

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

'98 MAY -1 P2:38

OFFICE OF GENERAL COUNSEL  
RULES AND ADJUDICATION  
ADJUDICATIVE

**SERVED MAY -1 1998**

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

May 1, 1998

MEMORANDUM AND ORDER  
(Telephone Conference: Lifting of Stay; Schedules for  
Discovery and Hearing)

On Thursday, April 30, 1998, the Atomic Safety and Licensing Board conducted a telephone conference to consider lifting the current stay of this proceeding and to establish future schedules in the event the stay were to be lifted. Participating, in addition to the three Administrative Judges, were Catherine L. Marco, Esq., for the NRC Staff and Thomas H. Lee, II, Esq., for Dr. Magdy Elamir.

This proceeding has been stayed, at the request of Dr. Elamir, pending a criminal investigation by the Department of Justice, since our Memorandum and Order (Deferral Pending Department of Justice Investigation), dated November 18, 1997. We initially granted the stay for 120 days, the period of time requested by the Department of Justice for

19010

its investigation. By motion dated March 3, 1998, Dr. Elamir sought to extend the stay.

In response, the NRC transmitted a copy of a letter from the Department of Justice to Dr. Elamir's counsel indicating that Dr. Elamir was not at that time a "target" of a Department of Justice criminal investigation. The Staff recommended that the stay not be continued. In a telephone conference call on March 26, 1998, in response to Dr. Elamir's position that the "not a target" language was too subjective and could be construed as meaning no more than that the Department at that time had not decided on criminal prosecution, we asked the Staff to attempt to obtain a letter declining prosecution similar to the type it normally obtains.

On April 23, 1998, the Staff transmitted to us and the parties a copy of a letter from the Department of Justice formally declining prosecution of Newark Medical Associates, the company of which Dr. Elamir serves as President. In the April 30 telephone conference, Dr. Elamir's counsel stated that he would accept the Department's latest letter, coupled with the earlier "not a target" communication, as adequate to permit ending the stay, even though the language of the letters might technically permit the Department to reverse its position.


Accordingly, after discussion with the parties' representatives, the Board established a sixty day discovery

schedule, commencing Monday, May 4, 1998 and ending on Thursday, July 2, 1998. By Wednesday, July 8, parties must have in our hands lists of witnesses to be presented, statements of their qualifications (curriculum vitae), and lists of documents to be presented. The hearing is scheduled to commence on Tuesday, July 14, 1998, at 9:30 a.m. EDT, and continue, to the extent necessary, on July 15 and 16, 1998, at a location to be announced.

Accordingly, Dr. Elamir's motion to extend the stay is dismissed as moot, the stay of this proceeding is terminated, and schedules for discovery and hearing are adopted as indicated above.

IT IS SO ORDERED.

For the Atomic Safety and  
Licensing Board

  
\_\_\_\_\_  
Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
May 1, 1998

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 TELECON: LIFTING STAY.. 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.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Charles Bechhoefer, Chairman  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Peter S. Lam  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Jerry R. Kline  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Harry Rein  
Special Assistant  
ASLBP  
1877 Wingfield Drive  
Longwood, FL 32779

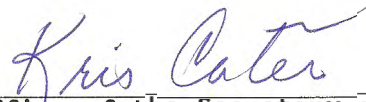
Ann P. Hodgdon, Esquire  
Catherine L. Marco, Esquire  
Office of the General Counsel  
Mail Stop - 0-15 B18  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Thomas H. Lee, II, Esquire  
Rachel Nosowsky, Esquire  
Dechert Price & Rhoads  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103

Perry D. Robinson, Esquire  
Winston & Strawn  
1400 L Street, N.W.  
Washington, DC 20005

Docket No.(s)IA 97-070  
LB M&O TELECON: LIFTING STAY..

Dated at Rockville, Md. this  
1 day of May 1998

A handwritten signature in blue ink that reads "Kris Carter". The signature is written in a cursive style with a prominent flourish at the end of the name.

Office of the Secretary of the Commission