

NUCLEAR REGULATORY COMMISSION

In the Matter of) IA-13-012
Mr. Armando N. Clavero)
)
)

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES

I.

Armando N. Clavero (Armando Clavero or Mr. Clavero) is employed as the Chief Technical Officer of University Nuclear and Diagnostics, LLC, (UND) located in Davie, Florida. University Nuclear and Diagnostics, LLC, holds an Agreement State license issued by the State of Florida and was contracted to Bradley D. Bastow (Bastow), who holds U.S. Nuclear Regulatory Commission (NRC) materials license No. 21-32316-01 issued by the NRC pursuant to 10 CFR Part 30 on April 20, 2001, and renewed on December 7, 2011. The Florida license authorizes use of diagnostic nuclear materials in accordance with the conditions specified therein. Armando Clavero is listed on the Florida license in Condition 16.A as President. The NRC license to Bastow authorizes the use of certain diagnostic nuclear materials in accordance with the conditions specified therein.

II.

On February 28, and April 3, 2012, the NRC conducted a special inspection at the Bastow facility in South Haven, Michigan, with continued in-office review through May 24, 2012. The details of the inspection were documented in NRC Inspection Report No. 03035710/2012001(DNMS) issued to Bastow on December 19, 2012. This document is

available in the NRC's Agencywide Documents Access and Management System (ADAMS) at accession number [ML12356A238](#). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. During the inspection, several unresolved items were identified that required further NRC review. The NRC Office of Investigations (OI) began an investigation on April 2, 2012 into several of the issues. OI completed its investigation on January 31, 2013. On April 18, 2013, the NRC issued letters to Bastow, UND, and Armando Clavero, providing them with the preliminary results of the investigation and requesting further input from them through a predecisional enforcement conference, alternative dispute resolution, or written response. These letters are available in ADAMS at accession numbers [ML13108A154](#), [ML13108A148](#), and [ML13109A537](#). On June 20, 2013, Mr. Clavero and a representative from UND met with the NRC in predecisional enforcement conferences, together and then in a separate individual conference. At both conferences a Spanish interpreter was available to Mr. Clavero if he had difficulty in understanding the NRC's questions or in expressing an adequate response.

Following the conferences, on July 15, 2013, Armando Clavero provided the NRC with additional information, received via electronic and regular mail. This document is available in ADAMS at accession number [ML13212A245](#). On August 9, 2013, the NRC provided both Mr. Clavero and UND with letters outlining the information discussed at the conferences and informing both parties that the NRC was continuing to evaluate the information. These letters can be found in ADAMS at accession numbers [ML13226A459](#) for the letter to UND and [ML13226A479](#) for the letter to Mr. Clavero.

On July 1, 2013, the NRC and Bastow met in an alternative dispute resolution (ADR) mediation session. The parties reached a preliminary settlement agreement which was later finalized in a Confirmatory Order dated September 3, 2013. A copy of the Confirmatory Order to Bastow is available in ADAMS at accession number [ML13241A320](#).

The NRC also performed additional investigation into the matter of a second meter as discussed at the June 20, 2013, predecisional enforcement conference, including conducting additional interviews with current and former UND employees. This supplemental investigation was completed on February 4, 2014. A synopsis of the NRC's review into the issue of whether a second meter existed, and other issues left unresolved at the conference, was provided to UND with a Notice of Violation and is available in ADAMS at accession number [ML14125A346](#).

Based on the results of the inspection and investigation, the NRC determined that, by his deliberate actions, Armando Clavero caused Bastow to be in violation of NRC requirements by: (1) deliberately not calibrating a survey meter yet providing falsified survey instrument calibration records dated August 13, 2010, and November 10, 2011, and providing inaccurate information about performing the survey meter calibration both during the NRC investigation and during the predecisional enforcement conference; (2) deliberately not performing a sealed source survey in October or November 2011 and providing falsified records of a sealed source survey on October 24, 2011, when there was no survey meter onsite; and (3) deliberately not performing an annual review on October 24, 2011, and providing a falsified record of an annual review dated November 24, 2011, containing erroneous information, including that surveys were performed when a survey meter was not onsite. Armando Clavero also did not ensure that Bastow's office had a working survey meter during the nearly eight week period from October 5, to November 28, 2011, when a UND NMT had sent the Bastow survey meter to UND for calibration and there was no other survey meter in Bastow's office. Armando Clavero did not ensure that records provided to Bastow's office were complete and accurate in all material respects in that he provided records that were dated one date but were based off surveys performed on a different date. Additionally, Armando Clavero, among others, caused UND to be in violation of 10 CFR 30.10.

III.

Based on the above, Armando Clavero, an employee of UND and contractor to NRC licensee Bastow has engaged in deliberate misconduct, in violation of 10 CFR 30.10, that has caused the NRC licensee to be in violation of 10 CFR 30.9, 35.24, 35.61, and 35.67, and its license conditions. Bastow was required to follow those requirements by the license issued to it pursuant to 10 CFR Part 30 on April 20, 2001, and renewed on December 7, 2011. The NRC must be able to rely on the licensee and its contractors to act with integrity and comply with NRC requirements. Armando Clavero's actions in causing Bastow to violate 10 CFR 30.9, 35.24, 35.61, and 35.67, and its license conditions raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Armando Clavero were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Armando Clavero be prohibited from any involvement in NRC-licensed activities for a period of 3 years effective 30 days from the date of issuance of this Order. Additionally, Armando Clavero is required to notify the NRC of his first employment in NRC-licensed activities for a period of 1 year following the prohibition period.

IV.

Accordingly, pursuant to sections 81, 161b, and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, IT IS HEREBY ORDERED THAT:

1. Armando N. Clavero is prohibited for 3 years from engaging in, supervising, directing, or in any other way conducting NRC-licensed activities, including participating in or overseeing contracted activities for NRC licensees. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in the NRC's jurisdiction pursuant to the authority granted by 10 CFR 150.20. This also includes ownership of NRC-licensed material located within NRC jurisdiction.
2. If Armando N. Clavero is currently involved with any licensee in NRC-licensed activities, then he must cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.
3. For a period of 1 year after the 3 year period of prohibition has expired, Armando N. Clavero shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Armando N. Clavero shall include a statement of his commitment to compliance with regulatory requirements, including providing complete and accurate information, and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The above provisions are effective 30 days from the date of issuance of this Order.

The Director, Office of Enforcement, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by Armando N. Clavero of good cause.

V.

In accordance with 10 CFR 2.202, Armando Clavero must submit a written answer to this Order under oath or affirmation within 30 days of issuance of this order. Armando Clavero's failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. Any other person adversely affected by this Order may submit a written answer to this Order within 30 days of issuance. In addition, Armando Clavero may demand, and any other person adversely affected by this Order may request, a hearing on this Order within 30 days of issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a demand or request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007), as amended by 77 FR 46562; August 3, 2012 (codified in pertinent part at 10 CFR Part 2, Subpart C). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through

the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to

the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants.

Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application.

If a person other than Armando Clavero requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is demanded by Mr. Clavero or requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings, as appropriate. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 30 days from the date this Order is issued without further order or proceedings. If an extension of time for requesting a hearing has been

approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 13th day of May 2014.

For the Nuclear Regulatory Commission.

/RA/

Roy P. Zimmerman, Director,
Office of Enforcement.