

STATE OF OHIO
THE STATE MEDICAL BOARD
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS, OHIO 43266-0315

April 12, 1991

James M. Fleming, D.O.
4206 Crownwood
Seabrook, Texas 77586

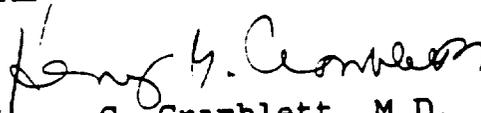
Dear Doctor Fleming:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on April 10, 1991, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO


Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 055 327 523
RETURN RECEIPT REQUESTED

cc: Douglas J. Maser, Esq.

CERTIFIED MAIL NO. P 055 327 524
RETURN RECEIPT REQUESTED

Mailed 4/12/91

STATE OF OHIO
STATE MEDICAL BOARD

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on April 10, 1991, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of James M. Fleming, D.O., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

April 12, 1991

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JAMES M. FLEMING, D.O.

*

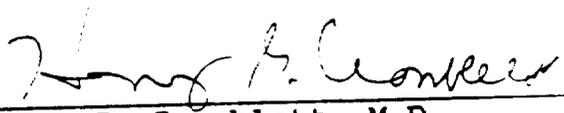
ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 10th day of April, 1991.

Upon the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the above date.

It is hereby ORDERED that the certificate of James M. Fleming, D.O., to practice medicine and surgery in the State of Ohio shall be and hereby is REVOKED. This Order shall become effective immediately upon mailing of notification of approval by the State Medical Board of Ohio.

(SEAL)


Henry G. Cramblett, M.D.
Secretary

April 12, 1991

Date

STATE MEDICAL BOARD

REPORT AND RECOMMENDATION
IN THE MATTER OF JAMES M. FLEMING, D.O. - 7 AM 1991

The Matter of James M. Fleming, D.O., came on for hearing before me, Kevin P. Byers, Esq., Hearing Examiner for the State Medical Board of Ohio, on February 15, 1991.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of November 14, 1990, mailed November 15, 1990 (State's Exhibit #1), the State Medical Board notified James M. Fleming, D.O., that it proposed to take disciplinary action against his Ohio certificate to practice medicine and surgery. The Board alleged that on or about May 23, 1990 he was convicted in the Circuit Court for the County of Ingham, Michigan, of five (5) counts of Medicaid Fraud and one (1) count of Conspiracy to Defraud Medicaid, all felonies. Furthermore, the Board alleged that the finding of guilt of the six (6) felony offenses constituted "a plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Revised Code.
- B. By letter received December 14, 1990 (State's Exhibit #2), Dr. Fleming, through counsel, requested a hearing in this Matter.

II. Appearances

- A. On behalf of the State of Ohio: Lee Fisher, Attorney General, by John C. Dowling, Assistant Attorney General
- B. On behalf of the Respondent: Douglas J. Maser, Esq.

III. Exhibits Examined

In addition to those noted previously, the following exhibits were examined and admitted into evidence in this Matter:

- A. Presented by the State
 1. State's Exhibit #3: December 18, 1990 letter to Douglas Maser, Esq., from the State Medical Board advising that a hearing was set for December 28, 1990 but was postponed until further notice pursuant to Section 119.09, Revised Code.
 2. State's Exhibit #4: December 19, 1990 letter to Mr. Maser from the State Medical Board scheduling Dr. Fleming's hearing for January 24, 1991.

91 MAR -7 AM 8:14

3. State's Exhibit #5: January 23, 1991 Motion for Continuance submitted by Mr. Maser on behalf of Dr. Fleming.
4. State's Exhibit #6: January 23, 1991 Entry by the State Medical Board granting Dr. Fleming's Motion for Continuance.
5. State's Exhibit #7: Six (6) page certified document from the Circuit Court for the County of Ingham, Michigan, which consists of an Amended Judgment of Sentence dated August 15, 1990, a Judgment of Sentence dated August 6, 1990, two (2) page verdict form and the two (2) page Amended Felony Information dated May 9, 1990.
6. State's Exhibit #8: Sections 400.606 through 400.608 of the Medicaid False Claim Act, Michigan Compiled Laws, Annotated.

B. Presented by the Respondent

1. Respondent's Exhibit A: Written "Statement of Defendant James M. Fleming" which was presented to the sentencing court in Michigan.
2. Respondent's Exhibit B: "Motion to Introduce Similar Acts Evidence" filed by the Attorney General in the Michigan criminal case.
3. Respondent's Exhibit C: "Memorandum of Law" supporting the above motion in the criminal matter filed by the Michigan Attorney General.
4. Respondent's Exhibit D: "People's Proposed Jury Instructions" submitted by the Michigan Attorney General in the underlying criminal case in Michigan.

FINDINGS OF FACT

1. James M. Fleming, D.O., is a licensee of the State Medical Board of Ohio entitled to practice medicine and surgery in this state.

This fact is established by review of the public licensure documents of the State Medical Board of Ohio.

2. On May 23, 1990 a jury returned a guilty verdict on each of six (6) felony counts against Dr. Fleming. Five (5) of these counts related to defrauding Medicaid by presenting a false claim and the sixth count alleged conspiracy in presenting false claims between May 10, 1984 and June 6, 1985. As a result of this jury verdict, Dr. Fleming was sentenced by the trial judge on August 15, 1990 to pay \$54,000 in fines and \$15,000 in costs by October 1, 1990 or face one (1) year in the Ingham County Jail.

These facts are established by State's Exhibits #7 and #8.

STATE MEDICAL BOARD

91 MAR -7 AM 8:11

CONCLUSIONS

Dr. Fleming does not contest the fact that he has been convicted of six (6) Medicaid fraud felonies in Michigan. These convictions constitute "a judicial finding of guilt of a felony" as proscribed by Section 4731.22(B)(9), Revised Code. Dr. Fleming's only explanation or rationale for his convictions is found within Respondent's Exhibit A which was apparently considered by the Michigan trial court prior to sentencing Dr. Fleming. At hearing, the jurisdiction of this Board to proceed in this Matter was questioned by Dr. Fleming's counsel because of Dr. Fleming's voluntary non-renewal of his certificate for the 1991-1992 biennium. This inaction does not divest the Board of jurisdiction. His medical license is extant although the current validity of the license is not evidenced by a certificate for the present biennium. Furthermore, the disciplinary action herein is premised upon convictions which occurred while Dr. Fleming was indisputably a certificate holder. In sum, Dr. Fleming's certificate is presently suspended by operation of law, however this suspension does not undermine Board authority pursuant to Section 4731.22(B), Revised Code. This Board has historically levied a severe sanction against licensees who are convicted of felonies as the underlying criminal acts present a serious compromise of the public trust. Dr. Fleming presented no significant mitigation which would justify deviation from prior policy of this Board. The Proposed Order herein reflects consistency and equal treatment of convicted licensees.

PROPOSED ORDER

It is hereby ORDERED that the certificate of James M. Fleming, D.O., to practice medicine and surgery in the State of Ohio shall be and hereby is REVOKED. This Order shall become effective immediately upon mailing of notification of approval by the State Medical Board of Ohio.

KEVIN P. BYERS
Kevin P. Byers
Attorney Hearing Examiner



STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

EXCERPT FROM THE MINUTES OF APRIL 10, 1991

REPORTS AND RECOMMENDATIONS

Mr. Albert stated that the Findings and Orders appearing on today's agenda are those in the matters of: Robert B. Heath, M.D.; James M. Fleming, D.O.; and Murray Hurwitz, D.O.

Mr. Albert asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Robert B. Heath, M.D.; James M. Fleming, D.O.; and Murray Hurwitz, D.O. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye
	Mr. Albert	- aye

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

All Assistant Attorneys General and all Enforcement Coordinators left the meeting at this time.

.....

REPORT AND RECOMMENDATION IN THE MATTER OF JAMES M. FLEMING, D.O.

.....

DR. GRETTOR MOVED TO APPROVE AND CONFIRM MR. BYERS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES M. FLEMING, D.O. DR. O'DAY SECONDED THE MOTION.

.....



STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

EXCERPT FROM THE MINUTES OF APRIL 10, 1991
IN THE MATTER OF JAMES M. FLEMING, D.O.

Page 2

A roll call vote was taken on Dr. Gretter's motion:

ROLL CALL VOTE:

Dr. Cramblett	- abstain
Dr. O'Day	- aye
Dr. Gretter	- aye
Dr. Stephens	- aye
Mr. Jost	- abstain
Dr. Garg	- abstain
Dr. Kaplansky	- aye
Dr. Heidt	- aye
Dr. Hom	- aye
Ms. Rolfes	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

November 14, 1990

James Michael Fleming, D.O.
1087 Dennison Avenue
Columbus, OH 43201

Dear Doctor Fleming:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about May 23, 1990 you were convicted, after a jury trial, in the Circuit Court for the County of Ingham, Michigan of five (5) counts of Medicaid Fraud and one (1) count of Conspiracy to Defraud Medicaid, all felonies. A certified copy of the Judgment of Sentence is attached hereto as Exhibit A and fully incorporated herein.

The judicial finding of guilt, as alleged in paragraph (1) above, individually and/or collectively, constitute "a plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

Mailed 11/15/90



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

James Michael Fleming, D.O.
Page 2

November 14, 1990

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Henry G. Cramblett, M.D.
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 569 363 832
RETURN RECEIPT REQUESTED

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v. James Fleming
Defendant.

Amended.
JUDGMENT OF SENTENCE

File No. 89-58848-FH

Hon. James T. Kallman

The above-named defendant having been found guilty of the offense of
Medicaid Fraud - 5 COUNTS (MCL 400.607) (MSA _____),
Conspiracy to Defraud Medicaid. 400.606
as punishable by MCL 750.92, upon (or following):

- () His or her plea of guilty on _____, 19__.
- () His or her plea of nolo contendere on _____, 19__.
- () His or her plea/conviction of probation violation on _____, 19__.
- (X) Trial by jury concluded 5-23, 1990.
- () Non-jury trial concluded _____, 19__.
- () His or her petition for Youthful trainee status on _____, 19__.

the defendant having been represented by attorney David Dodge,
and the Court, after due consideration of the matter, and in keeping with the
remarks of the Court made upon the record this date, does ADJUDGE AND
DETERMINE as follows:

- () The defendant shall be, and is, placed on probation (under HYTA) (under 7411) for the period of _____ from and after the date hereof, with the first _____ in the Ingham County Jail with credit for _____ days already served. Defendant is not to leave the state and not to violate any criminal law of the state during the period of probation. He or she is to report once each month, or as often as directed, to the probation officer. Defendant is to pay costs of \$ _____ in monthly installments of \$ _____ each with the first of such payments to be made on or before _____, 19__, (or 30 days after release from jail). Defendant is to pay a fine of \$ _____, as directed by the probation officer. Defendant is to pay restitution of \$ _____, as directed by the probation officer. Additional provisions: _____.
- () The defendant shall be, and is, sentenced to confinement at the State Prison of Southern Michigan or such other institution as the Corrections Commission shall determine for the period of _____ from and after this date with credit for _____ already served.
- () The defendant shall be, and is, sentenced to confinement at the Ingham County Jail for the period of _____ from and after this date with credit for _____ already served.
- (X) The defendant shall pay to the Ingham County Circuit Court a fine in the amount of \$54,000.00 and costs in the amount of \$15,000, on or before 10-1, 1990, for shall be confined in the Ingham County Jail for the period of one year from and after this date.

() Consecutive, (X) Concurrent, with other sentences.

DATED: 8-15-90 A TRUE COPY
CLERK OF THE COURT James T. Kallman
30th JUDICIAL CIRCUIT COURT James T. Kallman, Circuit Judge