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December 8, 1992

MEMORANDUM FOR: Chairman Selin  
FROM: Peter G. Crane *P. Crane*  
SUBJECT: FORTHCOMING MEDICAL BRIEFING

Dennis Rathbun suggested that I put on paper some of the questions that might profitably be asked of the staff at the December 10 briefing on medical issues. By way of background, I am enclosing a memo that I sent to the EDO, at his request, in 1991. The material from p. 5 on is most relevant. Among other things, it makes the point, which subsequent experience seems to have borne out, that appeasement of Dr. Marcus is likely to be counterproductive. (I believe that in a later draft, I omitted the last two pages, since they got into a matter that was sent to the IG.) I am also enclosing a copy of a March 10, 1990 memo from me to the IG, setting out what I saw as a "road map" of the problems in NRC regulation in the medical area.

I urge you to read these, because I cannot overemphasize how deeply upset and outraged I think the public and the Congress will be over what the Plain Dealer and the upcoming hearings are likely to reveal. You should know the worst ahead of time. I should add that in this memorandum, as in everything else I write in the medical area, I am speaking for myself alone, not for OGC.

1. How many people actually died at Riverside in 1975? (The Plain Dealer is going to report 26, as I understand it; Tom Combs tells me that they have been doing their homework, going back and looking at coroner's reports.)
2. How many people did the NRC report to the Congress as having died? (Joe Fouchard tells me the answer is two.)
3. If there is a disparity between the answers to #1 and #2, what is the reason for the disparity?
4. Did the NRC's consultant, Dr. Saenger of the U. of Cincinnati Medical Center, know of the disparity, and if so, who if anyone at NRC was told about this?
5. What followup if any was done by NRC on the people injured in the incident?
6. What do we know about the subsequent career of the person responsible for miscalculating the radioactivity of the source in the Riverside incident? (According to Norm McElroy, formerly of the NRC staff, the staff was aware that after fleeing the country

to avoid several hundred lawsuits, the individual reentered the country and was again working in the medical field.) If we were aware that he was back in the U.S., did we have some obligation to report this? Was he working for a licensee? (I don't know the answer to this last question.)

7. Why does the staff hire, as consultants to investigate misadministrations, people like Dr. Saenger and Dr. Marcus, who are on record as opposed in principle to the reporting of misadministrations?

8. According to the Plain Dealer, the NRC responded to the reporters by saying it knew of no deaths from misadministrations. Is that correct, and if so, who made that statement?

9. Who in NRC made the decision that the U. of Cincinnati incident in 1984 was not a misadministration? Who participated in that decision?

10. When the NRC reclassified the incident as a misadministration in 1986, did it notify the licensee of that fact? Did it notify the patient's family? (In 1989, when interviewed by OI and OIG, Dr. Saenger was quick to point out that NRC had never told the licensee that the event was a misadministration, and OIG later confirmed with the staff that this was accurate.) If the NRC staff failed to so inform the hospital, what was the reason for the omission? (My guess was that they were sparing the hospital from having to inform the patient's family, on the reasonable assumption that the patient's family would not be reading the AO reports in the Federal Register.)

12. When the NRC staff learned in 1989 that in addition to the patient, her boyfriend, and some 60 hospital staff, the patient's 5-year-old child had also been irradiated, what action if any did the staff take? If the answer is "none," why not?

13. What has been the subsequent record of the Cincinnati hospital? (OI referred them to DOJ on a separate charge of providing false information to NRC.)

14. Why, when the staff was aware in 1986 that the Cincinnati hospital case would be investigated by OI, did it then contact the hospital, discuss the facts of the case, and on the basis of that discussion urge that the investigation be terminated?

15. Why, when the staff knew that the Commission had just ordered an investigation of the Cincinnati case, and Dr. Saenger's role in it, did the staff then retain Dr. Saenger as its consultant on the Cleveland Clinic case in which a woman died of burns received in radiation treatment? (OGC raised the issue, the staff added another consultant, and Dr. Saenger withdrew from the case in a huff.)

16. Was that Cleveland Clinic case reported as a radiation-caused death in the AO report? (I don't know the answer to this.)

17. Is it true that the staff is proposing, in response to critical letters from Carol Marcus and the ACNP/SNM, to withdraw a NUREG, issued after extensive peer review only a short time ago?

18. Is it true that NMSS is preparing to reassign personnel about whom Carol Marcus has complained?

19. Dr. Marcus has repeatedly said, in letters to the NRC, that she filed a petition for rulemaking at the request of Dick Cunningham, who assigned Norm McElroy to help her write it. She says, in fact, that as an ACMUI member she should not be barred from participating in evaluation of the petition, since if it had been hers, rather than Dick Cunningham's, it would have been very different. (a) Is this statement accurate? (b) If the answer is yes, how does this comport with the notion of "arm's-length regulation," and has the public been told that this petition was, in Dr. Marcus's words (Letter to Chilk, 11-9-92), "an inside job from the start"? (c) If the answer is no, why did the staff propose the appointment to ACMUI of someone who makes false accusations about the conduct of the NRC staff?

20. What is the nature of the change in AO reporting criteria that the staff is proposing? (The answer is that only the most drastic misadministrations will be reportable -- 25 rems whole body, 150 rems to the skin, 375 rems to feet, hands, ankles.) Coming at this time, will it not appear that NRC's response to the ongoing problem of misadministrations is to change the criteria so as to report far fewer of them? Why are the criteria set so high? Isn't 25 rems whole body an extremely high threshold?

VOUCHER FOR PROFESSIONAL SERVICES

INSTRUCTIONS

This form shall be completed by all NRC consultants for claiming compensation for official authorized personal services. A signed original and two copies should be submitted to the NRC office authorizing the service.

TO: U.S. Nuclear Regulatory Commission		FROM: NAME OF CLAIMANT Eugene L. Saenger, M.D.	
ATTENTION: NRC OFFICE AUTHORIZING THIS SERVICE Division of Engineering and Technical Prog. Region III 799 Roosevelt Rd.		STREET ADDRESS Cincinnati General Hospital 234 Goodman Street	
CITY Glen Ellyn		STATE IL	ZIP CODE 60137
		CITY Cincinnati	STATE Ohio
		ZIP CODE 45267	SOCIAL SECURITY NUMBER [REDACTED]

DESCRIPTION OF CLAIM  
(All blocks must be completed)

CONTRACT:	NUMBER AT (49-24)-1023	DATE 7/1/82-6/30/82	AMOUNT CLAIMED	
PERIOD COVERED: (Dates)	FROM 4/7/82	TO 6/11/82	DOLLARS	CENTS
SERVICES PERFORMED:  (Itemize on reverse)	NUMBER OF DAYS	PER DAY \$	206	88
	NUMBER OF HOURS 9 1/2	PER HOUR \$ 21.25		
RETIRED ANNUITANT: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	TOTAL AMOUNT CLAIMED			

CERTIFICATION

I CERTIFY that the above account is just and true in all respects; that my statement of services correctly sets forth the services on official business; that the payment therefore has not been received; and that no compensation for any of the time shown above is payable from or will be claimed from any other source of the Federal Government or its cost reimbursable contractors.

\_\_\_\_\_  
(Claimant's Signature)

\_\_\_\_\_  
(Date of Certification)

OFFICE OF THE CONTROLLER USE ONLY

DIFFERENCE

AMOUNT VERIFIED CORRECT

SIGNATURE

APPROVAL

I CERTIFY that the above claim is just; that the above services were officially requested and performed; and that the expenses claimed are authorized.

\_\_\_\_\_  
(Approving Officer's Signature)

\_\_\_\_\_  
(Date Approved)