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Final - Minutes
Forensic Science Board Meeting
October 13, 2016
Department of Forensic Science, Central Laboratory, Classroom 1

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Board Members Present

Vince Donoghue, Essex Commonwealth's Attorney (Designee of Senator Mark D. Obenshain, Chair, Senate Courts of Justice Committee) - Chair
Colin L. Drabert, Esq. Staff Attorney at the Virginia State Crime Commission (Designee of Delegate Robert B. Bell, Chair, Virginia State Crime Commission)
James F. Entas, Esq., Assistant Attorney General (Designee of Attorney General Mark R. Herring)
William T. Gormley, M.D., Chief Medical Examiner
Karl R. Hade, Executive Secretary, Supreme Court of Virginia
Caroline Juran, Executive Director, Board of Pharmacy
Sheriff Anthony A. Lippa, Jr., Caroline County
David A. C. Long, Esq.
Lieutenant Colonel Tracy Russillo, Deputy Superintendent, Virginia State Police (Designee of Colonel Steven Flaherty, Superintendent, Virginia State Police)
Denise Toney, Ph.D., Director, Division of Consolidated Laboratory Services

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Board Members Absent

Francine C. Ecker, Director, Department of Criminal Justice Services
Leslie E. Edinboro, Ph.D., Scientific Advisory Committee Member
Jo Ann Given, Scientific Advisory Committee Member
Colette W. McEachin, Deputy Commonwealth's Attorney, City of Richmond
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
David A. Barron, Ph.D., Deputy Director
Sabrina S. Cillesen, Physical Evidence Program Manager
Amy M. Curtis, Department Counsel
Katya N. Herndon, Chief Deputy Director
James Hutchings, Ph.D., Toxicology Program Manager
Linda C. Jackson, Department Director
Bradford C. Jenkins, Forensic Biology Program Manager
Alka B. Lohmann, Technical Services Director
M. Scott Maye, Chemistry Program Manager
Carisa M. Studer, Legal Assistant

47 **Call to Order**

48 Vince Donoghue, Chair of the Forensic Science Board (“Board”), called the meeting to order at
49 10:11 a.m. Mr. Donoghue welcomed the Board members and the Department of Forensic
50 Science (“Department” or “DFS”) staff.

51
52 **Adoption of Agenda**

53 Mr. Donoghue asked if there were any additions or changes to the draft agenda for the meeting.
54 Mr. Long moved that the Director’s report be moved under new business, which was seconded
55 by Mr. Hade and adopted by unanimous vote of the Board.

56
57 **Approval of Draft Minutes of the August 10, 2016 Meeting**

58 Mr. Donoghue asked if there were any changes or corrections to the draft minutes from the
59 August 10, 2016 meeting. Being none, Mr. Hade made a motion to adopt the minutes, which
60 was seconded by Mr. Entas and approved by unanimous vote of the Board.

61
62 **Chair’s Report**

63 There was no report from the Chair.

64
65 Mr. Donoghue introduced the two newly appointed designees to the Board. He welcomed
66 Lieutenant Colonel Tracy Russillo, who is the designee of Colonel Steven Flaherty,
67 Superintendent of the Virginia State Police, and Colin Drabert, Staff Attorney at the Virginia
68 State Crime Commission (VSCC), who is the alternate designee of Delegate Robert B. Bell,
69 Chair of the VSCC.

70
71 **Old Business**

72
73 **Status of the Post-Conviction DNA Testing Program and Notification Project:**

74 Colin Drabert provided an update of the Post-Conviction DNA Testing Program and Notification
75 Project (PC Program). The case file review of PC program cases by the Virginia State Crime
76 Commission (VSCC) is nearly complete. The 83 “eliminated” cases have been reviewed, cross-
77 validated and are complete. The 421 “inconclusive” cases have been reviewed and the cross-
78 validation is currently in progress. The next cases for review are the 135 “need known” cases.

79
80 Mr. Drabert also updated the Board on the status of the notification letters for next of kin to 18
81 deceased suspects from the “eliminated” cases. The VSCC was able to locate information for
82 next of kin with the assistance from the Attorney General’s Office and the Department of
83 Corrections. Information was found and notification letters were sent to next of kin for 11 of the
84 18 deceased “eliminated” suspects. Three rounds of notification letters were sent to the
85 identified next of kin, and there have been 22 responses from the next of kin notified.

86
87 **Microscopic Hair Comparison Case Review:**

88 Amy Curtis, Department Counsel, presented the report from the Microscopic Hair Comparison
89 Case Review Subcommittee. The Subcommittee met at 9:00 a.m. prior the Board meeting. The
90 Subcommittee had agreed at its July 16 meeting that the Review Team would include two
91 attorneys and one DFS scientist with experience conducting microscopic hair examinations.
92 Linda Czyzyk from the Staunton Public Defender’s Office and Earl Wheeler from the Newport

93 News Public Defender's Office will serve as the two attorneys on the Review Team, and Bob
94 Scanlon will be the DFS scientist. The initial review team meeting will be held on October 27,
95 2016. The review team will review 12 transcripts at their initial meeting. Ms. Curtis will be
96 speaking at the IDC conference next week and will meet with Ms. Czyzyk and Mr. Wheeler to
97 provide them with background materials and the 12 transcripts in advance of the meeting. They
98 will be asked to sign a confidentiality agreement.

99
100 The Department has been able to utilize the work of the historical case file project to identify
101 cases with microscopic hair examinations. There are now five part-time employees working on
102 scanning Certificates of Analysis and entering information about cases into a database. To date,
103 over 28,000 of approximately 1,000,000 case files have been scanned and entered into the
104 database. Of the 28,000 cases reviewed thus far and entered into the database, 651 of the cases
105 involved hair examinations. One of the wage employees has been trained to help review and
106 screen the cases involving hair examinations into three categories: no comparison, comparison
107 (not probative), and positive (probative) association. Quality assurance reviews of the screened
108 cases are being conducted. Of the 651 cases involving hair examinations, 98 cases were
109 identified as having positive, probative associations. Those 98 cases are ready for the next step
110 in the process.

111
112 The next step will be to confirm conviction information for the 98 cases and to locate transcripts
113 or transcript substitutes, where appropriate. DFS does not have the staff or resources for this.
114 DFS reached out to Mary Tate, who runs the Actual Innocence Clinic at the University of
115 Richmond, T.C. Williams School of Law, to request assistance in identifying students who may
116 be interested in working on the project. Ms. Tate offered the assistance of her students from the
117 Actual Innocence Clinic that starts in January 2017. Ms. Curtis and Ms. Herndon plan to meet
118 with Ms. Tate to provide her with background materials and have a more detailed discussion
119 about how Ms. Tate's Clinic students may be of assistance. Ms. Curtis anticipates that the
120 Review Team should have additional cases to review by March 2017.

121
122 Ms. Curtis reported to the Board that the Subcommittee will send notification letters to the
123 Commonwealth's Attorney, the law enforcement agency, the defense attorney, and the defendant
124 in cases that the review team recommends. The Subcommittee will review draft notification
125 letters at their November 15, 2016 meeting. Ms. Curtis clarified that the transcript review forms
126 completed by the Review Team will be sent to the Subcommittee for final notification
127 determination.

128
129 Ms. Curtis advised the Board that the Subcommittee was recommending that the Review Team
130 consider context in conducting its transcript reviews. The Subcommittee recommended that the
131 draft language addressing context be added to the transcript review guidance document that will
132 be used by the Review Team.

133
134 Mr. Long made a motion to approve the recommendation of the Subcommittee to add the
135 consideration of context language to the transcript review guidance document, which was
136 seconded by Mr. Entas and approved by unanimous vote of the Board.

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139 Serology Case Review:
140 Brad Jenkins, Biology Program Manager, reminded the Board that DFS began the Serology Case
141 Review project in May 2016. DFS has pulled 100 serology cases from both the Northern and
142 Eastern Laboratories. These 200 serology case files are currently being reviewed by two DFS
143 forensic biology examiners with serology experience. Jami St. Clair, a member of the Scientific
144 Advisory Committee who has experience as a serologist, has volunteered to assist as the
145 independent external reviewer. She will be reviewing a subset of 20% of the files being
146 reviewed. She is currently at the Department reviewing serology cases.

147
148 **New Business**

149
150 Collection Time Periods of Physical Evidence Recovery Kits:

151 Mr. Jenkins advised the Board that DFS had revised its recommended collection time periods for
152 physical evidence recovery kit (PERK) samples. DFS issued a policy notice advising user
153 agencies of this change on September 16, 2016. The notice included a chart that specified types
154 of assault, and the maximum collection time for each type. Mr. Jenkins noted that the more
155 significant changes were allowing vaginal samples for rape allegations to be collected for up to
156 120 hours and for saliva samples on skin to be collected for up to 96 hours. DFS anticipates it
157 may see an increase in PERK submissions, but not a significant increase, as a result of these
158 changes.

159
160 Periodic Regulatory Review:

161 Ms. Curtis announced to the Board that it is time begin the periodic regulatory review of DFS
162 regulations. The last review was in 2012, and the Virginia Code and Governor McAuliffe's
163 Executive Order 17 (2014) require that agencies conduct periodic regulatory reviews every four
164 years. At this time, Ms. Curtis anticipates the only regulation that will need amending will be the
165 public participation guidelines. Ms. Curtis gave an overview of the regulatory review process to
166 the Board. She will initiate the review for the Board on the Virginia Regulatory Town Hall
167 website. The regulations will be available on the Town Hall website for public comment for 21
168 days. Ms. Curtis will present any posted comments to the Board at the January 2017 meeting.

169
170 Mr. Long made a motion to direct Ms. Curtis to begin the periodic regulatory review process of
171 DFS regulations, which was seconded by Sheriff Lippa and approved by unanimous vote of the
172 Board.

173
174 **Director's Report**

175
176 Budget Reduction Savings Plan Announcement:

177 Director Linda Jackson advised the Board that Governor McAuliffe had announced his FY17
178 budget reduction savings plan at 9:30 a.m. Director Jackson informed the Board that the Chief
179 of Staff had requested Agency heads to submit potential savings strategies equal to 5% of their
180 agency's budget for consideration for FY17. Five percent of the Department's budget would be
181 approximately \$2 million. The budget reduction plan announced by the Governor included a
182 \$1.1 million budget reduction for DFS. The reductions include the elimination of the Questioned
183 Documents Section. As part of the FY17 reductions, DFS will delay replacement of vehicles,
184 reduce overtime spending, reduce the hours of a wage employee, delay employee incentives, and

185 discontinue providing marijuana field test kits to law enforcement localities. All agencies
186 serviced by DFS will be notified of the elimination of Questioned Documents services and that
187 DFS will no longer be providing marijuana field test kits.

188
189 Facilities:
190 Director Jackson reported to the Board that the formal ribbon cutting ceremony to celebrate the
191 expansion and renovation of the Western Laboratory was held on September 26, 2016. Secretary
192 of Public Safety and Homeland Security Brian Moran, Secretary of Administration Nancy
193 Rodrigues, and Secretary of Health and Human Resources William A. Hazel, Jr. all participated
194 in the ceremony. Tours were given of both the DFS and Office of the Chief Medical Examiner
195 (OCME) facilities.

196
197 The selection of a Construction Manager at Risk for the Central Laboratory expansion and
198 renovation project is still underway.

199
200 Agency Events:
201 Director Jackson reported to the Board that DFS released a joint report with the Department of
202 Criminal Justice Services (DCJS) on September 20, 2016, entitled “Drug Cases Submitted to the
203 Virginia Department of Forensic Science CY 2015.” DCJS was able to use data provided by
204 DFS to show drug trends in various areas of the Commonwealth broken down by Virginia State
205 Police Divisions. The report, which is posted on the DFS website, is an update to a report first
206 released in 2013.

207
208 Director Jackson reminded the Board that DFS will be implementing Qualtrax, a quality and
209 compliance management software that will maintain accreditation, certification and training
210 documentation and streamline the workflow of business processes. Administrative training on
211 the system for DFS staff was held in September 2016. The Department hopes to go live with
212 Qualtrax in January 2017.

213
214 Director Jackson announced that DFS is beginning to plan for the implementation of pre-log and
215 electronic Certificate of Analysis dissemination using the Department’s Laboratory Information
216 Management System (LIMS). DFS will use AuthXAccess software for username and password
217 management. The Department has received training materials for users from North Carolina
218 who have implemented the same system. DFS will start with a pilot program for selected
219 agencies. The Office of the Chief Medical Examiner (OCME) has already agreed to be a pilot
220 agency.

221
222 Director Jackson updated the Board on the historical case file project. DFS now has five wage
223 employees scanning Certificates of Analysis from its archived case files (1973-1994) that are not
224 in the laboratory information management system (LIMS) and entering data about each case into
225 a database. To date, approximately 28,000 records have been uploaded to the new database out
226 of approximately 1,000,000 case files. The Department has been able to use the information
227 uploaded to the new database to identify cases for the serology and microscopic hair comparison
228 case reviews.

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230

231 Grants:

232 Director Jackson gave an update on the status of the Department’s recently awarded grants that
233 were previously approved by the Board: the FY16 DNA Capacity Enhancement and Backlog
234 Reduction grant; the FY16 Paul Coverdell Forensic Science Improvement Grant; the New York
235 County District Attorney’s (DANY) Sexual Assault Kit Backlog Elimination Program grant; the
236 FY16 Research and Evaluation for the Testing and Interpretation of Physical Evidence in
237 Publicly Funded Forensic Laboratories (will be used for new technology in the latent prints
238 section); the FY16 Byrne Justice Assistance Grant (JAG); and the FY16 national Sexual Assault
239 Kit Initiative (SAKI) grant.

240
241 Director Jackson presented the 2017 Highway Safety Project Grant TREDIS (Traffic Records
242 Electronic Data System) Program grant, which still requires Board approval. Under this grant,
243 DFS and the Office of the Chief Medical Examiner (OCME) will receive funds to decrease the
244 turnaround time of data from the OCME to DMV in cases involving motor vehicle accident
245 fatalities. DFS will hire four wage employees to assist the Toxicology Section in typing reports
246 and evidence handling. DFS will also receive funds to contract with its LIMS provider to create
247 a mechanism that will allow for the electronic distribution of data along with the reports to the
248 OCME.

249
250 Mr. Drabert made a motion for the Department to apply for and accept the funds for the FY 2017
251 TREDIS Grant, which was seconded by Mr. Entas and approved by unanimous vote of the Board.

252

253 Workload/Backlog:

254 Director Jackson provided the Board with an update on statistical trends in the program areas.
255 The report shows statewide statistics for each laboratory section. She explained the new
256 definition of the term “received” for these reports. The term “received” is the total number of
257 cases received or created by the section in the quarter.

258
259 Director Jackson reported that the Controlled Substances Section continues to see an increase in
260 submissions. The VSP has a new drug task force team focused in and around Amherst County
261 that has been fairly active. Additional localities are also participating in other VSP partnership
262 drug task forces that may explain the increase in drug submissions.

263
264 The Firearms section is also continuing to see an increase of cases being submitted for NIBIN
265 entry. DFS was given funding for additional staff in the Firearms Section, and it has created a
266 new Forensic Scientist NIBIN position. The training period for those these positions is only six
267 months whereas it takes 18 months to train a regular Forensic Scientist in the Firearms Section.
268 DFS also received funding for purchasing NIBIN equipment for its Northern and Western
269 Laboratories so now DFS has statewide NIBIN capability.

270
271 The case turnaround times in the Forensic Biology Section continue to be higher than desired
272 due to additional statistical reports required for each reported profile and an increase in PERK
273 submissions. DFS anticipated that PERK submissions will double based on the new legislation,
274 but since July 1, they have only increased approximately 40%. DFS will continue to monitor
275 PERK submissions. The Department received funding for six additional forensic scientists to
276 analyze PERKs.

277 Director Jackson informed the Board that there are three trainees in the Latent Prints Section that
278 should be fully trained in the near future, which will improve turnaround times for latents.

279
280 Director Jackson reminded the Board that the Questioned Documents Section is being
281 eliminated. The Section received approximately 20 to 30 cases per month.

282
283 Director Jackson updated the Board on the progress of recruiting and training the six new
284 positions DFS received in the Toxicology Section. DFS is in the recruitment process for the four
285 wage employees to assist the Toxicology Section in typing reports and evidence handling funded
286 by the TREDIS grant.

287
288 In the Trace Evidence Section, the training of the newly hired primer residue and explosives
289 examiners is almost complete. DFS restored Explosives examination services in June 2016 and
290 has re-hired a retired examiner to perform technical reviews of cases until the Explosives Trainee
291 has completed the training.

292
293 Director Jackson informed the Board of a recent report from the President's Council of Advisors
294 on Science and Technology (PCAST). She gave a brief overview of PCAST and shared a link to
295 the report, as well as links to several responses to the report.

296

297 **New Business Continued**

298
299 Annual Report of the Board:

300 Ms. Herndon reminded the Board that Code § 9.1-1110 (B) specifies the six subjects that need to
301 be addressed in the Board's Annual Report that is due to the General Assembly by November 1,
302 2016. Ms. Herndon reviewed the contents of the draft annual report that had been disseminated
303 to the Board. Ms. Herndon noted the portions of the report that will be updated after the Board
304 meeting, prior to the report being submitted. The report will be submitted with a cover letter
305 from the Board signed by the Chair.

306
307 Mr. Long moved to approve the Forensic Science Board's 2016 Annual Report, and to permit
308 Ms. Herndon to update the report following the Board meeting, and then to submit it according
309 to law, which was seconded by Ms. Juran, and passed by unanimous vote.

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311 **Public Comment**

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313 None

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315 **Next Meeting**

316

317 The next meeting of the Forensic Science Board will be Wednesday, January 4, 2016 at 9 a.m.

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323 **Adjournment**

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325 Sheriff Lippa moved that the meeting of the Board be adjourned, which was seconded by
326 Mr. Hade and passed by unanimous vote.

327

328 The meeting adjourned at 11:40 a.m.