



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, D.C. 20555-0001

DOCKETED
USNRC

'99 MAR 25 P5:09

March 24, 1999

OFFICE OF
PUBLIC AFFAIRS
ADMINISTRATIVE

MEMORANDUM TO: John F. Cordes, Jr., Acting Director
Office of Commission Appellate Adjudication
Emile L. Julian, Assistant
Rulemakings and Adjudications

SERVED MAR 26 1999

FROM: Charles Bechhoefer *Charles Bechhoefer*
Administrative Judge

SUBJECT: PETITION FOR REVIEW, AHARON BEN-HAIM, PH.D.
DOCKET NO. IA 97-068

The attached "Petition for Review" from Dr. Aharon Ben-Heim was received in our office yesterday. There was no certificate of service so we do not know whether this document was served. In addition, the NRC Staff has filed a petition for review of the Licensing Board Initial Decision in this matter (LBP-99-4).

The attached document is being sent to the OCAA for information and SECY for service if it was not previously received.

Attachment

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Bechhoefer

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Dr. Aharon Ben-Haim, Medical Physicist
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'99 MAR 25 P5:09

OFFICE OF
RULES
ADJUTANT GENERAL

Before Administrative Judges:
Charles Bechhoefer, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

In the Matter of

Docket No. IA 97-068

Aharon Ben-Haim, Sc. D.
Montclair, New Jersey

Petition for Review

1. I received the Atomic Safety and Licensing Board's "Initial Decision" with one week delay. The envelope had been opened, the Scotch tape had been pried open and obviously tampered with. The envelope came one week after the Errata sheet.

2. When I received the envelope, I had come down with an extremely heavy flu and was unable to do anything for a week.

3. In light of the above facts, and that I also have to sustain myself, and considering that the Board overextended its own time by over a quarter of a year, I am asking that you extend the 2 weeks that you have granted to me and still read my answers.

I object to the Board's conclusion that "Dr. Ben-Haim deliberately caused the licensee, NMA, to be in violation of several of the Commission's requirements". There was no deliberate misconduct on my part. I conducted my physicist activities as I was trained to do, with the requirements of the Commission in mind. I did not in any way attempt to supersede any RSO or Authorized User, but rather to complement and assist, just as any physicist would do. Even after December 1996, I was not informed of any changes in the relations between Dr. Elamir and Dr. Moskowitz and I presumed that Dr. Moskowitz would at least quarterly visit NMA and sign the necessary documents.

Where I came short is that I did not sufficiently understand the regulations. I truly believed that unlike hospitals as in the examples cited by Dr. Segal, in a small facility, the RSO on the license has only a formal role to play. I could not know that Dr. Moskowitz who had agreed to be the RSO and Authorized User would retract himself. From my experience in other small facilities, I witnessed that the RSO hardly ever showed up, and this was also the case at NMA with their new RSO, Dr. Maurizi.

The theatrical "impeachment" by Counsel was just a method to get me off-balance. All it proves is that I may have helped with the ordering, which I did not deny. All I denied was that I gave Smoligova the authorization to order. This I will always deny, because it simply is not true.

Smoligova lied when she said she ordered needles, syringes and such for me.

I reiterate that I did not perform the functions of RSO but that of a physicist, conscious of NRC requirements, always concerned of radiation safety as my professional training and long experience in the field dictate my conscience. I assumed that Dr. Moskowitz was the RSO and I performed all my activities with dedication and integrity I never performed any activity of a Physician.

I had no reason to have to see Dr. Moskowitz at NMA because I was hardly there. My main concern was the good functioning of the equipment. I only came when there was a problem with the equipment or to perform my physicist duties.

The NRC pursued me with an animosity which is very difficult to comprehend. The NRC should be satisfied that an experienced, knowledgeable physicist is making sure that radiation safety regulations are observed. A physicist trained in health physics is better qualified than a physician in these matters and can provide useful assistance in radiation related matters. There was no potential harm from my actions. On the contrary, my involvement was the best guarantee that requirements from a Health Physics point of view would be met.

In my findings of fact, I thought, since I do not think as a lawyer, that it would be futile to again repeat all the details of the matter. Del Medico indicated that it would be very easy for me to get the trust of the NRC back if I would show contrition rather than denial. So I kept my findings short and hoped that the sanctions against me would be alleviated..

I am disappointed that the Board decided to affirm the enforcement order, albeit with modifications, and still finds me guilty of deliberate misconduct. I therefore present this Petition for the Board to review its decision and grant me the relief I asked for.

H. Shambertlain
3/14/99

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

AHARON BEN-HAIM, PH.D.

(Superseding Order Prohibiting
Involvement in Licensed Activities)

Docket No.(s) IA 97-068

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMO LB TO CORDES RE PETITION have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
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Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Peter S. Lam
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Administrative Judge
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Washington, DC 20555

Aharon Ben-Haim, Ph.D.
3 Cloverhill Place
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Dated at Rockville, Md. this
26 day of March 1999


Office of the Secretary of the Commission