

October 28, 2010

EA-10-179

Mr. Gary E. Williams, Director
National Health Physics Program (115HP/NLR)
Department of Veterans Affairs
Veterans Health Administration
2200 Fort Roots Drive
North Little Rock, AR 72114

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION; CONCLUSIONS OF
NRC INVESTIGATION (OFFICE OF INVESTIGATIONS REPORT
NO. 3-2010-010) – DEPARTMENT OF VETERANS AFFAIRS

Dear Mr. Williams:

This letter refers to a reactive inspection conducted by your National Health Physics Program (NHPP) staff at the Veterans Affairs (VA) New Jersey Health Care System, East Orange, on September 16–17, 2009, and November 5, 2009, with continuing review through December 4, 2009. The purpose of the inspection was to evaluate the circumstances related to the temporary suspension of nuclear medicine procedures. During the inspection, your staff determined that a willful violation occurred when a technologist knowingly failed to monitor radioactive material packages received at the facility for contamination and deliberately recorded false data as the radiation survey results. Your staff issued Inspection Report 561-09-I01 and a Notice of Violation, containing a Severity Level III violation, to the permittee in a memorandum dated December 7, 2009.

Based on your staff's determination that a nuclear medical technician knowingly failed to monitor radioactive material packages received at the facility for contamination and deliberately recorded false data as radiation survey results, the U.S. Nuclear Regulatory Commission (NRC) initiated an investigation by the NRC's Office of Investigations (OI) on January 11, 2010. On August 26, 2010, the NRC OI completed its investigation and issued OI Report No. 3-2010-010. This report substantiated the findings of the NHPP and concluded that a nuclear medicine technologist willfully failed to monitor at least one radioactive material package for contamination, yet recorded a value in the log book for that package, contrary to the requirements of Title 10 of the Code of Federal Regulations (10 CFR) 20.1906. Based on the information developed during the OI investigation and the NHPP inspection, the NRC has determined that a violation of NRC requirements, specifically 10 CFR 20.1906, occurred. The circumstances surrounding the violation are described in detail in the NHPP inspection report and are summarized above.

Willful violations of NRC requirements are of significant regulatory concern because the NRC's regulatory program is based on licensees and the employees of licensees acting with integrity and communicating with candor. Therefore, it is essential that the NRC have confidence in those individuals working with licensed material and in licensees closely monitoring their program to ensure that individuals entrusted to use licensed material adhere to regulatory and/or license requirements.

The NRC evaluated the results of the OI investigation and the actions taken by the NHPP in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The NRC determined that the NHPP appropriately identified, processed, and ensured corrective actions for the violation in accordance with the enforcement procedures described in the NRC Master Materials License.

Therefore, after consultation with the Director, Office of Enforcement and in recognition of the enforcement action taken under the VA's NRC Master Materials License, the NRC is exercising enforcement discretion in accordance with Section 3.5 of the NRC Enforcement Policy and is not issuing a Notice of Violation or proposing a civil penalty in this matter. However, significant violations in the future could result in the issuance of a Notice or civil penalty.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and to prevent recurrence, and the date when full compliance was achieved have already been adequately addressed on the docket in the NHPP inspection report dated December 7, 2009. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to An Exercise of Enforcement Discretion, EA-10-179," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, and a copy to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the date of this letter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, and your response, if you choose to provide one, 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>.

Sincerely,

/RA/

Mark A. Satorius
Regional Administrator

Docket No. 030-34325
License No. 03-23853-01VA

cc: Charles Anderson, Chair
National Radiation Safety Committee
Milton Gross, M.D., Chair Elect
National Radiation Safety Committee

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Sincerely,
 /RA/
 Mark A. Satorius
 Regional Administrator

Docket No. 030-34325
 License No. 03-23853-01VA

cc: Charles Anderson, Chair
 National Radiation Safety Committee
 Milton Gross, M.D., Chair Elect
 National Radiation Safety Committee

*See previous concurrence

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DATE	10/19/10	10/19/10	10/22/10	10/18/10	10/18/10
OFFICE	D:OGC	RIII	RIII		
NAME	Harper for Scott ³	Orth*	Satorius		
DATE	10/18/10	10/27/10	10/28/10		

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- 1 OE concurrence received via e-mail from K. Day on October 18, 2010.
 - 2 FSME concurrence received from D. White via e-mail from K. Day on October 18, 2010.
 - 3 OGC No Legal Objection received from R. Harper via e-mail from K. Day on October 18, 2010.

Letter to Gary E. Williams from Mark A. Satorius dated October 28, 2010

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