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**Draft - Minutes**  
**Forensic Science Board Meeting**  
**May 11, 2016**  
**Department of Forensic Science, Central Laboratory, Classroom 1**

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**Board Members Present**

Vince Donoghue, Essex Commonwealth's Attorney (Designee of Senator Mark D. Obenshain, Chair, Senate Courts of Justice Committee) - Forensic Science Board Chair  
Francine C. Ecker, Director, Department of Criminal Justice Services  
James F. Entas, Esq., Assistant Attorney General (Designee of Attorney General Mark R. Herring)  
Colonel W. Steven Flaherty, Superintendent, Virginia State Police  
Jo Ann Given, Member, Scientific Advisory Committee  
William T. Gormley, M.D., Chief Medical Examiner  
Kristen J. Howard, Executive Director of the Virginia State Crime Commission (Designee of Senator Thomas K. Norment, Jr., Chair, Virginia State Crime Commission)  
Caroline Juran, Executive Director, Board of Pharmacy  
Anthony A. Lippa, Jr., Sheriff, Caroline County  
David A. C. Long, Esq.  
Claiborne H. Stokes, Jr., Commonwealth's Attorney, Goochland County

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**Board Members Absent**

Karl R. Hade, Executive Secretary, Supreme Court of Virginia  
Alphonse Poklis, Ph.D., Member, Scientific Advisory Committee  
Richard L. Morris, Delegate (Designee of Delegate David B. Albo, Chair, House Courts of Justice Committee)

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**Legal Counsel for the Forensic Science Board**

Elizabeth Myers, Esq., Assistant Attorney General

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**Staff Members Present**

Wanda W. Adkins, Office Manager  
David A. Barron, Ph.D., Deputy Director  
Donna M. Carter, Finance Manager  
Sabrina S. Cillessen, Physical Evidence Program Manager  
Amy M. Curtis, Department Counsel  
Katya N. Herndon, Chief Deputy Director  
Linda C. Jackson, Department Director  
Bradford C. Jenkins, Forensic Biology Program Manager  
M. Scott Maye, Chemistry Program Manager  
Carisa M. Studer, Legal Assistant

**Call to Order**

Vince Donoghue, Chair of the Forensic Science Board ("Board"), called the meeting of the Board to order at 9:05 a.m. The Chair welcomed the Board members and the Department of Forensic Science ("Department" or "DFS") staff.

47

48 **Adoption of Agenda**

49 The Chair asked if there were any additions or changes to the draft agenda for the meeting. Ms.  
50 Given moved to add the Scientific Advisory Committee (“SAC” or “Committee”) report to the  
51 agenda, which was seconded by Sheriff Lippa and adopted by unanimous vote of the Board.

52

53 **Approval of Draft Minutes of the January 6, 2016 Meeting**

54 The Chair asked if there were any changes or corrections to the draft minutes from the January 6,  
55 2016 meeting. Ms. Juran requested that the minutes be clarified to reflect that she was not in  
56 attendance at the January meeting and that Mr. Johnson was her designee. Ms. Juran made a  
57 motion to adopt the minutes with that clarification, which was seconded by Ms. Howard and  
58 approved by unanimous vote of the Board.

59

60 **Chair’s Report**

61 There was no formal report from the Chair.

62

63 **Scientific Advisory Committee Report**

64 Jo Ann Given, member of the SAC, advised the Board that the SAC’s Trace Evidence  
65 Subcommittee met on May 10, 2016 prior to the full SAC meeting to discuss the Qualitative  
66 Analysis of Clandestine Methamphetamine Laboratory Evidence using Laser Induced  
67 Breakdown Spectroscopy (LIBS) validation study. The Subcommittee provided comments and  
68 made suggestions to DFS staff, which will be incorporated into the validation study. The  
69 Subcommittee will be provided a copy of the draft LIBS procedures resulting from the validation  
70 study once they are developed. DFS will be using LIBS to detect lithium in clandestine  
71 methamphetamine laboratory cases.

72

73 Ms. Given reported to the Board that the Committee received a Director’s report, a legislative  
74 update, and program area updates, as well as information regarding the proposed microscopic  
75 hair comparison and serology case reviews. The SAC discussed the serology proposal and voted  
76 to recommend that the Department begin the serology review but retain the ability to make  
77 changes in the process if necessary to carry out the review. The SAC also specifically voted to  
78 recommend that the two DFS scientists review all of the cases first, and then have the outside  
79 serologist review a random sample of the cases reviewed.

80

81 Ms. Given advised that the Committee elected Leslie E. Edinboro, Ph.D., as the Chair for the  
82 next term and re-elected Kenneth B. Zercie as Vice-Chair.

83

84 **DFS Director’s Report**

85

86 **Facilities:**

87 Director Jackson provided an update on the facilities projects for the Western and Central  
88 Laboratories. The Western Laboratory moved into the newly constructed portion of the facility  
89 on January 25, 2016. Renovations to the existing portion of the laboratory also began on January  
90 25, 2016. The Western project is scheduled to be completed in September. An Architecture and  
91 Engineering firm has been selected for the Central Laboratory expansion project. The next step  
92 will be for a construction manager at-risk to be selected.

93 Agency Events:

94 Director Jackson updated the Board on the status of the Laboratory Information Management  
95 System (LIMS) project. Phase I of LIMS upgrade is complete. DFS staff received training  
96 March 15 – 17, 2016, and the new LIMS went live on March 21, 2016. Phase II of the project  
97 will include new features such as pre-submission data entry for evidence, and electronic  
98 distribution of Certificates of Analysis.

99

100 Director Jackson informed the Board that she participated in the Bill signing for SB291 and  
101 HB1160, which are the comprehensive physical evidence recovery kits (PERK) bills that will be  
102 discussed in more detail during the legislative review that will be presented by Ms. Herndon.

103

104 Director Jackson went over the restructured organization chart for the Department’s Division of  
105 Technical Services. The Toxicology and Breath Alcohol Sections are now under the new  
106 Toxicology Program Area, which replaces the Calibration and Training Program Area. The  
107 Forensic Training Section, which was under Calibration and Training, now reports directly to the  
108 Director of Technical Services.

109

110 The Department participated in Public Service Recognition Week during the first week of May.  
111 On May 4, 2016, DFS presented 56 employees with awards for their state service. The four  
112 Safety Officers, one from each laboratory, also received awards for outstanding contribution.

113

114 Director Jackson advised the Board of the various conferences across the Commonwealth at  
115 which DFS staff had spoken or would be speaking, including Commonwealth’s Attorneys, the  
116 Indigent Defense Commission, and Circuit Court Judges.

117

118 Director Jackson updated the Board on the historical case file project. DFS has two wage  
119 employees who have been scanning Certificates of Analysis from the archived case files (1973-  
120 1995) not in the laboratory information management system (LIMS) and entering data about  
121 each case into a database. To date, approximately 10,000 records have been uploaded to the new  
122 database. DFS has funding and will be hiring additional wage employees for this project.

123

124 Retesting of Post-Conviction DNA Cases:

125 Director Jackson updated the Board on the retesting of post-conviction DNA cases with  
126 “inconclusive” results. The 33 “inconclusive” cases recommended for testing were sent in  
127 November 2015 to Bode Cellmark Forensics (Bode), the private laboratory that was awarded the  
128 contract to conduct the testing. The Department has not received results from Bode to date, but  
129 Bode indicated that they would be sending results in the next couple of weeks.

130

131 Budget Overview:

132 Director Jackson gave an overview of the FY17/FY18 budget that included an itemized list of  
133 DFS budget increases. She also explained the language included in the budget that requires  
134 DFS, in cooperation with the Office of the Attorney General, to pursue funding including federal  
135 grants to ensure that physical evidence recovery kits (PERKs), which were collected but not  
136 submitted to DFS between July 1, 2014, and June 30, 2016, are analyzed. This two year window  
137 addresses PERKs not covered by the previous inventory/DANY grant and the new legislation.

138

139 Director Jackson informed the Committee that the ASCLD/LAB expanded surveillance visit of  
140 DFS was being held May 10 – May 12, 2016. The technical assessors will be visiting all four  
141 testing laboratories and the breath alcohol calibration laboratory. Their focus will be on  
142 Biology/DNA Nuclear and Breath Alcohol Calibration. Director Jackson noted that  
143 ASCLD/LAB merged with ANSI-ASQ National Accreditation Board (ANAB). The merger  
144 does not affect the Department’s accreditation status.

145  
146 Grants:

147 Director Jackson reminded the Board of the Department’s current grants: the FY 2014 DNA  
148 Capacity Enhancement and Backlog Reduction Program grant; the FY 2015 DNA Capacity  
149 Enhancement and Backlog Reduction Program grant; the FY 2014 Paul Coverdell grant; the  
150 Office of the Attorney General *Abbott* Settlement Forfeiture Funds One-Time transfer; the 2016  
151 Highway Safety Grant; the FY 2015 Paul Coverdell grant; the New York County District  
152 Attorney’s Office Sexual Assault Kit Backlog Elimination Program; and the NIJ Research and  
153 Development of Publicly Funded Forensic Science Laboratories.

154  
155 Director Jackson presented an overview of the four pending grant applications that require full  
156 permission from the Board: the 2017 Highway Safety Grant; the FY 2016 Paul Coverdell grant;  
157 the 2016 Research and Evaluation for the Testing and Interpretation of Physical Evidence in  
158 Publicly Funded Forensic Laboratories; and the National Sexual Assault Kit Initiative FY 2016  
159 Competitive Grant. Ms. Ecker made a motion for the Board to accept the funds for the four  
160 pending grant applications, if awarded, which was seconded by Ms. Howard and approved by  
161 unanimous vote of the Board.

162  
163 Director Jackson presented the FY2016 DNA Capacity Enhancement and Backlog Reduction  
164 Grant to the Board which requires approval for submission and acceptance of the funds. Colonel  
165 Flaherty made a motion for the Board to apply and accept the funds, if awarded, for the FY2016  
166 DNA Capacity Enhancement and Backlog Reduction Grant, which was seconded by Ms. Given  
167 and approved by unanimous vote of the Board.

168  
169 Workload/Backlog:

170 Director Jackson noted that the workload statistics and charts she typically provides to the Board  
171 were unavailable in light of DFS’s transition to the updated LIMS. She provided a brief update  
172 on statistical trends in the program areas. She noted an increase in Controlled Substances and  
173 Firearms submissions over the past several months. Director Jackson will share the workload  
174 statistical information with the Board once it is available.

175  
176 **Old Business**

177  
178 Status of the Post-Conviction DNA Testing Program and Notification Project:

179 Kristen Howard, Chair of the DNA Notification Subcommittee, reported to the Board that the  
180 Virginia State Crime Commission (VSCC) staff has been working on three major points  
181 regarding the project: the review of the “inconclusive” case files; the next of kin letters; and the  
182 database verification project.

183

184 Since the October 2015 meeting, all of the “inconclusive” case files had been reviewed and  
185 recommendations for testing were made. The recommended “inconclusive” case files have been  
186 sent for testing. VSCC staff has mailed notification letters to the next of kin for 13 deceased  
187 eliminated individuals. VSCC staff is continuing the database verification project to confirm the  
188 testing and notification status of each listed suspect in each case and enter the information into a  
189 database. Ms. Howard anticipates that this project will be completed by the fall of 2016 and that  
190 a report will be presented to the Crime Commission and the Board at that time.

191  
192 Microscopic Hair Comparison Case Review:  
193 Amy Curtis, Department Counsel, presented the report from the Microscopic Hair Comparison  
194 Case Review Subcommittee. Ms. Curtis reminded the Board that, at the January 6, 2016 Board  
195 meeting, a Subcommittee was created to develop and recommend a review process for DFS  
196 microscopic hair comparison cases. The Subcommittee met on March 27, 2016 and April 19,  
197 2016, and Ms. Curtis gave an overview of what occurred at each Subcommittee meeting.

198  
199 Ms. Curtis presented the recommendations of the Subcommittee to the Board. The  
200 Subcommittee was proposing a three step process for the case review, which would include: 1)  
201 the identification of cases; 2) an initial screening; and 3) a review by a team of two attorneys and  
202 a DFS scientist. Ms. Curtis reviewed with the Board draft documents that were recommended by  
203 the Subcommittee for use in the case review process. The documents included a letter requesting  
204 assistance identifying cases for the review, an initial screening form, and a flow chart of the  
205 review team.

206  
207 The Subcommittee recommended the following review criteria, which combined the Texas and  
208 FBI criteria: 1) Did the examiner state that an evidentiary hair could be associated with a  
209 specific individual to the exclusion of all others?; 2) Did the examiner assign a statistical weight  
210 or probability or provide a likelihood that the questioned hair originated from a particular  
211 source?; and 3) Does the testimony contain any other potentially misleading statements or  
212 inferences? The Subcommittee also proposed reviewing 12 transcripts from microscopic hair  
213 comparison cases in order to develop more specific criteria for the review team. The  
214 Subcommittee is scheduled to meet on June 15, 2016 for the transcript review.

215  
216 Ms. Curtis noted that the Subcommittee tabled its discussion regarding notification letters and  
217 elected to refer that issue to the Board given its experience with notification letters from the Post-  
218 Conviction project.

219  
220 The Board Chair asked if any member of the public wished to comment on the hair comparison  
221 case review proposal. Brandon Garrett, the Justice Thurgood Marshall Distinguished Professor  
222 of Law at the University of Virginia School of Law, and Shawn Armbrust, Executive Director of  
223 the Mid-Atlantic Innocence Project, offered public comment on the content of the notification  
224 letters and who should receive them. Both also offered assistance to the Board. The Board  
225 elected to table its decisions about the notification letters until after the review of the initial 12  
226 transcripts.

227  
228 Kristen Howard made a motion for the Subcommittee to move forward with the microscopic hair  
229 comparison case review proposal and conduct the review of 12 transcripts with a report back to

230 the Board, which was seconded by Colonel Flaherty and adopted by unanimous vote of the  
231 Board.

232

233 **New Business**

234

235 **Serology Review Proposal:**

236 Ms. Curtis described the serology review proposal to the Board. DFS anticipates conducting a  
237 random review of 200 of its serology cases. It will begin by looking at cases from 1982, 1986,  
238 and 1990 from the Eastern and Northern Laboratories. Ms. Curtis discussed the identification of  
239 cases, as well as the proposed review criteria and the proposed composition of the review team  
240 (two DFS scientists who conducted serology examinations and an outside serologist). The SAC  
241 recommended that the outside serologist review a random sample of the 200 cases reviewed by  
242 the DFS scientists.

243

244 The Board discussed the proposal by the Department, and the Board Chair invited public  
245 comment related to the serology case review proposal. Brandon Garrett commented on other  
246 serology reviews that he was aware of and offered to assist in identifying possible outside  
247 serologists who may be willing to assist with the review.

248

249 Ms. Given moved that the Department proceed with the serology case review proposal as  
250 presented and report back the Board, which was seconded by Ms. Howard, and adopted by  
251 unanimous vote of the Committee.

252

253 **Review of 2016 Legislation:**

254 Katya Herndon, Chief Deputy Director, reviewed with the Board DFS related legislation from  
255 the 2016 General Assembly Session. DFS had one agency bill, HB355, which adds the Director  
256 of the Division of Consolidated Laboratory Services (“DCLS”) or his designee to the Forensic  
257 Science Board. HB355 also deletes the outdated provision specifying that the Chairman of the  
258 Board of the now-defunct Virginia Institute of Forensic Science and Medicine shall be member  
259 of the Board. Ms. Herndon welcomed and introduced Denise Toney, the Director of DCLS, who  
260 was attending the meeting to observe in advance of her becoming a member of the Board in July.

261

262 Ms. Herndon gave an overview of the comprehensive PERK legislation, HB1160 and SB291,  
263 which establish a comprehensive procedure for the consistent handling of PERKs collected from  
264 victims of sexual assault across the Commonwealth. The Department was provided  
265 approximately \$900,000 annually in funding to absorb the estimated 700 additional PERKs it  
266 anticipates receiving each year as a result of the mandatory submission provisions of the  
267 legislation.

268

269 Ms. Herndon concluded by reviewing scheduling bills. Two identical bills, HB1077 and SB480,  
270 add twelve new compounds to Schedule I, and another bill, HB1292, adds a new substance to  
271 Schedule IV.

272

273 **Chemistry Program Update:**

274 Scott Maye, Chemistry Program Manager, provided the Board with an update on the  
275 Department’s recommendations made to the Board of Pharmacy for scheduling using the

276 expedited regulatory process. Six compounds that DFS recommended the Board of Pharmacy  
277 consider adding to Schedule I of the Code of Virginia were approved March 25, 2016. On April  
278 15, 2016, DFS recommended seventeen additional compounds to the Board of Pharmacy for  
279 consideration. On June 14, 2016, the Board of Pharmacy will hold a public hearing and consider  
280 the seventeen additional compounds.

281  
282 Toxicology Update:  
283 Dr. James Hutchings, Toxicology Program Manager, provided the Board with an overview of the  
284 Toxicology driving under the influence of drugs (DUID) testing panel, including changes to  
285 streamline the DUID testing scheme to reduce turnaround times.

286  
287 **Annual Election of Board Chair and Vice Chair**  
288 The Chair called for the annual election of the Board Chair and Vice-Chair. The Chair asked for  
289 nominations for Chair of the Committee. Ms. Given nominated Mr. Donoghue for re-election as  
290 Board Chair, which was seconded by Dr. Gormley and passed by unanimous vote. The Chair  
291 asked for nominations for Vice-Chair. The Chair nominated Mr. Long for re-election as Vice-  
292 Chair, which was seconded by Colonel Flaherty and passed by unanimous vote.

293  
294 **Public Comment**  
295 There was no additional public comment.

296  
297 **Next Meeting**  
298 The next meeting of the Forensic Science Board is set for August 10, 2016.

299  
300 **Adjournment**  
301 Ms. Howard moved that the meeting of the Board be adjourned, which was seconded by Mr.  
302 Entas and passed by unanimous vote.  
303  
304 The meeting adjourned at 11:30 a.m.