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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

SERVED MAR 25 1994

In the Matter of

CAMEO DIAGNOSTIC CENTRE, INC.

Docket No. 30-29567-CivP

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

ASLBP No. 94-686-01-CivP

March 24, 1994

MEMORANDUM AND ORDER

I. Modified Order Imposing Civil Penalty

In the Memorandum and Order (Following Prehearing Conference) of February 14, 1994, the Board approved issues for discovery and granted the joint motion for adoption of a schedule. On February 15, the NRC Staff issued in this proceeding an Order Modifying Order Imposing Civil Monetary Penalty which superseded the initial civil penalty order.

We have now received and considered the Licensee's March 14 response to the Staff's modified civil penalty order. The issues approved in the Board's February 14 Memorandum and Order remain appropriate under the Staff's

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modified civil penalty order and the Licensee's response to it. Discovery may continue within the scope of the previously approved issues and according to the previously approved schedule. Neither party has requested relief from our February 14 Memorandum and Order.¹

II. Board Notifications

On March 8, 1994, the Staff served in this proceeding Board Notification 94-05.

On March 11, 1994, the Licensee provided to the Board two pleadings filed in Civil Action No. 94-30036-F in the United States District Court for the District of Massachusetts.²

The Board intends to disregard both notifications unless they come before the Board in the context of properly adduced evidence.

III. Licensee's Request for Clarification

By letter dated March 11, 1994, Paul J. Rosenbaum, president of Licensee corporation submitted three questions

¹The Staff commenced discovery on March 22, 1994, apparently under the correct assumption that the modified civil penalty order, and the answer thereto, fold into the issues previously approved by the Board.

²Motion to Dismiss by the United States Attorney, March 1, 1994. Motion to Deny Motion to Dismiss by Plaintiff Cameo Diagnostic Centre, Inc., March 3, 1994.

concerning the Board's February 14 Memorandum and Order. Following are the questions and our responses:

Question 1

Mr. Rosenbaum cannot find the Board's citation to 10 C.F.R. § 2.740(b)(1) in his copy of the regulations.

Board's clarification: He has confused Section 2.740b with subsection (b), paragraph (1) of Section 2.740 (cited as 10 C.F.R. § 2.740(b)(1) in the Board's order). The section cited by the Board appears on page 2-27 of his copy of the regulations. Again, Mr. Rosenbaum should not confuse 2.740b with 2.740(b).

Question 2

Mr. Rosenbaum refers to the Board's order that "Licensee must first provide information sufficient to warrant further inquiry into the question of malice at the time any such discovery request is made." Memorandum and Order at 3. Mr. Rosenbaum wishes to know to whom such information should be provided.

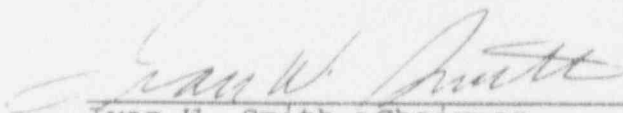
Board's clarification: The information should be included in any discovery request to the NRC Staff, a copy of which must be served upon the Board. In the event the Staff seeks protection from the Board from responding to a discovery request concerning malice, the Board will consider the information provided in Licensee's respective discovery request.

Question 3

With respect to the phrase, "sufficient to warrant further inquiry into the question of malice . . .," as stated in Question 2 above, Mr. Rosenbaum asks, "What constitutes sufficient?"

Board clarification: We do not know. Mr. Rosenbaum, not the Board, knows what he had in mind by his allegation of malice on the part of the Commission. It is his burden to demonstrate sufficiency without any guidance from the Board.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



Ivan W. Smith, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

March 24, 1994

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 MEMORANDUM AND ORDER - 3/24 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

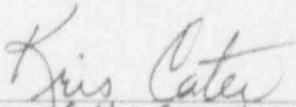
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Richard F. Cole
Atomic Safety and Licensing Board
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Paul Rosenbaum, President
Cameo Diagnostic Centre, Inc.
155 Maple Street
Springfield, MA 01105

Dated at Rockville, Md. this
25 day of March 1994


Office of the Secretary of the Commission