

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-THIRD MEETING
MONDAY, MAY 20, 2013
10:07 A.M.

REPORTED BY:
JOHN COTA

APPEARANCES

Review Committee Members

Dr. Paul Kimsey, Chairman (Richmond)

Lieutenant Kevin Davis (Sacramento)

Ms. Jennifer Harmon (San Diego)

Mr. Dan Jeffries (San Diego)

Mr. Bruce Lyle (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)

Also Present

Mr. Russ Huck, California Department of Public Health,
Food, Drug and Radiation Safety Division (Sacramento)

Mr. Stephen Woods, California Department of Public Health,
Food, Drug and Radiation Safety Division (Sacramento)

Mr. Peter Sapunor, Office of Legal Services (Sacramento)

Christine Jacobs, California Highway Patrol (Sacramento)

Peter Baldrige (Sacramento)

Tim Ford, Office of Legal Services (Sacramento)

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1 be post-review by Agency and the package coming to the
2 Department for promulgation.

3 The legislation is pretty silent on that but I
4 think the Department is interested in having some
5 transparency and some involvement from the Committee. I
6 think what we can have a little bit of a discussion is about
7 what would be the best way to do that.

8 There's a couple of options. I mean, obviously
9 the Committee can meet quarterly and go through this process
10 of getting together in an official meeting and meet, let's
11 say quarterly, and hear where the package is or what's going
12 on. If we were to make a vote or we were to, you know, come
13 under a Bagley-Keene meeting like this then that's one
14 option.

15 Another option that I'm thinking about is we could
16 have a subcommittee again of a couple of members that could
17 interact with the Department on a periodic basis. And then
18 if there was an issue that the full committee needed to
19 discuss that subcommittee could make a recommendation to
20 have a full committee meeting. Those are two options I had
21 thought of, I don't know that I think are compatible with
22 Bagley-Keene.

23 Another option, on the drive in this morning I
24 thought maybe we could send out to the Committee an update
25 periodically for the Committee to look at and then if

1 someone wanted to have a full meeting they could let us
2 know. So I am not sure how that really works under Bagley-
3 Keene but those are three options that I thought of, how the
4 Committee could have some role going forward after the
5 Health and Human Services Agency review.

6 Any comments on those ideas?

7 Now you can't like all three of them equally.

8 COMMITTEE MEMBER SHEN: Paul, this is Jennifer.
9 You know, I guess we're not 100 percent sure of what it is
10 that we are going to be -- going to be doing next. I'm a
11 little unclear about this next part.

12 So would the interactions with the Department be
13 on a sort of edits and clarification points? Do you think
14 someone kind of to be like a technical editor sort of
15 person?

16 CHAIRMAN KIMSEY: Well, that could be a role that
17 the Committee would take. I think in some previous
18 discussions I think there was some interest on the part of
19 the Committee to, you know, sort of at least be aware of the
20 process and how it was going forward.

21 I would anticipate with a package like this that
22 there might be some clarifications or some technical issues
23 the Department might want to talk with the Committee about.

24 I think it's pretty much open-ended.

25 You know, the alternatives as I think -- if we

1 were just pretty much to follow the legislation directly the
2 Committee, you know, would not be involved with what the
3 Department was doing internally. A number of us just felt
4 there should be an opportunity to have a little more
5 transparency and for the Committee to sort of see what the
6 Department was doing as we, as we move forward.

7 COMMITTEE MEMBER SHEN: I don't question that. So
8 what kind of changes can the Department make without buy-in
9 from the Committee?

10 CHAIRMAN KIMSEY: That's an interesting question.
11 I don't know that there'd be changes as such. I mean, it
12 would be more clarification. In other words, what did we
13 mean when we said, you know, Forensic Alcohol Analyst. I
14 mean, is that consistent throughout the document? Is the
15 dictionary, you know, definition accurate or whatever. I
16 don't anticipate, you know, changes to our, you know, to
17 what Agency sends the Department as such.

18 COMMITTEE MEMBER SHEN: You know it makes sense
19 for -- I would imagine being someone in the Department
20 working on this product, that person is going to need to
21 have a contact to ask questions of and clarifications of. I
22 mean, I would think the Department would need to have that
23 interaction.

24 CHAIRMAN KIMSEY: Well we certainly want to. And,
25 you know, now we're going through a process where, you know,

1 we do have our Office of Regs and we do have the services of
2 an attorney who obviously knows the law but certainly not
3 the technical aspects. So yes, I would anticipate that
4 there would be, you know, clarifications or discussions
5 needed on what we were thinking.

6 And that's why I sort of thought the subcommittee
7 of two members might make the best sense. And then if those
8 two subcommittee members felt that there was something that
9 should come to the full committee they could make that
10 request and we'd have a meeting.

11 COMMITTEE MEMBER SHEN: Well then the Department
12 would interact primarily with these two people. But a
13 clarification point, and I only say if something large
14 happened that required the brains of all then we would have
15 a committee meeting. So we would give the Department these
16 two main contact people and then those two people are
17 ultimately responsible for following up on that on a monthly
18 basis or whatever it is with the Department to make sure
19 that the process is going forward and providing updates to
20 the Committee?

21 CHAIRMAN KIMSEY: Yes. It's my understanding
22 under Bagley-Keene the way it would work is if the
23 Department wanted, you know, some interaction or some
24 clarification that the subcommittee would meet, the two
25 individuals, and, you know, try and resolve the issue with

1 the Department or answer the question. And then -- but if
2 the subcommittee felt that it was something that the full
3 committee needed to review then we would have a full
4 meeting.

5 COMMITTEE MEMBER SHEN: I think that makes sense.
6 I think that's the best option.

7 CHAIRMAN KIMSEY: Other thoughts from the
8 Committee?

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 A comment from the public?

11 CHAIRMAN KIMSEY: Comments from the public.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 Yeah, I think we have to be a little cautious here. An
14 attorney could weigh in and probably should weigh in. Under
15 Bagley-Keene a subcommittee is defined kind of strangely as
16 a group of two or less persons. So I think depending on how
17 you set this up, if you had two committee members, if they
18 were to meet with a secretary I think that could be viewed
19 under Bagley-Keene as a meeting of three people, then hence
20 a meeting under Bagley-Keene necessitating all of the open
21 meeting act requirements of the law.

22 CHAIRMAN KIMSEY: You know, my understanding, and
23 someone else can jump in, but I think a subcommittee is two
24 members of the committee but I think other people other than
25 FARC committee members could be part of the subcommittee; is

1 that true?

2 MR. BALDRIDGE: Are these mics live?

3 CHAIRMAN KIMSEY: Oh yeah, everybody is live.

4 MR. BALDRIDGE: Baldrige in Sacramento. This is
5 Pete Baldrige in Sacramento.

6 CHAIRMAN KIMSEY: Yes, Pete.

7 MR. BALDRIDGE: If there are two in the committee
8 and they meet with a technical expert, which is what the
9 attorney would be supporting the committee, this would not
10 turn it into a meeting of three.

11 COMMITTEE MEMBER SHEN: Okay.

12 MR. BALDRIDGE: So I don't think that would be a
13 Bagley-Keene violation.

14 CHAIRMAN KIMSEY: Okay, thank you, Pete.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 Based on that definition, the attorney is not a person.
17 Some would argue that's a reasonable conclusion.

18 (Laughter.)

19 MR. BALDRIDGE: Duly noted, Clay.

20 (Laughter.)

21 CHAIRMAN KIMSEY: So for the Committee, do we have
22 any volunteers to set up a subcommittee? I mean,
23 historically, you know, I've usually been one of these
24 members and Patty Lowe or Jennifer Shen has been but I think
25 we don't have to be caught in a rut. So if any other

1 members of the Committee would like to be on the
2 subcommittee now is your time.

3 COMMITTEE MEMBER SHEN: If wind up in a rut, Paul,
4 I will be on the committee with you again. I'm happy to
5 have someone else step in.

6 CHAIRMAN KIMSEY: And so am I but there is a
7 reason we call it a rut. So think about it. And if you're
8 interested don't hesitate to let us know.

9 Any other sort of questions about my opening
10 remarks with regards to the process going forward?

11 COMMITTEE MEMBER SHEN: So Paul, this is Jennifer.
12 So then we are all in agreement that the best way to go is
13 with a subcommittee? Because we didn't hear any other --

14 CHAIRMAN KIMSEY: Yeah, we're going to be doing a
15 bit of voting today so why don't we go ahead and vote. I
16 make a motion that our Forensic Alcohol Review Committee set
17 up a subcommittee of two individuals to interact with the
18 Department on the promulgation of the regulations after the
19 Health and Human Services review. Do I hear a second?

20 COMMITTEE MEMBER SLAUGHTER: This is Mark
21 Slaughter in Sacramento, CPDA, I will second.

22 CHAIRMAN KIMSEY: Thank you, Mark. Any other
23 discussion, options, concerns? All in favor from the
24 Committee?

25 (Ayes.)

1 CHAIRMAN KIMSEY: I guess we better do this by
2 roll call. Mr. Jeffries?

3 COMMITTEE MEMBER JEFFRIES: Aye.

4 CHAIRMAN KIMSEY: Is it Lieutenant Davis now?

5 COMMITTEE MEMBER DAVIS: Yes, and aye.

6 CHAIRMAN KIMSEY: Okay. Mr. Slaughter?

7 COMMITTEE MEMBER SLAUGHTER: Aye.

8 CHAIRMAN KIMSEY: Ms. Jennifer Shen?

9 COMMITTEE MEMBER SHEN: Aye.

10 CHAIRMAN KIMSEY: And myself is aye. I don't
11 believe that we have Jennifer Harmon or Bruce Lyle on the
12 line.

13 COMMITTEE MEMBER SHEN: Right.

14 CHAIRMAN KIMSEY: Okay. Okay, so we have a
15 subcommittee.

16 So the next item of business, I think, in our
17 packet we have a draft cover letter to go to Agency. What
18 have I done with my copy? Oh, here it is. I think we can
19 go ahead and review this. This may facilitate most of our
20 discussion today.

21 Briefly, Jennifer and I have worked on this and I
22 think Jennifer and I will continue to work on it.

23 One of the things we need to do is, obviously this
24 letter will be going to Diana Dooley, the Agency Secretary.
25 We will change -- we will need to change the first

1 paragraph to reflect the fact that the letter the Committee
2 received was from Dr. Horton, the Chairman of, the Chairman,
3 the Director of the Department at the time, so there are
4 some things about -- "your letter" will be, you know, "Dr.
5 Horton's letter," et cetera, et cetera. But those are edits
6 that I believe Jennifer and I can work on.

7 If you have the letter in front of you, obviously
8 we talk about -- there's the four bullets, as we have talked
9 about them, from the Committee's work product.

10 Then we start -- and I'll sort of review the first
11 one, maybe someone else will jump in and review the second
12 bullet. The first bullet was about removing the
13 Department's evaluation of a laboratory's performance on
14 proficiency testing. And the Committee had, based on the
15 letter, decided to accommodate the Department's concerns and
16 submit the following change. Now I am on the second page at
17 1216.1(a)(3).

18 "Meeting the proficiency testing requirements as
19 specified in Health and Safety Code Section 100702.
20 Laboratories shall direct approved providers to submit all
21 external proficiency test results as required by Health and
22 Safety Code 100702 to the Department. The laboratories
23 shall submit, at a minimum, one test per year, one test per
24 analyst per year. In addition, laboratory staff shall
25 provide the Department any documentation pertaining to

1 corrective actions with respect to proficiency tests."

2 Question?

3 COMMITTEE MEMBER SHEN: We just got Bruce Lyle.

4 COMMITTEE MEMBER LYLE: And Jennifer --

5 CHAIRMAN KIMSEY: Good morning, Bruce.

6 COMMITTEE MEMBER SHEN: We'll have Jennifer Harmon
7 shortly.

8 COMMITTEE MEMBER SHEN: On this bullet, then, the
9 only things we changed were changing "wills" to "shalls" and
10 "submitted" to "submit," I believe.

11 CHAIRMAN KIMSEY: Okay. Any other comments from
12 committee members?

13 Comments from the public?

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
15 Comments from the public. What step are we -- are you going
16 to vote on this?

17 CHAIRMAN KIMSEY: Well, eventually we will. No
18 comment?

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
20 No comment. Okay.

21 RESEARCH SCIENTIST SPELL: I have a comment.

22 CHAIRMAN KIMSEY: Sure. Identify yourself.

23 RESEARCH SCIENTIST SPELL: Natallia Spell. "In
24 addition, laboratory staff shall provide the Department any
25 documentation pertaining to corrective actions with respect

1 to proficiency tests." What if a corrective action hasn't
2 been never done or what is the time limit of when they're
3 supposed to be completed, these corrective actions? I mean,
4 otherwise there is no substance in the requirement.

5 CHAIRMAN KIMSEY: Is there a time frame,
6 classically, that corrective actions are done with
7 proficiency testing?

8 RESEARCH SCIENTIST SPELL: In other words, how we
9 implement this particular clause?

10 COMMITTEE MEMBER SHEN: Well, I mean, we've had
11 around and around on this but the bottom line is that all
12 these laboratories are accredited. But if there is a
13 problem, there would have to be -- corrective action. I
14 don't know that we have a legislated time frame, that's a
15 discussion we'll need to have. I don't know that we want to
16 legislate what the corrective action is, necessarily,
17 either.

18 CHAIRMAN KIMSEY: With the accreditation process,
19 Jennifer, is there a time frame for responding to
20 proficiency testing for corrective actions?

21 COMMITTEE MEMBER SHEN: Yes. You know, I don't
22 know what it is off the top of my head. It really depends
23 on what the problem is and the proficiency test would come
24 under, would not having an issue that is significant then
25 that has to be corrected before that person can be paid for.

1 And Jennifer Harmon is here, she might have a better idea
2 about the time frame. I don't know exactly what the time
3 frames. Obviously, you can get people back to work so it
4 doesn't drag on.

5 COMMITTEE MEMBER HARMON: A lot of laboratories
6 have internal policies on that, those laboratories usually
7 set their time frames. I can't -- I don't recall what the
8 time frame is to get into the PRC.

9 CHAIRMAN KIMSEY: I'm sorry, could you identify
10 yourself, I'm sorry.

11 COMMITTEE MEMBER HARMON: I'm sorry, this is
12 Jennifer Harmon.

13 CHAIRMAN KIMSEY: Oh, okay.

14 COMMITTEE MEMBER HARMON: But there is a time
15 frame and I don't know what it is offhand.

16 CHAIRMAN KIMSEY: Well, let me --

17 COMMITTEE MEMBER HARMON: To notify the PRC if
18 there are certain errors or problems. But most laboratories
19 have internal requirements. In fact, they have to have
20 internal requirements per ASCLD/LAB accreditations as to
21 what happens if a person simply has failed. It's actually a
22 requirement in 17025.

23 COMMITTEE MEMBER SHEN: As you walked in the room
24 the question came up about is there a time frame to send
25 corrective actions to the Department and is there any

1 technical sense for what that corrective action should be?
2 That's the question on the table.

3 CHAIRMAN KIMSEY: Well, and also -- this is Paul
4 in Richmond. I understand the question, also I think really
5 to the point for the Committee is, is there anyone
6 interested from the Committee? I mean, I appreciate the
7 public comment but is there any interest on anyone from the
8 Committee to add a time frame to this section?

9 COMMITTEE MEMBER SHEN: I don't have any interest;
10 this is Jennifer.

11 COMMITTEE MEMBER SLAUGHTER: This is Mark
12 Slaughter; I don't either. I believe adding the time frame
13 suggests another level of oversight.

14 CHAIRMAN KIMSEY: Okay, other comments on bullet
15 number 1 from the Committee or from the public?

16 What is the pleasure of the Committee, do we want
17 to vote on these one by one or do we want to vote later or
18 as we go through this letter?

19 COMMITTEE MEMBER SHEN: This is Jennifer. I'd
20 like to vote on them one by one.

21 COMMITTEE MEMBER SLAUGHTER: It's Mark, agreed.

22 CHAIRMAN KIMSEY: Okay.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
24 Actually a comment from the public because I want to
25 understand, this is kind of a procedural question. On the

1 agenda, and this based on a comment from the last meeting,
2 is an item where we were going to, I think you had referred
3 to it as a philosophical discussion about what the
4 Department does with the data. So my understanding is we
5 are just talking about the letter but you're talking about a
6 vote now. Again, I think that conversation was on the
7 agenda and probably should have taken place before the vote.

8 But kind of an over-arching comment to every one
9 of these four bullet points is it is noticeably absent. And
10 is it something that is in the current regulations but
11 noticeably absent with the revised regulations is any
12 mention of what the Department does with that information.

13 I would caution you that assuming that that isn't
14 flagged as a clarity issue during the promulgation process,
15 if the regulations are promulgated as this someone could
16 argue that the Department could do anything they want with
17 the data since there's no limits placed on the Department as
18 to what they do and there's the over-arching requirements of
19 100725 that says the Department "shall" enforce the
20 regulations, for this and for the rest of them.

21 Again, I thought we included in the agenda a
22 discussion of this general topic, what does the Department
23 do with the information. But that would apply, certainly,
24 in this case.

25 CHAIRMAN KIMSEY: Right. I had anticipated having

1 that discussion but not at this time. Is there anyone on
2 the Committee that wants to have that discussion now or do
3 we want to go through the letter and vote on these bullets?

4 COMMITTEE MEMBER LYLE: Bruce. I say we still do
5 the letter and vote on the bullets.

6 COMMITTEE MEMBER SHEN: This is Jennifer, I agree.

7 COMMITTEE MEMBER DAVIS: This is Kevin, I agree.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
9 Again, a procedural question, I'm not sure. If you're
10 voting on the letter -- there's two items. The cover letter
11 really, I don't want the tail to wag the dog here. The
12 cover letter is just something that goes along, it's read or
13 it's not read, with the -- with the revised regulations. So
14 by voting on the bullet are we voting on the revised
15 regulations?

16 CHAIRMAN KIMSEY: Well, the letter, I think -- I
17 thought that the letter provided a nice way of working
18 through the four bullets that the group was going to vote
19 on. These are the four sections or the four areas that we
20 have not had agreement on and so it just provided a nice
21 venue to walk through the discussion.

22 So basically our package that will go forward,
23 this cover letter will be on, you know, will be on sort of
24 the previous work product that we have already worked
25 through as a committee. So again, so we're going to be

1 voting on bullet number 1.

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
3 Again a comment from the public. I don't think the Chair's
4 responses make much sense, actually. Are we voting on the
5 regulations or are we voting on the letter? A simple
6 question.

7 CHAIRMAN KIMSEY: We're voting on the regulations.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
9 Okay. So I submit that a discussion which you would like to
10 postpone until later about what the Department -- it's just
11 barely possible, highly unlikely but barely possible, that
12 discussion would result in decisions that change the
13 language of the regulations. So again, I'm --

14 CHAIRMAN KIMSEY: I think we -- duly noted from
15 the public. The interest on the part of the Committee right
16 now is to vote on the regulations. I mean, there's a lot of
17 data besides what these four bullets represent that the
18 Department is going to have. What the Department does with
19 all of the information is a bigger question than what these
20 represent on these four bullets.

21 So back to the voting. We are voting on Section
22 1216.1(a)(3) on page two of the cover letter. We'll go by
23 voice vote by individual. Mr. Dan Jeffries, aye or nay?

24 COMMITTEE MEMBER JEFFRIES: Aye, in favor.

25 CHAIRMAN KIMSEY: Lieutenant Kevin Davis?

1 COMMITTEE MEMBER DAVIS: Aye.

2 CHAIRMAN KIMSEY: Mr. Mark Slaughter?

3 COMMITTEE MEMBER SLAUGHTER: Aye.

4 CHAIRMAN KIMSEY: Mr. Bruce Lyle?

5 COMMITTEE MEMBER LYLE: Aye.

6 CHAIRMAN KIMSEY: Ms. Jennifer Shen?

7 COMMITTEE MEMBER SHEN: Aye.

8 CHAIRMAN KIMSEY: Ms. Jennifer Harmon?

9 COMMITTEE MEMBER HARMON: Aye.

10 CHAIRMAN KIMSEY: And myself, Paul Kimsey, aye.

11 I guess we'll figure out later how we get Kenton
12 Wong's vote on this.

13 So moving on to bullet number 2. We previously
14 had "Remove CDPH authority to review, approve, and test the
15 qualifications of persons employed by a laboratory." And,
16 let's see. "Therefore, we propose to add the following
17 verbiage to Article --" Okay, the last, the Department will
18 have an oversight role. Therefore -- well, let me read it
19 correctly. Bullet number 2, remove -- the underlined part
20 says:

21 "Remove CDPH authority to review, approve and test
22 the qualifications of persons employed by a laboratory."

23 That's what we previously had.

24 "We recognize the department's role in ensuring
25 that analysts meet the criteria set forth in Title 17. It

1 is the Committee's opinion that if we provide proof to the
2 Department that analysts conducting alcohol analysis meet
3 the qualifications set forth in the proposed regulations, we
4 will have succeeded in providing the Department with an
5 oversight role. Therefore, we propose to add the following
6 verbiage to Article 2, Section 1216."

7 The top of the third page:

8 "1216.1(h) Every laboratory performing forensic
9 alcohol analysis shall provide to the Department the
10 following:"

11 "(1) A copy of the diploma(s) or transcripts of
12 relevant education for each individual performing forensic
13 alcohol analysis for the laboratory. The relevant education
14 includes proof of a baccalaureate or higher degree in any
15 applied physical or natural science."

16 "(2) A training summary of the topics outlined in
17 1216.1(e)(2) with a completion date for each individual
18 performing forensic alcohol analysis for the laboratory."

19 "(3) Copies of qualifying tests to include written
20 and/or practical examinations for each individual performing
21 forensic alcohol analysis for the laboratory."

22 "(4) Proof of completion of a competency test
23 which follows the requirements articulated in 1216.1(e)(3)
24 for each individual performing forensic alcohol analysis for
25 the laboratory."

1 "(5) Written notification to the Department
2 alerting it that the individual has successfully completed
3 his or her training prior to beginning casework; and"

4 "(6) Proof of completion of a proficiency test as
5 outlined in 1216.1(a)(3) for each analyst performing
6 forensic alcohol analysis for the laboratory."

7 Any comments from the Committee?

8 Comments from the public?

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

10 Well, I would note again that the Committee, certainly in
11 its comments, indicated its expectation the Department would
12 do nothing with this information except file it. But the
13 regulations actually, again, fail to describe any, any
14 response, anything the Department would do with this
15 information.

16 CHAIRMAN KIMSEY: Duly noted. Any other public
17 comment?

18 Okay, are we ready to vote?

19 COMMITTEE MEMBER SHEN: Yes.

20 COMMITTEE MEMBER SLAUGHTER: Yes.

21 CHAIRMAN KIMSEY: Bullet number 2, 1216.1(h). Dan
22 Jeffries?

23 COMMITTEE MEMBER JEFFRIES: Aye, in favor.

24 CHAIRMAN KIMSEY: Lieutenant Kevin Davis?

25 COMMITTEE MEMBER DAVIS: Aye.

1 CHAIRMAN KIMSEY: Mr. Mark Slaughter?

2 COMMITTEE MEMBER SLAUGHTER: Aye.

3 CHAIRMAN KIMSEY: Mr. Bruce Lyle?

4 COMMITTEE MEMBER LYLE: Aye.

5 CHAIRMAN KIMSEY: Ms. Jennifer Shen?

6 COMMITTEE MEMBER SHEN: Aye.

7 CHAIRMAN KIMSEY: Ms. Jennifer Harmon?

8 COMMITTEE MEMBER HARMON: Aye.

9 CHAIRMAN KIMSEY: Paul Kimsey, aye.

10 Does someone else want to read bullet number 3, my
11 voice is getting a little scratchy here.

12 COMMITTEE MEMBER SHEN: I'll do 3. Oh my gosh,
13 that's the long one, Paul.

14 (Laughter.)

15 COMMITTEE MEMBER SHEN: Okay, bullet 3.

16 "Remove CDPH authority to review and approve
17 training programs intended for persons to qualify under
18 regulations (e.g. breath instrument operator training)."

19 Okay. So we propose -- what we did last time was
20 -- I believe last time was to do a reorder of how it was
21 written. First, when we put in the original changes in that
22 sense, and then there's -- you don't want me to read all
23 that I wouldn't think. But including the original changes
24 that were there and that's in order to address this bullet
25 point on the next page saying:

1 "We propose changing those recommendations to the
2 following. These changes will serve to flesh out the
3 requirements for the breath testing program and to provide
4 the Department with a clear understanding of what is to be
5 included in the breath operator training program."

6 "We propose to reinsert Article 4 with the
7 following amendments."

8 Read that whole thing?

9 CHAIRMAN KIMSEY: I'm sorry, I didn't hear you,
10 Jennifer.

11 COMMITTEE MEMBER SHEN: Do I need to read that
12 whole thing?

13 CHAIRMAN KIMSEY: Sure, let's go ahead and read
14 it, please.

15 COMMITTEE MEMBER SHEN: Okay. This is how we are
16 currently suggesting that it be:

17 "Article 4 Training of Personnel"

18 "1218. Training Program Review."

19 "Any organization, laboratory, institution, school
20 or college conducting a course of instruction for persons to
21 qualify under Section 1221.4(a)(3) shall provide the
22 Department, shall provide the following to the Department to
23 demonstrate compliance with Title 17."

24 "1. For training described under Section
25 1221.4(a)(3); the laboratory shall submit the following:"

1 "1(a). A complete outline of the training which
2 meets the requirements of Section 1221.4."

3 "(b). A copy of the written examination together
4 with the correct answers."

5 "(c). A written description of the practical
6 examination."

7 "(d). A list of qualified instructors; and"

8 "(e). A description of the qualifications of
9 instructors for the training, which at a minimum shall mean
10 persons that meet the requirements described under Section
11 122.1 (sic) 4(a)(4)(A)."

12 "Additional Requirements."

13 "At the discretion of the forensic alcohol
14 laboratory, any phase or portion of the training shall be
15 subject to alteration in an effort to update the program as
16 technological advances were made or if a portion has been
17 judged inappropriate. The changes will be subject to
18 Department notification as outlined in 1218.1(a) through
19 1218.1(c)."

20 "If the Department believes that the laboratory's
21 training program does not comply with these regulations, the
22 Department shall notify the laboratory in writing within 30
23 days with its specific concerns. The laboratory management
24 shall respond to the Department in writing within 30 days."

25 All right.

1 "in addition, we propose the following changes to
2 Article 7."

3 "Article 7 Requirements for Breath Alcohol
4 Analysis."

5 "1221.4 Standards of Procedure."

6 "1221.4(a). Procedures for breath alcohol testing
7 shall meet the following standards:"

8 "(a)(3). Breath alcohol testing shall be
9 performed only with procedures for which the operator has
10 received training, such training to include at a minimum the
11 following schedule of subjects:"

12 "(A). Theory of Operation:"

13 "Value and purpose of forensic alcohol testing;"

14 "General processes of absorption, distribution and
15 elimination of alcohol;"

16 "Theory of breath alcohol analysis;"

17 "Discussion of the required 15 minute wait period,
18 and"

19 "Methods of breath alcohol testing."

20 "Detailed Procedure of Operation:"

21 "Procedures of operation for the specific breath
22 alcohol testing instrument used by the agency."

23 "(C). Precautionary Checklist: Description of,
24 and adherence to, the Precautionary Checklist."

25 "(D). Practical Experience:"

1 "The Precautionary Checklist is incorporated into
2 the testing sequence. Each screen prompt is discussed and
3 reviewed by the instructor."

4 "The operation of the breath instrument shall be
5 demonstrated by the instructor."

6 "The instructor will observe the trainee(s)
7 perform a test on the instrument while he or she
8 acknowledges each step of the Precautionary Checklist."

9 "(E). At the completion of the training session,
10 each breath instrument operator trainee will be required to
11 successfully complete a written examination and to achieve a
12 passing score of a minimum of 80 percent."

13 "(F). Prior to the completion of the training
14 session, each breath instrument operator trainee will be
15 required to successfully complete a breath test accurately
16 following the Precautionary Checklist as outlined in
17 1221.4(a)(3)(D)iii."

18 "(G). Upon successful completion of the training
19 session and successful completion of both the written and
20 practical examinations, the trainee will be issued a
21 certificate. The certificate will indicate the operator's
22 name, ID badge number, agency and include the instructor's
23 name."

24 "(a)(4). Training curriculum in the procedures of
25 breath alcohol testing shall be developed by a forensic

1 alcohol analyst. Department notification of the proposed
2 curriculum will follow Section 1218.1."

3 "The instructors will be, at a minimum, certified
4 breath instrument operators with two years of practical
5 experience, or, a Forensic Alcohol Analyst who has
6 successfully completed the breath instrument training and
7 has at least six months of practical experience with the
8 instrument. Training in the Theory of Operation, pursuant
9 to 1221.4(a)(3)(A) shall be coordinated by a Forensic
10 Alcohol Analyst."

11 "(B). The breath instrument operator trainees
12 will receive, at a minimum, four hours of instructional
13 training by a certified breath instrument operator."

14 "(C). If a breath instrument operator trainee has
15 already undergone training to operate a different approved
16 breath testing instrument, the trainee may receive
17 instruction as above excluding the portion covering
18 1221.4(a)(3)(A)."

19 "An operator shall be a forensic alcohol analyst
20 or a person who has successfully completed the training
21 described under Section 1221.4(a)(3) and 1221.4(a)(4) and
22 who may be called upon to operate a breath testing
23 instrument in the performance of his or her duties."

24 CHAIRMAN KIMSEY: Well read. Any comments from
25 the Committee?

1 Any suggestions, changes, discussion?

2 COMMITTEE MEMBER SHEN: I didn't ask this as I was
3 reading it -- Jennifer, you put all the "shalls" --

4 CHAIRMAN KIMSEY: I'm sorry, say that again.

5 COMMITTEE MEMBER SHEN: All the shalls in
6 everywhere. We should have "shalls."

7 COMMITTEE MEMBER SLAUGHTER: We have some
8 lingering "wills."

9 COMMITTEE MEMBER SHEN: Oh, we will have "shalls"
10 then.

11 CHAIRMAN KIMSEY: And just to let everyone know,
12 it looks like Tim Ford has joined us from our Office of
13 Legal Services in Sacramento. Good morning, Tim.

14 MR. FORD: Good morning, sir.

15 CHAIRMAN KIMSEY: I'm sorry, we had some lingering
16 "wills?"

17 COMMITTEE MEMBER SLAUGHTER: Yes, we do.

18 COMMITTEE MEMBER SHEN: Okay. I can change the
19 "wills" to "shalls," we just have to reread it again. Not
20 out loud, thankfully. I'll make those changes.

21 I think this was about the ability to not have to
22 retrain our officers again on a portion of the instrument.
23 So does everyone feel like this accomplished that?

24 COMMITTEE MEMBER DAVIS: This is Kevin; yes.

25 CHAIRMAN KIMSEY: Other comments from the

1 Committee?

2 COMMITTEE MEMBER LYLE: Bruce. Under
3 1221.4(a)(3)(D), the first (i). The way the sentence reads
4 the Precautionary Checklist is incorporated into the
5 testing. I don't really know if that is true for the rest
6 of it. It shall be? And then next is the screen prompt.

7 CHAIRMAN KIMSEY: So your interest would be to
8 have maybe the Precautionary Checklist, change it from "is"
9 to "shall be" incorporated?

10 COMMITTEE MEMBER LYLE: Correct.

11 CHAIRMAN KIMSEY: Those are some consistency
12 things I think we'll probably be dealing with going
13 foreword. But any objections from the Committee to make
14 that edit?

15 COMMITTEE MEMBER SLAUGHTER: This is Mark; no, no
16 objection.

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
18 Comment from the public. I --

19 CHAIRMAN KIMSEY: Just a moment, we're working on
20 the Committee here. Any other comments from the Committee?

21 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
22 There are quite a few "wills" so we just need to make sure
23 we switch them all over.

24 CHAIRMAN KIMSEY: And the direction is to change
25 the "wills" to "shall be" or "shall?"

1 COMMITTEE MEMBER HARMON: Yes.

2 CHAIRMAN KIMSEY: And Jennifer Shen I think has
3 agreed to do that.

4 COMMITTEE MEMBER SHEN: Yes, I'll take care of
5 that.

6 CHAIRMAN KIMSEY: Anything else from the
7 Committee?

8 Anything from the public?

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 Well, it's a technical issue. I'm surprised no one on the
11 Committee caught this. The requirement that, and maybe it,
12 the requirement that the Precautionary Checklist prompts are
13 provided by the instrument would exclude a number of types
14 and models of instruments that are currently being used.
15 For example, the Intoxilizer 5000 doesn't provide any alpha,
16 alpha/numeric prompts. So, the assumption, I think in time
17 is, although the technology could change as instruments get
18 smaller, there may be less information available in terms of
19 prompts.

20 But there certainly are some instruments that are
21 otherwise approved based on a committee's adoption of 100702
22 that would now be excluded. So that it creates an internal
23 consistency problem that this and many, many, many others
24 we'll assume will be resolved if and when these regulations
25 are promulgated.

1 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
2 Clay, the way it reads is "The Precautionary Checklist
3 shall be incorporated into the testing sequence." I think
4 that you can set up the testing sequence before you
5 physically start the instrument and that would be considered
6 incorporating it into the testing sequence. It's a step-by-
7 step process, I am going to start a (indiscernible) and this
8 is how I'm going to do it. It doesn't say that it has to be
9 -- now it does say the screen prompts we discussed, and
10 maybe we need to break that out. It doesn't necessarily
11 have to be on the screen, I think that's an interpretation
12 on your part.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
14 Then maybe you could remind yourself. I was responding
15 actually to the recent proposed edit. And maybe someone
16 could clarify their understanding of what that last edit was
17 regarding screen prompts, for Jennifer.

18 COMMITTEE MEMBER SHEN: The last edit was that
19 each screen prompt shall be discussed and reviewed and so
20 that each screen prompt is discussed and reviewed. But I
21 agree with Jennifer, to me the Precautionary Checklist, its
22 incorporation is part of the testing sequence, that does not
23 mean that the Precautionary Checklist has to be broken down
24 into individual screen prompts on an instrument. But any
25 screen prompts that come up on the instrument do, in fact,

1 need to be discussed with the trainee, he or she.

2 CHAIRMAN KIMSEY: Well again, this is sort of a
3 technical writing issue. It could be easily solved with, if
4 necessary, at some point, each screen prompt if available is
5 discussed and reviewed. I mean, if there is no screen
6 prompt I don't see you're going to be discussing it but that
7 is more for a technical writing from the regulation
8 perspective, I think.

9 COMMITTEE MEMBER SHEN: Jennifer. You know, what
10 we can do is, is simply break that out. So (i) or one would
11 be "The Precautionary Checklist shall be incorporated into
12 the testing sequence." (ii) would be "Each instrument
13 screen prompt --"

14 COMMITTEE MEMBER LYLE: As it appears.

15 COMMITTEE MEMBER SHEN: "as it appears." I think
16 -- "Each prompt shall be discussed and reviewed by the
17 instructor" as the second point and then (iii) would be "the
18 operation of the breath instrument shall be demonstrated,
19 then (iv), between (iii) and (iv). We could just break it
20 out if that would be clearer. But I can see why it looks
21 like they're linked, but they are not.

22 CHAIRMAN KIMSEY: So is there any interest on the
23 part of the Committee members to change the language as it
24 exists other than the "shall be" and the "is" correction?

25 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.

1 I guess my concern is an over-arching role which is this
2 goes to how the Department is going to interpret what the
3 regulation means. And if the Department, the person who is
4 going to be interpreting what the regulation means is going
5 to imply that a Precautionary Checklist is now a screen
6 prompt then we are going to have to break it out for those
7 labs that aren't meeting that. So if this is going to
8 clarify so that we don't have any misinterpretation of what
9 the regulation means then we probably should do that.

10 COMMITTEE MEMBER SHEN: This is Jennifer, I agree.

11 CHAIRMAN KIMSEY: So we're suggesting that we
12 break that out?

13 COMMITTEE MEMBER SHEN: Yes. I suggest that we go
14 with:

15 "i. The Precautionary Checklist shall be
16 incorporated into the testing sequence."

17 "ii. Each instrument screen prompt shall be
18 discussed and reviewed by the instructor."

19 "iii. The operation of the breath instrument
20 shall be demonstrated by the instructor."

21 And "iv. The instrument will, the instructor will
22 observe the trainee(s) perform a test on the instrument
23 while he or she acknowledges each step from the
24 Precautionary Checklist."

25 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.

1 Just to be consistent the form should be "the instructor
2 shall" to be the same.

3 COMMITTEE MEMBER SLAUGHTER: And this is Mark. On
4 the revised (ii) I think we should include "where
5 available."

6 COMMITTEE MEMBER SHEN: Okay.

7 COMMITTEE MEMBER SLAUGHTER: To clarify if the
8 instrument doesn't have the prompt.

9 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
10 I am not sure that someone who is not even familiar with
11 all this that that makes it any clearer. To me it makes it
12 even less clear where you're talking about where available.
13 Does that mean, where you want -- or instruments that have
14 it and probably the user (indiscernible). I think the
15 original point of if there is no screen prompt you don't
16 even discuss it is exactly what we're talking about.
17 Normally it only makes sense to discuss it if it's there.

18 CHAIRMAN KIMSEY: That was my feeling.

19 COMMITTEE MEMBER SLAUGHTER: I'll agree with that.
20 This is Mark, I'll agree with that.

21 COMMITTEE MEMBER SHEN: Well you think like all
22 instruments would have some prompts at some point. I don't
23 know that but, like, it would be unlikely that there's
24 absolutely nothing that shows up on the computer screen at
25 all on any instrument, on an instrument.

1 COMMITTEE MEMBER DAVIS: This is Kevin. Why not
2 just take it out altogether and just say each step of the
3 Precautionary Checklist shall be discussed and reviewed by
4 the instructor. And presumably that would include screen
5 prompts if they were there. The instructor would know that.

6 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. Just so
7 I can understand. The screen prompts include things like
8 amount of alcohol detected or temperature out of range or
9 low voltage or anything like that that might not be on the
10 Precautionary Checklist?

11 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
12 I am going to agree with Dan Jeffries on this. There are
13 things that could be -- instruments could be prompting
14 people for cues that are not going to necessarily be on the
15 Precautionary Checklist. Like volt trans or accuracy
16 checks, those type things that we could be instructing
17 people what they are. But they are not necessarily going to
18 be on the Precautionary Checklist.

19 COMMITTEE MEMBER DAVIS: This is Kevin. How about
20 each step of the checklist and instrument screen prompts
21 shall be discussed and reviewed.

22 COMMITTEE MEMBER SHEN: That works. And you know,
23 if there is some word other than "prompt" we could use. I
24 don't really consider the amount of alcohol to be a prompt,
25 necessarily but it is -- it's (indiscernible). I can't

1 think of another word.

2 MR. SAPUNOR: Instrument screen display. This is
3 Pete out of Sacramento. But I think we're over-thinking
4 this.

5 COMMITTEE MEMBER SHEN: Yeah, I think we're over-
6 thinking it. Okay. So what am I doing now?

7 CHAIRMAN KIMSEY: Well I think we like the idea of
8 breaking it out, you know, by itself to be a two. So each
9 instrument display is discussed and reviewed by the
10 instructor?

11 MR. SAPUNOR: I think that any display prompt is
12 what we had originally. I think I like that.

13 CHAIRMAN KIMSEY: Okay. I can go with either,
14 prompt or display.

15 COMMITTEE MEMBER SHEN: So now we have for (ii),
16 "Each instrument screen prompt shall be discussed and
17 reviewed by the instructor."

18 COMMITTEE MEMBER LYLE: Bruce; I'm fine with that.

19 CHAIRMAN KIMSEY: Is that something --

20 COMMITTEE MEMBER JEFFRIES: We're fine with it in
21 San Diego.

22 CHAIRMAN KIMSEY: That seems acceptable to
23 everybody?

24 COMMITTEE MEMBER DAVIS: Yes.

25 COMMITTEE MEMBER SLAUGHTER: Yes.

1 CHAIRMAN KIMSEY: Other comments on this bullet
2 number 3?

3 COMMITTEE MEMBER JEFFRIES: Dan Jeffries in San
4 Diego. If we are going to be consistent we're referring to
5 1221.4(a)(3)(D)(iii) or we're talking about (a)(3) -- I
6 think we need to change that to (iv) because we have now
7 renumbered (a)(3)(D); is that correct? If you're
8 renumbering (a)(3)(D)(i), (ii), (iii) and (iv), we go back
9 and refer to it as, about a paragraph later when you think
10 --

11 CHAIRMAN KIMSEY: Yeah, just to make it internally
12 consistent, I agree.

13 COMMITTEE MEMBER SLAUGHTER: Good catch.

14 CHAIRMAN KIMSEY: Other comments?

15 Are we ready to vote?

16 COMMITTEE MEMBER SHEN: Yes.

17 CHAIRMAN KIMSEY: Okay. All in favor of, well, no
18 not all, excuse me. We'll be voting on 1221.4 and, let's
19 see, 1218. Dan Jeffries?

20 COMMITTEE MEMBER JEFFRIES: I am in favor with the
21 amendments proposed by both Bruce and Jennifer and including
22 the changes of the "wills" to "shalls."

23 CHAIRMAN KIMSEY: Yes, thank you for that. we
24 will be voting as Dan described on 1218 and 1221.4 as
25 discussed and amended.

1 COMMITTEE MEMBER JEFFRIES: Dan Jeffries, aye.

2 CHAIRMAN KIMSEY: Lieutenant Davis?

3 COMMITTEE MEMBER DAVIS: Aye.

4 CHAIRMAN KIMSEY: Mr. Slaughter?

5 COMMITTEE MEMBER SLAUGHTER: Aye.

6 CHAIRMAN KIMSEY: Mr. Lyle?

7 COMMITTEE MEMBER LYLE: Aye.

8 CHAIRMAN KIMSEY: Ms. Shen?

9 COMMITTEE MEMBER SHEN: Aye.

10 CHAIRMAN KIMSEY: Ms. Harmon?

11 COMMITTEE MEMBER HARMON: Aye.

12 CHAIRMAN KIMSEY: Paul Kimsey, aye.

13 So we are on to 4. At the bottom of the page
14 there, 4. "Remove requirements for a laboratory to provide
15 CDPH with records of its activities under the regulations,
16 including notification by a laboratory of its intent to
17 perform forensic alcohol analysis."

18 "To provide oversight, the committee agrees that
19 the Department will need to have knowledge of the activities
20 of the laboratory and its staff. Therefore we propose to
21 add the following language."

22 "1216(a). Every laboratory performing forensic
23 alcohol analysis shall provide the Department the
24 following:"

25 "(1) A statement of intent to perform or stop

1 performing alcohol analysis to include notification for
2 breath and fluid analysis specifically;"

3 "(2) The laboratory's current address, as well as
4 the name, address and phone number of the laboratory's point
5 of contact;"

6 "(3) A list of current laboratory personnel
7 qualified to do forensic alcohol analysis; and"

8 "(4) A list of current instruments used by
9 laboratory personnel for alcohol analysis."

10 Comments from the Committee?

11 COMMITTEE MEMBER JEFFRIES: Just one thing, it
12 looks like we've got a stray colon in there.

13 CHAIRMAN KIMSEY: I'm sorry, where is the stray
14 colon?

15 COMMITTEE MEMBER JEFFRIES: At 1216(a).

16 CHAIRMAN KIMSEY: Okay. Any other comments from
17 the Committee or the public?

18 MR. BALDRIDGE: Dr. Kimsey, this is Pete Baldrige
19 in Sacramento. I'm reading this first sentence, "A
20 statement of intent to perform or stop performing alcohol
21 analysis to include notification for breath and fluid
22 analysis specifically;" I'm just -- I'm not tracking the
23 sentence.

24 COMMITTEE MEMBER SHEN: This is Jennifer. The
25 point of this clarification was to ensure that we specified

1 whether the person had stopped doing breath analysis or
2 fluid analysis or both, that was the purpose of (1).

3 MR. BALDRIDGE: Okay. So then could it say, "A
4 statement of intent to perform or stop performing alcohol
5 analysis that shall include notification." Would that be
6 more clear? Because to just say "to include" kind of -- I
7 think that's going to raise questions if this -- once this
8 gets to OAL.

9 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
10 I think that's a good point. I, actually now when Jennifer
11 reads it, and now I'm wondering are we talking about when a
12 lab (indiscernible) could do a test or a method or are you
13 talking about a particular individual? It sounds like
14 Jennifer's comment was a particular individual.

15 COMMITTEE MEMBER SHEN: The first bullet point,
16 number 1, is for the labs in general, it's the laboratory's
17 statement. The laboratory is now(indiscernible) -- fluid
18 analysis and alcohol. That is poor. Maybe it isn't clear
19 enough.

20 CHAIRMAN KIMSEY: Well the introductory sentence
21 above says, "Every laboratory performing forensic alcohol
22 analysis shall provide the following." So I assumed that we
23 were talking about laboratories.

24 COMMITTEE MEMBER SHEN: We were.

25 CHAIRMAN KIMSEY: But I like, I appreciate Pete's

1 clarification.

2 COMMITTEE MEMBER SHEN: Is the clarification
3 because -- and I guess as I'm reading it, a statement of
4 intent to perform or stop performing. All it is is
5 information about either breath or fluids or both. Is there
6 -- is there an issue that says to include? You can open the
7 file to get a bunch of other stuff in there?

8 MR. BALDRIDGE: Like I said, the sentence just
9 doesn't track for me. A statement of intent to perform or
10 stop performing alcohol analysis. This is what the lab,
11 every lab needs to provide. So they are providing a
12 statement to include notification for breath and fluid
13 analysis specifically. That's just not -- that's just not
14 tracking for me. I mean, are we -- is this last clause to
15 include notification for breath and fluid analysis
16 specifically? Is that something that defines what should be
17 in the statement of intent to perform or stop performing?

18 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
19 And you know (indiscernible). All that we wanted to say is
20 that a laboratory is required to notify the Department
21 whether they are performing or not performing, analysis.
22 And they have to specifically state whether it's breath,
23 blood or both. That's it.

24 MR. BALDRIDGE: Okay. But I think if it --

25 COMMITTEE MEMBER HARMON: It can be breath only,

1 blood only, it can be both, they could stop performing one,
2 they could start performing another, that's it.

3 MR. BALDRIDGE: Okay. Well then I think if you
4 change that "to include" to "that shall include." You know,
5 notification for breath and fluid analysis specifically.
6 You know, that could work. That shall -- or that shall be
7 specific with regard to breath and fluid analysis. So --
8 you can word it either way. But it's just having just two
9 instead of, you know, creating a subordinate clause, you
10 know, just doesn't -- there's something wrong with the
11 syntax.

12 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.

13 MR. BALDRIDGE: I understand what you're trying to
14 say, I have no problem. You know, I have no problem with
15 what you're trying to say. I just think for clarity's sake,
16 you know, once these things get over to the Office of
17 Administrative Law, this is what these guys do, you know.
18 They will scrutinize the language of this to make sure that
19 it's clear. And, you know, as I look at the sentence I'm
20 just having trouble tracking it. And if I'm having trouble
21 tracking it I know they will.

22 COMMITTEE MEMBER SHEN: This is Jennifer. So if
23 we say, "A statement of intent to perform or stop performing
24 alcohol analysis that shall include notification for breath
25 and fluid analysis specifically" how does that sound? Does

1 that work for you? I think it does.

2 MR. BALDRIDGE: I think that's better.

3 COMMITTEE MEMBER SHEN: It sounds better to me
4 also.

5 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
6 How about a different (indiscernible) and say "A statement
7 of intent to perform or stop performing alcohol analysis, be
8 it breath or fluid or both." Something like that. Isn't
9 that what we're getting at, that we just want an intent to
10 say whether we're doing fluid or breath or both?

11 COMMITTEE MEMBER LYLE: Yeah, or you could say
12 using breath or fluid analysis or both.

13 COMMITTEE MEMBER JEFFRIES: Instead of
14 (indiscernible).

15 COMMITTEE MEMBER SHEN: I don't know if I like the
16 "using breath or fluid." Well, do you think it's clear with
17 the "that shall?" I think maybe --

18 CHAIRMAN KIMSEY: Yeah, I think the "that shall"
19 is sufficient for me. I mean, a statement of intent to
20 perform or stop performing alcohol analysis that shall
21 include notification for breath and fluid analysis
22 specifically.

23 COMMITTEE MEMBER JEFFRIES: Now that I think about
24 it, there is a problem with the word "specifically." What
25 are we referring to specifically? We want them to notify if

1 it's breath or if it's fluid or it's both. And I think it's
2 the word "specifically" that is kind of out there hanging
3 without explaining what we mean by it.

4 COMMITTEE MEMBER LYLE: What if you had a
5 subheading that discussed on the one sentence intent to
6 perform or stop performing alcohol analysis and then a
7 subheading from that that said "the statement shall include
8 identification of breath or fluid or both."

9 CHAIRMAN KIMSEY: Is that Bruce? I'm sorry.

10 COMMITTEE MEMBER LYLE: Yeah, this is Bruce.

11 CHAIRMAN KIMSEY: Okay, great.

12 COMMITTEE MEMBER SHEN: Maybe we just need to
13 visit that the notification is specifically about. Or a
14 statement of intent to perform or stop performing alcohol
15 analysis that specifies breath and fluid analysis. Breath
16 and/or fluid analysis?

17 CHAIRMAN KIMSEY: How about if we just end the
18 sentence after "fluid analysis" and just drop "specifically"
19 all together?

20 COMMITTEE MEMBER SHEN: I guess I'm having
21 problems with "specifically" again because that's the point.
22 It has to specify which one is being done. You don't want
23 to have a statement of intent that just says, we intend to
24 do alcohol analysis. You have to specify what type.

25 COMMITTEE MEMBER HARMON: Why can't you say that?

1 COMMITTEE MEMBER LYLE: Yeah, why can't we say
2 "The statement shall specify whether breath, fluid or both
3 are --"

4 COMMITTEE MEMBER SHEN: Dear, dear.

5 CHAIRMAN KIMSEY: This is Paul, I have another
6 suggestion. "That shall include notification specifically
7 for breath and fluid analysis." Put the "specifically"
8 after "notification."

9 COMMITTEE MEMBER HARMON: But it should be a
10 statement of intent to perform or stop performing alcohol
11 analysis that shall include specific notification for breath
12 and blood analysis.

13 COMMITTEE MEMBER SHEN: I like that better.

14 CHAIRMAN KIMSEY: Yes, that's better.

15 COMMITTEE MEMBER SHEN: Okay, so now -- this is
16 Jennifer Shen. I have, "A statement of intent to perform or
17 stop performing alcohol analysis that shall include specific
18 notification for breath and fluid analysis."

19 CHAIRMAN KIMSEY: Should it be "and/or?"

20 COMMITTEE MEMBER LYLE: If you're going to do that
21 I'd rather get rid of the and/or and do breath and fluids or
22 both or something like that. Just so we're clear of what we
23 mean by it.

24 COMMITTEE MEMBER SHEN: A specific notification
25 for breath and a specific notification for fluid. I don't

1 have any (indiscernible).

2 COMMITTEE MEMBER LYLE: Too many adjectives. It
3 should be breath or fluid or both.

4 COMMITTEE MEMBER SHEN: Isn't that what the word
5 "specific" is for?

6 COMMITTEE MEMBER LYLE: This just drives it home.

7 COMMITTEE MEMBER SHEN: How are we feeling about
8 the and/or?

9 COMMITTEE MEMBER LYLE: Well, I think the problem
10 is (indiscernible) because you have to (indiscernible). And
11 so that's why you put people on notice of all the things
12 that you have to do in order to (indiscernible) with an
13 "and." I think that's why (indiscernible) the word "and."
14 We need to make sure we include all those scenarios.

15 CHAIRMAN KIMSEY: I mean, I could go with "or
16 both" at the end.

17 COMMITTEE MEMBER SHEN: Specific notification for
18 breath and fluid or both. Analysis or both?

19 MR. BALDRIDGE: This is Pete Baldrige again.
20 Maybe, maybe this configuration could work. A statement of
21 intent to perform or stop performing alcohol analysis,
22 comma, including breath analysis, comma, fluid analysis,
23 comma, or both.

24 COMMITTEE MEMBER HARMON: I don't (indiscernible).

25 CHAIRMAN KIMSEY: I think you wore us down.

1 (Laughter.)

2 COMMITTEE MEMBER HARMON: Can you say it again?

3 MR. BALDRIDGE: A statement of intent to perform
4 or stop performing alcohol analysis, comma, including breath
5 analysis, comma, fluid analysis, comma, or both.

6 COMMITTEE MEMBER SHEN: This is Jennifer. The
7 first time you said fluid included. Is it "included" or
8 "including," which is more appropriate?

9 MR. BALDRIDGE: Including.

10 COMMITTEE MEMBER SLAUGHTER: Including.

11 COMMITTEE MEMBER SHEN: Okay. I'm going to read
12 it because I have the notes that I'm going to change it
13 from. "A statement of intent to perform or stop performing
14 alcohol analysis, comma, including fluid analysis, comma,
15 breath analysis, comma, or both." Period.

16 MR. BALDRIDGE: Semicolon, yes.

17 COMMITTEE MEMBER SHEN: Semicolon? Semicolon.

18 CHAIRMAN KIMSEY: Okay. Any other comments on
19 number (1) there?

20 Any other comments on 1216(a) from the Committee
21 or the public?

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
23 Comment from the public. I reiterate my same comment I've
24 been making. Unlike the current regulations the proposed
25 revisions don't -- again, don't describe what the Department

1 would do with the submitted information. I suspect that
2 will be ferreted out during the -- if and when these
3 regulations are promulgated it will be ferreted out in the
4 promulgation process but I think it's a problem now.

5 I would also make a more general, over-arching
6 comment. One of the purposes of regulations is to
7 effectuate the purpose of the statutes. And there is a
8 statute the Committee sometimes seems to ignore, Section
9 100725 states that the Department shall enforce the law and
10 the regulations. Certainly in the statement of reasons in
11 the cover letter it is not clear that the Committee has
12 shown how the proposed revisions effectuate that statute.

13 CHAIRMAN KIMSEY: Other comments?

14 Is the Committee ready to vote on bullet 4?

15 COMMITTEE MEMBER HARMON: Yes, please.

16 CHAIRMAN KIMSEY: Okay. I make a motion that we
17 approve 1216(a) as edited. Dan Jeffries?

18 COMMITTEE MEMBER JEFFRIES: Aye, as last stated by
19 Jennifer.

20 CHAIRMAN KIMSEY: I'm sorry, I didn't quite catch
21 that.

22 COMMITTEE MEMBER JEFFRIES: I just want to be sure
23 we're talking about as we've edited. We're going back to
24 the last revision as Jennifer Shen read into the record.

25 CHAIRMAN KIMSEY: Yes.

1 COMMITTEE MEMBER JEFFRIES: Aye, agree.

2 CHAIRMAN KIMSEY: Lieutenant Davis?

3 COMMITTEE MEMBER DAVIS: Aye.

4 CHAIRMAN KIMSEY: Mr. Slaughter?

5 COMMITTEE MEMBER SLAUGHTER: Aye.

6 CHAIRMAN KIMSEY: Mr. Lyle?

7 COMMITTEE MEMBER LYLE: Aye.

8 CHAIRMAN KIMSEY: Ms. Shen?

9 COMMITTEE MEMBER SHEN: Aye.

10 CHAIRMAN KIMSEY: Ms. Harmon?

11 COMMITTEE MEMBER HARMON: Aye.

12 CHAIRMAN KIMSEY: Paul Kimsey also votes aye.

13 Any other comments on the cover letter?

14 COMMITTEE MEMBER SLAUGHTER: Yes, this is Mark

15 Slaughter. Change Mr. Torr Zielenski to Mr. Mark Slaughter.

16 (Laughter)

17 CHAIRMAN KIMSEY: Okay, thank you.

18 COMMITTEE MEMBER SHEN: Paul, this is Jennifer.

19 CHAIRMAN KIMSEY: Yes.

20 COMMITTEE MEMBER SHEN: Sergeant to Lieutenant?

21 COMMITTEE MEMBER SLAUGHTER: Yes, and Sergeant to

22 Lieutenant.

23 COMMITTEE MEMBER DAVIS: And it's Kevin, not Ken.

24 CHAIRMAN KIMSEY: Okay.

25 COMMITTEE MEMBER SHEN: Sorry.

1 CHAIRMAN KIMSEY: Kevin. That's okay.

2 COMMITTEE MEMBER SHEN: That's Paul's fault.

3 CHAIRMAN KIMSEY: Yeah, it's always Paul's fault.

4 And so is the will of the Committee that -- I suggested
5 Jennifer and I incorporate these edits that we have
6 discussed and move this forward with the package to Agency?
7 Is that agreeable to the Committee?

8 COMMITTEE MEMBER SLAUGHTER: One question.

9 CHAIRMAN KIMSEY: Sure.

10 COMMITTEE MEMBER SLAUGHTER: One question; this is
11 Mark Slaughter. On the first paragraph, "Thank you for."
12 We're going to change that to Dr. Horton's letter?

13 CHAIRMAN KIMSEY: Yes.

14 COMMITTEE MEMBER SLAUGHTER: Okay, perfect.

15 CHAIRMAN KIMSEY: And there are some other, you
16 know, "your letter, your letter." Some of these will be
17 changed to either "the letter" or "the letter from
18 Dr. Horton."

19 COMMITTEE MEMBER SLAUGHTER: Perfect.

20 CHAIRMAN KIMSEY: Just to clarify that.

21 Okay. Now I think there's some time -- obviously
22 we have time for some discussion about what has been raised
23 a number of times over a number of meetings is what the
24 Department is going to be doing with the information that it
25 receives, both through the regulations and maybe through

1 other means. This usually was around how the Department was
2 going to enforce the regulations.

3 And we've had -- I think we've had a discussion
4 around information coming to the Department's attention and
5 the Department following a process, which I am totally
6 unfamiliar with, I think referred to as a "writ of
7 mandamus." The Department has that authority, which is to
8 go to court with information, I believe. I don't know.

9 Any other feelings from the rest of the Committee
10 about what the Department will be doing with the information
11 it collects?

12 COMMITTEE MEMBER SHEN: This is Jennifer. You
13 know, I was thinking -- I have to go back and look. In one
14 of the four bullet points we do actually lay out that the
15 Department has to respond back in writing and then the
16 laboratory has to respond back and we actually lay out a
17 time frame.

18 COMMITTEE MEMBER LYLE: That's 1218.2(b).

19 COMMITTEE MEMBER SHEN: So I was wondering -- I
20 completely understand, Clay, your point. And we have had
21 this conversation over and over again, you know, just for
22 the licensing (indiscernible) that would be enforcement of
23 the Department was really removed and he has been put more
24 in an oversight role. I mean (indiscernible) the words that
25 really seems to be the intent.

1 But I think as a committee we've worked pretty
2 hard to try to ensure that the Department will have the
3 information it needs to see that the laboratories are, in
4 fact, complying with these regulations. Trying to come up
5 with a way that supports them without really an enforcement
6 tool, without legislating one in is very difficult. I just
7 (indiscernible) position of trying to make sure the
8 Department is informed we probably will look at it during
9 the back and forth communication like we did on the bullet
10 point to the others, that would be something. But I don't
11 think you're going to find a role unless you legislate back
12 in the licensing.

13 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
14 A comment I made awhile back about a lot of these
15 regulations are sort of self-enforcing. I think we kind of
16 thought that that is what we're doing, the way we
17 collaborate on this.

18 But when we actually get to the point where these
19 make a difference is where talking about admissibility of
20 evidence in court, that's really all it comes down to. If,
21 for instance, you've got an officer who does a blood test
22 and he's never been trained in using a breath instrument,
23 certainly the Department is not going to arrest him, the CHP
24 is not going to issue him a misdemeanor citation, it's not a
25 violation of law to do that in the sense of a criminal law.

1 It's the administering of the statutes that you
2 are not complying with. And if you're complying with it
3 then comes down to a matter of an officer who is qualified
4 to testify in court if he hasn't received the training.
5 Certainly the argument would be if he hasn't complied with
6 Title 17, if he hasn't followed the regulations or the
7 laboratory hasn't, then the evidence should be -- neither
8 that would be the same weight it would be or, in fact, in
9 appropriate cases excluded entirely.

10 So I think there is sort of a self-enforcing
11 mechanism that says these regulations, at least from our
12 perspective, are geared toward; that is, eventually having
13 officers and a lab (indiscernible) -- so that the evidence
14 is admissible in court.

15 COMMITTEE MEMBER DAVIS: This is Kevin. I agree
16 with those sentiments.

17 COMMITTEE MEMBER SHEN: So, this is Jennifer. So
18 there, I don't know if we want to talk about that, but there
19 is the option of, you know, putting in the correspondence
20 element that isn't in all of the bullets.

21 So, when you ask, what is the Department supposed
22 to do about this? Well, if the Department looked at it and
23 didn't like it, then the Department is -- the Department
24 needs to send a letter to the laboratory. All this stuff is
25 discoverable. You can't take a letter from the Department

1 that says all those things and shred it. So, you know, it
2 is a (indiscernible).

3 It will be a matter of having to address those
4 issues. I mean, our concerns for, is that we don't leave
5 Title 17 fluid enough that the interpretation by the
6 Department can be contrary to the needs to what was meant by
7 the Committee.

8 CHAIRMAN KIMSEY: This is Paul. Would we
9 anticipate the Department getting requests about a
10 particular laboratory, are they in compliance with Title 17?

11 And then we would look at our files or whatever and
12 respond, yes or no? Is that something that would happen?

13 ## COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
14 What's happening now? What are you doing now? What have
15 you been doing for the last, you know, 20 plus years?
16 I mean, if there's still part of the regulations in place,
17 they are either complying with it or they're not complying
18 with it even without the licensing. So what's happening
19 now?

20 CHAIRMAN KIMSEY: Do we get requests for --

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Well, I mean, there's two questions. We do get some
23 requests from attorneys for the status of individuals, of
24 the status of the laboratories' performances on proficiency
25 tests. This is Clay speaking.

1 The other question is --

2 COMMITTEE MEMBER HARMON: Clay, what do you do?
3 Not to interrupt you, but what do you do? The question is,
4 what is it that you're doing now? You get a request and
5 then what?

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
7 Well, I won't, for a number of items we have a specific
8 approval role. So, when we get a breath testing method,
9 procedures for training instrument operators, we review that
10 and at some point in time, either the first pass or
11 sometimes with some give and take, we then send a letter
12 saying, that those procedures are approved.

13 But that's been replaced by a fuzzier statement of
14 belief that goes back and forth every 30 days. For
15 personnel, again, the regulations specifically require that
16 the Department have an approval role. So we do review the
17 academic qualifications of the individual. We require the
18 individuals to complete a proficiency test and a written
19 examination. And based on that we send a letter saying that
20 individual is approved.

21 COMMITTEE MEMBER HARMON: Well, you don't have
22 licensing capabilities now.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
24 I never used the word, "licensing" but that's --

25 COMMITTEE MEMBER HARMON: Whatever --

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 -- well, not whatever. Words are important Jennifer.

3 COMMITTEE MEMBER HARMON: I understand. You can't
4 release their license right now. So, I guess my question
5 is, we've got changing. I mean, what if they didn't do,
6 what if you didn't have these (indiscernible)?

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 But I'm kind of --

9 COMMITTEE MEMBER HARMON: You don't license;
10 you're still providing information for the people who are
11 asking. Correct?

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

13 We're still providing correspondence, yes. But I'm pointing
14 out that perhaps, apparently subtle, but I would think
15 actually obvious, difference in the; where in the current
16 regulations describe an approval role, the revised
17 regulations actually don't describe anything they simply
18 require the labs to submit certain items of information to,
19 quote, unquote, "prove", that they are -- but, they don't
20 clearly describe what the Department does with those
21 regulations, what those --

22 COMMITTEE MEMBER HARMON: Well, what happens right
23 now if a laboratory does not provide you with something? Do
24 you send them a letter and then what? What is the
25 Department doing?

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 If a laboratory submits a procedure and it's not approved by
3 the Department then they simply don't get a letter -- get a
4 letter indicating that it wasn't approved. The ultimate
5 impact of that, I think, and maybe this is your point, would
6 be, apparently in a court of law, since -- you know, I'm not
7 even sure that the, we then learn that the lab was
8 performing an unapproved activity under the old Pre-2005
9 circumstances, we could take action against the, against the
10 laboratory.

11 It wouldn't necessarily be against the license.
12 And one could argue that the section of the regulations that
13 describe disciplinary action against the license could or
14 could be retained.

15 In the AG's opinion despite the fact that the,
16 that section refers to, just for an action that's taken
17 against the license, the AG concluded that the Department
18 still had, under the mechanisms that Dr. Kimsey was
19 referencing, still had the ability to take disciplinary
20 action against the license, against the activities of the
21 laboratory.

22 But again, that section has been removed. So,
23 while, so I think even without licensing, I think the old
24 regulations provided tools and mechanisms for the Department
25 to one, have a specific approval role and to, two, request a

1 number of items of information which are not going to be
2 requested, apparently are not going to be requestable now.

3 And, so I think that's the major difference. But
4 I don't think it's only licensing, I think the regulations
5 have been changed -- I would submit that the Committee has
6 and I think the statements made today have echoed that, have
7 proceeded as if the regulations, the statutes didn't state,
8 the statutes make the following statement, 100725 says, that
9 the Department shall enforce the regulations.

10 Now, the Legislature could have written that the
11 Department shall not enforce the regulations. And I submit
12 that would, that would pretty accurately describe the
13 Committee's design in providing these revisions.

14 CHAIRMAN KIMSEY: Other comments or questions?

15 COMMITTEE MEMBER LYLE: I guess we have to ask
16 ourselves, do we need to put something, do we need to add
17 something to each one of these areas that talks about the
18 Department corresponding with the Agency or have the labs --
19 just like these areas have 1218.2(e) and then given a
20 certain amount of time they correspond with them and let
21 them know, do we direct our lab to, or do we direct the
22 Department to make public the information, certain
23 information. I guess we have to decide that, right, Paul?

24 CHAIRMAN KIMSEY: Well, this is Paul. I mean if,
25 you know, the Department responds to a lot of requests for

1 information. If, like why I said, initially, you know,
2 would it, it's sort of the process would, the Department get
3 a request for about a laboratory whether it's in compliance
4 with Title 17. Obviously, if we had information that
5 indicated they weren't, we would respond with whatever that
6 information was.

7 But that's not, I mean obviously with these
8 regulations I know I'm not sure that's really the role for
9 the Department. I mean, we haven't clearly specified that.

10 COMMITTEE MEMBER LYLE: What I'm, this is Bruce.
11 What I'm asking is, do we have to clearly specify that?

12 CHAIRMAN KIMSEY: It's up to the Committee.

13 COMMITTEE MEMBER LYLE: Right. But does the
14 Committee think we do?

15 COMMITTEE MEMBER JEFFRIES: I guess part of the
16 question is, is that the role anymore to whether a lab is in
17 compliance or not --

18 CHAIRMAN KIMSEY: I'm sorry, who is this? I'm
19 sorry, we can't -- I'm sorry who is that speaking?

20 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries
21 in San Diego.

22 CHAIRMAN KIMSEY: Okay, okay. Go ahead. I'm
23 sorry. We just couldn't connect a name to the voice.

24 COMMITTEE MEMBER JEFFRIES: The question seems to
25 be whether that is the role of the Department or not. Is

1 the role of the Department just to collect information and
2 disseminate it or does the Department actually make a
3 decision, are you in compliance or you're not in compliance.
4 And I think that's kind of where we haven't really decided
5 which way we're going.

6 COMMITTEE MEMBER SHEN: This is Jennifer. I don't
7 have any problem with the Department deciding whether or not
8 we're in compliance if the Department actually, you know we,
9 we, what Title 17 actually says and does not extrapolate or
10 over-interpret. And that's what everyone is so worried
11 about. So, I don't, you know, you don't want to go down
12 that road.

13 We want to do the things that we laid out here
14 because we think they are really important and all of us
15 should be doing them. We should be held to doing them. But
16 we do not want to be held to doing things that we did not
17 decide need to be done. That's just really where we are.

18 CHAIRMAN KIMSEY: So it sounds like there's not a
19 lot of interest in changing what we currently have. And
20 correct me if I'm wrong because this isn't, there's an
21 opportunity here to be more specific about the Department's
22 role.

23 My understanding would be is if the Department has
24 information that it is requested of it, that we would
25 provide that information. Barring that, we obviously,

1 there's a lot of approval role that has been removed from
2 the Department in these regulations. But information that
3 is provided to us would be public information. It would be
4 available upon request.

5 COMMITTEE MEMBER SHEN: This is Jennifer. Well
6 again, I don't necessarily think it's a bad idea to have the
7 correspondence put in here. So when you send someone a
8 transcript et cetera and, you know, it isn't -- the
9 Department looks at the transcript and sees what topics are
10 there and then looks at Title 17 and if it's mandated and
11 it's not a degree in science, for instance; a degree in
12 something (indiscernible). A letter back showing that this
13 is not approved by the Department's standards.

14 You know, what we don't want to do is get into a
15 long protracted battle over, and we see this in our own
16 hiring processes, you know, we see your cross files, you
17 have to have a degree in such and so we're all the colleges
18 require all these degrees, all sorts of things; and
19 sometimes it's really hard to figure out what it is that
20 someone actually has a degree in. We don't want to have
21 long protracted battles when we're trying to get someone
22 ready to go.

23 If in fact the Department responds back as they
24 are doing now with a letter saying, yes, they reviewed the
25 packets for each person and yes, they approve and they're

1 good to go. We did not provide, does that provide approval
2 that you're looking for?

3 CHAIRMAN KIMSEY: I'm not sure the Department is
4 looking for anything at this point but -- I think we're sort
5 of interpreting where we are with regards to what we have
6 written.

7 COMMITTEE MEMBER SHEN: Well where we are now is
8 we have provided the Department an oversight role only.
9 And, you know, we have not really provided an approval role
10 mostly because we don't want to. But I understand that, I,
11 I think, I understand that that is maybe contrary to certain
12 things the Department representatives here feel is
13 appropriate.

14 So I guess my question again is, if we were to
15 continue along with the correspondence back, you know, we
16 send this stuff in and the Department sends something back.
17 I mean, that is an option.

18 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
19 My only issue is that one, most of the laboratories that
20 are already complying, can we comply with this, our already
21 accredited laboratories. You're putting another level of
22 approval on these laboratories and they're, they've already
23 done quite a bit to (indiscernible) the regulation as I see
24 it would be outlined in this packet for the laboratories
25 that what they should be doing.

1 And if there is something that they are not
2 complying with then the Department continues to take that
3 back. But to add additional layers of communication and
4 requirements on these laboratories that are already
5 (indiscernible) all of this or more; I think it's expensive.

6 You're duplicating processes that already exist
7 for the most part. I think that that is something that
8 needs to be evaluated. And although I know that's not
9 necessarily the agreement of the Department but these
10 processes already exist. I'm going to beg to differ for
11 somebody even practically doing this every day.

12 So, either we're going to outline what it is good
13 practices and what people should be doing in order to do
14 this type of analysis and how they should be training people
15 and communicate what that is.

16 And the Department (indiscernible) whether needed
17 or not needed. But beyond that, I don't think that it's
18 necessary to have additional approval and review roles for
19 the Department.

20 CHAIRMAN KIMSEY: This is Paul. It's been a good
21 discussion and we've sort of been around this bush a number
22 of times. I don't hear, and correct me if I'm wrong, but I
23 don't hear a lot of interest in these sort of, at this
24 stage, changing the direction that the regulations and the
25 role that they have given the Department, or lack thereof.

1 COMMITTEE MEMBER LYLE: This is Bruce, I agree.

2 CHAIRMAN KIMSEY: Other comments from the
3 Committee? (No response). Okay. It's 11:30. If I look at
4 the agenda I think we've pretty much gone through what we
5 have set out to do today. Let me sort of review my
6 understanding of where we're going to go next.

7 We've set up a subcommittee of myself and Jennifer
8 Shen to interact with the Department, post review of, from
9 Health and Human Services Agency on the regulations package.

10 Jennifer and I are going to rework the letter as
11 we've all agreed upon, the cover letter to Agency and get
12 that out in the relatively near future. We're not making
13 any promises on time frames but that's the direction we will
14 take.

15 So there are the two, and we've obviously voted on
16 the four bullets that were contained in that cover letter.

17 Any other summary of what we're going to be doing
18 going forward?

19 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
20 Just one question. Did you have someone walk in who is an
21 expert on Bagley-Keene that we want to revisit that issue?

22 CHAIRMAN KIMSEY: I don't believe so.

23 COMMITTEE MEMBER JEFFRIES: I'm still concerned
24 that -- I pulled out the AG's Guide to the Bagley-Keene Act
25 and looking at the (indiscernible).

1 CHAIRMAN KIMSEY: I'm sorry we can't hear.
2 There's some cross conversation. I'm sorry --

3 COMMITTEE MEMBER JEFFRIES: I'm still concerned
4 about Bagley-Keene. I am not an expert on it, but pulling
5 out the AG's Guide on it. On page 6, it discusses that:

6 "Conversations that advance or clarify a member's
7 understanding of an issue, or facilitate an agreement or
8 compromise among members, or advance the ultimate resolution
9 of an issue, are all examples of communications that
10 contribute to the development of a concurrence as to action
11 to be taken by the body. Accordingly, with respect to items
12 that have been placed on an agenda or that are likely to be
13 placed upon an agenda, members of state bodies should avoid
14 serial communications of a substantive nature that involve a
15 quorum of the body."

16 I just want to make sure that we're not running
17 afoul of that by not having a subcommittee talking about.

18 CHAIRMAN KIMSEY: Yeah, it's my understanding that
19 the subcommittees are authorized under Bagley-Keene. But I
20 defer to the attorneys who are more familiar with that
21 process.

22 COMMITTEE MEMBER JEFFRIES: And I thought you had
23 someone up there that was familiar with the process more
24 than I am.

25 CHAIRMAN KIMSEY: I don't know if Pete or -- do

1 you think the subcommittee is appropriate at this point for
2 the Committee's work?

3 MR. BALDRIDGE: This is Pete Baldrige. I don't,
4 if we have a subcommittee that is below the threshold of
5 two, then under Bagley-Keene it's not a state body for
6 purposes of the open meeting requirements.

7 So, you know, they can work, you know, with --
8 because at this point, you know, once you have your
9 regulatory language agreed upon, you know the, there's a reg
10 package that needs to be together to submit to the Office of
11 Administrative Law.

12 And that reg package needs to be prepared by
13 somebody. And it looks like that somebody is going to be an
14 attorney within the Office of Legal Services who is going to
15 need to be able to interact with at least one person so
16 that, you know, we can get the story straight in presenting
17 the, you know, the purpose of the regulation in the initial
18 statement of reasons.

19 So, if you want to make it a committee of two, I
20 think that that does not get sideways with Bagley-Keene. It
21 could just be one person designated by the Committee to work
22 with, you know, the assigned attorney from the Office of
23 Legal Services.

24 And, you know, our goal is to, you know, get this
25 thing written up as quickly as we can once we have the go

1 ahead from Agency.

2 CHAIRMAN KIMSEY: Thank you Pete. This is Paul
3 and, you know, I would recommend that we have it be a
4 subcommittee as we've talked about with Jennifer and myself.

5 And I think, you know, obviously I think Jennifer and I, if
6 we felt that there was something that the full Committee
7 needed to address because it was unclear to Jennifer and I
8 what the intent of the Committee was, so we needed to get
9 clarification on that, then that we would call another
10 Committee meeting and maybe have -- and address that, that
11 issue in the agenda where we might be voting.

12 So, I mean, does that clarify, Dan, your
13 questions?

14 COMMITTEE MEMBER JEFFRIES: It does. I think
15 that's perfect. I think what you're saying is that if
16 there's anything of a substantive nature that comes up when
17 you guys are discussing or working on this that you will
18 probably have an open and full public meeting
19 (indiscernible) the action of subcommittee (indiscernible)
20 accepted it. They just work out the details and the
21 paperwork.

22 COMMITTEE MEMBER SHEN: This is Jennifer. I would
23 anticipate that it would very much like the rework of the
24 sentence we just did.

25 CHAIRMAN KIMSEY: So I don't, I mean, at this

1 point I don't know when the Committee will be meeting again
2 offhand, you know, unless, you know, if something comes up
3 we would certainly pull the Committee together.

4 It's my understanding within the legislation there
5 this Committee does have to meet, if I remember correctly,
6 you know, once every five years. But also, that any member
7 of the Committee can call a Committee meeting within a
8 certain timeframe.

9 So, I think with that we're sort of covered.

10 COMMITTEE MEMBER SHEN: Hey Paul, this is
11 Jennifer.

12 CHAIRMAN KIMSEY: Yes.

13 COMMITTEE MEMBER SHEN: Before we wrap that up,
14 you know, the other thing that we did not discuss and maybe
15 we should is what we are, what we're submitting exactly.

16 CHAIRMAN KIMSEY: Okay.

17 COMMITTEE MEMBER SHEN: So, you know, you and I
18 have had a very small conversation about that. I don't
19 (indiscernible) the entire packet that we have before. Are
20 we submitting just the letter with just the work product?
21 What are we submitting?

22 CHAIRMAN KIMSEY: It's my perspective that what
23 the Committee is submitting now is what is going to trigger
24 the 90 day review. And I believe that's called the summary
25 of revisions. And so that would be the full package which,

1 you know, this cover letter would be on top of.

2 In other words, you know, we've, you know, these
3 four bullets are what was sort of the major issue previously
4 when there was a sort of a previous look at our work product
5 at Agency.

6 So, the cover letter plus the previous package.

7 COMMITTEE MEMBER SHEN: So, I'm looking at that
8 package and I have it in front of me and that includes, that
9 includes the ISOR and the, the fiscal impacts statement and
10 ~~~~~ all of that stuff.

11 CHAIRMAN KIMSEY: I would propose that that's not
12 necessary. I mean, obviously, you know, the summary of
13 revisions certainly didn't specifically ask for an ISOR or,
14 I mean, I think, the Committee has done a very good job with
15 regards to the strike out of the sections as being their
16 summary of revisions. I mean, it's pretty clear what the
17 recommendations are.

18 It would be my perspective that the statement of
19 reasons, the ISOR and that sort of thing are sort of, will
20 be necessarily downstream of the Agency review and would be
21 the responsibility of the Department.

22 COMMITTEE MEMBER SHEN: Okay. So, the packet that
23 we submitted before had the ISOR that you think we don't
24 need.

25 CHAIRMAN KIMSEY: Correct.

1 COMMITTEE MEMBER SHEN: And we have the
2 justifications. That was something that we, (indiscernible)
3 where we are justifying all of our changes and all of our
4 not changes with a whole sections that outlines every single
5 justification for everything we did.

6 But it needs some significant updating, I mean, at
7 this point. So, is it your opinion that we do not have to
8 send that forward either (indiscernible) statement will now
9 be something that you would send forward the statement of
10 determinations (indiscernible) and that leaves the last part
11 (indiscernible) which I have said is just the strike out
12 editions.

13 CHAIRMAN KIMSEY: You know, it's worth having a
14 discussion. I think the proposed text definitely. I think
15 maybe if the Committee feels that the justification helps
16 explain the strike out text that that might, that might go
17 forward but definitely the, you know, statement of reasons,
18 the ISOR, I don't think that's necessary.

19 But I don't know, what's the Committee feel about
20 the justifications document?

21 COMMITTEE MEMBER SHEN: Jennifer feels like that
22 would be a lot of work to change all the -- (indiscernible)
23 in the first sense.

24 CHAIRMAN KIMSEY: More than just the four bullets
25 areas? I mean I sort of thought that the cover letter was

1 sort of articulating, you know, those changes.

2 COMMITTEE MEMBER SHEN: If that's the thought, the
3 justifications for everything else (indiscernible) and then
4 the cover letter (indiscernible) all the other changes then
5 that would be (indiscernible).

6 CHAIRMAN KIMSEY: I don't know. What's the
7 feeling the Committee?

8 COMMITTEE MEMBER LYLE: That's as far as I would
9 thinking it would go was a letter pretty much outlines what
10 the newer justifications are than the old justifications
11 remain.

12 CHAIRMAN KIMSEY: Okay.

13 COMMITTEE MEMBER SHEN: Well I suppose I could
14 update the justifications (indiscernible) cover letter or
15 something, (indiscernible) like that.

16 CHAIRMAN KIMSEY: So that would add to the cover
17 letter is what you're thinking?

18 COMMITTEE MEMBER SHEN: Then what we would put
19 forward is the cover letter, plus the justifications and the
20 proposed text.

21 CHAIRMAN KIMSEY: Okay.

22 COMMITTEE MEMBER SHEN: That would be our package.

23 CHAIRMAN KIMSEY: Okay. Does that seem to be
24 agreeable to the Committee?

25 COMMITTEE MEMBER LYLE: This is Bruce, yes.

1 COMMITTEE MEMBER SLAUGHTER: Mark Slaughter, yes.

2 COMMITTEE MEMBER DAVIS: Kevin, yes.

3 CHAIRMAN KIMSEY: Okay. Other questions or
4 comments? (No response). Well I would like to thank you
5 all on behalf of the Department for all your time and effort
6 in this arduous project.

7 I'd like to throw in my personal thank you also.
8 And we'll certainly be back in touch as necessary. Thank
9 you all for your time.

10 (Thereupon, the California Department of
11 Public Health Forensic Alcohol Review
12 Committee meeting adjourned at 12:45 p.m.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of June, 2013.

JOHN COTA