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Final Minutes
Forensic Science Board Meeting
July 14, 2021
Department of Forensic Science, Central Laboratory, Classroom 1

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Board Members Present

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Megan L. Clark, Commonwealth's Attorney, Prince Edward County
Colleen R. Courtney (Designee of Denise M. Toney, Ph.D., Director of the Division of Consolidated Laboratory Services)
Colonel Maggie A. DeBoard, Chief of Police, Herndon Police Department
Shannon Dion, Director of the Department of Criminal Justice Services, *Chair*
Leslie E. Edinboro, Ph.D., Scientific Advisory Committee Member
William T. Gormley, M.D., Chief Medical Examiner
Karl R. Hade, Executive Secretary, Supreme Court of Virginia
Michael HuYoung, Esq.
Caroline D. Juran, Executive Director, Board of Pharmacy
Richard P. Meyers, Scientific Advisory Committee Member
Lieutenant Colonel Tracy S. Russillo (Designee of Colonel Gary T. Settle, Superintendent, Virginia State Police)

Board Members Absent

Senator John S. Edwards, Chair, Senate Courts of Justice Committee
Delegate Charniele L. Herring, Chair, House Courts of Justice Committee
Kristen J. Howard (Designee of the Chair of Virginia State Crime Commission, Delegate Charniele L. Herring)
Holli Wood (Designee of Attorney General Mark R. Herring)

Legal Counsel for the Forensic Science Board

Michelle Welch, Assistant Attorney General

Staff Members Present

Jeffrey D. Ban, Central Laboratory Director
David A. Barron, Ph.D., Deputy Director
Nancy L. Batterson, Forensic Administrative Specialist III, *Board Secretary*
Sabrina S. Cillessen, Physical Evidence Program Manager
Leslie H. Ellis, Human Resources Director
Katya N. Herndon, Chief Deputy Director
James W. Hutchings, Ph.D., Toxicology Program Manager
Linda C. Jackson, Director
Amy C. Jenkins, Department Counsel
Bradford C. Jenkins, Forensic Biology Section Program Manager
Alka B. Lohmann, Director of Technical Services

47 Jessica B. Norton, Legal Assistant
48 Elizabeth Stroble, Grants and Administration Program Manager
49 Robyn B. Weimer, Chemistry Program Manager

50

51 **Call to Order**

52

53 Shannon Dion, Chair of the Board, called the meeting to order at 9:33 a.m. Ms. Dion requested
54 that Ms. Batterson call the roll to ensure that a quorum was present. Ms. Batterson called the roll,
55 and the members indicated their presence as follows:

56

57 Megan Clark – Present
58 Colleen Courtney – Present
59 Maggie DeBoard – Present
60 Shannon Dion – Present
61 Les Edinboro – Present
62 Senator John Edwards – Absent
63 William Gormley – Present
64 Karl Hade – Present
65 Delegate Charniele Herring – Absent
66 Kristen Howard – Absent
67 Michael HuYoung – Present
68 Caroline Juran - Present
69 Rich Meyers – Present
70 Tracy Russillo – Present
71 Holli Wood – Absent

72

73 Ms. Batterson advised that a majority of the Forensic Science Board (FSB) members were
74 present. Ms. Dion declared that a quorum was present.

75

76 Ms. Dion introduced two new members who were recently appointed to the FSB; Megan Clark,
77 who is serving as the Virginia Association of Commonwealth’s Attorneys’ representative, and
78 Michael HuYoung, who is serving in the criminal defense attorney seat. She then asked all Board
79 members and staff to introduce themselves, and introductions followed.

80

81 **Adoption of Agenda**

82

83 Ms. Dion advised that the first order of business was the adoption of the draft agenda for the
84 meeting, which was previously shared with the members by Ms. Batterson. She indicated that the
85 Department would like to add a New Item VII, New Business, for a Policy on Participation of
86 Forensic Science Board Members in Meetings by Electronic Means Pursuant to Virginia Code
87 §2.2-3708.2.

88

89 Ms. Dion asked if there were any other additions or suggested changes to the agenda. Being none,
90 she asked for a motion to amend the agenda to include the New Item VII under New Business as
91 requested by the Department. Dr. Gormley made a motion to amend the agenda, which was
92 seconded by Ms. Juran and adopted by unanimous vote of the Board.

93
94 Ms. Dion asked for a motion to adopt the draft agenda as amended. Ms. Clark made a motion to
95 adopt the agenda, which was seconded by Lt. Col. Russillo and adopted by unanimous vote of the
96 Board.

97
98 **Approval of Draft Minutes of the April 21, 2021 Board Meeting**
99

100 Ms. Dion asked if there were any proposed changes to the draft minutes from the April 21, 2021
101 meeting. Being none, she asked for a motion to approve the draft minutes. Mr. Hade made a
102 motion to approve the April 21, 2021 meeting minutes, which was seconded by Ms. Juran and
103 passed by unanimous vote of the Board.

104
105 **FSB Chair's Report**
106

107 Ms. Dion stated she did not have a report but wished to thank the Board members for having the
108 confidence in her to elect her as FSB Chair.

109
110 **DFS Director's Report**
111

112 Central Laboratory Capital Project
113

114 Director Jackson updated the Board on the progress of the Central Laboratory capital project. She
115 shared the final approved budget for the facility, which the Department of General Services (DGS)
116 presented to the Senate Finance & Appropriations Committee and the House Appropriations
117 Committee. Construction drawings are being prepared with a groundbreaking anticipated in early
118 2022 and building occupancy in 2024. The new facility, which has been in the works since 2013,
119 will be built on 21.8 acres of land that the Department purchased on Times-Dispatch Boulevard in
120 Hanover County.

121
122 Accreditation
123

124 Director Jackson updated the Board on the Department's accreditation. Each DFS regional
125 laboratory is accredited through ANAB as a testing laboratory, and Breath Alcohol is accredited
126 as a calibration laboratory. An off-site document surveillance visit of the Department that was
127 conducted in May was successfully completed. The current accreditation cycle expires September
128 30, 2022, and next year will be a full on-site assessment. The Department's Accreditation
129 Certificates and Scopes are available on the DFS website.

130
131 Policy Initiatives
132

133 Director Jackson discussed two new policy initiatives. First, she explained that the Department
134 developed its ONE Virginia Plan, a Diversity, Equity, and Inclusion strategic plan. An agency-
135 wide team, which consisted of 10 to 12 staff members representing all four labs, recommended
136 additional training and development for staff around diversity and inclusion and increased access
137 to information about forensic science in order to develop a broader pool of future applicants for
138 scientific positions.

139 Director Jackson also discussed Executive Order 77, which Governor Northam issued to reduce
140 plastic pollution and eliminate the need for new solid waste disposal facilities in Virginia. The first
141 phase of EO77 required the immediate cessation of use of certain items, including plastic water
142 bottles, plastic cutlery, and disposable plastic bags. There is an exception for medical, public health
143 or public safety use. DFS is requesting an exception for its use of plastic trash bags in the laboratory
144 areas.

145
146 Phase two of EO77 requires the development of a plan to eliminate the use of all non-medical
147 single-use plastic. Director Jackson advised that the Department's recycling programs are being
148 reviewed; however, there are reasons single-use plastics are used in the laboratory (e.g., to avoid
149 possible cross contamination between cases). DFS has notified the Department of Environmental
150 Quality (DEQ) of the reasons it uses disposable plastics in the laboratory. Director Jackson noted
151 that DFS met with Division of Consolidated Laboratory Services (DCLS) staff who share the same
152 concerns with eliminating single-use plastic laboratory supplies.

153
154 Honoring Dr. Paul B. Ferrara

155
156 On May 27th, DFS held a ceremony honoring Dr. Paul B. Ferrara, who served as Director of the
157 agency from 1985 – 2006. To mark the 10-year anniversary of Dr. Ferrara's passing, his wife,
158 Dale, presented DFS with a framed copy of the Memorial Resolution passed by the General
159 Assembly in celebration of his life and numerous contributions to the Department and the field of
160 forensic science. The framed resolution was hung below Dr. Ferrara's portrait in the lobby of the
161 Central Laboratory.

162
163 Laboratory Information Management System (LIMS) Projects

164
165 Director Jackson provided an update on the Department's Laboratory Information Management
166 System (LIMS) Projects. The new build for the prelog system, which will make the evidence
167 submission process more efficient, should be ready within the next couple of months.

168
169 Expunging electronic records is more difficult than expunging paper records. For the Expungement
170 Module, the Department's LIMS vendor is creating a mechanism to redact information required
171 for expungement within the system. The module is about halfway completed.

172
173 The DNA Data Bank Sample Tracking System will replace the Local Inmate Data System (LIDS),
174 which is the system currently used to check to see if an individual is already in the Data Bank, a
175 requirement before a sample is collected. The new Data Bank system also has a prelog component
176 that will allow the information about the sample to be entered into the system electronically when
177 it is collected and then accessed by Data Bank staff once the sample is received. Use of LIDS is
178 currently mandated in the Code so the Department will be working with the Administration on
179 legislation to require use of the new Data Bank system in place of LIDS.

180
181 Finally, Director Jackson discussed a project to use Power BI, a data visualization software, to
182 allow for easy review of DFS workload statistics, including case submissions, backlogs, and
183 average case turnaround times. This tool will allow users to choose dates for specific case statistics

184 and visualize trends over time. Once completed, the Department would like to be able to make this
185 additional information available on its website.

186
187 PERK Tracking

188
189 Director Jackson provided an update on the PERK Tracking System. The Sexual Assault Kit
190 Initiative (SAKI) grant awarded to the OAG provides funding for the PERK Tracking System
191 Coordinator position through 2023. Although use of the PERK Tracking System was mandated
192 July 1, 2020, not all law enforcement agencies have been trained on the System and not all agencies
193 are submitting their PERKs to DFS within 60 days as required by the PERK law. PERK Tracking
194 System Coordinator Madison Boden is continuing to contact these agencies to discuss the
195 requirements and help bring them into compliance. Director Jackson reminded members that
196 information on use of the PERK Tracking System is required to be included in the Board's Annual
197 Report to the General Assembly.

198
199 Forensic Training

200
201 Director Jackson noted that the Forensic Training Section only had to cancel one Forensic Science
202 Academy Session as a result of the pandemic. The Section is scheduled to hold its Annual
203 Retraining of Academy Alumni in person September 1 – 3, 2021, in Virginia Beach. The Section
204 transitioned to offering online courses during the pandemic and, as a result of positive feedback
205 received about the online offerings, plans to continue making some trainings available virtually.

206
207 Workload Statistics

208
209 Director Jackson advised the Board that the number of breath tests performed in the field continues
210 to be lower than the number performed pre-pandemic. She shared a graphic showing the percent
211 differences in overall breath tests by month.

212
213 Director Jackson shared statistics on case submissions and the backlogs for each section,
214 comparing Q2 for Calendar Year 2020 to the same period in 2021. She also shared statistics
215 showing submissions, the backlog, and average turnaround times, by discipline for the month of
216 June in 2019, 2020, and 2021 in order to illustrate workload statistics from before and after the
217 pandemic.

218
219 Submissions to the Controlled Substances Section continue to be significantly lower than in 2019.
220 The Controlled Substances backlog is also down markedly, and turnaround times are now under
221 30 days, which is the Department's goal.

222
223 Submissions to the Firearms & Toolmarks and Toxicology Sections, on the other hand, increased
224 between 2019 and 2021, 20% and 31% respectively. These increases have led to growing backlogs
225 for those sections.

226
227 Three open scientist positions were moved from Controlled Substances to Firearms to place the
228 resources where they are most needed. The Department has requested the funding for necessary
229 equipment for the three new Firearms positions through the American Rescue Plan Act (ARPA).

230 In order to focus its resources on cases most likely to yield investigative leads, on June 17, 2021,
231 the Department issued a Notice advising of a New National Ballistic Information Network
232 (NIBIN) Case Acceptance Policy. The Firearms & Toolmarks Section will no longer accept cases
233 for NIBIN examination that were collected more than one calendar year prior to potential
234 submission.

235
236 Director Jackson also reviewed with the Board reports showing statistical trends of cases received
237 and completed, as well as the case backlog and average turnaround times, for each of the scientific
238 disciplines for the most recent five quarters.

239
240 The Digital & Multimedia Evidence (DME) Section is fully staffed. The Section now has the
241 ability to unlock both Android and Apple-type phones.

242
243 The Latent Prints Section had the most success with teleworking because the examiners were able
244 to do their onscreen comparisons by using their VPN connections. The Section's backlog has been
245 steadily decreasing.

246
247 With fewer submissions and fully trained examiners, the Controlled Substance Section has been
248 able to significantly reduce its backlog and average turnaround times. While Department
249 submissions continue to be lower, other states have seen controlled substances case submissions
250 return to pre-pandemic levels. Accordingly, in order to maintain capacity, Controlled Substances
251 staff are helping out in other sections temporarily, but will remain in the Controlled Substances
252 Section to be ready to respond to anticipated increases in case submissions.

253
254 Director Jackson advised the Board the semi-quantitative testing method for cannabis was updated
255 to run both oil and plant material to determine whether they are marijuana or hemp. The
256 administrative threshold was changed to 1%; anything that has a ratio above the 1% standard is
257 being reported out as marijuana. Anything below the 1% standard is being reported out as cannabis.
258 The lab cannot differentiate marijuana from industrial hemp in infused edibles, seeds if by
259 themselves, or residues. The Department has developed a quantitative method for plant material
260 samples that are under the threshold, and plans for implementation in August. Once implemented,
261 DFS will distribute a memo discussing the method and any new submission guidelines resulting
262 from the legislation that went into effect July 1, 2021. Updated submission guidelines have not
263 been finalized, but will focus on accepting cases with criminal or contested civil charges. Director
264 Jackson asked the Board for thoughts or comments regarding the potential submission guidelines
265 and received no additional feedback from the members.

266
267 Director Jackson advised the Board that DFS recommended three compounds in April to the Board
268 of Pharmacy (BoP) for scheduling via the regulatory process. The compounds were considered at
269 the BoP meeting and approved to be scheduled through the expedited process.

270
271 Trace Evidence has appropriate staff for the level of casework submitted.

272
273 DNA submissions have not changed significantly, but the backlog has increased due to changes
274 made to the workflow in response to supply chain issues. Director Jackson provided the Board an
275 update on the previously reported pipette tip shortage. A supply of pipette tips has been secured

276 allowing the robotics to be reinstated in the DNA workflow for casework. The Forensic Biology
277 backlog has begun to decrease since securing supplies and reinstating use of robotics. The supply
278 chain will continue to be monitored. Dr. Courtney indicated that DCLS is still experiencing some
279 vendor shortages and backlogs of supplies.

280
281 Director Jackson explained to the Board that the Department will be making updates soon on how
282 complex DNA mixtures are reported. Although DFS has been using TrueAllele probabilistic
283 modeling software, the Forensic Biology Section has been validating STRMix, which is a
284 probabilistic modeling software used by many other labs across the country. DFS plans to add to
285 its capabilities and implement STRMix in the early Fall in each of the four laboratories. Additional
286 information on the use of STRMix will be provided at future meetings.

287
288 While DFS rebuilds capacity, a Memorandum of Understanding (MOU) is in place between the
289 Office of the Chief Medical Examiner (OCME) and DFS for the OCME to outsource toxicology
290 testing directly to a private lab; DFS is paying for the private toxicological testing. With the
291 submission increases, DFS is evaluating future resource and capacity needs. Other considerations
292 that may impact capacity projections include the impact of marijuana legalization on Driving
293 Under the Influence of Drugs cases and any policy changes that would increase drug screening for
294 high alcohol (over 0.10% BAC) case samples. DFS continues to strive to keep its Toxicology
295 turnaround times for OCME submissions under 90 days to meet their accreditation criteria.

296
297 Budget and Resources

298
299 Director Jackson presented the Board with an overview of the Department's FY21/FY22 biennial
300 budget.

301
302 Grants:

303
304 Director Jackson advised the Board of two grants the Department applied for since the last FSB
305 meeting. The FY2021 Paul Coverdell Forensic Science Improvement Grant will be split with the
306 OCME, and the funds will be utilized for continuing education for scientific staff in various
307 disciplines and to contract with the Forensic Advantage software provider to increase capabilities
308 of the LIMS to allow for a paperless, electronic review process for the generation of reports. The
309 FY2021 DNA Capacity Enhancement and Backlog Reduction Program Grant funds will be used
310 to increase/maintain capacity in the Forensic Biology and the DNA Data Bank Sections by
311 continuing to fund personnel, purchase supplies, add equipment, and provide required continuing
312 education for DNA scientists. As per the approval process, the grant applications were previously
313 approved by the Chair and Vice-Chair, but approval from the full Board is required for the
314 Department to accept the funds, if awarded.

315
316 Ms. Dion called for a motion for the Board to approve acceptance of the funds from the two grants,
317 if awarded. Ms. Clark made the motion, which was seconded by Colonel DeBoard and passed
318 unanimously by those members of the Board who voted. Ms. Dion, Mr. HuYoung, and Dr.
319 Gormley voted to approve acceptance of the FY2021 DNA Capacity Enhancement and Backlog
320 Reduction Program Grant, but they recused themselves from the vote on the FY2021 Paul
321 Coverdell Forensic Science Improvement Grant.

322 Director Jackson advised the Board that DFS applied for American Rescue Plan Act funds. The
323 funding is permitted to be used to address public safety by investing in technology and equipment
324 to allow law enforcement to more efficiently and effectively respond to the rise in gun violence
325 resulting from the pandemic. The request, if awarded, would add equipment for three additional
326 Firearms forensic scientists and purchase additional NIBIN equipment. Director Jackson stated
327 she is unsure if this is a grant.

328
329 Ms. Juran made a motion for the Department to accept the funds, if this is a grant, from the
330 American Rescue Plan Act Spending Proposal. The motion was seconded by Lt. Col. Russillo and
331 passed by a unanimous vote.

332 **Old Business**

333 **Proposed Regulatory Amendments**

334
335
336
337 Amy Jenkins, Department Counsel, provided an overview of proposed amendments to two of the
338 Department's regulations; 6VAC40-30, the Regulations for the Approval of Field Tests for
339 Detection of Drugs, and 6VAC40-50, the Regulations for the Approval of Marijuana Field Tests
340 for Detection of Marijuana Plant Material.

341
342 Ms. Jenkins reviewed the recommended amendments for 6VAC40-30, Regulations for the
343 Approval of Field Tests for Detection of Drugs, which are proposed to reflect the addition of a
344 second definition of marijuana under the Cannabis Control Act (Virginia Code §§ 4.1-600 et seq.)
345 Because the amendments are necessary to conform the regulation with the new Cannabis Control
346 Act, which went into effect July 1, 2021, the regulatory action is exempt under Code § 2.2-
347 4006(A)(4)(A) of the Administrative Process Act. Ms. Jenkins asked the Board to approve the
348 amendments to 6VAC40-30, Regulations for the Approval of Field Tests for Detection of Drugs,
349 as an exempt regulation.

350
351 Dr. Gormley made a motion to approve the proposed amendments to 6VAC40-30, the Regulations
352 for the Approval of Field Tests for Detection of Drugs, as an Exempt Final Regulation. The motion
353 was seconded by Dr. Edinboro and passed by a unanimous vote.

354
355 Ms. Jenkins also reviewed the proposed amendments to 6VAC40-50, Regulations for the Approval
356 of Marijuana Field Tests for Detection of Marijuana Plant Material, which will allow the
357 Department to consider for approval alternative field tests that can be utilized by law enforcement
358 for the identification of marijuana plant material. The proposed amendments would change the
359 definition of "field test" so that non-Duquenois Levine chemical tests and mobile instruments
360 could be considered for approval by the Department. The proposed amendments also outline the
361 process for the evaluation of these alternative field tests and set the fees that manufacturers must
362 pay for the evaluation of their product for approval for use by law enforcement. The fees for
363 chemical tests were adjusted in consideration of the new proposed requirement that the field test
364 must not only identify cannabis plant material, but also be able to distinguish marijuana from
365 industrial hemp. The Board and staff discussed the proposed amendments, as well as adding
366 foundational validation studies to the materials that the manufacturers of chemical tests must
367 provide when requesting the evaluation of their field tests. After the discussion, Ms. Jenkins asked

368 the Board to approve the amendments to 6VAC40-50, Regulations for the Approval of Marijuana
369 Field Tests for Detection of Marijuana Plant Material with the change proposed by the Board
370 members.

371
372 Mr. HuYoung made a motion to approve the proposed amendments to 6VAC40-50, Regulations
373 for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material, with the
374 addition of the reference to foundational validation studies for chemical field tests in 6VAC40-50-
375 30(B). The motion was seconded by Colonel DeBoard and passed by a unanimous vote.

376

377 **New Business**

378

379 **New Policy on Electronic Meeting Participation**

380

381 Katya Herndon, Chief Deputy Director, provided an overview of a draft Policy on Participation of
382 Forensic Science Board Members in Meetings by Electronic Means Pursuant to Virginia Code §
383 2.2-3708.2. Ms. Herndon explained that the adoption of a written policy by the Board is a
384 prerequisite to permitting members to participate remotely in meetings in accordance with Code
385 §2.2-3708.2. She provided an overview of the draft policy for the members.

386

387 After discussion by the Board and input from Counsel, Ms. Clark made a motion for the Board to
388 approve the Policy on Participation of Forensic Science Board Members in Meetings by Electronic
389 Means Pursuant to Virginia Code §2.2-3708.2. The motion was seconded by Mr. HuYoung and
390 passed by unanimous vote.

391

392 **Public Comment**

393

394 Ms. Dion inquired whether any member of the public would like to provide any comments. No
395 member of the public provided comment.

396

397 **Confirm future meeting date**

398

399 The Board is scheduled to meet next on Thursday, October 14, 2021 at 9:30 a.m.

400

401 **Adjournment**

402

403 Ms. Dion called for a motion to adjourn. Dr. Edinboro made a motion to adjourn the meeting,
404 which was seconded by Colonel DeBoard and adopted by unanimous vote of the Board.

405 The meeting adjourned at 11:19 a.m.

406