

June 1, 2010

Dr. Leon S. Malmud, Chairman
Advisory Committee on the Medical Uses of Isotopes
Temple University School of Medicine
3401 N. Broad St.
Philadelphia, PA 19140

Dr. Bruce Thomadsen, Vice Chairman
Advisory Committee on the Medical Uses of Isotopes
L 1 – 1005 Wisconsin Institute for Medical Research
1111 Highland Avenue
Madison, Wisconsin 53705-2275

Dear Dr. Malmud and Dr. Thomadsen,

It has come to my attention that at the May 24, 2010 meeting of the Advisory Committee on the Medical Uses of Isotopes, the NRC Staff explained that it had postponed the development and issuance of regulatory guidance on release of patients under 10 CFR 35.75 to hotels due to a pending federal lawsuit filed by Mr. Crane which was related to the same general subject matter. Although I cannot wholly discount the possibility of a prior miscommunication between this office and the Staff, neither I nor any of my colleagues in the office who had substantive or managerial responsibility for the matter– including the Solicitor and the attorney who argued the case in federal court on behalf of the agency – recall giving any advice or direction to the staff to halt its efforts on the matter.

For the Committee's benefit, I want to emphasize that it is rare, if ever, that we would counsel the staff or the Commission to suspend regulatory initiatives based solely on the pendency of a court case. Our normal practice is to counsel the Staff to do what is best or necessary from a programmatic perspective in carrying out its safety and security mission, notwithstanding any pending lawsuit.

A pending lawsuit is a reason to consult this office, but not a reason to halt action. As always, the Office of the General Counsel is dedicated to assisting the NRC Staff and the Commission

in achieving the agency's mission to protect the public health and safety and the common defense and security, consistent with our best understanding of all applicable law.

Sincerely,

/RA/

Stephen G. Burns
General Counsel

cc: ACMUI members
R. Lewis, FSME
Peter Crane, Esq.