OGB/OCB

MAY 2 4 1994

Veterans Affairs Medical Center
North Chicago
ATTN: Alfred S. Pate, Director
3001 North Green Bay Road
North Chicago, IL 60064

License No. 12-10057-04
Docket No. 030-15269
EA 93-264

Dear Mr. Pate:

This refers to an investigation performed by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) at Veterans Affairs Medical Center, North Chicago (VAMCNC). The subject of the investigation was an allegation that VAMCNC discriminated against an employee for pursuing the reporting of a diagnostic nuclear medicine misadministration.

The investigation substantiated the allegation that VAMCNC discriminated against the employee. Specifically, it determined that a former VAMCNC employee, the Chief of the Nuclear Medicine Service (Nuclear Medicine Chief) discriminated against the Supervisor of the Nuclear Medicine Technicians (Supervisor) for pursuing the reporting of a September 27, 1989, misadministration. The discrimination was an apparent violation of 10 CFR 30.7(a).

The OI investigation revealed that the Nuclear Medicine Chief changed (downgraded) the Supervisor's performance evaluation on April 17, 1991, following the NRC inspection which affirmed that a misadministration had occurred. The written performance evaluation contained a liberal use of correction fluid in several key areas, e.g., the overall performance was changed from "outstanding" to "fully successful" and seven elements originally marked "exceptional" were changed to "fully successful." The Nuclear Medicine Chief's secretary testified that she made these changes to the performance evaluation per the Nuclear Medicine Chief's direct orders. Furthermore, the Nuclear Medicine Chief violated Veterans Affairs policy in preparing the Supervisor's performance evaluation. The performance evaluation revealed that correction fluid was used to change the name of the rating official from the Nuclear Medicine Chief to that of a nuclear medicine staff physician, and the name of the approving official from the Chief of Staff to the Nuclear Medicine Chief. According to your Director, as well as Veterans Affairs policy, the correct rating official was the Nuclear Medicine Chief, and the correct approving official was the Chief of Staff, the Nuclear Medicine Chief's supervisor. Therefore, by placing himself in the position of the approving official, the Nuclear Medicine Chief avoided scrutiny of the evaluation at a higher level.

No Notice of Violation is presently being issued for this finding. In addition, please be advised that the characterization of the apparent violation may change as a result of further NRC review.

IE07

An enforcement conference to discuss the apparent violation has been scheduled for Wednesday, June 1, 1994, at 10 a.m. at the NRC Region III office in Lisle, IL. The purposes of this conference are to discuss the apparent violation, its causes and safety significance; to provide you the opportunity to point out any errors in our findings; and to provide an opportunity for you to present your corrective actions.

In addition, this is an opportunity for you to provide any information concerning your perspectives on (1) the severity of the violation, (2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy, and (3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

A copy of the OI Report Synopsis is enclosed for your information. Two additional issues are discussed in the Synopsis. In addition to the discrimination against the Supervisor, we would like to briefly discuss with you the issue of the alleged discrimination against the Radiation Safety Officer. The issue of the Nuclear Medicine Chief providing false and/or misleading information to the NRC inspectors will not be a subject of this enforcement conference.

You will be advised by separate correspondence of the results of our deliberations on this matter following the Enforcement Conference. No response regarding the apparent violation is required at this time.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Original Signed by John A. Grobe

W. L. Axelson, Director
Division of Radiation Safety and
Safeguards

Enclosure: OI Synopsis

bcc w/enclsoure:
J. Lieberman, OE
J. Goldberg, OGC
R. Bernero, NMSS
PUBLIC - IE07

(See previous concurrence page)

RIII	RIII	RIII	RIII	RIII
Weber/dp	Jones	Caniano	DeFayette	for Axelson
05/ /94				5/24/94

An enforcement conference to discuss the apparent violation has been scheduled for Wednesday, June 10, 1994, at 10 a.m. at the NRC Region III office in Lisle, IL. The purposes of this conference are to discuss the apparent violation, its causes and safety significance; to provide you the opportunity to point out any errors in our findings; and to provide an opportunity for you to present your corrective actions.

In addition, this is an opportunity for you to provide any information concerning your perspectives on (1) the severity of the violation, (2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy, and (3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

A copy of the OI Report Synopsis is enclosed for your information. Please be advised that the issue of the Nuclear Medicine Chief providing false and/or misleading information to the NRC inspectors will not be a subject of this enforcement conference. Moreover, although the major issue to be discussed is the discrimination against the Supervisor, we also would like to briefly discuss the issue of the alleged discrimination against the Radiation Safety Officer.

You will be advised by separate correspondence of the results of our deliberations on this matter following the Enforcement Conference. No response regarding the apparent violation is required at this time.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

W. L. Axelson, Director
Division of Radiation Safety and
Safeguards

Enclosure: OI Synopsis

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SYNOPSIS

On May 30, 1991, the Regional Administrator, U. S. Nuclear Regulatory Commission (NRC), Region III, requested that an investigation be initiated concerning alleged false or potentially misleading information being provided to the NRC, and alleged employment discrimination being directed against the RSO and the supervisor of the nuclear medicine technicians at the Veterans Affairs Medical Center, North Chicago, Illinois, after NRC notification of a September 27, 1989, diagnostic misadministration.

The Office of Investigations (OI) investigation did not develop sufficient evidence to conclude that the RSO suffered from employment discrimination by the chief of the Quality Improvement Center as a result of reporting the September 27, 1989, diagnostic misadministration.

The OI investigation substantiated that the chief of the Nuclear Medicine Service deliberately provided false and/or misleading information to NRC inspectors and also discriminated against the supervisor of the nuclear medicine technicians for pursuing the reporting of a diagnostic misadministration.