

**FILED**

February 9, 2012

**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:

FARID HAKIMI, D.P.M.  
License No. 25MD00241000

ORDER ADOPTING IN PART  
AND MODIFYING IN PART  
INITIAL DECISION OF A.L.J.  
COOKSON

This matter was returned to the New Jersey State Board of Medical Examiners on or about November 22, 2011, upon the issuance of an Initial Decision by the Honorable Gail M. Cookson, A.L.J. in the matter of Farid Hakimi, D.P.M. Within that Initial Decision, A.L.J. Cookson found that respondent Farid Hakimi violated multiple provisions of the terms of a Reinstatement Order filed on March 20, 2009 (hereinafter the "2009 Reinstatement Order") - both by repeatedly treating nursing home patients in a setting that had not approved by the Board, and by having conducted an un-chaperoned home visit on a female patient. A.L.J. Cookson recommended, based on those findings, that the Board suspend Dr. Hakimi's license for a period of eighteen months, and assess the costs of this matter, to include attorneys' fees and investigative costs, upon Dr. Hakimi.

Upon carefully considering the record in this matter, to include the history preceding the entry of the 2009 Reinstatement

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Order, we have concluded that good cause exists to adopt the findings of fact and conclusions of law that are set forth in A.L.J. Cookson's Initial Decision, but to reject her recommendation that Dr. Hakimi's conduct be penalized by a finite period of suspension. We instead conclude that his misconduct warrants and fully supports the entry of an Order revoking his license.

Simply put, Dr. Hakimi was found in a prior Board action, which concluded upon the filing of a Final Order on May 10, 2006 (hereinafter the "2006 Final Order"), to have engaged in egregious sexual misconduct, under the guise of providing podiatric treatment. Notwithstanding the gravity of that finding, and notwithstanding that the A.L.J. before whom that case had been tried recommended that Dr. Hakimi's license then be revoked, we decided that we would afford Dr. Hakimi one last and final chance to again practice podiatry in New Jersey, provided that any resumed practice was performed under supervision, in an approved setting, and with a mandatory chaperone presence.

Despite having been given that lifeline, Dr. Hakimi eviscerated the protective measures that we put in place within the 2009 Order by unilaterally electing to ignore or disregard all of the imposed conditions. He instead practiced without supervision, outside of the approved practice setting, and, most significantly, without a chaperone. In doing so, he squandered the final chance we gave him to reclaim his career, and we conclude that nothing

short of an Order revoking his license would now be sufficient to fully protect the public health, safety and welfare. We set forth below a brief summation of the procedural history of this matter, followed by a more detailed explanation of the basis for our determination to reject A.L.J. Cookson's penalty recommendations.

#### Procedural History

The procedural history of this matter, to the time of the entry of the Initial Decision, is summarized in A.L.J. Cookson's Initial Decision and incorporated herein by reference. Following the Board's receipt of A.L.J. Cookson's Initial Decision, the parties were advised that their written exceptions would be considered by the Board, and that the Board would entertain oral argument on any filed exceptions, at its December 14, 2011 meeting. The parties were further advised that the Board would then deliberate and decide whether to adopt, reject or modify the proposed findings of fact and conclusions of law reached by A.L.J. Cookson, and that the Board would immediately thereafter (if A.L.J. Cookson's findings of fact and conclusions of law were adopted, in full or in part) hold a hearing on penalty, at which hearing Dr. Hakimi would be afforded an opportunity to present evidence in mitigation of penalty.

Shortly before that meeting, respondent retained new counsel, Dennis A. Durkin, Esq. Upon Mr. Durkin's request, we

adjourned consideration of this matter until January 11, 2012.<sup>1</sup>

Dr. Hakimi appeared before the Board on January 11, 2012, represented by Dennis A. Durkin, Esq. Deputy Attorney General William Lim appeared for the complainant Attorney General. Mr. Durkin, in his written submissions and oral argument, urged the Board to adopt all findings of fact and conclusions of law made by A.L.J. Cookson. Deputy Attorney General Lim urged that the Board adopt the findings of fact regarding Dr. Hakimi's conduct, but reject the findings made regarding Dr. Hakimi's intentions and motivation. He further urged that the Board reject A.L.J. Cookson's recommendations as to penalty, and instead order the revocation of Dr. Hakimi's license.

Following deliberations, we announced on the record that we had decided to adopt all Findings of Fact and Conclusions of Law made by A.L.J. Cookson. While we then adopted A.L.J. Cookson's findings regarding Dr. Hakimi's "state of mind," we specifically stated that any determinations regarding the weight or significance to be ascribed to those findings were being deferred to the penalty phase of the hearing. We then afforded Dr. Hakimi an opportunity to present mitigation evidence, at which time Dr. Hakimi made a

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The Board secured an Order of Extension from the Office of Administrative Law, dated January 3, 2012, extending the time to adopt, reject or modify A.L.J. Cookson's decision for an additional forty-five days, through February 21, 2012. That Order specifically recites that the basis for the extension was respondent's counsel's request for an extension of time beyond the originally scheduled date of December 14, 2011.

statement under oath to the Board. In addition to his testimony, Dr. Hakimi offered copies of tax returns for the years 2007-2010 for the Board to consider regarding his financial status and ability to pay any assessments or penalties that might be ordered.

Adoption of Findings of Fact and Conclusions of Law

Upon review of the record and consideration of the arguments made by the parties, we conclude that good cause exists to adopt all findings of fact and conclusions of law made by A.L.J. Cookson. Neither party disputes or takes exception to the predicate factual findings made - namely, that Dr. Hakimi violated the terms of the 2009 Reinstatement Order both by traveling to Jersey City to examine a female patient (who in fact was an Enforcement Bureau investigator posing as a patient) without having a chaperone present, and by having repeatedly traveled to a nursing home to examine elderly patients. Similarly, neither party disputes A.L.J. Cookson's conclusion of law that Dr. Hakimi's violations of the 2009 Order constitute grounds for the imposition of disciplinary sanction, pursuant to the Uniform Enforcement Act.

Rather, the only findings of fact which the Attorney General has urged that we reject are those regarding Dr. Hakimi's "state of mind", to include her findings that Dr. Hakimi's conduct was neither "malicious" nor "intentional" and her findings that his conduct did not evince "contempt for the Board or its Order." We decline to overturn those findings, as we find nothing within the

record that would allow us to conclude that A.L.J. Cookson's findings were in error. As the trier of fact, A.L.J. Cookson was best able to observe the demeanor of Dr. Hakimi when testifying, and to make judgments regarding the sincerity and credibility of his testimony.

As we explain below, however, we do not share A.L.J. Cookson's opinion regarding the relevancy of Dr. Hakimi's "state of mind." Rather, given the unique and compelling history which preceded the entry of the 2009 Reinstatement Order -- to include our express admonition that we were providing Dr. Hakimi "one final opportunity" to reclaim his career - we have concluded that Dr. Hakimi's license must presently be revoked, regardless whether his violation of the conditions of the 2009 Order was purposeful or mistaken.

#### Determinations upon Penalty

As noted above, our conclusion that Dr. Hakimi's license to practice podiatry should presently be revoked is one that is inexorably tied and related to the particular circumstances of this case. Our analysis of penalty, therefore, must start with review of the history of this matter.

On October 4, 2004, Dr. Hakimi was charged in an administrative complaint with, *inter alia*, having engaged in sexual misconduct under the guise of providing podiatric care to patient K.G. As recounted in length in the 2006 Final Order, following a

five day trial before the Office of Administrative Law, we found that Dr. Hakimi unnecessarily and inappropriately exposed and touched his female patient during the course of a podiatric "examination" conducted on August 14, 2001. Commenting on the egregiousness of Dr. Hakimi's conduct, we then stated:

Dr. Hakimi clearly shattered the trust reposed in him as a licensee of this Board. He took advantage of that trust to convince K.G. to disrobe, and then engaged in egregious sexual misconduct when he exposed her naked body unnecessarily and sought to push his hand between her legs and into her genital area, all under the guise and pretext of rendering medical services. He also sexually harassed K.G. by engaging in clearly inappropriate conversation, repeatedly offering to come to her home to give her a surgical boot and to give her a massage, and asking if she lived alone, if she had a boyfriend and if she liked massage oil. Clearly, neither the conduct nor the questions posed had anything to [do] with any legitimate podiatric practice, and all constitute brazen violations of the Board's sexual misconduct rule.

Notwithstanding those findings and conclusions, upon weighing the mitigation evidence that had been presented, we declined to adopt A.L.J. Klinger's recommendation that Dr. Hakimi's license be revoked and instead imposed a finite period of suspension. In doing so, however, we clearly and unequivocally pronounced that we were giving Dr. Hakimi one last chance to reclaim his practice, stating:

While we find the sexual misconduct proven in this case to be clearly deserving of stern and significant disciplinary sanction - and while we recognize the effects such conduct can have upon a patient - we must weigh all of the circumstances in meting out punishment. In this case, we have determined that cause exists to afford Dr. Hakimi one final opportunity to reclaim his

career after he serves a period of suspension, if and only if he fully complies with all conditions of this Order. We conclude that a penalty of a five year suspension, eighteen months of which are to be served actively and the remainder to be stayed as a period of probation, with the reservation of the right to impose necessary protections (to include without limitation chaperoning requirements) upon any resumed practice by respondent, is appropriate. [emphasis added]

Dr. Hakimi was thereafter authorized, within the 2009 Reinstatement Order, to resume the practice of podiatry. As foreshadowed in the 2006 Final Order, limitations and conditions were in fact placed upon Dr. Hakimi's resumed practice. One such condition, imposed within ¶3 of the Reinstatement Order, was a condition that Dr. Hakimi was to only practice in a supervised setting. Yeon A. Shim, D.P.M. was specifically designated to be Dr. Hakimi's supervisor, and all practice by Dr. Hakimi was "to be conducted at Dr. Shim's office at 1305 St. Georges Avenue, Roselle, New Jersey." A second condition, set forth at ¶4 of the Order, was that Dr. Hakimi was to "practice podiatry only in the presence of a Board approved chaperone," who was "required to be present with Dr. Hakimi at all times and all locations at which he sees and/or treats any patients" (emphasis added). Priscilla Amaya was approved as respondent's practice chaperone. Significantly, the conditions and limitations that the Board imposed at that time were expressly made known to Dr. Hakimi in advance of entry of the Order, and the Order was entered with Dr. Hakimi's express written consent to all of its terms.

With that backdrop, we today conclude that Dr. Hakimi's violations of the 2009 Order must be considered to be actions that fully support - if not dictate - the revocation of his license. Dr. Hakimi was clearly on notice that his reentry to the practice of podiatry was to be his last and final chance. His reentry occurred only after he had completed professional ethics courses and boundary courses acceptable to the Board - courses which should have, but did not, make Dr. Hakimi sensitive to the need for his conduct upon resumption of practice to have been beyond reproach.

We find that A.L.J. Cookson's analysis discounts, in far too great a degree, the egregiousness of the original conduct that Dr. Hakimi was found to have engaged, and the concomitant need for any resumed practice to have been strictly, and only, in accordance with the conditions that were imposed in the 2009 Reinstatement Order. The conditions imposed in that Order were crafted in order to allow this Board to assure that Dr. Hakimi's practice would be conducted in a safe and appropriate manner, and would not present any risks to his patient population. By ignoring the mandates of those requirements, Dr. Hakimi has eviscerated the intent manifest therein, and necessarily compromised the Board's ability to adequately protect the public health, safety and welfare.

Unlike A.L.J. Cookson, we do not find Dr. Hakimi's state of mind to be a relevant consideration in our penalty analysis. At oral argument, Deputy Attorney General Lim urged that we should

consider Dr. Hakimi's violations of the Order to be akin to a "strict liability" offense - that is, that the Board consider any violation of the requirements of the 2009 reinstatement order to be a sufficient basis to support the revocation of Dr. Hakimi's license. In the unique circumstances of this case, we agree with that analysis, particularly as it pertains to any practice by Dr. Hakimi without a chaperone presence. We thus conclude that cause exists to presently order the revocation of Dr. Hakimi's license - regardless whether or not his multiple violations of the terms of the Reinstatement Order were or were not intentional.

Dr. Hakimi has, in his argument and testimony before the Board, suggested that we should discount the gravity of his offenses, either because he did not understand the "legal" language of the Order, or because we should conclude that any violations which occurred were innocuous. We reject both contentions. First, we find nothing ambiguous in the terms of the 2009 Reinstatement Order, which we instead find to have been cast in plain, understandable and direct language. Even assuming, however, that Dr. Hakimi may have had some doubt regarding whether those terms would have allowed him to see patients in a nursing home outside of Dr. Shim's presence and office, he could have and should have then sought clarification from the Board instead of unilaterally settling upon a self-serving interpretation at odds with the express language within the Order.

Nor do we find Dr. Hakimi's conduct to have been innocuous. Rather, we find his decision to treat a female patient, at her home, without the required female chaperone, evinces a fundamental disregard for the authority of the Board, and, even more significantly, a critical absence of understanding of the need for the chaperoning and supervision requirements in the first instance. We do not perceive the fact that Dr. Hakimi did not engage in any misconduct during that visit to be a mitigating factor. We note that it is certainly within the realm of possibility that Dr. Hakimi could have been using the initial visit to build trust and establish a rapport with his patient, and that he may have, at a subsequent visit, sought to exploit that trust. We also point out that Dr. Hakimi certainly could have then directly told his patient that he was required to have a chaperone present, and told her (as he told the Board when testifying on January 11, 2012) that he had decided not to be accompanied by Ms. Amaya because of the time and expense that would have been incurred to secure her presence. We find the fact that he did not offer that explanation at that time to be significant, and to be a fact which further buttresses our conclusion that Dr. Hakimi's misconduct fully supports revocation of licensure.

We similarly reject Dr. Hakimi's suggestion that we should discount his conduct because the terms of the 2009 Reinstatement Order made it too difficult for him to resume a

practice of podiatry. We instead point out that those terms necessarily reflect and strike a balance between Dr. Hakimi's interest in resuming a practice and the Board's paramount interest in assuring that any resumed practice was conducted with safeguards designed to protect the public from the possibility of any recurrence of any predatory conduct by Dr. Hakimi. If Dr. Hakimi found the terms to be so onerous, his redress should have, again, been to have approached the Board and sought relief from the terms of the Order, rather than to have simply chosen to practice outside its terms.

We affirm the remainder of Judge Cookson's Order - namely, her recommendation that Dr. Hakimi be assessed the costs of this prosecution, but not any additional penalty based on the evidence presented of Dr. Hakimi's limited financial resources. The costs incurred in the investigation and prosecution of this matter are detailed within the January 3, 2012 certification of William Lim. Those costs include investigative costs of \$7,848.60 (as supported by the August 17, 2011 certification of Acting Supervising Investigator Sandra Murray), attorneys' fees of \$34,395.00, and transcript costs of \$734.50. At the hearing before the Board, respondent did not challenge or dispute any of the costs that were sought. We have, nonetheless, independently reviewed the submitted cost application, and find the number of hours of attorney and investigative time detailed therein to be reasonable,

particularly in light of the manifest significance of this case.

In conclusion, we find Dr. Hakimi's violations of the conditions which had been imposed in the 2009 Reinstatement Order to fully support the revocation of his license, for all the reasons set forth above.

WHEREFORE, it is on this 9th day of February, 2012

ORDERED:

1. The license of respondent Farid Hakimi, D.P.M. to practice podiatry in the State of New Jersey is hereby revoked.

2. Respondent is hereby assessed all costs incurred in the prosecution of this case, in an amount of \$42, 987.10. Imposition of any additional civil penalties are waived based on the evidence presented of financial hardship.

NEW JERSEY STATE  
BOARD OF MEDICAL EXAMINERS

By: \_\_\_\_\_

  
Paul T. Jordan, M.D.  
Board President

**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.