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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'94 JUN -8 A11:20

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman  
Dr. Charles N. Kelber  
Dr. Peter S. Lam

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

SERVED JUN - 8 1994

In the Matter of

Docket No. IA-94-011

DR. JAMES E. BAUER

ASLBP No. 94-696-05-EA

(Order Prohibiting  
Involvement in NRC-Licensed  
Activities)

June 8, 1994

MEMORANDUM AND ORDER  
(Initial Prehearing Order)

In this proceeding, Dr. James E. Bauer, M.D., challenges the NRC staff's May 10, 1994 immediately effective enforcement order. That order 1) prohibits Dr. Bauer from performing any NRC-licensed activities for a period of five years from the date of the order, and 2) requires that for a two-year period thereafter Dr. Bauer must notify the agency within twenty days of accepting employment involving NRC-licensed activities or otherwise becoming involved in such activities. In accordance with our authority under 10 C.F.R. § 2.718, we set forth the following directives regarding the conduct of this proceeding:

DS02

I. Administrative Matters

A. Notice of Appearance. Within ten days of the date of this memorandum and order, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.713(b).

B. Service on the Board. For each pleading or other submission filed before the Board or the Commission in this proceeding, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R. § 2.708(d) and serving a copy on each participant in accordance with section 2.701(b), one conforming copy should be served on each Board member in accordance with the following instructions:

1. Regular Mail. To complete service via United States Postal Service first-class mail, a conforming copy should be sent to each Board member at the following address:

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

For regular mail service, the staff may use the NRC internal mail system (Mail Stop EWW-439) in lieu of first-class mail.

2. Overnight or Hand Delivery. To complete service via overnight (e.g., express mail) or hand delivery, a conforming copy should be sent to each Board member at the following address:

Atomic Safety and Licensing Board Panel  
Fourth Floor, West Tower  
East West Towers Building  
4350 East West Highway  
Bethesda, MD 20814

3. Facsimile Transmission. To complete service by facsimile transmission 1) one copy should be sent by rapifax to the attention of the Board members at (301) 492-7285 (verification (301) 492-4896); and 2) a conforming copy should be sent that same date to each Board member by regular mail at the address given in ¶ I.B.1 above.

4. E-Mail for Staff Submissions. For the staff to complete service by E-Mail transmission through the NRC's Agency Upgrade of Technology for Office Systems (AUTOS) Wide Area Network (WAN) System 1) the staff filing (which should include the certificate of service) should be sent as a WordPerfect file attached to a Mail Message directed to all Board members (User IDs GPB, CNK, PSL); 2) any attachments or exhibits to a pleading that cannot be transmitted by "E-Mail" should be sent to the Board by a separate facsimile transmission or other means that will ensure receipt by the due date, and 3) a paper conforming copy should be sent that same date to each Board member by regular mail at the address given in ¶ I.B.1 above.

5. Timely Service by Hand Delivery, Facsimile Transmission, or E-Mail. To be timely, any pleading or other submission served on the Board by hand delivery, facsimile transmission, or E-Mail must be received by the

Board no later than 4:30 p.m. Eastern Time on the date due.

C. Motions for Extension of Time. For any motion for extension of time filed with the Board in this proceeding, except upon a showing of good cause, the moving participant shall:

1. Ascertain whether and when any other participant intends to oppose or otherwise respond to the motion and apprise the Board of that information in the motion; and

2. Provide the motion to the Board at least three business days before the due date for the pleading or other submission for which an extension is sought.

D. Exhibits/Attachments to Filings. If a participant files a pleading or other submission with the Board that has additional documents appended to it as exhibits or attachments, a separate alpha or numeric designation for each appended document (e.g., Exhibit 1, Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

## II. Joint Prehearing Report

On or before Friday, July 1, 1994, Dr. Bauer and the staff should file a joint prehearing report that contains the following information:

A. Relative to the various legal and factual assertions that form the basis for the staff's May 10, 1994

order, a statement outlining the central issues for litigation in this proceeding. In the event the parties cannot agree on the wording or inclusion of any issue, the statement should set forth that issue separately with a notation identifying the sponsoring party.

B. A statement identifying which, if any, of the issues specified in accordance with ¶ II.A each party believes is amenable to a dispositive motion and whether discovery will be needed prior to filing a dispositive motion on that issue.

C. A statement indicating how long the parties estimate they will need to conduct discovery on the issues specified in accordance with ¶ II.A.

D. A statement indicating how long the parties estimate will be needed to conduct an evidentiary hearing on the issues specified in accordance with ¶ II.A.

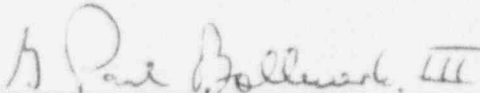
E. A statement describing the status of any settlement discussions between the parties.

F. A statement indicating the parties' positions on whether, in accordance with 10 C.F.R. § 2.716, this proceeding should be consolidated with the pending proceeding (Docket No. 030-30485-EA) concerning a November 16, 1993 staff order suspending and modifying the license of the Indiana Regional Cancer Center that authorizes the use of a strontium-90 source for the treatment of eye conditions.

The parties should serve their joint prehearing report on the Board so as to ensure its receipt by July 1.

It is so ORDERED.\*

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD



G. Paul Bollwerk, III, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland

June 8, 1994

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\* Copies of this memorandum and order have been sent this date to counsel for Dr. Bauer by facsimile transmission and to staff counsel by E-Mail transmission through the agency's WAN.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
JAMES E. BAUER

Docket No.(s) IA-94-011

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (INITIAL PREH. ORDER) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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

Administrative Judge  
G. Paul Bollwerk, Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

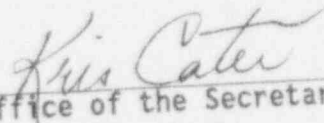
Administrative Judge  
Charles N. Kelber  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Peter S. Lam  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Marcy L. Colkitt, Esq.  
P. O. Box 607  
Indiana, PA 15701

Dated at Rockville, Md. this  
8 day of June 1994

  
Office of the Secretary of the Commission