

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
OAL DOCKET NO. BDS 13754-08

In the matter of:

MAGDY ELAMIR, M.D.
License No. 25MA04140400

FINAL ORDER

This matter was reopened before the New Jersey State Board of Medical Examiners (the "Board") following the Board's receipt of an Initial Recommended Decision ("ID") from Administrative Law Judge ("ALJ") Ken R. Springer dated August 10, 2016. Within the ID, ALJ Springer granted the Attorney General's motion for summary decision on Count 1¹ and Count 3² of an administrative complaint filed on September 18, 2008 against respondent Magdy Elamir, M.D., but denied the Attorney General's motion for summary decision on Count 2³. ALJ Springer further

¹ Within Count 1 of the complaint, the Attorney General alleged that Dr. Elamir failed to fully disclose all health-care related business entities in which he held a financial interest on a completed biennial renewal application which Dr. Elamir submitted to the Board of Medical Examiners, for the licensure period July 1, 2003 through June 30, 2005.

² Within Count 3, the Attorney General alleged that Dr. Elamir operated four unlicensed Magnetic Resonance Imaging (MRI) facilities at four different locations, and that he improperly received payment from insurance carriers for services rendered at those unlicensed facilities.

³ Within Count 2, the Attorney General alleged that Dr. Elamir submitted false information to the United States Atomic Energy Commission in connection with an application for a permit to perform diagnostic testing. Specifically, it was alleged that Dr. Elamir falsely claimed that a specific physician at the University of Medicine and Dentistry of New Jersey would serve as the registered radiation safety officer, when the named individual was in fact unaware of the designation and had nothing whatsoever to do with Dr. Elamir's practice.

recommended that the Board: (1) assess a \$700 civil penalty against Dr. Elamir based on the charges set forth within Count 1, (2) order that Dr. Elamir cease and desist from holding any interest in any unlicensed MRI facility(s) based on the conduct established in Count 3, and (3) assess costs and fees, to include investigative costs and attorney's fees.

Following entry of the ID, neither party filed any written exceptions to ALJ Springer's decision. Deputy Attorney General Kathy Mendoza filed a September 7, 2016 letter brief, wherein she urged the Board to adopt the ID in its entirety (to include the recommended penalties), dismiss Count 2 of the Complaint, and assess investigative costs of \$5,605.06 and attorney's fees of \$12,480.50. Deputy Attorney General Mendoza simultaneously filed a Certification of Costs, detailing the basis for all sought investigative costs and attorney's fees.

The matter was scheduled for consideration at the Board's September 14, 2016 meeting. Deputy Attorney General Mendoza appeared for Complainant Attorney General. Dr. Elamir appeared, *pro se*.

Consistent with established Board procedure, the hearing was conducted in a bifurcated fashion, with the Board first affording the parties an opportunity for oral argument before deciding whether to adopt, modify or reject the ID, and then proceeding to a penalty phase. Although Dr. Elamir had not filed

any written exceptions, he was offered the opportunity at the hearing to orally present any exceptions he may have taken to ALJ Springer's recommended decision. At that time, respondent's only assertion was that the Board should dismiss Count 2 of the Complaint in its entirety.⁴ Consistent with her letter brief, Deputy Attorney General Mendoza raised no exceptions at oral argument, and moved that Count 2 of the Administrative Complaint be dismissed.

Clearly, neither party has taken any exceptions to any of the proposed findings of fact or conclusions of law within the ID. Further, while the ID left open the possibility that there would be a need for a hearing on the allegations made within Count 2 of the Administrative Complaint, that need no longer exists given the Attorney General's unilateral election to dismiss those charges.

We adopt in their entirety ALJ Springer's recommended findings of fact and conclusions of law. We point out that, even though no exceptions were filed by either party, we are satisfied upon our independent review of the ID that ALJ Springer's analysis,

⁴ Dr. Elamir also sought to testify that many of the companies at issue within Count 1 of the Complaint had been closed and dissolved before 2003. We did not allow him to further testify on that point, as we instead pointed out that the purpose of this hearing was not to retry factual determinations made within the ID. It is apparent that ALJ Springer considered those very same claims prior to granting the Attorney General's motion for summary decision. ALJ Springer thus recounted in the ID that Dr. Elamir had denied any malicious or dishonest intent, and had explained that the companies were "dormant, inactive, [had] ceased function[ing] or never started beyond incorporating the name." ID at p. 3. ALJ Springer concluded that Dr. Elamir's assertions were insufficient to defeat the motion for summary decision below, and we fully affirm that determination.

reasoning and recommended disposition of the motion for summary decision was consistent with established legal standards and principles. We are therefore satisfied that good cause exists to adopt, in their entirety, all of the findings of fact and conclusions of law set forth in the ID, and to affirm his grant of summary decision upon Counts 1 and 3 of the Complaint.

Penalty Phase

After announcing our decision to adopt the ID in its entirety, we proceeded to conduct a hearing on penalty, at which time we afforded Dr. Elamir the opportunity to present mitigation evidence. Dr. Elamir did not present any such evidence. Rather, he made only a brief statement wherein he again asserted that many of the companies which he was found not to have disclosed to the Board on the biennial renewal had in fact been closed prior to 2003 (see *infra*, fn4).

In her presentation, DAG Mendoza stated that although the Attorney General was not seeking any penalties beyond those recommended by ALJ Springer, the Board should impose all investigative costs and attorney's fees as detailed in her certification. She further pointed out that, in the interest of fairness, the attorney's fees application had been significantly pared back and limited only to hours spent in the preparation and pursuit of the motion for summary decision.

In assessing penalty, we, like ALJ Springer, are well aware that this case is a companion case to a prior adjudicated case. In the prior case, Dr. Elamir was found to have engaged in serious misconduct, to include prescribing opioids indiscriminately and without legitimate medical purpose, maintaining incomplete and illegible medical records, self-referring patients to imaging services in which he held an undisclosed financial interest, charging excessive fees for services and performing unnecessary tests. The constellation of misconduct found in that case supported the entry of a Final Order by the Board, on November 24, 2014, revoking Dr. Elamir's medical license, assessing a civil penalty in the amount of \$100,000 and a cost assessment in excess of \$169,000.⁵

It is with full consideration of that backdrop - and indeed only because that backdrop exists - that we have decided to

⁵ We sought to capture the gravity of Dr. Elamir's misconduct in the prior action within our Final Order, where we specifically observed:

It is clear to us that Dr. Elamir repeatedly acted in a manner antithetical to any continued practice of medicine. The window opened into his medical practice -- established by the evidence introduced below to include the tapes of each undercover visit and the transcriptions of those tapes - reveals that Dr. Elamir repeatedly eschewed and abandoned all of his obligations as a physician, and instead acted solely as a drug dealer. Dr. Elamir used his medical license as nothing more than a conduit to allow him to write and sell prescriptions for monetary gain, and in doing so fundamentally compromised and corrupted his integrity as a physician. Nothing short of a license revocation is adequate to redress that misconduct.

See Final Order, In the matter of Magdy Elamir, M.D., filed November 24, 2014, at p. 11-12.

adopt the penalty recommendations made by ALJ Springer. In doing so, we do not discount or excuse the misconduct which Dr. Elamir has now been found to have engaged in, particularly his failure to have disclosed material information about fifteen distinct corporate entities on an application for licensure he filed with the Board (see ID, p. 6-8). Rather, we are satisfied, on balance, that Dr. Elamir was substantially (and appropriately) penalized in the prior matter, and that ALJ Springer's exercise of discretion in recommending that only minimal penalties be assessed in this case is appropriate.

Turning to the issue of costs, we apply the same analysis in this case as we did in the companion action.⁶ We find that

⁶ As we stated in the companion case, the standard for our review of an application for costs is as follows:

In reviewing the application for attorney's fees, we are guided by the general principles established in Rendine v. Pantzer, 141 N.J. 292 (1995) and recently reaffirmed in Walker v. Giuffre, 209 N.J. 124, 130 (2012). Specifically, we are required to establish a "lodestar" fee by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. In evaluating the reasonableness of hours, we are to "carefully and critically" evaluate the aggregate hours claimed, and we are required to eliminate duplicative or nonproductive time. See also Poritz v. Stang, 288 N.J. Super. 217, 221 (App. Div. 1996) (in evaluating reasonableness of actual hours expended, one must be mindful that "actual time expended does not necessarily equate with reasonable time."). An attorney seeking a fee award must prepare and provide a certification of services that is sufficiently detailed to allow for an accurate calculation of a lodestar. While "exactitude" is not required, the submission needs to include "fairly definite information as to the hours devoted to various general activities." Rendine, 141 N.J. at 337.

See Final Order, In the matter of Magdy Elamir, M.D., filed November 24, 2014, at p. 13.

there is ample documentation to support the reasonableness of all hours for which costs are sought, both investigative and attorney's fees. The Attorney General elected to pare back the attorney's fee application and is seeking to be awarded fees solely for time spent in pursuit of the motion for summary decision. We conclude that the entire 41.6 hours of time is adequately documented and fully supported. Additionally, we find the hourly rate of \$300 to be reasonable, as we recognize that the rate is reserved for Deputy Attorneys General with over twenty years of legal experience and that the rate appears to be below market rates for comparably experienced attorneys in private practice.⁷

Notwithstanding the above analysis, we are cognizant that the Attorney General did not fully succeed on the motion for summary decision, as the summary decision motion was not successful on one of the three Counts of the Complaint. Given that recognition, we have concluded that it would be unfair to assess Dr. Elamir the entirety of investigative costs and/or attorney's fees, and instead have decided that the cost award application should be reduced by a factor of one-third in order to reflect the limited success on the motion for summary decision.

⁷ We are aware that the rate of compensation sought in this case exceeds the \$175/hour which was sought in the companion case, however that is because the Attorney General amended the uniform rate of compensation for which attorney's fees are sought effective September 1, 2015. All of the hours of time which Deputy Attorney General Mendoza billed in pursuit of the motion for summary decision occurred after September 1, 2015, and may be reimbursed at the higher hourly rate of \$300/hour.

WHEREFORE it is on this 26th day of October 2016

ORDERED:

1. All Findings of Fact and Conclusions of Law set forth within the Initial Decision of ALJ Ken R. Springer, dated August 10, 2016, are adopted in their entirety, without modification.

2. Count 2 of the Administrative Complaint is dismissed.

3. Respondent is assessed a civil penalty in the amount of \$700.

4. Respondent shall (to the extent he has not done so previously) immediately cease and desist operation of any unlicensed stand-alone MRI facility in which he may have a financial interest, and/or which may be under his control, until such time as the facility obtains a license from the Department of Health and Senior Services.

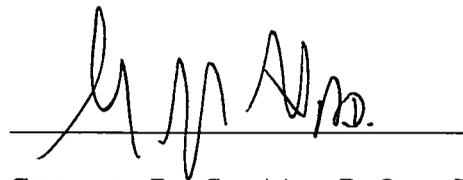
5. Respondent is assessed costs in the aggregate amount of \$12,057.03, which includes an attorney's fee award in the amount of \$8320.33 and an investigative costs award in the amount of \$3736.70.

6. The civil penalty and costs assessed herein shall be due and payable within thirty days of the date of entry of this Order. Payment shall be made by certified check, bank check or money order (or any other form of payment acceptable to the Board). In the event payment is not timely made, a certificate of debt

shall be filed in accordance with N.J.S.A. 45:1-24, and respondent may be subject to such other actions as may be authorized by law.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: _____

A handwritten signature in black ink, appearing to read "G. J. Scott", is written over a horizontal line.

George J. Scott, D.O., D.P.M.
Board President

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ORDERS/ACTIONS

All Orders filed by the New Jersey State Board of Medical Examiners are "government records" as defined under the Open Public Records Act and are available for public inspection, copying or examination. See N.J.S.A. 47:1A-1, et seq., N.J.S.A. 52:14B-3(3). Should any inquiry be made to the Board concerning the status of a licensee who has been the subject of a Board Order, the inquirer will be informed of the existence of the Order and a copy will be provided on request. Unless sealed or otherwise confidential, all documents filed in public actions taken against licensees, to include documents filed or introduced into evidence in evidentiary hearings, proceedings on motions or other applications conducted as public hearings, and the transcripts of any such proceedings, are "government records" available for public inspection, copying or examination.

Pursuant to N.J.S.A. 45:9-22, a description of any final board disciplinary action taken within the most recent ten years is included on the New Jersey Health Care Profile maintained by the Division of Consumer Affairs for all licensed physicians. Links to copies of Orders described thereon are also available on the Profile website. See <http://www.njdoctorlist.com>.

Copies of disciplinary Orders entered by the Board are additionally posted and available for inspection or download on the Board of Medical Examiners' website.

See <http://www.njconsumeraffairs.gov/bme>.

Pursuant to federal law, the Board is required to report to the National Practitioner Data Bank (the "NPDB") certain adverse licensure actions taken against licensees related to professional competence or conduct, generally including the revocation or suspension of a license; reprimand; censure; and/or probation. Additionally, any negative action or finding by the Board that, under New Jersey law, is publicly available information is reportable to the NPDB, to include, without limitation, limitations on scope of practice and final adverse actions that occur in conjunction with settlements in which no finding of liability has been made. Additional information regarding the specific actions which the Board is required to report to the National Practitioner Data Bank can be found in the NPDB Guidebook issued by the U.S. Department of Health and Human Services in April 2015. See <http://www.npdb.hrsa.gov/resources/npdbguidebook.pdf>.

Pursuant to N.J.S.A.45:9-19.13, in any case in which the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, the Board is required 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 entered by the Board is provided to the Federation on a monthly basis.

From time to time, the Press Office of the Division of Consumer Affairs may issue press releases including information regarding public actions taken by the Board.

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