

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
ONCOLOGY SERVICES CORPORATION)	Docket No. 030-31765
)	EA 93-006
(Order Suspending Byproduct)	
Material License No. 37-28540-01))	ASLBP No. 93-674-03-EA

AFFIDAVIT OF BARRY R. LETTS
IN SUPPORT OF NRC STAFF MOTION FOR PROTECTIVE ORDER

I, Barry R. Letts, first being duly sworn, depose and state:

1. I am the Region I Field Office Director, Office of Investigations, U.S. Nuclear Regulatory Commission. The Office of Investigations (OI), pursuant to 10 C.F.R. 1.36, carries out investigations of alleged wrongdoing by licensees, applicants and vendors, or their contractors. One of OI's responsibilities is to investigate alleged violations of NRC rules and regulations and to determine whether such alleged violations merit referral to the United States Department of Justice (DOJ) for criminal consideration. See Memorandum of Understanding between the DOJ and the NRC, 53 Fed. Reg. 50317 (December 14, 1988).

2. The purpose of this affidavit is to provide information to support the NRC Staff's motion for a protective order.

3. OI's investigation regarding the November 1992 incident at the Indiana Regional Cancer Center (IRCC), incomplete and/or inaccurate statements made by the Licensee's personnel to members of the NRC staff and other license issues potentially affecting the public health and safety is almost complete. With the exception of interviewing OSC's President, the taking of statements, at this juncture in the investigation, has been completed and a preliminary decision regarding referral to DOJ has been made.

4. It is my decision that the preliminary results of the OI investigation indicate that several issues under investigation by OI warrant referral to DOJ. The issues to be referred to DOJ involve deliberate inaccurate and incomplete statements made by the Licensee's personnel in connection with the November 1992 incident at the IRCC.

5. Until the referrals to DOJ are made and until DOJ decides whether to pursue a criminal prosecution, it is necessary to withhold certain documents and other information, including transcripts of statements obtained by the Incident Investigation Team (IIT). Since the IIT documents contain statement transcripts and other information regarding the same individuals who are likely to be called as witnesses in any grand jury proceeding related to the referred matters, it is necessary to withhold such information in order to protect the grand jury process. The premature release of the IIT documents could, therefore, adversely affect a potential criminal proceeding.

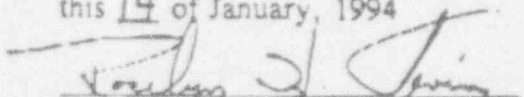
6. I estimate that initial consultations with DOJ will be made within one week from the date of this affidavit. If, after the referral is made, DOJ declines to prosecute the referred matters, or if DOJ otherwise indicates that it is no longer necessary to withhold certain documents, I will so inform counsel for NRC staff and the withheld documents will be made available to the Licensee within a reasonable time.

7. The matters stated above are true and correct to the best of my knowledge, information, and belief.



Barry R. Letts, Director
Office of Investigations
Field Office, Region I

Subscribed and sworn to before me
this 14 of January, 1994


Notary Public

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ONCOLOGY SERVICES CORPORATION)	Docket No. 030-31765-EA
)	
(Byproduct Material)	EA No. 93-006
License No. 37-28540-01))	
)	

MEMORANDUM AND ORDER

(Granting NRC Staff's Motion for a Protective Order)

On January 14, 1994, the NRC Staff filed a Motion for a Protective Order, requesting that the Board postpone certain responses to the Licensee's request for the production of documents. The Staff specifically requested that it not be required to produce specifically enumerated documents from the NRC Incident Investigation Team (IIT) because the premature release of such documents could harm a potential criminal proceeding. Having determined that good cause exists for issuance of a protective order, pursuant to 10 C.F.R. § 2.740(c), the Staff's Motion is GRANTED. It is ORDERED that

the production of IIT documents, listed in the Staff's Motion, is POSTPONED, pending a decision by the Department of Justice whether to initiate a criminal prosecution.

It is so ORDERED

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Charles N. Kelber
ADMINISTRATIVE JUDGE

Peter S. Lam
ADMINISTRATIVE JUDGE

Bethesda, Maryland

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NUCLEAR REGULATORY COMMISSION

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NRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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ONCOLOGY SERVICES CORPORATION) Docket No. 030-31765-EA
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OFFICE OF SECRETARY
DOCKETING & SERVICE

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF OBJECTIONS TO DISCOVERY REQUESTS AND MOTION FOR A PROTECTIVE ORDER" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by facsimile transmission, as indicated by an asterisk, or by electronic mail with a conforming copy served by deposit in the Nuclear Regulatory Commission's internal mail system, as indicated by a double asterisk, this 14th day of January, 1994:

G. Paul Bollwerk, III, Chairman**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of the Secretary (2)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing and Service Section

Dr. Charles N. Kelber**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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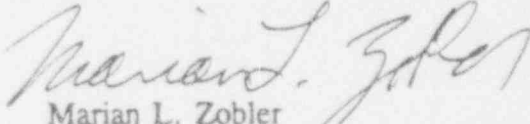
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Oncology Services Corp.
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Indiana, PA 15701-0607

Dr. Peter S. Lam**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Adjudicatory File (2)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Board
Panel (1)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of Commission Appellate
Adjudication (1)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555


Marian L. Zabler
Counsel for NRC Staff