



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

September 23, 2002

IA-02-017

Perry M. Beale
[Address Deleted Pursuant
to 10 CFR 2.790].

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)**

Dear Mr. Beale:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Order) is being issued as a result of the NRC's determination that your activities violated 10 CFR 30.10, Deliberate Misconduct. Public health and safety require that the provisions of this Order become effective immediately.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order should be addressed to Mr. Frank Congel, Director, Office of Enforcement, at 301-415-2741.

Sincerely,

/RA/

Carl J. Paperiello
Deputy Executive Director for Materials,
Research and State Programs

Enclosure: As stated

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DATE	9/13/2002	9/19/2002		

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

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IA-02-017

Perry M. Beale

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Perry M. Beale, a consultant in the field of health physics, provided consulting services to City Hospital in Martinsburg, West Virginia, Warren Memorial Hospital in Front Royal, Virginia, Culpeper Memorial Hospital in Culpeper, Virginia, Fauquier Hospital in Warrenton, Virginia, and Prince William Hospital in Manassas, Virginia (Licensee or Licensees). City Hospital holds License No. 47-15501-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 35, last amended on June 25, 2001. Warren Memorial Hospital holds License No. 45-19566-01 issued by the NRC pursuant to 10 CFR Part 35 on January 12, 1981, and last amended on October 12, 2001. Culpeper Memorial Hospital holds License No. 45-23040-01 issued by the NRC pursuant to 10 CFR Part 35 on September 19, 1984, and last amended on June 12, 2002. Fauquier Hospital holds License No. 45-19484-01 issued by the NRC pursuant to 10 CFR Part 35 on November 20, 1980 and last amended on August 2, 2001. Prince William Hospital holds License No. 45-19485-01 issued by the NRC pursuant to 10 CFR Part 35 on October 27, 1980, and last amended on October 12, 2001. The licenses for each Licensee authorize the medical use of byproduct material in accordance with the conditions specified therein.

In March 2001, NRC inspections of licensed activities were conducted at City Hospital and Warren Memorial Hospital, and an in-office review was conducted of the Culpeper Memorial Hospital license file. Based on the results of the inspections and in-office review, the NRC's Office of Investigations (OI) initiated an investigation in April 2001, to review the circumstances surrounding the potential falsification of xenon gas clearance rate calculations, and dose calibrator accuracy evaluations. Xenon gas clearance rate calculations, required by 10 CFR 35.205(c), determine the amount of time that would be needed to clear accidentally spilled radioactive xenon gas from rooms where it was to be used. Dose calibrator accuracy tests, required by 10 CFR 35.50(b)(2), compare a known radiation activity to that measured by the calibrator. Mr. Beale had provided consulting services to each of the licensed facilities with respect to the foregoing calculations and evaluations. On March 27, 2002, OI completed its review of the matter. A predecisional enforcement conference was held between the NRC Staff and Mr. Beale on July 15, 2002, to discuss these matters.

Mr. Beale admitted that he had knowingly prepared and submitted inaccurate xenon gas clearance rate calculations to City Hospital, Warren Memorial Hospital and Culpeper Memorial Hospital, and had knowingly prepared and submitted inaccurate dose calibrator accuracy evaluations to Culpeper Memorial Hospital. Specifically, Mr. Beale submitted numerous reports

to City Hospital,¹ to Warren Memorial Hospital,² and to Culpeper Memorial Hospital,³ stating that he had calculated xenon gas clearance rates according to the procedure specified in Appendix O to NRC Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs." The reports stated that the rooms in question at the three hospitals all had the same volume of 0.697×10^7 ml, although in fact they each had different volumes. The reports further stated that all rooms at the three hospitals had a total room air exhaust rate of 1.5×10^7 ml per minute, although Mr. Beale did not measure or calculate that value. Although the values purportedly used to make the calculations were the same, reported calculated xenon gas clearance rates varied. Mr. Beale told OI investigators and NRC Staff, that in fact he had measured airflows into and out of the rooms at each of the three hospitals to determine that the rooms were under negative pressure, performed no calculations, and then "guessed" the clearance rates. In addition, Mr. Beale admitted that on a day after May 6, 1999, he had generated three dose calibrator accuracy evaluation reports for Culpeper Memorial Hospital dated May 16, 1998, December 10, 1998, and May 6, 1999. Mr. Beale stated that he had used published decay tables to determine the remaining activity in a calibration source, but the values he reported were markedly inconsistent with the values which would have been determined using published decay tables.⁴ Mr. Beale submitted a report to Culpeper Memorial Hospital of a dose calibrator accuracy evaluation, which he purportedly performed on

¹ Dated February 6, 1998, August 7, 1998, February 5, 1999, August 2, 1999, February 4, 2000, August 24, 2000, and February 21, 2002.

² Dated January 8, 1999, July 14, 1999, January 7, 2000, January 11, 2000, July 7, 2000, and July 12, 2000.

³ Dated May 14, 1998, November 12, 1998, May 3, 1999, November 19, 1999, and April 22, 2000.

⁴ For May 6, 1999, 1.58 millicuries versus 1.37 millicuries. For December 10, 1998, 2.65 millicuries versus 1.99 millicuries. For May 16, 1998, 1.1 millicuries versus 3.34 millicuries.

April 25, 1997, for a Cobalt-57 source, Serial No. 559186-9, which was certified as having been initially calibrated by the manufacturer on November 1, 1997. Mr. Beale could not explain these inaccuracies. Records of xenon clearance rate calculations and dose calibrator evaluations are required to be maintained by 10 CFR 35.205(d) and 10 CFR 35.50(e), respectively. These records are material to the NRC in that they are relied upon to demonstrate the Licensees' compliance with 10 CFR 35.205(c) and 10 CFR 35.50(b)(2), which require the performance of xenon clearance rate calculations and dose calibrator evaluations, respectively.

In addition, Mr. Beale admitted at the predecisional enforcement conference that inaccurate information regarding his educational background and professional qualifications had been provided to Culpeper Memorial Hospital. Specifically, Mr. Beale's resume indicated that he had received a Master of Science Degree in Radiologic Technology, Nuclear Medicine, Radiological Physics from the University of Virginia and that he had been certified by the American Board of Radiology (ABR) in Radiological Physics. Mr. Beale also acknowledged that a certificate purportedly issued by the ABR indicated that he was certified in Radiological Physics.

Mr. Beale stated at the predecisional enforcement conference that, in fact, he does not possess a Master Degree from the University of Virginia and has not received ABR certification. Based on a written request from Culpeper Memorial Hospital dated December 19, 1995, the NRC amended Culpeper Memorial Hospital's license to name Mr. Beale as alternate RSO by Amendment No. 10, dated December 22, 1995. The request from Culpeper Memorial Hospital included Mr. Beale's inaccurate resume. In addition, based on a written request from Culpeper Memorial Hospital dated July 23, 1996, the NRC amended the license to name Mr. Beale as RSO by Amendment No. 11, dated August 7, 1996. The request included Mr. Beale's inaccurate resume and a copy of the purported ABR certificate. The inaccurate resume information and purported ABR certificate were material to the NRC because they were relevant

to Mr. Beale's qualifications to be named an alternate RSO and an RSO on the Culpeper Hospital Memorial license.

After the predecisional enforcement conference, NRC staff conducted inspections from July 31 through August 2, 2002, at Fauquier Hospital, Culpeper Memorial Hospital and Prince William Hospital, hospitals which used the consulting services of Perry M. Beale. Mr. Beale contracted with the hospital to provide reviews of their radiation safety programs and to participate in Radiation Safety Committee activities. Mr. Beale also performed xenon clearance rate calculations, leak tests, dose calibrator tests (including decay correction calculations) for the hospitals, and undertook to have the licensees' survey instruments calibrated by a calibration vendor at the appropriate frequency. The inspections revealed that xenon clearance rate calculations prepared by Mr. Beale for the three hospitals were similar to those he had prepared for City Hospital and Warren Memorial Hospital and which had been examined during the OI investigation. Specifically, the input values for the calculations were the same, and the forms Mr. Beale provided to the three hospitals stated that his xenon gas clearance rate calculations were performed according to the procedure specified in Appendix O to NRC Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs." The clearance rates calculated by Mr. Beale, however, were different from those that would have been calculated if the formula specified by Regulatory Guide 10.8 had been used. Records of xenon clearance rate calculations are required to be maintained by 10 CFR 35.205(d), and are material to the NRC in that they are relied upon to demonstrate the Licensee's compliance with 10 CFR 35.205(c), which requires the performance of xenon clearance rate calculations.

Also, during the inspection at Prince William Hospital, a survey instrument that was used to perform activities required by regulation was observed to have an overdue calibration sticker. When questioned about this, the licensee representative presented a current calibration certificate which showed that the instrument had been calibrated within the past several months. As part of his consultant activities for the hospitals, Mr. Beale was to pick up their instruments prior to the calibration due date and send them to RSO, Inc. for calibration. After calibration, Mr. Beale was to return the instruments to the licensees with a current calibration certificate and calibration sticker. The calibration certificate which Prince William Hospital provided stated that RSO, Inc. had calibrated the instrument on May 7, 2002. The RSO, Inc. representative, whose name appeared on the certificate as the individual who had performed the calibration, advised NRC inspection staff that according to RSO, Inc. records, no instrument bearing the serial number referenced on the calibration certificate for Prince William Hospital (#119312) had been calibrated by RSO, Inc. for several years. The RSO, Inc. representative further advised that the RSO, Inc. order number referenced on the calibration certificate supplied by Prince William Hospital (#2118) was in fact for Culpeper Memorial Hospital. Comparison of the Prince William Hospital calibration certificate to the calibration certificates obtained from Culpeper Memorial Hospital and Fauquier Hospital demonstrates that the calibration data, order/tracking numbers, and probe serial numbers were identical for all three hospitals. Based on the above, the NRC concludes that Mr. Beale did not calibrate a radiation survey instrument for Prince William Hospital at the required frequency, and that Mr. Beale deliberately provided inaccurate information to Prince William Hospital to conceal his failure to calibrate the instrument. Licensees are required to note on the survey instrument the date of calibration and the apparent exposure rate from a dedicated check source, and to retain calibration records by 10 CFR 35.51(a)(3) and (d). These records are material to the NRC in that they are relied upon to demonstrate the Licensee's compliance with 10 CFR 35.51(a),

which requires calibration of survey instruments. Moreover, the calibration certificate which Mr. Beale supplied to Prince William Hospital certifies that the instrument had been calibrated on May 7, 2002, approximately one year after Mr. Beale's interview with NRC's OI. During that interview, the Commission's regulation requiring complete and accurate information and the deliberately inaccurate xenon clearance rate calculations and dose calibrator evaluations which Mr. Beale had submitted to City Hospital, Warren Memorial Hospital and Culpeper Memorial Hospital were discussed at length.

Based on the above, it appears that Perry M. Beale has engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) in that he caused City Hospital, Warren Memorial Hospital, Culpeper Memorial Hospital, Fauquier Hospital, and Prince William Hospital to be in violation of 10 CFR 35.205 and 10 CFR 30.9. It also appears that Mr. Beale engaged in deliberate misconduct in that he caused Culpeper Hospital to be in violation of 10 CFR 35.50 and 10 CFR 30.9, and caused Prince William Hospital to be in violation of 10 CFR 35.51 and 30.9. It further appears that Perry M. Beale has engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(2) by providing to Culpeper Memorial Hospital information regarding his educational and professional qualifications that he knew to be incomplete or inaccurate in some respect material to the NRC. The NRC must be able to rely on its Licensees and their employees, including consultants, to comply with NRC requirements, including the requirement to provide complete and accurate information in all material respects. Mr. Beale's deliberate misconduct, including falsification of records related to his qualifications to be named a Radiation Safety Officer (RSO) and to licensees' compliance with regulatory requirements, especially continued falsification of records after being interviewed by OI concerning his falsification of records, raises serious concerns regarding his trustworthiness and reliability, and call into question his willingness to comply with NRC requirements, including the requirement to

provide complete and accurate information to the NRC and to entities who perform NRC-licensed activities.

III

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Perry M. Beale were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Perry M. Beale be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Mr. Beale is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period, and provide documentation of his qualifications to fill that position. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Beale's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Perry M. Beale is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to,

those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Perry M. Beale is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. After completion of the term specified in Paragraph IV.1 above, Perry M. Beale shall, at least 20 days before resuming participation in NRC-licensed activities (as a Consultant to, Radiation Safety Officer for, or employee of, an NRC licensee, or in any other capacity), provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the names, addresses, and telephone numbers of the employers or entities for whom he is, or will be, involved in NRC-licensed activities. In the notification, Perry M. Beale shall include his qualifications to participate in NRC licensed activities (as appropriate), a statement of his commitment to compliance with regulatory requirements, and provide a basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above commitments upon demonstration by Perry M. Beale of good cause.

In accordance with 10 CFR 2.202, Perry M. Beale must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to request a hearing must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Perry M. Beale or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and Safeguards, at the same address, to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW, Suite 23T85, Atlanta, Georgia, 30303-8931, and to Perry M. Beale if the hearing request is by a person other than Mr. Beale. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that any request for hearing be transmitted to the Secretary for the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than Perry M. Beale requests a hearing, that person shall set forth with particularity the

manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).⁵

If a hearing is requested by Perry M. Beale or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Perry M. Beale may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a

⁵ The most recent version of Title 10 of the Code of Federal Regulations, published in January 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (d)(2), regarding the criteria for intervention and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "... such ruling body or officer shall, in ruling on— (1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest. (2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE NUCLEAR REGULATORY COMMISSION

 /RA/

Carl J. Paperiello
Deputy Executive Director for Materials,
Research and State Programs

Dated this 23rd day of September 2002