

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

FORENSIC ALCOHOL REVIEW COMMITTEE

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850 Marina Bay Parkway

Room B137

Richmond, California

WEDNESDAY, April 14, 2010

1:00 P.M.

Reported by:
Kent Odell

PARTICIPATING

Paul Kimsey

Kenton Wong

Clay Larson

Robert A. Haas

Harby Thandy

Natalya Butenka

Jennifer Shen

Bruce Lyle

Kevin Davis

Bill Phillips

Terry Fickies

Michael Brush

William Chi

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P R O C E E D I N G S

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2 APRIL 14, 2010

1:10 p.m.

3 Dr. Kimsey - This is Paul Kimsey in Richmond and
4 I want to welcome you all to the 15th Meeting of the
5 Forensic Alcohol Review Committee. We have an agenda. For
6 my opening comments, well, let's actually go around and see
7 who we have, first. We will do a roll call. Here in
8 Richmond, we have Paul Kimsey, a member of the Committee.

9 Mr. Wong - Kenton Wong, member of the Committee.

10 Dr. Kimsey - Other people in the room here?

11 Dr. Haas - Robert Haas, the Food and Drug
12 Laboratory Branch Chief.

13 Ms. Butenka - Natalya Butenka, a Research
14 Scientist I.

15 Mr. Thandy - Harby Thandy, Department of
16 [Inaudible].

17 Mr. Larson - Clay Larson, Food, Drug Lab Branch.

18 Dr. Kimsey - And our Stenographer today is?

19 Mr. Odell - Kent Odell.

20 Dr. Kimsey - Kent Odell. And who do we have in
21 Sacramento?

22 Mr. Zielenski - Torr Zielenski, Sacramento.

23 Sgt. Davis - Kevin Davis, Committee, CHP.

24 Mr. Brush - Michael Brush, CHP.

25 Mr. Chi - William Chi, CHP, Legal.

1 Mr. Phillips - Bill Phillips, DOJ.

2 Mr. Fickies - Terry Fickies, DOJ.

3 Dr. Kimsey - Is that it in Sacramento?

4 Mr. Fickies - That is it in Sacramento.

5 Dr. Kimsey - And in San Diego, we have?

6 Ms. Shen - Jennifer Shen, San Diego Police
7 Department.

8 Mr. Lyle - Bruce Lyle, Orange County Sheriff
9 Department.

10 Dr. Kimsey - Do we have Laura Tanney or Paul
11 Sedgwick?

12 Mr. Lyle - No, we do not.

13 Dr. Kimsey - Okay. I believe we had heard from
14 Paul that he was not going to be able to make it. So we
15 have a quorum and we will go ahead and get started. I
16 think the only opening remark I have is I have heard -- I
17 have not seen it yet, it has not been posted, but I have
18 heard that there is a request from a Legislator for an AG
19 opinion on the Department's authority in some aspects of
20 this Forensic Alcohol Regulations that has come in. We do
21 not have the specifics, we have not seen it, it has not
22 been posted yet on the Attorney General's website yet, but
23 that is something we have heard at our end; I do not know
24 if anyone else has any other information, but there is - a
25 Legislator did make a request to the AG for an

1 interpretation or an opinion on -- I believe the authority
2 of the Department to, I guess, regulate the Forensic
3 Alcohol Lab, something to that effect. So I do not know if
4 anyone else has any information, but that is what we have
5 heard so far.

6 Anything else for the Agenda? Basically, today
7 we are going to be talking -- at our last meeting, we
8 talked about the letter that was going to be going to
9 agency, the cover letter for the summary, our group
10 summary. And again, that is probably the first item on the
11 agenda. And then, also, we have some other information
12 that people had requested examples of regulation packages
13 and that sort of thing. But unless there are some other
14 comments, I think we will just go ahead and get started.
15 Oh, the other thing I would like to mention is that Ms.
16 Jennifer Shen is officially now the newest member of the
17 Forensic Alcohol Review Committee.

18 Ms. Shen - Yea!

19 Dr. Kimsey - Yea! [Applause] Welcome. And if
20 you want to walk us through the draft cover letter at this
21 point?

22 Ms. Shen - All right, this is Jennifer Shen. I
23 assume everybody has a copy.

24 Dr. Kimsey - Yeah, it was put in the packet, so
25 everyone should have a copy. Do we need more copies? Does

1 everyone have one? Go ahead, Jennifer.

2 Ms. Shen - Okay, well, you know, we decided that
3 we wanted to be -- we want to strike just the right tone,
4 introducing why it is that we are doing this, who it is
5 that is doing this, and giving a little history behind the
6 process, and it was important to me as I was writing it
7 with Paul, that I really wanted to make sure that the
8 people who reviewed this knew that we have really spent a
9 lot of time on each and every aspect of our changes. I did
10 not want there to be the possibility that someone would
11 look at it, particularly non-scientists, perhaps, look at
12 it and take lightly the changes we have made. So I was
13 trying to articulate that every change we had made was
14 incredibly discussed, inspected, you know, and gone over
15 and over and over. So I was trying to kind of strike that
16 tone and also to frankly give the feedback that the
17 Committee members by and large, with the exception of one,
18 did vote to approve all of these changes. So I thought it
19 was important that we made it very clear that that had all
20 gone on. Other than that, it was just if they would like a
21 little bit of history and, as part of this process, we are
22 trying to articulate also that we did not think this
23 started that 90-day clock. So, I mean, I am open to any
24 comments. I have not written many things like this before,
25 so I am perfectly happy to change or revise in any way you

1 think, or if you think particularly that the tone is not
2 quite right, then I am certainly happy to address that, as
3 well.

4 Dr. Kimsey - Any comments from the Committee?
5 Thank you, Jennifer. Do we all feel comfortable with the
6 letter as drafted, then, at this point? Are people still
7 reading it? Do we need more time? What is the feeling of
8 the group?

9 Sgt. Davis - This is Kevin Davis. Can we just
10 real briefly review again the process, including this
11 letter, of submitting this rulemaking package?

12 Dr. Kimsey - Sure.

13 Sgt. Davis - Is that -- there seemed to be some
14 confusion about that at the last meeting.

15 Dr. Kimsey - Yeah, I can sort of give my
16 impression and then we can get everybody else's.
17 Basically, we pretty much felt that we have come to the
18 point that we wanted to send, well, at one point we called
19 it our "work product," but now we are calling our "summary"
20 to Agency as required by the legislation. There was some
21 discussion, the fact that this summary does not trigger the
22 90-day review period by Agency; we specifically, I believe,
23 did not want to do that, and we were basically sending our
24 summary to Agency to give them basically notice of what we
25 have been doing and how we have done it, and what our

1 summary of the revisions are, as directed by the
2 legislation, to get feedback from them and for them to know
3 what it is we have been doing. And it is my impression, I
4 guess once this letter gets to them, they will respond to
5 us as an entity, as a committee, and we will see what that
6 response is. And then, at some point, I believe that
7 people are going to be working on sort of a larger package.
8 We have some examples of various aspects of a package here,
9 and I guess we would be discussing, based on input from
10 Agency, what we would be doing next and when we would be
11 submitting the product that would trigger the 90-day review
12 process. And is that sort of a general timeframe, time
13 line?

14 Sgt. Davis - Okay, thank you.

15 Dr. Kimsey - Does anyone else have sort of an
16 additional perspective, or different?

17 Ms. Shen - That was my understanding.

18 Mr. Lyle - Bruce Lyle, that was my understanding,
19 too.

20 Dr. Kimsey - Okay, thank you. So, back to the
21 letter. Do we have any suggested changes? I personally do
22 not. I helped Jennifer a little bit in crafting this
23 draft, so this is fine as far as I am concerned. Jennifer
24 and I had talked a little bit about that the committee
25 would be sending this. I mean, obviously we are all listed

1 at the bottom, that Jennifer, on behalf of the committee
2 could sign the letter. I just thought technically for us
3 all to have a letter with all of our signatures was not
4 worth the effort and not necessary, of trying to send this
5 all around and trying to get signatures, and so that
6 Jennifer would sign the letter on behalf of the committee.
7 Correct me if I am wrong, Jennifer, but I think we talked a
8 little bit about, you know, does that mean the committee
9 should come up with some letterhead? It was my
10 recommendation as far as I was concerned that it could just
11 come from Jennifer's office where she works. I mean, I do
12 not think that is really an issue either for the Department
13 or Agency, but that is also up for discussion. So anyone
14 else's perspective on how we want to send it?

15 Mr. Wong - I think with Jennifer as
16 representative, we should defer to her and let it be.

17 Dr. Kimsey - Jennifer, is your department down
18 there comfortable with you signing a letter like this? Are
19 you comfortable?

20 Ms. Shen - Yes, this is Jennifer. If that is
21 sufficient, I will just have it written up on San Diego
22 Police Department Crime Laboratory letterhead and that is
23 what we will send it out on.

24 Dr. Kimsey - Okay.

25 Sgt. Davis - This is Kevin Davis. Just two minor

1 edits.

2 Ms. Shen - Okay.

3 Sgt. Davis - On the second page, the signature
4 block, if you could change "Ken" to "Kevin?"

5 Ms. Shen - Oh, Kevin?

6 Sgt. Davis - On "Law Enforcement," why don't you
7 actually just put "California Highway Patrol."

8 Ms. Shen - Yes, I will do that. I was not quite
9 100 percent sure what everyone needed, how they needed to
10 be represented. So "Ken" to "Kevin?"

11 Sgt. Davis - Yeah. And then "California Highway
12 Patrol" rather than "Law Enforcement."

13 Mr. Lyle - Bruce Lyle. And after mine, it is
14 actually the "California State Coroners Association."

15 Ms. Shen - Say it again?

16 Mr. Lyle - California State Coroners Association.

17 Mr. Zielenski - Torr Zielenski. That would be
18 the same for the California Public Defenders Association.

19 Ms. Shen - I need to add the word "California?"

20 Mr. Zielenski - I think to accurately reflect the
21 agency, yes.

22 Ms. Shen - Got it.

23 Dr. Kimsey - And actually, Jennifer, this is Paul
24 Kimsey -

25 Ms. Shen - I just want to say in my own defense

1 that I just got these from Patty.

2 Dr. Kimsey - Oh, that is fine. I am glad someone
3 picked up on these because I tend to overlook this. This
4 is Paul Kimsey, I am with the California Department of
5 Public Health.

6 Ms. Shen - California Department of Public
7 Health, got it.

8 Mr. Phillips - Jennifer, Bill Phillips in
9 Sacramento. Jennifer?

10 Ms. Shen - Yes?

11 Mr. Phillips - I would suggest the closing thank
12 you should say something along the lines of "on behalf of
13 the Forensic Alcohol Review Committee, thank you for your
14 time," so it is known that this was a cooperative effort.

15 Ms. Shen - Okay, "On behalf of the Forensic
16 Alcohol Review Committee, thank you for your time." Yes?

17 Mr. Phillips - Right.

18 Ms. Shen - Perfect. Anything else?

19 Dr. Kimsey - Okay, since we are all here, we have
20 gone to the effort of being official, why don't we go ahead
21 and vote on the letter. All in favor of the letter as
22 drafted and edited, signify by saying "aye."

23 (Ayes.)

24 Anyone on the FARC Committee opposed to the
25 letter? Let the record show that there was no opposition

1 from the people on the line from the FARC Committee to the
2 letter.

3 So the next item. We sent out some - there was
4 some information we need to get back to the group on
5 suggested language from Goldie Eng. It should be in your
6 packets. It says "Draft 119009" at the top, "Suggested
7 Revisions to 17 CCR." Basically, she is talking about
8 grandfathering, I believe. This was something that had
9 been requested from the Department.

10 Ms. Shen - Paul?

11 Dr. Kimsey - Yes.

12 Ms. Shen - This is Jennifer. Before we move on,
13 I just have one more question to be clarified. So I am
14 going to obviously make those edits, and I am going to put
15 this on letterhead, and I am going to send it out with our
16 latest, most complete and finished summary. That is what I
17 am doing? I am sending those things out?

18 Dr. Kimsey - That is correct.

19 Ms. Shen - Okay, so that is something I will do
20 this week, then. Okay, thank you.

21 Dr. Kimsey - Okay, sure. And as part of that, I
22 think these suggestions from Goldie were to be included in
23 the package -

24 Ms. Shen - Yes.

25 Dr. Kimsey - -- that these were some areas that

1 we had been waiting for. And I guess the only thing I
2 would add is this question mark here, whether it is Part 4
3 or 5, I think it is based on how the regulations actually
4 flow together, so I do not know that we need to make that
5 decision today, but just there is a little question on
6 whether these are 4 or 5. But any other additions or sort
7 of holes in the summary that we are going to be sending to
8 Agency, that Jennifer is going to be sending to Agency on
9 our behalf?

10 Ms. Shen - This is Jennifer. So have these
11 changes been made to the work product, then?

12 Dr. Kimsey - I do not believe so.

13 Ms. Shen - Who does that?

14 Dr. Kimsey - Well, if it is easier for you to do,
15 if you have the work product, that might be easiest.

16 Ms. Shen - Okay.

17 Dr. Kimsey - Were there other aspects of the work
18 product that we were waiting for? I think this was the
19 last piece as far as I was aware.

20 Mr. Lyle - Bruce Lyle. This is the last piece
21 that we were waiting for.

22 Dr. Kimsey - Okay, thank you. So basically, any
23 other questions about what we are sending to Agency? It
24 sounds like Jennifer thinks she may be able to do it, you
25 know, this week. Any other discussion on that particular

1 topic at this point?

2 Pretty much the other major thing, we did send
3 out a number of documents, one was an example of -- I guess
4 the thick document is an example of some regulations, it
5 basically says "Continuing Education for Registered
6 Environmental Health Specialists," this was just given to
7 the group as an example of a regulation package that has
8 gone through the Department, and pretty much all the parts
9 of the package are here for people to look at. We also
10 sent out an overview of the fiscal requirements and
11 information. I believe we had sort of made some
12 recommendations, or people had volunteered for various
13 aspects of the package, and so here are some examples of
14 some of the fiscal requirements that go into a package. We
15 have an example of a Statement of Determination. There is
16 the State Administrative Manual chapter on 6600 for
17 Economic and Fiscal Impact Statements. There is an Office
18 of Regulations Tips for Preparing Regulation Packages and
19 Responding to Public Comments. And then, the last item we
20 sent out was our Office Regulations Action Plan, this is
21 sort of a tracking sheet for where regulations go in the
22 department and timeframes for completing each aspect of the
23 regulation package. Any questions on any of those
24 documents or sort of the process at this point?

25 Mr. Lyle - It is Bruce Lyle in San Diego. I took

1 the assignment of doing the Statement of Determination and
2 I finished what I thought was a draft, but I did not finish
3 it in time to get it on the agenda. Is it proper for me to
4 take that and send it out to all the Committee members?

5 Dr. Kimsey - Mr. Chi, is that -

6 Mr. Chi - Yeah, one way communication is fine.

7 Dr. Kimsey - Okay. And let me also -- again,
8 this is just off the top of my head a little bit, but
9 basically we are going to hear back from Agency and be
10 getting some response, some direction. I think it was the
11 wishes of the Committee to obviously receive that
12 information and then continue to prepare the package that
13 we will be sending to Agency that will trigger the 90-day
14 review period. And that is what the various folks in the
15 Committee were going to work on, various parts of that.
16 That is part of what is Bruce Lyle is referring to when he
17 was working on the Determinations. And I guess we do not
18 really know what the timeframes yet will be. What is the
19 feeling of the Committee? Do we want to continue putting
20 together the various parts of the package in anticipation
21 of getting some direction from Agency? In other words,
22 sort of continuing the work? Or what is the feeling of the
23 committee? Because it is my impression the Agency has 90
24 days to give -

25 Mr. Larson - No. There is no time period for

1 this summary.

2 Dr. Kimsey - No, that is correct, there is no
3 time period for this summary, but when we do send the next
4 package, the package that triggers the 90 days, then the
5 Agency will have 90 days to respond to the Committee.
6 Basically they have, it is my understanding, sort of a line
7 item veto on pretty much any aspect of the regulations.
8 And then that package -- I guess the Committee may have
9 some more interaction, but at some point, once that
10 interaction between this committee and Agency has happened,
11 is done, then it is pretty much, according to the
12 legislation, the responsibility of the Department to start
13 the regulation process. And that is pretty much where we
14 are at this point.

15 Dr. Haas - This is Bob Haas, FDLB. If the
16 Committee members take a look at the example that we
17 provided, you will notice this is a pretty substantial
18 document and includes an informative digest, a Policy
19 Statement overview, as well as the Statement of Reasons and
20 text of the Regulations, etc. And I guess, since I am the
21 programmatic lead here, I have some concerns about where
22 the responsibilities for the drafting of the next package
23 is going to come from. Maybe members of the Committee can
24 -- I know that some assignments have been made about the
25 Initial Statement of Reasons and the fiscal impact, and

1 things like that, but my understanding is that it is the
2 Department's responsibility to prepare an APA approvable
3 Reg package subsequent to the summary and the Agency's
4 actions on the summary, so -

5 Mr. Larson - Not the summary.

6 Dr. Haas - -- not the summary, the package that
7 will trigger the 90-day, and subsequent to Agency's review
8 and acceptance or rejection of what is submitted, then it
9 becomes the Department of Public Health's responsibility to
10 develop the Regulation package. So at that point, I do not
11 know what the Committee -- does the Committee then just sit
12 and wait until -- or what does the Committee want to do at
13 that point with regard to the development of this
14 regulatory package? And maybe you do not know, and that is
15 fine, just let me know.

16 Mr. Lyle - It is Bruce Lyle. I think, you know,
17 while we wait, after Jennifer sends in the summary, the
18 letter and the summary, I think we should anticipate that
19 they will get back to us and, you know, not have any issues
20 with it. So, in the mean time, we should probably work on
21 developing the entire package, you know, along with the
22 fiscal impacts and the Statement of Determination and the
23 intention letter, whatever that thing is.

24 Dr. Kimsey - Initial Statement of Reasons?

25 Mr. Lyle - That is the one.

1 Dr. Kimsey - Right.

2 Dr. Haas - Okay, so I guess the Committee's plan,
3 then, let me make sure I have got this straight in my head,
4 the Committee's plan is that, while the summary is at
5 Agency, and we are all awaiting their feedback, that you
6 will go ahead and begin work on the next submission. I
7 heard that right?

8 Ms. Shen - I think that is what we had talked
9 about doing. Do you have a reason that we would not want
10 to do that? It could be quite a while before we get
11 anything back from them.

12 Dr. Haas - No, I agree and, no, I think that is a
13 good plan. I just wanted to make sure I understood the
14 process correctly.

15 Dr. Kimsey - And I do not have the Minutes from
16 the last meeting in front of me, but I did remember that
17 Bruce Lyle was going to look at the Statement of
18 Determinations, or work on that. Do people remember how
19 other parts of the package were sort of allocated to the
20 members of the Committee for some work?

21 Mr. Wong - Yeah, this is Ken Wong. I took on the
22 Fiscal Impacts, and my hats off to Bruce because, I do not
23 know about you, Bruce, but when I was reading some of this
24 stuff, it looked like all Greek to me. I am not joking.

25 Mr. Lyle - It was more Latin to me, Ken.

1 Mr. Wong - I am not joking. Because I was
2 sitting there reading this thing for the Fiscal Impacts and
3 I did not -- I still do not know where to begin. They are
4 talking about having your fiscal effects on local
5 governments, state government, federal funding of state
6 programs, and then if there is no impacts, then you have to
7 provide relevant rationale and I am like, I do not even
8 know, where do these come from?

9 Ms. Shen - This is Jennifer in San Diego. Maybe
10 it is just something, a threat to do, they managed to go
11 through this overview of Fiscal requirements and
12 information and help you come up with a plan of attack
13 because, I agree with you, all by yourself it would be kind
14 of hard, I do not understand it either, but maybe together
15 we could come up with at least a plan.

16 Mr. Wong - Thanks, Jennifer. The only thing that
17 I could think of was, currently at this time, or up to this
18 time, the Department of Public Health had been sending out
19 their proficiency tests via Clay, and people would send
20 back the results, and that was a done deal. But since the
21 passing of time and as part of ASCLD accreditation, that
22 will not work anymore for a lot of laboratories and is not
23 sufficient to meet the requirements for proficiency
24 testing. And I know for us, we have proficiency testing
25 with the College of American Pathologists, or what is the

1 other one?

2 Ms. Shen - CTS?

3 Mr. Wong - Yeah, CTS. And it is costing us about
4 \$300 a year for our proficiency tests and blood alcohols
5 and toxicology. I know for other laboratories, the costs
6 are -- the only costs that I can see that are going to
7 increase, whereas before just a section or a laboratory had
8 to do a proficiency test once for the whole year, even
9 though there may be six people in the Unit, now, for ASCLD
10 accreditation, each analyst has to do the proficiency test
11 once a year. So there is going to be an added labor cost
12 of performing that analysis once a year per analyst. But
13 other than that, I really do not see any fiscal impacts to
14 the local laboratories, or CHP, or anything because nothing
15 else is really changing in Title 17.

16 Ms. Shen - This is Jennifer. I do not believe
17 that the cost, the labor cost, is even really very
18 significant, as we just add them on to our runs, sort of,
19 as we are going about our daily business. So, I mean, you
20 could come up with maybe an estimate of what laboratories
21 -- well, I mean, as long as we know how much proficiency
22 tests are and how many you have to do per laboratory, we
23 could come up with a bit of a ballpark figure that should
24 cover most everybody.

25 Mr. Wong - Right. And you are right, I think

1 most of that can just be absorbed into the workload and I
2 do not think it is going to be that significant.

3 Dr. Kimsey - Also, if you have in front of you
4 sort of the example Regulations that the Department sent
5 out, the ones dealing with Registered Environmental Health
6 Specialists, if you look on page 10, I mean, obviously do
7 not get me wrong, I am not saying that we could just
8 transfer this language, but you can see -- oh, my page 10
9 is looking a little different than your page 10 -- oh,
10 there are several page 10's, I am sorry. The first page
11 10, at the top of the first page 10, it says, "Local
12 Mandate Determination" and the second heading is "Economic
13 Impact Statements" and it gives you some -- I mean,
14 basically I guess what I am saying is, talking about the
15 average cost of proficiency testing may be a little too
16 granular, or more granular than it needs to be in the sense
17 that, if you look, some of this is basically general
18 statements of impact. And so --

19 Ms. Shen - Paul, this is Jennifer in San Diego.
20 We cannot hear you over the paper shuffling that is going
21 on. I missed all of that, what you just said.

22 Dr. Kimsey - Okay, I am not sure where the paper
23 shuffling was, but basically what I was repeating -- it
24 might have been Sacramento -- but anyhow, on the first page
25 10 in the draft or the model Regulations that we sent out

1 that deals with Environmental Health Specialists, on the
2 first page 10 there, the second section is called "Economic
3 Impact," and if you look -- I am not saying that this
4 language is specific to our situation, but if you look at
5 how the question are answered, they are answered at a
6 fairly high level. We talked a little bit about -- we had
7 some discussion talking about how much proficiency testing
8 costs. I do not think that is -- that is a little more
9 granular than the information needs to be. We just need to
10 talk about sort of high level effects of some of the
11 economic impacts of these Regulations. And obviously -

12 Mr. Lyle - Paul?

13 Dr. Kimsey - Yes.

14 Mr. Lyle - Paul, this is Bruce in San Diego. The
15 thing that you are reading is actually, if you go back to
16 page 9 on that, it says, "Statement of Determinations," and
17 that is -- everywhere I look for Statements of
18 Determination, they included that alternative considered --
19 it included the local mandate determination, the economic
20 impact statements, and it was all pretty boilerplate with
21 that economic impact statement. I think what Kenton has to
22 do, what Kenton is working on, is completely different, the
23 Fiscal Impact Statement. This is just an Economic Impact
24 Statement, specifically, does it create jobs? Does it
25 create new business? Or will it inhibit the creation of

1 jobs and new businesses in California? That is what the
2 determination -- that is included in the determination. A
3 better idea of what the Fiscal Impacts estimate is, is on
4 the very first section, the 1, 2, 3, of 6, 4 of 6 on that
5 packet, and it says "Fiscal Impact Estimate." I think that
6 is more of what Kenton has bitten off, and I think it has
7 to do with the affect on the fiscal effect on local
8 government, state government, federal government. I think
9 those are the targets for the actual fiscal impact estimate
10 that he is working on.

11 Dr. Kimsey - Yeah, thank you, Bruce. You are
12 very correct. I had sort of gotten on to the wrong
13 section.

14 Ms. Shen - Kenton, had you looked at this
15 particular portion of the packet?

16 Mr. Wong - No.

17 Ms. Shen - You may be able to just follow this
18 along, this A, B, C, D, just like they do.

19 Mr. Wong - Works for me.

20 Mr. Lyle - Yeah, when I was looking at it, I kind
21 of got sidetracked and I was sort of on that particular
22 fiscal impact stuff, not really understanding the terms of
23 art, and so I was actually looking and I was churning
24 through my little alleged brain, you know, what would the
25 impacts be, and I really only saw that there could be like

1 -- that there would be local fiscal impacts. I did not see
2 an overall state impact or I do not know of any like
3 federal grants or funding that it would impact on that
4 federal level, so it seemed like the one that we would
5 brainstorm and come up with are the costs that would be
6 borne by local government.

7 Ms. Shen - This is Jennifer. The only other
8 costs that I saw, which I think are choice costs, is if
9 laboratories do use the net traceable standard that will
10 increase their costs, but they are not required to. So I
11 think that is not a cost that we need to worry about.

12 Dr. Kimsey: It occurs to me, depending upon what
13 Agency directs us to do, obviously the work that maybe
14 Kenton and Bruce and all of you that are working on aspects
15 of this, some of that may change, but it is certainly
16 working while Agency is making their -- while we are
17 waiting for Agency to respond, I do not think that is going
18 to be work that is lost, it may change what we actually end
19 up submitting, but I think it is still going to be time and
20 effort that is worthwhile, I guess is what I am trying to
21 say.

22 Mr. Wong - Absolutely.

23 Mr. Larson - A couple comments from staff about
24 the costs. Perhaps the committee members have forgotten
25 some of the details of the regulations. Actually,

1 regarding proficiency tests, there is no requirement in the
2 regulations that either the annual Examiner Proficiency
3 Test, or the -- which is not even referenced in the
4 Regulations -- or the Competency Test, that is described in
5 the Regulations, be obtained from an external provider.
6 The committee specifically considered that and excluded
7 that requirement, so currently in the Regulations, there is
8 no requirement that personnel are ever tested by an
9 external test. So the \$300 per cost that you referred to
10 probably is not applicable. It would be for an internal
11 proficiency test sample, there would apparently some costs
12 associated with preparing or finding that sample, but it
13 would not necessarily be \$300.00. Regarding the NIST
14 Standards, there is a requirement, a new requirement, that
15 the labs "qualify" -- I think is the appropriate word -- a
16 new batch of secondary standards by the analysis of a NIST
17 Standard Rep's material. That stuff is about \$60.00 a
18 vial. So you might run multiple concentrations, but the
19 Regulations frankly are unclear, but how you do that
20 validation -- but there would be a cost, it would not be
21 voluntary from the NIST Standard, but there would be some
22 cost associated with that.

23 Dr. Kimsey - Other comments?

24 Ms. Shen - I still think we are looking at pretty
25 -- I mean, Ken, you are going to be able to come up with

1 sort of a ballpark number that is usable, if not extreme.

2 Mr. Wong - I think so.

3 Dr. Kimsey - So other parts of the package? You
4 know, Kenton has got the Fiscal Impacts, Bruce has the
5 Statement of Determination. Did we farm out other parts of
6 it? Do people remember?

7 Sgt. Davis - This is Kevin Davis. I had a
8 question on the State Impact, just a question. With the
9 anticipated diminished role of Public Health, is there a
10 cost savings to them in any way?

11 Ms. Shen - This is Jennifer. I wondered that,
12 myself. There is a possibility of savings, I agree.

13 Sgt. Davis - And, if so, that should probably be
14 noted.

15 Dr. Kimsey - Yeah, maybe the Department ought to
16 make some contribution of that since we probably have a
17 better understanding. We can have the program folks give
18 us some estimates or some language that we can then review.

19 Dr. Haas - Yes, certainly. The portion of the
20 program that supports this would probably decrease.

21 Dr. Kimsey - And that is on a special fund or
22 arrangement?

23 Dr. Haas - Yes, it is a special fund.

24 Dr. Kimsey - Are there other aspects?

25 Ms. Shen - Paul, are those are numbers that you

1 can supply to Kenton?

2 Dr. Haas - Yes.

3 Mr. Wong - Excellent.

4 Dr. Kimsey - We will supply it.

5 Dr. Haas - Well, I am not sure that we will do
6 that at the outset because, once the regulatory package has
7 a more clear form, those numbers can come forward.

8 Ms. Shen - So, for the time being, that could
9 just be included in the Statement as an undetermined
10 number?

11 Dr. Haas - Yeah, I think so. I think that would
12 be best. I mean, we do not know what is -- I mean, we do
13 not have a crystal ball, so we do not really know what is
14 going to happen, so for us to make cost estimates or
15 savings estimates seems to me premature.

16 Mr. Wong - Potential cost savings.

17 Dr. Haas - Well, yeah. I mean, your language
18 would probably be "potential cost savings," yeah. Do not
19 forget that the Abused Substances Analysis section does
20 more than just forensic alcohol.

21 Dr. Kimsey - Other parts of the package that we
22 had sort of farmed out to members of the Committee?

23 Ms. Shen - This is Jennifer. I just sat down
24 with the letter. I would be happy to take on another
25 portion. What other portions do we have that need to be

1 worked on?

2 Mr. Larson - This is staff. I am not sure if you
3 mentioned this, but we have the Initial Statement of
4 Reason, actually it is probably the biggest piece. I
5 understand that you and Leona Gaulk -- Jennifer Shen and
6 Leona Gaulk will be working on that?

7 Ms. Shin - Oh, I actually farmed that out to
8 myself already?

9 Dr. Kimsey - I believe so.

10 Ms. Shin - Okay. I wrote it down, so I am there.
11 That is probably enough for me.

12 Mr. Wong - I think so, Jennifer.

13 Ms. Shin - Yeah, and I may require some
14 assistance on that, we will see.

15 Mr. Larson - Well, actually, that was determined
16 two meetings ago, so it is not really a new assignment, but
17 one of the issues that we did discuss is the necessity of
18 keeping that ISOR, I-S-O-R, subcommittee at two members or
19 less.

20 Ms. Shen - Great.

21 Dr. Kimsey - Are there other parts of a package
22 that we have not assigned out at this point? We have the
23 ISOR, the Fiscal Impact, Statement of Determination, the
24 actual package itself, which will obviously have quite a
25 bit of -- I mean, that is sort of done pending what Agency

1 has to say.

2 Ms. Shin - We only really have those three
3 things?

4 Dr. Kimsey - I think that is -- I mean, there may
5 be more; in fact, I would not be surprised, but --

6 Mr. Larson - There is also the Regulations text,
7 which probably needs to be -- might need to be cleaned up a
8 little bit, there are issues -- the standard format is to
9 put definitions in alphabetical order, sorting and
10 referenced citations should be with each section, so there
11 is some little work that needs to be done there.

12 Dr. Kimsey - But it seems like we have some
13 assignments for the Committee at this point. What is the
14 feeling of the committee on the periodicity of which it
15 seems like, according to Mr. Chi, our attorney, that we can
16 have one-way communication from -- I guess Kenton can send
17 us his draft, and Bruce can send us his draft. Is that
18 correct, Mr. Chi?

19 Mr. Chi - Right. They can send it out, but the
20 Committee members should not be discussing changes or
21 drafts via responding to their e-mails, that should
22 probably be taken up at the next part of the meeting.

23 Dr. Kimsey - And that is sort of where I was
24 going. When would we all like to get together again? And
25 part of that might be just when we have something from each

1 of the folks that is going to be drafting something, might
2 be one -- I do not want to -- it is up to the group. When
3 would we like to have our next meeting, based on when
4 people have had time to prepare something? Do we want to
5 set it at two months or one month, three months?

6 Ms. Shin - This is Jennifer. I think that if we
7 set meetings, I know for my own self, that I will have to
8 get that work done prior to the meeting. I think that is
9 better than leaving it open.

10 Dr. Kimsey - Okay.

11 Mr. Lyle - Bruce Lyle, I agree. Even though I
12 have got what I think is a pretty good draft of my thing,
13 but I do not know if Kenton agrees with that, but I always
14 work that way, too; if I have something to head towards, it
15 is a lot easier for me.

16 Mr. Wong - I concur.

17 Dr. Kimsey - That is why they call them
18 deadlines.

19 Mr. Lyle - Yeah, right.

20 Dr. Kimsey - So do we want to try and - what is
21 the feeling of the group? In a month? This is the middle
22 of April. Try for the middle of May or late May?

23 Ms. Shin - This is Jennifer. I cannot promise
24 that I will be done with this in a month, but I certainly
25 will have made a start, so maybe we can work on the other

1 aspect a little bit at the next meeting.

2 Mr. Wong - Maybe later.

3 Ms. Shen - And I will have gotten a good start,
4 but this looks kind of large, so it may take me a while.

5 Dr. Kimsey - And it just may be that we check in
6 with everybody at that point and see where we are in maybe
7 late May. I think, just pulling out a calendar here, that
8 is sort of the week of the 24th through the 28th, and I am
9 not even in the country.

10 Mr. Wong - "Dr. Kimsey has left the building."

11 Dr. Kimsey - Yes, "left the planet." So we could
12 do it the third week in May, the 17th through the 21st, or we
13 could go over to -- not the first week of June. But
14 anyhow, the third week in May? Does that work for people?
15 Or do we want to look at maybe the second week of June, the
16 7th through the 11th?

17 Ms. Shin - What do you think, Kenton?

18 Mr. Wong - Either one. I think it is far enough
19 out, but definitely not the beginning of May, I do not
20 think.

21 Mr. Zielenski - Sacramento, I will not be
22 available during the month of June.

23 Dr. Kimsey - Then let's shoot for some time in
24 that week of the 17th through the 21st of May, tentatively,
25 and we will get out an e-mail.

1 Mr. Wong - I will not make it, but I am not on
2 the committee.

3 Mr. Lyle - Paul, this is Bruce. How soon in
4 advance do we have to have something so that it could get
5 on the agenda? Is it a week beforehand that it has to get
6 to your staff in order to get it out on the agenda and the
7 public to look at?

8 Mr. Wong - Ten days.

9 Mr. Larson - Clay speaking. The Notice of the
10 Meeting has to go out 10 days prior to the meeting.

11 Ms. Shin - Does the work product have to go out
12 10 days ahead of time, too, that we are going to be
13 discussing?

14 Mr. Larson - Well, Laura Tanney is not here, she
15 once wanted four weeks to review any of this material.

16 Ms. Shen - My point being that, if it is going to
17 be three or four weeks out, and we have to have the work
18 product out two weeks before, then you are really only just
19 giving me a couple of weeks to do the work, that is what
20 the issue is.

21 Mr. Larson - In practice, the Committee has
22 probably noticed, it is actually difficult to schedule a
23 meeting in one month. I mean, it takes a couple weeks for
24 the transcripts to get, I am sure people anxiously await
25 those and read them. And then there is always difficulty

1 in getting -- and I would encourage, when we send out an e-
2 mail announcement requesting your availability, we often
3 have to send a second reminder, it would actually be great
4 if people responded to the first one. I think a month is
5 difficult just to get everything -- and, again, it is not a
6 month, it is 10 days less than a month, so basically it is
7 two and a half weeks to get another meeting going, so I
8 think the end of May. And I also -- it is obviously
9 important that, for that meeting, there be something for
10 the Committee to work on, and I would submit that the ISOR
11 is probably the most interesting product and, so, unless
12 the presumption is that there could be significant work on
13 that and there are parts of it, say, that the whole
14 Committee could then review, I do not see much value
15 unless, you know, working very hard to schedule a meeting
16 in four weeks.

17 Ms. Shin - This is Jennifer. I would tend to
18 agree with that. I am not going to have a significant work
19 product accomplished in two weeks, I am quite sure.

20 Dr. Kimsey - Okay, so -

21 Ms. Shin - My April is quite dreadful.

22 Dr. Kimsey - so we are starting to look now to
23 the middle to late June, which, you know, we are starting
24 to get to that three months of school and vacations and
25 that sort of thing, so how about the latter part of June?

1 That is the week from the 14th to the 18th, or the 21st
2 through the 25th of June?

3 Ms. Shin - Let's aim for the 14th to the 18th.

4 Dr. Kimsey - Okay. Someone mentioned that they
5 were gone the whole month of June?

6 Mr. Wong - Torr.

7 Dr. Kimsey - Torr?

8 Mr. Zielenski - Yeah, I start a trial the early
9 part of June, which should be three to four weeks long.

10 Dr. Kimsey - Okay. Well, and we do not have to
11 have everyone, I mean, I think it is worth trying to --
12 well, is it worth trying to have a meeting in June? Or
13 should we move on to July?

14 Ms. Shin - This is Jennifer. I do not think we
15 should wait until July. Time is just slipping away.

16 Dr. Kimsey - Okay, so --

17 Mr. Phillips - How about plan for the future and
18 do something that would be logical like scheduling meetings
19 at a normal time of the month? The California Crime
20 Laboratory Task Force manages to do that, and they are
21 doing the same thing as you are right now.

22 The Reporter - I am sorry, could the speaker
23 identify himself?

24 Mr. Won - Bill Phillips, DOJ.

25 Dr. Kimsey - And so you are recommending that we

1 have a periodic meeting every like quarterly, or every
2 three weeks or something?

3 Mr. Phillips - So the first of the month, or
4 something like that.

5 Sgt. Davis - I think the way they work is the
6 first Wednesday of every month, and now they are meeting
7 every other month, but it used to be monthly.

8 Mr. Wong - I do not think that is going to work
9 for most of us.

10 Dr. Kimsey - You know, one thing we could do is
11 get out some we could say hold the last Thursday of every
12 month open, pending us sending out the 10-day notice. I
13 mean, if that would be helpful, but I think we are getting
14 pretty close to a timeframe. It seems like, expect for
15 Officer Davis, maybe some time between the 14th and 18th of
16 June --

17 Mr. Larson - Torr.

18 Mr. Wong - Torr.

19 Dr. Kimsey - -- oh, I am sorry, Torr -- anyhow,
20 the 14th through the 18th may be working for a large number
21 of the Committee -- of June.

22 Ms. Shin - This is Jennifer. That works for me.

23 Mr. Wong - Send out the e-mail and see what
24 happens.

25 Dr. Kimsey - Okay. We will send out an e-mail

1 starting with sort of that June 14th through the 18th time
2 frame and maybe even get some feedback on the following
3 week, the 21st through the 25th.

4 Dr. Haas - Though it is really going to be the
5 17th because the 18th is a furlough day.

6 Dr. Kimsey - That is true.

7 Dr. Haas - Hopefully the last furlough day.

8 Dr. Kimsey - Okay. Other items for discussion?

9 Mr. Fickies - Paul, this is Terry Fickies from
10 Sacramento.

11 Dr. Kimsey - Yes.

12 Mr. Fickies - Is it possible that, once the work
13 product is done from each person, that you could put that
14 on your website?

15 Dr. Kimsey - I do not know. Mr. Chi?

16 Mr. Chi - That is fine.

17 Dr. Kimsey - That is fine? Okay.

18 Mr. Larson - It is the 15th meeting, so this is
19 the kind of thing we should have covered at the first
20 meeting. All the hand-outs, anything provided to the
21 Committee is also - the same day, 10 days prior to the
22 meeting, is posted on the website now. So there would be
23 no change.

24 Dr. Kimsey - Other items for discussion?

25 Dr. Haas - Yeah, this is Bob Haas, Food and Drug

1 Lab. Included in the package is the Office of Regulations
2 and Hearings Regulation Action Plan, and I just wanted to
3 bring this out to the Committee, so to make everyone aware
4 that this process is a Departmental process and it has not
5 even begun, we are not even at Step 1, and that there will
6 be a long and involved process within the Department of
7 Public Health once the Committee's work product and the
8 Agency's review has been completed.

9 Dr. Kimsey - Thank you, Bob.

10 Mr. Wong - For bursting our bubble.

11 Ms. Shin - Paul, this is Jennifer. I have a
12 question. I probably should know this, I am sorry, but I
13 do not. So when I make these changes to our work product,
14 I am going to add in Goldie's changes, then I will send
15 that out, but does that newly changed work product then
16 need to go and be posted?

17 Dr. Kimsey - That is an interesting question.

18 Mr. Larson - Well, I would just -- before the
19 next meeting, that would certainly be a new piece that all
20 the committee members would want to have as part of their
21 background information, so it would be distributed to -- I
22 mean, it would be almost identical to the January version,
23 but with those changes, it would be distributed to the
24 members and therefore posted on the website as part of that
25 distribution process.

1 Ms. Shin - So I guess my question is, so I can
2 pull up this work product and I could make these changes,
3 and I can attach them to the cover letter and send them
4 out. Can I do all that prior to this -- I am just going to
5 make the changes exactly as she has them here.

6 Mr. Phillips - Jennifer, this is Bill Phillips in
7 Sacramento.

8 Ms. Shin - Yes.

9 Mr. Phillips - I recommend the Committee vote on
10 these draft changes that Goldie Eng has submitted, so that
11 you have a record that they were accepted, and then they
12 are edited into the new document.

13 Ms. Shin - You are saying we should have a vote?

14 Mr. Phillips - I would recommend that. That way,
15 you are not putting something in that has not been decided
16 upon by the Committee.

17 Ms. Shin - I think that is a great idea, thank
18 you. Let's do that.

19 Dr. Kimsey - Okay. I will take that as a motion
20 that we vote on -- let me get through my paper here -- the
21 document in our package that, at the top, has "Draft -
22 11/9/09, Suggested Revisions to 17 CCR 1216.1E, Goldie Eng,
23 Senior Staff Counsel, CDPH," that this recommended language
24 for 17 CCR 1216.1 be added as written to our package
25 summary, summary package. Do I hear a second?

1 Mr. Lyle - I second, Bruce Lyle.

2 Dr. Kimsey - Discussion?

3 Mr. Wong - With a proper determination whether it
4 is subsection 4 or 5.

5 Mr. Lyle - From looking at it, I think it just
6 goes in as 4.

7 Dr. Kimsey - Okay.

8 Mr. Wong - You can double-check that, Jen.

9 Ms. Shin - Yes, I will.

10 Dr. Kimsey - Any other discussion? All in favor?

11 Mr. Larson - We should probably do a roll call
12 vote.

13 Dr. Kimsey - Okay, well, if we have a dissenting,
14 we could do -

15 Mr. Larson - If Goldie was here, she would want a
16 roll call.

17 Dr. Kimsey - That is true. Why don't we do a
18 quick roll call. Ms. Tanney is not with us. Signify your
19 response, please, when I call your name. Sergeant Kevin
20 Davis?

21 Sgt. Davis - That is fine.

22 Dr. Kimsey - Mr. Torr Zielinski?

23 Mr. Zielinski - Agreed.

24 Dr. Kimsey - Mr. Bruce Lyle?

25 Mr. Lyle - Yes.

1 Dr. Kimsey - Mr. Kenton Wong?

2 Mr. Wong - Yes.

3 Dr. Kimsey - Ms. Jennifer Shen?

4 Ms. Shen - Yes.

5 Dr. Kimsey - Paul Kimsey - yes. And Paul
6 Sedgwick is not with us. So no vote from Laura Tanney or
7 Paul Sedgwick. Okay, other items?

8 Ms. Shin - This is Jennifer again. So after I
9 make these changes, then can I forward it to you? And you
10 will post it?

11 Dr. Kimsey - When you send it off to Agency, you
12 can send me a copy and we can certainly get it posted.

13 Ms. Shin - Okay, that is what I will do.

14 Dr. Kimsey - Any other business for the
15 Committee?

16 Mr. Wong - This is Kenton, I am just chiming in
17 on the sheet that Dr. Haas had here. If you guys look at
18 the projected calendar days to complete for each one of
19 these boxes, we are in this for the long long haul, we have
20 not even begun. I mean, there is a big chunk here at 180
21 days, another one down here at 95, 95, 47, 47, 46, 47, 44,
22 45, not to mention all of the teen digits and single
23 digits. We are just like way way out.

24 Dr. Kimsey - And not to dissuade you or the
25 Committee from that perspective, that is true, but the

1 reality is that some of these, like if you look at the
2 three 180 days, "develop Regulation Package," the
3 Department will be working from a document that is a
4 combination of what the Committee has done and what Agency
5 has indicated their wishes are, so it is not like we would
6 be starting from zero. I cannot say that that does not
7 mean how long it will take us, but theoretically, like Step
8 2 there is starting from ground zero.

9 Mr. Wong - Is the worst case.

10 Dr. Kimsey - Yeah, is theoretically a worst case,
11 not to dissuade you from the fact that Regulation writing
12 takes a long period of time, but this document reflects,
13 you know, pretty much the Department's process from
14 beginning to the end.

15 Mr. Fickies - This is Terry Fickies from
16 Sacramento. Are some of these concurrent? Or are these
17 consecutive?

18 Dr. Kimsey - I would have to look at them more
19 closely. Some of these, in looking at "Responsible Party,"
20 I really do not know, Terry.

21 Mr. Fickies - I would say 6.4, duplication in
22 mailing, 47 days? Wow.

23 Mr. Wong - Moving at the speed of government.

24 Mr. Larson - We have monks carefully writing.

25 Mr. Fickies - Do we have like monks and scribes

1 to do this or what?

2 Mr. Wong - No, we have annuitants.

3 Dr. Kimsey - Well, if you throw in furloughs, I
4 mean, who knows where we will be?

5 Mr. Fickies - Careful, I will go to the defense
6 and you will be finished, then.

7 Ms. Shin - So these are the projected days after
8 it has been submitted?

9 Mr. Wong - Correct.

10 Dr. Kimsey - Well, and like I said, we are not
11 starting from ground zero. I mean, the package, the work
12 that we have been doing for the last 14-15 meetings, I
13 mean, is something to start from. But, again, there is no
14 way to predict how long this process is going to take.

15 Ms. Shin - So once we turn this packet in, we can
16 start checking off days here? Oh, very depressing.

17 Dr. Haas - I do not want to be the Prophet of
18 Doom here, but Paul is right, the developed regulation
19 package, the 380-day thing, is pretty much what has gone on
20 here, so you should take that number with somewhat of a
21 grain of salt; however, it has been made clear to the
22 program from the Office of Regulations and Hearings that we
23 will need a considerable amount of time to work on your
24 product to get it ready for Step 2.1, 2.2, the comment
25 period, etc., etc., that what exists today, ORH needs --

1 you have got to remember ORH works on, you know, some 100
2 regulation packages at any one time, so what will be
3 presented to them at the start of this Step 2 will need a
4 considerable amount of revision. And some of these things
5 go along with that; if you get down to Agency Review, you
6 know, you might surmise and may be correct, but maybe not,
7 that agency review of 95 days may not be quite that long;
8 however, the product, when it gets down to the Director's
9 Office approval in Step 4 may be quite different, not so
10 much in substance, but in language -- and perhaps even in
11 substance -- from what the Committee has prepared. So
12 agency review in 5 and Department of Finance, DOF review,
13 will in our experience probably take those full amounts of
14 time, and that is six months right there.

15 Ms. Shin - This is Jennifer. So I am a little
16 confused. So this would go in and the person who is
17 reviewing this, in whatever line we are on, can make
18 substantive changes to the product, that would alter what
19 the Committee's desires were?

20 Dr. Haas - That is my understanding, that the
21 Department of Public Health is the rulemaking body here.
22 This is kind of a unique situation with 1623 and the
23 Forensic Alcohol Review Committee preparing regulatory
24 revisions. Those regulatory revisions will still need to
25 go through the full rulemaking process within the

1 Department of Public Health.

2 Dr. Kimsey - Mr. Chi, what is your perspective on
3 -- if we have the Committee's work product, and we have
4 Agency's comments, do you think there would be substantive
5 changes after that with regards to, you know, direction?
6 Or is this more formatting, answering of certain types of
7 questions? What is your perspective?

8 Mr. Chi - Usually, I think, with the work that
9 the Committee has done, I fail to see how it would change
10 the substantive work that the Committee has done, but the
11 Office of Administrative Law has been known to provide
12 feedback and make sure of clarity and conciseness and all
13 of that criteria is met, so there is still a lot of work
14 that needs to be done by the Office of Regs to make sure
15 that the Office of Administrative Law is satisfied with the
16 final product.

17 Dr. Kimsey - And my follow-up question would be,
18 once we sort of start this Step 1, this is not necessarily
19 a transparent process, in other words, we do not
20 necessarily let the public or the Committee know where the
21 package is on a daily basis? I mean, basically this
22 Committee will probably not see this Regulation package
23 until the public comment period?

24 Mr. Wong - Does it go into a virtual black hole
25 for us? I mean --

1 Dr. Kimsey - That is the question I was asking
2 Mr. Chi.

3 Mr. Lyle - Yeah, as I read the statute, the
4 Committee's role is done after submission to Agency, and
5 Agency provides the feedback in 90 days, and then the
6 Department's role takes over in propounding regulations to
7 make sure that it goes through the regulatory process. So
8 I think Dr. Kimsey is right, that the Committee probably
9 will not see a final Regulation until it comes out in hard
10 print.

11 Dr. Kimsey - And that is Step 6.5 down here,
12 which is the 45-day public comment period begins.

13 Ms. Shen - This is Jennifer. So that makes sense
14 to me, that once we get our feedback, after the 90 days we
15 get our feedback, we make whatever alterations we need to
16 make, and then I would expect at the end of this big long
17 process here, that the product that comes out, it may be
18 reformatted, or made clearer, or following certain rules,
19 but the scientific basis for all of the changes that have
20 been made should not be changed at that point, I would
21 think.

22 Dr. Kimsey - Jennifer, this is Paul. I would
23 tend to agree with you, but one of the reasons this process
24 is so long and convoluted, and the reason we have that
25 public comment period of 45 days, is to, you know, assure,

1 or at least make that transparent.

2 Mr. Chi - It also -- after the public comment
3 period, the Department needs to address each and every one
4 of the comments submitted, so that usually takes a lot of
5 time, too.

6 Ms. Shin - So I guess I wonder, again, not really
7 knowing how all of this works, if somewhere in this process
8 a person were to decide that they felt scientifically we
9 should be doing some other things instead, that would
10 ultimately have to come back to this Committee, wouldn't
11 it? I do not see how that is a change that could be made.

12 Mr. Chi - The statute itself does not provide
13 that the Committee would have veto power over what the
14 final regulation is. It just says that subsection (f) --
15 and I point you to subsection (f), Section 10703, that
16 says, "The Department shall adopt regulations pursuant to
17 this section and shall incorporate the Review Committee's
18 revisions." So, as long as the Department incorporates the
19 revisions as has been submitted by the Committee, I think
20 the statutory mandate has been met, and I think with all
21 regulatory process, the Office of Administrative Law
22 obviously has their role in making sure that the
23 regulations are concise, that are relevant, and that can be
24 easily understood by the public. So usually they would
25 make suggestions or recommendations back to us and the

1 Department's Office of Regulations would then make any
2 changes necessary. But again, like I said earlier, I
3 cannot imagine the Office of Regulation making any
4 substantive scientific changes to what Committee has
5 recommended. But I do not think you should expect that
6 there will be 100 percent adoption of what you submitted,
7 that it will be probably be tinkering with the language a
8 little bit.

9 Mr. Phillips - Would they change the intent of
10 certain parts of it?

11 Mr. Chi - My experience is that they would not
12 usually change what program or, in this case, what the
13 Committee has submitted. And, also, subsection (f)
14 basically says that we have to incorporate the revisions
15 that are proffered by the Committee.

16 Ms. Shen - That was helpful. Thank you.

17 Mr. Chi - No problem.

18 Sgt. Davis - This is Kevin. So, what I am
19 hearing is, once the rulemaking package is submitted,
20 barring any unforeseen things happening, this committee
21 would be done. Correct?

22 Dr. Kimsey - Well, I think the legislation, I
23 think this Committee in some form or other exists in
24 perpetuity.

25 Mr. Larson - It meets every five years.

I, KENT ODELL, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing 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 outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of April, 2010.

KENT ODELL