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MEMORANDUM

To: Committee on Investigations No. 1 (Dr. Gordon, Dr. Justus and Dr. Marshall)
From: George G. Hearn
Subject: Confidential Settlement Negotiations / Dr. Monce Case
Date: March 12, 2003

Dear Dr. Gordon, Dr. Justus and Dr. Marshall:

This is a status report, but also is written to alert you to the enclosure which Tom Mickey printed from the Deases' website.

1. First, you should have now received a copy of my letter to Michael Crowell requesting a response to the Committee regarding Dr. Monce's statement to the Committee in September, 2001 that he had applied for a new DEA permit.
2. The Consent Order is taking longer than I thought to complete, but I hope to finish it today.
3. The enclosure printed from the website recites (second page) that the Deases informed the Board and Michael Crowell that they longer wished to be involved in the hearing. Nancy Deas communicated this decision to Dr. Gordon mid-afternoon Friday.
4. Early Friday afternoon I received a telephone call from Nancy Deas who wanted to know whether the Deases' concerns about the hearing being in Raleigh had been communicated to Judge Fred Morrison. I replied that they had, and in fact, although no decision had been made by the Judge on our Motion to Change Venue, he had at least decided to have part of the hearing in Raleigh for the convenience of the Raleigh area witnesses. I agreed with Nancy there was no basis for the hearing being in Wilmington. Without reciting all of what she said and her fairly strident objections, she made the additional relevant point that their mother's health had taken a turn for the worse and they had no caregiver other than themselves (Edna works; Nancy does not) and an out of town hearing would compromise their ability to care for their mother. I suggested as a solution that Nancy testify and Edna be released from being a witness so that Edna could care for their mother.

Nancy seemed receptive to that. Five minutes following that call, Edna Deas called. Her voice mail message stated that if the hearing were held out of town, she and Nancy would not participate. Shortly thereafter Nancy left me a voice mail message that mentioned nothing about their not participating but argued further on the issue of the case being heard in Raleigh. Thereafter Dr. Gordon called me following a call to him from Nancy in which she stated that they had decided to withdraw from testifying. Dr. Gordon then informed me of their wish.

I was somewhat surprised to see the website posting that they had decided to withdraw. What caught my attention particularly about the statement was that they had contacted Michael Crowell and informed him of their decision. Does this affect the settlement negotiations? Perhaps, but I am going to go ahead with what we are doing, and present to him a proposed Consent Order that you will have approved. Dr. Monce might think that this gives him a stronger negotiating position. However, the Board is prepared to litigate the facility inspection and related issues in the second complaint in any event, settlement or not. Nevertheless, I do not like the Deases communicating with Mr. Crowell and undercutting our position, but they of course do not know we are in settlement negotiations. We will have to deal with it as we can. If negotiations break down, we will have to reassess the case, and change the focus, and perhaps bring the case back before the Board, and have the hearing only on the facility/inspection/business corporation violations. One role the Deases would have played in this is they could testify that Dr. Monce was in fact treating patients at these various facilities in Durham, Cary and the mobile veterinary facility over the years.

If they are needed to testify at a limited hearing, the Deases are always subject to being subpoenaed, but under these circumstances, I would not like to have them testify as reluctant witnesses.

Sincerely,



George G. Hearn

GGH:jh
Enclosure

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