

August 13, 2015

Chairman Stephen G. Burns
Commissioner Kristine L. Svinicki
Commissioner William C. Ostendorff
Commissioner Jeff Baran

Dear Chairman Burns and Commissioners:

On June 17, 2015, Jeffry Siegel, Ph.D., Carol S. Marcus, M.D., Ph.D., and Michael Stabin, Ph.D., wrote to the Commission to denounce a recent article in *Medical Physics* by Dr. Shaheen Dewji of Oak Ridge National Laboratories and six co-authors, including two NRC employees. The article, they complained, was an "abuse of User Fees" and a "wasteful expenditure of NRC funds," since the underlying Oak Ridge research was funded by NRC. They were particularly galled by the article's failure to reference "our entire body of work," including an article "by Siegel, Marcus, and Stabin published in 2007 ... [that] was sent to the Commission by Dr. Marcus to ensure they would be aware of it." The three authors concluded their letter with a request that one of them be made a consultant "to help with the review of proposals and any updates dealing with any aspect of the patient release rule and to provide realistic information as needed." The clear implication was that the Advisory Committee on the Medical Uses of Isotopes (ACMUI) had proven itself unequal to the task.

The problem is that on February 9 of this year, Dr. Marcus filed a petition for rulemaking that calls on the NRC to radically overhaul its approach to radiation protection, scrapping the "as low as reasonably achievable" (ALARA) principle, which has obtained since the dawn of the nuclear age, and replacing it with the "hormesis" (or "radiation is good for you") principle, which mainstream science scorns as worthless pseudoscience. Days later, two more petitions arrived, modeled on her filing and essentially identical to it.

Thus the notion behind the June 17 letter is that Dr. Marcus or one of her fellow hormesis partisans should be advising the Commission on radiation protection issues at the same time that her petition and its clones are pending before the NRC. Since past experience suggests that this may well present difficulties relating to conflict of interest, and there are few at the NRC today whose institutional memory reaches back quite that far, I will offer some relevant history.

In 1990, when Dr. Marcus was in her first term as a member of the ACMUI, she was informed by the lawyers in the Office of General Counsel that on conflict of interest grounds, she could not participate in Committee deliberations on a pending rulemaking petition that she herself had filed. She disagreed, and in a letter to NRC General Counsel William C. Parler, dated May 24, 1990, explained that there could be no conflict of interest, since she had only filed the petition at the express request of a senior NRC official, who had then assigned a staffer to help draft it for her signature. This covert collusion had taken place behind the backs of the EDO and the Commissioners, and was later confirmed by an Office of Inspector General investigation, leading to a change in NRC rules and a 1993 Senate hearing at which NRC Chairman Ivan Selin humbly assured a shocked and incredulous John Glenn that such an impropriety would never occur again.

Mr. Parler wrote back to Dr. Marcus on June 1, 1990, explaining the concept of conflict of interest to her; she replied on June 8; and so Mr. Parler had to write yet again, on June 26, 1990. Her wrath then descended on Mr. Parler, whom she denounced to the Office of Government Ethics.

More than two years later, on September 3, 1992, Dr. Marcus was still hard at it, with a letter to

then Chairman Ivan Selin, recounting her efforts to involve OGE Director Stephen Potts, complaining of a "nasty plan being hatched... to impose diabolical requirements," and inexplicably attaching a "Calvin and Hobbes" comic strip. (She had informed Potts on January 28, 1992, that the NRC was "becoming a national embarrassment," and asked for his attention at his "earliest convenience.") This letter brought a reply from Chairman Selin, dated September 14, 1992, trying yet again to explain about conflict of interest. Dr. Marcus volleyed back with a letter to Chairman Selin, dated September 21, 1992:

I felt that the judgment of such "conflict of interest" was inappropriate at the time it was conferred, and continues to be inappropriate now. You refer to Mr. Parler's letters of 1 June 90 and 26 June 90. However, are you aware of my letters of 24 May 90 and 8 June 90? For your convenience, I have appended the four letters for your consideration. As you will see, your petition was requested by NRC, and NRC participated in its crafting to a very significant extent.

It should be apparent from the foregoing that Dr. Marcus does not appreciate the niceties of the conflict of interest rules, nor does she readily take no for an answer. The passage of time has not dimmed the vigor of her rhetoric, as her recent petition shows: "The attitude of today's regulators is reminiscent of the Catholic Church at the time of Galileo. ...[T]he Church threatened to torture Galileo to death unless he rescinded his point of view. ... And while today's regulators do not have the tools of torture available that the Catholic Church used... etc., etc."

Not for a moment would I presume to tell the Commission whom it can and cannot hire or listen to. (In this I differ from Dr. Marcus, who when the Commissioners once scheduled a meeting to hear from Robert Adler, then a professor at the University of North Carolina, now a member of the Consumer Product Safety Commission, wrote a fiery letter of protest to Chairman Shirley Jackson, 16 pages long.) Thus if the Commission wishes to hire Dr. Marcus or one of her co-authors as a consultant on patient release issues, notwithstanding the foreseeable conflict of interest problems and the implied insult to the ACMUI, the NRC staff, and the researchers at Oak Ridge, that is entirely its business, but I suggest it do so with eyes wide open.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'P. Crane', with a long horizontal flourish extending to the right.

Peter Crane
NRC Counsel for Special Projects (retired)