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USNRC

September 16, 1998

UNITED STATES OF AMERICA '98 SEP 16 P3:12  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

AHARON BEN-HAIM, Ph.D.

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IA 97-068

NRC STAFF'S FINDINGS IN RESPONSE  
TO DR. BEN-HAIM'S PROPOSED FINDINGS

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's (Board's) "Memorandum and Order (Telephone Conference, 6/3/98; Proposed Findings)," dated June 4, 1998 (Telephone Conference Order), the staff of the Nuclear Regulatory Commission (Staff) hereby files its findings in response to "Dr. Ben-Haim's Proposed Findings," dated September 8, 1998 (Ben-Haim Findings).

DISCUSSION

1. In his findings, Dr. Ben-Haim set forth three numbered findings in which he acknowledged that he made mistakes as a consultant for NMA. Ben-Haim Findings at 2. Dr. Ben-Haim conceded that he "should have verified that Dr. Moskowitz was indeed informed and willing to take on the functions of Radiation Safety Officer and authorized user at NMA," should have instructed Ms. Smoligova not to order radiopharmaceuticals without explicit authorization from Dr. Moskowitz, and should have instructed Ms. Geylikman that she "had to obtain explicit instructions from Dr. Moskowitz before administering any radioactive dosage to a patient." Ben-Haim Findings at 2.


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2. Inasmuch as Dr. Ben-Haim does not dispute, in his findings, any of the findings set forth by the Staff,<sup>1</sup> the Staff does not raise any further facts or arguments not previously presented in the Staff Findings. The Staff notes that Dr. Ben-Haim requests that the findings be considered as a showing of cause to relax the Order against him. Ben-Haim Findings at 2. The Staff notes, however, that there is nothing in Dr. Ben-Haim's findings that provides support for such a relaxation.

### CONCLUSION

3. The Staff believes that the record in this proceeding supports the finding that Dr. Ben-Haim deliberately caused NMA to be in violation of several Commission requirements. Therefore, the Board should uphold the Staff's Order, including the five year term during which Dr. Ben-Haim is prohibited from involvement in NRC-licensed activities.

Respectfully submitted,



Catherine L. Marco  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 16<sup>th</sup> day of September 1998

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<sup>1</sup> Dr. Ben-Haim does state that he thought it was the licensee's duty to notify the Radiation Safety Officer and authorized user, Dr. Moskowitz, that the license was granted. Ben-Haim Findings at 2. Regardless of NMA's responsibility in this regard, however, Dr. Ben-Haim does not dispute the Staff's findings that Dr. Ben-Haim knew that Dr. Moskowitz was not performing the role of RSO or authorized user at NMA when he, Dr. Ben-Haim, brought about the use of radioactive material at NMA. See Staff Findings at 16-25.

UNITED STATES OF AMERICA  
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'98 SEP 16 P3:13

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IA 97-068

AHARON BEN-HAIM, Ph.D.

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OFFICE OF THE SECRETARY  
RULEMAKING AND ADJUDICATIONS  
ADMINISTRATIVE JUDGE

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S FINDINGS IN RESPONSE TO DR. BEN-HAIM'S PROPOSED FINDINGS" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk this 16th day of September, 1998:

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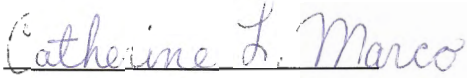
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Adjudicatory File (2)  
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