State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. BDS 01663-10

AGENCY DKT. NO. N/A

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF MAGDY ELAMIR, M.D., LICENSE NO. 25MA41404, TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY.

Kathy Stroh Mendoza, Deputy Attorney General, and **Lisa Brown**, Deputy Attorney General, for complainant Attorney General of New Jersey (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

Joseph M. Gorrell, Esq., for respondent Magdy Elamir, M.D. (Brach Eichler, LLC, attorneys)

Record Closed: July 15, 2014 Decided: August 26, 2014

BEFORE **KEN R. SPRINGER**, ALJ, t/a:

STATEMENT OF THE CASE

This is a disciplinary proceeding brought by the Attorney General of New Jersey ("Attorney General") before the State Board of Medical Examiners ("Board"), seeking to suspend or revoke the medical license of Dr. Magdy Elamir, a neurologist licensed to practice medicine and surgery in the state of New Jersey. Essentially, the Attorney

General accuses Dr. Elamir of five major violations of the licensing act and accompanying regulations governing medical practice.

First, the Attorney General alleges that Dr. Elamir illegally prescribed controlled dangerous substances, specifically, Percocet and Xanax, without following the appropriate medical protocol and without legitimate medical purpose, to three cooperating witnesses participating in an undercover sting operation. In addition, he alleges that, on one occasion, Dr. Elamir prescribed Advair, a drug of high street value, to a cooperating witness who had no demonstrated need for it. These acts and omissions allegedly constitute gross malpractice in violation of N.J.S.A. 45:1-21(c); repeated acts of malpractice in violation of N.J.S.A. 45:1-21(d); professional or occupational misconduct in violation of N.J.S.A. 45:1-21(e); conduct evidencing poor moral character and moral turpitude in violation of N.J.S.A. 45:1-21(f) and N.J.S.A. 45:9-6; and indiscriminate prescribing of a controlled dangerous substance in violation of N.J.S.A. 45:1-21(m).

Second, the Attorney General alleges that Dr. Elamir maintained incomplete and illegible medical records in violation of the regulatory standards set forth in N.J.A.C. 13:35-6.5. In particular, he alleges that the medical records failed to reflect the patients' medical history, failed to include the results of a physical examination, lacked adequate diagnosis or plan of treatment, omitted adequate progress notes, and did not provide sufficient justification for numerous medications and tests. Again, these acts and omissions allegedly constitute gross malpractice in violation of N.J.S.A. 45:1-21(c); repeated acts of malpractice in violation of N.J.S.A. 45:1-21(d); professional or occupational misconduct in violation of N.J.S.A. 45:21(e); and failure to comply with regulations administered by the Board in violation of N.J.S.A. 45:1-21(h).

Third, the Attorney General alleges that Dr. Elamir inflated the coding for office visits at a higher level of service than authorized under the Current Procedural Terminology (CPT 2007) codes of the American Medical Association. On October 19, 2009, alone, Dr. Elamir reported having treated forty-four patients and coded them mainly as 99204, as cases of "moderate to high severity." As a result, the exaggerated

coding generated fees in excess of the true value of his medical services, contrary to N.J.S.A. 45:1-21(b), dealing with dishonesty, fraud or deception.

Fourth, the Attorney General charges Dr. Elamir with violating the Codey Act, N.J.S.A. 45:9-22.5, by referring his patients to health-care services in which the practitioner or a member of his immediate family has a significant beneficial interest. Dr. Elamir acknowledges sending patients for radiologic studies to imaging facilities in which he has an ownership interest. However, he maintains that the arrangement falls within an exemption for health-care services "provided at the practitioner's medical office for which the patient is billed directly by and in the practitioner's name." N.J.A.C. 13:35-6.17(b).

Fifth, the Attorney General alleges that Dr. Elamir committed numerous deviations from the accepted quality of care, constituting gross malpractice in violation of N.J.S.A. 45:1-21(c); repeated acts of malpractice in violation of N.J.S.A. 45:1-21(d); and professional or occupational misconduct in violation of N.J.S.A. 45:1-21(e). The Attorney General avers that, among other serious departures from accepted medical standards, Dr. Elamir continued prescribing opioid drugs to patients known to be addicted to narcotics;[1] that he engaged in repetitive and unnecessary testing; that he misdiagnosed what was wrong with patients and failed to provide proper treatment; and that his patients failed to improve or experience a diminution of pain.

Although Dr. Elamir concedes that his medical record-keeping was below the accepted standard and that he pled guilty to criminal charges of having illegally prescribed Advair, he denies the remainder of the Attorney General's complaint. In opposition, he vigorously asserts that the Attorney General produced incomplete portions of the records that were seized from his office and that the absence of crucial documents hampered his ability to prepare his defense.

[1] An "opioid" is a synthetic drug with the properties of an opiate, but not directly derived from opium. See McCauley v. Purdue Pharma, 331 F. Supp. 2d 449, 450 n.2 (W.D. Va. 2004) (citing Merriam Webster's Collegiate Dictionary 815 (10th ed. 1996)). Opiates are medications derived from the opium poppy and include such substances as opium, codeine and morphine. Opioid is a more general term, often used to describe synthetic analgesics with opiate-like qualities, such as fentanyl and methadone. YaleCares, <http://medicine.yale.edu/cancer/research/education/471_90466_YaleCares_December2008.pdf>.

PROCEDURAL HISTORY

Investigation into the black-market distribution of narcotic drugs in New Jersey commenced in 2009 with a joint operation, dubbed "Operation Medscam," conducted by a team of officers from the New Jersey Division of Criminal Justice ("DCJ") and the Jersey City Police Department. Once Dr. Elamir had become identified as a suspect, detectives arranged with three of his patients to conduct consensual electronic surveillance. Pursuant to a search warrant issued by Superior Court Judge Kevin G. Callahan of Hudson County, investigators visited Dr. Elamir's medical office in Jersey City on October 20, 2009, and confiscated voluminous records and computer hard drives. Dr. Elamir was arrested on that same day.

Six weeks later, on December 3, 2009, the Attorney General filed a verified complaint with the Board, demanding various types of relief, including: suspension or revocation of Dr. Elamir's medical license; imposition of penalties; recovery of investigation costs and expenses; and award of counsel fees. Simultaneous with the filing of the complaint, the Board issued an order directing Dr. Elamir to appear before it to show cause why his license should not be suspended pending the outcome of a full administrative hearing. Dr. Elamir filed an answer with the Board on December 9, 2009. At a hearing held by the Board on December 9, 2009, both parties introduced written evidence and presented oral argument. By order entered on December 9, 2009, the Board temporarily suspended Dr. Elamir's medical license until completion of the administrative proceedings. That order remains in effect. Subsequently, on February 9, 2010, the Board transmitted the matter to the Office of Administrative Law ("OAL") for hearing as a contested case.

Before the administrative matter was heard, on July 26, 2010, a State Grand Jury in Hudson County indicted Dr. Elamir on twelve counts, including conspiracy, health-care claims fraud, Medicaid fraud, and dispensing a controlled dangerous substance. On May 22, 2012, the State Grand Jury handed down a second three-count indictment, adding, among other charges, the unlicensed practice of medicine.

Meanwhile, the OAL issued a series of orders of inactivity placing the administrative matter on inactive status to await the outcome of the criminal trial. On April 11, 2013, Dr. Elamir appeared before Superior Court Judge Joseph Isabella of Hudson County and pled guilty to a single fourth-degree crime of dispensing a prescription legend drug not in its original container in violation of N.J.S.A. 2C:35-10. Dr. Elamir testified at a plea hearing and admitted prescribing Advair without medical justification. As part of a plea bargain, the court dismissed all remaining charges on both indictments. Judge Isabella sentenced Dr. Elamir on May 24, 2013, to a suspended sentence of eighteen months, without probation, and imposed a fine of $10,000.

Thereafter, the OAL restored the administrative matter to its active hearing calendar. The OAL held fourteen nonconsecutive days of hearing commencing on March 10, 2014, and ending on May 28, 2014. Upon receipt of post-hearing briefs, the record closed on July 15, 2014.

FINDINGS OF FACT

General Background Information

Many of the general background facts are undisputed. Dr. Magdy Elamir, age sixty-one, is married with three adult children, and lives in Saddle River, New Jersey. Born in Cairo, he graduated from Cairo University in December 1977 with a degree as bachelor of medicine and surgery. Unlike the four years of medical education required in New Jersey, Dr. Elamir completed six years of medical studies in Egypt. He served one year of internship at Cairo University.

Emigrating to the United States in 1980, he passed the equivalency examination and took a two-year residency (1981–1983) in psychiatry at a New York Medical College affiliated hospital. Next, he completed his residency at a two-year program (1983–1985) in neurology at the University of Medicine and Dentistry of New Jersey. Afterwards, he took a one-year fellowship (1985–1986) in electroneurophysiology at Rutgers Medical School. Electroneurophysiology is a subspecialty of neurology dealing

with measurement of electric changes in the nervous system by use of such equipment an electroencephalogram ("EEG") and an electromyogram ("EMG"). He is licensed to practice medicine in the states of New Jersey and New York.[2] In 2006 he obtained a special license from the Drug Enforcement Agency ("DEA") authorizing him to prescribe Suboxone, a Schedule III narcotic used for the treatment of opioid-dependent patients.[3] He is not board-certified in any medical specialty, having taken the Board examination twice and failed.

Dr. Elamir holds himself out as qualified in the fields of neurology, internal medicine and electrodiagnostic medicine. Immediately after finishing his fellowship, Dr. Elamir started his private practice, specializing in neurology, in Jersey City. Since 1999 or 2000, he practiced as a professional association under the name "North Jersey Medical Services, P.A." His offices were last located at 550 Summit Avenue, a large complex with an adjunct building at 544 Summit Avenue. Until his suspension, Dr. Elamir had admitting and staff privileges at the Jersey City Medical Center, Christ Hospital and the former Greenville Hospital, which closed in 2008.

A large part of his patient mix in an urban setting consisted of working people who performed heavy labor and suffered severe disabilities at a relatively young age. Some of his patients had health-insurance coverage, but many were on Medicaid or uninsured. Thus, he saw patients whom doctors in a comparable suburban practice ordinarily would not encounter.

Sometime around 2006 or 2007, an odd change occurred in his patient load. Because of a government crackdown on physicians who overprescribed narcotics, many doctors "were forced out of practice" and their heavily-addicted patients began coming to Dr. Elamir seeking substitute drugs. At about the same time, Dr. Elamir

[2] At the time that the Board suspended his license to practice medicine in New Jersey, Dr. Elamir also voluntarily surrendered his license to practice medicine in New York.

[3] Article 2 of the New Jersey Substance Control Act, N.J.S.A. 24:21-3 to -8.1, classifies controlled substances in five schedules, ranging from high potential for abuse and no accepted use in medical treatment (Schedule I) to low potential for abuse, current accepted medical use and limited physical dependence (Schedule V). See also the definition section of the Comprehensive Drug Reform Act of 1987, N.J.S.A. 2C:35-2.

obtained his license to prescribe Suboxone and started treating drug addiction. When other doctors refused to continue prescribing narcotics, some of them referred their patients to Dr. Elamir, who "didn't mind, actually" because he thought he "could handle different patients." Since some of the patients were already on Percocet from their previous doctors, Dr. Elamir felt he "could not make it a policy in my office not to prescribe Percocet." Dr. Elamir described that "an invasion" of new patients, many of whom needed narcotics, came to his office, and "all of a sudden" replaced his regular patient population. Lines of people started forming outside of his office and sometimes the wait to see him could be "hours and hours." It became increasingly difficult for him to get rid of unwanted patients, many of whom left "in peace" and some of whom "did not."

Dr. Neil R. Holland, the Board's neurological expert, holds a medical degree from University College London School of Medicine, performed his residency at Johns Hopkins Hospital & University School of Medicine, and possesses board certifications in neurology, clinical neurophysiology, neuromuscular medicine and electrodiagnostic medicine. Besides his private neurological practice in West Long Branch, New Jersey, he is the medical director of the Neuroscience Institute of the Monmouth County Medical Center and is an associate professor of neurology at Drexel University College of Medicine in Philadelphia. He has been listed as a top doctor in the New York metropolitan area by Castle Connolly, Inc., for the last nine years in a row. Dr. Holland does not normally testify as an expert, having appeared only once before as a witness for the plaintiff in a personal injury suit.

Respondent's neurological expert, Dr. David H. Rosenbaum, received his medical degree from New York University, received two years of training in internal medicine at Belleview Medical Center, completed a neurology residency at Columbia Presbyterian Medical Center and is board-certified in neurology. He is engaged in the private practice of neurology in Englewood, New Jersey, and has attending privileges at Englewood Hospital. Presently he teaches as an associate clinical professor of neurology at the Icahn School of Medicine at Mount Sinai in New York City, and previously he served as chief of the neurology and epilepsy clinics at Mount Sinai and chief of the epilepsy clinic at the Bronx Veterans Hospital. Dr. Rosenbaum has testified

on numerous occasions as a paid expert witness, on average four times a year, over a period of ten years.

First Charge—Illegal Prescribing of Controlled Dangerous Substances

Operation Medscam was an all-encompassing investigation into the illegal distribution of pharmaceutical narcotics in New Jersey, targeting drug dealers as well as more legitimate providers, "such as doctors and pharmacies." Dr. Elamir came to the attention of law enforcement through various sources of information, both on the street and in police intelligence agencies. Cooperating witness #1, designated by his initials "J.A.," previously had been arrested on an unrelated drug charge and agreed to cooperate by wearing a wire in exchange for leniency in sentencing. J.A., who was thirty-two years old in February 2009, had been a patient of Dr. Elamir for several years. At the hearing, J.A. testified that he had heard of Dr. Elamir by word of mouth, "from other people who were getting narcotics from him."

Det. Kevin Gannon, a DCJ investigator with extensive experience in electronic surveillance, met with J.A. prior to sending him to Dr. Elamir's office, searched his person to make sure that J.A. did not have any contraband, and equipped him with a concealed audio-recording device. On February 26, 2009, Det. Gannon encountered J.A. outside of Dr. Elamir's office, furnished him with $120 "buy" money, and activated the hidden recording device. Once inside Dr. Elamir's office, J.A. signed in at the reception desk, handed $50 cash to the receptionist and waited for approximately one hour to see the doctor. Ushered into the examining room, J.A. observed that Dr. Elamir already had his prescription pad out. Insofar as J.A. could tell, Dr. Elamir did not have any medical chart or patient file in front of him.

Dr. Elamir did not perform a physical examination of any type, but simply greeted him with, "How are you doing, buddy?" When J.A. responded that he was "doing okay" and was "just here for my medicine," Dr. Elamir asked, "what do you need?" J.A. told the doctor that he wanted Percocet and Xanax. Percocet is a highly addictive mixture of oxycodone and acetaminophen used to alleviate severe pain. Xanax, with the active ingredient alprazolam, is a habit-forming sedative for treatment of anxiety. Without

further questioning or writing anything in his records, Dr. Elamir issued two prescriptions, one for sixty tablets of Percocet in the amount of 10/325 mg and one for sixty tablets of Xanax in the amount of 1 mg.

Detective Gannon can recognize the voices of J.A. and Dr. Elamir and was able to confirm that the voices on the recordings were genuine. Regrettably, it is difficult to gauge the exact amount of time that J.A. and the other complaining witness spent with Dr. Elamir. On direct examination, Detective Gannon volunteered that the elapsed time shown on the running account on the left side of the screen of the recording was not always accurate, and that he "didn't pay much attention to the time that the transcription service is saying."

Similarly, Bhavini Patel, a paralegal in the DCJ who arranged for transcription of the recordings, explained that an outside audio laboratory synchronized the recordings to match the verbatim running account, slowed the recordings down by 20 percent, and raised some of the pitch of the sounds so you could hear them more clearly. Since the synchronization software has a different clock attached to it, the reference to time on the running transcript reflects "an internal software clock" rather than "live time." At best, therefore, the time that J.A. spent with Dr. Elamir on February 26, 2009, can only be roughly estimated. Given the few words exchanged and the apparent lack of any thorough physical examination, in all probability the two spent about two or three minutes together.

Immediately afterwards, Detective Gannon conducted a debriefing in which he shut off the recorder, took possession of the two prescriptions, and recovered the unused $120 in buy money. Detective Gannon downloaded three copies of the recording onto compact discs; the original went into the evidence vault for safekeeping, the second copy went to a paralegal at the prosecutor's office, and the third copy went to an outside transcription company. Sgt. Frederick Weidman, another investigator who assisted in the undercover operation, was present at the scene on February 26, 2009, and corroborated Detective Gannon's version of what had transpired.

In addition to J.A.'s direct testimony regarding his interaction with Dr. Elamir, the most compelling pieces of evidence were the actual recordings of the events and a written transcription later prepared from those recordings. Most of the recordings were digitally enhanced to render them more audible by filtering out background noises.[4] Voices of the cooperating witnesses and supporting staff from Dr. Elamir's office are audible and clear on the tapes. Unfortunately, Dr. Elamir's part of the conversations is sometimes difficult to hear, either because of the softness of his voice or because he was standing too far away from the microphone, or because he didn't say very much.[5] Nonetheless, the recordings are highly probative because they provide insight into the perfunctory nature of the exchanges between Dr. Elamir and the cooperating witnesses and the short amount of time that they had face-to-face contact.

For his part, Dr. Elamir recalled first treating J.A. toward the end of 1988, although the records dating back that far are no longer available. Thereafter, Dr. Elamir treated J.A. off and on through September 11, 2007, when J.A. sought treatment for back pain alleged to have been caused by a work-related injury. For this pain, Dr. Elamir prescribed 10/325 mg of Percocet and 500 mg of naproxen, a stronger dose of the over-the-counter anti-inflammatory Aleve. Dr. Elamir claims that he tried to switch J.A. to Vicodin, a less powerful narcotic substitute for Percocet, but that J.A. refused to take it, so he continued giving him Percocet. His thinking was that J.A. suffered from a chronic back condition and, without health-insurance coverage, he could not afford other treatment modalities like physical therapy.

By the time of the first recorded visit on February 26, 2009, Dr. Elamir's clientele was "getting worse and worse" and his waiting room was "plagued with many people coming requesting narcotics." Due to the large backlog of waiting patients, the time J.A. spent with the doctor "was shortened tremendously." While Dr. Elamir contends that the

[4] In advance of the hearing, I listened to the tapes, and on February 24, 2014, I entered a written ruling that the recordings could be accepted into evidence. See State v. Dye, 60 N.J. 518, cert. den., 409 U.S. 1090, 93 S. Ct. 699, 34 L. Ed. 2d 675 (1972), modified on other grounds by State v. Catania, 85 N.J. 418 (1981); see also State v. Driver, 38 N.J. 255 (1962).

[5] The same difficulty occurred during the administrative hearing itself, with the court reporter often having to stop and ask Dr. Elamir to repeat his testimony because of trouble understanding exactly what he was saying.

audio recording of J.A.'s appointment did not pick up everything he said, he did not add anything significant that J.A. had omitted from his testimony. During the silent pauses on the recording, Dr. Elamir explained, he probably had been performing a neurological evaluation of J.A.'s mental status, gait and behavioral mannerisms. Nothing in Dr. Elamir's contemporaneous records, however, lends support to this assertion.

Two weeks later, when J.A. returned for his second audio-recorded visit on March 11, 2009, he announced to Dr. Elamir that he was "here for my medicine." Detective Gannon had given J.A. $100 in "buy money," and J.A. paid $50 in cash to the receptionist. Dr. Elamir chided him for returning too soon, since Dr. Elamir had prescribed a thirty-day supply of narcotic drugs on the last visit. Nevertheless, Dr. Elamir renewed the same dosage of Percocet and Xanax for another thirty days. Cautioning J.A. not to come for medication more than once a month, Dr. Elamir told him, "we watch what we are doing." Indicating awareness that what he was doing was a questionable practice, Dr. Elamir confided to J.A., "it's just that the government is gonna close down the agencies." Both J.A. and Detective Gannon identified the voices on the recording as belonging to J.A. and Dr. Elamir. Detective Gannon estimated that the entire visit lasted "approximately three minutes." As was his customary practice, Detective Gannon held a debriefing session with each cooperating witness after every visit, in which he went over the witness's fresh recollection of what had just occurred, took possession of any scripts that Dr. Elamir had furnished, and retrieved any unused buy money.

After receiving his prescriptions for Percocet and Xanax, J.A. asked, "is there any way you could write me a prescription for Advair?" Detective Gannon explained that Advair, a medication for the treatment of asthma, is "valuable on the street for resale purposes" and can be sold back to pharmacies. Although J.A. had no known history of asthma, Dr. Elamir merely asked him if he had asthma. Accepting J.A.'s representation at face value, and without listening to his chest to verify the diagnosis, Dr. Elamir wrote him a prescription for an Advair inhaler and one refill. In the allocution before acceptance of his guilty plea to the crime of dispensing Advair without medical justification, Dr. Elamir admitted that he should have examined J.A. for asthma before giving him that prescription.

J.A.'s third audio-recorded visit to Dr. Elamir took place on April 16, 2009. Instead of cash, Sergeant Weidman supplied a bogus Medicaid card, which J.A. presented to the receptionist as proof of insurance. After a long wait, J.A. finally was able to see Dr. Elamir for what he later told investigators was "less than a minute." J.A. got right to the point, telling Dr. Elamir that he was "just here for my medicine. Xanax and Percocet." When Dr. Elamir hesitated a moment, J.A. repeated, "just here for my medicine." Without a word, Dr. Elamir wrote out a prescription for sixty tablets of Percocet and sixty tablets of Xanax in the customary dosage. Dr. Elamir promptly ended the visit by saying, "you have a good day," and J.A. left the room.

On the fourth audio-recorded visit, which occurred on May 5, 2009, investigators decided that J.A. should attempt to obtain illicit drugs for a fictitious girlfriend. It was unnecessary for J.D. to present his Medicaid card because the receptionist already had his insurance information on file. This time J.A. waited nearly four hours before getting to see Dr. Elamir, but the actual visit was "very short." Once more, Dr. Elamir did not perform a physical examination and did not take extensive notes. J.A. reintroduced himself to Dr. Elamir and asked for "Percocet and Xanax." Dr. Elamir wrote two prescriptions in the usual dosages and handed the scripts to J.A. According to Dr. Elamir, he initially started to write a prescription for Vicodin, but he scratched it out and gave him Percocet instead. Notwithstanding his testimony, the actual recording of the transaction lacks any indication that Dr. Elamir tried to convince J.A. to switch to a less potent drug. J.A. recalled on cross-examination, however, that Dr. Elamir had, at some time, prescribed Vicodin for him "once or twice."

Then J.A. asked "for a favor" and requested that Dr. Elamir write a prescription for his girlfriend, who "needs a prescription too." Refusing J.A.'s request, Dr. Elamir twice repeated that she has to get or to make "paper" before he would be willing to write a prescription for her. When J.A. asked whether his girlfriend had to come in to see him, Dr. Elamir responded, "no, no, no, she has to make an application." While it is unclear what Dr. Elamir meant, J.A. took it to mean that Dr. Elamir wanted to see her in

person. Dr. Elamir clarified that he could not write a prescription for her "until I examine her and see if she needs it."[6]

J.A.'s fifth audio-recorded visit to Dr. Elamir occurred more than two months later on July 21, 2009. Posing as J.A.'s pretend girlfriend under the pseudonym "Desiree Bradley," Det. Lisa Cawley of the DCJ accompanied J.A. to Dr. Elamir's office and had a separate appointment with Dr. Elamir. The recording of J.A.'s visit is largely inaudible and was not put into evidence. Called in before Detective Cawley, J.A. made his regular request for Percocet and Xanax and received prescriptions from Dr. Elamir for these two drugs. Detective Gannon's investigative report for this visit recites that J.A. told the receptionist that he would be paying cash this month and that she accepted his payment of $50. Further, the report states that Dr. Elamir did not perform any medical examination and that the visit lasted for approximately three minutes, "most of which was spent writing the prescriptions."

Wearing a concealed wire, Detective Cawley was the next patient to see Dr. Elamir on July 21, 2009. She provided the receptionist with false identification in the name of Desiree Bradley. While the details of the encounter are sketchy (neither the recording of the event nor Detective Cawley's investigative report were offered into evidence), it appears undisputed that Dr. Elamir did not provide any drugs, that he told her to go see another doctor, and that he did not charge for the visit. It is unclear exactly what to make of this limited interaction. Viewed in the most favorable light, and as contended by Dr. Elamir, it proves that Dr. Elamir did not prescribe narcotic drugs to patients whom he did not know. On the other hand, Dr. Elamir never conducted an initial evaluation to determine whether Detective Cawley had a genuine medical problem and never accepted her as his patient.

During his sixth audio-recorded visit on September 21, 2009, J.A. received prescriptions of Percocet and Xanax from Dr. Elamir in the usual dosage. Due to

[6] A slightly different transcription of the surveillance tape, prepared at the request of DAG Kay Ehrenkrantz in connection with the order to show cause, suggests that Dr. Elamir refused to write any script for the "girlfriend until she had a medical "workup." This would be consistent with Dr. Elamir's comment that he needed to examine her first.

technical difficulties, the recording of that visit had large gaps and it was not introduced into evidence. Sergeant Weidman's investigative report concerning that visit indicates that Dr. Elamir saw J.A. for "a very short period of time," and that Dr. Elamir did not perform a medical examination or refer to any medical chart.

Attempting to put J.A.'s recorded visits in context, Dr. Elamir referred to certain non-recorded visits, such as a visit on June 30, 2009, during which, as he purportedly recalled from memory, he did not prescribe any medication because J.A. was coming in for refills more frequently than once per month. He interpreted an unreadable notation on a superbill[7] for a visit on October 14, 2009, as saying "requested Percocet, declined." Ostensibly frustrated by J.A.'s resistance to a change in his medication, Dr. Elamir said that, at one point, he had to terminate treatment of J.A. Contrary to this assertion, however, Dr. Elamir continued to treat J.A. until his last visit on October 14, 2009, less than one week before investigators moved in to search his medical office.

J.A., who was gainfully employed at the time of his testimony, came across as a believable and forthright witness, notwithstanding a rather checkered past. In an effort to impeach his credibility, respondent's counsel established that J.A. had been convicted of felonies on no less than three occasions, including once for possession and distribution of heroin, and that he had previously lied on an application to obtain disability benefits for an accident that was not work-related. Seeking to show bias or lack of independence, counsel got J.A. to admit that he hoped to receive some "benefit" in sentencing when he agreed to act as a cooperating witness in the present investigation. Disarmingly, J.A. conceded that he anticipated receiving a shorter sentence on pending criminal charges, or "Why else would I do it?"

Of course, one would not expect someone who obtains prescription painkillers to feed a drug habit, or for whatever illicit purpose, to be a paragon of virtue. Here,

[7] A superbill is a form used by medical practitioners and clinicians so they can quickly complete and submit the procedure(s) and diagnosis(s) for a patient visit for reimbursement. It is generally customized for a provider office and contains patient information, the most common CPT (procedure) and ICD (diagnostic) codes used by that office, and a section for items such as follow-up appointments, copays, and the provider's signature. <http://www.aapc.com/icd-10/superbills.aspx>

however, the veracity of J.A.'s account of his interactions with Dr. Elamir is buttressed by the surrounding circumstances. Detectives from the DCJ monitored J.A.'s dealings, searched him for contraband before his meetings with Dr. Elamir, recorded their ensuing conversations, obtained J.A.'s oral statement of what transpired between them and confiscated all prescriptions that Dr. Elamir gave J.A. Thus, it is unnecessary to rely on J.A.'s "say so" alone, because of the totality of circumstances which lend trustworthiness and reliability to J.A.'s testimony.

Cooperating witnesses #2 and #3 are a married couple, K.S., the wife, and M.S., the husband. K.S. started seeing Dr. Elamir in May 2007, complaining of "neck and back pain and a history of migraines." She had previously been treated by Dr. Enrique Hernandez, whom Dr. Elamir described as "a famous neurologist in the Ironbound section of Newark, who closed his office abruptly" and "nobody knew what happened." While under Dr. Hernandez's care, K.S. began taking Percocet. Initially, Dr. Elamir made a few unsuccessful attempts to substitute Vicodin, together with headache medication and sleeping aids, but by July 2007 he resumed giving her Percocet. In August 2007 K.S. had an automobile accident and complained of "neck pain" and "intractable back pain radiating to her lower extremities." Dr. Elamir continued a regular regimen of Percocet in the dosage of 10 mg/325 mg, with occasional sleeping pills and muscle relaxants, over a period of approximately two years. In December 2008, Dr. Elamir terminated K.S.'s treatment for the car accident, the patient "having reached maximum benefit from conservative care treatment."

K.S.'s first recorded visit to Dr. Elamir was on July 30, 2009, at which time she was thirty-four years old. Sergeant Weidman testified that investigators followed the same protocol, namely, that they searched her for any contraband and equipped her with a secret recording device. Soon after she entered the examination room, Dr. Elamir inquired whether she was in trouble with the Division of Youth and Family Services ("DYFS"). New Jersey's welfare agency had contacted Dr. Elamir about K.S.'s drug use. K.S. replied that somebody had reported her to DYFS, and she had had to show DYFS that she had a legitimate prescription. She assured Dr. Elamir that the DYFS case was "closed now" and that "they just wanted to make sure that I'm not getting drugs illegally."

Dr. Elamir then asked what she needed, and K.S. answered that she needed "the same thing." Dr. Elamir interpreted this response to mean that she wanted Percocet in the dosage of 10 mg. K.S. replied affirmatively and asked for "Xanax too, please." Dr. Elamir wrote her prescriptions for sixty tablets of Percocet 10/325 mg and sixty tablets of Xanax 1 mg, which K.S. turned over to the police at the debriefing. Although Dr. Elamir testified that he discussed with her tapering off Percocet and Xanax, the recording does not bear out that assertion. K.S. informed investigators that Dr. Elamir did not perform any medical examination or ask her to fill out any medical-history forms. For reasons that are unclear, K.S. was never charged for this visit.

Several weeks later, on August 13, 2009, the husband, M.S., submitted to a search by detectives, put on a wire, and went to Dr. Elamir's office. Detective Gannon gave him $50 for the doctor's fee and an additional $20 to jump to the head of the line. To avoid what might otherwise be a long wait, M.S. paid the extra $20 to the receptionist and was called into the doctor's office ahead of others. After an exchange of greetings, M.S. instructed Dr. Elamir to give him Percocet 10/325 mg, and also "the sticks," which is street slang for 2 mg of Xanax. Insisting that he never prescribed "the sticks" to anyone, Dr. Elamir wrote a prescription for the requested amount of Percocet and for Xanax in the lesser amount of 1 mg. None of the evidence would sustain a finding that Dr. Elamir performed a physical examination. Detective Gannon estimated that the visit lasted approximately two minutes.

K.S. and M.S. went together for a final audio-recorded visit with Dr. Elamir on September 11, 2011. Sgt. Anthony Musante of the Special Investigations Unit of the Jersey City Police Department searched them to insure the integrity of the investigation and equipped them both with recording devices. Upon arrival at Dr. Elamir's office, they paid the receptionist $50 each for the medical visit and $30 in bribe money to be put at the front of the waiting list. Recordings made of the visit disclose that Dr. Elamir asked what he could do for them, and K.S. announced that she and her husband wanted the "same thing," in other words, sixty tablets of Percocet 10/325 mg. Complying with their request, Dr. Elamir wrote two Percocet prescriptions, one for each of them. Before exiting the premises, K.S. asked Dr. Elamir whether it would be possible for him to give

her a prescription for an Advair inhaler. When Dr. Elamir asked whether the medication were for her, K.S. explained that it was for her girlfriend "who has no insurance and it is expensive." While Dr. Elamir's response is inaudible on the recording, the investigative report recites that Dr. Elamir declined her request. Sergeant Musante approximated that the entire visit took less than one minute.

I **FIND** that Dr. Elamir routinely dispensed Percocet and Xanax without checking to see how his patient was doing, without conducting a genuine physical examination and without taking adequate medical notes. He followed this pattern during visits by the three cooperating witnesses on the eight dates mentioned above. The cooperating witnesses would merely tell Dr. Elamir what drugs they had come for and Dr. Elamir would give them what they wanted. Often the patient instructed Dr. Elamir what dosage to prescribe. Specifically, Dr. Elamir failed to inquire how much pain his patients were suffering, whether they were getting better, and whether they still needed treatment. Likewise, he never asked about other medicines or allergies in order to minimize the danger of adverse drug reactions or potential side effects. Lasting no longer than four minutes, each of these visits basically consisted of the patient entering the room, requesting a controlled dangerous substance, and leaving with a prescription. In exchange, Dr. Elamir accepted cash payments of $50 or charged the visit to Medicaid.

Dr. Elamir was put on notice of the high probability that some of his patients were abusing or reselling controlled dangerous substances when people started lining up outside his office seeking prescriptions for narcotic drugs that other doctors would not give them. Additionally, Dr. Elamir made no inquiry as to whether the three cooperating witnesses had any drug-arrest record or used drugs recreationally, despite his awareness that DYFS suspected one of them of drug abuse. While Dr. Holland offered his professional opinion that patients should be prescribed different quantities of narcotics depending on their individual needs and tolerances, the dosage for all three cooperating witnesses always remained the same, regardless of the circumstances. No evidence appears in the audio recordings of the visits of any effort by Dr. Elamir to reduce dosages or wean the three patients off prescription painkillers or to substitute less-addictive substances. In one instance, Dr. Elamir renewed a prescription for narcotics when a patient returned for a refill in less than thirty days. In another,

Dr. Elamir prescribed an asthma medicine of high resale value without properly verifying his patient's claim of asthma.

There were lines, however, that Dr. Elamir would not cross. He declined on two occasions to prescribe medications for persons whom he had never seen. He also did not prescribe drugs for an undercover agent whom he did not accept as his patient.

Second Charge—Incomplete and Illegible Medical Records

Before considering the substance of this issue, it is helpful to address Dr. Elamir's recurrent theme that the poor condition of his medical records is somehow the fault of the Board or the DCJ. While it is indeed true that Dr. Elamir's records are disorganized and incomplete, the explanation is Dr. Elamir's own haphazard record-keeping rather than any mishandling or spoilage of evidence by State actors.

Sergeant Joseph Jaruszewski, a member of the DCJ team who conducted the search of Dr. Elamir's medical office on October 20, 2009, described how the investigators followed standard procedure by marking a floor plan of the office into various sectors to be searched, and then collecting numerous items of evidence and placing them into numbered boxes. The office has two floors, and the search team visited both. Contemporaneous with the search, the officers prepared a sixty-six-page "long form" evidence voucher itemizing the items seized. Sergeant Jaruszewski personally took possession of the evidence boxes and transported them to the evidence vault in Trenton, where they were "signed in" and labeled. Najwa Qaquish, who worked in Dr. Elamir's billing department, confirmed the thoroughness of the search. Seated downstairs in the waiting room, Qaquish could not see everything, but she saw the investigators copying some papers, and for "some of the files they took the whole thing." In fact, respondent's counsel stipulated that "whatever documents were taken [from Dr. Elamir's office] were transported to the evidence vault." Hence, the State went to painstaking effort to catalog and preserve whatever records Dr. Elamir had in his possession.

Nonetheless, Dr. Elamir objects that the Board offered only his billing records and not his medical records into evidence. This objection makes little sense, however, because his medical and billing records were written on the same form. Dr. Elamir utilized a so-called "superbill" to record the type of visit for billing purposes and to memorialize any medical information. The only difference between the two is that the billing version of the superbill had additional entries relating to processing for payment. Investigators also seized various computer disks and other medical records, such as reports of medical tests and correspondence to attorneys in connection with personal-injury cases.

Najwa Qaquish, the billing clerk, testified that Dr. Elamir prepared initial evaluation reports, like "twelve-page drafts," which were transcribed in typewritten form and stored on his computer. This assertion was directly contracted by Dr. Elamir himself, who acknowledged that his typewritten records consisted mainly of reports to attorneys and insurance certifications to obtain authorization for treatment. At the hearing, Dr. Elamir bitterly complained that he never received "usable" disk copies of his seized computer hard drives, which supposedly had missing materials, such as the logs of his treatment of Suboxone patients. Although he confirmed Sergeant Gannon's testimony that copies of the computer disks were made available in the criminal matter through his defense counsel, Dr. Elamir asserted that the disks could not be opened. Had he raised this problem prior to hearing, steps could have been taken to allow him and his attorney access to the original disks in the DCJ's possession. In any event, Sergeant Gannon attested that he conducted a keyword search of the hard drives using patient names and that they did not contain any patient files.

Initially, the Board obtained photocopies of only the front side of the original superbills stored at the evidence vault, not realizing that there was also relevant information on the reverse side. To cure this problem, Roman Guzik, a volunteer attorney working for the Division of Law, visited the evidence vault, obtained copies of all missing pages and incorporated them into the corresponding superbill. Therefore, the exhibits ultimately received in evidence constitute everything that was seized during the search of Dr. Elamir's office.

In an abundance of caution, the Attorney General issued a subpoena on February 2, 2010, demanding that Dr. Elamir produce "all retained medical records" pertaining to this case, including "laboratory test results, diagnostic tests ordered and the results, consultants' reports, prescriptions, progress notes and billing records." Respondent's counsel first shipped fifty-four patient records to the Attorney General, and later an additional nineteen patient records. Dr. Elamir remained under a continuing obligation to make available to the Attorney General any records in his possession that had not been previously produced. If Dr. Elamir failed to disclose any pertinent medical records during discovery, he has only himself to blame.

Emphasizing the importance of keeping accurate medical records, Dr. Holland, the Board's medical expert, noted their indispensability in charting the progress of a patient and in informing the covering doctor in the absence of the regular treating physician. Dr. Holland spelled out the contents that a contemporaneous medical record ought to contain. Records of an initial visit, referred to as a "history and physical," must include the chief complaint or reason for referral to a specialist; details about past medical treatment; what medications the patient is currently taking or has tried; any known allergies to medications; relevant remarks about family and social history; a description of the physical examination performed during the visit; the doctor's tentative impressions and what steps will be taken to confirm or refute that diagnosis; a treatment plan, including diagnostic testing and outcome measurements.

Records of follow-up visits, commonly known as "progress notes," should include what has transpired since the last visit; the results and interpretation of diagnostic testing; the patient's response to treatment; and a plan for any further evaluation and management. These components have been formalized as legal requirements in regulations adopted by the Board and will be treated more fully in the legal discussion. Indeed, Dr. Elamir acknowledged his familiarity with the State regulation governing patient records and his willingness "to adhere to the regulation as much as we can."

Both sides are in remarkable agreement about the appropriate standard for medical record-keeping and Dr. Elamir's utter failure to meet that standard. In an exhaustive review of a sample of medical records of ten patients, Dr. Holland found that

the most "striking feature" was a complete lack of documentation of medical care. Nearly all of the superbills reviewed by Dr. Holland did not indicate any reason for the visit, any evidence that a physical examination had actually been performed, any rationale for the ordering of tests and prescriptions, any diagnosis of the medical condition or any course of treatment. By way of example, Dr. Holland could not read the handwriting on the superbill for the initial evaluation of J.A. on September 11, 2007, which had only the billing code, a notation of a cash payment and "a couple of lines of words" that were incomprehensible. Another superbill for a follow-up visit by J.A. on November 23, 2007, has a diagonal line that might mean Percocet, but Dr. Holland could not be sure. A certification in J.A.'s file, dated September 9, 2008, and addressed to To Whom It May Concern, recites that J.A. had been under Dr. Elamir's care for "lumbar radiculopathy" (a pain in the leg caused by a compressed nerve root in the spine), but provides no supporting details for this diagnosis. By the date of the certification, J.A. had already been under Dr. Elamir's treatment for a full year. After looking at some twenty-four superbills pertaining to J.A. over a three-year period, Dr. Holland remained uninformed of the nature of J.A.'s condition or his medical progress.

One by one, Dr. Holland examined every medical record of each of the remaining samples of nine patients treated by Dr. Elamir, pointing out similar squiggly lines and meaningless markings which were unintelligible. For instance, an initial visit for patient D.B. on January 19, 2009, has a large "L" surrounded by a circle, which typically means "left," but to what body part does it refer? Someone ordered an MRI of D.B.'s lumbar spine on January 19, 2009, but the record does not reveal which doctor ordered that test or for what reason. It appears that Dr. Elamir ordered a CT scan of D.B.'s abdomen and pelvis on February 3, 2009, but the purpose of this particular test was unclear.

A superbill for the initial evaluation of B.B. on January 8, 2009, again gave no indication of reason for the referral, medical history, current or past medication, allergies, physical examination, diagnosis or treatment plan. Handwritten reports regarding the next four follow-up visits add nothing to our knowledge of B.B.'s condition. Not until Dr. Holland got to a typewritten referral for EMG testing did he realize that B.B. was a "38-year-old female complaining of neck pain radiating to the right shoulder."

Dr. Holland suggested that an EMG might not even have been warranted, absent a careful history and proper physical examination to determine if there was a mechanical shoulder problem.

An initial evaluation of patient M.H. dated October 25, 2007, indicated the patient's chief complaint as "neck pain radiating to left upper extremities," but was devoid of information about the results of a physical examination. Numerous MRIs were ordered, including an MRI of the left knee, that had has nothing to do with neck pain. Later, in a report prepared in connection with M.H.'s request for exemption from the work requirement for welfare recipients, Dr. Elamir identified M.H.'s primary diagnosis as "radiculopathy." According to Dr. Holland, a diagnosis of radiculopathy "would not be based solely on MRI scans, but based on the clinical impression."

Similarly, Dr. Holland could not tell the presenting problem for patient V.F. because he could not read the initial evaluation report, dated October 20, 2008. He could not ascertain who was the referring doctor or the reason for the referral. Various superbills covering the period from March 18 through October 19, 2009, do not provide any clinical information. Although V.F. underwent an elaborate set of different imaging studies, the doctor's notes do not show why they were ordered or what was done with the test results.

Patient T.C.'s initial evaluation of January 23, 2009, does not provide any reason for the referral, does not list any complaints, does not have a past medical history and does not indicate that a physical examination was performed. Scribbled handwriting on the superbill seems to reference a prescription for Seroquel, an antipsychotic drug used to treat bipolar disorder or schizophrenia, but the superbill is silent as to why such powerful medication might have been appropriate. Typically it would be a psychiatrist rather than a neurologist who would be treating schizophrenia. Copies of prescriptions in the file indicate that T.C. was also prescribed lithium, a mood-stabilizing compound usually used by psychiatrists to treat bipolar disorder, but sometimes prescribed by neurologists for cluster headaches. It would be usual for a woman like T.C. to suffer from cluster headaches, a condition mostly affecting middle-age men. A superbill for a follow-up visit on March 3, 2009, is illegible and sheds no light on T.C.'s complaints or

her treatment. Another superbill for March 25, 2009, is equally opaque, except that it refers to a prescription for Klonopin, an anticonvulsant used for epilepsy and anxiety. These documents provide "no clue" as to T.C.'s presenting complaint or treatment plan.

Meanwhile, T.C. was subjected to a series of tests, including nerve conduction studies of both lower extremities and MRI's of the lumbar spine, right and left knees and both hips. A typed write-up in connection with the nerve studies on March 25, 2009, describes T.C. as a "37-year-old female complaining of low back pain radiating to both lower extremities." Once more, T.C.'s complaint of low back pain has no relevance to the two MRI's of her knees. Surprisingly, a CT scan of the brain on April 7, 2009, revealed, for the first time, that T.C. has a healed skull fracture involving the left parietal bone. Dr. Holland considers T.C.'s prior skull surgery to be a "pretty significant clinical situation," which should have been duly noted in T.C.'s past medical history.

Without delving into the details, the medical records for the other five patients in the sample were equally deficient in terms of chief complaint, medical history, current and prior medications, known allergies, physical examination, diagnosis, treatment plan and progress. Other glaring lapses in Dr. Elamir's records included the lack of any reports of hospital admissions and the absence of any consultative reports from Dr. Elamir to referring physicians. Summing up the degree of deviation from the acceptable standard of care in the medical profession, Dr. Holland opined that Dr. Elamir committed gross malpractice by his lack of adequate record-keeping. If a doctor's records are grossly deficient, nobody can figure out what is going on with a particular patient and "that's unsafe medicine."

Respondent's own expert, Dr. Rosenbaum, fully shares Dr. Holland's view about the inadequacy of Dr. Elamir's record-keeping. During his direct testimony, Dr. Rosenbaum characterized Dr. Elamir's note taking as "rather spotty" and "very terse" and described his handwriting as "worse than mine." Unable to render an expert opinion on the basis of Dr. Elamir's contemporaneous records alone, Dr. Rosenbaum was forced to resort to a typewritten "summary" of recollections that Dr. Elamir created more than four years after he stopped practicing medicine. This self-serving document was so untrustworthy and unreliable that it was excluded from evidence. Candidly,

Dr. Rosenbaum acknowledged on cross-examination that he could not decipher Dr. Elamir's "scribbles," that his records lacked essential medical information, and that his records were "clearly grossly deficient."

Even Dr. Elamir had to concede that his record-keeping was chaotic and uninformative. He admitted that his handwriting "is not very legible," that he did not employ a recognized system of medical shorthand abbreviations, and that his notes were "just to remind myself" and "not meant as a communication between myself and anybody else." Repeatedly throughout his testimony, Dr. Elamir had difficulty understanding his own handwriting. Illustratively, he could not make out the lower part of a patient record dated June 14, 2005, could not identify the names of all the medications he had prescribed for a patient on March 10, 2006, and could not interpret an entry on a patient record of June 11, 2009. In response to pointed questioning by the deputy attorney general, Dr. Elamir acknowledged that he did not personally sign his medical records and that he did not initial any changes he made in his records. Dr. Elamir offered many lame excuses for the poor quality of his medical records, such as not having the "luxury of getting good support staff" and being unable to hire "qualified people to do transcription."

I **FIND** that Dr. Elamir's contemporaneous medical records fall substantially below the minimum standard for record-keeping in the medical profession. Specifically, his medical records fail adequately to document his patient's presenting complaint or the reason for referral by another physician; the past medical history, including prior medications, hospital admissions and known allergies; findings on physical examination; the doctor's impressions or diagnosis; progress notes; the rationale and outcome of any treatment ordered; and the plan for future treatment. Dr. Elamir did not personally sign his medical records and did not initial any changes made to the original entries

Dr. Elamir's unorthodox method of record-keeping was so ineffectual that Dr. Holland, Dr. Rosenbaum and frequently Dr. Elamir himself were unable to decipher their meaning. Since the experts for both parties agree that Dr. Elamir's medical records are grossly deficient, this determination is essentially a matter of undisputed fact. In short, Dr. Elamir's medical records were so poor that they were unhelpful in

allowing Dr. Elamir to monitor the progress of his patients and unusable for communicating a patient's condition to any other doctor who might take over care in the event of Dr. Elamir's unavailability.

Dr. Elamir's empty protestations that some of the contemporaneous medical records necessary for his defense were improperly excluded from the evidentiary record is refuted by the standard operating procedures followed by State investigators and by the full opportunity for Dr. Elamir to supplement the record with any missing documents during discovery.

Third Charge—Improper Coding of Office Visits

Next, the Attorney General accuses Dr. Elamir of inflating the value of his services by assigning an improper CPT code or, in the vernacular, of "upcoding" office visits as a means of generating excessive income. Various codes in the standard CPT codebook promulgated by the American Medical Association are implicated. Code 99204, pertaining to an initial visit by a new patient, requires three key components: a comprehensive history, a comprehensive examination; and medical decision-making of moderate complexity. Usually the presenting problems are of moderate to high severity and the physician typically spends forty-five minutes of face-to-face contact with the patient.

Several categories pertain to follow-up visits by an established patient. Codes 99212 and 99213 are problem-focused and require medical decision-making of a straightforward or low complexity. Typically these visits involve five to fifteen minutes of face-to-face contact with the patient. Code 99214, the number most directly involved here, requires at least two of the following components: a detailed history; a detailed examination; and medical decision-making of moderate complexity. Physicians typically spend twenty-five minutes in face-to-face contact with their patients.

Throughout his medical records, Dr. Elamir coded his office visits as either 99204 for initial evaluations of new patients or 99214 for follow-up visits with established patients. Our inquiry focuses on the single date of October 19, 2009, when patient sign-

in logs show that Dr. Elamir saw forty-four patients in a single working day. Dispelling any notion that some of these patients saw other doctors in his office or were there for tests or therapy, Dr. Elamir verified that he personally saw all forty-four patients whose names are associated with superbills for that date.

Of the forty-four patients whom Dr. Elamir claimed to have seen, the superbills disclose that he coded one of those visits as a moderately-complex initial evaluation, 99204, and the remaining forty-three as moderately complex follow-up visits, 99214. Superbills prepared by Dr. Elamir fail to document the taking of any medical history, the performance of any medical examination or the degree of complexity of any medical decision-making. Therefore, there is a lack of substantiation that these visits involved the key components necessary to justify the higher-level coding assigned to them.

Where there is such a lack of adequate documentation, Dr. Holland explained, the only way to determine an appropriate code would be based on the amount of time spent with the patient. Dr. Holland calculated that, if Dr. Elamir had afforded the recommended time to each patient, "this volume of clinical work would have taken nineteen hours to complete." In other words, if Dr. Elamir started at 8:00 a.m. he would be going until 3:00 a.m. the next morning, without any breaks. That did not happen, however, because Najwa Qaquish, the billing clerk, testified that Dr. Elamir "comes in the afternoon, twelve o'clock until seven," which would be a seven-hour work day. Dr. Elamir never suggested that he worked especially long hours on October 19, 2009. Testifying on behalf of respondent, Dr. Rosenbaum boasted of having seen "as many as thirty patients myself in an eight-and-a-half-hour day," an accomplishment which he portrayed as "quite a feat." Significantly, however, Dr. Rosenbaum did not intimate that he had coded those thirty office visits as 99214.

Stressing the lack of proof that patients who visited him on October 19, 2009, were actually billed at 99204 or 99214 rates, Dr. Elamir urges that the Attorney General has not shown that he overcharged for his services. While the superbills establish that the four patients known to have paid cash were charged at reduced rates, $50, $30, $15 and $10 respectively, it is doubtful whether the other superbills were ever submitted to

health insurers for payment. Indeed it is unlikely, since State investigators came to his place of business the very next day and seized all of Dr. Elamir's billing records.

Dr. Elamir misses the point, however, since the gravamen of the offense is the upcoding for relatively mundane office visits. Although Dr. Elamir testified that he does not charge at CPT rates for patients who pay in cash, he was conspicuously silent about his billing procedures regarding insurance companies. A spreadsheet of his Medicaid claims for 2009 demonstrates that he does utilize CPT codes and regularly bills at $100 or more for a 99214 visit. Although State intervention disrupted the billing process, it is probable that his office staff would have submitted these insurance claims in due course.

I **FIND** that Dr. Elamir inflated the value of his services by assigning code 99214 to routine office visits that did not satisfy the requirements set forth in the CPT codebook for that designation. A vast majority of his follow-up visits in 2009 were coded as 99214 for Medicaid purposes, without adequate justification in his records that this higher level of services was performed. On October 19, 2009, in particular, Dr. Elamir coded one initial evaluation as 99204 and forty-three follow-up visits as 99214 in the span of a normal seven-hour work day. It would have been impossible for Dr. Elamir to have seen forty-four patients in a single working day and have provided neurology treatment within acceptable standards of specialty care. Code numbers listed on Dr. Elamir's superbills were customarily forwarded to his billing department for submission to Medicaid for payment.

Fourth Charge—Self-Referral to a Health Care Service in which Dr. Elamir has a Significant Beneficial Interest

Dr. Elamir conducted his medical practice under the name of North Jersey Medical Services, P.A., a professional association, with offices located at 550 Summit Avenue in Jersey City. He also was the sole owner of New Jersey MRI Services, L.L.C., a limited liability company managing the delivery of imaging services. Magnetic resonance imaging, or MRI, is a medical test utilizing magnetic fields for diagnosing a

patient's physical condition and for planning an appropriate course of treatment, but it is not a treatment or therapy.

Although Dr. Elamir's primary office address was 550 Summit Avenue, his MRI facility was situated in the adjacent building at 554 Summit Avenue. Dr. Elamir saw patients in an examining room next to the MRI facility at 554 Summit Avenue. In August 2008, Dr. Elamir changed the name of New Jersey MRI Services to Jersey City Health Services, Inc., so that he could bill for MRI services and physical therapy under one name.[8] In a letter approving the corporate name change, the New Jersey Department of Health and Senior Services expressly cautioned that "the Department offers no opinion as to whether the proposed ownership or business organization is in compliance with the Codey Act."

While he installed an MRI machine at his office on Summit Avenue in 1997, Dr. Elamir did not commence operations until it became fully licensed in 2006. Aware of the prohibition against self-referral, Dr. Elamir consulted with legal counsel about the exception for allied services which are "an extension of a doctor's practice." Initially he billed Medicaid for both medical treatment and imaging services under his personal provider number.

In 1999, however, unidentified Medicaid inspectors toured Dr. Elamir's offices and, during the exit interview, reportedly recommended that every facility he owned "must have a separate Medicaid number." Missing from the record is any written report issued by the Medicaid inspectors or the reasoning behind their recommendation. At the hearing, Mitzi Gross, an employee of the DJC's Medicaid Fraud Section, clarified that every physician who is a Medicaid provider must have a personal provider number. If that physician is the owner of a professional company that is a Medicaid provider as well, that entity must have its own provider number.

[8] Dr. Elamir distinguished between Jersey City Health Services, the management company for his MRI facility, and the facility itself, which was known as Jersey City Open MRI. For clarity and convenience, the two related functions will be referred to collectively as Jersey City Health Services, which was the entity under which Dr. Elamir billed for his MRI services.

Subsequent to the Medicaid inspection, Dr. Elamir obtained a second Medicaid provider number for his MRI facility. Between 2007 and 2009, Dr. Elamir submitted bills under two distinct Medicaid provider numbers, one for himself and the second for Jersey City Health Services. Najwa Qaquish, who was Dr. Elamir's billing clerk, testified that she was responsible for doing the billing for both Dr. Elamir's medical services and his MRI services.

Frequently, Dr. Elamir or his staff referred his patients to Jersey City Health Services for imaging studies. Illustratively, he referred D.B. to Jersey City Health Services for an MRI of the lumbar spine on January 27, 2009, and of the right elbow on March 10, 2009. He referred M.H. to Jersey City Health Services for an MRI of the cervical spine on March 27, 2007, of the lumbar spine on September 4, 2008, of the left knee on December 5, 2008, and of the right elbow on December 9, 2008. Similarly, he referred D.C. to Jersey City Health Services for an MRI of the left knee on February 6, 2007, and V.F. for an MRI of the cervical spine on November 18, 2008. It should be said, however, that Dr. Elamir sometimes referred his patients to outside imaging facilities in which he did not possess any financial interest.

I **FIND** that Dr. Elamir owned and operated an MRI facility as an extension of his medical practice. MRI equipment owned by him was located at 554 Summit Avenue in Jersey City in the same building complex where he conducted his medical practice. At times, he saw patients in an examining room situated next to the room where the MRI machine was kept. When he obtained licensure of his MRI facility and commenced operations in 2006, he billed for both medical treatment and for imaging services under the same Medicaid number used for his regular medical practice. Medicaid officials inspected his facilities in 1999 and recommended that he should use a separate Medicaid billing number for his MRI facility. Thereafter, he obtained a unique Medicaid provider number to be used for his MRI facility, which he billed under the name of Jersey City Health Care Services. Regardless of the reason for this distinction, it is incontrovertible that MRI services performed in Dr. Elamir's office were billed under the name of a distinct business entity and not under his own name or the name of his medical practice.

Fifth Charge—Deviations from the Standard Quality of Care

Consideration must be given to the credibility of the two opposing expert witnesses. Both Dr. Holland and Dr. Rosenbaum have impeccable credentials and are knowledgeable in the specialty of neurology. When comparing a witness like Dr. Holland, who rarely testifies as an expert, with a witness like Dr. Rosenbaum, who testifies frequently in court, the better approach is to afford greater weight to the opinion of the doctor who devotes more time to the actual practice of medicine. Though it is certainly not improper to accept a fee in exchange for expert testimony, the temptation exists for a practiced expert witness to tilt his testimony in favor of the client who pays him.

Respondent makes the repugnant argument that his medical records are so inadequate that Dr. Holland cannot render an informed opinion about the quality of care received by Dr. Elamir's patients. There is much truth, sadly, in the defense that the dearth of contemporaneous records impedes Dr. Holland's ability to comment on the adequacy of care. This posture of the case only underscores the importance of a doctor's record-keeping responsibilities. On the other hand, the same disadvantage applies to Dr. Rosenbaum as well. As noted in Dr. Rosenbaum's expert report, his analysis of patient care was also "hampered by apparently inadequate record-keeping and by a lack of the complete records."

Insofar as Dr. Rosenbaum sought to compensate for this difficulty by relying on Dr. Elamir's self-serving reconstruction of his medical records prepared in anticipation of litigation, his opinion is entitled to less weight. Kept out of evidence due to its inherent unreliability, Dr. Elamir's belated recitation of past events does not gain any greater probative value because he incorporated this recitation in his testimony as supposed recollections.[9] Rather, a credible opinion ventured by an expert witness should be

[9] Value or weight of the expert opinion is dependent upon, and no stronger than, the facts upon which it is based. State v. Vandeweaghe, 351 N.J. Super. 467, 480 (App. Div. 2002), aff'd, 117 N.J. 229 (2003). Expert testimony is not a vehicle for the "wholesale [introduction] of otherwise inadmissible evidence." State v. Farthing, 331 N.J. Super. 58, 79 (App. Div.), certif. denied, 165 N.J. 530 (2000).

based on the contemporaneous records made at the time that the treatment was rendered.

Excessive and Unnecessary Testing

Radiologic imaging studies, as Dr. Holland elucidated, "are used in neurology to identify structural lesions in the brain and spine that could be contributing to the patient's symptoms." Usually they are ordered "for a patient with documented neurological deficits or a patient whose symptoms progress despite conservative treatment." Dr. Holland inferred from his review of the contemporaneous medical records that Dr. Elamir had been ordering too many tests and for no valid medical reason.

One case in point was M.H., a forty-eight-year-old homeless man who came to see Dr. Elamir with a primary diagnosis of radiculopathy, or a dysfunction of a nerve root from the spine. An initial MRI of the cervical spine ordered by Dr. Elamir was appropriately related to this condition. Over the course of a year, Dr. Elamir ordered a total of seven additional radiological tests, including an MRI of the lumbar spine, an MRI of the left knee, two MRIs of the right elbow, a second MRI of the left knee, an MRI of the left hip and an MRI of the left shoulder. Noting that MRIs of the joints, such as the knee, elbow and hip, are not typically ordered by neurologists, Dr. Holland opined that these studies "had nothing to do with radiculopathy." Concurring with Dr. Holland's view, respondent's own expert, Dr. Rosenbaum, expressed concern about what seemed to be "an overuse of MRI, with repeated MRI studies that did not change management" and some of which "were arguably unnecessary."

Dr. Elamir also ordered several radiologic imaging tests for patient D.B., a forty-five-year-old man who presented with pain radiating to the upper extremities and intractable back pain with urinary changes. Besides an MRI of the lumbar spine, Dr. Elamir also obtained a CT scan of the abdomen and pelvis. Again, Dr. Holland commented that it is "unusual" for a neurologist to order a CT scan of the abdomen and pelvis, although doing so falls within the scope of a general license to practice medicine and surgery. Dr. Rosenbaum noted in his expert report that the imaging work for D.B.'s

intra-abdominal problems is "beyond what most neurologists would undertake," but nonetheless that the testing was appropriate to D.B.'s clinical status and led to appropriate referrals. Results of the CT scan indicated an enlarged liver and spleen, thickening of the bladder wall and prostate enlargement. Declining to interpret the significance of this finding, Dr. Holland stated "[t]hat is something I would defer to a urologist." Dr. Rosenbaum did not find fault with Dr. Elamir for having ordered a test of the abdomen and pelvis to rule out the possibility of renal disease, although he himself "would not order abdominal CT in a situation like this."

In other cases, Dr. Elamir also ordered a lengthy series of imaging tests. For A.D., a thirty-five-year-old woman who complained of significant headaches, neck pain radiating to both upper extremities and persistent back pain resulting from a slip-and-fall accident in September 2002, Dr. Elamir ordered a CT scan of the brain and MRIs of the brain, cervical spine and lumbosacral spine over a course of treatment lasting four months. Apparently A.D. suffered some additional trauma in March 2009, at age forty-one, and complained of neck pain and of numbness in the right hand, which was clinically diagnosed as carpal tunnel syndrome. Dr. Elamir, who by then was co-managing this patient with her primary-care physician, Dr. Abaid Choudry, ordered an MRI of the right wrist, which showed no obvious pathology, and an MRI of the brain, which revealed mucosal thickening leading to sinusitis. Further, Dr. Elamir ordered an MRA of the Circle of Willis, part of the circulatory system supplying blood to the brain. As distinguished from an MRI which provides a structural image of the brain, a magnetic resonance angiogram, or MRA, "is an image to look at blood flow throughout the arteries." Dr. Holland did not particularly question the propriety of these tests, although he could not tell from Dr. Elamir's notes why they were necessary.

V.F., a forty-eight-year-old man, consulted Dr. Elamir, originally complaining of headaches and dizzy spells. Sometime thereafter, according to a written certification from Dr. Elamir, V.F. came under his care for treatment of radiculopathy. Dr. Elamir ordered not only MRIs of the brain and cervical spine, but also MRAs of the brain and the carotid arteries. Dr. Holland contended that Dr. Elamir should have first taken a thorough history and performed a physical examination before ordering extensive testing. He added that if the blackouts were due to a seizure, and not to syncope, then

the MRA would be inappropriate because "if it's a seizure, it is not a vascular problem with the brain."

In addition to radiologic imaging, Dr. Elamir ordered electrodiagnostic testing for nearly all of the ten cases reviewed by Dr. Holland. Electrodiagnostic studies deal with electronic changes in the nervous system and "are used as an adjunct to the physical exam for localizing muscle, nerve and spine problems." Electrodiagnostic testing includes two related types of tests: a needle EMG, which is done by inserting a needle into a muscle and recording electrical activity from the muscle both at rest and when the muscle is activated; and a nerve conduction study, which is done by placing electrodes over the nerves and stimulating them with electricity. Having completed a one-year fellowship in electroneurophysiology, Dr. Elamir performed most of the electrodiagnostic studies himself at his own office.

Critical of the patterned nature of Dr. Elamir's electrodiagnostic studies, Dr. Holland observed that "[t]hese reports were generated from boiler-plated forms where there is a very limited repertoire of comments that are circled and later transcribed." The reports are mostly the same every time—the nerve conduction studies are either normal or show carpal tunnel syndrome, and the needle EMG always shows bilateral C5-6 root lesions or bilateral L5 root lesions. Referring to the electrodiagnostic reports for patients A.S. and M.H., Dr. Holland remarked that Dr. Elamir's studies involve both upper and lower extremities. For D.B., the study appears to have been run on all four limbs. Along the same lines, Dr. Rosenbaum wrote that it was "not clear" why the electrodiagnostic studies of patient A.S. included the upper extremities, and that there was "no apparent reason" for electrodiagnostic testing of D.B.'s upper extremities.

Looking at the needle EMG findings for D.B., Dr. Holland observed that the worksheet indicates increased insertion activity in the biceps muscle for both the right and left sides. Were this a true reading, Dr. Holland would have expected to see abnormalities in the next categories, such as fibrillations or positive shock waves, but those items were left blank. Skeptical of the authenticity of the test results, Dr. Holland

commented that an isolated finding of activity without anything else "actually doesn't mean anything."

Dr. Holland emphasized that electrodiagnostic tests are time-consuming and difficult for the patient to endure, lasting from fifteen minutes to three hours, depending on how much testing is required. Absent documentation in the medical records as to why the electrodiagnostic tests were ordered, Dr. Holland found it impossible to tell whether the information obtained from such testing was helpful in terms of the care and treatment of Dr. Elamir's patients. Reiterating the desirability of performing a careful physical examination before subjecting a patient to unnecessary testing, Dr. Holland declared that, for example, a shoulder problem may be a mechanical defect that you could detect without an electrodiagnostic study.

I **FIND** that Dr. Elamir ordered a large number of radiological imaging and electrodiagnostic studies without adequate justification in the medical records and without a proper showing of how the results influenced case management. Again, though, this deficiency is more a matter of inadequate record-keeping and not necessarily a sign of improper medical care. Some of the tests performed were outside of Dr. Elamir's area of expertise and would not typically be ordered by a doctor specializing in neurology. Despite serious misgivings on the part of Dr. Holland about the excessiveness and necessity of such testing, he stopped short of accusing Dr. Elamir of causing actual substantive harm. Instead, Dr. Holland hedged his bets, saying only that "without clinical documentation, it is difficult for me to comment on the medical necessity of all these tests." Dr. Rosenbaum clearly harbored similar reservations about the efficacy of all those tests, although he too did not consider Dr. Elamir's choices to be a deviation from appropriate medical standards, especially in light of the reality that many doctors practice "defensive medicine," and that "patients want testing." In short, Dr. Elamir's testing protocol has caused his patients needless cost, discomfort and inconvenience, but is not so egregious as to rise to the level of substandard care.

Improper Treatment of Psychiatric Illness

Patient T.C., a thirty-seven-year-old woman, started treatment with Dr. Elamir in January 2009 after sustaining multiple injuries in an automobile accident. Dr. Elamir described her medical conditions as "psychiatric illness" and "drug addiction."[10] She had recently been treated at the Berks County Center in Reading, Pennsylvania, believed to be a drug and alcohol rehabilitation center. Urine screens performed on March 25, 2009, were positive for methadone and cannabinoid. Dr. Elamir obtained T.C.'s written consent to release of the facility records, but the follow-up was inadequate and those records never became part of Dr. Elamir's files. In one way or another, Dr. Elamir could not remember exactly how, he ascertained that T.C. was already taking certain psychotropic medications prescribed by an unknown doctor. He thought that he might have verified her prescription history by contacting the pharmacy, but there was no record of such contact. More likely, he learned of her prescription regimen from T.C. herself.

Without conducting his own independent evaluation, Dr. Elamir began prescribing T.C. a complex cocktail of medications, including: lithium, a mood-stabilizing compound used to treat episodes of manic depression; Seroquel, a short-acting antipsychotic used to treat bipolar disorder and schizophrenia; and Klonopin, a form of benzodiazepine used to treat bipolar disorder and anxiety. Having completed a two-year residency in psychiatry, Dr. Elamir felt comfortable prescribing these drugs because he had "had a good experience in using this medication in the past." Dr. Elamir did not claim that someone else was monitoring T.C.'s use of psychotropic drugs. Indeed, he could hardly do so, because he testified that her primary physician was unfamiliar with psychiatric conditions and had referred her to him because of his psychiatric background.

Dr. Elamir continued writing prescriptions for T.C. because "she had to be maintained on this medication that works in a certain therapeutic window"; for example, if lithium were interrupted, T.C. "could have decompensated." He felt he had a duty to

[10] Nowhere does the record identify the exact nature of T.C.'s psychiatric illness.

write a refill because "by the time she finds a psychiatrist, private or even a clinic to renew for her, it could be too late." Testifying in his defense, Dr. Rosenbaum went so far as to suggest that "it would have been inappropriate to not continue medications like that in patients until you knew more about them." Dr. Rosenbaum would have no qualms about continuing lithium, Seroquel and Klonopin because "none of the[m] are drugs of abuse" and "these are important maintenance drugs for psychiatric patients."

Aware that T.C. needed to be referred to a psychiatrist to monitor her medication, Dr. Elamir intended his intervention as a stop-gap measure "in the interim until she was permanently or regularly with a regular psychiatrist." However, it was difficult to find a psychiatrist willing to accept T.C. as a patient because "many psychiatrists refuse to see drug abusers" and her particular insurance was not accepted by most private specialists. Dr. Rosenbaum confirmed that "the pool of psychiatrists willing to accept insurances has dwindled greatly."

What was intended to be an interim solution dragged on for nearly nine months from January to October 2009, when Dr. Elamir's records were seized. Incredibly, there is no record that Dr. Elamir ever performed any blood tests to monitor T.C.'s levels of lithium. He was "not sure" whether he had done a thyroid test or whether he had done a kidney-function test. Instead, Dr. Elamir insisted that he could tell if lithium is necessary merely "by examining somebody physically." Since neurologists do not normally prescribe lithium, Dr. Holland had little to say on this subject. On cross-examination, Dr. Rosenbaum acknowledged that lithium is potentially dangerous and that he would have expected to see lithium blood levels, thyroid tests and kidney function tests on a patient being treated long-term on lithium.

I **FIND** that, while not an ideal situation, it was not a deviation from accepted medical standards for Dr. Elamir to keep T.C. stable by continuing to prescribe lithium, Seroquel and Klonopin for a short time until a qualified psychiatrist could be found to oversee this regimen of mood-altering drugs. Before doing so, however, Dr. Elamir should have consulted with the originally prescribing doctor to understand the nature of T.C.'s psychiatric illness and the reasons for the drugs she was taking. More importantly, while he continued prescribing lithium, Dr. Elamir was under a continuing

obligation to monitor T.C.'s lithium blood levels, thyroid tests and kidney functioning. His failure to do so constitutes a substantial deviation from the accepted standards of medical care, which potentially could have caused great harm to his patient.

CONCLUSIONS OF LAW

Based on the foregoing facts and the applicable law, I **CONCLUDE** that Dr. Magdy Elamir committed numerous acts or omissions constituting violations of the licensing act, which warrant revocation of his license to practice medicine and the imposition of penalties totaling $100,000.

Pursuant to the Medical Practices Act, N.J.S.A. 45:9-1 to -27.9, the Board possesses broad authority to regulate the practice of medicine in the state of New Jersey. In re License Issued to Zahl, 186 N.J. 341 (2006). Companion legislation, entitled the Uniform Enforcement Act, N.J.S.A. 45:1-14 to -27, creates uniform standards "for license revocation, suspension and other disciplinary proceedings by professional and occupational licensing boards." N.J.S.A. 45:1-14. The Board's supervision of the medical field is critical to the State's fulfillment of its "paramount obligation to protect the general health of the public." Zahl, supra, 186 N.J. at 352. In addition to safeguarding the public from harmful medical practices, the Board upholds the reputation of the profession by punishing conduct that "lowers the standing of the medical profession in the public's eyes." In re Fanelli License Revocation, 174 N.J. 165, 179 (2002).

The right to an administrative hearing before revocation of a doctor's medical license has "long been imbedded in our jurisprudence," Fanelli, supra, 174 N.J. at 173, and is expressly guaranteed under the Administrative Procedure Act, N.J.S.A. 52:14B-11. At such hearing, the Attorney General must prove the elements of his case by a preponderance of the substantial credible evidence, meaning more likely than not that the charges are true. In re Polk License Revocation, 90 N.J. 550, 574 (1982). Although the Attorney General cites numerous grounds for its proposed disciplinary action against Dr. Elamir, the following legal analysis will concentrate on the most pertinent statutory provisions.

Of all the charges against Dr. Elamir, the most reprehensible is the prescribing of highly addictive drugs, like Percocet and Xanax, without any legitimate medical purpose. N.J.S.A. 45:1-21(m) expressly authorizes the Board to suspend or revoke the medical license of any doctor who "has prescribed or dispensed controlled dangerous substances indiscriminately or without good cause, or where the applicant or holder knew or should have known that the substances were to be used for unauthorized consumption or distribution." Furthermore, N.J.S.A. 45:1-21(c) permits the Board to suspend or revoke a doctor's license upon proof that the licensee "has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person."

"Gross malpractice," as that term is used in the licensing act, requires something much greater than ordinary malpractice in a civil suit for personal injury. In an ordinary malpractice case, the plaintiff must demonstrate that the doctor deviated from an accepted practice standard and that such deviation caused harm to the patient. Germann v. Matriss, 55 N.J. 193 (1970). A showing of "gross malpractice" requires misconduct so "egregious" or "flagrant" as to implicate a much higher magnitude of wrongdoing. In re Polk, supra, 90 N.J. at 565. "Gross neglect" has been equated with "wanton or reckless disregard of the safety of others" or willful misconduct amounting to "heedlessness or reckless[ness]." In re Suspension or Revocation of License of Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977).

Dr. Elamir's misconduct clearly violates the provision against the indiscriminate prescription of a controlled dangerous substance in N.J.S.A. 45:1-21(m) and satisfies the elements of "gross malpractice" in N.J.S.A. 45:1-21(c). In addition, his actions constitute "unprofessional conduct" in violation of N.J.S.A. 45:1-21(e). See In re Suspension of Heller, 73 N.J. 292, 306 (1977), holding that a pharmacist's sale of codeine-based cough syrup in excess of the legitimate needs of his customers was "conduct inherently wrong and obviously unprofessional." Furthermore, Dr. Elamir made no effort whatsoever to comply with N.J.A.C. 13:35-7.6, which directs that a doctor prescribing controlled substances must ensure that "a patient's medical history has been taken and physical examination accomplished, including an assessment of

physical and psychological function, underlying or coexisting diseases or conditions, any history of substance abuse and the nature, frequency and severity of any pain."

Overwhelming proofs establish that Dr. Elamir illegally dispensed Percocet and Xanax to three cooperating witnesses on no less than eight separate occasions. Essentially, the cooperating witnesses would enter the doctor's examining room, tell the doctor what drugs they wanted, receive the written prescriptions, and walk out, in an encounter lasting only a few minutes. In a scene more reminiscent of a criminal drug deal than a medical evaluation, Dr. Elamir did not even go through the motions of performing a physical examination, inquiring about the patient's current medical condition, or determining whether the prescriptions were medically appropriate. This was no mere mistake or error on his part. Rather, Dr. Elamir displayed a callous indifference to the consequences of his actions.

There can be no doubt that Dr. Elamir's indiscriminate distribution of opioids and other highly addictive controlled substances had a very real potential for causing harm, or even death. Skyrocketing use of heroin and other opiates has led one governmental task force to designate the problem "the number one health care crisis confronting New Jersey," with deaths surpassing even the number of fatalities resulting from motor vehicle accidents. Many of those affected began their journey to opiate addiction through legally prescribed pain medication. Over a three-year period, the drug-related death toll in New Jersey has risen steadily from 843 deaths in 2010, to 1,026 deaths in 2011, to 1,294 deaths in 2012. Approximately two-thirds of all those deaths involved prescription drugs rather than solely illicit drugs.[11]

One measure of the scope of this crisis is the startling rise in the rates of patient admissions to drug-addiction treatment centers. The number of individuals who entered such facilities in New Jersey for opioid pill addiction tripled from 2006 to 2011, with more

[11] Governor's Council on Alcoholism & Drug Abuse, "2014 Report Confronting New Jersey's New Drug Problem: A Strategic Action Plan to Address a Burgeoning Heroin/Opiate Epidemic Among Adolescents and Young Adults," at 5, 15, <http://gcada.nj.gov/policy/master/documents/2014_TaskForce_Report.pdf>.

than 8,600 admissions in 2001 alone. Of those patients, nearly half were age twenty-five or younger.[12]

Stating that the medical literature previously encouraged greater use of prescription painkillers for severe pain, Dr. Rosenbaum said that the pendulum began to swing five years ago, and that doctors today prescribe fewer narcotics and do more frequent urine testing. The implication is that it would be unfair to apply 2014 medical standards retroactively to treatment that occurred in 2009. However, the law prohibiting the indiscriminate prescription of controlled dangerous substances is not new, and has been on the books since 2003. L. 2003, c. 199 (eff. December 24, 2003). Indeed, Dr. Elamir demonstrated that he was fully aware of a crackdown on indiscriminate prescribing of narcotics in 2007, when drug addicts flocked to his office door because their own doctors had refused to continue prescribing narcotics.

N.J.S.A. 45:1-21(h) grants the Board the power to suspend or revoke the medical license of a doctor who "has violated or failed to comply with the provisions of any act or regulation administered by the board." With respect to recordkeeping, the Board's regulations codify what Dr. Holland testified were already the accepted standards of the medical profession. N.J.A.C. 13:35-6.5(b) specifies that patient records must contain the very items that Dr. Holland said were missing from Dr. Elamir's files, including the patient complaint, medical history, findings on appropriate examination, progress notes, orders for tests or consultations and their results, diagnostic or medical impressions, and the outcome of any treatment.

To ensure that the medical records are reliable and trustworthy, N.J.A.C. 13:35-6.5(b) requires that they be "contemporaneous," that is to say, it adopts the approach of the business-records hearsay exception, which relates to writings "made at or near the time of the observation by a person with actual knowledge or from information supplied by such person." N.J.R.E. 803(c)(6). Summaries pieced together from memory long after the events sought to be recorded cannot substitute for timely record-keeping.

[12] State of New Jersey Commission of Investigation, "Scenes from an Epidemic: A Report on the SCI's Investigation of Prescription Pill and Heroin Abuse" (July 2013), at 16, <http://www.nj.gov/sci/pdf/PillsReport.pdf>.

Both parties concur that Dr. Elamir's record-keeping was grossly deficient and, therefore, fails to comply with the regulatory standards for preparation of patient records. This lapse was not simply a hyper-technical failure to write neatly or to "dot all i's and cross all t's," but rather represents a total abandonment of a doctor's professional obligation to keep informative medical records. Dr. Elamir's indecipherable records were so obscure that they prevented everyone, sometimes even himself, from knowing what he was doing. The deficient record-keeping had a negative effect on Dr. Elamir's ability to track the progress of his own patients, on the capacity of a covering doctor to take over a patient's care in the event of Dr. Elamir's unavailability, and on the opportunity of the Board to verify whether Dr. Elamir's patients were receiving adequate medical care. In the memorable words of Dr. Holland, Dr. Elamir was practicing "unsafe medicine."

Another statutory provision, N.J.S.A. 45:1-21(b), allows the Board to suspend or revoke the medical license of a doctor who "[h]as engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense." Upholding the disciplinary action taken by the Board for a doctor's numerous dishonest acts, including overlapping time entries in patient records, the New Jersey Supreme Court recognized that "dishonesty is a sufficient basis to justify license revocation." Zahl, supra, 186 N.J. at 354. Dishonesty in falsifying the time spent on a particular medical service "has ramifications for the public at large in the form of increased taxes to fund public healthcare programs, higher insurance premiums and the like." Ibid. Miscoding the time devoted to a particular patient in order to reflect a higher level of service is akin to creating overlapping time entries. Here, Dr. Elamir did not merely fudge his time records, but sought to inflate the value of his services. It would have been impossible for Dr. Elamir to see forty-four patients on a single day if he had performed the services he claimed to have provided. Thus, his miscoding of the billing sheet was dishonest, fraudulent and deceptive.

Concerning the self-referral issue, N.J.S.A. 45:9-22.5(a) prohibits a practitioner, including a physician, from referring a patient "to a health care service in which the practitioner, or the practitioner's immediate family, . . . has a significant beneficial

interest." "Health care service" is broadly defined to include "a facility which provides radiological or other diagnostic imagery services," and, thus, applies to Jersey City Health Services. N.J.S.A. 45:9-22.4.

New Jersey statutes limiting self-referrals were enacted to address the concern that self-referral by health care providers would result in the provision of costly and unwarranted medical services. Allstate Ins. Co., v. Greenberg, 376 N.J. Super. 623, 634–35 (Law Div. 2004). Hessler G. McBride Jr., "An Overview of Health Care Providers' Referral and Investment Prohibitions," 173 New Jersey. Lawyer Magazine 18 (1995). MRI facilities owned by doctors were a particular target of cost-containment measures. Senator Richard Codey, a chief sponsor of the 1991 reforms embodied in the Health Care Cost Reduction Act, L. 1991, c. 187, § 41, expressed the view that "the greater the number of MRI centers invested in by physicians, the greater the likelihood that doctors will order unnecessary MRI scans as a means of protecting their investment." Michael Weiner, "Examiners' Board Hits Physician Referrals," New Jersey Law Journal (Jan. 25, 1993) 232.

Unless the MRI facility located in his Summit Avenue office falls within a recognized exception to the ban against self-referral, Dr. Elamir's referral of his patients to Jersey City Health Services was illegal. N.J.S.A. 45:9-22.5(a). Dr. Elamir seeks to bring himself within the exception contained in N.J.S.A. 45:9-22.5(c)(1) for "medical treatment or a procedure that is provided at the practitioner's medical office and for which a bill is issued directly in the name of the practitioner or the practitioner's medical office."

The threshold inquiry is whether this exception even applies to diagnostic services like an MRI facility. Originally the in-office exception in the predecessor statute used the identical language of "health care service," so that it undoubtedly would have extended to an MRI facility in a doctor's office. In the 1991 amendments to the Codey Act, however, the Legislature deleted the words "health care service" and substituted in its place the phrase "medical treatment or a procedure."

Presumably, the Legislature intended something different when it decided to change the statutory language. As distinguished from actual treatment, a diagnostic test ordinarily refers to a medical service "intended to assist in establishing a medical diagnosis, for the purpose of recommending a course of treatment for the tested patient." N.J.A.C. 13:35-2.6(a). Generally, "specific language in a statute takes precedence over more general language." Wilson v. Unsatisfied Claim and Judgment Fund Bd., 109 N.J. 271 (1988). Thus, the inquiry becomes whether the Legislature intended something more narrow and restrictive when it used the language "medical treatment or a procedure." Put differently, does the new language connote only treatment modalities like surgical care and exclude purely diagnostic services like MRI tests?

In common usage, the dictionary defines medical "treatment" as "medical or surgical care" and "procedure" as "the act, method or manner of proceeding in some process or course of action." Webster's New Universal Unabridged Dictionary (deluxe 2d ed. 1983), 1944, 1434. In the medical field, a "procedure" is a term of art used by physicians as synonymous with "surgical care." In re Suspension or Revocation of License of Brigham, OAL Dkt. No. BDS 12006-10, Initial Decision 11-28 (Aug. 13, 2013). Consequently, the new language could be read as limiting the reach of the in-office exception to services involving surgical care.

A statement by an Assembly committee accompanying the bill that became the source of the current language indicates:

> The substitute updates language concerning medical treatment provided at a practitioner's medical office to specify that the medical office includes, but is not limited to, a surgical practice, and specifies that bills for medical services must be issued directly in the name of the practitioner or the practitioner's medical or surgical practice.
>
> [Statement of Assembly Health & Senior Services Committee to Assembly Committee Substitute for No. 1933 (June 19, 2008).]

This declaration of purpose suggests that the Legislature actually may have intended to broaden rather than narrow the exception, although the particular language chosen may have unintentionally had the opposite effect. Since the intended scope of the exception implicates sensitive matters of agency expertise and policy making, the determination is best left to the sound discretion of the Board of Medical Examiners.

Irrespective of whether the in-office exception does extend to MRI facilities, Jersey City Health Services would not qualify anyway. N.J.S.A. 45:9-22.5(c)(1) requires that the bill for services be issued "directly in the name of the practitioner or the practitioner's medical office." Implementing regulations of the Board utilize the same language. N.J.A.C. 13:35-6.17(b)(4)(i). Evidence plainly demonstrates that the bill for MRI services performed in Dr. Elamir's office did not go out in his name or the name of his medical practice, but rather in the name of a separate company with a different Medicaid provider number.

Although the remaining substantive charges raise disturbing doubts about the overall quality of care provided by Dr. Elamir, the proofs are inadequate to be actionable under the licensing act. Dr. Elamir seems to have ordered an unusually high number of radiological and other medical tests, but neither of the experts was willing to say that they were unnecessary. It is precisely such potential abuse of testing for profit that the self-referral prohibition was designed to combat. Dr. Elamir's inexplicable failure to monitor his patient's blood levels after prescribing lithium and other psychotropic medications is an apparent violation of N.J.A.C. 13:35-7.2(a), which requires that doctors who prescribe medications "shall assure that appropriate follow-up is provided and that the effects of the drug are properly evaluated and integrated into the treatment plan for the patient." Nonetheless, the circumstances are not dire enough to constitute "gross" malpractice and the occurrence did not happen frequently enough to be "repeated" malpractice. Similarly, Dr. Elamir may have been somewhat neglectful in treatment of patients with seizure disorders, but not so much as to support disciplinary action for his lapses in good judgment.

Under the Uniform Enforcement Act, the Board may suspend or revoke the medical license of any person who engages in conduct violating the licensing act, may

impose monetary penalties, and may assess litigation costs. N.J.S.A. 45:1-21, -25. In light of his reckless disregard for the safety of his patients and the threat to the general public health, Dr. Elamir's indiscriminate prescribing of controlled dangerous substances, standing alone, is deserving of the penalty of revocation. Considered together with his other serious violations, such as the flouting of his duty to keep medical records and the upcoding of his billing records, the surrounding circumstances call forcefully for revocation.

When determining the appropriateness of a penalty, the Board must carefully weigh mitigating factors in deciding whether to revoke a license. Zahl, supra, 186 N.J. at 356. It may well be that some of Dr. Elamir's minor transgressions, such as his willingness to treat medical conditions outside his specialty, were due to sincere concern for low-income patients who might not have been able to obtain medical treatment elsewhere. Even so, the egregious nature of the totality of his conduct, especially his reckless approach to dispensing prescription painkillers to patients who did not need them, outweighs any charitable impulses on his part.

N.J.S.A. 45:1-25(a) authorizes the imposition of a civil penalty "of not more than $10,000 for the first violation and not more than $20,000 for the second and each subsequent violation." In the leading case of In re DeMarco, 83 N.J. 25 (1980), the New Jersey Supreme Court fleshed out the parameters for calculating an appropriate civil penalty. Finding that Dr. DeMarco had caused ninety-two cases of hepatitis among his patients by using improperly sterilized needles and syringes, the Board had revoked his medical license and imposed separate monetary penalties for each of the ninety-two separate patients. Rejecting any suggestion that "more potent deterrent" of a revocation of a doctor's license would obviate the necessity of imposing a civil penalty as well, the Court declared that "the importance of penalties lies in the total deterrent effect of the availability to the Board of the combination of both kinds of sanctions." DeMarco, supra, 83 N.J. at 39–40.

Faced with ambiguity in the statute as to whether the ninety-two separate incidents should be treated as a single violation or multiple violations, the Court "construe[d] the provision in question to impose a separate . . . penalty for each and

every violation, whether the violation is asserted alone or along with others as the basis for a conviction; stepped-up separate penalties apply only where there has been a prior conviction." Id. at 34–35.

Unfortunately, the Attorney General offers no guidance as to what might be an appropriate monetary penalty under the circumstances of this case. A review of 150 consent orders issued by the Board from 2002 through 2007 reveals no consistent and predictable pattern in setting amounts within a wide range of penalties.[13] Penalties imposed in recent cases involving indiscriminate prescribing of a controlled dangerous substance run the gamut from none to $20,000 per violation. Compare the consent order in In re Lee, entered on February 13, 2013, to the suspension order in In re Fleming, entered on June 14, 2010 (disciplinary orders are available by doctor's last name at the Board's website[14]).

Last, the time has come to fix a monetary amount for each violation committed by Dr. Elamir. On the first and most serious charge, the Board possesses the authority to impose the maximum penalty of $10,000 per first-time violation. Rather than considering each patient's situation as a separate violation, the Board may choose to adopt the recommendation of the State Commission of Investigation that the unlawful prescribing of opioids and other highly addictive drugs "be subject to civil penalties on a per-prescription or per-incident basis." Scenes from an Epidemic, supra, fn 12 at 45, <http://www.nj.gov/sci/pdf/PillsReport.pdf>. It is worth noting that Judge Isabella in the parallel criminal case saw fit to impose a $10,000 fine for just one instance of improperly prescribing Advair, a much less potentially dangerous drug than Percocet or Xanax.

Applied here, the per-incident analysis would mean that each visit during which Dr. Elamir indiscriminately prescribed one or more controlled dangerous substances should be counted as a separate violation. Treating the husband-and-wife visit on September 21, 2009, as a single occurrence, the computation would be nine violations at $10,000 each, or a total of $90,000.

[13] Alma Saravia and John Zen Jackson, "Understanding, Forecasting and Challenging Penalties Issued by the Board of Medical Examiners," 244 New Jersey Lawyer Magazine 41, 43 (2007).
[14] See <http://www.njconsumeraffairs.gov/bme/disnotice/bmepdn.htm>.

On the second charge, the lack of proper record-keeping prevented the Board from obtaining a clear understanding of Dr. Elamir's treatment of patients over the course of his medical practice. Since this deficiency occurred in virtually all of the medical records under review, it would be difficult, if not impossible, to impose separate penalties for what appears to be a single all-encompassing pattern. Merin v. Maglaki, 126 N.J. 430, 446–47 (1991) (Clifford, J., dissenting). To accomplish the statutory purpose of policing the medical profession and protecting the health and safety of patients, the most realistic remedy is to treat poor record-keeping as a single violation and to impose a penalty in the amount of $5,000.

On the third charge, the forty-three incidents of upcoding all occurred on the same date, October 19, 2009. While it would definitely be feasible to treat each incident as an independent violation, the resulting penalty would be excessively high and out of proportion to the nature of the underlying offense. Therefore, the better approach is to consider the events of October 19, 2009, as a single incident and impose a penalty in the amount of $5,000.

On the fourth charge, Dr. Elamir violated the prohibition against self-referral and conceivably could be assessed a penalty for each time that he referred one of his patients to his own MRI facility. However, the statutory scheme regarding self-referral is complicated, even for persons trained in the law, and, on the present record, it is unclear whether Dr. Elamir fully appreciated that what he was doing was illegal. To the extent that he was merely following the advice of Medicaid representatives, his conduct is understandable, albeit not totally excusable. Ultimately, the question is one of fairness and whether Dr. Elamir knew or should have known that what he was doing was wrong. DeMarco, supra, 83 N.J. at 37. Now that Dr. Elamir's medical license will be permanently revoked, the possibility of his repeating the proscribed behavior will be eliminated and the deterrent effect on others will depend on the similarity of Dr. Elamir's unique fact pattern to their own. Accordingly, the Board should consider waiving the imposition of any penalties that it might otherwise impose for this offense.

ORDER

It is **ORDERED** that Dr. Elamir's license to practice medicine and surgery in the State of New Jersey be **REVOKED**.

It is further **ORDERED** that Dr. Elamir pay a civil penalty of $100,000 to the State of New Jersey.

And it is further **ORDERED** that Dr. Elamir reimburse the State of New Jersey for its costs and fees, including investigation costs, expert witness fees, attorney fees, and transcript costs and fees, in an amount to be assessed by the Board.

I hereby **FILE** my initial decision with the **BOARD OF MEDICAL EXAMINERS** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF MEDICAL EXAMINERS**, which by law is authorized to make a final decision in this matter. If the Board of Medical Examiners does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE BOARD OF MEDICAL EXAMINERS, 140 East Front Street, 2nd Floor, Trenton, New Jersey 08608**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 26, 2014

DATE

KEN R. SPRINGER, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Complainant

Sgt. Frederick Weidman, New Jersey Division of Criminal Justice
Sgt. Joseph Jaruszewski, New Jersey Division of Criminal Justice
Roman Guzik, volunteer attorney, New Jersey Division of Law
Neil Robert Holland, M.D., expert in neurology
Det. Kevin Gannon, New Jersey Division of Criminal Justice
Mitzi Gross, New Jersey Division of Criminal Justice
Bhavini Patel, attorney assistant, New Jersey Division of Criminal Justice
J.A., cooperating witness No. 1

For Respondent

Najwa Qaquish, billing clerk
David H. Rosenberg, M.D., expert in neurology
Magdy Elamir, M.D.

Dates of Hearing

March 10, 2014
March 13, 2014
March 25, 2014
March 27, 2014
April 16, 2014
April 21, 2014
April 22, 2014
April 24, 2014
April 25, 2014
April 28, 2014
May 14, 2014

May 16, 2014

May 27, 2014

May 28, 2014

List of Exhibits

For Complainant

P-1	Certification of Sgt. Frederick J. Weidman	3/10
P-2	Certification of Det. Kevin Gannon	3/25
P-3	Certification of Det. Joseph Jaruszewski	3/10
P-3A	Investigation Report of S.I. Matthew Armstrong, #1519 dated October 27, 2009 Narrative of Tuesday, October 20	5/10
P-4	Investigation Report of Frederick Weidman of February 26, 2009 visit by CI#833 to Dr. Elamir (Exhibit A of P-1)	3/10
P-5	Prescriptions dated February 26, 2009 (Exhibit B of P-1)	3/10
P-6	North Jersey Medical Services cash receipt. (Exhibit C of P-1)	3/10
P-7	Copies of the buy money (Exhibit D of P-1)	3/10
P-8	Evidence Voucher of February 26,2009 encounter (2pp). (Exhibit A of P-2)	3/10
P-9	Investigation Report of Detective Kevin Gannon of March 11, 2009 visit by CI#833 to Dr. Elamir	3/10
P-10	Copies of buy money $100	3/10
P-11	Cash receipt for $50 payment on March 11, 2009 (Exhibit E of P-2)	3/10
P-12	Prescriptions dated March 11, 2009 for Xanax, Percocet and Advair (Exhibit D of P-2)	3/10
P-13	Evidence voucher digital recording (Exhibit F of P-2)	3/10
P-14	Evidence voucher 3 prescription Blanks and 1 cash receipt (Exhibit F of P-2)	3/10

P-15	Investigation Report of Sgt. Weidman of April 16, 2009 visit by CI#833 to Dr. Elamir (Exhibit I of P-1)	3/10
P-16	Prescriptions dated April 16, 2009 for Xanax, Percocet (Exhibit H of P-1)	3/10
P-17	Evidence voucher digital recording (Exhibit H of P-1)	3/10
P-18	Evidence voucher 2 prescription blanks (Exhibit H of P-1)	3/10
P-19	Investigation Report of Sgt. Weidman of May 5, 2009 visit by CI#833 to Dr. Elamir (Exhibit L of P-1)	3/10
P-20	Prescriptions dated May 5, 2009 for Xanax, Percocet (Exhibit J of P-1)	3/10
P-21	Evidence voucher digital recording (Exhibit K of P-1)	3/10
P-22	Evidence voucher 2 prescriptions (Exhibit K of P-1)	3/10
P-23	Investigation report of Det. Gannon of July 21, 2009 visit by CI#833 to Dr. Elamir (Exhibit L of P-2)	3/25
P-24	Prescriptions dated July 21, 2009 for Xanax, Percocet (Exhibit J of P-2)	3/25
P-25	Evidence voucher digital recording (Exhibit K of P-2)	3/25
P-26	Investigation Report by Sgt. Weidman of September 1, 2009 visit by CI#833 to Dr. Elamir (Exhibit R of P-1)	3/10
P-27	Prescriptions dated September 1, 2009 for Xanax, Percocet (Exhibit P of P-1)	3/10
P-28	Evidence voucher 2 prescriptions (Exhibit Q of P-1)	3/10
P-29	Evidence voucher digital recording (Exhibit Q of P-1)	3/10
P-30	Investigation report of Sgt. Weidman of July 30,2009 visit by CI KS to Dr. Elamir (Exhibit O of P-1)	3/10

P-31	Prescriptions dated July 30, 2009 for Xanax, Percocet (Exhibit M of P-1)	3/10
P-32	Evidence voucher digital recording and 2 prescriptions (Exhibit N of P-1)	3/10
P-33	Investigation Report of Det. Gannon of August 13, 2009 visit by CI MS to Dr. Elamir (Exhibit P of P-2)	3/25
P-34	Cash receipt for payment of $50	3/25
P-35	Prescriptions dated August 13, 2009 for Xanax, Percocet (Exhibit O of P-2)	3/25
P-36	Evidence voucher digital recording (Exhibit O of P-2)	3/25
P-37	Evidence voucher 2 prescriptions, cash payment receipt (Exhibit O of P-2)	3/25
P-38	Transcriptions of digital recordings of CI#833, CI KS, and CI MS on February 26, March 11, April 16, May 5, July 21, July 30, August 13 and September 1, 2009. (Exhibit B, H, Q, S of P-2)	
P-39	Search warrant signed by Hon. Kevin G. Callahan, Judge Superior Court (Exhibit T of P-2)	3/25
P-40	Warrant W378211	3/25
P-41	Real Estate Lease for 550 Summit Avenue, Jersey City, Magdy Elamir	
P-42	Evidence vouchers, Division of Criminal Justice (67pp) Contents of 544 Summit/550 Summit (Exhibit A of P-3)	3/10
P-43	Investigation Report of Det. Anthony D'Aquino regarding transport to DCJ Evidence by Det. Jaruszewski. October 20, 2009.	3/10
P-44	Certification of Kay Ehrenkrantz, DAG	In Date?

P-45	Certification of Roman Guzik w/ Exhibits A, B and C D – Marked for ID only - Worksheet listing additional documents found in vault for V.F. E – Exhibit C of 45 organized in chronological order	3/13
P-46	Patient Record of J.A. (JA001-091)	3/13
P-47	Patient Record of D.B. (DB001-091)	3/13
P-48	Patient Record of B.B. (BB001-082)	3/13
P-49	Patient Record of T.C. (TC001-091)	3/13
P-50	Patient Record of D.C. (DC001-123)	3/13
P-51	Patient Record of A.D. (AD001-248)	3/25
P-51A	Revised Record of A.D.	4/22
P-52	Patient Record of J.D. (JD001-084)	
P-53	Patient Record of V.F. (VF001-048)	3/13
P-53A	Revised Record of V.F.	4/22
P-54	Patient Record of M.H. (MH001-074)	3/13
P-55	Patient Record of K.S. (KS001-151)	3/13
P-56	Patient Record of A.S. (AS001-077)	3/13
P-57	Sign In Sheets and Superbills for October 19,2009 (SI001-049)	3/25
P-58	Transcript IMO Temporary Suspension of the Medical License of Magdy Elamir dated December 9, 2009	4/24
P-59	Order of Temporary Suspension filed by NJ State Board of Medical Examiners on December 18, 2009, including cover letter (2pp), Order (26pp), Spreadsheet (1p), Directives(4pp)	4/24
P-60	Report of Investigation dated January 28, 2011 with State v. Elamir Indictment Dkt. 10-07-0088-S filed July 15, 2010	3/25

P-61	Complaint-Warrant and Affidavit in support of arrest, Det. Gannon, July 22, 2011, signed by Hon. Kevin G. Callahan, J.S.C. (31pp)	3/25
P-62	State v. Elamir Indictment Dkt. 12-05-0108-S	3/25
P-63	Report of Investigation dated June 26, 2013 including Plea Form, Judgement of Conviction, Transcript of Plea Hearing, Transcript of Sentence Hearing	3/25
P-64	Neil R. Holland, M.D. – Curriculum Vitae	3/13
P-65	Neil R. Holland, M.D. – Report dated December 18,2013 (3pp)	4/22
P-66	Neil R. Holland, M.D. – Addendum to report dated February 11, 2014 (2pp)	4/22
P-67	Certification dated March 6, 2014 of Joseph Cicatiello, Chief, Provider Enrollment, Division of Medical Assistance and Health Services, attaching provider agreement, termination letters for Dr. Elamir; provider agreement and termination for Jersey City Health Services, N.J.S.A 30:40-6C	
P-68	Certification dated March 2014 of Mitzi Gross attaching Exhibit A Elamir 2009 Claims.xls Exhibit B JCHS 2009 Claims.xls Exhibit C Elamir Prescriptions for Selected Recipients	3/27
P-69	Certification dated November 16,2009 of Marianne Nucci, Investigator II, Enforcement Bureau, attaching List of entities in which Dr. Elamir has a controlling interest(5pp) including CI corporate documents for NJ MRI Systems Inc. (Exhibit 19)(6pp)	

P-70	Evidence vouchers for 544 Summit Ave, Jersey (2pp) License NJMRI (07/01/06-06/30/07) License Jersey City Health Services (07/01/09-06/30/10) Letter dated April 23, 2008 from Magdy Elamir to Dept. of Health and Senior Services advising he is the sole owner of NJ MRI Services, now Jersey City Health Services	3/10
P-71	Evidence voucher NJ MRI Services enrollment application for Medicaid, Magdy Elamir M.D./President Provider Agreement signed by Magdy Elamir Signature Authorization Form signed by Magdy Elamir Disclosure of Ownership, Magdy Elamir, M.D./President 01/16/07 Group Practice Application W-9 signed by office manager 11/29/06 Affirmative Action Survey	3/10
P-72	Evidence vouchers for 544 Summit Avenue, Jersey City (2pp) Medical Licenses for Alan Wasserman, M.D. and Jean Seneck Cherry R.T. Letter dated February 2, 2005 to Magdy Elamir from Feng Tao, M.D., agreeing to be Medical Director of JC Open MRI Letter dated August 6, 2008 from Feng Tao, M.D., agreeing to supervise technician, quality control and protocols.(NJ MRI Jersey City Open MRI letterhead)	3/10

P-73	Evidence voucher NJ MRI Services / JC Open MRI Coding Fee Sheet Request for Paper Updates Patient M.G. coding sheet, MRI referral form from North Jersey Medical Services (2pp) Patient A.B.- Letter dated June 18, 2009 to NJ MRI with MRI bill and letter of denial of payment from NJM Insurance; Denial based on self-referral in violation of N.J.S.A 45:9-22.5.(3pp)	3/10
P-74	Evidence voucher MRI Book 09/12/09-10/31/09 (mention of Kimberly Smith (sic) on final page)	3/10
P-75	Certification of William V. Roeder regarding medical license of Feng Tao, M.D.	
P-76	Certification from US DEA regarding DEA registration of Feng Tao, M.D.	
P-77	Certification of Matthew R. Wetzel regarding CDS registration of Feng Tao, M.D.	
P-78	Certification of William V. Roeder regarding medical license of Magdy Elamir; renewals for 2007 and 2009	4/24
P-79	Certification from US DEA regarding DEA registration of Magdy Elamir, M.D.	4/24
P-80	Certification of Matthew R. Wetzel regarding CDS registration of Magdy Elamir, M.D.	4/24
P-81	Magdy Elamir – Curriculum Vitae and Addendum	4/24
P-82	Subpoena for medical records dated February 2, 2010	4/24
P-83	Certification of True Copy signed by Magdy Elamir on May 25, 2010	
P-84	CPT Codes 2007	
P-85	Tape of 02/26/09	3/25
P-86	Tape of 03/11/09	3/10

P-87	Tape of 04/16/09	3/10
P-88	Tape of 05/05/09	3/10
P-89	Tape of 07/21/09 (mislabeled 06/21/09)	3/25
P-90	Tape of 07/30/09 (mislabeled 06/30/09)	3/10
P-91	Tape of 08/13/09	3/25
P-92	Tape of 09/1/09	
P-93	Tape of 7/21/09 Desiree Bradley	
P-94	Investigation Report of S.I. Lisa Cawley of July 21, 2009 visit to Dr. Elamir (2pp)	
P-95	Evidence Voucher digital recording of July 21, 2009	
P-96	Tape of 9/11/09 (M.S.)	3/25
P-97	Investigative Report of Sgt. Anthony Musante of September 11, 2009 visit by KS and MS to Dr. Elamir	3/25
P-98	Evidence Voucher digital recording of September 11, 2009 of KS	3/25
P-99	Evidence Voucher digital recording of September 11, 2009 of KS and MS	3/25
P-100	Certification of Bhavini Patel attaching transcripts of audio recordings A- 2/26/09 B- 3/11/09 C- 4/16/09 D- 5/5/09 E- 7/21/09 F- 7/30/09 G- 8/13/09 H- (1 and 2) 9/11/09	3/27
P-101	Certification of Roman Guzik with Exhibits A and B	3/25
P-102	Certification of Kay R. Ehrenkrantz regarding chain of custody of medical records	3/25

P-103	Certification of William Roeder regarding renewals of 2007 and 2009 with attachments A- 2007 B- 2009	
P-104	Certification of Joseph M. Gorrell dated 02/06/14 in opposition to Complainant's Motion to Amend, in Exhibits C and D	3/25
P-105	Letter dated 03/21/11 to Mr. Paul Ginsburg, Professional Audio Labs, from Debra Conrad, DAG, enclosing a compact disc and a proposed transcript Transcript dated 03/11/09 of J.A. and Elamir (2pp)	3/25
P-106	Letter dated 03/28/11 to Mr. Paul Ginsburg, Professional Audio Labs, from Debra Conrad, DAG, enclosing seven compact discs and a proposed transcripts (Office visits) Transcript dated 02/26/09 of J.A. (1pg) Transcript dated 04/16/09 of J.A. (2pp) Transcript dated 05/05/09 of J.A. (3pp) Transcript dated 07/21/09 of J.A. (1pg) Transcript dated 08/13/09 of M.S. (2pp) Inaudible Transcript of 09/01/09 of J.A. (1pg) Transcript of 09/11/09 of M.S. (1pg) Transcript of 09/11/09 of K.S. (2pp)	3/25
P-107	Letter dated 04/05/11 from Mr. Paul Ginsburg, Professional Audio Laboratories, to Debra Conrad, DAG regarding the source CDs submitted for digital enhancement. Letter dated 04/05/11 from Mr. Paul Ginsburg, Professional Audio Laboratories, to Debra Conrad, DAG, detailing the lab services (four sets of enhanced CDs, total 40) in the amount of $6,824.	3/25
P-108	Tape of 9/11/09 (K.S.)	3/25
P-109	Email dated 07/26/13 from Kay Ehrenkrantz, DAG, to Kathy Mendoza, DAG, Re:Call (2pp) Attaching progress notes for K.S. Dates of Service 05/22/07, 06/05/07, 06/25/07, 07/27/07	
P-110	Diagram of Normal disc and Herniated disc (Top views of Vertebrae)	
P-111	Table 45-4 Evolution of Electromyographic Changes in Radiculopathy	

P-111A	Letter dated 08/15/08 from John A. Calabria, Director of Certificate of Need and Healthcare Facility Licensure, to Magdy Elamir, M.D., regarding Corporate Name Change for Facility ID # 23164	
P-112	N.J.A.C. 8:43A(2014) Title 8. HEALTH Chapter 43A. Manual of Standards for Licensing of Ambulatory Care Facilities	
P-113	N.J.A.C. 13:35-6.17 (2014) Title 13. LAW AND PUBLIC SAFETY Chapter 35. Board of Medical Examiners Subchapter 6. General Rules of Practice	

For Respondent

R-1	Copy of K.S. transcripts, dated Jan 22 to June 12, 2009	May 28, 2014
R-2 id	Summaries of patient records prepared by Dr. Magdy Elamir, dated Feb. 20, 2014	
R-3	Curriculum Vitae of David H. Rosenbaum, M.D	March 24, 2014
R-4	Expert report of David H. Rosenbaum, MD dated March 4, 1014	May 28, 2014
R-5id	Advair Box	
R-6	Superbill for K.S. (front and reverse sides) dated May 17, 2007	May 14. 2014