

NUCLEAR REGULATORY COMMISSION

[IA-09-012]

Cedric Fernando, M.D.; Confirmatory Order (Effective Immediately)**I**

Cedric Fernando, M.D., is a licensed physician who provides physician services to Nuclear Fuel Services, Inc. (NFS or Licensee) and is the Medical Review Officer for NFS. The Licensee is the holder of Special Nuclear Materials License No. SNM-124 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 70 on July 2, 1999. The license authorizes the operation of the NFS facility in accordance with the conditions specified therein. The facility is located on the Licensee's site in Erwin, Tennessee.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on May 15, 2009.

II

On October 21, 2008, the NRC's Office of Investigations (OI) initiated a review of an October 2007 incident that occurred at the Licensee's facility in which the hearing test portion of a medical examination was not administered to two security officers. Dr. Cedric Fernando was providing physician services for a contractor to NFS at the time, and was involved in certifying that security officers were medically qualified per medical standards.

Based on the evidence developed during the investigation, the NRC staff identified two apparent violations of 10 CFR 70.10, as summarized below:

(1) On October 19, 2007, Dr. Fernando signed two Security Medical Examination forms certifying that the named security officers were medically qualified per medical standards when, in fact, the security officers had not been administered the hearing test portion of the medical examination.

(2) Dr. Fernando submitted to the NFS security office the signed but incomplete Security Medical Examination forms indicating that the two security officers were medically qualified per medical standards when, in fact, the security officers had not been administered the hearing test portion of the medical examination.

III

On May 15, 2009, the NRC and Dr. Fernando met in an ADR session

mediated by a professional mediator, which was arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consist of the following:

(1) Dr. Fernando admits that he signed the two incomplete Security Medical Examination forms and allowed them to be submitted to NFS's security office. He stated that he made a mistake in signing the forms, and denies that he engaged in any deliberate misconduct. On the day in question, the hearing test technician was unexpectedly absent and no backup was available. Dr. Fernando completed the remaining portions of the physical exams, including an examination of their ears. Dr. Fernando stated that, at the time of the physical exam, he had no reason to believe that either individual had any hearing problems. Dr. Fernando signed the forms and instructed his assistant to notify the NFS security office that the individuals needed to return to complete the tests. Dr. Fernando's assistant repeatedly attempted to reschedule the tests, but was unsuccessful. In February 2008, upon discovering that the hearing tests had not been performed, Dr. Fernando instructed his assistant to immediately schedule the hearing tests. The hearing tests were completed on or about the next day, and both individuals had impeccable hearing.

(2) At the ADR session, Dr. Fernando expressed and re-emphasized his commitment and willingness to comply with all NRC regulations, including providing complete and accurate information. To this end, Dr. Fernando agrees and is committed to the actions set forth in Section V below:

(3) In consideration of Dr. Fernando's commitments as set forth in Section V, NRC agrees not to pursue action with respect to Dr. Fernando for those matters referred to in Section II above, with the exception of the NRC's confirmation of completion of the actions discussed in the Confirmatory Order.

(4) Dr. Fernando agrees that the elements discussed in Section V will be incorporated into a Confirmatory Order, and agrees to waive the right to request a hearing regarding all or any part of this Confirmatory Order.

IV

Since Dr. Fernando agreed to take the actions as set forth in Section V, the NRC has concluded its concerns can be resolved through issuance of this Order.

I find that Dr. Fernando's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety and common defense and security are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Dr. Fernando's commitments be confirmed by this Order. Based on the above and Dr. Fernando's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 51, 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 70, *It is hereby ordered*, effective immediately, that:

(1) Dr. Fernando will ensure that an independent assessment (such as an NFS "Tap Root" investigation) is conducted into the circumstances that led to the incident, to identify root and contributing causes. The NRC acknowledges corrective actions and enhancements completed by Dr. Fernando regarding the training of staff and the development of a process to ensure that all medical-related testing and examinations would be completed prior to the authorizing signatures of a Certified Medical Assistant and the attending Physician.

(2) Based on the above assessment, Dr. Fernando will develop lessons learned, and if indicated, implement additional corrective actions from the assessment.

(3) Dr. Fernando and a physician engaged in NRC-regulated activities will meet at least quarterly to review unique or noteworthy issues relevant to compliance with NRC regulations. In addition, Dr. Fernando will initiate a one time, mutual review of processes and procedures with his Babcock and Wilcox Nuclear Owners Group (B&W NOG) counterpart.

(4) Dr. Fernando will take a course certified for continuing medical education credit that addresses best practices for administrative office procedures and record keeping.

(5) Dr. Fernando will communicate lessons learned and experiences as a result of this incident to an appropriate audience (e.g., industry peers, NFS Safety Culture Oversight Group).

(6) Dr. Fernando agrees that actions listed in Section V.1-5 above will begin

within 30 days of the NRC's issuance of the Confirmatory Order, and will be completed no later than one year from the NRC's issuance of a Confirmatory Order.

(7) Upon completion of all of the actions identified in Section V.1–6 above, Dr. Fernando will submit a letter within 30 days to the NRC advising of their completion. The letter will include details so as to allow the NRC to confirm completion of such activities.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by Dr. Fernando of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Dr. Fernando, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

If a person other than Dr. Fernando requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, (72 FR 49139, Aug. 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's on-line, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic

filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta-System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672–7640. The NRC Meta-System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding

officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

VII

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 23rd day of November 2009.

For the Nuclear Regulatory Commission.

Victor M. McCree,

Deputy Regional Administrator for Operations.

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NUCLEAR REGULATORY COMMISSION

[NRC-2009-0526; IA-08-036]

In the Matter of Cedric Fernando, M.D.; Confirmatory Order (Effective Immediately)

I

Cedric Fernando, M.D., is a licensed physician who provides physician services to Nuclear Fuel Services, Inc. (NFS or Licensee) and is the Medical Review Officer (MRO) for NFS. The Licensee is the holder of Special Nuclear Materials License No. SNM-124 issued by the Nuclear Regulatory Commission (NRC or Commission)

pursuant to 10 CFR Part 70 on July 2, 1999. The license authorizes the operation of the NFS facility in accordance with the conditions specified therein. The facility is located on the Licensee's site in Erwin, Tennessee.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on May 14, 2009.

II

An incident occurred at the Licensee's facility in March 2006, in which an NFS senior executive violated the NFS Fitness-For-Duty (FFD) policy and regulatory requirements. As the Medical Review Officer for NFS at the time, Dr. Cedric Fernando reviewed the circumstances of the FFD incident and was involved in a subsequent determination as to whether the former NFS senior executive was fit to return to duty.

On April 20, 2006, the NRC's Office of Investigations (OI) initiated a review of the March 2006 FFD incident. Based on the evidence developed during the investigation, the NRC staff identified three apparent violations of 10 CFR 70.10, as summarized below:

(1) On April 5, 2006, Dr. Fernando provided materially incomplete information to a contract professional retained by NFS to perform a determination of fitness for duty of the NFS senior executive.

(2) Dr. Fernando's failure to provide the contract professional this material information caused NFS to fail to make an informed determination that the NFS senior executive was fit to safely and competently perform his duties and responsibilities before being returned to duty.

(3) On or about April 5, 2006, Dr. Fernando provided materially inaccurate information to NFS that the NFS senior executive had entered a substance abuse rehabilitation program, when in fact he had not done so.

Dr. Fernando disagrees that any of the identified apparent violations occurred.

III

On May 14, 2009, the NRC and Dr. Fernando met in an ADR session mediated by a professional mediator, which was arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR

process. The elements of the agreement consist of the following:

(1) Dr. Fernando disagrees with the facts on which the Agency based its preliminary conclusion that he violated 10 CFR 70.10 and denies any misconduct. At the ADR meeting, Dr. Fernando elaborated on the circumstances concerning his involvement in the referral of the NFS senior executive. Dr. Fernando emphasized that his actions at the time were consistent with the roles and responsibilities of an MRO providing services to an NRC licensee, his current work processes and practices, and were consistent with general medical practice. Dr. Fernando stated that his actions did not violate any NRC requirements, circumvent a thorough assessment of the NFS senior executive's fitness to return to duty because the contract professional had the information that he allegedly failed to provide, or mislead NFS regarding the treatment that the NFS senior executive received.

(2) At the ADR session, Dr. Fernando expressed and re-emphasized his commitment and willingness to comply with all NRC regulations. To this end, Dr. Fernando agrees and is committed to the actions set forth in Section V below.

(3) In consideration of the above, NRC agrees not to pursue action with respect to Dr. Fernando for those matters referred to in Section II above, with the exception of NRC's confirmation of completion of the actions discussed in the Confirmatory Order.

(4) Dr. Fernando agrees that the elements discussed in Section V will be incorporated into a Confirmatory Order, and agrees to waive the right to request a hearing regarding all or any part of this Confirmatory Order.

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I find that Dr. Fernando's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety and common defense and security are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Dr. Fernando's commitments be confirmed by this Order. Based on the above and Dr. Fernando's consent, this Order is immediately effective upon issuance.