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**Final - Minutes**  
**Forensic Science Board Meeting**  
**January 6, 2016**  
**Department of Forensic Science, Central Laboratory, Classroom 1**

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**Board Members Present**

25 Vince Donoghue, Essex Commonwealth's Attorney (Designee of Senator Thomas K.  
26 Norment, Jr., Senator Mark D. Obenshain, Co-Chairs, Senate Courts of Justice  
27 Committee) - Forensic Science Board Chair  
28 Francine C. Ecker, Director, Department of Criminal Justice Services  
29 James F. Entas, Esq., Assistant Attorney General (Designee of Attorney General  
30 Mark R. Herring)  
31 William T. Gormley, M.D., Chief Medical Examiner  
32 Karl R. Hade, Executive Secretary, Supreme Court of Virginia  
33 Sammy Johnson, Deputy Executive Director, Board of Pharmacy (Designee of Caroline  
34 Juran, Executive Director, Board of Pharmacy)  
35 David A. C. Long, Esq.  
36 Lieutenant Colonel Robert B. Northern, Deputy Superintendent, Virginia State Police, (Designee  
37 of Colonel W. Steven Flaherty, Superintendent, Virginia State Police)  
38 Claiborne H. Stokes, Jr., Commonwealth's Attorney, Goochland County  
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**Board Members Absent**

49 Jo Ann Given, Member, Scientific Advisory Committee  
50 Kristen J. Howard, Executive Director of the Virginia State Crime Commission (Designee  
51 of Senator Thomas K. Norment, Jr., Chair, Virginia State Crime Commission) - G. Stewart  
52 Petoe, Director of Legal Affairs of the Virginia State Crime Commission, attended the  
53 meeting on Ms. Howard's behalf  
54 Anthony A. Lippa, Jr., Sheriff, Caroline County  
55 Alphonse Poklis, Ph.D., Member, Scientific Advisory Committee  
56 Richard L. Morris, Delegate (Designee of Delegate David B. Albo, Chair, House Courts  
57 of Justice Committee)  
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**Legal Counsel for the Forensic Science Board**

69 Michelle Welch, Esq., Assistant Attorney General  
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**Staff Members Present**

89 D. Jeffery Ban, Central Laboratory Director  
90 Sabrina S. Cillessen, Physical Evidence Program Manager  
91 Amy M. Curtis, Department Counsel  
92 Katya N. Herndon, Chief Deputy Director  
93 Linda C. Jackson, Department Director  
94 Bradford C. Jenkins, Forensic Biology Program Manager  
95 Alka B. Lohmann, Director of Technical Services  
96 M. Scott Maye, Chemistry Program Manager  
97 Carisa Studer, Legal Assistant  
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**Call to Order**

Vince Donoghue, Chair of the Forensic Science Board (“Board”), called the meeting of the Board to order at 9:08 a.m. The Chair welcomed the Board members and the Department of Forensic Science (“Department” or “DFS”) staff. The Chair also welcomed Stewart Petoe, Director of Legal Affairs of the Virginia State Crime Commission, who attended the meeting on the Kristen Howard’s behalf.

**Adoption of Agenda**

The Chair asked if there were any additions or changes to the draft agenda for the meeting. Being none, Dr. Gormley made a motion to adopt the agenda, which was seconded by Lt. Col. Northern and adopted by unanimous vote of the Board.

**Approval of Draft Minutes of the October 15, 2015 Meeting**

The Chair asked if there were any changes or corrections to the draft minutes from the October 15, 2015 meeting. Being none, Mr. Long made a motion to adopt the minutes, which was seconded by Lt. Col. Northern and approved by unanimous vote of the Board.

**Chair’s Report**

There was no formal report from the Chair.

**DFS Director’s Report**

Director Jackson updated the Board on major projects for the upcoming year for the Department.

**Facilities:**

Director Jackson informed the Board of the status of the Western Laboratory expansion and renovation project. The new building is almost complete. The final inspection is also today, January 6, 2016. The certificate of occupancy is expected to be complete by January 25, 2016. Once the new building is complete, DFS will move into the new space and then the renovations will begin on the existing laboratory February 1, 2016. DFS anticipates the entire project to be complete in the fall of 2016.

Director Jackson had reported to the Board at the October 15, 2015 meeting that negotiations were underway for the contract with an architectural and engineering firm for the Central Laboratory expansion project. Since the October meeting, negotiations have been terminated with the selected firm. The Department of General Services recommended that the Department do a re-solicitation for proposals. A new solicitation for proposals will be released within 30 days.

**DNA Data Bank:**

Director Jackson provided updated information on the number of misdemeanor samples submitted to the DNA Data Bank as a result of the law that went into effect July 1, 2015 that requires adults convicted of nine additional misdemeanor offenses to provide samples for the DNA Data Bank. The Department has continued to see an increase in submissions to the DNA Databank since the additional misdemeanors offenses were added to the statute. Although the rate of submissions has seemed to level off.

93 Customer Satisfaction Survey:

94 Director Jackson informed the Board that the Department distributed a customer satisfaction  
95 survey to its user agencies on November 1, 2015 using SurveyMonkey®. The survey was open  
96 from November 1 – 24. It was distributed to law enforcement agencies and Commonwealth’s  
97 Attorneys. The survey included questions about the overall utilization of services and  
98 satisfaction, National Integrated Ballistic Information Network (NIBIN) search needs, and  
99 Toxicology and Controlled Substances report needs. A total of 391 responses were received.  
100 Currently, laboratory directors and section supervisors are analyzing the responses and reaching  
101 out to commenters as needed. Director Jackson anticipates providing the results from the survey  
102 at the next Board meeting.

103  
104 Archived Case Files Project:

105 Director Jackson updated the Board on the archived case file project. DFS hired two wage  
106 employees to scan the archived case files (1973-1995) not in the laboratory information  
107 management system (LIMS). There is funding for two additional wage employees. Portions of  
108 the files are being scanned into a database that will be searchable, and the information from the  
109 database will be able to be uploaded into the upgraded LIMS. Approximately 1,900 records  
110 have been uploaded to date. There are approximately one million case files to be scanned.

111  
112 Retesting of Post-Conviction DNA Cases:

113 Director Jackson updated the Board on the retesting of post-conviction DNA cases with  
114 “inconclusive” results. The 33 “inclusive” cases recommended for testing have been sent to  
115 Bode Cellmark Forensics, the private laboratory that awarded the contract to conduct the testing.  
116 DFS staff conducted an onsite assessment of Bode on December 15, 2015 to review the facilities,  
117 testing procedure, and personnel assigned to the testing.

118  
119 Budget Resources:

120 Director Jackson provided an overview of the Department’s Budget, including the proposed  
121 FY17 and FY18 changes. Director Jackson directed the Board to where additional information  
122 about the budget reductions is available online. The budget includes an increase of authorized  
123 positions from 310 to 318, savings budgeted from the 2015 general fund, and technical  
124 adjustments for changes to salaries/benefits and IT costs. Director Jackson noted that there was  
125 one item introduced for the FY16 budget bill to increase funding for the Western Laboratory’s  
126 utilities cost and the need for an additional facilities maintenance position.

127  
128 The budget includes funding for maintenance and support costs for the Laboratory Information  
129 Management System (LIMS). An upgrade on the Department’s current LIMS is in progress and  
130 the new system will require an additional maintenance fee.

131  
132 The budget also provides for additional funding for Physical Evidence Recovery Kits (PERK)  
133 testing. The increase is based on the recommendations from the PERK Work Group’s legislation  
134 that is expected to increase the volume of PERKs submitted to DFS. DFS will outsource PERKs  
135 in FY17 will plans for DFS staff to complete testing of all the additional PERKs by FY18.

136

137 Additional funding is provided for additional resources to trace firearms in the FY17 and FY18  
138 budget. DFS is anticipating and additional 4,000 firearms submissions per year. Additional  
139 equipment and staffing will be needed.

140  
141 Grants:  
142 Director Jackson briefly reminded the Board on the Department's current grants which include:  
143 the NIJ Research and Development of Publicly Funded Forensic Science Laboratories to Assess  
144 the Testing and Processing of Physical Evidence; the 2016 Highway Safety Grant; the FY14 and  
145 FY15 Paul Coverdell grants; the FY14 and FY15 DNA Capacity Enhancement and Backlog  
146 Reduction Program grants; the Office of the Attorney General *Abbott* Settlement Forfeiture  
147 Funds One-time Transfer; and the New York County District Attorney's Office Sexual Assault  
148 Kit Backlog Elimination Program.

149  
150 Workload/Backlog:  
151 Director Jackson presented the Department's statistics in quarterly format using graphs reflecting  
152 cases received, cases completed, the caseload, and the average number of days in the system for  
153 each Section. The Firearms Section continues to see an increase in submissions due to the  
154 Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) encouraging law enforcement  
155 agencies to submit all guns for entry into the NIBIN system. The Department is working on a  
156 strategy to streamline current procedures.

157  
158 Director Jackson reminded the Board that there has been an increase in the turnaround time for  
159 the Forensic Biology Section over the past year due to the new requirements nationally for  
160 increased forensic biology statistics. Currently, there are seven new Forensic Biology  
161 examiners in training.

162  
163 Director Jackson explained that currently the Digital Multi-Media Evidence (DMME) section is  
164 included within the Latent Prints statistics. When the new LIMS is implemented the DMME  
165 statistics will be separate.

166  
167 Director Jackson noted that the Questioned Documents Sections is made up of three examiners  
168 and one will be retiring in the near future. DFS plans on hiring a new examiner and having the  
169 examiner fully qualified before the current examiner retires.

170  
171 Director Jackson also noted that, although the Toxicology Section has slightly decreased case  
172 turnaround times for the past several quarters, the delays are still impacting the Office of the  
173 Chief Medical Examiner and DUI-D cases. DFS is currently working on new methods to  
174 decrease turnaround times and newly hired examiners are in training.

175  
176 Director Jackson also reminded the Board that the Trace Evidence Section lost three scientist  
177 positions through budget reductions last year that were restored during the General Assembly  
178 Session. The Department has two newly hired examiners in training. One position is still in the  
179 recruitment process.

180  
181 Goals for 2016:

182 Director Jackson reported to the Board that in 2016 the Fusion for DNA casework will be  
183 complete. The validation of the Powerplex Fusion Kit for case work has begun in the Central  
184 Laboratory and it is anticipated to be complete by the spring of 2016. After the validation is  
185 completed in the Central Laboratory, the regional laboratories will begin their validations. The  
186 Department anticipates being ready to report on 24 areas of DNA by the fall of 2016. The  
187 national deadline for laboratories to move to reporting 24 areas of DNA is early 2017.

188  
189 Brad Jenkins, Forensic Biology Program Manager, explained TrueAllele to the Board. It is a  
190 computer system used by DFS to calculate statistics for complicated mixture profiles, will also  
191 under go additional validation to include the 24 areas of DNA contained in the new Powerplex  
192 Fusion Kit. Currently, this system is in use with the Powerplex 16 kit, which tests 16 areas of  
193 DNA.

194  
195 Director Jackson reported to the Board that in 2016 DFS will complete the upgrade the current  
196 Laboratory Information Management System (LIMS) to a newer version. Training is complete  
197 for sections champions, Program Managers, and System Administrators. Testing of the new  
198 LIMS will begin this month and it is scheduled to “Go Live” by March 31, 2016. All DFS staff  
199 will be trained on the new LIMS in February 2016. The project must be completed by July 2016  
200 when the current server reaches the end of its life cycle. Once the new LIMS is “Live”, Phase II  
201 of the upgrade will begin. Phase II will add new features which includes pre-submission data  
202 entry for evidence and electronic distribution of Certificates of Analysis.

## 203 204 **Old Business**

### 205 206 Status of the Post-Conviction DNA Testing Program and Notification Project:

207 G. Stewart Petoe, Director of Legal Affairs of the Virginia State Crime Commission (VSCC),  
208 reported for Kristen Howard, Chair of the DNA Notification Subcommittee. Mr. Petoe reported  
209 that the VSCC has been working on three major points in regards to the project; review of the  
210 “inconclusive” case files, next of kin letters, and the database verification project.

211  
212 Since the October 2015 meeting, all of the “inconclusive” case files had been reviewed and  
213 recommendations for testing have been made. The recommended “inconclusive” case files have  
214 been sent for testing. VSCC has completed receiving contact information for the next of kin for  
215 13 deceased eliminated individuals. VSCC is on track to mail the next of kin letters in the next  
216 month.

217  
218 VSCC is continuing the database verification project to confirm the testing and notification  
219 status of each listed suspect in each case and enter the information into a database. The review  
220 of “eliminated” files is complete. The “inconclusive” case file group will be next to be verified.

### 221 222 SB658 PERK Inventory Update/2016 Legislation:

223 Ms. Herndon updated the Board on the PERK Inventory and the PERK Work Group. The  
224 Department submitted a revised PERK Inventory Report to the General Assembly, which was  
225 reprinted on and posted to the Legislative Information System website on December 16, 2016.  
226 Ms. Herndon reminded the Board that the July 1 PERK Inventory Report had identified 2,369  
227 untested kits in the custody of law enforcement. Eighteen agencies submitted updated

228 inventories for the revised report, which identified a total of 2,902 untested kits in the custody of  
229 law enforcement.

230  
231 Ms. Herndon also reminded the Board that the PERK Work Group, which was convened by the  
232 Governor in response to the July 1 Inventory Report, was tasked with evaluating criteria for  
233 PERK evidence testing in the Commonwealth. The Work Group was chaired by Secretary of  
234 Public Safety and Homeland Security Brian Moran and included as members First Lady Dorothy  
235 McAuliffe and representatives of victim advocate groups, Commonwealth's Attorneys, the  
236 criminal defense bar, law enforcement, forensic nurses, and DFS. The Work Group met on three  
237 occasions and also created four Subcommittees, which each met to develop recommendations for  
238 its specific subject area. The four Subcommittees were: Hospital/Collection Issues, Law  
239 Enforcement/Submission Issues, Testing/Data Bank Issues and Victim Consent/Notification  
240 Issues. The full Work Group adopted a number of recommendations related to the handling of  
241 PERKs.

242 Ms. Herndon reviewed the recommendations adopted by the PERK Work Group that would be  
243 included in legislation during the upcoming Session. The Work Group identified a number of its  
244 recommendation for inclusion in what it termed its "PERK Act" legislation. These  
245 recommendations require all anonymous PERKs to be submitted to DCLS for storage for a  
246 minimum of two years. After a PERK is collected from a victim who is reporting the offense,  
247 the hospital is to notify law enforcement of its collection, and law enforcement is to pick up the  
248 kit "forthwith." Law enforcement must submit the kit to DFS for testing within 60 days of  
249 receiving it. All PERKs are to be submitted to DFS for analysis except the following:  
250 anonymous PERKs; PERKs collected by the OCME in a routine death investigation; PERKs  
251 related to out of state offenses; and when it has been determined that the evidence in the PERK  
252 was not connected to a criminal offense. If the determination that the PERK is not connected to  
253 a criminal offense is made after the PERK has been submitted to DFS, and law enforcement or  
254 the Commonwealth's Attorney provide this information in writing to DFS, DFS will be required  
255 to expunge the DNA profile from the Data Bank. The recommendations to be included in the  
256 proposed PERK Act also address the victim's right to be notified of scientific analysis  
257 information, specify that profiles developed from the PERKs shall be uploaded to local, state or  
258 national data banks only if eligible per DFS procedures and in accordance with state and federal  
259 law, and clarify that failure to comply with the procedures is not grounds for a defendant to  
260 challenge the admissibility of the evidence or set aside the conviction or sentence. Ms. Herndon  
261 noted that the Governor's Introduced Budget includes the funding for the fiscal impact DFS  
262 projected would be associated with the PERK Act bill.

263 Ms. Herndon advised the Board that the PERK Work Group adopted a recommendation related  
264 to the Board that will be a DFS agency bill. It will add a victim advocate as a member of this  
265 Board and delete an outdated reference in the Code specifying that the Chairman of the Board of  
266 the Virginia Institute of Forensic Science and Medicine (VIFSM). VIFSM formally dissolved in  
267 2010. By adding victim advocate, the bill restores the FSB to its originally specified 15  
268 members. Delegate-Elect Jennifer Boysko will serve as the patron of this bill.

269  
270 **New Business**

271  
272 **Board of Pharmacy Emergency Scheduled Compounds:**

273 M. Scott Maye, Chemistry Program Manager, reported to the Board that pursuant to Code §  
274 54.1-3443(D), the Board of Pharmacy amended its regulation through an expedited process to  
275 temporarily place six new compounds into the emergency scheduled compounds. DFS had  
276 identified the six compounds for recommended inclusion by the Board of Pharmacy into the  
277 emergency schedule. All six were added to the Emergency Schedule August 12, 2015. An  
278 additional six were identified by DFS and recommended to the Board of Pharmacy and were  
279 added to the emergency schedule December 2, 2015. Legislation for the 2016 General Assembly  
280 Session includes all twelve compounds added the Emergency Schedule since August 2015. Bills  
281 including the twelve compounds have not been filed to date.

282  
283 Mr. Maye presented the reporting language that will be included on certificates of analysis that  
284 include compounds added to Schedule 1 pursuant to the Board of Pharmacy Regulation. Mr.  
285 Maye also informed the Board that the Department would be recommending six new compounds  
286 to the Board of Pharmacy for emergency scheduling. The compounds are due to the Board of  
287 Pharmacy by January 15, 2016.

288  
289 Texas Hair Microscopy Case Review:

290 Lynn Robitaille-Garcia, Texas Forensic Science Commission (TFSC), General Counsel, gave a  
291 presentation by phone to the Board on the Texas Experience; Conducting a review of hair  
292 microscopy cases as a matter of ethical duty. Amy Curtis, Department Counsel, assisted with the  
293 presentation and introduced Ms. Robitaille-Garcia to the Board. Ms. Robitaille-Garcia began  
294 with a background on the Texas Forensic Science Commission and the Texas Hair Microscopy  
295 Hair review project. In 2013, the Federal Bureau of Investigation (FBI) reported a concern about  
296 the way the results of microscopic hair comparisons were described in court testimony. The FBI  
297 conducted a review of its own hair microscopy cases. In 2014, Texas Association of Crime Lab  
298 Directors (TACL D) made the decision to move forward with a review of all hair microscopy  
299 cases in Texas. The TFSC was tasked with conducting the statewide review.

300  
301 Ms. Robitaille-Garcia presented an outline of the process the TSFC created to move forward  
302 with the case review project. Criteria were set for case files that needed to be pulled and  
303 reviewed. A team was created to review the hair microscopy case files where there was a  
304 conviction and an examiner testified on hair microscopy in the case. The team developed a  
305 review process of the selected cases, and once a case was identified as needing further  
306 investigation, the team analyzed the transcripts closely. Cases identified as having  
307 overstatements made in Court were deemed eligible for notification. In the cases deemed  
308 eligible for notification, the prosecutor's office and the last counsel of record for the suspect  
309 were notified.

310  
311 Ms. Robitaille-Garcia shared examples of the transcripts found in the cases reviewed. She also  
312 shared examples of which cases were recommended for notifications and which were not  
313 recommended for notification, and the reasoning used to make the determination.

314  
315 Ms. Curtis then discussed with the Board the Department's possible need to do a similar hair  
316 microscopy case review. The Chair appointed a hair microscopy case review subcommittee to  
317 set up a process for reviewing case files and identifying hair microscopy cases to make a  
318 recommendation to the Board. The subcommittee includes David Long, Lt. Col. Northern, and

319 Vince Donoghue. DFS staff will be available to the subcommittee for questions and  
320 stakeholders may be brought in if needed. A date will be selected for the subcommittee in the  
321 future.

322  
323 The Board discussed with Director Jackson how DFS currently handles legal training, cognitive  
324 bias, and the Department's position on testimony.

325  
326 Victoria Cochran, Deputy Secretary of Public Safety and Homeland Security, addressed the  
327 Board and thanked the members for their service.

328

329 **Public Comment**

330 There was no public comment.

331

332 **Next Meeting**

333 The next meeting of the Forensic Science Board is set for May 11, 2016.

334

335 **Adjournment**

336 Mr. Hade moved that the meeting of the Board be adjourned, which was seconded by Lt. Col  
337 Northern and passed by unanimous vote.

338

339 The meeting adjourned at 11:15 a.m.