

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

Final 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)
Alan Katz (Designee for Attorney General Mims)
Sheriff A.A. Lipa 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

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

53

54 **Call to Order by Chairman Raymond Morrogh**

55

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

58

59 **Adoption of Agenda**

60

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

64

65 **Approval of Draft Minutes of October 14, 2009 Meeting**

66

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

71

72 **DFS Director’s Report – State of the Agency**

73

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

83

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

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

95
96 Director Marone further informed the Board that DFS has applied for the 2010 Justice Assistance
97 Grant (“JAG”) Program which makes funds available through the Department of Criminal
98 Justice Services (“DCJS”) to prevent and control crime and improve the functioning of the
99 criminal justice system. With approval of the Board Chair and Vice Chair on November 17,
100 2009, DFS submitted four grant proposals to fund projects relating to the (i) Digital and
101 Multimedia Evidence Section; (ii) Forensic Science Academy; (iii) Information Technology
102 Section; and (iv) Breath Alcohol Section. DCJS has invited DFS to submit full proposals for two
103 of the four proposals. The first proposal is the Digital and Multimedia Evidence Section Project.
104 This project would involve the acquisition of four complete computer systems and associated
105 hardware and software to enhance service delivery. This will allow two qualified examiners to
106 each be using two computers simultaneously to image, process and analyze data. The second
107 proposal is the Forensic Science Academy Project. This project would obtain and utilize grant
108 funding for the training and personal certification testing of Forensic Science Academy (“FSA”)
109 students and FSA graduates. Certification of personnel who process crime scenes and collect
110 physical evidence has been identified as an emerging need within the forensic science
111 community by the National Research Council of the National Academies. DFS proposes to
112 incorporate certification test preparation, materials, as well as test administration into its Forensic
113 Academy. The full proposals are due in February 2010.

114
115 Regarding the budget and staffing, Director Marone informed the Board that the current DFS FY
116 10 General Fund Appropriation is \$33,074,256. There is a Caboose Bill which proposes
117 \$197,975 to be added to DFS FY 10 Appropriation to fund increased travel, overtime, training,
118 and three additional toxicology positions. DFS is currently in the telephone interview stage of the
119 recruitment and hiring process for the three toxicology positions.

120
121 Discussion by the Board ensued.

122
123 Regarding the workload/backlog, Director Marone further informed the Board that the *Melendez-*
124 *Diaz* decision by the U.S. Supreme Court continues to affect DFS. The amount of time the
125 examiners are out of the lab traveling to and from court, appearing at court, testifying and other
126 related tasks has also increased with a resulting impact on the budget. As a result of the decrease
127 in hours in the lab the backlog has increased which has necessitated overtime hours in the lab in
128 addition to the increase in the travel budget to get examiners to and from court. Currently the
129 backlog in the toxicology and drug sections is over 30 days.

130
131 Discussion by the Board ensued.

132
133 **Scientific Advisory Committee Chair’s Report**

134
135 Dr. Carpenter informed the Board that the Scientific Advisory Committee (“SAC”) and the
136 Biology Subcommittee (“Subcommittee”) met yesterday. The Subcommittee met to review
137 capillary electrophoresis (“CE”) protocol issues previously discussed during the Subcommittee’s
138 August meeting. There remain two issues that require additional data and review prior to

139 validation by the Subcommittee. The first issue is the statistical basis for the 4-locus minimum
140 for inclusion and the second being the implementation of the stochastic threshold per that which
141 is being considered by SWGDAM. It is anticipated that DFS will provide the Subcommittee
142 with additional data for its review and a validation of the protocols will occur in May/June of
143 2010.

144
145 Dr. Carpenter further informed the Board that the SAC began the process of reviewing protocols
146 used by DFS, starting with the Controlled Substances section. Members of the SAC will begin
147 reviewing the protocols and identify any questions/issues by June 2010. DFS will respond to the
148 questions/issues and any outstanding issues will be resolved at the August 2010 meeting.

149 **Old Business**

150 **Post Conviction DNA Notification and Testing Program**

151
152 Regarding the notification portion of PC-DNA, Notification Subcommittee Chair Kristen
153 Howard informed the Board that all statewide pro bono training is complete. Currently, there are
154 89 total pro bono volunteers in the program from whom signed contracts and waiver forms are
155 being collected and the first few cases assignments have been made. The Clerks of Court in the
156 jurisdiction of an assigned case are being notified when a case is being assigned. Ms. Howard
157 further informed the Board that the more that she works with this project the more she finds it to
158 be a very large and very time consuming project. Over the summer Crime Commission staff has
159 been in the process of reviewing the database provided by DFS, identifying and categorizing into
160 jurisdictional type areas the cases to be assigned to the notification pro bono attorneys. A sample
161 of 200 file numbers from the DFS database was selected and DFS provided those cases for
162 review by Ms. Howard and another Crime Commission staff person. A review of the DFS
163 database and 200 sample case files found that there are blank notification related fields and
164 inaccuracies in the database.

165
166
167 Discussion by the Board ensued regarding the use of non-attorney volunteers in the notification
168 portion of PC-DNA.

169
170 Mr. Benjamin moved to allow the use of non-attorney volunteers in the notification portion of
171 PC-DNA. Senator Marsh seconded the motion which passed by unanimous vote of the Board.

172
173 Further discussion by the Board ensued regarding a new review of all PC-DNA case files and a
174 more complete search utilizing vital statistics and other databases for contact information of each
175 convicted suspect in PC-DNA.

176
177 Regarding notification and testing updates, Chief Deputy Director Gail Jaspén informed the
178 Board that the notification numbers remained essentially the same because the Department's
179 focus has shifted to testing while the notification process has been reassigned to the Notification
180 Subcommittee. At this point, testing is being conducted and Certificates of Analysis are being
181 issued. DFS is also working with and responding to convicted suspects' attorneys' discovery
182 requests. Ms. Jaspén informed the Board that to date, the total number of case files found with
183 evidence suitable for DNA testing is 3,048, of which 2,208 cases contain a named suspect and
184 800 cases contain a named suspect known to have been convicted in the case. 638 cases meeting

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

198
199 Regulations for Obtaining Information from the DNA Data Bank and Procedures for Verification
200 and Authorization of Persons Requesting Information from the DNA Data Bank, 6 VAC 40-60

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

224
225 Discussion by the Board ensued

226
227 Mr. Benjamin moved that the proposed Data Bank Regulation, 6 VAC 40-60 be withdrawn from
228 the regulatory process and that DFS staff present a new proposed regulation for the Board’s
229 consideration at the next Board meeting. Col. Flaherty seconded the motion.

230 Discussion by the Board ensued.

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

232

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

234

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

236

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

238

239 Continuing Impact of *Melendez-Diaz* Decision

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

248

249 Discussion by the Board ensued.

250

251 New Business

252

253 Grant Application Consideration

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

259

260 Public Comment

261

262 None

263

264 Next Meeting

265

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

267

268 Adjournment

269

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

272

273 The meeting adjourned at 11:10 a.m.