

THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
CENTERS FOR DISEASE CONTROL AND PREVENTION
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

convenes the

ADVISORY BOARD ON
RADIATION AND WORKER HEALTH

The verbatim transcript of the Meeting of the
Advisory Board on Radiation and Worker Health held
via Teleconference on Thursday, August 22, 2002.

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P A R T I C I P A N T S

(By Group, in Alphabetical Order)

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KEN CRASE	LEON OWENS
JOY GEST	MARK REINHALTER
MIKE GIBSON	ROBERT TABOR
RICHARD MILLER	JERRY TUDOR

P R O C E E D I N G S

1:00 p.m.

1
2
3 DR. ZIEMER: I got a memo from Dr. Roessler.
4 She's not going to be on the conference call.
5 She did e-mail her comments.

6 Tony Andrade is here?

7 DR. ANDRADE: Right.

8 DR. ZIEMER: Henry Anderson?

9 MS. HOMER: Okay.

10 DR. ZIEMER: Is Henry here?

11 MS. NEWSOM: I have not heard from Henry yet.

12 MS. HOMER: Okay.

13 DR. ZIEMER: Is Jim Melius?

14 MS. MUNN: Haven't heard him.

15 DR. ZIEMER: Larry Elliott?

16 MR. ELLIOTT: Here.

17 DR. ZIEMER: Mark Griffon?

18 MR. GRIFFON: Yes.

19 DR. ZIEMER: Rich Espinosa?

20 MS. HOMER: Um-hum (affirmative).

21 DR. ZIEMER: Bob Presley?

22 MR. PRESLEY: Here.

23 DR. ZIEMER: Roy DeHart?

24 DR. DeHART: Yes.

25 DR. ZIEMER: Has Sally come aboard yet?

1 **MS. GADOLA:** I'm here.

2 **DR. ZIEMER:** Okay, Sally's here.

3 And Wanda?

4 **MS. MUNN:** Um-hum (affirmative).

5 **DR. ZIEMER:** Okay.

6 **MS. HOMER:** So we're only missing Dr.

7 Anderson.

8 **DR. ZIEMER:** We're missing Anderson and -

9 **UNIDENTIFIED:** Jim Melius.

10 **DR. ZIEMER:** Melius, yeah.

11 **UNIDENTIFIED:** And Gen, you said Gen wasn't
12 going to be -

13 **DR. ZIEMER:** Gen Roessler will not be on this
14 conference call, it turned out.

15 **DR. MELIUS:** Hi, it's Jim Melius.

16 **DR. ZIEMER:** Oh, Jim's here. Okay. Hi, Jim.

17 Jim, we're waiting for Henry Anderson, I
18 think. Gen Roessler is not going to be on the
19 conference call. All the other board members
20 except Henry are with us now.

21 And then we have some members of the public.
22 I know that Bob Tabor's aboard. Right, Bob?

23 **MR. TABOR:** Yes, I'm here.

24 **DR. ZIEMER:** And who else?

25 **MR. MILLER:** Richard Miller's here.

1 DR. ZIEMER: Richard's here. Hello, Richard.

2 MR. MILLER: Hi, Paul.

3 DR. ZIEMER: Any other members of the public?

4 MR. CRASE: Ken Crase.

5 DR. ZIEMER: Ken.

6 MS. GEST: Gest from Hanford.

7 MR. NAIMON: David Naimon and Liz Homoki-Titus
8 from the Department of Health and Human Services.

9 DR. ZIEMER: Thank you.

10 MR. REINHALTER: Mark Reinhalter from the
11 Department of Labor.

12 DR. ZIEMER: Thank you.

13 UNIDENTIFIED: I'm sorry, we didn't catch the
14 name from Hanford.

15 MS. GEST: Joy Gest, G-E-S-T.

16 UNIDENTIFIED: Thank you.

17 DR. ZIEMER: And we've got Richard Miller. I
18 just want to make sure the recorder got all the -

19 MS. NEWSOM: I believe I've got everybody
20 that's come in so far.

21 MR. GIBSON: Mike Gibson's here too.

22 UNIDENTIFIED: Hi, Mike.

23 MR. GIBSON: Hi.

24 MR. OWENS: Leon Owens.

25 UNIDENTIFIED: And Leon Owens is here also.

1 DR. ZIEMER: Leon is on.

2 MR. KATZ: Ted Katz from Atlanta.

3 DR. ZIEMER: Any others?

4 MR. KATZ: Did you catch me? Ted Katz from
5 Atlanta.

6 MS. HOMER: Um-hum (affirmative).

7 UNIDENTIFIED: Hi, Ted.

8 MR. KATZ: Hi.

9 MR. TUDOR: Jerry Tudor from Oak Ridge.

10 DR. ZIEMER: Okay.

11 MS. MURRAY: I'm sorry, what was that name?

12 DR. ZIEMER: Jerry -

13 MR. TUDOR: Tudor, T-U-D-O-R.

14 MS. MURRAY: Thank you.

15 DR. ZIEMER: Okay. Let me see. We have, as
16 far as the voting members of the Committee, we
17 have one, two, three, four, five, six, seven,
18 eight, nine - we have ten voting members on board
19 right now, is that correct?

20 UNIDENTIFIED: Yes.

21 MR. ELLIOTT: Yes, I believe so.

22 MS. HOMER: Seven, eight, nine.

23 MS. MUNN: I have nine.

24 MS. HOMER: Nine.

25 MR. ELLIOTT: The only one we were missing is

1 Henry Anderson.

2 UNIDENTIFIED: And Gen Roessler.

3 UNIDENTIFIED: Gen Roessler, yes, okay.

4 DR. ZIEMER: Did somebody just come aboard?

5 MS. COLLEY: Hi. This is Vina Colley from
6 the Portsmouth Gaseous Diffusion Uranium
7 Enrichment facility in Piketon, Ohio.

8 DR. ZIEMER: Thank you. Did you get the
9 name, the recorder?

10 MS. NEWSOM: Could you repeat that, please?

11 DR. ZIEMER: Lani?

12 UNIDENTIFIED: Background.

13 MS. MUNN: A lot of background.

14 UNIDENTIFIED: Last call got a lot of
15 background noise.

16 UNIDENTIFIED: Vina Colley.

17 DR. ZIEMER: Zina?

18 MS. COLLEY: Vina, V-I-N-A, Colley.

19 DR. ZIEMER: Vina, okay. Got it.

20 MS. COLLEY: I'm having - probably going to
21 be pretty noisy, but what I'd like to say is that
22 I want to see meetings around the Portsmouth
23 Gaseous Diffusion Plant like the rest of these
24 plants are having meetings.

25 DR. ZIEMER: Yeah, can you hold that, because

1 we haven't started yet. We're waiting for
2 everybody to get aboard.

3 **DR. ANDERSON:** Hi, it's Andy. I just signed
4 on.

5 **UNIDENTIFIED:** Okay, good. There we go.

6 **DR. ZIEMER:** Anderson?

7 **DR. ANDERSON:** Yes.

8 **DR. ZIEMER:** Yes, okay. So I think we have
9 everybody now, so let me call the meeting
10 officially to order.

11 I'm hearing a lot of background noise. Can
12 everybody here me all right?

13 **UNIDENTIFIED:** I can't hear you over that,
14 sorry.

15 **UNIDENTIFIED:** (inaudible) on that cellular
16 (inaudible) going to have to go on mute
17 (inaudible) contributing to the background noise.

18 **DR. ZIEMER:** Is that better?

19 **UNIDENTIFIED:** That's better.

20 **DR. ZIEMER:** Okay. I'm officially calling
21 the meeting to order.

22 We have our agenda today. We'll have really
23 two things. We will have opportunity for public
24 input, and then we have two documents to review
25 and act on. One is - let me ask first, did

1 everybody get copies of the two documents?

2 UNIDENTIFIED: No.

3 DR. ANDERSON: Yes, I did.

4 UNIDENTIFIED: (inaudible)

5 DR. ZIEMER: I'm sorry?

6 MR. MILLER: At least folks who are not on
7 the board, I didn't get one. Richard Miller.

8 DR. ZIEMER: Okay. Let's see, Cori, is there
9 a way to transmit those documents by e-mail to
10 those folks?

11 MS. HOMER: If I can get the e-mail addresses
12 I can forward them. I've got Richard Miller's.

13 MR. MILLER: That'd be great, Cori. I would
14 appreciate that.

15 MS. MUNN: I'm still getting an awful lot of
16 background noise (inaudible) -

17 UNIDENTIFIED: Excuse me, I came in late.
18 Can we identify everyone who's on the call?

19 DR. ZIEMER: Sorry?

20 UNIDENTIFIED: I came in on this. Could we
21 identify everyone that's on the call?

22 DR. ZIEMER: Sure. Maybe we could ask our
23 recorder to - can you easily go through the
24 names?

25 MS. MURRAY: Yeah. (inaudible), Mark

1 Griffon, Wanda Munn, Bob Presley, (inaudible) -

2 **MR. ELLIOTT:** I'm sorry. This is Larry
3 Elliott. I would ask that everybody that has a
4 mute button on their phone use it, except for of
5 course when they're speaking. Maybe that will
6 cut out the background noise. If that doesn't
7 cut out the background noise, we're going to have
8 to identify that individual and they're going to
9 have to get on a different phone because the
10 recorder can't hear everybody, and everybody else
11 on the phone can't hear.

12 **MR. TABOR:** Larry, Bob Tabor here. It sounds
13 to me like everything was pretty clear, except if
14 you've got somebody on cellular that might be in
15 an automobile they're going to pick up all that
16 road noise.

17 **DR. ZIEMER:** Is anybody on a cellular in an
18 automobile?

19 **MR. ESPINOSA:** Actually, I - this is Rich
20 Espinosa.

21 **DR. ZIEMER:** Are you moving, Rich, or just -

22 **MR. ESPINOSA:** No, I'm just going to park
23 right now.

24 **DR. ZIEMER:** Yeah, that would be probably
25 good.

1 **MR. ESPINOSA:** Okay.

2 **DR. ZIEMER:** Anyone else?

3 [No responses]

4 **DR. ZIEMER:** Okay. Can you go through the
5 names again?

6 **MS. MURRAY:** Okay. Board members: Wanda
7 Munn, Bob Presley, Roy DeHart, Sally Gadola, Paul
8 Ziemer, Tony Andrade, Richard Espinosa, Jim
9 Melius, and Henry Anderson. From NIOSH, Larry
10 Elliott, Cori Homer, and Ted Katz. Members of
11 the public: Mike Gibson, Vina Colley, Jerry
12 Tudor, Richard Miller - I'm sorry, for DHHS I
13 should add David Naimon and Liz Homoki-Titus.
14 Other members of the public: Mark Reinhalter,
15 Joy Gest, Ken Crase, Gibson - I've got you
16 already - and Leon Owens. Did I miss anybody?

17 **MR. TABOR:** I don't know. Did you say Bob
18 Tabor?

19 **MS. MURRAY:** I did.

20 **MR. TABOR:** Okay, thank you.

21 **MR. MORALES:** Also Frank Morales.

22 **MS. MURRAY:** Frank Morales, thank you.

23 **MR. REINHALTER:** And I would just - Mark
24 Reinhalter, I guess I'm a member of the public,
25 but I'm also associated with the U.S. Department

1 of Labor.

2 **MS. MURRAY:** Okay.

3 **DR. ZIEMER:** Thank you.

4 So at the moment those are the individuals
5 who are on the line. I was identifying the
6 documents that the Board needs to act on.

7 The first is a letter to Secretary Thompson
8 that deals with the Memorandum of Understanding
9 with DOE and with retention of records by DOE.
10 That's a one-page letter. The basic content of
11 this item was discussed at the meeting last week,
12 and it was a matter of wording the letter in an
13 appropriate fashion.

14 And then the second document consists of a
15 cover letter and two attachments. Again, the
16 cover letter to the Secretary indicating that the
17 Board is providing comments on 42 CFR Part 83,
18 and then the comments themselves are included in
19 two attachments: Attachment 1, which is called
20 General Comments; and Attachment 2, called
21 Specific Comments, which relate to specific
22 sections of the proposed rule making.

23 **MS. MUNN:** Paul, you're almost being covered
24 up by the background noise again.

25 **DR. ZIEMER:** Okay.

1 **MS. MUNN:** I can hear you, but only barely.

2 **DR. ZIEMER:** Do we know - does everyone have
3 their cell phones on mute, or - that's a little
4 better again, is it?

5 **MS. MUNN:** Yeah, much better.

6 **DR. ZIEMER:** That's good.

7 **MS. MUNN:** And there is goes again.

8 **DR. ZIEMER:** Okay, well, we'll do our best
9 here with the situation as it is.

10 Now what we'll do is go through the documents
11 one at a time. Before we vote on the specific
12 documents I will call for public comment on those
13 documents.

14 The first (inaudible) deals with the single
15 letter relating to the Memorandum of
16 Understanding and the retention of records.

17 **MS. MUNN:** Background noise again.

18 **DR. ZIEMER:** Okay. Let me ask, I suppose for
19 the recorder, should I read the proposed letter?

20 **MS. MUNN:** I think.

21 **DR. ZIEMER:** I think so. Okay.

22 **MS. MUNN:** Well, it seems to me we all have
23 it, the Board members all have it. Right?

24 **DR. ZIEMER:** We may need to read it for the
25 record.

1 **MS. MUNN:** Okay. I have one question before
2 you do read it, Paul.

3 **DR. ZIEMER:** Yes?

4 **MS. MUNN:** Did we identify the appropriate
5 DOE number?

6 **DR. ZIEMER:** I have not gotten that
7 information yet. Let me ask if -

8 **MR. ELLIOTT:** This is Larry Elliott. I can
9 respond to that. I have resurrected the memo
10 from - the Department of Energy memo dated
11 October 28, 1991. It is (inaudible) Cori Homer,
12 and it will be attached to this letter and the
13 appropriate citations (inaudible).

14 **MS. MUNN:** Oh, great. Okay.

15 **MR. ELLIOTT:** So we can insert the citation
16 at the appropriate spot.

17 **MS. MUNN:** Yeah, that's great. Thanks,
18 Larry. I'm sorry.

19 **DR. ZIEMER:** Okay. Let me proceed, then, and
20 read the letter.

21 The date on the letter would be today's date,
22 if it's approved, which would be August 22nd,
23 2002, addressed to The Honorable Tommy G.
24 Thompson, Secretary, Department of Health and
25 Human Services, Washington, D.C.

1 Dear Secretary Thompson:

2 Since my last communication to you on
3 February 22, 2002, The Advisory Board on
4 Radiation and Worker Health has had three
5 additional meetings. The sessions were open to
6 the public in accordance with FACA requirements
7 and were attended by a variety of individuals
8 representing themselves or interest groups.
9 Copies of the meeting agendas are attached for
10 your information.

11 During the Advisory Board meeting in
12 Cincinnati on August 14 and 15, two of the issues
13 under consideration relating to past records were
14 deemed to be of sufficient substance to require
15 your attention. The Board continues to be
16 seriously concerned about the critical need to
17 have complete personnel exposure records and
18 other related site records available in a timely
19 manner. The dose reconstruction process being
20 conducted by NIOSH, as required by law, cannot
21 function fairly and quickly in the absence of
22 those data. As the bulk of the required
23 information is accessible almost exclusively
24 through the Department of Energy, the Board
25 recommends that - now there are two bullets:

1 Bullet one: A Memorandum of Understanding
2 between DHHS and DOE be pursued as expeditiously
3 as possible to assure NIOSH is provided timely
4 and appropriate DOE exposure records required by
5 Section 3623(e) of EEIOCPA.

6 Bullet two: DOE be urgently requested to
7 reissue its directive on retention of personnel
8 records (the DOE Reference would be inserted
9 here) to each of their offices, contractors, and
10 former contractors to ensure that all necessary
11 data are appropriately retained and accessible.

12 If there are questions, or if further
13 explanations of the Board's concerns are desired,
14 please advise accordingly.

15 Sincerely, Paul L. Ziemer, Ph.D., CHP,
16 Chairman.

17 Now let me ask if any of the Board members
18 have comments, questions, or suggestions on this
19 letter.

20 **DR. DeHART:** Paul, this Roy.

21 **DR. ZIEMER:** Right.

22 **DR. DeHART:** The second bullet, I would move
23 the word "urgently" to be inserted, and read DOE
24 be requested to urgently reissue.

25 **DR. ZIEMER:** Okay. It's a matter of whether

1 it's the request is urgent or the reissue is
2 urgent. Maybe it's the same. Let me get some
3 feedback here. We can do this by consent if
4 that's agreeable.

5 **DR. DeHART:** Yes.

6 **DR. ZIEMER:** What do others feel about that
7 word change, moving the word?

8 It would be "be requested to urgently
9 reissue?"

10 **DR. DeHART:** DOE be requested to urgently
11 reissue.

12 **MS. MUNN:** I guess it's not a big thing, but
13 my view was that we were urgently suggesting that
14 DOE do something urgently, that it get on the
15 ball to do it itself rather than to issue it as
16 an urgent directive, although both are
17 applicable.

18 **DR. ZIEMER:** As it stands now, (inaudible)
19 the urgency comes from NIOSH to get this request
20 out.

21 **DR. DeHART:** That's my point. What we're
22 wanting is that they urgently reissue directive.
23 And I think it is a given that if we're saying
24 urgently reissue we would also like to get the
25 memorandum out real quickly.

1 **UNIDENTIFIED:** What we might want to do if -

2 **DR. ANDERSON:** (inaudible) say that HHS
3 should (inaudible) urgently, and (inaudible).
4 We're trying to cover two steps in this. The
5 first is the letter is to HHS. What we want HHS
6 to do is immediately contact DOE to reissue their
7 document.

8 **DR. ZIEMER:** Right.

9 **MR. ELLIOTT:** This is Larry Elliott.
10 (inaudible) remind you all that when you speak
11 you need to introduce yourself each time so the
12 recorder -

13 **DR. ANDERSON:** (inaudible) Henry Anderson.

14 **MS. MUNN:** This is Wanda. Can we take care
15 of the issue by using both words in two
16 respective places? Can we say DOE be urgently
17 requested to immediately reissue its directive?

18 **UNIDENTIFIED:** (inaudible)

19 **DR. DeHART:** That would be fine.

20 **DR. ZIEMER:** Does that meet the - Roy, does
21 that meet your -

22 **DR. DeHART:** Yes. My point was that we're
23 trying to get DOE to respond quickly, and we're
24 not really saying that.

25 **MS. MUNN:** Right.

1 **DR. ZIEMER:** Are there any objections to that
2 change that anyone has?

3 **MS. MUNN:** Oh, thank you whoever hung up.

4 **DR. ZIEMER:** It's in the spirit of it.
5 Unless I hear objections, I'm going to take it by
6 consent that that wording change would be
7 agreeable, so it would now read DOE be urgently
8 requested to immediately reissue its directive.

9 Is that okay?

10 [No responses]

11 **DR. ZIEMER:** Other comments or suggestions?

12 **MR. GRIFFON:** This is Mark Griffon. On the
13 first bullet, I was wondering if the Memorandum
14 of Understanding between DHHS and DOE be pursued,
15 or be completed as expeditiously as possible? I
16 think there's already been a pursuit.

17 **DR. ZIEMER:** That's quite true. It sounds
18 like the way it's written now, it sounds like
19 this is something to get underway, where it is
20 already pretty far along.

21 **MS. MUNN:** Completed is probably stronger
22 language.

23 **MR. GRIFFON:** I would recommend -

24 **DR. ZIEMER:** Everybody agreeable to
25 "completed?"

1 UNIDENTIFIED: Yes.

2 UNIDENTIFIED: Yes.

3 DR. ZIEMER: Any objections?

4 [No responses]

5 DR. ZIEMER: By consent, we'll change that
6 "pursued" to "completed."

7 Thank you, Mark, for that suggestion.

8 Others?

9 [No responses]

10 DR. ZIEMER: Okay, before we vote I want to
11 ask if any of the members of the public have
12 comments on this topic dealing with the DOE
13 records and the urgency of both obtaining them
14 and retaining them.

15 MS. GEST: I have a comment.

16 DR. ZIEMER: Thank you. Identify, and then -

17 MS. GEST: My name is Joy Gest from Hanford.

18 DR. ZIEMER: Thank you, Joy. Go ahead.

19 MS. GEST: I have received two letters from
20 NIOSH telling me that they have requested the
21 necessary radiation exposure records. I've
22 received two letters, so that leads me to believe
23 if I've received two letters asking for the same
24 information from DOE, DOE is the hangup. Is that
25 correct?

1 **MR. ELLIOTT:** This is Larry Elliott.

2 **MS. MUNN:** Oh, it's back, whatever that
3 background noise is. It's returned with that
4 call.

5 **UNIDENTIFIED:** (inaudible)

6 **MR. ELLIOTT:** I'd answer your question,
7 though, in a general sense. The two letters may,
8 and I believe this is the case, represent our
9 initial request from DOE, and we - did the second
10 letter imply that we had received information, or
11 did it imply we had not received any to date?

12 **MS. GEST:** It sounded - I don't have the
13 letters right in front of me, but it sounded to
14 me like you were requesting the same information
15 and that you had not received it yet.

16 **MR. ELLIOTT:** Okay. Well, the second letter
17 that goes back to DOE (inaudible) secondary level
18 information if the first submittal that they gave
19 us wasn't as complete as we needed to do the dose
20 reconstruction, or it may be a reminder to DOE
21 that this particular request for a given claim
22 may have passed a given mark in time, such as a
23 120-day mark. So it's just our attempt to keep
24 you apprized - you, the claimant - apprized of
25 our interaction with DOE in our pursuit of

1 records for your claim. But I can't speak
2 specifically with regard to your question.

3 **MS. GEST:** It just seems to me like
4 (inaudible) process from the time I submitted my
5 claim, which I have done four different times,
6 that everyone involved in this (inaudible)
7 process is going extremely slow. It's like the
8 right hand doesn't know what the left hand is
9 doing.

10 **DR. ZIEMER:** Yes, and we appreciate that
11 problem. And part of the point of this - this is
12 Paul Ziemer - part of the point of this
13 memorandum is to help urge DOE to be timely in
14 those responses, and also concern that arose from
15 some comments from the members of the public that
16 records, as new contractors come into the
17 different facilities, that they may not be
18 cognizant of the need to preserve all of the old
19 records.

20 We are trying to address those issues. And
21 whether it will address your specific one it's
22 not clear, but at least we're concerned about
23 both the retention and the timely availability of
24 records, and that's the point of the letter. So
25 thank you for your comment.

1 Are there any other general comments, or
2 comments from members of the public?

3 **MS. COLLEY:** I'd like to make one. And I
4 have just had to go to a pay phone, so it's going
5 to be kind of noisy, and then I can get off here.
6 This is Vina Colley from the Portsmouth Gaseous
7 Diffusion Plant.

8 **DR. ZIEMER:** Thank you.

9 **MS. COLLEY:** And we're really upset with the
10 process here of trying to get workers to sign
11 waivers to sign away their rights because they
12 don't have a certain type of cancer.

13 And we're also upset because we're not having
14 a meeting here at Piketon, or at least I haven't
15 heard of one yet, and we ask that you do that.

16 And we also ask that you put all the sites as
17 special cohorts, because we all have been exposed
18 to many different types of chemicals.
19 Particularly at the gaseous diffusion plants are
20 uranium hexafluoride, plus all the other
21 plutonium that we had that we weren't supposed to
22 have.

23 So they haven't kept good records, so none of
24 us should have to prove anything. It's time for
25 the Department of Energy to do the right thing.

1 **DR. ZIEMER:** All right, thank you for that
2 comment.

3 Any others?

4 **MR. MILLER:** Dr. Ziemer, this is Richard
5 Miller.

6 **DR. ZIEMER:** Yes, Richard.

7 **MR. MILLER:** I just had a question. In the
8 drafting of this letter, is this carbon copied to
9 the Secretary of Energy? Because it seems to me
10 as though you're asking Secretary Thompson to
11 accomplish something which frankly is a bit
12 beyond his personal control, which is to have the
13 Energy Department reciprocate (inaudible) based
14 on his suasion. I realize you don't have
15 jurisdiction pursuant to the Statute over at DOE,
16 but it seemed to me at least as a courtesy it
17 ought to be copied to the Secretary of Energy at
18 the same time.

19 **MR. ELLIOTT:** This is Larry Elliott, Richard,
20 and we will attend to those things within the
21 protocol that we have for corresponding between
22 departments.

23 **MR. MILLER:** Oh, okay. Well, thank you,
24 Larry.

25 **DR. ZIEMER:** I don't think it's our

1 prerogative to be - our job is to advise the
2 Secretary of Health and Human Services. And they
3 do have mechanisms for transmitting this
4 information, so I'm confident it will find the
5 proper target, as it were.

6 **MR. MILLER:** Now is this letter going to be
7 made publicly available on your web site as well?

8 **DR. ZIEMER:** Oh, yes.

9 I'm correct on that, am I not? This would -

10 **MR. ELLIOTT:** Yes, that --

11 **DR. ZIEMER:** This would be an official
12 recommendation of the Board.

13 **MR. ELLIOTT:** It will be a matter of part of
14 the docket for the proposed rule. So that is
15 accessible, all those comments are accessible on
16 the web site.

17 **DR. ZIEMER:** Actually, this letter is
18 separate from the rule making.

19 **UNIDENTIFIED:** True, that's true.

20 **DR. ZIEMER:** But it still would be available
21 on the web site, certainly, as all the other
22 recommendations are.

23 **UNIDENTIFIED:** Dr. Ziemer, one last point,
24 and that is - it's sort of off the point of this
25 letter, but only slightly - and that was your

1 committee has received public comment with
2 respect to concern that NIOSH lacks adequate
3 staffing to do all of the enormous tasks that you
4 have ahead of us.

5 Is there going to be some way to address
6 communication with the Secretary of Health and
7 Human Services on that, or - I'm not suggesting
8 it be part of this letter, but I don't know if
9 that could be added to the agenda for today. But
10 I know that the Senate had weighed in recently
11 with some language in a Senate appropriations
12 bill for Labor/HHS encouraging the Secretary's
13 office to give NIOSH some staff to actually do
14 the task ahead. And if there's a way to respond
15 I'd -

16 **DR. ZIEMER:** Well, you may recall that we had
17 a discussion on that issue at our meeting a week
18 ago, and also we have it on the agenda for next
19 time in terms of evaluating where things are when
20 the new contractor gets the dose reconstruction
21 contractors in place.

22 So it's an ongoing issue that we have before
23 us, but certainly is not an agenda item for the
24 meeting today. But your comment will be in the
25 record, of course.

1 **MS. GEST:** I would like to make a comment
2 also, since he brought this up.

3 **DR. ZIEMER:** Please identify yourself for the
4 record.

5 **MS. GEST:** Mrs. Joy Gest.

6 **DR. ZIEMER:** Joy.

7 **MS. GEST:** I understand that at the present
8 time NIOSH only has three people who are looking
9 at the claims for dose reconstruction.

10 (Inaudible) correct statement? And there have
11 only - at the present moment have only processed
12 five to seven claims out of what, approximately?

13 **MR. ELLIOTT:** This is Larry Elliott. There
14 are more than three actually working on dose
15 reconstruction efforts here at NIOSH.

16 **MS. GEST:** Okay, give me an approximate.

17 **MR. ELLIOTT:** Well, I would say that every
18 one of my staff is working on these claims as
19 they come through.

20 **MS. GEST:** And how many people are we talking
21 about?

22 **MR. ELLIOTT:** So I would answer your question
23 this way, that we all must recognize and
24 understand that a compensation program that's
25 being implemented is difficult in and of itself,

1 and it's a legal process which requires us to be
2 very careful and deliberative in the process.
3 And if we compare that process to other
4 compensation program processes, (inaudible) see
5 that in other processes, other compensation
6 programs, it takes approximately a year for a
7 claim to move through the system.

8 Now as soon as the contract is awarded that
9 NIOSH has pending for dose reconstruction
10 support, I fully expect to see a larger number of
11 claims being processed.

12 **MS. GEST:** Okay. I still didn't get an
13 answer to the question of how many claims have
14 been processed, or are in the process at the
15 moment.

16 **MR. ELLIOTT:** Well, if you go on our web site
17 you'll see that we have a little over 6,700
18 claims in our hands right now. We have finalized
19 and sent over to the Department of Labor for
20 recommended decision or a final decision, I
21 believe we're up to seven now of those claims.
22 And we are just about ready to send some more
23 over this week. There are a variety of steps in
24 the process, and at each given step there's a
25 different number of claims.

1 **MS. GEST:** Well, I guess -

2 **DR. ZIEMER:** But also, you have a contractor
3 shortly coming aboard. And once the contract is
4 approved, that will greatly expedite the handling
5 of these. Is that correct?

6 **MR. ELLIOTT:** Yes, that is correct.

7 **MS. GEST:** Okay, what are we talking about, a
8 greatly (inaudible)? It seems to me like this
9 process - I guess one of my main comments would
10 be is it looks to me like we're not setting a
11 high enough priority for the people who put in
12 claims. Other things are getting in the way -
13 September 11th and the war effort, whatever. We
14 don't have enough clout, those of us who put in
15 claims, and we keep writing to people (inaudible)
16 seems to me like anybody with (inaudible) -

17 **MS. NEWSOM:** Excuse me, I can't hear
18 anything.

19 **DR. ZIEMER:** Sounds like it's breaking up
20 here.

21 **UNIDENTIFIED:** I'm going to have to ask that
22 whoever's contributing to the background noise is
23 going to have to hang up and find another phone.

24 Thank you.

25 **DR. ZIEMER:** That's better again.

1 In any event, the NIOSH group is certainly
2 moving forward on getting the contractor aboard.
3 There will be a goodly number of individuals
4 working strictly on this process of dose
5 reconstruction and processing of claims. So it's
6 not - the NIOSH staff is just getting the process
7 underway, but they will have -

8 **MR. ELLIOTT:** Let me ask a question
9 (inaudible) Ms. Gest - this is Larry Elliott
10 again. Once we have the contractor aboard, the
11 contractor is supposed to be staffed and equipped
12 to handle 8,000 claims per year as a minimum.

13 **MS. GEST:** Okay. And we're talking about
14 whoever this contractor is who has expertise in
15 looking at these records?

16 **MR. ELLIOTT:** Yes. Ma'am, we're not - if
17 you'd like to make a comment for the record
18 today, that's what we would ask you to do. We
19 don't have time to debate and question and
20 answer. So (inaudible) comment for the record,
21 please do so. But I'd ask you to make your
22 comment, and then we need to move along.

23 **MS. GEST:** Okay.

24 **DR. ZIEMER:** Any further comments?

25 [No responses]

1 **DR. ZIEMER:** Okay. Board members, are you
2 ready to act on this document? Is there anyone
3 not ready to vote?

4 [No responses]

5 **DR. ZIEMER:** What we have before us now would
6 be approval of the letter relating to the
7 Memorandum of Understanding and the retention of
8 personnel records. Are you ready to vote?

9 [No responses]

10 **DR. ZIEMER:** I hear silence. Does that mean
11 you're ready to vote?

12 All who favor the document with those two
13 minor changes in wording that we agreed to,
14 please say aye.

15 **UNIDENTIFIED:** Dr. Ziemer, I think you'll
16 have to have a roll call.

17 **DR. ZIEMER:** Yes, we'll do a roll call. Can
18 the -

19 **MR. ELLIOTT:** Cori could do that.

20 **DR. ZIEMER:** Cori, can you do the roll call?

21 **MS. HOMER:** Yes. As soon as I can find my
22 roster, now that it's buried. Okay.

23 **DR. ZIEMER:** If you favor this document say
24 aye; if you oppose say no.

25 **MS. HOMER:** Dr. Ziemer?

1 DR. ZIEMER: Yes.
2 MS. HOMER: Dr. Anderson?
3 DR. ANDERSON: Yes.
4 MS. HOMER: Dr. Andrade?
5 DR. ANDRADE: Yes.
6 MS. HOMER: Dr. DeHart?
7 DR. DeHART: Yes.
8 MS. HOMER: Mr. Espinosa?
9 MR. ESPINOSA: Yes.
10 MS. HOMER: Ms. Gadola?
11 [No responses]
12 MS. HOMER: Ms. Gadola?
13 MS. GADOLA: Yes.
14 MS. HOMER: Mr. Griffon?
15 MR. GRIFFON: Yes.
16 MS. HOMER: Dr. Melius?
17 DR. MELIUS: Yes.
18 MS. HOMER: Munn?
19 MS. MUNN: Yes.
20 MS. HOMER: Mr. Presley?
21 MR. PRESLEY: Yes.
22 MS. HOMER: Okay. It's unanimous.
23 DR. ZIEMER: Thank you. The motion carries,
24 and that will go with our recommendation to
25 Secretary Thompson.

1 Now the next document and attachment consists
2 of a cover letter to Secretary Thompson. Let me
3 read the letter. And the letter itself, although
4 we can reword it if necessary, does not contain
5 any recommendations. It is simply a cover
6 letter, but I will read it for the record:

7 August 20, 2002, The Honorable Tommy G.
8 Thompson, Secretary, Department of Health and
9 Human Services, Washington, D.C.

10 Dear Secretary Thompson:

11 During meetings held May 2nd and 3rd, 2002,
12 July 1st and 2nd, 2002, and August 14 and 15, 2002,
13 The Advisory Board on Radiation and Worker Health
14 examined the provisions of the Department of
15 Health and Human Services proposed rule 42 CFR
16 Part 83 entitled Procedures for Designating
17 Classes of Employees as Members of the Special
18 Cohort Under the Energy Employees Occupational
19 Illness Compensation Program Act of 2000.

20 At the Board sessions, formal presentations
21 were provided by NIOSH staff members concerning
22 the Special Exposure Cohort issues. In addition,
23 presentations were made by outside experts,
24 including individuals from the Department of
25 Veterans Affairs. Members of the public also

1 provided valuable input on this matter.

2 Under the provisions of the President's
3 Executive Order of December 7th, 2000, the
4 Advisory Board has very specific responsibilities
5 on advising the Secretary of Health and Human
6 Services. In accordance with those
7 responsibilities, I am pleased to provide the
8 Advisory Board's comments and recommendations
9 concerning the proposed procedures set forth in
10 42 CFR Part 83. These comments and
11 recommendations are summarized in Attachments 1
12 and 2. Attachment 1 provides general comments on
13 certain aspects of the proposed rule. Attachment
14 2 provides more specific comments on particular
15 sections of the proposed rule.

16 Please let me know if additional information
17 or clarification is needed.

18 Sincerely, Paul Ziemer, et cetera.

19 Now let me ask, although this has no
20 recommendations, you may wish to help me improve
21 wording on this.

22 **MR. ELLIOTT:** Dr. Ziemer, this is Larry
23 Elliott. I would suggest to you all that in the
24 first sentence, during meetings held May 2nd and
25 3rd, and tying that with examining the provisions

1 of 42 CFR 83, I don't believe that actually
2 happened in that May meeting. Our Notice of
3 Proposed Rule Making were not presented to you at
4 that time. They were not ready.

5 **DR. ZIEMER:** That's right.

6 **MR. ELLIOTT:** (inaudible) did, however, I
7 believe the transcript will show, have some
8 discussions. You certainly asked us questions
9 about the status of this, of the guidelines or
10 rule at that time, but I don't believe you
11 examined the provisions.

12 **DR. ZIEMER:** On May 2nd and 3rd, because that
13 draft was not out yet. That's quite correct.

14 **MR. ELLIOTT:** So you can work with the
15 language a little bit, but just to - apart from
16 that.

17 **DR. ZIEMER:** It's not necessary that we have
18 the May 2nd and 3rd in there, probably. I mean,
19 it's -

20 **MS. MUNN:** This is Wanda. We could say
21 examine issues relevant to the Department of
22 Health and Human Services proposed rule, rather
23 than provisions of.

24 **UNIDENTIFIED:** And leave May 2nd and 3rd in.

25 **MS. MUNN:** Yeah, if you were going to leave

1 May 2nd and 3rd in -

2 DR. ZIEMER: Examine issues relevant to?

3 MS. MUNN: Um-hum (affirmative).

4 DR. ZIEMER: Which doesn't mean that we
5 necessarily examined that document on that day.

6 MS. MUNN: That's correct.

7 DR. ZIEMER: That certainly will make it more
8 correct. Anyone object to that or have a better
9 solution?

10 [No responses]

11 DR. ZIEMER: So examined issues relevant to
12 the provisions?

13 MS. MUNN: Um-hum (affirmative).

14 DR. ZIEMER: Okay. Everybody okay on that?

15 MR. PRESLEY: Bob Presley. Sounds good to
16 me.

17 DR. ZIEMER: Okay. And then - well, let me
18 ask for any other comments or suggestions on the
19 letter itself.

20 DR. ANDERSON: Paul, this is Henry Anderson.

21 DR. ZIEMER: Yes, Henry?

22 DR. ANDERSON: I'm going to have to step out
23 here, and I just want to say that I'm supportive
24 of the letter and would vote for it, as well as
25 the two attachments. If there's some minor

1 wordsmithing that's fine with me. But I just
2 want you to record my vote in favor of these two.
3 I'll get back on the line, but they're waving
4 frantically at me here.

5 DR. ZIEMER: Oh, okay. Thank you.

6 DR. ANDERSON: Okay.

7 DR. ZIEMER: Thank you.

8 DR. ANDERSON: Sure thing.

9 DR. ZIEMER: Henry?

10 DR. ANDERSON: Yeah?

11 DR. ZIEMER: If you're able to, come back on.

12 DR. ANDERSON: Oh, I will.

13 DR. ZIEMER: I have a couple of items that I
14 want to raise on some items here.

15 DR. ANDERSON: Okay.

16 DR. ZIEMER: Okay.

17 DR. ANDERSON: Thank you.

18 DR. ZIEMER: Thank you.

19 Okay, we don't need to vote on the letter at
20 the moment. We're just getting wording on that.
21 What we need to vote on are the attachments.

22 Let's go to Attachment 1, unless someone had
23 any other comments on the letter?

24 [No responses]

25 DR. ZIEMER: Okay. Attachment one. Let's go

1 through this section by section, if that's
2 agreeable.

3 First section, on non-SEC listed - oh, what
4 I'll do now, let me read each section for the
5 recorder here. On Attachment 1, the first
6 section is called Non-SEC Listed Cancers. The
7 comment is this:

8 The Board noted that there were a number of
9 unresolved issues concerning how to handle
10 claimants who were part of an SEC class who
11 developed a non-SEC listed cancer. The Board
12 recommends that NIOSH carefully review the
13 proposed regulations to ensure that they do not
14 preclude appropriate handling of these cases.
15 The Board also recommends that NIOSH develop
16 appropriate procedures to address situations
17 where part but not all of a claimant's dose
18 history is included in an SEC class.

19 Now that's the paragraph. Let me ask if
20 anyone has any comments, corrections, suggested
21 changes?

22 **DR. DeHART:** This is Roy with just a word
23 change. It's on the third line. It's the word
24 "they" could be interpreted to refer back to
25 NIOSH rather than to the regulation. I would

1 suggest then that it read proposed regulation to
2 ensure that these do not preclude.

3 DR. ZIEMER: Okay, these.

4 DR. DeHART: Yes.

5 UNIDENTIFIED: (inaudible)

6 DR. ZIEMER: (inaudible) because it's plural
7 that it's regulations?

8 DR. DeHART: Yes.

9 DR. ZIEMER: Anybody object to that?

10 [No responses]

11 DR. ZIEMER: It's a clarity issue. Thank
12 you.

13 Any others?

14 [No responses]

15 DR. ZIEMER: Okay. Let's - well, let me ask
16 the group now, do you want to get all comments
17 and then vote on the document as a whole, or does
18 anyone wish to separate the document into
19 sections?

20 MS. MUNN: Let's get the whole thing
21 (inaudible), unless we get a particularly thorny
22 issue.

23 DR. ZIEMER: Okay. Well, I'm going to raise
24 an issue here in a moment. In fact, I'll raise
25 it under the health endangerment.

1 Let me read the document first. The second
2 section, Health Endangerment:

3 Some of the Board members felt that the
4 proposed rule for determining whether a potential
5 SEC class meets the criteria of "health
6 endangerment" was not adequate. In particular,
7 the proposed method for estimating whether the
8 cohort met the criteria for "health endangerment"
9 was not adequately justified and could lead to
10 arbitrary and unfair decisions. These members
11 recommended that NIOSH consider criteria similar
12 to those used for the current SEC classes based
13 on duration of work in a facility in a situation
14 where the monitoring of radiation exposures was
15 required or should be required (after first
16 determining that the information was not adequate
17 for individual dose reconstruction).

18 Okay, that is the document or this statement
19 as it stands.

20 Now one of the issues, and we brought it up
21 at the meeting, was that this may not represent a
22 consensus of the Board, this particular
23 statement. It may represent the views of some of
24 the Board. In fact, it appeared to be split at
25 the meeting.

1 The question really arises - and now in my
2 mind, as I look at this further as to whether or
3 not the Advisory Board should be putting forth to
4 the Secretary something that is not necessarily a
5 consensus view - this may or may not be a
6 consensus view. At the meeting I was suggesting
7 that we at least have it in the document to look
8 at for today to see whether or not there was
9 consensus on this item of health endangerment.
10 If there is not, then I am questioning whether it
11 should even be in the document since it would
12 then not be a consensus view.

13 **DR. ANDRADE:** Paul?

14 **DR. ZIEMER:** So let's have some discussion on
15 that issue.

16 **DR. ANDRADE:** Paul?

17 **DR. ZIEMER:** Yes.

18 **DR. ZIEMER:** Tony Andrade.

19 **DR. ZIEMER:** Tony.

20 **DR. ANDRADE:** I feel that the statement needs
21 to have a little bit more clarification for it to
22 be palatable, at least to me. Just working in a
23 facility for a period of time, like 250 days,
24 without adequate monitoring in and of itself does
25 not mean anything to anybody. That is completely

1 arbitrary.

2 There has to be another indicator. There has
3 to be an "and" statement in there. For example,
4 working at a facility in a situation where the
5 monitoring of radiation exposures was required,
6 and there was evidence of either external or
7 internal - potential for external or internal
8 dose. Without that, then we're getting back to
9 this arbitrariness that Congress dealt us in
10 establishing the first cohort to begin with.

11 **DR. ZIEMER:** Okay. Other comments?

12 **DR. DeHART:** This is Roy. In reviewing this,
13 I had simply lined through everything following
14 "these members recommend that." I have no
15 objection at all to the Board bringing up that
16 there is confusion and problems, perhaps, with
17 health endangerment as a definition. But I would
18 not approve recommending NIOSH be instructed as
19 to what to consider.

20 **DR. ZIEMER:** Okay. So your recommendation is
21 to -

22 **DR. DeHART:** My recommendation -

23 **DR. ZIEMER:** Statement but no recommendation?

24 **DR. DeHART:** That's correct. We would stop
25 at "these members recommend that NIOSH consider."

1 **DR. ZIEMER:** Okay. Let me ask for other
2 comments now. Right now we're just listening.
3 We can ask for specific motions to amend here in
4 a moment.

5 **MS. MUNN:** This is Wanda.

6 I wish I had thought of that, Roy. I agree.

7 I can see - I think it's appropriate for us
8 to mention that there is concern on the Board
9 with respect to what health endangerment
10 essentially means, but I am likewise hesitant to
11 make this statement that's made in the last
12 sentence. The first two sentences, I think, are
13 approveable.

14 **DR. ZIEMER:** Okay, other comments?

15 **DR. ANDRADE:** This is Tony Andrade again. I
16 could support that. I think if we leave the
17 sentence as recommend that NIOSH consider
18 suitable criteria or something to that effect, or
19 consider this issue, period, which leaves it a
20 little open-ended and gives us some time to work
21 with it, then I would certainly support Dr.
22 Anderson's comment.

23 **MR. PRESLEY:** This is Bob Presley. I agree.

24 **DR. ZIEMER:** Let me ask the question of those
25 who have commented so far, what you would have

1 left is a statement that some Board members felt
2 something or other.

3 But what I'm asking now is that would, as it
4 is written here, it would appear to go to the
5 Secretary as a sort of minority report thing,
6 which is not what we're asked to do. The
7 Secretary wants to know what the Board by
8 consensus agrees to. It's one thing to say that
9 we agree that some of our members have this
10 concern, but if not a majority has this concern
11 then I ask the question, do we send it on to the
12 Secretary?

13 If those who just spoke feel that you could
14 agree to this concern if it were written in the
15 abbreviated way - that is, that it was a Board
16 consensus that there is a concern about the
17 criteria without spelling out how it goes - then
18 it becomes a consensus. Do you see what I'm
19 saying?

20 **MS. MUNN:** Yes.

21 This is Wanda. I have an additional
22 suggestion. Could the third sentence then read,
23 these members recommend that NIOSH consider this
24 issue be more extensively defined?

25 **DR. MELIUS:** This is Jim Melius. I need to

1 clarify things procedurally. I don't see where
2 there's any requirement that the Board put forth
3 a consensus recommendation. We've attempted to
4 do that, but it's not something that's required
5 of us. And I think procedurally, my
6 understanding from the last meeting that we were
7 putting forth in this particular paragraph, and I
8 think in one other place, some criteria that
9 there are some recommendations that we recognize
10 were not unanimously agreed to by - were not
11 being unanimously agreed to by the Board.

12 If that's the case, then I have some question
13 - you know, I guess we can go two ways. One is
14 we can try to make them, reword them to make them
15 a consensus, or we can leave them as they are.
16 And I guess I would object to people trying to
17 reword what some members of the Board feel should
18 be recommended when they didn't agree with the
19 point to begin with.

20 **DR. ZIEMER:** That was sort of what I was
21 saying, Jim, that if people are trying to reword
22 others' views, that's one thing. If we're
23 rewording so that it becomes a consensus view,
24 that's a different issue.

25 Personally, I'm comfortable with simply

1 enumerating all views on everything. I think
2 advisory boards in general are called on to
3 provide the consensus view.

4 Now in saying that, let me tell you that I
5 have no personal qualms with other views going
6 forward. I'm not sure that the system is
7 comfortable with that. By the system, I'm
8 talking about advisory boards in general, which -
9 and even NIOSH in how it operates. So -

10 **MR. ELLIOTT:** Dr. Ziemer?

11 **DR. ZIEMER:** Yeah?

12 **MR. ELLIOTT:** This is Larry Elliott, if I
13 might speak. Certainly, I think you're both
14 right.

15 Under FACA, which this advisory body has to
16 operate, the intention is to provide consensus-
17 based advice. And the Department and the
18 Secretary, I think, feel that if there are
19 individuals who have another opinion or another
20 perspective, they certainly have been afforded
21 the opportunity to provide that as an individual.
22 And as an individual that's going to carry in, I
23 think, their mind more weight than - as equal
24 weight to consensus advice coming from an
25 advisory body than if the report from the

1 advisory body says some members, a few members,
2 or a member. And I'd just offer that for
3 everyone's understanding of how the Department
4 views this.

5 **MS. HOMER:** This is Cori. While I'm sitting
6 here, I pulled up the Operational Guidelines that
7 was discussed and agreed upon at the very first
8 meeting. And the paragraph two reads that the
9 Board shall issue formal recommendations on
10 specific matters to HHS/NIOSH only after a
11 majority opinion has been reached through voting
12 by eligible members.

13 I'm not sure if that clarifies things for
14 you, but -

15 **DR. ZIEMER:** Well, one of the things that we
16 had sort of entertained was a majority could
17 agree to allow a minority view to be included.
18 Do you understand what I'm saying?

19 In other words, we could, I think, under that
20 plan vote to allow the view to go forward.
21 Everyone, we could by vote say this is the
22 paragraph we want to go forward, so even though
23 the content would not have represented a
24 consensus. Or maybe it will. I think it was a
25 very close vote last time, as I recall.

1 In any event, I must say that my preference
2 would be to have things go forward not just
3 pointing out minority views, but things that
4 everybody said yes, we all - we, consensus-wise,
5 maybe not all - but we agree that this is an
6 issue. And if the definition of health
7 endangerment itself, if the definition, if that's
8 a concern to most, that can be a majority thing.

9 The solution of it may be different in
10 people's minds. In one case it may be in terms
11 of a required time of work at a site or whatever.

12
13 **DR. DeHART:** Paul, this is Roy. I would
14 recommend - I don't know if we're ready to vote
15 on anything or not, but anyway -

16 **DR. ZIEMER:** Well, that's why I originally
17 said we need to take this by sections, because
18 this may be an example of such.

19 **DR. DeHART:** I'm quite willing to agree,
20 because of our discussions and the difference of
21 opinions that were there that health endangerment
22 as a term needs to be better defined, and I would
23 be quite willing to see that as a Board position.
24 But I would take exception with trying to define
25 it.

1 **MR. TABOR:** I don't see how you gain anything
2 by that.

3 **DR. ZIEMER:** I'm sorry?

4 **MR. TABOR:** This is Bob Tabor here. You
5 people were in a discussion there. I don't think
6 you're ready for any comments.

7 **DR. ZIEMER:** Right now limiting this to Board
8 discussion. Thank you, Bob.

9 **MR. TABOR:** Fine.

10 **DR. ZIEMER:** Other -

11 **MS. MUNN:** This is Wanda again. As you know
12 from our discussion in the Board itself, I felt
13 that the definition that was given was reasonable
14 enough.

15 For that reason, I hesitate to begin to make
16 those definitions ourselves as a Board. And I
17 guess I would prefer to go back to Roy's initial
18 suggestion, that the comments after the first two
19 sentences be deleted. As our current discussion
20 has pointed out, if those members who feel
21 otherwise feel strongly enough about it we or
22 they are certainly free to make individual
23 comments to the Secretary.

24 **DR. ZIEMER:** Do I understand your comment,
25 Wanda, to mean that you do not object to having a

1 statement that says some Board members who are
2 concerned about adequacy, whatever the statement
3 is here at the beginning -

4 **MS. MUNN:** Yes.

5 **DR. ZIEMER:** Deleting the rest, as Roy has
6 suggested?

7 **MS. MUNN:** Yes. I can see no problem with
8 the first two sentences that shows that there was
9 a difference of opinion on the Board, but I think
10 we can spend a lot of time not necessarily
11 productively trying to meld the differences that
12 exist.

13 **DR. ZIEMER:** Any other comments?

14 **MR. GRIFFON:** Yeah, this is Mark Griffon. I
15 mean, it does go back to that question of can we
16 reach consensus on this, or are we going to allow
17 this minority position to stay of some Board
18 members? I think if I'm interpreting what Roy
19 just said correctly, he could vote for something
20 that's slightly edited where we don't make a
21 recommendation, but we as an entire Board -

22 **DR. ZIEMER:** Have raised the issue.

23 **MR. GRIFFON:** We as an entire Board feel that
24 there is a problem with this definition, and we
25 think that NIOSH needs to further consider other

1 suitable criteria, period, and we don't lay out
2 that specific recommendation that's more to the
3 other SEC stuff. I guess I see that as sort of a
4 middle ground, a consensus.

5 **DR. ZIEMER:** Is that what you were
6 suggesting, Roy?

7 **DR. DeHART:** Yes, it is.

8 **MR. GRIFFON:** But that's different than -

9 **DR. ZIEMER:** And that's different than the
10 feeling that it's -

11 **MR. GRIFFON:** And I guess my feeling is that
12 if we're going to leave it as some Board members,
13 then as Jim Melius stated earlier, some Board
14 members - and I think we were actually challenged
15 for, well, what are the other criteria during the
16 meeting, and we laid out one option.

17 **DR. ZIEMER:** But not necessarily all.

18 **MR. GRIFFON:** And I think that some Board
19 members felt that that option was a suitable
20 criteria. So if we're going to edit out the
21 option or the recommendation, then maybe we - I
22 might be agreeable to that, if we're building a
23 consensus opinion for the entire Board, to state
24 that there's a problem with this definition of
25 health endangerment.

1 **DR. ZIEMER:** Let's try the following.

2 Roy, if you're willing to make a motion, I
3 think your motion would have been the Board
4 members - and maybe instead of "felt" we use the
5 word "suggest" - the Board members suggest that
6 the proposed rule determining whether potential
7 SEC class meets health endangerment was not
8 adequate, and in particular - in other words, the
9 next - the sentences as given, and then ending
10 after "unfair decisions." Is that what you are
11 wanting to move?

12 **DR. DeHART:** Yes, I would. That the Board -

13 **DR. ZIEMER:** The Board, not some of the
14 Board?

15 **DR. DeHART:** Yeah, that the Board felt. Not
16 members, but that the Board felt that -

17 **DR. ZIEMER:** Or can I suggest the word
18 "suggest?"

19 **DR. DeHART:** Yes.

20 **DR. ZIEMER:** Board members suggest that?

21 **DR. DeHART:** That's fine.

22 **MR. GRIFFON:** And Roy, not to put words in
23 your mouth, but would you add one additional line
24 from the next section saying that the Board
25 recommends that NIOSH consider other suitable

1 criteria, period, or something to that effect?

2 DR. DeHART: I think that's a given, but I'll
3 accept that.

4 DR. ZIEMER: Okay, is that a motion, Roy?

5 DR. DeHART: I'll make it a motion.

6 DR. ZIEMER: Is there a second?

7 MR. PRESLEY: Bob Presley, I have second.

8 DR. ZIEMER: Okay, we have a second. Now
9 let's have discussion on this, then. And that
10 motion would delete the sentence starting with
11 "these members" through the end of the paragraph,
12 is that correct?

13 DR. DeHART: It would.

14 DR. ZIEMER: Okay, is there discussion?

15 MS. MUNN: This is Wanda. That's getting
16 convoluted in my simple mind. If I understood
17 the suggestion correctly, we're working toward a
18 consensus statement here.

19 DR. ZIEMER: Right.

20 MS. MUNN: Therefore, removing the statement
21 that some of the Board felt this way, and
22 therefore inferring that what we're going to say
23 is the consensus of the entire Board?

24 DR. ZIEMER: That's correct, or the consensus
25 as defined by our voting procedure.

1 Cori, what did we say it required for
2 consensus?

3 **MS. HOMER:** (inaudible) moment I'll
4 (inaudible) that back up.

5 **DR. ZIEMER:** On our working rules as far as
6 the percent of those voting.

7 **MS. HOMER:** I'm not sure we defined a quorum,
8 did we?

9 **MR. GRIFFON:** Is there some background
10 conversations? I'm sorry, I'm having a hard
11 time.

12 **MS. MUNN:** Again, may I be really ugly and
13 suggest that whoever is carrying on another
14 conversation just go offline.

15 **MS. HOMER:** Well, it does define eligible
16 members, which is not an issue. I'm looking to
17 see - I'm believing a quorum is one more than one
18 half -

19 **DR. ZIEMER:** Yes.

20 **MS. HOMER:** - Is how we defined it, but I
21 can't find it specifically without -

22 **DR. ZIEMER:** No, definition of consensus, not
23 of quorum.

24 **UNIDENTIFIED:** Majority. I believe you
25 established that it was a majority -

1 **DR. ZIEMER:** Majority of -

2 **MR. GRIFFON:** Simple majority, yeah.

3 **MS. HOMER:** Yeah, only after a majority
4 opinion has been reached through voting by
5 eligible members.

6 **DR. ZIEMER:** Okay.

7 **MR. PRESLEY:** This is Bob Presley. That's
8 what I remember.

9 **DR. ZIEMER:** The motion, then, is as follows:
10 That we would have a statement that says the
11 Board members suggest that the proposed rule for
12 determining whether a potential SEC class meets
13 the criteria of health endangerment was not
14 adequate. In particular, the proposed method for
15 estimating whether the cohort met the criteria
16 for health endangerment was not adequately
17 justified and could lead to arbitrary and unfair
18 decisions. The Board - and you had another
19 sentence, Roy, or somebody did, or maybe it was
20 Mark.

21 **DR. DeHART:** Mark came in with it.

22 **MR. GRIFFON:** I was just adding on the Board
23 recommends that NIOSH consider other suitable
24 criteria, period, which would drop off the
25 specific -

1 **DR. ZIEMER:** And I think that was part of
2 your motion, Roy, is that correct?

3 **DR. DeHART:** Yes, that would be fine.

4 **DR. ZIEMER:** The Board recommends that NIOSH
5 consider other suitable - what?

6 **MR. GRIFFON:** Criteria, period. Yes.

7 **MS. MUNN:** Could you use "additional" rather
8 than "other suitable," because you're inferring
9 that the current criterion doesn't mean anything.
10 And I guess I object to that assertion.

11 **DR. ZIEMER:** Additional - other or
12 additional?

13 **MS. MUNN:** Additional criteria, because -

14 **MR. GRIFFON:** Well, additional is different.

15 **MS. MUNN:** - if you use "other," then the
16 inference is throw out the current criteria and
17 choose something else.

18 **MR. GRIFFON:** It says consider other - yeah,
19 suitable. But it doesn't necessarily mean that
20 they have to (inaudible).

21 **UNIDENTIFIED:** But I think --

22 **MR. GRIFFON:** Additional is different, you
23 know.

24 **DR. ZIEMER:** It doesn't mean that they can't
25 retain the ones, right?

1 DR. DeHART: That's correct.

2 DR. ZIEMER: Okay. So as you're suggesting
3 it would read consider other suitable criteria.

4 Any other comments on the motion?

5 [No responses]

6 DR. ZIEMER: I don't hear any. We're vote,
7 then. If the motion passes, this now would
8 become the item on health endangerment. Okay,
9 we'll -

10 UNIDENTIFIED: Cori call the roll?

11 DR. ZIEMER: Call the roll.

12 MS. HOMER: I'll do so.

13 Okay, Dr. Ziemer?

14 DR. ZIEMER: Yes.

15 MS. HOMER: Dr. Anderson?

16 DR. ZIEMER: He's gone.

17 MS. HOMER: That's correct.

18 Dr. Andrade?

19 DR. ANDRADE: Yes.

20 MS. HOMER: Dr. DeHart?

21 DR. DeHART: Yes.

22 MS. HOMER: Mr. Espinosa?

23 MR. ESPINOSA: Yes.

24 MS. HOMER: Ms. Gadola?

25 MS. GADOLA: Yes.

1 MS. HOMER: Mr. Griffon?

2 MR. GRIFFON: Yes.

3 MS. HOMER: Dr. Melius?

4 DR. MELIUS: Yes.

5 MS. HOMER: Ms. Munn?

6 MS. MUNN: No.

7 MS. HOMER: Mr. Presley?

8 MR. PRESLEY: Yes.

9 MS. HOMER: And Dr. Roessler is not on the
10 call.

11 DR. ZIEMER: So what is the total vote? How
12 many yeas?

13 UNIDENTIFIED: Eight yeas, one no.

14 DR. ZIEMER: Eight and one.

15 MS. HOMER: Um-hum (affirmative).

16 DR. ZIEMER: No abstentions.

17 MS. HOMER: And one unavailable.

18 DR. ZIEMER: Yeah. But it's only those
19 present and voting.

20 MS. HOMER: Um-hum (affirmative).

21 MR. ELLIOTT: Cori - Larry - I would suggest
22 that on the next set of votes you ask Dr. Ziemer
23 for his vote last.

24 MS. HOMER: All right.

25 DR. ZIEMER: Okay, then we have completed

1 that one.

2 Let's go on to Dose Reconstruction
3 Guidelines. Let me read the draft
4 recommendation:

5 The Board recommends that NIOSH clarify the
6 criteria for determining that it was not possible
7 to complete an individual dose reconstruction
8 with sufficient accuracy. These criteria should
9 be more completely outlined in the preamble to
10 the final rule in order to assist potential SEC
11 class applicants to understand the criteria that
12 will be used for evaluating an applicant for SEC
13 class designation. The Board also recommends
14 that NIOSH develop operational guidelines
15 outlining the criteria for determining that the
16 available data are not adequate for conducting
17 individual dose reconstruction. These guidelines
18 should be reviewed by the Board. The Board
19 believes that these guidelines are necessary for
20 ensuring consistency and fairness in these
21 important determinations.

22 Okay, comments?

23 **MS. MUNN:** This is Wanda. I have no problem
24 at all with the content or context.

25 In re-reading this this morning, I had a

1 slight editorial comment, but I don't know
2 whether it improves it or not, now that I look at
3 it.

4 In the second sentence, which is rather
5 lengthy and gets a bit sticky toward the end of
6 the sentence, at least trying to read it simply
7 (inaudible), I considered whether in the third
8 line of that sentence toward the end there,
9 evaluating - the criteria will be used for
10 evaluating an applicant for inclusion in any SEC
11 designation.

12 Is that any clearer, or does it just add more
13 words?

14 **DR. ZIEMER:** For inclusion?

15 **MS. MUNN:** Um-hum (affirmative), in any SEC
16 designation. The duplication of the word "class"
17 there stopped me a couple of times.

18 **DR. ZIEMER:** I agree that that certainly
19 reads better.

20 Anyone object to that, evaluating an
21 applicant for inclusion in any, was it?

22 **MS. MUNN:** Yes, in any SEC designation.

23 **DR. ZIEMER:** Anyone object to that? It
24 doesn't change the meaning -

25 **MS. MUNN:** No.

1 **DR. ZIEMER:** - But maybe reads better.

2 [No responses]

3 **DR. ZIEMER:** Okay, let's agree to do that.

4 Thank you, Wanda.

5 Other comments or suggestions?

6 **DR. DeHART:** This is Roy. I have a
7 substantive change. We spent some time talking
8 about time limits, and I realize that guidelines
9 could include time and perhaps should. I would
10 like to make sure that it does by including it.

11 So I would add to the, I guess, third
12 sentence down, the Board also recommends that
13 NIOSH develop operational guidelines outlining
14 the criteria to include time limits for
15 determining that the available data, et cetera.

16 **DR. ZIEMER:** So that would be introducing a
17 phrase after "criteria?"

18 **DR. DeHART:** That's correct.

19 **DR. ZIEMER:** Maybe there'd be a comma, and
20 then say including?

21 **DR. DeHART:** To include time limits.

22 **DR. ZIEMER:** To include. Time limits?

23 **DR. DeHART:** Yes. The idea of do we wait a
24 year or a year and a half, two years.

25 **DR. ZIEMER:** And does anybody object to that?

1 [No responses]

2 **DR. ZIEMER:** I think in our discussions there
3 was certainly a concern that there be timely
4 action on these things. No objection?

5 **MR. GRIFFON:** This is Mark Griffon. I'm
6 sorry, not an objection, a comment along the same
7 lines, though.

8 I thought at the last meeting we had
9 discussed specific language to be added to a
10 certain section of the preamble, and I didn't see
11 that in the Attachment 2 either. I didn't know
12 if we were going to offer specific language, or
13 is this going to be our - I mean, I support this
14 recommendation, but I thought that we had
15 discussed specific language as well.

16 **DR. ZIEMER:** Specific language on time
17 limits?

18 **MR. GRIFFON:** No, no, on - I remember a
19 discussion of the criteria that could be used in
20 determining adequacy, such as. And people were
21 talking about radiation measurement record, e.g.,
22 and would give a series of examples. And then we
23 added on a sentence to say NIOSH would further
24 outline these in an operational manual. I
25 thought that was specific language that we had

1 sort of discussed at the meeting.

2 **DR. ZIEMER:** I apparently didn't have that if
3 that was the case. Let me - I'm looking into my
4 own notes here now.

5 Did anybody else have that?

6 **MR. GRIFFON:** I think this probably covers it
7 anyway. But I did, just as a point of what was
8 discussed last time.

9 **DR. DeHART:** This is Roy. I remember our
10 talking about it. That's why I've inserted that.
11 I don't remember specifically what Mark was
12 referring to (inaudible).

13 **MS. MURRAY:** This is Marie. I've got
14 something here. After Dr. Melius had presented
15 his suggestion, in the discussion following I
16 have are the opinion remains that the point at
17 which the information (inaudible). (inaudible)
18 that is necessary to ensure the fairness of due
19 process and to allow any (inaudible).

20 **DR. ZIEMER:** I don't have anything more
21 specific myself than this. I think the thing
22 that was inserted here is that the requirement
23 that the guidelines be reviewed by the Board,
24 which means that we have the opportunity at some
25 point then to really take a look at them without

1 spelling out here what they should be - in other
2 words, not us saying what they are at this point.

3 Are you okay on that, Mark?

4 **MR. GRIFFON:** I think so, yes. I just
5 thought we had - I was looking for it in the
6 (inaudible) Attachment 2, and I didn't - but
7 this, I think this covers it.

8 **DR. ZIEMER:** Any other comments?

9 [No responses]

10 **DR. ZIEMER:** Okay. We appear to have sort of
11 general agreement on that one, so maybe we can
12 move ahead.

13 The last one is Interim Final Rule. And this
14 one raises the same issue that we had on the
15 previous or the second one, and that's the issue
16 of it being possibly not a consensus viewpoint,
17 the issue of interim final rule. Let me read the
18 paragraph, and then we'll open it for discussion:

19
20 Some of the Board members recommended that
21 NIOSH issue these regulations as an interim final
22 rule rather than a final rule. The former would
23 allow later modifications to the rule without
24 necessarily going through the full rule making
25 process. Given that some elements of this rule

1 (e.g., health endangerment criteria, how to
2 handle SEC class members with non-SEC listed
3 cancers, et cetera) have not been fully worked
4 out and will need further development by NIOSH
5 and review by the Board, this may be a prudent
6 approach. If issuing this rule as an interim
7 final rule would inhibit the Secretary of DHHS
8 from certifying new SEC classes, then the Board
9 would recommend that this option not be
10 considered.

11 And I think Jim Melius suggested this last
12 sentence in your final draft when I asked you to
13 put that together for us.

14 **DR. MELIUS:** Yeah. I think if I recall
15 right, Larry raised this as a potential issue
16 with - legal issue. And I wanted to make clear
17 that the full Board, at least the Board people
18 who were left at that time at our meeting, I
19 think we all did not want this to inhibit their
20 ability to be able to (inaudible) - you know, to
21 certify classes.

22 **DR. DeHART:** This is Roy. My original
23 objection at the time of the meeting is resolved
24 by the last sentence, so I have no objection.

25 **MR. PRESLEY:** This is Bob Presley. I have -

1 that's my feelings exactly, because I feel that
2 the last sentence that's been added will take all
3 that out.

4 **DR. ANDRADE:** This is Tony Andrade. I agree,
5 and I move that we adopt it as written.

6 **DR. ZIEMER:** Okay. Realize that if we - oh,
7 you're making a motion?

8 **DR. ANDRADE:** Yes.

9 **DR. ZIEMER:** On this?

10 **MR. PRESLEY:** This is Bob Presley. If we go
11 back and do that, can we go back and change this
12 then to say that the Board members recommend, and
13 that way we take out "some of the Board?"

14 **DR. ZIEMER:** Well, keep in mind now, this is
15 the issue of whether - I think some Board members
16 felt on this one that - well, I think there were
17 two views.

18 One was that they should go to final rule
19 making. The other was some felt that we
20 shouldn't get into the issue of whether it was -
21 we're going to leave it up to the Secretary
22 anyway, so why are we raising this. These are
23 the very issues that NIOSH has to consider.
24 After they get all the comments, they have to
25 make the determination what's in the best

1 interest of the Agency anyway. So in other
2 words, sort of like do we need to get into this?
3 They know what the issues are. But -

4 **MR. ELLIOTT:** Dr. Ziemer, this is Larry
5 Elliott. If I might offer an edit for your
6 consideration to vote on here. It should be, in
7 the first sentence, recommended that HHS issue
8 these regulations. It's not NIOSH.

9 **DR. ZIEMER:** Yes.

10 **MR. ELLIOTT:** It's actually -

11 **DR. ZIEMER:** Yeah. If it was approved it
12 would have to say HHS, right.

13 **MR. ELLIOTT:** We're just acting here at NIOSH
14 on behalf of the Secretary.

15 **DR. ZIEMER:** Right, right.

16 **DR. DeHART:** This is Roy. Going back again
17 to our proceeding when we attempted to get a
18 consensus and were successful, basically that is
19 what my comments are here. This would be a
20 position of the Board, not some members.

21 **DR. ZIEMER:** You're saying with that final
22 sentence you are okay with this as raising the
23 issue as a Board issue?

24 **DR. DeHART:** I am.

25 **DR. ZIEMER:** Why don't I ask you to make a

1 motion on that, then, again for this section?

2 **DR. DeHART:** I will be glad to do that. Roy
3 DeHart making the motion, the Board recommends,
4 with the change of HHS over NIOSH, and continue.

5 **DR. ZIEMER:** Okay.

6 **MR. PRESLEY:** Second it. This is Bob
7 Presley.

8 **DR. ZIEMER:** Okay. Discussion?

9 The motion, then, would be the Board
10 recommends that these be issued as an interim
11 final rule.

12 **MS. MUNN:** Well - this is Wanda again. And I
13 guess if we do that then we're saying that we
14 recommend that it be issued as an interim final
15 rule. And the other members may be more
16 cognizant of what the legal ramifications are
17 that separate an interim final rule and a final
18 rule; I am not. And since I am not familiar with
19 those ramifications, I guess I can't continue to
20 make that - I can't say that I'm willing to make
21 that distinction for the Agency.

22 **DR. ZIEMER:** That's a good point. Let me
23 offer something. As Chair, I'll suggest this is
24 a possible - if the mover of the motion would
25 agree to it, this might soften it. Rather than

1 the Board recommends, that the Board recommends
2 that NIOSH - or that HHS consider issuing.

3 **UNIDENTIFIED:** I certainly -

4 **DR. ZIEMER:** That is softer than issuing.

5 **DR. DeHART:** Yes, I understand. And I
6 certainly accept that, because that's exactly
7 what they would do in any case.

8 **MS. MUNN:** Um-hum (affirmative).

9 **DR. ZIEMER:** Right. But it doesn't - I think
10 it sounds softer.

11 **MS. MUNN:** Or consider whether these
12 regulations should be issued as an interim final
13 rule.

14 **DR. ZIEMER:** Which they're going to do, I
15 suppose, anyway.

16 **UNIDENTIFIED:** Yes.

17 **DR. ZIEMER:** But it does get the issue before
18 them without - is that, Roy -

19 **DR. DeHART:** The mover accepts that.

20 **DR. ZIEMER:** The mover and the seconder?

21 **MR. PRESLEY:** The seconder accepts that.

22 **DR. ZIEMER:** The Board recommends that HHS
23 consider issuing these regulations as an interim
24 final rule, and so on.

25 Further discussion?

1 [No responses]

2 DR. ZIEMER: Okay. Are you ready to vote on
3 this item?

4 MS. MUNN: Yes.

5 DR. ZIEMER: Okay. Let's vote by poll here.
6 Cori, do you want to poll the members?

7 MS. HOMER: Dr. Andrade?

8 DR. ANDRADE: Yes.

9 MS. HOMER: Dr. DeHart?

10 DR. DeHART: Yes.

11 MS. HOMER: Mr. Espinosa?

12 MR. ESPINOSA: Yes.

13 MS. HOMER: Ms. Gadola?

14 MS. GADOLA: Yes.

15 MS. HOMER: Mr. Griffon?

16 MR. GRIFFON: Yes.

17 MS. HOMER: Dr. Melius?

18 DR. MELIUS: Yes.

19 MS. HOMER: Ms. Munn?

20 MS. MUNN: Yes.

21 MS. HOMER: Mr. Presley?

22 MR. PRESLEY: Yes.

23 MS. HOMER: Dr. Ziemer?

24 DR. ZIEMER: Yes.

25 MS. HOMER: It was unanimous.

1 **DR. ZIEMER:** Okay.

2 **DR. MELIUS:** This is Jim Melius. I have one
3 procedural. Did we actually formally vote on
4 dose reconstruction guidelines, the previous one?
5 I thought we deferred that because there was no -

6 **DR. ZIEMER:** No, we didn't. We didn't vote
7 on it. We only voted on the two where there -
8 we're going to go back and vote the whole
9 document now.

10 **DR. MELIUS:** Okay, okay.

11 **DR. ZIEMER:** We by consent agreed to some
12 minor wording changes on dose reconstruction.

13 **DR. MELIUS:** Okay.

14 **DR. ZIEMER:** Everybody understand? On the
15 first one, by consent we had a minor wording
16 thing, the non-SEC listed cancers. On the second
17 one we voted because there was substantial
18 change. The third one we didn't vote; by
19 consensus we agreed to some minor changes. And
20 the fourth one we voted.

21 Now I will just ask for a motion for approval
22 of -

23 **MR. GRIFFON:** Can I ask one more question?

24 **DR. ZIEMER:** Sure.

25 **MR. GRIFFON:** This is Mark Griffon. As far

1 as general comments go, I know we had a
2 discussion on the question - and I'm not
3 necessarily even necessarily sure it goes in this
4 document - but the question of assigning dose
5 from an SEC category into the other
6 reconstructible dose, and the response from NIOSH
7 was that that falls under dose reconstruction
8 issues or guidelines.

9 And I just wonder where that will be
10 captured, since those rules are final, how the
11 Board could point out that - I guess NIOSH is
12 well aware of it, but how, where that would come
13 up or be clarified by NIOSH.

14 **UNIDENTIFIED:** Is that in Attachment 2?

15 **DR. ZIEMER:** Yeah. Mark, I think it was -
16 let's see.

17 **DR. MELIUS:** Was it Attachment 1 under the
18 last sentence of non-SEC listed cancers? Does
19 that capture what you're talking about, Mark?

20 Jim Melius.

21 **DR. ZIEMER:** Yeah, there it is. Address
22 situations where part but not all of a dose
23 history is included in a -

24 **MR. GRIFFON:** Okay. That's written to kind
25 of go both ways, I guess, right?

1 UNIDENTIFIED: Yeah.

2 UNIDENTIFIED: Yeah.

3 MR. GRIFFON: Okay, that's fine.

4 UNIDENTIFIED: Sort of mislabeled there, but
5 I was trying to, without trying to think of every
6 specific situation, I was trying to get sort of
7 the ways that it would come up. So I think that
8 covers (inaudible). Yeah, thank you.

9 DR. ZIEMER: Just for the record now, a
10 motion to approve the general comments as
11 amended?

12 MS. MUNN: Wanda Munn. So move.

13 MR. PRESLEY: Bob Presley. I second this.

14 DR. ZIEMER: Any further discussion?

15 [No responses]

16 DR. ZIEMER: All in favor say aye.

17 [Ayes respond]

18 DR. ZIEMER: Opposed? Oh, wait. Let me ask,
19 any opposed, say no.

20 [No responses]

21 DR. ZIEMER: Any abstentions?

22 [No responses]

23 DR. ZIEMER: We don't have to poll, then.
24 Everybody's voted in favor.

25 Now, Attachment 2 are the specific comments.

1 **DR. ANDRADE:** Paul?

2 **DR. ZIEMER:** Yes.

3 **DR. ANDRADE:** This is Tony Andrade.

4 **DR. ZIEMER:** Yes.

5 **DR. ANDRADE:** I am unfortunately going to
6 have to leave the phone call. I have a meeting
7 to go to way on the other side of the laboratory.
8 However, I would like to just state that on
9 Attachment 2 on all the specific comments that
10 had been proposed, so long as wording changes are
11 very small or insignificant - non-significant,
12 let's put it that way - I would support them
13 pretty much as written.

14 **DR. ZIEMER:** Let me also point out that this
15 document was already in our hands at the last
16 meeting, with the exception of one added section
17 which - let's see, which one was added?

18 **UNIDENTIFIED:** Section 83.9.

19 **DR. ZIEMER:** 83.9, which - so the only new
20 thing that is here is 83.9. Everything else was
21 in our hands at the last meeting, and was also
22 distributed publicly. So I'm wondering if we, in
23 the interest of time, if we can forego reading
24 the whole document? Or can we?

25 **MS. MUNN:** Well, again in the interest of

1 time before Tony goes away, since 83.9 is the
2 only one that's really new, perhaps we can ask if
3 there are any substantive comments on that.

4 I have one quick one, which -

5 **DR. ZIEMER:** That would be fine. Then let me
6 have - is that agreeable to everyone?

7 [No responses]

8 **DR. ZIEMER:** Okay, go ahead.

9 **MS. MUNN:** In the very last sentence under
10 Section 83.9, we refer to the applicant being
11 able to submit a government or other research
12 report. I was a little concerned about the term
13 "other research report."

14 I can imagine anyone being able to say I'm a
15 research firm and I've looked at this, and it's
16 not there. I guess my concern was perhaps
17 slightly more well defined criteria other than
18 just another research report, other than a
19 government report. I don't know whether that
20 would strike Tony the same way it did me or not,
21 but I was concerned about from whom, under what
22 conditions. I guess I just feel that there ought
23 to be some designation as to source.

24 **DR. ZIEMER:** I think we're typically talking
25 about published scientific reports, right?

1 **MS. MUNN:** Yes. I think so.

2 **UNIDENTIFIED:** That's the way I interpreted
3 it.

4 **MS. MUNN:** But we didn't say that.

5 **UNIDENTIFIED:** When I said -

6 **DR. MELIUS:** That would be fine. This is Jim
7 Melius. I wrote that, and that would be -

8 **DR. ZIEMER:** Can we just add the words
9 "published scientific research report?"

10 **UNIDENTIFIED:** (inaudible)

11 **DR. ANDRADE:** I think that would be fine.
12 This is Tony Andrade.

13 **MS. HOMER:** Where do you want that added?

14 **UNIDENTIFIED:** Other research -

15 **DR. ZIEMER:** That would be "may submit a
16 government or other published scientific research
17 report."

18 Now let me ask, in - is it Section 2?
19 Attachment 2, Section 83.1, does anyone have any
20 questions or changes?

21 **MR. PRESLEY:** This is Bob Presley. In the
22 last line there, it says we recommend, there's a
23 spelling problem there.

24 **DR. ZIEMER:** Last line of -

25 **MS. MUNN:** Of the first paragraph, you have -

1 it's a typo.

2 **DR. ZIEMER:** R-E-C-O - yeah, there's a seven
3 in there. My magic fingers. I wonder why that
4 didn't show up as a redline underline here.

5 **MS. MUNN:** Oh, the computer goofed?

6 **DR. ZIEMER:** Yeah.

7 **UNIDENTIFIED:** Thank you, Bob.

8 **DR. ANDRADE:** Okay, I will have to leave now.

9 **DR. ZIEMER:** Okay, Tony.

10 **MS. MUNN:** Thanks, Tony.

11 **DR. ANDRADE:** Thank you very much.

12 **DR. ZIEMER:** 83.2, any changes?

13 **MS. MUNN:** This is Wanda. I don't have -
14 again, not substantive changes; it's just a
15 suggestion with the possibility of rewriting a
16 few words.

17 Under the statement, when I re-read that
18 first sentence several times, and finally decided
19 that the reason I was having trouble reading
20 through it is because it seems not to be in the
21 correct chronological order. The statement below
22 it is, but this one is not.

23 I suggest that we might change it to say,
24 using the same words, just in a different
25 sequence, a statement addressing our concerns

1 about individuals who have had a thorough dose
2 reconstruction performed and who have had a claim
3 denied, might appear as item "b" in Section 83.2,
4 et cetera.

5 I'm just shifting the -

6 **DR. ZIEMER:** Yes, Um-hum (affirmative).

7 Anyone object to that? That's just moving
8 the words.

9 **UNIDENTIFIED:** More logical.

10 **DR. ZIEMER:** Yes.

11 **MR. PRESLEY:** This is Bob Presley. It makes
12 it read better.

13 **DR. ZIEMER:** Okay.

14 **MS. MUNN:** And then I really got tangled up
15 in my underwear while I was trying to read the
16 quote there. I don't know whether this would
17 help it read better and if I have lost the
18 thought in doing it, but I suggest that we
19 consider:

20 A cancer claimant whose dose reconstruction
21 was completed but whose claim did not qualify for
22 compensation cannot reapply - this is where the
23 change (inaudible) - as a member of a special
24 cohort or use the procedures for designating such
25 classes as a route for appealing a decision.

1 **DR. ZIEMER:** Could you read that one more
2 time?

3 **MS. MUNN:** Yes. Everything the same, the
4 first line and the second line up to reapply,
5 starting with reapply, as a member of a special
6 cohort --

7 **DR. ZIEMER:** After "reapply?"

8 **MS. MUNN:** Yes. Reapply as a member of a
9 special cohort, or use the procedures for
10 designating such classes as a route for appealing
11 a decision.

12 **DR. ZIEMER:** Okay. Anyone want to react to
13 that? I'm still looking at it myself.

14 **MS. MUNN:** I think it means the same thing
15 that it says.

16 **DR. ZIEMER:** You're just trying to clarify
17 the language?

18 **MS. MUNN:** Yes.

19 **DR. ZIEMER:** Cannot reapply as a member of a
20 special cohort or use the procedures for
21 designating classes of employees as members -

22 **MS. MUNN:** Well, I took out the "of employees
23 as members of the special cohort" because it
24 seems to put too many phrases in the line of
25 thinking.

1 **DR. ZIEMER:** Yeah.

2 **MR. KATZ:** Dr. Ziemer, it's Ted Katz here.
3 Can I just - I think you're on treacherous turf
4 here with this rewriting, because then you're
5 saying that should by one means or another this
6 individual end up in a special exposure cohort
7 they can't make a claim under the cohort. And of
8 course, this rule can't do that, but that's how
9 it would read.

10 So say, for example -

11 **DR. ZIEMER:** I lost my phone contact here for
12 a minute; I'm back on. I probably missed
13 something here.

14 **MR. KATZ:** Could I repeat that -

15 **UNIDENTIFIED:** Ted, maybe you should repeat
16 that, yeah.

17 **MR. KATZ:** I'm concerned about this, because
18 this would read, then, to say that say we attempt
19 to do a dose reconstruction, we do a dose
20 reconstruction, they don't get compensated as a
21 result of that; down the road they're added to
22 the special exposure cohort. Now I guess that
23 could happen if we found new information that
24 showed that in fact we couldn't do a dose
25 reconstruction though we had, so we thought we

1 could down the road, and so we've added this
2 class to the cohort that includes this
3 individual.

4 This rule would be reading to say that this
5 individual can't make a claim as a member of the
6 cohort, and of course they could.

7 **DR. ZIEMER:** Yeah, so that's not the intent.

8 **MS. MUNN:** No, the intent -

9 **MR. KATZ:** That's not the intent, I know.
10 It's just as worded it would say that.

11 **DR. ZIEMER:** Ted, the way it was worded
12 originally, it's - was that okay, or not?

13 **MR. KATZ:** I even -

14 **MS. MUNN:** I think it said the same thing.

15 **MR. KATZ:** I still have - I understand the
16 intent here. I still have a concern even with
17 the original wording for the same reason, that
18 say we did a dose reconstruction - I know the
19 intent, and I, of course, agree with you that
20 they shouldn't be using this as an appeal route.

21 **DR. ZIEMER:** Right.

22 **MR. KATZ:** But say someone is denied. They
23 have a dose reconstruction, they're denied. And
24 we come into information down the road that tells
25 us that we in fact couldn't do a dose

1 reconstruction for part of their work experience.
2 They could be able to apply for a class, a
3 special exposure class, based on that new
4 information.

5 So at a minimum I think if you have a
6 statement like this in here, you need - it ought
7 to recognize that the claimant may have obtained
8 information (inaudible) dose reconstruction that
9 calls into question the ability of NIOSH to
10 complete a dose reconstruction for such a class
11 of employees.

12 **DR. ZIEMER:** Right.

13 **MR. KATZ:** Does that make sense?

14 **DR. ZIEMER:** Yeah.

15 **DR. MELIUS:** This is Jim Melius. The other
16 concern I have is that this precludes someone
17 from appealing their dose reconstruction decision
18 on the basis of their - that there wasn't enough
19 information to complete it with sufficient
20 accuracy.

21 **MR. KATZ:** I think they would have to make
22 that case in appealing the dose reconstruction.

23 **UNIDENTIFIED:** Correct.

24 **DR. MELIUS:** And I want them to be able to do
25 it if - I don't it to be able to preclude them

1 from doing it in that situation, not as a special
2 cohort appeal, but rather as part of their
3 individual dose reconstruction.

4 **MR. KATZ:** And I didn't read this as
5 precluding it, but you could always add a
6 sentence to ensure that (inaudible).

7 **DR. MELIUS:** Well, I'm more worried about
8 when we start messing with this language that
9 we're going to make -

10 **MR. KATZ:** Right.

11 **MS. MUNN:** Well, perhaps we're trying to say
12 too much. Perhaps we should simply say that a
13 cancer claimant whose dose reconstruction was
14 completed but whose claim did not qualify for
15 compensation cannot use the procedures for
16 designating SEC classes specifically as a route
17 for appealing the decision.

18 **MR. PRESLEY:** Bob Presley. I like that
19 better, because if you leave that "cannot apply"
20 in there that legally can get into some sticky
21 situations.

22 **DR. ZIEMER:** Can you give us that proposed
23 wording again, Wanda, so we can look at it and
24 see how we like that?

25 **MS. MUNN:** I'll try it.

1 **DR. ZIEMER:** Cancer claimant whose dose
2 reconstruction was completely - was completed but
3 whose claim did not qualify for compensation -

4 **MS. MUNN:** Um-hum (affirmative), cannot -

5 **DR. ZIEMER:** As a member of a special cohort
6 -

7 **MS. MUNN:** No, we haven't said anything about
8 special cohort so far.

9 **DR. ZIEMER:** Oh, no, no. Right. I got that
10 wrong.

11 **MS. MUNN:** Did not qualify for compensation
12 cannot use the procedures for designating special
13 cohort classes specifically as a route for
14 appealing a decision.

15 **UNIDENTIFIED:** And how would you determine
16 that?

17 **DR. ZIEMER:** Ted, does that take care of your
18 concerns?

19 **MR. KATZ:** It takes care of the concerns I
20 raised.

21 I guess I would just lay out for you another
22 option. You may not try to - you may choose not
23 to try to solve this with the specific language
24 here, but raise the issue and leave it for HHS
25 lawyers or whoever to figure out what kind -

1 **DR. ZIEMER:** Yeah, yeah.

2 **MR. KATZ:** - of wording, if any, (inaudible)
3 work. But that's, of course, your decision.

4 **DR. ZIEMER:** You mean instead of trying to do
5 the wording?

6 **MR. KATZ:** Right. It's up to you, but I
7 think it's difficult to sort of on the fly write
8 rule wording. But -

9 **MS. MUNN:** Yeah, well, we've discussed it
10 long enough.

11 **DR. MELIUS:** Yeah. This is Jim Melius. I
12 think the intent is clear with (inaudible) we use
13 Wanda's rewording. The defining, the HHS lawyers
14 are going to go through it anyway, so -

15 **MS. MUNN:** Yeah, they'll do what they want to
16 do with it.

17 **DR. ZIEMER:** Wanda, can you read your final
18 wording again, so -

19 **MS. MUNN:** I can try it. I don't have it
20 actually written out.

21 A cancer claimant whose dose reconstruction
22 was completed but whose claim did not qualify for
23 compensation cannot use the procedures for
24 designating SEC classes specifically as a route
25 for appealing a decision.

1 **DR. ZIEMER:** Okay. Everybody get that?
2 Would that wording be agreeable to everybody?

3 **MR. GRIFFON:** Can I ask - this is Mark
4 Griffon. Ted Katz a few minutes ago mentioned
5 that we could add a line on to this thing, this
6 does not preclude them from filing an appeal
7 under whatever section it is. And I think that
8 might be an important sentence to add in there,
9 just so that everybody's clear that there still
10 is an appeal route.

11 **MS. MUNN:** Yeah, a sentence that says -

12 **MR. GRIFFON:** Just to clarify -

13 **MS. MUNN:** - appropriate appeal processes are
14 defined elsewhere. That's -

15 **MR. GRIFFON:** It doesn't add that much, but
16 it just clarifies that -

17 **DR. ZIEMER:** This does not preclude appeals -

18 **MS. MUNN:** Under, and the section for the
19 rule, yeah.

20 **UNIDENTIFIED:** Right.

21 **DR. ZIEMER:** Where is that? Section what?
22 Anybody have that?

23 **MS. MUNN:** I don't have them all in front of
24 me.

25 **MR. KATZ:** Just to be clear, I guess, this

1 would be provisions for contesting case
2 adjudications under the Department of Labor
3 rules.

4 **UNIDENTIFIED:** Ah, yes.

5 **DR. ZIEMER:** This does not preclude appeals
6 as set forth in or as provided for?

7 **MS. MUNN:** Yeah, as provided for elsewhere in
8 this rule.

9 **MR. KATZ:** Not this rule.

10 **DR. ZIEMER:** Or in the Department of Labor
11 rules? Is that where it is?

12 **MS. MUNN:** In existing -

13 **MR. KATZ:** Right, Department of Labor rules
14 for --

15 **MS. MUNN:** In existing -

16 **MR. KATZ:** (inaudible) claims.

17 **MS. MUNN:** - DOL rules.

18 **DR. ZIEMER:** Okay. A cancer claimant whose
19 dose reconstruction was completed but whose claim
20 did not qualify for compensation cannot use the
21 procedures for designating SEC classes as a route
22 for appealing a decision. This does not preclude
23 appeals as provided for in DOL rules.

24 **MS. MUNN:** Right.

25 **DR. ZIEMER:** Is that the wording?

1 **MS. MUNN:** I think so. I'd approve it.

2 **DR. ZIEMER:** Just for the record, Wanda, why
3 don't you move that wording?

4 **MS. MUNN:** I move that wording.

5 **DR. MELIUS:** Second.

6 **DR. ZIEMER:** Jim seconded.

7 Further discussion?

8 [No responses]

9 **DR. ZIEMER:** All in favor say aye.

10 [Ayes respond]

11 **DR. ZIEMER:** So now 83.2, as it's been
12 amended, says: A statement addressing our
13 concerns about individuals who have had a
14 thorough dose reconstruction performed and who
15 have had a claim denied might appear as item "b"
16 in Section 83.2 (requiring that the current item
17 b become item c). This could read as follows.
18 And then Wanda's quote, right?

19 **MS. MUNN:** Um-hum (affirmative).

20 **DR. ZIEMER:** Good.

21 **DR. ZIEMER:** Any other sections?

22 **DR. DeHART:** This is Roy. Back to 83.9, I
23 probably had a senior moment when we were
24 discussing this in Cincinnati, but I thought that
25 what we were talking about was if a scientific

1 paper discussed dose, even though the DOE
2 couldn't substantiate it, we would accept that.
3 But what we're saying here is if the scientific
4 paper has no dose history -

5 **DR. MELIUS:** This is Jim Melius.

6 **DR. ZIEMER:** It could go either way, could it
7 not?

8 **DR. MELIUS:** Yeah, but this is how - what the
9 people petitioning for SEC class, the applicants,
10 are required to submit, and they're required to
11 submit one of currently two things. One is some
12 indication that they tried to obtain their dose
13 record and couldn't, and that's what most of this
14 refers surely. Second is a report from a health
15 physicist or other dose reconstruction expert
16 that they specifically have gotten involved or
17 whatever in this situation.

18 And then we're adding a third one, which we
19 actually talked about not at the last meeting but
20 the meeting before, and Paul reminded me of it at
21 the last meeting. They also could submit a
22 report, a research report or research paper that
23 indicates there's not adequate dose information -

24 **DR. ZIEMER:** Somebody that's studied that
25 site or whatever.

1 **DR. DeHART:** Yes. Okay, so this only applies
2 to what they're submitting to NIOSH as part of
3 their petition?

4 **DR. ZIEMER:** Meets that requirement.

5 **DR. DeHART:** Yeah.

6 **DR. ZIEMER:** You okay, Roy, on that?

7 **DR. DeHART:** Yeah. For some reason I was
8 thinking that if there's a scientific paper that
9 has dose in it and we can't find it anywhere
10 else, that's acceptable. But I understand where
11 you're going.

12 **DR. MELIUS:** Yeah. No, it applied to a
13 different situation. And it's not a senior
14 moment; we didn't really discuss it at the last
15 meeting -

16 [Laughter]

17 **DR. MELIUS:** - the meeting before. And Paul
18 remembered it; I didn't. And I had suggested it
19 at the last meeting, so.

20 **DR. ZIEMER:** Anything else on any of the
21 parts of Attachment 2?

22 **MS. MUNN:** You have a typo in the first line
23 of Section 83.5. The next to the last word on
24 the first line should be "additional" rather than
25 "addition."

1 DR. ZIEMER: You're right, thank you.

2 MS. MUNN: And are we looking at all sections
3 now?

4 DR. ZIEMER: Yeah.

5 MS. MUNN: Section 83.10, I suggested a
6 wording change in this first sentence so that
7 that sentence would read the wording of items
8 blah, blah, blah, and blah.

9 DR. ZIEMER: The wording of -

10 MS. MUNN: Of those items.

11 DR. ZIEMER: - instead of - yeah. The
12 wording of. A friendly change. The wording of -

13 MS. MUNN: The wording of all those items
14 infers that the - "infers" rather than "appears"
15 - infers that the Advisory Board is directly
16 involved in processes which - that should say are
17 appropriately HHS (or NIOSH) staff functions.

18 It doesn't change the meaning, but --

19 DR. ZIEMER: Yeah, that's good.

20 MS. MUNN: It's a little more specific.

21 DR. ZIEMER: No, I think that's certainly
22 good editorial change. Any others?

23 MR. GRIFFON: Yeah, Mark Griffon. 83.10,
24 just another question on this. And I'm sure we
25 discussed this at the meeting, but I was so

1 focused on the broader issues that I probably
2 missed it.

3 The question I have on this is not that I
4 think it's correct that we don't want to be
5 involved in reviewing all these. If I'm reading
6 this right, this is basically taking the Board's
7 role out from having to review all the petitions
8 that didn't meet the first administrative hurdle.

9 **DR. ZIEMER:** Right, right.

10 **MR. GRIFFON:** Right. I was wondering, and if
11 we in our quote there, if we can add language to
12 say something to the effect that NIOSH will
13 notify the Board of all petitions which did not
14 meet the administrative requirements identified
15 in, I guess it's 83.9.

16 And my reasoning, before we even get hung up
17 on the language, my reasoning is that I'm just
18 concerned about this question of available data,
19 available information. And if we're finding - it
20 might be useful for the Board to track and see if
21 there's a lot of petitions that are coming out
22 that can't even meet those hurdles of finding
23 whether the data was available or not. I think
24 we might have to look into that further.

25 It's been an issue with us from the beginning

1 of this Board that access to the data, access to
2 the information from DOE, we need to keep an eye
3 on that. And I'm not suggesting that we review
4 those, but just that we track those to see
5 numbers, to see - and then maybe in the future
6 there may be recommendations there that in
7 certain -

8 **DR. ZIEMER:** I think it's our - well, let's
9 see.

10 **MS. MUNN:** Is it not our prerogative to do
11 that - this is Wanda - whether or not there are
12 wordings in the rule making?

13 **DR. ZIEMER:** I think it's already included.
14 If the petition fails to meet a requirement,
15 HHS notifies the petitioner. That's 83.10,
16 paragraph (b)(2). Paragraph (b)(3) says HHS will
17 report the recommended finding and its basis to
18 the Board.

19 So they're already required to report to the
20 Board on those, as I read it.

21 **MR. GRIFFON:** Okay. You're just taking out
22 the review capacity - okay, I -

23 **DR. ZIEMER:** Yeah, that we have to review it.
24 I think they still have to report it, as I
25 understand it.

1 Ted, are you still on the line? Or Greg, can
2 you -

3 MR. KATZ: I'm still on the line. And
4 certainly you're editing those sections, but it's
5 readily left in that way, that we would report.
6 It would no longer be a recommended decision,
7 because if you don't have any role then it would
8 be just a decision.

9 DR. ZIEMER: Yeah. But -

10 MR. KATZ: Reported to you, right.

11 MR. GRIFFON: Okay. I withdraw. I didn't
12 see that particular line.

13 DR. ZIEMER: I think the requirements still
14 there.

15 MR. GRIFFON: Okay.

16 DR. ZIEMER: Any other comments?

17 [No responses]

18 DR. ZIEMER: Are you ready to vote on
19 Attachment 2 with the modifications that we've
20 already agreed to?

21 MS. MUNN: This is Wanda with one other very
22 minor, very minor editorial.

23 DR. ZIEMER: Oh, okay. That's fine. Let's
24 get them all.

25 MS. MUNN: In 83.13, isn't it a little

1 plainer to remove the parentheses in sentence one
2 and make a separate sentence out of it, just
3 period at the end of "hearing?"

4 **DR. ZIEMER:** See, for example, the language?

5 **MS. MUNN:** Yeah, Um-hum (affirmative).

6 **DR. ZIEMER:** I have no objection. Does that

7 -

8 **MS. MUNN:** I think it makes reading a little
9 easier.

10 **DR. ZIEMER:** Anyone object to that?

11 **MR. PRESLEY:** I agree.

12 **DR. ZIEMER:** We'll just do that as an
13 editorial change.

14 Any others?

15 [No responses]

16 **DR. ZIEMER:** Okay. Motion to approve this
17 Attachment, then?

18 **MR. PRESLEY:** Bob Presley, I'll move we
19 approve it.

20 **UNIDENTIFIED:** Second.

21 **DR. ZIEMER:** With the changes agreed to.

22 Any further discussion?

23 [No responses]

24 **DR. ZIEMER:** All in favor, say aye.

25 [Ayes respond]

1 **DR. ZIEMER:** Are there any opposed, say no.

2 [No responses]

3 **DR. ZIEMER:** None opposed.

4 Any abstention?

5 [No responses]

6 **DR. ZIEMER:** Maybe we should just - I'm not
7 sure who all is voting at this point. We should
8 take a poll anyway, just because some have left
9 the line.

10 Cori, do you want to go through the list?

11 **UNIDENTIFIED:** Make sure we have a consensus.

12 **DR. ZIEMER:** Yeah.

13 **MS. HOMER:** All right. Let's see, we've lost
14 Dr. Andrade.

15 Dr. DeHart?

16 **DR. DeHART:** Yes.

17 **MS. HOMER:** Mr. Espinosa?

18 **MR. ESPINOSA:** Yes.

19 **MS. HOMER:** Ms. Gadola?

20 [No response]

21 **DR. ZIEMER:** Sally not on?

22 [No responses]

23 **MS. HOMER:** Griffon?

24 **MR. GRIFFON:** Yes.

25 **MS. HOMER:** Dr. Melius?

1 DR. MELIUS: Yes.

2 MS. HOMER: Ms. Munn?

3 MS. MUNN: Yes.

4 MS. HOMER: Presley?

5 MR. PRESLEY: Yes.

6 MS. HOMER: Okay.

7 DR. ZIEMER: Ziemer, yes.

8 Okay, we have seven yeses.

9 MS. HOMER: Yes.

10 DR. ZIEMER: I don't know if Gen Roessler
11 sent her e-mail to everyone. Do you know if she
12 did?

13 MS. MUNN: I received it.

14 UNIDENTIFIED: I received (inaudible). I
15 think so.

16 DR. ZIEMER: So I think she was generally
17 supportive to the document.

18 MS. MUNN: Yes.

19 DR. ZIEMER: So although that doesn't
20 officially count as a vote, though, as she's not
21 here at present.

22 DR. DeHART: Paul, this is Roy. I've got
23 patients rioting in the waiting room.

24 DR. ZIEMER: Okay. I think we have completed
25 our business. Are there any other - any public

1 comments, other public comments?

2 [No responses]

3 **DR. ZIEMER:** There appear to be none. If
4 not, I thank everybody for hanging with us
5 through this. I will get the -

6 **MS. MURRAY:** Excuse me, I'm sorry. This is
7 Marie. May I ask that the text that you all just
8 discussed be e-mailed to Kim and me?

9 **DR. ZIEMER:** Yes.

10 **MS. MURRAY:** Thank you.

11 **MR. PRESLEY:** Is Liz still on here? Liz
12 Homoki?

13 **MS. HOMOKI-TITUS:** Yes, sir.

14 **MR. PRESLEY:** This is Bob Presley. Could you
15 call me sometime when you get a chance? I need
16 to ask you a question.

17 **MS. HOMOKI-TITUS:** Yes, I'll call you.

18 **DR. ZIEMER:** Cori?

19 **MS. HOMER:** Yes.

20 **DR. ZIEMER:** I can e-mail right now what I
21 think - I've done a mark-up copy.

22 **MS. HOMER:** I have as well, so we can compare
23 notes.

24 **DR. ZIEMER:** Okay. So why don't - I'll send
25 mine to Cori, then Cori, can you distribute that?

1 **MS. HOMER:** I'll do so.

2 **DR. ZIEMER:** I'll e-mail that here in a
3 couple of seconds, Cori.

4 **MS. HOMER:** Okay, great.

5 **MS. GADOLA:** Dr. Ziemer?

6 **DR. ZIEMER:** Yes?

7 **MS. GADOLA:** This is Sally. I was having
8 some trouble with my phone momentarily, but I was
9 able to hear you all, and I did vote affirmative.

10 **DR. ZIEMER:** Okay, make sure that's recorded.
11 Thank you, Sally.

12 **MS. GADOLA:** You're welcome.

13 **DR. ZIEMER:** Okay, if that's it we'll declare
14 the meeting adjourned.

15 [Whereupon, the meeting was adjourned at
16 approximately 2:58 p.m.]

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C E R T I F I C A T E

STATE OF GEORGIA)
)
 COUNTY OF DEKALB)

I, KIM S. NEWSOM, being a Certified Court Reporter in and for the State of Georgia, do hereby certify that the foregoing transcript, consisting of 100 pages, was reduced to typewriting by me personally or under my direct supervision, and is a true, complete, and correct transcript of the aforesaid proceedings reported by me.

I further certify that I am not related to, employed by, counsel to, or attorney for any parties, attorneys, or counsel involved herein; nor am I financially interested in this matter.

This transcript is not deemed to be certified unless this certificate page is dated and signed by me.

WITNESS MY HAND AND OFFICIAL SEAL this 16th day of September, 2002.

KIM S. NEWSOM, CCR-CVR
 CCR No. B-1642

[SEAL]