

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

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10:30 A.M.

JAMES F. PETERS, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

REVIEW COMMITTEE MEMBERS

Dr. Paul Kimsey, Chairperson(Richmond)

Ms. Janet Anderson-Seaquist(Ventura)

Sergeant Kevin Davis(Sacramento)

Mr. Bruce Lyle(San Diego)

Mr. Paul R. Sedgwick(San Diego)

Mr. Laura Tanney(San Diego)

Mr. Kenton S. Wong(Richmond)

Mr. Torr M. Zielenski(Sacramento)

STAFF

Ms. Effie Harris, Abused Substances Analysis Section

Ms. 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. Harbi Thandi, Abused Substances Analysis Section

ALSO PRESENT

Mr. Terry Fickies, California Department of Justice(Sacramento)

Ms. Ann Marie Gordon, San Francisco Office of the Chief Medical Examiner

Ms. Patricia S. Lough, Subcommittee member

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Bill Phillips, California Department of
Justice(Sacramento)

Mr. Michael Toms, Sacramento County, Laboratory of
Forensic Services(Sacramento)

Ms. Florida Zabala, Staff Counsel, California Department
of Motor Vehicles

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1 PROCEEDINGS

2 CHAIRPERSON KIMSEY: Let's get started. This is
3 Paul Kimsey in Richmond. This is the 10th meeting of the
4 Forensic Alcohol Review Committee. We have four sites:
5 Richmond, Sacramento, San Diego and Ventura on the line.

6 Why don't we go around and see who is at the
7 various sites. Here in Richmond, the committee members
8 are myself. Kenton Wong has not arrived yet. In the room
9 we have Clay Larson from the Department as part of the
10 public and on the back row we have Effie Harris and...?

11 MR. THANDI: Harby Thandi, Department of Public
12 Health.

13 And we have our stenographer here, please
14 introduce yourself.

15 THE COURT REPORTER: Jim Peters

16 CHAIRPERSON KIMSEY: Jim Peters.

17 With that, that's everybody here in Richmond.
18 How about in Sacramento?

19 DIVISION OF FOOD, DRUG & RADIATION SAFETY

20 ASSISTANT CHIEF HUCK: In Sacramento this is Russ Huck.

21 MS. ZABALA: Flerida Zabala, DMV.

22 DRUG & RADIATION DIVISION CHIEF SCHLAG: Bob
23 Schlag, Public Health.

24 MR. TOMS: Michael Toms, Sacramento Crime
25 Laboratory.

1 COMMITTEE MEMBER DAVIS: Kevin Davis, CHP,
2 committee member.

3 CHAIRPERSON KIMSEY: In San Diego, could you
4 identify yourselves, please.

5 COMMITTEE MEMBER LYLE: Bruce Lyle, coroner.

6 COMMITTEE MEMBER SEDGWICK: Paul Sedgwick,
7 toxicology.

8 CHAIRPERSON KIMSEY: Laura, you need to speak up
9 a little bit.

10 COMMITTEE MEMBER TANNEY: Laura Tanney,
11 California District Attorney's Association.

12 CHAIRPERSON KIMSEY: Thank you.

13 MS. LOUGH: Patty Lough on the subcommittee.

14 CHAIRPERSON KIMSEY: Great. Anyone else in San
15 Diego?

16 No. If not, we'll move on to Ventura.

17 COMMITTEE MEMBER ANDERSON-SEAQUIST: Hi,
18 everyone. It's Janet Anderson-Seaquist and so far I'm the
19 only one here.

20 CHAIRPERSON KIMSEY: Well, you're coming in very
21 loud and clear.

22 COMMITTEE MEMBER ANDERSON-SEAQUIST: Oh, awesome.

23 DIVISION OF FOOD, DRUG & RADIATION SAFETY

24 ASSISTANT CHIEF HUCK: Paul, this is Sacramento. We've
25 had another participant.

1 CHAIRPERSON KIMSEY: Okay. Who's joined?

2 COMMITTEE MEMBER ZIELENSKI: Torr Zielenski.

3 CHAIRPERSON KIMSEY: Torr Zielenski. Great.

4 Just a little bit of housekeeping. As new people
5 come into the rooms, wherever, please let's have them
6 identify themselves. Also, when you speak, please
7 identify yourselves for the purpose of the stenographer.
8 What other sorts of things?

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

10 We have someone who just arrived here in Richmond

11 MS. GORDON: I'm Ann Marie Gordon from the San
12 Francisco Medical Examiner's Office.

13 CHAIRPERSON KIMSEY: Welcome.

14 And let's see. So I think there's probably some
15 sign-in sheets or there may be sign-in sheets in your
16 respective places. If there are, please do sign them.

17 And I think we can go ahead and get started.

18 Our agenda, which you should have, we have some
19 opening remarks from myself. This, as I mentioned, is our
20 10th meeting. Our last meeting had been on May 28th. And
21 we can, at some point during the day, talk about future
22 meetings as necessary.

23 Basically, we've given a little bit of update
24 before on AB 599. There was a hearing scheduled yesterday
25 where it was canceled. There's quite a bit of information

1 on the website, the Assembly Health Committee website with
2 regards to AB 599. There's some history and an analysis.
3 I don't know if the group is interested, but there -- the
4 bill has made it through a number of reviews. There's
5 now -- I think some of the new information are the support
6 and oppose organizations.

7 I don't know if people are interested in having
8 me read them, but the sponsor supporting is the California
9 Association of Crime Lab Directors and supporting the
10 bill, the American Federation of State, County and
11 Municipal Employees, California Peace Officer's
12 Association, California State Sheriff's Association,
13 District Attorney of Santa Clara County, Los Angeles
14 County Sheriff's Department, San Bernardino County, San
15 Diego County Sheriff's Regional Crime Laboratory, San
16 Francisco Police Department, Sheriff/Coroner of Orange
17 County and Ventura County Sheriff's Department.

18 On the opposed, there's the California
19 Association of Medical Laboratory Technology, California
20 Association of Professional Scientists, California
21 Department of Public Health, California DUI Lawyers
22 Association, and the Public Policy Advocates.

23 So the bill is still very active. There have
24 been some proposed amendments, but I don't think anything
25 has changed to my understanding. It's gone through the

1 Assembly floor with 76 to 0 votes in favor; Assembly
2 Appropriations, 16 to 0 votes in favor; and Assembly
3 Health, 17 votes in favor, 17 to 0 in favor.

4 So I think the bill, since it was not heard
5 Yesterday, the Committee meets weekly, so it may be up for
6 review again next week.

7 But basically all this information I've mentioned
8 you can get off the Senate Health Committee website, just
9 by typing in AB 599.

10 Any questions on AB 599 or comments? People know
11 more or less about it than what I've just reviewed?

12 Okay. Any other questions. As you probably all
13 heard, this is not necessarily relevant to the Committee,
14 but it's certainly very much on our radar, the Governor
15 has directed State employees and offices to be furloughed
16 and closed three Fridays of the month, first, second and
17 third Fridays. Fortunately, we didn't have this meeting
18 scheduled for tomorrow.

19 And so, that's our latest information.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 We're open tomorrow. This month it's the second,
22 third and four Friday.

23 CHAIRPERSON KIMSEY: Okay. So we are open
24 tomorrow.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 If you want to call, I'll be here.

2 CHAIRPERSON KIMSEY: Any comments on the agenda
3 as we've presented it?

4 The first item on the agenda -- I mean obviously
5 what we're going to be doing today is pretty much
6 reviewing -- continue to review the draft regulatory work
7 product. One of the issues we've talked a bit about back
8 and forth over the last few meetings was the elimination
9 of the Forensic Alcohol Analyst Trainee classification.

10 In reviewing the transcripts, it was not
11 necessarily clear to us or clear that, you know, we had
12 voted on this or really come to a clear understanding that
13 it was going to be eliminated. And obviously, that may be
14 arguable. There's lots of transcripts. They're rather
15 lengthy.

16 But I think the easiest thing to do is maybe just
17 to have the discussion again and decide more formally, so
18 it's more clear on what the Committee wants to do with the
19 retaining or not, the Forensic Alcohol Analyst Trainee
20 classification.

21 So I believe there -- does anybody want to sort
22 of lead that off. I think it's the Department's
23 perspective, you know, sort of broadly, that the
24 qualifications of personnel that exist be retained. And I
25 know that's not obviously the majority perspective, dare I

1 say, of the Committee.

2 To sort of, just to lead it off, I would just
3 sort of say that it is the Department's perspective that
4 we retain pretty much the personnel qualifications that
5 were not removed by SB 1623 or any of the things that
6 weren't removed by 1623.

7 Does somebody want to articulate the argument for
8 eliminating the Forensic Alcohol Trainee classification?

9 MS. LOUGH: Patty Lough, San Diego.

10 CHAIRPERSON KIMSEY: Sure.

11 MS. LOUGH: I think the reason we all were
12 maintaining the different titles, the three different
13 classifications was because it was of assistance to the
14 DMV. And in our last meeting, DMV understood that it
15 wasn't necessary anymore. And so if we just talk about an
16 analyst, because that's the point of these regs, is how do
17 you analyze it and who is an analyst.

18 So the responsibility on qualifying the analyst
19 now falls within the laboratory. And a laboratory doesn't
20 need a trainee position, because they're not going to have
21 a trainee as such perform casework until they're sure that
22 that person is qualified.

23 So I think we can certainly remove the trainee
24 classification. If you're an analyst, it means you have
25 passed your written and practical exams and shown

1 competence and proficiency in the work.

2 CHAIRPERSON KIMSEY: Any further discussion?

3 I know, Sergeant Davis, did you have any
4 comments?

5 COMMITTEE MEMBER DAVIS: My recollection was -- I
6 was not here at the last meeting. I think we have someone
7 here today. I don't have any strong feelings one way or
8 the other. So my understanding was this originally was a
9 DMV issue, and why it went on so long.

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

12 CHAIRPERSON KIMSEY: Anymore comments from the
13 Committee members before we have comments from the public?

14 Okay. We have a comment from the public here in
15 Richmond.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 Clay Larson, Richmond.

18 One of the advantages of the trainee
19 classification under the current regulations is that it
20 provided a means by which a laboratory could, after
21 training the individual, could immediately utilize the
22 services of that individual for casework.

23 If we look through the whole proposed regulatory
24 package here, we've added recently a requirement that the
25 competency tests be obtained from an external source. We

1 haven't defined what that means exactly, but the
2 reasonable assumption is that would be a commercial
3 provider. Collaborative Testing Service provides test
4 samples twice a year. So conceivably, a lab could hire an
5 individual outside that window of that most recent
6 commercially provided proficiency test and then have to
7 wait six months before they would be able to obtain
8 another external -- depending on how we define external
9 proficiency test, but another external proficiency test
10 before they could utilize that individual's services for
11 casework.

12 The Department currently has proficiency tests at
13 least three times a year. So it was a slightly shorter
14 potential wait. So there could be a problem here in terms
15 of being able to -- utilizing the manpower that you've
16 hired, given that combination of requirements, elimination
17 of a trainee classification and the adoption of, as I say,
18 a requirement that the individual complete an external
19 competency test.

20 MS. LOUGH: Patty Lough. Yeah, that was the
21 problem with the trainees is even though the Department
22 issued testing three times a year, that trainee may have
23 to wait for the next round. So that's the reason we had
24 that trainee classification, because there was such a
25 delay in getting them up and running as an analyst, even

1 though they were fully qualified.

2 An external test does not have to be from CTS.

3 An external test can be something prepared from another
4 laboratory and submitted. I mean, there's a lot of
5 different ways to provide external tests. And if you've
6 got an analyst that is - the way it's written now - more
7 qualified than they are with the current Title 17, they're
8 up and running and ready to go, then there doesn't have to
9 be any delay at all. The external test does not have to
10 be from a particular provider. So I don't really see any
11 reason to maintain the trainee position.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

13 Then we should definitely define an external test
14 in the regulations.

15 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is
16 Janet in Ventura. And I just wanted to concur with
17 Patty's statement, and say that as a person who's actually
18 running analysis and maintaining a work load in the
19 laboratory, the trainee classification has absolutely --
20 is not helpful to us at all.

21 COMMITTEE MEMBER SEDGWICK: This is Paul Sedgwick
22 in Sacramento. It's absolutely -- I'm sorry. I'm in San
23 Diego.

24 (Laughter.)

25 CHAIRPERSON KIMSEY: I was going to say, I don't

1 see you on the -- go ahead.

2 COMMITTEE MEMBER SEDGWICK: It is absolutely
3 unthinkable to use, as an analyst, a person who has not
4 proven their competency.

5 End of discussion.

6 CHAIRPERSON KIMSEY: And how does that relate to
7 the elimination? Are you agreeing to the elimination then
8 of the Forensic Alcohol Trainee classification?

9 COMMITTEE MEMBER SEDGWICK: Yes.

10 MR. PHILLIPS: This is Bill Phillips in
11 Sacramento.

12 I just want to concur with Patty Lough. External
13 proficiencies can be made available to individuals to
14 prove their competency. We do this all the time in other
15 disciplines in forensic science, so there's no reason why
16 this couldn't be done for alcohol as well.

17 CHAIRPERSON KIMSEY: And this is Paul Kimsey in
18 Richmond again. With the rest of forensic testing, is
19 there sort of a definition of external -- of a proficiency
20 or external sample?

21 MR. PHILLIPS: It's external to the laboratory.

22 CHAIRPERSON KIMSEY: So it could be -- there's no
23 more, how do you say, narrow definition? I mean, is it in
24 another forensic laboratory? I mean, is it something you
25 bring in from wherever, I mean?

1 MR. PHILLIPS: Just as long as it's not
2 laboratory prepared, that it's external to the laboratory.

3 MS. LOUGH: Patty Lough. And the result is
4 unknown to the test taker. So I could -- if I was in San
5 Diego, I could have somebody from Sacramento prepare a
6 sample for me. Sacramento would know the results that are
7 expected and I would take the test without knowing those
8 results.

9 CHAIRPERSON KIMSEY: That does bring some
10 definition to external. I mean, we're talking about
11 another forensic laboratory. This wouldn't be a drinking
12 water laboratory, or I don't know -- is everybody
13 comfortable with that generalization of external?

14 MS. LOUGH: Well, let's look in our definitions.

15 CHAIRPERSON KIMSEY: I don't think it's there.
16 But anyhow, yeah, I guess we can look here real quick.

17 MS. LOUGH: This is Patty Lough. If we look at
18 page 4, where it talks about competency test, that's
19 actually what we're talking about right now. A new
20 analyst coming on, even if you come from another
21 laboratory, even if you're not a trainee, any analyst
22 coming from one lab to another will be given a competency
23 test to show that they can use the equipment and methods
24 at their new station.

25 So we do talk about competency tests. And that's

1 what the trainee actually gets is a competency test. And
2 under the current Title 17, that is the only test ever
3 required of that person throughout their career. So they
4 could work for 30 years and never have another proficiency
5 test. So the initial competency test is before a person
6 begins casework.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
8 Comment from the public.

9 CHAIRPERSON KIMSEY: And that's on page 4, Patty?

10 MS. LOUGH: Page 4. Yeah, we added that
11 definition of competency test last time, because that's
12 really what happens to a new employee.

13 CHAIRPERSON KIMSEY: Is that 1215.1(h)

14 MS. LOUGH: 15.1(o).

15 CHAIRPERSON KIMSEY: (o).

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

18 CHAIRPERSON KIMSEY: Yeah, we have a comment from
19 Richmond here.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 Clay Larson. Yeah, this definition actually
22 doesn't even describe a blood alcohol test, so it's
23 apparently incomplete.

24 In general, we've obviously lowered the bar a bit
25 for the competency tests versus the proficiency test. The

1 proficiency test, as I think described in law and
2 regulations, has to be from an approved provider.
3 ASCLD-LAB apparently has some program in place to qualify
4 those providers, in terms of we have an eight page list of
5 procedures that must be followed. None of those
6 procedures would necessarily be followed -- or none of
7 those procedures would be followed by a -- by this
8 friendly laboratory, this alternative laboratory, I
9 guess -- if it is a laboratory -- preparing a sample,
10 something external to a laboratory.

11 So two points. One, subsection (o) here doesn't
12 even define this as a practical examination. It could
13 just be a theoretical examination as defined here. And
14 number 2, it still doesn't defined "external". The word
15 "external" is still not there.

16 And number 3, we've obviously lowered the
17 standards for this external test relative to the
18 requirements for a proficiency test from now an ASCLD-LAB
19 approved provider.

20 COMMITTEE MEMBER TANNEY: ASCLD has competency
21 testing criteria.

22 CHAIRPERSON KIMSEY: Could identify yourself for
23 the stenographer, please.

24 COMMITTEE MEMBER TANNEY: Laura Tanney.

25 CHAIRPERSON KIMSEY: Thank you.

1 CHAIRPERSON KIMSEY: I'm sorry you said?

2 COMMITTEE MEMBER TANNEY: Does ASCLD --
3 apparently, they've defined competency test, which is what
4 has been adopted here. Do they have criteria for
5 competency tests in order to be accredited? Because this
6 is defined under their program of accreditation, so I'm
7 assuming they do?

8 MR. PHILLIPS: Yes, I'm assuming they do. This
9 is Bill Phillips in Sacramento. I'm assuming they do.
10 I'd have to look at their proficiency test review program
11 guide.

12 COMMITTEE MEMBER TANNEY: So you could actually
13 say, "'Competency test' means the evaluation of a person's
14 ability to perform work in forensic alcohol analysis prior
15 to the performance of independent casework," as defined by
16 ASCLD-LAB International?

17 MR. PHILLIPS: Yes.

18 COMMITTEE MEMBER TANNEY: Therefore, you have the
19 same criteria for Title 17.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
21 Comment from the public.

22 CHAIRPERSON KIMSEY: Go ahead.

23 COMMITTEE MEMBER TANNEY: And eliminate any
24 vagueness as associated with what competency means and
25 that's just adding.

1 MS. LOUGH: Patty Lough, San Diego. If you look
2 on page 12, the numbering is wrong here 1216.1(e)(3),
3 there we talk about -- we define how that competency test
4 would be prepared. Now, if our question is external, we
5 can add to the definition that obviously has to come from
6 a forensic source, if we think -- you know, if Clay thinks
7 we're going to go out and go to Starbucks and get a
8 sample, obviously, we can narrow that down in the
9 definition.

10 But under here it tells you the parameters that
11 would be required of that competency test, which far
12 exceed the current proficiency test parameters provided by
13 this.

14 COMMITTEE MEMBER TANNEY: So you just can include
15 a cross-reference then in 1215.1(o), "'Competency Test'
16 means..." such and such as used in and requires whatever.

17 MS. LOUGH: It's the definition. So when we use
18 the term "competency" on page 12, we just, in the
19 definition, said what a competency test is. It's very
20 specifically stated on page 12.

21 COMMITTEE MEMBER TANNEY: You're right. You
22 don't need a cross-reference. It just defines it.

23 MS. LOUGH: No. And the composition of the
24 competency test, as it's now stated, is a much, much
25 better more suitable test.

1 CHAIRPERSON KIMSEY: Any further discussion?

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 Just a quick comment from the public.

4 Laura Tanney made the proposition and then she
5 seemed to withdraw it. Just to be clear, ASCLD-LAB
6 doesn't define -- and to correct Bill's misunderstanding,
7 ASCLD-LAB doesn't define competency test other than as
8 described here.

9 COMMITTEE MEMBER TANNEY: Well, I don't think we
10 need to address it one way or the other, because as Patty
11 said in the other section, it defines what we mean by it.
12 I didn't realize that was in there.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

14 Thanks. I just wanted to clarify the
15 misunderstanding that apparently was permeating through
16 the Committee, that again, it doesn't define competency
17 tests other than as described here.

18 And in terms of the proficiency review
19 guidelines, it clearly separates proficiency tests, which
20 have to be provided by an ASCLD-LAB approved provider and
21 follow apparently the criteria associated with that
22 approval process. It distinguishes competency tests,
23 which indicates it could be internal or external. So to
24 some extent, the proposal -- when you figure out what it
25 means -- to require this to be an external test exceeds

1 the requirements of ASCLD-LAB, because ASCLD-LAB requires
2 that the -- or provides that the competency test, the
3 initial test shown to demonstrate the competency of the
4 analyst, can be an internal test. And it can be a retest
5 of case samples, as an example of a possible internal
6 test.

7 So the current regulations require that
8 satisfactory performance on a department-conducted
9 proficiency test and written examination. So that's
10 clearly an external test that doesn't even require a
11 definition.

12 I think here we do need a definition of an
13 external test. I don't -- for the record, I like
14 Starbucks, so I'm not denigrating Starbucks. I'm not sure
15 they couldn't do a good job.

16 MS. LOUGH: Patty Lough, San Diego. I've got a
17 Starbucks right here.

18 (Laughter.)

19 MS. LOUGH: You know, personally, as someone
20 who's been performing alcohol analyses and supervising the
21 program in two different laboratories, I don't really care
22 if it's external or not. As a program manager or
23 supervisor, I can have my -- I can direct my staff to
24 obtain very specific types of samples that have very
25 specific concentrations of alcohol pretested and have

1 those prepared for an analyst before they start casework
2 to make sure that I feel that they're competent.

3 So I would just as soon personally take the word
4 "external" out and just have "competency test" in there.
5 And how I come about that, I could ask another lab to
6 prepare them for me. I could use a prior CTS test that I
7 still have that I can ensure is still valid. I don't
8 really care about that. I would just as soon remove that
9 word "external".

10 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is
11 Janet in Ventura. I concur with Patty wholeheartedly.

12 COMMITTEE MEMBER SEDGWICK: Paul Sedgwick, still
13 in San Diego, I totally agree also.

14 (Laughter.)

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

17 Let me get this straight, so is that a
18 proposition -- so this was a valuable -- I think Laura
19 Tanney suggested we stopped talking about it, but it seems
20 like it was a valuable conversation, because we've decided
21 to change the requirements for the competency test; is
22 that correct, vis a vis 1216.1(e)(3)? Maybe we ought to
23 wait till we get to that section.

24 CHAIRPERSON KIMSEY: Right. Any other comments
25 on this? We've sort of shifted a little bit here, but

1 it's been a good discussion, don't get me wrong.

2 Any other comments on the external of Sacramento
3 or Ventura or San Diego on the use of "external"?

4 COMMITTEE MEMBER LYLE: Bruce Lyle. I don't
5 think we need to have "external" in the definition.

6 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is
7 Janet in Ventura. I don't think we need it in the
8 definition for competency test either.

9 CHAIRPERSON KIMSEY: Sergeant Davis, do you have
10 an opinion?

11 COMMITTEE MEMBER DAVIS: I don't see a specific
12 need for it either, but I defer to you guys. You're the
13 experts in that area.

14 CHAIRPERSON KIMSEY: This sort of brings up the
15 issue of voting a little bit. I guess we're stating
16 opinions, which could be considered votes to some extent.
17 And this sort of opens up the broader issue of voting.

18 Why don't -- what I would propose is that we sort
19 of go back to the original part of the discussion, which
20 was the elimination of the Forensic Alcohol Analyst
21 Trainee classification and vote there. And then, since
22 there's been a proposal around "external", then we have a
23 vote on the use of "external". I'm just trying to think
24 of the easiest way to do this voting. We could just do it
25 I guess by roll call. That seems a little cumbersome, but

1 it will certainly be clear in the transcript.

2 So what I'll do is I'll just -- I guess I'll go
3 down the list on our agenda of the Committee members. I
4 guess the proposal, the elimination of the Forensic
5 Alcohol Analyst Trainee classification, you can vote
6 either yes or no. And so, unless there's an objection to
7 this voting process, any other comments on that? Does
8 that seem reasonable?

9 COMMITTEE MEMBER TANNEY: I have a question
10 before I can vote on this subject. And that is, are there
11 any government labs in the state that use technicians to
12 run the samples and then have an analyst look at it to
13 analyze it? And will that be affected by the elimination
14 of "trainee"?

15 And maybe that just shows that I, you know -- all
16 I remember is that you used to have techs do some of the
17 line work. And I'm not saying in a forensic alcohol lab,
18 because I have no idea. I just know that in other
19 laboratories, there are technicians, scientific
20 laboratories not necessarily forensic laboratories, who do
21 some of the work. And then the professor or the lab
22 director or whoever it is does the analysis of the
23 results. And I want to make sure that that's not the way
24 it's done in the labs here in California. Or, that if it
25 is done that way, it won't be affected by this change.

1 MS. LOUGH: I think that may be a correct
2 assumption in private laboratories who hire part-time
3 workers, students that come in and they do part of it, but
4 they are not accredited labs.

5 But that is something that's possible. But in
6 this case, if we say you have to be an analyst, then you
7 have to meet those educational qualifications.

8 COMMITTEE MEMBER TANNEY: And I guess what I'm
9 wondering is in the Government labs that will be affected
10 by Title 17, is that a practice that's being done now
11 that's an accepted practice that's going to require --
12 particularly, I mean in fiscal times, a more qualified
13 individual for the tasks that don't necessarily require
14 them to be more qualified, if that's accepted in the
15 scientific population. And I don't know the answer, but
16 if there's certain labs that aren't represented on this
17 committee or by people on this committee, perhaps you're
18 aware of whether that's a practice that's allowed. I just
19 don't know the answer.

20 MS. LOUGH: San Bernardino did that at one time.
21 They hired techs to come in and do alcohol work, and they
22 could pay them less money. But once they became ASCLD-LAB
23 accredited, the tech had to meet the whole academic
24 requirements of an analyst, even if they just did the
25 samples, got an answer, and then left it up to a

1 supervisor or somebody to come up with what the bottom
2 line was.

3 But because the person performing the analyses
4 has to make some decisions and evaluations as a test is
5 performed, ASCLD-LAB requires that person to have the
6 proper academic background. So we are raising the bar in
7 this case here. Even a technician performing the work is
8 going to have to have the same academic requirements. It
9 should not be an issue, because San Bernardino had to go
10 back then and change all those individuals, and either
11 still offer them low pay and the low title, but they had
12 to come up with the proper academic background that was
13 conformed to our casework.

14 COMMITTEE MEMBER TANNEY: Is there going to be an
15 issue with respect to finding people to fill those
16 positions, qualified people?

17 MR. PHILLIPS: Laura, this is Bill Phillips in
18 Sacramento.

19 DOJ doesn't follow the practice. We do the same
20 thing as San Bernardino. If a lab tech is doing the
21 analysis, they have to meet the qualifications.

22 COMMITTEE MEMBER TANNEY: All right. I mean, if
23 that's the way it is done in the state, then I mean you've
24 got -- that's why I'm asking you that question, so that I
25 know what I'm voting on because I didn't know how that

1 worked in the public sector here.

2 MS. LOUGH: It would probably impact the 10 or so
3 private laboratories that do work. They would have to
4 enhance their requirements of their staff.

5 COMMITTEE MEMBER TANNEY: And that is something
6 that's intended by this?

7 MS. LOUGH: Absolutely.

8 COMMITTEE MEMBER TANNEY: Okay.

9 CHAIRPERSON KIMSEY: Any further discussion?

10 COMMITTEE MEMBER DAVIS: Kevin Davis, Sacramento.

11 I just want to confirm that DMV is not opposed to
12 the taking away of these titles. Because if I recall
13 originally, that was the only opposition. And DMV wasn't
14 at the last meeting to my recollection.

15 MS. ZABALA: Flerida Zabala, DMV.

16 We are not opposed to eliminating the
17 classification of a Forensic Alcohol Trainee, because
18 based on my review of law, we are to adjust to the
19 revisions of the statute and not vice versa. And I think
20 that it's not going to affect the procedure the way we
21 admit blood test results into evidence. The most
22 important part for us is to have that certification
23 revised to be in line with the new guidelines and new
24 provisions of the statute.

25 We are just concerned with some of the -- with a

1 person attesting to the fact that he or she is qualified
2 or classified to be a Forensic Alcohol Analyst and yet the
3 list shows that he or she is not, then the procedure is
4 still the same. The burden shifts to the Department. We
5 have to come up with the fact that this trainee, in fact,
6 was supervised by the Forensic Alcohol Analyst.

7 So I don't think it's going to change the
8 procedure the way we admit a blood test result, as long as
9 we have the forensic alcohol reports certification showing
10 that the person that analyzed the blood sample is
11 qualified or determined to be a Forensic Alcohol Analyst
12 as determined by that specific laboratory, I think we
13 should be good to go.

14 But if the opposing side comes up with an
15 affirmative evidence showing -- for example, if they
16 obtained a list from that specific laboratory, showing
17 that this person is not, in fact, a Forensic Alcohol
18 Analyst, then that becomes a material misrepresentation.
19 And therefore, the burden shifts to the Department and we
20 go back to the same procedure, which is to call in the
21 advisor that you know -- that took care of supervising the
22 analysis.

23 COMMITTEE MEMBER DAVIS: Thank you.

24 CHAIRPERSON KIMSEY: Any other comments before we
25 vote?

1 And so the proposal is the elimination of the
2 Forensic Alcohol Analyst Trainee classification.

3 Ms. Tanney?

4 COMMITTEE MEMBER TANNEY: Yes.

5 CHAIRPERSON KIMSEY: Sergeant Davis?

6 COMMITTEE MEMBER DAVIS: Yes.

7 CHAIRPERSON KIMSEY: Mr. Zielenski?

8 COMMITTEE MEMBER ZIELENSKI: Yes.

9 CHAIRPERSON KIMSEY: Mr. Lyle?

10 COMMITTEE MEMBER LYLE: Yes.

11 CHAIRPERSON KIMSEY: Mr. Wong is not here.

12 Mr. Sedgwick?

13 COMMITTEE MEMBER SEDGWICK: Yes.

14 CHAIRPERSON KIMSEY: Ms. Janet Anderson-Seaquist?

15 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes.

16 CHAIRPERSON KIMSEY: Dr. Paul Kimsey, no.

17 I'm not sure what we'll do about Mr. Wong's vote.

18 I guess this gets into some -- I guess some issues around
19 Bagley-Keene. But we'll work that out whether he can vote
20 in absentia or whatever, we'll figure that out. Well,
21 thank you very much. I think that's one of our first more
22 formal votes.

23 I would propose that maybe now might be a good
24 time to -- Patty Lough did some work on upgrading or
25 modifying the work-product from our last meeting. Maybe

1 this would be a good time for her to sort of walk us
2 through what she did.

3 I think something we all should be thinking a bit
4 about is the voting process. Basically, the task of this
5 Committee is to present a summary to Agency. And we've
6 been sort of working this work-product pretty much as our
7 summary I assume.

8 And what we vote on, you know, the whole package
9 as one or by article or by section or subsection is
10 something up for discussion by the Committee. It's really
11 the decision of the Committee. So we can be thinking a
12 bit about that, while Patty sort of walks us through the
13 additions she made. And so does that seem like a logical
14 next direction?

15 COMMITTEE MEMBER TANNEY: Why don't we decide
16 that now. And that way, if we do it by section, when we
17 walk through it, we can take the vote at the same time and
18 save some time.

19 CHAIRPERSON KIMSEY: Okay. That's fine. I don't
20 know that -- I think it's really the Committee's decision,
21 on, you know, what we vote on with regards to, you know,
22 subsection, section, page, you know, article.

23 Any feelings from the group? I mean, there are
24 eight articles and, you know, pages of sections and
25 subsections.

1 COMMITTEE MEMBER LYLE: Bruce Lyle. I think we
2 should do it by article.

3 CHAIRPERSON KIMSEY: Other comments?

4 MS. LOUGH: I can just start out and walk us
5 through articles -- any section within the article. And
6 by the end of that article, if there hasn't really been
7 any dissension among the group, then we can just take a
8 vote at that time. If there is any question on any
9 particular section as we're talking about it, we can make
10 a note of that, so we know which of the sections we need
11 to come back to.

12 COMMITTEE MEMBER TANNEY: Paul, this is Laura.

13 In order for it to pass, what are the
14 requirements for the Committee in order for it to -- in
15 other words, to pass a vote to go to the -- to be
16 submitted as a recommendation, does it need to be a
17 majority vote or a --

18 CHAIRPERSON KIMSEY: That's correct. That's my
19 understanding.

20 COMMITTEE MEMBER TANNEY: Okay.

21 CHAIRPERSON KIMSEY: I'm not sure how it could be
22 otherwise. I mean, a lot of times votes are recorded, you
23 know, but it's pretty much the majority rules.

24 COMMITTEE MEMBER TANNEY: Okay. Thank you.

25 CHAIRPERSON KIMSEY: Sure. Other comments on the

1 voting?

2 So to summarize, it's the feeling of the group
3 that we want to go pretty much vote, you know, article by
4 article as Patty sort of updates us on the additions she
5 made to the work-product?

6 COMMITTEE MEMBER TANNEY: That's fine.

7 CHAIRPERSON KIMSEY: You know, and I've thought
8 about this a bit myself. I mean, there's a lot of
9 sections in some of these articles. I guess we can just
10 see how it goes. I mean, but I don't know, I was thinking
11 more maybe section by section. But I don't know if people
12 have had time to talk with their organizations or think
13 about it in that context. But again since the majority
14 sort of rules, maybe article by article does make some
15 sense.

16 MS. LOUGH: And of course, we're just -- the
17 Committee is voting on the summary that's going to go to
18 Agency. I'm assuming that there will be another
19 opportunity when the package is prepared to have a final
20 vote, which gives people the opportunity to run that
21 through their respective agencies that they represent.

22 CHAIRPERSON KIMSEY: Well, if that's what we want
23 to have happen, I don't know that -- I don't think our
24 process, fortunately or unfortunately, was very clearly
25 defined for us.

1 I mean, basically it's our responsibility to get
2 a summary to Agency as I understand it. And we can
3 certainly, you know, do some voting today and then you
4 know -- it's up to the Committee when the summary goes to
5 Agency. Agency, to my understanding, has 90 days after it
6 goes to them. So I would caution us a little bit in the
7 sense that I think it would be a tragedy if we had to
8 cross administrations. So, I mean, I realize that's a
9 year and a half, but I just -- you know, we've been at
10 this a number of years.

11 And so I think our -- the current Agency is, you
12 know, aware of this legislation and the work of the
13 Committee to a certain extent. And, you know, having to
14 re-educate that on a new administration would certainly
15 take quite a bit of time.

16 But I think it's the Committee's decision on when
17 something goes to Agency and what does constitute the
18 summary. So if we want to do some voting today and then
19 pull that all together and then talk to various
20 organizations and have another meeting or whatever we
21 decide, it's our call.

22 MS. LOUGH: Maybe for clarification of what we're
23 talking about when we're saying the summary to the Agency,
24 this might be a good time to go over what the process is.
25 I have my notes from 2005. And I'm not sure everybody

1 remembers what it is formally that we have to put together
2 and send forward as our formal product.

3 You know by us -- by summary, I'm thinking we're
4 just giving them the current work-product where we are
5 today. But there is a formal package that has to go
6 through. Would it be helpful to anyone if I went through
7 that process or is it not necessary?

8 CHAIRPERSON KIMSEY: And this was some notes that
9 you had from, who was the lady in --

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
11 Ruebusch.

12 CHAIRPERSON KIMSEY: Cathy Ruebusch, was this
13 from her notes?

14 MS. LOUGH: Cathy Ruebusch and Goldie Eng. I
15 have notes that I prepared for my association to review
16 the briefing that they gave us, which I thought was very
17 informative on the process, because I personally wasn't
18 aware of the process.

19 CHAIRPERSON KIMSEY: Right. And I think it
20 actually might be helpful, Patty, because, you know, the
21 legislation was pretty -- how do you say -- silent. I
22 mean, they just talked about a summary. And I know that
23 Cathy Ruebusch had feelings about it, you know, a number
24 of years ago. So that might be helpful.

25 How does the rest of the Committee feel? I don't

1 want to sidetrack everybody here, if it's just, you
2 know --

3 COMMITTEE MEMBER ZIELENSKI: This is Torr
4 Zielenski, Sacramento. I agree, I'd like to hear it.

5 MS. LOUGH: This will just take a minute.

6 Just to give you a summary of the regulations
7 process and the standards that they require. What we are
8 charged to do, at this point, is to look at the Title 17
9 regulations that were last updated in 1986 and bring them
10 into compliance with the Administrative Procedures Act.
11 The current Title 17 is out of compliance because just of
12 timeline.

13 So we have to include in there -- the standards
14 that must be met includes the statute authority, which was
15 SB 1623. We have to include a reference, the legal basis
16 for any change. We have to ensure our final document that
17 goes forward has clarity, that there is only one way the
18 information can be interpreted. That it is based on
19 necessities. We have to provide the evidence, all facts,
20 documents, expert opinions, and a reason for whatever it
21 is we're submitting, that even needs to exist.

22 We can't have something in there just because we
23 like the way it sounds. It has to have evidence that it
24 is necessary. It has to have consistency with any
25 existing laws and we have to provide research to all

1 applicable laws. And we have to ensure there's no
2 duplication. It cannot already be information that is
3 available someplace else. So that is basically the
4 document that we've been working with.

5 The justifications that we have included under
6 our comments, that's where that is coming in. So all that
7 information has to be gathered.

8 Now, that gets put into the regulations package.
9 And the components of that package is a transmittal memo.
10 This is the official statement by the Committee. It says
11 that we are starting, and that's what starts our timeline.
12 So we haven't done that memo yet.

13 So that's why I'm thinking when we submit this as
14 a summary, this is just to Agency to know here's kind of
15 where we are. When we're ready to officially submit this,
16 we have to have the official transmittal memo.

17 Then we have to have an informative digest, a
18 policy statement overview. We have to have a Statement of
19 Reasons that every regulation is evidence based and it
20 includes all of our documents that we have relied on. We
21 have to have a Statement of Determinations, which is the
22 business and public impact, the text, the language and the
23 strikeouts and underlines is how it has to be done.

24 Then the regulations text, forms, outside
25 standards, any reference documents that need to be

1 included. They become part of the regulation. And then a
2 fiscal impact statement, how it affects any local, State,
3 federal government agencies. And in this case, we have
4 the DMV that might be involved. We have CHP. We have the
5 State DOJ labs. There's a lot of impact that could happen
6 fiscally.

7 That is everything that has to be put in our
8 package. And, of course, we're not prepared, at this
9 point, to submit a package. We're only still looking at
10 our regulations and whether or not we are complying with
11 the Administrative Procedure Act requirements.

12 And then just so everybody knows, once that
13 package is ready to submit officially, then it has to go
14 through a review process. It first goes to the Department
15 of Health's, Office of Regulations. They make sure it
16 does meet the APA requirements. Then it goes to the
17 Department of Health, Office of Legal Services for
18 approval. It goes through the Budget Office, through the
19 Health and Human Services. They have the veto power. And
20 if it makes it through there, then it goes to the
21 Department of Finance. And then all those other State
22 departments that may have some impact on this.

23 After that, if it makes it through all of those
24 things, then you have the public notice process. You have
25 to announce to the public that it's happening. There's a

1 45-day public comment period. There is a post-comment
2 hearing process and then another 15-day comment period.

3 Once that is all completed, then there is a final
4 transmittal memo that goes to the Office of Administrative
5 Law. And that office then looks at it, reviews it, and if
6 they accept everything, again, you go through that public
7 notice process again.

8 And the estimate from Goldie was if there are no
9 problems or glitches through this process, this process
10 could take up to about three years or so from the day that
11 we start. So we're still at the point where we just have
12 our draft of our work-product.

13 CHAIRPERSON KIMSEY: Thank you, Patty. This is
14 Paul in Richmond. If you ever want -- maybe you want to
15 think about a retired annuitant. We could certainly --
16 that's one of the best explanations of our regulation
17 process that I've heard in quite awhile.

18 I think the one comment I would make that I
19 think -- to help clarify for everybody and summarize a
20 little bit, are we assuming that this work-product with a
21 cover letter is going to be our summary that's going to go
22 to Agency? In other words, you outlined a lot of other
23 parts of the regulatory process, which is sort of post,
24 dare I say, our interaction with Agency.

25 MS. LOUGH: My thought was that our objective

1 today should be to finish our final review of the
2 work-product, because we had finished the review last time
3 and now I added the comments in it, which is what we're
4 going to go through today.

5 I would like to see that we complete the review
6 of that work-product today. And then a subcommittee be
7 formed to work on the Statement of Reasons, the
8 transmittal letter, everything to put that package
9 together and bring that back to the full committee for the
10 full committee to take a look at.

11 And at that point, you know, we probably are
12 getting close to the formal submission of the document.

13 CHAIRPERSON KIMSEY: And so you would want all
14 those things to be considered part of a summary that goes
15 to Agency.

16 MS. LOUGH: Yeah, I think we're so close now,
17 that if we can -- if this -- if the Committee can
18 determine what they want those regulations to be by the
19 end of the meeting today, I think we're ready to have a
20 subcommittee that can go ahead and work on the package.

21 COMMITTEE MEMBER LYLE: Bruce Lyle. I agree.
22 And in the meantime, we can take it back to our respective
23 people that we represent and run it by them, so we can get
24 approval from those entities.

25 CHAIRPERSON KIMSEY: This is Paul in Richmond. I

1 think I would propose a possible alternative. I mean,
2 there's quite a bit of -- I mean, I appreciate a
3 subcommittee doing some of that work around Statement of
4 Reasons and some of those other items. I'm not sure
5 that's required, since there wasn't really a clear
6 definition of summary.

7 I'm thinking that if what we send to Agency --
8 and some of this might move things along a little quicker
9 is what I'm sort of thinking in my mind. If what we sent
10 to Agency was our work-product with a cover letter, maybe
11 an explanation of, you know, voting or this is the
12 majority, whatever, perspective of the Committee, then I
13 think we're even a lot closer.

14 If we pull together a subcommittee to compile
15 things like statements of reasons and these sorts of other
16 looking at some of these other things, that's going to
17 take another period of time. I don't know that we're
18 under an obligation to do that work prior to our
19 interaction with Agency. Because it's my understanding
20 that Agency, let me think here, has the ability to reject,
21 but not necessarily add -- I mean, it's sort of like a yes
22 or no with Agency.

23 And so if Agency, you know, accepts the whole
24 package, then maybe a subgroup could put together those
25 other aspects. If Agency doesn't like one particular

1 section, there's not -- that we're proposing, then maybe
2 there's no necessity to do that follow-up work. I'm not
3 sure if I'm making myself clear.

4 But I'm just sort of thinking that maybe we're a
5 little bit closer to submitting a summary as this
6 work-product would represent with a cover letter, than
7 having another subcommittee, you know, pull together some
8 of those other aspects of Statement of Reasons, et cetera.

9 MS. LOUGH: I agree. I just thought by your
10 prior conversations that when you kept saying submit the
11 summary to Agency, you meant the package. And that we
12 would be starting the clock. So I don't know that the
13 Committee would mind giving the Agency this information,
14 finding out which areas the issue had a dispute with, then
15 the Committee could go ahead and take a look at those and
16 then submit it.

17 COMMITTEE MEMBER TANNEY: This is Laura. I think
18 that it's a good idea to submit the work-product, but I
19 also think that somebody needs to write an abstract or an
20 introduction that does go through -- just like in a bill
21 or a legislative analysis, that you're going to go through
22 and briefly bullet point the changes that are being made,
23 in a summary form and with an introduction.

24 I think that has to be submitted at the outset so
25 that when somebody is looking at this from front to back,

1 because it isn't necessarily linear -- we've gone back and
2 forth throughout the whole thing -- that they may
3 understand what the changes are about before they even
4 start reading them.

5 MS. LOUGH: I agree. And I think that, then
6 along with this work-product, I think a draft of the
7 Initial Statement of Reasons should be included, because
8 that gives the background information and sort of a
9 summary of what the changes were made, just an overview of
10 things, such as enhanced academic requirements, things
11 like that. So I think that would be helpful for someone
12 who's reviewing the work-product.

13 CHAIRPERSON KIMSEY: And this is Paul in Richmond
14 again.

15 I think the Committee, we, can collectively
16 decide what really a summary is and what we submit to
17 Agency. I don't think there's -- since there's so
18 little -- I mean, it just says summary, so it's up to us,
19 I guess, decide what that summary means. And so we can
20 submit what we want.

21 Generally, internally in the Department, when we
22 talk about a package, that's a full-blown regulatory
23 package, where there's pretty much there's no -- how do
24 you say -- controversy about what's going to be in it and
25 it's pretty much the polished sort of product.

1 So the difference between a package and a
2 summary, a package at least, like I said, internally has a
3 very specific regulatory office meaning. I think if we
4 want this summary to be, you know, this work-product, a
5 draft Statement of Reasons or an outline, that's for us to
6 decide. What we submit to Agency, to my understanding, as
7 quote a summary, is for us to decide.

8 So it sounds like we're thinking, at this point
9 from the discussion, that this draft work-product --
10 or actually it's not a draft anymore, but when it's sort
11 of finalized, a cover letter, maybe a draft Statement of
12 Reasons, did I hear you say, Patty, and then, Laura, you
13 had sort of an annotation of that?

14 COMMITTEE MEMBER TANNEY: Well, I would call it
15 an abstract or an outline.

16 CHAIRPERSON KIMSEY: Abstract, outline.

17 COMMITTEE MEMBER TANNEY: I mean, it doesn't have
18 to be more than a page. It could be basically a cheat
19 sheet, this is what we're doing.

20 CHAIRPERSON KIMSEY: And that could be maybe part
21 of the cover letter. I mean, generally, you know, the
22 cover letter is, you know, sort of standardized. I'm sure
23 we have, you know, a form for that. But I'm sure there's,
24 you know, text and amendments and whatever attachments
25 that can go into that cover letter to Agency.

1 MS. LOUGH: And then, from my understanding, when
2 this summary is submitted to Agency, I'm assuming that
3 this Committee will continue to move forward at the pace
4 they choose. I mean, it's not like we would have to
5 necessarily wait for a response or is there some kind of
6 timeline that we know we would get a response back from
7 agency, if, you know -- I mean, would they be able to give
8 us an answer back in 30 days if there is some particular
9 area that they have an issue with or can the Committee
10 just continue on and complete the product?

11 CHAIRPERSON KIMSEY: That's a good question. And
12 again, I'm sort of speaking for a much larger body,
13 meaning the Government, than I probably should.

14 But I think we can do again what we want. The
15 legislation is again a little bit vague, in the sense that
16 it gives agency 90 days. They could get back to us with
17 some, you know, comments in 30 days or they may not say
18 anything to us until, you know, the 89th day or something.

19 MS. LOUGH: That's for the package though,
20 correct? That 90-day time period is for the package when
21 it's officially submitted to them.

22 CHAIRPERSON KIMSEY: Right, the summary as it's
23 referred to in the legislation.

24 MS. LOUGH: Not the summary that we're talking
25 about today.

1 CHAIRPERSON KIMSEY: Comment from the public here
2 in Richmond.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 Yeah. It's probably unfortunate that OLS and/or
5 Office of Regulations aren't here today, but I do sense a
6 misunderstanding. Once the summary, however we define it,
7 is prepared and anything called a summary is submitted to
8 Agency that starts the 90-day clock.

9 The legislation -- I believe the statutes -- and
10 I'm not a lawyer obviously -- clearly create a bifurcated
11 process here. The review committee's determinations and
12 then a disapproval review, you might call it, by Agency.
13 After that, the regulatory process -- the promulgation of
14 regulations start.

15 The Committee can't promulgate regulations. Only
16 administrative agencies, in this case, the Department, can
17 promulgate regulations. If and when we get to that point,
18 I'll assume we'll welcome the help, and often private
19 parties do participate in that process.

20 But just so we're all clear here, once that
21 summary, however we defined it, is submitted to Agency,
22 that starts the 90-day clock. And I suspect it will be
23 the 89th day, but that starts that clock. And that's the
24 one time that's the -- or at least for that submission,
25 that's the disapproval review that will occur. And that's

1 separate from the regulatory package, which gets submitted
2 through that rather litany of steps that Patty summarized.

3 MS. LOUGH: Clay, it's Patty. So the summary
4 starts the clock, regardless of when the package is
5 received?

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
7 Yes.

8 MS. LOUGH: And that was my concern. I didn't
9 want to start the clock until we were prepared. After
10 all, we're all volunteers on this committee, or you are
11 all volunteers on this committee.

12 CHAIRPERSON KIMSEY: Any further discussion on
13 what we want to be considered the summary?

14 So to reiterate, and please correct me, but it
15 sounds like we're thinking that this work-product, once
16 it's finalized and voted on, would be part of that
17 summary. There would also be a cover letter, which would
18 have some -- obviously, the Committee would, you know,
19 draft and review the cover letter. But there might be --
20 in that cover letter, there might be an abstract or an
21 outline of the work-product and a possible draft Statement
22 of Reasons, is that what I'm hearing?

23 MS. LOUGH: You can't get that draft Statement of
24 Reasons then until you have this Committee or a
25 subcommittee prepare it.

1 CHAIRPERSON KIMSEY: Right. If what we're trying
2 to do with the abstract and outline and Statement of
3 Reasons is make it more clear to Agency what and why it is
4 we have done what the Committee has done, I'm not sure
5 that we need to call that a Statement of Reasons. Maybe
6 this abstract outline could, you know, suffice. I mean,
7 if we're trying to make things a bit more clear to Agency,
8 when you start talking about a Statement of Reasons, it's
9 you know, a little bit more clearly defined system, I
10 guess.

11 If we're trying to just explain something to
12 agency or another organization, maybe the abstract
13 outline, as part of the cover letter, would suffice. I
14 mean, again that means that we don't have to have a
15 subcommittee come up with a Statement of Reasons and, you
16 know, keep running the clock. It's just whether we feel
17 comfortable or not, that what we're communicating to
18 Agency can be understood. I mean, obviously the
19 work-product will speak for itself. Maybe, the cover
20 letter can be that explanation of some of the thinking of
21 the Committee in certain areas.

22 MS. LOUGH: I think the Statement of Reasons is a
23 critical component of even the summary and obviously the
24 regulations package. I think that could make or break the
25 whole process.

1 CHAIRPERSON KIMSEY: Okay. Other feelings?

2 COMMITTEE MEMBER ANDERSON-SEAQUIST: I concur
3 with Patty. It sounds important to have that completed.

4 CHAIRPERSON KIMSEY: Okay.

5 Any other comments about -- this has been a good
6 suggestion. I mean, we've obviously been talking about
7 the summary in this sort of a bit more detailed
8 understanding of what it's going to be and I think it has
9 been helpful. At least it's been helpful to me.

10 Other feelings about the summary?

11 Then the last, I believe we were talking about
12 voting. Again, it's not clear. You know, I think we're
13 talking about -- I think where we left this last was, you
14 know, Patty was going to maybe review her additions to the
15 work-product and then we would vote or come to some
16 understanding and then vote on each article in its
17 entirety or is that sort of everyone's understanding?

18 MS. LOUGH: Yes.

19 CHAIRPERSON KIMSEY: Okay. Why don't you go
20 ahead and get started, Patty.

21 MS. LOUGH: Okay. Starting with Article 1.

22 1215, Authority. This just tells you, as I've
23 gone through the document, I've tried to put in the types
24 of corrections that are required for the package. That
25 means that language that has been removed, deleted, is

1 lined through. New language that we are adding is
2 underlined. So that's the format of this. And that's
3 what we -- the main thing that I did in this document from
4 the last one we worked with, is I put it in the format
5 that we'll go through in final form.

6 Underneath that, in the smaller print, would be
7 our justification. And we're doing it section by section,
8 so that each thing is justified as we go.

9 Then there are some areas that we did not have --
10 we were not finished with what we were doing or there was
11 some question on our justification. So those are what I
12 have noted in my comments section, as best as I could read
13 from my notes. So please feel free to help me, in case I
14 did not get that correct.

15 So this should leave us with what's left from our
16 last discussion of where we have some items to clarify for
17 the Committee.

18 So 1215 just shows you, it now reads, "California
19 Health and Safety Code, Division 101, part 1, chapter
20 4...", et cetera. I don't need to read that to you. You
21 have that in front of you.

22 And then I do have a comment that Goldie was
23 going to check the correct citation. I think we can put
24 that forward without having to have that at this point.
25 When it goes through her office, I think they do that at

1 that time; is that correct?

2 CHAIRPERSON KIMSEY: Well, we can certainly get
3 her input.

4 MS. LOUGH: Yes, okay. So I'm just going to
5 continue on. I'll just go through each one and then --
6 because you've all had the opportunity to review this, if
7 you have an issue with anything, this is a nice place, I
8 can go ahead and make another note on that. Otherwise,
9 we'll just silently be going through them. And at the end
10 of the Article the Committee can vote.

11 So we started 1215.1, Definitions. We have
12 1215.1(a), which talks about a definition for alcohol.

13 We have 1215.1(b), which talks about a definition
14 for forensic alcohol analysis.

15 1215.1(c), we now have breath alcohol testing.

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

18 CHAIRPERSON KIMSEY: We have a comment from the
19 public here in Richmond.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 Yeah, 1215.1(c). We have had some discussion --
22 I think this is probably a mistake on Patty's part. I
23 suspect the last word you meant to say is "breath". There
24 are various ways we could define breath alcohol analysis
25 or breath alcohol testing. And I actually favored a

1 slightly more complicated, but I think in a way that was
2 more consistent with the Vehicle Code, but I think the
3 Committee is enamored with the notion that we just refer
4 to breath alcohol testing as the concentration -- as a
5 direct measurement of the concentration of alcohol on a
6 person's breath.

7 So I think the last word, and I think it was in
8 the previous -- I think the last word should be "breath"
9 there.

10 COMMITTEE MEMBER TANNEY: I think that was what
11 was intended as well. I caught that also.

12 MS. LOUGH: I've made that change.

13 Thank you.

14 1215.1(d) definition for concentration?

15 1215.1(e)?

16 COMMITTEE MEMBER TANNEY: I have a comment on
17 that. I think it would be more clear on the very last
18 clause of this to say, "...this may be an activity of a
19 laboratory engaged in activities..." in addition to
20 "...forensic alcohol analysis", rather than "other than",
21 because I think the intent was that it was a laboratory
22 that did other disciplines as well as alcohol, not instead
23 of alcohol.

24 MS. LOUGH: Does the Committee agree?

25 CHAIRPERSON KIMSEY: I'm sorry. I'm not sure I

1 caught, we're at 1215.1(e)?

2 COMMITTEE MEMBER TANNEY: The last part after the
3 semicolon.

4 MS. LOUGH: It says, "...this may be an activity
5 of a laboratory engaged in activities other than forensic
6 alcohol analysis." That is a bit misleading. So we would
7 change that to, "...in activities 'in addition to'
8 forensic alcohol analysis." So if you're doing firearms,
9 or DNA or trace evidence, you could also be a lab that
10 does forensic alcohol analysis.

11 CHAIRPERSON KIMSEY: Okay.

12 MS. LOUGH: So I've made that change, unless
13 there's any other discussion?

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

16 CHAIRPERSON KIMSEY: We have a comment here in
17 Richmond.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 I actually don't think that change that Laura
20 Tanney proposed does much. It's probably a little more --
21 sometimes when you need to flip a coin in these and if
22 you're going to use three words rather than one word. I
23 thought the current language actually was slightly better.

24 COMMITTEE MEMBER TANNEY: In response to that,
25 Clay is right, I'm being very nitpicky, and that's because

1 it's my understanding that the Committee that this goes to
2 are very nitpicky about vagueness. And my next one on (f)
3 is going to be just as nitpicky.

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

5 Okay. Well, I wasn't -- let me finish, I wasn't
6 accusing you of being nitpicky. I just don't think --

7 COMMITTEE MEMBER TANNEY: Well, I think I'm being
8 nitpicky.

9 (Laughter.)

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

11 Anyway. I don't think the proposal is clearer
12 than what we had. I've said in the past, I think we
13 created problems for ourselves down the road regarding the
14 simple inclusion of the word "breath" here as a forensic
15 alcohol -- the analysis of a breath sample as an activity
16 on the part of the laboratory. When, in fact, we've had
17 this discussion before just to remind, that generally the
18 forensic alcohol laboratories, as a laboratory activity,
19 don't do breath alcohol analysis. That's done in the
20 field. They certainly support that activity. I've
21 advocated before for a richer definition of a forensic
22 alcohol activity to define the actual analysis of samples
23 in blood, urine, and tissue; and to also define the
24 support of an activity, which is almost 99 percent of the
25 time, external to the laboratory, done by different

1 personnel, and that is the analysis of breath samples.

2 So repeating what we had before, just again a
3 comment that I don't think this captures the breath
4 alcohol analysis part of this -- which is the majority,
5 which is a part of the activities.

6 CHAIRPERSON KIMSEY: So what would you propose?

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 Well, we had language before. We could have a
9 subsection that simply defines the two activities are
10 training instrument operators to do breath alcohol
11 analysis and calibrating and maintaining and determining
12 the accuracy of instruments. It would be --

13 COMMITTEE MEMBER TANNEY: Paul?

14 CHAIRPERSON KIMSEY: Yes.

15 COMMITTEE MEMBER TANNEY: This is Laura. You
16 know, it's my concern, and I've noted this before, that we
17 go around in these circles, that those comments made by
18 Clay have already been addressed. We've been discussing
19 this so many times and we're coming close to the end where
20 I just don't think it's necessary to rehash every argument
21 that's ever been made on every one of these provisions.

22 So I would actually recommend that we just go
23 through this, and where there is additional comments,
24 mostly pertaining to any language that might need to be
25 changed for clarification, rather than necessarily

1 spending a lot of time on the substance that's already
2 been discussed.

3 CHAIRPERSON KIMSEY: No, I appreciate that --

4 COMMITTEE MEMBER TANNEY: This is just an effort
5 to get through it. I'm not really trying to shut anybody
6 down if they have new ideas. But I don't know that it's
7 going to be fruitful to go over the same things over and
8 over again.

9 CHAIRPERSON KIMSEY: No, I would agree. And I
10 think we're all going to try and sort of keep our comments
11 brief. And we can also -- does anyone from the Committee
12 have a feeling about this particular topic and discussion
13 on 1215.1(e)?

14 COMMITTEE MEMBER LYLE: Bruce Lyle. I think that
15 in addition to clarifying a lot more than the others I am.
16 And I think that's the point that we're getting at, and
17 not whether breath is a function of a laboratory. So
18 getting back to that point, I think that "in addition to"
19 spells it out a lot clearer.

20 CHAIRPERSON KIMSEY: Okay.

21 COMMITTEE MEMBER ANDERSON-SEAQUIST: I agree with
22 Bruce and Laura.

23 CHAIRPERSON KIMSEY: Okay. Hearing no dissents,
24 why don't you move along a little, Patty.

25 MS. LOUGH: And on that focusing .1(e), then I've

1 made that correction "in addition to". And then I made a
2 note for myself also for clarity, because I have to go
3 back through the response of why we're making a change
4 with the language. So just so you know, that anything
5 clarity.

6 1215.1(f)?

7 Okay. I'm just looking at the way it's written.

8 "Forensic Alcohol Analyst means a person employed by a
9 forensic alcohol laboratory, who..." and it says "...can
10 be responsible..." That's the old language. I'm thinking
11 maybe for clarity we should just say "is".

12 COMMITTEE MEMBER ANDERSON-SEAQUIST: I agree.

13 CHAIRPERSON KIMSEY: I think it's more clear.

14 MS. LOUGH: Okay. It is noted.

15 1215.1(g)?

16 (h)?

17 Both of those have been completely deleted.

18 1215.1(i)?

19 1215.1(j)?

20 (k)

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

22 Actually, under (j), comment from the public.

23 CHAIRPERSON KIMSEY: Sure.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

25 Again, a rehash of an old thing, but I think we

1 would be in real danger, if we tried to limit the comments
2 on this whole process.

3 I think "instrument" or "device" are terms of
4 art. I think we have 20 current and 4 newly proposed
5 instances of the word "instrument", and one newly proposed
6 definition -- or use of the word "device". I think it was
7 correct to try and define these terms in the old
8 regulations. Eliminating the definition here, I think, is
9 a mistake.

10 CHAIRPERSON KIMSEY: Anybody on the Committee's
11 comment?

12 COMMITTEE MEMBER ANDERSON-SEAQUIST: I think it
13 needs to be deleted.

14 CHAIRPERSON KIMSEY: Anybody on the Committee
15 opposed to deleting the definition of -- or opposed to
16 deleting this?

17 Okay, continue on, Patty.

18 MS. LOUGH: Okay then (k)?

19 1215.1(1)?

20 (m)?

21 (n)?

22 Okay, there is a comment under (n). Okay, for me
23 to check. I tried to go through and make sure that the
24 term "department" was not used to refer to any other
25 department. I didn't find that. If anyone else did find

1 it, let me know, but -- and we did keep that in just so
2 that it was defined what department we're talking about.

3 CHAIRPERSON KIMSEY: And actually a comment
4 there. This is Paul in Richmond. It's Department of
5 Public Health.

6 MS. LOUGH: Now, yeah. I think Goldie said that
7 they would also go through and make it current. Okay, I'm
8 going to leave it sort of as it is, because that's the
9 original language and let her do that, does that sound
10 fine?

11 CHAIRPERSON KIMSEY: That's fine.

12 MS. LOUGH: Okay, thanks.

13 Okay, we discussed (o), but (o) is in there.

14 CHAIRPERSON KIMSEY: Refresh my memory on (o).

15 MS. LOUGH: A competency test.

16 CHAIRPERSON KIMSEY: That's right, yes.

17 MS. LOUGH: And (p) is a definition for
18 proficiency test. Mainly, we did not have definitions
19 before. It is talked about in the document, so we just
20 added a definition. It's also my understanding that
21 definitions are not part of the APA, so they don't really
22 get scrutinized for clarity as much.

23 (q), Precautionary Checklist.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

25 Comment from the public.

1 CHAIRPERSON KIMSEY: Sure.

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 Just so we don't -- I want this to be an
4 educational process for everyone. Actually, Goldie
5 responded to that same question last time and she
6 indicated that definitions are subject to the APA. They
7 are not -- they're not supposed to be regulatory. They don't
8 impose any requirements on the regulated entities. But an
9 unclear definition would be a problem with the APA.

10 MS. LOUGH: Well, we're certainly trying to
11 improve on clarity of this document and we did put our
12 responses in there.

13 (q) Precautionary Checklist.

14 Okay, (r), (s), and (t) for some reason I have
15 comments that Paul is going to define. I don't know --

16 CHAIRPERSON KIMSEY: Wow.

17 (Laughter.)

18 CHAIRPERSON KIMSEY: No, that's fine.

19 MS. LOUGH: I don't know.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 It could be Paul Sedgwick.

22 CHAIRPERSON KIMSEY: Maybe that was Paul

23 Sedgwick.

24 MS. LOUGH: So those three definitions are left
25 to be defined.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 Do we know which Paul?

3 CHAIRPERSON KIMSEY: Paul was -- I mean, I think
4 that might have been you. I mean, I could certainly do
5 some research, but this would be sort of new to me.

6 COMMITTEE MEMBER SEDGWICK: This is Paul Sedgwick
7 in San Diego and this is news to me too.

8 (Laughter.)

9 MS. LOUGH: Perhaps I could not read my
10 handwriting. Does someone on the Committee want to take
11 those definitions on?

12 COMMITTEE MEMBER TANNEY: I think it would have
13 to be one of you who uses these things.

14 COMMITTEE MEMBER ANDERSON-SEAQUIST: I could do
15 it, Patty. This is Janet in Ventura.

16 MS. LOUGH: Okay. So I'll give you all three of
17 those.

18 COMMITTEE MEMBER TANNEY: Thank you, Janet.

19 MS. GORDON: A comment from the public.

20 CHAIRPERSON KIMSEY: We have a comment from the
21 public here in Richmond.

22 MS. GORDON: Hi. This is Ann Marie Gordon from
23 the San Francisco Medical Examiner's Office. And, Janet,
24 when you do the NIST Traceable, you might want to look at
25 some of the jurisdictional issues that have come up in

1 other states with that terminology and be really careful.

2 CHAIRPERSON KIMSEY: Yeah. This is Paul in
3 Richmond. I know the Committee in the past has had some
4 discussions that, just briefly summarizing, there might
5 not be any "there" there when it come to NIST traceable.

6 So, yeah, I guess we'll look at that, but there
7 is some cautionary --

8 MS. GORDON: If you want to give me a call,
9 Janet, I can give you some additional resources for that.

10 COMMITTEE MEMBER ANDERSON-SEAQUIST: I will
11 definitely do that, Ann. Thanks.

12 MS. GORDON: You're welcome.

13 MS. LOUGH: Okay. So that's just assigned to
14 Janet. And, Janet, I'll just wait for you to Email that
15 to me and I'll make that correction.

16 COMMITTEE MEMBER ANDERSON-SEAQUIST: Okay.

17 MS. LOUGH: Okay. So other than the fact that
18 we're waiting for a response on those definitions, it
19 looks to me like the Committee is agreeing to everything
20 in Article 1, except for that part, those definitions.

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

23 CHAIRPERSON KIMSEY: Comment here in Richmond.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
25 Yeah. My notes show that at various times the

1 Committee has considered other definitions. Just to make
2 sure we're all in agreement, we don't see the need for
3 these definitions.

4 We talked about defining a breath alcohol
5 operator, or an organic volatile solvent, Agency, internal
6 standard, employee, reference sample, standard, blank
7 standard, primary standard -- I can't read my writing here
8 -- a secondary standard. I think that is defined, but we
9 talk about moving it here. Reference alcohol water, dry
10 gas standard. I wrote "et cetera".

11 So we've considered, at various times,
12 definitions of other terms used in the regulations. The
13 presumption here is that after very thoughtful and careful
14 consideration on the part of the Committee, we determined
15 that those definitions aren't necessary.

16 MS. LOUGH: I think what happened is throughout
17 this document, if it is defined within the document, that
18 that's acceptable. If we use a term in the document that
19 is not defined, then we have to put that term in the
20 definitions. So if it is adequately defined in the
21 document -- which we'll be going through this document
22 today. So if it's adequately defined, we don't have to
23 include it in the definition, if that's correct.

24 CHAIRPERSON KIMSEY: I think, you know, as we go
25 through this, I mean, obviously, most of us have other

1 jobs other than regulation writing. And so I'm sure there
2 are going to be some issues, at some point, where someone
3 more technically competent in reg writing is going to come
4 back and say you need a definition or you need to do X or
5 Y and we can do that.

6 I think, at this point, whatever reason these
7 are, the definitions that we have felt to be necessary,
8 and that's our best judgment, at this point.

9 MS. LOUGH: All right. So then for Article 1,
10 all the way through 1215.1(q)

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

12 Actually, one more comment from the public.

13 CHAIRPERSON KIMSEY: Let her finish. Go ahead
14 and finish, Patty.

15 MS. LOUGH: All right. Then I'm assuming then,
16 that the Committee, did you want to take a vote on that
17 and determine if you are all in agreement with what we
18 have changed today?

19 CHAIRPERSON KIMSEY: We have a comment.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 Actually one more. I can read my writing. We
22 occasionally have gotten inquiries as to what does blood
23 mean. It seems pretty simple. Blood is whole blood. And
24 I think that is probably implied by the fact that the
25 regulations require that the sample obtained by

1 venipuncture from a living subject, and doesn't describe
2 any subsequent workup on the samples, such as
3 centrifugation to prepare a plasma sample.

4 But many states' regulations define and the
5 regulatory process is kind of pedantic in that way,
6 defined blood as whole blood. Pretty innocuous. No
7 hidden agendas here. It's a pretty innocuous definition.
8 It might be appropriate to -- since every reference to
9 blood actually is talking about whole blood, not serum,
10 not plasma, not any fractionation of a product. Anyway,
11 it might be appropriate to consider the inclusion of a
12 simple definition of blood as whole blood.

13 MS. LOUGH: I believe the document describes how
14 the blood is obtained, which is through venipuncture.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 As I said, yes, that's correct.

17 MS. LOUGH: So I think that includes whole blood.
18 You can't just draw part of the blood. So I think it's
19 kind of understood.

20 CHAIRPERSON KIMSEY: And this is Paul. And I
21 agree. I mean, this is a little bit past our expertise,
22 in the sense, like I mentioned, there's going to be some
23 technical aspects. If we go through this, to meet the APA
24 or someone who polishes off as regulations, lets us know
25 that we need to define blood, I mean, I think we're making

1 collectively our best understanding of what needs to be
2 defined.

3 I know that on the clinical side and even the
4 environmental laboratory side of things, you know, there
5 are lots of definitions. We just, I think, are going to
6 have to deal with that as we are directed when we get to
7 that more technical phase of a reg package. I mean,
8 because we can spend a lot of time either adding
9 definitions or subtracting definitions to the best of our
10 understanding, and we're still not going to have, you
11 know, be correct, technically.

12 So I mean, I agree, to some extent, with Clay,
13 but then we'll just -- let's just see what happens with
14 the more formal reg writing process.

15 MS. LOUGH: I think when we get to the individual
16 section where it talks about blood shall be obtained by
17 venipuncture, that might answer the question for us. If
18 we think we need to fine tune it, we might deal with it
19 easily through that, if someone feels it's unclear.

20 The only time I could think it might be unclear
21 is if it's some kind of a coroner's issues, and then the
22 coroner's representative could bring that up at that time.

23 CHAIRPERSON KIMSEY: Okay. So anymore comments
24 on Article 1, the general. Move on to the definition.

25 MS. LOUGH: Article 1 through 1215.1(a) then. I

1 guess I'm looking for, is there a committee vote on that?

2 CHAIRPERSON KIMSEY: Yes, that's what I was going
3 to start proposing. So we've gone as far as 1215.1(t).

4 MS. LOUGH: (q).

5 CHAIRPERSON KIMSEY: Is that a 2?

6 MS. LOUGH: (q) like question.

7 CHAIRPERSON KIMSEY: Oh, (q). Oh, that's right
8 okay. And so we're going to -- yeah, wait for (r), (s),
9 and (t).

10 And again, if anyone has a better process, an
11 idea for doing this voting, speak up, but I'll just go
12 through the list of folks again. And I guess the proposal
13 is to accept Article 1 as presented in our discussion by
14 Patty Lough up to 1215.1(q).

15 Ms. Tanney?

16 COMMITTEE MEMBER TANNEY: Yes.

17 CHAIRPERSON KIMSEY: Sergeant Davis?

18 COMMITTEE MEMBER DAVIS: Yes.

19 CHAIRPERSON KIMSEY: Mr. Zielenski?

20 COMMITTEE MEMBER ZIELENSKI: Yes.

21 CHAIRPERSON KIMSEY: Mr. Lyle?

22 COMMITTEE MEMBER LYLE: Yes.

23 CHAIRPERSON KIMSEY: Mr. Sedgwick?

24 COMMITTEE MEMBER SEDGWICK: Yes.

25 CHAIRPERSON KIMSEY: Ms. Anderson-Seaquist?

1 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes.

2 CHAIRPERSON KIMSEY: Dr. Kimsey, no.

3 Okay, Patty, Article 2.

4 MS. LOUGH: Okay, Article 2, 1216 the
5 authorization requirements.

6 1216(a)?

7 CHAIRPERSON KIMSEY: This is Paul. Just a point
8 of order. It's sort of up to the Committee. It's five
9 minutes to 12. We're obviously starting another Article.
10 We should take a break for lunch. And I think we've done
11 half hour breaks. So unless someone has a different
12 opinion, I would recommend that we break and come back at
13 12:30.

14 COMMITTEE MEMBER TANNEY: We don't have a
15 facility available in this building for lunch, so we
16 actually have to go off site.

17 CHAIRPERSON KIMSEY: Oh, that's right. I think
18 that's happened before.

19 So one o'clock?

20 MS. LOUGH: Yes, that's fine.

21 CHAIRPERSON KIMSEY: Okay. We'll take a break
22 here and reconvene at one o'clock.

23 COMMITTEE MEMBER TANNEY: Thank you.

24 CHAIRPERSON KIMSEY: Thank you, all.

25 (Thereupon a lunch break was taken.)

1 I'll make this brief so not to incur the wrath of
2 anyone.

3 In the past, we've noted that the Committee may
4 want to consider the need to clarify and make specific the
5 proficiency test requirements of a particular Health and
6 Safety Code section, which currently don't require a
7 satisfactory performance. They simply require that the
8 labs participate.

9 You know, you could also consider defining what
10 an external test is. We've decided we don't need that,
11 including a requirement that labs with multiple methods
12 participate with that PT requirement for each method, et
13 cetera, et cetera.

14 CHAIRPERSON KIMSEY: This is in reference to
15 which section?

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

17 This is in reference to currently regarding
18 proficiency tests, where in the past we had to satisfy the
19 requirements of the Department's Program, which had a
20 certain richness to it, in terms of defining what those
21 requirements are. We now simply reference Health and
22 Safety Code Section 100702. The purpose of regulations is
23 to clarify and make specific statutory requirements.

24 In this case, the statutory requirement actually
25 simply says you need to participate. It doesn't say you

1 have to be successful. The Committee could consider
2 revisions to the -- or specifying in regulations the
3 requirement, for instance, that you have a successful
4 proficiency test. That probably would necessitate a
5 description of what successful means, but you could
6 consider additional detail there.

7 MS. LOUGH: I think when we discussed that
8 particular section, the reason we have anything written in
9 there at all is just to provide clarity and inform the
10 reader of this document that there is another location to
11 go to have proficiency test information. Because of the
12 APA, we cannot be redundant. We cannot reiterate all of
13 the -- and I think it's also in our explanation here. We
14 can't reiterate what all of the rules and regs are of the
15 proficiency test program here, because then it would be
16 redundant and then it would not pass APA.

17 So we simply, for assistance to the reader,
18 direct them to a location where they could find the
19 information that the code requires.

20 CHAIRPERSON KIMSEY: Further comments?

21 COMMITTEE MEMBER DAVIS: It does say in the
22 Health and Safety Code, the examinee shall successfully
23 complete, so that word is in there. It's not defined, but
24 it is in there.

25 MS. LOUGH: Thank you.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 And let me clarify, because it seems to get
3 really confused here, apparently, the separate
4 requirements are for a laboratory to participate in a
5 proficiency test. If somebody says proficiency test, give
6 it a good shot.

7 The separate requirements are for an examiner and
8 that doesn't say external proficiency test. It simply
9 says a proficiency test. So those are two completely
10 separate requirements.

11 CHAIRPERSON KIMSEY: Okay, other comments?

12 MS. LOUGH: Going on. 1216.1(a)(4)

13 1(a)(5)?

14 1(b)?

15 1(c)?

16 1(d)?

17 1(d)(1)?

18 1(e)?

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

20 Comment from the public.

21 CHAIRPERSON KIMSEY: Comment here in Richmond.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

23 Yeah, just so the Committee is aware -- I assume
24 they are -- the solution here was to -- I mean, we decided
25 to eliminate the supervisor requirements. The solution

1 here was to then simply apply all those former supervisor
2 requirements to the analyst position.

3 I think this could create a couple problems.
4 We'll get to it later regarding grandfathering. The
5 Department's qualifications of people qualified at one
6 level and then presuming that they qualify at another
7 level, arguably a higher level, so I think that's a
8 problem.

9 I don't think the supervisorial requirements,
10 they presume that the individuals have training in the
11 analysis of samples. And that's clearly spelled out under
12 the requirements for the analysts, which we are going to
13 subsequently delete. And so it's not so clearly spelled
14 out in the analysts -- in the supervisor position.

15 So we'll get to 1216.1(e)(2). While we require
16 them to have experience in the interpretation of alcohol
17 analysis and subjective -- such as behavior and demeanor
18 and behavior of persons, et cetera, et cetera, we actually
19 don't require them to have any training in the actual
20 analysis.

21 So I think we should do a little word-smithing
22 and think about -- I mean I would have preferred actually
23 to simply eliminate the Supervisor Classification and all
24 its requirements. And if you decide you want to then --
25 and retain the analyst requirements, and if you want to

1 upgrade those, do those individually.

2 MS. LOUGH: Clay, this is Patty. Can we talk
3 about the grandfathering part, because I think that is a
4 point that I'd like to address when we get to that part,
5 to make sure that -- because we're grandfathering, because
6 I was grandfathering both of those when I typed this up.

7 I think the Committee wanted to keep the wording
8 as we have it now, but I think we do need to address that
9 grandfathering part when we get to it.

10 CHAIRPERSON KIMSEY: Okay.

11 MS. LOUGH: The comment that I have here on
12 1216.1(e)(1) is we have a term that was the term
13 appropriate. We wanted to revisit that. We were going to
14 check the wording in the licensed clinical field and see
15 if that's what we wanted here. We want to make sure that
16 we're clear with the type of degree that we want to
17 finalize in here.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

19 Comment from the public. So we're on (e)(1) now.
20 I mentioned this before. Natural science generally
21 includes physical science and the biological sciences. So
22 it's redundant -- I guess is the favorite word of the
23 Committee. It's redundant to talk about a physical
24 science and/or a natural science, since a natural science
25 already includes physical science.

1 The word "applied" I still don't know what that
2 means. I mean, you could certainly -- a pure -- if the
3 distinction is a pure versus applied physical science,
4 since natural science includes physical science, it would
5 include, I presume, pure physical science. So I don't
6 think the word -- I mean, a lot of this language is taken
7 from ASCLD-LAB, but I don't think the language applied
8 physical science means much. I think it's going to be
9 confusing.

10 COMMITTEE MEMBER ANDERSON-SEAQUIST: I'm a little
11 frustrated, because it seems like we're getting bogged
12 down in things that have been discussed previously ad
13 nauseam. I'd like to move forward.

14 MS. LOUGH: Does anyone from the Committee --
15 thanks, Janet. Does anyone else from the Committee have a
16 desire to change the wording on 1(e)(1)?

17 COMMITTEE MEMBER ANDERSON-SEAQUIST: No.

18 MS. LOUGH: Not hearing anything else --

19 COMMITTEE MEMBER WONG: No.

20 MS. LOUGH: -- I think, at this point, we'll go
21 ahead and go on.

22 1(e)(2)?

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

25 CHAIRPERSON KIMSEY: Yes.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 This may be an easy one. On line 4, we retained
3 "ethyl alcohol". In two or three other cases, we dropped
4 the "ethyl", based on the fact that the definition of
5 alcohol includes ethyl alcohol. So you may want to
6 consider the need to retain it here.

7 MS. LOUGH: Anyone on the Committee?

8 COMMITTEE MEMBER WONG: I agree with Clay. It's
9 already been clarified.

10 MS. LOUGH: Okay. So noted, I will make that
11 change.

12 On the third line, we have the word "appropriate"
13 in there and we're not supposed to use that word. So is
14 there comments from the Committee on that?

15 And I see there's an extra comma in here that I
16 will omit as well. "...the laboratory of employment or
17 approved by appropriate...", we might want to look at that
18 word "appropriate".

19 MR. FICKIES: Terry Fickies from the public.

20 What's the difference between "laboratory of
21 employment" or "laboratory personnel"? That's doesn't
22 read quite right to me.

23 COMMITTEE MEMBER TANNEY: I agree, Patty. Maybe
24 we can just delete after the "or".

25 MS. LOUGH: "...Or approved by laboratory

1 personnel."

2 COMMITTEE MEMBER TANNEY: Right.

3 MS. LOUGH: Okay. So it's going to read, "...the
4 laboratory of employment...", and I'm going to take out
5 "...or approved by laboratory personnel"?

6 MR. FICKIES: Yes. And one comma too.

7 MS. LOUGH: And one comma too.

8 MR. FICKIES: Or also, whatever.

9 (Laughter.)

10 MS. LOUGH: Hi, Terry. I didn't hear that you
11 were here earlier.

12 MR. FICKIES: I've been quiet today, unusual as
13 it may be.

14 MS. LOUGH: All right. 1(e)(2)(A)?

15 COMMITTEE MEMBER WONG: Going back, Patty. This
16 is Kenton. On 1(e)(2), should we clarify that on the,
17 "Has two years of experience in performing forensic
18 alcohol analysis..." to include court-qualified
19 experience? Because I've actually -- I mean, by the
20 definition for Forensic Alcohol Supervisor, you're
21 supposed to have the qualifications to be able to do
22 interpretation and qualify in court. But I know that
23 there are people that have actually cheated in the past
24 and have gotten their FAS, but have never met any of the
25 qualifications for that.

1 MS. LOUGH: Okay. Kenton, the "...experience in
2 performing analysis..." that has been lined through, just
3 to make sure your copy shows that, is that -- been
4 performing the alcohol analysis. And that was lined out
5 to just they have two years experience in and then it goes
6 into the interpretation and stuff.

7 COMMITTEE MEMBER WONG: Right.

8 MS. LOUGH: Are you okay with the part that has
9 been lined out or is that what you're saying?

10 COMMITTEE MEMBER WONG: I was wondering if we
11 should add in after the "include", "...such experience to
12 include 'court qualified' experience in interpretation and
13 correlation..."

14 COMMITTEE MEMBER TANNEY: Kenton, this is Laura.
15 The problem is some courts might consider them qualified
16 and some courts might not. Are you saying that they
17 actually have qualified in court?

18 COMMITTEE MEMBER WONG: Yeah.

19 COMMITTEE MEMBER TANNEY: For a two-year period?

20 COMMITTEE MEMBER WONG: Oh, I see what you're
21 saying. Yeah, that's kind a hard, huh?

22 MR. FICKIES: Terry Fickies, member of the
23 public. I would think it would not be unreasonable to
24 include "analysis" in there and being court qualified
25 doesn't have to be over a two-year period. It just has to

1 be once in that two-year period.

2 COMMITTEE MEMBER TANNEY: So you're saying, "Has
3 two years of experience in interpretation, 'and analysis
4 interpretation and' correlation of alcohol analyses with
5 subjective observations 'and has qualified in the court
6 room as an expert in forensic alcohol analysis.'"

7 MS. LOUGH: What if it's your first time?

8 MR. FICKIES: If we word it that way, I don't
9 like it.

10 MS. LOUGH: Because then if it's your first time,
11 you haven't qualified.

12 MR. FICKIES: But I think we should have
13 "experience in analysis" in there.

14 COMMITTEE MEMBER WONG: I agree with Terry.

15 MS. LOUGH: If it says, "Has two years of
16 experience in 'analysis', interpretation and correlation
17 of..."?

18 MR. FICKIES: I like that.

19 CHAIRPERSON KIMSEY: A question about the term
20 "court qualified". Is this something that's done
21 individually with a court or is it something when you've
22 done it with one court, you're qualified for another?

23 COMMITTEE MEMBER WONG: No, that's what Laura was
24 saying.

25 MR. FICKIES: Individually.

1 CHAIRPERSON KIMSEY: Okay. And you do that based
2 on you present credentials or resume, that kind of thing.

3 MR. FICKIES: You have to qualify every time you
4 testify.

5 MS. LOUGH: So I will make that change. So
6 really all we're adding is we're adding back the
7 experience part.

8 (e)(2)(A)?

9 (e)(2)(B)?

10 Terry, I have a note under (e)(2)(B) that there's
11 some general background information about a lab training
12 program. Does this ring a bell?

13 MR. FICKIES: I deny everything.

14 (Laughter.)

15 MS. LOUGH: That's what everybody has done so
16 far.

17 MR. FICKIES: Do we want --

18 MS. LOUGH: I don't know. The original Title 17
19 says just that statement physiological action of alcohol
20 and there's nothing else there. So did we have -- is
21 there anything that the Committee wants to see added to
22 that, other than just that statement?

23 I mean, obviously we could write pages on what
24 that involves. The same with the following ones. So do
25 we want to just keep it general like this, physiological

1 action of alcohol?

2 COMMITTEE MEMBER WONG: I agree.

3 MR. FICKIES: Yes.

4 MS. LOUGH: All right. I'm going to take out
5 whatever I had I was accusing you of, Terry. And I'm
6 going to take that off.

7 (Laughter.)

8 MR. FICKIES: Thank you.

9 MS. LOUGH: Okay. And then my next one it says
10 analyst, it says FAS before, so I'm just advising
11 everybody. So that's okay. So that just now has sort of
12 that title.

13 (e)(2)(C) just says the title.

14 (e)(2)(D)?

15 (e)(2)(E)?

16 (e)(2)(F)?

17 MS. GORDON: Comment from the public.

18 CHAIRPERSON KIMSEY: We have a comment from the
19 public in Richmond.

20 MS. GORDON: You're just missing an apostrophe of
21 analyst's.

22 MS. LOUGH: Got it. Okay.

23 (e)(2)(G)?

24 There is a note after the last one, "move on to
25 other article." Does anyone see that we need to I think

1 put (e)(2)(F) in another location. I don't recall why, so
2 it's just a note I have. Should that be in a different
3 location?

4 CHAIRPERSON KIMSEY: Not to my knowledge.

5 COMMITTEE MEMBER WONG: Yeah, I don't recall.

6 MS. LOUGH: Okay. (e)(2)(G)?

7 (e)(2)(H)?

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

9 Comment from the public.

10 CHAIRPERSON KIMSEY: In Richmond.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

12 Back on (F) actually I kind of recall a
13 discussion where that is similar to the competency test.

14 CHAIRPERSON KIMSEY: "...Analyst's ability to
15 perform..."?

16 MS. LOUGH: I agree, but I think it's fine here,
17 because it's summarizing what kind of training a person is
18 supposed to have. It sort of includes it in there, that
19 the training will include a practical. And later on it's
20 described as practical.

21 CHAIRPERSON KIMSEY: Okay.

22 MS. LOUGH: (e)(2)(I)?

23 (e)(2)(J)?

24 COMMITTEE MEMBER TANNEY: That should be an "I",
25 the one before (e)(2)(I).

1 COMMITTEE MEMBER TANNEY: Oh, it says that.

2 MS. LOUGH: (H), (I), (J), are we okay?

3 COMMITTEE MEMBER TANNEY: Yes.

4 MS. LOUGH: (e)(3). Kenton, we discussed this
5 when you were gone. The word on the second line there
6 where it says, "...complete an external competency..." I
7 put a "Y" in there now, "...competency test...." The
8 Committee discussed removing "external", which means a
9 laboratory can prepare a competency test for a person in
10 training. They could go get an old CTS test, make sure
11 it's still accurate. They could get any -- they could
12 come up with a test.

13 But we removed the term "external", and that's
14 where we are now to decide does anyone have any issue with
15 that?

16 COMMITTEE MEMBER WONG: No, that's okay.

17 MS. LOUGH: Okay.

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

20 CHAIRPERSON KIMSEY: In Richmond.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Clay Larson.

23 Just a couple comments about this section. I
24 think in terms of clarity standards, we're going to run
25 into issues about the requirements to successfully

1 complete. Here, we do include the language successfully,
2 and need to defined what that means. What's successful,
3 what's unsuccessful.

4 It's the same with predetermined values, are
5 those -- how are those predetermined? What exactly does
6 that mean?

7 And then finally, I know I have a note here that
8 we discussed at one point, but I think the Committee has
9 sort of lost sight of the fact, that we wanted to consider
10 what we're going to do with those small number of labs
11 that only do breath alcohol analysis -- I mean, only
12 support breath alcohol analysis, and therefore would
13 conceivably have difficulties preparing and analyzing a
14 blood alcohol sample.

15 So those are three comments.

16 MS. LOUGH: Clay, this is Patty. Let's take them
17 up one at a time. What does the Department of Health now
18 define as a successful test?

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

20 Well, it's based on the five percent accuracy
21 requirements.

22 MS. LOUGH: So it's a five percent success.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 Well, we hope that the success rate is higher
25 than five percent and it has been.

1 MS. LOUGH: Okay. I believe ASCLD-LAB is plus or
2 minus three standard deviations from the mean, which is
3 probably a lot smaller number than five percent.

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

5 Well, it depends on the mean. That's
6 interesting. I've never heard that before. That's
7 certainly not published in the PRC, in the Proficiency
8 Review Committee process. Where do you get that number?

9 MS. LOUGH: That's in the ASCLD-LAB documents.
10 Bill Phillips, are you out there?

11 MR. PHILLIPS: Yes, I am. I got that directly
12 from the program manager of the Proficiency and Review
13 Committee just two days ago.

14 MR. FICKIES: Question from the public. What is
15 three standard deviations? Is that 95 percent?

16 MS. LOUGH: Three standard deviations from the
17 mean?

18 MR. FICKIES: Yeah.

19 MS. LOUGH: Well, it means you know what the
20 level is going to be and it's been pretested.

21 MR. FICKIES: What would the plus, minus be for a
22 .10 solution?

23 MS. LOUGH: Bill?

24 MR. PHILLIPS: Three standard deviations.

25 COMMITTEE MEMBER ANDERSON-SEAQUIST: Isn't it

1 99.7?

2 MR. PHILLIPS: Yeah, it's 99.7 is three.

3 MR. FICKIES: No, that's one.

4 COMMITTEE MEMBER ANDERSON-SEAQUIST: No, one
5 is --

6 CHAIRPERSON KIMSEY: We have a clarification here
7 in Richmond.

8 MS. GORDON: It depends a lot on, I mean, what
9 your sample is. You can't do it without having the data
10 set. You can't determine what that plus or minus is.

11 MR. PHILLIPS: Right. You have to have a mean
12 value.

13 MR. FICKIES: What is the mean value if it's .10?

14 MS. GORDON: You have to have the mean value plus
15 all of the points that were there to establish that mean,
16 so you can calculate your standard deviation. Without a
17 data set, you can't calculate a standard deviation.

18 COMMITTEE MEMBER ANDERSON-SEAQUIST: Is that Ann
19 Marie?

20 MS. GORDON: Yes.

21 MR. FICKIES: What if the mean value is .10?

22 MS. LOUGH: Clay's second point is there's a
23 predetermined value. So when that predetermined value was
24 made, that would have been made from -- say information
25 from a CTS that had been issued that you have the numbers

1 on. I'm just throwing this out as a sample.

2 So I know what -- you know, you know that is,
3 because CTS is going to provide the statistical breakdown.
4 And then you give it to your new analyst, and they have to
5 fall within that plus or minus three percent of that value
6 that was determined as an example.

7 MR. FICKIES: Not three percent, three standard
8 deviations.

9 MS. LOUGH: Plus or minus three standard
10 deviations.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
12 Comment from the public. A question for Bill.
13 Was that a personal communication?

14 MR. PHILLIPS: Yes.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 Because they don't publish those criteria.

17 MR. PHILLIPS: It was from an email. I asked him
18 what the criteria was for acceptance.

19 CHAIRPERSON KIMSEY: We have another comment here
20 in Richmond.

21 MS. GORDON: Was that for alcohol analysis?

22 MR. PHILLIPS: Yes, it was.

23 MS. GORDON: Because, I mean it does depend upon
24 what you're -- the tighter your analytical ability is, the
25 smaller that percentage is going to be.

1 MR. PHILLIPS: Absolutely. You have to know the
2 data set.

3 MS. GORDON: And that's why I think so many
4 alcohol analyses use a percentage, because that does --
5 when you have -- if all your -- it depends on where you're
6 collecting your numbers. If all your numbers are
7 collected at one place, and then you go to another place
8 where there's slight variations in standards, then you're
9 going to have some difficulty in achieving that. And
10 that's why I think the percentage has been a --the
11 preferred method for alcohol.

12 If ASCLD has gone that way, and I haven't seen
13 that documentation, but I was -- I know where they were
14 discussing about that without alcohol, where they were
15 going with that, I just haven't -- because I'm not in
16 ASCLD-LAB now, I don't know that.

17 MS. LOUGH: Would everyone be comfortable if we
18 add a (E) to here that says, "Result of the test taker
19 must be within five percent." That is what's the current
20 Department of Health accepted value?

21 COMMITTEE MEMBER WONG: I think that's
22 reasonable.

23 MS. LOUGH: And then if the lab wishes to tighten
24 that up, they certainly could.

25 COMMITTEE MEMBER WONG: Right. I think you just

1 say, "at a minimum".

2 MS. LOUGH: Can somebody give me the sentence you
3 want for that, so I don't have to do the work.

4 "At a minimum, the analyst's result must
5 be..." -- "...the test-taker's results..."

6 COMMITTEE MEMBER ANDERSON-SEAQUIST: Let's put,
7 "The results must fall within plus or minus five percent
8 of the known value."

9 MS. LOUGH: Okay. That's in here now.

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

12 Actually, let me clarify. That actually would
13 exceed the Department's requirements. The Department's
14 requirements are based -- and maybe the way to do it is to
15 simply to reference the standard performance requirements
16 in the method. Because the Department takes a peer group
17 mean adds a five percent range, but then additionally sort
18 of through a documented and available statistical analysis
19 has made certain conclusions in terms of the added
20 variability that must occur, and maybe won't occur in this
21 case, because they're -- anyway, must occur with a peer
22 group mean sample that's been distributed to 40
23 laboratories, analyzed by 40 different people. So we've
24 added an additional range, so it's not exactly five.
25 Percent. As you get higher concentrations, it gets closer

1 to five percent. But, for instance, for a .1, it's
2 actually plus or minus -- .1, a .11 or a .09 would be
3 within an acceptable range, so it's actually 10 percent at
4 that point.

5 MS. LOUGH: Clay, you said peer review mean?

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
7 Peer group mean.

8 MS. LOUGH: Okay. So that's like the test the
9 Department does now, everybody tests it and then you make
10 the range based on the results everybody gets?

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
12 Yes.

13 MS. LOUGH: Okay. I don't think that's
14 scientifically acceptable, though, at this point.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 Well, it's --

17 MS. LOUGH: If you want to have more assurance
18 that we know what that number is before the test taker
19 takes the test. So we're looking at accuracy versus
20 precision.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Right. We're looking at both accuracy and
23 precision. It is the equivalent to the procedures that
24 Bill has now revealed for the first time -- I'm happy to
25 hear it here -- the three standard deviation. So it's

1 exactly equivalent to that.

2 Also, in general, I think our assumption is that
3 five percent is about two standard deviations. So, I
4 mean, it will be interesting to look at the numbers at
5 recent --

6 MS. LOUGH: Well, certainly, two percent -- two
7 standard deviations is great. I don't think anyone would
8 bother with -- would object to that. I think
9 scientifically, in general, science, if you do research
10 and you have a number that comes out past three standard
11 deviations, it would cause you to look at those as
12 outliers. And so I think if you feel that this is at two
13 standard deviations, I think we're good.

14 Does anyone on the Committee have an opinion?

15 Okay. So for the purposes of where we are, it
16 will read, "results must fall within five percent of the
17 known value."

18 COMMITTEE MEMBER WONG: Yeah.

19 MR. PHILLIPS: So that's assuming that you know
20 what the known value is, Patty.

21 MS. LOUGH: And it says that you --

22 MR. PHILLIPS: Data set maybe.

23 MR. FICKIES: But you predetermine that.

24 MS. LOUGH: They're predetermined. That's on
25 Step A, it says they're predetermined.

1 CHAIRPERSON KIMSEY: We also have a comment from
2 the public here in Richmond.

3 MS. GORDON: Again, it's says because their
4 values -- they range from 0 to .25, you also have to
5 consider that down -- you may not even be able to measure
6 those numbers, if you're actually giving proficiency
7 samples that are in lower levels.

8 MS. LOUGH: Kind of an interesting topic, isn't
9 it? Since we are analyzing those very numbers. And no
10 one in California has been required to do a proficiency
11 test at those levels, that includes the State law.

12 MS. GORDON: Someone could perhaps -- this is Ann
13 Marie again. I think you might want to -- we might want
14 to take a look at the data sets for the last couple of
15 years from the CAP alcohols, the CAP forensic alcohols,
16 and take a look and see what those means are, because
17 those are a broad change of labs doing some very -- you
18 know, some well qualified standard -- you know, samples
19 that go out. And you could actually take a look at that
20 and see if this criteria would be acceptable for those
21 kinds of tests. And then I think you'd have more
22 confidence that the rules you've set are acceptable.

23 MS. LOUGH: I think Ann Marie -- and pardon me, I
24 don't think I know you. I don't think I've met you.

25 MS. GORDON: I don't believe so either.

1 MS. LOUGH: Okay. I have some information in
2 front of me from CTS and the types of numbers that they
3 have -- types of values that they have included in their
4 testing, from zero to, looks like, about .29 from 2002 --
5 or 2004 to 2009. So CTS, which is what I believe most of
6 the general crime labs use as their provider, does have
7 those in here. And it is included in their program today.

8 So I do have those numbers. I don't have CAP's
9 numbers. It would be nice if you could supply those to
10 me, so I could at least have it in my package of
11 information here.

12 MS. GORDON: I can give you the last -- I don't
13 know how many we have at the medical examiner's office. I
14 haven't been doing it that long, but I can do all that we
15 have.

16 MS. LOUGH: That would be great.

17 MS. GORDON: Okay. I'll get your contact
18 information from someone here and get it to you.

19 MS. LOUGH: I appreciate that. Thank you so
20 much.

21 MS. GORDON: You're welcome.

22 COMMITTEE MEMBER WONG: I agree with you. I
23 think we're being, in some ways, harder on ourselves than
24 what we actually see in the field, because even though
25 we're looking at a range of 0 to .25 here in the standard

1 for Title 17, I know for years the average in San Mateo
2 county was about a one seven. And I don't think I ever,
3 in all my years, have seen a DUI lower than like a .06.
4 Because most of your CHP officers, if they're making a
5 stop, usually they're pretty good about getting a level at
6 least .08, 1.0 or if not above.

7 Kevin, can you corroborate that?

8 COMMITTEE MEMBER DAVIS: Yeah. For the Vehicle
9 Code .05 or below is presumed not impaired.

10 So you should never have a DUI that's .05 or
11 lower.

12 MS. LOUGH: Kevin, what about the .04 commercial
13 drivers?

14 COMMITTEE MEMBER DAVIS: Yeah, that would be a
15 situation where you can be lower.

16 COMMITTEE MEMBER TANNEY: Wait a minute. When
17 you say you should never have a DUI that's .05 or lower,
18 that's a presumption. That's not a conclusion. So if
19 that presumption is overcome, you could still possibly
20 have a DUI that's under .05, depending on other possible
21 factors involved.

22 COMMITTEE MEMBER WONG: Sure.

23 COMMITTEE MEMBER DAVIS: Correct.

24 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is
25 Janet down in Ventura and I have had DUIs at lower levels

1 than an .08.

2 COMMITTEE MEMBER WONG: Sure.

3 COMMITTEE MEMBER DAVIS: Let me clarify. You
4 could analyze samples below .05 certainly. What I'm
5 saying is that person wouldn't be convicted in court up to
6 impaired driving.

7 COMMITTEE MEMBER TANNEY: And, yes, they could.
8 That's my point, is the presumption can still be overcome.
9 You're right. That's a legal presumption, but that
10 presumption can be overcome by additional evidence.

11 MS. LOUGH: I think all of us in the field with
12 the training in experience of people under the influence,
13 will say that certainly a person by .04 is probably
14 impaired for the purposes of driving, whether or not that
15 would ever make it through the law, through a court is
16 another matter. But there's enough data out there to show
17 those low alcohol levels a person is impaired.

18 And also an agency may choose not to submit those
19 just because it may be more trouble than they're worth.
20 On the other hand, other agencies, if they have the person
21 that shows significant impairment and the level came back
22 low, those samples are also generally tested for drugs,
23 and there's usually the combination of drugs and alcohol.
24 And then the DA can go forward with their --

25 COMMITTEE MEMBER TANNEY: Or even a medical

1 condition, where they -- a balance problem, for example,
2 or some other problems that the alcohol exacerbates. They
3 could still be potentially convicted of a DUI. And I've
4 had an expert in court testify that at .02 there are --
5 you're --

6 MS. LOUGH: There is impairment.

7 COMMITTEE MEMBER TANNEY: Yeah, there's
8 impairment. Thank you.

9 So I think what's important is that you don't
10 make this an impossible reality, that people aren't going
11 to be able to pass this because you've made that range too
12 great for those high and low blood alcohol levels.

13 MS. LOUGH: I think Kenton's point that the
14 average DUI, if you looked at a Bell Curve, would probably
15 be a lot closer to the .15, .17 level. I think that's
16 true. And if we keep this five percent as just a general
17 rule, then that's probably suitable for most cases. And
18 each laboratory can obviously choose to enhance that and
19 tighten that up if they wish.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
21 Comment from the public.

22 CHAIRPERSON KIMSEY: Comment.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 In the first place, to note that this
25 conversation, although interesting, has become rather wide

1 ranging, and we're probably off topic, since some members
2 have been sensitive to that.

3 To the extent that we're talking about the value
4 of including proficiency test samples outside the range
5 .08 to some higher number, and the comment that Patty made
6 the Department didn't do this. The Department was really
7 limited, and you may well have considered this limitation
8 when you look at 1220.1(a)(1), limited to the standard of
9 performance requirements of the regulations that say that
10 a laboratory has to have a method that's accurate and
11 precise within plus or minus five percent between a given
12 range. It used to be .1 to .3. Probably it could change
13 to .08 to some higher number.

14 So, I mean, it would have been very easy to
15 prepare a .01 sample. That requires a little less
16 alcohol. I mean, it would be difficult to score that.
17 From a practical standpoint, five percent limits may be
18 problematic for a very low level.

19 But more importantly, from a regulatory
20 standpoint, I mean ASCLD-LAB's free of regulations. They
21 can make any kind of criteria they want. The Department
22 is a State agency. The government is limited by their own
23 regulations and law. So we were limited to applying a
24 standard that's specified under the standards of
25 performance section of the forensic alcohol analysis,

1 which I gave the Section, of plus or minus five percent,
2 but that was applied to a limited range. So it would have
3 been inappropriate for regulatory reasons and for
4 practical reasons to apply that range to a 01. So that's
5 the reason the Department didn't send out -- provide
6 samples over a wide range of concentrations.

7 MS. LOUGH: That's why we're revising the
8 regulations now, because the laws have changed.

9 Clay, the third thing that you said was you made
10 a comment about laboratories that perform breath analysis
11 only. So what does the Department do? How do you
12 proficiency test those laboratories that do breath alcohol
13 only and no blood testing?

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

15 Well, for candidates and laboratories, because
16 we're talking about candidate qualifications here, we
17 have -- we provide samples in an aqueous alcohol matrix,
18 and we send that --

19 MS. LOUGH: Okay, blood samples.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 No, not blood samples. In an aqueous -- aqueous
22 means water -- aqueous alcohol matrix --

23 MS. LOUGH: Oh, water sample, okay. Water
24 solutions of alcohol?

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Yeah, water alcohol is better. Water alcohol
2 samples. We provide four samples to the lab, and they're
3 asked to use their direct oxidimetric method. So they're
4 asked to perform six replicate analyses and provide the
5 results. And that's how we deal with labs that don't do
6 blood alcohol analysis.

7 MS. LOUGH: So then you're not testing the breath
8 instruments though?

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 No, for personnel --

11 MS. LOUGH: You're having them do --

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 For personnel qualifications, no. The main
14 activity of the lab typically is not to do a breath
15 alcohol analysis, but rather to prepare reference
16 solutions, for instance, to put in a calibrating unit and
17 test the instrument. And so the critical qualification
18 there is the ability to accurately characterize that
19 reference solution, in terms of alcohol concentrations.

20 So they're asked to do a chemical method, a
21 chemical determination of the concentration of alcohol in
22 that water alcohol solution.

23 MS. LOUGH: Okay. So the Department prepares
24 these standards and submits them as a test to the
25 laboratories?

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 We prepare those test samples, yes.

3 MS. LOUGH: Is this a new procedure?

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

5 It's about 25 years old.

6 MS. LOUGH: I'm not aware of proficiency tests

7 being submitted for breath instruments.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

9 Were you ever employed by -- there's only two.

10 They're used to be Oakland, Alameda County, and San

11 Francisco. Oakland is gone. There's Alameda county, one

12 of the Santa Clara labs and San Francisco. Were you ever

13 employed by those labs?

14 MS. LOUGH: No.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

16 That could be the reason.

17 MS. LOUGH: You mean you only send proficiency

18 tests out to two or three labs, is that what you're

19 saying?

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 Aqueous alcohol proficiency test samples, yes,

22 only to -- the assumption is if -- well, I don't want to

23 go into all this. But the assumption by a train of

24 events, if a lab can analyze a blood alcohol sample

25 correctly or an analyst can analyze a blood alcohol

1 sample, the laboratory procedures are -- accurately
2 characterize the aqueous alcohol standard used to
3 calibrate the method and analyze that blood sample.

4 So the same techniques would be employed to
5 characterize and to analyze a reference sample used in a
6 simulator. The presumption is that if they can analyze
7 the blood alcohol sample, they must have analyzed the
8 secondary standard in the correct manner, so that they can
9 analyze aqueous alcohol solutions.

10 But for labs that don't analyze blood samples, we
11 provide them a water alcohol reference solution.

12 MS. LOUGH: Okay. So three out of, what, 30
13 laboratories get your proficiency tests for breath
14 alcohol?

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 Right now, three out of 39 laboratories, yes.

17 MS. LOUGH: Three out of 39 are tested, and for
18 the breath test.

19 Okay. Is there anything else on 1(e)(3)?

20 CHAIRPERSON KIMSEY: Did we decide to leave the
21 range from 0 to 0.25. It seemed like there were some
22 ideas that maybe the range should maybe go from like .04,
23 .05 on up.

24 MS. LOUGH: No. I disagree. I think the
25 forensic community would want to know that if you gave

1 them a sample that contained an alcohol that they, in
2 fact, did not find alcohol.

3 CHAIRPERSON KIMSEY: Okay.

4 MS. LOUGH: I think that's pretty common practice
5 in proficiency testing.

6 COMMITTEE MEMBER TANNEY: What is the final --

7 MS. LOUGH: The only issue would be our (e), how
8 close does the analyst's results have to come to the
9 predetermined value? And right now I'm showing it has to
10 be five percent.

11 COMMITTEE MEMBER WONG: Yes.

12 COMMITTEE MEMBER TANNEY: Plus or minus?

13 MS. LOUGH: Plus or minus five percent.

14 1(e)(4)?

15 1(e)(5), I think, is actually coming up to the
16 grandfather clause that Clay was talking about.

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

18 First a comment on 1(e)(4). And this language is
19 taken from the canon, the ASCLD-LAB requirements. I find
20 it meaningless. I mean, basically we're requiring an
21 individual to meet the requirements of a laboratory of
22 employment. So what we're saying is, if he didn't meet
23 the requirements of the laboratory employment, he couldn't
24 analyze blood alcohol samples.

25 It raises the question why he's even employed if

1 he can't meet it. So this is an ASCLD-LAB requirement. A
2 lot of the -- I find it -- I mean, you can leave it in
3 there if you want. It's kind of superfluous.

4 COMMITTEE MEMBER TANNEY: I agree with Clay.

5 COMMITTEE MEMBER WONG: I agree.

6 MS. LOUGH: Okay. Everyone agree, we'll just
7 eliminate that section?

8 CHAIRPERSON KIMSEY: I agree.

9 MS. LOUGH: Omit because --

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
11 Meaningless.

12 MS. LOUGH: Well, I don't have to change the
13 added language. So what we're actually then omitting is
14 "Demonstrates the ability to adhere to these provisions of
15 the regulations..."

16 COMMITTEE MEMBER TANNEY: Because you can say
17 this is redundant and it's already required by the
18 individual provisions.

19 MS. LOUGH: Yes.

20 Okay, 1(e)(5) is that grandfather clause. We do
21 need to take a look at that and see how it applies here,
22 since we just have an analyst.

23 MR. FICKIES: Is there anyone that -- Terry
24 Fickies a member of the public. Is there anyone that this
25 applies to who is presently performing alcohol analyses in

1 the state of California?

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 Comment from the public?

4 CHAIRPERSON KIMSEY: Go ahead.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

6 This really is a two-part section, so it does

7 apply to individuals who were doing forensic alcohol

8 analysis 38 years ago in some other laboratory.

9 MR. FICKIES: Yeah, and that's my point exactly.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

11 Okay. But the second part has to do with

12 qualifications, in general, of individuals previously

13 qualified, for whatever reason, under the Department's

14 umbrella. So it's a two-part thing, so we've got to

15 consider both parts. The 1971, I kind of -- I think

16 that's almost a no-brainer. I don't think anyone is left.

17 But the second part is -- you know, has to do

18 with qualifications of individual -- automatic

19 qualification, I guess that's the word, of individuals

20 previously qualified for the Department.

21 As I said before, I think there's two problems.

22 One is we qualified people as analysts before -- if we

23 increase the requirements, then some of that previous

24 qualification might not apply.

25 But more generally, let me make a proposition

1 here, a proposal, and see if this resonates with the
2 Committee.

3 More generally, since -- under the new
4 regulations, since we've eliminated any kind of external
5 State agency oversight of this, labs can qualify people,
6 you know, in 20 minutes. I mean, they have a training
7 program, but that could be more or less complete. Once
8 these regulations are adopted, that labs could simply
9 automatically qualify whoever they want to qualify. I'm
10 not sure the impact on the official duty presumption, the
11 DMV might want to think about that. But I'm not sure
12 there's any need, since we've greatly facilitated the
13 process. We've eliminated external PT requirements. Labs
14 are kind of free to name a person and qualify them or
15 disqualify them, you know, on a daily basis. So I
16 don't -- I'm thinking we don't need to grandfather anybody
17 in.

18 MS. LOUGH: Actually, I think that's a good idea,
19 because an analyst under current Title 17 doesn't have to
20 have a college degree. I think it would be -- you know,
21 that that would be a person that would be qualified right
22 now to perform the work, but would not be qualified under
23 our new Title 17. I don't know if there are any people
24 out there doing the analytical work without a degree.

25 Certainly, as far as the supervisor, it required

1 a degree, so that it may not be an issue there. So maybe
2 we could just -- don't worry about grandfathering those
3 people. But when we get to the analysts part, and the
4 grandfather, maybe you want to address that.

5 I'm just thinking if they've been an analyst for
6 25 years, but they don't meet the current qualifications
7 that we have now established, that they'd be out of a job.

8 COMMITTEE MEMBER TANNEY: There was one, and this
9 was 10 years ago, in San Diego, who routinely came in.
10 And I don't know if he's still in practice or not.

11 MS. LOUGH: Oh, that old guy. He didn't have a
12 college degree, but he took the classes. He's still in
13 private -- he's private.

14 COMMITTEE MEMBER TANNEY: Well, then I think if
15 there are people like that still in practice --

16 MS. LOUGH: And he was a supervisor.

17 COMMITTEE MEMBER TANNEY: -- you cannot take them
18 out of their -- you know, especially when they've been
19 doing it for 40 years.

20 MR. PHILLIPS: A comment from the public. This
21 is Bill Phillips.

22 Do we need some sort of grandfathering clause for
23 those that are now forensic alcohol supervisors or
24 forensic alcohol analysts, should there be some sort of
25 statement like those that are forensic alcohol supervisors

1 at the time of this enactment will become forensic alcohol
2 analysts?

3 Otherwise, we have a class of individuals who
4 already are -- have been analysts and are now supervisors.
5 Do we need to make some sort of a grandfathering for them?

6 COMMITTEE MEMBER TANNEY: I still think you have
7 to include those.

8 MR. FICKIES: Comment from the public.

9 If they don't meet the qualifications expressed
10 in here, I don't think they should be doing the analyses.

11 COMMITTEE MEMBER TANNEY: But Terry, there are
12 people who have been doing it for 30 years or more who
13 their entire livelihood has been based on it and they've
14 already proven themselves in court numerous times. So
15 just because they don't have a degree -- the
16 qualifications now that we're setting as the standard now,
17 you know, but they have the benefit of 30 or 40 years of
18 experience, then I don't see how you can -- and they've
19 qualified in court hundreds of times, I'm not sure you can
20 take that away. I'm not sure that would be right.

21 I mean, you can. I mean, I don't believe that
22 would be right to do that.

23 MR. FICKIES: I think if you're referring to the
24 person in San Diego, that was a defense laboratory.

25 COMMITTEE MEMBER TANNEY: No, not the person that

1 I'm referring to.

2 MR. FICKIES: Is this William Holly?

3 COMMITTEE MEMBER TANNEY: No. I'm talking about

4 -- I think it was Martin --

5 CHAIRPERSON KIMSEY: This is Paul in Richmond.

6 COMMITTEE MEMBER TANNEY: Martin, I think, it's

7 Banker or there was --

8 CHAIRPERSON KIMSEY: It's not about individuals.

9 Hold on. Point of order, folks. This is Paul in
10 Richmond. We're sort of deviating a little bit.

11 Obviously, these regulations are not about individuals.

12 We can think about examples that we all know of, but we
13 shouldn't be throwing out names.

14 It is, I have to say, fairly standard that there
15 is a grandfather clause when you change qualifications in
16 regulations. However you want to characterize it, it can
17 be relatively straightforward. People doing this work
18 prior to such and such a date can continue. People after
19 such and such a date have to meet the new qualifications.

20 But anyhow, let's try and stay away from
21 individual names.

22 COMMITTEE MEMBER SEDGWICK: This is Paul Sedgwick
23 in San Diego. I agree with you, Paul. It's standard
24 procedure to grandfather.

25 MS. LOUGH: On 1(e)(5), should we keep the

1 language as it is?

2 MR. FICKIES: I think we should at least remove
3 the January 1971 language.

4 MS. LOUGH: Okay.

5 CHAIRPERSON KIMSEY: Maybe, we say something --

6 MS. LOUGH: Qualified who has been --

7 CHAIRPERSON KIMSEY: Maybe we say something based
8 on the date of effect of these regulations, since we don't
9 really know exactly or we can leave it blank. But I mean
10 I think there probably is some fairly standard regulatory
11 grandfather clausung language, which basically says at the
12 effective date of these regulations, people prior to
13 whatever, you know, are now -- or people, you know, prior
14 to these regulations qualified can continue. And people,
15 you know, moving forward have to adopt the new
16 qualifications.

17 MS. LOUGH: Can I make a note, Paul, under here,
18 grandfather clause wording from Goldie Eng?

19 CHAIRPERSON KIMSEY: Yes. Since she's not on,
20 I'm perfectly willing to volunteer her.

21 MR. FICKIES: I assume you only mean forensic
22 alcohol supervisors and forensic alcohol analysts?

23 COMMITTEE MEMBER WONG: Yes.

24 MS. LOUGH: Yes.

25 MR. FICKIES: And you would not grandfather

1 trainees?

2 MS. LOUGH: No, because we eliminated them.

3 Plus, they wouldn't be here from '71. You can only be a
4 trainee for one year.

5 MR. FICKIES: Well, the effective date of these
6 regulations.

7 MS. LOUGH: Okay. So I'm just going to, on that
8 whole section there, I'm just going to make a big note to
9 let Goldie put whatever the appropriate wording is.

10 CHAIRPERSON KIMSEY: I agree.

11 MS. LOUGH: Okay.

12 COMMITTEE MEMBER ZIELENSKI: This is Torr
13 Zielenski from Sacramento. I have a question about that,
14 the date there. When was this language or statute in
15 effect, relative to 1971? And so from the date of
16 enactment, that allowed the date of 1971 to be the base,
17 why don't we simply adjust that forward to keep the same
18 relative date to when the legislation selecting 1971 was
19 applicable?

20 Do you understand what I'm saying? In other
21 words, if the legislation was in 1991 that used 1971, that
22 would, in essence, allow a 19-year grandfather clause. So
23 we would simply adjust that date, and take it 19 years
24 from 2009, and readjust the date to keep it to the same
25 relative previous date.

1 MR. FICKIES: I suspect this legislation was
2 enacted in 1971.

3 CHAIRPERSON KIMSEY: I think is what, you know,
4 Goldie Eng can work through for us. I think some of this
5 has changed with the Administrative Procedures Act to have
6 it more standardized. But I think this is something that
7 we can have Goldie recommend to us.

8 COMMITTEE MEMBER DAVIS: This is Kevin in
9 Sacramento. I support Goldie developing the language, but
10 is she going to be aware of whether or not we're including
11 analysts and supervisors?

12 CHAIRPERSON KIMSEY: We can certainly inform her.
13 It will be in the transcript.

14 COMMITTEE MEMBER DAVIS: So we just -- it's
15 analysts and supervisors.

16 MS. LOUGH: We will be getting to the analysts
17 grandfather clause shortly.

18 COMMITTEE MEMBER DAVIS: Okay, I'm sorry.

19 MS. LOUGH: That's okay.

20 Okay, continuing. 1216.1(f)?

21 1(f)(1)?

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

23 Comment from the public.

24 You know, there's been comments briefly about --
25 a number of times we've said we've raised the level of

1 qualification for the analysts. Previously, the
2 Department required only two years of college education
3 and some specific chemistry courses.

4 I think I've looked at most or all of the
5 qualifications, I don't recall anyone certainly in the
6 last 10, 15 years, perhaps longer, that didn't have a
7 degree. What's kind of interesting is that on occasion,
8 maybe once, twice a year, someone -- some cases I assume
9 from an ASCLD-LAB accredited lab is asked by the
10 Department to take supplemental chemistry training,
11 because, you know, they didn't meet the specific chemistry
12 requirements of the regulation.

13 So just to keep in mind, I think, the notion that
14 we are increasing the academic rigor or the academic
15 requirements is, in practice, we're probably -- again at
16 least once or twice a year -- we're probably decreasing
17 the academic requirements.

18 MS. LOUGH: That's 1216.1(e)(1), which we have
19 just already gone over. That was the opportunity for us
20 to specify in there if we wanted to put any specific
21 course work for chemistry or things like that. We have
22 not done that there. That would be the place to do that
23 and we've already passed that point.

24 Is there anyone on the Committee that wants to
25 review that and be more specific on the course

1 requirements?

2 COMMITTEE MEMBER ANDERSON-SEAQUIST: No. This is
3 Janet down in Ventura.

4 CHAIRPERSON KIMSEY: This is Paul in Richmond.
5 So you folks in the industry feel comfortable that what we
6 have here, applied physical or natural science, if you can
7 get through a college degree and not have any chemistry,
8 let's say, that's okay?

9 MS. LOUGH: Any chemistry?

10 CHAIRPERSON KIMSEY: Yeah, any chemistry. I mean
11 let's say there's a baccalaureate degree out there that,
12 you know, basically have -- or let's say very limited
13 chemistry. Is there a level of chemistry that you folks
14 feel is necessary or not, I guess, is one way to look at
15 it?

16 MS. LOUGH: Actually, there's a degree of biology
17 and physiology that I think is necessary, because the
18 hardest part is the interpretation in court, and that's
19 never addressed. So I think without having to rehash the
20 entire course curriculum for everybody, we need to settle
21 on what kind of degree is appropriate. And then we're
22 leaving it up to the laboratories, who are hiring these
23 individuals, to make sure that they have the ability to
24 distinguish a graduated cylinder from an Erlenmeyer flask.

25 CHAIRPERSON KIMSEY: Okay.

1 MS. LOUGH: I mean, the onus is on the laboratory
2 and their hiring.

3 COMMITTEE MEMBER LYLE: Bruce Lyle. Now, I
4 notice above that just .1(e) has to do with analyst, so
5 isn't that all for analysts. Isn't all of (e) for
6 analysts and not supervisors? Because the supervisor is
7 struckout.

8 MS. LOUGH: The analysts before did not -- this
9 is Patty. The analysts did not have to have a college
10 degree. They had to have select course work. Now, we're
11 saying no, we're not going for that. Now, you have to
12 have a degree. So the only question was what kind of
13 degree are we going to accept.

14 So, yeah.

15 COMMITTEE MEMBER LYLE: But then when it gets
16 down to the grandfather part, (e)(5) -- 1(e)(5), that's
17 still under (e), so isn't that still having to do with
18 analysts? So that's the grandfather for analysts.

19 MS. LOUGH: But some people may have only
20 grandfathered as a supervisor. And that's my question
21 that comes up later, if whether you've been a supervisor
22 before is one thing, you have a degree. If you qualify
23 grandfathered as an analyst, you may not have a degree,
24 but we haven't gotten to that one yet.

25 COMMITTEE MEMBER WONG: Patty, can you define --

1 maybe, I'm sorry, it's going backward, but can we define
2 what like some examples of applied or physical natural
3 science degrees would be?

4 MS. LOUGH: Well, Kenton, that's stuff that we
5 talked about before, and I think we ended up -- that's why
6 we were talking about it again today, is to determine how
7 we wanted that language to be, because we start out -- you
8 know, if you have a degree in molecular biology, does that
9 qualify you, if you have a degree in biology or straight
10 chemistry or geography? You know --

11 COMMITTEE MEMBER WONG: Or anthropology.

12 MS. LOUGH: -- there have been people that
13 qualified that have degrees, I believe Clay told us, that
14 were in things like geography or something. So we wanted
15 to narrow it down without making it too narrow.

16 CHAIRPERSON KIMSEY: And this is Paul. I think
17 from a practical perspective, the direction the group is
18 going is it's really going to be up to the laboratory. If
19 the laboratory wants to look at, you know, transcripts to
20 see whether it's a particular biology or physiology or
21 chemistry, then that's the laboratory's role. But that's
22 not necessarily going to be uniform.

23 I mean, one laboratory may accept what other
24 laboratories might consider to be a less qualified person,
25 unless we get into more specifics.

1 COMMITTEE MEMBER TANNEY: Don't forget that all
2 these people, if they testify in court to the results, are
3 going to be turning over their resumes and subject to
4 cross-examination on their degree of expertise.

5 So their qualifications will be an issue. And
6 that's another way that this -- you know, that there's
7 some control. Because again, the labs aren't going to
8 hire people that they don't feel are qualified. But of
9 most science degrees -- when I went to UCSD for any
10 science degree, you had to take quite a bit of chemistry.
11 So I don't know that you should be excluding degrees just
12 because it's a geography degree or a physics degree or
13 something else, because chances are they have had a
14 chemistry requirement.

15 MR. FICKIES: Comment?

16 MS. ZABALA: Comment from the public. Florida
17 Zabala.

18 To qualify as an expert in court, criminal court
19 or even at the administrative for say a DMV hearing, an
20 expert can -- a person can be qualified to testify as an
21 expert based on three criteria. Either he has received
22 some training; second, experience, practical experience;
23 or education. That person doesn't have to have the
24 blending of all three. In fact, if you remember the movie
25 My Cousin Vinny, the witness there was able to testify

1 without having any education and, you know, on mechanics.

2 So it doesn't have to be a blending of all three.

3 In fact, so the person can qualify as an expert even with
4 just a blending of the first two, the training and
5 experience. So it's really good that we are in line with
6 the intent of the Legislature to leave this up to the
7 individual laboratories to determine what, in fact, should
8 be a qualified degree. You know, and so they can
9 compensate by getting a practical hands-on experience and
10 training. And so when they send that person to court,
11 then that person could somehow qualify as an expert, even
12 without a degree or two years of chemistry, or what have
13 you.

14 So it doesn't have to have a blending of all
15 three. That's my -- that's in the Evidence Code. I don't
16 know -- I don't remember the section of the Evidence Code.
17 But the Court can allow somebody to admit to qualify a
18 person an expert, even if that person doesn't have any
19 education at all.

20 MS. LOUGH: I'm not an attorney, but I think for
21 the expert witness, I'm not sure you can be an expert
22 witness in chemistry or biology without specific schooling
23 maybe in that area. I'm not sure if you could read enough
24 books, because you wouldn't have the practical. As part
25 of our -- when we were discussing this before, is did we

1 want to specify that a person actually had to have
2 laboratory classes, because I have interviewed people who
3 have degrees in chemistry, but never had any laboratory
4 classes, where they went to school. So I mean this really
5 can get way out there.

6 And ASCLD-LAB-approved laboratories have to
7 have -- all the candidates have to have degrees, which
8 we're kind of bringing this up to the ASCLD-LAB standard
9 with that.

10 COMMITTEE MEMBER TANNEY: But in addition to the
11 degree, don't you also have to have the two years of
12 experience?

13 MS. LOUGH: Yes.

14 COMMITTEE MEMBER TANNEY: And certainly that
15 chemistry person who might not have worked in the lab
16 after working in your lab for two years is going to have
17 the experience and knowledge necessary, I would think.
18 They have the ability to get a chemistry degree. So, I
19 mean, that's just one factor. I think it's fine the way
20 it's written now.

21 MS. LOUGH: I can leave it the way it's written
22 now. And those of you who really have an issue with it,
23 maybe you can consider it and think about it and then at
24 the next meeting come back. And when we go over it, that
25 would be a good time, so you have a little more time to

1 think about that and make some proposals, or should we
2 just keep it as it is right now?

3 COMMITTEE MEMBER WONG: Yes.

4 CHAIRPERSON KIMSEY: Are you referring back --

5 MS. LOUGH: 1(e)(1)?

6 CHAIRPERSON KIMSEY: Oh, okay.

7 It sounds like we want to leave it the way it is.

8 MS. LOUGH: And then on 1(e)(5), let's see is

9 that where we were?

10 We were at 1(e)(5), I think.

11 And we were talking about the dates there. And
12 we're just going to leave 1(e)(5) with a note that Goldie
13 Eng is going to look at the wording on that.

14 CHAIRPERSON KIMSEY: Correct.

15 MS. LOUGH: And I think are we now on 1(f)(1)?

16 Oh, that's where we are, 1(f)(1). That's where
17 we were. That's what started that.

18 So we'll just leave these as they are now?

19 COMMITTEE MEMBER WONG: Yes.

20 MS. LOUGH: And then at the next session,
21 someone, if they really want to go through that, can work
22 on that?

23 Then 1(f)(2)?

24 1(f)(3)?

25 1(f)(4)?

1 1(f)(5)?

2 Okay, 1(f)(6) has the grandfather clause for the
3 analysts. The difference now is the current analyst has
4 to have a college degree. So should I leave that for
5 Goldie to work on?

6 CHAIRPERSON KIMSEY: I think so. Unless the
7 Committee has some sort of direction we want her to go.
8 But we obviously want a grandfather clause for both of
9 these.

10 MS. LOUGH: Right.

11 COMMITTEE MEMBER DAVIS: Just for simplification
12 purpose, would we want to combine 1(f)(6) and 1(e)(5),
13 rather than saying the same thing twice, with just the
14 supervisor and the analyst?

15 MS. LOUGH: Yes. I think so.

16 CHAIRPERSON KIMSEY: I'll make that comment and
17 recommendation to Goldie and see if it's feasible. It
18 seems to make sense.

19 MS. LOUGH: Okay, I'll write to check with
20 Goldie.

21 1(g)?

22 COMMITTEE MEMBER TANNEY: I think we just deleted
23 it.

24 COMMITTEE MEMBER WONG: Those were all deleted.

25 COMMITTEE MEMBER TANNEY: They all fall within

1 the analyst.

2 MS. LOUGH: Well, (f)(6) grandfathers and
3 analysts, but an analyst from the Department of Health may
4 not have a college degree. And we now say they have to
5 have a college degree. So by grandfathering them, we
6 allow them to do the work without the college degree.

7 COMMITTEE MEMBER TANNEY: No, I understand that,
8 but isn't that what we're doing --

9 MS. LOUGH: That was analyst -- that was
10 supervisor. The one we just talked about.

11 COMMITTEE MEMBER TANNEY: Aren't supervisor and
12 analyst the same thing?

13 MS. LOUGH: Now.

14 COMMITTEE MEMBER TANNEY: Wait. So in this
15 revised supervisor and analyst are the same thing. So
16 what you need to do is change the wording in (e)(5) when
17 she does the grandfather clause to say -- too include
18 these supervisor and the analyst, like -- which is what
19 Paul said, but we just delete this one and have her add
20 analyst to the other one.

21 MS. LOUGH: Exactly. That's exactly what we're
22 doing.

23 COMMITTEE MEMBER TANNEY: Okay.

24 MS. LOUGH: Everybody get that?

25 COMMITTEE MEMBER WONG: Yes.

1 CHAIRPERSON KIMSEY: Yes.

2 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes.

3 MS. LOUGH: Okay. 1(g)?

4 1(g)(1)

5 1(g)(2)?

6 Okay, that's Article 2.

7 Shall we vote?

8 CHAIRPERSON KIMSEY: It's up to the Committee, if
9 the Committee feels -- I mean, obviously there were a few
10 things that, you know, are going to be getting language
11 on, you know, from Goldie or whatever. But if we feel
12 comfortable on the overall review of Article 2, we can
13 certainly take a vote.

14 Do people feel comfortable taking a vote or do we
15 want to wait till our next meeting?

16 COMMITTEE MEMBER TANNEY: I'm ready to vote.

17 CHAIRPERSON KIMSEY: Anybody object to voting
18 now?

19 Okay. As Article 2 has been presented, a yes
20 vote is basically supporting Article 2 as presented.

21 Ms. Tanney?

22 COMMITTEE MEMBER TANNEY: Yes.

23 CHAIRPERSON KIMSEY: Sergeant Davis?

24 COMMITTEE MEMBER DAVIS: Yes.

25 CHAIRPERSON KIMSEY: Mr. Zielenski?

1 COMMITTEE MEMBER ZIELENSKI: Yes.

2 CHAIRPERSON KIMSEY: Mr. Lyle?

3 COMMITTEE MEMBER LYLE: Yes.

4 CHAIRPERSON KIMSEY: Mr. Wong?

5 COMMITTEE MEMBER WONG. Yes.

6 CHAIRPERSON KIMSEY: Mr. Sedgwick?

7 COMMITTEE MEMBER SEDGWICK: Yes.

8 CHAIRPERSON KIMSEY: Ms. Anderson-Seaquist?

9 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes.

10 CHAIRPERSON KIMSEY: Dr. Kimsey, no.

11 So let's go on to Article 3.

12 MS. LOUGH: Okay, Article 3 is licensing. And

13 the whole thing has been deleted.

14 CHAIRPERSON KIMSEY: Correct.

15 MS. LOUGH: So that's Article 3. Any opposition

16 to Article 3?

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

18 Comment from the public.

19 CHAIRPERSON KIMSEY: Comment.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 Just to clarify. I'm not necessarily

22 anticipating a vote, what the Department's vote would be,

23 but in looking at Article 3 and the reference to

24 licensing, one might view as a no-brainer, you would

25 simply -- since the Department lost its authority to issue

1 licenses, that you would simply delete this section and
2 probably under a Rule 100 kind of change.

3 But as Cathy Ruebusch pointed out, there are
4 actually portions of this section that are related to
5 licensing, but involve activities of the Department, such
6 as inspection requirements, but also surveys and
7 proficiency tests and reporting, changes of activities to
8 the Department, which were arguably not automatically
9 removed as a result of the loss of the authority to
10 require labs to be licensed.

11 So although the Committee is simply, I think,
12 because there's been very little discussion of this
13 section, has simply determined that we will eliminate it
14 because of the word license. There actually are
15 activities described here that the Committee could have
16 considered continuation -- continuing, again related to
17 reporting, activities, and proficiency testing, site
18 inspections, and things like that.

19 MS. LOUGH: I think with regard to proficiency
20 tests, we have covered that, because we're following the
21 Health and Safety Code 100702.

22 With regard to inspections, that should be done
23 then -- if we want to put into this that there would be
24 some inspection going on, that's up to the Committee, if
25 they want to add that in there, inspections. Noting that

1 inspections are not currently performed within -- not
2 performed since 2005.

3 COMMITTEE MEMBER TANNEY: I think that where this
4 does not constitute a rule change under Rule 100, that
5 it's redundant and most of the -- most, if not all, of the
6 provisions are contained within other provisions, such as
7 record keeping, is included under Article 8 and the
8 proficiency testing and such are included in other
9 provisions.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

11 Just a quick comment from the public.

12 You mentioned proficiency tests and site
13 inspections. Section 1217.3 includes a requirement the
14 laboratories have to let the Department know -- to report
15 changes in activities. One could reach the conclusion, I
16 think, that since the statutes still state that the
17 Department shall enforce the law and the regulations, that
18 there is arguably a need for labs to, you know, at a
19 minimum inform the Department that they're performing
20 forensic alcohol analysis. I think as it is now, absent
21 that, a lab could decide they're a forensic alcohol
22 laboratory on Tuesday, and then decide they're not a
23 forensic alcohol lab on Wednesday.

24 So I think there needs to be some reporting
25 requirements. The Committee could include that there

1 needs to be some reporting requirements in order that the
2 Department can exercise the mandate described in Section
3 100 Health and Safety Code Section 100725.

4 COMMITTEE MEMBER TANNEY: Clay, reporting to who,
5 you -- to the Department or to ASCLD?

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
7 ASCLD has no role here at all. To the
8 Department.

9 MS. LOUGH: This document states that you have to
10 have a method on file. Your method has to be on file.
11 And accredited labs are going to be following the ISO
12 standards, which is very complicated and very detailed.
13 So if each lab is maintaining records on file of their
14 procedures, then I'm not sure it's necessary to have to
15 report to a particular location every time that procedure
16 changes. As long as you have properly documentation, know
17 what it was when you did the test today, and what it was
18 when you did the test in three years.

19 CHAIRPERSON KIMSEY: This gets to the point, you
20 know, that we have had discussions again, over and over
21 again, about the role of the Department. And obviously
22 the role of the -- I mean, the intent has been talked
23 about that the legislation was to at least limit and maybe
24 get the Department pretty much out of this regulatory
25 environment.

1 Unfortunately, the legislation wasn't clear
2 enough to let the Department completely off the hook and
3 so we do have responsibility enforcement. We've gone
4 through this a bit.

5 I think one of the things that I find problematic
6 is if the Department really does have responsibility for
7 these regulations and enforcement and this sort of thing,
8 and we don't even know -- I mean, if no one doesn't have
9 to -- we got this back and forth with this whole thing of
10 licensing, we talked about registration or whatever, you
11 know, it's a bit of a -- well, it's difficult for the
12 Department to have responsibility for regulations and not
13 know who is performing in the field so to speak.

14 But I mean think this is something we've
15 discussed numbers of times. And so I think the Committee
16 is being pretty consistent by removing all of Article 3, I
17 mean, in the sort of direction the Committee has been
18 wanting to go.

19 MS. LOUGH: If the question is, does the State
20 want to know who's doing what, does the State you know, a
21 public records information or are the labs -- at least the
22 accredited labs, have to have -- well, even under this new
23 Title 17, they have to have their procedures on file. So
24 the State, if they wish to go look at somebody's files,
25 they could. Just like they have the ability to perform

1 inspections in the past. Whether they took that
2 opportunity or not was up to the Department.

3 But, I mean, there's nothing that precludes the
4 Department if they wish just to drop in and ask to look at
5 somebody's procedures. Even when the Department was
6 responsible to perform such inspections, they were not
7 being performed. So, you know, I don't think it makes any
8 difference to the labs, but I don't think the labs should
9 have the responsibility every time they change something
10 in their procedures to send it up to the State, who wasn't
11 responsive prior to this.

12 MS. GORDON: Comment from the public. I think
13 having this, as a -- I mean, having this requirement to
14 keep -- to have those procedures on file, does provide
15 defendants a certain level -- I mean, at least their
16 attorneys can then ask for it, if you're requiring that
17 they have it. So I'm not sure that's necessarily a bad
18 thing for the process.

19 COMMITTEE MEMBER TANNEY: I propose that -- this
20 is Laura -- that the language -- that this article be
21 deleted and maybe we could take a vote on that.

22 CHAIRPERSON KIMSEY: Any other comments?

23 Comments from the Committee?

24 COMMITTEE MEMBER WONG: Even if -- the is Kenton.
25 Even if the laboratories methods are not on file with the

1 Department, they can still have access to it for
2 defendants. And those things are kept on file with the
3 laboratory anyway. It's all a matter of public record.

4 CHAIRPERSON KIMSEY: Any other comments and we'll
5 vote?

6 So the vote is on Article 3, basically, I think
7 I'm accurately describing, Article 3 will be removed in
8 its entirety as a Rule 100 change.

9 MS. LOUGH: I was going to also add in there
10 Laura's comment saying that it was redundant and many of
11 those sections are contained in other sections and put in
12 a couple of examples.

13 COMMITTEE MEMBER WONG: Yes.

14 CHAIRPERSON KIMSEY: So. Our usual voting.
15 Ms. Tanney?

16 COMMITTEE MEMBER TANNEY: Yes.

17 CHAIRPERSON KIMSEY: Sergeant Davis?

18 COMMITTEE MEMBER DAVIS: Yes.

19 CHAIRPERSON KIMSEY: Mr. Zielenski?

20 COMMITTEE MEMBER ZIELENSKI: Yes.

21 CHAIRPERSON KIMSEY: Mr. Lyle?

22 COMMITTEE MEMBER LYLE: Yes.

23 CHAIRPERSON KIMSEY: Mr. Wong?

24 COMMITTEE MEMBER WONG: Yes.

25 CHAIRPERSON KIMSEY: Mr. Sedgwick?

1 COMMITTEE MEMBER SEDGWICK: Yes.

2 CHAIRPERSON KIMSEY: Ms. Anderson-Seaquist?

3 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes.

4 CHAIRPERSON KIMSEY: Dr. Kimsey, no.

5 So we're on to Article 4.

6 MS. LOUGH: Article 4.

7 1218?

8 .1?

9 .2?

10 That's Article 4.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

12 Just a brief comment from the public.

13 I can't imagine this having much affect, but I
14 believe -- training program approval was a mechanism by
15 which a State agency, in this case the Department of
16 Health, provided a level of oversight. And I think it was
17 primarily important in the area of breath alcohol
18 analysis. It was a way that the State, as is recommending
19 by the Uniform Vehicle Code, by a number of safety
20 agencies, that the State had a role in approving
21 the procedures employed by law enforcement to perform
22 breath alcohol analysis. It's pretty standard. Every
23 State has something like this.

24 So eliminating this will put California in kind
25 of a unique situation, in that it will eliminate any State

1 agent oversight or approval of is -- this is a primary
2 breath alcohol analysis, to a lesser extent, but primarily
3 breath alcohol analysis procedures.

4 CHAIRPERSON KIMSEY: Yeah. I think that's
5 something we've been over a number of times.

6 Any other comments on Article 4?

7 Okay, let's go ahead and take a vote on Article 4
8 for removal of Article 4, Training Personnel.

9 Ms. Tanney?

10 COMMITTEE MEMBER TANNEY: Yes.

11 CHAIRPERSON KIMSEY: Sergeant Davis?

12 COMMITTEE MEMBER DAVIS: Yes.

13 CHAIRPERSON KIMSEY: Mr. Zielenski?

14 COMMITTEE MEMBER ZIELENSKI: Yes.

15 CHAIRPERSON KIMSEY: Mr. Lyle?

16 COMMITTEE MEMBER LYLE: Yes.

17 CHAIRPERSON KIMSEY: Mr. Wong?

18 COMMITTEE MEMBER WONG: Yes.

19 CHAIRPERSON KIMSEY: Mr. Sedgwick?

20 COMMITTEE MEMBER SEDGWICK: Yes.

21 CHAIRPERSON KIMSEY: Ms. Anderson-Seaquist?

22 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes.

23 CHAIRPERSON KIMSEY: Dr. Kimsey, no.

24 So we're on to Article 5.

25 MS. LOUGH: Article 5. Okay.

1 1219, there is a note there. I wanted to make
2 sure that we include uniform standard for handling of
3 samples. And I think it is, because below us on
4 1219.1(a), we do mention 23158 of the CVC. I just want
5 to make sure with our legal people present, that I don't
6 need to put anything else in there?

7 They do -- okay. The 23158(f) of the Vehicle
8 Code is a special document. I do have a copy. I have to
9 look for it. But it's a document on how to handle
10 samples. It will have a name on it. It --

11 COMMITTEE MEMBER TANNEY: That's correct.

12 MS. LOUGH: And really it kind of tells you how
13 to do that. So I want to make sure by mentioning under
14 19.1, we mentioned 23158, but that's under blood samples
15 only. So I want to make sure that we don't need to put
16 that any place else.

17 Let me look on what it says as blood -- I'm
18 looking at the code itself. Okay, the code is only
19 talking about blood.

20 COMMITTEE MEMBER TANNEY: That's correct.

21 MS. LOUGH: So it really doesn't have any place
22 up there anyway then, because it is quoted down below. So
23 I think we're okay.

24 All right. So 1219 then minus the comment that I
25 have in there.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 Comment from the public.

3 Actually, the subsection is Subsection J, 23158.

4 And it reads, "The Department shall adopt..." -- the

5 Department in this case is the -- it sequences the

6 California Vehicle Code, the Department would be referring

7 to the Department of Motor Vehicles.

8 "The Department in cooperation with the State

9 Department of Health Services, or any other appropriate

10 agency, shall adopt uniform standards for the withdrawal,

11 handling and preservation of blood samples prior to

12 analysis."

13 COMMITTEE MEMBER TANNEY: I believe the

14 Department referred to in the Vehicle Code is the

15 California -- Department of the California Highway Patrol.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

17 I believe you're incorrect.

18 COMMITTEE MEMBER TANNEY: I believe it's

19 specifically stated in the Vehicle Code.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 I think you're incorrect.

22 CHAIRPERSON KIMSEY: It doesn't make much

23 difference.

24 COMMITTEE MEMBER TANNEY: I have a copy with me,

25 I'll pull it up.

1 CHAIRPERSON KIMSEY: I mean, I'm -- certainly, we
2 can argue which one of the Departments, but it certainly
3 does mean Health -- I think we're more interested in what
4 our -- I mean, this department's role is. I mean, does it
5 make a difference, whether it's you know a --

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
7 No, I think more the --

8 CHAIRPERSON KIMSEY: Go ahead.

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 I think the issue here is -- and I'm not
11 sure -- the Committee might want clarification.

12 Whoever the Department is, in cooperation with
13 another department, the Department of Health Services or
14 the Department of Public Health, shall adopt uniform
15 standards for withdrawal, handling and preservation of
16 blood samples.

17 The implication is there that the law enforcement
18 personnel, whose ever involved with actually collecting
19 those samples, will then follow those uniform standards.

20 MS. LOUGH: If they don't, then they'd be thrown
21 out in court. I mean, that's up to the defense attorney
22 to ask if they followed the statutes. I mean, we
23 -- basically, it's repetitive for us to put those
24 references in here, because they're out there. We're only
25 putting them in here to be informative, to direct the

1 reader to -- for the fact that there are places that
2 perhaps they want to be familiar with, familiarize
3 themselves with the rules and regulations of those.

4 It's just like the phlebotomy issue. Can anybody
5 get that sample or are there certain people that can get
6 that sample. It's not our place here to tell them that,
7 but it is, if we want to just be informative of where they
8 might want to -- things they might want to comply with.

9 My problem was Article 5 is now blood, urine and
10 tissue. And the Uniform Standards only apply to blood.
11 So I just want to make sure we're comfortable with the
12 language, which I think we do, because we say, to collect
13 the samples in a matter to identify and maintain the
14 integrity of them throughout the process, from analysis to
15 reporting.

16 I'm happy with that, because then the person who
17 goes to court has to state how they did this.

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

20 I don't see -- and again, I wasn't trying to be
21 argumentative. It wasn't totally clear to me that that
22 Subsection J involves any kind of obligation on the part
23 of the person collecting it. It just says the Department
24 will prepare some standards.

25 But regarding Patty's point, the reference to

1 that is under Section 1219.1(a), which first, "Blood
2 samples shall be collected by venipuncture from living
3 individuals. So the issue about tissue and urine is not
4 an issue here, so I don't understand -- I didn't
5 understand her comment.

6 MS. LOUGH: Well, we can just strike my comment.

7 COMMITTEE MEMBER TANNEY: Let's see, the
8 definition of Department as used in the Vehicle Code means
9 the Department of Motor Vehicles, except when used in,
10 let's see, Division 11, which starts with Section 21000.
11 I don't believe that 23158 is in Division 11, but I'll
12 check.

13 So it's the Department of Motor Vehicles that is
14 referred to. And then it says with respect to those --
15 with respect to Section 11, it's the Department of the
16 California Highway Patrol. So I'll see which Section
17 23158 is in.

18 So it does not reference to your Department --

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

20 Well, --

21 COMMITTEE MEMBER TANNEY: -- either way. That's
22 just as far as the statute goes.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 Comment from the public.

25 Again, I don't think it's an important point.

1 But again, reading Subsection J, "The Department, in
2 cooperation with the State Department of Health
3 Services..." So I think it's unarguable. I think it's
4 clear that the reference to the State Department of Health
5 Services refers to the State Department of Health
6 Services. The other Department, whether that's CHP or
7 DMV, I believe it's DMV, but it's not that important.

8 MS. LOUGH: And of course, I'm looking at my 1986
9 copy of Title 17 that comes along with the old 23158(f),
10 that's what comes with me, which is really out of date.
11 So that's why it just says 23158. It's not even putting
12 the letter by it.

13 So on 1219, if it stays as it is, does anyone
14 have any objection to that?

15 COMMITTEE MEMBER ANDERSON-SEAQUIST: No
16 objection.

17 MS. LOUGH: 19.1?

18 19.1(a)?

19 1(b)?

20 There was a comment at the last meeting under
21 1(a) to include a unique identifier. I think that's self
22 explanatory under 1219 and certainly under forensic
23 standards. I mean, that's a well established process.

24 But does anyone today feel that we have anything
25 that we need to do here?

1 COMMITTEE MEMBER WONG: No.

2 MS. LOUGH: So 1(a) is fine as it is?

3 Okay, 1(b)?

4 1(c)?

5 1(d)?

6 There is a note that the Committee wanted to
7 revisit 1(d) through 1(e)(1) and check it with the Vehicle
8 Code.

9 The note says the Committee wanted to revisit
10 1(d) through 1(e)(1) and make sure we're in compliance
11 with the Vehicle Code.

12 COMMITTEE MEMBER TANNEY: Which would be that
13 same section.

14 MS. LOUGH: Which would be the same section, so
15 we think we're okay?

16 COMMITTEE MEMBER TANNEY: I did check. I
17 realized that it's in cooperation with or in conjunction
18 with your Department. But the Department referred to this
19 is 23158 does fall within Division 11, so the Department
20 referred to is the California Highway Patrol just for
21 clarification.

22 MS. LOUGH: Laura is going to be checking on our
23 comments that we had. I think I'm going to go ahead and
24 continue.

25 CHAIRPERSON KIMSEY: So just for the record, it

1 looks like Laura is going to look at 1219.1(d) through --

2 MS. LOUGH: Through (e)(1) --

3 CHAIRPERSON KIMSEY: (e)(1).

4 MS. LOUGH: -- and make sure that it's in
5 compliance with the CVC.

6 CHAIRPERSON KIMSEY: Okay, great.

7 MS. LOUGH: Okay. So for the rest of us 1(e)?

8 And 1(e)(1)?

9 1(e)(2)?

10 1(f)?

11 1(f)(1)?

12 1(f)(2)?

13 1(g)?

14 CHAIRPERSON KIMSEY: Go ahead.

15 MS. LOUGH: Okay. 1(g)(1). Okay, there was a
16 comment last time that postmortem cases should be under
17 their own section. How do you feel about that, Bruce,
18 does it need to or is it fine here.

19 COMMITTEE MEMBER LYLE: No, I think it's fine.

20 The only confusion --

21 CHAIRPERSON KIMSEY: I'm sorry, could you
22 identify yourself. I think it was Bruce Lyle.

23 COMMITTEE MEMBER LYLE: This is Bruce Lyle.

24 The only confusion is that we're talking about
25 postmortem stuff in (f), you know, (f)(2), and then it

1 goes to (g). And that's in order to allow for analysis by
2 defendant. The remaining portion of the samples shall be
3 retained for one year after the date of collection.

4 MS. LOUGH: So the defendant.

5 COMMITTEE MEMBER LYLE: Right. So that's just
6 beforehand, but as long as we read further down, I think
7 it's okay.

8 COMMITTEE MEMBER TANNEY: The only confusion I
9 have with that is, in the postmortem samples aren't those
10 kept for more than one year. And is that going to lead to
11 confusion with respect to (g)?

12 COMMITTEE MEMBER LYLE: No, they're not -- we
13 don't keep them for more than a year. We keep them six
14 months.

15 COMMITTEE MEMBER TANNEY: In murder cases, you
16 only keep your samples six months?

17 COMMITTEE MEMBER LYLE: No, we keep them
18 indefinitely in murder cases, but in traffic deaths, we
19 keep them.

20 COMMITTEE MEMBER TANNEY: What about when a
21 traffic death is charged as a murder?

22 COMMITTEE MEMBER LYLE: That's rare.

23 MS. LOUGH: And that's going to apply to all of
24 these, because a sample could be taken from something like
25 this and then also used in a rape case or something like

1 that. So you have to make sure that if this becomes a
2 felony case or something, that there is some coordination
3 so the sample doesn't get tossed.

4 COMMITTEE MEMBER TANNEY: And there actually
5 might be a statutory -- I don't know, that would trump
6 this anyway.

7 MS. LOUGH: There should be yeah.

8 COMMITTEE MEMBER LYLE: In the idea of 90 days, I
9 didn't want to compel all coroners and medical examiners
10 to, you know, to hold stuff for a really long time if they
11 didn't need to.

12 MS. LOUGH: So if they don't have --

13 COMMITTEE MEMBER LYLE: At a minimum.

14 COMMITTEE MEMBER TANNEY: Are you saying at
15 least?

16 COMMITTEE MEMBER LYLE: That's what it says.

17 COMMITTEE MEMBER TANNEY: Or the 90 days, but for
18 the year?

19 COMMITTEE MEMBER TANNEY: Under (g)?

20 COMMITTEE MEMBER LYLE: Yeah, because those
21 aren't postmortem samples, so I don't really --

22 MS. LOUGH: But (g)(1) says IF it's blood, it's
23 90 days.

24 MS. GORDON: It's a minimum.

25 COMMITTEE MEMBER TANNEY: But on (g) -- oh, I

1 see, (g)(1) is postmortem. Okay.

2 MR. PHILLIPS: Comment from the public.

3 1(g)(1), should that mention tissue samples. We
4 don't mention tissue other than the very beginning of the
5 Article 5. You don't mention tissues.

6 MS. LOUGH: It's all blood 19.1 is -- we're only
7 talking blood. And then we go to -- and then we talk
8 about urine. And we never talk about tissue.

9 COMMITTEE MEMBER LYLE: You're right, Bill. It
10 should talk about tissue.

11 MS. LOUGH: Would that 1(g)(1), if we said
12 postmortem samples?

13 CHAIRPERSON KIMSEY: That's what I was thinking.

14 MS. LOUGH: Postmortem case samples should be 90
15 days, and put that under 1219 like (a), before we get to
16 blood. Or we could make it 1219.3. We could make it
17 1219.3 and say tissues, any coroner samples.

18 COMMITTEE MEMBER LYLE: Okay.

19 MS. LOUGH: 1219.3, "In postmortem cases..." and
20 I'm going to cross out "blood" and just say "samples"?

21 COMMITTEE MEMBER LYLE: Yeah.

22 MS. LOUGH: "...samples shall be retained for at
23 least 90 days after collection." So this will be an added
24 section?

25 COMMITTEE MEMBER LYLE: You know, we also used

1 antemortem samples in coroner work. You know, if somebody
2 is in a traffic accident and then they die, you know, a
3 couple hours into the hospital stay. So I'm not really
4 sure that postmortem is a --

5 MS. LOUGH: In the medical examiner cases? It
6 used to say coroner's cases. You want to go back to
7 coroner's cases?

8 COMMITTEE MEMBER LYLE: Yeah. Or maybe
9 coroners/medical examiner.

10 MS. LOUGH: Coroner/ME cases. "In coroner/ME
11 cases, samples shall be retained for at least 90 days
12 after data collection." And that will be 1219.3 added.

13 1(g)(2)?

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

16 1(g)(2) on the second line we struck "alcohol".
17 In the past, when we referred to the laboratory, we used
18 the language, "forensic alcohol laboratory". But here and
19 in one other places, we struck "alcohol". So in Sections
20 1215.1, 1220 and in many other sections, we referred to
21 "forensic alcohol laboratory".

22 Here, for some reason, we struck "alcohol" just
23 to call it a forensic laboratory.

24 MS. LOUGH: Does anyone on the Committee want me
25 to put "alcohol" back in or leave it out?

1 COMMITTEE MEMBER WONG: I think we should be
2 consistent.

3 MS. LOUGH: What's that, Kenton?

4 COMMITTEE MEMBER WONG: I think we should
5 maintain some consistency throughout the whole entire
6 document.

7 MS. LOUGH: Do you want me to go through and make
8 sure the document says always "forensic alcohol lab"?

9 COMMITTEE MEMBER WONG: I think whatever we
10 choose should be consistent. And if we've been sticking
11 with forensic alcohol laboratory.

12 MS. LOUGH: Just a minute.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

14 In fact, that's a requirement of the APA. Since
15 we defined forensic alcohol laboratory, every subsequent
16 reference -- I mean, unless we want a separate definition
17 of forensic laboratory, we're really obligated to use the
18 term.

19 COMMITTEE MEMBER WONG: I agree.

20 MS. LOUGH: Okay. I will make an attempt to go
21 through and check it and make sure that it's in there, so
22 we will include it.

23 19.2?

24 19.2(a)?

25 Okay, I have a comment from Goldie, "shall"

1 versus "will". Shall I just keep my comment on there or
2 do we want to say something here?

3 COMMITTEE MEMBER WONG: I think that's correct,
4 because "shall" has legal teeth, but "will" does not.

5 CHAIRPERSON KIMSEY: That's my understanding.

6 MS. LOUGH: So keep it as "shall"?

7 COMMITTEE MEMBER WONG: I believe so.

8 CHAIRPERSON KIMSEY: Yes.

9 MS. LOUGH: Okay.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

11 Comment from the public.

12 You know with the changes here, we now apparently
13 intentionally include postmortem urine samples, which may
14 be fine. Under the old language, we said the only
15 approved urine sample shall be a sample collected, so it
16 pretty much precluded postmortem urine samples. We now
17 have included them.

18 Postmortem urine samples obviously aren't blood
19 samples. They aren't tissue samples. Urine wouldn't
20 qualify as a tissue. We really have nothing in terms of
21 any kind of standards or procedures of how postmortem
22 urine samples are collected.

23 MS. LOUGH: That was, I think -- well --

24 COMMITTEE MEMBER LYLE: Can't get them to void in
25 20 minutes.

1 (Laughter.)

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 They don't say no.

4 MS. GORDON: I think that that really should be
5 left out. I don't know that that is a place for that
6 here. It's not a -- when you do a urine alcohol on a
7 postmortem sample, it's usually to corroborate something
8 or to verify something else. It's actually usually
9 looking at volatiles other than alcohol. And I don't
10 think it's probably really important to cover it under
11 this.

12 MS. LOUGH: We haven't really gone into that at
13 all. All we added was our new 1219.3 about how long they
14 have to maintain their samples, but we're not telling them
15 with vitreous humor or heart blood or anything like that,
16 how they're going to obtain it or anything. We're just
17 sort of leaving that up to their protocols.

18 MS. GORDON: Well, actually that's not true,
19 because you do talk about collection of samples to avoid
20 combination -- we just glanced over that.

21 COMMITTEE MEMBER TANNEY: We're about to go back
22 to that, as a matter of fact, when I was waiting -- this
23 is Laura -- I was waiting for you to get through this
24 other stuff. But I was going to read what the statute
25 says. And it may be that we can delete that section. So

1 we'll get to that in a minute.

2 MS. LOUGH: All right.

3 CHAIRPERSON KIMSEY: Where are we then?

4 MS. LOUGH: .2(b).

5 COMMITTEE MEMBER TANNEY: And I would probably
6 say the same thing that -- was it Ann who said it?

7 MS. GORDON: Yes.

8 COMMITTEE MEMBER TANNEY: That I haven't found a
9 urine test section in here, but --

10 MS. LOUGH: We do have a comment though for that.

11 COMMITTEE MEMBER TANNEY: No, I mean in the
12 statute.

13 MS. LOUGH: Yeah. Okay, so 2(b)?

14 2(c)?

15 (c)(1)?

16 Okay. Now, this where I have a comment that we
17 need to include tissue specimens, such as liver, vitreous.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 Where are we looking?

20 MS. LOUGH: It includes the coroner/medical
21 office for reanalysis of samples. But it would be
22 whatever the sample is.

23 COMMITTEE MEMBER TANNEY: Well, and you define
24 sample in the beginning.

25 MS. LOUGH: I don't think we. My comment is P20,

1 I don't think --

2 COMMITTEE MEMBER TANNEY: In the definitions
3 section, sample is defined as, "A representative portion
4 of..." -- "Sample or specimen means a representative
5 portion of blood, urine or tissue or of an artificially
6 constituted material, taken for the purpose of measuring
7 its alcohol concentration." So you already have the
8 definition of sample to include tissues.

9 MS. LOUGH: So that was (c)(1),
10 1(b)(3)?

11 And that's Article 5.

12 COMMITTEE MEMBER TANNEY: Oh, on --

13 MS. LOUGH: So -- go ahead.

14 COMMITTEE MEMBER TANNEY: On (b)(3), I'm not sure
15 you have to say which is alveolar because I think you say
16 that a breath sample is alveolar in composition in the
17 definitions' section. So I think it's redundant to repeat
18 it here.

19 MS. LOUGH: Okay, I agree.

20 COMMITTEE MEMBER TANNEY: You can just start
21 with, "The breath sample shall be collected only..."

22 MS. LOUGH: Is that all right with the Committee?

23 CHAIRPERSON KIMSEY: Well, this is Paul. We
24 could start at the top and just say, "A breath sample
25 shall be expired breath, which..." and then skip down to,

1 "...which shall be collected only after..." Does that
2 make sense?

3 MS. LOUGH: The definition does it say it's
4 expired breath?

5 CHAIRPERSON KIMSEY: That's what I heard.

6 COMMITTEE MEMBER TANNEY: The definition says, a
7 "Sample or specimen may also include that portion of an
8 expired breath, which is essentially alveolar in
9 composition."

10 MS. LOUGH: So it sounds like we have already
11 defined it. So if we just started with, "The breath
12 sample shall...", the breath sample has been defined.

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

15 CHAIRPERSON KIMSEY: Comment here in Richmond.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

17 So we added that definition to sample. I
18 actually have a note that the language "may" is pretty
19 permissive. And it's -- I think the regulatory process
20 frowns on "mays", because it applies to "may not".

21 MS. LOUGH: This is a "shall"?

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

23 Except the language here is another -- I'm not
24 sure.

25 MR. FICKIES: Question from Terry Fickies.

1 Are you talking about eliminating that first
2 sentence?

3 MS. LOUGH: Yes.

4 MR. FICKIES: Alveolar talks about alveolar area.
5 Breath talks about a breath sample, but it doesn't include
6 alveolar in it, so those are two separate definitions.

7 COMMITTEE MEMBER TANNEY: Terry, if you look
8 under 1215.1, because it uses the word "sample", that it
9 says it "...includes that portion of expired breath which
10 is alveolar in composition."

11 MR. FICKIES: Okay.

12 COMMITTEE MEMBER TANNEY: 1215.1(1).

13 COMMITTEE MEMBER WONG: Oh, (1).

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

16 MS. LOUGH: Yes, it does.

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
18 Comment from the public. Actually, I lost my
19 place here.

20 Two things. One the definitions shouldn't set
21 requirements. They should only define. I see no problem
22 with retaining the reference to alveolar here. I mean,
23 it's possible. The regulated public may not go back and
24 look at the initial definitions of all those things. I
25 don't see any -- unless someone's -- the Committee is

1 aware of problems that the given definition has caused in
2 the past, I think we should -- I'd just retain it.

3 COMMITTEE MEMBER LYLE: Since it's already
4 defined, I think it's redundant to add it in there.

5 MS. LOUGH: And each analyst, of course, has to
6 be changed at the laboratory. So it shouldn't really be
7 overlooked. So they pretty much ought to know it's
8 alveolar.

9 COMMITTEE MEMBER WONG: And also most of your
10 breath instruments are already designed their very virtue
11 to only collect a deep lung sample with a pressure switch.

12 CHAIRPERSON KIMSEY: Any other comments?

13 COMMITTEE MEMBER LYLE: Bruce Lyle.

14 MS. LOUGH: Wait. Wait.

15 COMMITTEE MEMBER TANNEY: Is the current -- does
16 the current regulation say 15 minutes?

17 MS. LOUGH: Yes.

18 COMMITTEE MEMBER WONG: Yes.

19 MS. LOUGH: I have a comment. And this is an old
20 discussion topic. It's come up numerous times. This is,
21 I guess, our last chance to look at it.

22 Where it says, "...the subject has to be under
23 continuous observation....", I have a note that we wanted
24 to revisit that discussion. Personally, from my contact
25 with the laboratory, many of them feel it should stay as

1 it is. Others feel it should be defined. It's our last
2 chance to see if we want to change this or not.

3 COMMITTEE MEMBER WONG: This particular issue of
4 continuous observation has been beaten to death in the
5 courts already. And the intent is that it must be
6 continuous. And I feel strongly that the word continuous
7 has to stay, because people are minimalist by nature, and
8 a lot -- no offense to Sergeant Davis, but some of the
9 officers out in the field will just be very lax and just
10 wanting to just hurry up and get onto the next one and
11 they won't do a continuous observation.

12 MS. LOUGH: So, so far it stays?

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
14 Comment from the public?

15 And that's fine. I was looking back at some
16 notes Cathy Ruebusch had on this issue, when we did
17 discuss it with her. And she noted that really the -- in
18 writing regulations, you have two choices. Either you
19 specifically define a word or you use its dictionary
20 definition. So the dictionary definition, and this would
21 go into the record as the Department has found, because
22 ultimately it will be the Department's regulation, "...is
23 a continuous means...", reading the Oxford American
24 Dictionary of Current English usage, "...unbroken
25 uninterrupted, connected throughout space or time."

1 So in leaving continuous, without any
2 clarification, the Committee is recommending and the
3 Department would ultimately hopefully promulgate
4 regulations, which absolutely incorporated that definition
5 of continuous.

6 COMMITTEE MEMBER WONG: Amen.

7 CHAIRPERSON KIMSEY: Is that sort of the standard
8 interpretation in a court too?

9 COMMITTEE MEMBER WONG: Yes.

10 COMMITTEE MEMBER TANNEY: The reality of this is
11 it's -- well, never mind.

12 CHAIRPERSON KIMSEY: No, the reality is --

13 MS. LOUGH: -- each officer is going to say did
14 you do this and then the court will determine on a
15 case-by-case basis if they feel it was suitable.

16 COMMITTEE MEMBER TANNEY: Right.

17 MS. LOUGH: How about we leave it as it is?

18 COMMITTEE MEMBER TANNEY: And it goes to the
19 weight anyway, not the admissibility, so it's fine.

20 COMMITTEE MEMBER WONG: Correct.

21 MS. LOUGH: Torr, are you okay with that?

22 COMMITTEE MEMBER ZIELENSKI: Yep.

23 MS. LOUGH: Okay. I'm leaving it. That's
24 Article 5. You want to vote?

25 COMMITTEE MEMBER TANNEY: Well, wait. Do you

1 want me to go back and talk about the blood.

2 MS. LOUGH: Yes.

3 COMMITTEE MEMBER TANNEY: In the 23158, the way
4 it reads is -- and maybe justification for removing the
5 section is let's see, when it comes to a certified
6 phlebotomy technician drawing the blood, there has to be
7 policies and procedures approved by a physician or surgeon
8 appropriate to the location where the blood is being
9 drawn. And then it does say in accordance with State
10 regulations.

11 So my only concern would be if it conflicts. But
12 when it goes back to the regular taking of the blood, I
13 guess from anybody else, it says -- that's where it goes
14 again with, according to uniform standards, developed by
15 the Department, meaning the California Highway Patrol, in
16 cooperation with the State Department of Health Services,
17 or any other appropriate agency.

18 So I'm not sure it has to be in the regulation if
19 CHP -- Sergeant Davis, do you know if CHP has uniform
20 standards that have already been developed?

21 COMMITTEE MEMBER DAVIS: For drawing blood?

22 COMMITTEE MEMBER TANNEY: Do you know if the CHP
23 already has developed standards for the withdrawal,
24 handling, and preservation of blood?

25 COMMITTEE MEMBER DAVIS: The short answer is no,

1 I don't know for sure. But I can tell you that I'm not
2 aware of CHP officers ever withdrawing blood. It's
3 usually done by a nurse, or a phlebotomist, or a blood
4 tech.

5 COMMITTEE MEMBER TANNEY: Yeah, no, that's not
6 what I'm saying.

7 COMMITTEE MEMBER DAVIS: So when you say what
8 does CHP do, we're basically booking into evidence in
9 accordance with the procedures in the county in which
10 we're doing it.

11 COMMITTEE MEMBER TANNEY: So your department, at
12 this point, has not adopted uniform standards. It
13 probably needs to do that, since the statute requires that
14 it does that.

15 But in any event, I'm not -- whatever your desire
16 is, as far as keeping the regulations. It's just that I
17 think you have to consider, and one of the issues that we
18 dealt with during the chain -- all the litigation over
19 certified phlebotomy technicians being used, was that the
20 procedures and the instruments being used have changed so
21 much over time, that the way that it used to be done is no
22 longer necessarily the way it's done currently, different
23 equipment may be used.

24 So all I'll going to say is that however this is
25 drafted, it should anticipate that different equipment may

1 be used. It may be that you have some -- I'm just
2 throwing something out of the blue, and I have no idea.
3 But something that doesn't have a stopper. It may have
4 some other closing mechanism for example. In here it says
5 it has to be collected using a dry hypodermic needles or
6 syringes using clean, dry vacuum type containers that's
7 stocked with an inert stopper.

8 Well, is that going to last for the next 20
9 years?

10 COMMITTEE MEMBER WONG: Laura, this is Kenton.

11 COMMITTEE MEMBER TANNEY: Yeah.

12 COMMITTEE MEMBER WONG: Can we just go with some
13 kind of generalized, you know, currently acceptable
14 phlebotomy methods, clinical practice or some kind of --

15 COMMITTEE MEMBER TANNEY: I think that would be
16 much better, because I think that would --

17 COMMITTEE MEMBER WONG: Because that way, it
18 would kind of ebb and flow with whatever is currently
19 acceptable in the clinical field.

20 MS. LOUGH: And you're talking about 1(d) now?

21 COMMITTEE MEMBER TANNEY: I'm talking about 1(d)
22 and 1(e).

23 MS. LOUGH: Okay. So you want to give me the
24 language that you're proposing?

25 COMMITTEE MEMBER TANNEY: "Blood samples shall be

1 collected according to the standards accepted in
2 the..." -- I don't know something, "...scientific
3 community." Of course, APA may have a problem with that.

4 MS. LOUGH: Paul Kimsey would it be the standards
5 in the Health and Safety Code? Where does it fall for the
6 phlebotomist where they learn to --

7 CHAIRPERSON KIMSEY: That's Business and
8 Professions Code.

9 COMMITTEE MEMBER WONG: Thank you.

10 MS. LOUGH: Accepted in the B&P Code.

11 CHAIRPERSON KIMSEY: Right.

12 MS. LOUGH: B&P code.

13 COMMITTEE MEMBER TANNEY: Does it have that,
14 Paul? Does it go through what the protocols are? I don't
15 know that it does. I mean, what it says here under
16 phlebotomist is that it's approved by a physician.

17 CHAIRPERSON KIMSEY: Right. I don't know that
18 they get into this level of detail. The phlebotomy
19 regulations that I'm familiar with are more about the
20 training of the individuals and that sort of thing. I
21 don't know that it gets into, you know, dry vacuum, versus
22 wet, versus inert, versus those sorts of -- again, I
23 think --

24 COMMITTEE MEMBER TANNEY: If you want to go on, I
25 can look up real quick in the Business and Professions

1 Code.

2 CHAIRPERSON KIMSEY: I'm pretty sure it won't be
3 there, because I think, if I remember correctly, and this
4 goes back a number of years when we were doing that, it
5 did refer to some generalized language of standard, you
6 know, medical practice or something. The phlebotomy
7 regulations again that I'm familiar with was more about
8 the training and education and that sort of things of the
9 individual.

10 So I'm sorry, I can't be more helpful than that.

11 MS. LOUGH: I'm thinking of just at the 1(b) and
12 the 1(e) right now, just making a note that the language
13 is going to be provided. We're not going to vote on that,
14 but I think we can go ahead and vote on.

15 COMMITTEE MEMBER TANNEY: That's fine.

16 MS. LOUGH: Go ahead and vote on the rest of
17 Article 5, except for that part.

18 CHAIRPERSON KIMSEY: We have a couple comments
19 here in Richmond.

20 MS. GORDON: This is Ann Marie again. I just
21 think that it might be better to say, by a licensed
22 person -- do the phlebotomy by a licensed person and let
23 that play out in the court, because the more you specify
24 it, it gets -- you get caught up in all the minutia in the
25 court that are irrelevant to blood alcohol concentration.

1 COMMITTEE MEMBER TANNEY: The statute already
2 defines who can draw blood, so you can't -- the
3 regulations can't change that.

4 MS. GORDON: And I'm not suggesting that you do
5 that.

6 COMMITTEE MEMBER TANNEY: Oh, I thought you said
7 all the licensed people.

8 MS. GORDON: I'm suggesting -- okay.

9 MS. LOUGH: Because a blood tech, a
10 phlebotomy technician --

11 MS. GORDON: That wasn't my point.

12 CHAIRPERSON KIMSEY: I think the point was that
13 she wanted to leave it -- well, I shouldn't speak for you,
14 but I think she's trying to get away from specifications
15 and leave it to a licensed, you know, person that should
16 be responsible for doing it correctly.

17 MS. LOUGH: 23158 does that not include who is
18 authorized? Okay, that is in here, because we say under
19 1219.1(a) we add, "...processed in compliance with CVC
20 Section 23158." And that diverts the reader to who may
21 draw blood.

22 COMMITTEE MEMBER TANNEY: You could just say,
23 "Blood samples shall be..." -- are you talking about
24 saying, "...shall be collected..." -- oh, 1219.1(a) you
25 can just say, "Blood Samples shall be collected by

1 venipuncture from living individuals as soon as feasible
2 after an alleged offense and processed i.e. both of those
3 things in combines with 23158", and then drop the rest of
4 it.

5 Is that what you're suggesting, because it
6 already refers to 23158?

7 MS. LOUGH: No, because we don't want -- the
8 standard again would be cleaned with isopropyl alcohol.
9 We don't want that in forensic cases, not because we can't
10 find it, but we want to -- so we want to not drop. We
11 don't want to drop the rest of those.

12 But as far as 1(d) and 1(e), because the
13 technology there -- like for instance, now they have new
14 ways to collect it, new types of tubes, because of AIDS
15 and stuff. I think we should revisit that and see how
16 specific we want to be there or not, but the rest can be
17 the same.

18 COMMITTEE MEMBER TANNEY: I can work with you on
19 crafting that.

20 MS. LOUGH: I will put your name. Laura to do.

21 So then except for 1(d) and 1(e), then I think
22 we're ready for a vote on Article 5.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 Actually, still a comment from the Republic --
25 from the public.

1 To answer Laura Tanney's question, there is a
2 uniform standard for the collection and handling of blood
3 samples was prepared -- I think it was in the eighties.
4 It was prepared by the CHP and the DMV and the Department
5 of Health Services, so they do exist.

6 They perhaps need to be updated and maybe from
7 the standpoint of the qualifications of maybe personnel
8 to -- slight changes in the way we qualify people to
9 collect the sample.

10 I think regarding the inert container and the
11 inert stopper, I don't -- I think we should be careful and
12 not try to create a solution inn search a problem here.
13 I'm not sure that there's any problem -- we should first
14 determine that there's a problem with this current
15 language.

16 COMMITTEE MEMBER TANNEY: But, Clay, that's the
17 whole problem with these regulations is they're 20 years
18 old, and the reason -- the main reason we're here is
19 because they're obsolete because somebody didn't consider
20 changes that were coming in the scientific community.

21 So I think we can at least draft something that
22 is broad enough to handle those changes. And if there
23 uniform standards that have already been adopted, then
24 really the thing to do is not include this in regulations
25 and say in accordance with 23158 subdivision whatever that

1 was, that they should adopt them, and those should be
2 amended to reflect the standards of today.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 Follow-up comment. I'm not sure we're here
5 because of the failure of existing regulations to keep
6 pace with scientific progress. And on this particular
7 point, I believe that the current language, it includes
8 closures that prevent needles stick -- I mean, it doesn't
9 talk about needles. And so I think stoppers still need to
10 be inert and --

11 COMMITTEE MEMBER TANNEY: What if there's no
12 stopper.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

14 Well, there has to be a stopper, otherwise the
15 blood would leak all over the officer's pocket when he put
16 it in his pocket. So there has to be a stopper.

17 COMMITTEE MEMBER TANNEY: All right. In Any
18 event --

19 CHAIRPERSON KIMSEY: Well, sort of -- Laura, this
20 is Paul. I sort of like your idea that if there's already
21 existing standards or regulations that cover this, that we
22 shouldn't reinvent the wheel here. And so I agree with
23 Patty, I think, who said that let's sort of leave this
24 open and vote on the rest of the article.

25 COMMITTEE MEMBER TANNEY: That sounds good. That

1 will give us a chance to look at those uniform
2 standards --

3 CHAIRPERSON KIMSEY: Correct.

4 COMMITTEE MEMBER TANNEY: -- that currently exist
5 and see if there needs to be changes to those.

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
7 A follow-up comment from the public and the
8 republic.

9 Those standards unfortunately actually reference
10 Section 1219, the uniform standards. So we'll take a look
11 at it, but I think we're going to discover that it's
12 correct.

13 CHAIRPERSON KIMSEY: We'll be back then.

14 COMMITTEE MEMBER WONG: This Kevin in Sacramento.
15 Just a question for Clay. Where are those published at?
16 Obviously, I wasn't with the CHP in the eighties.

17 COMMITTEE MEMBER DAVIS: CHP

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 Well, they were published -- and again, I think
20 it's been awhile. They're a part of the handout that we
21 provide in terms of an application. They were created in
22 conjunction with the CHP, the DMV and the Department of
23 Health. So I assume, you can go to the CHP and get some.
24 Apparently, not.

25 Yeah, we probably need a better way of making --

1 I mean, it's having a Vehicle Code requirement referring
2 to a document that people don't know about is not a good
3 thing.

4 MS. LOUGH: The date I have for that is 1973.
5 And you probably weren't on the Highway Patrol then. I
6 think what's good though is you are sitting on this
7 Committee, and this Committee is going to determine
8 that -- the California Department of Justice has a
9 physical evidence bulletin that they put out. That's
10 nice. It does reference the 23158, and it's called
11 Uniform Standards for Withdrawal, Handling, and
12 Preservation of Blood Samples for Forensic Alcohol
13 Analysis.

14 We could, you know, get a copy of that maybe.

15 COMMITTEE MEMBER TANNEY: That's from 1998

16 MS. LOUGH: That's from 1998.

17 MR. FICKIES: That's on the CCI website.

18 COMMITTEE MEMBER TANNEY: Yes, I just found it.

19 This is Laura and I just found it on the website.

20 MS. LOUGH: I mean that is all information that
21 was done back in the sixties and seventies when the blood
22 alcohol program was just getting started, so it's no
23 wonder that a lot of people aren't familiar with it,
24 because, you know, it kind of happens and people are doing
25 things now and they don't remember why they're doing it or

1 how it got started. But that's what we'll address in our
2 current document.

3 CHAIRPERSON KIMSEY: Yeah, we have some requests
4 in Richmond for a bio break. So I would recommend that we
5 go ahead and vote on Article 5 minus the work that's going
6 to be done on 1219.1(b) and (e). Does that sort of
7 summarize where we are?

8 MS. LOUGH: Yeah.

9 CHAIRPERSON KIMSEY: Real quickly.

10 Ms. Tanney?

11 COMMITTEE MEMBER TANNEY: Yes.

12 CHAIRPERSON KIMSEY: Sergeant Davis?

13 COMMITTEE MEMBER DAVIS: Yes.

14 CHAIRPERSON KIMSEY: Mr. Zielenski?

15 COMMITTEE MEMBER ZIELENSKI: Yes.

16 CHAIRPERSON KIMSEY: Mr. Lyle?

17 COMMITTEE MEMBER LYLE: Yes.

18 CHAIRPERSON KIMSEY: Mr. Wong?

19 COMMITTEE MEMBER WONG: Yes.

20 CHAIRPERSON KIMSEY: Mr. Sedgwick?

21 COMMITTEE MEMBER SEDGWICK: Yes.

22 CHAIRPERSON KIMSEY: Ms. Anderson-Seaquist?

23 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes.

24 CHAIRPERSON KIMSEY: Dr. Kimsey, no.

25 So let's take a five minute break and we'll be

1 back.

2 (Thereupon a recess was taken.)

3 CHAIRPERSON KIMSEY: So why don't go ahead and
4 restart here at 3:23.

5 And before we move on to Article 6, I wanted to
6 talk a little bit about some logistics. What's the
7 feeling of the Committee, when would we like to meet
8 again. Since we've got about, you know, 35 minutes left,
9 I don't imagine that we're going to get through all the
10 articles. Although, we'll just have to sort of see.

11 But we probably will need to be going through
12 some articles. We have some gaps that people are going to
13 be collecting information for. We can talk a bit about --
14 maybe it's too early to set up or maybe this is the time
15 to setup the subcommittee that's going to look at the
16 Statement of Reasons for part of the package that's going
17 to go to Agency.

18 It's really pretty much -- about the quickest we
19 can probably turn around a meeting, I think, would be in a
20 month. So the soonest we could probably meet would be
21 early August. Obviously, we're already in the summer and
22 I'm greatly appreciative of everybody making the time to
23 be here today. We have a full committee. That's
24 wonderful.

25 But what's the feeling of the group on when we

1 want to meet next?

2 COMMITTEE MEMBER ZIELENSKI: Sometime in August
3 would be fine with me.

4 COMMITTEE MEMBER DAVIS: Same for me.

5 CHAIRPERSON KIMSEY: So that first or second week
6 of August seems to work for people. We can send out
7 some -- I see a shaking.

8 COMMITTEE MEMBER WONG: I'm on vacation. I will
9 not return until the third week in August.

10 CHAIRPERSON KIMSEY: How does the third week of
11 August work for people?

12 COMMITTEE MEMBER TANNEY: I have a big hearing.
13 I think it's on the 19th of August with -- and I don't
14 know how many days it's going to last. So I just have to
15 play it by ear. I won't know for sure until August 1st if
16 it's even going to happen.

17 CHAIRPERSON KIMSEY: That hearing for you sort of
18 consumes your time after the 19th, it sounds like. Is
19 there a window in there before the 19th, or are you going
20 to be getting in preparation.

21 COMMITTEE MEMBER TANNEY: I'll be preparing for
22 it, but I could -- one day is not going to be an issue if
23 it's like the first week in August. But Kenton is not
24 available then.

25 CHAIRPERSON KIMSEY: I don't have an August

1 calendar in front of me, but if the third week of August
2 doesn't start with the 19th, it sounds like there may be a
3 day or two in there that --

4 COMMITTEE MEMBER TANNEY: Yeah, well, hold on. I
5 have a calendar to look at.

6 CHAIRPERSON KIMSEY: Yeah, Kenton is showing me
7 one.

8 COMMITTEE MEMBER WONG: I'm coming back on the
9 17th.

10 CHAIRPERSON KIMSEY: So it looks like, Laura,
11 that the 17th is a Monday. And you're starting on
12 Wednesday the 19th.

13 How about Tuesday?

14 COMMITTEE MEMBER TANNEY: You know, I have
15 witnesses I have to prepare.

16 CHAIRPERSON KIMSEY: Sure. No, I understand.

17 So that moves us pretty much -- so you think that
18 your hearing on the 19th will take you through the rest of
19 August?

20 COMMITTEE MEMBER TANNEY: No, I don't think so.
21 And then the other option is to do it the last week in
22 July if everybody is available.

23 CHAIRPERSON KIMSEY: Yeah. I've got a wedding
24 I'm -- that's awfully close.

25 COMMITTEE MEMBER WONG: That's really pushing it,

1 because have to follow Bagley-Keene.

2 COMMITTEE MEMBER ZIELENSKI: I won't be here the
3 last week of July.

4 COMMITTEE MEMBER TANNEY: Probably the week after
5 the 19th, I can probably do it any day of that week.

6 CHAIRPERSON KIMSEY: So that's the week of the
7 24th through the 28th?

8 COMMITTEE MEMBER TANNEY: Yeah.

9 CHAIRPERSON KIMSEY: Okay. So how does that last
10 week in August work for people?

11 COMMITTEE MEMBER WONG: Tentatively?

12 CHAIRPERSON KIMSEY: Tentatively.

13 COMMITTEE MEMBER ANDERSON-SEAQUIST: That should
14 be fine for me.

15 CHAIRPERSON KIMSEY: We'll send out a note, just
16 so that everybody can look at their calendars when they
17 get back to their office, but we'll tentatively look at
18 dates, August 24th through the 28th.

19 COMMITTEE MEMBER WONG: Seven weeks.

20 CHAIRPERSON KIMSEY: Seven weeks.

21 Okay, and there's some obvious things we've
22 already talked about. The one thing, do we want to -- I
23 don't know if we want to work on setting up the
24 subcommittee for the -- what do we call that?

25 MS. LOUGH: The ISOR. The I-s-o-r.

1 CHAIRPERSON KIMSEY: Right.

2 MS. LOUGH: And I guess the package committee.
3 Maybe, it's the whole committee to put the package
4 together.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
6 Comment from the public. Keep in mind that if we
7 setup a subcommittee, members or nonmembers of more than
8 three people -- or more than two people, we run into
9 Bagley-Keene requirements.

10 CHAIRPERSON KIMSEY: Is this something the
11 Committee should take -- the full Committee should take
12 on?

13 MS. LOUGH: I don't think the full Committee is
14 going to want to hack this stuff out.

15 CHAIRPERSON KIMSEY: If that's the case, do we
16 have people that are willing to be on a subcommittee?

17 MS. LOUGH: I'd be a member of the public member.

18 CHAIRPERSON KIMSEY: Do we have a committee
19 member?

20 MS. LOUGH: Janet?

21 COMMITTEE MEMBER ANDERSON-SEAQUIST: I can
22 probably do it.

23 CHAIRPERSON KIMSEY: Okay. So we have a
24 subcommittee so far. And I think that may be the limit,
25 maybe not, but of one committee member and one public

1 member, I guess.

2 MS. LOUGH: I think you can get one more public
3 member. We did that with the one with Terry and Jennifer
4 and I on the last one.

5 CHAIRPERSON KIMSEY: Okay.

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
7 But when we did that, we had to notice -- if you
8 guys want to set it up, that's fine. We had to notice and
9 make -- each meeting and make them open to the public.

10 MS. LOUGH: Oh, right, okay. Well, then we don't
11 have to do that with just two of us, correct?

12 COMMITTEE MEMBER WONG: Correct.

13 MS. LOUGH: I think that's fine. Jan and I can
14 probably come up with some kind of a draft thing.

15 COMMITTEE MEMBER ANDERSON-SEAQUIST: Okay, that
16 would be great.

17 MS. LOUGH: So Janet, then you and I will talk?

18 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes.

19 CHAIRPERSON KIMSEY: Other logistical issues
20 before we sort of get back into reviewing the document?

21 Patty, why don't you walk us through Article 6.

22 MS. LOUGH: Okay, because we only have a half
23 hour left, I think we could maybe jump to Article 8,
24 because I suspect we'll have fewer disagreements with
25 Article 8. And we might be able to get that one complete

1 in the amount of time we have left.

2 CHAIRPERSON KIMSEY: Okay.

3 MS. LOUGH: Article is Records on page 37.

4 CHAIRPERSON KIMSEY: This is about records?

5 MS. LOUGH: Starts with 1222.

6 CHAIRPERSON KIMSEY: Yes.

7 MS. LOUGH: So any comments on 1222?

8 22.1?

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

10 Comment from the public. We have a half an hour,
11 so let's not go too fast.

12 Under general, under the description Forensic
13 Alcohol Laboratory and law enforcement agencies, we
14 actually -- under the breath alcohol analysis section
15 1222.2, the Committee decided we didn't care about keeping
16 records -- making any requirements for the actual people
17 doing the testing, their records. So for lots of reasons,
18 the Committee's pretty loathe to reference law
19 enforcement. Do you want to delete that, and law
20 enforcement agencies, here.

21 COMMITTEE MEMBER TANNEY: My position all along
22 has been these regulations don't control law enforcement
23 agencies, so it's my recommendation that that comes out of
24 this provision.

25 COMMITTEE MEMBER DAVIS: I would agree. I don't

1 see what records we would keep other than training
2 records, which the labs should also have.

3 CHAIRPERSON KIMSEY: Okay. So we're going to
4 drop, "and law enforcement agencies."

5 MS. LOUGH: Yes, that's what I did.

6 CHAIRPERSON KIMSEY: Okay.

7 MS. LOUGH: Okay. .1(a)?

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

9 Actually, a second comment from the public.

10 We don't have to discuss this. The Department's
11 position, I believe -- as a member of the public would
12 recommend that the requirement that, "Such records shall
13 be available for inspection by the Department upon
14 request." I would recommend we retain that.

15 MS. LOUGH: Our justification was that the
16 information is available. If the State wanted to take a
17 look at it, they could. It's also available through the
18 Public Records Act. So it's not like anything is a
19 secret.

20 CHAIRPERSON KIMSEY: I mean, you mention the
21 Department can look at that. How would that be, if we
22 dropped this?

23 Is it somewhere else in the -- that we're
24 retaining it somewhere here in this package, the
25 Department's ability to inspect records?

1 MS. LOUGH: Well, that would be the same as if CHP
2 said, "Hey, we want to see how you keep your records", or
3 DMV said, "We want to see how you keep your words." Then
4 you just contact the lab and make those arrangements.

5 CHAIRPERSON KIMSEY: And if the lab says --

6 MS. LOUGH: So if we're going to put Department
7 in here, I mean, why would we limit it to one agency and
8 not everyone who might have a hand in it?

9 COMMITTEE MEMBER TANNEY: The public defenders
10 might want to see it.

11 MS. LOUGH: Public defenders might want to see
12 it.

13 COMMITTEE MEMBER WONG: It's a public record,
14 anybody can see it.

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

17 Just to answer you, I believe, rhetorical
18 question, but to answer your rhetorical question. I think
19 the reason you might want to include that provision is
20 because the statutes specifically authorize the Department
21 to regulate this activity, while it doesn't authorize the
22 CHP to regulate this activity.

23 I think more generally, and Goldie is not here,
24 the Department really does things in response to specific
25 authorities and specific mandates. I don't think they do

1 much in the way of just doing Public Records Acts Requests
2 out of curiosity for things.

3 So anyway, to answer your rhetorical question,
4 you would include it because the statutes specifically
5 mandate the Department to regulate this activity.

6 MS. LOUGH: You know, to keep that in would imply
7 that there's been a regular process in place that the
8 State has come in and said we want to see your records on
9 this and your records on that, because there's a lot of
10 records that are maintained. And the fact is that in the
11 last 30 years, that has not happened. It has been a wish
12 of the Department to come in and do this.

13 You know, the on-site inspections have been
14 infrequent. So I really don't see a need to put it in
15 here. If the Department has some reason, some concern
16 that they want to come in the lab and take a look at
17 something, they could set that up. I wouldn't put it in
18 here in a blanket form like this, because the Department
19 has not had sufficient interest in the past to perform
20 that when they had that as a responsibility and function.

21 CHAIRPERSON KIMSEY: And I agree with what you've
22 said about the historical aspects. I mean, obviously the
23 Department's role here now is quite a bit different than
24 it has been historically, where we may have had other
25 avenues of assessing a laboratory's function, whether it

1 be, you know, overseeing the training, the whatever.
2 Since the Department is going to have so much more limited
3 ability, based on the Committee's recommendations, if the
4 Department does get a complaint, which would probably be
5 the type of situation that we would want to go to a
6 laboratory on a complaint investigation, having something
7 in the regulations would just make it more clear about the
8 Department's role. But I agree with everything you said,
9 Patty, about the history and of us not doing that.

10 But moving forward, I think, like Clay sort of
11 alluded to, the Department, you know, if it does get a
12 complaint, obviously we could look at it that, okay, it's
13 a public record and we're coming in asking for a public
14 record request. But I think, you know, our attorneys like
15 to have things a little more clear cut what we can do in
16 the regulations.

17 So I don't know, I would argue for leaving it in.
18 I guess it gets to be an argument about a Rule 100 change
19 possibly. But, you know, it's up to the Committee.

20 COMMITTEE MEMBER ZIELENSKI: I agree with you. I
21 think that that clause should be left in there, with
22 respect to the Department having that ability to go in and
23 see the records. I mean, if they're saying that it's
24 something that, you know, the State could do or the Agency
25 could do going through and looking at a Public Records Act

1 requests or what have you, it seems to me there's no real
2 concern about these records being available and inspected
3 by the State. Then it seems, it just clarifies, it makes
4 it easier, in fact, it may have some deterrent effect on a
5 lab, if there's some concern about the State easily being
6 able to come in and take a look at the records.

7 So I think it's been there historically, and I
8 think overall it will just make access to the records
9 easier.

10 CHAIRPERSON KIMSEY: Other comments?

11 COMMITTEE MEMBER ANDERSON-SEAQUIST: I think it
12 needs to be removed. I think it's redundant.

13 COMMITTEE MEMBER TANNEY: Why don't we take a
14 vote using either option? So take a vote first with
15 removing it and take a vote then with keeping it in?

16 CHAIRPERSON KIMSEY: Well, if all we hear is that
17 there's two of us out of the seven or whatever --

18 COMMITTEE MEMBER TANNEY: Well, I don't know if
19 other people just aren't interested in speaking up about
20 it.

21 CHAIRPERSON KIMSEY: Well, no, that's what I was
22 going to say. I mean, obviously there's two of us that
23 have concern about this. We'd have to have another four
24 people sort of to even come to a tie, so -- I mean,
25 another two people to come to a tie. I think -- is there

1 anyone else that has concerned, I mean, that would want to
2 leave this in besides Mr. Zielenski and myself?

3 COMMITTEE MEMBER DAVIS: I would probably vote
4 with you as well, given what I've heard and the
5 transparency issues. If it's PRA-able anyway, what's the
6 harm in having it there?

7 COMMITTEE MEMBER LYLE: If you left it in, it
8 could be redundant, and I would leave out the, "by the
9 Department" phrase. So it just reads, "Such records shall
10 be available for inspection on request."

11 COMMITTEE MEMBER TANNEY: Of course, if you do
12 that, then any member of the public can walk in. In a
13 Public Records Act request, there's 10 days to respond.
14 You know, upon request, does that mean immediately? I
15 guess, it doesn't say immediately.

16 CHAIRPERSON KIMSEY: Well, I think the Department
17 historically -- and I'm not talking about here obviously,
18 but in other regulatory programs when we say upon request,
19 that can be immediately.

20 COMMITTEE MEMBER TANNEY: Historically, the
21 Department had a much bigger role as far as the licensing
22 and the proficiency testing and all of that stuff. It's
23 now been removed. So just because it historically has
24 always been there, to me isn't justification for keeping
25 it there.

1 CHAIRPERSON KIMSEY: No. No, I would agree. And
2 like I said, historically we obviously haven't used that
3 in this situation. I think moving forward it looks like
4 the Department's role, we would only be asking for this
5 probably based on a complaint investigation, which might
6 have some urgency to it.

7 Yeah. So we have three people that are
8 interested in leaving something like this in. So maybe,
9 Laura, your suggestion of having two votes here is
10 worthwhile.

11 COMMITTEE MEMBER ZIELENSKI: I guess my question
12 is what is the harm? I mean, if we're really concerned
13 about the quality of these labs, and these labs doing, you
14 know, upstart and, you know, upstanding work and
15 straight-up work, and there's not any concerns of any
16 rogue lab out there or any type of lab work that's not
17 being, you know, upfront and honest and sound, then what's
18 the concern here, because it sound like the State has ever
19 meddled in their business in the past. It sounds like
20 there's going to be less involvement with the State now.
21 But for ease, for transparency, you know, it seems to me
22 this is just a good-faith clause, as far as I'm concerned.

23 COMMITTEE MEMBER TANNEY: At the risk of this
24 taking up the next 20 minutes, I have one comment to make.
25 And this all goes back to whether there is any enforcement

1 mechanism at all on the part of the Department. And if
2 there's no enforcement mechanism, then what's the point of
3 having the records available at their request. But that
4 was the whole enforcement portion of this was the big
5 debate that we had at the very beginning of these
6 committee meetings. And there's no -- as far as I know,
7 there's no answer to that question.

8 COMMITTEE MEMBER ZIELENSKI: But then why concede
9 it?

10 I mean, my innocent question is if we're not 100
11 percent certain there's no enforcement, why don't we leave
12 in language that allows -- because I think many of us
13 happen to believe that perhaps some enforcement should be
14 allowed here. Otherwise, it doesn't make an awful lot of
15 sense.

16 Why should we concede that? Why not leave this
17 in, even if there isn't enforcement, this is another means
18 that allows for transparency. So for those of us that
19 think that enforcement should be something that's implied,
20 this seems to be a back-up in case enforcement is not
21 allowed, because it allows for ease to get into the
22 records and it creates transparency. And as far as I'm
23 concerned, you know, I think we all want these labs to do
24 upfront quality work.

25 COMMITTEE MEMBER TANNEY: I agree. But does

1 ASCLD already have some review process for accreditation?

2 And I don't know the answer to that.

3 COMMITTEE MEMBER DAVIS: I agree with Torr. I'm
4 not going to reopen the debate about what oversight, if
5 any, the Department still has and trying to interpret, I
6 think, it's 10725 or whatever section was left.

7 But even if the answer is they have no oversight
8 whatsoever, there's still no harm in this clause, I don't
9 see.

10 COMMITTEE MEMBER ZIELENSKI: Because especially
11 since we don't know for certain whether or not there is
12 any oversight and enforcement, right? If we're all
13 concerned about that, why should we concede that and --
14 you know, even if we do concede it, it seems to me this
15 offers potential ease into the records.

16 COMMITTEE MEMBER TANNEY: Well, personally, I
17 think it adds confusion to the issue of what their role is
18 in all of this. That's my position on it. I think we
19 should just go ahead and take a vote.

20 CHAIRPERSON KIMSEY: And we could actually just
21 vote on this one section, I mean, it strikes me.

22 COMMITTEE MEMBER TANNEY: Or we could wait until
23 we're done with the article. I don't know if anything
24 else bears upon this.

25 CHAIRPERSON KIMSEY: Okay. But I think it's

1 certainly feasible to just -- like you, I think you were
2 implying that we just have two votes. We vote on the
3 whole article and then we can come back and vote on this
4 particular section.

5 COMMITTEE MEMBER TANNEY: What I was saying is
6 why don't you take a vote saying how many of those feel --
7 you know, how many of those who want to vote to have it
8 removed, how many want to vote to keep it in. It doesn't
9 matter, because once you have one vote, you'll know the
10 answer to the other vote. So you only really need one
11 vote.

12 But, you know, for the fiscal times that we're in
13 right now, to include a provision for the Department to go
14 around the stay and request records, to me would be
15 potentially an unnecessary expenditure of money as well.

16 So I'm not really sure what the purpose is of
17 having that there. I just -- that's my feeling about it.
18 But apparently -- I mean, obviously other people have
19 different feelings. So unless there's other comments on
20 the issue, I think we can either take a vote or move on to
21 another section within the Article.

22 COMMITTEE MEMBER ZIELENSKI: Well, if I can just
23 respond to that. We're all hopeful that the economy
24 changes and that it doesn't continue in its direction now.

25 COMMITTEE MEMBER TANNEY: Yeah, I hope that the

1 Government gets rid of all of the inefficiencies in the
2 state for the long term.

3 COMMITTEE MEMBER ZIELENSKI: Yeah. Well, we all
4 do. But I mean, this is not something that I think is
5 going to cause great economic stress on the system. And I
6 think it stands for transparency, which is, I think,
7 something that our government has lacked for quite some
8 time now.

9 COMMITTEE MEMBER TANNEY: Well, I think the
10 Public Records Act is all about transparency and that's
11 why that exists.

12 CHAIRPERSON KIMSEY: Well, why don't we go head
13 and have a vote. I mean, is there any further, you know,
14 points to be made? I think now maybe a good time to go
15 ahead and have a vote on this particular section.

16 Any other points that want to be made before
17 we've a vote?

18 So let me sort of phrase this. This is 1222.1(a)
19 we are talking about.

20 MS. LOUGH: No, 1222.1.

21 CHAIRPERSON KIMSEY: Oh, 1222.1. Okay so the
22 whole. Correct that, it's 1222.1. And I guess we'll vote
23 to retain it or to remove it.

24 MS. LOUGH: It's just 1222. It's not .1. The
25 last sentence in 12 -- well, there is no numbering system

1 on it.

2 CHAIRPERSON KIMSEY: Okay.

3 MS. LOUGH: Last sentence in 1222, "Such records
4 shall be available for inspection by the Department on
5 request."

6 CHAIRPERSON KIMSEY: Okay. Thank you for
7 clarifying that.

8 So a yes vote would be to retain the strikeout
9 and a no vote would be to retain the language. Does that
10 make sense? Is that understandable?

11 COMMITTEE MEMBER ANDERSON-SEAQUIST: No.

12 COMMITTEE MEMBER DAVIS: Retain or delete. Just
13 vote to retain or delete the sentence.

14 MS. LOUGH: Which one?

15 COMMITTEE MEMBER DAVIS: "Such records shall be
16 available for inspection by the Department of upon
17 request."

18 MS. LOUGH: Okay, so the vote is to retain?

19 COMMITTEE MEMBER DAVIS: Or delete.

20 COMMITTEE MEMBER WONG: Retain or delete.

21 MS. LOUGH: Retain the statement.

22 CHAIRPERSON KIMSEY: Maybe that's how we'll do
23 the vote, retain or delete. No yes or no, just retain or
24 delete.

25 Okay.

1 Ms. Tanney?
2 COMMITTEE MEMBER TANNEY: Delete.
3 CHAIRPERSON KIMSEY: Sergeant Davis?
4 COMMITTEE MEMBER DAVIS: Retain.
5 CHAIRPERSON KIMSEY: Mr. Zielenski?
6 COMMITTEE MEMBER ZIELENSKI: Retain.
7 CHAIRPERSON KIMSEY: Mr. Lyle?
8 COMMITTEE MEMBER LYLE: Delete.
9 CHAIRPERSON KIMSEY: Mr. Wong?
10 COMMITTEE MEMBER WONG: Delete.
11 CHAIRPERSON KIMSEY: Mr. Sedgwick?
12 COMMITTEE MEMBER SEDGWICK: Delete.
13 CHAIRPERSON KIMSEY: Ms. Anderson-Seaquist?
14 COMMITTEE MEMBER ANDERSON-SEAQUIST: Delete.
15 CHAIRPERSON KIMSEY: Dr. Kimsey, retain.
16 Okay, let's continue on.
17 MS. LOUGH: 1222.1(a)?
18 The vote is 5 to 3 in favor of deleting, by my
19 records.
20 CHAIRPERSON KIMSEY: Correct.
21 MS. LOUGH: So it gets deleted.
22 CHAIRPERSON KIMSEY: Correct.
23 MS. LOUGH: Let me make a note.
24 22.1(a)?
25 1(a)(1)?

1 1(a)(2)?

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 Actually --

4 MS. LOUGH: 1(a)(3)

5 CHAIRPERSON KIMSEY: We have comment here, I

6 think, in Richmond.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 1222.1(a)(1). Since the Committee, under 1216,
9 eliminated any requirement that the personnel complete an
10 examination -- I believe this is correct -- the reference
11 to an examination there, which previously referred to the
12 Department's comprehensive program, which included a
13 written examination, I'm wondering if reference to
14 examination will be confusing, or whether it meets the
15 necessity standard?

16 MS. LOUGH: I think what they were saying is
17 whatever it is that a laboratory does to train the person
18 that you're going to maintain those records, whatever that
19 will be, that any education, experience, continuing
20 education, training that people have, anything that
21 happens, during the employ of that person, you will have a
22 record of it.

23 COMMITTEE MEMBER TANNEY: I understand Clay's
24 point. I think if you said -- you could say, "include the
25 qualifications of each such person, including, but not

1 limited to, everything..." and take out the "...and
2 examinations", and that way, if there are examinations,
3 that a lab requires, it's in there. But I think his point
4 is these regulations don't require examinations.

5 MS. LOUGH: Okay. Well, how do you want it to
6 read?

7 COMMITTEE MEMBER TANNEY: Is that all right,
8 Clay?

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 Sounds good.

11 MS. LOUGH: Starting with, "...the record shall
12 include..."?

13 COMMITTEE MEMBER TANNEY: Say, "...including, but
14 not limited to records of education..." --

15 CHAIRPERSON KIMSEY: "...experience, training,
16 and performance in proficiency tests.", I guess.

17 MS. LOUGH: "...experience, training, performance
18 in proficiency tests..."

19 CHAIRPERSON KIMSEY: And then just put a period
20 after "tests" and drop "and examinations".

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Actually, another comment. Let's see if we can
23 agree on two things in a row here.

24 Since we've used the ASCLD-LAB term "competency
25 test" with respect to employees, perhaps the word

1 "competency test" should be there as opposed to
2 "proficiency test".

3 MS. LOUGH: That would be training records. That
4 would be part of a person's training records, the
5 competency testing.

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

7 Well, I think "...up-to-date records of persons
8 in its employ who are qualified..." again it includes
9 training records. It doesn't necessarily include
10 laboratory proficiency tests. I'm just buying into this
11 ASCLD-LAB terminology.

12 COMMITTEE MEMBER ANDERSON-SEAQUIST: Clay,
13 proficiency tests -- or your competency test is part of
14 your training. That would be kept in your training
15 records.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

17 So are you agreeing with me. I don't understand
18 your --

19 COMMITTEE MEMBER TANNEY: It says training in
20 here.

21 COMMITTEE MEMBER ANDERSON-SEAQUIST: It says
22 training in there already.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 So I'm just saying, previously there was a
25 requirement in the regulations that candidates, in order

1 to qualify, complete a proficiency test. Under ASCLD-LAB,
2 we define proficiency test as a laboratory activity, which
3 may include some analysts, but not all analysts.

4 COMMITTEE MEMBER TANNEY: So you're saying the
5 proficiency test should come out?

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
7 And perhaps even replaced by competency test.

8 COMMITTEE MEMBER TANNEY: Or just take it out and
9 leave training records.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
11 Okay.

12 MS. LOUGH: But you want them to -- you want the
13 labs to maintain the proficiency records.

14 COMMITTEE MEMBER TANNEY: This is a person as an
15 employee.

16 MS. LOUGH: You want all their proficiency tests
17 to be retained.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 And that's under 1222.1(a)(5).

20 CHAIRPERSON KIMSEY: Right.

21 MS. LOUGH: Okay. Then you can take it out
22 there.

23 CHAIRPERSON KIMSEY: I would agree.

24 MS. LOUGH: Okay, "...to include education,
25 experience, and training."

1 I think I have what you want.

2 1(a)(2)?

3 1(a)(3)?

4 1(a)(4)?

5 1(a)(5)?

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

7 Actually -- I'm sorry go on.

8 MS. LOUGH: 1(a)(6)?

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

10 Comment from the public regarding 1(a)(6).

11 Again, from a clarity issue, we have, "Records of
12 such determinations of accuracy..." and we added,
13 "...maintenance and/or calibration..." We actually nowhere
14 in the regulations -- we to have go back and look at this
15 again. But to date, I don't believe we have included any
16 regulatory requirements regarding the maintenance of
17 instruments, nor have we included any -- I think we struck
18 the calibration of instruments, which may be a good thing.
19 Some labs never calibrate instruments. It's a factory
20 service -- anyway, there's probably a clarity issue here,
21 in that we have references to records that we nowhere else
22 provide any level of detail as to what those records
23 consist of.

24 MS. LOUGH: I'm also looking to see if we
25 included that just for the regular blood analysis and

1 such, because it really should be of all the -- any of the
2 equipment used in the laboratories. Laboratories should
3 have a maintenance record of what's going on in there. If
4 you change a column in your GC, there should be some kind
5 of record of it that you changed it.

6 And so maybe we want to change this, because it
7 says of, "...breath testing instruments..." So maybe it
8 should just say "...of testing instruments..." I think
9 the standard practice is for laboratories to -- do
10 maintain these records. And certainly defense attorneys
11 ask all the time, I'd like to see your maintenance records
12 for this instrument.

13 So maybe we want to just say, "...of testing
14 instruments..."

15 CHAIRPERSON KIMSEY: I would agree with dropping
16 "of breath" and just going with "testing".

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

19 That still doesn't respond to my, what I believe,
20 will be a concern by the Office of Regulations or by the
21 APA, in that, I think, in general, if you're going to
22 include a requirement that they have records of
23 calibration of an instrument, then there has to be some
24 previous imposition of a requirement that they actually
25 calibrate the instrument, same for maintenance. We

1 actually eliminated the section that says that the
2 instruments shall be maintained in working order. We
3 thought that was too restrictive.

4 MS. LOUGH: But that doesn't tell you if they
5 ever went out of order or not.

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
7 I'm not going to come chasing your tail here. I
8 believe that the Office of Regulations would find -- and
9 we can just wait on this -- but that if you're going to
10 include the requirement to maintain records of
11 calibration, then there should be some previous reference
12 to a requirement that they calibrate the instruments, and
13 perhaps some detail as to what that involves.

14 MS. LOUGH: Well, this is underlined showing that
15 it's an addition. And I believe it's standard good
16 practice to have maintenance logs for your instruments.

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
18 We must be getting tired, because I don't see you
19 responding to my comments. I won't go -- I won't say
20 anymore.

21 MS. LOUGH: And perhaps I'm not understanding it.

22 CHAIRPERSON KIMSEY: No, I think Clay's point was
23 is that nowhere else are we requiring laboratories to do
24 maintenance or calibrate instruments. And so now we're
25 asking for records for something that we're not requiring.

1 So I think we all agree that laboratories should maintain
2 records of calibration and maintenance. I guess, maybe
3 whether or not they're required to under regulations to
4 even do maintenance or calibration.

5 MS. LOUGH: I think there are some labs that
6 simply don't report that information.

7 CHAIRPERSON KIMSEY: Oh, no, I would agree.

8 MS. LOUGH: Yeah. And I think that this is a
9 good opportunity to take a look at that.

10 COMMITTEE MEMBER DAVIS: What if you just added
11 the words, "if conducted" in parenthesis after
12 "calibration". Wouldn't that solve it?

13 CHAIRPERSON KIMSEY: I'm sorry, Sergeant Davis,
14 did you say calibration --

15 COMMITTEE MEMBER DAVIS: If I heard it from Clay
16 correctly, some labs don't even perform this. So why not
17 add in parenthesis after the word "calibration", "if
18 conducted."

19 CHAIRPERSON KIMSEY: Oh, if conducted.

20 COMMITTEE MEMBER TANNEY: You don't have to worry
21 about that, because they won't have any records if they're
22 not conducted.

23 MS. LOUGH: It does say, "...as a laboratory may
24 perform..." So if the laboratory does something --

25 CHAIRPERSON KIMSEY: We want to know about it.

1 MS. LOUGH: -- you want to know about it.

2 CHAIRPERSON KIMSEY: Okay, let's move on.

3 MS. LOUGH: Right now I've omitted "breath". And
4 it just says "testing instruments".

5 The next one is 1(a)(7).

6 COMMITTEE MEMBER SEDGWICK: You need to add --
7 this is Paul Sedgwick from San Diego. You need to add the
8 word "of" in front of "persons".

9 CHAIRPERSON KIMSEY: I'm sorry, Paul, where is
10 that?

11 COMMITTEE MEMBER SEDGWICK: 1221(a)(7)

12 CHAIRPERSON KIMSEY: Oh, (a)(7).

13 MS. LOUGH: "Of persons" rather than "to
14 persons".

15 COMMITTEE MEMBER SEDGWICK: To persons would
16 eliminate it.

17 Oh, I'm sorry.

18 MS. LOUGH: It's underlined.

19 COMMITTEE MEMBER SEDGWICK: It's getting late.

20 MS. LOUGH: It is getting late. It's underlined,
21 "...provided to persons..." is that okay?

22 COMMITTEE MEMBER SEDGWICK: Yes.

23 MS. LOUGH: 22.2?

24 2(a)?

25 2(a)(1)?

1 2(a)(2)?

2 2(a)(3)?

3 And, Laura, I have a note that you gave me some
4 wording for the justification section. I couldn't quite
5 read it. So Title 17 is concerned with something about
6 the regulation of laboratories's and not law enforcement
7 agencies.

8 COMMITTEE MEMBER TANNEY: I'll look it up.

9 MS. LOUGH: Okay

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

11 Actually, comment from the public.

12 1222.1(a)(7), you guys go too fast for me.

13 In striking, "...for law enforcement agencies",
14 apparently the -- I mean, these regulations only pertain
15 to testing in support of drunk driving laws. So I know
16 sometimes we -- you know, you train the Park District
17 staff, and/or you may train staff that do boating. I
18 don't that is covered here.

19 But I think ultimately they may not be employees.
20 They may sub it out. I think ultimately, the operator
21 needs to have some relationship with law enforcement in
22 order for any of these regulations to apply. So I'm not
23 completely sure why we strike "for law enforcement
24 agencies" as far as records of training.

25 MS. LOUGH: The justification that was provided

1 says that the record keeping requirements should apply to
2 all forensic laboratories regardless of whether the
3 analyses are performed by or for law enforcement agencies.
4 And that's why it was removed, because it wasn't needed.
5 It doesn't matter who you do it for or who does it, it
6 needs to be retained.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 Okay, just quickly. I mean, I know we're getting
9 close to four. So labs who are training to persons who
10 operate who's not employed -- who's not involved with law
11 enforcement. Is there an example of that or just -- I
12 mean, for instance, you might provide training on a PAS
13 device to a school resource officer to check people before
14 they go to a dance, but I don't know --

15 MS. LOUGH: PAS devices are not under Title 17.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

17 Okay. Well, maybe he's got an evidential device.

18 COMMITTEE MEMBER WONG: I can give an example.

19 This is Kenton. We used to train officers for the VA
20 Administration, you know, and they weren't specifically
21 law enforcement.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

23 You said they were officers?

24 COMMITTEE MEMBER WONG: Pardon?

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Did you say officers for the VA

2 COMMITTEE MEMBER WONG: The VA administration.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 But they're officers.

5 CHAIRPERSON KIMSEY: But they're maybe not law

6 enforcement.

7 COMMITTEE MEMBER WONG: I don't think they were

8 officers.

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

10 I thought you said officers. So they could then

11 utilize that test for law enforcement purposes or was --

12 again, the regulations apply to chemical testing of

13 individuals involved with traffic accidents or traffic

14 violations. So if the VA wasn't -- I mean, you may want

15 that training just because they're interested in it. But

16 if it wasn't used for law enforcement purposes, you

17 don't -- there's no need for that training. It's

18 redundant.

19 COMMITTEE MEMBER TANNEY: Are we talking about

20 (a)(7) or (a)(3)?

21 CHAIRPERSON KIMSEY: 1(a)(7).

22 MS. LOUGH: It just say that you're going to keep

23 the records. It doesn't matter who you train. It's kind

24 of redundant to say it's for law enforcement. I mean you

25 could have trained someone in the laboratory on how to use

1 the instrument. You could train someone from the nursing
2 staff that draws blood to go out on the check points, so
3 they can also take a test. They're not law enforcement,
4 but they're a person out there.

5 So it really doesn't matter -- we don't need to
6 specify it's for law enforcement. It's for anyone who you
7 train you want to keep those records.

8 COMMITTEE MEMBER WONG: Sure.

9 CHAIRPERSON KIMSEY: No, I would agree.

10 Any other questions about Article 8?

11 I think we have two --

12 MS. LOUGH: The only thing I have then is that
13 Laura is just going to -- right now we're going to keep
14 22.2(a)(3), just as it is, unless Laura checks and finds
15 that we need to make it kind of a complete sentence. So
16 it's probably ready for a vote then, is it, with the
17 changes we have?

18 CHAIRPERSON KIMSEY: Right. I would agree.

19 MS. LOUGH: It looks like it's ready for a vote.

20 CHAIRPERSON KIMSEY: This is Paul, I would agree.
21 Let's see. This is a separate vote from the previous one
22 we did on the section. So we're now voting on the entire
23 Article. And I guess we've already expressed our opinions
24 on that one section.

25 MS. LOUGH: Yes, it's just Article 8.

1 CHAIRPERSON KIMSEY: It's just the rest of

2 Article 8. So a yes vote is approval.

3 Ms. Tanney?

4 COMMITTEE MEMBER TANNEY: Yes.

5 CHAIRPERSON KIMSEY: Sergeant Davis?

6 COMMITTEE MEMBER DAVIS: Yes.

7 CHAIRPERSON KIMSEY: Mr. Zielenski?

8 COMMITTEE MEMBER ZIELENSKI: Yes.

9 CHAIRPERSON KIMSEY: Mr. Lyle?

10 COMMITTEE MEMBER LYLE: Yes.

11 CHAIRPERSON KIMSEY: Mr. Wong?

12 COMMITTEE MEMBER WONG: Yes.

13 CHAIRPERSON KIMSEY: Mr. Sedgwick?

14 COMMITTEE MEMBER SEDGWICK: Yes.

15 CHAIRPERSON KIMSEY: Ms. Anderson-Seaquist?

16 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes.

17 CHAIRPERSON KIMSEY: Dr. Kimsey, no.

18 So we're at 4 o'clock. I want to thank you all
19 for your patience and professionalism, and we will get out
20 some information on a meeting the last week of August.

21 MS. LOUGH: Thank you.

22 CHAIRPERSON KIMSEY: Thank you all.

23 (Thereupon the California Department of
24 Public Health, Forensic Alcohol Review
25 Committee meeting adjourned at 4:02 p.m.)

1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Department of Health Services,
7 Forensic Alcohol Review Committee meeting was reported in
8 shorthand by me, James F. Peters, a Certified Shorthand
9 Reporter of the State of California, and thereafter
10 transcribed into typewriting.

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

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 15th day of July, 2009.

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