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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

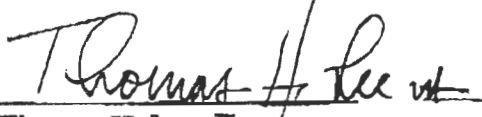
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD


In the Matter of )  
 )  
MAGDY ELAMIR, M.D ) IA-97-070  
 )  
Newark, New Jersey )  
 )

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

The Staff of the Nuclear Regulatory Commission and Magdy Elamir, M.D. jointly move the Atomic Safety and Licensing Board to approve the Settlement Agreement attached to this Joint Motion pursuant to 10 C.F.R. § 2.203 of the Commission's Regulations. The parties request that the Board, in accordance with 10 C.F.R. § 2.203, enter an order terminating this proceeding, embodying the terms of the Settlement Agreement without making any findings with respect to matters in dispute among the parties.

Respectfully submitted,

  
Thomas H. Lee, II  
Counsel for Magdy Elamir, M.D.

  
Ann P. Hodgdon  
Counsel for NRC Staff

Dated this 1st day  
of October, 1998

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE  
GENERAL COUNSEL  
ADMINISTRATIVE

In the Matter of :  
:   
MAGDY ELAMIR, M.D. : DOCKET NO. IA-97-070  
Newark, New Jersey :

SETTLEMENT AGREEMENT

On September 15, 1997, the Staff issued an "Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)" to Magdy Elamir, M.D. 62 Fed. Reg. 49536 (Sept. 22, 1997). Dr. Elamir answered the Superseding Order on October 4, 1997 and requested a hearing, resulting in the establishment of an Atomic Safety and Licensing Board. 62 Fed. Reg. 54656 (Oct. 21, 1997). On July 31, 1997, the Staff also issued a Demand for Information, Docket No. 030-34086, EA 97-308, to Newark Medical Associates ("NMA") (licensee under Byproduct Materials License No. 29-30282-01) regarding the same matters at issue in this proceeding.

WHEREAS, the Staff contends that Dr. Elamir caused and permitted NMA to be in violation of NRC requirements and that there was an adequate basis for issuance of the Superseding Order;

WHEREAS, Dr. Elamir denies the Staff's contentions and asserts that there was not an adequate basis for issuance of the Superseding Order;

WHEREAS, Dr. Elamir and NMA have, nevertheless, decided that they do not intend to engage in any NRC-licensed activity until after July 31, 2000, at the earliest;

WHEREAS, the parties have agreed that it is in the public interest to terminate this proceeding, without further litigation;

The parties hereby agree to the following terms and conditions:

1. Dr. Elamir agrees to withdraw his request for a hearing.
2. Dr. Elamir agrees to refrain from engaging in, and is hereby prohibited from engaging in, any NRC-licensed activities for three years from the date of the Staff's original Order, i.e., from July 31, 1997 through July 31, 2000.
3. The prohibition described in Paragraph 2 includes any and all activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 C.F.R. § 150.20.
4. Dr. Elamir further agrees that NMA will relinquish and surrender its license, Byproduct Materials License No. 29-30282-01, to the NRC.

5. In consideration of Dr. Elamir's agreement to the conditions of Paragraphs 1 through 4 above, the Staff agrees that it will take no further enforcement action against Dr. Elamir or NMA based on (i) the facts outlined in the September 15, 1997 Superseding Order; (ii) the 1997 inspections of Newark Medical Associates, or (iii) any other facts disclosed, assertions made, or conclusions reached as a result of the NRC's Office of Investigation's investigation relating to Newark Medical Associates' operations and/or Dr. Elamir's activities. In the event that either Dr. Elamir or NMA fails to comply with any term or condition set forth in Paragraphs 1 through 4 above, the Staff expressly reserves the right to take whatever action is necessary and appropriate to enforce the terms of this Settlement Agreement.

6. The Staff and Dr. Elamir understand and agree that this Settlement Agreement is limited to the issues in and the parties to the above-captioned proceeding.

7. The Staff and Dr. Elamir understand and agree that this Settlement Agreement does not constitute and should not be construed to constitute any admission or admissions in any regard by Dr. Elamir regarding any matters set forth by the NRC in its Order or Superseding Order.

8. The Staff and Dr. Elamir understand and agree that the matters upon which the Superseding Order is based have not been resolved as a result of this Settlement Agreement; this

Settlement Agreement shall not be relied upon by any person or other entity as proof or evidence of any of the matters set forth in the Superseding Order, in the Inspection Report dated September 4, 1997, or in the Report of the Office of Investigation dated July 23, 1997.

9. The Staff and Dr. Elamir shall jointly move the Atomic Safety and Licensing Board for an order approving this Settlement Agreement and terminating the above-captioned proceeding.

FOR MAGDY ELAMIR, M.D.

FOR THE NRC STAFF:

Thomas H. Lee, II  
Thomas H. Lee, II, Esquire  
Counsel for Magdy Elamir, M.D.

Catherine L. Marco  
Catherine L. Marco, Esquire  
Counsel for the NRC Staff

Magdy Elamir  
Magdy Elamir, M.D.

James Lieberman  
James Lieberman  
Director, Office of Enforcement  
Nuclear Regulatory Commission

Newark Medical Associates, Inc.  
by Dr. Magdy Elamir, President

Dated this 1st day of October, 1998

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October 1, 1998

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
MAGDY ELAMIR, M.D ) IA-97-070  
 )  
Newark, New Jersey )  
 )

ORDER APPROVING AND INCORPORATING  
SETTLEMENT AGREEMENT AND DISMISSING PROCEEDING

On September 15, 1997, the staff of the Nuclear Regulatory Commission (Staff) issued an "Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately)" (Staff's Order) to Dr. Elamir. 62 Fed. Reg. 49536 (1997). On October 4, 1997, Dr. Elamir answered the Staff's Order, denying the violations alleged in the Staff's Order and requesting a hearing. Answer of Dr. Magdy Elamir to the Commission's September 15, 1997 Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities. On October 1, 1998, the parties to this proceeding filed a "Joint Motion for Approval of Settlement Agreement."

Upon consideration of the Joint Motion for Approval of Settlement Agreement filed by the Staff and Dr. Elamir, and upon consideration of the Settlement Agreement executed by the parties to this proceeding, we find that settlement of this matter as proposed by the parties is in the public interest and should be approved. Accordingly, without making any findings with respect to matters in dispute among the parties, or any resolution of any

disputes, arising from the Order or any challenges thereto, the Settlement Agreement is hereby approved and incorporated into this Order, pursuant to section 81 and subsections (b) and (i) of section 161 of the Atomic Energy Act, as amended, 42 U.S.C. §§ 2111, 2201(b) and 2201(i), and is subject to the enforcement provisions of the Commission's regulations and Chapter 18 of the Atomic Energy Act, as amended, 42 U.S.C. § 2271 *et seq.* It is, therefore,

ORDERED that the Joint Motion for Approval of Settlement Agreement is granted and we approve the parties' Settlement Agreement which is attached to and incorporated by reference in this Order.

IT IS FURTHER ORDERED that this proceeding is terminated.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

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Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE

---

Dr. Peter S. Lam  
ADMINISTRATIVE JUDGE

---

Dr. Jerry R. Kline  
ADMINISTRATIVE JUDGE

Dated at Rockville, Maryland  
this \_\_\_ day of October, 1998



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE SECRETARY  
ADJUDICATION

In the Matter of )  
 )  
MAGDY ELAMIR, M.D. ) IA-97-070  
 )  
Newark, New Jersey )

CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT," "SETTLEMENT AGREEMENT" and "ORDER APPROVING AND INCORPORATING SETTLEMENT AGREEMENT AND DISMISSING PROCEEDING" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk this 1st day of October, 1998:

Charles Bechhoefer, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop T 3-F-23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Jerry R. Kline  
Atomic Safety and Licensing Board  
Mail Stop T 3-F-23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Peter S. Lam  
Atomic Safety and Licensing Board  
Mail Stop: T 3-F-23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Adjudicatory File (2)  
Atomic Safety and Licensing Board  
Mail Stop: T 3-F-23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Office of the Commission Appellate  
Adjudication  
Mail Stop: 16-C-15 OWFN  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

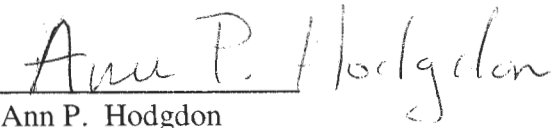
Office of the Secretary (2)  
ATTN: Rulemaking and Adjudications  
Staff  
Mail Stop: 16-C-15 OWFN  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555



Atomic Safety and Licensing Board  
Panel  
Mail Stop: T 3-F-23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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