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DOCKETED April 7, 1994
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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'S RESPONSE AND OBJECTIONS TO LICENSEE'S
REQUEST FOR PRODUCTION OF DOCUMENTS DATED
MARCH 8, 1994 AND NRC STAFF'S MOTION FOR PROTECTIVE ORDER

INTRODUCTION

Pursuant to 10 C.F.R. § 2.744 of the Commission's regulations, the staff of the Nuclear Regulatory Commission (Staff) hereby files its response and objections to "Request for Production of Documents Dated March 8, 1994," filed by Oncology Services Corporation (Licensee).

I. STAFF RESPONSE AND OBJECTIONS TO LICENSEE'S REQUEST FOR PRODUCTION OF DOCUMENTS

LICENSEE'S REQUEST FOR THE PRODUCTION OF DOCUMENTS

Any and all transcripts, statements, notes and/or summaries of statements made to the Nuclear Regulatory Commission, the IIT Team, the Office of Investigations and/or any other department/agent/agency of the Nuclear Regulatory Commission in connection with the investigation of Oncology Services Corporation.

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STAFF'S RESPONSE AND OBJECTIONS TO THE LICENSEE'S REQUEST FOR PRODUCTION OF DOCUMENTS

The Staff objects to this request because it is too broad. During the course of the NRC's investigation of Oncology Services Corporation certain issues, which are not relevant to any issue in this proceeding, were raised. As a result, there exists documents which are covered by the Licensee's request, but are not relevant to this proceeding. The Staff, therefore, objects to this request to the extent that it seeks information which is not relevant to this proceeding. 10 C.F.R. § 2.744(b). Notwithstanding the Staff's objection, the Staff will make available for inspection and copying any and all transcripts, statements, notes and/or summaries of statements (hereinafter referred to collectively as "documents") made to the Nuclear Regulatory Commission, the IIT Team, the Office of Investigations and/or any other department/agent/agency of the Nuclear Regulatory Commission in connection with the investigation of Oncology Services Corporation, at the NRC Region I Offices, King of Prussia, Pennsylvania, which are relevant to the above-captioned proceeding. These documents will be made available unless otherwise objected to below, or unless they have already been produced to the Licensee pursuant to the Freedom of Information Act or discovery, or are otherwise available in the NRC's Public Document Room (PDR).

The following documents have already been provided to the Licensee either via FOIA or through discovery in this proceeding:

Transcript: Entrance Meeting, December 3, 1992

Transcript: Interview of Robbie Ackerson, Staff Technologist, OSC (IRCC),
December 4, 1992

Transcript: Group Interview of James Bauer, M.D., IRCC; Bernard Rogers, M.D., Director of Brachytherapy, OSC, & David Cunningham, Ph.D., Director of Physics and Bioengineering, OSC, Harrisburg, PA, December 4, 1992

Transcript: Interview of Rudy Balko, Staff Therapist, IRCC, December 4, 1992

Transcripts:

Volume I - Interview of Gregory Hay, Consulting Physicist, December 4, 1992

Volume II - Interview of Gregory Hay, Consulting Physicist, (cont. December 5, 1992)

Transcript: Interview of Patricia Korywchak, R.N., Indiana Regional Cancer Center, December 4, 1992

Transcript: Interview of Sharon Rickett, Registered Radiation Therapy Technician, December 4, 1992

Transcript: Interview of James Bauer, M.D., IRCC, December 5, 1992

Transcript: Interview of Mitchell Jarosz, Jr., Senior Radiological Physicist, OSC, GPCC, December 8, 1992

Transcript: Interview of Roger Tokars, Medical Director, GPCC and Jefferson Radiation Oncology Center, December 8, 1992

Transcript: Interview of Joseph Dugan, Radiation Therapist, GPCC, December 8, 1992

Transcript: Interview of Bernard Rogers, M.D., Director of Brachytherapy, OSC, December 9, 1992

Transcript: Interview of Jerome Dardell, M.D., Radiation Oncologist, Vice President and Medical Director, OSC, at State College, Pennsylvania, December 9, 1992

Transcript: Interview of Douglas Colkitt, M.D., President and CEO, OSC, State College, Pennsylvania, December 9, 1992

Transcript: Interview of David E. Cunningham, Director, Radiation Safety, OSC, December 17, 1992

- Transcript: Interim Exit Meeting, Harrisburg Hotel, December 17, 1992
- Transcript: Interview (via speakerphone) of Robert M. Morrison, Sales Representative for Omnitron, December 22, 1992
- Transcript: Telephone interview of Wilda Prushnok, December 31, 1992
- Transcript: Interview of David Cunningham, Ph.D., Director of Physics and Bioengineering, OSC, Harrisburg, Pennsylvania, January 5, 1993
- Transcript: Joseph Dugan, Greater Pittsburgh Cancer Center, March 11, 1993
- Transcript: Michelle W. Markovitz Greater Pittsburgh Cancer Center, March 11, 1993
- Transcript: Roger P. Tokars, Greater Pittsburgh Cancer Center, March 11, 1993
- Transcript: Mitchell Jarosz, Greater Pittsburgh Cancer Center, March 11, 1993
- Transcript: Paula R. Salanitro, Exton Cancer Center, March 11, 1993
- Transcript: Mark A. Batog, Exton Cancer Center, March 11, 1993
- Transcript: Lorraine M. Copenhagen, Exton Cancer Center, March 11, 1993
- Transcript: Dr. Richard M. Yelovich, Exton Cancer Center, March 11, 1993
- Transcript: Connie Shope, OSC Harrisburg, PA, March 11, 1993
- Transcript: Dr. Abdurrahman Unal, OSC Harrisburg, PA, March 11, 1993
- Transcript: Dr. William Ying, OSC Harrisburg, PA, March 11, 1993
- Transcript: Richard Croley, Mahoning Valley Cancer Center, Lehigh, PA, March 11, 1993
- Transcript: Karen Wagner, Mahoning Valley Cancer Center, Lehigh, PA, March 11, 1993
- Transcript: Abne Hasan, Mahoning Valley Cancer Center, Lehigh, PA, March 11, 1993

- Transcript: Tillman Kulp Saylor, Mahoning Valley Cancer Center, Lehigh, PA, March 11, 1993
- Transcript: Earl D. Butterfield, Stoneboro Life Care Center, Stoneboro, PA, March 11, 1993
- Transcript: Gilbert A. Lawrence, Stoneboro Life Care Center, Stoneboro, PA, March 11, 1993
- Transcript: Susan Gosney, Exton Cancer Center, Exton, PA, dated March 11, 1993
- Transcript: John M. Ondos, Greater Pittsburgh Cancer Center, dated March 17, 1993
- Transcript: David Moylan, March 19, 1993, Mahoning Valley Cancer Center, Lehigh, PA
- Transcript: James Healy, Harrisburg, PA dated July 22, 1993
- Transcript: Robert Beauvais, Harrisburg, PA dated July 22, 1993
- Transcript: Vickie Trostle, Harrisburg, PA dated July 22, 1993
- Transcript: William Ying, Harrisburg, PA dated July 22, 1993
- Transcript: Thinh Nguyen, Harrisburg, PA dated July 22, 1993
- Transcript: Rudy Balko, Indiana, PA dated August 18, 1993
- Transcript: Robbie Ackerson, Indiana, Pa dated August 18, 1993
- Transcript: Sharon Rickett, Indiana, PA dated August 18, 1993
- Transcript: James Bauer, Indiana, PA dated August 18, 1993
- Transcript: Bernard Rogers dated January 12, 1994
- Transcript: James Bauer dated December 28, 1993
- Transcript: Jerome Derdel dated January 11, 1994

The following documents are available in the PDR:

Transcript: Interview of Richard Calfee, Ph.D., President, International, Inc.,
December 4, 1992

Accession Number 9403240065

Transcript: Interview of Lois Eiselman, Certified Nurses Aide, Scenery Hills
Manor Nursing Home, December 5, 1992

Accession Number 9402140188

Transcript: Interview of Donna Joyner, Licensed Practical Nurse, SHM Nursing
Home, December 5, 1992

Accession Number 9403240111

Transcript: Interview of Edwin A. Balliet, Jr., Administrator, SHM Nursing
Home, December 5, 1992

Accession Number 9403240114

Transcript: IIT Media Briefing with Dr. Carl Paperiello and Dr. Daniel F. Flynn,
December 4, 1992

Accession Number 9402140242

Transcript: Interview of James Goodwell, Jr., Tractor-Trailer Driver, BFI,
Carnegie, PA, December 7, 1992

Accession Number 9403240119

Transcript: Interview of Michael Christ, Medical Supervisor, BFI, Carnegie, PA,
December 7, 1992

Accession Number 9403240124

Transcript: Interview of James Gajewski, Assistant District Safety Manager, BFI,
Carnegie, PA, and Denise Claytor, District Safety Manager, BFI,
Carnegie, PA, December 7, 1992

Accession Number 9403240125

Transcript: Interview of David Shepler and Charles Edelman, BFI, December 7,
1992

Accession Number 9403240082

Transcript: Interview of Linda Haggerty, Certified Nursing Assistant, SHM
Nursing Home, December 8, 1992

Accession Number 9403240127

Transcript: Interview of Ronald Ressler, Maintenance Supervisor, SHM Nursing Home, December 9, 1992
Accession Number 9403240131

Transcript: Interview of Sarah Ferguson, Registered Nurse, SHM Nursing Home, December 9, 1992
Accession Number 9403240134

Transcript: Group Interview of NRC Headquarters NMSS Staff: Richard E. Cunningham, Director, Division of Industrial & Medical Nuclear Safety; John E. Glenn, Chief, Medical Academic & Commercial Use Safety Branch and; Frederick Combs, Chief, Operations Branch, December 16, 1992
Accession Number 9212310038

Transcript: Interview of Richard Calfee, President, Omnitron International, December 17, 1992
Accession Number 9403240102

Transcript: Interview of Anthony J. Bradshaw, V.P. Product Development, Omnitron International, December 17, 1992
Accession Number 9403240100

Transcript: Interview of Kent Schaible, Service Manager, Omnitron International, December 17, 1992
Accession Number 9403240097

Transcript: Interview of Sam Liprie, Sealed Source Manufacturer, December 18, 1992
Accession Number 9403240107

The following documents will be made available to the Licensee for inspection and copying at the NRC Region I Offices, King of Prussia, Pennsylvania, unless other arrangements are made by agreement of the parties:

Transcript: Jenny Johansen, NRC Inspector, January 13, 1993.

Transcript: Connie Hawkins, OSC Harrisburg, PA, March 11, 1993

Transcript: Nitin Naik, OSC Harrisburg, PA, March 11, 1993

Transcript: Dale Caldwell, OSC Harrisburg, PA, March 11, 1993

Transcript: John Wingate, Mahoning Valley Cancer Center, Lehighton, PA,
March 11, 1993

Transcript: Barbara Perkins, Mahoning Valley Cancer Center, Lehighton, PA,
March 11, 1993

Transcript: Trisha D. Yeager, Stoneboro Life Care Center, Stoneboro, PA,
March 11, 1993

Transcript: Rhonda Criswell, Stoneboro Life Care Center, Stoneboro, PA,
March 11, 1993

Transcript: Ann Higgins, Stoneboro Life Care Center, Stoneboro, PA, March 11,
1993

Interview of Dr Abdurrahman Unal, of the OSC facility at Harrisburg, PA,
February 25, 1993. The interview was not completed.

Interview of Susan Gosney of the Exton Cancer Center, February 25, 1993. The
interview was not completed.

Interview of Wade DeHass, Stoneboro facility, February 25, 1993

Interview of Dr. Amrik S. Chhabra, Stoneboro facility, March 2, 1993

Statement of Earl Butterfield, Stoneboro Life Care Facility dated March 18, 1993
via attorney Joseph Rodkey clarifying previous statements.

Interview of James Dwyer dated April 7, 1993

Report of Interview with Melissa A. Shawver, dated April 13, 1993

Report of Interview with Patrick Connolly, dated April 29, 1993

Report of Interview with John Babu, dated April 12, 1993

Report of Interview with Judith A. Jousstra, dated January 12, 1993

Report of Interview with Leanne K. Moody, dated April 29, 1993

Report of Interview with Neil Mcmanamon dated June 17, 1993

Report of Interview with Mary Ballin, dated June 25, 1993

Transcript: Nitin Niak, Harrisburg, PA, dated July 22, 1993

Report of Interview with Jill Yost dated September 20, 1993

Report of Interview with Greg Hay dated September 27, 1993

Report of Interview with Alex Kennan, dated September 28, 1993

Transcript: attempted interview of Douglas Colkitt dated January 12, 1994.

Report of Interview with James Dwyer dated February 18, 1994

Report of Interview with Pamela Henderson dated February 18, 1994

As discussed above, the Staff objects to the production of documents that are not relevant to this proceeding. In addition, pursuant to 10 C.F.R. § 2.744, the Staff objects to producing one document because it is exempt from disclosure pursuant to 10 C.F.R. § 2.790(a)(7)(iv) and is not necessary to a proper decision in this proceeding. 10 C.F.R. § 2.744(b). This document is a report of interview, dated November 9, 1993. Section 2.790(a)(7)(iv) provides that information compiled for law enforcement purposes which could reasonably be expected to disclose the identity of a confidential source is exempt from disclosure. The report of interview, which was compiled for law enforcement purposes, contains information received from an individual who was afforded protection pursuant to a confidentiality agreement. The information contained in this document, if disclosed, could reasonably be expected to disclose the identity of the confidential source. In addition, neither the identity of the confidential source nor the information contained in the document is necessary to a proper decision in this

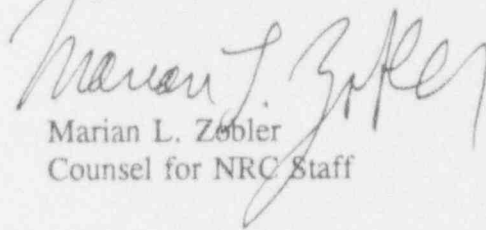
proceeding. Thus, the Staff objects to the production of this document, 10 C.F.R. § 2.744(b). In accordance with 10 C.F.R. § 2.744(c), if the Board so requests, the Staff will produce, *in camera, ex parte*, to the Board the protected document so that the Board may determine the relevance of the document, whether such document is exempt from disclosure under section 2.790, and whether the disclosure of the document is necessary for a proper decision in this proceeding.

In addition, certain portions of those documents to be produced are exempted from disclosure pursuant to 10 C.F.R. § 2.790(a)(6). Section 2.790(a)(6) provides that personnel and medical files and similar files, the disclosure of which constitute a clearly unwarranted invasion of personal privacy may be exempt from disclosure. Certain documents contain information regarding individuals' home addresses, home telephone numbers, and social security numbers. Because such information would constitute an unwarranted invasion of personal privacy and because such information is not necessary for a proper decision in this proceeding, the Staff objects to the provision of such information. 10 C.F.R. § 2.744. In addition, to the extent to a person's home address or telephone number is necessary, such information is obtainable from another source. *See id.*

II. NRC STAFF MOTION FOR A PROTECTIVE ORDER

Pursuant to section 2.740(c) of the Commission's regulations, the Staff hereby requests that the Board enter a protective order directing that certain documents requested by the Licensee in this proceeding need not be produced and that information constituting an unwarranted invasion of personal privacy need not be produced. The bases for the motion are set forth by the Staff, above.

Respectfully submitted,



Marian L. Zabler
Counsel for NRC Staff

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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

1994 APR -8 P4:37

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE AND OBJECTIONS TO LICENSEE'S REQUEST FOR PRODUCTION OF DOCUMENTS DATED MARCH 8, 1994 AND NRC STAFF'S MOTION FOR PROTECTIVE ORDER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 7th day of April 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
Atomic Safety and Licensing Board
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Washington, D.C. 20555

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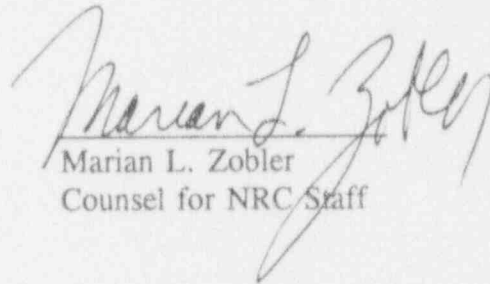
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Adjudicatory File (2)*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

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



Marian L. Zobler
Counsel for NRC Staff