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October 13, 1992

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Mr. James Taylor
Executive Director of Operations
Nuclear Regulatory Commission
Washington D.C. 20555

RE: Marquette General Hospital, Inc.
License Number 21-05432-05;
Invoice Number AM05224-92

Dear Mr. Taylor:

Our office represents Marquette General Hospital, Inc. in Marquette, Michigan who is the above-referenced licensee.

Marquette General Hospital owned a Cobalt-60 Teletherapy Source, Neutron Product serial number T-1171. Ownership was transferred to Therapy Services, Inc., Frederick, Maryland on May 1, 1992. See Appendix 1.

On or about August 24, 1992, Marquette General Hospital was billed for an annual license fee by the Nuclear Regulatory Commission, pursuant to 10 CFR 170.16(a)7A. This annual fee was for the 1992 Nuclear Regulatory Commission Fiscal year, which runs from October 1, 1991 to September 30, 1992. See Appendix 2.

At the time the teletherapy source was transferred, Marquette General Hospital applied for an amendment terminating its Nuclear Regulatory Commission license, as of May 1, 1992. This amendment was granted by Nuclear Regulatory Commission on or about June 15, 1992. See Appendix 3.

After the teletherapy source was transferred to Therapy Services, Inc., it was removed from Marquette General Hospital's premises. It was, in fact, moved to the premises of Alpha-Omega, Inc., in Bellflower, California, which is an associated company of Therapy Services, Inc. From the date Therapy Services, Inc. took possession, the teletherapy source has been in storage with Alpha-Omega, Inc.

Therapy Services, Inc. is a Nuclear Regulatory Commission licensee, and Alpha-Omega, Inc. is also a licensee, either in its own right, or through Therapy Services, Inc.

At any rate, Therapy Services, Inc. or Alpha-Omega, Inc. carries its own license, and pays its own annual fee relating to the services provided

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to it by the Nuclear Regulatory Commission, including those services relating to storage of this teletherapy source.

The situation which has resulted is that, pursuant to the August 24, 1992 invoice, Marquette General Hospital is being assumed an annual fee for the same period of time covered by the license fee paid by the purchaser.

Therefore, Marquette General Hospital is requesting an exemption of the annual fee, attributable to the period of time after May 1, 1992, pursuant to 10 CFR §171.11(d). That rule allows the licensee an exemption from the annual fee if it determines that the annual fee is not based on a fair and equitable allocation of Nuclear Regulatory Commission costs. The language of the rule requires it strictly to be construed, and suggests that "such exemptions will be rarely granted".

However, it is Marquette General Hospital's position that this is a case where the exemption should be granted. Clearly, it would not be "fair and equitable" for the Nuclear Regulatory Commission to collect the same fee, or, at least duplicative fees, from two owners of the same device. The Nuclear Regulatory Commission could not logically take the position that it is simultaneously providing services, and incurring costs relative to one device on behalf of two in-severalty owners during a period of time when only one of them has the ownership, possession, and use of the device. The assessment of an annual fee for the period of time when Marquette General Hospital no longer used, owned or possessed the device would result in a disproportion of allocation of Nuclear Regulatory Commission costs to Marquette General Hospital.

Further, it is obvious that the generic costs of the Nuclear Regulatory Commission for this class of licensees cannot specifically be allocated to Marquette General Hospital for a period of time when the hospital neither owned, used or possessed the device.

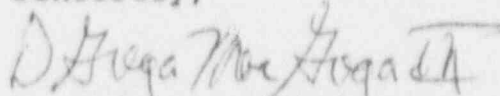
Marquette General Hospital acknowledges 10 CFR §171.17 which specifically provides that there will be no refund of the annual fee or any portion thereof for a licensee who has requested amendment to permanently withdraw his right to operate, as Marquette General Hospital did on May 1, 1992. However, it does not appear as though the Commission contemplated the situation we have here in adopting Rule 10 CFR §171.17; that being where the device is immediately transferred to another licensee, who either then begins, or is covered by a license relating to the use of that same device.

Marquette General Hospital does not have access to the Nuclear Regulatory Commission records relative to the subsequent licensing, etc. of this teletherapy source. The information was gained orally by telephone from Jerry Fogel at Therapy Services, Inc. in Frederick, Maryland. For purposes of this letter-request, we have not requested copies of those records under the appropriate statutes, but if you determine that such would be required in order to honor Marquette General Hospital's request, please advise. We have no reason to believe that the records would show anything other than as represented hereinabove.

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Likewise, if there is any other information that you need in order to consider this request, please do not hesitate to contact us.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Gregor MacGregor III". The signature is fluid and cursive, with the first name "D." and last name "MacGregor" being more prominent.

D. Gregor MacGregor III

DGM:sah
enclosure

cc: Karen MacLachlan

Source Removal
Teletherapy Transfer Form

This is to certify that the following Cobalt-60 teletherapy source:

Manufacturer Neutron Products, Inc.
Model Number NPTT Series, Cat. No. NPI-20-6000W
Serial Number T-1171

containing 4,964 curies as of May 1, 1992 has
been wipe tested and found to be leak free, was locked in the following
teletherapy unit:

Manufacturer Atomic Energy of Canada, Ltd.
Model Number Theratron 780
Serial Number 128
located at Marquette General Hospital
420 West Magnetic Street
Marquette, Michigan 49855

and is hereby transferred from Marquette General Hospital,
Marquette, Michigan NRC Radioactive
Materials License Number 21-05432-05 to
Therapy Services Incorporated, Frederick, Maryland, State of Maryland
Radioactive Materials License Number MD-21-009-01.

Signature <u>Richard J. Monahan</u>	<u>Jimmy Goble</u>
Date <u>5/1/92</u>	<u>5-1-92</u>
<u>Marquette General Hospital</u>	<u>Therapy Services Incorporated</u>
<u>Marquette, Michigan</u>	<u>Frederick, Maryland</u>