WORKSAFE
safety, health, and justice for workers

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Sent Via Email to rs@dir.ca.gov

Re: Surgical Plume Comments

We would like to extend our appreciation to the Division of Occupational Safety and Health and the Research and Standards Unit for its work on the discussion draft, "Occupational Exposure to Surgical Plume," and providing us with the opportunity to comment. We appreciate the work and thought that went into the draft. We support this rulemaking and provide the following comments in an order corresponding to the discussion draft. We have no comments on Part (b), Definitions.

Part (a), Scope and Application.

A standard on surgical plume should cover all workers under OSHA's jurisdiction who are at risk of recurring exposure to surgical plume and smoke. The scope of the discussion draft is too narrow because it excludes outpatient surgical clinics and ambulatory surgical clinics that do not operate under the license of an acute or psychiatric care hospital. As one of the nurses who spoke at the public hearing noted, these types of facilities, which can be licensed with the California Department of Public Health or meet one of several accrediting options, are growing, and the trend for many types of surgeries is towards these types of facilities. Many are specialized facilities in which health professionals are involved in performing multiple surgeries for long shifts. In fact, health professionals in these settings where plume-generating instruments are used probably have greater levels of exposure than workers in hospital surgical settings because of the volume of surgeries performed.

There is no health or exposure-based reason to exclude these types of facilities, or to include outpatient facilities operating under a hospital's license but exclude competing centers that are independently licensed or accredited. To exclude the many outpatient surgical centers not associated with hospitals would be a mistake. The standard should cover the workplaces where the hazard exists.

Part (c), Written Procedures

Any requirement for written procedures should be comprehensive and include employee input. We support the comments of the unions at the public hearing advocating for more employee input in the written procedures for the operation of plume scavenging systems. We also urge the Division to require that written procedures cover all aspects of protection from surgical plume, not just the operation of scavenger systems. Procedures and protocols addressing the use of administrative controls and personal protective equipment, as well as the safe maintenance of scavenger systems should also be included.

Part (d), Control Measures

We support the clear requirement for hierarchy of controls for addressing exposure to surgical plume. However, we object to the exception that scavenging systems be implemented as close as possible to the site of origin based upon the clinical judgment of the surgeon. The phrase in subpart (1)(a) requiring the system be "as close as possible" to the site of origin and the requirement that the systems be used to the greatest extent feasible already make room for an exception where such applications are not possible for the safety of the patient or the requirements of the procedure. The exception is redundant.

We are also concerned that an exception based on the surgeon's clinical judgment provides a road map to surgeons who don't want to use scavenger systems for avoiding their use. The exception would also invite litigation over the standard of care whenever the Division issued a citation. It could be construed by the Appeals board to give overly broad discretion to the surgeon, and have the practical effect of requiring the Division to refute the medical judgment of a surgeon when it writes a citation under this standard - something the Division is not well-equipped to do.

We are also concerned that the trigger for administrative controls and eye and respiratory protection are not triggered until there is visible surgical plume *and* it has come into contact with workers' eyes or respiratory tract. Fumes generated by the procedures at issue may not always be visible, and additional controls beyond engineering controls should be triggered whenever there is an exposure risk. A better approach would be for each level of the hierarchy of controls to be triggered if higher level controls do not eliminate the presence of or risk of exposure to surgical plume (we note that without an exposure limit it is not clear how traditional administrative controls would be implemented).

Finally, the Division should, unless it believes this would already be required by an existing standard, require employers to make personal protective equipment available upon request at any time to any employee who risks exposure, not just when engineering controls cannot be used effectively.

Part (e), Training

Training requirements should apply to both employees at risk of exposure airborne contaminants and employees responsible for scavenger systems maintenance. In addition to initial and annual training on the systems and procedures to minimize exposure, training should be required of new employees at risk of exposure.

Part (f), Recordkeeping

All employees and their representatives should be able to receive a copy or have electronic access to the procedures without charge.

Thank you for considering our comments.

/s/
Douglas L. Parker
Executive Director