

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 ROGER A. FORTUNA

I, Roger A. Fortuna, first being duly sworn, depose and state:

1. I am the Deputy Director, Office of Investigations (OI), U.S. Nuclear Regulatory Commission. I am responsible for, among other things, the daily oversight of OI field operations. As such, I am familiar, through my discussions with Gerard Kenna, the investigator assigned to this investigation, and Barry R. Letts, Region I Field Office Director, with the status of the investigation regarding the November 1992 incident at the Indiana Regional Cancer Center (IRCC), as well as other matters associated with the Licensee's conduct of licensed activities. I am also familiar with the referrals made to the Department of Justice (DOJ) regarding certain matters identified by the investigation.

2. The purpose of this affidavit is to provide information regarding the status of the referrals of certain matters identified by OI's investigation.

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3. As was previously stated in the affidavit of Barry R. Letts, dated January 14, 1994, OI's investigation is almost complete. One matter relative to the January 20, 1993 Order Suspending License was orally referred to the United States Attorney's Office in 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 November 16, 1992 incident at the IRCC.

4. On February 4, 1994, I received a letter from the Assistant United States Attorney in the Western District of Pennsylvania informing me that, at this time, it is her preliminary decision that the matter orally referred warrants a criminal investigation into possible violations of federal law. A copy of this letter is attached hereto as Exhibit A.

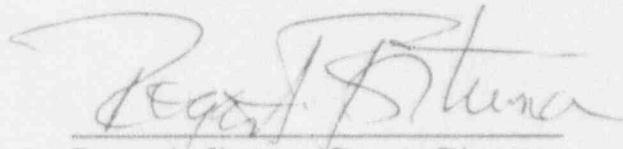
5. OI also orally referred an additional matter, related to the Suspension Order, to the United States Attorney's Office in the Middle District of Pennsylvania. I have been orally informed that, at this time, the AUSA in that district has decided to decline to prosecute that additional issue.

6. In response to the Board's specific question regarding the Memorandum of Understanding between the DOJ and the NRC, 53 Fed. Reg. 50317 (December 14, 1988) (MOU), 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. It is my

opinion that the letter from the AUSA from the Western District of Pennsylvania satisfies DOJ's commitment to inform the NRC of its preliminary decision as to whether a criminal investigation or prosecution is warranted, in relation to the issue referred to her. The AUSA from the Middle District's declination to prosecute satisfies section D.2 of the MOU as it relates to the second issue referred.

7. At this time, there are no other outstanding issues OI intends to refer to DOJ relative to the Licensee which could impact on the proceeding regarding the Suspension Order.

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



Roger A. Fortuna, Deputy Director
Office of Investigations

Subscribed and sworn to before me
this 4 of February, 1994



Notary Public

Commission expires: December 1, 1995



United States Attorney

Exhibit A

Western District of Pennsylvania

~~CONFIDENTIAL~~655 United States Post Office & Courthouse
Pittsburgh, Pennsylvania 15219412/644-3500
FTE/722-3500

February 4, 1994

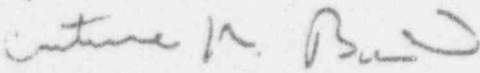
Roger A. Fortuna
Deputy Director
Office of Investigations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Fortuna:

On January 13, 1994, I spoke with Barry R. Letts, Region I Field Office Director, Office of Investigations, U.S. Nuclear Regulatory Commission, regarding a referral to my office of a potential criminal matter. The discussion involved false statements by Dr. James E. Bauer, Medical Director, Indiana Regional Cancer Center (IRCC), to the NRC regarding, among other things, the November 16, 1993 incident at the IRCC. During the week of January 24, 1994, pursuant to my request, I received certain documents regarding the referred matter. I have made the preliminary decision that this matter warrants a criminal investigation into possible violations of federal law.

Sincerely,

FREDERICK W. THIEMAN
United States Attorney


CONSTANCE M. BOWDEN
Assistant U.S. Attorney

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF STATUS REPORT ON CRIMINAL REFERRALS TO THE DEPARTMENT OF JUSTICE" in the above-captioned proceeding have been served on the following by deposit in the Nuclear Regulatory Commission's internal mail system or, as indicated by an asterisk, by Express Mail this 7th day of February, 1994:

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

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

Marcy L. Colkitt*
General Counsel
Oncology Services Corp.
P.O. Box 607
Indiana, PA 15701-0607

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

Kerry A. Kearney, Esq.*
Joseph W. Klein, Esq.
Joseph R. Rodkey, Jr., Esq.
Counsel for Oncology Services Corp.
Reed Smith Shaw & McClay
Mellon Square
435 Sixth Avenue
Pittsburgh, PA 15219-1886

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

Catherine L. Marco
Catherine L. Marco
Counsel for NRC Staff