

April 5, 1989

MEMORANDUM FOR:

Hal Walker

FROM:

Peter Crane

SUBJECT:

CINCINNATI INVESTIGATION

*Release 5
as
bracketed
Peter Crane*

I have put together a few thoughts in preparation for the [redacted] interview. I think that on one key point -- what was meant by the letter of Nov. 2, 1984 -- [redacted] was untruthful in his interviews with you. The interesting question is why he was untruthful, and what that implies, because his current explanation of the letter blows a hole both in the hospital's earlier submission to the NRC and the NRC's assessment of the incident back in 1984.

EX 6

EX 6

To me that suggests that [redacted] interest at this point is probably in protecting himself, not the hospital, and I can understand why he would feel that way. The screwup at the hospital wasn't his fault, it was the fault of Radiation Safety, which failed to make the proper surveys at the proper time. But [redacted] was called on to write the letter that was used to get the hospital off the hook. By the time you interviewed [redacted] he probably saw a danger that he would be made the fall guy, forced to take the blame for the hospital's having supplied inaccurate information about a

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blunder that wasn't Aron's responsibility in the first place.

So [redacted] interest is in distancing himself personally. He does this by saying: (1) the letter of Nov. 2 isn't about iodine leakage in the patient's head, it's about generalized iodine contamination in the brachytherapy storage room; and (2) the letter had nothing to do with whether or not the NRC would find that a misadministration occurred. On point (1), he's clearly lying, as described below. On point (2), either he is lying or he was completely duped by Saenger, [redacted] and others, as also described below.

Ev

Incidentally, the interviews make clear the hole in the NRC staff's reasoning that once I-125 contamination was detected, the hospital had to have known that it came from the seed in the patient, because that was the obvious source. Not correct. Both [redacted] (interview at 10) and [redacted] (interview at 22) make the point that I-125 seeds were used for prostate implants. [redacted] in the first interview at 9, likewise says that they "did not know which seed or seeds, even, had been the source of contamination." Thus the contamination in the BSR didn't necessarily point to the patient, and when they performed the wipe test, they ruled her out (for at least a period of time.)

Ev

The real problem for [redacted] comes when he says (second interview) that the letter of Nov. 2, when it spoke of "iodine leakage," referred to contamination in the ISR, not leakage in the patient. This can't possibly be true. The next sentence in the letter (saying that the need to continue treatment overshadowed any effects of I-125 irradiation of the thyroid gland) makes no sense if "leakage" refers to contamination in the ISR. Her thyroid would not have been a factor unless the source of the contamination was inside her. She was in her room, not in the ISR, so the fact that the ISR was contaminated would have been irrelevant to the state of her thyroid.

[redacted] is probably telling the truth, on the other hand, when he says (first interview at 9) that as of Friday, August 31 they did not know the patient was contaminated, and what evidence they did have "argued against contamination." (That position is consistent with Mullauer's original writeup, where he said that the cause of the contamination was "unknown" during the treatment period.)

So [redacted] I think, is now being accurate about the state of his knowledge during the incident. But he recognizes that the letter of Nov. 2 was deceptive about the state of the doctors' knowledge during the incident, and he is therefore arguing that the letter doesn't mean what it says.

What does [redacted] know about the letter's purpose? He says, in the first interview at 21, that the letter had nothing to do with whether there was a misadministration. But Saenger's cover letter said that he thought the [redacted] letter should resolve the "problem." What did [redacted] think the "problem" was if not the possible finding of a misadministration? EX. 6

Likewise, [redacted] (interview at 35) says that he did have discussions with NRC personnel "just to confirm that this was not under the definition of a misadministration." And [redacted] says that he sat in on a discussion of the chronology with [redacted] and NRC. (We don't know whether the discussion [redacted] sat in on was the same one in which [redacted] was arguing that the incident was not a misadministration.) EX. 6

I find it hard to believe that [redacted] didn't know that his letter was going to be used to argue that no misadministration had taken place. On the other hand, it could be that, to whatever degree, [redacted] was being duped by the Radiation Safety people, who were using him to cover their own failures. EX. 6

What can we conclude from the fact that [redacted] is misrepresenting the meaning of the November 2 letter? It suggests at least two things: (1) [redacted] knows that the hospital's story to the NRC was false, and that in fact the hospital had no real idea what was going on until the

treatment was over, just as Mullauer reported; and (2) he knows that his letter of Nov. 2 was the crucial document, requested by NRC, on which NRC hinged its finding of a no-misadministration, and he is afraid that the blame for the whole falsification will fall on him.

If [redacted] were bent on assisting his employers, and were willing to deceive in order to do so, the logical thing to do would be to stand by the original story, as reflected in the Nov. 2 letter, and say that of course, he and [redacted] had made the medical decision described in the letter once they realized or suspected that the seed was leaking in the patient's head. But [redacted] takes a different course. By saying that the letter means something other than its plain meaning, he has cut the legs out from under the hospital's claim of a deliberate medical decision to leave a leaking seed in place. [redacted] letter was the only documentation we have yet seen of that supposed decision. [redacted] memo to file of September 12 said nothing about it.)

E+G

The implication that he is thinking of his own hide, not the hospital's, and is trying to distance himself from the hospital's submissions to the NRC, suggests a possible line of inquiry.

Did he think he was getting full and timely information from Radiation Safety? [redacted] was not present at the October 12,

E+G

1984 exit interview, though Saenger was. [redacted] wasn't there either, and he says (interview at 32) that "we were all kept out of" Saenger's discussions with the NRC. It was after that interview that Mullauer returned and reported that the hospital thought that there was no misadministration, since there was a deliberate decision to continue the treatment. What was he told about those discussions?

EX 4

What discussions did [redacted] have with others in the hospital about the Nov. 2 letter? Saenger apparently asked for it, after a conversation with Axelson. What did Saenger say in asking for it? Who reviewed the letter? Who saw it? Were any additions or corrections made? Did counsel see it? Did [redacted] see Saenger's cover letter? What did he understand by the word "problem" in that letter? When did he learn that the NRC's finding of no misadministration would be or had been based on the November 2 letter? Did he express to anyone the concern that the letter was being interpreted to mean something other than what he meant?

EX 5

[redacted] also comments that the NRC's chronology is more accurate than the hospital's. Did he see the October 3 chronology before it went to the NRC? That chronology, with its claim that the decision to continue the treatment was made on August 29 -- supposedly on the basis of the wipe tests -- is where the hospital locked itself into the claim of having known of the problem during the treatment. (Note

EX 6

that at the time the October 3 chronology was submitted, the hospital was not yet responding to the charge of misadministration. Rather, it was responding to the charge in the anonymous September 24 letter to the NRC that the hospital was inept and didn't know what it was doing. Seen in that light, the chronology is an effort to show that the hospital was on top of the problem. Later -- after October 12 -- it became apparent that demonstrating that you were on top of the problem might be a way around the finding of misadministration.)

What had [redacted] reported to others in the hospital about his and [redacted] medical decisions? What had they put in the patient's chart? If you are [redacted] and you decide (say on August 31) that the seed is leaking, isn't that something you discuss with the people in Radiation Safety? Don't you alert [redacted] the surgeon who is going to be removing the seed? Doesn't that suggest special precautions for the people involved in the removal? (Note that they didn't begin testing the nurses who attended the patient until September 7.)

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E+L

In questioning [redacted] I think we should be pursuing some of these other questions before asking him about the problems with the way he characterized the Nov. 2 letter in his interview with you. If he is running scared, and trying to

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distance himself from the hospital's position, as theorized above, there may be things he wants to say.

Something I hope we can dig out of the medical records at some point is the seeming discrepancy in the urine samples.

(Also, what happened to the blood samples taken from the patient?) Supposedly, a urine sample was taken from the

patient on 8/31. Likewise, urine samples were taken from

[REDACTED]

on 8/31 -- in their case, 24

Ex-4

hour urines. Why did it take until 9/4 to get a reading on the patient? (It should take 20 minutes or so to run the

test.) If it did not take the same length of time to get a

reading on [REDACTED] samples, there is reason

to doubt that the patient's urine was actually collected on

8/31. In addition, if it was collected over a 24 hour

period, they would have had to begin collecting on 8/30. I

don't think that the patient was under suspicion on 8/30 as

having the leaking source in her.