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Minutes
Forensic Science Board Meeting
August 10, 2011
Department of Forensic Science, Central Laboratory, Classroom 1

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Board Members Present

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Caroline D. Juran, Chair
Steven D. Benjamin
John Colligan (Designee for Garth L. Wheeler)
Jo Ann Given
William Gormley, M.D. (Designee for Leah Bush, M.D.)
Katya Herndon (Designee for Karl R. Hade)
Kristen Howard (Designee for Delegate Bell)
Alan Katz (Designee for Attorney General Cuccinelli)
Sheriff A.A. Lippa Jr.
Raymond F. Morrogh
Colonel Robert Northern (Designee for Colonel W. Steven Flaherty)
Senator Roscoe Reynolds (Designee for Senator Henry L. Marsh, III)

Board Members Absent

Dale Carpenter, Ph.D.
Delegate William R. Janis (Designee for Delegate David Albo)

Legal Counsel for the Forensic Science Board

Amy Dilworth, Assistant Attorney General

Staff Members Present

Wanda Adkins, Office Manager
Jeff Ban, Central Laboratory Director
David Barron, Ph.D. Technical Services Director
Sabrina Cillessen, Physical Evidence Program Manager
Leslie Ellis, Human Resources Director
Linda Jackson, Chemistry Program Manager
Gail Jaspen, Chief Deputy Director
Brad Jenkins, Forensic Biology Program Manager
Alka Lohmann, Training and Calibration Program Manager
Pete Marone, Department Director
Stephanie Merritt, Department Counsel
Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology
Steve Siegel, Deputy Director
Elise Stroble, Grants Administration/Policy Analyst

47 **Call to Order by Chairman Caroline Juran**

48
49 Chairman Juran called the meeting of the Forensic Science Board (“Board”) to order at 9:07 a.m.
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51 **Adoption of Agenda**

52
53 Chairman Juran asked if there were any additions or changes to the draft agenda for the meeting.
54 Being none, Mr. Benjamin moved to adopt the agenda, which was seconded by Mr. Morrogh and
55 adopted by unanimous vote of the Board.
56

57 **Approval of Draft Minutes of May 11, 2011 Meeting**

58
59 Chairman Juran asked if there were any changes or corrections to the draft minutes from the May
60 11, 2011 meeting. Mr. Morrogh moved to adopt the minutes of the May 11, 2011 meeting,
61 which was seconded by Sheriff Lipa and adopted by unanimous vote of the Board.
62

63 **Chairman’s Report**

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65 Chairman Juran, Executive Director of the Board of Pharmacy, reported that she was honored to
66 have been elected chair and would look forward to conducting meetings of the board in the same
67 manner as her predecessor, respecting the view of all members and the public’s interest in the
68 business of the Board and the Department. Chairman Juran expressed her wish to have full
69 participation of board members or designees at all meeting and to continue the spirit of
70 cooperation and collegiality that has characterized this Board’s deliberations in recent years.
71

72 **DFS Director’s Report**

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74 Regarding facilities, Director Pete Marone informed the Board that the Eastern Laboratory has
75 begun moving to the 5th floor expansion and retro-fitting other sections. The design phase is in
76 progress for the next section to be expanded.
77

78 Regarding the 30-60-90 day workload summary report, Director Marone summarized average
79 days in systems for several different sections and reported on progress being made on old cases.
80 Director Marone noted a continuing concern regarding Toxicology but progress with the training
81 of new toxicologists.
82

83 **Resources and Budget:** The Department is hoping to reestablish the 3rd Training Academy
84 session. To do so, DFS will need to add another training position. DFS analyzed 62 cases
85 Synthetic Cannabinoids in July. The Department may need to hire an additional scientist to
86 handle these cases.
87

88 **Grants:** Director Marone reviewed the grants that have been awarded and the grants that are
89 pending. The Board was provided a handout that summarized these grants.
90

91 Mr. Benjamin asked if the measurements of uncertainty will be a part of reports? Director
92 Marone explained that there are a lot of specifics and the Department is working with the
93 American Society of Crime Laboratory Directors on these issues.

94
95 Laboratory News: Director Marone introduced the new Physical Evidence Program Manager,
96 Sabrina Cillessen, who was hired on July 10, 2011. Director Marone informed the Board that
97 DFS has notified user agencies that it will cease printing photographs from conventional film
98 after the first of next year. DFS has also helped some local law enforcement agencies to obtain
99 grant funds to purchase digital photographic equipment.

100
101 Stochastic Threshold/Population Statistical Calculations: Mr. Brad Jenkins, Forensic Biology
102 Program Manager, updated the Board on developments since the May Board meeting. Mr.
103 Jenkins informed the Board about contracting with a consultant for recalculations, validation and
104 training. No contract has been awarded for the purchase of statistical software at this time.
105 Steve Benjamin asked whether the Department has already entered into a contract. Mr. Jenkins
106 indicated that DFS contracted with Cybergenetics for the recalculating of population statistics for
107 certain cases where needed. Cybergenetics is issuing reports and testifying to regarding their
108 reports as required. The Department also is receiving some training and tracking upcoming
109 cases. To the extent possible, cases will be held until DFS analyst training is completed. Mr.
110 Jenkins reported that the expenses for Cybergenetics services are being paid by the Department,
111 as part of the contract. Mr. Benjamin inquired about the date by which the Department's staff
112 training will be completed, and Mr. Jenkins responded that training should be completed by the
113 Fall 2011.

114
115 Synthetic Cannabinoids: Ms. Linda Jackson, Chemistry Program Manager, updated the Board
116 on the Department's experience with regard to synthetic cannabinoids since March 23, 2011,
117 when emergency legislation prohibiting ten such compounds went into effect. Ms. Jackson
118 informed the Board that the Department is tracking submission of compounds not on the
119 prohibited list "for future reference." Mr. Marone informed the Board that a memo, a "white
120 paper" on Analysis of Synthetic Cannabinoids in Seized Drug Samples, was issued to our user
121 agencies on July 19, 2011. A copy of the memo will be e-mailed to the Board members for their
122 information. Ms. Howard requested that a presentation be made to the Crime Commission
123 meeting on synthetic cannabinoids at either its September 20th or November 16th meeting.
124 Chairman Juran mentioned that she also will inform the Board of Pharmacy about the
125 presentation to the Crime Commission.

126
127 Bullcoming v. New Mexico: Department Counsel Stephanie Merritt informed the Board about a
128 recent U.S. Supreme Court case of possible relevance. *Bullcoming* involved a DUI prosecution
129 in which the toxicology certificate of analysis was admitted along with the testimony of a
130 scientist who, while a lab employee familiar with the toxicology instrumentation and procedure,
131 was not the examiner who "certified" or signed the certificate of analysis. Further, this witness
132 had not observed nor participated in the analysis. In a 5-4 Supreme Court opinion, the court held
133 that the admission of the certificate of analysis, without the signing examiner's presence and
134 testimony, violated the requirements of the Sixth Amendment's Confrontation Clause because
135 the surrogate witness' testimony failed to meet constitutional requirements.

137 **Old Business**

138
139 Ms. Merritt also provided an update on Regulations for Obtaining Information from the DNA
140 Data Bank and Procedures for Verification and Authorization of Persons Requesting Information
141 from the DNA Data Bank, 6 VAC 40-60. Ms. Merritt explained to the Board the regulations are
142 in the proposed stage for consideration by the Governor's Office.

143
144 **Post-Conviction DNA Testing Program and Notification Project**

145 Notification Subcommittee Chair Kristen Howard updated the Board on recent training sessions
146 for *pro bono* attorneys. The Mid-Atlantic Innocence Project has presented four recent sessions.
147 A DVD of the training program was created. Ms. Howard informed the Board that there has
148 been a decline in the number of *pro bono* attorneys signing up to assist with the notification
149 effort and that some volunteers have not completed their case assignments. Ms. Howard
150 reported that she, Ms. Jaspens and the Innocence Project counsel collaborated on revised
151 notification letters to be mailed to non-notified suspects whose current addresses have possibly
152 been determined. The Department mailed approximately 200 notification letters to addresses
153 obtained from the Westlaw database from July/August. Ms. Howard expressed to the Board that
154 this has been a major project and they are moving slower than anticipated. Ms. Howard
155 suggested the Board consider an advertising campaign or public announcement to help with the
156 notification project. Mr. Benjamin volunteered his assistance to Ms. Howard in recruiting more
157 *pro bono* attorneys to help with the project.

158
159 Regarding notification and testing updates, Ms. Jaspens informed the Board that there have been
160 381 confirmed suspect notifications to date. There are 463 undelivered notifications. There has
161 been significant progress in the testing program since 2009. There are 785 cases in the program
162 with evidence and a named suspect who has been confirmed as convicted of a felony crime
163 against a person. To date, there are 691 cases in which certificates of analysis have been issued.
164 There are 91 cases that have been tested but not yet reported. Three cases are waiting for
165 testing. For suspects whose convictions meet NIJ criteria, 70 suspects were determined "not
166 indicated/eliminated" on the tested evidence. Among suspects who do not meet NIJ criteria, 21
167 were "not indicated/eliminated."

168
169 Director Marone informed the Board that there are fewer than 100 cases to process and
170 completion is expected by March 2012. Director Marone advised the Board that the Urban
171 Institute has asked the Department to provide suggestions to other states with similar issues.

172
173 Mr. Benjamin asked whether other states have conducted such testing programs. Director
174 Marone answered no, DFS found it had the evidence and tested what it had. Mr. Benjamin
175 asked if any other states similarly have evidence that could be tested. Director Marone
176 responded that he did not know. Mr. Benjamin asked if the Department would publish anything
177 on this project. Director Marone responded that might occur when the project is completed. Mr.
178 Benjamin recommended publishing something on the Department's accomplishments on the
179 project. Ms. Howard suggested a press release when the project is completed.

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182 **New Business**

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184 None

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186 **Public Comment**

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188 None

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190 **Next Meeting**

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192 The Forensic Science Board will meet on Wednesday, October 12, 2011 at 9 a.m.

193

194 **Adjournment**

195

196 Ms. Herndon moved that the meeting of the Board be adjourned, which was seconded by Mr.
197 Morrogh and passed by unanimous vote.

198

199 The meeting adjourned at 10:15 a.m.

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