

ENCLOSURE

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
DR. DAVID J. MOYLAN, III

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Docket No. 030-31765  
License No. 37-28540-01  
EA 94-088

DEMAND FOR INFORMATION

I

Dr. David J. Moylan is named as authorized user by Condition 12 on Byproduct License No. 37-28540-01 (License) issued to Oncology Services Corporation by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The License authorizes possession and use of iridium-192 in brachytherapy remote afterloaders for the treatment of humans at several specified facilities located within the Commonwealth of Pennsylvania in accordance with the conditions specified therein.

As an authorized user for License No. 37-28540-01, Dr. Moylan has responsibility for safely using licensed material at the Oncology Services Corporation's Mahoning Valley Cancer Center in Lehigh, Pennsylvania. In addition, in pending license applications, Dr. Moylan has been proposed as the Radiation Safety Officer and as an authorized user for the Mahoning Valley Cancer Center, and as an authorized user for the Indiana Regional Cancer Center, the Lebanon Valley Cancer Center, the Exton Cancer Center, the Jefferson Radiation Oncology Center, and the Greater Harrisburg Cancer Center.

In November 1992, at the Oncology Services Corporation facility in Indiana, Pennsylvania, a treatment with a high dose rate (HDR) afterloader resulted in a patient being exposed to significant levels of radiation, and numerous members of the public being exposed to unnecessary radiation. In December 1992, the NRC performed an inspection at the Oncology Services Corporation's Mahoning Valley Cancer Center, Lehigh, Pennsylvania during which the NRC inspectors discussed the Oncology Services Corporation license and the involvement of the Radiation Safety Officer, David Cunningham, Ph.D., with the licensed operation at Mahoning Valley Cancer Center.

During the December 1992 inspection, Dr. Moylan stated in the presence of two NRC inspectors that he was not aware that David Cunningham was the Radiation Safety Officer for the Oncology Services Corporation license and that he had not read the Oncology Services Corporation license. These statements were documented in NRC Inspection Report No. 030-31765/92-001.

In its February 8, 1993 response to the January 20, 1993 Order Suspending License (Effective Immediately), Oncology Services Corporation included a statement made under oath entitled "Verified Statement", dated February 4, 1993, and signed by Dr. Moylan which stated that "I never discussed with anyone from the NRC my knowledge regarding the terms and conditions of the License or anything to do with the issue of David Cunningham being the RSO. To the contrary, I am familiar with the terms and conditions of the License and am fully aware that David Cunningham is the named Radiation Safety Officer".

Dr. Moylan was interviewed by the NRC Office of Investigations (OI) on March 19, 1993. During this interview, Dr. Moylan first stated that he had told the NRC inspectors that he knew that David Cunningham was the Oncology Services Corporation Radiation Safety Officer. Tr. 64. Later during the interview, Dr. Moylan stated that he did not recall having any discussions with the NRC inspectors as to the identity of the Oncology Services Corporation Radiation Safety Officer or Dr. Moylan's knowledge concerning the terms and conditions of the Oncology Services Corporation license. See for example, Tr. 67, 69-72.

OI has concluded that Dr. Moylan deliberately failed to provide complete and accurate information to the NRC in his "Verified Statement" and in his transcribed interview with OI regarding his knowledge of the identity of the Oncology Services Corporation Radiation Safety Officer and the terms and conditions of the Oncology Services Corporation license. Deliberate submission to the NRC of incomplete or inaccurate information in some respect material to the NRC by any employee, contractor, supplier, consultant or subcontractor to a licensee is a violation of 10 CFR 30.10(a)(2). Because of this failure to provide complete and accurate information, the NRC has serious concerns regarding Dr. Moylan's continued involvement in NRC-licensed activities, specifically whether Dr. Moylan can be relied upon in the future to comply with or to assure compliance with NRC requirements including the requirement to provide complete and accurate information to the NRC. Therefore, further information is needed to determine whether the Commission can have reasonable assurance that in the future Dr. Moylan will conduct licensed activities in accordance with the Commission's requirements, and that the health

and safety of the public will be protected with Dr. Moylan involved in NRC-licensed activities.

III

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, as well as 10 CFR 30.32(b), in order for the Commission to determine whether enforcement action should be taken against Dr. David J. Moylan to ensure compliance with NRC regulatory requirements, Dr. Moylan is required to submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of this Demand for Information, the following information, in writing and under oath or affirmation:

- A. Identify each institution, including its location, at which Dr. Moylan engages in NRC licensed activities. For each institution, identify the duties performed at each location;
- B. Explain why NRC should conclude that Dr. Moylan provided complete and accurate information to the NRC regarding his knowledge of the identity of the Oncology Services Corporation Radiation Safety Officer and the conditions of the Oncology Services Corporation license in his "Verified Statement" and his transcribed OI interview.
- C. State why, in light of the facts set forth above, the NRC should not issue an Order to Dr. Moylan prohibiting him from performing NRC licensed

activities or limiting his involvement under any NRC license; and if such an Order should not be issued, why the NRC should have confidence that Dr. Moylan will:

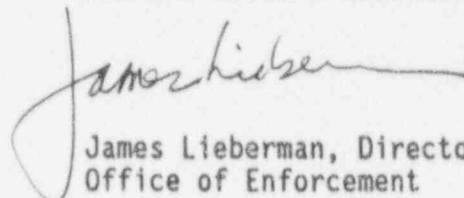
- (1) provide complete and accurate information to the NRC in the future, and
- (2) will otherwise comply with Commission requirements.

D. State why, in light of the facts set forth above, the NRC should approve Dr. Moylan as the Radiation Safety Officer and an authorized user on the pending application for Mahoning Valley Cancer Center, or as an authorized user on the pending applications for the Indiana Regional Cancer Center, the Lebanon Valley Cancer Center, the Exton Cancer Center, the Jefferson Radiation Oncology Center, and the Greater Harrisburg Cancer Center.

Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the above address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

After reviewing the response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director  
Office of Enforcement

Dated at Rockville, Maryland  
this 3<sup>rd</sup> day of June 1994

JUN 13 1994

Dr. David J. Moylan, III

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*per telephone  
 from Spw13*      *revised  
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