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**Minutes**  
**Forensic Science Board Meeting**  
**May 11, 2011**  
**Department of Forensic Science, Central Laboratory, Classroom 1**

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18

**Board Members Present**

19 Steven D. Benjamin  
20 Leah Bush, M.D.  
21 Dale Carpenter, Ph.D.  
22 Alan Katz (Designee for Attorney General Cuccinelli)  
23 Jo Ann Given  
24 Kristen Howard (Designee for Senator Howell)  
25 Caroline Juran  
26 Senator Henry L. Marsh III

27  
28

**Board Members Absent**

29 Colonel W. Steven Flaherty  
30 Katya Herndon (Designee for Karl R. Hade)  
31 Delegate William R. Janis  
32 Sheriff A.A. Lippa Jr.  
33 Raymond F. Morrogh  
34 Garth L. Wheeler

35  
36

**Legal Counsel for the Forensic Science Board**

37 Amy Dilworth

38  
39

**Staff Members Present**

40 Wanda Adkins, Office Manager  
41 Jeff Ban, Central Laboratory Director  
42 David Barron, Ph.D. Technical Services Director  
43 Donna Carter, Finance Manager  
44 Doug Chandler, IT Manager  
45 Ann Davis, Special Project Consultant  
46 Leslie Ellis, Human Resources Director  
47 Linda Jackson, Chemistry Program Manager  
48 Gail Jaspens, Chief Deputy Director  
49 Brad Jenkins, Forensic Biology Program Manager  
50 Alka Lohmann, Training and Calibration Program Manager  
51 Pete Marone, Department Director  
52 Stephanie Merritt, Department Counsel  
53 Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology  
54 Steve Siegel, Deputy Director

47 Carisa Studer, Legal Assistant  
48 Amy Wong, Northern Laboratory Director

49  
50 **Call to Order by Vice-Chair Dr. Leah Bush**

51  
52 Vice-Chair Bush called the meeting of the Forensic Science Board (“Board”) to order at 9:14  
53 a.m. Chairman Morrogh was unable to attend the meeting. Therefore, Dr. Bush, Vice-Chair,  
54 presided over the meeting. Vice-Chair Bush remarked that Shawn Armbrust from the Mid-  
55 Atlantic Innocence Project (MAIP) would be coming to the meeting with Mr. Thomas  
56 Haynesworth, and that they had asked for an opportunity to make some brief remarks to the  
57 Board. A quorum was not present at the time, but Vice-Chair Bush suggested that the members  
58 in attendance receive the Director’s Report.

59  
60 **DFS Director’s Report**

61  
62 Regarding facilities, Director Pete Marone informed the Board of both that the Central and  
63 Eastern Laboratories expansion projects were on schedule.

64  
65 Regarding the 30-60-90 day workload summary report, Director Marone informed the Board that  
66 progress was being made on old cases in the last six months. Director Marone commented that  
67 the Department should be in a good place by the end of the year.

68  
69 Director Marone informed the Board that the Department was moving forward with purchasing  
70 more equipment for the Toxicology, Trace Evidence, and Controlled Substances sections. All  
71 positions in the Toxicology section have been filled, and all should be qualified by the end of the  
72 summer.

73  
74 Director Marone explained to the Board that the Firearms Section and Latents Section will be  
75 experiencing turnover in the future due to upcoming retirements. Consequently, DFS has  
76 identified the need to start the hiring process because of the extensive training period. Also, the  
77 Department will be adding staff to the Forensic Biology Section using grant funds, with the  
78 expectation of moving any new position to general fund positions in the future.

79  
80 Director Marone reviewed the grant programs that the Department receives, and gave an  
81 overview of the grants funding the Forensic Biology section.

82  
83 Senator Marsh asked if there was going to be a trend for greater staffing needs in the Forensic  
84 Biology section in the future. Director Marone answered that with the addition of new  
85 equipment and efficiency measures, the Department does not see a need for more staff. Senator  
86 Marsh added that the reason he asked was for legislative budget purposes. He would like to  
87 know now if there are budget issues he can help with now before future needs arise. Director  
88 Marone commented about past budget reductions not affecting staffing, but expressed interest in  
89 possibly seeking to have some of the Forensic Science Academy funding reinstated. Senator  
90 Marsh expressed concern over his impression that Congress would be reducing federal grants,  
91 and its affects on the Department’s ability to fulfill its needs. Director Marone explained he is in

92 contact with Congressional staff and is preparing the Department to absorb the DNA grant  
93 funded staff if needed. He is unaware of specific grant reductions at this time.

94  
95 Mr. Benjamin asked when the Department has to submit its budget to the Governor's Office.  
96 Director Marone answered that the Budget gets submitted in October. Mr. Benjamin suggested  
97 to the Department to let the Board help if any additional funding will be needed. The Board, he  
98 suggested, could help bring the matter to the General Assembly to review any budget requests.

99  
100 Ms. Jaspens commented that the Department takes budget direction from the Governor's Office  
101 and the Secretary's Office, which provide direction at times based on how it chooses among  
102 conflicting priorities. The Department does its best to accommodate the process. Senator  
103 Marsh agreed with Ms. Jaspens's comments, and asked the Department to reach out to him and  
104 the Board in advance of the budget submission, and to let the Board know of any anticipated  
105 needs. Ms. Jaspens commented that she understood the Board's interest and will express it to the  
106 Secretary. Director Marone also commented that the Department has had fewer budget problems  
107 compared to Forensic Science programs in other states. There is a chance that cuts in Federal  
108 funding could be coming and will work with the Board if this happens.

109  
110 Director Marone continued with his grant presentation, and reviewed the current grant  
111 applications. A quorum became present, and the Board proceeded with approving the grant  
112 applications.

113  
114 Senator Marsh moved to approve the Solving Cold Cases with DNA, 2012 Highway Safety  
115 Grant Program, and Continuation of two Byrne Justice Assistance Grants. Ms. Given seconded  
116 the motion which was adopted by unanimous vote of the Board.

117  
118 Ms. Given moved to approve the 2011 DNA Backlog Reduction Grant Program, 2011 Paul  
119 Coverdell Grant Program, and 2011 Paul Coverdell Grant Program. Ms. Howard seconded the  
120 motion which was adopted by unanimous vote of the Board.

121  
122 **Adoption of Agenda**

123  
124 Vice-Chair Bush asked if there were any additions or changes to the draft agenda for the  
125 meeting. Being none, Mr. Katz moved to adopt the agenda, which was seconded by Ms. Given  
126 and adopted by unanimous vote of the Board.

127  
128 **Approval of Draft Minutes of January 5, 2011 Meeting**

129  
130 Vice-Chair Bush asked if there were any changes or corrections to the draft minutes from the  
131 January 5, 2011 meeting. Being none, Senator Marsh moved to adopt the minutes of the January  
132 5, 2011 meeting. Ms. Juran seconded the motion which was adopted by unanimous vote of the  
133 Board.

134  
135 **Public Comment**

136 At this time Vice-Chair Bush introduced Shawn Armbrust, Executive Director MAIP, to the  
137 Board. She thanked the Board for their time and effort on the Post-Conviction DNA Program,

138 and introduced Mr. Thomas Haynesworth to the Board. Mr. Haynesworth expressed his  
139 appreciation and thanked the Board and the Department for all the efforts put forth on the Post-  
140 Conviction DNA Program.

141  
142 Mr. Benjamin thanked Mr. Haynesworth for taking the time to come and share his thoughts with  
143 the Board. Mr. Benjamin commented on the important work of the Department and of the Board  
144 for establishing the Post-Conviction DNA Program. He thanked everyone involved.

145  
146 Senator Marsh and Dr. Bush also thanked Mr. Haynesworth for his expression of appreciation to  
147 the Department and the Board.

148  
149 **Chairman's Report**

150  
151 Vice-Chair Bush made no report to the Board at this meeting.

152  
153 **Update on General Assembly Legislation**

154 Chief Deputy Director Jaspén provided the Board with an overview Public Safety legislation  
155 enacted in the 2011 Session of the General Assembly. Ms. Jaspén gave an explanation of the  
156 "Spice" bill that passed as emergency legislation, and became effective upon adoption.

157  
158 The statute for the DNA data bank and disclosure of information to relevant persons other than  
159 law enforcement officers was amended to include Commonwealth's Attorneys, US Attorneys,  
160 and the OCME. Also, the statute providing for the collection of DNA samples from persons  
161 arrested or convicted of sex offenses was expanded as a public safety measure.

162  
163 A bill also passed allowing private police departments to submit evidence to the Department for  
164 analysis.

165  
166 **Update on Impact of Melendez-Diaz Decision**

167 Chief Deputy Director Jaspén provided an update of the impact on the Department of the  
168 *Melendez-Diaz* decision, presenting graphs to demonstrate the effect on various sections over  
169 time. The increased number of subpoenas received remains at an elevated plateau. The greatest  
170 impact continues to be on the Controlled Substances Section, and it is not expected to diminish.  
171 The Breath Alcohol Section continues to see its subpoena numbers return to pre-*Melendez-Diaz*  
172 levels. Dr. Bush inquired as to why the Controlled Substances Section was still above pre-  
173 *Melendez-Diaz* levels when Breath Alcohol has gone down. Director Marone answered that  
174 Breath Alcohol had certification requirement wording removed from the Certificate of Analysis  
175 so that the operators no longer testify about the Breath Instruments. The Controlled Substances  
176 section does not have a similar option.

177  
178 Ms. Jaspén asked the Board if they would like for her to continue *Melendez-Diaz* updates at  
179 future Board Meetings. There was no motion to continue reports.

180  
181 **Old Business**

182

183 Ms. Merritt, Department Counsel provided an update on Regulations for Obtaining Information  
184 from the DNA Data Bank and Procedures for Verification and Authorization of Persons  
185 Requesting Information from the DNA Data Bank, 6 VAC 40-60. Ms. Merritt explained to the  
186 Board the Town Hall process and went over changes made to the regulation. There were  
187 changes to page 2, line 69, and to page 3 lines 97-112.  
188

189 Senator moved that the Board accept the changes to the Regulations as they appear. Ms. Given  
190 seconded the motion which was adopted by unanimous vote of the Board.  
191

### 192 **Annual Election of Board Chair and Vice Chair**

193  
194 Vice-Chair Bush asked if there were any nominations for Board Chair. Ms. Given nominated  
195 Ms. Juran; the nomination was seconded by Mr. Benjamin and passed by unanimous vote of the  
196 Board. Vice-Chair Bush asked for nominations for Vice Chair. Mr. Benjamin nominated Dr.  
197 Bush for a second term; the nomination was seconded Senator Marsh and passed by unanimous  
198 vote of the Board.  
199

200 Mr. Benjamin moved that the Board request the Scientific Advisory Committee (SAC) review  
201 and comment on the Department's proposed implementation of an alternative statistical  
202 calculation for DNA mixture cases. Senator Marsh seconded the motion. Ms. Given informed  
203 the Board that the SAC has a continuing DNA subcommittee that is reviewing the issue and may  
204 meet if they feel it is necessary. Mr. Benjamin withdrew his motion.  
205

### 206 **Scientific Advisory Committee Report**

207  
208 Ms. Given reported that the Biology Subcommittee will continue and expects comments from all  
209 members on both DNA Stochastic Threshold Implementation and Familial DNA. Comments  
210 need to be made by June 1, 2011. The subcommittee will meet if needed, and will report back to  
211 the SAC and Board  
212

213 Ms. Given gave a review of the Chemistry Subcommittee report. The Subcommittee reviewed  
214 all training and procedures manuals, and made some recommendations for changes to the  
215 Department. All recommendations have already been implemented by the Department.  
216

217 The SAC established a Firearms Subcommittee and the members will begin to review training  
218 and procedures manuals for the upcoming SAC meetings.  
219

220 Ms. Given announced that she was re-elected to serve as SAC Chair, and that Jamie St. Clair was  
221 elected to serve as Vice-Chair.  
222

223 Mr. Benjamin commented on how well the SAC works with the Department and the Board, and  
224 thanked them for all their hard work.  
225

### 226 **Update on Familial DNA Searching**

228 Brad Jenkins, Biology Program Manager, updated the Board on the Department's progress on  
229 implementing Familial DNA searching with a presentation. Mr. Jenkins gave examples during  
230 his presentation, including how the screening process for cases was going to be handled, and  
231 explained the Department's policy.

232  
233 Dr. Bush inquired about slide 5 and why the Department was going to be able to perform  
234 searches at a cheaper estimated cost than other searches. Mr. Jenkins explained that the  
235 Department would be able to do it for a more reasonable cost because of the consolidated list of  
236 samples.

237  
238 Ms. Juran asked when the Department was going to begin accepting requests for Familial DNA  
239 searches. Mr. Jenkins responded that the Department went live with accepting requests about a  
240 month prior to the Board meeting. Ms. Juran asked if the Department can search the National  
241 Databank or if searches are limited to the Virginia Databank. Mr. Jenkins answered that  
242 searches are limited to the Virginia Databank.

243  
244 Ms. Howard asked if the Department has yet to receive any request for Familial DNA searches.  
245 Ms. Jaspens answered that like all other case work, the Department is not at liberty to say if it  
246 performing Familial DNA searches in any actual cases. Ms. Howard asked if the Department  
247 could say anything at all about doing Familial DNA searches. Ms. Jaspens responded that,  
248 hypothetically, if she indicated that DFS had performed a familial search upon request, it might  
249 be easy at this time for the public to figure out what case or cases were being worked..

250  
251 Mr. Benjamin commented that he has in fact observed that particular prosecutors and law  
252 enforcement officials who have an interest in Familial DNA searches have come to the  
253 Department.

254  
255 Kristen Howard commented that every year more individuals are added to the databank, and she  
256 asked if the Department would conduct repeated searches. Mr. Jenkins answered that under the  
257 Department's manual, they reconsider the search every 12 months just like in California. Ms.  
258 Howard asked if there would be a priority level for searches. Mr. Jenkins answered that he is  
259 anticipating for it to be the same.

260  
261 Mr. Benjamin commented about his continued support for Familial DNA testing. He  
262 commented about how this technology is not without some controversy, and acknowledged the  
263 public's fear that Familial DNA is an invasion of privacy. Mr. Benjamin suggested that  
264 additional language could be added to policy to help with public fears. Mr. Benjamin noted that  
265 the Department and law enforcement do not plan on using Familial DNA as evidence in a case,  
266 but rather it is only for developing a lead in a case. It does not require any citizen to give a  
267 sample. It is a tool of police work.

268  
269 Mr. Marone agreed with Mr. Benjamin's comments on public fears. He also commented on  
270 Familial DNA searches possibly becoming overly burdensome for Commonwealth's Attorneys  
271 and Law Enforcement involved in these cases. Familial DNA cases are going to be done with a  
272 purpose and on a limited number of cases.

273

274 Mr. Benjamin commented that he would like to hear from any person who maintains this is a  
275 violation of privacy.

276  
277 Ms. Juran commented that if the Department is going to be sources of information to the public  
278 about Familial DNA searches than should the Department create literature for the public about it.  
279

280 Mr. Marone answered that was a legal question not a science question, so it was not for the  
281 Department to answer.

282  
283 Ms. Juran asked who the appropriate source was and does the Department anticipate receiving  
284 lots of inquiries for Familial DNA searches.

285  
286 Mr. Benjamin ended the discussion commenting that these were all good questions for the Board  
287 and the Department to think about.

288  
289 **Update on Stochastic Thresholds (ST)**

290 Brad Jenkins, Biology Program Manager, updated the Board on the Department's progress on  
291 implementing Stochastic Thresholds (ST) with a presentation. Mr. Jenkins gave a definition and  
292 explanation of ST. He gave an extensive explanation of SWGDAM guidelines, and the  
293 Department's implementation of the new nation guidelines to change certain DNA population  
294 statistic calculations. The training of staff will be done internally over the summer of 2011. The  
295 Department has identified 375 cases that will be receiving the new calculations. Mr. Jenkins  
296 expects all changes to fall in place over the summer.

297  
298 Mr. Benjamin asked if there was a plan for distribution of supplemental reports for the 375 cases  
299 discussed, and where are they sent. Ms. Merritt answered that they will be handled like all  
300 certificates of analysis, and they will be sent to the investigating officer.

301  
302 Mr. Benjamin asked if notifications were going to be necessary. Mr. Marone answered that the  
303 Department is currently trying to define categories for the cases, for example have they gone to  
304 trial or waiting court date. Each case is going to be different.

305  
306 Mr. Benjamin asked about the cases where the person mentioned in the certificate may have  
307 already been tried and convicted. Ms. Merritt explained that the Department is not notified of  
308 the outcome of litigation. It would be more practical for a defense attorney to submit a 9.1-1104  
309 request for all certificates of analysis.

310  
311 Mr. Benjamin commented on the memo sent to Commonwealth's Attorneys in regards to the  
312 change in calculations. He suggested that it would also be important to inform the Defense Bar  
313 to receive the memo. He volunteered to post the notification to the Defense Bar.

314  
315 **Post-Conviction DNA Testing Program and Notification Project**

316 Notification Subcommittee Chair Kristen Howard updated the Board training sessions for the  
317 pro-bono attorneys. The Mid-Atlantic Innocence Project has assisted with the first 3 sessions.  
318 20 out of 59 attorneys that attended the training have taken case assignment. They have been  
319 receiving good leads on finding address information. The Westlaw database is up and working.

320  
321 Regarding notification and testing updates, Ms Jaspen informed the Board that there have been  
322 356 confirmed suspect notifications to date. There are 497 undelivered notifications. There has  
323 been significant progress in the testing program since 2009. There are 783 cases with evidence  
324 and a named suspect confirmed convicted of a felony crime against a person. Final completed  
325 case results have been returned in 636 cases. To date, there are 636 cases in which certificates of  
326 analysis have been issued. For suspects who meet NIJ criteria, 66 suspects were determined not  
327 indicated or eliminated on the tested evidence. Among suspects who do not meet NIJ criteria, 30  
328 were not indicated or eliminated.

329  
330 Ms. Jaspen informed the Board that phase 1 of the post-conviction testing has been completed  
331 and all certificates of analysis have mailed to law enforcement. Phase 2 of the program has  
332 already begun. These cases include the new NIJ eligibility criteria which includes violent felony  
333 offenses.

334  
335 Mr. Benjamin asked of the Phase 2 cases where did the 30 suspects not indicated or eliminated  
336 come from. Ms. Jaspen and Ms. Schiermeier-Wood explained further about Phase 2 and how the  
337 cases were counted verses the number of suspects.

338  
339 **New Business**

340  
341 None

342  
343 **Public Comment**

344  
345 None

346  
347 **Next Meeting**

348  
349 The Forensic Science Board will meet on Wednesday, August 10, 2011 at 9 a.m.

350  
351 **Adjournment**

352  
353 Ms. Given moved that the meeting of the Board be adjourned, which was seconded by Ms.  
354 Howard and passed by unanimous vote.

355  
356 The meeting adjourned at 11:35 a.m.

357