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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Charles Bechinoefer, Presiding Officer
Thomas D. Murphy, Special Assistant

DOCKETED
USNRC

'99 APR 12 AIO:45

OFFICE OF
RULEMAKING AND
ADJUDICATION STAFF

In the Matter of

ADVANCED MEDICAL SYSTEMS, INC.

(1020 London Road
Cleveland, Ohio)

) Docket No. 30-16055
) Docket No. 30-16055-ML-REN
) ASLBP No. 99-765-01-ML
) ASLBP No. 95-707-02-ML-REN
) (Materials License
) No. 34-19089-01)

**CITY OF CLEVELAND'S ANSWER TO AMS' MOTION IN OPPOSITION TO
RELEASE OF ANY AMS PROPRIETARY INFORMATION**

Now comes the City of Cleveland (City), by and through its counsel of record, and requests that Advanced Medical Systems, Inc.'s (AMS) "Motion in Opposition to Release of any AMS Proprietary Information" (Motion in Opposition) be stricken from the record or, alternatively, denied. The reasons for striking or denying AMS' Motion are as follows:

The City received service of AMS' Motion in Opposition on March 30, 1999. On that same date, the City and the Northeast Ohio Regional Sewer District (NEORSD) mailed for filing and served on the parties a "Joint Motion to Permit Inspection of Information Claimed to be Confidential or Financial Information"¹ (Joint Motion to

¹ Concurrent with their Joint Motion to Permit Inspection, the City and NEORSD also filed a "Joint Motion for Enlargement of Time to File Presentations Regarding NRC Denial of AMS Applications to Renew License" in which they asked that the April 30, 1999 due date for their respective presentations be rescheduled to thirty days after a ruling is made on their Joint Motion to Permit Inspection and, if granted, they receive the documents sought.

Permit Inspection). Procedurally, prior to the filing of the Joint Motion to Permit Inspection, the issue of the release of the proprietary documents was not properly before this Honorable Panel. Until the City and NEORSD raised the issue in their Joint Motion, AMS had no grounds to preemptively raise an issue because it thought the City and NEORSD might raise it based on ongoing discussions (beginning in December 1998 through March 26, 1999) between and through the NRC Staff (Staff) with AMS, the City and NEORSD, in which at all times the City and NEORSD believed that AMS did not object to the finalized proposed agreed protective order prepared by Staff. (See the City' and NEORSD's Joint Motion to Permit Inspection which is incorporated herein by reference the same as if fully rewritten herein.)

Because AMS' Motion in Opposition was filed before the issue it opposes was ever raised before this Panel, it should be stricken. The proper course for AMS to follow is to file an answer in opposition to the City's and NEORSD's Joint Motion to Permit Inspection.

In the alternative, AMS' Motion in Opposition should be denied for reasons stated in the City' and NEORSD's Joint Motion to Permit Inspection. AMS has given no reasonable basis in its Motion in Opposition that would justify prohibiting the disclosure of the documents in question to the City and NEORSD. The Staff relied on these documents in its determination to deny renewal of AMS' license and presumably AMS relied on them in its contention that its decommissioning plan is or can be rendered adequate. The City and NEORSD should be entitled to inspect these documents to properly prepare their respective presentations in the Denial Proceeding. See 10 C.F.R. 2.790(b)(6).

AMS makes two general arguments for why the City and NEORSD should not be able to inspect proprietary documents directly relevant to the issue of decommissioning. First, while it recognizes that the proprietary material can not be protected from Court Order even by the NRC, AMS speculates that the City does not believe the proprietary material can be protected under Ohio's Public Records Act² (Ohio Revised Code Section 149.43) and this is why the City wants a provision in the protective order referring to the

Act's possible impact on disclosure of the proprietary material. Therefore, AMS concludes, the City would have to release the proprietary information to the public under Ohio's Public Records Act.

AMS' speculation about the City's assessment of the impact of the Ohio's Public Records Act is incorrect and has no factual basis. To the contrary, the City believes that under Ohio's Public Records Act the proprietary material would be exempt from disclosure under several provisions of the Act. However, the City wanted it acknowledged in the agreed protective order that, in essence, the Ohio Courts may determine differently and the City would then be legally obligated to disclose the materials. While AMS may acknowledge now the obviousness that a Court Order to release the documents under Ohio's Public Records Act would supersede the requirements of non-disclosure under the protective order, the City believed it was necessary to spell this out in the agreed protective order to prevent any future contention by AMS that the City was not complying with the agreed order if the City was required to disclose the materials pursuant to a Court Order.

Because the City does not believe that the proprietary documents, as a matter of law, are required to be released upon a request under Ohio's Public Records Act, but believes, rather, that the documents are protected from release under the Act, AMS argument against disclosure to the City and to NEORSO of the materials is without merit. Further, because AMS acknowledges that the protective order would not protect the materials from a Court Order of release, it must also concede that the City's request that this be spelled out in the agreed protective order was legitimate and well-founded.

AMS' only other contention in support of its opposition to release of the proprietary material is its opinion that, even if the materials are protected under the protective order, the City does not need the materials because the materials are not relevant to one of the issues in the Denial Proceeding concerning whether AMS can use SAFSTOR for decommissioning. Therefore, AMS argues, the documents should not be released prior to a determination of whether or not AMS can use SAFSTOR.

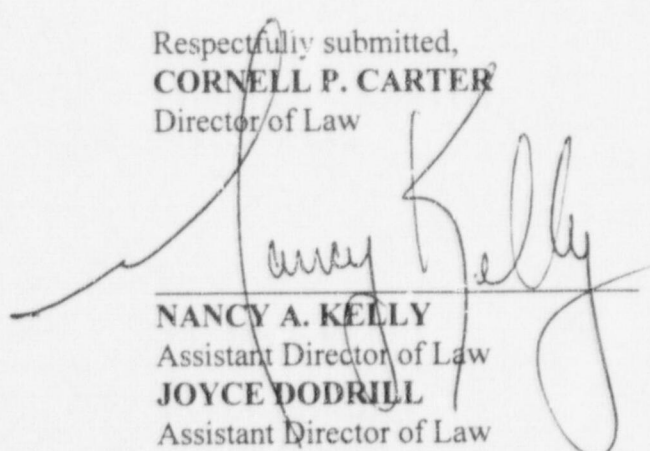
² A copy of Ohio's Public Record Act, Ohio Revised Code Section 149.43, is attached hereto as Exhibit A.

Based on the Staff's September 28, 1998 letter denying AMS' applications to renew its license (in which it refers to the materials sought), the City does not agree with AMS' contention that the materials sought are not relevant to the whether SAFSTOR rather than DECON can be used by AMS. Further, the City should be able to make this determination itself after review of the materials rather than rely on AMS' biased opinion. Further, the issues in the Denial Proceeding have not been bifurcated for resolution. AMS has already filed its presentation and made arguments on all issues. The City presentation will necessarily address all issues raised in order to fully present its position supporting the denial of AMS' license applications.

The City cannot adequately make its presentation and protect its interest without reviewing the proprietary material that both AMS and Staff have available to it. AMS has presented no basis upon which the City should be denied disclosure of the materials.

WHEREFORE, the City respectfully requests that AMS' Motion in Opposition to Release of Any AMS Proprietary Information be stricken or, alternatively, denied in its entirety and that the proprietary materials be ordered released to the City and to NEORS.

Respectfully submitted,
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE PRESIDING OFFICER

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Charles Bechhoefer, Presiding Officer
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OFFICE OF GENERAL COUNSEL
RULEMAKING AND
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In the Matter of)	Docket No. 30-16055-ML
)	Docket No. 30-16055-ML-REN
ADVANCED MEDICAL SYSTEMS,)	ASLBP No. 99-765-01-ML
INC.)	ASLBP No. 95-707-02-ML-REN
(1020 London Road)	
Cleveland, Ohio))	
)	(Material License No. 34-190089-01)

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the City of Cleveland's Answer to AMS's Motion in Opposition to Release of any AMS Proprietary Information was served by regular U.S. Mail, first class, postage prepaid, on the following this 6th day of April, 1999:

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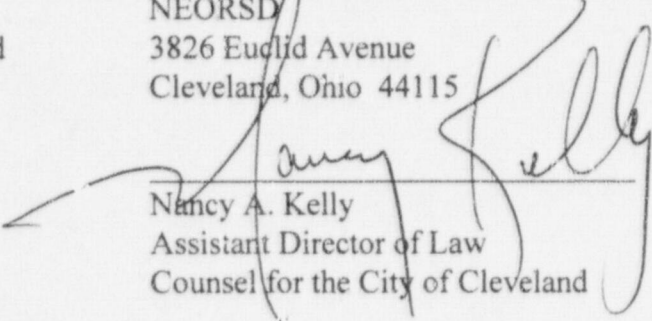
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1999 Pocket Part

SET NO. 1

The 1999 Pocket **BALDWIN'S** is the text of the Revised Code Annotated in date through the 1999 session.

histories, uncodified law, and historical and statutory notes. An annotated code is a code that contains annotations, such as court decisions, legislative history, and other information, that provide context and interpretation for the code provisions.

OHIO REVISED CODE

ANNOTATED



Replacing 1998 Pocket Part
Supplementing the 1994 main volume

Includes all laws through
December 31, 1998

For changes after 12-31-98, please consult
Baldwin's Ohio Legislative Service Annotated, 1999.

Title 1

State Government

Chapters 141 to end



WEST GROUP

EXHIBIT

"A"

2

(j) Records containing information that is confidential under section 2317.023 of the Revised Code, and not subject to release under section 2317.021 of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction department of youth services or a court of record pursuant to division (E) of section 51 of the Revised Code;

(m) Intellectual property records;

(c) Records maintained by the department of human services pursuant to section 510 of the Revised Code, as amended, and to chapter 5111, which relate to the department's

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature only to the extent that the release of the record would create a substantial risk of harm to the public.

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

- (v) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source or witness's identity;
- (c) Specific confidential investigative techniques or procedures or specific investigative work product;
- (d) Information that would endanger the life or physical safety of law enforcement personnel or a crime victim, witness or confidential source.

(3) "Medical record" means any document or combination of documents, except bills, receipts, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically relevant to the trial of a criminal case.

any computed or reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of attorney.

(3) **architectural property record** means a record, other than a financial or administrative record that is produced or collected by a building owner, that contains information about the design, construction, or maintenance of a building or structure.

arriving in the conduct of or as a result of study or research on an educational commerce

scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released or published.

(6) "Donor profile record" means all records about donors or potential donors to a publication of higher education except the names and residential addresses of donors.

(B) All public records shall be promptly prepared and made available for inspection to a person at all reasonable times during regular business hours. Upon request, a person responsible for public records shall make copies available at cost without charge. A request for a copy for the date, amount, and conditions of the actual donation.

order to facilitate broader access to public records, governmental units shall maintain copies of records at cost, within a reasonable period of time, in a manner that they can be made available to the public.

with division (B) of this section, for if a person who has requested a copy of a public record allegedly is aggrieved by the failure of a person responsible for the public record to make a copy available to the person, allegedly aggrieved, in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the governmental unit or the person responsible for the public record to comply with division (B) of this section, and that awards reasonable attorney's fees to the person that instituted the mandamus action. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(D) Chapter 1347, of the Revised Code does not limit the provisions of this section.

51(E)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119, of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person, for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (E)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be located without examination of all items in a records series, class of records, or data base by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (E)(1) and (2) of this section, "commercial surveys, marketing, solicitation, or resale" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or non-profit educational research.

(1998 H 421, eff. 5-6-98; 1997 H 352, eff. 1-1-98; 1996 S 277, § 6, eff. 7-1-97; 1996 S 277, § 1, eff. 3-31-97; 1996 H 438, eff. 7-1-97; 1996 S 269, eff. 7-1-96; 1996 H 353, eff. 9-17-96; 1996 H 419, eff. 9-18-96; 1995 H 5, eff. 8-30-95; 1993 H 152, eff. 7-1-93; 1987 S 275; 1985 H 319, H 238; 1984 H 84; 1979 S 62; 130 V H 187)

Unmodified Law

1998 H 770, § 8; See Unmodified Law under (b) 3314.

Cross References

Adoption records not public, 3107.52
Adoption registration, public record, 3705.12

Alcohol and drug addiction program report, public record, 2925.03
Alternative program for chemically dependent nurses, 4733.35
Appeals based on felony sentencing guidelines, 2953.08
Capital case status reports, 109.97
Cemetery dispute resolution commission, records, 4767.06
Child support division, account information obtained from financial institutions not public records, 5101.315
Coal development office, journal of actions, public inspection, 1555.17
Coal development office, trade secrets and proprietary information not public, 1551.35
Community schools, required terms of contracts, 3314.03
Competitive bidding, public inspection and copying prohibited, 125.071
Consumers court, public record, 4911.10
Court reports as public record, Sup R 37
Credit card payment of fees, confidentiality of information, 111.16
Criminal gang activity, civil forfeiture action proceedings not public record, 2923.45
Criminal gang activity, records of expenditure of time monies subject to inspection, 2923.42
Criminal gang activity, records of forfeiture hearings not public records, 2923.44
Criminal gang activity, reports, 173.41, 3712.09, 3721.121, 3722.151
Currency and transaction, reporting data not public, 1315.53
Currency and transaction reporting investigation records not public, 1315.54
Death certificates, social security numbers as public records, 3705.16
Environmental audit privileges and immunities, government agency authority not limited, 3745.74
Environmental protection agency policies as public records, 3745.30
Hazardous waste, confidentiality of information, 4905.82
Health insuring corporations, complaints against, documentation not a public record, 1751.19

Ohio Administrative Code References

Department of rehabilitation and correction, public records, OAC 5120.9-49, 5120.1-1-36

Library References

Ohio 3d: 5A, Alternative Dispute Resolution § 86, 98, 158, 14; Carriers § 108; 26, Criminal Law § 1197; 39, Employment Relations § 543; 47, Family Law § 1183; 55, Incompetent Persons § 47; 78, Public Welfare § 54; 80, Records and Recording § 13, 15 to 17, 22 to 25, 27, 33; 84, State of Ohio § 91

Library References

Health insuring corporations, utilization review, clinical review, rationale not public record, 1751.80
Malpractice actions, restrictions on discovery regarding professional review organizations, 2305.252
Mediator communications privileged, exceptions, 2317.023
Mental health department, confidentiality of quality assurance record, 5122.32
Mental retardation and developmental disabilities department, records not public, 5123.02
Nonprofit health care facility transfers of assets, notice and documents as public records, 109.34
Opiumists, final disposition of claims for damages involving malpractice, 4725.22
Physician assistants, investigations of violations, 4730.26
Proficiency testing, results as public records, 3301.0711
Public assistance recipients, names and identifying information not deemed public records, 5101.29
Public utilities commission, public record, 4901.12, 4905.07
Rail fixed guideway systems, investigation reports, 5501.55
Rehabilitation and correction department, confidentiality of quality assurance records, 5120.211
Reports by employers to child support division not public records, 5101.312
Sex offender registration, public record, 2950.11
Supported living, standards and procedures for certification of providers, records of evaluation, 5126.431
Telephone solicitors, information in application for certificate of registration is not a public record, 4719.02
Title insurance agents and companies, interest on trust accounts, 3953.231
Tourism market research records, confidentiality, 122.07
Trade secrets and commercial or financial data submitted to department of development not public, 122.33
Transit agency's system safety program, 5501.56
Victim request for notices regarding sex offender not public record, 2950.13
Victims of crimes reparations, disclosure of medical records related to injury, 2743.62
Youth services department records, confidentiality, 5120.21

Ohio Administrative Code References

Method of giving public notice and availability of Administrative Code rules, OAC 5101.22-01
Release of information held by ODHS, OAC 5101-22-15

Library References

Giannelli & Snyder, Baldwin's Ohio Practice, Evidence § 502.4 (1996)
2 & 3 Katz & Giannelli, Baldwin's Ohio Practice, Criminal Law § 39.22, 49.20, 49.24, 99.18, 101.3 (1996)
Klein & Darling, Baldwin's Ohio Practice, Civil Practice § 1.3 (1997)

Kurtz & Giannelli, Ohio Juvenile Law (1998 Ed.), Text 10.8, 10.10, 11.4, 18.2, 32.2

Meek & Pearlman, Ohio Planning and Zoning Law (1997 Ed.), Text 8-54, 13.31

Ohio Administrative Law Handbook and Agency Directory, OAC Vol 17, Text 2.8, 3.14, 4.13, 6.1, 7.1 to 7.12, 7.15 to 7.17, 7.19

Sowald & Morganstern, Baldwin's Ohio Practice, Domestic Relations Law § 22.10 (1997)