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August 17, 2010

Jack L. Gruenstein

Via First Class Mail

Roy P. Zimmerman
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

**Re: In the Matter of Dr. Gary Kao
IA-09-035**

Dear Director Zimmerman:

On July 28, 2010, on behalf of my client, Dr. Gary Kao, I wrote to Ms. Viktoria Mitlying, the Public Information Officer for Region III of the NRC. The purpose was to express my concern regarding information about my client maintained on the NRC web site. A copy of my letter to Ms. Mitlying is enclosed for your information. Although I asked Ms. Mitlying to respond within ten (10) business days, she has not done so and for this reason that I am writing directly to you.

As you will see from my letter to Ms. Mitlying, we are gravely concerned about the impact that certain information on the NRC web site has and continues to have upon Dr. Kao's right of privacy and his reputation. We are, as well, cognizant of the obligation of the NRC to make publicly available certain types of records maintained in its' system of records. Among the records which we recognize as publicly available is Dr. Kao's May 28, 2009, response to an NRC Demand for Information (ML091871017). It is the link to this document, as identified on the NRC web site Fact Sheet and Webpage summarizing the NRC investigation of the brachytherapy program at the Philadelphia Veterans Affairs Medical Center that causes us concern. On that link (<http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/fs-response-med-events.html>), Dr. Kao is identified by name as having responded to a Demand for Information. No other individual is so identified. Our request to Ms. Mitlying was simply to eliminate the use of Dr. Kao's name on the web site link, for example, substituting with "physician practitioner." This would in no way compromise the integrity of the underlying document but would give some modicum of protection to Dr. Kao. It is my belief that by doing so the NRC would be acting in accordance with its obligations to protect Dr. Kao's privacy,

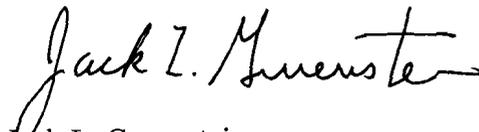
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under 5 U.S.C. Section 552a and 10 C.F.R. 9.50 et. seq. while also fulfilling its duty to provide access to information to the public under 10 C.F.R. 9.15.

Your attention to this matter will be greatly appreciated. I am available to discuss our concerns with your staff and work with them to achieve an amicable resolution.

Thank you.

Sincerely,



Jack L. Gruenstein

JLG/slc

cc: Dr. Gary Kao
Julia Gabis, Esquire

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July 28, 2010

Jack L. Gruenstein

Certified Mail - R/R/R

Ms. Viktoria Mitlying
Public Information Officer
U.S. NRC Region III
2443 Warrenville Road
Suite 210
Lisle, Illinois 60532-4352

**Re: IA-09-035
Gary Kao, M.D.**

Dear Ms. Mitlying:

As you may know, I represent Dr. Gary Kao in connection with the above referenced investigation conducted by the NRC into the brachytherapy program at the Philadelphia, Pennsylvania Veterans Affairs Medical Center. This letter follows my several telephone conversations with Kerri Stafford, Esquire of the NRC's General Counsel's Office regarding information about Dr. Kao published on a Fact Sheet and Webpage (<http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/fs-response-med-events.html>) available on the NRC web site entitled NRC's Response to Medical Events at the Veterans Affairs Medical Center in Philadelphia, Pa.

The Fact Sheet and Webpage summarizes the NRC's investigation of the brachytherapy program and under the section identified as "Timeline of Events" references a May 2009 "... Demand for Information to Dr. Kao to obtain specific commitments regarding his current and future involvement in NRC regulated activities (ML091460732)." Two additional references are made to Dr. Kao under the section of the Fact Sheet identified as "List of Important Documents." The important documents linked to Dr. Kao are the "NRC Demand for Information (Dr. Kao) 5/28/09 (ML091460732)" and "NRC Demand For Information Response (Dr. Kao) 5/28/09 (ML091871017)." No other physician, individual or institution is identified as one from whom the NRC demanded important information.

Although I am not privy to the full scope of the NRC investigation, I assume that demands for information were made to other individuals and institutions and presumably responses were received. Because none of these individuals or institutions are identified, the Fact Sheet and Webpage portrays Dr. Kao in a false light by implicitly suggesting that he not

Ms. Viktoria Mitlying

July 28, 2010

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only is the focal point of the NRC investigation but also bears full responsibility for the systemic problems in the brachytherapy program uncovered during the NRC investigation. However, as is now clear, the problems endemic to the brachytherapy program were multiple and involved many individuals at the Philadelphia VAMC as well as others associated with related institutions. As such, the focus on Dr. Kao is grossly unfair to him and serves not only to reinforce the negative image about his medical competence created since the inception of the investigation but also continues unfairly to cause unwarranted damage to his already damaged reputation.

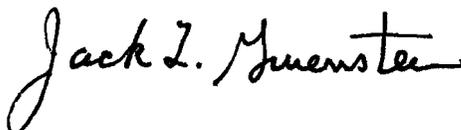
When this matter was brought to my attention by Dr. Kao, I contacted Ms. Stafford to discuss a way of addressing our concern that would ameliorate the unfair stigma to Dr. Kao but would not impact the obligation of the NRC to disclose certain information about the investigation to the public. In my last conversation with her Ms. Stafford advised that as the Public Information Officer for Region III you are the official who determines what information will be made available for public dissemination. Ms. Stafford also said you advised her that the references to Dr. Kao cannot be removed from the Fact Sheet and Webpage since to do so would compromise the content of public documents related to the NRC's investigation.

As I explained to Ms. Stafford, we are not seeking to alter the content of any public documents. Rather, we are asking only that the description of the public documents directly linked to Dr. Kao be worded in a way that eliminates any direct reference to him on the Fact Sheet and Webpage. This will not compromise the underlying public documents which will remain fully available for public review and will contain Dr. Kao's name as well as his specific responses to the NRC's Demand for Information. By simply eliminating Dr. Kao's name from the Fact Sheet and Webpage the prominent focus upon him will be moderated. Both Dr. Kao and I think the request is reasonable and will in no way impact the ability of the NRC to meet its' obligation to make these and other documents available for public inspection.

In view of the importance of this matter, I ask that you respond to this letter within ten (10) business days. If you have any questions or wish to discuss this matter more fully, please do not hesitate to contact me.

Thank you.

Very truly yours,



Jack L. Gruenstein

JLG/slc

cc: Dr. Gary Kao
Julia Gabis, Esquire