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February 7, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF REGULATORY
MARKETING & SERVICE
OF NRC

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

NRC STAFF STATUS REPORT ON CRIMINAL
REFERRALS TO THE DEPARTMENT OF JUSTICE

Pursuant to the Atomic Safety and Licensing Board's Order (Prehearing Conference Order), dated February 1, 1994, the staff of the Nuclear Regulatory Commission (Staff) hereby submits a status report on criminal referrals regarding certain matters related to the above-captioned proceeding made to the Department of Justice by the NRC Office of Investigations (OI).

The OI investigation regarding the November 1992 incident at the Indiana Regional Cancer Center (IRCC) and deliberate incomplete and/or inaccurate statements made by the Licensee's officials and staff to members of the NRC staff is almost complete. Affidavit of Roger A. Fortuna at ¶ 3 (Fortuna Affidavit), attached hereto as Attachment 1. One matter relative to the January 20, 1993 Order Suspending License (Order) was orally referred to the United States Attorney's Office for the Western District of Pennsylvania, involving deliberate, incomplete and/or inaccurate statements by Dr. James E. Bauer, Medical Director, IRCC, made to the NRC regarding, among other things, the

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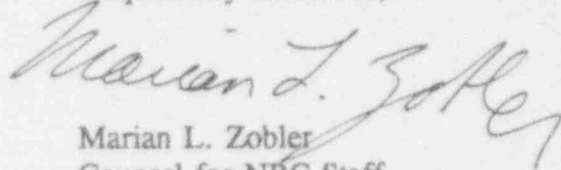
November 16, 1992 incident at the IRCC. *Id.* OI was informed, on February 4, 1994, by the Assistant United States Attorney (AUSA) in the Western District of Pennsylvania that it is her preliminary decision that the matter orally referred warrants a criminal investigation into possible violations of federal law. *Id.* at ¶ 4.

In addition, another matter related to the Order was orally referred to the United States Attorney's Office for the Middle District of Pennsylvania. OI has been orally informed that the AUSA in the Middle District of Pennsylvania has, at this time, declined to prosecute that additional matter. *Id.* at ¶ 5. At this time, according to OI, there are no other outstanding matters which could impact on the proceeding related to the Order. *Id.* at ¶ 7.

In its Order, the Board specifically requested an explanation of when the sixty-day time frame for notification regarding referrals made to the Department of Justice (DOJ) outlined in the Memorandum of Understanding between the DOJ and NRC (MOU) begins to run. Board Order at 3. *See* 53 Fed. Reg. 50317 (December 14, 1988). Section D.2. of the MOU provides that DOJ will notify the NRC of its preliminary decision as to whether a criminal investigation or prosecution is warranted. The MOU further provides

that this notification will normally be provided to the NRC within sixty days of the referral. Since OI has been notified of DOJ's preliminary decisions on whether a criminal investigation or prosecution is warranted on the two matters related to the Order referred to it by OI, section D.2 of the MOU has been satisfied. See Fortuna Affidavit at ¶ 6.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Marian L. Zabler". The signature is written in dark ink and is positioned above the printed name and title.

Marian L. Zabler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of February, 1994