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Draft - Minutes
Forensic Science Board Meeting
January 7, 2015
Department of Forensic Science, Central Laboratory, Classroom 1

Board Members Present

Vince Donoghue, Essex Commonwealth's Attorney and Designee of Senator Thomas K. Norment, Jr., and Senator Mark D. Obenshain, Co-Chairs, Senate Courts of Justice Committee
Francine C. Ecker, Director, Department of Criminal Justice Services
Karl R. Hade, Executive Secretary of the Supreme Court
Kristen J. Howard, Designee of Senator Thomas K. Norment, Jr., Chair, Virginia State Crime Commission
Caroline D. Juran, Executive Director, Board of Pharmacy
Anthony A. Lippa, Jr., Sheriff, Caroline County
Lt. Colonel Robert Northern, Designee of W. Steven Flaherty, Colonel, Virginia State Police Superintendent
Alphonse Poklis, Ph.D., Member, Scientific Advisory Committee
Claiborne H. Stokes, Jr., Commonwealth's Attorney, Goochland County
Richard Vorhis, Esq., Designee of Attorney General Mark R. Herring
Arkuie Williams, Designee of William T. Gormley, M.D., Chief Medical Examiner

Board Members Absent

Jo Ann Given, Forensic Science Board Chair and Member, Scientific Advisory Committee
David A. C. Long, Esq.
Richard L. Morris, Delegate and Designee of Delegate David B. Albo, Chair, House Courts of Justice Committee

Legal Counsel for the Forensic Science Board

K. Michelle Welch, Esq., Assistant Attorney General

Staff Members Present

Wanda W. Adkins, Office Manager
D. Jeffery Ban, Central Laboratory Director
David A. Barron, Ph.D., Deputy Director
Donna Carter, Finance Manager
Sabrina S. Cillessen, Physical Evidence Program Manager
Amy M. Curtis, Department Counsel
Leslie Ellis, Human Resources Director
Theresa Francis, Forensic Biology Group Supervisor
John T. Griffin, Northern Laboratory Director
Katya N. Herndon, Chief Deputy Director
Linda C. Jackson, Department Director
Bradford C. Jenkins, Forensic Biology Program Manager
Alka B. Lohmann, Director of Technical Services
Lisa Schiermeier-Wood, Forensic Biology Section Supervisor
Susan Stanitski, Eastern Laboratory Director

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Call to Order

Caroline Juran, the Vice-Chair of the Forensic Science Board (“Board”), served as Chair in the absence of Jo Ann Given and called the meeting of the Board to order at 9:00 a.m. The Chair welcomed new member, Vince Donoghue, and new DFS Counsel, Amy Curtis. Brief introductions were given by both to the Board.

Adoption of Agenda

The Chair asked if there were any additions or changes to the draft agenda for the meeting. Being none, Dr. Poklis made a motion to adopt the agenda, which was seconded by Mr. Hade and adopted by unanimous vote of the Board.

Approval of Draft Minutes of the October 15, 2014 Meeting

The Chair asked if there were any changes or corrections to the draft minutes from the October 15, 2014 meeting. Being none, Lt. Colonel Northern made a motion to adopt the minutes, which was seconded by Sheriff Lippa and approved by unanimous vote of the Board.

Chair’s Report

There was no formal report from the Chair.

DFS Director’s Report

Facilities:

Director Jackson updated the Board on the status of the renovation/expansion of the Western Laboratory. The anticipated completion date for the new construction is December 2015. Renovations to the current Western Laboratory building will begin in January 2016 after the new construction is finished, with an estimated completion date of August 2016.

Detailed planning money for the expansion of the Central Laboratory has been awarded. The Department was approved to begin the design on August 28, 2014. Design plans have been submitted and are being reviewed by the Department of General Services. Expected completion date of the Central Laboratory expansion project is sometime in 2019, at the earliest. The current lease for the space DFS uses in Biotech 8 ends in 2016. However, the Division of Real Estate Services has renegotiated lease terms with the owner of Biotech 8 for a lower rate, and the lease is in the process of being renewed.

Budget Resources:

Director Jackson provided an overview of the Department’s Budget, including FY15 budget reductions totaling \$1,153,070, and the proposed FY16 reductions estimated at \$1,790,451. Director Jackson directed the Board to where additional information about the budget reductions is available online. Director Jackson also reviewed with the Board information on DFS FY14 expenditures by category.

93 All DFS service reductions notices were posted on the DFS website and e-mail notices were sent
94 to the Virginia Sheriff's Association, the Virginia Association of Chiefs of Police and the
95 Commonwealth's Attorneys' Services Council for distribution to user agencies. Director
96 Jackson discussed the service reductions and directed the Board to where the notices could be
97 found on the Department's website.
98

99 Grants: Director Jackson gave an overview of all current grants, including one grant requiring
100 the Board's approval, which is for "Research and Development for Publicly Funded Forensic
101 Science Laboratories to Assess the Testing and Processing of Physical Evidence." With the
102 approval of the Board's Chair and Vice-Chair, DFS submitted an application for this grant in
103 December. The grant will provide funds for the development, validation and dissemination of
104 two quantitative LC/MS/MS methods for the analysis of whole blood in accordance with the
105 SWGTOX Method Validation guidelines for: 1) designer drugs, such as cannabimimetic agents
106 and research chemicals; and 2) cocaine, its metabolites and opioids. Total funding for this
107 project is estimated at \$140,504. Ms. Ecker made a motion for the Board to accept the funds for
108 this pending grant, if awarded, which was seconded by Dr. Poklis and approved by unanimous
109 vote of the Board.
110

111 Agency Goals for 2014:

112 Director Jackson updated the Board on the Department's 2014 Agency Goal to validate and
113 implement DNA multiplex kits in the Data Bank. The validation and training are complete and
114 the multiplex kits are scheduled to be implemented by the end of January.
115

116 Agency Goals for 2015:

117 Director Jackson gave an overview of the 2015 agency goals: 1) implement the new Laboratory
118 Information Management System; and 2) provide additional online access to breath alcohol test
119 records.
120

121 Workload/Backlog: Director Jackson presented the Department's statistics in quarterly format
122 using graphs reflecting cases received, cases completed, the caseload, and the average number of
123 days in the system for each Section. Director Jackson noted an increase in cases for the Forensic
124 Biology Section and explained that it was a result of supplemental reports on statistical cases that
125 were issued.
126

127 Director Jackson informed the Board that the Questioned Document Section was originally on
128 the list for budget reductions, with two scientists being laid off, but DFS was subsequently
129 informed by the Department of Planning and Budget that the Questioned Document Section had
130 been removed from the list of budget reductions.
131

132 Director Jackson also reviewed the average turnaround times matrix, which was submitted to the
133 Department of Planning and Budget for the strategic plan that was recently updated. DFS was
134 able to change the matrix in the Virginia Performs system to include the average turnaround time
135 quarterly for Controlled Substances, Firearms, Forensic Biology, Latent Prints and Toxicology.
136 Director Jackson noted that, although DFS tracks and has goals to reduce its turnaround times in
137 many Sections, the most important priority of the agency is ensuring quality work.
138

139 Director Jackson informed the Board of the U.S. Commerce Department’s National Institute of
140 Standards and Technology (NIST) final appointments to the Organization for Scientific Area
141 Committees (OSAC), established to coordinate development of standards and guidelines for the
142 forensic science community. OSAC is bringing a uniform structure to what was previously an ad
143 hoc system with the goal of improving the quality and consistency of forensic science in the
144 United States. Eight DFS scientists were appointed to serve on various OSAC Subcommittees.

145
146 **Old Business**

147
148 **Status of the Post-Conviction DNA Testing Program and Notification Project**

149 Katya Herndon, Chief Deputy Director, briefly reviewed with the Board the post-conviction
150 testing and notification figures, which had not changed since the October meeting.

151
152 Ms. Herndon advised the Board that DFS is working on compiling a complete list of all
153 individuals whose files contain evidence that includes the testing and notification status of each
154 of the cases so that it may be shared with Crime Commission staff. In order to do this, DFS staff
155 has been manually pulling and reviewing files to confirm notifications and the current status of
156 these cases. However, to date, DFS has only been doing the manual review and have not yet
157 completed the data entry. Once the data entry is completed, the post-conviction figures may
158 change.

159
160 Ms. Herndon reminded the Board that, at its October meeting, she provided an update on what
161 had occurred at the September Crime Commission meeting. In particular, the recommendation
162 from the Crime Commission that DFS “retest” in the post-conviction cases where there was an
163 “inconclusive” result. The Crime Commission had recommended that the retesting be prioritized
164 as follows: 1) cases where spermatozoa is present and the suspect is still incarcerated; 2) cases
165 where the suspect is still incarcerated; and 3) cases where spermatozoa is present and the suspect
166 is not still incarcerated; and 4) all other cases.

167
168 DFS submitted a decision package seeking funding to outsource the retesting of the
169 “inconclusive” cases using mini-STR or Y-STR testing. DFS does not conduct mini-STR
170 testing, and does not have the resources to conduct Y-STR testing in these cases without
171 significant delay to pending cases. The estimated cost is \$3,500 per case, based on an average
172 number of samples per case of seven, and a per sample cost of \$500. The Governor’s Introduced
173 Budget includes \$150,000 for this testing in FY16.

174
175 DFS has identified 421 cases that contained evidence that yielded “inconclusive” results. DFS
176 has manually pulled 400+ case files and volunteers from the Forensic Biology Section have
177 worked overtime on weekends and holidays to review the original serologist’s notes in each of
178 these case files to ascertain which had sperm/semen present. As a result of this review, 60 cases
179 with sperm/semen present were identified. DFS will provide the Crime Commission information
180 on the suspects for these 60 cases so that a determination can be made as to which, if any, of the
181 suspects in these cases is still incarcerated.

182
183 Ms. Herndon addressed another issue regarding the recommended retesting which was raised by
184 Shawn Armbrust with the Mid-Atlantic Innocence Project. Ms. Armbrust had planned to attend

185 the Board meeting, but she had an unexpected conflict and asked Ms. Herndon to convey her
186 thoughts to the Board. Ms. Armbrust had advised Ms. Herndon that she did not think it would be
187 a good use of the state's resources to conduct retesting in the majority of the inconclusive cases.
188 She believes it would be worthwhile to screen the cases in advance to ascertain whether retesting
189 the retained evidence would be probative of the suspect's guilt or innocence. Ms. Armbrust's
190 experience with the Innocence Project in handling these post-conviction cases is that, in more
191 than half of the cases, the DNA testing that was conducted was not probative of guilt or
192 innocence. She indicated that the Innocent Project could not take on all of the screening, but she
193 offered to participate in conducting the screening. Her suggestion is to include representatives
194 from the Commonwealth's Attorneys, the Attorney General's Office, and the Indigent Defense
195 Commission, in addition to the Innocence Project.

196
197 DFS is supportive of this type of screening, and believes the decision making regarding which
198 cases to retest should be conducted independent of DFS. DFS would, however, make available a
199 scientist who is able to answer any technical questions the screening group may have.
200

201 Ms. Howard commented that she had spoken with Ms. Armbrust at the conclusion of the October
202 Board meeting and agreed that testing should only occur if probative to the case. After general
203 discussion, Ms. Howard made a motion to add a Commonwealth's Attorney as a member of the
204 DNA Notification Subcommittee and to have that Subcommittee develop recommendations to
205 present to the Board at its May meeting regarding how the screening to determine the probative
206 value of testing in these cases should occur. The motion was seconded by Mr. Vorhis and
207 unanimously approved by the Board. Mr. Donoghue volunteered to serve as the
208 Commonwealth's Attorney on the Notification Subcommittee.
209

210 SB658 PERK Inventory Update:

211 Theresa Francis, DFS Forensic Biology Section Group Supervisor, gave an update on the status
212 of the PERK Inventory. Ms. Francis reviewed the requirements of Senate Bill 658 as well as the
213 timeline for the PERK Inventory. The deadline for law enforcement agencies to return
214 completed forms to DFS is February 1, 2015. The total number of local/state law enforcement
215 agencies in Virginia is 388. As of January 4, 2015, only 93 agencies (24%) had submitted their
216 inventories. E-mails have been sent to all state and local law enforcement agencies and members
217 of the Virginia Sheriff's Association, Virginia Association of Chiefs of Police, Virginia Police
218 Chiefs Foundation and Virginia Association of Campus Law Enforcement Administrators. In
219 addition, information is posted on the DFS website. Follow-up e-mails will be sent to remind
220 agencies of the timeline for submission of the inventory. DFS will submit a report to the General
221 Assembly by July 1, 2015.
222

223 Report on Costs Associated with Forensic Science Board meetings

224 At the October meeting, the Chair, Jo Ann Given, brought to the Board's attention her concerns,
225 as both a citizen and a member of the Board, for the State Budget as a whole, and the
226 Department's budget in particular. She had offered, for discussion, the idea of reducing the
227 number of times the Board meets per year from four to two. The Board discussed the possible
228 change and potential cost savings to the Department, and requested the Department to provide
229 information about potential cost savings by reducing the number of meetings per year at the next
230 Board meeting. In response, Director Jackson provided a report on the costs to the agency

231 associated with holding each Board meeting. Cost estimates were approximately \$18,100 per
232 meeting, based on direct costs (e.g. travel, copies of materials) of \$700 and indirect costs (e.g.
233 DFS staff costs) of \$17,400.

234

235 **New Business**

236

237 2015 Legislation

238 Ms. Herndon advised the Board that the Department would have two agency bills in the
239 upcoming General Assembly Session. The first bill, which would grant law enforcement
240 agencies the authority to donate unclaimed firearms to DFS for use in its reference collections, is
241 being carried by Senator Marsden. Under current law, law enforcement may destroy any
242 unclaimed firearm once it has been in their possession for more than 60 days, provided there
243 have been reasonable attempts made to notify the rightful owner, and the Commonwealth's
244 Attorney has advised that the firearm is not needed for criminal prosecution. The bill provides
245 law enforcement with the option of donating an unclaimed firearm to DFS for use in its reference
246 collections in lieu of destroying the firearm. DFS must agree to the donation of any unclaimed
247 firearm. The second bill, which would grant the State Police the explicit authority to seek
248 confirmation from the DNA Data Bank about whether any person required to register with the
249 Sex Offender Registry has provided a DNA sample to the DNA Data Bank, is being carried by
250 Delegate Watts. Under current law (Code § 9.1-903), every person registered as a sex offender
251 is required to submit a DNA sample for inclusion in the DNA Data Bank. The bill would
252 streamline the process and allow DFS to directly notify State Police whether persons in the Sex
253 Offender Registry have provided DNA samples as required by law. The bill's language mirrors
254 the language in the juvenile offender DNA Data Bank statute.

255

256 ASCLD/LAB Notice of Important Program Adjustment

257 Director Jackson notified the Board, as an interested party to the American Society of Crime Lab
258 Directors/Laboratory Accreditation Board (ASCLD/LAB), about a Notice of an Important
259 Program Adjustment that was received and became effective immediately. ASCLD/LAB will
260 now schedule and complete all on-site, full reassessments to renew ASCLD/LAB-International
261 accreditation within five years of the last on-site, full assessment of the laboratory (as opposed to
262 within five years of the date of accreditation). The change in the ASCLD/LAB schedule will not
263 affect DFS as the Department elected to have its accreditation granted for a period of four years
264 during its reaccreditation in September 2014.

265

266 Board of Pharmacy Regulation Adding Compounds to Schedule I

267 Chair Juran advised the Board that, pursuant to Code § 54.1-3443(D), the Board of Pharmacy
268 amended its regulation through an expedited process to place three new compounds into
269 Schedule I. DFS had identified the three compounds for recommended inclusion by the Board of
270 Pharmacy into Schedule I. The regulation will be published in the Register of Regulations on
271 January 12, 2015, and will become effective on February 11, 2015. The placement of these
272 substances in Schedule I will remain in effect for a period of 18 months from the effective date
273 and will then be de-scheduled unless the Drug Control Act is amended by legislation of the
274 General Assembly. Director Jackson noted that DFS has been contacted by Delegate Garrett's
275 legislative aide, who advised that the Delegate intends to put forth a bill to add the three
276 compounds to the Drug Control Act.

277
278 DFS Decision Package on Review of Archived Case Files
279 Amy Curtis, DFS Counsel, advised the Board that the FBI, in conjunction with the United States
280 Department of Justice, has undertaken a review of microscopic hair examinations after three
281 individuals were exonerated following DNA testing of evidence in 2012. In April 2013,
282 ASCLD/LAB recommended that each laboratory consider review of past microscopic hair cases.
283 Texas and New York have already begun a review of these cases. Texas has established a Hair
284 Microscopy Review Team to advise on how to establish a process for review and criteria for
285 these cases.

286
287 Ms. Curtis informed the Board that DFS submitted a decision package, and funding was included
288 in the Governor's Introduced Budget, to review all archived cases from 1973 through 1994 in
289 order to be able to identify cases where microscopic hair examinations were conducted. DFS
290 implemented its laboratory information system in 1995 so DFS is able to electronically search
291 cases from 1995 forward to identify microscopic hair exam cases. Because this project will
292 require DFS to conduct another manual review of archived case files housed at the Library of
293 Virginia, DFS decided it would be best to create an electronic database of these files.
294 Accordingly, in its decision package, DFS requested funding for personnel (four wage positions
295 working 30-36 months), equipment (two networked copiers/scanners) and data storage for this
296 case file review. The wage employees will scan and create an electronic database of the
297 Requests for Laboratory Examination forms and the Certificates of Analysis from each of the
298 archived case files.

299
300 Ms. Curtis noted that, if the funds for this project remain in the budget that is passed by the
301 General Assembly, the Board may want to hear a presentation at its May meeting from Texas
302 officials on the process they have developed to assist in determining how to proceed. If the
303 funds are included in the approved budget, DFS will contact Texas regarding a presentation to
304 the Board or request information that DFS could present to the Board.

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306 **Public Comment**

307
308 None.

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310 **Next Meeting**

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312 The Forensic Science Board will meet again on May 13, 2015, August 12, 2015, and October 15,
313 2015.

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315 **Adjournment**

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317 Ms. Howard moved that the meeting of the Board be adjourned, which was seconded by
318 Mr. Hade and passed by unanimous vote.

319
320 The meeting adjourned at 10:55 a.m.