

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission
Atomic Safety & Licensing Board

Title: Oncology Services Corporation

Docket No. 30-31765-EA and ASLBP No.
93-674-03-EA

LOCATION: Bethesda, Maryland

DATE: Wednesday, June 8, 1994

PAGES: 160 - 197

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 ATOMIC SAFETY AND LICENSING BOARD
4

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6 In the Matter of: : Docket No. 30-31765-EA
7 ONCOLOGY SERVICES CORPORATION : ASLBP No. 93-674-03-EA
8 - - - - -x

9
10 Nuclear Regulatory Commission
11 Room 426
12 4350 East-West Highway
13 Bethesda, Maryland

14
15 Wednesday, June 8, 1994
16

17 The above-entitled matter came on for prehearing
18 conference via telephone, pursuant to notice, at 9:40 a.m.
19 Before Administrative Judges:

- 20 G. Paul Bollwerk, III, Chairman
21 Dr. Charles N. Kelber
22 Dr. Peter S. Lam
23
24
25

1 APPEARANCES:

2 ON BEHALF OF ONCOLOGY SERVICES CORPORATION:

3 MARCY COLKITT

4 JOE KLEIN

5

6 ON BEHALF OF NUCLEAR REGULATORY COMMISSION:

7 MARIANNE ZOLBER

8 PATRICIA SANTIAGO

9 CATHERINE MARCO

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P R O C E E D I N G S

9:40 A.M.

1
2
3 JUDGE BOLLWERK: This is Judge Bollwerk. We're
4 having a telephone conference this morning in the Oncology
5 Services proceeding to discuss portions, I guess, of our
6 May 26, 1994 Order dealing with discovery matters.
7 Specifically, as I understand it from the NRC staff, some of
8 the rulings that were made on pages 3 and 4 regarding some
9 of the interrogatories, numbers 5, 9, and 10, this is what
10 Ms. Zolber indicated to me last Friday when she called and
11 asked to set up this conference, and we've established it
12 for this morning.

13 With me is Judge Kelber and Judge Lam, also Bob
14 Pierce, an attorney with the Licensing Board staff. And I
15 would ask at this point if each of the counsel could
16 identify themselves for the record?

17 MS. ZOLBER: For the NRC staff, it's Marianne
18 Zolber from the Office of General Counsel. With me is
19 Catherine Marco and Patricia Santiago from the Office of
20 Enforcement.

21 MS. COLKITT: Marcy Colkitt for Oncology Services.

22 MR. KLEIN: And Joe Klein with Marcy Colkitt for
23 Oncology Services.

24 JUDGE BOLLWERK: Okay. And as I think we've done
25 at least one of these before, I know at least Mr. Klein and

1 Ms. Zolber did, I would ask if you can before you speak,
2 that you identify yourself so the court reporter can make
3 sure for the record we've got the proper person identified
4 in terms of who is speaking.

5 Okay. As I mentioned, Ms. Zolber called and asked
6 us to set up this conference because of some matters she
7 wanted to discuss.

8 And so I guess it's your dime, Ms. Zolber. What
9 would you like to bring before the Board?

10 MS. ZOLBER: Your Honor, before we get into the
11 discovery question that the staff had, I wanted to bring up
12 another matter. I apologize for sort of bringing this up at
13 the last minute, but it just occurred recently, and I have
14 spoken to Marcy Colkitt about it, and this involves your
15 May 26th Discovery Order regarding the provision of a
16 certain document ex parte in camera. I understand that
17 would be due tomorrow. And I was wondering if the Board
18 would entertain an oral motion from the staff regarding the
19 provision of that document?

20 JUDGE BOLLWERK: We will hear what you have to
21 say.

22 MS. ZOLBER: The director of our Office of
23 Investigations request he have the opportunity to provide
24 the Board personally the requested document and to address
25 the Board orally tomorrow afternoon to discuss the document.

1 MR. KLEIN: Your Honor, I don't mean to interrupt.

2 JUDGE BOLLWERK: Mr. Klein? Is this Mr. Klein?

3 Why don't you identify yourself? I'd appreciate it.

4 MR. KLEIN: All right. It's Joe Klein. OSC would
5 object to any individual presentation or anything like
6 testimony without its presence there. That is not to say
7 OSC would object if the Board had questions it wished
8 answered in camera. But as a general matter, I think a
9 level playing, due process and all those sorts of fairness
10 concerns, would mandate that OSC be present if the Board is
11 going to take what, in effect, is testimony.

12 MS. COLKITT: This is Marcy Colkitt. I should
13 also indicate that Ms. Zolber just informed me of this about
14 five minutes ago. That was the first time we've ever had
15 any discussion on that. And I would further request that if
16 the Board was at all inclined to grant such a matter that
17 the matter be briefed. Because my understanding of the
18 rules is oral motions are not standard procedure, and that
19 really this is a motion that should have been introduced to
20 writing quite a while ago, giving us an opportunity to
21 respond so that the record is clear.

22 JUDGE BOLLWERK: Well, I guess at this point what
23 is unclear to me is what exactly -- this is the head of the
24 Office of Enforcement or the Office of Investigations? I'm
25 sorry.

1 MS. COLKITT: It's the head -- the director of our
2 Office of Investigations in the headquarters office.

3 JUDGE BOLLWERK: That's Mr. Hayes then; right?

4 MS. COLKITT: Correct.

5 JUDGE BOLLWERK: I guess it's not clear to me what
6 Mr. Hayes would say that couldn't be put in a pleading.

7 MS. ZOLBER: Your Honor, it's Marianne Zolber. My
8 understanding is that Mr. Hayes would like to address the
9 Board orally in order to, I guess, support the request to
10 prevent the disclosure of this document, and also to make
11 himself available to answer questions if the Board has any.

12 MR. KLEIN: This is Joe Klein, your Honor. That
13 seems to be the purpose, as Ms. Zolber, expresses and it
14 appears to me plainly as an issue of oral argument to which
15 we would be entitled to respond. Therefore, I would like to
16 reiterate Ms. Colkitt's notion that the issue be briefed.

17 MS. ZOLBER: Your Honor, Marianne Zolber. I have
18 no problem briefing the request. My concern is the deadline
19 is tomorrow to provide this document to the Board.

20 MR. KLEIN: I don't see why -- this is Joe Klein,
21 your Honor -- be provided to the Court tomorrow with
22 subsequent presentation by Mr. Hayes dependent on briefing.

23 JUDGE BOLLWERK: Okay. I'm going to put you all
24 on the mute switch a second, we want to talk about this.
25 Recognize, however, that you cannot hear what we're talking

1 about, but we can hear what you're saying.

2 MS. ZOLBER: Okay.

3 JUDGE BOLLWERK: So with that caution, I'm going
4 to go ahead and put us on mute here.

5 (A discussion was held off the record.)

6 JUDGE BOLLWERK: This is Judge Bollwerk. I guess
7 our feeling is that if Mr. Hayes has something he wishes to
8 bring to the Board's attention, that can be made part of the
9 pleading that's due, whether through an affidavit or
10 whatever statements are necessary. And if the Board has any
11 questions, well, you know, we recognize that Mr. Hayes is
12 available and we will reach that -- you know, we'll cross
13 that bridge when we come to it, in terms of how we deal with
14 that. At this point see any reason that we need to have
15 Mr. Hayes in here to talk with us.

16 MR. KLEIN: Thank you, your Honor.

17 MS. COLKITT: Thank you.

18 JUDGE BOLLWERK: And again, recognizing that this
19 pleading that the staff is supposed to file tomorrow is
20 filed in camera, but it's supposed to address as to any part
21 of the pleading why it should or shouldn't be made available
22 to Oncology to provide them an opportunity to respond. So
23 obviously with respect to whatever Mr. Hayes has to say or
24 any affidavit he might provide, that's something you need to
25 address, Ms. Zolber.

1 MS. ZOLBER: Okay. I will, your Honor. Thank
2 you.

3 JUDGE BOLLWERK: All right?

4 MS. ZOLBER: All right.

5 JUDGE BOLLWERK: Are we ready to move on to the
6 next matter, then?

7 MS. ZOLBER: Yes, yes, your Honor.

8 JUDGE BOLLWERK: All right.

9 MS. ZOLBER: Okay. Moving on to the original
10 reason why I asked for this conference call is regarding the
11 Board's May 26th Order, and I'd like to go first to
12 discussing Interrogatory Request for Production No. 9 and
13 10. And the reason the staff had a question was the staff
14 provided in response to 9 and 10 a list of documents that
15 was searched through the Office of Enforcement computer
16 database, and I think we provided an explanation as to how
17 to the search worked, what the cue words were, the
18 parameters, the date parameters of the search. In light of
19 that provision, in the Board's order which requested that we
20 identify enforcement orders I don't see what the staff more
21 could provide if the list is somehow inadequate.

22 MS. COLKITT: This is Marcy Colkitt. Judge, I
23 think what Marianne is saying is everything that was in
24 front of the Board when the Board made its May 26th ruling
25 compelling the Board or granting OSC's Motion to Compel on

1 our request, our Interrogatory Document Request 9 and 10.

2 Specifically, we had requested documents, all
3 documents, where there were matters where the staff was
4 aware of certain items such as where there has been an
5 attempt by the * to delegate his responsibilities and where
6 there was an allegation of breakdown of corporate
7 management.

8 What Ms. Zolber produced, she produced a computer
9 printout. First of all, it's not broken down into either
10 one of these matters, but there is one printout. Although
11 some of these may be in -- she is saying they are in NUREGs,
12 what the Board has ordered and what we need, we're looking
13 for all the documents, as are requested, all the documents
14 relating to these matters so that we can examine them.

15 Specifically, the court ordered that the document
16 production is limited to those NRC records and documents
17 concerning the identified cases. Now, all she has done is
18 identify certain cases. She has not produced any documents,
19 and that's why we moved to compel and that's why I believe
20 the Court granted the Motion to Compel.

21 Although some of these documents may or may not be
22 in the NUREGs, I went and looked at some of the NUREGs and
23 it is what I'm going to call "hit or miss." There may be
24 things and there may not be things. What I need is I'm
25 looking for the NRC records.

1 I proposed to Ms. Zolber this morning that to the
2 extent certain documents of the NRC would have are in the
3 NUREGs, for example, a notice of violation or a subsequent
4 enforcement order or even an answer that the licensee may
5 have provided, to the extent that they are in the NUREGs,
6 I'm not asking her to reproduce those to me. That's fine, I
7 will take those from the NUREGs.

8 But the problem is that I have no idea whether or
9 not what's in the NUREG is the universe of relevant
10 documents. I believe and aver that they are not. The only
11 way I could say that we could resolve this would be, for
12 example, Ms. Santiago could do maybe an affidavit or
13 something and she could look at these records and say, you
14 know, in Advent Health Systems case all the documents were
15 produced -- or I mean all the documents are in the NUREG,
16 period.

17 I mean, that would be fine. That would be
18 acceptable to OSC. But absent something like that, we have
19 no idea whether or not documents that we have are the
20 documents that have been ordered to be granted.

21 MS. ZOLBER: I would like to address that. I read
22 the Board's order sort of in two parts as it relates to each
23 specific interrogatory and production requests. The first
24 one had to do with case identification. The Board ordered
25 that we, the staff, identify cases that the staff was

1 generally aware of where we instituted enforcement action on
2 the basis of these two specific facts. That list was
3 provided and the explanations for how that list was
4 generated was also provided.

5 The second part of the Board's Order requested
6 production of those documents or NRC records that analyze or
7 otherwise discuss the factual legal basis for taking such
8 enforcement actions and are not available in West Law. I
9 first wanted to address the identification issue in light of
10 what the staff provided to the licensee with the
11 accompanying explanation. Staff is unable to provide
12 anything more in light of our database capability.

13 MS. COLKITT: Marcy Colkitt again. So it's the
14 staff's position that they have identified every case?

15 MS. ZOLBER: To the best of the ability of the
16 database search to identify the specific cases that you
17 requested.

18 MS. COLKITT: Okay. But the second issue is have
19 you produced the documents?

20 MS. ZOLBER: Well, we've stated the documents were
21 available in the NUREGs in the PDI, and those documents
22 include the Order, you know, the Order imposing a civil
23 penalty, the Notice of Violation, as well as an accompanying
24 letter that would go with it.

25 MS. COLKITT: It's Marcy Colkitt again. So it's

1 the staff's position that each and every one of the relevant
2 documents for each one of these matters is in the NUREGs?

3 MS. SANTIAGO: Or in the PDI. This is Pat
4 Santiago. For the most part, and we didn't go back through,
5 but if you look on the list thing, and I think our answer
6 tells which volume, in fact, these documents would be in,
7 and again it wouldn't include licensees who respond. You
8 had earlier indicated all documents, and I'm concerned if
9 you were looking for any licensee's response to the issues,
10 notices of violations or orders. Those responses are not in
11 the NUREGs. In fact, I think it was only in earlier years
12 that maybe at times some licensees responses were published.

13 MS. COLKITT: Marcy Colkitt again. Those
14 documents are in the possession of the NRC.

15 MS. ZOLBER: And they are available in the Public
16 Document Room.

17 MS. SANTIAGO: Correct.

18 MS. COLKITT: But you have an accession? Can you
19 provide an accession number?

20 MS. ZOLBER: We could provide one.

21 MS. COLKITT: I mean, Judge, I mean, what I feel
22 like is happening here is this is supposed to be discovery
23 and what's happening is the staff is basically requiring me
24 to do all the work for them.

25 MS. ZOLBER: I'm curious. We are required to make

1 the documents available to the licensee, which we have done.
2 One way of making them available is through the Public
3 Document Room.

4 MS. COLKITT: Marcy Colkitt again. So all the
5 documents are currently in the Public Document Room?

6 MS. SANTIAGO: That's correct.

7 MS. COLKITT: And have you identified them so that
8 they're accessible? I mean, quite truthfully, on the other
9 document requests that we've gone through you have provided
10 accession numbers when things that were in the Public
11 Document Room, and that worked. But unless I have accession
12 numbers, I can't obtain the documents, or it becomes very,
13 very difficult. We would be willing, OSC would be willing,
14 though, if we could be provided accession numbers, then we
15 would be willing to certainly do that.

16 MS. ZOLBER: Another alternative is that each of
17 the enforcement action discussed in the NUREGs have a docket
18 number. I believe that if you go to the PDR with a docket
19 number they can give you all the documents under that docket
20 number.

21 MS. SANTIAGO: That's how we would have searched.
22 We would have to probably go back and identify the volume
23 number, go back to the NUREGs identify the docket number,
24 and then go over to another database and try to identify the
25 accession number. It would be very expensive for us to

1 identify specific accession numbers, and we would have to be
2 referencing back -- by the way this is Pat Santiago --
3 through the volumes that we identified in that listing.

4 MS. COLKITT: Joe Klein?

5 MR. KLEIN: Your Honor, it seems to me that the
6 rule has generally been in this proceedings, and there has
7 to be some further identification than just a broad document
8 identification where the party responding to discovery does
9 no produce a document itself. Under that principle, it
10 seems to me, that the result or the indicated decision in
11 this case is that OSC does receive the accession numbers.

12 MS. COLKITT: This is Marcy Colkitt. Consistent
13 with that, Judge, we have discovered that we are responding
14 to on June 10, pursuant to the Court's order, in which I've
15 spent days and days going through and trying to find titles
16 of documents and that sort of things, to specifically
17 identify them for the agency. Because I had earlier done
18 what I'm going to call the broad brush, and the court found
19 that what I had done was not acceptable.

20 Although I certainly understand that this is work
21 for the agency, when I produced 15,000 pages worth of
22 documents to the NRC over a year ago and then had to go and
23 go through documents and try to come up with titles to
24 documents, or dates or identifications of them, it was a lot
25 of work also. The burden, I believe the burden is no

1 different. It was a burden on me, and the burden is on
2 them. These are the documents of the agency.

3 MS. ZOLBER: Your Honor, it's Marianne Zolber. We
4 have provided a list of documents and ways for the licensee
5 to find out more information about these cases of the
6 Board's ruling regarding the staff's discovery requests
7 where the licensee could reference unidentified numbers in
8 response. But clearly that was not sufficient for the staff
9 to be able to understand which document the licensee was
10 referring to in response to a discovery request. Unlike
11 that, here we have a specific document request that the
12 staff has provided the list, and so the licensee is quite
13 able to find the documents staff is referring to.

14 In addition, this is Pat Santiago, I'm concerned
15 that we could give possibly an accession number for these
16 Notices of Violation; however, every document that is
17 entered into the PDR has a separate accession number.

18 As the licensee is interested in identifying all
19 documents, perhaps, related to that access, I would only be
20 giving accession numbers for the Notice of Violation which
21 is printed in the NUREGs' volume, and I would not be giving
22 all the other accession numbers associated perhaps with
23 other correspondence that that licensee has related to the
24 issuance of the Notice of Violation.

25 So I wouldn't be able to give all the accession

1 numbers that perhaps the licensee is asking for in this. In
2 fact, maybe the best way to get all the information the
3 licensee may be looking for is for them to have the docket
4 number that's listed in the NUREG. That way they can look
5 through the docket of that particular licensee or the
6 information that's publicly available and may be of interest
7 to them for whatever their reasons.

8 JUDGE BOLLWERK: Let me just say a couple of
9 things. In granting this, my concern was the question of
10 precedent that has been brought up, and precedent really
11 relates to agency matters that have been issued, decided,
12 talked about in documents. Now, the fact that there are
13 other documents out there written by licensees or other
14 people, that is of less concern to me in terms of what I
15 understood Ms. Colkitt's request being.

16 It's still not clear to me, but to the degree the
17 documents that have been provided identify the agency
18 documents that were generated with respect to this, not
19 necessarily the ones that came in from the licensee or
20 someone else, my concern with respect to this interrogatory
21 and the Board's concern has been addressed.

22 Now, it strikes me that if the docket number is
23 provided that is a way for Ms. Colkitt and Mr. Klein to get
24 into that docket and look at any documents they want to, not
25 only the staff-generated documents or the agency-generated

1 documents, but any that came in from the licensee or
2 whatever. Is there a way you all can work this out?

3 MS. COLKITT: Well, if that's the case I would
4 suggest -- Marcy Colkitt -- that the staff provide a docket
5 number for each of these matters.

6 MS. ZOLBER: Judge, the docket numbers can be
7 found in the NUREGs. They are listed, every docket signed
8 with the order taking the enforcement action and if there's
9 a letter, it has a docket number listed right on the top as
10 part of the caption or part of the letterhead, as well as a
11 license number and the enforcement action number.

12 JUDGE BOLLWERK: Let me just ask a question. If
13 Ms. Colkitt came in with that docket number and went into
14 the PDR and asked, "I want to see all documents relating to
15 this docket number," I take it that's something that you all
16 can help her with?

17 MS. ZOLBER: I understand that there are people in
18 the public document room who will help someone find
19 information if she is, if Ms. Colkitt is, having exceptional
20 difficulties she can call me and I will see what I can do
21 from my end.

22 MS. COLKITT: But, Judge, my experience with the
23 Public Document Room is that it's more difficult to get help
24 there than we would make it sound, that by and large
25 documents are copied and shipped out. But if, for example,

1 i the staff would be willing to provide somebody to come
2 over and spend, you know, whatever, some time to assist in
3 the Document Room to find everything, that would be
4 something that we could deal with.

5 JUDGE BOLLWERK: Ms. Zolber and Ms. Santiago, how
6 can you help us out here?

7 MS. SANTIAGO: Well, I was wondering if the NUREGs
8 were even available to OSC, if they had some of the copies
9 of these things.

10 MS. COLKITT: Well, that would help, too. Marcy
11 Colkitt again.

12 MS. SANTIAGO: This is Pat Santiago. I do think
13 that that's part of your problem is obtaining these NUREGs.

14 MS. COLKITT: Well --

15 MS. SANTIAGO: Because they are available, I
16 think, through the Government Printing Office, but I have
17 yet to, I guess, ask them. If you have the NUREGs, because
18 once you have the NUREGs, I recognize certain volumes might
19 be difficult to obtain because there are older ones,
20 something like that we would be able to assist. If you were
21 interested in the basic points in that Notice of Violation
22 Order that was --

23 MS. COLKITT: Well, first of all, I mean, I have
24 been -- Marcy Colkitt again -- some new regs were more
25 accessible, as you pointed out, Pat, than others. But the

1 answer is no, do I have them all, no. That's one thing that
2 to the extent that you could assist in obtaining those, but
3 that's only half the problem.

4 The second half is being able to take that and
5 then effectively locate and obtain the documents relating to
6 the docket numbers that are, as you folks have said, in the
7 PDR. That's where again I would say that if we could work
8 out something where there would be assistance, if we could
9 have somebody give us some help, that's something we would
10 be willing to do.

11 MS. ZOLBER: Your Honor, this is Marianne Zolber,
12 if Ms. Colkitt and I or someone else from the staff, we can
13 arrange a time to meet and go over the documents if that
14 would satisfy the licensee, then that can be arranged.

15 JUDGE BOLLWERK: It sounds like a good idea to me.
16 How about it, Ms. Colkitt?

17 MS. COLKITT: That's fine, Judge.

18 JUDGE BOLLWERK: All right. So does that take
19 care of --

20 MS. COLKITT: If I could take Ms. Santiago up on
21 her offer to maybe give me a hand in attempting to get these
22 NUREGs, because some of them are very hard to get.

23 MS. ZOLBER: Okay. I'm expecting that you don't
24 mean the full volume, but perhaps a volume that you can't
25 obtain we can get you a copy of that particular action.

1 MS. COLKITT: Yeah. All I'm looking -- I'm just
2 trying to locate the ones that are relevant to the list that
3 Marianne produced.

4 MS. ZOLBER: Can you at least let us know what
5 NUREGs you do have?

6 MS. COLKITT: Yes.

7 MS. ZOLBER: Or which ones that you don't have and
8 would like us to get you copies of?

9 MS. COLKITT: Yes.

10 JUDGE BOLLWERK: All right. Anything else on this
11 in terms of 9 and 10 anyway?

12 MS. ZOLBER: I don't think so, your Honor. So in
13 terms of responding to 9 and 10, that will be, I guess, held
14 in abeyance until Ms. Colkitt and I work out a date? I'm
15 thinking of how the staff should respond to the Board's
16 Order of Interrogatories 9 and 10?

17 JUDGE BOLLWERK: The Board has already put out --
18 we put out an earlier order, and I mentioned this, I guess
19 it was in a footnote, but it still applies. To the degree
20 that you all can work out a date other than the one that we
21 give you, by mutual agreement that does not go beyond the
22 close of discovery, that date is perfectly acceptable to us.
23 I just put these dates in here because I don't want things
24 sort of sitting out there with nobody knowing when to
25 respond. Okay?

1 MS. ZOLBER: Okay, your Honor.

2 JUDGE BOLLWERK: Is that clear?

3 MS. ZOLBER: Yes, your Honor. The other
4 interrogatory which is similar is the request for production
5 number 5, and I have spoken to Ms. Colkitt about this one.
6 The staff had originally objected to the provision of these
7 documents and then noted that some of this information
8 requested in interrogatory is publicly available in West
9 Law. We did not provide a list similar to what we provided
10 in 9 and 10.

11 One of the reasons beyond the objection is, and
12 this is why Ms. Santiago is also here, it has to do with our
13 inability to search that specifically on the radiation
14 safety communications, due to the nature of our database
15 search. Why don't I let Ms. Santiago explain it a little
16 bit more in depth.

17 MS. SANTIAGO: Well, I think in the other
18 interrogatories, 9 and 10 -- and again this is Pat Santiago
19 -- we attempted to explain we only have certain key words
20 that can be used to generate a list of names. The specific
21 words in this particular interrogatory, we don't have
22 anything that we see to be equivalent. I might add that
23 there's a possibility that that may also be covered by the
24 other interrogatories, but we just have no way of knowing or
25 any way of being very direct and specific in using those

1 particular words as a key word search.

2 JUDGE BOLLWERK: So in other words you --

3 MS. COLKITT: What we're requesting for is that
4 the documents in cases relating to "failure to disseminate,"
5 "corporate," "radiation safety," and "communications."
6 Now, those are the words that -- those are the agency's
7 words that I have quoted back to them.

8 It is my understanding that there has never been a
9 similar allegation before. If they have no cases, I would
10 just request that they would say that they are aware of
11 none,, and there is no list because they can't locate any.
12 Or according to their understanding they can put certain doc
13 words in and then run key word searches.

14 I would suggest that they run a key word search
15 for "corporate" or "radiation safety" or the word
16 "communications." I think the word "communications" would
17 be a word that could be very easily searched, and if there's
18 a case out there it's going to come up. But what basically
19 the response is, is that I can't get identification of any
20 of these cases that may be relevant because they just can't
21 do it. I can't locate any of these sort of cases on West
22 Law.

23 MS. ZOLBER: Your Honor, I think as Ms. Santiago
24 explained --

25 JUDGE BOLLWERK: This is Ms. Zolber?

1 MS. ZOLBER: Yes, I'm sorry.

2 JUDGE BOLLWERK: Okay.

3 MS. ZOLBER: The Office of Enforcement database is
4 unlike West Law in that West Law allows you to search
5 basically any words you can think of. We have certain set
6 key words and, as Ms. Santiago explained, we don't have a
7 key word for "communication," since it was not one of the
8 keys that was set up when the database was set up.

9 My other suggestion was going to be for Ms.
10 Colkitt to search in West Law using the words "corporate,"
11 "radiation safety," "communications," or a combination
12 thereof, but she says she is unable to find out. I don't
13 know what her search was, but if it would make it any
14 easier, I am willing to do a West Law search and give Ms.
15 Colkitt the results of any search that I have found.

16 MR. KLEIN: Your Honor, this is Joe Klein. If I
17 may, I would like to ask a question of Ms. Zolber and
18 Ms. Santiago, whoever feels more comfortable in replying.
19 In terms of the database that was set up and the identifier
20 terms, how were identifier terms that you can search
21 selected? And why would, say, "communication" not fall into
22 that rationale for selection?

23 MS. SANTIAGO: This is Pat Santiago. The database
24 was set up years before I ever joined the NRC, and I'm not
25 certain as to how those terms were picked, but they were

1 broad terms. They weren't meant to capture every type of
2 action. The terms or key words that are available in the
3 database are, for example, as we answered in Interrogatory 8
4 and 9 broad terms like "management oversight," "medical
5 licensee," and things like that.

6 We were never trying to get it so specific on all
7 the searches that you might have available in West Law,
8 where you could search for any word you want. That's all
9 the information I could give you. I really was not involved
10 in the original set up of the database.

11 MS. COLKITT: This is Marcy Colkitt again. It
12 would sound as if the words that were put in to make the
13 searches were the words that were more commonly occurring in
14 these actions.

15 MS. SANTIAGO: Again, I don't really know, but I
16 can just suggest to you that the words that we do have are
17 broad, and that would be so that when we have to do searches
18 we try to encompass whatever we can that's related to, say,
19 a radiation safety program or an issue related to radiation
20 safety law.

21 JUDGE BOLLWERK: Let me ask you a question.
22 Ms. Zolber?

23 MS. ZOLBER: Yes?

24 JUDGE BOLLWERK: To what degree have you checked
25 with NRC enforcement management about these particular

1 interrogatories? Is there anyone that's aware of any cases
2 that deal with this sort of thing?

3 MS. ZOLBER: This is Pat Santiago, and I'm the
4 assistant director for materials in the Office of
5 Enforcement. I have discussed this question with the
6 director of the Office of Enforcement. To my knowledge I am
7 not aware, and I don't believe he recalled any that would
8 have specifically been related to "radiation safety
9 "communication." Again, I can go back and ask him one more
10 time.

11 MR. KLEIN: This is Joe Klein, your Honor.
12 Ms. Colkitt and I are in separate offices, as you probably
13 realize, and I cannot confer with my client. But I think it
14 would go a long way towards satisfaction of OSC's inquiry if
15 Ms. Santiago could verify that there is a record or no
16 access to any case or no memory recalls any case within the
17 agency related to radiation safety communication.

18 MS. COLKITT: This is Marcy Colkitt. I would
19 agree that that would be fine. That would solve the issue
20 with the licensee.

21 JUDGE BOLLWERK: Is that something you can do,
22 Ms. Zolber?

23 MS. ZOLBER: Provide an affidavit from
24 Ms. Santiago or James Lieberman, the head of Enforcement?

25 MR. KLEIN: This is Joe Klein, Marianne. Just

1 something saying "There is nothing out there that we can
2 locate," you know, "that no one can locate," something like
3 that.

4 MS. ZOLBER: If that in fact is true, you can
5 provide an explanation as to limitations of the searches.

6 MS. COLKITT: Marcy Colkitt. But limitations is
7 only half of it; the most important thing is what are the
8 results. It's not just the searches, it's their
9 understanding and their recollection. Yeah, we can, the
10 staff can do that. What I'll do, as I offered, I will run a
11 West Law search and provide at the same time we provide the
12 information from the Office of Enforcement, I can tell you
13 what I've done on West Law.

14 Now, Ms. Colkitt, you told me that you did do a
15 West Law search?

16 MS. COLKITT: Yeah, I didn't come up with
17 anything. I just couldn't get it. I won't pretend -- I
18 don't pretend to be some West Law guru, so maybe your
19 broader brush or more appropriate searching techniques
20 because of your familiarity with the area might be more
21 fruitful.

22 MS. ZOLBER: Well, we can do this, we don't have
23 to do this right now. Maybe later on this afternoon if you
24 remember you can tell me what some of the words you searched
25 and how you searched for it, and maybe that way I won't

1 repeat.

2 MS. COLKITT: Well, quite truthfully, I did this a
3 while ago, and I really wouldn't remember.

4 MS. ZOLBER: Okay.

5 MS. COLKITT: We could come up with some things
6 that I think would be appropriate here.

7 MS. ZOLBER: Well, we don't need to do this in
8 front of the Board.

9 JUDGE BOLLWERK: Right. Okay, I take it this
10 sounds like something you all are going to try to work out;
11 am I right?

12 MS. ZOLBER: Right.

13 JUDGE BOLLWERK: Anything else on Interrogatory 5
14 then?

15 MS. COLKITT: Well, no. Marcy Colkitt again. But
16 just so my understanding here is clear that Ms. Zolber will
17 try to arrange some comprehensive West Law searches and also
18 request some sort of an affidavit from either Ms. Santiago
19 or James Lieberman that either they are aware of the case,
20 and identify that case with a NUREG number or identify that
21 they have no recollection of anything.

22 MS. ZOLBER: That's what I understand. This is
23 Marianne Zolber.

24 MS. COLKITT: In terms of a due date, we can work
25 that out also.

1 JUDGE BOLLWERK: That's perfectly acceptable to
2 the Board. All right, I'm glad we were able to reach an
3 understanding on both of these or all these matters.
4 Anything else that you all want to talk to us about from
5 your perspective? I have a couple of things I want to talk
6 to you about. But is there anything else you want to bring
7 up to us at this point?

8 MS. COLKITT: Yes, Judge. This is Marcy Colkitt
9 again. I wanted to bring to the Board's attention as an
10 update that I have been in contact with Ron Bellamy,
11 Dr. Bellamy, in Region 1 regarding the extinguishment of the
12 OSC license. There has been communications going back and
13 forth quite some time relating to separate licenses that are
14 going to be issued.

15 Dr. Bellamy informed me that those licenses are
16 currently being typed and that there has been a complete
17 review and that those are going to come out. Basically, if
18 I called him and told him it's okay now, because some things
19 have to be -- a couple of things have to be finalized.

20 So he and I are to talk tomorrow, tomorrow
21 morning, to see how that's all going to work out. I guess
22 the bottom line is going to be that there will be, I
23 anticipate, within the next month or so an extinguishment of
24 the OSC license. I just wanted to bring that to the Board's
25 attention.

1 JUDGE BOLLWERK: Which would include then the
2 issuance of new licenses for all the six different
3 facilities?

4 MS. COLKITT: Yes.

5 JUDGE BOLLWERK: All right. I guess then my
6 question to Ms. Zolber is, how does that affect this action?

7 MS. ZOLBER: If in fact Ms. Colkitt's information
8 is correct and that the licenses, the individual licenses,
9 do issue, and then together with that Oncology Service's
10 license would be terminated, I would think that it could
11 moot out the proceeding on the suspension order.

12 JUDGE BOLLWERK: Okay. Well, that's something
13 obviously everybody is going to have to bear in mind. Is
14 that something you can check out a little further,
15 Ms. Zolber, and maybe give us an update on.

16 MS. ZOLBER: On when the licenses will issue?

17 JUDGE BOLLWERK: I guess so.

18 MS. ZOLBER: Well, Judge, I'm going to be talking
19 to Dr. Bellamy tomorrow about that.

20 MS. ZOLBER: Excuse me, your Honor. Ms. Colkitt
21 just told me this morning that she had spoken to Ron Bellamy
22 in Region 1. I haven't had a chance to call him. Now,
23 Ms. Santiago has spoken to Ron Bellamy yesterday, and she
24 can give an update on what he told her.

25 MS. SANTIAGO: Well, as I understood it, your

1 Honor, there still had to be management review of those
2 licenses and possibly some other issues. I think that
3 Ms. Zolber and myself should probably talk to him right
4 after this call, and we can get back to Ms. Colkitt with the
5 update.

6 JUDGE BOLLWERK: Okay. Well, maybe this isn't as
7 done a deal as it sounds like. Is that what I'm hearing? I
8 don't even think I want to characterize it that way, and I
9 apologize. I guess you all need to talk about this.

10 MS. COLKITT: He informed me on Monday that
11 basically the licenses could issue upon a phone call from
12 me.

13 MS. SANTIAGO: Okay. I talked to him yesterday,
14 but we will have to talk to him again and then we will call
15 you back.

16 MS. COLKITT: I mean, I guess the bottom line,
17 though, is any way you cut this thing is there is going to
18 be a resolution on that front, whether that is this Friday
19 or two weeks from Friday or three weeks or four weeks from
20 Friday, but it has the Board's attention.

21 JUDGE BOLLWERK: Okay. I guess the bottom line
22 with the Board is let us know sooner rather than later
23 whenever you all agree. If you've reached a resolution on
24 this, let us know; okay?

25 MS. COLKITT: Yes, your Honor.

1 JUDGE BOLLWERK: All right. Anything else that
2 you all want to bring to our attention?

3 [No response.]

4 JUDGE BOLLWERK: Okay. I don't hear anything, so
5 I'm going to assume nobody has anything. Okay, let me just
6 mention a couple of things to you all then that relate to
7 this proceeding and a couple of the others that are pending
8 that are related in one way or another. As you're all
9 aware, discovery in this proceeding closes on the 1st of
10 August.

11 I hope it's your understanding that that means
12 that the responses have to be completed by the 1st of
13 August, so any late discovery requests that would come in
14 that would not allow a response under the rules by the 1st
15 of August are going to not -- you know, they are not going
16 to fall within the meaning of discovery closing. So just be
17 aware of that. I also want you to be aware that I am going
18 to be out of the office and effectively unavailable the last
19 two weeks in July and the first week in August, and so what
20 I'm sort of trying to warn you is if you have something you
21 need to bring to us, don't wait until the last minute
22 because it's going to be very difficult to get a ruling on
23 it. By the last minute I mean the 15th of July is the last
24 minute, so make it well before that if you can, all right.
25 I will leave numbers and try to be available, but you're

1 going to have a hard time reaching me. Okay?

2 MS. ZOLBER: Yes.

3 MS. COLKITT: Consistent with that -- Marcy
4 Colkitt -- Judge, I brought this up and discussed it a
5 little bit with Ms. Zolber. That is, I have a concern about
6 the practicalities of the discovery deadline, and have
7 talked to her about requesting from the Board some sort of
8 an amenable discovery deadline extension. I guess this is
9 as good a time to discuss that as any.

10 MS. ZOLBER: Your Honor, Marianne Zolber. Ms.
11 Colkitt and I discussed this on Monday and we're considering
12 her request, but we're concerned that any extension in
13 discovery -- and Ms. Colkitt had mentioned a 60-day
14 extension, would of course delay the start of any hearing.

15 MS. COLKITT: Well, that's a prejudice -- Marcy
16 Colkitt -- that's only a prejudice to my client and not a
17 prejudice to the Board.

18 JUDGE BOLLWERK: Okay.

19 MS. COLKITT: Or to the staff.

20 MS. ZOLBER: Well, I agree with that.

21 JUDGE BOLLWERK: Well, let me just say this.

22 Well, obviously we will certainly entertain any motion you
23 want to make. Obviously, a joint motion is better than an
24 individual motion in terms of, you know, if both parties
25 agree that certainly has an influence on the Board.

1 Obviously, one that's shorter rather than longer is probably
2 going to have an influence on the Board in terms of what's
3 granted.

4 With those words and the fact that I'm going to be
5 effectively unavailable, sooner rather than later is
6 probably better as well in terms of whatever you're going to
7 request. So I'll leave it at that. Is there anything else
8 that I need to say about it?

9 MS. COLKITT: No, your Honor.

10 MS. ZOLBER: No, your Honor.

11 JUDGE BOLLWERK: Okay. Let me also advise you
12 that in the individual case that the staff has brought
13 against Dr. Bower which recently has been assigned to the
14 same Board, you should be aware that by fax to Ms. Colkitt
15 and by E-mail today to the staff I'm issuing a Prehearing
16 Conference Order, the Board is issuing a Prehearing
17 Conference Order. It's basically the same as the one that
18 went out for the Indiana Regional Cancer Center suspension
19 and modification order. One, it asks for a joint prehearing
20 report by July 1.

21 One small wrinkle on it, I have asked that the
22 parties give their position in that report about formal
23 consolidation of the individual case brought against Bower
24 with the Indiana Regional Cancer Center case, whether those
25 cases should be consolidated in accordance with the NRC

1 rules. That is something you should think about, discuss
2 among yourselves, if you think it's appropriate, and we
3 would like to know what your feelings are in the joint
4 prehearing report that we're requesting.

5 MS. COLKITT: Okay.

6 MS. ZOLBER: That's okay, your Honor.

7 JUDGE BOLLWERK: All right. One other thing, it
8 appears that the November 1992 incident as a baseline matter
9 seems to be coming up in all these different cases. We
10 talked about this a little bit in the prehearing conference.
11 Again, I'm concerned that we not end up trying the same set
12 of facts two or three or four different times.

13 I also will be frank to admit that we have seen
14 the press release dealing with the civil penalty that has
15 been issued. It raises the same sorts of things. Again,
16 it's proposed and a lot of things could happen before it
17 ever becomes final. That's not something that is before us,
18 but nonetheless it raises the same sort of concerns we have.

19 I just want to, you know, have you be aware in
20 thinking about any ways that we can if we have to try that
21 set of circumstances in one or more of these cases, that we
22 do it only once and not several times. All right? That's
23 again just the heads up to be thinking about.

24 MS. COLKITT: Marcy Colkitt here. I appreciate
25 that, Judge. The other thing I guess I should bring to your

1 attention, I'm sure it won't be a surprise to you or the
2 other members of the Board, is obviously the licensees are
3 going to request a full hearing on the enforcement matter.

4 JUDGE BOLLWERK: Right. Well, again, you have the
5 right and initially to come back to the staff and indicate
6 why they shouldn't impose this penalty. For all I know,
7 they may agree with you.

8 MS. COLKITT: Well, I understand that, and we will
9 follow procedure.

10 JUDGE BOLLWERK: Right.

11 MS. COLKITT: I guess I would like to say that i'd
12 like to feel that that would be the end of it, but I in my
13 heart of hearts can't say that because I don't anticipate a
14 change by the agency on that front. But assuming there will
15 be, and maybe I'm jaded, but if there isn't a change, then
16 I'm just trying to be real up front up with everybody that
17 there we don't agree to that.

18 JUDGE BOLLWERK: Well, one other thing I should
19 say is that it may well be that you will file your response
20 and the staff will decide to impose a civil penalty or some
21 portion of it, and you will file a hearing request. This
22 Board may or may not be assigned to that case; although, you
23 probably will begin to see a pattern develop here. You
24 know, we will watch to see what happens at the time. One of
25 the things I will mention, and I brought this up in the past

1 and I'll continue to bring it up, is the question of
2 settlement.

3 It appears to me that some of the uncertainties
4 that you had at the prehearing conference, Ms. Zolber, in
5 terms of -- I'm sorry, Ms. Colkitt, in terms of Notices of
6 Violation and what you were being -- I guess there was some
7 concern about civil penalty. Those are beginning to fall in
8 place now, and as people get more information on what your
9 liability is, obviously the ability to settle these cases
10 becomes a little clearer.

11 I would again urge you, if you haven't already, to
12 be talking settlement. If there is anything we can do in
13 terms of helping out in that respect, we stand ready and
14 available to do so.

15 MS. COLKITT: Well, Judge -- Marcy Colkitt --
16 Ms. Zolber and Ms. Santiago and myself and Mr. Cooper did
17 meet probably five weeks ago in an attempt to discuss a
18 settlement. That really didn't go anywhere because at that
19 time the staff was not able to give us the amount of the
20 civil penalty or to assign any kind of a severity level to
21 anything.

22 MS. ZOLBER: Your Honor, this is Marianne, I don't
23 think it's appropriate to discuss really the reasons why the
24 settlement didn't go forward, and I would appreciate if
25 Ms. Colkitt -- you know, I mean, I don't want to get into

1 it. We were unable to settle the case at that point.

2 JUDGE BOLLWERK: All right. That's fine, and I
3 hear you. What I hear is that you're talking, and all we're
4 trying to do is to encourage you to keep talking.

5 MS. COLKITT: Well, I guess the other thing is,
6 Judge, you know, I would request and I'll make an oral
7 motion now, I would request that -- I'm not sure how this
8 would happen -- a settlement magistrate or someone be
9 assigned to the matter.

10 JUDGE BOLLWERK: The Board's position on that has
11 been consistent, I think, and that is, we have no problem
12 with doing that if it's a joint request. I'm not going to -
13 - the idea of settlement is if both parties want to sit down
14 and get together and talk, and if there is a joint request
15 that is something we will certainly give serious
16 consideration to. But at this point I'm certainly not going
17 to impose it on either side. Okay?

18 MS. COLKITT: Okay.

19 JUDGE BOLLWERK: The last thing I just wanted to
20 mention is, again there are a lot of things between now and
21 the fall, but we have a number of, at least three cases now
22 dealing with different matters. It's quite possible we're
23 going to want to have a prehearing conference sometime in
24 the September/October time frame. More than likely we will
25 do it in the Pittsburgh area this time.

1 Ms. Colkitt initially at the prehearing conference
2 had indicated there might be an opportunity to see the
3 Indiana Regional Cancer Center facility, and that would be
4 something we would want to do then. This is simply a heads
5 up that this is something we're sort of thinking about, just
6 to let you all know.

7 MS. COLKITT: Okay.

8 MS. ZOLBER: Your Honor, this is Marianne Zolber,
9 the staff of course would like to accompany the Board on any
10 tour of the Indiana Regional Cancer Center.

11 JUDGE BOLLWERK: Absolutely.

12 MS. ZOLBER: Thank you.

13 JUDGE BOLLWERK: Okay. That's all I have. Is
14 there anything else anyone else has?

15 MS. ZOLBER: Nothing from the staff, your Honor.

16 MS. COLKITT: Nothing from OSC.

17 JUDGE BOLLWERK: All right. If that's the case,
18 then we will consider ourselves adjourned, and I hope that
19 everything goes all right as we near the end of discovery.

20 Thank you very much.

21 MS. ZOLBER: Thank you.

22 MS. COLKITT: Your Honor, bye-bye.

23 (Whereupon, at 10:30 a.m., the prehearing
24 conference was concluded.)

25

REPORTER'S CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory
Commission
in the matter of:

NAME OF PROCEEDING: Oncology Services

DOCKET NUMBER: 30-31765-EA

PLACE OF PROCEEDING: Bethesda, MD

were held as herein appears, and that this is the
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