

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-SIXTH MEETING
MONDAY, NOVEMBER 16, 2015
10:00 a.m.

Reported by:
Julie Link

APPEARANCES

Review Committee Members

Dr. Paul Kimsey, Chairman, Department of Public Health

Jennifer Harmon, California Association of Toxicologists

Dan Jeffries, California District Attorneys Association

Sgt. Eric Jones, California Highway Patrol

Bruce Lyle, California State Bar Association

Jennifer Shen, California Association of Crime Lab Directors

Kenton Wong, California Association of Criminalists

Richmond, California

Bob Moezzi, Branch Chief

Clay Larson, Section Chief

Wayne Tseng

Harby Thandi

Sacramento, California

Alexandra Stupple

Sgt. Eric Jones

Dawn Basciano

Russ Huck

San Diego, California

Jennifer Shen

Santa Ana, California

Jennifer Harmon

Dan Jeffries

Bruce Lyle

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MONDAY, NOVEMBER 16, 2015

10:39 A.M.

CHAIR KIMSEY: We're going on the record. Julie is our stenographer again today. Welcome to our 26th meeting of the Forensic Alcohol Review Committee.

COMMITTEE MEMBER SHEN: Paul?

CHAIR KIMSEY: Yes?

COMMITTEE MEMBER SHEN: This is Jennifer Shen. I'm going to be working in the background here (inaudible) set up to help me, so I'm going to continue on but I'll leave myself on.

CHAIR KIMSEY: Okay. Thank you. Let us know if things change.

COMMITTEE MEMBER SHEN: Okay. Thank you.

CHAIR KIMSEY: We may need you.

So we'll go around the room here in Richmond. I'm Paul Kimsey, the chairman of the Forensic Alcohol Review Committee.

COMMITTEE MEMBER WONG: Kenton Wong.

CHAIR KIMSEY: Also a committee member.

MR. THANDI: Harby Thandi, CDPH.

MR. LARSON: Clay Larson, Department of Health.

MR. MOEZZI: Bob Moezzi, Chief, Food and

1 Drug Laboratory Branch.

2 MR. TSENG: Wayne Tseng, for the Department.

3 CHAIR KIMSEY: Okay. And in Sacramento.

4 MR. HUCK: This is Russ Huck, I'm with the
5 Division Office, the Division of Food, Drug, and
6 Radiation Safety.

7 COMMITTEE MEMBER JONES: Sergeant Eric
8 Jones, California Highway Patrol.

9 MS. BASCIANO: Dawn Basciano, Office of
10 Regulations.

11 MS. STUPPLE: Alexandra Stupple, Office of
12 Legal Services.

13 CHAIR KIMSEY: Thank you. And in Santa Ana.

14 COMMITTEE MEMBER HARMON: Jennifer Harmon,
15 committee member.

16 COMMITTEE MEMBER LYLE: Bruce Lyle,
17 committee member representing the California State
18 Bar Association.

19 COMMITTEE MEMBER JEFFRIES: Dan Jeffries,
20 committee member representing the California
21 District Attorneys Association.

22 CHAIR KIMSEY: Anyone else in Santa Ana?

23 COMMITTEE MEMBER HARMON: No, that's it.

24 CHAIR KIMSEY: Okay, thank you. And we have
25 Jennifer Shen in San Diego.

1 COMMITTEE MEMBER SHEN: Yes.

2 CHAIR KIMSEY: Okay. Well, thank you all for
3 joining us. Sorry for the technical difficulties.

4 The agenda, we're getting started here at
5 about 10:40. The opening remarks by myself, I just
6 had a few things to mention.

7 The Department of Public Health in
8 conjunction with its health partners at the county
9 level statewide is having a statewide medical health
10 exercise today. I want to emphasize this is an
11 exercise, so if you hear anything about the
12 scenario, it's just an exercise.

13 I have some roles to play in this exercise.
14 I have written myself out of all of them but I do
15 have a statewide call I need to make at one o'clock
16 today, so we'll try and have a break that includes
17 that one o'clock timeframe for at least fifteen
18 minutes so I can do that call.

19 Also with regard to the agenda, our public
20 comment times, we need to have public comment before
21 each of our discussions, so I will include those in
22 the agenda as I proceed through. So we will have
23 public comment before we get started on our
24 subcommittee reports. That's a change to the agenda.

25 Any other questions about the agenda?

1 Basically, we're going to be going through
2 subcommittee reports today. We're going to also have
3 some discussion about OAL approval. And we'll also
4 be discussing proposed changes to the ISOR. And we
5 also may be also meeting again tomorrow.

6 But any questions on the agenda?

7 COMMITTEE MEMBER SHEN: Jennifer Shen. I
8 think we have it working. If someone wanted to try
9 and call us again, I think I might be able to switch
10 over.

11 CHAIR KIMSEY: Okay. That's the 858-495-
12 5943?

13 COMMITTEE MEMBER SHEN: Yes.

14 CHAIR KIMSEY: Okay, hold on.

15 (Off the record 10:45 a.m. to 10:51 a.m.)

16 CHAIR KIMSEY: Thank you all. I talked about
17 a change in the agenda, the fact that we're putting
18 public comment before the committee discussion. The
19 statewide medical health exercise.

20 I think we're going to find as we go through
21 the subcommittee comments today that there may be
22 some things that need to get cleaned up. We know
23 that there's some footnotes and some references that
24 we didn't get out to the subcommittees. I'm going to
25 propose to the full committee that we contemplate

1 setting up a subcommittee of Jennifer Shen and
2 myself again to resolve some of those issues. We
3 don't have to do that yet, we'll see how far we get
4 and what's involved. I just want to put that out as
5 an option as we go through our work today.

6 Alexandra Stupple in Sacramento and myself
7 here in Richmond and Jennifer Shen in San Diego are
8 going to be taking notes to make changes to the
9 subcommittee comments that we posted online, so
10 we'll be taking notes of edits that we want to make
11 and get those incorporated into the document.

12 Any other comments about the agenda at this
13 point before we get started?

14 COMMITTEE MEMBER LYLE: Bruce Lyle in Orange
15 County. I have a meeting I couldn't get out of at
16 1:30, and I understand you have some obligation at
17 about 1:15 or so, so I was thinking maybe we could
18 push the lunch up to around that time to incorporate
19 my meeting. I'm hoping it won't last too long but I
20 couldn't get out of it.

21 CHAIR KIMSEY: I absolutely understand, and
22 I think that's a great idea. We'll try and have our
23 lunch meeting from five minutes to one until two
24 o'clock or so. Would that facilitate your meeting?

25 COMMITTEE MEMBER LYLE: Yeah, that would

1 help a lot.

2 CHAIR KIMSEY: Okay, great, we'll propose
3 that.

4 COMMITTEE MEMBER SHEN: Jennifer Shen. I
5 just wanted to note that I took everybody's comments
6 and I put them all into one large spreadsheet, so I
7 have the total spreadsheet with everything filled
8 in, including the stuff that we talked about that I
9 would do. Any place where there wasn't a comment for
10 some reason, I put one in.

11 So I have my laptop with me. I'm going to,
12 as we go along, just edit the comments as we go,
13 hoping to save a lot of time later, but I have that
14 sitting right in front of me.

15 CHAIR KIMSEY: Great. Thank you very much.

16 Other comments before we get started?

17 So any public comment on the next agenda
18 item, which is the subcommittee is going to discuss
19 the reports and the subcommittee's responses to the
20 public comments received for the Department's
21 proposed forensic alcohol analysis regulations. Any
22 public comment on that agenda item?

23 MR. LARSON: Yeah, Clay Larson. Could you
24 describe the reasons why we've changed the agenda.
25 In the past we've scheduled public comments after

1 and therefore in response to discussions by the
2 committee, which seemed to be totally in keeping
3 with the spirit of Bagley-Keene, which is to give
4 the public access to the discussions.

5 In fact, we've been loose about that and we
6 haven't typically scheduled formal public comment
7 times and committee times. Is there some reason why
8 we've changed that?

9 CHAIR KIMSEY: Well, we've always had public
10 comment available. Part of Bagley-Keene is that we
11 have public comment on the agenda. Bagley-Keene also
12 recommends that public comment come before the
13 agenda item, so we're just catching up with Bagley-
14 Keene.

15 MR. LARSON: The other comment is the Chair
16 seemed to describe what looked like a three-person
17 committee, you described some work the product of
18 yourself and Jennifer Shen and of an attorney. That
19 sounds like three people. Even if you didn't all get
20 together in one room or one teleconference, just a
21 cautionary note, it could still create issues if you
22 had serial meetings, so you'd meet with Jennifer
23 Shen, then you'd meet with...

24 Since you made that part of the record, I
25 think we should be aware of the possible

1 implications.

2 CHAIR KIMSEY: Yeah, I'm sorry. My intention
3 was to refer to the subcommittee as Jennifer Shen
4 and myself that the committee might want to propose,
5 which we've done in the past. And our attorney's
6 role is for the Department might be advisory tome,
7 but the subcommittee would just be Jennifer Shen and
8 myself. So we can correct that if I misspoke.

9 Any other public comments before the full
10 committee gets started on our subcommittee reports?

11 MR. LARSON: And I want to comment on this
12 so I can sit back and relax. I still think this
13 structure is a little awkward. We might do this by
14 subcommittee. The one interesting but significant
15 comment for the first subcommittee, Subcommittee 1,
16 was related to a response to a public comment that
17 asked --

18 CHAIR KIMSEY: Which number?

19 MR. LARSON: There are actually nine
20 instances of it. Bear with me for a minute.

21 CHAIR KIMSEY: Sure.

22 MR. LARSON: I just happened to see one
23 which is 1:34, and there was a public comment that
24 basically just paraphrased, or actually quoted, I
25 think, the requirements of the APA with regard to

1 the definition of necessity, that
2 The committee has not demonstrated by substantial
3 evidence that the proposed revisions to this section
4 will effectuate the purpose of the statutes. This
5 was either paraphrased or actually quoted in the
6 comment.

7 In the response on nine indications by the
8 subcommittee was that the committee does not need
9 direction from the statute. The statute clearly
10 empowers the committee to review and rewrite these
11 regulations as it deems necessary.

12 I think that represents a willingness on the
13 part of the committee, at least the subcommittee, to
14 ignore the requirements of the APA. There's a more
15 general requirement of the APA that defines a
16 regulation as a rule or a standard which is intended
17 to implement, interpret, and make specific the
18 statutes, and I think the public comment just called
19 for that. So to make the statement nine times that
20 the committee doesn't need direction from statutes,
21 I think it's going to be a problem.

22 COMMITTEE MEMBER HARMON: Clay, Jennifer
23 Harmon. Can you give us at least one of the comment
24 numbers?

25 MR. LARSON: I think I did.

1 CHAIR KIMSEY: He's found one at 1:34.
2 Subcommittee 1, Comment 34.

3 COMMITTEE MEMBER HARMON: That's the very
4 last comment, Clay, The committee does not need
5 direction from the statute?

6 CHAIR KIMSEY: Correct.

7 COMMITTEE MEMBER HARMON: Thank you.

8 CHAIR KIMSEY: And that's in response to the
9 comment --

10 COMMITTEE MEMBER SHEN: Jennifer Shen. That
11 comment refers to a continual comment from the
12 public again and again and again and again that, The
13 committee has not demonstrated by substantial
14 evidence that the proposed revisions to this section
15 will effectuate the purpose of the statutes... So
16 that is what that refers to.

17 CHAIR KIMSEY: And if I remember correctly,
18 when we refer to the statute we're referring to the
19 statute that pretty much created the subcommittee.

20 COMMITTEE MEMBER SHEN: Correct.

21 CHAIR KIMSEY: And the public comment is in
22 reference to APA regulations?

23 MR. LARSON: Yeah. And I would add that it's
24 stated at least in the current version of the ISOR
25 that the role of a subcommittee is to write in

1 regulations that refer to the statutes, and the
2 reference is 100700 etcetera.

3 So the direction to the committee, and I
4 wouldn't think this is a surprise, was to address
5 the appropriate subset of regulations that pertain
6 to forensic alcohol analysis starting with 100700.

7 CHAIR KIMSEY: You have any other comments?

8 MR. LARSON: I think that's all for now.

9 CHAIR KIMSEY: So it was my impression,
10 Jennifer, when we were doing this that maybe we need
11 to clarify the comment that's saying the founding
12 statute for the Forensic Alcohol Committee. Maybe
13 that specificity would be helpful in clarifying that
14 this is the Forensic Alcohol Committee.

15 Other ideas from the full committee?

16 COMMITTEE MEMBER SHEN: Jennifer Shen. So I
17 don't understand. So we want to clarify what we're
18 referring to?

19 CHAIR KIMSEY: Right, the statute that we're
20 referring to is the one that authorized the
21 formation of the Forensic Alcohol Committee.

22 COMMITTEE MEMBER SHEN: Okay. We need to
23 hear what the rest of the committee thinks.

24 CHAIR KIMSEY: Does the committee think that
25 clarification would be helpful?

1 COMMITTEE MEMBER LYLE: Bruce Lyle. What
2 we're saying is that the committee does not need
3 direction from, and then cite the exact statute?

4 CHAIR KIMSEY: Right.

5 COMMITTEE MEMBER LYLE: Because it clearly
6 empowers the committee to review and rewrite these
7 regulations.

8 CHAIR KIMSEY: That was our intention, I
9 believe, Jennifer.

10 COMMITTEE MEMBER SHEN: It was.

11 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. I
12 guess the basic question that we probably should
13 consider before anything else is what exactly we're
14 trying to accomplish with our responses to comments.

15 I think that our responses to comments have
16 been along the lines of this is something we've
17 discussed, this is something we've considered, this
18 is why we need to do it and it is response to the
19 public comment.

20 But basically what we need to do with the
21 public comments is look at them and see, based on
22 the public comments do we want to make any changes
23 to proposed rules that we have before us. We don't
24 have to agree with the comments, we don't have to
25 incorporate the comments, we just have to consider

1 them. And once we've thought about them, then we can
2 decide whether we want to make changes.

3 And I think that follows to a lot of the
4 comments, that they are things that we've talked
5 about for many sessions and in the past we've
6 considered a lot of things and felt that changes
7 weren't necessary. I think that's the same thing
8 with a lot of these responses to comments, that's
9 we're recognizing the comment and explaining why we
10 disagree with the comment.

11 CHAIR KIMSEY: That's correct.

12 COMMITTEE MEMBER SHEN: Jennifer Shen. One
13 of the things we did, because there were pages and
14 pages of comments about the ISOR and consistent and
15 continual comments that the committee hasn't
16 demonstrated by substantial evidence that blah-blah-
17 blah.

18 What I tried to do with Paul is that we
19 tried to go through the comments and pull out things
20 that we could actually discuss and see whether they
21 needed changing or not. So it's difficult and really
22 impossible, I think, to pull the sort of closure
23 comment that happens on every single public comment.

24 Does that make sense?

25 So every comment that we had, there was

1 something in it that was being addressed, and then
2 at the end of that comment it wrapped it up in that
3 we didn't have the authority to do whatever it is we
4 did, over and over and over again. So we were
5 looking for some sort of language, and I don't know
6 if what went out is highlighted, but I was, for my
7 own use and help, was trying to highlight the
8 different issues in the public comments so that we
9 made sure that we addressed them and that you could
10 see what the comment referred to.

11 COMMITTEE MEMBER JEFFRIES: And I agree with
12 you. I guess what I'm saying or I think what we're
13 all trying to say is a lot of the comments were sort
14 of Comment noted; objection overruled kind of
15 responses.

16 So we recognize the comment was there, we
17 disagree with the comment and we don't have to
18 specifically respond to the comment if we disagree
19 with it and don't feel that any changes are
20 necessary. We don't have to justify everything that
21 is a comment, it's not a back-and-forth conversation
22 with it.

23 CHAIR KIMSEY: And when Jennifer and I were
24 going through them we also did find a number of
25 areas where we are going to be recommending some

1 changes to the regulations.

2 COMMITTEE MEMBER JEFFRIES: Right, and I
3 think that's totally appropriate. It shows that
4 we've considered all the public comments, the
5 lengthy and well thought-out public comments, and
6 some of those do require us to make changes and I
7 think that's what we'll be doing over the next
8 couple of days.

9 I guess just as a starting point I don't
10 know that we have to defend all of our earlier
11 actions. I think now our response is we've
12 considered all the comments that the public has
13 made. These are the changes we're making in response
14 to the public comments.

15 COMMITTEE MEMBER SHEN: Jennifer Shen again.
16 So maybe what we could do is take the comment, talk
17 about the things that we address and that we think
18 are relevant, and then come up with some sort of
19 closing line or two to close out each public comment
20 that would just say, Things in this comment have
21 been discussed. We choose to make this, that, or the
22 other changes, or no changes, and thank you very
23 much, and then move on to the next one.

24 COMMITTEE MEMBER JEFFRIES: I think
25 Alexandra will want to address how she'd like to

1 procedurally do it.

2 MS. STUPPLE: Right, thank you. Even if you
3 have discussed them and even if you think the
4 comments are irrelevant, you do need to state why
5 you are not going to change the text.

6 So when it says over and over again the
7 committee has not demonstrated by substantial
8 evidence, while that is directed at the proposed
9 action, it is a very general and broad statement
10 that only needs to be answered once. And 100725 is
11 not the statute that we are implementing, and that
12 could be a possible answer to that statement.

13 COMMITTEE MEMBER SHEN: Jennifer Shen. So
14 one thing we would do in this document, then, at
15 least on the front end, because Paul and I did this
16 again and again, is that we would say this the first
17 comment that it comes up we would put in whatever it
18 is we decide and then we would not address that
19 again.

20 MS. STUPPLE: Right, you could put in See
21 comment 1:12 or whatever.

22 COMMITTEE MEMBER SHEN: Yeah, and so what we
23 did is just cut-and-paste the comment every single
24 time that it happened.

25 MS. STUPPLE: You could do that too. But the

1 answer to that particular comment is more of a legal
2 answer that should be provided and I think it should
3 be rewritten a little bit, that's all.

4 COMMITTEE MEMBER SHEN: How about we rewrite
5 it right now.

6 MS. STUPPLE: Okay.

7 CHAIR KIMSEY: So we're referring to the
8 last comment that the committee does not need
9 direction from the statute?

10 COMMITTEE MEMBER SHEN: Jennifer Shen. Yeah.
11 I'm going to tell you the first place it appears.
12 Just one second.

13 Okay, the first place I have it is 1:22.

14 COMMITTEE MEMBER LYLE: I see it in 1:20.

15 COMMITTEE MEMBER SHEN: Oh, you're right,
16 1:20. So how would we like to rewrite that?

17 CHAIR KIMSEY: We talked about clarifying
18 which statutes we're talking about. So the committee
19 does not need direction from the statute.

20 COMMITTEE MEMBER SHEN: How about this, why
21 don't we just say The statute blah-blah-blah clearly
22 empowers the committee to review and rewrite these
23 regulations as it deems necessary.

24 CHAIR KIMSEY: Okay.

25 MS. STUPPLE: Yeah, it's 100703, and then I

1 would add, if you feel that you have found
2 substantial evidence throughout the rest of the
3 document that the amendments are necessary.

4 COMMITTEE MEMBER SHEN: Okay. So, The
5 statute, 100703, clearly empowers the committee to
6 review and rewrite these regulations as it deems
7 necessary. I don't think we need more than that,
8 unless you think so.

9 COMMITTEE MEMBER JEFFRIES: I think what
10 Alex is suggesting is that we might want to just
11 make it a little clearer that we did consider it. It
12 is our position that the statute empowers us to do
13 exactly what we're doing and no further change is
14 deemed necessary by the committee.

15 COMMITTEE MEMBER SHEN: I think add a line
16 that says the changes or lack of changes pertaining
17 to this public comment were considered necessary by
18 the committee, or something. I just want to have
19 some language that I can --

20 MS. STUPPLE: The comment is addressing the
21 entire thing, all the regulations, so you don't have
22 to say this comment because it's such a general. I
23 mean, it's arguably an irrelevant comment, but on
24 the safe side it's better to answer. So I think more
25 of what Dan was saying.

1 COMMITTEE MEMBER SHEN: Okay. How about
2 this. The statute, 100703, clearly empowers the
3 committee to review and rewrite these regulations as
4 it deems necessary. The changes or lack thereof were
5 deemed necessary to effectuate the purpose of the
6 statute by the committee.

7 COMMITTEE MEMBER JEFFRIES: And maybe just a
8 tag line that public comments have been considered
9 and incorporated where the committee feels
10 appropriate.

11 COMMITTEE MEMBER SHEN: All right. Wait, say
12 that one more time?

13 COMMITTEE MEMBER JEFFRIES: Something along
14 the lines of that the public comments have been
15 considered and incorporated where appropriate.

16 COMMITTEE MEMBER SHEN: All right. Shall I
17 read it again?

18 CHAIR KIMSEY: Sure.

19 COMMITTEE MEMBER SHEN: The statute,
20 100703, clearly empowers the committee to review and
21 rewrite these regulations as it deems necessary. The
22 changes or lack thereof were deemed necessary to
23 effectuate the purpose of the statute. The public
24 comments have been considered and incorporated where
25 appropriate by the committee.

1 COMMITTEE MEMBER LYLE: Bruce Lyle. That
2 sounds great.

3 CHAIR KIMSEY: Paul. That sounds good.

4 A process point. We're obviously working on
5 Subcommittee 1's responses. As I mentioned, Jennifer
6 and I went through and basically pointed out where
7 the committee had previous discussions and where as
8 a subcommittee we didn't feel there was any
9 necessary change to the regulations.

10 I'm just thinking about how we want to go
11 through all of these subcommittee reports today. I
12 think we can open it up to the committee, but maybe
13 the subcommittees go through and articulate where we
14 recommend a change based on the public comment, and
15 then talk to the full committee about whether other
16 areas that they may have seen in their review that
17 they would like to discuss.

18 Alternatively, we could go through each
19 comment, but a number of them observed the
20 subcommittee has already deemed what the full
21 committee had already previously discussed was
22 appropriate, and we could concentrate on the areas
23 where the subcommittee felt there were some needed
24 proposed changes, and that's just a suggestion for
25 our process.

1 MS. STUPPLE: This is Alex. I think I
2 emailed the changes already to you where you
3 discussed the item beforehand. Some of the comments,
4 they still need to have a reasoning stated with
5 them, so there are a couple areas that need flushing
6 out.

7 You can't just say we discussed it and we --

8 CHAIR KIMSEY: Okay, that's fine.

9 COMMITTEE MEMBER SHEN: Jennifer Shen. I
10 think the first section I would like to get hammered
11 out is, as you can see, there is a comment that
12 appeared over and over again in the beginning and
13 that's the irrelevant comment. There's some that are
14 irrelevant because it just refers to the ISOR
15 itself. So I want to make sure we're on solid ground
16 there because that takes care of our first several
17 pages.

18 We do not spend our time addressing the
19 ISOR. We only spend our time addressing the actual
20 regulations.

21 MS. STUPPLE: Yes. And in the supplemental
22 statement of reasons, anything that was inaccurate
23 or not (inaudible) ISOR we can fix with these group
24 of changes.

25 COMMITTEE MEMBER SHEN: Correct. And that

1 was sent out to everyone, the corrections were sent
2 out to everyone, correct?

3 MS. STUPPLE: Yes.

4 COMMITTEE MEMBER SHEN: Okay. So if we're
5 good with those, then the first one that comes up
6 that we have not answered is comment 1:3 and that's
7 an authority and reference comment that I think you
8 need to answer, Alex.

9 COMMITTEE MEMBER JEFFRIES: Which one did
10 you say?

11 COMMITTEE MEMBER SHEN: 1:3, is an authority
12 and reference comment that I did not answer because
13 I think we were told that that's a legal issue.

14 MS. STUPPLE: Oh, yes. So the authority is
15 100703, and we can fix that in the next round in the
16 ISOR. And then also specific authority is better to
17 cite than general authority.

18 COMMITTEE MEMBER SHEN: Okay. So can you
19 tell me what you want me to write in there?

20 MS. STUPPLE: Just that we're going to
21 change the authority to 100703, and that 131200 we
22 are not going to cite as authority because specific
23 authority is better to cite than general authority,
24 and 131200 just is a CDPH (inaudible) regulation.

25 COMMITTEE MEMBER SHEN: Okay. I might need

1 that written down somewhere.

2 MS. STUPPLE: Okay.

3 CHAIR KIMSEY: So the next one that's not
4 based on the ISOR, I believe is 1:13 that was a
5 technical numbering issue, which I think was going
6 to be handled by the Office of Regulations.

7 MS. STUPPLE: We're talking about 1:13?

8 CHAIR KIMSEY: Yeah.

9 MS. STUPPLE: So that is the Secretary of
10 State who publishes the regulations, not Westlaw.
11 And also, Westlaw (inaudible) and they have no legal
12 meaning, so it's not relevant.

13 COMMITTEE MEMBER SHEN: Okay. So 1:13 is, I
14 just will put not relevant?

15 MS. STUPPLE: No. The regulations publisher,
16 it says in the comment, is Westlaw, which is not it.
17 The Secretary of State publishes the regulations.
18 And also the titles of sections are not something
19 that we write.

20 COMMITTEE MEMBER SHEN: So this is not an
21 issue for the committee?

22 MS. STUPPLE: Correct.

23 COMMITTEE MEMBER SHEN: Okay. That is what
24 I'll put.

25 COMMITTEE MEMBER HARMON: Jennifer Harmon.

1 Can you repeat that.

2 COMMITTEE MEMBER SHEN: Let me know how to
3 speak so you can hear me better. Is that okay?

4 COMMITTEE MEMBER HARMON: Yeah.

5 COMMITTEE MEMBER SHEN: Okay. So 1:13, I'm
6 going to write in there, This is not an issue for
7 the committee.

8 MS. STUPPLE: Well, I would add the reasons
9 why in that Westlaw is not the publisher and we
10 don't come up with the titles of the sections. I
11 mean, we can make suggestions but they're not
12 binding.

13 COMMITTEE MEMBER SHEN: Okay. So I have,
14 This is not an issue for the committee because
15 Westlaw is not the publisher and we do not come up
16 with the titles of the sections. All right.

17 Okay. So I'm wondering if we could just get
18 started on the comments after that all have to do
19 with the actual regulations. I'm assuming everybody
20 has read all of these, so we can go through them one
21 by one.

22 Comment 1:14, does anybody have any issues
23 with that? No, we'll move on. Or yes, let's talk
24 about it. Do you want to do that?

25 CHAIR KIMSEY: That sounds like a good

1 suggestion. Heads are nodding here in Richmond. How
2 about Santa Ana, does that seem like a good process?

3 COMMITTEE MEMBER LYLE: Bruce Lyle. Heads
4 are nodding.

5 CHAIR KIMSEY: Okay.

6 COMMITTEE MEMBER SHEN: Okay. So then, Paul,
7 you can I can handle bringing up ours. If you want
8 to bring them up one by one, I will handle typing.
9 And then when we get to the next subcommittee's work
10 we can hand it over to them.

11 CHAIR KIMSEY: Sure.

12 COMMITTEE MEMBER SHEN: All right. We'll
13 start with 1:14, then.

14 CHAIR KIMSEY: Okay. Our comment was,
15 Sentence restructured slightly to add clarity.
16 Antiseptic was changed to disinfectant to provide
17 consistency with the regulations. The definition now
18 reads Alcohol means the unique chemical compound,
19 ethyl alcohol. When referencing compounds to be
20 avoided, such as skin antiseptics, alcohol means any
21 organic compound in which the hydroxyl functional
22 group is bound to a saturated carbon atom.

23 That seems quite specific.

24 COMMITTEE MEMBER SHEN: Anybody have any
25 issues with that?

1 COMMITTEE MEMBER HARMON: Jennifer Harmon.
2 No issues.

3 CHAIR KIMSEY: Okay. Jump in if you have a
4 comment. Moving on to 1:15.

5 The definition of forensic alcohol analysis
6 was meant to describe the testing, not the personnel
7 conducting the testing.

8 Equipment is common vernacular within the
9 forensic environment. The committee felt this was a
10 more appropriate term than device.

11 The regulations have included breath sample
12 analysis under the definition of Forensic Alcohol
13 Analysis for the past 30 years. There have been no
14 clarity issues the committee is aware of. In
15 addition, the regulations clearly articulate what
16 requirements are specifically for breath or fluid
17 analyses, so the committee felt this definition is
18 not unclear and change was unnecessary.

19 Any comments from the committee?

20 COMMITTEE MEMBER LYLE: Santa Ana agrees
21 with you.

22 CHAIR KIMSEY: Okay. 1:16.

23 The committee wished to clarify the
24 distinction between breath and fluid alcohol
25 analysis. The change from analysis to testing is

1 more consistent with the verbiage used throughout
2 the country. This definition was changed to more
3 accurately reflect current law and more clearly
4 state what breath alcohol testing means. The word
5 analysis describes how the test results are achieved
6 which is not suitable in this context, thus making
7 this revised definition more appropriate.

8 The committee agrees that sampling is not an
9 appropriate word choice. Sampling will be changed to
10 analysis. The definition will now read: Breath
11 Alcohol Testing means the analysis of a person's
12 expired breath, using a breath testing instrument to
13 obtain a breath alcohol result.

14 The definition of breath alcohol testing was
15 meant to describe the testing, not the personnel
16 conducting the testing, or the location of that
17 testing.

18 Comments?

19 COMMITTEE MEMBER JEFFRIES: Dan Jeffries.
20 One comment. I think this goes to the combination of
21 comments that goes throughout this about what
22 laboratory means, so maybe we should just talk about
23 it now.

24 I think we all understand laboratory to mean
25 a functioning organization that is engaged in a

1 process, not a physical building, so I don't know
2 that we need to address it again, I think you've
3 addressed it well and I think that's a great comment
4 that you have.

5 CHAIR KIMSEY: Yeah, and that comes up in
6 1:18 here in a couple of minutes too about the
7 definition of laboratory.

8 COMMITTEE MEMBER SHEN: Right. Jennifer
9 Shen. So what we did is added another definition.
10 The definition solves that place entity issue that
11 we're having.

12 So forensic alcohol laboratory means a place
13 where specialized equipment and methods are used,
14 blah-blah-blah.

15 But the next definition, laboratory.
16 Laboratory means an entity capable of assuming the
17 responsibility of fulfilling the requirements of the
18 regulation.

19 So wherever we need to have laboratory as a
20 place entity, that is what it's called, so we added
21 that definition in there to solve that problem,
22 which was brought up numerous times.

23 CHAIR KIMSEY: Thank you. On 17 we were
24 addressing a comment about solid tissue. The
25 committee agrees with the comment, and the word

1 solid has been removed.

2 And 1:18 is talking about, The committee
3 agrees there is a place/entity issue. The definition
4 Laboratory was added to mean: an entity capable of
5 assuming the responsibility of fulfilling the
6 requirements of the regulations. The regulations
7 have included breath sample analysis under the
8 definition of Forensic Alcohol Analysis for the past
9 30 years. There have been no clarity issues the
10 committee is aware of. In addition, the regulations
11 clearly articulate what requirements are
12 specifically for breath or fluid analyses, so the
13 committee felt this definition is not unclear and
14 change was unnecessary.

15 1:19, we have our standard language about
16 what relates to the ISOR, This comment is irrelevant
17 as it is not specifically directed at the agency's
18 proposed action or the procedures followed by the
19 agency in proposing or adopting the action.

20 It was the intent of the committee to remove
21 all references to Forensic Alcohol Supervisor.
22 Therefore a definition is not necessary.

23 And then we also have, This comment is
24 irrelevant as it is not specifically directed at the
25 agency's proposed action, and we repeated ourselves.

1 MS. STUPPLE: This is Alex. In 1:18 the
2 comment that's highlighted in green, I think that
3 needs a better answer, it needs to be explained a
4 little bit why it was removed.

5 CHAIR KIMSEY: Is this the forensic alcohol
6 supervisor?

7 MS. STUPPLE: Yes.

8 COMMITTEE MEMBER SHEN: Jennifer Shen. Alex,
9 (inaudible) as to why we did that in upcoming
10 comments. This is just the definition. And the
11 purpose of not having this definition is because we
12 took it out of the regulations. Later we describe
13 again and again and again why it is that we didn't
14 want to have one.

15 MS. STUPPLE: Okay, got it.

16 COMMITTEE MEMBER SHEN: So you'll see that
17 very shortly.

18 CHAIR KIMSEY: Okay, 1:20. This is where we
19 clarified the statute from some comments from both
20 Jennifer Shen and Dan Jeffries.

21 COMMITTEE MEMBER SHEN: Jennifer Shen. What
22 I'm going to do after we're done here today is I'm
23 going to try to paste that comment everywhere the
24 other comment is.

25 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. It

1 sounds like Alex made another suggestion that
2 instead of doing that you might just say see
3 committee's response to 1:20 so that you only have
4 to write it out once.

5 COMMITTEE MEMBER SHEN: That might be
6 easier, okay.

7 CHAIR KIMSEY: Yeah, whatever's easier for
8 you.

9 COMMITTEE MEMBER SHEN: Okay.

10 CHAIR KIMSEY: 1:21, The committee felt that
11 the removal of the three personnel titles
12 (supervisor, analyst, and trainee) added clarity and
13 conciseness to the regulations. As the old titles
14 are not used in current laboratories, and the title
15 supervisor in particular causes some confusion, the
16 committee felt it best to have one title, and to
17 articulate through the regulations what an analyst
18 must do to be considered proficient.

19 1:22, The committee felt that procedure was
20 more applicable in this definition than steps.

21 MS. STUPPLE: This is Alex.

22 CHAIR KIMSEY: Yes.

23 MS. STUPPLE: Sorry. That needs to be
24 flushed out a little bit more. Why did the committee
25 feel that procedure is better than steps?

1 COMMITTEE MEMBER HARMON: Jennifer Harmon.
2 Maybe we can just add something that standard
3 operating procedures is a well understood term used
4 in forensics.

5 MS. STUPPLE: Okay.

6 COMMITTEE MEMBER HARMON: And is used in
7 most laboratories in general.

8 COMMITTEE MEMBER SHEN: Okay. Standard
9 operating procedures is a well understood term and
10 is used in forensic laboratories. Currently?

11 CHAIR KIMSEY: Sure.

12 COMMITTEE MEMBER HARMON: Sounds good.

13 COMMITTEE MEMBER SHEN: How about you, Alex?

14 MS. STUPPLE: Sure, that sounds great.

15 CHAIR KIMSEY: Any other comments on 1:22?

16 COMMITTEE MEMBER LYLE: Bruce Lyle. If
17 there's really a big hang-up can we just go back to
18 steps? I mean, does it really matter?

19 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. I
20 think maybe what Alex feels is lacking is we're not
21 really explaining why procedure is better than
22 steps, and I think from a non-scientist it's because
23 the procedure involves a lot of things going on at
24 the same time and steps implies that you
25 sequentially do one to the next to the next, and I

1 don't know if we want to actually touch on why
2 procedure fits better, but that may be what really
3 we're getting at, is that the word procedure really
4 does fit better than steps because the procedure
5 does not involve a series of sequential incidents.

6 COMMITTEE MEMBER SHEN: Yeah, that makes
7 sense to me. Because we've battled each and every
8 one of these words for a decade, I want to, unless
9 it's really necessary, keep away from just
10 acquiescing on these, what I consider small points.
11 I mean, I don't know why this would hang the public
12 up if we used procedure instead of steps, and I
13 don't know why we would have to go back and use a
14 word that we didn't want to use just because it's
15 easier than saying we like procedure better as a
16 committee.

17 COMMITTEE MEMBER HARMON: Jennifer Harmon.
18 You would not walk into a laboratory and say can you
19 please show me your steps. You would walk into a
20 laboratory and say would you please show me your
21 procedure. So it's using terminology that is
22 commonly used by the scientific community. Steps is
23 not commonly used by the scientific community, for
24 all the reasons that Dan stated.

25 COMMITTEE MEMBER SHEN: Okay. So I can say

1 procedures really incorporate what's actually
2 happening.

3 COMMITTEE MEMBER JEFFRIES: How about this.
4 The committee felt that procedure was more
5 applicable a definition than steps, as steps implies
6 a sequence of events while procedure is a commonly
7 used scientific term.

8 COMMITTEE MEMBER SHEN: Great. I'm writing
9 that down. The committee feels that procedure was
10 more applicable than steps as steps imply
11 sequential...what?

12 CHAIR KIMSEY: Sequence of events.

13 COMMITTEE MEMBER SHEN: Sequence of events.

14 CHAIR KIMSEY: And procedure is a more
15 commonly used term.

16 COMMITTEE MEMBER WONG: And more
17 encompassing.

18 COMMITTEE MEMBER SHEN: Okay. I now have,
19 The committee felt that procedure was more
20 applicable than steps as steps implies sequence of
21 events and procedure is a more commonly used and
22 encompassing term.

23 COMMITTEE MEMBER WONG: I like it.

24 COMMITTEE MEMBER SHEN:

25 CHAIR KIMSEY: Any other comments on 1:22?

1 1:23, to instrument, The committee feels
2 that instrument is a common term, and does not
3 require a separate definition. Which is also where
4 we dropped device.

5 1:24, The committee felt that the phrase
6 essentially alveolar in composition is descriptive,
7 and lends itself to providing clarity of the
8 definition sample. It does not constitute an
9 imposition of a collection requirement.

10 The committee feels these phrases are common
11 terms, and do not require definitions.

12 Any comments there? If we're taking five
13 seconds with no comments, that means we can move
14 forward.

15 CHAIR KIMSEY: 1:25, The committee agreed to
16 change the word casework to testing to add clarity.

17
18 With this change, the committee feels the
19 definition of competency test is clear.

20 This comment is irrelevant as it is not --

21 MS. STUPPLE: This is Alex. I think the
22 committee agreed to change the word casework to
23 testing to add clarity is a little (inaudible) and
24 maybe you should spell out a little bit more why.

25 COMMITTEE MEMBER SHEN: Jennifer Shen. It

1 says in the comment that it doesn't define casework,
2 so we're changing away from casework because we
3 don't have a definition of casework, even though I
4 would argue that's a pretty common term.

5 The comment is that the proposed definition
6 of competency test is unclear. I think that we as a
7 committee would feel that it's not an unclear
8 definition.

9 MS. STUPPLE: Right, but why? I mean, why do
10 you think it's clear?

11 CHAIR KIMSEY: Well, I think within the
12 scientific community it's pretty clear.

13 COMMITTEE MEMBER SHEN: Competency test
14 means the evaluation of a person's ability to
15 perform work in forensic alcohol analysis prior to
16 the performance of independent testing. That is
17 extremely clear, there is nothing unclear about
18 that.

19 Now, you could argue that it wasn't all
20 encompassing but it certainly tells you what a
21 competency test is. I just don't believe it's
22 unclear in any way, shape, or form.

23 MS. STUPPLE: I understand that. I think
24 just maybe spell out what you've changed or just add
25 a little more substance than this is what we think.

1 COMMITTEE MEMBER JEFFRIES: Where did that
2 show up with that change, that specific wording?

3 COMMITTEE MEMBER SHEN: Well, the comment
4 asks for a definition of casework, so Paul and I
5 thought, well, we'll just change casework to
6 testing. The definition I just read you is actually
7 in the work product.

8 COMMITTEE MEMBER JEFFRIES: Yeah, I was
9 trying to find it again. Jennifer just handed it to
10 me.

11 COMMITTEE MEMBER SHEN: Okay. So it's under
12 --

13 COMMITTEE MEMBER JEFFRIES: It looks like
14 it's under (b)?

15 COMMITTEE MEMBER SHEN: (b), yes.

16 COMMITTEE MEMBER HARMON: Just for
17 clarification (inaudible).

18 COMMITTEE MEMBER JEFFRIES: It appears we're
19 now talking about 1215(b).

20 COMMITTEE MEMBER SHEN: Yeah, we're still in
21 the definitions here.

22 COMMITTEE MEMBER JEFFRIES: What I'm lost on
23 is where is the word? So it previously read casework
24 and now reads testing?

25 COMMITTEE MEMBER SHEN: Yes, that's our

1 suggestion, that we change the word casework to
2 testing.

3 COMMITTEE MEMBER HARMON: So the public
4 comment goes to wanting very specific information
5 about how that (inaudible).

6 COMMITTEE MEMBER SHEN: Yeah, the public
7 comment is two part. It's that it's not encompassing
8 enough, without enough specificity, and also that
9 the word casework hasn't been defined anywhere.

10 COMMITTEE MEMBER HARMON: Is it appropriate
11 for the definition of a competency test to be a test
12 in which a person has to take? To me the definition
13 is defining what a competency test is and not all of
14 the details that have to be performed under that
15 competency test.

16 COMMITTEE MEMBER SHEN: I agree. Shall I
17 write that in there?

18 COMMITTEE MEMBER JEFFRIES: Well, before you
19 do let's just make sure that we understand what
20 we're doing here.

21 You're no longer using the word casework,
22 correct?

23 CHAIR KIMSEY: Correct.

24 COMMITTEE MEMBER JEFFRIES: So the public
25 comment that it doesn't define casework is

1 irrelevant because we're not using that word.

2 COMMITTEE MEMBER SHEN: Because of public
3 comment we changed it from casework to testing.

4 COMMITTEE MEMBER JEFFRIES: Right. So then
5 the first part of the comment asks for more of a
6 clarification about what a competency test is and
7 how it's conducted, and that's addressed elsewhere.

8 COMMITTEE MEMBER SHEN: Right. Although I
9 think Jennifer Harmon is right. I think we probably
10 should say something here about the definition
11 section is meant to define a term and not to be
12 specific about how a term might be applied
13 necessarily.

14 COMMITTEE MEMBER JEFFRIES: Right. So to
15 flush out the details, what we're really saying is
16 that for the definition purposes we're not trying to
17 establish a procedure, we're just defining what we
18 mean by it.

19 COMMITTEE MEMBER SHEN: Okay. So the
20 definition is to define a term, not encompass the
21 application of that term?

22 COMMITTEE MEMBER JEFFRIES: I guess what I'd
23 do is maybe add some words at the end of the
24 sentence so the sentence reads, The committee agreed
25 to change the word casework to testing to add

1 clarity. With this change the committee feels the
2 definition of competency test is clear, and the
3 process for competency tests is detailed in other
4 sections.

5 CHAIR KIMSEY: Other comments?

6 COMMITTEE MEMBER SHEN: Okay. So, With this
7 change the committee feels the definition of
8 competency test is clear, and the process of the
9 specifics of the competency tests is laid out later
10 in the regulations.

11 COMMITTEE MEMBER JEFFRIES: Or is addressed
12 in other regulations.

13 COMMITTEE MEMBER SHEN: So these are really
14 just definitions.

15 COMMITTEE MEMBER JEFFRIES: Right.

16 COMMITTEE MEMBER SHEN: Addressed within the
17 regulation.

18 COMMITTEE MEMBER JEFFRIES: Yes.

19 COMMITTEE MEMBER SHEN: All right. Got it.

20 CHAIR KIMSEY: Okay. 1:26.

21 MS. STUPPLE: Sorry. In regard to the next
22 sentence, the next paragraph, the green highlighted
23 one, when they say ISOR they mean the specific
24 rationales for each subsection. So this green part
25 does need to be addressed. And it says that

1 competency test is not used elsewhere in the
2 regulation in other states.

3 COMMITTEE MEMBER SHEN: This comment is
4 irrelevant, really. What other states do doesn't
5 really matter to us, does it?

6 MS. STUPPLE: No, but you need to say that.

7 COMMITTEE MEMBER SHEN: Because it says it
8 was added because it's used elsewhere, which is
9 true, to differentiate it (inaudible) is true. And
10 apparently this means the committee felt it was
11 important, which is true.

12 However, it should be noted that no other
13 states makes this differentiation. Okay. That is
14 nothing that requires an address. That is so not
15 even a legitimate comment, in my opinion.

16 MS. STUPPLE: Well, it may be not legitimate
17 but you need to answer it anyway.

18 COMMITTEE MEMBER JEFFRIES: Jennifer, you're
19 saying that in your opinion competency test is
20 synonymous with proficiency test?

21 COMMITTEE MEMBER SHEN: Are you asking me
22 that?

23 COMMITTEE MEMBER JEFFRIES: Yes.

24 COMMITTEE MEMBER SHEN: No, no, no. We
25 differentiate competency and proficiency tests

1 specifically.

2 COMMITTEE MEMBER JEFFRIES: Right.

3 COMMITTEE MEMBER SHEN: But whoever wrote
4 this is saying it should be noted that no other
5 state makes this differentiation or uses the term
6 competency test in its alcohol regulations.

7 First of all, I don't know that to be true.
8 And secondly, that doesn't have any bearing on what
9 we're doing here. There was nothing in that comment
10 that said we shouldn't do it. They're just merely
11 noting that other states don't.

12 COMMITTEE MEMBER JEFFRIES: What I'm getting
13 at is that we do think they're different, and so
14 what you can say is the committee felt that it is
15 appropriate and necessary to differentiate between
16 competency test and proficiency test.

17 COMMITTEE MEMBER SHEN: All right, I can do
18 that.

19 COMMITTEE MEMBER JEFFRIES: And I think that
20 addresses Alex's point that we didn't specifically
21 respond to what was being brought up.

22 COMMITTEE MEMBER SHEN: Okay. So the
23 committee felt is appropriate and necessary to
24 differentiate between the two tests.

25 COMMITTEE MEMBER JEFFRIES: Right.

1 COMMITTEE MEMBER SHEN: Okay.

2 CHAIR KIMSEY: Okay, back to 1:26. The
3 committee removed the words technical support from
4 the definition.

5 The committee feels the term continuing
6 competence is common vernacular, and does not need a
7 definition, nor does it lend itself to clarity
8 issues.

9 The committee agrees there is a place/entity
10 issue. The definition Laboratory was added to mean:
11 an entity capable of assuming the responsibility of
12 fulfilling the requirements of the regulations.

13 COMMITTEE MEMBER JEFFRIES: Dan Jeffries
14 again. I know we already talked about this a little
15 bit. Do you think because it does come up this many
16 times that we want to clean up that definition of
17 laboratory just a little bit? I'm not sure we need
18 to say that it's an entity capable of it. Really all
19 you're saying is that it's an entity charged with
20 fulfilling the requirements. Do you want to just
21 make that a little shorter?

22 COMMITTEE MEMBER SHEN: Jennifer Shen. What
23 I did is sort of (inaudible) the language that was
24 in there before. I am married to this language. We
25 just need to solve the place/entity issue.

1 COMMITTEE MEMBER JEFFRIES: So I was just
2 proposing is we would just change it to laboratory
3 means an entity charged with fulfilling the
4 responsibilities of the regulations.

5 COMMITTEE MEMBER WONG: If we're going to do
6 that we should do it where it shows up the first
7 time.

8 COMMITTEE MEMBER JEFFRIES: Right. It shows
9 up in 1215(j) is what we're looking at. So I agree
10 it should be consistent everywhere.

11 COMMITTEE MEMBER SHEN: Yes, definitely,
12 because it will have to be put in the --

13 CHAIR KIMSEY: In some ways there's quite a
14 difference between the word capable and charged.
15 Capable implies something that can be currently
16 done. Charged is something that they're being asked
17 to do or told to do.

18 COMMITTEE MEMBER WONG: Those are very
19 different.

20 CHAIR KIMSEY: So I don't know. I don't have
21 an opinion either way.

22 MS. STUPPLE: This is Alex. You could just
23 remove the word charged and capable and just say
24 it's an entity responsible for.

25 COMMITTEE MEMBER JEFFRIES: Yes, I think

1 that's much better.

2 CHAIR KIMSEY: Okay.

3 COMMITTEE MEMBER SHEN: An entity
4 responsible for...

5 CHAIR KIMSEY: Fulfilling the requirements
6 of the regulations.

7 COMMITTEE MEMBER SHEN: Okay. I'll just make
8 the change here and tonight I'll go back and change
9 it everywhere.

10 COMMITTEE MEMBER JEFFRIES: The original one
11 is on 1:18.

12 COMMITTEE MEMBER WONG: And we can just
13 refer to that same one in 1:26.

14 COMMITTEE MEMBER SHEN: So 1:18 is the first
15 one?

16 COMMITTEE MEMBER JEFFRIES: Right.

17 COMMITTEE MEMBER SHEN: Okay. I can do like
18 one or two more comments and then I have to stop
19 long enough to move my car.

20 CHAIR KIMSEY: Well, we could also take a
21 bio break, too, I guess.

22 COMMITTEE MEMBER SHEN: I need like five
23 minutes to move my car.

24 CHAIR KIMSEY: Why don't we take a break and
25 get back at five minutes after noon.

1 COMMITTEE MEMBER HARMON: Sounds good.

2 CHAIR KIMSEY: Okay.

3 (Off the record 11:51 a.m. to 12:05 p.m.)

4 CHAIR KIMSEY: I think we were on 1:27. The
5 committee added the word written to the definition
6 for additional clarity. The definition will now
7 read: Precautionary Checklist means a written guide
8 to assist in the operation of a breath instrument.

9 COMMITTEE MEMBER HARMON: Jennifer Harmon.
10 The issue with adding written is for those folks who
11 have electronic precautionary checklists from their
12 instrument, so if we add written there needs to be
13 an electronic equivalent.

14 COMMITTEE MEMBER SHEN: So can we write that
15 it means written or an electronic equivalent. Or
16 maybe we don't even need to address it, maybe it's
17 fine the way it is.

18 COMMITTEE MEMBER JEFFRIES: (inaudible) the
19 word written so it just reads precautionary
20 checklist means a guide to assist in the operation
21 of a breath instrument. That sounds like a good
22 definition.

23 COMMITTEE MEMBER SHEN: That's what the
24 definition was prior to public comment.

25 COMMITTEE MEMBER JEFFRIES: I don't know

1 that we want to put in there it's written. It seems
2 like that does eliminate a lot of things that are
3 going electronic.

4 CHAIR KIMSEY: I agree, let's leave out
5 written.

6 COMMITTEE MEMBER SHEN: Okay. So we're going
7 to say instead that the committee feels the
8 definition as it is is appropriate because it
9 accommodates for changing technology?

10 CHAIR KIMSEY: Yeah, electronic
11 communication.

12 1:28, The committee corrected the definition
13 to read: NIST is an abbreviation for the National
14 Institute of Standards and Technology.

15 1:29, The committee corrected the definition
16 to read: NIST Standard Reference Material (SRM)
17 means a CRM issued by NIST that also meets
18 additional NIST-specific certification criteria and
19 is issued with a certificate or certificate of
20 analysis that reports the results of its
21 characterizations and provides information regarding
22 the appropriate use(s) of the material.

23 Comments? If not, moving on to 1:30.

24 The committee feels this is an accurate and
25 appropriate definition. This is also a necessary

1 definition, as NIST Traceable is referred to in the
2 regulations.

3 The discussions had by the committee and the
4 decisions made, provide substantial evidence that
5 its actions are necessary to effectuate the purposes
6 of the statute.

7 So moving on to 1:31, The committee removed
8 Article 3 in its entirety, so the notification
9 requirements were placed in Article 2.

10 1:32, The committee changed Authorization
11 Requirement to Notification Requirement to add to
12 the clarity of the regulations, and to increase
13 consistency with the other revisions proposed by the
14 committee.

15 MS. STUPPLE: And again, we can note here
16 that section titles aren't binding and that we can
17 create section titles but Westlaw may make up their
18 own section titles. Or anybody.

19 COMMITTEE MEMBER SHEN: So I would just put
20 section titles are not binding.

21 MS. STUPPLE: I would just add it to what
22 you already have.

23 COMMITTEE MEMBER SHEN: Okay.

24 CHAIR KIMSEY: 1:31 [sic], The committee
25 agrees there is a place/entity issue. The definition

1 Laboratory was added to mean: an entity capable of
2 assuming the responsibility of fulfilling the
3 requirements of the regulations.

4 COMMITTEE MEMBER SHEN: I'll change that.

5 CHAIR KIMSEY: Okay, that goes to 1:18.

6 COMMITTEE MEMBER SHEN: We could do that
7 right now. See Comment 1:18.

8 CHAIR KIMSEY: Great.

9 COMMITTEE MEMBER SHEN: Okay, I'll do it
10 now.

11 CHAIR KIMSEY: 1:34, The committee removed
12 Article 3 in its entirety, so the notification
13 requirements were placed in Article 2.

14 Laboratories have not been required for
15 several years to submit their written methods to the
16 Department for various reasons. The update to the
17 regulations merely codifies this practice.

18 Personnel are required to follow regulations
19 to achieve proficiency in the area of Forensic
20 Alcohol Analysis. Information showing this process
21 will be forwarded to the Department to show
22 compliance with the regulations. Please refer to
23 Article 2, 1216.1 (c) 1-6

24 The committee feels fluid analysis is a
25 common term and does not require a definition.

1 The committee added time frames for
2 providing the listed information. 1216 (a) now
3 reads: Every laboratory performing forensic alcohol
4 analysis shall provide the Department the following
5 within 90 days of a change of any information listed
6 in 1-4 below.

7 The committee intends that forensic alcohol
8 laboratories will follow the regulations, and
9 provide documentation of their compliance to the
10 Department. Submission of these documents to the
11 Department with this information meets the
12 requirements for the Department to enforce
13 regulations.

14 MS. STUPPLE: This is Alex.

15 CHAIR KIMSEY: Sure.

16 MS. STUPPLE: I think here we might want to
17 start addressing oversight and enforcement issue,
18 that 100725 presents. That Attorney General opinion
19 that's been mentioned numerous times basically says
20 that CDPH can enforce regulations either through an
21 injunction or mandamus.

22 CHAIR KIMSEY: So a standard paragraph that
23 we might use in other places is what we're thinking
24 of?

25 MS. STUPPLE: Yeah.

1 COMMITTEE MEMBER SHEN: So Alex, we're going
2 to add this onto the green comment?

3 MS. STUPPLE: Yeah, pretty much everywhere
4 that it talks about 100725 and enforcement. It might
5 be easier if I write something and --

6 COMMITTEE MEMBER JEFFRIES: Alex, are you
7 suggesting something along the lines of, In
8 addition, the Department may seek enforcement
9 through injunction or mandamus?

10 MS. STUPPLE: Perfect.

11 COMMITTEE MEMBER JEFFRIES: There are
12 several places that would be helpful.

13 MS. STUPPLE: Yeah, that's perfect.

14 COMMITTEE MEMBER SHEN: Okay. In addition,
15 the Department will...

16 COMMITTEE MEMBER JEFFRIES: The Department
17 may seek enforcement through injunction or mandamus.

18 COMMITTEE MEMBER SHEN: I have no idea how
19 that's spelled.

20 COMMITTEE MEMBER JEFFRIES: I believe it's
21 M-A-N-D-A-M-U-S.

22 COMMITTEE MEMBER SHEN: Okay. So I'm going
23 to add it to the green comment. The committee
24 intends that forensic alcohol laboratories will
25 follow the regulations, and provide documentation,

1 blah-blah-blah. In addition, the Department may seek
2 enforcement through injunction or mandamus.

3 COMMITTEE MEMBER JEFFRIES: Right.

4 CHAIR KIMSEY: Any other comments on 1:34?

5 1:35, this was also about the ISOR where we
6 have the standard language.

7 MS. STUPPLE: Just a minute.

8 CHAIR KIMSEY: Okay.

9 MS. STUPPLE: Because now we're talking
10 about the ISOR, it's talking about not the
11 introductory policy overview but the specific
12 rationale behind each subsection. So ISOR is not
13 necessarily irrelevant.

14 CHAIR KIMSEY: It's about the creation of a
15 new subsection.

16 MS. STUPPLE: Yeah, it looks like it's just
17 redesignated, right?

18 COMMITTEE MEMBER SHEN: It looks like the
19 public comment point is that we said it remained
20 unchanged when in fact it was changed.

21 MS. STUPPLE: What was the change?

22 COMMITTEE MEMBER SHEN: I think we fixed
23 that in the changes. I have to double check that
24 right now, if you like.

25 MS. STUPPLE: Okay.

1 COMMITTEE MEMBER SHEN: There are a few
2 places in ISOR where we said (inaudible). I have it
3 saying this subsection remains unchanged, so it is
4 unchanged. So we'll have to change that. What was it
5 actually that happened to it?

6 MS. STUPPLE: I don't know, it looks the
7 same. The old text and your text look the same to
8 me, so I'm not sure.

9 COMMITTEE MEMBER SHEN: I don't really
10 understand this comment.

11 COMMITTEE MEMBER HARMON: Jennifer Harmon.
12 It looks like you eliminated 1216(b), incorporated
13 changes to 1216(a)(1)(A).

14 COMMITTEE MEMBER SHEN: Authorization
15 requirement, right?

16 COMMITTEE MEMBER HARMON: Yes. Look at your
17 tracked changes on the new Title 17, you have 1216
18 that became 1216(a)(1), (2), (3), and (4). And then
19 what was 1216(a)(1) became 1216(b). And it has to do
20 with the analyst, and there was quite a bit of
21 amendment to that.

22 COMMITTEE MEMBER SHEN: Okay. So basically,
23 it looks like this particular point is that we said
24 it was unchanged when in fact it was sort of
25 relabeled.

1 COMMITTEE MEMBER HARMON: It was relabeled
2 and modified.

3 COMMITTEE MEMBER SHEN: Yeah.

4 COMMITTEE MEMBER JEFFRIES: Not only that,
5 but isn't it addressed now in a different section?

6 COMMITTEE MEMBER SHEN: It is, so it was
7 relocated, I believe. What do you want to do?

8 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. My
9 suggestion is we just address the public comment
10 head on by saying that the former provisions of
11 1216(a)(1)(A) and 1216(a)(2) are addressed elsewhere
12 in the new regulation.

13 COMMITTEE MEMBER SHEN: I love that, that's
14 perfect.

15 COMMITTEE MEMBER WONG: But Alex, isn't
16 Westlaw going to go over and make sure our numbers
17 and change them correctly anyway?

18 MS. STUPPLE: No. I mean, we have
19 (inaudible) but they won't change. This is how we do
20 it in California, so it will be fine.

21 COMMITTEE MEMBER JEFFRIES: I think they'll
22 go back in and add the titles and the headings and
23 other things that are not really part of the
24 regulation, but the numbering and the language will
25 be ours.

1 COMMITTEE MEMBER WONG: Oh, okay. Thanks,
2 Dan.

3 CHAIR KIMSEY: Other comments on 1:35?

4 COMMITTEE MEMBER SHEN: So what am I putting
5 here?

6 COMMITTEE MEMBER JEFFRIES: The former
7 provisions of 1216(a)(1)(A) and 1216(a)(2) are
8 addressed elsewhere.

9 COMMITTEE MEMBER SHEN: Okay.

10 MS. STUPPLE: And the last sentence in the
11 comment for 35, that section should be lowercase,
12 that also needs to be addressed.

13 COMMITTEE MEMBER SHEN: Okay. What do you
14 want me to say about that?

15 MS. STUPPLE: We can either lowercase it or
16 not.

17 COMMITTEE MEMBER SHEN: It's uppercase
18 everywhere, I think. I'm looking at 1216(a)(1) and
19 it says Sections with an uppercase.

20 MS. STUPPLE: Oh, you mean in hours.

21 COMMITTEE MEMBER SHEN: Yeah.

22 MS. STUPPLE: I mean, there's no style
23 guide, just say there's no style guide and don't
24 worry about it.

25 COMMITTEE MEMBER SHEN: I'll put there is no

1 style guide. Stop worrying about this. We will
2 attempt to make it --

3 COMMITTEE MEMBER WONG: Consistent.

4 COMMITTEE MEMBER SHEN: -- consistent. Okay.

5 CHAIR KIMSEY: Okay, 1:36, The committee
6 agrees there is a place/entity issue. This is our
7 laboratory definition.

8 COMMITTEE MEMBER SHEN: Okay, I'll fix that.

9 CHAIR KIMSEY: 1:37, The committee felt that
10 the removal of the three -- I believe we've said
11 this before -- the three personnel titles
12 (supervisor, analyst, and trainee) added clarity and
13 conciseness to the regulations. As the old titles
14 are not used in current laboratories, and the title
15 supervisor in particular causes some confusion,
16 etcetera, etcetera.

17 Current practice has many laboratories
18 utilizing forensic alcohol analysts (FAAs) to do all
19 of the alcohol analysis and interpretation, while
20 using supervisors that are not necessarily FASs to
21 supervise the personnel within the unit.

22 Then we have our irrelevant comment.

23 MS. STUPPLE: So that one where it says
24 irrelevant, it's not just because it's ISOR, because
25 it's talking about that specific subsection. And

1 what's quoted in the comment is a mistake.

2 COMMITTEE MEMBER SHEN: Right, okay. So do
3 we change that?

4 MS. STUPPLE: We should definitely just
5 change it here.

6 COMMITTEE MEMBER SHEN: Okay. The subsection
7 was amended because the Department computation
8 forensic alcohol supervisor has been eliminated by
9 the enabling statute. That's a problem right there,
10 right?

11 MS. STUPPLE: Correct.

12 COMMITTEE MEMBER SHEN: Okay. So we need to
13 fix that.

14 COMMITTEE MEMBER JEFFRIES: Fix it within
15 the ISOR?

16 MS. STUPPLE: We can't change the ISOR but
17 we can change the SSOR, but it's going to come out
18 with these changes, we can change that to not be
19 wrong. But in response to this comment we can say
20 you are correct and then tell them why you took out
21 the supervisors.

22 COMMITTEE MEMBER SHEN: So I don't know that
23 we need to say it again.

24 MS. STUPPLE: No, but we do need to
25 acknowledge that it was incorrect.

1 COMMITTEE MEMBER SHEN: Okay. So you are
2 correct. The committee agrees that the (inaudible)
3 enabling statute is not correct?

4 MS. STUPPLE: Yeah.

5 COMMITTEE MEMBER SHEN: Okay. Anything else?

6 MS. STUPPLE: You can say that the reasoning
7 for changing this subsection is articulated above or
8 something.

9 COMMITTEE MEMBER SHEN: Okay.

10 CHAIR KIMSEY: Okay. Anything else on 1:37?

11 COMMITTEE MEMBER SHEN: The committee agrees
12 that eliminated by enabling factors is not correct.
13 The reason for changing the section is articulated
14 above.

15 MS. STUPPLE: Yeah.

16 COMMITTEE MEMBER SHEN: And we'll change
17 that committee does not need direction thing, I'm
18 going to change that everywhere. Okay, I'm ready.

19 CHAIR KIMSEY: 1:38, The committee feels
20 that the description is adequate, as the specificity
21 of Standards of Procedures is outlined elsewhere in
22 the regulations. (1221.2)

23 And we have our irrelevant comment again
24 which is ISOR, so let's look at that some more.
25 Confusing mix of comments apparently intended to

1 explain the proposed repeal of current Section
2 1216.1 (a)(1) as well as the amendments to the
3 subsequent section [Section 1216.1 (a)(2)], which
4 would be renumbered as 1216.1(a)(1).

5 COMMITTEE MEMBER SHEN: Again I feel that's
6 sort of irrelevant.

7 MS. STUPPLE: Yeah, I don't really
8 understand what it's saying.

9 COMMITTEE MEMBER SHEN: The committee does
10 not agree that we're confusing.

11 MS. STUPPLE: I think the redesignation of
12 things confuse people, I don't know.

13 COMMITTEE MEMBER SHEN: Let's see. Which
14 one?

15 CHAIR KIMSEY: 1:38.

16 COMMITTEE MEMBER SHEN: So I changed that.
17 So the new ISOR you guys got it's changed, so it's
18 clearer, hopefully. Can we just go with that, that
19 (inaudible) clarified.

20 MS. STUPPLE: We're not going to change the
21 ISOR, we're just going to make the next Statement of
22 Reasons better.

23 COMMITTEE MEMBER SHEN: Right. Well, just
24 the specifications of it.

25 MS. STUPPLE: Right.

1 CHAIR KIMSEY: So we're on to 1:39?

2 COMMITTEE MEMBER SHEN: What do you want me
3 to say in this, Alex? I still think that even
4 addressing the ISOR comment is a waste of time.
5 There's nothing useful in that comment.

6 MS. STUPPLE: Which comment?

7 COMMITTEE MEMBER SHEN: The ISOR comment
8 about the fact that it's confusing. The committee
9 will attempt to clarify it.

10 MS. STUPPLE: So for 1:39, the comment this
11 requirement would be replaced with a reference --

12 CHAIR KIMSEY: 1:39, The committee
13 disagrees, and finds the requirements in H&S 100702
14 to be very clear. The laboratories shall submit, at
15 a minimum of one per analyst per year is clear, and
16 reflects best practices in the forensic community.

17 MS. STUPPLE: When a comment is directed at
18 the language of the statute and not the regulations
19 it is irrelevant because we have no control over the
20 statutes. And it says this requirement would be
21 replaced with a reference. I'm not entirely clear
22 what the first two paragraphs of the public comment
23 mean. I think that those are irrelevant because
24 they're talking about the statute, the language in
25 the statute. We're not doing anything with 100702.

1 So instead of saying you disagree you could just say
2 it's irrelevant, this isn't directed at the
3 committee's proposed action.

4 COMMITTEE MEMBER SHEN: Okay. But the first
5 comment I have under there is the laboratory shall
6 submit a minimum of one per analyst per year. That's
7 the first thing I have written down.

8 CHAIR KIMSEY: In my copy the first sentence
9 is the committee disagrees and find the requirements
10 in H&S 100702 to be very clear. That's what Kenton's
11 also got.

12 COMMITTEE MEMBER JEFFRIES: That's what I
13 have also.

14 COMMITTEE MEMBER SHEN: Well, I might have
15 cut-and-pasted myself right out of that. All right.
16 So we don't want that or we do want that?

17 COMMITTEE MEMBER JEFFRIES: No, I think it's
18 correct.

19 COMMITTEE MEMBER SHEN: Okay. So I need to
20 know what that says.

21 COMMITTEE MEMBER JEFFRIES: The committee
22 disagrees, and finds the requirements in H&S 100702
23 to be very clear.

24 I think what the public comment is getting
25 at is that the public comment believes that the

1 Health and Safety Code itself does not specify with
2 clarity what the terms mean, and the public comment
3 is suggesting that we would take the step that the
4 public commenter wants, and that is to clarify those
5 terms ourselves. So we may actually want to add
6 something like the committee does not feel further
7 definition of these terms is necessary.

8 COMMITTEE MEMBER SHEN: All right.

9 COMMITTEE MEMBER JEFFRIES: And I agree with
10 Alex. We're not commenting on the Health and Safety
11 Code, but I think the meaning of the comment is that
12 they're inviting us to clarify what the terms mean.

13 COMMITTEE MEMBER SHEN: The committee
14 disagrees, and finds the requirements in H&S 100702
15 to be very clear. The committee does not feel
16 further definition of these terms is necessary.

17 CHAIR KIMSEY: That sounds good.

18 COMMITTEE MEMBER SHEN: All right. And then
19 the next thing I have is the thing about the
20 laboratory (inaudible). Does everyone have that
21 next?

22 CHAIR KIMSEY: Yes.

23 COMMITTEE MEMBER SHEN: Okay.

24 MS. STUPPLE: One more thing about the
25 yellow part. The committee's proposed language does

1 not describe what the Department will do with the
2 submitted data, which again creates clarity issues.
3 I think that needs to be addressed, that sentence.

4 COMMITTEE MEMBER SHEN: The comment that I
5 highlighted was (inaudible), which I think we all
6 disagree with that. And it doesn't clearly require
7 any analyst to submit his test results, but it does.

8 MS. STUPPLE: The part where it says that it
9 doesn't say what the Department will do with the
10 data, I think that needs an answer. In the middle of
11 the third paragraph of 1:39. The committee's
12 proposed language does not describe what the
13 Department will do with the submitted data, which
14 again creates clarity issues.

15 COMMITTEE MEMBER JEFFRIES: Okay, so it's
16 before the yellow highlighted. Jennifer, you're
17 addressing the highlighted are and Alex is
18 suggesting that we also need to respond to the third
19 paragraph.

20 COMMITTEE MEMBER SHEN: Right. Basically
21 what we're doing is we're having all of the
22 proficiency test data sent back to the Department
23 for them to take a look at, showing that we're
24 actually doing it and that we're (inaudible) it.

25 MS. STUPPLE: We just need to say that.

1 COMMITTEE MEMBER SHEN: Okay. So we have
2 comments somewhere else where we said this.

3 CHAIR KIMSEY: Yeah, I was just reading
4 forward. I thought we had included that.

5 COMMITTEE MEMBER SHEN: So that comes before
6 that we think this is clear.

7 All right. Now, we need to put in a comment
8 here about the fact that everything's getting
9 submitted.

10 CHAIR KIMSEY: The committee disagrees.
11 Proficiency tests by approved providers with results
12 forwarded to the Department is the best and most
13 effective practice.

14 COMMITTEE MEMBER SHEN: Should we just add
15 to that?

16 CHAIR KIMSEY: Sure.

17 COMMITTEE MEMBER SHEN: Dan, you're so good
18 at this, but something along the lines of by
19 forwarding (inaudible) results of each analyst per
20 year to the Department, the Department will achieve
21 the necessary ability to review laboratory
22 compliance, or something like that.

23 COMMITTEE MEMBER JEFFRIES: Well, I guess
24 the comment in the third whole paragraph really has
25 to do with what the Department will do with the

1 submitted data, which I think means how will they
2 use that to measure data and enforce the law. So it
3 really does address the if the Department feels it's
4 inappropriate or whatever. Where you've got The
5 committee disagrees. Proficiency tests by approved
6 providers with results forwarded to the Department
7 is the best and most effective practice.

8 Alex, where you were going with it was
9 something along the lines of in addition, the
10 Department may seek injunctive and mandamus relief;
11 is that where you were going, Alex?

12 MS. STUPPLE: Yeah, yeah, essentially.

13 COMMITTEE MEMBER SHEN: Should we add it
14 into that paragraph we already wrote earlier?

15 COMMITTEE MEMBER JEFFRIES: Yeah, I think
16 that's what Alex is suggesting, because we're not
17 saying what the state has to do with the data. The
18 way we're addressing it is that there is (inaudible)
19 basis for the Department to address it if there is
20 no action pending. So I think you can just repeat
21 that same language there at the end of your blue
22 comment.

23 COMMITTEE MEMBER WONG: Just reference it's
24 at 1:34.

25 COMMITTEE MEMBER SHEN: All right. I will

1 put 1:34 in here and then I will add that in later.
2 So I'm going to put that on the blue comment.

3 COMMITTEE MEMBER JEFFRIES: Is that good for
4 you, Alex?

5 MS. STUPPLE: Yeah.

6 COMMITTEE MEMBER LYLE: Bruce Lyle. You also
7 in 1:42 talk about the Department receiving
8 information from laboratories to show that they are
9 in fact following the regulations, so you guys did
10 draft some language in that comment ahead.

11 COMMITTEE MEMBER SHEN: Yeah, I see that.
12 Maybe I should put that in there too.

13 CHAIR KIMSEY: Yeah, that reads, The
14 Department is receiving information from
15 laboratories to show that they are, in fact,
16 following the regulations. This allows the
17 Department to comment when it feels the laboratories
18 are not following regulations. This is the
19 disciplinary action the committee discussed and
20 agreed to, with Department representation.

21 We're still back on 1:39. Any additions to
22 1:39? Additional additions?

23 COMMITTEE MEMBER SHEN: So I'm going to put
24 1:34 and 1:42 into that.

25 COMMITTEE MEMBER JEFFRIES: Perfect.

1 CHAIR KIMSEY: Okay, 1:40.

2 MS. STUPPLE: There's a lot in 1:39 and I
3 just want to make sure we cover it.

4 Okay, go ahead.

5 CHAIR KIMSEY: Okay, 1:40. The Department
6 has not conducted onsite inspections routinely for
7 decades.

8 The regulations were modified to reflect
9 actual practice.

10 Inspections conducted by the Department are
11 not done on a regular or frequent basis.

12 Laboratories can, and do, go many years without an
13 inspection conducted by the Department. As all
14 government forensic laboratories in California are
15 accredited, this function would appear to be
16 redundant, as ASCLD/LAB, the accrediting body used
17 by the majority of crime laboratories in California,
18 requires annual audits of all accredited areas,
19 annual on-site inspections, as well as
20 reaccreditation inspections every 5 years. In
21 addition, for those laboratories that are not
22 accredited, their work product must pass scrutiny on
23 all adjudicated cases through the court system.

24 COMMITTEE MEMBER HARMON: Jennifer Harmon.
25 We may want to update this because the public

1 comment does address that the annual inspections are
2 internal. (inaudible) accredited laboratories
3 actually (inaudible) through surveillance which is
4 external every year, and the new cycle is every four
5 years, so there's been some updates to the actual
6 ASCLD/LAB accreditation requirements that we should
7 probably bring current.

8 COMMITTEE MEMBER SHEN: And I did update
9 that.

10 COMMITTEE MEMBER HARMON: So every four
11 years and surveillance is every year.

12 COMMITTEE MEMBER SHEN: Yes. I'm trying to
13 remember where I did that. One of these I did that
14 because (inaudible) surveiled every year to some
15 degree.

16 COMMITTEE MEMBER HARMON: Yes. So it's not
17 just internal anymore.

18 CHAIR KIMSEY: So we can update that.

19 COMMITTEE MEMBER SHEN: Yeah, I will update
20 that.

21 CHAIR KIMSEY: Okay. Other comments on 1:40?

22 MS. STUPPLE: This is Alex. The part on Page
23 31, the paragraph, the misplaced comments in the
24 ISOR, starting with the site inspections conducted
25 by a voluntary third party, I would delete those. Do

1 they need to be addressed?

2 COMMITTEE MEMBER SHEN: All right. So that's
3 on 1:40.

4 COMMITTEE MEMBER JEFFRIES: Well, think,
5 Jennifer, from your response to the comment in the
6 first paragraph, I think you are attempting to
7 respond to this with your paragraph that says, In
8 addition, for those laboratories that are not
9 accredited, their work product must pass scrutiny on
10 all adjudicated cases through the court system.

11 I think that's where you're going with all
12 of it, not only for those labs but other labs, the
13 work product must have scrutiny when cases are going
14 through the court. Is that where you were going with
15 it, Jennifer, is that your thinking of why we don't
16 need to address it further?

17 COMMITTEE MEMBER SHEN: Me, Jennifer Shen?

18 COMMITTEE MEMBER JEFFRIES: Yes.

19 COMMITTEE MEMBER SHEN: Yes, I would agree
20 with that.

21 COMMITTEE MEMBER JEFFRIES: So Alex, do you
22 want us to elaborate on that?

23 MS. STUPPLE: No.

24 COMMITTEE MEMBER HARMON: Jennifer Harmon.
25 Dan brought this up in other comments so we could

1 probably just copy and paste some of what he said in
2 there that explains the role of the court.

3 COMMITTEE MEMBER SHEN: Yeah, I saw that
4 comment, that was a good one.

5 COMMITTEE MEMBER JEFFRIES: Thank you.

6 COMMITTEE MEMBER SHEN: So what I have
7 written here is, As all government forensic
8 laboratories in California are accredited, this
9 function would appear to be redundant, as ASCLD/LAB,
10 the accrediting body used by the majority of crime
11 laboratories in California, requires annual audits
12 of all accredited areas, annual on-site inspections,
13 as well as reaccreditation inspections every 5
14 years.

15 COMMITTEE MEMBER HARMON: That should be
16 four.

17 COMMITTEE MEMBER SHEN: Four years?

18 COMMITTEE MEMBER HARMON: Yeah, they just
19 changed that.

20 COMMITTEE MEMBER SHEN: You'd think I would
21 know this. Okay. So that's enough, don't you think?

22 Are we good with 1:40?

23 COMMITTEE MEMBER LYLE: Bruce Lyle. It seems
24 like that does cover all that stuff after the
25 misplaced comment.

1 CHAIR KIMSEY: Okay, 1:41. The committee
2 feels that laboratories will provide required
3 information to ensure sufficient regulatory
4 oversight. And I think we've talked about some
5 additional language to add there.

6 As the requirements are laid out in the
7 regulations, the committee felt this sentence was
8 irrelevant.

9 The committee does not need direction from
10 the statute. The statute clearly empowers the
11 committee...

12 COMMITTEE MEMBER SHEN: We changed the green
13 comment. So we got rid of that sentence because we
14 thought it's redundant. Requirements of laboratory
15 include the ability to meet requirements.

16 CHAIR KIMSEY: Okay. Anything else on 1:41?
17 There's some comment about the ISOR claim
18 subsections was repealed.

19 COMMITTEE MEMBER SHEN: Well, the point of
20 repealing that sentence was because it was
21 redundant. So we aren't taking away authority or
22 giving authority or doing anything, it's just
23 redundant. That's the only reason we took it out.

24 MS. STUPPLE: Okay.

25 COMMITTEE MEMBER HARMON: Maybe saying

1 redundant instead of irrelevant?

2 COMMITTEE MEMBER SHEN: Yeah, that's a good
3 idea.

4 CHAIR KIMSEY: Okay. Moving on to 1:42. AG
5 held up authority of the Department while waiting
6 for the committee to complete its work. Department
7 should respond to this? And we talked about some
8 language.

9 COMMITTEE MEMBER SHEN: What language are we
10 putting in there?

11 CHAIR KIMSEY: Well, this is one of the
12 oversight issues, correct? This is where we talked
13 if we had that language about --

14 COMMITTEE MEMBER WONG: 1:34.

15 CHAIR KIMSEY: -- yeah, 1:34.

16 MS. STUPPLE: And I would also add that the
17 AG's opinion was addressing disciplinary action,
18 which was allowed in the regulations as they're
19 written today, but these new regulations don't have
20 disciplinary actions. This comment about take
21 disciplinary action is only going to be mandamus or
22 injunction.

23 COMMITTEE MEMBER JEFFRIES: So how about
24 just adding that same language you crafted before
25 about, In addition, the Department may seek

1 enforcement through injunction or mandamus.

2 COMMITTEE MEMBER WONG: 1:34 and 1:42.

3 COMMITTEE MEMBER SHEN: Where are we going
4 to add that? I'm going to add it into 1:42, but
5 should I put that first?

6 COMMITTEE MEMBER JEFFRIES: I think it would
7 flow naturally at the end of the paragraph that
8 starts with the Department is receiving information.

9 COMMITTEE MEMBER SHEN: Okay. Yeah.

10 CHAIR KIMSEY: And then we have our final
11 comment was The committee does not need direction
12 from the statute. The statute clearly empowers.

13 COMMITTEE MEMBER SHEN: That one we fixed. I
14 will change that one.

15 CHAIR KIMSEY: Other comments on 1:42?
16 1:43. We have an irrelevant comment again.
17 This was based on the ISOR but it's the forensic
18 alcohol supervisor, yeah.

19 COMMITTEE MEMBER JEFFRIES: Right, so there
20 really was a change.

21 COMMITTEE MEMBER SHEN: So what did we say
22 to put in there last time?

23 COMMITTEE MEMBER JEFFRIES: I think Alex's
24 point was, rather than saying we're going to revise
25 the ISOR, that the next SOR will be corrected to

1 address that.

2 COMMITTEE MEMBER SHEN: Okay.

3 MS. STUPPLE: Yes.

4 COMMITTEE MEMBER SHEN: The next what?

5 CHAIR KIMSEY: SOR.

6 COMMITTEE MEMBER SHEN: Oh, because it's not
7 initial anymore?

8 CHAIR KIMSEY: I assume so.

9 COMMITTEE MEMBER SHEN: All right.

10 CHAIR KIMSEY: 1:44. The committee agrees
11 and the regulations have been changed to state:
12 Possesses a baccalaureate or higher degree, in life
13 science or physical science.

14 MS. STUPPLE: This is Alex. I think we need
15 to address the part of it that talks about any
16 course work.

17 CHAIR KIMSEY: The proposed revisions, which
18 remove the requirements for any chemistry course
19 work, actually lower the current academic standards
20 for the personnel who can ultimately be responsible.

21 COMMITTEE MEMBER SHEN: Well, that is a
22 supposition which is not going to be true, but how
23 do we address that?

24 COMMITTEE MEMBER WONG: The way it used to
25 be had language that was possess a baccalaureate or

1 higher degree in any applied physical or natural
2 science to include a total of 18 semester units in
3 general chemistry, (inaudible) analysis and organic
4 chemistry with related laboratories. That way it's
5 more specific and shows that these people have to
6 have those physical science course work.

7 COMMITTEE MEMBER SHEN: But we specifically
8 took all of that out after hours and hours and hours
9 of discussion. Because the laboratories could hire
10 people with the degrees if they wanted, with a
11 chemistry or non-chemistry that they wanted.

12 In particular, what we didn't want is to not
13 be able to hire people with plenty of chemistry but
14 not hitting a particular course of some sort that
15 might be called something other than it used to be
16 or some such thing.

17 CHAIR KIMSEY: Yeah, course names change and
18 I remember the discussion was that we felt that
19 generalizing to life sciences and physical sciences
20 was sufficient, and we didn't have to get into the
21 specific course work.

22 COMMITTEE MEMBER SHEN: I am totally fine
23 with that. I mean, we are talking, again, accredited
24 laboratories that are not going to hire whatever it
25 was they said we were going to hire, like someone in

1 nanny science or something, or whatever the comments
2 were.

3 You know, you have to be able to do the work
4 in the laboratory, you have to be able to pass all
5 the accreditation guidelines, you have to be able to
6 do the work and testify in court. So I think that
7 being more general is a better way to go.

8 CHAIR KIMSEY: Maybe we add a sentence that
9 says degrees in life science and physical science
10 contain sufficient chemistry instruction.

11 COMMITTEE MEMBER WONG: But the ISOR will
12 ask, well, what's sufficient?

13 COMMITTEE MEMBER JEFFRIES: I think where
14 Jennifer was going is that that was a conscious
15 decision on the part of the committee to make that
16 change, and that rather than being defensive about
17 it or trying to justify it, we should just say
18 (inaudible) with something like the committee feels
19 that the particular course work requirement should
20 not be mandated in the regulation. That's where
21 we're going with it. We don't want to require the
22 regulations to require (inaudible) course work.

23 CHAIR KIMSEY: So specific course work is
24 not mandated.

25 COMMITTEE MEMBER JEFFRIES: Should not be

1 mandated by the regulations.

2 COMMITTEE MEMBER SHEN: I love it. Love it.
3 We feel that particular course work should not be
4 mandated by the regulations.

5 COMMITTEE MEMBER JEFFRIES: That's what my
6 suggestion would be, because I think that's what our
7 discussion on that subject was, that we don't want
8 to be regulating it through this particular
9 regulation.

10 CHAIR KIMSEY: Anything else on 1:44?

11 MS. STUPPLE: You want to say why you don't
12 want to regulate it through the regulations, or
13 specify it in the regulation?

14 COMMITTEE MEMBER SHEN: It's because they
15 want laboratories to have the ability to hire the
16 personnel that they feel would be more appropriate
17 for their employees.

18 MS. STUPPLE: Let's put that in.

19 COMMITTEE MEMBER HARMON: Jennifer Harmon.
20 Can we just say that B.S. degrees are sufficient to
21 demonstrate the course work necessary?

22 COMMITTEE MEMBER SHEN: We want to be
23 careful about B.S. versus B.A. because yours truly
24 has a Bachelors of Arts degree in biology.

25 COMMITTEE MEMBER HARMON: Okay.

1 Baccalaureate degrees (inaudible)?

2 CHAIR KIMSEY: That's a little bit too
3 general.

4 COMMITTEE MEMBER WONG: That's going to be
5 too nebulous and they're going to ask us to define
6 what's sufficient.

7 COMMITTEE MEMBER LYLE: Bruce Lyle. Do we
8 want to say that being too specific in the
9 regulation would hamstring the laboratories in their
10 hiring?

11 COMMITTEE MEMBER SHEN: Yes. I like that.

12 COMMITTEE MEMBER LYLE: I think the point is
13 not so much that it hampers the hiring. Really
14 the point is that it's up to the laboratory to
15 determine if people are qualified, and the specific
16 course work should not be required in a regulation
17 to say you must have this course in order to
18 qualify.

19 COMMITTEE MEMBER SHEN: Okay. So the
20 committee feels that laboratories should --

21 CHAIR KIMSEY: Have the flexibility.

22 COMMITTEE MEMBER LYLE: Yeah, that sounds
23 right.

24 COMMITTEE MEMBER SHEN: So the committee
25 feels that laboratories should have the flexibility

1 to hire --

2 COMMITTEE MEMBER JEFFRIES: Qualified
3 individuals.

4 COMMITTEE MEMBER SHEN: The committee feels
5 that particular course work should not be mandated
6 by regulation. The committee feels that laboratories
7 should have the flexibility to hire qualified
8 individuals of their own choosing?

9 COMMITTEE MEMBER JEFFRIES: Period.

10 COMMITTEE MEMBER SHEN: Period.

11 CHAIR KIMSEY: Okay. It's getting close to
12 one o'clock. I have a call. And Dan, yours it at
13 1:20, did you say?

14 COMMITTEE MEMBER LYLE: Bruce, and it's at
15 1:30.

16 CHAIR KIMSEY: Bruce, at 1:30. So do we want
17 to take an hour break for lunch?

18 COMMITTEE MEMBER LYLE: Just before we leave
19 that do we want to just for clarity, because we've
20 had a lot of discussion this morning, just make it
21 clear that all of the committee members are
22 unanimously in support of the proposed changes of
23 1:1 to 1:44?

24 CHAIR KIMSEY: Sure.

25 COMMITTEE MEMBER SHEN: That's a good idea.

1 CHAIR KIMSEY: Paul Kimsey, I agree.

2 COMMITTEE MEMBER WONG: I agree.

3 CHAIR KIMSEY: That was Kenton Wong.

4 COMMITTEE MEMBER JEFFRIES: Dan Jeffries, I
5 agree.

6 COMMITTEE MEMBER LYLE: Bruce Lyle, I agree.

7 COMMITTEE MEMBER HARMON: Jennifer Harmon, I
8 agree.

9 COMMITTEE MEMBER SHEN: Jennifer Shen, I
10 agree.

11 COMMITTEE MEMBER WONG: Sergeant Jones?

12 CHAIR KIMSEY: Oh, Sergeant Jones, I'm
13 sorry.

14 COMMITTEE MEMBER JONES: This is Sergeant
15 Jones, I agree. I think we have some others in the
16 room here, too.

17 COMMITTEE MEMBER WONG: They're not
18 committee members, though.

19 COMMITTEE MEMBER JONES: Okay. Never mind.
20 I'm still learning.

21 CHAIR KIMSEY: So we'll take a pause and get
22 started at two o'clock.

23 (Lunch recess taken at 12:57 p.m.)

24 --o0o--

25

1 a person shall have experience in interpreting and
2 correlating the demeanor and behavior of persons who
3 have ingested known amounts of alcohol. I don't
4 think we believe that's vague.

5 CHAIR KIMSEY: Okay, thank you.

6 MS. STUPPLE: Can I say something?

7 CHAIR KIMSEY: Sure.

8 MS. STUPPLE: About the green highlighted
9 one. In the regulations it says that an analyst is
10 someone that has two years of analytical experience.
11 But my question is how does one get analytical
12 experience if they're not an analyst?

13 COMMITTEE MEMBER HARMON: Isn't there an
14 'or' in there? Which one are you referring to?

15 MS. STUPPLE: The green highlighted part,
16 which is --

17 COMMITTEE MEMBER HARMON: All that we have
18 is that forensic alcohol analyst means a person
19 employed by a forensic alcohol laboratory who is
20 responsible for all (inaudible) performance as
21 forensic alcohol analysis.

22 MS. STUPPLE: What they have in the
23 regulation is that forensic alcohol analyst is a
24 person who meets the following qualifications, and
25 then one of them is has two years of analytical

1 experience.

2 COMMITTEE MEMBER JEFFRIES: Alex, I think
3 Jennifer's point is that (inaudible) an 'or' saying
4 that if you don't have that or satisfactorily
5 complete a training course approved by, etcetera. I
6 think that would be the answer of how you would
7 become --

8 MS. STUPPLE: Okay.

9 CHAIR KIMSEY: Okay.

10 MS. STUPPLE: Is there any point in having
11 the two years of analytical experience?

12 COMMITTEE MEMBER JEFFRIES: I think that is
13 two different alternate ways of becoming a qualified
14 person, that either you do to the training or you've
15 got two years of experience.

16 COMMITTEE MEMBER HARMON: Jennifer Harmon.
17 It allows for laboratories possibly who are not
18 accredited to use individuals who can demonstrate
19 previous work experience as opposed to having to
20 complete a training program.

21 Because in an accredited laboratory
22 (inaudible) experience they're still going to have
23 to go through some kind of training program. But it
24 is possible that you may have a private laboratory
25 that may not have them go through a training program

1 but if they demonstrate work experience that would
2 be sufficient to meet the standard.

3 MS. STUPPLE: Okay.

4 COMMITTEE MEMBER SHEN: Where is our lab
5 place/entity comment, 1:18?

6 CHAIR KIMSEY: Yeah. After the laboratory
7 place/entity issue, the next comment from the
8 committee is The committee feels that with the
9 submission of the training outline and additional
10 listed documents, the Department has sufficient
11 materials to ensure adequate oversight. This is
12 about oversight response. The committee also felt
13 that laboratories are best suited to train their own
14 employees, as is done in every other forensic
15 discipline.

16 COMMITTEE MEMBER SHEN: So do we add on that
17 last little thing about the management thing?

18 CHAIR KIMSEY: Sure. I think any place where
19 we can deal with the oversight issue it's worth
20 putting that in.

21 And then we have our standard irrelevant
22 comment. And then the committee does not need
23 direction from the statute comment, which we've
24 changed.

25 The ISOR question on this one was approved

1 by the Department with laboratory employment.

2 MS. STUPPLE: So on page 37, the second part
3 of the paragraph that you were just reading, Paul,
4 where it says the proposed regulations do not set
5 any meaningful standards for the training, etcetera.
6 I believe that should be answered.

7 CHAIR KIMSEY: Okay.

8 COMMITTEE MEMBER SHEN: Where is it?

9 MS. STUPPLE: Page 37, the very top of the
10 paragraph.

11 COMMITTEE MEMBER SHEN: My page numbers are
12 different.

13 MS. STUPPLE: So second-to-last paragraph in
14 1:45.

15 CHAIR KIMSEY: Correct.

16 MS. STUPPLE: The second half of that
17 paragraph.

18 COMMITTEE MEMBER SHEN: So the paragraph
19 that starts the ISOR states, halfway through there?

20 CHAIR KIMSEY: Right. The sentence starts As
21 noted above, the performance regulations do not set
22 any meaningful standards for the training and
23 transfer.

24 COMMITTEE MEMBER SHEN: Okay. Why am I not
25 seeing that?

1 COMMITTEE MEMBER JEFFRIES: Jennifer, I
2 think it's at the bottom of the second-to-last whole
3 paragraph.

4 COMMITTEE MEMBER SHEN: Such regulations are
5 clearly unnecessary?

6 COMMITTEE MEMBER JEFFRIES: I think Alex is
7 talking about the proposed regulations, which
8 require a laboratory to design, approve, and conduct
9 the training of staff without any meaningful
10 performance requirements, that one.

11 COMMITTEE MEMBER SHEN: Okay.

12 COMMITTEE MEMBER JEFFRIES: And I think the
13 answer to is it's a two-part question. The first
14 part is that the committee does feel that there is
15 sufficient performance requirements built into the
16 regulations. And then the second part of it, the
17 external oversight, has to do with the regulatory
18 nature of the laboratory.

19 COMMITTEE MEMBER SHEN: All right. So what
20 should I put in here? (inaudible) I do not know why,
21 so I'm just going to put in whatever you say.

22 CHAIR KIMSEY: The committee feels adequate
23 performance requirements are included in the
24 regulations, is what I think Dan was mentioning.

25 COMMITTEE MEMBER JEFFRIES: Right.

1 CHAIR KIMSEY: And the second part, Dan?

2 COMMITTEE MEMBER JEFFRIES: The second part
3 again goes back to that oversight, which I think
4 we've just added above that there is oversight.

5 COMMITTEE MEMBER SHEN: Okay. So basically,
6 we've already talked about the fact that The
7 committee feels that with the submission of the
8 training outline and additional listed documents,
9 the Department has sufficient materials to ensure
10 adequate oversight, and then the ability to training
11 their employees. And then we're going to say the
12 Department has the ability to do the whole
13 management thing.

14 What else, do we need more on top of that?

15 COMMITTEE MEMBER JEFFRIES: Yeah, I think
16 what Paul added was the committee feels that the
17 regulations are clear as to the requirements for
18 training.

19 COMMITTEE MEMBER SHEN: All right.

20 COMMITTEE MEMBER JEFFRIES: But I think the
21 way Paul said it was best.

22 COMMITTEE MEMBER SHEN: How did you say it,
23 Paul?

24 CHAIR KIMSEY: The committee feels adequate
25 performance requirements are included in the

1 regulations.

2 COMMITTEE MEMBER SHEN: Oh wow, I think I
3 had a goose bump right there. Adequate...

4 CHAIR KIMSEY: ... performance requirements
5 are included in the regulations.

6 COMMITTEE MEMBER SHEN: Got it.

7 COMMITTEE MEMBER WONG: This is Kenton. Do
8 we need to add a clarification to full-time
9 employment involving analytical work experience,
10 because it says two years of analytical work
11 experience and there was something about that we
12 needed to clarify is that part-time, is it full-
13 time.

14 COMMITTEE MEMBER SHEN: I think we should be
15 careful about overregulating.

16 MS. STUPPLE: There's a difference between
17 overregulating and vagueness, and that is the point
18 because two years could be four hours a week for two
19 years or it could be full-time.

20 COMMITTEE MEMBER SHEN: So should we put
21 full-time in there?

22 MS. STUPPLE: If that's what you guys want.

23 COMMITTEE MEMBER JEFFRIES: Is it necessary
24 to be full-time or (inaudible). Would it be okay if
25 it's only three-quarter time or half-time?

1 CHAIR KIMSEY: Number of hours.

2 COMMITTEE MEMBER WONG: I think we're all
3 talking about full-time.

4 CHAIR KIMSEY: That was my impression.

5 COMMITTEE MEMBER WONG: That's the
6 implication.

7 CHAIR KIMSEY: So let's use full-time,
8 unless there's a feeling...

9 COMMITTEE MEMBER SHEN: So I need to put two
10 years of full-time analytical experience?

11 COMMITTEE MEMBER JONES: This is Eric. What
12 would happen, though, if you had an analyst that had
13 worked for a lab for a significant portion of time
14 (inaudible), would they not be qualified then?

15 COMMITTEE MEMBER SHEN: Here with my own
16 laboratory, my alcohol analysts are all chemists and
17 they also do narcotics analysis. So they do
18 (inaudible) program, they do the alcohol analysis,
19 and they do narcotics, plus half of them are on
20 (inaudible) detail. So they could easily work in a
21 laboratory for two years and spend of their two
22 years doing alcohol analysis, even though they're
23 full-time analytical employees, they're not doing
24 alcohol analysis a hundred percent of the time.

25 COMMITTEE MEMBER JONES: Right, that's what

1 I'm getting at. That person, would they be qualified
2 under these regulations?

3 COMMITTEE MEMBER SHEN: No. I mean, I think
4 the Department could argue that they're not but I
5 don't think that's a good idea.

6 COMMITTEE MEMBER HARMON: Jennifer Harmon. I
7 say we keep it the way it is.

8 COMMITTEE MEMBER SHEN: Thank you. And
9 again, laboratories are not going to put people or
10 not train people who don't know what they're doing.
11 If they haven't had enough experience (inaudible).

12 COMMITTEE MEMBER HARMON: And of course
13 they're going to question them as to the training
14 and experience that they have. If in two years
15 they've analyzed one alcohol sample, then it's not
16 going to hold in court.

17 COMMITTEE MEMBER SHEN: Correct.

18 CHAIR KIMSEY: Okay.

19 COMMITTEE MEMBER SHEN: So the extra comment
20 that we added, The committee feels adequate
21 performance requirements are included in the
22 regulations, is there any specific spot you think
23 that should go?

24 CHAIR KIMSEY: Well, it was in response to
25 the second-to-last major paragraph there.

1 COMMITTEE MEMBER SHEN: Right. So stick it
2 toward the end, then.

3 CHAIR KIMSEY: Any other comments on 1:45?

4 Okay, 1:46. The committee feels that the
5 removal of breath alcohol analysis from (A) and
6 inclusion of breath alcohol testing in (E) serves to
7 clarify the regulations.

8 This section was amended to remove the
9 phrase including breath alcohol analysis as it is
10 redundant. The term Forensic Alcohol Analysis is
11 defined in Section 1215.1 (g), and includes a
12 reference to breath alcohol analysis.

13 Questions?

14 Hearing none, 1:47. The committee wished to
15 clarify the distinction between breath and fluid
16 alcohol analysis. We felt that testing was a more
17 accurate representation of the process used to
18 obtain a breath result.

19 This also reflects the change in the
20 definition of Breath Alcohol Testing noted in
21 Section 1215.1 (c).

22 COMMITTEE MEMBER SHEN: We're on 1:47?

23 CHAIR KIMSEY: testing was a more accurate
24 representation of the process used to obtain a
25 breath result.

1 This also reflects the change in the
2 definition of Breath Alcohol Testing noted in
3 Section 1215.1 (c).

4 Any comments on that one?

5 1:48. The committee agrees. The wording will
6 be changed to read: Practical laboratory
7 demonstration of the analyst's trainee's ability to
8 perform forensic alcohol analysis...

9 The committee agrees. For clarification, the
10 word successfully will be added. The regulations
11 will now read: Practical laboratory demonstration of
12 the analyst's trainee's ability to successfully
13 perform forensic alcohol analysis;

14 1:49. The committee agrees, and will remove
15 the word forensic to now read: Interpretation of
16 results of alcohol analysis, including correlation
17 of alcohol analyses with subjective observations of
18 the demeanor and behavior of persons who have
19 ingested known amounts of alcohol;

20 This is established historical language, and
21 the committee feels it is clear and requires no
22 modification.

23 1:50. The terms court testimony and court
24 decisions regarding chemical tests of alcohol to
25 determine alcohol influence, will be included in the

1 training outline submitted to the Department.

2 (inaudible)

3 1:51. Training summary in requirements of
4 these Group 8 regulations, will be included in
5 submitted training documentation.

6 MS. STUPPLE: I have a comment about half-
7 way down where it says as a consequence.

8 CHAIR KIMSEY: Yeah.

9 MS. STUPPLE: I believe that sentence, those
10 two sentences need an answer.

11 CHAIR KIMSEY: As a consequence, with the
12 proposed revisions to the regulations, there would
13 be no external oversight of employee training and
14 each laboratory would individually determine how to
15 fulfill the loosely defined training requirements.
16 Because of this, the proposed revisions to the
17 regulations -- oh, okay.

18 So is this where we put in our oversight
19 paragraph?

20 MS. STUPPLE: Yes.

21 CHAIR KIMSEY: Which was 1:34 and 1:32?

22 COMMITTEE MEMBER SHEN: 1:34 and 1:42.

23 CHAIR KIMSEY: Right.

24 COMMITTEE MEMBER SHEN: I'll just put that
25 in there, then.

1 CHAIR KIMSEY: Okay. On 1:52, The committee
2 feels that competency test is a common term used in
3 forensic laboratories to describe a practical
4 examination that shows competency prior to a trainee
5 being allowed to do independent casework. There's
6 that word casework.

7 The inclusion of competency test here versus
8 proficiency test more closely resembles common
9 practice.

10 COMMITTEE MEMBER SHEN: We should probably
11 change the word casework to testing.

12 CHAIR KIMSEY: Yes. The committee feels that
13 the level of detail suggested here is not necessary.

14 MS. STUPPLE: That needs to be flushed out a
15 little bit.

16 CHAIR KIMSEY: Well, actually, if I can
17 continue, it says, Proof of completion of the
18 competency test, and its adherence to the
19 regulations will be forwarded to the Department for
20 review.

21 I think that was a further explanation of
22 the detail.

23 COMMITTEE MEMBER SHEN: I was just saying
24 that the information that the Department will want
25 to know (inaudible).

1 MS. STUPPLE: Okay.

2 CHAIR KIMSEY: And then we have another
3 irrelevant comment to -- and the last of the
4 comments, The elements of the competency test are
5 laid out in the regulations. The competency test is
6 a practical examination which will be outlined in
7 the training documentation submitted to the
8 Department. It is in addition to a written test and
9 an annual proficiency test. The proficiency test
10 will be from an approved external provider, as
11 specified in H&S 100702. It reads:

12 *(a) All laboratories that are subject to the*
13 *requirements of Section 100700 shall follow the*
14 *American Society of Crime Laboratory*
15 *Directors/Laboratory Accreditation Board (ASCLD/LAB)*
16 *guidelines for proficiency testing. The required*
17 *proficiency test must be obtained from any ASCLD/LAB*
18 *approved test provider.*

19 *Each laboratory shall participate annually*
20 *in an external proficiency test for alcohol*
21 *analysis. And then it continues on.*

22 *Each examiner shall successfully complete at*
23 *least one proficiency test annually.*

24 *Each laboratory shall have a procedure in*
25 *writing that describes a review of proficiency test*

1 *results, and, if applicable, the corrective action*
2 *taken when proficiency test results are inconsistent*
3 *with expected test results.*

4 The new regulations require all staff
5 employed in forensic alcohol analysis to complete an
6 external proficiency test and a written test, along
7 with a competency test, all of which will be
8 submitted to the Department. The committee, along
9 with Department representatives agreed that
10 submission of the documents outlined in the
11 regulations accomplished Department oversight to an
12 appropriate degree.

13 The committee does not need direction from
14 the statute, etcetera.

15 And then we go on to say, The committee
16 recognizes that 1216.1(b)(3)(E) is not reasonable,
17 as 5 percent of a small number (0.02 for instance)
18 is too small for laboratories to adhere to.
19 Therefore, the language will be changed to read:
20 Results must fall within plus or minus 5 percent of
21 the known value if the value is above a 0.08
22 percent. If the value is lower than a 0.08%, the
23 result must be within plus or minus 0.005.

24 COMMITTEE MEMBER JEFFRIES: Could we pause
25 on that one just for a second. That one I'm still

1 trying to follow. I think I understand what you guys
2 are saying, but just so that it's clear, is that
3 clear to everyone what you mean by it?

4 If I'm understanding it -- I guess my
5 concern is when you're starting out by saying it's
6 too small for laboratories to adhere to, you mean
7 it's not doable?

8 COMMITTEE MEMBER SHEN: Right.

9 COMMITTEE MEMBER HARMON: Jennifer Harmon.
10 The ability (inaudible) right now could not achieve
11 what the regulation as written as it is right now at
12 the lower end, so you're talking about like a plus
13 or minus .001 or plus or minus .002, which is just
14 not reproducible for most laboratories.

15 COMMITTEE MEMBER JEFFRIES: And at what
16 level are you doing the testing?

17 COMMITTEE MEMBER HARMON: Most laboratories
18 will test anywhere from a .01 all the way up. If
19 they're a (inaudible) lab they go up to a .5.

20 COMMITTEE MEMBER SHEN: Well, the problem
21 then is that a plus or minus 5 percent of a .01 is
22 so small that we can't do that.

23 COMMITTEE MEMBER JEFFRIES: Right. I think I
24 understand the problem; I'm just not sure the
25 solution is what I'm grappling with.

1 I get it that on a small number it's harder
2 to get in terms of percentage.

3 COMMITTEE MEMBER SHEN: We can't do it.

4 COMMITTEE MEMBER HARMON: It's not
5 reproducible.

6 COMMITTEE MEMBER JEFFRIES: Then I guess my
7 question is, on the higher numbers is it reasonable
8 to be plus or minus .005, or is there a reason that
9 on a higher number you want to have the 5 percent of
10 the known value?

11 COMMITTEE MEMBER HARMON: The greater the
12 number is, the larger the possibility of not being
13 able to reproduce (inaudible).

14 COMMITTEE MEMBER JEFFRIES: Okay.

15 COMMITTEE MEMBER HARMON: That part of the
16 curve usually is between a .05 and about a .2. So
17 what you're doing is allowing laboratories the
18 flexibility at the high end and at the low end to be
19 able to consistently reproduce results.

20 COMMITTEE MEMBER HARMON: What has been
21 proposed here in the language is consistent with
22 what most laboratories in the state of California
23 are doing with the technology that they have. This
24 is not a big window. This isn't what is achievable
25 based on uncertain measurement calculations, based

1 on the (inaudible). This is not an unreasonable
2 expectation. It's not too large.

3 COMMITTEE MEMBER JEFFRIES: Okay. So now
4 that I understand it, then, I guess what you're
5 saying is one of them is at or above an .08 and the
6 other is below an .08?

7 COMMITTEE MEMBER HARMON: Yes.

8 COMMITTEE MEMBER JEFFRIES: What if it's
9 exactly an .08? The way it's worded right now, we
10 don't have it.

11 COMMITTEE MEMBER SHEN: No, you're right
12 about that. So do we want at or above or at or
13 below? Jennifer?

14 COMMITTEE MEMBER HARMON: It should be at or
15 above.

16 COMMITTEE MEMBER JONES: This is Eric. This
17 is (inaudible) blood testing, correct?

18 COMMITTEE MEMBER HARMON: That's correct.

19 COMMITTEE MEMBER JONES: Okay.

20 CHAIR KIMSEY: So did we resolve that?

21 COMMITTEE MEMBER SHEN: So I need to change
22 that paragraph (inaudible).

23 COMMITTEE MEMBER WONG: The paragraph above
24 that should also have a reference to 1:34 and 1:42.

25 COMMITTEE MEMBER SHEN: Yes, okay. Didn't we

1 have a reference for our new paragraph about the
2 committee not needing direction from the statute? Or
3 did we not?

4 CHAIR KIMSEY: I thought we did. Is that
5 1:18?

6 COMMITTEE MEMBER SHEN: No, that's the
7 place/entity one, I think. I'll just find it later.
8 I'll just circle it and know I have to change it.

9 CHAIR KIMSEY: Okay. Any other comments on
10 1:52?

11 1:53. This section is redundant and is
12 deleted in its entirety. The information is already
13 required in a previous section.

14 The new regulations require all staff
15 employed in forensic alcohol analysis to complete an
16 external proficiency test and a written test, along
17 with a competency test, all of which will be
18 submitted to the Department. The committee, along
19 with Department representatives agreed that
20 submission of the documents outlined in the
21 regulations accomplished Department oversight to an
22 appropriate degree. Which is more on the oversight.

23 COMMITTEE MEMBER SHEN: Yeah, those are the
24 comments again.

25 CHAIR KIMSEY: Questions?

1 1:54. The committee agrees. This section has
2 been removed in its entirety.

3 1:56. The committee agrees. This section has
4 been removed in its entirety.

5 1:57. The committee felt that the removal of
6 the three personnel titles (supervisor, analyst, and
7 trainee) added clarity and conciseness to the
8 regulations. As the old titles are not used in
9 current forensic discipline.

10 The committee agrees, and the following
11 clarifications were made to separate out documents
12 submitted for newly trained analysts versus all
13 analysts.

14 (c) Every laboratory performing forensic
15 alcohol analysis shall provide to the Department the
16 following for each newly trained forensic alcohol
17 analyst:

18 (1) A copy of the diploma(s) or transcripts
19 of relevant education for each individual performing
20 forensic alcohol analysis for the laboratory. The
21 relevant education includes proof of a baccalaureate
22 or higher degree in any life science or physical
23 science;

24 (2) --

25 MS. STUPPLE: Paul.

1 CHAIR KIMSEY: Yes?

2 MS. STUPPLE: Sorry, I think you skipped a
3 page.

4 CHAIR KIMSEY: Sorry about that. I had
5 already jumped to 1:58, I guess.

6 MS. STUPPLE: Yes.

7 CHAIR KIMSEY: So, okay. All the titles are
8 not used in the current laboratories, and the title
9 supervisor in particular causes some confusion, the
10 committee felt it best to have one title, and to
11 articulate through the regulations what an analyst
12 must do to be considered proficient. Therefore this
13 section was removed in its entirety.

14 The forensic alcohol laboratory will be
15 required to ensure its analysts are competent to
16 conduct alcohol analysis. Running 25 samples with
17 known results serves only as practice for an
18 analyst, and does not show competence. The
19 competency test requirement outlined in Section
20 1216.1 (b) (3) is a true test of an analyst's
21 competency, as the answers to the test are unknown
22 to the analyst.

23 Questions on 1:57?

24 I'll reread 1:58. The committee removed
25 Article 3 in its entirety, so the notification

1 requirements were placed in Article 2.

2 The committee feels that with the submission
3 of the training outline and additional listed
4 documents, the Department has sufficient materials
5 to ensure adequate oversight. The committee also
6 felt that laboratories are best suited to train
7 their own employees, as is done in every other
8 forensic discipline.

9 The committee agrees, and the following
10 clarifications were made to separate out documents
11 submitted for newly trained analysts versus all
12 analysts.

13 Every laboratory performing forensic alcohol
14 analysis shall provide to the Department the
15 following for each newly trained forensic alcohol
16 analyst:

17 (1) A copy of the diploma(s) or transcripts
18 of relevant education for each individual performing
19 forensic alcohol analysis for the laboratory. The
20 relevant education includes proof of a baccalaureate
21 or higher degree in any life science or physical
22 science;

23 (2) A training summary of the topics
24 outlined in 1216.1(b)(2) with a completion date for
25 each individual performing forensic alcohol analysis

1 for the laboratory;

2 (3) Copies of qualifying tests to include
3 written examinations for each individual performing
4 forensic alcohol analysis for the laboratory;

5 (4) Proof of completion of a competency test
6 which follows the requirements articulated in
7 1216.1(b).

8 (3) for each individual performing forensic
9 alcohol analysis for the laboratory.

10 (5) Written notification to the Department
11 alerting it that the individual has successfully
12 completed his or her training prior to beginning
13 casework; and

14 (d) Proof of completion of a proficiency
15 test as outlined in 1216.1(a)(2) for each analyst
16 performing forensic alcohol analysis for the
17 laboratory.

18 The committee feels that qualifying tests is
19 common language, and does not need defining.

20 COMMITTEE MEMBER HARMON: Jennifer Harmon. I
21 have a question.

22 CHAIR KIMSEY: Sure.

23 COMMITTEE MEMBER HARMON: The proficiency
24 test versus competency test, is that interchanged in
25 (5)(B)? Proof of completion of a proficiency test or

1 proof of completion of a competency test?

2 COMMITTEE MEMBER SHEN: I think they have to
3 do both of them.

4 COMMITTEE MEMBER HARMON: Okay.

5 COMMITTEE MEMBER SHEN: Because (4) is proof
6 of completion of a competency test. (5)(B) is Proof
7 of completion of a proficiency test.

8 COMMITTEE MEMBER HARMON: We're requiring
9 people to have the competency test and a proficiency
10 test before they get qualified?

11 COMMITTEE MEMBER SHEN: Well, maybe. I don't
12 know that we ought to do that.

13 MS. STUPPLE: And qualifying tests.

14 COMMITTEE MEMBER HARMON: A competency test
15 is what they have to do in order to qualify, and a
16 proficiency test is what they have to do in order to
17 maintain qualification.

18 COMMITTEE MEMBER SHEN: Jennifer, we're just
19 showing the Department what we're going to be
20 sending them. This isn't what we're making someone
21 do, this is what we're sending the Department, and
22 so we are going to send the Department proof of
23 completion of a proficiency test as outlined here
24 for each analyst.

25 COMMITTEE MEMBER HARMON: Okay.

1 COMMITTEE MEMBER SHEN: Right? Am I right
2 about that? I'm not sure, I don't have it right in
3 front of me but I think that's the deal.

4 CHAIR KIMSEY: That was my understanding.

5 MS. STUPPLE: But what is the qualifying
6 test?

7 COMMITTEE MEMBER SHEN: One that qualifies
8 you.

9 MS. STUPPLE: Which is different than a
10 competency test?

11 COMMITTEE MEMBER SHEN: Yes.

12 MS. STUPPLE: I think that might want to be
13 explained somewhere.

14 COMMITTEE MEMBER SHEN: Maybe we need to put
15 copies of written examinations.

16 COMMITTEE MEMBER HARMON: Not everybody's
17 taking a written exam.

18 COMMITTEE MEMBER JONES: This is Eric. As
19 somebody just a layman looking in from the outside,
20 the qualifying test is the competency or proficiency
21 test, right? It's one of those tests we're just
22 telling the CDPH that they okay to perform forensic
23 alcohol work?

24 COMMITTEE MEMBER SHEN: Yeah. So I think
25 what we're putting here is qualifying test. You

1 know, (inaudible) every single time they pass a new
2 training module there is some sort of test, and so
3 we would be mandated as a part of our training to
4 send copies of those tests to the Department.

5 But if you had a different process where you
6 didn't ever take a written test and you just did
7 competency tests only, then that's what you would
8 say.

9 So I think the point here is that whatever
10 qualifying test you have, whatever test you are
11 giving your analysts that qualifies them in your
12 eyes, copies of those need to go.

13 MS. STUPPLE: I think you might want to
14 define that somewhere, since it's causing a little
15 bit of confusion.

16 COMMITTEE MEMBER JONES: This is Eric again.
17 If you say something to the effect of proof of
18 competency or proof of proficiency, something like
19 that? The only reason I ask is because I didn't
20 understand it either.

21 COMMITTEE MEMBER SHEN: All right. Let's
22 see. I mean, can we just take out the word
23 qualifying?

24 CHAIR KIMSEY: Or would a definition of
25 qualifying tests?

1 COMMITTEE MEMBER SHEN: I'm not sure we want
2 to go down that road because it could mean so many
3 different things.

4 COMMITTEE MEMBER WONG: I agree.

5 COMMITTEE MEMBER HARMON: Jennifer Harmon. I
6 agree. I think we need to be careful here.

7 COMMITTEE MEMBER SHEN: So how about we just
8 take out the word qualifying?

9 MS. STUPPLE: What if it -- well, okay.

10 COMMITTEE MEMBER SHEN: Because basically
11 we're just saying what we're going to send and we're
12 going to send copies of any tests we take.

13 COMMITTEE MEMBER HARMON: But can the
14 Department then extrapolate out that there is a test
15 and all doing is a competency test and they don't
16 have a written exam or they don't have a practicum
17 or whatever, they're going to extrapolate out that
18 that's insufficient?

19 COMMITTEE MEMBER SHEN: Well, I could tell
20 you I actually never really know what they're going
21 to extrapolate.

22 MS. STUPPLE: Well, it does say shall
23 provide, and that's one of the things listed, so if
24 there weren't copies of tests in addition to
25 competency tests and proficiency tests, I guess they

1 would be out of compliance.

2 COMMITTEE MEMBER SHEN: Right now they'd
3 only be out of compliance if they had tests that
4 were taken that were used to qualify an analyst that
5 the Department didn't get.

6 MS. STUPPLE: Right, but if those tests
7 don't exist, the Department may not know that. So
8 you may want to say copies of tests --

9 COMMITTEE MEMBER SHEN: If applicable?

10 MS. STUPPLE: -- if they exist, or
11 something.

12 COMMITTEE MEMBER SHEN: How about if
13 applicable, or if they exist?

14 COMMITTEE MEMBER WONG: No, that sounds bad.

15 COMMITTEE MEMBER SHEN: Yeah.

16 MS. STUPPLE: No. But something that means
17 that.

18 COMMITTEE MEMBER HARMON: Can we get rid of
19 it entirely? Can we get rid of (3), copies of
20 qualifying tests to include written examinations for
21 each individual performing forensic alcohol analysis
22 for the laboratory; can we eliminate that language
23 entirely?

24 COMMITTEE MEMBER SHEN: I don't have a
25 problem with that.

1 CHAIR KIMSEY: Well, then nothing would be
2 submitted in that vein.

3 COMMITTEE MEMBER SHEN: Right, the written
4 examinations wouldn't be submitted.

5 And currently, I mean, I'm just wildly
6 guessing here, the Department might have a problem
7 with that, but currently the analysts take a written
8 examination.

9 COMMITTEE MEMBER WONG: Something to the
10 effect of appropriate documentation such as written
11 examinations, competency tests, proficiency tests,
12 shall be provided to the Department. Since like you
13 guys are a perfect example of doing things a little
14 bit differently, but you would each have to submit
15 stuff to the CDPH for review.

16 And then we need to go back and change that
17 other one that said qualifying didn't need to be
18 defined because everyone knew what that was, so
19 obviously that's not true.

20 COMMITTEE MEMBER SHEN: Well, I still think
21 qualifying is a pretty straightforward word. I think
22 the issue here is are we going to have trouble if
23 some laboratories have -- because we have already
24 laid out here that you have to send in proof of
25 completion of a proficiency test and proof of

1 completion of a competency test. If you just take
2 out (3) what we're not going to be sending is copies
3 of written examinations; that's really all that's
4 left, there isn't anything else.

5 So if we are not on board with everybody
6 doing a written examination, then we should take
7 that out. If we think that all analysts should have
8 some sort of written test, then it needs to stay in
9 and that does need to go to the Department.

10 CHAIR KIMSEY: So how common are the written
11 tests versus labs not doing written tests?

12 COMMITTEE MEMBER HARMON: Right now the
13 Department requires a written test that is given.
14 It's the exact same test that's given to every
15 person and it's been the same test for over a
16 decade.

17 COMMITTEE MEMBER SHEN: Well, longer than
18 that.

19 COMMITTEE MEMBER HARMON: Yeah. And it
20 serves no purpose in qualifying a person other than
21 saying that they can answer the questions on that
22 test, which they're supposed to do independently but
23 then get corrected when they come back to the
24 Department if they don't like the answer, and then
25 get resubmitted.

1 COMMITTEE MEMBER SHEN: So it really comes
2 down to we should just decide this as a committee
3 right now. Do we want to require written tests or
4 not? If we don't, we get rid of it. If we do, we
5 keep it in and get rid of the word qualifying. I
6 frankly don't care.

7 COMMITTEE MEMBER HARMON: Jennifer Harmon. I
8 don't believe that a written test demonstrates
9 competency.

10 COMMITTEE MEMBER SHEN: All right.

11 COMMITTEE MEMBER HARMON: So I say we take
12 it out.

13 COMMITTEE MEMBER SHEN: What's everyone else
14 think?

15 COMMITTEE MEMBER WONG: Kenton Wong. I'm
16 torn because the assertion is that we keep watering
17 down the requirements, and I'm getting some of that,
18 I'm seeing some of that, and I'm just saying this is
19 going to be just part and parcel of more of that.

20 COMMITTEE MEMBER SHEN: I think that's a
21 very valid point, and I don't really see an issue
22 with having some sort of written test.

23 CHAIR KIMSEY: And obviously I guess the
24 issue is that the test that's been around for a long
25 time isn't really felt to be very beneficial. That

1 doesn't mean that an individual laboratory could
2 not, for their own purposes, have a written test of
3 their own.

4 COMMITTEE MEMBER HARMON: Jennifer Harmon.
5 Laboratories do have many ways in which they're
6 testing people's competency, and it may not be a
7 physical exam.

8 They may be asking people to read and
9 document answers to questions. They may be giving
10 people practical exams where they're doing it in a
11 moot court testimony workshop. There's lots of ways
12 where they're testing people's knowledge that is not
13 a question-and-answer written exam. And my concern
14 is with the Department for allowing them to take
15 what they've been doing forever and dictate what's
16 new in the regulation when this is maybe not the
17 most appropriate way to be testing people's ability
18 to do this job. And a laboratory has many mechanisms
19 at getting at how to train their people, and it may
20 not be a written exam.

21 COMMITTEE MEMBER SHEN: That's why it's
22 perfectly fine the way it's written, probably.

23 COMMITTEE MEMBER JEFFRIES: Well, I think if
24 you're going to leave it in that way, you need to
25 allow for the situation where it may not happen, so

1 like a line saying something, if administered by the
2 laboratory, to allow for the situation that not
3 everyone's going to do it.

4 COMMITTEE MEMBER SHEN: That's not bad. If
5 administered by the laboratory, then copies of
6 qualifying tests to include written examinations?

7 COMMITTEE MEMBER JEFFRIES: Well, I'd just
8 put it at the end.

9 COMMITTEE MEMBER WONG: I think that's a red
10 flag. I think it should be something more along the
11 lines of appropriate documentation shall be provided
12 to the Department, or something like that. But to
13 say if it's appropriate or not, it's just a red flag
14 saying, well, you guys don't do it, don't you?

15 COMMITTEE MEMBER SHEN: So what about
16 appropriate documentation of any qualifying test?

17 COMMITTEE MEMBER WONG: Yeah, something to
18 that effect. That way the Department knows we're
19 getting everything that has to do with this person's
20 training.

21 COMMITTEE MEMBER HARMON: Then, Jennifer,
22 you can just document the fact that the person went
23 through this course, right?

24 COMMITTEE MEMBER HARMON: Sure.

25 COMMITTEE MEMBER SHEN: All right. So what

1 did we decide to say?

2 COMMITTEE MEMBER JEFFRIES: Appropriate
3 documentation of any qualifying test.

4 COMMITTEE MEMBER SHEN: Okay. Everybody get
5 that?

6 COMMITTEE MEMBER WONG: Yeah.

7 COMMITTEE MEMBER HARMON: Do we now have to
8 define what qualifying tests are?

9 COMMITTEE MEMBER SHEN: I think qualifying
10 is a very simplistic term. Everyone knows what
11 qualifying is, the qualifying rate, the qualifying
12 degree. It's just a saying, a word that people know.

13 COMMITTEE MEMBER WONG: I agree.

14 COMMITTEE MEMBER JEFFRIES: And can we get
15 rid of the to include written examinations, right?

16 COMMITTEE MEMBER SHEN: Appropriate
17 documentation of any qualifying test. Yes, I will.

18 COMMITTEE MEMBER JEFFRIES: It would
19 continue to read qualifying test for each individual
20 performing forensic alcohol analysis at a
21 laboratory.

22 COMMITTEE MEMBER SHEN: Yes.

23 COMMITTEE MEMBER JEFFRIES: Okay. But I
24 think we also do have to be mindful of Kenton's
25 comments, and I think they really are well taken

1 here, and I think we need to be careful about that.
2 We don't want to make it sound in any way that we're
3 making the requirements for analysis to be any less
4 stringent than they were in the past.

5 COMMITTEE MEMBER WONG: I agree.

6 COMMITTEE MEMBER JEFFRIES: So really the
7 point is just we're changing this to make it more
8 appropriate for current times rather an dummy down
9 the regulation.

10 COMMITTEE MEMBER SHEN: Well, I think this
11 accomplishes that.

12 CHAIR KIMSEY: Anything else on 1:58?

13 1:59. The committee removed Article 3 in its
14 entirety, so the notification requirements were
15 placed in Article 2.

16 The Department has not conducted onsite
17 inspections for decades. The regulations were
18 modified to reflect actual practice.

19 The committee disagrees. The Department's
20 proficiency tests have been adequate for decades.
21 Using ASCLD/LAB approved test providers is common
22 practice and accepted throughout the forensic
23 community.

24 Proficiency tests by approved providers with
25 results forwarded to the Department is the best and

1 most effective practice.

2 The committee does not need direction from
3 the statute.

4 COMMITTEE MEMBER SHEN: And I'm going to
5 change that one.

6 Paul, you're almost done reading.

7 CHAIR KIMSEY: Any questions on 1:59?

8 1:60. Article 3 has been removed in its
9 entirety. Notifications have been moved to Article
10 2. Qualifications of a forensic alcohol analyst are
11 laid out in Article 2.

12 COMMITTEE MEMBER SHEN: Okay. So I think
13 that (inaudible) subcommittee also did, 1:60, so we
14 have a combo there. No, actually you don't, I put
15 that in. I put that in because I think the next
16 subcommittee did 1:60 also, and that's where that,
17 The committee assumes the role of the Department as
18 it pertains to the enforcement of regulations. Do
19 you have that, Dan?

20 COMMITTEE MEMBER JEFFRIES: Yes, that's
21 where we picked up, we also answered 1:60.

22 COMMITTEE MEMBER SHEN: Okay. So I'll let
23 you start with 1:60.

24 COMMITTEE MEMBER JEFFRIES: Okay, let me
25 open that file.

1 MR. LARSON: One minute before you start. We
2 haven't had any public input for a couple hours now.
3 My assumption was that we prefer to provide any
4 public input at the beginning that it would be
5 perhaps with each section.

6 I will also note that I looked at the
7 Bagley-Keene. I think we got bad legal advice. It
8 says in a number of places that the public should be
9 provided an opportunity to comment before or during,
10 so I don't think our switch to before was catching
11 up with Bagley-Keene, I think it was just a
12 reinterpretation.

13 So is it appropriate to include public
14 comments before each section, or just once a day?

15 CHAIR KIMSEY: Well, it's each agenda item,
16 and we're going through subcommittee reports.

17 MR. LARSON: Are these agenda items?

18 CHAIR KIMSEY: Right. We had a public
19 comment --

20 MR. LARSON: This ended at 11:45, and then
21 when was the next public comment after that?

22 CHAIR KIMSEY: Well, we haven't gotten
23 finished with the first agenda item.

24 MR. LARSON: It says we're over at 11:45.

25 CHAIR KIMSEY: But we weren't.

1 MR. LARSON: Okay. So you anticipate --
2 okay. I don't think you're giving adequate
3 opportunity for public input. There's certainly
4 opportunities for the public to comment later,
5 (inaudible), but I don't think this is being
6 conducted competently.

7 CHAIR KIMSEY: Your comments are noted.
8 Dan, you were talking about 1:60?

9 COMMITTEE MEMBER JEFFRIES: Yes, let me open
10 that up. We took the section starting at 1:60, and
11 that's where we added the language. I think we've
12 talked about this before, about how the regulation
13 (inaudible), and so I think we might want to add to
14 that the language that we came up with earlier
15 about, In addition, the Department may seek
16 enforcement through injunction or mandamus.

17 COMMITTEE MEMBER SHEN: Okay. Paul, was that
18 the end of your comments?

19 COMMITTEE MEMBER JEFFRIES: Yeah, I think
20 that would be appropriate.

21 And then if we move on to 1:61, we have the
22 same issue there about what the role of the
23 Department is, and I think it's the same response
24 and the same answer on that. I also would think that
25 adding the additional language at the end, In

1 addition, the Department may seek enforcement
2 through injunction or mandamus, would be
3 appropriate.

4 COMMITTEE MEMBER SHEN: All right. So I'm
5 going to add that to the next three of them, right?

6 COMMITTEE MEMBER JEFFRIES: Yes.

7 COMMITTEE MEMBER SHEN: Okay.

8 COMMITTEE MEMBER JEFFRIES: Because I think
9 1:62 and 1:63, do we want to slow down and talk
10 about the specifics of any of it?

11 COMMITTEE MEMBER HARMON: Alex?

12 MS. STUPPLE: Not yet, no.

13 COMMITTEE MEMBER SHEN: Dan, I read
14 everybody's and I tried to put all this together, so
15 occasionally as we go through these I will add a
16 little bit of extra comment that we were having in
17 other places.

18 So on 1:62 I also added about the fact that
19 The committee removed Article 3 in its entirety, so
20 the notification requirements were placed in Article
21 2.

22 COMMITTEE MEMBER JEFFRIES: Yeah, I'm
23 looking on the copy that was sent out to us.

24 COMMITTEE MEMBER SHEN: You guys don't have
25 that.

1 COMMITTEE MEMBER JEFFRIES: Okay.

2 COMMITTEE MEMBER SHEN: This work I did
3 after everybody's comments came out because I wanted
4 to have everybody's comments on one spreadsheet. So
5 as I was doing that, there were some that there was
6 no comment on some of them, and then other ones we
7 had three committees that answered three different
8 ways.

9 COMMITTEE MEMBER JEFFRIES:

10 COMMITTEE MEMBER SHEN: Because three of our
11 public comment people were virtually identical in
12 twenty or thirty of their comments, and I think
13 those were spread out over the three subcommittees,
14 so I tried to combine all that information.

15 COMMITTEE MEMBER JEFFRIES: So what do you
16 have now, what did you add to it?

17 COMMITTEE MEMBER SHEN: So I just added the
18 little verbiage about, The committee removed Article
19 3 in its entirety, so the notification requirements
20 were placed in Article 2.

21 COMMITTEE MEMBER JEFFRIES: Okay, I think
22 that sounds right.

23 Then 1:63 is about the necessity and
24 consistency of 1217.2 and 3. Again that goes to the
25 view that the committee has taken about the role of

1 the Department in terms of oversight, and I think it
2 might be appropriate to add at the end there the
3 language about, In addition, the Department will
4 seek enforcement.

5 COMMITTEE MEMBER SHEN: Okay.

6 COMMITTEE MEMBER JEFFRIES: And same thing
7 with 1:64.

8 MS. STUPPLE: With 1:64, I thought it might
9 be worthwhile to talk about inspection a little
10 specifically.

11 COMMITTEE MEMBER SHEN: Yeah. I added that
12 in, Dan, on 1:64 I added in, The Department has not
13 conducted onsite inspections for decades. The
14 regulations are modified to reflect the actual
15 practice, so I added that one in.

16 COMMITTEE MEMBER JEFFRIES: Okay.

17 COMMITTEE MEMBER SHEN: And then I also
18 added, In addition, accreditation requires
19 laboratories to have yearly site visits, annual
20 internal inspections, as well as the larger
21 inspection that takes place every four years.

22 COMMITTEE MEMBER JEFFRIES: That sounds
23 good.

24 COMMITTEE MEMBER SHEN: And then do I put
25 mandamus in this one also?

1 COMMITTEE MEMBER JEFFRIES: I think it's
2 good. I think that language Alex came up with is
3 really helpful.

4 And do you want to take it from here since
5 it looks like you've got some comments that were
6 added?

7 COMMITTEE MEMBER SHEN: No, I don't. Just a
8 couple places I added extra stuff in for you. And
9 that was just only because I think two other
10 subcommittees handled some of these exact same
11 comments.

12 COMMITTEE MEMBER JEFFRIES: Right. I think
13 at the end of ours we did the same thing, we
14 duplicated some of the other committee's work.

15 COMMITTEE MEMBER SHEN: So I'm sorry, I
16 didn't mean to be stepping on your toes there.

17 COMMITTEE MEMBER JEFFRIES: No, I'm happy to
18 let you take it completely.

19 COMMITTEE MEMBER SHEN: No, no, no.

20 COMMITTEE MEMBER JEFFRIES: Okay. So 1:65,
21 custody and the oversight role of the Department.

22 COMMITTEE MEMBER SHEN: Okay.

23 COMMITTEE MEMBER JEFFRIES: And the copies
24 we received did not have a 1:66. Does anyone have a
25 1:66?

1 COMMITTEE MEMBER SHEN: No, we didn't
2 either.

3 CHAIR KIMSEY: No.

4 COMMITTEE MEMBER JEFFRIES: Okay.

5 COMMITTEE MEMBER SHEN: So Dan, do we have
6 (inaudible) in here too?

7 COMMITTEE MEMBER JEFFRIES: Yes.

8 COMMITTEE MEMBER SHEN: Okay. And then --

9 COMMITTEE MEMBER JEFFRIES: There's no 1:66.

10 COMMITTEE MEMBER SHEN: So I add the comment
11 about proficiency test. I added, The Department's
12 proficiency tests have been adequate for decades,
13 using blah-blah-blah, that whole thing. I added that
14 in.

15 COMMITTEE MEMBER JEFFRIES: Okay.

16 MS. STUPPLE: That was on 1:65, correct?

17 COMMITTEE MEMBER SHEN: Yes. And 1:66, it
18 was just misnumbered.

19 COMMITTEE MEMBER JEFFRIES: Okay. So then we
20 get to 1:67 about the training and personnel, and I
21 think our response to the comment was, The change in
22 title clarifies the role of the Department from a
23 role of Approval to a role of Review, as we talked
24 about earlier.

25 Alex, do you think we need anything else on

1 that?

2 MS. STUPPLE: Just that maybe the fact of
3 laboratories submitting something that they are
4 required to submit does, in fact, put them into
5 compliance, at least with regard to submitting
6 things.

7 COMMITTEE MEMBER JEFFRIES: That's a good
8 point.

9 MS. STUPPLE: You know what I mean?

10 COMMITTEE MEMBER JEFFRIES: So let's find
11 the original language of 1218 and see what it looks
12 like.

13 COMMITTEE MEMBER HARMON: You want the
14 original language, Dan?

15 COMMITTEE MEMBER JEFFRIES: Does the
16 original language help us at all? Not really.

17 COMMITTEE MEMBER HARMON: Yeah.

18 MS. STUPPLE: Yeah.

19 COMMITTEE MEMBER JEFFRIES: Okay. So Alex,
20 do you want us to add something there?

21 MS. STUPPLE: No, forget about it.

22 COMMITTEE MEMBER JEFFRIES: Okay. 1:68,
23 again, is about the Department oversight role, and I
24 think we definitely want to include the language
25 about, In addition, the Department may seek

1 enforcement through injunction or mandamus.

2 COMMITTEE MEMBER SHEN: My laptop's freaking
3 out, hang on a second. Okay, 1:68?

4 COMMITTEE MEMBER JEFFRIES: Right.

5 COMMITTEE MEMBER SHEN: Okay, add the
6 injunction or mandamus.

7 COMMITTEE MEMBER JEFFRIES: I have no idea
8 how it's pronounced. I like how you pronounce it.

9 MS. STUPPLE: Mandamus.

10 COMMITTEE MEMBER SHEN: Okay.

11 COMMITTEE MEMBER JEFFRIES: And that's a
12 really long comment. Does anyone think we need to
13 add any more to it?

14 MS. STUPPLE: If you wanted, you could put
15 that the AG's opinion that's quoted at the end of
16 the second paragraph, where it says that the
17 Department can enforce all regulations other than
18 those requiring licensure. I guess that's what the
19 mandamus is.

20 COMMITTEE MEMBER SHEN: Yeah.

21 COMMITTEE MEMBER JEFFRIES: Yeah, I think
22 that's why we included it in committee.

23 Takes us to 1:69, and that was about whether
24 we needed -- the public comment reads, The list of
25 required information that a training organization

1 must submit is unclear and not complete.

2 And our response to that was that we
3 considered the issue and concluded that we did not
4 want a mandated, detailed and rigid list of training
5 materials because those may change over time.

6 COMMITTEE MEMBER SHEN: Okay.

7 COMMITTEE MEMBER JEFFRIES: And 1:70, same
8 thing. Basically, we felt it was not necessary to
9 add to it.

10 And then 1:71, again, the response to the
11 public comment would be that, Non-compliance with
12 30-day limits would potentially impact the weight
13 given. So if there was non-compliance with 30 days
14 it would be self-enforcing.

15 But again, I suppose in theory this could be
16 (inaudible) by an injunction if there was a lab that
17 was not doing it in a timely manner, and so maybe
18 adding in language, In addition, the Department may
19 seek enforcement through injunction or mandamus
20 would be appropriate.

21 COMMITTEE MEMBER SHEN: Okay. And then, Dan,
22 partway down in the second-to-last paragraph it
23 says, The 30-day limits are unclear since the
24 regulations do not specify when the clock starts.

25 So I think that we should think about, so I

1 put, The committee agrees and the verbiage has been
2 changed to read, If the Department believes that the
3 laboratory's training program does not comply with
4 these regulations, the Department shall notify the
5 laboratory in writing within 30 days of the receipt
6 of the materials with its specific concerns. The
7 laboratory management shall respond to the
8 Department in writing within 30 days of receipt of
9 the Department's concerns.

10 So the comment was that there was no 30 days
11 wasn't capped for any (inaudible) time, so what do
12 you think about that?

13 COMMITTEE MEMBER JEFFRIES: Do you think
14 it's necessary? Do you think that there would be
15 debate for whether within 30 days or not?

16 COMMITTEE MEMBER SHEN: Well, the question
17 of the public is the 30-day limits are unclear and
18 the regulations should specify when the clock
19 starts. So if we have to answer that, we have to
20 answer it somehow, or maybe we don't need to say
21 when the clock starts.

22 COMMITTEE MEMBER WONG: Jennifer, can you
23 read what you had again?

24 COMMITTEE MEMBER SHEN: So basically the
25 words I added in were, of the receipt of the

1 materials with its specific concerns, and of receipt
2 of the Department's concerns. So it reads, If the
3 Department believes that the laboratory's training
4 program does not comply with these regulations, the
5 Department shall notify the laboratory in writing
6 within 30 days of the receipt of the materials with
7 its specific concerns. The laboratory management
8 shall respond to the Department in writing within 30
9 days of receipt of the Department's concerns.

10 COMMITTEE MEMBER WONG: I like it.

11 COMMITTEE MEMBER JEFFRIES: I suppose there
12 always will be receipt of materials.

13 COMMITTEE MEMBER SHEN: Yeah, I would think.

14 COMMITTEE MEMBER JEFFRIES: Would there be a
15 situation where you would not have receipt of the
16 materials?

17 COMMITTEE MEMBER SHEN: I guess we don't
18 have to respond.

19 COMMITTEE MEMBER JEFFRIES: Yeah. Okay. I
20 like it, I'm fine with that.

21 Okay. And that takes us to 1:72, and the
22 public comment was again about the contracting out
23 and administration of its proficiency test and
24 written exam. And do we want to address the ISOR
25 part of it, do we feel that's necessary, or are we

1 just okay again talking about the oversight role?

2 COMMITTEE MEMBER SHEN: This is all about
3 inappropriate coding of the statute, it looks like.

4 MS. STUPPLE: Yeah.

5 COMMITTEE MEMBER JEFFRIES: I think we can
6 just answer the way we did.

7 COMMITTEE MEMBER SHEN: Which way is that?

8 COMMITTEE MEMBER JEFFRIES: Just saying that
9 we considered the role of the Department as it
10 pertains to the enforcement.

11 COMMITTEE MEMBER SHEN: Oh, do the mandamus
12 thing?

13 COMMITTEE MEMBER JEFFRIES: Would it apply
14 here? Yeah, I guess it could, although...

15 COMMITTEE MEMBER SHEN: I'm not sure exactly
16 what the problem is here with this one. The comment
17 says, The statutes do not prohibit the Department
18 from any other of the activities associated with the
19 regulation of the laboratories including conducting
20 proficiency tests and examinations. As a result, the
21 provisions here enabling the Department to contract
22 out some of these activities.

23 Okay. So they are saying that they ought to
24 be able to contract out their activities if they
25 want to, I guess.

1 MS. STUPPLE: Yeah.

2 CHAIR KIMSEY: Right.

3 COMMITTEE MEMBER JEFFRIES: Is anyone saying
4 they can't?

5 COMMITTEE MEMBER HARMON: It looks like
6 they're saying what the committee is proposing
7 suggests that they can't. I don't think they're
8 reading it correctly because we took that part out,
9 1218.2, we just took it out.

10 COMMITTEE MEMBER JEFFRIES: Okay.

11 COMMITTEE MEMBER SHEN: So 1218.2 is
12 contracts. So basically remove that because we don't
13 need to Department to do any contracting out of
14 anyone because they won't be providing us with that
15 stuff.

16 COMMITTEE MEMBER JEFFRIES: I guess I was
17 actually thinking it meant the opposite, that we're
18 not prohibiting them from contracting and there's
19 nothing in there that says they have to be able to
20 contract out, so I'm not sure we're changing
21 anything by deleting it.

22 COMMITTEE MEMBER SHEN: It doesn't make them
23 not able to.

24 COMMITTEE MEMBER JEFFRIES: Right. We didn't
25 say the Department may not contract. I guess that's

1 what the public comment is saying is that we're not
2 giving specific authority allowing them to contract
3 it out, making them not be able to do it.

4 COMMITTEE MEMBER HARMON: But we're not
5 asking them to, so it's irrelevant.

6 COMMITTEE MEMBER JEFFRIES: Yeah, I'm fine
7 with the answer as we have it.

8 Anyone else?

9 COMMITTEE MEMBER SHEN: I'm good.

10 CHAIR KIMSEY: It's fine.

11 COMMITTEE MEMBER JEFFRIES: Okay. And 1:73.

12 COMMITTEE MEMBER SHEN: More oversight.

13 COMMITTEE MEMBER JEFFRIES: Yeah, it's again
14 oversight and what the role of the oversight is, so
15 I think it's the same as we've answered before,
16 although the public comment says, As noted
17 previously (many times now), the conclusion here
18 misrepresents the intent of the legislature.

19 I don't know if we need to address that. I
20 think we can simply say that the committee's view
21 that the oversight is current the way we're talking
22 about it.

23 COMMITTEE MEMBER SHEN: Are we adding
24 mandamus on this one?

25 COMMITTEE MEMBER JEFFRIES: Sure, I think

1 that's a good idea.

2 COMMITTEE MEMBER SHEN: Okay.

3 MS. STUPPLE: So the next part in that same
4 comment in the second paragraph about the court
5 system, I think that should be answered
6 specifically.

7 COMMITTEE MEMBER JEFFRIES: Okay.

8 CHAIR KIMSEY: This is where they talk
9 about, Moreover, as a general rule, the courts will
10 not substitute their own scientific judgment in
11 evaluating evidence. For regulated testing, this
12 role should be assigned to the administrative agency
13 that writes and enforces the regulations.

14 It's partially down on the second paragraph.
15 Is that what you're referring to?

16 MS. STUPPLE: Yeah.

17 COMMITTEE MEMBER SHEN: Oh, the 175,000
18 drunk driving arrests never go anywhere?

19 CHAIR KIMSEY: Right.

20 COMMITTEE MEMBER SHEN: Okay. Well, Dan, I
21 think this is an interesting question for you to
22 answer because we do rely on that. We have to be
23 able to represent in court that we've done these
24 things correctly. So I don't know about the rest of
25 you, but my laboratory is absolutely overwhelmed

1 with discovery requests and (inaudible) and I want
2 to see all your manuals and (inaudible). I feel like
3 we're constantly having to prove what we're doing,
4 even if most of those go to trial, all of the work
5 that's being done before you go to trial is we're
6 proving again and again and again that we're doing
7 what we say.

8 COMMITTEE MEMBER JEFFRIES: Yeah, I think
9 that's true. I think in our office we're doing
10 something like only one percent of our cases go to
11 trial, so 99 percent are resolved before that, but
12 the one percent that do go to trial set the
13 standards for all of them that don't go to trial.
14 And so, if you know that you've got a lab that's got
15 any issues where something's not going right in the
16 lab, they're not complying with this or that, you
17 know that it's going to affect all the other 99
18 percent of the cases.

19 So I disagree with that comment from the
20 public that the fact it never goes to trial means
21 there's no judicial scrutiny. The scrutiny is that
22 both sides, the defense and the prosecution, look at
23 it closely, and if there's any non-compliance in
24 terms of the lab, both sides will know it.

25 COMMITTEE MEMBER SHEN: And again, we have

1 to provide that paperwork in a large percentage of
2 our cases.

3 COMMITTEE MEMBER JEFFRIES: Right.

4 COMMITTEE MEMBER HARMON: Alex, Jennifer
5 Harmon. Why is Dan's comment here regarding the way
6 that Title 17 compliance issues or non-compliance
7 issues are given... why is that not (inaudible) the
8 answer, because he actually cites case law.

9 MS. STUPPLE: Because it's not talking about
10 specifically about if it's going to trial or not.

11 Basically, if we just wrote down what she
12 just said that would be the answer. A better answer.

13 COMMITTEE MEMBER SHEN: Okay. Although ...
14 what?

15 COMMITTEE MEMBER JEFFRIES: Well, which part
16 of it, Alex, do you want to go with, the fact that
17 what Jennifer was saying that the cases that don't
18 go to trial still go through the discovery process?

19 MS. STUPPLE: Yeah.

20 COMMITTEE MEMBER JEFFRIES: Furthermore, the
21 committee knows that while not all cases go to
22 trial, all cases are subject to the discovery
23 process.

24 COMMITTEE MEMBER SHEN: Well, and a DMV
25 hearing, perhaps say.

1 COMMITTEE MEMBER JEFFRIES: That too. Is
2 that good, Alex?

3 MS. STUPPLE: Yeah.

4 COMMITTEE MEMBER SHEN: The cases that don't
5 go to trial often go through the discovery process
6 and/or the DMV hearing.

7 COMMITTEE MEMBER JEFFRIES: Correct.

8 COMMITTEE MEMBER SHEN: Providing legal
9 oversight?

10 COMMITTEE MEMBER JEFFRIES: No, I'd just put
11 period.

12 COMMITTEE MEMBER SHEN: Okay.

13 MS. STUPPLE: And then I think we should
14 also specifically address the suggestion that the
15 regulations should incorporate by reference the
16 document, "Uniform Standards for Withdrawal, blah-
17 blah-blah, at the bottom of 57.

18 COMMITTEE MEMBER SHEN: I didn't really know
19 what that meant, so I thought you would fix that.

20 MS. STUPPLE: Me?

21 COMMITTEE MEMBER SHEN: Uh-huh.

22 MS. STUPPLE: Well.

23 COMMITTEE MEMBER SHEN: There's a Vehicle
24 Code that actually states what they're supposed to
25 do.

1 MS. STUPPLE: Right. Just write the reason
2 you don't want to incorporate that, or if you do.

3 COMMITTEE MEMBER SHEN: I don't know if we
4 do or don't. Frankly, I don't understand the
5 paragraph.

6 CHAIR KIMSEY: This is the paragraph that
7 starts, Regarding the stated goal in the section to
8 maintain sample identity and integrity, the
9 regulations should incorporate by reference the
10 document, blah-blah-blah?

11 COMMITTEE MEMBER SHEN: Yes.

12 CHAIR KIMSEY: Is that standard?

13 COMMITTEE MEMBER JEFFRIES: I'm not sure why
14 you wouldn't want to incorporate it. That stands on
15 its own, the Vehicle Code provision stands on its
16 own and doesn't need to be cited.

17 COMMITTEE MEMBER HARMON: And I would even
18 go so far as to say that even when you get further
19 into the regulation it's spelled out what the
20 expectations are beyond the Vehicle Code, so it's
21 already there. It's already there. It says where you
22 have to pull it from, and you have to be in
23 compliance with the Vehicle Code. It says what you
24 can do to clean the person's arm, that you have to
25 use sterile pads but you have to have anti --

1 there's a whole list of items that are required, so
2 it's already done beyond that.

3 CHAIR KIMSEY: Maybe we just say that.

4 COMMITTEE MEMBER SHEN: So what am I going
5 to say?

6 COMMITTEE MEMBER HARMON: It's already
7 codified in the regulation.

8 CHAIR KIMSEY: Can we point to where?

9 COMMITTEE MEMBER HARMON: It starts in
10 1219.1.

11 COMMITTEE MEMBER SHEN: So uniform standards
12 for withdrawal...are already -- I need verbiage
13 here.

14 CHAIR KIMSEY: Standards are already
15 incorporated for sample identity and integrity in
16 Section 1219.1.

17 COMMITTEE MEMBER JEFFRIES: That sounds
18 right.

19 COMMITTEE MEMBER HARMON: Reading this
20 again, it looks like they want us to outline chain
21 of custody requirements.

22 COMMITTEE MEMBER JEFFRIES: I read that
23 paragraph from the public comment as being a little
24 different in that in order to give them the force of
25 regulation that we must adopt them by reference, and

1 I think that's exactly what we're trying to avoid
2 doing.

3 We're trying to say those regulations stand
4 on their own, they're their own separate set of
5 regulations, and that a laboratory is aware of the
6 regulations that are out there and will comply with
7 all regulations that are pertinent. But I don't want
8 to adopt them by reference.

9 COMMITTEE MEMBER SHEN: So what I wrote in
10 there was the standards are already incorporated for
11 sample identity and integrity in Section 1219.1.

12 COMMITTEE MEMBER JEFFRIES: And maybe also
13 say something like laboratories are aware of and
14 will comply with other regulations.

15 COMMITTEE MEMBER SHEN: The standards are
16 already incorporated for sample identity and
17 integrity in Section 1219.1. Laboratories are aware
18 of and will comply with other regulations.

19 COMMITTEE MEMBER JEFFRIES: I'm good with
20 that.

21 Okay, 1:74 talks about the requirement to
22 collect a sample as soon as feasible is not clear. I
23 think that is sufficiently clear. I don't think it
24 needs to be more regulated. Do you think we should
25 say more?

1 COMMITTEE MEMBER SHEN: No.

2 COMMITTEE MEMBER WONG: No.

3 COMMITTEE MEMBER JEFFRIES: Okay. 1:75,
4 again going back to what we think is clear or not.
5 And again it goes back to the idea that we don't
6 need to say what is an amount sufficient for a
7 duplicate analysis. That would probably depend on
8 the circumstances.

9 COMMITTEE MEMBER SHEN: It would depend on
10 the laboratory.

11 COMMITTEE MEMBER JEFFRIES: Let's go with
12 that.

13 COMMITTEE MEMBER SHEN: Okay.

14 COMMITTEE MEMBER JEFFRIES: Okay, 1:76. I
15 don't have the science background like you guys, but
16 I thought that the term suitable aqueous
17 disinfectant probably means something to you guys
18 and I don't think there's any doubt probably to
19 people that do this kind of work as to what it
20 means. Is that true?

21 COMMITTEE MEMBER SHEN: Yes.

22 CHAIR KIMSEY: Um-hmm.

23 COMMITTEE MEMBER SHEN: I also wrote in
24 there, In addition, the definition (inaudible) and
25 then I put the new definition in there that changed

1 antiseptic to disinfectant.

2 COMMITTEE MEMBER JEFFRIES: Okay. And then
3 1:77. Again, I thought it was fairly clear in terms
4 of post mortem sample, but now, Jennifer, was that
5 your comment?

6 COMMITTEE MEMBER HARMON: Yes. So 1219.1(e)
7 should include an additional subsection (3) that
8 states that (inaudible). That addition should be
9 made.

10 COMMITTEE MEMBER SHEN: All right. (3),
11 that's in here, right?

12 COMMITTEE MEMBER JEFFRIES: No. It was
13 something that I had a science question for
14 Jennifer, so she thought it would be appropriate to
15 add that to 1219.1(e).

16 COMMITTEE MEMBER SHEN: So the (3) there,
17 postmortem blood samples shall be mixed with
18 anticoagulant and preservative.

19 COMMITTEE MEMBER HARMON: Yes.

20 COMMITTEE MEMBER SHEN: Yeah, I have it
21 here. (inaudible) but it seems reasonable to me.

22 COMMITTEE MEMBER JEFFRIES: Okay, 1:78 goes
23 back to the suspicious volume, and it would seem
24 like that changes from lab to lab but also over
25 time.

1 COMMITTEE MEMBER SHEN: Yes.

2 COMMITTEE MEMBER JEFFRIES: 1:79. Again,
3 this is where the post mortem, and I think Jennifer
4 suggested adding the language of the anticoagulant
5 and preservative for that.

6 COMMITTEE MEMBER SHEN: Okay.

7 COMMITTEE MEMBER JEFFRIES: 1:80, about care
8 should be taken to avoid contamination by alcohol,
9 and reference the major vein. It seems clear. I
10 don't think any of us felt it was necessary when we
11 talked about it before.

12 COMMITTEE MEMBER SHEN: Yeah, I'm good with
13 it.

14 COMMITTEE MEMBER JEFFRIES: 1:81, same
15 thing, that we've talked about it in terms of
16 (inaudible) and thought it was clear enough.

17 MS. STUPPLE: I think there should be a
18 little bit of reasoning of why you don't think it's
19 necessary.

20 COMMITTEE MEMBER SHEN: For which one, 1:81?

21 MS. STUPPLE: For 1:81.

22 COMMITTEE MEMBER JEFFRIES: Because that's
23 referring back to 1219.1(f).

24 CHAIR KIMSEY: This is about who's retaining
25 the samples?

1 COMMITTEE MEMBER HARMON: In order to allow
2 for analysis by the defendant the remaining portion
3 of the sample shall be retained for one year after
4 the date of collection.

5 COMMITTEE MEMBER JEFFRIES: Right, that's
6 how it's worded now. And the public comment, I
7 guess, would be that the regulation should specify
8 who retains it, and I guess you'd have to specify is
9 that retained by the lab or the police Department? I
10 don't know that you'd want to specify, would you?

11 COMMITTEE MEMBER HARMON: No, you wouldn't.
12 (inaudible) have to be retained, period, and that's
13 what's happening, so I don't think further
14 explanation is needed beyond the fact that it must
15 be retained in order for reanalysis if needed.

16 COMMITTEE MEMBER JEFFRIES: Alex, do you
17 want us to say something along the lines that the
18 method of storage and the custody of the sample will
19 vary from laboratory to laboratory?

20 MS. STUPPLE: Yes.

21 COMMITTEE MEMBER JEFFRIES: Okay.

22 COMMITTEE MEMBER SHEN: So say that again?

23 COMMITTEE MEMBER JEFFRIES: The method of
24 storage and the custody of the sample will vary from
25 laboratory to laboratory.

1 COMMITTEE MEMBER HARMON: And what's
2 critical to the regulation is that it is available
3 for up to a year.

4 COMMITTEE MEMBER WONG: May vary.

5 COMMITTEE MEMBER HARMON: May vary, yes.

6 COMMITTEE MEMBER SHEN: All right. The
7 method of storage and the custody of the sample may
8 vary from laboratory to laboratory.

9 COMMITTEE MEMBER JEFFRIES: Is that good for
10 you, Alex?

11 MS. STUPPLE: Yeah, although you might want
12 to say why that's okay.

13 COMMITTEE MEMBER HARMON: Because what's
14 critical here is that reanalysis can be done.

15 MS. STUPPLE: By the lab?

16 COMMITTEE MEMBER SHEN: Yes, by anyone.

17 COMMITTEE MEMBER HARMON: By anyone. An
18 evidence control unit can split a sample and send it
19 off.

20 COMMITTEE MEMBER JONES: This is Eric again.
21 How long does that anticoagulant keep blood good to
22 reanalyze for specifically?

23 COMMITTEE MEMBER HARMON: The preservative
24 or the anticoagulant?

25 COMMITTEE MEMBER JONES: I don't know. How

1 long will the sample keep once it's in the tube?

2 COMMITTEE MEMBER JEFFRIES: I think there's
3 two questions. The first is whether the sample will
4 dry up and you can't do anything with it. The second
5 is will the amount of alcohol change over time. And
6 I think that's the specifics about both the
7 anticoagulant and preservative they're using.

8 CHAIR KIMSEY: Yeah.

9 COMMITTEE MEMBER JEFFRIES: So going back to
10 the public comment, I don't know if we want to
11 specify who's going to maintenance it because it'll
12 vary from lab to lab. Nor how it's going to be kept
13 and who's going to keep the custody of it, because
14 that'll also vary from place to place.

15 And Alex, do you want us to say something
16 that that's common practice, that as long as it's
17 done in a scientifically acceptable manner it
18 doesn't matter who keeps it?

19 MS. STUPPLE: Yeah, basically. Because if
20 you don't clarify it then it will obviously vary by
21 lab, so I guess the question is why is that okay?

22 COMMITTEE MEMBER SHEN: Because every single
23 laboratory has a different structure and setup.
24 Maybe it'll be in the property room. Maybe it'll be
25 up in the chemist's area. Maybe it'll be in the

1 medical examiner's office. Maybe you'll refrigerate
2 it, maybe you won't.

3 MS. STUPPLE: But why is that okay?

4 COMMITTEE MEMBER JONES: Alex, are you
5 getting to method of retention or --

6 MS. STUPPLE: I'm just trying to find a
7 reason why it's okay not to clarify who retains the
8 sample and for how long.

9 COMMITTEE MEMBER SHEN: Because every
10 laboratory is going to be different.

11 COMMITTEE MEMBER HARMON: Alex, because that
12 is what the regulations have been for the last 40
13 years. There has been no clarification on that for
14 40 years.

15 COMMITTEE MEMBER SHEN: No, we've never ever
16 had an issue with this. Every laboratory, every law
17 enforcement agency is set up a little differently.

18 COMMITTEE MEMBER JEFFRIES: I have some
19 language that I think might answer Alex's question.
20 How about this.

21 The committee feels that as long as the
22 sample is maintained in a scientifically acceptable
23 manner, it can be tested later. Is that true?

24 COMMITTEE MEMBER SHEN: I just think that
25 the bottom line here is that you can't shove a

1 square peg in a round hole here. Every setup is a
2 bit different and you can't clarify and say who
3 exactly is going to have custody when you don't even
4 know the makeup of whatever law enforcement agency
5 you're dealing with.

6 COMMITTEE MEMBER JEFFRIES: I think Alex's
7 point is that what we're really getting at is that
8 it doesn't matter how you store it or who's storing
9 it, as long as it can be retested later. And that's
10 really the answer to the public comment, is that
11 we're trying to ensure that it can be tested later.

12 COMMITTEE MEMBER HARMON: Can we say
13 something like the retention must be sufficient for
14 reanalysis?

15 COMMITTEE MEMBER JEFFRIES: I don't think
16 you want to add to the regulation, I think what we
17 really want to do is just respond to the comment
18 rather than change the regulation.

19 COMMITTEE MEMBER SHEN: This historically,
20 as Jennifer said, we've been doing this for 40 years
21 and there's never been a (inaudible), so it's not
22 like this is a big problem for anyone.

23 MS. STUPPLE: Well, you can say that. I
24 mean, that's an answer.

25 COMMITTEE MEMBER SHEN: All right.

1 COMMITTEE MEMBER JEFFRIES: Is (inaudible) a
2 legal term?

3 COMMITTEE MEMBER SHEN: I'm here all by
4 myself so I have to entertain myself. So I have, The
5 language is sufficiently clear and the committee do
6 not feel the current regulation as to who retains
7 the samples and how they are stored is necessary.
8 The method of storage and the custody of the samples
9 will vary from laboratory to laboratory. What is
10 critical is that the sample is available for
11 reanalysis. This language has been in place for
12 decades with no issue.

13 COMMITTEE MEMBER JEFFRIES: Sounds good to
14 me.

15 COMMITTEE MEMBER WONG: May instead of will.
16 May vary from lab to lab.

17 COMMITTEE MEMBER SHEN: Okay, may. I'm good.

18 COMMITTEE MEMBER JEFFRIES: Moving on to
19 1:82, talking about the coroner or medical
20 examiner's office. From our earlier discussions I
21 think it was clear that again is something that's
22 going to vary from county to county, location to
23 location, and it's much clearer if we refer to it as
24 coroner/medical examiner's cases and it seems
25 sufficiently clear to apply to either system.

1 COMMITTEE MEMBER SHEN: I agree.

2 COMMITTEE MEMBER JEFFRIES: Okay.

3 COMMITTEE MEMBER SHEN: I love this next
4 comment.

5 COMMITTEE MEMBER JEFFRIES: 1:83, I think
6 goes back to the question about whether we need to
7 define everything and continue defining it, and I
8 think that we don't need to go through defining
9 everything, that these things are pretty clear to
10 the people who are dealing with it.

11 Any other?

12 MS. STUPPLE: I have one question. The
13 requirement to provide identifying information with
14 the sample, does that mean identifying information
15 of the sample or the analyst, or both?

16 COMMITTEE MEMBER JEFFRIES: Where are you
17 at?

18 MS. STUPPLE: I'm on 1:83 near the bottom,
19 the end.

20 CHAIR KIMSEY: Yeah, The requirement to
21 provide identifying information with the sample also
22 creates clarity issues since the required
23 identifying information is not specified anywhere.

24 MS. STUPPLE: I wasn't sure what that meant.

25 COMMITTEE MEMBER SHEN: So whenever a sample

1 is requested by a defendant for analysis and
2 sufficient sample remains, the forensic laboratory
3 or law enforcement agency in possession of the
4 original sample shall continue such possession but
5 shall provide a defendant with a portion of the
6 remaining sample in a clean container together with
7 a copy of a transcript of the identifying
8 information carried on the original sample
9 container.

10 This seems pretty clear to me.

11 COMMITTEE MEMBER JEFFRIES: Yeah, I assumed
12 it means if you're in a place where they use a
13 designated report number or a booking number or
14 whatever particular identifying information that you
15 use is what you would put on there.

16 COMMITTEE MEMBER HARMON: Is this the
17 original statute, was this going to change?

18 COMMITTEE MEMBER SHEN: No. Well, we did
19 change it a little bit.

20 COMMITTEE MEMBER HARMON: No, but I mean the
21 whole part about identifying information.

22 COMMITTEE MEMBER SHEN: No, that's original.

23 COMMITTEE MEMBER HARMON: Okay. It's
24 original and it's been well understood for the last
25 40 years, so I don't think clarification is

1 necessary.

2 COMMITTEE MEMBER SHEN: Shall I put that in?

3 COMMITTEE MEMBER HARMON: Yes. Yes.

4 COMMITTEE MEMBER SHEN: Okay. Past 40 years?
5 Hasn't it been 36 years?

6 COMMITTEE MEMBER HARMON: Okay. Nearly 40
7 years.

8 COMMITTEE MEMBER SHEN: No, I'm asking you.
9 It's been nearly 40 years, right?

10 COMMITTEE MEMBER HARMON: 1971 was the
11 original statute.

12 COMMITTEE MEMBER SHEN: So I can say for
13 over 30 years and be safe.

14 COMMITTEE MEMBER HARMON: Sure.

15 COMMITTEE MEMBER JEFFRIES: Okay. Alex, you
16 good with that?

17 MS. STUPPLE: Sure.

18 COMMITTEE MEMBER JEFFRIES: Then we'll move
19 on to 1:84, which is about whether there's a minimum
20 sample volume collection requirement. It seems to us
21 that that's clear, and that if there's not enough
22 for a duplicate analysis, then whatever reason
23 there's not enough would be appropriate to discuss
24 in court but there's no reason doing a regulation to
25 put in a minimum volume.

1 COMMITTEE MEMBER HARMON: Plus it varies
2 from laboratory to laboratory, and I believe we had
3 this comment prior.

4 COMMITTEE MEMBER SHEN: Yes.

5 COMMITTEE MEMBER JEFFRIES: Yeah, I think
6 we've dealt with that before.

7 CHAIR KIMSEY: Yes.

8 COMMITTEE MEMBER SHEN: Which one was that?

9 COMMITTEE MEMBER HARMON: 1:75.

10 COMMITTEE MEMBER JEFFRIES: Okay. 1:85 is
11 the next one, and it again goes to the Department's
12 role. And I think probably here would be especially
13 appropriate to add the language before about, In
14 addition, the Department may seek enforcement
15 through injunction or mandamus.

16 COMMITTEE MEMBER SHEN: Okay.

17 MS. STUPPLE: And the last paragraph of 1:85
18 about the addition of from a living individual, I
19 think that needs an answer.

20 COMMITTEE MEMBER SHEN: Well, they're saying
21 that they didn't think we needed to say this added
22 thing. This added thing is absolutely true, however,
23 and this is just kind of a snarky little extra
24 comment that means nothing.

25 MS. STUPPLE: Okay, but it still needs an

1 answer.

2 COMMITTEE MEMBER SHEN: That doesn't work?

3 CHAIR KIMSEY: Was there ever any reference
4 to living individual versus deceased?

5 COMMITTEE MEMBER HARMON: No, but you can't
6 collect the sample after void from a dead person. So
7 the actual regulation says a urine sample shall be a
8 sample collected no sooner than twenty minutes after
9 first voiding the bladder. That in its nature
10 suggests that that's somebody who can provide you
11 more than one sample, that that person can only
12 provide you one sample.

13 I don't think it's necessary to say either
14 way whether it's a living person or a not living
15 person, only a living person can provide you a
16 sample after void.

17 COMMITTEE MEMBER JEFFRIES: How about
18 something just like while the reference to a living
19 individual may be redundant, it does not change the
20 underlying regulation, rather than go back and
21 change the regulation.

22 COMMITTEE MEMBER SHEN: Well, we didn't
23 change the regulation.

24 COMMITTEE MEMBER JEFFRIES: No, I'm just
25 saying maybe we add that also. Do you want us to do

1 that, Alex?

2 MS. STUPPLE: Yeah.

3 COMMITTEE MEMBER SHEN: I put only a living
4 person can provide (inaudible) put that?

5 COMMITTEE MEMBER HARMON: I think the
6 regulation is written really well, A urine sample
7 from a living individual shall be a sample collected
8 no sooner than twenty minutes after first voiding
9 the bladder.

10 That actually allows for sampling of
11 deceased urine for ethanol as well as urine from
12 people who are still alive. It seems sufficiently
13 clear.

14 COMMITTEE MEMBER SHEN: Yeah, I like it. So
15 what I'm actually doing then is, Only living persons
16 can provide a second void. The regulations as now
17 written provide for urine collection from a living
18 and a deceased person.

19 COMMITTEE MEMBER HARMON: Yes.

20 COMMITTEE MEMBER JEFFRIES: Okay. Then 1:86
21 has to do again with retention of sample in a
22 specialized storage unit. We've talked about it
23 before. Do we want to take the language we did a few
24 paragraphs ago and throw that in there?

25 COMMITTEE MEMBER WONG: Just reference to

1 1:75.

2 COMMITTEE MEMBER SHEN: Which one, 1:86?

3 COMMITTEE MEMBER JEFFRIES: Yeah, 1:86 is
4 the same comment that was brought up in 1:75.

5 COMMITTEE MEMBER SHEN: Okay. I'm going to
6 say reference which one?

7 CHAIR KIMSEY: We think it's 1:75.

8 COMMITTEE MEMBER SHEN: All right.

9 COMMITTEE MEMBER JEFFRIES: Okay, then
10 moving on to 1:87.

11 COMMITTEE MEMBER SHEN: This one too, right?

12 COMMITTEE MEMBER JEFFRIES: Again we're
13 talking about the clarity of the coroner/medical
14 examiner's office, and I think we answered that in
15 one of the earlier.

16 COMMITTEE MEMBER WONG: 1:82.

17 COMMITTEE MEMBER SHEN: Okay. So I want to
18 say see comment 1:82?

19 CHAIR KIMSEY: Yes.

20 COMMITTEE MEMBER SHEN: All right.

21 COMMITTEE MEMBER JEFFRIES: Then 1:88 is the
22 comment from the public that it might be better to
23 put that in a different section rather than where we
24 did put it, and I don't know if we need to say
25 anything more about it other than we put it where we

1 put it and we think that's appropriate.

2 COMMITTEE MEMBER SHEN: Right.

3 COMMITTEE MEMBER JEFFRIES: That okay with
4 you, Alex?

5 MS. STUPPLE: Yes.

6 COMMITTEE MEMBER JEFFRIES: Okay. 1:89 has
7 to do with, again, the role of the regulators and
8 all that. I know if we want to again throw the
9 language about the Department may seek enforcement,
10 or it's probably sufficient the way it is.

11 COMMITTEE MEMBER SHEN: This is again I
12 think argumentative, the comment that it shows the
13 committee's lack of understanding of the role of
14 regulations. They don't outline or discuss the rules
15 and directives. I mean, it's not really --

16 COMMITTEE MEMBER JEFFRIES: I get your point
17 is that the committee understands the role of the
18 regulators but our view of the role of the
19 regulators is different than the public comment may
20 view it as. I don't think we need to say that.

21 COMMITTEE MEMBER SHEN: I think your comment
22 is perfectly fine, The committee understands the
23 role of regulators.

24 COMMITTEE MEMBER JEFFRIES: Okay. 1:90,
25 again it's about enforcement of regulations, and

1 actually since it makes reference to the Attorney
2 General's opinion, I think this is a perfect place
3 to quote back that same language that Alex had
4 about, In addition, the Department may seek
5 enforcement through injunction or mandamus.

6 COMMITTEE MEMBER SHEN: Okay, I'll put that
7 one in there. And I also add this one, The
8 Department has not required written (inaudible) for
9 several years. The changes here merely reflect
10 current practice.

11 COMMITTEE MEMBER JEFFRIES: Okay. 1:91 was
12 again about the role of the regulators. Did you have
13 anything you wanted to add about that?

14 COMMITTEE MEMBER SHEN: No, I don't think I
15 added anything there.

16 CHAIR KIMSEY: Is this also appropriate for
17 our standard blurb on oversight?

18 COMMITTEE MEMBER SHEN: You know what, I
19 have to go move my car. I hope I don't have a
20 ticket.

21 COMMITTEE MEMBER HARMON: Why don't we take
22 a break.

23 COMMITTEE MEMBER SHEN: I can be back in
24 five minutes, I've just got to go move it.

25 CHAIR KIMSEY: Okay, we'll break for ten.

1 COMMITTEE MEMBER SHEN: All right.

2 COMMITTEE MEMBER HARMON: Thank you.

3 COMMITTEE MEMBER JEFFRIES: Thank you.

4 (Off the record 3:41 p.m. to 3:48 p.m.)

5 CHAIR KIMSEY: So is Santa Ana still with
6 us?

7 COMMITTEE MEMBER JEFFRIES: Yeah, this is
8 Santa Ana. We don't have Jennifer yet, she stepped
9 out for a second.

10 CHAIR KIMSEY: No problem. Let us know when
11 she's back.

12 COMMITTEE MEMBER JEFFRIES: Okay.

13 (Off the record.)

14 CHAIR KIMSEY: We're back online, so to
15 speak. We've got about an hour left on our agenda,
16 and obviously we've spent quite a bit of time on
17 just the subcommittee reports. What is everybody's
18 schedule like, can we go till five o'clock or what
19 is -- let me hear from the committee members.

20 COMMITTEE MEMBER JEFFRIES: In Santa Ana
21 we're fine going till five.

22 CHAIR KIMSEY: Okay.

23 COMMITTEE MEMBER JONES: This is Eric in
24 Sacramento. I have to leave at 4:30.

25 COMMITTEE MEMBER SHEN: Jennifer in San

1 Diego. I'll stay till five.

2 CHAIR KIMSEY: Okay. So it sounds like we'll
3 stay till five. Since we've spent so much time on
4 this one topic, why don't we go ahead and have some
5 more public comment if there's any.

6 MR. LARSON: I think there's a timeliness
7 issue now. I'll postpone the comments until later.

8 CHAIR KIMSEY: Okay. So I think we're back
9 to 1:91.

10 COMMITTEE MEMBER JEFFRIES: Okay. And 1:91
11 is talking about amendments about 1221. Again, it
12 has to do with the regulatory.

13 Jennifer, do you have anything you wanted to
14 add to that?

15 COMMITTEE MEMBER SHEN: (inaudible)

16 COMMITTEE MEMBER JEFFRIES: Yeah, that's
17 probably a good idea. I'm sure (inaudible) involved
18 the references to the Public Records Act and all
19 that.

20 MS. STUPPLE: Well, that was not for us, but
21 we can fix that in the SSOR.

22 COMMITTEE MEMBER JEFFRIES: Okay. 1:92,
23 again was about what the role of the Department was,
24 but it also again has to do with the appropriate
25 procedure for handling samples and retaining them

1 and all the other things. And the recommendation
2 from the public comment was that we completely
3 revised all that, and I think we discussed earlier
4 why the committee did not feel it was appropriate to
5 revise all that nor to specify why a method of
6 retention and storage and who should keep chain of
7 custody should be specified in the regulations. Do
8 we want to include that language from the earlier
9 paragraph?

10 MS. STUPPLE: I think that would be a good
11 idea.

12 COMMITTEE MEMBER SHEN: Which comment was
13 that?

14 COMMITTEE MEMBER HARMON: That was 1:75,
15 right, Kenton? This is about the method. This is not
16 about retention, it's about methodology used to
17 handle it.

18 COMMITTEE MEMBER JEFFRIES: right, I guess
19 we probably should take the comment from 1:75 and
20 modify it a little. It's the same theory about we
21 don't want to specify too much detail, so I guess
22 the language is a little different, isn't it.

23 COMMITTEE MEMBER WONG: 1:35?

24 COMMITTEE MEMBER SHEN: Okay. So what are we
25 doing here? The committee proposed no changes to the

1 section.

2 COMMITTEE MEMBER JEFFRIES: I think what
3 we're looking for is the one where we're talking
4 about how a sample needs to be maintained and who's
5 going to maintain it and whether we should specify
6 that in the regulations, and we came up with some
7 language earlier when we had to deal with
8 approximately (inaudible) in the regulations.

9 COMMITTEE MEMBER SHEN: All right, I got
10 you. So this says in the regulation says each
11 specimen description shall include the calibration
12 procedure and the quality control programs and
13 methods.

14 So one thing we could put in there, because
15 this came up somewhere else, we could put equipment,
16 because I think Bruce has something later on where
17 his public commenter said that no one had any idea
18 what you were calibrating, so we could put the word
19 equipment in there if that would help.

20 Each such description shall include the
21 equipment calibration procedures and the quality
22 control programs and methods.

23 COMMITTEE MEMBER JEFFRIES: I think the
24 public comment is saying that it would recommend
25 that we make changes to that section and make it

1 more clear so we can clearly describe the
2 requirement. And I think that from our previous
3 discussions our feeling was that we don't want to
4 get that specific.

5 COMMITTEE MEMBER SHEN: Right. So we should
6 just say that.

7 COMMITTEE MEMBER JEFFRIES: That the
8 regulations should not specify the details proposed
9 by the public comment.

10 COMMITTEE MEMBER SHEN: Then I suppose we
11 could say something about the fact that -- because
12 we won't be sending any of this to the Department.

13 COMMITTEE MEMBER JEFFRIES: I think we're
14 not proposing any changes to that section.

15 COMMITTEE MEMBER SHEN: Right.

16 COMMITTEE MEMBER JEFFRIES: And I think the
17 public comment is calling for changes.

18 COMMITTEE MEMBER SHEN: Right. So we put in
19 that historical thing (inaudible) historically it's
20 because the Department has been figuring out if
21 those are accurate or not by our submissions, and
22 we're not going to submit this so they have no way
23 of knowing that. So I'm anticipating the argument
24 will be that it's not specific enough if there is no
25 overlying body approving it.

1 COMMITTEE MEMBER JEFFRIES: Do you think,
2 Jennifer, that we want to regulate it?

3 COMMITTEE MEMBER SHEN: No, I don't think I
4 do want to regulate it but I just think we need to
5 be more descriptive than this and say why we don't
6 want to.

7 COMMITTEE MEMBER JEFFRIES: And the reason
8 we don't want to regulate it is because the changes
9 (inaudible) over time?

10 COMMITTEE MEMBER SHEN: Yeah, and the fact
11 that it's redundant. That's the problem. Really, the
12 problem (inaudible) completely redundant to all of
13 the work that laboratories do to be accredited, to
14 make sure their laboratories are running properly,
15 to make sure that we are meeting our legal needs. We
16 don't need to have warring overplays.

17 It doesn't come down to the fact that we
18 don't want people to see what we're doing or we
19 don't want to (inaudible) and so we don't want to
20 have to do it twice for two different oversight
21 bodies.

22 COMMITTEE MEMBER JEFFRIES: Okay. Alex, do
23 you want us to say something like the committee does
24 not feel the need to revise the regulations as
25 proposed by the public comment?

1 MS. STUPPLE: Yeah, and then add what she
2 just said.

3 COMMITTEE MEMBER SHEN: Well, that's how I
4 feel. Does anyone else feel that way?

5 CHAIR KIMSEY: Or you could refer to it as
6 duplicative oversight.

7 COMMITTEE MEMBER WONG: Right. I like it.

8 COMMITTEE MEMBER SHEN: Oh, I like that,
9 too.

10 COMMITTEE MEMBER WONG: Or redundancy of
11 oversight.

12 COMMITTEE MEMBER JEFFRIES: You got it?

13 COMMITTEE MEMBER SHEN: So how about, The
14 committee feels that the regulation should not
15 specify the details proposed by the public comment.
16 Any further specification would result in redundant
17 oversight.

18 COMMITTEE MEMBER JEFFRIES: I like it.

19 MS. STUPPLE: That's fine.

20 COMMITTEE MEMBER SHEN: All right.

21 COMMITTEE MEMBER JEFFRIES: Okay, 1:93. Was
22 that mine or yours?

23 COMMITTEE MEMBER HARMON: That's mine.

24 COMMITTEE MEMBER JEFFRIES: Okay, good.

25 COMMITTEE MEMBER HARMON: The comment we put

1 on 1:93 was, The experimental data that supports the
2 methodology employed by California labs is guided by
3 the minimum expectations of standards of performance
4 as outlined in the regulation. The methods employed
5 in the labs are also reviewed by ASCLD/LAB and other
6 accrediting bodies as appropriate.

7 The regulation provides the metrics and it
8 is up to the laboratories to demonstrate their
9 compliance which is vetted through the courts and
10 accreditation achievements.

11 COMMITTEE MEMBER SHEN: Sounds good to me.

12 COMMITTEE MEMBER JEFFRIES: Sounds good to
13 me.

14 COMMITTEE MEMBER HARMON: Alex?

15 MS. STUPPLE: Yes, it's fine.

16 COMMITTEE MEMBER HARMON: Okay. And 1:94, I
17 believe there is a clarification.

18 Jennifer, I think you already wrote this. I
19 wrote it slightly different but we can tweak it.

20 COMMITTEE MEMBER SHEN: Yeah. So and we just
21 want to make sure -- so I put here a comment do we
22 want this to be 0.08 or 0.10?

23 COMMITTEE MEMBER JEFFRIES: I think it would
24 be nice to be consistent with that language you guys
25 came up with before about the at or above .08, it

1 just seems nice to have it the same unless there's a
2 reason not to do that.

3 COMMITTEE MEMBER HARMON: It actually should
4 be the same. I don't know why the .08 was chosen
5 other than that's the legal limit.

6 COMMITTEE MEMBER SHEN: I don't know why
7 either, I can't remember why, so I'm going to put
8 these limits shall be applied to alcohol
9 concentrations which are at or above 0.08?

10 COMMITTEE MEMBER HARMON: Well, I think this
11 one says, precision limits of plus or minus 5
12 percent; these values shall be applied to alcohol
13 concentrations which are 0.100 grams per 100
14 milliliters or higher. So that's at or above. For
15 samples below 0.100 grams per 100 milliliters, the
16 method shall be capable of the analysis of a
17 reference sample of known concentration within the
18 accuracy and precision limits of plus or minus 0.005
19 grams per 100 milliliters.

20 I don't know why that higher language was
21 chosen to use. I would actually recommend in the
22 language what the laboratories are using now, that
23 the 0.10 is a more appropriate number.

24 COMMITTEE MEMBER SHEN: I just need them
25 both to say the same thing.

1 COMMITTEE MEMBER HARMON: I would use this
2 language in the other one, as long as everybody's
3 okay with it.

4 Kenton, do you have any comments on this?

5 COMMITTEE MEMBER WONG: (inaudible)

6 COMMITTEE MEMBER HARMON: Okay.

7 COMMITTEE MEMBER SHEN: So at or above, are
8 we doing at or above?

9 COMMITTEE MEMBER HARMON: Yes, because
10 that's what this says, 0.1 or higher.

11 COMMITTEE MEMBER SHEN: Okay.

12 COMMITTEE MEMBER JEFFRIES: Why are we using
13 .10? Is there something about that level that's
14 appropriate? Why not use the .08 level? Or is it
15 just we're actually thinking about what we've
16 already discussed and has nothing to do with the
17 legal limit, it has to do with the testing?

18 COMMITTEE MEMBER HARMON: It has nothing to
19 do with the legal limit and has everything to do
20 with the linear capability of the accuracy. And this
21 is more appropriate. The .08 I think was used
22 because of the legal limit and has nothing to do
23 with the capability of the instrumentation is.

24 COMMITTEE MEMBER JEFFRIES: You know, I
25 think we need to say something in the response to

1 that is to say that the .08 is not being used and
2 there's no reason to use the .08; the .10 is more
3 scientifically appropriate.

4 COMMITTEE MEMBER SHEN: I don't know the
5 public comment cares about that particularly.

6 MS. STUPPLE: But since we're amending the
7 text to that, to .10, we have to give a reason.

8 COMMITTEE MEMBER SHEN: Okay.

9 MS. STUPPLE: So either way you have to say
10 it.

11 COMMITTEE MEMBER SHEN: All right. So I need
12 to put in there something about the fact that the
13 scientific capabilities, or what do you want me to
14 put, Jennifer?

15 How about the change to the regulations here
16 reflect scientific practices currently being used in
17 laboratories?

18 COMMITTEE MEMBER HARMON: Yes.

19 COMMITTEE MEMBER JEFFRIES: And are
20 unrelated to the .08 presumptive level for DUI.

21 COMMITTEE MEMBER HARMON: Yeah, are
22 unrelated to the legal limit, because that's what it
23 is, it's legal, not scientific.

24 COMMITTEE MEMBER SHEN: Okay. All right.
25 Changes to the regulations reflect current practice

1 in forensic alcohol laboratories and are unrelated
2 to the legal limit.

3 COMMITTEE MEMBER HARMON: Are we good?

4 CHAIR KIMSEY: Yeah.

5 COMMITTEE MEMBER SHEN: Yes.

6 COMMITTEE MEMBER HARMON: Can we move on to
7 1:95?

8 COMMITTEE MEMBER SHEN: I need to remember
9 to go back and change those other ones.

10 CHAIR KIMSEY: Yeah.

11 COMMITTEE MEMBER HARMON: Do you know which
12 one that is?

13 CHAIR KIMSEY: I'll look back.

14 COMMITTEE MEMBER HARMON: Okay.

15 MS. STUPPLE: I think it was 1:81.

16 COMMITTEE MEMBER SHEN: Oh, is it? Okay. It
17 seems like it was back in mine and Paul's.

18 COMMITTEE MEMBER HARMON: It was in yours,
19 it was before that.

20 COMMITTEE MEMBER SHEN: It was 1:52.

21 COMMITTEE MEMBER HARMON: Are we ready to
22 move on?

23 CHAIR KIMSEY: Yes.

24 COMMITTEE MEMBER SHEN: Yes.

25 COMMITTEE MEMBER HARMON: Okay, so 1:95 was

1 mine also. The comment is correct in its assertion
2 that the new language implies that the method must
3 be specific for ethyl alcohol and many current
4 techniques being employed in California laboratories
5 would not meet this standard. This includes
6 diffusion-oxidation methodology and gas
7 chromatography with flame ionization detector
8 technology.

9 The regulation modifications should be
10 removed and the original wording should remain.

11 Unless you're using a (inaudible) as a
12 tester you are not going to be specific for ethyl
13 alcohol. Specific for ethyl alcohol, the way the
14 language was before, which was sufficient for
15 traffic law enforcement purposes, was I think not
16 clear. I think the argument is that things that
17 could (inaudible) with ethyl alcohol on those
18 methodologies wouldn't be found in somebody who is
19 driving a car. I don't know that I agree with that.

20 COMMITTEE MEMBER SHEN: Don't you have to
21 prove that you don't have (inaudible)?

22 COMMITTEE MEMBER HARMON: The regulation
23 doesn't -- it says it has to sufficient for traffic
24 law enforcement purposes. So the way we clarify it
25 now is that it has to specific to ethyl alcohol.

1 COMMITTEE MEMBER SHEN: So you're saying
2 that (inaudible) with the work you do to show
3 there's no (inaudible).

4 COMMITTEE MEMBER HARMON: It's a non-
5 specific technology.

6 COMMITTEE MEMBER SHEN: All right. So you
7 just want to take it back to the way it was?

8 COMMITTEE MEMBER HARMON: That would be my
9 recommendation.

10 COMMITTEE MEMBER SHEN: The method shall be
11 capable of analysis of ethyl alcohol with a
12 specificity which is adequate and appropriate for
13 traffic law enforcement.

14 COMMITTEE MEMBER HARMON: Yes.

15 COMMITTEE MEMBER SHEN: All right. So I do
16 have to change it in the regulation.

17 COMMITTEE MEMBER HARMON: Because I think
18 attorneys are going to interpret this saying that
19 the method shall be specific for analysis of ethyl-
20 alcohol --

21 COMMITTEE MEMBER SHEN: When it's not.

22 COMMITTEE MEMBER HARMON: -- when it's not,
23 and they're going to ask is it a specific technique,
24 and the answer is going to be no.

25 COMMITTEE MEMBER SHEN: All right. Moving

1 on.

2 COMMITTEE MEMBER HARMON: 1:96, Dan put it
3 the same as a few others. It's asking for
4 (inaudible) data.

5 COMMITTEE MEMBER SHEN: Okay. If I added
6 something to that what would I add here? I added,
7 there was language (inaudible) for blood alcohol
8 results on post mortem samples will not be reported
9 unless specifically identified as ethyl alcohol.

10 COMMITTEE MEMBER HARMON: I think we're on -
11 -

12 COMMITTEE MEMBER SHEN: (inaudible)
13 .1(a)(3).

14 COMMITTEE MEMBER HARMON: (a)(3) The method
15 shall be free from interference from anticoagulants
16 and preservatives added to the sample.

17 COMMITTEE MEMBER SHEN: I added a (4), it
18 looks like. Did we add a (4)?

19 COMMITTEE MEMBER HARMON: That's not that
20 comment. We're on 1 --

21 COMMITTEE MEMBER SHEN: 1:95, right?

22 COMMITTEE MEMBER HARMON: Yeah, we're on
23 1:96.

24 COMMITTEE MEMBER SHEN: Oh, okay, 1:96. Oh,
25 yeah, I'm sorry.

1 COMMITTEE MEMBER HARMON: Okay.

2 COMMITTEE MEMBER SHEN: I skipped down a
3 page. I added something to 1:97.

4 COMMITTEE MEMBER HARMON: Yeah, we're on
5 1:96, and it's asking us to show experimental data,
6 I guess.

7 COMMITTEE MEMBER SHEN: Okay.

8 COMMITTEE MEMBER HARMON: I think we've
9 already covered that.

10 COMMITTEE MEMBER SHEN: Yeah.

11 MS. STUPPLE: There's also the part about
12 the Department has published guidelines, and they
13 should be incorporated into the regulations, and
14 that should be (inaudible) why you do or do not want
15 to do that. I have no idea what these published
16 guidelines are.

17 COMMITTEE MEMBER SHEN: Yeah, they have not
18 been in a long time, they have not been in the
19 regulations.

20 COMMITTEE MEMBER HARMON: Correct. So maybe
21 that's our answer, the guidelines were currently not
22 published, no reason to publish those here.

23 COMMITTEE MEMBER SHEN: What do we want to
24 say here? The public comment is, the Department has
25 published guidelines describing this demonstration.

1 These guidelines should be incorporated into the
2 regulations. The review committee must consider the
3 need for continued state-level oversight here in
4 order to assure proper accountability.

5 COMMITTEE MEMBER JEFFRIES: And you guys are
6 saying there are no published guidelines?

7 COMMITTEE MEMBER SHEN: Apparently there
8 are, but I don't think that they're in our current
9 regulations.

10 COMMITTEE MEMBER WONG: They haven't been
11 provided to the committee.

12 COMMITTEE MEMBER HARMON: I do know that
13 there is (inaudible) that when a new method is put
14 online that there are certain things that have to be
15 demonstrated, but that's redundant to what's
16 required from outside labs. So it's redundant.

17 COMMITTEE MEMBER SHEN: Okay.

18 COMMITTEE MEMBER HARMON: I've never seen
19 the physical guidelines themselves, just the
20 worksheets that have to be submitted, so some of
21 those guidelines then I guess I have seen them,
22 but...

23 COMMITTEE MEMBER SHEN: So experimentally
24 demonstrate the (inaudible) or method. Well, you
25 know, but that's all in your validation studies and

1 your (inaudible) and all that stuff, right?

2 COMMITTEE MEMBER HARMON: Yes.

3 COMMITTEE MEMBER SHEN: Well, you have all
4 that.

5 COMMITTEE MEMBER HARMON: It's redundant.

6 COMMITTEE MEMBER SHEN: Yeah, it's
7 redundant. So how about (inaudible) is required to
8 put a new method online via accreditation would be
9 redundant.

10 CHAIR KIMSEY: Or duplicative, there's that
11 word again.

12 COMMITTEE MEMBER HARMON: Either is fine
13 with me.

14 COMMITTEE MEMBER SHEN: Okay. I used
15 redundant this time, it's easier to spell.

16 CHAIR KIMSEY: That's fine.

17 COMMITTEE MEMBER HARMON: Alex, are we good?

18 MS. STUPPLE: Yeah.

19 COMMITTEE MEMBER HARMON: 1:97, The
20 committee's revision is non-specific and requires
21 clarification. The language should either remain as
22 the original text or modified to say, Blood alcohol
23 results on postmortem samples shall not be reported
24 unless specifically identified as ethyl alcohol.

25 This goes back to that other issue.

1 COMMITTEE MEMBER SHEN: Okay. So this is
2 what I added. The language has been changed to read,
3 Blood alcohol results on postmortem samples shall
4 not be reported unless specifically identified as
5 ethyl alcohol. I just took the qualitative test part
6 out.

7 COMMITTEE MEMBER WONG: She referenced 1:95
8 as well.

9 COMMITTEE MEMBER HARMON: My concern here is
10 our postmortem laboratories employing methods that
11 are specific for ethyl alcohol. If they're not,
12 they're going to take issue with this.

13 COMMITTEE MEMBER SHEN: (inaudible)
14 qualitative tests and/or specify the appropriate
15 methods of analysis.

16 So again, we have language that's been in
17 place for over 30 years with absolutely no problem.

18 COMMITTEE MEMBER HARMON: I'm fine with the
19 language, but it's going to be a change for
20 laboratories.

21 COMMITTEE MEMBER SHEN: You're saying that -
22 - they also say that our provision is nonspecific
23 and requires clarification.

24 COMMITTEE MEMBER HARMON: Yeah, so they
25 should go back to the original text, because it says

1 as alcohol by a qualitative test. Well, postmortem
2 laboratories look for methanol, which is in alcohol,
3 they look for isopropyl alcohol, they look or other
4 alcohols.

5 COMMITTEE MEMBER SHEN: Well, it originally
6 says that blood alcohol results on postmortem
7 samples shall not be reported unless the oxidizable
8 substance is identified as alcohol by qualitative
9 tests.

10 COMMITTEE MEMBER HARMON: I think it says
11 ethyl alcohol.

12 COMMITTEE MEMBER SHEN: We have -- oh, ethyl
13 alcohol by a qualitative test.

14 COMMITTEE MEMBER HARMON: Right, that's the
15 original language, correct?

16 COMMITTEE MEMBER SHEN: Yes.

17 COMMITTEE MEMBER HARMON: Okay. The comment
18 was the language should remain as the original text
19 or be modified.

20 COMMITTEE MEMBER SHEN: I don't care.

21 CHAIR KIMSEY: Let's keep it.

22 COMMITTEE MEMBER JEFFRIES: Yeah, original
23 text is fine, it's approved.

24 MS. STUPPLE: So you're going to need to
25 explain why you're changing it back.

1 COMMITTEE MEMBER SHEN: Yeah, because that's
2 not going to satisfy our public comment.

3 COMMITTEE MEMBER HARMON: It's nonspecific,
4 and they need to specify which alcohol they're
5 testing for.

6 MS. STUPPLE: Why?

7 COMMITTEE MEMBER HARMON: Because more than
8 one alcohol could be present in a postmortem sample.

9 COMMITTEE MEMBER SHEN: But Jennifer, why
10 would they leave it the way it is; why are we
11 leaving it the way it is?

12 COMMITTEE MEMBER HARMON: Because we need it
13 to say ethyl alcohol, it needs to be specific for
14 ethyl alcohol.

15 COMMITTEE MEMBER SHEN: Okay. Got you. So
16 we're changing it back to that it must be specific,
17 and the way we changed it, it wasn't.

18 COMMITTEE MEMBER HARMON: Correct.

19 COMMITTEE MEMBER SHEN: Got you. So do we
20 need to keep the original text, the language needs
21 to be specific for ethyl alcohol.

22 COMMITTEE MEMBER JEFFRIES: Yes.

23 COMMITTEE MEMBER HARMON: Yes.

24 COMMITTEE MEMBER SHEN: Okay. So then we're
25 not going to worry about the fact that oxidizable

1 substance and qualitative test needs to be fleshed
2 out, because it hasn't been for the last 30 years.

3 COMMITTEE MEMBER HARMON: Correct.

4 COMMITTEE MEMBER SHEN: I'm going to write
5 that in there, too. All right, I'm ready.

6 COMMITTEE MEMBER HARMON: 1:98 is the same
7 comment as before. They're asking us for more
8 experimental data.

9 COMMITTEE MEMBER SHEN: Okay. Ready for
10 1:99?

11 COMMITTEE MEMBER HARMON: Was there any
12 comment, Alex, for 1:98?

13 MS. STUPPLE: No.

14 COMMITTEE MEMBER HARMON: Okay. Dan, this is
15 you.

16 COMMITTEE MEMBER JEFFRIES: 1:99 is again a
17 comment about the oversight role, and I think we're
18 responded to it but I think again it would be
19 appropriate to add Alex's language about mandamus.

20 COMMITTEE MEMBER SHEN: All right. And I
21 also added some language here. I added, the
22 committee feels that with the submission of the
23 training outline and additional list of documents
24 the Department has sufficient materials to ensure
25 adequate oversight.

1 And we also felt that laboratories are best
2 suited to train their own employees (inaudible)
3 discipline.

4 And then I wrote, the committee disagrees.
5 The Department proficiency tests have been adequate
6 for decades, blah-blah-blah. That one.

7 COMMITTEE MEMBER HARMON: Okay.

8 COMMITTEE MEMBER JEFFRIES: Alex, you good
9 with that?

10 Back to Jennifer for 1:100.

11 COMMITTEE MEMBER HARMON: Are we ready on
12 1:100?

13 MS. STUPPLE: I have one more thing. On 1:99
14 on what is my page 76 where it says, the
15 Department's regulatory program is a public process,
16 so is covered under the rules of strict
17 confidentiality. I think that should be addressed.

18 COMMITTEE MEMBER SHEN: All right. So how
19 public is the Department, I wonder?

20 MS. STUPPLE: You can do Public Records Act
21 requests and get things.

22 COMMITTEE MEMBER SHEN: Yeah.

23 MS. STUPPLE: Which you can't do to a
24 private entity.

25 COMMITTEE MEMBER JEFFRIES: Well, what is

1 the point of the comment, though, about it being a
2 public process? Meaning that, therefore, because
3 it's a public process, the public can find out about
4 it and therefore the labs will be more likely to
5 comply with it because it's publicly known whether
6 they're complying? I'm not sure where the comment
7 goes.

8 And so to respond to it --

9 COMMITTEE MEMBER JONES: Why couldn't we
10 just submit a PRA to the lab?

11 MS. STUPPLE: Because, well, if it's a
12 public lab. If it's a private lab, it wouldn't
13 apply.

14 COMMITTEE MEMBER JONES: Okay.

15 COMMITTEE MEMBER SHEN: Well, the public
16 lab, which we are all here, would have to comply.

17 MS. STUPPLE: But there are private labs,
18 right? And also they're talking about ASCLDs.

19 CHAIR KIMSEY: (inaudible)

20 COMMITTEE MEMBER SHEN: And the bottom line
21 is that that ASCLD labs at least have licensing
22 authority, so if we don't do what we're supposed to
23 do we lose our accreditation.

24 MS. STUPPLE: How does anybody find out and
25 view your accreditation?

1 COMMITTEE MEMBER SHEN: It's posted on the
2 website.

3 MS. STUPPLE: Okay.

4 COMMITTEE MEMBER SHEN: Isn't that right,
5 Jennifer?

6 COMMITTEE MEMBER HARMON: Yes, it's on the
7 website.

8 MS. STUPPLE: There's a footnote there that
9 we should probably look at.

10 COMMITTEE MEMBER HARMON: It's all
11 discoverable. The accreditation status is all
12 discoverable.

13 COMMITTEE MEMBER SHEN: So I put a
14 laboratory's accreditation status is posted on a
15 public website and is discoverable.

16 MS. STUPPLE: I think maybe what this
17 comment is going to is that the process of
18 accreditation is not a public process. I mean, I
19 might be reading too much into it, but...

20 COMMITTEE MEMBER JEFFRIES: But I think even
21 if you are reading that into it, Alex, I think
22 Jennifer's response that the ultimate results are
23 made public does serve the purpose because they are
24 made public.

25 MS. STUPPLE: Okay.

1 COMMITTEE MEMBER SHEN: So I put a
2 laboratory's accreditation status is posted on a
3 public website and is discoverable.

4 COMMITTEE MEMBER HARMON: Yeah.

5 COMMITTEE MEMBER JEFFRIES: Okay. Moving on
6 to 1:100?

7 CHAIR KIMSEY: Sure.

8 COMMITTEE MEMBER HARMON: The language
9 should be modified to incorporate wet chemistry
10 techniques. The method shall employ calibration
11 standard(s) (inaudible) as to ethyl alcohol.

12 I don't know anybody employing that
13 chemistry technique, but the fact that there's a
14 public comment referring to it, I'm assuming that
15 there are, maybe some private labs are. Does anybody
16 know, Kenton, Jennifer, is anybody using that
17 chemistry technique?

18 COMMITTEE MEMBER SHEN: Nope.

19 COMMITTEE MEMBER JONES: This is Eric. Does
20 either of the DOJ use wet chemistry?

21 COMMITTEE MEMBER HARMON: No.

22 COMMITTEE MEMBER SHEN: No.

23 COMMITTEE MEMBER HARMON: I think I've got a
24 couple private labs down here that are using some
25 sort of (inaudible) or oxidization reaction kind of

1 technique.

2 COMMITTEE MEMBER WONG: Yeah, at Forensic
3 Analytical Sciences we don't.

4 COMMITTEE MEMBER HARMON: So I wrote it so
5 that if we wanted to incorporate wet chemistry you
6 could, or this is the opportunity to actually say
7 you have to use (inaudible) method; I don't know.

8 COMMITTEE MEMBER SHEN: No, I like it, I
9 think it's perfectly fine.

10 COMMITTEE MEMBER HARMON: Okay.

11 MS. STUPPLE: So we need to just say why
12 you're going to incorporate what chemistry
13 techniques.

14 COMMITTEE MEMBER HARMON: We're answering to
15 the comment, which is that wet chemistry is not an
16 instrumental method.

17 MS. STUPPLE: So you're agreeing with the
18 comment.

19 COMMITTEE MEMBER HARMON: We're agreeing
20 with the comment, yes.

21 COMMITTEE MEMBER SHEN: We're agreeing and
22 changing verbiage to accommodate the comment.

23 MS. STUPPLE: Okay.

24 COMMITTEE MEMBER JONES: This is Eric. Just
25 for my own clarification purposes, are you guys

1 ruling out the wet (inaudible) simulators for the
2 breath testing, then?

3 COMMITTEE MEMBER WONG: That's different.

4 COMMITTEE MEMBER HARMON: It's a different
5 part of the regulation.

6 COMMITTEE MEMBER JONES: Oh, okay. Never
7 mind.

8 COMMITTEE MEMBER WONG: Good question.

9 COMMITTEE MEMBER SHEN: All right, 101.

10 COMMITTEE MEMBER HARMON: 101. The language
11 is sufficiently clear. Language was modified in the
12 amendment and the additional language as proposed is
13 needed to ensure that laboratories understand they
14 can prepare secondary alcohol standards or purchase
15 them.

16 COMMITTEE MEMBER SHEN: Yes.

17 COMMITTEE MEMBER HARMON: Can we move on?
18 I'm just killing you, Alex, aren't I?

19 MS. STUPPLE: Oh, no, sorry. I think it says
20 that there should be a comma before the which, and I
21 think that's correct.

22 COMMITTEE MEMBER SHEN: (inaudible) for the
23 purpose of these regulations is awkward and adds
24 nothing to the requirement.

25 Well, I'm not sure I agree with that,

1 actually.

2 MS. STUPPLE: It means that apply? It should
3 be standards apply (inaudible). And also do you mean
4 that or which?

5 COMMITTEE MEMBER SHEN: That's too
6 complicated.

7 MS. STUPPLE: We'll just go over that later
8 with the subcommittee. I mean, when we finish up the
9 --

10 COMMITTEE MEMBER SHEN: Because that's just
11 an English thing, that's not really anything
12 significant.

13 MS. STUPPLE: I know.

14 COMMITTEE MEMBER SHEN: We just have to
15 phrase it better. I mean, I think the point is for
16 purposes of the regulation it's not meaningful. So
17 (inaudible) our secondary standard, which applies to
18 prepared or purchased solutions. So we'll take out
19 for the purposes of the regulation.

20 MS. STUPPLE: No, I was just asking if there
21 should be a comma.

22 COMMITTEE MEMBER SHEN: After which?

23 MS. STUPPLE: Before which.

24 COMMITTEE MEMBER SHEN: I don't know.

25 MS. STUPPLE: I can't tell.

1 COMMITTEE MEMBER HARMON: Maybe we should
2 move on and get back to that.

3 MS. STUPPLE: Yeah.

4 COMMITTEE MEMBER SHEN: I don't think that's
5 a committee issue. We can just fix that when my
6 brain is working again.

7 MS. STUPPLE: Yeah.

8 COMMITTEE MEMBER SHEN: My brain is tired.

9 MS. STUPPLE: I know.

10 COMMITTEE MEMBER SHEN: All right, 102.

11 COMMITTEE MEMBER HARMON: We stated here,
12 Basically that the comment is correct; however,
13 water alcohol solutions are NIST traceable are
14 readily available for purchase, and that we define
15 what secondary alcohol standards are in
16 1220.2(a)(1)(A). So I don't think there's any change
17 necessary there.

18 COMMITTEE MEMBER SHEN: But I think I added
19 a change here.

20 COMMITTEE MEMBER HARMON: Yeah, there's a
21 comment here for you to add proposed language.

22 COMMITTEE MEMBER SHEN: Yeah. The language
23 has been changed to read, Each forensic alcohol
24 laboratory shall purchase NIST traceable CRMs or
25 prepare a secondary alcohol standard, establishing

1 the concentration of the prepared standard by using
2 a direct oxidimetric method, which employs a primary
3 standard, such as the NIST potassium dichromate.

4 The other comment is that you don't prepare
5 it, you -- you don't prepare it using a direct
6 oxidimetric method, you...they're prepared by
7 dilution, blah-blah-blah, so I need to change that
8 verbiage a little bit. They are prepared by dilution
9 of pure alcohol standards, so I think that that
10 answers that question as well.

11 Do you want me to read that one more time?

12 COMMITTEE MEMBER JEFFRIES: Yes, please.

13 COMMITTEE MEMBER SHEN: The language has
14 been changed to read, Each forensic alcohol
15 laboratory shall purchase NIST traceable CRMs or
16 prepare a secondary alcohol standard, establishing
17 the concentration of the prepared standard by using
18 a direct oxidimetric method, which employs a primary
19 standard, such as the NIST potassium dichromate.

20 Does that work?

21 CHAIR KIMSEY: Um-hmm.

22 COMMITTEE MEMBER SHEN: All right. So I
23 think was 103 me also?

24 COMMITTEE MEMBER HARMON: Yes.

25 COMMITTEE MEMBER SHEN: All right. So I

1 changed the language here. The language has been
2 changed to read, (C) The forensic alcohol laboratory
3 personnel shall verify the concentration of any new
4 secondary standard used as a method by analyzing the
5 new secondary standard concurrently with a NIST SRM.

6 (D) If a purchased secondary standard CRM
7 has been certified and analytically verified against
8 a NIST SRM, then 1220.2(a)(1)(C) is not necessary.

9 So at the end of the day if you buy your CRM
10 and it says on the certificate that it's already
11 been running as an SRM, there's no need for us to
12 (inaudible).

13 And then I finish with, The committee
14 believes that the proposed text represents current
15 best practices.

16 The committee also believes the verbiage
17 used is clear and plain language readily understood
18 by competent forensic practitioners.

19 COMMITTEE MEMBER JEFFRIES: One comment. I'm
20 just not sure what is not necessary means. I think
21 you mean that it's not applicable or it's not
22 required or something like that. That's what you
23 mean, right?

24 COMMITTEE MEMBER SHEN: Yes. That would be a
25 better terminology. Instead of is not necessary I'll

1 put is not required?

2 COMMITTEE MEMBER HARMON: Required, that
3 would be good.

4 COMMITTEE MEMBER SHEN: Okay. So now it will
5 read, If a purchased secondary standard CRM has been
6 certified and analytically verified against a NIST
7 SRM, then 1220.2(a)(1)(C) is not required.

8 COMMITTEE MEMBER JEFFRIES: Or it's not that
9 the 1220.2(a)(1)(C) is not required, the
10 verification of 1220.2(a)(1)(C) is not required.

11 COMMITTEE MEMBER SHEN: Well, (C) says that
12 you have to verify it.

13 COMMITTEE MEMBER HARMON: Right, and so what
14 Dan's saying is that you don't have to verify it
15 because the verification is already there. So
16 instead of saying that the whole part of the
17 regulation is not required, it's saying that the
18 verification as an SRM is not required because it's
19 already been done on the CRM.

20 COMMITTEE MEMBER SHEN: Right, so the way I
21 have it written it says (C) tells you that you have
22 to verify it.

23 (D) says if you purchase one that's already
24 been verified then you don't have to do (C), which
25 tells you to verify it.

1 COMMITTEE MEMBER JEFFRIES: Right, but you
2 have to say the verification required by (C) is not
3 required.

4 COMMITTEE MEMBER SHEN: All right. Well,
5 there's nothing else in (C).

6 COMMITTEE MEMBER JEFFRIES: What you're
7 saying is the statute is not required. What you
8 really mean is that the verification is not
9 required.

10 COMMITTEE MEMBER SHEN: All right. So I have
11 to put, If a purchased secondary standard CRM has
12 been certified and analytically verified against a
13 NIST SRM, then reverification is not required?

14 COMMITTEE MEMBER JEFFRIES: Yeah, or the
15 verification pursuant to (a)(1)(C) is not required.

16 COMMITTEE MEMBER SHEN: Oh, okay. If a
17 purchased secondary standard CRM has been certified
18 and analytically verified against a NIST SRM, then
19 verification pursuant to 1220.2(a)(1)(C) is not
20 required.

21 COMMITTEE MEMBER JEFFRIES: Yeah, I think
22 that's clear.

23 COMMITTEE MEMBER SHEN: All right. Are you
24 good, Alex?

25 MS. STUPPLE: Yes.

1 COMMITTEE MEMBER SHEN: That's a super long
2 one. That would be great to finish with you guys
3 today so we can do the second half tomorrow.

4 All right, 104?

5 COMMITTEE MEMBER HARMON: 104. The language
6 is sufficiently clear. Language was modified in the
7 amendment and the additional language as proposed is
8 needed to ensure that laboratories understand they
9 can -- oh, it's the same thing.

10 COMMITTEE MEMBER SHEN: Yeah.

11 COMMITTEE MEMBER HARMON: I feel like we've
12 got a different standard.

13 COMMITTEE MEMBER SHEN: I'm seeing it keeps
14 repeating it, 1220.2(a)(2).

15 COMMITTEE MEMBER HARMON: That's about a
16 blank.

17 COMMITTEE MEMBER SHEN: The blank and
18 secondary standard shall be analyzed concurrently or
19 prior to analysis of a subject sample, the
20 (inaudible) of analysis and any instrument used.

21 COMMITTEE MEMBER HARMON: I have no idea why
22 I wrote the same answer.

23 COMMITTEE MEMBER SHEN: Yeah, we're going to
24 have to twist it around a little bit.

25 COMMITTEE MEMBER HARMON: That comment

1 doesn't make any sense.

2 COMMITTEE MEMBER SHEN: I thought I read the
3 comment about the blank, though. Oh, yeah, you have
4 it in the next one, (a)(2)(A).

5 COMMITTEE MEMBER HARMON: Wow. Okay.

6 COMMITTEE MEMBER SHEN: It says (a)(2) and
7 (a)(2)(A).

8 COMMITTEE MEMBER HARMON: So I guess the
9 comment I wrote for 105 should be moved up to 104.

10 COMMITTEE MEMBER SHEN: Well, I think what
11 happened here is I think we combined (a)(2) and
12 (a)(2)(A).

13 COMMITTEE MEMBER JEFFRIES: It looks like we
14 eliminated (a)(2)(A) and put the meaning from that
15 into (a)(2).

16 COMMITTEE MEMBER HARMON: Right. So I think
17 I wrote an update. The Section should be updated to
18 read, A blank and secondary standard(s) shall be
19 analyzed concurrently or prior to analysis of
20 subject samples on each day of analysis and on any
21 instrument used. All blank(s), secondary standard(s)
22 and samples shall be taken through all steps of the
23 method.

24 It was an agreement with the clarification
25 needed.

1 COMMITTEE MEMBER SHEN: All right. So 105
2 needs to go up to 104, and then 105 needs to say
3 this is repealed because what used to be in it is
4 now in 104.

5 COMMITTEE MEMBER HARMON: Yes.

6 COMMITTEE MEMBER SHEN: Okay.

7 COMMITTEE MEMBER HARMON: Sorry.

8 COMMITTEE MEMBER SHEN: Okay. I should have
9 caught that, sorry.

10 COMMITTEE MEMBER HARMON: I should have
11 caught it too.

12 COMMITTEE MEMBER SHEN: Okay. Then 105 we're
13 going to just say that the information in this
14 section is now in 1220.2(a)(2).

15 COMMITTEE MEMBER HARMON: Yes.

16 COMMITTEE MEMBER SHEN: All right.

17 COMMITTEE MEMBER HARMON: 106. So this was
18 an update also. 1220.2 (a)(3) should be updated to
19 reflect the comments concern. The section does
20 detail two entirely different concepts. 1220.2
21 (a)(3) should be updated to say, The procedure shall
22 also include analysis of quality control reference
23 samples as described in section 1220.3.

24 An addition should be made as 1220.3 (a)(5)
25 that shall say, All samples shall minimally be

1 analyzed in duplicate.

2 COMMITTEE MEMBER SHEN: Yes, I agree with
3 that. That's better.

4 All right, ready to move on?

5 COMMITTEE MEMBER HARMON: Yes. Okay, so 107
6 refers to alcohol or other volatile organic solvents
7 shall not be used to wash or rinse glassware and
8 instruments used for alcohol analysis.

9 And I made a note here that if labs are
10 using GGMS technology they cannot adhere to this
11 standard. The only way to clean a source from a mass
12 spectrometer is to use an organic solvent. So if it
13 remains this way, then we're prohibiting
14 laboratories (inaudible) specific identification.

15 I know, sorry, but yeah, it is a problem.

16 COMMITTEE MEMBER SHEN: Well, can we call
17 out that one specific thing, with the exception of
18 blah-blah-blah?

19 I mean, I guess the only ones using GGMS
20 hasn't been following this rule anyway.

21 COMMITTEE MEMBER HARMON: That would be
22 correct. That's why we run blanks.

23 COMMITTEE MEMBER JEFFRIES: Well, is it that
24 you don't want to use alcohol or volatile organic
25 solvents to clean the glassware? What if you got rid

1 of the (inaudible) in that, would that take you
2 where you want to go?

3 COMMITTEE MEMBER SHEN: Oh, that's a good
4 idea. That works for me.

5 COMMITTEE MEMBER HARMON: We could just say
6 ethyl alcohol shall not be used to wash or rinse
7 glassware or instruments used for alcohol analysis.

8 COMMITTEE MEMBER SHEN: Well, I don't think
9 alcohol should be used to wash glassware of any
10 kind.

11 COMMITTEE MEMBER JEFFRIES: There's two
12 different things there. One is for washing in
13 general and the other is for mass spectrometers; is
14 that where we're going?

15 COMMITTEE MEMBER SHEN: Yes.

16 CHAIR KIMSEY: Do we want to think about
17 this one overnight?

18 COMMITTEE MEMBER HARMON: I think that would
19 be a really good idea.

20 COMMITTEE MEMBER SHEN: Yeah, I think,
21 Jennifer, you should look at (inaudible).

22 COMMITTEE MEMBER HARMON: Okay. Let's do
23 that.

24 COMMITTEE MEMBER SHEN: With the GGMS not
25 allowed to use ethyl alcohol.

1 COMMITTEE MEMBER HARMON: Right.

2 COMMITTEE MEMBER SHEN: All right.

3 COMMITTEE MEMBER HARMON: All right, let's
4 move on to 108. The comment carries merit. The
5 revised regulation under 1220.1 (a)(1), 1220.1 (b),
6 1220.2 (a)(1), 1220.2 (a)(1)(C) and 1220.3
7 sufficiently demonstrate routine checks of accuracy
8 and precision and this component of the removed text
9 is redundant and unnecessary. However, the text
10 stating, All instruments used should be in good
11 working order, should remain. The assertion that
12 preventative maintenance, and maintenance
13 recommendations are included in accreditation
14 standards is correct and should be considered by the
15 committee.

16 COMMITTEE MEMBER SHEN: Okay. So what would
17 we do there, Jennifer?

18 COMMITTEE MEMBER HARMON: That's a really
19 good question.

20 COMMITTEE MEMBER JEFFRIES: It sounds like
21 what you want to say is that all instruments used
22 for alcohol analysis shall be in good working order,
23 and then you want to say a little bit after that
24 about preventative maintenance. So maybe some
25 language at the end of it about preventative

1 maintenance and whatever the other maintenance
2 recommendation.

3 COMMITTEE MEMBER LYLE: Maybe just something
4 like, following the preventative maintenance
5 recommendations of the lab.

6 COMMITTEE MEMBER JEFFRIES: Well, does good
7 working order imply that you're doing appropriate
8 maintenance?

9 COMMITTEE MEMBER HARMON: Yes.

10 COMMITTEE MEMBER SHEN: So the thing is we
11 (inaudible), right?

12 COMMITTEE MEMBER HARMON: Yeah.

13 COMMITTEE MEMBER JEFFRIES: Then why don't
14 we just leave it that all instruments shall be in
15 good working order, period.

16 COMMITTEE MEMBER HARMON: Yeah.

17 COMMITTEE MEMBER SHEN: All right.

18 COMMITTEE MEMBER HARMON: And I think the
19 reason it was taken out is because the second part
20 of it said and routinely checked for accuracy and
21 precision, which is a given if they're calibrating
22 their instruments daily, which is required. But the
23 part about it being in good working order should
24 probably remain.

25 COMMITTEE MEMBER JEFFRIES: I think that

1 sounds right.

2 COMMITTEE MEMBER SHEN: That sounds right.

3 COMMITTEE MEMBER JEFFRIES: Put that back in
4 at 1228.5.

5 COMMITTEE MEMBER HARMON: Yeah, so the
6 comment actually says that, testing all instruments
7 to ensure they are in good working order should
8 remain.

9 COMMITTEE MEMBER SHEN: Yeah. I think we're
10 good.

11 COMMITTEE MEMBER HARMON: Okay.

12 COMMITTEE MEMBER SHEN: I don't think we're
13 going to get through with you guys today.

14 COMMITTEE MEMBER JEFFRIES: Well, we went
15 above and beyond. We were only supposed to go to
16 Page 87 and we're already beyond that.

17 COMMITTEE MEMBER SHEN: Oh, okay.

18 COMMITTEE MEMBER JEFFRIES: We tried to
19 reduce Bruce's work.

20 COMMITTEE MEMBER HARMON: 109. I don't think
21 we changed anything. There was no change in the
22 original regulation.

23 MS. STUPPLE: Then why did you change .10 to
24 .08, but even though that's not what this comment is
25 about.

1 COMMITTEE MEMBER HARMON: Each method of
2 forensic alcohol analysis from each forensic alcohol
3 laboratory shall make or acquire suitable quality
4 control reference material containing --

5 COMMITTEE MEMBER SHEN: Okay. Yeah, we
6 changed .10 to .08.

7 COMMITTEE MEMBER HARMON: They're making a
8 comment about the clarity of the wording. Can't we
9 just say the language is clear?

10 COMMITTEE MEMBER JEFFRIES: Yeah, I think
11 we've already corrected the laboratory issue.

12 COMMITTEE MEMBER SHEN: Yeah, we had to
13 cross off forensic alcohol and just make it
14 laboratory, which I have already done in my notes.
15 So that handles that place/entity issue. Yeah?

16 COMMITTEE MEMBER HARMON: Yes. And the
17 question about whether it's suitable or not, it's
18 the same language that has been in place for 40
19 years. Or 30 or whatever number you want. A long
20 time.

21 COMMITTEE MEMBER SHEN: Okay. The language
22 is clear, unambiguous and requires no revision.
23 Removing forensic alcohol in front of laboratory
24 solves the place/entity issue. And then we changed
25 .08 to .10 to reflect current, what, Vehicle Code?

1 COMMITTEE MEMBER JEFFRIES: Yes.

2 COMMITTEE MEMBER HARMON: Yes.

3 COMMITTEE MEMBER SHEN: All right.

4 COMMITTEE MEMBER HARMON: 110, same thing.

5 Seems like it's clear.

6 COMMITTEE MEMBER SHEN: The language is
7 clear, unambiguous and requires no revision.

8 Are you good on it, Alex?

9 MS. STUPPLE: Yeah.

10 COMMITTEE MEMBER SHEN: So this one, (a)(2),
11 why is there a place/entity issue there?

12 COMMITTEE MEMBER JEFFRIES: Because the
13 laboratory shall determine.

14 COMMITTEE MEMBER SHEN: I know, but we have
15 already got that --

16 COMMITTEE MEMBER JEFFRIES: Right, we
17 corrected it before.

18 COMMITTEE MEMBER SHEN: All right. So we're
19 good on that one.

20 COMMITTEE MEMBER JEFFRIES: Yeah.

21 COMMITTEE MEMBER HARMON: 111. So (a)(4) has
22 to do with how frequently we're doing it, and I
23 think we answer as to why. The revision improves the
24 quality of forensic alcohol analysis in the state by
25 mandating that a quality control reference material

1 be run at the beginning and the end, covering the
2 entire set of samples. This ensures that the
3 instrument's calibration is maintained throughout
4 the entire analytical process. This is common
5 scientific practice in both forensic and clinical
6 toxicology.

7 COMMITTEE MEMBER SHEN: All right.

8 COMMITTEE MEMBER HARMON: And then there was
9 another question. The wording of at least one sample
10 permits laboratories to determine whether they use
11 analytical instrumentation capabilities to source
12 from a singular source/vial or to use a separately
13 prepared source/vial of the quality control
14 reference material.

15 So this gives the laboratory the option as
16 to how to meet the statute.

17 COMMITTEE MEMBER SHEN: Okay. 112.

18 COMMITTEE MEMBER HARMON: I think the
19 comment here...

20 COMMITTEE MEMBER SHEN: You altered the
21 language.

22 COMMITTEE MEMBER HARMON: Yeah. All
23 analytical results shall be expressed in terms of
24 the alcohol concentration in blood, based on the
25 number of grams of alcohol per 100 milliliters of

1 blood, with the exception of tissue analysis and
2 breath test results.

3 So we don't get into an issue of how it
4 should be worded, it's expressed elsewhere.

5 COMMITTEE MEMBER SHEN: Yeah, I agree.

6 COMMITTEE MEMBER HARMON: So this specifies
7 what.

8 COMMITTEE MEMBER SHEN: 113?

9 COMMITTEE MEMBER HARMON: The modification
10 should be removed to ensure consistency with change
11 made in 1220.4 (c) Additionally, or grams per 210
12 liters of breath should be removed as the expression
13 of breath alcohol results is defined in 1220.4(f).

14 COMMITTEE MEMBER SHEN: Okay. So the
15 language is going to read, the symbols grams %, %, and %
16 and % (W/V) shall be regarded as acceptable
17 abbreviations of the phrase grams per 100
18 milliliters of blood.

19 COMMITTEE MEMBER HARMON: Yes.

20 COMMITTEE MEMBER SHEN: Okay. I put that in
21 there.

22 COMMITTEE MEMBER HARMON: Okay. And then
23 breath is handled somewhere else.

24 COMMITTEE MEMBER SHEN: Yeah.

25 COMMITTEE MEMBER HARMON: Are we on 114?

1 COMMITTEE MEMBER SHEN: Yes.

2 COMMITTEE MEMBER HARMON: The proposed
3 revision is more inclusive and prohibits
4 interpretation that the reporting criteria only
5 apply to blood samples. The comment assumes that it
6 is well understood that this reporting criteria
7 applies to other sample types that have been
8 converted to a blood alcohol concentration.

9 So it allows us to not have to -- yeah, what
10 it says.

11 COMMITTEE MEMBER SHEN: All right.

12 COMMITTEE MEMBER HARMON: Are we good with
13 that?

14 CHAIR KIMSEY: Um-hmm.

15 COMMITTEE MEMBER HARMON: 115. The comment
16 makes assumptions that postmortem urine samples and
17 other postmortem fluids are not analyzed for ethyl
18 alcohol content. Vitreous humor is a fluid and is
19 routinely analyzed for ethanol content and it would
20 be inappropriate to consider this sample type a
21 tissue and reported as such. The modification should
22 be maintained.

23 COMMITTEE MEMBER SHEN: All right. That's
24 pretty clear.

25 MS. STUPPLE: I have a question. On 114 in

1 the last paragraph.

2 COMMITTEE MEMBER HARMON: Alex.

3 MS. STUPPLE: We addressed that, right?

4 COMMITTEE MEMBER HARMON: I don't know, did
5 we?

6 MS. STUPPLE: I don't know.

7 COMMITTEE MEMBER SHEN: Where may was
8 changed?

9 MS. STUPPLE: Yeah, like --

10 COMMITTEE MEMBER JEFFRIES: I think we
11 addressed it in terms of the ability of labs to
12 measure at certain levels in terms of either a
13 percentage or an absolute number, so we did talk
14 about that in terms of -- that's what our earlier
15 discussion was about.

16 MS. STUPPLE: That's right.

17 COMMITTEE MEMBER JEFFRIES: But I don't
18 think we've had a conversation about how low a
19 number should be detected by a lab.

20 COMMITTEE MEMBER SHEN: Well, this is also
21 saying that required analytical results shall be
22 reported to the second decimal place. Well, it even
23 gives you the third decimal place but we're not
24 going to do that anymore, so this is not relevant.

25 MS. STUPPLE: Okay. Well, we still need to

1 answer it, that we've changed it and therefore.

2 COMMITTEE MEMBER SHEN: I'll just make a
3 circle to remind me we need to circle back to this
4 one and put in whatever comment we put in when we
5 address it tomorrow.

6 MS. STUPPLE: Okay.

7 COMMITTEE MEMBER SHEN: This is no longer
8 relevant. That one (inaudible) public comment all
9 wanted that in a big way.

10 COMMITTEE MEMBER JEFFRIES: Which one, the
11 third digit?

12 COMMITTEE MEMBER SHEN: The three decimal
13 places.

14 COMMITTEE MEMBER JEFFRIES: Yeah.

15 COMMITTEE MEMBER SHEN: There was almost an
16 insurrection about that.

17 COMMITTEE MEMBER HARMON: What are we on?

18 COMMITTEE MEMBER SHEN: 116.

19 COMMITTEE MEMBER HARMON: Okay. Change
20 should be made to read, A urine alcohol
21 concentration shall be converted and expressed as a
22 blood alcohol concentration.

23 The converted blood alcohol concentration is
24 determined by dividing the urine alcohol
25 concentration by 1.3. That way there's no conflict.

1 That was the public comment.

2 COMMITTEE MEMBER SHEN: Perfect.

3 COMMITTEE MEMBER HARMON: Okay, 117. Change
4 should be made to read, A breath alcohol
5 concentration shall be expressed as the number of
6 grams of alcohol per 210 liters of breath.

7 COMMITTEE MEMBER SHEN: Okay.

8 MS. STUPPLE: Are these changes both for the
9 reasons articulated in the public comment?

10 COMMITTEE MEMBER HARMON: Yes.

11 MS. STUPPLE: Okay.

12 COMMITTEE MEMBER HARMON: We're agreeing
13 with them, Alex.

14 MS. STUPPLE: Okay. I'm just making sure
15 that it's not for some other reason.

16 COMMITTEE MEMBER HARMON: No, I don't think
17 so.

18 COMMITTEE MEMBER SHEN: All right. Article
19 6. Bruce is here, right?

20 COMMITTEE MEMBER LYLE: Yeah.

21 COMMITTEE MEMBER SHEN: We ought to have
22 this conversation now. So we need to change breath
23 analysis to breath testing throughout the document
24 and had justified as so, until we get to Bruce and
25 he said we should put it back to what it was. So we

1 should probably decide what we want to do there.

2 COMMITTEE MEMBER LYLE: And the reason I did
3 that is because I am an acquieser. And two, I just
4 thought -- I mean, I didn't have all the good
5 information that these guys in the previous group
6 indicated on their stuff, so I was just going with
7 the easiest method that I could, and if it was going
8 to just placate the public and it wasn't going to
9 come up again, because if we stick by our guns and
10 stick with going with testing versus analysis -- or
11 what are we going with?

12 COMMITTEE MEMBER SHEN: Testing.

13 COMMITTEE MEMBER LYLE: See, that's how much
14 I don't care about it. So if we go with testing
15 versus analysis, it's going to come back when the
16 second set of comments come, in a different way. So
17 that's the only reason is it's just a little easier
18 and it wasn't a battle that I thought that we really
19 had to fight.

20 COMMITTEE MEMBER SHEN: And my opinion is
21 that we should never -- that we should do what we
22 think is right and we shouldn't acquiesce.

23 So in this particular case, I'm not saying
24 testing versus analysis is right or wrong; it's just
25 that the committee spent quite a bit of time coming

1 up with testing. It's all the way through the
2 regulation and it's in the definitions and
3 everything else, so to acquiesce at this point would
4 mean a lot of changes.

5 COMMITTEE MEMBER LYLE: Okay. Well, I can
6 acquiesce to you.

7 COMMITTEE MEMBER SHEN: Oh, yeah. I think
8 that's probably our best course of action at this
9 point, because we made the decision based upon
10 several logical reasons, eight or ten years ago.

11 COMMITTEE MEMBER LYLE: Right. That's why I
12 was having trouble recalling that. Does anybody else
13 on the committee have any sort of third different
14 point of view on that?

15 CHAIR KIMSEY: No.

16 COMMITTEE MEMBER WONG: No.

17 COMMITTEE MEMBER SHEN: Okay. I'm thinking
18 this might be a good place to stop.

19 CHAIR KIMSEY: So am I. It's getting close
20 to five. I recommend, let's see, we're stopping at
21 117?

22 COMMITTEE MEMBER SHEN: 118.

23 CHAIR KIMSEY: Okay. I think it's worth
24 taking a voice vote that we approve or we agree with
25 the changes that have been proposed like we did

1 before our previous break, so I'll make a motion, I
2 mean, I'll start by saying that I, Paul Kimsey,
3 agree with the changes that we have proposed to this
4 point.

5 COMMITTEE MEMBER WONG: Kenton Wong, I
6 concur.

7 COMMITTEE MEMBER HARMON: Jennifer Harmon, I
8 concur.

9 COMMITTEE MEMBER JEFFRIES: Dan Jeffries, I
10 concur.

11 COMMITTEE MEMBER LYLE: Bruce Lyle, I
12 concur.

13 CHAIR KIMSEY: Okay, thank you. I might
14 recommend tomorrow is that we'll try and get this
15 set up maybe 15 minutes before 10:00, so if people
16 are available and in the room to get the phones
17 working and that sort of thing, I think it might be
18 helpful for our timeframe.

19 COMMITTEE MEMBER HARMON: Paul, this is
20 Orange County. If you guys just dial that same
21 number we're going to keep it here.

22 CHAIR KIMSEY: Okay, great.

23 COMMITTEE MEMBER HARMON: I wanted to make
24 one note. Apparently there were some folks that came
25 to the Sacramento location who were told that it was

1 not there.

2 MR. WOODS: We had security at the desk
3 calls when anybody arrives, so (inaudible).

4 COMMITTEE MEMBER HARMON: Okay.

5 CHAIR KIMSEY: It's the same location.

6 COMMITTEE MEMBER HARMON: And we have
7 multiple people at the Sacramento location, right?

8 CHAIR KIMSEY: Yes.

9 COMMITTEE MEMBER HARMON: More than
10 (inaudible)?

11 MR. WOODS: We have a couple of CDPH staff
12 and just the one CHP, Eric.

13 COMMITTEE MEMBER HARMON: Okay. That way I
14 can at least get back to those folks.

15 COMMITTEE MEMBER SHEN: Paul, I'm in two
16 different rooms tomorrow.

17 CHAIR KIMSEY: Okay.

18 COMMITTEE MEMBER SHEN: That will be a fun
19 adventure.

20 CHAIR KIMSEY: Okay. Well, we can text each
21 other, so you might text me your phone numbers.

22 COMMITTEE MEMBER SHEN: Yes, I will.

23 COMMITTEE MEMBER JEFFRIES: And Paul, did
24 you hear (inaudible) that we concur on the afternoon
25 comments.

1 COMMITTEE MEMBER SHEN: You didn't hear from
2 me.

3 COMMITTEE MEMBER JEFFRIES: That's what I
4 thought.

5 COMMITTEE MEMBER SHEN: I think we should
6 start from scratch.

7 COMMITTEE MEMBER JEFFRIES: Okay.

8 CHAIR KIMSEY: Jennifer.

9 COMMITTEE MEMBER JEFFRIES: Yeah, I think we
10 only heard from five people that concurred, that's
11 why I wasn't sure about you, Jennifer.

12 COMMITTEE MEMBER WONG: We'll get her first
13 thing tomorrow.

14 COMMITTEE MEMBER JEFFRIES: Okay. And
15 Sergeant Jones left and Mark is not with us, right?

16 CHAIR KIMSEY: Correct. Okay, thank you
17 all.

18 (Off the record at 4:59 p.m.)

19 --o0o--

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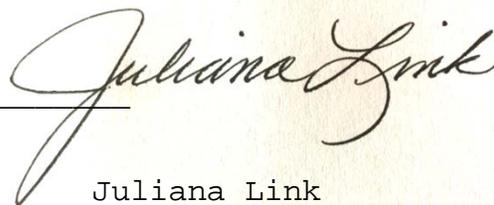
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5**REPORTER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of December, 2015.

A handwritten signature in black ink that reads "Juliana Link". The signature is written in a cursive style and is positioned above a horizontal line that spans the width of the signature area.

Juliana Link
CER-830

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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

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IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of December, 2015.



Terri Harper
Certified Transcriber
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