

September 27, 2000

EA No. 00-204  
Docket No. 03033672

License No. 29-30177-01

Kevin Mitchell  
Vice President, Human Resources  
Sonic Medical Resources, Inc.  
201 Moreland Road, Suite 1  
Hauppauge, NY 11788

SUBJECT: U.S. DEPARTMENT OF LABOR (DOL), OFFICE OF ADMINISTRATIVE LAW  
JUDGES (ALJ), RECOMMENDED DECISION AND ORDER  
(CASE NO: 97-ERA-00038)

Dear Mr. Mitchell:

On July 10, 1998, a U.S. Department of Labor (DOL) Administrative Law Judge (ALJ) issued a Recommended Decision and Order (97-ERA-00038) which found that you had taken adverse action against a former employee of your facility in Toms River, NJ (licensed as X-Ray Associates, P.A.) by terminating her employment as a result of her having engaged in a protected activity. Such an adverse action is potentially discrimination in violation of Section 210 of the Energy Reorganization Act and 10 CFR 30.7. Although a prior investigation by the NRC Office of Investigation did not substantiate that discrimination occurred in this case, the NRC was concerned that the circumstances that prompted the issuance of the ALJ decision could have a chilling effect on employees in that it might deter them from raising safety concerns they might have. Therefore, the NRC requested, in an October 5, 1998, letter, that you provide a response which addressed the NRC concerns. Your response was provided on January 12, 1999.

In the October 5, 1998, letter, we also informed you that, since the ALJ's Recommended Decision and Order was under review by the DOL Administrative Review Board (ARB), the NRC would not make a final enforcement determination on this matter until the ARB Final Decision was issued. In a February 1, 1999, letter we noted that the NRC would review the ARB's final decision, when issued, and based on that review, may take enforcement action on this matter. NRC enforcement action may include imposition of monetary civil penalties or other appropriate action. You may wish to review the NRC's Enforcement Policy which is found on the Internet at <http://www.nrc.gov/OE/>.

We continue to consider it appropriate to defer NRC action on this matter until the issuance of the DOL ARB Final Decision. However, as noted by Ms. Pamela J. Henderson of the Region I office in a telephone conversation with you on September 1, 2000, the NRC is subject to the general Statute of Limitations, 28 U.S.C. Section 2462, which provides that any action for enforcement of a civil penalty must be commenced within five years of when the claim first accrued. Since the apparent adverse action began on September 26, 1996, the Statute of

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Limitations will expire on September 26, 2001. We are uncertain as to when the ARB will make a final determination in this matter and, therefore, whether that determination will allow for the timely consideration of NRC enforcement action.

In order for the NRC to continue to defer its decision regarding the need for enforcement action in this matter, the NRC requests that Sonic Medical Resources, Inc. (formerly Ocean Imaging Associates) consider waiving the five-year Statute of Limitations for the issues raised in DOL case No. 97-RA-00038. Should you agree to waive the five-year Statute of Limitations, your right to appeal any imposition of civil penalties or other enforcement action would be preserved. In addition, your agreement to waive the five-year Statute of Limitations does not constitute or infer in any way an admission of discrimination by Sonic Medical Resources, Inc., X-Ray Associates, P.A. or their employees in this matter.

The NRC requests that Sonic Healthcare Resources, Inc. (formerly Ocean Imaging Associates) and X-Ray Associates, PA consider this request, and have the President or legal counsel with the requisite authority inform my office in writing of your decision, with a copy to Mr. Hubert J. Miller in our Region I Office, within 14 days of receipt of this letter. Should you decide that it is not in your best interests to waive the five-year Statute of Limitations, the NRC will consider whether to initiate enforcement action concerning this matter, based on information available to us at that time.

Should you have any questions regarding this request, please contact J. Bradley Fewell, the Region I Counsel, at (610) 337-5301, or Sally Merchant, Senior Enforcement Specialist, of my staff at (301) 415-2747.

Sincerely,

/RA/

R. W. Borchardt, Director  
Office of Enforcement

cc:  
Om Soni, President  
David Loughton, Senior Vice President  
S. Lee Cohen, Esq.

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