

July 28, 2009

IA-09-026

Mr. Michael T. Hackett
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2008-013]

Dear Mr. Hackett:

The enclosed Confirmatory Order is being issued to you as a result of a successful Alternative Dispute Resolution (ADR) session on June 26, 2009. The enclosed commitments were made by you as part of a settlement agreement concerning your involvement in apparent violations that occurred at the Department of Veterans Affairs (DVA) Medical Center, Lexington, Kentucky.

In a letter dated April 16, 2009, the U.S. Nuclear Regulatory Commission (NRC) provided you with the results of an investigation completed by the NRC's Office of Investigations (OI). Based upon the evidence developed during the investigation, the NRC reached a preliminary conclusion that you deliberately caused the DVA Medical Center in Lexington, Kentucky to be in violation of NRC requirements by failing to: (1) conduct annual reviews of the radiation safety program; (2) hold periodic Radiation Safety Committee meetings; and (3) conduct required Department of Transportation Hazardous Material training for nuclear medicine technicians involved in transportation of radioactive material to a local radiopharmacy. A Factual Summary of the OI investigation was enclosed with our letter.

Our letter of April 16, 2009, offered you a choice to: (1) attend a Predecisional Enforcement Conference; or (2) request ADR with the NRC in an attempt to resolve any disagreement on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. In response, you requested ADR to resolve differences you had with the NRC concerning the apparent violation. An ADR mediation session was held on June 26, 2009, at which a preliminary settlement agreement was reached. The elements of the preliminary agreement, which were formulated and agreed to at the mediation session, are contained within the enclosed Order. Consistent with the purposes of ADR, you and the NRC acknowledged that the session was not for the purposes of reaching any conclusions regarding any facts or circumstances as discussed in the NRC's letter dated April 16, 2009.

At the session, you made no admission that you violated any NRC requirements and agreed that the enclosed Confirmatory Order would be issued in settlement of a disputed claim in order to avoid litigation and further action by the NRC. In light of the corrective actions you have agreed to take as described in the enclosed Confirmatory Order, the NRC is satisfied that its concerns will be addressed by making your commitments legally binding through the enclosed Confirmatory Order. Therefore, the NRC has agreed not to pursue any further enforcement action in connection with the issues described in our April 16, 2009, letter to you.

We have enclosed a copy of the Confirmatory Order (Effective Immediately) to confirm the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated July 9, 2009, you agreed to issuance of this Confirmatory Order.

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 penalties.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, Illinois 60532. If you have any questions or comments concerning this letter, please contact Mr. Kenneth O'Brien of my staff at 630-810-4373.

A copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS); accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter, and the enclosed Confirmatory Order, at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>; then select **Significant Enforcement Actions**. Your response to the Confirmatory Order, if any, will also be made available electronically for public inspection in the NRC Public Document Room or from ADAMS. This letter will be maintained by the Office of Enforcement (OE) in a NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/foia-privacy.html>.

Sincerely,

/RA/

Mark A. Satorius
Regional Administrator

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver Form

cc: Mr. David Enlow, Attorney
Enlow & Enlow, P.L.L.C
Mr. E. Lynn McGuire, Director
National Health Physics Program (115HP/NLR)

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¹ FSME concurrence received via e-mail from S. Woods on July 23, 2009.

² OE concurrence received via e-mail from N. Hilton on July 28, 2009.

³ OGC No Legal Objection received via e-mail from S. Woods on July 23, 2009.

Letter to Michael T. Hackett from Mark A. Satorius dated July 28, 2009

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NRC OFFICE OF INVESTIGATIONS INVESTIGATION REPORT NO. 3-2008-013

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