

UNITED STATES NUCLEAR REGULATORY COMMISSION
REGION I

Licensee: The Samuel S. Stratton VA Medical Center

An Enforcement Conference was held before
Loretta B. Devery, Registered Professional Reporter
and Notary Public at the office of the Nuclear
Regulatory Commission, Region I, 475 Allendale Road,
King of Prussia, Pennsylvania, on Monday, July 8,
1991, commencing at 10:10 A.M.

PRESENT:

DR. RONALD BELLAMY
DR. MOHAMED SHANBAKY
DR. MALCOLM KNAPP
KARLA SMITH, ESQ.
GIOVANNA LONGO, ESQ.
DANIEL HOLODY

FREDERICK L. MALPHURS, Director
LAWRENCE H. FLESH, M.D, Chief of Staff
SIMIMKEON ANDREW KANG, M.D.
ARNOLD W. PROSKIN, ESQ., Counsel for Dr. Kang

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1
2 DR. BELLAMY: Good morning. Let me
3 welcome you to Region I for an enforcement conference
4 that we're having this morning with the Veterans
5 Administration Medical Center in Albany. My name is
6 Ron Bellamy. I am the NRC Branch Chief for the
7 Nuclear Materials Safety and Safeguards Branch.

8 We will be discussing issues this morning
9 having to do with some inventory records that were
10 purportedly done by the VA Medical Center in calendar
11 year 1990. Before we get into that, I'd like to,
12 although we have given the court reporter our names,
13 I'd like to go around the table and make sure we all
14 know who everybody is.

15 DR. KNAPP: Malcolm Knapp. I'm the
16 Division Director for the Division of Radiation Safety
17 and Safeguards here in Region I, materials licensing
18 falls within my responsibilities.

19 MS. LONGO: My name is Giovanna Longo.
20 I'm an attorney with Office of General Counsel,
21 Enforcement.

22 MR. HOLODY: Dan Holody, Enforcement,
23 Region I.

24 MS. CAHILL: Mary Cahill, Materials

1 Inspector, Region I.

2 DR. SHANBAKY: Mohamed Shanbaky, Section
3 Chief for Medical Inspection, Region I.

4 MS. SMITH: Karla Smith, regional
5 counsel.

6 DR. FLESH: Lawrence Flesh, Chief of
7 Staff of the VA Medical Center Albany, New York, and
8 Radiation Safety Officer.

9 MR. MALPHURS: Fred Malphurs, Director of
10 the VA Center in Albany.

11 MR. PROSKIN: Arnold Proskin, I'm
12 representing Dr. Kang.

13 DR. KANG: Andrew Kang, previous RSO at
14 Albany.

15 DR. BELLAMY: During an inspection that
16 Mr. Christopher Eckert conducted in November, 1990, he
17 uncovered a list of violations, one of which had to do
18 with the apparent failure to perform sealed source
19 inventory records. There was a concern on our part at
20 that time that these records may not have been
21 complete and there may have been signatures and/or
22 dates or some other information falsified on those
23 records.

24 We asked our Office of Investigations to

1 determine if records of sealed source inventories were
2 deliberately falsified and also to see what the extent
3 of licensing management's involvement in those issues
4 would be. Based on that investigation, our Office of
5 Investigations has found that certain inventory
6 records of sealed sources were falsified by a member
7 of staff. Specifically, the then radiation safety
8 officer falsified certain sealed source inventory
9 records in January, April, July and October of 1990.

10 The apparent falsification of the
11 required sealed source inventory records identified
12 during the O.I. investigation constitutes an apparent
13 violation of NRC requirements that are set forth in 10
14 CFR 30.9; and the failure to perform sealed source
15 inventories constitutes an apparent violation of 10
16 CFR 35.59.

17 What we would like to do this morning is
18 to discuss the details of those four apparent
19 falsifications of inventory records, your
20 understanding of why this may have occurred, your
21 corrective actions to insure that it does not occur
22 again, and in particular, what your understanding of
23 an inventory is. With that I'll ask if you have any
24 introductory comments or concerns that you'd like to

1 bring up, both Mr. Malphurs and Dr. Kang, and then if
2 not, we can start the discussion.

3 DR. FLESH: I'm not sure this is the
4 appropriate place or time, but as we discussed on the
5 phone, with our subsequent inspection by Mr. Eckert on
6 March 28th and 29th, we had demonstrated full
7 correction and compliance with the sealed source
8 inventory procedure and our process to maintain that
9 inventory.

10 DR. BELLAMY: Yes, that's noted.

11 MR. MALPHURS: I just would like to say
12 that I have been profoundly embarrassed, I think, over
13 this episode. I regret it very much. I have a lot of
14 confidence in our current Radiation Safety Officer,
15 our current radiation safety program. I think it has
16 really good leadership, has a definite quality
17 assurance frame of mind, and I think the direction and
18 the attitudes of everybody involved at the VA Medical
19 Center are going in the right direction.

20 DR. BELLAMY: Attached I believe that you
21 received a synopsis of our Office of Investigations
22 report. I assume that you have reviewed that
23 synopsis. Do you believe that the synopsis is
24 accurate? In other words, if you would, for each of

1 the four inventories that were supposed to have been
2 done in 1990, can you tell us whether it is the VA's
3 position that they were done, or if they were not
4 done, and if there were any falsifications involved in
5 each of them?

6 DR. KANG: Are you asking me?

7 MR. MALPHURS: Is that question for me?

8 DR. BELLAMY: I'm asking Mr. Malphurs,
9 and if Mr. Malphurs is not the appropriate person to
10 ask it, then he can certainly redirect the question.

11 MR. MALPHURS: It is my belief that the
12 synopsis as stated is correct.

13 MR. PROSKIN: Dr. Bellamy, may I ask a
14 question?

15 DR. BELLAMY: Absolutely.

16 MR. PROSKIN: Dr. Kang, sometime ago,
17 gave a complete, quite lengthy statement to an
18 investigator and was straightforward. And I believe
19 he gave you all the information that you have insofar
20 as what he did. He's asked several times for a copy
21 and was assured that he would get a copy of this
22 statement that he gave under oath, and he's never
23 received it yet. He's asked the investigator, Mr.
24 Fitzgerald?

2 1 DR. BELLAMY: Yes.

2 MR. PROSKIN: It would seem to me that he
3 has said everything he could say in there, and if
4 there are other statements that contradict what he has
5 said, I think in fairness, he should be able to see
6 these and make any statements he wished. Because the
7 conclusions that you reach here do not seem to be
8 completely in line with the statement that he gave
9 you. And if there's other information, I think maybe
10 he should know about it, because he's cooperated with
11 you from day one. He'd like to continue to cooperate.

12 DR. BELLAMY: Karla, do you have any
13 comments on that?

14 MS. SMITH: Well, I wasn't aware of the
15 request. I mean, were you?

16 DR. BELLAMY: No, I was not.

17 MS. SMITH: And that's something we
18 should check out with O.I., I think.

19 DR. KANG: I think I spoke directly to
20 Mr. Fitzgerald on the phone.

21 MS. SMITH: What do you recall that he
22 said?

23 DR. KANG: He would send it through the
24 fax in a few days, and that was in March I think --

2 1 yeah, right after the second investigation.

2 DR. BELLAMY: We will certainly note
3 that. Generally speaking, the results of interviews
4 are not even considered as to whether we can release
5 them until after we have completed our investigation
6 and had our discussions and internal deliberations,
7 but Mr. Fitzgerald is also no longer with the Nuclear
8 Regulatory Commission. That puts us in a little
9 difficult position.

10 MR. PROSKIN: Dr. Bellamy, if I may just
11 say one thing, Dr. Kang's silence in no way -- there
12 are some conclusions in here that have very strong
13 language that I don't think -- I know he doesn't agree
14 with. We've talked about this and he's given you the
15 facts as to what's happened. If there was an
16 investigation or a hearing held, he had no knowledge
17 of it, of course.

18 When you're saying he falsified,
19 intentionally did this, if you're asking if he agrees
20 with your conclusions, I think the answer has to be
21 no. He would agree with the facts as he gave them,
22 that he delegated work and he did not take any
23 physical inventory at certain times -- whether it's
24 required or not, we still don't know -- but when

2 1 you're saying that he falsified documentation, I'm not
2 so certain he did when you see just a signature on a
3 sheet with his name. Because he did delegate, as he's
4 told me, I assume he's told the investigator the same
5 thing, I haven't been privy to that yet, but if your
6 information that you have is that you had an
7 individual, that he delegated to an individual who
8 worked for him while he was doing these two full time
9 jobs, and then the individual came back and said I did
10 these and he did the rest and he signed this document,
11 I don't believe that should rise to falsification.

12 As I said, I just don't want his silence
13 to say oh, yes, he did falsify these things -- I mean,
14 he has given a false statement. We're all at a
15 disadvantage not having that statement here, at least
16 I am. I'll sit back and be quiet.

17 DR. BELLAMY: We need you to be an active
18 part of our discussions.

19 MR. PROSKIN: Dr. Kang has cooperated, as
20 you know, from the word go.

21 DR. BELLAMY: I think where we would be
22 coming from were issues such as if you take the first
23 inventory in 1990 that was supposed to have been
24 performed on January 10, the inventory, when the

2 1 Radiation Safety Officer signed that inventory, we
 2 expect that that certification is that it is a
 3 complete and accurate listing where all the, in this
 4 case, all the sealed sources are at the facility,
 5 i.e., the VA Medical Center in Albany in this case.

 6 DR. KANG: As far as I'm concerned, yes.
 7 January --

 8 MR. PROSKIN: Let him finish what he's
 9 saying.

 10 DR. BELLAMY: It would appear to us that
 11 the January inventory we do not have information that
 12 says that there was an individual that went to every
 13 department in the facility and certified that each
 14 sealed source was where it should be. Therefore, it
 15 is difficult for us then to make a leap to say that
 16 that was a complete and accurate inventory. And by
 17 the signature of the Radiation Safety Officer, it was
 18 a complete and accurate inventory. If it is not a
 19 complete and accurate inventory, the records have been
 20 falsified in that the Radiation Safety Officer signed
 21 saying this is a complete and accurate inventory where
 22 in effect he did not have knowledge of that when he
 23 signed that inventory.

 24 MR. PROSKIN: Maybe this is inappropriate

2 1 to re-do this thing. I know you were talking as far
2 as any changes they've made. But this is what we have
3 here, I have this and it just says all okay. I don't
4 know how you can arrive at this conclusion.

5 I've looked for regulations that mandate
6 a physical touch, hands-on inventory and I can't find
7 them. I've checked with people who are much more
8 knowledgeable than I in the field, and they've told me
9 well, it can be interpreted either way, you can
10 delegate or you can do it physically yourself. But
11 Dr. Kang did say I had an individual do this, he came
12 back. They weren't too happy, the technicians, in
13 doing it, came back to him and he said well, he
14 finished it himself, and he just assumed that the
15 people to whom he delegated did it. And maybe that's
16 wrong, but I don't think that's falsifying.

17 It's pretty harsh to say he falsified
18 something. And again, he signed this, and I'm not so
19 certain he knew at the time what inventory meant, that
20 inventory should mean to go physically, hands-on.
21 Again, maybe this is the wrong time for me to raise
22 this, maybe it isn't --

23 MR. HOJODY: Let me ask a question. Dr.
24 Kang, what is your understanding of inventory and what

3 1 was your understanding back then?

2 DR. KANG: Right now of course, as you
3 know, we've been through last 6, 7, 8 months that
4 we've been through extensive reorganization of the
5 program. And I was happy to be part of that, at least
6 the beginning few months. And this very issue was the
7 first thing we rectified. With me, and at that time,
8 John Dapolito and his associate, for 3, 4 days and
9 nights exclusively until 3:00 in the morning, we all
10 gathered together, all hundred different places, the
11 unsealed -- sealed source, we put together, now it's
12 very orderly.

13 But until then, I'm sorry to say that my
14 understanding of inventory was not quite accurate. I
15 have to realize that. My -- before that extensive,
16 really thorough inventory of that 1990 December,
17 before that, my understanding on inventory was make
18 sure everything is there. I mean visually checking, I
19 did not understand that I have to go physically
20 checking. Just as long I know that everything is
21 there, that's inventory.

22 MR. HOLODY: How would you know
23 everything was there if you didn't do a physical check
24 to verify that it was there?

3 1 DR. KANG: You could call a few people
2 and verify that if that's there. And also, I can just
3 see that they haven't recorded any missing items.
4 They haven't reported any new items added.

5 I added specifically in April time,
6 that's a very, very difficult time. At that moment,
7 we were having whole new program, as everybody know,
8 that I was the one who had the whole department torn
9 apart and remodeling for the new camera. I was kind
10 of a supervising the wallpapering and all those
11 things. And then so the inventory time comes, I'm not
12 really excusing it because there's no excuse for this,
13 but I'm just saying at that time I didn't realize how
14 important this was. And also another thing, the
15 supporting was not there. If I really realized that
16 inventory was so important, maybe I should have spent
17 whole night, 24 hours, work, I could have done that.
18 I don't know how I could have done that, but I should
19 at least could have tried. At that time was difficult
20 time.

21 My understanding and also inventory of
22 sealed source was, I'm sorry to say, that that was not
23 my first priorities, was maybe 10 to 20th. And my
24 understanding again, inventory was -- it's everything

3 1 is there, everything is there. I called a few people.
2 It's very difficult to get everybody on the same time
3 at the same line. I called people. If they're not
4 there, a few days later I call, if they say hey, look,
5 it's time again, do you have this, and if they say
6 it's there, I'm sorry, I didn't go and check it
7 visually.

8 But in January, it's not only because of
9 regulation, but for curiosity. This is the first time
10 I was kind of involved in this interesting subject.
11 As I told last conference, that I even didn't know
12 what a sealed source was. When was that, '89,
13 November, one of the inspectors came and pointing out
14 the previous RSO didn't do four times, twice a year
15 and missed it twice. At that time, I was not involved
16 Radiation Safety Officer. But because Radiation
17 Safety Officer is under the nuclear medicine, I was
18 already to say that yes, we will do it, not meaning
19 that I do it myself, of course.

20 We were looking for at that time new
21 Radiation Safety Officer, presuming that new Radiation
22 Safety Officer on board in few months or so. And at
23 that time I still remember that I asked that
24 inspector, I'm sorry to ask you, but what is a sealed

3 1 source. She was laughing and she told me what is a
2 sealed source was.

3 And an example was I now recognize that
4 nuclear medicine has one like a cobalt source with a
5 big round disk which every morning we do camera
6 control unit. So I thought that, presuming that maybe
7 sealed source maybe 5 or 6, so that's no big deal, I
8 mean anybody can do that when I'm talking that time
9 the inspector was there. So I said well, I'll make
10 certain that from next year, from 1990, we'll make
11 sure, we'll do it, presuming that it's not so big job,
12 either I do it or somebody else, I obviously thought
13 the Radiation Safety Officer there, he or she will do
14 it. When January comes, by the time that my name was
15 on Radiation Safety Officer, not realizing of course
16 that I was fully responsible for Radiation Safety
17 Officer, there was again a misunderstanding. That's
18 my mistake.

4 19 So the January time came, the secretary
20 brought a list of sealed source inventory list again.
21 I have no knowledge of how to do it, what is
22 inventory, what a sealed source is, no knowledge
23 whatsoever. No nobody told me anything. Since I'm
24 the RSO, I'm supposed to do it, so secretary brought a

4 1 list. I look at it. I was stunned, it was not five,
2 it was a hundred some items which is all coded items,
3 O.N225, Z226. What is all this? Nobody tell me what
4 that is. I mean how could I do it? I haven't had the
5 vaguest idea. So the best thing I can do is -- even
6 the secretary doesn't know anything about it, the
7 secretary just copy the sealed source inventory last
8 time she did it, okay.

9 There's some error, so I gave it to one
10 of the nuclear medicine techs. The tech is not happy
11 of course. Why not, that's not their job. Their job
12 is to do the imaging. The RSO, his job is the
13 Radiation Safety Officer. They don't consider that's
14 their main functions. But anyway, I asked do me a
15 favor, and they said -- they called me first name,
16 Andy, I'll tell you what I'm going to do whatever I
17 can, I mean some part of it, s'nce you are the one who
18 took the job and that's all your part of the work.

19 So okay, I appreciate anything you can do
20 it for me. So they did, and maybe next day or so
21 brought back and some checked, some not checked. So I
22 said okay, thank you very much, and I will assume the
23 rest of it.

24 Now, I did honestly, I did the rest of it

4 1 very much, just for my curiosity, like I say.

2 DR. BELLAMY: You did the rest of it?

3 DR. KANG: I did the rest of it and
4 checked all by myself.

5 DR. BELLAMY: In January of 1990?

6 DR. KANG: I'm talking January, yes.

7 DR. BELLAMY: You took the sheet that the
8 nuclear medicine technologist gave back to you with
9 certain checks, and the ones that this individual
10 checked, you assumed those were there. The ones that
11 had no checks, you said --

12 DR. KANG: I did, for my own technical
13 and personal something, because this is the first time
14 it's my responsibility, that's right.

15 DR. BELLAMY: You physically went out and
16 looked at each of those?

17 DR. KANG: What I did was before --

18 DR. BELLAMY: Tell me what you did then.

19 DR. KANG: Okay. See, they checked
20 mostly nuclear medicine part. And the rest of is
21 all -- I look at it -- is all these things it looks
22 like research items, so I started to call all the
23 research lab. It's very difficult sometimes. They
24 are not just waiting to be called. So I called the

4 1 one guy and he was not there. Then I have to call
2 another guy until I'm thinking that I'm going to call
3 the next time. Then if I get lucky, I will get
4 someone there. Sometimes the person doesn't know what
5 I'm talking about, because that's mostly the PI only
6 knows, principal investigator. So it's quite a few
7 days in between my work, you know, there's a patient
8 waiting, then I have to go out, do things, then come
9 back and continue other things.

10 Then finally I made all those checkmarks,
11 and I was so happy. So that's why I said first time
12 that's all okay.

13 DR. BELLAMY: So you personally contacted
14 somebody that said the source is here?

15 DR. KANG: I contacted PI and I check,
16 look you have these items, let me find out. In a few
17 minutes, he said yeah, I think I have. Okay, wait
18 there, I'm coming. Then I go there and I checked all
19 items and it was all there. I mean, in other words,
20 the January, I honestly did everything. Although you
21 can say that I didn't check, I mean the next April, I
22 didn't, I mean I realize that I didn't do the
23 physical.

24 DR. BELLAMY: I want to make sure that we

4 1 all understand what your position is on the January
2 inventory.

3 DR. KANG: Right.

4 DR. BELLAMY: And it's your position that
5 you asked the nuclear medicine technologist to do it
6 and this individual did a certain fraction of it?

7 DR. KANG: Right.

8 DR. BELLAMY: Those that were not done,
9 it was obvious to you, which the individual had not
10 done, you made telephone calls to each of the
11 principal investigators?

12 DR. KANG: Right.

13 DR. BELLAMY: And I understand it may
14 have been difficult to get the principal investigator,
15 but finally you spoke to somebody in each case?

16 DR. KANG: Then I go there and check it.

17 DR. BELLAMY: And said are you in the
18 laboratory, I would like to come down and physically
19 look at it?

20 DR. KANG: Right.

21 DR. BELLAMY: And then you physically
22 looked at each of those additional sources?

23 DR. KANG: I did that, yes.

24 DR. BELLAMY: In January of 1990?

4 1 DR. KANG: Right.

2 MR. HOLODY: Dr. Kang, that appears to
3 conflict with what you had told the investigator.

4 DR. KANG: What did I say?

5 5 MR. HOLODY: In January of this year,
6 January 30th, in the signed statement, you said, "I
7 did not -- I conducted a physical inventory on January
8 10, 1990, at which time I believe that all sources
9 were accounted for. A technician assisted me in
10 locating these sources -- a technician, Helen McKeown,
11 assisted me in locating the sources within the nuclear
12 medicine department. I do not recollect going to the
13 research department or therapy department, but I might
14 have telephoned or personally visited, but I don't
15 recollect."

16 DR. KANG: Well, the first sentence,
17 that's all there. The thing is that I'm not sure
18 whether that is correct, if I said so. Maybe Mr.
19 Fitzgerald also came, when was that, this year, so
20 it's already a year past, I mean --

21 MR. HOLODY: This was in January of 1991.

22 DR. KANG: That was the January, 1990
23 inventory you're talking about?

24 MR. HOLODY: The statement was in January

5 1 of 1991.

2 DR. KANG: 1991, again it's a year old
3 memory, I'm trying. I think I honestly believe I did
4 all check at that time. Maybe I misunderstood what
5 Fitzgerald said. I'm not sure what I have said. I
6 don't know what I have said, but the thing is --

7 MR. PROSKIN: Excuse me one second. Are
8 you aware how that statement was taken, sir?

9 MR. HOLODY: It's a typewritten statement
10 signed by Dr. Kang and signed by the investigator.

11 MR. PROSKIN: Are you aware how it was
12 taken though?

13 MR. HOLODY: Ask the question again.

14 MR. PROSKIN: Are you aware of the
15 mechanics of how that statement was taken?

16 MR. HOLODY: The mechanics, I am not.

17 MR. PROSKIN: If I understand, I wasn't
18 there for that, that's a statement that I, just for
19 the reason I said earlier, that I should have had a
20 copy of the statement before Dr. Kang said anything
21 today. He has no idea what's in that statement. The
22 man asked him these things and then wrote down
23 whatever he wanted. These are not Dr. Kang's words.
24 You've heard him speak and you've heard his use of the

5 1 English language. I think if you're -- knowing
2 investigators, knowing former Philadelphia policemen,
3 I would think that that language is probably not Dr.
4 Kang's language. I'm pretty sure it is not.

5 MS. CAHILL: He read it, he signed it.

6 MR. PROSKIN: He did sign it. I'm not so
7 sure he read it. This was quite lengthy. I don't
8 know how many hours he spent interrogating him. I do
9 believe that for the very reason that you just raised,
10 Dr. Kang should have that statement in fairness. In
11 some basic fairness, let him see what kind of a
12 statement he made before -- I know he's read the
13 statement and that's what it said. I'm not so sure
14 how he read that statement and I'm not so sure Mr.
15 Fitzgerald -- what he put in there.

16 MS. CAHILL: What do you mean how he read
17 the statement? I don't understand what you're saying.

18 MR. PROSKIN: I'm not so sure he read the
19 statement in depth. How many pages is that statement?

20 MS. SMITH: Five.

21 DR. BELLAMY: Five pages.

22 MS. CAHILL: Well, maybe Dr. Kang could
23 answer that question.

24 MR. PROSKIN: Very frankly, I'd like to

5 1 have a copy of the statement. It's just, I mean, just
2 2 basic fairness. The man is here trying to tell you
3 3 everything you want to know, and then you're saying
4 4 under oath you said such and such to Mr. Fitzgerald,
5 5 who's not here and we can't talk to him, obviously.

6 I think in fairness, he should have a
7 7 copy of his statement. He's willing to sit and tell
8 8 you everything that went on, but if you're going to
9 9 cross-examine him on a statement that he doesn't have,
10 10 I can't very well sit here and say okay, Andy, you
11 11 talk to them and let them cross-examine you. It's
12 12 just not fair to the man. He came here willing to
13 13 tell you everything he knows about the whole situation
14 14 once again, something that happened a couple years
15 15 ago. But then, as I said, in fairness, it doesn't
16 16 seem that it's very fair for you to take a statement
17 17 that he gave six, eight months ago and say wait a
18 18 minute, you said this to this man supposedly.

19 MR. HOLODY: The issue is not the
20 20 statement, what occurred back in January. Whether the
21 21 inventory was conducted or not, that's what we're
22 22 trying to understand today, and the extent of that
23 23 inventory being conducted, and what Dr. Kang
24 24 understood an inventory to be. And that's the purpose

5 1 of this conference.

2 MR. PROSKIN: I know this is not a
3 hearing, I apologize for making it sound like I'm a
4 little bit involved in a hearing, but Dr. Kang is
5 trying to tell you the best of his recollection what
6 he said when he read that. What I meant was I'll bet
7 you he read it in a couple minutes, and I know he
8 didn't read it line-for-line, word-for-word. And
9 there may be an emphasis on one thing here. He's been
10 consistent telling me the same thing. I have no idea
11 that this statement is being taken because Mr.
12 Fitzgerald said to him if you want it, you can have
13 one, but we'll just talk. And he willingly talked.
14 He's willingly talked from the beginning. He's
15 willing to tell you anything you need to know.

6 16 And the hospital, I think they've
17 resolved this problem in this thing and everyone wants
18 to get to the root of this thing, but basically I just
19 find it very difficult as an attorney to sit here and
20 to say well go ahead, Andy, you can talk, and forget
21 what you said to the investigator. He'd love to tell
22 you what happened, I think he'd be more than willing
23 to.

24 DR. KANG: Mr. Fitzgerald was very nice.

6 1 And I mean the thing is that first Mr. Fitzgerald
2 appeared in my office, he was very cordial, and I
3 didn't realize this issue is that important. So we
4 just sit down, just casually talked, not realizing how
5 important the issue is.

6 So if Mr. Fitzgerald asked, I just answer
7 maybe whatever comes into my mind. In other words, I
8 didn't really think that what this statement is really
9 truth or not. I mean it's whether I really say -- the
10 best way to say is that I don't know, I don't
11 remember. I mean it's not really -- I can't remember
12 nowadays even months after so many different things
13 happening. And besides that, again, I'm not really
14 with that moment seeing that it was really that
15 important to remember.

16 So whatever he asked, if I can't answer
17 all time I don't know, I don't know, I cannot say
18 that. So if he says maybe you didn't do it, maybe I
19 didn't do, then he write down you didn't do. I'm not
20 sure what I didn't do and what I did, but I think
21 honestly, I'm telling you honestly, look at all many
22 inventories. I said first time all okay. I was so
23 satisfied. Don't you see that? I did all I can.

24 I mean what I stated, I mean that's

6 1 important of course. I stated that, maybe I stated
2 that. But at that time, honestly I felt that
3 everything was there. I was so satisfied. That's why
4 I said first time all okay. I mean that's the best
5 thing I could do, because that's one textbook I got
6 from the previous Radiation Safety Officer in short
7 period of time, I can at least fulfill my
8 responsibility. If you have other -- I just
9 cannot -- I mean you can look at it either way.

10 MR. HOLODY: So if I understand what you
11 said earlier today, your statement today is that the
12 technician checked off --

13 DR. KANG: Yes.

14 MR. HOLODY: -- what was in the nuclear
15 medicine department --

16 DR. KANG: Right.

17 MR. HOLODY: -- and did that inventory
18 for you?

19 DR. KANG: That's right.

20 MR. HOLODY: However, all other materials
21 that weren't checked off, you believe you --

22 DR. KANG: I checked the rest of it.

23 MR. HOLODY: Checked them off. Based on
24 doing -- this is a question -- was it based on doing

6 1 an actual observation of the source or based on
2 telephone calls?

3 DR. KANG: I first called telephone, then
4 I go and check it.

5 DR. BELLAMY: So you believe today that
6 you did --

7 DR. KANG: I did in January.

8 DR. BELLAMY: -- a physical inventory and
9 saw each of those sources that the nuclear med tech
10 did not check off in January, 1990?

11 DR. KANG: Yes.

12 DR. BELLAMY: Okay. Now, you started to
13 talk about the one in April of 1990. Tell us about
14 the April, 1990.

15 DR. KANG: Well, that's again, that's my
16 misunderstanding and my -- I can give you dozens of
17 excuses, but I know there's no excuse. I'm not going
18 to repeat that, bore you with all the excuses. But at
19 the time when -- again, since last eight months, it --
20 which I think had all my concept of all these
21 radiation safety issues, including this inventories,
22 after going through many days with the great John
23 Dapolito and his associate, if we had done that a few
24 years before, it wouldn't have happened, it shouldn't

6 1 have happened.

2 But again, the April time was difficult
3 time. Besides, just one week before that inventory
4 date was that the new -- what you call that request
5 from radiation therapy person, there's a brain tumor
6 patient admitted and we need Radiation Safety Officer
7 to order iridium and something. I had never done that
8 before. But since I was the one who was
9 responsibility, I checked around almost -- most of the
10 time hanging on the telephone conversating with the
11 other radiation safety officers at other institutions,
12 mostly Albany Med, and what to do and all kinds of
13 things.

14 So I think I managed it pretty good and
15 we ordered the iridium and we received that, we're
16 receiving procedure, very, very thoroughly I followed
17 it. And I was happy at the time of inserting all the
18 iridium source in the brain, I was there, and it was
19 one instant they lost one source in the room. Thank
20 God, I found the one source entangled, cut off with
21 the rest of the ribbons, I found it. And after
22 treatment of one week, I collected everything and I
23 sealed it back and sent back all those things. That
24 was great for me, that was great accomplishment for me

1 to do that.

2 Not only that, for every day, twice,
3 morning and afternoon, including Saturday and Sunday,
4 I had to come in to measure the radiation, the
5 dosimetry from the outside of the patient door, the
6 right side of the door, the next room. I was
7 measuring the one meter activities and three meter
8 activities and changing the lines. That was
9 tremendous job for me and another job also besides I
10 have to do. I mean after all done that, patient
11 discharged and I sent back the source. I was happy.
12 Then the source inventory comes.

13 I am sorry I was a little bit, you know,
14 kind of exhausted myself. And I knew that again the
15 main thing was, to my understanding of inventory, was
16 just if all the sources there. So I thought at this
17 time I could just check it with -- not by everything,
18 by physical checking, so I just added it. I just
19 received the iridium and sent back the iridium, and
20 those records -- I put it on the record and I called
21 the people that they didn't had add any new, they
22 didn't lose anything, then I just signed it.

23 MR. PROSKIN: Dr. Bellamy, you're aware
24 during this time that Dr. Kang was working full time

7 1 in a different capacity?

2 DR. KANG: Not full time.

3 MR. PROSKIN: 7-8ths time in a capacity
4 as a physician and the Radiation Safety Officer. The
5 prior one had been a full time job, and he --
6 actually, his duties prevented him to adequately do
7 the job that a Radiation Safety Officer he knows now
8 should be doing.

9 DR. BELLAMY: We talked about that at our
10 last conference, yes. So the April one you simply
11 added the new source that you knew had come in and
12 signed it?

13 DR. KANG: Right.

14 DR. BELLAMY: Why did you sign at that
15 time as acting?

16 DR. KANG: I still -- I told the last
17 conference, I told everybody that I didn't understand
18 what is RSO and acting RSO. I still believed I
19 thought I was acting RSO until the last conference. I
20 mean, my understanding was -- maybe there is some
21 miscommunication between my superior and me when he
22 gave the position, it's not -- I did not understand
23 that I was assigned another Radiation Safety Officer,
24 because that's impossible, that's absolutely

7 1 impossible. That's out of my imagination. I cannot
2 imagine anybody assigning 7-8ths person who is
3 actually working more than 10 hours every day, even
4 though I am supposed to work only 7 hours, I'm not
5 really trying to -- that's besides the point.

6 All my understanding was we all know the
7 government has a short of money and we cannot afford
8 just to -- in the meantime, while advertising for RSO,
9 we can spend 20, 30 thousand dollars per month for
10 these positions, so he's asking me to just do it as
11 much as you can do and do emergency cases. In other
12 words, somebody ordered a source, you just look into
13 the proper procedures. If somebody received the
14 material, distribute it properly.

15 And I said to the committee at that time
16 when they approved it as a position, I said I cannot
17 do the survey. I need all your every individual lab
18 person there, you do your own survey, I'm sorry, until
19 we get a new Radiation Safety Officer. I didn't say
20 that I am acting Radiation Safety Officer. I don't
21 have to clarify that. I thought I understood that I'm
22 just acting and we are looking for new Radiation
23 Safety Officer, professional, qualified person who is
24 a paying person who's receiving salary for that.

7 1 I'm kind of a -- let's say I'm minding
2 next door good buddy shop while he's gone for a few
3 minutes somewhere. But again, it was really late to
4 realize that I was real Radiation Safety Officer. I
5 had it to do whole thing. Then I mean obviously I
6 haven't done that. So when the time I realized that I
7 was the Radiation Safety, already it is too late.

8 When I realized that when Mr. Chris
9 Eckert came, even at that time, I'm sorry to tell you
10 right now, I can tell you maybe Chris Eckert was a
11 little bit upset when he was visiting. He came in
12 very late. I was late 15 minutes. He was sitting
13 waiting for me in my office with the James Zhang at
14 that time. To me he was the one Radiation Safety
15 Officer. Although my name was on, I was not really
16 thinking that I was the Radiation Safety Officer. Now
17 not realizing legally I was the one, I didn't realize
18 that.

19 So when I came in my office, there was
20 Mr. Eckert and James was waiting for me. I was
21 stunned. And James said Mr. Eckert is NRC inspector.
22 Hi, good morning. Then I was looking at James. If
23 that's NRC inspector, what are you doing here. You
24 don't have to introduce me. You're the one who's

7 1 supposed to show all the whatever is necessary
2 document and everything. You don't have to wait for
3 me. I was I mean, without saying, I was sitting
4 there. Perhaps Mr. Eckert look at me, my attitude was
5 not really cooperative maybe. I don't know. I
6 apologize there.

7 I mean, later on I found out that I was
8 still Radiation Safety Officer. Again, I thought that
9 James Zhang was to me was Radiation Safety Officer at
10 that time already. So that my attitude was maybe a
11 little bit let's say out of the reality.

12 DR. SHANBAKY: Dr. Kang, can we get back
13 to the April inventory? You said that you added a new
14 source you received to the inventory list?

15 DR. KANG: Right.

16 DR. SHANBAKY: And you made some calls to
17 certain people to make sure that they did not lose any
18 sources. Can you recall who did you call?

19 DR. KANG: I'm sorry, it's very
20 difficult. I mean I called a few labs, I believe.
8 21 But I cannot recall -- I mean that's -- it's a very
22 difficult issue. You can believe me or you cannot
23 believe me, it's up to you, but it's very difficult at
24 this point that I can say that, whom I called. I mean

8 1 there's four, five, six, so many labs there. I didn't
2 do the inventory.

3 MR. PROSKIN: He didn't do an inventory,
4 I think he said that.

5 DR. KNAPP: Would it be correct to say
6 that, to the best of your recollection, although you
7 don't recall who you spoke with at the various
8 laboratories, you did call all of them and essentially
9 say have there been any changes?

10 DR. KANG: I would think so. I would
11 think I called, but I'm not sure it is all of them,
12 but I called most of them I guess. Most of them, all
13 of them, none of them, I just cannot say right now.
14 But I called, I know I called.

15 DR. BELLAMY: Then --

16 DR. SHANBAKY: Did you call Dr. Tsan?

17 DR. KANG: Tsan, yes.

18 DR. SHANBAKY: Did you call Dr. Tsan and
19 you ask him if he have all the sources?

20 DR. KANG: Who's Dr. Tsan, T-C-H-E-N?

21 MS. LONGO: He's research.

22 DR. KANG: I didn't get your question.
23 He's Radiation Safety Officer.

24 MR. HOLODY: T-S-A-N.

8 1 DR. KANG: Oh, Dr. Tsan.

2 DR. FLESH: Min-Fu Tsan.

3 DR. KANG: Perhaps I did. I don't know.
4 I must have done, yes.

5 MR. PROSKIN: Let me instruct you, if you
6 don't know an answer, please say I don't know. Don't
7 try to satisfy them by making something up one way or
8 the other.

9 DR. KANG: I should say I don't know.

10 DR. BELLAMY: Then we have James Zhang
11 arrives on the scene, and you believe that he becomes
12 Radiation Safety Officer, in your opinion?

13 DR. KANG: As soon as he on board, I was
14 very happy, because I mean after this, we can share
15 the responsibilities.

16 DR. BELLAMY: He was in charge of doing
17 the July, 1990?

18 DR. KANG: Yes. Not only inventories, I
19 gave the first day on arriving 200 some pages of
20 instruction book as to what Radiation Safety Officer
21 should do.

22 DR. BELLAMY: Do you recall when he came
23 on board? Was it before the July inventory?

24 DR. KANG: He came to work starting

8 1 perhaps in June 10, sometime. The VA was not -- did
2 2 not yet authorize on board yet, but he was, let's say
3 3 he's the presumable candidate for the permanent
4 4 Radiation Safety Officer, he should know what he's
5 5 doing.

6 DR. BELLAMY: So he was on board, and in
7 7 your opinion, he was doing the job of Radiation Safety
8 8 Officer from this date in June when he first came on
9 9 board?

10 DR. KANG: Absolutely.

11 MR. HOLODY: Was he hired by you or was
12 12 he hired by the hospital administration?

13 DR. KANG: Both of us. We advertised and
14 14 we finally got down to one person, and it was some
15 15 input on people's opinion, including Dr. Flesh and Dr.
16 16 Tsan, and everybody said he's okay to us, so although
17 17 I wasn't really a hundred percent, but I agreed that
18 18 we will have him.

19 MR. HOLODY: And he was recruited as a
20 20 Radiation Safety Officer?

21 DR. KANG: Yes.

22 MR. HOLODY: Maybe this is a question for
23 23 the hospital. Dr. Flesh, was that the understanding
24 24 of the doctor, Mr. Zhang?

8

1 DR. FLESH: He was recruited under the
2 category of health physicist with the idea that he
3 would be -- we would apply for and have him converted
4 to Radiation Safety Officer when he met the NRC
5 requirements, that was our intention. What happened
6 in the interim time between selecting him and actually
7 bringing him on board, we found out that he was a
8 non-citizen. And being a Title 5 non-citizen, we were
9 allowed to hire him for one year, but we could not
10 retain him in that employment after a year.

11 Realizing that, there was no point in
12 submitting his name as Radiation Safety Officer. And
13 as a matter of fact, he told us when he was informed
14 of that information that he would be looking for
15 another job, and as soon as he found another job, he
16 would leave. So we never made an amendment request to
17 have him made Radiation Safety Officer.

18 MS. LONGO: When was it that Dr. Zhang
19 said that he would leave if he couldn't be the
20 officer?

21 DR. FLESH: Almost immediately, as soon
22 as he could find another job, he would leave.

23 MS. LONGO: When did he tell you this?
24 Was it soon after he arrived at VA?

8

1 DR. FLESH: Yes. As soon as we informed
2 him that we could not give him a permanent
3 appointment, he said then I can't stay.

4 MS. LONGO: When did you tell him that
5 you couldn't give him a permanent appointment?

6 DR. FLESH: As soon as personnel started
7 processing his paperwork and realized he was a
8 non-citizen was when we told him that, but he was
9 unemployed, he was looking for employment.

10 MS. LONGO: I was asking about the time.
11 Do you remember when? Was that in July? Was it in
12 July?

13 DR. FLESH: In June, prior to actually
14 bringing him on board.

15 DR. KANG: But you see, when he notified
16 me he's leaving was very in middle of October, just a
17 month before he left.

18 DR. BELLAMY: So you didn't know he was
19 leaving until October?

20 DR. KANG: He was supposed to stay until
21 next year, the annual anniversary, August, 1991.

22 DR. BELLAMY: And do the functions of the
23 Radiation Safety Officer?

24 DR. KANG: Oh, yes. He was going to do,

8 1 except he just fortunately got a position. I mean he
2 was kind of in process of looking for next year after
9 3 position, but position came up so soon, so he just
4 notified me in a few weeks that he's leaving.

5 DR. BELLAMY: How did the July, 1990
6 sealed source inventory get done?

7 DR. KANG: All I remember is that again
8 secretary gave it to, the paper, James Zhang to do
9 that. And again, I'm sorry, I wasn't really paying
10 attention on this. After the paper -- my table is
11 just like more than this paper is so much mess, I'm
12 sorry to tell you, but I mean I didn't find this
13 inventory. Then suddenly in the end of some period, I
14 don't remember when, and this July inventory appeared.
15 I assumed that James Zhang did it. I didn't really
16 make sure that he did it. I mean I wasn't really
17 thinking this is so important, I mean important
18 issues. I mean it's one of the 20 different papers I
19 supposed to sign every day. So I just signed it and I
20 didn't realize if he said he didn't do it, maybe he
21 didn't do it, I don't know.

22 DR. BELLAMY: There was no documentation
23 with it? There was no note, you just saw the
24 inventory?

9 1 DR. KANG: No note. See, that's the
2 2 thing.

3 3 DR. BELLAMY: It needed to have a
4 4 signature on it, so you signed it without reviewing
5 5 it?

6 6 DR. KANG: If he didn't do it, I wish he
7 7 could have left a note or something, there's some
8 8 reason I couldn't find this and that, and maybe I
9 9 remember something.

10 10 DR. BELLAMY: Did you check the dates on
11 11 it?

12 12 DR. KANG: I don't think so. I don't
13 13 remember.

14 14 DR. BELLAMY: You wouldn't have checked
15 15 the dates to verify that this was a July versus an
16 16 August date on it or anything? You just signed it
17 17 without reading it or reviewing it?

18 18 DR. KANG: I'm sorry that happened, and
19 19 also let's talk about the date. This date is first
20 20 date you can see is that the secretarial date, which
21 21 is supposedly just a copy of the document every three
22 22 months and send it to whoever responsible. So that
23 23 doesn't mean that that was the date it was done.
24 24 After maybe 10 days later, month later, somebody did,

9 1 and it could have been done even months later. The
2 2 date is not really the date is done. The date the
3 3 empty paper was prepared, okay. So it's not really
4 4 the date was saying that that date has been done.
5 5 Maybe it's been done same day, but sometimes it may
6 6 not, maybe months later, weeks later, a few days
7 7 later.

8 DR. BELLAMY: You have a copy of the
9 9 inventory, so you attach no significance to the fact
10 10 that the first page is dated July 10th and the second
11 11 page of the same inventory is dated August 14th?

12 DR. KANG: Yes, I noticed that.

13 DR. BELLAMY: But that's of no
14 14 significance as far as you're concerned?

15 DR. KANG: That's very interesting to me,
16 16 yes, but I cannot explain. I think that Mr.
17 17 Fitzgerald also asked secretary, and secretary gave
18 18 some statement. I don't know what she told him. But
19 19 I think that doesn't really mean much. The first date
20 20 is I think secretary prepared the document and the
21 21 last date maybe it was done. I don't know.

22 DR. BELLAMY: Basically, your statement
23 23 is that you realize -- you now realize that an
24 24 inventory had to be done, and you believed since it

9 1 was on your desk that the person who you believed was
2 2 doing the RSO job, Dr. Zhang, did it, and without
3 3 review, checking of dates, speaking with anybody, you
4 4 signed it?

5 DR. KANG: I'm very sorry to say that
6 6 that's the fact, yes.

7 DR. SHANBAKY: Can you tell me, Dr. Kang,
8 8 who generated the computer list here for the August
9 9 inventory?

10 DR. KANG: The list is already in the
11 11 computer as a list. In other words, doesn't any
12 12 person is going to be typing each individual item.
13 13 It's already in.

14 DR. SHANBAKY: Who retrieved this list
15 15 from the --

16 DR. KANG: That's a secretary.

17 DR. SHANBAKY: The secretary did?

18 DR. KANG: Right.

19 DR. SHANBAKY: Why did she do that?

20 DR. KANG: I'm sorry?

21 DR. SHANBAKY: Why did the secretary
22 22 retrieve the date from the computer?

23 DR. KANG: Because every quarter
24 24 inventory time comes, we supposed to make a copy of

9 1 the list to give to the responsible person, either
2 2 Radiation Safety Officer to do the inventory.

3 DR. SHANBAKY: And did she give you the
4 4 list to do the inventory?

5 DR. KANG: When I was Radiation Safety
6 6 Officer, yes. If it's James Zhang, she must have
7 7 given it to James Zhang.

8 DR. SHANBAKY: So when the list appeared
9 9 on your desk -- I'm trying to just clear this in my
10 10 mind -- your understanding is that the secretary gave
11 11 you the list to do the inventory, or you're thinking
12 12 that Dr. Zhang got the list from the secretary and he
13 13 did the inventory and he put the list on your desk?
14 14 I'm trying to understand what was your --

15 DR. KANG: I can say what I believe is I
16 16 asked him to do it those two times.

17 DR. SHANBAKY: You asked Dr. Zhang to do
18 18 it, to do the inventory?

19 DR. KANG: Right, with the paper given to
20 20 him. And I didn't see him returning it. But after I
21 21 had given to him a few days, later on I don't know
22 22 when, but if that came back on my table, I presumed
23 23 that he did it.

24 MR. HOLODY: You thought, I think you

9 1 said earlier, you thought Dr. Zhang when he arrived
2 was the Radiation Safety Officer?

3 DR. KANG: Right.

10 4 MR. HOLODY: As soon as he arrived?

5 DR. KANG: Correct.

6 MR. PROSKIN: Excuse me, you knew he
7 wasn't approved.

8 DR. KANG: I mean not legally, but you
9 know -- what is the question? Maybe I didn't get you.

10 MR. HOLODY: What did you think Dr. Zhang
11 was when he arrived? What position did he have to
12 you?

13 DR. KANG: He came -- I mean we agreed to
14 hire him as a Radiation Safety Officer, that's what
15 I'm trying to say. Whether he's approved or not is
16 again secondary matter. It will be sooner or later,
17 whether two months or even six months later, it will
18 be approved sooner or later.

19 MR. HOLODY: So in July or August --

20 DR. KANG: He arrived, he started working
21 with me in the early part of June, because I started
22 showing what is the receiving procedure of radioactive
23 materials and what is the distributing things. And I
24 gave a whole book I asked him to study immediately in

10 1 a few weeks. And he did so, I believe.

2 MR. PROSKIN: Is he a doctor?

3 DR. KANG: He's masters.

4 MR. PROSKIN: You keep calling him Dr.
5 Zhang.

6 MR. HOLODY: Mr. Zhang?

7 DR. KANG: Right. He called himself
8 doctor because he's engineering master.

9 MR. HOLODY: Well, Mr. Zhang. So when
10 you initialed these inventory reports for July in
11 October --

12 DR. KANG: Right.

13 MR. HOLODY: -- 1990 --

14 DR. KANG: I'm sorry say again.

15 MR. HOLODY: When you initialed them --

16 DR. KANG: I initialed them, yes,
17 October.

18 MR. HOLODY: -- did you believe you were
19 still the Radiation Safety Officer or acting Radiation
20 Safety Officer?

21 DR. KANG: I believe acting, yes.

22 MR. HOLODY: And what did you feel Mr.
23 Zhang was at the time?

24 DR. KANG: He's the real Radiation

10

1 Safety, at least it's not approved, I don't know it's
2 approved by NRC or not, but he's the real Radiation
3 Safety, presumably.

4 MR. PROSKIN: De facto?

5 DR. KANG: I mean in my mind, yes.

6 MR. HOLODY: But you felt you had not
7 been relieved of your position as the acting Radiation
8 Safety Officer?

9 DR. KANG: I haven't been notified that
10 my name is changed to James Zhang. I was waiting for
11 that and I was very kind of maybe ignorant about this
12 whole procedure.

13 MR. PROSKIN: His question is you knew
14 you hadn't been relieved.

15 DR. KANG: I didn't know.

16 MR. PROSKIN: It's a very straight
17 question.

18 DR. KANG: I'm sorry. No, I didn't know.

19 MS. LONGO: Excuse me, could you give a
20 little more information on Mr. Zhang's background?
21 He's not a physician?

22 DR. KANG: He's not a physician.

23 MS. LONGO: He's not a physician, he's a
24 health physicist?

10

1 DR. KANG: He's a nuclear physicist,
2 scientist.

3 MS. LONGO: Was he hired to do any of
4 the --

5 DR. FLESH: Health physics.

6 MS. LONGO: Did he administer any
7 radioactive materials, by-products, to patients?

8 DR. FLESH: No, of course not.

9 MS. LONGO: What was he hired to do?

10 DR. FLESH: He was hired to be the
11 Physicist/Radiation Safety Officer. That's what he
12 was recruited for. I believe he was an M.D. He had
13 an M.D. degree from China.

14 DR. SHANBAKY: That's my understanding.

15 DR. FLESH: M.D. degree from Red China,
16 Mainland China, which was not recognized in the United
17 States, but he did not practice medicine in the
18 hospital.

19 MS. CAHILL: I have a question. My
20 question is concerning your instructions to Dr. Zhang
21 when you handed him the inventory and told him to do
22 it. Did he question any of the columns in this
23 inventory as where he would go to verify that the
24 source was in the location that it was indicated in?

1 I'm looking at this inventory now and you have a
2 column labeled location.

3 DR. KANG: Right. He didn't specify the
4 question. He must have had a question, but he didn't
5 direct it to me. There's many, many different people
6 he could ask. He could ask anybody in the nuclear
7 medicine. You see, James Zhang perhaps had more other
8 close -- there's technicians there, company.

9 MS. CAHILL: But how would he even know
10 where to go?

11 DR. KANG: I didn't have to tell him
12 where to go.

13 MS. CAHILL: He just knew?

14 DR. KANG: He should know. Of course, if
15 he asked me, of course I would be happy to tell him
16 where to go, but I don't think he asked me.

17 MS. SMITH: Did you instruct Dr. Zhang to
18 do the inventory for July?

19 DR. KANG: Yes.

20 MS. KING: And exactly what did you tell
21 him to do?

22 DR. KANG: I mean this is July, the
23 quarterly inventory has to be done and --

24 MS. SMITH: What did you tell him he

10

1 would have to do in order to accomplish it?

2 DR. KANG: No, I didn't tell him. I just
3 tell him the inventory has to be done. Again, I have
4 to remind of that.

5 MS. SMITH: Did he know where to go? Had
6 he ever been to this facility before?

7 DR. KANG: July means he already been
8 here for more than one and a half months. He should
9 know where every corner of the building. He should
10 have been introduced by every researcher, every room.
11 He doesn't have to ask me to know where to go to do
12 this thing.

13 MR. HOLODY: Did you do those
14 introductions? Did you introduce him to the others?

15 DR. KANG: I don't specifically recall
16 that, no.

17 DR. BELLAMY: So it was really an
18 assumption on your part that he knew where everything
19 was? Let me state that you assumed that he knew
20 everybody that was dealing with nuclear materials and
21 he would be able to find the sources and do an
22 appropriate inventory?

11

23 MR. HOLODY: That's a question, right.

24 DR. BELLAMY: That's the question.

11

1 DR. KANG: Okay, I will answer this. I
2 just did exactly what I was introduced to when I was
3 assigned. In other words, nobody told me nothing.
4 What is the radiation safety, I didn't know what the
5 radiation safety. We hired a fully qualified person,
6 he's supposed to be knowing more than I do, because
7 he's the paying salaried person, the RSO, I'm not. So
8 I said you, sir, you do your inventory. That's all I
9 have to do.

10 MR. PROSKIN: Can I just try to clarify
11 that? I don't want to get into asking questions, but
12 are you saying, Doctor, he never asked you? You don't
13 know who he asked, but he never asked you anything?
14 That's what you're telling them, right?

15 DR. KANG: No.

16 DR. BELLAMY: Is that the same situation
17 for the October, 1990 inventory?

18 DR. KANG: I would think so, yes.

19 MS. SMITH: So there was no transition
20 from your understanding of being acting RSO to him
21 becoming what you thought was RSO and no discussions
22 between the two of you as to what doing an inventory
23 would mean?

24 DR. KANG: Again, if I really told him,

11 1 that means I could have told the wrong thing, right.
2 The point is this: The previous Radiation Safety
3 Officer left a big, like a textbook of radiation
4 safety as a Radiation Safety Officer. If you read
5 that, any layman can understand what to do. I mean it
6 didn't describe what inventory means or those things,
7 but there is what about 80 some different surveys,
8 weekly, monthly, bi-weekly, quarterly, semiannually,
9 annually what should have been done, how to do it, all
10 kinds of like textbook style.

11 I couldn't -- I didn't have time to read
12 all those things for the few months when I was there,
13 so I just left presuming that someone can come on
14 board as a full time job. So that's what James Zhang
15 was, here is your textbook, you thoroughly review it.
16 I don't care whether you spend 24 hours a day, you
17 master it in the next few weeks. That's what I did.

18 I mean and also in my part, I never think
19 of I can instruct what to do in the Radiation Safety
20 Officer. It's very -- what can I say as
21 non-professional Radiation Safety trying to instruct
22 Radiation Safety Officer? That's a little bit over
23 the head, isn't it? So I was not really going to try
24 to teach with my short knowledge to the Radiation

11 1 Safety Officer.

2 In other words, James Zhang to me was
3 not my successor. James Zhang was arriving here for
4 the job of full time Radiation Safety Officer
5 successor. I'm just minding shop guy. How can I
6 instruct what the real full time person on board? I
7 can tell you what to do, no. I wouldn't dare to do
8 that.

9 MS. CAHILL: Can I just backtrack a
10 little bit to the January inventory that you
11 physically conducted? The location codes that you
12 have listed here, did you know what they meant at the
13 time, the location codes that you have listed on the
14 inventory list?

15 DR. KANG: You mean --

16 MR. PROSKIN: Column 1 you mean?

17 DR. KANG: You mean these core room
18 numbers?

19 MS. CAHILL: Is that what they are, room
20 numbers?

21 DR. KANG: Yes, that's presumably room
22 numbers, yes.

23 MS. CAHILL: So you went to those rooms
24 because --

11

1 DR. KANG: Before I go there, I checked
2 with the person in that room, if he or she has those
3 sources. I'm talking about the research materials.
4 Then I ask him to hold it there and I go and check it.

5 MS. CAHILL: When the inspector came --

6 DR. KANG: This room number is all messed
7 up.

8 MS. CAHILL: It's not right?

9 DR. KANG: No. I'm sorry to tell you
10 that I didn't try to change it. Because it's too
11 complicated. It needed a full time Radiation Safety
12 Officer person to do that. All my responsibility,
13 again I'm telling you, my understanding, the inventory
14 is that if all there and that's all count.

15 MS. CAHILL: But "there" doesn't have to
16 be defined, is that what your understanding was?

17 DR. KANG: That's right.

18 MS. CAHILL: So these check marks that
19 you made on the January inventory doesn't necessarily
20 mean they were in the location that's indicated?

21 DR. KANG: That's right, right.

22 MS. CAHILL: You just checked it that it
23 was somewhere there?

24 DR. KANG: I checked it there. It

11 1 doesn't make any difference whether it's -- that
2 problem is all solved by the last December really,
3 extensive inventories done by concert and other
4 radiation safety officers. I'm very happy, a further
5 comment from the administration part. But again by
6 thinking back, considering what I have been through
7 all this last few months of real extensive
8 reorganization of the radiation safety program, I
9 realize that this is really incomparable, not really
10 it's all I did is not right thing, it's all the wrong
11 way.

12 But again, I wish I could have realized
13 this a little bit earlier, but this thing happened
14 after all done. I cannot undo what I have done. I
15 realize of course now sealed source inventory is very
12 16 important. I hadn't realized that at that time, but
17 if I realized at that time when somebody assigned me
18 as radiation safety and I realized how vast important
19 big job that is, I should have not taken it. The
20 thing is that I just took it so casually, trying to
21 help the institution in several other ways. It was my
22 fault. I don't think that's the institution's fault
23 because all they did was they trusted me. I mean I am
24 sorry for that.

12 1 MS. CAHILL: When the inspector came in
2 November and he questioned you about your inventory
3 records, your October inventory records and he asked
4 you what the columns in the inventory list meant,
5 according to him, you didn't know what the location
6 codes were at that time.

7 DR. KANG: Well, I cannot remember all
8 hundred different isotopes.

9 MS. CAHILL: Or whether these meant room
10 numbers or where these sources were located?

11 DR. KANG: No, because I didn't do
12 everything. So first of all, I mean I cannot even try
13 to think what is where. I mean at that time was too
14 short a period of time. I told him, if he told you or
15 not, I don't know, but I told him, Mr. Eckert, that if
16 you give me three hours, we could find it, because I
17 don't remember. I can find someone who remembers,
18 someone who did the inventories. He said that --
19 again, another thing, maybe was Robin was one person
20 who did it, but after she left, there's so many
21 different people involved, me or the tech or James or
22 somebody, else, it's very difficult to find who knows
23 what source and all those things. Again, there's many
24 things I made a mistake. I could have done, if I

12 1 thought this was important, I could have done every
2 2 each individual item, checked next to the person to
3 3 sign everybody who checked even one source, I may have
4 4 a hundred different names on that, that may be
5 5 helpful. But you see, I was just trying to copy
6 6 exactly what Robin did. If you look at Robin's, that
7 7 was the only thing Robin signed on it. And why I
8 8 signed, now I feel very stupid, and very stupid that I
9 9 didn't get James Zhang to sign it at least. But at
10 10 that time, I know that my name is still on the RSO and
11 11 his name is not valid, whatever he signed or not, it
12 12 doesn't make any difference. So I still I could have
13 13 done that, if that's so important. Not only that --

14 MR. HOLODY: Question for Dr. Flesh, I
15 15 guess. Prior to October, '89, you had a health
16 16 physicist as a Radiation Safety Officer?

17 DR. FLESH: Yes.

18 MR. HOLODY: And that was a full time
19 19 position?

20 DR. KANG: Yes, Robin Hill-Zobel, Ph.D.

21 MR. HOLODY: That person didn't have any
22 22 medical responsibilities?

23 DR. FLESH: No, strictly health
24 24 physicist.

12 1 MR. HOLODY: How did that person do the
2 inventories? Did she delegate to others to do it or
3 did she go out and do it herself?

4 DR. FLESH: My understanding was that she
5 went out and did it herself. I think she delegated
6 the authority to some of the investigators who sent
7 her a written report saying that they were in
8 possession of their sealed sources, signed. None of
9 the sealed sources that are out in the laboratories
10 require leak testing. There is one down in radiation
11 therapy that does, but that she actually went and did
12 it herself.

13 MR. HOLODY: So she either physically
14 observed it or had investigators working for her
15 physically observing them?

16 DR. FLESH: And documenting them.

17 MR. HOLODY: And documenting such. So
18 there would have been some eyes upon those sources,
19 either hers or those that she had delegated that
20 responsibility to?

21 DR. FLESH: One of the things in
22 retrospect that she did wrong --

23 MR. HOLODY: Is that correct?

24 DR. FLESH: Yes, I'm sorry, that's

12 1 correct. One of the things that she did wrong,
2 however, is that she did not -- and we're finding that
3 out now -- she did not discard sealed sources that she
4 should have that were no longer being used, activity
5 too low, some which no longer had any activity at all,
6 they're all on this inventory that you have, which is
7 why the list is as large as it is. We're taking steps
8 now to rectify that. There was some shortcomings in
9 the way she did that job. She knew where everything
10 was, it was all documented and accounted for, but
11 there were too many of them.

12 DR. BELLAMY: Let me get back, let's just
13 make sure we tie a loop here and address them all.
14 The situation on the October, 1990 inventory, Dr.
15 Kang, you would say is similar to what happened for
16 the July, 1990 inventory in that you assumed that Mr.
17 Zhang had done it and it appeared on your desk,
18 therefore, you just signed it without doing any check?

19 DR. KANG: That's my understanding, yes.

20 DR. SHANBAKY: I'd like to at this point
21 to just let the record document the fact that Dr. Kang
22 has been handed his statement from the O.I.
23 investigation.

24 MR. PROSKIN: Is this the one that

12 1 Fitzgerald took?

2 DR. SHANBAKY: Yes.

3 MR. PROSKIN: 11/25, right.

4 DR. SHANBAKY: Yes.

13 5 MR. PROSKIN: This was after he had given
6 all of your statements this morning, but thank you
7 very much.

8 DR. SHANBAKY: This was given to you with
9 the approval of our Office of Investigation.

10 DR. KANG: Thank you very much.

11 MR. PROSKIN: Could you tell me where Mr.
12 Fitzgerald is now? Maybe I don't have to know.

13 DR. BELLAMY: The answer is no, I can't,
14 because I don't know. He's retired. Anything else?
15 Did you have anything else you wanted to add?

16 DR. KANG: Again, I really sincerely
17 apologize for all my mistakes done. You can say that
18 maybe some document was not correct because of my
19 mistake. Again, let the record show that it's not an
20 administrative part of any thing, it's just my
21 misunderstanding of my job. And it's all my mistake.

22 MR. PROSKIN: May I ask one question that
23 I've never asked him, and maybe you know the answer,
24 was there anything ever missing from these items that

13 1 they were supposed to have, even with this sort of
2 slipshoddiness that went through, there was nothing
3 missing in this inventory ever, was there?

4 DR. BELLAMY: I don't believe so, no.

5 MR. PROSKIN: I don't know either. Why I
6 asked this, I just happened to look down --

7 DR. SHANBAKY: Let me answer this
8 question. The latest inventory performed according to
9 the hospital record indicated no missing sources. As
10 to whether there was missing sources or not at the
11 1990 inventories, I cannot answer this question.

12 MR. PROSKIN: Because I noticed, I just
13 happened to skim through this, and apparently someone
14 said there were five or six missing, and I didn't
15 think there were either.

16 MS. CAHILL: What happened was there were
17 some cesium sources, implant sources, I believe that
18 were listed on the inventory, but when the inspector
19 tried to verify the location with the Radiation Safety
20 Officer, they couldn't locate them.

21 DR. FLESH: Actually, they weren't
22 missing at all, but they were exactly where they were
23 supposed to be, in a lead safe locker under lock and
24 key in the radioactive hot room, but you're right,

13 1 they couldn't be located.

2 MR. PROSKIN: Everything is there though,
3 right?

4 DR. FLESH: Yes.

5 DR. BELLAMY: What we'd like to do at
6 this time is take a five-minute break and see if you
7 have any final thoughts before we conclude this
8 conference and make sure that we don't have any other
9 questions or unanswered areas that we want to pursue.
10 Something burning on your mind?

11 DR. FLESH: Just a question, since you
12 addressed it in your letter, are you satisfied with
13 Question 2, or do you want me to address that, which
14 is current policies for safe handling of inventory?

15 DR. BELLAMY: We would like you to
16 address that. If you'd like to do that now, that
17 would be fine. That was the next area I was going to
18 head into. Since he had that statement, I thought it
19 might be appropriate to give him five minutes, but go
20 ahead, Dr. Flesh.

21 DR. FLESH: When we came to the last
22 enforcement conference, one of our agreements at the
23 time was to retain Mr. Dapolito, the health physicist,
24 to help Dr. Kang. One of the first things that Mr.

13 1 Dapolito did was to thoroughly do a sealed source
2 inventory and to identify all of the isotopes and all
3 of the shield sources that are on that listing. Most
4 of the room locations were correct, some were
5 incorrect, and they were changed on the physical
6 inventory.

7 On January 17th, the amendment letter
8 dated January 17th, I took over the responsibilities
9 of Radiation Safety Officer, and I then asked Mr.
10 Dapolito to actually show me all of the sealed sources
11 that were on that list. And we went room-to-room,
12 laboratory-to-laboratory and eyeballed each one.

13 It was his suggestion that the type of
14 list that you have in front of you was unworkable, and
15 that's completely true. So we have subsequently
16 created a book, a sealed source inventory book for
17 which each sealed source has a page. On the page, the
18 sealed source is identified, if there are any
19 identification numbers or registry numbers, dates,
20 amounts, whatever; most importantly, location. The
21 book is organized by room number, so that for each
22 room, there is a page for each sealed source in that
23 room.

24 On the March 31st inventory, which I

13 1 conducted, we just went with that book, identified
2 each isotope and sealed source in the room. The page
3 is constructed so there's a chart with a place for
4 date and signature of the RSO or the person doing the
5 inventory. And as we eyeball and touch each sealed
6 source, we sign the page.

7 On the June 30th inventory, we modified
8 it a little bit more, where not only is there a room
9 number on the sheet, but I hand wrote on the sheet
10 exactly where in the room it was. Some are in a
11 refrigerator, some were behind a lead wall, some are
12 in a lead safe. It just made it easier to do the
13 inventory.

14 MR. HOLODY: How many rooms are covered
15 as part of the inventory?

16 DR. FLESH. How many rooms?

17 MR. HOLODY: Right. How many different
18 locations do you have total?

19 DR. KANG: There are four rooms in
20 nuclear medicine service, the three laboratories
21 outside of the service and the radiation therapy
14 22 department. Now, I've delegated the responsibility
23 for the two sealed sources in radiation therapy to the
24 radiation therapy physicist.

14

1 MR. HOLODY: He takes the book and he
2 fills it out?

3 DR. FLESH: No, he sends me a letter
4 documenting the presence of the sealed sources, the
5 survey readings. And in June, we hired Mr. Dapolito
6 to come back and do the wipe tests, the every
7 six-month wipe tests, and the sources that require
8 them, one of which is down in radiation therapy. So
9 that one was done down there.

10 We have subsequently, in the last few
11 weeks, hired a health physicist who we hope to have
12 certified as Radiation Safety Officer as soon as the
13 amendments and paperwork and whatever is completed.
14 First our radiation safety committee has to agree on
15 it first and then we would submit an amendment request
16 to you.

17 MR. HOLODY: So for those two
18 inventories, other than those few that were --

19 DR. FLESH: Two.

20 MR. HOLODY: -- where someone sent you a
21 documentation indicating that they had the sources,
22 you physically observed each of the sources?

23 DR. FLESH: Each of the sources.

24 MR. HOLODY: How long did that take,

14

1 approximately?

2 DR. FLESH: About three hours it gets
3 easier of course the more often you do it, because you
4 know exactly where they are. Now, we're also in the
5 process -- there's one sealed -- one set of sealed
6 sources that were about 30 half lives old, which were,
7 you know, we discarded after appropriate surveys. And
8 we're finding a number of sealed sources that, A, can
9 be discarded; B, can be sent back to the manufacturer,
10 or C, are no longer radioactive. So we're in the
11 process of culling this list down into a more workable
12 and usable list. There are sealed sources here that
13 date back into the '60s and '70s which are no longer
14 used. So I would expect by the next inventory, which
15 will be due in the end of September, the list should
16 be half of what it is now.

17 DR. BELLAMY: Was this notebook available
18 when our inspectors were there in March of 1991?

19 DR. FLESH: Yes, and I showed that.

20 DR. BELLAMY: But you had not done the
21 inventory yet?

22 DR. BELLAMY: They were there the 28th
23 and 29th..

24 DR. FLESH: That's correct, we did the

14 1 inventory on the 31st and April first we had not
2 completed it, but the previous inventory, which had
3 been done by Mr. Dapolito in January as part of the
4 initial requirement, that was documented on pages in
5 the book.

6 DR. BELLAMY: Okay.

7 DR. FLESH: So that he saw where we were
8 going with it and he told me that he was very
9 impressed with the methodology.

10 DR. BELLAMY: Fine. Okay, we'll take a
11 five-minute break.

12 (Brief recess.)

13 DR. BELLAMY: I assume you had a chance
14 to review the statement that Dr. Kang did sign that he
15 had read?

16 MR. PROSKIN: Yes, I did.

17 DR. BELLAMY: Did you have any comments
18 or concerns about it?

19 MR. PROSKIN: Well, no. The only comment
20 was -- Mr. Holody, is that right?

21 MR. HOLODY: Yes.

22 MR. PROSKIN: I raised the issue about
23 the first inventory, and when you read what he said,
24 what he said to Mr. Fitzgerald was consistent with

14

1 what he said today.

2 DR. BELLAMY: Understood.

3 MR. PROSKIN: I wasn't going to read it,
4 but if you read the four or five sentences together,
5 it sort of says the same thing in a disjointed manner.

6 DR. BELLAMY: Dr. Kang, did you have
7 anything else you wanted to add?

8 DR. KANG: Nothing much, except that if I
9 signed in the future, I hope not, but I will do much
10 better job, I believe.

11 DR. BELLAMY: In the future, you will
12 understand what the importance is of your signature on
13 such a document?

14 DR. KANG: Yes, sir.

15 MR. HOLODY: In your role as an
16 authorized user, do you have records you need to
17 maintain?

18 DR. KANG: Yes, as far as nuclear
19 medicine wise, yes.

20 MR. HOLODY: Constancy checks and things
21 of that nature?

22 DR. KANG: Yes, absolutely.

23 MR. HOLODY: Have you completed those
24 records properly?

14

1 DR. KANG: I believe so. Our
2 technologist was very specifically instructed by the
3 last inspector, and we are following exactly what we
4 should do.

5 MR. HOLODY: Those are the types of
6 records you had to maintain even before you took on
7 the responsibilities of the Radiation Safety Officer.
8 How long have you been employed at the hospital as an
9 authorized user?

10 DR. FLESH: 1977.

11 DR. KANG: As a resident?

12 MR. PROSKIN: No, how long have you been
13 an employee on the staff?

14 DR. FLESH: You started one year after I
15 did, so '77.

16 DR. KANG: '77, probably '77, right.

17 MR. HOLODY: And you've been an
18 authorized user during that entire period?

19 DR. KANG: Right.

20 MR. HOLODY: So you have had to maintain
21 other records?

22 DR. KANG: Yes.

23 MR. HOLODY: Fulfilling your
24 responsibilities as an authorized user?

14 1 DR. KANG: Right.

2 MR. HOLODY: You have had -- this is a
3 question -- to fill out other records, correct, over
4 the past 14 years?

5 MR. PROSKIN: I'm not so sure he
6 understands the question. Doctor, he's saying as a
7 physician in nuclear medicine, do you have to fill out
8 records when you use the nuclear stuff?

9 DR. KANG: I believe we have a record,
10 but as a user, I don't have my own license though. I
11 am under general license. I'm just a user, of course.
12 So as a licensee, I think in the hospital they keep
13 the document as one, not each individual user as
15 14 physician I have to keep my own record for which I'm
15 using. As a physician, I'm using under the nuclear
16 medicine, so we have our nuclear medicine record,
17 which I myself don't keep all my measures.

18 We have our procedure to keep to follow
19 according to NRC's rules and regulations. We have
20 been following last, even before I was at the VA, but
21 I believe so far. Of course, there has been some
22 violation, as you noticed last time, but as a user, of
23 course we all keep the record, yes.

24 DR. BELLAMY: Mr. Malphurs, did you have

15 1 anything as the senior hospital administrator that
2 you'd like to add or clarify that we've discussed?

3 MR. MALPHURS: No, I have nothing to add
4 and I will stand on my opening statement.

5 DR. KNAPP: I have one or two very brief
6 closing remarks to make. First, of course we do
7 appreciate your coming today to discuss this situation
8 with us. Although most of our discussion has been
9 with Dr. Kang, obviously, the hospital, as licensee,
10 bears the responsibility for the actions under the
11 license. My understanding is that you are well aware
12 of that. That is a responsibility which you will
13 have, under any circumstances, obviously regardless of
14 who is RSO or who is acting RSO.

15 We are here today largely because any
16 aspect of the use of nuclear materials requires
17 extremely high standards, meticulous attention to
18 detail well beyond those which are accepted almost in
19 any other practice in the United States. And one of
20 my personal responsibilities is to insure that these
21 standards are met and to take vigorous action if they
22 are not. We are of great concern when we find a
23 licensee where we do not have high competence that in
24 our absence the licensee will meet these standards.

15

1 Obviously, our inspectors are only able
2 to visit a few times annually, or in many cases less
3 frequently than that, and so it's our expectation that
4 licensees will have the competence and the integrity
5 to insure that in our absence things will be conducted
6 as though we were present. Any time we have occasion
7 to doubt this ability, then we take vigorous action.

8 The information I think we received
9 today, in addition to the statements which we received
10 earlier, give us what we need to make the decisions
11 we'll need to make next. I think, although you have
12 been here recently, it probably would be worthwhile
13 just to review what our next actions might be and what
14 would happen from there. Would you like me to do that
15 or, Dan, would you like to?

16 MR. HOLODY: Well, if they feel they need
17 it.

18 DR. KNAPP: Yes, if you'd like to, it's
19 just a moment or two.

20 MR. HOLODY: We told you at the last
21 conference what the options are available whenever
22 we've identified violation, our requirements, and
23 they're in the policy 10 CFR Part 2 Appendix C,
24 essentially three-fold. We can issue a notice of

15 1 violation, which is a summary of the requirements and
2 what was done wrong. We can issue a civil penalty
3 attached to those violations, as we did the last time,
4 or we can issue an order where we can modify, suspend
5 or revoke the license.

6 And what we do is consider what's in your
7 investigative report, what we've heard today and make
8 a decision on what the appropriate findings are and
9 what the appropriate action should be. And you'll be
10 hearing from us concerning what that decision is at
11 some later date.

12 DR. BELLAMY: Does anybody from
13 headquarters have anything they want to add or
14 question?

15 MR. CANT: No. Thank you.

16 DR. FLESH: I just wish to clarify there
17 were two regulations cited as possible violations, but
18 I think they may be duplicative of previous citations.
19 I just ask that you take that into consideration, that
20 of the failure to keep adequate records, which was
21 true at the time of the November inspection, but not
22 true and corrected during the March inspection. That
23 would be --

24 MR. HOLODY: But this particular record

15 1 was not cited. What you were not cited for were
2 several violations that were part of the prior notice
3 that was based on the November, 1990 inspection. Two
4 of the issues you were not cited for which were the
5 basis for this conference today, one being the failure
6 to do the actual inventories; second, completion of a
7 form which would indicate that the inventories were
8 done when in fact they weren't, that would be the
9 second issue. The maintenance of that inaccurate
10 record.

11 DR. KNAPP: In any case, we do hear your
12 statement. We will carefully consider the possibility
13 that these citations could be repetitive. That will
14 figure into our deliberations.

15 DR. FLESH: Because one of the citations
16 in fact cites failure to perform sealed source
17 inventories on a quarterly frequency.

18 DR. KNAPP: We will look at that very
19 carefully. And in the event we will, in with the
20 documentation we provide you, will explain how we
21 arrive at whatever violations we will cite, should we
22 choose to cite violations.

23 DR. FLESH: Can you give us a clue about
24 time frame and when we might hope to hear from you?

1 DR. KNAPP: Any decisions like this
2 involve not only those of us in the region, but as you
3 can tell from the telephone link-up to Washington,
4 headquarters involvement as well. I would like to
5 think that we will have this matter completed within
6 about one to two months; but in the event that policy
7 or regulatory issues that I do not now foresee need to
8 be discussed and resolved as a part of this particular
9 action, it could take longer. You should receive a
10 report of this enforcement conference shortly. I
11 would think that should be issued within approximately
12 the next two to three weeks.

13 DR. FLESH: Thank you.

14 DR. BELLAMY: Thank you very much.

15 (Proceedings concluded.)

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UNITED STATES NUCLEAR REGULATORY COMMISSION

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No. I-91-07

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February 5, 1991

NRC STAFF CITES VETERANS ADMINISTRATION MEDICAL CENTER IN ALBANY FOR ALLEGEDLY VIOLATING NRC GUIDELINES ON HANDLING NUCLEAR MATERIALS; PROPOSES \$3,750 FINE.

The Nuclear Regulatory Commission staff has cited the Veterans Administration (VA) Medical Center in Albany, New York, for alleged violations of NRC rules concerning the handling of licensed radioactive materials. The NRC proposes to fine VA \$3,750.

During a routine safety inspection on November 20 and 21, 1990, the inspector found 21 alleged violations of NRC requirements, including failure to control access by unlicensed persons to radioactive materials; failure to give some hospital workers the required test for uptake of radioactive iodine within the required three days after these workers prepared doses of the material for administration to patients; failure to maintain for the years 1988 and 1989 adequate records of radioactive material that is permitted to be released to a sanitary sewer system; failure to test implantable radiation sources for possible leakage within the required six month interval (some sources were not leak-tested from October 14, 1989 to November 21, 1990); failure to adequately instruct workers in the necessary precautions to minimize radiation exposure and potential health problems that could result from their handling of the material; and eating, and consuming soft drinks, in five research laboratories where radioactive material is used or stored, which is prohibited by NRC regulations to prevent accidental ingestion of radioactive material.

In a letter informing the VA facility of this enforcement action, Thomas T. Martin, Regional Administrator of NRC Region I, said the number of violations "represent a lack of adequate management attention to and oversight of the radiation safety program." Martin added that "If adequate attention and oversight had been provided, the violations should have been prevented or identified and corrected."

The base fine for such violations is \$2,500. However, since the violations were identified by the NRC, and not the licensee, the fine has been increased by 50 percent, to \$3,750.

The facility has been given 30 days to either pay the proposed fine or to request in writing that part or all of it be withdrawn, giving its reasons for any such request. VA has also been given 30 days to admit or deny the alleged violations, to give its reasons for them if admitted, to describe the actions it has taken or plans to take to prevent their happening in the future, and to give the date by which it expects to be in full compliance with NRC requirements.

The State of New York has been informed of this proposed enforcement action.

###

G/12

APPENDIX B

NUCLEAR MEDICINE INSPECTION FIELD NOTES
Region 1Inspection Report No. 92-001 License No. 31-02755-05

Licensee (name and address)

Docket No. 030-10026Dept. of VA Medical Center113 HOLLAND AVE.
ALBANY NY 12208Licensee Contact DR. J. PHUE Telephone No. _____Last Amendment No. 20 Date of Amendment 9-3-91Priority: 1

Program Codes:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 02110 - Broad Scope | <input type="checkbox"/> 02120 - Limited |
| <input type="checkbox"/> 02121 - Custom | <input type="checkbox"/> 02200 - Private Practice - Limited |
| <input type="checkbox"/> 02209 - In Vivo | <input type="checkbox"/> 02201 - Private Practice - Custom |
| <input type="checkbox"/> 02210 - Eye Applicator | <input type="checkbox"/> 02220 - Nuclear Medical Van |
| <input type="checkbox"/> 02400 - Veterinary | <input type="checkbox"/> 02410 - In Vitro |
| <input type="checkbox"/> 02500 - Pharmacy | <input type="checkbox"/> Other - |

Date of Last Inspection ~~1-21-90~~ ~~5-27-91~~Date of This Inspection 1-6-92Type of Inspection: ☐ Announced ☒ Unannounced
☒ Routine ☐ Special
☐ Initial ☐ ReinspectionNext Inspection Date. 1-93 ☒ Normal ☐ Reduced ☐ Extended

Summary of Findings and Action:

- ☒ No violations, Clear 591 or letter issued
☐ Violations, 591 or letter issued
☐ Action on Previous Violations

Inspector: William G. Damin
(Signature)Date 1-14-92Approved: M. S. Lasky
(Signature)Date 2/12/92

* All areas indicated in field notes are not required to be addressed during each inspection.

e. Visiting Authorized User

☒ N/A

- (1) Has written permission [35.27(a)(1)] ☐ Y ☐ N
- (2) Copy of visitor's license on file [35.27(a)(2)] ☐ Y ☐ N
- (3) Performs only those procedures authorized on visitor's license [35.27(a)(3)] ☐ Y ☐ N
- (4) Uses material under licensee's license for sixty days per year or less [35.27(b)] ☐ Y ☐ N
- (5) Records maintained 3 years after last visit [35.27(c)] ☐ Y ☐ N

Remarks.

f. Mobile Nuclear Medicine Service

☒ N/A

- (1) Licensee uses mobile nuclear medicine services [35.29] ☐ Y ☐ N
- (2) Licensee operates mobile nuclear medicine services [35.29, 35.30] ☐ Y ☐ N

Remarks.

2. INSPECTION HISTORY

☐ N/A - Initial inspection

- a. Last inspection conducted on 3-27-91
- b. Violations or deviations were identified ☒ Y ☐ N
- c. Response letter or 591 dated 5-8-91
- d. Violations from Previous Inspection

<u>Requirement</u>	<u>Violation</u>	<u>Corrective Action Taken (Y/N)</u>	<u>Status</u>
35.50(a)(1)	did not do contraindications	Y	C
35.50(b)(3)	did not perform competency test	Y	C

4. INTERNAL AUDITS OR INSPECTIONS

a. Audits or inspections are conducted

(☒) Y () N () N/A

(1) Audits conducted by HP

(2) Frequency monthly

b. Audits are required by license condition

(☒) Y () N
(☒) Y () N

c. Records maintained

Remarks.

*N.C. ind. of labor
HP has an extensive checklist but
he does for the audits.*

5. TRAINING, RETRAINING, AND INSTRUCTIONS TO WORKERS

a. Instructions to workers per [10 CFR 19.12]

(☒) Y () N

Remarks.

*required to read safety manual & sign
before starting work*

b. Training program required [L/C]

(☒) Y () N () N/A

- (1) Training program implemented
- (2) Retraining program required
- (3) Retraining program implemented
- (4) Records maintained

(☒) Y () N
(☒) Y () N
(☒) Y () N
(☒) Y () N

Remarks.

*over each section
with act is responsible for initial
training. ~ 17 different training courses of
quarterly intervals which are only well attended*

c. Supervision of individuals by authorized user
in accordance with [35.25]

(☒) Y () N

Remarks.

d. Survey instruments

- (1) Appropriate operable survey instruments possessed per [35.120,220,320,420] or available per [35.520] ☒ Y () N () N/A
- (2) Calibration performed as required in [35.51] ☒ Y () N
- (3) Records maintained [35.51(d)] ☒ Y () N
- (4) Proper operation checked with check source per [35.51(c)] ☒ Y () N

Remarks. *have an amendment in for doing their own survey meter calibrations*

- e. Syringes containing RAM properly labeled and shielded unless contraindicated per [35.60] ☒ Y () N
- f. Vials containing RAM properly labeled and shielded per [35.61] ☒ Y () N

Remarks. *Answered - fed injecting a patient*

7. RADIOLOGICAL PROTECTION PROCEDURES

- a. Radioactive materials used in accordance with current procedures [L/C] ☒ Y () N

Remarks. *one lab received permission to exceed their own radiological limit now H¹ after the H¹ verified that at 20 minutes ~~was~~ not exceeded*

f. Leak tests and inventory

- | | |
|---|---|
| (1) Leak tests performed on sealed sources and brachytherapy sources per [35.59(b)] | (<input checked="" type="checkbox"/>) Y () N |
| (2) Inventory of sealed sources and brachytherapy sources per [35.59(g)] | (<input checked="" type="checkbox"/>) Y () N |
| (3) Leak tests records in microcuries | (<input checked="" type="checkbox"/>) Y () N |
| (4) Leak test/inventory records signed by RSO | (<input checked="" type="checkbox"/>) Y () N |
| (5) Records maintained of leak tests and inventories for 5 years | (<input checked="" type="checkbox"/>) Y () N |

Remarks.

9. RECEIPT AND TRANSFER OF RADIOACTIVE MATERIAL

- a. Describe how packages are received and by whom: () N/A

*community brings packages up to
Proc. pack. & back in hot lab*

- | | |
|---|---|
| b. Opening procedures established and followed [20.205(d)] | (<input checked="" type="checkbox"/>) Y () N |
| c. Incoming packages wiped per [20.205(b)] | (<input checked="" type="checkbox"/>) Y () N |
| d. Incoming packages surveyed per [20.205(c)] | (<input checked="" type="checkbox"/>) Y () N |
| e. Transfer(s) performed per [30.41] | (<input checked="" type="checkbox"/>) Y () N |
| f. Records of surveys and receipt/transfer maintained per [20.401(b) and 30.51] | (<input checked="" type="checkbox"/>) Y () N |

Remarks.

*...
completes many sources to Henry the Center
across street - all records in order of
is continuing with the RSO of Govt rep.*

- e. Brachytherapy sources inventoried per [35.406] ☐ Y ☐ N
 f. Brachytherapy source storage area surveyed quarterly and record signed by RSO [35.59(h)] ☐ Y ☐ N
 g. Records maintained ☐ Y ☐ N

Remarks.

13. PERSONNEL RADIATION PROTECTION - EXTERNAL

- a. Film or TLD supplier Lundgren Frequency Monthly
 b. Supplier is NVLAP - approved ☒ Y ☐ N
 c. Reports reviewed by RSO & HP Frequency Quarterly
 d. NRC inspector reviewed personnel monitoring records for period May 1, 1991 to Dec 31, 1991
 e. NRC forms or equivalent
 (1) NRC-4: ☒ Y ☐ N Complete: ☐ Y ☐ N ☒ N/A
 (2) NRC-5: ☒ Y ☐ N Complete: ☒ Y ☐ N ☐ N/A
 [20.401(a)]
 f. List maximum exposures (millirem): US 90 mrem/yr for 50 mrem/yr
 g. Licensee has implemented an ALARA program [35.20] ☒ Y ☐ N

Remarks.

14. PERSONNEL RADIATION PROTECTION - INTERNAL

- a. Potential for exposure of individuals to airborne RAM exists ☒ Y ☐ N
 b. Monitoring for airborne radioactivity conducted [20.201(b) to meet 20.103, 35.90, and 35.205] ☒ Y ☐ N

16. NOTIFICATION AND REPORTS

- | | | |
|----|---|---|
| a. | Licensee in compliance with [19.13]
(reports to individuals) | <input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> N/A |
| b. | Licensee in compliance with [20.402]
(theft or loss) | <input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> None |
| c. | Licensee in compliance with [20.403]
(incidents) | <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> None |
| d. | Licensee in compliance with [20.405]
(overexposures) | <input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> None |

Remarks.

17. MISADMINISTRATIONS

- | | | |
|----|---|--|
| a. | Misadministrations have occurred | <input checked="" type="checkbox"/> Y <input type="checkbox"/> N |
| | (1) Diagnostic | <input type="checkbox"/> Y <input type="checkbox"/> N |
| | (2) Therapeutic | <input type="checkbox"/> Y <input checked="" type="checkbox"/> N |
| b. | Licensee in compliance with reporting
therapeutic misadministrations
[35.33(a),(b)] | <input type="checkbox"/> Y <input type="checkbox"/> N ~ |
| c. | Licensee in compliance with reporting
diagnostic misadministrations, if required
[35.33(c)] | <input checked="" type="checkbox"/> Y <input type="checkbox"/> N |
| d. | Appropriate action taken to prevent recurrence | <input checked="" type="checkbox"/> Y <input type="checkbox"/> N |
| e. | Records maintained [35.33(d)] | <input checked="" type="checkbox"/> Y <input type="checkbox"/> N |

Remarks.

5. 39-41 wrong patient on TC-99m injection
- patient. answered yes to another patient
name

f. Licensee makes return shipments of radiopharmacy doses

() Y (☒) N () N/A

- (1) If YES, licensee assumes responsibility of all shipper requirements
- (2) If NO, describe arrangements made between licensee and radiopharmacy as to performance of shipper responsibilities:

() Y () N

20. RECORDKEEPING FOR DECOMMISSIONING

- a. Records of information important to the safe and effective decommissioning of the facility maintained in an independent and identifiable location until license termination [30.35(g)]
- b. Records include all information outlined in [30.35(g)]

() Y () N

() Y () N

Remarks.

21. INDEPENDENT MEASUREMENTS

- a. Survey instrument used Wellman 14C
- b. NRC Serial No. 009662
- c. Last date of calibration 11-4-91
- d. Inspector's measurements were compared to licensee's
- e. Describe the type and results of measurements:

() Y (☒) N

also let bench at 100 levels

25. PERFORMANCE EVALUATION FACTORS

Licensee _____
(name & _____
location) _____

Inspector _____

Inspection Date _____

- a. Lack of senior management involvement with
the radiation safety program and/or
Radiation Safety Officer (RSO) oversight

() Y (☒) N

- b. RSO too busy with other assignments

() Y (☒) N

- c. Insufficient staffing

() Y (☒) N

- d. Radiation Safety Committee fails to meet
or functions inadequately

() Y (☒) N

- e. Inadequate consulting services or
inadequate audits

() Y (☒) N

Remarks (consider above assessment and/or other pertinent PEFs):

Regional follow-up on above PEFs citations: