

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

**Meeting was not conducted because of a lack of a quorum.**

TWENTIETH MEETING  
MONDAY, APRIL 16, 2012  
10:00 A.M.

REPORTED BY:  
JOHN COTA

APPEARANCESReview Committee Members

Dr. Paul Kimsey, Chairperson (Richmond)

Mr. Paul R. Sedgewick (San Diego)

Mr. Kenton S. Wong (Richmond)

Lieutenant Kevin Davis (Sacramento)

Staff

Dr. David Kiang, Acting Chief, Food and Drug Laboratory  
(Richmond)

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

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

Ms. Natallia Spell, Research Scientist, Food and Drug  
Laboratory (Richmond)

Mr. Harbhajan Thandi, Research Scientist, Food and Drug  
Laboratory (Richmond)

Ms. Zenaida Zabala, Research Scientist, Food and Drug  
Laboratory (Richmond)

Also Present

Mr. Steve Woods, Department of Public Health (Sacramento)

Mr. Russ Huck, Department of Public Health (Sacramento)

Ms. Denise Lyons, Solano County Crime Lab (Sacramento)

Ms. Peggy Campbell, Office of Legal Services (Sacramento)

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1 been updated. I wish it was captain but it's still  
2 lieutenant (laughter).

3 CHAIRMAN KIMSEY: Okay.

4 THE REPORTER: Denise Lyons and who --

5 CHAIRMAN KIMSEY: Denise Lyons and Peggy Campbell.

6 THE REPORTER: And who are they with?

7 CHAIRMAN KIMSEY: Peggy Campbell is with our  
8 Office of Legal Services. And Denise Lyons --

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
10 Solano County Crime Lab.

11 CHAIRMAN KIMSEY: Solano County Crime Lab.

12 THE REPORTER: Thank you.

13 CHAIRMAN KIMSEY: In San Diego Paul are you still  
14 on your own?

15 COMMITTEE MEMBER SEDGEWICK: I'm still the only  
16 one here in San Diego. Correct.

17 CHAIRMAN KIMSEY: Okay. And here in Richmond we  
18 have a retired gentleman.

19 DR. HAAS: Yeah. Bob Haas.

20 ACTING CHIEF KIANG, FOOD AND DRUG LAB: David  
21 Kiang.

22 MS. ZABALA: Zenaida Zabala.

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

25 RESEARCH SCIENTIST SPELL: Natallia Spell.

1 CHAIRMAN KIMSEY: Paul Kimsey.

2 COMMITTEE MEMBER WONG: Kenton Wong.

3 MR. THANDI: Harbhajan Thandi.

4 THE REPORTER: And John Cota with Ehlert Business  
5 Services.

6 CHAIRMAN KIMSEY: Okay. On our agenda, the first  
7 item is opening remarks and discussions of the agenda.  
8 Let's see, the opening remarks I would have -- as my  
9 understanding, as members of this committee you are all  
10 required to have a Form 700 on file with the Department.

11 And so it's that time of year again. We're  
12 actually a little bit behind the time but -- so please dust  
13 that off, update it and get it into the Department.

14 We've had a change here. Dr. Bob Haas has retired  
15 and Dr. David Kiang is the Acting Branch Laboratory Chief  
16 for the Food and Drug Laboratory.

17 Let's see, what else. We mentioned at the last  
18 meeting that the Attorney General's opinion had come out.

19 We had a little bit of a request to sort of  
20 summarize that.

21 And the Attorney General was pretty much asked two  
22 questions. The first question was, what powers the  
23 Department has to enforce their Forensic Alcohol Program.  
24 And the second question had been, can the Department require  
25 a laboratory to participate in the Department's proficiency

1 testing or proficiency test described under the regulations?

2 On the first question the Attorney General found  
3 that the Department could seek mandamus or injunctive relief  
4 from a court to enforce compliance with the forensic alcohol  
5 regulations.

6 This is a topic we'd had over the number of  
7 meetings which was, what powers of enforcement would the  
8 Department have over its own regulations.

9 And the Attorney General has found that we have  
10 this mandamus or injunctive relief aspect of, that we could  
11 go to a court with.

12 The second question with regards to, can the  
13 Department require a laboratory to participate in the  
14 Department's proficiency test -- the Attorney General said,  
15 yes. That the state forensic alcohol laboratories, I guess  
16 if there is some quoting language here, shall comply with  
17 existing Department regulations, Health and Safety Code  
18 100700 (a) and that the Department shall enforce those  
19 regulations 700 and 725, 100725 with the single exception  
20 that it shall not require a laboratories to be licensed, be  
21 licensed.

22 But the AG also cited a section of the law, 100170  
23 (a), (1) which provides the Department with the authority to  
24 take all necessary actions to enforce its regulations.

25 So, obviously that's a just a small summary of

1 some aspects of the Attorney General's opinion or analysis  
2 and comment.

3 But I think it's, as I mentioned, we had had  
4 several discussions on how the Department might enforce  
5 these regulations. So I think that was important for the  
6 Committee's work.

7 Any questions on the Attorney General's or other  
8 comments on the Attorney General's opinion?

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
10 Actually, one quick comment. Just to set the time frame. I  
11 think you stated that at the last meeting we mentioned that  
12 the opinion had been issued. But the opinion was issued,  
13 last meeting was November 15th and the opinion was issued on  
14 December 27th --

15 CHAIRMAN KIMSEY: Ah, okay.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
17 -- so this is --

18 CHAIRMAN KIMSEY: This is the first time, okay.

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
20 Right.

21 CHAIRMAN KIMSEY: I know we had been waiting for  
22 it for a number of meetings so -- thank you for that  
23 correction.

24 Any comments either on the Attorney General's  
25 opinion or opening remarks or discussions with regards to

1 the agenda? Pretty much the rest of the day we're going to  
2 be discussing the language of the regulations.

3 COMMITTEE MEMBER WONG: So Paul, what does  
4 mandamus or injunctive relief for enforcement mean?

5 CHAIRMAN KIMSEY: Aha.

6 COMMITTEE MEMBER WONG: I'm sorry I --

7 CHAIRMAN KIMSEY: No, no, it's fine --

8 COMMITTEE MEMBER WONG: -- I'm familiar with the  
9 legalese. It's like, what does that mean?

10 CHAIRMAN KIMSEY: Peggy, would you mind -- Mrs.  
11 Campbell would you mind giving us sort of an overview?

12 MS. CAMPBELL: Well, mandamus would be going into  
13 court and seeking an order forcing an entity to comply with  
14 the law or regulations.

15 Injunctive relief is basically, the opposite.  
16 Where you would stop an entity from doing certain things  
17 that are against the law.

18 So, it's -- I think injunctive relief is generally  
19 a little faster to get than mandamus. But that's basically  
20 the -- what it is.

21 CHAIRMAN KIMSEY: And for those that are  
22 interested, I believe, at least in my packet here in  
23 Richmond we have a copy of the opinion, a complete copy.

24 So, you can look at it further.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 It is online.

2 RESEARCH SCIENTIST SPELL: It's online, yes.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 It's on the website --

5 CHAIRMAN KIMSEY: And it's on the website --

6 RESEARCH SCIENTIST SPELL: Yes --

7 CHAIRMAN KIMSEY: -- also. So, any other comments  
8 on the agenda --

9 COMMITTEE MEMBER DAVIS: Real quick, this is Kevin  
10 Davis.

11 CHAIRMAN KIMSEY: Sure.

12 COMMITTEE MEMBER DAVIS: This is a question on the  
13 AG opinion.

14 CHAIRMAN KIMSEY: Uh-hum.

15 COMMITTEE MEMBER DAVIS: We were briefly talking  
16 about it here. I see that it was requested by  
17 Assemblymember Hall. And this is just me being curious.  
18 Does anyone know on whose behalf she requested or she's just  
19 independently curious or how this came about?

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 I think I can respond. First, it's a male --

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

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 -- Isadore, "e", Hall --

25 RESEARCH SCIENTIST SPELL: Isadore --

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
2 -- kind of a strapping young man, so be careful.  
3 Assemblyman Hall sponsored legislation in 2009, AB 599 that  
4 would have, it was a little narrower than the opinion. It  
5 would have exempted labs that were, I think the intent was  
6 to exempt labs that were accredited by an accreditation body  
7 from the Department's current PT requirements. And that  
8 actually passed the Legislature but was vetoed by the  
9 Governor.

10 Subsequent to that he requested an opinion that,  
11 you have a copy of that opinion.

12 COMMITTEE MEMBER DAVIS: Thank you.

13 CHAIRMAN KIMSEY: Okay. If there's no other  
14 questions I think just to summarize, basically, at our last  
15 meeting we were discussing four bullets that the Committee  
16 had been asked to look at the Department's role and  
17 previously and we assigned various members of the community.

18 We had a broad discussion and some understandings.  
19 And we had members of the Committee draft some regulatory  
20 language and the first item, the first bullet that Bruce  
21 Lyle came up with had to do with proficiency testing.

22 And he has the one sentence, and I believe this is  
23 also in your packet, laboratories will direct and approve to  
24 provider to submit all external proficiency test results to  
25 the Department at a minimum of one per year.

1           And I know, obviously, well, maybe it's not  
2 obvious -- my background is not necessarily in forensic  
3 laboratories and I know that pretty much all laboratories do  
4 some form of proficiency testing at some frequencies.

5           And I'm just curious, I believe currently the  
6 Department's proficiency testing is twice a year. Is once a  
7 year sufficient? I'm not sure, you know, what other  
8 proficiency test forensic laboratories do. But is this sort  
9 of the norm with regard to proficiency testing, would be one  
10 question I would have.

11           And, then also, would this proficiency testing be  
12 per method? And what role do we want the Department to have  
13 besides, if anything, besides a keeper of the results.

14           Is the Department going to take any action on bad  
15 results or notify anybody about bad results? Those are some  
16 questions that I had.

17           RESEARCH SCIENTIST SPELL: I can answer those  
18 questions.

19           CHAIRMAN KIMSEY: Anything else from the rest of  
20 the Committee at this point?

21           COMMITTEE MEMBER WONG: Well, with regard to the  
22 external proficiency testing, I think that's within  
23 compliance and consistent with most of the accreditation  
24 requirements.

25           Most labs require analysts to provide or perform

1 one external proficiency in whatever discipline they're  
2 involved in per year.

3 So, I think that's where that's --

4 CHAIRMAN KIMSEY: So, one is sort of standard --

5 COMMITTEE MEMBER WONG: Yeah --

6 CHAIRMAN KIMSEY: -- in forensics? And is this to  
7 test -- I mean, obviously, it's to test the analysts but is  
8 it per method?

9 COMMITTEE MEMBER WONG: I think in this case it  
10 probably would be per method.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
12 Just one clarifying point. The accreditation bodies without  
13 exception I believe, don't because I think you may have  
14 misstated that slightly, don't require external proficiency  
15 tests for the analysts.

16 They do require, I'm speaking --

17 RESEARCH SCIENTIST SPELL: Other labs --

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: -  
19 - I'm speaking ASCLD/LAB, they require the lab to  
20 participate in external proficiency tests. And they don't  
21 specify -- they specify one.

22 COMMITTEE MEMBER WONG: Right.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 But it's not each analyst we're talking about. It's --

25 CHAIRMAN KIMSEY: It's the laboratory itself.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 -- it's the laboratory itself. Yeah.

3 CHAIRMAN KIMSEY: So, do we want it to be analysts  
4 per method or --

5 COMMITTEE MEMBER WONG: I don't see a problem with  
6 that. And I don't think it should be onerous in any way. I  
7 don't think that's too much to ask.

8 CHAIRMAN KIMSEY: No, I know some other laboratory  
9 types, you're doing proficiency testing, you know, three and  
10 four times a year or once a month. So, I'm just, you know,  
11 it just depends upon the type of testing you're doing, so.

12 And what did we want, I mean, obviously, we're  
13 reporting the results to the Department. Do we want -- if  
14 it's a failure, do we want the Department to do anything  
15 about that or -- because currently, I think, the Department  
16 runs proficiency tests, we obviously notify the laboratories  
17 if they've failed and there's an expectation that they would  
18 do another test and come into compliance so to speak.

19 DR. HAAS: Well, isn't the implication even in  
20 Bruce's language, that by providing all the external  
21 proficiency test results they'll provide the reference  
22 values for review of these results versus the reference  
23 values?

24 I would have thought that that was, at least in  
25 the previous discussions that was always the implication.

1 Was that FDLB would get the analysts or the laboratory's  
2 results as well as the reference values that the submitting,  
3 what the provider provided.

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
5 I think -- a comment. I think there are two questions. One  
6 is, well, what is the Committee's intent in this one  
7 sentence, piece of regulations.

8 But I think you'd agree that under the current  
9 regulatory requirements, if you're going to have, when you  
10 describe a role for the Department it has to be clearly  
11 spelled out in the regulations.

12 So, I hope and I kind of agree that this program  
13 implies some level of review but I think the regulations  
14 have to spell out the actual requirements that are being  
15 imposed on the laboratory.

16 How would we -- what standards would we apply to  
17 review those results?

18 CHAIRMAN KIMSEY: And then also the bigger  
19 question is, what happens with the current Department's  
20 proficiency testing program? Is that going to go away as a  
21 result of this -- and I guess that means we're going from  
22 two proficiency tests a year down to one; which if that is  
23 the Committee's, that's fine. I mean, that's obviously, the  
24 Committee's decision.

25 But then also, Bruce's language says, members will

1 direct and approve provider. I don't believe our  
2 Departmental program is approved.

3 And we might want to say who, who winds up doing  
4 the approval.

5 So, then I guess there's some unanswered questions  
6 with regards to the one sentence.

7 And I think some of that may need to have a  
8 broader discussion with some of the other members that  
9 aren't present at the moment.

10 So, is any of the Forensic Alcohol Committee  
11 members have some comments they want to make now? I have a  
12 feeling that we're going to have to revisit this with a  
13 broader representation of the Committee, at an additional  
14 meeting but --

15 I mean Paul, any -- your thoughts down in San  
16 Diego.

17 COMMITTEE MEMBER SEDGEWICK: As you know, I was on  
18 the Proficiency Review Committee more at ASCLD/LAB. And  
19 they actually do inspect laboratories but provide  
20 proficiency tests.

21 At this point, if their awarding requires an  
22 approved provider I think it's pretty basic that somebody  
23 has to be designated to do approvals. That's my thought on  
24 the subject.

25 CHAIRMAN KIMSEY: Okay. No, I would agree. I

1 mean, I know in other programs in the Department, the  
2 Department is actually the approver.

3           So, I mean you know, it does need to be clear.

4           And which sort of brings up a point in general  
5 about our regulations. I mean, obviously, there's going to  
6 be issues of what are sometimes referred to as, clarity and  
7 specificity as we move forward with all of this.

8           And so, just keep that in mind that we will  
9 probably be being even -- the next, at some point, this  
10 package goes again back to Agency and they have their 90  
11 days. And then it comes to the Department to write the  
12 regs.

13           And at some point when that actually takes place,  
14 I'm sure there's going to be questions of what the intent of  
15 the Committee was and some wordsmithing, dare I say.

16           And so at some point the Committee, I'm sure, will  
17 be asked for that. But this is sort of an example where  
18 here we're proposing to use, approved.

19           If this, you know, we would probably be asked,  
20 okay, what do we mean by, approval? And I know, sometimes  
21 that approval even gets to the point of, this is what you  
22 will use to approve a laboratory.

23           So, or, as Paul has mentioned, we could just use  
24 ASCLD's criteria they've already established.

25           So, any other comments on bullet number one at

1 this point?

2 DR. HAAS: Yeah, it's Bob Haas. As a member of  
3 the public I'm just reading through the AG's opinion here  
4 and I'm not an expert on this by any means. But it seems to  
5 be that, and I'll quote here, that this is with regard to  
6 the proficiency, the Department's administered proficiency  
7 test.

8 The argument is that the new requirement for  
9 annual ASCLD/LAB-approved proficiency testing supplants or  
10 impliedly repeals the Department's own proficiency testing  
11 efforts for the following, for the reasons that follow we  
12 disagree.

13 And then they go on to conclude that the  
14 Governor's veto message said that, the Governor encourages  
15 the stakeholders to work with DPH on a solution that does  
16 not eliminate important state functions.

17 And finally, they, in the final paragraph of this  
18 opinion, they say, for the following, foregoing reasons we  
19 conclude as to the second question that although  
20 laboratories engaged in performing forensic alcohol tests  
21 must follow the ASCLD/LAB guidelines for proficiency testing  
22 and must obtain the required proficiency test from an  
23 ASCLD/LAB with an approved provider, comma, the Department  
24 may nevertheless, (a) require a laboratory to also perform  
25 separate proficiency tests under the Department regulations

1 using samples not obtained from an ASCLD/LAB-approved  
2 provider and, (b) discipline a laboratory for failing to  
3 perform these additional tests.

4           So, maybe I'm missing something here that the  
5 notion of eliminating the DPH-provided proficiency tests  
6 seems to be moot.

7           CHAIRMAN KIMSEY: I know that we've been  
8 continuing the program for the last five years. And I read  
9 that in the AG's opinion also.

10           But, I think that is as the regulations currently  
11 exist.

12           DR. HAAS: Uh-hum.

13           CHAIRMAN KIMSEY: I think this Committee still has  
14 the authority, possibly, moving forward since we're  
15 changing, you know, changing the regulations, that this  
16 Committee could remove the Department from proficiency  
17 testing.

18           I think that's within the authority of the group.  
19 I'm not saying that's what I would recommend.

20           But I think the AG's opinion is about the  
21 regulations as they exist now based on the legislation that  
22 did not remove the Department, remove the Department from  
23 licensing. But the legislation did not remove the  
24 Department from proficiency testing.

25           But it's my understanding that this Committee

1 would still have the authority in redoing the regulations,  
2 and I may be wrong, but I think that this Committee has the  
3 authority under the regulations, excuse me, under their  
4 legislative mandate to redo the regulations to remove, since  
5 it's a regulatory requirement. So I don't know.

6 DR. HAAS: Well, I would fully agree that they  
7 have the authority --

8 CHAIRMAN KIMSEY: Right.

9 DR. HAAS: -- to do that --

10 RESEARCH SCIENTIST SPELL: But --

11 DR. HAAS: -- but that brings back to whether,  
12 back in the original legislation, whether that, aspect, of a  
13 revised regulation or summary of revisions would make it  
14 through the process.

15 We've already seen that one time it failed already  
16 at the Agency level. And I would guess that, and it's a  
17 guess, that this would happen again.

18 So if the authority was removed in the revised  
19 regulations, it would be rejected by Agency.

20 And then Committee would be back to where we were,  
21 what, two and a half years ago or so?

22 CHAIRMAN KIMSEY: Other comments on proficiency  
23 testing (no response).

24 Well, okay. Let's move on to Jennifer Shen's  
25 proposed language where she has basically talked about,

1 remove requirements for a laboratory to provide the  
2 Department with records of its activities under the  
3 regulations including notification of a laboratory of its  
4 intent to perform forensic alcohol analysis. And she  
5 suggested that was the bullet as it came back from, to the  
6 Committee.

7 I suggest we address the following matter, 1216  
8 (a), every laboratory performing forensic alcohol analysis  
9 will have on record with the Department the following, a  
10 statement of intent to perform or stop performing alcohol  
11 analysis to include, notification for breath and fluid  
12 analysis specifically.

13 Two, the laboratories address as well as the name,  
14 address and phone of the laboratory's point of contact.

15 Three, a list of laboratory personnel qualified to do  
16 forensic alcohol analysis.

17 And four, a list of instruments used by the  
18 laboratory personnel for alcohol analysis.

19 Comments on that first part?

20 RESEARCH SCIENTIST SPELL: Natallia Spell. A list  
21 of instruments used by a laboratory personnel of alcohol,  
22 personnel of alcohol analysis, does it mean like also maybe  
23 include the methods as well?

24 Or we assume that each instrument corresponds to  
25 method?

1 CHAIRMAN KIMSEY: I'm not sure. I think we'll  
2 have to ask Jennifer. She doesn't have method in there.

3 RESEARCH SCIENTIST SPELL: It's just being logical  
4 to include it, method SOP.

5 COMMITTEE MEMBER WONG: This is Kenton. I can't  
6 remember whether that was one of the Department's beefs when  
7 they sent it back.

8 DR. HAAS: Doesn't having the list of instruments  
9 indicate which method is being used? Or is it possible, I  
10 mean, I'm not familiar with the instrumentation but at least  
11 with the breath analysis instrumentation the instrument  
12 defines the method.

13 COMMITTEE MEMBER WONG: Sure.

14 RESEARCH SCIENTIST SPELL: Well, breath analysis  
15 instrument is very kind of narrow instrumentation --

16 DR. HAAS: Right.

17 RESEARCH SCIENTIST SPELL: -- and simple. To my  
18 knowledge, I worked in a lab for many years, it could be  
19 that one instrument can be used for both of two methods.

20 DR. HAAS: Okay. Well certainly that would be --

21 RESEARCH SCIENTIST SPELL: With some variation on  
22 --

23 DR. HAAS: -- the case if it was GC/MS or  
24 whatever. But I don't know -- what, the, well it's  
25 addressed to any of the three of you since you're all do

1 forensic alcohol analysis.

2 I know that in the, what, the four of you  
3 including Harby, you guys use a regular GC/MS to do some of  
4 the blood analysis, correct?

5 RESEARCH SCIENTIST SPELL: The GC --

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
7 Well the GC --

8 DR. HAAS: Yeah, okay. So, that doesn't really  
9 help. You know, you get a list of, you know, it's a Perkin  
10 Elmer or an HP, you know, GC doesn't really tell you  
11 anything about the method that's being done. So --

12 RESEARCH SCIENTIST SPELL: Well, recently we  
13 scored candidates for recent PT results and written  
14 examinations. And I noticed that the same, the same lab,  
15 there were two analysts candidates, the same lab, apparently  
16 the same equipment.

17 What was unusual that one person submitted one  
18 concentration, let's say, concentration A, for a QC standard  
19 of a QC sample. And, four results for it.

20 The second analyst submits concentration B of QC  
21 sample and two results. Apparently the same method, Clarus  
22 PE, HeadSpace and my question was, maybe they do have two  
23 methods for one piece of equipment.

24 Or, a misunderstanding or the third, they just  
25 don't follow the same SOP. For some reason it's like a

1 verbal thing. One is doing two replicates and another doing  
2 four replicates --

3 DR. HAAS: Right.

4 RESEARCH SCIENTIST SPELL: So, what is the case?  
5 We don't know.

6 DR. HAAS: Yeah. But that doesn't address the  
7 question of --

8 RESEARCH SCIENTIST SPELL: Yeah, I, this is just  
9 example --

10 DR. HAAS: -- method. It's probably not a  
11 different method. They probably just did the analysis twice  
12 with two replicates, for some reason. That would be my  
13 guess. I don't know, again, you know, I -- I mean, if it  
14 was two and three it would be an even more bizarre example.

15 RESEARCH SCIENTIST SPELL: Yeah.

16 DR. HAAS: But since it's a multiple of two --

17 CHAIRMAN KIMSEY: The second part that Jennifer  
18 submitted was, 1216 (h). Every laboratory performing  
19 forensic alcohol analysis will have on record with the  
20 Department the following, a copy of the diplomas or  
21 transcripts of relevant education for each individual  
22 performing forensic alcohol analysis for the laboratory.  
23 The relevant education includes, proof of a baccalaureate or  
24 higher degree in any applied physical or natural science.

25 Two, a training summary of the topics outlined in

1 1216.1 (e), (2) with a completion date for each individual  
2 performing forensic alcohol analysis for the laboratory.

3 Three, copies of all qualifying tests to include,  
4 written and/or practical examinations for each individual  
5 performing forensic alcohol analysis for the laboratory.

6 Four, proof of completion of a competency test  
7 which follows the requirements articulated in 16.1 (e), (3)  
8 for each individual performing forensic alcohol analysis for  
9 the laboratory.

10 Five, written notification to the Department  
11 alerting it that the individual has successfully completed  
12 his or her training and is beginning case work.

13 And six, proof of completion of a proficiency test  
14 as outlined in 16, 1216.1 (a), (3) for each analyst  
15 performing forensic alcohol analysis for the laboratory.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
17 Just a point of -- we're batting out of order a little bit.

18 So this is actually bullet number two. And what we  
19 previously discussed was bullet number four, at least in the  
20 order that they were presented.

21 RESEARCH SCIENTIST SPELL: Yeah, it's says here in  
22 the --

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
24 So, let me jump along as I start talking about it.  
25 Regarding bullet number two, it wasn't clear as I read

1 through this that, that it captures the Committee's position  
2 on whether or not the Department will be reviewing and  
3 approving the qualifications of persons employed in forensic  
4 alcohol analysis.

5           There are references in the text here to, to  
6 laboratories submitting proof of completion and written  
7 notification to the Department.

8           The language is pretty vague and it, I don't, it  
9 doesn't capture the idea, I don't think, that is, that is it  
10 the lab that is, that will be approving the qualifications  
11 and simply informing, notifying the Department that they  
12 completed that approval process or will it be the Department  
13 reviewing the educational and experience qualifications of  
14 the, of an individual nominated by the laboratory and  
15 submitting a proficiency test and perhaps a written  
16 examination to the candidate to make sure that the, he has  
17 the knowledge and skills to perform forensic alcohol  
18 analysis.

19           So, that's what we do now. And, I believe, that's  
20 what was captured in the bullet point provided in the  
21 December 10th letter.

22           And I'm not sure that the language here describes  
23 that clearly.

24           CHAIRMAN KIMSEY: And I would agree that it needs  
25 to be clarified. Is the lab approving personnel and

1 notifying the Department and providing the Department with  
2 all the information or is the Department going to be the  
3 approver?

4 I think it was Jennifer's intent, actually, that  
5 it was the lab that was going to be doing the approving and  
6 the Department was going to be, have access to the  
7 information.

8 But we'd have to talk with her to confirm that.  
9 But I think that's part of my vague memory.

10 Did you have any comment on bullet four?

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

12 Well, I'm -- yeah, I did have comments on bullet four. And  
13 they're kind of complicated. Basically, Jennifer chose to  
14 revise Article Two of the Title 17 regulations.

15 And in particular, she chose to describe (a), to  
16 revise a section that describes the, quote, unquote,  
17 authority, to perform forensic alcohol analysis.

18 So I think maybe the good news for the Department  
19 here, for the Committee is a recognition that if you're  
20 going to have an authorization requirement, you need an  
21 authority. And the only, the only candidate, I believe  
22 here, is the Department.

23 So perhaps there is a subtle recognition that the  
24 Department will retain an oversight authority role.

25 There are, as with many of these examples of

1 proposed language that, I don't, I think there's a lack of  
2 detail in that it doesn't define the role of the Department  
3 in reviewing the information that's submitted.

4 I would also, probably on a -- less important, I  
5 don't, I think there's some points of information that are  
6 missing. But I think we can probably agree on that.

7 But, I think we have to be clear when the  
8 regulations, exactly what role the Department would play and  
9 how they would exercise that role in reviewing the  
10 information submitted, for example, for a new laboratory.

11 A new laboratory comes onboard, currently the  
12 procedures for approving new a laboratory and we've had at  
13 least one new laboratory since 2005, the procedures involved  
14 the submission of certain items of information that, the  
15 methods that the lab would use, any training that the lab  
16 would, is going to perform, initial proficiency tests of the  
17 staff, an initial site inspection.

18 And, by the way, regarding site inspections, I  
19 would think that under this section which is involved with  
20 among other things, notification and the access to records.

21 In a way I think an initial site inspection could be or  
22 should be viewed as a technique for accessing records.

23 I think we could probably, perhaps reach some  
24 agreement. If an entirely new laboratory that the  
25 Department doesn't know anything about; it's appropriate to

1 do an onsite inspection to make sure that the equipment that  
2 they indicate they're going to be using and the, generally  
3 to make sure that the, that they're doing what they describe  
4 in the written methods descriptions and they have the  
5 capability of doing that and they're maintaining proper  
6 records.

7           A site inspection also might be valuable even down  
8 the road for cause if a lab had some analytical difficulties  
9 or wasn't complying or didn't appear to be complying with  
10 the requirements of the regulations, I think it's  
11 appropriate for an entity which has the authority to  
12 authorize a lab to perform forensic alcohol analysis should  
13 have the ability to go in and look at that lab, that lab's  
14 activities if, not on a periodic bases necessarily or not on  
15 a periodic bases but for cause.

16           CHAIRMAN KIMSEY: Any comments from the Committee  
17 on bullets two and four (no response)? Bullet three, the  
18 training of personnel. I'll read it.

19           I believe Kenton brought this forward. In 1218,  
20 training program approval, any organization, laboratory,  
21 institution, school or college conducting a course of  
22 instruction for persons to qualify under these regulations  
23 shall submit a course summary, list of instructors and their  
24 qualifications to the Department for approval.

25           In 1218.1, additional requirements at the

1 discretion of the Department, any phase or portion of a  
2 training program shall be subject to alteration in an effort  
3 to update the program as technology advances are made or if  
4 a portion has been judged inappropriate.

5 In 1218.2, contracts. The Department, the  
6 Department may contract with persons it deems qualified to  
7 administer such practical tests and oral or oral  
8 examinations as may be required under these regulations.

9 This section shall not be construed to authorize  
10 the delegation of any discretionary functions conferred on  
11 the Department by law including but no limited to, the  
12 evaluation of tests and examinations.

13 This was in response to bullet point three which  
14 had said, remove the CDPH authority to review and approve  
15 training programs intended for persons to qualify under the  
16 regulations, example, breath instrument operator training.  
17 Therefore, add back in.

18 COMMITTEE MEMBER DAVIS: This is Kevin. Just to  
19 clarify. Is this existing language?

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
21 Yes.

22 COMMITTEE MEMBER WONG: It was.

23 CHAIRMAN KIMSEY: Right. Proposed to be --

24 COMMITTEE MEMBER WONG: Right, correct.

25 COMMITTEE MEMBER DAVIS: I mean, existing current

1 Title 17 language, right?

2 COMMITTEE MEMBER WONG: Correct.

3 CHAIRMAN KIMSEY: Correct. Any discussion (no  
4 response). Well, that's the four bullets and the language  
5 that was presented. Obviously, unfortunately with the, two  
6 of the authors not be able to be here and two other members  
7 wanting replacements, we're not able to really take any  
8 votes.

9 But, what is the pleasure of the group and the  
10 Committee? How do we want to proceed with the rest of our  
11 time.

12 MR. WOODS: Paul, this is Steve Woods from  
13 Sacramento. I did put a call into Jennifer's office. They  
14 were trying to contact her via her cell phone. I told them  
15 the situation but yet the office, I don't know if you want  
16 to give a couple of minutes to see if they were able to  
17 trace her down. If they were going to try to call and  
18 contact her on her cell phone.

19 CHAIRMAN KIMSEY: Okay, thank you. We could also  
20 take a break for, you know, 20 minutes and come back and see  
21 if Jennifer is able to be on the line.

22 I think Clay was actually able to get a hold of  
23 Bruce. And Bruce Lyle will not be able to be available  
24 today.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 And I also left a message for Jennifer --

2 COMMITTEE MEMBER WONG: Sure --

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
4 -- earlier this morning.

5 CHAIRMAN KIMSEY: So, how does taking a break for  
6 20 minutes and coming back, everyone take a bio break, get  
7 some tea, coffee. And so, let's see, it's, let's say it's  
8 five minutes to eleven; let's come back at 11:15 and see  
9 where we are.

10 COMMITTEE MEMBER DAVIS: Sounds good.

11 CHAIRMAN KIMSEY: Thank you.

12 (Off the record for a short break)

13 CHAIRMAN KIMSEY: Any news? Has Sacramento heard  
14 back from Jennifer at all?

15 MR. WOODS: Hello Paul. This is Steve Woods. I  
16 called back her office, they were leaving messages.

17 CHAIRMAN KIMSEY: Okay.

18 MR. WOODS: She's not picking up on the phones  
19 because I asked her to send me an email if she hears one way  
20 or the other. But I haven't heard anything back.

21 CHAIRMAN KIMSEY: Okay, thank you. And Paul, I  
22 assume you're still there in San Diego?

23 COMMITTEE MEMBER SEDGEWICK: I'm the only one here  
24 in San Diego (laughter).

25 CHAIRMAN KIMSEY: Well, what is the feeling of the

1 Committee? Are we, we've had a bit of our discussion. Is  
2 there -- we can obviously continue that. Barring no further  
3 discussion I think we can start to think about rescheduling  
4 another meeting.

5 We've had two Committee members, well one  
6 officially requests a replacement, Ms. Tanney.

7 Mr. Zielenski has expressed interest in not  
8 attending but we haven't really gotten a resignation letter  
9 from him yet. But, you know, we can work on that.

10 And so, I guess, is there anything else any of the  
11 Committee members would like to have us discuss at this  
12 point (no response)?

13 Then I think we'll, obviously think about getting  
14 a couple of more people appointed to the Committee and  
15 trying to reschedule the meeting pretty much within the time  
16 frame, you know, the shorter time frame possible, maybe into  
17 June sometime. Of course that gets, that actually gets into  
18 peoples' vacation time. But anyhow, we'll reschedule a  
19 meeting.

20 Any other comments from the Committee or from any  
21 of the members or the public that -- before we sign off (no  
22 response)?

23 Well, thank you all very much for your time and  
24 you'll be getting an email from us looking to reschedule our  
25 21st meeting.

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COMMITTEE MEMBER DAVIS: Thank you.  
CHAIRMAN KIMSEY: Thank you all.  
(Thereupon, the California Department of  
Public Health, Forensic Alcohol Review  
Committee meeting adjourned at 11:18 a.m.)

## 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 30th day of April, 2012.

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JOHN COTA