

UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES  
AND WORKER HEALTH

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SUBCOMMITTEE ON SITE EXPOSURE MATRICES (AREA #1)

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MEETING

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SUMMARY MINUTES

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TUESDAY,  
SEPTEMBER 20, 2016

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The Subcommittee met telephonically at 1:00 p.m. Eastern Time, Laura Welch, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

JOHN M. DEMENT

MEDICAL COMMUNITY:

STEVEN MARKOWITZ  
LAURA S. WELCH, Chair

CLAIMANT COMMUNITY:

KIRK D. DOMINA  
GARRY M. WHITLEY

OTHER ADVISORY BOARD MEMBERS PRESENT

FAYE VLIEGER

DESIGNATED FEDERAL OFFICIAL:

CARRIE RHOADS

## **Introductions**

Ms. Rhoads opened the meeting at 1:01 p.m. Chair Welch said that she had asked the subcommittee members to review some of the beryllium case files to ensure everyone had a good understanding of the case review process.

### **Request for data on claims by specific ICD codes**

Chair Welch asked if the department could make the cases available in a more easily searchable fashion. Having everything (e.g., all of the medical records) in one PDF would be very helpful. The subcommittee needs more information on claims by specific ICD code so that they can get an idea of what people are filing for and what is happening to those cases. Dr. Welch informed the committee that DEEOIC staff reported that the department does not code the incoming claims in a specific or routine way. Based on that, although with the current compilation of data that the subcommittee has, it may not be able to identify the total universe of cases, the data can be used to identify cases that the subcommittee wants to learn from. The department is trying to find all of the claims by using text descriptors and the ICD codes. That seems like the best that the department can do.

### **Request for case examples with presumptions**

The subcommittee can learn a lot by looking at individual cases. But the department is not collecting information such as if a case is denied because employment wasn't verified or because a medical opinion was turned down. The subcommittee could at least get a description of the number of cases that are accepted and denied by broad categories. It looks like 30% of the denials are lung disease. Chair Welch reiterated that the subcommittee wants to get claims data by ICD code in order to get a sense of the big categories of medical conditions in the claims process. Member Vlieger said that she could provide, via Deb Jerison, a copy of the data dictionary for the codes that the department uses. The subcommittee needs to look at how to dive into what information is available to determine if the SEM is entering into negative claims decisions that might be contrary to a known exposure association for a particular job category. Along the spectrum of reasons for denial, a crucial area to take a look at is to see if the SEM/occupational history could play a role in the negative causation results. The subcommittee needs to look at a subset of claims where there was a negative causation result for some of the conditions.

The category "employee not covered" usually means that DOL has not found adequate site presence for employment. There are also claims that get sent to contract medical consultants after review by the industrial hygienists and toxicologists that are denied.

At some point, DOL started applying presumptions to COPD. The subcommittee needs to understand the timing of when DOL started applying those presumptions. The bulletin on the presumption of COPD was issued on December 28<sup>th</sup> of 2015 and expires in December this year. Member Markowitz said that even if the subcommittee looks at claims from January 2016 and the few months after that, they may be able to gauge how well the presumption is working. Chair Welch said that the subcommittee will request a couple of different reports that reflect a wide range of data.

## **DOL's response to IOM report on SEM**

The recommendations from the IOM report are quite extensive and too big of a task for the subcommittee to take on alone. Chair Welch suggested that instead of having some process to peer review literature, OWCP should use its reliable sources like IARC, EPA, and the National Toxicology Program. Member Vlieger said this approach would be good and that it takes away the issues with the Haz-Map and the lack of peer review in the previous reports. Member Domina said he is for anything that will help the claimant. He reminded the subcommittee that 34 sites have no SEMs. Member Markowitz suggested looking at claims from a place that has no SEMs and see how DOL makes decisions in those cases.

Member Vlieger said that in the past when there was no exposure data from either an incident or an accident where there would have been air sampling, a number of chemists and metallurgists were turned down because their diseases weren't in the SEM and there was no monitoring data. Also, a lot of the occupational history that's in the files are variable in terms of quality and completeness.

The subcommittee agreed that board needs to form a plan for looking at how DOL can use other expert data effectively.

The IOM report said that the SEM does not adequately address mixtures or synergistic processes. The subcommittee agreed to brainstorm on this issue.

### **Review of OHQ completed at resource centers**

The OHQ is a beginning but it's not enough. Chair Welch suggested that the industrial hygienists call the claimants during their review of cases. Turning claims down because the claimant didn't collect the information that would support the claim does not seem right. Some of the questionnaires do talk a little bit about the claimants' work activity, but very little. The industrial hygienists have been relying on their general knowledge of industrial hygiene and what can be expected to happen in an industrial facility, construction site, etc. Member Dement cited the example of a laundry worker that claimed CBD and was denied based on the lack of specific exposure information. The industrial hygienist probably should have gone back and spoken to this individual. Member Whitley added that many workers have no clue as to what they were exposed to. Member Markowitz said that the interview should not be used against a claimant. Any recommendation from the subcommittee on this point needs to express some limitation of the interview approach. Whether or not the claimant should be open to or allowed to have a second party with them during the interview is a question that deserves consideration.

Member Vlieger said that it would be great if there was someone actually looking at the work processes that the claimant might have been affiliated with. The exclusions that DOL assigns to things needs to be broadened. The completeness of occupational histories needs to be enhanced. Perhaps the subcommittee could recommend that the resource centers hire former workers to be trained up and to administer the OHQ. In addition to having former workers, there needs to be some continuous improvement to better understand the data collection. Improving the OHQ is now on the board's agenda.

## Development of the 1995 memo

Chair Welch walked the subcommittee through the 1995 decision process as a matter of background. As of 1995, DOL is assuming that all exposures were controlled to regulatory standards. Member Dement said that it does seem inappropriate to entirely eliminate the possibility that a worker can provide evidence about their exposures that an industrial hygienist would like opine to be above some established threshold. Even exposures above some established threshold does not exclude the possibility of causation. The logic of this policy is that exposures below regulatory thresholds would not be harmful. It is hard to know how exactly the 1995 memo is currently being used to adjudicate claims. Member Markowitz said that DOL was probably trying to assimilate the idea that exposure conditions in many places were probably getting better over time. The underlying problem seems to be trying to find some way of accommodating the idea that conditions in many places probably did improve over time. If the OHQ and the industrial hygienist interviews work properly, then DOL could do away with the 1995 memo.

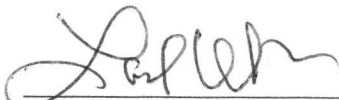
Member Dement added that there could be presumptions of the exposure disease relationships that could be definite or true pre-1995. Those relationships could be investigated with more rigor as opposed to not acknowledging a known occupational disease association. Also, virtually all of the OSHA standards date from the 1970s except for a few that have been specifically updated since then. Therefore, the idea that regulatory standards are entirely protective is not true.

Member Markowitz said that the subcommittees are all dealing with a range of important topics and that he would figure out where the overlap is among the subcommittees and better coordinate discussion of those topics. The priorities should be either recommendations that the subcommittees are coming up with or important issues for the consideration of the full board.

The meeting was adjourned at 2:57 p.m.

*I hereby certify that, to the best of my knowledge, the foregoing minutes are an accurate summary of the meeting.*

*Submitted by:*



Laura S. Welch, MD

Chair, Subcommittee on the Site Exposure Matrices (SEM)

Advisory Board on Toxic Substances and Worker Health