

RELATED CORRESPONDENCE

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March 16, 1998

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
AHARON BEN-HAIM, Ph.D.) IA 97-065
)
)

NRC STAFF'S FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS AND ADMISSIONS

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.740b and 2.741 of the Commission's regulations, the NRC staff (Staff) hereby requests that Dr. Ben-Haim respond to the following interrogatories, and produce for inspection and copying, the documents requested. In addition, pursuant to 10 C.F.R. § 2.742 of the Commission's regulations, the Staff hereby files its requests for admissions of the truth of the matters specified below in the Request For Admissions portion of this document.

Each interrogatory shall be answered separately and fully, in writing, and under oath or affirmation and shall include all pertinent information available to Dr. Ben-Haim, based upon his personal knowledge. The production of the documents requested herein shall take place at the Office of General Counsel, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Room O-15-B-18, Rockville, Maryland, unless other arrangements are made, by agreement, in this regard. Pursuant to 10 C.F.R. § 2.740b(b), Dr. Ben-Haim must serve a copy of the answers and objections to the interrogatories upon the Staff within 14 days after service of the interrogatories. In addition, the

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answers must be filed with the Secretary of the Commission and must be served on the presiding officer. 10 C.F.R. § 2.740b(a). With respect to the Staff's request for production of documents, 10 C.F.R. § 2.741(d) provides that the party upon whom such a request is served shall serve upon the party submitting the request a written response within 30 days after the service of the request. Section 2.742(b) provides that each requested admission shall be deemed made unless, within a time designated by the presiding officer or the Commission, and not less than ten days after service of the request or such further time as may be allowed on motion, the party to whom the request is directed serves on the requesting party its response as provided in section 2.742.

INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

INTERROGATORY 1

Identify any person Dr. Ben-Haim intends to call as a witness at the evidentiary hearing in this proceeding.

INTERROGATORY 2

With respect to any person listed in response to Interrogatory 1, set forth the subject matter and facts to which that person will testify.

INTERROGATORY 3

With respect to any person listed in response to Interrogatory 1, state the individual's last known residential address, last known business address, and telephone numbers at those addresses.

INTERROGATORY 4

Identify each document Dr. Ben-Haim intends to rely on in this proceeding by setting forth its title; its subject matter; its date; its author; its addressee; its present location and present

custodian.¹

INTERROGATORY 5

As to each document listed in response to Interrogatory 4, state whether or not Dr. Ben-Haim intends to seek to move each such document into the record as evidence in this proceeding pursuant to 10 C.F.R. § 2.743.

INTERROGATORY 6

As to each document listed in response to Interrogatory 4, state what fact or opinion Dr. Ben-Haim intends to establish if the document is admitted into evidence.

REQUEST FOR PRODUCTION OF DOCUMENTS 1

Provide copies of the documents identified in response to Interrogatory 4.

INTERROGATORY 7

What is the basis for Dr. Ben-Haim's belief, as stated in his August 19, 1997 letter to Edward Jordan, that after the license was issued, he "believed Dr. Moskowitz was assuming his duties as Authorized user and RSO"?

INTERROGATORY 8

Did Dr. Moskowitz at any time delegate to Dr. Ben-Haim any duties of Radiation Safety Officer or authorize user? If so, please provide the date of the communication of such delegation, the place of the making and place of receipt of the communication, the type and means of the communication, the substance of the communication, and the names of each person present during, participating in, or receiving the communication.

REQUEST FOR PRODUCTION OF DOCUMENTS 2

Provide copies of any documents concerning any communication referenced in Interrogatory 8.

¹ "Document" as used herein shall mean any written matter, whether produced, reproduced or stored on paper, cards, tapes, disks, belts, charts, film, computer storage devices, or any other medium and shall include, without limitation, matter in the form of books, reports, studies, statements, speeches, notebooks, agreements, appointment calendars, working papers, manuals, memoranda, notes, procedures, orders, instructions, directions, training materials, records, correspondence, diaries, plans, diagrams, drawings, periodicals, lists, telephone logs, minutes, photographs, and any published materials.

INTERROGATORY 9

At any time after the issuance of the license did Dr. Ben-Haim have any communication with Dr. Moskowitz? If so, please provide the date of the communication, the place of the making and place of receipt of the communication, the type and means of the communication, the substance of the communication, and the names of each person present during, participating in, or receiving the communication.

REQUEST FOR PRODUCTION OF DOCUMENTS 3

Provide copies of any documents concerning any communication referenced in Interrogatory 9.

INTERROGATORY 10

How often did Dr. Ben-Haim see Dr. Moskowitz at the Newark Medical Associates facility? Please provide the dates and times Dr. Ben-Haim saw him, the duration and frequency of his visits, and the names of the persons present during his visits.

INTERROGATORY 11

Did Dr. Ben-Haim authorize dose orders of Tc-99 for Newark Medical Associates?

INTERROGATORY 12

If Dr. Ben-Haim did not authorize dose orders of Tc-99 for Newark Medical Associates, who did?

INTERROGATORY 13

Did Dr. Ben-Haim meet with Dr. Moskowitz at Dr. Moskowitz's office on February 16, 1996, as stated in the September 18, 1997 Answer to the Order Superseding Order Prohibiting Involvement in NRC-licensed Activities?

INTERROGATORY 14

If the answer to Interrogatory 13 is yes, please provide the following: the time of the meeting, who was in attendance, the purpose of the meeting, the duration of the meeting, what was said at the meeting, how this meeting was set up and by whom.

INTERROGATORY 15

Did Dr. Moskowitz ever tell Dr. Ben-Haim that he would serve as the Radiation Safety Officer or authorized user for Newark Medical Associates? If so, please provide the date of the communication, the place of the making and place of receipt of the communication, the type and means of the communication, the substance of the communication, and the names of each person present during, participating in, or receiving the communication.

REQUEST FOR PRODUCTION OF DOCUMENTS 4

Provide copies of any documents concerning any communication referenced in Interrogatory 15.

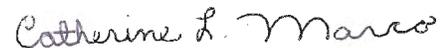
REQUEST FOR ADMISSIONS

1. Dr. Ben-Haim, in his capacity as a contractor-consultant to Newark Medical Associates, prepared the license application dated February 21, 1996 for Newark Medical Associates.
2. The license application for Newark Medical Associates named Gerard W. Moskowitz, M.D. as the only authorized user and Radiation Safety Officer.
3. Dr. Ben-Haim knew at all times that only Dr. Moskowitz was listed on the license to serve as authorized user and Radiation Safety Officer.
4. Dr. Moskowitz did not ever perform the role of authorized user or Radiation Safety Officer for Newark Medical Associates.
5. Dr. Ben-Haim was never the authorized user or Radiation Safety Officer for Newark Medical Associates.
6. Dr. Ben-Haim knew at all times that he was not the authorized user or Radiation Safety Officer for Newark Medical Associates.
7. From November 1996 through February 6, 1997, Dr. Ben-Haim aided and assisted Newark Medical Associates in conducting NRC-licensed activities.
8. From November 1996 through February 6, 1997, Dr. Ben-Haim performed the functions of the Radiation Safety Officer for Newark Medical Associates.
9. From November 1996 through February 6, 1997, Dr. Ben-Haim prescribed, in writing, the

radiopharmaceuticals and dosages to be ordered and administered to patients by technologists for bone scans and cardiac images.

10. The document attached hereto as "Attachment" is a true copy of instructions from Dr. Ben-Haim to technologist Smoligova for the ordering of radiopharmaceuticals.
11. The notations in the above-referenced Attachment are in Dr. Ben-Haim's own handwriting.
12. During an interview with the Office of Investigations conducted on April 23, 1997, Dr. Ben-Haim admitted acting as the de facto Radiation Safety Officer for Newark Medical Associates.
13. During an interview with the Office of Investigations conducted on April 23, 1997, Dr. Ben-Haim admitted giving a technologist the authority to order Tc-99.
14. During an interview with the Office of Investigations conducted on April 23, 1997, Dr. Ben-Haim admitted that Dr. Moskowitz had not delegated Dr. Ben-Haim the authority to give a technologist the authority to order radiopharmaceuticals.
15. During an interview with the Office of Investigations conducted on April 23, 1997, Dr. Ben-Haim admitted that Dr. Ben-Haim knew that Dr. Moskowitz only could delegate the authority to give a technologist the authority to order radiopharmaceuticals.

Respectfully submitted,



Catherine L. Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 16th day of March, 1998

RADIO PHARMACY:

ATTACHMENT

MEDI-PHYSICS

1-800-242-8004

X BONE SCAN → MDP - 25mCi

HEART → MYOVUE
2 SINGLE DOSES
1 x 8mCi 1 x 25mCi

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NEWARK MED ASS

Swellman

718 326 5104

Joy 441 5967

MARINA

718 714 1169

24850

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
) IA 97-065
AHARON BEN-HAIM, Ph.D.)

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS ST-1F

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS AND ADMISSIONS" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk this 16th day of March, 1997:

Charles Bechhoefer, Chairman
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop T 3-F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Evert van Kampen, Esq.*
12 - 47 River Road
P.O. Box 1065
Fairlawn, NJ 07410

Dr. Peter S. Lam
Atomic Safety and Licensing Board
Mail Stop T 3-F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Jerry R. Kline
Atomic Safety and Licensing Board
Mail Stop T 3-F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the Commission Appellate
Adjudication
Mail Stop: 16-G-15 OWFN
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the Secretary
ATTN: Rulemaking and Adjudications
Staff
Mail Stop: 16-G-15
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Aharon Ben-Haim, Ph.D.*
3 Cloverhill Place
Montclair, NJ 07042

Atomic Safety and Licensing Board
Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Adjudicatory File (2)
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 2055


Catherine L. Marco
Counsel for NRC Staff