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Lt. Governor

THOMAS A. TURCO, III  
Secretary

**Forensic Science Oversight Board Meeting**  
Meeting Minutes

**Date:** May 13, 2020

**Place:** WebEx Meeting

Join by video system

<https://statema.webex.com/statema/j.php?MTID=mff43b5c8bf22f4180dc76cb41e08f3b4>

Meeting number: 610260232; password: QWgzmRrJ524

Join by phone

+1-203-607-0564 US Toll

+1-866-692-3580 US Toll Free

Access code: 610260232

**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 10:08AM. A quorum was present.**

## **1. Minutes Approval**

- a) March meeting minutes were not approved and were placed on the June 19<sup>th</sup> meeting agenda.

## **2. Crime Lab Budget Update (Chairwoman U/S Collins)**

- a) The budget has not passed. The governor filed the budget and is waiting for approval.
- b) Budget presentation will take place at a future meeting.

## **3. Negligence and Misconduct Update (Papagiorgakis and Botch-Jones)**

- a) A document outlining general research relation to subsection E of the FSOB statute was presented to the Board (see attached).
- b) The Board provided feedback:
  - i. Subsection E of the statute vaguely specifies the implementation of a system of periodic review.
    - 1. Other boards have the power to adjudicate complaint. An example is the Texas board which has a complaint screening committee that investigates and takes recommendations.
  - ii. The Board considered the procedure for a complaint.
    - 1. Some questions that were considered: Where does it the complaint go next, i.e. report to licensing authority? Would personnel would get in trouble?
    - 2. Board also discussed the need for a recommendation for disciplinary action.
    - 3. The Board agreed that there should be an outline that is not too specific and not too vague. There has to be actionable offenses so it does not go into policy problems or issues.
  - iii. Board discussed the meaning of negligence.
    - 1. The definitions that Botch-Jones and Papagiorgakis found were vague. Also included is a code of professional responsibility.
    - 2. The Board questioned if they are focusing on criminal negligence or standard negligence. The Board expressed that they need to decide what kind of scenarios should be brought to FSOB.
    - 3. Although the MSP Crime Laboratory does not have a formal definition, its employees reviewing the ANAB ethics code annually.
      - a. EOPSS to inquire if Boston Police Crime Lab, also ANAB accredited, also does this.

- b. Board will look at police departments to see if they have a procedure in place and review any existing procedures.
  - c. Board expressed concern over the fact that some police departments conduct an investigation on laboratory personnel as they would any of their officers if they oversee the lab. They, however, do not have the training or understanding to do properly this. The Board should ensure that what FSOB develops is not overridden by the umbrella agency.
- iv. Board inquired if complaints would be presented to them in an executive session. Legal counsel stated that there is an enumerated reason for investigating personnel matters. When misconduct has to be investigated, the person has to be notified and give them the opportunity to be present.
- v. Board stated that it would be best if what is developed would be written in statute or code. EOPSS to look into MA statutes that look into employee records, to ensure that what the Board develops does not infringe on existing procedures or is contradictory.
  - 1. The Ethics Commission enforces the Conflict of Interest Law for state employees based on statute. The Board of Bar Overseers does it for attorneys. Having something like this in place does not have criminal power such as incarcerating the offender but there are major repercussions.
- vi. The Texas forensic board website has sample reports.
- vii. Board recommended that Botch-Jones and Papagiorgakis collect documents and put them on an appendix of the document they are drafting.

#### **4. Springfield Audit Update (Palmbach and Cotton)**

- a) The presenters could not visit the Springfield PD Lab due to COVID-19. They were going to go to engage in discussion and bring pertinent information to the Board.
- b) Waiting to look at what phased approach will look like in MA. Palmbach and Cotton are willing to attend with face masks and social distancing. The Board wants to be sensitive to their needs. EOPSS to reach out to the Springfield PD commissioner to gauge her willingness.
- c) Board suggested they could initiate the process by asking for a few documents
  - i. Palmbach and Cotton will make a list of requested documents to provide to the Springfield PD Crime Laboratory. This will help them prepare so that when they go there they can be more efficient

- d) Board will use this list to generate a general checklist to provide to all labs such as redacted reports of all the processes and examinations they perform and organization chart.

## **5. Chain of Custody Discussion (Rothstein and Lynch)**

- a) A document outlining general research regarding subsection I of the FSOB statute was presented to the Board (see attached).
  - i. Proper chain of custody should be looked at broadly and include everything that happens to evidence from the collection, labeling, all the way to the storage.
  - ii. Rothstein to send all the resources Rothstein and Lynch looked at to generate the document. There are more resources available.
  - iii. The presenters came up with a comprehensive list on everything an agency can do to handle evidence appropriately.
    - 1. Includes from collection on the field to a destruction order.
- b) The Board provided feedback:
  - i. The Board inquired if the best practices/standards are directed to law enforcement agencies or labs.
    - 1. Accredited labs have requirements and may not need this. This document is beneficial for municipal law enforcement agencies to establish the integrity of the evidence.
  - ii. The Board discussed evidence in the post-conviction context where evidence is maintained at courthouse. Courts should adhere to standards as well.
    - 1. There is a SJC committee regarding how clerks' offices should be handling evidence.
      - a. EOPSS to circulate SJC document.
    - 2. The Board expressed the need for consistency from courts.
    - 3. Due to budget restrictions, there is no central evidence unit.
      - a. Biological evidence degrades the most over time. Every effort should be made to maintain integrity because evidence can be exculpatory.
      - b. Biological evidence should be listed.
- c) The Board discussed providing an online training or certification program for law enforcement and courts to make sure they are up to date on legal requirement of retention. This would be offered on the FSOB website.

- d) The Board recommended that the document include bullet points or a narrative on best practices and also include reading recommendations or information on where there is a more complete guidance (i.e. NIST).
  - i. The document can include links which the board would be responsible for updating.
- e) The Board discussed including specifics on the procedure for returning evidence such as how it should be documented and who is responsible.
  - i. The AGO's cyber division did this through statute that codifies return of property.
  - ii. The document should consider what is involved in retaining an item of evidence (i.e. property held for safekeeping versus evidence that has evidentiary value).
- f) The Board discussed needing a list of all places where evidence could go. Kavanaugh to provide a partial list.
- g) The Board considered other guidelines to include such as security in evidence rooms.
  - i. Considerations that were explored: security cameras monitoring evidence room, motion detection rings, multiple people being present when certain evidence needs to be viewed, requiring a backup paper trail, scanning in and scanning out, etc.

## **6. Steps Moving Forward**

- a) June 19<sup>th</sup> meeting may be held at Ashburton if there is an ability to social distance. If so, the meeting will have a hybrid format and will be in person and on WebEx
- b) Still working under executive order. There are current guidelines with open meetings that may expire.
  - i. EOPSS will circulate guidance once the agency receives it.
- c) The Board discussed grants and would like to add a grant discussion on the June agenda.
  - i. It is important for the FSOB as an entity to endorse grant applications and other agencies/state entities to be the lead
  - ii. Subsection F of the FSOB statute addresses training. It would be appropriate for grant applications that address training to include what the FSOB is trying to achieve.
  - iii. Kavanaugh discussed a grant application that is due in June. There are also six Coverdell grants.

## **7. Response to Bills**

- a) Familial DNA Bill
  - i. The Board will add their comments to the document that Davis and Mires circulated.
  - ii. The Board will provide the Bill with comments and track changes to the bill to the legislature.
- b) Conversation will be resumed at June meeting.

## **8. Public Comment**

No public comment. There was a motion to adjourn by Ann Marie Mires and seconded by Lucy Davis. The Board adjourned at 1:53pm.

## **9. Action items:**

- a) EOPSS to inquire if Boston Police Crime Lab, also ANAB accredited, reviews ANAB code of ethics annually.
- b) EOPSS to look into MA statutes that look into employee records, to ensure that what the Board develops does not infringe on existing procedures or is contradictory.
- c) EOPSS to reach out to the Springfield PD commissioner to inquire about a visit following COVID-19 guidelines (face masks and social distancing).
  - i. Palmbach and Cotton to make a list of requested documents to provide to the Springfield PD Crime Laboratory.
- d) EOPSS to circulate SJC document RE: evidence storage in court houses.
- e) Kavanaugh to provide a partial list of places where evidence goes.
- f) EOPSS to circulate public meeting guidance RE: COVID-19 once it is issued.
- g) The Board to add their comments to the document that Davis and Mires circulated.
  - i. The Board will provide the Bill with comments and track changes to the bill to the legislature.