APPEARANCES

REVIEW COMMITTEE MEMBERS

Mr. Paul Kimsey, Ph.D., Chairperson (Richmond)
Sergeant Kevin Davis (via teleconference in Sacramento)
Ms. Patricia Lough (via teleconference in San Diego)
Mr. Bruce Lyle (via teleconference in San Diego)
Mr. Paul Sedgwick (via teleconference in San Diego)
Ms. Laura Tanney (via teleconference in San Diego)
Mr. Kenton Wong (Richmond)
Mr. Torr Zielenski (via teleconference in Sacramento)

STAFF

Mr. Clay Larson, Chief, Abused Substances Analysis Section
Dr. Mary Soliman, Chief, Food & Drug Laboratory Services

ALSO PRESENT

Mr. Terry Fickies, California Department of Justice
Mr. Mike Grubb, San Diego Police Department
Mr. Mark Kalchik, California Department of Justice
Mr. Jon Knapp, Valley Toxicology Services
Mr. Bill Phillips, California Department of Justice
Mr. Bob Reckers, Orange County Sheriff-Coroner Forensic Science Services
Ms. Jennifer Shen, San Diego Police Department

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PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
CHAIRPERSON KIMSEY: Okay. Good morning again.

This is Paul Kimsey. I want to welcome everyone to the 8th meeting of the Forensic Alcohol Review Committee.

And our charge is basically to evaluate the current California Department of Public Health regulations pertaining to forensic alcohol analysis, Title 17 California Code of Regulations, and consider additions that are reasonably necessary to ensure the competence of the laboratories and employees to prepare, analyze, and report the results of the tests and comply with applicable laws.

And for those interested, the current regulations are available online at www.calregs.com.

Why don't we go around and first identify the Forensic Alcohol Review Committee members that are participating.

I'm Paul Kimsey. I'm representing Department of Public Health.

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

CHAIRPERSON KIMSEY: And, let's see, in San Diego. Is that where we are today?

COMMITTEE MEMBER SEDGWICK: Paul Sedgwick representing the California Association of Toxicologists.
CHAIRPERSON KIMSEY: Welcome.

COMMITTEE MEMBER LYLE: Bruce Lyle representing the California State Coroners' Association.

CHAIRPERSON KIMSEY: Okay.

COMMITTEE MEMBER LOUGH: Patty Lough representing the California Association of Crime Laboratory Directors.

CHAIRPERSON KIMSEY: Okay.

COMMITTEE MEMBER LYLE: And Laura will be here. She's driving around looking for a parking spot. But she is here, I know that.

CHAIRPERSON KIMSEY: Okay. And in Sacramento?

COMMITTEE MEMBER DAVIS: Kevin Davis representing the California Highway Patrol.

COMMITTEE MEMBER ZIELENSKI: Torr Zielenski representing the CPDA.

CHAIRPERSON KIMSEY: Okay. This looks like we're going to have a full Committee meeting today. That's great.

Let's go ahead. And for those that would like to introduce themselves as part of the public -- there's not a requirement that you do that, but if you'd like to identify yourselves.

Here in Richmond?

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: I don't want to.
ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
Clay Larson, California Department of Public Health.

MR. KALCHIK: Mark Kalchik, California Department of Justice Laboratory, Fresno.

MR. RADAHD: Shah Radahd with Laboratory Field Services.

MS. DeSOUSA: Maria DeSousa, Laboratory Field Services.

MR. de RAMA: Rick de Rama, Food and Drug Laboratory Branch.

MS. ZENAIDA ZABALA: Zenaida Zabala, Food and Drug Lab.

MR. THANDI: Harby Thandi, Food and Drug Laboratory Branch.

CHAIRPERSON KIMSEY: Okay. That's it for Richmond.

In San Diego?

Anyone in --

MR. GRUBB: Mike Grubb from the San Diego Police Department.

MR. RECKERS: I'm Bob Reckers from the Orange County Sheriff Crime Lab.

MS. SHEN: I'm Jennifer Shen, San Diego Police
CHAIRPERSON KIMSEY: Anyone else in San Diego?

In Sacramento?

MR. TOMS: Michael Toms, Sacramento County Crime Lab.

MR. ZERBE: Jeremy Zerbe, Sacramento County Crime Lab.

MR. KNAPP: Jon Knapp, Valley toxicology.

MS. FLERIDA ZABALA: Flerida Zabala, Department of Motor Vehicles.

MS. CARTER: Sandra Carter, Department of Motor Vehicles.

CHAIRPERSON KIMSEY: Okay. I think that's everyone.

Let's see. About the only item -- I guess there's two items. One is -- I've just received -- personally received notification that those wonderful Form 700s are going to be due here fairly soon. And this is an annual filing. And it's my understanding, as Committee members, you are all also in that esteemed group of individuals that also need to file your Form 700s, just as a reminder.

The other item is basically to review the agenda as we have sent out. Are there any additions or deletions or comments to the agenda as it was sent out to folks?
Well, if not, I'll just remind everyone that we do have someone transcribing the notes here today, which we have done also in the past.

And so I think at our last meeting we talked about having reports from the Committee members with regards to the current draft regulatory work product that we've been working on, that -- trying to get some feedback from the various agencies or groups that we all represent.

And does anyone want to go first with regards to if they've been able to get any feedback from their group or agency that they represent?

Well, I'll go first. I'm the spokesperson for the Department of Public Health. Obviously we have been tracking the Committee's work product fairly closely. The Department's perspective is that, you know, we're very much as a state agency required to follow the legislation pretty much as written. And our perspective has been to obviously comply with the legislation. We are not interested in seeing the Department's responsibility with regards to the regulations reduced anymore than has been done so by the regulations. And so we are interested in maintaining the roles and responsibilities that we currently do have. And that's part of -- you know, the discussion this afternoon is the role of the Department. So obviously the regulatory work product that we have in
front of us at this point does further remove the
Department's or reduce the Department's role past what the
legislation may have mandated. And the Department is
interested in maintaining a number of those roles and
responsibilities. And some of that obviously we can
further discuss this afternoon.

But that's sort a summary of our Department's
perspective on the work product.

Let's see, if I just go down the list here, since
I'm sort of at the bottom here, I don't know, Patty Lough,
do you have any report from the crime lab directors.

COMMITTEE MEMBER LOUGH: I do. There are several
things throughout -- you know, we've redrafted this so
many times, our original proposal, I think we left out a
few things. So I did catch a few things. You want me
just to go through it with what I have?

CHAIRPERSON KIMSEY: Sure.

COMMITTEE MEMBER LOUGH: All right. Under
1216.1 -- and I am looking at under (J)(3), it's page 5
for me. I don't know if everybody has kind of the same
thing.

CHAIRPERSON KIMSEY: Yes, I have that.

COMMITTEE MEMBER LOUGH: Okay. Because we did
kind of combine things here, we probably should add
something -- language about labs that are only performing
alcohol analysis versus labs that are only performing breath alcohol analysis, because we're requiring the breath people to use this method. They have to analyze blood. So I think we need to look at that language.

Do you want to do that as we go?

CHAIRPERSON KIMSEY: Sure.

COMMITTEE MEMBER LOUGH: Okay. And it would also -- I would think it would be helpful if the people that are in our audience from the different organizations, this is a good time for their input as well, so that everybody's happy with our language.

CHAIRPERSON KIMSEY: Okay. What are you proposing?

COMMITTEE MEMBER LOUGH: All right. So let me look again and see what (J) is to perform alcohol analysis.

Okay. J is probably okay if you go down to, on the bottom of the page, the number 4. We'd probably want to say something there that's specific for the breath alcohol people. Where it says, "At a minimum successfully replicate the known results of a variety of four competency test samples ranging from zero to .25 percent using the methods of Article 6." So that the breath people would not use Article 6. So is this a place we want them to do the same thing using wet bath simulators
or dry gases from Article 7? I'm just tossing that out.

CHAIRPERSON KIMSEY: So you're looking for some description of the process that the breath alcohol analysis folks would use -- be required to use?

COMMITTEE MEMBER LOUGH: If some labs -- I don't know in California because I don't know what all the labs do. But I know there are laboratories that do not do blood alcohol analysis. So if the lab is doing breath only, you know, there may not be a point to have them do competency testing on blood alcohol samples to show that they do the breath alcohol program.

So do we want to put something in there that, using their methods, they have to take competency tests with solutions or standards that would be appropriate for their use?

MR. FICKIES: Question.

CHAIRPERSON KIMSEY: Go ahead.

MR. FICKIES: This is Terry Fickies from the Department of Justice.

I don't think there's any requirement now for a proficiency testing regarding breath alcohol for laboratories that do blood. And so I don't necessarily see the point of putting a proficiency test in there for doing breath alcohol testing unless you do it for everybody. And I don't think that technology is smooth at
the moment.

COMMITTEE MEMBER LOUGH: Okay. And I know where I've worked in the past the scientific staff was trained on the breath instrument, how it worked and how to use it. But we were never really given any unknowns or anything to run to show we know how to use it. So if we want to just eliminate that then from that number 4 for laboratories -- well, in fact, for all of the positions, the supervisor, the analysts and the trainees, do we want to eliminate -- do we want to eliminate the requirement for labs that do breath alcohol only to have to do competency tests in blood alcohol? Should we state in there for labs that perform blood alcohol analysis they must do the competency test and make it clear?

MR. KNAPP: I have a comment.

CHAIRPERSON KIMSEY: Go ahead.

MR. KNAPP: Hi. I'm Jon Knapp, toxicology.

From my recollection, the last time I looked at a list of laboratories, back from when we were all licensed several years ago, that I got from Clay Larson, I don't recall any laboratories that were only licensed for breath. There were a lot of them that were only licensed for alcohol -- for blood alcohol but not licensed for breath, but I don't think there were any the other way around.
COMMITTEE MEMBER LOUGH: That may be.

MR. KNAPP: Clay could clarify that.

CHAIRPERSON KIMSEY: Clay, would you like to clarify?

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Clay Larson, Department of Public Health.

A couple comments. There actually are three laboratories -- or maybe I should say two and a half laboratories that do a breath only. Alameda County Sheriff's Department only does breath samples. San Francisco Police Department's laboratory only does -- well, they don't do a blood alcohol analysis. They only service -- provide services to the breath operators training program and the determination of accuracy.

And then Santa Clara has a separate facility.

And since in the old days labs were places, they have a separate facility that has only -- only supports breath alcohol analysis.

The Department has and had -- or has a proficiency testing program consisting of a series of aqueous alcohol samples that are distributed to those labs that only do breath alcohol analysis.

The logic in not requiring labs that do blood alcohol analysis to also analyze aqueous alcohol samples is that the analytical train, if you will, of determining
a blood alcohol concentration includes a step wherein the lab determines the concentration of an aqueous alcohol secondary standard. So proficiency testing the lab on blood alcohol analysis, we felt -- this goes back many years -- captures the competency in analyzing the standards they use to calibrate the method. So currently -- under the current program there is a proficiency testing requirement for labs that only support breath alcohol analysis.

MR. FICKIES: Question to Clay.

How large are the -- so you send out. Are they sample -- are they proficiencies that you can run in a simulator?

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

No, no, no. We're testing the ability of the lab to determine the concentration of a sample by, in this case, a directed oxidimetric analysis. Expectation is that if they can do that competently, then they can prepare and analyze solutions which are then used in a simulator or they can evaluate the concentration of a dry gas material.

COMMITTEE MEMBER LOUGH: Patty Lough.

I don't have an objection to keeping language in and not making a distinction. I just didn't want to make a hardship on a lab that does breath only. But if those
labs that do it now are used to that, I think it's fine and I'm happy with the language as it is.

CHAIRPERSON KIMSEY: Okay. Next item.

Did you have another item, Patty?

COMMITTEE MEMBER LOUGH: Oh, yeah. Just a sec?

CHAIRPERSON KIMSEY: Sure.

COMMITTEE MEMBER LOUGH: Okay. On page 6 -- I think we have all the same page -- on page 6, this number 6, it starts out "Or in lieu of..." Just to update Department of Health Services to Department of Public Health.

In fact, that might -- do we need to -- maybe we don't need to do it there, because that's talking about people who were given those qualifications by there. So I don't think we have to do it there. Right? People who were -- it was Department of Health when they got their --

CHAIRPERSON KIMSEY: Right.

COMMITTEE MEMBER LOUGH: Okay. So that one's okay, we'll keep the same.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Quick point.

CHAIRPERSON KIMSEY: One comment.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

This is an ongoing and never-ending story. The process is continuing. The Department of Public Health,
quote-unquote, last week qualified someone. So the process is ongoing. Currently the Department of Public Health is qualifying people under the regulations.

COMMITTEE MEMBER LOUGH: So we should probably update this language then. Do we include the former or just the new or do we refer back to the old?

CHAIRPERSON KIMSEY: I think that's a technical issue that we can set. I mean obviously whether it was the Department of Health Services or the current Department of Public Health, I mean we can certainly work on the appropriate language.

COMMITTEE MEMBER LOUGH: Okay.

CHAIRPERSON KIMSEY: I mean I don't know off the top of my head, but it's pretty clear.

COMMITTEE MEMBER LOUGH: Okay. My next one is on page 9, 1219.1(a). We have left out a lot of information from our original stuff. So we need to add in there where it says, "Blood samples shall be collected by venipuncture from living individuals as soon as feasible after an alleged offense..." I'd like to see added to that "...in compliance with CVC Section 23158(f)" -- like Frank -- and then finishing the "and only persons authorized by Section 23158(a) of the Vehicle Code."

COMMITTEE MEMBER TANNEY: Why don't you just say --
COMMITTEE MEMBER LOUGH: -- (f) and (a)?

COMMITTEE MEMBER TANNEY: -- in compliance

with -- no -- with Section 23158.

COMMITTEE MEMBER LOUGH: (a) and (f)?

COMMITTEE MEMBER TANNEY: Why do you even have to

designate the subparagraphs?

COMMITTEE MEMBER LOUGH: Okay. Because I don't

know what else 158 has.

COMMITTEE MEMBER TANNEY: But if that's the law,
then it needs to be in compliance with all of it anyway,
right?

COMMITTEE MEMBER LOUGH: Right.

Okay. So we're just saying then we can -- well,
this is -- see, this is talking about the samples
collected.

Okay. That's still 158 and then the 158(f).

Okay. So I think if we just remove that A and
just have it the Section 23158, and then that covers
everything.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Another comment.

COMMITTEE MEMBER LOUGH: For those that may not
remember the F section, that's that -- it has the chain of
custody information on it, what information's on a label,
what label was placed on the tubes, things like that.

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CHAIRPERSON KIMSEY: We have a comment --

COMMITTEE MEMBER LOUGH: That's the uniform

standards.

CHAIRPERSON KIMSEY: We have a comment here in

Richmond.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Yeah, I would think the current language

referenced there to Section 23158 does appear refer to the

immediately preceding "persons authorized." So I'm not

sure that simply dropping the A there would necessarily as

a clarity issue inform the reader that not only must the

persons be authorized under 23158 but the procedures must

follow the uniform standards which are authorized under --

I actually have 23158(j), but it may have changed. So I

don't think just deleting -- as Ms. Tanney suggested,

deleting the A would clearly state what you want to state.

COMMITTEE MEMBER LOUGH: What if we said blood

samples shall be collected and handled? And then that

would cover both of those areas.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Well, I think it's going to take a little more

wordsmithing than that, because again the immediately

preceding language there is persons authorized by Section

23158(a).

COMMITTEE MEMBER LOUGH: Right, okay.
Okay. But everybody agrees we do need to add something in there or else we have to take the A off? We either have to take the subdivision A off or -- if we keep it specifically, then we have to add the F.

I like the idea that we just reference the section. So maybe we should change that whole paragraph and just say, "Samples will be collected and handled in accordance with..."

Is there anyone who disagrees that a change is needed?

COMMITTEE MEMBER WONG: No.

COMMITTEE MEMBER ZIELENSKI: Torr Zielenski from Sacramento.

I'm not sure that actually having the code section -- seems to me that 23158(a) is simply defining those people that are authorized. So if we would -- if that's the section that delineates who it is that's authorized, then why do we need to make reference to anything else?

COMMITTEE MEMBER LOUGH: Because we don't say anything in here showing the people doing the work. We're not referencing the fact that how that sample is to be handled after collection. So we're just out of courtesy giving a reference to make sure that they are familiar with those other sections.
COMMITTEE MEMBER ZIELIKESKI: I'm not sure that A makes reference to the handling or processing. It simply talks about who it is that's authorized to do it and how timely it's supposed to be done.

COMMITTEE MEMBER LOUGH: That's correct. And Section F tells you what to do with it after that.

COMMITTEE MEMBER TANNEY: What do you say about subdivision A of 1219.1?

COMMITTEE MEMBER LOUGH: Oh, A of 1219.1. Oh. Well, we can add the next one or -- we can just --

COMMITTEE MEMBER TANNEY: Take out the "and". "...offense and only..."

COMMITTEE MEMBER LOUGH: "...offense only by persons..."

COMMITTEE MEMBER ZIELIKESKI: Either that or you can add -- you know, where it says, "Blood samples shall be collected and processed" under the two code sections on 23158 is -- you know, the F would then address the collection and the handling of the collection, and then it also defines within that particular aspect the people that are authorized.

COMMITTEE MEMBER LOUGH: Right. And then at that time I think we would have the reference to the section itself and not the subsections, because then the reader
should look at 23158 and make sure everything is covered.

So if we said that shall be collected and processed from living individuals as soon as feasible after an offense, if that's not otherwise in the A section, and then only by persons authorized, which I think is the A section, we can just say -- remove the "only by persons authorized" and say "in accordance with CVC Section 23158." I think then that would clarify both of them and just have to have one reference.

MR. PHILLIPS: I think you're right. This is Bill Phillips. It's actually Section J of that prior section of best procedures in A says, "The Department in cooperation with the Department of Health Services or any other appropriate agency shall adopt uniform standards for withdrawal, handling, and preservation of blood samples prior to analysis." So that's what J says. And A determines the persons that can do the procedures.

COMMITTEE MEMBER LOUGH: That could be, Bill, because the last one that I have, it was revised in 1973. So there certainly could be some changes to it since -- it could be J. The one I'm -- the copy I'm working with shows F.

So if it were to say, "Blood samples shall be collected and processed by venipuncture from living individuals --
COMMITTEE MEMBER TANNEY: No, collected by venipuncture --

COMMITTEE MEMBER LOUGH: -- and processed --

COMMITTEE MEMBER TANNEY: -- from living individuals --

COMMITTEE MEMBER LOUGH: -- from living individuals as soon as feasible.

COMMITTEE MEMBER TANNEY: -- and processed --

COMMITTEE MEMBER LOUGH: -- after an alleged event and processed, collected -- hang on. Wasn't that supposed to be collected by venipuncture as soon as feasible after an offense and processed, but according to in compliance with?

Okay, try this. "Blood samples shall be collected by venipuncture from living individuals as soon as feasible after an alleged offense and processed in compliance with CVC Section 23158."

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: We have a comment.

CHAIRPERSON KIMSEY: Do you have a comment?

Here in Richmond we have a comment.

Please identify yourself.

MS. DeSOUZA: Maria DeSousa, Lab Field Services.

I think I have a quick comment regarding blood collection. Apparently -- as far as I know, but I don't
know the exact section, in Business and Professional Code addresses collection of blood for forensic purposes. And individuals who collect blood have to have a certain certification. So you may want to include that in this section.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Another comment.

CHAIRPERSON KIMSEY: Another comment here in Richmond.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Maria's right. However, the section 23158 (a) refers to Business and Profession Code sections. So that may be captured. In general, the APA recommends that if you have multiple requirements, in this case you have a requirement for how you handle, preserve, and collect the sample and who collects it, that they ought to be -- they ought to be described in separate sections or subsections so you don't have one catch-all section that introduces nine requirements.

So I think you might want to have a 1219.1(a)(1), which reads something like, "Blood samples shall be collected in accordance with the uniform standards for withdrawal, handling, and preservation of blood samples for forensic alcohol analysis adopted pursuant to Section 23158" -- it is J -- "of the Vehicle Code." So I would
think you'd want -- I would think you -- you might be advised to separate the two separate and distinct requirements as two sections or subsections.

CHAIRPERSON KIMSEY: Other comments?

COMMITTEE MEMBER LOUGH: Can we come to a decision on this so that we don't have to come back to it?

CHAIRPERSON KIMSEY: Well, you had a proposed language which I know our stenographer got down. And then there was a recommendation that there may need to be a second section -- or second section to this?

What is the feeling of the Committee?

You want to repeat your comment, Clay, succinctly?

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

What do you mean succinctly?

No, I propose that we add a separate Section 1219.1(a)(1), that read "The red blood samples shall be collected in accordance with the uniform standards for withdrawal, handling, and preservation of blood samples for forensic alcohol analysis adopted pursuant to Section 23158(j) of the Vehicle Code."

One of the problems, by the way, with just referring to 23158 in general is when you go to the Vehicle Code, it doesn't really give you those standards. It refers you to a now 25-, 30-year-old document that was
prepared by CHP and DMV and DHS which describes the
procedures for handling blood sample -- for collecting and
handling blood samples. So additional value might be in
actually naming the document in that subsection.

Is that succinct?

CHAIRPERSON KIMSEY: Comment?

COMMITTEE MEMBER TANNEY: This is Laura Tanney.
The thing is is the statute is controlling
because that's legislation. And Title 17 can refer to
the -- I mean the statute has what you're looking for, it
sounds to me. It has the authorized persons and it has
the reference to the processing. So it seems to me that
you can make this really simple by just stating what we
said in the first place. The way it's written now is a
limitation. But if you say that they shall be collected
and processed in compliance with Section 23158, you're not
placing any limitations on it. You're making it open for
referring people to the statute and saying, "Here is the
legislative authority for what you have to do."

So I don't think you need to be so specific in
this, because 23158 is controlling anyway.

CHAIRPERSON KIMSEY: We had another comment here
in Richmond.

MR. KALCHIK: Mark Kalchik, DOJ.

Maybe a middle ground on this would be to break
it up like Clay has suggested, but bring it up as (a)
blood alcohol samples shall be collected by venipuncture
from living individuals as soon as feasible after the
alleged offense" -- and then do (1) -- "only by persons
authorized by Section 23158(a)" -- and (2) -- "as accorded
by procedures listed in 23158(j).

COMMITTEE MEMBER LOUGH: That's fine. It's just
another way of saying the same thing.

COMMITTEE MEMBER TANNEY: Well, the only other
problem -- this is Laura again. The only other problem
with that is that if 23158 is changed by the Legislature
in the future, again you're limiting yourself to
subdivisions. And as we now know, to go back and change
the regulations is a very long, tedious process. And by
saying just in compliance with 23158, you're leaving that
open to whatever changes are made in 23158.

COMMITTEE MEMBER LOUGH: Patty Lough. I agree.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
Comment.

CHAIRPERSON KIMSEY: Another comment here in
Richmond.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
This is in response to Laura Tanney's comments.
The purpose of regulations of course, to clarify
and make specific the statutes. Her last comment that,
you know, you run into problems when subsections get changed, it's interesting to note that the current regulations as they exist now refer to Section 13354, so it's 13,000 sections away apparently. So that the Legislature is free not only to change subsections, but to change major sections. So this is not a real prophylactic particular for that potential problem.

COMMITTEE MEMBER LOUGH: Patty Lough. I just wanted to call attention to that area, because it is not noted anywhere. And I think a new analyst coming on just needs to be aware to look in that section.

So do we have an agreement?

CHAIRPERSON KIMSEY: Why don't you restate it for our stenographer.

COMMITTEE MEMBER LOUGH: The one -- who?

COMMITTEE MEMBER WONG: Yours.

COMMITTEE MEMBER LOUGH: Mine said, "Blood samples shall be collected by venipuncture from living individuals as soon as feasible after an alleged offense and processed in compliance with CVC Section 23158."

COMMITTEE MEMBER TANNEY: You could add both in there -- this is Laura again -- just so there's no confusion that we're only talking about processing. We could say, "Blood samples shall both be collected by venipuncture from living individuals as soon as feasible..."
after an alleged offense and processed, in compliance with Section 23158.

MR. KALCHIK: Comment.

CHAIRPERSON KIMSEY: Another comment, Richmond.

MR. KALCHIK: Mark Kalchik.

By putting that in compliance with the CVC section as a process, does that apply to the collection by venipuncture, or does that open up that area?

COMMITTEE MEMBER TANNEY: That's why I suggested putting both. But actually I think maybe that is not a good idea. But you're right, we want to make sure that in compliance with 23158 applies to both the processing and the collection in the language.

It says by the authorized persons.

CHAIRPERSON KIMSEY: And this is Paul.

I'm happy with what has been suggested by Patty Lough. I think though that this discussion is a little -- it's illustrative of part of our process in the sense that we really haven't had any disagreement on what it is we want to say. It's just how we're going to say it from a technical perspective. And, you know, we've spent a good amount of time, which has been good. That's our role and our responsibility. But I think there's some technical guidance that obviously we're not -- we don't have the technical expertise with regards to the Administrative
But, anyhow, I'm happy with the way Patty Lough has described it.

COMMITTEE MEMBER TANNEY: So am I.

COMMITTEE MEMBER LOUGH: So for now we can just keep it as that, it's still a working document?

CHAIRPERSON KIMSEY: Yes.

COMMITTEE MEMBER LOUGH: Okay. Let me find my next one.

Page 11, 1220.2 Subsection (a)(1) and (A). In there somewhere we've lost our calibrators. So we need to add some language I think that talks about three-point calibration, whether they're going to be a high and a low, what kind of decimal places those are going to be. That's all missing now.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: What section?

CHAIRPERSON KIMSEY: This is page 11, 1220.2 -- COMMITTEE MEMBER LOUGH: -- 1220.2 Subsection (a), and then there's a (1) and an (A) under that. And we need to add -- we need to beef that up.

CHAIRPERSON KIMSEY: Does anyone have some language they want to propose or do -- the fact that we wanted to include reference to a three-point calibration, is this previous regulatory language that we left off or
is this something new?

COMMITTEE MEMBER LOUGH: No, I don't believe it was in the original Title 17. But it is the procedure that laboratories are using.

MR. FICKIES: Question. Terry Fickies.

What's this three-point calibration?

COMMITTEE MEMBER LOUGH: Excuse me. I didn't hear.

MR. FICKIES: What do you mean by three-point calibration? I think we use various -- pardon? I think we use a secondary standard at the front and the back of a run.

COMMITTEE MEMBER LOUGH: And when you calibrate the instrument before you do -- you probably check a 10 20 30 standard, make sure the instrument's looking good and a blank in there. And then you throw a quality reference solution on your subject samples with some blanks and run that throughout the day. I think that's the typical. So I'm talking about that initial three-point calibration check of the instrument prior to subject samples for blood alcohol.

MR. FICKIES: That's a no, no. No way, Jose. At the start of the day we run a blank, a secondary standard, a QC, a five-way standard. And at the very end of a run we run a QC and a secondary standard.
And in addition I want to propose some additional set of standards that should be run on at least during the day.

But, anyway, we only do the three-point thing -- or is it six point? -- when we do the -- when we qualify the method for DOHS or DPA.

COMMITTEE MEMBER LOUGH: Okay. So there is a variation then between labs.

Also, I notice labs routinely will run the sample with the interfering substances as well at the beginning of every run. So --

MR. FICKIES: We do that.

COMMITTEE MEMBER LOUGH: -- I know different labs -- yeah.

Okay. So we want to put some language in there then to maybe talk about some -- at one point our standards run -- I mean we're not talking about anything, whether we're running an 08 standard with yours or, you know -- I think we need to put something in there and to talk about decimal places on that standard.

MR. PHILLIPS: Patty, Bill Phillips.

COMMITTEE MEMBER LOUGH: Yes, Bill.

MR. PHILLIPS: Yes, we would like to add changes to Section B that would -- 1220.2 B -- large B. And we would like to include a new standard that is a NIST.
Traceable instead of the "or establish the concentration," we'd like to use the word "and establish the concentration". And we would like to add a new definition at the beginning of page -- or at the end of page 3 that would talk about an external alcohol standard being added to the run. And then let me ask Terry to explain the process.

MR. FICKIES: We would like to propose that the laboratories at least once a day run an external alcohol standard which would be purchased from outside and would be NIST traceable, and require that this be run in duplicate in the run, but agree within either 0.005 or 0.010 of the published value.

COMMITTEE MEMBER LOUGH: You know, my disagreement with that is now we're getting specific and we're defining how every laboratory is going to operate, which is going to change how labs do. For instance, those labs that run a three-point calibration every time before subject samples probably feel that all labs should do that. I think we need to be real careful not to get too specific with this but to have some general statement there about at a minimum what needs to be run, some definition of that.

MR. PHILLIPS: Well, one of our concerns -- Bill Phillips again. One of our concerns is the preparation of
that direct oximetric method in weighing out the potassium
dichromate, that if that's the only thing that you're
doing instead of using a NIST standard as well, you can
be --

COMMITTEE MEMBER LOUGH: I see where you're
coming from.

MR. PHILLIPS: -- not accurate.

COMMITTEE MEMBER LOUGH: I see where you're
coming from.

What I agree with is you're changing that "or" to
an "and" because that's saying you have to have --
purchase the standards and you have to do the titrations.

MR. PHILLIPS: Right.

COMMITTEE MEMBER LOUGH: And I don't want that to
happen.

But if you're suggesting that if you did
titrations that you have to double-check those against
store-bought standards, that's another issue. But I think
we -- that's a huge issue that we would have to go back to
our agency and see if everyone is in compliance with
that -- in agreement with that.

MR. PHILLIPS: You know, that's okay with us.

MR. FICKIES: Patty, that -- Terry Fickies again.

That's essentially what I'm suggest -- I'm not suggesting
that the titrate -- this external standard such as the
serum standard. I'm simply suggesting that you include
that in the run, and also putting in some kind of -- some
precision requirements so that you're -- the results you
get out of your run have to agree within then -- to some
extent with the values on the vial of the external
standard.

COMMITTEE MEMBER LOUGH: Which I think we do have
that language in here when we talk about the agreement
that we have to have. And I'd have to say I agree with
you, because I think from my conversations with NIST, they
do so many samples, they just do so much more work than we
do if they just titrate six -- do six titrations and
determine a level. So I agree that it would be nice to
include that in there. But at the same time, we want to
be careful because we're going to cause laboratories to
have to change a procedure that they're currently doing
which is also a budgetary consideration and maybe a time
consideration.

So what I'd like to see maybe is if Terry or Bill
could take some time and formally perhaps give us some
language that you'd like to see there that we could look
at.

COMMITTEE MEMBER TANNEY: I have a question.

This is Laura Tanney.

Does the Quality Control Program, Section 1220.3,
not take care of those issues that we're talking about?
And I'm not a scientist, so I'm just curious, because
that's seems to go into more specifics about what the
results need to be. And as long as those results are met,
does the manner in which the labs run the standards really
make -- I mean I'm concerned about tying every lab down to
the same thing and making generalizations. It seems to me
that if the quality control requirements are met, that the
standards and procedure don't have to be specified to such
a degree that you're talking.

MR. FICKIES: This is Terry Fickies, Laura.
The QCs are derived from the secondary standard.
So if your secondary standard is off, let's say you made a
gross error and it's half of the value, and you determine
your QC, then that is -- that's going to be half the value
too and you'll never know it.

COMMITTEE MEMBER TANNEY: Okay.
MR. PHILLIPS: Until you do a proficiency
somewhere -- until you do an external proficiency
somewhere. So that's why this external standard was
important.

MR. FICKIES: And --

MR. PHILLIPS: We think you're getting precision
but not accuracy.

MR. FICKIES: And we've seen -- in our experience
we've seen this external standard be a useful and valuable tool, which has identified some problems.

COMMITTEE MEMBER TANNEY: All right. Well, I'm with Patty then, that maybe if you can work on suggesting something that's not going to tie the hands of the laboratories but still is going to satisfy your concerns, that would be helpful.

MR. FICKIES: It will tie the hands that stand by. But I think it will also improve the quality of our work.

MR. PHILLIPS: Yes. And I think the cost would be around $10 per run. So it would add an additional $10 to each analysis batch on an average.

COMMITTEE MEMBER TANNEY: That's huge. I mean that's a huge amount of money. So that even concerns me more hearing that, especially if there's other reasonable alternatives to that that other laboratories have discovered.

MR. FICKIES: I don't think it's huge when you're considering what the cost is of making a mistake.

COMMITTEE MEMBER LOUGH: Patty Lough. Well, if you use that language, do we want them also to -- well, have we addressed the decimal places and come up with language on --

MR. PHILLIPS: We have.
COMMITTEE MEMBER LOUGH: Okay.

MR. PHILLIPS: We'll --

COMMITTEE MEMBER LOUGH: You'll do that?

MR. PHILLIPS: Yeah, sure.

MR. FICKIES: On the QC, we were proposing to specify the values out to three significant figures -- or three figures.

COMMITTEE MEMBER LOUGH: Right, that was another one -- also another place I did.

If you can, if you want to give us a draft for the QC 1220.3 Subsection(a)(2), and the same thing for the current 1220.2(a)(1). And some language on that calibration, because all the labs apparently are doing that really differently, whether it's a three point or a one point or how that's done, give us a suggestion that you think would be general for the labs, what those calibrations might need to be. That would be really appreciated.

MR. FICKIES: Okay. That was -- what section was that for the language for the calibrators, Patty?

COMMITTEE MEMBER LOUGH: That's the 1220.2 Subsection (a)(1).

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: Comment.

CHAIRPERSON KIMSEY: A comment here in Richmond.
ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Clay Larson.

As we have this conversation -- I brought this up once before, but I'll briefly bring it up again. I think the Committee should consider retaining the requirement that each lab employ a primary standard -- primary standards have a special role in analytical chemistry; alcohol's not a primary standard -- employ a primary standard to determine the concentration of the standards that are used, whether purchased or prepared. Relying totally -- and I like Patti's word, store bought -- relying totally on store-bought samples could be a problem. Perhaps buying them from three or four different sources, that may increase your odds of getting it right.

I think we should be cautious about being so -- relying on the term "NIST traceability". NIST has absolutely no role in validating a vendor's claim that their reagent is NIST traceable. They don't check on this. They don't review that process. And in some cases I think it's -- the actual basis for the NIST traceability doesn't give you that much confidence.

Restek produces a series of NIST traceable standards. I believe -- and I've asked them to clarify and they haven't responded -- I believe that claim for NIST traceability is based solely on the fact that they

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use NIST Class S weights to weigh the alcohol. Well, that's not a good idea for a couple reasons. Weighing alcohol is problematic because it's a very volatile material. There are also many steps in the process that can change the alcohol concentration. So I think basing the accuracy of the concentration on that one step and then calling it NIST traceable may give people confidence, but I don't think it should.

COMMITTEE MEMBER LOUGH: Patty Lough.

I did have a long conservation over a period of time with NIST on this topic. And I could be in agreement with you that it might be nice to do those titrations if we were doing thousands of them and coming up with our number, because it is important that we get it right. But in reality, when we only do six titrations to determine what the concentration of alcohol is, that just really -- there's so much leeway there for error that we're really better off to purchase standards like clinical labs do. Clinical labs oftentimes get kits for things and they use the controls in the kits. They're not titrating those standards and verifying them and doing a whole research project on them.

So those labs that want to continue to do titrations, that's fine. I agree that those labs, it would be nice to have some language that they check that
periodically with concentrations that an outside laboratory has performed. That's a good double-check on the system. It's quick and easy. And that follows what clinical labs do. You know, I can see the use of that.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
Quick follow-up response. I don't want to get in an argument here. But certainly labs were free to select more than six titrations if they wished. Keep in mind that in all likelihood the vendor you buy the, quote-unquote, NIST traceable material has done zero titrations.

COMMITTEE MEMBER LOUGH: Thank you.

MR. PHILLIPS: Clay, hi. This is Bill Phillips.
That's why we're proposing that you use a NIST traceable secondary alcohol standard and compare that to a primary standard that you have prepared, so that this error or doesn't occur and that NIST traceable secondary alcohol standard would be from an external source.

COMMITTEE MEMBER LOUGH: Bill, I'm clear --

MR. PHILLIPS: We're proposing both.

COMMITTEE MEMBER LOUGH: So you want everyone to, if they can, buy NIST standards?

MR. PHILLIPS: Right. We would like that done.

MR. FICKIES: I agree with that.

COMMITTEE MEMBER LOUGH: I think that definitely
needs to go around the group. We would be changing how
our intention started out on that from the beginning.
That would definitely have to go back to all of our
organizations.

MR. PHILLIPS: Yeah, I agree. It's a step into
the 21st Century.

COMMITTEE MEMBER LOUGH: Is there other labs that
are not checking it with NIST standards now that
are -- well, then again, I'm going to say passing their
proficiency test. But at the same time Clay's proficiency
tests, those from the state, are based I think a lot in
part on the responses they get back from everybody and
seeing if everybody's kind of in the ballpark with their
anticipated number, which is another good reason to use an
ASCLD/LAB approved vendor, because that would be a larger
scale proficiency test program. That is kind of the proof
of the pudding in there. Samples that come in as
proficiency tests perhaps could be used as a check -- as a
positive control check without having to titrate. You
know, I think we really need to think about that.

Yeah, go ahead and write it up and --

MR. PHILLIPS: We will.

One comment. As you have mentioned, your
comments about clinical laboratories. The Department of
Justice Toxicology Laboratory, in doing a quantitative
analysis on drugs, includes a quality control that's purchased from an external provider and develops standards and does linearity using three-point standard curve and follows the quality control of an external provider. So that it's a standard practice in clinical and forensic science to use an external -- a quality control from an external source.

COMMITTEE MEMBER LOUGH: Well, I think that's exactly what we're talking about. I think we're on the same page. We're talking about, first off, that if you choose not to do the titrations, if you choose to purchase, then we're talking about doing that same thing, providing them, getting them at different concentrations, checking them, including them.

The difference I see is you're -- I thought you were suggesting that everybody do that; in addition, everybody titrate and compare those values, because the titrations would be with primary standards. Am I missing the point?

MR. FICKIES: This Terry Fickies.

No, we are suggesting you do both.

COMMITTEE MEMBER LOUGH: Okay. That's what I thought.

MR. FICKIES: How many laboratories out there are just in external secondary standards?
COMMITTEE MEMBER LOUGH: I am aware of some laboratories doing that, in addition to the required titrations. But I think most of them are probably still titrating, unless that's changed.

MR. FICKIES: Okay. I --

COMMITTEE MEMBER LOUGH: I think most are titrating. I know some labs, San Diego P.D. does purchase the external standards and does run them. But that's an optional, that's in addition to what the current requirements are.

MR. FICKIES: And that's what we're essentially suggesting should be the standard.

COMMITTEE MEMBER LOUGH: Yes, I realize that. I agree it would be nice to have. But we would have to take that back to everybody. I think it would be difficult to make a regulation then that is going to require the labs do more and pay more without taking it back to them and getting their buy-in on it. I agree with you, that is a good way to do it. But I also agree that the use of primary standards is not required. So it could be strictly external standards.

MR. PHILLIPS: We'll propose some language.

COMMITTEE MEMBER LOUGH: Okay. Why don't we move on to my next one, which is simple, I think. On that same page where we were, 1220.2 Subsection B, where it says,

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"An oxidimetric method," that's the current language. We should probably change that to "a direct oxidimetric method." Clay made a comment in there about that. That makes it more clear how that will be accomplished.

On page 12, 1220.3 Subsection 2. Just to reiterate, we need to include the decimal places and, therefore, that material. So if we want to include it to three decimal places, for instance.

Terry, you want to include that then? You're going to include that as well in your write-up?

MR. PHILLIPS: Yes, sir.

COMMITTEE MEMBER LOUGH: Yes, sir? Yes, ma'am.

(Laughter.)

COMMITTEE MEMBER LOUGH: All right. Page 14.

I don't know if we want to include this or not. But we may want to have a definition in the beginning about a calibrating unit versus a calibrating device. And the reason I say that is the Health and Safety Code refers to devices, Department of Transportation refers to units.

CHAIRPERSON KIMSEY: I'm sorry. This is Paul.

What part of page 14 are you looking at?

COMMITTEE MEMBER LOUGH: Oh, I'm sorry.

CHAIRPERSON KIMSEY: That's okay.

COMMITTEE MEMBER LOUGH: Page 14, A at the top, Subsection A.
CHAIRPERSON KIMSEY: Okay. Thank you.

COMMITTEE MEMBER LOUGH: "Breath alcohol analysis shall be performed only with instruments and calibrating units." I think we probably at the beginning need to put a definition in there, and somehow maybe units and/or devices, because we reference the Health and Safety, and the Health and Safety references Department of Transportation, and they use different nomenclature. So it might be a good place where we might want to fix that. Does anybody want to come up with a definition now, or do we have something in our definitions?

In our definitions on page 2 we talk about instruments or devices. We don't talk anywhere about units. Maybe it would be sufficient in there to say instruments, devices, or units.

CHAIRPERSON KIMSEY: Does anyone want to propose -- go ahead.

MR. PHILLIPS: Could we use parentheses "calibrating devices" after -- or "calibrating units," excuse me, after "device" in parentheses?

COMMITTEE MEMBER LOUGH: Say it again.

MR. PHILLIPS: Could we insert in parentheses "calibrating units" after "device" in the J?

COMMITTEE MEMBER LOUGH: Yeah, that would be good.
MR. PHILLIPS: "Instrument" or "device"
parentheses "calibrating units".

COMMITTEE MEMBER LOUGH: I like that.

MR. KNAF: Jon Knapp.

Down at the bottom is -- where you're looking
at it says 9 up there after "device," and down there it
says "device" and "or calibrating units" in parentheses.

MR. PHILLIPS: Yeah.

MR. KNAPP: At the bottom of the page it already
says that.

MR. PHILLIPS: Yeah, well, that's been added for
emphasis to try to explain this particular topic.

COMMITTEE MEMBER LOUGH: Because when we're done
here, we have to go back through the entire document and
do the justification for the changes and keeping the
remaining language. So I like that "devices" and then in
parentheses "calibrating units".

Okay. My next one is the same page, page 14,
subsection B.

Okay. They're talking about instruments --
breath alcohol instruments and who can use them. And then
it says, "only if such places and persons are under the
direct jurisdiction of a governmental agency or" -- and
we're talking out "licensed forensic alcohol lab".

What we're trying to say is San Diego can't
training you on their machine and then someone can go to
L.A. and run their machine. So I think we want to take
out "governmental agency" in case there's someone there
that is not a government agency and we want to take out
"forensic alcohol lab," because that means that it must
always be done at the lab and you can't take a show on the
road someplace.
"...in places other than labs and by persons
other than" -- "...only if such places and persons are
under the direct jurisdiction of a forensic alcohol lab"?
COMMITTEE MEMBER TANNEY: No, they say
"governmental agency" at the top.
COMMITTEE MEMBER LOUGH: It does need to say
"government"?
COMMITTEE MEMBER TANNEY: Yeah.
COMMITTEE MEMBER LOUGH: Okay. Never mind.
MR. KALCHIK: Question.
CHAIRPERSON KIMSEY: We have a question here in
Richmond.
MR. KALCHIK: Mark Kalchik.
What was that about governmental agency?
COMMITTEE MEMBER LOUGH: We're going to keep the
language in. It will read like it does.
MR. KALCHIK: I do have a question on that,
because I think there is one county that uses breath
instruments that it is not a governmental agency that
oversees it.

COMMITTEE MEMBER TANNEY: Is it a lab that
oversees it?

MR. KALCHIK: It's a laboratory, yes.

MR. PHILLIPS: So with the "or" statement it's
okay.

COMMITTEE MEMBER LOUGH: It has "or," so we're
okay.

MR. PHILLIPS: It says "or".

MR. KALCHIK: Okay.

MR. PHILLIPS: Bill Phillips.

We're okay with that.

COMMITTEE MEMBER LOUGH: Okay. Thanks. Me too.

Okay. Page 15, subparagraph 3, A underneath
that. Again we have to put in what our decimal places
are. And I think before we had talked about two decimal
places was the agreement of my organization, to make sure
that those are checked to two decimal places.

CHAIRPERSON KIMSEY: I'm sorry. This is Paul
again. This is page 15, Item No. --

COMMITTEE MEMBER LOUGH: Page 15.

CHAIRPERSON KIMSEY: -- Item No. 3?

COMMITTEE MEMBER LOUGH: Subparagraph 2 -- 3(A).

CHAIRPERSON KIMSEY: Mine says, "Theory of
operation."

COMMITTEE MEMBER LOUGH: Okay. This is 1221.4, Subsection -- oh, no. No, the other 3.

CHAIRPERSON KIMSEY: Oh, I see. The 3 -- "The accuracy of instruments" --

COMMITTEE MEMBER LOUGH: "The accuracy of instruments" --

CHAIRPERSON KIMSEY: Okay. I see it now. Thank you.

COMMITTEE MEMBER LOUGH: -- "shall be determined."

I think we need to have -- and, Terry, maybe you'd want to handle this one with yours since you're doing the other one.

And I think two decimal places was the agreement -- the best agreement that I could get, even though some instruments will read out to three or where they can have three, at least with -- I think CAC and CAELD I think they want two decimal places overall.

MR. FICKIES: Well, there's two decimal places in there right now, isn't there?

COMMITTEE MEMBER LOUGH: We don't have anything -- oh, well --

MR. FICKIES: But I would think that you would want three decimal places.
MR. PHILLIPS: The problem with these figures is they're dealing with breath alcohol, and some instruments don't read three, I don't believe.

COMMITTEE MEMBER LOUGH: Right. That's --

COMMITTEE MEMBER WONG: I agree.

COMMITTEE MEMBER LOUGH: -- true. Some are programmed so that they're only going to read two, and they cannot go back and reprogram with the older instruments.

MR. RECKERS: Comment. Bob Reckers.

Could you say at least two decimal places, leaving the option open for labs --

COMMITTEE MEMBER TANNEY: These are always the minimal. It says at a minimum, talking about what it would be -- yeah, those labs -- three is really nice. But I know there's people that were fighting that.

MR. RECKERS: But what if they have the option to go to three?

MR. FICKIES: Patty?

COMMITTEE MEMBER LOUGH: Yes.

MR. FICKIES: Right now they read minus 0.01 grams and 0.08 and 0.25, which are to two places. So no change is needed, unless I'm missing something here.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: Comment.
CHAIRPERSON KIMSEY: Comment here in Richmond.

MR. RECKERS: Yeah, but those are exact numbers.

Those could be infinite numbers.

COMMITTEE MEMBER LOUGH: Then will we just leave it as it is?

Okay. Just leave it as it is.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Comment.

CHAIRPERSON KIMSEY: We have a comment here in Richmond.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Clay Larson.

The Committee should be aware the Department has many years now -- and it actually hasn't been that controversial -- administratively required that when labs submit procedures for the determination of accuracy of instruments, that they indicate that they're checking the instruments to three significant digits -- three places past, to the right of the decimal point. That the logic there -- and as far as I'm aware, every instrument that's in use has that capability. The DOT requires -- the DOT requirements include an evaluation at that level. So the instruments, if they're going to pass DOT muster, have to have that capability.

The logic is that if you ran on 08 solution and
you got a result of a 0.98, so nearly 0.02 above the limit --
the plus or minus 0.01 limits, you would truncate it and
say, "That's fine. The instrument's reading about 0.02 high
and we're happy with that."

So it seemed -- to be given the importance of the
use of these results, it seems appropriate, and the
Department administratively required, that the instruments
be checked -- and we would evaluate this when we did site
inspections -- would be checked to the three decimal place
level for accuracy.

MR. FICKIES: Question.

COMMITTEE MEMBER LOUGH: Yeah, I think it was --
yes.

MR. FICKIES: This is Terry Fickies again.
What instruments -- this is for the accuracy
check.

COMMITTEE MEMBER LOUGH: Right.

MR. FICKIES: So what instruments don't read to
three places?

COMMITTEE MEMBER LOUGH: I think they all should.
And that's why in here I think we should have language
maybe to talk about running the instruments to three
decimal places.

MR. FICKIES: Well, I think they should be run
three decimal places. And I think we should specify three
decimal places for these three values under subsection A.

And I'd be happy to write that up if you want me to.

COMMITTEE MEMBER TANNEY: I think this has to go back to the association, because there's indications from -- that some laboratories may not do this or may not have this capability.

COMMITTEE MEMBER LOUGH: If you want to write it up, Terry, and submit it and we'll just run that past everybody.

MR. FICKIES: Okay. And could we find out who does have the capability?

COMMITTEE MEMBER TANNEY: I think that's up to the association to find out.

COMMITTEE MEMBER LOUGH: We'll send the change -- we'll send the wording around and leave it up to them to read it and respond back to us.

MR. FICKIES: Cool.

COMMITTEE MEMBER LOUGH: Well, my next one is page 15, keep going down to big subsection E and 4 under that.

This is where -- okay, this is where I want to remove the location at the end of that sentence where it says -- the last of the sentence says, "at a forensic alcohol lab." I'd like to just have, "Training in the procedures of breath alcohol analysis shall be under the
supervision of forensic alcohol supervisors, forensic alcohol analysts, or forensic alcohol analyst trainees."

And that's all I have.

CHAIRPERSON KIMSEY: And, Patty, this is Paul Kimsey. The rationale for dropping "forensic alcohol laboratory"?

COMMITTEE MEMBER LOUGH: Because a lab may wish to go out to a location and --

CHAIRPERSON KIMSEY: Okay.

COMMITTEE MEMBER LOUGH: Yeah, I just don't want them restricted to having to do it on-site.

COMMITTEE MEMBER DAVIS: Paul, this is Kevin Davis in Sacramento. I agree, you know, that's not the way it's done now, anyway from my experience. They usually come out to the police agencies to do the training. So I'd be glad it to be at a lab facility.

CHAIRPERSON KIMSEY: Okay.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: Public comment.

CHAIRPERSON KIMSEY: We have a comment here in Richmond.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: Clay Larson.

I don't believe the intent of that phrase there was ever meant to specify the location. It goes back to a
broader question which I don't think the Committee has considered. Under the Department's program, individuals were qualified as analysts, trainees, or supervisors at a specific laboratory. So the qualification was always linked to that laboratory. And I think this just reinforces that notion. So the old language was "persons who qualify" and they qualified as one of those three categories at a forensic alcohol laboratory. So I think the Committee --

COMMITTEE MEMBER TANNEY: No. But the

definition --

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

I think at some point --

COMMITTEE MEMBER TANNEY: We're saying the
definition of forensics -- go ahead.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Well, I think at some point since that's the current status quo, that's how it worked. I think the Committee may want to consider at some point whether it wants to make these analyst, trainee, and supervisor classifications transferable. I don't think it can do that since we're actually under the current -- as we establish this now, unless we retain some role by a state agency for approving the qualifications of these people.

The individuals are qualified by a -- you know, by Acme
Laboratories, by a specific laboratory. So allowing a person trained at Laboratory A to go -- so this might suggest provide training on an instrument that is maintained and is checked by a Laboratory Z, might not be what you want to do.

MR. PHILLIPS: Bill Phillips in Sacramento.

A compromise would be to use the word -- instead of "at," "from".

COMMITTEE MEMBER LOUGH: That's good.

COMMITTEE MEMBER TANNEY: Or, Terry, even being more specific, that it's under the supervision -- and you could say -- where's that, page 15? -- you could say, "Training in the procedures of breath alcohol analysis shall be conducted by forensic alcohol supervisors, forensic alcohol analysts, or forensic alcohol analyst trainees under the supervision of a forensic alcohol laboratory."

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Comment?

Cathy Ruebusch --

COMMITTEE MEMBER DAVIS: You know, I think that is a lot simpler and that handles it.

COMMITTEE MEMBER TANNEY: That's fine.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

One simple -- my comment. But if Cathy Ruebusch
were here, she would point out that a laboratory as a
place couldn't be supervising anything.

COMMITTEE MEMBER TANNEY: Well, let's just say
from then.

CHAIRPERSON KIMSEY: Did you have any other
suggestions, Patty?

COMMITTEE MEMBER LOUGH: No, I'm done. Thank
you.

CHAIRPERSON KIMSEY: Okay. Sort of continuing
around with whether or not people were able to, you know,
get some feedback from their agencies, I guess going up
the list.

Paul Sedgwick, for the toxicologists, did you get
any feedback from your organization?

COMMITTEE MEMBER SEDGWICK: I got no feedback.

CHAIRPERSON KIMSEY: All right. Kenton.

COMMITTEE MEMBER WONG: I got no feedback
specifically. But I feel strongly that we should still
maintain Title 17, as there was some talk that maybe we
should just totally abandon it.

CHAIRPERSON KIMSEY: Yeah, and that's on the
agenda for some discussion.

Okay. And Bruce Lyle from the coroners.

COMMITTEE MEMBER LYLE: Yeah, I got some
feedback, mostly from L.A. County. On page 9 at the
bottom, Section g, subsection 2, it says, "Whenever a sample is requested by the defendant for analysis and a sufficient sample remains, the forensic alcohol laboratory or law enforcement agency" -- and L.A. County didn't really consider themselves one of those or the other, so they were wondering if we could add in coroner or medical examiner, because they post that sample a lot of times. And it didn't give major heartburn, so I thought it wasn't a bad idea.

CHAIRPERSON KIMSEY: So it would read "...sample remains, the forensic alcohol laboratory, law enforcement agency or coroners' office" or --

COMMITTEE MEMBER LYLE: Coroner/Medical Examiner Office, yeah.

CHAIRPERSON KIMSEY: -- "Coroner/Medical Examiner Office in possession of original sample, et cetera, et cetera"?

COMMITTEE MEMBER LYLE: Correct.

CHAIRPERSON KIMSEY: And any objections from the Committee?

COMMITTEE MEMBER LOUGH: No.

COMMITTEE MEMBER TANNEY: No.

CHAIRPERSON KIMSEY: Did you have another --

COMMITTEE MEMBER LYLE: Yeah, on the next page, on page 10, that same paragraph is reiterated under Urine
Collection. It's Cl -- 1219.2(C)(1), and it looks like
it's reiterated there.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Comment.

CHAIRPERSON KIMSEY: Comment here in Richmond.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

We have a limited number or -- because I may use
it up in the morning.

Under the current regulations, the -- you may
want to change this -- the postmortem urine samples
aren't -- the analysis of those samples are not provided
for under the current regulations. I mean the procedures
for collections of samples, you know, involve steps where
you voluntarily void obviously -- I don't want to make it
macabre -- but obviously a corpse would not be able
to -- so regarding that issue on the retention samples
here, keep in mind currently the analysis of postmortem
urine samples or, you know, various other samples is not
provided for under the regulations.

COMMITTEE MEMBER LYLE: Bruce Lyle.

So if that's true, then A ought to read, "The
urine sample from living individuals shall be collected no
sooner than 20 minutes after first voiding the bladder,"
just to clarify that it's on living people and not dead
people.
CHAIRPERSON KIMSEY: Well, I --

COMMITTEE MEMBER SEDGWICK: Paul Sedgwick in San Diego.

If it's patently obviously the postmortem urine samples are not even remotely acceptable as a reflection of the blood alcohol levels, I think is what Clay is referring to. But they are useful to guard against mixing up samples. And so the presence of alcohol in the blood might be useful, not accurate, in the postmortem urine sample.

CHAIRPERSON KIMSEY: So currently they're not regulated.

Do we want to regulate them into the future?

COMMITTEE MEMBER LYLE: Bruce Lyle.

I don't think so. I just want to separate them and make sure the 1219.2 isn't addressing us, my office.

CHAIRPERSON KIMSEY: So then you would advocate for some language, "from a living individual" or something to that effect?

COMMITTEE MEMBER LYLE: Correct, in A.

MR. KALCHIK: Question.

CHAIRPERSON KIMSEY: Question here in Richmond.

MR. KALCHIK: Mark Kalchik.

Why wouldn't the Coroner's Office be a forensic alcohol laboratory under the definitions? Because they're
collecting it for forensic alcohol analysis.

COMMITTEE MEMBER LOUGH: They may not be doing
the analysis. Some laboratories contract out. So they
may collect the sample but contract out for analysis.

COMMITTEE MEMBER LYLE: Bruce Lyle.

That's all the comments I had.

CHAIRPERSON KIMSEY: And does the Committee agree
then to add something -- let's see, 1219.2 small A on page
10, the first section there about the urine sample -- that
this is from a living individual or something to that
effect?

COMMITTEE MEMBER TANNEY: That's fine. Laura
Tanney.

COMMITTEE MEMBER LOUGH: Yes, that's fine.

CHAIRPERSON KIMSEY: Okay. Moving --

COMMITTEE MEMBER ZIELENSKI: Torr Zielenski.

CHAIRPERSON KIMSEY: Sure. Go ahead.

COMMITTEE MEMBER ZIELENSKI: Yes, Torr Zielenski
from Sacramento. Going back to page 15 --

CHAIRPERSON KIMSEY: I'm sorry. Which page?

COMMITTEE MEMBER ZIELENSKI: -- where we're
talking about -- page 15.

CHAIRPERSON KIMSEY: Okay.

COMMITTEE MEMBER ZIELENSKI: Now, then section
subsection 3, item 4. I want to keep the language exact
there with respect to who it is that we want to conduct
the training. I think the language probably ought to say,
"analyst trainees employed at a forensic alcohol
laboratory," because employment is part of the definition
requisites in order to be a supervisor or analyst or
trainee, as opposed to "from" -- be employed actually at a
forensic alcohol lab in order to be defined as such.
Where I think "from" is somewhat vague.

Does that make sense?

CHAIRPERSON KIMSEY: So employed by?

COMMITTEE MEMBER ZIELENSKI: Yes.

CHAIRPERSON KIMSEY: How does the rest of the
Committee feel?

COMMITTEE MEMBER TANNEY: That's the definition
of a trainee. That's within the definition of a trainee
anyway.

COMMITTEE MEMBER ZIELENSKI: Right.

COMMITTEE MEMBER LOUGH: Right.

COMMITTEE MEMBER WONG: Right. Now, the
definitions.

COMMITTEE MEMBER TANNEY: And it's redundant.

COMMITTEE MEMBER LOUGH: Yeah, that's redundant.

And on page 2, subsection H.

COMMITTEE MEMBER ZIELENSKI: Okay. I see it.

Thank you.
MR. KALCHIK: Question.

CHAIRPERSON KIMSEY: Question here in Richmond.

MR. KALCHIK: Since we're still on page 15 at the top of the page, it's .02 grams per 100 milliliters.

Should that be 210 liters to be consistent?

COMMITTEE MEMBER LOUGH: Yes.

MR. FICKIES: Should that be the three places?

COMMITTEE MEMBER WONG: Or 210 liters of breath.

MR. FICKIES: Oh, it doesn't matter.

CHAIRPERSON KIMSEY: So for our stenographer, it would read --

MR. KALCHIK: If I could.

CHAIRPERSON KIMSEY: Go ahead.

MR. KALCHIK: The top of that page, "...samples which result in determinations of breath alcohol concentrations which do not differ from each other by more than 0.02 grams per 210 liters."

CHAIRPERSON KIMSEY: How does the rest of the Committee feel about that change?

COMMITTEE MEMBER LOUGH: Fine. Patty Lough.

MR. PHILLIPS: The confusion there -- excuse me, Bill Phillips -- is that it says, "Breath alcohol analysis" -- if you read the first part of that sentence on page 14, it says, "Breath alcohol analysis shall include two separate breath samples which result in
determinations of blood alcohol concentrations which do not differ in the amount of .02 grams." So it's blood that you're expressing the concentration in, not breath.

MR. KALCHIK: Question.

CHAIRPERSON KIMSEY: Question here in Richmond.

MR. PHILLIPS: Use breath, or should the determinations of alcohol concentrations be changed from blood to breath? Do you want to meet --

COMMITTEE MEMBER LOUGH: Right.

MR. KALCHIK: Yeah, that's what --

COMMITTEE MEMBER LOUGH: Kind of cleans it up a little.

MR. KALCHIK: That's what I had proposed, yes, that it's changed back from blood to breath.

MR. PHILLIPS: Okay.

CHAIRPERSON KIMSEY: I think moving along --

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: Comment from the public.

CHAIRPERSON KIMSEY: Oh, comment from the public here in Richmond.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: The previous comments regarding the requirements that those various classifications be employed by a forensic alcohol laboratory. The Committee was right in noting that the trainee classification includes specific
language that says that the employee -- that the individual has to be employed by a forensic alcohol laboratory. Actually the definitions of the analysts and the supervisor don't include that. I think it's implied, but they don't --

CHAIRPERSON KIMSEY: It says employed, G and F on page 2.

COMMITTEE MEMBER WONG: Right in the middle it says employed.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: Okay. All right.

CHAIRPERSON KIMSEY: I think we're moving along to Sergeant Davis.

Any comments from your agency?

COMMITTEE MEMBER DAVIS: No formal comments from our agency. I agree -- I was going to bring up the change on the one we discussed on page 15, which sounds like it's been addressed.

CHAIRPERSON KIMSEY: Okay. Ms. Tanney from the district attorneys.

COMMITTEE MEMBER TANNEY: No.

CHAIRPERSON KIMSEY: No comments.

Okay. Well, it's noon time. According to our agenda we're going to break for lunch in about ten minutes.
Any other comments from the public?

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON: Did we ask Torr?

COMMITTEE MEMBER TANNEY: Paul, this is Laura.

I'm sorry.

CHAIRPERSON KIMSEY: That's okay.

COMMITTEE MEMBER TANNEY: I'm actually not going to be here this afternoon. So I didn't know if you wanted to go into the -- I don't need a long discussion on the Title 17 -- need for Title 17 regulations. We can either reserve that till the next meeting or --

CHAIRPERSON KIMSEY: Sure, why don't --

COMMITTEE MEMBER TANNEY: -- you guys can talk about it without me if you want. Or we can go ahead and talk about it for a few minutes.

CHAIRPERSON KIMSEY: Sure. I'll leave it to the Committee. But I'm certainly willing to go ahead and have the discussion before we have lunch.

COMMITTEE MEMBER TANNEY: Okay. The only -- I again pointed out that the statute was to get this group together to look at the regulations and make recommendations regarding modifications of the regulations to ensure competency. And my query at the end of the last meeting was, are these really necessary to ensure competency when, as we pointed out, all the other
disciplines of forensic testing do not have such
regulations and are self-regulated, so to speak. So I
wanted to take a look at that question and have a
discussion regarding that question, and talk about whether
or not a repeal would be something that we should talk
about also.

And part of that stems from my -- in actuality
stems from my frustration about this process. It's been
years we've been working with this trying to revise these
things. Every time we get involved with the Office of
Administrative Law, there's a wall that's put up or a
change in policies and procedures. And it's become a very
frustrating and time consuming process with a lot of
people expending a large amount of time and energy into
this. And I'm beginning to wonder whether this is really
worth the effort and whether it's really necessary to
ensure competence.

Somebody pointed out at the last meeting that
there was a bill passed last year that created a committee
to determine whether or not oversight should be
recommended for all the other forensic disciplines. And
apparently that committee is now meeting also and
discussing that. And again there's representatives from a
lot of laboratory agencies, from defense attorneys, from
prosecution, I think from pretty much all of the same
representatives that we have here.

And I'm concerned also about a duplication of
effort on both committees if we're -- if we're considering
one thing and they end up considering something else, we
may undo what each other are doing.

So that was another thing that -- I don't think
that they're talking about specific procedures or
regulations at this point but merely whether or not
they're going to recommend oversight for other forensic
disciplines.

So, you know, I don't want to act in conflict
with what they're doing, yet we know very little about
what they're doing. And I don't know if Department of
Public Health, or what you're called now, is involved in
that or not. But I think we need to find out and I think
we really need to, without getting into territorialism,
get into whether or not we really need to have these
regulation to ensure competency. And I just want to throw
that out there.

CHAIRPERSON KIMSEY: This is Paul.

You bring up some very good points. As a state
agency, we have very little leeway except to follow, you
know, the black and white of State law. So our presence
here and our participation is quite clear with regards to
the legislation. And so that's how we will proceed.
I think -- I don't know if anyone else in the audience has participated or is aware of the other committee's work. But I know the Department is not part -- our Department of Public Health has responsibility for this Committee, or at least participation with this committee, is not represented in the Committee that was formulated from statute from last year.

I don't know much about the history of that or if that was an oversight or intentionally. But the reality is that our Department is not represented. And so I know very little bit about what that group is doing.

COMMITTEE MEMBER DAVIS: This is Kevin Davis, Sacramento.

I've attended two of the three meetings with the other group. Although there's obviously some slight overlap, they're more concerned with the general configuration in staffing and delivery of services by crime labs as a whole. They're obviously, as Patty said, not specific to procedures. So I wouldn't use -- the existence of the other committee I don't think is a reason to stop working on Title 17 per se.

COMMITTEE MEMBER LOUGH: Patty Lough.

I did discuss this with my group. And the consensus was that this is a long time standard that the laboratories and the courts have relied upon, especially
the DMV. And to change it right now would probably be too
large of a transition. This is what everyone's used to.
So my group felt it was appropriate for Title 17 to remain
in place.

CHAIRPERSON KIMSEY: Other comments from
Committee members about the necessity of Title 17?

COMMITTEE MEMBER DAVIS: This is Kevin Davis
again.

I would agree to keep Title 17 in place.

CHAIRPERSON KIMSEY: Any Committee members in
favor of repealing Title 17, I guess is the way to put it?

COMMITTEE MEMBER TANNEY: I'm still undecided on
that. Laura Tanney. So I -- I may be in favor of that,
but -- so I'm not the scientist here either. So I think
it's more -- I think it's more important that the
scientists weigh in on whether this is necessary to ensure
their competency.

COMMITTEE MEMBER WONG: Kenton Wong, Richmond.

Title 17 was originally promulgated to ensure
minimum standards for competency. And I think it's done
that. It's been a good law. It's been a good regulation.
And I know when 1623 first went through there were a lot
of people in the forensic ranks that thought that, "Yea,
we don't have to do a Title 17 anymore." And that was not
a good thing.
There were some laboratories that just thought that Title 17 was a thing of the past and was oppressive and making them jump through all these hoops. And, you know, we don't want to throw out the baby with the bath water. I think it's really important that -- they are minimum standards.

And I understand -- totally hear you, Laura. I understand the frustration, because we're all dealing with it. And a lot of attorneys that I've talked to, they were just saying, "Well, what's going on with that? And, you know, it's been like three or four years. And has it gone anywhere? And, you know, it just seems like it's dragging its feet."

So I feel your frustration and I totally agree with you. But I still believe that Title 17 is necessary to prevent roguism in labs and people just running amuck. You know, I'm old enough to be a student in human nature to know that, you know, if you allow people just to do whatever they want, that unfortunately they will. And I think that Title 17 is required and is necessary.

COMMITTEE MEMBER LOUGH: Patty Lough.

And it does provide consistency statewide -- some minimal consistency of how alcohol analysis is performed by individual laboratories.

COMMITTEE MEMBER WONG: Absolutely.
CHAIRPERSON KIMSEY: Other comments from the Committee?

Any comments from the public?

MR. TOMS: Hello. Michael Toms from Sacramento County.

I agree this has been a standard for some time and it's accepted by both the Department of Motor Vehicles as well as the courts as the standard, and we believe it should be kept in place.

CHAIRPERSON KIMSEY: Okay. Any other comments on this?

If not, we'll break for an hour for lunch.

COMMITTEE MEMBER WONG: Laura, if I could also chime in one more time.

Working in a private lab, I have the rare ability to be able to review both prosecutorial and defense results. And I see it time and time again where laboratories aren't doing exactly what they're supposed to be doing. And Title 17 is an assurance, a long-standing assurance to keep people on the straight and narrow.

COMMITTEE MEMBER TANNEY: Okay. I just wanted to make sure that the Committee feels -- particularly the scientific community and the Committee feels that this is a worthy project and necessary as prescribed by the Legislature. If it is, then so be it. That's fine. And
I'm not going to independently seek repeal of Title 17 if the scientific community feels that it's important. So I just wanted to throw it out there and get a consensus from the scientists whether or not this is something they feel is necessary. And we've done that. So I appreciate that.

CHAIRPERSON KIMSEY: Okay. Any other comments before we break?

We'll reconvene at 1:15.

Thank you.

(Thereupon a lunch break was taken.)
AFTERNOON SESSION

CHAIRPERSON KIMSEY: This is Paul Kimsey in Richmond. We can take our microphones off mute and we'll get started?

COMMITEE MEMBER LOUGH: San Diego is here.

CHAIRPERSON KIMSEY: Richmond's here.

And I think I saw Sacramento. Can you hear us?

COMMITEE MEMBER ZIELENSKI: Yes.

CHAIRPERSON KIMSEY: Okay, great.

On to the afternoon, we have a couple of hours scheduled left.

At the top of the agenda is a discussion with regards to pretty much I guess the role of the Department. Not that we've taken it personally or anything, but we do have this chart that has outlined the direction the Committee is going with regards to the role of the Department, which is to -- on top of the legislative reduction of responsibilities, to continue removing the Department from a number of areas.

The chart outlines the activity, the current requirements, and the rationale for continuing current requirements, which is our logic for continuing, and in the current regulatory work product, which pretty much, as I anticipated at our last meeting, removes the Department pretty much from all of these activities.
And we set aside some time if the Committee wants to discuss any of these areas. But it's pretty much our interpretation that the current regulatory work product pretty much removes us from these activities.

Is there any sort of comment or discussion on that or anybody want to discuss any particular aspect of these activities or...

Hearing none --

MR. GRUBB: Hello. Are you asking whether we have any response to the Department of Public Health's comments about their continued involvement?

CHAIRPERSON KIMSEY: Yes. And also, if you could identify yourself for the stenographer.

MR. GRUBB: Yeah, it's Mike Grubb representing the public in the San Diego P.D.

Regarding specifically the involvement in proficiency testing. And, Dr. Kimsey, you said earlier that you were looking at the letter of the law. And I don't think the law could be any clearer than it is regarding Section 100702 directing forensic alcohol laboratories to follow ASCLD-LAB guidelines proficiency testing.

Each laboratory would participate annually in performing an external proficiency test provided by an approved provider. Each examiner would have to be
successfully proficiency tested annually. The labs must have a policy dealing with proficiency test review and corrective action. And an ASCLD-LAB has a proficiency test review committee that investigates proficiency testing problems in the laboratories.

So I see this as sort of the Department of Public Health maintaining any stand in the area of proficiency testing is -- they are looking at Section 100725, which is a piece of the Health and Safety Code that probably should have been deleted but wasn't. But the law couldn't be clearer that we're looking to the laboratories to participate with ASCLD-LAB proficiency testing. And the Department of Public Health involvement in that area is superfluous.

CHAIRPERSON KIMSEY: Okay. Other comments?

Then --

MR. KNAPP: Jon Knapp, toxicology.

CHAIRPERSON KIMSEY: Oh, go ahead.

MR. KNAPP: I don't agree with that last man's statements. I think that it's very important to have the Department of Health Services or Public Safety, or whatever they are now, to give us a proficiency test in addition to one that the outside -- like an ASCLD-LAB certified one. I see no reason to avoid it. I mean I think that's just being lazy.
CHAIRPERSON KIMSEY: And could you identify yourself, please.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
Jon Knapp.

MR. KNAPP: Pardon me?
I already did. Oh, Jon Knapp.

CHAIRPERSON KIMSEY: Okay. Thank you.

COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.
I certainly have opinions about this. But this was all addressed at the -- when we met at all the different hearings with the State Legislature, so I'm not going to kind of rehash it. But it was clear to me that the proficiency testing function is no longer required of the state.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
Comment.

CHAIRPERSON KIMSEY: Comment from the public here in Richmond.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
And I think I've described in the advisory we sent to the lab -- I'll just kind of repeat that. But perhaps you've forgotten or didn't get a chance to look at it. The statutes did include language associated with specific requirements for proficiency testing. But they also included a requirement that labs comply with all
regulations as they existed in December 31st, 2004. And those regulations include specific departmental proficiency test requirements. For the qualification of personnel it actually says a proficiency test -- they have to pass a proficiency test and a written examination conducted by the Department. So in that instance our hands are sort of tied. But there are also sections that require -- that refer to the Department's use of proficiency testing data in order to evaluate the ability of the lab's methods to meet the standards of performance requirements.

So I don't -- I think just reading one section of the new statutes and ignoring the other probably doesn't give you the balanced view that you may need to understand maybe why the program is ongoing.

I also had one more quick --

COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.

Go ahead.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

I also have one more quick point, which is we've got to keep in mind that the new statutes require labs to participate in an ASCLD-LAB approved proficiency test providers program, that there's no requirement that those results are reviewed or evaluated by ASCLD. And they certainly wouldn't apply to the half dozen or -- I'm not
sure what number. But there are a number of labs that aren't currently ASCLD-LAB accredited. And they would have no involvement whatsoever with the Proficiency Test Review Committee that exists under ASCLD.

So keep that in mind as we reach a comfort level with that ASCLD oversight. One, it's not required by the regulations; two, it doesn't apply to a number of labs.

COMMITTEE MEMBER LOUGH: Patty Lough, San Diego.

This topic of proficiency testing was discussed at long length to the members of our Legislature. I think it's very clear they were speaking to us to accept ASCLD-LAB approved testing providers, of which the state is not.

And if we want to go with Title 17 of the regulations, understanding that the State Legislature's intent was for us to use ASCLD-LAB approved providers, Title 17 on page 5 clearly says the Department may approve another provider and that's a way the Department might come into compliance with the intentions of the Legislature.

And I'll read for you. It says -- and this is under 1216.1 subparagraph 3: "Demonstrating satisfactory performance in a proficiency testing program conducted by or approved by the Department." So this would be a very nice time to take the intention of our State Legislature...
and put that into effect.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

A follow-up comment.

And again that wouldn't apply to the requirement under 1216.1 F and -- E and F, which refers to a requirement in the regulations that personnel to be qualified to perform forensic alcohol analysis must satisfactorily complete a written examination and a proficiency test conducted by the Department.

So the other section refers to --

COMMITTEE MEMBER LOUGH: But that's a competence --

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Well, the word "competence" -- the competency test samples is undefined in the current regulations and actually in the proposed new regulations.

COMMITTEE MEMBER LOUGH: The only reference to the state's proficiency test as long as the state would approve the use of another provider, as was the intention of the Legislature, is for the acceptance of new analysts who are still by Title 17 required to take the proficiency tests provided by the Department. That's what we would call a competency test. And I don't know if we have that definition or not.

And the written exam, all those things, those are
still left over things until it's changed. Because, as
you know, we have repealed all of that out of the changes
that we made.

So to comply with the Legislature's intention,
the bulk of proficiency testing is not the new analysts
that come on. If the state wishes to provide those
initial competency tests for new analysts before they
start doing the work, I think that's fine. That would
considerably lessen the work of your Department, Clay, and
be more in line with what the state legislators intended.

COMMITTEE MEMBER SEDGWICK: Paul Sedgwick in San
Diego.

I agree with that with the proviso that these
samples be provided in a timely manner. As soon as a
person finishes their training, what we generally refer to
as qualifying samples or competency tests, should be
immediately administered and not wait until the next six
months down the line when your laboratory does provide
samples.

ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

Quick comment.

COMMITTEE MEMBER LOUGH: Also, and for Mr.
Knapp -- This is Patty Lough again.

For Mr. Knapp, if he -- you don't have to be a
member of ASCLD-LAB to use a provider that they have
approved. So his lab doesn't have so seek accreditation
by ASCLD-LAB to be able to use those providers. They're
common forensic providers that are used by the industry.

MR. KNAPP: Jon Knapp.

I understand. And we are complying with that.

We do proficiency testing with CAP.

And I guess my point was, I don't see any reason
why -- you know, if Clay's group wants to provide an
additional one and we have an opportunity to do an
additional proficiency test provided by the state, why not
do both. You know, that maybe it not be a requirement.
But if they're willing to make one up and send one out,
you know, why not?

COMMITTEE MEMBER LOUGH: I think very clearly --
this is Patty Lough -- one of the main considerations
would be budgetary. We're doing something that's
redundant and that is not generally accepted in the
forensic science community, that particular test that Clay
provides. And so instead of going through that expense on
both sides of the lab and the state, I'm sure that it
would free up more time for Clay's office to do other
functions if they didn't have to administer those
proficiency tests, monitor them, evaluate them, et cetera.

So there are a lot of things which we discussed
in Legislature about this, which I don't really want to
rehash right now. But there are -- these issues were all discussed.

CHAIRPERSON KIMSEY: Other comments?

This is Paul in Richmond.

Pretty much I just wanted the Committee
to -- this discussion is good. I just wanted the Committee to understand that we pulled together -- the purpose of this chart was to pull together one area, sort of the diminishing role, as the Committee has structured it, with regard to the Department. And I wasn't sure that we'd gotten it -- I mean we talked about it on a number of Committee meetings. And I just wanted to be sure that we had pulled together in one spot the diminishing role of the Department with regards to Title 17, with regards to enforcement, types of, you know, personnel qualifications, training programs, et cetera, et cetera.

Any further discussion on this particular document?

We've got about -- well, we still have about two hours of time scheduled left. On the agenda, we pretty much -- we've talked about, you know, to continue to discuss the draft regulatory work product.

I think everyone on the Committee is feeling like we would like to get through this process. So I'm open to some discussion on how the Committee would like to spend
this next couple of hours. Obviously we have a
requirement to get a product to Agency at some point. And
they have a requirement of reviewing on a 90-day
turnaround pretty much what the Committee has pulled
together.

We had a little bit of discussion last time on
what it was we wanted to send forward to Agency, and I
think we might want to continue that. Part of what we
were doing was getting some time for the various Committee
members to get feedback from their agencies and their
organizations. And we've done that with regards to the
regulation package.

But does anyone have an idea how they'd like to
proceed with regards to work product to Agency?

COMMITTEE MEMBER LOUGH: This is Patty Lough.

I think at this time -- I think what we can start
doing since we only have a couple of things left on our
work product that we're looking at, I think it's a good
time to start now doing the research and the prep work for
submission with the references and all that stuff. And I,
for one, would like to volunteer to start working on that
process.

Well, that's volunteer on my own working, not as
part of the -- I don't think the full Committee is
required for that.
CHAIRPERSON KIMSEY: No, I would agree. And a subcommittee, we've used them in the past early on. And I think a subcommittee might be able to make some progress on that.

I think we might want to have a -- are we anticipating sending over to Agency then a full package -- regulation package that has a statement of reasons and all of the various language associated with that? I say that -- I mean that's obviously one avenue we can take. We can also -- we could also send over an abbreviated document that basically just gives the intentions of the Committee. But it's pretty much for the Committee to decide how they want to proceed.

COMMITTEE MEMBER LOUGH: My vote is to give them the whole package with our reasoning behind it.

CHAIRPERSON KIMSEY: So if we were to set up a subcommittee to start down that road, so to speak, are there any other folks besides Patty Lough that would like to participate? If I remember correctly, we -- it's getting fuzzy, as I said. As I remember, I think we can have folks outside the Committee participate in a subcommittee. If that's not the case, I'll certainly find out rather quickly.

But are there any other Committee members or folks present that would be willing to serve on a
subcommittee?

MS. SHEN: This is Jennifer Shen from San Diego Police Department. And I definitely would be willing to assist on a subcommittee.

CHAIRPERSON KIMSEY: And could you spell your last name, please.

MS. SHEN: Shen S-h-e-n.

CHAIRPERSON KIMSEY: Thank you.

Anyone else?

I think --

MR. FICKIES: Terry --

CHAIRPERSON KIMSEY: Yes, go ahead.

MR. FICKIES: Terry Fickies, DOJ, Sacramento.

I'd be willing to assist.

CHAIRPERSON KIMSEY: I have a feeling that I or someone else from the Department will also be participating.

Anyone else?

Let me at least throw out what I understand the subcommittee is going to do. We have a bit more discussion.

That the subcommittee will meet and prepare pretty much what the full Committee has already approved, but prepare that further in the regulatory process, including reviewing maybe the footnotes and some of the
issues that are still remaining including a statement of reasons, and then report back to the full Committee. Is that --

COMMITTEE MEMBER LOUGH: Yes. Yeah, I think so.

MR. KALCHIK: Where will the subcommittee meetings be held?

CHAIRPERSON KIMSEY: We had a question here in Richmond about where the subcommittee meetings will be held.

They'll probably be conference calls. That's what we've done in the past. And the subcommittee's work product will come to the full committee in a full open meeting for discussion. And so if I remember correctly, the subcommittee was able to meet as a group not in a public forum previously. And that the public forum comes when we have a subsequent full Committee meeting, and the subcommittee's work product is reviewed in its entirety.

COMMITTEE MEMBER WONG: Kenton Wong, Richmond.

If I recall, I think you can only have two people from the main Committee on a subcommittee. And after that, then you're subject to Bagley-Keene. And then --

CHAIRPERSON KIMSEY: Sounds familiar.

COMMITTEE MEMBER WONG: I think you're limited to two. So if you and Patty are on, then that's it.

And then the other question I had was whether the
new Cathy Ruebusch, Barbara Galloway, was going to be available to provide input.

CHAIRPERSON KIMSEY: A little review there.

Barbara Galloway is the new individual in our Office of Regulations in the Department of Public Health that is going to have responsibility with regards to this reg package. And I'll certainly try and include her in these subcommittee calls. I think initially she may be able to help give the group, the subcommittee, some direction on how to proceed. And I'll certainly try and include her.

Reality is -- I will certainly invite her in trying to arrange around her schedule a subcommittee meeting. Our Office of Regulations now is down to two individuals for the whole Department. We've had someone go out recently on maternity leave. So her availability is something I can't speak to directly. But we will certainly do -- I'll certainly do what I can to get her involved with the subcommittee.

COMMITTEE MEMBER WONG: Kenton Wong, Richmond.

I think that's really important, because, as intimated by Laura, I would hate to have a subcommittee taking off on a certain direction and then, you know, not having Barbara there, and then she coming back and nixing everything that you've worked so hard for. So --
CHAIRPERSON KIMSEY: Well, and there are --
that's a very good point. I mean, as we've all realized,
there's some very technical issues with regards to the
writing of these regulations under the Administrative
Procedures Act. So I think that's a very key point.

Any other comments about the subcommittee's work?
At our last meeting we talked about trying to
address some of the footnotes that have been on some of
our documents. Are there any particular footnotes that
the Committee wants to address? We still have a bit of
time here scheduled with, you know, videoconferencing and
our stenographer. So we might want to take advantage of
any other comments the Committee might want to have with
regards to work product and maybe specifically some of the
footnotes.

COMMITTEE MEMBER DAVIS: This is Kevin Davis,
Sacramento.

CHAIRPERSON KIMSEY: Yes.

COMMITTEE MEMBER DAVIS: I had a question.
At our last meeting I believe her name was Goldie
Eng gave a presentation on -- she seemed to be questioning
the Committee's authority to include regulations for law
enforcement based upon the change to 100715. It was my
understanding that myself and several others disagreed
with her assessment and that she was going to kind of
reanalyze it or get back to us. Was there any word on that?

CHAIRPERSON KIMSEY: It was actually my impression that she would actually be at the meeting here today and prepared to answer questions. Unless I'm not seeing her -- I agree, I don't see her currently. And so I'm as surprised as you are that she's not here.

I can certainly try to see that she's available at our next Committee meeting.

Do you think these are issues that are relevant to what the subcommittee's work might be?

COMMITTEE MEMBER WONG: Most definitely.

COMMITTEE MEMBER DAVIS: Are you asking me? I'm sorry.

CHAIRPERSON KIMSEY: Yes. I mean --

COMMITTEE MEMBER DAVIS: Kevin Davis, Sacramento.

I was just wondering -- it was an issue that wasn't quite resolved. And I was just curious if that's something that we still need to discuss at some point.

CHAIRPERSON KIMSEY: Right.

COMMITTEE MEMBER LOUGH: Patty Lough.

I thought we kind of removed references to law enforcement. I think we just took them out and left it as "other persons".

COMMITTEE MEMBER DAVIS: Kevin Davis, Sacramento.
Well, she had problems with almost the entire Article 7 as it pertains to law enforcement. I disagreed with her. But that was what I seemed to be getting from her.

COMMITTEE MEMBER LOUGH: I think for me, even though we -- fortunate that we have our meetings set up and our stenographer here, I'm not really prepared to go over the footnotes at this time. And we can go one by one.

But I think it'd be easier to have an opportunity to kind of sit down and figure out kind of the format that would be easier for me to keep track of them and, you know, kind of see what's going on.

I'd like to come up with first some kind of a format of information that we're going to use for each one of these. And then maybe we -- just do some background work on that and then get together with the subcommittee once we establish our format of the topics that -- of the areas that we need to cover for each of these issues -- changes.

CHAIRPERSON KIMSEY: Okay. When do we think the subcommittee -- since we have a number of the folks at least that will probably be on the subcommittee, what are people's availability? I think, you know, we should try to get this done sooner than later.
I don't have a calendar in front of me. But this week is pretty much shot. How about -- is there a particular day of the week that works for folks, like Fridays or Mondays?

COMMITTEE MEMBER LOUGH: Probably not Mondays or Fridays, because some people have those days off.

CHAIRPERSON KIMSEY: Okay.

COMMITTEE MEMBER LOUGH: So probably middle of the week.

CHAIRPERSON KIMSEY: Wednesdays? I believe next Wednesday's the 12th and then there'd be the 19th. Do we want to try and maybe set something up for the 19th?

COMMITTEE MEMBER LOUGH: And what I'm suggesting then if we meet that soon is for us just to take a look at these footnotes and see what kind of -- how we want to organize them to start working on them at this point. And then maybe we can assign different areas.

CHAIRPERSON KIMSEY: No, and I agree. I think if we do meet on the 19th, that we would probably just initially have a discussion hopefully with Barbara Galloway on what would be the best way for the subcommittee to proceed with regards to footnotes. Maybe we can even split it up, I mean, and get back together. So I'm very much sure that the first meeting of
the subcommittee would -- at least the first part of it would be how to proceed.

But does the 19th work?

MR. FICKIES: How would the 12th be?

CHAIRPERSON KIMSEY: That's pretty quick. Well, let me think. I mean --

COMMITTEE MEMBER LOUGH: Well, I think that's too soon. I mean that doesn't --

MR. FICKIES: Okay.

CHAIRPERSON KIMSEY: -- give us -- everyone enough time to take a look at that with their other work.

I think we need a little bit of room in there.

MR. FICKIES: The 19th is fine then.

CHAIRPERSON KIMSEY: Why don't we tentatively --

COMMITTEE MEMBER LOUGH: The 19th is good for me.

CHAIRPERSON KIMSEY: Okay. Jennifer, how's the 19th work for you, do you know?

MS. SHEN: That works for me. Thank you.

CHAIRPERSON KIMSEY: Well, I'll try to tentatively set something up for the 19th. I'll see who's going to be representing the Department and if I can get Barbara Galloway's availability. And I'll communicate with folks via Email.

Are there other -- I heard Patti's Lough's perspective on the footnotes.
But are there any other Committee members that have an interest in any particular footnote at this point?

With regards to the full Committee meeting, what is the feeling of the Committee? I mean if we're going to have a subcommittee meet, it's going to have to meet a few times I would think before we have something to bring back to the full Committee. I would recommend that we probably not have a hard scheduled date for a future Committee meeting but sort of base it on how the subcommittee progresses.

I mean is there any feeling we need to have a Committee meeting -- a full Committee meeting before the subcommittee has gone through its work?

I see heads shaking.

So what we'll try and do is we'll talk to the subcommittee on the 19th or so, whenever we get it scheduled, and try and get an idea what our timeframes are going to be.

But realistically speaking, even if the subcommittee were to meet every other week or so, it's going to be a bit of time, I would believe, before we've gotten through the whole work product and have it up to standards of a regulation package.

COMMITTEE MEMBER WONG: Are you thinking the summer?
CHAIRPERSON KIMSEY: Yeah, you may be right. It may be two or three months, I would think, of subcommittee work. But, anyhow, I -- not too much more speculating. But what we'll do is we'll stay in touch, you know, via Email and public announcements with regards to the next full Committee meeting. But we'll try and schedule the subcommittee meeting for the 19th of March.

With regards to the people that are going to be on the subcommittee, what is your tolerance for the amount of time you can put to this in one meeting? Should we schedule, you know, two-hour meetings? What is -- I think two hours might -- from past experience, I think two hours may be a good timeframe to start with.

COMMITTEE MEMBER LOUGH: That's probably fine for the initial, just to come up with our plan of attack.

CHAIRPERSON KIMSEY: Okay.

COMMITTEE MEMBER LOUGH: And then after that, we'll probably have homework assignments, and then we can come back and have longer meetings.

CHAIRPERSON KIMSEY: Okay. Other comments from the full Committee or the public on pretty much anything relevant to the work of the Committee?

Well, if I don't hear any other comments, I guess we'll go ahead and call it a day.

And I want to again thank all the Committee and
the public for their participation. And I appreciate the
fact this takes time out of your real jobs. And I want to
thank you very much for your help.

(Thereupon the Forensic Alcohol Review
Committee meeting adjourned at 1:49 p.m.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Department of Health Services, Forensic Alcohol Review Committee meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and 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 meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of March, 2008.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063