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Minutes
Forensic Science Board
All-Virtual Meeting

July 10, 2024

Board Members Present

Megan L. Clark, Commonwealth's Attorney, Prince Edward County
Maggie A. DeBoard, Chief of Police, Herndon Police Department
Karl R. Hade, Executive Secretary, Supreme Court of Virginia
Kristen Howard, Designee for Charniele Herring, Chair of the Virginia State Crime Commission
Michael HuYoung, Esquire, Criminal Defense Attorney
George C. Maha, Ph.D., Scientific Advisory Committee Member
Richard P. Meyers, Scientific Advisory Committee Member, *Vice Chair*
Jackson Miller, Director, Department of Criminal Justice Service, *Chair*
Beth O'Halloran, Designee for Caroline D. Juran, R.Ph., Executive Director, Board of Pharmacy
Senator Russet Perry, Designee for Senator Scott Surovell, Chair of the Senate Committee on the
Judiciary
Colonel Gary Settle, Superintendent of the Virginia State Police
Denise Toney, Ph.D., Director of the Division of Consolidated Laboratory Services
Robert Tracci, Senior Assistant Attorney General, Designee of Attorney General Jason S. Miyares

Board Members Absent

William T. Gormley, M.D., Chief Medical Examiner
Delegate Vivian Watts, Designee for Delegate Patrick Hope, Chair of the House Committee on
the Judiciary

Legal Counsel for the Forensic Science Board

Sarah Hornberger, Esquire, attending as Counsel to the Board for Michelle Welch

Staff Members Present

Elizabeth Ballard, Assistant Forensic Biology Program Manager
David A. Barron, Ph.D., Deputy Director
Mason Byrd, Chief Deputy Director
Deea Chakraborty, Legal Assistant
James W. Hutchings, Ph.D., Toxicology Program Manager
Linda C. Jackson, Director
Amy Jenkins, Department Counsel
David Koppenhaver, Eastern Laboratory Director
Alka B. Lohmann, Director of Technical Services
Scott Maye, Central Laboratory Director
Jessica B. Norton, Sr. Legal Assistant
Ellen Spain, Evidence Receiving Program Manager
Elise Stroble, Grants & Administration Program Manager/FSB Secretary
Robyn Weimer, Chemistry Program Manager

47 **Call to Order**

48 Jackson Miller, Chair of the Forensic Scientific Board (“Board” or “FSB”), called the meeting to
49 order at 9:31 a.m. and verified that a quorum of the Board was present. Chairman Miller then
50 called on Ms. Stroble to lead the introductions. Ms. Stroble asked members to introduce themselves
51 and to state the seat that they fill on the Board as their names were called.

52

53 **Adoption of Agenda**

54 Chairman Miller asked if there were any changes that needed to be made to the draft agenda. Mr.
55 Byrd stated that a correction was needed to one agenda item: *Arizona vs. Smith* should be *Smith*
56 *vs. Arizona*. A motion was made by Ms. Clark to adopt the agenda with that correction. The motion
57 was seconded and passed with the unanimous approval of the Board.

58

59 **Approval of Draft Minutes of the April 10, 2024 Board Meeting**

60 Chairman Miller asked if there were any proposed changes to the draft minutes of the April 10,
61 2024 meeting that were previously provided. Hearing none, he asked for a motion to approve the
62 minutes. Mr. Meyers made the motion, which was seconded and passed by unanimous vote of the
63 Board.

64

65 **FSB Chair’s Report**

66 Chairman Miller advised the Board that he did not have a report at this time.

67

68 **DFS Director’s Report**

69 Director Jackson provided her presentation related to various new and ongoing activities of the
70 Department. Below are some key points of her presentation.

71

- 72 • Notification letters related to the Burton case review project were sent to 174 law
73 enforcement agencies and 125 localities, and information regarding convictions is being
74 returned. DFS will begin notification of defendants, prioritizing those who are incarcerated
75 (as identified by the Virginia State Crime Commission).
- 76 • DFS has established an honorarium for former employees who are called to appear in court
77 for testimony in cases worked while employed with the agency. This is to limit reanalysis,
78 where possible, especially given that evidence may no longer be available.
- 79 • As of July 1, DNA Certificates of Analysis will no longer include a Table of Typing
80 Results. The relevant statute was amended to include language advising that the case file
81 documentation, including the developed evidentiary and comparison profiles could be
82 obtained with a lawfully served subpoena *duces tecum* (as with any other DFS case).
- 83 • DFS is working on a bid for the outsourcing of DNA “non-person” cases from all DFS
84 locations. The contract lab would provide the certificate of analysis to DFS who would
85 forward that to the submitting agency. A customer notice will be sent prior to
86 implementation.

87

88 Director Jackson also notified the Board that DFS had applied for two formula grants since the
89 previous meeting, with permission from the then-serving Chair and Vice Chair and stated that the
90 full Board’s approval is needed to accept the funds, should they be awarded.

91

92 Chairman Miller asked if there were any questions regarding the grants or Director Jackson's
93 presentation in general.

94
95 Senator Perry stated that she would like to receive a more thorough briefing on the Mary Jane
96 Burton case review project, which she indicated she was happy to receive at a later time. Ms.
97 Howard provided a high-level overview and offered to provide more information at a later date.
98 Senator Perry stated that a particular concern of hers is in relation to other individuals who were
99 trained by Ms. Burton and what is being done about those cases; Ms. Howard stated that she would
100 discuss that with her at another time.

101
102 Chairman Miller asked for a motion to allow DFS to accept grant funds from the two programs,
103 should they be awarded. A motion was made by Senator Perry, which was seconded and passed
104 unanimously by the Board.

105
106 A question was raised regarding the potential outsourcing of certain DNA cases and whether DFS
107 would be responsible for testifying if the case goes to court. Director Jackson advised that DFS
108 would not be the ones to testify, but that the contract laboratory would have the responsibility of
109 testifying on behalf of their results. There was also mention of the difficulties surrounding out-of-
110 state subpoenas for testimony. Ms. Jenkins advised that providing testimony in court would be a
111 requirement of any contract for outsourcing and that DFS does not anticipate any issues with that.

112
113 **Old Business**
114 Ms. Jenkins provided an update on 6 VAC 40-40-80 and -90 – DNA Regulations for the
115 Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and
116 Certain Burglaries. This is a fast-track regulation action that was approved by the Board at the
117 April 2024 meeting as part of an ongoing response to the Governor's Executive Order 19 calling
118 for a reduction of regulatory requirements in state government. The amendments to this regulation
119 were approved in April and are now before the Attorney General's Office for review. It is
120 anticipated that this will be approved by the end of 2024.

121
122 **New Business**
123 Elizabeth Ballard, Assistant Forensic Biology Program Manager, provided an update on the FBI
124 Rapid DNA Guidelines. To date, Virginia has not decided to implement rapid DNA testing. Ms.
125 Ballard provided detailed information regarding the draft FBI Quality Assurance Standards that
126 were released for public review in June of 2024 and the potential implications for DFS and
127 partnering agencies if the decision is made to move forward with this type of testing by Virginia
128 law enforcement.

129

130 Amy Jenkins, Department Counsel, provided information regarding *Smith vs. Arizona*, a U.S.
131 Supreme Court case involving surrogate testimony where an expert conveyed an absent analyst's
132 statements in support of his opinion. The case has potential implications for forensic laboratories
133 nationwide for surrogate testimony and for batch processing. Ms. Jenkins advised that surrogate
134 testimony would not necessarily have implications for DFS, as (1) DFS is encouraging the return
135 of its former employees to testify utilizing the new Honorarium Policy and (2) typically re-
136 examination of the evidence would be sought when the original analyst is not available for
137 testimony. The main concern for DFS is batch processing, and DFS is working with the
138 Commonwealth's Attorneys to work through those potential implications.

139

140 **Public Comment**

141 None.

142

143 **Confirm Next Meeting Date**

144 Chairman Miller stated that the next meeting will be held on October 9, 2024 at 9:30 a.m., and
145 confirmed that the meeting would be held in person at the DFS Laboratory in Richmond.

146

147 **Adjournment**

148 He then called for a motion to adjourn the meeting. The motion to adjourn, made by Ms. Clark,
149 was seconded and passed unanimously. The meeting was adjourned at 10:40 a.m.