BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST	))	FILE NO. 02-09-283 DIA NO. 10DPHMB003
RICHARD M. FLEMING, M.D.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

Date: February 9, 2012.

On February 4, 2010, the Iowa Board of Medicine (Board) filed a Statement of Charges against Richard M. Fleming, M.D. (Respondent), charging him with:

> **Count I**: Being convicted of a felony relate to the profession of the licensee or conviction of any felony that would affect the licensee's ability to practice within a profession, in violation of Iowa Code sections 147.55(5), 148.6(2)(h) and 272C.5[1].
>
> **Count II**: Violating a statute or law of this state, another state or the United States without regard to its designation as a felony or misdemeanor, in violation of Iowa Code sections 148.6(2)(b)[2] and 653 IAC 23.1(10).
>
> **Count III:** Being convicted of a felony in the courts of this state, or another state, territory or country, in violation of Iowa Code section 148.6(2)(c)[3] and 653 IAC 23.1(9).
>
> **Count IV:** Engaging in unethical conduct or unprofessional conduct and/or practice harmful or detrimental to the public, in violation of Iowa Code section 147.55(3), 272C.10(3) and 653 IAC 23.1(3) and (4). Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice, or good

[1] At the beginning of the hearing, the Board granted the state's motion to correct some typographical errors in the Iowa Code sections that were cited in Counts I-III of the Statement of Charges. The correct citation in Count I is Iowa Code section 272C.10(5), not 272C.5.

[2] This citation was corrected to Iowa Code section 148.6(2)(c).

[3] This citation was corrected to Iowa Code section 148.6(2)(b).

morals, whether the same is committed in the course of the licensee's practice or otherwise and whether committed within this state or elsewhere.

The initial hearing date was continued. The hearing was held on August 26, 2011, before the following Board members: Siroos S. Shirazi, M.D., Board Chair; Analisa Haberman, D.O.; Colleen Stockdale, M.D.; Joyce Vista-Wayne, M.D.; Carole Frier, D.O.; and Tom Drew, public member. Respondent represented himself and elected to appear by video conference. Assistant Attorney General Theresa O'Connell Weeg represented the state. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(l) and 653 IAC 25.18(12). The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare a written decision for their review, in accordance with their deliberations.

THE RECORD

The record includes the Notice of Hearing and Statement of Charges; Continuance/Scheduling Orders; Respondent's testimony; State Exhibits 1-25 (See Exhibit Index for description); and Respondent Exhibits A-O.

FINDINGS OF FACT

1. Respondent was initially issued Iowa medical license number 26135 on July 1, 1987. Respondent's license is current and will expire on February 1, 2012. Respondent has also been licensed in Nebraska, Texas, Illinois, Oklahoma, and Missouri. However, at this time his only active medical license is in Iowa. (Testimony of Respondent; State Exhibits 1, 5)

2. At all times relevant to the Statement of Charges, Respondent was practicing as a cardiologist with the Fleming Heart and Health Institute, P.C. in Omaha, Nebraska. As part of his practice, Respondent performed myocardial perfusion imaging for Medicare patients. Respondent submitted billing for these diagnostic procedures to the U.S. Health Care Financing Administration (HCFA) on a claim form that reported the number and kind of services provided by him based on codes from the Current Procedural Terminology (CPT) manual, which is published by the American Medical Association. The CPT billing codes for

tomographic myocardial perfusion imaging included CPT 78464 and CPT 78465. Physicians were reimbursed at a higher rate under CPT 78465.

In January 2007, Respondent was indicted by a grand jury in the United States District Court for the District of Nebraska and charged with:

- Ten counts of Health Care Fraud, in violation of Title 18 U.S.C.§§1347 and 2 [Counts 1-10]. The allegations underlying these counts stated, in part, that Respondent submitted or caused to be submitted claim forms for payment of tomographic imaging studies which he knew contained materially false and fraudulent information regarding the quantity and type of imaging studies actually performed.
- Two counts of Wire Fraud, in violation of Title 18 U.S.C.§1343 [Counts 11-12]. The allegations underlying these counts stated, in part, that Respondent entered into an agreement with physician Dr. T and Physicians Pharmaceutical, Inc. (PPI), a business located in North Carolina, to conduct a clinical study of a soy chip product and to document its health benefits, including weight loss. Respondent was paid approximately $35,000 to conduct the study. It was agreed that the study would have at least 60 participants so that the results would have statistical significance. It was alleged that Respondent sent two emails claiming that the soy chip study at that time had 52 participants when Respondent knew that the clinical study had materially fewer participants than he reported.
- One count of Mail Fraud, in violation of Title 18 U.S.C.§§1341 and 2 [Count 13]. The allegation underlying Count 13 was that on March 8, 2004, Respondent caused to be sent and delivered by commercial interstate carrier, to wit: Federal Express, documents and papers purporting to represent four weeks worth of data for 60 participants in the soy chip clinical study when he then well new (sic) some of the data was fabricated because the clinical study did not have 60 participants.

(State Exhibit 9; Testimony of Respondent)

3. On April 23, 2009, Respondent pled guilty to Count IV (alleging Health Care Fraud) and Count XIII (alleging Mail Fraud). (State Exhibit 10) Question 45 in the written plea agreement asked: "What acts did you do that cause you to think you are guilty of the charge(s) to which you want to plead guilty?" IN response, Respondent wrote:

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

(Respondent Exhibit C; Testimony of Respondent)

Respondent was sentenced to probation for a term of 5 years on these two counts. Respondent was given special conditions of probation, which included in part:

- Participation in the Home Confinement Program under electronic monitoring 6 months;
- Compliance with the provisions of the Exclusion Agreement which Respondent entered into with the U.S. Department of Health and Human Services[4];
- Completion of 150 hours of community service;
- Payment of restitution in the amount of $107,244.24.

(State Exhibit 10)

4. Although he pled guilty to two federal felony level counts, Respondent maintains that he has not committed any crime. (Testimony of Respondent) However, Respondent's repeated attempts to appeal or vacate his guilty plea and sentence have been unsuccessful.

a. Respondent's motion to stay judgment and execution of sentence was denied by the trial court on September 21, 2009. (State Exhibit 11)

b. On October 9, 2009, the trial court denied Respondent's motion to vacate, set aside, or correct sentence (28 U.S.C. §2255 motion). In

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[4] Pursuant to the Exclusion Agreement that he signed on April 24, 2009, Respondent agreed to be permanently excluded from Medicare, Medicaid, and all other Federal health care programs. The exclusion has national effect and also applies to all other federal procurement and nonprocurement programs. The Exclusion Agreement took effect on May 11, 2009. (State Exhibits 18, 19)

his Memorandum and Order, the trial judge wrote that [Respondent] had a trial and the matter was submitted to the jury for decision. Rather than wait for the jury to return a verdict, [Respondent] knowingly and voluntarily entered into a plea agreement. When questioned by the court as to his guilt or innocence at the plea hearing, [Respondent] responded that he had no doubt that he was guilty of the charges as set forth in Counts IV and XIII of the Indictment. (State Exhibit 12, pp. 3-4; Exhibit 13)

c. On October 20, 2009, the trial court denied Respondent's request for the issuance of a certificate of appealability. (State Exhibit 14)

d. On December 1, 2009, a three judge panel of the United States Court of Appeals for the Eighth Circuit ("Eighth Circuit") denied Respondent's request for a certificate of appealability from the denial of his §2255 motion. (State Exhibit 15) Respondent's petition for rehearing was denied. (State Exhibits 16, 17).

e. On December 15, 2010, the federal trial judge denied Respondent's Petition for Writ of Habeas Corpus. The judge characterized Respondent's Petition as "frivolous and without merit for both procedural and substantive reasons." (State Exhibits 20, 21)

f. On March 29, 2011, a three judge panel of the Eighth Circuit denied Respondent's application for a certificate of appealability and dismissed his appeal. (State Exhibit 22). On April 12, 2011, the Eighth Circuit denied Respondent's motion for reconsideration. (State Exhibit 23) On June 17, 2011, the Eighth Circuit denied Respondent's petition for rehearing en banc. (State Exhibit 24) The Eighth Circuit issued formal mandate on June 24, 2011. (State Exhibit 25).

g. Respondent testified that he intends to file a Petition for a Writ of Certiorari to the United States Supreme Court but concedes there is a "very low" probability that the U.S. Supreme Court will consider his writ. (Testimony of Respondent; Respondent Exhibit D)

CONCLUSIONS OF LAW

COUNT I

Iowa Code sections 147.55(5) and 272C.10(5), which have been in effect at all times relevant to this decision, authorize the Board to revoke, suspend, or otherwise discipline a licensee for being convicted of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

The preponderance of the evidence established that Respondent violated Iowa Code sections 147.55(5) and 272C.10(5) by being convicted of crimes that were related to and arose out of his medical practice. Despite Respondent's claims that he did not admit to conduct that constituted a crime, there is no doubt that he pled guilty to and was convicted of two crimes – Health Care Fraud and Wire Fraud. The record of Respondent's Judgment (Exhibit 10) is conclusive evidence. The conviction has not been overturned on appeal.

In addition, Respondent's explanations concerning his guilty plea, including his claims that he never admitted to falsifying health care billing claims or to falsely reporting clinical study data, were not convincing nor were they credible.

COUNT II

Iowa Code section 148.6(2)(c) and 653 IAC 23.1(10), which have been in effect at all times relevant to this decision, authorize the Board to discipline a licensee, including imposition of a civil penalty not to exceed $10,000, for violating a statute of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine.

The preponderance of the evidence established that Respondent violated Iowa Code sections 148.6(2)(c) and 653 23.1(10) when he violated two federal statutes – 18 U.S.C. §§1347 and 2 (Health Care Fraud) and 18 U.S.C. §§1341 and 2 (Mail Fraud) that relate to the practice of medicine.

COUNT III

Iowa Code section 148.6(2)(b) and 653 IAC 23.1(9), which have been in effect at all times relevant to this decision, authorize the Board to discipline a licensee, including imposition of a civil penalty not to exceed $10,000, for being convicted of a felony in the courts of this state or another state, territory, or country or other jurisdiction. Conviction as used in Iowa Code section 148.6(2)(b) shall include a conviction of an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere.

The preponderance of the evidence established that Respondent violated Iowa Code sections 148.6(2)(b) and 653 23.1(9) when he was convicted of two federal felony level offenses. The crimes were obvious felonies. Respondent was sentenced to five years federal probation and was ordered to make over $100,000 in restitution payments. The presentence investigation (Respondent Exhibit O) designates both crimes as felonies. In addition, if these crimes had occurred in Iowa they would be designated as felonies. See, e.g. Iowa Code section 714.9 and 714.10 (Fraudulent Practice in the First or Second Degree); Iowa Code section 714.2 (Theft in the First or Second Degree).

COUNT IV

Iowa Code sections 147.55(3), 272C.10(3), and 653 IAC 23.1(3) and (4) authorize the Board to discipline a licensee for engaging in unethical or unprofessional conduct and/or practice harmful or detrimental to the public. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by the licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise and whether committed within this state or elsewhere.

The preponderance of the evidence established that Respondent violated Iowa Code sections 147.55(3), 272C.10(3) and 653 23.1(3) and (4) when he engaged in unethical or unprofessional conduct in the practice of medicine. Although he pled guilty, Respondent now denies that he committed any criminal act or engaged in any unethical or unprofessional conduct. However, Respondent's guilty plea and his conviction of two felony level crimes arising out of his medical practice constitutes conclusive evidence of unethical or unprofessional conduct.

DECISION AND ORDER

THEREFORE IT IS HEREBY ORDERED:

1. **CITATION AND WARNING:** Respondent is hereby **CITED** for having been criminally convicted of federal crimes related to the practice of medicine and for engaging in unethical or unprofessional conduct in the practice of medicine. Respondent is hereby **WARNED** that engaging in such conduct in the future may result in further disciplinary action, including suspension or revocation of his Iowa medical license.

2. **CIVIL PENALTY:** Respondent shall pay a **$10,000 civil penalty within twenty (20) days** of the date of this Decision and Order. The civil penalty shall be paid by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited into the State General Fund. If Respondent fails to pay the $10,000 civil penalty within twenty (20) days of the date of this order, the Board shall issue a notice to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date the notice is served.

3. **PROFESSIONAL ETHICS PROGRAM: Within sixty (60) days** of the date of this order, Respondent shall successfully complete the Professional/Problem Based Ethics (PROBE) program sponsored by the Center for Personalized Education for Physicians (CPEP), 7351 Lowry Blvd., Suite 100, Denver, CO 80230, 303-577-3232. Respondent shall ensure that a report is sent directly to the Board. If Respondent fails to complete the professional ethics program within sixty (60) days of the date of this order, the Board shall issue a notice to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date the notice is served.

4. **BILLING COURSE: Within ninety (90) days** of the date of this order, Respondent shall complete a Board-approved course for appropriate billing practices. It Respondent's responsibility to locate a course. Once Respondent has identified a course he must provide course material for approval to Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. Once Respondent has completed the course he must send proof of completion to Ms. Billington. If Respondent fails to complete the Board-approved billing course within ninety (90) days of the date of this order, the Board shall issue a notice to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date the notice is served.

5. **FIVE-YEARS PROBATION.** Respondent shall be placed on probation for a **period of five (5) years**, subject to the following terms and conditions:

A. **Written Notice:** Respondent shall provide the Board written notice at least thirty (30) days prior to practicing medicine under his Iowa medical license or being employed under the authority of his Iowa medical license. Respondent shall send the required written notice to Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686.

B. **Monitoring Program:** If Respondent practices medicine or is otherwise employed under the authority of his Iowa medical license, he shall establish a Board monitoring program with Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-3654 within thirty (30) days. Respondent shall fully comply with all requirements of the monitoring program. If Respondent fails to establish a Board monitoring program or fails to fully comply with the Board monitoring program, the Board shall issue a notice to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date the notice is served.

C. **Billing Audits:** If Respondent practices medicine under his Iowa medical license, he shall fully comply with Board-approved audits of his billing practices during the period of this Order. Respondent shall submit the names of all patients. From that list, the Board shall select 10 patients quarterly. Respondent shall provide the Board copies of the medical records and billing records for each patient selected for review. Respondent shall pay the Board a $300 auditing fee each quarter for the audits performed by the Board. The auditing fee shall be submitted to the Board with each quarterly report required below.

D. **Quarterly Reports**: Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of this Decision and Order. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.

E. **Board Appearances**: Respondent shall make appearances before the Board or a Board committee annually or upon request. Respondent shall be given reasonable notice of the date, time and location for the appearances. Such appearance shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).

F. **Monitoring Fee.** If Respondent practices medicine or is otherwise employed under the authority of his Iowa medical license, he shall make a payment of $100 to the Board each quarter for the duration of this Order to cover the Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with the quarterly report required under this Order. The monitoring fee shall be sent to: Coordinator of Monitoring Programs, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine. The Monitoring Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.

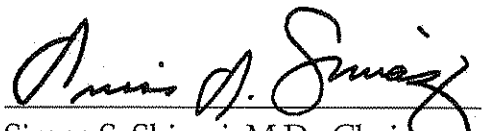
6. **Obey All Laws:** Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine.

7. **Failure To Comply**: In the event Respondent violates or fails to comply with any of the terms or conditions of this Order, the Board may initiate action to suspend or revoke Respondent's Iowa medical license or to impose other license discipline as authorized in Iowa Code chapters 148 and 272C and 653 IAC 25.

8. **Duration of Probation:** Periods in which Respondent does not practice medicine under his Iowa medical license or fails to comply with the terms established in this Order, shall not apply to the duration of probation established in this Order.

IT IS FURTHER ORDERED, in accordance with 653 IAC 25.33, that Respondent shall pay a disciplinary hearing fee of $75.00. In addition, Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 25.33(3). All fees and costs shall be paid in the form of a check or money order payable to the state of Iowa and delivered to the department of public health, within thirty days of the issuance of a final decision.

Dated: February 9, 2012.



Siroos S. Shirazi, M.D., Chairman
Iowa Board of Medicine

cc: Richard M. Fleming, M.D.
Theresa O'Connell Weeg, Assistant Attorney General

Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of this Decision and Order.

BEFORE THE IOWA BOARD OF MEDICINE

****

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

RICHARD M. FLEMING, M.D., RESPONDENT

File No. 02-09-283

****

AGREEMENT NOT TO PRACTICE MEDICINE

****

COMES NOW the Iowa Board of Medicine (Board) and Richard M. Fleming, M.D. (Respondent) on October 22, 2010, and pursuant to Iowa Code sections 17A.10 and 272C.3(4), enter into this Agreement Not to Practice Medicine.

1. Respondent was issued Iowa medical license no. 26135 on July 1, 1987.

2. Respondent's Iowa medical license is active and will next expire on February 1, 2012.

3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.

4. Respondent is an Iowa-licensed physician who specializes in internal medicine and cardiovascular disease from Reno, Nevada.

5. On January 18, 2007, Respondent was indicted in the United States District Court for the District of Nebraska on ten (10) counts of health care fraud, two (2) counts of wire fraud and one (1) count of mail fraud.

6. On August 21, 2009, Respondent pleaded guilty to one (1) count of health care fraud and one (1) count of mail fraud. All other counts of the Indictment were dismissed as part of his guilty plea. Under the terms of the plea agreement, Respondent was placed on probation for a period of five (5) years, placed under home confinement under electronic monitoring for a period of six (6) months, ordered to complete 150 hours of community service and ordered to pay $107, 244.24 in restitution. Effective May 11, 2009, Respondent was also permanently excluded from participation in Medicare, Medicaid and all other Federal health care programs.

7. On February 4, 2010, the Board filed formal disciplinary charges against Respondent based on the criminal charges in Nebraska.

8. Respondent is currently litigating a Habeas Corpus claim of actual innocence.

9. Respondent is not currently practicing medicine.

10. Respondent has requested that the Board delay prosecution of the pending disciplinary charges pending the outcome of his appeal of the guilty plea to the criminal charges if he agrees not to practice medicine until the disciplinary charges in this matter have been resolved.

AGREEMENT NOT TO PRACTICE MEDICINE

11. Respondent hereby agrees that he shall not engage in the practice of medicine under Iowa license until the pending disciplinary charges in this matter have been resolved.

12. Respondent acknowledges that this Agreement is a public record.

13. Respondent voluntarily submits this Agreement to the Board for consideration.

14. In the event Respondent violates or fails to comply with any of the terms of this Agreement, the Board may initiate action to suspend or revoke Respondent's Iowa medical license or to impose other license discipline authorized in Iowa Code Chapters 148 and 272 and 653 IAC 12.2.

15. This Order is subject to approval by the Board. If the Board fails to approve this Order, it shall be of no force or effect to either party.

16. The Board's approval of this Order shall constitute a **Final Order** of the Board.

Richard M. Fleming, M.D.
Richard M. Fleming, M.D., Respondent

7October 2010
Date

Date Subscribed and sworn to before me on October 7, 2010.

Notary Public, State of Nevada J. Stewart White

J. STEWART WHITE
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 88-1726-2 - Expires November 29, 2013

This Order is approved by the Board on October 22, 2010.

Siroos S. Shirazi, M.D., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, IA 50309-4686

BEFORE THE IOWA BOARD OF MEDICINE

****

IN THE MATTER OF STATEMENT OF CHARGES AGAINST

RICHARD M. FLEMING, M.D., RESPONDENT

File No. 02-09-283

****

STATEMENT OF CHARGES

****

COMES NOW the Iowa Board of Medicine (Board) on February 4, 2010, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 26135 on July 1, 1987. Respondent's license is active and will next expire on February 1, 2010.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on April 29, 2010, before the Iowa Board of Medicine. The hearing shall begin at 8:30 a.m. and shall be located in the conference room at the Iowa Board of Medicine office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Notice of Hearing you are required by 653 Iowa Administrative Code 25.10 to file an Answer. In that Answer, you should also state whether you will require a continuance of the date and time of the hearing.

3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

4. Prehearing Conference. A prehearing conference will be held by telephone on March 4, 2010, at 10:30 a.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (ALJ). Please contact Kent M. Nebel, J.D., Legal Director, Iowa Board of Medicine, at 515-281-7088 with the telephone number at which you or your legal counsel can be reached. Board rules on prehearing conferences may be found at 653 IAC 25.15.

5. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 Iowa Administrative Code Chapter 25. At hearing, you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 653 Iowa Administrative Code 25.16. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

6. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Theresa O'Connell Weeg, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may contact Kent M. Nebel, J.D., Legal Director, at 515-281-7088 or to Assistant Attorney General Theresa O'Connell Weeg at 515-281-6858.

B. LEGAL AUTHORITY AND JURISDICTION

8. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C (2005).

9. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 148, and 272C (2005) and 653 Iowa Administrative Code Chapter 25.25.

10. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 653 Iowa Administrative Code 25.20.

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

11. Respondent is charged pursuant to Iowa Code section 147.55(5) and 272C.5 with being convicted of a felony related to the profession of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession.

COUNT II

12. Respondent is charged pursuant to Iowa Code section 148.6(2)(b) and 653 IAC 23.1(10) for violating a statute or law of this state, another state or the United States without regard to its designation as a felony or misdemeanor, which statute or law relates to the practice of medicine.

COUNT III

13. Respondent is charged pursuant to Iowa Code section 148.6(2)(c) and 653 IAC 23.1(9) for being convicted of a felony in the courts of this state or another state, territory, or country.

COUNT IV

14. Respondent is charged pursuant to Iowa Code sections 147.55(3) and 272C.10(3), and 653 IAC sections 23.1(3) and (4), with engaging in unethical or unprofessional conduct and/or practice harmful or detrimental to the public. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise and whether committed within this state or elsewhere.

D. STATEMENT OF MATTERS ASSERTED

15. Respondent is an Iowa-licensed physician who specializes in internal medicine and cardiovascular disease from Reno, Nevada.

16. On January 18, 2007, Respondent was indicted in the United States District Court for the District of Nebraska on ten (10) counts of health care fraud, two (2) counts of wire fraud and one (1) count of mail fraud:

Counts 1-10 - Health Care Fraud: The Indictment alleges that Respondent committed health care fraud when he submitted false or fraudulent claims for services to Medicare, Medicaid and Blue Cross Blue Shield of Nebraska between January 24, 2002, and October 9, 2002. Respondent allegedly submitted claims for tomographic myocardial perfusion imaging studies that he knew contained materially false representations. The number and type of tomographic studies had not been provided as claimed.

Counts 11-12 – Wire Fraud: The Indictment alleges that Respondent committed wire fraud when he knowingly and willfully attempted to obtain money by means of material false and fraudulent pretenses and representations between January 29, 2004 and March 8, 2004. Respondent allegedly submitted false data via e-mail while conducting a clinical study on the health benefits of a soy chip food product for which he received compensation.

Count 13 – Mail Fraud: The Indictment alleges that Respondent committed mail fraud when he knowingly and willfully attempted to obtain money by means of material false and fraudulent pretenses and representations on March 8, 2004. The indictment alleges that Respondent submitted false data via a commercial interstate carrier while conducting a clinical study on the health benefits of a soy chip food product for which he received compensation.

17. On August 21, 2009, Respondent pleaded guilty to one (1) count of health care fraud and one (1) count of mail fraud. All other counts of the Indictment were dismissed as part of his guilty plea. Under the terms of the plea agreement, Respondent was placed on probation for a period of five (5) years, placed under home confinement under electronic monitoring for a period of six (6) months, ordered to complete 150 hours of community service and ordered to pay $107, 244.24 in restitution. Effective May 11, 2009, Respondent was also permanently excluded from participation in Medicare, Medicaid and all other Federal health care programs.

E. SETTLEMENT

18. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 Iowa Administrative Code 12.25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088.

F. PROBABLE CAUSE FINDING

19. On this 4th day of February, 2010, the Iowa Board of Medicine found probable cause to file this Statement of Charges.

Siroos S. Shirazi, M.D., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686