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Final - Minutes
Forensic Science Board Meeting
August 10, 2016
Department of Forensic Science, Central Laboratory, Classroom 1

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Board Members Present

Leslie E. Edinboro, Ph.D., Scientific Advisory Committee Member
James F. Entas, Esq., Assistant Attorney General (Designee of Attorney General Mark R. Herring)
Colonel W. Steven Flaherty, Superintendent, Virginia State Police
William T. Gormley, M.D., Chief Medical Examiner
Karl R. Hade, Executive Secretary, Supreme Court of Virginia
Caroline Juran, Executive Director, Board of Pharmacy
Anthony A. Lippa, Jr., Sheriff, Caroline County
David A. C. Long, Esq., Acting Chair
Colette W. McEachin, Deputy Commonwealth's Attorney, City of Richmond
Denise Toney, Ph.D., Director, Division of Consolidated Laboratory Services

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Board Members Absent

Vince Donoghue, Essex Commonwealth's Attorney (Designee of Senator Mark D. Obenshain, Chair, Senate Courts of Justice Committee)
Francine C. Ecker, Director, Department of Criminal Justice Services
Jo Ann Given, Scientific Advisory Committee Member
Kristen J. Howard, Executive Director of the Virginia State Crime Commission (Designee of Senator Thomas K. Norment, Jr., Chair, Virginia State Crime Commission)
Richard L. Morris, Delegate (Designee of Delegate David B. Albo, Chair, House Courts of Justice Committee)

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
Sabrina S. Cillessen, Physical Evidence Program Manager
Amy M. Curtis, Department Counsel
Leslie H. Ellis, Human Resources Director
Katya N. Herndon, Chief Deputy Director
Linda C. Jackson, Department Director
Bradford C. Jenkins, Forensic Biology Program Manager
M. Scott Maye, Chemistry Program Manager
Carisa M. Studer, Legal Assistant

47 **Call to Order**

48 David Long, Vice-Chair of the Forensic Science Board (“Board”), served as Acting Chair for
49 this meeting and called the meeting to order at 9:05 a.m. Mr. Long welcomed the Board
50 members and the Department of Forensic Science (“Department” or “DFS”) staff.

51
52 Mr. Long introduced the two newly appointed members to the Board. He welcomed Colette
53 McEachin, Deputy Commonwealth’s Attorney for the City of Richmond, who is a member of the
54 Virginia Commonwealth’s Attorneys Association. He also welcomed Dr. Denise Toney,
55 Director of the Division of Consolidated Laboratory Services.

56
57 **Adoption of Agenda**

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

61
62 **Approval of Draft Minutes of the May 11, 2016 Meeting**

63 Mr. Long asked if there were any changes or corrections to the draft minutes from the May 11,
64 2016 meeting. Being none, Colonel Flaherty made a motion to adopt the minutes, which was
65 seconded by Ms. Juran and approved by unanimous vote of the Board.

66
67 **Chair’s Report**

68 There was no report from the Chair.

69
70 **DFS Director’s Report**

71 Director Jackson announced that it was National Forensic Science Week and that DFS would be
72 honoring and thanking its employees for all their hard work. Director Jackson also thanked the
73 Board members for their time and support of DFS.

74
75 **Facilities:**

76 Director Jackson updated the Board on the status of the facilities project at the Western
77 Laboratory. DFS staff moved into the newly constructed portion of the laboratory on January
78 25, 2016. Renovations to the existing portion of the laboratory also began on January 25, 2016,
79 and are almost complete. An official ribbon cutting ceremony will be held on September 26,
80 2016, and will include Secretary of Public Safety and Homeland Security Brian Moran,
81 Secretary of Administration Nancy Rodrigues, and Secretary of Health and Human Resources
82 William A. Hazel, Jr.

83
84 Director Jackson also updated the Board on the status of the facilities project for the Central
85 Laboratory. SFCS was selected as the Architecture and Engineering firm for the Central
86 Laboratory expansion project. The Department of General Services is conducting a parking
87 study for the Central Laboratory project, which includes a geotechnical survey that was
88 completed of the current parking surface to determine the feasibility of digging underground at
89 that location. The selection of a Construction Manager at Risk is in progress.

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93 Agency Events:

94 Director Jackson informed the Board that the comprehensive physical evidence recovery kit
95 (PERK) bills, SB291 and HB1160, went into effect on July 1, 2016. They establish a
96 comprehensive procedure for the consistent collection, handling, storage, and analysis of PERKs.
97

98 Director Jackson informed the Board that the Department purchased Qualtrax, which is a quality
99 and compliance management software that will maintain accreditation, certification and training
100 documentation and streamline the workflow of business processes. The Division of Consolidated
101 Laboratory Services uses Qualtrax and found it to be very useful. Training of DFS staff on the
102 new software is tentatively scheduled for September, and the plan is for the software to be fully
103 installed by the end of 2016.
104

105 Director Jackson updated the Board on the historical case file project. DFS has hired four wage
106 employees to scan the Certificates of Analysis from the archived case files (1973-1994) that are
107 not in the laboratory information management system (LIMS) and enter data about each case into
108 a database. To date, approximately 25,000 records have been uploaded to the new database,
109 which is 2% of the historical cases. There will be an additional wage employee hired to work on
110 the project. The Department has been able to use the information uploaded to the new database
111 to identify cases for the serology and microscopic hair comparison case reviews.
112

113 Budget Overview:

114 Director Jackson gave an update on the new positions DFS received in the FY17/FY18 budget.
115 She noted that DFS pledged \$100,000 of its FY16 Year End General Fund balance to offset
116 potential reductions in FY17. The Department was able to pledge back \$75,000 of the \$150,000
117 budgeted to outsource the retesting of “inconclusive” cases from the Post-Conviction Testing
118 project as fewer cases than anticipated needed retesting. Additionally, the Department pledged
119 \$25,000 of unused funds for the historical case project from FY16. The FY17 funding for the
120 historical case project will not be reduced.
121

122 Grants:

123 Director Jackson updated the Board on the status of the Department’s current grants: the FY
124 2014 DNA Capacity Enhancement and Backlog Reduction Program grant; the FY 2015 DNA
125 Capacity Enhancement and Backlog Reduction Program grant; the Office of the Attorney
126 General *Abbott* Settlement Forfeiture Funds One-Time transfer; the 2016 Highway Safety Grant;
127 the FY 2015 Paul Coverdell Forensic Science Improvement Grant; the New York County
128 District Attorney’s Office (DANY) Sexual Assault Kit Backlog Elimination Program grant; and
129 the NIJ Research and Development of Publicly Funded Forensic Science Laboratories grant.
130

131 Director Jackson gave an overview of the Department’s pending grant applications that were
132 previously approved by the Board: the 2017 Highway Safety Grant; the FY 2016 Paul Coverdell
133 Forensic Science Improvement Grant; the 2016 Research and Evaluation for the Testing and
134 Interpretation of Physical Evidence in Publicly Funded Forensic Laboratories grant; the National
135 Sexual Assault Kit Initiative FY 2016 Competitive Grant; and the FY2016 DNA Capacity
136 Enhancement and Backlog Reduction Grant.
137

138 Director Jackson presented the FY 2016 Byrne Justice Assistance Grant, which still required
139 Board approval for submission and acceptance of the funds. The grant would be used to increase
140 the capacity in the Forensic Training Section through the purchase of new equipment and the
141 hiring of a part-time employee. This grant would allow the Forensic Training Section to offer
142 short courses concurrently with the Forensic Science Academy sessions. Sheriff Lippa made a
143 motion for the Department to apply for and accept the funds, if awarded, for the FY 2016 Byrne
144 Justice Assistance Grant, which was seconded by Ms. Juran and approved by unanimous vote of
145 the Board.

146
147 Workload/Backlog:

148 Director Jackson provided the Board with an update on statistical trends in the program areas.
149 She reviewed the workload/backlog report generated from the new Laboratory Information
150 Management System (LIMS). The report shows statewide statistics for each laboratory section.
151 Director Jackson noted that the Digital Multimedia Evidence Section of the report only captures
152 what has been added to the system since the new LIMS has been in place. The Forensic Biology
153 Section of the report shows cases in the section longer than in the system because of the way
154 “cold” cases are tracked. The Board discussed staffing at each laboratory and the complexity of
155 cases at each laboratory.

156
157 Director Jackson explained that the Controlled Substances Section submissions have been higher
158 since February 2016. The Department is researching the reasons for the continued increase in
159 submissions, and evaluating the staffing necessary to handle the submission increase. Director
160 Jackson explained to the Board that the substances that are being submitted are not only
161 marijuana. The Department of Criminal Justice Services and DFS are preparing a report of drugs
162 submitted to the Department in calendar year 2015 grouped by State Police division that shows
163 the trends by type of drug. A link to the report will be passed along to the Board once it is
164 available.

165
166 Director Jackson reported that the Firearms Section also has continued to see a significant
167 increase in submissions for NIBIN entry. She reminded the Board that DFS did receive funding
168 for additional positions to handle the case increase, but they are still in recruit. NIBIN cases
169 account for approximately 50% of case submissions to the Firearms Section.

170
171 Director Jackson reported that the Forensic Biology Section completed more cases than received.
172 She noted that, in the Forensic Biology Section, more than one case may be created for a
173 criminal event. A case is created for the examination and another case is created if there are
174 complex DNA mixtures that require statistics. There are currently six positions in recruit for this
175 section.

176
177 Director Jackson continued with updates for the other DFS sections. She reported that the Latent
178 Prints Section trainees have completed their training. In the past quarter, the section has analyzed
179 more cases than received. The Question Documents Section currently consists of two staff
180 members in the Western laboratory. There is one position that will remain in continuous recruit
181 until a qualified candidate is found. The Toxicology Section has six new positions that were
182 funded in the biennial budget that are in the hiring process. Three additional Administrative
183 Specialists, one at each regional laboratory, were also added through the budget which will assist

184 in preparing reports in Controlled Substances and Toxicology. DFS is waiting to see what
185 impact the recent Birchfield v. North Dakota decision will have on the Toxicology Section. The
186 Trace Evidence Section has restored explosives examinations capability and the Scope of
187 Accreditation for the Central Laboratory has been updated.

188
189 **Old Business**

190
191 Status of the Post-Conviction DNA Testing Program and Notification Project:

192 Katya Herndon, Chief Deputy Director, provided an overview of the Post-Conviction DNA
193 Testing Program and Notification Project (PC Project) for the new Board members. Ms.
194 Herndon reminded the Board that Virginia State Crime Commission (VSCC) staff has been
195 working on next of kin letters and the database verification project. She advised that Ms.
196 Howard would provide an update on the status of the work of the VSCC staff at the next
197 meeting.

198
199 Ms. Herndon also reminded the Board that, in the fall of 2014, the VSCC had recommended the
200 retesting of evidence in the PC Project cases with “inconclusive” results. All 421 cases with
201 “inconclusive” results were reviewed, and a determination was made whether additional DNA
202 testing would be probative of the defendant’s guilt or innocence in each case. There were 33
203 “inconclusive” cases recommended for testing and sent to Bode Cellmark Forensics, the private
204 laboratory awarded the contract to conduct the additional testing. Ms. Herndon provided an
205 overview of the results from the Bode testing in the “inconclusive” cases. In each of the 33
206 cases, the Department sent the Bode report to the original investigating agency with a copy to the
207 Commonwealth’s Attorney. Letters were also sent to the suspects in cases where DFS had a
208 confirmed address for the suspect. The letters to the suspects advised of the additional testing
209 and how to request a copy of the report. The VSCC is assisting DFS with locating additional
210 suspect addresses for the “inconclusive” cases.

211
212 Ms. Herndon updated the Board on additional testing DFS conducted in a “need known” case
213 after receiving a “known” or reference sample from the defendant. The defendant was excluded
214 from the evidence as a result of the additional testing. In light of this, DFS will be looking at
215 other “need known” cases where the defendants confirmed notification and working with the
216 VSCC to get updated contact information for the defendants so that letters may be sent in
217 appropriate cases.

218
219 Microscopic Hair Comparison Case Review:

220 Amy Curtis, Department Counsel, provided background on the creation and work of the
221 Microscopic Hair Comparison Case Review Subcommittee for the new members of the Board.
222 Ms. Curtis presented the report from the Microscopic Hair Comparison Case Review
223 Subcommittee. The Subcommittee met twice since the Board’s May meeting.

224
225 On June 16, 2016, the Subcommittee reviewed twelve transcripts and identified testimony of
226 concern in the transcripts. The Subcommittee directed DFS to create a guidance document using
227 the testimony flagged in the transcripts. The guidance document will assist the review team as it
228 screens transcripts from microscopic hair comparison cases.

229

230 On July 18, 2016, the Subcommittee reviewed the draft guidance document, which outlines the
231 three questions the review team will be considering and includes examples of testimony of
232 concern, as well as examples of appropriate testimony. The Subcommittee approved the
233 guidelines as a working document.

234
235 Ms. Curtis advised the Board that the Subcommittee had considered the issue of whether the
236 review team should consider the entire context of the testimony in conducting its review or
237 whether any inappropriate testimony should be automatically flagged. Ms. Curtis shared draft
238 language on context for the Board to consider including in the guidelines. The issue of context
239 will be acted on by the Board at its October 13, 2016, meeting.

240
241 Ms. Curtis informed the Board that two attorneys from the Indigent Defense Commission have
242 agreed to serve on the review team along with a DFS examiner. The Department is currently
243 working on identifying cases for review.

244
245 The next Subcommittee meeting is scheduled for October 13, 2016, at 9 a.m. The initial review
246 team meeting is scheduled at DFS on October 27, 2016.

247
248 Serology Case Review:
249 Brad Jenkins, Biology Program Manager, provided an update to the Board on the serology case
250 review. DFS has pulled 100 serology cases from both the Northern and Eastern Laboratories,
251 and has begun to review them. Jami St. Clair, a member of the Scientific Advisory Committee,
252 has volunteered to assist as an independent reviewer. She will be reviewing a subset of the files
253 reviewed. Mr. Jenkins will have more information at the October Board meeting.

254
255 **New Business**

256
257 Chemistry Program Update:
258 Scott Maye, Chemistry Program Manager, provided the Board with an update on the
259 Department's recommendations to the Board of Pharmacy for scheduling compounds using the
260 expedited regulatory process. Six compounds added to Schedule I of the Code of Virginia using
261 the expedited process were effective June 15, 2016, and an additional seventeen will be effective
262 September 7, 2016. On July 29, 2016, DFS recommended five additional compounds to be
263 added to Schedule I via the expedited regulatory process.

264
265 Mr. Maye answered questions about the Board of Pharmacy's expedited scheduling process from
266 the newly appointed members of the Board. Mr. Maye explained that the Department adds
267 language to its Certificates of Analysis when reporting on compounds have been added to
268 Schedule I by Board of Pharmacy regulation.

269
270 Birchfield v. North Dakota:
271 Amy Curtis reported to the Board on the Supreme Court's decision in Birchfield v. North
272 Dakota. Ms. Curtis discussed how the decision could impact the Department's Toxicology
273 Section. She also discussed the Department's process for handling implied consent DUI cases
274 compared to search warrant cases. The Department has sent information to Commonwealth's
275 Attorneys and law enforcement agencies reminding them how to properly submit blood kits in

276 search warrant DUI cases. The Department will be keeping statistics on the need for its
277 toxicologists to testify in search warrant DUI cases, and Ms. Curtis will update the Board at the
278 October meeting on any trends due to the Birchfield decision.

279

280 **Public Comment**

281 There was no public comment.

282

283 **Next Meeting**

284 The next meeting of the Forensic Science Board is set for October 13, 2016, at 10:00 a.m. The
285 next meeting of the Microscopic Hair Comparison Case Review Subcommittee is set for October
286 13, 2016, at 9:00 a.m. The Forensic Science Board also set a meeting for January 4, 2017, at
287 9:00 a.m.

288

289 **Adjournment**

290 Sheriff Lippa moved that the meeting of the Board be adjourned, which was seconded by Mr.
291 Long and passed by unanimous vote.

292

293 The meeting adjourned at 10:21 a.m.