

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
CONFERENCE ROOM B-137
RICHMOND, CALIFORNIA

THIRTEENTH MEETING
THURSDAY, JANUARY 14, 2010
11:00 A.M.

TIFFANY C. KRAFT, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

REVIEW COMMITTEE MEMBERS

Dr. Paul Kimsey, Chairperson (Richmond)

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)

STAFF

Mr. William Chi, Senior Counsel, CDPH, Office of Legal Services (Sacramento)

Ms. Rosalie Dvorak-Remis, Regulations Coordinator, CDPH, Office of Legal Services (Sacramento)

Dr. Robert Haas, Acting Branch Chief, Abused Substances Analysis Section (Richmond)

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

Mr. Robert Schlag, M. Sc., Chief, Division of Food, Drug, and Radiation Safety (Sacramento)

Mr. Harbhajan Thandi, FDL Branch (Richmond)

Ms. Marylyn Willis, CDPH, Office of Regulations and Hearings, Office of Legal Services (Sacramento)

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Terry Fickies, Public (Sacramento)

Ms. Leona Golk, San Diego Police Department (San Diego)

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

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

Mr. Ron Moore, Public (San Diego)

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

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 PROCEEDINGS

2 CHAIRPERSON KIMSEY: This is Paul Kimsey in
3 Richmond. Let's see if we can get started.
4 And here in Richmond, we'll go around.
5 Our stenographer is Tiffany Kraft.
6 Can you hear us here? In Sacramento, can you
7 hear us?

8 COMMITTEE MEMBER DAVIS: We can hear you.
9 Can you see the entire table?

10 CHAIRPERSON KIMSEY: Pretty much.

11 COMMITTEE MEMBER DAVIS: Okay.

12 CHAIRPERSON KIMSEY: Anyhow, we'll go around the
13 room here in Richmond.
14 Our stenographer is Tiffany Kraft.
15 I'm Paul Kimsey.

16 ABUSED SUBSTANCE ANALYSIS SECTION CHIEF LARSON:
17 Clay Larson.

18 MR. THANDI: Hardi Thandi.

19 SUBCOMMITTEE MEMBER LOUGH: Paul, this is Patty.
20 Can you turn your volume up?

21 CHAIRPERSON KIMSEY: Okay. Is that better?

22 SUBCOMMITTEE MEMBER LOUGH: Yes.

23 CHAIRPERSON KIMSEY: Sacramento, could you go
24 around the room there, please?

25 COMMITTEE MEMBER DAVIS: Kevin Davis.

1 MR. PHILLIPS: Bill Phillips.

2 MR. FICKIES: Terry Fickies.

3 MS. DVARAK-RIVAS: Rosalie Dvarak-Remis.

4 MS. WILLIS: Marylyn Willis.

5 SENIOR COUNSEL CHI: William Chi.

6 MR. SCHLAG: This is Bob Schlag in my office,
7 sparing everybody my cold.

8 CHAIRPERSON KIMSEY: Thank you.

9 San Diego?

10 SUBCOMMITTEE MEMBER LOUGH: Patty Lough from
11 CACLD.

12 COMMITTEE MEMBER LYLE: Bruce Lyle, Coroners
13 Division.

14 MR. MOORE: Attorney Ron Moore.

15 COMMITTEE MEMBER SEDGWICK: Paul Sedgwick,
16 California Association of Toxicologists.

17 MS. GOLK: Leona Golk, San Diego Police
18 Department.

19 COMMITTEE MEMBER TANNEY: Laura Tanney,
20 California District Attorneys Association.

21 CHAIRPERSON KIMSEY: Okay. San Diego is not on
22 video conference.

23 By my count, that does give us a quorum. We have
24 Laura Tanney, Sergeant Kevin Davis, Mr. Lyle, Mr. Paul
25 Sedgwick, and myself, Paul Kimsey.

1 Just some meeting information. Please state your
2 name for the purposes of the stenographer.

3 And we'll go ahead and get started.

4 Bob Haas has just joined us here in Richmond.

5 The first item on the agenda is opening remarks
6 and discussion of the agenda. I have just a couple
7 comments.

8 Governor Schwarzenegger in the last two weeks
9 appointed Dr. Kevin Riley as the Chief Deputy for Policy
10 and Programs in the Department of Public Health. This
11 position had been vacated about six months ago by Dr.
12 Sorenson. The Chief Deputy for Policy and Programs
13 reports directly to our director, Dr. Horton. And I'm one
14 of Dr. Riley's direct reports.

15 We also need to say goodbye to one of our
16 Committee members. Janet Anderson-Seaquist has taken a
17 job in New York and will not be on the Committee anymore.
18 CACLD has nominated Jennifer Shen to be the representative
19 in a recent letter to the Department. And that is going
20 through the appointment process. As you may remember, Dr.
21 Horton makes the final appointments to the Committee, and
22 that has not actually formally taken place yet. But I
23 don't anticipate any difficulties with that.

24 I think those are my only comments.

25 Any questions about the agenda today? Or any

1 other housekeeping items?

2 Then, if I remember correctly, there were a few
3 things on our work product that we wanted to get some more
4 information on and review and maybe a little bit further
5 discussions on.

6 What's the feeling of the Committee on how we
7 want to proceed? Do we want to look at some of those
8 comments? The revisions from 11/9/09 is the document I'm
9 looking at. And there are some comments in the columns.
10 The first one being on page 13 where I believe the comment
11 says Goldie was going to provide some grandfather clause
12 wording.

13 I don't know if -- I have some wording here. And
14 let's see. We can get this out to the Committee. I'm
15 sorry we didn't do this sooner. But we do have some
16 wording here, and I guess the best thing to do would be to
17 just send it out to the Committee. I'm not sure this is
18 actually the same. 1216.1, yes.

19 I can read it to the Committee, if that would be
20 helpful, or I can send it out to you. Which do we prefer?

21 COMMITTEE MEMBER LYLE: Bruce Lyle.

22 I'd like you to read it.

23 CHAIRPERSON KIMSEY: Okay. This is 1216.1(e)(5)
24 "The qualifications and requirements set forth in
25 subdivision (e)(1), (e)(2), and (e)(3) shall not apply to

1 any of the following persons: (e) (4) or (e) (5) (a), a
2 person who prior to January 1st, 1971, qualified as a
3 director of a clinical laboratory operating under the
4 provisions of the California Business and Professions
5 Code, a person who was employed in the activities of a
6 forensic alcohol supervisor for a period of one year prior
7 to January 1st, 1971, or a person who was qualified by the
8 Department as a forensic alcohol supervisor prior to" --
9 we have a questionmark for a date there -- "or a person
10 who was qualified by the Department as a Forensic Alcohol
11 Analyst prior to date" -- with a questionmark.

12 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:
13 Goldie sent this to us, and I talked to her about it.
14 Basically, what she proposed -- this is Clay Larson from
15 the staff here -- proposed -- and this may be kind of an
16 indicator of how we need to write regulations. The old
17 paragraph had a lot of different exceptions to the
18 qualifications requirements, and Goldie is suggesting that
19 we -- proposed in her draft revision that the Committee
20 would want to break those down into subsections.

21 So what Chair Kimsey read there was a series of
22 subsections which said basically the same thing, the date
23 would be the date the regulations were promulgated.

24 CHAIRPERSON KIMSEY: Any comments?

25 I assume by no comments that we're accepting this

1 proposed language.

2 Then the next item I believe under comments is on
3 page 15.

4 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

5 So you'll e-mail me that, and I'll go ahead and
6 stick it in for when I type this up.

7 CHAIRPERSON KIMSEY: Absolutely. We'll get it out
8 to the full Committee.

9 SUBCOMMITTEE MEMBER LOUGH: Okay.

10 CHAIRPERSON KIMSEY: And, actually, page 15 seems
11 to be a continuation. The comment there, more grandfather
12 clause comments.

13 The comment on page 19, Laura Tanney was going to
14 revisit 1219.1(d) through 1219.1(e) (1) and to check with
15 the CVC and provide language.

16 COMMITTEE MEMBER TANNEY: I'm looking at it right
17 now.

18 CHAIRPERSON KIMSEY: Sure.

19 COMMITTEE MEMBER TANNEY: Why don't you skip over
20 that one and we'll come back to it.

21 CHAIRPERSON KIMSEY: Okay.

22 Moving onto page 26, Jennifer Shen to review
23 reference information on the analysis standard material
24 certificate of analysis.

25 COMMITTEE MEMBER TANNEY: Jennifer isn't here.

1 She is detained at the moment. She is on her way here.

2 CHAIRPERSON KIMSEY: Okay. We'll come back to
3 that one also.

4 Page 29, 1220.4, expression of analytical
5 results. Comment here is re-visit Sections 1240.4(a) and
6 (a)(1) and discuss at December 9th meeting. Torr, Laura,
7 and Kenton to review 23152(c) McNeil case, court actions,
8 new case law, et cetera.

9 COMMITTEE MEMBER TANNEY: This is Laura.

10 I've looked at this, and I believe that it should
11 remain as it is written, that there is -- based on 23152,
12 that is what the law states that specifically says, "for
13 purposes of this article, percent by weight of alcohol in
14 a person's blood is based upon grams of alcohol per 100
15 milliliters of blood or grams of alcohol per 210 liters of
16 breath." I think that should remain as written.

17 I don't know if Torr had a chance to look, or
18 Kenton.

19 COMMITTEE MEMBER WONG: I concur.

20 CHAIRPERSON KIMSEY: Torr, do you have a comment?

21 COMMITTEE MEMBER WONG: Torr's out.

22 CHAIRPERSON KIMSEY: Oh, Torr's out. Right.

23 Any other comments from the Committee?

24 COMMITTEE MEMBER TANNEY: Patty points out the
25 term should not say "liquid." It should say "blood,"

1 because that is the way it's written in the code. "Grams
2 of alcohol per 100 milliliters of blood or grams of
3 alcohol per 210 liters of breath." That's subdivision
4 (a).

5 CHAIRPERSON KIMSEY: Right. That's (a) (1).

6 COMMITTEE MEMBER TANNEY: (A) (1).

7 CHAIRPERSON KIMSEY: So (a) (1) currently says
8 "grams per 210 liters of breath."

9 COMMITTEE MEMBER TANNEY: Yeah, I'm talking about
10 the line before that, "100 milliliters of liquid," it
11 says. It should say "100 milliliters of blood." At least
12 that's the way it's written in the California Vehicle
13 Code.

14 CHAIRPERSON KIMSEY: I understand. Okay.

15 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:
16 Comment from the public.

17 It's common practice to use grams percent to
18 characterize standards in reference materials, you know,
19 potentially also urine, but that aren't -- where the
20 liquid is not necessarily blood. So this is the --

21 COMMITTEE MEMBER TANNEY: But this specifies
22 right in the section that it pertains to the alcohol
23 concentration in blood.

24 COMMITTEE MEMBER WONG: Correct.

25 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:

1 Okay.

2 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

3 I think if there is some other medium that is
4 used, then it would be up to that laboratory to provide,
5 you know, any relationship of that media to blood without
6 us doing it here in this document.

7 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:

8 Well, I mean, we defined a quality control reference
9 solution and, you know, we indicate it has to be
10 prepared -- this is Clay Larson again -- has to be
11 prepared within a certain concentration range. And we can
12 look and make sure -- we probably shouldn't use that
13 abbreviation in making references to -- and maybe we
14 don't. Maybe we say "grams per 100 mills," but we
15 probably should take a look and make sure we don't use
16 grams percentage in a more general sense than a
17 concentration in a blood sample.

18 CHAIRPERSON KIMSEY: Any other comments?

19 I believe the next comment is on page 35 where
20 we've had some discussion about supervision. Under
21 supervision, the comment is Forensic Alcohol, FARC, the
22 justification has been re-written, please review. I think
23 that was Patty Lough's comment.

24 Any comments on that section? Okay. I think
25 that's the last in the right-hand column comment box. We

1 wanted to go back to --

2 SUBCOMMITTEE MEMBER LOUGH: I'm still looking for
3 that section. It will take me a couple minutes.

4 CHAIRPERSON KIMSEY: That's fine.

5 And Ms. Shen has not shown yet?

6 COMMITTEE MEMBER TANNEY: No.

7 CHAIRPERSON KIMSEY: So we have those two other
8 comments to discuss. Are there other items that the
9 Committee wants to review or comment on?

10 MR. FICKIES: This is Terry Fickies from
11 Sacramento.

12 Question on page 30, Sections 1220.4(c) and
13 12204(d). Why did we leave "may" in there as opposed to
14 "shall" for the blood concentration less than 0.01 percent
15 and 0.02 percent?

16 CHAIRPERSON KIMSEY: So that was 1220.4 --

17 MR. FICKIES: (D) as in David.

18 CHAIRPERSON KIMSEY: "May be reported."
19 Obviously, (e) says "shall." And actually (c) also says
20 "may."

21 What's the feeling of the Committee? Do we want
22 those to be "shalls"?

23 "May" is permissive.

24 "Shall" I believe is more -- well, less
25 permissive. You pretty much have to do a "shall," and

1 that's not required of a "may."

2 MR. SEDGWICK: This is Paul Sedgwick in San
3 Diego.

4 The "may" was put in there specifically on the
5 coroner's limitation of .002, because some coroner's
6 offices still report at .01, as low as .01. And so it's
7 my understanding that it's important to have the "may" in
8 there, at least for coroners.

9 COMMITTEE MEMBER LYLE: Bruce Lyle.

10 I agree.

11 MR. FICKIES: Terry Fickies.

12 What about the 1220.4(c)?

13 COMMITTEE MEMBER TANNEY: This is Laura.

14 I think that from an evidentiary standpoint if
15 there are labs that are reporting at less than .01, there
16 might be some reason why somebody would want to know that.

17 But I don't think it's -- for instance, maybe
18 from an administrative point of view from the DMV or say
19 the court orders through probation that somebody not
20 ingest any alcohol whatsoever, then -- and a lab happens
21 to report at that level, maybe that's significant somehow.

22 But I don't know, because it depends on you
23 scientists on whether you want to say that's accurate
24 enough to rely upon to say that there was an injection of
25 alcohol at all. So I think it may be --

1 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

2 I think by having the "may" in there I think
3 that's nice, because it allows labs to say, okay, well, at
4 this point we're going to go ahead and call it negative.
5 But those laboratories that feel confident at those
6 really, really low levels, if they're justified and can
7 show in their work that they're justified in calling lower
8 levels, let them call lower levels. We don't want to be
9 restrictive at this point and make them call something at
10 a higher level if they can justify their work at a lower
11 level.

12 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:

13 Comment from staff. This is Clay Larson.

14 Given the requirements of 1220.4(b), which states
15 you have to truncate the result and actually --

16 COMMITTEE MEMBER TANNEY: Clay, we can't hear
17 you. There's shuffling going on somewhere.

18 CHAIRPERSON KIMSEY: People that are near a
19 microphone, please be careful of the paper shuffling.

20 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:

21 Regarding the discussion that again concerning 1220.4(c),
22 if we look at 1220.4(b), it requires that you report a two
23 decimal place result and that you truncate any numbers to
24 the right of those two decimal places. So if you were to
25 do an analysis and get a result of 009, which is less than

1 01, you would have under -- given the "may" language of
2 (c), you would have two choices: Either report it as a 00
3 as a zero, or you report it as negative.

4 COMMITTEE MEMBER TANNEY: True. He's got a
5 point.

6 MR. FICKIES: So is 1220.4(c) redundant?

7 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

8 I think there is a difference between having a --
9 if you report 00, to me, that's making a greater statement
10 than if you say that you didn't find something or it was
11 negative according to your testing or something. I think
12 there is some work that you do where based on the
13 limitations of your testing, you're saying, well, for all
14 purposes, we're reporting it as negative.

15 I prefer it to say "may" in there and leave it up
16 to the laboratory.

17 COMMITTEE MEMBER WONG: This is Kenton.

18 I agree with Patty. Like in San Mateo, when we
19 had low levels like that, we just used to not even put a
20 number. We put out a trace amount was detected.

21 COMMITTEE MEMBER TANNEY: That's good. That's
22 true.

23 CHAIRPERSON KIMSEY: So it sounds like we're
24 comfortable leaving it with "may."

25 MR. SCHLAG: This is Bob Schlag.

1 You know, when you put "may" into regulatory
2 language, that creates a lot of problems. You need to be
3 sort of specific. So I think that's something that the
4 Office of Administrative Law would probably box out.

5 COMMITTEE MEMBER TANNEY: We don't want that to
6 happen.

7 CHAIRPERSON KIMSEY: Well, I wouldn't be too
8 concerned. I mean, well, we have to be concerned about
9 the Office of Administrative Law. Don't get me wrong.

10 But I think there's probably going to be at some
11 point a number of interactions along these types of lines.
12 And so I think if the Committee -- the Committee should go
13 by what it feels. And then we can sort of deal with some
14 of the cleanup or some of the administrative or the
15 Administrative Procedures Act issues in a different
16 context.

17 MR. SCHLAG: I agree with that. Conceptually, we
18 have to get everything done here, as precision as
19 possible. Words like "could" or "may" create problems.
20 We just have to address it later on.

21 COMMITTEE MEMBER LYLE: Bruce Lyle in San Diego.

22 I think we need to allow the permissive language
23 of "may" in there now. And if the OAR decides it's bad or
24 not correct, then we can change it then.

25 CHAIRPERSON KIMSEY: Any other comments on this

1 particular wording or --

2 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

3 If we leave it in, perhaps the Committee should
4 consider adding in the justification the reason why we're
5 leaving it in. So that when the reader goes through this,
6 if they come across that, they'll understand that we did
7 discuss it and the reasons why we left it in.

8 COMMITTEE MEMBER WONG: This is Kenton.

9 On 1220.4(c), what's the language currently? Is
10 it "may"?

11 SUBCOMMITTEE MEMBER LOUGH: Yes. We have to
12 justify even the old regulations, because they are
13 entirely out of compliance. So if we see that's an issue,
14 we probably should put a justification on why we're
15 keeping the "may" in.

16 COMMITTEE MEMBER WONG: Sure.

17 SUBCOMMITTEE MEMBER LOUGH: So maybe that's
18 something the full Committee doesn't have to address.

19 The next step is to go to the preparation of the
20 package for submission. So maybe that crew that deals
21 with that can go ahead and put that justification in, if
22 everyone is in agreement with that. And then the full
23 Committee doesn't have to worry about it.

24 CHAIRPERSON KIMSEY: And the justification is --
25 what's a short justification? I mean, the fact it's

1 always been there?

2 SUBCOMMITTEE MEMBER LOUGH: I don't think that
3 will fly.

4 COMMITTEE MEMBER TANNEY: The laboratories may be
5 able to satisfactorily demonstrate reliability at lower
6 levels and it be -- and also I don't know if this -- if we
7 can do this, but also to say that as technology -- I mean,
8 remember, we're writing this for the future as well. And
9 as technology becomes -- has a greater capacity to attach
10 this to the smaller levels, you want this to apply.

11 CHAIRPERSON KIMSEY: We feel that same way about
12 1220.4(d) as well as (c)?

13 COMMITTEE MEMBER LYLE: Bruce Lyle.

14 I feel stronger about it being in (b) about the
15 permissive language "may."

16 CHAIRPERSON KIMSEY: Who was that?

17 MR. FICKIES: Terry Fickies.

18 We were wondering whether 1220.4(b) should be
19 changed or not. And as technology or whatever changes --
20 but I think that should remain as it is.

21 COMMITTEE MEMBER TANNEY: This is Laura.

22 That's fine, because the results are still
23 available, even if it's not reported. And there are case
24 law that allows that third decimal as evidence. This
25 hasn't stopped that before.

1 COMMITTEE MEMBER DAVIS: This is Kevin Davis,
2 Sacramento.

3 I just had a question regarding .4(b). What do
4 we mean by "reported"? I mean, in my experience, most
5 breath testing equipment does print out the third decimal
6 place. Is that a violation of that?

7 SUBCOMMITTEE MEMBER LOUGH: Kevin, it prints it
8 out, but your results that get reported, is it not in two
9 decimal places?

10 COMMITTEE MEMBER DAVIS: Law enforcement just
11 attaches the printout to the report, and basically that is
12 the report.

13 SUBCOMMITTEE MEMBER LOUGH: Uh-huh.

14 MR. FICKIES: Terry Fickies.

15 Kevin, is that for the EPAS screening test or for
16 the final result?

17 COMMITTEE MEMBER DAVIS: No. I mean, I don't
18 know what the EPAS does. I'm talking about -- it may have
19 changed. I haven't done a breath test in a couple of
20 years. Working administrative now. I know most desktop
21 evidential post-arrest devices print out the third decimal
22 point, don't they?

23 MR. FICKIES: I don't believe they do. I think
24 they round up and follow this rule.

25 COMMITTEE MEMBER DAVIS: Have they changed them?

1 I know the old Intoxilyzers printed out.

2 MR. FICKIES: Well, the older Intoxilyzers you
3 could set to print out either two or three. For the EPAS
4 now, we get three places in our records, but I think it
5 prints to two.

6 COMMITTEE MEMBER DAVIS: Okay.

7 MR. FICKIES: But if you want three, you can do a
8 PAS device twice. They're screened.

9 COMMITTEE MEMBER DAVIS: I was just curious.
10 Thank you.

11 MR. PHILLIPS: This is Bill Phillips.

12 I believe there are laws on the books -- Kevin
13 and I were talking -- and concerning zero tolerance. So
14 (c) might be, you know, justified by allowing for
15 reporting of the results below 01 to demonstrate zero
16 tolerance.

17 COMMITTEE MEMBER WONG: Correct.

18 MR. PHILLIPS: About so the justification for
19 leaving it in as "may."

20 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON: A
21 couple comments from the staff.

22 First regarding instruments, under the old
23 regulations -- under the current regulations, the labs are
24 required to file with the Department descriptions of their
25 breath alcohol training procedures, which include

1 exemplaries of printouts. And without exception, every
2 printout we have on file that's been submitted as required
3 by the labs shows a two decimal place result.

4 The second point is the youthful offender at
5 least zero tolerance laws, the language of the Vehicle
6 Code says -- refers to a concentration of excess of 01.
7 It's not truly zero. So I don't believe that's an issue.

8 COMMITTEE MEMBER TANNEY: And I think on the
9 young offender, it also includes the use of PAS devices,
10 which doesn't even come under these regulations anyway.

11 COMMITTEE MEMBER DAVIS: That's correct. For
12 both DUI probationers and youth offenders, we utilize PAS
13 device for zero tolerance.

14 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:
15 But there's language in the Vehicle Code that says if a
16 PAS device is not available, blah, blah, blah, blah, blah.

17 COMMITTEE MEMBER DAVIS: It could be used, but
18 Clay is right. If it was .009, it would be considered
19 zero. It wouldn't be a violation.

20 But, Clay, I know I have seen printouts with the
21 third decimal point on evidential devices in my career.

22 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:
23 Well, that would be inconsistent with the requirements of
24 Title 17.

25 COMMITTEE MEMBER TANNEY: But from a legal

1 standpoint -- from an evidentiary standpoint, Title 17
2 doesn't apply. Basically, it goes to the weight of the
3 evidence, but it doesn't go to the admissibility of the
4 evidence. So we get -- we routinely get three decimal
5 points in, and the court allows three decimal points to
6 come into evidence. Case law allows it.

7 So we are always asking for the third decimal
8 point and then are litigating whether or not it's going to
9 come into evidence. So to say -- and to us, that can be
10 very relevant evidence. If you have an 07 or an 079,
11 there's a difference. And if you're talking about murder
12 cases or manslaughter cases involving alcohol, that third
13 decimal place can be very significant.

14 CHAIRPERSON KIMSEY: This is Paul.

15 Then it seems like our concern is that these
16 results get reported out with at least two decimal places,
17 and we're not concerned if it's three. And if the court
18 allows three or in the future they go to five or six, is
19 that a problem? Is what we're saying is we want a minimum
20 of two decimal places?

21 COMMITTEE MEMBER TANNEY: That would be good as
22 far as I'm concerned.

23 This is Laura.

24 COMMITTEE MEMBER DAVIS: Kevin Davis, Sacramento.

25 Just out of curiosity, what was the intent behind

1 the requirement to delete the third decimal point
2 originally?

3 COMMITTEE MEMBER WONG: Because it's not that
4 significant.

5 COMMITTEE MEMBER DAVIS: I'm not saying it's
6 significant or not. Why was it a shall be deleted? Why
7 was it significant to delete it?

8 COMMITTEE MEMBER TANNEY: Leona brought up a good
9 point that maybe back when these were written they were
10 not reporting the third decimal place. Who knows.

11 I mean -- what I mean is they were not available
12 for the third decimal place because technology may not
13 have allowed for it.

14 MR. FICKIES: Terry Fickies here.

15 You've always been able to do three decimal
16 points for blood as I remember. But as Ken said, it's not
17 significant.

18 COMMITTEE MEMBER TANNEY: This is a little bit
19 aside. But I prosecuted a vehicle manslaughter case where
20 the blood alcohol level was .049. And that was in a
21 person under 21 years of age. And an 049 was a big
22 difference as compared with a .040 when you're trying to
23 get them under the section that applies to vehicular
24 manslaughter.

25 COMMITTEE MEMBER DAVIS: This is Kevin Davis --

1 go ahead.

2 COMMITTEE MEMBER TANNEY: All I needed since he
3 was under 21 was a .05.

4 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:
5 Comment from the public.

6 When we talk about homicide and vehicular
7 manslaughter, the basic statutory authority covers the
8 application of these regulations to traffic accidents and
9 traffic violations. So I don't believe vehicular -- which
10 is generally violations of the Vehicle Code. I don't know
11 the answer to this, but I don't believe vehicular
12 manslaughter is addressed in the Vehicle Code; is that
13 correct or --

14 COMMITTEE MEMBER TANNEY: Well, 23153 relates to
15 injury, which -- but you're right that Penal Code Section
16 191.5 and 191(c) -- subdivision (c) relates to
17 manslaughter.

18 But the thing is is when you're drawing blood or
19 the laboratory is drawing blood or reporting the blood
20 results, you don't necessarily know what it is. You don't
21 know whether it's going to be a manslaughter or a murder.
22 That all depends on all kinds of factors, including their
23 history.

24 So if you're creating regulations for the
25 laboratory and for the reporting, you have to contemplate

1 all the potential uses. The breath alcohol results from a
2 breath machine are used in any cases involving alcohol
3 while driving.

4 So you can't look at it in a vacuum as far as
5 this only deals with traffic accidents. That's what
6 causes the manslaughter or the murder is a traffic
7 incident -- or traffic collision, I should say.

8 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:

9 Comment from the public.

10 I think the statutes created a vacuum -- couple
11 comments.

12 I think the statutes created a vacuum that
13 you're trying to avoid now.

14 But I also think it may be -- I'm not sure about
15 this, but I can look. That language that requires the
16 truncation is common in many state's regulations. And it
17 may be in the Uniform Vehicle Code.

18 But just generally, I think this would be a
19 significant change that we probably -- the Committee I
20 would hope would want to think about more than simply
21 capriciously changing -- striking that requirement now.
22 It may be something you want to come back to.

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

25 Just for the record, I'm not advocating we change

1 it. I was just curious about its origin, because I know I
2 have seen printouts like that.

3 And it also comes into play I would think with
4 the .02 agreement. You can have a .041 and a .069 which
5 are outside of the parameters. But if you drop the third
6 decimal point, they would be okay. And that could be
7 reason to leave it as it is written now.

8 CHAIRPERSON KIMSEY: Sounds like there was a
9 public comment in San Diego.

10 MR. MOORE: Yes, thank you. This is attorney Ron
11 Moore.

12 My understanding was originally that the
13 truncation was in answer to the question of what do you do
14 with the third digit when it's present. From a scientific
15 standpoint, do you round it off or do you delete it? In
16 recognition of the fact that the margin of error for those
17 instruments exists in the third digit. They're not
18 accurate beyond the third digit. And the uncertainty
19 occurs in the third digit.

20 The NAS report that was just published criticizes
21 forensic science for not reporting their uncertainty. And
22 Title 17, even as long ago as it was written, recognized
23 that uncertainty existed. And its answer to that was to
24 truncate the uncertainty basically deleting it from
25 consideration.

1 COMMITTEE MEMBER WONG: This is Kenton.

2 I agree with Ron. And I also agree with Terry is
3 that the third decimal place has always existed, but we've
4 chosen to be conservative because of the uncertainty of
5 that third digit. It should remain as it is to two
6 digits.

7 CHAIRPERSON KIMSEY: Any other comments on this
8 topic?

9 It sounds like we're leaving it as it is at this
10 point.

11 MR. MOORE: One more comment.

12 Attorney Ron Moore.

13 Laura Tanney is absolutely correct that under the
14 case law, the third digit is routinely omitted in the case
15 anyway. Under the laws, that's relevant evidence. It
16 comes in whether Title 17 grants it any other authority or
17 not. So we really aren't affecting the judicial system by
18 not making a change.

19 COMMITTEE MEMBER WONG: Correct. And --

20 COMMITTEE MEMBER TANNEY: That's correct.

21 And just to be clear also, that third digit
22 doesn't always help the prosecution. It may help the
23 defense just as much, because the 04 might be more helpful
24 than the 049 -- 040 -- I'm sorry -- would be more helpful
25 than an 049.

1 But that's just for the comment if anybody ever
2 looks back at this.

3 But it's fine the way it is. Either way.

4 CHAIRPERSON KIMSEY: Okay. I think that closes
5 that discussion.

6 Other comments from the Committee or the public
7 on the work product?

8 MR. FICKIES: Terry Fickies here in Sacramento.

9 On page 5 on 1215.1(s) and 1215.1(t), it says,
10 "'NIST traceable' means the properties of a reference."
11 And I think we could add in "materials/standard" there
12 would make that more clear.

13 And I would like to reverse those two sections to
14 talk about the standard reference material first. And
15 that's in the definition section.

16 CHAIRPERSON KIMSEY: Comments on Terry's
17 proposal?

18 COMMITTEE MEMBER WONG: What wording?

19 SUBCOMMITTEE MEMBER LOUGH: That might make sense
20 if we talk about the real standards and then the
21 traceable. So -- although we have to go back probably in
22 our document and see where else we've put those. And it
23 probably does add clarity to include the
24 material/standard.

25 CHAIRPERSON KIMSEY: And that would then read,

1 "'NIST traceable' means that the properties of a reference
2 material/standard are authenticated by a documented series
3 of" -- et cetera.

4 MR. PHILIPS: This is Bill Phillips in
5 Sacramento.

6 1215.1(u) needs an ISOR just added for clarity or
7 whatever, some statement there.

8 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

9 Again, I think to speed things up, that could go
10 to the next Committee that works on that and then that can
11 come back to the whole Committee for approval.

12 And you're right. It does need to have something
13 added there.

14 It means the justification for why it's there.
15 Although, this is definitions which doesn't really fall
16 into that, but it would be nice to keep it consistent.

17 And speaking about that, the Committee that's
18 working on the Initial Statement of Reasons is putting the
19 packet together. I believe Janet Anderson-Seaquist was
20 the prime person on that Committee I think with Jennifer
21 Shen. So we probably have to add another person to the
22 Committee since Janet is going to be gone.

23 CHAIRPERSON KIMSEY: Has that group been able to
24 meet that we know of?

25 Patty?

1 SUBCOMMITTEE MEMBER LOUGH: Not that I know of.

2 CHAIRPERSON KIMSEY: Okay. We can have a
3 discussion about maybe needing to revitalize or see who
4 can participate at some point on that next step.

5 But before we go down that road too far, are
6 there any other comments on the work product that's in
7 front of us?

8 ACTING BRANCH CHIEF HAAS: This is Bob Haas.

9 What was the resolution on (s) and (t) reversing
10 them? Adding the materials standard? I missed that.

11 CHAIRPERSON KIMSEY: This is Paul.

12 I think there was general agreement on reversing
13 (s) and (t) in the sequence.

14 And I think -- speak up if this is not everyone's
15 understanding -- that there was agreement to reverse them
16 in order and then to add "material/standard" to what is
17 currently (s) after reference. So it would read
18 "traceable means that the properties of a reference
19 material/standard are authenticated."

20 ACTING BRANCH CHIEF HAAS: Thank you.

21 CHAIRPERSON KIMSEY: Is there any feeling that is
22 not the feeling of the group? Any objections? Or
23 comments?

24 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:
25 Comment from the public.

1 In formatting regulations -- this is down the
2 road a bit -- I believe it's standard practice to place
3 the definitions in alphabetical order. So fortuitously,
4 that would result in the definition of the "NIST standard
5 reference material" preceding the word "NIST traceable."
6 So that's good.

7 MR. FICKIES: Terry Fickies.

8 One other thing. Would we want to refer to the
9 second time it uses NIST reference, do we want to refer to
10 NIST standard reference material (SRM), because that's
11 actually what we're referring to there?

12 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

13 I only heard part of that. So under the 1(s),
14 add "material (NIST SRM)"?

15 MR. FICKIES: And then you say "authenticated by
16 a documented series of comparisons to a NIST reference."
17 And that would actually be a NIST standard reference
18 material, because that's what you're comparing it to.

19 SUBCOMMITTEE MEMBER LOUGH: So in 1(s), it would
20 say "comparison to a NIST reference standard material
21 (NIST SRM)"?

22 MR. FICKIES: Well, or "NIST standard reference
23 material."

24 SUBCOMMITTEE MEMBER LOUGH: And leave it at that?

25 MR. FICKIES: Yeah, and leave that reference out.

1 SUBCOMMITTEE MEMBER LOUGH: Okay.

2 MR. FICKIES: How does that sound?

3 SUBCOMMITTEE MEMBER LOUGH: "NIST standard
4 reference material"?

5 MR. FICKIES: Yes.

6 SUBCOMMITTEE MEMBER LOUGH: Uh-huh.

7 Did you have a change on 1(c)?

8 MR. FICKIES: Just to move it in its position.

9 SUBCOMMITTEE MEMBER LOUGH: Other than that,
10 where it says "controlled reference material," do you want
11 it to be "controlled standard reference material"? That's
12 in the title.

13 MR. FICKIES: Or -- I like that.

14 SUBCOMMITTEE MEMBER LOUGH: Just for consistency.

15 MR. FICKIES: Well, actually, I don't like that.

16 I think it's good as it is.

17 SUBCOMMITTEE MEMBER LOUGH: Okay.

18 COMMITTEE MEMBER DAVIS: Not in the definition.

19 SUBCOMMITTEE MEMBER LOUGH: Okay. So we'll add
20 that to the 1(s) definition.

21 We are going to reverse the order? Was that the
22 agreement?

23 COMMITTEE MEMBER WONG: Yeah.

24 SUBCOMMITTEE MEMBER LOUGH: And then I'll add on
25 the 1(s) reference material/standard and NIST standard

1 reference material. Okay.

2 On the 1(u), I could just put the same
3 justification that we had above that this definition was
4 added to define a term that is utilized in the text and
5 provides clarity.

6 MR. FICKIES: I think that would be excellent.

7 CHAIRPERSON KIMSEY: Anything else on this area?

8 This is Paul.

9 I noticed on page 4, 1215.1(n), Department means
10 the California Department of Health. That should say
11 "Public Health."

12 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

13 It's my understanding that somebody was going to
14 go through and make all of those changes with terminology
15 in your organization, because I haven't done it. I think
16 Goldie or somebody was going to do that.

17 CHAIRPERSON KIMSEY: Okay.

18 SUBCOMMITTEE MEMBER LOUGH: But I can certainly
19 add it right there.

20 CHAIRPERSON KIMSEY: Other comments? How are we
21 doing on this other comment -- let's see.

22 COMMITTEE MEMBER TANNEY: I've been looking.
23 There's nothing in the Vehicle Code that -- this is Laura.

24 There's nothing in the Vehicle Code that provides
25 for a different manner in which blood samples are

1 collected.

2 And I'm looking in this Business and Professions
3 Code right now. I believe there's something in there
4 under clinical laboratories anyway, although I'm not sure
5 that would be applicable. So I'm not sure that we need to
6 change it by adding that language that's underlined. Does
7 anybody else have any feeling about that?

8 CHAIRPERSON KIMSEY: This is Paul.

9 You're correct that there is quite a bit on the
10 clinical laboratory side with regards to phlebotomists and
11 training and these sorts of issues.

12 And I just at this point don't know -- I would
13 assume that that does not apply in this situation since
14 we're not talking about a clinical setting. So maybe we
15 need to look into that a little bit further.

16 COMMITTEE MEMBER TANNEY: I think that one of the
17 reasons that -- I mean, are there alternatives to
18 hypodermic needles and syringes or Vacutainers? And will
19 technology change such that those will be outdated?

20 But I think at this point that this is what's
21 used. And, honestly, I don't see what's wrong with the
22 current language other than provide for future
23 development. But I doubt that the Business and
24 Professions Code refers to that. But I think that's why
25 we were going to refer to it so in the future if the

1 Business and Professions Code is updated by allowing
2 different tools to be used, that then we wouldn't have to
3 change the regulations. We could just say in the same
4 manner as provided for.

5 But I'm not sure that -- I don't think that if
6 you're not using it for diagnostic purposes in a clinical
7 laboratory, I'm not sure that all of their rules and
8 regulations would apply in a forensic setting.

9 SUBCOMMITTEE MEMBER LOUGH: Laura, this is Patty.
10 Does the 23158, it doesn't refer --

11 COMMITTEE MEMBER TANNEY: Correct. I think it
12 used to.

13 SUBCOMMITTEE MEMBER LOUGH: There was something
14 that referred to it.

15 COMMITTEE MEMBER TANNEY: But I don't think it
16 does anymore. I've looked, and I've read it, and I don't
17 see anything in there.

18 MR. FICKIES: Excuse me. Doesn't refer to what?

19 COMMITTEE MEMBER DAVIS: BMP.

20 COMMITTEE MEMBER TANNEY: The manner in which the
21 blood samples should be collected.

22 It refers to who should do the collecting, but it
23 doesn't talk about the fact that you want Vacutainers or
24 hypodermic needles and syringes anymore.

25 I think my comment originally was that I was

1 aware of there being the Business and Professions Code
2 sections under the clinical lab section, and I wanted to
3 make sure there was nothing that conflicted.

4 And also wanted to basically say that we're going
5 to conform to what was required in the Business and
6 Professions Code or the Vehicle Code. But I don't think
7 there is any language in the Vehicle Code anymore from
8 what I can find, and I'm not finding the exact section
9 under the clinical labs that deal with this.

10 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

11 So that sentence was one that we added anyway.
12 So are you recommending that we take that out?

13 COMMITTEE MEMBER TANNEY: Take that out.

14 CHAIRPERSON KIMSEY: This is page 19, 1219.1(d)
15 just below that.

16 This is Paul.

17 I would also throw out under 1219.1(d) I'm
18 thinking that that last sentence there about reuseable
19 equipment may be historic. I'm just curious if in the
20 current practices if any type of equipment is reused. I
21 would be concerned if it was. And maybe that sentence can
22 come out, because it may have been of an historic
23 necessity, but I'm curious if equipment is being reused to
24 this day.

25 COMMITTEE MEMBER TANNEY: Paul, this is Laura.

1 As early as six years ago, I'm aware there was
2 still reuseable equipment being used. This was something
3 that was majorly litigated in San Diego about the process
4 of cleaning and reusing that equipment.

5 So I believe -- I mean, I would be very cautious
6 about removing that right now, because in the giant scheme
7 of things, if San Diego was using it six years ago, I
8 wouldn't be surprised if there are a lot of counties in
9 California that are still using reuseable equipment.

10 MR. FICKIES: Terry Fickies.

11 Does this also refer to postmortem samples from
12 coroners?

13 CHAIRPERSON KIMSEY: Good point, possibly.

14 MR. SCHLAG: Bob Slag.

15 This coroner part is later on in 1(f). But there
16 is -- this is Bruce Lyle.

17 There are instances when we might use some
18 equipment, not necessarily Vacutainers or hypodermic
19 syringes, but we might use -- especially with the budget
20 the way it is, we might use scissors and knives and things
21 like that to get to the heart blood or something.

22 COMMITTEE MEMBER TANNEY: This is Laura.

23 I don't think that 1219.1 excludes the coroners.

24 COMMITTEE MEMBER LYLE: I think the way it's
25 written it's separate.

1 CHAIRPERSON KIMSEY: Well, that's fine. I just
2 brought it up from a broader public health perspective
3 about the reuse of needles and the difficulties that
4 represents. I'm not saying that's happening. But if
5 there are other pieces of equipment that are reusable and
6 that's happening, that's fine.

7 COMMITTEE MEMBER TANNEY: I appreciate you
8 bringing it up. Hopefully, that's going to change.

9 But I'm thinking we should add -- we should
10 specify that this only applies to live individuals as
11 opposed to postmortem, because it really doesn't say that.

12 The only thing different is that (f) says there
13 should be precaution to ensure an uncontaminated sample,
14 but there's nothing about how -- I'm not sure the other
15 part is limited.

16 You could say "except as provided in 1219.1
17 subdivision (f), blood sample shall be" -- or except, like
18 I said, "in live individuals, blood samples shall be
19 collected using sterile, dry hypodermic needles and
20 syringes," something like that. Because I'm not sure it's
21 very clear that that (d) doesn't apply to medical -- or
22 the way it's written doesn't apply to medical examiners.
23 I realize they haven't been following it thus far. But
24 you don't want to create a problem for them. If we're
25 going to redo this, we might as well fix it.

1 COMMITTEE MEMBER LYLE: Bruce Lyle.

2 I agree. It does leave that open. So "blood
3 samples in live individuals shall be collected using
4 sterile," blah, blah, blah. I think that's probably a
5 more clear way to say it and then have it delineated in
6 (f) that you're talking about postmortem samples.

7 COMMITTEE MEMBER TANNEY: Although -- this is
8 Laura again.

9 Sorry. The way we have to do things here is all
10 discussions on record.

11 But, Bruce, since these are being collected for
12 forensic purposes, do you -- don't you still take -- you
13 still have to take the effort to preserve everything, and
14 I doubt you're using equipment that's been washed with
15 alcohol; right?

16 COMMITTEE MEMBER LYLE: Correct. For the most
17 part.

18 COMMITTEE MEMBER TANNEY: And this relates to
19 traffic collisions; right?

20 COMMITTEE MEMBER LYLE: No. It relates to any
21 kind of deceased person I work on where we're going to run
22 toxicology, where we're going to run alcohol analyses on
23 them.

24 I think due -- I like the separation and that
25 it's less -- you know, that it's just asking us to take

1 practical precautions to ensure an uncontaminated sample.
2 I prefer it to read that way, because given the nature of
3 the difference between a deceased person and a live person
4 not having a blood pressure and not being able to collect
5 it arterially, we have to go into the body, and it's much
6 more difficult to remain uncontaminated. So I'd like it
7 to read like that.

8 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

9 What are the proposed changes for 1(d)?

10 COMMITTEE MEMBER TANNEY: "Blood samples from
11 live individuals shall be collected" -- or "from live
12 persons."

13 SUBCOMMITTEE MEMBER LOUGH: From live persons?

14 COMMITTEE MEMBER WONG: Subjects?

15 SUBCOMMITTEE MEMBER LOUGH: Subjects?

16 MR. FICKIES: Terry Fickies in Sacramento.

17 Do you want to make it consistent with 1219.1(a)
18 "from living individuals"?

19 COMMITTEE MEMBER TANNEY: Yeah.

20 SUBCOMMITTEE MEMBER LOUGH: Perfect. Thank you,
21 Terry.

22 MR. FICKIES: I know, you just want to go to
23 lunch.

24 SUBCOMMITTEE MEMBER LOUGH: What about that last
25 sentence about reuseable, sentence about equipment? It

1 stays in?

2 COMMITTEE MEMBER WONG: Yeah.

3 CHAIRPERSON KIMSEY: That's fine.

4 Has Ms. Shen been able to show up?

5 SUBCOMMITTEE MEMBER LOUGH: Not yet.

6 On that one topic that we had here -- this is
7 Patty -- I would recommend that we just refer that to -- I
8 believe, Lyle, to the ISOR Committee, which I think she
9 probably was going to be on, because she will be I think
10 replacing Janet. So she could go ahead and add it there
11 and then present it to the full Committee later.

12 CHAIRPERSON KIMSEY: Okay.

13 And the subject of lunch was brought up. It is
14 12:05. We've been going about an hour.

15 What's the feeling of the Committee? Do we want
16 to work through? Do we want to take a break? Or do we
17 want to just like a biobreak maybe for ten minutes or half
18 hour for lunch? What's the feeling of the Committee?

19 COMMITTEE MEMBER LYLE: I propose we take a
20 biobreak.

21 CHAIRPERSON KIMSEY: That's fine. We only have
22 this availability this conference today until 2:00.

23 So any other comments or feelings about the
24 break?

25 Sounds like maybe a biobreak for ten minutes.

1 Hearing no objections, we'll get back together at quarter
2 after.

3 (Thereupon a recess was taken.)

4 CHAIRPERSON KIMSEY: This is Paul Kimsey in
5 Richmond. I think we can go ahead and get started again.

6 Did I hear that Jennifer Shen made it into San
7 Diego?

8 SUBCOMMITTEE MEMBER SHEN: Yes, I'm here.

9 CHAIRPERSON KIMSEY: Welcome.

10 SUBCOMMITTEE MEMBER SHEN: Thank you.

11 CHAIRPERSON KIMSEY: We've been going through the
12 work product, and there was an area here that we were
13 going to defer to another subcommittee that we thought you
14 might be on. But I don't know if you wanted to speak to
15 page 26. There was a comment there, "Jennifer Shen to
16 review reference information."

17 SUBCOMMITTEE MEMBER SHEN: Yes.

18 This is Jennifer.

19 I believe all that you needed to know was exactly
20 what site I was giving, and I do have that reference. And
21 that reference is listed in this work product on page 40
22 of 41. And in my records, it's site 16. So it is the
23 second to last site on page 40 of 41.

24 CHAIRPERSON KIMSEY: That's the United States
25 National Institute of Standards and Technology Certificate

1 of Analysis?

2 COMMITTEE MEMBER WONG: 1828(b).

3 SUBCOMMITTEE MEMBER SHEN: That's the one.

4 COMMITTEE MEMBER WONG: Okay.

5 CHAIRPERSON KIMSEY: Okay. Any other comments on
6 the work product?

7 Then I think probably to start the discussion, we
8 had a little bit already this morning about a subcommittee
9 to work on the Initial Statement of Reasons and maybe some
10 more discussion on some timing.

11 And as we all know, we are responsible to get a
12 summary of our efforts to Agency. The subcommittee for
13 the Initial Statement of Reasons, you know, can do their
14 work. We can review it. I would imagine there would be a
15 package that the Committee would send with a cover letter.

16 But any other sort of feelings or comments about
17 the subcommittee at this point?

18 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

19 I think the current subcommittee is made up of
20 Janet and myself. And Janet, of course, isn't available
21 now. So I think we need another person to step in and
22 take Janet's place.

23 I would like to be removed from that subcommittee
24 subject to helping as needed.

25 But I think Jennifer Shen had an interest in

1 being on that, and it would be nice -- because she wasn't
2 here when we started this process years ago. And it would
3 be nice if she could get together with someone from
4 Goldie's office to bring her up to date on what is
5 required in the ISOR and that packet and things like that,
6 because she wasn't here when we first discussed those
7 requirements.

8 CHAIRPERSON KIMSEY: Yeah.

9 SUBCOMMITTEE MEMBER LOUGH: I think Jennifer
10 would like to go ahead and head up that subcommittee.

11 CHAIRPERSON KIMSEY: And let me mention, because
12 Jennifer is now in the room, we did talk about you in your
13 absence in the sense that CACLD has sent the Department a
14 letter nominating you to represent them on the Committee.
15 We received that letter, oh, somewhere after Christmas
16 here. And that nomination is going through the process in
17 the Department, and we don't see any difficulties with
18 that. But it hasn't actually -- the director hasn't
19 actually had an opportunity to make the appointment
20 official. But barring all that, we don't see any
21 difficulties. But I wanted to let you know we had
22 mentioned that.

23 SUBCOMMITTEE MEMBER SHEN: Okay. Thank you.

24 This is Jennifer.

25 And I would have interest in heading up this

1 Committee.

2 CHAIRPERSON KIMSEY: And I'm sure we can get you
3 some information to the subcommittee on what an ISOR
4 entails, or Initial Statement of Reasons.

5 I think it may be pretty limited on the part of
6 the Department's legal group to participate. But we can
7 certainly get the subcommittee the information and maybe
8 some examples and that sort of thing of Initial Statements
9 of Reasons.

10 If I remember correctly, when we set up a
11 subcommittee -- and everyone sort of search your
12 memories -- there are some restrictions. I think if the
13 Forensic Alcohol Review Committee sets up a subcommittee,
14 that is also under the Bagley-Keene guidelines. And I
15 think up to two members of our FARC Committee can be on
16 that subcommittee. And I don't think there's any
17 limitations -- I'm not sure of the limitations on people
18 outside of the Committee. There may not be any, to my
19 understanding.

20 So that being said -- and as the Chair, I'm sort
21 of making an assumption that Jennifer Shen will be the
22 CACLD representative. And if she's interested, that's one
23 member of our Forensic Alcohol Review Committee that would
24 be on the subcommittee.

25 Are there any other members of the Committee that

1 would like to be on the subcommittee?

2 Are there any members or public that are present
3 that would like to be on the subcommittee?

4 MS. GOLCK: Leona Golck, San Diego Police
5 Department. I will assist Jennifer Shen.

6 CHAIRPERSON KIMSEY: Okay. And your name again?

7 MS. GOLCK: Leona Golck, G-o-l-c-k.

8 CHAIRPERSON KIMSEY: Thank you very much.

9 Do we have some contact information for you?

10 MS. GOLCK: I can put it on a sheet and forward
11 it by e-mail.

12 CHAIRPERSON KIMSEY: That would be great.

13 Any other folks interested?

14 SUBCOMMITTEE MEMBER SHEN: I guess what I would
15 like to see is that we can move forward with a work
16 product in some sort of timely fashion, which is why I
17 think I need some assistance from your office. I want to
18 know exactly what it is that I need to do so that we can
19 move forward.

20 I'm a little hesitant, because I don't really
21 understand all the ins and outs of what's required for the
22 overall packet. I totally get the -- I totally get the
23 changes that we've done here and what we needed to do for
24 this with the Title 17 document. But as far as things
25 that need to be included with it, I really would like to

1 have some solid guidelines so that we can make one run at
2 it and not several runs at it.

3 CHAIRPERSON KIMSEY: Sure. I guess my hesitation
4 or the real question is how much time the Department's
5 legal staff or our Office of Regulations or someone from
6 the Department would have to assist. I can't really make
7 a full commitment.

8 I know that we would certainly be able to address
9 the subcommittee and get them up to speed on Initial
10 Statements of Reasons.

11 Actually participating and actually going through
12 the document, I'm quite fairly sure that we don't have
13 that ability of staffing at this point.

14 But there's no question we can go over what the
15 Initial Statements of Reasons are, show you examples, and
16 we can do that actually for the whole Committee -- I mean,
17 our full Committee, I should say again. And we can all,
18 you know, be involved in sort of reviewing the
19 subcommittee's work product. I don't know that it all has
20 to fall to just the subcommittee.

21 SUBCOMMITTEE MEMBER SHEN: This is Jennifer.

22 I think that makes a lot of sense. I just would
23 like to have a go-to person that I can really -- I'm going
24 to have lots of questions, I imagine. So before we start
25 on a work product via the subcommittee and then have the

1 full Committee look at it, I know exactly what is
2 required, so we only have to try to do this one time.

3 And I'm just not there yet. I'm not 100 percent
4 clear on what needs to be done.

5 COMMITTEE MEMBER WONG: Jennifer, this is Kenton.

6 None of us do. It's the great unknown. And from
7 the very get go, we used to have a gal from -- I can't
8 remember -- Kathy Ruberish --

9 CHAIRPERSON KIMSEY: From the Office of
10 Regulations.

11 COMMITTEE MEMBER WONG: -- and she used to assist
12 us and walk us through the pitfalls and some of those
13 things. She since got re-assigned somewhere else.

14 And I had written a letter requesting that
15 someone else be re-assigned to the Forensic Alcohol Review
16 Committee to assist us in that effort, in that endeavor,
17 because it is truly full of pitifuls. And we don't want
18 to be spinning our wheels doing the wrong thing and they
19 say no, no, no, no.

20 We were turned on to Barbara Gallaway that she
21 would be available part time possibly as a replacement for
22 Kathy Ruberish, but I don't know where that stands, as
23 this was many years ago now.

24 CHAIRPERSON KIMSEY: Yeah. No, and things for
25 our Office of Regulations, as we all know, the State staff

1 and that sort of thing, we're only getting more compressed
2 in what -- limited in what sort of assistance we can
3 offer.

4 I mean, I'll certainly ask the Department, and we
5 can sort of work through it. But, again, I think it's
6 just going to be how much time that person is going to be
7 able to spend past giving an overview and getting us on
8 the right track.

9 You know, what Kathy Ruberish did for us early
10 on, I don't know that we're going to have someone
11 dedicated like Kathy Ruberish had been.

12 I think what I would recommend is that I'll get
13 clarification from the Department on what capability we're
14 going to have.

15 But I don't see any problem with the initial
16 meeting of the subcommittee, getting an overview, and
17 getting the Committee started. And we'll just have to see
18 what else the Department might be able to contribute. But
19 I don't want there to be an expectation at this point that
20 we'll have someone like a Kathy Ruberish holding our hand
21 or really going --

22 COMMITTEE MEMBER WONG: But, Paul, can you check
23 into that to just see -- I think all Jennifer wants is a
24 phone number and an e-mail address.

25 SUBCOMMITTEE MEMBER SHEN: Yep.

1 COMMITTEE MEMBER WONG: Some kind of contact
2 that, hey, are we on the right track? Are we doing the
3 right thing?

4 CHAIRPERSON KIMSEY: Sure.

5 And I think what we can do is we can set up the
6 subcommittee and have a meeting. And we'll certainly
7 have -- I'll probably call into the first meeting at least
8 and have somebody there and go over what all this will
9 entail.

10 Past that, I'm not sure how much time the
11 Department is going to be able to dedicate somebody to
12 past that.

13 Now, I'm only hesitating because I don't really
14 have the authority or the knowledge on what the Office of
15 Regs will be able to do. In our discussions with them,
16 having gone through Kathy Ruberish and the other woman,
17 it's only been less, their ability to help any programs in
18 the Department with their regulation packages. It's just
19 the Department has quite a backlog and very limited staff
20 and ability.

21 But we can certainly get the subcommittee
22 started, and I can find out what other commitment we might
23 be able to make.

24 COMMITTEE MEMBER WONG: We just need some kind of
25 point person to bounce thoughts on.

1 CHAIRPERSON KIMSEY: Any other comments or people
2 that are interested in serving on the subcommittee?

3 SUBCOMMITTEE MEMBER SHEN: This is Jennifer
4 again.

5 I'm totally happy with that, someone to sit down
6 with us for one meeting and get us started. All I would
7 be looking for after that is a point person. Someone, if
8 I have a question about something or a clarification, I
9 need to do such and so, I'm not quite sure how to do that.
10 Is this right or that right? Just someone who is
11 available, knows what we're doing, and has ambition to
12 help us succeed. That's all I need. That would be just a
13 contact periodically versus -- I'm not looking for someone
14 to sit down and hold our hands while we write this. I
15 don't think we need that.

16 CHAIRPERSON KIMSEY: Okay.

17 Any other volunteers? We have two so far. And
18 I'll certainly be there at the first meeting.

19 But any other comments about when we have the
20 Initial Statement of Reasons that will be part of a
21 package that will go to Agency. I don't know if someone
22 has experience or interest in writing or drafting a cover
23 letter or what the feeling of the Committee is on putting
24 something like that together.

25 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

1 I think the subcommittee can go ahead and draft
2 up all that and have it ready for the full Committee.

3 Once they have their initial meeting where
4 Jennifer can be brought up to speed on the requirements of
5 the APA and such, I think they can meet and get their work
6 done and then be ready to give the information to the full
7 Committee.

8 ABUSED SUBSTANCE ANALYST SECTION CHIEF LARSON:

9 Comment from the public, staff.

10 Regarding the subcommittee meeting. My
11 recollection is that the Bagley-Keene requirements refer
12 to the total numbers. So two members of the subcommittee,
13 which could be experts that are not on the Committee or
14 could be Committee members, but the number two applies to
15 the total number. So if we had a meeting in which -- so
16 far the Committee is Jennifer. But if there was a second
17 person plus you, that would simply entail that meeting
18 would have to be noticed. It's not that big a deal, but
19 noticed and held at a public place.

20 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

21 I think that's correct, because that's what Paul
22 and I ran into when we were the first subcommittee. So
23 Jennifer and Leona are on the Committee.

24 I don't know that members of the public are
25 excluded from attending, which if I attended, I would be

1 just a member of the public. I think if Paul attends, he
2 is a member of the full Committee, and that might cause a
3 problem.

4 CHAIRPERSON KIMSEY: Well, what we can do is get
5 clarification on sort of the rules. I mean, I think we
6 all understand what it is we would like to do. I'll get
7 some clarification.

8 I mean, if for whatever reason I'm not able to
9 broker or be involved, we will certainly have somebody
10 there, maybe just as an initial advisory. But we'll get
11 some clarification to make this subcommittee work I guess
12 or happen within the strictures of Bagley-Keene.

13 Other feeling from the Committee though on some
14 of the work of the subcommittee? We're talking about
15 Initial Statement of Reasons, a cover letter. Do we have
16 a feeling for timing? Obviously, most people outside this
17 process don't realize the time that it takes for these
18 sorts of things take.

19 But I want to thank you all for your years of
20 perseverance and participation. At the same time, we all
21 I think are hearing comments from our member organizations
22 from within the Department to sort of move things along.

23 But any other comments or suggestions to the
24 subcommittee?

25 SUBCOMMITTEE MEMBER SHEN: This is Jennifer.

1 My only comment would be I would like to -- as
2 soon as you have a contact person, I think we can get
3 started on that initial meeting. I don't know how that
4 works, if an initial overview meeting needs to be noticed
5 and everything else. If it does, we should probably move
6 on getting a contact as soon as possible.

7 CHAIRPERSON KIMSEY: Yes, I agree. I'll work on
8 it -- not tomorrow, obviously but -- not Monday, but we'll
9 do something next week.

10 MR. SCHLAG: This is Bob Slag.

11 One of the things that anybody who works on this,
12 too, should probably get a copy of the Office of
13 Administrative Law. They have a booklet on rule writing
14 and gives guidance and do's and don'ts, what are the laws,
15 how you format it, how does this all really work, and the
16 various elements that are needed in the rulemaking
17 package. So that is something that is readily available
18 from the Office of Administrative Law.

19 CHAIRPERSON KIMSEY: And this is Paul.

20 I would also point out -- and we've had this
21 conversation a number of times. So I'm just sort of
22 reiterating that the legislation requires us to send a
23 summary to Agency. And, unfortunately, you know, summary
24 is a very elastic term.

25 We have made the choice as a Committee to pretty

1 much present what might be considered a full package. And
2 that's laudable. And don't get me wrong. I think that's
3 fine. That is something that I think as a result may take
4 more time than if we were to think about a summary that
5 Agency might be able to react to. But just to let you
6 know, we have to this point decided that obviously we're
7 going to have this work product. We've been working on
8 Initial Statement of Reasons and a cover letter. And
9 that's the road we're going down at this time.

10 SUBCOMMITTEE MEMBER LOUGH: Paul, this is Patty.

11 I think one reason why we didn't provide the
12 summary so far is because it starts that time clock and we
13 wanted to avoid that until we had our packet with our full
14 justifications and everything there. We didn't want to
15 start the clock without having our work finished.

16 This is Patty again.

17 Also maybe to help Jennifer on putting the packet
18 together, there's a couple of areas that it would be nice
19 if someone from the Committee could handle a couple of
20 different areas while Jennifer is working on the Statement
21 of Reasons. And that would be the Statement of
22 Determinations, which involves the business and public
23 impact that this document would have. That is sort of a
24 whole separate category.

25 And the other would be the fiscal impact

1 statement, how this package is going to effect local,
2 state, federal government, et cetera. Those are two kind
3 of different venues that maybe someone else on the
4 Committee would like to get that information and then
5 funnel that through Jennifer. I think it would be
6 difficult to have Jennifer do all of that, including the
7 ISOR and the memo and the policy statement overview and
8 those things that are required.

9 COMMITTEE MEMBER WONG: Could you repeat what the
10 Statement of Determinations is?

11 SUBCOMMITTEE MEMBER LOUGH: Yes. That's a
12 statement in this packet that is going to talk about how
13 is business and the public, how are they impacted by these
14 regulations that we are proposing. So that's something
15 that we have to include in our package. You know, are we
16 going to propose something and is there going to be some
17 organization or something that is really impacted by this?
18 And those are things that we have to go over. If not,
19 fine. But those are things that we have to provide as
20 statements to that regard. So somebody needs to look at
21 that and determine what types of impact there is to the
22 business of public entity.

23 And the other is the fiscal impacts. So what we
24 are doing, how is that involving other people. For
25 instance, we have CHP in the state entity. How are they

1 impacted by this? The State of California -- we have the
2 DOJ labs, how are they impacted by this. So those are
3 sort of two different directions that maybe somebody else
4 could look at so Jennifer can concentrate on the ISOR.

5 SUBCOMMITTEE MEMBER SHEN: This is Jennifer.

6 Those two things are pretty large. I'm not even
7 100 percent sure how one would go about finding out that
8 information.

9 CHAIRPERSON KIMSEY: Well, we can certainly
10 get -- obviously, in our Office of Regulations in our
11 legal office, we have people that do this sort of thing
12 and understand what they are.

13 I'm thinking out loud. But when we have the
14 meeting of the subcommittee, we'll be talking about the
15 ISOR. If there are people on the Committee right now that
16 want to sort of tackle the Statement of Determinations and
17 the fiscal impact statements and other aspects of a
18 package, we can again certainly get clarification on what
19 that represents and what that means and possibly bring
20 even examples of them. I mean, so we can get some
21 guidance on these issues I guess is what I'm --

22 COMMITTEE MEMBER LYLE: Bruce Lyle.

23 I'll do the Statement of Determinations.

24 CHAIRPERSON KIMSEY: How about the fiscal impact?

25 COMMITTEE MEMBER LYLE: Not me.

1 COMMITTEE MEMBER TANNEY: This is Laura Tanney.

2 I can help on the law enforcement angle, if the
3 CHP representative on the Committee wants to help me with
4 that. But that would be limited to the law enforcement
5 Angle of that.

6 COMMITTEE MEMBER DAVIS: This is Kevin.

7 I can help with the law enforcement angle. I
8 don't see much fiscal impact to the CHP. Just thinking
9 out loud, the largest fiscal impact to a state agency
10 would be to DPH.

11 COMMITTEE MEMBER TANNEY: You're right. I
12 misunderstood. I thought this meant the impact on law
13 enforcement. I didn't realize he was talking about fiscal
14 impact.

15 COMMITTEE MEMBER DAVIS: I thought we were
16 talking about fiscal impact. And I see very little fiscal
17 impact to CPH or any law enforcement.

18 COMMITTEE MEMBER TANNEY: I agree. And I
19 wouldn't be the one to do the fiscal impact anyway.

20 SUBCOMMITTEE MEMBER SHEN: This is Jennifer.

21 It seems to me like you ought to have
22 representatives all over the state and all the various
23 agencies look at what we're doing and tell us what the
24 impact would be on their particular laboratory. I don't
25 know how else we can do that and come up with a meaningful

1 product, other than it doesn't effect them.

2 CHAIRPERSON KIMSEY: Well, and I think it would
3 be helpful for us to know what fiscal financial impacts --
4 to clarify, what those types of statements are required to
5 include. I mean, we may need to talk to a number of
6 different agencies and entities. But until we are told
7 specifically what the fiscal impact looks like and is
8 required to have in it, it's sort of an unknown at this
9 point.

10 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

11 Also on that Statement of Determination business
12 public impact, I would think that would be private tax
13 labs and all those things, too, that would be impacted by
14 all this.

15 SUBCOMMITTEE MEMBER SHEN: This is Jennifer.

16 Would it be a good idea then to have our first
17 meeting with someone from your office or your legal
18 office, to have the first meeting of the subcommittee
19 include those people that are going to work on the
20 Statement of Determinations and the fiscal impact and get
21 the download all at once and then break into our separate
22 ways and handle those things?

23 CHAIRPERSON KIMSEY: That makes some logical
24 sense. Unfortunately, I'm not sure logic and the
25 Bagley-Keene go together too well.

1 What we might do is have a -- what we might end
2 up having -- again, we will huddle here to be sure we do
3 things correctly. But we may end up having another
4 meeting of the full Forensic Alcohol Review Committee
5 today with an agenda that just is very tight and talks
6 about presentation on Statement of Determinations, ISOR,
7 and just do it that way. And --

8 SUBCOMMITTEE MEMBER SHEN: That makes sense.

9 CHAIRPERSON KIMSEY: I think there is a pretty
10 clear understanding on my part on what we're trying to
11 accomplish here, and we will try to get the process in
12 place.

13 So there may be another meeting of this Committee
14 within a relatively -- within a month to try to resolve --
15 get these explanations.

16 COMMITTEE MEMBER DAVIS: Kevin Davis, Sacramento.

17 Just adding, if that is the case, we should
18 probably try to get some examples of these documents like
19 you mentioned earlier.

20 CHAIRPERSON KIMSEY: I agree.

21 Other parts of the package?

22 Patty, you seem to have a pretty good mind for
23 that. Were there other parts of these packages that we
24 haven't covered?

25 SUBCOMMITTEE MEMBER LOUGH: I'm just going over

1 my notes that we have from Goldie way back when where she
2 talked about the APA, what had to be in that, which is,
3 you know, what's in our standards that we have.

4 And then the components of the regulations
5 packet, she talked about who are the organizations that
6 have to review it and the public notice process, the final
7 rulemaking documents, and all that stuff.

8 So I'm just reading from my notes from that
9 meeting.

10 But she did give us a handout at our very first
11 meeting, both Goldie and somebody else -- Kathy --

12 CHAIRPERSON KIMSEY: Kathy Ruberish?

13 SUBCOMMITTEE MEMBER LOUGH: I don't remember.
14 There were two people. They each gave us pretty lengthy
15 packets of information of the process. So I'm looking at
16 my notes from that.

17 CHAIRPERSON KIMSEY: I believe that was Kathy
18 Ruberish who has left the Department. And, actually,
19 Goldie Eng has taken a different position within the
20 Office of Legal Services. So she's still working for the
21 Department, but Kathy Ruberish has moved to another
22 Department.

23 Other volunteers from the Committee for any of
24 these activities or -- we have Bruce Lyle has volunteered
25 for the Statement of Determinations. I think we're

1 still -- we have the fiscal impact is still --

2 COMMITTEE MEMBER WONG: I can do that.

3 This is Kenton.

4 I definitely need some direction and contact and
5 examples from the Department to assist me in that, who to
6 contact.

7 CHAIRPERSON KIMSEY: Okay.

8 SUBCOMMITTEE MEMBER SHEN: This is Jennifer.

9 I have a question of Patty. So the packet that
10 we put forward via the ISOR has to go in. Our product has
11 to go in, and a cover letter.

12 When are we looking to submit the fiscal
13 determination, fiscal impact, and the Statement of
14 Determination? Is that part of the financial packet?

15 SUBCOMMITTEE MEMBER LOUGH: Yeah.

16 This is Patty.

17 Let me just briefly tell you what goes into that
18 initial packet.

19 It has a transmittal memo, which is the official
20 statement of the Committee that we are starting this
21 process and getting this going. So you have the cover
22 letter.

23 Then you have the informative digest policy
24 statement overview, which is, I suppose, just what it
25 says. It's going to be a little recap of what it's doing.

1 And then you have the Statement of Reasons, which
2 is what Jennifer is going to work on where every
3 regulation has to be evidence based and includes all the
4 documents that are relied upon and in the proper format
5 and all that stuff. So that's that Committee, which is
6 now Jennifer and Leona.

7 You have the Statement of Determinations, which
8 is the business public impact.

9 And I also have a note that says tax language,
10 strike out, underlines. I'm not sure why I have that in
11 there. I have to go back to her original stuff. But you
12 have that.

13 Then the regulations text which is part of
14 Jennifer's stuff that she's doing.

15 Any forms, outside standards, reference documents
16 are included, and those are things that become part of the
17 regulation.

18 And then the fiscal impact statement, how it
19 affects local, state, and federal government.

20 All of that is the package. That is the package
21 that goes forward.

22 SUBCOMMITTEE MEMBER SHEN: We can do that or a
23 summary?

24 SUBCOMMITTEE MEMBER LOUGH: No. That's the
25 package. So it starts out with the transmittal memo.

1 Here's our package. And the informative digest policy
2 statement of this is our package and here's kind of what
3 this package says. And then you've got your reasons,
4 determination, the text of your package, and the fiscal
5 impact. That's all the package.

6 SUBCOMMITTEE MEMBER SHEN: So obviously that's
7 not the summary. Our other option was to do a summary.

8 COMMITTEE MEMBER LYLE: I don't think so. I
9 think the Legislature in writing the statute didn't mean
10 to bypass the administrative regulations for how this
11 process gets done. They just said you need to summarize
12 it and send it to the appropriate parties if you go
13 through the APA.

14 SUBCOMMITTEE MEMBER LOUGH: The summary is for us
15 to provide a little where are we status summary that goes
16 with -- that Paul was talking about.

17 But my fear on that is once you send that little
18 summary to them, that starts the clock without having all
19 this information. And if you go forward and you start
20 that clock and you haven't done this, now you're really
21 under the gun, because they're going to say, "Where are
22 these things?" And you're going to say, "We haven't had a
23 meeting yet."

24 So my fear is unless we're ready to submit the
25 package, let's not start the clock.

1 So when he's talking about summary is like
2 updating them on what has the Committee been doing, that
3 sounds very informal and very casual when, in fact, I
4 believe the clock starts once we submit that, which was
5 always my objection.

6 SUBCOMMITTEE MEMBER SHEN: This is Jennifer
7 again.

8 So my understanding is we're going to get our
9 packet all together, which makes sense, and then send a
10 summary that starts our clock?

11 SUBCOMMITTEE MEMBER LOUGH: That is our summary.
12 Every time we asked that question, it keeps coming back,
13 does the clock start every time that informal summary gets
14 submitted.

15 SUBCOMMITTEE MEMBER SHEN: Okay.

16 SUBCOMMITTEE MEMBER LOUGH: And I have all the
17 little brief notes here about the office as it goes
18 through the public notice process, the rulemaking
19 documents, and OAL review. So we're talking probably
20 theoretically a couple of years I think from the time this
21 gets submitted -- this packet first gets submitted to go
22 through, especially with the State and all the shortages
23 they have right now. So I think once that document is
24 ready to leave this Committee, we're looking at probably
25 several years to go through the process.

1 COMMITTEE MEMBER WONG: Patty, this is Kenton.

2 When the clock starts, how much time do we have
3 ticking down on us?

4 SUBCOMMITTEE MEMBER LOUGH: Let's see here.

5 COMMITTEE MEMBER LYLE: It's one year.

6 SUBCOMMITTEE MEMBER LOUGH: I think that's
7 correct.

8 CHAIRPERSON KIMSEY: Well, it's my understanding
9 that -- and obviously we may need to get some
10 clarification on all this. But it's my understanding that
11 when the Committee sends the summary or whatever it is
12 that we send, communicate basically, this information to
13 Agency, Agency has 90 days to respond to us saying -- I
14 think they have basically a -- I think the term is they
15 cannot agree with something; they can take something off.
16 They can't really add something to the regulations to what
17 we submit. And that's where, you know, they have 90 days.
18 That's the clock that I'm aware of that I think we have
19 been concerned about triggering.

20 Obviously, once they have commented on what it is
21 we send them, then, you know, there may be more work to
22 incorporate the information they give us. But the whole
23 reg writing and passing process does take a couple of
24 years.

25 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

1 What I have is the public notice process where
2 you have to announce the proposed rulemaking, that that
3 publication is the official beginning of the APA process
4 and you have one year from the publication to complete the
5 entire process.

6 MR. MOORE: This is Ron Moore.

7 I think if you go back to the original
8 authorizing legislation, there was language in it that
9 gave Department of Health parent agency, Health and Human
10 Services, authority over the Committee's work product
11 before it began the rest of the APA process. We have to
12 go back and look at that original legislation.

13 SUBCOMMITTEE MEMBER LOUGH: I know they do get 90
14 days to -- if they want to disprove it at that point. And
15 at that point, it all stops and it's over. They can
16 choose.

17 SENIOR COUNSEL CHI: This is William Chi, CDPH
18 legal.

19 I'm subbing in for Goldie today.

20 The language in the statute calls for, one, a
21 summary revisions, which you can submit to the agency.
22 But the 90 days provision doesn't start until the
23 Committee submits revisions, which I take to mean the reg
24 package that you are working on right now. So that's
25 under Health and Safety Code 10703 Subsection (e).

1 SUBCOMMITTEE MEMBER LOUGH: So you're saying if
2 we submit our work product right now, which has the
3 revisions we'd like to see in the regulations, that it
4 does start the process?

5 SENIOR COUNSEL CHI: No. I think the statute
6 contemplates that you submit a summary of your proposed
7 revisions to regulations. That I don't think triggers the
8 90-day provision. The 90-day provisions trigger when you
9 submit your proposed reg package to the agency.

10 SUBCOMMITTEE MEMBER LOUGH: Okay. This is Patty.
11 So just sort of a recap of some of the areas that
12 we have changed versus sending the whole regulation, just
13 a little overview summary.

14 SENIOR COUNSEL CHI: So I think you want to do
15 the summary first and then submit that to Agency. And
16 then once you get your reg package in place and everything
17 looks good, then you submit that, and that triggers 90
18 days. At least that's the way I'm reading the statute.

19 SUBCOMMITTEE MEMBER LOUGH: Okay. Now this is
20 Patty.

21 So the question I have is, if we submit a summary
22 that says, okay, we're proposing these types of changes,
23 then without providing the justification and all that
24 stuff, how will the reader have any -- what is their
25 purpose? Are they supposed to evaluate information from

1 our summary at that point?

2 CHAIRPERSON KIMSEY: This is Paul.

3 I mean, obviously, we've been doing this for a
4 number of years. And I remember the first meeting here in
5 Richmond where we had quite a bit of discussions about all
6 this. I think we might need to sort of re-visit some of
7 this more officially. I think we need to get something to
8 the Committee in writing on what -- or at least to the
9 Committee for the Committee's --

10 COMMITTEE MEMBER WONG: Edification.

11 CHAIRPERSON KIMSEY: -- edification the
12 Department's perspective on what the summary and the reg
13 package and the process would be, because we don't want to
14 misinterpret this at this point.

15 SUBCOMMITTEE MEMBER SHEN: Now, Paul, the
16 question I have on that is in our completed regs the
17 Committee has worked on and voted on, there's a unanimous
18 yes vote on all of our changes, except a unanimous no vote
19 from you representing the Department. So what point is
20 there in submitting the summary to the Department if you
21 voted no on every change?

22 CHAIRPERSON KIMSEY: Well, no, we're not
23 submitting it to the Department. We're submitting it to
24 Agency.

25 Agency is a separate entity to the Department.

1 Our Department of Public Health is one of 13 departments
2 in the Health and Human Services Agency. And so on an org
3 chart we may look monolithic of whatever, they are really
4 a separate entity.

5 And so my voting on behalf of the Department
6 really does not -- how do you say -- predict or preclude
7 Agency from taking whatever perspective they might. It's
8 an independent entity above the Department. So the
9 Department's vote and the Department's perspective is
10 certainly not necessarily represented or unanimous or the
11 same as what Agency might think about all this.

12 And I think that was -- I mean, the legislation
13 was a little unusual in the sense that the Health and
14 Human Services Agency and the agencies in state government
15 generally don't get involved in a Department's reg writing
16 process at this stage. I mean, obviously, it's sort of
17 after a lot of these decisions have been made.

18 But the Committee should not feel that the Health
19 and Human Services Agency is bound by any vote that I may
20 have taken or made on behalf of the Department.

21 Is that helpful?

22 SUBCOMMITTEE MEMBER SHEN: This is Jennifer.

23 This is a question that's come up time and time
24 again, particularly when noting the voting record of the
25 Committee members.

1 So I guess I'm confused. Are we going to send it
2 to Agency and they are going to be able to take these
3 changes that we've made that we, as experts from all over
4 the field, have made and approved and just take them out
5 if they want to and just send them right back to square
6 one, even if they aren't representative of the scientific
7 community or the experts that we have representative on
8 the Committee?

9 I guess I'm confused as to -- I can see how they
10 didn't like something was justified or this or that. Is
11 it going to come down to they can say we don't agree you
12 should only have a Bachelor's degree or whatever and then
13 change it unilaterally? Is that something that can
14 happen?

15 CHAIRPERSON KIMSEY: It's my understanding they
16 don't have the ability to change. It's not like they're
17 not going to be editing and changing education
18 requirements and these sort of things.

19 It's my understanding if they wanted to take out
20 a section that they could do that. It's my understanding
21 they have, as it was described, sort of a red pencil. I
22 mean, things can come off the table so to speak based on
23 their work, but they don't necessarily have the ability to
24 add regulations to it. So --

25 SUBCOMMITTEE MEMBER SHEN: So something can come

1 off the table and they just put something else in its
2 place or --

3 CHAIRPERSON KIMSEY: No. I think it's more of a
4 removal process only. And, you know, since we've been
5 going at this for over four years, maybe it's worth
6 getting some at least interpretation again from the
7 Department more broadly to everybody. Maybe this should
8 be part of the next meeting in the sense that some
9 clarification on all of this. I mean, we all got it four
10 years ago. But it's not like we haven't all been doing
11 lots of things in the last four years.

12 And I greatly appreciate that the Committee wants
13 to do this correctly. And I think we all have a number of
14 questions on this.

15 So it's up to the Committee. We can certainly
16 have another meeting. We can maybe get a written
17 interpretation from the Department on what the next steps
18 need to be and what that will engender.

19 SUBCOMMITTEE MEMBER SHEN: This is Jennifer.

20 I think that's a great idea. I guess my biggest
21 question would be if they were to be able to take these
22 regulations that we've spent four years agonizing over and
23 changing and trying to make the best we possibly can with
24 our expertise and with a nearly unanimous vote, at what
25 authority they would use or what experience they would use

1 to say that this Committee's changes are not legitimate
2 and take them out. That would be very frustrating, I
3 would think.

4 CHAIRPERSON KIMSEY: And, unfortunately, I think
5 we may hear that that is pretty much what the
6 legislation -- I mean, we're pretty much tied to the
7 legislation. The Committee was legislatively mandated,
8 and we're pretty much tied to that legislation. And so I
9 think obviously a clarification would be helpful to the
10 Committee, because we did get a lot of this information
11 four years ago. But there are some details that I think
12 we need to have clarified.

13 Comments, though, from the rest of the Committee?

14 COMMITTEE MEMBER LYLE: Bruce Lyle.

15 Yeah, that detail was lost on me. So I'd like to
16 have some clarification.

17 So I think the next meeting should be all of us
18 with somebody who can interpret and let us know exactly
19 what that red lining entails and does it revert back to
20 what the original Title 17 was. There are a lot of
21 questions that are involved here.

22 CHAIRPERSON KIMSEY: Okay. So then to sort of
23 summarize, I guess our next meeting will probably be a
24 full meeting of the Forensic Alcohol Review Committee and
25 we will get sort of an itemized agenda out to everybody.

1 And a lot of it will be the clarification of the
2 legislation and the role of the Committee and the role of
3 Agency and we'll have further discussion at that point.

4 Any other comments?

5 COMMITTEE MEMBER WONG: Hopefully by that time we
6 can also get some guidance with regard to the Statement of
7 Determinations and the fiscal impacts and some contacts,
8 if not some examples and whatnot to facilitate this whole
9 process.

10 And I think we really need to have everything in
11 writing. I don't mean any disrespect, but I don't want
12 anybody's "I think" or "I believe it's this way." Because
13 if we're going to be really premeditated and strategic
14 about this and we have deadlines and clocks starting, I
15 don't want to get stuck in that just on somebody saying "I
16 thought it was that way."

17 CHAIRPERSON KIMSEY: Okay. Other comments?

18 SUBCOMMITTEE MEMBER LOUGH: This is Patty.

19 Before I send out my clean copy to everyone, I'll
20 wait to get the e-mail you're going to send me, Paul, from
21 Goldie on the language on the grandfather clause.

22 CHAIRPERSON KIMSEY: Okay. I'll do that.

23 Other issues? Or we're getting pretty close to
24 adjourning here, I think.

25 Hearing no other comments or subjects, I guess

1 we'll go ahead and end our 13th meeting, our lucky 13th
2 meeting, at a few minutes after 1:00.

3 I want to again thank you all for your time, and
4 we'll be in touch on trying to schedule the next meeting.
5 Thank you very much.

6 (Thereupon the Forensic Alcohol Review Committee
7 adjourned at 1:08 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
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13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 21st day of January, 2010.

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