

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

TWENTY-FIRST MEETING
THURSDAY, SEPTEMBER 6, 2012
10:30 A.M.

REPORTED BY:
JOHN COTA

APPEARANCESReview Committee Members

Dr. Paul Kimsey, Chairman (Richmond)

Lieutenant Kevin Davis (Sacramento)

Mr. Dan Jeffries (San Diego)

Mr. Bruce Lyle (San Diego)

Mr. Paul R. Sedgwick (San Diego)

Ms. Jennifer Shen (San Diego)

Mr. Mark Slaughter (Sacramento)

Staff

Dr. Bahman "Bob" Moezzi, Acting Chief, Food and Drug Laboratory (Richmond)

Mr. Clay Larson, Chief, Abused Substances Analysis Section, Food and Drug Laboratory (Richmond)

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

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

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

Also Present

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

Mr. Dave Koenitzer, California Department of Justice (Sacramento)

Karen J. Buckman, District Attorney's Laboratory of Forensic Services, Sacramento County (Sacramento)

Christopher Fogelberg, District Attorney's Laboratory of Forensic Services, Sacramento County (Sacramento)

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1 Crime Lab.

2 CHAIRMAN KIMSEY: Okay, welcome. I'm assuming we
3 have -- in San Diego we have Jennifer Shen, Paul Sedgwick
4 and Bruce Lyle.

5 COMMITTEE MEMBER SEDGWICK: Correct.

6 CHAIRMAN KIMSEY: Okay. And Dan Jeffries has not
7 arrived yet.

8 COMMITTEE MEMBER SHEN: He has.

9 COMMITTEE MEMBER JEFFRIES: I'm right here.

10 CHAIRMAN KIMSEY: Okay.

11 COMMITTEE MEMBER JEFFRIES: No parking (laughter.)

12 CHAIRMAN KIMSEY: Great. So the only member we
13 are missing is Kenton Wong at the moment and hopefully he'll
14 be able to make it here in a few minutes.

15 In Richmond here let's go around the room. I am
16 Paul Kimsey.

17 RESEARCH SCIENTIST SPELL: Natallia Spell.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 Clay Larson.

20 ACTING FOOD AND DRUG LABORATORY CHIEF MOEZZI: Bob
21 Moezzi.

22 RESEARCH SCIENTIST ZABALA: Zenaida Zabala.

23 MR. THANDI: Harby Thandi.

24 CHAIRMAN KIMSEY: And our stenographer today?

25 THE REPORTER: I'm John Cota with Ehlert Business

1 Group.

2 MS. COTA: And Ramona Cota with Ehlert Business
3 Group.

4 CHAIRMAN KIMSEY: Okay. All right, I think we've
5 identified everyone.

6 Please, you know, as we have a discussion,
7 identify yourselves for the ease of the stenographer.

8 And looking at our agenda, Opening Remarks and
9 Discussion of the Agenda. I don't think I have any earth-
10 shattering news from the Department. And so any comments or
11 questions on the agenda as presented?

12 (No response.)

13 If not I think we can move right into our
14 continued discussion of the revisions of our draft
15 regulatory work product.

16 At the end of our last meeting, Kenton and
17 Jennifer were going to work on the language for Article 4 of
18 Training of Personnel, which they have done and we have
19 gotten out to the group.

20 Jennifer, since Kenton is not here can you walk us
21 through the Article 4.

22 COMMITTEE MEMBER SHEN: I will do my best.

23 (Inaudible) I didn't have to do this.

24 What we were trying to do was address bullet, I
25 think it's bullet number 3, the concerns from the California

1 Department of Public Health. And bullet 3 was: Remove
2 (audio breaking up) training programs intended for persons
3 to qualify under the regulations. So to address that
4 particular issue.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
6 She's breaking up a little bit.

7 CHAIRMAN KIMSEY: Yes, you're breaking up a bit,
8 Jennifer. If it's possible to get closer to the mic.

9 (Static and interference.)

10 COMMITTEE MEMBER SHEN: Okay. Is that better?

11 CHAIRMAN KIMSEY: That's much better.

12 COMMITTEE MEMBER SHEN: Anyway, we were attempting
13 to -- do I need to start over?

14 CHAIRMAN KIMSEY: Yes, I think for the purposes of
15 the stenographer, please.

16 COMMITTEE MEMBER SHEN: Okay, starting over. I
17 was wishing Kenton was here.

18 We were attempting, after our last meeting, to
19 address bullet point 3 from the letter. Bullet point 3 is
20 one of the items that the California Department of Public
21 Health had issue with in our first rendition.

22 That bullet point is to remove CDPH authority to
23 review and approve training programs intended for persons to
24 qualify under the regulations. That was the concern the
25 Department raised.

1 So what we talked about last time was trying to
2 come up with a compromise where the laboratories still
3 maintain some control and were able to particularly have
4 some control over how they train their people but the
5 Department wasn't cut out from seeing what type of training
6 was done to get someone ready to do this type of testing.

7 So what we attempted to do, Kenton and I, was to
8 sort of mimic the training that was put forth in Title 17
9 that refers to blood alcohol analysis. Sort of mimic that
10 same style with breath alcohol analysis. So that's, that's
11 the product that you see. We went back and forth several
12 times on it.

13 So with Article 4, Training of Personnel, Training
14 Program Guidelines. A lot of language is somewhat similar.

15 And what we decided -- what we decided a good compromise
16 position would be was to let the laboratories determine what
17 they needed to do following the guidelines -- following what
18 is now going to be put out in Title 17, but that the
19 Department is notified of all of the things that we have
20 done. So that the Department can be in the loop and the
21 Department can take a look at what we have done to provide
22 our analyst the training and ensure that that training falls
23 under what is specified in Title 17. Kind of where we are.

24 CHAIRMAN KIMSEY: And so to summarize, possibly.
25 Rather than the Department having an approval role it would

1 be -- I guess the laboratories would be notifying the
2 Department of their training program and the Department
3 would be seeing if that was in compliance with the Title 17
4 that we have in front of us?

5 COMMITTEE MEMBER SHEN: Correct.

6 CHAIRMAN KIMSEY: And I think that's sort of the
7 thread that we have had with a couple of the other bullets,
8 notification or collection of information versus the
9 Department's prior role of approval.

10 And this -- for sort of our new members, Dan and
11 Mark, there was this letter of December 15th that was in
12 response to the Committee's product that was sent to Agency,
13 oh gosh, well before December.

14 The letter that we received back I think pretty
15 much to some degree accepted the work product except for
16 these four bullet areas. And the comments were that, you
17 know, in the letter was that the Committee had removed the
18 Department from various areas of oversight, meaning the four
19 bullets. And the letter's intent, I guess, was to have the
20 Committee work some more to ensure, I guess. Independent
21 state oversight, I guess, is what the last sentence or the
22 last part of the sentence says.

23 And so at least with this particular Article 4,
24 whereas the Department previously had approval authority or
25 responsibility, that's being removed and we are replacing

1 that with notification.

2 Now is there any expectation of what the
3 Department would do once it is notified? I mean, I guess --
4 I mean, just following up on that thought. If the
5 Department felt that the information that was presented
6 didn't meet Title 17 the Department would inform the
7 laboratory of that? Is that sort of the idea?

8 COMMITTEE MEMBER SHEN: This is Jennifer. That
9 would be sort of the idea. So I think one of the things we
10 talked about last time was that it needs to be laid out
11 fairly specifically what needs to be parted to the
12 Department and what needs to be included in our training
13 program.

14 So that, you know, so that it's clear that our
15 training programs from the laboratories do include these
16 particular elements. And it's clear that when the
17 Department is reviewing what we have submitted that it can
18 easily see that we have or have not followed what is in
19 Title 17.

20 So, you know, it's ones that you don't want to
21 overdo, obviously, in the regulations but they have to be
22 clear enough so that it's easy for us to follow and easy for
23 the Department to oversee.

24 CHAIRMAN KIMSEY: Right. Any comments from the
25 rest of the Committee? I guess I'm --

1 COMMITTEE MEMBER SLAUGHTER: Yes.

2 CHAIRMAN KIMSEY: Go ahead.

3 COMMITTEE MEMBER SLAUGHTER: What is notification?

4 THE REPORTER: Who is this?

5 CHAIRMAN KIMSEY: I'm sorry, could you identify
6 yourself.

7 COMMITTEE MEMBER SLAUGHTER: This is Mark
8 Slaughter.

9 CHAIRMAN KIMSEY: Okay, thank you.

10 COMMITTEE MEMBER SLAUGHTER: Is notification
11 filing or it's just something as basic as saying, yep, we've
12 got it?

13 COMMITTEE MEMBER SHEN: This is Jennifer. I think
14 our intention is that what's laid out in Article 4, I think,
15 these are the things that need to be submitted to the
16 Department.

17 COMMITTEE MEMBER SLAUGHTER: Okay.

18 COMMITTEE MEMBER SHEN: So not -- it wouldn't be
19 as simple as, you know, as a memo or a phone call saying we
20 are doing the things it said. It would be more like, well
21 here is this and here is that and here is this, this is what
22 we're doing, so you can see that we are actually following
23 Title 17.

24 COMMITTEE MEMBER SLAUGHTER: Thank you.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Comment from the public. I actually think there are
2 significant clarity issues now that I've heard your
3 explanation on what's been submitted.

4 And one disadvantage of presenting this as
5 entirely new regulations is it's not so easy for the
6 reviewer or the person looking at it to compare it with the
7 old regulations. So let me make a couple -- but I can do
8 that and let me make a couple of points.

9 That even the title of Section 1218. It was
10 previously titled "Training Program Approval" and the
11 subcommittee now has replaced that with "Training Program
12 Guidelines." And I would submit that "guidelines" sound a
13 little less regulatory, a little more advisory, so that was
14 of a concern.

15 And then you chose to, for the most part, retain
16 the current language but replace -- the former language
17 would submit the -- submit some information to the
18 Department for review and approval. It now says, "submit
19 the following to the Department to demonstrate compliance."

20 It's just a -- a reader of that, the first question I would
21 have is, demonstrate to whom? I assume it's the Department
22 but it's certainly not clear here.

23 And it is also not clear whether, whether the --
24 whether the demonstration is a mere act of submitting
25 something, anything, that demonstrates compliance. Although

1 I am now listening to you it seems like kind of on a fence
2 here. I'm not sure which side to, which side to jump to.

3 Where before we had clear language that said the
4 Department would review the training protocol and make a
5 determination whether it's complied to the regulations and
6 then approve it, or not approve it, but the language here
7 was approve it. So we've replaced that with something
8 definitely squishier, if you will.

9 So just looking at the very first section I would
10 have those comments. I have other comments on other
11 sections but -- under the APA we do have, we do have clarity
12 requirements. I think where we ended up here is not very
13 clear.

14 CHAIRMAN KIMSEY: This is Paul. We've had these
15 sort of clarity questions a lot throughout our discussions.

16 And none of us on the committee are reg writers or have
17 experience with the APA. And I think going forward, at some
18 point when the Department is writing with the Committee's
19 input these regulations, clarity issues will come up.

20 And I think as an example here, and I am just sort
21 of summarizing, but "approval" has been removed and
22 "notification" has been substituted. And I think that is
23 pretty much the clear intent of the subcommittee and maybe
24 of the committee.

25 And what those distinctions are with -- and this

1 is where sort of, I guess, the clarity issue comes in. I
2 mean, we can argue back and forth all day, I guess, but we
3 would probably be getting guidance from people that are much
4 more familiar with the APA on what it is we need to do to
5 implement what our revisions are going to be.

6 So, I mean, I understand and I acknowledge that
7 there's going to be clarity issues through a lot of what we
8 have done. I just don't know if the time frame here and our
9 understanding of the APA is going to be productive in having
10 discussions back and forth about the difference between
11 "approval" and "notification."

12 Any comments from the Committee?

13 COMMITTEE MEMBER LYLE: This is Bruce in San
14 Diego. I think the Legislature has sort of boxed us into a
15 squishy corner, to use Clay's term. We sort of have to
16 lessen the Department's role in the approval of different
17 trainings and different personnel.

18 CHAIRMAN KIMSEY: Well, and I think also, you
19 know, it'll be -- we haven't talked in great detail and we
20 will, not to digress. But when we submit the package to
21 Agency for their -- we notify them for their 90 day review.

22 I think the cover letter, which I would recommend, would
23 address the December 15th, 2010 letter in some detail.

24 And I think that what the letter would have to
25 sort of articulate is, why the Committee or how the

1 Committee sees that what we have done ensures this
2 independent state oversight. I mean, that will be an
3 argument I think we would be making for each of the four
4 bullets. And so that's something, you know, that I would
5 recommend be contained in the cover letter or some
6 communication that goes to Agency with the whole package.

7 But any other comments on, I guess, on Article 4?

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

9 We've got to get this done by noon but not necessarily by
10 11. I had a couple of comments.

11 First, I would disagree with Member Lyle's comment
12 that it's kind of the devil made me do it comment that
13 anything in the statute specifically requires the Committee
14 to reduce the level of oversight of training in this case.
15 That language is not there. That was partially discussed in
16 the AG's opinion, I think, but I don't think there's any
17 specific direction. The Committee is given pretty wide
18 latitude there and they can certainly make that finding but
19 I think that's based on their assessment of what's needed,
20 not necessarily any specific direction from the Legislature.

21 Regarding what Dr. Kimsey said. The APA kind of,
22 sometimes looks like a set of arbitrary, maybe even
23 bureaucratic requirements that we have to comply to and it's
24 just a -- it's wordsmithing and it's just putting something
25 in reg-speak that withstands the approval process.

1 But the other role of writing regulations that are
2 clear is since this process includes the rather unusual step
3 that Health and Human Services Agency is basically given
4 veto power, a very unusual step. But it would be -- I'm
5 going to speak sarcastically and say, a good idea. But
6 actually I think the better words are, absolutely essential
7 that Agency knows what the regulation is going to do.

8 And I think you added, maybe that's the way to do
9 it. If you're struggling with writing straightforward
10 language in the regulations then you would explain it
11 somehow in the cover letter. But I don't think the clarity
12 requirement is necessarily just kind of bureaucratic detail,
13 it's a good idea that everybody knows what the regulations
14 are trying to say.

15 COMMITTEE MEMBER SHEN: This is Jennifer. You
16 know, Kenton and I gave this -- you know, worked together in
17 the time we had to come up with a framework for us to work.

18 And neither of us were sure, if he was here he would agree,
19 assumed that every single word we wrote in here was going to
20 be perfect from the get-go, which is what we are doing here
21 now.

22 So if there is a specific issue that you have
23 trouble with, let's talk about that; I don't have any
24 problem with that. And I certainly can see that Training
25 Program Guidelines might not be exactly how you want to have

1 that said or how we might want to have that said. But our
2 goal was to come up with something to work with to address
3 that bullet point and I think that what we have here is a
4 nice framework to start from.

5 So I don't have any problems going through and
6 addressing particular issues that Committee Members or the
7 public members may have, may take issue with. I don't have
8 any problem with that so let's do that.

9 We did try very hard to be clear. We did try very
10 hard to put the Committee's wishes in this particular
11 product. So let's assume that and go forward from there.

12 CHAIRMAN KIMSEY: I mean, I might suggest that
13 maybe we don't even need a word. I guess we had "approval"
14 there before and now it says "guidelines." We could just
15 have, you know, "training program" or "personnel training
16 program" since that's Article 4.

17 Anything you want to say about Article 7,
18 Jennifer, the breath alcohol?

19 COMMITTEE MEMBER SHEN: Article 7 we, again, what
20 we were trying to do is we felt that, you know, Title 17 as
21 originally written actually -- you know, I don't have all my
22 stuff out in front of me but from my recollection it's
23 pretty minimal when it talks about what is required in a
24 breath training program and it left all of the minutiae
25 really up to the Department.

1 So what we were trying to do is to write out a
2 better structure and a better framework for what a breath
3 alcohol training program actually should include, using the
4 breath alcohol training program outlined in Title 17 as a --
5 as a guide. So what you see here is something very similar
6 to the way it's laid out when discussing blood alcohol
7 training and what is required.

8 So that's what we were trying to do, trying to put
9 out something -- this is -- these are the elements that need
10 to be included in your training program and you need to
11 submit X, Y and Z to the Department. When the Department
12 takes a look at that they can say, hey, this training
13 program does include these elements which are required in
14 Title 17.

15 And that is the oversight that we are suggesting
16 the Department have. We put the framework together of what
17 we, what we think is important, we as laboratory personnel.

18 Put together the framework of what we think is important to
19 do the training.

20 We frame our training program around what is
21 required in Title 17 and we forward that information to the
22 Department. The Department can take a look at it and either
23 agree or disagree that we have met what is laid out in Title
24 17. That is the concept of what this particular product is
25 all about.

1 And, you know, like I said, we did the best we
2 could. And I am quite sure it can be made better and I am
3 certainly open to whatever suggestions those are.

4 CHAIRMAN KIMSEY: Comments from the Committee?

5 COMMITTEE MEMBER LYLE: Bruce in San Diego. Do we
6 need to add a section in there that discusses what the
7 Department will do with it? Do we need to say, the
8 Department will analyze the submission, each submission, and
9 evaluate for compliance with Title 17?

10 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries
11 in San Diego. My thought was along the lines of if you took
12 1218 and you changed it to say "Training Program Review" and
13 then changed the last sentence to say something like "shall
14 submit the following to the Department to review for
15 compliance with Title 17."

16 That gets us closer to what I think we are all
17 looking at. That we want it submitted to the Department to
18 be reviewed. What happens if the Department doesn't like
19 it? We haven't really addressed that. But at least what we
20 are going with right now is, what we're looking for is the
21 Department to review it, not to approve it.

22 CHAIRMAN KIMSEY: I think that's a good
23 suggestion. I would imagine if -- this may not need to be
24 in the regulations. But I guess the assumption, which may
25 not be a good word to us is, that if the Department didn't

1 feel that what was submitted was compliant with Title 17
2 that they would notify the laboratory.

3 COMMITTEE MEMBER SHEN: Correct, that is the
4 assumption.

5 COMMITTEE MEMBER JEFFRIES: I think it's in
6 everyone's interest, all the laboratories, if the Department
7 says, we don't feel you're in compliance with Title 17, I'm
8 sure all the laboratories will do what they can to either
9 change their procedures or try to persuade the Department as
10 to why they are in compliance.

11 COMMITTEE MEMBER SHEN: This is Jennifer. And
12 that is one of the reasons. That issue right there is one
13 of the reasons we thought it would be better to sort of beef
14 up what the requirements of a training program are so that
15 it is less ambiguous than it may have been in the past.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 Comment from the public; responding to Mr. Jeffries'
18 comment. I think we ought to be wary of writing regulations
19 that get to some fork in the road and say, we don't know
20 exactly what we're going to do at that point. I think
21 regulations are supposed to clarify and make more specific,
22 statutes and so they should describe what the department is
23 going to do. Again, the current regulations refer to
24 department approval --

25 CHAIRMAN KIMSEY: Review.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
2 -- in the Title and under 1218. So the thing we've got to
3 think about now, the Committee should think about now and
4 certainly should address in their cover letter, what was
5 wrong with the word "approval."

6 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
7 Just to respond. I think I have to agree with Clay that we
8 do need to address what happens when you come to that fork
9 in the road. That the guidelines -- the laboratory is
10 submitting something to the Department, the Department does
11 not feel it is in compliance with Title 17. What happens if
12 you reach an impasse and there is not an agreement between
13 the lab and the Department? Where do you go from there?

14 I think that is a global issue, it is not
15 something we have talked about. We have talked about going
16 down the road of submitting something for review but we
17 haven't really addressed what happens if the Department and
18 the lab disagree?

19 COMMITTEE MEMBER SHEN: This is Jennifer. I think
20 that, you know, if I'm reading the Committee Members right
21 over the last several years, that I think what I would
22 expect to see is that there would be notification of the
23 laboratory by the Department. Notification that we feel
24 that this is not in compliance for X, Y and Z reasons.

25 Really at the end of the day it's where we get.

1 There isn't anything else to be done. That laboratory would
2 have that on record and the Department would have that, I
3 assume, on record.

4 COMMITTEE MEMBER JEFFRIES: Yeah, this is Dan
5 Jeffries in San Diego. Echoing what we talked about last
6 time. That sort of makes it self-enforcing. That is, if
7 the Department makes a finding that a lab is not in
8 compliance with Title 17 everyone will know about it. It'll
9 be brought up in every trial we do up and down the state.
10 So it will be resolved one way or the other. The laboratory
11 has to resolve it. They can't remain in a place where the
12 Department thinks they are not in compliance.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
14 Comment from the public. I think the word "self-enforcing"
15 can actually then have multiple meanings. Because the
16 regulations would also be self-enforcing if, as is the case
17 I think in some of the other bullet points, the Department
18 is not given even -- we're using the word "notification" a
19 lot but now we are using the word "notification" to mean a
20 notification on the part of the Department to the
21 laboratory.

22 Absent that notification you still could refer to
23 the process as self-enforcing. It's just literally an
24 internal -- and I would argue that's what has been proposed
25 in the other three bullets. But literally an internal

1 process in which a laboratory designs, in this case,
2 training and then independently and internally makes a
3 decision as to whether that training complies.

4 So self-enforcing could have, I think, two
5 meanings there. One can be how you enforce something in the
6 absence of licensing and the other could be how you enforce
7 something on the absence of, the substitution of guidelines
8 for regulations in which there is no external review.

9 COMMITTEE MEMBER SHEN: This is Jennifer. You
10 know, I can see changing the word "guidelines" to something
11 else. But the bottom line is that the Department doesn't
12 have licensing authority any longer and that was taken out
13 for a very specific reason.

14 So what we wanted to do is to make this document
15 -- provide information as to what must be included in
16 training programs. And laboratories must follow what's
17 written down here if we ever get it to a final product. And
18 if we are not following it and it's clear we are not
19 following it, then the Department will have that
20 information.

21 But, I mean, if you are looking to reinstate some
22 sort of licensing authority or some sort of -- that's not
23 going -- that's not going to happen. So what we are trying
24 to do here is meet that compromise of here is what it says
25 we must do. Here is what we are doing. And we are showing

1 you what you're doing so that you can see that it contains
2 the elements that are required.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 Just a quick comment. I don't disagree with any of that. I
5 think the Committee has to be aware of -- you write
6 regulations in response to statutes. The Committee has to
7 keep in mind the requirements of Health and Safety Code
8 100725 which states the Department shall enforce the law and
9 the regulations, and it's regulations.

10 In this case I think you've cut, apparently, but I
11 think we should describe it more clearly. If we have come
12 up with a process whereby the Department notifies the labs
13 of their findings regarding the adequacy of the training
14 then that certainly is something you could describe in a
15 cover letter as a basis for permitting the Department to
16 enforce the law and the regulations. Something I don't
17 think exists in the other three bullets but would exist for
18 this.

19 CHAIRMAN KIMSEY: I'm sorry, I forget who made the
20 suggestion of changing "guidelines" to "review" but that
21 appeals to me. Other thoughts from the Committee? Any
22 other suggestions? Or does "review" seem sufficient?

23 COMMITTEE MEMBER LYLE: Bruce. "Review" sounds
24 good to me.

25 CHAIRMAN KIMSEY: Okay. If somebody feels

1 differently just speak up. And it's pretty clear that the
2 subcommittee removed "approval" from the language and
3 substituted to some extent "notification."

4 I think it might be -- I guess I am asking the
5 question, is it worth having a section that more clearly
6 describes the Department's role? I mean, obviously we are
7 talking about to demonstrate compliance with Title 17 is
8 what's being submitted and the parties being notified.
9 Should we say in here the Department would communicate with
10 the laboratory if it was felt that they were not meeting the
11 guidelines in Title 17 or is that a more global issue?

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 Except we got rid of "guidelines."

14 CHAIRMAN KIMSEY: Excuse me, review of the
15 training program.

16 COMMITTEE MEMBER SHEN: This is Jennifer. You
17 know, I strongly feel, and I suspect others do as well, that
18 we don't want to get into a situation where there is, and
19 I'll say this again, ambiguity in determining whether or not
20 a laboratory is following the guidelines. It's been a
21 problem for us in the past where the laboratory personnel do
22 not agree with the Department personnel on whether or not
23 these regulations are being followed.

24 So I don't have any problem with using the
25 regulations as a framework for developing training programs

1 and I don't have any problem with turning that training
2 program outline into the Department and the Department
3 looking at it to determine whether it follows regulations.
4 But it has to be extremely clear and there can be no
5 interpretation of whether or not the laboratory is meeting
6 what is in Title 17.

7 And that's my fear. We need to make sure that if
8 we are going to go through this process that there is --
9 there is no interpretation on the Department's part as to
10 whether they feel that this is or is not in compliance. It
11 has to be clear as day. That is my biggest worry here.

12 CHAIRMAN KIMSEY: That being said, Jennifer --
13 this is Paul in Richmond. I guess there's some history here
14 that there has been differences of opinion between the
15 Department and a laboratory. And we are going to try and
16 resolve that with clarity or very, you know, clear
17 definitions here. But at the same time the Department is
18 going to be reviewing for compliance. And so there is
19 obviously a potential that the Department and a laboratory
20 would see this review, I mean this training program,
21 something differently.

22 COMMITTEE MEMBER SHEN: That's correct.

23 CHAIRMAN KIMSEY: And so I am not sure that
24 anything we do in regulation or writing here is going to
25 preclude that from happening. As nice a goal as it is,

1 don't get me wrong. It's always nice to have, you know,
2 everything clearly understood by everybody. But I am not
3 sure that's feasible. Other thoughts from the Committee?

4 (No response.)

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
6 Comment from the public. I think this conversation started
7 with Member Jeffries' comment that what happens if we reach
8 an impasse. I mean, a situation where there's an impasse
9 reached between the labs and the Department.

10 I don't know if this is going to assuage your
11 concerns or not but in the 30-plus year history of the
12 Department's regulation that's never happened. I mean,
13 we've always reached some agreement. Both sides could
14 decide whether agreement was appropriate. But it's never
15 been the case that we simply didn't reach an agreement. I'm
16 not sure what the consequences would be in that case but
17 that's never happened.

18 COMMITTEE MEMBER SHEN: This is Jennifer. I would
19 say to that, yes, we worked out all of our disagreements.
20 But I -- having been involved in some of my own and watched
21 others, I feel oftentimes the laboratory has to do things
22 that it might not want to do so that there isn't a
23 disagreement.

24 So I just -- I'm -- you know, I don't -- I don't
25 know what the answer is really here but that's what --

1 that's what I am looking for is to minimize those times when
2 the Department can say, hey, you're not -- you're not
3 following this guideline for these reasons and have it be
4 something that is read into. I keep saying "guidelines," I
5 mean "regulations." But if it's something being read into
6 the regulations versus something that's stated in the regs.

7 If we can (audio breaking up) those opportunities
8 that would be the best we really can do.

9 CHAIRMAN KIMSEY: No, I think that's a good way to
10 describe it, minimize them. Obviously I think that's the
11 goal of these regulations, so there is not going to be
12 conflict. Which also gets to the clarity issue, which gets
13 to how we're going to be, you know, writing -- clarifying
14 these in the future.

15 I want to go back. I think it was Bruce's comment
16 when we were talking about breath alcohol analysis. I think
17 someone made a comment about having a section clarifying the
18 Department's role. I noticed here in my notes on the second
19 page at the bottom, 1221.4(a)(4) it says:

20 "Training curriculum in the procedures of
21 breath alcohol testing shall be developed by
22 forensic alcohol analysts. Department
23 notification of the proposed curriculum will
24 follow Section 1218.1."

25 So there is some mention of the Department's role

1 there again being sort of notification. Was there another
2 area, do you remember, Jennifer, where the Department's role
3 was discussed?

4 COMMITTEE MEMBER SHEN: Well, I think Article 4
5 says that, you know, these outlines, I think, felt the
6 Department needed to see. So, I mean, outlined here, a
7 complete outline of the training; a copy of the written
8 examination with the answers' a written description of the
9 practical examination; and a list of qualified instructors;
10 and a description of the qualifications of instructors for
11 the training. Which at a minimum will mean blah-blah-blah.

12 CHAIRMAN KIMSEY: Right.

13 COMMITTEE MEMBER SHEN: Theses are all, all
14 elements that would be submitted to the Department. So the
15 laboratory would develop the training program and these
16 elements of that training program would be then submitted to
17 the Department.

18 If there was a change, if there was any
19 significant change or, you know, however, if any alteration
20 to update the program as technological advances are made or
21 if a portion of it has been judged inappropriate then we can
22 notify the Department of the changes we have made.

23 But again, you know, my thought here was that here
24 are the major elements. Sending to the Department, the
25 Department can take a look at it, see if it covers what the

1 regulations say it should and we're good to go.

2 But, I mean, we could probably write in a line
3 somewhere here that says, if the Department does not feel
4 that the laboratory is in compliance, laboratory will be
5 notified via letter within X amount of time or something.

6 CHAIRMAN KIMSEY: So you're suggesting adding
7 something like that to 1218.2?

8 COMMITTEE MEMBER SHEN: I would (audio breaking
9 up) to just add that without Kenton's -- Kenton's input.
10 But yes, I mean, if that is a hang-up. I mean, I would
11 anticipate if the Department feels that we did not meet our
12 end of the bargain here that we would be notified. So I
13 don't think that's unreasonable.

14 CHAIRMAN KIMSEY: Okay.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 Comment from the public proceeding through Article 4.
17 Actually I would submit that 1218.2 is completely
18 unnecessary. It states, in effect, that if the laboratory
19 feels for any reason the need to change the training they
20 can change the training. But nothing else in the
21 regulations prevents that.

22 The Department first hears about a training
23 program because a laboratory has made some arrangements with
24 the law enforcement community to provide training for some
25 instrument, maybe a new instrument.

1 So nothing in the regulations prevents a
2 laboratory from preparing a training summary and submitting
3 it to the Department. So to add a section that says they
4 can do that or they can change those requirements, to me
5 that's -- I think that will fall by the wayside under the
6 necessity requirements of reg writing. I think it's
7 unnecessary instruction.

8 COMMITTEE MEMBER SHEN: Well, I don't know that I
9 agree with you.

10 CHAIRMAN KIMSEY: And we can, I think we'll cross
11 that, a lot of these bridges about necessity and clarity
12 when we get to that stage of the process.

13 I think it would be helpful. I mean, it sounds --
14 and I'm interested in the rest of the Committee's
15 perspective, that we maybe do add a sentence there. Maybe
16 we can -- I'm just trying to get, you know, realize that
17 Kenton's involvement would be helpful. But if we were to
18 add a sentence saying the Department, if the Department felt
19 that any training program was not in compliance with the
20 Title 17 regulations that a letter would be, as Jennifer
21 mentioned, sent to the laboratory within a period of time.

22 COMMITTEE MEMBER SHEN: What period of time would
23 you think that should be?

24 CHAIRMAN KIMSEY: Well, there's usually standards
25 for this sort of thing. I'd use "guidance" but, you know,

1 usually we're talking about 30 days, two weeks.

2 COMMITTEE MEMBER SHEN: We'll start with 30 days
3 and see what happens. (Laughter.)

4 CHAIRMAN KIMSEY: So does anyone want to propose a
5 sentence?

6 COMMITTEE MEMBER SHEN: Would we be putting this
7 under 1218? And so right after "shall submit the following
8 to the Department to review for compliance with Title 17."
9 And then add a sentence right there, "if the Department
10 feels" blah-blah-blah, right there?

11 CHAIRMAN KIMSEY: Yes, that's what I would
12 propose.

13 COMMITTEE MEMBER SHEN: All right.

14 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries;
15 I have a suggestion. If we do something along the lines of:

16 "If the Department finds that the lab is not
17 in compliance with Title 17 the Department shall
18 notify the lab in writing within 30 days. The lab
19 may, but is not required to, modify their
20 procedures to address the Department's concerns.
21 If the lab elects to modify their procedures the
22 Department shall review the changes and notify the
23 Department of their findings."

24 Something along those lines.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Comment from the public. I think the "may or may not" is,
2 I've got to think about it a little bit and see it written
3 down, but unusual language in regulations.

4 COMMITTEE MEMBER SHEN: I like it.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
6 It's unusual language for regulations. You're suggesting
7 that the Department will provide a response to the
8 laboratory describing its findings regarding the compliance
9 and then in regulation we're going to say the labs may
10 choose to ignore that.

11 CHAIRMAN KIMSEY: Well "may" is permissive, if I
12 remember correctly, so we don't have to say "may or may
13 not." Was that Dan or was that Mark that had the suggested
14 language?

15 COMMITTEE MEMBER JEFFRIES: That was Dan Jeffries.

16 CHAIRMAN KIMSEY: Thank you, Dan. If you have
17 that written down -- obviously our stenographer probably has
18 it also. But you want to sort of read that again?

19 COMMITTEE MEMBER JEFFRIES: The language is rough
20 because obviously you'd have to change "labs" to include all
21 the different things, including organizations and
22 institution and spell out the Department more. But what I
23 had suggested was something along the lines of:

24 "If the Department finds that the lab is not
25 in compliance with Title 17, the Department shall

1 notify the lab in writing within 30 days. The lab
2 may, but is not required, to modify their
3 procedures to address the Department's concerns.
4 If the lab elects to modify their procedures the
5 Department shall review the changes and notify the
6 lab in writing of their findings."

7 CHAIRMAN KIMSEY: Comments from the Committee on
8 the proposed language?

9 COMMITTEE MEMBER SHEN: This is Jennifer. I mean,
10 really, even though it's unusual language and it is
11 permissive it is a reflection of the reality in which we
12 find ourselves. Which is that there isn't really any
13 oversight -- there really isn't any oversight that the
14 Department can do other than saying, you know, hey, we don't
15 agree with you. So it really does come down to the
16 laboratory's choice whether or not to change its procedures
17 and suffer the consequences if it doesn't.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 Comment from the public, unless there's going to be response
20 to what Jennifer said.

21 I would add, in looking at Article 4 now and
22 looking at the material that's submitted. There is one more
23 element that we certainly currently require and it has to do
24 with the way training is provided in modern times, I guess.
25 Think of this as an attempt to modernize the regulations.

1 The labs often have a -- besides providing an
2 outline, if you will, often provide training materials to
3 the trainee. In many cases now this is a PowerPoint
4 presentation but in other cases it's kind of a handbook that
5 the trainee would take with them that provides in detail the
6 course of instruction.

7 And so in order to evaluate the training we need
8 to look at that, at that -- at those handouts. It may be
9 captured in a complete outline of the training but it might
10 also be appropriate to, since you provide detail regarding
11 providing a written description of the practical examination
12 and a copy of the written examination, it may be , I would
13 think, appropriate to include among the submitted material a
14 copy of any training materials provided to -- any handouts.

15 You don't have to provide instruments but any handouts
16 provided to the -- and/or PowerPoint kind of presentations
17 provided to the trainees.

18 CHAIRMAN KIMSEY: So you would add something in
19 1218.1? It's more than just an outline?

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
21 Right.

22 CHAIRMAN KIMSEY: Thoughts from the Committee?

23 COMMITTEE MEMBER SHEN: This is Jennifer. I would
24 say that I would not be interested in doing that. I think
25 that -- I think that opens up -- that opens us up for much

1 more (audio breaking up).

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 Just a quick response. The Department certainly is
4 interested in -- I think the thrust of the letter, in
5 reviewing and actually approving, making sure training is
6 appropriate. And to the extent that the Committee is -- and
7 this is hopefully a cooperative effort. That the Committee
8 sees value in hiding information that's provided to the
9 trainees is -- I think anyone reviewing these regulations
10 and reading the transcript would have concern about how much
11 cooperation there is here.

12 CHAIRMAN KIMSEY: I don't think anyone is trying
13 to hide anything here. The proposal is to have an outline.
14 And the question is, does the Committee want the Department
15 to have more than an outline of the training? I guess
16 you're making the recommendation that there be a -- if there
17 are PowerPoint or if there are handouts.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

19 Okay, but in the context. The word "outline" is a new word.
20 The word in the existing regulations is "a training
21 summary." And based on the training summary we have
22 interpreted it traditionally as since -- as training has
23 changed from -- including even multimedia for presentations.
24 This summary has been reviewed, has been interpreted, if
25 you will, to include training handouts.

1 "Outline" is arguably one abstraction step back of
2 "summary." So you're right, we're discussing outline, it's
3 a new word. It's a new word proposed by the subcommittee.
4 But it's a proposal to change the current regulations and so
5 it should be discussed.

6 CHAIRMAN KIMSEY: Any other feeling from the
7 Committee on the subject of the outline versus summary?

8 COMMITTEE MEMBER LYLE: Bruce from San Diego. In
9 all of the Peace Officers Standards and Training Commission,
10 in all of their regulations the word "outline" is meant as a
11 specific POST-approved, formatted outline. And that's the
12 way I would take it in this, in this instance.

13 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
14 I also was taking it in a similar way, that an outline
15 would be actually more specific than a summary. I think in
16 a lot of regulations there are a lot of discussions. A
17 summary sort of just means a very quick overview of what
18 you're going to cover. Whereas an outline gets into a lot
19 more details about what exactly is going to be covered and
20 in what order and some more detail.

21 COMMITTEE MEMBER LYLE: Bruce. Exactly. In the
22 POST regulations an outline includes the learning
23 objectives, any sort of handouts that are used, any sort of
24 adult learning techniques that are used, breakout groups, it
25 goes to the third level of detail. Those are specific

1 requirements of an outline and that's the way I read that.

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 I'm not sure that the requirements for POST training are
4 even remotely relevant here but -- so in providing POST
5 training, if handouts are provided as part of the training
6 is that captured in the word "outline?" We may need to
7 define the word "outline" then. Obviously it's become a
8 term of art and so maybe it needs a definition. But just
9 curious. So if there are training handouts associated with
10 the POST training is that -- are those handouts captured in
11 and described by the word "outline?"

12 COMMITTEE MEMBER SHEN: I would certainly say that
13 "outline" is no more a term of art than "summary" is. So it
14 is -- I mean, if you would feel more comfortable looking up
15 "outline" the definition of "outline" that's fine with me.

16 Certainly my understanding of an outline is that
17 it is much more complete than a summary. I don't think
18 generally a summary would include handouts and PowerPoint
19 presentations and in-depth detail about what is being
20 lectured on. I think that is an interpretation of what the
21 word "summary" actually means.

22 CHAIRMAN KIMSEY: I sort of had a flashback to the
23 definition of "is" or something. (Laughter.) Maybe we need
24 a break. But we don't have --

25 That does bring up the topic of do we -- it's my

1 understanding from seeing some email traffic that we can
2 pretty much go to about 12:30 today; is that correct?

3 COMMITTEE MEMBER SHEN: I have to leave at 12:00,
4 I'm sorry.

5 CHAIRMAN KIMSEY: At 12:00, no, that's fine. I
6 just wanted to be cognizant. And with Kenton not here I
7 think we probably will need to stop at noon.

8 And I want to thank Kenton and Jennifer for coming
9 up with this document that we have been reviewing.

10 To go back to the outline versus summary
11 discussion. I feel that we are getting into another one of
12 those clarity issues and what do we mean by outline versus
13 summary. And that I would anticipate getting guidance from
14 -- with people, as I have said before, that are more
15 familiar with the APA. And maybe we have to have a
16 definition of, you know, "outline" and we'll have to have
17 some agreement on that.

18 COMMITTEE MEMBER SHEN: You know, one of the
19 things I can do, Paul, is that -- I mean, this particular
20 (audio breaking up) can be fleshed out a little bit. A
21 complete outline of the training which meets the
22 requirements of Section code to include X, Y and Z. And we
23 can make it more obvious.

24 It is not -- it is not my feeling that we should
25 be sending copies of PowerPoint presentations. If we want

1 to -- if the Committee wants to include the handouts that
2 are given to the Officer, I could go either way on that.
3 But I can flesh out the term "outline" if that would be
4 better.

5 CHAIRMAN KIMSEY: That might be helpful. I mean,
6 at some point I guess I assume we would probably have to
7 have either that or a definition. But I think it's pretty
8 clear that there was a change, as has been pointed out from
9 "summary" to "outline." Maybe it would be helpful to have a
10 little more information on what you and Kenton thought the
11 outline meant.

12 COMMITTEE MEMBER SHEN: Okay.

13 COMMITTEE MEMBER DAVIS: This is Kevin in
14 Sacramento, just a question. Is the word "summary" defined
15 in the current regulations?

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 No. And it might come as a surprise to you but actually the
18 current regulations are probably not in every case APA
19 compliant.

20 COMMITTEE MEMBER SHEN: That is my point is that
21 "summary" is then open to interpretation, which is something
22 we want to stay away from.

23 COMMITTEE MEMBER DAVIS: This is Kevin. I would
24 agree. I think we're getting way too deep trying to define
25 words in the regulations. Just a general comment.

1 CHAIRMAN KIMSEY: No. And I think I would agree.
2 I think if we, if the Committee can feel comfortable with
3 the direction that they are going and we can continue to
4 articulate it, when we get to those issues of APA compliance
5 and clarity, you know, some of our thinking may change a
6 little bit. But it will be a decision of the Committee, you
7 know, when we get to that level of detail.

8 It's pretty clear that the subcommittee has made
9 some recommendations, one of which would be to remove the
10 approval process, the word "approval process" from the
11 regulations and is substituting, to a certain extent,
12 notification to the Department of their training programs.

13 Any other -- I mean, we sort of got to the role of
14 the Department and between -- anything we wanted to add?
15 We're adding, we're proposing to add a sentence that may be
16 wordsmithed a bit by the subcommittee again, I'm possibly
17 anticipating, but I think Dan had a good shot at that, we
18 have that in the minutes.

19 Other broad areas of the sections here that anyone
20 on the Committee has a comment on?

21 RESEARCH SCIENTIST SPELL: I have question.

22 CHAIRMAN KIMSEY: Just a second, the Committee
23 first, please.

24 (No response.)

25 Okay, no comments from the Committee. The public?

1 RESEARCH SCIENTIST SPELL: I have a question to
2 Jennifer Shen. Natallia Spell. What is -- I don't know
3 summary, definition of summary or outline, but my question
4 is very practical. What exactly the labs going to submit as
5 a training procedure for breath alcohol instrument training?
6 Is it SOP? Is it like real procedure? Or it's just a
7 bullet point, how we say "outline." Oh yeah, we do this,
8 this, this, this and this. And that's pretty much it. What
9 is it exactly going to be submitted?

10 COMMITTEE MEMBER SHEN: This is Jennifer. We're
11 discussing the training program, we're not discussing the
12 protocol or the procedures. So as far as the training
13 program, the training that is given to the officers we
14 would, you know, as suggested here, submit a complete
15 outline of what that training program covers, a copy of the
16 written examination along with the answers, a written
17 description of what the practical examination would be and a
18 list of the qualified instructors along with a description
19 of the qualifications of those that are doing the training.
20 So that is what we would be submitting.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 So I think Natallia's question actually is apparently going
23 to be addressed with the offer on the part of Kenton and --
24 Kenton didn't know he's offering but Kenton and Jennifer to
25 clarify what "outline" means.

1 But in doing that I think we want to avoid the
2 following. One could conceivably see an outline as simply a
3 literal restatement of the requirements of the regulation.
4 You might format it a little better but it would just
5 contain each of those elements.

6 The goal of the Department here is to make sure
7 that the training is adequate and produces competent
8 personnel to perform the analyses. If something like a
9 literal word-for-word restatement of the regulations was
10 submitted as an outline it would not -- I don't think it
11 would -- it wouldn't enable the Department to make that
12 finding.

13 So I'm interested to see how we define "outline."
14 Perhaps we'll check the POST, the Police Officers Standards
15 Training community and come up with some ideas. But until
16 we do that, my comment would be we need to hold judgment on
17 -- absent a requirement that labs submit everything,
18 including PowerPoint presentations and/or a summary of
19 what's in the PowerPoint presentation it would be impossible
20 for the Department to make a competent determination as to
21 the adequacy of the training.

22 CHAIRMAN KIMSEY: This is Paul again. We're sort
23 of getting back down into the weeds about "outline" versus
24 "summary." We've sort of addressed that going forward.

25 Any other, you know, sort of higher level topics

1 with regards to what's included? Do we feel that --

2 COMMITTEE MEMBER SHEN: This is Jennifer. So as
3 we read and we've gone over a couple of times now, I mean,
4 does the Committee feel -- does the Committee feel that
5 those elements that we talked about for submission are
6 appropriate? Or does the Committee feel that there is some
7 other element that we should add or one of these elements
8 that we should take out?

9 If we're going to stay, you know, stay out of the
10 weeds. I think, you know, I think that would be the
11 discussion for Article 4 is whether or not we think the four
12 things described here are adequate?

13 COMMITTEE MEMBER DAVIS: This is Kevin. They
14 sound adequate to me.

15 COMMITTEE MEMBER SLAUGHTER: This is Mark
16 Slaughter. They sound adequate to me and I like the
17 addition in 1218 that Dan suggested.

18 COMMITTEE MEMBER LYLE: Bruce. I think they're
19 accurate.

20 CHAIRMAN KIMSEY: This is Paul. My only concern
21 is -- I mean, I respect the subcommittee's work product. My
22 only, I guess, concern is as we roll this together and that
23 we probably out to spend -- I would propose after a little
24 bit more discussion that we sort of change tack here and
25 start talking about the package that we'd submitting to

1 Agency and a bit of our next meeting. Because I think there
2 was some confusion, maybe generated on my part, at the last
3 meeting about that.

4 But I appreciate the subcommittee's work product
5 and the Committee's discussion. My only concern from the
6 Department's perspective would be the issue of the December
7 15th letter and can we articulate this as ensuring
8 independent state oversight, which was sort of the direction
9 that that letter charged the Committee with.

10 And that gets to some of the clarity issues that
11 we've talked about with regards to removing the word
12 "approval" and adding in -- and putting in "notification."
13 So that's my only caveat to also supporting what the
14 subcommittee has proposed.

15 COMMITTEE MEMBER SHEN: This is Jennifer. I
16 think, Paul, that maybe when we beef up 1218.1(a) a little
17 bit with a more complete description of what an outline is
18 that might be of help to you.

19 And as to 1218, one of Dan's suggested changes was
20 that we shall submit the following to the Department to
21 review for compliance.

22 CHAIRMAN KIMSEY: Right.

23 COMMITTEE MEMBER SHEN: And then when we add the
24 sentence in that if the Department feels the program is not
25 in compliance blah-blah-blah we have really given the

1 Department oversight. What we haven't done, and I don't
2 think we want to do and I'm not even sure that we can do, is
3 that, you know, what the punishment will be.

4 I mean, really we are looking at the Department is
5 reviewing, the Department has a conclusion that it draws and
6 the laboratory is notified. And that is, in fact,
7 oversight, in my opinion.

8 CHAIRMAN KIMSEY: And I think that's what we --
9 you know, obviously that sort leads as a segue to the
10 discussion about what we submit to Agency.

11 We're obviously going to have to have another
12 meeting, of course. And I think what I will be reviewing
13 may be the four bullets, or at least this particular bullet,
14 the training, with the new language. And I appreciate
15 Jennifer's comments about sort of clarifying the
16 Department's role. But at the same time at our next meeting
17 we will have the language from the four bullets for the
18 Committee.

19 I think to sort of move things along time-wise it
20 might be worth also to have a draft cover letter to our
21 package that would be going to Agency.

22 As I mentioned earlier, I think that draft letter,
23 besides notifying Agency that this triggers the 90 day
24 review on their part and outlining that, one of the other
25 areas that I think that letter should address is maybe the

1 December 15th letter and how the Committee has worked to --
2 at least articulate that we have taken the letter seriously
3 and that we have modified these four sections to ensure the
4 independent state oversight and sort of have that language
5 sort of front and center. Because I think that will be
6 helpful for the interpretation of the whole package that we
7 send up to Agency. Comments on that?

8 COMMITTEE MEMBER LYLE: Bruce. I agree.

9 CHAIRMAN KIMSEY: Because I think I may have --
10 and I think the package would include, you know, our
11 revisions and, you know, we have an ISOR that would also go
12 up. So there will be three parts to that package, the ISOR,
13 the revisions and the cover letter. And it's the cover
14 letter that I think would take some, obviously review by the
15 Committee and agreement by the Committee. But anything else
16 that we think should be included in that cover letter?

17 COMMITTEE MEMBER SHEN: This is Jennifer, Paul.
18 Just so I -- I was trying to type while you were talking.
19 So you're envisioning this letter would serve a dual
20 purpose. One of addressing the December letter from the
21 Department, addressing those bullet points specifically; and
22 two, acting as a send-off of our final product. All in one.

23 CHAIRMAN KIMSEY: Yes. I would sort of anticipate
24 it being, notifying the Agency, you know, that from the
25 Committee's perspective this package sort of triggers the 90

1 day review on their part and that the Committee had received
2 a letter from the Department of December 15th. And those
3 are the two areas that I sort of see being in the cover
4 letter along with the package that would include the
5 revisions and the ISOR.

6 COMMITTEE MEMBER SHEN: And that package is fairly
7 complete; we put it together already. I would have to go in
8 and -- since I have the package. I'd have to go in and make
9 all those changes.

10 So I guess for me I would -- I would need to have
11 -- you know, we would need to have Article 4 fleshed out.
12 You know, this particular one we're discussing today,
13 fleshed out in its entirety.

14 And we didn't really discuss Article 7 at all. I
15 don't know if there's any problems with that. I'm sure
16 there are. I would like to do a one-time change,
17 justifications, et cetera, in that package because it's
18 fairly extensive. So we need to be, you know, everybody on
19 board with the changes we have made and everybody happy with
20 the last product that we were just discussing.

21 CHAIRMAN KIMSEY: Right, I would agree. I guess,
22 you know, obviously we may have a few more minutes here to
23 discuss more of Article 7 but I think what I would propose
24 is that we have maybe a subcommittee draft a cover letter.
25 I believe that's what we did last time, Jennifer.

1 COMMITTEE MEMBER SHEN: Yes.

2 CHAIRMAN KIMSEY: And we would have that draft
3 ready for the Committee's review at our next meeting as well
4 as the ability to continue, you know, maybe looking at
5 Article 7. But I know at some point we are going to have to
6 have that letter. And rather than have to wait for a
7 meeting to have -- get something drafted, if we have it
8 ready for our next meeting.

9 The other thing I would recommend. I know this is
10 going to be important for me. But since we have had these
11 discussions about these four bullets, is that each of us
12 that are representing entities, which is all of us, that we
13 sort of touch base with those entities that, you know, this
14 is the direction the Committee is going and --

15 Pretty much under Bagley-Keene we pretty much will
16 need to have sort of a roll call vote on a lot of this. And
17 so just so that there is some preparation for that on the
18 part of the individuals on the Committee representing their
19 organizations, that our next meeting, that would be part of
20 the agenda. Comments on that?

21 COMMITTEE MEMBER SHEN: You're talking, Paul,
22 particularly with touching base with our organizations on
23 the changes we've made to these particular four bullet
24 points.

25 CHAIRMAN KIMSEY: Correct. At our last meeting we

1 basically had a lot of consensus around, you know, the three
2 bullets. We're still working on the fourth bullet, or
3 actually the third bullet. At our next meeting we'd
4 probably end up needing to take, you know, as we have done
5 previously with various sections, done a roll call vote from
6 each individual.

7 COMMITTEE MEMBER SHEN: This is Jennifer again.
8 Have we -- I sort of remember there's a few little
9 alterations that were made to each of our changes as we
10 talked about them in this Committee meeting. Have those
11 changes been made, are they documented somewhere?

12 CHAIRMAN KIMSEY: Not to my knowledge, at the
13 moment. We can -- I'm just trying to think. We can look at
14 the transcript and at our next meeting have that sort of
15 consensus language presented so that the Committee can
16 review it again and have a full discussion before the vote.

17 The other thing I think it's worth -- this cover
18 letter. If I remember correctly Jennifer and I worked on
19 some draft language for the Committee last time as a
20 subcommittee of two. And it looks like we have a
21 subcommittee, the subcommittee that Jennifer is currently on
22 with Kenton is going to propose some more language or
23 additional language to what we reviewed today.

24 Since I have some background in, obviously, these
25 types of letters, is there anyone else on the Committee that

1 would want to work with me as a subcommittee of two to draft
2 some language for the Committee?

3 COMMITTEE MEMBER SHEN: Well if nobody else wants
4 to do it I will work with you again.

5 CHAIRMAN KIMSEY: I appreciate that.

6 COMMITTEE MEMBER SHEN: If someone else wants to,
7 though, have at it.

8 CHAIRMAN KIMSEY: I'm sorry, what was that?

9 COMMITTEE MEMBER SHEN: If somebody else wants to
10 do that please feel free to have at it.

11 CHAIRMAN KIMSEY: Okay. We have -- any other
12 comments about our next meeting? I think the time frames,
13 we're here in the beginning of September. I believe, you
14 know, a few phone calls with Jennifer and I and back and
15 forth, we can probably work on a draft letter. I don't see
16 a lot of workload with Kenton and Jennifer. Maybe we could
17 try and have a Committee meeting in early November? Does
18 that seem to work for the group?

19 COMMITTEE MEMBER SLAUGHTER: Yes.

20 COMMITTEE MEMBER SHEN: That works for me,
21 Jennifer.

22 COMMITTEE MEMBER SLAUGHTER: This is Mark. Yes,
23 that works for me.

24 COMMITTEE MEMBER DAVIS: This is Kevin, it works
25 for me. Also, this is Kevin, I have a question. Although I

1 have read it previously I haven't recently. In our next
2 packet can we include the letter, the original letter that
3 we are making these changes in response to?

4 CHAIRMAN KIMSEY: Oh, the December 15th letter?

5 COMMITTEE MEMBER DAVIS: Yes.

6 CHAIRMAN KIMSEY: Sure. I looked around for it a
7 bit this morning myself but I found it in one of my previous
8 packets. I think a lot of this information is also up on
9 line. Is the letter?

10 RESEARCH SCIENTIST SPELL: It's on line in Archive
11 2011, December, I believe, meeting. No.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 January meeting.

14 RESEARCH SCIENTIST SPELL: January meeting, yeah.
15 If you look, it says "Letter December 15." That's how you
16 identify the document.

17 CHAIRMAN KIMSEY: And that's on our Internet?

18 RESEARCH SCIENTIST SPELL: Yes it is.

19 CHAIRMAN KIMSEY: Under the Department, under
20 Forensic Alcohol?

21 RESEARCH SCIENTIST SPELL: Under Forensic Alcohol
22 Program. But look at Archive, Archive 2011.

23 COMMITTEE MEMBER DAVIS: Okay. This is Kevin. I
24 just have one question too. I could be wrong here. I
25 thought I recall from a previous meeting that shortly after

1 that letter was written there was a change in directors at
2 Agency; is that accurate, or administration?

3 CHAIRMAN KIMSEY: Yes, this was a previous
4 administration, the Schwarzenegger administration, and
5 obviously we have a new administration. We have new
6 appointees at both the agency level and at the department
7 level. The new Department Chairman is Dr. Ron Chapman and I
8 believe our Agency Secretary is Diana Dooley. So yes, this
9 package, this review will be submitted under a different
10 administration from the previous package.

11 COMMITTEE MEMBER DAVIS: Obviously there's not
12 much we can do about it but I just wonder if they'll have
13 the same findings as the previous ones.

14 CHAIRMAN KIMSEY: I certainly have no idea.

15 RESEARCH SCIENTIST SPELL: They might have the
16 same findings but different conclusions.

17 CHAIRMAN KIMSEY: So with ten minutes left, any
18 other questions or ideas about our next meeting?

19 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.

20 It would be very helpful for me and for the district
21 attorneys around the state to get a draft of the cover
22 letter as well. Most district attorneys will not be that
23 involved in the minutiae of Title 17 since DUIs are just a
24 portion of what they do. But the cover letter would be very
25 helpful to sort of let everyone know the direction the

1 Committee is going with it in terms of changing the approval
2 to the oversight.

3 CHAIRMAN KIMSEY: Okay.

4 COMMITTEE MEMBER SLAUGHTER: And this is Mark
5 Slaughter. I would need the same for the public defenders
6 as well.

7 CHAIRMAN KIMSEY: I agree that would be helpful.
8 My only reservation is that it will be a draft from a
9 subcommittee that we would normally be bringing to the full
10 committee for comment and change. I'll check under Bagley-
11 Keene. I don't know if we're circumventing --

12 Obviously what we would be giving you is a draft
13 from a subcommittee that has not been reviewed by the full
14 committee. I don't know how that -- if that's in
15 compliance, I guess, with Bagley-Keene.

16 Believe me, I understand the need for that but we
17 might have -- I'll check and if we can we certainly will.
18 But I have a feeling the full committee may need to --
19 because what you would be showing your organization would be
20 the work product of a subcommittee that the full committee
21 has not necessarily agreed to, I guess, is what I'm worried
22 about.

23 COMMITTEE MEMBER SLAUGHTER: Understood, this is
24 Mark Slaughter. I am still looking for something that I can
25 give that's digestible to the group for the roll call relay

1 back to the Committee.

2 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.

3 I agree with Mark. I think if we can turn something over,
4 even if we have to tell everyone, this is just a first draft
5 work product of a subcommittee of the committee that's
6 looking at it, and make it real clear that this is a very
7 early, I think everyone would actually appreciate kind of
8 knowing where we're going with it so that we can get some
9 buy-ins from everyone.

10 CHAIRMAN KIMSEY: That's fine. I understand the
11 need and if we can do that we will.

12 COMMITTEE MEMBER SLAUGHTER: Thank you.

13 CHAIRMAN KIMSEY: You're welcome.

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
15 Just to add, the documents would be available no later than
16 -- because they'll be material that the Committee will
17 review and use to make the determination they will be
18 available on the website no later than ten days prior to the
19 meeting. I don't know if ten days is enough time but in
20 many cases we don't get the stuff much more than ten days
21 ahead of time.

22 CHAIRMAN KIMSEY: So there would be at least a ten
23 day period where this information would be on the website.

24 RESEARCH SCIENTIST SPELL: Maybe -- this is
25 Natallia Spell. Maybe it makes sense to notify participants

1 like specifically where this document could be found. You
2 know, like the path, like file path. Like you go to this
3 web site, go here, here and here. Because even for me it
4 was a little bit confusing when I started doing the website
5 publishing.

6 CHAIRMAN KIMSEY: That's a good suggestion. We
7 will send out a link to that information on the website to
8 the Committee and whomever else we send notifications to, I
9 think that would be helpful.

10 Any other comments about our next meeting or -- I
11 think in ten minutes we can't really get back to Article 7
12 too much.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
14 Let's try it.

15 RESEARCH SCIENTIST SPELL: Yeah, let's try.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 I have one quick comment. And I will stay out of the weeds,
18 recognizing it's what we want to do. But regarding kind of
19 an interesting additional regulation under 1221.4(a)(4)(C).

20 And this, I think, was a response to concerns of the CHP.
21 It reads:

22 "If a breath instrument operator trainee has
23 already undergone training to operate a different
24 approved breath testing instrument, the trainee
25 may receive instruction as above excluding the

1 portion covering 1221.4(a)(3)(A)."

2 Well, 1221.4(a)(3)(A) covers, refers to the theory
3 of operation. And it occurs to me in reading that, that it
4 sounds like a good idea and it sounds like maybe going in
5 the right direction. But it wouldn't apply, I don't
6 believe, if the different approved instrument had a
7 different principle of operation.

8 In other words, if someone was previously trained
9 on the Intoxilyzer 5000 and therefore was at some point in
10 time provided some information on IR theory, if they
11 switched to a fuel cell EC instrument then that previous
12 theory of operation would not be, at least for that
13 component, wouldn't be relevant.

14 So I think -- maybe we're getting into the weeds
15 again, I apologize. It would be necessary to include a
16 caveat there that where the previous instrument employed the
17 same theory of operation. And I suspect what -- maybe it's
18 the identical instrument, in which case it's even more
19 reason for this. But I don't think the way it reads now it
20 accomplishes it.

21 And of course that means you'd have to define in
22 regulations the different potential theories of operation.
23 I don't know if the Committee has the technical expertise to
24 do that. But as it reads now I think it creates a, I don't
25 want to call it a loophole but an exception that would not

1 be appropriate.

2 COMMITTEE MEMBER DAVIS: This is Kevin in
3 Sacramento. If that was added for CHP we appreciate it but
4 that was not what we, that was not the concern we had. It
5 was when we have the exact same instrument in two different
6 counties. So that could be reworded to say, to operate the
7 same instrument in another jurisdiction. That would be
8 acceptable.

9 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
10 I also am familiar with a lot of situations where we have a
11 CHP officer who gets initial training out of the academy and
12 it's somewhere like Los Angeles and then gets reassigned
13 somewhere in the state where they use a different breath
14 testing instrument. I think part of the goal is to not have
15 to have them duplicate every time they move from one office
16 to another the entire program.

17 Perhaps to address the concern, if there is some
18 language in there that the -- under that, that the detailed
19 procedure of operation shall be covered.

20 I understand what you're saying, you wanted to
21 make sure that if someone is trained on one theory of
22 operation and you go to a different theory of operation they
23 cover it. But that would be under the detailed procedure of
24 the operation.

25 COMMITTEE MEMBER SHEN: This is Jennifer. I would

1 -- I would have to say that, you know, our goal here -- and
2 maybe the problem is that "theory of operation" is not an
3 adequate title. It's what we took right out of the other
4 portion of Title 17. One discusses the concept of breath
5 alcohol testing, why it works, and B is the detailed
6 procedure of operations.

7 So what we wanted is that if you switch to a new
8 instrument, a new breath instrument, not to learn all the
9 things that are easily applicable to any breath instrument
10 that you use. And they would be required to do the detailed
11 procedure of operation that would be specific to that new
12 instrumentation.

13 So maybe it just lies, the problem lies within the
14 title of 1221.4(a)(3)(A), Theory of Operation. Maybe that
15 needs to be altered.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 To respond to all three comments, since I think they're all
18 a little off point. Regarding -- is it Sergeant or
19 Lieutenant Davis?

20 CHAIRMAN KIMSEY: Lieutenant.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Lieutenant Davis' comment. Since this only creates an
23 exception for the theory of operation it doesn't really
24 address the issue of the CHP using the same instrument
25 because the second time around he would only be exempted

1 from a fairly small portion of the course.

2 Theory of Operation, we could change the words but
3 it certainly captures the principle of operation of the
4 instrument. And I believe Detailed Procedure of Operation
5 tells you which button to push, when to push it. You know,
6 what to do with -- you know, the detailed, step-wise
7 instructions and it doesn't include principle of operations.

8 So I think it's in the right section. I think the
9 principle of operation is covered under the theory of
10 operation. And if the officer had received training on a
11 different instrument with a different principle of operation
12 he or she would still need some kind of instruction in the
13 principles of operation of the new instrument.

14 COMMITTEE MEMBER SHEN: This is Jennifer. I guess
15 I don't really see -- if you look at the bullet points, I
16 don't really see the principle of operation of a specific
17 instrument covered under Theory of Operation.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 Well that's probably a shortcoming of the subcommittee's
20 work product. (Laughter.)

21 RESEARCH SCIENTIST SPELL: Natallia Spell. I
22 think it's covered under theory of breath alcohol analysis
23 applied to the particular instrument.

24 COMMITTEE MEMBER SHEN: Well then --

25 RESEARCH SCIENTIST SPELL: It would be analogous

1 of the theory of operation, the theory of how analysis is
2 done on this instrument. It's 1221.4(a)(3)(A) and it says
3 I, double-I, triple-I. I mean, one, two, three, four,
4 number three.

5 COMMITTEE MEMBER SHEN: This is Jennifer. I think
6 what I'll talk to Kenton about is adding under "Detailed
7 Procedure of Operation" something that covers what you're
8 talking about so that that will no longer be a problem.
9 Operation of a specific instrument.

10 CHAIRMAN KIMSEY: Anything else on Article 7?

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
12 We'll see how that works. A couple of comments. In every
13 procedure that has ever been submitted there certainly is a
14 discussion of the principle of operation. And it typically
15 is not a part of the detailed procedure of operation.
16 Again, the detailed procedure just goes to the nuts and
17 bolts. Arguably the most important, perhaps, but it's the
18 nuts and bolts, step-wise instructions that enable the
19 officer to get a result.

20 And you don't necessarily need to know. You can
21 consider at that point the instrument a black box. You
22 don't necessarily need to know -- although I think it's
23 appropriate to understand the principle of the operation
24 we're asking technically unsophisticated people to make
25 scientific measurements. I think it's appropriate.

1 As I say, every single approved training procedure
2 that's been submitted to date includes some kind of
3 discussion of how the thing works. But in the past that
4 hasn't been under the detailed step-wise, precautionary
5 checklist kind of detailed procedure of operation.

6 CHAIRMAN KIMSEY: Well, we've come up to the noon
7 hour. I am sure Kenton and Jennifer will take into
8 consideration our discussions.

9 Any other comments before we sign off? Yes.

10 RESEARCH SCIENTIST SPELL: Natallia Spell. I have
11 comment here. It's 1221.4(a)(4)(A), "The instructions will
12 be, at a minimum, certified breath instrument operators with
13 2 years of practical experience, or, an FAAT." Which means,
14 forensic alcohol analysis trainee? I mean, what stands for
15 this abbreviation? And isn't it something, if it's
16 trainee, it has been previously eliminated from definitions?

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
18 We're getting into the weeds now so we've got to be careful.

19 RESEARCH SCIENTIST SPELL: Yeah, I mean --

20 CHAIRMAN KIMSEY: We're also trying, we're also at
21 the noon hour.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
23 Anyway.

24 RESEARCH SCIENTIST SPELL: I just think it --

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 There are some, there are some mistakes, if you will, in
2 Article 7 and I guess they'll be addressed at the next
3 meeting.

4 RESEARCH SCIENTIST SPELL: Yes.

5 CHAIRMAN KIMSEY: Thank you all for your time. If
6 there is nothing else from anyone on the Committee?

7 (No response.)

8 Thank you.

9 (Thereupon, the California Department of
10 Public Health Forensic Alcohol Review
11 Committee meeting adjourned at 12:02 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, or in any way interested in the outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of September, 2012.

JOHN COTA