MINUTES (draft)
Forensic Science Board Meeting
November 8, 2006 at 10:00 a.m.
DFS Central Laboratory, Classroom 1

Board Members Present:

Mr. Steven Benjamin
Mr. Joseph Bono
Ms. Linda Carne (Designee for Ms. Linda Fairstein)
Mr. Leonard Cooke
Ms. Rochelle Altholz (Designee for Dr. Marcella Fierro)
Colonel Steven Flaherty
Ms. Katya Herndon (Designee for Mr. Karl Hade)
Sheriff F.W. Howard
Mr. Alan Katz (Designee for Ms. Marla Decker)
Ms. Demris Lee
Ms. Elizabeth Russell
Mr. Randolph Sengel, Chair

Department Staff Members Present:

Mr. Jeff Ban, DNA Section Chief
Dr. Dave Barron, Central Laboratory Director
Ms. Leslie Ellis, Director of Human Resources
Dr. Paul Ferrara, Director
Ms. Michele Gowdy, Department Counsel
Ms. Meghan Kish, Board Secretary
Mr. Ron Layne, Director of Administration and Finance
Mr. Pete Marone, Director of Technical Services
Ms. Elise Mirza, Policy Analyst
Mr. James Pickelman, Firearms and Toolmarks Section Chief
Ms. Susan Scholl, Eastern Laboratory Director
Mr. Steve Sigel, Deputy Director
Ms. Amy Wong, Northern Laboratory Director

Call to Order

The meeting was called to order by Mr. Sengel.

Mr. Sengel introduced the following individuals: Ms. Rochelle Altholz, designee for Dr. Marcella Fierro; and Mr. Alan Katz, designee for Ms. Marla Decker.

Adoption of Agenda

Mr. Sengel made an addition to the agenda. Under new business, Mr. Sengel asked that Marijuana Field Test Regulation be inserted as an additional topic. The agenda with that addition was adopted unanimously.

Adoption of Minutes

Mr. Sengel asked if there were any correction or additions to the draft minutes for the August 9, 2006 meeting. It was suggested that line 94 be amended to read "house the administration, breath alcohol, and training sections."

Colonel Flaherty moved that the minutes be amended, and adopted with the amendment. The motion was seconded, and all were in favor.

Chairman's Report

Mr. Sengel provided an update on the actions of the subcommittee who had been selected to review the applications for the Department Director position. He informed the Board that they had met on October 24, 2006 and reviewed all applications that had been received for the position. From those applications, the subcommittee selected 6 individuals who will be interviewed on December 10-11, 2006.

Mr. Sengel introduced Michele Gowdy, the new Department Counsel. He welcomed her to the Department.

November 1 Report

Mr. Sengel explained to the Board that the November 1 Report, a copy of which had been distributed with the Board materials, had been submitted to the proper individuals, pursuant to VA Code §9.1-1110 (B). He explained that he had updated the case backlog, budget, and construction sections since this Board had approved the draft in August.

Vacancies at the Northern Laboratory

Mr. Sengel informed the Board that there were five vacancies in the Northern Laboratory's Forensic Biology section, and asked the Board to consider what further inquiries they might wish to make. During Mr. Sengel's private conversation with one of the outgoing examiners, questions about the Department's use of gel technology, rather than capillary electrophoresis (CE), the parallel technology, were raised. He questioned if the Department's use of gel technology (FMBio) was impacting its ability to recruit and/or retain examiners.

Mr. Marone responded that examiner retention in the Forensic Biology sections at the other regional laboratories was not a problem. He also informed the Board that the use of FMBio hadn't played a role in recruitment; the Department successfully recruited three

new DNA examiners within the last few months, all of whom had come from labs that employed CE.

Dr. Ferrara stated that Ms. Leslie Ellis, the Department's Human Resources Director, was present and prepared to report on this issue.

Mr. Ban explained to the Board that conversion time to CE was projected at 18 months to 2 years. This includes equipping the laboratory and training the staff, while maintaining the lab's capacity. He also stated that a newer technology, micro-capillary array electrophoresis (μCAE) is currently being tested by the Department in conjunction with Dr. Richard Mathies of the University of California at Berkeley. He stated that this newer technology, μCAE, will be available in three years.

Mr. Bono then questioned the laboratory directors that were present whether this was a real issue, or merely anecdotal. Dr. Barron responded that he felt this was not an issue in the Central Lab. Ms. Scholl stated that her laboratory hadn't experienced much turnover. She reported that her examiners have expressed interest in other platforms, but are comfortable with the Department's use of technology. Ms. Wong stated that she felt the issue was real but was affected by localized factors.

Discussion followed on whether the Board wished to refer the issue to the Committee for consideration.

A general consensus was reached that, because the Committee is already considering the other technologies, it would be appropriate for the Board to ask the Committee to consider the Human Resources aspect along with the other considerations when discussing the possible implementation of new technology. Mr. Sengel asked that an assessment be presented at the February meeting of the Board.

Conflict of Interest

Mr. Sengel informed the Board that some questions had arisen after a Committee member, Dr. Dan Krane, testified as an expert witness in Virginia criminal cases. General discussion followed.

It was the Board's consensus to informally request that Dr. Krane seek an opinion from the Attorney General's Office as to whether or not a conflict of interest existed.

Director's Report

Dr. Ferrara, in the interest of time, referred the Board to the November 1 report, and provided updates on the information provided.

Dr. Ferrara was pleased to report success with the Department's backlog initiative. During the month of October, the Drug backlog was reduced to 5,535 cases from 7,480 cases, Latent Prints: 679 from 834, and Firearms: 1,631 from 1709. He reported that

DNA's had risen by 60 cases, bringing the current backlog to 1680, but estimated that the recent hire of several new examiners would assist in bringing that backlog back down.

Sheriff Howard asked how the online ordering system was working for the marijuana field tests.

Ms. Gowdy responded that it seemed to be working well. The agencies that have not yet ordered, roughly 100 of them, will be receiving a second notice through the mail.

Sheriff Howard inquired as to the current wait for the Forensic Academy, if it was still a year and a half. Dr. Ferrara responded that the wait is now probably half of that, and that we have been able to accommodate all special requests. Sheriff Howard stated that he had gotten great feedback from the other agencies.

<u>Submission Protocol</u>

Mr. Sengel began by giving a brief history of the review of the submission protocol. After visiting all four laboratories, and meeting with the chemists and DNA examiners, new submission protocol was developed and published for public comment. After a comment period, a subcommittee reviewed the draft protocol, and redrafted the proposal. Once again, the protocol was sent out for public comment. Mr. Sengel asked that the Board now consider the draft of the protocol before them.

Ms. Altholz suggested that #3 of the DNA submission protocol be amended. She asked that priority 1 (crimes against persons) be extended to include bodies that remain unidentified after all other avenues of identification have been exhausted, due to the fact that the body can not be released until after that identification has been made. Dr. Ferrara agreed that these cases, which are currently high priority, should remain so.

Ms. Carne moved that the submission protocol, with the one amendment, be approved. The motion was seconded.

Ms. Russell asked if there was any provision in the controlled substances protocol that included pharmaceutical submission. Mr. Sigel explained that those cases are handled by the investigating officer in coordination with the laboratory on a case by case basis.

Mr. Benjamin stated that although he felt the DNA protocol was fine as written, he suggested that the statement of facts on a RFLE form could create potential complications. He stated that, if a submitting officer were to note on the form that the suspect had confessed to the crime, that statement could create an opening for the defense to argue that examiner bias could have played a role. Mr. Sengel suggested that, because so little information is written on the RFLE, this is not really an issue. He suggested that officer training could eradicate the problem.

The motion went to vote, and passed unanimously.

Senate Bill 286

Mr. Sengel next directed the Board's attention to Senate Bill 286, which was discussed at the August 8, 2006 meeting. He asked that the Board amend or approve the language change suggested by the Committee.

Mr. Benjamin, as Counsel to the Courts of Justice Committee, elected to abstain.

There was discussion as to whether the general language "accredited by a recognized accrediting agency" would suffice, or if it would be more beneficial to name the accrediting agencies, of which there are two, the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) and Forensic Quality Systems International (FQSI).

Mr. Benjamin added that any language changed or added would likely be questioned as to its purpose and importance, and that only changes that were necessary should be made.

Mr. Bono explained that, speaking as an individual, this accreditation is necessary. The accreditation process for laboratories requires a standard; their data must be valid, their methods must be valid, and their data must be reviewed to ensure the integrity of the examinations. He reported that both Texas and New York have implemented such requirements.

Dr. Ferrara explained that in Virginia, since 1989, Virginia Laboratories have maintained ASCLD/LAB accrediation. He added that Virginia followed the model of New York State by creating the Board and the Committee. In New York, advocates of the Board and Committee also advocated the oversight of private laboratories under similar legislation. To adopt such legislation in Virginia would be following the natural progression.

Colonel Flaherty moved that the bill be recommended to the Committee for Courts of Justice with the following language: "All DNA analyses offered as evidence shall have been performed by laboratories *accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or Forensic Quality Systems International (FQSI) to perform such analyses*."

The motion was seconded, and approved unanimously. Mr. Benjamin and Ms. Herndon abstained from voting.

Grant Approvals

Mr. Sengel directed the Board's attention to the two grant summaries that had been sent out with the Board materials. He asked if there were any questions. There were none.

Joe Bono made a motion to approve the grant applications. The motion was seconded, and passed unanimously.

Marijuana Field Test Regulations

Mr. Sengel informed the Board that the Marijuana Field Test regulations, which had been submitted as emergency regulations in July, required Board approval before submission as proposed permanent regulations.

Ms. Herndon asked that one minor change be made: she asked that an apostrophe be inserted in the word “manufacturers” in the definitions section of the regulation.

Sheriff Howard moved that the regulations be approved with the amendment. Mr. Bono seconded the motion, and the motion passed unanimously.

Statement of Economic Interest/COIA

Ms. Kish informed the Board that, although the Conflict of Interest training they received at the November 2005 meeting is good for two years, Statement of Economic Interest and Financial Disclosure forms must be filed each year by January 15, 2007. Ms. Kish stated that she will email a link to the online forms to all members, and asked that the Board fill out the forms and return them to her attention by December 15, 2006.

Ms. Russell asked if they needed to fill the forms out if they have already filed such forms for another agency. Ms. Kish responded that additional forms would not be needed, but asked that she be sent a copy for the Board records.

Public Comment

Mr. Sengel asked if any members of the public had any comments.

Mr. Clyde Cristman, the Deputy Secretary of Public Safety, stood and introduced himself to the Board.

Adjourn

The meeting adjourned at 11:35 am.