

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
TELECONFERENCE ROOM B-137
RICHMOND, CALIFORNIA

TWELFTH MEETING
MONDAY, NOVEMBER 9, 2009
1:00 P.M.

REPORTED BY:
JOHN COTA

APPEARANCESReview Committee Members

Dr. Paul Kimsey, Chairperson (Richmond)

Ms. Janet Anderson-Seaquist (Ventura)

Sergeant Kevin Davis (Sacramento)

Mr. Bruce Lyle, (San Diego)

Mr. Paul R. Sedgwick (San Diego)

Ms. Laura Tanney (San Diego)

Mr. Kenton S. Wong (Richmond)

Mr. Torr M. Zielenski (Sacramento)

Staff

Mr. Robert Haas, Abused Substances Analysis Section

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

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

Also Present

Ms. Goldie L. Eng, Department of Public Health, Office of
Legal Services (Sacramento)

Mr. Terry Fickies, Public (Sacramento)

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

Ms. Patricia S. Lough, Subcommittee Member (San Diego)

Ms. Jennifer Shen, San Diego Police Department Crime Lab,
Subcommittee Member (San Diego)

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1 And if people could try and cut down on the
2 shuffling of papers. At least if it's close to somebody's,
3 we're hearing quite a bit of background (moaning or growling
4 sound feedback).

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

6 It's a whale.

7 CHAIRMAN KIMSEY: The, I guess the comments or
8 opening remarks would be that Assembly Bill 599 was vetoed
9 or, and I'm going to read the veto message.

10 It says, to the members of the California State
11 Assembly, I am returning Assembly Bill 599 without my
12 signature.

13 This bill is a premature delegation of regulatory
14 oversight from a state department to a private entity.

15 If there is more efficient to provide oversight
16 for forensic alcohol laboratories I encourage the
17 stakeholders to work with the Department of Public Health on
18 a solution that does not eliminate important state
19 functions.

20 For this reason I am unable to sign this bill.
21 Sincerely, Arnold Schwarzenegger.

22 Any other comments about Assembly Bill 599 (loud
23 moaning or growling sound again). It sounds like there's a
24 general moaning or growling going on on the, does anyone
25 know what --

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 It's a whale.

3 CHAIRMAN KIMSEY: It sounds like a whale a bit, in
4 the background. Okay.

5 COMMITTEE MEMBER WONG: I have a thought with
6 regard to AB 599. Since the Department is not currently
7 involved in inspections (moaning sound) --

8 CHAIRMAN KIMSEY: Go ahead I'll --

9 COMMITTEE MEMBER WONG: -- and has neither the
10 budget or the time to be involved in inspections. And most
11 of the laboratories are involved in some sort of
12 accreditation I was thinking that one way that might be
13 amenable and a workable solution in regards to the
14 governor's recommendation is maybe the laboratories can
15 submit their accreditation approvals from whoever is the
16 nationally accrediting body is for their laboratory to the
17 Department and the Department can then approve that.

18 So the private agencies can get their
19 accreditation and the Department doesn't have to spend their
20 time and money doing the inspections and the accreditation
21 or in line with their normal past responsibilities.

22 And it might be a way to solve all the problems
23 and make everybody happy and appease the Governor's goals.

24 Any thoughts?

25 MS. LOUGH: Hello, Kenton this is Pattie. As you

1 say there are no inspections being performed now. So
2 apparently the Governor isn't concerned about that.

3 Obviously the Governor did not specify what
4 control the Department of Health is taking currently with
5 the Forensic Alcohol Program.

6 So I think, really, the only thing that is being
7 performed now, and they can correct me if I'm wrong, is they
8 are sending out a proficiency test that is not acceptable
9 under the Health and Safety Code but they are submitting
10 that out.

11 And I think there is still approving new employees
12 to be under those classifications.

13 My thought is for the Committee to get the review
14 finished, the Title 17 Revisions and maybe submit that to
15 the Governor as, you know, to be approved or submit that to
16 the Legislature just to be accepted in one fell swoop.

17 And that would answer all of the questions
18 regarding control and oversight, you know, based on the
19 recommendations of the Committee.

20 CHAIRMAN KIMSEY: Other comments on 599?

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Yeah, just one quick comment from staff. On that list, I'm
23 not sure it was totally complete.

24 The activities that the Department continue to
25 conduct have been presented in a couple of advisories sent

1 to the laboratories so it's actually well understood.

2 Just listening to what you said I don't think you
3 mentioned the Section 1218 actually requires the labs to get
4 approval from the Department for any training offered to
5 qualify individuals under the regulations.

6 So that's another activity we continue to do that
7 I can think of that you didn't include in your list.

8 MS. SHEN: This is Jennifer Shen from San Diego
9 Police Department Crime Laboratory. I think this is sort of
10 beside the point.

11 And I think we should be focussed on getting our
12 work product out here versus thinking of a new way to
13 appease the Governor as this time.

14 CHAIRMAN KIMSEY: Okay, any other comments? If
15 not, why don't we move into a continued review of our work
16 product. If I remember correctly we left off with Article
17 6.

18 Is that where we want to pick up again or what's
19 the feeling of the Committee?

20 MS. LOUGH: This is Pattie. I have a note on my
21 from last time that says we stopped, it looks like at the
22 end of Article 6. I don't remember. Does anyone recall,
23 did we make it through Article 6?

24 CHAIRMAN KIMSEY: I don't remember that we voted
25 on Article 6.

1 COMMITTEE MEMBER WONG: No we didn't.

2 CHAIRMAN KIMSEY: And --

3 MS. LOUGH: No, we, this is Pattie. My thoughts
4 are maybe at this point we could briefly go through all the
5 comments that are in the margins, make sure we have those
6 things finalized. And then we can go back and vote in those
7 areas that are remaining.

8 CHAIRMAN KIMSEY: Okay. Which document are you
9 going to be working from? We have the Lough version from
10 the --

11 MS. LOUGH: We --

12 CHAIRMAN KIMSEY: -- from 9/16 or (cell phone
13 ringing).

14 MS. LOUGH: Hi Laura this is Pattie.

15 MS. SHEN: Hi, Jen. Are you on your way?

16 MS. LOUGH: All right. We're just talking. All
17 right we're just starting to go through the document now.

18 About how much time? So about 1:30? Okay. All
19 right.

20 No, it's a different building. It's kind by the
21 entrance of Old Town. Yes, and parking is okay. All right,
22 we'll see you in a few.

23 That was Laura Tanney. She will be here in about
24 10 minutes.

25 CHAIRMAN KIMSEY: Okay.

1 MS. LOUGH: I'm working, in front of me the
2 document that came in the mail. So we should all have that
3 same document.

4 CHAIRMAN KIMSEY: Okay. That's the one at the top
5 it says, it says meeting 9-16-09?

6 MS. LOUGH: Yes.

7 CHAIRMAN KIMSEY: Okay.

8 MS. LOUGH: The revisions from that meeting.

9 CHAIRMAN KIMSEY: Right, okay.

10 MS. LOUGH: Yeah.

11 CHAIRMAN KIMSEY: So what page do we want to start
12 from?

13 MS. LOUGH: Go ahead.

14 CHAIRMAN KIMSEY: Sure, go ahead Pattie.

15 MS. LOUGH: I think we should just start, I think
16 we'll just start on the first page and we'll just be working
17 with the notes in the margins that we were going to come
18 back to later.

19 But I think we got, reviewed the document in its
20 entirety and now we can look at those notes and if everyone
21 is comfortable the Committee can take a vote then on those
22 sections that need votes.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
24 Comment from --

25 MS. LOUGH: And if that holds --

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
2 Comment from staff. We actually haven't looked at Article
3 7.

4 CHAIRMAN KIMSEY: Did we?

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
6 I mean we looked at everything at times. But in terms of
7 that last go through we had Article 1 and we skipped that
8 and Article 6 and 7.

9 And last time I believed we completed Article 6
10 but didn't vote, we didn't do Article 7.

11 CHAIRMAN KIMSEY: Okay, well let's see --

12 MS. LOUGH: We haven't gotten into it yet?

13 MS. SHEN: It says that we have.

14 MS. LOUGH: Well, that's, you know, as I said, we
15 have to, let me look at my notes from the statement.

16 Okay. We may not have.

17 CHAIRMAN KIMSEY: Yeah, I showed us stopping at
18 the end of Article 6. But we can still start, this current
19 document from the beginning.

20 I thought I had Goldie's comments here somewhere.

21 MS. LOUGH: All right, maybe we can go, maybe we
22 go through the notes in the margins and then go back to
23 Article 7.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
25 Yeah, this is to disagree --

1 MS. LOUGH: Oh yeah, according to my notes we
2 stopped at the end of Article 6. Those are my handwritten
3 notes.

4 CHAIRMAN KIMSEY: Yeah, that's what my --

5 MS. LOUGH: So we do --

6 CHAIRMAN KIMSEY: -- handwritten --

7 MS. LOUGH: Article 7.

8 CHAIRMAN KIMSEY: -- okay.

9 MS. LOUGH: Yeah, so we do need to do seven. So
10 do you want to finish up the margins, get those out of the
11 way. And then just finish that last Article?

12 CHAIRMAN KIMSEY: Yes.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
14 Actually, just to disagree again. I think --

15 MS. LOUGH: Or we --

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 I think --

18 CHAIRMAN KIMSEY: We have a comment here in
19 Richmond.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
21 I think it would just to keep this, to establish the
22 procedures, I think it would be appropriate to do the
23 comments certainly in Article 6. Finish Article 6 and vote
24 and then do Article 7.

25 Before, for instance, we turned to Article 1 which

1 we agreed to postpone until such time as we finished the
2 other seven Articles thinking that the definitions would
3 make more sense once we had reviewed the Articles, the
4 regulations themselves.

5 CHAIRMAN KIMSEY: What's the feeling of the rest
6 of the Committee?

7 MS. LOUGH: Okay, so this is Pattie. Okay.

8 COMMITTEE MEMBER WONG: It's fine to me.

9 COMMITTEE MEMBER LYLE: This is Bruce Lyle. I
10 don't see why we can't just go through Article 1 now.

11 CHAIRMAN KIMSEY: Well some of what we did talk
12 about in Article 6 and 7 may affect Article 1. That's been
13 the history in the past with the definitions.

14 COMMITTEE MEMBER LYLE: I'm with Clay.

15 MS. SHEN: Finish Article 6 and then move to --

16 COMMITTEE MEMBER LYLE: Finish six and then let's
17 go to seven and then we can go back to one.

18 COMMITTEE MEMBER WONG: Sounds good.

19 MS. SHEN: Sounds good to me.

20 CHAIRMAN KIMSEY: Okay, there seems to be general
21 agreement so let's finish up Article 6.

22 MS. LOUGH: Okay, this is Pattie again. And my
23 notes show that we got through the end of Article 6. So I
24 think we're ready for seven.

25 COMMITTEE MEMBER LYLE: We'll have to vote on six.

1 MS. LOUGH: Oh, we all voted on --

2 MS. SHEN: For comments --

3 MS. LOUGH: Okay, so that's what, Article 6,
4 everyone then had a time, had time to review it and then a
5 vote by the Committee is needed.

6 As with all of them pending a review, the final
7 comments. So Laura is not here yet but do we want to go
8 ahead and vote? Does the Committee want to vote on Article
9 6?

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
11 Comment from staff. There were some margin comments on six.
12 Do you want to go over those?

13 MS. LOUGH: Well I think that's what we talked
14 about is holding off and we're going to as with many others
15 that we voted on there are comments in the margins.

16 So pending review of all comments, a last time
17 vote, so the whole document will have a yes or a no.

18 Just what we have so far for Article 6. We'll
19 finish Article 7. We'll go through all the comments. And
20 then we'll take a final vote on the whole document.

21 Okay, what does the Committee want to do? Do you
22 want to vote on six?

23 COMMITTEE MEMBER LYLE: I'm ready to vote on it.

24 COMMITTEE MEMBER SEDGWICK: Paul Sedgwick, I'm
25 ready to vote on it as well.

1 CHAIRMAN KIMSEY: This is Paul. Can we try and
2 identify ourselves. Our reporter has requested that we
3 identify ourselves before we speak.

4 The person that just last spoke? We recognize
5 Paul --

6 COMMITTEE MEMBER SEDGWICK: Paul Sedgwick.

7 CHAIRMAN KIMSEY: Okay.

8 THE REPORTER: No, it was a woman.

9 CHAIRMAN KIMSEY: And then there was someone after
10 that.

11 MS. SHEN: That was Jennifer. I can't vote but
12 I'm ready as well.

13 CHAIRMAN KIMSEY: (laughter).

14 COMMITTEE MEMBER ZIELENSKI: Torr Zielenski,
15 Sacramento. I'm prepared to vote.

16 COMMITTEE MEMBER ANDERSON-SEAQUIST: Janet from
17 Ventura, I'm ready to vote.

18 COMMITTEE MEMBER WONG: Kenton. I'm ready to vote
19 just as long as we don't have to go over the comments on the
20 side. Clay. Clay was saying?

21 CHAIRMAN KIMSEY: So, let's do a roll call vote, I
22 guess. Well, let's see. This is Paul Kimsey. Why don't
23 we, all in favor of Article 6 as presented signify by saying
24 aye. (Various panel members in unison, "aye")

25 CHAIRMAN KIMSEY: There's one, any opposed? This

1 is Paul Kimsey. I'll be opposing on behalf of the
2 Department.

3 MS. ENG: Excuse me, Paul.

4 CHAIRMAN KIMSEY: Yes.

5 MS. ENG: This is Goldie.

6 CHAIRMAN KIMSEY: Uh-huh.

7 MS. ENG: I think a roll call vote is required
8 because this is a teleconference.

9 CHAIRMAN KIMSEY: Okay. I'll go down the list
10 here. Sergeant Davis?

11 COMMITTEE MEMBER DAVIS: Aye.

12 CHAIRMAN KIMSEY: Mr. Torr Zielenski.

13 COMMITTEE MEMBER ZIELENSKI: Aye.

14 CHAIRMAN KIMSEY: Mr. Bruce Lyle.

15 COMMITTEE MEMBER LYLE: Aye.

16 CHAIRMAN KIMSEY: Mr. Kenton Wong.

17 COMMITTEE MEMBER WONG: Aye.

18 CHAIRMAN KIMSEY: Mr. Paul Sedgwick.

19 COMMITTEE MEMBER SEDGWICK: Aye.

20 CHAIRMAN KIMSEY: Ms. Janet Anderson-Seaquist.

21 COMMITTEE MEMBER ANDERSON-SEAQUIST: Aye.

22 CHAIRMAN KIMSEY: Dr. Paul Kimsey. No. And
23 Ms. Laura Tanney is not present. Is that correct?

24 COMMITTEE MEMBER TANNEY: I'm here now.

25 CHAIRMAN KIMSEY: Oh, okay. How do you vote?

1 COMMITTEE MEMBER TANNEY: I vote, aye.

2 CHAIRMAN KIMSEY: Okay.

3 COMMITTEE MEMBER TANNEY: Aye.

4 CHAIRMAN KIMSEY: So we have seven ayes and one
5 no. So do we want to move on to Article 7?

6 MS. LOUGH: Yes. For Laura this is Pattie, for
7 Laura I'll tell her, we found that we didn't do Article 7,
8 that's our remaining Article.

9 Then the intention is to go back and look at the
10 comments so we can vote on the whole document.

11 I'm working off the document that came in the
12 mail.

13 Okay, so, this is Pattie. Article 7, I'll just go
14 through them as we have them. Section 1221., 1221.1(a),
15 1221.1(b), (b)(1), (b)(2), okay, (b)(3) it has a comment.
16 We may as well go ahead and address that comment now.

17 This is regarding the use of that term,
18 continuous. The observation, this has been a term that's
19 been subject to a lot of discussion from CACLD.

20 So the Committee needs to decide how they want the
21 final language to read on this, if it stays the same of if
22 they want to change it.

23 COMMITTEE MEMBER DAVIS: This is Kevin. What was
24 the issue previously, defining continuous?

25 MS. LOUGH: Well, not to define, continuous. Some

1 people feel the word, continuous, should be removed.

2 Some people think it's vague. It means the
3 officer has to be making eye contact with the subject
4 entirely for that amount of time.

5 Some people loosely say it counts for the time the
6 subject is in the back seat of the patrol car.

7 Our thought was that it's up to the officer to
8 define how he or she performs that observation in a court of
9 law. I mean that's the place where the officer can give the
10 confidence that they had observed the person.

11 So a majority felt that it should remain just as
12 it's written.

13 COMMITTEE MEMBER DAVIS: Okay.

14 CHAIRMAN KIMSEY: This is Paul Kimsey. Are we
15 going to define, continuous, in the dictionary or in the, or
16 just leave it open to interpretation?

17 COMMITTEE MEMBER LYLE: I'd say we just leave it
18 open to interpretation.

19 COMMITTEE MEMBER SEDGWICK: So this is Paul
20 Sedgwick. I tend to agree with that also but I know Laura
21 Tanney would know more about this than I.

22 There have been, I don't know how many court
23 decisions either defining that or regulating it one way or
24 the another, that particular word.

25 Do you have any feelings on that Laura?

1 COMMITTEE MEMBER TANNEY: My only concern with it
2 is that whether the rules -- help me Pattie, the rules,
3 Administrative Law Office and the rules --

4 MS. LOUGH: Oh, would find it --

5 COMMITTEE MEMBER TANNEY: -- people would find it
6 too vague. But I agree with leaving it because it is well
7 established law that it doesn't require an actual visual
8 necessarily for the entire 15 minutes.

9 So it's basically, basically it's like Pattie
10 says, subject to interpretation. An argument for both the
11 prosecution and the defense is to whether it was adequately
12 performed for purposes of the accuracy of the testing.

13 So I think it's okay to leave it, I think it's
14 okay to take it out. I don't think it's going to make a lot
15 of difference to the attorneys.

16 What I'm concerned about it is whether it's too
17 vague for these regulations to pass as written down.

18 COMMITTEE MEMBER LYLE: Bruce Lyle. Isn't it
19 easier if it stays, if it's, if it was the previous wording?

20 And if it, if you don't change the wording then it goes
21 through a lot easier?

22 MS. LOUGH: This is Pattie. We were under that
23 assumption when we started this document however many years
24 ago. And since we've found out that the original document
25 is not in compliance so when it goes in the whole thing has

1 to comply.

2 COMMITTEE MEMBER LYLE: Okay.

3 MS. LOUGH: So we're stuck with it one way or the
4 other.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

6 A couple of comments --

7 MS. SHEN: This is Jennifer Shen from San Diego
8 Police Department. This is Jennifer from the San Diego
9 Police Department Crime Laboratory, and it occurs to me that
10 the definition that probably is more under question is what,
11 observation, means versus what, continuous, means.

12 So I think you can get yourself wound up with
13 semantics when it's not really necessary.

14 And does, observing, mean being in the presence?
15 Does, observing, mean to have your eyeballs on someone?
16 What does that actually mean?

17 So, I don't know, spending a lot of time on,
18 continuous, might not even answer our question.

19 COMMITTEE MEMBER TANNEY: I agree with Jennifer.
20 It's actually pretty --

21 THE REPORTER: Speaker?

22 COMMITTEE MEMBER TANNEY: -- previously --

23 THE REPORTER: Speaker please.

24 CHAIRMAN KIMSEY: I'm sorry, who is speaking?

25 COMMITTEE MEMBER WONG: It's Laura.

1 CHAIRMAN KIMSEY: Was that Laura.

2 COMMITTEE MEMBER TANNEY: Sorry.

3 COMMITTEE MEMBER ZIELENSKI: Torr Zielenski,
4 Sacramento. The, observation aspect, or definition used, it
5 doesn't specify specifically the basis for the observation
6 and/or who it is that's doing the observation.

7 You might have multiple officers at different
8 times that observe the suspect for a period of time.

9 So, you know, the observation is vague in terms of
10 the type of observation involved and the source of the
11 observation.

12 COMMITTEE MEMBER TANNEY: This is Laura Tanney
13 again. Would you consider or maybe the Committee might
14 consider, the breath sample shall be collected only after a
15 15 minute period of time during which the subject may not
16 ingest alcohol, beverages or other fluids, regurgitate,
17 vomit, eat or smoke.

18 COMMITTEE MEMBER DAVIS: I like that. That's,
19 this is Kevin. This is Kevin. That sounds good to me but
20 if we change it is there going to be a higher level of
21 explanation needed as to why we changed it?

22 COMMITTEE MEMBER ANDERSON-SEAQUIST: Well, this is
23 Janet from Ventura. Some other states have gone away from
24 calling them, observation periods, to, deprivation periods,
25 because what you're actually doing is depriving the person

1 of having an alcohol in their oral cavity. So you might
2 want to go in that direction and just rename it a,
3 deprivation period, instead of observation.

4 MS. SHEN: This is Jennifer from the San Diego
5 Police Department Crime Laboratory, as I worked a lot on
6 this, on justifying these changes, you know really, taking
7 out two words that are nebulous is only going to make it
8 stronger.

9 I don't know that, I think beyond describing the
10 fact that those two words make this paragraph less clear
11 than it could be is enough of a justification right there.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 A couple of comments from staff. In the first place, in the
14 various, I saw seven court cases which had looked at this
15 section and looked at the continuous observation
16 requirement, a number of the cases pointed out that the
17 regulations didn't provide appropriate direction.

18 And so they had to make certain presumptions and
19 make certain scientific, ultimately decisions, which the
20 courts are normally loathe to do but in this case they
21 pointed out a lack of specificity in the regulations.

22 So we sort of got that message. Regarding
23 eliminating, observation, and just going with, deprivation
24 period, a couple of the activities, to call that,
25 regurgitated, vomited are only, I would presume, established

1 by looking for them.

2 I mean it's pretty easy to lock them up and don't
3 give a cigarette or anything to drink but some of the other
4 non-volitional behavior there I would submit, require
5 observation to establish that it didn't occur.

6 COMMITTEE MEMBER TANNEY: This is Laura Tanney
7 again. We could say the breath samples shall be collected
8 only after it is ensured that the subject has not ingested
9 alcoholic beverages or other fluids, regurgitated, vomited,
10 eaten or smoked.

11 And then it's left up to the officer to explain to
12 the jury how that, and explain how that's been ensured.
13 Whether it's by continuous observation of five people versus
14 one. I mean, five sequential people, that will still
15 satisfy it as long as each one can say that the person has
16 not done those things.

17 But at least take out the vague, the vagueness
18 that's, as Jennifer pointed out, in both of the works
19 continuous and observation.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
21 I submit it adds another word --

22 MS. LOUGH: Is that Kevin?

23 COMMITTEE MEMBER DAVIS: Pardon?

24 MS. LOUGH: This is Pattie. Kevin how would that
25 work for your organization, Kevin?

1 COMMITTEE MEMBER DAVIS: I like the, I don't
2 remember exactly what you said but I like the previous. It
3 sounds like now you're saying taking out the 15 minutes
4 also?

5 MS. TANNEY: No.

6 COMMITTEE MEMBER WONG: No.

7 COMMITTEE MEMBER LYLE: Observe for 15 minutes.

8 COMMITTEE MEMBER TANNEY: If I wanted it out I
9 didn't intend to.

10 COMMITTEE MEMBER DAVIS: So someone mentioned some
11 language prior to that taking out the words, continuous and
12 observation that sounded good (loud moaning sound,
13 feedback).

14 MS. LOUGH: Paul this is Pattie. Laura do you
15 want to slowly repeat a sample, a --

16 COMMITTEE MEMBER TANNEY: Okay. The breath sample
17 shall be collected only after the subject, I'm sorry start
18 it over. The breath sample shall be collected only after
19 15 minutes during which the subject must not have ingested
20 alcoholic beverages or other fluids, regurgitated, vomited,
21 eaten or smoked.

22 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is Janet
23 from Ventura --

24 COMMITTEE MEMBER TANNEY: And we want to make --

25 COMMITTEE MEMBER ANDERSON-SEAQUIST: -- I totally

1 support that verbiage.

2 COMMITTEE MEMBER DAVIS: This is Kevin. That
3 sounds good to me too.

4 MS. LOUGH: Okay, this is Pattie. I think I have
5 it. All right, so I crossed off the comment and I will
6 retype it the way she has it.

7 And I think everyone will probably be happy with
8 that. It's been a big discussion.

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 Actually, one more comment --

11 MS. LOUGH: Okay, moving on --

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 Actually, one --

14 CHAIRMAN KIMSEY: One more comment here in
15 Richmond.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 One comment from staff. In the first sentence we struck
18 out, a breath sample shall be expired breath which is
19 essentially alveolar in composition. And I think we did so
20 noting that the definitions, and we can think about this
21 again when we look at definitions, the definition adds a
22 sentence regarding a sample.

23 And it was, you know, in Article 1 that says, a
24 sample or specimen may also include that portion of expired
25 breath which is essentially alveolar in composition.

1 I guess I'm, two things. I'm a little troubled by
2 that language, may also, so it, may not also.

3 But I think it was actually clear to in this
4 section when we're defining the sample and in some cases
5 there is operator activity that ensures that that sample is
6 alveolar that it would be appropriate to retain in this
7 section the definition of the sample as being an alveolar
8 breath sample.

9 MS. SHEN: This is Jennifer from San Diego. So if
10 the definition was, went from, may, to, shall, then it would
11 be redundant then to have that repeated in this paragraph.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 I'm not sure that wordsmithing would work but you're correct
14 that perhaps beefing up the definition would make it less of
15 an issue here.

16 I still think it's appropriate in defining a
17 sample, and this section was originally, I saw no problem
18 with leaving this under Article 4 which, I'm sorry Article
19 5, which defined the different kinds of samples that are
20 analyzed.

21 So under that section we talk about blood breath,
22 I'm sorry, blood, urine and tissue samples. Anyway you're
23 correct. Beefing up the definition --

24 COMMITTEE MEMBER TANNEY: This is Laura. This is
25 Laura Tanney. Going back to 1215.1 (1) we're defining

1 sample of specimen in a broad view which includes blood,
2 urine, tissue and then we go to the breath which is why
3 we're saying we also include that.

4 Clay's point is well taken. We could say a breath
5 sample or specimen in that portion of an expired breath
6 which is essentially alveolar in composition. And that's on
7 page four.

8 MS. SHEN: This is Jennifer from San Diego. The,
9 may, refers to the type of sample that we might have. The,
10 may, does not refer to the type of breath that it is.

11 COMMITTEE MEMBER TANNEY: Right.

12 CHAIRMAN KIMSEY: So this is Paul Kimsey in
13 Richmond. Then are we suggesting that we put the first
14 sentence back in on 1221.1 (b)(3)?

15 A breath sample shall be expired breath which is
16 essentially alveolar in composition.

17 MS. SHEN: This is Jennifer again in San Diego.
18 You know we've been pretty careful to not reiterate and to
19 be redundant in this document.

20 And if the definition describes what a breath
21 sample is it's redundant to put it back, to have it
22 described again which is what we're doing.

23 And we do not do that everywhere else. We
24 specifically tried not to do that everywhere else. So I
25 don't know why we'd do it here.

1 COMMITTEE MEMBER LYLE: Bruce Lyle. I agree. I
2 think in the definitions we can change the wording as Laura
3 suggested but leave it in the definitions.

4 COMMITTEE MEMBER WONG: I agree.

5 COMMITTEE MEMBER TANNEY: And for better yet on
6 part 1215.1 eleven, this is Laura on page four. You could
7 still say a sample or specimen may also, and we need to say,
8 refer to or obtain to instead of include.

9 So it's not an inclusion exclusion type of thing.

10 MS. LOUGH: Okay, this is Pattie. So I have it
11 reading under the definition, a sample or specimen may also
12 pertain to an expired breath sample?

13 MS. SHEN: That portion is still, that portion --

14 COMMITTEE MEMBER TANNEY: That portion of an
15 expired breath which is essentially alveolar in composition.

16 MS. LOUGH: Okay, sample or specimen may also
17 pertain to that portion of an expired breath sample which is
18 essentially alveolar in composition?

19 An expired breath pertaining to that portion of,
20 take out the an, of those.

21 Okay, Pattie is reading now. A sample or specimen
22 may also pertain to that portion of expired breath which is
23 essentially alveolar in composition.

24 Okay, that's the way it will be.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Actually, comment from the --

2 MS. LOUGH: And then --

3 COMMITTEE MEMBER LYLE: Condition of the alveolar
4 --

5 CHAIRMAN KIMSEY: We have a comment here in
6 Richmond.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
8 Comment from staff. So we're looking at 1215.1 (1) now?

9 CHAIRMAN KIMSEY: Yes.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
11 We haven't talked a lot about, recently, about APA
12 requirements. To some extent those kind of look at just
13 burdensome hurdles that we have to cross.

14 But they also are intended to make, obviously, the
15 regulations clear.

16 As a general rule I believe the APA would frown on
17 a definition which really includes, hang on, a blood sample,
18 a urine sample, a tissue sample, an artificially constituted
19 material. And then as we toss in at the end, a new sentence
20 that defines a sample or specimen may include portion of
21 expired breath that represents alveolar air.

22 It would probably be appropriate to, at least for
23 that last one, separate it out and say what a breath sample
24 is.

25 MS. SHEN: This is Jennifer from San Diego. The

1 definition of a sample does include all of those things.
2 And so if sample appears in here anywhere in a manner that
3 could actually be any of those particular types of samples
4 then those are all appropriate under the definition of
5 sample.

6 It doesn't mean you might not want to add another
7 definition that's more specific. But, in fact, those things
8 are all considered samples or specimens.

9 MS. LOUGH: So this is Pattie. So if we take that
10 definition and put a comma instead of the period and say,
11 and pertains to, instead of another, a sample or specimen
12 may also.

13 Can I just put a -- So after it says, obtain for
14 the purpose of measuring its alcoholic concentration comma
15 and pertains to that portion of expired breath which is
16 essentially alveolar in composition.

17 So it would be one kind of long sentence.

18 MS. SHEN: This is Jennifer from San Diego. Maybe
19 you need to take out, what that does is it puts a different
20 thought in the middle of your paragraph.

21 Perhaps you want to list all your specimens in a
22 row and then, obtain for the purpose of measuring it's
23 alcoholic concentration at the end.

24 MS. LOUGH: So I'll put that at where it says, for
25 of an artificially constituted material or pertains to that

1 portion of breath dah, dah, dah, dah obtained for the
2 purpose of measuring --

3 COMMITTEE MEMBER LYLE: And take out one more are.

4 COMMITTEE MEMBER TANNEY: And obtain so --

5 MS. SHEN: For that --

6 COMMITTEE MEMBER TANNEY: -- obtain, portion of an
7 expired breath.

8 MS. LOUGH: For, a portion. Okay, so that's just
9 one sentence. All of this goes after, so it reads, now that
10 definition reads, sample or specimen means a representative
11 portion of blood, urine or tissue or of an artificially
12 constituted material or a portion of expired breath which is
13 essentially alveolar in composition comma obtained for the
14 purpose of measuring its alcohol concentration.

15 COMMITTEE MEMBER LYLE: Just get rid of one of one
16 of, in order. There are two orders.

17 MS. LOUGH: Okay, that's the way I have it for
18 now. And I'll make that change. Going back to --

19 COMMITTEE MEMBER DAVIS: This is Kevin. This is
20 Kevin. Did we, we kind of got off track. Going back to the
21 15 minutes, did we all agree then on that language? On the
22 continuous observation. Did we delete it?

23 COMMITTEE MEMBER LYLE: Bruce, I agree with it.

24 COMMITTEE MEMBER TANNEY: Laura, I agree.

25 COMMITTEE MEMBER ANDERSON-SEAQUIST: Janet, I

1 agree.

2 COMMITTEE MEMBER WONG: Kenton, I agree.

3 MS. LOUGH: Okie, dokie, 1221.2 (a)(1), (b),
4 1221.3 (a), 1221.4, 4 (a), 4 (a)(1), 4 (a)(2) there's a
5 comment that just tells you that I moved this to a below
6 section.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
8 Actually, comment from staff on the second instance of 4
9 (a)(2). In the added language we refer to --

10 MS. LOUGH: Okay.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
12 -- we refer to checking the instrument for accuracy with
13 standards. And then under 4 (a)(2)(a) we refer to it three
14 times, first as a reference sample, then as a standard, then
15 as a reference sample.

16 We have to establish the standards that are used
17 to calibrate, certainly on the forensic side, standards are,
18 you know as a reagent to calibrate the method, we're in
19 general not calibrating the instrument with this particular
20 material.

21 So we probably want to refer to it as a reference
22 sample throughout.

23 And I have some more comments but I, let's see if
24 there's a response to that.

25 MS. LOUGH: This is Pattie. I think we need to

1 look back at our definitions and I see what we see there.

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 All right. Then I have some more comments. Whatever we
4 decide to call them, standards, reference samples, we
5 haven't said any requirements on this material at all,
6 either, you know, regarding the qualifications of the
7 material, what the lab does to, if it's a water alcohol
8 solution, what the lab does to determine that it's a, to
9 know the concentration.

10 The requirements are that you test the instrument
11 on a periodic basis with a sample of known concentration.
12 What is the lab required to do to know what that
13 concentration is?

14 Same thing with the a dry-gas standard or with
15 purchased material, what does the lab do to know that the
16 concentration is 270 parts per million or 0.1 percent of
17 grams percent.

18 So, you know, and these samples serve a similar
19 function to a quality control reference material or a
20 standard on the forensic side.

21 And on that side we go through great detail to
22 establish how the laboratory is supposed to establish the
23 concentration of the material, of the standard. In this
24 case we have nothing.

25 MS. LOUGH: Okay, this is Pattie. That's probably

1 consistent with the comment that's in that margin. So why
2 don't we first discuss terminology.

3 COMMITTEE MEMBER TANNEY: This is Laura. Was that
4 there before? I mean, at the outset in redoing the rules
5 would we have not, not make it more restrictive than they
6 already were. So if --

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
8 You know regarding --

9 COMMITTEE MEMBER TANNEY: If the -- if Title 17
10 just defines those previously then I'm not sure that we
11 should define it now because that would be more restrictive.

12 If it was there before then I don't have any quarrel with
13 doing it.

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
15 A couple of comments in response from staff, Clay Larson
16 speaking. In the first place there's nothing in the
17 statutes that states what Laura Tanney just stated that
18 there is, it's necessary to write regulations that are less
19 restrictive.

20 The mandate in the statutes was to write
21 regulations that ensure the competency of laboratories and
22 their employees to prepare, analyze, report the results of
23 forensic alcohol tests. That's the mandate.

24 The Department established way back, this goes
25 back to the 70s, established administrative,

1 administratively establish procedures that labs need in
2 order to satisfy the specific requirement of the regulations
3 that the reference alcohol solutions were of known
4 concentration.

5 And basically they typically mirrored that the
6 requirements of the secondary alcohol standards, where using
7 a direct oximetric procedure, establish the concentration of
8 the material and wrote procedures that limited the number of
9 uses of a solution and set forth certain requirements for
10 the storage of the solution and a usage life for the
11 solution.

12 So, right now with the Department's oversight
13 there is a structure out there that assures that the
14 periodic determinations of accuracy are done in a manner
15 which in turn ensures that the instruments are accurate and
16 are producing results that can then be introduced as
17 evidence.

18 The appropriate way to capture that now is to
19 incorporate those existing 20 year old procedural
20 requirements in the regulations.

21 MS. LOUGH: This is Pattie from San Diego. I'd
22 like to address that comment from Clay. That is what Clay
23 is referring to as what we talked about at our very first
24 meeting of the underground regulations.

25 Those are the very regulations that have been

1 causing issues with crime laboratories for these last 20
2 years.

3 We have discussed those ad nauseam. We discussed
4 as we went through the document up until now what are
5 feelings were on those.

6 We had voted not to accept the underground
7 regulations when we started.

8 And now Clay is wanting to bring those underground
9 regulations as a part of the regulations which he has not
10 done in those 20 years.

11 I propose that the Committee made up of the
12 scientists that the full scope of the scientific staff that
13 are involved in this work discuss at this point if they want
14 to accept those underground regulations as the only way to
15 do this or to continue on as we are with our document and
16 discuss how we want those particular, how you want those
17 particular requirements worded in this document.

18 Whether or not you want to refer to only being
19 able to do the 1970 procedures or allow the incorporation of
20 a new set of standards and procedures.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Let me --

23 MS. SHEN: This is Jennifer from San Diego.
24 Sorry. One of the things I'd like to keep in mind here is
25 that as we have discussed, technology certainly has

1 advanced.

2 And I don't know how wide spread it is but
3 certainly the use of the dry-gas standard is prolific and
4 those are certified.

5 Every tank we get has its own certificate. We
6 are, they are getting away from relying upon water
7 solutions.

8 So, I mean, that's something to keep in mind.

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 So are you suggesting you want to include --

11 MS. LOUGH: And this is Pattie. This is Pattie.
12 As mentioned in my comment there might be some wording that
13 the Committee would like to add that, some requirement that
14 a laboratory must do to something to ensure that what they
15 get is okay to use.

16 And I leave it up to this current Committee to
17 determine what that wording would be and whether or not they
18 want to accept the 1970 procedure or write the regulations
19 now of how they see fit.

20 And I don't think this is the opportunity to put
21 in a specific recipe for how to do something. We want to
22 keep it open for all labs.

23 COMMITTEE MEMBER TANNEY: This is Laura. From the
24 non-scientific standpoint, known means known to me. And if
25 it's known it's known. And that's how this is defined.

1 However you get to know it's got to be a known alcohol
2 concentration. So it's already defined within it. And then
3 it's up to the defense attorneys and the prosecutors on the
4 stand to battle out whether or not it was accurate --

5 MS. SHEN: Accurately known.

6 COMMITTEE MEMBER TANNEY: -- whatever the lab
7 determines to be known, is it accurate? So I'm not sure
8 that known needs to be defined any more than, known.

9 And this leaves it open for advances in
10 technology.

11 MS. SHEN: This is Jennifer. I 100 percent agree
12 with that.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
14 Let me comment.

15 COMMITTEE MEMBER ANDERSON-SEAQUIST: Janet, I
16 agree as well.

17 COMMITTEE MEMBER LYLE: Bruce Lyle. So like in
18 1221.4 (a)(2) it looks like we just need to add the word,
19 known.

20 MS. SHEN: A known water solution.

21 COMMITTEE MEMBER LYLE: Yep, or known standards,
22 with known standards what your solution is, or dry-gas is.

23 MS. LOUGH: So this is Pattie. Do you, do we need
24 to go back first to the nomenclature. Do you want to say,
25 reference samples or standards so we can be consistent?

1 Do you want to just call them referent samples?

2 Okay, so 4 (a)(2) I changed standards to read,
3 reference samples so that there's consistency which I will
4 also put down in the justifications.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
6 A couple of comments from staff. In the first place there's
7 a quick comment. I don't want to belabor this. Regarding
8 underground regulations, there's a section in the current
9 regulations that states that the Department shall not be
10 limited by these regulations.

11 It's obviously not an appropriate requirement in
12 2009 or 2008 but it was probably, it was certainly a
13 regulation which was approved in the 70s. So I would submit
14 that the simple-minded approach that says, well if this was
15 a regulation that we, somehow, determined was underground,
16 we're not even going to consider it. I think that may pull
17 out some of the science that we really want in the
18 regulations.

19 So I would recommend we don't arbitrarily and
20 capriciously simply eliminate anything that we kind of,
21 mentally, internally conclude, is underground regulation.

22 But and I don't need a response to that. A couple
23 of other comments on this section. Let's see if I can get
24 them all. The, what is generally the, there are procedural
25 requirements for using a dry-gas or a wet-gas solution. It

1 could be captured in regulations which aren't now.

2 So, in other words, if you use a wet, a water
3 solution you obviously have to know that no one monitored
4 the temperature of the solution, there's usage life limits,
5 so that would be one comment.

6 Maybe a simpler comment is, in the comments on the
7 right you indicate that you get reasons for changing the
8 range from 0.1 to 3 zero to 0.08 to 0.25 but the language in
9 the revised regulations retains the 0.30. So apparently you
10 want to make that, actually you want to 0.25.

11 But I would comment two things on that. In the
12 first place the DOT model specifications only test the
13 instrument to 0.16 so we're a little bit in no-man's land
14 when we get anything above 0.16.

15 Regarding the approved dry-gas calibrating units
16 that are available on the current CPO nothing is above 0.1.

17 So talking about 0.25 or 0.30 is two things.

18 On the one we ought to make sure the comments
19 agree with the language that you're proposing here but keep
20 in mind that the 0.25 is not available, currently available
21 in a dry-gas standard.

22 And the ranges here actually exceed the ranges
23 that DOT tests the instruments.

24 MS. SHEN: This Jennifer from San Diego. The
25 reason the dry-gas is used at a 0.10 is to make it very

1 consistent with something very near the legal limit.

2 And our instruments are calibrated and linearity
3 and checked via linearity up to the 0.30. So I don't think
4 that that is unrealistic.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

6 So you want to make 0.30?

7 MS. LOUGH: This is Pattie.

8 MS. SHEN: No, I'm not suggesting that. That 0.25
9 is fine. But I just want to make it clear that these
10 instruments are checked at varying levels that go above a
11 one six.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

13 And this is something San Diego does or --

14 MS. LOUGH: This is Pattie Lough.

15 MS. SHEN: Well it may establish the linearity,
16 yes. Our instruments are checked up to a three zero.

17 COMMITTEE MEMBER WONG: This is Kenton Wong. I
18 also --

19 MS. LOUGH: Pattie for the --

20 COMMITTEE MEMBER WONG: Go ahead. Go ahead
21 Pattie.

22 MS. LOUGH: For the purposes of this document I
23 think we meant to make that a 0.25 in our language to change
24 that to a 0.25 because that's what we have in our
25 justifications.

1 So we were going to lower that just in case some
2 labs had trouble with that higher ends of maintaining their
3 linearity as well above the prosecution limit.

4 And just for the notes in this meeting, it was Dr.
5 Kimsey who coined the phrase, underground regulations, at
6 our first meeting. But I had never heard that term before.

7 But we did talk about the fact that Clay's office
8 has another set of documents that we were required to do our
9 work by without any question about it which is the whole
10 point why this Committee is even here today.

11 So, anyway, it was Dr. Kimsey that coined that
12 phrase based on my description of that administrative
13 document that Clay has.

14 So back to the what we're looking at as far as 4
15 (a)(2) I've changed, standards, to, reference samples. On 4
16 (a)(2)(A) I changed that level of 0.30 to 0.25 and on 4
17 (a)(2) I've added the word, known to water solutions, are
18 known water solutions or dry-gasses of alcohol.

19 COMMITTEE MEMBER WONG: Which number was that
20 Pattie?

21 MS. LOUGH: Okay. On 4 (a)(2) I changed,
22 standard, to, reference samples --

23 COMMITTEE MEMBER WONG: Yes.

24 MS. LOUGH: -- and it says, the last line says,
25 which are, I added the word, known, which are known water

1 solutions or dry-gasses of alcohol.

2 I will change the justification comment to,
3 indicate consistency and be more specific.

4 On 4 (a)(2)(A) I've changed the upper limit from
5 0.30 to 0.025 --

6 COMMITTEE MEMBER LYLE: It's 0.25 --

7 MS. LOUGH: -- 0.25 --

8 COMMITTEE MEMBER WONG: Uh-hum.

9 MS. LOUGH: -- any other questions on those?

10 COMMITTEE MEMBER LYLE: Bruce Lyle. On (a)(2)(A)
11 where it say, or dry-gas standards, are you going to cross
12 out, standards, and make that, reference sample?

13 MS. LOUGH: Thank you. Okay, are you ready for 4
14 (a)(2)(A)(1), (2)(B), 4 (a)(3) down to (a)(3)(D)?

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 A couple of comments on 4 (a)(3). Both of them went to 4
17 (a)(3), Clay Larson, staff. We still have one residual
18 reference to blood alcohol analysis. We've painfully gone
19 through and got them all for you. I assume you want to
20 change blood alcohol analysis, to, testing, right?

21 You know, let me comment quickly that I --

22 COMMITTEE MEMBER LYLE: That's .4 (a)(3) --

23 MS. SHEN: Blood alcohol analysis --

24 MS. LOUGH: Breath alcohol --

25 CHAIRMAN KIMSEY: It says, breath.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 If breath alcohol --

3 MS. LOUGH: Okay, this is Pattie. I got it,
4 breath alcohol testing.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

6 I don't want to. You thought that was important so you've
7 done it elsewhere.

8 You know I spent some time this weekend looking at
9 other states. And I found that it was pretty much 50/50 in
10 whether they called it, breath alcohol testing, or, breath
11 alcohol analysis.

12 And it's further complicated by the fact that
13 seven states, Alabama, Arizona, Maine, Nebraska, and New
14 Mexico, North Carolina, Rhode Island define it as, breath
15 alcohol testing, but then in the definition refer to, breath
16 alcohol testing, as the, analysis, of a breath sample.

17 Four states, Pennsylvania, Nevada, Hawaii and
18 Alaska, in case you were interested, referred to, breath
19 alcohol testing, but they also refer to, blood alcohol
20 testing.

21 Ten states that refer to breath alcohol analysis
22 or, twelve states, but two of them define, breath alcohol
23 analysis, as the, testing, of a breath sample.

24 And finally, there's four states Arkansas, New
25 York, Oregon, South Carolina and Texas that state, the

1 testing and analysis are identical.

2 So I suspect the efforts here to change this
3 language are probably, it's reasonable to conclude, are not
4 going to be that meaningful to the regulated public.

5 Because it's reasonable to include the two words
6 that basically mean the same thing.

7 MS. LOUGH: This is Pattie. I don't believe so in
8 our document. I think we differentiated between the two.

9 One is something that an operator can perform.
10 And the other has to do with more things involved the
11 laboratory in overseeing the testing programs.

12 So this is where we wanted to separate out lab
13 personnel from other people who might give the test.

14 So I think for our purposes, with our document, it
15 may be a little bit different from other organizations or
16 other states.

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
18 Yeah, I'm not sure that's correct. But I would note, we
19 could do that. And when we get to definitions we could talk
20 about the, I think, problems, with the current definition of
21 breath alcohol testing.

22 But we could have done that leaving it, breath
23 alcohol analysis. So in addition to trying to distinguish
24 the two which they always were distinguished but to, maybe
25 distinguish in a different way.

1 I'm just, on the narrow point changing from,
2 alcohol analysis to, testing, I don't believe has that much
3 impact.

4 MS. LOUGH: Okay, this is Pattie --

5 MR. PHILLIPS: This is Bill Phillips in
6 Sacramento.

7 MS. LOUGH: What I hear from the Committee then --

8 CHAIRMAN KIMSEY: Go ahead Bill.

9 MR. PHILLIPS: This is Bill Phillips in
10 Sacramento, hi. This is defined in our definition section.
11 We're rehashing old stuff.

12 CHAIRMAN KIMSEY: Does it distinguish between,
13 testing, for personnel and, analysis, as a laboratory
14 function?

15 MR. PHILLIPS: Right. That's in our definitions.

16 MS. LOUGH: Yes --

17 CHAIRMAN KIMSEY: Okay.

18 MS. LOUGH: -- this is Pattie. Yeah, this is
19 Pattie. I didn't, I wasn't aware that there was a problem
20 with that wording.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Anyway look at --

23 MS. LOUGH: Okay, on 4 (a)(3)(A), (a)(3)(E) or
24 (a)(4).

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Yeah, comment from staff. I believe the language developed
2 and facilitated, well one of the APA problems but more
3 importantly it, I think the Committee should recognize that
4 this is such a vague term especially when it replaces a more
5 specific term, supervised, given the fact that supervision
6 is defined throughout the regulations.

7 I think developed and facilitated is almost
8 meaningless. It would certainly create clarity issues.

9 MS. LOUGH: This is Pattie. Clay can you tell us
10 what paragraph you're talking about.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
12 Are we in --

13 MS. LOUGH: Are you talking about 4 (a)(4)?

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
15 Are we in 1221.4 (a)(4)?

16 COMMITTEE MEMBER WONG: Uh-hum.

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
18 Okay, the, you've added the language which is in red if
19 you've got the color version on line three that says,
20 training in the procedures of breath alcohol, testing, shall
21 be, and we dropped requirements for any kind of supervision
22 of the training, and we've said, developed and facilitated.

23 MS. SHEN: Yes, this is Jennifer from San Diego.
24 And I submit to you that, developed and facilitated, is
25 actually more specific than, supervised, when, supervised,

1 could mean almost anything including just watching.

2 MS. ENG: This is Goldie Eng. I have a concern
3 about that phrase, developed and facilitated, particularly
4 the word, facilitated.

5 Facilitated means that an action is taken in
6 furtherance of an activity. And that is very vague.

7 I think the Committee should consider specifying
8 what that action should be. Such as, should the forensic
9 alcohol analyst review the training, approve the training?

10 We need a more specific term.

11 MS. LOUGH: Pattie Lough. How about if we say,
12 develop and approve?

13 MS. SHEN: This is Jennifer. Wouldn't you approve
14 your own development?

15 COMMITTEE MEMBER LYLE: Exactly, just delete the,
16 and facilitated.

17 MS. SHEN: I have no problem with facilitated.
18 It's what you're doing. You are developing a program and
19 you're making it happen. That's what you're doing.

20 MS. ENG: What does making it happen mean?

21 COMMITTEE MEMBER TANNEY: Goldie this is Laura.
22 This was a discussion we had a long time ago, months ago
23 that the analyst doesn't actually have to train the
24 operators. It might be, train the trainer. It might be,
25 actual training. There could be varying forms of it. And

1 it could be developed and delivered by but then that's going
2 to be vague as to what is meant by delivered.

3 By hosted. Developed and hosted by. Does that
4 mean in those particular locations? And I'm not really sure
5 that there is another word other than, facilitated because
6 different labs are going to have different ways of making
7 sure that the operators are trained.

8 COMMITTEE MEMBER DAVIS: This is Kevin in
9 Sacramento --

10 MS. LOUGH: Goldie this is Pattie --

11 MS. ENG: Is it in the --

12 COMMITTEE MEMBER DAVIS: This is Kevin in
13 Sacramento.

14 MS. ENG: Is it in the common dictionary --

15 CHAIRMAN KIMSEY: Go ahead Kevin. Kevin why don't
16 you go first.

17 COMMITTEE MEMBER DAVIS: I was just going to say,
18 I seem to recall the discussion of having the option to have
19 to train the trainer. So in that light I think, developed
20 and approved, are both good terms to use because, developed,
21 would mean, the forensic alcohol analyst develops the
22 training curriculum. And then they would, approve, of how
23 it's delivered whether it's by them in person, by a member
24 of their staff or by someone they've trained or by Internet.

25 So I think, developed and approved, is a good

1 terminology.

2 COMMITTEE MEMBER WONG: This is Kenton. Goldie
3 will that fly?

4 CHAIRMAN KIMSEY: You might repeat it.

5 COMMITTEE MEMBER WONG: This is Kenton. Goldie
6 will that fly, that wording?

7 MS. ENG: Well I think the problem with, approved,
8 is that there may need to be standards as to what, there
9 needs to be a reference to the, standard, for approving it.

10 How does the forensic alcohol analyst know whether
11 something is approvable or not?

12 MS. LOUGH: This is Pattie. The requirements for
13 the training are specified here in the document --

14 MS. ENG: On this page.

15 MS. LOUGH: -- so it says, the training will
16 include these things. So what we're saying is the lab is
17 going to develop this program. And by, facilitate, we
18 wanted the lab staff to --

19 COMMITTEE MEMBER WONG: Give it.

20 MS. LOUGH: -- give it.

21 COMMITTEE MEMBER TANNEY: Be involved in.

22 MS. LOUGH: Be involved yeah.

23 COMMITTEE MEMBER TANNEY: And the delivery of it.

24 It's not necessarily actually used, hands on training and
25 all the operators.

1 MS. SHEN: This is Jennifer. And again if you're
2 approving it, if you have just developed your program I
3 don't know how you're going, you would have to specify that
4 you're approving the delivery of it.

5 COMMITTEE MEMBER TANNEY: Well then that's what we
6 should say. We should say, training, this is Laura,
7 training in the procedures of breath alcohol testing shall
8 be --

9 MS. SHEN: Developed.

10 COMMITTEE MEMBER TANNEY: -- shall be, the
11 training curriculum and the procedures of breath alcohol
12 testing shall be developed by forensic alcohol analysts.

13 COMMITTEE MEMBER WONG: Uh-hum.

14 COMMITTEE MEMBER TANNEY: Period?

15 COMMITTEE MEMBER WONG: Uh-hum.

16 MS. LOUGH: And I think, this is Pattie. I think
17 that sounds good.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 Comment from --

20 MS. LOUGH: It gets our attention.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Comment from staff. Another aspect, we've eliminated any
23 reference to a laboratory. Obviously this new training --

24 MS. ENG: We have to because of --

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 -- okay, let me finish. Obviously --

2 MS. ENG: The laboratory is not an entity.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 -- obviously this, that is the place entity is an issue but
5 it arises in many places.

6 So rather than give up let me put a scenario in
7 front of you or a fact pattern in front of you. As this is
8 written I believe it would permit an analyst working at Lab
9 A to become an independent contractor and provide training,
10 you know, in San Diego. And provide training to a police
11 agency in San Francisco because he's an analyst, whatever
12 that means, I mean some lab called him an analyst, and right
13 now obviously there's a useful link there.

14 A laboratory maintains and determines the accuracy
15 of the instrument and they provide training to the operators
16 and they maintain records of that stuff.

17 Eliminating the laboratory, that was a concern
18 that it had to take place within the physical confines of
19 the laboratory, it was never a problem, I assume. I assume
20 that training was never interpreted as that.

21 But totally eliminating the, I would submit here
22 that, totally eliminating the word, laboratory, could allow
23 individual analyst working in one lab to simply to offer, on
24 a contractual basis, their services to law enforcement
25 agencies throughout the state.

1 COMMITTEE MEMBER TANNEY: This is Laura. With
2 respect to the members of the Committee is everybody all
3 right with the language that we just stated on 1221.4
4 (a)(4)?

5 COMMITTEE MEMBER DAVIS: This is Kevin in
6 Sacramento. I still think if you lose that word,
7 facilitated or approved, so say an analyst develops a
8 training program, I thought from our previous discussions
9 there's a variety of ways it can be delivered and who's
10 going to approve which way is appropriate?

11 COMMITTEE MEMBER TANNEY: Right. Well I'm talking
12 about the language that was stated orally. The training
13 curriculum --

14 COMMITTEE MEMBER DAVIS: I thought we --

15 COMMITTEE MEMBER TANNEY: -- is stated --

16 COMMITTEE MEMBER DAVIS: -- stated deleting it,
17 facilitated by.

18 COMMITTEE MEMBER TANNEY: This is how it would
19 read. The training curriculum in the procedures breath
20 alcohol testing shall be developed by a forensic alcohol
21 analyst period.

22 MS. SHEN: This is Jennifer from San Diego. And
23 that sort of alters that paragraph a little bit to discuss
24 the training curriculum itself and not, it doesn't really
25 have anything to do with how it's given any longer.

1 COMMITTEE MEMBER DAVIS: Right, this is Kevin. I
2 agree that's --

3 COMMITTEE MEMBER WONG: I agree too.

4 COMMITTEE MEMBER DAVIS: -- my point. We've lost
5 the part about the --

6 MS. LOUGH: This is Pattie.

7 COMMITTEE MEMBER DAVIS: -- delivery of the
8 training.

9 COMMITTEE MEMBER TANNEY: Well we --

10 COMMITTEE MEMBER DAVIS: And that's our --

11 COMMITTEE MEMBER TANNEY: -- with respect to the
12 delivery then and say, the training curriculum and the
13 procedures of breath alcohol testing shall be developed by
14 forensic alcohol analysts period. The delivery of the
15 training or, see we're going to run into the same problem
16 with --

17 MS. SHEN: Facilitated and approved.

18 COMMITTEE MEMBER TANNEY: -- we're going to run
19 into the same problem with respect to the vagueness of using
20 the words, facilitated and delivery, in terms of the
21 delivery.

22 COMMITTEE MEMBER DAVIS: This is Kevin --

23 MS. LOUGH: This is Pattie --

24 COMMITTEE MEMBER DAVIS: -- currently don't
25 operators. This is Kevin. Currently don't operators have

1 to be signed off on by their lab to use the instruments?

2 COMMITTEE MEMBER WONG: Yes.

3 COMMITTEE MEMBER LYLE: Written and practical
4 exams are --

5 MR. PHILLIPS: Yes.

6 COMMITTEE MEMBER DAVIS: And where are those
7 records kept? Are they kept at the lab?

8 MR. PHILLIPS: Yes.

9 COMMITTEE MEMBER LYLE: Yes.

10 COMMITTEE MEMBER DAVIS: So I would think if the
11 lab approved whatever delivery method it was whether it was
12 Internet or a trained trainer, they would have to approve
13 that.

14 MS. SHEN: This is Jennifer. The lab cannot
15 approve. The laboratory as an entity can't approve it.

16 MS. ENG: It's not an entity.

17 COMMITTEE MEMBER TANNEY: Well you're --

18 MS. SHEN: Or it's not an entity to me.

19 COMMITTEE MEMBER TANNEY: -- we're staying away
20 from the laboratory, language of the laboratory. That's a
21 rehash of what we had hours and hours and hours of
22 discussion on. So I think we need to stay away from that
23 term.

24 But we could use, training curriculum, the
25 training curriculum and the procedures of breath alcohol

1 testing shall be developed by forensic alcohol analysts.

2 And then, a forensic alcohol analyst shall --

3 MS. SHEN: Facilitate and approve.

4 COMMITTEE MEMBER TANNEY: -- approve the delivery
5 method of training operators or something like that.

6 MS. SHEN: This is Jennifer --

7 COMMITTEE MEMBER DAVIS: This is Kevin --

8 MS. SHEN: -- I think we --

9 COMMITTEE MEMBER DAVIS: -- I agree with --

10 MS. SHEN: -- could use --

11 COMMITTEE MEMBER DAVIS: -- Goldie's concern
12 with --

13 MS. SHEN: -- and approve.

14 COMMITTEE MEMBER DAVIS: -- defining approve.

15 MS. LOUGH: This is Pattie. You know the whole
16 point of this is alcohol analysis, and I think maybe we
17 don't even need to go into that part as long as we say that
18 the forensic alcohol analysts are going to develop the
19 training curriculum --

20 COMMITTEE MEMBER SEDGWICK: I agree.

21 MS. LOUGH: -- so we need to in this document
22 state how that is going to be facilitated even? I mean I
23 think that is something different and is outside of what
24 we're doing.

25 COMMITTEE MEMBER TANNEY: That's true. I mean

1 the, this is Laura again. The labs may do it over the
2 Internet but if it's still the same curriculum it will still
3 be the same thing that is taught to everybody.

4 So I think it is okay the way it is, the way I
5 stated it a few minutes ago.

6 MS. SHEN: This is Jennifer from San Diego. And
7 that was my point. It just that that verbiage makes this
8 paragraph very tight and very specific. And it just kind of
9 cuts out the problem we're going to have with, facilitate
10 and approve. So I would agree with that.

11 COMMITTEE MEMBER LYLE: Bruce Lyle. I have to
12 agree with Laura's description.

13 MS. LOUGH: Okay, this is Pattie. So I have it
14 the way Laura originally proposed it. And I'll type it up
15 that way. And then you guys can look at it again.

16 Now 4 (a)(4)(A), 4 (a)(5), 4 (a)(6), 4 (a)(6)(A),
17 4 (b), and five.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 A comment on five. Actually I misspoke before. There's yet
20 another reference to, it now reads, results of breath
21 alcohol analysis, somebody needs to go through this more
22 carefully. Something you wanted to use, you wanted to
23 change it --

24 MS. LOUGH: That's why we're all here.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 -- to, you wanted to change that to, testing.

2 MS. LOUGH: Thank you.

3 COMMITTEE MEMBER WONG: Should we also change the
4 21, 12 --

5 MS. LOUGH: On this --

6 COMMITTEE MEMBER WONG: Okay, this is Kenton.
7 Should we also change the 1221.5 title to expression of,
8 test results, or, breath test results? Breath alcohol
9 results?

10 MS. LOUGH: This is Pattie. That sounds good to
11 me.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 It, the section does refer to 1220.4 which is titled,
14 expression of analytical results so.

15 MS. LOUGH: Okay once it's made once, this is
16 Pattie. Okay, Laura proposes, expression of results.

17 COMMITTEE MEMBER LYLE: Bruce Lyle, I agree.

18 MS. LOUGH: Okay so we have finished Article 6.
19 Does the Committee want, or seven.

20 CHAIRMAN KIMSEY: Seven.

21 MS. LOUGH: Does the Committee want to vote?

22 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes, this is
23 Janet.

24 CHAIRMAN KIMSEY: Okay, let's go around. We'll do
25 a roll call vote again. All in favor of the Section 7 as

1 presented signify by saying aye --

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 It's a roll call vote.

4 CHAIRMAN KIMSEY: Yes, it'll be a roll call.

5 Ms. Laura Tanney?

6 COMMITTEE MEMBER TANNEY: Aye.

7 CHAIRMAN KIMSEY: Sergeant Davis?

8 COMMITTEE MEMBER DAVIS: Aye.

9 CHAIRMAN KIMSEY: Mr. Torr Zielenski.

10 COMMITTEE MEMBER ZIELENSKI: Aye.

11 CHAIRMAN KIMSEY: Mr. Bruce Lyle.

12 COMMITTEE MEMBER LYLE: Aye.

13 CHAIRMAN KIMSEY: Mr. Kenton Wong.

14 COMMITTEE MEMBER WONG: Aye.

15 CHAIRMAN KIMSEY: Mr. Paul Sedgwick.

16 COMMITTEE MEMBER SEDGWICK: Aye.

17 CHAIRMAN KIMSEY: Ms. Janet Anderson-Seaquist.

18 COMMITTEE MEMBER ANDERSON-SEAQUIST: Aye.

19 CHAIRMAN KIMSEY: Dr. Paul Kimsey. No. It's half
20 way through our scheduled conference call. It's up to the
21 Committee. Do you want to take a 10 minute break or a bio-
22 break or just continue on?

23 COMMITTEE MEMBER ZIELENSKI: Torr Zielenski in
24 Sacramento. I've got to go to my car to avoid a ticket so
25 (laughter).

1 CHAIRMAN KIMSEY: Okay, why don't we take a 10, or
2 well let's make it, do you think you can do it in 10 minutes
3 or do you want 15?

4 COMMITTEE MEMBER ZIELENSKI: I don't think that,
5 it's going to probably take me at least 15 minutes to get to
6 and from.

7 CHAIRMAN KIMSEY: Okay. We'll start back up at
8 2:45.

9 (A recess was taken.)

10 CHAIRMAN KIMSEY: This is Paul in Richmond. Let's
11 go ahead and get started again. We've got some
12 conversations going on. Let's try and get started. Hello.
13 Ah, yes, we're trying to get started again.

14 MS. LOUGH: We're waiting for Laura.

15 CHAIRMAN KIMSEY: Ah, okay. Looks like we've got
16 Sacramento back.

17 COMMITTEE MEMBER DAVIS: Not all of Sacramento.
18 There's still significant people missing in Sacramento.

19 COMMITTEE MEMBER WONG: No problem. We're just
20 scratching our collective heads here in Richmond wondering
21 if the original Title 17 document actually spelled out how
22 the training for officers with breath instrumentation was
23 actually disseminated and whether we're going to get into
24 trouble on 1221.4 (a)(4) on just leaving it without spelling
25 that out because I know we had a major issue with that.

1 I know we're kind of backtracking a little bit but
2 over the break we've been wondering about that.

3 CHAIRMAN KIMSEY: And we'll bring this up again
4 when we get officially get started. We have a couple more
5 people --

6 COMMITTEE MEMBER LYLE: This is written under the
7 supervision of --

8 MS. LOUGH: Oh, this is Pattie. You know what, it
9 probably is, the original Title 17 should be in the document
10 we're looking at and it should be lined through. And if not
11 then that's a mistake on my part that it got taken out.

12 CHAIRMAN KIMSEY: Okay, this is Paul Kimsey in
13 Richmond. Is everybody back from break?

14 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is Janet
15 in Ventura. I'm back.

16 CHAIRMAN KIMSEY: Great. Sacramento are you all
17 back?

18 COMMITTEE MEMBER DAVIS: We have all our Committee
19 members back, yes.

20 CHAIRMAN KIMSEY: Okay, great. San Diego?

21 COMMITTEE MEMBER WONG: Torr and Kevin.

22 COMMITTEE MEMBER LYLE: We're all back.

23 CHAIRMAN KIMSEY: Okay let's go ahead and
24 officially start up again. Over the break there was a
25 little bit of discussion here in Richmond. And I'll turn it

1 over to Kenton to articulate it.

2 COMMITTEE MEMBER WONG: Basically we're kind of
3 scratching our heads here wondering whether the original
4 Title 17 document spelled out in detail how the training was
5 disseminated to officers for breath instrumentation.

6 And when we look at 1221.4 (a)(4) we're wondering
7 if we're going to get in trouble if the original Title 17
8 document spells that out where as we kind of had trouble
9 with it and just left it.

10 MS. LOUGH: And this is Pattie. So I'm looking at
11 the original document and I'm thinking it is not following
12 the Article 7. It should be, we should have the old
13 language and then it should be all lined out with the new
14 changes are.

15 So I'm not sure why it doesn't look like it's
16 corresponding that way. So that's something that I'll have
17 to look at and make sure that I did it.

18 Because some of the things in Article 7 we have
19 placed in other locations.

20 COMMITTEE MEMBER WONG: Correct.

21 MS. LOUGH: But we still need to have these
22 Article 7 in here and then line through it and note that
23 that's what we did.

24 So I'm going to have to take a look at this and
25 see. But to answer your question let me look at Title 17

1 and see what it says on that.

2 CHAIRMAN KIMSEY: Okay, any other comments on that
3 topic?

4 COMMITTEE MEMBER DAVIS: Kenton.

5 COMMITTEE MEMBER WONG: Yeah.

6 COMMITTEE MEMBER DAVIS: Again, this is Kevin. Is
7 your concern removing the word, under the supervision of?
8 Is that the concern?

9 COMMITTEE MEMBER WONG: Well I know in the past in
10 the original Title 17 the training for officers was under
11 the, approval, of the Department. And now that's not
12 happening but I know that, I'm just wondering whether, like
13 I said, where we're just dropping it and not leaving it and
14 spelling it out.

15 And whether we need some kind of verbiage that
16 says that, I don't know, that, either that this program of
17 training or curriculum is either directly or indirectly
18 provided or given, you know, to operators or, I don't know,
19 something like that.

20 I don't know if that's even required or whether
21 it's necessary to be in line with what originally was there.

22 MS. LOUGH: Okay, this is Pattie. I'm on page 16
23 of the original Title 17 document. And it starts out kind
24 of the same where it says, training in the procedures of
25 breath alcohol analysis, that's the same.

1 But then, you want me just to read it to
2 everybody?

3 COMMITTEE MEMBER WONG: Sure.

4 MS. LOUGH: It says, shall be under the
5 supervision of person who qualify as forensic alcohol
6 supervisors, forensic alcohol analysts or forensic alcohol
7 analyst trainees in a licensed forensic alcohol lab.

8 So all of that needs to be back in our document.

9 COMMITTEE MEMBER LYLE: It's there.

10 MS. LOUGH: Okay, that part there that is lined
11 through.

12 COMMITTEE MEMBER WONG: Yep.

13 MS. LOUGH: And it says, after approval as set
14 forth in Section 1218, okay that's there too. That's in our
15 document. After approval as set forth in Section 1218 just
16 like it says, the forensic alcohol laboratory is responsible
17 for training and qualifying of its instructors. So we've
18 addressed the line so strike through that.

19 You know what, it's all here. It's all here.
20 That's so, what you're looking at is the original wording
21 where it's lined through is what we've taken out.

22 And where it's underlined is where we've added
23 with the exception of this 4 (a)(4). That is not in the
24 proper format. So I need to go through and line some things
25 and line on the new stuff, underline our changes.

1 So it's all the original wording is there for you.

2 COMMITTEE MEMBER TANNEY: This is Laura Tanney.

3 Kenton would it make you feel better if under 1221.4
4 subdivision (a)(5) that we say, an operator shall be dot,
5 dot, dot, who has successfully completed the training
6 described under 1221.4 (a)(3) and (a)(4) so that it's also
7 demonstrated that that's the curriculum they have to be
8 using.

9 COMMITTEE MEMBER WONG: That might be a way to go.

10 Like I said I was just more concerned that we might just
11 get in, have a roadblock thrown in front of us that we're
12 not spelling out actually how these operators are getting
13 trained.

14 But it looks like it didn't really say it or spell
15 it out to begin with in detail in the original Title 17
16 document anyway.

17 COMMITTEE MEMBER TANNEY: Right. And again, we're
18 kind of making these work for various methods --

19 COMMITTEE MEMBER WONG: Right, exactly

20 COMMITTEE MEMBER TANNEY: -- being used.

21 CHAIRMAN KIMSEY: Okay.

22 MS. LOUGH: Okay, this is Pattie. So I'll add
23 that and (a)(4).

24 COMMITTEE MEMBER WONG: Right.

25 CHAIRMAN KIMSEY: Any other items that came up

1 over the break? Then I believe we're back to Article 1.

2 MS. LOUGH: Okay, so this is Pattie. So I'll just
3 walk us through those comments then.

4 On the 1215 Goldie at some point will check on
5 that citation. I don't know that we have to have it at this
6 point.

7 CHAIRMAN KIMSEY: We have it here.

8 MS. LOUGH: Goldie will check and make sure the
9 citation --

10 CHAIRMAN KIMSEY: Yeah, actually this is Paul in
11 Richmond. We do have it. It's stats, period, two, zero,
12 zero, four, comma, c, dot three, three, seven, parenthesis
13 SB 1623, end parenthesis.

14 MS. LOUGH: All right.

15 CHAIRMAN KIMSEY: I could email that to you Pattie
16 if that would be helpful.

17 MS. LOUGH: I got it. I have
18 stats.2004,C.337(SB1623).

19 CHAIRMAN KIMSEY: Correct.

20 MS. LOUGH: Okay. The next thing that I see is on
21 page five. I just want everyone to take a look at that and
22 see if they were comfortable with that definition.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
24 So are we talking about 1215.1 (s)?

25 CHAIRMAN KIMSEY: Yes.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 Or (t)?

3 COMMITTEE MEMBER WONG: Both.

4 MS. LOUGH: Yes.

5 COMMITTEE MEMBER ANDERSON-SEAQUIST: Both, I

6 think.

7 COMMITTEE MEMBER WONG: Both.

8 CHAIRMAN KIMSEY: Yeah, eventually.

9 MS. LOUGH: Yes. Well it will be both.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

11 Actually we, okay then comments. Regarding 1215.1 (s) I
12 don't think the, I think it's missing something because it
13 doesn't, I would be more comfortable if we established what
14 the reference to NIST would be.

15 For instance, for a time Resteck used to
16 manufacture secondary alcoholic standards in which they
17 acknowledged in their certificate that it was based on the
18 weighing of alcohol and the, with a weight that's been
19 certified by NIST Class S rates.

20 They've since changed that. The newer solutions,
21 and I sent them an email, or several emails, and suggested
22 this was not appropriate procedure and they now, they now
23 establish a reference with to one of the NIST test RMs.

24 So, but I think NIST traceable is vague and weak
25 in that it doesn't, I mean it's taken from the NIST

1 document. It doesn't, I don't think adequately
2 characterizes for the regulatory, regulated public what
3 steps they need to take.

4 MS. LOUGH: This Pattie again. Our guidelines
5 here, we specified that if you use a NIST traceable you will
6 check it against a NIST SRM. That is our procedure.

7 So we've made the lab do that anyway. We've added
8 that step which greatly enhances the accuracy and precision
9 of amendments.

10 And that's where our reference to the SRM is, in
11 the TA Section, so. The NIST traceables is just instead of
12 making your own you can store-buy now but you do have to
13 check them against an SRM.

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
15 The, I would suggest --

16 MS. LOUGH: We wouldn't care even if -- this is
17 Pattie. Even if the Resteck or somebody checked it against
18 an SRM that's fine and we'll have that documentation.

19 But our procedure states that we have to do that
20 ourself in-house as well.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 So I think what you're suggesting is there's no need to have
23 a NIST traceable material since you're going to establish
24 the traceable --

25 MS. LOUGH: No, I think that you have to, I think

1 the Committee agreed, that the Committee agreed you can use
2 NIST traceables. And the document tells how they can be
3 used.

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

5 On subsection (t) we actually didn't correctly capture
6 the --

7 MS. LOUGH: Are we done?

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

9 -- I'm through with this. For (t) we didn't accurately --

10 MS. LOUGH: Okay, any other comments on (s)?

11 Okay, (t)?

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

13 For (t) we didn't accurately capture the language in the
14 NIST definition. A couple of words are missing or wrong.

15 It's not a controlled reference material. It's
16 actually a certified reference material.

17 And maybe unfortunately, certified reference
18 material, is defined separately under the NIST guidelines.

19 And then, there's a statement, issued by NIST in
20 the NIST definition. It's not captured here.

21 And there's some other words that could also
22 meet, the word, also, was gone.

23 Anyway to the extent that we were attempting to
24 capture, the word, control, is clearly wrong. But to the
25 extent that we're attempting to capture the definition

1 provided by NIST we missed some words.

2 MS. LOUGH: Janet, this is Pattie. Did you want
3 to comment on that. That was your definition and maybe I
4 didn't write it down right.

5 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yeah, those
6 definitions Clay were pulled right from the ASTM
7 Standardization NIST Document. So they're just basically
8 copied right out of there. So --

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 But I --

11 COMMITTEE MEMBER ANDERSON-SEAQUIST: -- we have
12 the reference if you would like it and to where it came
13 from.

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
15 Right and --

16 COMMITTEE MEMBER ANDERSON-SEAQUIST: -- these are
17 our NIST definitions.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 A couple of points. I don't think you should look in the
20 ASTM documentation. You should look in this documentation.
21 So that would be good.

22 COMMITTEE MEMBER ANDERSON-SEAQUIST: Well this is
23 from the National Institute of Standards and Technology
24 written by Robert L. Watters Jr. and Nancy S. Parrish
25 titled, NIST Standard Reference Material Supporting

1 Metrology and Traceability for Forensic Science Community.

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 Great. And so that has nothing to do with ASTM, I agree.

4 Anyway I can send you the correct, accurately transcribed
5 definition from NIST also.

6 Perhaps in exchanging that we'll have a meeting of
7 the minds.

8 MS. LOUGH: Janet this is Pattie. If you want to
9 take a look at what I wrote down because it's possible I
10 didn't write down exactly what you told me.

11 And if it is that's fine. But can you double
12 check and make sure I transcribed it right.

13 COMMITTEE MEMBER ANDERSON-SEAQUIST: I can
14 certainly do that.

15 MS. LOUGH: Do you have it with you today?

16 COMMITTEE MEMBER ANDERSON-SEAQUIST: I do. I have
17 it right in front of me.

18 MS. LOUGH: Could you read what you have and I'll
19 check against what I wrote down here.

20 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes, I'm
21 trying to find it.

22 MS. LOUGH: Or did you check to see that it's --

23 COMMITTEE MEMBER ANDERSON-SEAQUIST: This says, a
24 NIST standard reference material, SRM, is a controlled
25 reference material that meets NIST-specific certification

1 criteria and is issued with a certificate of analysis that
2 details its characteristics and provides information on its
3 appropriate uses.

4 COMMITTEE MEMBER LYLE: It's straight enough.

5 MS. LOUGH: Okay, thank you.

6 COMMITTEE MEMBER ANDERSON-SEAQUIST: Uh-hum.

7 MS. LOUGH: Does the Committee have any comment on
8 that?

9 COMMITTEE MEMBER LYLE: Seems verbatim. This is
10 Bruce.

11 MS. LOUGH: Okay. I'm moving on to page six,
12 comment [p4]. I just added the last sentence here just for
13 your information. Same thing for [p5].

14 I didn't add it so that was, [p5] was on, okay
15 [p5] we included information.

16 COMMITTEE MEMBER DAVIS: This is Kevin. Is the
17 vote here on Article 1?

18 MS. LOUGH: Yeah, are we done?

19 COMMITTEE MEMBER DAVIS: Yes.

20 MS. LOUGH: Sounds good to me. This is Pattie.
21 Do you guys want to vote?

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
23 Actually one more comment from --

24 COMMITTEE MEMBER LYLE: Yes.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 -- staff. Going back and looking at Cathy Ruebish's
2 additional comment, original comments, there were a number
3 of terms of art, if you will, in the regulations that aren't
4 defined.

5 You know, if and when this actually gets
6 promulgated we can probably capture these. I think they're
7 non-controversial.

8 But included were anti-coagulants, blanks, blood
9 alcohol analysis, blood, breath test operators, calibration
10 device provider, control and quality control reference
11 materials, determination of accuracies, employees, inert
12 ingested, instrument, vena puncture, interference, law
13 enforcement agency, lot mean, observation period, it goes on
14 and on.

15 So there are many terms that seem to be general
16 terms but they actually have somewhat specific meanings.

17 It's not totally unreasonable to assume that some
18 of the regulated public which includes the defendants and
19 actions, the defendants and actions brought by the courts
20 would know what an anti-coagulant is.

21 So there are many, down the road, there are many
22 potential terms that we might need to define in order to
23 satisfy clarity issues in the regulations.

24 CHAIRMAN KIMSEY: This is Paul Kimsey in Richmond.
25 Is the group ready to vote on Article 1?

1 COMMITTEE MEMBER LYLE: San Diego is ready.

2 COMMITTEE MEMBER ZIELENSKI: Torr Zielenski,
3 Sacramento, yes.

4 MS. LOUGH: Yes, I'm ready.

5 CHAIRMAN KIMSEY: Okay. We'll do it, again,
6 signify by saying, aye if you approve Article 1 as
7 presented. Miss Laura Tanney.

8 COMMITTEE MEMBER TANNEY: Aye.

9 CHAIRMAN KIMSEY: Sergeant Kevin Davis.

10 COMMITTEE MEMBER DAVIS: Aye.

11 CHAIRMAN KIMSEY: Mr. Torr Zielenski.

12 COMMITTEE MEMBER ZIELENSKI: Aye.

13 CHAIRMAN KIMSEY: Mr. Bruce Lyle.

14 COMMITTEE MEMBER LYLE: Aye.

15 CHAIRMAN KIMSEY: Mr. Kenton Wong.

16 COMMITTEE MEMBER WONG: Aye.

17 CHAIRMAN KIMSEY: Mr. Paul Sedgwick.

18 COMMITTEE MEMBER SEDGWICK: Aye.

19 CHAIRMAN KIMSEY: Ms. Janet Anderson-Seaquist.

20 COMMITTEE MEMBER ANDERSON-SEAQUIST: Aye.

21 CHAIRMAN KIMSEY: Dr. Paul Kimsey. No. Shall we
22 go on to Article 2?

23 MS. LOUGH: Yes.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
25 I thought we voted on Article 2.

1 COMMITTEE MEMBER ANDERSON-SEAQUIST: We already
2 voted on that one.

3 COMMITTEE MEMBER WONG: We already voted on it.

4 CHAIRMAN KIMSEY: Yeah but there's a couple of
5 changes that I think Pattie --

6 MS. LOUGH: We did vote on this.

7 CHAIRMAN KIMSEY: Right. Pattie wanted to,
8 there's some comments in the grey boxes on the comments
9 sections.

10 MS. LOUGH: Yeah I had, there are some comments in
11 there. I want to make sure that it doesn't change anybody's
12 vote on there.

13 So comment [p6] on page eight. That's just a
14 comment. It says that there can be other accrediting
15 bodies.

16 That the intention was not to make this an
17 ASCLD/LAB mandatory accredited situation.

18 Page seven --

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
20 Actually comment from staff here. What's the significance
21 of that comment?

22 I mean I would submit that the Committee has no
23 ability --

24 MS. LOUGH: We had --

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 -- the Committee has no ability to approve other accrediting
2 bodies. And we haven't mentioned accrediting bodies
3 anywhere in the regulations.

4 MS. LOUGH: Well on page eight we mentioned
5 ASCLD/LAB. Using a test provider that's consistent with
6 ASCLD/LAB. There may be a time in the future that there may
7 be other accrediting bodies.

8 And that might be something that might have to be
9 addressed either through this Committee or through
10 Legislature.

11 There may be other, and what we don't want is
12 someone just to hang out a shingle and say, I have a
13 proficiency test, go ahead and use mine.

14 The Committee should always be able to evaluate
15 whether they want to accept another program's input.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 Well they don't want the statutory authority --

18 MS. LOUGH: That was just a note in here.

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
20 Okay.

21 MS. LOUGH: There is, it's --

22 MS. ENG: This is Goldie Eng. I'd like to comment
23 on that. I agree with Clay. There is no authority for the
24 Committee to approve accrediting bodies.

25 The statute only authorizes the Committee to

1 propose revisions to the regulations according to the
2 statute. It doesn't say anything about accrediting bodies.

3 COMMITTEE MEMBER TANNEY: This is Laura. What is,
4 somebody helped me arrange Safety Code Section 100702.

5 MS. ENG: What is your question again Laura?

6 COMMITTEE MEMBER TANNEY: What did I say
7 (inaudible).

8 MS. ENG: I'm having trouble hearing.

9 CHAIRMAN KIMSEY: Yeah, someone's phone is close
10 to a window with some car noise, I think, going by.

11 COMMITTEE MEMBER TANNEY: Well, not here.

12 MS. ENG: I believe that's an aerobics class
13 you're hearing (laughter).

14 COMMITTEE MEMBER TANNEY: Goldie I was just, this
15 is Laura. I was just looking at the original, the Health
16 and Safety Code Section 100702 and it says, all labs that
17 are subject to the requirements of 100700 shall follow the
18 ASCLD guidelines for proficiency testing.

19 So what we could do is say is that, Pattie can
20 change it. Instead of saying that FARC has the ability to
21 approve other accrediting agencies that the Legislature, of
22 course, can expand that in the future.

23 And we just don't want a situation where if
24 another accrediting agency or entity comes around that these
25 regulations have to go through another change.

1 We want to leave it open whatever the Legislature
2 in 100702 determined is appropriate.

3 So, in other words, the Legislation right now is
4 that it's ASCLD. But for all we know next year it'll be
5 amended and say something else.

6 So we don't want to limit it. I think it's
7 actually okay as it's written.

8 And I don't know that you need further
9 justifications past what the statute has. I don't know.
10 Goldie do you agree?

11 MS. ENG: I'm having trouble understanding what
12 the Committee wants to do. It says, the proficiency tests,
13 100702 says, the proficiency tests must be obtained from an
14 ASCLD/LAB approved test provider, period.

15 COMMITTEE MEMBER TANNEY: So what's, so we can
16 remove the rest of the justification and just say that the
17 justification is provided in 100702.

18 I agree, I agree with Clay and Goldie that we
19 don't have the authority to pre-approve or to approve other
20 accrediting labs.

21 What we do have the ability to do is get together
22 in the future at the request of anybody on the Committee in
23 order to consider making revisions in the future.

24 So, but I agree that we don't have the authority
25 what Pattie suggests here.

1 MS. LOUGH: And this is Pattie. And we're looking
2 at the comments section. We're not looking at the
3 regulations. This is under the comments.

4 And I think we had included that here because
5 there was some talk in the earlier meetings that there are
6 other accrediting bodies out there that are good and have
7 good programs.

8 So we included it here. So maybe is we do use
9 Laura's suggestion and say, or others as approved by the
10 Legislature that will not offend those other accrediting
11 bodies out there that are saying, we're being exclusive.

12 This is just our comment section.

13 COMMITTEE MEMBER WONG: I'm okay with that.

14 MS. LOUGH: I think that's where it came from.
15 And Kenton I'm thinking maybe, that's something that you
16 brought up at one time?

17 COMMITTEE MEMBER WONG: Correct. Because it, the
18 way --

19 MS. LOUGH: Okay.

20 COMMITTEE MEMBER WONG: -- the justification notes
21 read, it almost, to me, it sounded like a sole endorsement
22 for ASCLD. And that's not our intent at all, I don't
23 believe.

24 CHAIRMAN KIMSEY: Maybe the intent --

25 MS. LOUGH: This is Pattie. That's correct. So

1 I'm going to change, well I'll change the, FARC, to,
2 Legislature, under comments, under the comments.

3 CHAIRMAN KIMSEY: This is Paul. That's fine but
4 I'd say up until that point though this is pretty much, has
5 to be an ASCLD approved proficiency testing program until
6 the Legislature does make some other determination.

7 COMMITTEE MEMBER WONG: Right.

8 COMMITTEE MEMBER TANNEY: I think that --

9 COMMITTEE MEMBER WONG: At this particular moment
10 in time --

11 MS. LOUGH: Yes.

12 COMMITTEE MEMBER WONG: -- but we don't want it to
13 appear like we're just in cahoots in endorsing them solely.

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
15 Did you get that (laughter)?

16 COMMITTEE MEMBER WONG: Yeah.

17 MS. LOUGH: This is Pattie.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 In cahoots, c-a-h-o-o-t-s (laughter).

20 MS. LOUGH: It was inserted. Okay then, the next
21 question on [p7] did we want to include that information
22 that's down here on the types of things.

23 I think it's nice to have it here because it shows
24 our intent of what specifically we are looking for in a
25 proficiency test.

1 COMMITTEE MEMBER WONG: I concur.

2 MS. LOUGH: Personally I'd like to see it stay in.
3 Okay, comment [p8], page 10.

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
5 Comment from staff. On, the question [p7] appears to
6 indicate, you're asking the question do you want to include
7 this criteria within the regulations but what you actually
8 want to do is you want to include these criteria within the
9 justification, right?

10 MS. SHEN: It is. It's in the comment section.

11 COMMITTEE MEMBER TANNEY: We didn't get any
12 comments within the regulations. In your [p7] question I
13 understand what Clay is saying. This is Laura.

14 You say you want to include this criteria and it's
15 actually within the regulation.

16 MS. SHEN: Oh, oh, oh, no.

17 COMMITTEE MEMBER TANNEY: That's not what you
18 meant --

19 COMMITTEE MEMBER WONG: No.

20 MS. SHEN: No.

21 COMMITTEE MEMBER TANNEY: You meant within the
22 comments.

23 MS. SHEN: Yes.

24 COMMITTEE MEMBER TANNEY: Okay, I think the only
25 purpose for that is to send this to the Legislature that

1 this is something you want in the future. Like you said,
2 your intent. But I don't think you can explain them that
3 way.

4 MS. SHEN: This is Jennifer from San Diego. I
5 believe we have it in here to show how comprehensive the
6 guidelines from ASCLD are.

7 So we don't, certainly don't want to give the
8 impression that we're trying to scale back on what we're
9 doing or be lesser than we were before.

10 So this just goes to show, look how much we're
11 doing. Look at the guidelines we're following to really
12 insure that we have the best product possible.

13 That's what that justification is there for.

14 COMMITTEE MEMBER TANNEY: Yes. Also the
15 justifications are for the reader who may not know a thing
16 about forensic alcohol programs.

17 MS. ENG: So it's telling them, these are the
18 things that are happening with approved providers.

19 So it's giving them information they might not
20 otherwise have. I think it's well written.

21 MS. LOUGH: Okay, comment on [p8], page 10. This
22 is the one you all remember we had a lot of discussion on.
23 On this definition on degrees that are allowed.

24 So this is your chance for the Committee to check
25 their wording.

1 COMMITTEE MEMBER TANNEY: Well the comment, we
2 already wrote on that.

3 COMMITTEE MEMBER WONG: Right.

4 MS. LOUGH: Yeah, if you have any question on it,
5 yeah and I believe we said we wanted to come back and have
6 an opportunity to double check the language that we have.

7 So this is our opportunity.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
9 Well then I will repeat my comments before. You know
10 sciences are broadly divided into social sciences and
11 natural sciences.

12 And the natural sciences include some physical
13 sciences. So this Committee is shown an exquisite
14 sensitivity to redundancy in the past.

15 And so referring to a physical and a natural
16 science is actually redundant.

17 The term, applied, I think is hard to understand.
18 For instance, someone may have graduated with a degree in
19 chemistry. And I'm not sure that's always an applied
20 science. There certainly are some theoretical aspects to a
21 degree in chemistry so would you want to disqualify a
22 chemist?

23 So, it's the same thing I mentioned before but
24 give him another chance so give it one more try.

25 MS. SHEN: This is Jennifer from San Diego. I

1 think it's written this way to give the laboratory staff
2 more latitude in getting the person that is most appropriate
3 for them with the correct training and educational
4 background.

5 I don't know that you can write something that
6 would encompass every aspect of everything that could
7 possibly come up and whether or not a person is appropriate
8 with respect to their educational background.

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 Well I don't find that comment, I don't find that
11 responsive. I don't know what the, I mean I don't disagree
12 with anything that you said. It' just I don't find that
13 responsive.

14 So you're comfortable with the word, applied. And
15 you would conclude that I, I'm not sure the word, applied,
16 adds anything to this.

17 In a way it's more restrictive. But I don't think
18 it adds anything to the requirements here.

19 MS. SHEN: I would disagree with that. This is
20 Jennifer. And applied as it says in the justification seems
21 hands-on experience you don't necessarily want someone who
22 only has theoretical experience.

23 Then again, this gives broad discretion to the
24 hiring personnel to look at the actual background of what
25 someone has done and decide, do they have hands-on

1 experience?

2 Is their degree more than just theory? And make
3 that decision when hiring the best person for themselves.

4 CHAIRMAN KIMSEY: This Paul in Richmond.
5 Sometimes, you know, applied and hands-on experience relates
6 to, you know, laboratory courses of a specific type and
7 certain other personnel licensing categories.

8 Not to get too specific about it, but if we're
9 interested in individuals with some sort of laboratory
10 courses or applied or hands-on experience maybe we want to
11 be a little more specific about that.

12 Because, I don't know, I'm not sure, maybe, I
13 guess we do, maybe leave it up to the laboratories at this
14 point.

15 But, you know, somebody with an entomology degree
16 or geology that may have had little or no chemistry or, is
17 that going to be totally left up to the hiring by their
18 prospective laboratories?

19 MS. LOUGH: This is Pattie. That was part of the
20 intention because the majority of laboratories are
21 accredited and there are very strict guidelines of types of
22 degrees that you can have to perform different tasks. So
23 it's that small minority that are non-accredited labs that
24 really fall in the cracks here.

25 MS. SHEN: This is Jennifer from San Diego again.

1 And I do hire. And I am looking for a specific thing. And
2 I want that discretion to get the person in my laboratory
3 that's going to do the best job.

4 And that may mean I'm looking particularly at
5 someone who is very articulate. So I want the discretion to
6 look at what their background is.

7 It has to be specific to what we're doing. And it
8 has to be relevant.

9 But I think the point was to let the laboratories
10 decide, the laboratory personnel I should say, decide who is
11 most appropriate for them.

12 And I don't know if we want to go the route of
13 really pigeon-holing what is and isn't appropriate.

14 MS. LOUGH: This is Pattie. And also each person
15 has to qualify in court to be an expert witness in the area.
16 So there is another check and balance system in place.

17 CHAIRMAN KIMSEY: Pattie this is Paul. You
18 mentioned that the accredited laboratories have some rather
19 specific requirements to be met. Is that something we want
20 to emulate or take a look at or, this is, I mean, obviously
21 right now this is quite general.

22 I mean if we're talking about a subset of labs --

23 MS. LOUGH: Well currently --

24 CHAIRMAN KIMSEY: Go ahead.

25 MS. LOUGH: Right Paul. Currently you can be an

1 alcohol analyst and not have a college degree.

2 We have increased those standards here which is
3 why we removed the other classification of, supervisor.
4 Because now we are requiring more qualifications from our
5 candidates in the first place.

6 And that's too, that's also in compliance with the
7 ASCLD/LAB's accreditation but as Kenton was saying, there
8 are other accrediting bodies out there as well.

9 So I don't think we want to, you know, slight
10 ASCLD/LABS anymore than we already have.

11 CHAIRMAN KIMSEY: No, no, I wasn't thinking
12 necessarily of making a reference to ASCLD but maybe looking
13 at some of these other, you know, ASCLD maybe their
14 requirements for their education and maybe some other
15 organizations.

16 It's just right now this language is quite
17 general. Which, you know, if that's what the group wants,
18 that's fine.

19 But you had just mentioned that there was a subset
20 of laboratories that weren't accredited that, you know, that
21 this language might address.

22 And that we might be setting up a sort of two
23 tiered system of training based on whether you're, you know,
24 approved by ASCLD or not.

25 And so if we want some consistency, if we like

1 what ASCLD has done with regards to those training
2 requirements maybe we should try and incorporate those as a
3 minimum or something.

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
5 Comment from staff. I believe ACLD simply refers to a
6 natural science or criminalistics. I don't have those in
7 front of me but. I'm quite certain they don't refer to
8 applied physical.

9 Which raises the question whether a degree in
10 criminalistics, is that a natural science or --

11 COMMITTEE MEMBER TANNEY: This is --

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 I'm sorry.

14 COMMITTEE MEMBER TANNEY: This is Laura. I think
15 Jennifer was correct. I think the language is sufficient as
16 it is.

17 And I recall us discussing this for hours
18 previously as well. And, you know, for the sake of
19 efficiency I don't really think it's an effective use of our
20 time to rehash it.

21 CHAIRMAN KIMSEY: Okay. I guess we can move on to
22 comment nine, [p9]?

23 MS. LOUGH: Okay, this is Pattie. And here we're
24 asking the Committee to check this wording from the July
25 meeting and see if you have any changes you want to make.

1 MS. SHEN: This is Jennifer from San Diego.
2 Shouldn't it be has, has two year of, analytical,
3 experience?

4 COMMITTEE MEMBER WONG: I concur.

5 MS. SHEN: Versus analysis experience? This is
6 Jennifer again. And satisfactorily completes a training
7 course approved at the laboratory of employment or is that
8 supposed to be, by the laboratory of employment? Is, at,
9 what we want there?

10 Training course given, at, the laboratory? So we
11 might not want, approved at, the course taken at, completed
12 at or just, at, completes a training course, at.

13 I think, approved, is sort of hanging on out there
14 for no reason.

15 MS. LOUGH: This is Pattie. You're saying, take
16 off the, approved.

17 MS. SHEN: Right.

18 MS. LOUGH: At the laboratory employment.

19 MS. SHEN: Correct.

20 COMMITTEE MEMBER WONG: Well some people are going
21 to be taking are going to be taking CCI classes that are not
22 going to be at the laboratory. And they're not going to be
23 by the laboratory either. They're outside of their own
24 agency.

25 COMMITTEE MEMBER ANDERSON-SEAQUIST: Court school

1 would fit in that category too.

2 COMMITTEE MEMBER TANNEY: Have the lab --

3 MS. SHEN: That's why I thought this was a little
4 confusing. So I wasn't quite sure what was meant by that.

5 COMMITTEE MEMBER TANNEY: This is Laura. But if
6 it's, if your laboratory approved you for a position then
7 they're approving that training, are they not? So it's
8 approved by your laboratory of employment.

9 MS. SHEN: Yeah, that's another option. Maybe
10 take, at, and turn it into, by. If that's what you meant.

11 COMMITTEE MEMBER WONG: I think that's correct,
12 by.

13 MS. SHEN: Okay, and leave, approved, in then.

14 COMMITTEE MEMBER WONG: Right.

15 MS. LOUGH: Okay, so I've left, it says, approved
16 by the, that stays, and then, at.

17 COMMITTEE MEMBER TANNEY: Okay.

18 COMMITTEE MEMBER WONG: Should we also say on the
19 fourth sentence. Subjective and/or objective observations?
20 Because sometimes those observations by law enforcement are
21 a combination of the two.

22 Or should we just say, observations? I don't
23 know.

24 MS. SHEN: I like that, observations. This is
25 Jennifer. It's a very cumbersome sentence already.

1 COMMITTEE MEMBER WONG: It is, it is. So just get
2 rid of the word, subjective.

3 MS. LOUGH: Okay, I have --

4 MR. PHILLIPS: This is Bill Phillips from
5 Sacramento. In the sentence that says, in lieu of such two
6 years experience I'd drop the word, such.

7 MS. SHEN: Yes, that's very 70s.

8 COMMITTEE MEMBER WONG: Get rid of, such.

9 CHAIRMAN KIMSEY: All right.

10 COMMITTEE MEMBER WONG: I think we need an, of, at
11 the second two. The second sentence, experience in
12 interpretation and correlation of observations. Wait,
13 there's another, of, there. Of the --

14 MS. LOUGH: Okay.

15 MS. SHEN: You know I, this is Jennifer again.
16 The whole sentence is slightly problematic because you're
17 not, when you correlate something you're correlating one
18 thing with another.

19 And we're sort of doing half that equation. It's
20 just, I think it's hard to --

21 MS. LOUGH: Correlating, this is Pattie. The
22 observations with the information on the known amount.

23 MS. SHEN: With the, yes. So you're really
24 correlating the observations that you see with the results.

25 COMMITTEE MEMBER TANNEY: You could say --

1 MS. LOUGH: With the results.

2 COMMITTEE MEMBER TANNEY: -- and experience in
3 interpretation of and correlation with observations of
4 demeanor.

5 MS. SHEN: Again, you're not correlating your
6 observations with the demeanor with anything. You need to
7 correlate it with something which for us --

8 COMMITTEE MEMBER TANNEY: It could be --

9 MS. SHEN: -- could be the alcohol results, the
10 actual results.

11 COMMITTEE MEMBER TANNEY: How about saying two
12 persons.

13 MS. SHEN: We can correlate the observations with
14 the analytical results is what you're doing.

15 COMMITTEE MEMBER TANNEY: With the analytical
16 results, with the test results?

17 MS. SHEN: Test results is fine.

18 COMMITTEE MEMBER TANNEY: Of persons with the test
19 results?

20 MS. SHEN: With test results. Yeah, I think, this
21 is Jennifer. If you add, with test results, or into that
22 before the, or in lieu, I think you've got your correlation.

23 MS. LOUGH: So, this is Pattie. It says,
24 observations of the demeanor and behavior of persons with
25 test results, or, in lieu.

1 MS. SHEN: Behavior of persons who have ingested
2 known amounts of alcohol. This is Jennifer again. So I
3 suppose if you know how much they've had to drink then
4 you're correlating what you know they drank with their
5 results, with --

6 COMMITTEE MEMBER TANNEY: That's what it's saying.

7 MS. SHEN: -- with observations. Well, you know
8 what --

9 MS. LOUGH: Is it okay as it was?

10 MS. SHEN: -- scratch that last --

11 COMMITTEE MEMBER TANNEY: It --

12 MS. SHEN: -- last five minutes.

13 MS. LOUGH: Okay, I hope I can do this.

14 MS. SHEN: You do have a correlation, sorry.

15 COMMITTEE MEMBER TANNEY: Yeah.

16 CHAIRMAN KIMSEY: This is Paul. Maybe it's
17 because it's getting late. But isn't or comma in lieu the
18 same thing? Shouldn't it be one or the other or just, in
19 lieu, I guess that's some, well anyhow. Maybe we just drop,
20 in lieu.

21 COMMITTEE MEMBER WONG: I agree.

22 MS. LOUGH: That sounds good. This is Pattie.

23 CHAIRMAN KIMSEY: I'm not even sure of the origin
24 of, in lieu. It doesn't sound English.

25 COMMITTEE MEMBER TANNEY: Just say, or

1 satisfactorily.

2 MS. SHEN: Oh yes. That's even better. You're
3 going to have, like, three words left.

4 COMMITTEE MEMBER TANNEY: Wait, or satisfactorily
5 completed a training course?

6 MS. SHEN: Completes, yes.

7 MS. LOUGH: Oh yeah, you've got to get rid of --

8 MS. SHEN: I think you --

9 MS. LOUGH: Okay, this is Pattie. We're going to
10 take out, in lieu of such two years of experience. You guys
11 need to read that sentence carefully when you see it.

12 COMMITTEE MEMBER WONG: Can we get a read back of
13 what the final thing is (laughter)?

14 MS. LOUGH: Oh gosh. Something like --

15 COMMITTEE MEMBER WONG: You can do it.

16 MS. LOUGH: -- has two years of analytical
17 experience and interpretation in --

18 MS. SHEN: No, and experience in --

19 MS. LOUGH: -- and experience in interpretation
20 and correlation with observations of the demeanor and
21 behavior of persons --

22 MS. SHEN: Who have ingested known amounts.

23 MS. LOUGH: -- who have ingested known amounts,
24 that goes back into the, ingested known amounts of ethyl
25 alcohol or satisfactorily completes a training course --

1 MS. SHEN: Approved by.

2 MS. LOUGH: -- approved by the laboratory of
3 employment.

4 MS. SHEN: Even though I completely screwed up
5 this paragraph already I wonder if, with observations, needs
6 to be, of observations and interpretation and correlation,
7 of, observations of the demeanor and behavior of persons who
8 ingested known amounts of alcohol.

9 COMMITTEE MEMBER WONG: That's what I said
10 originally.

11 COMMITTEE MEMBER TANNEY: Of --

12 MS. LOUGH: I've got, of. Okay, with, is out. I
13 have, of their of observations. Yes, it's there. I just --

14 COMMITTEE MEMBER WONG: Okay. So, it's with has
15 gone to, of.

16 MS. LOUGH: This is pretty messy, yeah. Of
17 observations, of the demeanor and behavior of persons who
18 have ingested known amounts of alcohol or satisfactorily
19 completes a training course approved by the laboratory of
20 employment period.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Comment from program staff. You know --

23 MS. LOUGH: Okay --

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
25 Comment from program staff. You know as we look at this in

1 the next five or six sections I think all this language
2 makes sense when you had a state agency which said, we gave
3 us informata to review and approve the training program and,
4 we've got all these words and these are going to be
5 laboratories designing the training course, determining what
6 constitutes a satisfactory completion and then training and
7 qualifying their own staff.

8 I mean some labs I'm sure will do a bang up job.
9 Some labs will not do a very good job. But all these words
10 I think are just window dressing.

11 Unless you assume for instance, unless you assume
12 the arguments, of course, you assume this is going to be
13 drawn into a court and some, very busy, court docket, the
14 judge is going to allow a discussion longer than the one we
15 just had on whether the elements, which I assume were put in
16 writing somewhere, whether the, probably whether the
17 analysts recollections of what his training included meet
18 the requirements of these regulations.

19 I submit that is never going to happen.

20 MS. SHEN: This is Jennifer in San Diego. One of
21 my analysts just spent a day and a half on the stand being
22 absolutely, in an inquisition about everything she'd ever
23 done, read, seen, thought a day and a half.

24 So I would submit that the courtroom testimony is
25 a great arbiter of how good our program is.

1 COMMITTEE MEMBER TANNEY: This is Laura. I have a
2 suggestion for a rewrite of 1216.1 (e)(2). I suggest, has
3 two years of analytical experience and experience in
4 interpreting and correlating the demeanor and behavior
5 persons with a known amount of alcohol which they have
6 ingested.

7 MS. SHEN: Or, who have ingested known amounts of
8 alcohol I think is okay still.

9 MS. LOUGH: Demeanor and behavior of --

10 MS. SHEN: That's great.

11 MS. LOUGH: Interpreted and correlated the
12 demeanor and behavior, say it again.

13 COMMITTEE MEMBER TANNEY: Of persons --

14 MS. SHEN: Who have ingested --

15 COMMITTEE MEMBER TANNEY: -- that's fine, who have
16 ingested known amounts of alcohol.

17 MS. LOUGH: Has two years of analytical
18 experience, and experience in interpretation and correlation
19 of --

20 COMMITTEE MEMBER TANNEY: No --

21 MS. SHEN: Interpreting -- interpreting --

22 COMMITTEE MEMBER TANNEY: -- in interpreting --

23 MS. LOUGH: -- in interpreting --

24 COMMITTEE MEMBER TANNEY: -- and correlating --

25 MS. LOUGH: -- and correlating --

1 COMMITTEE MEMBER TANNEY: -- the demeanor and
2 behavior of persons who have ingested known amounts --

3 MS. SHEN: -- known amounts of alcohol.

4 COMMITTEE MEMBER TANNEY: -- of alcohol.

5 MS. LOUGH: Okay, Committee this is Pattie, yea or
6 nay?

7 COMMITTEE MEMBER WONG: Yea.

8 COMMITTEE MEMBER TANNEY: Yea.

9 UNIDENTIFIED SPEAKER: Yea.

10 MS. LOUGH: Okay, I'll put that in. Comment [p10]
11 on page 14. I believe Goldie is to provide a grandfather
12 clause.

13 MS. ENG: I have suggested language for that. And
14 basically it would, I can provide the actual language to you
15 but I could just read it briefly.

16 Forensic alcohol analyst is a person who meets the
17 following. And then we have the two following
18 qualifications.

19 And we have the two provisions from the existing
20 regulations. Two grandfathered 1971 and then we're adding
21 two more subdivisions.

22 A person who was qualified by the Department as a
23 forensic alcohol supervisor prior to, and then it will give
24 a date.

25 And then the next subdivision would be, a person

1 who is qualified by the Department as a forensic alcohol
2 analyst prior to, and we'll insert a date.

3 MS. LOUGH: Okay, so this is Pattie. So what, can
4 I just --

5 MS. ENG: Yeah, I can send you the actual --

6 MS. LOUGH: What's the first --

7 MS. ENG: -- language.

8 MS. LOUGH: Okay, all right. That's fine.

9 MS. ENG: And then I'll just add that. You've got
10 my email, right?

11 MS. LOUGH: Yes.

12 MS. ENG: Okay, thank you.

13 MS. LOUGH: Okay, [p11] page 15 --

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
15 Actually, comment from staff. I think it's quite likely,
16 there's really two parts to this.

17 It's quite likely that the 1971 date, 38 years
18 ago, that no one is currently employed. That was very
19 meaningful in 1975 when the regulations were first
20 promulgated but in 2010 or 11 or 12 or whenever these are
21 written, that the 1971 clause there is probably not needed.

22 And then a second comment, and I don't know the
23 answer to this. But I think Pattie has mentioned several
24 times that the existing regulations didn't require labs to,
25 analysts to have a degree, a baccalaureate degree.

1 They were required to complete chemistry which may
2 be, which may be more extensive than now would be allowed.
3 But it didn't require that they have a baccalaureate degree.

4 And I don't know that there are any staff
5 currently employed by the laboratories that don't have a
6 degree. But grandfathering them might be problematic.

7 More problematic though, I think, is probably the
8 notion that we will grandfather analysts who qualified at
9 one level. A level that didn't require subjective
10 interpretation, didn't require experience, didn't require
11 two years experience, didn't require a subjective
12 interpretation of the behavior and demeanor of individuals
13 who have drunk known amounts of alcohol.

14 So we would be grandfathering these people at a,
15 you know by establishing new standards for the analyst class
16 which duplicate the former supervisor class, we would be
17 qualifying people at a higher level that might not actually
18 meet those standards.

19 COMMITTEE MEMBER TANNEY: Hi, this is Laura. I
20 have a hard time in case there are people who have been
21 doing this for 40 years or so, I have a hard time taking
22 them out of their position because they don't have a
23 baccalaureate degree.

24 COMMITTEE MEMBER SEDGWICK: This is Paul Sedgwick.
25 Clay that's the purpose of grandfathering.

1 MS. SHEN: This is Jennifer. We definitely have
2 at least one person in San Diego who is still working in his
3 80s.

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
5 Does he have a baccalaureate degree?

6 He's got longevity going for him.

7 MS. SHEN: No. No, he does not.

8 MS. LOUGH: He was qualified by the Department as
9 a forensic alcohol supervisor.

10 MS. SHEN: I think in 1923 (laughter).

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
12 But the program, that's clever, that's cute but the program
13 started in 1972 so that, maybe he's not qualified.

14 MS. LOUGH: Comment [p11] page 15. I think it
15 wasn't in there so, let's see. Yeah, before I think we had
16 unknown to the lab and it should be, unknown to the analyst.
17 I think that's what the comments were from Committee. And
18 I just want to make sure.

19 Okay then, [p12] is Goldie will send me her phrase
20 on that which might be very similar.

21 Comment [p13], page 18. I just made comments
22 based on what the Committee said last week. It doesn't look
23 like anything too critical.

24 And [p14], page 19. Just reiterating what's in
25 there. It's just a comment I added and I just wanted you

1 all to be aware of it.

2 Comment [p15], page 21.

3 COMMITTEE MEMBER TANNEY: Laura, I didn't do mine,
4 okay? Sorry.

5 MS. LOUGH: Okay, so we'll just revisit that at
6 the next meeting. Page 14, comment [p16]. I revised the
7 wording from the meeting.

8 CHAIRMAN KIMSEY: This is Paul --

9 MS. LOUGH: Page 27 --

10 CHAIRMAN KIMSEY: -- just a moment Pattie, this is
11 Paul. Back on [p16] this sort of gets to this back and
12 forth bit about analysis versus testing. Did we want that
13 to say, specific for the analysis or specific for the
14 testing of ethyl alcohol?

15 And then we have purposes. It seems like an
16 awkward construction.

17 COMMITTEE MEMBER WONG: For use by law
18 enforcement?

19 MS. ENG: Just add, purposes?

20 UNIDENTIFIED SPEAKER: We added that, yes.

21 MS. LOUGH: This is Pattie. That which is
22 underlined was what we added last time.

23 CHAIRMAN KIMSEY: And I see analysis further up in
24 some of these others. That's fine I just wanted to be sure
25 we understood.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
2 Comment from staff. In this case we're talking about
3 forensic alcohol so we're comfortable with the word.

4 I'm talking about the analysis of blood, urine and
5 tissue samples so we're comfortable with the word, analysis,
6 apparently.

7 We do use the word ethyl alcohol when we
8 previously defined alcohol as ethyl alcohol. So we're in
9 danger of being redundant there.

10 But more to the point, I do think, I agree with
11 Dr. Kimsey. I think the language is awkward.

12 And I think for it to make sense you have to
13 really read in the previous words, adequate and appropriate
14 because all these procedures are intended under the scope of
15 the statute, they're intended to imply for the testing by or
16 for law enforcement.

17 So adding, law enforcement here without including
18 that subtext, adequate and appropriate, it is pretty
19 meaningless.

20 And the danger of simply making the statement, the
21 method shall be specific for ethyl alcohol is that there are
22 methods out there, you know, the diffusion oxidation
23 methods, which aren't specific for alcohol.

24 They are adequately specific for the purposes of
25 laws enforcement or for drunk driving testing because, you

1 know, if you have a .1 methyl alcohol it's a post mortem
2 sample or it will be soon.

3 So when we're concerned about, adequate and
4 appropriate because of APA and clarity issues. But I don't
5 think we solved anything just by deleting and writing it as
6 we currently have written it.

7 MS. SHEN: This is Jennifer from San Diego. I
8 think that I wasn't here for that. But it seems to me that
9 by adding, purposes, when you just had, for traffic law
10 enforcement that was very specific but actually we're using
11 it for law enforcement purposes.

12 And, you know, I think as written this method has
13 to be specific for alcohol and it has to be done
14 specifically for traffic law enforcement purposes.

15 That's what we're doing here. That's what this
16 all is about.

17 COMMITTEE MEMBER TANNEY: This is Laura. The
18 discussion the last time I believe was about the fact that
19 the testing could pick up interference by other alcohols
20 that are present that don't necessarily affect a person's
21 ability to drive.

22 So that's my recollection of the discussion last
23 time was that you wanted to make sure the fact that, I think
24 it might have been you Clay that wanted to make sure that we
25 were using this only for testing because I believe I

1 mentioned that alcohol by definition is ethyl alcohol but we
2 wanted something to make sure that there was no interference
3 that was taken into consideration of the testing that
4 shouldn't be when it's done for traffic law enforcement
5 purposes.

6 So I understand what you're saying but at the same
7 time my recollection is the alternative that we had before
8 wasn't satisfactory either.

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

10 Well, I --

11 COMMITTEE MEMBER TANNEY: I might be wrong about

12 that. That's my recollection.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

14 Actually I thought Jennifer's comment was even more helpful
15 because she has interpreted this. And she will soon be, she
16 is an obvious example of a member of the regulated public.

17 She interpreted this that the method shall have an
18 absolute specificity for ethyl alcohol.

19 And the second part of the sentence simply reminds
20 folks, I guess, that the purposes of all these regulations
21 are for traffic law enforcement.

22 So on that first point I think it's appropriate to
23 keep in mind that there are laboratories, one DOJ laboratory
24 in Chico that doesn't use a method that's specific for ethyl
25 alcohol, that's specific for alcohol.

1 And so if we're going to write these regulations
2 in a manner that can be, where it's reasonable to interpret
3 it that we need absolute, we want absolute specificity then
4 that'll impact a number of labs.

5 MR. FICKIES: Paul, this is Terry Fickies in
6 Sacramento. And I think if you want to be really picky, a
7 GC is not specific for alcohol either.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
9 Well I don't think, picky, is the word. I think, silly, may
10 be the word. Why would you --

11 MR. FICKIES: I think they remind me --

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 Why, we can have a conversation sometime Terry. I don't
14 think that's correct.

15 MR. FICKIES: Well I certainly agree with Clay in
16 that Smith Widmark is not specific for alcohol. And if the
17 laboratory was using that that would not be, that would not
18 meet these qualifications.

19 And a GC mass spect I would say would be specific.
20 I'm not sure if you could find, if you could find compounds
21 that would go through a GC at the same, depending on the
22 column, if it would be specific or not.

23 MR. PHILLIPS: This is Bill Phillips in
24 Sacramento.

25 MS. SHEN: This is Jennifer from San Diego.

1 MR. PHILLIPS: If we can --

2 MS. SHEN: I'm sorry Bill. We can't go that way.
3 We'll have a mass revolt on our hands.

4 COMMITTEE MEMBER TANNEY: Yep. This is Laura. I
5 think the goal was to make sure that the interpretation,
6 that we were eliminating not necessarily by the equipment
7 that we're using, but by the entire method.

8 That we're eliminating a consideration of that any
9 contaminants. And so the way it was written before that
10 it's capable of analysis with the specificity adequate for
11 law enforcement I think is maybe that is better as Clay
12 pointed out than what we have now.

13 MR. PHILLIPS: This is Bill Phillips in
14 Sacramento. What you're defining here is one of the
15 multiples portions of a validation of alcohol and what the
16 idea here is to define who the customer is.

17 That's what we're doing in this small statement.
18 You're mentioning specific. There are so many steps that
19 are involved in a validation of alcohol that you haven't
20 mentioned here.

21 But you are defining the customer.

22 MR. FICKIES: Paul this is Terry Fickies again
23 just to be picky. But we always testified that it was a
24 specific, it's from the blood of a living human.

25 And if you have to take out a living human then

1 you're reduced in number of substances which can be, which
2 you naturally analyze for.

3 MS. SHEN: This is Jennifer from San Diego.
4 Looking at it it seems to me like the way it was written the
5 first time might be perfect where we made our changes.

6 MS. LOUGH: This is Pattie. Then I have a
7 question for Goldie. The word, adequate and appropriate, is
8 that a problem?

9 COMMITTEE MEMBER WONG: It's vague.

10 MS. ENG: Where is, adequate and appropriate?

11 CHAIRMAN KIMSEY: This is Paul. Goldie are you
12 still on the line?

13 MS. ENG: Yes I am.

14 CHAIRMAN KIMSEY: Okay.

15 MS. ENG: It could be, I don't know. Will the
16 people from all the areas care to comment? That they're
17 generally non-regulatory words that are approved by OAL.

18 MR. FICKIES: However if we didn't change it and
19 left as original, is that going to be a problem?

20 MS. ENG: These regs were written before the APA.
21 So it was a long time ago.

22 MR. FICKIES: So --

23 MS. ENG: So there will be, they will be
24 reevaluated --

25 MR. FICKIES: -- everything --

1 MS. ENG: -- they will be reevaluated, everything
2 will be --

3 MR. FICKIES: Even though we haven't changed that.

4 MS. ENG: -- right.

5 MR. FICKIES: So I still think the language is
6 much better --

7 COMMITTEE MEMBER WONG: This is Terry Fickies.
8 He's a member of the public.

9 MR. FICKIES: I'm sorry this is Terry Fickies.

10 THE REPORTER: I don't have him down anyway.

11 COMMITTEE MEMBER WONG: He came in after the
12 break.

13 MS. SHEN: This is Jennifer from San Diego. Now
14 that I recall this I think that's why we change it is
15 because, adequate and appropriate wasn't considered, you
16 know, appropriate for this.

17 I think that's why we went down the road of
18 changing it in the first place to try to really say what you
19 mean.

20 COMMITTEE MEMBER TANNEY: Well how about if we say
21 this, the method shall be capable of the analysis of ethyl
22 alcohol to determine, let's see, method shall be --

23 MS. ENG: Can we say, designed for? With a
24 specificity designed for traffic law enforcement purposes?

25 COMMITTEE MEMBER TANNEY: Oh.

1 MS. ENG: Use the old language, the method shall
2 be capable of the analysis of ethyl alcohol with a
3 specificity designed for traffic law enforcement.

4 MS. SHEN: Required. I like that, Jennifer in San
5 Diego.

6 CHAIRMAN KIMSEY: We're required --

7 MS. LOUGH: Okay, so what I've got down --

8 CHAIRMAN KIMSEY: -- required by who or what
9 though?

10 MS. LOUGH: Okay, this is Pattie. Here's the --

11 COMMITTEE MEMBER TANNEY: Required for conviction
12 that's (laughter).

13 MS. SHEN: Well then we might be back to,
14 appropriate. Appropriate by itself should be all right.

15 COMMITTEE MEMBER WONG: It's not going to fly.
16 It's too vague.

17 MR. FICKIES: How about some --

18 COMMITTEE MEMBER WONG: That's too vague.

19 MR. FICKIES: -- Terry.

20 MS. ENG: Sufficient doesn't tell who, that
21 doesn't give you a quantifier. I'd go back to, designed
22 for.

23 MS. SHEN: This is Jennifer. You know at some
24 point or another we have to put, these words all have
25 meanings. And we have to use one that is appropriate.

1 And you --

2 CHAIRMAN KIMSEY: And it --

3 MS. SHEN: -- can't and

4 MS. ENG: Shall not --

5 MS. SHEN: -- appropriate, but, adequate,
6 appropriate, facilitate, designs, all those have meanings.
7 We just have to pick the word that we want that says the
8 thing we want.

9 And, you know, it's going to not be as specific
10 as, we just have to find the most specific word that we can.

11 And all of these words are legitimate words.

12 COMMITTEE MEMBER TANNEY: How about if we do it in
13 a negative one, the method shall capable of distinguishing
14 between ethyl alcohol and other contaminants or something
15 like that.

16 I don't know how or method shall be capable of --

17 CHAIRMAN KIMSEY: This is Paul Kimsey. I have a
18 suggestion --

19 MS. SHEN: This is Jennifer --

20 CHAIRMAN KIMSEY: -- I have a suggestion. Since
21 we're trying to work up something for law enforcement how
22 about if we change it around to say, for traffic law
23 enforcement purposes the method shall be specific for the
24 analysis of ethyl alcohol.

25 MR. FICKIES: This is Terry. Can we include, in

1 living human beings? In living humans.

2 COMMITTEE MEMBER TANNEY: The problem is is we
3 used methods for --

4 COMMITTEE MEMBER WONG: It's used for coroner's
5 samples as well.

6 COMMITTEE MEMBER TANNEY: -- coroner's methods.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
8 Well for coroner's samples there's a quality --

9 MS. LOUGH: This is Pattie. Paul would you repeat
10 that please.

11 CHAIRMAN KIMSEY: Sure. It would read, for
12 traffic law enforcement purposes --

13 COMMITTEE MEMBER WONG: Yep.

14 CHAIRMAN KIMSEY: -- the method shall be specific
15 for the analysis of ethyl alcohol.

16 COMMITTEE MEMBER WONG: Period.

17 CHAIRMAN KIMSEY: Period. And if that's
18 acceptable I also want to point out that we're coming up on
19 four o'clock which I believe is when we all turn into --

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
21 Five.

22 CHAIRMAN KIMSEY: -- five o'clock. Okay, we're
23 going to five.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
25 We're tough.

1 CHAIRMAN KIMSEY: Never mind (laughter).

2 UNIDENTIFIED SPEAKER: I'd like to get as much
3 done as possible.

4 CHAIRMAN KIMSEY: Yeah, no, we should. So --

5 COMMITTEE MEMBER TANNEY: I like that Paul.

6 CHAIRMAN KIMSEY: -- if that's sufficient for --

7 MS. LOUGH: Okay.

8 CHAIRMAN KIMSEY: -- [p16] we'll go on to [p17]?

9 MS. SHEN: Yep. Okay, this is Jennifer. I was
10 just going to review the reference but you can do that on
11 your own because it will be added to the bottom and you're
12 on that committee anyway.

13 UNIDENTIFIED SPEAKER: Okay. Apparently I didn't
14 do my homework here.

15 MS. SHEN: Okay.

16 MS. LOUGH: Okay, Jennifer we'll check that later.
17 Now [p18], page 30. I bet nobody did their homework.

18 Okay, this is Pattie. I think this is another one
19 that will require probably a little bit of discussion. And
20 I don't know if everyone is too tired now to go through this
21 one.

22 CHAIRMAN KIMSEY: This is Paul Kimsey in Richmond.
23 I know that Goldie had spent some time on this. I don't
24 know Goldie if you want to comment. I have your comments
25 here in an email.

1 MS. ENG: Are you discussing --

2 UNIDENTIFIED SPEAKER: It's [p18]?

3 UNIDENTIFIED SPEAKER: The word, set.

4 MS. ENG: Yeah, I looked up the definition,
5 dictionary definition of, set, and it's, member of group or
6 combination of things of a similar nature, design or a
7 function. And it's a very flexible concept.

8 I mean you can group things in any number of ways,
9 a number of ways. So it's very flexible but by that
10 flexibility it can also be vague.

11 So I think the Committee needs to determine, you
12 know, what amount of specificity or flexibility is required
13 for this particular reg.

14 CHAIRMAN KIMSEY: This is Paul in Richmond. I
15 think we also at one point, if my memory serves me correctly
16 at four o'clock on a Monday afternoon, we talked about, set.

17 I think we also talked about a, run. At the
18 beginning of each, run of samples.

19 Again, that's probably even more flexible but it
20 just depends on what the intent was.

21 COMMITTEE MEMBER WONG: Batch. I don't know.

22 MS. SHEN: Well I like that. This is Jennifer.
23 Batch might work. Then again, we're going to have to use
24 words that are generally accepted by our scientific
25 community.

1 COMMITTEE MEMBER TANNEY: Okay, this is Laura. We
2 want to have some flexibility because like we talked about
3 some labs are running free samples on the machine and some
4 labs are running a lot more.

5 COMMITTEE MEMBER WONG: It could be a small batch
6 or a big batch.

7 COMMITTEE MEMBER TANNEY: So I have to , some
8 flexibility.

9 UNIDENTIFIED SPEAKER: Right.

10 MS. SHEN: Correct. I like, batch.

11 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is
12 Janet. I like, batch, too.

13 MS. LOUGH: Okay, so far, batch, it is.

14 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:
15 I know the coroners in this state would have no problem
16 with, batch.

17 COMMITTEE MEMBER WONG: Yes.

18 MS. LOUGH: Okay at [p19] next page --

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
20 Comment from program on --

21 MS. LOUGH: -- on page --

22 CHAIRMAN KIMSEY: Just a moment, here in Richmond
23 we have a comment.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
25 I think whatever term we, I mean Goldie probably didn't have

1 enough time to look up, batch. But whatever term we come up
2 with, the purpose of having a definitions section is to,
3 we'll use words that can have multiple meanings, batches of
4 cookies.

5 We would define them under the definitions
6 Section.

7 COMMITTEE MEMBER WONG: Yep.

8 UNIDENTIFIED SPEAKER: Excellent point.

9 COMMITTEE MEMBER TANNEY: That's true. We can do
10 that.

11 MS. ENG: Yeah, I was going to comment that I
12 didn't really understand the difference between a, set, and
13 a, batch.

14 THE REPORTER: Who is speaking?

15 COMMITTEE MEMBER WONG: Goldie Eng.

16 COMMITTEE MEMBER TANNEY: Goldie, there's really
17 not except that I think most people understand the
18 definition of, batch, is less flexible than, set. In the
19 sense that you if get a, you know, if you go get a, carpet
20 sample or a paint sample, you always want to get it from the
21 same batch so it matches.

22 I mean there is some common knowledge that, batch,
23 is to what batch pertains to. Basically, I mean we can say,
24 samples run in consecutive, consecutively or the machine at
25 this, in the same period of time. But I mean that's vague

1 too. What's consecutive? What is the same period of
2 timing?

3 It's all, everything that this, we use to define
4 this is subject to varying interpretations.

5 And I think Clay's suggestion is good, is that we
6 use, batch. And then we define, batch, the best we can
7 without being too vague in our definition.

8 But we all understand what we mean. And I think
9 the general public is, certainly the scientists who are
10 doing it are going to understand what it means.

11 I don't know if the lawyers at OAL are but I would
12 suspect even they will understand that.

13 MR. PHILLIPS: This is Bill Phillips in
14 Sacramento. To avoid, set, batch, run how about the concept
15 of using, at the beginning and end of the analysis of
16 samples for the purposes, at the beginning and end of the
17 analysis of samples.

18 So there's no, set, batch, run. It just has to be
19 at the beginning --

20 COMMITTEE MEMBER TANNEY: It will still --

21 MR. PHILLIPS: -- and the end. If it's one, it's,
22 there's two quality control has to be run. If there's --

23 COMMITTEE MEMBER TANNEY: Bill this is Laura --

24 MR. PHILLIPS: -- ten.

25 COMMITTEE MEMBER TANNEY: -- we --

1 MR. PHILLIPS: Yes.

2 COMMITTEE MEMBER TANNEY: You can have three
3 months worth of samples. So we've discussed that the last
4 time and that that was going to be too vague also because
5 there was no definition of what was the beginning and what
6 was the end.

7 Would it be on a monthly basis, a daily basis,
8 every five minutes --

9 MR. PHILLIPS: It could be --

10 COMMITTEE MEMBER TANNEY: -- I mean --

11 MS. SHEN: Of samples analyzed that day, each day.

12 MR. PHILLIPS: Yeah, use the word, day.

13 COMMITTEE MEMBER TANNEY: We eliminated that last
14 time. We didn't want to do that last time.

15 MS. SHEN: Then you run into the problem of
16 samples running overnight.

17 COMMITTEE MEMBER TANNEY: Yeah, we discussed all
18 of this --

19 COMMITTEE MEMBER WONG: Yep.

20 COMMITTEE MEMBER TANNEY: -- and we had the same
21 problem last time.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
23 Clay Larson, staff. The Department, you know, is written.
24 We've drafted regulations. And my recollection is we
25 defined, a set, as a grouping of samples analyzed in a

1 continuous time span.

2 COMMITTEE MEMBER TANNEY: That's great.

3 MS. SHEN: It works for me. Could you repeat that
4 slowly for Pattie please.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
6 I wasn't listening. What did I say?

7 MS. SHEN: Can you repeat what you just said Clay.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
9 A set, is a, defined as a group of samples analyzed in a
10 continuous time span.

11 RECORDED MESSAGE: Please pardon the interruption.
12 Your conference contains less than three participants at
13 this time. If you would like to continue press Star one now
14 or the conference will be terminated.

15 CHAIRMAN KIMSEY: Janet you need to press Star
16 one.

17 RECORDED MESSAGE: You have activated the --

18 THE REPORTER: (Several people speaking at once)

19 RECORDED MESSAGE: -- press Star zero for
20 technical assistance. Star one to reinitiate this help
21 menu. Star three for private roll call. Star six for self
22 mute, unmute. To move to a sub-conference press the sub-
23 conference number followed by pound, pound. To return to
24 the main conference press zero, pound, pound.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 So you can do it here?

2 CHAIRMAN KIMSEY: I'm trying. Janet are you still
3 with us?

4 COMMITTEE MEMBER WONG: I think we lost her.

5 CHAIRMAN KIMSEY: I think we're still on. Maybe I
6 should dial again. I can hang up and dial in or we should
7 wait for her I guess to call back.

8 I think we're still live.

9 UNIDENTIFIED SPEAKER: Yeah, you're still alive
10 Paul (laughter).

11 CHAIRMAN KIMSEY: I wonder.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 You got a cell phone to --

14 CHAIRMAN KIMSEY: Ah --

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 Did somebody kick him?

17 CHAIRMAN KIMSEY: -- is that Janet?

18 COMMITTEE MEMBER ANDERSON-SEAQUIST: I'm back. I
19 didn't catch it.

20 CHAIRMAN KIMSEY: -- you're back.

21 COMMITTEE MEMBER ANDERSON-SEAQUIST: Okay.

22 CHAIRMAN KIMSEY: Good. We have her back.

23 MS. LOUGH: Okay, so I'm leaving the word, set,
24 in. And then we're going to add a definition for, set.
25 Does that sound good?

1 UNIDENTIFIED SPEAKER: I like it.

2 UNIDENTIFIED SPEAKER: Good.

3 MS. LOUGH: Okay. Page 31, comment [p19]. Laura
4 and I were supposed to work on this.

5 COMMITTEE MEMBER TANNEY: Yeah, this is Laura.
6 There was a recent case called the McNeal Case --

7 COMMITTEE MEMBER WONG: Uh-hum.

8 COMMITTEE MEMBER TANNEY: -- or People v. McNeal.
9 It's a Supreme Court case that basically said that the
10 partition ratio, evidence of general partition ratios as
11 well as individual partition ratios is now going to be
12 admissible in your, in your driving under the influence of
13 alcohol cases where the prosecution is trying to use a
14 presumption, working with specific blood alcohol levels,
15 primarily (indiscernible), that they are presumed to be
16 intoxicated for the purposes of driving.

17 It's not applicable to the B count or the count of
18 driving with a blood alcohol level in the 0.08 percent or
19 greater. It's only applicable to the driving while
20 intoxicated section which is the Subdivision A section.

21 So the idea being then that the defendant can put
22 on, if his individual partition ratio differs from this
23 conservative average or estimation or whatever you want to
24 call the 2100 -- the grams per 210 liters of breath.

25 So it's not blood alcohol level where we have this

1 at the beginning where we said it was defined in the code.
2 It is defined in the code now but only for purposes of the
3 Subdivision B count which makes this a little, a little
4 problematic.

5 And at the same time my understanding is all the
6 breath alcohol machines use this partition ratio internally.

7 So I'm not sure that we really need to address what's,
8 address this or not.

9 And to be honest I haven't, I haven't thought
10 about this in any great detail as to what effect this should
11 have on our regulations, if any.

12 The fact that this opinion said that a person can
13 put on this only if we've got the presumption that they're
14 under the influence of 0.08.

15 So, I don't know, it's something that, you know,
16 the Committee may want to talk about. Torr do you know a
17 method? Do you have any feelings about it?

18 COMMITTEE MEMBER ZIELENSKI: No just other than
19 the whole that you just cited to the Committee. But I
20 haven't, you know, really thought about it other than just,
21 what you just mentioned.

22 COMMITTEE MEMBER TANNEY: Yeah, so I'm not sure.
23 I mean I haven't really contemplated what effect, if any, it
24 would have on the regulations, this new opinion.

25 Then the new opinion also talks about the fact

1 that even in individual partition ratio can change from day
2 to day therefore what somebody puts on as evidence as their
3 partition ratio now may not be indicative of what it was on
4 the day that the blood alcohol was result was given or the
5 breath test, excuse me, was given.

6 Then it's something that, I don't know, I guess I
7 can talk to the District Attorneys Association and Torr can
8 talk to the Public Defenders and determine whether we should
9 make a change or whether we should leave it as.

10 COMMITTEE MEMBER WONG: Laura this is Kenton. I
11 just testified in a case where they did that. And I really
12 don't think as a Committee it's something that we really
13 need to address.

14 Just so you know, in my case they came back and
15 they found him, they acquitted him of the B count and found
16 him guilty on, no, they acquitted him on the A count and
17 found him guilty on the B which doesn't make any sense to me
18 at all anyway.

19 But like I said, we talked about it. We went
20 around and around in court but it didn't make a difference.

21 COMMITTEE MEMBER TANNEY: Well that's why legally
22 the impact is not going to be very great because if have
23 greater than a 0.08 we always, at least in San Diego, we
24 charge under the A count.

25 So it's not going to have a huge, it's not really

1 going to have a huge impact on the cases. Whether we should
2 use it now to define breath alcohol level, I'm just not
3 sure.

4 On the other hand, like I said, if testing uses
5 that as an internal conversion, which leads me to think that
6 we have to define it that way.

7 So, I don't know. It certainly is something for
8 the Committee to think about and Kenton if your feeling is
9 that it doesn't need to be, it's not really our concern
10 because it's really what's in the scientific communities.

11 If the scientific community is comfortable with
12 this the way it is then it's appropriate, I guess.

13 MS. LOUGH: Okay, so this is Pattie. So I'm
14 making a note that we will revisit that point and discuss it
15 later after people have some time to kind of think about it.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 You know I wonder if we could, Clay Larson, staff. If we
18 could, the Committee could indulge me. I don't believe we
19 captured what we want to say on Section 1220.4 (a). And I
20 don't believe it's controversial.

21 We write, with the exception of tissue analysis
22 all analytical results shall be expressed in terms of the
23 alcohol concentration based on the number of grams of
24 alcohol per 100 milliliters of blood.

25 So what we write there is we, I mean that would

1 seem to, and imply, that states that we're only going to
2 express results as blood alcohol concentrations.

3 Now there was a way to go with that but we didn't
4 go in that direction because we then have subsequent
5 sections that define the description of the ability to
6 report results in terms of breath alcohol concentrations.

7 So I think the absolute language of that first
8 section creates a problem for the, there are other problems
9 but let's go into those some other time, but I think there
10 are problems with Section 1220.4 (a).

11 COMMITTEE MEMBER TANNEY: I have to, this is
12 Laura. I have to think about this overnight or more
13 (laughter). Because I think to some extent your point, your
14 point, Clay, relates sort of also to this McNeal Case.

15 So because I think that the machine can report low
16 blood alcohol level now, right? Is that right?

17 All the breath testing --

18 UNIDENTIFIED SPEAKER: Just a minute.

19 MS. SHEN: No our --

20 COMMITTEE MEMBER TANNEY: -- machines.

21 COMMITTEE MEMBER WONG: This is Kenton. Blood
22 alcohol results on a breath instrument are actually
23 expressed as blood alcohol equivalents or BAEs.

24 UNIDENTIFIED SPEAKER: Right.

25 COMMITTEE MEMBER WONG: So it's an extrapolation

1 rate --

2 UNIDENTIFIED SPEAKER: Right.

3 COMMITTEE MEMBER WONG: -- of the breath but they
4 call it a blood alcohol equivalent.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
6 Well I mean that's, Clay, that's one view. But the other
7 view --

8 COMMITTEE MEMBER TANNEY: Is that --

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 -- the other view is they express themselves as grams per
11 210 liters of breath.

12 COMMITTEE MEMBER WONG: Yes they do. In 23152
13 (c).

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
15 Well I mean that's what the instrument does.

16 COMMITTEE MEMBER WONG: Right.

17 MS. LOUGH: Okay, we'll revisit that because
18 that's going to need some attention when everybody is fresh
19 (laughter).

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
21 When will that be?

22 MS. LOUGH: Then I only have one more comment,
23 page 40, I'm at [p24]. Laura you had, this was from a long
24 time ago. I couldn't read your notes, my notes aren't
25 there. That very last note.

1 COMMITTEE MEMBER TANNEY: I know I read your
2 comment and I thought, no, I'll look back at my notes to see
3 what sounds good but --

4 MS. LOUGH: Okay, so we'll come back to that next
5 time to get a chance to look back at that.

6 COMMITTEE MEMBER TANNEY: All right, I mean I
7 think --

8 MS. LOUGH: It could have been from your notes
9 when we met as a subcommittee three or four years ago. So I
10 don't think it was anything --

11 UNIDENTIFIED SPEAKER: Sort of its concern --

12 MS. LOUGH: So, okay, this is Pattie. And I think
13 I should go ahead and type these pages and get them out to
14 everybody again.

15 Yes I would have been taking it in shorthand. And
16 my shorthand is 45 years old so. Okay. So I'm through with
17 my part of this is finished.

18 CHAIRMAN KIMSEY: Okay. This is Paul in Richmond.
19 What is the feeling of the group on when we would want to
20 meet again?

21 We have certain, you know, restrictions, you know,
22 announcements and sorts of things. Earlier today we were
23 talking, obviously we've got Thanksgiving so we're looking
24 maybe at early part of December or second week in December
25 before we get into the holiday, I mean pretty much half way

1 through December, half way through January is sort of out
2 generally for peoples' schedules.

3 So I think the earliest we might be able to meet
4 would be the second week of December. How does that work
5 for people, whatever those dates are?

6 MR. PHILLIPS: The second week is Monday the
7 seventh through the eleventh.

8 CHAIRMAN KIMSEY: Right, the seventh through the
9 eleventh. Any days that people can't do that for that week?

10 COMMITTEE MEMBER TANNEY: This is Laura. I cannot
11 do it on the ninth. So I can do it the rest of the week.

12 COMMITTEE MEMBER WONG: I'm almost sure I have
13 court in various places that week. Send out an email.

14 CHAIRMAN KIMSEY: Well we'll send out an --

15 COMMITTEE MEMBER LYLE: Bruce Lyle --

16 CHAIRMAN KIMSEY: -- email.

17 COMMITTEE MEMBER LYLE: -- I'm good all week.

18 CHAIRMAN KIMSEY: Okay. Kenton may have some
19 court appearances but what we'll do is we'll send out an
20 email getting peoples' schedule for that week. I'm sure
21 I've got things too but.

22 So, does anybody know that that seventh through
23 the, ah, at the end of the week I cannot do. So I'm just
24 remembering something.

25 So probably like the seventh, the earlier part of

1 that week. We'll send out an email for peoples' schedules.

2 Any other comments or business? Let me see if I
3 can find my agenda here under --

4 COMMITTEE MEMBER TANNEY: This is Laura. I would
5 just like to thank Pattie and Jennifer for all the work they
6 did on putting this together. I think they did a great job.

7 UNIDENTIFIED SPEAKER: I second it.

8 COMMITTEE MEMBER WONG: Here, here.

9 CHAIRMAN KIMSEY: Yes. Any other comments or
10 business before we sign off? Well, thank you all much for
11 your patience and your time again today.

12 And we'll see you at some time at, or hear from
13 you that second week of December. Thank you all very much.

14 (Thereupon, the California Department of
15 Public Health, Forensic Alcohol Review
16 Committee meeting adjourned at 4:20 p.m.)

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CERTIFICATE OF REPORTER

I, John Cota, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Department of Public Health, Forensic Alcohol Review Committee meeting, that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of November, 2009.

JOHN COTA