[Cite as *Ronald v. Ohio Dept. of Health*, 2008-Ohio-2529.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

HERBERT G. ROLAND, D.D.S.

Plaintiff

v.

OHIO DEPARTMENT OF HEALTH

Defendant

Case No. 2006-06027-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, Herbert G. Roland, D.D.S., a dentist practicing in Ohio, alleged an employee of defendant, Ohio Department of Health ("ODOH"), while conducting a statutorily mandated inspection on September 8, 2005, damaged the radiation generating (x-ray) equipment in his Columbus dental center. Plaintiff related ODOH employee, David W. Johnson, arrived at his office on September 8, 2005, for the purpose of checking the radiation emission of his x-ray equipment. Plaintiff explained the x-ray imaging equipment scheduled for inspection consisted of "an intraoral x-ray head and a PAN/CEPH dual unit." Plaintiff observed, "all equipment was working fine prior to Mr. Johnson's arrival." According to plaintiff, in order to properly inspect the CEPH unit "a physical position change of the x-ray head is required." Plaintiff recalled that after Johnson had repositioned the x-ray head to conduct the inspection of the CEPH unit, Johnson "could not get the CEPH unit to fire," and therefore, summoned plaintiff to inform him about this malfunction in the x-ray equipment. Plaintiff noted when he examined the equipment he discovered that "neither the PAN nor the CEPH position would work," although the PAN position had previously been inspected by Johnson and was operational. From his observations of the September 8, 2005 inspection, plaintiff reasoned ODOH employee Johnson, "did damage my PAN/CEPH unit in making the switch from a pan-a-rex operation to a cephalometric operation."

{¶2} Plaintiff contended the x-ray equipment at his dental office was damaged by defendant's employee during the September 8, 2005 inspection. Consequently, plaintiff filed this complaint seeking to recover "loss of revenue from September 8, 2005 to May 3, 2006." Plaintiff submitted a damage claim in the amount of $2,078.74. Plaintiff submitted an invoice from defendant for a late fee of $772.00 which was apparently charged for a failure to timely pay the September 8, 2005 inspection fee. Also, plaintiff submitted bills totaling $1,257.39 from two dental equipment service firms, who provided repair service for plaintiff's x-ray unit on September 22, 2005, April 4, 2006, April 12, 2006, and May 3, 2006. Furthermore, plaintiff requested postage expenses of $49.35. Plaintiff submitted copies of certified mail receipts for correspondence he sent to ODOH employees on October 28, 2005 and May 25, 2006. The filing fee was paid.

{¶3} Defendant acknowledged ODOH employee, David W. Johnson, Health

Physicist 2, conducted a routine inspection of equipment at plaintiff's dental office on September 8, 2005. Defendant explained the routine inspection of plaintiff's radiation-generating equipment was performed pursuant to the statutory requirements of R.C. 3748.04 and R.C. 3748.13 and rule 3701:1-38-04 of the Ohio Administrative Code. (All referenced statutes and rules are included as an addendum.) Defendant acknowledged ODOH employee Johnson inspected the particular equipment consisting of an intraoral x-ray head and a PAN/CEPH dual unit which required a physical position change of the x-ray head to thoroughly inspect the cephalometric function of the PAN/CEPH unit. For lack of knowledge, defendant denied plaintiff's radiation generating equipment was in good working order prior to Johnson's inspection and specifically denied plaintiff's "assertion that Mr. Johnson alone, made the physical position change of the x-ray head and could not get the cephalometric function to fire." Defendant denied plaintiff's x-ray equipment was damaged during the course of the required inspection of September 8, 2005.

{¶4} Defendant submitted a written statement from ODOH employee, David W. Johnson, concerning his recollection of the September 8, 2005, inspection he conducted of plaintiff's radiation-generating equipment. Johnson recalled he initially inspected plaintiff's intraoral machine then moved on to inspect plaintiff's panoral/cephalometric unit, but advised he first requested plaintiff's "assistance prior to conducting any tests or manipulating the panoral/cephalometric machine in any way." Johnson insisted plaintiff turned the power on the unit and instructed him where the operator stands when using the machine on a patient. Johnson related that after receiving this instruction he took the position of the unit operator and conducted a routine uneventful inspection of the panoral function of the machine in accordance with ODOH procedures. Johnson also related plaintiff stood "in a corridor opposite the operator's position" while this inspection of the unit's panoral function was being performed. Johnson noted he then moved on to inspect the machine functioning in its

cephalometric capacity by first requesting plaintiff himself make the necessary preparations for operating the machine in this particular capability. Johnson asserted plaintiff responded to this request by stating, "that he had not operated the machine in that capacity in such a long time that he would need to reference the operator's manual to do so." Johnson related he in turn responded to this information by advising plaintiff "that he obtain the manual because I would have to inspect the machine's cephalometric function regardless of his choice to utilize the machine clinically." Johnson recorded he advised plaintiff of ODOH policy in reference to inspections of radiation generating equipment.

{¶5} According to Johnson, his inspection continued after plaintiff recovered an operator's manual for the panoral/cephalometric unit. Referring to this specific inspection attempt, Johnson provided the following: "[t]ogether Dr. Roland and I used this manual to manipulate the machine according to the outlined procedures. This involved several simple procedures. They included loosening locks simply by twisting knobs, rotating the carriage to rest in a position stabled by a reflexive pin mechanism, and finally twisting the same knobs to lock the carriage in that position. Dr. Roland and I agreed that we had positioned the machine in accordance with the operator's manual but were unsuccessful in generating radiation."

{¶6} Due to the fact the unit was not functioning properly, Johnson noted he was unable to complete the inspection. Johnson also noted he then informed plaintiff of various options he could pursue to satisfy the inspection requirements. Johnson stated: "[o]ne resolution would be having the machine repaired and a subsequent follow up inspection performed by the Ohio Department of Health to conclude the inspection process. Also, Dr. Roland could have a third party render the cephalometric portion inoperable and provide supporting documentation to the Ohio Department of Health."

{¶7} Johnson denied he had any knowledge that the panoral function of the radiation generating unit was affected in any way during the September 8, 2005,

inspection. Johnson offered an opinion regarding the failure to plaintiff's x-ray machine to produce radiation after adjustments were made in accordance with the operation manual instructions. Johnson related, "I suspected a safety interlock sensor associated with the cephalometric positioning of the unit was malfunctioning preventing the machine from producing radiation." Since plaintiff's x-ray machine did not produce radiation and was consequently deemed inoperable, Johnson reported he explained to plaintiff the defendant's position on this matter as outlined in ODOH X-Ray Administrative Policy #10.

{¶8} Defendant provided a copy of X-Ray Administrative Policy #10, RE: X-Ray Units In Storage/INOPERABLE AND OUT OF ORDER. This ODOH policy is reproduced in its entirety.

{¶9} "Registrants possessing inoperable radiation-generating equipment (RGE) will be subject to routine inspection fees unless the equipment is registered as in storage and rendered inoperable in accordance with Ohio Administrative Code (OAC) 3701:1-38-03(D)(2).

{¶10} "Registrants possessing RGE in storage or in an inoperable condition, that does not meet the requirements of OAC 3701:1-38-03(D)(2), preparatory for disposal, as described in Administrative Policy #1, and do not intend to use the equipment, must continue to register the equipment and pay the registration fee. RGE that are registered as in storage and rendered inoperable will be exempt from routine inspection if the following conditions are met:

{¶11} "1. The Department must have supporting documentation from a third party (x-ray service company) stating that the equipment has been rendered inoperable. If documentation is not available, an inspection will be conducted to verify that the equipment is inoperable.

{¶12} "NOTE: Inoperable means being unable to generate radiation (dismantled, disconnected). **Each case must be specifically documented and submitted**

through your supervisor.

{¶13} "2. Written notification from the registrant, to the Department, must indicate that the equipment will not be used, and that the Department will be notified prior to the reactivation, sale, or disposal of the equipment.

{¶14} "The discovery of an inoperable unit may occur or be corrected by amendment during scheduling of an inspection. If an inoperable unit is discovered while performing an inspection, the registrant will be cited for 'Registration Not Accurate' 3803K, and will be charged a routine inspection fee for the equipment. An inoperable tube form, documenting the manufacturer, model, and serial number must be completed and included in the inspection report. The violation may be corrected during the inspection by completing an amendment form, but the inspection fee will still be assessed. A copy of the inop tube form is to be forwarded to your supervisor for computer system update.

{¶15} "If the RGE is operable at the time of the inspection, but the registrant indicates that the equipment is not used, nor is it intended to be used, the equipment is to be inspected and the applicable fees charged. Furthermore, the registrant should be reminded that mere possession of equipment requires registration."

{¶16} On two separate occasions (October 18, 2005 and May 21, 2006), plaintiff sent letters to defendant alleging his PAN/CEPH radiograph machine was broken by ODOH employee, David W. Johnson, during the course of the September 8, 2005, inspection. In the first letter plaintiff wrote, "[i]t appears that during the inspection process the pan-a-rex checked out satisfactory. When he (Johnson) got to the Cephalometric process, I was called in because something was not going right." Plaintiff acknowledged he retrieved all printed information he possessed regarding operation of the unit and worked with Johnson to try to operate the machine, "to make sure that we had all of the proper buttons pushed." Plaintiff recorded that after trying to make the proper adjustments not only would the machine not "fire," but the entire

machine was affected and rendered nonfunctioning, presumedly by the manipulations. Plaintiff also recorded the machine had been in use in his office since 1991 and was working "perfectly well" before September 8, 2005. Plaintiff alluded to the fact the problem with the machine may have been due to malfunctioning circuit boards, which he reported in his second letter had been shipped to Italy for repairs and returned. In this second letter, plaintiff notified defendant his PAN/CEPH radiograph machine functioned after the circuit boards were returned from Italy and installed in the machine. Also, plaintiff still implied his machine was broken during the inspection, stating "I still maintain that the machine was working before Mr. Johnson arrived at my office and was not working when he left."

{¶17} Defendant contended that although ODOH has statutory duties under R.C. 3748.04 and R.C. 3748.13 to register and inspect radiation-generating equipment, ODOH has also been granted statutory immunity from suit under R.C. 2743.02(A)(3)(a) for claims arising out of the performance of those duties. Essentially, defendant has asserted ODOH is immune from liability in this matter based on the statutorily defined public duty rule. R.C. 2743.02(A)(3)(a) states in pertinent part:

{¶18} "(3)(a) Except as provided in division (A)(3)(b) of this section, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty."

{¶19} In conjunction, R.C. 2743.01(E)(1) defines public duty. This statutory section states:

{¶20} "(E)(1) 'Public duty' includes, but is not limited to, any statutory, regulatory, or assumed duty concerning any action or omission of the state involving any of the following:

{¶21} "(a) Permitting, certifying, licensing, inspecting, investigating, supervising, regulating, auditing, monitoring, law enforcement, or emergency response activity;

{¶22} "(b) Supervising, rehabilitating, or liquidating corporations or other

business entities."

{¶23} In the instant claim, defendant asserted plaintiff alleged the damage to his equipment was caused by an ODOH employee performing a statutorily defined public duty and therefore statutory immunity is applicable.

{¶24} When addressing the applicability of the public duty rule in an action against the state, the court must first determine whether or not the statutory exception to this rule is appropriate under the particular circumstances shown. R.C. 2743.01(E)(2) provides:

{¶25} "(2) 'Public duty' does not include any action of the state under circumstances in which a special relationship can be established between the state and the injured party as provided in division (A)(3) of section 2743.02 of the Revised Code."

{¶26} R.C. 2743.02(A)(3)(b) states:

{¶27} "(b) The state immunity provided in division (A)(3)(a) of this section does not apply to any action of the state under circumstances in which a special relationship can be established between the state and an injured party. A special relationship under this division is demonstrated if all of the following elements exist:

{¶28} "(i) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who was allegedly injured;

{¶29} "(ii) Knowledge on the part of the state's agents that inaction of the state could lead to harm;

{¶30} "(iii) Some form of direct contact between the state's agents and the injured party;

{¶31} "(iv) The injured party's justifiable reliance on the state's affirmative undertaking."

{¶32} Upon a review of the facts of the present claim involving the acts of ODOH employee Johnson in relation to plaintiff, the court finds that although the expressed elements of (b)(i), (iii) and (iv) may exist, element (b)(ii) clearly does not exist. No facts

have established defendant's agent, Johnson, had any knowledge that if he had not assisted plaintiff in attempting to operate plaintiff's machine that inaction could lead to harm. The court concludes the provisions of R.C. 2743.02(A)(3)(a) exist and defendant is immune from liability. Consequently, plaintiff's claim is dismissed.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, plaintiff's claim is DISMISSED. Court costs are assessed against plaintiff.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Herbert G. Roland, D.D.S.
40 S. James Road
Columbus, Ohio 43213

J. Nick Baird, M.D., Director
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RDK/laa

1/13
Filed 3/6/08
Sent to S.C. reporter 5/27/08

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ADDENDUM

3748.04 Public health council rules for requirements, procedures and fees.

The public health council, in accordance with Chapter 119. of the Revised Code, shall adopt and may amend or rescind rules doing all of the following:

(A) Listing types of radioactive material for which licensure by its handler is required and types of radiation-generating equipment for which registration by its handler is required, and establishing requirements governing them. Rules adopted under division (A) of this section shall be compatible with applicable federal regulations and shall establish all of the following, without limitation:

1) Requirements governing both of the following:

(a) The licensing and inspection of handlers of radioactive material. Standards established in rules adopted under division (A)(1)(a) of this section regarding byproduct material or any activity that results in the production of that material, to the extent practicable, shall be equivalent to or more stringent than applicable standards established by the United States nuclear regulatory commission.

(b) The registration and inspection of handlers of radiation-generating equipment. Standards established in rules adopted under division (A)(1)(b) of this section, to the extent practicable, shall be equivalent to applicable standards established by the food and drug administration in the United States department of health and human services.

(2) Identification of and requirements governing possession and use of specifically licensed and generally licensed quantities of radioactive material as either sealed sources or unsealed sources;

(3) A procedure for the issuance of and the frequency of renewal of the licenses of handlers of radioactive material, other than a license for a facility for the disposal of low-level radioactive waste, and of the certificates of registration of handlers of radiation-generating equipment;

(4) Procedures for suspending and revoking the licenses of handlers of radioactive material and the certificates of registration of handlers of radiation-generating equipment;

(5) Criteria to be used by the director of health in amending the license of a handler of radioactive material or the certificate of registration of a handler of radiation-generating equipment subsequent to its issuance;

(6) Criteria for achieving and maintaining compliance with this chapter and rules adopted under it by licensees and registrants;

(7) Criteria governing environmental monitoring of licensed and registered activities to assess compliance with this chapter and rules adopted under it;

(8) Except as otherwise provided in division (A)(8) of this section, fees for the licensing of handlers of radioactive material, other than a facility for the disposal of low-level radioactive waste, and the registration of handlers of radiation-generating equipment and a fee schedule for their inspection. Rules adopted under division (A)(8) of this section shall not revise any fees established in section 3748.07 or 3748.13 of the Revised Code to be paid by any handler of radiation-generating equipment that is a medical practitioner or a corporation, partnership, or other business entity consisting of medical practitioners, other than a hospital as defined in section 3727.01 of the Revised Code.

As used in division (A)(8) of this section, “medical practitioner” means a person who is authorized to practice dentistry pursuant to Chapter 4715. of the Revised Code; medicine and surgery, osteopathic medicine and surgery, or podiatry pursuant to Chapter 4731. of the Revised Code; or chiropractic pursuant to Chapter 4734. of the Revised Code.

(B)(1) Identifying sources of radiation, circumstances of possession, use, or disposal of sources of radiation, and levels of radiation that constitute an unreasonable or unnecessary risk to human health or the environment;

(2) Establishing requirements for the achievement and maintenance of compliance with standards for the receipt, possession, use, storage, installation, transfer, servicing, and disposal of sources of radiation to prevent levels of radiation that constitute an unreasonable or unnecessary risk to human health or the environment;

(3) Requiring the maintenance of records on the receipt, use, storage, transfer, and disposal of radioactive material and on the radiological safety aspects of the use and maintenance of radiation-generating equipment.

In adopting rules under divisions (A) and (B) of this section, the council shall use standards no less stringent than the “suggested state regulations for control of radiation” prepared by the conference of radiation control program directors, inc., and regulations adopted by the United States nuclear regulatory commission, the United States environmental protection agency, and the United States department of health and human services and shall consider reports of the national council on radiation protection and measurement and the relevant standards of the American national standards institute.

(C) Establishing fees, procedures, and requirements for certification as a radiation expert, including all of the following, without limitation:

(1) Minimum training and experience requirements;

(2) Procedures for applying for certification;

(3) Procedures for review of applications and issuance of certificates;
(4) Procedures for suspending and revoking certification.

(D) Establishing a schedule for inspection of sources of radiation and their shielding and surroundings;

(E) Establishing the responsibilities of a radiation expert;

(F) Establishing criteria for quality assurance programs for licensees of radioactive material and registrants of radiation-generating equipment;

(G) Establishing fees to be paid by any facility that, on September 8, 1995, holds a license from the United States nuclear regulatory commission in order to provide moneys necessary for the transfer of licensing and other regulatory authority from the commission to the state pursuant to section 3748.03 of the Revised Code. Rules adopted under this division shall stipulate that fees so established do not apply to any functions dealing specifically with a facility for the disposal of low-level radioactive waste. Fees collected under this division shall be deposited into the state treasury to the credit of the general operations fund created in section 3701.83 of the Revised Code. The fees shall be used solely to administer and enforce this chapter and rules adopted under it.

(H) Establishing fees to be collected annually from generators of low-level radioactive waste, which shall be based upon the volume and radioactivity of the waste generated and the costs of administering low-level radioactive waste management activities under this chapter and rules adopted under it. All fees collected under this division shall be deposited into the state treasury to the credit of the general operations fund created in section 3701.83 of the Revised Code. The fees shall be used solely to administer and enforce this chapter and rules adopted under it. Any fee required under this division that has not been paid within ninety days after the invoice date shall be assessed at two times the original invoiced fee. Any fee that has not been paid within one hundred eighty days after the invoice date shall be assessed at five times the original invoiced fee.

(I) Establishing requirements governing closure, decontamination, decommissioning, reclamation, and long-term surveillance and care of a facility licensed under this chapter and rules adopted under it. Rules adopted under division (I) of this section shall include, without limitation, all of the following:

(1) Standards and procedures to ensure that a licensee prepares a decommissioning funding plan that provides an adequate financial guaranty to permit the completion of all

requirements governing the closure, decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with a licensed activity;

(2) For licensed activities where radioactive material that will require surveillance or care is likely to remain at the site after the licensed activities cease, as indicated in the application for the license submitted under section 3748.07 of the Revised Code, standards and procedures to ensure that the licensee prepares an additional decommissioning funding plan for long-term surveillance and care, before termination of the license, that provides an additional adequate financial guaranty as necessary to provide for that surveillance and care;

(3) For the purposes of the decommissioning funding plans required in rules adopted under divisions (I)(1) and (2) of this section, the types of acceptable financial guaranties, which shall include bonds issued by fidelity or surety companies authorized to do business in the state, certificates of deposit, deposits of government securities, irrevocable letters or lines of credit, trust funds, escrow accounts, or other similar types of arrangements, but shall not include any arrangement that constitutes self-insurance;

(4) A requirement that the decommissioning funding plans required in rules adopted under divisions (I)(1) and (2) of this section contain financial guaranties in amounts sufficient to ensure compliance with any standards established by the United States nuclear regulatory commission, or by the state if it has become an agreement state pursuant to section 3748.03 of the Revised Code, pertaining to closure, decontamination, decommissioning, reclamation, and long-term surveillance and care of licensed activities and sites of licensees.

Standards established in rules adopted under division (I) of this section regarding any activity that resulted in the production of byproduct material, as defined in division (A)(2) of section 3748.01 of the Revised Code, to the extent practicable, shall be equivalent to or more stringent than standards established by the United States nuclear regulatory commission for sites at which ores were processed primarily for their source material content and at which byproduct material, as defined in division (A)(2) of section 3748.01 of the Revised Code, is deposited.

(J) Establishing criteria governing inspections of a facility for the disposal of low-level radioactive waste, including, without limitation, the establishment of a resident inspector program at such a facility;

(K) Establishing requirements and procedures governing the filing of complaints under section 3748.16 of the Revised Code, including, without limitation, those governing intervention in a hearing held under division (B)(3) of that section.

3748.13 Inspections of sources of radiation; hospital to maintain quality assurance program for equipment.

(A) The director of health shall inspect sources of radiation for which licensure or registration by the handler is required, and the sources' shielding and surroundings, according to the schedule established in rules adopted under division (D) of section 3748.04 of the Revised Code. In accordance with rules adopted under that section, the director shall inspect all records and operating procedures of handlers that install sources of radiation and all sources of radiation for which licensure of radioactive material or registration of radiation-generating equipment by the handler is required. The director may make other inspections upon receiving complaints or other evidence of violation of this chapter or rules adopted under it.

The director shall require any hospital registered under division (A) of section 3701.07 of the Revised Code to develop and maintain a quality assurance program for all sources of radiation-generating equipment. A certified radiation expert shall conduct oversight and maintenance of the program and shall file a report of audits of the program with the director on forms prescribed by the director. The audit reports shall become part of the inspection record.

(B) Until rules are adopted under division (A)(8) of section 3748.04 of the Revised Code, a facility shall pay inspection fees according to the following schedule and categories:

First dental x-ray tube $ 129.00

Each additional dental x-ray tube at the same location $ 64.00

First medical x-ray tube $ 256.00

Each additional medical x-ray tube at the same location $ 136.00

Each unit of ionizing radiation-generating equipment capable of operating at or above 250 kilovoltage peak $ 508.00

First nonionizing radiation-generating equipment of any kind $ 256.00

Each additional nonionizing radiation-generating equipment of any kind at the same location $ 136.00

Assembler-maintainer inspection consisting of an inspection of records and operating procedures of handlers that install sources of radiation $ 317.00

Until rules are adopted under division (A)(8) of section 3748.04 of the Revised Code, the fee for an inspection to determine whether violations cited in a previous inspection have been corrected is fifty per cent of the fee applicable under the schedule in this division. Until those rules are adopted, the fee for the inspection of a facility that is not licensed or registered and for which no license or registration application is pending at the time of inspection is three hundred ninety-five dollars plus the fee applicable under the schedule in this division.

The director may conduct a review of shielding plans or the adequacy of shielding on the request of a licensee or registrant or an applicant for licensure or registration or during an inspection when the director considers a review to be necessary. Until rules are adopted under division (A)(8) of section 3748.04 of the Revised Code, the fee for the review is six hundred thirty-five dollars for each room where a source of radiation is used and is in addition to any other fee applicable under the schedule in this division.

All fees shall be paid to the department of health no later than thirty days after the invoice for the fee is mailed. Fees shall be deposited in the general operations fund created in section 3701.83 of the Revised Code. The fees shall be used solely to administer and enforce this chapter and rules adopted under it.

Any fee required under this section that has not been paid within ninety days after the invoice date shall be assessed at two times the original invoiced fee. Any fee that has not been paid within one hundred eighty days after the invoice date shall be assessed at five times the original invoiced fee.

(C) If the director determines that a board of health of a city or general health district is qualified to conduct inspections of radiation-generating equipment, the director may delegate to the board, by contract, the authority to conduct such inspections. In making a determination of the qualifications of a board of health to conduct those inspections, the director shall evaluate the credentials of the individuals who are to conduct the inspections of radiation-generating equipment and the radiation detection and measuring equipment available to them for that purpose. If a contract is entered into, the board shall have the same authority to make inspections of radiation-generating equipment as the director has under this chapter and rules adopted under it. The contract shall stipulate that only individuals approved by the director as qualified shall be permitted to inspect radiation-generating equipment under the contract’s provisions. The contract shall provide for such compensation for services as is agreed to by the director and the board of health of the contracting health district. The director may reevaluate the credentials of the inspection personnel and their radiation detecting and measuring equipment as often as the director considers necessary and may terminate any contract with the board of health of any health district that, in the director’s opinion, is not satisfactorily performing the terms of the contract.

(D) The director may enter at all reasonable times upon any public or private property to

determine compliance with this chapter and rules adopted under it.

3701:1-38-04 Radiation generating equipment inspection schedule and inspection fee.

(A) Each registrant shall afford the director, at all reasonable times, opportunity to inspect radiation-generating equipment and equipment shielding, surroundings, records and other equipment and devices used in connection with handling radiation-generating equipment. Each registrant also shall perform, as requested by the director, such tests as the director determines may be necessary for the registrant to demonstrate compliance with the requirements of Chapter 3748. of the Revised Code and rules adopted thereunder and to evaluate the extent of radiation hazards that may be present.

(B) The director shall routinely inspect radiation-generating equipment unless that equipment is registered as in storage and rendered inoperable. Routine inspections shall be conducted on the following schedule by facility category:

(1) Hospital registered under division (A) of section 3701.07 of the Revised Code, once every twenty-four months. Additionally, the director will conduct a review of the audit reports in between inspections.

(2) Podiatry facility, once every thirty-six months;

(3) Chiropractic facility, once every thirty-six months;

(4) Veterinary facility, once every thirty-six months;

(5) Educational facility, once every thirty-six months;

(6) Physician offices, clinics, and other types of health care facilities as defined in rule 3701-83-43 (D) and rule 3701-83-51 (F) of the Administrative Code; once every thirty-six months;

(7) Industrial or non-health care facility; once every thirty-six months; and

(8) Dental facility, once every sixty months.

(C) Notwithstanding the inspection frequencies specified in paragraph (B) of this rule, radiation-generating equipment capable of operating at or above 250 kilovoltage peak may be inspected every twelve months irrespective of facility category.

(D) The director may modify the inspection frequency of a registered facility based upon the performance of the facility.

(E) In addition to any inspections required under this rule, inspections of new or newly installed radiation-generating equipment may be performed within twelve months of installation of the equipment.

(F) Non-routine or special inspections of facilities may be conducted by the director upon receiving complaints or other evidence of violation of the requirements of Chapter 3748. of the Revised Code or rules adopted thereunder, or orders of the director issued pursuant thereto.

(G) Any handler of radiation-generating equipment that is a medical practitioner or a corporation, partnership, or other business entity consisting of medical practitioners, other than a hospital as defined in section 3727.01 of the Revised Code, shall pay to the department of health an inspection fee according to the following schedule and categories:

(1) First dental x-ray tube, the amount required by division (B) of section 3748.13 of the Revised Code;

(2) Each additional dental x-ray tube, the amount required by division (B) of section 3748.13 of the Revised Code;

(3) First medical x-ray tube, the amount required by division (B) of section 3748.13 of the Revised Code;

(4) Each additional medical x-ray tube, the amount required by division (B) of section 3748.13 of the Revised Code;

(5) Each unit of radiation-generating equipment capable of operating at or above 250 kilovoltage peak, the amount required by division (B) of section 3748.13 of the Revised Code.

For purposes of this section “medical practitioner” means a person authorized to practice dentistry pursuant to Chapter 4715. of the Revised Code; medicine and surgery, osteopathic medicine and surgery, or podiatry pursuant to Chapter 4731. of the Revised Code; or chiropractic pursuant to Chapter 4734. of the Revised Code.

(H) Except as otherwise provided in paragraph (G) of this rule, all handlers of radiation-generating equipment shall pay an inspection fee according to the following schedule:

(1) Each hospital having one to ten x-ray tubes, $800.00;

(2) Each hospital having eleven to twenty-five x-ray tubes, $1,500.00;

(3) Each hospital having more than twenty-five x-ray tubes, $2,200.00;

(4) Each cabinet, gauging, or analytical x-ray tube used in non-health care applications, $100.00;

(5) Each x-ray tube other than cabinet, gauging, or analytical x-ray tubes used in non-health care applications, $200.00;

(6) Each industrial or non-medical x-ray tube capable of operating at or above two hundred and fifty kilovoltage peak, $373.00;

(7) In accordance with division (B) of 3748.13 of the Revised Code, each assembler-maintainer inspection consisting of an inspection of records and operating procedures of handlers that install sources of radiation, $250.00.

(I) In accordance with division (B) of section 3748.13 of the Revised Code, the fee for the inspection of a facility that does not possess or that has not applied for registration and for which registration is required, shall pay the amount required in division (B) of section 3748.13 of the Revised Code plus any required amount specified under paragraph (G) or (H) of this rule.

(J) In accordance with section 3748.13 of the Revised Code, the fee for any inspection to determine whether notice of violations cited in a previous inspection have been corrected is fifty per cent of the fee specified in paragraphs (G) and (H)of this rule. Inspections to determine compliance with a notice of violation issued pursuant to paragraph (A) of rule 3701:1-38-06 of the Administrative Code may include, but is not limited to, compliance reviews done off-site.