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Final Minutes
Forensic Science Board Meeting
October 14, 2009
Department of Forensic Science Central Laboratory, Classroom 1

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Board Members Present

Steven Benjamin
Leah Bush, M.D.
Dale Carpenter, Ph.D.
Colonel W. Steven Flaherty
Jo Ann Given
Katya Herndon (Designee for Karl Hade)
Kristen Howard (Designee for Senator Howell and Senator Stolle)
Alan Katz (Designee for Attorney General Mims)
Sheriff A.A. Lippa Jr.
Senator Henry L. Marsh II
Raymond F. Morrogh
Elizabeth Russell

Board Member Absent

Leonard Cooke
Delegate William R. Janis (Designee for Delegate Albo)
Robert Jensen

Legal Counsel for the Forensic Science Board

Amy Dillworth

Staff Members Present

Wanda Adkins, Office Manager
Henry Bosman, Senior Accountant
Jeffrey Ban, Central Laboratory Director
Dave Barron Ph.D., Director of Technical Services
Donna Carter, Finance Manager
Guinevere Cassidy, Legal Assistant
Leslie Ellis, Human Resources Director
Gail Jaspen, Chief Deputy Director
Bradford Jenkins, Biology Program Manager
Alka Lohmann, Training and Calibration Program Manager
Marsha Sinclair-Kelly, Procurement and Support Services Manager
Pete Marone, Director, Department of Forensic Science
Stephanie Merritt, Department Counsel
Elizabeth Mirza, Grants Administration/Policy Analyst
Steven Sigel, Deputy Director
Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology

47
48 **Call to Order by Chairman Raymond Morrogh**
49 Chairman Morrogh called the meeting to order at 10:05 a.m. Chairman Morrogh welcomed new
50 Forensic Science Board (“Board”) Member Jo Ann Given. She is the Scientific Advisory
51 Committee (“SAC”) Member appointed by the SAC Chairman to sit on the Board.
52

53 **Adoption of Agenda**

54 Chairman Morrogh asked if there were any additions or changes to the draft agenda. There were
55 none. Col. Flaherty moved that the draft agenda be adopted as written with no revisions. Mr.
56 Benjamin seconded the motion, which passed by unanimous vote of the Board.
57

58 **Approval of Draft Minutes of August 12, 2009 Meeting**

59 Chairman Morrogh asked if there were any additions or changes to the draft minutes from the
60 August 12, 2009 Board meeting. Discussion by the Board ensued regarding typographical
61 corrections to lines 71, 175, 275 and 281. Mr. Benjamin moved that the minutes from the
62 August 12, 2009 Board meeting with the agreed upon amendments be adopted. Col. Flaherty
63 seconded the motion, which passed by unanimous vote of the Board.
64

65 **Director’s Report**

66 **State of the Agency**

67 Regarding facilities, Director Marone informed the Board that the Eastern Lab renovation
68 contract has been awarded and that partial construction has begun on the expansion into the
69 building’s 5th floor. The Governor has agreed to the purchase of the land adjacent to the Western
70 Lab for future expansion.
71

72 Regarding workload/backlog, Director Marone informed the Board that the Department of
73 Forensic Science (“DFS”) remains stable despite adverse working conditions triggered by
74 *Melendez-Diaz v Massachusetts*. Due to the dramatic increase in the number of hours drug
75 chemists spend in court, the Controlled Substances section is experiencing a higher turnaround
76 time. DFS drug chemists were on the road more hours in August 2009 than they were in the
77 preceding eleven months combined
78

79 Discussion by the Board ensued regarding the increase of examiners called to testify, the new
80 notice statute, and co-operative efforts made or being worked toward to assist all parties
81 regarding this increase in court appearances.
82

83 Further discussion by the Board ensued regarding the DNA data bank backlog. Director Marone
84 informed the Board that the data base currently has a 9,800 case backlog of which 8,500 are over
85 30 days. The database receives approximately 500 samples per month.
86

87 Regarding grants, Director Marone informed the Board that the following grants were awarded:
88 *FY09 Solving Cold Cases with DNA*, \$490,960 to review and investigate violent crime cold cases
89 and to locate and analyze biological evidence associated with these cases.
90 *FY09 Forensic DNA Backlog Reduction Program*, \$950,167 to reduce the case backlog and to
91 increase the DNA analysis capacity in the Forensic Biology Section.

92 *FY09 Convicted Offender and/or Arrestee DNA Backlog Reduction Program*, \$171,579 to reduce
93 the current backlog in the DNA data bank.

94 *2010 Highway Safety (DMV) Program*, \$136,469 to provide reimbursement of travel costs for
95 law enforcement officers traveling to Richmond for breath alcohol training.

96 *FY09 Paul Coverdell National Forensic Science Improvement Grant*, \$164,951 to renovate
97 laboratory and office space in the Central Lab.

98
99 Regarding the National Institute of Justice (“NIJ”) grant and the Post-Conviction DNA
100 Notification and Testing Program (“PC-DNA”), Director Marone informed the Board that DFS
101 is working with NIJ to expand the testing criteria from murder, rape and non-negligent
102 manslaughter to other crimes against persons. Currently, general funds are being used to test
103 PC-DNA cases that meet the State criteria but do not meet the NIJ criteria.

104
105 Discussion by the Board ensued.

106
107 Regarding resources and budget outlook, Director Marone introduced Deputy Director Steven
108 Sigel who informed the Board that DFS has implemented the FY2010 budget reduction plan.
109 The reduction plan includes holding open positions, reducing expenditures with wage
110 employees, discontinuing discretionary travel, discontinuing discretionary scientific and IT
111 equipment purchases, and deferring 2010 contracts to 2011.

112
113 **Old Business**

114 Post Conviction DNA Notification and Testing Program
115 Notification Subcommittee Chair, Kristen Howard informed the Board regarding the efforts of
116 the Subcommittee. The last of the Pro Bono Attorney/Volunteer training classes was being held
117 that day in Blacksburg. Other training classes were held in Richmond, Charlottesville, Virginia
118 Beach, Williamsburg, and McLean. There has been a good response to the training with
119 approximately 60 Pro Bono Attorneys having signed up to participate in the PC-DNA
120 Notification Program. The training class has been approved by the Virginia State Bar for
121 Continuing Legal Education Credit and been developed into a DVD recorded format. The
122 Confidentiality and Waiver forms are finalized and approved by the Attorney General’s Office
123 and are being signed by the Pro Bono Attorney/Volunteers.

124
125 Ms. Howard directed the Board’s attention to the Subcommittee’s report in the Board’s meeting
126 packet and asked that they consider using the report as a template for the subcommittee to use to
127 generate the Board’s required December report to the Legislature. Ms. Given moved that the
128 Notification Subcommittee draft the December report to the Legislature with cooperation and
129 input from DFS that would then be reviewed by the Board. Ms. Russell seconded the motion
130 which passed by unanimous vote of the Board.

131
132 Regarding notification and testing updates, Chief Deputy Director Gail Jaspén informed the
133 Board that the notification numbers remained essentially the same because the Department’s
134 focus has shifted to testing while the notification process has been reassigned to the Notification
135 Subcommittee. At this point, testing is being conducted and Certificates of Analysis are being
136 issued. DFS is also working with and responding to convicted suspects’ attorneys’ discovery
137 requests. Ms. Jaspén informed the Board that to date, the total number of case files found with

138 evidence suitable for DNA testing is 3,054, of which 2,208 cases contain a named suspect and
139 800 cases contain a named suspect known to have been convicted in the case. Of these, 829 cases
140 have been sent to the contracting laboratory for DNA testing. Of these, 747 are felony
141 convictions. Of the 747 cases, 638 cases meet the NIJ grant criteria (homicide, rape and non-
142 negligent manslaughter); 105 cases meet the State criteria (other violent crimes against a person);
143 and in 4 cases, NIJ conviction confirmation is pending. Preliminary case results have returned in
144 312 cases. The final completed case results were returned in 288 cases and 371 cases wait
145 contactor testing. Certificates of Analysis have been completed and mailed in 182 cases. The
146 following are the case test results regarding listed suspects meeting NIJ criteria: 24 convicted
147 suspects were not indicated/eliminated; 70 convicted suspects were not eliminated; known
148 samples are needed for 14 convicted suspects; and there are 70 convicted suspects whose cases
149 have insufficient scientific data upon which to draw a conclusion. The following are the case
150 test results regarding listed suspects who do not meet NIJ criteria: 15 convicted suspects were
151 not indicated/eliminated; 8 convicted suspects were not eliminated; known samples are needed
152 for 40 convicted suspects; and there are 18 convicted suspects whose cases have insufficient
153 scientific data upon which to draw a conclusion. Regarding the reporting to the Board of the
154 testing data in the future, Ms. Jaspens encouraged the Board to consider and request the types of
155 data that would be most useful to them. Ms. Jaspens offered to work with Board members
156 regarding any desired modifications to the reporting of testing data.

157
158 Discussion by the Board ensued regarding the terms “eliminated” and “not eliminated.” The
159 Board was informed that the terms are not indicative of the guilt or innocence of the convicted
160 suspect. The Board was further informed that the original Certificate of Analysis is sent to the
161 investigating agency and a copy is sent to the Commonwealth’s Attorney of the jurisdiction of
162 the case. Further discussion by the Board ensued.

163
164 Approval of Final Regulations for Obtaining Information from the DNA Data Bank and
165 Procedures for Verification and Authorization of Persons Requesting Information from the DNA
166 Data Bank, 6 VAC 40-60

167 DFS Department Counsel Stephanie Merritt informed the Board that the public comment period
168 for the proposed DNA Data Bank Regulations has expired. The proposed regulation was
169 submitted to the Regulatory Town Hall at the direction of the Board in June 2007.

170
171 Discussion by the Board ensued regarding the language of the proposed regulation. Mr.
172 Benjamin moved that the Board delay consideration of the proposed regulation to the Board’s
173 January meeting and that the proposed regulation be reviewed by the Attorney General’s office
174 regarding statutory construction issues. Col. Flaherty seconded the motion which passed by
175 majority vote of the Board.

176
177 **New Business**

178 Approval of Annual Report Pursuant to Va Code § 9.1-1110.B

179 Ms. Jaspens directed the Board’s attention to the proposed draft of the Annual Report pursuant to
180 Virginia Code § 9.1-1110 (B) (“November Report”) in the Board’s meeting packet. Discussion
181 by the Board ensued and the following amendments to the proposed draft were agreed upon by
182 the members of the Board:

183 Lines 23 – 25: The SAC reviewed the Department’s protocols for the mitochondrial DNA testing
184 program and found them to be complete and appropriate. The unit went online in December
185 2008, and obtained its first mitochondrial DNA hit in the spring of 2009.

186 Line 134: In 4 cases sent for testing, confirmation of suspect convictions remain pending

187 Line 136: Certificates of Analysis have been issued in 182 cases

188 Lines 174 – 181: DFS has reported to the Board that no Federal funds have been used in
189 violation of this Special Condition, or for any reimbursement, testing or retesting of any work on
190 NIJ-eligible cases for which state funds were used, paid, or available. To the extent that the
191 testing of any cases may be charged to the federal grant in error, DFS will adjust its receipt of
192 grant reimbursement through reconciliation. Such reconciliation with the grantor is a common
193 procedure, designed to ensure that grant funds are properly used.

194 Lines 227 – 228: A total of seven training sessions has been conducted at various locations
195 around the Commonwealth.

196 Lines 240 – 242: The Board agreed that Notification Subcommittee Chair Howard and Ms.
197 Jaspen could work out report language that would express completion of reporting requirements
198 consistent with SB 1391.

199 Lines 327 – 333: To achieve the Governor’s spending reductions, DFS has continued the
200 previously implemented strategies of holding positions open, reducing expenses for wage
201 employees, and delaying the purchase of scientific (GC/MS instruments) and IT equipment. The
202 delay in the purchase of the GC/MS instruments was accomplished with no detriment to
203 laboratory capabilities since DFS extended the normal service life of existing instruments
204 through one-time upgrades to their computer and software systems.

205 Lines 456 – 458: The final regulation was presented to the Board at its October 2009 meeting.
206 The Board has deferred consideration of the final regulation until its January 2010 meeting.

207 Lines 509 – 512: {bullet point removed}

208
209 Mr. Benjamin moved to approve the November Report with the addition of the agreed upon
210 amendments. Col. Flaherty seconded the motion which passed by unanimous vote of the Board.

211
212 Discussion by the Board ensued regarding the \$1.5 million of state money spent in the PC-DNA
213 project. Mr. Benjamin moved that DFS make a report of the spending breakdown of the \$1.5
214 million. Discussion by the Board ensued regarding the audit conducted by the Department of
215 Accounts. Mr. Benjamin withdrew his motion.

216
217 Mr. Benjamin moved that DFS provide a copy of the results of the audit of the \$1.5 million to
218 the members of the Board who wish to receive it. The motion was seconded by Senator Marsh
219 and passed by unanimous vote of the Board.

220
221 2009 Special Session and Continuing Impact of *Melendez-Diaz*
222 Director Marone informed the Board that DFS is working with the Department of Planning and
223 Budget in addressing the budget issues resulting from the impact of *Melendez-Diaz*. Some of the
224 budgetary issues consist of travel, overtime and providing additional training for some
225 examiners. The training would qualify these examiners to appear and testify in court.
226 Discussion by the Board ensued regarding current staff levels and the need for more examiners
227 in specific disciplines, i.e., toxicology.

228

229 Plan for Systematic Review of all DFS Protocols
230 Chairman of the Scientific Advisory Committee, Dr. Dale Carpenter informed the Board that he
231 and Director Marone discussed the process of reviewing DFS protocols. It was decided that the
232 SAC would review the protocols of each discipline one at a time. For each discipline a
233 subcommittee would be formed comprised of no more than three individuals. One of the three
234 would be an expert in the subject matter and one a quality control person. The SAC and DFS are
235 ready to move forward with the review.

236

237 **Public Comment**

238 None

239

240 **Next Board Meeting**

241 The following 2010 Board meeting dates and times were set by the Board:

242 Wednesday, January 6, 2010, 9:00 a.m.

243 Wednesday, May 12, 2010, 9:00 a.m.

244 Wednesday, August 11, 2010, 9:00 a.m.

245 Wednesday, October 13, 2010, 9:00 a.m.

246

247 **Adjournment**

248 Chairman Morrogh asked if there was a motion to adjourn. Col. Flaherty moved that the Board
249 meeting adjourn which was seconded by Ms. Russell and passed by unanimous vote of the
250 Board. The Board meeting adjourned at 12:07 p.m.