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Final Minutes
Forensic Science Board Meeting
August 11, 2010
Department of Forensic Science, Central Laboratory, Classroom 1

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Board Members Present

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Steven D. Benjamin
Leah Bush, M.D.
Dale Carpenter, Ph.D.
John Colligan (Designee for Garth L. Wheeler)
Lieutenant Colonel Robert Northern (Designee for Colonel W. Steven Flaherty)
Jo Ann Given
Katya Herndon (Designee for Karl R. Hade)
Kristen Howard (Designee for Senator Howell)
Caroline Juran
Alan Katz (Designee for Attorney General Cuccinelli)
Sheriff A.A. Lipa Jr.
Senator Henry L. Marsh III
Raymond F. Morrogh

Board Members Absent

Delegate William R. Janis (Designee for Delegate Albo)

Legal Counsel for the Forensic Science Board

Amy Dilworth

Staff Members Present

Wanda Adkins, Office Manager
Jeffrey Ban, Central Laboratory Director
David Barron, Ph.D. Technical Services Director
Donna Carter, Finance Manager
Doug Chandler, IT Manager
Ann Davis, Physical Evidence Program Manager
Leslie Ellis, Human Resources Director
Gail Jaspén, Chief Deputy Director
Brad Jenkins, Forensic Biology Program Manager
Alka Lohmann, Training and Calibration Program Manager
Pete Marone, Department Director
Stephanie Merritt, Department Counsel
Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology
Steven Sigel, Deputy Director
Elise Stroble, Grants Administration/Policy Analyst

47 Susan Uremovich, Eastern Laboratory Director
48 Amy Wong, Northern Laboratory Director
49

50 **Call to Order by Chairman Raymond Morrogh**

51
52 Chairman Morrogh called the meeting of the Forensic Science Board (“Board”) to order at 9:15
53 a.m.
54

55 **Adoption of Agenda**

56
57 Chairman Morrogh asked if there were any additions or changes to the draft agenda for the
58 meeting. Being none, Ms. Given moved to adopt the agenda, which was seconded by Senator
59 Marsh and adopted by unanimous vote of the Board.
60

61 **Approval of Draft Minutes of May 12, 2010 Meeting**

62
63 Chairman Morrogh asked if there were any changes or corrections to the draft minutes from the
64 May 12, 2010 meeting. Being none, Dr. Bush moved to adopt the minutes, which was seconded
65 by Senator Marsh and adopted by unanimous vote of the Board.
66

67 **Chairman’s Report**

68
69 Chairman Morrogh informed the Board that the Virginia Institute of Forensic Science and
70 Medicine formally dissolved on June 30, 2010. Chairman Morrogh acknowledged and thanked
71 Mr. Robert Jensen for his service to the Board. Chairman Morrogh also advised the Board that
72 Ms. Scotti Russell has retired as Executive Director of the Board of Pharmacy and announced
73 that Acting Executive Director, Ms. Caroline Juran, will now be serving in her place. Chairman
74 Morrogh also advised that Ms. Given was elected as new Chairman of the Scientific Advisory
75 Committee (“SAC”) and that Dr. Dale Carpenter and Ms. Given will remain on the Board as
76 representatives from the SAC. Finally, Chairman Morrogh expressed the appreciation of the
77 Board to Guinevere Cassidy for her service as Board Secretary for the past two years.
78

79 **Annual Election of Board Chair and Vice Chair**

80
81 Chairman Morrogh asked if there were any nominations for Board chair. Mr. Benjamin
82 nominated Mr. Morrogh for a second term; the nomination was seconded Lt. Colonel Northern
83 and passed by unanimous vote of the Board. Chairman Morrogh asked for nominations for Vice
84 Chair. Mr. Benjamin nominated Dr. Bush; the nomination was seconded Senator Marsh and
85 passed by unanimous vote of the Board.
86

87 **Scientific Advisory Committee Report**

88
89 Ms. Given informed the Board of the Governor’s reappointment of Drs. Almirall, Poklis and
90 Carpenter to the SAC; as well as the appointment of new Forensic Chemist member Richard
91 Meyers. Ms. Given informed the Board that the seat on the SAC designated for a member of the

92 Board of International Association of Identification (IAI) is now vacant, due to the conclusion of
93 Ken Smith's term on the IAI Board.

94
95 Ms. Given reported that the Biology Subcommittee met on August 10, 2010 to review the
96 statistical basis for the 4-locus minimum for inclusion and the implementation of the stochastic
97 threshold. The Subcommittee recommended that the Department of Forensic Science
98 ("Department") move forward on implementation. She also reported that the Controlled
99 Substances Subcommittee has been reviewing the protocols and standard operating procedures of
100 the Department and would report their recommendations to the SAC at their next meeting on
101 May 10, 2011.

102
103 **DFS Director's Report – State of the Agency**

104
105 Regarding facilities, Director Pete Marone informed the Board that the Eastern Laboratory first
106 phase expansion of 6,000 square feet on the 5th is 95% complete, with the next phase at the 35%
107 drawing stage. Director Marone thanked the administration and legislature for continuing to take
108 a long-range view in planning for the Department.

109
110 Regarding the 30-60-90 day workload summary report, Director Marone informed the Board the
111 statistics for the Forensic Biology Section's 90-day backlog is not an accurate reflection of that
112 section's backlog because the cases from the Post Conviction DNA Project ("PC-DNA") are
113 included in the numbers, along with the Mitochondrial DNA cases.

114
115 The Department had its first Mitochondrial DNA "hit" in an unidentified remains case to data in
116 the University of North Texas Center for Human Identification.

117
118 The Toxicology backlog in the 90 day report was 98 cases with 257 cases over 60 days in the
119 system. The Toxicology Section, as a consequence of the Melendez-Diaz opinion, continues to
120 spend more time in court and experience increased backlogs. With the hiring of four new
121 toxicologists, however, the Department anticipates that once their training is completed, the
122 backlog will start to decrease. The Department is also looking at adding Liquid Chromatograph
123 Triple Quad mass spectrometers, which are more efficient.

124
125 Dr. Bush thanked the Department for the identification of the missing person and applauded the
126 Department for its work on missing persons. Dr. Bush also expressed her thanks for the new
127 toxicologists employed with the Department.

128
129 Regarding grants, Director Marone informed the Board that DFS accepted two awards under the
130 2010 Justice Assistance Grant Program. One award is for the Digital and Multimedia Evidence
131 Section for federal fund of \$71,246. The Forensic Science Academy was also awarded \$19,000
132 in federal funds for training and personal certification testing of Forensic Science Academy
133 students and Academy graduates. The testing would qualify officers to receive Crime Scene
134 Certification through the International Association of Identification. The Department will
135 incorporate certification test preparation, materials, and test administration into its Forensic
136 Science Academy curriculum.

137

138 Under the 2011 Highway Safety Grant Program, the Department was awarded \$173,958 to use
139 for reimbursement to law enforcement agencies and their personnel for travel costs associated
140 with attending Breath Alcohol training, as well as to purchase related supplies and equipment.

141
142 Regarding resources and budget for FY 10, the net effect of budget reductions and additional
143 funds to address Melendez-Diaz expenses was reduction of \$889,263. At year end, agencies
144 were asked to return unspent moneys to the General Fund. The Department was able to return
145 \$500,000 from one-time savings that resulted from turnover/vacancy of four toxicology and two
146 latent print positions and savings derived from the Northern Laboratory first-year maintenance
147 contracts.

148
149 2010-2012 budget changes from FY10 included an increase of \$789,175 in each year of the
150 biennium for Melendez-Diaz costs, i.e., overtime, travel, and compensation for the toxicology
151 positions. The current budget also includes a reduction of \$271,983 for FY11 and \$282,728 for
152 FY12, to include the reduction of 2 positions from administrative services. No examiner
153 positions are affected.

154
155 Information Technology Resources: Transformation process is ongoing and the Department is
156 working closely with the VITA/NG partnership on the technical details of transformed services
157 and the determination of all associated costs. VITA estimated for the Joint Legislative Audit and
158 Review Commission an increase in DFS information technology costs of approximately \$1.5
159 million.

160
161 Familial DNA Searching: In light of public interest in the California "Grim Sleeper"
162 investigation the SAC reviewed the August 7, 2007 summary report of the former SAC sub-
163 committee on Familial Searches and requested an updated from the Department at their next
164 meeting. Director Marone informed the Board that the Department is in the process of gathering
165 information on familial DNA searching, existing software and the cost of implementation to the
166 Department. Director Marone explained to the Board that the CODIS software currently used
167 for searching the database is not capable of being used for familial testing. Director Marone
168 expressed his concern about using software currently used by California, Colorado and the City
169 of Denver. These jurisdictions have developed their software in-house, and the documentation,
170 protocols and support of the software resides in those laboratories.

171
172 Discussion by the Board ensued on familial searching.

173
174 The Board took a break at 10:35 a.m. and resumed at 10:55 a.m.

175
176 Mr. Benjamin made a motion that the Department, in consultation with the SAC and others with
177 appropriate expertise, shall study familial DNA searching, including existing software, cost of
178 the department's implementation, and the validation and efficacy of familial DNA searching, and
179 report to the Board in October 2010, which was seconded by Ms. Howard and passed by
180 unanimous vote of the Board.

181
182 **Old Business**

183

184 Ms. Merritt provide an update on Regulations for Obtaining Information from the DNA Data
185 Bank and Procedures for Verification and Authorization of Persons Requesting Information from
186 the DNA Data Bank, 6 VAC 40-60. At the May 12, 2010 meeting, the Board voted for the
187 Department to move forward with the regulatory action with the Notice of Intended Regulatory
188 Action (NORIA). The regulation was published on August 2, 2010.

189
190 The regulations are currently in the public comment period until September 1, 2010, and to-date,
191 no comments have been received.

192
193 Post-Conviction DNA Testing Program and Notification Project
194 Notification Subcommittee Chair Kristen Howard informed the Board that the Department
195 received approval from NIJ to use funding from the NIJ Post-Conviction DNA Testing Grant to
196 support the efforts of the Virginia State Crime Commission (“Crime Commission”) and the Mid-
197 Atlantic Innocence Project (“MAIP”) associated with case reviews and suspect notifications.
198 The Crime Commission was able to avail itself of access to the Westlaw database directory for
199 approximately \$6,000.

200
201 No new case assignments have been made to pro bono attorneys since January. At the beginning
202 of the project, there were 30 attorneys who received assignments, and only 17 have completed
203 their assignments to date. Seven attorneys have dropped out of the project. Of the 110 selected
204 cases in which suspects needed notification, no work has been done on 40 cases. VSCC will
205 need to make some reassignments on the majority of the 110 cases. We were able to make
206 approximately 25 successful notifications but VSCC is waiting on some verification forms to be
207 returned. The UVA law students notified 9 people. The Westlaw database has proved very
208 valuable. It helped identify 28 more individuals named on the DFS database that are now
209 deceased. This project has been very challenging for the Crime Commission. The next round of
210 assignments for the pro bono attorneys will include information gathered from the Westlaw
211 database. Ms. Howard advised the Board that they are revising the training manual,
212 presentations and scheduling additional training sessions. Approximately 80-90 cases will be
213 reassigned.

214
215 Regarding the 2008 NIJ Post-Conviction DNA Testing Assistance Grant, Chief Deputy Director
216 Gail Jaspén reiterated that NIJ approved the change of scope for the grant which allows the
217 Department to provide support to VSCC and MAIP through March 31, 2011.

218
219 Regarding notification and testing updates, Ms Jaspén informed the Board that DFS’ notification
220 numbers remained essentially the same because the Department’s focus has shifted to testing
221 while the notification process has been reassigned to the Notification Subcommittee. The
222 notification stats haven’t change very much and the Department is waiting for data from the
223 VSCC. Using updated numbers from the VSCC, the number of suspects still requiring
224 notification may be reduced to 519 or fewer.

225
226 Ms. Jaspén further updated the Board on the DNA testing program. In August 2009, cases with
227 final completed case results returned numbered 244. Now, DFS has final completed test results
228 returned in 543 cases. Certificates of Analysis have been issued thus far in 386 cases. The
229 number of Certificates of Analysis issued in closer to 400, because in a number of cases, more

230 than one certificate has been issued). A year ago, Certificates of Analysis had been issued in
231 only 134 cases.

232
233 With regard to case test results, among named suspects meeting NIJ criteria, 43 convicted
234 persons were not indicated/eliminated on evidence examined. For named suspects who do not
235 meet NIJ criteria, 25 convicted persons were not indicated/eliminated.

236
237 Ms. Jaspén introduced Mr. John Hardenbergh with the MAIP to update the Board on some of the
238 results of the MAIP's efforts.

239
240 Mr. Hardenbergh gave an update on Calvin Cunningham, a suspect in one of the post conviction
241 cases included in the testing program. He was convicted in 1981 of a single perp rape of his
242 landlady and served seven years in the Commonwealth's prisons. In 1982 he wrote a letter to the
243 judge and held firm to his innocence and stated "if my semen is tested against the samples
244 recovered from the victim's perk kit, I know it would prove my innocence". In February 2010,
245 MAIP, which represents Mr. Cunningham, received from the Department of Forensic Science
246 the Certificate of Analysis on the results of the testing. The testing results conclusively
247 eliminated Mr. Cunningham as the source of the samples collected from the crime scene. MAIP
248 filed a Writ of Actual Innocence in April with co-counsel and recently received assurances from
249 the Commonwealth's Attorney that they will not oppose the Writ. MAIP fully expect the Writ to
250 be granted.

251
252 Update on Impact of *Melendez-Diaz* Decision

253 Ms. Jaspén informed the Board that the impact on DFS continues to be felt in the Toxicology,
254 Drugs and Breath Alcohol sections. Ms. Jaspén presented charts regarding the marked increase
255 of receipt of witness subpoenas for DFS examiners to appear in court and data regarding
256 appearance and testimony verses appearance only. DFS examiners have risen to this challenge
257 and have been making it to court as subpoenaed. Ms. Jaspén reminded the Board that aside from
258 the court travel time documented in the charts, there is additional administrative time spent with
259 phone calls, logging in of subpoenas and coordinating appearances when more than one court
260 has subpoenaed an examiner for the same time and day.

261
262 New Business

263
264 Chief Deputy Gail Jaspén briefed the Board on the importance of renewing their Conflict of
265 Interest training every two years. Each member received a handout with instructions on how to
266 access the training on-line. Upon completed of the training, members are to send or e-mail Chief
267 Deputy Director Gail Jaspén a copy of the certificate of completion or otherwise affirm that they
268 have completed training.

269
270 Mr. Benjamin commented on the increased security to the Department's Central Laboratory
271 building. Mr. Benjamin and Ms. Jaspén each spoke with Maria Everett, Director of the FOIA
272 Advisory Council regarding the increased security. Ms. Everett opined that the measures in
273 place do not violate the open meeting provisions of the Virginia Freedom of Information Act.
274 Mr. Benjamin felt having the increased security may have the effect of discouraging public
275 attendance and participation at our meetings. Mr. Benjamin made a motion that the future

276 meetings of the Forensic Science Board be moved to a building that is more accessible or user
277 friendly to the general public, such as the General Assembly Building or another state building
278 that does not have the same security requirements. After discussion, the motion failed due to lack
279 of a second.

280

281 **Public Comment**

282

283 None

284

285 **Next Meeting**

286

287 The Forensic Science Board briefly discussed changing the date of the next meeting. Mr.
288 Morrough made a motion to move the next meeting date to Friday, October 15, 2010 at 9:00
289 a.m., which was seconded by Sheriff Lippa and passed by unanimous vote of the Board.

290

291 **Adjournment**

292

293 Chairman Morrough asked if there was a motion to adjourn. Dr. Bush moved that the meeting of
294 the Board be adjourned, which was seconded and passed by unanimous vote.

295

296 The meeting adjourned at 12:02 p.m.

297