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**Final - Minutes**  
**Forensic Science Board Meeting**  
**May 13, 2015**

**Department of Forensic Science, Central Laboratory, Classroom 1**

**Board Members Present**

John Colligan, Designee of Francine C. Ecker, Director, Department of Criminal Justice Services  
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  
Jo Ann Given, Forensic Science Board Chair and Member, Scientific Advisory Committee  
William T. Gormley, M.D., Chief Medical Examiner  
Karl R. Hade, Executive Secretary of the Supreme Court  
Kristen J. Howard, Executive Director of the Virginia State Crime Commission and 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  
Robert Northern, Lt. Colonel, Virginia State Police and Designee of Colonel W. Steven Flaherty, Superintendent, Virginia State Police  
David A. C. Long, Esq.  
Alphonse Poklis, Ph.D., Member, Scientific Advisory Committee

**Board Members Absent**

Richard L. Morris, Delegate and Designee of Delegate David B. Albo, Chair, House Courts of Justice Committee  
Claiborne H. Stokes, Jr., Commonwealth's Attorney, Goochland County  
Richard Vorhis, Esq., Designee of Attorney General Mark R. Herring

**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  
Sabrina S. Cillessen, Physical Evidence Program Manager  
Amy M. Curtis, Department Counsel  
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  
Melissa Kennedy, Calibration and Training Program Manager  
M. Scott Maye, Chemistry Program Manager  
Alka B. Lohmann, Director of Technical Services  
Carisa Studer, Legal Assistant

**Call to Order**

47  
48 Jo Ann Given, Chair of the Forensic Science Board (“Board”), called the meeting of the Board to  
49 order at 9:03 a.m. The Chair welcomed the Board members and the Department of Forensic  
50 Science (“Department” or “DFS”) staff.

51  
52 **Adoption of Agenda**

53  
54 The Chair asked if there were any additions or changes to the draft agenda for the meeting.  
55 Being none, Dr. Poklis made a motion to adopt the agenda, which was seconded by Dr. Gormley  
56 and adopted by unanimous vote of the Board.

57  
58 **Approval of Draft Minutes of the January 7, 2015 Meeting**

59  
60 The Chair asked if there were any changes or corrections to the draft minutes from the January 7,  
61 2015 meeting. Being none, Lt. Colonel Northern made a motion to adopt the minutes, which  
62 was seconded by Dr. Gormley and approved by unanimous vote of the Board.

63  
64 **Chair’s Report**

65  
66 There was no formal report from the Chair.

67  
68 **DFS Director’s Report**

69  
70 Agency Events: Director Jackson advised the Board of a media event held on April 13, 2015 for  
71 the 10,000<sup>th</sup> DNA Data Bank Hit. Governor McAuliffe made the announcement at the press  
72 conference held at the Central Laboratory. Senator Mark Warner and Secretary Brian Moran  
73 also attended the event. Governor McAuliffe and Senator Warner toured the Forensic Biology  
74 Section of the Central Laboratory prior to the announcement.

75  
76 Director Jackson noted that the Data Bank implemented the use of new Fusion multiplex kits in  
77 April 2015. The new kits, which analyze 24 areas of DNA as opposed to the previous 16 areas,  
78 will increase the discrimination ability of DNA Data Bank searches, and will make Virginia’s  
79 Data Bank compatible with international databases in Europe and Asia.

80  
81 Director Jackson updated the Board on the project to expand the Breath Alcohol records and  
82 reports that are made available online. Currently, certain Instrument Records in “.pdf” format  
83 are available on the DFS website dating from 2013 to the present. Grant funding received from  
84 the Virginia Highway Safety Office is being used to make additional records available on the  
85 Department’s website in “.pdf” format. These records include additional instrument records,  
86 redacted subject test records, operator license information, and statistical reports. Anticipated  
87 completion date is the summer of 2015.

88  
89 Facilities:

90 Director Jackson updated the Board on the Western Laboratory expansion and renovation  
91 project, which is on schedule. The project will double the square footage of the existing  
92 laboratory. The Office of the Chief Medical Examiner in the Western Laboratory will also gain

93 additional square footage. The anticipated completion date for the new construction is December  
94 2015, and the renovations to the existing laboratory are scheduled to begin in January 2016 with  
95 an expected completion date of August 2016.

96  
97 The Department was awarded detailed planning money in the budget for the expansion of the  
98 Central Laboratory. This project would allow the DFS operations currently housed across the  
99 street in Biotech 8 to be moved back into the expanded Central Laboratory. On May 7, 2015,  
100 DFS began conducting interviews to select an architect and engineering firm for the Central  
101 Laboratory project.

102  
103 Budget Resources:

104 Director Jackson provided an update on the Department's Budget since the January 7, 2015  
105 Board meeting. The Department implemented the required budget reductions including staff and  
106 service reductions from the FY15 Budget. However, during the 2015 General Assembly Session  
107 the Department was allocated funds to restore funding for eight scientist positions that had been  
108 either eliminated or held open in FY15.

109  
110 Director Jackson gave an overview of the staffing impact and service reductions by discipline.  
111 She noted that two Digital Multimedia Evidence (DME) Section scientist positions were  
112 eliminated in the FY15 budget reductions. As a result, the DME Section eliminated video  
113 enhancements, audio enhancements and image comparisons. The funding for the two scientist  
114 positions has been restored for the FY16 budget, which will allow for the reinstatement of video  
115 enhancements.

116  
117 Three Trace Evidence Section scientist positions were eliminated due to the FY15 budget  
118 reductions. The Trace Evidence Section reduced a number of services as a result, including  
119 limiting primer residue analysis to cases where there is a shooting victim, and reducing services  
120 in fiber, hair, explosives, and general chemical analysis. All three positions were restored in the  
121 FY16 budget.

122  
123 Discussion ensued about DFS staffing and services. The Department has posted on its website  
124 the Policy Notices that delineate the reduction in services.

125  
126 Director Jackson reminded the Board that the FY15 and FY16 Budgets included funding to  
127 review archived case files and create a database of the historical files. This funding covers the  
128 cost of personnel, equipment, and data storage. Other budget items include funding for retesting  
129 of Post-Conviction DNA cases with "inconclusive" results, and funding for the expansion of the  
130 DNA Data Bank to include additional convicted misdemeanants. Additional DNA testing kits  
131 and laboratory supplies will be required to process the DNA samples from the adults who have  
132 been convicted of these additional misdemeanor offenses.

133  
134 Grants: Director Jackson gave a brief overview of all current grants. There are six current  
135 grants; the FY13 and FY14 DNA Capacity Enhancement and Backlog Reduction Program  
136 grants, the FY13 and FY14 Paul Coverdell grants, the *Abbott* Settlement Forfeiture grant, and the  
137 FY15 Highway Safety grant.

139 There are three pending applications for grants that the Department received approval from the  
140 Board to submit applications and accept, if awarded. The first pending grant is the “Research  
141 and Development of Publicly Funded Forensic Science Laboratories to Assess the Testing and  
142 Processing of Physical Evidence.” If awarded, the funds will be used to develop, validate and  
143 disseminate two quantitative LC/MS/MS methods for the analysis of whole blood in accordance  
144 with the SWGTOX method validation guidelines. The other two grants are the FY16 Highway  
145 Safety Grant and the FY15 Paul Coverdell Grant program.

146  
147 Director Jackson presented three grants to the Board requiring approval; the FY15 Paul  
148 Coverdell Grant, the FY16 Highway Safety Grant, and the FY15 DNA Capacity Enhancement  
149 and Backlog Reduction Program. Ms. Juran made a motion for the Board to approve the  
150 Department applying for and accepting the funds for these three grants, if awarded, which was  
151 seconded by Ms. Howard and approved by unanimous vote of the Board.

152  
153 Workload/Backlog: Director Jackson presented the Department’s statistics in quarterly format  
154 using graphs reflecting cases received, cases completed, the caseload, and the average number of  
155 days in the system for each Section. Director Jackson noted the decrease in case submissions to  
156 the Controlled Substances Section since the implementation of the new marijuana policy. The  
157 number of cases completed has also gone up and could also be attributed to an increase in  
158 staffing.

159  
160 Director Jackson reminded the Board that there was an increase in cases for the Forensic Biology  
161 Section due to the resubmission of cases for supplemental reports on statistics that were issued.  
162 She anticipates turnaround times improving from this point forward since most of the  
163 supplemental reports have been issued.

164  
165 Director Jackson informed the Board that although the Questioned Documents Section was  
166 originally on the list for budget reductions, with two scientists being laid off, DFS was  
167 subsequently informed by the Department of Planning and Budget that the Questioned  
168 Documents Section was removed from the list of budget reductions.

169  
170 Director Jackson informed the Board that, for the last several quarters, the Toxicology Section  
171 has been receiving more cases than completing. Improving turnaround times for medical  
172 examiner cases has been a priority. The Office of the Chief Medical Examiner must have a  
173 minimum of 90% of toxicology reports completed within 90 days in order to meet their  
174 accreditation standards. The Western Laboratory is the Department’s only laboratory not  
175 currently meeting this timeline.

176  
177 Director Jackson also explained that the Trace Evidence Section’s quarterly statistics show that  
178 the number of cases received by the Section has decreased as a result of the new policy  
179 addressing the acceptance of cases for primer residue analysis.

180  
181 **Scientific Advisory Committee Report**

182  
183 Dr. Alphonse Poklis, a member of the Scientific Advisory Committee (SAC), reported to the  
184 Board that the Toxicology Subcommittee met on May 12, 2015. The Subcommittee, which is

185 chaired by Dr. Poklis, completed its review of the HPLC/MS/MS procedures for amphetamines  
186 and anti-epileptic drugs in the Toxicology Procedures Manual, and the SAC closed its review of  
187 the Manual. The Subcommittee provided comments and made suggested changes to DFS staff  
188 for consideration. DFS will review the Subcommittee's suggestions and revise the procedures as  
189 needed.

190  
191 Ms. Given informed the Board that the SAC met on May 12, 2015. At its meeting, the SAC  
192 amended its By-Laws. The majority of the amendments were the result of statutory changes that  
193 have been made to the laws impacting the SAC since the By-Laws were initially adopted. The  
194 SAC also adopted a Policy on Individual Participation in SAC Meetings by Electronic Means.  
195 The SAC discussed the draft policies and documents open for comment from the National  
196 Commission on Forensic Science (NCFS) that had been disseminated by ASCLD/LAB to all  
197 interested parties. The SAC decided not to make any recommendations for comments on the  
198 NCFS documents to the Board. Given the limited time available, the consensus of the  
199 Committee was that they would each take the time to review the documents and make any  
200 comments directly to the NCFS as individuals. Finally, Ms. Given advised the Board that the  
201 next meeting of the SAC has been rescheduled from October 14, 2015 to October 16, 2015.

## 202 203 **Old Business**

### 204 205 **Status of the Post-Conviction DNA Testing Program and Notification Project**

206 Kristen Howard, Chair of the DNA Notification Subcommittee, reported to the Board that the  
207 Subcommittee met on March 16, 2015 to discuss the Virginia State Crime Commission's  
208 (VSCC) recommendation that DFS retest the post-conviction cases where there was an  
209 "inconclusive" result. The Crime Commission had recommended that the retesting be prioritized  
210 as follows: 1) cases where spermatozoa is present and the suspect is still incarcerated; 2) cases  
211 where the suspect is still incarcerated; and 3) cases where spermatozoa is present and the suspect  
212 is not still incarcerated; and 4) all other cases. The Board subsequently requested the  
213 Subcommittee to develop recommendations regarding how the 400+ "inconclusive" cases should  
214 be screened to determine the probative value of testing.

215  
216 The Subcommittee discussed first screening the approximately 60 "inconclusive" cases that were  
217 identified as having sperm or seminal fluid present based on the review of the old files by the  
218 Forensic Biology Section. It was decided that a workgroup comprised of staff from the VSCC,  
219 Shawn Armbrust with the Mid-Atlantic Innocence Project (MAIP), and Catherine Mullins with  
220 the Indigent Defense Commission (IDC) would meet to conduct the legal review of the  
221 approximately 60 files to determine whether testing could be probative of the defendant's guilt or  
222 innocence. The Subcommittee used this review as a pilot project to determine the methodology  
223 for how the file review process for all inconclusive cases should proceed.

224  
225 The Subcommittee met for a second time on April 20, 2015 to discuss the results of the screening  
226 of the first 60 "inconclusive" cases by the workgroup. A worksheet of pertinent information was  
227 completed for each defendant in each case to determine if further testing could be probative of  
228 the defendant's guilt or innocence. There were 67 defendants identified in the 60 cases. The  
229 workgroup recommended that additional testing be conducted for 33 defendants, that additional  
230 information was required before a recommendation as to testing could be made for 13

231 defendants, and that testing was not recommended for the remaining 21 defendants. For the  
232 cases where the workgroup indicated it required additional information to determine whether  
233 testing should be recommended, the workgroup requested presentence reports in the cases from  
234 the Department of Corrections.

235  
236 On April 1, 2015, members of the workgroup met with DFS staff to discuss a strategy for  
237 reviewing the remaining ~ 360 “inconclusive” case files where no sperm or seminal fluid was  
238 identified. It was determined that a 10% sample of the ~360 would be screened. DFS would be  
239 able to use the information from the 10% review to extrapolate and determine whether it  
240 anticipates the \$150,000 in funding provided through the Budget will be sufficient to pay for the  
241 retesting or whether grant funding will be necessary.

242  
243 On April 8, 2015, the workgroup met to review the 36 cases. The workgroup identified one case  
244 for additional testing, 6 cases requiring more information to determine if testing should be  
245 recommend, and 29 cases where retesting was not recommended. Based on this review, it is  
246 anticipated that the \$150,000 provided in the budget should be sufficient to outsource the  
247 retesting of all “inconclusive” cases recommended for additional testing.

248  
249 On April 15, 2015, members of the workgroup met with DNA Program Manager Brad Jenkins  
250 and DNA Senior Forensic Scientist Shelley Edler to review the legal recommendations for  
251 testing. It was determined that 32 of the 33 “inconclusive” cases containing sperm or seminal  
252 fluid recommended for testing as a result of the legal review would be sent for additional testing.  
253 The remaining case recommended for testing contained only reference samples (no evidentiary  
254 samples), and therefore, should not be sent for additional testing.

255  
256 The Subcommittee recommended to the Forensic Science Board a plan of action for the review  
257 of the 400+ cases with “inconclusive results” that includes: 1) a legal case file review by  
258 representatives from the MAIP, the IDC, and the VSCC to determine whether retesting the  
259 retained evidence in the case file could be probative of the defendant’s guilt or innocence; and 2)  
260 a scientific review by DFS DNA staff of those files recommended for testing during the legal  
261 review. For any case where the group conducting the legal review indicates a need for additional  
262 information, VSCC staff will contact the Department of Corrections for the presentence report  
263 from the case so that the additional information can be used for the legal review and a  
264 recommendation as to testing can be ascertained. Cases that are recommended for testing as a  
265 result of the legal and scientific review will be sent for the recommended testing to the private  
266 laboratory retained by DFS using the \$150,000 from the budget amendment.

267  
268 Mr. Donoghue moved that the Board accept the DNA Notification Subcommittee’s proposal for  
269 a plan of action for the review of the approximately 400+ cases with “inconclusive results,”  
270 which was seconded by Mr. Long and passed by unanimous vote.

271  
272 Ms. Howard informed the Board that the VSCC has made the Post-Conviction DNA Testing  
273 Program and Notification Project a top priority and agreed to dedicate two staff members to the  
274 completion of the project. The VSCC staff will manually review the files and confirm the testing  
275 and notification status of each listed suspect in each case.

276

277 Ms. Herndon thanked Ms. Howard and the staff of the VSCC for the tremendous time and effort  
278 they have and will be contributing to wrap up the Post-Conviction DNA Testing Program and  
279 Notification Project.

280  
281 Mr. Jenkins reported to the Board that the Department will put out an Invitation for Bid (IFB) to  
282 select a private laboratory to conduct the testing on the “inconclusive” cases selected for  
283 retesting.

284  
285 SB658 PERK Inventory Update:

286 DFS Central Lab Forensic Biology Section Group Supervisor Theresa Francis gave an update on  
287 the status of the PERK Inventory. Ms. Francis reviewed the requirements of Senate Bill 658 as  
288 well as the timeline for the PERK Inventory. As of May 11, 2015, 357 out 385 (approximately  
289 93%) of state and local law enforcement agencies in Virginia had submitted their inventories.  
290 Additional targeted emails and phone calls will be made to encourage the remaining agencies to  
291 submit their inventories. The Department’s report on the PERK Inventory will be submitted to  
292 the General Assembly by July 1, 2015.

293  
294 **New Business**

295  
296 Request from ASCLD/LAB:

297 Director Jackson informed the Board that the American Society of Crime Laboratory  
298 Directors/Laboratory Accreditation Board (ASCLD/LAB) recently sent to all interested parties  
299 information regarding the draft policies and documents open for comment from the National  
300 Commission on Forensic Science (NCFS). Links to these materials were forwarded to the Board  
301 prior to the meeting. The Department also provided the information to the SAC in anticipation  
302 that the Board may want to give the SAC an opportunity to look at the documents and provide  
303 feedback to the Board before the May 15, 2015 deadline.

304  
305 Director Jackson provided background information on the NCFS, which is a federal advisory  
306 committee to the U.S. Attorney General. She noted that the SAC discussed the documents at its  
307 on May 12, 2015. However, the SAC did not make any recommendations to the Board regarding  
308 the documents. Given the limited time available, the consensus of the SAC was that they would  
309 each take the time to review the documents and make any comments directly to the NCFS as  
310 individuals.

311  
312 The Board recessed from 10:20am to 10:30am.

313  
314 Board of Pharmacy Regulation Adding Compounds to Schedule I

315 Chemistry Program Manager Scott Maye informed the Board that, pursuant to Code § 54.1-  
316 3443(D), the Board of Pharmacy amended its regulation through an expedited process to  
317 temporarily place three new compounds into Schedule I. DFS had identified the three  
318 compounds for recommended inclusion by the Board of Pharmacy into Schedule I. All three will  
319 be added permanently through legislative action effective July 1, 2015.

320  
321 Mr. Maye also informed the Board that the Department would be recommending six new analogs  
322 to the Board of Pharmacy for emergency scheduling. The Board of Pharmacy next meets in June

323 2015. Discussion ensued on the process of adding new compounds to Schedule I or II by means  
324 of emergency scheduling through the Board of Pharmacy. To date, the Department does not  
325 know if there have been any successful prosecutions using the newly added analogs.  
326

### 327 2015 Legislation

328 Ms. Herndon reminded the Board of the Department's two agency bills, which she discussed at  
329 the Board's January meeting. The first bill, which was carried by Delegate Watts, grants the  
330 State Police the explicit authority to seek confirmation from the DNA Data Bank about whether  
331 any person required to register with the Sex Offender Registry has provided a DNA sample to  
332 the DNA Data Bank. The bill streamlines the process and allows DFS to directly notify State  
333 Police whether persons in the Sex Offender Registry have provided DNA samples as required by  
334 law. The bill's language mirrors the language in the juvenile offender DNA Data Bank statute.  
335 The second DFS bill, which was carried by Senator Marsden, grants law enforcement agencies  
336 the authority to donate unclaimed firearms to DFS for use in its reference collections.  
337 Previously, the statute required law enforcement to destroy any unclaimed firearm once it has  
338 been in their possession for more than 60 days, provided there were reasonable attempts made to  
339 notify the rightful owner, and the Commonwealth's Attorney had advised that the firearm is not  
340 needed for criminal prosecution. The bill provides law enforcement with the option of donating  
341 an unclaimed firearm to DFS for use in its reference collections in lieu of destroying the firearm.  
342 DFS must agree to the donation of any such unclaimed firearm. Ms. Herndon noted that the bill  
343 was amended during the Session to extend the period that law enforcement must hold a firearm  
344 in its possession from 60 to 120 days before it is destroyed or donated to DFS.  
345

346 Ms. Herndon also informed the Board of other legislation related to the Department that passed  
347 the General Assembly. There were three different bills introduced that would have required  
348 sampling of persons convicted of additional specified misdemeanors for the Data Bank. The  
349 bills, as passed, add nine more misdemeanors and apply only to adults who are convicted of the  
350 offenses. It was estimated that an additional 3,265 samples would be received annually as a  
351 result of nine new offenses being added to statute. The Department anticipates being able to  
352 absorb the additional samples with existing staff; however, there is an estimated \$31 per sample  
353 cost to the Data Bank for testing kits and laboratory supplies. Accordingly, \$101,200 was added  
354 to DFS budget ( $\$31 \times 3,265$ ) to offset these additional costs to DFS. Additionally, as a result of  
355 an increased withdrawal fee for the collection of each sample, the bills resulted in a positive  
356 fiscal impact to the state of nearly \$68,000 annually.  
357

358 There were two bills related to marijuana. The first bill establishes a licensing program for the  
359 cultivation of industrial hemp. As introduced, the bills would have required DFS to quantitate  
360 all marijuana cases to differentiate marijuana from industrial hemp. DFS estimated it would  
361 require an additional 41 Controlled Substances examiners because of the time consuming nature  
362 of quantitations. The bills were amended to alleviate DFS' concerns and eliminate its fiscal  
363 impact. The second marijuana bill addresses the possession of marijuana for medical purposes.  
364 It creates an affirmative defense to possession of marijuana where Cannabidiol oil or THC-A oil  
365 is possessed pursuant to a valid written certification from a doctor to treat or alleviate the  
366 symptoms of intractable epilepsy.  
367



368 Ms. Herndon also reviewed the bills that add to Schedule I in the Code the three new compounds  
369 added temporarily to Schedule I by the Board of Pharmacy via the expedited regulatory process.  
370 There was also a Board of Pharmacy bill that removes hydrocodone combination products from  
371 Schedule III, and classifies tramadol and two other drugs as Schedule IV controlled substances.  
372 Finally, she advised the Board of bills that add powdered or crystalline alcohol to the definition  
373 of alcoholic beverages and prohibit containers sold in or shipped into the Commonwealth from  
374 containing such product. The bills make it a class 1 misdemeanor for anyone to purchase,  
375 possess, offer for sale or use, sell or use a powdered or crystalline alcohol product.

376  
377 Amendments to the DNA Data Bank Regulations:  
378 Department Counsel Amy Curtis informed the Board that the DNA Data Bank regulations need  
379 to be amended as a result of the DFS agency bill that goes into effect on July 1, 2015, and that  
380 requires the State Police to seek confirmation from the Data Bank about whether any person  
381 required to register with the Sex Offender Registry has provided a sample for the Data Bank. The  
382 Board is required to approve any regulatory action by the Department. The current regulation,  
383 6VAC 40-60-50, needs to be amended to add State Police to the agencies with which DFS has a  
384 secure electronic exchange of data. Because the amendment is necessary to conform the  
385 regulation to new statutory language, it is exempt from the full regulatory process. Ms. Curtis  
386 will post the regulatory amendment on the Commonwealth's Townhall website as required by  
387 statute. Ms. Curtis provided a copy of the language for the amended regulation for the Board's  
388 review. Ms. Juran moved that the Board adopt the language to promulgate the regulations for 6  
389 VAC 40-60-50, which was seconded by Dr. Poklis and passed by unanimous vote.

390  
391 Public Comment  
392  
393 None.

394  
395 Next Meeting  
396  
397 The Forensic Science Board will meet again on August 12, 2015, and October 15, 2015.

398  
399 Adjournment  
400  
401 Dr. Poklis moved that the meeting of the Board be adjourned, which was seconded by  
402 Mr. Donoghue and passed by unanimous vote.

403  
404 The meeting adjourned at 11:05 a.m.