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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'97 NOV 18 P12:49

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

OFFICE OF GENERAL COUNSEL
RULEMAKING AND
ADJUDICATORY STAFF

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

SERVED NOV 18 1997

In the Matter of

Docket No. IA 97-070

MAGDY ELAMIR, M.D.
Newark, New Jersey

ASLBP No. 98-734-01-EA

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

November 18, 1997

MEMORANDUM AND ORDER
(Deferral Pending Department of Justice Investigation)

In conjunction with his October 4, 1997 request for a hearing (which we granted by our October 23, 1997 Memorandum and Order (Request for Hearing and Stay of Proceeding)), Dr. Magdy Elamir also requested that "the hearing and all other proceedings in this matter be stayed" pending resolution of a referral to the Department of Justice for criminal investigation. By response dated October 21, 1997, the NRC Staff offered no objection and recommended that we grant Dr. Elamir's request.

In our October 23, 1997 Memorandum and Order, we noted that we had not been officially advised by the NRC Staff that a referral to the Department of Justice had been or will be made or that an investigation of Dr. Elamir is being

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or will be conducted. Nor had we been advised of the potential length of the stay. Because of our obligation to conduct the proceeding expeditiously, we deferred formal action on Dr. Elamir's request pending advice from the Staff on the matters referenced above.

On November 14, 1997, the Staff provided the information we requested, attaching an affidavit of the Assistant U.S. Attorney for the District of New Jersey, dated November 5, 1997. According to the affidavit, the Department of Justice is presently conducting a criminal investigation with respect to allegations of possible violations of federal criminal law by Newark Medical Associates, P.A., including its president and owner, Magdy Elamir, M.D. (Dr. Elamir). A stay is requested "for no less than one hundred and twenty days, subject to the possibility of a request for an extension [Affidavit, ¶ 7]."

Taking into account the circumstance that Dr. Elamir himself seeks the stay, we grant a stay of the full 120 days requested by the Department of Justice--i.e., measured from the date of the affidavit, until March 5, 1998, or such earlier date as the Staff may be notified that the Department of Justice will not pursue a formal criminal investigation. If a further extension is desired, we would expect to be provided with detailed reasons why an extension is needed, including the status of the Department of Justice investigation and reasons why a continuation of the delay

may be warranted. Cf. Aharon Ben Haim, Ph.D., LBP-97-18, 46
NRC ___ (October 22, 1997).

IT IS SO ORDERED.

For the Atomic Safety and
Licensing Board



Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 18, 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 (DEFERRAL PENDING...) 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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Dated at Rockville, Md. this
18 day of November 1997

Adria T. Byrdsong
Office of the Secretary of the Commission