

The Commonwealth of Massachusetts Executive Office of Public Safety and Security

One Ashburton Place, Room 2133
Boston, Massachusetts 02108

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MAURA HEALEY
Governor

TERRENCE M. REIDY
Secretary

KIM DRISCOLL
Lt. Governor

Pursuant to the provisions of G.L.C. 30A and 940 CMR 29.00 et seq, notice is hereby given of a meeting of the **Forensic Science Oversight Board** to take place on Thursday April 27th, 2023, from 10:00am-2:00pm.

FSOB Meeting Minutes

Members Present:

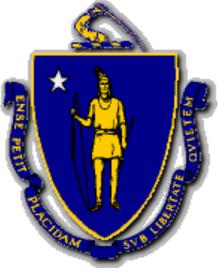
Undersecretary Kerry Collins
Timothy Palmbach
Ira Gant
Ann Marie Mires
Richard Lempert
Sabra Jones
Judge Nancy Gertner
Cliff Goodband
Gina Papagiorgakis
Lisa Kavanaugh
Robbin Cotton
Gabriel Thorton
Adrienne Lynch

1. Minutes Approval

- i. Ira – 11:00am 10:00am started at 10:02am
- ii. With Correction the Minutes will pass

2. OAT Presentation

- i. Attorney Joe Bernard, ADA Ryan Rall, and Shane O’Sullivan of MSP Office of Alcohol Testing presented on the MA Breath Test Litigation. The Presentation can be found on the FSOB Webpage.
- ii. Judge Getner: How can this apply to additional Forensic Science issues – How can this be generalized to other areas of forensic Science to assist this board?



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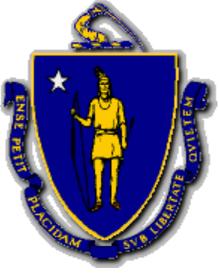
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1. Atty. Bernard – It was the culture - us against them and Cognitive bias was most likely in place. It happened in an unknown way there was a mentality that we are a lab for the Police.
2. Shane – You can't expect every attorney to understand every aspect of science communication between the analysts and the attorneys is needed to have a clear understanding of what takes place. Education is important
3. Sabra – I appreciate getting the chance to speak and I appreciate the approach that was taken in this effort to improve the OAT and its policies and procedures. It is important to keep in mind the fact that first, alcohol is a drug, and drug-impaired driving is a threat to public safety. In the Hallinan OAT decision- it is interesting that the fact that the observations of impairment by LE were not mentioned until page 35 of 46. A breath test was not the first thing that was used to identify impaired driving. It is most often law enforcement. These defendants are often if not always, repeat offenders, which Hallinan was a 2nd time offender. Individuals who drive impaired will do so over 80 times, before the first arrest. I fully support meeting national/international standards. I have been a part of the standards development process in forensic toxicology since it was formalized in the US in 2014. But, it is essential that we do not minimize the public health threat that impaired driving is to all of us, our families, and the citizens of the Commonwealth. We cannot diminish the efforts of law enforcement in identifying impaired drivers and the efforts they make in reducing impaired driving such as checkpoints, high visibility law enforcement, and other countermeasures. In 2020 we lost over 38,824 individuals on US roadways with almost half of those due to risky behavior such as driving under the influence. In 2021 we lost



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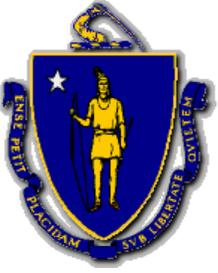
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42,915 individuals, and to drive that point home that is the entire population of Beverly-dead in a year. That is not taking into account those who survived serious life-altering crashes that are the result of driving under the influence of drugs which again alcohol is one of many most often encountered drugs. As a past Quality Manager and full supporter of laboratory accreditation and it is fantastic that OAT is accredited under ANAB. I commend them for obtaining that and for the efforts of all those involved, including many of you on this call, that lead to that achievement. Now more than ever the identification, prosecution, and effective treatment options for impaired drivers is essential if we are going to see a reduction in impaired driving, change driving behaviors, and save lives. I hope that this decision does not diminish the work of law enforcement officers who already may be working in understaffed agencies, who may feel even less motivated to stop suspected impaired drivers especially if they feel cases are going to be thrown out or not prosecuted. We can never calculate the lives that are saved by officers stopping and removing impaired drivers from our roadways. Officers are trained in Standardized Field Sobriety Tests which are utilized across the US and worldwide. Further, many officers receive Advanced Roadside Impaired Driving Enforcement or ARIDE training, and others attend extensive training to become Drug Recognition Experts. I wonder how many of these cases had other impairing substances on board that if a blood or oral fluid sample had been obtained would have been identified through comprehensive toxicological testing. An alcohol breath test will not detect drugs other than alcohol, but had one of these other samples been collected what other impairing substances would have been



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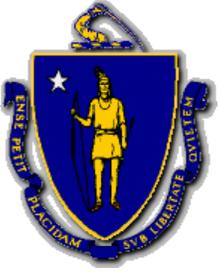
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identified? Further, breath samples are not retained nor is it possible at this point for additional testing. What data would we have if a more informative biological sample was collected? We can't go back in time to alter what was done by OAT and it is fantastic that they have greater oversight now with accreditation. However, as a society and citizens of the Commonwealth-we can do better in addressing the public health threat that impaired driving is and again, it does not only involve alcohol and we need to learn from these failures to more effectively reduce drug-impaired driving with more effective comprehensive testing.

- iii. Lisa – Shares Judge Gertner's concerns on whether this happening on the heels of the lab that it shows this is a cultural problem and the boards mandate is the reliability of Forensic Science. I am encouraged that in the realm of OAT that there was space to develop a working relationship. Is there a lab wide process that can be implemented? This happened under the umbrella of the State Crime Lab and does this board need to think about how the State Police Crime Lab interacts with the Defense Bar. We should also think about how we are going to audit unaccredited labs – how can we be assured that the kinds of transparency can be modeled in other divisions.
- iv. Rick Lempert – impressed with the Judge in how they mastered the material and made an informed decision. What is the right ratio for the breath test? Science moves on from the original decision – it would not be surprising if the crime labs proactively look at the change of science so they know when the science has changed before the general companies get around to change their instruments when know there is a general lag in those upgrades.
- v. Ira to look at the trainings that will occur and let us know what came about those trainings. Let's look at how the labs communicate with what is happening and



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how they are communicating with the defense and the prosecutors. The board is looking at whether the State Police should be lab independent.

3. Chain of Custody – Vote

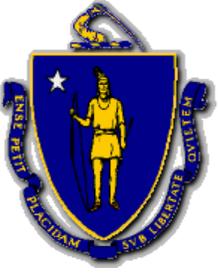
- i. Adrienne Lynch – Rick concerning the drying method page 5 subsection B. Pg. 5 para 4b “added the sentence drying is recommended”.
 1. Subsection I – small changes grammatically that will not hold up the vote
 2. Chain of Custody has passed – thank you to Adrienne, Nancy Rothstein, and Ira.

4. BPD Audit – Vote

- i. Motion to adopt July 2022 BPD Forensic Lab report
- ii. The motion has passed, and the BPD Audit has been accepted

5. Springfield Audit Update

- i. Most labs are unaccredited so we must figure out what our minimum baseline standards are and then how can we help to get them there to accreditation.
- ii. Ira Gant – What training for the staff is provided when they are onboarded? If there are it something that we can recommend?
- iii. Lisa Kavanaugh– When there are not protocols in place then we can’t rely on the machines as scientifically reliable. Transcript review of smaller units and we might want to consider doing this for the State Police Crime Lab.
 1. POSTC where is that group at with the interworking’s of police. While we are looking at Forensic work the state is also looking at how Police Officers are trained. We can ask more questions to Springfield to see how we want to approach nonaccredited.
- iv. Robin Cotton – They have now taken a proficiency test and passed. They are also receiving help from the State Police and outside the agency review some of the fingerprint comparisons. With respect to certified as a latent print examiner IAI



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website – we have 22 certified latent print examiners. Of the 22 - 9 are in Boston. The reason we talked about certification is the certification belongs to the person and the accreditation goes to the agency the lab and the setting. The process going forward will make a difference as we will have expectations.

- v. Tim Palmbach– Could Adrienne do some analysis of those who are providing latent testimonies and what are their experiences and certification – will draft questions to send to Adrienne.

6. Topics Not Reasonably Anticipated Within 48 Hours of the Meeting

7. Public Comments

- i. May 19th is the next meeting and wants to go back to the earlier presentation that highlighted a lot of areas that the board is interested in.
- ii. Adjourn at 12:51pm