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Final - Minutes
Forensic Science Board Meeting
January 4, 2017
Department of Forensic Science, Central Laboratory, Classroom 1

Board Members Present

Francine C. Ecker, Director, Department of Criminal Justice Services
James F. Entas, Esq., Assistant Attorney General (Designee of Attorney General Mark R. Herring)
Jo Ann Given, Scientific Advisory Committee Member
William T. Gormley, M.D., Chief Medical Examiner
Kristen J. Howard, Executive Director of the Virginia State Crime Commission (Designee of Delegate Robert B. Bell, Chair, Virginia State Crime Commission)
Caroline Juran, Executive Director, Board of Pharmacy
Sheriff Anthony A. Lippa, Jr., Caroline County
David A. C. Long, Esq. – Vice-Chair and Acting Chair
Colette W. McEachin, Deputy Commonwealth’s Attorney, City of Richmond
Lieutenant Colonel Tracy Russillo, Deputy Superintendent, Virginia State Police (Designee of Colonel Steven Flaherty, Superintendent, Virginia State Police)
Denise Toney, Ph.D., Director, Division of Consolidated Laboratory Services

Board Members Absent

Vince Donoghue, Essex Commonwealth’s Attorney (Designee of Senator Mark D. Obenshain, Chair, Senate Courts of Justice Committee) – Chair
Leslie E. Edinboro, Ph.D., Scientific Advisory Committee Member
Karl R. Hade, Executive Secretary, Supreme Court of Virginia
Richard L. Morris, Delegate (Designee of Delegate David B. Albo, Chair, House Courts of Justice Committee)

Legal Counsel for the Forensic Science Board

Michelle Welch, Esq., Assistant Attorney General

Staff Members Present

Wanda W. Adkins, Office Manager
Jeffrey D. Ban, Central Laboratory Director
David A. Barron, Ph.D., Deputy Director
Sabrina S. Cillesen, Physical Evidence Program Manager
Amy M. Curtis, Department Counsel
Leslie H. Ellis, Human Resources Director
Katya N. Herndon, Chief Deputy Director
James Hutchings, Ph.D., Toxicology Program Manager
Linda C. Jackson, Department Director
Bradford C. Jenkins, Forensic Biology Program Manager
Alka B. Lohmann, Technical Services Director
M. Scott Maye, Chemistry Program Manager
Carisa M. Studer, Legal Assistant

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Call to Order

David Long, Vice-Chair of the Forensic Science Board (“Board”), served as Acting Chair for this meeting and called the meeting to order at 9:07 a.m. Mr. Long welcomed the Board members and the Department of Forensic Science (“Department” or “DFS”) staff.

Adoption of Agenda

Mr. Long asked if there were any additions or changes to the draft agenda for the meeting. Being none, Ms. Given moved to adopt the agenda, which was seconded by Mr. Entas and adopted by unanimous vote of the Board.

Approval of Draft Minutes of the October 13, 2016 Meeting

Mr. Long asked if there were any changes or corrections to the draft minutes from the October 13, 2016 meeting. Being none, Sheriff Lipka made a motion to adopt the minutes, which was seconded by Ms. Given and approved by unanimous vote of the Board.

Chair’s Report

There was no report from the Chair.

New Business

Outlook for 2017 Legislation:

Chief Deputy Director Katya Herndon advised the Board that the Department has one agency bill for the 2017 General Assembly Session. The bill will amend Code §54.1-3408(X) to add DFS employees to the groups of individuals who may possess and administer naloxone or other opioid antagonist, provided they have completed the training program. The bill will allow the Department to make naloxone available to staff so that it can be administered in the event of an accidental exposure resulting in an overdose. Employees of the Office of the Chief Medical Examiner (OCME) will be added to the bill before it is introduced. An emergency clause is included due to the increasing potency of synthetic opioids DFS employees are handling. The Department has already begun to implement new safety measures regarding synthetic opioids, and staff members from each DFS regional laboratory have attended a Revive! “Train the Trainers” class taught by the Department of Health. The bill is being introduced in both Houses, and Delegate Hope and Senator Marsden will be the patrons.

Ms. Herndon also reviewed HB 1610, which will permanently place in Schedule I 28 compounds temporarily placed there through the Board of Pharmacy’s expedited regulatory process. A Senate version of the bill is expected to be introduced as well. Finally, Ms. Herndon informed the Board that a bill will be introduced to expand the eligibility for writs of actual innocence based on biological evidence to all persons convicted of a felony. Currently, persons who pleaded guilty to certain felonies are not eligible.

Old Business

Status of the Post-Conviction DNA Testing Program and Notification Project:

92 Kristen Howard, Notification Subcommittee Chair, provided an update on the case file review
93 that staff from the Virginia State Crime Commission (VSCC) is conducting of cases from the
94 Post-Conviction DNA Testing Program and Notification Project (PC Program). The review is
95 nearly complete. The 83 “eliminated” cases have been reviewed, cross-validated and are
96 complete. The 421 “inconclusive” cases have been reviewed, the first round cross-validation is
97 complete, and the second round is currently in progress. Ms. Howard anticipates that a report on
98 the project will be presented to the VSCC in 2017.
99

100 Ms. Herndon updated the Board on the Department’s efforts to send letters in certain
101 “inconclusive” and “need known” cases where Crime Commission staff worked with the Office
102 of the Attorney General to track down current addresses for the suspects. Thirteen additional
103 letters were sent out in these “need known” cases based on new address information provided by
104 VSCC staff. In one of the thirteen cases, the Mid-Atlantic Innocence Project’s (MAIP) contacted
105 DFS because the suspect, who lives out of state, was interested in submitting his known sample
106 for comparison. DFS put MAIP in contact with the investigating agency so that arrangements
107 can be made for the suspect to submit a sample.
108

109 **Director’s Report**

110 Facilities:

112 Director Jackson reported to the Board that the Western Laboratory passed its final Bureau of
113 Capital Outlay Management review and that the final certificate of occupancy will be issued.
114 She announced that all of the OCME autopsy suites are now open in the building (as of the day
115 of the Board meeting). Modifying the CT scan room is the final project, which should be
116 completed by the end of January.
117

118 A Construction Manager at Risk was selected for the Central Laboratory expansion and
119 renovation project. A kick-off meeting with the design team, the construction manager at risk,
120 and the Department of General Services (DGS) was held on November 30. Cost estimates for
121 the project are being developed for DFS review.
122

123 Agency Events:

124 Director Jackson advised the Board that she represents the Department on the Opioid Executive
125 Leadership Team, which is a joint project with public safety and public health to focus on the
126 addiction crisis. She went over the key objectives of the project. DFS will participate as a
127 member of the data committee and share aggregate seized drug data.
128

129 Director Jackson explained the new procedure for timely sharing investigative information
130 related to synthetic fentanyl derivatives and other potent opioids with the Department of State
131 Police Fusion Center. This will allow the Fusion Center to quickly disseminate bulletins with
132 safety information for first responders.
133

134 Director Jackson reported that at the December 12, 2016 Board of Pharmacy meeting, eight
135 additional compounds were approved to be temporarily placed in Schedule I through the Board
136 of Pharmacy’s expedited regulatory process. Research chemicals and fentanyl compounds were
137 included in the list.

138
139 Director Jackson presented a chart of the number of seized drug cases by jurisdiction that were
140 completed between October 1 and December 31, 2016, and found to contain fentanyl. The
141 Board discussed the jurisdictions with higher numbers of fentanyl encounters.

142
143 Director Jackson presented the Department's new website feature that allows law enforcement
144 agencies to order forensic kits, such as Physical Evidence Recovery Kits. Although agencies
145 within a two hour driving distance are asked to pick up the kits at a DFS laboratory, kits will be
146 mailed to agencies with driving distances greater than two hours. Law enforcement agency
147 training contacts and associations were notified of the Department's new website feature via
148 email.

149
150 Director Jackson updated the Board on the implementation status of the Fusion multiplex kits in
151 the Forensic Biology Section. The Department has been granted an extension from the Federal
152 Bureau of Investigation (FBI) to complete the validation of the new kits. Validation of the kits
153 has taken longer than anticipated because of the True Allele system, since more computer time is
154 required to analyze 24 areas of DNA compared to the current 16 areas of DNA. DFS anticipates
155 the validation to be complete by the beginning of the summer of 2017.

156
157 Director Jackson next updated the Board on the progress of the serology review. Approximately
158 fifty case reviews have been completed. There is one DFS examiner in the Northern Laboratory
159 working on the case review project and another in Western. Sixteen cases had been sent to an
160 external reviewer, Jami St. Clair, who serves on the Scientific Advisory Committee. Ms. St. Clair
161 has completed her review and returned the cases to DFS. A second group of cases will be sent to
162 Ms. St. Clair in the near future.

163
164 Director Jackson reminded the Board that the FY17 budget reduction savings plan included the
165 elimination of the Questioned Documents (QD) Section and was announced at the previous
166 Board meeting. The two QD examiner positions were eliminated, and both employees were able
167 to retire. A new American Society of Crime Laboratory Directors/Laboratory Accreditation
168 Board (ASCLD/LAB) Scope of Accreditation certificate will be issued to DFS removing QD
169 services. The Department stopped receiving QD cases on October 14, 2016, and by January 1,
170 2017, all previously submitted cases were completed. All agencies serviced by DFS have been
171 notified of the elimination of QD services. The FBI has indicated it may provide QD services to
172 local law enforcement agencies in certain cases and this information is being shared with local
173 agencies who inquire.

174
175 Resources - Budget Overview:

176 Director Jackson reminded the Board that, as part of the FY17 budget reductions, DFS will delay
177 replacement of vehicles, reduce overtime spending, reduce the hours of a wage employee, delay
178 employee incentives, and discontinue providing marijuana field test kits to local law
179 enforcement.

180
181 Director Jackson presented the Board with the Governor's Executive Amendments to the 2016-
182 18 biennial budget. The proposed amendments would restore money to the Department in FY17
183 for overtime pay to staff to reduce case turnaround times. DFS, along with other Executive

184 Branch Agencies, had submitted its saving strategies for FY18, but the Governor did not accept
185 any of the DFS strategies.

186

187 Grants:

188 Director Jackson provided a list for reference of the Department's current grants as there had
189 been no changes since the October Board meeting. Current grants include: the FY 15 and FY16
190 DNA Capacity Enhancement and Backlog Reduction grant; the FY15 and FY16 Paul Coverdell
191 Forensic Science Improvement Grant; NIJ research and Development for Publicly-Funded
192 Forensic Science Laboratories; the FY16 Byrne Justice Assistance Grant (JAG); the FY16
193 Research and Evaluation for the Testing and Interpretation of Physical Evidence in Publicly
194 Funded Forensic Laboratories; 2017 Highway Safety Project Grant (DMV); and the 2017
195 Highway Safety Project Grant (DMV) TREDS (Traffic Records Electronic Data System)
196 Program.

197

198 Director Jackson reviewed the two PERK grants. The New York County District Attorney's
199 (DANY) Sexual Assault Kit Backlog Elimination Program grant will be used for the analysis of
200 untested kits collected prior to July 1, 2014, and included in the PERK Inventory conducted by
201 DFS. Four agencies have submitted their kits to the private contract laboratory for testing. The
202 private laboratory has sent data to DFS for review and potential searching in the Data Bank in
203 244 cases. DFS will report results to the investigating agency. The National Sexual Assault Kit
204 Initiative FY 2016 Competitive Grant (SAKI) will be used to pay to outsource the analysis of
205 untested kits from July 1, 2014 through June 30, 2016. The SAKI grant will also allow DFS to
206 implement PERK tracking software. The intent is for the software to be integrated with the DFS
207 Laboratory Information Management System (LIMS). The grant funding will also be used for a
208 research assistant in the Forensic Biology section.

209

210 Workload/Backlog:

211 Director Jackson provided the Board with an update on statistical trends for each laboratory
212 section.

213

214 The Controlled Substances Section continues to see an increase in submissions. More cases
215 were received in 2016 than in 2015. In addition to the number of cases, the complexity of cases
216 has also increased. Additional staff is needed to handle the case load. There are approximately
217 seven positions in recruit or in training and, with the pending return of funds for overtime in the
218 proposed FY17 budget amendments, DFS has reauthorized overtime for scientists in this Section.

219

220 The Firearms section continues to see an increase of cases being submitted for NIBIN entry.
221 DFS was given funding for additional staff in the Firearms Section, and it has created a new
222 Forensic Scientist NIBIN position. The first Forensic Scientist NIBIN staff member is nearing
223 completion of the training. The Department has hired five additional Forensic Scientist NIBIN
224 trainees, and their training is scheduled to be completed by June 2017.

225

226 The case turnaround times in the Forensic Biology Section have decreased although the number
227 of cases in the backlog has increased. Three new examiners have recently completed training,
228 and there are seven examiners in the hiring process. In addition, all staff members have been

229 training on the new fusion multiplex kits. Once the Section is fully staffed it is anticipated that
230 the backlog will be reduced.

231
232 The backlog in the Latent Print Section has continued to decrease over the past four quarters.
233 The three trainees have completed their training.

234
235 Director Jackson reminded the Board that the Office of the Chief Medical Examiner (OCME)
236 needs to have 90% of their Toxicology reports completed within 90 days to meet their
237 accreditation standards. The Department is hiring staff in all four laboratories to help meet
238 OCME deadlines.

239
240 The Trace Evidence Section's backlog has been decreasing over the past three quarters. The
241 primer residue examiner completed training in December 2016. The newly hired explosives
242 examiner is scheduled to complete training in January 2017.

243
244 Microscopic Hair Comparison Case Review:

245 Amy Curtis, Department Counsel, gave an update on the Microscopic Hair Comparison Case
246 Review. The Review Team, which includes as members Linda Czyzyk from the Staunton Public
247 Defender's Office, Earl Wheeler from the Newport News Public Defender's Office, and Bob
248 Scanlon from DFS, met on October 27, 2016. The Review Team conducted a review of ten
249 transcripts and recommended to the Subcommittee that notifications be made in five of the cases.

250
251 The Subcommittee met on November 15, 2016 to go over the Review Team's recommendations.
252 The Subcommittee unanimously approved the five cases for notification. The Subcommittee
253 also unanimously approved the draft notification letters.

254
255 Ms. Curtis informed the Board that the Institute for Actual Innocence at the University of
256 Richmond's School of Law (the Clinic) has agreed to have its students assist in locating
257 conviction information and transcripts for cases where positive, probative associations were
258 made. In November, Ms. Curtis briefed the law students who will be participating in the Clinic
259 on the background of the project and the process recommended for confirming conviction
260 information and locating transcripts. The Clinic, which starts next week, will also serve as a
261 contact in the notification letters for defendants seeking legal advice.

262
263 Ms. Curtis explained that the Department has been identifying cases for this project by having
264 one of the wage employees from the historical case file project screen hair cases for positive,
265 probative associations. Ms. Curtis has also reached out to the Circuit Court Clerk's Association
266 to notify them that the law students may be reaching out to the Clerk's Offices while researching
267 for conviction information and transcripts. Ms. Curtis anticipates the Review Team will meet
268 again to review more transcripts in the spring of 2017.

269
270 No additional Subcommittee meetings have been scheduled at this time.

271
272 Periodic Regulatory Review:

273 Ms. Curtis announced to the Board at the October meeting that it is time to begin the periodic
274 regulatory review of DFS regulations. She reviewed the timeline for the periodic regulatory

275 review to meet all the review requirements. The notice of periodic regulatory review will be
276 published in the Virginia Registrar of Regulations for all of the Board's regulations on March 6,
277 2017. The public comment period will run from March 6, 2017, until March 31, 2017. Any
278 public comments received can then be considered by the Board at its May 24, 2017 meeting.
279 The review must be finalized by May 30, 2017.

280
281 Ms. Curtis reminded the Board that she anticipates that the public participation guidelines
282 regulation will need amending, due to a 2012 statutory change. The proposed amendment will
283 be presented to the Board for their consideration at the May 24 meeting.

284
285 **Public Comment**

286
287 None.

288
289 **Next Meeting**

290
291 The next meeting of the Forensic Science Board is scheduled for Wednesday, May 24, 2017, at 9
292 a.m.

293
294 **Adjournment**

295
296 Ms. Given moved that the meeting of the Board be adjourned, which was seconded by
297 Mr. Entas and passed by unanimous vote.

298
299 The meeting adjourned at 10:02 a.m.