



State Medical Board of Ohio

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April 11, 2001

James E. Fleming, M.D.
#4 Oakshore Green
Bratenahl, OH 44108

Dear Doctor Fleming:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 11, 2001, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in black ink, appearing to read "Anand G. Garg".

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0022 4402 9086
RETURN RECEIPT REQUESTED

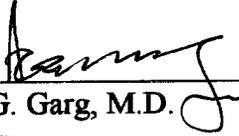
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CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 11, 2001, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of James E. Fleming, M.D., 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)



Anand G. Garg, M.D.
Secretary

APRIL 11, 2001
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JAMES E. FLEMING, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 11, 2001.

Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter 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 of Ohio for the above date.

- A. **STAYED PERMANENT REVOCATION; SUSPENSION OF CERTIFICATE:** The certificate of James E. Fleming, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. The permanent revocation is stayed, and Dr. Fleming's certificate is SUSPENDED for an indefinite period of time.
- B. **INTERIM MONITORING:** During the period that Dr. Fleming's certificate to practice medicine and surgery in Ohio is suspended, Dr. Fleming shall comply with the following terms, conditions, and limitations:
1. **Obey Laws in Ohio:** Dr. Fleming shall obey all federal, state and local laws; and all rules governing the practice of medicine in Ohio.
 2. **Quarterly Declarations:** Dr. Fleming shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which the Order becomes effective, provided that if the effective date is on or after the 16th day of the

month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Appearances**: Dr. Fleming shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order, provided that if the effective date is on or after the 16th day of the month, the first personal appearance must occur during the fourth month following. Dr. Fleming must also appear every three months thereafter, and/or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the Board will normally give Dr. Fleming written notification of scheduled appearances, it is Dr. Fleming's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Fleming shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

4. **Abstention from Drugs**: Dr. Fleming shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Fleming's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Fleming shall abstain completely from the use of alcohol.
6. **Rehabilitation Program**: Dr. Fleming shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval. Dr. Fleming shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. Fleming's quarterly declarations.

7. **Drug & Alcohol Screens; Supervising Physician:** Dr. Fleming shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Fleming shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Order, Dr. Fleming shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Fleming shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Fleming. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that a reliable person witnesses the giving of the specimen, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results.

Dr. Fleming shall ensure that the supervising physician provides quarterly reports to the Board, on forms approved or provided by the Board, verifying whether all urine screens have been conducted in compliance with this Order, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Fleming must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Fleming shall further ensure that the previously designated supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Fleming's quarterly declarations. It is Dr. Fleming's responsibility to ensure that reports are timely submitted.

8. **Provision of Blood or Urine for Screening without Prior Notice:** Dr. Fleming shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Fleming's expense.

9. **Compliance with Treatment Contract:** Dr. Fleming shall provide the Board with acceptable documentation evidencing continued compliance with the terms of the treatment contract entered into with the Cleveland Clinic Foundation, provided that where the terms of the treatment contract conflict with the terms of this Order, the terms of this Order shall control. The documentation must be received in the Board's offices no later than the due date for Dr. Fleming's quarterly declarations.
10. **Releases:** Dr. Fleming shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Fleming's chemical dependency, psychiatric conditions, or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Fleming shall provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Fleming's certificate to practice medicine and surgery unless all of the following conditions are met:

1. **Application and Fees:** Dr. Fleming shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Continued Compliance with Interim Monitoring Conditions:** Dr. Fleming shall have maintained continuing compliance with all terms of Paragraph B of this Order, unless otherwise determined by the Board.
3. **Completion of Inpatient Treatment:** Dr. Fleming shall complete a minimum of 28 days of inpatient or residential treatment, or a combination thereof, for his chemical dependency. Such inpatient or residential treatment shall be completed without interruption. Further, such inpatient or residential treatment shall be provided in accordance with Rule 4731-16-08(A)(13), Ohio

Administrative Code, by a treatment provider approved under Section 4731.25, Ohio Revised Code.

In addition, upon discharge from treatment, Dr. Fleming shall enter into, and thereafter maintain compliance with, a post-discharge aftercare contract which complies with Rule 4731-16-10, Ohio Administrative Code, with a treatment provider approved under Section 4731.25, Ohio Revised Code, who has access to Dr. Fleming's treatment records.

4. **Demonstration of Ability to Resume Practice:** Dr. Fleming shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Fleming has successfully completed the required inpatient treatment.
 - b. Evidence of continuing full compliance with an aftercare contract.
 - c. Two written reports indicating that Dr. Fleming's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.

5. **Releases:** Upon submission of his application, Dr. Fleming shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide or have provided evaluation, treatment or aftercare for Dr. Fleming's chemical dependency and related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. Dr. Fleming shall also provide the Board written consent permitting any treatment provider from whom Dr. Fleming obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract.

6. **Absence from Practice:** In the event that Dr. Fleming has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to the submission of his application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Fleming's fitness to resume practice.

D. **PROBATIONARY CONDITIONS:** Upon reinstatement or restoration, Dr. Fleming's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Fleming shall continue to be subject to the terms, conditions, and limitations specified in paragraph B of this Order.
2. **Chart Monitoring and Monitoring Physician:** Before engaging in any medical practice, Dr. Fleming shall submit for the Board's prior approval the name of a monitoring physician. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Fleming and who is engaged in the same or similar practice.

The monitoring physician shall monitor Dr. Fleming, his medical practice, and review Dr. Fleming's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Fleming, his medical practice, and on the review of Dr. Fleming's patient charts, and on the supervision of Dr. Fleming's medical practice. Dr. Fleming shall ensure that the reports are submitted to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Fleming's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Fleming must immediately so notify the Board in writing, and make arrangements acceptable to the Board for another monitoring physician as soon as practicable. Dr. Fleming shall further ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

3. **Prohibition Against Treating Self and Family Members**: Dr. Fleming shall refrain from self-treating and from treating any family member, except in the event of life-threatening emergency.
4. **Log of Controlled Substances Prescribed**: Dr. Fleming shall keep a log of all controlled substances prescribed. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Fleming's personal appearance before the Board or its designated representative, or as otherwise directed by the Board.
5. **Prohibition against Administering, Dispensing, or Possessing Controlled Substances**: Dr. Fleming shall not, without prior Board approval, administer, dispense, or possess (except as allowed under Paragraph B.4, above) any controlled substances as defined by state or federal law.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Fleming to administer or dispense controlled substances, Dr. Fleming shall keep a log of all controlled substances prescribed, administered or dispensed. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Fleming's personal appearance before the Board or its designated representative, or as otherwise directed by the Board.

6. **Absence from Ohio**: In the event that Dr. Fleming should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Fleming must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
7. **Violation of Probation; Stayed Sanction Imposed**: If Dr. Fleming violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Fleming's certificate.
8. **Tolling of Probationary Period while Out of Compliance**: In the event Dr. Fleming is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
9. **Refrain from Practice if Missed Declaration or Report**: If any declaration or report required by this Order is not received in the Board's offices on or before its due date, Dr. Fleming shall cease practicing beginning the day following Dr. Fleming's receiving notice from the Board of non-receipt, either

by writing, telephone, or by personal contact, until the declaration or report is received in the Board offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.41, Ohio Revised Code.

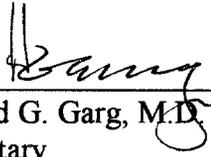
10. **Refrain from Practice if Missed Screening**: If, without permission from the Board, Dr. Fleming fails to submit to random screenings for drugs and/or alcohol, at least as frequently as required by this Order, Dr. Fleming shall cease practicing immediately upon Dr. Fleming's receiving notice from the Board of the violation and shall refrain from practicing for thirty days for the first instance of a missed screen. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41, Ohio Revised Code.
11. **Refrain from Practice if Missed AA or NA Meeting**: If, without permission from the Board, Dr. Fleming fails to participate in an alcohol and drug rehabilitation program, at least as frequently as required by this Order, Dr. Fleming shall cease practicing beginning immediately upon receipt from the Board of notice of the violation and shall refrain from practicing for fifteen days following a missed meeting. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41, Ohio Revised Code.

- E. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Fleming's certificate will be fully restored.
- F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Fleming shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Fleming shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- G. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, Dr. Fleming shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Fleming shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further,

Dr. Fleming shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)



Anand G. Garg, M.D.
Secretary

APRIL 11, 2001

Date

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

The Matter of James E. Fleming, M.D., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on February 27, 2001.

INTRODUCTION

I. Basis for Hearing

- A. On December 13, 2000, the State Medical Board of Ohio [Board] sent a Notice of Immediate Suspension and Opportunity for Hearing to James E. Fleming, M.D. The Board advised Dr. Fleming that the Cuyahoga County Prosecuting Attorney had reported pursuant to Sections 2929.24 and/or 3719.12, Ohio Revised Code, that on or about November 16, 2000, in the Cuyahoga County Common Pleas Court, Dr. Fleming pleaded guilty to, and was found guilty of, the following felonies: two counts of violating Section 2925.11, Ohio Revised Code, Possession of Drugs; one count of violating Section 2925.22, Ohio Revised Code, Deception to Obtain Dangerous Drugs; and two counts of violating Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents. The Board notified Dr. Fleming that, pursuant to Section 3719.121(C), Ohio Revised Code, his certificate to practice medicine and surgery in Ohio had been immediately suspended. The Board further advised Dr. Fleming that continued practice would be considered practicing medicine without a certificate, in violation of Section 4731.41, Ohio Revised Code.

Moreover, the Board notified Dr. Fleming that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio based on the guilty pleas noted above, and the acts underlying those guilty pleas.

The Board alleged that Dr. Fleming's guilty pleas and the judicial findings of guilt constitute "[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,' as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code; Section 2925.22, Ohio Revised Code; and Section 2925.23, Ohio Revised Code; and/or] '[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Section

2925.11, Ohio Revised Code; Section 2925.22, Ohio Revised Code; and Section 2925.23, Ohio Revised Code.”

Accordingly, the Board advised Dr. Fleming of his right to request a hearing in this matter. (State’s Exhibit 1A)

- B. By document received by the Board on January 8, 2001, Dr. Fleming requested a hearing. (State’s Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers, Assistant Attorney General.
- B. On behalf of the Respondent: Leonard T. Lancaster, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State

Lynn Mudra
- B. Presented by the Respondent

James E. Fleming, M.D.

II. Exhibits Examined

- A. Presented by the State
 - 1. State’s Exhibits 1A through 1J: Procedural exhibits.
 - 2. State’s Exhibit 2: Certified copies of Bills of Information from the Cuyahoga County Court of Common Pleas, concerning *State v. Fleming*, Case No. CR 394246.
 - 3. State’s Exhibit 3: Copy of the transcript from Dr. Fleming’s November 16, 2000, plea hearing in *State v. Fleming*.

4. State's Exhibit 4: Certified copy of a November 20, 2000, Journal Entry from *State v. Fleming*.
 5. State's Exhibit 5: Prosecutor's Reporting Form from the Cuyahoga County Prosecuting Attorney's Office, received by the Board on November 21, 2000. [Note: By agreement of the parties, Dr. Fleming's Social Security number was redacted from this document by the Hearing Examiner post-hearing.]
 6. State's Exhibit 6: Certified copy of a December 21, 2000, Journal Entry from *State v. Fleming*.
 7. State's Exhibits 7 and 8: Prescriptions issued by Dr. Fleming. [Note: These exhibits have been sealed to protect patient confidentiality.]
- B. Presented by the Respondent
1. Respondent's Exhibit A: Copy of a November 21, 2000, letter to the Cuyahoga County Common Pleas Court from Joseph W. Janesz, Ph.D., and Gregory B. Collins, M.D., the Cleveland Clinic Foundation, concerning Dr. Fleming; a copy of Dr. Fleming's Treatment Contract is attached.
 2. Respondent's Exhibit B: Dr. Fleming's curriculum vitae.

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

1. James E. Fleming, M.D., obtained his Doctor of Medicine degree in 1962 from Howard University Medical School, Washington, D.C. From 1962 through 1963, Dr. Fleming participated in an internship at St. Vincent Charity Hospital, Cleveland, Ohio. From 1963 through 1964, he participated in a first year of residency in internal medicine at that same institution. From 1964 through 1967, Dr. Fleming participated in an internal medicine residency at the Veteran's Administration Hospital, Cleveland, Ohio. (Respondent's Exhibit [Resp. Ex.] B)

Dr. Fleming's curriculum vitae lists a number of professional society memberships and professional affiliations, including Past-President of the Cleveland Medical Association, and membership on the Boards of Trustees for Kent State University and North Eastern Ohio Universities College of Medicine. (Resp. Ex. B)

Dr. Fleming testified that he has practiced medicine in Ohio since 1966. Dr. Fleming further testified that, since November 1989, he had been a plant physician for the Ford Motor Company in Cleveland, Ohio. Moreover, Dr. Fleming testified that since November 1989 he had also maintained a small consultative practice in internal medicine. (Hearing Transcript [Tr.] at 23)

2. Lynn Mudra testified that he is a compliance agent with the Ohio State Board of Pharmacy [Pharmacy Board]. Mr. Mudra further testified that his job responsibilities include investigating complaints of violations of state and federal drug laws. Moreover, Mr. Mudra testified that he has worked for the Pharmacy Board for six years. Finally, Mr. Mudra testified that, prior to going to work for the Pharmacy Board, he had been a police officer for Cleveland, Ohio, for 30 years. (Tr. at 8-10)

Mr. Mudra stated that, on February 8, 1999, he received a call from a detective in Parma, Ohio, concerning Dr. Fleming. Mr. Mudra testified:

The complaint was that Dr. Fleming was having security guards [employed at the Ford Motor Company plant] pick up Vicodin at a local Rite Aid pharmacy * * * in the City of Brook Park. The prescriptions had been written in the security guards' names. They would fill the prescriptions and then return to the Ford plant and turn the drugs over to the doctor.

(Tr. at 10)

Mr. Mudra testified that he initiated an investigation, and contacted Ford Motor Company security personnel. Mr. Mudra stated that he interviewed Ford employees who related information consistent with that given by the Parma detective. Moreover, Mr. Mudra testified that one employee stated that Dr. Fleming would contact the employee at his residence to pick up a prescription for Vicodin or hydrocodone product at a pharmacy in Beachwood, Ohio, on his way to work. (Tr. at 10-11)

Mr. Mudra testified that, as part of the investigation, Mr. Mudra obtained from the Rite Aid Pharmacy in Brook Park the prescriptions that Dr. Fleming had written. Mr. Mudra testified that State's Exhibit 7 is a prescription dated March 11, 1998, called in by or on behalf of Dr. Fleming for 30 Vicodin generic 750 mg, along with the hard-copy prescription signed by Dr. Fleming. Further, Mr. Mudra testified that State's Exhibit 8 is a prescription dated August 11, 1998, called in by or on behalf of Dr. Fleming for 30 Restoril 30 mg, and 30 Vicodin ES. (State's Exhibits [St. Exs.] 7 and 8; Tr. at 13-15)

Mr. Mudra testified that he also subpoenaed patient records from the Ford Motor Company for all patients that had received prescriptions for controlled substances from

Dr. Fleming. Mr. Mudra further testified that the prescriptions in State's Exhibits 7 and 8 had not been recorded in Dr. Fleming's patient records for those patients. (Tr. at 15)

Mr. Mudra stated that after he finished his investigation he presented the case to the Cuyahoga County Prosecuting Attorney. Moreover, Mr. Mudra testified that the prescriptions contained in State's Exhibits 7 and 8 are the prescriptions upon which the criminal charges against Dr. Fleming had been based. (St. Exs. 2, 7, and 8; Tr. at 11-15)

3. Mr. Mudra testified that his investigation of Dr. Fleming did not reveal that Dr. Fleming had issued prescriptions for financial gain. (Tr. at 16)
4. On July 21, 2000, Bills of Information were filed in the Cuyahoga County Common Pleas Court charging Dr. Fleming with the following offenses:
 - a. Two counts of violating Section 2925.11, Ohio Revised Code, Possession of Drugs, a felony of the fourth degree.
 - b. Two counts of violating Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, a felony of the fifth degree.
 - c. One count of violating Section 2925.22, Ohio Revised Code, Deception to Obtain Dangerous Drugs, a felony of the fifth degree.

(St. Exs. 2 and 4)

5. On November 16, 2000, Dr. Fleming appeared before the Cuyahoga County Common Pleas Court and pleaded guilty to each of the five counts contained in the July 21, 2000, Bills of Information. The court accepted Dr. Fleming's pleas of guilty, referred Dr. Fleming to the county probation department for a pre-sentence investigation, and scheduled the sentencing hearing for December 18, 2000. (St. Exs. 3 and 4)

On December 18, 2000, the court sentenced Dr. Fleming to one year of community control under the supervision of the adult probation department, and ordered Dr. Fleming to pay court costs and a standard probation fee. (St. Ex. 6)

6. Dr. Fleming testified that he does not dispute in any way the criminal charges to which he had pleaded guilty, but stated that they had resulted from "the degree of my unmanageability related to my addiction." (Tr. at 23)

Dr. Fleming testified that in 1993 he had been diagnosed with a virulent and inoperable carcinoma of the prostate. Dr. Fleming further testified that he was placed on Lupron therapy. Moreover, Dr. Fleming testified that, early in the course of treatment, "the first

six, nine months or so,” he had been in considerable pain for which he was prescribed Vicodin. (Tr. at 24) Dr. Fleming further testified:

I think I’ve always had a predisposition and a predilection to be [chemically] dependent. I always had a sense of insecurity, always had, in spite of a big ego, a kind of inferiority complex, hypersensitive, to some extent emotionally immature. That’s a personality profile commonly described for alcoholics and those who are chemically dependent.

* * * I liked Vicodin. I liked what it did. It made me suppress a lot of unwanted thoughts. It made me suppress a lot of restlessness and irritability.

When [my] doctor became a little hesitant about the frequent prescriptions, I started taking samples from the office. * * * I crossed a threshold of physical dependency. By that I mean in the absence of Vicodin, I would go through a characteristic abstinence symptomatology. I became unmanageable. I became essentially powerless over this drug, which led to all of this deviant behavior, degradation, morally, psychologically, physically, and on and on. That’s my history.

* * * I don’t have an excuse. I do have an explanation. I’m an addict. I had no ability on my own to correct this—I didn’t willfully become an addict. The tragedy of this is I administered a program for Ford Motor Company which was very, very advanced. It was a very comprehensive program. I sent people away to treatment all the time. I knew all the resources in the community. I had no ability seemingly to plug into those resources, and hence further deterioration.

(Tr. at 24-25) Dr. Fleming further stated that, in order to obtain Vicodin, “I used people [who] had a great deal of confidence, love, [and] trust in me as a person and as a physician.” Dr. Fleming acknowledged that he had had individuals at the Ford plant take prescriptions that he had written in their names, fill them, and bring the medicine back to him. Dr. Fleming further acknowledged that he was thereby causing those individuals to engage in illegal activity. (Tr. at 26, 30)

7. Dr. Fleming testified that he became aware that he was being investigated when a security guard who had been interviewed by the authorities called Dr. Fleming. Dr. Fleming further testified that the security guard told Dr. Fleming to “be careful.” Dr. Fleming testified that he decided at that time to quit abusing Vicodin. Moreover, Dr. Fleming testified that he had been taking 20 pills per day. (Tr. at 26)

Dr. Fleming testified that he attempted to withdraw from the drug on his own, but the withdrawal symptoms were too severe. Dr. Fleming testified that, on February 22, 1999,

he went to Gregory B. Collins, M.D., at the Cleveland Clinic Foundation for treatment. Dr. Fleming stated that he has been “completely compliant with that program since then”. (Tr. at 26-27)

Dr. Fleming testified that he was an inpatient at the Cleveland Clinic for five days during detoxification, then was transferred to intensive outpatient treatment for the following six weeks. Dr. Fleming testified that his contract with Dr. Collins currently mandates one random urine screen per week and attendance at a minimum of three Alcoholics Anonymous [AA] meetings per week. Dr. Fleming testified that he plans to continue in his recovery program for the rest of his life. (Tr. at 27)

Dr. Fleming testified that he believes that he has an excellent prognosis of continued recovery because he is “totally committed to it.” Dr. Fleming testified that he attends AA meetings at least 10 times per week. He further testified that he is the secretary of his group, which he has led on numerous occasions. Moreover, Dr. Fleming testified that he is on the board of trustees for Club 24, which is a group that provides a facility for meetings for a number of different recovery programs. (Tr. at 28)

Dr. Fleming testified that, although his certificate was not actually suspended until December 2000, he has not practiced medicine since February 1999, and has “devoted [himself] exclusively to recovery” since that time. Dr. Fleming further testified that he would have been willing to acknowledge his guilt for the criminal violations as early as February 1999, but that the charges against him were not brought until later. (Tr. at 27, 29-30)

8. Dr. Fleming testified that he has had no prior disciplinary actions taken against him by the Board. Dr. Fleming further testified that he would like to continue to hold an Ohio certificate. He asked that the Board consider his more than two years of sobriety, and the extent to which he has devoted himself to recovery. (Tr. at 23, 27-28)
9. A November 21, 2000, letter to the Cuyahoga County Common Pleas Court from Joseph W. Janesz, Ph.D., and Gregory B. Collins, M.D., the Cleveland Clinic Foundation, includes the following statements:
 - a. Dr. Fleming has been involved in the Cleveland Clinic Foundation alcohol and drug treatment program since February 26, 1999. He was stabilized during inpatient treatment then transferred to the intensive outpatient program. Dr. Fleming has since been treated for chemical dependency and clinical depression.
 - b. “Dr. Fleming has been committed to his recovery from chemical dependency and clinical depression for the past 21 months. He remains unemployed and has dedicated himself exclusively to his 12 Step recovery program. He attends 10 to 12 [AA] meetings per week (documented) and receives random weekly urine

2000-11-16 10:00 AM
2000-11-16 10:00 AM

toxicology screens from our office. All urine toxicology screens have been negative for drugs of abuse including alcohol.”

- c. Dr. Fleming is an active participating member of Club 24, the Physician Inner Circle Program at the Cleveland Clinic Foundation, and Caduceus. Further, Dr. Fleming has assumed leadership roles in AA, and attended the Alcoholics Anonymous National Men’s Conference in Freemont, Ohio, on April 7 through 9, 2000.
- d. Dr. Fleming has been in “complete compliance” with his March 4, 1999, treatment contract. Moreover, “Dr. Fleming has a tremendous resolve to remain abstinent and his prognosis is excellent. He has done an excellent job within his recovery, has demonstrated leadership with our Physicians Group and is currently sponsoring a number of newly recovering patients within [AA].”

(Resp. Ex. A)

FINDINGS OF FACT

On November 16, 2000, in the Cuyahoga County Common Pleas Court, James E. Fleming, M.D., pleaded guilty to, and was found guilty of, two counts of violating Section 2925.11, Ohio Revised Code, Possession of Drugs, a felony of the fourth degree; two counts of violating Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, a felony of the fifth degree; and one count of violating Section 2925.22, Ohio Revised Code, Deception to Obtain Dangerous Drugs, a felony of the fifth degree.

The acts underlying the above guilty pleas and judicial findings of guilt were that, while employed as a plant physician, Dr. Fleming issued false prescriptions for controlled substances to plant employees who, upon having the prescriptions filled at an area pharmacy, purveyed the controlled substances to Dr. Fleming for Dr. Fleming’s personal use.

CONCLUSIONS OF LAW

1. The guilty pleas or the judicial findings of guilt of James E. Fleming, M.D., as set forth in the Findings of Fact, constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code; Section 2925.22, Ohio Revised Code; and Section 2925.23, Ohio Revised Code.

2. The guilty pleas or the judicial findings of guilt of Dr. Fleming, as set forth in the Findings of Fact, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code; Section 2925.22, Ohio Revised Code; and Section 2925.23, Ohio Revised Code.

* * * * *

Dr. Fleming’s felony convictions and the conduct underlying those convictions constituted a profound breach of his responsibilities as a physician. He betrayed the public trust, and put patients who trusted him in jeopardy of being charged with criminal violations. Such conduct merits the severest sanction.

It must be noted, however, that Dr. Fleming presented mitigating evidence on his behalf. Dr. Fleming had practiced in Ohio since 1966 without prior disciplinary action. In addition, the criminal conduct was not committed for financial gain; rather, the criminal offenses to which Dr. Fleming pleaded guilty involved Dr. Fleming’s personal use or abuse of a controlled substance. Further, Dr. Fleming admitted his conduct to the Board at hearing and appeared to be aware of the gravity of the offenses. Moreover, Dr. Fleming has clearly made a substantial effort at rehabilitation from his impairment, and has taken leadership roles in the recovery community. Finally, Dr. Fleming has demonstrated sincere remorse for his misconduct.

Under all of the circumstances of this case, the Board may wish to consider allowing Dr. Fleming to reinstate his certificate by providing evidence that he has undergone 28 days of inpatient treatment and engaged in aftercare that satisfies the Board’s requirements, followed by a period of close monitoring to ensure that Dr. Fleming remains in recovery. It is, however, unfortunate that the Board’s rules require that Dr. Fleming participate in 28 days of inpatient treatment inasmuch as the evidence indicates that he has progressed beyond that stage of recovery.

PROPOSED ORDER

- A. **STAYED PERMANENT REVOCATION; SUSPENSION OF CERTIFICATE:** The certificate of James E. Fleming, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. The permanent revocation is stayed, and Dr. Fleming’s certificate is SUSPENDED for an indefinite period of time.
- B. **INTERIM MONITORING:** During the period that Dr. Fleming’s certificate to practice medicine and surgery in Ohio is suspended, Dr. Fleming shall comply with the following terms, conditions, and limitations:
 1. **Obey Laws in Ohio:** Dr. Fleming shall obey all federal, state and local laws; and all rules governing the practice of medicine in Ohio.

2. **Quarterly Declarations**: Dr. Fleming shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which the Order becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. **Appearances**: Dr. Fleming shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order, provided that if the effective date is on or after the 16th day of the month, the first personal appearance must occur during the fourth month following. Dr. Fleming must also appear every three months thereafter, and/or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the Board will normally give Dr. Fleming written notification of scheduled appearances, it is Dr. Fleming's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Fleming shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

4. **Abstention from Drugs**: Dr. Fleming shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Fleming's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Fleming shall abstain completely from the use of alcohol.
6. **Rehabilitation Program**: Dr. Fleming shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval. Dr. Fleming shall submit acceptable documentary evidence of continuing

compliance with this program which must be received in the Board's offices no later than the due date for Dr. Fleming's quarterly declarations.

7. **Drug & Alcohol Screens; Supervising Physician:** Dr. Fleming shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Fleming shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Order, Dr. Fleming shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Fleming shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Fleming. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that a reliable person witnesses the giving of the specimen, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results.

Dr. Fleming shall ensure that the supervising physician provides quarterly reports to the Board, on forms approved or provided by the Board, verifying whether all urine screens have been conducted in compliance with this Order, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Fleming must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Fleming shall further ensure that the previously designated supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Fleming's quarterly declarations. It is Dr. Fleming's responsibility to ensure that reports are timely submitted.

8. **Provision of Blood or Urine for Screening without Prior Notice:** Dr. Fleming shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Fleming's expense.
9. **Compliance with Treatment Contract:** Dr. Fleming shall provide the Board with acceptable documentation evidencing continued compliance with the terms of the

treatment contract entered into with the Cleveland Clinic Foundation, provided that where the terms of the treatment contract conflict with the terms of this Order, the terms of this Order shall control. The documentation must be received in the Board's offices no later than the due date for Dr. Fleming's quarterly declarations.

10. **Releases**: Dr. Fleming shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Fleming's chemical dependency, psychiatric conditions, or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Fleming shall provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Fleming's certificate to practice medicine and surgery unless all of the following conditions are met:

1. **Application and Fees**: Dr. Fleming shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Continued Compliance with Interim Monitoring Conditions**: Dr. Fleming shall have maintained continuing compliance with all terms of Paragraph B of this Order, unless otherwise determined by the Board.
3. **Completion of Inpatient Treatment**: Dr. Fleming shall complete a minimum of 28 days of inpatient or residential treatment, or a combination thereof, for his chemical dependency. Such inpatient or residential treatment shall be completed without interruption. Further, such inpatient or residential treatment shall be provided in accordance with Rule 4731-16-08(A)(13), Ohio Administrative Code, by a treatment provider approved under Section 4731.25, Ohio Revised Code.

In addition, upon discharge from treatment, Dr. Fleming shall enter into, and thereafter maintain compliance with, a post-discharge aftercare contract which complies with Rule 4731-16-10, Ohio Administrative Code, with a treatment provider approved under Section 4731.25, Ohio Revised Code, who has access to Dr. Fleming's treatment records.

STATE BOARD OF MEDICINE
JAMES E. FLEMING, M.D.
REINSTATEMENT ORDER

4. **Demonstration of Ability to Resume Practice:** Dr. Fleming shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Fleming has successfully completed the required inpatient treatment.
 - b. Evidence of continuing full compliance with an aftercare contract.
 - c. Two written reports indicating that Dr. Fleming's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.
 5. **Releases:** Upon submission of his application, Dr. Fleming shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide or have provided evaluation, treatment or aftercare for Dr. Fleming's chemical dependency and related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. Dr. Fleming shall also provide the Board written consent permitting any treatment provider from whom Dr. Fleming obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract.
 6. **Absence from Practice:** In the event that Dr. Fleming has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to the submission of his application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Fleming's fitness to resume practice.
- D. **PROBATIONARY CONDITIONS:** Upon reinstatement or restoration, Dr. Fleming's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Fleming shall continue to be subject to the terms, conditions, and limitations specified in paragraph B of this Order.
 2. **Chart Monitoring and Monitoring Physician:** Before engaging in any medical practice, Dr. Fleming shall submit for the Board's prior approval the name of a

monitoring physician. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Fleming and who is engaged in the same or similar practice.

The monitoring physician shall monitor Dr. Fleming, his medical practice, and review Dr. Fleming's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Fleming, his medical practice, and on the review of Dr. Fleming's patient charts, and on the supervision of Dr. Fleming's medical practice. Dr. Fleming shall ensure that the reports are submitted to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Fleming's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Fleming must immediately so notify the Board in writing, and make arrangements acceptable to the Board for another monitoring physician as soon as practicable. Dr. Fleming shall further ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

3. **Prohibition Against Treating Self and Family Members:** Dr. Fleming shall refrain from self-treating and from treating any family member, except in the event of life-threatening emergency.
4. **Log of Controlled Substances Prescribed:** Dr. Fleming shall keep a log of all controlled substances prescribed. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Fleming's personal appearance before the Board or its designated representative, or as otherwise directed by the Board.
5. **Prohibition against Administering, Dispensing, or Possessing Controlled Substances:** Dr. Fleming shall not, without prior Board approval, administer, dispense, or possess (except as allowed under Paragraph B.4, above) any controlled substances as defined by state or federal law.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Fleming to administer or dispense controlled substances, Dr. Fleming shall keep a log of all controlled substances prescribed, administered or dispensed. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Fleming's personal appearance before the Board or its designated representative, or as otherwise directed by the Board.

6. **Absence from Ohio**: In the event that Dr. Fleming should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Fleming must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
7. **Violation of Probation; Stayed Sanction Imposed**: If Dr. Fleming violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Fleming's certificate.
8. **Tolling of Probationary Period while Out of Compliance**: In the event Dr. Fleming is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
9. **Refrain from Practice if Missed Declaration or Report**: If any declaration or report required by this Order is not received in the Board's offices on or before its due date, Dr. Fleming shall cease practicing beginning the day following Dr. Fleming's receiving notice from the Board of non-receipt, either by writing, telephone, or by personal contact, until the declaration or report is received in the Board offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.41, Ohio Revised Code.
10. **Refrain from Practice if Missed Screening**: If, without permission from the Board, Dr. Fleming fails to submit to random screenings for drugs and/or alcohol, at least as frequently as required by this Order, Dr. Fleming shall cease practicing immediately upon Dr. Fleming's receiving notice from the Board of the violation and shall refrain from practicing for thirty days for the first instance of a missed screen. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41, Ohio Revised Code.
11. **Refrain from Practice if Missed AA or NA Meeting**: If, without permission from the Board, Dr. Fleming fails to participate in an alcohol and drug rehabilitation program, at least as frequently as required by this Order, Dr. Fleming shall cease practicing beginning immediately upon receipt from the Board of notice of the violation and shall refrain from practicing for fifteen days following a missed meeting. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41, Ohio Revised Code.

- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Fleming's certificate will be fully restored.
- F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Fleming shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Fleming shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- G. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Fleming shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Fleming shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Fleming shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.



R. Gregory Porter
Attorney Hearing Examiner



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

EXCERPT FROM THE DRAFT MINUTES OF APRIL 11, 2001

REPORTS AND RECOMMENDATIONS

Dr. Bhati announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Bhati 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 Peter E. Dintiman, M.D.; James E. Fleming, M.D.; Ndubueze C. J. Okereke, M.D., M.P.H.; Paul Morrow, P.A.; and Jimmie Steve Ward, P.A. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

Dr. Bhati asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

Dr. Bhati - aye

Dr. Bhati noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Bhati stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

.....
JAMES E. FLEMING, M.D.
.....

DR. SOMANI MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES E. FLEMING, M.D. DR. STEINBERGH SECONDED THE MOTION.
.....

A vote was taken on Dr. Somani's motion to approve and confirm:

- | | | |
|-------|----------------|-----------|
| Vote: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Somani | - aye |
| | Mr. Browning | - aye |
| | Ms. Sloan | - aye |
| | Dr. Stienecker | - aye |
| | Dr. Agresta | - aye |
| | Dr. Garg | - abstain |
| | Dr. Steinbergh | - aye |
| | Dr. Bhati | - aye |

The motion carried.



State Medical Board of Ohio

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NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

December 13, 2000

James E. Fleming, M.D.
13930 Euclid Avenue
East Cleveland, Ohio 44112

Dear Doctor Fleming:

In accordance with Sections 2929.24 and/or 3719.12, Ohio Revised Code, the Office of the Prosecuting Attorney of Cuyahoga County, Ohio reported that on or about November 16, 2000, in the Court of Common Pleas for Cuyahoga County, Cleveland, Ohio, you pleaded guilty to, and were found guilty of, two felony counts of Possession of Drugs, in violation of Section 2925.11, Ohio Revised Code; one felony count of Deception to Obtain Dangerous Drugs, in violation of Section 2925.22, Ohio Revised Code; and two felony counts of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

Furthermore, 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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about November 16, 2000, in the Court of Common Pleas, Cuyahoga County, you pleaded guilty to, and were found guilty of, two felony counts of Possession of Drugs, in violation of Section 2925.11, Ohio Revised Code; one felony count of Deception to Obtain Dangerous Drugs, in violation of Section 2925.22, Ohio Revised Code; and two felony counts of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code.

Mailed 12-14-00

The acts underlying the above guilty pleas and judicial findings of guilt were that, while employed as a plant physician, you issued false prescriptions for controlled substances to plant employees who, upon having the prescriptions filled at various area pharmacies, purveyed the controlled substances to you for your personal use.

Copies of the Bill of Information and Journal Entry of the above pleas of guilty and judicial findings of guilt are attached hereto and incorporated herein.

Your pleas of guilty or the judicial findings of guilt to five (5) felony counts, as alleged in paragraph (1) above, individually and/or collectively, constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code; Section 2925.22, Ohio Revised Code; and Section 2925.23, Ohio Revised Code.

Further, your pleas of guilty or the judicial findings of guilt to the five (5) felony counts, as alleged in paragraph (1) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code; Section 2925.22, Ohio Revised Code; and Section 2925.23, 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, if you timely request a hearing, 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.

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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

James E. Fleming, M.D.

Page 3

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 0890
RETURN RECEIPT REQUESTED

4 Oak Shore Green
Bratenahl, Ohio 44108

CERTIFIED MAIL # 7000 0600 0024 5140 0883
RETURN RECEIPT REQUESTED

NOV 27 2000

394246018585420001116105617046PLEA



STATE OF OHIO,
CUYAHOGA COUNTY

SS.

IN THE COURT OF COMMON PLEAS

SEPTEMBER TERM, 2000
2000

STATE OF OHIO
VS.

PLAINTIFF

TO-WIT: NOVEMBER 16
NO. CR 394246

DEFENDANT

INDICTMENT

POSSESSION OF DRUGS, DECPTN TO
OBTAIN DANG DRG, ILL PROC OF DRG
DOC

JAMES E FLEMING

JOURNAL ENTRY

DEFENDANT IN COURT WITH COUNSEL JOHN CARSON. PROSECUTING ATTORNEY JAMES GUTIERREZ PRESENT. DEFENDANT WAS ADVISED OF ALL CONSTITUTIONAL RIGHTS AND PENALTIES.

DEFENDANT RETRACTS FORMER PLEA OF NOT GUILTY AND ENTERS A PLEA OF GUILTY TO POSSESSION OF DRUGS ORC 2925.11 F-4 (SB2) AS CHARGED IN COUNTS 1 AND 4; DECEPTION TO OBTAIN DANGEROUS DRUGS ORC 2925.22 F-5 (SB2) AS CHARGED IN COUNT 2; AND ILLEGAL PROCESSING OF DRUG DOCUMENTS ORC 2925.23 F-5 (SB2) AS CHARGED IN COUNTS 3 AND 5.

COURT FINDS THE DEFENDANT GUILTY.

THE DEFENDANT IS REFERRED TO THE COUNTY PROBATION DEPARTMENT FOR A PRE-SENTENCE INVESTIGATION AND REPORT.

ORIGINAL BOND CONTINUED.

SENTENCING SET FOR DECEMBER 18, 2000 AT 9:30 A. M.

THE STATE OF OHIO }
Cuyahoga County } SS. I. GERALD E. FUERST - CLERK OF
THE COURT OF COMMON PLEAS
WITHIN AND FOR SAID COUNTY.

HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL *Journal Entry*

entry
NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF SAID COURT THIS *22nd*
DAY OF *November* A.D. 20*00*

GERALD E. FUERST, Clerk

By *[Signature]* Deputy

FILED

NOV 20 2000

GERALD E. FUERST
-CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

11-16-2000
PLEA RAT 11/17/00 10:56

JUDGE

[Signature]
RICHARD J MCMONAGLE

COPIES SENT TO:

Sheriff _____

Other _____

Defendant _____

THE STATE OF OHIO
 VS.
 JAMES E. FLEMING

INFORMATION

DECEPTION TO OBTAIN DANGEROUS DRUGS
 R.C. 2925.22

DATE OF OFFENSE	THE TERM OF	CASE NO.	COUNT
MARCH 11, 1998	MAY OF 2000	394246	2

CUYAHOGA COUNTY)
) SS.

The affiant, William D. Mason, Prosecuting Attorney of Cuyahoga County, State of Ohio, or his designee, being properly sworn, deposes, says and presents information that the above named Defendant, on or about the date of the offense set forth above, in the County of Cuyahoga, unlawfully did by deception, as defined in Section 2913.01 of the Ohio Revised Code, procure the administration of, a prescription for, or the dispensing of a dangerous drug, to wit: Vicodin, a Schedule III durg, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

W. S. Nolan
 Assistant Prosecuting Attorney

STATE OF OHIO)
) SS.
 CUYAHOGA COUNTY)

William D. Mason, being duly sworn, says that he is the duly appointed Prosecutor for Cuyahoga County, State of Ohio, William D. Mason or his designee Michael Nolan, says that he makes this affidavit on behalf of the State of Ohio as such Prosecuting Attorney, and that the facts set forth in support of the foregoing information are true as he verily believes.

W. S. Nolan
 Assistant Prosecuting Attorney

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public and in my presence, the said Michael Nolan this 19th, day of July, 2000.

[Signature]
 NOTARY PUBLIC

MICHAEL R. DOBROWSKI
 NOTARY PUBLIC, STATE OF OHIO
 Recorded In Cuyahoga County
 My Comm. Expires Feb. 27, 2002

THE STATE OF OHIO
 VS.
 JAMES E. FLEMING

INFORMATION

ILLEGAL PROCESSING OF DRUG DOCUMENTS
 R.C. 2925.23

DATE OF OFFENSE	THE TERM OF	CASE NO.	COUNT
MARCH 11, 1998	MAY OF 2000	394246	3

CUYAHOGA COUNTY)
) SS.

The affiant, William D. Mason, Prosecuting Attorney of Cuyahoga County, State of Ohio, or his designee, being properly sworn, deposes, says and presents information that the above named Defendant, on or about the date of the offense set forth above, in the County of Cuyahoga, unlawfully and intentionally did make, utter or sell a false or forged prescription, for Vicodin, a Schedule III drug, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

M. S. Nolan
 Assistant Prosecuting Attorney

STATE OF OHIO)
) SS.
 CUYAHOGA COUNTY)

William D. Mason, being duly sworn, says that he is the duly appointed Prosecutor for Cuyahoga County, State of Ohio, William D. Mason or his designee Michael Nolan, says that he makes this affidavit on behalf of the State of Ohio as such Prosecuting Attorney, and that the facts set forth in support of the foregoing information are true as he verily believes.

M. S. Nolan
 Assistant Prosecuting Attorney

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[Signature]
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MICHAEL R. DOBROWSKI
 NOTARY PUBLIC, STATE OF OHIO
 Recorded in Cuyahoga County
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THE STATE OF OHIO
 VS.
 JAMES E. FLEMING

INFORMATION
 POSSESSION OF DRUGS
 R.C. 2925.11

DATE OF OFFENSE	THE TERM OF	CASE NO.	COUNT
AUGUST 11, 1998	MAY OF 2000	394246	4

CUYAHOGA COUNTY)
) SS.
)

The affiant, William D. Mason, Prosecuting Attorney of Cuyahoga County, State of Ohio, or his designee, being properly sworn, deposes, says and presents information that the above named Defendant, on or about the date of the offense set forth above, in the County of Cuyahoga, unlawfully did knowingly obtain, possess or use a controlled substance, to wit: Vicodin, a Schedule III drug, in an amount equal to or exceeding the bulk amount but less than five times the bulk amount, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

M. S. Nolan
 Assistant Prosecuting Attorney

STATE OF OHIO)
) SS.
 CUYAHOGA COUNTY)

William D. Mason, being duly sworn, says that he is the duly appointed Prosecutor for Cuyahoga County, State of Ohio, William D. Mason or his designee Michael Nolan, says that he makes this affidavit on behalf of the State of Ohio as such Prosecuting Attorney, and that the facts set forth in support of the foregoing information are true as he verily believes.

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MICHAEL R. DOBROWSKI
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 Recorded In Cuyahoga County
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THE STATE OF OHIO
 VS.
 JAMES E. FLEMING

INFORMATION

ILLEGAL PROCESSING OF DRUG DOCUMENTS
 R.C. 2925.23

DATE OF OFFENSE	THE TERM OF	CASE NO.	COUNT
AUGUST 11, 1998	MAY OF 2000	394246	5

CUYAHOGA COUNTY)
) SS.

The affiant, William D. Mason, Prosecuting Attorney of Cuyahoga County, State of Ohio, or his designee, being properly sworn, deposes, says and presents information that the above named Defendant, on or about the date of the offense set forth above, in the County of Cuyahoga, unlawfully and intentionally did make, utter or sell a false or forged prescription, for Vicodin, a Schedule III drug, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Michael S. Nolan
 Assistant Prosecuting Attorney

STATE OF OHIO)
) SS.
 CUYAHOGA COUNTY)

William D. Mason, being duly sworn, says that he is the duly appointed Prosecutor for Cuyahoga County, State of Ohio, William D. Mason or his designee Michael Nolan, says that he makes this affidavit on behalf of the State of Ohio as such Prosecuting Attorney, and that the facts set forth in support of the foregoing information are true as he verily believes.

Michael S. Nolan
 Assistant Prosecuting Attorney

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public and in my presence, the said Michael Nolan this 19th, day of July, 2000.

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