

The Commonwealth of Massachusetts Executive Office of Public Safety and Security

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MAURA T. HEALEY
Governor

TERRENCE M. REIDY
Secretary

KIMBERLEY DRISCOLL
Lieutenant Governor

Members	Present
Kerry Collins, Undersecretary	X
Sabra Botch - Jones	X
Dr. Robin Cotton	X
Professor Timothy Palmbach	X
Professor Richard Lempert	X
Gina Papagiorgakis	
Cliff Goodband	X
Dr. Ann Maire Mires	X
Lucy A. Davis	X
Adrienne Lynch, Esq	X
Assistant AG Gabriel Thornton	X
Ira Gant	X
Lisa Kavanaugh, Esq	X
Judge Nancy Gertner	

Forensic Science Oversight Board Meeting Minutes

When: March 28th, 2024

Time: 11:00am – 1:00pm

Via Microsoft Teams

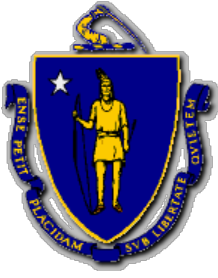
Pursuant to the provisions of G.L.C. 30A and 940 CMR 29.00 et seq, notice is hereby given of a meeting of the **Forensic Science Oversight Board** to take place on Friday March 28th from 11:00am – 1:00pm.

1. Meeting Minutes Approval
 - a. The minutes have been approved with the edits that have made
2. Massachusetts Complaint
 - a. The Bristol Complaint – October 2021 the board voted to accept the recommendations of the Bristol DNA Data base. On the broad point that the database hinders integrity. The topic of the subgroup that were discussed is to revisit the recommendations that were made and finding a new sponsor for 22E. Lisa Kavanaugh does not think that the board needs to change the recommendations. The second item is to better understand the structure of the database and if there is value in sending new requests to the DA.

The board could also seek a path through the Attorney General's office. Proposed revisions per the 2023 Gobi Bill have been shared with the board. Proposed addition of subsection E as well as a proposed outreach plan. Rep Danielle Gregoire is willing to push the bill and champion this. If the board splits from Familia DNA and adjusting access to DNA and not developing databases then the board is looking to support something different. Richard Lempert asks if the bill addresses unregulated databases. In response it does not – the board is including this in potential language. Richard Lempert believes that utilizing the word “unregulated” may be a weak point. Lisa Kavanaugh agrees with Richard Lempert and the board has not decided a definition for “unregulated”. The working group has decided that they should rework the language. There are two issues: 22E and then reaching out to Senator Brownsberger on expanding the scope of FSOB. Language proposal for Rep Gregoire and Senator Brownsberger for the April meeting. The role of the board is to discuss scientific techniques and whether they are permitted. The board should draft a document to understand the scope. Robin Cotton states that it may be helpful if the subcommittee wants to draft and then Robin offers to comment. Lucy Davis reviewed what was said at the Texas commission – it was scoped in looking at the transfer and what is being said across the community and the concept, not the testimony. Ann Maire also states that this relates to training which is within the boards scope. Ira Gant states that it is within the scope of the board within the science and the scientific reliability. It is not within the boards scope to say something is correct or incorrect within a specific case. He believes it is within the scope to put forth recommendations for testimony and/or report writing as it pertains to scientific reliability. Adrienne Lynch believes the approach should be that we look at the underpinning of the basis of the opinions, how were they expressed in court. And understand that what the board is putting forth is not intended to “tip the scale” in favor of one opinion. Lisa Kavanaugh states that it is impossible for the board to look at specific testimony that has been given. If the board has run into testimony that is not scientifically accurate then we should make a finding – believes that this is permitted and does not serve as an attack on a certain individual. U/S Collins adds that they are looking at the objective of the testimony and would it advance the scientific reliability without an attack on an individual. Adrienne Lynch believes that the board does need to decide what the scope of the work is and find the scientific issue in the case specific to this complaint. In regards to YSTR there is a genealogy lab that is able to determine race, ethnicity and determine a surname. It is a technique that has issues with potential bias. What are the scientific parameters of these databases to derive surnames? What is the role of a genealogist and presenting this evidence in court. SNPs – Forensic Genetic Genealogy is different than what we are taking about. SNPs – we are not talking about this individual ,case we are talking about its use as an investigatory tool that leads to a grand jury. If we are talking about the trial itself Richard Lempert believes that there are statistical worries.

3. Essex Case Discussion

- a. Adrienne Lynch states that this is a database issue: YSTR database. The DNA is developed by a lab, sent to a genealogist, who then uses the DNA to find a YSTR profile match. There are issues related to this; such as over representation in our database leading to bias. The board needs to determine how to frame an investigation into the scope and limits – emphasizing that this is not about Forensic Genetic Genealogy. This is purely YSTR data that is placed into a unregulated, user populated, family discerning group cites that are maintained by a corporation. Adding that there needs to be



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limitations of such a search and given the biases that are implicit in such unregulated source database. When thinking about a framework believes that the board should use the framework: What are the scientific parameters of this database? And what is the role of a forensic genealogist in presenting evidence in court? Ira Gant adds that YSTR is widely less reliable than any other DNA. Adrienne adds that is a equivalent to a game of bingo. There is a scientifically valid way to do this. Rick Lempert adds that this is a complex issue as well as the issue of whether this is within the boards scope. States that the databases will be disproportionate in racial minorities, will include a lot of arrestees who were cleared, may include people who gave DNA in cooperation so they could be cleared . Ira Gant suggests that perhaps the board should inform themselves more maybe outside of documents. Adds that it may be beneficially to have someone from the outside to come in. Essentially, group will talk about further steps, but all are in agreement that this is problematic. Lisa Kavanaugh adds that the involvement in experts between these two complaints would be beneficial. Adding that to the extent it is feasible, it would be great to find experts willing to consult who are not directly involved for all complaints. U/S Collins believes this is a good plan and offers to help if necessary.

4. Future Meeting Agenda Items

- a. U/S Collins stated that the next meeting we will be focusing on subsection updates:
 - i. (G) develop lab accreditation process – have not closed the loop. Discussing where we left off, this is where we currently are, and this is what we are asking of the board.
 - ii. (F) Engaging Stakeholders – U/S Collins has engaged with Anne and is hoping to partner with Social Law Library in December. Also discussing the Springfield Audit.
- b. In May U/S Collins will report out on Subsection J. MSPCL did have an RFR for new lab space and will report out on this. Will also discuss the potential complain form and Lisa and Tim's process for subsection d. While also discussing the complaints (YSTR and T.Roy) and 22E language.

5. Topics not reasonably anticipated within 48 hours

- a. Bernard's OAT Letter
 - i. MSPCL will not be discussing as they have just received but have not yet notified ANAB. This will be added on the agenda when appropriate and when MSPCL or the board wishes to discuss. Dr. Botch – Jones adds that she noticed there were enclosures that were associated with the letter. U/S Collins will check. Dr. Botch – Jones has further questions:

1. In first paragraph, Bernard mentions MA standards – would be helpful to have access to that or what info is specifically being referred to
 2. Who was involved in research and what docs were used to reach that allegation? Summary of what was reviewed
 3. If it comes to it, having an independent individual outside of FSOB or OAT with expert knowledge on this instrument would be incredibly helpful
- b. Ira Gant knows we are waiting on OAT's response but when could we add this to the agenda? Tentatively this could be added in April – EOPSS will check with the Lab. Lucy Davis would like an expert to come in to discuss the instrument and technology.

6. Public Comment

- a. T.Roy states that she can see the board is having a difficult time figuring out the area of science and has concerns. There are two parts
 - i. What happened in MA, is about how the DNA got on the items and the source of the DNA.
 - ii. This is different 2from proposed area of science where the Europeans are doing something different and suggested fix is to evaluate findings and proposed activities. This is new and novel. Regarding people that would have expertise in this area Texas has looked and had experts come in – there is still significant debate. Subject of complaint is different here than in TX, she cautions us to use the same experts here.
- b. Atty. Bernard can provide any and all documents to Ira. He also adds that OAT has been very transparent and responsive to FOIA requests. Asks that Ira redacts any client/case information before sharing with the board.
- c. Adjourn