Draft- Minutes
Forensic Science Board Meeting
August 7, 2013
Department of Forensic Science, Central Laboratory, Classroom 1

Board Members Present

Jo Ann Given, Forensic Science Board Chair
Dr. William Gormley
Kristen Howard (Designee of Del. Robert Bell, Chair, Virginia State Crime Commission)
Caroline D. Juran
Alan Katz (Designee of Attorney General Kenneth Cuccinelli)
Sheriff A.A. Lippa, Jr.
David A. C. Long
Raymond F. Morrogh
Lt. Col. Robert Northern (Designee of Colonel W. Steven Flaherty, Virginia State Police)
Jami St. Clair
Claiborne Stokes

Board Members Absent
Karl R. Hade
Senator Ryan McDougle (Designee of Sen. Thomas Norment, Chair, Senate Courts Committee)
Delegate Richard Morris (Designee of Del. David Albo, Chair, House Courts Committee)
Garth Wheeler

Legal Counsel for the Forensic Science Board
Joshua Lief, Senior Assistant Attorney General

Staff Members Present

Wanda Adkins, Office Manager
Jeff Ban, Central Laboratory Director
Dave Barron, Deputy Director
Leslie Ellis, Human Resources Director
Linda Jackson, Department Director
Gail Jaspen, Chief Deputy Director
Melissa Kennedy, Section Supervisor, Breath Alcohol
Alka Lohmann, Director of Technical Services
Scott Maye, Chemistry Program Manager
Stephanie Merritt, Department Counsel
Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology
Susan Stanitski, Eastern Laboratory Director
Carisa Studer, Legal Assistant

Call to Order by Board Chair Jo Ann Given

Ms. Given called the meeting of the Forensic Science Board ("Board") to order at 9:03 a.m. She welcomed and introduced newly appointed Board Members, David Long and Claiborne Stokes, to the Board. David Long is a defense attorney from Richmond and Claiborne Stokes is the Commonwealth's Attorney for Goochland County. Board Members and DFS staff introduced themselves to the newest members.

Adoption of Agenda

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

Approval of Draft Minutes of May 15, 2013 Meeting

Ms. Given asked if there were any changes or corrections to the draft minutes from the May 15, 2013 meeting. Being none, Sheriff Lippa moved to adopt the minutes of the May 15, 2013 meeting, which was seconded by Ms. St. Clair and adopted by unanimous vote of the Board.

Chair's Report

Ms. Given welcomed the Board, and thanked the members for their attendance. Ms. Given had no Chair's Report to present to the Board.

DFS Director's Report

2013 Governor's Award: Director Jackson reported to the Board that the DFS Post-Conviction DNA Testing Program "team" was the recipient of the 2013 Governor's Teamwork Award for Excellence in Public Service. DFS staff members were invited to the Governor's Award reception and were presented with a plaque to display at the Department.

Facilities: Director Jackson described the laboratory space renovations in each of the Department's regional laboratories. The Western Laboratory expansion project has been designated a contractor at risk. Once the findings report is complete, the project will move forward to the detailed planning stage. The Eastern Laboratory expansion and renovation project is coming to a close. Casework and new signage currently is being installed. A formal needs assessment and feasibility study has been completed for the Central Laboratory and submitted to the Department of Planning and Budget (DPB). The report includes the needs for both DFS and Office of the Chief Medical Examiner.

Budget Outlook: Director Jackson provided an overview of the Department's budget. She indicated the general fund, federal fund, and total fund amounts in this year's budget. Director Jackson reported that DFS is authorized for a total of 310 staff positions. The average number of staff during 2013 has been 268.

Staffing: The two open Program Manager positions have been filled. Scott Maye is the new Chemistry Program Manager, and Melissa Kennedy is the new Program Manager for Calibration

and Training. Newly created Toxicology positions have been filled and had start dates in August 2013 in the Northern Laboratory. Adding new Toxicology positions was necessary to meet demands of court obligations. The Department is assessing the need to fill positions currently held open in the Controlled Substances Section.

Workload/Backlog: Director Jackson explained the difference in how DFS reports its "backlog" as compared to other Laboratory Systems. DFS includes every case in its "backlog" beginning on the date the case is received at the laboratory, whereas other laboratory systems include cases in their backlogs only after a set amount of days in their laboratory. Regarding the 30-60-90-120 day workload summary report, Director Jackson summarized average days in the lab system for cases in several different sections. The increase of submissions in the Controlled Substance Section is the reason for requesting two new positions. Another reason is the additional time Examiners are spending going to Court and the increase in Synthetic Cannabinoids/Clandestine Lab submissions. The number of specimens for Synthetic Cannabinoids showed a significant increase from March 2013 to June 2013. Research Chemicals have showed the same increase during that time frame due to the addition of new substances added to Schedule 1 in the Code.

Ms. Howard commented that the addition of Research Chemicals to Schedule 1 illegal substances is an issue the Virginia State Crime Commission (VSCC) has worked on in the past. Currently the VSCC is not doing a study on the issue. Ms. Howard inquired if the Department would have anything to present to the VSCC in order to work on legislation.

Ms. Juran commented that the Board of Pharmacy is working possible legislation and has been in contact with the Department for input.

Ms. Howard commented that there will be a meeting of the VSCC on November 14, 2013, and that possible legislation could be put on the agenda.

Director Jackson continued with an overview of the statistics for Clandestine Methamphetamine Laboratories (clan labs). The Eastern Laboratory has received an increase in submissions of clan lab cases, and clan labs cases across the entire state have resulted in a steady increase in submissions. In fact, there has been a steady increase in these cases since 2008. Subpoenas for the Controlled Substances section increased from the 2012 to 2013. For the second quarter of 2013, there were 2310 Subpoenas received; Examiners made 183 appearances, and there were 62 testimonies.

Strategic Priorities: Director Jackson reported that the Department developed new customer satisfaction surveys using online technology rather than paper survey forms that were sent via the mail in the past. On May 29, 2013, survey invitations were sent via email to DFS customers. The Department received 471 responses in a matter of several weeks. Department management will review all responses and discuss any apparent trends. Regional Laboratory Directors were given results so that they could follow up directly with local agencies if needed. Director Jackson explained that it is an accreditation requirement to survey our customers. DFS will continue to do online surveys on an annual basis.

The Department's website is currently under construction. Cap Tech, which is a website design firm under state contract, is developing the new website. Cap Tech did a study of DFS users to identify improved, user-friendly revisions needed for the new website.

Grants: Director Jackson briefly updated the Board on all of the Department's awarded grants and pending grants that the Board voted on at the May 15 meeting. Director Jackson presented one new grant to the Board that needed approval. The Department would like to apply for a grant through the Office of the Attorney General for funding under the Abbott Settlement Forfeiture Funds. The amount requested would be approximately $3 million which would be used to purchase new instrumentation for the Controlled Substances, Toxicology and Trace Evidence Sections.

Ms. Howard made a motion to approve the Department's grant application to the Office of the Attorney General for Abbott Settlement Forfeiture Funds and to approve the Department's acceptance of the grant if awarded, which was seconded by Lt. Colonel Northern. The motion was adopted by unanimous vote of the Board.

Director Jackson reported to the Board that 2013 Byrne Continuation Grant awarded through DCJS for the support of the IAI certification for the Forensic Academy graduates was denied.

Admissibility Hearing: Forensic Scientists from the Forensic Biology Section recently participated in a admissibility hearing for the "TrueAllelle" software in a Capital Murder case in Colonial Heights. The Scientific Advisory Committee (SAC) did send confirmation to the Department that they finished their review of "TrueAllelle" and accepted the validation. The approval will be formalized at the next SAC meeting on October 15, 2013.

Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology, gave a brief overview of the "TrueAllelle" software for the new Board members. Ms. Schiermeier-Wood also explained to the Board about the admissibility hearing. The Judge ruled that the use of "TrueAllelle" was allowed.

Discussion: Sheriff Lippa inquired about the denied grant that supported the IAI certification, and asked if there was anything the Board could do to get funding for the program. Director Jackson explained that after the first year of funding, many Academy graduates took advantage of the funding and sought the certification. Alka Lohmann, Director of Technical Services, further elaborated that this is the third time that the Department has applied for this grant. DFS does have supplies to offer graduates to study for the certification, but DFS will not be able to assist with the testing fee. Lt. Col. Northern inquired about the testing fee, and Ms. Lohmann responded that it is $150. Lt. Col. Northern suggested that the Law Enforcement agencies may be able to pay the testing fee.

Old Business

Status of Regulatory Periodic Review, 6 VAC 40-60: Stephanie Merritt, Department Counsel, updated the Board on the Department's periodic review of four regulations. At the January 3, 2013 meeting, the Board voted to adopt amendments to all four of the regulations. The Office of

the Attorney General (OAG) has reviewed the regulations, and the periodic review was formally completed on April 23, 2013.

Ms. Merritt reported to the Board that the OAG advised the change made to the DNA regulation 6 VAC 40-40, an updated website address, qualified as an Exempt Regulatory Action. The proposed amendment became effective June 20, 2013.

Ms. Merritt also reported that the Department of Planning and Budget (DPB) has completed its review of the Board's proposed amendments to the Breath Alcohol Testing regulation, 6 VAC 40-20 for Fast Track Regulatory Action. This action is currently at the Governor's Office for review.

At the May 15, 2013 meeting, the Board approved the adoption of the proposed amendment to 6 VAC 40-60 for Fast Track Regulatory Action. Currently it is in the economic impact analysis review phase. Ms. Merritt expects the regulations to be in the publication phase by the next Board meeting.

<u>Post-Conviction DNA Testing Program and Notification Project:</u> Gail Jaspen, Chief Deputy Director, gave a brief overview of the history of the Post-Conviction DNA Testing Program & Notification Project to the new members of the Board. Ms. Jaspen explained the two aspects of the project, one being the notification of suspects included in the project and the other being the testing of the evidence. There have been many challenges in completing the notification portion of the project. The oldest case in the project is now 40 years old, so finding contact information for the suspects is extremely difficult. Many convicted suspects are now deceased. The Mid-Atlantic Innocence Project (MAIP) had offered to provide free legal services to all the suspects that DFS has notified. Ms. Jaspen went on to explain to the Board that DFS also is still seeking to confirm conviction information for suspects in a number of additional cases. Testing of the evidence cannot begin until it has been verified that the case conviction meets the criteria for testing.

Ms. Jaspen gave an overview of the statistics from the Post-Conviction Testing Program. To date, Certificates of Analysis have been issued in all 838 cases in which qualifying felony convictions have been confirmed. The remaining challenge for the Program will be to continue confirming conviction information and locating convicted individuals whose cases are deemed eligible for DNA testing. She highlighted that there are 140 individuals for whom known samples are needed to complete testing. There has been one individual to come forward to voluntarily submit his known sample and he has since been exonerated of the crime for which he was convicted. The Board might wish to consider options for contacting any of the 140 individuals still living and offering a means to receive advice about their options.

Ms. Howard updated the Board on the conviction verification efforts. There are 427 cases remaining with unconfirmed conviction information. Ms. Howard commented on the enormity of the project to find conviction information on these old cases. Staff from VSCC is making progress on searching clerk's offices for conviction verification. As conviction information is found it is being passed along to DFS to complete testing if it is confirmed as a program-eligible

case. Ms. Howard informed the Board that the Notification project is also continuing. VSCC staff continues to work on researching address to notify suspects whose cases are in the program.

Ms. Howard next addressed the need to move forward with the possible search for the 140 individuals for whom known samples are needed to complete testing. The Board may need to revise the initial notification letter to reflect the need of the individual submitting their DNA sample. MAIP has volunteered its assistance in reaching out to the individuals for whom known samples are needed and providing guidance to them. Ms. Howard suggested that the Notification Subcommittee set a time to meet to further discuss the issue and bring suggestions to the Board.

Ms. Given asked which Board members would volunteer to be on the Notification Subcommittee with Ms. Howard. David Long and Lt. Col. Northern both volunteered to be on the subcommittee. Ms. Howard will coordinate with the subcommittee members to designate a time and date to meet.

Ms. Howard commented that research into old Court records has shown that in a majority of cases there are no records. Also, she learned that in many cases the suspects charges were reduced from a felony to a misdemeanor. They have been keeping records of the information researched as best as possible.

Ms. Jaspen concluded the presentation by commenting on all the steps the Post-Conviction Notification and Testing Program has involved since its inception. Virginia's effort is unprecedented in post-conviction cases.

New Business

Ms. Jaspen reported to the Board that August 12 – August 26, 2013 is National Forensic Science week. Forensic Science laboratories across the nation have been encouraged to reach out to the community and policy makers to educate them on the capabilities of forensic science laboratories. DFS with the support of the Secretary of Public Safety has sent out invitations for laboratory tours at all four of the Department's laboratories. Invitations were sent to law enforcement, the media, state and federal lawmakers.

Ms. Jaspen updated the Board on the Substance Abuse Awareness Vital for Virginia Youth program (SAVVY), the special community drug abuse awareness initiative supported by the Governor and several Cabinet Secretaries. Ms. Jaspen gave a brief overview of the purpose of SAVVY to the new Board members. The next SAVVY Expo will be held on September 18, 2013, in Abingdon. It will be the final expo of the year. SAVVY will continue as on-line resource for the community.

Public Comment

None

Next Meeting

The Forensic Science Board will meet next on Wednesday, October 16, 2013 at 9 a.m.

Adjournment

Ms. St. Clair moved that the meeting of the Board be adjourned, which was seconded by Sheriff Lippa and passed by unanimous vote.

The meeting adjourned at 10:30 a.m.