03 from Tabor to Fleming with attached consent forms, Exhibit 54 - Email - 12/17/03 Fleming to Tabor re: 20 women, Exhibit 55 - Email dated 12/17/03 from Tabor to Fleming with attached food diary, Exhibit 56 - Series of emails - 12/03/03 to 12/19/03, Exhibit 57 - Email dated 12/22/03 from Fleming to Tabor with participant questionnaire, Exhibit 58 - Email dated 12/23/03 from Tabor to Fleming with participant questionnaire, Exhibit 59 - Emails dated 12/29/03 between Tabor and Fleming, Exhibit 60 - Email dated 01/05/04 from Fleming to Tabor, Exhibit 61 - Email - 01/06/04 Tabor to Fleming, forwarding email from 12/3/03 to 12/23/03, Exhibit 62 - Email dated 01/06/04 from Tabor to Fleming regarding soy study protocol (includes 12/3/03 to 12/23/03), Exhibit 64 - Email dated 01/07/04 from Fleming to Tabor regarding shipping soy chips, Exhibit 65 - Email dated 01/07/04 from Tabor to Fleming, Exhibit 66 - Shipping receipt for chips - 01/09/04, Exhibit 67 - Emails dated 01/14/04 and 01/13/04 between Tabor and Fleming, Exhibit 68 - Emails dated 01/16/04 and 01/17/04 between Tabor and Fleming regarding New York participant, Exhibit 69 - Emails - 01/15/04 to 01/21/04 between Tabor and Fleming regarding 25 enrolled, Exhibit 70 - Emails dated 01/15/04 to 01/21/04 between Fleming and Tabor regarding number of participants, Exhibit 71 - Emails - 01/21/04 Tabor to Fleming re: Avon wants 60, Exhibit 72 - Emails with final response date of 01/21/04 between Tabor and Fleming regarding number of participants, Exhibit 73 - Email dated 01/27/04 from Tabor to Fleming, Exhibit 74 - Email - 01/29/04 Fleming to Tabor: 52 enrolled (Count 11), Exhibit 75 - Email - 01/29/04 Tabor to Fleming re: 52 enrolled, Exhibit 76 - Shipping receipt for chips - 02/04/04, Exhibit 77 - Email - 02/06/04 Fleming to Tabor: enrollment complete, Exhibit 78 - Email - 02/19/04 Fleming to Tabor: soy research, Exhibit 79 - Email - 02/25/04 Fleming to Tabor: four week data (Count 12), Exhibit 80 - Email dated 03/03/04 from Tabor to Fleming regarding conclusion of study, Exhibit 81 - Email - 03/08/04 Fleming to Tabor: sending forms, Exhibit 82 - Fed Ex shipping document - 03/08/04 (Count 13), Exhibit 83 - Submitted participant questionnaires, Exhibit 84 - Emails - 04/01/04 between Fleming & Tabor re: study documents, Exhibit 85 - Email - 04/05/04 Tabor to Fleming re: final study report, Exhibit 86 - Final Study report, Exhibit 87 - Two-Page participant questionnaire, Exhibit 88 - Participant consent form, Exhibit 89 - Letter to Rydberg - 08/23/04, Exhibit 90 - Notebook, Exhibit 91 - Stipulation #1, Exhibit 92 - Stipulation #2, Exhibit 93 - Stipulation #3, Exhibit 94 - CPT codes from FHFI, Exhibit 95 - Inquiry sent to Merlino from AMA, Exhibit 96 - Time line 10-1-2003 through 4-7-2004 (not to jury), and Exhibit 97 - Stipulation #4.

2. Richard Fleming pled guilty, and was sentenced on August 20, 2009. ([Filing 176](#)). The district court denied the defendant's motion filed pursuant to 28 U.S.C. § 2255. ([Filing 187](#), [Filing 188](#)). The Eighth Circuit dismissed the defendant's appeal. ([Filing 199](#)).

The Plaintiff has maintained custody of the exhibits pursuant to NECrimR § 55.1(g)(1)(B) for at least thirty (30) calendar days after the case became final and the case is no longer subject to appellate review. If no objection is made by the Defendant within 15 calendar days, the exhibits will be destroyed without further notice.

UNITED STATES OF AMERICA

DEBORAH R. GILG  
United States Attorney  
District of Nebraska

However, neither the Court nor the Plaintiff (The Government) told me they were going to destroy these documents.

By: s/ Alan L. Everett  
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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following: N/A, and hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

Richard Fleming



Reno, NV 89523

This certificate of service is a false statement made by the Federal Government. It is by definition Perjury.

s/ Alan L. Everett  
ALAN L. EVERETT  
Assistant United States Attorney