

**Minutes of the
Tobacco Education and Research Oversight Committee (TEROC)
Friday, August 11, 2017
2:00PM - 4:00PM**

Locations

1616 Capitol Avenue Sacramento, CA 95814 6 th floor -- Salinas, 74.654	1400 Arcadia Place Palo Alto, CA 94303
Center for Tobacco Control Research and Education 530 Parnassus, Suite 366 San Francisco, CA 94143	4974 Brookburn Drive San Diego, CA 92130
Department of Preventive Medicine Keck School of Medicine, Room 106 University of Southern California 2001 Soto Street Los Angeles CA, 90033	10940 Wilshire Blvd. Suite 700, Conference Room 730 Los Angeles, CA 90024
	5150 E Pacific Coast Highway, Suite 200 Long Beach, CA 90804

MEMBERS WHO JOINED THE TELECONFERENCE:

Dr. Michael Ong (Chair), Dr. Claradina Soto, Dr. Mark Starr, Dr. Wendy Max, Mr. Richard Barnes, Ms. Mary Baum, Mr. Primo Castro, and Dr. Lourdes Baézconde-Garbanati

MEMBERS ABSENT:

Dr. Alan Henderson, Patricia Etem, Dr. Robert Oldham, Dr. Pamela Ling, Vicki Bauman

OTHERS IN ATTENDANCE:

SACRAMENTO LOCATION:

Dr. Mark Starr, TEROC Member, California Department of Public Health (CDPH)
Lindsay Freitas, American Lung Association (ALA)
Dennis Cuevas-Romero, American Heart Association (AHA)
Rich Kwong, California Tobacco Control Program (CTCP)
Tonia Hagaman, CTCP
Merril Lavezzo, CTCP
Tam Vuong, CTCP
Jim Knox, American Cancer Society Cancer Action Network (ACS CAN)

Tom Herman, California Department of Education (CDE)
Sarah Planche, CDE

SAN FRANCISCO LOCATION:

Richard Barnes, TEROC Member
Dr. Bart Aoki, University of California, Office of the President, Tobacco-Related Disease Research Program, (UCOP/TRDRP)
Dr. Norval Hickman, TRDRP

Dharmo Ghatta, University of California, San Francisco, Fellow, Center for Tobacco Control Research and Education (UCSF, CTCRE)
Poiyanka Vyas, Fellow, UCSF, CTCRE

UNIVERSITY OF SOUTHERN CALIFORNIA (USC) LOCATION

Primo Castro, TEROC Member, American Cancer Society Cancer Action Network
Dr. Claradina Soto, TEROC Member, USC
Dr. Lourdes Baézconde-Garbanati, TEROC Member USC
Yaneth Rodriguez, USC Tobacco Center of Regulatory Science (TCORS)
Chris Castro, USC TCORS

PALO ALTO LOCATION

Dr. Wendy Max, UCSF

SAN DIEGO LOCATION

Mary Baum, TEROC Member, Social Advocates for Youth (SAY) San Diego

LOS ANGELES LOCATION

Dr. Michael Ong, TEROC Member, UCLA

LONG BEACH LOCATION

Father Jack Kearney, member of the public, California Association for Drug and Alcohol Educators

1. Welcome and Introductions

The TEROC Chair, Dr. Michael Ong, called the meeting to order at 2:00 p.m. TEROC members and guests introduced themselves by location.

Dr. Ong welcomed and introduced Primo Castro as a new TEROC Member appointed by Anthony Rendon, Speaker of the Assembly. TEROC Member Debra Kelley's appointment has ended, and TEROC plans to recognize her contributions at the next TEROC meeting in Oakland, CA on October 10 and 11, 2017. Primo introduced himself to the TEROC Board and noted his enthusiasm to be part of TEROC.

2. Tobacco-Use Prevention Education Program Evaluation Discussion

Dr. Ong summarized that at the June 5, 2017 TEROC meeting TEROC became aware of non-payment and on-going challenges of the contract to evaluate the Tobacco-Use Prevention Education (TUPE) Program, which is funded by CDE, CDPH, and TRDRP.

Dr. Ong reviewed the June 22, 2017 Incoming Correspondence email from John Lagomarsino at CDE notifying TEROC of payment on the contract to evaluate the TUPE program evaluation. Dr. Ong also mentioned a letter on August 1, 2017 from Tom Herman saying payment was completed and that additional work has been done to resolve ongoing contracting challenges regarding the execution of continued evaluation of the TUPE program.

There were no questions from TEROC members nor from others on the call.

3. Proposition 56 Implementation

Dr. Ong asked program representatives from CDE, TRDRP, and the voluntary health organizations (AHA, ALA, and ACS CAN) to share their perspectives on how implementation of Proposition 56 is going given

discussion at the June 5th meeting about TEROC's concerns regarding a proposal by the Legislature to redirect funds in ways inconsistent with how Proposition 56 is written.

Mr. Herman responded CDE met with legislative staff and outlined how they plan to spend the additional funds. CDE provided legislative staff with information including roles and responsibilities of the new staff CDE plans to hire, how CDE plans to reach priority populations, and contracting with other organizations like California Youth Advocacy Network and Friday Night Live.

Mr. Dennis Cuevas-Romero from AHA responded first by thanking TEROC for their outgoing correspondence to the Legislature opposing the proposal to redirect Proposition 56 revenues, required to fund the TUPE program, to the After-School Education and Safety program. He noted that the letters were incredibly helpful in the advocacy efforts. Ultimately, the Legislature did not redirect the funds. He did note that legislative staff put trailer bill language in, which essentially said that the Legislature could either draft legislation to prioritize how Proposition 56 revenues, intended to fund the TUPE program, should be funded or let time run out; they had given a deadline of October 15, 2017. The Legislature is reviewing CDE's proposal and seems to be supportive of it. Other organizations reached out to CDE to see if the funding was eligible for other purposes such as the California Healthy Kids Survey. AHA, ACS CAN, and ALA are working to ensure that funds are appropriately used for purposes that were outlined in Proposition 56. They are hoping to hear of a decision within the next couple of weeks.

Dr. Ong thanked Mr. Cuevas-Romero and asked if any TEROC members had questions for Mr. Cuevas-Romero or related to CDE and the Legislature. Mr. Barnes asked Mr. Cuevas-Romero if there was some confusion from legislative staff about language used in Proposition 56 as to how funding should be used. Mr. Cuevas-Romero stated that the outgoing correspondence from TEROC as well as the work that other voluntary health organizations have done is helping to make it clear that funds should be used as required.

Dr. Ong asked the voluntary organizations if there were other areas of concern that TEROC should be thinking about or other areas of Proposition 56 that are not being used as intended. Ms. Lindsey Freitas of ALA stated the dollars pertaining to Tobacco Control were distributed per the initiative and there is no concern. There was an issue with funding as it pertained to the Medi-Cal portion, but that has been resolved.

Dr. Ong shared that a colleague at the University of California (UC) expressed concern about the amount of graduate medical education dollars that they received, but was not aware if it was still an issue. Dr. Aoki stated that those funds were allocated but at the same time, other funds were withheld. He does not believe that there was supplantation language applied to that pot of money. Mr. Barnes asked if universities were pursuing this issue. Dr. Aoki stated that although it is an issue, it is one of many competing issues between universities and the state and they have chosen to not to escalate it.

Dr. Ong directed the attention of TEROC members to a letter from the new Department of Tax and Fee Administration (DTFA, formerly the Board of Equalization), in regards to Regulation 4076 - The Wholesale Costs of Tobacco Products. DTFA sent materials to TEROC August 1, 2017 with a request to provide comments by August 11, 2017. Upon Dr. Ong's review of the materials, he did not think that there were any major issues in terms of the revisions that were made. Dr. Ong asked if other members had a chance to review the proposed regulation changes and if they had any additional comments on how tobacco products are treated by DTFA. Dr. Max questioned language in the definition of electronic cigarettes (e-cigarettes) that includes "liquids or substances that contain nicotine," stating that it was

somewhat broad. Mr. Richard Kwong added that DTFA attempted to adapt the definition of e-cigarettes from Proposition 56 language. Mr. Kwong noted that the language is consistent with the Proposition 56 definition but not verbatim, stating that the definition in Proposition 56 also includes liquids or substances that contain nicotine whether sold separately or sold in combination with any device “that could be used to deliver nicotine to a person in an aerosolized or vaporized form.” Had this portion of the definition been included in DTFA’s definition it would have been clear. Dr. Max asked if a suggestion could be made to add the remaining portion of the definition to DTFA’s definition.

Dr. Starr questioned whether it made a difference if the definition for electronic cigarettes included nicotine given that the current state law definition for electronic cigarettes includes any substance that could be smoked in an electronic cigarette. Mr. Kwong clarified that definition for electronic cigarettes that was enacted in state smoke-free laws and in underage access laws includes an electronic cigarette whether it contains nicotine or not. However for taxation purposes, electronic cigarettes must be sold in combination with nicotine in order to be taxed as a tobacco product.

Dr. Ong asked if there were any additional comments pertaining to the materials from DTFA. Dr. Starr had one additional question in regards to the usage of the word “consumption” in the “tobacco product” definition and asked if it encompassed everything that TEROC members wanted and asked if there were other methods to use besides consumption. Mr. Castro asked if the word accurately captures the act of inhaling. Dr. Ong stated that it would depend on how “consumption” is defined. Mr. Castro then asked if inhalation would be considered consuming. Mr. Kwong stated that this was another section that DTFA chose to cut out a portion of Proposition 56 “tobacco product” definition.

Action Item:

Dr. Ong motioned for TEROC write a response to Michael Patno, DTFA staff, on DTFA’s proposed changes to Regulation 4076 and replying to the information request line commenting on the DTFA materials. Motion passed unanimously. Dr. Ong emailed DTFA on behalf of TEROC.

Dr. Baézconde-Garbanati asked if any marijuana products should be addressed with these new regulations. Dr. Ong referred back to the tobacco product definition for taxation purposes in Proposition 56. Dr. Baézconde-Garbanati was concerned with the new and emerging products, especially those that combine marijuana with nicotine.

Dr. Ong asked if there were any additional comments. Mr. Castro asked how would the tax code be able to differentiate products that may contain nicotine and marijuana combined. Dr. Baézconde-Garbanati suggested raising this question to DTFA. Dr. Ong referenced Proposition 64, which includes a prohibition of selling tobacco products anywhere marijuana products are being sold. Retailer licenses need to be separate. Dr. Starr confirmed this, adding that in the manufacturing regulations for medicinal marijuana, and now in the regulations for adult use, would be quite similar. Also adding that in the manufacturing of marijuana, no additives considered addictive or other substances, such as caffeine, nicotine or alcohol can be mixed with cannabis. He was unclear about regulations if a person combined the two products themselves. Dr. Ong added that if a person bought these items separately and combined them that it was not something that could be regulated, as they were bought and taxed separately. Dr. Starr in referring to Mr. Castro’s question stated that he did not think that there would be products manufactured subject to this tax that would be tobacco products with cannabis in them.

Continuing with the Proposition 56 implementation discussion, Dr. Ong understood that there was some concern about how the California State Auditor (State Auditor) proposed regulations define

administrative costs for Proposition 56 revenues distributed to the California Department of Public Health. Mr. Kwong gave a brief background on the concern to TERO members. Proposition 56 states that each state or local agency that receives monies from the measure are subject to a 5% cap on administrative costs. As the proposed regulations are written, large components of the California Tobacco Control Program (CTCP) would be classified as administrative costs and well over the 5% cap.

Dr. Ong asked if there were any thoughts or questions on the issue. Mr. Barnes asked what TERO needed to do to address this. Mr. Kwong stated that the State Auditor is receiving public comments through August 21, 2017. TERO could develop a comment letter given that they are the mandated oversight committee for Proposition 56 funds for tobacco control.

Dr. Max inquired what percentage of staffing costs are and sought clarification in terms of what the State Auditor's Office is defining as administrative costs. Mr. Kwong stated that the State Auditor's Office is defining administrative costs as indirect costs or departmental service costs for a separate CDPH program receiving monies, the Food and Drug Branch's Stop Tobacco Access to Kids Enforcement (STAKE) Program. In the case with CTCP, the State Auditor's Office is defining direct costs (media, evaluation, training and technical assistance grants, and personnel costs) as administrative costs. CTCP is asking that the State Auditor's Office apply the same administrative cost definition the proposed regulations apply to the CDPH STAKE Program to CTCP. As it stands currently, the definitions and regulations for CTCP are based erroneously on the January 2017 Governor's Budget. Dr. Max asked if the issue would be resolved if TERO asked for all three CDPH programs (CTCP, STAKE, Oral Health Program) be treated the same. Mr. Kwong agreed. Dr. Starr inquired if the CDPH Oral Health Program faced the same issues, since they are also receiving Proposition 56 monies. Mr. Kwong stated that Oral Health Program is facing similar issues with definitions and regulations but could only speak on behalf of CTCP. Dr. Max asked if TERO wrote a letter asking that all three CDPH programs be treated the same in accordance with the definitions and regulations given to the STAKE Program, if that would resolve the issue. Mr. Kwong agreed.

Dr. Ong asked if there were any additional comments. Dr. Aoki shared that TRDRP sent the State Auditor's Office language to consider stating that they are using definitions currently aligned with Proposition 99, arguing that it would be useful to continue to use these definitions. They generally have incorporated those distinctions into the proposed regulations published with a couple of minor differences. The UC is writing a letter to recommend a couple of minor changes. The first change would be excluding both the direct and indirect costs of their grants, but the grants they specify are grants to local agencies. The UC is requesting language be broadened to grants awarded to "individuals or local entities" since they not only give grants to local agencies, but to other types of agencies as well, pursuant to the Health and Safety Code "shall not constitute administrative costs neither for the University of California or the recipient." The UC additionally recommends adding "and other expenses" to the regulations to exclude program activities or costs related to dissemination of information, for example conferences and briefings, except they limit those costs to personnel and recharging costs.

Dr. Aoki also shared that the State Auditor's Office audits has broadened its scope of audits to not only financial audits, but also performance audits. TRDRP's auditors have proposed language that suggests that they limit audits to the state and local agencies receiving funds rather than the grantees, these audits are set to occur every other year and could take up a lot of the time of the grantees. TRDRP will provide the information behalf of their grantees.

Dr. Ong asked members of CTCP and CDE if they would face similar problems to those of TRDRP with the programs they fund. Mr. Kwong confirmed that CTCP would face similar problems. Mr. Kwong stated that the State Auditor is required to audit local agencies that receive Proposition 56 monies. He added to Dr. Aoki's comments that these agencies would be subject to an audit as defined by Proposition 56 to include not only a financial audit but also a program and performance audit, which is beyond the scope of Proposition 56. This could also pose a challenge to the State Auditor to conduct performance, program and financial audits of all state and local agencies given that Proposition 56 distributes \$400,000 a year to their office to conduct these audits. If the State Auditor limited their Proposition 56 audits to financial audits, as written in the measure then it would be a much more efficient way to use these finite funds to conduct the audits necessary.

Mr. Jim Knox of ACS CAN added that it might be appropriate for TEROc to weigh in on Proposition 56 language and how it limits these audits to financial audits and that expanding into the area of programmatic audits really gets into the oversight function that is to the responsibility of TEROc. Dr. Ong agreed with Mr. Knox's sentiments and asked if TEROc members had anything to add. Dr. Max agreed, as well as CTCP. Dr. Ong added that this would also help CDE and TRDRP if the audits focused on financial and not performance reviews. Dr. Aoki included that it could get complicated if the State Auditor is suggesting things that are counter to what TEROc is prioritizing. Mr. Kwong added that it would also be duplicative of TEROc's mandates to oversee and evaluate programs. Mr. Herman also agreed.

Dr. Aoki stated that TRDRP is planning to submit their comments by August 21, 2017 deadline as well as appear at the public hearing on the same day to ensure that it is publicly entered into the record.

Dr. Ong asked if there were any additional comments. Mr. Barnes reviewed the "Authority and Purpose" language for the regulations and stated that nowhere in the regulation does it mention performance evaluations only a financial audit. He questioned where the State Auditor's Office would have any statutory authority to conduct a performance audit of any kind. They have to be authorized by the Legislature to do so. What they cite in the proposed regulations does not meet that requirement.

Ms. Freitas added that there is language in the regulations that states that "this financial audit should include but not be limited to..." which is what she believes the State Auditor's Office is using as a reason.

Action Item:

TEROc comment letter to the State Auditor clarifying that they do not have statutory authority under Proposition 56 to conduct a performance or program audit. Rather, the scope of their audit is limited to financial. TEROc is mandated to provide performance review oversight of CDPH, in addition to CDE and TRDRP. Moved by Dr. Ong. Seconded by Mr. Barnes. Motion passed unanimously.

4. Public Comment

Mr. Ong brought up the August 3, 2017 letter from Michael Magaña, President of the Local Lead Agency Project Director's Association (LLA PDA), asking TEROc to explore information-sharing issues between Local Lead Agencies (LLAs) and the California DTFA related to Tobacco Retailer Licensing.

General Discussion:

Ms. Tonia Hagaman gave a brief history behind the disclosure issues between LLAs and DTFA. In the past, Local health departments were able to get access to information on licensed retailers within the jurisdiction.

Mr. Kwong referred members of TEROC to the portion of the letter from the LLA PDA in which DTFA's response to the LLA PDA cited Civil Code Section 1798.69(a), as a reason to no longer disclose information. However, Mr. Kwong noted Civil Code Section 1798.69(b) states that there is nothing in the section that could prohibit the release of this information to any federal, state or local government by law. In this case LLA's are part of the local health department and local government, this information should be released to them.

Mr. Barnes suggested asking DTFA why there has been a change in policy in order to get them to acknowledge a legal basis for making that change. Agreeing with Mr. Kwong, LLAs are part of the local health department and thus part of the local government.

Action Item

TEROC letter to DTFA inviting a representative to the 10/10/17 TEROC meeting to discuss the change in policy in disclosure of the list of Tobacco Retailers with LLAs as well as Civil Code Section 1798.69(a). Moved by Mr. Barnes. Seconded by Dr. Starr. Motioned passed unanimously.

Ms. Freitas from ALA raised an issue to TEROC's attention. What voluntary health organizations have noticed since electronic cigarettes have been included in the tobacco products definition is a variation in how some of the online companies have addressed this. The concern is more than sales and advertising. It also includes the social media posts and their applications (apps) that deal with tobacco use. Mostly, these companies are trying to comply with the new definitions and have great policies in place that address this. However when it comes to electronic cigarettes the definitions for these products are blurred, particularly when it comes to heat not burn types of products. ALA wants to ensure that products such as those are included in those policies, and that all companies are held to the same standards. They thought this would be a great opportunity to reach out to these companies to educate them on new policies and how electronic cigarettes and the like would fall into those. Mr. Cuevas-Romero added that companies for the most part are trying to comply, however they may be unaware of the updates. He suggested in the future that they may need to be encouraged to review their policies and if needed, to update them to reflect current law. Ms. Freitas said that they are still researching the issue and would have more for the October meeting.

Dr. Max inquired to Dr. Aoki about Mary Croughan's retirement and who would replace Ms. Croughan in the Research Grant Program Office (RGPO). Dr. Aoki responded that they currently have an interim executive director, Julia Arno. They will be starting a search for Ms. Croughan's replacement.

Father Jack Kearney, member of the public and representative for the California Association for Drug and Alcohol Educators, stated that they are concerned about smoking. 80% of their clients in addiction treatment are smokers. They recommend that since smoking is listed as a substance abuse disorder, that it be moved in with all other substance abuse disorders. Removing it from CDPH and into Department of Health Care Services, they thought that it might help improve clinical services. The other item that they have found helpful and would like TEROC to consider and have found successful in the addiction and treatment area, is tobacco harm reduction. They do see vaping as an evidence based, relatively safe tool for smoking cessation and that the overwhelming science supports this. They would like to see TEROC and others to be more open to this item.

Dr. Max responded that for some this method may work, but it may not for others. Dr. Ong mentioned that in the tobacco control world that there are many views on electronic cigarettes and that is why we rely on science and programs such as TRDRP to provide us with the evidence either way.

Dr. Ong adjourned the meeting.