

Title: LAFAYETTE CLINIC:

ALLEGED WILLFUL VIOLATION OF NRC LICENSE CONDITION; ALLEGED
DISCRIMINATION IN THE REMOVAL OF THE RADIATION SAFETY OFFICER;
ALLEGED DISCRIMINATION THREATS MADE BY THE CLINIC DIRECTOR;
AND ALLEGED MATERIAL FALSE STATEMENT

Licensee:

Lafayette Clinic
951 East Lafayette
Detroit, MI 48207

License No.: 21-00664-02

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SYNOPSIS

On December 23, 1988, the Regional Administrator (RA), U.S. Nuclear Regulatory Commission (NRC), Region III, requested that an investigation be initiated by the NRC Office of Investigations (OI) to determine if there was a willful violation of an NRC license condition in the ordering and receipt of radioactive materials. Two amended Requests for Investigation were subsequently received from the RA. The first amendment (second allegation) requested that OI determine if the removal of the Radiation Safety Officer (RSO) in August 1988 constituted discrimination. The third allegation involved statements made by the Lafayette Clinic (Clinic) Director at a June 7, 1989, meeting of the research staff. The Clinic's Director allegedly made comments which discouraged Clinic researchers from expressing their radiation safety concerns to "third parties" and "outside agencies." During the course of the investigation into these allegations, a fourth allegation was developed regarding a possible material false statement made by the Clinic's Acting Director to the NRC in an October 20, 1988, letter.

The investigation revealed that on May 31, 1988, a Clinic researcher ordered 500 microcuries of phosphorus-32 (P-32), a radioisotope. On the weekend of June 4-5, 1988, the researcher used the P-32 in an experiment. The researcher failed to follow approved Clinic procedures for the ordering and use of the P-32. The Clinic RSO learned of the P-32 use on June 6, 1988. The RSO advised the researcher both orally and in writing of the proper Clinic procedures for the use and ordering of radioactive materials. The researcher and his assistant were also provided film badges sometime on or before June 14, 1988. The researcher indicated that he used all of the P-32 during the weekend of June 4-5, 1988.

The researcher placed a second order for P-32 during mid-June 1988 but cancelled the order the same day. On June 20, 1988, the RSO found radioactive contamination in the researcher's laboratory indicating a second unapproved use of P-32. The researcher denied the second use of P-32 and claimed he had taken his experiments to Bethesda, Maryland, where they were processed by ONCOR Laboratories (ONCOR) with the P-32. The investigation confirmed that ONCOR had processed the researcher's experiments.

The researcher's Radiation Dosimetry Report of the June 1988 time period showed a 30 millirem exposure. The researcher denied he used radioactive materials at the Clinic the second time and claimed his exposure came from ONCOR. The personnel of ONCOR who processed the researcher's experiments, claimed that the researcher could not have received the exposure recorded on his dosimetry report during his visit at ONCOR. The investigation found that the researcher used the radioactive materials the second time in willful violation of the Clinic's procedures. The investigation determined that another researcher interceded on behalf of the first researcher, but this researcher did not willfully violate any Clinic procedures.

The RSO in attempting to address the improper use of radioactive materials by the researcher, wrote memoranda and took actions which put him at odds with other Clinic researchers and the Chairman of the Wayne State University (WSU) Department of Psychiatry. At that time, WSU was in the process of negotiating with the Michigan Department of Mental Health (DMH) to take over the research

functions of the Clinic. On July 8, 1988, the Chairman wrote the Clinic's Acting Director proposing a reorganization of the Clinic's Radiation Safety Committee (RSC) of which the RSO was the Chairman. The Clinic's Acting Director said he forwarded the Chairman's request to DMH for approval. DMH approved the reorganization in August 1988, and the RSO was subsequently removed. The investigation concluded that the RSO removal constituted willful discrimination by the WSU Chairman.

The third allegation related to comments made by the Clinic's new director at a June 7, 1989, meeting of the Clinic's research staff. According to the former RSO and several persons involved with the RSO in the events of 1988, the Director made comments which they interpreted as meaning that the Director was threatening action against persons who contacted "outside agencies" and "third parties" with radiation safety concerns. The Director denied the allegation and claimed he was just reiterating instructions contained in NRC-Form 3 about attempting to first resolve radiation safety concerns within the Clinic before contacting outside agencies. Three other researchers who attended the meeting indicated that they did not interpret the Director's remarks as a threat to them if they contacted the NRC. The investigation found that the Director's comments were not a deliberate attempt on his part to prevent the employees from contacting the NRC with their radiation safety concerns.

The fourth allegation related to a statement in an October 20, 1988, letter to the NRC from the Clinic's Acting Director. The letter stated that the Acting Director had not been informed that the RSO had terminated his services in September 1988. The investigation determined that on August 26, 1988, the Acting Director authored two memoranda related to the implementation of the RSC reorganization. The Acting Director also telephoned the RSO and informed him of the reorganization.

The RSO, acting on the documentation of the Acting Director, turned over his equipment and documents to the new person designated "radioactivity officer" on September 22, 1988. A copy of the memorandum documenting the turnover of the equipment to the new "radioactivity officer" was sent to the Acting Director. The Acting Director acknowledged that the "radioactivity officer" described in his memorandum was the RSO.

The Acting Director acknowledged he was aware of the NRC requirement regarding notification in replacing the RSO. The Acting Director claimed he held off notifying the NRC of the RSO change because he was not sure the DMH reorganization would really take place. As a result of the RSO's removal, the NRC issued a Confirmatory Action Letter (CAL) against the Clinic in October 1988. The Acting Director's letter to the NRC of October 20, 1988, was in response to the CAL.

The investigation found that the Acting Director made a deliberate material false statement to the NRC.

ACCOUNTABILITY

The following portions of this Report of Investigation (Case No. 3-89-002) will not be included in the material placed in the Public Document Room. They consist of pages 3 through 37.

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APPLICABLE REGULATIONS

10 CFR 30.3: Activities Requiring License

10 CFR 30.7: Employee Protection

10 CFR 30.34(e): Terms and Condition of License

10 CFR 30.51: Records

10 CFR 30.61: Modification and Revocation of License

10 CFR 30.63: Violation

10 CFR 35.21(a): Radiation Safety Office

Section 210, Energy Reorganization Act of 1954, as amended, (42 U.S.C. 5851).
Employee Protection

Section 186, Atomic Energy Act of 1954, as amended, (42 U.S.C. 2236). Material
False Statment

Section 161(o), Atomic Energy Act of 1954, as amended, (42 U.S.C. 2201).
General Provision

Section 223, Atomic Energy Act of 1954, as amended, (42 U.S.C. 2273). Atomic
Violation of Sections Generally

Title 18 U.S.C. 1001, Statements and Entries Generally

Lafayette Clinic License Condition No. 22:

Except as specifically provided otherwise in this license, the licensee
shall conduct its program in accordance with the statements,
representations, and procedures contained in the documents including any
enclosures . . .

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DETAILS OF INVESTIGATION

Purpose of Investigation

The purpose of this investigation was to determine if there was a willful violation of an NRC license condition in the ordering and receipt of radioactive materials at the Lafayette Clinic (Clinic). Additionally the investigation was to determine if the removal of the Radiation Safety Officer (RSO) at the Clinic constituted employment discrimination. Third, the investigation was to determine if Clinic management discouraged staff members from expressing their radiation safety concerns to "third parties" and outside agencies." During the investigation, a fourth allegation was developed regarding a potential material false statement made to the NRC by the Clinic's Acting Director.

Background

On December 23, 1988, the Regional Administrator (RA), U.S. Nuclear Regulatory Commission (NRC), Region III (R/II), requested that an investigation be initiated by the Office of Investigations (OI) into the possibility that the Clinic operated in careless disregard of the regulations. This request was based on a series of allegations received by the NRC concerning the Clinic's radiation safety program. A subsequent NRC inspection based on these allegations confirmed a number of issues: (1) an unauthorized user; (2) unauthorized ordering and unauthorized receipt of radiopharmaceuticals; (3) the RSO had been reassigned and not replaced by a qualified individual; and (4) the Radiation Safety Committee (RSC) was abolished and later reconstituted without having an authorized user as a member (Exhibit 1).

As a result of the NRC inspection, a Confirmatory Action Letter (CAL) was issued on October 14, 1988 (Exhibit 1).

On May 9, 1989, the RA issued an amended Request for Investigation. This request detailed the allegation related to the ordering and use of radioactive materials by Dr. Natrej SITARAM in May and June 1988. This ordering and use was in violation of License Condition No. 22 of the Clinic's Material License which requires the Clinic to conduct its radiation safety program in accordance with statements, representations, and procedures contained in referenced documents. A referenced letter received by the NRC on August 29, 1983, in Item 7, "Order and Receipt" states, "All radioactive materials from the clinic must be ordered by Ken WARNER . . . Upon receipt of radioactive materials, our Receiving Department is instructed to call Mr. WARNER or (Dr. FROHMAN, Director, Biochemistry Laboratory)" (Exhibit 2; Exhibit 41).

Also the RA requested that OI investigate whether the intercession by Dr. Donald M. KUHN on the SITARAM use and ordering of radioactive materials with Dr. Lew M. HRYHORCZUK, the Clinic's RSO, constituted involvement in the willful violation of the Clinic's license conditions. In the May 9, 1989, Request for Investigation, it was requested that the investigation examine if the removal of HRYHORCZUK in August 1988 constituted employment discrimination in violation of 10 CFR 19.20 and) CFR 30.7 (Exhibit 2).

On July 3, 1989, a third request for Investigation was received from the RA regarding the Clinic. This request was initiated based on an allegation from an alleged that the Clinic's management discouraged staff members from "relaying our concerns about radiation safety to 'third party' and 'outside agencies.'" 67C

The allegation concerned a June 7, 1989, meeting the Clinic's Director, Dr. Gerald J. SARWER-FONER, called with the research staff. According to the alleged, SARWER-FONER told the research staff not to report violations of radiation rules outside the Clinic, but to the RSO. These allegations were potentially violations of 10 CFR 19.20 and 10 CFR 30.7 (Employee Protection) (Exhibit 3).

While investigating these allegations, OI developed an additional allegation related to a potential material false statement made by the Clinic's Acting Director, Dr. Thomas M. SULLIVAN. On October 20, 1988, SULLIVAN responded to the NRC regarding the October 14, 1988, CAL issued by the NRC for failure to have an NRC approved RSO. In his letter, SULLIVAN said he had not been informed that the RSO, HRYHORCZUK, had terminated his services as RSO. The investigation found that on August 26, 1988, SULLIVAN authored a memorandum appointing KUHN Chairman of the RSO and "as such he will serve as the radioactivity officer." This allegation was a potential violation of 10 CFR 30.61 and 10 CFR 30.63 (Exhibit 4).

Because of the multiple allegations related to this investigation, this report is divided into four parts addressing each allegation separately.

Allegation 1: Alleged Willful Violation of NRC License Condition

Background

On May 9, 1989, the RA requested an investigation to determine if the ordering and use of radioactive materials by SITARAM in May and June 1988 had been in violation of the Clinic's NRC Materials License Conditions. The RA additionally requested that OI determine if KUHN was directly involved in violations of the Clinic's license conditions by SITARAM (Exhibit 2).

Details of Investigation

HRYHORCZUK said he was appointed RSO at the Clinic in late March or early April 1988 by SULLIVAN, the Clinic's Acting Director at that time (Exhibit 5, pp. 4, 6, and Attachment 3). According to Robert E. ARTHUR, Sr., the Clinic's procedures for the use and ordering of radioactive materials were detailed in an August 29, 1983, memorandum authored by Samuel GERSHON, the Clinic's Director at that time. ARTHUR said his memorandum of July 9, 1986, addressed to "All researchers and employees involved with the use of radioactive isotopes" reconfirmed GERSHON's memorandum. ARTHUR said he was responsible for maintaining an inventory of radioactive materials at the Clinic and conducting periodic surveys for contamination (Exhibit 5, pp. 6-10; Exhibit 6, pp. 5-11 and 13; Exhibit 7; Exhibit 8).

HRYHORCZUK said that at the time he took over as RSO "there were clear procedures that were established" for the handling and use of radioisotopes (isotopes). HRYHORCZUK described the procedures as consisting of contacting Kenneth WARNER, who was listed on the Clinic's NRC license as the authorized

user, and advising him of the researcher's order. WARNER would acquaint the researcher with the required procedures and then place the order for the isotopes (Exhibit 5, pp. 5-8; Exhibit 7; Exhibit 8). ARTHUR said he or WARNER would be responsible for surveying the package containing the isotopes when it arrived at the Clinic (Exhibit 6, pp. 11-12).

WARNER said he had to approve any request for isotope use prior to ordering. After approval the order was sent to the purchasing officer. According to WARNER, upon receipt of the material at the Clinic, only he or ARTHUR would be notified of its receipt. WARNER said the material would be surveyed, inventoried, and taken to the primary investigator (PI) who would be responsible to make a report on the use and disposal of the isotopes and give that report to ARTHUR (Exhibit 9, pp. 9-11 and 14-15).

Franz FUCEK, KUHN, SULLIVAN, Dr. John M. RAINEY, Jr., and Robert A. LEVINE, the current RSO, acknowledged that they were aware of the established procedures requiring the notification of WARNER to order and use isotopes at the Clinic (Exhibit 10, pp. 3-6; Exhibit 11, pp. 5-8 and 4-15; Exhibit 12, pp. 14-17; Exhibit 13; Exhibit 14, pp. 5-7 and 9; Exhibit 15, pp. 14-15).

SITARAM said he is on the faculty of Wayne State University (WSU) and also has been associated with the Clinic as a PI since 1980. SITARAM said that in May 1988 he returned from a sabbatical at the National Institute of Health (NIH) to prepare a grant due July 1, 1988. SITARAM said he had used radioactive material before in his research but up to this point had never used isotopes at the Clinic (Exhibit 16, pp. 3-10).

SITARAM said he was unaware of the Clinic's procedures for use of isotopes. SITARAM said he may have gotten some of the memoranda describing the Clinic's procedures on radioactive material, but since he was not involved with them at the time, he possibly did not pay any particular attention to them. SITARAM indicated that when he left for his sabbatical at NIH there were no procedures at the Clinic for ordering isotopes but stated, "All I can say is that I knew that there were people designated to receive it." SITARAM said the protocol he submitted on his research did not indicate that he was using isotopes (Exhibit 16, pp. 6, 10, and 12-13).

According to SITARAM, in May 1988 he went to KUHN for guidance on how to proceed with the labelling of his DNA samples with radioactive materials. SITARAM indicated that this was the first time he had used radioactive materials at the Clinic. SITARAM said KUHN had shown him an area in his (KUHN's) laboratory where it was equipped to use and dispose of radioactive material. SITARAM responded that the Geiger counter he used during his experiments was also provided by KUHN (Exhibit 16, pp. 16-17, 22-23, and 32).

KUHN recalled that in 1988, SITARAM was on a sabbatical at NIH and was returning periodically (about once a month) to the Clinic. KUHN said that he discussed SITARAM's experiments with him. KUHN said SITARAM was learning how to do these experiments, and they (SITARAM and KUHN) did discuss the possibilities of KUHN assisting SITARAM in getting started and doing these experiments. KUHN said he did not recall the use of isotopes being specifically addressed but "it would not have surprised me since many of us who do electrophoresis will often use radioactive isotopes as markers." KUHN

said he did store supplies used in this experiment for SITARAM (Exhibit 11, pp. 12-14).

WARNER recalled that KUHN had told him of the discussion he (KUHN) had with SITARAM about the use of KUHN's laboratory for his experiments prior to SITARAM performing them. WARNER stated that KUHN told him that in those conversations SITARAM had discussed using a radioactive isotope (phosphorus-32 (P-32)) (Exhibit 9, pp. 16-18).

HRZHORCZUK said one of the first things he did after being named RSO in March/April 1988 was to determine who was using radioactive material at the Clinic, and he had ARTHUR inventory these materials. HRZHORCZUK said he found that Drs. OXENKRUG, FREEDMAN, KUHN, and LEVINE were using materials (Exhibit 5, pp. 9-10). This was confirmed by ARTHUR, WARNER and RAINEY (Exhibit 6, pp. 14-18; Exhibit 13; Exhibit 9, pp. 11-13; Exhibit 17).

HRZHORCZUK said that as a result of the May 25, 1988, meeting of the RSC a Radiation Safety Bulletin Board was installed. HRZHORCZUK was not sure if this bulletin board contained the Clinic's procedures on ordering radioactive materials. HRZHORCZUK said the bulletin board was just down the hall from Room 256R, which was SITARAM's laboratory (Exhibit 5, pp. 13 and 28-29 and Exhibit 17).

SITARAM said on May 31, 1988, he ordered 500 microcuries of P-32. SITARAM said he received the shipment at the Clinic on Wednesday, June 1, 1988. SITARAM acknowledged he did not contact WARNER or ARTHUR about the order. SITARAM said he placed the order through Cindy STUART at WSU. SITARAM said he was unaware of the "arrangements with licensee situations" and said about the P-32 order, "It was routine paperwork" (Exhibit 16, pp. 12, 14-15, and 22).

STUART, who handles purchasing for the WSU Department of Psychiatry, said she placed the order on a WSU purchase order but had the material shipped to the Clinic. STUART said she was unaware of any special procedures for ordering radioactive materials at that time (Exhibit 18; Exhibit 19, pp. 4-9).

ARTHUR, HRZHORCZUK, and WARNER said they were unaware that SITARAM had ordered the P-32, and they had never approved the order (Exhibit 5, pp. 13 and 25; Exhibit 6, pp. 19-21; Exhibit 9, pp. 22 and 27-29). HRZHORCZUK said the Clinic had procedures in effect that would have allowed SITARAM to transfer the radioactive materials to the Clinic from WSU (Exhibit 5, pp. 24-25). WARNER believed that SITARAM was aware of the ordering procedures for radioactive materials because he circumvented these rules by going through WSU to get the materials. WARNER said SITARAM's order was the first that he was aware of to ever go through WSU. Additionally, WARNER said SITARAM had talked with KUHN about the use of his laboratory prior to placing the order (Exhibit 9, pp. 16-18; Exhibit 24, pp. 12-14).

WARNER said that if SITARAM would have asked for permission to use P-32, there would have been no problem in SITARAM getting this permission. WARNER said, "In fact, there is a memo attesting the fact that anybody involved in radiation use and safety, radio-isotope use and safety has always literally bent over backwards to cooperate with whoever needed to use it" (Exhibit 9, pp. 24-25).

SITARAM said he conducted the experiment which utilized the P-32 on the weekend of June 4-5, 1988. SITARAM indicated that the labelling procedure which used the P-32 only takes one-half hour, and he performed this on Saturday evening, June 4, 1988. SITARAM acknowledged he used all 500 microcuries of P-32 and disposed of the waste materials in KUHN's laboratory. SITARAM said he was alone when he performed this part of the experiment. SITARAM said he did not wear a radioactive monitoring badge during these activities (Exhibit 16, pp. 17-20 and 26-27).

SITARAM indicated that after he had disposed of the P-32, his assistant, Siofrid DIXON, came into the laboratory. According to SITARAM, this was on Monday, June 6, 1988. SITARAM said DIXON assisted him with the cleanup of the radioactivity. SITARAM said that during the cleanup they got radioactive waste on the stickers on the bottles. SITARAM said that while he was showing his experiment to DIXON, he described it as "Chernobyl" going on. SITARAM said Sadiqa NASREEN, SITARAM's research assistant, was present when he made these remarks (Exhibit 16, pp. 21-26).

INVESTIGATOR'S NOTE: OI's attempts to locate and interview DIXON regarding his knowledge of these events were unsuccessful.

FUCEK said he was informed on May 25, 1988, by SITARAM that he (SITARAM) planned to use a very low concentration of P-32 as a marker in the experiment they were working on. FUCEK said it was his recollection that P-32 was first used on May 25, 1988. FUCEK said SITARAM was conducting his experiments in Room 256 at the Clinic. FUCEK said he wore a film badge during these experiments but acknowledged that DIXON, SITARAM, and NASREEN did not (Exhibit 10, pp. 8-12).

On June 6, 1988, FUCEK said he became aware that SITARAM had used "a highly-concentrated radioactive solution of P-32," and recalled SITARAM making a statement about a "miniature Chernobyl." FUCEK said that DIXON, SITARAM, and NASREEN were also present in the laboratory on June 6, 1988 (Exhibit 10, pp. 11-12 and 14-15).

NASREEN said prior to June 6, 1988, she was aware that SITARAM's experiments required the use of very diluted radioactive markers. NASREEN said that on June 6, 1988, she became aware that SITARAM and DIXON were working with P-32, a radioactive material. NASREEN said she knew this based on her knowledge of the experiment and the fact that SITARAM was using a survey meter. NASREEN said that SITARAM commented "there is a big Chernobyl going on inside the waterbath." NASREEN said this was the first and only time she saw SITARAM use P-32 (Exhibit 20; Exhibit 21).

NASREEN said she became concerned about SITARAM's use of P-32 because she had not been issued a film badge. NASREEN said she discussed this with FUCEK and then later talked with the RSO, HRYHORCZUK. According to NASREEN, this was the first HRYHORCZUK or anyone from the Clinic's administration was aware of SITARAM's use of radioactive materials (Exhibit 10, pp. 12-16; Exhibit 20; Exhibit 21).

INVESTIGATOR'S NOTE: [REDACTED]

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HRYHORCZUK said that on June 6, (1988), [sic] at about 4:00 p.m., NASREEN came to him requesting a film badge because of SITARAM's use of isotopes. HRYHORCZUK said he was surprised because he was unaware that SITARAM was using isotopes. HRYHORCZUK said he then went to SITARAM's laboratory and surveyed the area and determined the presence of radioactivity (Exhibit 5, pp. 11-12; Exhibit 10, p. 13; Exhibit 20; Exhibit 21).

HRYHORCZUK said he subsequently talked with SITARAM about the matter. SITARAM explained he used KUHN's area for his work with isotopes and had KUHN's permission. HRYHORCZUK said SITARAM admitted using P-32 during this conversation. HRYHORCZUK said that during his conversation with SITARAM, SITARAM remarked, "Hey, don't talk to me about radiation safety. I taught radiation safety." HRYHORCZUK said on June 7, 1988, he wrote a memorandum to SITARAM detailing the Clinic's procedures for the use and ordering of radioactive materials (Exhibit 5, pp. 11-15; Exhibit 22). SITARAM acknowledged he talked with HRYHORCZUK on June 6, 1988, and received HRYHORCZUK's memorandum of June 7, 1988. SITARAM also acknowledged that HRYHORCZUK's memorandum detailed the Clinic's procedures on radioactive material use (Exhibit 16, pp. 29-32 and Exhibit 22).

The Clinic's employees must use a sign-in sheet for after hours and weekend Clinic access. One of these sheets reflects an entry dated June 5, 1988, signed by "N. SITARAM." The time in shown on the sheet is 3:39 p.m. with no entry for time out. There is also an entry dated June 7, 1988, signed by "N. SITARAM" with a time in of 2:42 a.m. and again no entry for time out (Exhibit 23).

On June 7, 1988, the areas used by SITARAM during June 5-6, 1988, were surveyed by ARTHUR, HRYHORCZUK, and WARNER, and measurable levels of radioactivity were detected (Exhibit 5, pp. 10-11; Exhibit 6, pp. 23-25, 27-29, and Attachments 5 and 6; Exhibit 9, pp. 26-27; Exhibit 22).

HRYHORCZUK said that on June 7, 1988, before he wrote his memorandum to SITARAM, he called up SITARAM to inform him on how to handle P-32 and to get the information necessary to obtain film badges for SITARAM and NASREEN. HRYHORCZUK said, in this discussion and in his memorandum to SITARAM, he informed SITARAM of the proper procedures in effect at the Clinic to utilize and order radioactive materials (Exhibit 5, pp. 14-17 and 21 and Exhibit 22).

HRYHORCZUK said he ordered the film badges for NASREEN and SITARAM. HRYHORCZUK recalled that he gave NASREEN her film badge on June 10, 1988. HRYHORCZUK said he gave SITARAM's film badge and finger ring badge to SITARAM's secretary on either June 13 or 14, 1988 (Exhibit 5, pp. 14-15 and Exhibit 26). SITARAM acknowledged receipt of the film badges and finger ring badge (Exhibit 16, pp. 29-32).

SITARAM indicated that sometime around June 8-10, 1988, he discussed the events regarding the initial use of P-32 with KUHN, who had been away. SITARAM said that because he needed to do more work with P-32, he planned to do it the weekend of June 12-13, 1988. SITARAM said KUHN told him he would assist him in doing it by Clinic procedures. SITARAM said he had

conversations with Dr. Richard CUMMINGS, WSU's RSO, over the initial P-32 order. SITARAM said he then contacted STUART and placed a second P-32 order (Exhibit 16, pp. 32-35).

[REDACTED] 67C
According to KUHN, after SITARAM received the June 7, 1988, memorandum from HRYHORCZUK, SITARAM came to him and asked if he would intercede with HRYHORCZUK so that he might properly obtain the isotopes and continue his research. KUHN said he subsequently met with HRYHORCZUK and he (HRYHORCZUK) had no objections to SITARAM using P-32. KUHN said that he and HRYHORCZUK then met with WARNER. According to KUHN, WARNER told them that if SITARAM did not get this situation straightened out he would get the NRC involved and have the Clinic closed down, as far as licensed activity. KUHN said he also met with ARTHUR on the matter. KUHN said he contacted STUART and informed her that if SITARAM attempted to order more isotopes to contact WARNER (Exhibit 11, pp. 19-24).

STUART said that sometime after she had placed the first order for SITARAM, she was contacted by KUHN and WARNER. STUART said she was told to contact them before placing any isotope orders for the Clinic. STUART said that a couple of weeks after his May 31, 1988, order of P-32, she was again contacted by SITARAM who wanted to order more P-32. STUART said she attempted to contact WARNER, but he was unavailable. STUART said before she was able to contact WARNER, SITARAM called back and cancelled the order (Exhibit 18).

James BARROWS, an assistant to WSU's RSO, stated that SITARAM was never approved by WSU as an authorized buyer of radioactive material at WSU. BARROWS recalled that on June 15, 1988, SITARAM had requested to become an approved buyer of radioactive material and had been sent an application, but it was never returned. According to BARROWS, he reviewed WSU radiation safety records, and SITARAM never bought or ordered isotopes through WSU and has not done work with isotopes in any building licensed by WSU (Exhibit 25).

BARROWS was asked during his OI interview if he was aware if SITARAM had contacted WSU's RSO in June 1988, regarding approval to order P-32 through WSU and then later cancelled the order. BARROWS stated "he knew for a fact" that SITARAM had never been approved for this purchase and that this could be supported by WSU's RSO's documentation. BARROWS said WSU's NRC license does not cover isotope use at the Clinic even by WSU employees using material ordered through WSU (Exhibit 25).

SITARAM said he was admonished by CUMMINGS, WSU's RSO, over his first use of P-32. SITARAM said that before he placed the second P-32 order, he contacted CUMMINGS. SITARAM additionally said he told STUART to contact CUMMINGS when he placed his second P-32 order through her. SITARAM indicated that at about this time HRYHORCZUK authored a memorandum stating [REDACTED] 67C
SITARAM said he also told WARNER he was going to place the second order. SITARAM said that because of all this controversy he cancelled the second P-32 order (Exhibit 16, pp. 33-36).

SITARAM said at that point he decided he would have ONCOR Laboratories (ONCOR) in Bethesda, Maryland, process the experiment for radioactive labelling. SITARAM said he spent the weekend of June 18-19, 1988, preparing his samples

at the Clinic to take to ONCOR. SITARAM denied using any radioactive materials during this weekend. SITARAM said he could not recall if he wore his film badges on that weekend. SITARAM said that Drs. Sanjay DUBE and John GRABOWSKI were present at times during that weekend (Exhibit 16, pp. 36-40 and 46-49).

DUBE acknowledged that he and SITARAM worked the weekend of June 18-19, 1988, in the Clinic laboratory assigned to SITARAM. DUBE said he was unaware of any radioactive material being used that weekend. DUBE said he did not wear a film badge that weekend. DUBE said SITARAM had a film badge, but he was unsure if SITARAM was wearing that film badge at the time. DUBE indicated he was not at the Clinic the entire weekend (Exhibit 27, pp. 7, 17-20, and 23-27 and Exhibit 23).

GRABOWSKI said he recalled observing SITARAM perform part of his experiment on a Friday in June 1988. GRABOWSKI said that this was the only time that weekend he was present in SITARAM's laboratory. According to GRABOWSKI, SITARAM informed them that he was not using any isotope for tagging at that time. GRABOWSKI said he had no knowledge of any use of radioactive material by SITARAM on this particular weekend (Exhibit 23 and Exhibit 28, pp. 5-7).

DUBE said on or about Monday, June 20, 1988, he helped SITARAM load the samples up in SITARAM's car, and he (SITARAM) left for Washington, D.C. Dr. Norman ROSENZWEIG, SITARAM's supervisor at WSU, said he was aware that SITARAM was going to Bethesda, Maryland. During his interview, ROSENZWEIG initially said SITARAM told him this before he (SITARAM) left, but then ROSENZWEIG said he could not recall if this discussion with SITARAM was before or after SITARAM went to Bethesda (Exhibit 10, pp. 21-22; Exhibit 16, pp. 46-47; Exhibit 27, pp. 5-7; Exhibit 29, pp. 30-31 and 35-38).

HRYPHORCZUK said in a memorandum to SULLIVAN, the Clinic's Acting Director, dated June 23, 1988, that he had discussed with KUHN on June 15, 1988, SITARAM's request to use P-32 the weekend of June 18-19, 1988. The memorandum indicated that as of June 17, 1988, ARTHUR or WARNER were unaware of any ordering of P-32 by SITARAM. HRYPHORCZUK's memorandum states that on June 20, 1988, he (HRYPHORCZUK) found indications that work had been done in SITARAM's laboratory, Room 256R. Initial surveys of Room 256R by ARTHUR on June 21, 1988, did not find any unusual level of radioactivity, according to the memorandum. The memorandum states that on June 21, 1988, WARNER conducted further surveys of Room 256R and found indications of a "significantly high amount of radiation" (Exhibit 5, pp. 29-31 and Attachment 4; Exhibit 6, pp. 34-36, 41-43, and Attachment 10; Exhibit 9, pp. 33-36; Exhibit 30).

KUHN indicated that he believed WARNER, ARTHUR, and HRYPHORCZUK knew that SITARAM had attempted to order P-32 a second time but, in fact, never had. According to KUHN, it was shortly after this that SITARAM's second use was reported. KUHN felt that SITARAM did not use P-32 a second time and that the radiation safety program was "being held hostage" by WARNER and the others (Exhibit 11, pp. 22-24 and 69-72).

DUBE said that after SITARAM had left for Washington, D.C., "5000 counts" of radioactivity were detected in SITARAM's laboratory. DUBE said that just prior to this, the laboratory had been surveyed and found clean. DUBE said

after learning of the contamination, he called SITARAM who told him, "Why don't you go to the police or something?" (Exhibit 27, pp. 5-7 and 12-13).

The Landauer Radiation Dosimetry Report (Landauer Report) for exposure period June 5 to July 4, 1988, shows that [REDACTED] during this period (Exhibit 31). b6,7C

in his OI interview, SITARAM denied using radioactive material other than during the early June 1988 incident. When questioned about the Landauer Report, SITARAM replied, "That must have come from ONCOR." Prior to being confronted with the exposure report, SITARAM stated that he could not recall if he had his film badge with him at ONCOR and had only been an observer at ONCOR. SITARAM said the tagging had been performed by ONCOR personnel (Exhibit 16, pp. 40-46).

Michael T. ELLIOTT, ONCOR's Vice President for Development, said he was contacted by SITARAM regarding ONCOR's procedures for non-isotopic hybridization and detection. ELLIOTT said that in June 1988 SITARAM came to ONCOR in Bethesda, Maryland. ELLIOTT said it was his understanding that the reason SITARAM came to ONCOR was because he (SITARAM) was having difficulties processing materials used in his research. ELLIOTT said he made arrangements with Jay GEORGE, of ONCOR, to assist SITARAM (Exhibit 32).

GEORGE, who is ONCOR's RSO, said SITARAM had brought 10 blots with him to ONCOR. GEORGE recalled that SITARAM was wearing a film badge at the time he came to ONCOR. GEORGE said Harry ROBBINS assisted SITARAM in the labelling. ROBBINS said after observing SITARAM attempts to label the blots, he took over and performed the labelling. According to both GEORGE and ROBBINS, it was their opinion that SITARAM could not have gotten a [REDACTED] while at ONCOR. ROBBINS' radiation exposure records show no exposure for June 1988 (Exhibit 32; Exhibit 33; Exhibit 34; Exhibit 35). b7C

HRZHORCZUK said that the memorandum he initially wrote to SITARAM after the June 4-5, 1988, use of P-32 was sent to SULLIVAN, the Clinic's Acting Director. HRZHORCZUK said he also had discussions with SULLIVAN concerning the incident and NASREEN's firing. HRZHORCZUK said SULLIVAN told him "he would take care of it." HRZHORCZUK said he also met with SULLIVAN again on June 24, 1988, and raised the issue of SITARAM's use, and SULLIVAN told him he was monitoring the situation (Exhibit 5, pp. 17-18 and Exhibit 22).

ARTHUR said that following the two incidents of P-32 use by SITARAM, the matter was discussed at the RSC, of which SULLIVAN was a member. ARTHUR said he gave SULLIVAN the results of the surveys he had performed in SITARAM's laboratory which indicated radioactive use. According to Robert L. MUNSON, Clinic Administrative Officer, SULLIVAN assigned him to investigate the incidents (Exhibit 5, pp. 21-22, 29-30, and 38-39; Exhibit 6, pp. 44-46; Exhibit 36, pp. 4-6).

SULLIVAN said he became aware of the first allegation of improper use of P-32 on or about June 12 or 13, 1988. SULLIVAN said SITARAM was officially a WSU employee who did contract work at the Clinic. SULLIVAN acknowledged receipt of HRZHORCZUK's memorandum on the first incident. SULLIVAN said he was unaware of SITARAM's planned use of P-32 until after the fact. SULLIVAN said he dealt with the allegations regarding SITARAM on two levels; first he had

MUNSON investigate it, and secondly, he referred the matter to the ISC (Exhibit 15, pp. 7-11).

MUNSON said that around June 22, 1988, he was assigned by SULLIVAN to look into an alleged radioactive spill in Rooms 280R and 256R. MUNSON stated he was accompanied HRYHORCZUK who conducted a survey of the area. MUNSON said that based on his investigation, he was satisfied that radioactive materials had been used on the weekend of June 18-19, 1988 (Exhibit 27, pp. 11-13; Exhibit 36, pp. 4-7 and 12; Exhibit 5, pp. 29-30; Exhibit 38).

MUNSON's memorandum dated July 6, 1988, states that he had talked with KUHN who indicated he had offered SITARAM the use of his laboratory. According to MUNSON, KUHN indicated to him that he was unaware that SITARAM planned to use radioactive material in this work. In his OI interview, KUHN denied telling SITARAM he would help him get isotopes for his work (Exhibit 11, pp. 35-36 and Exhibit 38).

MUNSON concluded in his memorandum to SULLIVAN that isotopes had been brought into the Clinic without anyone's knowledge or authority. According to MUNSON, the P-32 order by SITARAM "clearly jeopardizes Lafayette Clinic's License and status with the Nuclear Regulatory Commission." MUNSON said, "Attached you will find a copy of the radiation safety rules which are in effect . . . at the very minimum, rules 3, 4, 5, 7, 9 and 13 have been violated" (Exhibit 38).

SULLIVAN thought at the time he received MUNSON's memorandum, he was in concurrence with MUNSON's findings. SULLIVAN said it appeared to him that SITARAM was not aware of the Clinic's procedures and his actions were out of "ignorance." SULLIVAN said he made inquiries with SITARAM in writing and through an intermediary but never received any response (Exhibit 15, pp. 12 and 16-19).

ROSENZWEIG said he discussed the allegations regarding SITARAM's use of radioactive materials with SULLIVAN. ROSENZWEIG indicated that SULLIVAN wanted to "let everything just quiet down" regarding the allegations of SITARAM's second use of P-32. ROSENZWEIG said he felt that the allegation of the second use of P-32 by SITARAM was untrue because SITARAM already planned to go to Bethesda, Maryland, to do the labelling (Exhibit 29, pp. 35-38).

Willfulness/Intent

- ° The Clinic's procedures for the ordering and use of radioactive material were detailed in a series of memoranda. Several of the researchers said they were aware of these procedures. SITARAM, however, said he was unaware of the Clinic's procedures for the use and ordering of isotopes (Exhibit 5, pp. 6-10; Exhibit 6, pp. 6-13; Exhibit 7; Exhibit 8; Exhibit 9, pp. 9-11 and 14-15; Exhibit 10, pp. 3-6; Exhibit 13; Exhibit 14, pp. 5-7 and 9; Exhibit 15, pp. 14-15; Exhibit 16, pp. 10 and 12-13).
- ° In May 1988, SITARAM said he went to KUHN for guidance on the use of radioactive isotopes in his research because he had never used isotopes at the Clinic. According to SITARAM, KUHN showed him an area in his (KUHN's) laboratory that was equipped to use and dispose of radioactive

material. SITARAM indicated that KUHN gave him a Geiger counter to use (Exhibit 16, pp. 4-10, 16-17, 22-23, and 32).

- ° KUHN recalled discussing SITARAM's experiments with him and said he (KUHN) would not have been surprised if SITARAM's experiments required the use of isotopes. KUHN claimed the use of isotopes was not specifically addressed. WARNER recalled KUHN telling him that SITARAM had mentioned the use of P-32 while discussing the use of KUHN's laboratory (Exhibit 9, pp. 16-18; Exhibit 11, pp. 12-14).
- ° SITARAM indicated that on May 31, 1988, he ordered 500 microcuries of P-32 through WSU. SITARAM acknowledged he did not contact WARNER or ARTHUR, as required by the Clinic's procedures. SITARAM said he received the order at the Clinic on June 1, 1988 (Exhibit 16, pp. 12, 14-15, and 22; Exhibit 18; Exhibit 19, pp. 4-9; Exhibit 5, pp. 13 and 25; Exhibit 6, pp. 18-21; Exhibit 9, pp. 22, 24-25, and 27-29; Exhibit 24, pp. 12-14).
- ° SITARAM said he used all 500 microcuries of P-32 on June 4, 1988, while conducting his experiment. SITARAM said he was alone while performing the experiment on June 4, 1988. SITARAM indicated he did not wear a film badge during the experiment (Exhibit 16, pp. 17-20 and 26-27; Exhibit 10, pp. 8-12; Exhibit 23).
- ° On June 6, 1988, SITARAM's assistant, NASREEN, became aware SITARAM was using isotopes when SITARAM remarked there was a "Chernobyl" going on in the laboratory. NASREEN said she became concerned and requested a film badge from RSO HRYHORCZUK. HRYHORCZUK indicated that this was the first he was aware of SITARAM's use of an isotope. HRYHORCZUK and ARTHUR stated they conducted surveys of SITARAM's laboratory and confirmed the presence of radioactivity (Exhibit 10, pp. 11-16; Exhibit 20; Exhibit 21; Exhibit 5, pp. 10-12; Exhibit 6, pp. 23-25, 27-29, and Attachments 5 and 6; Exhibit 22).
- ° HRYHORCZUK said he subsequently discussed the situation with SITARAM and SITARAM admitted using P-32. According to HRYHORCZUK, SITARAM said that he had KUHN's permission to use this area for work with P-32. HRYHORCZUK stated he wrote SITARAM a memorandum detailing the proper procedures for ordering and using isotopes at the Clinic. HRYHORCZUK said he ordered and gave SITARAM his film badge and finger ring monitor on or about June 13, 1988. SITARAM acknowledged receipt of HRYHORCZUK's memorandum and the monitoring devices (Exhibit 5, pp. 12-17 and 21; Exhibit 26; Exhibit 16, pp. 29-32).
- ° On or about June 15, 1988, SITARAM attempted to become an approved isotope buyer at WSU but never completed the necessary paperwork (Exhibit 16, pp. 33-36 and Exhibit 25).
- ° According to SITARAM, in mid-June 1988 he placed a second order of P-32 through WSU but then cancelled it because of all the controversy over the ~~isotope~~. According to KUHN, SITARAM advised him that he (SITARAM) was going to place a second order, and he (KUHN) advised HRYHORCZUK and WARNER (Exhibit 16, pp. 32-36 and Exhibit 11, pp. 19-24).

6,7C entire

- ° SITARAM said at this point he decided he would have ONCOR in Bethesda, Maryland, perform the radioactive labelling on his samples. On the weekend of June 18-19, SITARAM said he prepared his samples to take to ONCOR. SITARAM denied using isotopes on this weekend and said that DUBE and GRABOWSKI assisted him during this weekend. DUBE and GRABOWSKI acknowledged assisting SITARAM on this weekend, but they were only at the Clinic for part of the weekend. DUBE recalled that SITARAM wore a film badge that weekend (Exhibit 16, pp. 36-40 and 46-49; Exhibit 27, pp. 7, 17-20, and 23-27; Exhibit 23; Exhibit 28, pp. 5-7).

- ° On June 21, 1988, HRYHORCZUK and ARTHUR found a "significantly high amount of radiation" in SITARAM's laboratory. KUHN indicated that WARNER, ARTHUR, and HRYHORCZUK had been aware of SITARAM's planned order of P-32 the second time, and after he (SITARAM) failed to get their permission for the order, they presumed he had, in fact, used it that weekend. KUHN said he did not believe there ever was a second use, and this was an attempt to hold the Clinic radiation safety program "hostage" (Exhibit 11, pp. 22-24 and 69-72; Exhibit 5 pp. 29-31 and Attachment 4; Exhibit 6, pp. 34-36 and 41-43; Exhibit 9, pp. 33-36; Exhibit 30).

b7c ° The Landauer Report for the exposure period June 5 to July 4, 1988, shows that [REDACTED] during this period (Exhibit 31).

- ° SITARAM denied using radioactive materials other than during the first incident. When questioned about the Landauer Report, SITARAM replied it "must have come from ONCOR." Prior to being confronted with the exposure report, SITARAM stated that he could not recall if he had his film badge with him at ONCOR and had only been an observer at ONCOR (Exhibit 16, pp. 40-46).

b7c ° ONCOR personnel involved with SITARAM recalled that SITARAM had worn his own film badge at ONCOR. The ONCOR personnel doubted that SITARAM [REDACTED] (Exhibit 32; Exhibit 33; Exhibit 34; Exhibit 35).

- ° An internal investigation conducted by MUNSON for SULLIVAN, the Clinic's Acting Director, concluded that SITARAM's May 31, 1988, P-32 order "clearly jeopardizes Lafayette Clinic's License and status with the Nuclear Regulatory Commission." MUNSON stated, "Attached you will find a copy of the radiation safety rules which are in effect . . . at the very minimum, rules 3, 4, 5, 7, 9 and 13 have been violated." MUNSON's testimony states that, based on the investigation, he was satisfied that radioactive materials had been used on the weekend of June 18-19, 1988 (Exhibit 27, pp. 11-13; Exhibit 36, pp. 4-7 and 12; Exhibit 5, pp. 29-30; Exhibit 38).

Agent's Conclusion

It is concluded that SITARAM's use of isotopes on the weekend of June 18-19, 1988, was a deliberate violation of the Clinic's license conditions. It is further concluded that KUHN's intercession on SITARAM's behalf with the RSO did not constitute involvement in SITARAM's violation of the Clinic's license condition.

Allegation 2: Alleged Discrimination in the Removal of the Radiation Safety Officer

Background

In August 1988 subsequent to the events detailed in the first allegation of this report, the Clinic's RSO, HRYHORCZUK, was removed from the position.

Details

On March 21, 1988, SULLIVAN, the Clinic's Acting Director, notified the NRC that he had appointed HRYHORCZUK RSO. SULLIVAN said he also made HRYHORCZUK Chairman of the RSC. SULLIVAN indicated that the Clinic was lacking in a number of areas when he was asked about the Clinic procedures for ordering isotopes. SULLIVAN said he asked HRYHORCZUK "to try and get on top of things" in regards to radiation safety at the Clinic. SULLIVAN said that former RSO, Eugene DEMBICKI, had recommended HRYHORCZUK as the most qualified to replace him. SULLIVAN said that HRYHORCZUK's qualifications could have been greater, but he (HRYHORCZUK) was willing to take on the responsibilities (Exhibit 15, pp. 2-7; Exhibit 39; Exhibit 5, pp. 4-6).

HRYHORCZUK said that as a result of the improper use of the phosphorus-32 (P-32) by SITARAM and [REDACTED] he authored several memoranda detailing these incidents. One memorandum regarding [REDACTED] was sent to Dr. Joseph FISCHHOFF at WSU and referenced Federal regulations on employee protection (Exhibit 5, pp. 33-36 and Exhibit 40). b7C

INVESTIGATOR'S NOTE: The details of the events related to SITARAM's use of radioactive materials in June 1988 along with HRYHORCZUK's involvement are detailed in Allegation 1.

KUHN, a Clinic researcher, said that after the second alleged use of P-32 by SITARAM, he became concerned over the approach the RSO (HRYHORCZUK) and WARNER, the authorized user on the Clinic's NRC license, had toward research. KUHN said the researchers' work depended upon isotope use and he felt WARNER's and HRYHORCZUK's actions were making it increasingly difficult to use the isotopes. KUHN said he telephoned the NRC about WARNER's remarks concerning closing the Clinic "down," i.e., the radiation safety program (Exhibit 11, pp. 23-25).

KUHN wrote a memorandum to SULLIVAN, FISCHHOFF, and ROSENZWEIG, the head of WSU, Department of Psychiatry, taking issue with HRYHORCZUK's handling of the SITARAM incident and HRYHORCZUK's memorandum on NASREEN to FISCHHOFF. HRYHORCZUK responded to this memorandum on June 30, 1988 (Exhibit 40; Exhibit 37; Exhibit 42).

KUHN said he authored this memorandum because [REDACTED] and he felt HRYHORCZUK's memorandum was inaccurate. KUHN said he informed ROSENZWEIG of this, and he subsequently met with SULLIVAN and HRYHORCZUK on June 24, 1988 (Exhibit 5, p. 37 and Exhibit 11, pp. 26-32). b7C

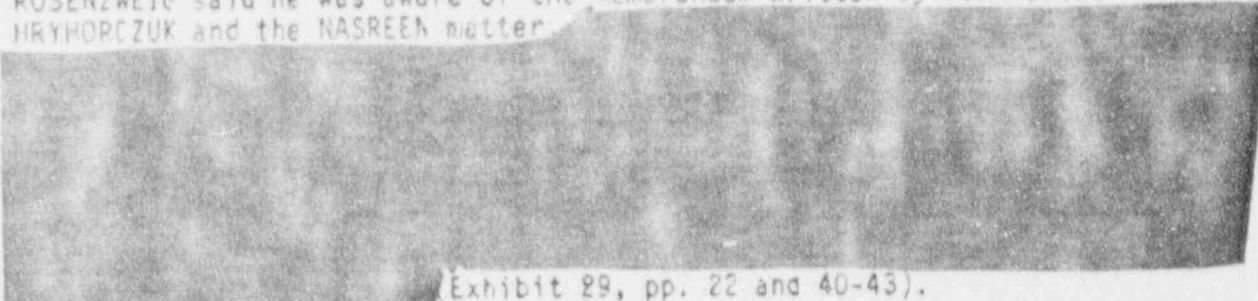
SULLIVAN said he thought he pursued SITARAM's use of P-32 through his Administrative Assistant, MUNSON, and the RSC, which was chaired by

HRYHORCZUK. According to SULLIVAN, SITARAM was not talking to him, so through the RSC several attempts were made to get an explanation from SITARAM on the use of the P-32. SULLIVAN said that ROSENZWEIG was SITARAM's supervisor at WSU (Exhibit 15, pp. 5, 7-8, 12-13, and 17-18; Exhibit 43; Exhibit 44).

On July 8, 1988, ROSENZWEIG wrote SULLIVAN and proposed that the Clinic's RSC be reorganized. ROSENZWEIG's letter proposed that the Committee be comprised of KUHN, LEVINE, SITARAM, Dr. Matthew GALLOWAY, and Dr. Robert FREEDMAN (Exhibit 45).

According to ROSENZWEIG, in 1988 the DMH, who funds the operation of the Clinic, and WSU were negotiating for WSU to take over the research functions of the Clinic. ROSENZWEIG said SULLIVAN had appointed HRYHORCZUK in March 1988 without consulting him, and it was not until the SITARAM incident that he became aware of this appointment. ROSENZWEIG acknowledged that SULLIVAN had the authority to appoint HRYHORCZUK as the Clinic's RSO. ROSENZWEIG said his reorganization proposal was a recommendation (Exhibit 29, pp. 18-24, 49-50, and Attachment 1).

ROSENZWEIG said he was aware of the memorandum written by KUHN about HRYHORCZUK and the NASREEN matter.



(Exhibit 29, pp. 22 and 40-43).

ROSENZWEIG said at this same meeting with SULLIVAN, he told him (SULLIVAN) to submit a list of researchers experienced with isotopes (Exhibit 29, pp. 40-41).

SULLIVAN's version of the events leading up to ROSENZWEIG's RSC reorganization memorandum, was that it was SULLIVAN's understanding that there was an October 1, 1988, deadline set by the DMH for WSU to take over the Clinic's research functions. SULLIVAN explained at the time he was not talking with ROSENZWEIG and dealt with him through intermediaries. SULLIVAN said that the DMH was allowing WSU to make all the changes in research and ROSENZWEIG's memorandum on the RSC reorganization was just the first of the changes. SULLIVAN said he just forwarded the ROSENZWEIG RSC reorganization memorandum to the DMH (Exhibit 15, pp. 19-22 and Exhibit 45).

Regarding a July 12, 1988, letter from KUHN subsequently sent to the NRC requesting that KUHN, SITARAM, and others be placed on the Clinic's license as authorized users, SULLIVAN said he does not recall seeing it. SULLIVAN said KUHN did not have the authority to amend the license. SULLIVAN said KUHN became involved in the SITARAM/HRYHORCZUK dispute, and he believed that KUHN was caught in the middle. SULLIVAN said he recalled at about the time of the KUHN letter, KUHN and five other researchers came to him requesting permission to go to ROSENZWEIG to get permission to be named to the RSC. SULLIVAN said he considered the issue a WSU issue and told them to go ahead (Exhibit 15, pp. 30-32 and Attachment 5; Exhibit 37).

SULLIVAN indicated the five users named in KUHN's letter to the NRC were aware that ROSENZWEIG would be running the Clinic after the merger (Exhibit 15, p. 32).

LEVINE, the current RSO at the Clinic, said that in the summer of 1988 there was a general concern among the researchers over the capabilities of HRYHORCZUK as RSO. LEVINE said that after the incidents of June 1988 it became apparent to him that the Clinic needed to "get people involved in the program (radiation safety) who knew something about radioactivity." LEVINE said it was his opinion that those involved in the radiation safety program at that time (i.e., HRYHORCZUK, WARNER, and ARTHUR) did not have the capabilities required. LEVINE said as a result of these efforts KUHN was named Chairman of the RSC and RSO. LEVINE said their efforts were more toward the RSC, and the fact that KUHN would become RSO was not that clear (Exhibit 12, pp. 5-10).

On August 26, 1988, SULLIVAN issued a memorandum naming KUHN, SITARAM, FREEDMAN, LEVINE, GALLOWAY, and WARNER to the RSC. KUHN was to be Chairman of the RSC and "as such he will serve as the radioactivity officer." According to the memorandum, the current RSC was dissolved effective September 1, 1988 (Exhibit 15, p. 19, and Attachment 3; Exhibit 46).

In a letter dated August 26, 1988, SULLIVAN notified HRYHORCZUK he was being removed from the RSC. SULLIVAN said HRYHORCZUK was on vacation at the time of this change so he called HRYHORCZUK at home to notify him of his removal. SULLIVAN indicated he was satisfied with HRYHORCZUK's performance as RSO but replaced him per ROSENZWEIG and the DMH's request (Exhibit 15, pp. 19, 24-26, 41, and Attachment 4; Exhibit 47).

HRYHORCZUK said he was aware in July/August 1988 that WSU was attempting to take over the research activities of the Clinic. HRYHORCZUK said at this time ROSENZWEIG wrote a memorandum to SULLIVAN indicating that he (ROSENZWEIG) would have expected SULLIVAN to [REDACTED] 6,7C
[REDACTED] HRYHORCZUK said, "The next thing I knew was that I was dismissed as Radiation Safety Officer" (Exhibit 5, pp. 39-44 and Attachment 5).

HRYHORCZUK said he spoke with SULLIVAN after his removal as RSO, but SULLIVAN basically repeated what was in the August 26, 1988, letter to him. HRYHORCZUK indicated he was led to believe that ROSENZWEIG had made the selections for the RSC. HRYHORCZUK acknowledged that SULLIVAN never indicated any dissatisfaction with his performance (Exhibit 5, pp. 43-45).

HRYHORCZUK said he felt he was replaced after he raised a radiation safety issue with FREEDMAN and as a result of his conflicts with KUHN and ROSENZWEIG. HRYHORCZUK said his pursuit of the SITARAM incidents was also a factor in his removal as RSO. HRYHORCZUK indicated that ROSENZWEIG was responsible for his removal as RSO (Exhibit 5, pp. 53-54 and 61-63).

MUNSON, SULLIVAN's Administrative Assistant who investigated the SITARAM incidents, said that HRYHORCZUK filed a grievance over his removal as RSO, and he (MUNSON) investigated the removal. MUNSON said he does not know the reason for HRYHORCZUK's removal as RSO. MUNSON [REDACTED] 6,7C

[REDACTED] MUNSON indicated that KUHN, LEVINE, and GALLOWAY were at odds with

b7c HRYHORCZUK, MUNSON said it was his finding that HRYHORCZUK did not suffer or incur any loss of prestige in his removal as RSO (Exhibit 36, pp. 7-11).

RAINEY, the former Director of Research Administration, said he discussed the RSC reorganization with SULLIVAN. According to RAINEY, SULLIVAN told him the purpose of the reorganization was to increase the expertise of the individuals on the RSC. SULLIVAN also indicated to him that he wanted an RSO with more expertise than HRYHORCZUK (Exhibit 13, pp. 17-22). WARNER indicated that he felt that the RSC was reorganized at ROSENZWEIG's request to prevent HRYHORCZUK and the RSC from investigating the SITARAM allegation (Exhibit 9, pp. 43-47).

ROSENZWEIG said he recommended SITARAM for the reorganized RSC because his (SITARAM's) violations of procedures were a result of ignorance. ROSENZWEIG said that SITARAM was a person of great moral rectitude. b7c

[REDACTED] Exhibit 29, pp. 43-48).

(INVESTIGATOR'S NOTE: b7c)

SITARAM said he did not discuss his appointment to the RSC with ROSENZWEIG before it was implemented. SITARAM said ROSENZWEIG and KUHN instituted the RSC change. SITARAM said he did not request to be placed on the RSC and, in fact, had asked ROSENZWEIG to relieve him of his duties (Exhibit 16, pp. 53-55 and Exhibit 29, pp. 29-30).

b7c KUHN said he discussed the RSC reorganization with SULLIVAN before it took place. KUHN said in the discussions that led up to the reorganization, he felt that it was not a good idea to include SITARAM, but it was ROSENZWEIG's opinion that SITARAM should be included. KUHN indicated the purpose of the reorganization was to include researchers on the RSC, and also because he felt the current RSC "had carried out actions which indicated that we were going to have [REDACTED] KUHN said it was not the intent of the reorganization to cover-up anything (Exhibit 11, pp. 48-49).

Willfulness/Intent

° On March 21, 1988, SULLIVAN, the Clinic's Acting Director, appointed HRYHORCZUK, RSO. SULLIVAN said HRYHORCZUK had been recommended by the Clinic's former RSO and he instructed HRYHORCZUK "to try and get on top of things" in regards to radiation safety (Exhibit 15, pp. 2-7; Exhibit 39; Exhibit 5, pp. 4-6).

b7c ° [REDACTED] HRYHORCZUK's documentation of the SITARAM incidents involving isotopes included reference to NRC regulations concerning employee protection (Exhibit 5, pp. 33-36 and Exhibit 40).

° Following the second alleged improper use of isotopes by SITARAM in mid-June 1988, KUHN and LEVINE said they became concerned about the interference of the RSO (HRYHORCZUK) and WARNER, the licensee's

authorized user, with their ability to use isotopes in their research (Exhibit 11, pp. 23-25 and Exhibit 12, pp. 5-10).

67C According to SULLIVAN, KUHN subsequently contacted ROSENZWEIG, the head of the WSU Department of Psychiatry, regarding the researchers' [REDACTED] and requesting to be named the RSO. KUHN also contacted the NRC and requested to be put on the Clinic's NRC license as an authorized user without SULLIVAN's permission (Exhibit 11, pp. 26-32; Exhibit 15, pp. 30-32 and Attachment 5; Exhibit 37).

- SULLIVAN said that in June/July 1988 WSU was negotiating with the DMH to take over the research functions of the Clinic as of October 1, 1988. SULLIVAN said that KUHN was aware of this planned transfer of their research functions to WSU and knew that ROSENZWEIG would be running the Clinic after the merger (Exhibit 15, pp. 19-22 and 32).
- ROSENZWEIG made an issue in his interview with OI that SULLIVAN had named HRYHORCZUK RSO without consulting him. ROSENZWEIG said that after he became aware of HRYHORCZUK's memorandum [REDACTED]

[REDACTED] (Exhibit 29, pp. 18-24, 40-43, 49-50, and Attachment 1).

- On July 8, 1988, ROSENZWEIG wrote SULLIVAN and proposed that the Clinic's RSC be reorganized. ROSENZWEIG's letter proposed that the committee be comprised of KUHN, LEVINE, SITARAM, GALLOWAY, and FREEDMAN (Exhibit 45).
- On August 26, 1988, SULLIVAN issued a memorandum reorganizing the RSC effective September 1, 1988. KUHN was to be Chairman of the RSC and "as such will serve as the radioactivity officer" (Exhibit 15, p. 19, and Attachment 3; Exhibit 46).
- On August 26, 1988, SULLIVAN wrote HRYHORCZUK and advised him of his removal from the RSC. SULLIVAN indicated he was satisfied with HRYHORCZUK's performance as RSO, but he was replaced per ROSENZWEIG's instructions through the DMH (Exhibit 15, pp. 19, 24-26, 41, and Attachment 4; Exhibit 47).
- HRYHORCZUK said SULLIVAN never indicated any dissatisfaction with his performance as RSO. HRYHORCZUK said that ROSENZWEIG had written a memorandum to SULLIVAN stating that [REDACTED] HRYHORCZUK said, "The next thing I knew was that I was dismissed as Radiation Safety Officer" (Exhibit 5, pp. 39-44 and Attachment 5).
- HRYHORCZUK said he felt he was replaced by ROSENZWEIG as RSO because of his pursuit of the SITARAM incidents and another incident he had with FREEDMAN over radiation safety. WARNER felt HRYHORCZUK's removal was to prevent the RSC from investigating the allegations against SITARAM (Exhibit 5, pp. 53-54 and 61-63; Exhibit 9, pp. 43-47).

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MUNSON, SULLIVAN's Administrative Assistant, investigated HRYHORCZUK's removal as RSO as a result of a grievance filed by HRYHORCZUK. MUNSON said he does not know the reason for HRYHORCZUK's removal as RSO but

MUNSON found that HRYHORCZUK did not either suffer or incur any loss of prestige as a result of his removal as RSO (Exhibit 36, pp. 7-11).

ROSENZWEIG said he recommended SITARAM for the reorganized RSC because his (SITARAM's) violations of procedures were a result of ignorance. ROSENZWEIG said that SITARAM was a person of great moral rectitude.

(Exhibit 29, pp. 43-48).

KUHN indicated the purpose of the reorganization was to include researchers on the RSC, and also because he felt the current RSC "had carried out actions which indicated that we were going to have nothing but trouble" from those currently serving on the RSC. KUHN said it was not the intent of the reorganization to cover-up anything (Exhibit 11, pp. 48-49).

Agent's Conclusion

It is concluded that HRYHORCZUK was willfully discriminated against in his removal from the Clinic's RSC and his position as RSO.

Allegation 3: Alleged Discrimination Threats Made by the Clinic Director

Background

On July 3, 1989, the RA requested an investigation into an allegation that the Clinic Director, SARWER-FONER, discouraged Clinic staff members from "relaying our concerns about radiation safety to 'third parties' and 'outside agencies.'"

Details

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The minutes of the June 7, 1989, meeting indicated that SARWER-FONER discussed the press coverage of the Clinic and "in particular, the problems with radiation safety." The minutes state that a hierarchy of responsibility had been established with respect to use of radiation materials. The minutes indicate that SARWER-FONER informed the researchers that in the event of a problem with radiation materials, it should be reported to the department head who will report to the PSD, LEVINE. KUHN or SARWER-FONER would then be contacted, if necessary. The minutes state, "All staff are instructed to follow this established hierarchy structure and not by-pass appropriate individuals who have been delegated with specific responsibilities." The minutes state in regards to media attention, that only SARWER-FONER or his designee is approved to discuss events at the Clinic (Exhibit 53).

ARTHUR said he attended the June 7, 1989, meeting chaired by SARWER-FONER. ARTHUR said he took notes of the meeting. ARTHUR said, and his notes reflect, that SARWER-FONER told the researchers, "If people weren't willing to comply with the rules they should leave." According to ARTHUR, SARWER-FONER then told them that they should not be going to the NRC or to the press on in-house problems. ARTHUR said that he was not intimidated by SARWER-FONER's remarks, and he did not feel inhibited in contacting the NRC on safety problems. ARTHUR said that in late 1988, around the time of the Nuclear Energy Service audit during a meeting with KUHN and WARNER, it was suggested that he write the NRC and tell them he had not been pressured (Exhibit 54, pp. 4-15 and Exhibit 15).

FUCEK said he attended the meeting with SARWER-FONER. In regards to radiation safety problems, FUCEK said SARWER-FONER told them to go through the chain of command on these problems. FUCEK said that SARWER-FONER never mentioned that they could not go to the NRC on these problems. FUCEK said that he would not

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The minutes of the June 7, 1989, meeting indicated that SARWER-FONER discussed the press coverage of the Clinic and "in particular, the problems with radiation safety." The minutes state that a hierarchy of responsibility had been established with respect to use of radiation materials. The minutes indicate that SARWER-FONER informed the researchers that in the event of a problem with radiation materials, it should be reported to the department head who will contact the RSO, LEVINE. KUHN or SARWER-FONER would then be contacted, if necessary. The minutes state, "All staff are instructed to follow this established hierarchy structure and not by-pass appropriate individuals who have been relegated with specific responsibilities." The minutes state in regards to media attention, that only SARWER-FONER or his designee is approved to discuss events at the Clinic (Exhibit 53).

ARTHUR said he attended the June 7, 1989, meeting chaired by SARWER-FONER. ARTHUR said he took notes of the meeting. ARTHUR said, and his notes reflect, that SARWER-FONER told the researchers, "If people weren't willing to comply with the rules they should leave." According to ARTHUR, SARWER-FONER then told them that they should not be going to the NRC or to the press on in-house problems. ARTHUR said that he was not intimidated by SARWER-FONER's remarks, and he did not feel inhibited in contacting the NRC on safety problems. ARTHUR said that in late 1988, around the time of the Nuclear Energy Service audit during a meeting with KUHN and WARNER, it was suggested that he write the NRC and tell them he had not been pressured (Exhibit 54, pp. 4-15 and Exhibit 55).

FUCEK said he attended the meeting with SARWER-FONER. In regards to radiation safety problems, FUCEK said SARWER-FONER told them to go through the chain of command on these problems. FUCEK said that SARWER-FONER never mentioned that they could not go to the NRC on these problems. FUCEK said that he would not

have hesitated in contacting the NRC on any unresolved problems because of SARWER-FONER's statements (Exhibit 10, pp. 30-32).

HRZHORCZUK, the former RSO, said he attended the June 7, 1989, meeting chaired by SARWER-FONER. HRZHORCZUK said that SARWER-FONER mentioned there had been a problem with radiation safety over a spill. HRZHORCZUK said that SARWER-FONER told them there were no longer any problems with radiation safety at the Clinic (Exhibit 5, pp. 57-58).

HRZHORCZUK said that SARWER-FONER discussed with the group that if people did not fit in the operation of the Clinic, there would be a "sociological solution." According to HRZHORCZUK, SARWER-FONER informed them he was the only spokesman for the Clinic, and he did not want people talking to outside agencies or newspapers. SARWER-FONER told the group that he was not there to interfere with their first amendment rights, but there would be consequences. HRZHORCZUK said he interpreted SARWER-FONER's remarks concerning "sociological solution" to mean that SARWER-FONER would "push somebody out" who did not fit in. HRZHORCZUK said he did not know if he felt intimidated by SARWER-FONER's remarks. Based on SARWER-FONER's remarks, HRZHORCZUK had informed SULLIVAN, the former director, that he (HRZHORCZUK) was being interviewed by OI (Exhibit 5, pp. 57-61).

KUHN said it was his interpretation of SARWER-FONER's remarks on dealing with outside agencies as wanting to be aware of the Clinic's problems so he (SARWER-FONER) could correct them. KUHN could not recall if he mentioned the NRC in his comments and said there was no negative connotation for going to the NRC. KUHN said he did not feel that SARWER-FONER's remarks inhibited his free access to the NRC (Exhibit 11, pp. 64-67).

LEVINE explained that SARWER-FONER's remarks regarding contacting the NRC were a reiteration of the procedures detailed in the NRC Form-3. LEVINE said SARWER-FONER believes rules, regulations, and procedures should be followed, but he did not get the impression that SARWER-FONER's remarks were intimidating or contained an implied threat of retribution (Exhibit 12, pp. 17-21).

Kenneth A. WARNER indicated he attended the June 7, 1989, meeting chaired by SARWER-FONER. WARNER said he made notes regarding the meeting. WARNER said he was intimidated by SARWER-FONER's remark that, "If you don't like the new rules, leave." WARNER said the rules discussed at the meeting were basic rules regarding everyday procedures. WARNER's notes state, "Threatened indirectly that people do not go to NRC or press with problems even if there are cover-ups of problems in-house." WARNER indicated he thought that the implication of SARWER-FONER's remarks was that there was the possibility job action could be taken against him if he went to the NRC (Exhibit 24, pp. 4-11 and Exhibit 57).

SARWER-FONER said he established a hierarchy within the Clinic regarding radiation safety problems and reporting of these problems. SARWER-FONER said he communicated these procedures to the research staff, and he told the staff he was the sole spokesman for the Clinic. SARWER-FONER also commented that he did not preclude the researchers from going to the NRC and said they (the researchers) knew they could contact the NRC. SARWER-FONER said the NRC

Form-3 posters regarding contacting the NRC were posted throughout the Clinic (Exhibit 56, pp. 12-21 and 24-25).

SARWER-FONER described the meeting tone as one of free discussion with question and answer periods. SARWER-FONER said there is no foundation to the complaints of intimidation or threats of punishment. SARWER-FONER said he did not receive any negative feedback on this meeting and acknowledged that no one told him they felt intimidated by his remarks. SARWER-FONER said the only disciplinary action taken against an employee was the removal of [REDACTED] (Exhibit 56, pp. 22-23). 6,7C

[REDACTED] 6,7C

Willfulness/Intent

- ° At a meeting held with the research staff of the Clinic on June 7, 1989, SARWER-FONER discussed the reporting procedures for radiation safety problems. SARWER-FONER also discussed that he is the Clinic's spokesman in dealings with outside agencies (Exhibit 14, pp. 23-25; Exhibit 53; Exhibit 54, pp. 5-15; Exhibit 55; Exhibit 10, pp. 30-32; Exhibit 5, pp. 57-58; Exhibit 11, pp. 64-67; Exhibit 12, pp. 17-21; Exhibit 24, pp. 4-11; Exhibit 56, pp. 12-21).
- ° [REDACTED] HRYHORCZUK, ARTHUR, and WARNER said that SARWER-FONER made remarks that those Clinic researchers who did not follow procedures should/could leave. [REDACTED] HRYHORCZUK, ARTHUR, and WARNER believed, based on SARWER-FONER's statements, that there existed the possibility of job actions against anyone who contacted an outside agency (some believed that meant the NRC) about problems in the Clinic (Exhibit 5, pp. 57-61; Exhibit 14, pp. 24-25; Exhibit 54, pp. 5-15; Exhibit 55; Exhibit 24, pp. 4-11; Exhibit 57).
- ° [REDACTED] and ARTHUR said they were not intimidated by SARWER-FONER's remarks. WARNER indicated he was intimidated, and HRYHORCZUK said he did not know if the remarks intimidated him (Exhibit 14, p. 25; Exhibit 54, pp. 5-15; Exhibit 5, pp. 57-61; Exhibit 24, pp. 4-11).
- ° The minutes of the June 7, 1989, meeting do not reflect any reference to SARWER-FONER's statement concerning the consequences of failure to follow Clinic rules (Exhibit 53).
- ° FUCEK said he attended the June 7, 1989, meeting. FUCEK said he did not recall SARWER-FONER making any statements prohibiting researchers from going to the NRC with concerns. KUHN and LEVINE, the RSO, said they attended the meeting and denied that SARWER-FONER made any threats for going to the NRC. LEVINE said SARWER-FONER was just reiterating the procedures in NRC Form-3 (Exhibit 12, pp. 17-21; Exhibit 10, pp. 30-32; Exhibit 11, pp. 64-67).

- * SARWER-FONER commented that his remarks did not preclude the researchers from going to the NRC. SARWER-FONER said the researchers knew they could contact the NRC as the NRC Form-3 was posted throughout the Clinic. SARWER-FONER described the tone of the meeting as one of free discussion with question and answer periods (Exhibit 56, pp. 12-26).

Agent's Conclusion

It is concluded that SARWER-FONER's remarks were not a willful attempt on his part to prohibit or discourage Clinic researchers from contacting the NRC on the radiation safety concerns.

Allegation 4: The Acting Director of the Clinic Made Material False Statements to the NRC

Background

While investigating allegations concerning the Clinic, OI developed an additional allegation related to a potential material false statement made by SULLIVAN, at the time the Clinic's Acting Director. On October 20, 1988, SULLIVAN wrote to the RA in response to a Confirmatory Action Letter (CAL) issued on October 14, 1988, for failure to have an NRC approved RSO. In his letter, SULLIVAN said he had not been informed that the RSO, HRYHORCZUK, had been terminated as RSO. However, on August 26, 1988, SULLIVAN authorized issuance of a memorandum appointing KUHN Chairman of the RSC and "as such he will serve as the radioactivity officer."

Details

On March 21, 1988, SULLIVAN wrote to the NRC naming HRYHORCZUK RSO (Exhibit 15, pp. 3-4 and Exhibit 39).

A memorandum dated July 8, 1988, from ROSENZWEIG, Chairman, Department of Psychiatry, WSU, to SULLIVAN proposed a reorganization of the Clinic's RSC until WSU took over the Clinic's research functions. SULLIVAN said he did not have any discussions with ROSENZWEIG on the memorandum (Exhibit 15, pp. 40-41 and Exhibit 45).

SULLIVAN said that when he received ROSENZWEIG's memorandum, he forwarded it to his supervisor (Diane CENSONI) at the DMH. SULLIVAN indicated in August 1988 that the first action approved by DMH in regard to the WSU takeover, was the RSC reorganization. SULLIVAN said the DMH wanted the RSC reorganized with KUHN made both the Chairman of the RSC and the RSO (Exhibit 15, pp. 21-22 and 40-41).

On August 26, 1988, SULLIVAN wrote a memorandum to "All Researchers and Heads of Departments" regarding the reorganization of the RSC. The memorandum lists Dr. D. KUHN, Chairman, and states, "And as such he will serve as the radioactivity officer" (Exhibit 46).

SULLIVAN was asked during his OI interview if a "radioactivity officer" was the same as a RSO. SULLIVAN replied, "I don't know. See, in my mind, it wasn't complete [the reorganization] although the memos I wrote sounded like this was going to take effect" (Exhibit 15, pp. 22-24).

In a memorandum dated August 26, 1988, from SULLIVAN to HRYHORCZUK, SULLIVAN informed HRYHORCZUK of his replacement by KUHN as Chairman of the RSC. SULLIVAN said he called HRYHORCZUK to advise him of the changes he was implementing per DMH (Exhibit 15, pp. 24-26 and Exhibit 47).

HRYHORCZUK acknowledged that per SULLIVAN's memorandum to him dated August 26, 1988, he was replaced as RSO and as the Chairman of the RSC. HRYHORCZUK said that based on the memorandum and his discussions with SULLIVAN, he transferred to KUHN all the records and equipment he maintained as RSO. HRYHORCZUK said this process was completed by September 22, 1988 (Exhibit 5, pp. 44-46).

SULLIVAN said after he received instructions from DMH on the RSC reorganization, he notified HRYHORCZUK. Regarding replacing HRYHORCZUK with KUHN, SULLIVAN stated, "We had to have something in place for those six weeks [while waiting for finalization of WSU's takeover]. I think what I did is, I sent Dr. KUHN as the Radiation Safety Officer down. I set up that Committee [RSC]" (Exhibit 15, pp. 23-24).

During his OI interview, several attempts were made to determine if SULLIVAN was aware that his memorandum resulted in the replacement of HRYHORCZUK by KUHN as RSO. SULLIVAN responded that "this was done very quickly" but he did not ever directly answer the question (Exhibit 15, pp. 26-27). SULLIVAN did admit, however, the consequences of these memoranda were that KUHN effectively became responsible for the RSO duties (Exhibit 15, pp. 33-34 and 39-40).

SULLIVAN acknowledged that he expected KUHN and HRYHORCZUK to take action as a result of his memoranda of August 26, 1988. HRYHORCZUK said as the result of the memorandum and his discussions with SULLIVAN, he turned over all the RSO equipment and documents to KUHN. ARTHUR, the Clinic's Radiation Monitor who was also responsible to maintain the Clinic's inventory of isotopes, said that when he received SULLIVAN's memorandum replacing him on the RSC, he assumed he had been replaced. ARTHUR documented his final surveys in a memorandum dated September 27, 1988, and advised KUHN and SULLIVAN that his records and equipment were available for their pickup (Exhibit 6, pp. 48-50 and Attachment 13; Exhibit 5, pp. 45-47; Exhibit 15, pp. 37-39).

KUHN said that on September 21, 1988, HRYHORCZUK turned over the RSO records and equipment. KUHN claimed he was unaware, at the time HRYHORCZUK turned this equipment over, that HRYHORCZUK was no longer RSO. KUHN said he thought SULLIVAN was aware HRYHORCZUK had turned over the RSO records and equipment to him. HRYHORCZUK's memorandum of September 6, 1988, documenting the transfer of the records and equipment to KUHN, indicates that SULLIVAN was sent a copy (Exhibit 11, pp. 54-56; Exhibit 48; Exhibit 49).

INVESTIGATOR'S NOTE:

In a letter dated September 6, 1988, HRYHORCZUK notified the NRC that he was no longer RSO at the Clinic (Exhibit 50).

KUHN acknowledged that at the time HRYHORCZUK turned everything over to him, he understood that HRYHORCZUK no longer had any responsibilities with radiation safety at the Clinic. KUHN said he was unaware at that time that he was the NRC recognized RSO or of the requirement to notify the NRC of the change in RSO (Exhibit 11, pp. 55-58).

LEVINE, the current RSO, said the changes instituted by SULLIVAN's August 26, 1988, memorandum could have been interpreted that KUHN replaced HRYHORCZUK as RSO. LEVINE said KUHN knew for sure he was the Chairman of the RSC and was responsible for activities that occurred within the Clinic; LEVINE was not clear if KUHN knew he was RSO. LEVINE said that on October 14, 1988, the Clinic received a CAL from the NRC, and they discovered the Clinic did not have an NRC approved RSO (Exhibit 12, pp. 4-9).

KUHN said he did not realize he had been appointed RSO as far as the Clinic's license was concerned, until after the CAL was issued. KUHN said the reorganization made him Chairman of the RSC but he did not equate this with being RSO in terms of the Clinic's NRC license (Exhibit 11, pp. 52-54).

A Clinic letter dated October 20, 1988, signed by SULLIVAN, was sent to the NRC. The letter states in part, "Due to a lack of proper communication through appropriate administrative channels, I was not informed by our prior radiation safety officer, Lew M. HRYHORCZUK, that he was terminating his services as of Sept. 6, 1988, which resulted in the Lafayette Clinic receiving a Confirmatory action letter from the N.R.C. on Oct 14, 1988" (Exhibit 51).

Willfulness/Intent

- ° On March 21, 1988, SULLIVAN, the Clinic's Acting Director, authored a letter to the NRC naming HRYHORCZUK RSO (Exhibit 15, pp. 3-4 and Exhibit 39).
- ° In a memorandum dated July 8, 1988, ROSENZWEIG, Chairman, Department of Psychiatry, WSU, proposed a reorganization of the Clinic's RSC (Exhibit 15, pp. 40-41 and Exhibit 45).
- ° SULLIVAN said he forwarded ROSENZWEIG's proposal to his superiors at DMH because at that time WSU was attempting to take over the Clinic's research functions. SULLIVAN indicated that DMH approved ROSENZWEIG's proposal in August 1988, and DMH wanted KUHN made the Chairman of the RSC and RSO (Exhibit 15, pp. 21-22 and 40-41).
- ° On August 26, 1988, SULLIVAN wrote a memorandum to all the researchers and department heads at the Clinic advising them of a reorganization of the RSC. The memorandum lists KUHN as Chairman of the RSC and states, "and as such will serve as radioactivity officer." SULLIVAN also wrote and telephoned HRYHORCZUK advising him that KUHN was replacing him (Exhibit 15, pp. 22-26 and Exhibit 47).
- ° Several times during this OI interview, SULLIVAN was asked if he intended to remove HRYHORCZUK as RSO as the result of his memorandum. SULLIVAN gave several inconsistent answers as to his intentions but never directly answered the question yes or no. However, SULLIVAN did admit that the

consequences of his reorganization memorandum were the effective removal of HRYHORCZUK as RSO (Exhibit 15, pp. 23-24, 26-27, 33-34, and 37-40).

- ° On September 22, 1988, HRYHORCZUK, acting on SULLIVAN's memorandum, turned over all the equipment and records he maintained as RSO. ARTHUR, the Radiation Monitor, also took similar action based on SULLIVAN's reorganization memorandum. KUHN acknowledged receipt of the RSO's equipment and documents and said he thought SULLIVAN was aware that HRYHORCZUK had made the turnover. HRYHORCZUK's memorandum documenting the turnover was copied to SULLIVAN (Exhibit 5, 44-47; Exhibit 6, pp. 48-50 and Attachment 13; Exhibit 15, pp. 37-39; Exhibit 11, pp. 54-56; Exhibit 48; Exhibit 49).
- ° KUHN and LEVINE indicated that they did not think the reorganization replaced HRYHORCZUK as RSO as far as the NRC license was concerned. KUHN acknowledged that at the time HRYHORCZUK turned all the RSO documents and equipment over to him, it was his understanding that HRYHORCZUK no longer had any responsibilities as to radiation safety at the Clinic (Exhibit 11, pp. 52-58 and Exhibit 12, pp. 4-5 and 8-9).
- ° In a letter dated September 6, 1988, HRYHORCZUK notified the NRC that he was no longer RSO at the Clinic (Exhibit 50).
- ° A Clinic letter dated October 20, 1988, signed by SULLIVAN, was sent to the NRC. The letter states in part, "Due to a lack of proper communication through appropriate administrative channels, I was not informed by our prior radiation safety officer, Lew M. HRYHORCZUK, that he was terminating his services as of Sept. 6, 1988, which resulted in the Lafayette Clinic receiving a Confirmatory action letter from the N.R.C. on Oct 14, 1988" (Exhibit 51).
- ° SULLIVAN said regarding HRYHORCZUK's termination of services as the RSO that he was unaware of HRYHORCZUK contacting the NRC. SULLIVAN acknowledged he knew he was required to notify the NRC to change the RSO but had held off because he was not sure on the reorganization. Subsequent to this comment, SULLIVAN said that he had received approval from DMH on ROSENZWEIG's RSO reorganization proposal. SULLIVAN said he felt it was imperative to act quickly to make the October 1, 1988, deadline on the reorganization as instructed by DMH (Exhibit 15, pp. 35-40 and Attachment 6).

Agent's Conclusion

Notwithstanding SULLIVAN's [REDACTED] during his testimony, his August 26, 1988, memorandum replaced HRYHORCZUK as the RSO with KUHN, effective September 1, 1988. It is, therefore, concluded that SULLIVAN deliberately misled the NRC with a material false statement regarding the termination of HRYHORCZUK as RSO in his October 20, 1988, letter to the NRC. b,7C

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LIST OF EXHIBITS




<u>Exhibit No.</u>	<u>Description</u>
1	Region III Request for Investigation, dated December 23, 1988.
2	NRC memorandum from DAVIS to Pawlik, dated May 9, 1989, re: Amended Request for Investigation.
3	NRC memorandum from DAVIS to Pawlik, dated July 3, 1989, re: Amended Request for Investigation.
4	NRC memorandum from Paul to Pawlik, dated October 10, 1989, re: Additional Allegation.
5	Sworn statement of HRYHORCZUK, dated September 20, 1989.
6	Sworn statement of ARTHUR, dated June 28, 1989.
7	Lafayette Clinic memorandum from GERSHON to All Researchers and Employees Involved in Radioactive Isotopes, dated August 29, 1983.
8	Lafayette Clinic memorandum from ARTHUR to All Researchers and Employees Involved with the Use of Radioactive Isotopes, dated July 9, 1986.
9	Sworn statement of WARNER, dated June 28, 1989.
10	Sworn statement of FUCEK, dated July 11, 1989.
11	Sworn statement of KUHN, dated October 3, 1989.
12	Sworn statement of LEVINE, dated October 4, 1989.
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15	Sworn statement of SULLIVAN, dated October 17, 1989.
16	Sworn statement of SITARAM, dated October 26, 1989.
17	Radiation Safety Committee Minutes for May 25, 1988.
18	Report of Interview with STUART, dated November 7, 1989.
19	Sworn statement of STUART, dated August 31, 1989.
20	Report of Interview with NASREEN, dated May 31, 1989.

Exhibit
No.

Description

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- 22 Lafayette Clinic memorandum from HRYHORCZUK to SITARAM, re: Unauthorized Use of Radioisotope P-32, dated June 7, 1988.
- 23 Lafayette Clinic Sign-In Sheets for the period of June 5 to June 28, 1988.
- 24 Sworn statement of WARNER, dated August 31, 1989.
- 25 Report of Interview with BARROWS, dated November 7, 1989.
- 26 Report of Interview with HRYHORCZUK, dated November 7-8, 1989.
- 27 Sworn statement of DUBE, dated October 26, 1989.
- 28 Sworn statement of GRABOWSKI, dated October 26, 1989.
- 29 Sworn statement of ROSENZWEIG, dated November 16, 1989.
- 30 Lafayette Clinic memorandum from HRYHORCZUK to SULLIVAN, dated June 23, 1988, re: High Degree of Radioactivity in Room 256R.
- 31 Landauer Radiation Dosimetry Report for Lafayette Clinic Biochemistry Department for exposure period June 5 to July 4, 1988.
- 32 Report of Interview with ELLIOTT, dated December 5, 1989.
- 33 Report of Interview with GEORGE, dated December 5, 1989.
- 34 Report of Interview with ROBBINS, dated December 5, 1989.
- 35 SIEMENS Radiation Exposure Report for Radiation Service Organization, CNCOR Laboratory, dated July 12, 1988.
- 36 Sworn statement of MUNSON, dated October 4, 1989.
- 37 Memorandum from KUHN to FISCHHOFF, ROSENZWEIG, and SULLIVAN, dated June 17, 1988.
- 38 Lafayette Clinic memorandum from MUNSON to SULLIVAN, dated July 6, 1988, re: Radioactive Material in 280R and 256R.
- 39 Lafayette Clinic letter to GRADEN from SULLIVAN, dated March 21, 1988, re: Request for License Amendment.
- 40 Lafayette Clinic memorandum to FISCHHOFF from HRYHORCZUK, dated June 14, 1988, re: Potential Firing of NASREEN.

<u>Exhibit No.</u>	<u>Description</u>
41	NRC Material License: Lafayette Clinic.
42	Lafayette Clinic memorandum from HRYHORCZUK to SULLIVAN, FISCHHOFF, and ROSENZWEIG, dated June 30, 1988, re: Dr. KUHN's Memorandum of June 17, 1988.
43	Radiation Safety Committee Minutes of July 18, 1988.
44	Radiation Safety Committee Minutes of August 15, 1988.
45	Wayne State University memorandum from ROSENZWEIG to SULLIVAN, dated July 8, 1988, re: Radiation Safety Committee at Lafayette Clinic.
46	Lafayette Clinic memorandum from SULLIVAN to All Researchers and Heads of Departments, dated August 26, 1988, re: The Radiation Safety Committee.
47	Lafayette Clinic memorandum from SULLIVAN to HRYHORCZUK, dated August 26, 1988, re: Radiation Safety Committee.
48	Lafayette Clinic memorandum from HRYHORCZUK to KUHN, dated September 6, 1988, re: Transfer of Radiation Safety Officer's Survey Meters and Books.
49	Lafayette Clinic memorandum from HRYHORCZUK to KUHN, dated September 21, 1988, re: Transfer of Radiation Safety Officer's Records.
50	Lafayette Clinic letter to MALLET, NRC Region III, from HRYHORCZUK, dated September 5, 1988, re: Radiation Safety Officer.
51	Lafayette Clinic letter to NRC Region III from SULLIVAN, dated October 20, 1988, re: License Amendment Request.
52	
53	Lafayette Clinic General Research Committee meeting minutes for June 7, 1989.
54	Sworn statement of ARTHUR, dated August 31, 1989.
55	June 7, 1989, Research Meeting notes prepared by ARTHUR.
56	Sworn statement of SARWER-FONER, dated January 11, 1989.
57	June 7, 1989, Research Meeting notes prepared by WARNER.