

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

DEPARTMENT OF HEALTH SERVICES
RICHMOND CAMPUS CONFERENCE CENTER
850 MARINA BAY PARKWAY
AUDITORIUM
RICHMOND, CALIFORNIA

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APPEARANCES

REVIEW COMMITTEE MEMBERS

Mr. Paul Kimsey, Ph.D., Chairperson

Sergeant Ray Cardona

Ms. Patricia Lough

Mr. Bruce Lyle

Mr. Paul Sedgwick

Mr. Kenton Wong

Mr. Torr Zielenski

STAFF

Mr. Clay Larson, Chief, Abused Substances Analysis Section

Ms. Cathy Ruebusch, Regulations Coordinator

Dr. Mary Soliman, Chief, Food & Drug Laboratory Services

ALSO PRESENT

Mr. Mark Kalchik, Department of Justice

Mr. Bill Phillips, Department of Justice

Mr. Jeff Zehnder, Drug Detection Lab, Sacramento

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1 PROCEEDINGS

2 CHAIRPERSON KIMSEY: Why don't we go ahead and
3 get started. It's 10 o'clock. And this is the second
4 meeting of the Forensic Alcohol Regulation Review
5 Committee.

6 And let's go around and introduce ourselves.

7 I'm Paul Kimsey. I'm with the Department of
8 Health Services. I'm the Assistant Deputy Director for
9 Laboratory Science.

10 COMMITTEE MEMBER LYLE: I'm Bruce Lyle. I'm the
11 Assistant Chief Deputy Coroner, Orange County
12 Sheriff-Coroner Department.

13 COMMITTEE MEMBER SEDGWICK: Paul Sedgwick, Senior
14 Forensic Scientist, Orange County Sheriff-Coroner
15 Department.

16 COMMITTEE MEMBER LOUGH: Patricia Lough, San
17 Diego PD Supervisor. I'm just retired. And representing
18 California Association of Crime Lab Directors.

19 COMMITTEE MEMBER WONG: Kenton Wong from the San
20 Mateo Crime Lab. I'm a criminalist, and I'm representing
21 the California Association of Criminalists.

22 COMMITTEE MEMBER CARDONA: Ray Cardona,
23 California Highway Patrol. I supervise our Traffic Radar
24 and Alcohol Programs Unit in Sacramento.

25 COMMITTEE MEMBER ZIELENSKI: Torr Zielenski, a

1 supervising attorney for Sacramento County Public
2 Defender's Office, representing the California Public
3 Defenders Association.

4 CHAIRPERSON KIMSEY: Okay. And I guess I'm going
5 to make some opening remarks.

6 This Committee was mandated through legislation
7 of 1623 last year. And as we heard more extensively at
8 last -- our first meeting, our responsibility is to
9 modify, add, delete, change the Title 17 regulations as
10 they relate to the Forensic Alcohol Program. And we had
11 some presentations from one of the Department's attorneys
12 at our first meeting, who gave us some direction. And we
13 also had a presentation from Cathy Ruebusch in our
14 Regulations Office, and she talked to us about that
15 process.

16 And I think there -- we've collected some
17 information, and we'll sort of go over the agenda. But I
18 would anticipate that there'll be, you know, maybe one or
19 two more meetings. Hopefully as few as possible. And I
20 think we all felt at our first meeting that we wanted to
21 do this as expeditiously as possible.

22 The Committee will be making recommendations to
23 the Health and Human Services Agency, which is an entity
24 that is over the Department of Health Services. And the
25 Agency at that point has 90 days to review and -- what is

1 the word? They want really amend, but they can --

2 COMMITTEE MEMBER ZIELENSKI: Adopt?

3 CHAIRPERSON KIMSEY: No, it's "reject". That's
4 the word. They can't really add. It's sort of a
5 rejection process on the part of Agency.

6 So the Committee has a very large responsibility
7 for these regulations. And hopefully we'll -- as you see,
8 as we go through the agenda today, I think we're going to
9 get pretty far -- pretty close to where we're actually
10 reviewing regulations today.

11 Cathy Ruebusch I don't see in the audience yet.
12 She is going to be here today our attorney, Goldie Eng, is
13 not going to be here today. And Dr. Barrett, the Division
14 Chief that oversees the Forensic Alcohol Program, is also
15 not here today. And Laura Tanney is apparently out ill.

16 With regards to the agenda, it's in front of you.
17 Since we are operating under the Bagley-Keene Act, we
18 can't really add agenda items per se, but we can certainly
19 change the order if there was -- if there's a feeling that
20 we needed to change the order.

21 We have scheduled an hour lunch. And I would
22 recommend the cafeteria.

23 A little bit of housekeeping. The restrooms are
24 at the back of the conference center. As you go out the
25 auditorium, they're towards the rear of the building on

1 the right and the left. There is a cafeteria over here to
2 the right as you go out the conference center. By all
3 means feel free to get coffee or tea. We just ask that
4 you have a cap on your cup. And there's no food in the
5 auditorium.

6 Now, this is a public meeting. And please help
7 try to remind me that we need to offer the public an
8 opportunity to speak on each agenda item.

9 And I don't know that we need to have the
10 audience introduce themselves. We can go around -- you
11 are not required to introduce yourselves in a public
12 meeting, but you do have that opportunity.

13 So maybe we should go around.

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

15 I'm Clay Larson. I'm Chief of the Abused
16 Substance Analysis Section.

17 FOOD AND DRUG LABORATORY BRANCH CHIEF SOLIMAN:

18 Mary Soliman, Chief for the Food and Drug Lab
19 Branch, DHS.

20 REGULATIONS COORDINATOR RUEBUSCH: Cathy

21 Ruebusch, Office of Regulations, DHS.

22 MS. IMHOF: Petra Imhof, Sacramento County Crime
23 Lab.

24 MS. MATTHIAS: Dianna Matthias, Kern County Crime
25 Lab.

1 MS. SUCHLAND: Kristel Suchland, Sacramento
2 County Crime Lab.

3 MS. BURKE-GALUSZKA: Kristen Burke-Galuszka,
4 Sacramento County Crime Lab.

5 MR. TRIEBOLD: Craig Triebold, Sacramento County
6 Crime Lab.

7 MR. DEETER: Dan Deeter with Department of Health
8 Services.

9 MR. LEE: Christopher Lee with the Department of
10 Justice.

11 MR. PHILLIPS: Bill Phillips with the Department
12 of Justice. I'm a forensic toxicologist in charge of the
13 blood alcohol and toxicology programs.

14 MR. KALCHIK: Mark Kalchik, Department of Justice
15 Laboratory, Fresno.

16 MR. JOHNSON: I'm Drew Johnson with the
17 Department of Health in Sacramento.

18 MS. ANDERSON-SEAQUIST: Janet Anderson-Seaquist
19 with the Ventura County Sheriff's Department Crime Lab.

20 MS. KAHLON: Jasmail Kahlon with the California
21 Food and Drug Laboratory Branch.

22 Okay. Thank you.

23 Any comments on the agenda, a change in the
24 order?

25 COMMITTEE MEMBER LOUGH: I'd like to propose

1 perhaps that we do the 11 clock discussion first.

2 CHAIRPERSON KIMSEY: Okay. Discussion of
3 regulatory concepts.

4 Okay. And then to do that first.

5 Any other comments? I mean is there a particular
6 reason that you want to do that first?

7 COMMITTEE MEMBER LOUGH: Well, I think that's
8 probably a good place to start before we get into the
9 scientific issues.

10 CHAIRPERSON KIMSEY: Okay. I see a discussion of
11 questions raised during the initial meeting was going to
12 be before that. And a review of existing statutes and
13 regulations that impact the Department of Health Services'
14 Forensic -- was going to be -- so those two items.

15 Any other feelings on the Committee? People want
16 to change that or keep the agenda as -- you want to go
17 ahead and change?

18 COMMITTEE MEMBER LYLE: Yes.

19 CHAIRPERSON KIMSEY: Okay. We'll move that
20 discussion to the first. And then following that we'd
21 have the discussion of questions raised during the initial
22 meeting and review of existing statutes.

23 Then after lunch is the proposed regulation
24 revision concepts. Does that seem acceptable?

25 Okay. The discussion of regulatory concepts:

1 Oversight, monitoring and enforcement of Department's
2 regulations. The first bullet there is: Mechanisms for
3 oversight and enforcement of regulations.

4 Let's see, I believe we had in our packet here
5 Alternatives to State-Level Regulation of Forensic and
6 Breath Alcohol Analysis. It was some information that was
7 prepared by the program and was sent out to folks.

8 Is this something we want to discuss? Or is
9 there something we want to start off with before we --
10 there are three basic alternatives that were outlined
11 here.

12 The first one has to do with sort of why forensic
13 alcohol and breath alcohol analysis are subject to DHS
14 regulations.

15 "The judicial process provides adequate
16 regulation" is number two.

17 And three is "ASCLD-LAB accreditation program
18 provides effective oversight."

19 I think this sort of gets to the question -- the
20 legislation, 1623, made it quite clear the Department was
21 not going to be licensing anymore and we weren't going to
22 be doing inspections and we weren't going to be doing
23 proficiency testing.

24 But it did leave in some language that the
25 Department is still responsible for -- I don't know if

1 they use the word "enforcement" or was it oversight of the
2 regulations? And in discussions with our attorneys and
3 with, you know, people here in the Department of Health
4 Services, we're not sure how the oversight and monitoring
5 the Department would do if we're not going on site, we're
6 not licensing. We really may not know -- actually there's
7 no -- there doesn't seem to be a requirement for us to
8 even know if laboratories are doing this work.

9 And so it wasn't really clear in the
10 legislation -- well, let me back up a little bit.

11 One of the hats I do wear in the Department is I
12 do oversee laboratory regulatory programs in other areas,
13 clinical laboratories and environmental laboratories. And
14 it's quite clear there in statute that the Department has
15 that authority. I mean we license, we do enforcement
16 actions, we do inspections. And that's pretty much what
17 we sort of consider to be our oversight responsibility.

18 We do have some of those programs, what's known
19 as, third-party accreditation or third-party overview of,
20 usually in conjunction with the Department. In one of
21 those programs the Department actually reviews and gives
22 the authority to a third party to do inspections. And
23 they don't actually do the actually licensing themselves,
24 but they do inspections, they do proficiency testing
25 samples.

1 I think there was some -- it seemed to be unclear
2 based on the legislation -- and maybe this gets to some of
3 the intent of the legislation, which -- it's quite clear
4 the Department is not licensing, inspecting or doing
5 proficiency testing. But it's also clear that we have
6 responsibility for the regulations. And so it might -- it
7 would be useful for us to -- I think as a committee to
8 sort of see how that might play out, because it's not
9 clear, I guess, to us as a department.

10 But any other thoughts?

11 Yes, Patti?

12 COMMITTEE MEMBER LOUGH: Yes, I think the
13 legislative intent was to eliminate the licensing, which
14 would be eliminating the oversight. If you go back to the
15 sessions that were held, the hearings and the
16 conversations and the documentation that was provided, the
17 two are actually the same. And so it was somewhat
18 understood that they're removing the licensing, the
19 oversight was removed. And the next step that would
20 follow then would be to update the regulations to reflect
21 that.

22 CHAIRPERSON KIMSEY: And so I think -- that
23 raises in my mind, the question is: Then this will be
24 pretty much a voluntary program on the part of people
25 doing this type of work? I mean generally speaking state

1 oversight -- if state oversight is involved, it's usually
2 with the Department. Like I can see how Department of
3 Health Services might not be the appropriate place for
4 this oversight. I mean historically it has been. But
5 maybe the Department of Justice or another department that
6 has more direct responsibility for this type of laboratory
7 work might be considered to be that oversight would be
8 sort of transferred to. But I think currently it seems
9 that there -- I shouldn't say there is no oversight,
10 because the Department does have responsibility for the
11 regulations. But there doesn't seem to be any mandate to
12 follow the regulations.

13 COMMITTEE MEMBER LOUGH: Well, what we wanted to
14 do -- I mean it was adjusted by our legislators to blow up
15 the box. They wanted to completely do away with Title 17.
16 And we were devastated when they said that, because what
17 we didn't want is for some person to hang up a shingle and
18 say, "I can do alcohol testing." So we very carefully
19 wanted to make sure that the science of Title 17 remained
20 so that somebody would have to have a certain educational
21 background, training and such to do this kind of work. So
22 we wanted to keep that intact while we went through the
23 process of removing the oversight.

24 It was understood that, not necessarily crime
25 labs, but people who do this work are exempt from the

1 state process, as they are -- as in all other forensic
2 science disciplines.

3 So this just brings the alcohol program in line
4 with the rest of the forensic discipline.

5 CHAIRPERSON KIMSEY: And this is where I guess
6 I'm not -- the other forensic disciplines have no state
7 oversight?

8 COMMITTEE MEMBER LOUGH: No.

9 CHAIRPERSON KIMSEY: Okay. So the Department of
10 Justice doesn't license crime labs or nobody currently
11 licenses?

12 COMMITTEE MEMBER LOUGH: No, forensic science,
13 everything we do is an open book. It is regularly
14 inspected. Attorneys have discovery processes in place
15 where they can obtain any information they want at any
16 time. They can come into the laboratory at any time and
17 say, "I want you to analyze this sample," alcohol being
18 the simplest. They could come in and have us analyze it
19 right in front of them if they wish.

20 And then we have policies in place where it's
21 routine that samples are preserved and can be portioned
22 off and sent to a lab of their choice for independent
23 examination. That's all set up on the routine basis. So
24 forensic work is quite different from other types of, for
25 instance, clinical laboratories.

1 CHAIRPERSON KIMSEY: Right, sure. Okay.

2 But you mentioned that there's some inspections?
3 In other words, I guess what -- I guess, if there's no
4 governmental oversight, there -- I know that there's some
5 third parties like ASCLD, they do inspections. There's
6 other types of I guess oversight. There's just not
7 governmental?

8 COMMITTEE MEMBER LOUGH: Right. The majority of
9 the labs doing this work are public labs. And public
10 laboratories --

11 CHAIRPERSON KIMSEY: Governmental labs? Public
12 meaning county --

13 COMMITTEE MEMBER LOUGH: Most of them, they're
14 either public, like state, city, county, or they're on
15 contract with them. And the majority of those labs are
16 ASCLD-LAB accredited, which is specific for the forensic
17 science discipline.

18 So those laboratories do have an inspection
19 process in place.

20 The defense labs that do the work primarily for
21 the defense community, some private labs, those that have
22 chosen not to be ASCLD-LAB accredited, which is a
23 voluntary program, would not have that inspection process.
24 They may have other organizations they belong to they
25 could probably request, for instance, a NIDA inspection.

1 I'm not really familiar with the clinical sites.

2 But there are probably other avenues that they
3 could go to have that inspection. Or if they wish, they
4 could contact CACLD, my organization, and ask for an
5 inspection. Which I'm sure we could make arrangements,
6 you know, for them to be inspected on a regular basis.

7 But with the ASCLD-LAB accredited labs, which
8 does make up the bulk of them, there is a rigid inspection
9 process in place.

10 COMMITTEE MEMBER SEDGWICK: I might also add that
11 it's not unheard of for a defense attorney to ask for an
12 inspection or a tour and look -- we could come in and look
13 over the records, rather than have the records copied and
14 supplied. And not only defense attorneys, but defense
15 experts as well.

16 CHAIRPERSON KIMSEY: And are there other
17 organizations besides ASCLD that do certifications?

18 COMMITTEE MEMBER LOUGH: There are some other
19 forensic accreditation organizations.

20 CHAIRPERSON KIMSEY: And with the legislation
21 that -- the statute is fairly silent on this. But I know
22 in some of our other programs it actually specifically
23 says that, you know, private third party. And they
24 sometimes are approved by the Department or they're
25 actually named in the legislation, you know, will take

1 over that oversight responsibility. But it seems that the
2 legislation has removed oversight completely from a
3 governmental perspective, is that -- would that be
4 accurate to say?

5 COMMITTEE MEMBER LOUGH: Right, in this case the
6 forensic science, which has the scrutiny of the public.

7 CHAIRPERSON KIMSEY: And for those -- maybe for
8 Sergeant Cardona, who wasn't here for the first meeting, I
9 think the Department had a Forensic Alcohol Program for
10 how many -- 20 some-odd years? -- Yeah, 20 some-odd years,
11 which did license and inspect, provide proficiency testing
12 samples, and did a certain amount of enforcement around
13 personnel standards. And there's pretty much had been a
14 program for quite a number of years that oversaw the
15 industry. And that oversight is what has been removed by
16 1620.

17 COMMITTEE MEMBER ZIELENSKI: What's interesting
18 about it is the bill requires that the legislature -- that
19 the labs actually comply with the requirements of Title 17
20 requirement -- of their components. So it seems to me
21 implicit in that there would be some mechanism of making
22 sure that that is in fact complied with. Otherwise, it's
23 got language in there that mandates the lab shall do this,
24 but no remedy for addressing even checking into that. So
25 it seems to me that probably within the statute there is

1 either some inherent and/or implied authority by the
2 Department to either engage in oversight and/or appoint,
3 like you say, some third entity that would be responsible
4 for doing this. Otherwise the legislation absolutely
5 makes no sense at all, that there would not be -- the
6 order -- it would be like there was no means of either
7 checking on it and/or enforcing it. But it does say that
8 they must comply with this. So --

9 COMMITTEE MEMBER LOUGH: In my interpretation of
10 it when you start with 1216, it starts out, "For
11 laboratories that are to be licensed the following will
12 apply:" And our intention in working with the Legislature
13 was that if you removed that licensing, you have removed
14 all the other applicable sections. And our intent was to
15 maintain the science.

16 COMMITTEE MEMBER ZIELENSKI: But I mean why
17 wouldn't they just simply say that the legislation didn't
18 require any particular compliance at all with Title 17?

19 COMMITTEE MEMBER LOUGH: For fear that there
20 would be an issue starting in January of rogue labs
21 springing up. That was exactly -- they did want to get --

22 COMMITTEE MEMBER ZIELENSKI: Right. But I mean
23 if you have that, then you have obviously very clear
24 legislation that says there is no licensing requirements
25 and there are no requirements with respect to Title 17.

1 And then there's -- the Legislature would be clearly
2 saying the remedy is to address it in court.

3 COMMITTEE MEMBER LOUGH: Well, I think what they
4 wanted was a remedy -- was that this group would be able
5 to come forward and define which areas of the science that
6 they wanted to maintain. And oversight was definitely not
7 an intention --

8 CHAIRPERSON KIMSEY: And I think we can do that.
9 This group can obviously go through the regulations and
10 come up -- but I think that follow up, that next step of
11 who's going to see that it happens.

12 And I think if part of the intention was to try
13 and not have, you know, quote, rogue labs come on board,
14 there's a pretty big gap here, because if -- without
15 our -- without some authority, someone knowing or
16 approving who's doing the work, I think that really does
17 leave open the door.

18 I mean was there some thought on how the rogue
19 labs would be prohibited from working?

20 COMMITTEE MEMBER LOUGH: Well, a rogue lab would
21 have some basic scientific requirements. So as it is now,
22 rogue labs are not required to be licensed, if you will.
23 I mean a defense lab, if that's what we're going to call
24 rogue labs, the defense laboratory was never required and
25 is still not required to follow Title 17 at all. So those

1 labs can still operate in the manner and character that
2 they are used to.

3 We're talking about really the bulk of the public
4 laboratories. And so I think we're pretty safe there.

5 But a lot of the conversation -- we went through
6 a lot of hearings, a lot of committee meetings with the
7 Legislature on this very discussion. And to me the intent
8 was quite clear. And we probably could get someone to
9 come here from the Senate, if we would like, to have them
10 explain, make sure that we have the correct intention.

11 CHAIRPERSON KIMSEY: Yeah. And that might be
12 helpful. Because, you know, in having our attorneys look
13 at it, we thought -- and we came to the conclusion, it's
14 quite clear. I mean obviously we're not licensing, we're
15 not inspecting, we're not proficiency testing. But we
16 thought, well, then if we are -- if we do have oversight
17 responsibility on knowing who's doing this work, how would
18 we know that? And so you think about, okay, well we could
19 ask -- we may have the authority, and this is just
20 hypothetical, to require the labs to register, just to let
21 us know that they're going to be doing this work and that
22 they're meeting Title 17 or whatever. But that really
23 sort of smacks of undercutting the legislation, because
24 you're just substituting licensure for registration.

25 So I think it might be helpful to have somebody

1 come from the staff from the Legislature to talk about
2 some of the intent, because I don't -- we're going to be
3 going through a lot of work here. And Title 17 may be
4 improved. But if it's just sort of sitting on the shelf,
5 I don't know that that's a good use of our time and
6 efforts.

7 If it's a voluntary -- well, maybe that's not
8 true. If it's a voluntary program, that people know that
9 if they're going to be doing this work, they need to meet
10 Title 17 -- but I'm not even sure that's clear -- then it
11 would be a voluntary program, I guess. I don't know.

12 COMMITTEE MEMBER SEDGWICK: I think under any
13 circumstances we need to make it clear that laboratories
14 doing this analysis for prosecution need to meet the
15 requirements in Title 17.

16 The question is: How do others know that they're
17 doing this? And the way we do it is you ask them, you
18 require proof.

19 And whether it's before the fact -- before they
20 do the analysis or after they do the analysis is really
21 pretty much irrelevant as long as they have the right
22 answers. And hopefully, if we organize Title 17
23 correctly, you will have the right questions.

24 CHAIRPERSON KIMSEY: So then the people -- then
25 the oversight sort of moves from the Department of Health

1 Services, you know, to the courts, which is where it sort
2 of -- to some extent it's always been. But I mean it just
3 removes that sort of license, I guess. I mean I hate to
4 use the analogy of a driver's license. But it removes
5 that type of oversight -- governmental oversight that says
6 this laboratory has been looked at and meets Title 17.
7 And now it's going to sort of transfer to the courts to
8 tab that responsibility in this.

9 COMMITTEE MEMBER ZIELENSKI: And the Legislature
10 also seems to indicate that there are requirements done
11 by, you know, ASCLD-type groups or what have you, I mean
12 proficiency tests being, you know, at least done annually.
13 So I mean there is some evidence in the legislation of how
14 they want the labs to be tested, it looks to me like. It
15 pales in comparison to what Title 17 used to require in
16 terms of how they're going to evaluate it, the
17 independence of the evaluation, the number of evaluations.
18 So I mean there is -- the legislation does indicate in
19 here, that I recall reading, that, you know, ASCLD
20 proficiency testing and other proficiency testing
21 requirements, and at least done once annually should be
22 done. But that looks pretty de minimus to me in terms of
23 where it was before. But, again, that's consistent with
24 if idea of kind of deregulating this area and taking the
25 licensing requirements away from it.

1 But the language that they laid out here, you
2 know, saying those regulations are to be complied with,
3 seems to me implicit enough. But there should be some
4 type of enforcement mechanism to ensure that that's met.
5 Otherwise why even include those requirements? Then you
6 could go completely deregulate it, and at that point
7 simply have it's up to -- you got your expert. I have my
8 expert. And the courts and the jury will decide what is
9 proper scientific protocol.

10 COMMITTEE MEMBER LOUGH: With regard to the
11 proficiency testing change, do either one of you want to
12 address that annually -- the single annual requirement
13 that --

14 COMMITTEE MEMBER WONG: With regards to the
15 changes that you see in Title 17, you were saying that it
16 pales in comparison to what was --

17 COMMITTEE MEMBER ZIELENSKI: Again, I'm not a
18 scientist. But it seems to me that there were more
19 involved testing requirements. There were three as
20 opposed to one, if I recall correctly.

21 COMMITTEE MEMBER WONG: Actually the requirements
22 have actually improved. And the reason why is because
23 when an individual such as Paul or myself or Patty would
24 analyze a sample, prior to analyzing a sample for its
25 blood alcohol content, that we had to obtain a license

1 from Department of Health Services in order to do so and
2 be engaged in that type of analysis.

3 However, let's say if an individual such as
4 myself left the blood alcohol toxicology area and went off
5 into -- or arson or firearms or something else for 25
6 years and then came back to blood alcohol just prior to
7 retiring, let's say, I would never be checked for
8 competency or proficiency ever again. There was a once in
9 a career test from DOHS. And, yes, it did have a written
10 test and it did have a proficiency testimony. But once I
11 had received a blessing from DOHS I never had to cross
12 that path again, I never had to be proficiency tested ever
13 again.

14 The new requirements in accordance and in line
15 with ASCLD require that the laboratories have to have each
16 individual engaged in that practice proficiency tested
17 annually at least once a year. Whereas the old
18 requirements were such that the laboratory as a whole just
19 had to have a proficiency test done to maintain the
20 laboratory's license and stature with Department of Health
21 Services' requirements. It didn't say that if you have
22 seven people in that unit, that they all had to do it.
23 Just one person had to do it to show that the laboratory
24 could still be in compliance. But nobody had to ever be
25 tested again.

1 So in that way the requirements are actually much
2 more stringent and much more rigorous now than they were
3 in the past.

4 CHAIRPERSON KIMSEY: Let's see. Anything else
5 you want to talk about with oversight and monitoring? I
6 think it sounds like -- I'm just summarizing -- that it
7 would be beneficial for us to have some presentation maybe
8 from the legislator's office that sponsored the bill about
9 what the idea -- their concept was for the oversight and
10 monitoring of Title 17.

11 Cathy, did you have a comment?

12 REGULATIONS COORDINATOR RUEBUSCH: It's very
13 helpful to have the intent. There's certainly nothing
14 wrong with that. The difficulty that it comes down to is
15 we're stuck with what the statute says specifically. It's
16 helpful to understand what they had in mind. But since
17 there's nothing in the statute that point blank says what
18 it is that the oversight is to entail, as Mr. Zielenski
19 pointed out, that it is difficult to determine that we
20 really have the authority to have any oversight
21 whatsoever.

22 So we need to keep that in mind -- I'm asking you
23 to keep that in mind when you're considering this, because
24 this is a critical component to how these regs are going
25 to need to be structured, because the question is going to

1 continually come up, "What's the point? If they don't do
2 this, what happens?" And if the point is the courts are
3 going to decide, then that's what we're going to have to
4 say is the mechanism.

5 So we just have to keep this in mind in terms of
6 how we structure these regulations so that we don't think
7 we're doing something we're not doing, because it will end
8 up coming back and essentially creating our inability to
9 demonstrate -- of the regulations.

10 COMMITTEE MEMBER ZIELENSKI: I mean one of the
11 things that I see is, from the standpoint of justice, you
12 want to get this right. I mean you want to make sure that
13 innocence people are not convicted and people that are
14 guilty are convicted. And this is pretty detailed stuff
15 in terms of how you test this. So it would seem that we'd
16 want to make sure that we -- there's an ambiguity in terms
17 of what the legislative intent is here. It seems to me
18 they're certainly suggesting that certain things need to
19 be followed. What is the proper and correct scientific
20 protocol that ought to be applied in this to make sure
21 that justice is done? I think that's what -- society
22 would look at from that perspective. I think that perhaps
23 the legislators would look at it in that perspective.

24 So what would be the right scientific things to
25 do with respect to that? I mean if somebody says, "You

1 don't have the authority to do that," then they could out
2 there and say, "Well, you didn't have the authority to do
3 that in the first place." And then at least from a
4 prophylactic standpoint we would have designed regulations
5 that were designed to effectuate justice.

6 And so it seems to me to look at it from that
7 perspective and somebody legally on down the road, a court
8 looks at it and says, "The Committee didn't have the
9 authority to do that," then -- well, then we would have
10 been preempted. But in the meantime we've got this
11 ambiguity, and the question is "What is the right thing to
12 do?" Because it doesn't say there will be no oversight,
13 there will be nothing that can be looked at in terms of
14 evaluating the integrity of these labs. So the question
15 then becomes, with that language that does require
16 compliance, if -- it doesn't make a lot of sense to me to
17 require that but yet have no means of looking at it and
18 then forcing it in doing anything with it to make sure
19 that justice is accomplished.

20 So I mean if we went with it from that
21 perspective, that there is some oversight, and the
22 scientists here could say, "This is what ought to be
23 done," then it seems to me maybe we ought to approach it
24 from that perspective, unless somebody totally disagrees
25 with -- but I don't understand why you'd want to totally

1 deregulate it but have language that says certain things
2 have to be complied with.

3 CHAIRPERSON KIMSEY: And I think maybe from our
4 regulatory writing perspective, there will be -- maybe we
5 need to look at it in two ways: There will be some
6 oversight yet to be defined, I guess, or clarified; or
7 these compliance are going to be voluntary.

8 COMMITTEE MEMBER ZIELENSKI: But if you don't
9 take a look at -- in the law they say it's the least
10 adjudicated indicated elements, which means breaking it
11 down to its fundamental components at the outset, just
12 define legislation that way. Then you have basically a
13 skeleton afterwards. In other words when you're looking
14 at it now, say, "What would be the proper thing to do?"
15 And we're going to go through the regulations now with the
16 idea that we have enforcement and compliance power
17 inherent in your legislation. If you simply decide at
18 this point that you don't have that power, then you've got
19 regulations that have no meat or have no substance. If
20 somebody later determines that would you guys did here was
21 good and it was proper, but you didn't have the authority
22 to do that, well, then you could easily, my guess, go back
23 to where we would have already included the lesser of the
24 process, it seems to me.

25 COMMITTEE MEMBER LOUGH: I think we're ahead of

1 that, because by requiring the science in Title 17 to be
2 defined, we are making sure that people who do this in
3 California are doing it -- at least doing it for the law
4 enforcement are doing it correctly. And the compliance,
5 as we said, comes back to the courts. I think that's
6 completely different than had we eliminated all of the
7 science and then there was no definition of what was
8 required to do this kind of work.

9 So we very clearly will spell out the science
10 that's required. But like all other forensic science
11 disciplines, there's no -- no one to come in and check it,
12 because the courts are what check it. That's what makes
13 it unique from other disciplines.

14 CHAIRPERSON KIMSEY: Yes, Cathy.

15 REGULATIONS COORDINATOR RUEBUSCH: I just want to
16 point out -- I appreciate what you're saying. I'm a
17 nurse, and so I do have a scientific background, I do have
18 an understanding of what you're going after.

19 Here's my concern: If we lay out these are the
20 specifics, you know, the minimum requirements, because
21 it's what's reasonably necessary to ensure competence,
22 that's what the statute requires, these are the minimums
23 we're saying you shall do because that's the language
24 we'll likely be using because there's no point in using
25 any other language if we're using -- not mandating

1 language, there's no point in writing the regulation.

2 Okay. If that's the case, if a laboratory, any
3 laboratory, public or otherwise, because of whatever
4 reason, some new science that comes out there and comes up
5 with something else that truly is not what is in our
6 regulations, yet when they go to court and they ask a
7 question -- the attorneys ask the question, "What makes
8 you qualified to do this?" And they can lay out their
9 science. And it's perfectly valid. And they can back it
10 up with studies and the whole nine yards. And you've got
11 another expert who comes in and says, "Absolutely, we
12 agree." If it contradicts what's in the regulation, is it
13 not valid? Is the evidence that they're presenting not
14 valid? That's the dilemma that's going to come up.

15 I don't know what the court would rule. I'm not
16 an attorney. I don't know if they'd say, "Well, you
17 didn't meet these regulations. So, therefore, it doesn't
18 matter how good your science is," or if they'd say, "Gee,
19 sounds good to me," jury over there says, "Sounds good to
20 me," we've just blown up our regulation.

21 So I'm just bringing back to you the courts as a
22 mechanism of enforcement may blow up our regulations. And
23 if that's the case and you feel okay about that, I just
24 want you to understand this mechanism of regulation -- or
25 enforcement isn't foolproof that's going to say, "Science

1 is set. We're ready. Thank you very much." I realize
2 this Committee's going to meet every five years,
3 hopefully, to reassess these regulations and, hopefully,
4 update as new science comes. But the bottom line is:
5 This is not a foolproof mechanism to be sure that the
6 science is adhered to in a regulatory format. I just
7 wanted to --

8 COMMITTEE MEMBER LOUGH: Right. And I appreciate
9 that.

10 It should be understood that having a license in
11 itself can be a false sense of security. "I'm licensed
12 so, therefore, our lab is doing it correctly."

13 And the statement that you brought up, Torr, that
14 a battle of the experts would ensue, well, we have that
15 now. We have the public laboratories that are really
16 limited in scope in what they can say. And we have
17 defense experts that, I will tell you, go way outside of
18 bounds. And that's what happens in the Court room.
19 That's --

20 COMMITTEE MEMBER ZIELENSKI: No, I mean -- I'm
21 not looking at these regulations really with the idea that
22 they're going to -- I don't think these regulations are
23 going to really affect -- it may have some weight in terms
24 of the admissibility of the evidence. I mean right now
25 Title 17, the way the courts rule, it just typically goes

1 to the weight of the evidence. If you did not comply with
2 Title 17, as long as they're Kelly-Frye certified, what's
3 generally accepted science within the community, it's
4 going to come in and the court to say, "You didn't
5 comply," that goes to weight, you can argue these
6 standards to the jury.

7 So most of time these regulations are not going
8 to impact the admissibility of the evidence. It may go to
9 the weight, in which the judge makes a preliminary
10 finding, or it can be argued to a jury. But I'm saying in
11 terms of getting lip science in terms of regulations
12 overall from a large global perspective and reliability of
13 labs, my concern is to get -- have a lab doing the right
14 job. Because somebody wrote -- or some of the information
15 that came to me was that both of these cases resolved in
16 pleas. I mean -- and that means when you have a thousand
17 cases that come through, probably a good 96, 97 percent of
18 those cases are going to resolve with a plea, either to a
19 lesser charge or to whatever the charge is, and that's
20 going to be based on the science. So there's a huge
21 interest in having sure that our clients basically are
22 pleading to charges because the evidence and the science
23 is solid.

24 CHAIRPERSON KIMSEY: Any other comments from the
25 Committee? We have some people in the audience that would

1 like to comment. But anything else from the Committee.

2 And we can all come back to it.

3 But a gentleman on left here first and then the
4 gentleman in the blue.

5 CHAIRPERSON KIMSEY: Can you come sort of up
6 close to where we can hear you a bit better.

7 I don't think there's a microphone there, but --

8 MR. ZEHNDER: Yeah, there is. If I know how to
9 use it.

10 My name's Jeff Zehnder, Drug Detection Lab,
11 Sacramento.

12 I don't know how you're going to keep the science
13 intact without having some kind of oversight. And I'm not
14 talking about just public labs. I'm talking about public
15 or private. We're all the same, we're all doing the same
16 work, and we all need to be regulated the same, evenly and
17 fairly.

18 I think -- and the other thing is to let the
19 courts do it, I think that's going to be a big mistake
20 because of the deficiency in the sheer number of cases
21 that deal with alcohol. You can't have every case with
22 alcohol being tried in the courts just to see if the
23 science is okay.

24 What we need is good science, we need that to be
25 regulated, and we need oversight. And we need fair

1 oversight. And I think that's the most efficient way to
2 handle it. And I'm hoping that you'll take that into
3 consideration.

4 CHAIRPERSON KIMSEY: Thank you for your comment.
5 Gentleman in blue.

6 MR. PHILLIPS: My name is Bill Phillips. I'm a
7 forensic toxicologist in charge of the blood alcohol and
8 toxicology programs with the Department of Justice.

9 One of issues that the nurse brought up was
10 evolving technology that might move into the courts.
11 There is a mechanism of competency that is discoverable in
12 the courts. The courts use either the Kelly-Frye -- and
13 your public defender mentioned that, the Kelly-Frye
14 hearing and also, at the federal level, Daubert as to
15 whether technology is appropriate. So therefore there is
16 a tool within the courts that can be used to challenge any
17 new technology that would come forward. Any other
18 forensic discipline I have to mention that -- trace
19 firearms, controlled substances, DNA, any of those
20 disciplines there is no regulation.

21 There is accreditation of a laboratory of
22 acceptance by the Court. The Court can ask and the public
23 defender can challenge and have that test -- have a retest
24 done by another expert and can bring that information into
25 the court. They can ask you at that time, Do your

1 standards meet the standards of the acceptance of the
2 scientific community? Did you do a control? Did you do a
3 blank? Is there any issues over contamination?" All of
4 those are appropriate and asked in the court.

5 So I'd say regulation oversight, right now what's
6 going on, the license has gone away. What does the Court
7 do with blood alcohols right now? They ask, "Are you
8 licensed?" "No, we're no longer licensed." Do you follow
9 Title 17? That's what the current -- that can be asked.
10 Right now that can be asked and answered.

11 CHAIRPERSON KIMSEY: Okay. Thank you.

12 MR. PHILLIPS: Thank you.

13 CHAIRPERSON KIMSEY: It comes to my mind, as a
14 result of this would -- and I am not obviously involved
15 with the court system. But is this going to be
16 transferring certain amount of workload to the courts? I
17 mean are more cases not going to be pled as a result of
18 this, do you think? Or is this not going to affect sort
19 of the workloads of the courts which you presume?

20 COMMITTEE MEMBER ZIELENSKI: I'm not certain that
21 it will ultimately affect the workload of the courts. It
22 may depending upon -- I mean if the word gets out -- for
23 instance, we have a case, lab results come back from the
24 D.A.'s office. The client says, "I don't care what the
25 labs say, that's not correct." We then send it out for a

1 retest. And we find out basically through discovery
2 process of what the lab did in terms of coming to that
3 analysis. Then our expert looks at it. Because, you
4 know, that's what -- I'm not a scientist. I hire an
5 expert to evaluate what they've done.

6 If we find out that something that they've done
7 is in fact questionable, then you're going to have an
8 increase in litigation, because at that point we will have
9 no confidence in the lab and at that point everything is
10 going to be subject to challenge. So I mean that's where
11 it could come out, is that somebody becomes aware of the
12 fact that work is coming out of a lab that's not reliable,
13 there's a basis to attack it.

14 And so that's what I would see would be the
15 potential of increasing caseloads in court.

16 CHAIRPERSON KIMSEY: Any other comments on this
17 agenda item? I think for our next meeting we were going
18 to contact somebody at the legislator's office. But I
19 think maybe we need a more definitive legal opinion on --
20 I mean I guess the legislator's office can speak to
21 intent. But as has been pointed out, the statute is what
22 rules. And maybe we need a more solid interpretation of
23 the Department's role on oversight. I know that one of
24 our -- Goldie -- Ms. Eng did give us, you know, an initial
25 reading. But I guess in my -- please correct me if I'm

1 not saying this correctly -- but there is either some
2 oversight on the part of the Department, and I guess that
3 needs to be defined or clarified, or this is becoming a
4 voluntarily program. Is that accurate?

5 COMMITTEE MEMBER LOUGH: Yes.

6 CHAIRPERSON KIMSEY: Okay. So a bit of a legal
7 question there on the oversight.

8 Anything else that we would want for next time
9 with regards to this?

10 There are some other options, but not from what
11 the statute says. I mean obviously there can be
12 government oversight. It can be moved around to other
13 agencies or whatever. It can be voluntary -- I mean --
14 excuse me -- third-party accreditation, which is sort of
15 the private sector generally approved by government. That
16 could be -- you know, ASCLD could be deemed or a group of
17 accrediting organizations could be deemed by the
18 Department to do this oversight.

19 And then sort of the other category -- I'm not
20 saying that I know all of these -- but obviously then
21 there's the voluntary, that people will say, you know,
22 "We're meeting Title 17." And then obviously, as has been
23 described, it's up to the courts.

24 COMMITTEE MEMBER LOUGH: Well, you know, when we
25 were discussing this with the Legislature, the question

1 that came to our mind is if we really truly feel that
2 there needs to be some state oversight of this program,
3 which is the easiest analysis performed in the crime lab,
4 then the state ought to be involved in the more difficult
5 analyses in the lab. So I mean if you put it into
6 perspective of the whole picture, you know, we're talking
7 about something that is the easiest thing to test, the
8 easiest thing to send out and be retested. And we need to
9 consider that we're just bringing this simple test up to
10 alignment with the rest of it.

11 CHAIRPERSON KIMSEY: And I also get the
12 impression I think that there was -- felt that there was
13 some redundancy in the oversight of the regulated
14 community. There was ASCLD, there was the departments,
15 there was the courts, and that -- you know, there just
16 appeared to be some redundancy. And that sort of gets to
17 the blowing-up-the-boxes type of a perspective.

18 COMMITTEE MEMBER LOUGH: Right. And I think when
19 Title 17 was first written it certainly had its place.
20 And I think especially alcohol because there are so many
21 alcohol trials, so many DUI trials. Most of those
22 defendants have jobs and they can hire attorneys. So they
23 do go to court. But, you know, that was a long time ago
24 when that started. It built a basis, a foundation for the
25 science, which I think most of us agree for the most part

1 will remain. But it is -- we do now have those other
2 areas of redundancy. So that's kind of why.

3 CHAIRPERSON KIMSEY: And historically the
4 forensic laboratory has not had, since I guess it's
5 government -- regulated government -- but I mean you have
6 not had an overall licensing or overall authority from
7 another state agency; you're basically just under the
8 rules of your entity, whether it's a county or city or
9 state?

10 COMMITTEE MEMBER LOUGH: Right.

11 CHAIRPERSON KIMSEY: Okay.

12 Okay, has -- yes, Cathy.

13 REGULATIONS COORDINATOR RUEBUSCH: I'd just like
14 to interject something here in response to what you just
15 said. With that reasoning -- because I'm always thinking
16 so justification for reg, because that's what I'm
17 always -- that's the way I think about the world. With
18 that being the case, why regulate them at all? I mean if
19 this truly -- you know, science or otherwise, if this
20 truly is the simplest or least involved forensic analyses
21 performed and we don't regulate the other ones, I mean I'm
22 just thinking from a logical perspective, why regulate at
23 all? And I think we're going to need you to answer that
24 question. So that's why I'm asking for -- so that when we
25 write the regs and we're saying these scientific elements

1 must be met, why? Because if they don't have to be met
2 for other folks, you know, other -- much more stringent
3 and difficult testing, why regulate this group at all?

4 COMMITTEE MEMBER LOUGH: And just for your
5 background and information, when DNA came on board, for
6 instance, that was a brand new technology for forensic
7 science. It was used in the clinical setting, but not for
8 forensic science use. And when that came aboard, you
9 ended up having a group of people within the DNA community
10 that got together and say, "Hey, wait. We have to have
11 some minimum regulations." So even though there's no
12 state oversight, the group itself formed a group that
13 said, "This is what we would like to see happen."

14 REGULATIONS COORDINATOR RUEBUSCH: So it's -- but
15 it's professional regulations.

16 COMMITTEE MEMBER LOUGH: Yeah. And it's
17 just that --

18 REGULATIONS COORDINATOR RUEBUSCH: So they set
19 their own standards.

20 COMMITTEE MEMBER LOUGH: Right. And we've
21 already done that. We did that 20, 30 years ago. So why
22 would you start with a blank slate when you already have,
23 you know --

24 REGULATIONS COORDINATOR RUEBUSCH: So, again, I
25 bring it back to: If that's the case and the regulated

1 community regulates itself -- and obviously the
2 Legislature thinks that sounds good to them too -- so why
3 regulate at all? Because you are doing it by another
4 mechanism, so why does Title 17 need to say another -- say
5 that mechanism also?

6 COMMITTEE MEMBER LOUGH: Right. And you have a
7 point, because the lab -- those labs that are accredited
8 already have to follow good guidelines. It's just those
9 that are not accredited that we would have no control
10 over, that choose not to be part of our professional
11 organization could go and do anything they want.

12 So we're just trying to help, you know --

13 REGULATIONS COORDINATOR RUEBUSCH: But can they
14 do that in other areas also? I mean like DNA testing,
15 could they just do whatever they want if they aren't part
16 of their professional group?

17 COMMITTEE MEMBER LOUGH: Well, the guidelines for
18 DNA with these -- they have these technical working
19 groups. What you would have to have happen is the
20 technical working group to come and say, "You have to do
21 this." But there's nothing that keeps some outlying lab
22 from saying, "I'm not going to follow that." And then
23 that's why you go to court.

24 REGULATIONS COORDINATOR RUEBUSCH: So I'm just
25 saying again --

1 COMMITTEE MEMBER LOUGH: Why would you blow up
2 the box?

3 REGULATIONS COORDINATOR RUEBUSCH: Well --

4 COMMITTEE MEMBER LOUGH: Because in the
5 meantime -- in the meantime you could have all of these
6 labs do this and -- as scientists, we didn't want to blow
7 up the box. We are the ones that prevented that.

8 REGULATIONS COORDINATOR RUEBUSCH: No, I
9 appreciate that. But I'm trying to think how am I going
10 to justify this to the powers that be that are going to
11 say, "You don't have the authority to do this"?

12 COMMITTEE MEMBER LOUGH: Yeah. Well, and if they
13 do --

14 REGULATIONS COORDINATOR RUEBUSCH: I've got to
15 give them why we've got the authority.

16 COMMITTEE MEMBER LOUGH: Yeah. And if they want
17 to just blow up the box, they can. But at least we went
18 on record trying to keep the science.

19 REGULATIONS COORDINATOR RUEBUSCH: Okay. So
20 we're --

21 COMMITTEE MEMBER LOUGH: So we didn't have to
22 work backwards.

23 REGULATIONS COORDINATOR RUEBUSCH: Okay.

24 COMMITTEE MEMBER LOUGH: There are dipstick tests
25 you can do for alcohol.

1 REGULATIONS COORDINATOR RUEBUSCH: Sure, and I
2 appreciate --

3 COMMITTEE MEMBER LOUGH: You can't do that for
4 DNA, you know. So we just don't want someone to, you
5 know --

6 REGULATIONS COORDINATOR RUEBUSCH: I'm trying to
7 build our statement of reasons is what I'm doing.

8 COMMITTEE MEMBER LOUGH: Oh, yeah, sure. And we
9 can certainly work on that.

10 REGULATIONS COORDINATOR RUEBUSCH: Well, we're
11 going to have to because that's going to be a critical
12 piece, because the argument being -- and they can read
13 legislative intent. I mean I've read the whole
14 legislative analysis. And one of the big components of it
15 was, you know, rest of forensic-type analyses are not
16 regulated. And you're saying they're done by their own
17 professions. At any rate, great, whatever. So we don't
18 need this.

19 So I'm saying with that being the case -- that's
20 on record -- why do we need this? And that's what we're
21 going to have to say. And it can't just be because of
22 these guys out there and we know they're bad guys. You
23 know, there's bad guys in every one of them. And if the
24 courts are the mechanism to determine that the bad guys
25 are bad guys and good guys are good guys, why can't the

1 court be the mechanism to do the same thing and that the
2 standards are set in the same way and everybody fights the
3 battle in that mechanism? So we need to answer that
4 question. That's what I'm asking.

5 So think, folks, because I mean that's the answer
6 I'm going to need to write this statement of reasons.

7 Mr. Larson.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

9 Yeah, but because I'm trying to keep my comments
10 technical and scientific as opposed to political, the
11 notion, and it's been raised several times and responded,
12 that this is the simplest test the crime labs perform, I
13 think has to be -- it has to be placed in some
14 perspective.

15 Typically this is a gas chromatography test based
16 on direct injection and toxicological analysis. It would
17 qualify as a highly complex -- in fact it does quality as
18 a highly complex analysis with CLIA rules. The subject
19 therefore is a full gamut of CLIA requirements.

20 It is simple if you have staff that are
21 appropriately trained to recognized problems. And it's
22 probably simpler than -- I believe -- I have a great deal
23 of respect for the crime labs. I think a lot of their
24 testing, questioned documents, fingerprint analysis, may
25 be as much art as science. So it is going to be simpler

1 than that. But it is -- just like it came under CLIA
2 rules and regulations, and it would qualify as a highly
3 complex test.

4 CHAIRPERSON KIMSEY: And isn't it also true that
5 the cutoffs -- I mean the actual reading of the result and
6 the -- at a difference between, you know, I think it's a
7 hundredth of a point or whatever, a tenth of a point, it's
8 really a fairly significant result. In other words you're
9 considered to be intoxicated at one level and not at a
10 tenth less.

11 COMMITTEE MEMBER LOUGH: Not necessarily, because
12 there are two sections to the code. So there -- you have
13 an A and a B section. So one can be -- have an alcohol
14 level of .04 and still be under the influence if the facts
15 are there. So --

16 CHAIRPERSON KIMSEY: Yeah. No, I understand
17 that. But at some point --

18 COMMITTEE MEMBER ZIELENSKI: You're right. You
19 mean an 08 --

20 CHAIRPERSON KIMSEY: -- 08 --

21 COMMITTEE MEMBER ZIELENSKI: -- percent you're
22 nailed --

23 CHAIRPERSON KIMSEY: Right.

24 COMMITTEE MEMBER ZIELENSKI: -- and 07 you're
25 not --

1 CHAIRPERSON KIMSEY: Right.

2 COMMITTEE MEMBER ZIELENSKI: -- under at least
3 the B count.

4 COMMITTEE MEMBER LOUGH: Correct, right. But you
5 do have both. But if we're talking about quantitative
6 versus qualitative work, having performed DNA analysis for
7 years and performed alcohol analysis, I can assure you
8 that you have to have a good solid scientific background
9 and good skills to be able to do the DNA work, much more
10 than you have to to do the forensic alcohol work. I mean
11 we're not at all demeaning forensic alcohol. You know, I
12 spent my career, most of it, in one way or another
13 associated with the alcohol program. And although it's
14 usually just a misdemeanor, that usually irritates me
15 because I think it's a very, very critically important
16 crime that affects every one of us and all of the
17 families. So I would not diminish the importance of it at
18 all.

19 COMMITTEE MEMBER ZIELENSKI: One of the things I
20 can just comment and, that is, the volume of cases. I
21 mean you have a tremendously significant higher number of
22 cases in which alcohol tests are being done, my guess is,
23 relative to the other cases. Where you're doing DNA
24 testing, those are very -- for the most part, fairly rare.
25 So there's a high volume of those types of cases. And I

1 think that's another reason why you want to make sure that
2 those things are done properly and accurately, because
3 there is such a large volume of those relative to the
4 other types of cases where forensic testing is going to be
5 done.

6 COMMITTEE MEMBER LOUGH: Well, at the same time
7 the San Diego Police Department, for instance, our
8 toxicology cases were probably four times greater in
9 volume than in alcohol and our controlled substances
10 analysis of the solid dope was greater than our alcohol
11 cases. So, you know, it's going to vary from place --
12 some places may only do alcohol. But in our lab the
13 toxicology and controlled substances, which was much
14 greater.

15 CHAIRPERSON KIMSEY: Yes.

16 MR. KALCHIK: Mark Kalchik with the DOJ lab in
17 Fresno.

18 We've got to remember too there's a lot of
19 pressure, if you will, for us to maintain our good work
20 with or without the Department of Health Services.
21 Because if we start messing up, it soon gets around in
22 court, and now you're going to have all of your work
23 challenged rather than just the usual challenges. So
24 there's a lot of impetus to self-police much like we do
25 the other areas. So with or without licensing or

1 accreditation, we do have a lot of impetus to maintain a
2 good workload to put out a good product.

3 CHAIRPERSON KIMSEY: Sure.

4 MR. ZEHNDER: I just wanted to say that --

5 CHAIRPERSON KIMSEY: And your name again for the
6 stenographer.

7 MR. ZEHNDER: Jeff -- my name is Jeff Zehnder,
8 Drug Detection Lab, Sacramento.

9 Alcohol is very simple. I don't think anybody's
10 going to argue that. But there's a hundred things that
11 can go wrong. And, again, coming back to this -- the
12 point here is to protect actually the person who's being
13 arrested, to either be rightly convicted or rightly
14 acquitted. And because of the sheer numbers of cases, we
15 need to have definite regulations that control and allow
16 the quality of the testing to remain high no matter who's
17 doing it. And in order to do that, I -- again, I keep
18 coming back to this oversight -- you have to have a
19 neutral oversight that's fairly given to all kinds of
20 labs, private and public.

21 I know there's a lot of talk about, oh, the
22 public labs are doing all this. The hell they are.
23 There's a lot of private labs that are doing this work.
24 And it needs to be done and regulated to the point to --
25 so that the end result because of the sheer numbers --

1 you're not going to put every one of these cases through
2 the trial. No way. And in order to protect the poor guy
3 that's looking through the cracks, it has to be set out
4 and specified and regulated and overseen so that
5 everybody's doing it equally and the quality is high.

6 I can see that -- well, Title 17 right now has
7 some holes in it. I mean there's some things you can talk
8 about to correct that; for example, calibration of breath
9 instruments and how that should be done. Right now a lot
10 of these hand-held instruments are being calibrated; and
11 then the accuracy's checked with same solution they did
12 the calibration with. Well, that's a simple thing, but,
13 you know, if you don't have a scientific background,
14 you're not going to get that. That needs to be maybe
15 addressed.

16 But I don't see, because of the logistics and
17 just the sheer numbers of people that are being run
18 through the system like this -- and the most efficient way
19 is to make sure -- at least make an effort to get the
20 science up and keep it up, and then make sure that those
21 people that are actually doing it are regulated and
22 overseen and -- God forbid, I say it -- licensed to do the
23 work.

24 And I think that's going to be the safest -- it's
25 going to be the best for the people that this is

1 affecting, average person that's actually being arrested,
2 whether he's guilty or not.

3 And that's all I have to say. Thanks.

4 CHAIRPERSON KIMSEY: Thank you for your comments.

5 COMMITTEE MEMBER LOUGH: Paul, I'd like to ask --
6 find out from Clay how many private labs are licensed --
7 were licensed as of the last licensing? Was it about ten?

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

9 More to the point, we've contacted the labs -- I
10 believe it's nine, six of which are doing law enforcement
11 casework.

12 COMMITTEE MEMBER LOUGH: So there are nine --
13 we're talking about nine laboratories then for the whole
14 state?

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

16 And we also found five. But, your know, I
17 understand San Mateo is where we got the rest. But
18 accreditation in -- was four, four public crime labs.
19 They aren't ASCLD-LAB accredited.

20 COMMITTEE MEMBER LOUGH: Right, they're not in
21 the process. And they have -- they're driven to that for
22 other reasons besides the alcohol program.

23 And I also wanted to let the Committee know that
24 there is now a breath alcohol proficiency test that is
25 going to be offered by Plastech Testing Service. They've

1 done a research -- the research part of that has been
2 completed. It looks very good. And that is going to be
3 available, if it's not already available, to labs. I'm a
4 little bit out of the loop. I believe it is now available
5 to laboratories. So that is a great stride and should
6 make everybody happy to have that available.

7 CHAIRPERSON KIMSEY: Okay. Thank you.

8 One of my major responsibilities as Chair is to
9 sort of keep us to the agenda. And we've spent an hour on
10 this topic. And I think we have some next steps, which is
11 contact the Legislature and sort of get a more definitive
12 legal interpretation of the oversight issue for the
13 Department.

14 But I want to make clear that, you know, we are
15 following the legislation, the 1623, and that very much is
16 quite clear that it did eliminate licensing and
17 inspections and a proficiency testing program. So how we
18 come to oversight for that as a result of that is going to
19 be the legal question. And if there is no real oversight,
20 I would assume then that would mean it isn't going to be a
21 voluntary program. And I know that there may be some
22 feeling in the audience that we should go back to doing
23 licensing. That's not really the purview of this
24 Committee. The purview of this Committee is to look at
25 Title 17 and, let's say, update those regulations.

1 Okay. Back to the first item on the agenda.

2 Oh, yes.

3 MR. PHILLIPS: One comment.

4 I don't believe the Department is still sending
5 out proficiency tests.

6 CHAIRPERSON KIMSEY: I see them --

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 You mentioned that. In fact, the old Health and
9 Safety Code was silent on proficiency testing. But the
10 laboratory programs, the common technique, a common tool
11 was to employ proficiency. The new law is silent on
12 proficiency testing. So I believe you might have
13 misspoke.

14 CHAIRPERSON KIMSEY: Okay.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

16 Telling your boss he misspoke isn't the best --
17 wisest move. But in that particular item, in the
18 particular tool, that particular activity it is not
19 specifically limited by this new legislation of the world
20 permitted by the old legislation. And it's an activity
21 that we continue.

22 CHAIRPERSON KIMSEY: Okay. I stand corrected.

23 COMMITTEE MEMBER LOUGH: And if they had
24 continued it, does the lab who is abiding by the ASCLD-LAB
25 proficiency testing program obligated to take the state

1 test?

2 CHAIRPERSON KIMSEY: It doesn't sound like it.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 No -- yes, in that -- again, at least as -- okay.

5 As ascribed in our advisory that we -- it says to everyone
6 early in the year, January I believe. It's an activity
7 that our regulations -- we use those results in a couple
8 of different ways. It requires to qualify personnel under
9 regulations, required to evaluate the accuracy of the
10 methods under the regulations, again, using those results.

11 The new legislation includes a requirement that
12 labs comply with the regulations as they exist December
13 31st, 2004. So that was an aspect of the current
14 regulations. So it's -- at least for 2005 it's an
15 activity we need to continue and the labs are -- need to
16 comply with.

17 CHAIRPERSON KIMSEY: Okay.

18 COMMITTEE MEMBER LOUGH: For licensing?

19 CHAIRPERSON KIMSEY: Right. Well, that's --

20 COMMITTEE MEMBER LOUGH: You can't --

21 CHAIRPERSON KIMSEY: Cathy's trying to say
22 something.

23 REGULATIONS COORDINATOR RUEBUSCH: Right. And I
24 want to point out that the statute is very specific on
25 that in that the current, you know, regulations are in

1 effect until we promulgate new regulations. However,
2 there is no enforcement mechanism. So if they choose not
3 to do it --

4 COMMITTEE MEMBER LOUGH: Right.

5 CHAIRPERSON KIMSEY: So I'm not going --

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

7 Can we make less samples? Because we're doing it
8 right now. So let us know, and we can put that on
9 blood --

10 CHAIRPERSON KIMSEY: Okay. So there's no
11 enforcement over the proficiency testing that the
12 Department requires?

13 REGULATIONS COORDINATOR RUEBUSCH: Right. And I
14 want to point out that that's what you're going to run
15 into unless we have some magic. And at this point I don't
16 know what that is. I'm looking forward to Goldie Eng's
17 response.

18 CHAIRPERSON KIMSEY: Yeah, I'll put down magic
19 when I talk to her.

20 REGULATIONS COORDINATOR RUEBUSCH: It's going to
21 be on public record, so...

22 CHAIRPERSON KIMSEY: Okay. Any other comments on
23 this agenda item?

24 Let's move back to the first agenda item, which
25 is discussion of questions raised during the initial

1 meeting. And we have two bullets there, a summary of
2 other regulations impacting the laboratories. And I
3 believe we have some handouts in our packets to relevant
4 California law. And the other bullet is identification of
5 current regulations that impede new technology.

6 So let's talk about other regulations impacting
7 laboratories.

8 And staff looked -- we're not saying this is
9 exhaustive. We know it doesn't include OSHA. We're still
10 trying to track down some -- an OSHA expert. You have --
11 it says "Additional Relevant California law" and then
12 "Relevant California Law" in your packet.

13 So OSHA is still a bit of a question. Although
14 it's my understanding OSHA really is only called in when
15 there's an incident. I don't know if they do routine
16 reviews or inspections of laboratories. It's more sort of
17 an after the fact.

18 But we did find under the first document that
19 says "Relevant California Law" -- and I was just going to
20 sort of go over these. I don't know that we need to
21 discuss them. I think -- in great detail. I think we
22 need to be aware of them as we look at Title 17.
23 Obviously we don't want to necessarily be duplicative with
24 Title 17 or we don't want to be in conflict with another
25 California code or regulation. And this is sort of to

1 help us do that.

2 But in the California Constitution there's a
3 right to truth-in-evidence clause or article; the
4 California Evidence Code, admissibility of relevant
5 evidence; the Vehicle Code has driving under the influence
6 and blood alcohol percentage presumptions and there's some
7 regulations there.

8 Then blood alcohol percentages, presumptions,
9 other evidence.

10 Chemical, blood, breath, or urine tests. This is
11 still all under the Vehicle Code. That's a very extensive
12 section, 23612.

13 And then 23614, chemical blood, breath, or urine
14 tests; advising persons submitting to breath tests;
15 admissibility of evidence.

16 So there's quite a bit of California Vehicle
17 Code.

18 Under the "Additional Relevant California Law"
19 there's some Evidence Code: Discretion of court to
20 exclude evidence.

21 And again back to the California Vehicle Code: A
22 chemical test procedure; immediate supervision; police
23 officer's report; service order of suspension: Arrests.

24 And then the Penal Code has a reckless driving,
25 driving under the influence of alcohol or drugs.

1 So this is what staff was able to come up with.
2 I know that Laura was interested in this question and I
3 think Patty also. And I was concerned in trying to get an
4 idea of what the regulated industry -- what, you know,
5 regulatory burden the industry is under. Obviously we
6 don't want to be in conflict or duplicative of any of
7 these.

8 But does this -- does anyone know of other areas
9 of California law that we have not sort of discovered at
10 this point?

11 And we can try and get a bit more information on
12 OSHA. But I don't think that's going to heavily impact
13 our work.

14 So if anyone knows of any other areas of
15 California law that affect the laboratory -- the forensic
16 laboratory or the blood alcohol work that would be done in
17 the laboratory, please let us know.

18 Are there any comments on this information? I
19 mean do we want to go over it in more detail? I sort of
20 started to read through it. And I must say it was -- got
21 bogged down. Didn't have enough time I guess is the
22 correct way to phrase that.

23 So any comments though on this information?

24 COMMITTEE MEMBER SEDGWICK: I'd say the only
25 additional thing that would be relevant, wouldn't

1 necessarily be law, but it could very well be DMV
2 regulations.

3 CHAIRPERSON KIMSEY: Okay. We'll check into
4 that. DMV and OSHA for next time.

5 Identification of current regulations that impede
6 new technology. This was mentioned in the first meeting.
7 And I don't think we have a handout on that. But is
8 anyone aware of some of the -- of anything in Title 17
9 that would impede the adoption of new technology? Other
10 than, as Cathy I think pointed out, when you put something
11 in regulation and it's specific enough, if new technology
12 comes on, it's just not covered, then you basically are
13 excluding that technology.

14 So in some sense just the definitions -- not
15 definitions, but just how you write the regulations with
16 specificity may exclude new technology.

17 Yes, Cathy.

18 REGULATIONS COORDINATOR RUEBUSCH: And
19 unfortunately the Administrative Procedures Act requires
20 specificity. The regulation must be clear. It must be
21 interpreted in only one way. So unfortunately the way
22 Title 17 is written now, because it was written before the
23 Administrative Procedures Act, as I told you all last
24 time, it allows a lot more interpretation now than what
25 ever we rewrite. So just keep that in mind as we're going

1 forward with this process.

2 COMMITTEE MEMBER LOUGH: Without looking at the
3 specifics, I think Title 17 is basically okay. The
4 problems that we had had before was in the oversight of
5 the regulations, where the regulations say one thing but
6 then in the oversight of it there was an interpretive
7 issue. So as they stand, without going through them one
8 by one right now, I don't think they're too far off.

9 CHAIRPERSON KIMSEY: Well, I can see how they may
10 have historically been -- put a damper on new technology
11 just because if there was specificity. So -- but I don't
12 know about the specifics. And in writing Title 17, in
13 looking at our rewrite, which is our responsibility, as
14 Cathy pointed out, we're sort of in a Catch 22 in the
15 sense that -- in that sense in the sense that it requires
16 specificity in the regulations and so that will, because
17 of that, inherently impede new technology. Of course we
18 can --

19 REGULATIONS COORDINATOR RUEBUSCH: Unless you
20 don't change the language as it currently exists in
21 regulation. If you don't touch a reg section, we don't
22 have to explain it. We don't have to tell -- you know,
23 get anybody's approval, Administrative Law -- the Office
24 of Administrative Law doesn't have to say, "Yes, you need
25 the clarity standard; yes, you've met the necessity

1 standard." So there are ways to deal with this. It's
2 just be -- we have to keep these things in mind when we're
3 going. Because if you want to say, you know, we're going
4 to use a particular methodology, but you want to say it in
5 this kind of vague flowery terms, that's not going to cut
6 it. It will not pass.

7 I want to just point something out that you need
8 to appreciate. If the Office of Administrative Law
9 disallows the regulations, they're disallowing all the
10 regulations. They're not just disallowing one portion or
11 one regulation -- you know, one regulatory sentence. They
12 disallow the entire set of regulations and we start over
13 again. So we need to write these right the first time.

14 COMMITTEE MEMBER ZIELENSKI: They give you no
15 direction as to what the problem is?

16 REGULATIONS COORDINATOR RUEBUSCH: Yes, they give
17 you -- yes, they do, absolutely. They give you a legal
18 opinion as to what the problem is. But if we're writing
19 and saying, well, we'll just -- let them throw it out, you
20 know, if they, you know --

21 COMMITTEE MEMBER LOUGH: "Don't waste our time."

22 REGULATIONS COORDINATOR RUEBUSCH: Exactly,
23 please. Everybody's time. It's an incredibly time
24 consuming process as it is, and let's try to do it right.

25 Yes, they'll give us legal advice. If we're

1 lucky, it'll be simple. But if it's something global
2 like, "You guys don't have the authority to do this,
3 period," we're out of the ball game. We're starting all
4 over again. So --

5 COMMITTEE MEMBER LOUGH: If we change the
6 numbering system, is that okay?

7 REGULATIONS COORDINATOR RUEBUSCH: That's easy.

8 COMMITTEE MEMBER LOUGH: Okay.

9 REGULATIONS COORDINATOR RUEBUSCH: That's easy.
10 I'm going to tell you, the wordsmithing part,
11 that's where I come in. I'm going to have to get the
12 right words. What I'm looking for from you is your
13 concepts. You know, you're the ones that are going to
14 decide the big picture stuff. I'm going to help you try
15 to get it into a framework that will get us through this
16 process and get the blessing of the gods here, so that,
17 you know, we will be able to promulgate regulations. But,
18 you know, I'm just throwing in these caveats because I'm
19 educating as we're going along so that you can appreciate
20 what we need to do.

21 COMMITTEE MEMBER LOUGH: Thanks.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

23 It really may be helpful to the Committee to ask
24 someone to elaborate a little more how previously the
25 Department's interpretation of the regulations resulted in

1 inadmission of new technology. Because in the absence of
2 the Department someone else may be interpreting the
3 regulations, whether it's a third-party group, the courts.
4 And they may make the same old mistake that the Department
5 makes. I think it might help if the Committee could just
6 briefly elaborate on that.

7 COMMITTEE MEMBER LOUGH: You know, you have that
8 other book that are your guidelines that follow Title 17,
9 that book about this is how you have to do it. Those are
10 the things I think that -- they have a whole separate book
11 that is not part of Title 17 that is: "This is way you
12 must do it," for the last 20 or 30 years. It's those
13 things, Clay. There may be other ways, something really
14 quick like having to -- whether or not you should make up
15 your own standards and do titrations on those and have to
16 use those for your controls and your standards versus
17 buying missed standards and controls. And, you know, one
18 of them in most of our opinion is a better way to go. But
19 the old interpretation was you had to do it this other
20 way.

21 And, you know, there's a lot of those
22 interpretive stuff. You must know what it is, Clay,
23 because you see our methods come in and you bounce them
24 back. I think you know what they are.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 No, but you constitute the new technology. I'm
2 saying alcohol water solution is not the new technology.
3 I mean early on man discovered you can't drink the stuff
4 straight, so they put water in it. So we've been making
5 alcohol water solutions for centuries. So -- that was a
6 joke, but nobody laughed.

7 COMMITTEE MEMBER LOUGH: Well, you know, if I
8 wanted to -- if my lab wanted to go with a new blood
9 alcohol instrument, I couldn't just get one that was
10 approved. It's considered new technology, so it has to go
11 through your program. And then it can take a long time
12 before you get approval to use that instrument that has
13 been listed as being usable for these purposes by the U.S.
14 DOT. The San Diego Police Department bought those data
15 masters. Those data masters sat there five or six years
16 before we finally got an approved program and then they
17 were canned. They were never used on a single subject.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 Actually the full story though was totalistic --
20 I need to respond to this -- was they were obsolete. That
21 actually is incorrect. The instruments are current types
22 of models. They're used by Orange County Sheriff's
23 Department, they're used by Huntington Beach. L.A. uses a
24 slightly different data master. But the only instrument
25 used was in about six different studies. So the

1 statement, I don't know where it occurred, whether it was
2 origins of the spin city mind of a politician or in the
3 lab. But the statement that they issue it is obsolete.
4 It's simply factually incorrect.

5 Also, I'd like to point out that, you're right,
6 that did take an extraordinary amount of time, the
7 approval of those regulations. But for a record, I went
8 back and checked. After I, you know, listened to Senator
9 Johnson tell the story at one of the hearings, I sort
10 of -- the lab -- personally I believe the labs didn't
11 prepare competent procedures and so we returned them. The
12 lab delayed their response in one case by 18 months and
13 one case by 13 months and one case by 10 months. And in
14 the final go-around probably up to 6 months.

15 So I believe a great deal of the delay that
16 resulted in -- not the elimination of the technology but
17 the postponement of the new technology rests with the lab.
18 And we -- the record also shows we wrote letters, a total
19 of three letters in which we asked the lab to -- you know,
20 we're worried about this. We offered to work with the
21 lab. We asked the lab to either respond or set dates of
22 response, estimated dates of completions. And the lab
23 typically would set dates and then miss those by 6, 8, or
24 10 months.

25 So it wasn't a happy situation. I don't think it

1 reflects the typical response of either the ability of the
2 labs to write competent procedures or the ability of the
3 Department to process this. So I think there's more story
4 there. But the main point is it didn't eliminate new
5 technology. The technology actually still exists and
6 apparently is being successfully used in Tijuana. So
7 there's a happy ending there.

8 COMMITTEE MEMBER LOUGH: Well, that is a good
9 standard for you.

10 With regard to it being obsolete or not obsolete,
11 we would be faced with the situation of having an
12 instrument that requires a time period between the time of
13 arrest closer to the time of driving and when that
14 chemical test can be given to a subject. The newest
15 technology requires -- allows for that testing process to
16 be done in the field closer to the time of driving. That
17 is a huge, huge difference in the courtroom when you're
18 talking about that blood alcohol level and all of the
19 defense issues involved in that.

20 So obsolete in the sense that you have better
21 answers with new technology? No. Obsolete in the sense
22 that the defendant has a better opportunity to have that
23 test taken closer to the time of driving is insurmountable
24 to say, well, we're just not going to buy the new
25 instruments because our data masters are good. So --

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 Most people don't know what you're talking --
3 you're referring to the desirable -- a portable instrument
4 versus a --

5 COMMITTEE MEMBER LOUGH: A portable evidentiary
6 field instrument where after your 20 minutes of waiting
7 and doing FSTs on the person, you can administer the field
8 test right there. In other places -- you might be in San
9 Bernardino County, it might take you an hour and a half to
10 get to to the nearest breath alcohol instrument. And
11 there's all kinds of legal disputes there, which is where
12 it is in the courtroom today. So those labs that are
13 fortunate to be able to buy the newest field instruments
14 that can test at the field closer to the time of driving
15 off gives the defendant the best test they can have.

16 CHAIRPERSON KIMSEY: And I can -- with regards to
17 impeding new technology -- I do oversee to CLIA, the
18 federal CMS Clinical Laboratory Program. And there are --
19 of course those are federal regulations, and so they're
20 outside of our California ADA, Administrative -- APA,
21 Administrative Procedures Act. But there may be some
22 language in there about generalized language about new
23 technology, because it's happening every day, you know, on
24 the clinical side.

25 REGULATIONS COORDINATOR RUEBUSCH: And let me

1 point out. That is a very significant distinction. The
2 federal process of promulgating regulations is much less
3 stringent than California's. California's is the most
4 stringent in the entire United States, bar none.

5 We go to conferences and other regulating
6 agencies and bodies are amazed at what we have to go
7 through to promulgate regulations. It is a fact. It's
8 the way it is. The only way around it is to get it in
9 your statute and you're exempted. We aren't. It's in
10 there. So bottom line is we have to adhere to it.

11 But, it doesn't mean that we can't learn from
12 what the feds do, because they do have some -- sometimes
13 they have some things that I'd just love to be able to
14 grab and use. I've worked with many, many programs that
15 must meet federal regulatory requirements. And our
16 regulations need to reflect those. And we are in a
17 constant battle with the federal government about how we
18 have to work on regulations versus how they are allowed to
19 work with regulations. So unfortunately they're allowed a
20 lot more leeway.

21 The current regulations in Title 17 are very
22 broad and do allow for a lot of interpretation. I heard
23 your statement regards to there's this guidelines book.
24 And I just want to point out to you guidelines are not
25 law. And if you're being regulated based upon the

1 guidelines, that can be challenged. But that's another
2 story. And, you know, bottom line is if you challenge
3 those you probably would have to go to court.

4 But the point being is just understand when you
5 have broadly written regulations, they can be interpreted
6 in many ways. And if you end up in court making the
7 interpretation, it's whatever the Court decides it's going
8 to be. And the fact is courts frequently will look to our
9 statements of reasons to understand what was our point,
10 why were we doing the regulation. So when we write our
11 statement of reasons we want to be clear what was the
12 purpose of this, why were we doing this, what's it based
13 on, so that the Court truly interprets it the way the
14 regulation was intended in the first place.

15 COMMITTEE MEMBER LOUGH: So this statement of
16 reasons will stay with the document?

17 REGULATIONS COORDINATOR RUEBUSCH: Absolutely.
18 It's part of the rule-making file. It goes -- it's filed
19 with the document with the Secretary of State when the
20 regulations are promulgated. It is part of the public
21 record. And it's a critical piece of the public record,
22 and it is used in court frequently when regulations are
23 being challenged or being interpreted.

24 Unfortunately the old regs never had a statement
25 of reasons. And that's part of the difficulty when you're

1 in court as to what was the point of them.

2 CHAIRPERSON KIMSEY: Any other comments from the
3 Committee on these two items, the summary of other
4 regulations or the regulations impeding new technology?

5 Any comments from the audience, from the public?

6 Okay. Why don't we take a five or ten minute bio
7 break here. I know I could use one.

8 We'll start again at 11:35.

9 Thank you.

10 (Thereupon a recess was taken.)

11 CHAIRPERSON KIMSEY: Let's go ahead and get
12 started again please. We're coming back together at
13 11:35.

14 The next item on the agenda, I tend to think we
15 have in our -- discussed this morning a bit. It says:
16 "Review of existing statutes and regulations that impact
17 the Department of Health Services' Forensic Alcohol
18 Analysis regulations. That's a little bit similar to
19 "Other regulations impacting the laboratories." We also
20 had some broad discussions under the oversight about
21 existing statutes and regulations.

22 Is there some aspect of this that the Committee
23 would like to discuss?

24 Yes.

25 COMMITTEE MEMBER LOUGH: I'd like to propose that

1 Department of Health issue an advisory to the labs so that
2 they understand that their performance of the proficiency
3 test was strictly voluntary. That probably should be more
4 clear.

5 CHAIRPERSON KIMSEY: Okay. Other comments on the
6 agenda item?

7 Anything from the public?

8 We have some time here before lunch. And I
9 thought we would talk a bit about the afternoon. And we
10 can -- you know, we can take our hour or half hour or
11 whatever we want to do. I would -- if everyone stays here
12 I think we could probably do something in a half hour and
13 sort of come back.

14 But what we had proposing in the afternoon --

15 REGULATIONS COORDINATOR RUEBUSCH: Paul?

16 CHAIRPERSON KIMSEY: Yes.

17 REGULATIONS COORDINATOR RUEBUSCH: Excuse me.

18 I'm sorry.

19 Bagley-Keene requires that you meet at a
20 scheduled time.

21 CHAIRPERSON KIMSEY: Ah, that's true.

22 Thank you, thank you.

23 So we will stick to the -- but we can take a
24 break between --

25 (Laughter.)

1 CHAIRPERSON KIMSEY: Yeah, but we'll stick to the
2 agenda as printed.

3 Let's see. So we're proposing this afternoon a
4 discussion about the proposed regulation revision
5 concepts. And a little bit of review -- and, Cathy,
6 please correct me if I'm wrong -- the concepts are sort of
7 broad categories, like whether or not we're going to do
8 personnel licensing, whether or not we're going to do
9 proficiency testing, whether or not we're going to do
10 something else. Sort of broad concepts. And I think we
11 should try and get those down today.

12 Now, we do have submissions from three groups
13 that talk about concepts that were submitted. And we can
14 talk over those. Those came in various levels of detail,
15 I mean one of which was practically to the level of
16 writing the actual regulation. I think if we can sort of
17 agree on the concepts, then we might take the two least
18 detailed reports first just to sort of see that we got all
19 the concepts considered. And I think if we can do that
20 today, that will be great, and Cathy would feel very
21 comfortable with that. And then we can sort of get to the
22 level -- if we've gotten all those concepts down, then I
23 think we can go to the more detailed language possibly and
24 get to that.

25 So that's what I was sort of proposing for this

1 afternoon. How's the Committee feel about that?

2 COMMITTEE MEMBER LOUGH: Sounds good.

3 CHAIRPERSON KIMSEY: Do we want to go ahead and
4 start with one of the -- since we're sort of -- we sort of
5 have to be -- we could take a break. But since we're
6 trying to conserve time here -- we do have to sort of take
7 a break from noon to 1. So I would propose that we sort
8 of get started with one of those submission and talk about
9 the concepts just for the use of our time.

10 Does that seem acceptable?

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

12 Has that fit under Bagley-Keene? I mean someone
13 may be flying in to hear the CAT proposal --

14 CHAIRPERSON KIMSEY: That's true.

15 REGULATIONS COORDINATOR RUEBUSCH: It's true.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

17 -- in a private jet.

18 CHAIRPERSON KIMSEY: Okay. So we -- no, thank
19 you very much for the clarification. We are sort of stuck
20 with what's in print.

21 That doesn't say that we couldn't -- no.

22 Yes, Cathy.

23 REGULATIONS COORDINATOR RUEBUSCH: Can I make a
24 suggestion? It's up to you if you wish to hear it.

25 I would be happy to discuss a little more in

1 detail about concepts and what I would appreciate the
2 Committee considering when we review these things.

3 CHAIRPERSON KIMSEY: Okay.

4 REGULATIONS COORDINATOR RUEBUSCH: Would that
5 be --

6 COMMITTEE MEMBER LOUGH: Sure.

7 CHAIRPERSON KIMSEY: That would be good. Thank
8 you very much. And feel free to come up and use the tear
9 sheets there if you would like.

10 And actually the people -- if you're representing
11 an organization that presented something or gave something
12 to the Department that's in packet, if you could consider
13 talking over that from -- when we come back. In other
14 words, if -- I think it was -- if someone represents the
15 Toxicologists Association -- toxicologists, if you could
16 sort of go over with the Committee what was handed out.

17 Go ahead, Cathy.

18 REGULATIONS COORDINATOR RUEBUSCH: Regulatory --
19 the concepts, what I'm looking for, what I'm --

20 CHAIRPERSON KIMSEY: Oh, excuse me just a moment.

21 We had a question -- and this sort of seems very
22 basic. But we had a question over the break on the
23 definition of "regulation". Doesn't that imply a
24 regulatory authority?

25 REGULATIONS COORDINATOR RUEBUSCH: No.

1 CHAIRPERSON KIMSEY: Okay.

2 REGULATIONS COORDINATOR RUEBUSCH: No.

3 Regulation is any rule that government imposes on anybody
4 essentially.

5 CHAIRPERSON KIMSEY: But it's government's
6 imposition, I think. I mean this is sort of I think
7 getting to the idea of oversight.

8 REGULATIONS COORDINATOR RUEBUSCH: I appreciate
9 what you're saying. But, no, we have regulations that are
10 considered standards that may or may not have to be
11 followed.

12 CHAIRPERSON KIMSEY: Followed. Okay.

13 REGULATIONS COORDINATOR RUEBUSCH: Certain
14 legislation required the establishment of standards. The
15 Department creates the standards. They promulgate them
16 through the regulation process. They are published in the
17 California Code of Regulations in one of the titles,
18 depending on what it is. And that's the end of the story.

19 Usually the courts enforce them or don't enforce
20 them, if they get argued into the Court, as to whether or
21 not something met that particular standard. But in terms
22 of the enforcement, but not necessarily.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 Aren't they referred to as standards or best
25 practices or --

1 REGULATIONS COORDINATOR RUEBUSCH: No, no. They
2 are -- you know, such and such shall do such and such.
3 They are mandates.

4 They sound pretty impressive usually. People
5 tend to do them because of how they sound, not
6 appreciating the fact that there's absolutely no mechanism
7 to enforce them. And that could be what we may be doing.

8 What I'm looking for is kind of the basic first
9 step in regulation creation. And this is looking at the
10 concept of "What are you trying to achieve?" And it
11 starts out as this big global idea. It can be something
12 as simple as: We want to be sure people are qualified to
13 do this. We want to ensure certain methodologies are
14 used. We want the science to be good. I heard that being
15 said.

16 We need to identify what are those components.
17 Global is good to a degree. We can start with the big
18 statement of: We want good science. But then I'm going
19 to ask you to say what things demonstrate good science.
20 And I'm not asking for, you know, writing, you know, the
21 results to the third decimal point. That's not what I'm
22 asking for. What I'm asking for are -- you know, there's
23 established methodologies. You know, within our
24 professional organizations we've all looked at these
25 things and said, "This is the one way you do this and you

1 know you get the right answer." And "we've got a paper
2 that shows that" or "we've got some published guidelines
3 that are based on" something, you know. They've got a
4 bibliography attached to them. Something that makes them
5 look like they're supportable.

6 I need those kinds of things, because I have to
7 have a basis for why we're doing what we're doing. I
8 cannot just say, "We want this and we want it really bad,"
9 you know. Emotion doesn't cut it. And I'm not talking
10 about do you have the authority to do this. I'm not
11 getting into that. We're going to have that question
12 discussed formally. I'm just asking for what it is you
13 want to see these regulations do.

14 You know, and I heard a level of "We want this to
15 be something that justice is served." Well, what do you
16 need to show that justice is served? Do you need to have
17 labs have some sort of an accreditation? Do you need to
18 have people have some sort of degrees? Do you need to
19 have this test done in this way? You know, what do you
20 need when you want justice to be served?

21 And then: Why are those things needed? I'm
22 going to always be going back to you and saying, "That's
23 great. But why?" And the reason is because chances are
24 I'm the person who's going to be writing this stuff. And
25 when I'm sitting here writing, I need to know what are we

1 basing this on. And I, you know, may be picking up the
2 phone and calling you and saying, you know, "I'm sorry, I
3 don't understand what you said." I take lots and lots of
4 notes and I tend to be able to take things verbatim. And
5 then I've also got this gentleman over here who's taking
6 everything verbatim. So I'm going to be able to use that
7 to help us.

8 And, incidentally, everything he's taking down,
9 these hearings, are part of the rule-making file, just so
10 you know. It will be in the public record in the
11 rule-making file.

12 CHAIRPERSON KIMSEY: Oh, great.

13 (Laughter.)

14 REGULATIONS COORDINATOR RUEBUSCH: No, this is
15 good, Paul, to be honest with you. This is what
16 demonstrates -- because the Legislature told us in this
17 statute this needs to be a public process. This
18 demonstrates we did that. That's so that we are doing --
19 we're jumping through the hoops that the Legislature has
20 mandated for us to do.

21 But it will also help justify, because these are
22 things that are going to be available to courts when
23 they're trying to determine: Are these regulations saying
24 a particular thing? You know, because try as we might --
25 you know, we'll try to get as, you know, clear as

1 possible, and we're going to be able to write our
2 statement of reasons to say, "This is what it says." And
3 then the lawyer who's looking at it who doesn't know the
4 science is going to say, "Okay, fine, if you say that's
5 what it says."

6 Now, absent public comment, the public has a
7 right to tell us, "He's wrong. That's not what it says."
8 And then we need to respond to that and perhaps modify,
9 depending -- our language, depending on what they say.

10 But bottom line is, when push comes to shove, we
11 are going to be the experts that are telling the Office of
12 Administrative Law, who will rule on whether or not these
13 regulations meet the standards of the APA -- they're going
14 to rely on us, that if we say, "This is what it means,"
15 that that is indeed the case as long as we put together a
16 pretty reasonable argument to that case -- to that effect.
17 So, you know -- and absent any public comment that says,
18 "Wrong. That's not what it says."

19 So bottom line is we have a lot of ability to do
20 a lot here. So I'd like you to help me with: What is it
21 you want to do? How do we go about doing it? And why do
22 we do that? So those are the questions I'm going to be
23 asking -- what, how and why -- through this process.

24 Okay. Not bad. Ten minutes.

25 CHAIRPERSON KIMSEY: Thank you very much.

1 Questions for Cathy?

2 COMMITTEE MEMBER LOUGH: Very helpful. Thanks.

3 COMMITTEE MEMBER ZIELENSKI: And let me just get
4 something clear in my mind. It seems to me that a lot of
5 a part of the afternoon the analysis of the Committee is
6 to go through that Group 8 of the legislation, to go
7 through each of the provisions of that and determine
8 whether or not the language that is already in existence
9 is applicable and appropriate and leave it alone and/or
10 modify that language. So much of what we're talking about
11 here may already be a legitimate articulation of what it
12 is that we need --

13 REGULATIONS COORDINATOR RUEBUSCH: Correct.

14 COMMITTEE MEMBER ZIELENSKI: -- Right?

15 REGULATIONS COORDINATOR RUEBUSCH: And in which
16 if we don't touch it -- and I'm talking about the big
17 section, I'm not talking about subsections -- if we don't
18 touch the big section, we don't have to justify it. So
19 it's a good thing in terms of facilitating this process,
20 if you are satisfied with the way the current regulations
21 are written.

22 Unfortunately, keep in mind, that throughout
23 those regulations licensing is all over the place. So we
24 will have to amend the regulations. And if we open it to
25 amend them, we've got to be sure that we write it. We

1 have to write it.

2 CHAIRPERSON KIMSEY: So we just can't mark --
3 okay.

4 REGULATIONS COORDINATOR RUEBUSCH: I'm sorry, but
5 you cannot.

6 COMMITTEE MEMBER ZIELENSKI: Does anybody know
7 the answer to this question: That is, let's assume you
8 delete all the language dealing with licensing and
9 suspension of a license. Assuming that you implemented
10 certain components that had to be required within the
11 existing legislation and/or new regulations that we
12 revised or amended. Is there any enforcement mechanism,
13 other than license? In other words --

14 REGULATIONS COORDINATOR RUEBUSCH: Not current
15 regs, no.

16 COMMITTEE MEMBER ZIELENSKI: So licensure is the
17 mechanism that's used to make sure that --

18 REGULATIONS COORDINATOR RUEBUSCH: That's what's
19 there now.

20 COMMITTEE MEMBER ZIELENSKI: And there's no other
21 means of enforcing this?

22 REGULATIONS COORDINATOR RUEBUSCH: No, because
23 it's a pretty big enforcement mechanism. It's the
24 traditional enforcement, as Paul pointed out. It's the
25 traditional enforcement mechanism. There are other

1 enforcement mechanisms that are used. But the bottom
2 line --

3 COMMITTEE MEMBER ZIELENSKI: Well, my concern
4 was -- let's assume you leave everything the way it is.
5 And you wanted to somehow show oversight, just simply not
6 by utilizing licensing. Then could you not effectuate the
7 concerns that you have about oversight, just not through
8 the licensing process?

9 CHAIRPERSON KIMSEY: Right. And I think one of
10 the things we were thinking about is what would that be.

11 COMMITTEE MEMBER ZIELENSKI: Right.

12 CHAIRPERSON KIMSEY: Right.

13 And, Cathy, you sort of alluded to the fact that
14 there are other oversight mechanisms other than licensure?

15 REGULATIONS COORDINATOR RUEBUSCH: Yeah, they
16 tend to come from the statutes. And the statutes will say
17 this is mechanism that you use to enforce. You know, that
18 there's some penalties, there's some sort of sanctioning,
19 you know, deficiency identification process. You know,
20 they have to write plans of correction, you know,
21 different things to that effect. It depends on how it's
22 set up, you know.

23 A good example of this is the WIC Program, the
24 Women Infant Children's Nutrition Program. They do not
25 license anybody, you know. The food -- you know, grocery

1 stores want to sell the food. We're going to pay for it.
2 It's just like a food stamp thing, if you people aren't
3 familiar with it, essentially. They sell it to program
4 participants. The program has the right to monitor them.
5 And as part of that is their sanctioning. They can, what
6 they call, disqualify them from the program. That is,
7 that grocery store can't sell WIC foods. Or they can
8 sell, but they're not going to get paid for it. That's
9 the bottom line.

10 So it's a mechanism that is essentially very
11 important to the grocery stores, because they're not going
12 to get money if they're not qualified, you know, if
13 they're not part of the group that can do it.

14 So it's not that they license anybody. But they
15 say, "If you don't meet certain rules, we won't pay you."

16 Medi-Cal has similar type things. They don't
17 license anybody. They determine you are a provider. And
18 then if you don't jump through certain hoops as a
19 provider, they won't pay you. That's a big motivator for
20 a provider.

21 COMMITTEE MEMBER ZIELENSKI: Probably better than
22 licensing.

23 REGULATIONS COORDINATOR RUEBUSCH: In many ways,
24 yes.

25 Yeah, but these -- again, these are programs that

1 are -- they do something for the entity that is being
2 regulated. So it's just another mechanism though of
3 enforcement; because if we don't pay you, that's a pretty
4 big enforcement.

5 COMMITTEE MEMBER ZIELENSKI: Now, those make
6 logical sense to me. If I'm looking at this, is there --
7 again, not having the knowledge that you have about how
8 regulations are implemented and how you effectuate
9 enforcement or oversight. Is there anything that you know
10 of based on the legislation that we have in our SB 1623
11 that would allow there to be some teeth to the oversight
12 with respect to this legislation? Because right now as I
13 look at it, it looks, you know, kind of like there is a
14 requirement of compliance but no sanction for
15 noncompliance.

16 REGULATIONS COORDINATOR RUEBUSCH: That --

17 COMMITTEE MEMBER ZIELENSKI: Is there something
18 out there in space, that obviously I'm unaware, that you
19 might be able utilize a mechanism to have some teeth with
20 respect to oversight?

21 REGULATIONS COORDINATOR RUEBUSCH: You're asking
22 me to give a legal opinion, and I can't give a legal
23 opinion.

24 COMMITTEE MEMBER ZIELENSKI: Okay.

25 REGULATIONS COORDINATOR RUEBUSCH: That's the

1 difficulty.

2 COMMITTEE MEMBER ZIELENSKI: So we're back then
3 to having those people come in that might be able --

4 REGULATIONS COORDINATOR RUEBUSCH: Yes, yes. I
5 am not a lawyer. I do not give the legal -- I don't have
6 the authority to do that.

7 CHAIRPERSON KIMSEY: But at the same time you're
8 not aware of any other --

9 REGULATIONS COORDINATOR RUEBUSCH: I'm not aware
10 of any other mechanism. I can say that.

11 CHAIRPERSON KIMSEY: Right. Okay.

12 With all your regulatory background and expertise
13 and --

14 REGULATIONS COORDINATOR RUEBUSCH: Right. I can
15 say we have other -- we have one very, very, very
16 analogous situation -- well, it's not exactly -- it's a
17 similar situation, where the statute essentially took away
18 the Department's ability -- you know, Department of Health
19 Services' ability to enforce something that they had been
20 able to enforce before and just said, "Set the standards.
21 The courts will take care of it." And that has to do with
22 playground equipment.

23 So the Department did that. We set standards and
24 walked away. That's the end of it.

25 Now, of course the courts have thrown up their

1 hands in total frustration because they're the battlefield
2 when they were not the battlefield before. But that's
3 another issue. It's gone back to the Legislature and
4 they're changing the statute -- or it's in process. Who
5 knows if they'll actually change it.

6 COMMITTEE MEMBER LOUGH: Wasn't there something
7 at one time about maybe blood banking work or something
8 where that used to be something that Department of Health
9 oversaw that program and then there was some new laws that
10 came in?

11 CHAIRPERSON KIMSEY: I can speak to that because
12 that's one of the programs I oversee.

13 We regulate blood banks. And we have been
14 working on some regulations for a period of time. And
15 there's an American Association of Blood Banks, I believe
16 it's called, and they have come up with some national
17 standards and regulations -- operating standards. And we
18 have been trying to incorporate those by, you know, what
19 we call sometimes reference. And actually I believe we've
20 been -- we've been attempting that. We haven't been able
21 to -- I'm trying to remember exactly why we have not been
22 able to. But it was our intention, rather than rewriting
23 regulations or reinventing the wheel, that we would adopt
24 these national standards here in California.

25 And I think it's been held up by the Legislature.

1 That's why --

2 COMMITTEE MEMBER LOUGH: So a lab doing that work
3 that follows those standards can be licensed automatically
4 because they --

5 CHAIRPERSON KIMSEY: Right. That's one of
6 those -- the Department's authority, we transfer that to
7 another entity. And we have -- we have, generally
8 speaking, partially because of our APA Procedures Act, we
9 don't just accept anything that a national organization
10 says. But we have like a 30 or 60, 90 day review period
11 in case they change their regulations. And then we can,
12 you know, quote, adopt those on a periodic basis.

13 So it's a fairly structured --

14 COMMITTEE MEMBER LOUGH: How, if I might ask, did
15 that impact your operation when it could go out to a third
16 party? Did that --

17 CHAIRPERSON KIMSEY: Well, in fact, we were quite
18 happy with it because it removed a certain workload for us
19 writing regulations that would have just been duplicative.
20 And so in our regulatory process it is difficult. And
21 so -- and actually it's -- excuse me. I misspoke. It
22 wasn't the Legislature. It's our own administrative
23 structure that has held us back from adopting those.

24 COMMITTEE MEMBER LOUGH: And that's on tape,
25 right?

1 (Laughter.)

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 So you haven't adopted them yet?

4 CHAIRPERSON KIMSEY: No, they have not been
5 adopted.

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

7 The blood banking organization would have to
8 comply with the state's regulations --

9 CHAIRPERSON KIMSEY: And then we have some
10 basic -- we have some current standards, regulations. But
11 we were in the process of upgrading those when these
12 national standards came around. And our staff thought --
13 professional staff thought they looked very good.

14 REGULATIONS COORDINATOR RUEBUSCH: And that
15 process that Paul's talking about is a very formal
16 process, the incorporation by reference. If we choose to
17 do something like that, I want to tell you it isn't
18 necessarily a lot easier than not writing regulations.
19 Okay? And I'll tell you why. The incorporation by
20 reference, the document, the standards, whatever, still
21 have to be justified. We still have to demonstrate a
22 necessity for them. It's just a -- it's a mechanism,
23 there's a way to do it. Sometimes, depending on what they
24 are, it can be more cumbersome than actually writing
25 regulations, sometimes it's not. It just depends.

1 But, again, the advantage of it is when -- we
2 have a level of -- there's an expertise implied behind it,
3 because it was like a national organization or whatever.
4 Unless somebody blows the national organization out of the
5 water, i.e., the public in comment says, "Oh, no, no.
6 These guys are not the recognized experts. This group's
7 the recognized experts," or, you know, "these guys," for
8 whatever reason," do not meet the requirements of being an
9 expert." Usually who does that would be the public. And
10 they do do that. And when they do it, we have to respond
11 to why they are the expert and justify, or not apply the
12 regulation.

13 COMMITTEE MEMBER LOUGH: So in that line of
14 thinking, does this Committee have the capability of
15 making that third-party requirement, like ASCLD-LAB
16 certification thing that we avoided requiring, that
17 there's only 12 labs that don't have it out of all the
18 labs performing this work, is it possible that that could
19 be the requirement, that it goes to ASCLD-LAB?

20 REGULATIONS COORDINATOR RUEBUSCH: If you want to
21 do that, you can. But you will have to establish that
22 that is what is reasonably necessary to ensure competency.
23 That's the critical piece. We must meet that legislative
24 mandate. That wording in the statute is a critical
25 phrase.

1 CHAIRPERSON KIMSEY: And that sort of gets into
2 sort of what's referred to as third-party accreditation.
3 And the best example of that is under the federal CLIA
4 requirements -- and this is for Medicaid and Medi-Cal
5 services -- medicaid services. The states can contract
6 with the federal government to oversee that program. CAP,
7 College of American Pathologists -- there were some
8 others. There are other private third-party entities that
9 can inspect laboratories to those federal standards. And
10 in that sense they have what is known under the federal
11 regulations as "deemed status" to actually accredit
12 clinical laboratories for the federal program.

13 The state does that as well, you know. And
14 basically part of that -- one of the differences between
15 the various accrediting entities in that program is the
16 cost. You know, there's a state fee. And then -- or you
17 can go out to a private third party. And there's a fee in
18 that kind of a situation. In that situation, they are set
19 up to oversee the federal program.

20 We also have state laws that are more stringent
21 than CLIA. And they are not really qualified to -- or
22 currently have that authority to investigate or -- excuse
23 me -- inspect laboratories for state purposes.

24 So the state licensing program still inspects
25 laboratories for state law, which is more stringent than

1 the federal law. But the private third-party
2 accreditation generally is -- a governmental entity that
3 has the authority grants some of that authority to a
4 private third party. In other words, a lot of times they
5 can do the inspections, they can do follow-up. But the
6 actual license might still come from the state. And the
7 state generally still has authority to go in and inspect
8 that's there's something -- if they think there's
9 something wrong. If there's a complaint, then the state
10 would also go in.

11 COMMITTEE MEMBER LOUGH: Just so I've got this
12 right. Does that mean that we can come up with the
13 science that we would like all labs to abide by, our
14 minimal levels, and that we can choose to have labs be
15 accredited by ASCLD-LAB, for instance, which would take
16 care of the inspection and the oversight process?

17 REGULATIONS COORDINATOR RUEBUSCH: Possibly they
18 would have that combination. But you have to be
19 careful --

20 CHAIRPERSON KIMSEY: The legislation -- I'm not
21 sure the legislation was that specific, you know.

22 REGULATIONS COORDINATOR RUEBUSCH: Yeah, yeah,
23 we -- this is a fine line. And, again, I'm going to say
24 I'm not a lawyer. I can't give a legal opinion. I really
25 want to defer that to the folks who can speak to that.

1 On a hypothetical level, in theory, yes. But
2 there is one component that is a problem, just so you
3 know. And it's part of the APA. And, that is, we are not
4 allowed to regulate in advance.

5 So the point is: We can say you're accredited
6 group standards as of a particular date, i.e., the date
7 that the regulations are promulgated. If ASCLD-LAB
8 changes the standards after that date, it blows the whole
9 thing out of the water, because we're then -- the public
10 did not get a chance to respond to that new standard that
11 ASCLD-LAB came up with.

12 Now, that's part of why generally in the State of
13 California we don't deem as the feds do.

14 Another good example, you know, per what Dr.
15 Kimsey was speaking of, is for hospitals. The Joint
16 Commission for Accreditation of Health Care Organizations
17 has deemed status from the Centers for Medicare and
18 Medicaid Services to accredit, for the purposes of the
19 federal government to pay them Medicare and Medicaid
20 funds, hospitals. And there -- and there are lots of
21 other organizations besides.

22 That's a certification that they get. And, you
23 know, then they are allowed to bill.

24 The State generally has difficulty deeming to one
25 of these organizations because of this problem of

1 regulating in advance. If we put in our regulation --
2 unless the statute says it, i.e., "The Legislature says
3 this group" -- you know, their accreditation means
4 everything is cool. Unless it says that, it's very
5 difficult to put it in the regulation because we're
6 regulating in advance.

7 If the statute says it, then it's a piece of
8 cake, because the statute has the ability -- you know, the
9 Legislature has the ability to do that. We do not.

10 CHAIRPERSON KIMSEY: And a lot of times -- well,
11 I shouldn't say a lot of times. An instance, basically --
12 again, it sort of gets to the Legislature gives the
13 authority to a governmental entity. And then they oversee
14 accrediting authority. There may be more than one. A lot
15 of times it's sort of hard to just choose one. If there's
16 a field of people that are doing this type of work, it's
17 sort of -- the Legislature doesn't like to pass
18 anti-competitive sorts of things. But generally speaking
19 there's sort of a process that entity goes through to get
20 a status from the state to do certain types of work. And
21 it's usually more than one. It's not usually dedicated to
22 one particular entity.

23 Well, I think we've actually gone over our time a
24 little bit.

25 Any comments from the public at this point?

1 So we will reconvene at 1 o'clock.

2 Thank you all.

3 (Thereupon a lunch break was taken.)

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1 AFTERNOON SESSION

2 CHAIRPERSON KIMSEY: Let's go ahead and reconvene
3 at a little bit after 1 o'clock here -- 1:06.

4 And we're going to take up the proposed
5 regulation revision concepts discussion as it is presented
6 on the agenda.

7 We're going to have a review and discussion of
8 regulation concepts submitted by Committee members. We
9 have the California Association of Toxicologists, the
10 California Association of Criminalists, the California
11 Association of Crime Laboratory Directors. Their
12 submissions are in your packet.

13 And I'd asked program to do a quick synopsis of
14 the quick review of what was submitted. And those are
15 also in your packet.

16 So I think the first one that we'll go over is
17 the California Association of Toxicologists. And I think
18 Paul was going to --

19 COMMITTEE MEMBER SEDGWICK: Yes, sir.

20 CHAIRPERSON KIMSEY: -- sort of walk us through
21 that.

22 COMMITTEE MEMBER SEDGWICK: Obviously not
23 selected alphabetically.

24 CHAIRPERSON KIMSEY: No. More as a function of
25 details, the least to the most details.

1 COMMITTEE MEMBER SEDGWICK: Mine's certainly the
2 least. I very specifically chose to not rewrite Title 17.

3 The California Association of Toxicologists had a
4 meeting in early March where we convened nine different
5 topics with nine different moderators. Roughly 45 people
6 the first day. And people went from table to table
7 discussing their concerns, verbalizing their wishes,
8 basically talking about things.

9 Two days later we had a number of other
10 roundtables with other people, with myself as a moderator;
11 and different people joining in, again talking about their
12 concerns, their wishes and what they hoped would happen
13 would come out of this.

14 What I chose to do was put down what appear to be
15 random comments by all these people, simply because there
16 was such a diversity of opinion. And what I'd like to do
17 here is just comment on a few of them.

18 The first thing is: Title 17 is not going away.
19 It will remain, mostly intact, with some modifications.
20 It served a very fine purpose when it was first enacted
21 and when it came into effect in 1970. That purpose I
22 believe is still there.

23 It was well written at the time. It needs some
24 rewriting. The law has changed around it. It needs to
25 keep up with that. My personal opinion, and some opinions

1 that were put out, is it needs to be better organized with
2 clearly defined, easy to find requirements. It's somewhat
3 disjointed as it stands now.

4 One of the people said it should get a more
5 holistic renovation rather than a simple red penciling of
6 the parts folks don't like. I don't know what a holistic
7 renovation is. But I put it down there because it sounded
8 cool.

9 (Laughter.)

10 COMMITTEE MEMBER SEDGWICK: Somebody said, "I'm
11 concerned about laboratory directors inspecting their
12 friend's laboratories," with reference to ASCLD-LAB.
13 They've obviously never been to an ASCLD-LAB inspection
14 where the biggest problem is cleaning up the blood
15 afterwards. I have never seen an inspection that did not
16 find something. I have never seen an inspection that did
17 not find more things than actually turned out to be
18 problems. Inspectors take their job very seriously and
19 will list virtually anything that needs to be addressed.

20 One person said, "We need to keep DHS's oversight
21 of personnel qualification at all three levels. It's
22 important to have independent review of analysts'
23 credentials."

24 Someone else says, "We should eliminate DHS's
25 oversight. Judicial and attorney review is sufficient to

1 show compliance with the qualification criteria in Title
2 17."

3 We've had people very specifically say, "We must
4 have at least two QCs required." That's quality control
5 samples required. Right now Title 17 requires one quality
6 control sample between .1 and .2.

7 Laboratories have tried to put more in, end up
8 giving them other names, because Title 17 only requires
9 one. Whatever this Committee decides, two is probably
10 better than one. In 1970 when this came into effect, one
11 was better than many laboratories were doing. And that
12 was very important. It was important that it be in place.
13 Whatever we decide, we'll certainly go along with.

14 The biggest point of contention appeared to be
15 between who was going to look over things. My gut feeling
16 of the 60 or so people I spoke with in those two days,
17 there were about roughly five who felt that the DHS
18 oversight should remain exactly as is, there were roughly
19 30 who were very adamantly opposed to that, and the rest
20 just sat and listened.

21 My report here was just a list of comments. And
22 that's all I have to say now.

23 CHAIRPERSON KIMSEY: Questions for Paul?

24 This second to the last comment, I assume
25 "Quants" was quantitative analysis? "Title 17 should not

1 require specific courses like Quant."

2 COMMITTEE MEMBER SEDGWICK: Like Quant.

3 CHAIRPERSON KIMSEY: Quantitative analysis?

4 COMMITTEE MEMBER SEDGWICK: Quantitative analysis
5 is what they're referring to. And the reason for that is
6 because even though that sort of a course labeled
7 quantitative analysis was rather common in the '50s and
8 '60s and maybe into the '70s, it's usually combined in
9 with something else now, and it's not a separate course in
10 its own right and maybe not even be mentioned in the
11 prospectus in the discussion of what these courses are.

12 CHAIRPERSON KIMSEY: Okay. Other questions or
13 comments for Paul?

14 Then lets's move on to the Association of
15 Criminalists.

16 I Guess Kenton was going to walk us through that.

17 COMMITTEE MEMBER WONG: Yes.

18 In looking at some of the proposed changes to
19 Title 17 that were solicited from the membership of the
20 CAC, I E-mailed those to Dr. Soliman, and she compiled
21 them together in a list. You all have a copy for looking
22 at those various amendments. And kind of going line by
23 line, looking at what the CACLD has proposed as a possible
24 rewrite and just kind of dovetailing into that. Looking
25 at the observation period versus deprivation period, that

1 should remain as an observation period in the discussions
2 that we've had. And if you look at that, that's the same
3 as in 1219.4. There are.

4 There on point 2, two-minute separation between
5 replicate breath samples. That could be added. We can
6 discuss that issue further possibly in 1219.5.

7 All agree that Title 17 should be amended to
8 mandate that periodic determinations of accuracy be
9 required in duplicate, with an accuracy to the third
10 decimal place. That can be further discussed in 1219.6.

11 But most of these changes are minimal.

12 Item 4 require that laboratories take corrective
13 action to -- following two failed attempts at periodic
14 determination. This one came about because it was
15 noticed, especially from just defense experts that from
16 time to time they reported seeing that in periodic
17 determination of accuracy that they have seen that like up
18 to six times for those periodic cal checks. And it was
19 viewed as the laboratory hunting for their correct value
20 instead of just being able to show that the instrument was
21 in compliance.

22 For example, under current federal regulations,
23 it's mandated that two attempts at periodic determination
24 of accuracy is allowed for the duplicate results. And
25 then after that, if there is additional attempts, that

1 they -- there has to be some investigation into why that's
2 occurring so that it doesn't look like they're just
3 hunting for a result. And that can be expanded possibly
4 in 1220.2 Subparagraph 1.

5 Item 5, it was recommended Title 17 be amended to
6 mandate the additional recording of maintenance records.
7 As there are currently no requirements for this at the
8 present. That has been added and been done in 1220.2
9 Subparagraph 3.

10 All agreed that NIST-Traceable dry gas standards
11 should be accepted without validation by DOHS. The first
12 part, that could be added in 1219.7 Subparagraph B.
13 There's been some notation here that that could be
14 determined, but it has to be defined what is exactly
15 NIST-Traceable referenceable standard.

16 And as an adjunct to that, there were some that
17 even suggested that wet bath simulators should be
18 disallowed. But obviously that can't happen because
19 there's many laboratories that are still utilizing those
20 instruments within California.

21 On Item 7, a reduction of the lower limit of the
22 range of alcohol concentrations for the reference
23 standards to 0.08, in line with the change in the law.
24 And that looks like that's referenced in the CLC -- CACLV
25 amendment of 1218.3.

1 Item 8 require that laboratories maintain
2 complete breath records with production of error code
3 messages. Currently that is not required in Title 17.
4 And that probably has to do more with the fact that as the
5 software changes occurred over time and those capabilities
6 were possible to do, as opposed to the old breathalyzer
7 which didn't, that we should have some type of mechanism
8 for that. And that can be added in 1220.2 Subparagraph A
9 Subparagraph 2. And I think that has to do with complete
10 and proper records as currently noted.

11 Item 9, that we can require proper annotation
12 regarding approved changes. I think that Cathy will
13 naturally take care of those things.

14 Ten, revise the requirements for training of
15 breath instrument operators to permit optional remote
16 training of officers with direct proficiency testing
17 administered by the laboratory. That looks like that has
18 been amended in 1219.10. And that would allow for
19 available or optional remote training, training modules or
20 whether that would be videos or CDs or whatever electronic
21 type things.

22 Eleven, revising of the requirements for record
23 retention from 30 years to 5 years or 7 years. This
24 discussion was brought about that record storage was a
25 problem in the past just due to sheer volume of paper.

1 But now that the data can be compressed so small now, this
2 is not an issue or a problem at all. I think 5 years
3 totally doable. And that's been addressed in 1220.1
4 Subparagraph A.

5 CHAIRPERSON KIMSEY: Are there some standards
6 that courts generally have for these type of records?

7 COMMITTEE MEMBER WONG: For homicides it's
8 indefinite. And for most other things the Statute of
9 Limitations is 7 -- is it?

10 COMMITTEE MEMBER LOUGH: For most everything --
11 for everything is it like --

12 COMMITTEE MEMBER ZIELENSKI: The Statute of
13 Limitations on most felonies is three years. Sometimes
14 it's longer, depending on -- obviously sex offenses and
15 homicide cases, which there is no limitation period.

16 COMMITTEE MEMBER LOUGH: But 5 years ties in well
17 with the ASCLD-LAB requirements. So it's a little more
18 consistent.

19 COMMITTEE MEMBER WONG: And naturally Title 17
20 would have to be amended everywhere where it referred to
21 licensed forensic alcohol laboratory, which no longer
22 exists under 1623.

23 CHAIRPERSON KIMSEY: Thank you.

24 Questions for Kenton? Comments?

25 COMMITTEE MEMBER LOUGH: We'll discuss these

1 later, right?

2 CHAIRPERSON KIMSEY: Yes.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 Regarding Item 1, I think you indicated that you
5 felt that that was captured in the provisions proposed by
6 CACLD. Actually the members are proposing -- more clearly
7 defining or redefining continuous observation to eliminate
8 certain kinds -- certain types of observations which have
9 been permitted in the decision of law. So since the CACLD
10 language is from that point identical to existing
11 regulations, it wouldn't necessarily achieve the goals
12 that the Committee members meant -- that CAC members
13 described.

14 COMMITTEE MEMBER WONG: You're right. I think
15 that what was specifically brought up is that the -- where
16 is it? Defined in a recent Supreme Court ruling that
17 allowed observation of the subject in the back of the
18 patrol vehicle as permissible. There were a lot of
19 individuals or -- not a lot -- I should just say the point
20 was brought up that under the spirit of the law that the
21 continuous observation period should be more direct
22 instead of maybe just happenstance sitting in the back of
23 the vehicle kind of heading down to the main jail where
24 the breath instrument might be housed.

25 So we could define possibly more accurately what

1 that observation period would entail.

2 CHAIRPERSON KIMSEY: And I think Clay found some
3 legal references here to some of that continuous
4 observation.

5 But, anyhow, I think there's some information
6 that we can work with to incorporate that.

7 Other comments, questions?

8 Okay. Let's get to the large package. And these
9 are the CACLD proposed revisions.

10 There's 11 pages.

11 CHAIRPERSON KIMSEY: So I thought I would just
12 summarize or give an overview.

13 It looks like you go by article. So maybe -- I
14 think you had a number of articles. There's four five
15 six -- six articles?

16 COMMITTEE MEMBER LOUGH: Right.

17 What we attempted to do was, same thing as CAC
18 did, is we removed any references to licensing. We tried
19 to group things maybe better, put things in better
20 articles where they could be found. So there's just a
21 little bit of kind of a rewrite, taking the opportunity
22 since we're going to rewrite it to sort of reorganize.

23 Most of the scientific things are pretty much the
24 same as in Title 17. There were some discussions among
25 our membership as far as little things, whether, you know,

1 three decimal places, two decimal places, or two
2 minutes -- waiting two minutes between tests, things like
3 that. That's all stuff that -- some of the stuff my
4 organization is in agreement with and there even those
5 issues that we are not in agreement with, which I figured
6 we would just go forward with what we were all in
7 agreement with at this point.

8 When you say, "We're in agreement with," do you
9 mean internally through your organization you're not in
10 agreement or in between --

11 COMMITTEE MEMBER LOUGH: Well, I'll give you an
12 example. Some of our members want the subject test to be
13 to three decimal places. Not just the accuracy test, but
14 the subject tests. So there was heavy discussion over
15 that issue.

16 Plus DMV says report to two places and -- you
17 know. So there are people who feel that the new
18 instruments can certainly do that, so why not do it. And
19 other people are using instruments that are not programmed
20 to do that. So our own group has those issues, which I
21 don't think are going to affect us at this point, because
22 that would be being even more tougher on us than it is
23 now, the Title 17.

24 CHAIRPERSON KIMSEY: You can always put in
25 generalized language that three decimal places are

1 possible, but the instrumentation that it be included, it
2 may not.

3 COMMITTEE MEMBER LOUGH: And certainly any lab
4 can go over and above what these regulations state.

5 I mean these are the minimal requirements. And
6 anybody can -- we could always add more standards or more
7 things.

8 CHAIRPERSON KIMSEY: Right.

9 COMMITTEE MEMBER LOUGH: So that's what we've
10 kind of done throughout this process. I'd say we worked
11 on this since we first had the approval of 1623. It's
12 gone back and forth numerous times, until it reached the
13 document that you see here. We have changed some
14 requirements. Our focus was the fact that we're talking
15 about the analysis of samples for alcohol concentration,
16 not in who's going to supervise that program and manage
17 the program or things like that.

18 We're trying to keep the focus -- there was also
19 a lot of discussion about training in courtroom testimony,
20 because that's a huge part of it. The analysts are
21 testifying to that, although there's nothing in Title 17
22 that really discusses analysts testifying to that. But we
23 kept that out as well, because we felt that this is about
24 the analysis of samples, not on all the nuances that an
25 individual lab might have their analysts do.

1 We did change the qualifications for people
2 performing the analysis. We now require them to have a
3 degree in the sciences.

4 We did list the Quant. I think we listed that as
5 a -- I don't remember what our final decision was here. I
6 think -- Oh, Quant may even be removed. We referred that
7 topic to our University of California system, who told us
8 that they're just not offering quantitative analysis
9 anymore. It's just a real issue and it just -- so I think
10 we even left that out.

11 However, each laboratory reserves the right --
12 because some of them feel very strongly about keeping that
13 Quant in. So those laboratories that feel that a person
14 should have that class could certainly require that when
15 they're hiring.

16 But we don't want to make it a requirement for
17 everybody.

18 CHAIRPERSON KIMSEY: But sometimes I've seen
19 language, you know -- because it's true of a lot of
20 licensing categories. You see it changes the course's
21 name and then it -- a lot of times through college they
22 didn't like the biology and -- you know, it was genetics
23 and biochemistry or whatever. So sometimes what they've
24 actually done is outlined some aspects of those courses.
25 Not so much the title, but the fact that nucleic acid

1 biochemistry is covered or, you know -- so if it's the
2 wish of the group, I think there are ways that you can
3 talk about certain types of training and education in a
4 generic way that won't become antiquated quickly.

5 COMMITTEE MEMBER LOUGH: Right. And our group
6 felt that this was really slanted toward chemistry when
7 the interpretation is really slanted more towards the
8 biology and physiology. And there are no requirements for
9 that. So we went the whole gamut with that.

10 We updated things that needed to be updated,
11 changing the type of disinfectant. There was an advisory
12 put out, so we made those changes. We tried to make the
13 changes as we saw them to be consistent with the changes
14 in the law.

15 We added little things, such as when you send a
16 split out to a sample, in some locations it's a big issue
17 that they get a court order for a split and the agency
18 gives it directly to the laboratory without going through
19 the D.A.'s office, which would be not really proper
20 procedure. So we specified that, tightened that up a
21 little bit.

22 We did change some of the -- as Kenton mentioned,
23 some of the concentrations and ranges for standards more
24 consistent with the law.

25 We included the use of -- they can -- individuals

1 can still use preparative secondary standards and do it
2 the way it's currently required in the guidelines right
3 now or they can opt to purchase store-bought controls and
4 test them.

5 I think we did beef up the quality control
6 program a bit.

7 We separated breath alcohol from everything so
8 that it pretty much stood alone basically against some of
9 the -- conforming products list. It is an instrument that
10 can be used. And it does have the QC requirements for it
11 and standards of performance.

12 We do allow for other individuals to become
13 secondary trainers according to training programs approved
14 by the laboratories.

15 Those are probably the main changes.

16 CHAIRPERSON KIMSEY: In the records was there
17 much --

18 COMMITTEE MEMBER LOUGH: We had changed that to I
19 think five years.

20 CHAIRPERSON KIMSEY: Right.

21 COMMITTEE MEMBER LOUGH: Yeah.

22 CHAIRPERSON KIMSEY: At least five years.

23 COMMITTEE MEMBER LOUGH: Correct.

24 CHAIRPERSON KIMSEY: I'm just trying to think
25 where to go next from here.

1 These articles -- this may be a question for you,
2 Cathy. The six articles, are those broad enough to be
3 concepts, or are they --

4 REGULATIONS COORDINATOR RUEBUSCH: Well, Let me,
5 if you wouldn't mind, do a little summary --

6 CHAIRPERSON KIMSEY: That's fine.

7 REGULATIONS COORDINATOR RUEBUSCH: -- of what
8 I've heard from three presentations that's offered here in
9 terms of some concepts that I'm hearing.

10 I'm hearing you want science covered. And what
11 I'm hearing the science as -- and please correct me if I'm
12 not interpreting correctly -- methodologies --
13 specification of methodologies, specification to a certain
14 degree of procedures, quality control components, quality
15 assurance program. I'm not sure if I was hearing
16 proficiency testing or not. I heard something that -- in
17 Kenton's presentation that I thought would lead to that.

18 Qualifications of direct analysis personnel.

19 Training of other types of personnel. And I'm
20 assuming these are, based upon what I'm reading, because
21 you called them operators, I'm believing that's police
22 officers?

23 COMMITTEE MEMBER WONG: (Nods head.)

24 COMMITTEE MEMBER LOUGH: Yes.

25 REGULATIONS COORDINATOR RUEBUSCH: Records and

1 record maintenance.

2 Let me see if there's anything else.

3 There was a -- in terms of methodologies the
4 separation of blood, urine, tissue, and breath, because
5 they're different -- because they're done differently in
6 terms of instrumentation, I'm assuming.

7 So the big issues: Methodologies, different
8 types of tissues or samples, things; quality control type
9 aspects; qualifications of the various types of people,
10 and direct types though; and records. So I hear four
11 things coming down. Those are big, with some breakouts
12 underneath.

13 Did that catch it or was there more?

14 COMMITTEE MEMBER LOUGH: I think that would --
15 and proficiency testing would be under the QAQC.

16 REGULATIONS COORDINATOR RUEBUSCH: I would think,
17 yeah.

18 CHAIRPERSON KIMSEY: So the four were QAQC,
19 qualifications of personnel, records and -- and what was
20 the fourth?

21 COMMITTEE MEMBER LOUGH: Methods.

22 CHAIRPERSON KIMSEY: Methodologies.

23 REGULATIONS COORDINATOR RUEBUSCH: Those are
24 pretty -- you know, those are broad. But those are --
25 okay. Under methodology I'm hearing the sample

1 differences. And that is kind of what you're doing here
2 in terms of your broad categories.

3 Now, of course we had -- methodology would --
4 you've got in here collection and handling as well as
5 methods of analysis. So it would not -- it's those two
6 groups too; is that correct?

7 CHAIRPERSON KIMSEY: Yes.

8 REGULATIONS COORDINATOR RUEBUSCH: And then of
9 course it's going to be -- but we can kind of look at that
10 under records also.

11 Okay. Did I miss anything?

12 No, at least at this point.

13 Okay. If you wouldn't mind -- it's totally up to
14 you -- do you want me -- I'm going to ask for -- I need a
15 mandate. Do you want me to do this or not? Committee,
16 you need to tell me.

17 COMMITTEE MEMBER LOUGH: Yeah, we would -- I
18 would like it if she, you know, could stay on top of it
19 and --

20 CHAIRPERSON KIMSEY: Yes.

21 REGULATIONS COORDINATOR RUEBUSCH: Because
22 technically we haven't established that.

23 COMMITTEE MEMBER LOUGH: Yeah.

24 CHAIRPERSON KIMSEY: Right.

25 REGULATIONS COORDINATOR RUEBUSCH: Okay. Thank

1 you.

2 CHAIRPERSON KIMSEY: In fact, are there any
3 objections to Cathy's involvement, just to make it a
4 little more official?

5 REGULATIONS COORDINATOR RUEBUSCH: Okay. I'd
6 like to ask the questions that I asked you all to take
7 down: What, how and why. We've done a bit of a what
8 already.

9 What I'd like to do is take each of these broad
10 concepts and pare them down a little bit more.

11 Okay. So under methodology, I'm going to take
12 these under -- let's start with -- I'm going to break them
13 down by samples. And then we're going to talk about
14 collection, handling, analysis and reporting for each of
15 those things.

16 So blood, urine, tissue. You group that
17 together. Is that acceptable?

18 CHAIRPERSON KIMSEY: I guess the question is it's
19 blood -- it's everything -- is there anything else
20 than breath?

21 REGULATIONS COORDINATOR RUEBUSCH: It's
22 everything except breath.

23 CHAIRPERSON KIMSEY: You don't find alcohol in
24 hair. Okay.

25 So any other areas?

1 REGULATIONS COORDINATOR RUEBUSCH: Well, tissue
2 would be just about everything, I think, other than blood
3 and urine.

4 CHAIRPERSON KIMSEY: That's true.

5 REGULATIONS COORDINATOR RUEBUSCH: Okay. So it's
6 those two categories. So let's -- all right.

7 Now, you want to specify collection and handling
8 for blood, urine, tissue. That's the what.

9 Now, you did go through and give us some points.
10 But how? Under your proposed article 2.

11 Now, I'm going to tell you I don't have -- Title
12 17 as it exists now. Because the \$64,000 question with
13 all of this, folks, is: Do we need to rewrite current
14 regulations?

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

16 Let me ask a quick question. In promulgating
17 this package, will that be -- I mean the way the CAC has
18 presented this, which was sort of de novo, complete new
19 regulations, new numbering. Well, especially in view of
20 the fact that we've characterized this in some instances
21 as tweaking, will we -- will the final package be in
22 strike-out underline format?

23 REGULATIONS COORDINATOR RUEBUSCH: It has to be.
24 If you want to renumber -- and you can do that -- we still
25 have to go through and repeal the current regulation.

1 Repealing the current Regulation involves doing a strike
2 out. We must speak to why we are repealing. And if you
3 are basically taking the same language and sticking it
4 into a new number, if you've reorganized it, folks, it's a
5 new regulation, which means we must speak to why we need
6 it.

7 If are you not -- see, this is -- that's the
8 little caveat, because you're essentially creating a new
9 regulation -- you're adopting a new regulation is what
10 you're doing. You are repealing it elsewhere, adopting it
11 in a new place. Now, we can argue that we're not changing
12 regulation and it's the same thing we're doing. But you
13 are going to need to speak to --

14 CHAIRPERSON KIMSEY: -- the renumbering?

15 REGULATIONS COORDINATOR RUEBUSCH: -- the
16 renumbering.

17 And we're going to need to speak to, you know,
18 some of this -- what I heard you saying: It's confusing
19 now. The regulated public doesn't understand it, cannot
20 find the regulations, or know what is required of them
21 yada, yada. We can say things like that. That's a
22 perfectly valid reason for doing this.

23 But the bottom line is, if you don't use exactly
24 the same language in the adopt, we're going to have to
25 speak to why we're changing, because you are changing the

1 regulation, unless you're using exactly the same language.

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 Let me ask another quick question. Isn't it also
4 necessary to retain the old number as a place holder?

5 REGULATIONS COORDINATOR RUEBUSCH: Yes. It will
6 be there, yes. That's a function of --

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 So reusing numbers is going to be a problem?

9 REGULATIONS COORDINATOR RUEBUSCH: No, no. No,
10 you can do that.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

12 Even after Section 1216 is deleted and Section
13 1216 that was --

14 CHAIRPERSON KIMSEY: -- Anew.

15 REGULATIONS COORDINATOR RUEBUSCH: Yes, you can.
16 You can repeal the old language, you can adopt the new
17 language. In fact, that is frequently done in regulation,
18 that we will use a number that already exists and put new
19 language in it.

20 The way -- if you ever do a perusal of the
21 California Code of Regulation, you will notice that
22 sometimes there are numbers that have a title next to them
23 and there's nothing there. There's no regulatory
24 language. All you have is your authority and reference
25 notes. Sometimes there's history notes. It just depends.

1 That is a regulation that got repealed at some
2 point in this time. And that is a requirement. It must
3 remain cataloged within the California Code of
4 Regulations. Now, if we choose to use the number again,
5 then it will get a new name, the new regulation. But the
6 authority reference in history notes will still exist from
7 the old regulation.

8 So when you get into your question of "Gee, I
9 wish I knew when these things were put together," you know
10 what, we have nothing to say about that. That is up to
11 the Office of Administrative Law, who runs the show when
12 it comes to how the California Code of Regulations is
13 written and the format of it. And nobody -- we have
14 nothing to say about that.

15 So, again, I'm sorry. If you know how to read
16 those notes, you can figure it out. But it's -- most
17 people ignore them when it comes to trying to enforce the
18 regulation because it's really rather superfluous.

19 COMMITTEE MEMBER LOUGH: And the dates are on
20 there, right?

21 REGULATIONS COORDINATOR RUEBUSCH: Uh-huh. When
22 they're adopted it also will tell you if it's done by
23 emergency and if it's done -- you know, when the
24 certificate of compliance was required. I mean there's a
25 whole bunch of stuff in there. But if you -- you know,

1 you care if you write regulations. But other than that,
2 most people truly could care less.

3 But, anyway, we usually recommend you don't
4 renumber if you're retaining the same language, only
5 because the justification component. But we can do it if
6 that's what you want to do.

7 But then getting back to what I was talking
8 about. Blood, tissue, urine currently in.

9 Okay. We've got blood collection and retention
10 in here. We have urine collection and retention. And we
11 have -- this is in current regulation. And then we have
12 breath collection.

13 You put in yours, blood collection and retention,
14 urine collection and retention, and stuck in a tissue
15 collection and retention to be determined by Committee.

16 Okay. So is that what you're looking for, is
17 something broken out like that? That makes sense to you
18 to do it that way?

19 Okay. Now are the components that different or
20 is this the same, other than some updating? Say, your
21 blood collection.

22 COMMITTEE MEMBER LOUGH: It's basically the same.

23 REGULATIONS COORDINATOR RUEBUSCH: Basically the
24 same?

25 COMMITTEE MEMBER LOUGH: Well, except one you

1 can't retain. But you mean the same as what it says
2 before?

3 COMMITTEE MEMBER WONG: Yes.

4 COMMITTEE MEMBER LOUGH: Yes, it is, except for
5 the elimination of the Department approval.

6 REGULATIONS COORDINATOR RUEBUSCH: Right.

7 Well, here it says, "Blood sample shall be
8 collected by vena puncture from living individuals
9 accessible from" yada, yada, yada.

10 Okay. "Sufficient blood shall be alcohol and
11 other volatile" -- I'm not seeing anything about licensing
12 mentioned in here. There's nothing in here that says,
13 "The licensee shall..."?

14 COMMITTEE MEMBER LOUGH: No.

15 REGULATIONS COORDINATOR RUEBUSCH: Okay. That's
16 the bit that's going to cause us trouble. Any regulation
17 that's got the "licensee shall" in it, we're dead in the
18 water, we've got to rewrite it. But that's not in here.

19 So the bottom line is -- I heard you say
20 something about you changed -- updated the disinfectants
21 used and all that.

22 COMMITTEE MEMBER LOUGH: Well, look at the law --
23 look at our 1217.1(a), we updated the Vehicle Code from
24 the 1219.1.

25 REGULATIONS COORDINATOR RUEBUSCH: Gotcha. Okay.

1 COMMITTEE MEMBER LOUGH: And the disinfectants,
2 there was an advisory on the Merthiolate.

3 REGULATIONS COORDINATOR RUEBUSCH: Right.

4 COMMITTEE MEMBER LOUGH: And we left that off.

5 REGULATIONS COORDINATOR RUEBUSCH: Okay. Yeah,
6 that's fine. This is the small stuff.

7 Okay. So are we essentially saying outside of
8 some fairly minor changes that we want to keep Title 17
9 the way it is?

10 CHAIRPERSON KIMSEY: In this area.

11 REGULATIONS COORDINATOR RUEBUSCH: In this area.
12 Is that what I'm hearing?

13 COMMITTEE MEMBER LOUGH: Yes.

14 REGULATIONS COORDINATOR RUEBUSCH: Okay. This is
15 not getting into, "Do we have the right to" --

16 COMMITTEE MEMBER ZIELENSKI: I understand.

17 REGULATIONS COORDINATOR RUEBUSCH: I ain't going
18 there.

19 In the postmortem stuff is essentially the same?

20 And then in order for the analysis of the
21 defendant the remaining portion of the sample shall be
22 retained for one year and --

23 COMMITTEE MEMBER SEDGWICK: That is different in
24 postmortem. Initially it was 90 days.

25 I also do not see in blood collection and

1 retention, under what apparently is antemortem blood, a
2 requirement that the sample should be retained for at
3 least a year. That's the way it is now. And unless I'm
4 overlooking it somewhere in here --

5 REGULATIONS COORDINATOR RUEBUSCH: Subsection G,
6 I think. "In order to allow for analysis by the defendant
7 the remaining portion of sample should be retained for one
8 year after the date of collection."

9 COMMITTEE MEMBER ZIELENSKI: You didn't say what
10 section --

11 REGULATIONS COORDINATOR RUEBUSCH: Well, they're
12 proposed sections. It's in here G1. It's 1219.1(g)(1).

13 COMMITTEE MEMBER LYLE: Now, the question I have,
14 does the -- you talk about postmortem stuff. And then you
15 get the rest of what's in here as 90 days. But then later
16 on there's another subsection. So does that pertain to
17 corner stuff maybe in a year?

18 COMMITTEE MEMBER LOUGH: Yes.

19 COMMITTEE MEMBER LYLE: Because I would prefer
20 not to have the whole next to a year.

21 COMMITTEE MEMBER LOUGH: And that's the input
22 that we got from our group. So --

23 COMMITTEE MEMBER WONG: But that's why you're
24 here.

25 COMMITTEE MEMBER LOUGH: Yeah, that's why you're

1 here. I mean that's --

2 CHAIRPERSON KIMSEY: So it's currently 90 days is
3 the --

4 COMMITTEE MEMBER LYLE: Yeah, it's 90 days.

5 COMMITTEE MEMBER WONG: I mean if you feel that
6 everything gets adjudicated and cleared within 90 days, no
7 problem. And --

8 COMMITTEE MEMBER LYLE: Well, it depends on what
9 the spirit is, because the person that's being tested is
10 not being adjudicated for anything. But a lot of times
11 it's exculpatory. And so, you know, there may be a
12 traffic death where the driver of one car is drunk and we
13 do the -- and he dies. Then he hits somebody else who is
14 running a red light though. So there's a certain amount
15 of culpability that's negated, because, you know, the
16 defense can make the argument that the other guy was
17 drunk. We still save those for 90 days. Well, actually
18 we save them for six months. But I don't want to be tied
19 to 90 days.

20 COMMITTEE MEMBER WONG: Right.

21 COMMITTEE MEMBER LYLE: I mean I don't want to be
22 tied to a year.

23 COMMITTEE MEMBER LOUGH: Yeah, anything
24 postmortem --

25 COMMITTEE MEMBER WONG: Because that would give

1 you a lot of samples, right?

2 COMMITTEE MEMBER LYLE: Well, yeah, there's space
3 problems.

4 COMMITTEE MEMBER LOUGH: Yeah, whatever your
5 association --

6 COMMITTEE MEMBER WONG: Yeah, whatever you think
7 is best, that's right.

8 COMMITTEE MEMBER LYLE: I'd rather keep it like
9 this.

10 REGULATIONS COORDINATOR RUEBUSCH: The less we
11 change, the better, because you're making -- whenever you
12 make something more stringent, we better have a good
13 reason why we're doing that.

14 COMMITTEE MEMBER LOUGH: Yeah. And it says at
15 least though if some agencies wants to --

16 REGULATIONS COORDINATOR RUEBUSCH: Absolutely.
17 The critical piece is we're not telling them they have to
18 do it. They can do anything they want beyond this. But
19 we don't have anything -- we don't care.

20 So what I'm hearing from this is they're really
21 very, very, very minor changes to the current regulatory
22 language.

23 COMMITTEE MEMBER WONG: You mean overall?

24 CHAIRPERSON KIMSEY: In this area.

25 REGULATIONS COORDINATOR RUEBUSCH: In this area.

1 Yeah, I'm strictly speaking to this one regulation
2 section.

3 Okay. This is what I'm going to ask you all to
4 do. Think about this. Because we touched it. If we
5 touch it, we got to rewrite it. Current language is not
6 the best in the universe. It's going to have to be
7 redone.

8 So the bottom line is: How necessary is it to
9 make the changes? I'm not asking you to answer that
10 question. I want you to think about the question, okay?

11 Because what I need from you -- if it's necessary
12 to make those changes, I need a "why?" Based on what?
13 "What's the science?" is what I'm going to ask you.

14 COMMITTEE MEMBER LOUGH: What about those
15 references to approved by the Department? Does that -- is
16 that a cause for change? Because we would have to change
17 that.

18 REGULATIONS COORDINATOR RUEBUSCH: Well, the
19 difficulty that boils down to is: What's your approval
20 mechanism?

21 COMMITTEE MEMBER LOUGH: Well, this was referring
22 to Department of Health.

23 REGULATIONS COORDINATOR RUEBUSCH: What's the
24 approval mechanism?

25 COMMITTEE MEMBER LOUGH: Well, what it means is

1 then you'd have to be sending your methods to Department
2 of Health and they would have to have a staff available to
3 review it.

4 REGULATIONS COORDINATOR RUEBUSCH: Correct,
5 right. And the question is?

6 COMMITTEE MEMBER LOUGH: We don't want to do
7 that.

8 REGULATIONS COORDINATOR RUEBUSCH: Okay. So we
9 want to get rid of that language, regardless.

10 COMMITTEE MEMBER LOUGH: Regardless.

11 REGULATIONS COORDINATOR RUEBUSCH: Okay. So
12 we're going to touch this one.

13 COMMITTEE MEMBER LOUGH: Okay.

14 REGULATIONS COORDINATOR RUEBUSCH: Okay.

15 CHAIRPERSON KIMSEY: So then the approval of
16 methods will be by whom?

17 REGULATIONS COORDINATOR RUEBUSCH: I'm trying to
18 find the language they're using.

19 Is it -- I don't know that there will be anybody
20 to approve them.

21 CHAIRPERSON KIMSEY: Okay.

22 REGULATIONS COORDINATOR RUEBUSCH: But, you know,
23 we're not mandating that they be approved.

24 CHAIRPERSON KIMSEY: Right. But currently they
25 are --

1 REGULATIONS COORDINATOR RUEBUSCH: Oh,
2 absolutely.

3 CHAIRPERSON KIMSEY: Currently they do require
4 approval.

5 REGULATIONS COORDINATOR RUEBUSCH: No, I know
6 that.

7 CHAIRPERSON KIMSEY: Okay. So we're going to a
8 less stringent --

9 REGULATIONS COORDINATOR RUEBUSCH: Absolutely.

10 CHAIRPERSON KIMSEY: -- standard? Okay.

11 REGULATIONS COORDINATOR RUEBUSCH: I think that's
12 pretty much the direction, at least at this point.

13 I'm sorry. Where does it say approval? I'm
14 missing it --

15 COMMITTEE MEMBER LOUGH: Okay, 1219 on the old.

16 REGULATIONS COORDINATOR RUEBUSCH: I want .1. In
17 1219 --

18 COMMITTEE MEMBER LOUGH: Just 1219 general?

19 REGULATIONS COORDINATOR RUEBUSCH: No, no. I
20 don't care about that.

21 COMMITTEE MEMBER LOUGH: Oh, I'm sorry.

22 The new one?

23 REGULATIONS COORDINATOR RUEBUSCH: Yeah.

24 1219.1 -- no, no, no.

25 1219.1: Blood collection and retention.

1 See, every number -- big number. 1219 is a
2 section. 1219.1 is a section. Those are the ones I want
3 to --

4 COMMITTEE MEMBER LOUGH: Okay. That one we have
5 to update the Vehicle Code section?

6 REGULATIONS COORDINATOR RUEBUSCH: That's it.
7 That's almost a Rule 100 change. That shouldn't be any
8 big deal.

9 COMMITTEE MEMBER LOUGH: And so the C underneath
10 it doesn't matter?

11 REGULATIONS COORDINATOR RUEBUSCH: It's up to
12 you, how critical it is to you.

13 COMMITTEE MEMBER LOUGH: Well, then merthiolate
14 is hazardous -- it's more hazardous. Nobody's going to
15 use it. We would like to have it out because it gives you
16 an option of using it.

17 CHAIRPERSON KIMSEY: If it's just an option --
18 well --

19 REGULATIONS COORDINATOR RUEBUSCH: I'm speaking
20 from a -- not from a science perspective.

21 REGULATIONS COORDINATOR RUEBUSCH: Right.

22 COMMITTEE MEMBER LOUGH: It's strictly from
23 regulations.

24 REGULATIONS COORDINATOR RUEBUSCH: We might --
25 I've got to think this one through. We might be able to

1 get away with no -- you know, this is a hazard, so
2 therefore it's --

3 COMMITTEE MEMBER WONG: -- it's been disallowed?

4 REGULATIONS COORDINATOR RUEBUSCH: It's for just
5 striking, you know -- repealing that and that's the end of
6 the story.

7 CHAIRPERSON KIMSEY: I think that's old
8 technology or old --

9 REGULATIONS COORDINATOR RUEBUSCH: Old
10 technology -- well, I think we can -- the reason for it is
11 pretty simple. But the question is the impact on the
12 section.

13 COMMITTEE MEMBER LOUGH: Right. Well, it doesn't
14 really matter to most of us because we use the --
15 chloride.

16 REGULATIONS COORDINATOR RUEBUSCH: Yeah. Well,
17 actually when I read this the first time I said, "And who
18 cares what you use as long as it doesn't have alcohol in
19 it."

20 COMMITTEE MEMBER LOUGH: Right. But that's for
21 that purpose, and that's what this is.

22 REGULATIONS COORDINATOR RUEBUSCH: I know. And,
23 you know, when I was reading this the first time I thought
24 why is any of those specified. Who cares?

25 COMMITTEE MEMBER LOUGH: Right.

1 REGULATIONS COORDINATOR RUEBUSCH: And, you know,
2 I'll tell you something. If you have to rewrite this,
3 that's the set I'm going to say, "Who cares? Why have
4 this at all."

5 COMMITTEE MEMBER LYLE: And you could say that?

6 REGULATIONS COORDINATOR RUEBUSCH: Absolutely.
7 You can repeal it, absolutely. Because all that matters
8 is that it's not alcohol based --

9 COMMITTEE MEMBER LOUGH: Right.

10 REGULATIONS COORDINATOR RUEBUSCH: -- so that it
11 doesn't interfere with the tests. End of discussion.
12 That's why we're repealing it.

13 Yes, you can say that.

14 COMMITTEE MEMBER LOUGH: There are a lot of
15 things we left in just because we weren't going to bother
16 changing it because we didn't have any reason to.

17 REGULATIONS COORDINATOR RUEBUSCH: Okay. Here's
18 the point: We can rewrite these completely and make them
19 real. Or we can get around a lot of this and not touch
20 reg sections because we don't want to get into what we
21 have to do to meet the APA.

22 The first is going to take a lot of time to be
23 done. There's probably bases for a lot of it. It's going
24 to take probably a subcommittee sitting down and going
25 line by line through this.

1 We're talking an estimated two to three years.

2 I'm sorry, Kenton.

3 It's a lot of work. This is not a small process.

4 The other way can be done much -- we can
5 facilitate it. It's still going to be at least a year,
6 I'm going to tell you that, just because of what I have
7 heard in public comment in this process. Because once we
8 go out to public comment, all these people sitting here
9 and a whole lot more will officially weigh in, and we must
10 respond to those things. Those responses to comments take
11 a long time to draft.

12 We will do our best to address these issues up
13 front, so that we write into our statement of reasons the
14 things that we need. So that when we have to respond to
15 comment, we will point to those things and say, Thank you
16 very much. However, as we said in the statement of
17 reasons, this is the point." That's how it's done.

18 If something is introduced in public comment that
19 has not come up before in consideration, we say, "Gee,
20 great idea. Let's do it that way." Then we will respond,
21 "Gee, great idea. Thank you very much. The Department
22 has chosen to accept the comment and has changed
23 regulations," yada, yada, yada. And you do that process.

24 But it is a time consuming thing to respond to
25 comments. We have one year from the date of public notice

1 to complete the process, or we start over again, i.e., go
2 to public notice, and public comment will start again. It
3 takes frequently that amount of time to do it when you are
4 rewriting an entire reg package. The less we rewrite, the
5 better we are off -- the better off we are, the faster the
6 process will go. Because the only thing the public gets
7 to comment on is what we change, not what's currently
8 there. I mean they can comment. But we will say, "Thank
9 you very much. It's outside the scope of the rule-making
10 process."

11 CHAIRPERSON KIMSEY: I know that some departments
12 in the -- excuse me -- some programs in the
13 Department post draft regulations.

14 REGULATIONS COORDINATOR RUEBUSCH: Yes, yes.

15 CHAIRPERSON KIMSEY: And it's been my experience
16 that that does sort of release some of the pressure from
17 the public comment period, to where --

18 REGULATIONS COORDINATOR RUEBUSCH: Absolutely.
19 This process releases the pressure, because we hear what
20 they're saying and think about it in writing the
21 regulation. You know, folks telling us, you know, "You
22 need to think about it in this light" helps us address
23 those issues. We don't have to take them, but we do need
24 to think about them, because, bottom line, it's a valid
25 point. It's affecting somebody who's in the regulated

1 public. They have a right to say this to us and we have a
2 requirement to respond to it.

3 So, yes, it is a good thing to do. We always --
4 Office Regulations always recommends that. Not all
5 programs get comfortable doing that. But it's frequently
6 a good idea. And I -- you know, since we're in a public
7 meeting format, our draft regs will be on them. They'll
8 be posted, whether we like it or not, because we have to.

9 CHAIRPERSON KIMSEY: It would be my perspective,
10 as long as we can have a quality project, that we not
11 necessarily try and start it from the beginning and it
12 ends up in the two to three year timeframe.

13 COMMITTEE MEMBER WONG: I second that.

14 CHAIRPERSON KIMSEY: Okay. My only concern is
15 that we -- you know, we -- and I think we will -- but if
16 we do parts of it, that we're sure that we have a quality
17 product at the end of the day. But I think the time
18 perspective, you know, is something that -- everything
19 I've heard of, legislative intent, regulated community,
20 regulators, we really want to sort of have this resolved
21 as soon as possible.

22 COMMITTEE MEMBER WONG: I think I speak for all
23 of us on the Committee, but, Cathy, I really appreciate
24 your candor and your wealth of experience in this area, in
25 this whole process, because we're trusting you to --

1 REGULATIONS COORDINATOR RUEBUSCH: Scary.

2 (Laughter.)

3 COMMITTEE MEMBER WONG: This is huge.

4 REGULATIONS COORDINATOR RUEBUSCH: Yeah. My goal
5 is to get this done as quickly as possible, to help you
6 not get into the pitfalls. That's part of why I'm asking
7 you these questions. Because, bottom line, if you're
8 married to something and you say, "We absolutely" -- "my
9 group says, 'This is so critical we're all going to throw
10 up our hands in total frustration if you don't do this,'"
11 okay, we'll do it.

12 But if you can let some things go --

13 COMMITTEE MEMBER WONG: -- and live with it.

14 REGULATIONS COORDINATOR RUEBUSCH: -- and live
15 with current language and do the modifications --
16 obviously we have to do the licensing stuff. That's got
17 to go. The statute told us we have to do it, that there's
18 no choices there.

19 What we replace -- you know, will we have any
20 other enforcement mechanism we need to put into the
21 regulations? That discussion will have to happen next
22 meeting, because we have to have a legal opinion that
23 says, yes, you may do that. Okay?

24 Because bottom line is that is the one thing
25 that's missing from your drafts. As I read through this,

1 you know, APA aside, clarity and this other -- you know,
2 all that stuff aside, I read through this and I said, "So
3 what?" And if they don't, what are you going to do?
4 We've got to speak to that. And if it's going to be the
5 courts, that's what we're going to speak to. If it's
6 going to be some other mechanism and the attorneys
7 determine that we have the authority to have some other
8 mechanism, then we're going to have to specify that and
9 speak to what is that mechanism.

10 CHAIRPERSON KIMSEY: It seems to be fairly clear
11 in legislation -- and this is not a legal opinion -- that
12 it's really the Department or no one. It's not like
13 there's an option to sort of say to the Department of
14 Justice, "You need to go out and license these folks," or
15 to whomever.

16 REGULATIONS COORDINATOR RUEBUSCH: That's what I
17 see in it too. I don't see any other options either.
18 Now, perhaps someone else will --

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
20 Let me pose a slightly different viewpoint. Let
21 me suggest that as we proceed forward, in the absence --
22 think about a time when we're not going to have a
23 state-level agency providing oversight. Then it becomes
24 suddenly more important that the regulations are as
25 detailed and as clearly written as possible, because you

1 don't have any active agency -- you know, they're still
2 from the department services regulations. We're not going
3 to have any agency actually interpreting them. So we may
4 have a -- for that reason alone we may have reasons for
5 not wanting to do a quick job of this, but to do a careful
6 look at each section and make it as scientifically and
7 technically clear and as comprehensive as possible.

8 So whatever agency, which may not have any
9 technical or scientific acumen as the Department of Health
10 Services at looking at this sort of stuff, is the best
11 shot at doing it correctly. To the end, for instance --
12 and I invite -- let me just do a couple of templates -- I
13 invite people to look at the -- basically we -- so the
14 program is to provide an overview of all the proposals.

15 I must say our -- our impression was there
16 actually was a -- Ms. Low said something different --
17 there actually is a net reduction, especially in the
18 breath alcohol, but also in the forensic alcohol -- a net
19 reduction in the level of rigor with the new regulations
20 versus the old.

21 And so one way to try to bring that to light, and
22 also just to point out some technical imperfections in the
23 language here, is we prepared a document which has 65 end
24 notes -- I was a better typist when I got through this
25 than when I started -- end notes commenting. And in the

1 section on breath collection, as an example again, we'll
2 look at some of those end notes.

3 There's a suggestion here that the Committee may
4 want to view in terms of other regulations and other
5 documents, the uniform standards for the collection and
6 handling samples, because they propose certain
7 requirements, especially with respect to the maintenance
8 of sample and the integrity.

9 Now, under the section 1217.1(c) -- Subsection
10 C -- there's a reference to suitable aqueous disinfectant.
11 The Committee may be able to consider in this case, and we
12 suggested, defining suitable aqueous disinfectant. We
13 have a situation that was reported to us in the Los
14 Angeles area that -- so a lot of us were using sterile
15 water to disinfect the skin prior to collecting the blood
16 sample. And we've opined that that -- the talking was
17 microbiology people. But that wasn't -- that didn't meet
18 one of the fuller requirements of a disinfectant.

19 You may want to add povidone iodine to the list
20 of -- since it's a very commonly used agent.

21 We've chosen to add a section under 1217.1(f),
22 the fourth requirement, that postmortem samples contain a
23 preservative. You might want to also consider not if it
24 doesn't antique.

25 Let me get over to the antemortem samples.

1 I think you really want to look at 1217.1(g)(2)
2 in terms of the minimum information with respect to 1) the
3 uniform standards, but 2) Vehicle Code Section 23158(c),
4 which provides that -- what does it provide? -- which
5 provides that -- It states: "Upon the request of the
6 person tested, full information concerning the test taken
7 at the direction of the peace officer shall be made
8 available to the person or the person's attorney." So,
9 again, there may be some -- we provided you -- this is one
10 of those sections that wasn't originally provided to you,
11 but we provided some additional law so --

12 REGULATIONS COORDINATOR RUEBUSCH: Here's the
13 issue, Clay. What you're proposing's perfectly valid. Do
14 you -- and the Committee needs to decide this. Do you
15 want greater specificity or do you want lesser
16 specificity? And here's the issue:

17 The statute says you are to propose revisions to
18 the regulations of what's reasonably necessary to ensure
19 competency of the labs and personnel. Does that mean more
20 or less?

21 Do you want -- this gets down to the basics,
22 folks. Is your point to regulate more now? I'm not
23 speaking about the enforcement now, but to create greater
24 specification in Title 17 that these are the things you
25 shall do in the laboratory. Or do you want to have less?

1 My impression -- and please correct me if I'm
2 wrong -- is you wanted less. Of course, Kenton, your
3 stuff sounded like you wanted more coming from your group.
4 But I got the overall feeling -- and I could be totally
5 wrong -- that you all were looking for less regulation,
6 more self-regulation, if you will.

7 COMMITTEE MEMBER SEDGWICK: May I speak to that?

8 REGULATIONS COORDINATOR RUEBUSCH: Absolutely,
9 sir. Please do.

10 COMMITTEE MEMBER SEDGWICK: My understanding from
11 what I'm hearing here and from what I've heard in a number
12 of areas is we would like similar specificity, more in
13 some areas, less in others, not a whole lot more in any
14 area and not a whole lot less in any other area, but
15 similar --

16 REGULATIONS COORDINATOR RUEBUSCH: Similar.
17 Okay.

18 COMMITTEE MEMBER SEDGWICK: -- overall.

19 REGULATIONS COORDINATOR RUEBUSCH: So some
20 reasonable specificity telling the world this is what we
21 think. Because at this stage of the game we're not sure
22 we can do much about it if they don't repeal. But saying,
23 "This is what the regulations want you to do."

24 CHAIRPERSON KIMSEY: And I would think that -- it
25 seems like there's a desire to have less oversight. I'm

1 not sure about the specificity.

2 REGULATIONS COORDINATOR RUEBUSCH: Okay.

3 CHAIRPERSON KIMSEY: Because one thing I think I
4 heard was if Title 17 is, you know, all that's going to be
5 there, so to speak, you know, in other words it becomes a
6 voluntary standard or whatever, that maybe we would not
7 want it to be less specific. And maybe that would warrant
8 us wanting it to be more specific.

9 REGULATIONS COORDINATOR RUEBUSCH: Well, it
10 depends. Now, let me tell you why. Because if you're
11 going to have the courts, you know, interpreting
12 essentially, they're going to be enforcing this, so that's
13 what it ends up being. And at this stage of the game I'm
14 thinking that's where we're going, if that could change.
15 But bottom line is that if that really nobody's going to
16 be able to say, "Naughty, naughty lab" outside of the
17 courts, the more specific it is, that's what the courts
18 are stuck with. And I don't know how attorneys feel about
19 that. Perhaps they'd like it to be a little more broad so
20 that they can get a variety of ways of getting
21 misinterpreted, you know.

22 I'm tossing this out, the point that the current
23 regulations are as a rule broader than what we're going to
24 be able to be to -- if we rewrite them, be able to say.

25 I'm a firm proponent of try less is more, try to

1 not stick in extra stuff. You know, don't get me wrong,
2 Clay. No, I you know, as a nurse, no, I don't like
3 sterile water being used as a either. But is Department
4 of Health Services' Forensic Alcohol Laboratory -- folks,
5 is that your problem? I mean is that something you need
6 to regulate?

7 CHAIRPERSON KIMSEY: I mean something in the
8 regulation could say a suitable disinfectant. I mean -- I
9 don't know. Nobody can argue --

10 REGULATIONS COORDINATOR RUEBUSCH: Usually what
11 we'd recommend you say is what -- if it's -- if your point
12 is it's not alcohol based -- that's what you say.

13 CHAIRPERSON KIMSEY: Sure.

14 REGULATIONS COORDINATOR RUEBUSCH: A disinfectant
15 that is not alcohol based, end of discussion. Other than
16 that we don't care what you use.

17 COMMITTEE MEMBER LYLE: Yeah, I don't think you
18 have to define disinfectant. But that seems a little
19 absurd that --

20 REGULATIONS COORDINATOR RUEBUSCH: You don't have
21 to. If you are using -- you know, definitions, I didn't
22 even get into that end of the rule.

23 COMMITTEE MEMBER LYLE: But that was the
24 suggestion, was to define a disinfectant.

25 REGULATIONS COORDINATOR RUEBUSCH: I know.

1 Definitions in regulation are tricky. What you want to
2 put in a definition is anything that is what you cannot --
3 you know, you have one way of looking at it and you want
4 everybody to look at it the same way. If the general
5 definition coming out of Oxford Dictionary or Webster's
6 Dictionary applies, don't define it, don't define it,
7 because you're locking yourselves in. We strongly
8 recommend you don't define it.

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

10 I think in answer to your question -- you started
11 out -- you asked a question and didn't give time to answer
12 it.

13 Yes, I believe it is the Department's role. We
14 had a similar response in some of the court cases many
15 years ago involving a collection of breath samples and the
16 proper handling of mouth pieces. In other words in a
17 manner that didn't transmit diseases to an officer and/or
18 the subject being tested. And it was evaluated and
19 reviewed. And for that kind of testing, for forensic
20 tests of a subject's breath sample, I believe it was
21 determined that there really was nobody else looking at
22 it.

23 REGULATIONS COORDINATOR RUEBUSCH: All I'm going
24 to say is the statute tells you the regulations that
25 you're going to be putting out are the ones that are

1 reasonably necessary to ensure competency of laboratories
2 and personnel in the analysis of alcohol-related stuff.
3 Not whether or not it's good health practice, not whether
4 or not it's good -- you know, what should be done because
5 we know that that's the medical right thing to do. This
6 gets back to point of regulation.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 You're right, the laws change. But the law
9 didn't say that. The law said Departments shall establish
10 procedures to be used by law enforcement personnel
11 collecting breath samples. It's much broader than --

12 REGULATIONS COORDINATOR RUEBUSCH: Sure. Which
13 could be perhaps interpreted that you get to also look at:
14 Are they doing it in a public health safety manner?
15 Absolutely.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

17 And the issue -- all things go down to refusal.
18 If we have a subject say, "I'm not going to take this test
19 because it could" -- you know, "it could be a death
20 sentence. It could be some contagion that I picked up,"
21 and so on.

22 So it became a legitimate basis why there's some
23 people who refuse to take the test. And so that -- I
24 think that was the other reason it was addressed for.

25 COMMITTEE MEMBER ZIELENSKI: Is not Title 17 as

1 it's currently -- it's been around since 1970.

2 REGULATIONS COORDINATOR RUEBUSCH: Oh, it's been
3 around a lot longer than that.

4 COMMITTEE MEMBER ZIELENSKI: It's been around for
5 a long time.

6 Does it not overall, for the most part,
7 reasonably ensure competent forensic testing?

8 COMMITTEE MEMBER WONG: Yes.

9 COMMITTEE MEMBER ZIELENSKI: So I mean the
10 question is: If it does, then what are the real issues?
11 I mean if you go through this -- the areas that we're
12 supposed to evaluate, you could go line by line and say,
13 "Now the issue of that definition is perfect. Next.
14 Perfect. Next." Right? And then at some point you may
15 look at one portion of Title 17 and go, "Oh, there's a
16 potential problem there." But really with the language
17 the way it's drafted now is it not broad enough where we
18 don't really have to address that?

19 REGULATIONS COORDINATOR RUEBUSCH: Absolutely.
20 If you want to maintain the language the way it is, we
21 don't have to get there.

22 COMMITTEE MEMBER ZIELENSKI: We could get
23 involved in technical distinctions on each aspect, I
24 guess, is the --

25 REGULATIONS COORDINATOR RUEBUSCH: Absolutely.

1 COMMITTEE MEMBER ZIELENSKI: And the problems
2 create a two or three year process over something that
3 maybe doesn't even need fixing. I mean I don't know. You
4 know, there may be some -- but you guys are the experts.

5 REGULATIONS COORDINATOR RUEBUSCH: Because some
6 needs fix something. You know, the bottom line is we need
7 to put on the licensing.

8 But, yes, do we need to do any of the other
9 things?

10 COMMITTEE MEMBER ZIELENSKI: Right.

11 REGULATIONS COORDINATOR RUEBUSCH: The only
12 problem areas will be wherever it says "the licensing
13 shall." Then we've got to pull out that stuff. But
14 you're right. We may not need to do that. But the
15 Committee needs to tell me that. The Committee needs to
16 decide that, that what is currently there is what is
17 reasonably necessary to ensure competency, we're happy
18 with it --

19 COMMITTEE MEMBER ZIELENSKI: I mean -- and I
20 guess from that standpoint, being forensic experts, they
21 would have had some history dealing with Title 17 in which
22 there would have been problems in the courtroom, which
23 would have suggested this area needs to be addressed
24 because the defense and/or prosecution is exploiting it
25 one way or another, right? I mean it seems to me you guys

1 would have the expertise or somebody in the public would
2 be able to comment and say, "There were problems here."

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 I'm afraid this is another -- when Title 17
5 regulations were continuing forensic alcohol analysis --
6 let's see, where are the sentences? There are other
7 references when Title 17 was a totality system and so
8 forth.

9 In the seventies -- I mean there wasn't even a
10 section of regulations that says the Department shall not
11 be limited by these regulations. But in general the
12 seventies, the spirit I think was -- you wrote some
13 regulation and you relied on the goodwill and the
14 expertise of the Department to apply that regulation. As
15 a consequence, the programs that existed since the
16 seventies and the eighties and the nineties had elements
17 that weren't specific; they would only generally describe
18 the regulations.

19 So if we were to simply, for instance, eliminate
20 the Department and adopt these regulations with no
21 changes, straightening out the license, you actually would
22 have a change in the way forensic and breath alcohol
23 analyses were being regulated in California, just because
24 it would -- I mean there's no requirement in the
25 regulations that says you have to have three proficiency

1 tests in fact in the regulations. It just says the
2 Department shall proficiently test and use those results
3 to acknowledge the accusation. We interpreted that -- we
4 decided that meant because the instruments change and
5 because the regions fail, things like that, you had to do
6 it three times a year. So --

7 REGULATIONS COORDINATOR RUEBUSCH: I'm listening.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

9 You're really upstaging me here. You're throwing
10 paper around. That's not fair.

11 (Laughter.)

12 REGULATIONS COORDINATOR RUEBUSCH: How rude. How
13 rude. You're right.

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

15 Anyway, so these are really underground
16 regulations. And I'm almost too embarrassed just to admit
17 it.

18 The Department's fully in place to and ready to
19 describe some of those activities. And I don't think
20 they're huge. But one given line, you know, will assess
21 the proficiency of the labs by submitting survey samples,
22 actually get blown up to a number of lines. We'll do that
23 three times a year or we'll establish the acceptable limit
24 space on certain scientific criteria. And we'll take
25 certain actions if the labs don't perform satisfactory.

1 So there's a number of cases. In order to fully
2 describe the current program, you would have to change the
3 regulations to describe what was contained in regulations
4 and guidelines and things -- and advisories.

5 So I don't know if you -- I mean -- so let's not
6 change anything. Actually the anything there didn't fully
7 describe the program that was --

8 REGULATIONS COORDINATOR RUEBUSCH: Well, what the
9 \$64,000 question always goes down to is do we need those
10 things?

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

12 Okay. I just --

13 REGULATIONS COORDINATOR RUEBUSCH: I don't know.
14 The Committee needs to speak.

15 COMMITTEE MEMBER SEDGWICK: That's my question.

16 I would like to ask the Committee: Do we want to
17 expand, do we want to add these underground regulations,
18 all of them, to what we have now?

19 COMMITTEE MEMBER LOUGH: No.

20 COMMITTEE MEMBER WONG: No.

21 CHAIRPERSON KIMSEY: That was pretty quick. I
22 mean I'm not --

23 COMMITTEE MEMBER ZIELENSKI: I mean this thing
24 could be as quick as this and say -- it's good.

25 COMMITTEE MEMBER WONG: And I vote for Torr for

1 our committee --

2 CHAIRPERSON KIMSEY: No. And I'm not familiar
3 with what they all are.

4 REGULATIONS COORDINATOR RUEBUSCH: Do we need to
5 know what they all are?

6 CHAIRPERSON KIMSEY: Well, if they're underground
7 regulations, they're not --

8 REGULATIONS COORDINATOR RUEBUSCH: Well, they're
9 not regulations. They are not enforceable. Underground
10 regulations are not enforceable. I'm not saying that they
11 aren't -- the Department doesn't try to enforce
12 underground regulations. It does it all the time. If the
13 regulated public lets them enforce the underground
14 regulations, then the regulated public is -- I don't think
15 it's stupid, but allowing themselves to be regulated.

16 COMMITTEE MEMBER LYLE: Well, they could be
17 bullied into doing it too.

18 REGULATIONS COORDINATOR RUEBUSCH: You can be
19 bullied into doing it, absolutely.

20 COMMITTEE MEMBER LYLE: So it's not that you're
21 stupid. It's just that you have --

22 REGULATIONS COORDINATOR RUEBUSCH: You don't want
23 to fight with the big guy.

24 COMMITTEE MEMBER LYLE: -- fight with the big
25 guy. I mean the big guy is the bully. You don't --

1 REGULATIONS COORDINATOR RUEBUSCH: Absolutely,
2 absolutely.

3 But the point of underground regulations is that
4 if you challenge it, you will win in court. The question
5 is: Do you want to go to court, do you want to go through
6 the whole process? Absolutely. That's always the case.

7 But bottom line is do we need to know what all
8 these things are that you have been subject to? I mean
9 I --

10 COMMITTEE MEMBER SEDGWICK: No, we already know.

11 REGULATIONS COORDINATOR RUEBUSCH: Well, you
12 know. I'm not so --

13 COMMITTEE MEMBER SEDGWICK: We just don't want
14 them.

15 COMMITTEE MEMBER ZIELENSKI: I got Title 17 here.

16 REGULATIONS COORDINATOR RUEBUSCH: I don't know
17 all the things you've been subject to. Do you?

18 CHAIRPERSON KIMSEY: I mean I don't know either.
19 But if --

20 REGULATIONS COORDINATOR RUEBUSCH: But you don't
21 feel it's necessary?

22 CHAIRPERSON KIMSEY: Well, if it's an underground
23 reg, I don't think it's necessary.

24 REGULATIONS COORDINATOR RUEBUSCH: Okay.

25 COMMITTEE MEMBER SEDGWICK: I agree.

1 COMMITTEE MEMBER ZIELENSKI: When you say
2 underground reg, you're talking about internal regs that
3 each of these labs -- I mean --

4 CHAIRPERSON KIMSEY: No, no. The Department
5 interprets the regulations to -- it wants more
6 specificity.

7 REGULATIONS COORDINATOR RUEBUSCH: Well this is
8 more so than even that. Underground regulation is a rule
9 that the Department creates, whether it is actually based
10 on something that's in regulation or not, that it enforces
11 as a regulation. The point being is that as it holds the
12 lab to this thing and says, "If you don't do it, we'll
13 pull your license," that's an underground regulation. And
14 that's not okay by law. The APA says you don't do that.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

16 And I --

17 COMMITTEE MEMBER ZIELENSKI: Are we even really
18 supposed to address that concern? That's something that
19 sounds outside the purview of --

20 REGULATIONS COORDINATOR RUEBUSCH: Well, the
21 question is frequently when reg -- frequently when the
22 programs are revamping their regulations, they take all
23 these little things that they really, really, really want
24 to be able to enforce and put them in a regulation so that
25 they can enforce them legally.

1 CHAIRPERSON KIMSEY: Yeah, if you look at the 30
2 years of history of the program, and the Department's had
3 the responsibility and the oversight and all that sort of
4 thing, and things have changed, then there's a logical
5 sort of progression like Clay was saying. Proficiency
6 testing three times a year, that seems to be the standard.
7 And so we'll say that's going to be the standard. It may
8 not -- if we were to get -- if someone were to take us to
9 court, they may say -- the judge may say, "This is an
10 underground reg. You don't have to do it."

11 But it's not to say that -- you know, that there
12 wasn't a justification the Department had for --

13 COMMITTEE MEMBER ZIELENSKI: I understand what
14 that means now. So that makes sense to me.

15 REGULATIONS COORDINATOR RUEBUSCH: But the point
16 is that, you know, whether or not it needs to be put in
17 regulation, I'm hearing folks say, "What's there is
18 plenty. We want that maybe tweaked a little bit more."

19 CHAIRPERSON KIMSEY: Right. You know, we may
20 have a discussion about proficiency testing, I mean how
21 many times and all that sort of thing. But, you know, I
22 think in general it just bothers me to be talking about
23 incorporating underground regulations, just from a
24 philosophical respect.

25 COMMITTEE MEMBER LYLE: Well, I think the

1 argument was that they are the things that have -- instead
2 of just this, they're the things that have made it --

3 CHAIRPERSON KIMSEY: -- onerous.

4 COMMITTEE MEMBER LYLE: -- successful.

5 CHAIRPERSON KIMSEY: Oh, successful.

6 COMMITTEE MEMBER LYLE: Yeah. I mean as -- they
7 may have padded the fact that -- it isn't just this
8 document that has made 30 years of forensic science so
9 successful. It's the added things that have been required
10 of them.

11 REGULATIONS COORDINATOR RUEBUSCH: In which case
12 perhaps you want to put some of those things into
13 regulation.

14 CHAIRPERSON KIMSEY: And what I think we're
15 hearing from the regulated community is that they were not
16 necessarily beneficial.

17 COMMITTEE MEMBER SEDGWICK: Correct. I don't
18 think we want to define what is affecting this. I think
19 we want to avoid it.

20 COMMITTEE MEMBER WONG: And I agree with Bruce,
21 that that's just common definition in English.

22 CHAIRPERSON KIMSEY: Right. Except people
23 apparently have used distilled water. But that's more of
24 an enforcement issue than anything else.

25 Comment?

1 Can you sort of stand up and state your name
2 please.

3 MR. PHILLIPS: A very good example of an
4 underground regulation -- my name is Bill Phillips --

5 CHAIRPERSON KIMSEY: Thank you.

6 MR. PHILLIPS: -- from the California Department
7 of Justice.

8 A very good example of an underground regulation
9 that I think is unenforceable, yet the Department
10 constantly puts us in this position, is defining pipette
11 tips, what manufacturer is being used, defining what
12 calibration gas we can use. Rather than saying we can use
13 it -- as long as the calibration gas is traceable we can
14 use it.

15 As long as we get the right answer, who cares
16 what pipette tips I use? Okay, so why should I have to
17 define that in my method? Why should they have the
18 authority, and do they have the authority, to actually
19 look at my method and tell me how to write it and how to
20 rewrite it and rewrite it and rewrite it, until we get it
21 the way they want it? That's one of the issues. And
22 those are underground regulations.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 Let me respond to it, because in one case I don't
25 think it is. In one case you gave an example of a

1 calibration gas. You misspoke. You meant to say a
2 calibrating unit.

3 The regulation said that you had to use
4 calibrating units and the -- instruments and related
5 accessories, which was calibrating units, which were on
6 the conforming products list. So it seemed appropriate
7 for the Department to ask the agency, "Are you going to
8 use one that's on the products list?" That's why we ask
9 that question.

10 The pipette tips, you know, I'm surprised -- but,
11 anyway, the pipette tips, there is a requirement that the
12 laboratories require detailed up-to-date written
13 descriptions and methods of -- it describes as
14 step-wise -- as step-wise instructions. So detailed
15 step-wise written descriptions of each method they use
16 when they file those with the Department.

17 Pipette tips, I don't -- I believe the approved
18 methods without specifying -- I just ask to get pipette
19 tip that fits the pipette.

20 CHAIRPERSON KIMSEY: In general though the
21 approval of methods by the Department, is that in Title
22 17?

23 REGULATIONS COORDINATOR RUEBUSCH: I'm looking
24 for it.

25 Can you tell me right off the bat where that is?

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 Yeah, I'm not sure --

3 COMMITTEE MEMBER LOUGH: No, it isn't. It says
4 that they have to have an up-to-date copy. But the
5 liberty is taken to require their approval.

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

7 And a long time go, again, we --

8 REGULATIONS COORDINATOR RUEBUSCH: So that's an
9 underground reg?

10 COMMITTEE MEMBER LOUGH: Yes.

11 REGULATIONS COORDINATOR RUEBUSCH: Unless you can
12 show me where it is. But I think --

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

14 We're authorized to approve training programs in
15 a specific section. But --

16 COMMITTEE MEMBER LOUGH: But then that goes past
17 that too.

18 CHAIRPERSON KIMSEY: 1220.1(b), the ability of
19 the method to meet the standards of performance set forth
20 in this section shall be evaluated by the Department using
21 a laboratory proficiency test results. And such ability
22 must meet the requirements of these regulations.

23 REGULATIONS COORDINATOR RUEBUSCH: Yeah, that's
24 not the same thing.

25 CHAIRPERSON KIMSEY: That's not the same, not

1 quite. Close though.

2 COMMITTEE MEMBER ZIELENSKI: Sounds to me like
3 his hypothetical as a result came back fine. Who cares
4 what pipette he's using?

5 REGULATIONS COORDINATOR RUEBUSCH: Well, I gather
6 the Department has been approving policies and
7 procedures -- or procedures or methodologies, is that --

8 COMMITTEE MEMBER WONG: For years, decades.

9 COMMITTEE MEMBER LOUGH: Or not approving --

10 REGULATIONS COORDINATOR RUEBUSCH: -- or not --

11 (Laughter.)

12 REGULATIONS COORDINATOR RUEBUSCH: There has
13 been -- a process has existed?

14 COMMITTEE MEMBER LOUGH: There has been a
15 process.

16 REGULATIONS COORDINATOR RUEBUSCH: And that's not
17 in regulation?

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

19 The training programs but not for --

20 REGULATIONS COORDINATOR RUEBUSCH: Okay. Not for
21 methodologies?

22 And I'm hearing you don't want that in
23 regulation?

24 COMMITTEE MEMBER LOUGH: No.

25 CHAIRPERSON KIMSEY: I'm not hearing any

1 interest.

2 REGULATIONS COORDINATOR RUEBUSCH: Well, that's
3 one thing. Okay.

4 CHAIRPERSON KIMSEY: But it's not currently in
5 regulation, so it doesn't --

6 REGULATIONS COORDINATOR RUEBUSCH: No, it's no
7 issue. Yeah, it's basically that we don't need to go
8 there.

9 I don't know what all the underground
10 regulation -- or, you know, the guidelines that exist for
11 interpretation, processes that exist that are not in
12 regulation and yet are enforced. Bottom line is if
13 they're not in regulation, unless you are telling me you
14 want them in regulation, we're not going to even go there.

15 CHAIRPERSON KIMSEY: You know, as Chairman --
16 we've got about 30 minutes left on this. And you did
17 mention a couple of options here. There's sort of a
18 long-term option and I think the group is more for the
19 short-term option. You talked about us possible a
20 subcommittee that might do some of this --

21 REGULATIONS COORDINATOR RUEBUSCH: Right. What
22 I -- if that's what you would like to go with, let's -- we
23 could do a first draft, if you will.

24 Help me, Clay. I don't remember. What's the
25 number of people on a subcommittee?

1 CHAIRPERSON KIMSEY: Any more than two.

2 REGULATIONS COORDINATOR RUEBUSCH: More than two,
3 for Bagley-Keene?

4 CHAIRPERSON KIMSEY: That's my understanding.

5 REGULATIONS COORDINATOR RUEBUSCH: So if we had
6 two members --

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
8 It should be more than three.

9 CHAIRPERSON KIMSEY: Well, okay. We can look it
10 up. I think the idea is that if you have more than two it
11 becomes an open meeting.

12 REGULATIONS COORDINATOR RUEBUSCH: That's what I
13 mean. That's what I want to know. When does it become an
14 open meeting? So there's more than two?

15 CHAIRPERSON KIMSEY: Right, more than two.

16 REGULATIONS COORDINATOR RUEBUSCH: Then 2 is an
17 acceptable subcommittee and not have an open meeting?

18 CHAIRPERSON KIMSEY: Correct. Two members of the
19 Committee. But I think there's also a caveat there that
20 if the group is larger than -- I mean maybe it's not just
21 the Committee. If there are two people from the Committee
22 and you have four people from the audience, I think that
23 also might have to be considered an open meeting.

24 That's something we need to check.

25 REGULATIONS COORDINATOR RUEBUSCH: We need to

1 check on that.

2 The point being is that it's much more difficult
3 to do subcommittee-type work when you have to notice per
4 open meeting law and all that kind of good stuff. I'd
5 like to recommend that we have as small a subcommittee as
6 we -- or as large a subcommittee as we can have.

7 CHAIRPERSON KIMSEY: Right. I think there's a
8 certain amount of interest level, you know, that -- and
9 whomever's interested should be able to participate. If
10 it has to be an open meeting --

11 REGULATIONS COORDINATOR RUEBUSCH: -- it's going
12 to be more difficult.

13 CHAIRPERSON KIMSEY: Well, yeah. But I think
14 that's --

15 REGULATIONS COORDINATOR RUEBUSCH: It can be
16 done. What we could do is a marathon session.

17 CHAIRPERSON KIMSEY: Well, and also I know that
18 if we -- it's my understanding, to get this clarified, but
19 we have the ability to teleconference. And so the
20 subcommittee could meet -- actually this room we can do
21 it. This could all be on the telephone. We could have it
22 publicly noticed, that people could call in and listen in
23 to that --

24 REGULATIONS COORDINATOR RUEBUSCH: Okay. As long
25 as they could get in.

1 CHAIRPERSON KIMSEY: As long as they can --
2 right. They will be able to hear everything that's being
3 discussed. So in that sense --

4 REGULATIONS COORDINATOR RUEBUSCH: And offer
5 comment if they choose to do so.

6 CHAIRPERSON KIMSEY: And offer comment. So we
7 can do that here. You know, we wouldn't use this room.
8 We have other rooms for that sort of thing.

9 So we could have a subcommittee of anybody
10 interested on the committee. And, you know, yourselves
11 and --

12 REGULATIONS COORDINATOR RUEBUSCH: That's who I
13 was going to recommend, is that I meet with a subcommittee
14 and basically hammer out a draft of minimalist regulation
15 change based on what we have to do to bring back to
16 discuss at large with the Committee and the public so that
17 people can --

18 CHAIRPERSON KIMSEY: Right. And that discussion
19 would also be a public meeting. I mean the subcommittee
20 meetings would be a public meeting.

21 REGULATIONS COORDINATOR RUEBUSCH: We can do
22 that, yeah. We can do that.

23 CHAIRPERSON KIMSEY: The whole Committee would
24 not have to be there.

25 REGULATIONS COORDINATOR RUEBUSCH: No, no, no.

1 They can if they choose to.

2 The point being is that that way we can -- but
3 we're going to need more than a couple hours to do this,
4 folks. And the question is who's interested and has the
5 time?

6 Yeah, Patty, I know you --

7 COMMITTEE MEMBER LOUGH: I'm the retired one.

8 CHAIRPERSON KIMSEY: Comment?

9 MR. PHILLIPS: Yeah, a point of order.

10 CHAIRPERSON KIMSEY: Sure.

11 MR. PHILLIPS: If you are to decide that you're
12 going to divide into subcommittees, I cannot attend each
13 one of the subcommittees, so -- unless you have one
14 subcommittee. You can't have two in separate --

15 CHAIRPERSON KIMSEY: Correct. No, what we do is
16 I think we're proposing one subcommittee, which would be
17 made up of anybody on the Committee that's interested.
18 And that would also be a public meeting just like this.
19 We'd try to make it a little more easy for the public in
20 the sense that we would have it on a teleconferencing
21 system to where you could be sitting anywhere as public,
22 be listening in, doing your E-mails or having lunch or
23 whatever, while the subcommittee was doing their work.
24 So it would still be a public meeting noticed
25 under Bagley-Keene. But it would be called a

1 subcommittee. It would not be a full meeting of the
2 Committee. It would be a subset of the Committee, with
3 Cathy's input. And actually the public is here. I mean
4 Cathy in some sense is just another member of the public,
5 as is other departmental employees other than myself.

6 So what we would be doing is having a
7 subcommittee that would give us a first draft of proposed
8 changes to the regulations. And that conversation, that
9 discussion would be in a public session.

10 Does that seem --

11 COMMITTEE MEMBER LOUGH: Good. Seems good.

12 REGULATIONS COORDINATOR RUEBUSCH: And part of
13 that discussion would be the why's. Because as you draft
14 regulation, you must speak to that or we don't -- we can't
15 write a statement of reasons. So we will be writing a
16 draft statement of reasons at the same time.

17 CHAIRPERSON KIMSEY: Okay.

18 REGULATIONS COORDINATOR RUEBUSCH: Okay. The
19 next question is?

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 Let me voice a quick opinion. I would suspect
22 that -- although I think teleconferencing a meeting could
23 work well for concepts. When you're getting to the
24 nitty-gritty of why you want to change Section 1216.1 to
25 Subdivision A, Subdivision capital A, that's actually kind

1 of hard -- that's hard to do on the telephone.

2 CHAIRPERSON KIMSEY: Well, I think the
3 subcommittee might actually meet in person. But I'm just
4 saying it would still be a public meeting to where if you
5 want to track something like that over the phone, you
6 could, or you have the option of coming to the room.

7 You know, I would be interested in that to the
8 extent that my schedule --

9 COMMITTEE MEMBER LOUGH: Can we video record?

10 CHAIRPERSON KIMSEY: I'm not sure that the
11 Bagley-Keene speaks to video.

12 COMMITTEE MEMBER LOUGH: Oh, that's right.

13 COMMITTEE MEMBER WONG: It has to be live, I
14 think, on --

15 REGULATIONS COORDINATOR RUEBUSCH: Yeah, the
16 public has to be able to comment at the time.

17 COMMITTEE MEMBER LOUGH: Right. Okay.

18 CHAIRPERSON KIMSEY: And with regard to
19 video-conferencing, I have had public meetings where we
20 have video-conferencing with southern California. That
21 site has -- it's my understanding -- we have to get this
22 clarified, but it's my understanding that that site would
23 have to be open to the public and our site here would have
24 to be open to the public. But we could have this live
25 video-conference, which would also be a teleconference.

1 And we've done that. In fact, we do that a lot. And
2 there are state office buildings down in Los Angeles -- I
3 mean in southern California that we video-conference with
4 fairly routinely.

5 REGULATIONS COORDINATOR RUEBUSCH: Yeah, we have
6 video-conferencing here.

7 CHAIRPERSON KIMSEY: Yes, we do. Actually this
8 room does. But we would do a smaller room.

9 REGULATIONS COORDINATOR RUEBUSCH: But do we have
10 that room?

11 CHAIRPERSON KIMSEY: Yeah, we can use another
12 room.

13 REGULATIONS COORDINATOR RUEBUSCH: I know I've
14 done it with classes.

15 Who is interested?

16 Paul, you expressed interest.

17 Patty.

18 COMMITTEE MEMBER LOUGH: Um-hmm.

19 REGULATIONS COORDINATOR RUEBUSCH: Anybody else
20 got the time? No, I appreciate that. I don't have time
21 either.

22 CHAIRPERSON KIMSEY: And that's actually
23 something I need to sort of let the Committee know. I'm
24 going to have to -- on behalf of the Committee I will be
25 making a request for more of Cathy's time. That's not

1 something that we had officially cleared with her
2 supervisory chain. But if the Committee wishes it, I will
3 certainly make that request. I think it will be honored.
4 But we would be asking for quite a bit more of Cathy's
5 time to accomplish what we're --

6 COMMITTEE MEMBER LOUGH: I think it's essential.

7 COMMITTEE MEMBER WONG: Yeah, totally essential.

8 REGULATIONS COORDINATOR RUEBUSCH: The main
9 reason for this is it helps with -- so that other things
10 that I'm working on can then be delegated to other staff
11 so that they don't fall through the cracks, because lots
12 of programs have a lot of things going on.

13 Okay. So I hear two, Paul and Patty.

14 COMMITTEE MEMBER WONG: Depends what day.

15 CHAIRPERSON KIMSEY: Okay. We can --

16 CHAIRPERSON KIMSEY: And I don't know that -- I
17 don't know that there's this -- let's see. We -- you
18 know, and actually we would notice everybody. And so
19 anyone that wanted to participate could, you know, from
20 the Committee. So --

21 REGULATIONS COORDINATOR RUEBUSCH: We could do it
22 on a see-if-you're-available type thing.

23 CHAIRPERSON KIMSEY: Yeah. And, you know, the
24 minutes of those meetings -- it's just -- I mean this
25 could be a subcommittee meeting. It would be the same

1 sorts of rules and regulations under Bagley-Keene. And

2 I'm --

3 REGULATIONS COORDINATOR RUEBUSCH: So we have to
4 put out an agenda ten days in advance. We have to put out
5 anything we're going to be handing out.

6 CHAIRPERSON KIMSEY: And we need to make
7 arrangements for transcription?

8 REGULATIONS COORDINATOR RUEBUSCH: Yes, yes. A
9 little more cumbersome. It's the nature of the beast.

10 CHAIRPERSON KIMSEY: And I think we would
11 anticipate that the group would try and meet a number of
12 times before our next -- I assume we would like to try and
13 meet again in approximately 60 days. Of course we're
14 moving this agenda a little too quickly, but...

15 And as long as we noticed the meeting ten days in
16 advance --

17 REGULATIONS COORDINATOR RUEBUSCH: -- I think
18 we're okay.

19 CHAIRPERSON KIMSEY: -- I think we meet the
20 requirements.

21 REGULATIONS COORDINATOR RUEBUSCH: What I'm
22 thinking is like a day session every two weeks for -- you
23 know, obviously there would be some -- my work, if you
24 will, in between, running, to set things up, you know, so
25 that when we come back together -- of course if I've got

1 to get it out ten days in advance.

2 Okay. Well, we'll try to make it happen.

3 CHAIRPERSON KIMSEY: So a one-day session every
4 two weeks?

5 REGULATIONS COORDINATOR RUEBUSCH: That's what I
6 think would -- well, it would facilitate the process. If
7 I can't pull it off, I'll let you know. But, you know,
8 the key will be if I have to get everything available to
9 go ten days in advance of each session. Okay.

10 CHAIRPERSON KIMSEY: Well, we'll turn it back
11 over to you. I was just trying to --

12 REGULATIONS COORDINATOR RUEBUSCH: Okay. No, I
13 think it's a good -- you're right, because I was beginning
14 to think the same thing. We're running out of time and
15 we're not getting this exactly -- but what I'm hearing is
16 let's keep it as simple as possible and yet meet the
17 requirements of what we're attempting to do.

18 Okay. We can do that. So we'll have a draft.
19 We'll have a -- everyone will be noticed to it.

20 Patty, since you said you want to be critically
21 involved and, Paul, you said you want to be critically
22 involved and you said if you can make it, I'll try to
23 check your schedules first with my schedule to be sure
24 that we can do it. And then we'll let everybody else
25 know. And if you can join us, that's great. If you

1 can't, that's -- you know we'll keep you abreast of what's
2 going on or we'll -- the drafts will get posted on the
3 website.

4 CHAIRPERSON KIMSEY: It just strikes me that 60
5 days from now it's Christmas. So we're not --

6 REGULATIONS COORDINATOR RUEBUSCH: It's going to
7 be after Christmas.

8 The other thing is I have a vacation --

9 COMMITTEE MEMBER LOUGH: Our next meeting will be
10 after Christmas?

11 CHAIRPERSON KIMSEY: No, no, no. The next
12 meeting of this group. Sixty days from now is Christmas.
13 So the next meeting -- the quickest we could probably have
14 the next -- we're not limited to 60 days, are we? But
15 anyhow --

16 REGULATIONS COORDINATOR RUEBUSCH: We're limited
17 to 60 days if somebody requests the Committee meeting.

18 CHAIRPERSON KIMSEY: So we could meet more
19 frequently?

20 Maybe that's sort of up to the subcommittee.

21 REGULATIONS COORDINATOR RUEBUSCH: Yeah, it
22 depends on how fast we get this done.

23 CHAIRPERSON KIMSEY: Right, right.

24 REGULATIONS COORDINATOR RUEBUSCH: I would like
25 to recommend that as soon as we -- you know, we have

1 something -- for something to do, then we can start,
2 "Okay, folks, when can we get together for the big meeting
3 and do the show?"

4 I'm just going to tell you I have a week's
5 vacation in January that will happen at the beginning of
6 January.

7 COMMITTEE MEMBER LOUGH: Denied.

8 REGULATIONS COORDINATOR RUEBUSCH: I quit.

9 (Laughter.)

10 COMMITTEE MEMBER LOUGH: Okay. We'll get
11 together then and talk about whether we need to bring
12 laptops or electric formats --

13 REGULATIONS COORDINATOR RUEBUSCH: Yeah, how we
14 want to do this, yeah, how we want to do this.

15 And then I have to talk to my boss about some
16 logistics as well. Well, he'll talk to my boss's boss.
17 Actually he'll probably talk to my boss's boss's boss.

18 CHAIRPERSON KIMSEY: We'll try and make it
19 happen.

20 REGULATIONS COORDINATOR RUEBUSCH: Anyway --
21 okay.

22 CHAIRPERSON KIMSEY: So what's a good use of our
23 remaining time?

24 REGULATIONS COORDINATOR RUEBUSCH: Actually I
25 think we can -- actually what I'd like to ask is if the

1 public has anything they would truly want in terms of
2 concepts addressed in this.

3 CHAIRPERSON KIMSEY: State your name please
4 again.

5 MR. ZEHNDER: Jeff Zehnder, Drug Detection Lab in
6 Sacramento.

7 I'm not sure whether we're doing more or less
8 here. I'm not sure whether that got resolved. But I'm
9 with Clay on the idea that if you're not going to have any
10 oversight, that you should have some detail in the
11 regulations. And it would leave it less open to
12 interpretation. And -- because the oversight really
13 provided that detail aspect before, and I think that was
14 good. And if you're going to dump the oversight and
15 you're going to dump the detail, then what are we doing
16 here? So -- I mean if it takes two years, it takes two
17 years. But we don't want to end up with something worse
18 than what we have.

19 And I do have some suggestions for things to add
20 that weren't addressed in the original Title 17 that I do
21 think are reasonably necessary to ensure the competency of
22 a laboratory in doing a analysis. And I don't know if you
23 want me to tell you now or --

24 CHAIRPERSON KIMSEY: Sure.

25 MR. ZEHNDER: Okay. Well, periodic determination

1 of linearity. Nobody's mentioned that. Because of the
2 zero tolerance law and these instruments, they're being --
3 they accuracy's being checked at a 1.0 now. And, yeah,
4 it's good to go down to an .08, but I think the
5 laboratories should be required to demonstrate linearity
6 of these instruments down to .01. Maybe from .01 to .25.
7 Because when you're testing people for zero tolerance,
8 you're speculating that it's even linear. And the
9 accuracy then can be off, maybe not. But this has to be
10 demonstrated.

11 So I would suggest you put in a requirement that
12 laboratories do periodic determination of linearity.
13 Maybe even once a year. That would be fine, as long as
14 it's done regularly and on each instrument that's being
15 used.

16 Calibration of breath testing instruments. A lot
17 of these hand-held devices now are being calibrated by
18 officers who don't know what they're doing, frankly. And
19 they're calibrating these devices with the same solution
20 that they're then checking the accuracy with. And that's
21 completely improper. And it doesn't demonstrate accuracy.
22 It might demonstrate precision. But that needs to be
23 specified. And it's kind of specified in the blood
24 aspects, but you don't use the same lot of solution as
25 your quality control that you do for your secondary

1 standard.

2 And also the details, you know -- well, like Clay
3 mentioned that 1217.1(g) (2), talking about full
4 information, especially when retesting is requested. I
5 think full information should be given. It saves time.
6 You know, we don't have to go back and say, "Hey, can we
7 get the chain of custody, please," or something like that.
8 So specified full information be given when a retest is
9 done so that people don't have to waste a lot of time on
10 the telephone and going and getting more court orders and
11 this kind of stuff, wasting a lot of time, wasting a lot
12 of money.

13 Add burps and belches to 1219.4. That's a simple
14 thing. But regurgitation and vomiting is not the only
15 thing that could bring alcohol up into the mouth.

16 And that's all I have.

17 Thank you.

18 CHAIRPERSON KIMSEY: Burps and which?

19 MR. ZEHNDER: Belches.

20 CHAIRPERSON KIMSEY: Belches. Thank you.

21 COMMITTEE MEMBER LOUGH: Can I --

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

23 And distinguish those two.

24 (Laughter.)

25 COMMITTEE MEMBER LOUGH: Could I ask a question

1 of Jeff?

2 CHAIRPERSON KIMSEY: Sure.

3 COMMITTEE MEMBER LOUGH: On the full information
4 that you're missing that would be helpful to you, can you
5 tell me what that information would be that you --

6 MR. ZEHNDER: A copy of the chain of custody
7 envelope shows the original documentation of the
8 collection of the sample. Officers' initials, dates, and
9 time of collection.

10 And I would prefer, if it's possible, if you're
11 going to split a sample -- oh, here's another thing that I
12 think should be done. It's being done in a lot of places.
13 But it should be done routinely. And, that is, you should
14 have two samples collected, one for retesting. Do not
15 open the one for retesting. You introduce oxygen into
16 that tube, boom. And that's what you're going to have
17 disputes about, lower alcohol level. Well, the ones that
18 are never opened are going to have very little, if any,
19 alcohol lost at all and preserves the integrity of the
20 sample. That's what I think should be -- that's the kind
21 of detailed thing that should be put in there and
22 required. If you're splitting the sample -- and then that
23 way the evaluating laboratory can actually get one of
24 those original vials -- and you don't need a copy of the
25 original vial or the label and see how it's labeled or

1 anything like that. It's already there. So I mean it's
2 simple. And I think it would save a lot of time and
3 money.

4 CHAIRPERSON KIMSEY: How often is retesting done?

5 COMMITTEE MEMBER LOUGH: Routinely.

6 CHAIRPERSON KIMSEY: Routinely.

7 COMMITTEE MEMBER ZIELENSKI: We do it a lot in
8 Sacramento.

9 CHAIRPERSON KIMSEY: Okay. I mean I'm just
10 saying obviously collecting two tubes is a big change, and
11 I'm just --

12 REGULATIONS COORDINATOR RUEBUSCH: Yeah, but if
13 everybody -- and it's a better sample.

14 COMMITTEE MEMBER SEDGWICK: I think the important
15 point is it constitutes a couple percent -- I don't know
16 what the percentage is of all the analyses we do. I don't
17 know whether it's 2 percent or 10 percent.

18 CHAIRPERSON KIMSEY: That's 10 percent or under
19 you mean in tests?

20 COMMITTEE MEMBER SEDGWICK: Oh, yes.

21 COMMITTEE MEMBER LOUGH: Generally pretty close.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
23 Regarding Jeff's comments about the handle
24 devices, I believe he's talking about preliminary alcohol
25 screening. One of the comments included in the program's

1 detailed end notes is the Committee may want to
2 consider -- right now Title 17 based on the Attorney
3 General's opinion and decision part of the department 10,
4 15 years ago -- 10 years ago, it doesn't -- Title 17
5 doesn't seem to apply at least under our program to
6 preliminary alcohol screening, testing devices. The
7 Committee may want to consider bringing it under the Title
8 17 umbrella. And some courts have, but the regulations
9 don't.

10 MR. ZEHNDER: One other thing, because of the
11 change in the regulations and the way the oversight is
12 done, and if it's going to be decided through the courts
13 rather than through the Department of Health, there may be
14 a lot more retesting, simply because that's the only way
15 the average person has of really checking it out and
16 making sure it's good. Which is probably the best thing
17 to do anyway. Of course that's what I do, so of course
18 it's the best thing.

19 (Laughter.)

20 MR. ZEHNDER: But if the regulations change you
21 may have a lot more than 10 percent of your blood's
22 retested.

23 CHAIRPERSON KIMSEY: And there's no way to
24 anticipate that obviously which ones were going to be
25 retested? There's just --

1 COMMITTEE MEMBER LOUGH: No.

2 CHAIRPERSON KIMSEY: Okay. Thank you.

3 Any other comments from the public?

4 Okay. So are we -- where are we, do you think?

5 REGULATIONS COORDINATOR RUEBUSCH: I'm at the
6 point -- I'm done with my feelings. What we'll do is get
7 our impound recap subcommittee.

8 CHAIRPERSON KIMSEY: Well, we can certainly have
9 some closing discussions, but we can also let people go
10 early.

11 With regards to when we want to meet again, how
12 many meetings of the subcommittee do you think you'd need
13 to have before we have something to review?

14 REGULATIONS COORDINATOR RUEBUSCH: About four.

15 CHAIRPERSON KIMSEY: So then we're definitely
16 probably after the holidays.

17 REGULATIONS COORDINATOR RUEBUSCH: Yeah, I would
18 think the beginning of the year.

19 CHAIRPERSON KIMSEY: Okay. Would we want to talk
20 about when might be the time for the subcommittee meeting?

21 REGULATIONS COORDINATOR RUEBUSCH: Is there
22 better times just from --

23 CHAIRPERSON KIMSEY: I'm out next week. I'm here
24 a week and then I'm gone.

25 Maybe we can just do that informally, just the

1 people that --

2 REGULATIONS COORDINATOR RUEBUSCH: Yeah, I was
3 going to call.

4 COMMITTEE MEMBER LOUGH: You two look -- yeah,
5 look at your calendars first, because mine's probably more
6 flexible.

7 If it's necessary.

8 (Laughter.)

9 REGULATIONS COORDINATOR RUEBUSCH: Okay. Paul,
10 do you want to --

11 CHAIRPERSON KIMSEY: Yeah, I'll check.

12 REGULATIONS COORDINATOR RUEBUSCH: Patty, I can
13 get your E-mail from the program.

14 CHAIRPERSON KIMSEY: And so we'd probably be
15 meeting, I would say -- when is your week in January?

16 REGULATIONS COORDINATOR RUEBUSCH: Well, it
17 starts in -- it's actually two weeks in January. It's
18 from the 9th to two weeks from then, whenever -- it's the
19 23rd, I think --

20 CHAIRPERSON KIMSEY: So we might be meeting at
21 the end of January?

22 REGULATIONS COORDINATOR RUEBUSCH: Well, in
23 fact -- and that would probably be reasonable. It's just
24 I would like you to put out the draft and say, "Okay,
25 guys, read it. Have a good look." The public gets to

1 look at it. Everybody can look at it for two weeks. And
2 then we get back together after that.

3 CHAIRPERSON KIMSEY: Okay. Let's see. Let me
4 look here real quick.

5 Future meetings.

6 Any other comments or perspectives from the
7 Committee?

8 No?

9 Thank you all for coming. And we'll officially
10 close here at 2:45.

11 And have a safe drive and commute back.

12 (Thereupon the Forensic Alcohol Review
13 Committee meeting adjourned at 2:45 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Department of Health Services,
7 Forensic Alcohol Review Committee meeting was reported in
8 shorthand by me, James F. Peters, a Certified Shorthand
9 Reporter of the State of California, and thereafter
10 transcribed into typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 10th day of November, 2005.

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JAMES F. PETERS, CSR, RPR

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