

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS



IN THE MATTER OF:

CASE NO. 3-97-022

NRC INVESTIGATION

MOTION TO QUASH SUBPOENAS DUCES TECUM

Movants, Marlene Gully, Saiyid Shaw, Ph.D., Lorraine Webster, Dennis Eckert, Pamela Duncan and David Townsend, employees of St. Mary's Medical Center of Evansville, Inc. ("St. Mary's Employees") and St. Mary's Medical Center of Evansville, Inc. (Collectively "Movants"), move to quash subpoenas duces tecum issued by the Nuclear Regulatory Commission. Copies of the subpoenas duces tecum, the subject of this motion, are attached hereto and marked Exhibits 1 through 6, inclusive.

Respectfully submitted,

ZIEMER, STAYMAN, WEITZEL & SHOULDERS

By: _____

Wm. Michael Schiff
Steven K. Hahn
P. O. Box 916
20 N. W. First Street
Evansville, IN 47708
Tel. No. (812) 424-7575

Attorneys for the Movants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has on the 9th day of October 1997, placed a copy of the above and foregoing pleading in the United States Mail, First-Class, to the following:

Claudia T. Pietras, Special Agent
Office of Investigations Field Office, Region III
801 Warrenville Road, Suite 255
Lisle, IL 60532-4351

Secretary of the Commission
Nuclear Regulatory Commission
Washington, DC 20555

John Hoyle, Secretary of Commission
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852



Steven K. Hahn

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS

IN THE MATTER OF: NRC INVESTIGATION

CASE NO. 3-97-022

TO: Mr. David Townsend, Director of Human Services,
St. Mary's Medical Center, 3700 Washington Avenue,
Evansville, Indiana 47750

YOU ARE HEREBY COMMANDED pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the Hampton Inn, 8000 Eagle Crest Boulevard, Evansville, Indiana, on the 15th day of October 1997, at 9:00 am, to testify in the matter of Rebecca Clark and St. Mary's Medical Center. In addition, you are commanded to provide any and all documents related to the performance or termination of Rebecca Clark.

**BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION III**

By *H. Walker for*
Richard C. Paul

Date *Sept. 5, 1997*

Requested by: Claudia T. Pietras, Special Agent
Office of Investigations Field Office, Region III
801 Warrenville Road, Suite 255
Lisle, Illinois 60532-4351 TELEPHONE: (630) 829-9676

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

EXHIBIT 1

RETURN

CERTIFICATE OF PERSONAL SERVICE:

I certify that I delivered a copy of this subpoena in hand to:

on _____, 19 ____, at _____ o'clock _____ M., at _____

CERTIFICATE OF SERVICE BY MAIL:

I certify that I caused a copy of this subpoena to be mailed by _____

_____ mail, postage prepaid, to the address specified and with delivery restricted to the

person named thereon on _____, 19 ____, Receipt No. _____.

(Signature)

(Printed Name and Title)
Claudia T. Pietras, Special Agent
Office of Investigations Field Office, RIII
U.S. Nuclear Regulatory Commission

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS

IN THE MATTER OF: NRC INVESTIGATION

CASE NO. 3-97-022

TO: Ms. Marlene Gulley, Part-time Nuclear Medical Assistant
St. Mary's Medical Center, 3700 Washington Avenue,
Evansville, Indiana 47750

YOU ARE HEREBY COMMANDED pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the Hampton Inn, 8000 Eagle Crest Boulevard, Evansville, Indiana, on the 15th day of October 1997, at 3:00 pm, to testify in the matter of Rebecca Clark and St. Mary's Medical Center. In addition, you are commanded to provide any and all documents related to the performance or termination of Rebecca Clark.

**BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION III**

By H. Walker for
Richard C. Paul

Date Sept. 5, 1997

Requested by: Claudia T. Pietras, Special Agent
Office of Investigations Field Office, Region III
801 Warrenville Road, Suite 255
Lisle, Illinois 60532-4351 TELEPHONE: (630) 829-9676

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

EXHIBIT 2

RETURN

CERTIFICATE OF PERSONAL SERVICE:

I certify that I delivered a copy of this subpoena in hand to:

on _____, 19 ____, at _____ o'clock _____ M., at _____

CERTIFICATE OF SERVICE BY MAIL:

I certify that I caused a copy of this subpoena to be mailed by _____

_____ mail, postage prepaid, to the address specified and with delivery restricted to the

person named thereon on _____, 19 ____, Receipt No. _____.

(Signature)

(Printed Name and Title)
Claudia T. Pietras, Special Agent
Office of Investigations Field Office, RIII
U.S. Nuclear Regulatory Commission

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS

IN THE MATTER OF: NRC INVESTIGATION

CASE NO. 3-97-022

TO: Mr. Saiyid Shaw, Ph.D., Part-time Consultant-
Radiation Safety Officer (RSO)
St. Mary's Medical Center, 3700 Washington Avenue,
Evansville, Indiana 47750

YOU ARE HEREBY COMMANDED pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the Hampton Inn, 8000 Eagle Crest Boulevard, Evansville, Indiana, on the 15th day of October 1997, at 1:00 pm, to testify in the matter of Rebecca Clark and St. Mary's Medical Center. In addition, you are commanded to provide any and all documents related to the performance or termination of Rebecca Clark.

**BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION III**

By H. Walker for
Richard C. Paul

Date Sept. 5, 1997

Requested by: Claudia T. Pietras, Special Agent
Office of Investigations Field Office, Region III
801 Warrenville Road, Suite 255
Lisle, Illinois 60532-4351 TELEPHONE: (630) 829-9676

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

EXHIBIT 3

RETURN

CERTIFICATE OF PERSONAL SERVICE:

I certify that I delivered a copy of this subpoena in hand to:

on _____, 19 ____, at _____ o'clock _____ M., at _____

CERTIFICATE OF SERVICE BY MAIL:

I certify that I caused a copy of this subpoena to be mailed by _____

_____ mail, postage prepaid, to the address specified and with delivery restricted to the

person named thereon on _____, 19 ____, Receipt No. _____.

(Signature)

(Printed Name and Title)
Claudia T. Pietras, Special Agent
Office of Investigations Field Office, RIII
U.S. Nuclear Regulatory Commission

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS

IN THE MATTER OF: NRC INVESTIGATION

CASE NO. 3-97-022

TO: Ms. Pamela Duncan, Supervisor, Nuclear Medicine,
St. Mary's Medical Center, 3700 Washington Avenue,
Evansville, Indiana 47750

YOU ARE HEREBY COMMANDED pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the Hampton Inn, 8000 Eagle Crest Boulevard, Evansville, Indiana, on the 15th day of October 1997, at 10:00 am, to testify in the matter of Rebecca Clark and St. Mary's Medical Center. In addition, you are commanded to provide any and all documents related to the performance or termination of Rebecca Clark.

**BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION III**

By *H. Walker for*
Richard C. Paul

Date *Sept. 5, 1997*

Requested by: Claudia T. Pietras, Special Agent
Office of Investigations Field Office, Region III
801 Warrenville Road, Suite 255
Lisle, Illinois 60532-4351 TELEPHONE: (630) 829-9676

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

EXHIBIT 4

RETURN

CERTIFICATE OF PERSONAL SERVICE:

I certify that I delivered a copy of this subpoena in hand to:

on _____, 19 ____, at _____ o'clock _____ M., at _____

CERTIFICATE OF SERVICE BY MAIL:

I certify that I caused a copy of this subpoena to be mailed by _____

_____ mail, postage prepaid, to the address specified and with delivery restricted to the

person named thereon on _____, 19 ____, Receipt No. _____.

(Signature)

(Printed Name and Title)
Claudia T. Pietras, Special Agent
Office of Investigations Field Office, RIII
U.S. Nuclear Regulatory Commission

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS

IN THE MATTER OF: NRC INVESTIGATION

CASE NO. 3-97-022

TO: Mr. Dennis Eckert, Nuclear Medical Technician,
St. Mary's Medical Center, 3700 Washington Avenue,
Evansville, Indiana 47750

YOU ARE HEREBY COMMANDED pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the Hampton Inn, 8000 Eagle Crest Boulevard, Evansville, Indiana, on the 15th day of October 1997, at 2:00 pm, to testify in the matter of Rebecca Clark and St. Mary's Medical Center. In addition, you are commanded to provide any and all documents related to the performance or termination of Rebecca Clark.

**BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION III**

By *H. Walker for*
Richard C. Paul

Date *Sept. 5, 1997*

Requested by: Claudia T. Pietras, Special Agent
Office of Investigations Field Office, Region III
801 Warrenville Road, Suite 255
Lisle, Illinois 60532-4351 TELEPHONE: (630) 829-9676

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

EXHIBIT 5

RETURN

CERTIFICATE OF PERSONAL SERVICE:

I certify that I delivered a copy of this subpoena in hand to:

on _____, 19 ____, at _____ o'clock _____ M., at _____

CERTIFICATE OF SERVICE BY MAIL:

I certify that I caused a copy of this subpoena to be mailed by _____

_____ mail, postage prepaid, to the address specified and with delivery restricted to the

person named thereon on _____, 19 ____, Receipt No. _____.

(Signature)

(Printed Name and Title)
Claudia T. Pietras, Special Agent
Office of Investigations Field Office, RIII
U.S. Nuclear Regulatory Commission

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS

IN THE MATTER OF: NRC INVESTIGATION

CASE NO. 3-97-022

TO: Ms. Lorraine Webster, Director of Radiology,
St. Mary's Medical Center, 3700 Washington Avenue,
Evansville, Indiana 47750

YOU ARE HEREBY COMMANDED pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the Hampton Inn, 8000 Eagle Crest Boulevard, Evansville, Indiana, on the 15th day of October 1997, at 11:00 am, to testify in the matter of Rebecca Clark and St. Mary's Medical Center. In addition, you are commanded to provide any and all documents related to the performance or termination of Rebecca Clark.

**BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION III**

By *H. Walker for*
Richard C. Paul

Date *Sept. 5, 1997*

Requested by: Claudia T. Pietras, Special Agent
Office of Investigations Field Office, Region III
801 Warrenville Road, Suite 255
Lisle, Illinois 60532-4351 TELEPHONE: (630) 829-9676

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

EXHIBIT 60

RETURN

CERTIFICATE OF PERSONAL SERVICE:

I certify that I delivered a copy of this subpoena in hand to:

on _____, 19 ____, at _____ o'clock _____ M., at _____

CERTIFICATE OF SERVICE BY MAIL:

I certify that I caused a copy of this subpoena to be mailed by _____

_____ mail, postage prepaid, to the address specified and with delivery restricted to the

person named thereon on _____, 19 ____, Receipt No. _____.

(Signature)

(Printed Name and Title)
Claudia T. Pietras, Special Agent
Office of Investigations Field Office, RIII
U.S. Nuclear Regulatory Commission

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS

IN THE MATTER OF:

CASE NO. 3-97-022

NRC INVESTIGATION

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

Movants, Marlene Gully, Saiyid Shaw, Ph.D., Lorraine Webster, Dennis Eckert, Pamela Duncan and David Townsend, employees of St. Mary's Medical Center of Evansville, Inc. ("St. Mary's Employees") and St. Mary's Medical Center Evansville, Inc., (collectively "Movants") submit their Memorandum in Support of Motion to Quash Subpoenas Duces Tecum.

I. Background.

On September 5, 1997, Claudia T. Pietras, Special Agent of the Nuclear Regulatory Commission ("NRC"), caused to be issued six subpoenas duces tecum directed to the St. Mary's Employees. The subpoenas command each person to testify in the matter of NRC Investigation Case No. 3-97-022 concerning "Rebecca Clark and St. Mary's Medical Center" and to provide any and all documents related to the "performance or termination of Rebecca Clark." The subpoenas provide no additional information as to what specifically the NRC seeks nor do the subpoenas or any other document produced by the NRC or its special agent, put the movants on notice of the specific allegations or charges that are being investigated by the NRC. Counsel for the Movants has requested that the

NRC provide either written notice of the specific claims asserted against St. Mary's medical Center and its agents or a copy of the complaint or charges filed against it but the NRC has refused any such requests to date.

II. The subpoenas are not enforceable.

An administrative subpoena is enforceable if the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant to the authorized inquiry. See U.S.v. Morton Salt Company, 338 U.S. 632 (1950). The Fourth Amendment, as applied, directs that the agency subpoena must be "sufficiently limited in scope, relevant in purpose and specific in directive so that compliance will not be unduly burdensome. See Donovan v. Lone Stear, Inc., 464 U.S. 408 (1984).

The subpoenas at hand violate the protections afforded by the Fourth Amendment. Specifically, the subpoenas are too indefinite in scope to be enforceable. There is no specific description, limiting what is requested as to time and subject. The scope of each subpoena is limitless. Moreover, fundamental due process and fair play requires that we be informed of the specific charges asserted against it before being required to provide sworn responses in the formal setting sought by the NRC. For all of these reasons, the subpoenas should be quashed.

III. Conclusion.

Movants request respectfully that the subpoenas at hand be quashed.

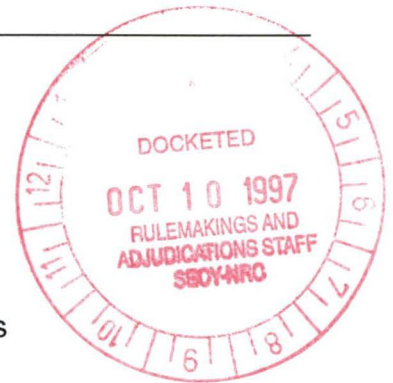
Respectfully submitted,

ZIEMER, STAYMAN, WEITZEL & SHOULDERS

By: 

Wm. Michael Schiff
Steven K. Hahn
P. O. Box 916
20 N. W. First Street
Evansville, IN 47708
Tel. No. (812) 424-7575

Attorneys for the Movants



CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has on the 9th day of October, 1997, placed a copy of the above and foregoing pleading in the United States Mail, First-Class, to the following:

Claudia T. Pietras, Special Agent
Office of Investigations Field Office, Region III
801 Warrenville Road, Suite 255
Lisle, IL 60532-4351

Secretary of the Commission
Nuclear Regulatory Commission
Washington, DC 20555

John Hoyle, Secretary of Commission
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852



Steven K. Hahn