

Title: UNIVERSITY OF CINCINNATI MEDICAL CENTER:

ALLEGED DISCRIMINATION THREATS AND ALLEGED WITHHOLDING OF
INFORMATION FROM THE U.S. NUCLEAR REGULATORY COMMISSION

Licensee:

University of Cincinnati Medical Center
234 Goodman Street
Cincinnati, Ohio 45267

Docket No.: 30-02764

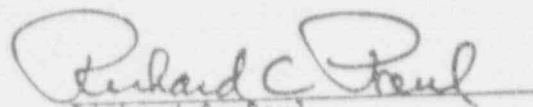
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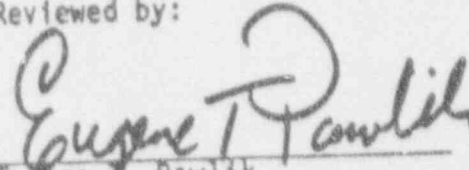
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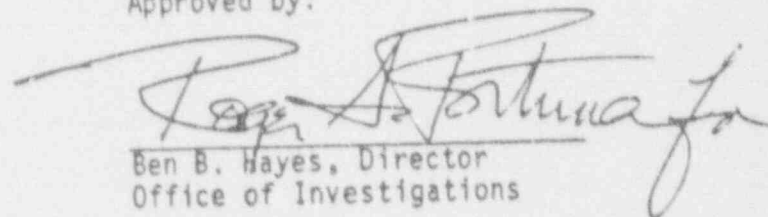
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SYNOPSIS

On October 10, 1989, the Regional Administrator, U.S. Nuclear Regulatory Commission (NRC), Region III (RIII), requested that an investigation be initiated concerning an allegation that sealed source records were intentionally concealed from an NRC:RIII inspector during a 1988 inspection at the University of Cincinnati Medical Center (UCMC). The Office of Investigations (OI) investigation substantiated the allegation that the UCMC Radiation Safety Officer (RSO) and Deputy RSO intentionally concealed sealed source records from the NRC inspector during his August 1988 inspection.

During the investigation an additional allegation of discrimination was brought to OI's attention and pursued during the investigation. The OI investigation substantiated that the RSO and his administrative director intentionally instituted a policy which was discriminatory. However, the investigation failed to find where the discriminatory policy affected or prevented UCMC employees from going to the NRC.

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ACCOUNTABILITY

The following portions of this Report of Investigation (Case No. 3-89-011) will not be included in the material placed in the Public Document Room. They consist of pages 3 through 24.

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APPLICABLE REGULATIONS

10 CFR 30.7(a): Employee protection (1988 Edition)

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The protected activities are established in section 210 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

10 CFR 30.9(a): Completeness and accuracy of information (1988 Edition)

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

10 CFR 30.51(b): Records (1988 Edition)

(b) Records which are required by the regulations in this part and Parts 35 and 39 of this chapter or by license condition shall be maintained for the period specified by the regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, such records shall be maintained until the Commission authorizes their disposition.

10 CFR 30.52(b): Inspections (1988 Edition)

(b) Each licensee shall make available to the Commission for inspection, upon reasonable notice, records kept by him pursuant to the regulations in this chapter.

Section 210(a) of the Energy Reorganization Act of 1974: Employee Protection

Sec. 210. (a) No employer, including a Commission licensee, an applicant for a Commission license, or a contractor or a subcontractor of a Commission licensee or applicant, may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)--

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this Act or the Atomic Energy Act of 1954, as amended;

(2) testified or is about to testify in any such proceeding or;

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this Act or the Atomic Energy Act of 1954, as amended.

Atomic Energy Act, Section 223(a): Violations of Sections Generally

(a) Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this Act for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under section 65 or subsections 161 b., i., or o., shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both, . . .

18 U.S.C. 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

LIST OF INTERVIEWEES

EXHIBIT

ALEXANDER Jr., George W., University of Cincinnati Medical Center (UCMC), Administrative Director of Nuclear Medicine Services.....	6
BARBRO, Jeffrey C., Senior Health Physics Technician, UCMC.....	12
BOYD, Melvin L., Health Physics Technician, UCMC.....	10, 11
ESTES, Raymond, Health Physics Technician, UCMC.....	2
FRITZ, Kenneth M., Radiation Safety Officer (RSO), UCMC.....	18
GIBBONS, Donald R., Radiation Specialist, NRC:RIII.....	4
HARRIS, Patrick W., Health Physics Technician, UCMC.....	14
JASON, Prince, Deputy RSO, UCMC.....	13
LODGE, William C., Director, Employee and Labor Relations, UCMC. .	9
SILBERSTEIN, Edward, Professor of Radiology/Internal Medicine, Radiation Safety Committee (RSC) Member, UCMC.....	16
WIOT, Jerome F., Professor and Chairman of Radiology, Chairman, RSC.....	17

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DETAILS OF INVESTIGATION

Purpose of Investigation

The investigation was requested to determine if sealed source records were intentionally concealed from an Nuclear Regulatory Commission (NRC), Region III (RIII), inspector during an August 1988 NRC inspection. The investigation was also to determine the licensee's culpability and the level of management involved if the allegation was substantiated.

During the investigation an additional allegation of discrimination was brought to the Office of Investigation's attention. It was alleged that the UCMC Radiation Safety Officer (RSO) and his administrative assistant had threatened discriminatory action against UCMC radiation safety personnel (technicians) if they went to the NRC with their concerns. Although this allegation was pursued by NRC:RIII as detailed in Inspection Report No. 030-02764/89002 and partially substantiated, it was investigated to determine if it was a motivating factor in the failure of the technicians to report the concealment of the sealed source records for over a year.

Background

On October 10, 1989, the Regional Administrator, RIII, requested an investigation (Exhibit 1) after receiving an anonymous allegation in December 1988 that some records (no further information) may have been hidden from the NRC during an August 1988 inspection. In January 1989 the alleged again contacted NRC:RIII with additional information and agreed to provide further information in the future. However, no further information was subsequently received. During NRC:RIII's follow-up on other allegations in September 1989, the RIII inspector obtained information that the UCMC RSO and Deputy RSO may have been involved in withholding sealed source inventory and leak test records from NRC review during the 1988 inspection. The purpose of this withholding was to prevent the NRC inspector from discovering that several sources had been missing for two years.

Interview of (b)(6) (Raymond ESTES, Health Physics Technician, UCMC) 6,7C

ESTES was interviewed on January 25, 1990. [REDACTED]

[REDACTED] ESTES said he became aware through 6,7C other technicians, that Kenneth M. FRITZ, the UCMC RSO, had instructed the Deputy RSO, Prince JASON, to remove inventory cards of missing or problem sources before an NRC inspection (Exhibit 2).

ESTES said he and the other technicians discussed going to the NRC with this and other concerns as early as the summer of 1988 but did not because of a UCMC memorandum authored by FRITZ and George W. ALEXANDER, Administrative Assistant, dated June 30, 1988, to UCMC radiation safety personnel regarding

the problem notification process for Radiation Safety Office personnel (Exhibit 2; Exhibit 3). ESTES referred to this memorandum as a "gag order" and indicated that it prevented the health physics personnel (technicians) from going to the NRC with concerns (Exhibit 2). 67C

Coordination with the NRC Staff

On November 1, 1989, the RIII referral (Exhibit 1) was discussed with Wayne SLAWINSKI, Senior Radiation Specialist, NRC:RIII. SLAWINSKI indicated that RIII had conducted a special inspection in 1989 on the alleged's other allegations (Exhibit 21). 67C

On August 13, 1990, Donald R. GIBBONS, Radiation Specialist, NRC:RIII, was interviewed. GIBBONS said that in August 1988 he conducted an unannounced inspection at UCMC. GIBBONS said during this inspection he reviewed the inventory cards of the sealed sources. GIBBONS said he was never made aware or determined that there were missing sealed sources at UCMC during this inspection (Exhibit 4).

According to GIBBONS, the sealed source inventory cards were documents required to be maintained per NRC regulations. GIBBONS indicated that the fact that information relevant to the missing sealed sources was not presented by UCMC to him, impacted the outcome of his inspection (Exhibit 4).

Allegation No. 1: Alleged Discrimination Threats

Summary

The following individuals were interviewed by OI:RIII on the dates indicated regarding the allegation that FRITZ and ALEXANDER, had threatened the Radiation Safety Office personnel if they went to the NRC with concerns. The pertinent testimony provided by these individuals is documented in the evidence section of this report.

<u>Name</u>	<u>Position</u>	<u>Date of Interview</u>
ESTES	UCMC Health Physics Technician	January 25, 1990
BOYD	UCMC Health Physics Technician	January 25 & February 21, 1990
JASON	Deputy RSO	February 6, 1990
HARRIS	UCMC Health Physics Technician	February 21, 1990
BARBRO	UCMC Senior Health Physics Technician	February 25, 1990
SILBERSTEIN	UCMC RSC Member	May 17, 1990
ALEXANDER	UCMC Administrative Director of Nuclear Medicine	June 20, 1990
WIOT	UCMC Chairman, RSC	July 16, 1990
LODGE	UCMC Director of Employee and Labor Relations	July 16, 1990
GIBBONS	NRC:RIII Radiation Specialist	August 13, 1990
FRITZ	UCMC RSO	November 1, 1990

Evidence

1. ALEXANDER said that as a result of a series of incidents where personnel from the Radiation Safety Office had contacted the local news media and the UCMC president, he, FRITZ, and the UCMC legal counsel, had authored a memorandum entitled, "Problem Notification Process for Radiation Safety Office Personnel," dated June 30, 1988. The memorandum was signed by FRITZ and ALEXANDER. ALEXANDER said the June 30, 1988, memorandum superceded an earlier memorandum (he and FRITZ authored) entitled, "Proper Channel of Communications for Radiation Safety Personnel," dated July 1, 1986. (Exhibit 3; Exhibit 6, pp. 6-8 and 10-12; Exhibit 7).
2. The July 1, 1986, UCMC memorandum states in part, "University of Cincinnati Policy dictates that you must report all problems first to your immediate supervisor." The memorandum further states that any Radiation Safety Office staff that deters from the "procedure" faces disciplinary action (Exhibit 7).
3. ALEXANDER said it was not the intent of the memorandum to prevent the Radiation Safety Office personnel from contacting the NRC and that they had, in fact, contacted the NRC many times (Exhibit 6, pp. 8 and 12).
4. ALEXANDER said he was "absolutely positive" William C. LODGE, UCMC Director of Employee and Labor Relations, approved the July 1, 1986, memorandum (Exhibit 6, p. 11).
5. ALEXANDER said the June 30, 1988, memorandum was presented to the Radiation Safety Office personnel at a meeting, and they (FRITZ and ALEXANDER) requested the employees sign the memorandum. ALEXANDER said the technicians did not have any questions regarding the policy (Exhibit 6, pp. 6-9; Exhibit 3).
6. LODGE said that FRITZ and ALEXANDER did not have authority to make University policy and termed the July 1, 1986, memorandum as departmental procedure. LODGE said he recalled discussions with ALEXANDER concerning the technicians publicly discussing their concerns (Exhibit 9, pp. 6-14).
7. Regarding the June 30, 1988, memorandum, LODGE recalled that FRITZ had come to him, possibly before the memorandum was issued, and wanted to establish a policy or procedure which would require the radiation safety personnel to take allegations or reports of safety violations to him (FRITZ), and no further. LODGE said he told FRITZ that he (LODGE) could advise him on specific problems as they came up, but LODGE said he felt "that a blanket prohibition on taking complaints other than to him [FRITZ] was -- was legally problematic and advised him [FRITZ] strongly not to pursue that." LODGE said he did not specifically review the June 30, 1988, memorandum before it was issued but had discussions with ALEXANDER concerning the memorandum's contents prior to its issuance (Exhibit 9, pp. 14-20).
8. LODGE said he advised FRITZ and ALEXANDER that the employees had a right to go to the NRC, and attempts to deter the employees from going to the NRC could be a problem. LODGE said FRITZ's interpretation of the NRC regulations required the radiation safety personnel (technicians) to come

to him first with problems before going to the NRC or anyone else, and if they failed to do this, he (FRITZ) could discipline them. LODGE said he advised FRITZ that he (FRITZ) could get in "big, big trouble" if he attempted to restrict the employees from contacting the NRC (Exhibit 9, pp. 17-19 and 22-24).

9. LODGE said he could not recall any UCMC radiation safety personnel being disciplined for going to the NRC (Exhibit 9, pp. 24-25).
10. According to UCMC Radiation Safety Office personnel, HARRIS, JASON, BARBRO, BOYD, ESTES, FRITZ, and ALEXANDER held a meeting some time around June 1988, which they all attended. At the meeting, the technicians were presented the June 30, 1988, memorandum from ALEXANDER and FRITZ, and according to BARBRO, the employees were told to read the memo and sign it. JASON said ALEXANDER was the author of the memorandum, and FRITZ was unaware of its contents and had "blindly" signed it. BARBRO said he told ALEXANDER and FRITZ that the memorandum could not apply to their contacting the NRC, and FRITZ and ALEXANDER acknowledged this right verbally. According to BARBRO, he felt that FRITZ and ALEXANDER expected the employees to bring the concern through management first. BARBRO and ESTES acknowledged that they called the memorandum a "gag order" because, according to BARBRO, they could not discuss the UCMC Radiation Safety Office business outside of the office and could be subject to disciplinary action if they did (Exhibit 2; Exhibit 10; Exhibit 11; pp. 6-11; Exhibit 12, pp. 30-39; Exhibit 13, pp. 7-12 and 47-49; Exhibit 14, pp. 12-13).
11. ESTES said the implication given by UCMC was that he would have been fired had he failed to sign the June 30, 1988, memorandum authored by FRITZ and ALEXANDER. ESTES said the memorandum prohibited the technicians from going to the NRC and required them to bring up concerns internally. [REDACTED] 674
(Exhibit 2).
12. BARBRO and JASON acknowledged they felt the June 30, 1988, memorandum addressed notifying the NRC on safety concerns. BOYD said the memorandum did not prevent him from going to the NRC. BARBRO said that based on his understanding of the UCMC policy, contacting the NRC without first going through UCMC management would have had an adverse impact on his career at UCMC. [BARBRO said the memorandum, "along with other things, influenced him in not reporting the hidden inventory records to the NRC inspector in 1988] (Exhibit 10; Exhibit 11, pp. 11-12; Exhibit 12, pp. 30-39; Exhibit 13, pp. 9-12).
13. HARRIS, initially in his NRC interview, acknowledged that he did not consider the June 30, 1988, memorandum as including contact with the NRC but later said it could be read to include the NRC. HARRIS then related he did not address safety concerns he had concerning the UCMC radiation safety program with an NRC inspector in 1988, because the inspector was always with FRITZ. HARRIS said his hesitancy to talk with the inspector was not influenced by the June 30, 1988, memorandum (Exhibit 14, pp. 12-13 and 17-20).

14. On January 4, 1989, JASON, BARBRO, BOYD, ESTES, and HARRIS brought several concerns, including concerns regarding the June 30, 1988, memorandum to the UCMC RSC, chaired by WIOT. According to SILBERSTEIN, the RSC appointed a subcommittee to look into the concerns, and he was appointed the chair of this subcommittee (Exhibit 2; Exhibit 10; Exhibit 11, pp. 35-39; Exhibit 12, pp. 50-54; Exhibit 13, pp. 8 and 23-26; Exhibit 14, pp. 18-20; Exhibit 15; Exhibit 16, pp. 10-18 and 21-24; Exhibit 17, pp. 6-11).
15. FRITZ exercised his Fifth Amendment rights and declined to answer questions regarding this matter (Exhibit 18).
16. SILBERSTEIN emphatically stated that the June 30, 1988 memorandum was not a policy of the RSC. SILBERSTEIN said his reaction upon learning of this memorandum was "a very strong one" and regarding the memorandum said, "... and was, in fact, inappropriate and violated the right of a radiation -- anyone to contact the NRC." SILBERSTEIN said he told ALEXANDER that the memorandum was inappropriate and "probably illegal." ALEXANDER said he believed that the RSC felt that the memorandum did not involve the NRC. SILBERSTEIN did not think the memorandum prevented anyone from contacting the NRC but "theoretically" could have inhibited someone (Exhibit 16, pp. 20-26; Exhibit 6, pp. 13-15; Exhibit 14, pp. 18-20).
17. The RSC subcommittee's recommendation regarding the "problem notification process for Radiation Safety Office Personnel" was to revise the process "to make it clear that 'whistle blowing' is supported by the State, and that employees have access to the Nuclear Regulatory Commission." The subcommittee report, however, said, "The licensee must always be told first according to the 'Notice to Employees in the Radiation Safety Manual.'" A memorandum dated July 31, 1989, signed by WIOT detailed the new process (Exhibit 8; Exhibit 16, pp. 28-29; Exhibit 17, pp. 10 and 29-31; Exhibit 19; Exhibit 20).
18. WIOT acknowledged that he did not think the procedures detailed in the memorandums of July 1, 1986, and June 30, 1988, inhibited the technicians from going to the NRC. WIOT indicated that the technicians were using the issue because of their dislike of FRITZ (Exhibit 17, pp. 28-31).
19. NRC:RIII addressed this allegation in Inspection Report No. 030-02764/89002 and partially substantiated it (Exhibit 21, pp. 27-28).

Conclusion

Based on the evidence developed during this investigation, it is concluded that FRITZ, the RSO, and ALEXANDER, the administrative director, intentionally instituted a UCMC Radiation Safety Office policy that was potentially discriminatory against Radiation Safety Office personnel. However, no Radiation Safety Office employee was found to have been discriminated against for their subsequent contact with the NRC as a result of this policy.

Allegation No. 2: Alleged Intentional Withholding of Information From an NRC Inspector

Summary

The following individuals were interviewed by OI:RIII on the dates indicated regarding the allegation that information was intentionally withheld from the NRC during the 1988 inspection. The pertinent testimony provided by these individuals is documented in the evidence section of this report.

<u>Name</u>	<u>Position</u>	<u>Date of Interview</u>
ESTES	UCMC Health Physics Technician	January 25, 1990
BOYD	UCMC Health Physics Technician	January 25, 1990
JASON	Deputy Radiation Safety Officer	February 21, 1990
HARRIS	UCMC Health Physics Technician	February 6, 1990
BARBRO	UCMC Senior Health Physics Technician	February 21, 1990
SILBERSTEIN	UCMC RSC Member	February 25, 1990
ALEXANDER	UCMC Administrative Director of Nuclear Medicine	May 17, 1990
WIOT	UCMC Chairman, RSC	June 20, 1990
GIBBONS	NRC:RIII Radiation Specialist	July 16, 1990
FRITZ	UCMC Radiation Safety Officer	August 13, 1990
		November 1, 1990

Review of Documentation

During the interview of JASON, the former deputy RSO at UCMC, he indicated that he had in his possession inventory cards of missing sources. These cards were subsequently provided to NRC:OI by JASON. A referral was then forwarded to RIII to determine if the sources represented by these cards were, in fact, missing. RIII responded that based on a review performed by UCMC's consultant, a total of ten isotope sources had been found missing. RIII indicated that five of the six sources represented by the inventory cards were presumed lost, and the sixth was missing (Exhibit 5).

Evidence

1. According to JASON, in 1988 there were approximately seven or eight missing sealed sources at UCMC. JASON said the inventory records for these missing sources indicated this missing/lost status. JASON went on to say that the situation with the missing sources was brought to the attention of FRITZ, the UCMC RSO, but he never made any attempts to resolve the problem. BOYD, a UCMC health physics technician (technician), said he was conducting a survey of a nickel-63 (Ni-63) sealed source and was unable to locate it. BOYD said he advised FRITZ of the situation, and FRITZ told him that he (FRITZ) would handle the matter. SILBERSTEIN, a RSC member, was also aware of a missing sealed source. SILBERSTEIN said he considered the matter serious and as a result the RSO was advised to contact the NRC on the matter. WIOT, the RSC chairman, said he was unaware of the missing sealed source issue until mid-1989 (Exhibit 2; Exhibit 10; Exhibit 11, pp. 17-27; Exhibit 12,

pp. 16-20; Exhibit 13, pp. 3-7, 13-16 and 21-23; Exhibit 14, pp. 10-12 and 23; Exhibit 16, p. 36; Exhibit 17, pp. 12-13).

2. JASON said that on the Friday prior to the Monday, August 19, 1988, announced (emphasis added) NRC inspection, FRITZ asked him to bring all the sealed source documents to his (FRITZ's) office for review. JASON said this was the first time FRITZ had reviewed the records, and in the past JASON had conducted the sealed source document review. According to JASON, FRITZ briefly scanned the cards and gave him the cards for the sources that were missing or had discrepancies. FRITZ then told him "to do something" with the cards. JASON said he then gave the cards to BOYD, who placed them in his desk. JASON said the cards were unavailable for review by D. R. GIBBONS, the NRC inspector, who conducted the August 1988 inspection (Exhibit 13, pp. 12-14 and 16-19; Exhibit 22; Exhibit 23; Exhibit 24).
3. JASON acknowledged it was his opinion that FRITZ was deliberately attempting to hide the sealed source cards from the NRC inspector. JASON said he did not "want to" follow FRITZ's directive to hide the cards and knew that the incident would eventually be brought out. JASON indicated that he hoped the Radiation Safety Program would get "straightened out" and "turned around" somehow (Exhibit 13, pp. 17-18, 20-21 and 53).
4. JASON said BOYD was aware of the reason he (JASON) was giving him (BOYD) the cards. BOYD, however, said he did not know why JASON gave him the cards at the time but that the cards were for two missing H1-63 sources. According to BOYD, JASON later said he had been instructed by FRITZ to give him (BOYD) the cards. BOYD acknowledged that he understood later the reason he was given the cards by JASON was to prevent the NRC from reviewing them. According to BOYD, when JASON came to him with the cards FRITZ was in a position to have heard his discussion with JASON. HARRIS and BARBRO said they witnessed this incident (Exhibit 10; Exhibit 11, pp. 29-31; Exhibit 12, pp. 20-23 and 27-29; Exhibit 13, pp. 18-19; Exhibit 14, pp. 14-17; Exhibit 25).
5. GIBBONS said the August 1988 NRC inspection he conducted at the UCMC was unannounced (emphasis added). GIBBONS said he reviewed the sealed source inventory cards during the course of his inspection and was unaware that there were any missing sources (Exhibit 1, Enclosure 7; Exhibit 4).
6. On July 28, 1989, BARBRO, HARRIS, and BOYD authored a memorandum to SILBERSTEIN advising him that sealed source records for unaccounted sources were kept from the NRC inspector during the August 1988 NRC inspection at the direction of the deputy RSO. SILBERSTEIN said he recognized that the incident described in the memorandum was a possible violation of law. SILBERSTEIN said he contacted WIOT concerning the allegation. SILBERSTEIN acknowledged that procedurally it was WIOT's responsibility to notify the NRC on the allegation (Exhibit 12, pp. 25 and 66-68; Exhibit 14, pp. 20-22; Exhibit 16, pp. 33-38 and 40-45; Exhibit 23).
7. BARBRO said the reason he brought up the concern in July 1989 to SILBERSTEIN was because it came to light during ESTES' Department of Labor (DOL) filing. BARBRO said he felt it would be advantageous to UCMC

and the RSC to contact the NRC first with this allegation (Exhibit 2; Exhibit 12, pp. 66-68).

8. On August 2, 1989, JASON authored a memorandum to WIOT informing him that FRITZ had directed him to intentionally conceal records during an NRC inspection. In the memorandum, JASON stated that he felt he had no other choice but to follow FRITZ's directive. JASON in his NRC:OI interview, said he wrote this memorandum on the advice of his staff members to protect himself (Exhibit 22; Exhibit 13, pp. 27-28; Exhibit 12, pp. 25-26 and 68-71; Exhibit 14, pp. 20-22).
9. WIOT said he first became aware of this allegation on August 2, 1989, during a discussion with BARBRO. WIOT said he told BARBRO he needed something in writing from JASON, and the following morning he received JASON's memorandum with the inventory cards. BARBRO indicated that to the best of his knowledge this was the first WIOT was aware of the allegation (Exhibit 17, pp. 11-14; Exhibit 12, pp. 25-26 and 66-68; Exhibit 22).
10. On August 18, 1989, WIOT authored a memorandum to JASON requesting specifics on the allegation. On August 21, 1989, JASON responded in a memorandum (Exhibit 23; Exhibit 24).
11. WIOT said he asked BARBRO why it took a year to surface the allegation of the concealment of the sealed source records. According to WIOT, BARBRO's response was that he did not know the reason, but they (the technicians) were going to get FRITZ (Exhibit 17, p. 31).
12. WIOT said that after he received JASON's memorandum on the allegation, he called the president of the University and advised him that he (WIOT) thought the issue was "a significant problem." WIOT said he subsequently hired a consultant to investigate the allegation. WIOT said the outcome of this process was to relieve JASON and FRITZ of their duties and place them on administrative leave. WIOT said he advised FRITZ and JASON that he was relieving them based on the allegation that FRITZ had instructed JASON to conceal documents from the NRC. WIOT said JASON responded that he had been instructed to hide the records by FRITZ. FRITZ denied telling JASON this, according to WIOT (Exhibit 17, pp. 14-21).
13. JASON said on August 25, 1989, he and FRITZ were called into WIOT'S office and advised of their suspension. JASON said FRITZ was totally surprised and shocked by the allegations, and JASON felt this was the first he (FRITZ) was made aware of the allegations. JASON said he never discussed the allegations with FRITZ (Exhibit 13, pp. 40-42).
14. In July 1989 ALEXANDER said he witnessed a conversation between JASON and FRITZ regarding the DOL complaint filed by ESTES. According to ALEXANDER, the DOL complaint referenced missing inventory cards. ALEXANDER said FRITZ asked JASON what ESTES was talking about, and JASON responded that he did not know. According to ALEXANDER, FRITZ then asked JASON if there was anything missing, and JASON replied that there was nothing missing. ALEXANDER provided NRC:OI with notes that he claimed he made concerning this conversation between FRITZ and JASON. ALEXANDER said he also witnessed the suspension of FRITZ and JASON in WIOT's

office, at which time FRITZ asked JASON what was the problem (Exhibit 6, pp. 15-18; Exhibit 26).

15. FRITZ exercised his Fifth Amendment rights in his NRC:OI interview and declined to answer questions regarding this matter (Exhibit 18).

Conclusion

Based on the evidence developed during this investigation, it is concluded that BOYD, FRITZ, and JASON intentionally concealed sealed source records of missing sources from the NRC:RIII inspector during his August 1988 inspection. No involvement in the concealment was found to have occurred on the part of the chairman of the RSC.

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SUPPLEMENTAL INFORMATION

UCMC was the subject of an earlier OI:RII investigation (Case No. 3-86-014).

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	RIII Request for Investigation, dated October 10, 1989.
2	Report of Interview with ESTES, dated January 25, 1990.
3	UCMC memorandum regarding Problem Notification Process, dated June 30, 1988.
4	Report of Interview with GIBBONS, dated August 13, 1990.
5	NRC memorandum re: Response to OI Request for Information Review, dated June 12, 1990.
6	Sworn statement of ALEXANDER, dated June 20, 1990.
7	UCMC memorandum re: Proper Channel of Communication for Radiation Safety Office Personnel, dated July 1, 1986.
8	UCMC memorandum re: Problem Notification Process, dated July 31, 1989.
9	Sworn statement of LODGE, dated July 16, 1990.
10	Report of Interview with BOYD, dated January 25, 1990.
11	Sworn statement of BOYD, dated February 21, 1990.
12	Sworn statement of BARBRO, dated February 20, 1990.
13	Sworn statement of JASON, dated February 6, 1990.
14	Sworn statement of HARRIS, dated February 21, 1990.
15	Memorandum from WIOT, dated January 5, 1989, with attached UCMC Radiation Safety Committee minutes of January 4, 1989.
16	Sworn statement of SILBERSTEIN, dated May 17, 1990.
17	Sworn statement of WIOT, dated July 16, 1990.
18	Sworn statement of FRITZ, dated November 1, 1990.
19	UCMC Report of Special Radiation Safety Committee, dated February 23, 1989.
20	UCMC memorandum re: RSC finding on technicians concerns, dated March 20, 1989.

Exhibit
No.

Description

- | | |
|----|------------------------------------------------------------------------------------------------------------|
| 21 | Letter from B. MALLET, dated February 16, 1990, with attached Inspection Report No. 030-02764/890C2(DRSS). |
| 22 | UCMC memorandum from JASON to WIOT, dated August 2, 1989. |
| 23 | UCMC memorandum from WIOT to JASCN, dated August 18, 1989. |
| 24 | UCMC memorandum from JASON to WIOT, dated August 21, 1989. |
| 25 | UCMC memorandum from Health Physics Technicians to SILBERSTEIN, dated July 28, 1989. |
| 26 | Handwritten notes signed by ALEXANDER. |

REPORT OF INTERVIEW
WITH
RAYMOND ESTES

On January 25, 1990, Raymond ESTES was interviewed by NRC:01 Investigators Richard C. Paul and Mary K. Fahey. The interview was conducted at the University of Cincinnati Medical Center (UCMC) Radiation Safety Office, 234 Goodman, Cincinnati, Ohio.

ESTES said he is currently employed at the hospital as a health physics technician (technician) and has worked there since May 1, 1985. ESTES said his prior experience in radiation safety was with the Department of Defense.

[REDACTED] 6,7C

[REDACTED] ESTES said the "gag order" prohibited the technicians from going to the NRC and were required to bring concerns up internally. ESTES said the implication on the "gag order" was that if the technicians refused to sign it they would be fired or forced to quit.

ESTES said there were three health physics technicians who worked with him: Melvin BOYD, Jeff BARBRO, and Pat HARRIS. ESTES said Ken FRITZ was the Radiation Safety Officer (RSO) and Prince JASON was the Deputy RSO. According to ESTES, George ALEXANDER was the business administrator for the Radiation Isotope Laboratory and the Radiation Safety Office. ESTES indicated that the "gag order" was authored by FRITZ and ALEXANDER.

ESTES stated that when he came to UCMC in May 1985, he replaced Lee ASHCRAFT, a health physics technician. [REDACTED] ESTES 6,7C
said that JASON was formally named Deputy RSO in the early part of 1989 but had been acting in that capacity for about a year. ESTES felt that JASON was part of the problem with radiation safety at UCMC because he was part of management. ESTES thought JASON had inherited the problems when he became Deputy RSO. ESTES indicated that he thought JASON had been required to sign the "gag order."

[REDACTED] 6,7C

According to ESTES, [REDACTED]
the UCMC police or state police conducted an investigation and secured all the documentation related to the matter in a locked room. ESTES indicated that this was possibly in August 1989. ESTES had concerns because ALEXANDER had a key to the room in which the documentation was stored. ESTES said the NRC inspectors who conducted an inspection also had access to the

EXHIBIT 2

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documentation. Bob BURGIN of NES also had access to the room, according to ESTES. ESTES said some of the documentation he had given to the police and stored in the room was never given back to him.

ESTES said that during the NRC:RIII inspection, the technicians were interviewed by the RIII inspectors in an area where ALEXANDER had access to, and the inspectors conducted the interviews with the doors open. ESTES had concerns about this technique and said his interview was conducted at a different location.

Regarding the situation of missing radioisotope sources and removal of inventory cards, ESTES said he did not have any direct knowledge of this but was aware that it occurred through discussions he had with other technicians. ESTES said he was aware that it occurred in the spring of 1989 and the summer of 1988, the times when the NRC inspections were conducted. ESTES felt that it occurred previous to these dates and said there was a past history of records being "inauthentic."

ESTES said that the UCMC RSC would be notified before the NRC was going to conduct their inspection. ESTES said he was aware of one incident in which JASON was involved where sealed source inventory cards were hidden from the NRC inspectors. According to ESTES, BARBRO and BOYD were witnesses to this incident.

ESTES said that the normal procedure for inventorying sealed sources was that the inventories were conducted by the technicians. The technicians would then report the results of the inventory verbally to the Deputy RSO or RSO.

According to ESTES, there had been sources missing from UCMC "for years," and JASON or FRITZ had attempted to locate these sources without success. ESTES stated that he reported one missing source to the RSO/Deputy RSC. ESTES said although the inventory records were kept in JASON'S cubicle, the technicians filled out the information on the cards and reported the results.


ESTES said he had heard that FRITZ had told JASON to pull the inventory cards for missing or problem sources before NRC inspections. ESTES acknowledged he had never been instructed to falsify inventory or other records related to his radiation safety duties. ESTES said that JASON was currently suspended as Deputy RSO as a result of this allegation. ESTES opined that JASON was caught in "the middle" on this because FRITZ had instructed him to pull the inventory cards.

ESTES said that up to January 1989 the technicians thought the UCMC Radiation Safety Committee (RSC) knew about their concerns. ESTES indicated that FRITZ and ALEXANDER had told them they had made the RSC aware of the concerns, and they (the technicians) believed them. According to ESTES, the technicians subsequently attended the January 1989 meeting of the RSC and brought up their concerns, including the issue with the gag order. After this meeting, the technicians had a representative attend the RSC meetings.

ESTES said that the technicians had discussed going to the NRC with their concerns as early as the summer of 1988 but did not because it was at about this time they were required to sign the gag order. ESTES said that based on their meeting with the RSC in January 1989, the RSC sent a letter to the

technicians responding to their concerns. ESTES said that based on this letter, it was his opinion the RSC supported the gag order.

6.7C



ESTES said that he had filed a Department of Labor (DOL) complaint against UCMC because he was not given a pay raise because he had identified a contaminated area. ESTES said that DOL ruled against him on this complaint.

Richard C. Paul

Richard C. Paul, Investigator
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Mary K. Fahey

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