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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '88 OCT -7 P4:39Administrative Law Judge
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In the Matter of
EDWARD HINES, JR. MEDICAL CENTER
(Veterans Administration)

Docket No. 30-1391-SC
ASLBP No. 88-565-01-SC
October 7, 1988

ORDER

(Approving Agreement to Terminate
Proceeding and Terminating Proceeding)

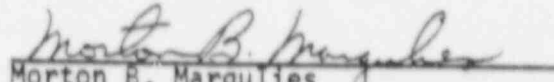
On October 1, 1988, the parties to this enforcement proceeding, the NRC Staff and Dr. Maynard L. Freeman, filed with the Administrative Law Judge (1) an Agreement to Terminate Proceeding that had been accepted by both parties; and (2) a joint motion requesting the Judge's approval of the Agreement and the entry of an order terminating this proceeding, with a proposed Order.

I have reviewed the Agreement under 10 C.F.R. § 2.203 to determine whether approval of the Agreement and consequent termination of this proceeding are in the public interest. Based upon the review, I am satisfied that approval of the Settlement Agreement and termination of this proceeding based thereon are in the public interest. The terms of the Agreement satisfy the interests of the public and parties without the need for a hearing.

Accordingly, I approve the Settlement Agreement attached hereto and incorporated by reference into this Order. Pursuant to 10 C.F.R.

DS02

§ 2.203, this proceeding is terminated on the basis of the attached Agreement.


Morton B. Margulies
ADMINISTRATIVE LAW JUDGE

Dated at Bethesda, Maryland
this 7th day of October, 1988.

ATTACHMENT

AGREEMENT TO
TERMINATE PROCEEDING

On August 24, 1987, the NRC issued to the Veterans Administration, Edward Hines, Jr. Medical Center (Hines Hospital) an "Order to Show Cause Why License Should Not be Modified Effective Immediately" (Order), 52 Fed. Reg. 32,623 (1987).

Hines Hospital is the holder of a specific byproduct material license of broad scope No. 12-01087-07 originally issued by the NRC on October 15, 1958, pursuant to 10 C.F.R. Parts 30, 33 and 35. (The license was most recently renewed on September 24, 1985, and expires on September 30, 1990.) As a result of the Order, the license was amended effective immediately, inter alia, by adding the following condition:

On receipt of this Order, Dr. Maynard L. Freeman shall be removed from all licensed activities and shall thereafter not serve in any position involving the performance or supervision of any licensed activities (e.g., as an authorized user) including the supervision of any nuclear medicine technologists.

The Order issued against Hines Hospital was based on alleged violations of NRC requirements allegedly determined during inspections and

investigations conducted at Hines Hospital from December 16, 1986 through June 30, 1987. Hines Hospital did not challenge the Order. However, Dr. Maynard L. Freeman, through his first attorney, challenged the Order by filing on September 22, 1987 a Response to the Order. Dr. Freeman also filed an Answer to the Order, a Request for a Hearing Pursuant to the Order, and a Request for Hearing Pursuant to 10 C.F.R. § 2.714(d). Dr. Freeman, through his first attorney, also requested the NRC to defer action on his request for a hearing pending conclusion of a meeting with him and the NRC's continued evaluation of Dr. Freeman's response. That meeting and evaluation did not result in any relaxation of the Order by the Staff. By letter dated January 25, 1988, then Counsel for Dr. Freeman requested that the hearing process go forward. That request led to the designation of the Administrative Law Judge (ALJ) on February 18, 1988.

By Orders dated May 24, 1988 and June 23, 1988 respectively, the ALJ granted the Staff's motions of May 23, 1988 and June 22, 1988, respectively, to extend a temporary stay of the proceeding which had been originally granted by the ALJ, over the objections of Dr. Freeman, on April 29, 1988, to and including June 24, 1988 and July 15, 1988, respectively. On July 13, 1988 the ALJ granted a joint motion of the Staff and Dr. Freeman for a further extension of the temporary stay of this proceeding to and including August 31, 1988.

By letter dated June 13, 1988 Staff Counsel advised the ALJ that Dr. Maynard L. Freeman had tendered his resignation to Hines Hospital. Staff Counsel further advised that Hines Hospital had accepted Dr. Freeman's resignation. Dr. Freeman states that his resignation was tendered for reasons unassociated with these proceedings. Dr. Freeman's last day of

official duties at the Hines Hospital was May 31, 1988. As a result of Dr. Freeman having ceased performing duties at Hines Hospital, and, further, since he is no longer physically present at said hospital, it is the NRC Staff's position that the condition imposed on the Hines Hospital license is moot since it can have no practical effect on Dr. Freeman.

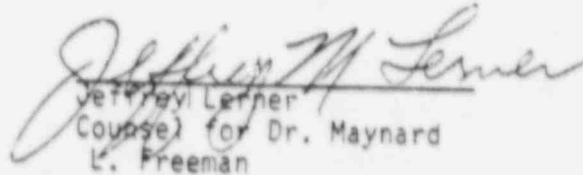
Dr. Freeman, however, vigorously disputes this position and argues that notwithstanding his departure from Hines Hospital, he is entitled to contest the validity of the underlying basis for the conditions applicable to him set out in the August 24, 1987 Order. However, the parties believe it is in the public interest to terminate this proceeding without further litigation and, therefore, the NRC Staff and Dr. Maynard L. Freeman hereby agree as follows:

1. Based on this Agreement, except as specified in the second sentence of this paragraph, Dr. Freeman hereby withdraws his requests for a Hearing pursuant to the Order and pursuant to 10 C.F.R. § 2.714(d) which requests were filed on September 22, 1987. In the event the NRC initiates a future proceeding, the subject matter of which includes expressly or implicitly the conditions of the Order of August 24, 1987, that were applicable to Dr. Freeman, the Staff agrees not to interpose any objection to any request for a hearing by Dr. Freeman based on this withdrawal, or interpose laches, estoppel, waiver, or any equitable type defense or the passage of time as they relate to the underlying basis of the August 24, 1987 Order.
2. The Staff agrees to provide, pursuant to Dr. Freeman's request for production, the following NRC documents:

- a. Office of Investigations (OI) Report of Investigation No. 3-P/-003 (Edward Hines, Jr., Veterans Administration Medical Center)-Alleged Willful Failure to Report Diagnostic Misadministrations and Alleged Willful Material False Statements-Dated November 4, 1987 and Exhibits 1-33 Attached thereto;
 - b. OI Report of Investigation No. 3-87-003S (Edward Hines, Jr., Veterans Administration Medical Center)-Alleged Material False Statements-Dated March 29, 1988 and Exhibit 1 attached thereto. [This Report has only one Exhibit].
3. The NRC Staff agrees to provide copies of the foregoing documents without cost to Dr. Freeman. The documents will be provided to Counsel for Dr. Freeman on or before October 31, 1988. It is understood by Dr. Freeman that the delay in providing the documents in question is necessitated by the fact that the NRC Staff must review the documents in order to remove, if necessary, the home address, home telephone numbers, and any other information which may be exempt from release by virtue of the Privacy Act or any other provision of law, of any persons mentioned or discussed in the documents in question. Dr. Freeman agrees to the removal of such information and recognizes that such action on the part of the NRC is necessary to protect the privacy of any such persons mentioned or discussed in the documents in question and to comply with the Privacy Act.
4. For a period of one year from the date of this agreement, Dr. Freeman agrees to voluntarily advise, in writing, the NRC in the

event he is employed in any activity regulated by the NRC or which would be regulated by the NRC but for an agreement with a state pursuant to section 274 of the Atomic Energy Act of 1954, as amended. The notice required by this provision shall state the name and address of his employer and a brief description of his duties and be mailed or sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. In the event that Dr. Freeman shall engage in an activity requiring NRC authorization, regulation or licensing, then the filing of any application for a license or approval as an authorized user shall be deemed to satisfy this requirement.

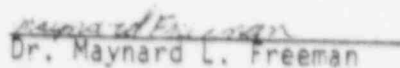
5. The NRC Staff and Dr. Freeman shall jointly move the ALJ for an Order approving this Settlement Agreement and terminating this proceeding. This Agreement shall become effective upon approval by the ALJ.


Jeffrey M. Lerner
Counsel for Dr. Maynard
L. Freeman


Bernard M. Bordenick
Counsel for NRC Staff

Dated: October 1, 1988

Seen and approved:


Dr. Maynard L. Freeman