

MEETING

STATE OF CALIFORNIA

DEPARTMENT OF PUBLIC HEALTH

FORENSIC ALCOHOL REVIEW COMMITTEE

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

STATE PUBLIC HEALTH LABORATORY

850 MARINA BAY PARKWAY

ROOM C-136

RICHMOND, CA 94804

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

1500 CAPITOL AVENUE, ROOM 165

SACRAMENTO, CA 95814

SAN DIEGO COUNTY

AGING AND INDEPENDENCE SERVICES ADMINISTRATION

ADMINISTRATIVE CONFERENCE ROOM

9335 HAZARD WAY

SAN DIEGO, CA 92123

MONDAY, JANUARY 28, 2008

10:02 A.M.

KATHRYN S. SWANK, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

REVIEW COMMITTEE MEMBERS

Mr. Paul Kimsey, Ph.D., Chairperson

Sergeant Kevin Davis (via videoconference)

Ms. Patricia Lough (via videoconference)

Mr. Bruce Lyle (via videoconference)

Mr. Paul Sedgwick (via videoconference)

Ms. Laura Tanney (via videoconference)

Mr. Kenton Wong

STAFF

Ms. Goldie Eng, Office of Legal Services (via videoconference)

Mr. Robert Haas, Food & Drug Laboratory Branch

Mr. Clay Larson, Food & Drug Laboratory Branch

Mr. Harby Thandi, Food & Drug Laboratory Branch

ALSO PRESENT

Mr. Chris Breyer, Los Angeles Police Department (via videoconference)

Ms. Sandra Carter, Department of Motor Vehicles (via videoconference)

Mr. Terry Fickies, Department of Justice

Mr. Mike Grubb, San Diego Police Department (via videoconference)

Mr. Jon Knapp, Valley Toxicology (via videoconference)

APPEARANCES CONTINUED

Mr. Wayne Moorehead, Orange County Sheriff's Department
(via videoconference)

Mr. Bill Phillips, Department of Justice

Mr. Edwin K. Scruggs, Department of Justice (via
videoconference)

Ms. Jennifer Shen, San Diego Police Department (via
videoconference)

Mr. Michael Toms, Sacramento County Crime Laboratory (via
videoconference)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

INDEX

	PAGE
Opening Remarks and Discussion of the Agenda	1
Presentation and Discussion of the Department of Public Health's Authority to Write Regulations Establishing the Procedures Used by Law Enforcement Personnel in Administering Breath Tests	6
Public Comment	23
Break	34
Committee Review of 07/31/07 Draft Regulatory Work Product along with 01/05/06 Draft Regulations	34
Lunch	63
Committee review of draft regulatory work products -- continuation of morning session	63
Public Comment	69
Break	
Discussion/Decisions by the Committee Regarding the Ongoing Role of the Department in the Oversight and Enforcement of the Regulations including:	72
Approval of personnel qualifications	
Evaluation of laboratory proficiency tests	
Approval of training programs	
Requiring labs to report changes in activities to CDPH through some Registration/Notification process	
Site inspections for cause (i.e., in response to complaints)	
Access to laboratory records	
Public Comment	81
Scheduling of future meetings	70
Adjournment	94
Reporter's Certificate	95

1 PROCEEDINGS

2 CHAIRPERSON KIMSEY: Welcome to the -- I believe
3 it's the seventh meeting of the Forensic Alcohol Review
4 Committee.

5 I want to thank you for your time in advance. We,
6 as you know, had attempted to have a meeting sort of in
7 October of last year, and that was canceled or delayed
8 because of the fires.

9 I think we'll go around and do a roll call.
10 Initially, let's identify the committee members and then
11 we'll identify the folks from the public.

12 We have Kathryn Swank here in Richmond who is our
13 stenographer today and will be making a transcript of our
14 meeting.

15 Here in Richmond, we have Mr. Kenton Wong and
16 myself, Paul Kimsey.

17 Who do we have on the Forensic Alcohol Review
18 Committee in San Diego present?

19 COMMITTEE MEMBER LOUGH: Patricia Lough
20 representing CACLD.

21 COMMITTEE MEMBER TANNEY: Laura Tanney, San Diego
22 County DA's Office.

23 COMMITTEE MEMBER SEDGWICK: Paul Sedgwick,
24 California Association of Toxicologists.

25 COMMITTEE MEMBER LYLE: Bruce Lyle, Coroner's

1 Association.

2 CHAIRPERSON KIMSEY: Great. And FAR Committee
3 members in Sacramento?

4 COMMITTEE MEMBER DAVIS: Kevin Davis, California
5 Highway Patrol.

6 CHAIRPERSON KIMSEY: Okay. Looks like the only
7 absentee we have today is Torr Zielenski.

8 Here in Richmond, from the public, we have --
9 please identify yourselves.

10 MR. LARSON: Clay Larson, Food and Drug Lab
11 Branch.

12 MR. FICKIES: Terry Fickies, California Department
13 of Justice.

14 MR. PHILLIPS: Bill Phillips, California
15 department of Justice.

16 MR. HAAS: Robert Haas, Food and Drug Laboratory
17 Branch.

18 MR. THANDI: Harby Thandi, Food and Drug
19 Laboratory Branch.

20 CHAIRPERSON KIMSEY: Okay.

21 And in San Diego?

22 MR. MOOREHEAD: Member of the public Wayne
23 Moorehead.

24 MR. GRUBB: Mike Grubb, San Diego Police
25 Department.

1 MS. SHEN: Jennifer Shen, San Diego Police
2 Department.

3 MR. BREYER: Chris Breyer, Los Angeles Police
4 Department.

5 CHAIRPERSON KIMSEY: And in Sacramento?

6 MR. SCRUGGS: Keith Scruggs, California Department
7 of Justice.

8 MS. CARTER: Sandra Carter, Department of Motor
9 Vehicles.

10 CHAIRPERSON KIMSEY: Anyone else that we haven't
11 identified yet?

12 Okay. Let's see. The agenda -- we have some
13 opening remarks and a discussion of the agenda. A couple
14 of -- I will make a couple of comments. As you know, I
15 believe our last meeting was July 3rd. On July 1st, the
16 State stood up a new Department of Public Health. So the
17 Department of Healthcare Services, which we were under
18 before July 1st, we were pulled apart and there's a new
19 Department of Public Health.

20 All of the activities that we're involved with,
21 with the forensic alcohol review, is taking place within
22 the Department of Public Health.

23 Dr. Mark Horton is the department director. He's
24 also the state health officer. Within the reorganization,
25 the Forensic Alcohol Review Committee is now in the Center

1 for Environmental Health. The director of that position
2 is vacant. And Mr. Rufus Howell is acting in that
3 capacity. And there are with the new department, there
4 are a number of vacancies in various places. I think
5 that's probably -- it's sort of the department update.

6 A couple of the things that has happened, there
7 was a letter to the Department from Mr. Wong, basically
8 requesting a replacement for Cathy Ruebusch from the
9 Office of Regulations, and a letter in response went out
10 to Mr. Wong on January the 18th, clarifying the role of
11 the Office of Regulations and their personnel and
12 identifying a Barbara Galloway as someone who will be
13 assisting.

14 I'm not sure if everyone received a copy of this
15 letter, but we can certainly make it available, probably,
16 on the Web site.

17 The -- one of the issues that's not formally on
18 the agenda today, but I think we will be discussing the
19 issue with regards to submitting a summary to the Health
20 and Human Services Agency. I think we'll have some
21 discussion on when we, as a committee, feel we should do
22 that and maybe in what form would a summary take place or
23 how would it -- what it would look like.

24 So that's something we'll probably discuss just
25 before we start reviewing the draft regulatory work

1 product, which is scheduled currently for 11:00 o'clock.

2 With regards to the agenda review, pretty much I
3 believe you have all seen copies of the agenda. We have a
4 presentation from our Office of Legal Offices, Goldie Eng,
5 about establishing new procedures for law enforcement
6 personnel;

7 After that, we have public comment;

8 We have a break at 10:45;

9 We're back at 11:00 to review the draft regulatory
10 work product;

11 We have a break for lunch;

12 Then we continue the review of the work product;

13 Some more public comment;

14 Another break at 2:45;

15 A presentation, discussion, on the role of the
16 Department from 3:00 to 3:30;

17 More public comment;

18 And then sort of a closing schedule of future
19 meetings.

20 Any comments or questions about the agenda as
21 presented?

22 Hearing none, I did not hear -- is Goldie Eng
23 available?

24 MS. ENG: Yes, I am.

25 CHAIRPERSON KIMSEY: Okay.

1 MS. ENG: I just stepped in.

2 CHAIRPERSON KIMSEY: Okay. Great.

3 I believe there was some handouts with regards to
4 Goldie's presentation. They should be in your packet.

5 You can go ahead Goldie, whenever you're ready.

6 MS. ENG: Oh, okay.

7 Let's see.

8 CHAIRPERSON KIMSEY: We basically have -- let me
9 fill you in a little bit. Let me fill you in a little
10 bit, Goldie.

11 We've gone through and done a roll call. All the
12 committee members are present expect one, Torr Zielenski.
13 And we've talked about -- we've done an agenda review. I
14 gave them a little bit of an update on the Department's
15 reorganization. I also mentioned that we would be talking
16 probably about a summary of what we -- how we want to
17 interact with Agency and what we want to send to Agency
18 probably after the 10:45 to 11:00 o'clock break.

19 And I think with that, we were going to go ahead
20 and hear your presentation.

21 MS. ENG: Thank you.

22 I'm going to see so I can face the people in this
23 room and hopefully the video camera will be able to catch
24 me as well.

25 Good morning. My name is Goldie Eng. And I'm an

1 attorney with the Department of Public Health, and I have
2 been advising the Forensic Alcohol Regulations Review
3 Committee. And I just want to say that I appreciate the
4 work of the committee, and I've been so impressed with the
5 level of expertise and experience that the committee
6 members have brought to this task. And what a -- I just
7 want to review as -- leading up to the issues, the
8 amendments that I am proposing to the definitions section
9 of the regulations, I would like to review some of the
10 background leading up to the regulations process. And as
11 all of you know, as committee members, the committee's
12 task is to review the existing forensic alcohol laboratory
13 regulations and to make a determination as to which
14 regulations are reasonably necessary to ensure the
15 competence of laboratories and employees to prepare,
16 analyze, and report the results of the tests and comply
17 with applicable laws.

18 And the committee has done that and has come up
19 with some draft regulations amending the current
20 regulations.

21 One thing to keep in mind, as we are going through
22 this process, is that these regulations need to be adopted
23 by the department. And before the department -- before
24 they can actually be adopted, they have to go through the
25 process of review through the Office of Administrative

1 Law.

2 And they need to comply with the standards for
3 regulations in the Administrative Procedure Act, which is
4 in the Government Code.

5 And the standards -- and I think early on, at one
6 of the earlier meetings, Cathy Ruebusch made a
7 presentation about the standards for regulations review,
8 and just to review that, there are six standards and they
9 are necessity, authority, clarity, consistency, reference,
10 and nonduplication.

11 And just going through these briefly, necessity
12 is, Agency needs to make a showing that these regulations
13 are necessary to accomplish the goals of the statute, the
14 intent of the statute. And that is normally done in the
15 Statement of Reasons.

16 The authority standard is the authority in the
17 statute which is given to the agency to adopt the
18 regulations. And in this situation, in the Forensic
19 Alcohol Lab Law, there is a provision which says that "the
20 Department shall adopt regulations." And that is the
21 authority section.

22 Clarity; the regulations need to be clear.

23 Consistency; the regulations need to be consistent
24 with the statutes and with other regulations. Otherwise,
25 they could be in conflict, and that would create a big

1 problem in terms of the enforceability of these
2 regulations.

3 Reference is -- in the OAL regulation is the power
4 to -- of an agency to implement, interpret, make specific
5 a statute. And in our situation, Forensic Alcohol Lab
6 Laws, that provision is found in Health and Safety Code
7 100700. And I just want to review that, because this is
8 one -- this is a provision that is key to determining what
9 regulations the committee can propose.

10 100700 says, "Laboratories engaged in the
11 performance of forensic alcohol analysis tests by or for
12 law enforcement agencies on blood, urine, tissue, or
13 breath, for the purpose of determining the concentration
14 of ethyl alcohol, involved in accidents or in traffic
15 violations shall comply with the regulations that are
16 adopted by the Department."

17 And that includes regulations currently enforced
18 and the regulations that the Department will adopt as
19 proposed by the committee.

20 So one thing to keep in mind is that the
21 regulations that are currently in Title 17, that are on
22 the books now, were drafted for the old statute. And what
23 we need to do, what the committee needs to do, and the
24 Department needs to do is, as we're drafting these, the
25 new set of regulations, we have to make sure that the

1 regulations are consistent with the new statute, the new
2 forensic alcohol lab statute.

3 So there have been some pretty significant changes
4 in the statute. As we all know, the licensing program was
5 eliminated and a lot of the other provisions were
6 redrafted and compressed into the provision that I just
7 read, which is 100700. And one of the handouts that you
8 should have before you is this table which is a
9 side-by-side table, looks like this. So this is a
10 side-by-side comparison of the old statute and the new
11 statute. And as you can see, a lot of the provisions are
12 similar but --

13 (Cell phone rings.)

14 MS. ENG: Anyway, it's important, as you are
15 looking at the draft regulations that you are considering
16 proposing, that there are differences between the old
17 statute and the new statute in that these changes may
18 require some changes in the terminology used in the new
19 regulation. And those -- and this is in order to meet the
20 APA standards of reference and consistency. If the new
21 regulations are not consistent and do not reference the
22 current statutes, OAL is, you know -- could see a problem
23 with that and send those regulations back.

24 So, you know, we need to avoid that process
25 because it's very time-consuming and it comes -- you know,

1 it comes at the very end. So if we can avoid that, these
2 legal issues, then we have -- we'll have a package that
3 will more likely be approved by OAL.

4 And one of the differences between the old statute
5 and the new statute is that because of the licensing
6 program, the licensing program only covered laboratories
7 that were performing in -- on the left side of the table,
8 100710. The statute only required licensing for
9 laboratories that were performing analyses of ethyl
10 alcohol in the blood, urine, or tissue -- not breath.
11 Okay? Breath was dealt with in a separate section, which
12 is 100715. Okay? Both of those sections have been
13 repealed and kind of redrafted and compressed into the new
14 statute, which is 100700. And 100700 combines blood,
15 urine, tissue, or breath, as you can see that. So you can
16 see that there is a change.

17 And the way the current regulations, the ones that
18 we're reviewing now, are written, the term "laboratory"
19 refers to the laboratories that are doing blood, urine,
20 and -- or tissue. And it does not refer to breath, breath
21 analysis. Breath analysis is done under a different --
22 under a different section, not under a licensed lab. It's
23 done by law enforcement agent -- can be done by law
24 enforcement agencies.

25 So that is the difference. And what I have

1 proposed to -- in my draft amendments is to define the
2 term "laboratory," because now the only -- the only
3 entities that can be covered under this law are entities
4 that are laboratories. And what we need to do is to
5 combine all of these entities that are doing blood,
6 breath, urine, and tissue, and bring them under the
7 umbrella of the term "laboratory."

8 But -- and they will be -- but they will be
9 subdivided as separate categories, one for -- let's see.
10 If you'll look on the draft regulation on the second page,
11 the term "forensic alcohol laboratory" is a laboratory
12 which is authorized -- which performs forensic alcohol
13 analysis by any method. And that is in contrast to
14 another term, which is -- another term, which is primarily
15 intended to cover law enforcement entities, and that is
16 defined as a "breath alcohol testing facility." And that
17 is a facility that is operated for breath alcohol analysis
18 and not analysis of blood, urine, or tissue.

19 CHAIRPERSON KIMSEY: You want comments now or when
20 you are finished?

21 MS. ENG: Just let me complete this concept --
22 discussion of this term.

23 The breath alcohol -- and the definition goes on
24 to say that "the breath alcohol testing facility includes
25 any law enforcement agency facility which performs breath

1 tests."

2 And anyway, at this point, I can answer any
3 questions from the committee.

4 Yes?

5 CHAIRPERSON KIMSEY: Any questions from the
6 committee? And then we'll take a public question.

7 COMMITTEE MEMBER TANNEY: Yes, this is Laura
8 Tanney.

9 We've gone on, over and over, over the last
10 several years, about broadening the application of these
11 regulations to cover law enforcement agencies. And again,
12 I am adamantly opposed to anything that's going to broaden
13 the scope of these regulations to cover officers out in
14 the field to the extent that they were not already covered
15 by this.

16 This -- these regulations are for laboratories and
17 to try to redefine laboratories to include the law
18 enforcement -- the sites, the field arrests, and the sites
19 out there in the field is inappropriate. And I'm not sure
20 if that's what you are trying to do again, Goldie. But
21 this is a concept that's been raised over and over and
22 over again, every time, with respect to somehow trying to
23 broaden this to regulate law enforcement officers doing
24 breath tests out in the field. And that is not an
25 appropriate place to go. And I'm really concerned with

1 trying to redefine what "laboratory" means.

2 MS. ENG: Well, Article 7 of the regulations does
3 cover the activities of law enforcement officers at police
4 stations and out in the field, doing breath alcohol tests;
5 does it not?

6 And if it does, if that activity -- if we want
7 that activity to be covered under these regulations, we
8 need to bring it under the general umbrella of a
9 laboratory. And this is only done once in the definition
10 term. You know, these law enforcement testing sites are
11 covered by these regulations. And if they are not linked
12 up in some way to the statute, then they cannot be in the
13 regulation. And I don't believe that there was any intent
14 in the -- by the legislature to change the scope of what
15 was already covered under the regulations.

16 You know, my reading of statutory intent was that
17 they wanted to remove the license program, and that has
18 been done. But in terms of what is covered, I thought
19 that the intent was to continue covering these breath test
20 sites, and that if they are not covered, then they can't
21 be part of the regulations. You can't regulate what is
22 not in the statute.

23 COMMITTEE MEMBER TANNEY: I think the legislative
24 intent was actually to do away with DHS oversight. And I
25 realize that this is a point of contention among the

1 different members of the committee here, but I believe
2 that was actually the legislative intent.

3 And I don't believe -- while I agree that there's
4 a section on breath alcohol analysis in here, it's covers
5 the equipment that's used. And I believe the new section
6 100700, if I'm not mistaken, has to do with the
7 instruments that are used. And this covers the
8 laboratories. I mean, I think this entire section of
9 Title 17 is for the regulation of laboratories.

10 And to the extent that it talks about breath
11 instruments and the breath instruments that are used, I
12 believe that the laboratories cannot certify the results
13 of the breath tests that are used by law enforcement
14 unless they qualify under the section. But that has to do
15 with laboratory certification. It doesn't have to do with
16 trying to control, necessarily, law enforcement directly.

17 And if you change the definition of laboratories,
18 you are now saying, law enforcement falls under these
19 regulations independent of the -- independent of
20 laboratory certification of the results. So right now,
21 law enforcement uses other types of breath tests that I
22 don't necessarily believe -- has results -- do those go
23 through the laboratory? No, they don't. So they use PAS
24 testing that does not -- it is not regulated under Title
25 17. But I'm afraid that if you try to change the scope,

1 you're essentially trying to regulate law enforcement.

2 And that's inappropriate.

3 If it's not appropriate to have breath testing in
4 the regulations, then maybe we should just take the breath
5 testing out of the regulations, period.

6 MS. ENG: Well, that's what I was trying to -- the
7 committee decided to keep the breath testing in the
8 regulations. So that's why I propose these changes to
9 allow that to be kept in, because if we don't make these
10 changes, the breath regulations won't -- will not have a
11 sufficient link to the statute.

12 COMMITTEE MEMBER TANNEY: So to the, I think, to
13 the extent the laboratory is certifying the results of the
14 breath tests, there is already that -- I mean, nothing's
15 changed as far as that goes.

16 So I don't know why they can't continue to have
17 the regulations pertaining to those laboratory tests that
18 are certified by the laboratory. But that's something
19 perhaps the committee members can discuss and decide
20 whether we need more breath testing included in the
21 regulations at all.

22 COMMITTEE MEMBER LOUGH: Patricia Lough.

23 If we were to look on page 15 of the draft, down
24 on the bottom, Item 4, that's really the place where the
25 law enforcement officer is stated. And I think we can

1 probably just eliminate that item right there, and leave
2 the rest of the language in.

3 CHAIRPERSON KIMSEY: Is that -- what section? Is
4 that -- 1221.

5 COMMITTEE MEMBER LOUGH: 1221.4.

6 CHAIRPERSON KIMSEY: (b)(4)?

7 COMMITTEE MEMBER LOUGH: (b)(4). It's the last
8 red -- do you have that in red? Law enforcement officers.
9 That's where we're addressing the law enforcement officers
10 and really, it's sort of a leftover. If we take that out,
11 we leave the responsibility up with the laboratory itself.

12 The only other place, if we go on page 14, which
13 is Article 7, 1221.1(b), it says it can be used by persons
14 other than -- under the definition of an agency or lab.
15 So that gives the lab the ability to determine if they
16 want to delegate some of that responsibility to other
17 people, and each laboratory can determine how they want to
18 do that and how they want to be assured that accurate
19 testing will be performed. So my suggestion is to
20 eliminate that No. 4 and eliminate that whole law
21 enforcement reference.

22 COMMITTEE MEMBER TANNEY: Well, I have a question
23 for Patty, then. Are you suggesting then that the only
24 people who can do breath testing are the laboratory
25 individuals?

1 COMMITTEE MEMBER LOUGH: No. If you go back to
2 page 14, (b), it says, "Instruments may be used in other
3 places and by persons other than."

4 COMMITTEE MEMBER TANNEY: I thought you wanted to
5 eliminate (b). The other (b).

6 COMMITTEE MEMBER LOUGH: The other No. 4, page 15.
7 So to keep that in, it says -- it's by -- the lab is going
8 to do it or other persons. And just specify who those
9 other persons are and which is probably good. Down the
10 road, there could be a completely different group of
11 people trained to do that for some reason, that are not
12 law enforcement officers. Or even now, there are law
13 enforcement agencies where these instruments are housed in
14 jails, and non-law enforcement officers can be giving
15 these tests.

16 So I think if we eliminate that last No. (4) on
17 page 15, that will eliminate the need for a definition.

18 COMMITTEE MEMBER WONG: Kenton Wong.

19 I agree with Patty. I think that's a great idea.
20 And I appreciate Laura's comments on the certification or
21 the breath tests. Regarding the PAS device tests, those
22 aren't certified as true evidentiary breath tests in a
23 court of law, anyway. So it doesn't matter, and so we
24 would never be trying to certify PAS device tests results
25 in a DUI type of trial situation.

1 But I appreciate Goldie's comments in trying to
2 help us get the right kind of language that's required,
3 because from the very get-go of these whole meetings and
4 proceedings, we've have trouble in defining what a
5 laboratory is, now that we have gone to the new
6 regulations with 1623. And it's been kind of trying to
7 stick a round peg in a square hole.

8 But I appreciate Goldie in trying to help us to
9 navigate the language that would move us forward in trying
10 to get these regulations passed.

11 CHAIRPERSON KIMSEY: Other comments from the
12 committee?

13 We have some public that wanted to make some
14 comments here in Richmond.

15 COMMITTEE MEMBER TANNEY: I have a question. This
16 is Laura.

17 Is Sergeant Davis here today from CHP?

18 COMMITTEE MEMBER DAVIS: Yes.

19 COMMITTEE MEMBER TANNEY: Does he have any
20 concerns about the law enforcement officers?

21 COMMITTEE MEMBER DAVIS: Yeah. I would echo your
22 concerns.

23 I don't see why law enforcement would need to be
24 put under the umbrella of a laboratory. You know, I don't
25 have the legal expertise which Goldie has, so I don't --

1 I'm not fully understanding why we would even need to do
2 that. I guess I'm not understanding the reasoning of why
3 we couldn't keep -- because Article 7, it looks like to
4 me -- this is Article 7 where it talks about how to do a
5 breath test; right?

6 MS. ENG: Correct.

7 COMMITTEE MEMBER DAVIS: So are you suggesting
8 that can't be in there? And if so, I don't understand the
9 why, because we're not changing that, really.

10 MS. ENG: Right. What has changed is this table,
11 the difference is that in 100 -- the old law, Health and
12 Safety Code 100715, there was authority to establish
13 procedures used by law enforcement agencies in
14 administering breath tests. Okay?

15 So that means that under the old law, these
16 procedures were established by the Department and that was
17 done in Article 7. That provision has been repealed, and
18 the new provision is all of these concepts have been
19 consolidated into current 100700. And that's all we have
20 to work with in the current -- the new law, the new
21 statutes, 1623.

22 And we need to make sure that whatever regulations
23 we adopt are consistent with the authority and the
24 reference in 100700. And that's old reference, is
25 laboratories. So, you know, we can only adopt regulations

1 relating to laboratories. That's the bottom line. So
2 whatever is a laboratory, that's all we can regulate.

3 CHAIRPERSON KIMSEY: So correct me if I'm wrong --

4 COMMITTEE MEMBER LOUGH: Patty Lough.

5 CHAIRPERSON KIMSEY: This is Paul in Richmond.

6 So what you are saying, Goldie, is to -- for us to
7 do any sort of regulation, or to continue any sort of
8 regulation of the breath alcohol or law enforcement aspect
9 of this, we need to adopt this particular language, the
10 new language that you are recommending.

11 MS. ENG: Well, what I'm hearing from Laura Tanney
12 and others on the committee is that the committee wants to
13 only regulate the laboratory certification of the law
14 enforcement testing and that these regulations are not
15 to -- intended to cover the law enforcement testing, per
16 se; only the laboratory certification of the law
17 enforcement testing. That's what I'm hearing.

18 COMMITTEE MEMBER TANNEY: What was that last
19 statement?

20 MS. ENG: That the committee would -- does not
21 want to regulate the law enforcement testing, but only the
22 laboratory certification of the law enforcement testing.

23 COMMITTEE MEMBER LOUGH: Seems that's closer to
24 what we're talking about.

25 This is Patty Lough.

1 COMMITTEE MEMBER DAVIS: Kevin Davis.

2 The crime lab will only certify the result if the
3 law enforcement officer does the test properly. But they
4 are not telling you that you have to do a test a certain
5 way. In other words, if I do it wrong and don't follow
6 these rules, nothing stops me from doing that, but now my
7 results will not be certified by a crime laboratory. Is
8 that my understanding, Laura, the point you are trying to
9 make?

10 COMMITTEE MEMBER TANNEY: Yes. That's one of the
11 points that I was trying to make.

12 And the other point that I was trying to make is
13 that law enforcement uses tests that do not go through the
14 same certification, or that do not go through Title 17,
15 for instance, the PAS. And I don't know if the point of
16 arrest testing that's done, I don't know to what extent
17 that's covered by the laboratory or not, because I'm not
18 that familiar with that.

19 But my point is, by saying -- by basically saying
20 "laboratory" includes law enforcement and includes breath
21 testing, now you are encompassing all of the instruments,
22 from what I can see, that law enforcement may use, whether
23 or not we intend them to be covered by the lab -- or
24 certified by the laboratory. I'm worried about it
25 being -- being too broad in encompassing, for instance,

1 the PAS testing. We don't want it to.

2 COMMITTEE MEMBER WONG: Kenton Wong, Richmond.

3 COMMITTEE MEMBER DAVIS: Kevin Davis again.

4 COMMITTEE MEMBER WONG: Laura, you are absolutely
5 right.

6 The PAS device tests have never been under
7 certification or anything like that from the crime lab or
8 the criminalist testifying in the case. And they never
9 will be.

10 Those tests fall outside of Title 17, and those
11 results are as they say, they are preliminary alcohol
12 screening device tests. They are not covered under Title
13 17. They are not a true evidentiary breath test, and they
14 are not covered under the regulations that we're
15 discussing.

16 MR. FICKIES: A comment.

17 Terry Fickies, DOJ.

18 The breath testing devices that we use are
19 certified by Title 17, and they are, the tests, are done
20 at the -- may be done at the roadside if necessary, and
21 they meet the requirements of Title 17. But these are
22 different from the general PAS device that is used by
23 agencies, which is not certified, does not follow -- it
24 may or may not follow the rules of Title 17.

25 MR. PHILLIPS: A comment.

1 Bill Phillips with the Department of Justice.
2 Therefore, the definition of "breath alcohol facility"
3 would not meet the needs of the Department of Justice,
4 because we do breath testing with instruments that are
5 evidential at the roadside.

6 COMMITTEE MEMBER DAVIS: Kevin Davis again. I
7 think -- I agree with everything. PAS devices are
8 covered, and EPAS devices, or point of arrest devices used
9 like in Orange County, are covered. And that's allowed --
10 by my understanding is that Section (b) we just discussed,
11 where it says, you know, may be -- "instruments may be
12 used in places other than laboratories and by persons
13 other than alcohol personnel only if such places are under
14 the direct jurisdiction of a governmental agency or
15 forensic laboratory," I think that's what allows the EPAS
16 devices and so forth to be done roadside, which is fine.

17 But what I want to go back to real quick is how
18 you were saying the old statutes versus the new statutes,
19 and it seems like you are suggesting the new statutes are
20 not covering breath testing specifically by law
21 enforcement.

22 But on this new statute column, under 100703, it
23 says, "The committee shall evaluate group 8" -- "determine
24 revisions that will limit the regulations to those that
25 the committee determines are reasonably necessary to

1 ensure that the competence of the laboratories and
2 employees to prepare, analyze, and report the results."

3 Well, I don't think that to report results -- I
4 mean I don't know if "report" and "certify" are
5 synonomous, but you are going to report results and the
6 lab is going to testify to those results, that would be
7 necessary that the law enforcement agencies follow a
8 protocol. So I don't think it would fall even under the
9 new statutes.

10 And again, I don't have the legal expertise you
11 have. But it sounds -- just reading that alone, I think,
12 the argument could be made that it does fall under that.

13 COMMITTEE MEMBER LOUGH: Patty Lough.

14 I think that you're correct that we do include law
15 enforcement under 221.1(b), where it says "persons other
16 than" the lab personnel.

17 So the practical situation is that if we continue
18 business as we're doing now, which has always been our
19 intention, not to change the way we do business, if we do
20 it as it is now, you are not going to have your agency
21 take your instruments and just run amuck with them. You
22 are going to continue to do it probably pretty much the
23 way you are. Your instruments are going to be checked by
24 the state. You have, what, a thousand-some instruments
25 out there.

1 You are still going to follow the same programs
2 that you are doing now. Probably everything will be the
3 same. That will be the arrangement you will probably make
4 with your crime laboratory that is assisting you with your
5 breath instrument testing.

6 So by just naming other persons, you are included
7 in there. And then the laboratory will say, "We will let
8 you do it, but you need to have this training," whatever
9 it is, "the lab wants you to do, to be certified that
10 you're competent to go out and do this test."

11 So everything will stay the same and you are just
12 listed as other persons. You can't go out on your own as
13 a CHP agency and just take over the breath program. It's
14 probably never going to work.

15 COMMITTEE MEMBER DAVIS: Patty, I fully understand
16 and fully agree. I was just merely responding to Goldie
17 that I don't see the why we have to exclude this. I think
18 it's fine as is. It's business as usual, so to speak.

19 MS. ENG: Right.

20 COMMITTEE MEMBER DAVIS: We're not changing
21 anything in those parts of the regulations. That's all I
22 was commenting on and I'm fine with the way it's done now.

23 CHAIRPERSON KIMSEY: We have another comment here
24 in Richmond.

25 MR. LARSON: Clay Larson.

1 First I heard a number of committee members refer
2 to certification of breath testing results. You need to
3 keep in mind there's nothing in the regulations that
4 refers to certification of the results. Nothing in the
5 statute requires those results are certified -- again,
6 breath testing results are certified by a forensic alcohol
7 laboratory. So we created a new layer here, which we may
8 want to incorporate -- maybe this is ultimately a
9 solution, but in regulations, assuming we have the
10 authority. It doesn't exist now.

11 My other kind of overriding comment is that I
12 think what the committee is struggling with is a poorly
13 written statute. The elimination of that particular
14 section 100715 was never commented upon by the authors.
15 It was never commented upon by any of the legislative
16 record. And it is puzzling because it didn't involve
17 laboratory oversight of -- by the Department, which it was
18 apparently a major concern.

19 When you look at Article 7, it tells the police
20 officer to do duplicate breath tests, to obtain results
21 with certain precision, to wait 15 minutes, and we
22 struggle with the definition of the continuous
23 observation. But wait 15 minutes and in some way observe
24 the subject. We require them to use instruments that have
25 been periodically checked by a laboratory. We require the

1 police officer to have taken training from a laboratory.
2 These are all requirements placed by the Department
3 through its regulations on police officers.

4 And the authority to do that previously existed in
5 a section which 100715 said two things. It said, "The
6 Department shall promulgate regulations that establish the
7 technical procedures used by law enforcement operators."
8 And then it added, "The law enforcement operators have to
9 follow these procedures." We eliminated those two.

10 So as we struggle with the new concepts of now
11 capturing breath testing under the umbrella of the
12 laboratory tests, I think that struggle was a direct
13 result of poorly written legislation.

14 COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.

15 To respond to Clay's comments, he discusses the
16 certification of results, because I used that word. It
17 certainly is up to each laboratory how they want to
18 determine if people other than laboratory people are going
19 to perform this test, that the laboratory will support in
20 court. And if the lab chooses to do some sort of internal
21 certification, that's up to each laboratory to determine.

22 With regard to Article 7, the procedures,
23 step-by-step, officers need to know how to do this. Well,
24 we feel that everyone who does a test, we just kept the
25 information in for anyone that does tests on these

1 instruments. They must use these standards, and we don't
2 need to specify officers to do that. Anyone who does it
3 will follow these standards. So it doesn't really require
4 us to specify "officer" to mean something different.

5 COMMITTEE MEMBER TANNEY: Laura Tanney.

6 I agree with Patty. When we use the term
7 "certification," perhaps it was incorrect because I'm not
8 talking about it in the technical sense or in the literal
9 sense. But rather, the fact that the laboratory approves
10 the results and is willing to testify to that as being
11 accurate results.

12 I still have a problem with -- when the
13 legislature got together and changed the statutes, they
14 used the term "laboratory." And I honestly don't know
15 what the legislature was thinking in using the term
16 "laboratory." But I think it's dangerous to go to try to
17 redefine "laboratory" just so that it fits within what you
18 want or what the committee wants to regulate. The term
19 "laboratory," I believe, is defined in many places. And I
20 have yet to see the term "laboratory" cover law
21 enforcement agencies.

22 So I think there's a real problem in trying to
23 make the shoe fit by putting in the term "law enforcement"
24 under the definition of "laboratory." I have no problem
25 with the provisions now that essentially recommend or

1 define what an appropriate test is that law enforcement
2 should give, such that the laboratory will not testify to
3 them unless they are followed this way or will testify
4 about the results but qualify that it's based upon whether
5 or not certain rules were followed when the breath test
6 was given.

7 And that would be up to the laboratory under
8 cross-examination, to determine whether or not it really
9 meets the standards.

10 But again, I have a real problem with the
11 regulations, trying to -- or with the committee trying to
12 redefine laboratory to include law enforcement just so it
13 fits in with what the committee or the Department of
14 Health Services wants to regulate.

15 COMMITTEE MEMBER WONG: Kenton Wong, Richmond.

16 I agree with you, Laura, but, you know, it is what
17 it is. And the statute is the way it is. And like Clay
18 said, it's the way that it turned out.

19 I think what may be helpful is on the second page
20 of Goldie's handout, about halfway down, she's got some
21 language regarding what "laboratory" would be defined as
22 to help us to kind of make the shoe fit. Because it is
23 what it is. And we have to deal with that.

24 COMMITTEE MEMBER TANNEY: But Kenton, it's not.
25 We're talking about statutes. It takes a year to change a

1 statute. We've been in this committee for four years now,
2 just -- or going on four years.

3 If we have a problem with the definition of the
4 statute or the words or terms used in the statute, then
5 maybe that's where we should go is to the legislature to
6 correct it. But the fact is, you cannot change the
7 definition just so that you can try to squeeze it in
8 under -- you know, so that you can say, "Well, now this is
9 what the legislature meant," because they said
10 "laboratory" and we're just going to redefine a
11 "laboratory," so it covers what we want it to cover.
12 That's not appropriate.

13 And, you know, I'm still trying to find -- Goldie,
14 where is your definition that you proposed?

15 CHAIRPERSON KIMSEY: It's on the back page of a
16 document -- go ahead.

17 MS. ENG: The definitions are in alphabetical
18 order. So the definition of "laboratory," which is the
19 umbrella definition, is on the second page in the middle
20 of the page.

21 CHAIRPERSON KIMSEY: It says "laboratory means any
22 facility operated --

23 MS. ENG: So basically, the umbrella definition of
24 laboratory, "A laboratory includes a forensic alcohol
25 laboratory and a breath alcohol testing facility."

1 A forensic alcohol laboratory is a laboratory that
2 can do forensic alcohol analysis for any type of
3 specimen -- blood, breath, urine, tissue, whatever. A
4 breath alcohol testing facility can only do breath. It's
5 not -- is law enforcement. It can be any --

6 COMMITTEE MEMBER TANNEY: The breath machine
7 that's at the jail is now a laboratory?

8 MS. ENG: Yes. Under -- yes. The way -- in order
9 to bring it under the umbrella.

10 COMMITTEE MEMBER TANNEY: And so the law
11 enforcement officer working in EPAS, does that device out
12 at the field, does he become an employee of the
13 laboratory?

14 MS. ENG: The laboratory -- there is a provision
15 in the definition of "laboratory" for labs that are not at
16 a fixed location.

17 So that includes -- that would include mobile
18 laboratories. And, yes, the law enforcement officer which
19 is operating that machine at the police station would be
20 an employee of the laboratory.

21 COMMITTEE MEMBER TANNEY: That's my concern.

22 CHAIRPERSON KIMSEY: We have a comment here in
23 Richmond.

24 MR. FICKIES: Comment.

25 Terry Fickies, DOJ.

1 I'm trying to find out what the basic requirement
2 is, why we are defining "laboratory" this way. Is this
3 from 100701? Or why do we have to define laboratory as a
4 jail facility or roadside testing?

5 COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.

6 I think the problem is, originally, we were trying
7 to incorporate the law enforcement entity of this without
8 making them employees of the laboratory. But if we simply
9 remove their reference in here, we probably can get rid of
10 that as well and just talk about the laboratory as a whole
11 and not the testing facility or the law enforcement
12 component.

13 MR. FICKIES: Which reference are you speaking of,
14 Patty?

15 COMMITTEE MEMBER LOUGH: If we go back to the
16 item -- No. 4, under Article 7, 1221.1(b). If we get rid
17 of our reference to law enforcement in there, we don't
18 really have to worry about those instruments that are
19 being used at roadside or that are housed in jails or
20 anything. We just talk about the laboratory. We don't
21 really need to specify where those instruments are or
22 who's using them. That will come under the jurisdiction
23 of the laboratory.

24 So we can probably avoid a lot of this detail
25 because now we're talking about just taking that law

1 enforcement reference out.

2 MR. FICKIES: Is this page 15, Section 4,
3 regarding the training of breath analysis operators?

4 COMMITTEE MEMBER LOUGH: Yes, Terry.
5 Patty Lough.

6 We don't really need to go into the training. We
7 leave that up to the laboratory, how they are going to
8 train officers and what's going to be required if they
9 want the laboratory to support them in court.

10 MR. FICKIES: Comment.

11 Terry Fickies.

12 Let's get rid of it then.

13 COMMITTEE MEMBER LOUGH: Good idea.

14 CHAIRPERSON KIMSEY: This is Paul. We've sort of
15 blown through our break here. But I would suggest that we
16 take a 15-minute break and then come back and try to come
17 to some sort of a conclusion on this one particular area.

18 We're on a break for 15 minutes. We'll restart at
19 11:15.

20 (A break was taken in proceedings.)

21 CHAIRPERSON KIMSEY: We had a very active
22 continued discussion on the topic for our 15 minutes,
23 including in the men's room.

24 So is there anyone that would like to take a shot
25 at sort of summarizing where we are?

1 COMMITTEE MEMBER LOUGH: Patty Lough.

2 I think where we are is on 1221.1, bottom of
3 page 5, number -- sorry. Number (4). I think we want to
4 eliminate that paragraph. I think that's where we are.

5 CHAIRPERSON KIMSEY: You're proposing to eliminate
6 the whole paragraph?

7 COMMITTEE MEMBER LOUGH: Well, I don't care. Just
8 the law enforcement officer reference is fine.

9 COMMITTEE MEMBER DAVIS: So just the part in red
10 or the whole thing?

11 COMMITTEE MEMBER LOUGH: The additional part in
12 red that was for law enforcement officers. That new red
13 that was added, let's eliminate that, and I think we're
14 all good.

15 COMMITTEE MEMBER DAVIS: I would agree with that.
16 But Goldie, does that solve our issues? My understanding
17 is --

18 MS. ENG: I don't think that that change
19 necessarily addresses my concern. And that is that these
20 regulations, these standards, unless the entities that are
21 addressed in the regulation are covered as a laboratory,
22 then under the statute, they are not within the umbrella
23 of the statute. So if the activity of the lab -- the
24 relationship between the laboratory and the law
25 enforcement test site is that of supporting it, then that

1 relationship, if you are only wanting to regulate the
2 laboratory, the relationship between the laboratory and
3 the law enforcement test site, or just any test site,
4 needs to be spelled out in the regulation.

5 Because right now, it just says that, for example,
6 in 1221.4, "Procedures for breath alcohol analysis shall
7 meet the following standards." That only relates to
8 laboratories, whatever we define as a laboratory. So it's
9 only the laboratories that have to follow these
10 procedures.

11 COMMITTEE MEMBER LOUGH: That's correct.

12 Patty Lough.

13 MS. ENG: So what happens at the law enforcement
14 test site?

15 COMMITTEE MEMBER DAVIS: Right.

16 Kevin Davis here.

17 Didn't we -- is it my understanding, doesn't
18 1221.1(b), the second paragraph of page 14, cover that,
19 allowing law enforcement as written?

20 COMMITTEE MEMBER TANNEY: This is Laura Tanney.

21 The thing that Patty's trying to make is that if
22 we delete all reference to law enforcement throughout, so
23 that this only covers regulation of law enforcements, then
24 it's irrelevant what happens with law enforcement at the
25 other sites because they are not regulated by this,

1 anyway. We don't want them to be regulated by this.

2 It will be between law enforcement and the
3 laboratories as to whether the laboratory is going to
4 support the testing.

5 CHAIRPERSON KIMSEY: A comment here.

6 MR. FICKIES: Terry Fickies, DOJ.

7 I think Kevin was on point when he talked about
8 page 14, the second paragraph down. I think that covers
9 the relationship between the laboratories and the law
10 enforcement agencies that they support.

11 CHAIRPERSON KIMSEY: Another comment, Richmond.

12 MR. LARSON: Clay Larson.

13 I'm pretty sure, Patty Lough wasn't thinking
14 clearly when she referred to section 1221.4(a)(4), and
15 that language that referred to the word "law enforcement,"
16 it is big and it's red, so maybe that caught her eye.

17 But that particular section was intended to
18 eliminate the specific burden on the laboratory that they
19 had to supervise all training. And this simply permitted
20 them to outsource some of that training or all of that
21 training to the law enforcement agency.

22 So eliminating, surgically eliminating, that line
23 there would certainly not have the intended effect once we
24 figure out what that intended effect is.

25 COMMITTEE MEMBER LOUGH: Patty Lough.

1 I'm not sure I understand what Clay's comment is.

2 The training for people to use that type of
3 analysis is under the supervision of these three
4 categories. And that's sort of the outcome we're looking
5 for. How we get to that is up to the laboratories to
6 determine. But this puts the training under the
7 supervision of the laboratory staff.

8 COMMITTEE MEMBER TANNEY: They can still delegate
9 it. It would still be under their supervision.

10 CHAIRPERSON KIMSEY: Does someone from the
11 committee want to make a motion with regards to our
12 discussion as it's been going on, so we can have a vote?

13 COMMITTEE MEMBER LOUGH: Yes.

14 Patty Lough.

15 Do you want me repeat how I think that No. 4
16 should be worded?

17 CHAIRPERSON KIMSEY: I think for our stenographer,
18 that would be helpful.

19 COMMITTEE MEMBER LOUGH: All right. I will go
20 through the whole citation.

21 Article 7, Section 1221.1 -- 1221.4, sorry,
22 (b)(3) -- no, (b)(4) will now read, "Training and the
23 procedures of breath alcohol analysis shall be under the
24 supervision of forensic alcohol supervisors, forensic
25 alcohol analysts, or forensic alcohol analyst trainees in

1 an alcohol laboratory."

2 CHAIRPERSON KIMSEY: Any comments to the motion?

3 COMMITTEE MEMBER LYLE: Bruce Lyle.

4 I think the section is actually .4(a)(4).

5 CHAIRPERSON KIMSEY: I agree.

6 COMMITTEE MEMBER LYLE: Not (b).

7 And I second it.

8 Bruce Lyle.

9 CHAIRPERSON KIMSEY: Any further discussion?

10 Comments?

11 COMMITTEE MEMBER LOUGH: Patty Lough.

12 If I can amend that. Instead of "in an alcohol
13 laboratory," to be "from an alcohol -- a forensic alcohol
14 laboratory."

15 COMMITTEE MEMBER WONG: Kenton Wong. Richmond.

16 Laura, are you happy with that?

17 COMMITTEE MEMBER TANNEY: Yes.

18 COMMITTEE MEMBER LYLE: Bruce Lyle.

19 I amend it.

20 COMMITTEE MEMBER WONG: Because in that fashion --

21 COMMITTEE MEMBER TANNEY: That's fine.

22 COMMITTEE MEMBER WONG: Okay. Great.

23 CHAIRPERSON KIMSEY: Why don't we go ahead and
24 have a vote?

25 Let's just do a voice vote, I guess.

1 Obviously, a "yay" is to support the motion and a
2 "nay" is not to.

3 Laura Tanney?

4 COMMITTEE MEMBER TANNEY: Yay.

5 CHAIRPERSON KIMSEY: Sergeant Davis?

6 COMMITTEE MEMBER DAVIS: Yay.

7 CHAIRPERSON KIMSEY: Bruce Lyle?

8 COMMITTEE MEMBER LYLE: Yay.

9 CHAIRPERSON KIMSEY: Kenton Wong?

10 COMMITTEE MEMBER WONG: Yay.

11 CHAIRPERSON KIMSEY: Paul Sedgwick?

12 COMMITTEE MEMBER SEDGWICK: Yay.

13 CHAIRPERSON KIMSEY: Patty Lough?

14 COMMITTEE MEMBER LOUGH: Yay.

15 CHAIRPERSON KIMSEY: Paul Kimsey?

16 Nay.

17 Goldie, where does this sort of leave us with your
18 presentation?

19 COMMITTEE MEMBER LOUGH: Patty Lough.

20 Question on procedure.

21 CHAIRPERSON KIMSEY: Sure.

22 COMMITTEE MEMBER LOUGH: We are missing a member
23 on the committee. Do we need to obtain a vote from that
24 member by telephone or something?

25 CHAIRPERSON KIMSEY: That's a good question.

1 COMMITTEE MEMBER LOUGH: Or can we --

2 CHAIRPERSON KIMSEY: We're under Bagley-Keene.

3 And off the top of my head, I don't know an answer. We'll
4 certainly check into it. If there is an opportunity for
5 Mr. Zielenski to vote, we'll certainly provide him with
6 that.

7 Under Bagley-Keene, we'll just have to see if
8 there's a necessity for that or not. But I don't know --
9 does anyone know off the top of their head, what the
10 procedure is for that?

11 MS. ENG: This is Goldie Eng.

12 I can answer that question. The committee may
13 take action so long as that -- so long as there is a
14 quorum. And has it been ascertained that there is a
15 quorum?

16 CHAIRPERSON KIMSEY: Yes.

17 MS. ENG: Okay. Then the committee may vote.

18 CHAIRPERSON KIMSEY: Okay. Do we give an
19 opportunity for an absent member to vote or comment?

20 MS. ENG: No.

21 CHAIRPERSON KIMSEY: Okay.

22 MS. ENG: Certainly to comment, but not to vote.

23 CHAIRPERSON KIMSEY: Goldie, that was -- I think
24 we're sort of back to where you want to go with your
25 presentation.

1 MS. ENG: I think that it was helpful to hear
2 where the committee wants to go with this. And I will
3 have to review the regulation and the changes to see what
4 more changes should be made to clarify the statute -- I
5 mean, the regulations package. Because I don't -- I don't
6 know that the relationship between the laboratory and the
7 law enforcement test site is clearly stated in this
8 regulation package. But I understand where the committee
9 wants to go with this.

10 COMMITTEE MEMBER LOUGH: Patty Lough.

11 I don't believe that's necessary.

12 CHAIRPERSON KIMSEY: What part's not necessary,
13 Patty?

14 COMMITTEE MEMBER LOUGH: That we have to establish
15 the testing that's done outside of the laboratory, that we
16 have to specify anything with regard to that.

17 CHAIRPERSON KIMSEY: Okay. So Goldie, is there
18 any more of your presentation you would like to make at
19 this point, or are you finished?

20 MS. ENG: Not at this point.

21 CHAIRPERSON KIMSEY: Okay.

22 MS. ENG: I'm done.

23 COMMITTEE MEMBER WONG: Thank you, Goldie.

24 CHAIRPERSON KIMSEY: That was a good discussion,
25 something we've been around dealing with for quite a

1 period of time.

2 Any comment from the committee or public at this
3 point?

4 Before we head off into what was going to be our
5 11:00 o'clock to 12:00 o'clock committee review, draft
6 regulatory work product, I think now might be a good time
7 to have a bit of discussion with the committee on what we
8 would want to move forward to Agency and when we might
9 want to do that.

10 The legislation directs the committee to provide a
11 summary to the Health and Human Services Agency with which
12 when we do that, then they have 90 days, basically, to
13 respond. I think we would all like to think that we're
14 getting close to that point in time. There's no real
15 clear understanding, at least on my part, what a summary
16 would represent. So I want to have a little bit of a
17 discussion with the committee and to sort of throw out
18 there as an idea of what a summary would be, would be
19 basically a mark-up of the draft regulation package, the
20 work product, from this committee. It looks like it's
21 going to be somewhere around 17, 18 pages. And I think
22 that could be something that Agency could respond to.

23 Any other feelings from the committee?

24 COMMITTEE MEMBER WONG: Kenton Wong, Richmond.

25 The new regulations coordinator that's been

1 assigned to assist us in this process, Barbara Galloway,
2 where is she physically located so that we can figure out
3 some logistics for her?

4 CHAIRPERSON KIMSEY: Most likely in Sacramento.

5 Another alternative would be maybe a bulletized
6 version of what the draft regulations say. If someone on
7 the committee has some ideas about the summary or
8 bulletizing or whatever, please let us know.

9 But at this point, it seems, at least from my
10 perspective, that a mark-up of the draft regulations could
11 represent the summary going from the committee to Agency.

12 COMMITTEE MEMBER LOUGH: Paul, this is Patty
13 Lough.

14 Did you say, there is a timeline that we're
15 supposed to do this, or are you thinking -- are you just
16 suggesting that it's a good time to do that? Is there a
17 regular --

18 CHAIRPERSON KIMSEY: Yeah. The legislation, if I
19 remember correctly, specifically says that the committee
20 will send a summary to the Health and Human Services
21 Agency. And when the committee does do that, a summary of
22 their revisions, they know that when the committee does do
23 that, then Agency has 90 days to review that summary, and
24 I believe the term is reject -- approve or reject -- maybe
25 it's just only reject certain revisions.

1 So it's my understanding that the clock starts
2 pretty much when the committee sends what we consider to
3 be a summary to Agency.

4 And so that's --

5 COMMITTEE MEMBER LOUGH: Patty Lough. I would --

6 CHAIRPERSON KIMSEY: Yes?

7 COMMITTEE MEMBER LOUGH: I don't think we're ready
8 to do that at this point. And I think we might want to
9 wait until after our afternoon session to discuss any of
10 the draft.

11 CHAIRPERSON KIMSEY: I understand that. I just
12 wanted the committee to start thinking about, you know,
13 what a summary would be and then when we might do that.
14 I'm not saying that we're ready to do that, necessarily.

15 And maybe by the end of the day, we might have a
16 different opinion on that or maybe it will take another
17 meeting or so.

18 I just wanted to remind the committee that part of
19 our responsibility under the legislation is to send a
20 summary, which is not defined, to the Health and Human
21 Services Agency.

22 And at some point later on today, we can have a
23 discussion on what that summary might look like and when
24 we might do it. But that was pretty much the point of the
25 discussion.

1 COMMITTEE MEMBER WONG: Kenton Wong, Richmond.

2 Paul, do you mean that we're supposed to send HHSA
3 a summary at the very end of our work product, or
4 continually as we're going along through the process?

5 CHAIRPERSON KIMSEY: That's not clear on the
6 legislation -- from the legislation. It just says that
7 the committee will submit a summary of its revisions.

8 And we can talk about -- and then they -- it's my
9 understanding then they will reject revisions or not.
10 Their role is not to add revisions or modify things. It's
11 pretty much, what it would appear from the legislation, to
12 be either accepting them by not rejecting them, I guess is
13 the way to put it.

14 COMMITTEE MEMBER WONG: Kenton Wong.

15 What does Goldie say with regard to this
16 recommendation?

17 MS. ENG: The question is simply a summary should
18 include -- and it's not defined. So I think it's just
19 open for discussion what a summary -- what a summary
20 should include. I think at minimum it needs to include a
21 description of the regulations. And since the committee
22 has been working on the draft language, that should also
23 be forwarded, at minimum.

24 COMMITTEE MEMBER WONG: But do they mean, like, at
25 the very end?

1 COMMITTEE MEMBER LOUGH: Patty Lough.

2 MS. ENG: The statute doesn't say that, but I
3 think that's kind of implied, at the end.

4 COMMITTEE MEMBER WONG: That's what I say.

5 MS. ENG: Because what the agency needs to do is
6 they need to -- the agency needs to review the regulations
7 and then rejects them if, you know, there are any problems
8 with them.

9 So it could be done on a -- you know, incremental
10 basis. But it would probably make more sense to do it as
11 an entire package.

12 COMMITTEE MEMBER LOUGH: Patty Lough.

13 Kenton, just to jog your memory -- it's been a
14 number of years. But we were the ones that wrote this in,
15 who the agency is that's going to be there to review the
16 recommendations of the committee. And because we are
17 revising all of Title 17, it really doesn't make sense to
18 do it piecemeal and start the clock on each little
19 incremental piece, but to wait until our work product is
20 finalized.

21 COMMITTEE MEMBER WONG: Thanks. That was my
22 recollection.

23 COMMITTEE MEMBER LOUGH: Do you recall that,
24 Kenton?

25 COMMITTEE MEMBER WONG: Yes.

1 CHAIRPERSON KIMSEY: Okay. Per the agenda, we now
2 have some time to continue to review our regulatory work
3 product. And is there any feeling on a way to do that?
4 Obviously, there's -- something that was posted on the Web
5 site and, I believe, sent out to you is titled Title 17
6 Redraft No. 3, July 31st, 2007. There's about 17 pages of
7 our work product, and then there's some additional pages
8 of comments from the Office of Regulations and Program.

9 This particular draft, the one I'm looking at, on
10 page 1, it has four footnotes at the bottom.

11 Does anyone on the committee have a -- want to
12 articulate a way to sort of, you know, continue to review
13 this product? Do you want to look at the footnotes?
14 What's the pleasure of the committee?

15 COMMITTEE MEMBER LOUGH: Patty Lough.

16 At this point, I would like just to see if the
17 committee agrees with the main gist of the Title 17 and
18 not looking at the footnotes right now, just to see if the
19 language that it says now is what we want it to be at the
20 last meeting, which was why we had it all written up, so
21 we could see the changes we made, and see if there are any
22 specific changes to the main document, not the references.

23 CHAIRPERSON KIMSEY: Okay. Does someone have a
24 comment they would like to make, based on Patty's
25 direction?

1 COMMITTEE MEMBER LOUGH: This title -- I could
2 start.

3 CHAIRPERSON KIMSEY: Sure.

4 COMMITTEE MEMBER LOUGH: Page 2, Item (f), it's
5 discussing the definition of a "forensic alcohol
6 supervisor." I think we need to change the last few words
7 where it says that they are also responsible "for the
8 supervision of personnel who performs such analysis."

9 This is a DMV title that we left in, because DMV
10 likes these titles of "supervisor," "analyst," and
11 "trainee." But that does not mean a forensic alcohol
12 supervisor under the DMV heading is a person that actually
13 supervises the personnel. I think we need to take that
14 part off. It is not a civil service classification.

15 CHAIRPERSON KIMSEY: And so you would recommend
16 putting a period after "alcohol analysis" and before
17 "and"?

18 COMMITTEE MEMBER LOUGH: Yes.

19 CHAIRPERSON KIMSEY: How's the rest of the
20 committee feel about that?

21 COMMITTEE MEMBER WONG: What was that?

22 CHAIRPERSON KIMSEY: She wants to put a period
23 here and remove this.

24 COMMITTEE MEMBER WONG: We could leave that in.
25 They "may."

1 COMMITTEE MEMBER LOUGH: Patty Lough.

2 I don't know -- why Kenton? Why would we need to
3 say they may? That's up to the laboratory.

4 CHAIRPERSON KIMSEY: Usually, "will" is a
5 requirement. "May" or "can," I think, is sort of
6 optional.

7 COMMITTEE MEMBER WONG: Well, some alcohol
8 supervisors do supervise a forensic alcohol section. So
9 if we change it to, instead of "can," "may," is that
10 better?

11 COMMITTEE MEMBER LOUGH: I don't think we need to
12 get that -- I don't think we need to get that definition.
13 In San Diego City, for instance, that laboratory, all of
14 the analysts obtain the supervisor designation, so it
15 would really be unclear. It's from lab to lab. Some
16 labs, only the official supervisors allow to get that
17 title. Other places, everybody gets that title.

18 So I don't think you have to legislate permission
19 of the lab to discuss who can actually supervise
20 personnel. That talks about writing evaluations and all
21 kinds of stuff.

22 COMMITTEE MEMBER WONG: Okay. I get it.

23 CHAIRPERSON KIMSEY: Other comments?

24 Comment from the program, Richmond.

25 MR. LARSON: Clay Larson.

1 I think maybe we should have that conversation
2 with DMV as to the necessity of this classification. We
3 keep referring generally to the notion that they need
4 this. I would suggest you might want to eliminate the
5 first part of that statement as a person who can be
6 responsible for the performance for all aspects of the
7 performance of forensic alcohol analysis.

8 We've eliminated the requirement under section
9 1221.4(a)(2)(A)(1) that -- I'm sorry. That's the wrong
10 section. We've eliminated the requirement that the
11 laboratories must employ a supervisor. We now permit a
12 laboratory to employ an analyst and only an analyst. So
13 under those conditions, one would assume that the analyst
14 would be a person who can be responsible for all aspects
15 of the performance of the laboratory.

16 We've also eliminated the requirement that the
17 supervisor take corrective action in response to a QC
18 failure. So we've kind of gutted the requirements and
19 regulations that call for a supervisor. We would end up
20 with a just a forensic alcohol supervisor means a person
21 employed by a forensic alcohol laboratory. And then it
22 would be indistinguishable from an analyst.

23 So maybe we should have that conversation as to
24 why DMV needs this, given the fact that the committee has
25 voted to remove any special performance tasks for the

1 supervisor, why they would continue to need this
2 classification.

3 COMMITTEE MEMBER LOUGH: Patty Lough on the
4 committee.

5 We did remove it originally. The documents
6 submitted by CCLD did remove those titles. And the
7 difference is, it just talked about an alcohol analyst.
8 The person who's going to be analyzing the work needs to
9 have this background, this training, to be qualified for
10 the position.

11 But at that time which will be on the record, we
12 heard from DMV, who said -- who told us that it was very
13 critical in their DMV hearings to maintain those titles.
14 So we went back and redrafted, putting in those titles and
15 trying to make some sort of differentiation between the
16 training required for each one, strictly for DMV. We
17 originally had it taken out of our document.

18 MR. LARSON: The other part of my comment, though,
19 is that I think we should remove the statement that a
20 forensic alcohol supervisor, and perhaps only a forensic
21 alcohol supervisor, can be responsible for all aspects of
22 the performance of forensic alcohol analysis. Because we
23 clearly now revised the regulations to permit an analyst
24 under certain -- to take on those responsibilities.

25 MS. CARTER: Sandra Carter, department of Motor

1 Vehicles.

2 And I was just stating that I think DMV's concern
3 regarding these titles are somewhat twofold. One is, when
4 it comes to a forensic alcohol analyst trainee, it needs
5 to be clear who is going to be supervising that person, or
6 who's authorized to supervise that person in their
7 analyses process.

8 And then, secondly, the Vehicle Code is quite
9 clear on who is authorized to perform analyses. So when
10 we start -- if there's changes made to those titles, then
11 we may have some problems regarding, administratively,
12 what's going to be authorized as far as who can do
13 analyses.

14 So as far as -- I mean, I can't totally understand
15 where, you know, supervision overall certainly doesn't --
16 we don't need that. DMV doesn't need that as far as, it
17 doesn't need the regulations to state that forensic
18 alcohol supervisors supervise, in all entirety, analysts,
19 as long as it's clear. And when I look at section (H),
20 the forensic alcohol analysis trainee section, I think
21 that makes it somewhat clear as to who would be capable of
22 supervising that person in their analysis process.

23 CHAIRPERSON KIMSEY: Thank you.

24 So basically, then, you would not -- DMV, from
25 your perspective, would not be concerned if we ended Item

1 (F), "Forensic alcohol supervisor means a person employed
2 by a forensic alcohol laboratory," period?

3 MS. CARTER: You know, I'm not an attorney. And
4 one of the attorneys from DMV was scheduled to be here
5 today, but couldn't make it. So I know from my point of
6 view, as long as it's clearly defined who's going to be
7 supervising the trainee, I think that's the primary --
8 would be the primary concern. And also any changes to the
9 terms "forensic alcohol supervisor" or "forensic alcohol
10 trainee," because we would have problems if those titles
11 were changed, per se.

12 COMMITTEE MEMBER WONG: Kenton Wong.

13 COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.

14 COMMITTEE MEMBER WONG: Go ahead, Patty.

15 COMMITTEE MEMBER LOUGH: Okay. Thank you.

16 Just to point out an example of what I'm talking
17 about, Sandra, is San Diego PD, all of the alcohol
18 analysts, or the intention is that all of the analysts
19 will obtain that forensic alcohol supervisor designation,
20 just because that's the way they've always done it.

21 The person who is actually the supervisor of that
22 unit, the civil service supervisor that actually does
23 supervise them, is not a forensic alcohol supervisor.
24 It's not set up in the structure like that. So I think
25 there may be a false sense of security with the DMV and

1 the hearing officers that using this title "supervisor,"
2 they really think they are getting a supervisor in there,
3 which may not be a supervisor of that person.

4 MS. CARTER: That -- I understand that. I can
5 concur with you on that.

6 Can I make a comment from the public?

7 CHAIRPERSON KIMSEY: Just identify yourself,
8 please.

9 MR. KNAPP: This is Jon Knapp, Valley Toxicology.

10 I have several people who work for me and have,
11 over the years, changed personnel, that come and go,
12 because we're private. And I know I represent a small
13 portion of laboratories. But people that are certified as
14 forensic alcohol analysts, but they have -- there's no way
15 they could go to court and testify on impairment. And
16 they haven't had the training. They may or may not even
17 really have a firm understanding of breath analysis. They
18 haven't trained anybody. I shouldn't say all of them.
19 Some of them may or may not have. So you have got a big
20 difference in qualifications of who can do what.

21 If you don't want to call them a supervisor, you
22 got to have a designation for different people because
23 there's a whole lot of difference in their ability to
24 perform if they go to court.

25 COMMITTEE MEMBER LOUGH: Patty Lough. San Diego.

1 I thank you for that comment. But when we're
2 looking at a statewide operation of the forensic alcohol
3 program, I think you will find, there are some large
4 laboratories that has one forensic alcohol supervisor on
5 paper. The rest of the people in that section are only
6 forensic alcohol analysts, and they go to court every day
7 and testify to the impairment side of the issues.

8 So Title 17 does not eliminate you from being
9 trained and showing competency in the impairment side,
10 because this document is considering what is required to
11 analyze the samples. It is not set up to talk about what
12 makes you a good expert in court and be able to address
13 the impairment side of those issues.

14 So you have to look at statewide, not just a lab
15 here or a lab there. They are all done so differently.
16 And I think we want to be careful about the language that
17 we use.

18 MR. KNAPP: Jon Knapp again.

19 For the qualifications, currently, forensic
20 alcohol supervisor, when you take the tests, there's
21 questions on impairment. There's nothing like that for an
22 analyst.

23 COMMITTEE MEMBER LOUGH: Patty Lough.

24 Yes, there is one question -- one poorly-worded
25 question on that exam. That is the only difference

1 between the two. That exam is not set up to assess a
2 person's knowledge in the entire field of interpretation
3 of alcohol impairment.

4 So I don't think that's an issue.

5 MR. SCRUGGS: Keith Scruggs with the Department of
6 Justice.

7 CHAIRPERSON KIMSEY: Yes?

8 MR. SCRUGGS: I have a question.

9 It appears that what we're looking at here is
10 simply a definition of a position. And given the verbiage
11 placed in the definition on section (F), it just says that
12 a forensic alcohol supervisor can be responsible. It
13 doesn't say that he has to be responsible. And it does
14 not negate the responsibility of anyone else, perhaps a
15 forensic alcohol analyst or someone else, having those
16 same duties.

17 So I guess I'm at a loss for why we're discussing
18 so much about the definition of this title since it's
19 actually been opened up as it's written.

20 CHAIRPERSON KIMSEY: I think the proposal --

21 COMMITTEE MEMBER LOUGH: Patty Lough.

22 CHAIRPERSON KIMSEY: Go ahead.

23 COMMITTEE MEMBER LOUGH: I agree.

24 Yes, they can. I think what's unfortunate is when
25 people state that title -- I don't like using these

1 titles. I would just assume these titles went away. But
2 it was a courtesy to DMV, not to disrupt their system.
3 The fact that it says "can," I can live with that. But I
4 do think when a person testifies in court or at the DMV,
5 that they are a forensic alcohol supervisor, I think that
6 does give out a misrepresentation of their
7 responsibilities. But I can live with the language as it
8 is.

9 CHAIRPERSON KIMSEY: You're withdrawing your
10 proposal to put a period after "analysis"?

11 COMMITTEE MEMBER LOUGH: Sure.

12 CHAIRPERSON KIMSEY: Oh, okay.

13 COMMITTEE MEMBER LOUGH: To avoid anymore -- sure.

14 CHAIRPERSON KIMSEY: Okay. Does that meet with
15 the rest of the committee's okay, that we're going to
16 withdraw that motion?

17 Okay. Other comments on the regulatory package
18 work product?

19 COMMITTEE MEMBER LOUGH: Patty Lough.

20 A question for the audience.

21 Bill Phillips, do you have a copy of this
22 document, Bill?

23 MR. PHILLIPS: Yes, I do.

24 COMMITTEE MEMBER LOUGH: The draft?

25 Did you look on page 15(F) you can just -- I know

1 it's doesn't give you a lot of time. But take a look at
2 that, and then the changes made in the section (A) below
3 that.

4 Is that written okay about the standards and
5 solutions, because the language sort of is a little --
6 it's altered from one to the other in the sentence.

7 MR. PHILLIPS: So this is (2)(A), Patty?

8 COMMITTEE MEMBER LOUGH: The instrument -- yes.
9 2, "The instrument shall be calibrated with standards,
10 which are water solutions and/or dry-gas of alcohol."

11 So accepting that -- I'm sure that's fine. But
12 when you go to (A) below it, now it says "water
13 concentrations and/or dry-gas standards." So the term has
14 been flipped there a little bit.

15 Is that okay? I just want to clarify it.

16 MR. PHILLIPS: I believe --

17 MR. FICKIES: A comment.

18 CHAIRPERSON KIMSEY: Yes, another comment.

19 MR. FICKIES: Comment. Terry Fickies.

20 I think it's the calibration with standards is on
21 (2), whereas (A) is the accuracy -- or (3) is the accuracy
22 of instruments.

23 And --

24 COMMITTEE MEMBER LOUGH: Okay. That's fine.

25 MR. PHILLIPS: Yes, it's okay, Patty.

1 COMMITTEE MEMBER LOUGH: Just checking.

2 Thank you. That's my only comment with that.

3 CHAIRPERSON KIMSEY: Other comments?

4 MR. LARSON: A comment from the public.

5 CHAIRPERSON KIMSEY: Go ahead.

6 MR. MOOREHEAD: Wayne Moorehead, Orange County.

7 On page 4, No. 1. Number 1. "Possesses a
8 baccalaureate or higher degree in any physical or natural
9 science."

10 Does that include forensic science and/or
11 criminalistics?

12 Typically, it states that it's an applied natural
13 science, but here it states a physical or natural science.
14 And I'm not sure whether everyone in the state would agree
15 that forensic science and criminalistics falls under
16 either of those designations. It would fall under the
17 applied science designation, however, in that forensic
18 science and criminalistics is not a theoretical science.

19 COMMITTEE MEMBER LOUGH: Patty Lough.

20 I think we can add that. "Applied."

21 CHAIRPERSON KIMSEY: So it would read, "in any
22 applied, physical, or natural science"?

23 COMMITTEE MEMBER LOUGH: Yes.

24 COMMITTEE MEMBER TANNEY: And probably under
25 (F)(1) also then.

1 CHAIRPERSON KIMSEY: On page No. 5, (F)(1),
2 "Possesses a baccalaureate or higher degree in one of the
3 applied or physical" or -- well, I guess we'll put in
4 "applied" there somewhere.

5 COMMITTEE MEMBER LOUGH: "Applied, comma,
6 physical, or natural sciences."

7 MR. LARSON: Comment from the public.

8 CHAIRPERSON KIMSEY: Sure.

9 MR. LARSON: We had a comment from the public --
10 Clay Larson -- a comment early on.

11 Actually, the natural sciences are typically --
12 includes the sciences of nature. And they include
13 biology, chemistry, physics. So the natural sciences
14 already capture physical sciences.

15 So I think in terms of writing an ISOR, we would
16 have to explain why the regulated public would be so
17 confused on that issue. ASCLD, which everybody seems to
18 be enamored with, uses the language "natural science,
19 toxicology, criminalistics, or in a closely-related
20 field."

21 You might want to throw that out. I find "applied
22 science" -- and OAL might find "applied science" fairly
23 vague.

24 So you might want to consider the language
25 contained in the ASCLD voluntary guidelines.

1 MR. MOOREHEAD: Would a medical technologist --
2 Wayne Moorehead, Orange County.

3 Would then a medical technologist who had one year
4 of chemistry not be qualified, because it may not be under
5 the implied manner, since medical technology may not also
6 be considered a natural science, being that it's not a
7 theoretical one?

8 CHAIRPERSON KIMSEY: I'm not sure what these
9 definitions actually mean in that context.

10 COMMITTEE MEMBER LOUGH: Patty Lough.

11 Maybe we want to think about that later because we
12 are going to have to go through all of these and justify
13 them anyway and put the references in. So if we leave it
14 that way now, maybe in our research, we'll come up with a
15 better choice of terms.

16 CHAIRPERSON KIMSEY: This is Paul in Richmond.

17 Just reminding us of our -- the time frames. It's
18 now noon. We have in the agenda scheduled a one-hour
19 lunch break.

20 If the committee so wants, we could do a half
21 hour, or what is the pleasure of the committee?

22 COMMITTEE MEMBER LOUGH: I think we're going to
23 need one hour in San Diego because I'm not sure there's
24 any place in this facility to eat.

25 CHAIRPERSON KIMSEY: Okay.

1 Then we will reconvene at 1:00 o'clock this
2 afternoon.

3 Thank you, all.

4 (A break was taken in proceedings.)

5 CHAIRPERSON KIMSEY: And so I think we'll take up
6 pretty much where we left off, which was to continue to
7 review the draft regulatory work product.

8 It's been brought to my attention that maybe some
9 people joined us either in Sacramento or San Diego after
10 we went around and identified ourselves.

11 And if they could state their names, then our
12 stenographer can capture that for the record.

13 MR. TOMS: I'm Michael Toms from Sacramento County
14 Crime Laboratory.

15 And in San Diego I think we had a person join?
16 Maybe not. No. It was just the one.

17 Also, here in Richmond, we do have a sign-in
18 sheet. If someone in each of the Sacramento and San Diego
19 locations could pass around just piece of paper for people
20 to sign, as a sign-in sheet, basically your name,
21 signature, organization, address, and e-mail. And then if
22 that individual -- if someone passes it around, if someone
23 could fax it to us at (510) 412-6280.

24 Sorry about that. I would appreciate someone
25 doing that for us.

1 Anything else before we get started again?

2 So we're back to our work product review.

3 Comments?

4 There was some discussion here. In one of the
5 products, the Office of Regulations' comments are pretty
6 much towards the back of the package if someone was
7 interested in those. They are basically after page 27.
8 These are pretty much Cathy Ruebusch's comments from
9 previous versions.

10 Well, not hearing any further amendments, what's
11 the sort of pleasure of the committee? We can talk some
12 more about what we want -- how we want to get a product, a
13 summary, to Agency, and what that might look like and what
14 we think our time frame might be.

15 Or we can continue on, doing to the agenda item,
16 you know, for 3:00 o'clock. So what's sort of the feeling
17 of the committee?

18 We did have a comment here in Richmond that before
19 something went to Agency, that maybe the Office of
20 Regulations, the woman that's standing in or taking over
21 for Cathy Ruebusch is Barbara Galloway. Maybe she should
22 take a look at our work product at this stage before
23 something went to Agency.

24 So did everyone have too much lunch and all the
25 blood's rushed to your stomachs?

1 Well, maybe I will make that suggestion that was
2 discussed here as a proposal, that we have the Office of
3 Regulations review our work product prior to it going to
4 Agency, and then I guess we would post it again and
5 distribute it to the committee for comment before taking
6 it to Agency.

7 Is there any other documentation -- I mean
8 obviously the transcripts are available to Agency. But is
9 there any other documentation that we would want to have
10 go to accompany the work product that's been reviewed by
11 the Office of Regulation? I mean, something else that
12 might be considered a summary or bullet points?

13 COMMITTEE MEMBER LOUGH: Patty Lough.

14 I would hate for us to send something to agency
15 right now that starts the clock. It could take a long
16 time for us to do the justification part of it. So I'm
17 reluctant at this point to send anything to agency.

18 CHAIRPERSON KIMSEY: Let me clarify my
19 understanding of what that 90 days represents.

20 Basically, the summary that we send, Agency then
21 has 90 days to get back to the committee and the
22 Department on the work -- on whatever the summary is.
23 It's a summary of our revisions. So that 90 days does not
24 really affect the committee. It's pretty much directed
25 towards Agency, giving them 90 days to basically reject

1 any of our recommended revisions, the committee's
2 revisions. So that does not necessarily impact the
3 statement of reasons -- you know, that preparation.

4 Basically, once Agency has made their
5 determination back to the committee, the committee can
6 take a look at that direction or -- from the Agency. If
7 there's agreement on it, then it falls to the Department
8 to get the package through the Office of Regulations and
9 into the pipeline.

10 So the 90 days is --

11 COMMITTEE MEMBER LOUGH: Patty Lough.

12 CHAIRPERSON KIMSEY: Yes, go ahead.

13 COMMITTEE MEMBER LOUGH: I don't know why we would
14 want to send it to them without the supporting information
15 and documentation, because they are not familiar with this
16 area of analysis, and they would just be looking at our
17 document. And it's probably meaningless to them why we
18 would even make those changes. I think we should wait.
19 When we're ready to submit something that's a complete
20 document, I think we should submit that.

21 CHAIRPERSON KIMSEY: And when you say "complete,"
22 you mean like a complete as a reg package that would go to
23 the Office of Regulations?

24 COMMITTEE MEMBER LOUGH: Well, when Kenton and I
25 discussed who would be the agency reviewing this, that was

1 our intention, was to submit to them a completed document,
2 the recommendation from this committee, and ready to go
3 forward, not part of it or an incomplete part of it.

4 COMMITTEE MEMBER WONG: Kenton over at Richmond.

5 I totally agree with Patty. I think if we did
6 anything, it would be premature and putting the cart
7 before the horse. I think, like I said, if anything, we
8 need to have this looked at and reviewed with Barbara
9 Galloway, through her eyes, to make sure that we're on the
10 right track and that it isn't just going to crash and burn
11 the first -- right out the gate.

12 CHAIRPERSON KIMSEY: Okay. If that's sort of the
13 agreement of the committee, that's how we'll proceed.

14 Any objections to moving in that direction?

15 Okay. What we'll do is we'll run this by our
16 Office of Regs, Barbara Galloway, and get her comments and
17 get them back to the committee.

18 I'm not sure what time frame that's going to be.
19 I can't really speak for the Office of Regs. But we will
20 certainly keep the committee apprised of that.

21 Any other comments on the summary or having the
22 Office of Regs look at it?

23 COMMITTEE MEMBER WONG: Dr. Kimsey, do you know
24 anything about Barbara Galloway? The original letter that
25 I had read or something was that they were looking for a

1 retired annuitant or a person to fill in for Cathy.

2 CHAIRPERSON KIMSEY: Yes. Let me explain a little
3 bit of that, as I understand it. When our Department
4 split, when the Department of Public Health split off from
5 the Department of Health Care Services, we formed an
6 Office of Regulations within the Department of Public
7 Health.

8 To my understanding, I don't know as of today, but
9 at some point just a number of weeks ago, they pretty much
10 had 40 reg packages and there were two people in the
11 office, so to speak. And there were a number of
12 vacancies.

13 So Barbara Galloway time commitment, I'm not aware
14 of. But I will certainly express -- I would assume I'm
15 expressing all of our folks' interest on the committee to
16 have this done sooner than later. So I will certainly
17 express that when this goes to her. But I don't really
18 have any idea of what other responsibilities she might
19 have at this point.

20 Now, when I say there are 40 reg packages there
21 is, this is not anything -- I mean, these are reg packages
22 that are further into the process than what we are putting
23 forward. I mean, these are reg packages that have already
24 come from a program that, yeah, has gone back and forth a
25 few times. And so this is all enough to say just that I

1 can't really know what Barbara Galloway's availability and
2 what the time frame might be for her getting back to us.

3 But I will certainly pass along a sense of urgency
4 on the part of the committee.

5 So any other comments on this aspect of things?

6 If not --

7 MR. PHILLIPS: A public comment?

8 CHAIRPERSON KIMSEY: Sure. Public comment.

9 MR. PHILLIPS: Bill Phillips with the Department
10 of Justice.

11 I'm noticing that there are certain things that
12 are mentioned in the footnotes that probably should be
13 addressed before this package goes anywhere.

14 Because, for instance, in Footnote No. 2 on the
15 first page, it says, "The forensic alcohol personnel is
16 not defined." You added that to the regulations right
17 now, and there's no definition.

18 So possibly, either change that wording or define
19 "forensic alcohol personnel." And it goes on, you know,
20 from page to page, that there are footnotes that need to
21 be addressed.

22 COMMITTEE MEMBER LOUGH: Patty Lough.

23 I agree. There are a lot of things that we're not
24 addressing. We just have pretty much agreed to the draft
25 of the regulation as it stands. I think there is

1 considerable work that needs to be done to address some of
2 those footnotes that are Cathy Ruebusch's original
3 comments. And that all has to be done probably before we
4 address all the other six elements before it's a final
5 draft. So there is still a lot of work to be done there.

6 My recommendation would be to take this document
7 back to our agencies that we represent and see if what we
8 have is -- if everyone still agrees with it in our
9 agencies, because it's -- except for responding to those
10 things that Bill was discussing, it's pretty much in the
11 final format the way we see it right now.

12 And we could probably at this meeting move on to
13 some other topics.

14 The next meeting, once we know that the agencies
15 we represent agree with the document we have, make sure we
16 haven't made some kind of fatal flaw, then the next step
17 would be to address all of those things before it goes --
18 way before our packet is ready for agency.

19 CHAIRPERSON KIMSEY: Okay.

20 That brings up the idea of the timing for our next
21 meeting.

22 I think we're all trying to, I think, get through
23 this sooner than later. Unfortunately, time keeps moving
24 on. Every -- try to meet again in two months, or how much
25 time do you think it will take to sort of have it reviewed

1 by your respective agencies?

2 COMMITTEE MEMBER LOUGH: Patty Lough.

3 About 30 days --

4 CHAIRPERSON KIMSEY: So try and meet again --

5 COMMITTEE MEMBER LOUGH: -- perhaps.

6 CHAIRPERSON KIMSEY: Maybe try and meet again in
7 30 days?

8 COMMITTEE MEMBER LOUGH: A month.

9 COMMITTEE MEMBER WONG: How much notice does
10 Bagley-Keene have to be?

11 CHAIRPERSON KIMSEY: Ten days.

12 We could try and have another meeting in 30 days.
13 That puts us at the end of February, maybe early part of
14 March. And we can send out, you know, the e-mail
15 announcements and try and get people's dates set up as
16 soon as possible.

17 I'm not sure that we'll have much information back
18 from the Office of Regs at that point. But if we can get
19 feedback from the various agencies in dealing with some of
20 the footnote issues, I think it would be a worthwhile
21 meeting, even if it was only half a day.

22 How does that sound for folks? Try and meet again
23 in 30 days?

24 Any objections?

25 That's fine. We'll move along with that, with

1 that idea.

2 I think the last thing, then, for us to discuss on
3 the agenda, or at least one of the last things, is the
4 item that is coming up at 3:00 o'clock, the discussion and
5 decisions by the committee regarding the ongoing role of
6 the Department in the oversight and enforcement of the
7 regulations including -- and there's some bulletized areas
8 there. There's also a handout that relates to this. It's
9 two pages. It may be double-sided, in your packet. But
10 it has -- at the top, it has "activity," and then it says
11 "Title 17", "Current requirements," "Rationale for
12 Continuing Current Requirements."

13 This is a series of activities that the Department
14 has carried out in the past that the Department would like
15 to continue. We understand that we've had a lot of
16 discussion. There's been a general perspective of having
17 the Department not involved in a lot of these
18 requirements, or a lot of these activities.

19 It's our understanding, or at least my
20 understanding, that these activities that we're proposing
21 to continue were left -- were not affected by the 1623,
22 that these are areas that the committee has been
23 discussing and is -- it would appear to have not taken at
24 least votes or final determinations on the role for the
25 Department.

1 I think, from the Department's perspective, it's
2 going to be helpful that we have some clear understanding
3 from the various represented groups, their feelings about
4 the Department's continued role in these areas.

5 In preparing for this meeting, I also realized, in
6 looking at this, that there might be something that might
7 help the committee understand the choices that would be
8 asked of them in the sense that we have a column here that
9 says "Current Requirements," and then we have the
10 Department's rationale for continuing this, whether it's,
11 you know, accountability or to enforce -- since we have to
12 enforce the regulations or whatever the rationale is, is
13 in the second column.

14 It might be helpful for the committee to have a
15 third column that outlines what our current work product
16 is basically recommending, in other words, so there's a
17 clear understanding of the current requirements, what the
18 Department is proposing to continue, and what the
19 committee so far has either, by consensus or through the
20 work product, delineated the Department's role to be, a
21 lot of which will be, as we've heard, you know, removing
22 the Department from this particular role.

23 So I'm leaving it open to the committee whether
24 we, you know, continue to discuss this today -- you know,
25 just go through it, or if it would be helpful for people

1 to understand with the third column what our current work
2 product is proposing the role for the Department to be.

3 What's the feeling of the committee?

4 COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.

5 CHAIRPERSON KIMSEY: Yeah?

6 COMMITTEE MEMBER LOUGH: I would like to address
7 that rationale. I think there's been a fundamental error
8 here, and if I may take a few moments --

9 CHAIRPERSON KIMSEY: Sure.

10 COMMITTEE MEMBER LOUGH: -- to go through that
11 with everyone.

12 I am looking at my copy of the chapters bill,
13 1623, that I pulled off my computer in October of 2004. I
14 think this is what Kenton probably recalls as well. This
15 is the document that Kenton and I pretty much thought
16 was -- met the intentions of both the senate and assembly.

17 This is the -- when you look at the council's
18 digest in there, it starts out talking about the existing
19 law, where the Department of Health Services was the
20 department to determine whether or not the work was done
21 appropriately. I'm not going through the whole sentence
22 that's there. But it was the Department's responsibility.

23 And it talked a little bit about how the
24 Department would accomplish that task.

25 But in the third paragraph, it says, "This bill

1 would repeal all of the above provisions." And it was
2 always the intention to remove the oversight of Department
3 of Health on forensic alcohol analysis.

4 As you go through this document as of 2004, it
5 spells out the reorganization of the Health and Safety
6 Code, where we have removed and renumbered the codes. So
7 we now are left with a section 100700, 701, 2, and 3. And
8 then it goes on to say, "All the others were repealed."
9 That's the document Kenton and I were working from.

10 But when I look at what actually happened, it
11 appears there might have been a typographical error,
12 because in this chapter there was no reference to the
13 100725 or 100775 sections. Now to be honest with you, I
14 didn't go through each of these sections to make sure they
15 had all been typed in.

16 So when we first started discussing this 725
17 section, I know Kenton and I were both kind of shocked
18 because it puts the enforcement back into Department of
19 Health, which was the whole point of this bill.

20 I know that it probably was an oversight because
21 that last section, the 775, discusses the use of ampoules,
22 which is probably not being used today and probably has
23 not been used for a couple of decades. That should easily
24 have been removed.

25 So I think the intention was all of those

1 remaining sections were supposed to be repealed. The
2 responsibility to make sure the new regulations would be
3 determined was to be established with the review
4 committee. And by design, the recommendations of the
5 review committee was supposed to go to the Health and
6 Human Services Agency, not Department of Health Services,
7 but to the higher organization, just to give them the
8 opportunity to approve or disapprove at that time in case
9 there was something, perhaps, that we were amiss about.

10 So I think when I look at all of the information
11 that was presented to the legislature, all of the
12 committee work, all of the hearings where we testified,
13 the intent was to remove state oversight. And I think it
14 was probably a typographical error that those two sections
15 are still remaining.

16 I think we should confirm this error and determine
17 what type of correction -- corrective action needs to be
18 taken on that point. I'm not sure what the method or
19 procedure would be to do that.

20 CHAIRPERSON KIMSEY: Yeah. I'm not sure either.
21 I think some clarification would help all of us, because a
22 lot of the Department's perspective on -- as you can see,
23 of our rationale for continuing the current requirements
24 as outlined in this document basically relate to 100725.

25 And whether it's a typographical error, you know,

1 or we can get some interpretation, if it's in the -- if
2 it's actually in the final chapter of legislation, it's my
3 understanding, to some extent, whether it's a
4 typographical error or not, we're pretty much -- as an
5 agency of government, pretty much required to deal with
6 something like a 100725.

7 But I certainly will check into -- because not
8 having been involved necessarily in the legislation, but I
9 clearly would agree that it seemed like, from a personal
10 perspective, that the intent, that this might have been an
11 error, not that that means that as an agency we're not
12 going to have to deal with it.

13 But the one caveat I would say to that though, the
14 fact that the Department -- and I know this, from my
15 understanding, was sort of a last-minute decision also.
16 But the fact that the Department is represented on the
17 committee and the Department apparently still has, you
18 know, responsibility for the regulations, it certainly
19 would be helpful to have some clarification. Because I
20 would think that the Department wouldn't even be
21 represented and these regulations wouldn't even be ours;
22 they might be somebody else's, more appropriately, with
23 what looked like the intent of the legislation.

24 So with that all being said, unless someone has
25 some other idea, I will try and find out how we can get

1 some clarification. But if all we can say is that we
2 think this might be a typographical error, I'm not sure
3 that we're just not going to have to live with it. And if
4 that is the case, I think that it still -- if we do have
5 to live with 100725, I don't think -- we can try and
6 obviously update this at our next meeting in 30 days. It
7 would be helpful for the Department to have a clear
8 understanding from the committee, a vote from the
9 committee, that you really do not want the Department
10 involved in these areas. And just having that clarity,
11 whether this is a typographical error or not, I think is
12 going to be helpful for us.

13 So to summarize that, what I will try and do is I
14 will get an understanding of what we might be able to do
15 with regards to this 100725 and 775, having been
16 typographical errors, or is this something that we just
17 have to live with?

18 I mean, documents of legislative intent and
19 committee hearings and everything, pale in comparison to
20 the black and white document, from my understanding. So
21 if the legislation, for whatever reason, ended up with
22 these in there, what we are generally told as a state
23 agency is that we have to comply with the legislation.

24 But I will certainly try and get a clarification.
25 And if anyone has, you know, a different understanding of

1 a way of possibly getting some clarification on that, I'm
2 certainly willing to try and work in any direction that,
3 you know, someone can sort of give me. But this is pretty
4 much where we are.

5 I take it that at this point we don't actually
6 want to go through this document then. I will try and get
7 some clarification. I will also get an additional column
8 here, for no other purpose than my own, to understand
9 where we are currently with the work product and the role,
10 proposed role, for the Department.

11 Any other comments on how we might deal with
12 100725 and 100775?

13 COMMITTEE MEMBER DAVIS: Kevin Davis, Sacramento.

14 I don't have those sections in front of me. Can
15 someone just maybe summarize that for me? I'm not
16 familiar with those. Just grants the authority of Health
17 Service -- I'm sorry. It's being handed to me. I
18 apologize.

19 CHAIRPERSON KIMSEY: 100725, basically under the
20 Health and Safety Code, gives the Department the
21 responsibility to enforce the law and the regulations.

22 And so if we don't have that responsibility, then
23 that changes, dramatically, our role.

24 COMMITTEE MEMBER LOUGH: Patty Lough, san Diego.

25 CHAIRPERSON KIMSEY: Sure.

1 COMMITTEE MEMBER LOUGH: I also would like to
2 point out that if in fact we do have that language in
3 there and cannot get rid of it, where it says, "The
4 Department shall enforce," we have no definition of what
5 "the Department" is. So I think that goes to the example
6 that there's an error. So we haven't described who the
7 Department is. So who -- you know, if we're talking about
8 who's going to enforce it, we haven't -- you know, the
9 only thing we're talking about adopting and enforcing --
10 the closest we get to it is the HHS.

11 CHAIRPERSON KIMSEY: Right.

12 Now, I will check for clarification on "the
13 Department." Usually, there's somewhere in the
14 legislation, you know, that says -- refers to what they
15 mean by "Department." But --

16 COMMITTEE MEMBER LOUGH: Right. This also
17 includes Department of Transportation. It made reference
18 to them. So maybe that's one way we can further justify
19 that this was an error. It doesn't make sense.

20 CHAIRPERSON KIMSEY: Okay. I will look into that.

21 Question from the public?

22 MR. FICKIES: Terry Fickies, DOJ.

23 Why wouldn't "Department" mean the Department of
24 Health Services?

25 COMMITTEE MEMBER LOUGH: Because throughout the

1 legislative process, what we were telling the assembly and
2 the senate was that we did not want their oversight. So
3 that would be the opposite of what the intentions were on
4 both the initiator of Senate Bill 1623 and all testimony
5 by them. So I don't think you can assume that that was
6 meant to be in, that it would be Department of Health
7 Services, which -- it wouldn't make sense. I think it
8 would have to be defined.

9 COMMITTEE MEMBER TANNEY: This is Laura Tanney.

10 I think that Paul's right, though, that even if
11 there was an error, we're stuck with the letter of the law
12 unless there is an effort made by an assembly bill or a
13 senate bill to fix it, so that may be the direction that
14 somebody needs to go.

15 CHAIRPERSON KIMSEY: A comment here in Richmond.

16 MR. LARSON: Just a real quick comment on
17 Ms. Lough's very narrow point. That particular section of
18 the Health and Safety Code exists under Division 101,
19 Administration of Public Health, Part 1, California
20 Department of Health Services, Chapter 4, Regulation of
21 Laboratory Services, and it drills on down.

22 But this whole section of the statutes of Health
23 and Safety Code defines authorities for the Department of
24 Health Services, now the Department of Public Health, to
25 regulate certain activities. So that's not an issue.

1 COMMITTEE MEMBER LOUGH: Patty Lough.

2 Absolutely, I understand. And in my narrow frame
3 of reference, you know, I note that we're talking about
4 forensic alcohol. And as stated in all the hearings in
5 the assembly and senate, there is no other forensic
6 discipline that has oversight by this state. And we had
7 always intended to bring forensic alcohol in line with all
8 other forensic discipline.

9 MR. LARSON: Quick follow-up response.

10 Probably the easiest way to do that would be to
11 simply eliminate the regulations -- the statutory
12 authority and the regulations altogether.

13 COMMITTEE MEMBER TANNEY: And that would have to
14 be done through the legislative, I believe.

15 CHAIRPERSON KIMSEY: Well, the committee has a
16 certain amount of discretion on what it puts forward to
17 Agency. I mean, I don't think we want to put forward a
18 blank sheet of paper, but I will certainly try and get
19 some clarification.

20 I think -- obviously it's either we can -- we
21 either have to respond to this or we don't. If we do have
22 to respond to it, I believe the committee can still, you
23 know, function and continue as it has been. It would just
24 help the Department to know how the committee -- and have
25 an understanding of a vote based on what's presented here.

1 I mean, obviously, the work product that goes forward will
2 be what the committee wants. It's just having a clear
3 understanding for the Department on what its role is going
4 to be, and for Agency to understand that is going to help
5 the process.

6 COMMITTEE MEMBER DAVIS: Kevin Davis in
7 Sacramento.

8 Just out of curiosity, regardless of the level of
9 oversight, does the Department want oversight, overlap?

10 CHAIRPERSON KIMSEY: Well, I'm the Department's
11 spokesperson. I would say, if we have responsible for
12 725, then these are the areas that we would want to
13 continue -- requirements to continue for us to follow
14 through on 725.

15 That doesn't mean that this is binding to the
16 Committee, by any means.

17 COMMITTEE MEMBER DAVIS: That's fine. I was just
18 curious.

19 CHAIRPERSON KIMSEY: Yeah.

20 MS. ENG: This is Goldie Eng.

21 I just wanted to address the questions about the
22 meaning of the term "Department" as used in the statute.
23 I just wanted to add that the "Department" does mean the
24 Department of Public Health.

25 If you notice in 100703(F), it says, "The

1 Department shall adopt regulations." So the Department
2 still has a role in the existing -- in addition to 100725.
3 The Department still has a role in adopting the
4 regulations.

5 So the only Department that I can imagine adopting
6 these regulations is the Department of Public Health. So
7 therefore, the "Department," as used in this statute, is
8 the Department of Public Health.

9 COMMITTEE MEMBER TANNEY: Goldie, this is Laura
10 Tanney.

11 I think under 100703, our responsibility -- "The
12 committee's responsibility is determining revisions that
13 will limit the regulations to those that the review
14 committee determines are reasonably necessary to ensure
15 the competency."

16 Do you think that that includes the authorization
17 to recommend a repeal of all of Title 17, or do you think
18 that has to be done by the legislature?

19 MS. ENG: To repeal all Title 17? I think -- I
20 think that the -- go ahead.

21 COMMITTEE MEMBER TANNEY: That's okay. I was just
22 -- if we don't feel that we need regulations in order to
23 ensure competency of the laboratories, because we know
24 that they are engaged in other reviews through ASCLD, can
25 we just recommend that Title 17 be repealed, that the

1 regulations be repealed? Because it's our belief -- if
2 it's our belief that they are not necessary to ensure the
3 competency of the laboratories. Because that's what it
4 says our duty is to determine revisions that "will limit
5 regulations to those reasonably necessary." And if we
6 feel none of them are reasonably necessary, can we
7 therefore recommend repeal?

8 MS. ENG: I think that the committee could do
9 that. However, repeal also has to go through OAL and the
10 repeal needs to be -- the reasons for the repeal need to
11 be addressed in the statement of reasons.

12 COMMITTEE MEMBER TANNEY: So you'd have to --

13 MS. ENG: You'd still have to go through the
14 regulations process.

15 COMMITTEE MEMBER TANNEY: Whereas to do it through
16 the legislature, you don't need to do that obviously.

17 Okay. Thank you.

18 MS. ENG: Yeah.

19 CHAIRPERSON KIMSEY: Any further discussion?

20 Any further public comment?

21 Any other business of the committee? We're going
22 to try and meet again within 30 days. We'll send out a
23 notice for people's calendars. I appreciate people
24 prioritizing as they have their attendance and all of
25 their activities.

1 Any other business of the committee at this point?

2 COMMITTEE MEMBER TANNEY: Paul, this is Laura
3 Tanney again.

4 I'm just going to ask that the committee members
5 consider whether they feel that Title 17 regulations are
6 necessary to ensure competency so we can discuss that
7 issue at the next meeting.

8 CHAIRPERSON KIMSEY: Okay. We'll put it on the
9 agenda.

10 Anything else we want to add to the agenda at this
11 point?

12 COMMITTEE MEMBER WONG: Should we be looking at
13 the footnotes to try and hash those out.

14 CHAIRPERSON KIMSEY: I think we did come to sort
15 of an agreement that we were going to run our work product
16 by our various agencies and look at footnotes to be able
17 to comment on them next time, trying to move the package
18 forward.

19 COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.

20 May I request that your office send an advisory or
21 a letter, perhaps, out to all of the forensic alcohol
22 labs? I know some of them got a late notice on this
23 meeting. You have all the e-mails and stuff. If you
24 could fax that to them, we would all have that.

25 CHAIRPERSON KIMSEY: Fax the work product? I'm

1 sorry, Patty. You broke up.

2 COMMITTEE MEMBER LOUGH: The draft.

3 CHAIRPERSON KIMSEY: Well, it is posted on the Web
4 site.

5 COMMITTEE MEMBER LOUGH: Yes. But I noticed that
6 not all of the labs are included on your e-mail list. And
7 if you would make sure that at least one representative
8 from the labs are on there, and maybe could send --
9 because we made a couple corrections today, or one
10 correction. Send it to all the labs.

11 CHAIRPERSON KIMSEY: We can certainly try to do
12 that.

13 One of our -- Effie, our staff person, basically
14 said they don't have e-mail addresses for all the
15 laboratories. But where we didn't have an e-mail address,
16 we did fax documentation to them.

17 COMMITTEE MEMBER LOUGH: Right.

18 Patty Lough.

19 But in particular, one lab didn't get that faxed
20 until last Friday, about this Monday's meeting.

21 CHAIRPERSON KIMSEY: Oh, okay.

22 We'll try and get that out -- we'll try and get
23 that out on a more timely basis.

24 COMMITTEE MEMBER LOUGH: Thank you.

25 CHAIRPERSON KIMSEY: Other comments? Question?

1 Yes?

2 MR. KNAPP: Jon Knapp.

3 I would like to say that I think that repealing
4 Title 17 would be a mistake. But I also think that it's
5 fairly important that, to me, anyway, that the Department
6 has some oversight, especially on, say, private labs.
7 Because I could foresee somebody coming in and wanting to
8 set up business and just appointing themselves as a
9 forensic alcohol analyst because they want to be, and
10 saying that they have got a method that works, and nobody
11 even looks at it to say, you know, is it good or not?

12 You could open up a big can of worms. I'm not
13 saying that any district attorney's office would go with
14 that, but you never know.

15 And I think that it's important, to me, anyway, to
16 have proficiency testing. You know, I could spike some
17 blood and analyze it myself. What does that prove? I'd
18 like -- and we do that proficiency testing with CAP, but I
19 would like to continue having the Department send me some,
20 if I want to. Maybe it's not going to be required. But I
21 would like to have the opportunity if I wanted to.

22 I would like to have the opportunity to have Clay
23 Larson review a method that I write and see if he agrees
24 that it's good or not. I would like to have him review
25 candidates to see, does he think that they are qualified

1 or not. And even if it's not required, I would still like
2 to have somebody outside give an objective opinion.

3 Thank you.

4 COMMITTEE MEMBER WONG: Kenton Wong, Richmond.

5 Jon, if I could address that. Independent
6 laboratories, private laboratories, outside of
7 governmental agencies, are not covered under Title 17.
8 And that's one of the reasons why Patty and I did not want
9 to discard and get rid of Title 17, just for that very
10 purpose. We wanted to prevent it against rogue
11 laboratories or people, agencies, just totally going off
12 on their own way and not having guidance at all.

13 Title 17 has always been a well written regulation
14 and was a good and important part of the forensic alcohol
15 analysis process for laboratories.

16 So agencies that are not governmental, that are
17 private, are not covered under Title 17 anyway. Never
18 have been.

19 COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.

20 CHAIRPERSON KIMSEY: Go ahead, Patty.

21 COMMITTEE MEMBER LOUGH: Yes. Patty Lough.

22 There were, I think, a handful of private agencies
23 that do work for law enforcement because we do remember,
24 this only applies to those labs that do the law
25 enforcement analysis.

1 The majority of the labs are accredited through
2 other organizations that include proficiency testing,
3 include the need for standards and procedure, written
4 standards, inspections and all that.

5 And yeah, I don't want to hash that all over
6 again. But I think with hindsight, I'm not sure that
7 Title 17 is going to make that much difference. The labs
8 have been operating now without licenses for a few years.
9 I don't think the quality of the work has changed. And I
10 think it may be more of a hindrance of us to get good work
11 done. We're still being hindered by this process. So I
12 might have changed my thought on that at this time.

13 MR. KNAPP: Well, I'd just like to say -- Jon
14 Knapp again, that -- I don't know if I misunderstood you,
15 Kenton. But my lab was always licensed. And it's not --
16 it wasn't just government labs. In fact, there's another
17 lab in Sacramento that used to be licensed, Jeff Zehnder's
18 lab. And there's several others. They are mostly
19 defense-oriented laboratories, but they were licensed
20 forensic alcohol laboratories. It wasn't just the state
21 and county labs.

22 COMMITTEE MEMBER WONG: I hear you. I work for
23 Forensic Analytical, which is an independent lab, and
24 we're licensed as well.

25 CHAIRPERSON KIMSEY: Comment?

1 MR. FICKIES: I think on the narrow area of
2 proficiencies, most of the laboratories now receive
3 proficiencies from an ASCLD lab provider, or accredited
4 provider. And I think that is the way to go.

5 And if the Department of Health wants to actually
6 become a -- meet the qualifications for an ASCLD lab
7 provider, then that would be appropriate. But otherwise,
8 I don't think those proficiency tests are the ones we want
9 to be using.

10 CHAIRPERSON KIMSEY: Any other comments?

11 Another public comment here in Richmond.

12 MR. PHILLIPS: Bill Phillips with the Department
13 of Justice.

14 Mr. Knapp, your comments concerning the
15 regulations, if you consider all the other disciplines
16 within forensic science, none of them are regulated other
17 than accredited through the American Society of Crime
18 Laboratory Directors' Laboratory Accreditation Board.

19 But in California, only alcohol is. And I think
20 the other disciplines are doing fine.

21 MR. KNAPP: I would never argue that. I think
22 they are too.

23 MR. LARSON: One more public comment?

24 CHAIRPERSON KIMSEY: Sure.

25 MR. LARSON: Just -- it may be interesting at some

1 point --

2 CHAIRPERSON KIMSEY: Identify yourself.

3 MR. LARSON: I'm sorry. Clay Larson.

4 It may be interesting for something that we've
5 prepared and we can distribute a summary of the laws and
6 regulations in other states.

7 In California, the reason none of the other crime
8 lab disciplines are related is that there's no statutory
9 requirement that they be regulated. So there's a clear
10 distinction here because there is a statutory requirement,
11 that seems to continue to exist, that an agency, in this
12 case, the Department of Public Health, promulgated
13 regulations that cover that kind of testing.

14 In virtually every state -- there are some states
15 that actually have regulations that cover crime lab
16 testing -- Virginia, Texas, New York. But in general,
17 that pattern in California is duplicated. And that is
18 that the other crime lab disciplines are totally
19 unregulated, and but the testing for -- in support of DUI
20 laws, is regulated by the state. So as you go forth and
21 think about totally eliminating the regulation and putting
22 them on par with other crime lab disciplines, keep in mind
23 that this will put us at odds or put us in a different
24 situation than virtually all the other states in the
25 country.

1 COMMITTEE MEMBER DAVIS: Kevin Davis, Sacramento.

2 So I'm sure many are already familiar with it, but
3 Assembly Bill 1079 set forth the Crime Laboratory Review
4 Task Force, and obviously not specific to alcohol, but
5 they are looking at these very issues -- lack of oversight
6 and lack of regulations, and they had their first meeting
7 last month.

8 CHAIRPERSON KIMSEY: Are you a member of that
9 committee?

10 COMMITTEE MEMBER DAVIS: I am not personally a
11 member. There is a CHP person on the committee.

12 I can tell you briefly, it's -- Department of
13 Justice oversees the committee. It's got members from the
14 CAC, California Association of Crime Lab Directors, State
15 Sheriff's Association, the DA's Association, the American
16 Society of Crime Lab Directors, Police Chief's
17 Association, Peace Officer's Association, Public
18 Defender's Association, some private defense attorneys,
19 judicial council, some other people as well.

20 They met for the first time last month.

21 MR. LARSON: Question for Sergeant Davis.

22 Clay Larson again.

23 I've -- I am a pretty adroit Googler, and I
24 believe that this task force, which is created under
25 statutory authority, would follow Bagley-Keene. I was

1 totally unable to find any information on the meetings, on
2 the -- the other interesting thing is, is the author,
3 Laura Richardson, is now in Congress. So her office, I
4 got someone there who was unfamiliar with the legislation.

5 Do you have a contact person at DOJ that --

6 MR. PHILLIPS: Bill Phillips with the Department
7 of Justice. Lance Gima, the chief of the Bureau of
8 Forensic Services, would be the contact person.

9 CHAIRPERSON KIMSEY: Okay. Any other business?

10 If not, I want to thank you all very much for your
11 time, and you will be hearing from us via e-mail for -- to
12 try and schedule our next meeting.

13 Thank you all very much.

14 (The Forensic Alcohol Review Committee
15 meeting adjourned at 1:52 p.m.)

16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2 I, KATHRYN S. SWANK, a Certified Shorthand Reporter
3 of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the
5 foregoing Forensic Alcohol Review Committee meeting was
6 reported in shorthand by me, Kathryn S. Swank, a Certified
7 Shorthand Reporter of the State of California, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said meeting nor in any
11 way interested in the outcome of said meeting.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 10th day of February, 2008.

14

15

16

17

18

19

20

21

22

23

KATHRYN S. SWANK, CSR

24

Certified Shorthand Reporter

25

License No. 13061