

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
ROOM B-137
RICHMOND, CALIFORNIA

FOURTEENTH MEETING
TUESDAY, FEBRUARY 23, 2010
2:00 P.M.

REPORTED BY:
JOHN COTA

APPEARANCES

Review Committee Members

Dr. Paul Kimsey, Chairperson (Richmond)

Sergeant Kevin Davis (Sacramento)

Mr. Paul R. Sedgwick (San Diego)

Ms. Laura Tanney (San Diego)

Mr. Kenton S. Wong (Richmond)

Mr. Torr M. Zielenski (Sacramento)

Mr. Bruce Lyle (San Diego)

Review Subcommittee Members

Ms. Patricia S. Lough (San Diego)

Mr. Terry Fickies (Sacramento)

Staff

Mr. Robert Haas, Abused Substances Analysis Section
(Richmond)

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

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

Also Present

Mr, William Chi, Department of Public Health, Office of
Legal Services (Sacramento)

Ms. Rosalee Dvorak-Remis, Office of Regulations (Sacramento)

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

Ms. Elyne Salazar, Office of Regulations (Richmond)

Ms. Roxanne Durning, Department of Motor Vehicles (Richmond)

Ms. Jennifer Shen, San Diego Sheriff's Department (San
Diego)

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1 MR. CHI: William Chi, DHP Legal

2 MS. DVORAK-REMIS: Rosalee Dvorak-Remis, Office
3 of Regs.

4 MS. ZAVALA: Fleriea Zavala, DMV.

5 CHAIRMAN KIMSEY: Could the last three people
6 could you say your names again and a bit more slowly closer
7 to a microphone. Our stenographer needs to get it down.

8 THE REPORTER: After Phillips.

9 CHAIRMAN KIMSEY: After Phillips.

10 MR. PHILLIPS: Terry Fickies, T-E-R-R-Y, last
11 name, F-I-C-K-I-E-S, California Department of Justice.

12 MR. CHI: And William Chi, DPH legal.

13 CHAIRMAN KIMSEY: William Chi, C-H-I, Office of
14 Legal Services.

15 THE REPORTER: Okay, William.

16 MS. DVORAK-REMIS: Rosalee Dvorak-Remis, Office of
17 Regs.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 We'll give it to you later.

20 CHAIRMAN KIMSEY: We'll get that to you later.
21 The last two people could you spell your names please.

22 MS. DVORAK-REMIS: I'll spell my name. It's a
23 hyphenated last name. D like David, V like Victor, -O-R-A-K
24 hyphen R-E-M-I-S.

25 THE REPORTER: F as in Frank?

1 MS. DVORAK-REMIS: S like Sacramento.

2 THE REPORTER: Thank you.

3 Rosalee Zavala: F-L-E-R-I-E-A, Zavala, Z as in
4 zebra, A, V as in void, A-L-A, Department of Motor Vehicles,
5 Legal Affairs.

6 CHAIRMAN KIMSEY: Thank you. And here in Richmond
7 we have starting on my left.

8 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:
9 Robert Haas, Acting Branch Chief Food and Drug Lab.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
11 Clay Larson, Department of Public Health.

12 CHAIRMAN KIMSEY: Paul Kimsey, Department of
13 Public Health.

14 COMMITTEE MEMBER WONG: Kenton Wong representing
15 the California Association of Criminalists.

16 MS. SALAZAR: Elyne Salazar, Alameda County
17 Sheriff's Office Crime Lab.

18 MS. DURNING: Roxanne Durning, Alameda County
19 Sheriff's Office.

20 THE REPORTER: How would I spell your last name?

21 MS. DURNING: D-U-R-N-I-N-G.

22 THE REPORTER: Thank you.

23 CHAIRMAN KIMSEY: Okay. And our stenographer is?

24 THE REPORTER: John Cota, C-O-T-A with Peters
25 Court Reporting.

1 CHAIRMAN KIMSEY: Okay. Thank you. So I guess
2 this is the 14th meeting. With regards to opening remarks
3 on my part for the Departments.

4 A couple of items. Sorry for the confusion on the
5 start time of the meeting. I hear that some things went on
6 at 1:00 and some things went out for 2:00. I apologize for
7 that.

8 And also the approval for Jennifer Shen for the
9 Committee has not made it through the system yet. It
10 doesn't mean she can't participate today.

11 But her formal appointment to the Committee has
12 not been approved as of yet.

13 And, let's see, other items or discussion about
14 the agenda for today. We're basically continuing a
15 discussion we had at our last meeting with the two main
16 agenda items there.

17 Are there any other items that the Committee wants
18 to discuss or wants some comment about the agenda before we
19 get started?

20 Okay. The first item is the statutory
21 requirements for the submission of the Committee's revisions
22 to the Health and Human Services Agency.

23 This is again, like I mentioned, a continuation of
24 our discussion at our last meeting.

25 We've had some clarification from our Office of

1 Legal Services. To the extent and for those of you that
2 have it in front of you, this, we're talking about 10703 (d)
3 and (e) where we refer to the Review Committee shall submit
4 a summary revisions to the California Health and Human
5 Services Agency.

6 And since we're pretty close to the conclusion or
7 at least to the stage of our deliberations that we're
8 thinking about submitting something to the Agency this came
9 up.

10 And so the items (d) and (e). Item (d) refers to
11 a Summary of Revisions and item (e) refers to the Review
12 Committee's revisions.

13 Item (e) is where it's discussed that within 90
14 days of receiving the Review Committee's revisions the
15 California Health and Human Services Agency will disapprove,
16 may, excuse me, may disapprove of one or more of the
17 revisions.

18 Our Office of Legal Services as we were discussing
19 last time, you know, what the summary contained, what would
20 it be? Our office of Legal Services has made the
21 recommendation or made the statement that these are actually
22 two separate documents.

23 The Summary of Revisions is going, could be, or is
24 going to be considered different than the Review Committee's
25 revisions.

1 And so that we can talk about what it is we want
2 to submit as the Summary of Revisions that part of the
3 discussion last time was does that start the 90 day clock?

4 And since we're being advised that these are two
5 separate documents our Summary of Revisions however we want
6 to present that to the Agency would not start the 90 day
7 clock.

8 The 90 day clock would start when we submit what
9 we consider to be our revisions.

10 So any sort of comments? I mean is that clear
11 that we basically have two separate documents. One is
12 referred to as the Summary of Revisions in the legislation
13 and one is referred to as the Committee's Revisions.

14 Hearing no questions I think we can sort of go
15 back to our discussion where we were talking about the
16 Summary of Revisions and the timing that we might want to
17 submit the Summary to Agency.

18 We're having some discussions at the time as I
19 remember correctly about setting up a subcommittee to work
20 on some aspects of our work product.

21 And I know that Jennifer Shen had volunteered. We
22 also had a question about the number of people on a
23 subcommittee with regards to the Bagley-Keene requirements.

24 And we've gotten some clarification on that also.

25 A subcommittee is a group less than three which

1 tells me two. And so technically if we want to call it a
2 subcommittee we would have two people total on the
3 committee.

4 It's my own personal thought that we shouldn't
5 feel restricted by Bagley-Keene for the purposes of what
6 we're trying to do.

7 And maybe we should go ahead and have a group meet
8 and we would just follow the Bagley-Keene procedure which is
9 basically, you know, 10 days notification and the
10 accessibility of the public.

11 And I think I can speak for the Department in
12 saying that we would be willing to make the announcements if
13 we can work through some of the, you know, locations that
14 would be convenient for people to convene at.

15 And those at least and I'm stepping outside of my
16 knowledge here. I think at least one of those has to be a
17 place that the public can attend.

18 I don't know that all those places have to be
19 where the public can attend but we get a little bit of
20 clarification on that.

21 Maybe Mr. Chi has some advise on whether all the
22 locations that that group were to meet at if they would have
23 to be accessible to the public.

24 MR. CHI: Some of the places need to be accessible
25 to the public.

1 CHAIRMAN KIMSEY: Okay. So and the Department has
2 been obviously making space available in Sacramento and here
3 in Richmond. And I think we could probably fairly easily
4 continue to do that.

5 But we have more difficulty finding a place down
6 south that is convenient for everybody.

7 And actually if we do go with sort of a group more
8 than two and so we are complying with Bagley-Keene, you
9 know, Richmond could be used again. It could be accessible
10 to the public and probably Sacramento.

11 And the folks that might be participating from the
12 southern part of the state might be able to be on the
13 telephone.

14 So what's the feeling of the group with regards to
15 the subcommittee? Do we want to sort of limit it to two or
16 do we want to go ahead and comply with the Bagley-Keene
17 requirements and have the ability to have a larger group?

18 MS. LOUGH: This is Pattie Lough in San Diego. I
19 think if you start bringing in a larger group and trying to
20 get those dates coordinated and a lot of people probably did
21 not really have an interest in working on that part of it.

22 You're probably better off to move this along. To
23 keep it to the two people. To have them come up with the
24 product. Bring that to the full Committee and then let the
25 Committee handle it there.

1 CHAIRMAN KIMSEY: Okay. Any other thoughts?

2 COMMITTEE MEMBER WONG: I concur with Pattie. I
3 think it depends more upon Jennifer Shen. If she feels that
4 just working with another individual would facilitate things
5 and make it run more smoothly I think that would be the way
6 to go.

7 MS. SHEN: This is Jennifer Shen in San Diego. I
8 definitely agree with that. I think the other volunteer for
9 the subcommittee was Leanna Gault who works for me.

10 I think that would be very easy for us to
11 coordinate and get a work product out. I think it really
12 would delay things unless somebody else has a real interest
13 in coming up with a work product. It would delay things to
14 have more than two people.

15 COMMITTEE MEMBER WONG: I concur.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 Comment from the public or comment from staff actually.
18 That sounds fine. At the last meeting I think Pattie
19 indicated she would be interested in attending those as a
20 member of the public which begs the question if it wasn't a
21 public meeting how would she even know about it?

22 So my understanding then is Pattie you wouldn't be
23 participating?

24 MS. LOUGH: This is Pattie. No, my thoughts to
25 Jennifer as I've told her is I don't really want to be on

1 the Committee. But certainly if they had questions or
2 anything they could contact me at anytime as they can in
3 committee contact anybody they want.

4 And by my not being on the Committee they should
5 be able to consult with me if they need to for anything if
6 there's anything I can do to help.

7 But, no, I did not want to be on the Committee or
8 a member of the public for it.

9 CHAIRMAN KIMSEY: Okay.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
11 So you wouldn't be attending the meetings?

12 MS. LOUGH: Not unless there's something that I
13 can provide that they ask me to. But I would not be a
14 member of the subcommittee.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 I think, again, if it's a public meeting then you can
17 certainly attend as a, I mean, I think under Bagley-Keene
18 that there really, members of the public and members of the
19 legislative body and there's really no.

20 And if it's not a public meeting then you
21 probably, again, reading strictly the Bagley-Keene
22 requirements you probably couldn't attend that meeting
23 simply because you wouldn't know about it.

24 MS. LOUGH: Well this is Pattie. I don't know
25 under Bagley-Keene if they can lever our legal people that

1 are here today to advise us if Jennifer and Leona meet and
2 if they have a question do they have an opportunity to
3 contact anybody anywhere in the country to answer a question
4 or come in and clarify something for them as a consultant
5 having nothing to do with the general public or nothing to
6 do with that committee or the FARC Committee.

7 Are they allowed to contact anybody for
8 information?

9 CHAIRMAN KIMSEY: Mr. William, Williams do you
10 have a, I mean, Mr. Chi, I'm sorry Bill.

11 MR. CHI: On my part is the intent of Bagley-
12 Keene is they can still more people attend a public so that
13 the public can participate in that.

14 So if the subcommittee was by its official action
15 call another member of the public then the accessibility
16 implies that the public should be and therefore if Jennifer
17 was to call Pattie for a two-way meeting that Pattie
18 actively participate then that makes it a public meeting
19 which is subjected to Bagley-Keene.

20 Now after the meeting one of, and maybe Jennifer
21 can call Pattie and talk to her about questions I think that
22 would be okay.

23 But while the two or the subcommittee is
24 officially meeting and during that meeting somebody calls
25 another member of the public I think that would run afoul of

1 Bagley-Keene.

2 MS. SHEN: This is Jennifer Shen in San Diego. We
3 are having a really, really difficult time hearing
4 Sacramento. Like I didn't hear most of that.

5 CHAIRMAN KIMSEY: Mr. Chi could you get maybe
6 closer to a microphone and repeat your comments please.

7 MR. CHI: I was trying to say was, by Pattie
8 participating in subcommittee meetings while at the
9 subcommittee meeting I think that would create Bagley-Keene
10 problems.

11 I think if Jennifer after the meeting wants to
12 call Pattie and ask to provide any documentation or for any
13 feedback not during while the subcommittee is meeting I
14 think that would be okay.

15 MR. PHILLIPS: This is Bill Phillips in Sacramento
16 again. I think we, Jennifer is not a subcommittee yet.
17 Okay, that's one issue.

18 Next she's not a member of, she's not a member so
19 she's not a subcommittee member. Then you only have one, if
20 you do nominate her before your as a member then you only
21 have one person.

22 And Leona is not a member of the Committee and
23 neither would be Pattie Lough so you only, you don't have a
24 public meeting yet why I didn't get to.

25 MR. CHI: That is a problem because the Attorney

1 General's guide on Bagley-Keene specifies that this person
2 is not a committee member.

3 So when we talk about three persons it's really,
4 it doesn't matter whether you're a committee member or not
5 if the subcommittee is official, is a formal creation of the
6 Department Committee so anytime that three persons are there
7 then that would require e-notices.

8 MR. PHILLIPS: You recall having meetings Dr.
9 Kimsey in the past where there were three people?

10 CHAIRMAN KIMSEY: I believe in the past we may
11 have done that. I think some of our early, Pattie Lough and
12 I and someone else did some meetings.

13 But we may have not been in strict compliance with
14 Bagley-Keene. So I think moving forward we want to try and
15 be sure that we're, you know, following the best advise that
16 we're getting at this point.

17 So that's why, you know, I mentioned early on that
18 I don't think we should feel, have Bagley-Keene, you know,
19 sort of slow us down in the sense if we want to have three
20 people it's not, or four, I don't think we're going to have
21 people knocking down the door to do the subcommittee's, to
22 participate in the subcommittee.

23 So, again, you know, we can certainly, it's
24 relatively easy, I think, to comply with public notice and
25 one area where we could have the public attend if they

1 wanted.

2 So it's really up to the full Committee. I agree
3 that, you know, if we have two people working on it that
4 they may be able to move things along quicker which I think
5 we're all interested in.

6 So it's up to the Committees to decide.

7 MS. LOUGH: This is Pattie Lough. I have no
8 problem not attending the meetings. I am not interested in
9 attending the meetings.

10 If Jennifer wants to talk to me after a meeting or
11 between meetings I'm available to her.

12 I can pretty much guess that she is not very
13 interested in having to spend her day leaving early in the
14 morning to fly to the two northern California locations for
15 a subcommittee meeting.

16 That would really be difficult for her. If that's
17 not true I'm sure she would speak to that.

18 But I have no problem not being a member. I do
19 not wish to be a member.

20 CHAIRMAN KIMSEY: Okay. And that's fine Pattie.
21 This is Paul. I mean I believe that, you know, we could
22 have Jennifer, you know, on a phone too. I mean I was just
23 offering, you know, two of the state office buildings here
24 in northern California one of which, you know, could help us
25 meet the Bagley-Keene requirements.

1 The subcommittee does not have to meet at that
2 location. In fact it could probably be a room with a
3 conference call phone and maybe nobody in it so if nobody
4 from the public wanted to attend so.

5 MS. SHEN: This is Jennifer Shen again. Again I
6 think that if we can make it work my preference would be to
7 work with one other person who is readily available to me 30
8 yards down the hall to get this product moving.

9 I think once we start trying to have publicly
10 noticed meetings this process will take a long, long time.
11 I worry that it's going to take me a long, long time anyway.

12 But I don't want to do anything to slow it down.
13 So unless someone really has an interest in assisting with
14 this work product I still think our best bet is to go with
15 two.

16 COMMITTEE MEMBER WONG: I concur.

17 CHAIRMAN KIMSEY: Hearing no further discussion I
18 think that's what the full Committee agrees to is that the
19 subcommittee will be, it will be a subcommittee and it will
20 be two individuals that have been mentioned.

21 Any comments or disagreements with that direction
22 at this point? Any public comment?

23 So we have a subcommittee. And we've identified
24 the two individuals.

25 The other item on the agenda is the support

1 available to the subcommittee to prepare the draft
2 regulations or to the full Committee and as you know the
3 Department doesn't really have the resources to assign
4 somebody from our Office of Regulations but we will be able
5 to get the Office of Regulations assistance.

6 Basically what the process would be is the
7 subcommittee and/or the full Committee but the subcommittee
8 can submit the work product to the Department, to the
9 program and we will get a review and some feedback from the
10 Office of Regulations through the program.

11 So, and this can take place it's obviously going
12 to be a very transparent process.

13 I'm not sure exactly what the turn around time can
14 be. It'll certainly depend upon the questions that come
15 from the subcommittee.

16 But we can certainly provide that level of service
17 to the Committee and the subcommittee for the draft
18 regulation package.

19 Comments?

20 MS. SHEN: This is Jennifer Shen in San Diego. So
21 I guess I'm willing to take on this work but I want to be
22 very clear on what it is that I'm doing.

23 And I feel as though at this point I am not very
24 clear on what exactly it is that we need.

25 And I think having some sort of examples of the

1 various portions of this work product that have been
2 approved would be very helpful for us.

3 CHAIRMAN KIMSEY: No, and I think --

4 MS. SHEN: Use a template that has been
5 successful.

6 CHAIRMAN KIMSEY: Sure. No, this is Paul. And we
7 can certainly provide that. I think part of it is is the
8 full Committee sort of needs to discuss a little bit about
9 what it is you're preparing to some extent.

10 In other words, this sort of goes back to the idea
11 that we have sort of two documents here.

12 One is the Summary of Revisions that can go to
13 Agency.

14 And then one is the, you know, the Committee's,
15 you know, dare I say, final revisions.

16 And I think and the Committee should chime in
17 here. But it seems like we have been going down the road of
18 preparing a full package to present to Agency as our
19 revisions.

20 And that is for the Committee to decide if we want
21 to send up a summary then we need to sort of see how a
22 summary might be different or what do we want the Summary to
23 contain.

24 And that's pretty much for the full group here to
25 sort of decide. But I understand your concern Jennifer.

1 And we can certainly get you examples and some, you know,
2 some directions and some instructions on what's involved and
3 things like Statement of Reasons if that's going to be part
4 of the package. I mean this type of information.

5 MS. SHEN: This is Jennifer Shen. I have, I guess
6 I have one question. What is the benefit putting forward
7 the Summary of Revisions as opposed to just putting forward
8 a final product?

9 CHAIRMAN KIMSEY: That's a good question. If the
10 Committee would, I'm thinking that if the Committee wanted
11 to give the Health and Human Services Agency an idea of what
12 the Committee's deliberations have been in something other
13 than a final package then a summary would be something less
14 than the Committee's full revisions so to speak.

15 COMMITTEE MEMBER WONG: In a nutshell.

16 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:
17 I would just, you know, second that by saying that the,
18 this is Bob Haas, FDLB. The legislation calls for a Summary
19 of Revisions for Agency review. That would be the benefit.

20 That Agency perhaps, and I can't speak for them,
21 but perhaps would rather see a summary and judge on the
22 basis of the summary the salient features of it and the
23 changes to the existing code rather than have to wade
24 through into the entire package.

25 Plus, I mean, this is what the bill calls for, a

1 summary.

2 MS. SHEN: So therefore, this is Jennifer Shen.
3 Therefore there is really no choice and we need to be
4 preparing a Summary of Revisions.

5 COMMITTEE MEMBER WONG: Correct, yes.

6 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:
7 Well I would think of that as, you know, your preparatory
8 document. The one that is going to list the important
9 changes. To make it easy for Agency to evaluate it.

10 MR. LYLE: This is Bruce Lyle. And so doesn't the
11 law say that we have to prepare a summary.

12 COMMITTEE MEMBER WONG: Yes.

13 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:
14 Yes.

15 MR. LYLE: What are we talking about? Let's just
16 prepare a summary (laughter).

17 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:
18 Okay.

19 CHAIRMAN KIMSEY: Yeah but we need to decide what
20 that is. I mean the legislation just says, summary.

21 MR. LYLE: It's not defined in the past? I mean
22 isn't, I mean when you talk about a Summary of Revisions it
23 sounds like it's a term of art but it means a specific
24 something.

25 Otherwise then it's just the entire revisions.

1 CHAIRMAN KIMSEY: I would agree. I mean Mr.
2 William do you have any guidance on, Chin, excuse me. I did
3 it again.

4 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:
5 Chi.

6 CHAIRMAN KIMSEY: Mr. Chi do you have any guidance
7 on summary versus the full product?

8 MR. CHI: I haven't looked at the, a little bit on
9 the history behind it. And I think the previous speaker was
10 right that you would normally call a Summary of Revisions a
11 term of art but in this case the legislature did not, it did
12 not define what a summary needs to be.

13 So I think it's really up to the Committee. So
14 what he thinks is appropriate as a Summary.

15 MS. SHEN: This is Jennifer Shen. I do not want
16 to add any extra work to ourselves. So it would occur to me
17 that we have made all the revisions.

18 That the only summary that would make any sense at
19 this point would be simply our revisions because to
20 summarize our revisions would be a whole lot of extra work
21 for no reason.

22 MR. CHI: That can definitely be a way to go. If
23 you added the revisions that the committee may take and they
24 put in the Summary of Revisions on it I think that would
25 suffice.

1 Like I said earlier there's no statutorily
2 mandated form that the Summary of Revisions needs to be in.

3 So that's the choice to me that I think are
4 appropriate.

5 MS. SHEN: This is Jennifer again. I'm concerned,
6 we are really struggling to hear you here. Your suggestion
7 would be that we could label our work product as that we
8 have completed that they add a Summary of Revisions
9 essentially and submit that?

10 MR. CHI: Can you hear me now?

11 MS. SHEN: No. I think --

12 MS. LOUGH: This is Pattie Lough. Could you move
13 up to the front table. I'm assuming you're in the audience
14 area. It might be easier for us to hear if you moved up
15 front.

16 MR. CHI: I didn't hear (inaudible) --

17 MS. SHEN: I said what I got, this is Jennifer
18 Shen again. What I got from that I think although it's hard
19 to hear you is that we can take our work product and we have
20 outlined all of our revisions and labelled that Summary of
21 Revisions essentially and turn that in.

22 MR. CHI: Yes, that's what I was saying is as long
23 as you call it a Summary of Revisions that the statute does
24 not dictate or mandate what a Summary of Revisions needs for
25 a format that the Summary of Revisions needs to be in.

1 CHAIRMAN KIMSEY: This is Paul Kimsey in Richmond.
2 The movement of the microphone in Sacramento greatly
3 increased. The movement that was just made of that
4 microphone greatly increased the ability to hear Mr. Chi.

5 So if he can get closer to that microphone that
6 would be even better.

7 MS. LOUGH: So this is Pattie Lough in San
8 Diego. As you were saying earlier on (h) and (f) 10703 (d)
9 which talks about a Summary of Revisions then legally that
10 is a completely different document then in paragraph (e)
11 which talks about the Committee's revisions.

12 So submitting in summary according to paragraph
13 (d) does not start the 90 day timeclock. I think that might
14 be helpful if the Agency could do a cursory review of those
15 revisions if there's anything that they feel, you know,
16 needs to go back to Committee maybe that could be worked
17 with and adjusted pretty rapidly so that we know when the
18 final Committee revisions go forward there would be no
19 issues with any of those areas.

20 I think that might be handy. As long as we
21 understand that (d) and (e) are two separate documents.

22 And (d) does not start the timeclock if I
23 understood that correctly.

24 MR. CHI: Yes. Well that's exactly what I was
25 getting to is that I think the legislative intent behind (d)

1 is really to get the Committee to submit a summary of
2 basically what's proposed, a very rough guideline so that it
3 could elicit some Agency feedback.

4 Now I can't speak for Agency and say that it won't
5 be feedback but I think the language of the statute clearly
6 implies that.

7 That's the only fair way to read it I think.

8 MS. LOUGH: Again, this is Pattie Lough. So my
9 questions is if the 90 day response time from Agency is
10 there a response time that we might anticipate with this
11 timeline so that the Committee could continue to progress.

12 MR. CHI: There is no timeline that Agency has to
13 respond by for subsection (d) summary revisions.

14 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:
15 Well this is Bob Haas. Not only is there no timeline
16 there's no mandate for the Agency to respond to the Summary
17 of Revisions at all.

18 MS. LOUGH: Okay Pattie Lough. That's fine
19 because if they don't respond they don't respond and the
20 Committee can continue to do their work.

21 And that can be reflected in a lack of response so
22 I don't know if a lack of response can be considered a
23 positive response or what. But then there's no need to wait
24 for a response. Committee themselves continue on with their
25 work.

1 And then they have satisfied paragraph (d).

2 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:

3 It looks that way to me. What do you think William?

4 MR. CHI: Yeah, that's exactly how I read it is
5 that the only obligation created by subsection (d) is on the
6 Committee to submit summary revisions and it did not create
7 any duty on the part of Agency to respond to the summary
8 revisions.

9 So, but I think the intent behind the language is
10 certainly to hopefully elicit some feedback from Agency.

11 COMMITTEE MEMBER WONG: This is Kenton Wong in
12 Richmond. With regard to that so we're just going to say
13 that no news is good news but I know that in the last
14 meeting I had volunteered to help on the fiscal impacts to
15 act as ancillary function for Jennifer Shen.

16 And I also had Bruce Lyle down for with the
17 Statement of Determinations or Reasons or something like
18 that.

19 And I was wondering if Department had gotten some
20 examples for us for Bruce and I to work on to help Jennifer
21 in that endeavor.

22 CHAIRMAN KIMSEY: I don't believe we have anything
23 prepared but you're thinking of a Statement of Reasons did
24 you say?

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Statement of Determinations.

2 CHAIRMAN KIMSEY: Determinations.

3 COMMITTEE MEMBER WONG: Yeah, Statement of
4 Determinations and Fiscal Impacts. We were supposed to get
5 some template or some type of examples for us to, at least,
6 springboard off of because we have no idea what that means.

7 MR. LYLE: Bruce Lyle. I agree Kenton and I
8 looked online and tried to find some kind of template or
9 something having to do with the Statement of Determinations
10 and I couldn't find anything.

11 So even just, you know, a hint in the right
12 direction where I can go and look for it would be
13 appreciated.

14 MS. SHEN: This is Jennifer Shen. That's why I
15 think examples of a approved submissions would be helpful
16 for us.

17 CHAIRMAN KIMSEY: This is Paul Kimsey in Richmond.
18 If someone from the Office of Regs is there in Sacramento
19 is there something available online or are we going to find
20 some examples of specifics Statement of Determinations or
21 fiscal impacts that's been previously done or is there some
22 online guidance that we can refer to for assistance.

23 MS. DVORAK-REMIS: This is Rosalee Dvorak-Remis.
24 I can't speak for Office of Regs. Office of Regs supports
25 the program.

1 I do know that any of the documents or any of the
2 regulations that are ready in the public purview should be
3 available through Office of Administrative Law and you might
4 check their website.

5 MS. SHEN: Do you think that there will be
6 templates available?

7 MS. DVORAK-REMIS: All I can say is that each of
8 the regulations packages that go through Office of
9 Administrative Law contain the initial Statement of Reasons,
10 Informative Digest, Statement of Determinations, the Fiscal
11 Estimates and the 399, Standard 399 which is the fiscal that
12 you're looking for.

13 MS. LOUGH: This is Pattie Lough, San Diego. If
14 the FARC Committee wishes I'll be happy to contact the
15 Office of Administrative Law and obtain some examples of
16 approved documents and send them out to the entire
17 Committee.

18 COMMITTEE MEMBER WONG: Bless your heart Pattie.

19 MS. LOUGH: Ha, ha, ha, that would be a yes.

20 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:

21 And this is Bob Haas. The program will be glad to work
22 with the Office of Regulations in trying to obtain those
23 things as well.

24 COMMITTEE MEMBER WONG: Great. We just don't want
25 to reinvent the whole wheel if it's kind of already been

1 done.

2 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:
3 I understand.

4 COMMITTEE MEMBER WONG: Yeah.

5 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:
6 Yeah.

7 CHAIRMAN KIMSEY: And it's also my, this is Paul
8 Kimsey in Richmond. It's also my understanding that I don't
9 know if it's the Office of Administrative Law but somebody
10 and I'm sure OAL would know, but there is some training
11 that's offered. And there may be some reviews or some
12 previous, you know, webinar-type things that you may be able
13 to look at.

14 Now are we anticipating that these types of, parts
15 of the regulation package would be part of our summary or is
16 this, we sort of have been talking about the Summary of
17 Revisions containing our work product.

18 Are we going to include these types of elements in
19 the Summary?

20 MS. SHEN: This is Jennifer Shen. I think we
21 decided that we would not.

22 CHAIRMAN KIMSEY: Right.

23 MS. SHEN: So I guess the question of the day then
24 is, do we want to submit this and how do we do that?

25 COMMITTEE MEMBER WONG: Mr. Chi can you give us

1 some guidance as to how that should be packaged possibly?

2 MR. CHI: I'm sorry. What was the question again?

3 MS. SHEN: This is Jennifer Shen from San Diego.

4 I guess question would be then, if we want to take our work
5 product and submit it how would we go about doing that?

6 What format do we need to do? Who exactly do we
7 submit that to? You know, to make that happen what do we
8 need to do?

9 COMMITTEE MEMBER WONG: And how do we package the
10 Statement of Determinations and the Fiscal Impacts with all
11 of that for a package?

12 MR. CHI: That's something that Program and Office
13 of Regs can probably assist you better on. I'm with Office
14 of Legal Service so I don't participate in regulatory
15 process.

16 CHAIRMAN KIMSEY: Jennifer this is Paul Kimsey in
17 Richmond. It strikes me that, you know, obviously we would
18 probably need some sort of cover letter to let whoever is
19 opening the envelope know what this is about.

20 And then the work product. And I think there may
21 be a little confusion at least on my part. I mean a cover
22 letter is a cover letter. You basically state, you know,
23 the purpose of, you know, what's in the envelope.

24 But if the envelope is the our work product are we
25 going to add, you know, things like Fiscal Impacts or

1 Informative Digest or Statement of Determinations or because
2 right now there's not a lot of that in our work product.

3 MS. SHEN: This is Jennifer Shen. I would say at
4 this point I'd agree. We'd start with a cover letter in
5 referencing our product, what we're doing, our product and
6 what part of the statute we're accommodating by submitting
7 this.

8 And then submit our actual work product as is
9 possibly with a new title and that would be it.

10 I think we would get that done first and then we
11 would move on to putting together all the other elements for
12 a final package.

13 MS. LOUGH: This is Pattie Lough. I think that is
14 in compliance with the Health and Safety Code, that
15 paragraph (e) where it says, a Summary of Revisions. It's
16 not talking about the fiscal impacts and all those other
17 things that are supposed to be in a full package.

18 It's just the revisions. And we're just giving a
19 heads up to the Agency that here is what the majority of the
20 Committee members have agreed upon before we go forward and
21 to give such a step of, you know, looking at those things
22 that Agency may have an issue with.

23 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:
24 This is Bob Haas. I agree with you completely about that.
25 I may be very naive but I don't know that Agency wants to

1 see all of the articles with the cross outs and the changes.

2 I think if I was in Agency I would like to see
3 three or four pages explaining the changes. And as, you
4 know, in an easily reviewed document.

5 I may be completely wrong but that's, I don't know
6 that sending them, you know, this whole thing is really
7 going to sit well with Agency.

8 MS. SHEN: This is Jennifer Shen. You know one of
9 the problems that we've had with this whole process is that
10 not only are we justifying all of the changes we're making
11 we're also justifying not making changes.

12 And although this may not be a step that we have
13 to be overly concerned about I would hate to, first of all,
14 put in the time and effort to create yet another document to
15 summarize this document the meaningful changes that we've
16 made and have it come back and say, well we need to know why
17 you haven't made changes in these particular areas.

18 Why these things are staying the same and why you
19 chose only to change a few. But to my understanding that
20 it's equally important show it because apparently the entire
21 thing is somewhat out of compliance.

22 But why we're making changes and why we're not
23 making changes. I'm not sure how you summarize that without
24 actually showing them what you're doing.

25 Perhaps give a cleaner copy than what we've got

1 here but even so then there's the whole issue of, well don't
2 you want to know what it said first and now what it says,
3 what it would currently say and the reasons for making those
4 changes?

5 I'm not sure where we can cut things out.

6 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:

7 Your point is well taken. And if the Committee decides on
8 that then so be it.

9 CHAIRMAN KIMSEY: This is Paul. And I tend to
10 agree with you Jennifer. I mean even though this is 43 or
11 so pages I don't know how, you're creating another document
12 to try and summarize this and have it meaningful. I'm not
13 sure how we would do that.

14 Anyone else have thoughts?

15 MR. LYLE: This is Bruce Lyle. I just think we
16 need to stick with what we've got because it is fairly
17 succinct in what it says and why the changes are there.

18 And I don't know about guessing what Agency, I
19 don't know who is going to be looking at this. And I'm sure
20 they'll forgive us the messiness of it given the fact that
21 we don't have a lot of direction and this is our first time
22 for doing any of this.

23 I don't think it's going to ruffle feathers and
24 even if it did I don't know if that's a real good excuse for
25 not being able to understand it.

1 It' understandable as it is. So I'd say we just
2 stick with this.

3 CHAIRMAN KIMSEY: Other comments? So right now we
4 have the idea of a cover letter and then, I guess, the
5 document that's in our packet that says, FARC Work Product
6 as of January 14, 2010 or it says 10 but 2010.

7 MS. SHEN: This is Jennifer Shen. Yeah, I think
8 that's where we are on it. Do we want to discuss what
9 elements you would like to have covered in the cover letter?

10 Just take a stab at it.

11 CHAIRMAN KIMSEY: Well I think part, this is Paul
12 again in Richmond. I think some it would be that obviously
13 to refer to the legislation and the work and the number of
14 meetings of the Committee, maybe members of the Committee.

15 Broadly referring to the legislation and clearly
16 identifying this as the Summary of Revisions and requesting
17 feedback and comment.

18 I mean this is something maybe we can help you
19 with Jennifer. This is, you know, I'm saying that on
20 behalf of the Department. I mean we do letters (laughter).

21 And so unless there's something specific that the
22 Committee would like included, I mean, we can certainly talk
23 about that. But I don't think there's any, I mean there is
24 some formatting and font size and that sort of thing but --

25 MS. SHEN: This is Jennifer Shen. Would this mean

1 that you would handle the cover letter and the submission of
2 this?

3 CHAIRMAN KIMSEY: Well we can certainly work with
4 the Committee. The Committee can sort of tell us, you know,
5 what, I mean, they want in the cover letter.

6 And we can certainly get a draft out to the full
7 Committee. But somebody's got to put the, you know, the
8 stamp on the envelope and unless there's a volunteer I don't
9 see why the Department can't work with the Committee on a
10 draft and you just need to let us know what you want in it.

11 MR. PHILLIPS: Is there anything that prevents,
12 this is Bill Phillips in Sacramento. Is there anything that
13 prevents the circulation of this document from member to
14 member in the Bagley-Keene Act?

15 MS. SHEN: The cover letter?

16 MR. PHILLIPS: Yes. If you created a cover letter
17 draft, can it be circulated from member to member for
18 comment?

19 CHAIRMAN KIMSEY: Mr. Chi.

20 MR. CHI: That's a good question. There is a
21 prohibition against serial meetings. And by the comment by
22 the letter going from member to member eliciting comments
23 that could be interpreted as a meeting of the Committee.

24 And if Dr. Kimsey acts as the Chair of the
25 Committee can he, being he's not a, can he circulate it to

1 the members?

2 MS. SHEN: This is Jennifer Shen again --

3 MR. CHI: Kimsey is acting as the hub of the wheel
4 as circulating that draft to Committee and the Committee
5 members getting back to him. That would still constitute a
6 meeting under the Bagley-Keene Act.

7 COMMITTEE MEMBER WONG: Yeah.

8 MS. SHEN: This is Jennifer Shen. I think I
9 certainly would be willing to write a cover letter and then
10 have, and then I suppose, we could just have a meeting to
11 (laughter) have everyone review it. And I could make the
12 changes that were scripted and then we could sent it out
13 with the idea at the end of that meeting making those
14 changes and getting it out.

15 I think it's important enough for a step for us
16 that we want to have everyone take a look at it versus
17 having the letter be written and go out without everyone
18 being happy with it.

19 At least everyone knowing what it says.

20 COMMITTEE MEMBER WONG: This is Kenton in
21 Richmond. I say, go for it Jennifer.

22 MS. SHEN: Okay.

23 MS. LOUGH: This is Pattie Lough in San Diego.
24 Also it might be nice in between time if we can get the
25 wording from Goldie on the grandfather clause so we can have

1 that in our work product by the time of the next meeting for
2 a submission.

3 There were just a couple of areas there that Paul
4 was going to get for us. And also I can try to get my
5 information from OAL by the next meeting.

6 So the next meeting might be we have everything we
7 need. And that portion of discussing the next step.

8 MR. CHI: My understanding was Goldie before she
9 left did provide the grandfather clause to the Committee.

10 MS. LOUGH: I'm sorry, Pattie Lough. I didn't
11 hear that.

12 MR. CHI: This is William Chi down in, up in
13 Sacramento. My understanding from Goldie before she left
14 for her new assignment was that she did provide the
15 grandfather clause to the Committee before she left.

16 MS. LOUGH: Pattie Lough. I have not received it.

17 CHAIRMAN KIMSEY: This is Paul in Richmond. We'll
18 check into that and find it and get it out to people.

19 So we've got the grandfather clause from Goldie.
20 We're going to try and get some information on these various
21 products or these various aspects of a package, Fiscal
22 Impacts, Statement of Determinations, Informative Digest and
23 get some examples of that or tutorials or frameworks or
24 whatever from the Office of Administrative Law.

25 We're going to help with that as I believe also

1 Pattie said that she would try and find some information
2 too.

3 And then we're going to try and have a meeting
4 based on a draft that Jennifer, I'm thinking out loud here.

5 But if I work with Jennifer that would be a subcommittee.

6 Is that acceptable to the Committee on the
7 subcommittee, this subcommittee of Jennifer and myself would
8 come up with the draft cover letter for the Summary of
9 Revisions to go to Agency.

10 COMMITTEE MEMBER WONG: This is Kenton Wong. I
11 say, aye.

12 CHAIRMAN KIMSEY: Other comments?

13 MS. SHEN: This is Jennifer Shen. That sounds
14 good to me.

15 MR. LYLE: Bruce Lyle. I say, aye.

16 CHAIRMAN KIMSEY: Okay. And then so we'll try and
17 have that meeting, our next be our 15th meeting here in a
18 relatively short turn around besides looking at our cover
19 letter and being sure that our final work product which will
20 then be called a Summary of Revisions that we have filled in
21 some of the gaps that may exist.

22 Is there anything else that we want to do at our
23 subsequent meeting? Or have at our subsequent meeting?

24 MR. LYLE: Bruce Lyle. Will I, do you think I'll
25 be able to get is it, okay through Bagley-Keene that I get

1 the template on the Statement of Determination in order to
2 start working on it so I can bring that to the table at the
3 next meeting?

4 Or am I going to get that, do I have to get that
5 at the meeting?

6 MS. LOUGH: This is Pattie Lough. I am hoping to
7 get that as soon as possible so I can submit that to you
8 Paul so when the agenda goes out for the next meeting that
9 will be in the packet as well.

10 And it would be nice if, you know, we had Goldie's
11 clause in there. I could change the title on the work
12 product so that's ready to go.

13 And then maybe you and Jennifer, if your stuff can
14 be back then that can all be in the packet for the next
15 meeting so there's no delay.

16 CHAIRMAN KIMSEY: And this is Paul. Mr. Chi, I
17 mean, I understand the purpose of Bagley-Keene or see that
18 decisions are made in public view. Can not we get
19 information out to members of the Committee or public --

20 MR. CHI: Right. My, my, look, you can do that.
21 My point earlier was where there is feedback going from
22 Committee member to Committee member then that would
23 constitute a meeting but a unilateral distribution of
24 templates is not communication.

25 CHAIRMAN KIMSEY: Okay. At least it's not --

1 MR. CHI: A meeting --

2 CHAIRMAN KIMSEY: -- it's not two-way
3 communication (laughter). Just don't respond to the email.

4 MR. CHI: -- it's bilateral communication
5 (laughter).

6 CHAIRMAN KIMSEY: So, and I assume that Pattie and
7 I have distribution lists that will access people that are
8 interested.

9 So we both can get out whatever we can find with
10 regards to these subsequent pieces of the final document,
11 fiscal impacts, et cetera, et cetera.

12 Other comments or clarifications?

13 MS. SHEN: This is Jennifer Shen. I am, we've
14 already talked about this at the last meeting. We were
15 hoping that you might, even though someone came in many
16 years ago and went through the whole process that we now
17 have to go through with our final product, that we were
18 hoping that there might be someone that could come and kind
19 of give us a refresher as to how this whole process will
20 work and the different layers of bureacracy that we have
21 to go through.

22 Kind of give us an updated version of that. Is
23 that something that you were able to look into?

24 CHAIRMAN KIMSEY: It's, yes we've had some
25 discussion. Actually I'm blanking on what the final part of

1 it was. We can certainly try and I think part of this will
2 come when we're working with the Office of Administrative
3 Law and their website in what this process is.

4 It's obviously, you know, statewide and there may
5 be like I mentioned earlier, some training and maybe some
6 abbreviations of the whole process that we can get to the
7 Committee. I'll also look into that again.

8 Sorry I didn't get something more specific.

9 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:

10 This is Bob Haas. It's been made clear to my branch what's
11 referred to here as the program. That the Office of
12 Regulations will work with us to get the final revisions APA
13 compliant.

14 And they'll be submitted through our Office of
15 Regulations and go into a normal regulatory queue which is
16 quite long and will take a while for them to work on.

17 But that the, that the previous support that you
18 enjoyed several years ago would not be forthcoming at this
19 time.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 Another comment from the staff. Regarding, at that was
22 Cathy Ruebusch, her presentation. It was made at the second
23 meeting.

24 You can go online. The FDLB website, Department
25 of Public Health website and read the full transcript of

1 what she said.

2 In addition, she had a PowerPoint presentation and
3 some handouts. They're also available online.

4 So you could kind of duplicate that experience by
5 going online.

6 CHAIRMAN KIMSEY: Other comments or questions? We
7 do have on the agenda some time and the agenda item for the
8 Committee to review the draft regulatory work product if
9 there is besides the gaps that we've noted, the grandfather
10 clause and a few other things, if there's anything else that
11 anyone wants to comment either from the Committee of the
12 public on the work product there's time now that we can do
13 that.

14 Any, since we seem to be sort of winding down here
15 a little bit, in scheduling our next meeting we're pretty
16 much the next week starts March. Is there any blocks of
17 time that really don't work for any particular member of the
18 Committee at this point?

19 So we'll probably be trying to schedule a meeting
20 maybe that third week of March. I don't have a calendar in
21 front of me but --

22 MR. LYLE: The third week, this is Bruce Lyle.
23 The third week is the 22nd, Monday the 22nd through Friday
24 the 26th. Okay that's the fourth week.

25 The third week is would be the 15th through the

1 19th.

2 COMMITTEE MEMBER WONG: We have to have enough
3 time for Jennifer to make a draft with you and then get
4 these other things lined up for all the pieces for the
5 public before we're ready to meet.

6 CHAIRMAN KIMSEY: Yeah. Kenton was just
7 mentioning that there's a little bit of, I mean, Jennifer
8 and I are going to be meeting to, you know, get a draft
9 letter together.

10 So we're looking at probably, you know, this third
11 or fourth week of March. I don't anticipate this draft
12 letter taking a lot of --

13 COMMITTEE MEMBER WONG: Yeah, I don't either.

14 CHAIRMAN KIMSEY: -- a lot of time on Jennifer's
15 and my part. And I'll get in touch with Jennifer even later
16 this week so we can get started on that.

17 COMMITTEE MEMBER DAVIS: Paul this is Kevin Davis.
18 I'll be gone the last week of March and the first week of
19 April.

20 CHAIRMAN KIMSEY: Okay.

21 MS. SHEN: This is Jennifer Shen. I think we
22 should shoot for the third week then.

23 CHAIRMAN KIMSEY: That's the 15th through the 19th
24 did we decide?

25 MS. SHEN: Yes.

1 CHAIRMAN KIMSEY: Yep, okay. Other comments or
2 questions?

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
4 So we're reminded, under Bagley-Keene if we had a meeting on
5 the 15th that would require a notice, that would require a
6 notice on the 5th. So keep in mind there is that 10 day
7 lead time, so.

8 COMMITTEE MEMBER WONG: Uh-hum.

9 CHAIRMAN KIMSEY: And that's, I believe, next
10 Friday.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
12 Right so we --

13 CHAIRMAN KIMSEY: A week from this Friday.

14 COMMITTEE MEMBER WONG: The fifth --

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 So we need, we need that draft letter next week basically in
17 order to schedule the meeting, at least the early part of
18 the --

19 And Friday is a furlough day so it really serves
20 as (laughter) --

21 CHAIRMAN KIMSEY: Well Jennifer and I will work on
22 it. We'll see what we can get done. If we have to delay it
23 a week then we will but we'll work on that.

24 COMMITTEE MEMBER WONG: We'll work it out.

25 CHAIRMAN KIMSEY: Other questions or comments? If

1 not, I think we're coming to the end of our meeting. I want
2 to thank you all for your time. And you'll be getting an
3 email from us requesting availability for our fifteenth
4 meeting sometime in the, hopefully in the third week of
5 March. Thank you all very much.

6 (Thereupon, the California Department of
7 Public Health, Forensic Alcohol Review
8 Committee meeting adjourned at 3:00 p.m.)

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CERTIFICATE OF REPORTER

I, John Cota, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Department of Public Health, Forensic Alcohol Review Committee meeting, that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of March, 2010.

JOHN COTA