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DECEMBER 18, 2009
NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

MAGDY ELAMIR, M.D.

ORDER OF TEMPORARY
SUSPENSION OF LICENSE

This matter was opened before the New Jersey State Board of Medical Examiners (the "Board") upon the Attorney General's filing of a Verified Complaint on December 3, 2009. Therein, the Attorney General alleged that Dr. Elamir had been the subject of a criminal investigation, focused upon alleged illegal prescribing of controlled dangerous substances and upon related Medicaid fraud. The investigation was conducted, in part, by sending three cooperating witnesses (hereinafter, references to individual cooperating witnesses appear as "CW #1, CW #2 and CW #3" respectively) into Dr. Elamir's office to conduct a total of eight undercover visits. Each of those visits is detailed in the Complaint - in all cases, it is alleged that the cooperating witnesses were able to secure prescriptions for the controlled substances Percocet and Xanax (and, in one case, a third prescription for Advair) by simply requesting the medications.

The Complaint further details that the investigation culminated upon the execution of a search warrant on October 20,

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2009, pursuant to which Dr. Elamir's patient records were seized from his office and home. Dr. Elamir was also arrested on October 20, 2009, on charges of violations of N.J.S. 2C:35-5(b)(4) [Illegal Distribution of a Controlled Dangerous Substance], N.J.S. 30:4D-17 [Medicaid Fraud] and N.J.S. 2C:21-4.3 [Health Care Claims Fraud].

Simultaneous with the filing of the complaint, we entered an Order to Show Cause scheduling a hearing upon the Attorney General's application for the entry of an Order temporarily suspending the license of Dr. Elamir. A hearing on that application was scheduled and held on December 9, 2009.

Upon consideration of the record presently before us, we have concluded that a compelling predicate exists to find that Dr. Elamir's continued practice would present clear and imminent danger to the public health, safety and welfare. We do so based on documentation demonstrating that, on eight separate occasions, individual "patients" were able to obtain prescriptions for Percocet and Xanax (and, in one case, a third prescription for Advair) upon doing nothing more than walking into Dr. Elamir's office and asking for the medications. In each instance, the visits were a complete sham, as there was not even a pretext that the prescriptions were issued for a legitimate medical need or purpose. In all cases, neither Dr. Elamir nor any other member of his staff ever conducted even the most cursory of physical examination, or otherwise attempted to obtain an appropriate history, to support the prescribing. Each encounter was extremely

brief, and, in each instance, the cooperating witness reported that Dr. Elamir made no contemporaneous entries into any patient record. In short, each of the visits was nothing more than an outright sale of prescriptions by a medical licensee.

We thus conclude that, on eight separate occasions, Dr. Elamir totally abrogated his responsibilities as a licensee. The striking absence of any indicia that the prescriptions he wrote were for a legitimate medical purpose demonstrates both a dereliction of judgment and a willingness to place both his patients, and the public at large, in harm's way, and forms a predicate that fully supports a conclusion that Dr. Elamir's continued practice presents clear and imminent danger. Based thereon, we herein order the temporary suspension of Dr. Elamir's license. We set forth below a synopsis of the procedural history of this matter, summarize the evidence introduced and the arguments that were made at the hearing before the Board on December 9, 2009, and delineate the findings of fact and conclusions of law that we have presently made.

Procedural History

As noted above, this matter was opened upon the Attorney General's filing of a Verified Complaint, along with three Certifications[1] to which documents supporting the allegations of

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[1] The Attorney General's Verified Complaint was supported by three Certifications - specifically, a Certification of Investigator Gina Galloni dated December 1, 2009; a Certification

the complaint were appended. The Attorney General also filed a letter brief in support of her application for temporary suspension. An Order to Show Cause was filed on December 3, 2009, requiring respondent to file an Answer to the allegations within the complaint and scheduling a hearing for December 9, 2009 to consider the Attorney General's application for the temporary suspension of Dr. Elamir's license.

On December 9, 2009, Deputy Attorney General Kay Ehrenkrantz appeared for Anne Milgram, Attorney General of New Jersey. Dr. Elamir appeared, represented by Joseph M. Gorrell, Esq. Dr. Elamir then filed an Answer to the Verified Complaint, and offered an Affidavit and a Certification (by Dr. Elamir and by Eric Gross, Esq., respectively, see discussion infra) in opposition to the application for temporary suspension. A hearing was conducted before the Board, which hearing was limited to the introduction of documents in evidence (as neither party sought to offer any live witness testimony) and the presentation of oral arguments of counsel.

A. Documents Introduced by the Parties in Support and Opposition to the Application for Temporary Suspension:

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of Deputy Attorney General Cynthia Vazquez, dated December 2, 2009; and a Certification of Deputy Attorney General Kay Ehrenkrantz, dated December 2, 2009. In all three certifications, the individual affiants attested that the documents supporting the Attorney General's application for temporary suspension were true and complete copies of original documents that had been obtained from the Evidence Vault at the Division of Criminal Justice.

I) Attorney General's Exhibits: The Attorney General's allegations regarding what transpired on each of the eight undercover visits to Dr. Elamir's offices are supported by eight similarly-structured Investigative Reports.[2] Each Investigative Report begins by setting forth the date, time and location at which police officers met the cooperating witness; provides details regarding what the cooperating witness was provided in advance of entering Dr. Elamir's office (i.e., cash to pay for the visit, or a Medicaid card) and regarding the recording devices which were utilized to tape record the visits; and provides details regarding the police surveillance of the witness' entry and exit from Dr. Elamir's office. Most significantly, each report also provides details, obtained from the individual cooperating witness, shortly after the witness left Dr. Elamir's office, regarding what occurred

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[2] The eight reports, all without supporting exhibits, were collectively introduced into evidence as Exhibit P-1, over the objection of respondent's counsel, who argued that the records could only be introduced if the custodian of the record testified to their authenticity. We rejected that argument and accepted the reports in evidence, based on the Certifications submitted by D.A.G. Ehrenkrantz and Vazquez and the Certification of Gina Galloni, all of which provide an adequate predicate to establish the authenticity of the reports.

Thereafter, each individual report was moved into evidence, with all exhibits included (exhibits include copies of the prescriptions that were issued on each visit by Dr. Elamir, copies of receipts for cash payments that were received by the undercover "patients," and evidence vouchers describing evidence collected and detailing the chain of custody of that evidence). The individual reports with exhibits have been marked as Exhibits P-2 through P-9 respectively, and were accepted into evidence without any objection being raised by respondent's counsel.

while the witness was in Dr. Elamir's office, to include:

- approximations of the length of waiting time spent in Dr. Elamir's office;

- observations regarding what occurred while the witness was waiting to see Dr. Elamir, to include, in certain cases, observations regarding other individuals who were in the waiting room;

- details about how the visit was paid for; and

- details regarding what occurred when the C.W. was ultimately called into Dr. Elamir's office and met with Dr. Elamir, to include details regarding the approximate length of time spent with Dr. Elamir, any conversation which occurred during the visit, the lack of any taking of a history and/or performance of an examination, and regarding the prescriptions which Dr. Elamir wrote.

In each of the eight cases, the individual cooperating witness secretly tape recorded his or her visit to Dr. Elamir's office. Copies of the prescriptions which were obtained, any receipts that were provided for cash payments made, and the audio tapes for each visit were retrieved by the police from the cooperating witnesses, and evidence vouchers appended to each Investigative Report detail the chain of custody of all evidence obtained (all such evidence is presently in the custody of the Division of Criminal Justice).

The Attorney General also supported her case with certified true copies of:

- the Search Warrant authorizing the search and seizure of documents from Dr. Elamir's office, issued by the Honorable Kevin G. Callahan on October 15, 2009. [P-10 in evidence].

- the Arrest Warrant in State of New Jersey v. Magdy

Elamir, charging Dr. Elamir with violations of N.J.S. 2C:35-5(b)(4), 2C-21-4.3 and 30:4D-17, issued October 15, 2009. [P-11 in evidence].

- copies of correspondence regarding a claim for reimbursement for services that Dr. Elamir made which was denied by New Jersey Manufacturers' Insurance Company based on NJM's determination that Dr. Elamir had violated New Jersey laws prohibiting self-referrals - specifically, a copy of a letter dated June 18, 2009 from Christopher F. Struben, Esq. to NJ MRI Services, LLC, and a letter dated June 5, 2009 from Valerie Devine, Claims Representative for NJM Insurance Group to Michael Percario, Esq. [P-12 in evidence].

- copies of eight patient records that were seized from Dr. Elamir's 550 Summit Avenue, Jersey City, New Jersey offices pursuant to the search warrant (in each case, there appear to be no entries at all by Dr. Elamir in any of the charts recording medical information, as the charts instead generally include only billing information and/or copies of forms signed or completed by the patients) [collectively introduced as P-13 in evidence].

- Patient sign-in sheets dated October 19, 2009 seized from Dr. Elamir's office, along with copies of "superbills" for each patient identified on the sign-in sheet [collectively introduced as P-14 in evidence].

- Spreadsheets that detail certain payments that were made by Medicaid to Dr. Elamir [P-15 in evidence].

- The patient record seized from Dr. Elamir's office for C.W. #1 [P-16 in evidence].

- Certifications of Mitzi Gross and Marianne Nucci [P-18 and P-18a in evidence].[3]

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[3] The Attorney General additionally sought to introduce two patient records, one for an individual patient whose name was completely redacted, and a second for a patient with initials of P.A., as additional examples of the types of records that had been seized and were being maintained by Dr. Elamir. As there did not appear to be any certification verifying said records, nor any foundation suggested for the entry of the documents, we declined to enter those patient records in evidence at this time. We note that the Attorney General may renew her application to enter the

ii) Dr. Elamir's Submissions in opposition to the Application for Temporary Suspension.

While Dr. Elamir produced no witness testimony at the hearing on the application for temporary suspension (Mr. Gorrell advised that Dr. Elamir would not testify at the hearing upon advice of his counsel in the pending criminal proceedings), Dr. Elamir did make statements in his defense within an affidavit (R-2 in evidence) dated December 9, 2009. Therein, Dr. Elamir stated that he believed that "he had been able to identity" the three confidential witness patients "from reviewing the attachments [to the complaint]." (Elamir Affidavit, ¶3). Dr. Elamir states in his affidavit that "the medications that I prescribed for CW#1, CW#2 and CW#3 were all for a legitimate medical purpose and after I had a good, clinical understanding of the patient's condition." (Elamir Affidavit, ¶8). With regard to CW#1, Dr. Elamir stated that he had treated the patient as far back as the 1980s, and again saw him in approximately 2001 (Elamir Affidavit, ¶5). Dr. Elamir further stated that he had treated CW #1 at that time for injuries from an accident and for back pain. Id. He stated that he again started treating CW #1 for back pain in September 2007, that he then refused to prescribe Oxycontin and initially had prescribed Vicodin (which CW#1 told him did not work) before prescribing Percocet; and that he at times tried to get CW#1 on medicines other

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documents into evidence when further hearings are held before the Office of Administrative Law, presumably upon the presentation of an appropriate proffer and authentication.

than Percocet but each time CW#1 insisted that the substitute medicine did not work. Id.

With regard to CW#2, Dr. Elamir stated that he had treated her for more than 2 years before the July 30, 2009 visit (Elamir Affidavit, ¶6). Dr. Elamir additionally detailed that, on her first visit, he had tried Vicodin rather than Percocet, but CW#2 claimed that Vicodin did not work. Id. Finally, with regard to CW #3, Dr. Elamir stated that he believed CW#3 was the husband of CW#2, and that he had been treating CW#3 for chronic pain since June 2007 (Elamir Affidavit, ¶7). Dr. Elamir provided a copy of what he believed to be his patient record for CW #3's visit to his office on August 13, 2009, which included progress notes (on the back side of a billing form) for the visit (that record was introduced as R-3 in evidence).

Finally, Dr. Elamir asserted in his affidavit that the records which had been provided by the Attorney General in support of her complaint were incomplete (Elamir Affidavit, ¶10). Respondent claimed that his notes of treatment for patients whose "records" were included within Exhibits M and N (now P-13 and P-14 in evidence, respectively) were incomplete because the back side of numerous pages, which Dr. Elamir stated contained his progress notes on the patients, had not been copied. Id. Respondent attached copies of "excerpts from [his] medical records for these patients, which show my notes on the back of the billing form for various visits" to his affidavit (Elamir Affidavit, ¶11 and

attachments).

Respondent also moved into evidence a Certification of Eric Gross, Esq. (an attorney at law and an associate in the law firm of Brach Eichler, L.L.C.) (R-1 in evidence). Within his certification, Mr. Gross states, based on his review of the Investigative Reports, that there are "numerous discrepancies" between the allegations within the Verified Complaint regarding the length of each visit (that is, the amount of time that Dr. Elamir spent with the patient on any given visit) and what is stated in the Investigation Reports (Gross Certification, ¶2). By way of example, Mr. Gross suggests that the allegations set forth in paragraph 13 of the Verified Complaint (wherein it is alleged that CW #1 spent less than two minutes with Dr. Elamir on February 26, 2009) are inconsistent with the investigative report, which "states that CW #1 entered Dr. Elamir's office at 11:56 a.m., waited approximately one hour, and left the office at 1:38 p.m." Based thereon, Mr. Gross states that "the investigative report thus indicates that Dr. Elamir spent more than 40 minutes with the CW #1." [Gross Certification, ¶2(a)].

On the other end of the spectrum, Mr. Gross suggests that the allegations within ¶19 of the "Verified Complaint" (namely, that Dr. Elamir spent less than 3 minutes with CW #1 on July 21, 2009) must be an "impossibil[ity]," for the Investigative Report details that CW #1 entered Dr. Elamir's office at 12:56 p.m. and left at 2:06 p.m. (for a total time spent in the office of 70

minutes), but also claims that CW #1 waited for approximately ninety minutes before being called to see Dr. Elamir [Gross Certification, ¶2(e)].

b) Oral Arguments of Counsel

Both D.A.G. Ehrenkrantz and Mr. Gorrell presented oral arguments in support of their respective positions. Without recounting those arguments (which generally consisted of analysis of the evidence presented and analysis whether that evidence would or would not support the entry of an Order of Temporary Suspension), we herein note two arguments that were made by Mr. Gorrell during the hearing. Most significantly, Mr. Gorrell asserts that Dr. Elamir is being deprived of due process in this proceeding. That argument rests on the assertion that it is fundamentally unfair at this juncture to proceed on the application for temporary suspension, because the Attorney General refuses to supply Dr. Elamir with the names of individual patients.[4] Mr.

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[4] We note that it is unclear on the record before us whether the Attorney General's refusal to supply names of patients to Dr. Elamir has been only with respect to the identities of the three confidential witness patients, or whether it has extended to all patient records that were appended to the Certifications that accompanied the Attorney General's application for temporary suspension (those records were appended to the Certifications as Exhibits M and N, and are now Exhibits P-13 and P-14 in evidence). If the Attorney General's refusal to supply names of patients extends beyond the three cooperating witness patients, we urge that those other patients' identities be provided to Dr. Elamir forthwith, in order to ensure fairness going forward. While Dr. Elamir, as the respondent in this case, should be provided with those names, it remains the case that no patient's name should be part of the public record in this case. Rather, the three

Gorrell further claimed that, without that identification, Dr. Elamir was deprived of an opportunity to assess the credibility of the witnesses against him, and hampered in the preparation of his defense, because he was left only to speculate as to the identity of each patient.

The Attorney General asserts that she is not authorized to release the names of the cooperating witnesses, nor even to confirm or deny whether Dr. Elamir has in fact correctly identified those witnesses, because there is presently an absolute need to shield the identity of the witnesses. She has asserted that the witnesses fear for their safety, and that the Division of Criminal Justice has instructed that she not identify those witnesses, even to Dr. Elamir.

In addition to the claims regarding the fundamental fairness of the proceeding, Mr. Gorrell repeatedly argued that the Board was being asked to decide the application for temporary suspension without having the benefit of Dr. Elamir's complete patient records. Mr. Gorrell pointed out that Dr. Elamir had provided an affidavit wherein he not only detailed that he had treated each of the three confidential witnesses for long periods of time, but also maintained that the records that were being relied on by the Attorney General were incomplete and missing

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confidential witness patients are to be referred to only as CW #1, CW #2 and CW #3, and, consistent with Board practice, all other patients are to be referred to by initials only in order to protect their individual privacy rights.

progress notes that were written on the back of copied billing information. Mr. Gorrell further argued that, regardless whether Dr. Elamir's records would or would not be found to be otherwise consistent with the requirements for physician record-keeping, the fact that there were patient records, and the content of those records, needed to be made known to and considered by the Board.[5]

Findings of Fact

We point out at the outset that we have elected to limit our focus, and our findings of fact, to that which can be presently found regarding the eight undercover visits by the three confidential witnesses. We do so because we have unanimously concluded that the details of those visits form a more than ample predicate on which to conclude that cause exists to temporarily suspend the license of Dr. Elamir, and we thus find it unnecessary presently to make any findings based on the additional documents which have been moved into evidence and cited as support for the Attorney General's application. Attached hereto as Exhibit "A" is a chart that we have prepared which sets forth relevant details concerning each of the eight patient visits which can be gleaned from review of the Investigative Reports.

The Board rarely is provided with a window through which

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[5] Mr. Gorrell suggested that, even if Dr. Elamir's record-keeping was not consistent with the Board's patient record regulations, that violation would not be grounds for the imposition of a temporary suspension of his license.

it can peer into the encounters that occur between a licensee and his or her patient. In this case, however, that window has been opened wide, as eight Investigative Reports detail what took place - and what didn't take place - in Dr. Elamir's office. In eight instances, involving three separate "patients," the Investigative Reports detail that the encounter between Dr. Elamir and his patient involved nothing beyond the patient asking to be provided with prescriptions for Percocet and Xanax (and, in one instance, for Advair as well), or simply asking for his or her "meds," and Dr. Elamir in turn writing prescriptions. On each and every visit, Dr. Elamir failed to conduct any physical examination whatsoever. On each and every visit, Dr. Elamir failed to make even the most cursory or fleeting of inquiry of his patient to obtain an appropriate history for the patient visit. On each and every visit, Dr. Elamir was not observed to have maintained, or completed, any patient record.

Dr. Elamir suggests, in his affidavit, that the prescriptions he wrote for CW #1, CW #2 and CW #3 were legitimate prescriptions for legitimate conditions, and part of long standing medical care that he had provided to each patient. While we make no specific findings herein regarding care that may have been provided to any of the three confidential witnesses on other visits, we specifically reject any claims that Dr. Elamir's actions on the eight undercover visits could somehow be explained, or condoned, based on any prior "treatment" he may have provided. It

is therefore the case that even if Dr. Elamir had written "legitimate" prescriptions for any of the cooperating witnesses in the past, he did not do so on any of the eight undercover visits.

The record thus supports findings that on none of the visits did Dr. Elamir measure or record any vital signs such as the patient's blood pressure or pulse rate, and in no case did he conduct any physical examination whatsoever to seek to determine the source or extent of the "patient's" pain symptoms. In no case did Dr. Elamir suggest or order that any laboratory work be obtained, and in no case did he discuss, consider or refer his patient for any testing of any sort. Indeed, in no case did Dr. Elamir engage in any conversation at all with any patient to obtain a history for the visit, or to seek to determine how the patient had been functioning, and the degree of pain that the patient may have been in, since the patient's prior visit (if Dr. Elamir had been truly treating the witnesses for chronic pain, we would certainly have expected him to have sought to obtain that type of information prior to prescribing). The absence of any of those most rudimentary of actions necessarily belies any claim that Dr. Elamir may presently make that the prescriptions issued to any of the cooperating witnesses, on any of the eight visits, were "legitimate." Rather, we find that, in all eight instances, Dr. Elamir did absolutely nothing to establish a medical basis or

rationale for any of the prescriptions that he wrote.[6]

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[6] We are clearly aware that the information available to us concerning the encounters between each confidential witness and Dr. Elamir has been provided in the context of police Investigative Reports, which could be considered to be hearsay accounts of what each confidential witness told the police officer preparing the report after leaving Dr. Elamir's office. Although Dr. Elamir has not directly challenged the Board's reliance on the police reports, we nonetheless are independently satisfied that it is appropriate to rely on the detailed descriptions of the encounters that took place between Dr. Elamir and the confidential witnesses recounted in the eight Investigative Reports. While neither the audio tapes (nor any transcript of what is on those tapes) nor any certified statements of the cooperating witnesses have been made available for our review at this juncture, there is nothing before us (to include any statements that might have been made by Dr. Elamir in his affidavit) to suggest that the audio tapes will not corroborate the descriptions of the encounters set forth in the Investigative Reports.

Hearsay evidence is admissible in administrative proceedings. In this case, we have concluded that the Investigative Reports should be considered to be the best available evidence regarding the encounters that took place in Dr. Elamir's office - and we find the detail therein, and the fact that the accountings of what occurred in Dr. Elamir's office were secured, in all cases, shortly after the cooperating witness left Dr. Elamir's office, to be factors which suggest that the Reports should be deemed reliable. Consistent therewith, we note that it has been held, in the context of parole revocation hearings (which indisputably involve greater individual liberty interests than are implicated in this action), that Police Reports can be relied on, in lieu of live testimony, to base findings on which parole revocation may be ordered. See Crawford v. Jackson, 355 U.S. App. D.C. 282, 323 F. 3d 123 (D.C. Cir. 2003); Stanton v. U.S. Parole Commission, 2007 U.S. Dist. LEXIS 46313 (citing Crawford for proposition "the inability to confront witnesses during a revocation proceeding is not a due process violation if the documentary or other evidence contains sufficient indicia of reliability to be an appropriate substitute for live testimony.") Finally, we also point out that the exhibits to the Investigative Reports - particularly, the copies of the actual prescriptions that were written in each instance by Dr. Elamir and provided to the cooperating witnesses, and, in three cases, the copies of the receipts for cash payments that were provided - corroborate the accounts of each visit (thus providing a measure of competent

The record before us additionally provides support for a finding that, on four visits, Dr. Elamir collected $50 in cash for the office visits. Specifically, the Investigation Reports detail that, on CW #1's February 26, 2009 visit and his March 11, 2009 visit, he paid $50 in cash to Dr. Elamir's receptionist, and was in turn provided with a receipt evidencing that payment (P-2 and P-3). On July 21, 2009, CW #1 also paid $50 cash for his visit, but he did not obtain a receipt on that visit (P-9).

P-8 in evidence details that when CW#3 visited Dr. Elamir's office on August 13, 2009, he not only paid $50 in cash for the visit, but paid an additional $20 to the receptionist in order to "move to the front of the line" and cut down on his waiting time (the receipt appended to P-8, however, only records a $50 cash payment). We point out that the charging or acceptance of an additional cash payment to secure a preferential spot in line to see Dr. Elamir is not only offensive and blatantly unethical, but also serves to further unmask any claim that Dr. Elamir's "medical practice" was anything other than an absolute charade.

We expressly decline at this juncture to make any specific findings beyond those identified above, as we have found it unnecessary to consider additional issues based on our unanimous conclusion that the Attorney General's application for temporary suspension is fully supported based on the evidence regarding the

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evidence to meet the requirements of the Residuum Rule).

eight visits. We nonetheless point out herein issues that we fully anticipate will be further developed and explored in the plenary hearings which will follow at the Office of Administrative Law, all of which we would anticipate will need to be considered when a final penalty determination is to be made.

Initially, the issue whether Dr. Elamir submitted billings to, or received payments from, Medicaid (or, for that matter, any third party payor) for any of the eight undercover visits (and the related issue whether he engaged in fraudulent billing practices when submitting bills and/or accepting payments for any of his patients) will need to be further developed. While there may well be evidence that can be presented that will demonstrate that Dr. Elamir billed for and/or was paid for "services" he claimed to have provided on some of the eight visits, the record before us simply is insufficient to allow us to make any findings on those points.[7]

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[7] The Attorney General has sought to introduce evidence, specifically certain spreadsheets that show claims submitted to Medicaid by Dr. Elamir, that would demonstrate that Dr. Elamir also submitted bills to, and received payments from, Medicaid for the visits with CW #1 and CW #2. That evidence apparently demonstrates that Dr. Elamir was reimbursed for claims made for services that were provided to CW #1 on many dates in 2008 and 2009, to include service dates of April 16, 2009, May 5, 2009, July 21, 2009 (a date that CW #1 in fact paid cash, but did not receive a receipt) and September 1, 2009. The records also appear to suggest that Dr. Elamir submitted claims for services provided to CW #2 on various dates in 2009 (although it does not appear that he was paid for any claim for services provided on July 30, 2009).

We decline, however, to specifically make any findings

In a similar vein, we anticipate that further hearings in this matter will more fully explore Dr. Elamir's record-keeping practices, to include the charges that he failed to keep any patient records (other than copies of information related to billing) for some of his patients. As those issues can be more

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regarding the information set out on the spreadsheets, because we are concerned that there has not been any certification submitted that would allow us to conclude that any particular entry on any of the spreadsheets represents Dr. Elamir's billing for a specifically identifiable patient. Within her Certification, Mitzi Gross (P-18 in evidence) detailed the manner in which the spreadsheets that comprise exhibit P-15 were created. Ms. Gross also identifies what information is included within each column of the spreadsheets. While Ms. Gross explains that certain of the columns in the spreadsheet detail the recipient's identification number and the recipient's first and last name, the information in those columns was completely blacked out from the spreadsheet copies that the Attorney General initially sought to introduce as P-15. Based on the fact that we could not link any particular claim information within P-15 to any given patient, we initially declined to accept the document in evidence, but stated that we would accept the document in evidence if revised copies were supplied with sufficient information left unredacted to allow us to identify individual patients and thereby link any Medicaid billings that Dr. Elamir made to identifiable patients.

At the conclusion of the December 9, 2009 hearing, the Attorney General resubmitted P-15. The only changes that were made to the document, however, appear to be the addition of handwritten notations "CW #1" to the first two pages of the document, the addition of a handwritten note "CW #2" to the third page, and the recopying of a fourth page so as to allow the Board to determine that six of the lines thereon pertain to billings for services provided to a patient "W.T." on September 9, 2009 and September 22, 2009. While P-15 was accepted into evidence at that time, on further review it remains the case that, to the extent it is being offered to prove that Dr. Elamir was paid by Medicaid for any of the office visits by C.W. #1 and/or C.W. #2, the document needs to be properly authenticated (with regard to patient W.T., who apparently is one of the eight patients whose patient records were included within Exhibit P-13, there needs to be additional background information provided in order to enable us to reasonably analyze, and draw conclusions from, the information provided).

fully developed, and resolved, in plenary proceedings, we simply do not find it necessary at this juncture to make any findings regarding whether or not Dr. Elamir in fact kept any record for any individual patient or patient visit. Similarly, we decline to presently reach any findings whether the copies of the records that have been introduced within Exhibits P-13 and P-14 are or are not complete records, or whether those records were missing "progress notes" Dr. Elamir made on the back of billing sheets, as he claims in his affidavit. We thus anticipate that the questions whether Dr. Elamir kept records and, if so, whether those records include truthful and/or adequate information, will be fully developed in further proceedings.[8]

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[8] Given that we are not presently making findings regarding Dr. Elamir's record-keeping, and/or regarding any care he may have provided to any patients other than CW #1, CW #2 and CW #3 on the eight specific patient visits, we do not find it necessary to address Mr. Gorrell's arguments that the Board is being asked to take action without benefit of having all of Dr. Elamir's patient records.

With regard to records for CW #1, CW #2 and CW #3, the statements set forth within the Investigative Reports document that none of the three witnesses observed Dr. Elamir prepare any contemporaneous patient record. We have relied on those statements to conclude that each of the eight visits was a complete sham - and that nothing resembling appropriate medical care or treatment occurred in any of the eight visits. Whether or not Dr. Elamir prepared records for those encounters thus is not an issue that we need to presently consider, for any such records (assuming the statements in the police report are truthful) would necessarily either document nothing beyond the fact that prescriptions were issued or (were they to include purported examination findings or history taken) would include misrepresentations of what occurred. For that reason, we have not found it necessary at this time to analyze the patient record that Dr. Elamir has moved into evidence

We also anticipate that the Attorney General will, in further proceedings, present and develop evidence to support her broader claims that Dr. Elamir's actions were part of a scheme to provide drug dealers with a supply of drugs that would ultimately be sold on the streets of Hudson County. We thus are fully aware that the Attorney General has included statements in her moving brief which clearly suggest that Dr. Elamir's misconduct was purposeful and widespread, and we anticipate that those most serious claims will be more fully developed in the upcoming plenary hearings.[9]

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as R-3, which he has suggested are progress notes for the August 13, 2009 office visit by CW #3.

[9] The Attorney General thus states, in her brief, that the Verified Complaint should be read not only to include allegations that Dr. Elamir engaged in fraudulent billing practices, but also to include allegations that he prescribed so as to "illegally supply drug dealers"; specifically, the Attorney General stated:

> The Verified Complaint, filed by the Attorney General with this brief, alleges that Dr. Elamir both lined his own pockets and indiscriminately prescribed hundreds of doses of Schedule II Narcotics and Schedule IV benzodiazepines, subsequently submitted fraudulent bills to insurance companies and illegally supplied drug dealers, who sold the highly addictive drugs on the streets of Hudson County. The benefits of accepting cash for narcotics prescriptions included a steady stream of patients requiring constant "treatment," which Dr. Elamir could avoid financially reporting. Finally, Dr. Elamir's submission of Medicaid charges for these types of visit (sic) enabled him to receive unjust compensation. [Attorney General's letter brief in support of application for temporary

Finally, we decline to accept the suggestion or implication made, within Mr. Gross' certification, that there are striking discrepancies between the claimed length of patient visits within the Verified Complaint and the information included in the Investigative Reports. It is clear that the statements in the police reports that recount the length of time that was spent waiting to see Dr. Elamir were approximations, and not stopwatch timed records of the number of minutes that were spent waiting - indeed, in each and every report, the amount of waiting time was specifically cited as an approximation. Given that recognition, we do not find Mr. Gross' calculations and speculation about the amount of time that Dr. Elamir spent with any cooperating witness on any given visit to merit further consideration. While we have not presently made any specific finding regarding the precise duration of any of the eight encounters, what is absolutely clear on the record, and what can be found, is that each visit was stark in its brevity.

Conclusions of Law

The Attorney General moves for the temporary suspension of Dr. Elamir's license pursuant to N.J.S.A. 45:1-22[10], which

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suspension dated December 3, 2009, p. 2].

[10] N.J.S.A. 45:1-22 specifically provides:

A board may, upon a duly verified application of the Attorney General that .... alleges an act or practice

statute authorizes the Board to act, before the completion of plenary proceedings, in instances where a palpable demonstration is made that a licensee's continued practice would present clear and imminent danger to the public health, safety and welfare. We conclude that the threshold showing of clear and imminent danger necessary to support the entry of an Order of Temporary Suspension has been made in this instance, based on the consistent and compelling statements detailing what occurred in Dr. Elamir's office on eight separate undercover visits.[11]

> violating any provision of an act or regulation administered by such board, enter a temporary order suspending or limiting any license issued by the board pending plenary hearing on an administrative complaint; provided, however, no such temporary order shall be entered unless the application made to the board palpably demonstrates a clear and imminent danger to the public health, safety and welfare and notice of such application is given to the licensee affected by such order.

[11] In making the above determinations, we do not lightly dismiss or discount respondent's claim that he is being denied due process of law by the Attorney General's refusal to identify CW #1, CW #2 and CW #3 (or even to confirm or to deny whether he has correctly identified the patients based on his review of the exhibits regarding each patient). While we understand and appreciate the sensitivity of this issue and the paramount need to secure the safety of the cooperating witnesses, we believe it to be a reasonable question (and one that may ultimately need to be fully briefed and decided at the Office of Administrative Law, should the Attorney General continue to decline to confirm the identity of the cooperating witnesses to Dr. Elamir) whether this matter can be fairly conducted without that identification being made.

At this juncture of the proceeding, however, we do not find that Dr. Elamir's due process rights have been abrogated. For the reasons that have been set forth at length above, we simply do not conclude that the application for the temporary suspension of

We conclude that, at a minimum, Dr. Elamir's repeated abrogation of the most basic and fundamental obligations of a physician evidences a wanton disregard for the safety and well-being of his supposed "patients." Dr. Elamir's repeated writing of prescriptions for controlled dangerous substances, in the absence of any indicia that the prescribing was related to legitimate

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Dr. Elamir's license is dependent on the identification of the three witnesses. The application is not based on any medical care that Dr. Elamir provided to the three witnesses - rather, the application is based on the claim that each of the visits was a sham. While Dr. Elamir has suggested in his affidavit that the care being provided to the three witnesses was "legitimate," he has not specifically disputed the accuracy of the descriptions of what occurred in his office on any of the eight visits (beyond his general entry of an Answer denying the allegations of the Verified Complaint), nor has he made any suggestion that his ability to dispute the accuracy of those descriptions is in any way dependent on his being provided the identities of the three witnesses.

Finally, with regard to Dr. Elamir's claims that he should be provided with the identification of the witnesses to allow him to ultimately seek to test or impugn their credibility, we find his claim to be premature. N.J.S.A. 45:1-22 authorizes the Attorney General to move for the entry of an Order of Temporary Suspension on a properly verified Application. The statute authorizes the application to be made based on appropriately certified evidence, but does not require the Attorney General to produce witnesses or testimony to support the application.

Recognizing the substantial impact that a temporary suspension order can have on an individual licensee, the statute sets a high bar for what must be shown before such an Order can be entered, as it limits the Board's authorization to act to instances where a palpable demonstration of clear and imminent danger is made. In doing so, the legislature necessarily sought to balance a physician's due process rights against the paramount state obligation to protect public health, safety and welfare, and N.J.S.A. 45:12-22 necessarily reflects a legislative recognition that the need to protect the public health is paramount and can, in appropriate instances, trump any right that a physician may have to continue in practice pending a plenary hearing, even when the temporary suspension application is made on paper alone.

medical treatment, is shocking.

The conclusion we have reached does not turn on Dr. Elamir's claim, in his affidavit, that the three cooperating witnesses were long-term patients receiving "legitimate" medical care. For, even if we accept Dr. Elamir's claim, we find Dr. Elamir's conduct on each of the eight visits palpably evidences a complete lack of understanding of (or concern for) the fundamental and basic tenets of medical care, which clearly places all of his patients in imminent peril. Alternatively, if the prescribing was not done for any legitimate medical purpose, then Dr. Elamir has acted as nothing more than a conduit to allow individuals to illegally obtain controlled dangerous substances, and his continued retention of a medical license would clearly place not only his patients, but indeed the public at large, at grave risk. In either case, we are satisfied and unanimously conclude that the findings we have made demonstrate that Dr. Elamir's continued practice presents clear and imminent danger, and we are further unanimous in our conclusion that our findings support the entry of an Order temporarily suspending his practice at this time, pending the

completion of plenary proceedings.

WHEREFORE, it is on this 18th day of December, 2009

ORDERED:

1. Effective as of 5:00 p.m. on December 23, 2009, the license of respondent Magdy Elamir, M.D., to practice medicine and surgery in the State of New Jersey shall be temporarily suspended. The suspension ordered herein shall continue until the completion of plenary proceedings in this matter.

2. In the period between December 9, 2009 (the date on which this matter was considered by the Board, and the actions effected herein were announced on the public record) and December 23, 2009, Dr. Elamir shall be precluded from writing any prescriptions for any controlled dangerous substances and from taking any new patients. Dr. Elamir shall additionally seek to make appropriate arrangements for the transfer of care of all existing patients to other licensed physicians.

3. The Board urges the parties to pursue an expedited hearing on this matter before the Office of Administrative Law, and will be fully supportive of such a request.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: _____
Paul T. Jordan, M.D.
Board Vice-President

Exhibit ID	Date of Visit	CW	Payment Details	Reported Details Concerning Waiting Room	Length of Visit reported by CW	Reported Details of what Occurred while CW in Dr. Elamir's office	Exam Conducted	History obtained	Patient Records	Prescriptions Written
P-2	2/26/09	CW #1	$50 in cash; receipt obtained .	About 7 others in waiting room; described by CW #1 as "individuals there to obtain prescriptions."	"Probably less than a minute"	"Dr. Elamir asked CW #1 what he wanted to which CW #1 replied Percocet and Xanax"	none	none	none	Xanax, 1 mg, 60 tablets Percocet, 10/325 mg, 60 tablets
P-3	3/11/09	CW #1	$50 in cash to "Tyeisha ;" receipt obtained	Several people waiting; individual who "taught" CW #1 how to obtain prescriptions for narcotics entered waiting room, conversation ensued; individual "decided not to wait."	Approximately three minutes	Asked Dr. Elamir for "my medication." Dr. Elamir raised concerns that informant should only come once a month. Before leaving office, CW #1 asked for a prescription for Advair	none	none	none	Xanax, 1mg, 60 tablets Percocet, 10/325 mg, 60 tablets Advair 50/250 Inhaler, 1 refill
P-4	4/16/09	CW #1	Medicaid Card provided	7 to 9 individuals, some of whom "were there to obtain prescriptions."	"Very short period of time, less than a minute."	Advised Dr. Elamir "that he was here for his medicine."	none	none	none	Xanax, 1 mg, 60 tablets Percocet, 10/325 mg, 60 tablets
P-5	5/5/09	CW #1	Told that Medicaid card information on "file"	numerous individuals; "most ... were there to obtain prescriptions"	"very short period of time"	Advised Dr. Elamir "that he was here for his medicine."	none	none	none	Xanax, 1 mg, 60 tablets Percocet, 10/325 mg, 60 tablets
P-6	7/21/09	CW #1	$50 in cash; no receipt	several people waiting	"approximately three minutes"	Asked Dr. Elamir for "my medication, percocet and xanax."	none	none	none	Xanax, 1 mg, 60 tablets Percocet, 10/325 mg, 60 tablets

Exhibit ID	Date of Visit	CW	Payment Details	Reported Details Concerning Waiting Room	Length of Visit reported by CW	Reported Details of what Occurred while CW in Dr. Elamir's office	Exam Conducted	History obtained	Patient Records	Prescriptions Written
P-9	9/1/09	CW #1	cash not accepted ; told Medicaid information on "file"	"not many people waiting to be seen"	"very short period of time."	Advised Dr. Elamir "that he was here for his 'meds'."	none	none	none	Xanax, 1 mg, 60 tablets Percocet, 10/325 mg, 60 tablets
P-7	7/30/09	CW #2	not charged a fee	"numerous individuals that arrived to be seen; "felt that over half ... were there to obtain prescriptions."	Not reported	Dr. Elamir questioned CW #2 about a call he received from DYFS; CW #2 explained it was to verify prescription of narcotics she had tested positive for; "Dr. Elamir then asked her as to what dosage of Percocet she wanted to which she replied 10mg."	none	none	none	Xanax, 1 mg, 60 tablets Percocet, 10/325 mg, 60 tablets
P-8	8/13/09	CW #3	$50 cash + $20 "to move to the front of the line."; receipt for $50 obtained	Several people waiting	"less than two minutes."	Dr. Elamir "asked what he needed. CW #3 responded percocet, 10/325 mg." CW #3 asked "if he could have sticks." "Dr. Elamir stated that he would not write 'sticks,' and only would provide Xanax 1 mg."	none	none	none per inv. rep.; Copy of progress note R-3 in ev.	Xanax, 1 mg, 60 tablets Percocet, 10/325 mg, 60 tablets

DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE HAS BEEN ACCEPTED

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

NOTICE OF REPORTING PRACTICES OF BOARD REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

(1) Which revokes or suspends (or otherwise restricts) a license,
(2) Which censures, reprimands or places on probation,
(3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license(and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A.45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.