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April 18, 1994



UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF	)	Docket No. 030-30485
	)	License No. 37-28179-01
INDIANA REGIONAL CANCER CENTER	)	EA No. 93-284

MOTION TO IMMEDIATELY STAY DISCOVERY

The Indiana Regional Cancer Center, Licensee, and James E. Bauer, M.D., by and through their counsel, Iles Cooper, Esquire, and Williamson, Friedberg & Jones, hereby submit the following Motion to Immediately Stay Discovery and move that the Atomic Safety and Licensing Board stay discovery in this matter. In support of this motion, the Indiana Regional Cancer Center and James E. Bauer, M.D. hereby state as follows:

1. The Indiana Regional Cancer Center ("IRCC") holds By-Product License 37-28179-01 (strontium-90 license) as issued by the Nuclear Regulatory Commission ("NRC").

2. On November 16, 1993, the NRC Staff ("Staff") issued an immediately effective Order Modifying and Suspending License, which suspended the strontium-90 license until further order. See 58 Fed. Reg. 61932 (November 23, 1993); 58 Fed. Reg. 61933.

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3. On February 1, 1994, the Atomic Safety and Licensing Board ("Board"), following a pre-hearing conference held on January 26, 1994, issued an Order pertaining to the filing of dispositive motions and conduct of discovery in this matter.

4. In the "NRC Staff's Response to First Request for Production of Documents and Admissions Directed to the NRC Staff and NRC Staff Motion for a Protective Order," dated March 3, 1994, "the Staff indicated that the issue of false statements made by Dr. James E. Bauer was referred to and accepted by the Assistant United States Attorney for the Western District of Pennsylvania (AUSA) as warranting a criminal investigation into possible violations of federal law."

5. Last week the Indiana Regional Cancer Center was informed by Staff in a letter of April 13, 1994 from Marian L. Zobler, Esquire to Administrative Judges stated that "[s]ince the filing of the Staff's Response, it has come to the Staff's attention that the scope of the matter being investigated by the AUSA has expanded to include an investigation into Dr. Bauer's misuse of the strontium-90 source." A copy of the April 13, 1994 letter is attached hereto.

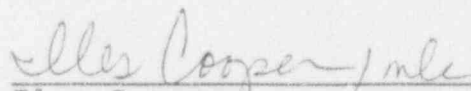
6. Indiana Regional Cancer Center and Dr. Bauer have recently been advised that the AUSA wishes to speak with certain individuals regarding these matters.

7. Because of the expanded scope of the criminal investigations into the activities of Dr. Bauer and/or The Indiana Regional Cancer Center under the strontium-90 license, the Indiana Regional Cancer Center and Dr. Bauer believe they will not be in a position to meaningfully respond to discovery in this matter without placing the constitutional rights of Dr. Bauer and/or the Indiana Regional Cancer Center in jeopardy.

8. There will be no prejudice to the Staff by the granting of a stay of discovery in this matter until the criminal investigations have been completed.

WHEREFORE, the Indiana Regional Cancer Center and James E. Bauer, M.D. respectfully request that the Atomic Safety and Licensing Board grant this Motion to Immediately Stay Discovery and stay discovery under 10 C.F.R. Section 2.74D, et. seq. in this matter until the criminal investigations pertaining to Dr. Bauer and/or The Indiana Regional Cancer Center have been completed by the AUSA for the Western District of Pennsylvania.

Respectfully submitted,



Iles Cooper  
Pa. I.D. No. 24754  
Williamson, Friedberg & Jones  
One Norwegian Plaza  
P.O. Box E  
Pottsville, PA 17901

Dated: April 18, 1994



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

April 13, 1994

G. Paul Bollwerk, III, Chairman  
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  
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

In the Matter of  
Indiana Regional Cancer Center  
Byproduct Material License No. 37-28179-01  
Docket No. 030-30485-EA

Dear Administrative Judges:

The Staff hereby informs the Atomic Safety and Licensing Board and the parties to this proceeding of the following information. In "NRC Staff's Response to First Request for Production of Documents and Admissions Directed to the NRC Staff and NRC Staff Motion for a Protective Order," dated March 3, 1994, the Staff indicated that the issue of false statements made by Dr. James E. Bauer was referred to and accepted by the Assistant United States Attorney for the Western District of Pennsylvania (AUSA) as warranting a criminal investigation into possible violations of federal law. Staff's Response at 2.

Since the filing of the Staff's Response, it has come to the Staff's attention that the scope of the matter being investigated by the AUSA has expanded to include an investigation into Dr. Bauer's misuse of the strontium-90 source. Since the scope of the investigation could have an impact on civil discovery in the above-captioned proceeding, the Staff is making this information known to both the Atomic Safety and Licensing Board and the parties in this proceeding.

Sincerely,

*Marian L. Zohler*  
Marian L. Zohler  
Counsel for NRC Staff

cc: Service List

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF ) Docket No. 030-30485  
 ) License No. 37-28179-01  
INDIANA REGIONAL CANCER CENTER ) EA No. 93-284

CERTIFICATE OF SERVICE

I hereby certify that copies of the Motion to Stay Discovery in the above-captioned proceeding have been served on the following this 18th day of April 1994 as indicated:

G. Paul Bollwerk, III, Chairman  
Administrative Judge  
Atomic Safety & Licensing Board  
4350 East West Highway  
4th Floor  
Bethesda, MD 20814  
**By Mail and By Fax (301-492-7285)**

Dr. Charles N. Kelber  
Administrative Judge  
Atomic Safety & Licensing Board  
4350 East West Highway  
4th Floor  
Bethesda, MD 20814

Marian L. Zobler  
Michael H. Finkelstein  
U.S. Nuclear Regulatory  
Commission  
Office of General Counsel  
Washington, DC 20555  
**By Mail and By Fax (301-504-3725)**

Atomic Safety & Licensing Board  
Panel (1)  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Peter S. Lam  
Administrative Judge  
Atomic Safety & Licensing Board  
4350 East West Highway  
4th Floor  
Bethesda, MD 20814

Adjudicatory File (2)  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

Office of the Secretary (2)  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

ATTN: Docketing & Service  
Section  
**By Mail and By Fax (301-504-1672)**

Office of Commission  
Appellate Adjudication (1)  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

*Iles Cooper / ml*  
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