

# Brain & Lung Tumor and Air Pollution Foundation

21865 Copley Drive ❖ Diamond Bar CA 91765

Michael D. Antonovich, Chair

Robert Davidson, Vice Chair

## Board of Directors Meeting

**February 22, 2005 ♦ 12:00 noon**

### AGENDA

The public may attend at any location listed below or by teleconference by calling 1-888-605-5786 and entering Participant Passcode 643516 followed by # key

#### Teleconference Locations:

Office of Chairman Spvr. Michael Antonovich 500 W Temple St, 869 Hall of Administration Los Angeles CA	Office of Vice Chairman Robert Davidson 3360 E Pico Blvd Los Angeles CA
Office of Hal Bernson 11280 Corbin Ave, Suite A Porter Ranch CA	Office of SCAQMD <sup>1</sup> 21865 Copley Dr – EO Conf Rm Diamond Bar CA
Office of Beatrice LaPisto-Kirtley 4201 Wilshire Blvd, Suite 200 Los Angeles CA	

#### Staff Member or Director

1.	<b>Approve Minutes of March 3, 2004 meeting</b> (Attachment pp. 3-5) and <b>March 5, 2004 Annual Meeting</b> (Attachment p. 6)	Chery Cooper Foundation Secretary
2.	<b>Annual Meeting of the Brain Tumor and Air Pollution Foundation</b>	Barry Wallerstein Chief Executive Officer
3.	<b>Report on the California Non-Profit Integrity Act (SB 1262) and its Impact on the Foundation</b>	Kurt Wiese Counsel
4.	<b>Status Report on the Foundation's Authority to Fund a Medical Device Proposal Submitted by MicroSurgeon, Inc.</b>	Kurt Wiese Counsel Jean Ospital Health Effects Officer
5.	<b>Report on Current Research Projects Funded by the Foundation</b>	Jean Ospital Health Effects Officer
6.	<b>Future Research Opportunities for the Foundation</b>	Jean Ospital Health Effects Officer

<sup>1</sup> South Coast Air Quality Management District

Directors: Hal Bernson, Bea LaPisto-Kirtley (ex officio)

7.	<p><b>Other Business</b></p> <p>Any member of the Foundation, or its staff, on his or her own initiative or in response to questions posed by the public, may ask a question for clarification, may make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter, or may take action to direct staff to place a matter of business on a future agenda. (Government Code §54954.2)</p>	
8.	<p><b>Next Meeting</b></p> <p>Will be scheduled as needed.</p>	
9.	<p><b>Public Comment</b></p> <p>Members of the public may address the Foundation’s Board concerning any agenda item before or during consideration of that item (Government Code §54954.3). All agendas for regular meetings are posted at SCAQMD Headquarters, 21865 Copley Drive, Diamond Bar, California, at least 72 hours in advance of a regular meeting. At the end of the regular meeting agenda, an opportunity is also provided for the public to speak on any subject within the Board’s authority.</p>	
	<p><b>Americans with Disabilities Act</b></p> <p>The agenda and documents in the agenda packet will be made available, upon request, in appropriate alternative formats to assist persons with a disability (Govt. Code Section 54954.2(a)). Disability-related accommodations will also be made available to allow participation in the meeting. Any accommodations must be requested as soon as practicable. Requests will be accommodated to the extent feasible. Please contact Chery Cooper at 909-396-2745 from 7 a.m. to 5:30 p.m. Tuesday through Friday, or send the request to <a href="mailto:ccooper@aqmd.gov">ccooper@aqmd.gov</a>.</p>	

# Brain & Lung Tumor and Air Pollution Foundation

21865 Copley Drive ❖ Diamond Bar CA 91765

Michael D. Antonovich, Chair

Robert Davidson, Vice Chair

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## Minutes

March 3, 2004

Chairman Antonovich called the meeting of the Brain Tumor and Air Pollution Foundation to order at 9:07 a.m. Present by teleconference from the locations indicated were the following Directors (in alphabetical order):

Michael D. Antonovich - 500 W. Temple St., 869 Hall of Administration, Los Angeles CA 90023  
Hal Bernson - 11280 Corbin Ace., Suite A, Porter Ranch CA 91326  
Robert Davidson - 3360 E Pico Blvd., Los Angeles CA 90023

Not attending:  
James Silva

Also present by teleconference from AQMD Headquarters at 21865 Copley Dr., Diamond Bar CA 91765 were the following individuals (in alphabetical order):

Chery Cooper, Foundation Secretary  
Debra Mendelsohn, Assistant to Spvr. Antonovich  
Dwight Montgomery, Esq., law firm of Best, Best & Krieger  
Dr. Jean Ospital, SCAQMD Health Effects Officer  
Patrick (Rick) Pearce, Foundation Treasurer  
Dr. Barry Wallerstein, Foundation Chief Executive Officer  
Kurt Wiese, Counsel

1. **APPROVE MINUTES OF FEBRUARY 12, 2004 and FEBRUARY 25, 2004 MEETINGS**

Moved (Davidson), seconded (Antonovich) and unanimously approved. Mr. Bernson abstained regarding the February 25, 2004 minutes since he was not present at that meeting.

2. **A. AMEND ARTICLES OF INCORPORATION**

This action is to amend the Articles of Incorporation to change the name of the nonprofit corporation to "Brain and Lung Tumor and Air Pollution Foundation" and to change the specific purpose of the corporation: (i) to aid, assist, and support research on the incidence, detection and causes of brain and lung tumors, especially those caused or aggravated by air pollution; and (ii) to receive and utilize funds acquired through the solicitation of donations, gifts, and bequests for the purposes for which this corporation was formed. Moved (Bernson), seconded (Antonovich) and unanimously approved.

**B. AMEND BYLAWS**

This action is to amend the Bylaws to reflect changes resulting from the changed named of the nonprofit corporation, to provide for recovery of royalties—or other payments from grantees—from research funded by the Foundation with monies provided by the AQMD. The amendments also make the following administrative changes: authorize the AQMD Board, as

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Directors: Hal Bernson, James Silva

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the Foundation's member, to designate a Board member to act on the Board's behalf; provide that the Foundation's Chief Executive Officer may also be designated as its president; and provide that neither the Secretary nor Treasurer can serve concurrently as the Chief Executive Officer. Moved (Davidson), seconded (Bernson) and unanimously approved.

### **3. ANNUAL REPORT**

Dr. Wallerstein advised that this action is to approve the annual report that will be presented to the South Coast Air Quality Management District Governing Board on March 5, 2004. The report provides a brief background of the Foundation and a summary of its Directors and Officers, a report on the Foundation's activities and plans, and a financial report. Moved (Bernson), seconded (Davidson) and unanimously approved.

### **4. RECOMMENDATION TO MAKE INVESTMENT**

The following materials were faxed to the Board Members on March 2, 2004:

(1) eleven-page letter from Best, Best & Krieger to Board of Directors, Brain Tumor and Air Pollution The (sic) Foundation dated March 1, 2004 (hereinafter "Opinion Letter") and

(2) two-page Memorandum from Best, Best & Krieger to Board of Directors, Brain Tumor and Air pollution Foundation dated March 2, 2004 (hereinafter "Opinion Memorandum").

It was ascertained that each Board Member had both the Opinion Letter and the Opinion Memorandum in their possession.

Kurt Wiese reported that it would be staff's recommendation to not purchase stock in MicroSurgeon, Inc., but rather fund a research grant with limitations described in Dwight Montgomery's Opinion Memorandum, and with the Foundation to receive royalties and/or intellectual property rights.

Mr. Bernson suggested the Foundation Board authorize staff to begin negotiating with MicroSurgeon regarding a research grant as outlined by Mr. Wiese. Dwight Montgomery, Esq. of the law firm of Best, Best & Krieger advised that research grants are a common practice between nonprofit and for-profit organizations. Stock acquisition would violate both government law regarding government agencies and tax law regarding nonprofit entities.

Mr. Bernson indicated there ought to be specification that any proceeds must be used to further advance the goals of the Foundation. Mr. Wallerstein pointed out that the AQMD Board's intent in granting the \$1.5 million to the Foundation was to have proceeds go back to the AQMD, which will decide how to allocate those proceeds.

In response to concerns about getting further opinions, Mr. Montgomery indicated the Foundation could request a letter ruling from Franchise Tax Board and the Internal Revenue Service, a process that can take 6-9 months and cost thousands of dollars in attorney fees. Mr. Montgomery indicated that the filing fee for IRS letter ruling is \$25,000.

Mr. Bernson asked what would be the liability to the Foundation Board if there is a problem in the future and suggested seeking guidance from the Fair Political Practices Commission (FPPC). Mr. Wiese indicated that the FPPC gives opinions on conflicts of interest.

Mr. Bernson indicated that he wanted it understood that the Foundation Board is being held harmless if there are any repercussions and any losses will be guaranteed by the AQMD Board. Mr. Montgomery advised that liability is statutorily limited or eliminated to the extent

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Directors: Hal Bernson, James Silva

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that the Foundation Board shows that it relied on the reasoned advice of professionals. This principle has been upheld on many occasions where an investment was improper but the Board took the step of hiring a good manager who just made bad decisions. The Foundation Board should be able to withstand any attack on whether it met its fiduciary obligation by virtue of the legal opinion provided by Best, Best & Krieger and the discussion in this March 3, 2004 meeting. There has been deliberation on the matter and the requested action is to begin negotiations only. Mr. Montgomery repeated that the fiduciary obligation is discharged by looking to the professionals for advice.

Mr. Davidson suggested giving the staff authority to negotiate the terms of a research grant with the limitations as outlined in the Opinion Letter and Opinion Memorandum and to get a second legal opinion. Mr. Bernson indicated that would be his motion. Seconded (Davidson) and unanimously approved.

4. OTHER BUSINESS - None
5. NEXT MEETING - The next meeting was scheduled for 9:00 a.m. on March 3, 2004
6. PUBLIC COMMENT - There was no public comment.

There being no further business, the meeting was adjourned.

Dated: March 3, 2004

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Chery Cooper, Foundation Secretary

APPROVAL OF MINUTES:

Date: \_\_\_\_\_

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Directors: Hal Bernson, James Silva

# Brain and Lung Tumor and Air Pollution Foundation

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Michael D. Antonovich, Chair

Robert Davidson, Vice Chair

## Minutes March 5, 2004

The Annual Meeting of the Brain and Lung Tumor and Air Pollution Foundation was held as part of the South Coast Air Quality Management District Board meeting. The following minutes are from the SCAQMD Minutes:

### "2. ANNUAL MEETING OF BRAIN AND LUNG TUMOR AND AIR POLLUTIN FOUNDATION

Dr. Wallerstein noted that an annual report, financial accounting, and amendments to the Foundation's bylaws were submitted for approval by the Board, as the Foundation's sole member.

AQMD Board Member, Ms. Carney requested that future reports include a more detailed account of how the funds were spent, and the type and status of the research; and she suggested that a scientific panel be formed to advise on health studies. Dr. Burke suggested that the Medical Director of Research give a presentation before the Board.

ON MOTION OF MR. YATES, SECONDED BY DR. WILSON, AND UNANIMOUSLY CARRIED (Absent: Loveridge), THE BOARD RECEIVED AND FILED AGENDA ITEM NO. 14, AND APPROVED THE AMENDMENTS OF THE FOUNDATION'S ARTICLES OF INCORPORATION AND BYLAWS, AS RECOMMENDED BY STAFF."

(as prepared by Sandra McDaniel, Clerk of the SCAQMD Board)

PUBLIC COMMENT - There was no public comment.

Dated: March 5, 2004

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Chery Cooper, Foundation Secretary

APPROVAL OF MINUTES:

Date: \_\_\_\_\_

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Directors: Hal Bernson, James Silva

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Directors: Hal Bernson, Bea LaPisto-Kirtley

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