

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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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

REVIEW COMMITTEE MEMBERS

Mr. Paul Kimsey, Ph.D., Chairperson(Richmond)  
Sergeant Kevin Davis(via teleconference in Sacramento)  
Ms. Patricia Lough(via teleconference in San Diego)  
Mr. Bruce Lyle(via teleconference in San Diego)  
Mr. Paul Sedgwick(via teleconference in San Diego)  
Ms. Laura Tanney(via teleconference in San Diego)  
Mr. Kenton Wong(Richmond)  
Mr. Torr Zielenski(via teleconference in Sacramento)

STAFF

Mr. Clay Larson, Chief, Abused Substances Analysis Section  
Dr. Mary Soliman, Chief, Food & Drug Laboratory Services

ALSO PRESENT

Mr. Terry Fickies, California Department of Justice  
Mr. Mike Grubb, San Diego Police Department  
Mr. Mark Kalchik, California Department of Justice  
Mr. Jon Knapp, Valley Toxicology Services  
Mr. Bill Phillips, California Department of Justice  
Mr. Bob Reckers, Orange County Sheriff-Coroner Forensic  
Science Services  
Ms. Jennifer Shen, San Diego Police Department

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1 PROCEEDINGS

2 CHAIRPERSON KIMSEY: Okay. Good morning again.

3 This is Paul Kimsey. I want to welcome everyone to the

4 8th meeting of the Forensic Alcohol Review Committee.

5 And our charge is basically to evaluate the

6 current California Department of Public Health regulations

7 pertaining to forensic alcohol analysis, Title 17

8 California Code of Regulations, and consider additions

9 that are reasonably necessary to ensure the competence of

10 the laboratories and employees to prepare, analyze, and

11 report the results of the tests and comply with applicable

12 laws.

13 And for those interested, the current regulations

14 are available on line at [www.calregs.com](http://www.calregs.com).

15 Why don't we go around and first identify the

16 Forensic Alcohol Review Committee members that are

17 participating.

18 I'm Paul Kimsey. I'm representing Department of

19 Public Health.

20 COMMITTEE MEMBER WONG: Kenton Wong representing

21 the California Association of Criminalists.

22 CHAIRPERSON KIMSEY: And, let's see, in San

23 Diego. Is that where we are today?

24 COMMITTEE MEMBER SEDGWICK: Paul Sedgwick

25 representing the California Association of Toxicologists.

1 CHAIRPERSON KIMSEY: Welcome.

2 COMMITTEE MEMBER LYLE: Bruce Lyle representing  
3 the California State Coroners' Association.

4 CHAIRPERSON KIMSEY: Okay.

5 COMMITTEE MEMBER LOUGH: Patty Lough representing  
6 the California Association of Crime Laboratory Directors.

7 CHAIRPERSON KIMSEY: Okay.

8 COMMITTEE MEMBER LYLE: And Laura will be here.  
9 She's driving around looking for a parking spot. But she  
10 is here, I know that.

11 CHAIRPERSON KIMSEY: Okay. And in Sacramento?

12 COMMITTEE MEMBER DAVIS: Kevin Davis representing  
13 the California Highway Patrol.

14 COMMITTEE MEMBER ZIELENSKI: Torr Zielenski  
15 representing the CPDA.

16 CHAIRPERSON KIMSEY: Okay. This looks like we're  
17 going to have a full Committee meeting today. That's  
18 great.

19 Let's go ahead. And for those that would like to  
20 introduce themselves as part of the public -- there's not  
21 a requirement that you do that, but if you'd like to  
22 identify yourselves.

23 Here in Richmond?

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

25 I don't want to.

1 (Laughter.)

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 Clay Larson, California Department of Public  
4 Health.

5 MR. KALCHIK: Mark Kalchik, California Department  
6 of Justice Laboratory, Fresno.

7 MR. RADAHD: Shah Radahd with Laboratory Field  
8 Services.

9 MS. DeSOUSA: Maria DeSousa, Laboratory Field  
10 Services.

11 MR. de RAMA: Rick de Rama, Food and Drug  
12 Laboratory Branch.

13 MS. ZENAIDA ZABALA: Zenaida Zabala, Food and  
14 Drug Lab.

15 MR. THANDI: Harby Thandi, Food and Drug  
16 Laboratory Branch.

17 CHAIRPERSON KIMSEY: Okay. That's it for  
18 Richmond.

19 In San Diego?

20 Anyone in --

21 MR. GRUBB: Mike Grubb from the San Diego Police  
22 Department.

23 MR. RECKERS: I'm Bob Reckers from the Orange  
24 County Sheriff Crime Lab.

25 MS. SHEN: I'm Jennifer Shen, San Diego Police

1 Department.

2 CHAIRPERSON KIMSEY: Anyone else in San Diego?

3 In Sacramento?

4 MR. TOMS: Michael Toms, Sacramento County Crime

5 Lab.

6 MR. ZERBE: Jeremy Zerbe, Sacramento County Crime

7 Lab.

8 MR. KNAPP: Jon Knapp, Valley toxicology.

9 MS. FLERIDA ZABALA: Flerida Zabala, Department  
10 of Motor Vehicles.

11 MS. CARTER: Sandra Carter, Department of Motor  
12 Vehicles.

13 CHAIRPERSON KIMSEY: Okay. I think that's  
14 everyone.

15 Lets's see. About the only item -- I guess  
16 there's two items. One is -- I've just received --  
17 personally received notification that those wonderful Form  
18 700s are going to be due here fairly soon. And this is an  
19 annual filing. And it's my understanding, as Committee  
20 members, you are all also in that esteemed group of  
21 individuals that also need to file your Form 700s, just as  
22 a reminder.

23 The other item is basically to review the agenda  
24 as we have sent out. Are there any additions or deletions  
25 or comments to the agenda as it was sent out to folks?

1           Well, if not, I'll just remind everyone that we  
2 do have someone transcribing the notes here today, which  
3 we have done also in the past.

4           And so I think at our last meeting we talked  
5 about having reports from the Committee members with  
6 regards to the current draft regulatory work product that  
7 we've been working on, that -- trying to get some feedback  
8 from the various agencies or groups that we all represent.

9           And does anyone want to go first with regards to  
10 if they've been able to get any feedback from their group  
11 or agency that they represent?

12           Well, I'll go first. I'm the spokesperson for  
13 the Department of Public Health. Obviously we have been  
14 tracking the Committee's work product fairly closely. The  
15 Department's perspective is that, you know, we're very  
16 much as a state agency required to follow the legislation  
17 pretty much as written. And our perspective has been to  
18 obviously comply with the legislation. We are not  
19 interested in seeing the Department's responsibility with  
20 regards to the regulations reduced anymore than has been  
21 done so by the regulations. And so we are interested in  
22 maintaining the roles and responsibilities that we  
23 currently do have. And that's part of -- you know, the  
24 discussion this afternoon is the role of the Department.  
25 So obviously the regulatory work product that we have in

1 front of us at this point does further remove the  
2 Department's or reduce the Department's role past what the  
3 legislation may have mandated. And the Department is  
4 interested in maintaining a number of those roles and  
5 responsibilities. And some of that obviously we can  
6 further discuss this afternoon.

7 But that's sort a summary of our Department's  
8 perspective on the work product.

9 Let's see, if I just go down the list here, since  
10 I'm sort of at the bottom here, I don't know, Patty Lough,  
11 do you have any report from the crime lab directors.

12 COMMITTEE MEMBER LOUGH: I do. There are several  
13 things throughout -- you know, we've redrafted this so  
14 many times, our original proposal, I think we left out a  
15 few things. So I did catch a few things. You want me  
16 just to go through it with what I have?

17 CHAIRPERSON KIMSEY: Sure.

18 COMMITTEE MEMBER LOUGH: All right. Under  
19 1216.1 -- and I am looking at under (J)(3), it's page 5  
20 for me. I don't know if everybody has kind of the same  
21 thing.

22 CHAIRPERSON KIMSEY: Yes, I have that.

23 COMMITTEE MEMBER LOUGH: Okay. Because we did  
24 kind of combine things here, we probably should add  
25 something -- language about labs that are only performing

1 alcohol analysis versus labs that are only performing  
2 breath alcohol analysis, because we're requiring the  
3 breath people to use this method. They have to analyze  
4 blood. So I think we need to look at that language.

5 Do you want to do that as we go?

6 CHAIRPERSON KIMSEY: Sure.

7 COMMITTEE MEMBER LOUGH: Okay. And it would  
8 also -- I would think it would be helpful if the people  
9 that are in our audience from the different organizations,  
10 this is a good time for their input as well, so that  
11 everybody's happy with our language.

12 CHAIRPERSON KIMSEY: Okay. What are you  
13 proposing?

14 COMMITTEE MEMBER LOUGH: All right. So let me  
15 look again and see what (J) is to perform alcohol  
16 analysis.

17 Okay. J is probably okay if you go down to, on  
18 the bottom of the page, the number 4. We'd probably want  
19 to say something there that's specific for the breath  
20 alcohol people. Where it says, "At a minimum successfully  
21 replicate the known results of a variety of four  
22 competency test samples ranging from zero to .25 percent  
23 using the methods of Article 6." So that the breath  
24 people would not use Article 6. So is this a place we  
25 want them to do the same thing using wet bath simulators

1 or dry gases from Article 7? I'm just tossing that out.

2 CHAIRPERSON KIMSEY: So you're looking for some  
3 description of the process that the breath alcohol  
4 analysis folks would use -- be required to use?

5 COMMITTEE MEMBER LOUGH: If some labs -- I don't  
6 know in California because I don't know what all the labs  
7 do. But I know there are laboratories that do not do  
8 blood alcohol analysis. So if the lab is doing breath  
9 only, you know, there may not be a point to have them do  
10 competency testing on blood alcohol samples to show that  
11 they do the breath alcohol program.

12 So do we want to put something in there that,  
13 using their methods, they have to take competency tests  
14 with solutions or standards that would be appropriate for  
15 their use?

16 MR. FICKIES: Question.

17 CHAIRPERSON KIMSEY: Go ahead.

18 MR. FICKIES: This is Terry Fickies from the  
19 Department of Justice.

20 I don't think there's any requirement now for a  
21 proficiency testing regarding breath alcohol for  
22 laboratories that do blood. And so I don't necessarily  
23 see the point of putting a proficiency test in there for  
24 doing breath alcohol testing unless you do it for  
25 everybody. And I don't think that technology is smooth at

1 the moment.

2           COMMITTEE MEMBER LOUGH: Okay. And I know where  
3 I've worked in the past the scientific staff was trained  
4 on the breath instrument, how it worked and how to use it.  
5 But we were never really given any unknowns or anything to  
6 run to show we know how to use it. So if we want to just  
7 eliminate that then from that number 4 for  
8 laboratories -- well, in fact, for all of the positions,  
9 the supervisor, the analysts and the trainees, do we want  
10 to eliminate -- do we want to eliminate the requirement  
11 for labs that do breath alcohol only to have to do  
12 competency tests in blood alcohol? Should we state in  
13 there for labs that perform blood alcohol analysis they  
14 must do the competency test and make it clear?

15           MR. KNAPP: I have a comment.

16           CHAIRPERSON KIMSEY: Go ahead.

17           MR. KNAPP: Hi. I'm Jon Knapp, toxicology.

18           From my recollection, the last time I looked at a  
19 list of laboratories, back from when we were all licensed  
20 several years ago, that I got from Clay Larson, I don't  
21 recall any laboratories that were only licensed for  
22 breath. There were a lot of them that were only licensed  
23 for alcohol -- for blood alcohol but not licensed for  
24 breath, but I don't think there were any the other way  
25 around.

1 COMMITTEE MEMBER LOUGH: That may be.

2 MR. KNAPP: Clay could clarify that.

3 CHAIRPERSON KIMSEY: Clay, would you like to  
4 clarify?

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

6 Clay Larson, Department of Public Health.

7 A couple comments. There actually are three  
8 laboratories -- or maybe I should say two and a half  
9 laboratories that do a breath only. Alameda County  
10 Sheriff's Department only does breath samples. San  
11 Francisco Police Department's laboratory only does  
12 -- well, they don't do a blood alcohol analysis. They  
13 only service -- provide services to the breath operators  
14 training program and the determination of accuracy.

15 And then Santa Clara has a separate facility.  
16 And since in the old days labs were places, they have a  
17 separate facility that has only -- only supports breath  
18 alcohol analysis.

19 The Department has and had -- or has a  
20 proficiency testing program consisting of a series of  
21 aqueous alcohol samples that are distributed to those labs  
22 that only do breath alcohol analysis.

23 The logic in not requiring labs that do blood  
24 alcohol analysis to also analyze aqueous alcohol samples  
25 is that the analytical train, if you will, of determining

1 a blood alcohol concentration includes a step wherein the  
2 lab determines the concentration of an aqueous alcohol  
3 secondary standard. So proficiency testing the lab on  
4 blood alcohol analysis, we felt -- this goes back many  
5 years -- captures the competency in analyzing the  
6 standards they use to calibrate the method. So  
7 currently -- under the current program there is a  
8 proficiency testing requirement for labs that only support  
9 breath alcohol analysis.

10 MR. FICKIES: Question to Clay.

11 How large are the -- so you send out. Are they  
12 sample -- are they proficiencies that you can run in a  
13 simulator?

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

15 No, no, no. We're testing the ability of the lab  
16 to determine the concentration of a sample by, in this  
17 case, a directed oxidimetric analysis. Expectation is  
18 that if they can do that competently, then they can  
19 prepare and analyze solutions which are then used in a  
20 simulator or they can evaluate the concentration of a dry  
21 gas material.

22 COMMITTEE MEMBER LOUGH: Patty Lough.

23 I don't have an objection to keeping language in  
24 and not making a distinction. I just didn't want to make  
25 a hardship on a lab that does breath only. But if those

1 labs that do it now are used to that, I think it's fine  
2 and I'm happy with the language as it is.

3 CHAIRPERSON KIMSEY: Okay. Next item.

4 Did you have another item, Patty?

5 COMMITTEE MEMBER LOUGH: Oh, yeah. Just a sec?

6 CHAIRPERSON KIMSEY: Sure.

7 COMMITTEE MEMBER LOUGH: Okay. On page 6 -- I  
8 think we have all the same page -- on page 6, this number  
9 6, it starts out "Or in lieu of..." Just to update  
10 Department of Health Services to Department of Public  
11 Health.

12 In fact, that might -- do we need to -- maybe we  
13 don't need to do it there, because that's talking about  
14 people who were given those qualifications by there. So I  
15 don't think we have to do it there. Right? People who  
16 were -- it was Department of Health when they got their --

17 CHAIRPERSON KIMSEY: Right.

18 COMMITTEE MEMBER LOUGH: Okay. So that one's  
19 okay, we'll keep the same.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
21 Quick point.

22 CHAIRPERSON KIMSEY: One comment.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
24 This is an ongoing and never-ending story. The  
25 process is continuing. The Department of Public Health,

1 quote-unquote, last week qualified someone. So the  
2 process is ongoing. Currently the Department of Public  
3 Health is qualifying people under the regulations.

4 COMMITTEE MEMBER LOUGH: So we should probably  
5 update this language then. Do we include the former or  
6 just the new or do we refer back to the old?

7 CHAIRPERSON KIMSEY: I think that's a technical  
8 issue that we can set. I mean obviously whether it was  
9 the Department of Health Services or the current  
10 Department of Public Health, I mean we can certainly work  
11 on the appropriate language.

12 COMMITTEE MEMBER LOUGH: Okay.

13 CHAIRPERSON KIMSEY: I mean I don't know off the  
14 top of my head, but it's pretty clear.

15 COMMITTEE MEMBER LOUGH: Okay. My next one is on  
16 page 9, 1219.1(a). We have left out a lot of information  
17 from our original stuff. So we need to add in there where  
18 it says, "Blood samples shall be collected by venipuncture  
19 from living individuals as soon as feasible after an  
20 alleged offense..." I'd like to see added to that "...in  
21 compliance with CVC Section 23158(f)" -- like Frank -- and  
22 then finishing the "and only persons authorized by Section  
23 23158(a) of the Vehicle Code."

24 COMMITTEE MEMBER TANNEY: Why don't you just  
25 say --

1 COMMITTEE MEMBER LOUGH: -- (f) and (a)?

2 COMMITTEE MEMBER TANNEY: -- in compliance  
3 with -- no -- with Section 23158.

4 COMMITTEE MEMBER LOUGH: (a) and (f)?

5 COMMITTEE MEMBER TANNEY: Why do you even have to  
6 designate the subparagraphs?

7 COMMITTEE MEMBER LOUGH: Okay. Because I don't  
8 know what else 158 has.

9 COMMITTEE MEMBER TANNEY: But if that's the law,  
10 then it needs to be in compliance with all of it anyway,  
11 right?

12 COMMITTEE MEMBER LOUGH: Right.

13 Okay. So we're just saying then we can -- well,  
14 this is -- see, this is talking about the samples  
15 collected.

16 Okay. That's still 158 and then the 158(f).

17 Okay. So I think if we just remove that A and  
18 just have it the Section 23158, and then that covers  
19 everything.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 Another comment.

22 COMMITTEE MEMBER LOUGH: For those that may not  
23 remember the F section, that's that -- it has the chain of  
24 custody information on it, what information's on a label,  
25 what label was placed on the tubes, things like that.

1 CHAIRPERSON KIMSEY: We have a comment --

2 COMMITTEE MEMBER LOUGH: That's the uniform  
3 standards.

4 CHAIRPERSON KIMSEY: We have a comment here in  
5 Richmond.

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
7 Yeah, I would think the current language  
8 referenced there to Section 23158 does appear refer to the  
9 immediately preceding "persons authorized." So I'm not  
10 sure that simply dropping the A there would necessarily as  
11 a clarity issue inform the reader that not only must the  
12 persons be authorized under 23158 but the procedures must  
13 follow the uniform standards which are authorized under --  
14 I actually have 23158(j), but it may have changed. So I  
15 don't think just deleting -- as Ms. Tanney suggested,  
16 deleting the A would clearly state what you want to state.

17 COMMITTEE MEMBER LOUGH: What if we said blood  
18 samples shall be collected and handled? And then that  
19 would cover both of those areas.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
21 Well, I think it's going to take a little more  
22 wordsmithing than that, because again the immediately  
23 preceding language there is persons authorized by Section  
24 23158(a).

25 COMMITTEE MEMBER LOUGH: Right, okay.

1           Okay. But everybody agrees we do need to add  
2 something in there or else we have to take the A off? We  
3 either have to take the subdivision A off or -- if we keep  
4 it specifically, then we have to add the F.

5           I like the idea that we just reference the  
6 section. So maybe we should change that whole paragraph  
7 and just say, "Samples will be collected and handled in  
8 accordance with..."

9           Is there anyone who disagrees that a change is  
10 needed?

11           COMMITTEE MEMBER WONG: No.

12           COMMITTEE MEMBER ZIELENSKI: Torr Zielenski from  
13 Sacramento.

14           I'm not sure that actually having the code  
15 section -- seems to me that 23158(a) is simply defining  
16 those people that are authorized. So if we would -- if  
17 that's the section that delineates who it is that's  
18 authorized, then why do we need to make reference to  
19 anything else?

20           COMMITTEE MEMBER LOUGH: Because we don't say  
21 anything in here showing the people doing the work. We're  
22 not referencing the fact that how that sample is to be  
23 handled after collection. So we're just out of courtesy  
24 giving a reference to make sure that they are familiar  
25 with those other sections.

1           COMMITTEE MEMBER ZIELENSKI: I'm not sure that A  
2 makes reference to the handling or processing. It simply  
3 talks about who it is that's authorized to do it and how  
4 timely it's supposed to be done.

5           COMMITTEE MEMBER LOUGH: That's correct. And  
6 Section F tells you what to do with it after that.

7           COMMITTEE MEMBER TANNEY: What do you say about  
8 subdivision A of 1219.1?

9           COMMITTEE MEMBER LOUGH: Oh, A of 1219.1. Oh.  
10          Well, we can add the next one or -- we can  
11 just --

12          COMMITTEE MEMBER TANNEY: Take out the "and".  
13 "...offense and only..."

14          COMMITTEE MEMBER LOUGH: "...offense only by  
15 persons..."

16          COMMITTEE MEMBER ZIELENSKI: Either that or you  
17 can add -- you know, where it says, "Blood samples shall  
18 be collected and processed" under the two code sections on  
19 23158 is -- you know, the F would then address the  
20 collection and the handling of the collection, and then it  
21 also defines within that particular aspect the people that  
22 are authorized.

23          COMMITTEE MEMBER LOUGH: Right. And then at that  
24 time I think we would have the reference to the section  
25 itself and not the subsections, because then the reader

1 should look at 23158 and make sure everything is covered.

2           So if we said that shall be collected and  
3 processed from living individuals as soon as feasible  
4 after an offense, if that's not otherwise in the A  
5 section, and then only by persons authorized, which I  
6 think is the A section, we can just say -- remove the  
7 "only by persons authorized" and say "in accordance with  
8 CVC Section 23158." I think then that would clarify both  
9 of them and just have to have one reference.

10           MR. PHILLIPS: I think you're right. This is  
11 Bill Phillips. It's actually Section J of that prior  
12 section of best procedures in A says, "The Department in  
13 cooperation with the Department of Health Services or any  
14 other appropriate agency shall adopt uniform standards for  
15 withdrawal, handling, and preservation of blood samples  
16 prior to analysis." So that's what J says. And A  
17 determines the persons that can do the procedures.

18           COMMITTEE MEMBER LOUGH: That could be, Bill,  
19 because the last one that I have, it was revised in 1973.  
20 So there certainly could be some changes to it since -- it  
21 could be J. The one I'm -- the copy I'm working with  
22 shows F.

23           So if it were to say, "Blood samples shall be  
24 collected and processed by venipuncture from living  
25 individuals --

1 COMMITTEE MEMBER TANNEY: No, collected by  
2 venipuncture --

3 COMMITTEE MEMBER LOUGH: -- and processed --

4 COMMITTEE MEMBER TANNEY: -- from living  
5 individuals --

6 COMMITTEE MEMBER LOUGH: -- from living  
7 individuals as soon as feasible.

8 COMMITTEE MEMBER TANNEY: -- and processed --

9 COMMITTEE MEMBER LOUGH: -- after an alleged  
10 event and processed, collected -- hang on. Wasn't that  
11 supposed to be collected by venipuncture as soon as  
12 feasible after an offense and processed, but according to  
13 in compliance with?

14 Okay, try this. "Blood samples shall be  
15 collected by venipuncture from living individuals as soon  
16 as feasible after an alleged offense and processed in  
17 compliance with CVC Section 23158."

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
19 We have a comment.

20 CHAIRPERSON KIMSEY: Do you have a comment?

21 Here in Richmond we have a comment.

22 Please identify yourself.

23 MS. DeSOUSA: Maria DeSousa, Lab Field Services.

24 I think I have a quick comment regarding blood  
25 collection. Apparently -- as far as I know, but I don't

1 know the exact section, in Business and Professional Code  
2 addresses collection of blood for forensic purposes. And  
3 individuals who collect blood have to have a certain  
4 certification. So you may want to include that in this  
5 section.

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

7 Another comment.

8 CHAIRPERSON KIMSEY: Another comment here in

9 Richmond.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

11 Maria's right. However, the section 23158 (a)  
12 refers to Business and Profession Code sections. So that  
13 may be captured. In general, the APA recommends that if  
14 you have multiple requirements, in this case you have a  
15 requirement for how you handle, preserve, and collect the  
16 sample and who collects it, that they ought to be -- they  
17 ought to be described in separate sections or subsections  
18 so you don't have one catch-all section that introduces  
19 nine requirements.

20 So I think you might want to have a 1219.1(a)(1),  
21 which reads something like, "Blood samples shall be  
22 collected in accordance with the uniform standards for  
23 withdrawal, handling, and preservation of blood samples  
24 for forensic alcohol analysis adopted pursuant to Section  
25 23158" -- it is J -- "of the Vehicle Code." So I would

1 think you'd want -- I would think you -- you might be  
2 advised to separate the two separate and distinct  
3 requirements as two sections or subsections.

4 CHAIRPERSON KIMSEY: Other comments?

5 COMMITTEE MEMBER LOUGH: Can we come to a  
6 decision on this so that we don't have to come back to it?

7 CHAIRPERSON KIMSEY: Well, you had a proposed  
8 language which I know our stenographer got down. And then  
9 there was a recommendation that there may need to be a  
10 second section -- or second section to this?

11 What is the feeling of the Committee?

12 You want to repeat your comment, Clay,  
13 succinctly?

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
15 What do you mean succinctly?

16 No, I propose that we add a separate Section  
17 1219.1(a)(1), that read "The red blood samples shall be  
18 collected in accordance with the uniform standards for  
19 withdrawal, handling, and preservation of blood samples  
20 for forensic alcohol analysis adopted pursuant to Section  
21 23158(j) of the Vehicle Code."

22 One of the problems, by the way, with just  
23 referring to 23158 in general is when you go to the  
24 Vehicle Code, it doesn't really give you those standards.  
25 It refers you to a now 25-, 30-year-old document that was

1 prepared by CHP and DMV and DHS which describes the  
2 procedures for handling blood sample -- for collecting and  
3 handling blood samples. So additional value might be in  
4 actually naming the document in that subsection.

5 Is that succinct?

6 CHAIRPERSON KIMSEY: Comment?

7 COMMITTEE MEMBER TANNEY: This is Laura Tanney.

8 The thing is is the statute is controlling  
9 because that's legislation. And Title 17 can refer to  
10 the -- I mean the statute has what you're looking for, it  
11 sounds to me. It has the authorized persons and it has  
12 the reference to the processing. So it seems to me that  
13 you can make this really simple by just stating what we  
14 said in the first place. The way it's written now is a  
15 limitation. But if you say that they shall be collected  
16 and processed in compliance with Section 23158, you're not  
17 placing any limitations on it. You're making it open for  
18 referring people to the statute and saying, "Here is the  
19 legislative authority for what you have to do."

20 So I don't think you need to be so specific in  
21 this, because 23158 is controlling anyway.

22 CHAIRPERSON KIMSEY: We had another comment here  
23 in Richmond.

24 MR. KALCHIK: Mark Kalchik, DOJ.

25 Maybe a middle ground on this would be to break

1 it up like Clay has suggested, but bring it up as (a)  
2 blood alcohol samples shall be collected by venipuncture  
3 from living individuals as soon as feasible after the  
4 alleged offense" -- and then do (1) -- "only by persons  
5 authorized by Section 23158(a)" -- and (2) -- "as accorded  
6 by procedures listed in 23158(j).

7 COMMITTEE MEMBER LOUGH: That's fine. It's just  
8 another way of saying the same thing.

9 COMMITTEE MEMBER TANNEY: Well, the only other  
10 problem -- this is Laura again. The only other problem  
11 with that is that if 23158 is changed by the Legislature  
12 in the future, again you're limiting yourself to  
13 subdivisions. And as we now know, to go back and change  
14 the regulations is a very long, tedious process. And by  
15 saying just in compliance with 23158, you're leaving that  
16 open to whatever changes are made in 23158.

17 COMMITTEE MEMBER LOUGH: Patty Lough. I agree.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
19 Comment.

20 CHAIRPERSON KIMSEY: Another comment here in  
21 Richmond.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

23 This is in response to Laura Tanney's comments.

24 The purpose of regulations of course, to clarify  
25 and make specific the statutes. Her last comment that,

1 you know, you run into problems when subsections get  
2 changed, it's interesting to note that the current  
3 regulations as they exist now refer to Section 13354, so  
4 it's 13,000 sections away apparently. So that the  
5 Legislature is free not only to change subsections, but to  
6 change major sections. So this is not a real prophylactic  
7 particular for that potential problem.

8 COMMITTEE MEMBER LOUGH: Patty Lough. I just  
9 wanted to call attention to that area, because it is not  
10 noted anywhere. And I think a new analyst coming on just  
11 needs to be aware to look in that section.

12 So do we have an agreement?

13 CHAIRPERSON KIMSEY: Why don't you restate it for  
14 our stenographer.

15 COMMITTEE MEMBER LOUGH: The one -- who?

16 COMMITTEE MEMBER WONG: Yours.

17 COMMITTEE MEMBER LOUGH: Mine said, "Blood  
18 samples shall be collected by venipuncture from living  
19 individuals as soon as feasible after an alleged offense  
20 and processed in compliance with CVC Section 23158."

21 COMMITTEE MEMBER TANNEY: You could add both in  
22 there -- this is Laura again -- just so there's no  
23 confusion that we're only talking about processing. We  
24 could say, "Blood samples shall both be collected by  
25 venipuncture from living individuals as soon as feasible

1 after an alleged offense and processed, in compliance with  
2 Section 23158.

3 MR. KALCHIK: Comment.

4 CHAIRPERSON KIMSEY: Another comment, Richmond.

5 MR. KALCHIK: Mark Kalchik.

6 By putting that in compliance with the CVC  
7 section as a process, does that apply to the collection by  
8 venipuncture, or does that open up that area?

9 COMMITTEE MEMBER TANNEY: That's why I suggested  
10 putting both. But actually I think maybe that is not a  
11 good idea. But you're right, we want to make sure that in  
12 compliance with 23158 applies to both the processing and  
13 the collection in the language.

14 It says by the authorized persons.

15 CHAIRPERSON KIMSEY: And this is Paul.

16 I'm happy with what has been suggested by Patty  
17 Lough. I think though that this discussion is a little --  
18 it's illustrative of part of our process in the sense that  
19 we really haven't had any disagreement on what it is we  
20 want to say. It's just how we're going to say it from a  
21 technical perspective. And, you know, we've spent a good  
22 amount of time, which has been good. That's our role and  
23 our responsibility. But I think there's some technical  
24 guidance that obviously we're not -- we don't have the  
25 technical expertise with regards to the Administrative

1 Procedures Act.

2 But, anyhow, I'm happy with the way Patty Lough  
3 has described it.

4 COMMITTEE MEMBER TANNEY: So am I.

5 COMMITTEE MEMBER LOUGH: So for now we can just  
6 keep it as that, it's still a working document?

7 CHAIRPERSON KIMSEY: Yes.

8 COMMITTEE MEMBER LOUGH: Okay. Let me find my  
9 next one.

10 Page 11, 1220.2 Subsection (a)(1) and (A). In  
11 there somewhere we've lost our calibrators. So we need to  
12 add some language I think that talks about three-point  
13 calibration, whether they're going to be a high and a low,  
14 what kind of decimal places those are going to be. That's  
15 all missing now.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
17 What section?

18 CHAIRPERSON KIMSEY: This is page 11, 1220.2 --

19 COMMITTEE MEMBER LOUGH: -- 1220.2 Subsection  
20 (a), and then there's a (1) and an (A) under that. And we  
21 need to add -- we need to beef that up.

22 CHAIRPERSON KIMSEY: Does anyone have some  
23 language they want to propose or do -- the fact that we  
24 wanted to include reference to a three-point calibration,  
25 is this previous regulatory language that we left off or

1 is this something new?

2 COMMITTEE MEMBER LOUGH: No, I don't believe it  
3 was in the original Title 17. But it is the procedure  
4 that laboratories are using.

5 MR. FICKIES: Question. Terry Fickies.  
6 What's this three-point calibration?

7 COMMITTEE MEMBER LOUGH: Excuse me. I didn't  
8 hear.

9 MR. FICKIES: What do you mean by three-point  
10 calibration? I think we use various -- pardon? I think  
11 we use a secondary standard at the front and the back of a  
12 run.

13 COMMITTEE MEMBER LOUGH: And when you calibrate  
14 the instrument before you do -- you probably check a 10 20  
15 30 standard, make sure the instrument's looking good and a  
16 blank in there. And then you throw a quality reference  
17 solution on your subject samples with some blanks and run  
18 that throughout the day. I think that's the typical. So  
19 I'm talking about that initial three-point calibration  
20 check of the instrument prior to subject samples for blood  
21 alcohol.

22 MR. FICKIES: That's a no, no. No way, Jose. At  
23 the start of the day we run a blank, a secondary standard,  
24 a QC, a five-way standard. And at the very end of a run  
25 we run a QC and a secondary standard.

1           And in addition I want to propose some additional  
2 set of standards that should be run on at least during the  
3 day.

4           But, anyway, we only do the three-point thing --  
5 or is it six point? -- when we do the -- when we qualify  
6 the method for DOHS or DPA.

7           COMMITTEE MEMBER LOUGH: Okay. So there is a  
8 variation then between labs.

9           Also, I notice labs routinely will run the sample  
10 with the interfering substances as well at the beginning  
11 of every run. So --

12          MR. FICKIES: We do that.

13          COMMITTEE MEMBER LOUGH: -- I know different  
14 labs -- yeah.

15          Okay. So we want to put some language in there  
16 then to maybe talk about some -- at one point our  
17 standards run -- I mean we're not talking about anything,  
18 whether we're running an 08 standard with yours or, you  
19 know -- I think we need to put something in there and to  
20 talk about decimal places on that standard.

21          MR. PHILLIPS: Patty, Bill Phillips.

22          COMMITTEE MEMBER LOUGH: Yes, Bill.

23          MR. PHILLIPS: Yes, we would like to add changes  
24 to Section B that would -- 1220.2 B -- large B. And we  
25 would like to include a new standard that is a NIST.

1 Traceable instead of the "or establish the concentration,"  
2 we'd like to use the word "and establish the  
3 concentration". And we would like to add a new definition  
4 at the beginning of page -- or at the end of page 3 that  
5 would talk about an external alcohol standard being added  
6 to the run. And then let me ask Terry to explain the  
7 process.

8 MR. FICKIES: We would like to propose that the  
9 laboratories at least once a day run an external alcohol  
10 standard which would be purchased from outside and would  
11 be NIST traceable, and require that this be run in  
12 duplicate in the run, but agree within either 0.005 or  
13 0.010 of the published value.

14 COMMITTEE MEMBER LOUGH: You know, my  
15 disagreement with that is now we're getting specific and  
16 we're defining how every laboratory is going to operate,  
17 which is going to change how labs do. For instance, those  
18 labs that run a three-point calibration every time before  
19 subject samples probably feel that all labs should do  
20 that. I think we need to be real careful not to get too  
21 specific with this but to have some general statement  
22 there about at a minimum what needs to be run, some  
23 definition of that.

24 MR. PHILLIPS: Well, one of our concerns -- Bill  
25 Phillips again. One of our concerns is the preparation of

1 that direct oximetric method in weighing out the potassium  
2 dichromate, that if that's the only thing that you're  
3 doing instead of using a NIST standard as well, you can  
4 be --

5 COMMITTEE MEMBER LOUGH: I see where you're  
6 coming from.

7 MR. PHILLIPS: -- not accurate.

8 COMMITTEE MEMBER LOUGH: I see where you're  
9 coming from.

10 What I agree with is you're changing that "or" to  
11 an "and" because that's saying you have to have --  
12 purchase the standards and you have to do the titrations.

13 MR. PHILLIPS: Right.

14 COMMITTEE MEMBER LOUGH: And I don't want that to  
15 happen.

16 But if you're suggesting that if you did  
17 titrations that you have to double-check those against  
18 store-bought standards, that's another issue. But I think  
19 we -- that's a huge issue that we would have to go back to  
20 our agency and see if everyone is in compliance with  
21 that -- in agreement with that.

22 MR. PHILLIPS: You know, that's okay with us.

23 MR. FICKIES: Patty, that -- Terry Fickies again.  
24 That's essentially what I'm suggest -- I'm not suggesting  
25 that the titrate -- this external standard such as the

1 serum standard. I'm simply suggesting that you include  
2 that in the run, and also putting in some kind of -- some  
3 precision requirements so that you're -- the results you  
4 get out of your run have to agree within then -- to some  
5 extent with the values on the vial of the external  
6 standard.

7 COMMITTEE MEMBER LOUGH: Which I think we do have  
8 that language in here when we talk about the agreement  
9 that we have to have. And I'd have to say I agree with  
10 you, because I think from my conversations with NIST, they  
11 do so many samples, they just do so much more work than we  
12 do if they just titrate six -- do six titrations and  
13 determine a level. So I agree that it would be nice to  
14 include that in there. But at the same time, we want to  
15 be careful because we're going to cause laboratories to  
16 have to change a procedure that they're currently doing  
17 which is also a budgetary consideration and maybe a time  
18 consideration.

19 So what I'd like to see maybe is if Terry or Bill  
20 could take some time and formally perhaps give us some  
21 language that you'd like to see there that we could look  
22 at.

23 COMMITTEE MEMBER TANNEY: I have a question.  
24 This is Laura Tanney.

25 Does the Quality Control Program, Section 1220.3,

1 not take care of those issues that we're talking about?  
2 And I'm not a scientist, so I'm just curious, because  
3 that's seems to go into more specifics about what the  
4 results need to be. And as long as those results are met,  
5 does the manner in which the labs run the standards really  
6 make -- I mean I'm concerned about tying every lab down to  
7 the same thing and making generalizations. It seems to me  
8 that if the quality control requirements are met, that the  
9 standards and procedure don't have to be specified to such  
10 a degree that you're talking.

11 MR. FICKIES: This is Terry Fickies, Laura.

12 The QCs are derived from the secondary standard.  
13 So if your secondary standard is off, let's say you made a  
14 gross error and it's half of the value, and you determine  
15 your QC, then that is -- that's going to be half the value  
16 too and you'll never know it.

17 COMMITTEE MEMBER TANNEY: Okay.

18 MR. PHILLIPS: Until you do a proficiency  
19 somewhere -- until you do an external proficiency  
20 somewhere. So that's why this external standard was  
21 important.

22 MR. FICKIES: And --

23 MR. PHILLIPS: We think you're getting precision  
24 but not accuracy.

25 MR. FICKIES: And we've seen -- in our experience

1 we've seen this external standard be a useful and valuable  
2 tool, which has identified some problems.

3 COMMITTEE MEMBER TANNEY: All right. Well, I'm  
4 with Patty then, that maybe if you can work on suggesting  
5 something that's not going to tie the hands of the  
6 laboratories but still is going to satisfy your concerns,  
7 that would be helpful.

8 MR. FICKIES: It will tie the hands that stand  
9 by. But I think it will also improve the quality of our  
10 work.

11 MR. PHILLIPS: Yes. And I think the cost would  
12 be a around \$10 per run. So it would add an additional  
13 \$10 to each analysis batch on an average.

14 COMMITTEE MEMBER TANNEY: That's huge. I mean  
15 that's a huge amount of money. So that even concerns me  
16 more hearing that, especially if there's other reasonable  
17 alternatives to that that other laboratories have  
18 discovered.

19 MR. FICKIES: I don't think it's huge when you're  
20 considering what the cost is of making a mistake.

21 COMMITTEE MEMBER LOUGH: Patty Lough. Well, if  
22 you use that language, do we want them also to -- well,  
23 have we addressed the decimal places and come up with  
24 language on --

25 MR. PHILLIPS: We have.

1 COMMITTEE MEMBER LOUGH: Okay.

2 MR. PHILLIPS: We'll --

3 COMMITTEE MEMBER LOUGH: You'll do that?

4 MR. PHILLIPS: Yeah, sure.

5 MR. FICKIES: On the QC, we were proposing to  
6 specify the values out to three significant figures -- or  
7 three figures.

8 COMMITTEE MEMBER LOUGH: Right, that was another  
9 one -- also another place I did.

10 If you can, if you want to give us a draft for  
11 the QC 1220.3 Subsection(a)(2), and the same thing for the  
12 current 1220.2(a)(1). And some language on that  
13 calibration, because all the labs apparently are doing  
14 that really differently, whether it's a three point or a  
15 one point or how that's done, give us a suggestion that  
16 you think would be general for the labs, what those  
17 calibrations might need to be. That would be really  
18 appreciated.

19 MR. FICKIES: Okay. That was -- what section was  
20 that for the language for the calibrators, Patty?

21 COMMITTEE MEMBER LOUGH: That's the 1220.2  
22 Subsection (a)(1).

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
24 Comment.

25 CHAIRPERSON KIMSEY: A comment here in Richmond.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 Clay Larson.

3 As we have this conversation -- I brought this up  
4 once before, but I'll briefly bring it up again. I think  
5 the Committee should consider retaining the requirement  
6 that each lab employ a primary standard -- primary  
7 standards have a special role in analytical chemistry;  
8 alcohol's not a primary standard -- employ a primary  
9 standard to determine the concentration of the standards  
10 that are used, whether purchased or prepared. Relying  
11 totally -- and I like Patti's word, store bought --  
12 relying totally on store-bought samples could be a  
13 problem. Perhaps buying them from three or four different  
14 sources, that may increase your odds of getting it right.

15 I think we should be cautious about being so --  
16 relying on the term "NIST traceability". NIST has  
17 absolutely no role in validating a vendor's claim that  
18 their reagent is NIST traceable. They don't check on  
19 this. They don't review that process. And in some cases  
20 I think it's -- the actual basis for the NIST traceability  
21 doesn't give you that much confidence.

22 Restek produces a series of NIST traceable  
23 standards. I believe -- and I've asked them to clarify  
24 and they haven't responded -- I believe that claim for  
25 NIST traceability is based solely on the fact that they

1 use NIST Class S weights to weigh the alcohol. Well,  
2 that's not a good idea for a couple reasons. Weighing  
3 alcohol is problematic because it's a very volatile  
4 material. There are also many steps in the process that  
5 can change the alcohol concentration. So I think basing  
6 the accuracy of the concentration on that one step and  
7 then calling it NIST traceable may give people confidence,  
8 but I don't think it should.

9 COMMITTEE MEMBER LOUGH: Patty Lough.

10 I did have a long conversation over a period of  
11 time with NIST on this topic. And I could be in agreement  
12 with you that it might be nice to do those titrations if  
13 we were doing thousands of them and coming up with our  
14 number, because it is important that we get it right. But  
15 in reality, when we only do six titrations to determine  
16 what the concentration of alcohol is, that just  
17 really -- there's so much leeway there for error that  
18 we're really better off to purchase standards like  
19 clinical labs do. Clinical labs oftentimes get kits for  
20 things and they use the controls in the kits. They're not  
21 titrating those standards and verifying them and doing a  
22 whole research project on them.

23 So those labs that want to continue to do  
24 titrations, that's fine. I agree that those labs, it  
25 would be nice to have some language that they check that

1 periodically with concentrations that an outside  
2 laboratory has performed. That's a good double-check on  
3 the system. It's quick and easy. And that follows what  
4 clinical labs do. You know, I can see the use of that.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

6 Quick follow-up response. I don't want to get in  
7 an argument here. But certainly labs were free to select  
8 more than six titrations if they wished. Keep in mind  
9 that in all likelihood the vendor you buy the,  
10 quote-unquote, NIST traceable material has done zero  
11 titrations.

12 COMMITTEE MEMBER LOUGH: Thank you.

13 MR. PHILLIPS: Clay, hi. This is Bill Phillips.

14 That's why we're proposing that you use a NIST  
15 traceable secondary alcohol standard and compare that to a  
16 primary standard that you have prepared, so that this  
17 error or doesn't occur and that NIST traceable secondary  
18 alcohol standard would be from an external source.

19 COMMITTEE MEMBER LOUGH: Bill, I'm clear --

20 MR. PHILLIPS: We're proposing both.

21 COMMITTEE MEMBER LOUGH: So you want everyone to,  
22 if they can, buy NIST standards?

23 MR. PHILLIPS: Right. We would like that done.

24 MR. FICKIES: I agree with that.

25 COMMITTEE MEMBER LOUGH: I think that definitely

1 needs to go around the group. We would be changing how  
2 our intention started out on that from the beginning.  
3 That would definitely have to go back to all of our  
4 organizations.

5 MR. PHILLIPS: Yeah, I agree. It's a step into  
6 the 21st Century.

7 COMMITTEE MEMBER LOUGH: Is there other labs that  
8 are not checking it with NIST standards now that  
9 are -- well, then again, I'm going to say passing their  
10 proficiency test. But at the same time Clay's proficiency  
11 tests, those from the state, are based I think a lot in  
12 part on the responses they get back from everybody and  
13 seeing if everybody's kind of in the ballpark with their  
14 anticipated number, which is another good reason to use an  
15 ASCLD/LAB approved vendor, because that would be a larger  
16 scale proficiency test program. That is kind of the proof  
17 of the pudding in there. Samples that come in as  
18 proficiency tests perhaps could be used as a check -- as a  
19 positive control check without having to titrate. You  
20 know, I think we really need to think about that.

21 Yeah, go ahead and write it up and --

22 MR. PHILLIPS: We will.

23 One comment. As you have mentioned, your  
24 comments about clinical laboratories. The Department of  
25 Justice Toxicology Laboratory, in doing a quantitative

1 analysis on drugs, includes a quality control that's  
2 purchased from an external provider and develops standards  
3 and does linearity using three-point standard curve and  
4 follows the quality control of an external provider. So  
5 that it's a standard practice in clinical and forensic  
6 science to use an external -- a quality control from an  
7 external source.

8 COMMITTEE MEMBER LOUGH: Well, I think that's  
9 exactly what we're talking about. I think we're on the  
10 same page. We're talking about, first off, that if you  
11 choose not to do the titrations, if you choose to  
12 purchase, then we're talking about doing that same thing,  
13 providing them, getting them at different concentrations,  
14 checking them, including them.

15 The difference I see is you're -- I thought you  
16 were suggesting that everybody do that; in addition,  
17 everybody titrate and compare those values, because the  
18 titrations would be with primary standards. Am I missing  
19 the point?

20 MR. FICKIES: This Terry Fickies.

21 No, we are suggesting you do both.

22 COMMITTEE MEMBER LOUGH: Okay. That's what I  
23 thought.

24 MR. FICKIES: How many laboratories out there are  
25 just in external secondary standards?

1           COMMITTEE MEMBER LOUGH: I am aware of some  
2 laboratories doing that, in addition to the required  
3 titrations. But I think most of them are probably still  
4 titrating, unless that's changed.

5           MR. FICKIES: Okay. I --

6           COMMITTEE MEMBER LOUGH: I think most are  
7 titrating. I know some labs, San Diego P.D. does purchase  
8 the external standards and does run them. But that's an  
9 optional, that's in addition to what the current  
10 requirements are.

11          MR. FICKIES: And that's what we're essentially  
12 suggesting should be the standard.

13          COMMITTEE MEMBER LOUGH: Yes, I realize that. I  
14 agree it would be nice to have. But we would have to take  
15 that back to everybody. I think it would be difficult to  
16 make a regulation then that is going to require the labs  
17 do more and pay more without taking it back to them and  
18 getting their buy-in on it. I agree with you, that is a  
19 good way to do it. But I also agree that the use of  
20 primary standards is not required. So it could be  
21 strictly external standards.

22          MR. PHILLIPS: We'll propose some language.

23          COMMITTEE MEMBER LOUGH: Okay. Why don't we move  
24 on to my next one, which is simple, I think. On that same  
25 page where we were, 1220.2 Subsection B, where it says,

1 "An oxidimetric method," that's the current language. We  
2 should probably change that to "a direct oxidimetric  
3 method." Clay made a comment in there about that. That  
4 makes it more clear how that will be accomplished.

5 On page 12, 1220.3 Subsection 2. Just to  
6 reiterate, we need to include the decimal places and,  
7 therefore, that material. So if we want to include it to  
8 three decimal places, for instance.

9 Terry, you want to include that then? You're  
10 going to include that as well in your write-up?

11 MR. PHILLIPS: Yes, sir.

12 COMMITTEE MEMBER LOUGH: Yes, sir? Yes, ma'am.

13 (Laughter.)

14 COMMITTEE MEMBER LOUGH: All right. Page 14.

15 I don't know if we want to include this or not.  
16 But we may want to have a definition in the beginning  
17 about a calibrating unit versus a calibrating device. And  
18 the reason I say that is the Health and Safety Code refers  
19 to devices, Department of Transportation refers to units.

20 CHAIRPERSON KIMSEY: I'm sorry. This is Paul.  
21 What part of page 14 are you looking at?

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

23 CHAIRPERSON KIMSEY: That's okay.

24 COMMITTEE MEMBER LOUGH: Page 14, A at the top,  
25 Subsection A.

1 CHAIRPERSON KIMSEY: Okay. Thank you.

2 COMMITTEE MEMBER LOUGH: "Breath alcohol analysis  
3 shall be performed only with instruments and calibrating  
4 units." I think we probably at the beginning need to put  
5 a definition in there, and somehow maybe units and/or  
6 devices, because we reference the Health and Safety, and  
7 the Health and Safety references Department of  
8 Transportation, and they use different nomenclature. So  
9 it might be a good place where we might want to fix that.

10 Does anybody want to come up with a definition  
11 now, or do we have something in our definitions?

12 In our definitions on page 2 we talk about  
13 instruments or devices. We don't talk anywhere about  
14 units. Maybe it would be sufficient in there to say  
15 instruments, devices, or units.

16 CHAIRPERSON KIMSEY: Does anyone want to  
17 propose -- go ahead.

18 MR. PHILLIPS: Could we use parentheses  
19 "calibrating devices" after -- or "calibrating units,"  
20 excuse me, after "device" in parentheses?

21 COMMITTEE MEMBER LOUGH: Say it again.

22 MR. PHILLIPS: Could we insert in parentheses  
23 "calibrating units" after "device" in the J?

24 COMMITTEE MEMBER LOUGH: Yeah, that would be  
25 good.

1           MR. PHILLIPS: "Instrument" or "device"  
2 parentheses "calibrating units".

3           COMMITTEE MEMBER LOUGH: I like that.

4           MR. KNAPP: Jon Knapp.

5           Down at the bottom is -- where you're looking  
6 at it says 9 up there after "device," and down there it  
7 says "device" and "or calibrating units" in parentheses.

8           MR. PHILLIPS: Yeah.

9           MR. KNAPP: At the bottom of the page it already  
10 says that.

11          MR. PHILLIPS: Yeah, well, that's been added for  
12 emphasis to try to explain this particular topic.

13          COMMITTEE MEMBER LOUGH: Because when we're done  
14 here, we have to go back through the entire document and  
15 do the justification for the changes and keeping the  
16 remaining language. So I like that "devices" and then in  
17 parentheses "calibrating units".

18          Okay. My next one is the same page, page 14,  
19 subsection B.

20          Okay. They're talking about instruments --  
21 breath alcohol instruments and who can use them. And then  
22 it says, "only if such places and persons are under the  
23 direct jurisdiction of a governmental agency or" -- and  
24 we're talking out "licensed forensic alcohol lab".

25          What we're trying to say is San Diego can't

1 training you on their machine and then someone can go to  
2 L.A. and run their machine. So I think we want to take  
3 out "governmental agency" in case there's someone there  
4 that is not a government agency and we want to take out  
5 "forensic alcohol lab," because that means that it must  
6 always be done at the lab and you can't take a show on the  
7 road someplace.

8 "...in places other than labs and by persons  
9 other than" -- "...only if such places and persons are  
10 under the direct jurisdiction of a forensic alcohol lab"?

11 COMMITTEE MEMBER TANNEY: No, they say  
12 "governmental agency" at the top.

13 COMMITTEE MEMBER LOUGH: It does need to say  
14 "government"?

15 COMMITTEE MEMBER TANNEY: Yeah.

16 COMMITTEE MEMBER LOUGH: Okay. Never mind.

17 MR. KALCHIK: Question.

18 CHAIRPERSON KIMSEY: We have a question here in  
19 Richmond.

20 MR. KALCHIK: Mark Kalchik.

21 What was that about governmental agency?

22 COMMITTEE MEMBER LOUGH: We're going to keep the  
23 language in. It will read like it does.

24 MR. KALCHIK: I do have a question on that,  
25 because I think there is one county that uses breath

1 instruments that it is not a governmental agency that  
2 oversees it.

3 COMMITTEE MEMBER TANNEY: Is it a lab that  
4 oversees it?

5 MR. KALCHIK: It's a laboratory, yes.

6 MR. PHILLIPS: So with the "or" statement it's  
7 okay.

8 COMMITTEE MEMBER LOUGH: It has "or," so we're  
9 okay.

10 MR. PHILLIPS: It says "or".

11 MR. KALCHIK: Okay.

12 MR. PHILLIPS: Bill Phillips.

13 We're okay with that.

14 COMMITTEE MEMBER LOUGH: Okay. Thanks. Me too.

15 Okay. Page 15, subparagraph 3, A underneath  
16 that. Again we have to put in what our decimal places  
17 are. And I think before we had talked about two decimal  
18 places was the agreement of my organization, to make sure  
19 that those are checked to two decimal places.

20 CHAIRPERSON KIMSEY: I'm sorry. This is Paul  
21 again. This is page 15, Item No. --

22 COMMITTEE MEMBER LOUGH: Page 15.

23 CHAIRPERSON KIMSEY: -- Item No. 3?

24 COMMITTEE MEMBER LOUGH: Subparagraph 2 -- 3(A).

25 CHAIRPERSON KIMSEY: Mine says, "Theory of

1 operation."

2 COMMITTEE MEMBER LOUGH: Okay. This is 1221.4,  
3 Subsection -- oh, no. No, the other 3.

4 CHAIRPERSON KIMSEY: Oh, I see. The 3 -- "The  
5 accuracy of instruments" --

6 COMMITTEE MEMBER LOUGH: "The accuracy of  
7 instruments" --

8 CHAIRPERSON KIMSEY: Okay. I see it now. Thank  
9 you.

10 COMMITTEE MEMBER LOUGH: -- "shall be  
11 determined."

12 I think we need to have -- and, Terry, maybe  
13 you'd want to handle this one with yours since you're  
14 doing the other one.

15 And I think two decimal places was the  
16 agreement -- the best agreement that I could get, even  
17 though some instruments will read out to three or where  
18 they can have three, at least with -- I think CAC and  
19 CACLD I think they want two decimal places overall.

20 MR. FICKIES: Well, there's two decimal places in  
21 there right now, isn't there?

22 COMMITTEE MEMBER LOUGH: We don't have  
23 anything -- oh, well --

24 MR. FICKIES: But I would think that you would  
25 want three decimal places.

1           MR. PHILLIPS: The problem with these figures is  
2 they're dealing with breath alcohol, and some instruments  
3 don't read three, I don't believe.

4           COMMITTEE MEMBER LOUGH: Right. That's --

5           COMMITTEE MEMBER WONG: I agree.

6           COMMITTEE MEMBER LOUGH: -- true. Some are  
7 programmed so that they're only going to read two, and  
8 they cannot go back and reprogram with the older  
9 instruments.

10          MR. RECKERS: Comment. Bob Reckers.

11          Could you say at least two decimal places,  
12 leaving the option open for labs --

13          COMMITTEE MEMBER TANNEY: These are always the  
14 minimal. It says at a minimum, talking about what it  
15 would be -- yeah, those labs -- three is really nice. But  
16 I know there's people that were fighting that.

17          MR. RECKERS: But what if they have the option to  
18 go to three?

19          MR. FICKIES: Patty?

20          COMMITTEE MEMBER LOUGH: Yes.

21          MR. FICKIES: Right now they read minus 0.01  
22 grams and 0.08 and 0.25, which are to two places. So no  
23 change is needed, unless I'm missing something here.

24          ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

25          Comment.

1 CHAIRPERSON KIMSEY: Comment here in Richmond.

2 MR. RECKERS: Yeah, but those are exact numbers.  
3 Those could be infinite numbers.

4 COMMITTEE MEMBER LOUGH: Then will we just leave  
5 it as it is?

6 Okay. Just leave it as it is.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
8 Comment.

9 CHAIRPERSON KIMSEY: We have a comment here in  
10 Richmond.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
12 Clay Larson.

13 The Committee should be aware the Department has  
14 many years now -- and it actually hasn't been that  
15 controversial -- administratively required that when labs  
16 submit procedures for the determination of accuracy of  
17 instruments, that they indicate that they're checking the  
18 instruments to three significant digits -- three places  
19 past, to the right of the decimal point. That the logic  
20 there -- and as far as I'm aware, every instrument that's  
21 in use has that capability. The DOT requires -- the DOT  
22 requirements include an evaluation at that level. So the  
23 instruments, if they're going to pass DOT muster, have to  
24 have that capability.

25 The logic is that if you ran on 08 solution and

1 you got a result of a 098, so nearly 02 above the limit --  
2 the plus or minus 01 limits, you would truncate it and  
3 say, "That's fine. The instrument's reading about 02 high  
4 and we're happy with that."

5           So it seemed -- to be given the importance of the  
6 use of these results, it seems appropriate, and the  
7 Department administratively required, that the instruments  
8 be checked -- and we would evaluate this when we did site  
9 inspections -- would be checked to the three decimal place  
10 level for accuracy.

11           MR. FICKIES: Question.

12           COMMITTEE MEMBER LOUGH: Yeah, I think it was --  
13 yes.

14           MR. FICKIES: This is Terry Fickies again.  
15           What instruments -- this is for the accuracy  
16 check.

17           COMMITTEE MEMBER LOUGH: Right.

18           MR. FICKIES: So what instruments don't read to  
19 three places?

20           COMMITTEE MEMBER LOUGH: I think they all should.  
21 And that's why in here I think we should have language  
22 maybe to talk about running the instruments to three  
23 decimal places.

24           MR. FICKIES: Well, I think they should be run  
25 three decimal places. And I think we should specify three

1 decimal places for these three values under subsection A.

2 And I'd be happy to write that up if you want me to.

3 COMMITTEE MEMBER TANNEY: I think this has to go  
4 back to the association, because there's indications  
5 from -- that some laboratories may not do this or may not  
6 have this capability.

7 COMMITTEE MEMBER LOUGH: If you want to write it  
8 up, Terry, and submit it and we'll just run that past  
9 everybody.

10 MR. FICKIES: Okay. And could we find out who  
11 does have the capability?

12 COMMITTEE MEMBER TANNEY: I think that's up to  
13 the association to find out.

14 COMMITTEE MEMBER LOUGH: We'll send the  
15 change -- we'll send the wording around and leave it up to  
16 them to read it and respond back to us.

17 MR. FICKIES: Cool.

18 COMMITTEE MEMBER LOUGH: Well, my next one is  
19 page 15, keep going down to big subsection E and 4 under  
20 that.

21 This is where -- okay, this is where I want to  
22 remove the location at the end of that sentence where it  
23 says -- the last of the sentence says, "at a forensic  
24 alcohol lab." I'd like to just have, "Training in the  
25 procedures of breath alcohol analysis shall be under the

1 supervision of forensic alcohol supervisors, forensic  
2 alcohol analysts, or forensic alcohol analyst trainees."

3 And that's all I have.

4 CHAIRPERSON KIMSEY: And, Patty, this is Paul  
5 Kimsey. The rationale for dropping "forensic alcohol  
6 laboratory"?

7 COMMITTEE MEMBER LOUGH: Because a lab may wish  
8 to go out to a location and --

9 CHAIRPERSON KIMSEY: Okay.

10 COMMITTEE MEMBER LOUGH: Yeah, I just don't want  
11 them restricted to having to do it on-site.

12 COMMITTEE MEMBER DAVIS: Paul, this is Kevin  
13 Davis in Sacramento. I agree, you know, that's not the  
14 way it's done now, anyway from my experience. They  
15 usually come out to the police agencies to do the  
16 training. So I'd be glad it to be at a lab facility.

17 CHAIRPERSON KIMSEY: Okay.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
19 Public comment.

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

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

24 I don't believe the intent of that phrase there  
25 was ever meant to specify the location. It goes back to a

1 broader question which I don't think the Committee has  
2 considered. Under the Department's program, individuals  
3 were qualified as analysts, trainees, or supervisors at a  
4 specific laboratory. So the qualification was always  
5 linked to that laboratory. And I think this just  
6 reinforces that notion. So the old language was "persons  
7 who qualify" and they qualified as one of those three  
8 categories at a forensic alcohol laboratory. So I think  
9 the Committee --

10 COMMITTEE MEMBER TANNEY: No. But the  
11 definition --

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
13 I think at some point --

14 COMMITTEE MEMBER TANNEY: We're saying the  
15 definition of forensics -- go ahead.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
17 Well, I think at some point since that's the  
18 current status quo, that's how it worked. I think the  
19 Committee may want to consider at some point whether it  
20 wants to make these analyst, trainee, and supervisor  
21 classifications transferable. I don't think it can do  
22 that since we're actually under the current -- as we  
23 establish this now, unless we retain some role by a state  
24 agency for approving the qualifications of these people.  
25 The individuals are qualified by a -- you know, by Acme

1 Laboratories, by a specific laboratory. So allowing a  
2 person trained at Laboratory A to go -- so this might  
3 suggest provide training on an instrument that is  
4 maintained and is checked by a Laboratory Z, might not be  
5 what you want to do.

6 MR. PHILLIPS: Bill Phillips in Sacramento.

7 A compromise would be to use the word -- instead  
8 of "at," "from".

9 COMMITTEE MEMBER LOUGH: That's good.

10 COMMITTEE MEMBER TANNEY: Or, Terry, even being  
11 more specific, that it's under the supervision -- and you  
12 could say -- where's that, page 15? -- you could say,  
13 "Training in the procedures of breath alcohol analysis  
14 shall be conducted by forensic alcohol supervisors,  
15 forensic alcohol analysts, or forensic alcohol analyst  
16 trainees under the supervision of a forensic alcohol  
17 laboratory."

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

19 Comment?

20 Cathy Ruebusch --

21 COMMITTEE MEMBER DAVIS: You know, I think that  
22 is a lot simpler and that handles it.

23 COMMITTEE MEMBER TANNEY: That's fine.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

25 One simple -- my comment. But if Cathy Ruebusch

1 were here, she would point out that a laboratory as a  
2 place couldn't be supervising anything.

3 COMMITTEE MEMBER TANNEY: Well, let's just say  
4 from then.

5 CHAIRPERSON KIMSEY: Did you have any other  
6 suggestions, Patty?

7 COMMITTEE MEMBER LOUGH: No, I'm done. Thank  
8 you.

9 CHAIRPERSON KIMSEY: Okay. Sort of continuing  
10 around with whether or not people were able to, you know,  
11 get some feedback from their agencies, I guess going up  
12 the list.

13 Paul Sedgwick, for the toxicologists, did you get  
14 any feedback from your organization?

15 COMMITTEE MEMBER SEDGWICK: I got no feedback.

16 CHAIRPERSON KIMSEY: All right. Kenton.

17 COMMITTEE MEMBER WONG: I got no feedback  
18 specifically. But I feel strongly that we should still  
19 maintain Title 17, as there was some talk that maybe we  
20 should just totally abandon it.

21 CHAIRPERSON KIMSEY: Yeah, and that's on the  
22 agenda for some discussion.

23 Okay. And Bruce Lyle from the coroners.

24 COMMITTEE MEMBER LYLE: Yeah, I got some  
25 feedback, mostly from L.A. County. On page 9 at the

1 bottom, Section g, subsection 2, it says, "Whenever a  
2 sample is requested by the defendant for analysis and a  
3 sufficient sample remains, the forensic alcohol laboratory  
4 or law enforcement agency" -- and L.A. County didn't  
5 really consider themselves one of those or the other, so  
6 they were wondering if we could add in coroner or medical  
7 examiner, because they post that sample a lot of times.  
8 And it didn't give major heartburn, so I thought it wasn't  
9 a bad idea.

10 CHAIRPERSON KIMSEY: So it would read "...sample  
11 remains, the forensic alcohol laboratory, law enforcement  
12 agency or coroners' office" or --

13 COMMITTEE MEMBER LYLE: Coroner/Medical Examiner  
14 Office, yeah.

15 CHAIRPERSON KIMSEY: -- "Corner/Medical Examiner  
16 Office in possession of original sample, et cetera, et  
17 cetera"?

18 COMMITTEE MEMBER LYLE: Correct.

19 CHAIRPERSON KIMSEY: And any objections from the  
20 Committee?

21 COMMITTEE MEMBER LOUGH: No.

22 COMMITTEE MEMBER TANNEY: No.

23 CHAIRPERSON KIMSEY: Did you have another --

24 COMMITTEE MEMBER LYLE: Yeah, on the next page,  
25 on page 10, that same paragraph is reiterated under Urine

1 Collection. It's C1 -- 1219.2(C)(1), and it looks like  
2 it's reiterated there.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
4 Comment.

5 CHAIRPERSON KIMSEY: Comment here in Richmond.

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
7 We have a limited number or -- because I may use  
8 it up in the morning.

9 Under the current regulations, the -- you may  
10 want to change this -- the postmortem urine samples  
11 aren't -- the analysis of those samples are not provided  
12 for under the current regulations. I mean the procedures  
13 for collections of samples, you know, involve steps where  
14 you voluntarily void obviously -- I don't want to make it  
15 macabre -- but obviously a corpse would not be able  
16 to -- so regarding that issue on the retention samples  
17 here, keep in mind currently the analysis of postmortem  
18 urine samples or, you know, various other samples is not  
19 provided for under the regulations.

20 COMMITTEE MEMBER LYLE: Bruce Lyle.

21 So if that's true, then A ought to read, "The  
22 urine sample from living individuals shall be collected no  
23 sooner than 20 minutes after first voiding the bladder,"  
24 just to clarify that it's on living people and not dead  
25 people.

1 CHAIRPERSON KIMSEY: Well, I --

2 COMMITTEE MEMBER SEDGWICK: Paul Sedgwick in San  
3 Diego.

4 If it's patently obviously the postmortem urine  
5 samples are not even remotely acceptable as a reflection  
6 of the blood alcohol levels, I think is what Clay is  
7 referring to. But they are useful to guard against mixing  
8 up samples. And so the presence of alcohol in the blood  
9 might be useful, not accurate, in the postmortem urine  
10 sample.

11 CHAIRPERSON KIMSEY: So currently they're not  
12 regulated.

13 Do we want to regulate them into the future?

14 COMMITTEE MEMBER LYLE: Bruce Lyle.

15 I don't think so. I just want to separate them  
16 and make sure the 1219.2 isn't addressing us, my office.

17 CHAIRPERSON KIMSEY: So then you would advocate  
18 for some language, "from a living individual" or something  
19 to that effect?

20 COMMITTEE MEMBER LYLE: Correct, in A.

21 MR. KALCHIK: Question.

22 CHAIRPERSON KIMSEY: Question here in Richmond.

23 MR. KALCHIK: Mark Kalchik.

24 Why wouldn't the Coroner's Office be a forensic  
25 alcohol laboratory under the definitions? Because they're

1 collecting it for forensic alcohol analysis.

2 COMMITTEE MEMBER LOUGH: They may not be doing  
3 the analysis. Some laboratories contract out. So they  
4 may collect the sample but contract out for analysis.

5 COMMITTEE MEMBER LYLE: Bruce Lyle.

6 That's all the comments I had.

7 CHAIRPERSON KIMSEY: And does the Committee agree  
8 then to add something -- let's see, 1219.2 small A on page  
9 10, the first section there about the urine sample -- that  
10 this is from a living individual or something to that  
11 effect?

12 COMMITTEE MEMBER TANNEY: That's fine. Laura  
13 Tanney.

14 COMMITTEE MEMBER LOUGH: Yes, that's fine.

15 CHAIRPERSON KIMSEY: Okay. Moving --

16 COMMITTEE MEMBER ZIELENSKI: Torr Zielenski.

17 CHAIRPERSON KIMSEY: Sure. Go ahead.

18 COMMITTEE MEMBER ZIELENSKI: Yes, Torr Zielenski  
19 from Sacramento. Going back to page 15 --

20 CHAIRPERSON KIMSEY: I'm sorry. Which page?

21 COMMITTEE MEMBER ZIELENSKI: -- where we're  
22 talking about -- page 15.

23 CHAIRPERSON KIMSEY: Okay.

24 COMMITTEE MEMBER ZIELENSKI: Now, then section  
25 subparagraph 3, item 4. I want to keep the language exact

1 there with respect to who it is that we want to conduct  
2 the training. I think the language probably ought to say,  
3 "analyst trainees employed at a forensic alcohol  
4 laboratory," because employment is part of the definition  
5 requisites in order to be a supervisor or analyst or  
6 trainee, as opposed to "from" -- be employed actually at a  
7 forensic alcohol lab in order to be defined as such.  
8 Where I think "from" is somewhat vague.

9 Does that make sense?

10 CHAIRPERSON KIMSEY: So employed by?

11 COMMITTEE MEMBER ZIELENSKI: Yes.

12 CHAIRPERSON KIMSEY: How does the rest of the  
13 Committee feel?

14 COMMITTEE MEMBER TANNEY: That's the definition  
15 of a trainee. That's within the definition of a trainee  
16 anyway.

17 COMMITTEE MEMBER ZIELENSKI: Right.

18 COMMITTEE MEMBER LOUGH: Right.

19 COMMITTEE MEMBER WONG: Right. Now, the  
20 definitions.

21 COMMITTEE MEMBER TANNEY: And it's redundant.

22 COMMITTEE MEMBER LOUGH: Yeah, that's redundant.

23 And on page 2, subsection H.

24 COMMITTEE MEMBER ZIELENSKI: Okay. I see it.

25 Thank you.

1 MR. KALCHIK: Question.

2 CHAIRPERSON KIMSEY: Question here in Richmond.

3 MR. KALCHIK: Since we're still on page 15 at the  
4 top of the page, it's .02 grams per 100 milliliters.  
5 Should that be 210 liters to be consistent?

6 COMMITTEE MEMBER LOUGH: Yes.

7 MR. FICKIES: Should that be the three places?

8 COMMITTEE MEMBER WONG: Or 210 liters of breath.

9 MR. FICKIES: Oh, it doesn't matter.

10 CHAIRPERSON KIMSEY: So for our stenographer, it  
11 would read --

12 MR. KALCHIK: If I could.

13 CHAIRPERSON KIMSEY: Go ahead.

14 MR. KALCHIK: The top of that page, "...samples  
15 which result in determinations of breath alcohol  
16 concentrations which do not differ from each other by more  
17 than 0.02 grams per 210 liters."

18 CHAIRPERSON KIMSEY: How does the rest of the  
19 Committee feel about that change?

20 COMMITTEE MEMBER LOUGH: Fine. Patty Lough.

21 MR. PHILLIPS: The confusion there -- excuse me,  
22 Bill Phillips -- is that it says, "Breath alcohol  
23 analysis" -- if you read the first part of that sentence  
24 on page 14, it says, "Breath alcohol analysis shall  
25 include two separate breath samples which result in

1 determinations of blood alcohol concentrations which do  
2 not differ in the amount of .02 grams." So it's blood  
3 that you're expressing the concentration in, not breath.

4 MR. KALCHIK: Question.

5 CHAIRPERSON KIMSEY: Question here in Richmond.

6 MR. PHILLIPS: Use breath, or should the  
7 determinations of alcohol concentrations be changed from  
8 blood to breath? Do you want to meet --

9 COMMITTEE MEMBER LOUGH: Right.

10 MR. KALCHIK: Yeah, that's what --

11 COMMITTEE MEMBER LOUGH: Kind of cleans it up a  
12 little.

13 MR. KALCHIK: That's what I had proposed, yes,  
14 that it's changed back from blood to breath.

15 MR. PHILLIPS: Okay.

16 CHAIRPERSON KIMSEY: I think moving along --

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

19 CHAIRPERSON KIMSEY: Oh, comment from the public  
20 here in Richmond.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

22 The previous comments regarding the requirements  
23 that those various classifications be employed by a  
24 forensic alcohol laboratory. The Committee was right in  
25 noting that the trainee classification includes specific

1 language that says that the employee -- that the  
2 individual has to be employed by a forensic alcohol  
3 laboratory. Actually the definitions of the analysts and  
4 the supervisor don't include that. I think it's implied,  
5 but they don't --

6 CHAIRPERSON KIMSEY: It says employed, G and F on  
7 page 2.

8 COMMITTEE MEMBER WONG: Right in the middle it  
9 says employed.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
11 Okay. All right.

12 CHAIRPERSON KIMSEY: I think we're moving along  
13 to Sergeant Davis.

14 Any comments from your agency?

15 COMMITTEE MEMBER DAVIS: No formal comments from  
16 our agency. I agree -- I was going to bring up the change  
17 on the one we discussed on page 15, which sounds like it's  
18 been addressed.

19 CHAIRPERSON KIMSEY: Okay. Ms. Tanney from the  
20 district attorneys.

21 COMMITTEE MEMBER TANNEY: No.

22 CHAIRPERSON KIMSEY: No comments.

23 Okay. Well, it's noon time. According to our  
24 agenda we're going to break for lunch in about ten  
25 minutes.

1 Any other comments from the public?

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 Did we ask Torr?

4 COMMITTEE MEMBER TANNEY: Paul, this is Laura.

5 I'm sorry.

6 CHAIRPERSON KIMSEY: That's okay.

7 COMMITTEE MEMBER TANNEY: I'm actually not going  
8 to be here this afternoon. So I didn't know if you wanted  
9 to go into the -- I don't need a long discussion on the  
10 Title 17 -- need for Title 17 regulations. We can either  
11 reserve that till the next meeting or --

12 CHAIRPERSON KIMSEY: Sure, why don't --

13 COMMITTEE MEMBER TANNEY: -- you guys can talk  
14 about it without me if you want. Or we can go ahead and  
15 talk about it for a few minutes.

16 CHAIRPERSON KIMSEY: Sure. I'll leave it to the  
17 Committee. But I'm certainly willing to go ahead and have  
18 the discussion before we have lunch.

19 COMMITTEE MEMBER TANNEY: Okay. The only -- I  
20 again pointed out that the statute was to get this group  
21 together to look at the regulations and make  
22 recommendations regarding modifications of the regulations  
23 to ensure competency. And my query at the end of the last  
24 meeting was, are these really necessary to ensure  
25 competency when, as we pointed out, all the other

1 disciplines of forensic testing do not have such  
2 regulations and are self-regulated, so to speak. So I  
3 wanted to take a look at that question and have a  
4 discussion regarding that question, and talk about whether  
5 or not a repeal would be something that we should talk  
6 about also.

7           And part of that stems from my -- in actuality  
8 stems from my frustration about this process. It's been  
9 years we've been working with this trying to revise these  
10 things. Every time we get involved with the Office of  
11 Administrative Law, there's a wall that's put up or a  
12 change in policies and procedures. And it's become a very  
13 frustrating and time consuming process with a lot of  
14 people expending a large amount of time and energy into  
15 this. And I'm beginning to wonder whether this is really  
16 worth the effort and whether it's really necessary to  
17 ensure competence.

18           Somebody pointed out at the last meeting that  
19 there was a bill passed last year that created a committee  
20 to determine whether or not oversight should be  
21 recommended for all the other forensic disciplines. And  
22 apparently that committee is now meeting also and  
23 discussing that. And again there's representatives from a  
24 lot of laboratory agencies, from defense attorneys, from  
25 prosecution, I think from pretty much all of the same

1 representatives that we have here.

2           And I'm concerned also about a duplication of  
3 effort on both committees if we're -- if we're considering  
4 one thing and they end up considering something else, we  
5 may undo what each other are doing.

6           So that was another thing that -- I don't think  
7 that they're talking about specific procedures or  
8 regulations at this point but merely whether or not  
9 they're going to recommend oversight for other forensic  
10 disciplines.

11           So, you know, I don't want to act in conflict  
12 with what they're doing, yet we know very little about  
13 what they're doing. And I don't know if Department of  
14 Public Health, or what you're called now, is involved in  
15 that or not. But I think we need to find out and I think  
16 we really need to, without getting into territorialism,  
17 get into whether or not we really need to have these  
18 regulation to ensure competency. And I just want to throw  
19 that out there.

20           CHAIRPERSON KIMSEY: This is Paul.

21           You bring up some very good points. As a state  
22 agency, we have very little leeway except to follow, you  
23 know, the black and white of State law. So our presence  
24 here and our participation is quite clear with regards to  
25 the legislation. And so that's how we will proceed.

1           I think -- I don't know if anyone else in the  
2 audience has participated or is aware of the other  
3 committee's work. But I know the Department is not  
4 part -- our Department of Public Health has responsibility  
5 for this Committee, or at least participation with this  
6 committee, is not represented in the Committee that was  
7 formulated from statute from last year.

8           I don't know much about the history of that or if  
9 that was an oversight or intentionally. But the reality  
10 is that our Department is not represented. And so I know  
11 very little bit about what that group is doing.

12           COMMITTEE MEMBER DAVIS: This is Kevin Davis,  
13 Sacramento.

14           I've attended two of the three meetings with the  
15 other group. Although there's obviously some slight  
16 overlap, they're more concerned with the general  
17 configuration in staffing and delivery of services by  
18 crime labs as a whole. They're obviously, as Patty said,  
19 not specific to procedures. So I wouldn't use -- the  
20 existence of the other committee I don't think is a reason  
21 to stop working on Title 17 per se.

22           COMMITTEE MEMBER LOUGH: Patty Lough.

23           I did discuss this with my group. And the  
24 consensus was that this is a long time standard that the  
25 laboratories and the courts have relied upon, especially

1 the DMV. And to change it right now would probably be too  
2 large of a transition. This is what everyone's used to.  
3 So my group felt it was appropriate for Title 17 to remain  
4 in place.

5 CHAIRPERSON KIMSEY: Other comments from  
6 Committee members about the necessity of Title 17?

7 COMMITTEE MEMBER DAVIS: This is Kevin Davis  
8 again.

9 I would agree to keep Title 17 in place.

10 CHAIRPERSON KIMSEY: Any Committee members in  
11 favor of repealing Title 17, I guess is the way to put it?

12 COMMITTEE MEMBER TANNEY: I'm still undecided on  
13 that. Laura Tanney. So I -- I may be in favor of that,  
14 but -- so I'm not the scientist here either. So I think  
15 it's more -- I think it's more important that the  
16 scientists weigh in on whether this is necessary to ensure  
17 their competency.

18 COMMITTEE MEMBER WONG: Kenton Wong, Richmond.

19 Title 17 was originally promulgated to ensure  
20 minimum standards for competency. And I think it's done  
21 that. It's been a good law. It's been a good regulation.  
22 And I know when 1623 first went through there were a lot  
23 of people in the forensic ranks that thought that, "Yea,  
24 we don't have to do a Title 17 anymore." And that was not  
25 a good thing.

1           There were some laboratories that just thought  
2 that Title 17 was a thing of the past and was oppressive  
3 and making them jump through all these hoops. And, you  
4 know, we don't want to throw out the baby with the bath  
5 water. I think it's really important that -- they are  
6 minimum standards.

7           And I understand -- totally hear you, Laura. I  
8 understand the frustration, because we're all dealing with  
9 it. And a lot of attorneys that I've talked to, they were  
10 just saying, "Well, what's going on with that? And, you  
11 know, it's been like three or four years. And has it gone  
12 anywhere? And, you know, it just seems like it's dragging  
13 its feet."

14           So I feel your frustration and I totally agree  
15 with you. But I still believe that Title 17 is necessary  
16 to prevent roguism in labs and people just running amuck.  
17 You know, I'm old enough to be a student in human nature  
18 to know that, you know, if you allow people just to do  
19 whatever they want, that unfortunately they will. And I  
20 think that Title 17 is required and is necessary.

21           COMMITTEE MEMBER LOUGH: Patty Lough.

22           And it does provide consistency statewide -- some  
23 minimal consistency of how alcohol analysis is performed  
24 by individual laboratories.

25           COMMITTEE MEMBER WONG: Absolutely.

1           CHAIRPERSON KIMSEY: Other comments from the  
2 Committee?

3           Any comments from the public?

4           MR. TOMS: Hello. Michael Toms from Sacramento  
5 County.

6           I agree this has been a standard for some time  
7 and it's accepted by both the Department of Motor Vehicles  
8 as well as the courts as the standard, and we believe it  
9 should be kept in place.

10          CHAIRPERSON KIMSEY: Okay. Any other comments on  
11 this?

12          If not, we'll break for an hour for lunch.

13          COMMITTEE MEMBER WONG: Laura, if I could also  
14 chime in one more time.

15          Working in a private lab, I have the rare --  
16 ability to be able to review both prosecutorial and  
17 defense results. And I see it time and time again where  
18 laboratories aren't doing exactly what they're supposed to  
19 be doing. And Title 17 is an assurance, a long-standing  
20 assurance to keep people on the straight and narrow.

21          COMMITTEE MEMBER TANNEY: Okay. I just wanted to  
22 make sure that the Committee feels -- particularly the  
23 scientific community and the Committee feels that this is  
24 a worthy project and necessary as prescribed by the  
25 Legislature. If it is, then so be it. That's fine. And

1 I'm not going to independently seek repeal of Title 17 if  
2 the scientific community feels that it's important.

3           So I just wanted to throw it out there and get a  
4 consensus from the scientists whether or not this is  
5 something they feel is necessary. And we've done that.  
6 So I appreciate that.

7           CHAIRPERSON KIMSEY: Okay. Any other comments  
8 before we break?

9           We'll reconvene at 1:15.

10          Thank you.

11          (Thereupon a lunch break was taken.)

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1           And we set aside some time if the Committee wants  
2 to discuss any of these areas. But it's pretty much our  
3 interpretation that the current regulatory work product  
4 pretty much removes us from these activities.

5           Is there any sort of comment or discussion on  
6 that or anybody want to discuss any particular aspect of  
7 these activities or...

8           Hearing none --

9           MR. GRUBB: Hello. Are you asking whether we  
10 have any response to the Department of Public Health's  
11 comments about their continued involvement?

12          CHAIRPERSON KIMSEY: Yes. And also, if you could  
13 identify yourself for the stenographer.

14          MR. GRUBB: Yeah, it's Mike Grubb representing  
15 the public in the San Diego P.D.

16          Regarding specifically the involvement in  
17 proficiency testing. And, Dr. Kimsey, you said earlier  
18 that you were looking at the letter of the law. And I  
19 don't think the law could be any clearer than it is  
20 regarding Section 100702 directing forensic alcohol  
21 laboratories to follow ASCLD-LAB guidelines proficiency  
22 testing.

23          Each laboratory would participate annually in  
24 performing an external proficiency test provided by an  
25 approved provider. Each examiner would have to be

1 successfully proficiency tested annually. The labs must  
2 have a policy dealing with proficiency test review and  
3 corrective action. And an ASCLD-LAB has a proficiency  
4 test review committee that investigates proficiency  
5 testing problems in the laboratories.

6           So I see this as sort of the Department of Public  
7 Health maintaining any stand in the area of proficiency  
8 testing is -- they are looking at Section 100725, which is  
9 a piece of the Health and Safety Code that probably should  
10 have been deleted but wasn't. But the law couldn't be  
11 clearer that we're looking to the laboratories to  
12 participate with ASCLD-LAB proficiency testing. And the  
13 Department of Public Health involvement in that area is  
14 superfluous.

15           CHAIRPERSON KIMSEY: Okay. Other comments?

16           Then --

17           MR. KNAPP: Jon Knapp, toxicology.

18           CHAIRPERSON KIMSEY: Oh, go ahead.

19           MR. KNAPP: I don't agree with that last man's  
20 statements. I think that it's very important to have the  
21 Department of Health Services or Public Safety, or  
22 whatever they are now, to give us a proficiency test in  
23 addition to one that the outside -- like an ASCLD-LAB  
24 certified one. I see no reason to avoid it. I mean I  
25 think that's just being lazy.

1           CHAIRPERSON KIMSEY: And could you identify  
2 yourself, please.

3           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
4 Jon Knapp.

5           MR. KNAPP: Pardon me?

6           I already did. Oh, Jon Knapp.

7           CHAIRPERSON KIMSEY: Okay. Thank you.

8           COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.

9           I certainly have opinions about this. But this  
10 was all addressed at the -- when we met at all the  
11 different hearings with the State Legislature, so I'm not  
12 going to kind of rehash it. But it was clear to me that  
13 the proficiency testing function is no longer required of  
14 the state.

15          ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
16 Comment.

17          CHAIRPERSON KIMSEY: Comment from the public here  
18 in Richmond.

19          ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
20 And I think I've described in the advisory we  
21 sent to the lab -- I'll just kind of repeat that. But  
22 perhaps you've forgotten or didn't get a chance to look at  
23 it. The statutes did include language associated with  
24 specific requirements for proficiency testing. But they  
25 also included a requirement that labs comply with all

1 regulations as they existed in December 31st, 2004. And  
2 those regulations include specific departmental  
3 proficiency test requirements. For the qualification of  
4 personnel it actually says a proficiency test -- they have  
5 to pass a proficiency test and a written examination  
6 conducted by the Department. So in that instance our  
7 hands are sort of tied. But there are also sections that  
8 require -- that refer to the Department's use of  
9 proficiency testing data in order to evaluate the ability  
10 of the lab's methods to meet the standards of performance  
11 requirements.

12           So I don't -- I think just reading one section of  
13 the new statutes and ignoring the other probably doesn't  
14 give you the balanced view that you may need to understand  
15 maybe why the program is ongoing.

16           I also had one more quick --

17           COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.

18           Go ahead.

19           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

20           I also have one more quick point, which is we've  
21 got to keep in mind that the new statutes require labs to  
22 participate in an ASCLD-LAB approved proficiency test  
23 providers program, that there's no requirement that those  
24 results are reviewed or evaluated by ASCLD. And they  
25 certainly wouldn't apply to the half dozen or -- I'm not

1 sure what number. But there are a number of labs that  
2 aren't currently ASCLD-LAB accredited. And they would  
3 have no involvement whatsoever with the Proficiency Test  
4 Review Committee that exists under ASCLD.

5           So keep that in mind as we reach a comfort level  
6 with that ASCLD oversight. One, it's not required by the  
7 regulations; two, it doesn't apply to a number of labs.

8           COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.

9           This topic of proficiency testing was discussed  
10 at long length to the members of our Legislature. I think  
11 it's very clear they were speaking to us to accept  
12 ASCLD-LAB approved testing providers, of which the state  
13 is not.

14           And if we want to go with Title 17 of the  
15 regulations, understanding that the State Legislature's  
16 intent was for us to use ASCLD-LAB approved providers,  
17 Title 17 on page 5 clearly says the Department may approve  
18 another provider and that's a way the Department might  
19 come into compliance with the intentions of the  
20 Legislature.

21           And I'll read for you. It says -- and this is  
22 under 1216.1 subparagraph 3: "Demonstrating satisfactory  
23 performance in a proficiency testing program conducted by  
24 or approved by the Department." So this would be a very  
25 nice time to take the intention of our State Legislature

1 and put that into effect.

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 A follow-up comment.

4 And again that wouldn't apply to the requirement  
5 under 1216.1 F and -- E and F, which refers to a  
6 requirement in the regulations that personnel to be  
7 qualified to perform forensic alcohol analysis must  
8 satisfactorily complete a written examination and a  
9 proficiency test conducted by the Department.

10 So the other section refers to --

11 COMMITTEE MEMBER LOUGH: But that's a  
12 competence --

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

14 Well, the word "competence" -- the competency  
15 test samples is undefined in the current regulations and  
16 actually in the proposed new regulations.

17 COMMITTEE MEMBER LOUGH: The only reference to  
18 the state's proficiency test as long as the state would  
19 approve the use of another provider, as was the intention  
20 of the Legislature, is for the acceptance of new analysts  
21 who are still by Title 17 required to take the proficiency  
22 tests provided by the Department. That's what we would  
23 call a competency test. And I don't know if we have that  
24 definition or not.

25 And the written exam, all those things, those are

1 still left over things until it's changed. Because, as  
2 you know, we have repealed all of that out of the changes  
3 that we made.

4           So to comply with the Legislature's intention,  
5 the bulk of proficiency testing is not the new analysts  
6 that come on. If the state wishes to provide those  
7 initial competency tests for new analysts before they  
8 start doing the work, I think that's fine. That would  
9 considerably lessen the work of your Department, Clay, and  
10 be more in line with what the state legislators intended.

11           COMMITTEE MEMBER SEDGWICK: Paul Sedgwick in San  
12 Diego.

13           I agree with that with the proviso that these  
14 samples be provided in a timely manner. As soon as a  
15 person finishes their training, what we generally refer to  
16 as qualifying samples or competency tests, should be  
17 immediately administered and not wait until the next six  
18 months down the line when your laboratory does provide  
19 samples.

20           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
21 Quick comment.

22           COMMITTEE MEMBER LOUGH: Also, and for Mr.  
23 Knapp -- This is Patty Lough again.

24           For Mr. Knapp, if he -- you don't have to be a  
25 member of ASCLD-LAB to use a provider that they have

1 approved. So his lab doesn't have so seek accreditation  
2 by ASCLD-LAB to be able to use those providers. They're  
3 common forensic providers that are used by the industry.

4 MR. KNAPP: Jon Knapp.

5 I understand. And we are complying with that.  
6 We do proficiency testing with CAP.

7 And I guess my point was, I don't see any reason  
8 why -- you know, if Clay's group wants to provide an  
9 additional one and we have an opportunity to do an  
10 additional proficiency test provided by the state, why not  
11 do both. You know, that maybe it not be a requirement.  
12 But if they're willing to make one up and send one out,  
13 you know, why not?

14 COMMITTEE MEMBER LOUGH: I think very clearly --  
15 this is Patty Lough -- one of the main considerations  
16 would be budgetary. We're doing something that's  
17 redundant and that is not generally accepted in the  
18 forensic science community, that particular test that Clay  
19 provides. And so instead of going through that expense on  
20 both sides of the lab and the state, I'm sure that it  
21 would free up more time for Clay's office to do other  
22 functions if they didn't have to administer those  
23 proficiency tests, monitor them, evaluate them, et cetera.

24 So there are a lot of things which we discussed  
25 in Legislature about this, which I don't really want to

1 rehash right now. But there are -- these issues were all  
2 discussed.

3 CHAIRPERSON KIMSEY: Other comments?

4 This is Paul in Richmond.

5 Pretty much I just wanted the Committee  
6 to -- this discussion is good. I just wanted the  
7 Committee to understand that we pulled together -- the  
8 purpose of this chart was to pull together one area, sort  
9 of the diminishing role, as the Committee has structured  
10 it, with regard to the Department. And I wasn't sure that  
11 we'd gotten it -- I mean we talked about it on a number of  
12 Committee meetings. And I just wanted to be sure that we  
13 had pulled together in one spot the diminishing role of  
14 the Department with regards to Title 17, with regards to  
15 enforcement, types of, you know, personnel qualifications,  
16 training programs, et cetera, et cetera.

17 Any further discussion on this particular  
18 document?

19 We've got about -- well, we still have about two  
20 hours of time scheduled left. On the agenda, we pretty  
21 much -- we've talked about, you know, to continue to  
22 discuss the draft regulatory work product.

23 I think everyone on the Committee is feeling like  
24 we would like to get through this process. So I'm open to  
25 some discussion on how the Committee would like to spend

1 this next couple of hours. Obviously we have a  
2 requirement to get a product to Agency at some point. And  
3 they have a requirement of reviewing on a 90-day  
4 turnaround pretty much what the Committee has pulled  
5 together.

6           We had a little bit of discussion last time on  
7 what it was we wanted to send forward to Agency, and I  
8 think we might want to continue that. Part of what we  
9 were doing was getting some time for the various Committee  
10 members to get feedback from their agencies and their  
11 organizations. And we've done that with regards to the  
12 regulation package.

13           But does anyone have an idea how they'd like to  
14 proceed with regards to work product to Agency?

15           COMMITTEE MEMBER LOUGH: This is Patty Lough.

16           I think at this time -- I think what we can start  
17 doing since we only have a couple of things left on our  
18 work product that we're looking at, I think it's a good  
19 time to start now doing the research and the prep work for  
20 submission with the references and all that stuff. And I,  
21 for one, would like to volunteer to start working on that  
22 process.

23           Well, that's volunteer on my own working, not as  
24 part of the -- I don't think the full Committee is  
25 required for that.

1           CHAIRPERSON KIMSEY: No, I would agree. And a  
2 subcommittee, we've used them in the past early on. And I  
3 think a subcommittee might be able to make some progress  
4 on that.

5           I think we might want to have a -- are we  
6 anticipating sending over to Agency then a full package --  
7 regulation package that has a statement of reasons and all  
8 of the various language associated with that? I say  
9 that -- I mean that's obviously one avenue we can take.  
10 We can also -- we could also send over an abbreviated  
11 document that basically just gives the intentions of the  
12 Committee. But it's pretty much for the Committee to  
13 decide how they want to proceed.

14           COMMITTEE MEMBER LOUGH: My vote is to give them  
15 the whole package with our reasoning behind it.

16           CHAIRPERSON KIMSEY: So if we were to set up a  
17 subcommittee to start down that road, so to speak, are  
18 there any other folks besides Patty Lough that would like  
19 to participate? If I remember correctly, we -- it's  
20 getting fuzzy, as I said. As I remember, I think we can  
21 have folks outside the Committee participate in a  
22 subcommittee. If that's not the case, I'll certainly find  
23 out rather quickly.

24           But are there any other Committee members or  
25 folks present that would be willing to serve on a

1 subcommittee?

2 MS. SHEN: This is Jennifer Shen from San Diego  
3 Police Department. And I definitely would be willing to  
4 assist on a subcommittee.

5 CHAIRPERSON KIMSEY: And could you spell your  
6 last name, please.

7 MS. SHEN: Shen S-h-e-n.

8 CHAIRPERSON KIMSEY: Thank you.

9 Anyone else?

10 I think --

11 MR. FICKIES: Terry --

12 CHAIRPERSON KIMSEY: Yes, go ahead.

13 MR. FICKIES: Terry Fickies, DOJ, Sacramento.  
14 I'd be willing to assist.

15 CHAIRPERSON KIMSEY: I have a feeling that I or  
16 someone else from the Department will also be  
17 participating.

18 Anyone else?

19 Let me at least throw out what I understand the  
20 subcommittee is going to do. We have a bit more  
21 discussion.

22 That the subcommittee will meet and prepare  
23 pretty much what the full Committee has already approved,  
24 but prepare that further in the regulatory process,  
25 including reviewing maybe the footnotes and some of the

1 issues that are still remaining including a statement of  
2 reasons, and then report back to the full Committee. Is  
3 that --

4 COMMITTEE MEMBER LOUGH: Yes. Yeah, I think so.

5 MR. KALCHIK: Where will the subcommittee  
6 meetings be held?

7 CHAIRPERSON KIMSEY: We had a question here in  
8 Richmond about where the subcommittee meetings will be  
9 held.

10 They'll probably be conference calls. That's  
11 what we've done in the past. And the subcommittee's work  
12 product will come to the full committee in a full open  
13 meeting for discussion. And so if I remember correctly,  
14 the subcommittee was able to meet as a group not in a  
15 public forum previously. And that the public forum comes  
16 when we have a subsequent full Committee meeting, and the  
17 subcommittee's work product is reviewed in its entirety.

18 COMMITTEE MEMBER WONG: Kenton Wong, Richmond.

19 If I recall, I think you can only have two people  
20 from the main Committee on a subcommittee. And after  
21 that, then you're subject to Bagley-Keene. And then --

22 CHAIRPERSON KIMSEY: Sounds familiar.

23 COMMITTEE MEMBER WONG: I think you're limited to  
24 two. So if you and Patty are on, then that's it.

25 And then the other question I had was whether the

1 new Cathy Ruebusch, Barbara Galloway, was going to be  
2 available to provide input.

3 CHAIRPERSON KIMSEY: A little review there.

4 Barbara Galloway is the new individual in our  
5 Office of Regulations in the Department of Public Health  
6 that is going to have responsibility with regards to this  
7 reg package. And I'll certainly try and include her in  
8 these subcommittee calls. I think initially she may be  
9 able to help give the group, the subcommittee, some  
10 direction on how to proceed. And I'll certainly try and  
11 include her.

12 Reality is -- I will certainly invite her in  
13 trying to arrange around her schedule a subcommittee  
14 meeting. Our Office of Regulations now is down to two  
15 individuals for the whole Department. We've had someone  
16 go out recently on maternity leave. So her availability  
17 is something I can't speak to directly. But we will  
18 certainly do -- I'll certainly do what I can to get her  
19 involved with the subcommittee.

20 COMMITTEE MEMBER WONG: Kenton Wong, Richmond.

21 I think that's really important, because, as  
22 intimated by Laura, I would hate to have a subcommittee  
23 taking off on a certain direction and then, you know, not  
24 having Barbara there, and then she coming back and nixing  
25 everything that you've worked so hard for. So --

1           CHAIRPERSON KIMSEY: Well, and there are --  
2 that's a very good point. I mean, as we've all realized,  
3 there's some very technical issues with regards to the  
4 writing of these regulations under the Administrative  
5 Procedures Act. So I think that's a very key point.

6           Any other comments about the subcommittee's work?

7           At our last meeting we talked about trying to  
8 address some of the footnotes that have been on some of  
9 our documents. Are there any particular footnotes that  
10 the Committee wants to address? We still have a bit of  
11 time here scheduled with, you know, videoconferencing and  
12 our stenographer. So we might want to take advantage of  
13 any other comments the Committee might want to have with  
14 regards to work product and maybe specifically some of the  
15 footnotes.

16           COMMITTEE MEMBER DAVIS: This is Kevin Davis,  
17 Sacramento.

18           CHAIRPERSON KIMSEY: Yes.

19           COMMITTEE MEMBER DAVIS: I had a question.

20           At our last meeting I believe her name was Goldie  
21 Eng gave a presentation on -- she seemed to be questioning  
22 the Committee's authority to include regulations for law  
23 enforcement based upon the change to 100715. It was my  
24 understanding that myself and several others disagreed  
25 with her assessment and that she was going to kind of

1 reanalyze it or get back to us. Was there any word on  
2 that?

3 CHAIRPERSON KIMSEY: It was actually my  
4 impression that she would actually be at the meeting here  
5 today and prepared to answer questions. Unless I'm not  
6 seeing her -- I agree, I don't see her currently. And so  
7 I'm as surprised as you are that she's not here.

8 I can certainly try to see that she's available  
9 at our next Committee meeting.

10 Do you think these are issues that are relevant  
11 to what the subcommittee's work might be?

12 COMMITTEE MEMBER WONG: Most definitely.

13 COMMITTEE MEMBER DAVIS: Are you asking me? I'm  
14 sorry.

15 CHAIRPERSON KIMSEY: Yes. I mean --

16 COMMITTEE MEMBER DAVIS: Kevin Davis, Sacramento.

17 I was just wondering -- it was an issue that  
18 wasn't quite resolved. And I was just curious if that's  
19 something that we still need to discuss at some point.

20 CHAIRPERSON KIMSEY: Right.

21 COMMITTEE MEMBER LOUGH: Patty Lough.

22 I thought we kind of removed references to law  
23 enforcement. I think we just took them out and left it as  
24 "other persons".

25 COMMITTEE MEMBER DAVIS: Kevin Davis, Sacramento.

1           Well, she had problems with almost the entire  
2 Article 7 as it pertains to law enforcement. I disagreed  
3 with her. But that was what I seemed to be getting from  
4 her.

5           COMMITTEE MEMBER LOUGH: I think for me, even  
6 though we -- fortunate that we have our meetings set up  
7 and our stenographer here, I'm not really prepared to go  
8 over the footnotes at this time. And we can go one by  
9 one.

10           But I think it'd be easier to have an opportunity  
11 to kind of sit down and figure out kind of the format that  
12 would be easier for me to keep track of them and, you  
13 know, kind of see what's going on.

14           I'd like to come up with first some kind of a  
15 format of information that we're going to use for each one  
16 of these. And then maybe we -- just do some background  
17 work on that and then get together with the subcommittee  
18 once we establish our format of the topics that -- of the  
19 areas that we need to cover for each of these issues --  
20 changes.

21           CHAIRPERSON KIMSEY: Okay. When do we think the  
22 subcommittee -- since we have a number of the folks at  
23 least that will probably be on the subcommittee, what are  
24 people's availability? I think, you know, we should try  
25 to get this done sooner than later.

1 I don't have a calendar in front of me. But this  
2 week is pretty much shot. How about -- is there a  
3 particular day of the week that works for folks, like  
4 Fridays or Mondays?

5 COMMITTEE MEMBER LOUGH: Probably not Mondays or  
6 Fridays, because some people have those days off.

7 CHAIRPERSON KIMSEY: Okay.

8 COMMITTEE MEMBER LOUGH: So probably middle of  
9 the week.

10 CHAIRPERSON KIMSEY: Wednesdays? I believe next  
11 Wednesday's the 12th and then there'd be the 19th.

12 Do we want to try and maybe set something up for  
13 the 19th?

14 COMMITTEE MEMBER LOUGH: And what I'm suggesting  
15 then if we meet that soon is for us just to take a look at  
16 these footnotes and see what kind of -- how we want to  
17 organize them to start working on them at this point. And  
18 then maybe we can assign different areas.

19 CHAIRPERSON KIMSEY: No, and I agree. I think if  
20 we do meet on the 19th, that we would probably just  
21 initially have a discussion hopefully with Barbara  
22 Galloway on what would be the best way for the  
23 subcommittee to proceed with regards to footnotes. Maybe  
24 we can even split it up, I mean, and get back together.

25 So I'm very much sure that the first meeting of

1 the subcommittee would -- at least the first part of it  
2 would be how to proceed.

3 But does the 19th work?

4 MR. FICKIES: How would the 12th be?

5 CHAIRPERSON KIMSEY: That's pretty quick. Well,  
6 let me think. I mean --

7 COMMITTEE MEMBER LOUGH: Well, I think that's too  
8 soon. I mean that doesn't --

9 MR. FICKIES: Okay.

10 CHAIRPERSON KIMSEY: -- give us -- everyone  
11 enough time to take a look at that with their other work.  
12 I think we need a little bit of room in there.

13 MR. FICKIES: The 19th is fine then.

14 CHAIRPERSON KIMSEY: Why don't we tentatively --

15 COMMITTEE MEMBER LOUGH: The 19th is good for me.

16 CHAIRPERSON KIMSEY: Okay. Jennifer, how's the  
17 19th work for you, do you know?

18 MS. SHEN: That works for me. Thank you.

19 CHAIRPERSON KIMSEY: Well, I'll try to  
20 tentatively set something up for the 19th. I'll see who's  
21 going to be representing the Department and if I can get  
22 Barbara Galloway's availability. And I'll communicate  
23 with folks via Email.

24 Are there other -- I heard Patti's Lough's  
25 perspective on the footnotes.

1           But are there any other Committee members that  
2 have an interest in any particular footnote at this point?

3           With regards to the full Committee meeting, what  
4 is the feeling of the Committee? I mean if we're going to  
5 have a subcommittee meet, it's going to have to meet a few  
6 times I would think before we have something to bring back  
7 to the full Committee. I would recommend that we probably  
8 not have a hard scheduled date for a future Committee  
9 meeting but sort of base it on how the subcommittee  
10 progresses.

11           I mean is there any feeling we need to have a  
12 Committee meeting -- a full Committee meeting before the  
13 subcommittee has gone through its work?

14           I see heads shaking.

15           So what we'll try and do is we'll talk to the  
16 subcommittee on the 19th or so, whenever we get it  
17 scheduled, and try and get an idea what our timeframes are  
18 going to be.

19           But realistically speaking, even if the  
20 subcommittee were to meet every other week or so, it's  
21 going to be a bit of time, I would believe, before we've  
22 gotten through the whole work product and have it up to  
23 standards of a regulation package.

24           COMMITTEE MEMBER WONG: Are you thinking the  
25 summer?

1 CHAIRPERSON KIMSEY: Yeah, you may be right.

2 It may be two or three months, I would think, of  
3 subcommittee work. But, anyhow, I -- not too much more  
4 speculating. But what we'll do is we'll stay in touch,  
5 you know, via Email and public announcements with regards  
6 to the next full Committee meeting. But we'll try and  
7 schedule the subcommittee meeting for the 19th of March.

8 With regards to the people that are going to be  
9 on the subcommittee, what is your tolerance for the amount  
10 of time you can put to this in one meeting? Should we  
11 schedule, you know, two-hour meetings? What is -- I think  
12 two hours might -- from past experience, I think two hours  
13 may be a good timeframe to start with.

14 COMMITTEE MEMBER LOUGH: That's probably fine for  
15 the initial, just to come up with our plan of attack.

16 CHAIRPERSON KIMSEY: Okay.

17 COMMITTEE MEMBER LOUGH: And then after that,  
18 we'll probably have homework assignments, and then we can  
19 come back and have longer meetings

20 CHAIRPERSON KIMSEY: Okay. Other comments from  
21 the full Committee or the public on pretty much anything  
22 relevant to the work of the Committee?

23 Well, if I don't hear any other comments, I guess  
24 we'll go ahead and call it a day.

25 And I want to again thank all the Committee and

1 the public for their participation. And I appreciate the  
2 fact this takes time out of your real jobs. And I want to  
3 thank you very much for your help.

4 (Thereupon the Forensic Alcohol Review  
5 Committee meeting adjourned at 1:49 p.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing California Department of Health Services,  
7 Forensic Alcohol Review Committee meeting was reported in  
8 shorthand by me, James F. Peters, a Certified Shorthand  
9 Reporter of the State of California, and thereafter  
10 transcribed into typewriting.

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

14 IN WITNESS WHEREOF, I have hereunto set my hand  
15 this 20th day of March, 2008.

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