

EDO Principal Correspondence Control

FROM: DUE: 04/24/09 EDO CONTROL: G20090215  
DOC DT: 04/13/09  
FINAL REPLY:

Peter Crane  
Seattle, Washington

TO:

The Commission

FOR SIGNATURE OF : \*\* PRI \*\* CRC NO: 09-0152

Chairman Klein

DESC:

ROUTING:

Patients' Rights Advocate on the Advisory  
Committee on the Medical Use of Isotopes (ACMUI)  
(EDATS: SECY-2009-0184)

Borchardt  
Virgilio  
Mallett  
Ash  
Ordaz  
Cyr/Burns  
Boyce, OIS  
Cyr, OGC  
Rivera, OEDO

DATE: 04/15/09

ASSIGNED TO: CONTACT:  
FSME Miller

SPECIAL INSTRUCTIONS OR REMARKS:

Note: Portion of letter is being handled as a FOIA request.

# EDATS

Electronic Document and Action Tracking System

**EDATS Number:** SECY-2009-0184

**Source:** SECY

## General Information

**Assigned To:** FSME

**OEDO Due Date:** 4/24/2009 5:00 PM

**Other Assignees:**

**SECY Due Date:** 4/27/2009 5:00 PM

**Subject:** Patients' Rights Advocate on the Advisory Committee on the Medical Uses of Isotopes (ACMUI)

**Description:**

**CC Routing:** OIS; OGC

**ADAMS Accession Numbers - Incoming:** NONE

**Response/Package:** NONE

## Other Information

**Cross Reference Number:** G20090215, LTR-09-0152

**Staff Initiated:** NO

**Related Task:**

**Recurring Item:** NO

**File Routing:** EDATS

**Agency Lesson Learned:** NO

**Roadmap Item:** NO

## Process Information

**Action Type:** Letter

**Priority:** Medium

**Sensitivity:** None

**Signature Level:** Chairman Klein

**Urgency:** NO

**OEDO Concurrence:** YES

**OCM Concurrence:** NO

**OCA Concurrence:** NO

**Special Instructions:** Note: Portion of letter is being handled as a FOIA request.

## Document Information

**Originator Name:** Peter Crane

**Date of Incoming:** 4/13/2009

**Originating Organization:** Citizens

**Document Received by SECY Date:** 4/15/2009

**Addressee:** The Commission

**Date Response Requested by Originator:** NONE

**Incoming Task Received:** Letter



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April 13, 2009

Chairman Dale Klein and Commissioners  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Chairman Klein and Commissioners:

The puzzling question of how the NRC came to choose a senior Department of Energy official as the patients' rights advocate on the Advisory Committee on the Medical Uses of Isotopes (ACMUI) seems at last to have an answer: the NRC staff, when it sent his name to the Commission for approval, concealed the fact of his affiliation with DOE. It can hardly be claimed that Darrell Fisher's position at DOE was too unimportant a fact to be worth mentioning to the Commission, since the second paragraph of the press release announcing his appointment was devoted to his present and past work experience.<sup>1</sup> If a licensee kept back safety information of comparable significance from the NRC, it would face enforcement action for a material false statement.

The unavoidable inference is that the staff withheld the information because it knew what the effect of communicating it would be. Despite Mr. Fisher's excellent qualifications in the field of isotope production, his position and background made him an inappropriate choice to be patients' rights advocate, as the Commission would undoubtedly have recognized in an instant.

It may be recalled that in 2006, the staff asked the Commission (in SECY-06-0028) to allow it to make ACMUI appointments without Commission involvement. The Commissioners did not accept this proposal. Instead, they decided to require prior consultation with the Commission. Thanks to the case of Mr. Fisher - the first person named to the ACMUI after that Commission decision - we know how the staff chose to interpret the Commission's directive. Its paper on the patients' rights advocate (COMSECY-07-0001) advised the Commission that Darrell Fisher was the best of the four candidates, but did not attach his resumé, mention what he did for a living, or reveal who the other candidates were.

Offering only one name, as in a North Korean election, and then omitting crucial facts about the candidate's background, surely was not what the Commission had in mind by consultation.

NRC has refused to tell me the names of the other three candidates, and has told me that this information would be withheld on privacy grounds *even if I filed a Freedom of Information Act request*. I find this hard to understand, as well as legally insupportable. It is plainly a matter of legitimate public interest to know who these individuals were. They submitted their names as part of a public process, and there is no shame in the fact that someone else was selected. Without knowing who they were, what credentials they offered, and who nominated them, it is impossible to judge the soundness of the staff's conclusion that Mr. Fisher was the best choice. I would like to reiterate that request here, and if it is necessary (as it should not be) for it to be considered a FOIA request, then please treat it accordingly, with due regard for President Obama's recent directive on increasing government openness.

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<sup>1</sup>The third paragraph identified him as former assistant to the director of the "American Association of Cancer Patients," a fictitious organization.

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I do not wish to offer only criticisms, however; I would also like to offer some positive suggestions for improvement. The first and most obvious is that henceforth, when the staff "consults" the Commission about candidates for ACMUI, it should be required to provide resumés of all the candidates, as a bare minimum. The Commission should also be informed of all approaches that have been made to "stakeholder" groups to identify candidates. In addition, it should know who made the nominations.

But it is insufficient simply to resolve to do better in the future. Mr. Fisher's term runs until 2011. Something needs to be done *now* to ensure that there is someone on ACMUI who actually speaks for patients and their interests. For twelve years, ever since the NRC began appointing people from the "National Association of Cancer Patients" (despite its name, an industry lobbying group) to the patients' rights advocate position, ACMUI has been without the kind of true patient advocate that the Commission had in mind when it created the position in the early 1990's. I suggest, therefore, the Commission add a second patients' rights advocate to ACMUI, and this time, let it choose someone who actually represents the patient community. This move would not unbalance the Committee; considering how many ACMUI members there are who represent licensees' interests, this would still leave the Committee overwhelmingly tilted toward the licensee side.

It would serve the Commission's interests to make such an addition. Consider the possibility that Congress or anyone else someday asks the question, "Who is there on your advisory committee to speak for the interests of ordinary patients?" As of today, the answer would have to be, "the scientific director of the Department of Energy's isotope production program."

Sincerely,



Peter Crane