

**END OF MONITOR REPORT
[REDACTED FOR PUBLIC REVIEW]**

Of

**THE FEDERALLY-APPOINTED MONITOR FOR THE
UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY**

To

**Hon. Christopher J. Christie
United States Attorney
For the District of New Jersey**

**Prepared Pursuant to the
Deferred Prosecution Agreement
Dated December 30, 2005**

**By:
Herbert J. Stern, Monitor**

January 3, 2008

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EXECUTIVE SUMMARY

The following report is made to the Honorable Christopher J. Christie, United States Attorney for the District of New Jersey in accordance with paragraphs 10 and 11c. of the Deferred Prosecution Agreement (the "DPA") entered into between the United States Attorney and the University of Medicine and Dentistry of New Jersey ("UMDNJ") and the Monitor Agreement entered into between UMDNJ and Herbert J. Stern¹.

This is the final report of the Monitor. The term of the Monitorship expired on December 31, 2007. It is the conclusion of both the Monitor and the United States Attorney, in consultation with the UMDNJ Board of Trustees, that UMDNJ is not an institution that requires continued federal oversight by a Monitor. Thus, the Monitorship shall not be extended by the United States Attorney who had it within his discretion under the DPA to extend the Monitorship for up to one additional year. The United States Attorney has stated that he shall seek dismissal of the criminal complaint that was filed against UMDNJ in December 2005.

We are gratified to report that UMDNJ is a much-changed institution. The changes at UMDNJ – though still in process in many respects – are noteworthy. From the top down, UMDNJ has undergone major personnel, policy, and cultural changes. Perhaps most importantly, we believe that UMDNJ can now conduct its business honestly and legally. However, it must be noted that UMDNJ will face significant challenges going forward. Indeed, we have transitioned forty-two (42) investigations of alleged misconduct to UMDNJ. UMDNJ now has a process for investigating such issues; it has a several departments (Legal

¹ For purposes of this report, the terms "Monitor", "Monitor's Office", "Monitor's staff", "we", and "our" shall include, in the appropriate context, the Monitor; the Monitor's counsel, Stern & Kilcullen; and/or Sobel & Co., the Monitor's forensic accountants and investigators.

Management, the Office of Ethics and Compliance, and Internal Audit) whose charge it is to identify, investigate, and address such indiscretions; and it has Board oversight of such issues in the form of the Audit Committee of the Board. UMDNJ assured us that it has the capability to perform such investigations in a thorough and professional manner.

The Board of Trustees (the “Board”) – numbering six at the inception of the Monitorship – is now a robust 18 members strong. This membership includes a mix of experienced leaders from educational, medical, business, legal, and financial disciplines. The Governor, Speaker of the General Assembly, and the Senate President have taken care to appoint strong members to the Board. The historical use of the UMDNJ Board as a prominent political patronage position has subsided. The Board makes use of its members’ expertise and oversees operations with a new and evolving Committee structure. At the conclusion of this report we recommend an additional institutional change which we believe will further these already substantive practices.

The administrative leadership has undergone a significant overhaul as well. The new President of UMDNJ is a strong, determined leader committed to continue the changes that have begun in the past two years. Many other notable changes in the administrative leadership of UMDNJ have occurred in the past two years including the appointment of a General Counsel and a new head of Information Systems & Technology. The institution’s Compliance, Internal Audit, Human Resources, and Finance functions have had numerous personnel changes. Specifically, the Internal Audit and Compliance offices were expanded greatly.

There are steps that need to be taken in the future to ensure these positive strides will endure. Primarily, UMDNJ must conduct a nation-wide search for a new Compliance leader

and must continue to implement reforms in the purchasing/materials management area. Reforms also must continue to be implemented in the Compliance area. The Board must have oversight over all aspects of Compliance including ethics and investigations. With the volume of on-going investigations being turned over to UMDNJ from the Monitor, there is a need for UMDNJ to increase its capacity and its capabilities to conduct investigations.

We will reiterate, one last time, something that we have stated in previous reports - it should be clear to the thousands of hard working employees of UMDNJ, to the thousands of dedicated health professionals who serve our most vulnerable populations, and to the hundreds of students of UMDNJ, that they are working and learning in an exceptional institution. Our findings over the past two years speak to the moral, ethical, and leadership short-comings of a very few at UMDNJ. Unfortunately, those about whom we were forced to report due to various lapses in judgment often were in decision-making positions.

While attention was appropriately paid to those few individuals who exhibited unethical and even fraudulent behavior, our continuous interaction with the larger administration and staff of UMDNJ leads us to conclude that the institution as a whole is genuinely committed to a principled course and are deserving of the public's trust and financial support. For every self-serving individual that UMDNJ has had the misfortune to employ, there are hundreds of selfless professionals, physicians, nurses, and professors that UMDNJ should consider itself fortunate to employ. The institution has been making strides in restoring itself to the standing which the New Jersey community expects; and we believe it has reemerged from its past tumult better for having been excised of those who have done it harm.

The report includes a comprehensive review of the status of our investigations conducted and recommendations made pursuant to the DPA throughout the Monitorship. It details the events of the two-year Monitorship (December 30, 2005 through December 31, 2007). Finally, it details the final recommendations of the Monitorship.

I. THE INVESTIGATIVE PROCESS

The Monitorship began on December 30, 2005 with the execution of the Deferred Prosecution Agreement. Since that day, representatives of the Monitor have:

- conducted over 1000 investigative interviews;
- made over 60 document requests;
- responded to over 300 hotline leads;
- opened up over 65 individual investigative files;
- reviewed 5 years worth of no-bid contracts and blanket waivers;
- analyzed 5 years worth of purchase orders;
- reviewed 364 new bid waiver requests;
- reviewed reams of documents; and
- made 10 reports to the United States Attorney (including this report).

This work, as detailed in our previous reports, has led to the end of systems and lax policies that caused us to uncover over \$400 million of fraudulent, wasteful, and/or abusive practices. The institution has been purged of the unethical (at best) behavior of two members of the Board of Trustees (Donald Bradley and Dr. Fred Sterritt), a Senior Vice President (Robert Saporito), a Dean (Dr. R. Michael Gallagher), a Senior Associate Dean (Warren Wallace), and two Associate Deans (Paul Mehne and Dr. Deborah Johnson). The abhorrent practices of others who have recently left UMDNJ was brought to light, including the political patronage grading system established by former President John Petillo and the no-work position created for State Senator Wayne Bryant.

From the first day, we have used the DPA and the Monitor Agreement as a strict guide in determining the course and scope of our work. The DPA and Monitor's Agreement

sets forth numerous duties and obligations for the Monitor. All duties and obligations, and our efforts to carry out such duties and obligations are detailed below.

Duty & Obligation within the DPA

- Review and evaluate **Medicare, Medicaid, and other health care benefit program cost reporting and billing** (DPA, paragraph 10c).
- **Determine the amount of restitution** to be paid by UMDNJ to the state and federal governments after conducting a thorough investigation (DPA, paragraph 18).

Monitor's Actions

- January, 2006 – July, 2006 – Review of all cost report activity from 2001-2005
- July 19, 2006 – Findings:
 - 2001-2005 Cost report errors quantified at **\$35.5 million**
 - Pre-2001 cost report errors estimated at **\$49 million**
 - Impact on State Charity Care payments to UMDNJ as a result of cost report errors quantified at **\$11.7 million**
 - Impact on state appropriations to UMDNJ as a result of cost report errors quantified at **\$51 million**
 - Direct and Indirect Medical Education calculation errors estimated at **\$1 million**
 - Other cost report errors quantified at **\$155,000**

Duty & Obligation within the DPA

- Review and evaluate **conflicts of interest, actual or potential, of trustees, officers, employees, and agents of UMDNJ** (DPA, paragraph 10i).
- **Insure compliance with Executive Order 65** which prohibits trustees and university presidents of New Jersey state colleges and universities from doing business with their respective schools (DPA, paragraph 10i).
- **Report to the Office of the United States Attorney for the District of New Jersey (the "Office") and the Governor concerning conflicts of interest** (DPA, paragraph 10i).

Monitor's Actions

- March 30, 2006 Findings –
 - **SVP Dr. Robert Saporito** violated UMDNJ policy. Saporito resigns.
 - **Government Affairs Department** under the direction of Christy Davis-Jackson made illegal political contributions.
- April 24, 2006 Findings:
 - **Trustee Donald Bradley** inappropriately gifted public funds to acquaintances; demanded that UMDNJ support his political position; and inappropriately obtained several patronage positions at UMDNJ for supporters. Bradley is not reappointed to the Board.
 - **Dean of the School of Osteopathic Medicine ("SOM"), Dr. R. Michael Gallagher** exerted influence inappropriately over SOM Financial officers; ordering them to doctor financial statements to ensure that he would receive \$15,000 annually. He is also found to have taken advantage of lax oversight and financial controls to expend large sums on travel and entertainment expenses, to abuse UMDNJ driver and auto policy privileges, and to hire personal friends. Gallagher is terminated.
- June 2, 2006 Findings:
 - Senior Associate Dean for Academic & Student Affairs at SOM **Warren Wallace** engaged in unethical behavior including inappropriate use of UMDNJ time and resources to engage in political activities as a member of the Gloucester County Freeholder Board and as Chairperson of the Delaware River & Bay Authority ("DRBA"); Manipulation of the petty cash system by requiring direct reports (administrative assistants) to submit his expenses for petty cash reimbursement; participation in efforts to obtain no-bid cafeteria & catering services for a friend/neighbor; and inappropriate actions in relation to obtaining admission to SOM for a close relative. Wallace is terminated.

- July 20, 2006 Findings:
 - **Trustee Dr. Fred Sterritt** exerted undue influence to obtain employment for a relative in violation of State ethics rules and statutes. Sterritt resigns.
- September 15, 2006 Findings:
 - **State Senator Wayne Bryant** helped create a no-work position at UMDNJ for himself for which he was paid \$35,000 per year; and in which he lobbied himself as the head of the Senate Budget and Appropriations Committee on behalf of SOM.
- June 8, 2007 Findings:
 - **Dr. Deborah Johnson** inappropriately signed the charts and charge tickets of other doctors.
- September 21, 2007 Findings:
 - **Dean Paul Mehne** inappropriately handled student grading and testing.
- The Monitor is transferring 42 open investigative files to the UMDNJ Office of Ethics and Compliance.

Duty & Obligation within the DPA

- Review and evaluate **the contracts awarded or otherwise entered into without a bidding process** (DPA, paragraph 10e).
- Conduct a **review of all no-bid contracts before they are awarded by UMDNJ** (DPA, paragraph 10e).

Monitor's Actions

- January – July 2006 – Review of all no-bid contract, blanket waiver, and purchase order activity from 2001-2005
- Review all request for waiver from the public bidding process (no-bid contract requests) –total 364
- Participated in UMDNJ working group revising all policies with respect to the purchasing, materials management, and contract oversight process.
- July 19, 2006 Findings:
 - **\$22,607,834** in unauthorized or inappropriate spending for the period from 2002 to 2006

- **\$91,400,000** per year in blanket waiver funds that have virtually no oversight
- overpayments of **\$88,310,929** without approved purchase orders
- July 19, 2006 Recommendations:
 - Require explicit Board approval of blanket waivers to improve vendor exposure control
 - Lower the threshold of UMDNJ Presidential approval of bid waivers and require additional reporting to the Board of individual bid waivers to improve exposure control
 - Additional Reports to Board for Blanket Waivers and Individual Bid Waivers
 - Requests for POs and RFWs must be approved by the manager of the requesting department.
 - A clause should be included in the vendor's contract that if services are performed outside of the scope of the agreed upon contract, the vendor will not be reimbursed for the unauthorized services.
 - The Materials Management Department must decline to generate POs and RFWs for requesting departments that allow work to start prior to approval.
 - The manager of the requesting department must be advised not to order services without the proper approval. Department heads should be held accountable for unauthorized purchases.
 - Policy updates

Duty & Obligation within the DPA

- Review and evaluate **corporate structure and governance** (DPA, paragraph 10a).
- Review and evaluate the effectiveness of **compliance functions and operations** at UMDNJ (DPA, paragraph 10b).
- Review and evaluate the effectiveness of **internal audit functions and operations** at UMDNJ (DPA, paragraph 10b).
- Make recommendations to the Board of Trustees in regard to the **hiring and firing of senior management and finance, legal and compliance personnel** (DPA, paragraph 11g).

Monitor's Actions

- February 10, 2006 Recommendation to begin search for a permanent President (reiterated June 15, 2006)
- March 20, 2006 Recommendations:
 - Creation of Chief Compliance Officer
 - Creation of Corporate Compliance Office
 - Bifurcate Compliance and Internal Audit
 - Establish Independent Audit Committee of the Board
 - Dedicate Appropriate Financial Resources
- July 24, 2006; October 24, 2006 - Attended meetings with Middle States accreditation body

Duty & Obligation within the DPA

- **Ensure UMDNJ's compliance with applicable federal and state laws (DPA, paragraph 11b).**

Monitor's Actions

- November 10, 2006 Findings:
 - UMDNJ paid cardiologists illegal payments of **\$5.7 million** for referrals in violation of federal Stark and Anti-Kickback laws.
 - This illegal scheme could result in nearly **\$80 million** in fines and penalties under the Stark and Anti-Kickback laws.
- January 15, 2007 Findings:
 - UMDNJ failed to obtain and maintain proper licensure for air ambulance (trauma helicopter) services in accordance with federal law and regulation.

Duty & Obligation within the DPA

- Review and evaluate **salaries, bonuses, and other compensation and perquisites** of UMDNJ senior management (DPA, paragraph 10h).
- **Review employment practices** (DPA, paragraph 11g).

Monitor's Actions

- Participated in Board Compensation Committee meetings with outside consultant
- January 2006 – review and revised Separation Agreement of outgoing President Petillo
- January 2006 – investigation of the executive auto program. Program suspended.
- March 20, 2006 Findings –
 - Political influence in the HR function is pervasive and adversely affecting UMDNJ
 - President Petillo went so far as to keep a rating system for employment referrals that came in to his office. Those coming from more influential politicians received a higher rating.

Duty & Obligation within the DPA

- Recommend one or more candidates to the Board of Trustees for the position of **Chief Compliance Officer** (DPA, paragraph 13b).

Monitor's Actions

- February 7, 2006 - Hired Search Firm
- Reviewed credentials of over 200 compliance professionals; made recommendations
- August 2006 – Chief Compliance Officer hired.
- Oversaw joint investigations with the Office of Ethics and Compliance and noted numerous deficiencies in the Office of Ethics and Compliance and with its investigative procedures.
- December 31, 2007 - Made recommendation to conduct nation-wide search for Chief Ethics and Compliance Officer replacement

Duty & Obligation within the DPA

- Review and evaluate the effectiveness of **legal functions and operations** at UMDNJ (DPA, paragraph 10b).
- Review and prior **approval for the engagement of all outside counsel** for UMDNJ (DPA, paragraph 11e).
- Recommend one or more candidates to the Board of Trustees for the position of **General Counsel** (DPA, paragraph 13a).

Monitor's Actions

- February 27, 2006 - Hired Search Firm
- Reviewed credentials of over 70 legal professionals; made 7 recommendations for the position of General Counsel
- May 21, 2007 – New General Counsel begins employment
- November 10, 2006 Recommendations:
 - Redistribution of the DPA to UMDNJ staff
 - Distribution of the DPA to all outside counsel
 - Include as part of all retainers with outside counsel, the obligations of paragraph 9 of the DPA

- Clarification that paragraph 11e of the DPA required the Monitor to approve counsel on a case-by-case basis
- Crafting of policy with new settlement approval limits and Board of Trustees settlement approval process
- Crafting of new policy concerning settlement authority
- Reviewed all contracts for outside counsel presented by UMDNJ.

Duty & Obligation within the DPA

- Review and evaluate the effectiveness of **finance functions and operations** at UMDNJ. DPA, paragraph 10b.

Monitor's Actions

- January 2006 – Handled federal funding crisis relating to cost report.
- January - October 2006 - Involved in monitoring and assisting with completion of audit work plan to finalize FY '05 Audited Financial Statements
- January 2006 – investigated claims that \$36.8 million in state funding was unaccounted for.
- February 7, 2006 Recommendation that UMDNJ immediately declare that UPA's Financial Statement was material to its own and thus consolidated it into UMDNJ's FY '05 audit
- Participated in and assisted with completion of FY 2006 and FY 2007 Audited Financial Statements.
- Participated in Internal Control Process Committee meetings.

Duty & Obligation within the DPA

- **Monitor the information received by the confidential hotline** and e-mail address (DPA, paragraph 11f).

Monitor's Actions

- January 5, 2006 – established a telephone and electronic mail hotline.
- Received and responded to over 300 telephone and e-mail communications.

Duty & Obligation within the DPA

- Review and evaluate **document retention and destruction** policy, including electronic data and electronic mail (DPA, paragraph 10f).

Monitor's Actions

- February 2006 – site assessment of all server and email systems conducted
- Compliance Office needs to update document retention and destruction policies

Duty & Obligation within the DPA

- Review and evaluate **the relationship between UMDNJ and the University Physicians Associates (“UPA”)** (DPA, paragraph 10j).

Monitor's Actions

- Mediated and assisted in negotiations between UMDNJ and UPA to reform the relationship between the two entities
- Oversaw outline of verbal resolution to both parties' concerns. Written resolution still required.

Duty & Obligation within the DPA

- **Monitor UMDNJ's compliance with the DPA.** DPA, paragraph 11a.

Monitor's Actions

- The Monitor has made recommendations to the Board and Central Administration throughout the Monitorship relating to its compliance with the DPA.

Duty & Obligation within the DPA

- Review and evaluate the **development of effective training programs** in the areas of financial management and controls; Medicare, Medicaid and other health care benefit program cost reporting and billing; security; document retention; and corporate governance (DPA, paragraph 10d).
- Determine which UMDNJ officers and employees shall be required to attend such training and the frequency of such programs (DPA, paragraph 16).

Monitor's Actions

- The Monitor has met with the Chief Compliance and Ethics Officer and has discussed the need for development of effective training and compliance programs for UMDNJ staff.
- The institution must continue its efforts in this regard.
- The Monitor has recommended numerous times that the Office of Ethics and Compliance must make significant outreach efforts to the employees of UMDNJ to engender confidence in the Office of Ethics and Compliance.

Duty & Obligation within the DPA

- Review and evaluate the effectiveness of **security functions and operations** at UMDNJ (DPA, paragraph 10b).
- Review and evaluate all **security programs and policies** (DPA, paragraph 10g).

Monitor's Actions

- The Monitor has met with the Chief Compliance and Ethics Officer and has discussed the need for the review of security functions at UMDNJ.

Certain issues detailed in the chart above are described in more detail below.

II. LAPSES IN THE ETHICS AND COMPLIANCE OFFICE

The one negative parting comment we have is that the Office of Ethics and Compliance (the “Compliance Office”) requires significant improvement. When the Monitorship began, there was no office of Ethics and Compliance. Compliance was a fractured function that existed within Legal Management but had been decimated by the events leading up to the Monitorship. In early 2006, we immediately undertook a major review of the Compliance function and made recommendations. Our review led to the creation of a large, independent Compliance Office with a direct relationship to a newly created independent Audit Committee of the Board (also a Monitor’s recommendation).

We have not been satisfied by the progress being made to independently investigate claims being brought to the Compliance Office’s attention. Our investigators have worked side-by-side with the Compliance Office and consider the Compliance Office’s work deficient.

Certain key reforms would resolve most of these issues and eliminate the institution’s vulnerability. First, among these reforms would be to hire an experienced, strong leader as the new Chief Ethics and Compliance Officer. Thus, we recommend that a nation-wide search for this position begin immediately; and that the Board authorize a competitive salary for this sensitive position. Second, we recommend that the institution commit the resources necessary to hire experienced investigators and to conduct thorough investigations of issues that come to the Compliance Office. Finally, the Board should receive periodic reports concerning investigations conducted by Ethics and Compliance. We recommend that the Audit Committee, a member of the Board, an ad hoc committee of the Board, or a subset of

the Audit Committee be charged with oversight of the investigative side of the Compliance Office. Currently, the Board does not receive any report from the Compliance Office concerning investigations. The Audit Committee only receives reports of audits conducted by the Compliance Office.

UMDNJ has undertaken steps to rectify these concerns. They have put an experienced investigator in place to oversee the Compliance Office's investigation team. James Rowan, a current UMDNJ employee, who was integral in assisting the Monitor design the Compliance Office in 2006, and who has extensive experience in investigative matters, is now supervising Compliance investigations. We believe that this supervision along with Board oversight of the investigative process will provide sufficient resources and expertise to address any shortcomings until a new Chief Ethics and Compliance Officer is hired.

III. INVESTIGATION OF DR. ROBERT MONTGOMERY LICENSURE ISSUES

Allegations were received by UMDNJ and the Monitor that Dr. Richard Montgomery ("Montgomery") a professor at New Jersey Dental School ("NJDS") failed to renew his license to practice medicine, that he practiced dentistry without a license, that he wrote prescriptions without a license, and that he abused the attendance policy.

Our investigation concluded that Montgomery abused the attendance policy for many years; that he never renewed his license to practice dentistry with the State Board when it expired in October, 2005; and he has been practicing dentistry illegally in UMDNJ clinics, including writing prescriptions.

The investigation began when Legal Management informed Compliance of Montgomery's abuse of the leave policy, his failure to renew his license and offered its

concerns about his continued employment. The Compliance office and our investigators conducted numerous interviews.

The investigation revealed that Montgomery had taken 548 sick days since 2001 and calculated that the average was 84 days per year. Montgomery did not provide medical documentation from a physician excusing these absences, which is required by UMDNJ policy.

Richard L. Montgomery's dental license expired effective October 31, 2005, and it has not been renewed. All dental licenses in New Jersey are bi-annual licenses and all have the same expiration date of October 31. The New Jersey Board of Dentistry Policy offers a thirty day grace period for renewal. The New Jersey Board of Dentistry (Board), pursuant to statute, prepares and sends a mailing to all licensees reminding them that their license will expire and providing them a mechanism for renewal. The Board also advertises in newspapers in New Jersey pursuant to statute.

UMDNJ Policy provides that faculty and staff with patient care responsibilities are required to renew registration and certification at intervals stipulated by the licensure, registrations and certification board or agency. Moreover, failure to renew said credentials will result in the loss of clinical privileges.

Montgomery's faculty appointment at NJDS required him to teach pre-doctoral dental students at NJDS clinics and to teach elective courses. Montgomery also provided dental care at NJDS clinics. Montgomery did not have an extramural dental practice and he did not participate in the Faculty Practice Plan. During the time that Montgomery was unlicensed; he taught and practiced at the Emergency and Urgent Care Clinic (EUC) of NJDS.

Pursuant to the UMDNJ Policy above, Montgomery's lapse in licensure on or about October 31, 2005 should have resulted in the immediate loss of clinical privileges. Montgomery saw approximately 1,500 patients at NJDS clinics during the time he was unlicensed as a dentist. The New Jersey Board of Dentistry has the authority to levy fines and penalties against Montgomery for his actions. If the Board of Dentistry determined that an "offense" was each act of dentistry performed by Montgomery during the seventeen months he was unlicensed, the fines could be in excess of \$3 million. During this time, as part of Montgomery's duties at the EUC Clinic, he wrote prescriptions for patients.

UMDNJ is moving to terminate Montgomery "for cause" after it was discovered that he had been practicing at NJDS clinics without a valid dental license for nearly 17 months. Montgomery taught at NJDS in violation of N.J.S.A. 45:6-16.4 which states "no person shall teach the science of dentistry in any of its branches in this State unless he shall hold a regularly issued license to practice dentistry in this State or a limited license under this act, and any violation of this provision shall be deemed to be an illegal practice of dentistry punishable as provided in the chapter to which this act is a supplement."

Montgomery was contacted to request an interview. Montgomery only agreed to be interviewed concerning sliding fee scales at NJDS but refused to discuss any and all other topics, including licensure. No interview was conducted.

IV. RADIOLOGY INVESTIGATION

The following information is a summary of findings related to the investigation of Department of Radiology Teleradiology Program at New Jersey Medical School (“NJMS”) and Stephen Baker, MD (“Baker”), Professor and Chief of Radiology NJMS.

During this investigation, it was learned the two physicians, Yaron Lebovitz, MD and Charles Levine, MD, worked as full time faculty members in the Department of Radiology at NJMS despite the fact that most of their services were provided from Israel, where they are full-time residents. To the extent that services were provided, they were provided via teleradiology technology between NJMS and Israel. This arrangement was designed to provide services during the overnight hours when there is no radiology attending physician on site at University Hospital. Due to the time difference, Levine and Lebovitz can review the radiology studies in real time and consult via telephone with the resident on call. However, as outlined below, there were numerous problems associated with this system.

Levine was initially hired to work on campus at NJMS and was later allowed to work from Israel via teleradiology. Lebovitz was hired to specifically work in Israel and provide the professional component of radiology studies via teleradiology. Lebovitz did not work on campus at NJMS prior to being hired.

As a result of a misinterpretation of the applicable Medicare and Medicaid regulation by Baker, these two physicians were allowed to review radiology studies, render a formal reading and produce a bill through University Physician Associates (UPA) for those services. Medicare and Medicaid do not allow for the payment of services rendered outside the United States. UPA was forced to reimburse Medicare and Medicaid for services rendered by these physicians while they were in Israel.

A legal opinion on this subject was provided to UPA by counsel on July 26, 2002. In short, the opinion stated that telemedicine or teleradiology was acceptable under Medicare because radiology did not require a face to face contact or hands on service with the patient. However, the opinion clearly stated Medicare does not cover services provided outside the United States.

According to UPA, Baker was advised of this opinion; and there were subsequent meetings with Baker. Baker obtained his own independent opinion which was later found to be legally flawed.

As a result of the opinion of counsel in this matter, UMDNJ determined that Levine and Lebovitz would no longer dictate formal reports when they review a study in Israel, and would no longer be able to produce a bill for services rendered in Israel. They can both continue to support residents during the overnight hours as part of their "teaching" requirements as NJMS faculty members by discussing radiology studies performed in Newark, and would be required to return to NJMS to review radiology studies on campus in New Jersey one or two weeks per month. When in New Jersey they would be required to produce dictated reports and would be able to bill for the professional component of the radiology studies reviewed.

UMDNJ has been paying for travel expenses between NJMS and Israel for these physicians, and expenses associated with a work location in Israel. These payments have been made by Baker through Baker's "Radiology Chairman Discretionary Account" through University Physician Associates (UPA) which is funded by the Dean's tax on clinical funds.

Lebovitz has been reimbursed \$12,571.31 for his travel to educational seminars and travel associated with his agreement to return to NJMS monthly since his employment began. Lebovitz resigned his position at NJMS effective July 1, 2007.

Charles Levine, MD has received a total of \$ 71,642.15 in reimbursement since December 2001. This is reimbursement for travel expenses, the expenses associated with maintaining the equipment in Israel, the cost of telephone service in Israel, and the cost of internet services in Israel.

Levine and Lebovitz denied that they had any employment outside their UMDNJ employment. Levine is named in a contract with Lakes Radiology, a radiology service located in New York, as the sole radiologist to review their studies under the contract. This contract between Lakes and UMDNJ Department of Radiology is an unusual contract in that Levine is specifically named in it as the provider of services and payment was made directly to the Department of Radiology and not billed through UPA as provided for in the Affiliation Agreement with UMDNJ. It was explained by Baker that the owner of Lakes Radiology is an acquaintance of Levine and also resides in Israel.

Initially we were advised Levine did not benefit from this contract personally; however, we did discover he received \$29,585 in payments through Baker's Discretionary UPA account. The total billed to Lakes was \$68,150; however, records supporting payment of these amounts is sparse.

As a result of the investigation and options presented by Compliance staff, Levine has agreed to change his status to from full-time to a part-time (.7 of a full work week) faculty appointment. He will continue to review studies in Israel during the overnight hours via teleradiology with residents without issuing a formal report. The formal interpretation

reports will be dictated by an attending physician in New Jersey and the bill will be generated at that time by the attending physician dictating the report. Levine will travel to New Jersey one week each month to work with students and perform radiology readings on site. When in New Jersey, he will dictate reports and generate billing for the studies he reads. He will pay his own expenses to travel between New Jersey and Israel. Van Camp stated a formal job description has been developed and Levine will be given a written contract outlining his responsibilities and salary.

The teleradiology program at NJMS remains a concern. Medicare rules are clear that services performed outside the US, except in certain emergent situations, are not reimbursable. Medicare rules state if a portion of a service is performed outside the US, payment may not be made for the service or a portion of the services that was provided by another provider or supplier outside the US.

Lebovitz and Levine did not maintain records of the studies they performed, and since they did not generate a narrative report of findings based upon their consultations during the overnight hours, it is difficult to track the radiology studies reviewed, and difficult to track the teaching consultations they performed.

There continues to remain an issue related to Medicare and Medicaid at UMDNJ. It has been confirmed the technical component associated with the radiology studies reviewed in Israel will need to be reimbursed for the same time period the professional component was reimbursed. UH, and Advanced Imaging, Bakers enterprise, will need to reimburse these amounts as they are both recipients of the technical fees.

In addition, Graduate Medical Education cost reports will need to be reviewed and adjusted for this same time period because the services of these two physicians provided via

teleradiology in Israel may not be used in the calculation of “physician time spent supervising and teaching”. The physicians in Israel are not able to bill for the patient service due to the “outside the US” exclusion and it would only make sense they should not supervise from outside the country.

Although Baker, Curtis and Van Camp state it is appropriate to instruct, supervise and manage students via teleradiology, the physicians in Israel are not performing the direct supervision and instruction, and since the supervision and instruction being delivered has a genesis outside the US, it too should not be considered appropriate. The rules regarding telemedicine, and in this case teleradiology, are restricted to direct patient services in specific situations. There is no comment regarding the use of telemedicine technology as an instructional tool in the Medicare regulations.

The Accreditation Counsel for Graduate Education (ACGME) guidelines recognize the use of teleradiology and have added guidelines regarding the use of teleradiology that will go into effect on July 1, 2008. It will consider the use of teleradiology during the “on call” period for residents only after they have completed the first year of residency. ACGME also warns that supervising a resident via the use of telemedicine may have a risk associated with it in the event the connection is lost during the session, leaving the patient at risk.

Finally, UMDNJ has not accounted for the equipment and technology that was provided to Lebovitz in order to perform duties in Israel now that he is no longer employed.

V. UPA

Throughout the course of the Monitorship, we oversaw negotiations between UMDNJ and UPA. Recently, we managed to mediate terms of a resolution to the existing relationship on November 13, 2007. The two parties continue to finalize the terms and to work on

implementation. The resolution includes adding an end date to the contract and making all UPA doctors W-2 employees so that UMDNJ will now qualify for the academic medical center exception to the Stark law. Issues about their relationship still exist as new requirements effective December 4, 2007 to comply with Stark III have not been effectuated.

VI. DOCUMENT RETENTION POLICY

UMDNJ records retention/shredding policy. Since early in the Monitorship, shredding has been prohibited by US Attorney. In the Fall of 2006, comprehensive guidance was provided to OEC regarding the need to develop a comprehensive records retention policy incorporating State, Federal and contractual retention requirements and a procedure with checks and balances developed to assure that once shredding was authorized and initiated it would be done appropriately. In connection with the discussions regarding these issues, it was discovered that regulated medical waste and original medical records were placed in shredding bins in violation of OSHA and State law. It was recommended that disposition policies be review and comprehensive education be commenced regarding these issues. To our knowledge, despite prodding and support, nothing has been done. Note also that before Thanksgiving 2007, we were advised that the Federal government directed UMDNJ to shred records from an adolescent research study that had been performed without parental consent in violation of Federal law. The Monitor's office advised Willie Curtis of OEC to tell Dean Karen Putterman to put request for exemption in writing that we would transmit to US Attorney for approval but request has never been received for transmittal. We do not know what happened to documents at issue.

VII. PENDING INVESTIGATIONS AND ISSUES

The Monitor currently has approximately 42 open investigative files that are based on allegations of legal and ethical breaches or conflicts of interest. There are also numerous pending issues that require attention from the administration and Board. Again, we believe that the reforms being made to the Compliance function, including better supervision of the investigative team will allow UMDNJ to finalize these investigations.

The following list describes these open investigative files and outstanding issues.

[THE FOLLOWING INFORMATION WAS REDACTED FROM PUBLIC REVIEW]

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VIII. FINAL RECOMMENDATIONS

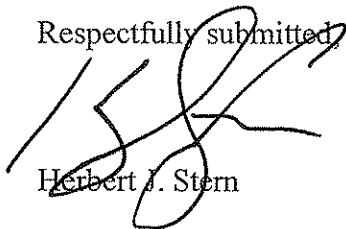
The Monitor makes the following two recommendations pursuant to paragraph 28 of the DPA:

- UMDNJ should immediately commence a search for a new Vice President of the Office of Ethics and Compliance. A long-term leadership void in this position will exacerbate any deficiencies that the Monitor has recognized in the existing investigative capabilities of that department.
- The Board of Trustees should consider creating a sub-committee of itself, perhaps called the “Trustee Committee” of the Board of Trustees, for the purpose of identifying desirable candidates for future board appointment by the Governor as seats become open, or are increased. It is likely that such a committee of the Board would be in an excellent position to identify persons not only of suitable stature, but

people vested in particular expertise currently needed by the Board. Of course, we recognize that the statutory scheme of New Jersey vests exclusive power in the Governor, Senate President, and Speaker of the General Assembly over such appointments. However, they must obtain candidates from someplace. It seems to us that the Board itself is a natural place to identify such prospects, particularly as self-sustaining Boards are very common in university and college settings. Although we recognize the Governor, Senate President and Speaker are free to do as they wish, we can think of no reason why they would wish to ignore recommendations from the Board. It is our view that the institutionalization of the Board itself as the primary origin for the consideration of new appointments would go very far in insulating UMDNJ from the kind of political interference which in the past has led to some of its greatest abuses.

This is the final report of the Monitor under the terms of the DPA dated December 30, 2005. The Monitor commends the Office in making reformation of this institution possible without its destruction. UMDNJ is a vital healthcare and educational facility in the State of New Jersey. Its loss would have been a serious loss for our entire State as it is the sole healthcare educational facility in New Jersey.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'H. Stern', written over the typed name.

Herbert J. Stern