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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ivan W. Smith, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

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OFFICE OF SECRETARY
GENERAL INVESTIGATIVE
DIVISION

SERVED FEB 15 1994

In the Matter of

CAMEO DIAGNOSTIC CENTER, INC.

Byproduct Material
License No. 20-27908-01

Docket No. 30-29567-CivP

ASLBP No. 94-686-01-CivP

February 14, 1994

MEMORANDUM AND ORDER
(Following Prehearing Conference)

Introduction

The Licensing Board conducted a prehearing telephone conference with the parties on February 1, 1994 to discuss the identification of issues for discovery and the joint motion for adoption of a schedule. The parties had agreed to the date and agenda for the prehearing conference during an informal telephone conference with the Board on January 18, 1994.

Issues for Discovery

Alleged Violation I.A. charges that the Licensee changed the address and location at which the licensed byproduct material was used before receiving an amendment to authorize the change in violation of the requirements of 10

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CFR 35.13(e). The issue under alleged Violation I.A. is self explanatory and is approved for discovery.

Alleged Violation I.B. recites the provisions of 10 CFR 30.9(a) which require, in part, that information required by law to be provided to the Commission by a licensee "... be complete and accurate in all material respects." The Staff alleges that, contrary to Section 30.9(a), the Licensee failed to inform the Commission that it had begun using the licensed material at the new location referred to in alleged Violation I.A.

The NRC Staff states that the factual basis for alleged Violation I.B. is the Licensee's failure to provide any information whatever, i.e. "zero information." Tr. 11-14. The Board questioned whether the Staff's factual allegation constitutes a violation of 10 CFR §30.9(a); in particular, whether that section requires that at least some information must be submitted before the information can be deemed incomplete or inaccurate. The parties agreed to brief the issue. The Staff's brief is due no later than February 15, 1994 and the Licensee's answer due is no later than March 1.

The Licensee's President, Mr. Rosenbaum, claims, however, that, notwithstanding the Staff's theory of alleged Violation I.B., he did in fact provide the NRC with relevant information before he moved. Tr. 11. Whether he did or not may be moot if alleged Violation I.B. fails on Staff's factual theory. On, the other hand, the substance, form and

timing of the information provided by Licensee could be relevant to, for example, mitigation of alleged Violation I.A. and alleged Violation I.B., if it survives. The Board therefore approves that factual issue (information submitted by Licensee) for discovery without awaiting the ruling on the legal issue.

Licensee's demand for a hearing requests that the scope of issues be broadened to include whether "distorted or omitted facts" induced the Commission to charge Licensee with the violations. The Staff does not object. Tr. 7. We agree that a consideration of whether distorted or omitted facts underlie the allegation is an appropriate evidentiary issue for discovery.

Licensee also demands the right to include "whether malice toward licensee was a factor influencing the Commission." to make the charges. The Staff, however, opposes any issue relating to the motive of the Staff. The Board took the issue of malice under advisement. Tr. 7. After consideration, we rule that the issue of malice toward licensee is an appropriate evidentiary issue for discovery. Provided however, in addition to the general requirements for discovery in NRC proceeding (10 CFR § 2.740(b)(1), the Licensee must first provide information sufficient to warrant further inquiry into the question of malice at the time any such discovery request is made. The Staff may seek

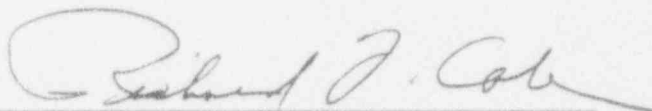
protection from the Board if it believes that Licensee has not justified an inquiry into Staff's motivation.

Stipulations

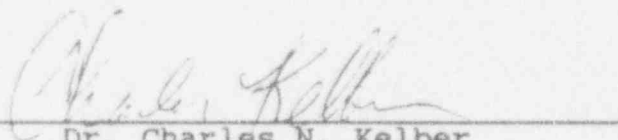
The Board directed the parties to consult with each other, in a good faith effort, for the purpose of stipulating facts at the conclusion of the prehearing conference. Tr. 18.

Schedule

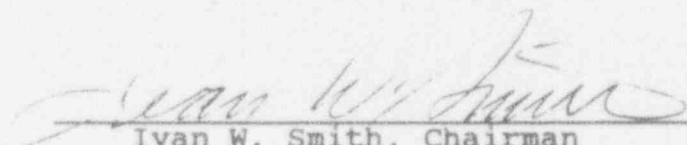
The Board grants the joint motion for adoption of a schedule, adopts the proposed schedule, and attaches it as a part of this order.



Dr. Richard F. Cole
ADMINISTRATIVE JUDGE



Dr. Charles N. Kelber
ADMINISTRATIVE JUDGE



Ivan W. Smith, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

February 14, 1994

Cameo Diagnostic Centre, Inc.
Proposed Schedule

ATTACHMENT

EVENT	TIME
Commence Discovery	Upon issuance of a prehearing conference order or order approving joint schedule proposal.
End Discovery	90 days (after issuance of a prehearing conference order or order approving joint schedule proposal)
Motions for Summary Disposition	120 days (after issuance of a prehearing conference order or order approving joint schedule proposal)
Answers to Motions for Summary Disposition	30 days from service of Motion
Pre-filed written testimony (optional) (In the event proceeding is not totally disposed of through Summary Disposition Motions)	15 days from Board ruling on any Summary Disposition Motion
Commence Hearing (unless proceeding is totally disposed of through Summary Disposition)	15 days after pre-filed written testimony is filed (or 30 days from Board ruling in the event pre-filed written testimony is not filed)

- Notes:
1. If any date falls on a Saturday, Sunday or Federal holiday, the due date shall be the next business day.
 2. The schedule may be shortened or enlarged upon motions for good cause shown.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

CAMEO DIAGNOSTIC CENTRE, INC.

(Byproduct Material License No.
20-27908-01, EA 93-005)

Docket No.(s) 30-29567-CIVP

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (FOLLOWING PREH. CONF.) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Ivan W. Smith, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

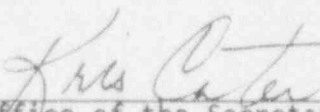
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155 Maple Street
Springfield, MA 01105

Dated at Rockville, Md. this
15 day of February 1994


Office of the Secretary of the Commission