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Secretary

Forensic Science Oversight Board (FSOB)
Meeting Minutes

Scheduled: October 22, 2021 10:00am-2:00pm, Microsoft Teams

Members in Attendance:

Chairwoman Kerry Collins (Undersecretary for Forensic Science)
Sabra Botch-Jones (Forensic Science Expertise)
Dr. Robin Cotton (Forensic Laboratory Management 1)
Lucy A. Davis (Clinical Quality Management Expertise)
Judge Nancy Gertner (New England Innocence Project)
Anne Goldbach, Esq. (Committee for Public Counsel Services)
Clifford Goodband (Expertise in Statistics 2)
Lisa Kavanaugh, Esq. (MA Association of Criminal Defense Lawyers)
Adrienne Lynch, Esq. (MA District Attorneys Association)
Dr. Ann Marie Mires (Academia, Research Involving Forensic Science)
Professor Timothy Palmbach (Forensic Laboratory Management 2)
Gina Papagiorgakis (Expertise in Statistics 1)
Nancy Rothstein (Nominee from Attorney General's Office)

Members Not in Attendance:

Vacant seat (Cognitive Bias Expertise)

The chair called the meeting to order at 10:03 AM. A quorum was present.

1. Minutes Approval

- i. Approved.

2. Subsection Discussions

- i. Subsection (d) Report

- 1. The FSOB reviewed suggested changes to the draft report.

- a. The FSOB discussed the conclusion and recommendations section and decided that a bifurcated vote would be necessary due to the second recommendation (*"since at the current time, this FSOB has no independent enforcement power, we believe that the Attorney General should take steps to enjoin the Bristol District Attorney from unlawfully disseminating personal data"*).

- i. T. Palmbach stated that he is okay with a bifurcated vote because it is the Attorney General's (AG) job to take action. N. Gertner agreed and added that removing this recommendation or not specifying the AG, would

- underscore the board's powerlessness. A. Mires agreed and added that the AG has the power that the FSOB does not.
- ii. L. Davis expressed that it is more powerful to have the AGO back the document in its totality.
- 2. N. Rothstein motioned for a bifurcated vote on the FSOB's Report on the Bristol District Attorney Office (BDAO) DNA Database. R. Cotton seconded.
 - a. On the issue of whether to approve the body of the FSOB Report (minus the Conclusions and Recommendations) on the BDAO DNA Database:
 - i. **11** Approve the Report
 - ii. **1** Oppose the Report
 - iii. **0** Abstain from taking a position
 - b. On the three bulleted Conclusions and Recommendations (C&R) set forth at the end of the FSOB Report on BDAO DNA Database:
 - i. First C&R
 - 1. **10** Approve
 - 2. **2** Oppose
 - 3. **0** Abstain from taking a position
 - ii. Second C&R
 - 1. **8** Approve
 - 2. **3** Oppose
 - 3. **1** Abstain from taking a position
 - iii. Third C&R
 - 1. **11** Approve
 - 2. **1** Oppose
 - 3. **0** Abstain from taking a position
- 3. The FSOB is statutorily required to submit the report to the Executive Office of Public Safety and Security, the Joint Committee on Public Safety and Homeland Security, the Supreme Judicial Court, the Massachusetts District Attorneys Association, the Massachusetts Attorney General, the Committee for Public Counsel Services, the Massachusetts Association of Criminal Defense Lawyers, and the New England Innocence Project, Inc. The report will also be shared with key legislators such as Senator Gobi.
 - a. L. Kavanaugh suggested the report be sent to the leadership of the legislative body where the report is currently being reviewed. EOPSS will coordinate with EOPSS' legislative director.
 - i. EOPSS to check in with the communications director for a press release.
 - b. Board members to share with their distribution lists.
- ii. Subsection (e): *The board shall develop, implement and periodically review a system for forensic laboratories to report professional negligence or misconduct and any such facility shall be required to report to the board any instance of professional negligence and misconduct.*
 - 1. S. Botch-Jones and G. Papagiorgakis reviewed the feedback submitted by the FSOB and discussed changes to the report (i.e. the addition of a forward section and a list of disciplines)
 - 2. The working group's field research included attending other board meetings (i.e. pharmacy board) to see how they addressed negligence allegations.
 - a. The group consulted with the Texas Forensic Science Commission.

3. The FSOB will consider removing medicine professions as a discipline upon reviewing the medico-legal commission statute and determining if the FSOB has oversight of members of the medico-legal community. The language will be removed from the document if they are out of the FSOB's scope.
 - a. A. Lynch stated that the FSOB has to determine if it has oversight of the Office of the Chief Medical Examiner.
 4. The FSOB discussed what is meant by negligence.
 - a. A. Goldbach expressed the importance of making sure language is broad enough to include behavior that is negligent from a professional forensic perspective but not criminal conduct.
 - b. L. Davis expressed that intention is important and language should be added to specify purposeful omissions.
 - i. N. Gertner expressed that the FSOB should review anything that affects the integrity of results. She added that an intentional act is not negligence and is misconduct that could arguably be criminal.
 - c. R. Cotton discussed negligence in regards to following or not following accepted standards of practice. She stated that analysts should be aware of their department's standard procedure. If the analyst was negligent but was following the laboratory's policies and procedures or standards of practice, the laboratory would be at fault. L. Davis added that in the latter scenario, laboratory management would be the problem. A. Goldbach stated that she could cite instances where the federal-level standards and state-level standards are at odds. L. Davis added that there may be laboratory procedures that may not be appropriate.
 - d. N. Gertner added that it is not unusual for a code of conduct to have leeway that allows the reviewing entity to consider the specifics of each allegation.
 5. S. Botch-Jones and G. Papagiorgakis stated that the document provides a baseline of recommendations and should not be more detailed. A. Mires agreed and added that it is unnecessary to list every potential scenario.
 - a. Corrective actions may be submitted to the FSOB if it, or the response to it, rises to a level of misconduct or negligence.
 6. S. Botch-Jones and G. Papagiorgakis discussed the reporting process for complaints of negligence and misconduct. One avenue is the FSOB mass.gov website. EOPSS will consult with the EOPSS communications department.
 - a. The document will consider situations that warrant emergency meetings.
 - i. These meetings will be in executive session meaning they will not be public meetings and limited minutes will be generated. Additionally, any information obtained and reviewed will not be available to the public.
 - ii. N. Rothstein suggested a monthly rotating schedule for groups of members that would be responsible for reviewing cases.
 7. The FSOB will vote on the document at the November meeting.
- iii. Subsection (i): *The board shall develop protocols to ensure proper chain of custody of evidence.*
1. N. Rothstein and A. Lynch reviewed the feedback submitted to the draft document. S. Botch-Jones volunteered to help the working group.
 - a. A document with all of the references will be circulated to the board.

- b. The draft subsection (i) document will be shared with the Boston Police Department laboratory and the Massachusetts State Police Crime Laboratory for feedback.
 - i. The laboratories will check the charts on page six to make sure the charts adequately address sexual assault evidence collection kit storage and do not conflict with the laboratories' best practices.
 - 2. The working group asked if it would be wise to reference International Organization for Standardization (ISO) documents considering that only those that have purchased the standards, have access to the ISO document. L. Davis responded that they should not use ISO documents because they are copyrighted but they should use ISO definitions and reference the ISO documents in the bibliography.
 - 3. EOPSS will check the status of the commission that was established to address evidence storage. EOPSS will circulate the memorandum issued by the trial court.
 - 4. The FSOB will discuss the document at the December meeting and will potentially vote on the document at the January 2022 meeting.
 - iv. Subsection (c): Boston Police Department Laboratory Audit
 - 1. Working group members C. Goodband, S. Botch-Jones, G. Papagiorgakis, and L. Davis will meet to engage in preliminary discussions regarding their approach to the audit. The working group's first step is to collect information.
 - 2. The working group will provide the FSOB with an update at the December meeting.
- 3. Topics Not Reasonably Anticipated Within 48 Hours of the Meeting**
 - i. A. Mires informed the FSOB that she met with Angela Davis to discuss the issues discussed at the FSOB September meeting regarding missing persons. She will be meeting with Angela Davis again who will reach out to Chairperson Collins on potential next steps.
 - ii. The FSOB will meet in executive session at the next meeting for a subsection (j) presentation from the Massachusetts State Police Crime Laboratory.
 - iii. The next meeting dates are 11/19 and 12/17.
- 4. Public Comments**

No public comments.

Meeting adjourned at 1:38 pm