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CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

THOMAS A. TURCO, III
Secretary

Forensic Science Oversight Board Meeting

Meeting Minutes

Place: WebEx Meeting

Join by video system

<https://statema.webex.com/statema/j.php?MTID=m02c2175e1e648b3149c882699bd04dfb>

Meeting number: 1619821026; password: 3vkJvp3Mxh4

Join by phone

+1-203-607-0564 US Toll

+1-866-692-3580 US Toll Free

Access code: 1619821026

Members in Attendance:

Chairwoman Kerry Collins (Undersecretary for Forensic Science)

Sabra Botch-Jones (Forensic Science Expertise)

Dr. Robin Cotton (Forensic Laboratory Management 1)

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:

Lucy A. Davis (Clinical Quality Management Expertise)

Vacant seat (Cognitive Bias Expertise)

The chair called the meeting to order at 10:00AM. A quorum was present.

1. Minutes approval March

- i. The March meeting minutes will be approved at the August 3rd meeting.

2. Minutes approval May

- i. The May meeting minutes were approved unanimously.

3. Breath test RMV notification (PowerPoint and notice attached)

- i. The Massachusetts State Police Crime Laboratory presented. The Board commended the laboratory for bringing this situation to the FSOB and followed up with questions and suggestions:
 - 1. The lab sent out the attached notice to eleven MA District Attorney's Offices, bar associations, the Ananias prosecutors and litigants, Committee for Public Counsel Services (CPCS) Forensic Resources Unit, and added a flag on the eDiscovery portal.
 - a. The Board suggested notifying the Massachusetts Association of Criminal Defense Lawyers (MACDL) as well.
 - 2. Board expressed their concerns and posed questions that Dräger and the MA Registry of Motor Vehicles would be better equipped to answer.
 - a. Some members expressed that the Registry of Motor Vehicles needs to act upon incomplete data and should be able to properly notify individual license holders.
 - 3. The Board discussed the need for FSOB to develop procedures to respond to similar situations and to also be a conduit for notification.

4. Familial DNA Bill discussion

- i. EOPSS shared a copy of bill, Senate, No. 2480 on Microsoft One Drive with the Board. The Board is collaboratively reviewing the document with track changes so that the feedback can be voted on at the next meeting (August 3rd) and provided to the legislature.
- ii. L. Kavanaugh will reach out to the Policy Coordinator from the Innocence Project of New York to get their feedback and input.

5. EOPSS follow-up from previous meeting

- i. BPD indicated that they review the ANAB ethics code annually.
- ii. EOPSS looked into FSOB's options for obtaining personnel records. The FSOB statute does not grant the FSOB the authority to obtain employee records. Additionally, the Public Records Law exempts personnel records and MGL c. 66A, § 2k requires that the employee be notified and provided with an opportunity to prohibit the release of their records.
- iii. EOPSS reached out to Springfield PD and is willing to have anyone from FSOB visit the laboratory.
 - 1. T. Palmbach and R. Cotton expressed that it would be best to get there and then they can ask questions instead of drafting a questionnaire beforehand. This meeting will be coordinated offline and will likely occur in the end of July.
- iv. EOPSS circulate the case law of evidence storage at courthouses but was unable to find the actual Bill that created the 17-member task force. The Board discussed the Bill and if it actually passed or if the task force was actually formed. EOPSS will consult their Legislative Director for clarification.

6. General updates on subsections of the FSOB statute

- i. L. Kavanaugh responded to the May Minutes Action Item (e) and shared a document listing the places where evidence goes.
- ii. N. Rothstein and A. Lynch will revisit subsection (i) in September
 - 1. L. Kavanaugh is working on a portion of this subsection and will connect with them.
- iii. S. Botch-Jones and G. Papagiorgakis will be sharing an updated draft document in response to subsection (e). The feedback and comments that arose from the May meeting are included. Their research includes documentation and procedures from outside

countries such as the UK. S. Botch-Jones and G. Papagiorgakis will revisit the document and will make it available to the Board in time for the August meeting.

1. S. Botch-Jones and G. Papagiorgakis are seeking feedback on what the Board will do about Forensic Service Providers that are not accredited. The Board was asked to consider the process of reporting, which entities would be able to report and how notification will occur.
2. The Board suggested including failures of proficiency testing and referenced the Commonwealth v. Sullivan case.
 - i. The Board to consider if it is negligence to fail a proficiency test.
The Board expressed that a failure in a proficiency test should not be considered misconduct.
 1. In accredited labs there are procedures in place, but unaccredited laboratories do not have a uniform procedure and handle situations differently.
 - ii. The Board suggested to either be inclusive of all types of failures or create substantive distinctions of failures. The Board further proposed it would be better to be inclusive.

7. Next meeting

- i. August 3rd 10am-2pm.

8. Matters not reasonably anticipated within 48 hours

- i. The Board acknowledge the article that N. Gertner shared discussing L. Kavanaugh's work. This item will be placed on the August meeting.
 1. The core of this document discusses misconduct investigations and investigations of certain forensic disciplines (see attached).

- a. The Board to consider hosting a webinar to include a panel discussion about forensic disciplines that have been criticized.

9. Public Comment

No public comment. There was a motion to adjourn by N. Gertner and seconded by L. Kavanaugh. The meeting adjourned at 11:48am.

10. Action items

1. EOPSS to circulate Bridgeman case to the Board.
2. The lab plans on presenting at the August meeting.
3. L. Kavanaugh to reach out to the NY Innocence Project to ask for a presentation or a document to circulate to the Board.
4. EOPSS will consult with the EOPSS Legislative Director regarding evidence storage at courthouses.
5. EOPSS to look into the status of the Milford facility at DOC for evidence storage.
6. S. Botch-Jones and G. Papagiorgakis to present subsection (e) updates at the August meeting.
7. EOPSS to speak to Communications Director about press conferences and a public facing website.