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AUTHOR: Raphael Heffron

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Peter Crane / 6545 27th Avenue, NW / Seattle, WA 98117 / 206-783-8485 / kinderhook46@yahoo.com

July 12, 2010

Chairman Gregory B. Jaczko and Commissioners
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Jaczko and Commissioners:

I had hoped to be finished, once and for all, with the issue of the "Patients' Rights Advocate" on the Advisory Committee on the Medical Uses of Isotopes (ACMUI), but regrettably, circumstances demand yet another letter on this overworked subject.

At the ACMUI meeting of May 24, 2010, Dr. Darrell Fisher, the current holder of the Patients' Rights Advocate position, issued an impassioned, heartfelt, and – to this observer, at least – utterly sincere defense of his record and his qualifications for that post. Unfortunately, he coupled this with the accusation that I had made "false and misleading" statements about him (TR at 68). (Continuing with this theme the following day, he said, "I knew that I was being accused of something that was sort of far out and untrue." (TR at 140).) The making of "false and misleading" statements is, of course, an extremely serious charge, and since to remain silent in the face of it might seem to concede its validity, I have no choice but to respond.

To avoid any concern that I might have taken his words out of context, I am reproducing in full the statement that Dr. Fisher read aloud at the May 24 meeting:

Since my appointment in 2007 as a member of this Advisory Committee and in a series of letters to the NRC Commissioners and even to U.S. Senators and members of Congress, Mr. Peter Crane wrote that I have affiliated with or belonged to a lobbying organization for the Ward Valley Nuclear Waste Site in the Mojave Desert.

I would like to set the record straight. I have never had any involvement with that organization. Period.

During his illness and disability with myasthenia gravis, between about 2005 and 2007, I assisted my friend and neighbor, Dr. Robert Schenter, with his responsibilities for cancer patient education. Schenter was for that time National Director of a 501(c)(3) charitable foundation called the National Organization of Cancer Patients and also a member of this Advisory Committee as its Patients' Rights Advocate. However, I was never a member of the National Organization of Cancer Patients.

I helped Dr. Schenter on a voluntary basis, at his request, when he was too ill to follow up with some of the many cancer patients who contacted him for educational materials. As I child, I suffered with polio myelitis and also had a bone tumor successfully removed.

Since that time, I have felt a desire to help terminally ill patients of all ages. For that reason, I also volunteer with the charitable organization, the Fighting Children's Cancer Foundation. I help select grants to medical centers for cancer research funding. And I help identify needy families of children with cancer for direct financial assistance. I also visit our local hospital on a regular basis to spend time with patients.

I have lost many close friends as well as my best friend and his wife to cancer. Most received radiation therapy and nuclear medicine imaging as part of their treatment.

My advocacy for patient rights is voluntary and compassionate and has no other ulterior motive. I typically give two to four hours per week in cancer patient education, counseling, and support activities. I have never affiliated with any lobbying organization or industry front organization. And Mr. Crane's claims to that effect are false and misleading.

I have spoken for and will continue to represent patients and patients' rights as a member of this Advisory Committee.

Reduced to its essentials, Dr. Fisher's statement asserts that he was never a member of what he calls the "National Organization of Cancer Patients," but merely assisted his friend Dr. Schenter with his educational activities during a period of illness and disability. Dr. Fisher insists that the organization was in any event a Section 501(c)(3) charitable foundation, not a lobbying group.

My point, as described in letters to the NRC over the past two years, can be summarized as follows: that contrary to the Commission's intent in creating the Patients' Rights Advocate position in the early 1990's, it has been monopolized for many years by persons associated with the isotope producers' industry. In 1998, after more than a year in which the post had gone unfilled, it was given to Nekita Hobson, a longtime public relations official at General Atomics and U.S. Ecology. She was at that time Executive Director of the National Association of Cancer Patients (NACP), a Section 501(c)(4) lobbying group active in the effort to gain approval for the Ward Valley radiological waste dump that U.S. Ecology was planning to construct in the Mojave Desert. When Ms. Hobson's second term was up, the Patients' Rights Advocate position was given to her successor as Executive Director of the NACP, Dr. Robert Schenter, and when he resigned from the Committee and took a job with an isotope producer, the job went to Dr. Fisher, who was both a longtime employee of PNNL and, so it appeared, Dr. Schenter's assistant at the NACP.

Dr. Fisher insists vehemently that he was not a member of the NACP or affiliated with it -- a statement all the easier to believe in light of his evident inability to remember the organization's name. In his letter to the NRC of August 17, 2006, applying for the position, he did refer to it correctly as the "National Association of Cancer Patients." Six months later, in the NRC press release on his appointment, it had become the "American Association of Cancer Patients," and the same name was used in the biography of Dr. Fisher on the ACMUI website until I pointed out in a letter that no such organization existed. In his statement at the May 24 ACMUI meeting, Dr. Fisher twice called it by yet another name: the "National Organization of Cancer Patients."

Where might I have got the idea that Dr. Fisher was associated with the NACP? Nowhere else but from the NRC press release announcing his appointment (No. 07-029, dated February 26, 2007). In seemingly unambiguous terms, it said, "Dr. Fisher previously served as an assistant to the director of the American Association of Cancer Patients."

Setting aside the fact that the word "American" was substituted for "National," what reader would *not* have inferred from this that Dr. Fisher was a member of this organization or affiliated with it? Surely readers were *supposed* to think this, and to draw the conclusion that this showed him to be an appropriate person to be the ACMUI's advocate for patients. In short, if anything in this whole matter was "false and misleading," it was the NRC press release.

If readers such as myself were misled by a press release that exaggerated Dr. Fisher's association with the organization, no blame can fairly be placed on them. Rather, it should fall on those who drafted the press release and on those who reviewed it, or who should have reviewed it and evidently failed to.

It is puzzling that Dr. Fisher should couple his adamant denial that he was ever a member of the NACP or affiliated with it with an equally firm conviction that he can speak authoritatively to its status under the Internal Revenue Code. (I doubt I am alone in seeing an inconsistency there.) In the May 24 statement quoted above, Dr. Fisher insisted that the organization was a “501(c)(3) charitable foundation.” He surely knows by now that he is contradicted on this point by quite compelling evidence: the NACP website and past issues of its newsletter, *Lifelines*. According to them, the NACP is (or was, for it may no longer exist¹) a 501(c)(4) lobbying organization, and among its explicit purposes in its early years was to lobby for the Ward Valley project.²

All the information about the NACP, including its purposes and its tax status, was readily available on line as late as October 2008. Sometime after that date, however, changes appeared in the NACP website, in what was evidently an attempt – utterly futile, since printouts of the original versions remained -- to destroy the evidence of the NACP’s history.³ (Lest there be any misunderstanding, let me emphasize that I am not suggesting that Dr. Fisher himself had any hand in or knowledge of these alterations of the record.) But quite apart from the now-you-see-it, now-you-don’t NACP website, there is ample confirmation, on Internet sites not so subject to tampering, of the NACP’s political activities relating to Ward Valley.⁴

¹ As to whether the NACP is still operating, the most recent data point I have found is a June 28, 2008, article from the *San Diego Business Journal* about a piece of legislation affecting pharmaceuticals. Written by Nekita Hobson, it concludes: “The National Association of Cancer Patients urges our elected officials to address this issue and fine tune the proposed legislation so it makes sense for both patient safety and our pocketbooks.” The author is described as follows: “Nekita Hobson served as executive director of the National Association of Cancer Patients from 1993 to 2002 and is chairman of the organization’s California chapter.”

² If, as Dr. Fisher believes, the NACP was a 501(c)(3) organization, then it follows that the NACP website was being “false and misleading” when it said that it was a 501(c)(4) organization. Why a Section 501(c)(3) charity, contributions to which are tax deductible, would choose to masquerade as a non-tax deductible Section 501(c)(4) lobbying group, thereby driving away potential donors, is a mystery.

³ Whoever did this even went so far as to make changes in the online text of a 1998 article in *Lifelines* by a former NACP President, Dan Negroni, deleting a long passage in which he explained that for tax purposes, the National Association of Cancer Patients, a Section 501(c)(4) lobbying group, had created an affiliated 501(c)(3) organization, the National Association of Cancer Patients Foundation. This retrospective surgery on a ten-year-old article inevitably calls to mind 1984. Today, the NACP website seems to have disappeared altogether, and the former web address, www.cancerpatients.org, has evidently been acquired by a different entity.

⁴ For example, in a reported court case, *California Radioactive Materials Management Forum v. Department of Health Services*, 15 Cal. App. 4th 841 (May 7, 1993), the NACP joined U.S. Ecology and others in challenging the state’s plan to hold formal adjudicatory hearings on whether to grant Ward Valley a license. (The plaintiffs were afraid this would delay issuance of a license.) Likewise, a Google search turns up a September 10, 1997, letter from Senator Larry Craig to Wilma Lewis, the Interior Department Inspector General, in which he reports that the NACP has objected to the decision of the Bureau of Land Management to hire one Dr. Martin D. Mifflin to study the Ward Valley site. Finally, one can still find the October 22, 1998, article from *Business Wire*, describing how the NACP had accused Senator Barbara Boxer, then running for reelection, of “delaying a cure for cancer by many years, perhaps decades,” through her opposition to Ward Valley. Surely no one would mistake any of these for the actions of a charity.

I have never suggested that Dr. Fisher himself was involved in the Ward Valley campaign. The rejection of the Ward Valley proposal in 1999 meant that this phase of NACP's activities was well in the past by the time he came to Dr. Schenter's assistance (in 2005, according to his statement). For all I know, he never heard Ward Valley mentioned during the time in which he aided Dr. Schenter. Even so, the NACP's history as a lobbying group is a matter of record, amply cited in my past letters. In the face of that record, Dr. Fisher's unbudging and plainly sincere conviction that the NACP was a 501(c)(3) charitable organization is hard to understand, unless he has been misinformed by someone he considers more credible and authoritative than the NACP website and newsletter, in which case his trust has been abused.

It is also worth noting that there is no reason to think that Dr. Fisher himself bears any personal responsibility for a problem at the root of this protracted controversy: namely, that when the NRC staff submitted his name to the Commission for approval, on the strength of this involvement with "patient advocacy" groups, it failed to mention either his lifetime association with PNNL or the fact that he was then scientific director of the DOE isotope program. (The first notice to the Commissioners of these salient facts was the press release on Dr. Fisher's appointment.) These were significant omissions -- enough so, as I suggested in a letter to the Commission, that if a licensee were to omit equally important facts from a filing with the NRC, it would find itself facing penalties for a material false statement.⁵

But if the NRC staff withheld pertinent information about Dr. Fisher from the Commission, that should not be held against *him*. Nor was it his fault if the Commissioners seem not to have noticed that the staff had not attached Dr. Fisher's curriculum vitae, or revealed the name of his employer, or even told them the names of the other three candidates for the position. Nor is he to be blamed if for too many years, the NRC staff has turned to the licensee community, rather than to patient groups, when seeking candidates for a position intended to represent patients' interests, on a Committee already amply supplied with representatives of licensee interests.

In short, neither the NRC staff nor the Commissioners covered themselves with glory in the handling of Dr. Fisher's nomination, but while that is troubling for what it says about NRC's processes, it should not be viewed as reflecting on his own integrity or on his distinguished record as a scientist.

I can well understand that Dr. Fisher, having out of kindness and compassion stepped in to help a friend who was ill and overwhelmed by his responsibilities, was wounded by the suggestion that his professional background made him an inappropriate choice as Patients' Rights Advocate. In his

⁵ This was referred to the Office of the Inspector General for handling as an allegation. Instead of treating it as process-oriented -- *i.e.*, that the NRC staff had withheld important and material information about Dr. Fisher from the Commission, thereby doing mischief to the selection process -- OIG chose to take a result-oriented approach, and interpret it as alleging that the NRC staff withheld information *that if provided would have led to Dr. Fisher's rejection*. This rendered the allegation inherently incapable of proof, ensuring that OIG would find it to be unsubstantiated.

position, I might well have felt the same. But if he can get beyond that initial emotional response, and examine the actual documentary record, I think he will see that I have said nothing about him that can fairly be described as false, misleading, far out, or untrue, and indeed, that I have repeatedly praised his qualifications.

Both in letters and in my presentation at the recent ACMUI meeting, I have described Dr. Fisher as a valuable asset to the Committee, because of a lifetime spent in the field of isotopes, where he is recognized as a leading expert. Indeed, his own profession continues to heap him with honors. But I have said also that what the Commission had in mind when it created the Patients' Rights Advocate position was, as I wrote to the Commission on April 24, 2008, persons whose background reflected a "primary, undivided focus on patient rights and patient care." [Emphasis added.] Dr. Fisher does not fit this description. He should most certainly be serving on the Committee, but in some capacity other than that of Patients' Rights Advocate.

Sincerely,

Peter Crane

cc: ACMUI Chairman Leon Malmud and ACMUI members
Congressman Edward J. Markey
Hubert Bell, Inspector General

Mike, Linda

From: Peter Crane [cranebko@comcast.net]
Sent: Monday, July 12, 2010 6:33 PM
To: Vietti-Cook, Annette; Cockerham, Ashley
Cc: Luehman, James; Raspa, Rossana; Bell, Hubert; Joseph, Avenel
Subject: Letter to Commission on Patients' Rights Advocate, 7/12/10
Attachments: 2010.JULY12.FISHER.ACMUI.FINAL.docx

Annette, Ashley --

Could I trouble you to pass the attached letter on to the Chairman and Commissioners and to Chairman Malmud and the members of ACMUI? Many thanks. Please let me know if there is any problem receiving it. -- Peter