

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Chairman  
Dr. Jerry R. Kline  
Dr. Peter S. Lam

DOCKETED  
USNRC

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OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

In the Matter of  
MAGDY ELAMIR, M.D.  
Newark, New Jersey

Order Superseding Order  
Prohibiting Involvement in  
NRC-Licensed Activities  
(Effective Immediately)

Docket No. IA 97-070

ASLBP No. 98-734-01-EA

October 23, 1997

SERVED OCT 23 1997

MEMORANDUM AND ORDER  
(Request for Hearing and Stay of Proceeding)

On September 15, 1997, the NRC Staff issued an order (Superseding Order) that bars Dr. Magdy Elamir, President and Owner of Newark Medical Associates, P.A. (NMA), from participating in NRC-licensed activities for a period of five years from July 31, 1997. The order was published at 62 Fed. Reg. 49536 (September 22, 1997).<sup>1</sup> On October 4, 1997, Dr. Elamir filed an answer to the Superseding Order requesting a hearing but also seeking a stay of the proceeding pending resolution of the referral of this proceeding by the NRC Staff to the Department of Justice for criminal investigation. By a filing dated October 21, 1997, the NRC Staff did not oppose either Dr. Elamir's request for a hearing or his stay motion.

<sup>1</sup>This order superseded in its entirety an earlier order, dated July 31, 1997, published at 62 Fed. Reg. 43360 (August 13, 1997).

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This Atomic Safety and Licensing Board has been designated to preside over this proceeding.<sup>2</sup> Because Dr. Elamir has a right to a hearing (see 10 C.F.R. § 2.202(c)), his request is hereby granted. A Notice of Hearing will be issued in the near future. Parties to the proceeding are Dr. Elamir and the NRC Staff. As specified in the September 15, 1997 Superseding Order, the issue to be considered at the hearing is whether such Order should be sustained.

With respect to Dr. Elamir's motion to stay this proceeding, Dr. Elamir notes that "this matter has been referred to the Department of Justice" and he requests "that the hearing and all other proceedings in this matter be stayed pending resolution of the referral." Because we have also received the answer of NMA to a Demand for Information served by the Staff on NMA, it is not clear whether or not Dr. Elamir is seeking a stay of the proceeding involving NMA. We do not at this time have jurisdiction over NMA or the Staff's Demand for Information against NMA, so to the extent Dr. Elamir's stay motion may be construed as seeking a stay of that matter, his request must be denied for lack of jurisdiction.

Beyond that, however, we do not at this time have enough information to act on the stay motion insofar as it concerns Dr. Elamir. We have not been officially advised by the Staff (which would refer the matter to the Department of Justice) that a referral has been or will be made or that an investigation of Dr. Elamir is being or will be

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<sup>2</sup>Establishment of Atomic Safety and Licensing Board, dated October 15, 1997, published at 62 Fed. Reg. 54656 (October 21, 1997).

conducted by the Department of Justice.<sup>3</sup> Moreover, we have received no estimates concerning the potential length of any such stay of this proceeding.<sup>4</sup> We have an obligation to conduct this proceeding expeditiously, giving due consideration to the rights of all parties. 10 C.F.R. § 2.202(c)(1). We cannot exercise these responsibilities properly without the benefit of further information.

Accordingly, we call upon the Staff to advise us, as soon as possible, about the details of a referral, if any, or of any criminal investigation of Dr. Elamir being conducted by the Department of Justice, together with as realistic an estimate as possible of the time needed for the Department of Justice to determine whether or not to undertake a formal criminal investigation. Cf. Aharon Ben-Haim (Staff's Motion for Delay of Proceeding), LBP-97-18, 46 NRC \_\_\_ (October 22,

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<sup>3</sup>We note, however, that in another proceeding before this same Licensing Board, Aharon Ben-Haim, Ph.D., Docket No. IA 97-068, the NRC Staff filed a Department of Justice affidavit stating that the Department is conducting an investigation of allegations of criminal law violations by "Newark Medical Associates, P.A., its owners and employees [emphasis supplied]." Affidavit of Bruce A. Levy, Assistant U.S. Attorney, dated September 26, 1997, ¶ 2. Dr. Elamir is, of course, an owner of NMA. This affidavit is not part of the record of the instant proceeding at this time.

<sup>4</sup>The estimate received by this Licensing Board in the Aharon Ben-Haim proceeding of 120 days may or may not be applicable here.

1997). We defer formal action on Dr. Elamir's stay motion pending our receipt of that information.

IT IS SO ORDERED.

For the Atomic Safety and  
Licensing Board

  
Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
October 23, 1997

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

MAGDY ELAMIR, M.D.

(Superseding Order Prohibiting  
Involvement in Licensed Activities)

Docket No.(s) IA 97-070

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (REQUEST FOR HEARING..) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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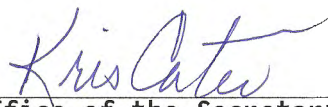
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Dated at Rockville, Md. this  
23 day of October 1997

  
Office of the Secretary of the Commission