

TELECONFERENCE MEETING
STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF PUBLIC HEALTH
FORENSIC ALCOHOL REVIEW COMMITTEE

DEPARTMENT OF PUBLIC HEALTH
RICHMOND CAMPUS CONFERENCE CENTER
850 MARINA BAY PARKWAY
ROOM B-137
RICHMOND, CALIFORNIA

TWENTY-FIFTH MEETING
THURSDAY, OCTOBER 15, 2015
1:00 p.m.

Reported by:
Julie Link

APPEARANCES

Review Committee Members

Dr. Paul Kimsey, Chairman (Richmond)

Dan Jeffries, Orange County, Santa Ana

Mark Slaughter, Sacramento

Bruce Lyle, Orange County, Santa Ana

Kenton S. Wong, Richmond

Jennifer Shen, San Diego

Jennifer Harmon, Orange County, Santa Ana

Sgt. Eric Jones, California Highway Patrol

Also Present

Food and Drug Laboratory
California Dept. of Public Health
Richmond, CA

Bob Moezzi, Ph.D., Branch Chief

Clay Larson, Section Chief

Wayne Tseng

Natalia Spell

Harby Thandi

Via Video Feed:

California Department of Public Health
Sacramento, CA 95814

Josh Spatola

Barry Miller

Alexandra Stupple

Dawn Basciano

Steve Woods

Rosalie Dvorak-Remif

Russ Huck

Marin Kline

Via Audio Feed:

Location: San Diego

Jennifer Shen

Location: Orange County

Jennifer Harmon

Dan Jeffries

Bruce Lyle

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1 MR. TSENG: Wayne Tseng, FDLB.

2 MR. THANDI: Harby Thandi, Food and Drug
3 Laboratory Branch.

4 CHAIR KIMSEY: Okay. And in Sacramento?

5 MR. HUCK: This is Russ Huck, Division
6 Office, Division of Food, Drug and Radiation Safety
7 here in Sacramento.

8 MS. KLINE: Marin Kline, with the Center for
9 Environmental Health and CDPH.

10 MR. WOODS: This is Steve Woods, I'm with
11 California Department of Public Health, Division of
12 Food, Drug and Radiation Safety.

13 SGT. JONES: Sergeant Eric Jones, California
14 Highway Patrol Research and Planning Section.

15 MS. BASCIANO: Dawn Basciano, Public Health
16 Office of Regulations.

17 MS. STUPPLE: Alexandra Stupple, Office of
18 Legal Services, CDPH.

19 CHAIR KIMSEY: Welcome, Sergeant Jones. I
20 think this is your first meeting.

21 SGT. JONES: Yes, it is.

22 CHAIR KIMSEY: Welcome, and don't hesitate
23 to ask questions.

24 SGT. JONES: Thank you, sir.

25 CHAIR KIMSEY: And someone else just joined

1 in Sacramento?

2 MR. SLAUGHTER: That's correct. Mark
3 Slaughter with the California Public Defender's
4 Association.

5 CHAIR KIMSEY: Hi, Mark, Welcome.

6 MR. SLAUGHTER: Hi. Thank you.

7 MS. MINOS: Rosalie Minos, Sacramento,
8 member of the public.

9 CHAIR KIMSEY: Thank you.

10 FEMALE VOICE: Paul, we have two more people
11 that have just signed in here in Sacramento.

12 CHAIR KIMSEY: Okay. We'll give it a minute
13 or two.

14 MR. SPATOLA: Josh Spatola, California
15 Department of Justice.

16 [side conversation with reporter]

17 MR. MILLER: Barry Miller from Solano County
18 Crime Lab.

19 CHAIR KIMSEY: So the site in Santa Ana, can
20 you identify the folks there for us, please?

21 MR. LYLE: Bruce Lyle.

22 MS. HARMON: Jennifer Harmon.

23 MR. JEFFRIES: Dan Jeffries, California
24 District Attorneys Association.

25 FEMALE VOICE: And then we have three

1 members of the public here also.

2 CHAIR KIMSEY: Okay.

3 MS. PRADER: Alicia Prader.

4 MR. HOOLIHAN: Bruce Hoolihan (phonetic),
5 Orange County Crime Lab.

6 MR. MELANDO: Fernando Melando (phonetic).

7 CHAIR KIMSEY: Okay. And in San Diego?

8 MS. SHEN: We have Jennifer Shen and Phyllis
9 Millet, San Diego County Medical Examiner,
10 Toxicology Lab.

11 CHAIR KIMSEY: Okay. Anyone else? Okay,
12 thank you very much.

13 And for those of you that have an agenda in
14 front of you, I have some opening remarks.

15 Just to mention, again, thank you all for
16 participating.

17 A few things have changed in the Department
18 since our last meeting.

19 We have a new director, Dr. Karen Smith,
20 formerly of Solano County health officer is the new
21 director of the Department.

22 We have two new chief deputies, Brandon
23 Nunez is the Chief Deputy for Operations, and
24 Claudia Crist is the Chief Deputy for Programs.

25 As we go through the meeting we'll be

1 talking a little bit about, obviously, the
2 regulation package from the Committee and its status
3 and where it is in the process. As a result of that
4 discussion we'll be talking a little bit about a
5 bill that was signed recently -- not that recently,
6 but a bill since we've met, AB2425.

7 But the main purpose of this meeting is to
8 review our regulation product and where it is in the
9 process. And then at the end we'll probably talk a
10 bit about our next meeting.

11 Any questions on the agenda at this point?

12 Okay. The first item on the agenda is
13 really to have OLS give us an update on the
14 Department's forensic alcohol analysis regulation
15 package, and there's three areas that we'll be
16 discussing at least.

17 An explanation of the California
18 Administrative Procedures Act rulemaking
19 requirements; a discussion with examples of some of
20 the themes of the public comments received; and
21 discussions of options for our next steps, for the
22 Committee's next steps.

23 So if there aren't any other questions, I'll
24 turn it over to Alexandra Stuppel of our Office of
25 Legal Services.

1 MS. STUPPLE: Hi, my name is Alexandra
2 Stupple, I'm an attorney with CDPH Office of Legal
3 Services. I work in the newly created Regulations
4 Unit of attorneys where we help draft and promulgate
5 regulations for the Department.

6 Today I want to provide you some information
7 about the California Administrative Procedure Act
8 and its regulation promulgation process, and some
9 possible next steps for this FARC regulation
10 package.

11 So I'm not sure how many of you are familiar
12 with the APA, but I have this APA timeline have
13 hopefully the Committee members at least have.

14 We'll get to that in a minute, but let me
15 start off with the fact that there's a one year
16 clock when you start the regulation process, and our
17 one year clock started on June 5th. The end of that
18 process is when the regulation package goes to the
19 Office of Administrative Law and they review the
20 package and they approve it or deny it. But there's
21 a lot that happens in between June 5th and the end
22 of that year.

23 So the first step was public notice, which
24 we went through. It was 45 days to receive comments
25 and we had a hearing.

1 So now we're at Stage 2, which is where this
2 timeline comes in. So Stage 2 requires that we
3 answer all of the public comments that we got during
4 the 45 days, and give a justification for why we are
5 or are not going to make changes to the regulation
6 text in response to each particular comment.

7 So if a commenter makes a comment about the
8 text, particularly a suggestion, that comment needs
9 to be addressed with a written answer as to why the
10 regulation was changed or not changed.

11 We received about, the lowest amount, I'm
12 guessing, is five hundred comments, so the Committee
13 members should have those comments.

14 So for us this is where the logistical
15 problem lies, because the APA, the Administrative
16 Procedure Act, was not created exactly for this kind
17 of situation. Usually an agency promulgates its own
18 regulations and it's the same subject matter experts
19 who answer the comments through the process.

20 But here we have a Committee and then we
21 have an agency, so this is a different situation and
22 there's a bit of a logical problem. And with the
23 timeframe, the comments would have to be answered by
24 November 22nd for us to make the one-year clock.
25 And if anyone were to change the regulation text in

1 a substantial way, which it's almost always
2 substantial unless it's grammatical changes, then it
3 would have to go out for another 45-day comment
4 period, and we would possibly receive more comments
5 on the text and would have to go through the same
6 process of answering each comment with a
7 justification of why we are or are not changing the
8 text.

9 Then after that happens, it goes to OAL
10 review, and they reject or accept the package.

11 So I just want to emphasize that this is a
12 very odd system, the one that we have right now, and
13 this was not what the APA was intended for, so it's
14 created a bit of a problem of who this is going to
15 get done.

16 Well, do you want to move on to the...

17 CHAIR KIMSEY: Well, thank you very much,
18 Alexandra. Maybe it's worth asking if there are any
19 questions from the Committee members on the APA
20 process itself, but thank you for that explanation.

21 Do any of the Forensic Alcohol Review
22 Committee members have a question on the APA at this
23 point?

24 MR. SLAUGHTER: This is Mark Slaughter, no
25 questions.

1 CHAIR KIMSEY: Down south?

2 MS. HARMON: No questions from Marin County.

3 CHAIR KIMSEY: San Diego?

4 MS. SHEN: No.

5 CHAIR KIMSEY: Okay. Then go ahead,
6 Alexandra.

7 MS. STUPPLE: Okay. So the comments that
8 were received, there's no way (inaudible). There
9 were a lot about oversight, probably about a
10 hundred, but rest really touched on every single
11 facet of the regulations.

12 In addition, I have identified some possible
13 obstacles with the regulation text to getting OAL
14 approval for this package to move forward just
15 exactly as it is right now. And in the handout on
16 that there's about twelve items.

17 I don't know if you want to go through them
18 of if you've read them or anyone has questions about
19 them.

20 MS. SHEN: This is Jennifer, I have a
21 question.

22 MS. STUPPLE: Sure.

23 MS. SHEN: You're talking about the sheet
24 labeled "Possible Obstacles to Obtaining Approval,"
25 that one?

1 MS. STUPPLE: Correct.

2 MS. SHEN: Okay. So are these twelve
3 obstacles on the product before the subcommittees
4 did any work on it or after?

5 MS. STUPPLE: This is after.

6 MS. SHEN: Okay. All right.

7 CHAIR KIMSEY: And just for everyone, a
8 little of explanation there.

9 At our last meeting we set up a subcommittee
10 of Jennifer Shen and myself to answer questions with
11 regard to the regulation package and provide
12 guidance for the completion of the package. And so
13 we had a number of meetings and did provide input.

14 MS. SHEN: This is Jennifer again. I think
15 we need to have some conversations about this before
16 we move to address this list.

17 CHAIR KIMSEY: Okay. Is there something in
18 particular that you wanted to talk about?

19 MS. SHEN: Well, because this list of
20 obstacles pertains to changes that the subcommittee
21 talked about making, I think that the Committee
22 needs to be apprised as to what all those changes
23 were for and decide whether those are reasonable
24 changes before we decide whether or not there are
25 obstacles to those changes.

1 CHAIR KIMSEY: If we go through that list
2 and talk about what the subcommittee proposed, do
3 you think that would get us where we want to be as
4 we go through the list, the subcommittee's role?

5 MS. SHEN: Maybe. We might be able to come
6 up with discussion points based upon that. It might
7 be a little tougher than addressing some of the --
8 really, I think one of the issues that I saw, and I
9 personally read every single page of every single
10 person's public comments, which took me about a
11 week, so I went through all of it and there are
12 definitely some substantive changes that I think we
13 should discuss as the Committee that really,
14 frankly, come into play because this process has
15 taken so long. Things that we really weren't
16 considering ten years ago or five years ago are now
17 very pertinent, and they are not reflected in our
18 product as we finished it up, what, only three years
19 ago we stopped writing it. So there are some things
20 that we need to really, I think, address
21 (inaudible).

22 And then as I read through them I tried to
23 address in my own notes every single solitary change
24 that seems reasonable. There are some clarity
25 issues and things like definitions in alphabetical

1 order, things like that. There are some pretty big
2 issues that we need to discuss, I think, as the
3 Committee.

4 CHAIR KIMSEY: Okay. Do you think that
5 those will come to light as we go through this list,
6 or how do we want to sort of attack those or bring
7 those up?

8 MS. SHEN: I would say if we're ready to
9 talk about things, maybe we just want to start with
10 some of the public comments. I mean, (inaudible) on
11 this list that the reporting of uncertainty
12 measurements have not been addressed as required by
13 statute.

14 Well, the uncertainty measurements is a
15 whole big thing that we need to talk about. I don't
16 know that we can address the big changes that we've
17 talked about first by using this list, I think it
18 might be a little confusing.

19 CHAIR KIMSEY: Okay. I was just looking at
20 our agenda and I think we want to get to those
21 points, obviously, Jennifer, but we were going think
22 about examples of some of the themes from the public
23 notice comments, and then we were going to talk
24 about some options for next steps.

25 I think Alexandra wanted to mention a little

1 bit about some of the examples, and maybe that was
2 the list of a dozen; was that what you were
3 perceiving, Alexandra?

4 MS. STUPPLE: Yeah. I mean, this list comes
5 from public comments and from my own reading of the
6 text. Really, besides oversight there's not much to
7 categorize because the comments really touched on
8 every part of the regulations.

9 MS. SHEN: This is Jennifer. My point was
10 with this list, not that we shouldn't talk about
11 some of these issues, but this list appears to be
12 related to the document after the subcommittee
13 worked on it.

14 So for instance, No. 3, nobody knows about
15 that. This is a change that Paul and I talked about
16 making, but it isn't really reflective of the public
17 comments of the product as it was publicly commented
18 on. Does that make sense?

19 I just think these are comments about
20 changes that we haven't yet discussed with the
21 Committee.

22 CHAIR KIMSEY: So as an example, should we
23 talk about No. 3 then and explain to the Committee
24 what...

25 MS. SHEN: If we're there, but we can just

1 wait until we get there in the agenda. But that is
2 a good example of one of the problems in the public
3 comment was that -- and I'd have to pull this
4 information out, but basically that laboratory was
5 being used as an entity when it really isn't an
6 entity and in the old regulations it was the
7 definition of a laboratory was an entity (inaudible)
8 new regulations it can't but it was still being used
9 that way.

10 So one of the changes we've made was to try
11 to address that particular issue. So in the
12 definitions one of the changes that we were talking
13 about was creating a definition of laboratory and
14 that laboratory means an entity capable of
15 (inaudible) responsibility of fulfilling the
16 requirements of the regulations. And that is
17 something that directly addresses about 80 public
18 comments.

19 CHAIR KIMSEY: Right. And I think what we
20 might want to do is hear about -- I mean, we
21 obviously know there's five hundred or so public
22 comments that need to be addressed by the Committee.

23 Maybe we ought to have Alexandra talk about some of
24 the options and then maybe get into some of the
25 specifics on that page, like the definition of a

1 laboratory.

2 MR. SLAUGHTER: This is Mark Slaughter in
3 Sacramento. Someone has paper very close to one of
4 the microphones, and every time they move the paper
5 or jostle it, it takes out everything anyone is
6 saying and we're losing whole sentences here. So if
7 someone's got paperwork next to a microphone, maybe
8 be a little careful and move it. Thank you.

9 CHAIR KIMSEY: That's fine. We have
10 microphones built into the table here in Richmond.
11 I'm not sure what everybody else's situation is
12 like, but thank you very much for the comment, Mark.

13

14 So Alexandra, do you want to talk about what
15 some of the options are at sort of a higher level
16 before we get into talking about the specific public
17 comments?

18 MS. STUPPLE: Yeah, sure.

19 So one option is that the Committee answers
20 each comment, justifying why a change was or was not
21 made in response to each comment, and the deadline
22 for that would be November 22nd.

23 Alternatively, and I don't particularly
24 recommend this, you could answer with a rote
25 response that CDPH is adopting the revisions because

1 Health and Safety Code 10703 requires it. But there
2 is a strong, strong possibility that OAL will reject
3 the package, so there may really be no point to
4 doing that.

5 The second option is that the Committee
6 withdraw the package, take another look at the
7 regulations and at the comments and other things
8 that Jennifer mentioned, and sort of revamp them and
9 go out again for public comment from the beginning,
10 starting fresh.

11 You would not have to respond to the
12 comments that we received this time, but there will
13 likely be more comments the next time also.

14 And also, CDPH legal staff can assist the
15 Committee in any way with drafting the regulations.

16 MS. KLINE: Did you mention that the agency
17 packet would have to go back to agency?

18 MS. STUPPLE: Yes, the packet will, if it's
19 withdrawn it will have to go back to agency for
20 their -- what is it, 90 day review before it goes
21 out to public comment.

22 CHAIR KIMSEY: Those are the two options
23 then?

24 MS. STUPPLE: Yes.

25 CHAIR KIMSEY: So trying to meet the

1 November 22nd deadline for five hundred comments or
2 withdrawing the package and adding to the package
3 for a second release; is that sort of a summary?

4 MS. STUPPLE: Yes.

5 CHAIR KIMSEY: And the timeframe when we
6 withdraw the package, the timeframe for having it go
7 out to public notice, is there a timeframe that that
8 has to happen by or is that sort of open ended?

9 MS. STUPPLE: No, there's no timeframe at
10 all. You can resubmit it any time.

11 CHAIR KIMSEY: And it's sort of the
12 Committee's decision to withdraw the package or not
13 at this point, then?

14 MS. STUPPLE: Yes, of course.

15 MS. SHEN: This is Jennifer in San Diego.
16 If we withdraw this package, we will have just
17 thrown away ten years of work. And I have to tell
18 you, after being part of six or seven years of that,
19 I have absolutely no expectation that starting all
20 over again and addressing these five hundred
21 comments and trying to rewrite the regulations with
22 the type of (inaudible) we got for the last decade
23 is going to be any different. I cannot fathom
24 starting all over again, I just cannot fathom that.
25 And I personally will not be part of that.

1 CHAIR KIMSEY: Yeah, this is Paul. I'm not
2 sure that we're starting all over again. I mean,
3 obviously we have the package that the Committee
4 produced. I think what it would be is a reworking
5 of that package, some of it based on the public
6 comments that we got that we feel are relevant as a
7 Committee.

8 Ah. Kenton Wong just joined us here in
9 Richmond. Welcome.

10 So correct me if I'm wrong, Alexandra, but
11 we're not really starting from scratch. We're
12 taking the package and reworking it to include areas
13 that the Committee wants to address.

14 MS. STUPPLE: Correct. You could take the
15 regulations you have now, rework them a little bit,
16 resubmit it in a month. I mean, it's definitely not
17 starting from scratch, it's just stopping the one
18 year clock so that you can --

19 MS. SHEN: We could also take the next month
20 to address those comments, and there definitely are
21 public comments worth addressing, so we as a
22 Committee could address some of those comments
23 (inaudible) and get that package done by November
24 22nd and move it forward.

25 I think you said Alex (inaudible) having

1 read all of them, if we were to take this off the
2 table and rework this in a manner that would address
3 the five hundred-plus comments, they are all
4 encompassing. I mean, they're all encompassing
5 every single line of every single page. I mean, it
6 was absolutely overwhelming.

7 And so (inaudible) the public comments
8 really is that it needs to be completely redone in
9 an entirely new format, entirely different concept
10 of how this would work (inaudible) with accrediting
11 body, international accrediting body. So that's no
12 small task.

13 The smaller task would be to look at this
14 and say here are ten or fifteen really reasonable
15 things that we should address and talk about and
16 fix, and here's why we're not going to do the other
17 476 things. Which we've spent ten years discussing.

18 MS. STUPPLE: This is Alex. I'm a little
19 confused about the four hundred comments that aren't
20 worth discussing. Do you mean that you -- the
21 problem is you have to address each comment and
22 justify why or why we're not going to make a change
23 to the regulation text. So no matter how good or
24 bad the comment is, you do have to write a response
25 to it. I just want that to be clear.

1 MS. SHEN: I understand that. And writing a
2 response to something that's been discussed ad
3 nauseum and to say this is why we're doing it is
4 quite a bit different than -- I guess I'm just
5 worried about the take it off the table and rework
6 it.

7 We did that, I believe, for those of us that
8 have been around for awhile, I believe we've done
9 that two, possibly three times since we started this
10 thing. I'm very worried about that, because it was
11 such a battle to make a change to every single word,
12 and I just don't anticipate that it's going to be
13 any better, and we'll battle for another ten years.

14 CHAIR KIMSEY: This is Paul. Option number
15 one was that the Committee address -- and obviously
16 we have set up subcommittees in the past -- that the
17 Committee, maybe through a subcommittee, address a
18 number of the issues that the subcommittee -- and
19 maybe we need to have another meeting of the full
20 Committee -- but would be to address the deadline of
21 November 22nd. And some of those responses might be
22 described as being sort of rote responses to a
23 number of the questions. And the concern there was
24 how OAL would view that type of response where in
25 this particular APA process there's an expectation

1 of maybe a level of detail that we might not meet on
2 a number of those public comments.

3 But anyhow, option one was to meet the
4 November 22nd deadline. And option two was really
5 to withdraw the package to work on it more
6 extensively. Am I sort of restating those options
7 correctly, Alexandra?

8 MS. STUPPLE: Yes, you are. And don't
9 forget that when you enter a comment you don't have
10 to make changes to the regulation text, you just
11 have to justify why you're not making a change. So
12 it's not like these are demands, the comments are
13 demands of you. The only demand is that you justify
14 each decision to change or not change the regulation
15 text.

16 And that is the problem with APA. It's very
17 cumbersome and it's not quite set up for this kind
18 of a situation.

19 MS. SHEN: Alex, is there any chance we can
20 get a pass on this?

21 CHAIR KIMSEY: This is Paul. The founding
22 legislation, so to speak, pretty much directed us,
23 or the legislation directed the Committee and the
24 Department to go through the APA process, so that's
25 a pretty hard -- I mean, since we're following

1 legislation as an administrative agency of the
2 Governor, that's pretty much the direction that the
3 Department and the Committee has to go due to the
4 legislation.

5 There are exceptions that are made to the
6 APA but that goes through its own legislative
7 process, which is not something that's within the
8 purview of the Department. So pretty much because
9 of our legislation we are bound by the APA at this
10 point.

11 MR. SLAUGHTER: This is Mark Slaughter in
12 Sacramento, I have a question. I'm not yelling at
13 you, just speaking loudly.

14 Alex, is our commitment to either option one
15 or option two irreversible? In other words, if we
16 pick option one, are we stuck with it, or if we pick
17 option one and two or three weeks down the line we
18 find that the process is too overwhelming, would we
19 then be able to go with option two to reset the
20 clock? Not necessarily redraft this whole document
21 but just to reset the clock so that we're not stuck
22 with the one year completion date?

23 MS. STUPPLE: Yes, you can withdraw at any
24 time.

25 MR. SLAUGHTER: So we could pick option one,

1 and then if it gets too overwhelming, we could say
2 let's go fall back, default to option two to reset
3 the clock.

4 MS. STUPPLE: Sure.

5 MR. SLAUGHTER: Okay.

6 MS. HARMON: I have a question. This is
7 Jennifer Harmon from Orange County.

8 You were saying a subcommittee. Could the
9 Committee members break some of these comments up
10 and each Committee member address some of the
11 comments, or do we have to do that and then come
12 back as a Committee to substantiate whether that's
13 the answer we want to give or not?

14 CHAIR KIMSEY: That's a good question.

15 Alexandra, can you?

16 MS. STUPPLE: Yeah, you could designate, I
17 mean, you could have a bunch of subcommittees and
18 each one address some of them, but you would have to
19 come back together to talk about them.

20 CHAIR KIMSEY: And if I remember correctly,
21 a subcommittee is two members of the Committee?

22 MS. STUPPLE: Yes, or fewer.

23 CHAIR KIMSEY: So every member could be
24 their own subcommittee.

25 MS. STUPPLE: Yes.

1 MR. JEFFRIES: This is Dan Jeffries in
2 Orange County. Do we have a possibility of doing an
3 option 1B, that is that we address some of the
4 substantial comments that we would like to address,
5 but then answer the other ones with a collection of
6 rote responses.

7 For instance, one rote response could be
8 this is something that was not considered by the
9 Committee because at the time it was not appropriate
10 to be considered and will be considered at a later
11 date.

12 There might be a handful of rote responses
13 that would apply to a lot of them. Could we do
14 that, and then give a substantial answer to the ones
15 we want to give a substantial answer to, but then
16 the other ones just sort of a rote response?

17 MS. STUPPLE: Honestly, I don't think that
18 that would be a very good idea. I think that the
19 point of public comment is to bring something to
20 your attention, and once you've read it you need to
21 give a response of not just we didn't think about it
22 but why now that it's been brought to your attention
23 you're not going to go with it.

24 MS. SHEN: This is Jennifer. One of the
25 problems we have is that science is continually

1 evolving, and the problem we run into here is that
2 we stopped writing this, I think the last time we
3 were actively writing was maybe 2010 or 11, and
4 things have changed.

5 So because the process takes so long it's
6 certainly possible that if we address everything
7 now, that by the time it actually got through public
8 comment and back and forth and back and forth the
9 next time around there could be other things that
10 needed to be addressed.

11 I mean, we could be setting ourselves up for
12 never being able to finish this.

13 [discussion with reporter]

14 CHAIR KIMSEY: Where were we? Jennifer Shen,
15 could you sort of repeat?

16 MS. SHEN: My point only is that (inaudible)
17 that things keep changing, and I think it's
18 reasonable to cut it off at some point. That this
19 Committee has considered all these things up to this
20 point in time, and the next Committee has to start
21 looking at improving this version.

22 There has to be a cutoff point or we could
23 just go on and on and on, because things do change.

24 CHAIR KIMSEY: That's a good point, that
25 science does change. And that's probably, again,

1 one of the difficulties with the APA process, it
2 doesn't really match well with that type of movement
3 of scientific knowledge. We're sort of under the
4 rules of the APA at this point and I believe we need
5 to adjust as well as we can.

6 I mean, obviously, a good example has been
7 the measurement of uncertainty reporting that has
8 come on since we drafted a lot of these regulations.

9
10 Thoughts from some of the other Committee
11 members on option one or two, or maybe there's an
12 option three if somebody can think of one?

13 MS. SHEN: Jennifer Shen again. I like
14 Mark's idea of trying option one and defaulting to
15 option two if necessary.

16 CHAIR KIMSEY: Okay. Other Committee
17 members, thoughts?

18 MR. LYLE: Bruce Lyle in Orange County. I
19 guess I agree that we should probably try to address
20 all the comments. I read through as many as I could
21 get through in a couple of days.

22 I like the idea of separating it out into
23 the eight Committee members doing a certain section
24 or a certain amount of the answers to the questions.

25 I would just need some direction as to how, well,

1 flippant I can get, and then -- some of the things I
2 didn't really see as this needs to be changed, or it
3 just seemed like they weren't really asking for
4 anything, they were just comments and I didn't
5 really know where to go with it. I don't know if
6 it's just directed at the titles that (inaudible)
7 regulations or there was some talk about in the
8 ISOR, changes to that, we need to address comments
9 about changes to the ISOR; is that a necessity?

10 MS. STUPPLE: No, you don't unless the ISOR
11 was talking about the regulation text. So there are
12 a couple instances that there were comments about
13 the ISOR that you would have to address and some
14 that you wouldn't, and I could help identify those
15 for you.

16 MR. LYLE: Excellent.

17 MS. SHEN: Jennifer Shen again. I think we
18 just even today, you know, I read through several
19 (inaudible) comments of varying people that were
20 very direct, to the point, meaningful, not too many
21 of them, and I think that we could probably get
22 through a list of those today pretty easily, and I
23 think what we'll be left with is the large quantity
24 of I don't really know what to do with them comments
25 that we could just sort of divide up.

1 And I do think, Alex, that we could come up
2 with a few responses to some of them, because we
3 spent many, many, many, many meetings talking about
4 oversight of the Department, and we compromised with
5 our member representatives on a way that we could,
6 in fact, give them the information they needed in
7 order to ensure that we were doing what we say we're
8 doing.

9 And I remember those meetings where we
10 talked to Department representatives about, hey,
11 let's do this, and they agreed to that. So there
12 has to be some ability for us to say this was
13 discussed numerous times and the Committee and
14 Department representatives agreed that this would be
15 adequate to provide oversight. I mean, there has to
16 be something like that that we could use.

17 MS. STUPPLE: I would like to say that there
18 is; however, like I said, the APA is not set up for
19 committee kind of rulemaking event, so you still
20 need to give an answer, even if you've talked about
21 it.

22 I mean, you could go back and look at the
23 transcripts maybe, that would be my best advice, but
24 it's going to be a hard task.

25 MS. SHEN: I'm talking about the oversight

1 because it came up again and again and again, but
2 the answer is this was discussed in Committee and
3 applying XYZ in this timeframe to the Department in
4 these area accommodates the oversight intended by
5 the Legislature.

6 I mean, we are answering the question, it is
7 (inaudible) about what we're doing, and you could
8 probably use that for a good hundred, two hundred of
9 the responses. That's what I'm talking about.

10 MS. STUPPLE: Yes, the oversight definitely.

11 And all the ones that are about the same subject
12 you can answer them all in one bunch, and oversight
13 was definitely the biggest category, but they're
14 also about every single word practically.

15 MS. SHEN: Well, that's why I think we could
16 categorize them into areas and come up with an
17 adequate response for each area and then use that
18 response again and again and again.

19 CHAIR KIMSEY: Thank you very much, Jennifer
20 Shen. We've heard pretty much about the option one
21 and two, we've heard, I believe, from Jennifer Shen
22 and Bruce Lyle. Any of the other Committee members
23 have an opinion on option one versus option two?

24 MR. SLAUGHTER: This is Mark Slaughter. I
25 think I submitted mine as well.

1 CHAIR KIMSEY: Oh, okay.

2 MR. SLAUGHTER: Start with option one.

3 CHAIR KIMSEY: That's right, thank you.

4 MR. SLAUGHTER: (inaudible) or grows, then
5 fall back to option two.

6 CHAIR KIMSEY: Okay. Thank you.

7 MR. JEFFRIES: This is Dan Jeffries of
8 Orange County. I think I would just echo that I'm
9 in agreement with Jennifer, that I think if we
10 created a series of rote responses that we could
11 knock out a lot of the questions with the rote
12 responses and then devote more attention to the
13 other questions that might call for a more thorough
14 answer.

15 CHAIR KIMSEY: And Kenton?

16 MR. WONG: I concur.

17 CHAIR KIMSEY: Kenton is nodding and
18 concurring.

19 MR. WONG: I'm just worried that with the
20 rote responses that it will just go out there and
21 will immediately get squashed down.

22 MR. LYLE: Bruce Lyle in Orange County. I
23 might disagree with you, Kenton. The APA, whoever
24 is reading this has never done it with five hundred
25 public comments and the responses, they're probably

1 going to glaze over it like I did, so they're
2 probably just going to like the rote responses, is
3 what I'm saying.

4 CHAIR KIMSEY: Bruce, this is Paul Kimsey.
5 I wish I could agree with you but that might be
6 wishful thinking. It would be nice, but I think
7 that may be wishful thinking, not that I don't
8 agree.

9 MS. HARMON: This is Jennifer Harmon in
10 Orange County. I think we need to try option one.

11 Also, if you read some of the comments, they
12 actually elaborate how the Committee exhaustively
13 discussed what should be done, so maybe we will be
14 able to pull off some of those rote responses,
15 because I think the answers are actually in the
16 comments about how many times the Committee
17 discussed certain options.

18 So I think we just need to give it a shot to
19 try to get through these so we can get something.
20 These laboratories have been waiting way too long
21 for these changes, they want something done.

22 CHAIR KIMSEY: Thank you, Jennifer Harmon.
23 So you're also voting for option one, then.

24 MS. HARMON: Yes.

25 CHAIR KIMSEY: So that being said, is there

1 anyone that thinks option two is -- I mean,
2 obviously option one sort of may lead into option
3 two at some point, but it looks like the Committee's
4 perspective is that option one is the direction to
5 go.

6 I don't know, Sergeant Jones, I know this is
7 your first meeting, but do you have an opinion one
8 way or the other?

9 SGT. JONES: I'm going to have to rely on
10 the expertise of the Committee at this point, so if
11 you guys are saying option one it sounds like start
12 with option one and then fall back to option two.

13 CHAIR KIMSEY: At this point we might take
14 any public comment, not that we've voted or anything
15 yet, but just have some public comment on the option
16 one/option two perspective.

17 MR. LARSON: I have a comment. Clay Larson.

18 A process question. I guess I was unaware
19 that the subcommittee had met twice, and I would
20 have anticipated that for the edification of the
21 public and for the other Committee members that this
22 meeting would have began with a report from the
23 subcommittee on what was -- you know, what their
24 efforts produced.

25 I would think that they started on a path

1 that is similar to the path -- and they started in
2 early September -- that is similar to the path that
3 we're now proposing to continue under option one
4 with a shorter timeframe.

5 It's not on the agenda so I'm not even sure
6 that it's appropriate for some member of the
7 subcommittee to describe and discuss what the work
8 entailed, what the conclusions or partial
9 conclusions they reached, but without that the rest
10 of the Committee has no idea what was done, so I
11 think we've kind of lost an opportunity here.

12 CHAIR KIMSEY: Other comments?

13 MS. HARMON: Jennifer Harmon from Orange
14 County. I do want to make one comment.

15 It would have helped if the Committee
16 members had had access to these comments a little
17 sooner than now. Maybe we could have at least had
18 an opportunity to read through these, because we
19 really haven't had them for very long.

20 MS. SHEN: This is Jennifer Shen. The
21 actual comments as they were submitted were
22 available (inaudible) whoever put this spreadsheet
23 together (inaudible) go through all of them and come
24 up with a spreadsheet. They've been working on it
25 for quite awhile and I think they've just finished

1 it. Today is the first time I have seen the
2 spreadsheet.

3 CHAIR KIMSEY: No, and I think to the
4 previous comment about the work of the subcommittee,
5 some of that can come to light, the work of the
6 subcommittee, as we discuss each of these comments,
7 but I think that pretty much the full Committee gave
8 the subcommittee pretty clear direction to be
9 responding to the Department and to come back to the
10 full Committee if there were areas that we could not
11 necessarily agree on, that meaning the subcommittee.

12 So I think we can get into that level of detail
13 when we need to for each of the comments.

14 Any other public comments?

15 MR. SPATOLA: I have some comments. This is
16 Josh Spatola from Department of Justice. This is
17 toward the option one/option two situation.

18 It seems like I would appreciate option one
19 to go forward. It seems as if at least having a
20 rote response to some of the repetitive or unusual
21 or silly comments was better than option two, which
22 is sort of a backdoor way to not address any of the
23 comments. So at a minimum you're at least
24 addressing the ones you find substantive, and you're
25 actually addressing the comments that were made.

1 And then for the option 1B, I'm not sure, it
2 made it sound like there was the possibility that
3 you could leave uncertainty in three decimal places
4 off the plate because it wasn't necessarily an issue
5 back the first time it was written, and so I just
6 want to make sure that some of the things that
7 should be addressed can't get to option 1B.

8 MS. SHEN: Jennifer Shen. No, some of those
9 comments that were public comments were very, very
10 legitimate, and Paul and I have discussed them, and
11 those are things that we can talk about today, some
12 ideas (inaudible) because I agree with you,
13 particularly with AB2425 we must make some changes
14 to Title 17 to accommodate (inaudible) legislation
15 and to bring ourselves to where we are now
16 scientifically.

17 So I think the 1B option would be for -- I
18 don't know what but not those particular things, but
19 there are four or five really important issues that
20 I think that we need to address and (inaudible) by
21 November 22nd.

22 CHAIR KIMSEY: Other comments from the
23 public?

24 MS. SPELL: Natalia Spell. With all due
25 respect, I disagree with Jennifer Shen when she says

1 that science moving fast and we cannot address every
2 changes.

3 I want to notice that actually the number of
4 issues related directly to science in this
5 particular package was pretty much negligible to all
6 other issues, so that's a moot point.

7 MR. LARSON: Comment from the public. Clay
8 Larson. Maybe we can get an opinion from Legal.

9 I would think it would be very ambitious to
10 try to address the comments, and I'm not sure that's
11 what you're suggesting, and address the question of
12 measurement uncertainty basically in a month.

13 January 1st a new law went into effect that
14 changed the Health and Safety Code to direct the
15 Committee to consider uncertainty. Since this
16 package was submitted before January 1st, 2015, and
17 the Committee actually discussed this and got advice
18 which said basically that they would certainly need
19 to address that in future revisions but wouldn't
20 have to address it with this package.

21 Advice from legal. Do you believe that it
22 has to -- I know you've made it number one here, but
23 that it has to be addressed with this package?

24 MS. STUPPLE: Are you speaking as a member
25 of the public or as a representative of the

1 Department?

2 MR. LARSON: As I said, speaking as a member
3 of the public, because I've already addressed that.

4 MS. STUPPLE: I'm not authorized to address
5 questions from the public, I'm sorry.

6 CHAIR KIMSEY: I think there's an
7 opportunity since the Committee had discussed the
8 uncertainty issue in previous, and there's
9 legislation that is directing, I think that Jennifer
10 Shen and I have had a couple conversations that
11 didn't see why we could not be addressing it in this
12 package, so that's something we can talk about as a
13 full Committee when we get to that point.

14 Other questions from the public and members
15 on the options vote?

16 So we have on the table the idea of going
17 with option one or option two. I've heard pretty
18 much from, I believe everyone on the Committee that
19 option one or a variation thereof is the direction
20 the Committee wants to go; that option two,
21 withdrawing the package, is not something the
22 Committee members are in favor of.

23 And I believe we should probably have a
24 voice vote, so those in favor of option one, and
25 I'll just sort of go through peoples' names, those

1 in favor of option one just give me a yes or no, and
2 I'll start with myself.

3 I'm in favor of option one for a yes.

4 Dan Jeffries?

5 MR. JEFFRIES: Yes.

6 CHAIR KIMSEY: Mark Slaughter?

7 MR. SLAUGHTER: Yes to option one.

8 CHAIR KIMSEY: Bruce Lyle?

9 MR. LYLE: Yes.

10 CHAIR KIMSEY: Kenton Wong?

11 MR. WONG: Yes.

12 CHAIR KIMSEY: Jennifer Shen?

13 MS. SHEN: Yes.

14 CHAIR KIMSEY: Jennifer Harmon?

15 MS. HARMON: Yes.

16 CHAIR KIMSEY: Sergeant Jones?

17 SGT. JONES: Yes.

18 CHAIR KIMSEY: Anyone in favor of option
19 two? So it's pretty much unanimous, so we can
20 continue to discuss how to implement option one.

21 There's been several areas that we've talked
22 about. There was a couple of individuals that were
23 willing to put in some time and effort before
24 November 22nd to address some of these questions, or
25 comments from the public. I think it's worth

1 discussing that.

2 I mean, obviously we've had a subcommittee
3 in the past, and I'm certainly willing to
4 participate going forward. With five hundred
5 questions does anyone have a good idea of how to
6 start or how we would address this as a full
7 Committee?

8 MS. HARMON: This is Jennifer Harmon in
9 Orange County. Can we get some commitment from the
10 Committee members as far as to what extent they're
11 willing to do first just so we have an idea of how
12 many people have the time to address all of this in
13 a month first possibly, Paul?

14 CHAIR KIMSEY: Sure. No, I think that's a
15 place to start. I mean, we can start.

16 My schedule is like for a number of us that
17 work for state agencies, my schedule is a function
18 of what my bosses tell me my schedule is, but I
19 think at this point I can commit at least an hour,
20 maybe two hours a week to this type of a review.

21 I don't know, Jennifer Harmon, how about
22 yourself?

23 MS. HARMON: I'm willing to take part of
24 this on, so if each of the Committee members can, or
25 those that can, can divide it up. If possible, I'd

1 suggest we divide it up and everybody take a piece
2 of what needs to be addressed. And Jennifer Shen
3 has read through all of this but maybe she has a
4 good idea of who should take what or how many each
5 should take, I don't know.

6 MS. SHEN: This is Jennifer Shen. I think
7 that's a great idea. I'm definitely willing to see
8 this through and give time that's necessary to put
9 the written product together.

10 I will tell you my thought is that there
11 are, again, four or five issues that are big that we
12 should discuss today if we can, and then divide up
13 the rest, because the same four or five issues came
14 up again and again and again.

15 Several of the things that need to be
16 changed are pretty simple, like alphabetizing the
17 definitions, adding a few clarifying definitions,
18 making a few things clearer than other things, but
19 there are definitely some things that we should talk
20 about as the Committee that we have a plan for so
21 those responses can be written. I think it would be
22 too hard for a Committee member to do that alone.

23 Everything else we could divide up, and I
24 think with a little bit of thought we could probably
25 come up with categories of responses. I haven't

1 looked at the spreadsheet yet so I don't know
2 exactly what is on there. It looks like cut-and-
3 paste out of all the responses that I've already
4 read.

5 MR. JEFFRIES: This is Dan Jeffries in
6 Orange County. I think it would also be helpful if
7 we try and categorize them. My (inaudible)
8 technology is very minimal certainly compared to all
9 the experts we have here, so I would be happy to
10 take the ones that do not require a scientific
11 response, but many of them require scientific
12 knowledge to properly respond.

13 MR. WONG: Jennifer, this is Kenton in
14 Richmond. Jennifer Shen, of those four or five
15 categories of the major substantive things, are they
16 smattered all over the document or are they kind of
17 centralized in certain places?

18 MS. SHEN: Well, this is what I found when I
19 read through it. I found that the comments that we
20 were getting from practitioners were very
21 reasonable, very on point, and very necessary for
22 the draft. I was able to get through all the public
23 comments from those people fairly quickly.

24 It was the gigantic tomes of information
25 spattered and smattered with nasty little comments

1 that took a lot longer to get through and they are
2 not really something that's easy to respond to.

3 But really the practitioners had a group of
4 issues that they pretty much all brought up again
5 and again. So I don't know how they're put into
6 this spreadsheet because I haven't seen the
7 spreadsheet before today, but I think that that will
8 take a big chunk of them away, the ones that really
9 need meaningful dialog in response.

10 CHAIR KIMSEY: This is Paul. Kenton, how
11 are you set up for time commitment at this point?

12 MR. WONG: I'm always busy and I'm in
13 private practice, so a little bit different than the
14 rest of you. I have billable hours to deal with and
15 things that just --

16 CHAIR KIMSEY: No, that's fine.

17 MR. WONG: But having said that, I'm willing
18 to roll up my sleeves and jump in and do everything
19 that I can to see this through.

20 CHAIR KIMSEY: Well, part of this will be
21 that the Committee itself is probably going to be
22 meeting a little more frequently. We can talk about
23 what that means, but just having you be able to
24 participate in some of the bigger discussions would
25 certainly be valuable.

1 Bruce, what's your timeframe commitment
2 like?

3 MR. LYLE: Yeah, I can set aside some time.
4 Like you, I'm sort of at the whim of everything
5 else, but I can certainly make some time to tackle a
6 chunk of these.

7 CHAIR KIMSEY: Okay. And Mark?

8 MR. SLAUGHTER: I'm at the whim of the
9 court, so I'm in court every day all day long, but I
10 can parse out about two hours a week.

11 CHAIR KIMSEY: Okay. And Dan, you talked
12 about the categories. Does that mean you're sort of
13 in the pool here with the rest of us?

14 MR. JEFFRIES: Yes, certainly happy to jump
15 in at a few hours a week at least. I just would ask
16 that if we could divide them up in such a way that
17 things that I might be able to give legitimate
18 responses to be in my area.

19 There's a number of questions that talk
20 about statutes and regulations, and I might be able
21 to take those on much better than science questions.

22 MR. SLAUGHTER: This is Mark Slaughter. I
23 agree with Dan. I'm kind of in that low impact tech
24 range.

25 CHAIR KIMSEY: I appreciate the Committee's

1 commitment greatly. I like Dan's idea of
2 categories. Obviously, there's a workload to go
3 through all of the 171 pages even to put them into
4 categories, so it might be helpful. Does anyone
5 have off the top of their head some ideas of what
6 categories would make sense? We've already talked
7 about some science versus non-science, but that's a
8 little too general maybe. Would anybody have any
9 other thoughts on the categories we might split
10 these up into?

11 MS. SHEN: I think Alex can back me up on
12 this. One of the big categories was oversight.
13 There were dozens and dozens and dozens, because the
14 same things kept coming up again and again and
15 again. So I think oversight, the public commenters
16 were unhappy that the Department wasn't really given
17 what they considered to be any regulatory authority,
18 just they were getting to see what we're doing and
19 they didn't have any real teeth, which is something
20 we of course knew and has been in place ever since
21 the licensing went away, so that is a category right
22 there that I think would be great if our lawyers
23 could handle.

24 MR. WONG: This is Kenton in Richmond. That
25 has just been a conundrum since day one. I mean,

1 that's where this whole thing started from with 1623
2 or whatever back in the day, and we're just trying
3 to wrestle with how the Department has oversight but
4 really legally doesn't, so maybe Dan and Mark can
5 provide us some guidance in that, because that has
6 just been a thorn in our side from day one.

7 MR. JEFFRIES: This is Dan Jeffries in
8 Orange County. I think we've had a number of
9 discussions along the way that these are self-
10 enforcing regulations and I think we could draft
11 something along those lines as sort of a standard
12 boilerplate response saying that we understand that
13 the Department no longer has the authority to do it
14 but by including it the way we've done, we
15 understand that the question will come up is the lab
16 complying with all the recommendations, and as that
17 it will sort of a self-enforcing mechanism.

18 MS. SHEN: This is Jennifer. I don't know
19 if you were at that particular meeting and I for the
20 life of me can't remember which one it was, where we
21 talked about the fact that we will provide all the
22 information to prove we are doing what we say.

23 MR. JEFFRIES: I think you're right,
24 Jennifer, I think that is a big category that we can
25 include a fairly generic response explaining that we

1 did consider that, we did consider there's no
2 specific case in there, but we still think there is
3 a mechanism for its enforcement.

4 MS. SHEN: Right.

5 CHAIR KIMSEY: So I think we all, it sounds
6 like we agree that oversight is a certain category,
7 so we have three at the moment; non-science,
8 science, and oversight.

9 I don't know, Alexandra or Jennifer, in my
10 looking through them all, I'm blanking on any other
11 grouping, but were there other areas that might be
12 grouped or categories?

13 MS. SHEN: This is Jennifer Shen. That was
14 just a big one, and I think there's, again, five or
15 six legitimate scientific issues that we would have
16 to discuss, and then there's a whole host of
17 (inaudible) I go back to the put the definitions in
18 alphabetical order sort of thing, there are several
19 of those clarity issues throughout that I assume are
20 all (inaudible) in the spreadsheet. That's a
21 category unto itself.

22 And then the last thing I remember quite a
23 bit of is just the concept of how it is we have it
24 set up. I think there was a lot of problems with
25 forensic alcohol (inaudible) versus analytic versus

1 non and that kind of thing, but the structure a
2 little bit of how that we decided on was another
3 reoccurring theme, just the other kind of structure
4 component, but not really scientific, not really
5 law, it just sort of a structural component.

6 CHAIR KIMSEY: Okay.

7 MR. SLAUGHTER: This is Mark Slaughter. I
8 think I also saw a theme of duplicity or conflicting
9 definitions where the definitions were outlined in
10 one area and then the same term was used in another
11 area but it didn't seem to comply with the earlier
12 definition, so just some duplicity that might need
13 to be, I guess it comes under clarity. There was a
14 bit of that as well.

15 MS. SHEN: There was quite a bit of that in
16 there.

17 CHAIR KIMSEY: Okay. Other ideas?

18 MR. JEFFRIES: Dan Jeffries in Orange
19 County. I think the one issue that we haven't
20 really talked about is the sort of big issue that's
21 talking about the uncertainty and what we're going
22 to do with that. It sounds like we want to have a
23 discussion later in this meeting about how we're
24 going to address that, but those do also come up in
25 these comments.

1 MR. SLAUGHTER: Yes.

2 CHAIR KIMSEY: Okay. So as your chair it's
3 one of my responsibilities to keep track of time.
4 We're scheduled until 4:00 o'clock. We've been
5 meeting for a little over an hour, so why don't we
6 take about a ten minute break, a bio break. I think
7 we can just keep all the lines open, don't turn
8 anything off. It's ten after two, let's start at
9 2:20 please. So we're going to take a break.

10 (Off the record 2:10 p.m. to 2:23 p.m.)

11 CHAIR KIMSEY: Let's go ahead and get
12 started again. And we left off we were talking
13 about categories of comments and the commitment of
14 the Committee to address them by November, I believe
15 the 23rd is a Monday, but obviously we need to
16 probably back up to the previous Thursday or Friday.

17 I would anticipate that as a result of our
18 commitment that we will probably have at least one
19 meeting between now and then. Keep in mind that I
20 believe we need to give ten days notice for a
21 meeting, so you might be thinking and pulling out
22 your calendars because at some point we probably
23 want to try and get very close to getting agreement
24 on a date before the end of this meeting.

25 That being said, other ideas about

1 categories? We've got non-science, science,
2 clarity, duplicity, oversight, and structural
3 issues, and then the uncertainty.

4 So I think we ended up talking a bit about
5 uncertainty and AB2425, which if I remember
6 correctly, requires the reporting of uncertainty.
7 Is there someone on the Committee that sort of wants
8 to lead the discussion on how we go about doing that
9 in this reg package?

10 MS. HARMON: AB2425 didn't require that we
11 report uncertainty, it required that the Committee
12 consider it first.

13 CHAIR KIMSEY: Okay.

14 MS. HARMON: Let's be clear about that, that
15 it is not required. It's required that the
16 Committee take it up.

17 CHAIR KIMSEY: Thank you for the
18 clarification.

19 MS. HARMON: This is Jennifer Harmon in
20 Orange County. This package was submitted in 2013.

21 I don't know how or why we are picking this up now,
22 you know, almost two and a half years later as an
23 issue. Public comment took two years to happen, so
24 do we really need to address this now or is it
25 something that we can do after this package has been

1 submitted?

2 CHAIR KIMSEY: It's our understanding we had
3 the same questions. I'm speaking for the
4 Department. It's my understanding that we do need
5 to address it in this package.

6 MS. HARMON: And why is that?

7 MS. STUPPLE: You want me to answer?

8 CHAIR KIMSEY: Sure, Alexandra.

9 MS. STUPPLE: So this package went out to
10 public comment in June and it's not going to get to
11 OAL until, we'll say June 2016. The statute is
12 already in place, and so therefore you have to
13 answer it. I think that was the best explanation.

14 MS. HARMON: Again, the legislation does not
15 require us to do anything more than discuss it as
16 the Committee.

17 MS. STUPPLE: I know, you just need to
18 discuss it.

19 MS. SHEN: This is Jennifer Shen. We did
20 discuss it. We had a lengthy conversation about
21 uncertainty measurements before we put this in
22 place, and the uncertainty conversation as I recall
23 was that we are not going to legislate it at this
24 time. That that was something that labs need to get
25 more comfortable with in the future and everybody is

1 kind of figuring their own way. I mean, we're not
2 ready to have the Department legislate how someone
3 did uncertainty measurements; we had that
4 conversation.

5 MS. HARMON: So again back to Legal. If we
6 have already had this conversation, it is on the
7 record that we had that conversation. We discussed
8 this actually at the last meeting, Committee
9 meeting, what more is obligated of us to discuss --
10 to add things to a package that was submitted in
11 2013 from legislation that went into effect in 2015?

12 MS. STUPPLE: If you've already discussed
13 it, then nothing, but I haven't seen anything so I
14 was not aware that you had discussed it.

15 MS. SHEN: This is Jennifer Shen. That
16 should be in our transcripts, we absolutely had that
17 conversation.

18 CHAIR KIMSEY: This is Paul, and we'll
19 certainly look at that transcript. Is there anyone
20 else on the Committee that has a perspective on
21 AB2425? I mean, it seems like we have discussed this
22 previously, but is there any other discussion about
23 uncertainty?

24 MR. SLAUGHTER: This is Mark Slaughter. I
25 just wanted to quickly say I do recall the

1 discussion and we did have a lengthy discussion
2 about the uncertainty, and our agreement was that it
3 would not be a part of this package.

4 MS. HARMON: This is Jennifer Harmon again
5 in Orange County. As far as AB2425, we had a
6 conversation about incorporating those issues into
7 the package as well as in the last Committee meeting
8 that we held, and it was discussed that we did not
9 want to delay the process any further by
10 incorporating those changes.

11 Now, that being said, there was a letter
12 issued by the Department after that Committee
13 meeting that may change some of the Committee
14 members' feelings about what to do about that.

15 Again, AB2425 had more than one issue than
16 uncertainty of measurement addressed in it, so maybe
17 Jennifer wants to pick this up to discuss something
18 more about AB2425, but again, we did discuss that in
19 the last Committee meeting about not rehashing that
20 until after this package is submitted and approved.

21 MS. SHEN: You're right, Jennifer does want
22 to pick that up. What I would like to do, Paul, I
23 think, (inaudible) separate from these big issues,
24 and then we can assign, you know, maybe Jennifer
25 Harmon would be a great person to assign putting

1 together an answer for some of these issues, but I
2 think some of these issues we could just address
3 that people who are practitioners have issues with a
4 few things.

5 CHAIR KIMSEY: You just broke up, Jennifer
6 Shen.

7 MS. SHEN: Sorry.

8 CHAIR KIMSEY: That's okay.

9 MS. SHEN: I'm not wiggling paper, I
10 promise.

11 So I think what we should do is talk about a
12 couple of those issues. One big issue for all our
13 practitioners who took the time to do public
14 comments is (inaudible) versus three decimal place
15 issue. It came up in AB2425, which basically gave
16 labs the option of doing one or the other.

17 And Jennifer Harmon is correct. The
18 Department's interpretation of that has lent itself
19 to causing us difficulty. So (inaudible) we decided
20 to let it just sit the way it is. I would say now I
21 think what we need to do is change Title 17 to
22 incorporate the ability to report out to three
23 decimal places. So I have some ideas on how to do
24 that if that is something the Committee wants to do.
25 Right now what we've done is set ourselves up with

1 competing legislation and that is not a good thing.

2 CHAIR KIMSEY: Jennifer Harmon, how do you
3 feel about it?

4 MS. HARMON: I agree with Jennifer that the
5 practitioners are pretty upset at the Department's
6 position on this. They waited nearly seven months
7 to come out with a statement that AB2425 only
8 applies to blood alcohol test results and not breath
9 alcohol test results. We have practitioners who
10 can't get their programs approved by the Department
11 because of how the Department's legal is
12 interpreting what the bill actually says.

13 We've had the authors of the bill actually
14 make a statement that this is not how they
15 interpreted or what their intention was with the
16 bill, it was not the spirit of the legislation that
17 was passed. And we do need to address it because we
18 have many practitioners in the state that are
19 conflicted as what to do in order to meet the
20 regulations.

21 So I'm with Jennifer, we actually do have to
22 address the truncation issue that's in the
23 regulation as it stands right now.

24 MS. SHEN: This is Jennifer. Let's take
25 that up. I mean, if all the Committee agrees it's

1 something we need to address, let's move forward and
2 figure it out.

3 CHAIR KIMSEY: This is Paul. One of the
4 things that we can do, it sounds like we need to
5 maybe have the Department relook at the information
6 that they have issued and clarify that, and maybe a
7 discussion by this Committee would help the
8 Department either reinterpret or clarify what has
9 currently been sent out. I haven't seen that
10 letter.

11 And I think I've also noticed that some of
12 the shuffling I think is Jennifer -- excuse me,
13 Alexandra, for the paper.

14 MS. SHEN: I'm not shuffling.

15 CHAIR KIMSEY: No, it's Alexandra, I think.
16 You're just very close to the microphone.

17 So I think the Committee should have a
18 discussion and I can certainly communicate back to
19 the Department that there may be need for
20 clarification on what we've already sent out, so
21 let's continue the discussion please.

22 MS. SHEN: This is Jennifer Shen. One of
23 the public comments from one of our practitioners
24 was, "Language on Page 17 requiring labs to truncate
25 two digits is in conflict with AB2425 (inaudible) by

1 a lab accredited lab. Results should be required to
2 be reported with uncertainty (inaudible) significant
3 number of digits for accreditation requirements.
4 Ongoing conflict between Title 17 and AB2425 is
5 confusing and harmful to laboratories."

6 So I agree with this. I think the
7 Department's position that we can only use three
8 decimal places for blood and two for breath is
9 really problematic. In order to do uncertainty
10 measurements for our breath instruments, the
11 instruments are set to record to three decimal
12 places, and the officers are getting their strips of
13 paper that say the results to three decimal places
14 and that's what they need to be able to report.
15 They shouldn't have to be ordered to truncate them
16 to meet a two decimal place result, which is really
17 frankly at this point kind of obsolete with the way
18 that science is going.

19 CHAIR KIMSEY: Any other perspective from
20 other Committee members?

21 MS. HARMON: Just so that I can go on the
22 record on this. This is Jennifer Harmon from Orange
23 County, Paul.

24 Most of the courts are already admitting the
25 results to three decimal places, so the courts are

1 already allowing this. And so we're giving our law
2 enforcement agencies information that is less
3 informative than what we're actually providing to
4 the courts as evidence.

5 MR. SLAUGHTER: This is Mark Slaughter in
6 Sacramento. That's some courts. They're not doing
7 that in Sacramento County. They're truncating and
8 reporting to the court in the truncated two
9 decimals.

10 But truncation doesn't take a lot. It's not
11 a rounding up or a rounding down factor, it's just a
12 cutting off. So if you're just looking at three
13 decimals and you only have to write two, there's not
14 a lot of work to that.

15 MS. SHEN: This is Jennifer Shen. So what
16 we're seeing is that the defense attorneys, the
17 prosecutors, the judge, they want that third decimal
18 place. And (inaudible) the uncertainty measurement,
19 which we are mandated to do, we have to talk about
20 the third decimal place. So it seems like a wasted
21 step to truncate a result that is the second it gets
22 to court they're going to have to talk about that
23 third decimal place anyway.

24 I don't know what the benefit is; that's
25 what I'm struggling with. What is the benefit of

1 truncating that result?

2 MR. WONG: This is Kenton in Richmond.
3 Jennifer, I think historically it was looked at as
4 by truncating the third decimal place it was giving
5 the benefit of the doubt to the individual, so I
6 don't know how valid that is anymore with the new
7 capability to report out to three digits.

8 And you're right, with the uncertainty
9 measurements now going out to three decimal places,
10 I can see how that is always going to come up.

11 MS. SHEN: This is Jennifer. I think one of
12 the issues that we have is that laboratories that
13 can do an uncertainty measurement and laboratories
14 that can report it to three decimal places are in
15 fact being as transparent and scientifically
16 (inaudible) as possible and the defense attorneys
17 are able to use that third decimal place sometimes
18 to their advantage, but they're definitely able to
19 use the uncertainty measurements to their advantage
20 where they can plus or minus from the results that
21 we're reporting.

22 It's laboratories that don't have that
23 capability where the truncating really could assist
24 in giving the benefit of the doubt to the defendant.

25 And I don't know how many laboratories are out

1 there now that are not capable of doing uncertainty
2 measurements or are not capable of reporting to a
3 third decimal place, and I think that's really where
4 the problem lies.

5 MR. SLAUGHTER: This is Mark Slaughter. I
6 agree with you, Jennifer. I just want to clarify
7 that the truncating wasn't at this huge (inaudible)
8 and that not all courts are actually collecting or
9 accepting the three decimals. But you're right, it
10 would benefit a defendant obviously if it's going to
11 show on the low end, and the uncertainty factors are
12 something that defense counsel could certainly
13 exploit.

14 CHAIR KIMSEY: This is Paul. I'm thinking
15 about how we sort of resolve this. It sounds like
16 maybe the Committee could write a letter, or maybe a
17 couple members of the Committee could write a letter
18 to the Department on behalf of the Committee
19 explaining the position of the Committee.

20 MS. HARMON: This is Jennifer Harmon from
21 Orange County. There have been multiple
22 practitioners who have written to the Department
23 making multiple justifications as to why AB2425
24 should be interpreted to include breath alcohol
25 results, and we've repeatedly been told that legally

1 the Department supports its position.

2 So if you think that the Committee is going
3 to get further, that would be fantastic. That would
4 be fantastic.

5 CHAIR KIMSEY: I think it would be helpful
6 as the Forensic Alcohol Committee and maybe a couple
7 of members. Doesn't have to be everybody signing
8 it, but a couple members of the Forensic Alcohol
9 Committee writing maybe even a similar letter that's
10 already been received would be helpful, and it would
11 be helpful if you, just so it looks like I'm going
12 to be in this loop for awhile, if you could sort of
13 cc me.

14 It seems like either the two Jennifers and
15 Mark or two of you or one of you, if you could write
16 a letter, and it's not necessarily on behalf of the
17 whole Committee, although we could have that
18 discussion, but just as a member of the Forensic
19 Alcohol Committee it might be helpful in getting
20 some resolution.

21 MS. SHEN: This is Jennifer Shen. I think,
22 though, what we need to do right now is talk about
23 whether or not we want to change the verbiage that
24 we have in Title 17 to include the ability to report
25 to a third decimal place. And if we do want to do

1 that, I have some language that we might consider.

2 CHAIR KIMSEY: What are the feelings of the
3 Committee; do we want hear the language and have a
4 discussion?

5 MR. SLAUGHTER: This is Mark Slaughter.
6 Yes, let's hear the language.

7 MR. WONG: I'm for that.

8 CHAIR KIMSEY: So is Kenton.

9 SGT. JONES: This is Sergeant Eric Jones. I
10 just have one question. In listening to all this,
11 if we were to add additional language to Title 17
12 does that put it back up to the public comment
13 again?

14 MS. STUPPLE: Yeah, it's going to go out for
15 45 days if you're talking about changing the decimal
16 places.

17 MR. SLAUGHTER: This is Mark Slaughter. So
18 then we would be back to option two more than
19 likely.

20 MS. STUPPLE: No. Option one includes the
21 45 day notice.

22 MR. SLAUGHTER: Okay. Good, good.

23 MS. HARMON: Jennifer Harmon. Just to be
24 clear, we could incorporate this new language while
25 addressing the public comments, correct?

1 MS. STUPPLE: Yes.

2 MS. HARMON: Because this actually came up
3 during public comment?

4 CHAIR KIMSEY: That's correct.

5 MS. STUPPLE: Correct.

6 MS. HARMON: Okay.

7 MS. SHEN: This is Jennifer Shen. So we
8 would be addressing a very significant public
9 comment that came up again and again, and this is
10 something that's really important to people, which
11 is why I think we should consider changing it.

12 MR. LYLE: Okay. Bruce Lyle in Orange
13 County. Do you need the section that it is and the
14 wording of right now?

15 MS. SHEN: It's in Section 1220.4,
16 Expression of Analytical Results.

17 MR. LYLE: So Section (b).

18 MS. SHEN: Section (b) yes. So verbiage as
19 it is right now -- are you guys ready for this?

20 MR. SLAUGHTER: Yes.

21 MS. SHEN: "Analytical results shall be
22 reported to the second decimal place, deleting the
23 digit in the third decimal place when it is
24 present." That's what it says now.

25 So my suggestion is that we say, "Analytical

1 results may be reported to the third decimal place
2 along with the associated estimation of uncertainty
3 measurement."

4 Now, I was thinking that prior to the
5 conversation we had recently about the fact that
6 maybe we don't want to address uncertainty
7 measurements and maybe we just want to say,
8 "Analytical results may be reported to the third
9 decimal place." We can make it to the second or
10 third decimal place. I don't necessarily want to
11 cut out labs that only want to do two decimal
12 places, so we want to make sure that we can do three
13 if we would like to.

14 MR. WONG: This is Kenton in Richmond. This
15 is for Dan, Mark, and Alex. If we leave it open
16 ended like that with a "may" where we give the
17 option to the labs to do it one way or another, two
18 digits or three, is that going to be a consistency
19 issue?

20 MR. JEFFRIES: Dan Jeffries in Orange
21 County. By consistence issue you mean that it'll be
22 done differently from location to location or that
23 the meaning of the Committee will be misinterpreted
24 by using the word "may" instead of "shall"?

25 MR. WONG: I think probably both, because

1 obviously there's going to be difference in
2 jurisdiction from one side of the city or county
3 line to another and one lab's going to say, well, we
4 only do two, and then two miles the other way
5 they'll say, well, we do three.

6 MR. JEFFRIES: I guess my concern is that
7 we're not saying what to do with it if it is
8 reported to the second digit, because right now
9 we're in a place where we're saying we're reporting
10 to the second decimal place by deleting the digit in
11 the third decimal place if you report it in two
12 digits.

13 If we adopt the language Jennifer proposed
14 saying it may be reported to the third decimal
15 place, we give no clarity as to what we're going to
16 do if you're reporting it to just two decimal
17 places, and I would suggest we somehow either leave
18 the language in and add the additional language that
19 it may, so it could read something like, "Analytical
20 results shall be reported to at least the second
21 decimal place, blah-blah-blah," something like that,
22 giving the option.

23 MS. SHEN: This is Jennifer. Yeah, my first
24 thought was to add like (inaudible) I don't know
25 what that is, a 1 or something. Leave the first one

1 as is and then put in a second one and use,
2 "Analytical results may be reported to the third
3 decimal place," and then either adding along with
4 the estimated uncertainty measurement or not, as we
5 saw fit. But I think you're absolutely right, that
6 is a much better way to go.

7 MR. WONG: Alex, do you have thoughts on
8 that?

9 MS. STUPPLE: I do. I think perhaps an idea
10 would be "Results shall be reported to the second
11 decimal place or the third decimal place," if that's
12 what you're going for.

13 MR. WONG: To the second or third.

14 MS. STUPPLE: I definitely don't think the
15 "may" should be in there because it could leave open
16 reporting to one decimal place.

17 MS. SHEN: Right, but if we put second
18 decimal place, Dan's right, we need to continue to
19 add deleting the digit in the third decimal place
20 when it's present, because we want to make sure that
21 we're truncating down to two decimal places.

22 MS. HARMON: This is Jennifer Harmon from
23 Orange County. Why? Why do we need to continue a
24 practice of truncation? If the laboratory believes
25 that it's scientifically relevant to round up or

1 round down, isn't that their choice? We're giving
2 them the choice of whether they want to give three
3 digits or two digits. Truncation gives less
4 information. I don't know that there's any
5 scientific relevance to truncating whatsoever.

6 MS. SHEN: There is no scientific relevance
7 other than it gives the defendant the benefit of the
8 doubt.

9 MR. SLAUGHTER: That would be legal
10 relevance. This is Mark Slaughter. But yes, I
11 agree.

12 MR. JEFFRIES: Again Dan Jeffries in Orange
13 County. My only comment on that would be that
14 perhaps we want to leave it open for labs that are
15 currently doing one thing and not force them to
16 change, so that if they currently are reporting to
17 the second decimal place by truncation, we don't
18 want to preclude that, or perhaps we do want to
19 preclude that, but that would require certain labs
20 to make changes to the way they're doing things.

21 MS. SHEN: This is Jennifer. I think we
22 should leave the verbiage as is and then add the
23 ability to report to the third decimal place.

24 MR. WONG: Will that work, Alex?

25 MS. STUPPLE: If you leave it as "may report

1 to two decimal places or three decimal places"?

2 MR. SLAUGHTER: No, "shall."

3 MR. WONG: "Shall to two or three decimal
4 places."

5 MS. STUPPLE: Yes, that would do it.

6 MS. SHEN: Okay, this is Jennifer again. So
7 is that all going to be one sentence, "Analytical
8 results shall be reported to the second or the third
9 decimal place. If reported to the second decimal
10 place," blah-blah-blah? Do we need to add that
11 deleting the digit in the third decimal place when
12 it's present thing?

13 MS. STUPPLE: This is Alex. I think that
14 works.

15 MS. SHEN: Okay.

16 CHAIR KIMSEY: Any further discussion? Any
17 comments on the suggested change?

18 MR. JEFFRIES: Do we want to also talk about
19 uncertainty and Jennifer's question about whether or
20 not we want to discuss or do anything about
21 uncertainty?

22 CHAIR KIMSEY: Sure. I just wanted to get
23 agreement on that particular language change, but
24 sure. Was that Dan?

25 MR. JEFFRIES: It was. I know when Jennifer

1 was talking about it she was talking about maybe
2 adding some additional language to deal with
3 uncertainty.

4 MS. SHEN: This is Jennifer. Yeah, the
5 first rendition I had was, "...third decimal place
6 along with the associated estimation of uncertainty
7 measurement." So to go along with that I added a
8 definition of uncertainty measurement into the
9 definitions up front.

10 But if we want, which I think is fine, but
11 if we want to not mention uncertainty measurements
12 at all in this particular document, then we don't
13 have to. But I guess what I see as important here
14 is the reason that we want to be able to report to
15 three decimal places, because we want to have our
16 uncertainty measurements that we all have
17 (inaudible). So we wouldn't have a three decimal
18 place without an uncertainty measurement, likely.

19 MR. WONG: Correct.

20 MS. SHEN: So I guess I'm okay with leaving
21 it in there as long as we define it in the front.

22 MR. WONG: We're going to have to.

23 MS. SHEN: Right. Well, I did that. That
24 was one of the changes I thought might be a good
25 idea was to add it. I added several definitions,

1 that was one of them.

2 MR. WONG: I agree.

3 CHAIR KIMSEY: And the rest of the
4 Committee?

5 MR. SLAUGHTER: This is Mark Slaughter in
6 Sacramento. I agree, we do have to define
7 uncertainty and it should be further in the
8 beginning with the definitions. I'm still chewing
9 on it, though.

10 CHAIR KIMSEY: Okay. Go ahead and think
11 about it a bit. I think Jennifer Harmon was going
12 to comment.

13 MS. HARMON: I'm still unclear if we're
14 going to add uncertainty measurement as a
15 requirement in the regulation or not. Is that
16 something the Committee is hoping to take up?

17 CHAIR KIMSEY: That's what the proposal is.

18 MS. SHEN: This is Jennifer Shen. Jennifer,
19 I don't think that we need to do much more than
20 that. The definition that I would suggest for the
21 beginning of Title 17 where the definitions are, and
22 since I have now put them in alphabetical order I
23 can find it very easily.

24 "Uncertainty measurement means a non-
25 negative parameter characterizing the dispersion of

1 a value attributed to a measured quantity." So it's
2 in there.

3 I just don't know that we would have a three
4 decimal place result without uncertainty
5 measurements. I don't know a lab would do that.

6 MR. WONG: I think that's great, Jennifer.
7 This is Kenton in Richmond. I think just leave it
8 as is and less is more, really.

9 What do you think, Mark?

10 MR. SLAUGHTER: What do you mean leave it as
11 is?

12 MR. WONG: No, I just mean that just with
13 the definition that's there, I don't think we need
14 to expound on it, I don't think we need to go crazy
15 on the uncertainty of measurement. I think it's
16 been defined and then mentioned, and leave it short
17 and sweet.

18 MR. SLAUGHTER: Yes, I do agree with that,
19 yes.

20 MS. HARMON: This is Jennifer Harmon from
21 Orange County. Just so I'm clear, the goal is that
22 if a laboratory reports the three decimal places
23 they can only do that if they provide an uncertainty
24 of measurement

25 MS. SHEN: If we write it that way, that's

1 what would happen.

2 MR. JEFFRIES: Dan Jeffries. If we could
3 just maybe restate what Jennifer specifically was
4 suggesting adding to 1220.4(b), that parenthetical
5 last phrase just so we're all clear about what she
6 was suggesting.

7 MS. SHEN: This is Jennifer. So the
8 suggestion on the table currently is that subsection
9 (b) would be, "Analytical results shall be reported
10 to the second decimal place, deleting the digit in
11 the third decimal place when it is present."

12 And then (b)(1) would be, "Analytical
13 results may be reported to the third decimal place
14 along with associated estimation of uncertainty
15 measurement."

16 MR. JEFFRIES: This is Dan Jeffries. I
17 think we were at a place where Alexandra was
18 suggesting that she liked it better to be left as
19 "shall" in there by saying, "Analytical results
20 shall be reported to the second decimal place" --

21 MS. SHEN: Oh, yeah.

22 MR. JEFFRIES: -- "or the third decimal
23 place. If reporting to the second digit, deleting
24 the third." Can you incorporate that extra language
25 about uncertainty if you use that language?

1 MS. SHEN: I think what we can do is (b) is,
2 "Analytical results shall be reported to the second
3 or the third decimal place."

4 (b)(1), "If results are reported to the
5 second decimal place, delete the digit in the third
6 decimal place when it is present," or something
7 better than that.

8 And then (b)(2), "When reported to the third
9 decimal place, report along with associated
10 estimation of uncertainty measurement."

11 But I'm sure we can make it sound better
12 than that, but essentially (b) is it shall be to the
13 second or third, (b)(1) is this is what you do if
14 it's second place, and (b)(2) is this is what you do
15 if it's third place.

16 MR. JEFFRIES: That works for me from a
17 structural and legal and understanding it basis.
18 Does it work for everyone scientifically, though?

19 MS. HARMON: This is Jennifer Harmon. I
20 think actually my bigger concern is that this is
21 going to open us up again on public comment about
22 how this is expressed.

23 So again, if the goal here is to try to get
24 this through, I think we're opening ourselves up to
25 a lot of public comment about how uncertainty is to

1 be expressed. What confidence (inaudible) you use,
2 you know, how it's determined, what your budget
3 looks like. I just think that you're going to get
4 yourselves (inaudible) on that. Do we have to add
5 the uncertainty of measurement as a requirement in
6 order to report the three decimal places?

7 MS. SHEN: This is Jennifer. No, we don't.
8 I mean, we could make (b) is, "Analytical results
9 shall be reported to the second or third decimal
10 place."

11 (b)(1) is, "If reported to the second
12 decimal place, delete the digit in the third decimal
13 place when it is present and let it ride."

14 MR. WONG: Will that work, Alex?

15 MS. STUPPLE: Yes.

16 MS. SHEN: All right. Maybe that's the best
17 thing to do, then.

18 CHAIR KIMSEY: Any other comments from the
19 Committee?

20 MR. SLAUGHTER: Mark Slaughter. I missed
21 that. I guess because I was thinking we had it set
22 as, "...shall be reported to the second or third
23 decimal place, when reported to the second it would
24 be truncated by deleting the third decimal place,"
25 with no (b)(1) or (b)(2), but we're adding (b)(1) or

1 (b)(2).

2 MS. SHEN: Well, we can add a comma and put
3 that, that's fine.

4 MR. LARSON: Hopefully it's a period.

5 MS. SHEN: But at the end of the day
6 (inaudible) will that be a second comma saying
7 anything about the third decimal place reporting
8 along with an uncertainty measurement, we have cut
9 that out.

10 MR. SLAUGHTER: That's correct. Yes.

11 MS. SHEN: Okay. We're good.

12 CHAIR KIMSEY: Other comments from the
13 Committee members? From the public?

14 MR. SPATOLA: This is Josh Spatola from DOJ.

15 CHAIR KIMSEY: Yes.

16 MR. SPATOLA: I've got a quick comment here.

17 I think that reporting to the third decimal place,
18 while I agree shouldn't throw in uncertainty
19 necessarily, but you should have reporting to their
20 measurement capability. There should be a listing
21 of what they're capable of in the third decimal
22 place, and you could say with an example of either
23 as your accuracy and precision requirements, sort of
24 like a tolerance as opposed to your uncertainty, so
25 you could give examples, expanded uncertainty,

1 accuracy and precision.

2 But if you're going to report in the third
3 you need to make some mention of what your
4 limitations are in the third decimal place. It
5 doesn't have to be uncertainty but that's why you're
6 truncating at the second is because you're saying
7 there's a limitation to my capabilities in the third
8 decimal place so I'm deleting that digit.

9 In the third there's also a limitation to
10 the capability. There has to be some mention of
11 what that limitation is. It doesn't have to be
12 uncertainty, though. That's just my opinion.

13 MR. LARSON: Comment from the public to just
14 kind of follow up on Josh's comment, and to play a
15 bit of the role of the Devil's advocate.

16 One might want to be completely clear and
17 specify whether the figure in the third decimal
18 place is arrived at by rounding or truncation.

19 The other thing I wanted to comment, there
20 are other references in the regulations that set
21 limits at two decimal places sort of based on the
22 original truncation requirements. I haven't thought
23 this through yet, but for instance, there's a
24 requirement under 1221.2(a)(1) that the results of a
25 duplicate breath test agree within plus or minus

1 .02.

2 Technically, I think the instruments already
3 look at that as to the third decimal place but do we
4 want to change, since you've changed the regulations
5 here and elsewhere where there's references to
6 parameters that expresses two decimal places, do we
7 want to change that to two or three?

8 MS. SHEN: This is Jennifer in San Diego.
9 Yes, that is one of the things that I looked at was
10 if we made this change then there are several other
11 places where -- in fact (c) for instance, and (d) --
12 but there are places in the regulation that we would
13 have to look at saying two or three, or you know,
14 .01 or .010, we'd have to make that three decimal
15 places.

16 CHAIR KIMSEY: Other comments from the
17 public?

18 MR. MILLER: Yeah, this is Barry Miller from
19 Solano County. First of all, I realize we're
20 talking about breath alcohol here, and I would like
21 to see us shy away from any uncertainty measurement
22 related to breath alcohol in these regulations.

23 These regulations are being written and
24 submitted for private and public laboratories in the
25 state of California, not just public labs that have

1 some sort of accreditation requirement. Putting
2 uncertainty in there is going to put burden on
3 laboratories because we do not maintain these
4 instruments. These are not instruments that we've
5 bought, that we've had in-house that our analysts
6 are running. These are instruments that officers in
7 the field are running.

8 So for us to put an uncertainty on there we
9 have to figure out a way that we, as laboratories,
10 can actually come up with some reasonable
11 uncertainty to report if we want to do three digits.

12
13 I think the Committee's approach to this is
14 correct, I think it needs to be addressed in Title
15 17, because I really truly believe you're not going
16 to get any teeth with AB2425 and breath alcohol
17 analysis being reported to the third digit. It's
18 pretty clear to me what the language says in Title
19 17 and the regulation and in AB2425, so I do think
20 it needs to be addressed here but I would shy away
21 from the uncertainty measurement.

22 MS. SPELL: Natalia Spell. I agree with
23 him, because it's kind of controversial issue. To
24 my understanding, some literature sources say that
25 basically preanalytical uncertainty or (inaudible)

1 of measurement might be so big that the results only
2 make sense to report to two decimal places rounded,
3 so that's why I think we should shy away from this
4 issue.

5 Another thing I would propose, like if you
6 say (a) and (b) and in (b) you say truncate, it's
7 logical that you also specify in (b) the third
8 decimal place, do you round it up, do you round it
9 down, do you truncate it, or you round it even. And
10 maybe that's a matter of manufacturer to program
11 their devices, but I think logical way would be to
12 specify that.

13 CHAIR KIMSEY: Other comments?

14 MR. MELANOTO: Fernando Melanoto from Orange
15 County. I would just like to make a comment that
16 for some laboratories when we comply with the
17 regulations to do the accuracy checks every ten days
18 or (inaudible) there are laboratories that are
19 capable of measuring that out to the third decimal
20 place. Wouldn't that then demonstrate their ability
21 to report their results to the same decimal place
22 and incorporate that level of uncertainty in
23 accordance with the proposed regulations?

24 I mean, if we're able to check an
25 instrument's accuracy throughout the required time

1 periods the third decimal place without truncating
2 it to the second, I think that demonstrates a
3 laboratory's ability to report their (inaudible)
4 level to the same decimal place.

5 CHAIR KIMSEY: Okay. Other comments? So
6 does someone want to summarize where we are?

7 MS. SHEN: All right. This is Jennifer. I
8 will summarize.

9 So right now what we're talking about doing
10 is changing the language to say, "Analytical results
11 shall be reported to the second or third decimal
12 place, when reported to the second decimal place
13 deleting the digit in the third decimal place when
14 it is present."

15 CHAIR KIMSEY: Comments on that proposed
16 language from the Committee?

17 MR. LYLE: Bruce Lyle, it sounds good to me.

18 MR. SLAUGHTER: Mark Slaughter. Sounds
19 fine.

20 CHAIR KIMSEY: Kenton, your thoughts?

21 MR. WONG: I'm okay with it as long as it'll
22 pass muster with Alex.

23 MS. STUPPLE: Actually, I do think there
24 should be a period before "when."

25 MS. SHEN: All right. I like the period

1 also.

2 MR. SLAUGHTER: I concur. I concur.

3 CHAIR KIMSEY: Jennifer Harmon, your
4 thoughts?

5 MS. HARMON: I like the language, go with
6 that.

7 CHAIR KIMSEY: Okay. Did we hear from Dan?

8 MR. JEFFRIES: Yes, I like the language.

9 CHAIR KIMSEY: Okay. And Bruce?

10 MR. LYLE: It's good to me.

11 CHAIR KIMSEY: Sergeant Jones?

12 SGT. JONES: It makes sense. I was able to
13 follow it.

14 CHAIR KIMSEY: Thank you. And I also agree.

15 MR. JEFFRIES: This is Dan. I don't know if
16 we want to address that one public comment about
17 should we all specify how if you're doing two digits
18 you're truncating, or shall we go ahead and draft it
19 while we're looking at it?

20 CHAIR KIMSEY: Sure. What are your
21 thoughts?

22 MR. JEFFRIES: I defer to Jennifer.

23 MS. SHEN: I (inaudible) no. How we handle
24 our data is very well laid out in our methodology.
25 I don't think we need to do that.

1 MS. HARMON: This is Jennifer Harmon. Just
2 to address the one public comment, what if we put
3 some sort of language like the laboratory must
4 maintain records of its analytical capability to
5 report to three decimal places? That way if the
6 laboratories actually have uncertainty measurements
7 they can demonstrate that if they have accuracy
8 documentation that demonstrates it. Whatever
9 mechanism they want to use, they have to have
10 something available onsite if necessary, much like
11 we have to maintain methodology onsite.

12 MS. SHEN: This is Jennifer. But Jennifer,
13 we already have to do that. I think we're
14 overwriting there.

15 CHAIR KIMSEY: So those records are already
16 required to be kept?

17 MS. HARMON: We maintain all of those, yes.

18 CHAIR KIMSEY: Okay.

19 MS. HARMON: Josh, does that address your
20 comment?

21 MR. SPATOLA: Yeah, it addressed it. I
22 guess my concern is more regarding comparability of
23 measurements between laboratories in that you have
24 one laboratory that could say .080 but maybe their
25 plus or minus is like an .01 or .02 because they

1 (inaudible). And then you've got one that's .080
2 and they're plus or minus .005 or .004, and without
3 that information you don't -- it's different once
4 you get into the third decimal.

5 Or when we're talking about two you've
6 truncated to allow for that. You're saying, look,
7 I'm giving you some wiggle room, I've left off the
8 third. But if you're only good to the third and
9 you're still reporting the third, then it's not the
10 true value that you're reporting, you're reporting
11 the value that's your best estimate of the true
12 value with some variability in that number and it's
13 just acknowledging that.

14 So just allowing anyone to just throw in
15 three decimals and maybe their capability is they're
16 not really that good to three decimals, someone
17 needs to know that. It doesn't have to be on the
18 report, I suppose, but my concern is you'll have
19 labs out there that aren't as good with the ability
20 to say .080, and as a reader you think, oh, okay,
21 it's an .08. Maybe it's a little too close to the
22 line. Maybe I should either plea or not plea.
23 They're basing decisions off of a number where they
24 don't know what it means in the third decimal
25 because we've placed it there.

1 That's my only issue. You've addressed it
2 fine. That's kind of where I'm coming from, though.

3 MR. WONG: This is Kenton in Richmond. If
4 that's an issue, then that's data that should be
5 discoverable and that's data that should be mined by
6 the attorney to query that.

7 MS. SHEN: I agree.

8 MR. SPATOLA: I'm okay with that, that's
9 fine.

10 MS. HARMON: I'm with Kenton on that, too.
11 Let the courts hash it out.

12 MR. WONG: Yeah.

13 MS. SHEN: Okay. So is that one out of five
14 hundred?

15 MR. LARSON: Can I interject? As a member
16 of the Department, I'm embarrassed. A housekeeping
17 issue, I'll just make this brief.

18 At 3:45 -- currently Jennifer Shen is in the
19 Pam Smith Room, and we learned last Friday
20 apparently at 3:45 Pam Smith needs her room. I'm
21 not kidding.

22 Anyway, we've made arrangements that you
23 would need to transfer to the John Gaffney Memorial
24 Conference Room. It's memorial so John is not going
25 to use it. And we've got a number there and we

1 would call you. So I think at around 3:45, 4:00
2 o'clock you may have to move. Sorry.

3 MS. SHEN: All right. Well, (inaudible) by
4 then anyway.

5 CHAIR KIMSEY: Well, thank the Committee for
6 that discussion and that resolution of as we're
7 jokingly talking about being one of five hundred.
8 It brings me back to the fact that we pretty much
9 don't even have an hour left for the other 499. And
10 we did have some very good discussion about trying
11 to break them up into categories and getting the
12 various members of the Committee that have to time
13 to work on them. Obviously I think we need to have
14 some more discussion on the mechanism with which we
15 do that in more detail because we do have some
16 restrictions as a Committee. It's not just that we
17 can sort of call each other up and say "Would you do
18 this" kind of thing.

19 So I would anticipate that the Department,
20 and that probably means Alexandra and myself and
21 maybe a couple other people, might be able to go
22 through this document and put them into categories.

23 If we could have a better understanding of which of
24 the Committee members would be interested in which
25 categories to review, that would be helpful for us

1 then to send them to you.

2 Now, that's just off the top of my head.
3 Does anyone have a better idea of how to sort of
4 disburse out 499 comments to the Committee members
5 that are going to take a look at them?

6 MR. JEFFRIES: This is Dan Jeffries. I was
7 thinking maybe incorporate (inaudible) technology
8 guys always talk about, and maybe if you put it up
9 as a Google document that we all have access to
10 where you could have someone from your staff propose
11 who handles each category or each type of question,
12 then we can immediately start working on it. Like
13 if you added a column to the spreadsheet to just say
14 to be handled by Dan, to be handled by Bruce, if we
15 have to punt on it at least then we would know
16 (inaudible) not my area of expertise.

17 CHAIR KIMSEY: That's a great idea. The
18 caveat is that I'm not sure that our Bagley-Keene
19 restrictions have caught up with Google documents at
20 this point yet.

21 MS. SHEN: This is Jennifer. Is it possible
22 that we could just go through, you or whomever, go
23 through the document and assign types and then
24 assign a number to each question and a type so that
25 you could hand out lists, so Dan would get numbers

1 1, 6, 12, 14, 18, 20, and then (inaudible) on his
2 own as his own little subcommittee, can you do that?

3 CHAIR KIMSEY: I think, let's see. Yes, I
4 think that that's doable. I'm just trying to think,
5 again, then we would be coming back to sort of
6 follow through. If we were to do that we would be
7 coming back as a Committee, and then that individual
8 would be talking to the Committee about what he
9 recommends for his comments, and then we would sort
10 of all agree as a Committee.

11 I mean, part of the purposes of Bagley-Keene
12 is that we do our work in public as a group, and so
13 obviously as a subcommittee of one, I believe we're
14 able to do some work but we have to bring it back to
15 the full Committee for review and approval.

16 Now, I say all that. I don't see Alexandra
17 nodding or -- that seems okay.

18 MS. STUPPLE: I was nodding.

19 CHAIR KIMSEY: Okay. Thank you.

20 MS. SHEN: This is Jennifer again. I mean,
21 so if Dan got his 20 questions and he wrote
22 responses to them and then sent that work product
23 out to the Committee and to the public, however,
24 that would work, prior to our meeting, so everyone's
25 job would be to read everyone's changes before we

1 got into this room so that we could then discuss
2 anything that we didn't like or we thought should be
3 changed, and then approve the changes. Can we do
4 that?

5 CHAIR KIMSEY: Yes. I mean, we're having a
6 bit of conversation here. Yes, I think if all that
7 comes back to the Department, the individual work
8 products of all of our individual subcommittees,
9 then the Department would get that out to the full
10 Committee hopefully with more time to be reviewed by
11 the Committee before we met. So I think that's
12 doable.

13 MS. SHEN: The only problem is how do we
14 assign out the questions?

15 CHAIR KIMSEY: Right.

16 MR. LYLE: This is Bruce Lyle. Is it
17 possible to just give each individual eight of us a
18 set of pages and go from there?

19 MR. WONG: I don't think that'll work.

20 CHAIR KIMSEY: I think there was some
21 concern that some of the comments are more technical
22 or more structural and that not everybody on the
23 Committee felt comfortable handling those.

24 MS. HARMON: What if we partnered up, Paul,
25 where we put a scientist with a non-scientist. So

1 Dan and I get forty pages of comments and between
2 the two of us we work out what the science is versus
3 what's legal and kind of clarity issues are. Dan
4 can deal with those and I can deal with the
5 scientific ones.

6 Because the reality is we only have a month
7 to try to do this, and this is insanity as far as
8 how much there is to read for any one person, so to
9 divvy it all up and parse it all out is going to
10 take so much more time than maybe if we just partner
11 up.

12 MS. SHEN: I think that's a great idea.

13 MS. HARMON: So let's just partner up maybe
14 and each take fifty pages or whatever it's going to
15 require, or a hundred pages, and figure out between
16 the two or three of us what we can do and what we
17 can't do.

18 CHAIR KIMSEY: I think that's a great
19 direction. It's my understanding that subcommittees
20 need to be limited to two people. But so let's talk
21 about what the partnerships might be, and I'll take
22 some notes here.

23 MS. SHEN: This is Jennifer Shen again. Two
24 things. One is I get you.

25 CHAIR KIMSEY: Okay.

1 MS. SHEN: But two, since I have the working
2 document, what I would suggest is that all of the
3 small meaningless clarity type things, whatever your
4 pages, ignore those. I will take care of those
5 myself. I've already done it, really, frankly, so I
6 mean, I've already put the definitions in order.
7 I've already added the ones we needed to. I've
8 already clarified a couple of the definitions
9 weren't quite right. There was some just the basic
10 housekeeping kind of things, I have that and I have
11 that finished. So I can present that easily.

12 CHAIR KIMSEY: I like that idea, Jennifer.
13 Maybe if you and I get together as a subcommittee
14 and get that together on this document, then that
15 work that you and I have already done can go out to
16 the teams, as we'll call them, the teams of two
17 people, and then they're working from something that
18 already has that incorporated.

19 MS. SHEN: Yes.

20 CHAIR KIMSEY: Okay.

21 MR. JEFFRIES: This is Dan Jeffries. A
22 question for Alexandra. If we have a seven person
23 Committee would that allow for a three person
24 subcommittee and not violate the required rule?
25 Because it may work better for us to have a three

1 person subcommittee.

2 MS. STUPPLE: No, it has to be two.

3 CHAIR KIMSEY: Good idea, though.

4 MS. SHEN: Paul, this is Jennifer. I'm not
5 opposed to you and I picking our share of pages
6 also. So we can do the housekeeping things and then
7 our share of pages.

8 CHAIR KIMSEY: I agree. So we have one
9 team, which is Jennifer and myself. I mean, you
10 folks may know each other more than I know how you
11 know each other, so we have another team that wants
12 to sort of express themselves?

13 Jennifer, you mentioned working with, was it
14 Dan?

15 MS. HARMON: This is Jennifer Harmon. I
16 could work with Dan and then maybe am I allowed to
17 be on a second subcommittee with Bruce? That way we
18 can kind of get as many Committee members involved
19 as possible.

20 MS. STUPPLE: No, you could only -- not when
21 it's the same subject matter, so no.

22 CHAIR KIMSEY: But if they had different
23 subject matter. I mean, let's say we had distinct
24 categories. Category A Jennifer and Dan could work
25 on. Category B, myself and Jennifer could work on.

1 In other words, Committee members can be on
2 more than one subcommittee if it's a different
3 topic?

4 MS. STUPPLE: Right.

5 MS. HARMON: So we can't be on Committee
6 Pages 1 through 50 and then on Committee pages 51
7 through 100?

8 MR. WONG: You'd have to parse out
9 categories.

10 MS. HARMON: I don't think that's going to
11 work.

12 CHAIR KIMSEY: Yeah, I don't think so
13 either. We'll check into it, but why don't we set
14 up our teams initially and not have more than team.

15 In other words, I'll be on a team with Jennifer but
16 I won't be on a team with anybody else.

17 So does it make sense to have Jennifer
18 Harmon and Dan Jeffries on a team?

19 MR. JEFFRIES: That's fine with Dan
20 Jeffries.

21 MS. SHEN: Did we lose Jennifer?

22 MS. HARMON: No, I'm here. I'm fine with
23 that too.

24 CHAIR KIMSEY: Okay.

25 MS. HARMON: I just want to be able to get

1 as much done with everybody who's available as
2 possible.

3 CHAIR KIMSEY: We all agree.

4 MS. SHEN: Paul, could we have one committee
5 of one person and just give them fewer pages?

6 CHAIR KIMSEY: Sure.

7 MR. LYLE: I'll be that person, Bruce Lyle.

8 CHAIR KIMSEY: Okay. Is there an area that
9 you feel most comfortable with?

10 MR. LYLE: No, just a chunk of pages. I
11 thought we were just going to chunk up pages.

12 CHAIR KIMSEY: Yes.

13 MR. LYLE: Okay.

14 CHAIR KIMSEY: But if you had reservations
15 about a particular area...

16 MR. LYLE: No, because I know where to go to
17 get the answers.

18 MS. SHEN: Bruce feels very comfortable with
19 twenty to thirty.

20 MR. LYLE: Yeah, exactly.

21 CHAIR KIMSEY: So let's see...

22 Sergeant Jones, do you feel comfortable?
23 Obviously you're the new kid on the block so we're
24 not twisting any arms here.

25 SGT. JONES: This is Eric. I'll help

1 however I can.

2 CHAIR KIMSEY: And Mark, what was your
3 ability; were you going to be able to participate on
4 a team? You talked about your court obligations.

5 MR. SLAUGHTER: Yeah, I can donate or
6 contribute about two hours a week.

7 CHAIR KIMSEY: Okay.

8 MS. HARMON: Kenton, what about you?

9 MR. WONG: Whatever comes my way, I'll roll
10 up my sleeves and do it.

11 CHAIR KIMSEY: Would it make sense if we
12 were to team you up, who would you --

13 MR. WONG: Whatever works, I'm totally
14 flexible.

15 CHAIR KIMSEY: So we might put you with
16 Mark, since I think you both have limited time.

17 MR. WONG: That works for me.

18 CHAIR KIMSEY: Okay.

19 MR. SLAUGHTER: Works for me.

20 MS. SHEN: Don't we have a scientist and a
21 non-scientist left over now? Jennifer Shen.

22 MR. LYLE: Bruce. No, you have a cop and a
23 coroner.

24 CHAIR KIMSEY: So we have Sergeant Jones and
25 who else do we have left off? Bruce.

1 MR. LYLE: I was going to be my own.

2 CHAIR KIMSEY: Yeah, Bruce is on his own.
3 Well, maybe we'll partner you with Sergeant Jones as
4 a learning experience.

5 MR. LYLE: Perfect.

6 CHAIR KIMSEY: Okay. One, two, three four,
7 we have four teams.

8 MS. STUPPLE: This is Alex. I just want to
9 remind you as a subcommittee not to speak to each
10 other about the stuff that you're working on until
11 you come together.

12 MR. LYLE: I think what that means is that
13 we have to do our work independently and report it
14 all back to the Department, not to each other. So
15 that Google document idea doesn't work, we actually
16 have to do it separately, report it back out to you
17 guys, and then you guys have to distribute it to the
18 full Committee.

19 CHAIR KIMSEY: That's my understanding, yes.

20 MS. SHEN: This is Jennifer. We probably
21 should before we leave today at least run over the
22 other big (inaudible) issues quickly and get an idea
23 of where the committee wants to go before we turn
24 that over to our subcommittees.

25 And I would suggest we come in front of you

1 and come up as a group with sort of a stock language
2 for various things (inaudible) having picked one,
3 because each of the groups may get the same
4 oversight issue. So knowing what we know about what
5 the committee has talked about, we just have to come
6 up with some verbiage and then we'll have to sort of
7 pick (inaudible).

8 MR. LYLE: Bruce Lyle. I think that's fine,
9 too. I think if we've got four different ideas on
10 how to respond to a comment that's generally the
11 same, then I think we'll get a better work product.

12 CHAIR KIMSEY: Okay. So does this bring us
13 back to that document that had the twelve issues on
14 it, or Jennifer, is there a place that you think we
15 should start?

16 MS. SHEN: I would like to talk about a few
17 more scientific issues. Well, we don't have to work
18 out the language right now but we need to at least
19 have an idea where the committee wants to go so that
20 those of us that wind up with these issues in our
21 pages know what to do.

22 CHAIR KIMSEY: Okay.

23 MS. SHEN: So I'm back to the same document
24 I looked at before. Another issue was -- this is a
25 big one for lots of people, language on Page 5

1 requiring alcohol analysts have two years of
2 analytical experience or complete intensive training
3 program including (inaudible) pharmacology and
4 physiology (inaudible) -- can you hear me?

5 MS. HARMON: Jennifer, we're losing you in
6 Orange County.

7 MS. SHEN: There's paper shuffling going on.

8 CHAIR KIMSEY: And it wasn't Alexandra this
9 time.

10 MS. SHEN: All right. So language on Page 5
11 requiring analysts to have two years of analytical
12 experience or complete a whole entire training
13 program before they can run samples, to include
14 masters in pharmacology and physiology (inaudible)
15 all that. And that is actually a problem for all
16 labs and an unintended consequence, I think, of how
17 we wrote it.

18 So the thing that we need to decide is,
19 (inaudible) analysts on board and you have trained
20 them to do analysis. While they're training to be
21 impairment experts can they run samples? And I think
22 the answer is yes, but we need to change the
23 verbiage a little bit in Title 17 to reflect that.

24 CHAIR KIMSEY: Okay. Discussion from
25 committee members?

1 MR. JEFFRIES: Dan Jeffries. I agree with
2 Jennifer, I think you do need to change it.
3 Otherwise you do have the question about whether
4 someone who is a new analyst, even before they're
5 qualified to testify as to impairment, they need to
6 be able to run samples.

7 CHAIR KIMSEY: That's under some supervision
8 or some oversight that they do that?

9 MR. JEFFRIES: Is that right, Jennifer?

10 MS. SHEN: Yeah, I'm looking at what I was
11 proposing. So basically we're looking at
12 1216.1(d)(3). Let me know when you're all there.

13 MR. WONG: Say that again?

14 MS. SHEN: 1216.1(d). So I added the words
15 on (d) "A fully trained forensic alcohol analyst is
16 a person who meets the following qualifications,"
17 and then there's all those things.

18 MR. LYLE: We're getting a lot of shaking of
19 heads no in Orange County on that one. I'm not sure
20 we want to write "fully trained" like that. I get
21 where you're going with it, but --

22 MS. SHEN: Well, let me finish that thought.

23 Fully trained means someone who's had all this
24 stuff, but the thing that I would add is under
25 (d)(3) of (a), (b), (c), (d), and (e); are we all

1 there?

2 CHAIR KIMSEY: Yes.

3 MS. SHEN: I would then after that add a
4 (4), "Persons who completed (a), (d), (e), (f), and
5 (3) can conduct analysis on samples for the purpose
6 of determining alcohol concentration."

7 So essentially, people who have completed
8 the training up above that, which is (a), (b), (e),
9 and (f), and (3), which is complete a competency
10 test, can then do alcohol analysis. I know that's
11 kind of confusing when you can't see it.

12 MS. HARMON: Jennifer, can you repeat it
13 again?

14 MS. SHEN: So everyone see where (a), (b),
15 (c), (d), (e), and (f)?

16 CHAIR KIMSEY: Yes.

17 MS. HARMON: Yes.

18 MS. SHEN: So after that there is (g), (h),
19 (i), (j), then there's (3). (3) is the competency
20 test, right?

21 MS. HARMON: Right.

22 MS. SHEN: So I suggest adding (4), and (4)
23 would say, "Persons who completed (a), (d), (e),
24 (f), and (3) can conduct analysis on samples for the
25 purpose of determining alcohol concentration."

1 If you go back up a little bit, (a) is value
2 and purpose analysis, (b) is the laboratory method,
3 (d) is instruments and procedures, (f) is practical
4 laboratory demonstration of the ability to perform
5 the work, and then (3) is taking a competency test.

6 So if you've done those things, you can now run
7 samples for the purpose of determining alcohol
8 concentration.

9 MS. HARMON: Okay. So you're saying value
10 and purpose in forensic alcohol analysis.

11 MS. SHEN: Uh-huh.

12 MS. HARMON: Physiological action of
13 alcohol.

14 MS. SHEN: No, no, no, (d) as in dog.

15 MS. HARMON: Value and purpose of forensic
16 alcohol analysis, laboratory method, practical
17 laboratory demonstration.

18 MS. SHEN: (e) as well. So (a) as in apple,
19 (d) as in dog, (e) as in elephant, (f) as in Frank.

20 MS. HARMON: You're saying they need to have
21 had forensic alcohol instruments and procedures
22 training?

23 MS. SHEN: (inaudible).

24 MS. HARMON: Not if they're doing blood
25 alcohol analysis.

1 MS. SHEN: That's a very good point, so we
2 would take (e) out of there.

3 MS. HARMON: Okay. So (a), (d), (f), and a
4 competency test.

5 MS. SHEN: Correct.

6 MS. HARMON: I like it.

7 MR. LYLE: One suggestion Jennifer Shen.
8 Could you change the word "can" to "may"?

9 MR. SLAUGHTER: That was my suggestion as
10 well. Mark Slaughter.

11 MS. SHEN: Yes, I can and I may.

12 CHAIR KIMSEY: This is Paul. Is there some
13 point, then, when they will be required to complete
14 the rest of the training?

15 MS. SHEN: Yes, they have to complete the
16 rest of the training before they are a fully trained
17 alcohol analyst who can testify (inaudible).

18 MR. JEFFRIES: And I think if we can
19 (inaudible) the words "fully trained." I'm not sure
20 what we mean by it, because it implies that there's
21 no more training possible, that they're beyond any
22 possible more levels of training. Is there another
23 way to say that?

24 MS. SHEN: I am crossing that out.

25 MS. HARMON: This is Jennifer Harmon. Maybe

1 we can cross out between analysis versus
2 interpretive testimony. So a trained analyst or an
3 analyst trained in analysis versus an analyst
4 trained to provide interpretive testimony.

5 MS. SHEN: This is Jennifer. Or we can just
6 take that out and leave it exactly the way it is.

7 "A forensic alcohol analyst is a person."

8 MS. STUPPLE: This is Alex. I just want to
9 point out that forensic alcohol analyst is defined
10 in the definitions and they're responsible for all
11 aspects of the analysis. So then this part implies
12 that they're students who need to have two years of
13 analytical experience who are not, in fact,
14 analysts. So it's a little confusing with the two.

15

16 MS. SHEN: This is Jennifer. That is why on
17 (4) it says "Persons who completed this, this, and
18 this can do that."

19 MS. HARMON: All aspects of analysis versus
20 all aspects of interpretation are really two
21 different things.

22 MS. SHEN: Yes.

23 MS. STUPPLE: But where it says "A fully
24 trained forensic alcohol analyst is a person" --
25 okay.

1 MS. SHEN: This is Jennifer again. That's
2 why we probably should take that out. I put it in
3 there because I thought that was (inaudible) but it
4 clearly is not. I think we should leave it as is
5 and then add our (4) and we're good to go.

6 This is Jennifer still. I think we can talk
7 about how to make that better, whoever winds up with
8 that in their pages, but I just want to make sure
9 that we are all on board with that as a change that
10 needs to be made.

11 CHAIR KIMSEY: Okay.

12 MS. SHEN: Shall I move on to another one?

13 CHAIR KIMSEY: Let's do it.

14 MS. SHEN: Okay. The other one that was a
15 really big deal to a lot of people, language on Page
16 16 requiring verification of a purchased CRM is
17 redundant and unnecessary. (inaudible) for vendors
18 accredited to ISO, blah-blah-blah are already
19 (inaudible).

20 So what we are doing is checking (inaudible)
21 that have already been done.

22 MS. HARMON: This is Jennifer Harmon from
23 Orange County. The issue with the way the language
24 is right now, you're requiring laboratories to
25 purchase certified reference material that has

1 already been checked against a standard reference
2 material. The way the language is right now, the
3 laboratories have to purchase a standard reference
4 material, then check their certified reference
5 material that has already been validated and
6 certified against another (inaudible). So I don't
7 think this is the intention of the committee
8 whatsoever.

9 MR. WONG: No.

10 MS. SHEN: This is Jennifer. I agree it was
11 not, and so I have a solution for that, I think. I
12 just want to make sure that everybody was on board
13 with making that the way it should be and what we
14 actually said. (inaudible) actually anticipated
15 that we would be wanting to have happen.

16 So what my thought was that we could say --
17 where are we on that? That is 1220.2.

18 MR. SLAUGHTER: Whoa, whoa, say that again
19 please? This is Mark.

20 MS. SHEN: 1220.2(a)(b).

21 MR. WONG: What page are you on?

22 MS. SHEN: Page 15 of the original. So
23 1220.2(a)(1), and there's an (A), (B), and (C). Is
24 everybody there?

25 CHAIR KIMSEY: Yes.

1 MS. SHEN: Okay. So there's a couple of
2 changes I think would be helpful there, but the big
3 change would be to add a (D) as in dog that said,
4 "If a purchased secondary standard (CRM) has been
5 certified as analytically verified against a
6 (inaudible), that 1220.2(a)(1)(B) is not required."

7 MS. HARMON: This is Jennifer Harmon. I
8 like the language.

9 MR. SLAUGHTER: This is Mark. I didn't
10 catch the language.

11 MS. SHEN: I'm sorry. So we would add a (D)
12 as in dog and it would say -- so if (C) says, "The
13 forensic alcohol laboratory shall verify the
14 concentration of any new secondary standard used in
15 the methods by analyzing the new secondary standard
16 concurrently with the NIST standard reference
17 material." And that's the thing that's the problem.

18
19 We would add a (D) that said, "If a
20 purchased secondary standard has been certified as
21 analytically verified against a NIST SRM, then
22 1220.2(a)(1)(C) is not required."

23 MR. SLAUGHTER: Got it.

24 MS. SHEN: So I just want to make sure the
25 committee's all on board with that. I don't think

1 that was our intention to make people reverify stuff
2 that's already been verified.

3 CHAIR KIMSEY: Okay.

4 MS. SHEN: All right. That was a big one.

5 Does anyone else have one that they can
6 think of off the top of their heads that's a big
7 science one while I look through my notes really
8 quickly?

9 I think those were the ones that were really
10 important to everyone.

11 CHAIR KIMSEY: Okay.

12 MS. SHEN: So one of the things that I did
13 is I added in some definitions for SRMs and CRMs
14 that went to in the regulations everyone knows what
15 they mean.

16 I have one more that I think we should
17 discuss. I think this came from the Department of
18 Personnel. I think it's time to get rid of all the
19 grandfather clause stuff. Apparently there isn't
20 anyone that needs that anymore. The people who have
21 been doing this since, I think before 1970 or
22 whenever that was.

23 MS. HARMON: This is Jennifer Harmon. Can
24 the Department address that, since you are the
25 Department personnel who receive this information,

1 do you have private labs possibly that may have
2 folks who are grandfathered in?

3 MR. LARSON: The Department looked at it
4 somewhat closely when the question came up before,
5 and my recollection is that we believe that it's two
6 issues.

7 It's actually if someone was grandfathered
8 in, they are qualified and they will continue to be
9 grandfathered under the language that says anyone
10 that was an analyst or a supervisor at the time the
11 regulations were promulgated is automatically an
12 analyst. Point one.

13 Point two. So the question really is, is
14 there someone who did an activity which was either a
15 forensic alcohol analysis activity or a med tech
16 activity and was the director of a clinical lab, and
17 then stopped working for forty-five years, and then
18 wants to come back and work again. And if we've
19 already qualified that person and he's okay, he's in
20 his walker and he's billing the work.

21 I think, as we said before and what the
22 conclusion was before without looking at how we came
23 to that conclusion, the conclusion was before that
24 it's unlikely anyone is going to attempt to qualify
25 under those grandfather clauses and it's unlikely

1 there would be documentation to demonstrate that he
2 or she was so qualified forty-five years ago. So I
3 don't believe it has any meaning, the grandfather
4 clause that refers to the pre-70 activities.

5 The grandfather clause that you've added,
6 which qualifies anyone who's currently qualified,
7 will be significant and should be retained, I would
8 imagine.

9 MS. SHEN: This is Jennifer. So I'm going
10 through my notes and I think those are the big
11 issues. There is one last place in here where there
12 was a problem with pre-verifying CRMs, but I've
13 changed it in a couple places.

14 Let me see how I did this. Oh no, it's the
15 same place, I'm sorry.

16 So the only other big issue there was and
17 something (inaudible) took a crack at was adding in
18 some timeframes. So if the Department has an issue
19 with something we're doing, they would send us that
20 information. And we didn't really articulate
21 timeframes as to when we needed to get back to the
22 Department or the Department needs to get back to
23 us, so I took a crack at adding in a sixty- or
24 ninety-day timeframe so that we would be compelled
25 and they would be compelled to communicate

1 responsive to issues that we had.

2 MR. JEFFRIES: Dan Jeffries. On the point
3 of putting in the timeframes are you also then going
4 to address what happens if you don't comply with
5 those timeframes?

6 MS. SHEN: No.

7 MR. JEFFRIES: Then I would think we're
8 better off leaving them out, because if you say
9 something must be done in sixty days and it's not
10 done, and it's undeclared what happens at that
11 point.

12 MS. SHEN: This is Jennifer. I agree with
13 you. I think that was a suggestion coming out of
14 our legal people, that we can't just say we have to
15 respond and then not say anything, as a clarity
16 issue whether or not, you know, two years, five
17 years, three days, so that's problematic.

18 And I agree with you about there's nothing
19 saying, well, if you don't what's going to happen,
20 but the entire conundrum of the whole experience is
21 that that's really the conflict you're in. We say
22 (inaudible) but if we don't what happens. That's a
23 problem throughout the document.

24 MR. JEFFRIES: Yeah, I think that is the
25 intrinsic problem, but I think if we specifically

1 say that something must be done within sixty days,
2 then it'll be argued that if it wasn't done within
3 sixty days, who knows, your entire lab accreditation
4 may go out the window. You're then leaving open the
5 argument as to what (inaudible) timely fashion.

6 MS. SHEN: (inaudible)

7 MS. STUPPLE: This is Alex. With or without
8 a timeframe you have the same problem if you're
9 saying that somebody shall do something, then you
10 have the same problem of what happens if they don't
11 do it. Adding a timeframe just made more sense but
12 either way you come out with the same issue, but
13 without a timeframe nobody's going to send you
14 anything.

15 MS. SHEN: Yeah, (inaudible).

16 This is Jennifer again. I remembered the
17 other issue that I wanted to run by you guys, the
18 other scientific issue, and that is the twenty
19 replicate analyses of no more than two analyses per
20 day. If you have, if they're using (inaudible)
21 reference material that meets the requirements for
22 quality control reference material, then why would
23 you have to run it twenty times?

24 MS. HARMON: This is Jennifer Harmon. You
25 shouldn't have to.

1 MS. SHEN: Right. It's 1220.3(a)(1). It's
2 Page 16, 15 and 16.

3 MS. HARMON: Jennifer, if I'm reading this
4 right, we don't mention certified reference
5 material.

6 MS. SHEN: No, so we had to add those into
7 the definitions.

8 MS. HARMON: So under the definition of
9 quality control you entered in that it was a CRM.

10 MS. SHEN: In the definitions in the
11 beginning I added in CRM -- what did I add in? Yes,
12 I added in med certified reference material and new
13 standard reference material as definitions
14 (inaudible).

15 MS. HARMON: Okay. And the way the
16 regulation reads right now it just says quality
17 control reference material, and a solution of
18 alcohol that you determine yourself.

19 MS. SHEN: All right. So 1220.3(a)(1), I
20 added an (A), "If the quality control material is
21 acquired and is a CRM that has been verified against
22 a NIFT (inaudible) 1200.3(a)(2) is not required."

23 Basically, if you buy it, (inaudible) you do
24 not need to run it twenty times over a day.

25 MS. HARMON: This is Jennifer Harmon. My

1 only concern with that is are we going to mandate
2 that it's a different lot or batch than the
3 certified reference materials they're using to
4 calibrate the instruments with? Because we really
5 should, because if they're using the same quality
6 control to run analysis that they're using to
7 calibrate their instrument with and let's just say
8 something's wrong, you're never going to know.

9 So at least the way the laboratories are
10 doing it right now, they're making it up and they're
11 running it across several calibrations, potentially
12 more than one batch of standards, and testing them.

13 MS. SHEN: You know, Jennifer, this is not
14 really my bailiwick, this is just a concern that
15 people had. If we think that we should continue to
16 do it as it's written, I don't have a problem with
17 that, but this is something that was certainly a
18 concern to people who are purchasing them that
19 they're already verified and they don't want to have
20 to run that twenty times over ten days. So however
21 you want to fix that is really up for discussion.

22 MS. HARMON: Kenton, do you have any
23 comments?

24 MR. WONG: I agree with you, Jennifer
25 Harmon. You have to still do that part if it's a

1 different lot. Otherwise you'd never know.

2 MS. SHEN: If it's a different lot or when
3 it isn't a different lot?

4 MS. HARMON: Go ahead, Kenton.

5 MR. LARSON: It's getting late.

6 MS. HARMON: The quality control needs to be
7 different either by source or minimally by lot
8 numbers --

9 MR. WONG: Correct.

10 MS. HARMON: -- than what is being used to
11 calibrate the instrument.

12 MR. WONG: Correct.

13 MS. SHEN: Okay. This is Jennifer. If it
14 is, in fact, a different lot, do you need to run it
15 twenty times?

16 MS. HARMON: No.

17 MS. SHEN: So if it's, in fact, the same
18 lot, you would have to run it twenty times?

19 MS. HARMON: No, I would just mandate that
20 they have to use a different lot.

21 MS. SHEN: Okay.

22 MS. HARMON: And I believe that the old
23 regulation has something about that. Clay?

24 MR. LARSON: In preparing the old regulation
25 presume you prepared both, so yeah, there is still

1 language that they have to be separate lots.

2 MR. WONG: And for good reason.

3 MS. HARMON: Yes.

4 MR. LARSON: Everything in Title 17 is for a
5 good reason.

6 CHAIR KIMSEY: So with that little bit of
7 humor, we're getting close to the witching hour, and
8 while Jennifer hasn't had to move yet but we still
9 only have ten minutes or so, so can we close out
10 that discussion or do we need a little more?

11 MS. SHEN: This is Jennifer. I think we can
12 close that out. I get that. And then I wonder if
13 you would like me to address those public comments
14 that correspond to those particular things we just
15 discussed, as a committee member, that we could do
16 those as well, unless someone else --

17 CHAIR KIMSEY: No, absolutely. If you're
18 talking about your partner subcommittee member,
19 absolutely.

20 MS. SHEN: So we would address those four
21 things we just talked about.

22 CHAIR KIMSEY: Yes.

23 MS. HARMON: Do you know which pages those
24 are on, Jennifer?

25 MS. SHEN: Well, as I'm getting kicked out

1 of here I just put all my stuff in a big pile.

2 MS. HARMON: Okay. Paul, could we maybe
3 divide this up because it's getting late?

4 CHAIR KIMSEY: Yes, that's where I was
5 heading, actually, for people to start thinking
6 about their calendars. With the amount of time we
7 have left, the Department will work on breaking up
8 the package into the four subcommittee groups.

9 How much time does the Committee want to
10 have? So you'll be submitted your information to us.

11 It's going to take us a few days to turn it around
12 to the full committee. How much time does the
13 Committee want to have everybody's work product
14 before we actually meet again, how many days?

15 MR. WONG: We have to have --

16 CHAIR KIMSEY: But getting your packet with
17 all the information from all the subcommittees, how
18 many days do you want to have for review before we
19 have a meeting? I'm trying to get to a date.

20 MS. HARMON: I think we should be meeting
21 the first week in November because that will only
22 give us two weeks before the final is due.

23 CHAIR KIMSEY: Right. Well, I was thinking
24 we might be able to get to the second week, just to
25 give people more time to actually do the work and

1 then also review everybody's subcommittee's work. I
2 was thinking maybe the second week of November,
3 which I believe is Monday the 16th.

4 MS. HARMON: That's the 9th.

5 CHAIR KIMSEY: Yes, so Monday the 9th.

6 MS. SHEN: This is Jennifer. I think we
7 need to have a week to review everybody's data.

8 CHAIR KIMSEY: Okay.

9 MS. SHEN: That'll be a lot.

10 CHAIR KIMSEY: So are we thinking of getting
11 the package out to the Committee on the 9th and
12 meeting on the 16th?

13 MS. HARMON: I think we need to have the
14 package before that. I hate to say it, but...

15 MS. SHEN: I agree.

16 MS. HARMON: We probably need to get it to
17 everybody by the first week of November.

18 CHAIR KIMSEY: Okay. So then you need to
19 get it to us at the end of the last week of October.
20 That only gives you about not even two weeks. And
21 we got to get it out to you.

22 MS. SHEN: This is Jennifer. It's going to
23 be hard, that's all there is to it, so we just have
24 to suck it up and do it.

25 CHAIR KIMSEY: Okay. So then we're thinking

1 that we would try and meet the week of the 16th?

2 MR. SLAUGHTER: Yes.

3 CHAIR KIMSEY: The week of the 16th?

4 MS. HARMON: Yes.

5 CHAIR KIMSEY: Monday's the 16th that goes
6 through the 20th. Obviously the Department needs a
7 bit of time to pull together the package. It goes
8 out of the Department operation that following
9 Monday the 23rd. So how about Monday the 16th or
10 Tuesday the 17th for people's calendars?

11 MS. HARMON: This is Jennifer Harmon. I can
12 do either one.

13 CHAIR KIMSEY: Okay.

14 MR. SLAUGHTER: This is Mark Slaughter. I
15 can do either one.

16 CHAIR KIMSEY: Okay.

17 MR. JEFFRIES: Dan Jeffries, both are good
18 for me.

19 MR. LYLE: Bruce Lyle, both are good for me.

20 CHAIR KIMSEY: Anybody have a problem with
21 those dates?

22 MS. SHEN: What were the dates, Paul?

23 CHAIR KIMSEY: Monday November 16th or
24 Tuesday November 17th.

25 MS. SHEN: Okay. We'll make it work. We

1 are actively being dragged out of our room.

2 CHAIR KIMSEY: And we'll be in touch. Thank
3 you.

4 [Side conversation]

5 CHAIR KIMSEY: I'm looking at Sacramento,
6 there's a lot of people leaning over to the side.
7 No, I think we'll stop at 4:30.

8 So we'll go for the 16th or the 17th. Any
9 feeling one way or the other, Monday or Tuesday?

10 MS. HARMON: Well, if we have to address
11 anything we probably should -- is it possible if we
12 have to meet again?

13 CHAIR KIMSEY: It wouldn't be possible.

14 MS. HARMON: Oh, ten days.

15 MR. JEFFRIES: Would you want to notice a
16 meeting for both days and then cancel the second one
17 if we don't need it?

18 CHAIR KIMSEY: Okay. We can do that.

19 MS. HARMON: That's a great idea.

20 CHAIR KIMSEY: Okay. Any other comments
21 real quick about what we have planned?

22 MR. JEFFRIES: Time-wise are we talking
23 about the same time in the afternoon or should we
24 schedule it one to five just in case we want to use
25 the whole time?

1 CHAIR KIMSEY: Yeah, we'll pretty much make
2 arrangements for the whole day and just see how it
3 goes.

4 MR. JEFFRIES: By the whole day you mean --

5 CHAIR KIMSEY: We'll start in the morning.
6 Nine o'clock, ten o'clock?

7 MR. JEFFRIES: I would ask for ten o'clock
8 only because I'll have to either come to Orange
9 County or San Diego. Can we do Orange County again
10 also?

11 CHAIR KIMSEY: We'll try, and we'll do ten
12 o'clock. And we'll take a lunch break.

13 Other comments?

14 MS. HARMON: Can we get a division of who's
15 doing what, Paul, as far as pages?

16 CHAIR KIMSEY: Well, that's something, yes,
17 we can talk about that. We have four groups and
18 let's say we have four hundred pages? No, actually
19 we have --

20 MR. SLAUGHTER: We have 171 pages.

21 CHAIR KIMSEY: I'm sorry, comments versus
22 pages. We have a calculator going here quickly.
23 Oh, that's something else.

24 MS. HARMON: It's 43 to 45 pages.

25 CHAIR KIMSEY: So 43 to 45 pages each. I

1 think we'll just start with 1 through 43 and sort it
2 out unless there's some other suggestions.

3 MR. SLAUGHTER: Overlap. Some of comments
4 overlap onto different pages.

5 CHAIR KIMSEY: It occurs to me that we might
6 send you also some examples of responses, some
7 language, regulatory response language for those of
8 you that haven't done this before. It might be of a
9 different subject but it'll give you an idea of the
10 language style.

11 MR. SLAUGHTER: Thank you, that would be
12 great. This is Mark.

13 MS. HARMON: This is Jennifer. I agree,
14 thank you. Okay, so Paul, are you just going to
15 assign pages?

16 CHAIR KIMSEY: I think so unless we have
17 another suggestion.

18 MS. HARMON: Let's just do it.

19 CHAIR KIMSEY: I guess you folks have them
20 now, so Jennifer and I were going to add some things
21 we've already agreed on that might make your jobs
22 easier, so I don't know that it helps right now to
23 give you out the numbers, but maybe it does just so
24 you can sort of get started, and when we send our
25 product you'll at least have an idea.

1 So we'll just go down the list. Jennifer
2 and I will take the first batch, which would be 1
3 through 43.

4 And then 43 through 86, does that work?
5 Jennifer Harmon and Dan Jeffries will do Pages 43
6 through 86.

7 MS. HARMON: Isn't it 44?

8 CHAIR KIMSEY: I'm sorry, 44, Thank you. So
9 44 through 87, I guess it is then.

10 Doing some addition here.

11 Bruce Lyle and Sergeant Jones will have
12 Pages 88 to 131, it looks like.

13 MR. LYLE: Okay.

14 CHAIR KIMSEY: And Mark Slaughter and Kenton
15 have the last set, 132 to 171.

16 MR. SLAUGHTER: Perfect, Thank you.

17 MR. JEFFRIES: And after you add your
18 comments to the ones that you guys want to knock
19 out, could you put them in like a Word format or
20 something? It looks like we have them in pdf and it
21 would be easier if we had them in a different
22 format.

23 CHAIR KIMSEY: Okay, we'll try and do that.

24 Other helpful comments or suggestions? If
25 not, I think we'll go ahead and call this meeting to

1 a close.

2 MS. HARMON: I just want to clarify. The
3 plan is to set a ten o'clock meeting on the 16th of
4 November, correct?

5 CHAIR KIMSEY: And the 17th.

6 MS. HARMON: And the 17th, so we should
7 block that out in case we need it.

8 CHAIR KIMSEY: Correct.

9 MS. HARMON: Okay. And you're saying ten
10 until five, correct, or ten to four?

11 CHAIR KIMSEY: We'll go ten to five and see
12 what we can handle.

13 MS. HARMON: Okay.

14 CHAIR KIMSEY: Okay. Well, thank you all
15 very much for your time today and your commitment.

16 MS. HARMON: Paul, I'm sorry, I have one
17 more housekeeping issue.

18 CHAIR KIMSEY: Sure.

19 MS. HARMON: Once the subcommittees have
20 made comments, how do you want us to get that to
21 you?

22 CHAIR KIMSEY: We'll communicate that in the
23 package that we send to you or the notification.
24 I'm not sure. It'll probably be in an email
25 situation. We'll get those dates and sort of

1 confirm this information to you in that package.

2 MS. HARMON: Okay.

3 MR. SLAUGHTER: This is Mark Slaughter.
4 Could you also in that email include some of those
5 restrictions or limitations for our communications
6 during the subcommittee so that we don't misstep?

7 CHAIR KIMSEY: Yes. I think I've seen a one
8 pager of that sort of thing, but basically just real
9 quickly, you're a subcommittee of two. You don't
10 share information with the rest of either another
11 committee or the full Committee. You're basically
12 making your process just with the two of you.

13 MR. SLAUGHTER: Got it.

14 MS. HARMON: And you need that work product
15 by what date again?

16 CHAIR KIMSEY: I don't know that we've
17 decided.

18 MR. WONG: Shooting for the end of October.

19 CHAIR KIMSEY: So what is that? Does
20 somebody have a calendar in front of them?

21 MR. SLAUGHTER: October 30th.

22 CHAIR KIMSEY: Friday, October 30th? Getting
23 close to Halloween.

24 MR. SLAUGHTER: Yes.

25 CHAIR KIMSEY: So basically that's about two

1 weeks.

2 Now, I don't want to close the meeting if we
3 know that Jennifer Shen is going to another room and
4 we can call or whatever.

5 MR. JEFFRIES: Just a question. That two
6 weeks, how soon do you think you'll have the
7 materials out to us, because I don't think we should
8 do a lot of duplication of work, so you and Jennifer
9 are going to answer a number of questions within our
10 area, it would be helpful to have that and then have
11 two weeks from that time.

12 CHAIR KIMSEY: Right, that's why I was
13 hoping we could maybe get Jennifer on again to talk
14 about it specifically. But generally speaking,
15 Jennifer and I will probably be able to meet, I
16 would say either Monday or Tuesday of next week and
17 get that out to you, and maybe this whole package.
18 I think our goal will be to try and get this whole
19 package to you by the middle, like Wednesday or
20 Thursday of next week.

21 But in anticipation of that, that's why I
22 think it's good that we outlined the numbers. You
23 can start looking at them tomorrow even. Because
24 the changes that Jennifer and I are going to make or
25 suggest, we'll put them in red. There's not going

1 to be that many of them and you might as well get
2 started as soon as possible.

3 MR. LYLE: And I know if you're looking at
4 it and if we've discussed it already, you can kind
5 of bypass that one if you know it's about something
6 that we've just discussed right now, you can kind of
7 skip over it.

8 CHAIR KIMSEY: Correct, I would agree. And
9 you can get an understanding of what your forty
10 pages are covering.

11 So we're going to try and patch in to
12 Jennifer.

13 [Side conversation]

14 CHAIR KIMSEY: We're still trying to get
15 Jennifer on the phone. So we're going to take a
16 pause until we can get Jennifer.

17 (Off the record 4:04 p.m. to 4:07 p.m.)

18 CHAIR KIMSEY: We have not been able to
19 contact Jennifer in her new location, so we're going
20 to officially close our meeting, our twenty-fifth
21 meeting of the Forensic Alcohol Review Committee,
22 and we're adjourning at 4:07.

23 Thank you all very much for your time.

24 (Adjourned at 4:07 p.m.)

25 --o0o--

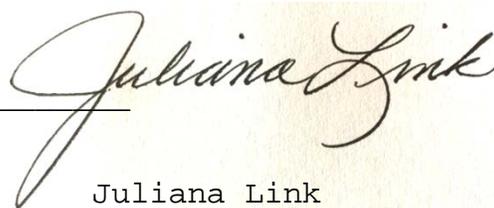
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Juliana Link
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