PROPOSITION 65 MEETING IN SACRAMENTO, CALIFORNIA

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As planned and right on schedule, the Office of Environmental Health Hazard Assessment (OEHHA) – the agency within the State of California charged with enforcing its Proposition 65 law – held a public meeting on Friday morning, April 18, 2008, at its headquarters in Sacramento, California. The meeting, styled as a workshop, discussed a proposed regulatory concept being floated by OEHHA that would essentially exclude any listed "beneficial nutrients" from the definition of carcinogen and reproductive toxin if the person causing the exposure can show that it is indeed a beneficial nutrient *and* if the levels of such a nutrient in the food do not exceed the Recommended Daily Allowance (RDA) for the nutrient (or if no such level had been set, then no more than 20% of the nutrient's Tolerable Upper Intake Level).[1] Anything above such levels for listed nutrients would have to be labeled as cancer causing and/or a reproductive toxin. There were more than two dozen individuals in attendance at the meeting and, as your National Health Federation president, I was one of them.

A Short Primer on Prop 65

Proposition 65's history is well-known within the State of California, and even outside the State. In November 1986, voters in the State approved Proposition 65 in the belief that its passage would help protect them from toxic chemicals in the environment. Officially known as the "Safe Drinking Water and Toxic Enforcement Act of 1986," almost everyone these days just calls it Prop 65. Prop 65 requires the State to publish a list of those chemicals "known" to cause cancer or birth defects or other reproductive harm. This list is updated at least annually and has ballooned to include some 775 chemicals. Although Prop 65 uses the term "known," in the real world substances on the list are not necessarily *known* to cause cancer but are only those that *could*, under certain circumstances, pose a risk of cancer based upon the interpretation of existing scientific data, such as animal studies. OEHHA administers this program.

Without the warnings on listed products, the State Attorney General, District Attorneys, or even private legal bounty hunters can sue those companies in violation of Prop 65, **even though no harm from the products is ever demonstrated**, and exact enormous legal and other costs. While some good has resulted from Prop 65, like all government programs the good intentions can all too easily lead to enormously bad consequences that far outstrip any possible good. One easy example of this is the Prop 65 listing of natural progesterone as a cancer-causing agent when in fact it helps counteract the carcinogenic effects of estrogen. Natural, bioidentical progesterone is an important hormone-replacement therapy for women, many of whom have been unfortunately scared away from its health benefits by the Prop 65 warnings that are mandated on the product.

Yet, without such warnings, the products and their manufacturers and distributors are sitting ducks. In fact, one growth industry spawned by Prop 65 consists of numerous private law firms dedicated to shooting first and asking questions later in a "no prisoners taken" attempt to earn huge legal fees while doing a bare-minimum of public good. The State and County governments may also bring legal action, but often it is these vulture firms that are first out of the gate to win the jackpot. It is a very lucrative practice – actually no more than sanctimonious looting with the pretense of doing public good.

While Prop 65 is a State law and should therefore have no legal effect outside of California, in real life it does. Due to the huge size and influence of the California market, many businesses sell products into the State. In doing so, they make themselves subject to Prop 65, whether they know it or not.

The April 18th Meeting

On behalf of the NHF membership, I attended the meeting in response to OEHHA's March 21st notice of this regulatory "concept" and its request for public participation at the meeting. Our members were understandably alarmed by what was seen as an attempt to tie dietary supplements into a dumbed-down, RDA-level potency for supplements, something NHF has opposed for decades. Curiously enough, using RDA (Recommended Dietary Allowance) levels for dietary supplements dovetails very neatly with national and international attempts to restrict consumer choice by doing the same.

As the April 18th meeting began that morning, OEHHA attorney Fran Kammerer explained to the attendees what Sam Delson, OEHHA's deputy director for external and legislative affairs, had also written the NHF in an earlier e-mail, that

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Codex and health freedom. I'd like you to touch on a few other highlights to entice our readers to obtain a copy.

Tips: Basically the main thing is that it shows the structure of Codex and how it operates so someone will understand what takes place and how it all comes together. The importance of this book is that instead of having a dry recitation of this and that, what you have are people who were there at the time, on the spot, and eye-witnessing all of this, with little personal stories that get interwoven as well. With the book you get the feeling that you were actually there attending the meetings with descriptions of the rooms, descriptions of the people, with things that happened and events. The book is constructed in such a way that one doesn't have to read it from start to finish. You can skip around. You can get a feeling for what Codex is truly like; and if there's an article that is more technical and you aren't a technical person, then you can skip those articles and just read those with a more general approach. On the other hand, if you are a technical person and you like technical details, then those kind of pieces are in there as well. It is really like a travel guide through the Codex process and through the various committee meetings that have happened over the last ten-to-eleven years.

Crusador: Thank you for your time, Scott. I look forward to doing a lot of work with you in the future helping to defend our health freedoms.

Tips: Thank you, Greg. You're doing an excellent job through *The Crusador* keeping people informed.

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is, that the concept would apply only to chemicals already listed under Proposition 65, such as chromium and vitamin A (retinol) and does not propose any new listing or warning requirements. Interestingly enough, the ferocious response sent to OEHHA from NHF members in answer to NHF's first press release on the subject (March 24, 2008) had taken OEHHA aback so much that Ms. Kammerer specifically commented on it to me.

For one thing, in its March 21st request for public participation, OEHHA stated, "Certain chemicals or compounds such as vitamins and minerals are necessary to promote human health or to ensure the healthy growth of food crops. Excessive exposure to these same chemicals or compounds can cause cancer or adverse reproductive effects."

As one of the first to speak at the meeting, I told them that with only one or two well-known exceptions (such as iron), this is incorrect, misleading and does a great disservice to those dewy-eyed consumers who will trust the government and thus forgo taking beneficial nutrients in sufficient cancer-preventing quantities. In fact, numerous studies show that only ***large doses*** of natural Vitamin E, Vitamin D, selenium, fish oils, resveratrol, and other such beneficial nutrients will prevent or ameliorate cancer. Synthetic nutrients and those either at or below Recommended Dietary Intake (RDI) levels rarely show any such benefit. In fact, a major review of studies on the relationship between vitamin intake and various diseases published between 1966 and 2002 revealed that suboptimal intake of vitamins is correlated with increased risk of chronic diseases such as cancer, heart disease, and osteoporosis.

To be assured of obtaining these benefits, however, I continued, one must take more than simply RDI levels of beneficial nutrients. What may seem "excessive" to some individuals would actually be the minimal amounts needed by others. So, OEHHA does an enormous disservice mischaracterizing the cancer-preventative effects of large-dose vitamin-and-mineral dietary supplements. How many people will die or suffer harm because this myth is put forth yet again by institutions that should know better?"

Moreover, "RDAs" are the wrong standard here. The proposed regulatory concept states, in part, that "[t]his section [1250X] applies only to exposures that do not exceed the Recommended Daily Allowance (RDA) established in the Dietary Reference Tables of the Food and Nutrition Board of the Institute of Medicine, National Academies, current edition, if one is established." At the meeting, and in its written submission of May 2nd to OEHHA, the NHF also pointed out that, "*Leaving aside the fact that the term of art has been revised to RDI, this standard – whether RDA or RDI – is not and never has been a* ***safety*** *standard. Rather, it is a* ***nutrition*** *standard that constitutes more of a floor than a ceiling for appropriate nutrient intake levels. Setting an exemption from the definition of 'exposure' at or below the RDI levels would dramatically exclude nutrient levels that would actually help prevent cancer and reproductive harm."*

Besides, Upper Levels are established for a whole number of reasons not necessarily related to cancer or reproductive toxicity. The application of RDIs here would be of zero value as to cancer and reproductive toxicity since they were not established with these problems in mind. The general consensus expressed by most attendees was that at the very least RDIs were the wrong standard of measure for creating an exemption. Two other NHF members, Donna Moncrieff and Monica DeWitt, were also present at the meeting to support our position; and thanks to Ms. DeWitt, I was the only independent attendee to be interviewed by the local capital television station about this meeting and our views.

The NHF Petitions and its May 2nd Written Comments

Although there are only two beneficial nutrients (retinol and chromium) on the Prop 65 list as of today, the list grows regularly. It grows through OEHHA's Science Advisory Board, which has two committees to review and add carcinogens and reproductive toxicants to the list. But authoritative bodies such as the FDA, the Environmental Protection