Draft Minutes
Forensic Science Board Meeting
January 6, 2010
Department of Forensic Science, Central Laboratory, Classroom 1

Board Members Present

Steven Benjamin
Leah Bush, M.D.
Dale Carpenter, Ph.D.
John Colligan (Designee for Leonard G. Cooke)
Colonel W. Steven Flaherty
Jo Ann Given
Katya Herndon (Designee for Karl Hade)
Kristen Howard (Designee for Senator Howell and Senator Stolle)
Alan Katz (Designee for Attorney General Mims)
Sheriff A.A. Lippa Jr.
Senator Henry L. Marsh III
Raymond F. Morrogh
Elizabeth Russell

Board Members Absent

Delegate William R. Janis (Designee for Delegate Albo)
Robert Jensen

Legal Counsel for the Forensic Science Board

Amy Dilworth

Staff Members Present

Wanda Adkins, Office Manager
Jeffrey Ban, Central Laboratory Director
David Barron, Ph.D. Technical Services Director
Donna Carter, Finance Manager
Guinevere Cassidy, Legal Assistant
Doug Chandler, IT Manager
Ann Davis, Physical Evidence Program Manager
Leslie Ellis, Human Resources Director
Gail Jaspen, Chief Deputy Director
Bradford Jenkins, Biology Program Manager
Marsha Sinclair-Kelly, Procurement and Support Services Manager
Alka Lohmann, Training and Calibration Program Manager
Pete Marone, Department Director
Stephanie Merritt, Department Counsel

Elise Mirza, Grants Administration/Policy Analyst
Kevin Patrick, Western Laboratory Director
Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology
Steven Sigel, Deputy Director
Susan Uremovich, Eastern Laboratory Director
Amy Wong, Northern Laboratory Director

Call to Order by Chairman Raymond Morrogh

Chairman Morrogh called the meeting of the Forensic Science Board ("Board") to order at 9:05 a.m.

Adoption of Agenda

Chairman Morrogh asked if there were any additions or changes to the draft agenda for the meeting. Being none, Col. Flaherty moved to adopt the agenda which was seconded by Mr. Katz and adopted by unanimous vote of the Board.

Approval of Draft Minutes of October 14, 2009 Meeting

Chairman Morrogh asked if there were any changes or corrections to the draft minutes from the October 14, 2009 meeting. Being none, Mr. Benjamin moved to adopt the minutes of the October 14, 2009 meeting which was seconded by Col. Flaherty and adopted by unanimous vote of the Board.

DFS Director's Report – *State of the Agency*

Regarding facilities, DFS Director Pete Marone informed the Board that the Department of Forensic Science ("DFS") Central Laboratory, using Coverdell grant funds is in the process of moving its Administrative Section to the first floor. This will allow for the expansion of lab space. The Eastern Laboratory has begun an expansion project into the 5th floor of its building. Construction is underway for Phase I and the renovation contract has been awarded for Phase II of the project. The Western Laboratory purchased the land adjacent to it from the School Board. The land was purchased for expansion of the laboratory sometime in the future. The existing building will remain until construction begins. The old Northern Laboratory facility was recently transferred to the Department of Military Affairs after extensive clean-up.

Regarding grants, Director Marone informed the Board that the following grants have been awarded to DFS: FY09 Solving Cold Cases with DNA, $490,960 to review and investigate violent crime cold cases and to locate and analyze biological evidence associated with these cases; FY09 forensic DNA Backlog Reduction Program, $950,167 to reduce the case backlog and to increase the DNA analysis capacity in the Forensic Biology Section; FY09 Convicted Offender and/or Arrestee DNA Backlog Reduction Program, $171,579 to reduce the current backlog in the DNA Data Bank; and 2010 Highway Safety ("DMV") Program, $136,469 to provide reimbursement of travel costs for law enforcement officers traveling to Richmond for breath alcohol training. Regarding the NIJ grant and the Post Conviction DNA Program ("PC-

DNA), NIJ has agreed to the testing of non-NIJ eligible cases upon review by NIJ on a case by case basis.

Director Marone further informed the Board that DFS has applied for the 2010 Justice Assistance Grant ("JAG") Program which makes funds available through the Department of Criminal Justice Services ("DCJS") to prevent and control crime and improve the functioning of the criminal justice system. With approval of the Board Chair and Vice Chair on November 17, 2009, DFS submitted four grant proposals to fund projects relating to the (i) Digital and Multimedia Evidence Section; (ii) Forensic Science Academy; (iii) Information Technology Section; and (iv) Breath Alcohol Section. DCJS has invited DFS to submit full proposals for two of the four proposals. The first proposal is the Digital and Multimedia Evidence Section Project. This project would involve the acquisition of four complete computer systems and associated hardware and software to enhance service delivery. This will allow two qualified examiners to each be using two computers simultaneously to image, process and analyze data. The second proposal is the Forensic Science Academy Project. This project would obtain and utilize grant funding for the training and personal certification testing of Forensic Science Academy ("FSA") students and FSA graduates. Certification of personnel who process crime scenes and collect physical evidence has been identified as an emerging need within the forensic science community by the National Research Council of the National Academies. DFS proposes to incorporate certification test preparation, materials, as well as test administration into its Forensic Academy. The full proposals are due in February 2010.

Regarding the budget and staffing, Director Marone informed the Board that the current DFS FY 10 General Fund Appropriation is $33,074,256. There is a Caboose Bill which proposes $197,975 to be added to DFS FY 10 Appropriation to fund increased travel, overtime, training, and thee additional toxicology positions. DFS is currently in the telephone interview stage of the recruitment and hiring process for the three toxicology positions.

Discussion by the Board ensued.

Regarding the workload/backlog, Director Marone further informed the Board that the *Melendez-Diaz* decision by the U.S. Supreme Court continues to affect DFS. The amount of time the examiners are out of the lab traveling to and from court, appearing at court, testifying and other related tasks has also increased with a resulting impact on the budget. As a result of the decrease in hours in the lab the backlog has increased which has necessitated overtime hours in the lab in addition to the increase in the travel budget to get examiners to and from court. Currently the backlog in the toxicology and drug sections is over 30 days.

Discussion by the Board ensued.

Scientific Advisory Committee Chair's Report

Dr. Carpenter informed the Board that the Scientific Advisory Committee ("SAC") and the Biology Subcommittee ("Subcommittee") met yesterday. The Subcommittee met to review capillary electrophoresis ("CE") protocol issues previously discussed during the Subcommittee's August meeting. There remain two issues that require additional data and review prior to

validation by the Subcommittee. The first issue is the statistical basis for the 4-locus minimum for inclusion and the second being the implementation of the stochastic threshold per that which is being considered by SWGDAM. It is anticipated that DFS will provide the Subcommittee with additional data for its review and a validation of the protocols will occur in May/June of 2010.

Dr. Carpenter further informed the Board that the SAC began the process of reviewing protocols used by DFS, starting with the Controlled Substances section. Members of the SAC will begin reviewing the protocols and identify any questions/issues by June 2010. DFS will respond to the questions/issues and any outstanding issues will be resolved at the August 2010 meeting.

Old Business

Post Conviction DNA Notification and Testing Program

Regarding the notification portion of PC-DNA, Notification Subcommittee Chair Kristen Howard informed the Board that all statewide pro bono training is complete. Currently, there are 89 total pro bono volunteers in the program from whom signed contracts and waiver forms are being collected and the first few cases assignments have been made. The Clerks of Court in the jurisdiction of an assigned case are being notified when a case is being assigned. Ms. Howard further informed the Board that the more that she works with this project the more she finds it to be a very large and very time consuming project. Over the summer Crime Commission staff has been in the process of reviewing the database provided by DFS, identifying and categorizing into jurisdictional type areas the cases to be assigned to the notification pro bono attorneys. A sample of 200 file numbers from the DFS database was selected and DFS provided those cases for review by Ms. Howard and another Crime Commission staff person. A review of the DFS database and 200 sample case files found that there are blank notification related fields and inaccuracies in the database.

Discussion by the Board ensued regarding the use of non-attorney volunteers in the notification portion of PC-DNA.

Mr. Benjamin moved to allow the use of non-attorney volunteers in the notification portion of PC-DNA. Senator Marsh seconded the motion which passed by unanimous vote of the Board.

Further discussion by the Board ensued regarding a new review of all PC-DNA case files and a more complete search utilizing vital statistics and other databases for contact information of each convicted suspect in PC-DNA.

Regarding notification and testing updates, Chief Deputy Director Gail Jaspen informed the Board that the notification numbers remained essentially the same because the Department's focus has shifted to testing while the notification process has been reassigned to the Notification Subcommittee. At this point, testing is being conducted and Certificates of Analysis are being issued. DFS is also working with and responding to convicted suspects' attorneys' discovery requests. Ms. Jaspen informed the Board that to date, the total number of case files found with evidence suitable for DNA testing is 3,048, of which 2,208 cases contain a named suspect and 800 cases contain a named suspect known to have been convicted in the case. 638 cases meeting

the NIJ grant criteria (homicide, rape and non-negligent manslaughter) have been sent to the contracting laboratory for DNA testing. 105 additional cases meeting the State criteria for testing (other violent crimes against a person) have been sent to the contracting laboratory for DNA testing. Preliminary case results have returned in 249 cases. The final completed case results were returned in 353 cases and 306 cases wait contactor testing. Certificates of Analysis have been issued in 228 cases. The following are the case test results regarding listed suspects meeting NIJ criteria: 37 convicted suspects were not indicated/eliminated; 92 convicted suspects were not eliminated; known samples are needed for 19 convicted suspects; and there are 85 convicted suspects whose cases have insufficient scientific data upon which to draw a conclusion. The following are the case test results regarding listed suspects who do not meet NIJ criteria: 15 convicted suspects were not indicated/eliminated; 8 convicted suspects were not eliminated; known samples are needed for 46 convicted suspects; and there are 23 convicted suspects whose cases have insufficient scientific data upon which to draw a conclusion.

Regulations for Obtaining Information from the DNA Data Bank and Procedures for Verification and Authorization of Persons Requesting Information from the DNA Data Bank, 6 VAC 40-60

Amy Dilworth, Legal Counsel for the Board informed the Board that she spoke with Chief Deputy Director Jaspen and DFS Department Counsel Stephanie Merritt regarding various scenarios in which requests for information are made to the DNA Data Bank ("Data Bank"). Ms. Merritt informed the Board that the Data Bank is essentially divided into two areas; the identifying information of the offenders and the DNA profiles. The DNA profiles are in three systems: Combined DNA Index System ("CODIS"); National DNA Index System (NDIS); and State DNA Index System (SDIS). Ms. Merritt further informed the Board that she, Ms. Jaspen and DFS Data Bank employees met and discussed the various scenarios in which requests for information are made to the Data Bank. The following are the eight most common scenarios in which Data Bank information is released: (1) Virginia casework to a Virginia offender which is requested by a Request for Laboratory Examination form ("RFLE") and reported by the examiner in a Certificate of Analysis; (2) Virginia casework with no data bank hit which is requested by RFLE and reported by the examiner in a Certificate of Analysis; (3) Virginia casework to an out of state offender which is requested by RFLE and reported by the examiner in a Certificate of Analysis; (4) Out of state casework to a Virginia offender, which is an automatic computer search, identifying information is requested in writing and reported by letter from CODIS Administrator; (5) Out of state requests for search are made via facsimile in a format approved by the Department's Memorandum of Understanding with the FBI as well as NDIS policy, positive results are reported by letter from the CODIS Administrator; (6) Case to case hits, which are automatic computer searches, are reported by the examiner in a Certificate of Analysis; (7) Quarterly sync with Department of Corrections and Department of Juvenile Justice as required by law; and (8) Requests for information regarding whether or not someone is in the Data Bank.

Discussion by the Board ensued

Mr. Benjamin moved that the proposed Data Bank Regulation, 6 VAC 40-60 be withdrawn from the regulatory process and that DFS staff present a new proposed regulation for the Board's consideration at the next Board meeting. Col. Flaherty seconded the motion.
Discussion by the Board ensued.

The Board broke from meeting proceedings at 10:30 a.m. for a 15 minute break.

The Board meeting resumed at 10:45 a.m.

Discussion by the Board resumed regarding Mr. Benjamin's motion.

Mr. Benjamin restated his motion which passed by unanimous vote of the Board.

Continuing Impact of *Melendez-Diaz* Decision

Ms. Jaspen informed the Board that the largest impact on DFS continues to be felt in the Toxicology, Drugs and Breath Alcohol sections. Ms. Jaspen presented charts regarding the marked increase of receipt of witness subpoenas for DFS examiners to appear in court and data regarding appearance and testimony verses appearance only. DFS examiners have risen to this challenge and been making it to court as subpoenaed. The numbers of subpoenas have slightly decreased since the issuance of the *Melendez-Diaz* decision on June 25, 2009 and it is anticipated that they will continue to decrease slightly but it is anticipated that the numbers will never be like those prior to the decision.

Discussion by the Board ensued.

New Business

Grant Application Consideration

Col. Flaherty moved for the Board's approval for DFS to submit full project proposals to DCJS for Justice Assistance Grant funding of two projects: (1) acquisition of hardware and software for the Digital and Multimedia Evidence Section and (2) training and personal certification testing of Forensic Science Academy students (FSA) and FSA graduates; and to accept an award if granted. The motion was seconded by Ms. Russell and adopted by majority vote of the Board.

Public Comment

None

Next Meeting

The next meeting of the Board is set for Wednesday, May 12, 2010 at 9:00 a.m.

Adjournment

Chairman Morrogh asked if there was a motion to adjourn. Dr. Bush moved that the meeting of the Board be adjourned which was seconded by Col. Flaherty and passed by unanimous vote.

The meeting adjourned at 11:10 a.m.