Oregon
Theodore R. Kulongoski, Governor

Department of Human Services
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DATE: August 21, 2008

TO: OAR 333-100, 102, 103, 106, 111, 116, 118, 119, and 120 – Radiation Protection Services – Hearing Attendees and Commenters

FROM: Jana Fussell, Hearing Officer

cc: Terry Lindsey, Section Manager
Radiation Protection Services
Office of Environmental Public Health

Brittany Sande, Administrative Rules Coordinator
DHS, Public Health Division

SUBJECT: Presiding Hearing Officer's Report on Rulemaking Hearing and Public Comment Period

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Hearing Officer Report

Date of Hearing: June 23, 2008 (Please note that after the hearing, the agency sent a memo dated June 26, 2008 to interested parties. This memo contained a recommended revision to OAR 333-106-0601(3) and informed interested parties that the public comment period was extended to July 18, 2008. This memo is attached to this report as "Exhibit 1".)

Purpose of Hearing: To receive testimony regarding the Department's proposed adoption of OAR 333-120-0340 and 333-120-0800 and proposed amendment of OAR 333-100-0005, 333-100-0020, 333-100-0080, 333-102-0010, 333-102-0103, 333-102-0115, 333-102-0125, 333-102-0130, 333-102-0190, 333-102-0203, 333-

102-0235, 333-102-0245, 333-102-0247, 333-102-0285, 333-102-0293, 333-102-0310, 333-102-0330, 333-102-0335, 333-102-0340, 333-102-0345, 333-102-0355, 333-102-0900, 333-103-0003, 333-103-0005, 333-103-0010, 333-103-0015, 333-103-0020, 333-103-0025, 333-103-0050, 333-106-0005, 333-106-0010, 333-106-0035, 333-106-0040, 333-106-0045, 333-106-0050, 333-106-0055, 333-106-0101, 333-106-0105, 333-106-0110, 333-106-0130, 333-106-0201, 333-106-0210, 333-106-0215, 333-106-0230, 333-106-0301, 333-106-0305, 333-106-0315, 333-106-0320, 333-106-0325, 333-106-0350, 333-106-0355, 333-106-0365, 333-106-0370, 333-106-0601, 333-106-0700, 333-106-0720, 333-106-0730, 333-106-0750, 333-111-0001, 333-111-0005, 333-111-0010, 333-111-0015, 333-111-0020, 333-111-0025, 333-111-0030, 333-111-0035, 333-116-0020, 333-116-0027, 333-116-0035, 333-116-0040, 333-116-0050, 333-116-0055, 333-116-0057, 333-116-0090, 333-116-0100, 333-116-0105, 333-116-0107, 333-116-0110, 333-116-0120, 333-116-0123, 333-116-0125, 333-116-0130, 333-116-0150, 333-116-0160, 333-116-0165, 333-116-0170, 333-116-0180, 333-116-0190, 333-116-0200, 333-116-0250, 333-116-0255, 333-116-0260, 333-116-0280, 333-116-0290, 333-116-0300, 333-116-0320, 333-116-0330, 333-116-0370, 333-116-0405, 333-116-0425, 333-116-0430, 333-116-0440, 333-116-0445, 333-116-0447, 333-116-0450, 333-116-0460, 333-116-0475, 333-116-0495, 333-116-0570, 333-116-0573, 333-116-0577, 333-116-0580, 333-116-0583, 333-116-0585, 333-116-0587, 333-116-0590, 333-116-0600, 333-116-0610, 333-116-0640, 333-116-0660, 333-116-0670, 333-116-0680, 333-116-0683, 333-116-0687, 333-116-0690, 333-116-0700, 333-116-0715, 333-116-0720, 333-116-0740, 333-116-0760, 333-116-0830, 333-116-0870, 333-116-0880, 333-116-0905, 333-116-0910, 333-116-0915, 333-116-1015, 333-116-1030, 333-118-0010, 333-118-0020, 333-118-0050, 333-118-0070, 333-118-0080, 333-118-0110, 333-118-0150, 333-119-0001, 333-119-0010, 333-119-0020, 333-119-0030, 333-119-0040, 333-119-0050, 333-119-0060, 333-119-0070, 333-119-0080, 333-119-0090, 333-119-0100, 333-119-0110, 333-119-0120, 333-119-0130, 333-119-0140, 333-119-0200, 333-120-0015, 333-120-0017, 333-120-0020, 333-120-0100, 333-120-0110, 333-120-0120, 333-120-0130, 333-120-0160, 333-120-0170, 333-120-0180, 333-120-0200, 333-120-0210, 333-120-0215, 333-120-0230, 333-120-0240, 333-120-0320, 333-120-0420, 333-120-0450, 333-120-0520, 333-120-0540, 333-120-0600, 333-120-0610, 333-120-0620, 333-120-0650, 333-120-0680, 333-120-0710, 333-120-0720, and 333-120-0740. The proposed changes are intended to meet Title 10 Code of Federal Regulations Parts 20, 32, 69, 71, as well as make necessary changes to Table 1 of OAR 333-106-0045. In addition, increases in

licensee and registration fees outlined in division 103 are being made, as approved by HB 2193, passed in the 2007 Legislative Session.

Hearing Officer: Jana Fussell

Oral Testimony Received at the Hearing. Six individuals provided oral testimony at the hearing. Three of these individuals also provided written testimony. This testimony is briefly summarized as follows and a transcript of this hearing is attached to this report as "Exhibit 2":

Don McCoy, DVM, North Portland Veterinary Hospital
Dr. McCoy testified that, besides himself, he was representing the Oregon Veterinary Medical Association and Portland Veterinary Association. Dr. McCoy stated that he participated in the veterinary working group discussion held by Radiation Protection Services and at that time testified that mechanical supporting and restraining devices do not work on animals that are awake. Dr. McCoy restated that position, opining that veterinarians need the flexibility to decide whether sedation and/or restraining devices should be used and cited specific supporting examples. He produced examples of some of the mechanical devices that are available in order to illustrate his testimony.

Dr. McCoy's written testimony is attached to this report as "Exhibit 3".

Public Health Division's Response:
The Public Health Division agrees to make the changes below to proposed rules to allow veterinarians to decide on a case-by-case basis whether animals need to be held during radiographic procedures. Note: These rule text changes were agreed upon by a veterinary working group.

OAR 333-106-0601
Veterinary Medicine Radiographic Installations Additional Requirements
(3) Operating Procedures:
(a) ~~The operator~~ All individuals shall stand well away from the useful beam and the animal during radiographic exposures;
(b) No individual ~~other than the operator~~ shall be in the X-ray room while exposures are being made unless such individual's assistance is required;

(c) When an animal must be held in position during radiography, mechanical supporting or restraining devices ~~should~~ shall be available and used as appropriate.
(d) If the animal must be held by an individual, that individual shall be protected with appropriate shielding devices, such as protective gloves and apron, and that individual shall be so positioned that no part of the body will be struck by the useful beam. The exposure of any individual used for this purpose shall be monitored with appropriate personnel monitoring devices.

Glenn Kolb, Executive Director, Oregon Veterinary Medical Association
Mr. Kolb stated that he was testifying on behalf of his organization's 900-plus members. He began by acknowledging that safety in the workplace for all employees and animals is imperative. He stated his organization's opposition to OAR 333-106-0601(3) as written, opining that the proposed replacement of the word "should" with "shall" requires that mechanical supporting or restraining devices shall be used at all times and for all radiographs, even if they are not indicated for a patient's health. Mr. Kolb opined that this is not practical or reasonable in veterinary medicine. He testified that it may be necessary for a human holder to be in the room to restrain and comfort the patient but that may not be allowed under the proposed rules. In a letter dated July 7, 2008, Mr. Kolb opined that it is unclear what "such individual's assistance is required" means and pointed out potential issues that could arise. Mr. Kolb suggested that the following alternative language which was drafted by the veterinary working group be used with regard to OAR 333-106-0610(3)(c): "when an animal must be held in position during radiography, a mechanical supporting or restraining device should be available and used as appropriate."

Mr. Kolb's written testimony and two pieces of supporting testimony that he submitted on behalf of other individuals, Rachel Tennant and Esther Monical, are attached to this report as "Exhibit 4".

Public Health Division's Response:
See the response to Dr. McCoy on page 3. Also, per the 2008 Attorney General's Administrative Law Manual, page B-7, "shall" is the current recommended text for rule language versus "should" as suggested by Mr. Kolb.

Diane Debruckere

Ms. Debruckere stated that she was testifying as a concerned citizen and pet owner. She opined that it is possible to protect the best interests of both workers and animals but that she is not convinced that the proposed rule accomplishes this. She questioned where the data is that demonstrates the real risk to employees "if they take the proper precautions and wear badges and do things according to proper procedures and rules?" Ms. Debruckere testified that someone needs to advocate for the animals and it is likely that they will be more stressed and more injured with the proposed rules. She also requested that the public comment period be extended. (In response to Ms. Debruckere's request, the agency extended the public comment period until July 18, 2008.)

Public Health Division's Response:

See the response to Dr. McCoy on page 3. Public Health Division administrative rules, as revised above, are a balance between worker radiation safety and animal health considerations. In the revised language, veterinarians can decide on a case-by-case basis whether to restrain animals or use human assistance to immobilize animals during X-ray procedures to ensure diagnostic image quality and worker protection.

Christine Ortner, DVM

Dr. Ortner stated that she also shared the concerns that had been mentioned about mechanical restraining devices as well as sedation. As a consequence, she looked at x-ray use during May 2008 at her four-doctor practice. Dr. Ortner detailed the results of that review in her written testimony which is attached to this report as "Exhibit 6". Of the 23 radiographic studies performed during that time period, she testified that she would only feel comfortable in giving sedation or using restraining devices in three instances, opining that in the remaining instances such usage would have been contraindicated and could have possibly caused death. Dr. Ortner also questioned how it is possible to leave the room for dental radiographs when the patient is under general anesthesia. She stated that when a patient is under general anesthesia, they are obligated to be there with the patient to monitor their status and often assist with breathing. Dr. Ortner expressed concern about the increased costs associated with sedation. She also expressed concern about increased costs if every employee is required to take the 20-hour radiation education certification class, asking that "if education would be required for every

person in the clinic that we find a shorter course that would apply to those assistants, or possibly have a state-provided course rather than privately-offered courses that charge so much for the course."

Public Health Division's Response:
See the response to Dr. McCoy on page 3. Public Health Division administrative rules, as revised above, are a balance between worker radiation safety and animal health considerations. In the revised language, veterinarians can decide on a case-by-case basis whether to restrain animals or use human assistance to immobilize animals during X-ray procedures to ensure diagnostic image quality and worker protection.

In the three cases that Dr. Ortner described (where she may have used restraints instead of human holders for animal imaging procedures) this change in procedure alone represents a *13% decrease in worker exposure* for this sole veterinary office.

As for the statement that veterinary assistants must attend 20 hours of radiation use and safety and restraint training, there is only a requirement in OAR 333-111-0010 to *adequately instruct workers of precautions and procedures to minimize exposure when working in a restricted area (radiation area).* Currently, *only veterinary technologists, who will be operating X-ray machines, have to complete the 20-hour radiation use and safety training.* Restraint training is needed to understand best practices to safely restrain animals during X-ray procedures by all veterinary staff, without a time requirement specified.

Robert Bullard, DVM, Cornelius Veterinary Clinic
Dr. Bullard is president of the Washington County Veterinary Medical Association. Dr. Bullard stated that although he has "technicians that have been with me over 20 years, (and) have received less radiation than they would in certainly a mammogram, because they do practice safely," he would like them to be able to practice in a safer environment. However, he questioned what percentage of his profession is trained to restrain animals in the manner that the agency would like them to do so. He stated that the "technique here is to come into our practices one by one and cite us for a violation of a rule which we don't know how to accommodate." Dr. Bullard suggested that he would "like to see a moratorium on this whole thing for a year or two, and I'd like to see instead an

education program that is meaningful that I think our organization would embrace."

Public Health Division's Response:
See the response to Dr. McCoy on page 3. Public Health Division administrative rules, as revised above, are a balance between worker radiation safety and animal health considerations. In the revised language, veterinarians can decide on a case-by-case basis whether to restrain animals or use human assistance to immobilize animals during X-ray procedures to ensure diagnostic image quality and worker protection.

Dr. Bullard's comments in support of education of the veterinary community for both proper use of restraints and worker protection during X-ray procedures are also appreciated. His comments concerning citations before understanding of rule requirements for the proposed rule are appreciated; however, this rule has essentially been in place for at least 20 years. We will enforce the revised rule using an educative approach to ensure that all veterinary practices are fully informed of the rule requirements. We will also work with the Oregon Veterinary Medical Association and the Oregon Veterinary Medical Examining Board to provide information concerning future rules affecting veterinary practices.

Steve Milner, DVM, Milner Veterinary Hospital
Dr. Milner expressed concern about a required 20-hour radiation course and, while acknowledging that education is always a good thing, pointed out the expense involved in training technicians. He suggested the creation of an educational DVD, which could be used for certification of technicians and the education of office staff. He also testified that while he knows that taking a full-body x-ray of an animal increases the scatter radiation, it is often necessary in order to provide proper care given that animals, unlike human patients, cannot say where it hurts. Dr. Milner also opined that there is no way to successfully restrain a dog or cat with mechanical devices. He also expressed concern about asking operators not to be in the x-ray room while the x-rays are exposed saying that this goes right back to the restraint of animals.

Public Health Division's Response:

Dr. Milner's suggestion that a DVD or web-based media be developed for this need will be considered and discussed within RPS and the veterinary training community. Our primary concern is that workers not required to assist in holding animals also not be in the room during X-ray procedures. This relates directly to worker safety and instruction of workers (veterinary assistants or technologists) to comply with worker safety rules in division 111 of our current rules for all radiation workers. *Clarifying this regulatory issue for human medical X-ray procedures has greatly helped to reduce unnecessary exposure to scrub nurses and surgical assistants during interventional procedures using fluoroscopy or portable X-ray machines.*

Other Comments: Forty-five additional individuals submitted written comments to the Department within the time period allotted for public comment. All of these comments concerned radiographic issues related to veterinary medicine and raised the same kind of concerns as expressed by those testifying at the public hearing. Dr. Dannell Davis' comments also requested that the phrase "well away" that appears in OAR 333-106-0601(3)(a) be clarified and that a subsection (d) be added which would address protective thyroid shields and eye wear. Other comments touched upon the recommended revisions to OAR 333-106-0601(3) which appeared in the June 26, 2008 memo to interested parties from the agency. These comments are attached to this report as "Exhibit 7". The individuals who provided these comments are:

- Laura Archer, DVM, Ash Creek Animal Clinic
- Bianca Shaw, DVM and Laura Wilson, CVT, Back on Track Veterinary Rehabilitation Center
- Michael and Cindy Bankston
- Carol Bentz
- Linda Cahan
- Matt Dahlquist, DVM, Gateway Veterinary Hospital
- Dannell Davis, DVM, Companion Pet Clinic
- David Schaefer, DVM, Randy Greenshields, DVM, Rene Fleming, DVM, Double Arrow Veterinary Clinic
- Rodney Ferry, DVM, Lakeview Animal Hospital
- Joy Greenlees
- Bill Guthrie

- Julie Nielsen, CVT, Halsey East Animal Clinic
- Marissa Hammer, CVT, Halsey East Animal Clinic
- Cheryl Henning
- Tiara, Hillside Dog Sports
- Rebecca Horn
- Kelly Krause
- Darlene MacNair
- Lori Makinen, Veterinary Medical Examining Board
- Nancy Marquette
- Cheryl Martinez
- Linda McGovern
- Brendan McKiernan, DVM, Southern Oregon Veterinary Specialty Center
- Jo-Ann Moss
- E. L. Osburn, DVM, Osburn Veterinary Clinic
- Ron Parsons
- Reed Prince, DVM, Companion Pet Clinic
- Cheryl Lopate, DVM, Reproductive Revolutions
- Kurt Schrader, DVM, Clackamas County Veterinary Clinic
- Karen Shilling
- Steve Sundholm, DVM, Equus Veterinary Service
- Dr. Takashima, DVM
- Holly Thau
- Ken Genova, DVM, Tigard Animal Hospital
- Unknown (sent from a fax machine at Orenco Church)
- L. Van Mierlo
- Sara Vickerman
- Claire White
- Yvonne Wikander, DVM, Pampered Pet Clinic
- Etta Wilborn
- Raymond Calkins, DVM, Wilsonville Veterinary Clinic

Public Health Division's Response:
See the response to Dr. McCoy on page 3. Public Health Division administrative rules, as revised above, are a balance between worker radiation safety and animal health considerations. In the revised language, veterinarians can decide on a case-by-case basis whether to restrain animals or use human assistance to immobilize

animals during X-ray procedures to ensure diagnostic image quality and worker protection.

Discussions with the X-ray inspection staff concerning the rule language of "...well away from the useful beam..." in current rules indicate that this rule should be retained as each practice layout and design is so different that setting a fixed distance is impractical. *Radiation exposure follows the inverse square law (doubling the distance from the useful beam from 2 feet to 4 feet decreases radiation dose to one-fourth or less).* The use of thyroid shields and additional eye protection are not appropriate requirements for most veterinary practices (unless fluoroscopic procedures are used). *Noted deficiencies in this area can be handled as a recommendation during inspections following machine testing and scatter measurements being completed by inspectors.*

Exhibit 1

Oregon
Theodore R. Kulongoski, Governor

Department of Human Services
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Date: June 26, 2008

To: Interested Parties

From: Terry Lindsey, Section Manager
Radiation Protection Services

DHS oregon department of human services

Subject: Edits, amendments, and adoption of Oregon Administrative Rules, chapter 333, divisions 100, 102, 103, 106, 111, 116, 118, 119, and 120.

Proposed amendments and new rule text for OAR, chapter 333, divisions 100, 102, 103, 106, 111, 116, 118, 119, and 120 pertaining to Radiation Protection Services have been drafted. (See revised text for Division 106 rules for veterinary requirements on page two of this notice.)

In response to requests received to extend the public comment period for these rules, you are hereby invited to send written comments not later than July 18, 2008 at 3:00p.m. to the Public Health Rules Coordinator at the following address:

DHS Public Health Division
Brittany Sande, PH Rules Coordinator
800 NE Oregon Street, Suite 930
Portland, Oregon 97232

You may also send comments by fax to (971) 673-1299.

Final rules will be filed after consideration of all comments.

For more details, please see the Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact, and the full text of the proposed rules at the following website: http://www.healthoregon.org/rps **(Note: Recent changes to proposed Division 106 rules for Veterinary requirements for control of radiation are also posted on this website.)**

If you have questions or would like a paper copy of these rules, please contact Todd Carpenter at (971) 673-0500. Thank you.

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Recommended revision to OAR 333-106-0601(3):

Below are changes agreed upon by a veterinary working group on these proposed rules which includes revised language to clarify the proposed rule and still provide latitude for the veterinarian to decide when animals need to be held during an X-ray procedure.

OAR 333-106-0601

Veterinary Medicine Radiographic Installations Additional Requirements

(3) Operating Procedures:

(a) ~~The operator~~ All individuals shall stand well away from the useful beam and the animal during radiographic exposures;

(b) No individual ~~other than the operator~~ shall be in the X-ray room while exposures are being made unless such individual's assistance is required;

(c) When an animal must be held in position during radiography, mechanical supporting or restraining devices ~~should~~ shall be available and used as appropriate.

(d) If the animal must be held by an individual, that individual shall be protected with appropriate shielding devices, such as protective gloves and apron, and that individual shall be so positioned that no part of the body will be struck by the useful beam. The exposure of any individual used for this purpose shall be monitored with appropriate personnel monitoring devices.

Notes:

1) The intention of the rule is to reduce unnecessary radiation exposure to the public and includes Veterinarians, Veterinary Technicians and Veterinary Assistants.
2) This revised radiation control rule **does not discuss animal sedation for X-ray procedures**. Animal sedation is directed by a Veterinarian for the safety of the animal under other rules or veterinary medical requirements.
3) The above revised text permits the Veterinarian to decide when animals need to be restrained or sedated during X-ray procedures.

OREGON DEPARTMENT OF HUMAN SERVICES

PUBLIC HEALTH DIVISION

PUBLIC HEARING ON RULE CHANGES

RADIATION PROTECTION SERVICES

ORAL AND WRITTEN TESTIMONY

BEFORE HEARING OFFICER JANA FUSSELL

MONDAY, JUNE 23, 2008

3:05 P.M.

ORIGINAL

Copy

STATE OFFICE BUILDING

CONFERENCE ROOM 1B

800 NE OREGON STREET

PORTLAND, OREGON

* * *

RULE FACILITATORS

Connie Grater, Administration Specialist

Terry Lindsey, Section Manager, RPS

Todd Carpenter, Licensing Manager, RPS

Kevin Siebert, Lead Worker, Materials Section

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INDEX TO TESTIMONY

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INDEX TO EXHIBITS

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P R O C E E D I N G S

MS. JANA FUSSELL: We're ready to go on the record now, so this is the call to order.

My name is Jana Fussell, and I've been designated as hearing officer for this rulemaking hearing.

I would now like to call this hearing to order. Let the record show that the time is approximately 3:10 p.m., and the date is June 23rd, 2008.

The Department of Human Services, Public Health Division, is proposing to adopt, amend and edit Oregon Administrator Rules relating to Radiation Protection Services to meet Title 10, Code of Federal Regulations, Parts 20, 32, 69, 71, as well as amend Table 1 of OAR 333-106-0045.

In addition, increases in licensee and registration fees outlined in division 103 are being made, as approved by House Bill 2193, passed in the 2007 legislature.

Testimony will be received by all persons signing the list provided. If you've not signed the list you may do so now, but I think

we've caught everybody. The order of testimony will be in the order of signing.

Persons wishing to testify shall first state their names and that of any organization they represent.

And, as I said earlier, it would be really helpful if you would spell the first and last name since we're lucky enough to have a court reporter today. And I would also like to remind you, as I have to remind myself, that it would be very courteous if you not speak too fast so that she can capture our testimony.

The department will not respond to questions during this hearing. It will not cross-examine or debate the material at hand. All discussion and questions shall be directed to the hearing officer. Testimony is limited to the matter at hand. The hearing officer may exclude or limited cumulative, repetitious or immaterial testimony.

Written testimony is encouraged. Copies of written testimony may be obtained from the department. Please contact me after the hearing for details. The deadline for written comments is June 25th, 2008 at 5:00 p.m.

according to the notice of this hearing. Comments received after the deadline will not be reviewed or considered by the department unless the agency decides to extend the public comment period for everyone.

A record of this hearing will be made by tape-recording and, as I noted, a court reporter, too. Copies will be available at the department's cost for reproducing the tapes or the written transcript.

So with that we'll get going, and I will now open the floor for testimony. The first one is Don McCoy, so if you could come up to the table and present your testimony. If you have any written testimony you can hand it to me.

DR. DON McCOY: This will be short.

MS. JANA FUSSELL: Okay, thank you. I can see you're prepared.

* * *

TESTIMONY OF DR. DON McCOY

DR. DON McCOY: My name is Don McCoy, M-C-C-O-Y. I've been a veterinarian for 28 years. I guess I'm representing the Oregon

Veterinary Medical Association and Portland Veterinary Medical Association. I own a ten-doctor practice in North Portland employing 20 employees that assist in taking radiographs. They've all been trained by the veterinary technician course or the radiation safety course given by Richard Kay.

Radiation safety is an important part of our clinic culture. I participated in the veterinary working group discussion held by Radiation Protective Services. At that time I testified that mechanical supporting and retaining devices do not work on awake animals.

As veterinarians we need the flexibility to decide whether sedation and/or restraining devices should be used. Examples where this would be detrimental to the patient would be congestive heart failure or severe dyspnea. That means difficulty breathing.

Animals with fractures need to be handled gently and mechanical devices may end up with further injuries. In addition, using sedatives and mechanical devices in a barium series slow down peristalsis, rendering the study invalid.

We all believe it's our duty to protect

our employees and our patients. We need the latitude to determine when sedatives and mechanical support and restraining devices are appropriate.

If radiographs have to be repeated, we actually end up with more exposure to our employees and our patients. I was asked by the veterinary working group discussion to bring some examples of some of the mechanical devices that are available.

Any of you who have tried to take x-rays of a cat or x-rays of a dog when they're awake -- these are sandbags. And actually, in Richard Kay's booklet, here it shows some beautiful pictures of animals with sandbags on them, that you can hold them down and have the sandbags on their legs.

I don't know of any dog that's going to sit there -- or at least very few dogs will sit there and let you put sandbags on their legs or put them on their back and put them in a V-trough like these are here. These just don't work in practice.

This is supposed to be something that you put on the table and then put an animal's arm

in it and hold it down and take some radiographs. In a practical situation they just don't help, and many times for our patient's safety we have to hold them down. That's it.

MS. JANA FUSSELL: Thank you very much.

So next up we have Glenn Kolb.

MR. GLENN KOLB: I have some material. I'll give it to you afterwards. Thanks.

* * *

TESTIMONY OF MR. GLENN KOLB

DR. GLENN KOLB: Good afternoon. My name is Glenn Kolb. It's Glenn with two N's, and it's K-O-L-B, as in boy. I'm the executive director for the Oregon Veterinary Medical Association. I'm here on behalf of our 900-plus membership across the state to address the proposed rules of veterinary radiography.

Before I share with you some thoughts on the rules, I want to note that safety in the workplace for all employees and animals is imperative. As an organization we expect this of our membership and emphasize this in a OSHA DVD and an accompanying training and education

manual that we developed specifically for the veterinary profession. Some of this material does cover radiography safety in veterinary medicine.

With regard to the proposed rules, we oppose OAR 333-106-601(3)(c) as written. The proposal reads, "when an animal must be held in position during radiography, mechanical supporting or restraining devices shall be used."

This change, if adopted as-is, would remove the word "should," a suggestion, with the word "shall," a requirement. As filed and published, the proposed rule offers no allowance for professional judgment, none. It clearly says that mechanical supporting or restraining devices shall be used at all times and for all radiographs, even if they're not indicated for a patient's health.

This simply is not practical or reasonable in veterinary medicine. For instance, in companion medicine, inducing anesthesia or using tie-down restraints are not always viable options for a cat or a dog who has been hit by a car and may be suffering from serious

internal injuries or broken bones.

It may be necessary for a human holder to be in the room to restrain and comfort as much as possible that patient. While mechanical support and restraint devices are used in equine medicine, they are done more as a tool to help and control the horse.

As an example, when a myelogram of a horse's neck is being taken, a technician must hold, flex, or extend the head for the correct positioning when this type of radiograph is called for. The technicians I've talked with and I've contacted since those rules have come out have told me that there isn't any way around this.

Yet under the proposed rules as written, this wouldn't be allowed. These are but a couple of examples of the many veterinarians and technicians in clinical practice that crossed my attention, and I believe they underscore how important this specific issue is to the profession and why these professionals need flexibility with decision making.

If adopted intact, the proposed rule, in all likelihood, would mean that more animals

will be sedated or placed under anesthesia. While sedation and anesthetization in patients is common, in veterinary medicine they're not always indicated, and there are times when they're contraindicated for the patient's health.

Again, veterinarians must have that allowance to make this decision based on the interest of his or her patient. I also would like to point out that it appears that doctors, nurses and technicians in human medicine have latitude that is needed and required really for veterinary medicine.

Under division 106, OAR 333-106-0040, patient holding in restraint, item one says, mechanical holding devices shall be provided and used when the technique permits. Item eight says, holding of patients shall be permitted only when it is otherwise impossible to obtain the necessary radiograph.

This is a similar context that is otherwise possible to obtain -- this is a similar context of what was encountered in veterinary medicine. Not quite the same, but it is similar.

I also would like to make another point, too. It's important to keep in mind the differences between humans and animals. People understand when they're asked to be still and be compliant, but animals, they don't understand what "don't move" means. I think it's important to keep that in mind.

Also, a few weeks ago after the notice of the proposed rules were published by Dr. McCoy, I participated in the working group discussion held by Radiation Protection Services. They invited us to attend and we appreciate that opportunity to sit down and talk about some clinical aspects.

We had a lengthy and healthy discussion on this specific topic about the use of restraints and the word "should" and "shall" and the ability of veterinarians and their staff to have that discretion when it is appropriate to use. The consensus among the group is that veterinarians need allowance for professional judgment in treating their patients.

And, in fact, the working group drafted, in supportive language that was suggested by Mr. Lindsay here -- and the language we arrived

at reads, "when an animal must be held in position during radiography, a mechanical supporting or restraining device should be available and used as appropriate."

The words "as appropriate" are really critical to us in the profession as they provide the veterinarian and/or key technician direction for making that decision that such support or restraint devices are ineffective, are really inappropriate for a specific case and shouldn't be used.

The language developed by the working group addresses this concern while we hope also meets the intent of Radiation Protection Service. In our view, it's a pragmatic approach that is good for employees in clinical practice as well as for patients.

For these reasons, we ask that if you are to adopt the proposed rules, please accept the suggested language of the working group with regard to the OAR 333-106-601(3)(c).

I have a couple comments, if I may, briefly that I don't have in here. But when we first learned of the proposed rules for veterinarian radiography, we asked ourselves,

why? What is going on that is a cause or reason for this to come up and for rules to be implemented and some clarified? So are we aware of the problems? To what extent are the problems?

There are approximately 525 veterinary practices across the state, not all of which use radiology. So are we talking about 5 percent of the practices where there are issues or concerns? 10 percent? 15 or 20 percent? We've not heard, so we really don't know.

In various exchanges with Radiation Protection Services entering the working group discussion, we did learn that some of the noncompliance concerns are: Inadequate collimation provided to restrict useful beams, areas of clinical interest, employees not wearing the appropriate and required personal monitoring devices, and then practices not employing the use of mechanical restraint devices to secure patients and employees.

But first to our already existing rules. And I think the RPS would acknowledge that, too, from our perspective, the last item is not because the word "should" is a suggestion and

not a requirement, so maybe it depends on a person's view.

RPS's point of view, if I understood it correctly, is that this ruling has always been their intention, and to move from "should" or "shall" kind of clarifies that rule. I guess, I suppose the point is somewhat moot if it's going to be adopted. But our hope is that for Radiation Protection Services to work with us, the Oregon Veterinary Medical Association, really to education the profession.

What concerns are out there, and what can we do working together to address our rules needed to address that? Or are current rules sufficient, provided we can educate veterinarians and their staff?

And I guess I'll leave it at that. And what I also would like to -- we have received some calls from the general public and also some e-mails. A public member expressed concerns and wanted me to -- a veterinarian student, who is in her second year, and if I could submit those to you on her behalf. Thank you.

MS. JANA FUSSELL: Yes, of course.

Next -- and I'm going to mispronounce your last name, so I'll call you Diane. And you know that you signed up, so please come forward.

MS. DIANE DeBRUCKERE: I'm used to this, all my life. No one can pronounce my last name.

MS. JANA FUSSELL: I'm just one more. I'm sorry.

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TESTIMONY OF MS. DIANE DeBRUCKERE

MS. DIANE DeBRUCKERE: It's DeBruyckere, which is spelled capital D-E, capital B-R-U-Y-C-K-E-R-E.

And I'm just here as a concerned citizen and a pet owner. And I would just like to say that I understand that Oregon Public Health believes that it is representing the best health and safety interests of the people of Oregon. I worked for DHS, Oregon Public Health, for 13 and a half years, and I worked in the occupational and environmental health division. Some of you may recognize my face.

I just think it's possible to have both

the best interests of the workers and the best interests of the animals. I think that this goal can be accomplished. I am not convinced that the proposed rule accomplishes this.

So my comments actually fall into two categories. The first one, a throwback from my epidemiology days, is where is the data that demonstrates the real risk to employees if they take the proper precautions and wear badges and do things according to proper procedures and rules? Where is the real risk and where is the data showing what the actual measurable radiation exposure is?

The other part of my comments fall under animal advocacy. And that is, someone needs to advocate for the animals. They can't speak for themselves. They cannot protect themselves. It is up to us to protect this very vulnerable population, especially when they're in a veterinary setting where they are more likely to be there due to acute injury or illness or some disease that is requiring diagnostic testing that requires x-ray radiation.

And I just think that it is very important to weigh all the risks and relative risks,

because these animals are extremely vulnerable, and it is highly likely that there will be more stressed and more injured with the proposed rules.

Lastly, I'd like to request that the public health comment period be extended. I did not become aware of this proposed rule until last Friday, and I'm sure there are many people like myself that are not aware of it at all or possibly too late to make a response.

And I think it's important that we make sure the public has an adequate amount of time to be aware of this proposed rule and to respond to it. Thank you.

MS. JANA FUSSELL: Thank you for your testimony.

Christine Ortner, please.

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TESTIMONY OF DR. CHRISTINE ORTNER

DR. CHRISTINE ORTNER: It's Christine, C-H-R-I-S-T-I-N-E, Ortner, O-R-T-N-E-R, Doctor of Veterinary Medicine. I will give you my copy of my presentation, if you'd like, when

I'm done. I didn't bring an extra copy.

MS. JANA FUSSELL: Thank you.

DR. CHRISTINE ORTNER: So I have the concerns that have already been mentioned about mechanical restraining devises, as well as sedation. So I took a look at May 2008 of all the x-rays that we took at my four-doctor practice, and we took 23 radiographic studies. That means usually two views, a study is two views, so two exposures per study.

Eleven of them were of the chest cavity for the following reasons. These are why the patient is getting x-rays: Heart murmur, pulse deficits on exam, coughing with labored breathing, coughing with a tumor on the leg and the radiographs ended up showing a collapsed lung lobe, difficulty breathing with a possible seizure, check the heart because a littermate died from heart disease, tracheal stenosis with coughing more lately, metastasis cancer check for a dog with known melanoma, coughing with vomiting blood.

We took eight abdominal radiographic studies for the following reasons: Breathing hard with a large abdominal tumor and this dog

did die one week later, vomiting, vomiting blood, urinating blood, distended swollen abdomen, not eating with lethargy and shaking, vomiting, vomiting with lethargy.

We took four skeletal radiographic studies. The first reason, the dog has lymphoma and is now weak in the rear legs, elbow pain, limping, back pain.

Out of these 23 cases, I would only feel comfortable giving sedation or using restraining devices in three of them. Otherwise, I believe sedation or mechanical restraint would have been contraindicated and could have possibly caused death in these patients.

Dental procedures are performed under general anesthesia on healthy patients. How do you propose we leave the room for dental radiographs when the patient is under general anesthesia? The dental radiograph unit has a cord that stretches about six feet from the base. The tube head is usually about four feet from the base, so we're standing approximately ten feet away when the exposure is taken with our lidded protected devices.

If the patient needs assistance with breathing under anesthesia, we wear protective gear and stand approximately three feet away with the anesthesia machine with protective gear.

When a patient is under general anesthesia, we are obligated to be there with the patient to closely monitor their status and often assist them with breathing. Full mouth radiographs are taken with every dental cleaning at my practice. Typically eight to ten radiographs are taken.

Leaving the room for each exposure would significantly increase the time the patient is under anesthesia, as well as put them at risk due to lack of monitoring in assisted breathing.

I have concerns about the increased costs. The cost of sedation would include the IV catheter placement for the administration and reversal of the sedatives, the drugs themselves, and monitoring anesthetic monitoring machines, which would be $191 additional at my practice, on top of the x-rays.

And then the cost would also increase if every employee is required to take the 20-hour radiation education certification class. If you require the employee to go, you must pay them the hourly wages on top of the cost of the course.

Currently the class costs $299, and three days' worth of wages for an average assistant would be $240, plus payroll taxes. So I would request that if education would be required for every person in the clinic that we find a shorter course that would apply to those assistants, or possibly have a state-provided course rather than privately-offered courses that charge so much for the course.

Current radiation safety practices at my hospital, when we submit our radiograph to the Veterinary Diagnostic Imaging Center for a radiologist consultation, they grade us on position and technique on a scale of one to ten. Currently my clinic averages an 8.9, which means we are collimating well and using correct exposure.

All employees wear radiation detection badges, and you can see in my attached report

our lifetime exposure is too low to be measured. We have nondetectable, measurable radiation. With taking radiographs, employees wear all the protective gear, lead aprons, gloves, thyroid shields.

New employees, if they don't -- I only have two employees that don't have the actual radiation certification course. The other two go through extensive OSHA training and our own hospital phase training. We have radiation safety documents from the OVMA, and then we have them take a quiz before they start working to make sure that they are aware of the risks and safety measures.

And then there is a really good class online from the Veterinarian Information Network recently. It talks about the average exposure of veterinary practice. This was done by a board certification radiologist, Matt Wright, and he talked about the average exposure.

If you yourself were to get a chest x-ray, he calls it a unit of one. The average person living on earth receives 44 times that amount just walking around in the environment per

year. Smoking 20 cigarettes a day equals 662 units per year. Getting a single CT scan on yourself would be 312 times the exposure of a chest x-ray.

One year working at a veterinary practice is less than 2.5 times the chest x-ray that you would get on yourself. So, on average, I think our risk as a profession is very low compared to other things in the environment, so I don't see that that is worth putting my patients at risk for death or further injury from mechanical retraining devises or sedation.

MS. JANA FUSSELL: Thank you very much. Robert Bullard, please.

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TESTIMONY OF DR. ROBERT BULLARD

DR. ROBERT BULLARD: I'm Robert Bullard, Cornelius Veterinary Clinic, Pacific Avenue Veterinary Clinic, president of the Washington County Veterinary Medical Association.

I'm mostly just going to reiterate what my fellow professionals have already mentioned. And in previous discussions with like Terry,

colleagues, I think my added point would be that, you know, I think all of our technicians would like less exposure than what they've already received and what they do receive, even though I think we failed to define what the problem is at this point, where we'd like to go, at least in our hospital, as I think that some of the other speakers that have come before me expressed.

I have technicians that have been with me over 20 years, have received less radiation than they would in certainly a mammogram, because we do practice safely. But, nonetheless, I understand that your goal is to still do practice in a manner that's safer than what we do now, and I -- my technicians would like to be safer. I would like for them to practice in a safer environment.

And you've asked us to do that, to practice in this different way. And so in talking to my colleagues, I'm wondering -- and you perhaps have a better answer -- as to what percentage of our profession is trained to restrain animals in the manner in which you would like us to do so.

As I look around at four practitioners in my practice, at five practitioners in my two practices, there are four technicians, my assistants, who have been trained by -- have undergone your training program, your certified training program, and none of them have been trained in the method in which you would like us to be trained.

A recent graduate from Oregon State, I just talked to him, and I said, Dave, you should be the person that should be in charge of our new training program.

And he says, not me. They didn't train me to do that. Our technicians restrain patients.

And I said, come on, Dave. You know it's someplace in your classroom instruction and so forth.

Well, a little bit, but not specifically.

I called up my fellow practitioner who had just taken a, sent a technician to Richard Kay's class within the last six months. And this is hearsay, of course. But he said, you know, I'm trying to get him to teach our technicians how to restrain in the way that you would like us to. He did not learn that.

I said, I think you need to write a letter to them to tell them that, because they're not being taught that.

So I don't think we're adverse to learning some new techniques. I require all of my veterinarians to take, attend continuing education every year. I spend a lot of money paying for CE trips. I fly around the country every year to go to a major meeting. I require all of my veterinarians to go to a major meeting every year.

I require my CBTs to go to a meeting every year. I require them to go to the Oregon veterinary conference down in Corvallis. I spend a lot of money on continuing education. I'd like for them to be better educated. I'd like for them to be safer. I'd like to practice a lot better medicine.

I think one of the things that we're dealing with -- but it seems like to me that one of the ways that we're trying to accomplish where we want to go here is for RPS to come into our practice -- and you guys want us to accomplish this.

But it seems like the technique here is to

come into our practices one by one and cite us for a violation of a rule which we don't know how to accommodate. I got to think there's a better way. We all want to get to the same place. We all want to do the same thing.

One of the reasons that we're having a lot of discussion behind the scenes on our end is out of fear. We have -- your personnel came into my practice and asked some questions.

How often are we in the room when we restrain pets, patients? Is that the right question? What's the right answer? What's the right answer that's going to keep me from getting cited? I don't know. Nobody told me.

So I think among us there's a fear here. And I regret we're operating on fear when, in reality, all of us are professionals that would like to do a better job, and I think all of us are willing to do a better job.

What I would like to see -- I think there's a compromise here on the table. I'd like to go one better. I'd like to say, I don't -- I think you'll argue with me that there may not be as big a problem here as what -- we may argue as to the magnitude of the

problem.

But it would seem like -- since we're all interested in accomplishing the same goal, I'd like to see a moratorium on this whole thing for a year or two, and I'd like to see instead an educational program that's meaningful that I think our organization would embrace.

Because I think when you left my practice, and I think when I talked to you on the phone I said, hey, I would love it if you guys would drop a CD on my desk and say, hey, at your next staff meeting we'd like you to do a better job positioning animals. Here are the techniques we'd like you to use.

I think you'd show this, and I'd jump up and down and say, great. I'm always looking for a good staff meeting. I'm always looking for some education for my staff. I'd like to learn some techniques. And I know the OVMA would, you know, in turn -- this guy over here I think has already volunteered that. I think we can help you with that.

And if we spent two years saying, hey, you know, let's get ready to -- RPS would like to raise the standard here. Man, in two years we

could sit down and have this discussion, and we wouldn't be having it out of fear. We wouldn't all have our heels dug in saying, well, you know, we can't do this, we can't do this because this isn't right.

I'm not sure how much I can do. I'm not sure how much better I can do. I'm not sure any of us know how much better we can do. Maybe we can't do anything better. You know, I'm not going to bore you any longer.

But I'm an Illinois boy. I came from Springfield, Illinois. Abe Lincoln was my mentor. We didn't go to school together, but some of my younger colleagues think we probably did. Abe had a great quote. He said, with public sentiment, nothing can fail. Without it, nothing can succeed.

Consequently, he who molds public sentiment goes deeper than he who enacts statutes and pronounces decisions. That was in 1858. I think if Abe were here he'd say, you know what, guys? Let's get together and see if we can't come up with a plan.

MS. JANA FUSSELL: Thank you very much.

Dr. Milner, please.

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TESTIMONY OF DR. STEVE MILNER

DR. STEVE MILNER: I'm Steve Milner. I have the Milner Veterinary Hospital in Oregon City. I'm nowhere near as prepared as everybody else.

I came up with a list of four problems I think Glenn sent to us. The first one I saw in here was that we're talking about increasing -- having everybody go to a 20-hour radiation course, and I think there are some pros and cons on that.

The obvious pro is that education is always a good thing. The more you know. The better. Radiation is dangerous, and we definitely aren't very well trained in how to bend it.

The biggest con that I saw is the expense. The course is $300. It's offered in Eugene, Seattle and Portland about every six months, which means that you send somebody down to the meeting. If you're from out of town you buy them a hotel room, you pay them wages, you pay

the course, you pay overtime to your staff to cover their positions.

It's expensive. I have no idea how many clinics there are in the state or how many technicians, but that has to be millions of dollars that we would have to pay to send our technicians to this course.

I think Richard Kay was the technician at Oregon State when I was there. The course is heavy in physics. It doesn't really teach a whole lot as far as prevention. I think it would be much better served if we created a DVD that we were talking about that we could give to our technicians to certify them.

I think that there should be three levels: Our doctors, our technicians, our certified technicians who have gone through the 20-hour course and are certified to be operators of the machines.

And then there are assistants who need view the DVD, probably take a little test at the end of it, possibly have a mentoring veterinarian sign off that you've taken the test and send it in and make them certified.

That would take an hour out of their time

for them to watch, be a great training tool. And another nice thing about it, if I saw one of my technicians using unsafe behavior, I'd make them sit down and watch the DVD again.

We have in this area several great radiologists. Mark Papageorge was one of my instructors. I am sure we could hire them to do an hour-long presentation for us, film it, make a DVD out of it. There's production companies around.

For probably somewhere in the range of 2500 to $5,000 we could have that accomplished, rather than spending millions of dollars sending all of our technicians to a class that, quite frankly, is not very beneficial. That's my whole rant on the 20-hour course.

Another thing that we're talking about is collimation on our animals. And I know that taking a full-body x-ray of an animal increases the scatter radiation. Unfortunately, our patients don't talk to us. And you asked us to radiograph only the areas of interest.

In almost every case, the entire animal is an area of interest, at least in surveyed radiographs. Very often I take radiographs,

see something questionable, and I'll collimate down to get a clearer of it.

But there's a very rare incidence where I radiograph a dog or a cat where I don't want to see a little bit more, a little further into the chest if I'm x-raying the abdomen. There's always, you want to look at a little bit more.

In human medicine, people come in and say, it hurts when I breathe, along with this pain in my stomach. I would go as far as to say many times not taking full body radiographs would be malpractice.

I can think of an incident in which I repaired a fractured leg. It was a distal fracture of the femur. We didn't radiograph the proximal femur. It was also broken. The dog's distal fractured healed fine. The proximal fracture should have gotten us sued.

We talked a little bit about mechanical devices, and I almost brought my dog. I really wish I'd brought my dog. There's almost no way to restrain a dog or a cat -- the dog is easier -- with mechanical devices.

Pretty much what you're asking us to do is to sedate them and strap them down with duct

tape. That's about the only thing that will work, and I guarantee that's not going to go very well with our clients.

If the legislation goes through as you're proposing it, you're pretty much going to put the pressure on us to use mechanical devices or fudge the law. The reality is we're not going to obey this. We're going to keep holding the animals, which will put us in liability. There really is no way.

Nothing scares a dog more than trying to retrain them mechanically. You can put a leash around a leg and pull it out, and once in a while that works, but most of the time that scares your animals. It gets our technicians injured, and doesn't help the radiograph. You end up taking three or four because they're moving doing it. The positioning is wrong. It increases the radiation. It's not a good deal.

The last thing on here that I was a little bit worried about, we're asking that no operators be in the x-ray room while the x-rays are exposed. Again, that goes right back to the restraint of animals. There are very few radiographs I take without any restraint.

Once in a while when I have an anesthetized animal, you can position them, put sandbags on them, and take your view. Almost always you need somebody in the room with them. I think that's just about everything on my list.

MS. JANA FUSSELL: Okay. Thank you very much.

Are there any parties wishing to provide additional testimony? This is your chance.

I see none. I wish to thank you and assure you that the department will consider fully all written and oral testimony received. I remind you that the deadline for written comments is open until June 25th, 2008.

And the request for the public comment extension, that's something that the agency will take under advisement. So thank you very much.

(Proceedings concluded at 3:50 p.m.)

CERTIFICATE

I, the undersigned, Pamela Beeson Frazier, hereby certify that the foregoing proceedings were reported by me, a Registered Professional Reporter and Certified Shorthand Reporter for Oregon, Washington and California, and were thereafter transcribed using computer-aided transcription under my direction; that the foregoing is a full, complete and true record of said proceedings.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceedings and caption named, or in any way interested in the outcome of the cause named in said caption.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my stamp at Portland, Oregon, this 30th day of June, 2008.

Pamela Beeson Frazier

PAMELA BEESON FRAZIER
OREGON CSR No. 90-0061