

**Minutes of the  
Tobacco Education and Research Oversight Committee (TEROC)  
The Sheraton  
Beavis Room  
1230 J Street  
Sacramento, CA 95814**

**MEMBERS PRESENT:**

Dr. Lourdes Baezconde-Garbanati, Dr. Alan Henderson, Dr. Michael Ong (Chair),  
Mr. Myron Dean Quon, Dr. Dorothy Rice, Ms. Peggy Uyeda, Dr. Shu-Hong Zhu

**MEMBERS PRESENT IN ALTERNATE LOCATION:**

Dr. Pamela Ling

**MEMBERS ABSENT:**

Dr. Lawrence Green, Ms. Pat S. Etem, Ms. Denise Adams-Simms, Dr. Wendel  
Brunner

**OTHERS IN ATTENDANCE:**

Kimberly Amazeen, American Lung Association of California (ALAC)  
Dr. Bart Aoki, Tobacco Related Disease Research Program (TRDRP), University  
of California, Office of the President (UCOP)  
Peter Baldrige, California Department of Public Health (CDPH)/Office of Legal  
Services (OLS)  
Richard L. Barnes, Center for Tobacco Control Research and Education,  
University of California, San Francisco (UCSF)  
Kimberly Bankston-Lee, Breath California of Sacramento Emigrant Trails  
Dr. Ronald Chapman, State Health Officer, CDPH  
Giancarlo Cosavalente, California Youth Advocacy Network (CYAN)  
Bob Curry, Marin County Local Lead Agency (LLA)/Project Director's Association  
(PDA)  
Felicia Flores-Workman, Solano County Health and Human Services-Tobacco  
Prevention and Education Program  
Dr. Phillip Gardiner, TRDRP/ UCOP, African American Tobacco Control  
Leadership Council (AATCLC)  
Michele Goetz, San Diego State University Research Foundation (SDSURF)  
Tonia Hagaman, California Tobacco Control Program (CTCP)  
Colleen Hayden, CYAN  
Rich Heintz, LLA/PDA  
Tom Herman, California Department of Education (CDE)/Coordinate School  
Health and Safety Office (CSHSO)  
Kimberly Homer-Vagadori, CYAN  
Lisa Houston, Health Education Council (HEC)/Breakfree Alliance  
Dr. Jonathan Isler, CTCP

Drew Johnson, The Center for Chronic Disease Prevention and Health Promotion (CCDPHP), CDPH  
Jerry Katsumata, CTCP  
Dave Kitchen, Tobacco Education Clearinghouse California (TECC)  
Jim Knox, American Cancer Society (ACS)  
Richard Kwong, CTCP  
John Lagomarsino, CDE/CSHSO  
Linda Lee, CTCP  
Rod Lew, Asian Pacific Partners for Empowerment, Advocacy and Leadership (APPEAL)  
Janet Lopez, University of Southern California (USC)  
Vanessa Marvin, ALAC  
Carol McGruder, Achieve Equity for Priority Populations on Tobacco (ADEPT), AATCLC  
Matthew Marrow, Public Health Institute (PHI)  
Cathy Medina, CTCP  
Jamie Morgan, American Heart Association (AHA)  
Sharen Muraska, ACS  
Greg Oliva, Assistant Deputy Director for CCDPHP, CDPH  
Lisa Peterson, TECC  
Q. Rafietari, TECC  
Alison Ramey, American Cancer Society (ACS)  
Yaneth Rodriguez, University of Southern California (USC), Tobacco Education and Materials (TEAM) Lab  
April Roeseler, CTCP  
Nadine Roh, CTCP  
Karin Schwartz, CDPH/OLS  
Patti Seastrom, CTCP  
Alexandria Simpson, CTCP  
Gloria Soliz, Coalition of Lavender-Americans on Smoking and Health (CLASH)/ADEPT  
Vicki Webster, CYAN  
Greg Wolfe, CDE/CSHSO

**1. WELCOME, INTRODUCTION, AND OPENING COMMENTS**

TEROC Chair, Dr. Ong, called the meeting to order at 1:04 p.m. TEROC members and guests introduced themselves.

**2. CTCP CONTRACTS DISCUSSION**

Dr. Ong began discussion by thanking Dr. Chapman and the team from the California Department of Public Health (CDPH) for agreeing to meet. Dr. Ong discussed the goals and ground rules of the meeting. Dr. Ong stated his hope that Dr. Chapman and his guests can help TEROC understand CTCP contractual issues directly related to Government Code (GC) Section 19130.

TEROC members and guests reviewed the following outgoing correspondence:

- TEROC Letter to Dr. Ronald Chapman, Director and State Health Officer, CDPH regarding CDPH contracting policy and practices as they relate to GC Section 19130 and the impact on the California Tobacco Control Program (CTCP).

TEROC members and guests then reviewed the following incoming correspondence:

- Letter from Advocacy and Data Dissemination to Achieve Equity for Priority Populations on Tobacco (ADEPT) to TEROC regarding CDPH's new interpretation of GC Section 19130.
- Letter from the Health Education Council (HEC) to Dr. Ronald Chapman, Director and State Health Officer, CDPH regarding the Department's new interpretation of GC Section 19130.
- Letter from the Coalition of Lavender Americans on Smoking and Health (CLASH) to Dr. Ronald Chapman, Director and State Health Officer, CDPH regarding the Department's interpretation of GC Section 19130.
- Letter from the Project Directors Association (PDA) to TEROC regarding the Tobacco Education Clearinghouse of California (TECC) contract.
- Letter from ADEPT to Dr. Ronald Chapman, Director and State Health Officer, CDPH regarding the Department's new interpretation of GC Section 19130.
- Letter from Dr. Ronald Chapman, Director and State Health Officer, CDPH to TEROC regarding CDPH contracting policies and practices in relation to GC Section 19130 and the impact on CTCP.

Dr. Ong continued the discussion by emphasizing how successful CTCP has been for more than 20 years and how important it is to maintain the existing infrastructure in order to allow tobacco control to effectively be carried out at the local level.

TEROC wants to understand why the process of contracting for services has changed. TEROC understands that CDPH must adhere to certain practices, but they are set up as an oversight committee to ensure the statewide tobacco control infrastructure is maintained.

TEROC expressed hesitancy regarding the State's ability to provide the services currently provided by the Education Training and Research (ETR) Associates, Inc., TECC. The particular concern is whether or not the state can efficiently produce materials for Local Lead Agencies (LLAs) and local jurisdictions.

Dr. Ong invited Dr. Chapman to provide thoughts on the subject.

Dr. Chapman thanked TEROC for inviting him to speak and thanked guests for attending. He appreciates the opportunity to discuss the Department's contracting practices as they relate to GC Section 19130 and its impact on CTCP.

Dr. Chapman acknowledged that he is not a contract or legal expert so he may not be qualified to answer all of TEROC's questions at the meeting; however, if after this meeting there continue to be items that need further clarification, the Department will do its best to answer questions, in a timely manner.

GC Section 19130 does not affect local assistance agreements and agreements are not being terminated early. However, as agreements are nearing the end of their existing terms, the Department is identifying funding mechanisms that permit the continuation of services while being in compliance with GC Section 19130. This includes identifying universities within the University of California (UC) and California State University (CSU) systems, as well as state agencies, that may be able to perform the work.

Dr. Chapman understands that the present situation is disruptive to the Program, to the non-governmental agencies currently providing statewide services, and to the field which values the high quality services delivered by non-governmental agencies. CDPH wants to work with TEROC to manage this transition so CTCP can continue being a success.

Article VII of the California Constitution requires that the State's work is to be done by state civil service employees unless an exemption applies.

The California Supreme Court has held that this Constitutional requirement prohibits state agencies from contracting with private entities to perform work that the State has historically performed or that it can adequately and competently perform.

GC Section 19130 lists exceptions to this civil service mandate that have been recognized by courts. At least one of the exemptions under GC Section 19130 must apply, or State work may not legally be contracted to private entities and instead must be performed by State employees.

In recent years, the California State Auditor has conducted audits of CDPH and has made findings regarding CDPH's noncompliance with GC Section 19130. As a result of the audit findings and recommendations, and due to heightened union interest in the State of California contracting out statewide services which could otherwise be adequately and competently conducted by State employees, CDPH implemented new business processes.

These new business processes include working to ensure that the Department's contracting practices are consistent with the State Constitution. The agreements in question were not previously reviewed for compliance with GC Section 19130; therefore, there is no reinterpretation of the law, but rather a first-time application.

Dr. Chapman continued by addressing several state functions that are of concern.

1. **Information Clearinghouse Services.** The TECC agreement ends December 31, 2013.
  - Quit Kit Fulfillment and Helpline Materials Distribution: The Program negotiated and is finalizing an Interagency Agreement (IA) with the University of California, San Diego (UCSD) that will include quit kit fulfillment and the distribution of California Smokers' Helpline materials.
    - Anticipated start date for this activity: first quarter of 2014
    - Library Services and Tobacco Policy Database Maintenance: The Program is negotiating an IA with the University of California, Davis (UC Davis) to assume library functions and maintenance of the tobacco policy database. Anticipated start date: First quarter of 2014.
  - Bulk Distribution of Educational Materials: On a temporary basis, the Program will make a limited number of materials available for download on the Department's website. A longer term solution is to find a state agency that currently performs bulk order and distribution of educational materials. The Program has initiated conversations with the Office of State Publishing and the Department of Health Care Services (DHCS) to explore the feasibility of these state agencies performing clearinghouse functions for the Program.
2. **Capacity Building Network.** This project performs training and technical assistance to enhance the ability of tobacco control funded projects to work more effectively with priority populations on tobacco control efforts and to build the capacity of priority population communities to address tobacco control.

- The Program negotiated an IA with UC San Francisco (UCSF) to provide these services.
- Anticipated start date: February, 2014.

- 3. Annual Youth Tobacco Purchase Survey.** The results from this survey are reported to the federal government every year to comply with federal Synar reporting requirements which are tied to the State's receipt of a \$249 million Substance Abuse Prevention and Treatment block grant administered by DHCS.
- This survey has been conducted by San Diego State University Research Foundation (SDSURF) for many years.
  - The Program has notified the principal investigator that it can no longer contract with SDSURF, but that it is willing to enter into an IA with San Diego State University (SDSU).
  - The Program has given SDSU a deadline of November 15, 2013 to respond before it begins soliciting other universities who may be interested in performing the work.
  - Anticipated start date: IA needs to be in place by July 1, 2014.
- 4. California Student Tobacco Survey and Tobacco Use Prevention Education Evaluation.** This work has been performed collaboratively by WestEd and the University of California Los Angeles (UCLA) for several years. The Program was able to contract directly with WestEd because it has Joint Powers Agreement Authority.
- The Program has notified WestEd that it can no longer contract with them and has approached the principal investigator at UCLA about entering into an IA with UCLA.
  - The deadline for a decision is December 1, 2013.
  - Anticipated start date: IA needs to be in place by July 1, 2014.
- 5. Policy Organizing Project, Tobacco Control Policies and Regulations Technical Assistance Project, and Youth and Young Adults Project.** These projects provide training and technical assistance to local health departments, community based organizations, cities and counties, and directly work with youth and volunteers.
- Agreements for these three projects are currently with the American Lung Association of California (ALAC), ChangeLab Solutions, and Public Health Enterprises Foundation/California Youth Advocacy Network (CYAN).
  - These agreements all expire June 30, 2014.
  - The Program is re-framing these projects so that they would be consistent with requirements for issuing Grants.
  - A Request for Application is tentatively scheduled to be released in January, 2014.
  - Should the Grant mechanism not provide to be viable, the Program will pursue an IA with the UC system.

- 6. Educational Materials Development Technical Assistance.** This project provides training and technical assistance to local health departments and community based organizations on how to develop low literacy and culturally appropriate educational materials. It also administers a materials review group that assesses the appropriateness of materials for statewide distribution through the Clearinghouse, and it develops a few pieces of educational materials for statewide distribution.
- The agreement for this project is currently with the University of Southern California (USC).
  - This agreement expires June 30, 2014.
  - At this time there are no plans to enter into a new agreement with any agency for this project. The Program is not financially able to sustain this project in the upcoming years due to its declining revenue source.

Dr. Chapman concluded his presentation by stating that the current plans that are in place will allow CTCP to continue to provide the critical program functions it has provided for over 20 years, while being in compliance with GC Section 19130.

Dr. Ong thanked Dr. Chapman for his thorough presentation.

Dr. Ong's first concern was that it seems as though CDPH is not pursuing exemptions under GC Section 19130 as a viable option. Dr. Ong wondered what the basis was for determining that the exemptions did not apply to the above described CTCP contracts. The work done by ALAC, ChangeLab Solutions, and CYAN cannot, in his opinion, be adequately provided by entities within the State of California. He is struggling to understand why CDPH has thrown out the option of pursuing an exemption.

Dr. Chapman explained that CTCP is not the only program that has been impacted by the application of GC Section 19130. The audit was department-wide. There are over 200 programs that have been impacted within the CDPH. CDPH is aggressively looking for exemptions anywhere they can find them. Each of the discussed contracts has been evaluated and they were found unsuitable for an exemption.

Dr. Chapman asked whether TEROC had considered the UC system or the CSU system as appropriate agencies to perform this work.

Dr. Ong stated that the UC and CSU systems' core competencies do not rest in these areas; therefore, they are not likely equipped to appropriately provide these services. He went on to question the adequacy of the agencies who are being asked to perform the services. In a theoretical situation, the services could be

performed by State agencies, but there is a serious problem regarding the actual ability to adequately conduct the kind of work needed.

Dr. Ong also discussed the agreement with ChangeLab Solutions. He is concerned about conflict of interest regarding State agencies providing guidance about policies to local jurisdictions. The service would be extremely difficult for a State entity to perform.

Dr. Zhu asserted that the services that TECC has been providing are not a part of UCSD's core competencies. In addition, it might not be as cost-effective for UCSD to provide the printing services. Dr. Ong contacted the Office of State Publishing, who stated that they are not currently equipped to warehouse the quantities of materials CTCP requires. He questioned who would perform the services while state agencies were building the capacity to provide the services needed.

Dr. Baezconde-Garbanati stated that she is the Director of TEAM Lab from USC. She has been working in tobacco control for nearly 20 years and she appreciates that Dr. Chapman has been on the forefront of these efforts. She continued by explaining that CTCP is different from other programs in that they are fighting an industry who is continuously creating new tactics and new ways of recruiting youth. Dr. Baezconde-Garbanati stressed the issue of electronic cigarettes (e-cigarettes) use among youth has nearly doubled in just the past year. By moving these services over to the State, from entities that have been performing the services for over 20 years, tobacco control could be seriously lacking in its ability to respond to the tobacco industry's efforts in recruiting youth. The eroding of the internal infrastructure is, in fact, helping to further the tobacco industry's agenda.

Dr. Baezconde-Garbanati and Mr. Quon both expressed concern that State workers are unable to reach vulnerable populations in the same way that programs like CYAN are equipped to help reach.

Dr. Henderson stressed that Californians should be looking out for the public's best interest. He is concerned that there is shortsightedness, on CDPH's part, in regards to contracting. This shortsightedness could potentially cause damage to the infrastructure of CDPH programs.

Dr. Ong agreed with Dr. Henderson by adding that the TEAM Lab contract helps to address one of CTCP's key areas of focus for tobacco control in California, which are the priority populations. He recognizes that declining funds are a factor, but asserted that this need is at the top of the priority list.

Dr. Chapman explained the process of examining whether or not State employees are able to perform the job functions that contractors currently provide. They compare duty statements and job classifications from all State government entities to determine whether or not the function can be performed

in-house. He also offered to look into the definition of adequacy in terms of services provided and look into the decision made to end the USC contract as a result of decreasing revenue.

TEROC offered to help provide to CDPH the evidentiary basis needed to comply with GC Section 19130 so that CTCP can continue running effectively.

Dr. Henderson and Mr. Quon asked Dr. Chapman or Ms. Schwartz to elaborate on the audit that was conducted resulting in the aggressive enforcement of GC Section 19130.

Ms. Schwartz responded by reiterating that CDPH must comply with the constitutional mandate and that there has been no change in interpretation of the law, only new enforcement. She welcomed TEROc to help CDPH create the evidentiary basis to establish a basis for exemption.

Mr. Curry spoke on behalf of the Statewide LLA/PDA that represents the 58 county and three city health departments in California addressing tobacco issues. He expressed concern regarding the State's ability to take-over the services required. The LLA/PDA disagrees with CDPH's interpretation of GC Section 19130 and asked TEROc if they can contact Legislative Counsel to review the interpretation.

Dr. Gardiner spoke on behalf of TRDRP and expressed concern regarding CDPH's actions. In his opinion, the entire tobacco control infrastructure is being uprooted. CDPH has expressed that they should focus on the transition of the services to the state. However, Dr. Gardiner is concerned that a transition for all services may not be possible. He believes that CDPH should examine this closely, and think it through, before the program reaches a point of ruin. Dr. Gardiner asserted that bringing all services in-house to save money may be pennywise but pound-foolish.

Ms. Goetz spoke on behalf of SDSURF. SDSURF is facing challenges with regards to transferring the STAKE Act Contract to SDSU. CSU utilizes its auxiliaries, which are recognized in the State Contracting Manual (SCM) to provide services on behalf of the university. At SDSU, the infrastructure and responsibility for administering grants and contracts on behalf of SDSU's faculty, staff, and students resides with the SDSURF. Ms. Goetz also addressed the fact that the California Constitution was written at a time when the current structure of CSU auxiliaries was not contemplated.

Ms. Homer-Vagadori presented on behalf of CYAN, which is staffed by 3.5 employees. These three staff members serve the entire state of California, including high schools, counties, public colleges and universities, and military service members. Non-profit organizations have the unique ability to serve these communities in an impartial manner and reach them in a way that State

government cannot. Community organizations can be more effectively reached through CYAN.

Mr. Wolf spoke on behalf of the California Department of Education (CDE). Concern was particularly expressed regarding the CYAN contract. Expertise from youth advocacy projects was nearly impossible to find within the State system. Mr. Wolfe explained that State workers, by law, are precluded from taking part in advocacy. However, the staff at CYAN has stepped-up and provided expertise in this specialized area. He went on to ask CDPH to reconsider the CYAN contract, as there is a genuine exception there.

Dr. Zhu asked what the procedure was to work on finding exemptions for contracts; he is afraid the program will become inefficient and self-destruct. Dr. Chapman answered that inefficiency and self-destructing is unacceptable to CDPH. Dr. Chapman stated that CDPH and TEROC are on the same page; they both want CTCP to continue to be a success. Dr. Chapman will continue to work with his team at CDPH to discuss logistics and viable solutions based on the discussion.

Mr. Barnes assured the group that Philip Morris is applauding the path the CDPH is currently taking by ending CTCP's external contracts. CDPH is harming CTCP more than the tobacco industry is capable of. Mr. Barnes turned CDPH and TEROC's attention to GC Section 19132; this is what could potentially protect CDPH. GC Section 19132 requires the State Personnel Board, at the request of an employee organization that represents state employees, to review the adequacy of any proposed or executed contract which is of a type enumerated in subdivision (b) of Section 19130. A complaint has never, in the past 25 years, been filed with the State Personnel Board regarding the contracting practices of CTCP. If a complaint ever occurs, CDPH has an army of support to provide evidence as to why the contracts cannot be performed in-house.

Dr. Ong continued the meeting by exploring potential TEROC action. TEROC's next public meeting will take place on Wednesday, December 11, 2013 and Thursday, December 12, 2013. Another TEROC meeting will take place in late January 2013. A TEROC subcommittee can convene, according to Bagley-Keene, to work with CDPH on the issues and report back to the main body. The meetings should be facilitated rather quickly because of the short time-frame of some of the contracts.

Mr. Baldrige, of CDPH/OLS, brought up a potential conflict of interest regarding inviting outside contractors to be members of the subcommittee. He advised that, in his interpretation of Bagley-Keene, a subcommittee consists of fewer than three members.

Mr. Baldrige went on to explain that OLS performs their review of contracts based on the scope of work and whether or not there is a state classification that

could potentially perform that service. It makes no difference whether or not they can do it better.

Ms. Amazeen, of the American Lung Association in California (ALAC), stated that although she has a conflict because of a statewide grant ALAC receives, she is also a lobbyist, and she asked whether or not the Health and Safety Code could be amended. Ms. Schwartz replied that the State Constitution could not be amended through legislative action.

Ms. Amazeen inquired whether CDPH is continuing to have discussions on how to move forward; or if they have already determined that bringing the contracts in-house is the only way to move forward. Dr. Chapman answered that options are still being discussed.

Ms. Amazeen pointed out that CTCP is a world-renowned program that cannot be performed only by State employees.

Dr. Ong questioned whether or not opinions from the Attorney General (AG) or Legislative Council would be helpful to CDPH. Mr. Baldrige answered that their interpretations can be persuasive; however, he stated that sometimes the opinions can take years to receive back. Ms. Schwartz wondered whether or not the questions TEROC have would fit within the parameters of requesting an outside legal opinion.

Mr. Barnes stated that the question that must be asked of either the AG's Office or the Legislative Council must incorporate GC Section 19130 and its juxtaposition with California's tobacco control mandates that TEROC is charged with overseeing. CTCP's charge is unique and must be considered when asking for a legal opinion.

Ms. McGruder of ADEPT and the African American Tobacco Control Leadership Council (AATCLC), expressed that she believes that the decision CDPH has made will further isolate the local communities from the State.

TEROC will discuss seeking an opinion from Legislative Council with regard to CTCP contracting practices and how they relate to GC Section 19130 at the next TEROC Meeting.

**Action Item:**

Dr. Henderson made a motion to create a subcommittee to enter into discussions with CDPH and solicit information from the community to determine whether or not the discussed contracts meet any of the exemptions in GC Section 19130. Dr. Zhu seconded the motion. Motion carried; abstained by Dr. Baezconde-Garbanati.

Subcommittee members:

- Mr. Quon
- Mr. Ong

### **3. PUBLIC COMMENT**

Dr. Ong encouraged public comment from the audience.

Dr. Chapman thanked TEROC and attendees and looks forward to working with the TEROC subcommittee.

Ms. Soliz, from CLASH and ADEPT welcomed the opportunity for Dr. Chapman to be a champion of tobacco control.

Dr. Chapman agreed to be a champion of tobacco control.

Dr. Gardiner compared the current situation with the dismantling of TRDRP nearly five years ago. He believes tobacco control officials should step outside of their existing logic to discuss how to move forward.

Yaneth Rodriguez of the USC, TEAM Lab, requested more information regarding the budgetary issues and how the decision came about to discontinue the services.

### **4. ADJOURN**

Dr. Ong thanked Dr. Chapman and his team from CDPH for attending the meeting.

The meeting was adjourned at 3:40 PM.

The next TEROC meeting will take place on Wednesday, December 11, 2013 and Thursday, December 12, 2013 in Los Angeles, CA.