

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

DEPARTMENT OF PUBLIC HEALTH  
RICHMOND CAMPUS CONFERENCE CENTER  
850 MARINA BAY PARKWAY  
C-136  
RICHMOND, CALIFORNIA

THURSDAY, MAY 28, 2009

10:00 A.M.

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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

REVIEW COMMITTEE MEMBERS

Mr. Paul Kimsey, Ph.D., Chairperson (Richmond)

Ms. Janet Anderson-Seaquist (San Diego)

Sergeant Kevin Davis (Sacramento)

Mr. Bruce Lyle (San Diego)

Mr. Paul Sedgwick (San Diego)

Ms. Laura Tanney (San Diego)

Mr. Kenton Wong (Richmond)

Mr. Torr Zielenski (Sacramento)

STAFF

Mr. Ric de Rama, Abused Substances Analysis  
Section (Richmond)

Ms. Effie J. Harris, Abused Substances Analysis  
Section (Richmond)

Mr. Russ Huck, Assistant Chief, Division of Food, Drug &  
Radiation Safety (Sacramento)

Mr. Clay Larson, Chief, Abused Substances Analysis  
Section (Richmond)

Mr. Robert Schlag, Chief, Food, Drug & Radiation  
Division (Sacramento)

Mr. Harby Thandi, Abused Substances Analysis  
Section (Richmond)

Ms. Zenaida Zabala, Abused Substances Analysis  
Section (Richmond)

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Michael Brush, California Highway Patrol (Sacramento)

Ms. Patricia Lough, Subcommittee Member (San Diego)

Mr. Bill Phillips, Department of Justice (Sacramento)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

INDEX

	PAGE
Opening Remarks and Discussion of Agenda	1
Committee Review of April 10, 2009, Discussion of Draft Regulatory Work Products	3
Committee Review of Draft Regulatory Work Products	8
Afternoon Session	75
Continued Committee Review of the Regulatory Work Product	76
Scheduling of Future Meetings	73
Reporter's Certificate	94

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 PROCEEDINGS

2 CHAIRPERSON KIMSEY: Thank you. I guess we'll go  
3 ahead and get started. This is Paul Kimsey in Richmond.  
4 It looks like San Diego we will not have on video  
5 conference; we will have on voice -- just by voice. I  
6 think we'll go around and take a roll call of the  
7 Committee members.

8 Is Laura Tanney present?

9 COMMITTEE MEMBER TANNEY: Yes.

10 CHAIRPERSON KIMSEY: Kevin Davis?

11 COMMITTEE MEMBER DAVIS: Yes.

12 CHAIRPERSON KIMSEY: Did I hear a yes?

13 COMMITTEE MEMBER DAVIS: Yes.

14 CHAIRPERSON KIMSEY: So Kevin Davis is here and  
15 Laura Tanney is on the line.

16 Torr Zielenski?

17 Bruce Lyle?

18 COMMITTEE MEMBER LYLE: Here.

19 CHAIRPERSON KIMSEY: Thank you.

20 Kenton is sitting right next to me.

21 COMMITTEE MEMBER WONG: Yep.

22 CHAIRPERSON KIMSEY: Paul Sedgwick?

23 COMMITTEE MEMBER SEDGWICK: Here.

24 CHAIRPERSON KIMSEY: Patty Lough?

25 MS. LOUGH: Yes, here.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 She's not a member.

3 CHAIRPERSON KIMSEY: I realize that.

4 And I am, obviously, here. And our new member

5 is --

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

7 Janet Anderson-Seaquist.

8 CHAIRPERSON KIMSEY: Janet Anderson-Seaquist.

9 Are you on?

10 MS. LOUGH: She is not in San Diego right now.

11 She will -- she is driving down from Ventura so she could

12 have traffic or something.

13 CHAIRPERSON KIMSEY: Our court reporter today is

14 Kathryn Swank and so please identify yourself when you

15 speak.

16 But it looks like the only absentee -- Janet is on

17 her way. The only person that's not on the line or

18 hopefully soon to be on the line, that we know of, is Torr

19 Zielenski. Has anyone heard about Torr's ability to

20 participate?

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

22 He said he would be here.

23 COMMITTEE MEMBER DAVIS: Paul, he is here. He's

24 here in Sacramento.

25 COMMITTEE MEMBER ZIELENSKI: Maybe he can't hear.

1 Maybe I'm too far away.

2 CHAIRPERSON KIMSEY: You need to sort of pass  
3 around those microphones a little bit if you are going to  
4 be speaking. Thank you, then. Okay. So good.

5 So we have a quorum, which is good.

6 According to our agenda, I'm going to have some  
7 opening remarks, and then we can talk a bit more about the  
8 agenda.

9 We did have a meeting where we did not -- where we  
10 did not have a quorum, on April the 10th, and we did go  
11 ahead then and review the subcommittee work product, to  
12 some extent; we got to page 33. We have 177 pages of  
13 minutes -- of court reporter-typed minutes.

14 And as part of that meeting on the tenth, we did  
15 talk about AB 599, which is legislation in our state  
16 Legislature, dealing with forensic laboratories. And  
17 there's some information there on page 4 of the  
18 transcript. And the bill is still in the Legislature.  
19 It's moving through the Legislature. We also talked a bit  
20 about the -- I think Terry sort of briefed us -- or no,  
21 Bill Phillips, I think, briefed us on the Crime Laboratory  
22 Task Force. That's also there in the transcript on  
23 page 5. And we talked a little bit about the National  
24 Academy of Sciences.

25 COMMITTEE MEMBER TANNEY: We lost you, Paul.

1           CHAIRPERSON KIMSEY: There does seem to be some  
2 paper noise coming out of Sacramento, I guess.

3           COMMITTEE MEMBER TANNEY: It sounds like desks  
4 moving around to us.

5           CHAIRPERSON KIMSEY: If you are not going to be  
6 talking, you can put your phones on mute, but also watch,  
7 you know, your shuffling of papers on the desktops.  
8 That's coming through pretty loudly.

9           COMMITTEE MEMBER TANNEY: None of us are moving  
10 papers.

11           CHAIRPERSON KIMSEY: We think it's you in  
12 Sacramento. But anyhow -- so let's see. Where was I? So  
13 there was a National Academy of Sciences report on the  
14 strengthening forensic science in the United States, a  
15 path forward. These were just things that we briefly  
16 mentioned at our last meeting.

17           Now that we've sort of identified the Forensic  
18 Alcohol Committee members, I think it's time to go around  
19 and introduce the public members.

20           Here in Richmond, we have?

21           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
22 Clay Larson, Department of Public Health.

23           CHAIRPERSON KIMSEY: Back row.

24           MS. HARRIS: Effie Harris, Department of Public  
25 Health.

1 MR. ZABALA: Zenaida Zabala, Department of Public  
2 Health.

3 MR. DE RAMA: Ric de Rama, Department of Public  
4 Health.

5 MR. THANDI: Harbi Thandi, Department of Public  
6 Health.

7 CHAIRPERSON KIMSEY: In Sacramento?

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

10 MR. BRUSH: Michael Brush, California Highway  
11 Patrol.

12 MR. HUCK: Russ Huck, Department of Public Health.

13 MR. SCHLAG: Bob Schlag, Department of Public  
14 Health.

15 CHAIRPERSON KIMSEY: Is that it in Sacramento?

16 MR. PHILLIPS: Yes.

17 CHAIRPERSON KIMSEY: And San Diego?

18 COMMITTEE MEMBER SEDGWICK: There's no one here  
19 who hasn't already been identified.

20 CHAIRPERSON KIMSEY: Okay. Thank you.

21 Any questions or updates on AB 599 or the Crime  
22 Lab Task Force or the National Academy of Sciences report?

23 MR. PHILLIPS: Bill Phillips, DOJ. The AB 599 has  
24 passed out of the Assembly, so it's on its way to the  
25 Senate.

1 CHAIRPERSON KIMSEY: Thank you.

2 MS. LOUGH: Patty Lough. It's in the Senate.  
3 Last I heard, it was getting ready to be assigned to a  
4 committee, and I have not heard that it has had an  
5 assignment yet. It passed unanimously out of the  
6 Assembly.

7 CHAIRPERSON KIMSEY: Bill, anything new with the  
8 Crime Lab Task Force?

9 MR. PHILLIPS: No. Other than the -- let's see.  
10 I think I said last time that the report is not -- was due  
11 July. It's been moved to October.

12 CHAIRPERSON KIMSEY: Okay. With regards to  
13 today's agenda, we're going to pretty much review -- or  
14 some of the work we did on April the 10th, and just  
15 continue going through the work product from subcommittee.  
16 And since we have a quorum, we can vote on aspects of the  
17 subcommittee report, and we can talk a little bit about  
18 how we want to do the voting.

19 I may need to turn -- I would like to try and turn  
20 over the chairmanship for a brief -- not a brief meeting,  
21 but I am -- I am double-scheduled. We're still dealing a  
22 bit with swine flu here, at the State, and I have a  
23 conference call at 1:30 that I need to be at, so I would  
24 like to transfer the chairmanship to someone else at that  
25 point, after lunch, and so the group can continue. And

1 maybe Bob Schlag can sort of represent the Department, but  
2 we can talk about that a little bit before lunch.

3 With regards to the voting, obviously, you know,  
4 we have the work product and various aspects to vote on.  
5 We can vote on it by section. We can vote on it by  
6 article, with some exceptions. It's pretty much up to the  
7 group, for a group discussion, on how we want to sort of  
8 handle the voting.

9 Any ideas? Want to go article by article?

10 One of the suggestions -- one of the suggestions  
11 would be to go by article, and then, with some exceptions,  
12 you know, from a particular individual representing their  
13 group. I think at the end -- the other option is, is  
14 based on the transcript, we might be able to prepare, you  
15 know, a voting block for each of the articles or each of  
16 the sections or subsections with the eight organizations  
17 in sort of a yes/no type of format so there's a record of  
18 the voting.

19 And some of that actually could take place -- I  
20 mean, obviously, someone may feel they need to talk to  
21 their organization about an area, and so we could send  
22 that out and people could sort of look at the votes and  
23 talk with their organization and make some modifications.  
24 And so there's several -- there's a number of different  
25 options and so it's pretty much up to the group, you know,

1 to decide.

2 Strong feelings one way or the other?

3 Well, then why don't we go ahead and get started  
4 with Article 1. Is there somebody -- I don't know. Patty  
5 Lough, do you want to walk us through it? Or has Janet  
6 Seaquist --

7 MS. LOUGH: Janet Anderson-Seaquist. She's not  
8 here yet.

9 This is Patty Lough.

10 You know, we had stopped on page 33. I think it  
11 might be helpful if we continue on because we're taking  
12 notes of our conversation as we go. The document is not  
13 yet in the approved format that's submitted, anyway, where  
14 it has to be lined through and underlined and that kind of  
15 thing. So instead of going through Article 1, you didn't  
16 want to review everything we did last time, did you?

17 CHAIRPERSON KIMSEY: Well, I think it's up to the  
18 group. Obviously, we didn't have a quorum last time and  
19 we did have a lot of good discussion. I don't know if the  
20 folks that were absent on the tenth meeting -- it's really  
21 up to them. And I think you are right, Patty. Obviously,  
22 this is not in its final format and we could, in its final  
23 format, have sort of this voting block section with  
24 each -- this voting block line with each section, and, you  
25 know, do that, but it's really up to the group with

1 regards to where we start.

2 Obviously, we didn't have a quorum last time. So  
3 there is 177 pages of discussion, that a number of  
4 organizations represented by individuals are not really  
5 aware of, but it's pretty much up to the group.

6 MS. LOUGH: Patty Lough again.

7 We're on page 33. That's where we left off from  
8 the document we're looking at. I would like us, the  
9 Committee, to continue on to page 47, and at least that  
10 would complete our review, our initial review, of the  
11 document.

12 CHAIRPERSON KIMSEY: Why don't we go ahead -- I  
13 would suggest we go ahead and do that. And then once we  
14 get through it all, we can sort of maybe leaf back through  
15 the first 33 pages. But I think it would be nice to  
16 have -- you know, go through and complete. I would agree  
17 with that.

18 COMMITTEE MEMBER LYLE: Bruce Lyle.

19 I was one of the ones that missed last meeting,  
20 and so I agree with that.

21 COMMITTEE MEMBER WONG: I was also not at the last  
22 meeting, but I trust the Committee's judgment to move  
23 forward. It's not in its final form, anyway.

24 CHAIRPERSON KIMSEY: Let's see. In my notes from  
25 last -- I think I was sort of wearing down a little bit.

1 I know we got to page 33. I guess we can review -- I  
2 guess we would start at 1220.2(a)(1)(B).

3 MS. LOUGH: That's correct.

4 Patty Lough.

5 CHAIRPERSON KIMSEY: Okay. Any comments?

6 COMMITTEE MEMBER TANNEY: This is Laura Tanney.

7 I have one question, which is, we had -- before  
8 the subcommittee got together, we had come up with pretty  
9 much final language, and the subcommittee's work was to do  
10 the justification. And the question I have is, was there  
11 any changes to the language in the actual sections that  
12 we -- that were noted, as opposed to just changes -- as  
13 opposed to just justifying those changes that the  
14 Committee had already approved?

15 MS. LOUGH: Patty Lough.

16 I'm probably the only one here that was on the  
17 subcommittee. There could be some things that we changed,  
18 especially language, since we had to justify and improve  
19 on. Anything that we changed would be written down here  
20 as part of our justification, because even things that we  
21 keep, or things that we don't keep, we have to justify.  
22 So any changes we made would be documented in here under  
23 the justification.

24 COMMITTEE MEMBER TANNEY: I'm just trying to  
25 figure out whether I need to read the whole thing over

1 again and if there weren't any language changes. Then I'm  
2 not really concerned. But if there were substantive or  
3 substantial language changes, particularly with things  
4 relating to the legal aspects, rather than the science  
5 aspect, and if you know what those are, offhand --  
6 otherwise, I will review it later.

7 MS. LOUGH: Patty Lough.

8 I think that some of the biggest changes that were  
9 made in here, and I don't know if we've even got to it  
10 yet, but I think we are -- we have or we're just getting  
11 to it, was to change the control. Yes, we did talk to  
12 some of those. So we did change some controls and wording  
13 on how controls will be used; scientific stuff.

14 COMMITTEE MEMBER TANNEY: That's fine. Okay.

15 CHAIRPERSON KIMSEY: So any comments on  
16 1220.2(a)(1)(B)?

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
18 Comment from the public.

19 CHAIRPERSON KIMSEY: Comment from the public here  
20 in Richmond.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

22 I think I actually mentioned this last time, so it  
23 must have come up before. Actually, the several sections  
24 are confusing in that the language of the regulations, of  
25 the proposed regulations, and the language of the

1 justification kind of mix together in NIST traceable  
2 standards and NIST SRM, standard reference materials, and  
3 then just commercially prepared standards. There's sort  
4 of a blending of all those three concepts.

5 NIST SRMs are definable. They are prepared by  
6 NIST, so everybody would know what that meant. As I said  
7 before, I don't believe NIST traceable standards is kind  
8 of an advertising claim by a vendor. NIST doesn't have  
9 any particular procedures for defining traceability, so,  
10 at the very at least, you would need to, I think, define  
11 NIST traceable standards. I think it's going to be  
12 difficult to define but -- in the regulations. And I  
13 think you would want to think about not blending all three  
14 of those materials together in various forms in the  
15 regulations.

16 MS. LOUGH: Patty Lough.

17 I think we did talk about it last time. Paul was  
18 going to, according to my notes, define NIST traceable  
19 versus NIST standard. We did discuss that. We can easily  
20 put definitions in, but where they are used in the  
21 document, they are specific to their intent as to what  
22 they are supposed to be.

23 CHAIRPERSON KIMSEY: So sort of towards the bottom  
24 of the page, where it says 1220.2(a)(1)(C), we have the  
25 second sentence: "The forensic alcohol laboratory

1 personnel shall verify the concentrations of any new  
2 secondary (traceable) standards used in" methods.

3 MS. LOUGH: Patty.

4 I don't see where you are.

5 CHAIRPERSON KIMSEY: This is bottom of page 33.

6 MS. LOUGH: Oh, okay.

7 CHAIRPERSON KIMSEY: 1220.2(a)(1)(C). There's  
8 just -- and also, I guess secondary alcohol standards is  
9 also used in (B) above. But the first sentence: "The  
10 subsection will be added to read: The forensic alcohol  
11 laboratory personnel shall verify concentrations of any  
12 new secondary (traceable) standards..."

13 So that's obviously an area where the definition  
14 would be, you know, obviously needed.

15 MS. LOUGH: And the definition could simply be put  
16 at the front of the document --

17 CHAIRPERSON KIMSEY: Right. With other  
18 definitions.

19 Other comments on page 33?

20 Page 34?

21 No questions on page 34?

22 Page 35?

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 Comment from the public.

25 CHAIRPERSON KIMSEY: Comment from the public here

1 in Richmond.

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 I'm just recalling some of the discussion my notes  
4 indicate we didn't resolve.

5 Under section 1220.2(a)(2)(A), there is a  
6 reference to a tertiary alcohol standard, and there was  
7 some discussion including -- I think it was Mr. Fickies,  
8 who was present, who seemed to be -- was a member of the  
9 subcommittee and seemed to be unaware that the term was  
10 even in the regulations. But tertiary alcohol  
11 standards -- yet another term would need definition.

12 CHAIRPERSON KIMSEY: Okay.

13 MS. LOUGH: San Diego can't hear you.

14 CHAIRPERSON KIMSEY: There was a comment here in  
15 Richmond from the public -- it was Clay Larson -- about on  
16 page 34, 1220.2(a)(2)(A), there's a reference to tertiary  
17 alcohol standards and how that would also need to be  
18 defined.

19 MS. LOUGH: Patty Lough.

20 I made a note to that.

21 CHAIRPERSON KIMSEY: Okay. Page 35.

22 This is some discussion about quality control  
23 reference material containing alcohol. There's some  
24 discussion down at the bottom of 1220.3(a)(3)(B) about the  
25 higher limits shall be calculated. So we're adding a

1 decimal place -- I mean, a zero to the decimal number  
2 there.

3 Any questions on page 36?

4 MS. LOUGH: Patty Lough.

5 1220.3(a)(5), we did talk earlier, and if I am  
6 correct, there is no representative from the DMV here  
7 today, but we did talk last time about eliminating the  
8 classification "supervisor analyst" and "trainee," so that  
9 might be a correction there.

10 CHAIRPERSON KIMSEY: Okay.

11 Page 37? We're talking about symbols for the  
12 analysis and concentrations.

13 MS. LOUGH: Patty Lough.

14 I have a note, and I don't remember if this is  
15 from corrections that were made, but on 1220.4(c), I have  
16 crossed off the word "blood" and just -- it just says  
17 "alcohol concentration."

18 Same thing with 1220.4(d); I crossed off "blood,"  
19 and it just says "alcohol." And I crossed off "blood" in  
20 the second half, "postmortem samples."

21 MR. PHILLIPS: Bill Phillips, Sacramento.

22 I think the reason why, Patty, is that often,  
23 postmortem samples can be other than blood -- tissue and  
24 also vitreous.

25 MS. LOUGH: Okay.

1 CHAIRPERSON KIMSEY: Could you speak up and say  
2 your name again?

3 COMMITTEE MEMBER ANDERSON-SEAQUIST: Janet  
4 Anderson-Seaquist down in San Diego.

5 Isn't tissue analysis covered in 1220.4(g)?

6 MS. LOUGH: Patty Lough.

7 Not as far as what would be considered a  
8 negative --

9 COMMITTEE MEMBER ANDERSON-SEAQUIST: Reporting?  
10 Okay.

11 MS. LOUGH: Yeah. Just reporting a negative.  
12 Okay. So we need to add justification.

13 CHAIRPERSON KIMSEY: And this is Paul in Richmond.  
14 The 1220.4(f), that conversion is still pretty  
15 much as it stands?

16 MS. LOUGH: Patty Lough.

17 Yes.

18 CHAIRPERSON KIMSEY: Okay.

19 Anything else on page 37?

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 Comment.

22 CHAIRPERSON KIMSEY: Comment from the public here  
23 in Richmond.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

25 Yeah. I have lost track of where this change is.

1 I believe 1220.4(f), the intent of the Review Committee  
2 was to eliminate -- I mean, it now reads, "A breath  
3 alcohol concentration shall be converted to an equivalent  
4 blood alcohol concentration," so there was no interest in  
5 keeping that.

6 We made a number of changes which permit the  
7 direct expression of breath alcohol analysis results. I  
8 didn't think the justification was complete, but that was  
9 clearly the intent of the Committee. So I would suspect  
10 that we would strike, or perhaps make optional, section  
11 1220.4(f).

12 MS. LOUGH: That's on page 38. And 1220.4(f). I  
13 am kind of losing where we were, so it looks like one was  
14 existing language and then -- 37. And on 38, it looks  
15 like it's corrected.

16 COMMITTEE MEMBER TANNEY: The bold is the new  
17 language?

18 MS. LOUGH: I forgot. Yeah. This process is so  
19 long.

20 Yeah. I should have gone through and corrected  
21 that. I tried to go through it.

22 I believe Jennifer Shen -- she's not here today.  
23 I think she's going to go through and give us the  
24 document, or give it to Janet, that has what our proposed  
25 language is, because it's a little confusing. I have

1 forgotten how we had the set-up.

2 And it also answers, then, if you look at the  
3 italics, it answers that 1220.4(c) and (d), where we took  
4 out the word "blood" and the justification.

5 But yeah, just to refresh everybody's mind, the  
6 bold is the existing, and the italics is the new.

7 CHAIRPERSON KIMSEY: I see. Okay.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

9 Another comment from the public.

10 CHAIRPERSON KIMSEY: Another comment from the  
11 public in Richmond.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

13 Under the second version of 1220.4(a), on page 37,  
14 the -- the use of the term "grams %" -- percent means --  
15 you know, it's Latin for "per hundred." They use grams --  
16 the use of that terms is -- to define grams per 210, in  
17 this case, liters of breath is mathematically or  
18 dimensionally challenged.

19 MS. LOUGH: What would you suggest, Clay?

20 This is Patty.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

22 You could -- I believe some states have done this,  
23 so you could do that. But you could also simply, as the  
24 Vehicle Code does, refer to -- either without  
25 abbreviation, refer to grams per 210 liters. And you

1 would not have an abbreviation for that particular  
2 dimension or come up with a new abbreviation.

3 MS. LOUGH: Patty Lough.

4 I'm not following you. If we're talking about a  
5 breath sample versus a liquid sample.

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

7 Well, the abbreviation "grams %" literally means a  
8 weight per hundred. And we're proposing -- you're  
9 proposing here to make that a weight per 210 -- different  
10 units. But so, currently, it means weight per a hundred  
11 milliliters of a liquid material, and we're going to use  
12 that same symbol to represent weight per 210 liters of a  
13 gas.

14 COMMITTEE MEMBER ANDERSON-SEAQUIST: I don't read  
15 it that way, Clay.

16 This is Janet down in San Diego.

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

18 How do you read it?

19 COMMITTEE MEMBER ANDERSON-SEAQUIST: The symbols  
20 are above, or you can use the grams per 100 mils of liquid  
21 or grams per 210 liters of breath. All those are  
22 acceptable.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 Well, I think a straightforward parsing of the  
25 sentence -- "The symbols," and it lists three, "shall be

1 regarded as acceptable abbreviations of the phrase, grams  
2 per 100 milliliters" or -- you are reading into some  
3 words. "Or" the -- you are saying that it should be read  
4 "or the results can be expressed as grams per 210."

5 And I suggest that a simple, straightforward  
6 parsing of the sentence here would lead you to conclude  
7 that that the symbol "grams %" is an acceptable  
8 abbreviation for the unit "grams per 210 liters."

9 CHAIRPERSON KIMSEY: So you would recommend  
10 putting in "or."

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
12 "Or" is already there. I think the impact of the  
13 word "or" is to -- is conditional there. It creates two  
14 possible uses of the symbol "grams %."

15 MS. LOUGH: Clay, this is Patty.

16 Where it says "or," we can say "or for breath  
17 samples." You wanted grams per 210 liters or you want  
18 just -- how would you like it to read, Clay?

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
20 I think at this point you probably should have a  
21 separate section that says that "the results of breath  
22 alcohol analysis shall be reported" -- since you have  
23 eliminated conversion, "shall be reported as grams per 210  
24 liters of breath."

25 MS. LOUGH: I have a question. This is Patty.

1           For the crime lab, because a lot of their breath  
2 instruments and their printouts are already cast in stone,  
3 would that make a difference on how they are being  
4 reported?

5           COMMITTEE MEMBER TANNEY: This is Laura.

6           And what my concern is, is doesn't the Penal Code  
7 in the -- I'm sorry, the Vehicle Code sections state in  
8 terms of percent, and doesn't that also refer to grams per  
9 210 liters of breath? They don't actually say that, I  
10 don't think, in the Code. I would have to look.

11           So they use the term, you know, "breath alcohol"  
12 or "blood alcohol level greater than .20%," for example,  
13 and they are referring to either a breath result or a  
14 blood result. But they use that symbol.

15           COMMITTEE MEMBER WONG: Kenton Wong in Richmond.  
16 Laura, you are right. It's 23152(c) that refers to it in  
17 210 liters of breath or the equivalent of grams %.

18           COMMITTEE MEMBER TANNEY: But we use the symbol,  
19 whether it's one or the other.

20           COMMITTEE MEMBER WONG: Correct.

21           COMMITTEE MEMBER TANNEY: Which is why I think  
22 Patty wrote at this point in the first place. So I mean,  
23 I think this is accurate, that that symbol was used to  
24 refer to either the grams per 210 liters of breath, in the  
25 case of a breath test, and grams per hundred milliliters

1 of liquid with reference to a blood test or a urine test.

2 COMMITTEE MEMBER WONG: Kenton Wong in Richmond.

3 You are correct, Laura. And it's not going to  
4 change because the Scientific Review Committee already  
5 mandated that it's 2100-to-1 and all the instrument  
6 manufacturers are all setting their instruments, according  
7 to that Scientific Review Committee, to 2100-to-1, so it's  
8 not going to change.

9 COMMITTEE MEMBER TANNEY: So we can leave this as  
10 is; right, Kenton?

11 COMMITTEE MEMBER WONG: I would think so.

12 CHAIRPERSON KIMSEY: The Scientific Review  
13 Committee you are referring to is?

14 COMMITTEE MEMBER WONG: That was when they started  
15 back with the Breathalyzer and all of that stuff, with  
16 Borckenstein.

17 CHAIRPERSON KIMSEY: Other discussion on page 37,  
18 on the symbols paragraph?

19 Page 38?

20 We're finishing up -- I guess we'll be starting  
21 Article 7 here at the bottom: "Requirements for Breath  
22 Alcohol Analysis."

23 MS. LOUGH: I have a comment on page 39.

24 CHAIRPERSON KIMSEY: Okay.

25 Go ahead.

1 MS. LOUGH: 1221.1(a) under our justification  
2 part, I think that needs to be corrected. In the second  
3 sentence, it says, "The Department uses the word 'units'."  
4 That should be the US DOT.

5 MR. WONG: Where is she?

6 CHAIRPERSON KIMSEY: Right here on the first  
7 bullet.

8 MS. LOUGH: The justification. 1221.1(a).

9 CHAIRPERSON KIMSEY: It's the bulletized section.

10 MS. LOUGH: First bullet. It should be US DOT.

11 CHAIRPERSON KIMSEY: And 1221.1(b), the last part  
12 of that says, "...direct jurisdiction of a governmental  
13 agency or licensed forensic alcohol laboratory," we're not  
14 going to be licensing anymore; isn't that correct?

15 COMMITTEE MEMBER WONG: This is the old in the  
16 bold.

17 CHAIRPERSON KIMSEY: And so -- but have we talked  
18 about removing that?

19 COMMITTEE MEMBER TANNEY: Yeah. It says it in the  
20 note at the bottom.

21 COMMITTEE MEMBER WONG: (b)(2).

22 CHAIRPERSON KIMSEY: Thank you.

23 COMMITTEE MEMBER WONG: Sorry. This is Kenton  
24 Wong in Richmond.

25 I had a thought. Going back to page 38, I know

1 we're defining some of these terms and conversions for  
2 breath and urine and things like that. I've had a couple  
3 cases whereby serum samples have been taken at the  
4 hospital and they have been later used in law enforcement,  
5 or by law enforcement, because that was the only sample  
6 that was retained at the time.

7 Do we need to define any conversion for serum?

8 MS. LOUGH: Kenton, it's Patty.

9 In my experience, you know, the criminalists  
10 should be prepared to do that in court, certainly if they  
11 use any kind of ratios and stuff. I don't think at this  
12 time that we want to step up and establish what that is.  
13 I think it's up to each analyst when they go to court to  
14 have that information, if they are going to testify to  
15 that number.

16 COMMITTEE MEMBER TANNEY: And then they will be  
17 subject to cross-examination on that.

18 MS. LOUGH: Right. It's such an unusual sample  
19 that it's not like it would be overloaded.

20 COMMITTEE MEMBER WONG: Right. Just a thought.

21 MS. LOUGH: Yeah. Good thought.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
23 Comment from the public.

24 CHAIRPERSON KIMSEY: A comment from the public in  
25 Richmond.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 Actually, two. Under Article 7, there still is,  
3 as I mentioned at the last meeting, there's still -- the  
4 subcommittee still retained a number of references to  
5 breath alcohol analysis. And I think the intent was, they  
6 somehow felt more comfortable with a new term; I think  
7 it's "breath alcohol testing." So there are a half dozen,  
8 dozen, references to "breath alcohol analysis" in -- under  
9 Article 7 that apparently would need to be changed.

10 Also, let me make the case, as I have done at  
11 several meetings. We'll be getting to this section today.

12 Under the procedures for forensic alcohol  
13 analysis, there's a requirement that labs provide written  
14 method descriptions. Actually, the Department applied  
15 that same requirement, which is mainly related to written  
16 procedures for the training of operators, but, by analogy,  
17 you could make the case that just as it's appropriate to  
18 provide detailed stepwise written descriptions of forensic  
19 alcohol methods, it would be appropriate for the labs to  
20 prepare detailed written descriptions of the procedures  
21 for breath alcohol analysis. So those are the two points:  
22 One, you neglected to change all the references to "breath  
23 alcohol analysis" to "breath testing" or whatever it is;  
24 and, two, again, make the point that it would be  
25 appropriate to have a requirement that labs develop

1 written procedures for breath alcohol analysis, state what  
2 they are doing, and how it's done.

3 MS. LOUGH: Patty Lough.

4 I made a note on your first part --

5 COMMITTEE MEMBER TANNEY: On the testing?

6 MS. LOUGH: -- on the testing, to make sure that  
7 when the final document gets done, that that maybe can be  
8 checked -- "breath alcohol analysis" be checked so it says  
9 "breath alcohol testing." I made a note on that.

10 On the other one, would you repeat your second  
11 comment -- the second part of that comment, please?

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

13 Yeah. Under the section -- Article 6 that  
14 describes forensic alcohol analysis, we have a requirement  
15 that labs prepare detailed written descriptions,  
16 up-to-date written descriptions of the methods they use  
17 for forensic alcohol analysis.

18 I think it would be similarly appropriate to  
19 include a requirement -- and, in fact, the Department had  
20 that requirement -- that labs prepare detailed written --  
21 up-to-date written descriptions of their procedures  
22 employed for breath alcohol analysis, which, again, is  
23 training of instrument operators, maintenance of  
24 equipment, and periodic determination of accuracy; to  
25 provide detailed written descriptions which satisfy the

1 requirements of -- the other requirements of Article 7.

2 MS. LOUGH: Patty Lough.

3 It looks to me like Title 17, the issues that  
4 cover the breath alcohol testing and its controls, are  
5 included in here. As far as how a laboratory wishes to  
6 train other people to do that, that's up to the lab and  
7 how they want to do that.

8 There doesn't -- there is included in here what is  
9 required for the training, but it isn't any more specific  
10 than what we require of the analysts for their training, I  
11 don't believe.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

13 Well, I don't think that comment was responsive.

14 Again, you can make the same comment, I believe,  
15 about the forensic alcohol methods and the requirements  
16 that you have written descriptions. It seems appropriate,  
17 especially in this -- you know, this is a very litigious  
18 area that labs have written descriptions that describe  
19 what they did and how they did it.

20 COMMITTEE MEMBER TANNEY: This is Laura Tanney.

21 Again, I think you are trying to use Title 17 to  
22 regulate the officers -- or the operators, and that's not  
23 the -- that's not the fraction of Title 17, which is to  
24 regulate the laboratories. So I don't -- there is a  
25 distinction between what's required within the laboratory

1 with regard to training of forensic alcohol analysts, but  
2 I don't believe that necessarily should extend to writing  
3 down methods and the requirements that you are suggesting  
4 for the operators.

5 That's not to say that it's not -- that wouldn't  
6 be a best practice for the Department to adopt, because  
7 they are going to be subject to scrutiny over that in a  
8 court, but Title 17, I don't believe, is the place to do  
9 that.

10 MS. LOUGH: This is Patty Lough.

11 If you look on page 13, it lists the type of  
12 training that we want our analysts to have, and it just  
13 has sort of paragraphed bullets.

14 When you look on page 42, there are paragraphed  
15 bullets that say what the alcohol -- the breath alcohol  
16 testers are going to have for their training. So to me,  
17 it looks pretty similar.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

19 I don't want to keep repeating myself because,  
20 again, I don't think those comments are responsive.

21 To respond to Laura Tanney's comment, this  
22 proposal, just so we're clear here, was a proposal to  
23 impose a requirement on the laboratory, not on law  
24 enforcement. That's a separate issue which I don't think  
25 has been totally understood by the Committee, but that's a

1 completely separate issue. This would -- what I was  
2 proposing was a requirement that would be imposed on the  
3 forensic alcohol laboratory.

4 CHAIRPERSON KIMSEY: This is Paul in Richmond.

5 We require written procedures in other parts of  
6 this document. It does seem to be unusual that we don't  
7 have anything for the breath alcohol testing.

8 MS. LOUGH: Patty Lough.

9 We do have procedures for breath alcohol testing.  
10 It's very specific what -- how many tests have to be  
11 performed on each subject, what type of results there must  
12 be, what kind of controls there must be. So that goes  
13 into the quality control of the document, and if we're  
14 talking about how do we train the operators, which I think  
15 is what Clay is referring to, we just simply have to  
16 bullet items that operators will be trained on these areas  
17 and demonstrate classical ability.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

19 Just one last point. The other area that I  
20 suggested would have been included, besides training, is  
21 the procedures employed by the labs to periodically  
22 determine the accuracy of the instruments.

23 MS. LOUGH: Patty Lough.

24 If you could give me a second here, and let me  
25 look and see what we have.

1 COMMITTEE MEMBER WONG: Page 42. 221.4(a)(2)(B).

2 MS. LOUGH: Yep. That is included. I mean,  
3 the -- Patty Lough. I'm not seeing where we removed  
4 anything.

5 CHAIRPERSON KIMSEY: Okay. We're sort of jumping  
6 ahead a little bit.

7 Anything else on page -- let's see. Where were  
8 we? Page 39.

9 Page 40? On page 40, sort of the middle of the  
10 page, the text under 12212.3(a), it says "These sections  
11 were removed in their entirety as redundant."

12 Which sections do we mean?

13 MS. LOUGH: Patty Lough.

14 That whole paragraph is out.

15 CHAIRPERSON KIMSEY: Oh, just the section  
16 immediately above?

17 MS. LOUGH: 1221.2(a)(1), (2)(B), (3), and (3)(A)  
18 are out.

19 COMMITTEE MEMBER TANNEY: And also the first --

20 MS. LOUGH: Well, everything where it says  
21 "standards of performance," those are out because we are  
22 now following the the Health and Safety Code.

23 CHAIRPERSON KIMSEY: Okay.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
25 Comment from the public.

1           CHAIRPERSON KIMSEY: Did we have a comment in  
2 Sacramento?

3           COMMITTEE MEMBER DAVIS: Yes. Kevin Davis in  
4 Sacramento.

5           Does -- I don't have it in front of me. Does the  
6 Health and Safety Code reference the NHTSA Conforming  
7 Products List?

8           MS. LOUGH: Yes, it does, I believe.

9           COMMITTEE MEMBER DAVIS: We should probably be  
10 sure of that before we delete it.

11          COMMITTEE MEMBER TANNEY: I will look. Hold on.  
12 You can move on while I am looking.

13          CHAIRPERSON KIMSEY: We had a comment here in  
14 Richmond.

15          ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
16          Yeah. I think it does reference the NHTSA code,  
17 but I think there's a subtle and maybe important  
18 difference between the requirements of the Health and  
19 Safety Code and the former requirements of the  
20 regulations. And as we proposed it, we tried to kind of  
21 combine the two. We say, "Breath alcohol analysis shall  
22 be performed only with instruments and calibrating units  
23 and devices which meet the requirements specified in the  
24 Health and Safety Code Section 100701."

25          100701 actually doesn't set any requirements

1 regarding the instrument. It says that laboratories that  
2 are subject to the requirements of 100700 shall ensure --  
3 and then it continues -- that instruments used are --  
4 satisfy those NHTSA requirements.

5           So it's interesting; it's a requirement imposed on  
6 the laboratories. We're saying here that breath alcohol  
7 analysis, or breath alcohol testing, once it gets  
8 corrected, throughout the state, has to be performed with  
9 these instruments, when, in fact, I think that may --  
10 these are the Department's regulations. You can ask the  
11 question whether that doesn't exceed the authority of the  
12 Department to require that all breath alcohol analysis is  
13 performed with those instruments, given the fact that the  
14 statutes impose the requirement on the laboratories, that  
15 the laboratories shall ensure. So the onus is on the  
16 laboratory. It's still not clear what the nexus between  
17 the laboratory and law enforcement gets -- this and three  
18 and four other sections come close to imposing  
19 requirements on law enforcement personnel.

20           When we tell the law enforcement -- when we say we  
21 have to be duplicate tests, there has to be an agreement  
22 within plus or minus zero-two. Ultimately, it's the law  
23 enforcement personnel that's doing that, so that could be  
24 viewed as imposing a requirement on law enforcement. So I  
25 don't think we've totally gotten away with that -- from

1 that.

2 But on this particular point regarding the  
3 instruments used, I think we're using, again, a  
4 requirement imposed on labs to -- to cover all breath  
5 alcohol analysis, and I think it's an interesting question  
6 that, obviously, the attorneys need to look at, as to  
7 whether this is appropriate.

8 COMMITTEE MEMBER TANNEY: This is Laura.

9 I think that we're moving particularly .2(a)(1)  
10 and maybe even .3(a) is necessary because, again, this  
11 whole document has to pertain to scientific advances that  
12 are made in the future, and if you are confining yourself  
13 to a list that already exists, that doesn't account for  
14 changes in technology. I think that Patty's right. You  
15 have to remove these sections and refer to the Health and  
16 Safety Code sections.

17 MS. LOUGH: And this is Patty.

18 I'm simply saying that this will -- this will  
19 prohibit a law enforcement agency from going out and  
20 buying a breath tester. They have to get one that has  
21 been evaluated by NHTSA, and it doesn't have anything to  
22 do with the standards that have to be applied to that.  
23 Both are clearly defined in the regulation.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

25 Comment from the public.

1 MS. LOUGH: It almost sounds to me, Clay -- I know  
2 this is one of your pet peeves that in the past, you felt  
3 there should be a lot of Department control over the  
4 training of law enforcement officers, and I think you are  
5 probably trying to hold on to that, and that's not where  
6 we are at this point.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 I wasn't talking about -- Clay Larson from the  
9 public. I wasn't talking about training at all. So let's  
10 move back.

11 You made a statement that you will limit -- you  
12 prevent law enforcement from purchasing instruments which  
13 aren't on the NHTSA list. Number one, I think that's so  
14 we're saying these regulations impose the requirements on  
15 law enforcement, and I assume we're all comfortable with  
16 that. But two, I would submit that -- again, suggest that  
17 Health and Safety Code doesn't say that. I think what's  
18 missing here is some link between the laboratories and law  
19 enforcement personnel and the procedures that they use.  
20 It sets a requirement on laboratories, and they shall  
21 ensure. I'm not sure how they ensure.

22 But again, the major point is, you just said that  
23 you believe these regulations should impose requirements  
24 on law enforcement.

25 MS. LOUGH: Let me read for everybody what 100701

1 says. It's very short, and I have discussed this with  
2 NHTSA, with the representative from NHTSA and the testing  
3 program. We did that before we had proposed the changes  
4 to Health and Safety Code, so this is kind of historic.

5           100701 says, "All laboratories that are subject to  
6 the requirements of section 100700," which is forensic  
7 alcohol analysis, "shall ensure that breath alcohol  
8 instruments and calibrating devices used in testing are  
9 listed in the 'Conforming Products List' in the Federal  
10 Register by the National Highway Traffic Safety  
11 Administration of the United States Department of  
12 Transportation."

13           That means that they are only going to list those  
14 instruments that they have tested and feel comfortable  
15 that they meet the requirements for these purposes. It  
16 doesn't talk about anything on the concerns of how you  
17 will ensure that those instruments are working. That is  
18 in our document, our Title 17 document.

19           But it says, you need to ensure that those  
20 instruments that you are using are on that list. If an  
21 agency decides to purchase any other equipment that they  
22 want to use, they can do whatever they want, but they will  
23 not be supported by the scientific group in court  
24 circumstances.

25           So that's why it's listed like it is. There's no

1 real reason for us to have to re-invent the wheel for  
2 equipment that Department of Transportation has already  
3 studied.

4 CHAIRPERSON KIMSEY: Is the Committee satisfied  
5 with that?

6 COMMITTEE MEMBER DAVIS: This is Kevin Davis,  
7 Sacramento. Torr, if you don't mind -- I don't want to  
8 put you on the spot. Legally speaking, do you think that  
9 that language that she read in the Health and Safety Code  
10 covers that adequately, to where they could be deleted?

11 COMMITTEE MEMBER ZIELENSKI: It sounds to me like,  
12 basically, the language that they are using, I'm  
13 assuming -- it sounds to me like we've done what the other  
14 two paragraphs, because the language in 1221.2(a) seems to  
15 be the old language The new language that she read,  
16 pursuant to 100701, seems to apply to the same criteria.

17 COMMITTEE MEMBER DAVIS: I agree. I just wanted  
18 to your opinion.

19 COMMITTEE MEMBER ZIELENSKI: -- as being  
20 redundant, if, in fact, that language is being removed and  
21 the definition is already included in the old language.

22 So it seems to me -- my question is, is what --  
23 why Clay Larson thinks that, if he does, in fact, whether  
24 it might be some problem with that interpretation.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Well, I think --

2 COMMITTEE MEMBER ZIELENSKI: Something more might  
3 be needed, in other words. It seems to me like it's  
4 encompassed within the definition under the Health and  
5 Safety Code.

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

7 I think what you are missing, if you look at the  
8 subject of the sentence that's contained in 100701, it  
9 refers to laboratories. And then we jump to this -- we  
10 created kind of a mental nexus that says, if an agency  
11 chose not to use that, then they wouldn't have the support  
12 of the laboratory, the scientific support of the  
13 laboratory.

14 MS. LOUGH: This is Patty Lough.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

16 I'm almost through.

17 They wouldn't have the support of the laboratory.

18 And maybe that's something -- I'm not sure the statutory  
19 authority to do that, but maybe that support is something  
20 that should be described in the regulations. You can have  
21 regulations that says that all breath alcohol analysis  
22 have to be -- have to be conducted with -- sorry, breath  
23 alcohol testing has to be conducted with instruments that  
24 has to be somehow removed and some imprimatur by the  
25 laboratories, saying that this is a good forensic

1 alcohol -- this is a good breath alcohol result.

2 MS. LOUGH: Patty Lough.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 But that's actually missing.

5 MS. LOUGH: We've kind of talked about this stuff.

6 First off, the language that has been removed from  
7 Title 17, referencing the Health and Safety, is a  
8 requirement for the APA, because it is redundant. You are  
9 not allowed to have redundant information in your new  
10 document. So if it's found someplace else, it's  
11 redundant. So we removed it. We only left the reference  
12 in here. Let's see. No. I think we removed it  
13 completely, because it is found in another document, and  
14 that's a requirement we have to bring this document into  
15 compliance.

16 The other question you had, Clay, goes back to  
17 that old issue: How many people were doing roadside test  
18 evaluations with equipment that was not supported by the  
19 crime lab? That was a very common practice, and we have  
20 talked about that for, probably, decades, whether or not  
21 the Department should have control over those pieces of  
22 equipment -- the old -- what was it -- help me with the  
23 name. PAS devices, thank you.

24 The PAS devices were not part of a laboratory  
25 program. They were not part of anything that the lab did

1 to maintain the calibration of events; perhaps allow  
2 officers to come in and use that equipment. But many  
3 laboratories do not testify to PAS devices because they  
4 are not controlled within the laboratory setting.

5 And it sounds like what you are trying to do is  
6 confuse this and make it more difficult. We've discussed  
7 this many, many times. I think the document is fine the  
8 way it stands.

9 CHAIRPERSON KIMSEY: And what's the feeling of the  
10 rest of the Committee?

11 COMMITTEE MEMBER DAVIS: Kevin Davis. I'm  
12 satisfied that it's redundant.

13 CHAIRPERSON KIMSEY: Okay. Then let's go ahead  
14 and move on to standards of procedure, sort of the middle  
15 page there, page 40.

16 Page 41? Discussion of dry gas standards and  
17 decimal places.

18 Anything on page 41?

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
20 Actually, on page 40.

21 CHAIRPERSON KIMSEY: On page 40?

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

23 On 1221.4(a)(1), the reference to -- "For each  
24 person tested, breath alcohol analysis shall include  
25 analysis of 2 separate breath samples which result in

1 determinations of" -- it still lists it as "blood alcohol  
2 concentrations." It's probably -- it seems to be  
3 inconsistent with the other efforts to provide for the  
4 direct expression of breath alcohol concentration. So an  
5 easy one this time. I think you may want to change  
6 "blood" to "breath."

7 MS. LOUGH: Patty Lough. I made a comment here; I  
8 made a note.

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
10 What does that mean exactly, when you make those  
11 notes?

12 MS. LOUGH: Well, at some point, probably I will  
13 be on the subcommittee to go through and put this document  
14 into the -- closer to the format that's going to go  
15 forward. So I will get together with whoever's on that  
16 subcommittee and review my handwritten notes with their  
17 handwritten notes and make sure that we all feel that  
18 we're comfortable with what we have.

19 And then, of course, everyone is welcome to look  
20 at the transcripts of these meetings and compare them to  
21 our document.

22 COMMITTEE MEMBER ZIELENSKI: Torr Zielenski in  
23 Sacramento.

24 Why don't we just -- it seems that Clay is correct  
25 in that aspect. Why is that just simply not modified with

1 "breath alcohol concentration."

2 MS. LOUGH: Patty Lough.

3 I made a note to change that to "breath."

4 COMMITTEE MEMBER ZIELENSKI: Okay.

5 MS. LOUGH: We don't have -- Torr, we don't have  
6 anybody sitting here, you know, doing it right now. We  
7 have to do that outside of this meeting.

8 COMMITTEE MEMBER ZIELENSKI: Okay.

9 CHAIRPERSON KIMSEY: And like you said, Patty, it  
10 will be covered in the transcript.

11 MS. LOUGH: Absolutely. And it's all Committee  
12 members' responsibility to make sure that, you know, we're  
13 saying what we thought we were saying.

14 CHAIRPERSON KIMSEY: Okay. Which leads me to the  
15 point, maybe we ought to take a ten-minute break since  
16 we've been going for an hour. And if no one objects, why  
17 don't we come back at 11:20.

18 (Break taken in proceedings)

19 CHAIRPERSON KIMSEY: Let's continue our  
20 discussion. Why don't we go ahead and come back from our  
21 break and continue our discussion. I think we were on  
22 page 41.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 Comment from the public. On 1221.4(a)(2), I made  
25 this comment before. There's kind of a quick reference to

1 the checks for accuracy of instruments using water  
2 solutions or dry gases of alcohol.

3           There is a -- there's a great deal that goes on  
4 there. If you use a water solution, you clearly have to  
5 carefully control the temperature of the solution; you  
6 have to control the number of uses of the solution. So  
7 there are specific requirements that have to be followed  
8 in order for that accuracy check to be meaningful.

9           The Committee could consider stating those  
10 requirements in regulation. The Department imposes their  
11 comments when they were an active -- when they had an  
12 active administrative role, but they probably could and  
13 should now be incorporated in the regulations.

14           CHAIRPERSON KIMSEY: Feelings from the Committee?

15           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

16           They all agree.

17           CHAIRPERSON KIMSEY: I take it that we're  
18 satisfied, then, with the way the requirements stand at  
19 this point, with not including that level of detail?

20           COMMITTEE MEMBER ANDERSON-SEAQUIST: Janet from  
21 San Diego.

22           Yes.

23           CHAIRPERSON KIMSEY: Okay. Page 42?

24           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

25           Actually, on page 41, comment from the public.

1 I have a note here and it's hard to read it. We  
2 retain 1221.4(a)(2). It says, "The accuracy of the  
3 instruments shall be determined." And maybe it's just  
4 order. Maybe the bold came before the -- I think I see  
5 now. So --

6 COMMITTEE MEMBER WONG: The bold is the old.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 But under the narrative, it explains -- the bold  
9 is old, but it follows the new. So in the past, the new  
10 has followed the old, so we reserved it.

11 It also says, under 1221.4(a)(2), the first time  
12 it's shown on page 41, it says, "The following subsection  
13 will be added" So we're clear, I gather, the first  
14 instance of 1221.4(a)(2) is intended to replace the second  
15 instance.

16 CHAIRPERSON KIMSEY: I'm not sure I follow what  
17 you are saying.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

19 At the top of page 41, "The following" section  
20 "will be added." "The instrument shall be checked for  
21 accuracy with standards which are water...."

22 CHAIRPERSON KIMSEY: Right.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 Immediately below that is another 1221.4(a)(2).

25 CHAIRPERSON KIMSEY: I see.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 In the past, we placed the old next first and then  
3 the new text. Then it says -- there's a note.

4 "Subsequent sections will need to be renumbered/lettered  
5 to reflect addition of (2)." So maybe the intent then is  
6 to make 1221.4(a)(2), again, the second instance, now  
7 (a)(3), but now my note is correct, I believe. Those two  
8 sections, the newly added section and the old section, say  
9 the same thing.

10 COMMITTEE MEMBER TANNEY: Patty, you just want to  
11 make sure you note that --

12 MS. LOUGH: The bold goes first?

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

14 Make a note of that.

15 MS. LOUGH: Yeah, the order; the bold goes first?

16 CHAIRPERSON KIMSEY: Right.

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

18 Besides that, I think we've duplicated the same  
19 statement here. We're not really adding section (2).

20 We're simply changing the existing (2).

21 MS. LOUGH: Okay. Patty Lough.

22 I made a note to check the duplication of the  
23 wording on the 1221.4(a)(2) and put the (a)(2) in one.

24 CHAIRPERSON KIMSEY: Page 42?

25 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is Janet

1 from San Diego.

2 Just a comment about the 1221.4(a)(4), to take out  
3 the designations of supervisor analyst and trainee.

4 MS. LOUGH: I have a note for that. And also to  
5 change the breath alcohol analysis to testing. I got to  
6 make sure we go through and do that.

7 COMMITTEE MEMBER TANNEY: You are changing that  
8 section that says -- right, right, right.

9 CHAIRPERSON KIMSEY: How will that section then  
10 read? It will be, "Training in the procedures of breath  
11 alcohol testing shall be" --

12 MS. LOUGH: -- "under the supervision of breath  
13 alcohol analysts." And that's all we'll have.

14 CHAIRPERSON KIMSEY: Okay. Page 43?

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
16 Actually, on page 42, comment from the public.

17 On page 42, let me just ask, I hope it's not a  
18 rhetorical question, but under 1221.4(a)(3), which we  
19 haven't changed, it says "Breath alcohol analysis shall be  
20 performed only with instruments for which the operators  
21 have received training."

22 Maybe there's actually a better section that  
23 subsequently defines the operator. Actually,  
24 1221.4(a)(2)(A)1, "Such analysis should be performed by an  
25 operator as defined in Section 1221.4(a)(5)," which comes

1 later, which maybe is on page 42; we'll get to it  
2 eventually. So on page -- actually, it's page 43. What  
3 page are we on now?

4 CHAIRPERSON KIMSEY: 42.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
6 I will probably wait till 43 then.

7 CHAIRPERSON KIMSEY: Okay. We're on page 43.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
9 All right. Then regarding Section 1221.4(a)(5),  
10 it says, "An operator shall be a forensic alcohol  
11 supervisor," analyst, or trainee; may want to change that.  
12 "...or a person who has successfully the training  
13 described under section 1221.4(a)(3) and who may be called  
14 upon to operate a breath testing instrument in the  
15 performance of his or her duties."

16 Does that impose a requirement on a law  
17 enforcement officer? In other words, if a law enforcement  
18 personnel performs a test and he or she has not received  
19 the training described here, is he or she violating Title  
20 17?

21 COMMITTEE MEMBER TANNEY: No. But the lab, again,  
22 will not be able to testify, to back up the test results.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 And again, I would submit, there's nothing in the  
25 regulations that describes that. I mean, if everybody's

1 comfortable as it exists -- there's nothing in the  
2 regulation that describes that backup-the-results  
3 business.

4 COMMITTEE MEMBER TANNEY: Well, I think that,  
5 again, Title 17 doesn't regulate the officers, so they can  
6 choose to do what they want to do, but if they want -- I  
7 mean, they are going to be cross-examined on the fact that  
8 they used an instrument that was not -- or that they  
9 didn't attend the training that they were required to  
10 attend in order to accurately use the instrument or use  
11 the instrument in accordance with what the lab requires.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
13 And when you say "cross-examine," keep in mind  
14 that we had an estimate earlier that 95 percent of DUI  
15 cases never go to court.

16 COMMITTEE MEMBER TANNEY: And the defense has  
17 access to the rules and they know what the rules are, and  
18 if that's something that -- I suppose I understand what  
19 you are saying, is -- let me think about it. I guess it  
20 would be incumbent on the defense to inquire whether or  
21 not the person who did the breath test had the training.

22 COMMITTEE MEMBER ANDERSON-SEAQUIST: And they do,  
23 repeatedly do.

24 MS. LOUGH: Patty Lough.

25 And then as a criminalist, in a courtroom, you are

1 often asked about the person who did the test; here's  
2 the -- you know, they have a precautionary checklist or  
3 they have the test results. And in some of the  
4 instruments, you can tell whether they have done the  
5 standards appropriately, whether they followed the  
6 sequence.

7           So even if the person did not have the training,  
8 the scientist could look at that and say, well, they did  
9 perform the functions that needed to be performed, and we  
10 can determine if it looks like a valid test was taken, in  
11 spite of the fact that this person just kind of winged it.

12           So it would come to court. The bottom line is, if  
13 the person doesn't have that training like they are  
14 supposed to have, according to this document, that test  
15 might not even get in just on the basis of that. I've  
16 seen cases where a jury has thrown out a test because an  
17 operator did not check a box on a checklist, but obviously  
18 there was a result, so that step got done.

19           But you just don't know what's going to happen in  
20 court, and that's where it all comes out in a wash.

21           COMMITTEE MEMBER TANNEY: Well, and there's no  
22 requirement that an officer have the training. The  
23 requirement is that the lab -- that the lab gives the  
24 training to operators -- I mean, this only controls the  
25 lab, again. So if the officer goes and they allow their

1 officers to give blood -- breath tests, it -- first of  
2 all, Title 17 doesn't even go to the admissibility of the  
3 evidence; it only goes to the weight of the evidence.

4           So the officers can do what they want and they can  
5 testify to it. And, again, we talked about this at our  
6 very first meeting. Under the truth and evidence clause,  
7 any evidence that is deemed to be probative is admissible  
8 in the State of California. The question is, what is the  
9 weight of that evidence? And that's up to the defense,  
10 then, to figure it out, whether or not the appropriate --  
11 what the lab views as appropriate procedures were  
12 followed, and they can argue that the officer didn't  
13 comply with what the laboratory requires, or what Title  
14 17, which is basically the standards in the industry  
15 require.

16           But then it's up to the jury to decide whether or  
17 not that is significant to them or not. I mean, I suppose  
18 the officer could choose to call the manufacturer of the  
19 instrument in to try to back up the way they used the  
20 instrument. And there's nothing that you guys, the lab,  
21 or the Department of Health Services can do to stop the  
22 officers from doing that if that's the way they are going  
23 to proceed. But that's all going to be subject to  
24 scrutiny.

25           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1           Just a quick response. I think what you are  
2 describing is unregulated testing and the intent of the  
3 regulations was to have regulated testing, so I think  
4 there's a gray area here, but if everybody else is  
5 comfortable with it, I'm --

6           COMMITTEE MEMBER TANNEY: It's like the PAS  
7 device. The PAS device results come in now. They do.  
8 And those are not subject to oversight by you or by the  
9 laboratories. But there's still case law that allows  
10 those results to come in. They are not coming in  
11 generally for the same purpose that the other results come  
12 in -- that the regulated testing comes in under, but  
13 there's unregulated testing, and we've talked about this  
14 before, in all the scientific disciplines.

15           So it's just a question of what the labs want to  
16 do as far as overseeing other labs that get this type of  
17 certifications, and have the credibility in the courtroom  
18 that other operators may not have if they haven't followed  
19 the procedures that are accepted by these regulations.

20           COMMITTEE MEMBER WONG: Kenton in Richmond.

21           I believe that the relationship between law  
22 enforcement and the crime labs is very good overall, where  
23 most law enforcement are abiding by the requirements to  
24 train their officers as operators. I think in over 20  
25 years, I've only had one case where there was a, quote,

1 rogue officer that just went off and said, "Oh, yeah.  
2 It's easy. I can do that," and just pressed the button  
3 and went off and did the test, but that went to the  
4 officer's credibility, of doing the test and not having  
5 the training that was required by Title 17 and provided by  
6 the laboratory, to the rest of his fellow officers, and  
7 that all came out in the wash with the jury.

8 COMMITTEE MEMBER TANNEY: It's in everybody's  
9 interest that operators are trained. Whether they get  
10 that training from the laboratory or not, that's the  
11 interest, is to have faith in the results.

12 CHAIRPERSON KIMSEY: Okay. Thank you for the  
13 discussion.

14 Anything else on page 43?

15 Page 44?

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

17 A comment from the public. I think it's an easy  
18 one.

19 On page 42, 1221.4(a)(2)(A)1, there's a reference  
20 to product determinations of accuracy and it such says  
21 that such analysis should be performed by an operator.  
22 Subsequently, and perhaps in response to comments made by  
23 the Department, there was an attempt to accommodate those  
24 instruments that are -- where the determinations of  
25 accuracy are automated. But certainly, the record keeping

1 section, we made the attempt, but here, we still have a  
2 reference to an operator, apparently precluding automated  
3 product determinations of accuracy.

4 CHAIRPERSON KIMSEY: So you are suggesting such  
5 analysis shall be performed as defined in Section 1221 and  
6 just drop "by an operator"?

7 COMMITTEE MEMBER TANNEY: Where are we looking?

8 CHAIRPERSON KIMSEY: This is page 42 towards the  
9 top, 1221.4(a)(2)(A)1. First sentence there says, "Such  
10 analysis shall be performed by an operator..." And the  
11 suggestion was to remove "by an operator."

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

13 Well, not necessarily. Subsequently, there's an  
14 attempt -- in the recordkeeping section, there's an  
15 attempt to distinguish manual -- there's no definitions  
16 yet, but there's an attempt to -- apparently an attempt to  
17 distinguish manual and automatic instruments'  
18 functionality.

19 MS. LOUGH: Patty Lough.

20 It seems to me, we did address that someplace.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

22 As I said, you did it under the recordkeeping  
23 section, but I don't think you've done it here.

24 CHAIRPERSON KIMSEY: This is Paul.

25 Maybe for the sake of time, we can just sort of

1 highlight that, and the subcommittee, when they are  
2 redoing some of their work, can sort of look at it and try  
3 and tie it together or make a recommendation.

4 MS. LOUGH: Patty Lough.

5 Good idea. I will make a note.

6 CHAIRPERSON KIMSEY: So I think we're on page 44.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 Actually, comment from the public.

9 In 1221.4(a)(4), which is the very end of the page  
10 and continues on to page 43, "Training in the procedures  
11 of breath alcohol analysis shall be under the supervision  
12 of persons who qualify as..." and then it gives several  
13 categories, and you may want to change those categories.

14 The previous version of the whole Review Committee  
15 included language that would provide for supervision by  
16 law enforcement. And that's been dropped. But I think  
17 that -- so that was one point, the thinking of the  
18 Committee, I think there's probably some lack of clarity  
19 on what "supervision" means here.

20 COMMITTEE MEMBER TANNEY: I think we took out the  
21 term "direct"; didn't we? That was a long time ago. But  
22 I think it used -- perhaps --

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 It never said "direct."

25 COMMITTEE MEMBER TANNEY: It never said "direct"?

1 I think maybe that was the discussion, but we didn't put  
2 that in because "supervision" could be -- I mean,  
3 conceivably you could have a train-the-trainer course, I  
4 suppose.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

6 But I think when you use the word "could be," I  
7 think you run into an APA clarity issue. I mean, if the  
8 regulations "could be" this or "could be" that, then they  
9 are not, clearly, anything. So I think we still need to  
10 not avoid, but get a handle on the word "supervision" and  
11 define what it means.

12 MS. LOUGH: This is Patty Lough.

13 It seems to me, we had a discussion about whether  
14 "supervision" was a common dictionary term, and common  
15 dictionary terms do not have to be defined. Does anyone  
16 recall that?

17 CHAIRPERSON KIMSEY: This is Paul.

18 I think -- obviously, I remember having  
19 discussions about "supervision," and if we want to go with  
20 the common Webster dictionary version, that's fine. I  
21 know that in other laboratory law, outside of this  
22 particular area, "supervision" has been defined to be, you  
23 know, "constant" or "direct" or "available by phone" or  
24 "within the same city block." I mean, "supervision" is a  
25 very general term, I guess, at this point, which, if we're

1 fine with the Webster's dictionary version, that's fine,  
2 but I know, in certain areas, it's quite specifically  
3 defined.

4 MS. LOUGH: Patty Lough.

5 I think I actually have documentation from Clay on  
6 this exact word, and I think he wrote on there that it  
7 was -- because that was a question we had, does this have  
8 to be direct, indirect? How does this have to be? And I  
9 think he said common dictionary term. I could probably  
10 find it if I went back in my stack of notes at home. It  
11 might take me a while.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

13 I don't want you to go home.

14 I'm recalling that the -- at least one of the  
15 discussions of "supervision" pertained to the supervision  
16 of forensic alcohol trainees, another case where the word  
17 comes up that was somewhat unclear. And the perception  
18 there was, the person had to be on site and available. It  
19 didn't necessarily -- so that was one discussion.

20 So I think -- so if we apply that same discussion  
21 that the individual has to be on site, providing the  
22 training, there would be no train-the-trainers approach.  
23 But "supervision" is probably -- and "supervision"  
24 previously was included with another section that we  
25 deleted for some reason, that referred to the actual

1 instructors of the course. We've totally deleted that  
2 section.

3           So apparently -- I mean, one idea here is that  
4 maybe there will be no instructors. It will simply be the  
5 supervisor directly providing the training. I just  
6 think -- I think there's going to be clarity issues with  
7 regarding how we interpret this section.

8           COMMITTEE MEMBER DAVIS: This is Kevin Davis,  
9 Sacramento.

10           Are there labs currently doing train-the-trainer?  
11 I've always been trained by a live employee, in several  
12 different counties.

13           COMMITTEE MEMBER TANNEY: I don't know that.

14           CHAIRPERSON KIMSEY: Well, and the Department  
15 still is required -- you know, labs are still required to  
16 follow all the Department's regulations, and the  
17 Department is still required to enforce the regulations.

18           One of the requirements is that any training  
19 provided by labs to qualify individuals under these  
20 regulations has to be approved by the Department. We've  
21 never approved any training procedures that are  
22 train-the-trainer approaches.

23           COMMITTEE MEMBER TANNEY: As far as I know, all  
24 the training in San Diego, as far as I know -- and I could  
25 be wrong -- is done by the lab.

1           COMMITTEE MEMBER DAVIS: That's why I asked,  
2 because I've never heard of train-the-trainers.

3           COMMITTEE MEMBER TANNEY: I was just saying  
4 that -- well, I don't know what -- I mean, I think maybe  
5 there is -- the word "supervision" does leave it open to  
6 some interpretation, and I don't know if that is going to  
7 be a problem, and if it is going to be a problem, then we  
8 should resolve what it means.

9           But I don't know whether all counties in  
10 California have labs that -- the lab personnel that come  
11 train every law enforcement officer. I can only talk  
12 about my experiences in San Diego. But there may be --  
13 there may be labs that get trained, for instance, the  
14 manufacturers. I have no idea. So --

15           COMMITTEE MEMBER DAVIS: This is Kevin. But if  
16 that was happening, it would be in violation of the  
17 current rules; right?

18           COMMITTEE MEMBER TANNEY: I don't know.

19           MS. LOUGH: Yes.

20           Patty Lough.

21           1221.4(a)(4), it says, "Training shall be under  
22 the supervision of" which will now be "forensic alcohol  
23 analysts."

24           COMMITTEE MEMBER TANNEY: Well, I don't think  
25 there's -- I think it said "supervision" before and it's

1 always worked that way and perceived not to be a  
2 violation; then you can keep that word in there and  
3 continue doing what you've always done. I don't --

4 COMMITTEE MEMBER DAVIS: This is Kevin.

5 That's ultimately what I was getting at. If it's  
6 always been done that way and there's an expectation that  
7 it continue, I don't see why we'd change the terminology.

8 MR. PHILLIPS: Here's what -- this is Bill  
9 Phillips with the Department of Justice.

10 Here's what's happening. This has been used as an  
11 underground regulation to control the supervision of  
12 training, and it's been interpreted by the Department as  
13 direct training. That's the problem.

14 Now, what we would like to be able to do is give  
15 this training, over the internet, to operators as  
16 specified. And that's the problem. Right now, it's not  
17 defined. It needs to be defined.

18 COMMITTEE MEMBER TANNEY: I think that's a very  
19 good point, because I think training over the internet  
20 and -- actually, I think it can be more effective than a  
21 direct training, because it's something they can refer  
22 back to, as needed, if it's available online. So I think  
23 you are right. I think we need to consider language that  
24 will leave that open to a possibility.

25 I would have thought "under the supervision of"

1 without the word "direct" would allow you to do that, but  
2 if you have interpreted that not to allow you to do that,  
3 then it seems to me that we should change that.

4 MR. PHILLIPS: I agree.

5 COMMITTEE MEMBER TANNEY: Is that right?

6 MR. PHILLIPS: Yes, I agree, Laura.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 Yeah. I would take exception to the notion that  
9 this is an underground regulation. Section -- article --  
10 Section 1218 specifically provides the Department will  
11 approve personnel. And generally regulations are -- I  
12 believe the courts have pretty broad authority for  
13 administrative agencies to interpret their own  
14 regulations, and supervision pretty much throughout the  
15 document refer -- doesn't refer to -- for instance, if  
16 we're going to define "supervision" in that way in this  
17 case, internet supervision probably is not appropriate for  
18 forensic alcohol analysis trainees. Maybe it is, but I --

19 COMMITTEE MEMBER TANNEY: It is. It's appropriate  
20 for almost anything nowadays. You can do videotapes,  
21 webinars; you can do all kinds of types of training over  
22 the internet. It doesn't have to be live. You can even  
23 do webinars where they can have -- send in questions.  
24 That way, you could train -- you can train so many more  
25 people at once and have it streamed live or at a webinar,

1 out to many, many different sites and still accept  
2 questions right there on the spot and answer them on the  
3 spot.

4           So I mean, that's just development of technology  
5 and tools that are useful for training, and you have to  
6 account for that in these regulations. You have to,  
7 because it's not -- the days of on-site training for  
8 everything are not only less efficient, but there's also  
9 resources to do that with the budget constraints we have  
10 these days. It's so much more efficient to do it on a  
11 webinar.

12           CHAIRPERSON KIMSEY: So what sort of language  
13 would we propose here?

14           COMMITTEE MEMBER TANNEY: "Shall be directed by  
15 persons who qualify"?

16           MR. PHILLIPS: Or instructed?

17           COMMITTEE MEMBER TANNEY: I don't know about  
18 "instructed," because I think you could -- the lab could,  
19 conceivably, bring the manufacturer in if the lab wanted  
20 to, to train -- to do the training with them. So I don't  
21 know if you have to say -- use the word "instructed," but  
22 you could have them oversee it or direct it or "under the  
23 direction of."

24           COMMITTEE MEMBER WONG: "Under the auspices of."

25           COMMITTEE MEMBER TANNEY: No.

1           COMMITTEE MEMBER DAVIS:  What if you said  
2  "training must be developed by" those people?  What if you  
3  were to say, "training must be developed by the FAAs or  
4  FASs"?

5           COMMITTEE MEMBER TANNEY:  Let's see.  "Training  
6  and procedures shall be developed and provided by"?  
7  "Developed and provided by"?  That's the word we use for  
8  MCLE, continuing legal education training, we're  
9  providers -- we're providers of continuing education.

10           So that's like the State Bar authorizes providers.  
11  So if the labs are providing the instruction, you could  
12  say "developed and provided by."

13           MS. LOUGH:  Patty Lough.

14           Does that -- would someone, a layperson, look at  
15  that and say "provided by," meaning I have to personally  
16  do it?

17           COMMITTEE MEMBER TANNEY:  No.  At least that's not  
18  the interpretation by the State Bar.  I'm the provider for  
19  our office, for example, and I can hire -- I bring in  
20  other instructors to do it.

21           MS. LOUGH:  How about the use of the word  
22  "facilitate"?  I'm just concerned that someone said  
23  provided by and it wasn't an alcohol analyst that  
24  physically did it.

25           COMMITTEE MEMBER DAVIS:  This is Kevin.

1 I think "provided by" is just as confusing as  
2 "supervision."

3 MR. PHILLIPS: And another way we can do this is  
4 to define the term "supervision" to include electronic or  
5 other means.

6 MS. LOUGH: Patty Lough.

7 I don't want to get that detailed.

8 COMMITTEE MEMBER TANNEY: Right. I think we can  
9 come up with a word. "Facilitate" is possible.

10 MS. LOUGH: "Facilitate" sounds to me like someone  
11 putting something together, but they don't actually have  
12 to be present.

13 CHAIRPERSON KIMSEY: Or responsible.

14 COMMITTEE MEMBER TANNEY: The only problem --  
15 well, no. Because you already have to have the  
16 qualifications to be a forensic alcohol analyst. So  
17 that's probably all right.

18 MS. LOUGH: "Facilitated"?

19 COMMITTEE MEMBER TANNEY: Bill, what do you think?  
20 Is it Bill?

21 MR. PHILLIPS: Yes. I think that's fine.

22 MS. LOUGH: This is Patty Lough.

23 I will put that in, and we can take a look at it  
24 when it's in writing.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1           You know, as we -- Clay Larson, member of the  
2 public.

3           As we discuss these proposals, let's sort of think  
4 about -- I don't know if it's a worst-case scenario, but  
5 possible outcomes which would be completely compliant with  
6 the regulations. So if a lab, strapped for cash, simply  
7 decided they were going to have a two-page training  
8 outline. The first page was -- the second page was a  
9 precautionary checklist, and the first page simply says,  
10 "Please follow the attached checklist," and sent those to  
11 the law enforcement agency, would they be facilitating the  
12 training?

13           COMMITTEE MEMBER TANNEY: Well, they already have  
14 under 1221.4(a)(3) all -- the training has to include at a  
15 minimum the following topics or information, which  
16 includes the theory of operation, a detailed procedure, a  
17 practical experience, precautionary checklist, and an  
18 examination. So I mean, that's pretty detailed right  
19 there.

20           You could say, "Detailed procedure and  
21 demonstration of operation," if you want, so that there  
22 has to be a demonstration. But I mean, I think it's  
23 pretty detailed enough; it's detailed enough already to  
24 warrant against or to not allow a lab just to hand  
25 somebody a sheet of paper.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 I submit, you could have a four-page handout.

3 COMMITTEE MEMBER DAVIS: Kevin Davis.

4 You could have the word "interactive." That would  
5 alleviate that concern. And it would still address the  
6 webinar or electronic-based training, I think.

7 COMMITTEE MEMBER TANNEY: "Interactive" is a word  
8 they use by the State in doing other types of training,  
9 and I will tell you, there's differences in interpretation  
10 of that. I think for interactive, for example, the State  
11 required violence in the workplace or sexual harassment  
12 prevention training. There's some disagreement or  
13 differences in interpretation over whether that requires  
14 that people be able to ask questions right there, on the  
15 spot, or whether it just involves answering a question  
16 every few slides on a presentation. I think that's  
17 subject to too much interpretation also.

18 COMMITTEE MEMBER DAVIS: Okay. I was just  
19 throwing it out there, because if you just cover these  
20 topics, it could just be written material only.

21 MS. LOUGH: Patty Lough.

22 COMMITTEE MEMBER TANNEY: If you put  
23 demonstration.

24 MS. LOUGH: Patty Lough.

25 I would like to propose that 1221.4(a)(3)(E) be

1 changed to eliminate the "or," and it requires, then, a  
2 "written and practical examination." And that would  
3 ensure that someone would have to demonstrate the  
4 proficiency to take a correct test -- breath alcohol test.  
5 And the written part could include the other parameters  
6 that are covered in the training, that are really  
7 essential to law enforcement. So I think it should say  
8 "written and practical examination," and then that would  
9 kind of cover --

10 COMMITTEE MEMBER TANNEY: How are we going to do  
11 that on a webinar?

12 COMMITTEE MEMBER DAVIS: That wouldn't cover your  
13 concern.

14 MS. LOUGH: Well, on a webinar, isn't there a way  
15 that you can have a test put on the internet? You could  
16 submit a test to them. But they must have access to that  
17 instrument.

18 COMMITTEE MEMBER TANNEY: But that's a written  
19 examination.

20 MS. LOUGH: The written examination could be on a  
21 webinar, but they come into their laboratory, then, and  
22 demonstrate proficiency on the instrument, maybe in a time  
23 period of a two-week window, have to come in. Or it would  
24 be really simple to have a block of time when the officers  
25 have to go in and demonstrate.

1 I don't think any criminalist is going to want to  
2 have someone walk out of training without knowing that the  
3 person had to actually physically do a test on the  
4 instrument.

5 COMMITTEE MEMBER TANNEY: But doesn't that  
6 then require -- doesn't that then basically do away with  
7 the justification for off-site training, by using a  
8 webinar? If you are going to have to have a demonstration  
9 backed -- unless it can be approved by somebody other  
10 than --

11 MS. LOUGH: There will be -- there are -- let's  
12 take San Bernardino, for instance, which is the biggest  
13 county geographically. You have got people in Morongo and  
14 Twentynine Palms and San Bernardino city. So those  
15 people, if they are going to try to take this at their  
16 facility, there are instruments their lab uses at that  
17 location. So maybe they could go in and be directed to do  
18 a series of tests.

19 But I, as a scientist, wouldn't want to approve  
20 anyone without actually taking a test. And as an  
21 instructor -- and this doesn't take away from having,  
22 maybe, a senior person delegated to do this. As an  
23 instructor -- there's a lot of things; they need to know  
24 how people can manipulate the test and say, "I can't blow  
25 any harder," and there's all kinds of things that happen,

1 that the experienced operator understands and you kind of  
2 put the trainees in those situations.

3 COMMITTEE MEMBER TANNEY: Isn't that shifting the  
4 burden off of the lab, onto the Department. Like you  
5 said, they have access to those instruments --

6 MS. LOUGH: At their location, yes.

7 COMMITTEE MEMBER TANNEY: -- anyway, but would  
8 they then have to call a criminalist to meet them at that  
9 location in order to --

10 MS. LOUGH: It doesn't specify who can give -- it  
11 just says there has to be -- I would like the lab to say  
12 these are the kinds of tests I would like a person to take  
13 on a practical -- but it doesn't say that it has to be a  
14 lab person.

15 COMMITTEE MEMBER TANNEY: That's true.

16 Bill, what do you think about that?

17 MR. PHILLIPS: Patty, it does say that there's  
18 practical experience required. So, you know, either way,  
19 I'm okay with either way -- "written and/or practical  
20 examination," or "and a practical examination." Practical  
21 experience is already mentioned.

22 MS. LOUGH: You are right, Bill. All right.

23 COMMITTEE MEMBER WONG: Kenton Wong --

24 COMMITTEE MEMBER TANNEY: Does everybody agree  
25 with the "facilitated by"?

1 MS. LOUGH: "Facilitated by" is what I wrote down.

2 Patty Lough.

3 COMMITTEE MEMBER TANNEY: Okay. Bill, will that  
4 take care of your concerns?

5 MR. PHILLIPS: Yes.

6 COMMITTEE MEMBER TANNEY: That was a good point.  
7 Thank you.

8 COMMITTEE MEMBER WONG: Kenton.

9 I don't think you're going to get away from the  
10 practical exam. We've always had the officers take a  
11 written exam and a practical exam, and they had to pass  
12 both in order to be certified for use of the instrument  
13 and administration of the instrument.

14 COMMITTEE MEMBER TANNEY: That's fine. That makes  
15 sense.

16 CHAIRPERSON KIMSEY: So that moves us back to  
17 page 44? 45? I think we're finishing up on page 44,  
18 before we get to "Records" on 45.

19 MS. LOUGH: Okay. Patty Lough.

20 Just for clarification, page 42, 1221.4(a)(3)(E),  
21 do you want me to -- "written and practical" then?

22 COMMITTEE MEMBER WONG: "A written and practical."

23 CHAIRPERSON KIMSEY: That was my understanding.

24 MS. LOUGH: Okay. I made a note.

25 CHAIRPERSON KIMSEY: It's 12 o'clock, straight up,

1 here, at least. I would recommend we go for another half  
2 hour and then break for an hour. Does that seem  
3 acceptable?

4 I'm going to have to sort of -- like I mentioned  
5 earlier, I have a swine flu responsibility for about 45  
6 minutes, starting at 1:30. So when we come back, I would  
7 recommend someone else sort of take over the chairperson  
8 responsibility, and I will get back as soon as I can.

9 Any feelings on who that individual could be or  
10 should be? It should be a Committee member.

11 COMMITTEE MEMBER TANNEY: Kenton, do you want to  
12 do that?

13 CHAIRPERSON KIMSEY: I think they volunteered you.

14 COMMITTEE MEMBER WONG: Oh. Sure.

15 CHAIRPERSON KIMSEY: He says sure.

16 So anything else on page 44?

17 We're moving on to Article 8, Records, on page 45.

18 Moving on to page 46, it looks like we're  
19 maintaining 1221.1(a)(4), records of the quality control  
20 program. Or is that being removed? I'm interpreting it  
21 that it stays in.

22 MS. LOUGH: Yes. Patty Lough.

23 CHAIRPERSON KIMSEY: Okay.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

25 What page are we on?

1 CHAIRPERSON KIMSEY: Excuse me?

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 What page are we on?

4 CHAIRPERSON KIMSEY: Page 46.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

6 Under 1221.4(a) -- Clay Larson, member of the  
7 public.

8 Under 1221.4(a)(6), this is where we added a  
9 reference to manual determinations of accuracy. I think  
10 manual and, maybe, automatic would be things you need to  
11 define.

12 CHAIRPERSON KIMSEY: I'm sorry. Was that  
13 1222.1(a)(6)?

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
15 1221.4(a)(6).

16 COMMITTEE MEMBER WONG: On 43?

17 MS. LOUGH: Patty Lough.

18 I think the word "manual" is a common word.

19 COMMITTEE MEMBER TANNEY: How about if you say  
20 "...and the identity of any person performing a manual  
21 determination," instead of "the person." That way, if  
22 it's automatic, it's recorded, and if it's done by any  
23 person using the instrument, it's prompting that it's  
24 recorded.

25 MS. LOUGH: Patty Lough.

1 I think that sounds good.

2 CHAIRPERSON KIMSEY: Anything else on page 46?  
3 47?

4 So on page 47, just for clarity, we're  
5 recommending, "This section will be deleted in its  
6 entirety as redundant, as each subsection in 1222.2 is  
7 covered previously."

8 So we're losing all of 1222.2, those five previous  
9 sections -- breath alcohol analysis records; each agency;  
10 records of instrument determination; records of analysis;  
11 and the location of each instrument. That's all been  
12 covered previously.

13 MS. LOUGH: Yes.

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
15 Comment from the public.

16 Actually, I think the explanation is incorrect  
17 here. I think it's clear that the former Section 1222.2  
18 imposed the requirements on law enforcement agent -- I  
19 think the reference to "agency" there was law enforcement  
20 agency. So besides some of the records which are  
21 maintained by the lab, associated with training, there was  
22 a separate set of regulations that imposed requirements on  
23 law enforcement agencies. So I don't think it's  
24 redundant. I think the Committee has determined, at least  
25 in this instance, that it's not appropriate to pose

1 requirements on law enforcement agencies. I think  
2 elsewhere, we do, but here, we decided we don't. So I  
3 don't believe it's redundant.

4 COMMITTEE MEMBER TANNEY: Well, you could add in  
5 your note, "This section will be deleted in its entirety  
6 as Title 17 pertains to the regulation of laboratories and  
7 not law enforcement agencies." And with respect to  
8 "laboratories," each subsection is previously covered.

9 MS. LOUGH: Patty Lough.

10 I have made a note on that.

11 CHAIRPERSON KIMSEY: It looks like pages 48 and 49  
12 are works cited.

13 Any other comments in our last series of pages  
14 here?

15 Well, it looks like we might be able to go ahead  
16 and have our regular lunch hour, and come back at  
17 1 o'clock and continue some discussion about, you know,  
18 the April 10th meeting, and then some follow-up on how we  
19 want to continue the meetings and the work, and get  
20 involved with the subcommittee's work.

21 So unless I hear any objections, we will recess  
22 until 1 o'clock.

23 MS. LOUGH: Patty Lough.

24 CHAIRPERSON KIMSEY: Sure.

25 MS. LOUGH: Before we go, I may not be here this

1 afternoon because I have an obligation with the kiddies at  
2 home.

3 Can we, at this meeting, go ahead and set the date  
4 for the next meeting --

5 CHAIRPERSON KIMSEY: Sure.

6 MS. LOUGH: -- while we're all here?

7 CHAIRPERSON KIMSEY: Yeah. What's the feeling of  
8 the group? I think we're getting close, and I think some  
9 of this, Patty, may relate to if the subcommittee is going  
10 to meet again and incorporate some of the comments and  
11 come up with another product.

12 I think the meeting of the full Committee is  
13 probably dependent upon those subcommittee meetings and  
14 how many. And what is your feeling, based on what you've,  
15 you know, seen so far?

16 MS. LOUGH: Okay. This is Patty.

17 You know, it would probably be easier for me just  
18 to go ahead and make these changes and not have the  
19 subcommittee meet. I think I have all the notes I need  
20 for these changes, and we can just go ahead and set our  
21 meeting. This is something I can just do, you know, at  
22 home and have available for the next meeting.

23 CHAIRPERSON KIMSEY: So could we try and schedule  
24 something in another month or six weeks? What's your  
25 summer looking like?

1 MS. LOUGH: Patty Lough.

2 For me, the week of the 15th looks good, of June.

3 CHAIRPERSON KIMSEY: A meeting in two weeks or  
4 three weeks?

5 MS. LOUGH: Paul, you need to have -- is it a  
6 ten-day --

7 CHAIRPERSON KIMSEY: I believe it's a ten-day  
8 notice.

9 MS. LOUGH: -- notice? Okay.

10 CHAIRPERSON KIMSEY: We want to give the Committee  
11 some time to sort of review your incorporation, your -- I  
12 mean, the new product. So maybe -- the last week of June  
13 is difficult for me, since I'm out of the state.

14 COMMITTEE MEMBER TANNEY: And I'm gone the first  
15 two weeks of July. This is Laura.

16 CHAIRPERSON KIMSEY: Oh, dear.

17 COMMITTEE MEMBER DAVIS: This is Kevin in  
18 Sacramento. I prefer that we schedule the meeting as we  
19 have in the past. Throw some potential dates out, because  
20 I don't have the dates out.

21 COMMITTEE MEMBER ZIELENSKI: That would be the  
22 same with me.

23 COMMITTEE MEMBER WONG: Same for me.

24 COMMITTEE MEMBER DAVIS: That way, maybe we could  
25 review the draft document too, once it's redone.

1 CHAIRPERSON KIMSEY: Right.

2 MS. LOUGH: This is Patty.

3 The draft document, I could do it today and  
4 tonight and get it e-mailed out to the Department.

5 COMMITTEE MEMBER WONG: You are awesome, Patty.

6 COMMITTEE MEMBER DAVIS: I'm not opposed to a  
7 meeting soon. I just don't have my calendar, so I  
8 couldn't commit to a date today.

9 CHAIRPERSON KIMSEY: So we're thinking maybe the  
10 middle of the next month.

11 MS. LOUGH: 15th through the 19th of June.

12 CHAIRPERSON KIMSEY: I think those will probably  
13 be the dates I put out. I don't have my -- we'll try  
14 and -- we'll see what everybody's availability is for that  
15 week of the 15th of June.

16 If we can't do it that week, it sounds like we may  
17 be into July, but we'll certainly see what everyone's  
18 availability is for the week of the 15th.

19 Okay. Anything else before we break for lunch?

20 If not, I will see everybody at 1 o'clock. Thank  
21 you.

22 (Break taken in proceedings)

23 CHAIRPERSON KIMSEY: We sort of had an offline  
24 conversation about the need to actually even come back  
25 this afternoon. But since we had already adjourned, we

1 sort of need to come back.

2           The discussion had been that we would talk a bit  
3 more about the first 33 pages that we went over in April,  
4 April 10th, and there are some areas that we did sort of  
5 skip over, there, specifically around some of the  
6 personnel issues. But I guess the question -- it's up to  
7 the Committee. We can talk a bit about what we did up to  
8 page 33 last time, but it looks like we're also going to  
9 be reconvening here within the next three weeks or so, if  
10 possible, with a new version of the subcommittee's work  
11 product, so there will also be time to look at these  
12 issues again.

13           I think it was Bill Phillips, according to the  
14 transcript, on the April 10th meeting, that suggested that  
15 we -- let's see. It says, "I'd recommend that we move on  
16 past all personnel definitions. We don't have a clear  
17 correction right at the moment. Let's go on to another  
18 article," which we did.

19           And so I don't know -- this is something,  
20 obviously, the full Committee can catch up on with the new  
21 draft of the subcommittee's work product, or we can talk  
22 more about what the personnel directions have been. I  
23 think we're pretty much to the point where we're down to  
24 the trainee and the analyst position at this point. But  
25 anyhow, I will just sort of open it up to the full

1 Committee about discussing the personnel definitions  
2 and/or anything else that went on for the first 33 pages,  
3 back in April.

4 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is Janet  
5 from San Diego.

6 I thought that we had discussed only one  
7 designation of the analyst, but we don't have the DMV  
8 representative here this time.

9 CHAIRPERSON KIMSEY: Right. It was my  
10 understanding, I thought we still had a trainee  
11 designation and then the analyst.

12 Bill, we were just referring to the fact that back  
13 in April, April 10th meeting, as we were going through  
14 things, you made a recommendation that we move on past  
15 personnel definitions which we did. Your comment -- and  
16 I'm just reading from the transcript, "We don't have a  
17 clear direction at the moment. Let's go on to another  
18 article," which we did.

19 And we were just talking about the fact that we  
20 can talk some more. We have some time this afternoon, if  
21 we want to take it, to go over what we talked about on  
22 April the 10th. We'll also be seeing a new version of the  
23 subcommittee's work product here in, maybe, another three  
24 months, or back together meeting about it in another three  
25 weeks. But there had been some interest in what were sort

1 of the major decisions that were made back in April, or  
2 major recommendations; not necessarily decisions because  
3 there was no voting.

4 And we just -- in looking through the transcript,  
5 we did note that we did sort of skip, I think, from about  
6 page 16 in our subcommittee product to page 20. I don't  
7 know if there was any interest in reviewing any of that or  
8 just waiting to see what the next subcommittee product  
9 looks like.

10 MR. PHILLIPS: Okay. I understood that we had an  
11 agreement with DMV to eliminate two of the classes and use  
12 only "forensic alcohol analyst," but we may not have  
13 recorded that.

14 CHAIRPERSON KIMSEY: I haven't looked through the  
15 transcript for that, but that was sort of my understanding  
16 also. I don't know what the rest of -- let's see. Who  
17 else was there on the tenth? But that was my  
18 understanding also.

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
20 I don't recall eliminating trainees.

21 CHAIRPERSON KIMSEY: No. But I think we  
22 eliminated, what was it, supervisor and --

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
24 There's only three.

25 CHAIRPERSON KIMSEY: There's only three?

1           MR. PHILLIPS:  There are only three, and I  
2 understood it to be the supervisor and trainee was  
3 eliminated, and only forensic alcohol analyst was left.

4           CHAIRPERSON KIMSEY:  Okay.  I think earlier this  
5 morning, we had some discussion where we were still  
6 talking about trainees, but maybe that was -- it hadn't  
7 caught up with previous discussions.

8           Do you remember what the objection -- not  
9 objection, but the recommendation, what it was based on,  
10 from DMV, on losing the trainee category?

11          MR. PHILLIPS:  They often have interpretive  
12 problems with DMV hearings as to people who are qualified,  
13 and the trainee class often -- there was a lack of  
14 verification from the Department before they actually  
15 started testing, so they thought it would be best to drop  
16 the trainee completely.  That was my understanding.

17          COMMITTEE MEMBER ANDERSON-SEAQUIST:  Janet from  
18 San Diego.

19          That's my recollection as well.

20          COMMITTEE MEMBER TANNEY:  This is Laura, and I  
21 wasn't there.  But is that going to affect the amount of  
22 resources available of the labs statewide to do the  
23 testing?

24          MR. PHILLIPS:  It should have no effect.

25          COMMITTEE MEMBER TANNEY:  Okay.

1 COMMITTEE MEMBER WONG: This is Kenton.

2 Bill, what was the -- what's the word I want? So  
3 by not having a trainee designation, was that just  
4 basically kind of hiding that, so that that would make the  
5 DMV hearing officers happy, with lack of experience or --

6 MR. PHILLIPS: Yeah. The term "forensic alcohol  
7 supervisor" is a particular misnomer because they don't  
8 directly supervise any of these employees, and that was a  
9 complete misnomer. The trainee level, unfortunately, is  
10 often misinterpreted by employees and laboratories to mean  
11 that they can be a trainee without being granted the  
12 privilege from the Department, and so that was a  
13 misunderstanding and they wanted to straighten that out so  
14 that there wouldn't be a misunderstanding. You are either  
15 an analyst or you are not.

16 COMMITTEE MEMBER WONG: So someone that's in  
17 training and that hasn't been granted the status of an  
18 analyst is not?

19 MR. PHILLIPS: Right.

20 CHAIRPERSON KIMSEY: That's fine. I think I  
21 understand DMV's concern. It's just that it's sort of  
22 standards practice in laboratories to have trainees,  
23 whether -- I guess you can still call them that. There  
24 won't be a designation of that.

25 COMMITTEE MEMBER WONG: They are either Jedis or

1 Padawans; okay?

2 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is Janet  
3 from San Diego.

4 I know, in my laboratory and the laboratories that  
5 I have worked in, we have trainees, you know, when they  
6 are learning a specific discipline, but they don't do case  
7 work until they are actually an analyst, anyway, so it  
8 shouldn't affect the labs at all, as far as case work.

9 CHAIRPERSON KIMSEY: Okay.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
11 Comment from the public.

12 I'm looking through -- my recollection is  
13 different than the two members'. They say memory is the  
14 second thing to go. Let's see whose went first.

15 I don't recall a proposal, actually, to eliminate  
16 trainees. There was a proposal to eliminate supervisors,  
17 but I don't recall that we actually -- we come to some  
18 good reasons now. There would be implications in that if  
19 you have hired a new person, they would have to -- and we  
20 now describe a proficiency test. We still haven't  
21 discussed the pages that describe the -- maybe there's  
22 more reason to do it now; but the one remaining  
23 classification, which apparently still exists, given this  
24 new interpretation of what we cited last time, and that's  
25 the analyst class. But there is a requirement now that

1 the analyst complete an external proficiency test.  
2 Depending on how that's interpreted -- it's not defined --  
3 there could be some time lapse between the -- you hired a  
4 person and you trained them, and then you had that person  
5 available for case work.

6 Under the current regulations, that person could  
7 start case work immediately, providing that he had  
8 completed his training and that he was -- his initial  
9 analyses prior to becoming qualified as an analyst or  
10 supervisor were supervised by a qualified person.

11 So we would lose that. This -- again, I don't see  
12 any -- I don't recall any specific proposal to eliminate  
13 the trainee classification.

14 MR. PHILLIPS: This is Bill Phillips again.

15 Earlier today, on page 42, when we were discussing  
16 1221.4(a)(4), we determined that both the forensic alcohol  
17 supervisor and trainee would be eliminated from that  
18 sentence, and that it would be forensic alcohol analyst.  
19 And then on the next page as well, 1221.4(a)(5), we as  
20 well said that. So why would we have not -- why would we  
21 have agreed to do that today when, in fact, we hadn't had  
22 previous discussion concerning elimination of the trainee.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 That's kind of a very indirect argument. That  
25 works sometimes. We have the transcripts, and I will

1 certainly review it carefully. We didn't retain  
2 requirements for the recordation of trainee records under  
3 the records section, and there are similar sections where  
4 we didn't eliminate trainees. So I wonder why would we  
5 have done that if we decided -- blah, blah, blah, blah,  
6 blah.

7 COMMITTEE MEMBER TANNEY: This is Laura.

8 I just did a work search from the transcript and I  
9 found the discussion in the transcript.

10 CHAIRPERSON KIMSEY: What page is it?

11 COMMITTEE MEMBER TANNEY: I moved it forward to  
12 page 47, which is continuing the discussion, but let me go  
13 back to where it starts.

14 CHAIRPERSON KIMSEY: I was just leafing through --

15 COMMITTEE MEMBER TANNEY: The DMV representative  
16 is speaking on page 43. I'm sorry. But it actually  
17 starts a few pages before that. Let me find it again.  
18 Yeah. They start on page -- about page 40 as typed on the  
19 right hand-upper corner, maybe even a little before that,  
20 where you were talking about getting rid of the supervisor  
21 designation and then you go on to talk about trainees  
22 and -- did you find it, Paul?

23 CHAIRPERSON KIMSEY: I'm on page 43, and I see  
24 some discussion. I guess it was Ms. Zabala from DMV.  
25 That's about the supervisor.

1           COMMITTEE MEMBER TANNEY: Right. So then there's  
2 the discussion about the supervision over the trainee and  
3 I guess the DMV has some problem in determining who the  
4 trainee is under the supervision of.

5           CHAIRPERSON KIMSEY: Right. And yeah, we can look  
6 through this. I mean, obviously we can see -- we can  
7 continue the discussion when we see the next work product,  
8 but --

9           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
10 It sounds like -- comment from the public.

11           It sounds like Ms. Tanney found the section where  
12 the Committee member proposed deleting trainees. So what  
13 page is that on?

14           CHAIRPERSON KIMSEY: 45, I think. "Ms. Zabala, I  
15 would like to clarify that we don't get a lot of these  
16 trainees"...

17           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
18 It would be a Committee member; right?

19           CHAIRPERSON KIMSEY: Still reading.

20           COMMITTEE MEMBER TANNEY: On page -- yeah, 45, "We  
21 don't get a lot of these (sic) trainees that are not yet  
22 qualified. But sometimes we have forensic alcohol  
23 reports" where "the certification" was "by a criminalist  
24 and that person turned out not to be qualified to perform  
25 the analysis, as the list that came with that forensic

1 alcohol report shows that the trainee was not qualified or  
2 maybe he or she is has not graduated yet.

3 "So in that scenario, under case law" -- and I'm  
4 reading from the transcript, by the way -- "we have to  
5 prove that this person was supervised by a forensic  
6 alcohol supervisor, forensic alcohol analyst, that that  
7 person, that supervisor analyst, was actually involved in  
8 the actual analysis of the blood sample."

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

10 So you interpret that as a proposal by the  
11 Committee to eliminate the trainee position?

12 COMMITTEE MEMBER TANNEY: I haven't -- I haven't  
13 interpreted it. I was just looking for where it's  
14 discussed, and I haven't gotten to the end of the  
15 discussion.

16 CHAIRPERSON KIMSEY: Yeah. I have been sort of  
17 reading ahead a little bit. I'm already on to page 48 and  
18 don't see it. Then we get onto supervision again,  
19 unfortunately.

20 Anyhow, we can track this down. I don't know that  
21 it's -- and again, like I said, see what comes up in the  
22 next subcommittee work product, and review it then.

23 COMMITTEE MEMBER DAVIS: This is Kevin Davis in  
24 Sacramento.

25 Perhaps we should wait until DMV is here to fully

1 explain what their desires are in this area.

2 CHAIRPERSON KIMSEY: Sure. And it would also be  
3 worthwhile, looking through here, to see if we really  
4 did -- I don't see, yet, a recommendation to remove  
5 trainee. But I've only gotten up to page 53 here so far,  
6 starting at 43 or something. So this is obviously an area  
7 we want to revisit.

8 Any other areas from the September -- excuse me,  
9 April meeting that we want to review or discuss?

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

11 Did we get an answer to the question, whether we  
12 want to review pages 16 through 20, which we didn't  
13 discuss at all at the last meeting?

14 CHAIRPERSON KIMSEY: Well, that's part of what we  
15 were doing. I mean, obviously the pages 16 through 20 --  
16 16 is talking about --

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

18 Analyst.

19 CHAIRPERSON KIMSEY: -- the analyst position.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 I guess we're all clear, we are going to retain.

22 CHAIRPERSON KIMSEY: Which we have decided to  
23 retain, yes.

24 I think where we got -- where we pretty much  
25 stopped is when we were talking about some of the

1 training, like 1216.1(f)(2) on page 17. So we are still  
2 going to be doing training. We won't call them  
3 "trainees," possibly. There's quite a bit of change on  
4 page 18, 1216.1(f)(4). "At a minimum, successfully  
5 completed an external competency test comprised of at  
6 least four samples that must:" -- A through D.

7 We do talk about a forensic alcohol analyst  
8 trainee, and we do say, "This section will remain as it is  
9 written." That's on page 19, 1216.1(g). But obviously,  
10 there may have been some discussion, further discussion.

11 Other comments on the personnel definitions or  
12 anything else that we discussed on April the 10th?

13 Any other discussion about this particular  
14 subcommittee's work product?

15 Then I believe we have agreed to -- we're going to  
16 try and get out some dates, possible dates to meet again  
17 the week of June 15th, and we'll have another work product  
18 by then. And I think we'll work on some way of either --  
19 you know, prior to the meeting or at the meeting, we can  
20 maybe do some voting on the specific sections. I'm  
21 thinking of a rectangular box with the various  
22 organizations across the top and a yes/no check mark, you  
23 know, for each section so we can see, you know, how the  
24 Committee is voting.

25 Whether we do that at the meeting or prior to the

1 meeting, or we think of some other mechanism for voting,  
2 that's just one idea, that there would be sort of this  
3 check box at each section and/or subsection.

4 Other suggestions or comments?

5 COMMITTEE MEMBER ANDERSON-SEAQUIST: Would I be  
6 able to videoconference or teleconference from Ventura?

7 This is Janet.

8 CHAIRPERSON KIMSEY: We're actually -- is that  
9 because of geography?

10 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes.

11 CHAIRPERSON KIMSEY: I mean, because we're  
12 thinking we may have San Diego back on videoconferencing  
13 next time. And I think we may be limited to three sites.  
14 But we can look into -- I think there's also a way that  
15 you -- it's my understanding that if a Committee member is  
16 at a place where the public can attend, I think you can do  
17 this by audio conference.

18 COMMITTEE MEMBER ANDERSON-SEAQUIST: Okay.

19 CHAIRPERSON KIMSEY: And we'll get a clarification  
20 of that for you.

21 COMMITTEE MEMBER ANDERSON-SEAQUIST: That would be  
22 much appreciated.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
24 Comment from the public.

25 Regarding this compressed time schedule, for

1 instance, if we selected the 15th, we would have to have  
2 the Bagley-Keene-required notice of meeting and the agenda  
3 by next Friday.

4 COMMITTEE MEMBER WONG: Right. But Patty said  
5 she's going to get the work product out to us either  
6 tonight or tomorrow.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
8 Ms. Tanney, I think, has suggested, in the past,  
9 that she needs several weeks to -- so certainly, we need  
10 at least ten days, so we need that product to be available  
11 and up on the website by next Friday, assuming we pick  
12 that first day.

13 And also, the notice of meeting agenda will have  
14 to list the Ventura site so we need to get all that --  
15 that might not be difficult, but we need to get all that  
16 out of the way before next Friday.

17 CHAIRPERSON KIMSEY: Yeah. I think the feeling of  
18 the Committee is to try and do things on a pretty rapid  
19 turnaround basis, where possible. And we'll definitely  
20 meet the responsibilities and obligations of Bagley-Keene,  
21 but I think it's a good deal to try and, you know, keep  
22 this moving, since we've been at this now for four years  
23 or so.

24 Any other comments?

25 COMMITTEE MEMBER DAVIS: This is Kevin in

1 Sacramento.

2 I just had a quick question. I wasn't at the last  
3 meeting, but I saw that AB 599 was discussed briefly. I  
4 didn't read the transcript, but I did read the bill this  
5 morning.

6 If I understand it correctly, is it exempting any  
7 ASCLD/LAB certified lab from all these requirements  
8 completely?

9 COMMITTEE MEMBER ANDERSON-SEAQUIST: No, it's not.

10 This is Janet from San Diego.

11 It's exempting the labs from oversight by the  
12 Department of Public Health, not from Title 17.

13 COMMITTEE MEMBER DAVIS: But aren't we, in  
14 essence, doing that with these amendments to Title 17?

15 COMMITTEE MEMBER ANDERSON-SEAQUIST: No.

16 COMMITTEE MEMBER WONG: No.

17 COMMITTEE MEMBER DAVIS: No?

18 COMMITTEE MEMBER ANDERSON-SEAQUIST: No.

19 COMMITTEE MEMBER WONG: No. Title 17 is separate  
20 and, in and of itself, the California regulations which  
21 govern forensic alcohol analysis within the State of  
22 California.

23 ASCLD requirements are the overall proved methods  
24 and procedures that crime labs adhere to follow by in  
25 their analysis and examination of physical evidence. So

1 this is specifically maintaining the good science in  
2 forensic alcohol analysis, to make sure that there aren't  
3 rogue labs going out and just coming up with some blood  
4 alcohol analysis quantitation for court and not having any  
5 science to back it up.

6 COMMITTEE MEMBER TANNEY: This is Laura. This is  
7 essentially a -- it's essentially self-imposed rules or  
8 guidelines. But in actuality, other than the scrutiny in  
9 court, there is no enforcement for that.

10 COMMITTEE MEMBER DAVIS: Okay. So --

11 COMMITTEE MEMBER TANNEY: The statement.

12 COMMITTEE MEMBER DAVIS: I guess my question is,  
13 then, if AB 599 were to be chaptered, so maybe a lab like  
14 Valley Toxicology is the only one I'm aware that's not  
15 certified, they then would have to submit methods to  
16 Department of Health? Is that what that would mean?

17 COMMITTEE MEMBER TANNEY: From my reading of the  
18 legislation, that would be correct unless they were  
19 certified by another association, similar to ASCLD, that  
20 meets the approval of this Committee.

21 COMMITTEE MEMBER DAVIS: I guess what I am asking  
22 is, if we're removing all references to having the  
23 Department have approval in Title 17, what's going to  
24 require them to do that? A quote, unquote, rogue lab,  
25 what's going to require them to do that?

1 COMMITTEE MEMBER TANNEY: Require them to do what?

2 COMMITTEE MEMBER DAVIS: To submit methods to the  
3 Department of Health?

4 COMMITTEE MEMBER TANNEY: Well, I guess you would  
5 look at this: It was Patty's argument, when we started  
6 this process, that the old bill -- I can't remember the  
7 name of it -- remove DHS oversight.

8 COMMITTEE MEMBER WONG: 1623.

9 COMMITTEE MEMBER TANNEY: -- and disagree with  
10 that interpretation because of one provision that was  
11 never removed. This now makes it -- this new legislation  
12 makes it clear, expressly, that removing any  
13 ASCLD-certified lab or lab certified by another  
14 association that meets with the Committee's approval is  
15 like an express statement. And since that's an express  
16 statement in there, the interpretation that Clay had at  
17 the beginning of this process, that DHS oversight exists  
18 still for other laboratories, would basically be implied  
19 by the language of this new legislation.

20 In other words, before, it was subject to  
21 interpretation; you could interpret it either way. But  
22 now, if the Legislature passes this bill, it will be  
23 expressly stating that only these specific labs are  
24 removed from DHS oversight, the implication being that the  
25 other labs will remain under DHS oversight.

1 Does that make any sense?

2 COMMITTEE MEMBER WONG: Correct.

3 COMMITTEE MEMBER TANNEY: And that's dealing with  
4 legislative construction and interpretation.

5 COMMITTEE MEMBER DAVIS: Okay. I was just curious  
6 because I missed the discussion last time.

7 COMMITTEE MEMBER TANNEY: And I wasn't here for  
8 the discussion, but just in terms of how interpretation of  
9 legislation works, I think that's how it would end up  
10 being interpreted.

11 CHAIRPERSON KIMSEY: And this is Paul in Richmond.  
12 We didn't have much of a discussion in April.  
13 It's all on -- it's pretty much two paragraphs on page 4  
14 of the transcript.

15 COMMITTEE MEMBER DAVIS: Okay. Thank you.

16 CHAIRPERSON KIMSEY: Other comments?

17 If not, I think we'll adjourn here at 1:30.

18 And we will be getting in touch with you about  
19 future dates the week of June 15th.

20 And I want to thank you all for your time, and  
21 thank our court reporter and members of the public that  
22 participated.

23 Thank you all very much.

24 (Thereupon the Forensic Alcohol Review

25 Committee adjourned at 1:33 p.m.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of June, 2009.

KATHRYN S. SWANK, CSR  
Certified Shorthand Reporter  
License No. 13061