

1 **Final Minutes**
2 **Forensic Science Board Meeting**
3 **July 15, 2020**
4 **Department of Forensic Science, Held Electronically**
5

6 **Board Members Present**

7 Colonel Maggie A. DeBoard, Chief of Police, Town of Herndon Police Department
8 Shannon Dion, Director, Department of Criminal Justice Services (DCJS)
9 Leslie E. Edinboro, Ph.D., Scientific Advisory Committee Member
10 Senator John S. Edwards, Chair, Senate Courts of Justice Committee
11 William T. Gormley, M.D., Chief Medical Examiner
12 Karl R. Hade, Executive Secretary, Supreme Court of Virginia
13 Kristen J. Howard (Designee of Chair of Virginia State Crime Commission, Delegate Charniele
14 L. Herring)
15 Caroline D. Juran, Executive Director, Board of Pharmacy
16 David R. Lett, Petersburg Public Defender, *Chair*
17 Richard P. Meyers, Scientific Advisory Committee Member
18 Colonel Gary T. Settle, Superintendent, Virginia State Police
19 Edwin Shaw (Designee of Denise M. Toney, Ph.D., Director, Division of Consolidated Laboratory
20 Services)
21 Holli Wood (Designee of Attorney General Mark R. Herring)
22

23 **Board Members Absent**

24 Delegate Charniele L. Herring, Chair, House Courts of Justice Committee
25 Colette W. McEachin, Commonwealth's Attorney, City of Richmond
26

27 **Staff Present**

28 Jeffrey D. Ban, Central Laboratory Director
29 David A. Barron, Ph.D., Deputy Director
30 Sabrina S. Cillessen, Physical Evidence Program Manager
31 Leslie H. Ellis, Human Resources Director
32 Katya N. Herndon, Chief Deputy Director
33 James W. Hutchings, Ph.D., Toxicology Program Manager
34 Linda C. Jackson, Director
35 Amy M. Jenkins, Department Counsel
36 Bradford C. Jenkins, Biology Program Manager
37 Alka B. Lohmann, Director of Technical Services
38 M. Scott Maye, Northern Laboratory Director
39 Jessica B. Norton, Legal Assistant
40 Kevin M. Patrick, Western Laboratory Director
41 Susan Stanitski, Eastern Laboratory Director
42 Elizabeth Stroble, Grants and Administration Program Manager
43 Jennifer L. Taylor, Procurement Specialist I, *Board Secretary*

44 Robyn B. Weimer, Chemistry Program Manager

45

46 **Call to Order**

47 As a result of the state of emergency declared by Governor Northam due to COVID-19, the
48 Forensic Science Board conducted the meeting by electronic communication means using the
49 Cisco WebEx platform. The public was permitted to attend and participate via video or audio
50 conference. Directions for public participation were provided on the meeting agenda and posted
51 on Virginia’s Town Hall.

52

53 David Lett, Chair of the Board, called the meeting to order at 9:31 a.m. Mr. Lett requested Ms.
54 Taylor to call the roll to ensure that a quorum was present. After calling the roll, Ms. Taylor advised
55 that a quorum was present.

56

57 **Adoption of Agenda**

58 Mr. Lett advised that the first order of business was the adoption of the draft agenda for the meeting,
59 which was previously shared with the members. Mr. Hade made a motion to adopt the agenda,
60 which was seconded by Dr. Edinboro. A roll-call vote was taken, and the agenda was adopted. The
61 members voted as follows:

62 Colonel DeBoard – Yes

63 Director Dion – Yes

64 Dr. Edinboro – Yes

65 Senator Edwards – Yes

66 Dr. Gormley – Yes

67 Mr. Hade – Yes

68 Ms. Howard – Yes

69 Ms. Juran – Yes

70 Mr. Lett – Yes

71 Mr. Meyers – Yes

72 Colonel Settle – Yes

73 Mr. Shaw – Yes

74 Ms. Wood – Yes

75

76 **Approval of Draft Minutes of the June 29, 2020 Board Meeting**

77 Mr. Lett asked if there were any proposed changes to the draft minutes from the June 29, 2020
78 meeting. Being none, Dr. Gormley made a motion to approve the June 29, 2020 minutes, which
79 was seconded by Colonel DeBoard. A roll-call vote was taken, and minutes were adopted. The
80 members voted as follows:

81 Colonel DeBoard – Yes

82 Director Dion – Yes

83 Dr. Edinboro – Yes

84 Senator Edwards – Yes

85 Dr. Gormley – Yes

86 Mr. Hade – Yes

87 Ms. Howard – Yes
88 Ms. Juran – Yes
89 Mr. Lett – Yes
90 Mr. Meyers – Yes
91 Colonel Settle – Yes
92 Mr. Shaw – Yes
93 Ms. Wood – Yes

94

95 **DFS Director’s Report**

96 Director Jackson reviewed with the Board the actions the Department has taken in response to
97 COVID-19. DFS has been able to maintain normal business hours for evidence submissions,
98 except for lunch hour closures for cleaning. The Evidence Receiving Section requires customers
99 to wear face masks, encourages agencies to mail in evidence, and schedules appointments to assist
100 with physical distancing. Forensic Scientists are working staggered schedules and some scientists
101 are now teleworking one day per week.

102

103 The Breath Alcohol Section notified all operators of mandatory precautionary measures and
104 updated safety guidance on April 2, 2020. The number of breath alcohol tests run from March –
105 June was significantly below those from the same period in 2019.

106

107 Director Jackson advised of the impact of COVID-19 on the training courses offered by the Breath
108 Alcohol and Forensic Training Sections. The 100th class of the Forensic Science Training
109 Academy graduated early due to COVID-19. Additionally, because of the pandemic, the courses
110 DFS had been offering to attorneys/judges were cancelled for 2020.

111

112 **Facilities:**

113 Director Jackson provided an update on the Central Laboratory facility project.

114

115 **Accreditation:**

116 The Department successfully completed its surveillance assessment, which was conducted
117 remotely on May 19-21, 2020.

118

119 **Agency Initiatives:**

120 A DFS Customer Working Group was created with the Commonwealth’s Attorneys’ Services
121 Council. The Group, which will include laboratory customers and DFS staff, will review
122 submission policies, laboratory capabilities, and the triaging of evidence for analysis. The first
123 meeting was held virtually on May 14, 2020.

124

125 Director Jackson provided an overview of the PERK Tracking System and the legislative mandate
126 that law enforcement agencies submit PERKs to DFS within 60 days of receipt, with five
127 exceptions. Use of the PERK Tracking System became mandatory on July 1, 2020. Director
128 Jackson shared information on how agencies may get training on use of the System. As of July 13,
129 2020, 177 law enforcement agencies have received training and have access to the system.

130
131 Director Jackson informed the Board of a Policy Notice, issued June 10, 2020, which addressed
132 the use of paint cans for the submission of fire debris evidence. Cans were encountered that
133 contained an aromatic product that could potentially interfere with the instrumental analysis of
134 evidence packaged within the cans. The Notice requires the submission of a control can of
135 corresponding size(s) with each case.

136
137 Director Jackson advised the Board of marijuana legislation enacted by the 2020 General
138 Assembly, which prompted the Department to issue new marijuana policy notices. SB646, an
139 agency bill carried by Senator Surovell, requires DFS to determine the proper method for detecting
140 the concentration of tetrahydrocannabinol (THC) for purposes of the criminal code. HB972 and
141 SB2 decriminalized marijuana possession for adults and created a \$25 civil penalty. These bills
142 also eliminated hashish oil from Schedule I.

143
144 Director Jackson reviewed two DFS Policy Notices related to marijuana. The first, issued January
145 24, 2020, advised of implementation of a semi-quantitative method for the analysis of cannabis
146 sativa plant material, which generally determines whether plant material is marijuana or hemp.
147 Because the approved field test cannot distinguish between marijuana and hemp, the January
148 Notice also rescinded the prior policy requiring a court order for analysis in simple possession of
149 marijuana cases. As a result of passage of the marijuana decriminalization bills, on June 23, 2020,
150 the Department issued a Notice reinstating the policy requiring a court order for analysis in
151 simple possession of marijuana cases.

152
153 Director Jackson updated the Board on the Department's testing capabilities for alternate forms of
154 marijuana/hemp products.

155
156 Director Jackson provided an update on the Controlled Substances Section and the measures taken
157 to improve the backlog and turnaround time, including outsourcing and the status of staffing.

158
159 The Department recommended 11 compounds to the Board of Pharmacy (BoP) in January 2020
160 for consideration for expedited Scheduling via regulation. The compounds were approved by the
161 BoP at its May meeting and are pending final approval.

162
163 Director Jackson provided an update on initiatives under the sexual assault kit grants, including
164 the status of the outsourced testing of unsubmitted kits held by law enforcement, DFS reviews of
165 the data from the private laboratory, and hits reported, as well as funding for the PERK Tracking
166 System Coordinator position. She shared information on her participation in Attorney General
167 Herring's press event announcing the completion of the outsourced testing of kits under these
168 grants.

169
170 Director Jackson provided a Toxicology update, which included information on the purchase of
171 the Automated Liquid Handling Systems, the implementation of methods using the new automated
172 systems, and an update on staffing in the Section.

173

174 For Trace Evidence, Director Jackson shared information on changes being made to report wording
175 for cases involving a comparison. The new language will provide context to allow better
176 understanding of the strength of the conclusion and a descriptive justification.

177
178 Director Jackson shared a staffing update for Latent Prints. She explained how the existing Mideo
179 network and workflow allowed Latent Print examiners to conduct comparisons and verifications
180 while teleworking.

181
182 Director Jackson provided a staffing update for the Firearms Section and shared information on
183 the Department's NIBIN turnaround times, which are provided to ATF in support of their
184 Minimum Required Operating Standards (MROS). The Section is continuing to work on validating
185 the 3D imaging equipment.

186
187 The Digital and Multimedia Evidence (DME) Section participated in the Virginia Cybercrime
188 Initiative, a conference held in March 2010. The DME Section is fully staffed, and time limits for
189 data retrieval have been implemented that have helped the Section reduce its backlog.

190
191 Director Jackson provided an update on the Forensic Biology Section, including the status of Y-
192 STR testing, STRmix validation, and testing of prelog for the DNA Data Bank.

193
194 Budget:
195 Director Jackson presented an overview of the DFS Budget. She noted the hiring freeze that was
196 put in place due to COVID-19, but explained that there is a hiring exemption for positions directly
197 related to public safety. Director Jackson reviewed the Department's pledged savings for FY20,
198 as well as the Department budget for FY21/FY22, including items funded in the budget that were
199 unallotted as a result of the pandemic.

200
201 Grants:
202 Director Jackson presented a summary of current DFS grants. She reviewed eight grants that were
203 previously approved by the Chair and Vice-Chair, but that the full Board needed to approve in
204 order for DFS to accept the funds, if awarded. Dr. Edinboro made a motion for the Department to
205 accept funds for the two DCJS related grants, if awarded (the Coronavirus Emergency
206 Supplemental Funding (CESF) and the JAG grants). The motion was seconded by Dr. Gormley.
207 A roll-call vote was taken, and the motion was adopted. The members voted as follows:

- 208 Colonel DeBoard – Yes
- 209 Director Dion – Abstained
- 210 Dr. Edinboro – Yes
- 211 Senator Edwards – Yes
- 212 Dr. Gormley – Yes
- 213 Mr. Hade – Yes
- 214 Ms. Howard – Yes
- 215 Ms. Juran – Yes
- 216 Mr. Lett – Yes
- 217 Mr. Meyers – Yes

218 Colonel Settle – Yes
219 Mr. Shaw – Yes (voted through chat feature)
220 Ms. Wood – Yes

221
222 Mr. Hade made a motion to allow the Department to accept funds for the other six grants, if
223 awarded (CDC Opioid Joint Project, the Coverdell Forensic Science Improvement Grant –
224 Formula, the Coverdell Forensic Science Improvement Grant – Competitive, the NIJ FY2020
225 Research and Evaluation for the Testing and Interpretation of Physical Evidence in Publicly
226 Funded Forensic Laboratories Toxicology Research, FY2020 Research and Evaluation for the
227 Testing and Interpretation of Physical Evidence in Publicly Funded Forensic Laboratories
228 Firearms/Toolmarks Research, and the FY2020 Sexual Assault Kit Initiative). The motion was
229 seconded by Dr. Gormley. A roll-call vote was taken, and the motion was adopted. The members
230 voted as follows:

231 Colonel DeBoard – Yes
232 Director Dion – Yes
233 Dr. Edinboro – Yes
234 Senator Edwards – Yes
235 Dr. Gormley – Yes
236 Mr. Hade – Yes
237 Ms. Howard – Yes
238 Ms. Juran – Yes
239 Mr. Lett – Yes
240 Mr. Meyers – Yes
241 Colonel Settle – Yes
242 Mr. Shaw – Yes (voted through chat feature)
243 Ms. Wood – Yes

244
245 Workload/Backlog:
246 Director Jackson shared submission statistics for the 2nd Quarter of 2020 comparing them to
247 submissions for the same period in 2019. Overall submissions were down since the COVID-19
248 pandemic in comparison to the same time period last year. She also shared backlog data, comparing
249 each section’s backlog at the end of June 2019 to the end of June 2020. Overall, the statewide
250 backlog for all cases is down 19% over where it was a year ago. The Controlled Substances backlog
251 is down from over 12,000 cases at the end of June 2019 to 6,170 cases at the end of June 2020.
252 One section whose submissions did not change is Toxicology, which is likely a result of the
253 increase in medical examiner cases related to overdoses. Director Jackson also shared current
254 turnaround times for each discipline. Additionally, she reviewed with the Board reports showing
255 statistical trends of cases received and completed, as well as the case backlog for the most recent
256 five quarters, for each of the scientific disciplines.

257
258 **Recess**

259 Mr. Lett called for a brief recess at 10:48 a.m.

260

261 Mr. Lett called the meeting back to order at 10:54 a.m. and requested Ms. Taylor to call the roll
262 to ensure that a quorum was present. Ms. Taylor called the roll to confirm that all of the members
263 were still in attendance and advised that a quorum was present.

264

265 **Scientific Advisory Committee Report**

266 Mr. Meyers gave the report of the Scientific Advisory Committee (“SAC”). The Controlled
267 Substances and Toxicology Subcommittees both met electronically on July 13, 2020, to review
268 validation/verification documentation and methods in development. The Forensic Biology
269 Subcommittee met electronically on July 14, 2020, to discuss validation documentation. After
270 reviewing and discussing the documentation/methods with Department staff, all three
271 Subcommittees closed their reviews. The full SAC also met electronically on July 14, 2020. The
272 SAC received and accepted reports from the Controlled Substances, Toxicology and Forensic
273 Biology Subcommittees.

274

275 The SAC heard an agency update from Director Jackson, a Technical Services update from Alka
276 Lohmann, Program Area updates from the Program Managers, an update on the Microscopic
277 Hair Comparison Case Review and Field Test Regulations from Ms. Jenkins, and a PERK
278 Tracking System Overview from Madison Boden. The SAC also heard a presentation on the
279 Serology Case Review and recommended that notifications be made in five cases, if conviction
280 information is confirmed in those cases, and that the case review be closed.

281

282 **Old Business**

283

284 **Serology Case Review Update**

285 Mr. Jenkins, Biology Program Manager, provided a report on the results of the Serology Case
286 Review. He shared background on the case that prompted the Department to undertake the review,
287 as well as the serological testing that DFS conducted until it was replaced with DNA testing in
288 1994. Mr. Jenkins provided an overview of the scope of the review, including the number of
289 cases/reports reviewed and the fact that each case was reviewed independently by two DFS
290 scientists trained in conventional serology with 20% being reviewed by an external reviewer. He
291 shared general observations of what was seen in the cases reviewed.

292

293 An internal committee (Biology Program Manager and two DFS scientists) recommended nine
294 cases for possible notification or further action, and all nine were sent to the external reviewer. Mr.
295 Jenkins gave a summary of each of the nine cases with specific observations, including those
296 recommended for notification by the internal committee and the external reviewer. The Serology
297 Case Review found no duplication of the issue observed in the case that prompted the review, and
298 no other isolated or systemic issues that would warrant continuing the review.

299

300 Mr. Jenkins advised that the SAC recommended to the Board that notification be made in five
301 cases, if conviction information for the suspects is confirmed, and that the Serology Case Review
302 be closed. Mr. Jenkins also noted that, going forward, the Department would continue to offer
303 reviews upon request on a case by case basis.

304
305 Senator Edwards made a motion that the Department make notification in the five cases
306 recommended, if conviction information for the suspects is confirmed, and that the Serology Case
307 Review be closed, which was seconded by Ms. Howard. A roll-call vote was taken, and the motion
308 was adopted. The members voted as follows:

309 Colonel DeBoard – Yes
310 Director Dion – Yes
311 Dr. Edinboro – Yes
312 Senator Edwards – Yes
313 Dr. Gormley – Yes
314 Mr. Hade – Yes
315 Ms. Howard – Yes
316 Ms. Juran – Yes
317 Mr. Lett – Yes
318 Mr. Meyers – Yes
319 Colonel Settle – Yes
320 Mr. Shaw – Yes (Voted through Chat feature)
321 Ms. Wood – Yes
322

323 Report on the Post-Conviction DNA Testing Program and Notification Project

324 Kristen Howard provided a report on the completion of the Post-Conviction DNA Testing Program
325 and Notification Project. A detailed description of the project is included in the Virginia State
326 Crime Commission’s (VSCC) Annual Report, which is posted on the VSCC website.
327

328 Microscopic Hair Comparison Case Review Update

329 Amy Jenkins, Department Counsel, provided an update on the progress with the Microscopic Hair
330 Comparison Case Review. DFS is continuing to review cases for positive probative hair
331 associations to identify additional cases for the project. The Review Team met on June 5, 2020, to
332 review transcripts from nine cases and made recommendations that will be presented to the
333 Board’s Microscopic Hair Comparison Case Review Subcommittee. Ms. Jenkins noted that the
334 Hair Subcommittee only has two members at this time and asked for any member who is interested
335 in serving on the Subcommittee to contact her or Mr. Lett.
336

337 **New Business**

338
339 Legislative Update

340 Katya Herndon, Chief Deputy Director, gave an overview of DFS related legislation that passed
341 during the 2020 General Assembly Session, including the Department’s two agency bills. HB821,
342 which was carried for DFS by Delegate Jenkins, amended the DNA Arrestee Law to clarify that
343 the Data Bank can retain a sample from an Arrestee whose charge is dismissed or who is acquitted
344 if the person has been convicted of a qualifying misdemeanor offense. SB646, the Department’s
345 THC concentration bill carried by Senator Surovell, was summarized by Director Jackson during
346 her presentation.
347

348 **Public Comment**

349 Mr. Lett inquired whether any member of the public would like to provide any comments. No
350 member of the public provided comment.

351

352 **Future Meeting Date**

353 The Forensic Science Board is scheduled to meet on Thursday, October 15, 2020 at 9:30 a.m.

354

355 **Adjournment**

356 Mr. Lett called for a motion to adjourn the Board meeting. Dr. Edinboro made a motion to adjourn
357 the meeting, which was seconded by Mr. Hade. A roll-call vote was taken, and the motion was
358 adopted. The members voted as follows:

359 Colonel DeBoard – Yes

360 Director Dion – Yes

361 Dr. Edinboro – Yes

362 Senator Edwards – Yes

363 Dr. Gormley – Yes

364 Mr. Hade – Yes

365 Ms. Howard – Yes

366 Ms. Juran – Yes

367 Mr. Lett – Yes

368 Mr. Meyers – Yes

369 Colonel Settle – Yes

370 Mr. Shaw – Yes (Voted through Chat feature)

371 Ms. Wood – Yes

372

373 The meeting adjourned at 11:47 a.m.