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January 18, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
INDIANA REGIONAL CANCER CENTER)	Docket No. 030-30485-EA
INDIANA, PENNSYLVANIA)	
)	
(Byproduct Material)	EA No. 93-284
License No. 37-28179-01))	
)	

JOINT PREHEARING REPORT

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's Memorandum and Order (Establishing Administrative Directives and Scheduling Prehearing Conference)," dated December 17, 1993, the staff of the Nuclear Regulatory Commission (Staff), the Indiana Regional Cancer Center (Licensee), and Dr. James E. Bauer hereby submit a joint prehearing report.

DISCUSSION

A. Central Issues for Litigation

The Staff and the Licensee agree that the following issues are central issues for litigation in this proceeding.

1. Whether any violations of License No. 37-28179-01 or regulatory requirements (other than those expressly alleged in the Order) were identified during the November 11, 1993 inspection?
2. Whether Dr. Bauer or the Licensee violated 10 C.F.R. § 30.9 on November 11, 1993?

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3. Whether Dr. Bauer or the Licensee violated 10 C.F.R. § 30.10 by deliberately providing to the NRC inspectors, during the November 11, 1993 inspection, information Dr. Bauer knew to be incomplete and inaccurate in some material respect?
4. Whether the Order Modifying and Suspending License (Effective Immediately) correctly restates the requests for information made to Dr. Bauer by the NRC inspectors during the November 11, 1993 inspection, and Dr. Bauer's responses thereto?
5. Whether Dr. Bauer's alleged conduct under License No. 37-28540-01 (HDR license), which is subject to pending litigation, can, as a matter of law, be a basis for the suspension of License No. 37-28179-01 (Strontium-90 license)? (Legal issue which may be amendable to a dispositive motion without discovery).
6. Whether the facts cited in the Order, if true, support the removal of Dr. Bauer from License No. 37-28179-01?
7. Whether the facts cited in the Order, if true, support suspension of License No. 37-28179-01?
8. Whether the Order Modifying and Suspending License was appropriate considering the following facts, set forth in Inspection Report No. 030-30485/93-001:
 - a. Training had been provided in November 1993 on the Quality Management Program;
 - b. The strontium-90 source was locked in a cabinet as required under the license and the storage area was posted as required;
 - c. The licensee had available two Victoreen 410 meters. Both meters were calibrated and the licensee staff had been trained on how to perform check source readings to ensure operability of the meters;
 - d. The Licensee performed ambient dose rate surveys around the source storage location. Records were maintained as required.
 - e. The licensee performed sealed source leak test and inventories of the strontium-90 sealed source as required and the records were maintained as required;
 - f. IRCC personnel had available the required personal dosimetry; and
 - g. It was determined that the Licensee had implemented and followed the Quality Management Program when performing strontium-90 treatments.

9. Whether the Licensee specifically asked the inspectors, on November 11, 1993, if any additional information was requested? If so asked, whether, the inspectors indicated that they had received everything requested? If the inspectors indicated affirmatively, whether the Licensee violated 10 C.F.R. § 30.9?

The following is a list of issues proposed by the Licensee which the Staff does not agree are central issues for litigation:

1. Whether the use of the strontium-90 as treatment for skin lesions on the two identified patients was medically appropriate treatment?
2. Whether there was any risk to the public health, safety or other interest by virtue of the use of the strontium-90 as treatment for skin lesions on the two identified patients?
3. Whether provision of the patient treatment log constitutes provision of complete and accurate information by the Licensee to the NRC?
4. Whether allegations regarding Dr. Bauer's conduct on November 12, 1992 are relevant to this proceeding in that they involve a different source, a different license, and an entirely distinguishable factual setting?
5. Whether admission of evidence regarding Dr. Bauer's conduct on November 12, 1992 is improperly prejudicial given the posture of this proceeding and the confusion of issues likely to arise from the admission of that evidence?
6. Whether admission of evidence regarding Dr. Bauer's conduct on November 12, 1992 amounts *per se* to a denial of the due process rights of Dr. Bauer and the Licensee?
7. Whether admission of evidence into this proceeding regarding Dr. Bauer's conduct on November 12, 1992 amounts to a denial of due process rights of Dr. Bauer and the Licensee because Dr. Bauer and the Licensee have been denied the opportunity to review material in the NRC's possession regarding Dr. Bauer's conduct on November 12, 1992?
8. Whether allegations regarding Dr. Bauer's conduct on November 12, 1992 are admissible in this proceeding in that Dr. Bauer has yet to have the opportunity to contest any implication of fault at a hearing and there has been no finding of fault against him?

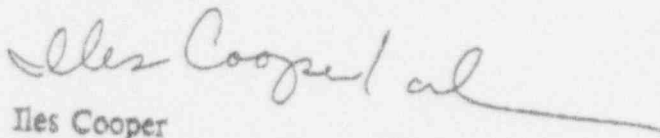
9. Where information provided by the Licensee has been complete and material in all respects, whether the Office of Enforcement can lack the "reasonable assurance," sufficient to modify and/or suspend a license, regarding the Licensee's provision of information to the NRC?
10. Whether unauthenticated or hearsay evidence is admissible in support of the Order Suspending License?
11. Whether irrelevant or immaterial evidence is admissible in support of the Order Suspending License?
12. Whether any statements by present or former employees and/or agents of IRCC constitute admissions against IRCC?
13. Whether the NRC is precluded from introducing, in support of the suspension order, evidence of alleged acts not identified in the suspension order?
14. Whether substantial patient need exists for Strontium-90 treatment at IRCC?

B. Length of Discovery. Length of Evidentiary Hearing. Status of Settlement Discussions

The Staff, the Licensee, and Dr. James E. Bauer estimate that a discovery period of 90 days would be sufficient. It is further estimated that the evidentiary hearing will last approximately three days. Settlement discussions are taking place.

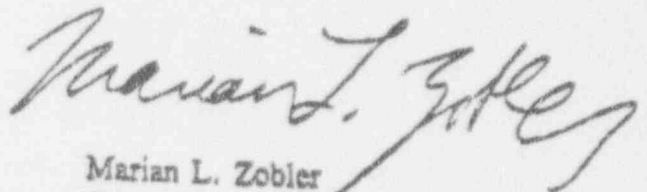
Respectfully submitted,

FOR THE INDIANA REGIONAL
CANCER CENTER AND DR. JAMES
E. BAUER



Iles Cooper
Counsel for the Indiana Regional
Cancer Center and Dr. James E. Bauer

FOR THE NRC STAFF



Marian L. Zobler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 18th day of January, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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JAN 16 1994

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF THE SECRETARY
GENERAL INVESTIGATIVE
DIVISION

In the Matter of)
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INDIANA REGIONAL CANCER CENTER,) Docket No. 030-30485-EA
INDIANA, PENNSYLVANIA)
) E.A. 93-284
(Byproduct Material License)
No. 37-28179-01))

CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT PREHEARING REPORT" 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 18th 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

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

Dr. Charles N. Kelber**
Administrative Judge
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Washington, D.C. 20555

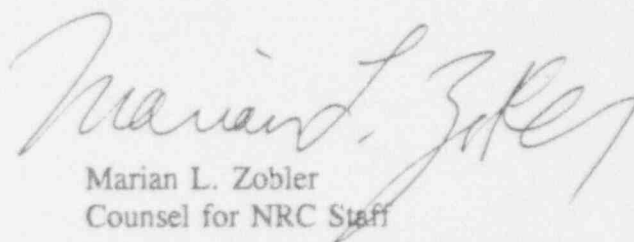
Office of the Secretary (2)
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Washington, D.C. 20555
Attn: Docketing and Service Section

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Office of Commission Appellate
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Marian L. Zobler
Counsel for NRC Staff