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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'94 JUN 20 P2:15

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
GENERAL INVESTIGATIVE
DIVISION

In the Matter of : DOCKET NO. 030-31765-EA
:
ONCOLOGY SERVICES CORPORATION :
:
(Byproduct Material : EA 93-0060
License No. 37-28540-01) :

OSC MOTION TO COMPEL RESPONSES
TO OSC'S REQUEST FOR PRODUCTION OF DOCUMENTS AND
INTERROGATORIES DATED MAY 10, 1994

INTRODUCTION

Pursuant to 10 C.F.R. §2.740(f), Oncology Services Corporation ("OSC" or "Licensee") hereby moves the Atomic Safety and Licensing Board ("Board") in the above captioned proceeding to compel the staff of the Nuclear Regulatory Commission ("Staff") to respond to OSC's Request for Production of Documents and Interrogatories dated May 10, 1994 ("Request for Production of Documents and Interrogatories").

DISCUSSION

I. OSC'S MOTION TO COMPEL RESPONSES TO ITS REQUEST FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES DATED MAY 10, 1994.

OSC herein moves the Board pursuant to 10 C.F.R. §2.740(f), to compel the Staff to respond to certain interrogatories and document production requests contained in OSC's Request for Production of Documents and Interrogatories dated May 10, 1994.

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To the extent that the Staff has responded to the subject discovery requests in its NRC Staff Responses and Objections to OSC's Request for Production of Documents and Interrogatories Dated May 10, 1994 ("Staff Responses and Objections"), certain responses, as set forth below, are evasive and incomplete. Such responses thus are to be considered failures to answer or respond. 10 C.F.R. §2.740(f). Moreover, the Staff's objections to Interrogatories 1 and 4, for the reasons set forth below, are without foundation and do not constitute a basis for the Staff's failure to answer or respond to OSC's valid discovery requests. 10 C.F.R. §2.740.

OSC seeks, and so moves the Board to issue, an order compelling the Staff to provide full and complete responses to those interrogatories discussed below. Additionally, with regard to Interrogatory 1, pertaining to the definition of terms, OSC moves the Board to issue an order compelling the Staff to provide a full and complete response, or alternatively, issue an order allowing OSC to apply to those terms whatever definition OSC deems appropriate for any particular purpose. See, generally Toledo Edison Co. (Davis-Besse Nuclear Power Station, ALAB - 300, 2 NRC 752, 760 (1975) (Federal Rules of Civil Procedure may be used to guide application of NRC discovery rules.)). See also Rule 36(a), Federal Rules of Civil Procedure ("If the

court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.").

INTERROGATORY 1

Interrogatory 1 requested that the Staff define the following terms and/or phrases: "unsupervised HDR treatments," "supervised HDR treatments," "breakdown of corporate management," "rely, training "in-charge of HDR treatment," "in-service training," and reasonable.

The Staff objected to Interrogatory 1, stating:

"The Staff objects to interrogatory 1 on the grounds that the information sought is the subject of a prior Board ruling in this proceeding. The Board ruled, in connection with the Staff's previous discovery requests which contained the same terms, that the Licensee should provide its answers based on what it believes is a reasonable interpretation of the Staff's discovery requests. Order (Ruling on Discovery Matters) May 6, 1994 at 6, 8, 9 10-11.

Staff Responses and Objections at 2.

These terms for which definitions are sought have been an integral part of past discovery requests of the Staff. The Staff, however, has refused to provide any definitions for these terms. The Staff, through its own actions, commencing with the issuance of the Suspension Order through the present discovery,

has made these terms vitally important while concomitantly refusing to give them specific meaning.

The basis for the Staff's objections to Interrogatory 1 is at once misguided and inappropriate. In refusing to answer Interrogatory 1 the Staff relies upon the Board's Order (Ruling on Discovery Matters) dated May 6, 1994. See Order (Ruling on Discovery Matters), May 6, 1994 at 6, 8, 9, 10-11. See also Staff Responses and Objections at 2. The Board's Order, however, has nothing to do with the interrogatories and request for documents at issue in the instant motion. In its Order, the Board narrowly ruled that, with regard to the Staff's previous discovery requests, OSC was to provide answers based upon what OSC believed to be a reasonable interpretation of certain terms. The Board did not rule that the Staff could forever evade defining the terms which it has chosen to use. Since it was the Staff that chose to utilize these terms, OSC does not believe that it is unreasonable to request that the Staff defined its own terms. There is no reason why the Staff is unable to provide such definitions.

For these reasons, OSC moves the Board to issue an order compelling the Staff to provide a full and complete response to Interrogatory 1. Alternatively, OSC moves the Board to issue an order allowing OSC to apply to those terms whatever definition

OSC deems appropriate for any particular purpose.

INTERROGATORY 2

The Staff's response to Interrogatory 2 is incomplete. In this interrogatory, OSC first requested that the Staff identify each and every allegation and/or fact upon which the NRC relied in suspending the license of OSC. See Request for Production of Documents and Interrogatories, Interrogatory 2.

The Staff has failed to respond, in any fashion, to that part of the interrogatory which addresses allegations. Similarly, the Staff provides no response to Interrogatories 2(a)-2(e), inclusive, insofar as allegations are concerned. OSC is entitled to such response.

The Staff's response with regard to the facts upon which the NRC relied in suspending the license of OSC is incomplete. The Staff failed to respond adequately to that part of the interrogatory which addresses facts. Similarly, the Staff also failed to respond adequately to Interrogatories 2(a)-2(e), inclusive, insofar as facts are concerned. OSC is entitled to such adequate responses.

The Staff's response to Interrogatory 2(a) is incomplete and evasive. The Staff not only failed to list any facts upon which it relied upon in suspending the license of OSC, but also

failed to identify "[t]he federal regulations, the license condition and/or any of the law which the NRC asserts the licensee violated with respect to said fact. . ." See Request for Production of Documents and Interrogatories, Interrogatory 2(a). Staff's response therefore is inadequate. OSC is entitled to a specific answer to this discovery request without the need to guess which facts the NRC "relied" upon in suspending the license of OSC.

The Staff's response to Interrogatory 2(b) is incomplete and evasive. The Staff failed to identify "[t]he identity of any NRC personnel who will testify about the (i) alleged factual situation and (ii) the application of the relevant federal regulation, license condition and/or any other law which the NRC asserts the licensee violated with respect to said fact. . ." See Request for Production of Documents and Interrogatories, Interrogatory 2(b). The Staff's response therefore is inadequate. OSC is entitled to a specific answer to this discovery request. The Staff's response references a previous Staff pleading which fails to address each item contained in Interrogatory 2(b).

The Staff's response to Interrogatory 2(c) is incomplete and evasive. The Staff failed to identify any ". . . legal theory by which the Staff asserts that the federal regulation,

the license condition and/or other law applies with respect to said fact . . ." See Request for Production of Documents and Interrogatories, Interrogatory 2(c). The Staff's response therefore is inadequate. OSC is entitled to a specific answer to this discovery request. OSC is is entitled to an enunciation of the Staff's legal theories beyond mere conclusory allegations contained in the suspension order.

The Staff's response to Interrogatory 2(d) is incomplete and evasive. The Staff has failed to adequately respond to Interrogatory 2(a), its response to Interrogatory 2(d) fails to identify those ". . . documents which NRC will rely on to support those matters identified pursuant to the NRC's response to question 2(a). . ." See Request for Production of Documents and Interrogatories, Interrogatory 2(d). The Staff's response therefore is inadequate. OSC is entitled to a specific answer to this discovery request.

The Staff's response to Interrogatory 2(e) is incomplete and evasive. The Staff fails to identify ". . . [a]ny and all facts which refute the NRC's allegation of 'breakdown of corporate management'." See Request for Production of Documents and Interrogatories, Interrogatory 2(e). The Staff's response therefore is inadequate. OSC is entitled to a specific answer to this discovery request.

For these reasons, OSC moves the Board to issue an order compelling the Staff to provide a full and complete response to Interrogatory 2.

INTERROGATORY 3

The Staff's response to Interrogatory 3 is incomplete. OSC requested the production of ". . . any and all documents used by the NRC to answer interrogatory 2 above." See Request for Production of Documents and Interrogatories, Interrogatory 3. The Staff, in response to Interrogatory 3, has done nothing more than make reference to both its inadequate response to Interrogatory 2(d) and the Suspension Order. This is an inadequate response. OSC is entitled to a specific answer to this discovery request and does not accept the Staff's premise that discovery begins and ends with the Suspension Order and the interview transcripts identified in the response to Interrogatory 2(d).

For these reasons, OSC moves the Board to issue an order compelling the Staff to provide a full and complete response to Interrogatory 3.

INTERROGATORY 4

Interrogatory 4 asks the Staff to "[i]dentify the

draftsman of 10 C.F.R. Section 35.404a." See Request for Production of Documents and Interrogatories, Interrogatory 4. The Staff objected to this interrogatory claiming that the "[i]nformation sought in interrogatory 4 is not relevant to any issue in this proceeding, and it is not necessary for a proper decision." See Staff Responses and Objections at 5.

Whether or not the Staff believes the information sought in a particular interrogatory is necessary for a proper decision is irrelevant and does not constitute a basis for the Staff's failure to answer or respond to this valid discovery request. See 10 C.F.R. §2.740. In its response to Interrogatory 9 of the Request for Production of Documents and Interrogatories, the Staff indicates that 10 C.F.R. Part 35 applies to the subject matter of the OSC license. Because the Staff asserts that Part 35 applies to the OSC license, the Staff cannot also be heard to assert that particular sections of Part 35 are not relevant when it is inconvenient for the Staff to provide a discovery response.

For these reasons, OSC moves the Board to issue an order compelling the Staff to provide a full and complete response to Interrogatory 4.

CONCLUSION

For the reasons set forth above, the OSC Motion to

Compel Responses to OSC Request for Production of Documents and Interrogatories dated May 10, 1994 should be granted.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

IN THE MATTER OF : DOCKET NO. 030-31765
:
ONCOLOGY SERVICES CORPORATION :
(Byproduct Material : EA No. 93-006
License No. 37-28540-01) :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within OSC Motion to Compel Responses to OSC's Request for Production of Documents and Interrogatories dated May 10, 1994, was furnished to the following by telefax and U.S. Mail, postage prepaid on this 17th day of June, 1994:

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