

1 **Final - Minutes**
2 **Forensic Science Board Meeting**
3 **May 11, 2016**

4 **Department of Forensic Science, Central Laboratory, Classroom 1**
5

6 **Board Members Present**

7 Vince Donoghue, Essex Commonwealth's Attorney (Designee of Senator Thomas K.
8 Norment, Jr., Senator Mark D. Obenshain, Co-Chairs, Senate Courts of Justice
9 Committee) - Forensic Science Board Chair
10 Francine C. Ecker, Director, Department of Criminal Justice Services
11 James F. Entas, Esq., Assistant Attorney General (Designee of Attorney General
12 Mark R. Herring)
13 Colonel W. Steven Flaherty, Superintendent, Virginia State Police
14 Jo Ann Given, Member, Scientific Advisory Committee
15 William T. Gormley, M.D., Chief Medical Examiner
16 Kristen J. Howard, Executive Director of the Virginia State Crime Commission (Designee
17 of Senator Thomas K. Norment, Jr., Chair, Virginia State Crime Commission)
18 Caroline Juran, Executive Director, Board of Pharmacy
19 Anthony A. Lippa, Jr., Sheriff, Caroline County
20 David A. C. Long, Esq.
21 Claiborne H. Stokes, Jr., Commonwealth's Attorney, Goochland County
22

23 **Board Members Absent**

24 Karl R. Hade, Executive Secretary, Supreme Court of Virginia
25 Alphonse Poklis, Ph.D., Member, Scientific Advisory Committee
26 Richard L. Morris, Delegate (Designee of Delegate David B. Albo, Chair, House Courts
27 of Justice Committee)
28

29 **Legal Counsel for the Forensic Science Board**

30 Elizabeth Myers, Esq., Assistant Attorney General
31

32 **Staff Members Present**

33 Wanda W. Adkins, Office Manager
34 David A. Barron, Ph.D., Deputy Director
35 Donna M. Carter, Finance Manager
36 Sabrina S. Cillessen, Physical Evidence Program Manager
37 Amy M. Curtis, Department Counsel
38 Katya N. Herndon, Chief Deputy Director
39 Linda C. Jackson, Department Director
40 Bradford C. Jenkins, Forensic Biology Program Manager
41 M. Scott Maye, Chemistry Program Manager
42 Carisa M. Studer, Legal Assistant
43

44 **Call to Order**

45 Vince Donoghue, Chair of the Forensic Science Board (“Board”), called the meeting of the
46 Board to order at 9:05 a.m. The Chair welcomed the Board members and the Department of
47 Forensic Science (“Department” or “DFS”) staff.
48

49 **Adoption of Agenda**

50 The Chair asked if there were any additions or changes to the draft agenda for the meeting. Ms.
51 Given moved to add the Scientific Advisory Committee (“SAC or Committee”) report to the
52 agenda, which was seconded by Sheriff Lippa and adopted by unanimous vote of the Board.
53

54 **Approval of Draft Minutes of the January 6, 2016 Meeting**

55 The Chair asked if there were any changes or corrections to the draft minutes from the January 6,
56 2016 meeting. Ms. Juran made a motion to have the minutes clarify the attendance, which was
57 seconded by Ms. Howard and approved by unanimous vote of the Board.
58

59 **Chair’s Report**

60 There was no formal report from the Chair.
61

62 **Scientific Advisory Committee Report**

63 Jo Ann Given, member of the SAC, reported the Board that the Trace Subcommittee met to
64 discuss the Qualitative Analysis of Clandestine Methamphetamine Laboratory Evidence using
65 Laser Induced Breakdown Spectroscopy (LIBS) validation study. LIBS will be used to detect
66 lithium. The Subcommittee gave suggestions to DFS staff for both the validation study and the
67 procedures.
68

69 Ms. Given reported to the Board that the Committee received presentations of the Director’s
70 report, a legislative update, program area updates, and the Microscopic Comparison Case
71 Review Subcommittee report. The Committee was presented with an overview of the Serology
72 Case Review proposal by the Department. The SAC discussed the proposal and provided input
73 to DFS staff to assist with the serology case review. The Committee voted the Department begin
74 the serology review as proposed with ability to make changes in the process if necessary to carry
75 the review; and by amending step 2 that DFS staff reviews the cases first than have an outside
76 serologist review the case.
77

78 The Committee elected Leslie E. Edinboro, Ph.D., as the Chair for the next term and re-elected
79 Kenneth B. Zercie as Vice-Chair.
80

81 **DFS Director’s Report**

82 Facilities:

83
84 Director Jackson updated the Board on the status of the facilities projects at the Western and
85 Central Laboratories. Western Laboratory moved into the newly constructed portion of the
86 laboratory on January 25, 2016. Renovations on the existing portion of the laboratory also began
87 on January 25, 2016. An Architecture and Engineering firm has been selected for the Central
88 Laboratory expansion project. The next step will be for a construction manager at-risk to be
89 selected.
90

91 Agency Events:

92 Director Jackson updated the Board on the status of the Laboratory Information Management
93 System (LIMS) project since the last meeting. Phase I of LIMS upgrade is complete. DFS staff
94 received training March 15 -17, 2016. Full implementation of the LIMS occurred on March 21,
95 2016. Phase II of the project will include new features such as pre-submission data entry for
96 evidence, and electronic distribution of Certificates of Analysis.

97
98 Director Jackson informed the Board that she participated in the Bill signing for SB291 and
99 HB1160 which is the comprehensive PERK bill. The bill resulted from the recommendation of
100 the PERK Workgroup in which the Department was a participant. The signing was held at the
101 Virginia Sexual and Domestic Violence Action Alliance Offices in Richmond.

102
103 Director Jackson explained the restructured organization chart of the Department's Division of
104 Technical Services. Toxicology and Breath Alcohol have been combined to create the
105 Toxicology Program. Toxicology is no longer included in the Chemistry Program area, and the
106 Forensic Training Academy reports directly to the Director of Technical Services.

107
108 The Department participated in Public Service Recognition Week the first week of May. On
109 May 4, 2016, DFS presented 56 employees with awards for state service. One employee received
110 an award for 45 years of service. Four Safety Officers received awards for outstanding
111 contributions.

112
113 Director Jackson presented an overview of the Department's outreach since January 2016. Staff
114 from the Department have presented at various conferences across the Commonwealth and are
115 also scheduled for many upcoming speaking engagements. Groups vary from Commonwealth's
116 Attorneys, the Indigent Defense Commission to Judges. Presentations included both general and
117 technical information on the Department's capabilities.

118
119 Director Jackson updated the Board on the historical case file project. DFS has hired two wage
120 employees to scan portions of the archived case files (1973-1995) not in LIMS. To date,
121 approximately 10,000 records have been uploaded to the new database. There two additional
122 wage employees will be hired to work on the project.

123
124 Retesting of Post-Conviction DNA Cases:

125 Director Jackson updated the Board on the retesting of post-conviction DNA cases with
126 "inconclusive" results. The 33 "inclusive" cases recommended for testing were sent in
127 November 2015 to Bode (Bode) Cellmark Forensics, the private laboratory that awarded the
128 contract to conduct the testing. The Department has not received results from Bode to date, but
129 Bode indicated that they would be sending results in the next few weeks.

130
131 Budget Overview:

132 Director Jackson gave an overview of the FY17/FY18 budget. DFS received funding for both
133 positions and projects. The Department's maximum employment level had been 310 authorized
134 positions, but additional funding in the budget has increased the maximum employment level to
135 318 authorized positions. Director Jackson presented an itemized list of budget increases to the
136 Committee. She also explained the budget language from SB30 which allows DFS along with

137 the Office of the Attorney General to pursue funding, including grant funding, to fund the PERK
138 program for sexual assault cases.

139
140 Director Jackson informed the Board that the ASCLD/LAB expanded surveillance visit was
141 being held May 10 – May 12, 2016. The technical assessors would be visiting all four testing
142 laboratories and the breath alcohol calibration laboratory. Their focus will be on Biology/DNA
143 Nuclear and Breath Alcohol Calibration. Director Jackson noted that ASCL/LAB merged with
144 ANSI-ASQ National Accreditation Board (ANAB). The merger does not affect the
145 Department’s accreditation status.

146
147 Grants:
148 Director Jackson reminded the Board of the Department’s current grants: the FY 2014 DNA
149 Capacity Enhancement and Backlog Reduction Program grant; the FY 2015 DNA Capacity
150 Enhancement and Backlog Reduction Program grant; the FY 2014 Paul Coverdell grant; the
151 Office of the Attorney General *Abbott* Settlement Forfeiture Funds One-Time transfer; the 2016
152 Highway Safety Grant; the FY 2015 Paul Coverdell grant; the New York County District
153 Attorney’s Office Sexual Assault Kit Backlog Elimination Program; and the NIJ Research and
154 Development of Publicly Funded Forensic Science Laboratories.

155
156 Director Jackson presented an overview of the pending grant applications that require full
157 permission from the Board: the 2017 Highway Safety Grant; the FY 2016 Paul Coverdell grant;
158 the 2016 Research and Evaluation for the Testing and Interpretation of Physical Evidence in
159 Publicly Funded Forensic Laboratories; and the National Sexual Assault Kit Initiative FY 2016
160 Competitive Grant.

161
162 Ms. Ecker made a motion for the Board to accept the funds for the 2017 Highway Safety Grant;
163 the FY 2016 Paul Coverdell grant; the 2016 Research and Evaluation for the Testing and
164 Interpretation of Physical Evidence in Publicly Funded Forensic Laboratories; and the National
165 Sexual Assault Kit Initiative FY 2016 Competitive Grant, if awarded, which was seconded by
166 Ms. Howard and approved by unanimous vote of the Board.

167
168 Director Jackson presented the FY2016 DNA Capacity Enhancement and Backlog Reduction
169 Grant to the Board which requires approval for submission and acceptance of the funds. Colonel
170 Flaherty made a motion for the Board to apply and accept the funds, if awarded, for the FY2016
171 DNA Capacity Enhancement and Backlog Reduction Grant which was seconded by Ms. Given
172 and approved by unanimous vote of the Board.

173
174 Workload/Backlog:
175 Director Jackson provided the Board with a brief update on statistical trends in the program
176 areas. She noted an increase in Controlled Substances and Firearms submissions over the past
177 several months. Due to the new LIMS system, the usual graphs used to show quarterly statistics
178 were not currently available. Staff is working on completing the new format for statistics, and
179 Director Jackson will have the report sent the Board before the August meeting.

180
181 **Old Business**

182

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

184 Kristen Howard, Chair of the DNA Notification Subcommittee, reported to the Board that the
185 Virginia State Crime Commission (VSCC) has been working on three major points in regards to
186 the project; review of the “inconclusive” case files, next of kin letters, and the database
187 verification project.
188

189 Since the October 2015 meeting, all of the “inconclusive” case files had been reviewed and
190 recommendations for testing have been made. The recommended “inconclusive” case files have
191 been sent for testing. VSCC has mailed notification letters for the next of kin for 13 deceased
192 eliminated individuals.
193

194 VSCC is continuing the database verification project to confirm the testing and notification
195 status of each listed suspect in each case and enter the information into a database. Ms. Howard
196 anticipates this project to be complete by the fall of 2016 and present a report the Crime
197 Commission and the Board.
198

199 Microscopic Hair Comparison Case Review:

200 Amy Curtis, Department Counsel, presented the report from the Microscopic Hair Comparison
201 Case Review Subcommittee. Ms. Curtis reminded the Board of the presentation from Lynn
202 Robitaille-Garcia, Texas Forensic Science Commission (TFSC), General Counsel on the Texas
203 Experience; Conducting a review of hair microscopy cases as a matter of ethical duty. At the
204 January 6, 2016 Board meeting a subcommittee was created to begin a review of DFS
205 microscopic hair comparison cases. The subcommittee met on March 27, 2016 and April 19,
206 2016.
207

208 At the March 27, 2016 meeting the subcommittee was presented with an overview of hair
209 microscopy comparison examinations by DFS staff, and began discussion regarding the
210 development of a draft procedure for FSB review. The subcommittee drafted a 3 step process for
211 the case review to include: identification of cases; initial screening; and review team
212 consideration.
213

214 At the April 19, 2016, meeting the subcommittee reviewed draft documents created for use in the
215 case review process, the composition of the review team, and the review criteria to make
216 recommendations to the Board. Ms. Curtis presented the recommendations of the subcommittee
217 to the Board. She reviewed the request for assistance letter, the initial screening form, and the
218 flowchart for the review team drafted by the subcommittee. The subcommittee proposed that the
219 hair comparison case review team be composed of a DFS scientist and two attorneys. The
220 Subcommittee proposed review criteria for the review team to follow. The review criteria should
221 be as follows: (1) Did the examiner state that an evidentiary hair could be associated with a
222 specific individual to the exclusion of all others? (2) Did the examiner assign a statistical weight
223 or probability or provide a likelihood that the questioned hair originated from a particular
224 source? and (3) Does the testimony contain any other potentially misleading statements or
225 inferences?
226

227 The Subcommittee also proposed a review of 12 transcripts from microscopic hair compassion
228 cases for review of particular language in those transcripts to determine more specific criteria for

229 the review team. The information will be presented at the next Subcommittee meeting on June
230 15, 2016.

231
232 The Subcommittee discussed the notification letters with the Board. Public comment was made
233 by Brandon Garrett, the Justice Thurgood Marshall Distinguished Professor of Law at the
234 University of Virginia, School of Law, and Shawn Armbrust, Executive Director, Mid-Atlantic
235 Innocence Project, made suggestions to the Board on the content of the notification letters and
236 who should receive the notifications. Both offered assistance to the Board. The Board discussed
237 tabling decisions about the notification letters until after the review of the initial 12 transcripts is
238 complete.

239
240 Kristen Howard made a motion for the Subcommittee to move forward with the microscopic hair
241 comparison case review project and conduct an initial review of 12 transcripts with the
242 Subcommittee's proposed process with a report back to the Board, which was seconded by
243 Colonel Flaherty and adopted by unanimous vote of the Board.

244
245 **New Business**

246
247 **Serology Review Proposal:**

248 Ms. Curtis presented the serology review proposal to the Board. Ms. Curtis gave a brief
249 explanation of the difference between hair comparison cases verses serology cases. The serology
250 review will focus on bench notes, results, and examiner testimony. It will be necessary for
251 scientists to review the bench notes and results to determine if there are any issues.

252
253 Ms. Curtis reviewed the proposed seven step process which should be as follows: (1)
254 Identification of cases; DFS will be conducting a review of serology cases from 1982, 1986, and
255 1990 from the Eastern and Northern Laboratories, (2) Review team composition, (3) Review
256 criteria, (4) Notification, (5) Testing, (6) Reporting results, and (7) Plan forward. Ms. Curtis
257 explained that the Department proposes reviewing 200 serology cases with the outline process
258 and reporting back the SAC and Board the results of the initial review.

259
260 The Board discussed the proposal by the Department. Public comment was made by Brandon
261 Garrett to the Board providing suggestion for possible outside scientists that may be available to
262 participate in the review.

263
264 Ms. Given moved that the Department proceed with the serology case review proposal and report
265 back the Board, which was seconded by Ms. Howard, and adopted by unanimous vote of the
266 Committee.

267
268 **Review of 2016 Legislation:**

269 Katya Herndon, Chief Deputy Director, gave the Board an update of the legislation from the
270 2016 General Assembly Session. There was one DFS agency bill, HB355, which deleted the
271 provision specifying that Chairman of the Board of the Virginia Institute of Forensic Science and
272 Medicine shall be member of the Board, and adds the Director of the Division of Consolidated
273 Laboratory Services or his designee to the Board.

274

275 Ms. Herndon also updated the Board on the comprehensive PERK legislation. It established a
276 comprehensive procedure for the consistent handling of PERKs collected from victims of sexual
277 assault. The Department was provided funding to absorb the estimated increase of 700 additional
278 PERK submissions annually.

279
280 Ms. Herndon concluded with the two scheduling bills from the 2016 legislative session. Twelve
281 new compounds were added into Schedule 1 and one new substance was added into Schedule 1V
282 as controlled substances.

283
284 Chemistry Program Update:
285 Scott Maye, Chemistry Program Manager, provided the Board with an update on the
286 Department's recommendations made to the Board of Pharmacy for emergency scheduling. Mr.
287 Maye briefly reminded the Board of the Board of Pharmacy's expedited process for placing new
288 compounds into emergency scheduling. DFS recommended six compounds to the Board of
289 Pharmacy for consideration to be added to Schedule I of the Code of Virginia. All six were
290 approved March 25, 2016. On April 15, 2016 DFS recommended seventeen new compounds to
291 the Board of Pharmacy for emergency scheduling. The Board of Pharmacy will vote June 14,
292 2016 on those additional compounds.

293
294 Toxicology Update:
295 Dr. James Hutchings, Toxicology Program Manager, provided the Board with an overview of the
296 Toxicology driving under the influence (DUID) testing scheme. The Toxicology section has
297 been working on streamlining the DUID testing scheme to reduce turnaround times. Dr.
298 Hutchings provided a brief update of the changes to the toxicology procedures manual which
299 will be implemented in the near future.

300
301 Annual Election of Board Chair and Vice Chair
302 The Chair called for the annual election of the Board Chair and Vice-Chair. The Chair asked for
303 nominations for Chair of the Committee. Ms. Given nominated Mr. Donoghue for re-election as
304 Board Chair; the nomination was seconded by Dr. Gormley and passed by unanimous vote of the
305 Board. The Chair asked for nominations for Vice-Chair. The Chair nominated Mr. Long for re-
306 election as Vice-Chair; the nomination was seconded by Colonel Flaherty and passed by
307 unanimous vote of the Board.

308
309 Public Comment
310 There was no additional public comment.

311
312 Next Meeting
313 The next meeting of the Forensic Science Board is set for August 10, 2016.

314
315 Adjournment
316 Ms. Howard moved that the meeting of the Board be adjourned, which was seconded by Mr.
317 Entas and passed by unanimous vote.
318
319 The meeting adjourned at 11:30 a.m.