

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'98 OCT -8 P2:19

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

OFFICE OF THE
PUBLIC INFORMATION
ADJUDICATOR

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

SERVED OCT - 8 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

October 8, 1998

*RE-SERVED OCT 15 1998

MEMORANDUM AND ORDER
(Approving Settlement Agreement and Terminating Proceeding)

On September 15, 1997, the staff of the Nuclear Regulatory Commission (Staff) issued to Dr. Magdy Elamir an "Order Superseding Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately)" (Staff's Order). 62 Fed. Reg. 49,536 (September 22, 1998). The Staff's Order, inter alia, would have prohibited Dr. Elamir's involvement in NRC-licensed activities for a period of five years from July 31, 1997.¹ On October 4, 1997, Dr. Elamir answered the Staff's Order, denying the alleged violations and requesting a hearing.

¹This Order superseded a July 31, 1997 "Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately)." 62 Fed. Reg. 43,360 (August 13, 1997). The prohibition in the Superseding Order continued to run from the date of the earlier Order.

*Corrected page 3 of the Settlement Agreement

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This Atomic Safety and Licensing Board was established to preside over this proceeding. 62 Fed. Reg. 54,656 (October 21, 1997). By Memorandum and Order (Request for Hearing and Stay of Proceeding), dated October 23, 1997, we granted Dr. Elamir's hearing request. We also issued a Notice of Hearing. 62 Fed. Reg. 56,207 (October 29, 1997).

At the joint request of the parties, this proceeding has been stayed several times, beginning with our Memorandum and Order (Stay Pending Settlement Negotiations), dated June 23, 1998, to accommodate settlement negotiations between the parties. On October 1, 1998, the parties filed a "Joint Motion for Approval of Settlement Agreement."

Upon consideration of the Joint Motion for Approval of Settlement Agreement, and upon consideration of the Settlement Agreement, a copy of which is attached hereto and incorporated herein by reference, we find, pursuant to 10 C.F.R. § 2.203, that the 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 Staff's 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 of 1954, 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:

1. The Joint Motion for Approval of Settlement Agreement is hereby granted;
2. The parties' Settlement Agreement, attached to and incorporated by reference into this Order, is hereby approved;
3. This proceeding is hereby terminated.

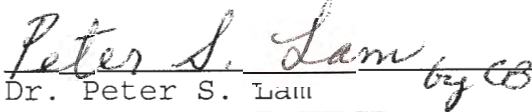
The Atomic Safety and
Licensing Board



Charles Bechnhoefer, Chairman
ADMINISTRATIVE JUDGE



Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE



Dr. Peter S. Lau
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 8, 1998

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

In the Matter of

MAGDY ELAMIR, M.D.
Newark, New Jersey

:
:
: DOCKET NO. IA-97-070
:

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.

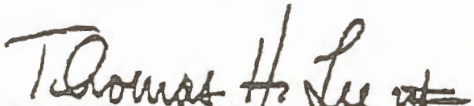
7. The Staff and Dr. Elamir understand and agree that this Settlement Agreement does not constitute and should not be construed to constitute any admission or admissions in any regard by Dr. Elamir regarding any matters set forth by the NRC in its Order or Superseding Order.

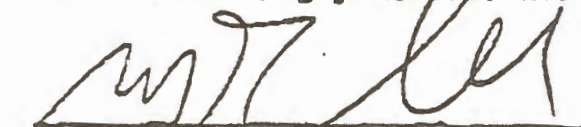
8. The Staff and Dr. Elamir understand and agree that the matters upon which the Superseding Order is based have not been resolved as a result of this Settlement Agreement; this

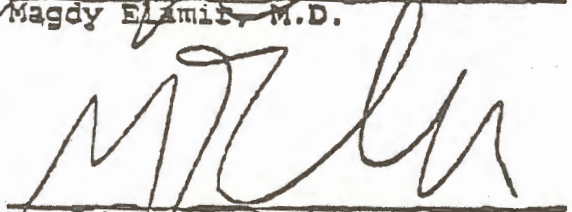
Settlement Agreement shall not be relied upon by any person or other entity as proof or evidence of any of the matters set forth in the Superseding Order, in the Inspection Report dated September 4, 1997, or in the Report of the Office of Investigation dated July 23, 1997.

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.



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


Magdy Elamir, M.D.


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

FOR THE NRC STAFF:


Catherine L. Marco, Esquire
Counsel for the NRC Staff


James Lieberman
Director, Office of Enforcement
Nuclear Regulatory Commission

Dated this 1st day of October, 1998

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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 MEMO & ORDER (LBP-98-25) 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
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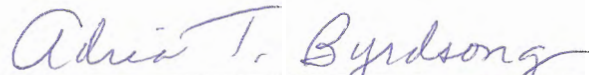
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Jerry R. Kline
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Washington, DC 20555

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

Dated at Rockville, Md. this
8 day of October 1998


Office of the Secretary of the Commission

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

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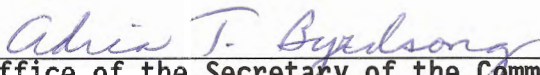
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Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005

Dated at Rockville, Md. this
15 day of October 1998


Office of the Secretary of the Commission