



Issue Date: 28 January 2014

BALCA Case No.: 2013-PWD-00005
ETA Case No.: P-100-12331-705321

In the Matter of:

**GENERAL ANESTHESIA SPECIALISTS PARTNERSHIP
MEDICAL GROUP (GASP),**

Employer

Center Director: William K. Rabung
National Prevailing Wage Center

Appearance: Catherine L. Haight, Esquire
Haight Law Group, PLC
Los Angeles, California
For the Employer

Before: **Almanza, Colwell and Johnson**
Administrative Law Judges

PAUL R. ALMANZA
Administrative Law Judge

DECISION AND ORDER
REMANDING FOR FURTHER PROCEEDING ON
PREVAILING WAGE DETERMINATION

This matter arises from the Employer's appeal pursuant to 20 C.F.R. § 656.41 of the Employment and Training Administration, Office of Foreign Labor Certification ("OFLC")'s prevailing wage determination for the position of Medical Scientist Assistant.

BACKGROUND

On December 6, 2012, the General Anesthesia Specialists Partnership Medical Group (“GASP” or “Employer”) filed a prevailing wage determination (“PWD”) request with the Office of Foreign Labor Certification National Prevailing Wage Center (“NPWC”). The request is in support of permanent alien labor certification for the position of “Medical Scientist Assistant.” (AF 92-95).¹ The Employer provided the suggested Standard Occupational Classification (“SOC”)/Occupational Informational Network (“O*NET”) code as 19-1042.00, corresponding to the occupation title “Medical Scientists, Except Epidemiologists.” (AF 92).² The Employer provided the following summary of the position’s duties:

Work under Primary Investigators (PIs) to conduct research regarding anesthesia and the application of pain medicine and the effect on physiological processes and human health. Coordinate the assembly of multi-disciplinary care teams (e.g., Anesthesiologists, Critical Care Specialists, Residents/Fellows, Nurses and Pharmacists). Select, interview and evaluate patients for participation in anesthesia studies. Analyze data and monitor effects of anesthesia at various levels, including severe adverse event signs and report them to the Institutional Review Board (IRB) and study sponsors. Provide statistical analysis of medical research results. Confer with health departments, industry personnel, physicians, and others to assure compliance with all regulations and safety procedures. Co-mentor residents and medical students in principles of medicine and anesthesia-related procedures. Assist PIs in collaborating with Fellows, Residents, and medical students on preparation of manuscripts and scientific abstracts for presentation at conferences and for submission to medical journals. Prepare quarterly presentations of research activities.

(AF 93). The Employer stated that the position required an M.D. degree, 36 months of training in Anesthesiology, and no additional months of experience. The 36 months of required training must have resulted in completion of an Anesthesiology Residency. The position did not involve supervision of others. Additional special requirements and skills included statistical analysis of medical research results. (AF 93-94).

The Certifying Officer (“CO”) issued a PWD on January 14, 2013. (AF 95). The CO assigned the position the SOC (O*NET/Occupational Employment Statistics (“OES”)) occupation title “Natural Sciences Managers,” SOC (O*NET/OES) code 11-

¹ In this decision, AF is an abbreviation for Appeal File.

² O*NET is a database containing information on hundreds of standardized and occupation-specific descriptors. O*NET job descriptions contain several standard elements, one of which is a “Job Zone.” An O*NET Job Zone “is a group of occupations that are similar in: how much education people need to do the work, how much related experience people need to do the work, and how much on-the-job training people need to do the work.” The Job Zones are split into five levels, from occupations that need little or no preparation, to occupations that need extensive preparation. 20 C.F.R. § 656.3.

9121. The CO determined that the wage level for the position was level IV, with a prevailing wage of \$180,502 per year. *Id.*

On January 15, 2013, the Employer submitted a request for Center Director (“CD”) review of the PWD (AF 25-59; 60-91), reiterating that the Medical Scientists, Except Epidemiologists occupation is the best match with the duties of the Medical Scientist Assistant position, providing in chart form, a cross-comparison with the duties of the two occupations. (AF 61). The Employer also argued that, while the occupation of Clinical Research Coordinator (SOC/O*NET code 11-9121.01) might be a possible match with its Medical Scientist Assistant position based on job duties, there is no available wage data associated with that occupation, and it would be inappropriate and unfair to base a PWD on the broader category of Natural Sciences Manager, which has the same ONET/OES six-digit code as the Clinical Research Coordinator occupation, but is clearly not comparable to the Employer’s position in terms of job duties or supervision exercised. (AF 62-63). Additionally, the Employer argued that it was inappropriate to apply the wage data of the Natural Science Managers occupation, which is in Job Zone 5, to the GASP position, while basing the job leveling standards applied to the GASP position on the Clinical Research Coordinator occupation, which is in Job Zone 4. (AF 63).

On February 28, 2013, the OFLC transmitted an email affirming the CO’s initial determination, and requesting that the Employer submit a Request for CD Review if it disagreed. The OFLC rejected the Employer’s recommendation that Medical Scientists, Except Epidemiologists was an appropriate job match because the Employer’s position contained several responsibilities which appeared to be equivalent to the Clinical Research Coordinator’s tasks:

The employer’s job duties are not consistent with the O*NET defined tasks for the suggested SOC 19-1042 – Medical Scientists, Except Epidemiologists as the employer’s job duties indicate clinical research coordination and selecting patients. Specifically, the employer’s job duties include “coordinate the assembly of multi-disciplinary care teams (e.g., Anesthesiologists, Critical Care Specialists, Residents/Fellows, Nurses, and Pharmacists); Select, interview, and evaluate patients for participation in anesthesia studies; Analyze data and monitor effects of anesthesia at various levels, including severe adverse event signs and report them to the Institutional Review Board (IRB) and study sponsors; and Confer with health departments, industry personnel, physicians, and others to assure compliance with all regulations and safety procedures.” The CO said these duties are consistent with the O*NET defined tasks for the SOC 11-9121.01 – Clinical Research Coordinators, which may include, “May evaluate and analyze clinical data; Oversee subject enrollment to ensure that informed consent is properly obtained and documented; Monitor study activities to ensure compliance with protocols and with all relevant local, federal, and state regulatory and institutional policies; Record adverse event and side effect data and confer with

investigators regarding the reporting of events to oversight agencies; and Assess eligibility of potential subjects through methods such as screening interviews, reviews of medical records, and discussions with physicians and nurses.” ... [A]lthough the employer’s job duties are consistent with the SOC 11-9121.01 – Clinical Research Coordinators, the six digit SOC 11-9121 – Natural Sciences Managers was assigned.

(AF 58.)

On March 11, 2013, the Employer filed a request for review by the Board of Alien Labor Certification Appeals (BALCA) of the CD’s Determination. (AF 15-21). On May 9, 2013, the CD issued a letter, stating that the request for BALCA review was premature, since the Employer had never received a decision from the CD, and that the CD would therefore consider the request for BALCA review as a request for the CD’s review. The CD’s letter rejected the use of the SOC/O*NET code 19-1042.00 occupation of Medical Scientists, Except Epidemiologists as the basis for the PWD because “the O*NET defined tasks for the Medical Scientists, Except Epidemiologists indicate engagement in clinical research, but do not specify coordinating clinical research activities.” The CD stated that the GASP position is more consistent with SOC/O*NET code 11-9121.01 – Clinical Research Coordinators because the occupation is engaged in “coordinating clinical research projects, selecting and interviewing patients, and assuring compliance.”

The CD applied the *Employment and Training Administration (ETA) Prevailing Wage Determination Policy Guidance - Nonagricultural Immigrations Programs, Revised November, 2009* (“2009 PWD Guidance”) for job leveling to the Clinical Research Coordinator occupation, which is in Job Zone 4. The normal educational level for this position is a Bachelor’s degree. Looking at the Educational Requirements, since the Employer’s position requires a Doctorate [sic] of Medicine (M.D. degree), which is two degree levels above the norm, two points were added. Additionally, the CD considered the requirement for completion of an anesthesiology residency, which is not normal for this (Clinical Research Coordinator) occupation, so an additional point was added. The CD therefore assigned the wage level IV. The CD continues, that since both OES and O*NET are in a transition year from the 2000 SOCs to the 2010 SOCs, and there is no wage data available for the eight-digit SOC for the Clinical Research Coordinators, the six-digit SOC 11-9121 is appropriately assigned. The CD stated that the wage data for the six-digit SOC 11-9121, which applies to the Natural Science Manager occupation, is also applied to the Employer’s position, and therefore the CD affirmed that the P W D of Employer’s Medical Scientist Assistant position, \$180,502, is correct. (AF 10-13).

The Employer appealed to BALCA on May 30, 2013. (AF 1-9). The Employer’s request for BALCA review distinguished the job duties of the Medical Scientist Assistant position at GASP with the duties of the Natural Sciences Manager occupation, arguing that the latter clearly contains managerial responsibilities: “planning or reviewing projects; developing client relationships and communicating with clients to explain

proposals; planning or directing research, development or production activities, preparing project proposals; designing problem analysis and solutions; reviewing project activities; hiring, supervising, or evaluating engineers, technicians, researchers, or other staff; determining goals within broad outlines provided by top management; developing or implementing policies, standards, or procedures; developing innovative technology or training staff for its implementation.” (AF 4). The Employer argued that the Medical Scientist Assistant position at GASP has none of these managerial functions. (*Id.*). The Employer also argued that the broad managerial duties of the Natural Sciences Manager occupation set it apart from the Clinical Research Coordinator occupation and applying the wage data from the broader category, (Natural Sciences Manager) to the lower-level, subcategory position (Clinical Research Coordinator) was improper. (AF 2-3).

The Employer then discussed the wage leveling procedures in accordance with the 2009 PWD Guidance as the Employer would apply them to the Medical Scientists, Except Epidemiologists occupation (SOC/O*NET code 19-1042.00). The Employer asserted that Job Zone 5 was appropriate since extensive skill, knowledge and experience are needed for both occupations. “Many require more than five years of experience. For example surgeons must complete four years of college and an additional five to seven years of specialized medical training to be able to do their job.” The Employer asserted that because the education and training required for the Medical Sciences Assistant position—an M.D. degree and three years’ additional training—was at or below the “additional five to seven years of specialized medical training” typically required of the Job Zone 5, Medical Scientists, Except Epidemiologists occupation, no points should be added for the experience requirement. Looking at the Education requirement, the Employer asserted that M.D. or Ph.D. degrees are typically required for Medical Scientists, Except Epidemiologists, so no points should be added for Education. Looking at Special Skills Requirements, the Employer asserted that the Anesthesiology Residency and the Statistical Analysis of Medical Research Results of its position corresponds exactly to the O*NET Knowledge category for Medical Scientists, Except Epidemiologists—“Knowledge of the information and techniques needed to diagnose and treat human injuries, diseases and deformities. This includes symptoms, treatment alternatives, drug properties and interactions, and preventive health-care measures.” The Employer therefore implicitly argued that no additional points for Special Skill Requirements should be assigned, concluding that the appropriate job classification and leveling for the position of Medical Scientist Assistant at GASP is Medical Scientists, Except Epidemiologists, (SOC/O*NET code 19-1042.00), Level 1. (AF 6-8).

Neither party submitted an appellate brief.

DISCUSSION

Standard of Review

The Board applies an abuse of discretion standard to the Center Director's decision on an employer's appeal of a prevailing wage determination. *See Emory University*, 2011-PWD-1 and 2, slip op. at 6-7 (Feb. 27, 2012); *RP Consultants, Inc. d/b/a Net Matrix Solutions*, 2009-JSW-1 (June 30, 2010). Accordingly, we will review the Center Director's decision in this case to determine whether it was consistent with the applicable regulations and was a reasonable exercise of that discretion. *Id.*, slip op. at 10.

Regulations and Guidelines

The PERM regulations require an employer filing an application for permanent labor certification after January 1, 2010, to request a prevailing wage determination from the National Processing Center [or National Prevailing Wage Center] ("NPC" or "NPWC"). 20 C.F.R. § 656.40(a). The regulations provide several methods by which the prevailing wage is determined. The applicable regulation provides:

If the job opportunity is not covered by a [collective bargaining agreement] CBA, the prevailing wage for labor certification purposes shall be the arithmetic mean, except as provided in paragraph (b)(3) of this section, of the wages of workers similarly employed in the area of intended employment. The wage component of the DOL Occupational Employment Statistics Survey shall be used to determine the arithmetic mean, unless the employer provides an acceptable survey under paragraph (g) of this section.

20 C.F.R. § 656.40(b)(2).

The Employment and Training Administration's 2009 PWD Guidance memorandum outlines a step-by-step, standardized approach for determining the appropriate occupational classification under SOC/O*NET and the appropriate wage level for the job opportunity. In discussing how the occupational code is assigned, the 2009 PWD Guidance provides that the O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification. 2009 PWD Guidance, at 4.

ETA also emphasized in its guidance that "the process described above should not be implemented in an automated fashion. The NPWHC must exercise judgment when making prevailing wage determinations." 2009 PWD Guidance, at 13.

*Occupational Classification under SOC/O*NET*

In its ETA Form 9141, the Employer suggests the Medical Scientists, Except Epidemiologists, SOC/O*NET Code 19-1042 as a match for its position, Medical Scientist Assistant. In the O*NET list of tasks for the Medical Scientists, Except Epidemiologists occupation, there are several tasks which correlate with the job duties listed on the Employer's ETA Form 9141:

Medical Scientists, Except Epidemiologists

- Plan and direct studies to investigate human or animal disease, preventive methods, and treatments for disease;
- Conduct research to develop methodologies, instrumentation, and procedures for medical application; analyzing data, and presenting findings to the scientific audience and general public;
- Study animal and human health and physiological processes;
- Write and publish articles in scientific journals;
- Evaluate the effect of drugs, gases, pesticides, parasites, and microorganisms at various levels;
- Standardize drug dosages, methods of immunization and procedures for manufacture of drugs and medicinal compounds.

(AF 72).

The Medical Scientist Assistant job description contains several comparable responsibilities to the Medical Scientists, Except Epidemiologists occupation:

- Work under Primary Investigators (PIs) to conduct research regarding anesthesia and the application of pain medicine and the effect on physiological processes;
- Analyze data and monitor effects of anesthesia at various levels.
- Assist PIs in collaborating with Fellow, Residents and medical students on preparation of manuscripts and scientific abstracts for presentation at conferences and for submission to medical journals;
- Prepare quarterly presentations of research activities.

(AF 93)

In summary, the Medical Scientists, Except Epidemiologists occupation and the Medical Scientist Assistant position both use a specific knowledge of a scientific medical field gained by extensive training to conduct medical research, analyze the research data and effects of variables, and write and publish articles on their research findings in scientific journals.

Employer's Medical Scientist Assistant conducts his or her research with less independence than the Medical Scientists, Except Epidemiologists occupation. Whereas the Medical Scientists, Except Epidemiologists "Plan and direct studies," the Medical Scientist Assistant "[w]ork[s] under Primary Investigators (PIs) to conduct medical research." While the Medical Scientists, Except Epidemiologists "[w]rite and publish articles in scientific journals," the Medical Scientist Assistant "[a]ssist[s] P.I.s in collaborating with Fellows, Residents and medical students on preparation of manuscripts and scientific abstracts." (AF 93). The Medical Scientists, Except Epidemiologists occupation "often involve[s] training, supervising, or managing the activities of others to accomplish goals." (AF 76) There are no supervisory responsibilities in the Medical Scientist Assistant position. (AF 93).

The Center Director analyzed the Employer’s position and determined that the tasks of the position were more aligned with the O*NET/OES job title Clinical Research Coordinators, SOC/O*NET Code 11-9121.01 than with Medical Scientist, Except Epidemiologists, SOC/O*NET Code 19-1042.00. In particular, the CD determined that the Employer’s position, Medical Scientist Assistant, will coordinate clinical research and that the Medical Scientist, Except Epidemiologists occupation does no coordination, only research. The CD listed these tasks as indicators that the Medical Scientist Assistant is primarily a coordinator:

- Coordinate the assembly of multi-disciplinary teams
- Select, interview and evaluate patients for participation in studies
- Assure compliance with all regulations and safety procedures
- Co-mentor residents and medical students in the principles of medicine and anesthesia

(AF11). The CD asserted that the Employer’s job duties involve coordination of clinical research, whereas the Medical Scientists, Except Epidemiologists occupation does not specify coordinating clinical research activities. However, the first task listed on the O*NET Summary Report for Medical Scientists, Except Epidemiologists begins, “Plan and Direct studies to investigate...” Planning and directing are aspects of the job that require coordinating and may involve supervision and leadership. An O*NET Job Zone example for the Medical Scientists, Except Epidemiologists occupation states, “[t]hese occupations often involve coordinating, training, supervising, or managing the activities of others to accomplish goals.” (AF 76).

The following chart compares each job duty of the position of Medical Scientist Assistant to the duties that are normal for the occupation of Medical Scientists, Except Epidemiologists and the occupation of Clinical Research Coordinators.

Job duties for the position of Medical Scientist Assistant	Is this similar to the normal job duty for Medical Scientists, Except Epidemiologists, SOC/O*NET Code 19-1042.00?	Is this similar to the normal job duty for Clinical Research Coordinators, SOC/O*NET Code 11-9121.01?
Conduct research regarding medical procedures, physiological processes and human health	Yes. Conduct research, Study animal and human health and physiological processes.	No.
Coordinate the assembly of multi-disciplinary care teams (anesthesiologists, Critical Care Specialist, Residents/Fellows, Nurses, Pharmacists)	No.	No.

Select, interview, and evaluate patients for participation in studies	Yes. Plan and direct studies to investigate human or animal disease, preventive methods, and treatments for disease.	Yes. Assess eligibility of potential subjects.
Analyze data and monitor effects of anesthesia at various levels.	Yes. Analyzing data and presenting findings to the scientific audience and general public; Evaluate the effect of drugs, gases, pesticides, parasites, and microorganisms at various levels.	No.
Observe adverse event signs and report them to the Institutional Review Board (“IRB”) and study sponsors	No.	Yes. Record adverse event and side effect data and confer with investigators regarding the reporting of events to oversight agencies.
Provide statistical analysis of medical research results	No.	No.
Assure compliance with all regulations and safety procedures	Yes. Follow strict safety procedures when handling toxic materials to avoid contamination.	Yes. Monitor study activities to ensure compliance with protocols and with all relevant local, federal and state regulatory and institutional policies
Co-mentor residents and medical students in medical principles and procedures	No.	No.
Collaborate on preparation of manuscript and scientific abstracts for presentation and publishing	Yes. Write and publish articles in scientific journals; present findings to the scientific audience and general public.	No.
Prepare quarterly presentations of research activities.	Yes. Present findings to the scientific audience and general public.	No.

(AF 11-12). In reviewing and summarizing the lists of ten tasks above, only one job element is common to the Employer’s Medical Scientist Assistant position and the Clinical Research Coordinators occupation, but is not listed among the tasks of the Medical Scientist, Except Epidemiologists occupation: “Observe adverse event signs and report them to the Institutional Review Board (“IRB”) and study sponsors.”

Three job requirements of the Medical Scientist Assistant position are found on neither of the O*NET task lists for Medical Scientists, Except Epidemiologists nor the list for Clinical Research Coordinators:

- “*Coordinate the assembly of multi-disciplinary care teams (e.g., Anesthesiologists, Critical Care Specialists, Residents/Fellows, Nurses and Pharmacists)*” — These are medical professionals, not patients being studied in the clinical research.
- “*Co-mentor residents and medical students in principles of medicine and anesthesia-related procedures*”—Because this aspect of Employer’s Medical Scientist Assistant position requires advanced knowledge of a medical specialty, it aligns closer to the Medical Scientists, Except Epidemiologists occupation.
- “*Provide statistical analysis of medical research results*”—The other positions may analyze research results, but the Employer’s position has this special requirement listed on the ETA Form 9141 Section D.b.5: Statistical Analysis of Medical Data.

The PWD 2009 Guidance states “[i]f the employer’s job opportunity has worker requirements described in a combination of O*NET occupations, the [NPWC] should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer’s job offer is for an engineer-pilot [the National Prevailing Wage Help Center] shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.” 2009 PWD Guidance, at 4.

The example of engineer-pilot used in the 2009 PWD Guidance suggests two fairly divergent occupations with separate and distinct skill sets. The knowledge, skills, and abilities required to be a pilot are different from the knowledge, skills and abilities to be an engineer.

In *Emory University*, 2011-PWD-00001 (Feb. 27, 2012), the Board analyzed a similar situation where the employer argued that the most appropriate job match for its position of Supervisor, Clinical Genetics Laboratory, was a Geneticist, SOC/O*NET code 19-1029.03. The CD affirmed the CO’s determination that the proper occupational title to apply was Natural Sciences Manager, SOC/O*NET code 11-9121.00, “because the Employer’s job duties are not “research at the scientist level,” as is the case with Geneticists. The CD also found that the Geneticists occupation usually requires a doctoral degree, while the Natural Sciences Managers occupation usually requires a bachelor’s degree. (The Supervisor, Clinical Genetics Laboratory position also required only a bachelor’s degree.) *Emory University*, at 5. The CD determined that the employer’s job duties are those of a supervisory laboratory technician who is managing the non-scientist functions of the laboratory, and that the duties do not include any actual genetic research, only laboratory testing and management of materials, expenses and strategic planning, and supervision of 20 staff members. *Id.*

The CD's logic in *Emory University* also applies in the case at bar. In *Emory University*, the CD rejected the employer's suggested SOC occupation title, Geneticist, because it was a front-line research position unlike the employer's position which had functions of a supervisory laboratory technician, managing the non-scientist functions of the laboratory. In the case before us, the Employer is suggesting a front line research position, Medical Scientists, Except Epidemiologists, would be more appropriate than the Clinical Research Coordinator, because the Employer's position, Medical Scientist Assistant, is a front-line research position while the Clinical Research Coordinator oversees the non-scientist functions of the laboratory. The Natural Sciences Manager occupation, upon which the CD eventually based the PWD, is even farther removed from front-line research. The Medical Scientist Assistant position and the Medical Scientists, Except Epidemiologists occupation both require incumbents with medical degrees. According to the O*NET Summary Report, the Clinical Research Coordinators are Zone 4 positions – "most require a bachelor's degree, but some do not." The CD's analysis in *Emory University* supports a finding that the Medical Scientists, Except Epidemiologists occupation would be the better match for Employer's Medical Scientist Assistant position.

The Board in *Emory University*, however, concluded that the employer's position of Supervisor, Clinical Genetics Laboratory, was a combination of the requirements of the Geneticist and of the Natural Sciences Managers occupations, and therefore the higher-paying occupation, Natural Sciences Managers, was the appropriate SOC occupational title and code. In that case, the Board considered the facts such as the Educational Requirements of the positions and the nature of occupations—Geneticists are front-line researchers whereas the Employer's position, Supervisor, Clinical Genetics Laboratory, was more like the Natural Sciences Manager—a job that manages the non-scientist functions of the laboratory. The Board considered the educational requirements of the three occupations and determined the Supervisor, Clinical Genetics Laboratory, was more like the Natural Sciences Manager, which required a Bachelor's degree, than the Geneticist, which required a Ph.D. Additionally, the Board looked at a chart which listed the tasks of the Supervisor, Clinical Genetics Laboratory, compared to the tasks of the Geneticist and the Natural Sciences Manager. The Board concluded that the chart illustrated that the Supervisor, Clinical Genetics Laboratory, was a combination of the Geneticist and the Natural Sciences Manager. *Emory University*, at 9-11. The chart in *Emory University* clearly showed that the Supervisor, Clinical Genetics Laboratory, had responsibilities in common with the Natural Sciences Managers occupation which covered a broad range of important administrative functions—Coordinate Workflow; Develop New Protocols; Supervise Staff; and Develop and Implement Policies, and the Geneticist did not perform these tasks. *Id.*

In this case, out of ten listed requirements for the Medical Scientist Assistant position at GASP, only three are shared with the Clinical Research Coordinator occupation. Those three—ensuring compliance with regulations and safety procedures, recording and reporting adverse event signs, and selecting patients for participation in studies—are tasks which are common to the research process on all levels. (The

Employer's occupational choice, Medical Scientists, Except Epidemiologists, also contains tasks similar to these job duties.) (AF 27).

There are tasks listed on O*NET for the Medical Scientists, Except Epidemiologists, which are not contained in the description of the Medical Scientist Assistant position, including the use of certain laboratory equipment, studying cells and microorganisms, and investigating the cause, progress, life cycle, or mode of transmission of diseases or parasites. None of those tasks relate to anesthesiology research, but rather to research in other areas of medicine, including cytology, parasitology, and virology. It would not be expected that the same list of equipment and activities would be part of a job description for an Anesthesiology Researcher, but conducting "research regarding anesthesia and the application of pain medicine and the effect on physiological processes and human health" is an activity which involves similar controlled experimentation. Other duties of the two occupations are comparable: The Medical Scientists, Except Epidemiologists "follow strict safety procedures when handling toxic materials to avoid contamination" while the Medical Scientist Assistant "assures compliance with all regulations and safety procedures." The Medical Scientists, Except Epidemiologists "study animal and human health and physiological processes" while the Medical Scientist Assistant "conduct[s] research on the effect of pain medicine on physiological processes and human health." The Medical Scientists, Except Epidemiologists "evaluate the effects of drugs, gases, pesticides, parasites, and microorganisms at various levels" while the Medical Scientist Assistant "monitor[s] the effects of anesthesia at various levels." It would appear that the O*NET list of tasks for the Medical Scientists, Except Epidemiologists occupation, if confined to the field of anesthesiology, would directly correspond to the Employer's Medical Scientist Assistant position. (AF 27).

In the case before the Board, we do not see a factual situation such as that in *Emory University*, where the employer's position was clearly a combination of two distinct SOC occupations and where the employer's position was clearly more similar to the CD's O*Net occupational choice than the employer's suggested O*Net title, based on the nature of the position's duties and educational requirements. *See Emory University*, at 7-11.

While there are certain tasks common between Employer's Medical Scientist Assistant position and the Clinical Research Coordinators occupation, the overall coordinating and project management responsibilities of the Clinical Research Coordinators occupation are not contained in the Medical Scientist Assistant position. The actual conducting of research and analysis and reporting of study results in medical journals of the Medical Scientist Assistant position is not contained in the Clinical Research Coordinator occupation. The Medical Scientist Assistant position and the Medical Scientists, Except Epidemiologists occupation both conduct medical research, evaluate the effect of drugs, study human health processes, analyze data and present findings to the scientific community. According to the 2009 PWD Guidance, the PWD process requires the NPWHC to exercise judgment and "should not be implemented in an automated fashion." (AF 117).

We therefore conclude that the Employer's position is not a combination of two O*NET occupations and therefore it is not appropriate to invoke the "combination of occupations" rule. See 2009 PRD Guidance, at 4. SOC/O*NET Job Code 19-1042.00, Medical Scientists, Except Epidemiologists, is a better job match than SOC/O*NET Job Code 11-9121.01, Clinical Research Coordinators, for Employer's Medical Scientist Assistant position. We therefore find that the CD erred in using the Clinical Research Coordinators occupation as the reference occupation for issuing the PWD.

While the Board must use deference when reviewing the determinations of the CD, this is an unusual case, where the use of a less appropriate O*Net Occupational Title resulted in a very skewed result. This was exacerbated due to the lack of wage data for the Clinical Research Coordinator occupation. In lieu of the missing wage data, the CD, following O*Net guidance in an automatic fashion, applied the wage data applicable to a significantly different occupation, Natural Sciences Managers. In so doing, the CD did not exercise due judgment as prescribed in the 2009 PWD Guidance. A comparison of the O*NET Report for Natural Sciences Managers (AF 98-104) against the O*NET Report for Clinical Research Coordinators indicates that these are two very distinct occupations.³ Clinical Research Coordinators are involved in the day to day administrative coordinating, monitoring, and record keeping of research projects, selecting participants and ensuring adherence to reporting requirements and safety standards. By comparison, Natural Sciences Managers are higher-level supervisors who develop research proposals, maintain client relationships, and determine scientific or technical goals within broad outlines provided by top management. The Natural Sciences Manager is a Job Zone 5 occupation with a Specific Vocational Preparation ("SVP") range of 8.0 and above. The Clinical Research Coordinator is a Job Zone 4 occupation with an SVP range of 7.0 to <8.0. (AF 28-29).

Taken as a whole, the Board finds that rejecting the Employer's choice of O*Net occupational title in favor of the Clinical Research Coordinator, an occupational title which is less similar to the Employer's position and lacks its own wage data, using that position to identify a wage level, and then following O*Net procedures to apply the wage data of the Natural Sciences Managers, a clearly different occupation, failed to adhere to the warning contained in the 2009 PWD Guidance—to avoid implementing the process in an automated fashion and to exercise judgment when making prevailing wage

³ Although both parties have argued their positions in terms of the similarity or difference of the Employer's position to the O*NET Occupational Summary of the Medical Scientists, Except Epidemiologists occupation, SOC/O*NET code 19-1042.00 and the Clinical Research Coordinators occupation, SOC/O*Net 11-9121.01, the particular Occupational Summary for the Clinical Research Coordinators was not included in the Appeal File. The O*NET Summary Reports are issued by ETA and are made available to the public online at www.onetonline.org. We find that it is appropriate to take administrative notice of the Summary Reports. *Albert Einstein Medical Center*, 2009-PER-379, slip op. at 12-15.

determinations. The Board therefore finds that the CD abused his discretion in issuing a PWD for the Medical Scientist Assistant position of \$180,502 per year.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that the matter is **REMANDED** to the CD for processing consistent with the conclusions stated in this order.

For the panel:

PAUL R. ALMANZA
Administrative Law Judge

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW Suite 400
Washington, DC 20001-8002

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.