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**Final - Minutes**  
**Forensic Science Board Meeting**  
**May 24, 2017**

**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) – Chair  
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, Scientific Advisory Committee Member  
William T. Gormley, M.D., Chief Medical Examiner  
Karl R. Hade, Executive Secretary, Supreme Court of Virginia  
Kristen J. Howard, Executive Director of the Virginia State Crime Commission (Designee of  
Delegate Robert B. Bell, Chair, Virginia State Crime Commission)  
Sammy Johnson, (Designee of Caroline Juran, Executive Director, Board of Pharmacy)  
Sheriff Anthony A. Lippa, Jr., Caroline County  
David A. C. Long, Esq. – Vice-Chair  
Colette W. McEachin, Deputy Commonwealth's Attorney, City of Richmond  
Denise M. Toney, Ph.D., Director, Division of Consolidated Laboratory Services

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**Board Members Absent**

Francine C. Ecker, Director, Department of Criminal Justice Services  
Leslie E. Edinboro, Ph.D., Scientific Advisory Committee Member  
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**

Michelle Welch, Esq., Assistant Attorney General

**Staff Members Present**

Wanda W. Adkins, Office Manager  
Jeffrey D. Ban, Central Laboratory Director  
David A. Barron, Ph.D., Deputy Director  
Sabrina S. Cillessen, Physical Evidence Program Manager  
Amy M. Curtis, Department Counsel  
John T. Griffin, Northern Laboratory Director  
Leslie H. Ellis, Human Resources Director  
Katya N. Herndon, Chief Deputy Director  
James Hutchings, Ph.D., Toxicology Program Manager  
Linda C. Jackson, Department Director  
Bradford C. Jenkins, Forensic Biology Program Manager  
Alka B. Lohmann, Technical Services Director  
M. Scott Maye, Chemistry Program Manager  
Kevin M. Patrick, Western Laboratory Director

47 Susan Stanitski, Eastern Laboratory Director  
48 Carisa M. Studer, Legal Assistant

49  
50 **Call to Order**

51 Vince Donoghue, Chair of the Forensic Science Board (“Board”), called the meeting to order at  
52 9:32 a.m. Mr. Donoghue welcomed the Board members and Department of Forensic Science  
53 (“Department” or “DFS”) staff.

54  
55 Introductions were made of the Board members and Department staff.

56  
57 **Adoption of Agenda**

58 Mr. Donoghue asked if there were any additions or changes to the draft agenda for the meeting.  
59 Being none, Ms. McEachin moved to adopt the agenda, which was seconded by Colonel Flaherty  
60 and adopted by unanimous vote of the Board.

61  
62 **Approval of Draft Minutes of the January 4, 2017 Meeting**

63 Mr. Donoghue asked if there were any changes or corrections to the draft minutes from the  
64 January 4, 2017 meeting. Being none, Ms. McEachin made a motion to adopt the minutes,  
65 which was seconded by Mr. Long and approved by unanimous vote of the Board.

66  
67 **Chair’s Report**

68 There was no report from the Chair.  
69

70 **Scientific Advisory Committee Report**

71 Jo Ann Given, Scientific Advisory Committee (“SAC”) Member, gave a report to the Board of  
72 the business of the SAC from its meeting held on May 23, 2017. Ms. Given reported that Dr.  
73 Barry Levine, a Toxicologist certified by the American Board of Forensic Toxicologists, was  
74 recently appointed and attended as the newest member of the SAC. The SAC heard  
75 presentations by DFS Director Linda Jackson, Director of Technical Services Alka Lohmann,  
76 and all four Program Managers.

77  
78 Ms. Given reported to the Board that the SAC’s Forensic Biology Subcommittee will be  
79 reviewing validation summaries for the new Fusion chemistries. The SAC Toxicology  
80 Subcommittee will be reviewing the validation for the new toxicology testing method for opiates,  
81 cocaine and its metabolites.

82  
83 Ms. Given reported that the SAC received an update on both the Serology and Microscopic Hair  
84 Comparison Case review projects. The SAC also had a discussion with DFS staff about  
85 controlled substances weight determination. The SAC concluded the meeting with the re-  
86 election of Dr. Leslie Edinboro as Chair, and the election of Carl Sobieralski as Vice-Chair.

87  
88 **Director’s Report**

89  
90 Facilities:

91 Director Jackson reported to the Board that the final certificate of occupancy was issued in  
92 January 2017 for the expanded Western Laboratory. The one outstanding project is to replace  
93 the roof on the original portion of the Western Laboratory building.

94  
95 Director Jackson also updated the Board on the status of the renovation and expansion project for  
96 the Central Laboratory. The project is now in the schematic design phase. Director Jackson  
97 presented an example plan showing a new separate building which would house all of the Office  
98 of the Chief Medical Examiner (OCME) functions, DFS statewide offices, and parking for staff  
99 and visitors. There would be a sky bridge to the original building. The original building would  
100 be renovated to hold all DFS Central Laboratory functions.

101  
102 Agency Events:

103 Director Jackson updated the Board on some changes in the Controlled Substances and  
104 Toxicology Section related to the opioid crisis. The Controlled Substances Section is  
105 transitioning to reporting the common name for newer drugs on its Certificates of Analysis, all  
106 drug examiners have been fit tested for respirators, and new safety protocols for working with  
107 powdered substances have been implemented. A new policy on naloxone has been implemented,  
108 staff has been trained on its use, and (Narcan Nasal Spray) is now on hand in all four  
109 laboratories. Director Jackson explained that, in the Toxicology Section, a new cocaine/opioid  
110 method being implemented will allow for more efficient screening of cases.

111  
112 Director Jackson reported on three additional compounds recommended by DFS for temporary  
113 scheduling via the expedited regulatory process. The compounds will be considered by the  
114 Board of Pharmacy at its June 27, 2017 meeting.

115  
116 Director Jackson advised the Board that, on May 8, 2017, the Department received notice from  
117 ASCLD/LAB-*International* of the successful continuation of its accreditation following an  
118 offsite review. DFS's next full accreditation reassessment is scheduled for the spring of 2018.  
119 The application for reaccreditation will be submitted in the fall of 2017.

120  
121 Director Jackson informed the Board that, on May 1, 2017, the Forensic Biology Section went  
122 online with the DNA Fusion multiplex kits for case work. With the new Fusion kits, DFS will be  
123 analyzing 24 areas of DNA compared to the previous 16 areas of DNA.

124  
125 Director Jackson reported on two new methodologies. The first being the Toxicology Section's  
126 combined cocaine/opioid method, which was referenced in the discussion on the opioid crisis.  
127 The second is the Trace Evidence Section's new method for identifying lithium metal and salts,  
128 which are a precursor/reaction product for methamphetamine laboratories. She gave a brief  
129 overview of the processes and advantages of the new methods.

130  
131 Director Jackson reported to the Board that, as a result of the Byrne Justice Assistance grant, the  
132 Forensic Training Section has been able to hire a part-time instructor, offer additional short  
133 courses, and add a third Forensic Science Academy session this year.

134  
135 Resources - Budget Overview:

136 Director Jackson gave an overview of the Department's 2016-2018 Biennial Budget. She  
137 reminded the Board of the DFS budget reductions from October 2016 and explained that a  
138 portion of the funding had been restored to pay for staff overtime to reduce case turnaround  
139 times.

140  
141 Grants:

142 Director Jackson provided a list for reference of the Department's current grants that have been  
143 previously approved by the Board, which include: the FY15 and FY16 DNA Capacity  
144 Enhancement and Backlog Reduction Grant; the FY15 and FY16 Paul Coverdell Forensic  
145 Science Improvement Grant; NIJ Research and Development for Publicly-Funded Forensic  
146 Science Laboratories; the FY16 Byrne Justice Assistance Grant (JAG); the FY16 Research and  
147 Evaluation for the Testing and Interpretation of Physical Evidence in Publicly Funded Forensic  
148 Laboratories; the 2017 Highway Safety Project Grant (DMV); and the 2017 Highway Safety  
149 Project Grant (DMV) TREDS (Traffic Records Electronic Data System) Program.

150  
151 Director Jackson provided an update on the two PERK grants. The New York County District  
152 Attorney's (DANY) Sexual Assault Kit Backlog Elimination Program Grant is being used for the  
153 analysis of untested kits collected prior to July 1, 2014 and included in the PERK Inventory  
154 conducted by DFS. Four agencies have submitted their kits to the private contract laboratory for  
155 testing. The private laboratory has sent data to DFS for review in 431 cases, and 100 of those  
156 cases have resulted in eligible profiles being uploaded by DFS to the Data Bank for searching.  
157 DFS is reporting results of any Data Bank hit obtained to the investigating agency. The National  
158 Sexual Assault Kit Initiative FY 2016 Competitive Grant (SAKI) will be utilized to outsource the  
159 analysis of untested kits collected from July 1, 2014 through June 30, 2016. The Attorney  
160 General's Office has completed an inventory of untested kits still in the custody of Virginia law  
161 enforcement agencies covering that period. A request for proposals is in the process of being  
162 developed for the outsourced testing contract. The SAKI Grant will also allow DFS to develop  
163 PERK tracking software. The plan is for the software to be integrated with the DFS Laboratory  
164 Information Management System (LIMS). The grant funding will also be used for a research  
165 assistant in the Forensic Biology Section.

166  
167 Director Jackson presented two research grants for the Board's consideration and approval. Both  
168 are grants for Research and Evaluation for the Testing and Interpretation of Physical Evidence in  
169 Publicly Funded Forensic Laboratories; one relates to fire debris analysis, and the second relates  
170 to the analysis of DUI/D samples in the Toxicology Section. Sheriff Lippa made a motion to  
171 authorize the Department to apply for and accept funds for the two research grants, if awarded.  
172 The motion was seconded by Mr. Entas and approved by unanimous vote of the Board.

173  
174 Director Jackson presented two Paul Coverdell Forensic Science Improvement Grants for the  
175 Board's consideration and approval. The first is a Formula grant, which will be used by both  
176 DFS and the OCME. The second is a Competitive grant, which will be used to purchase Mideo  
177 Gunworks in the Firearms and Toolmarks Section. Colonel Flaherty made a motion for the  
178 Department to apply for and accept the funds for the Coverdell Formula and Competitive Grants,  
179 if awarded, which was seconded by Mr. Entas and approved by unanimous vote of the Board.

180

181 Director Jackson presented the FY17 DNA Capacity Enhancement and Backlog Reduction  
182 Program Grant for the Board's approval and consideration. It will be used to retain the current  
183 grant-funded scientists and support staff in the Forensic Biology Section. She also presented the  
184 DMV Highway Safety Grant, which will continue funding of a current grant funded scientist in  
185 the Breath Alcohol Section. Ms. McEachin made a motion for the Department to apply for and  
186 accept the funds for the FY17 DNA Capacity Enhancement and Backlog Reduction Program  
187 Grant and the DMV Highway Safety Grant, if awarded, which was seconded by Ms. Toney and  
188 approved by unanimous vote of the Board.

189  
190 The final grant Director Jackson presented to the Board for consideration and approval was the  
191 DMV Highway Safety Traffic Records Electronic Data System (TREDS) Project. Funding  
192 would be used jointly by DFS, the OCME, and the DMV. Ms. McEachin made a motion for the  
193 Department to apply for and accept the funds for the DMV Highway Safety TREDS grant, if  
194 awarded, which was seconded by Ms. Givens and approved by unanimous vote.

195  
196 Workload/Backlog:  
197 Director Jackson provided the Board with an update on statistical trends in each of the scientific  
198 disciplines.

199  
200 The Controlled Substances Section continues to see rising submissions, which have contributed  
201 to the increase in case turnaround times. Examinations are also taking longer to complete due to  
202 the growing complexity of the compounds being submitted, as well as the additional safety  
203 precautions required in the handling of the increasingly lethal substances received. There are  
204 currently seven Controlled Substances positions in recruit or in training. Funding from the  
205 restoration of cuts from the FY17/FY18 Biennial Budget will allow for three additional  
206 controlled substances examiners to be hired after the new fiscal year begins on July 1, 2017.

207  
208 The Firearms Section continues to see an increase in cases being submitted for National  
209 Integrated Ballistic Information Network (NIBIN) entry. DFS was given funding for additional  
210 staff in the Firearms Section and has created six Forensic Scientist NIBIN positions to complete  
211 NIBIN only cases. Director Jackson anticipates the number of cases completed will improve as  
212 the NIBIN only staff complete their training and begin case work. There are NIBIN only  
213 examiners in each laboratory and additional NIBIN equipment has been purchased for the  
214 Central and Eastern Laboratories.

215  
216 Director Jackson informed the Board that the Forensic Biology staff has all received training on  
217 the new Fusion multiplex kits.

218  
219 Director Jackson reported that the backlog in the Latent Print Section has continued to decrease.  
220 The Section is currently fully staffed.

221  
222 Director Jackson reminded the Board of the OCME accreditation requirement to have 90% of  
223 their toxicology reports completed within 90 days. The Toxicology backlog and turnaround  
224 times have been decreasing, and DFS has, in recent months, been consistently meeting the  
225 OCME deadlines. The Toxicology Section received funding for six positions, and each  
226 laboratory now has two forensic scientists or Toxicologists in training. Once the new hires are

227 fully trained, they will be able to decrease the backlog. Funding from the restoration of budget  
228 cuts will also allow for hiring of a new position for toxicology research and method  
229 development.

230  
231 The Trace Evidence Section is now providing explosive examination services again. The service  
232 was discontinued in 2014 due to budget cuts, but the newly hired explosives examiner completed  
233 training in January 2017.

234  
235 **Old Business**

236  
237 Serology Case Review:  
238 Brad Jenkins, Forensic Biology Program Manager, provided an update on the progress of the  
239 serology review project. Mr. Jenkins reminded the Board that 100 serology case files from both  
240 the Northern and Eastern Laboratories would be reviewed by at least two scientists previously  
241 qualified as serologists. Thirty percent of the files will be reviewed by Scientific Advisory  
242 Committee member Jami St. Clair who volunteered to assist as the independent external  
243 reviewer.

244  
245 To date, approximately 140 reviews have been completed. Mr. Jenkins reported that, in those  
246 reviews, no files were identified where the typing results in the case notes would have eliminated  
247 the defendant and were not reported.

248  
249 Microscopic Hair Comparison Case Review:  
250 Amy Curtis, Department Counsel, gave an update on the Microscopic Hair Comparison Case  
251 Review. In February 2017, notification letters were sent in three of the five cases recommended  
252 for notification by the Review Team and approved by the Subcommittee. For the remaining two  
253 recommended for notification, one defendant cannot be located and the other defendant is  
254 deceased, which requires next of kin information for notification. Ms. Curtis gave a summary of  
255 the information provided in the notification letters.

256  
257 Ms. Curtis advised the Board that, after the three notification letters were mailed, the Department  
258 received feedback from Commonwealth's Attorneys who received notification letters. As a  
259 result, Ms. Curtis gave a presentation on the review project to the Virginia Association of  
260 Commonwealth's Attorneys on April 2, 2017. As a result of the presentation, two prosecutors  
261 have volunteered participate on the Review Team for future meetings.

262  
263 Ms. Curtis updated the Board on the assistance that the Institute for Actual Innocence at the  
264 University of Richmond's School of Law (the Clinic) has been providing. Students have been  
265 researching conviction information and attempting to locate transcripts. Ms. Curtis informed the  
266 Board that, based on the work of the Clinic students, she anticipates needing to visit Clerk's  
267 offices to pull transcripts.

268  
269 No additional Review Team or Subcommittee meetings have been scheduled at this time. Ms.  
270 Curtis anticipates scheduling additional meetings after more transcripts have been gathered.

271  
272 Periodic Regulatory Review:

273 Ms. Curtis updated the Board on the status of the periodic review of the Department's six  
274 regulations. The notice of the periodic regulatory review was published in the Virginia Registrar  
275 of Regulations for all DFS regulations on March 6, 2017. The public comment period ran from  
276 March 6, 2017, until March 31, 2017. No public comments were received. The review must be  
277 finalized by May 30, 2017.

278  
279 Ms. Curtis reminded the Board that the Department's Public Participation Guidelines or PPGs (6  
280 VAC 40-11), which were enacted in 2008, require an amendment due to a 2012 statutory change.  
281 The amendment to the PPGs can be made using the fast track process. Ms. Curtis presented the  
282 amendment to 6 VAC 40-11-50 of the PPGs, which addresses public comments.

283  
284 Ms. Given made a motion for the Board to accept the amendment to 6 VAC 40-11-50, which  
285 was seconded by Mr. Entas and approved by unanimous vote of the Board.

286  
287 Ms. Curtis informed the Board that no amendments are necessary to the remainder of the  
288 Department's regulations. Ms. Curtis reviewed each of the Department's regulations with the  
289 Board. There was a brief discussion about the fees included in the two field test regulations, 6  
290 VAC 40-30 and 6 VAC 40-50.

291  
292 Ms. McEachin made a motion that the Board retain the five remaining DFS regulations (6 VAC  
293 40-20, 6 VAC 40-30, 6 VAC 40-40, 6 VAC 40-50, and 6 VAC 40-60) as written and allow Ms.  
294 Curtis to finalize the periodic regulatory review, which was seconded by Mr. Entas and approved  
295 by unanimous vote of the Board.

296  
297 Status of the Post-Conviction DNA Testing Program and Notification Project:  
298 Kristen Howard, Notification Subcommittee Chair, provided an update on the case file review  
299 that staff from the Virginia State Crime Commission (VSCC) is conducting of cases from the  
300 Post-Conviction DNA Testing Program and Notification Project. The review is nearly complete.  
301 Staff is completing a final validation of notification letters sent to defendants for the final report.  
302 VSCC staff is planning on giving a presentation at the December Crime Commission meeting.

303  
304 **New Business**

305  
306 Review of 2017 Legislation:  
307 Katya Herndon, Chief Deputy Director, gave an overview of DFS related legislation from the  
308 2017 General Assembly Session. The DFS agency bills, HB1642 and SB1031, amend the Code  
309 to allow DFS, the OCME and DCLS to make naloxone or another opioid antagonist available to  
310 staff so that it can be administered in the event of an accidental opioid exposure resulting in an  
311 overdose.

312 Both bills passed with emergency clauses, and the Senate bill was signed by the Governor first  
313 and went into effect on February 13, 2017.

314  
315 Ms. Herndon reviewed the Schedule I bills, HB1610 and SB1546, which permanently added 28  
316 compounds to Schedule I that had been temporarily placed there through the Board of Pharmacy  
317 expedited regulatory process.

318

319 Ms. Herndon explained HB2327, known as the Birchfield bill, and its impact on DFS processes.  
320 As a result of this bill, DFS will now treat implied consent and search warrant blood draw cases  
321 the same, provided a DFS DUI/D kit is used. The bill passed with an emergency clause and went  
322 into effect March 16, 2017.

323  
324 Ms. Herndon informed the Board of companion bills, HB1650 and SB1479, which provide  
325 monetary relief to an individual who had been wrongfully convicted and spent 33 years in prison  
326 for crimes he did not commit. DFS conducted the DNA testing that exonerated the individual.

327  
328 Ms. Herndon reported on SB1257, a bill that allows for two-way video testimony at preliminary  
329 hearings and sentencing hearings.

330  
331 Ms. Herndon reviewed two PERK related bills that passed; SB1501, which addresses victim  
332 notification of analysis information for kits received by law enforcement prior to July 1, 2016,  
333 and HB2127, which addresses storage of kits and requires victims to be advised of their rights  
334 regarding storage of their kits.

335  
336 Ms. Herndon reported to the Board that, although a bill directing the Virginia State Crime  
337 Commission to conduct a study on expanding the Data Bank to include additional misdemeanor  
338 offenses was tabled during the Session, the VSCC Executive Committee has decided to conduct  
339 such a study. DFS staff recently met with VSCC staff to discuss the upcoming study.

340  
341 Proposed Amendments to the Forensic Science Board By-Laws:  
342 Ms. Herndon presented two proposed amendments to the Board's by-laws, which were provided  
343 in writing to the Board. Amending the by-laws requires 2/3 vote of members present at a  
344 meeting, and the proposed amendments have to be submitted to the Board in writing at a  
345 previous meeting.

346  
347 The first is a technical amendment that is the result of a statutory change made last year by the  
348 General Assembly. The amendment would update Article III, Section 1, Composition of  
349 Members, by deleting from the list of members the Chairman of the Board of the Virginia  
350 Institute of Forensic Science and Medicine and inserting instead the Director of the Division of  
351 Consolidated Laboratory Services.

352  
353 The second amendment would update Article IV, Section 3, Terms of Office, to allow a member  
354 of the Board who previously served as chairman or vice-chairman for two successive terms to be  
355 re-elected after an intervening term. This amendment was offered for discussion purposes given  
356 that there are several members ineligible to serve as Chair or Vice-Chair because of previously  
357 serving two terms in such roles.

358  
359 The Board had a brief discussion on the proposed amendments and then requested that both  
360 amendments be brought back before them at the meeting in August for a vote.

361  
362 Controlled Substances Weight Determination Discussion:  
363 Linda Jackson, Director, led a discussion with the Board on the Department's weighing policy  
364 and procedures for simple possession and possession with intent to distribute cases. Director



365 Jackson informed the Board that a recent safety audit identified the process of determining the  
366 weight of powders as a high risk activity. The SAC had a similar discussion at their meeting  
367 yesterday and provided feedback to the Department. The Board discussed the Department's  
368 policy and recommended that, if DFS is interested in pursuing a change, it may want to consider  
369 inviting stakeholders to have a similar discussion and provide input. It was requested that the  
370 issue be brought back for discussion at the next Board meeting.

371

372 Annual Election of Board Chair and Vice Chair:

373 The Chair called for the annual election of the Board Chair and Vice-Chair and asked for  
374 nominations. Colonel Flaherty nominated Fran Ecker for Chair of the Board. The nomination  
375 was seconded by Sheriff Lippa, and passed by unanimous vote of the Board. Mr. Donoghue  
376 nominated Ms. McEachin for Vice-Chair. The nomination was seconded by Mr. Long, and  
377 passed by unanimous vote of the Board.

378

379 **Public Comment**

380

381 None.

382

383 **Next Meeting**

384

385 The next meeting of the Forensic Science Board is scheduled for Wednesday, August 9, 2017, at  
386 9:30 a.m.

387

388 **Adjournment**

389

390 Sheriff Lippa moved that the meeting of the Board be adjourned, which was seconded by  
391 Colonel Flaherty and passed by unanimous vote.

392

393 The meeting adjourned at 11:30 a.m.