



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775
TTY Tel: (617) 727-6618
Fax: (617) 727-4764
www.mass.gov/eops

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

THOMAS A. TURCO, III
Secretary

Meeting Minutes
Forensic Science Oversight Board

Date: July 9, 2019

Place: The McCormack Building
One Ashburton Place, 10th floor
Charles River Conference Room
Boston, MA 02108

Time: 10:00AM-2:00PM

Members in Attendance:

U/S 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)
Dr. Itiel Dror (Cognitive Bias Expertise)
Judge Nancy Gertner (New England Innocence Project) – remote attendance
Anne Goldbach, Esq. (Committee for Public Counsel Services)
Clifford Goodband (Expertise in Statistics 2)
Lisa Kavanaugh, Esq. (MA Association of Criminal Defense Lawyers)
Gina Kwon (Nominee from Attorney General's Office)
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)

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

1. Minutes Approval

Corrections were made and minutes were approved.

2. Presentation (Itiel Dror) –PowerPoint provided

- a. Itiel Dror expressed that he respects the ISO/IEC standards and is not intent on replacing or reinventing the standards. He expressed that the standards, however, are not specific to forensics. Lucy Davis stated that the standards are being applied to forensic science and specifically address forensic issues.
- b. Itiel Dror stated that the presentation is meant to introduce five countermeasures to address cognitive bias. He expressed that the ideal audit should make sure a process is in place to

combat cognitive bias. He added that the MSP crime lab may or may not implement these things already.

- c. Timothy Palmbach asked Itiel Dror if he is asking the board to fully endorse the five recommendations. Itiel Dror stated that he would like the board to vote or endorse all or some of the countermeasures as good ideas and then hear from the lab to hear their feedback and to find out if they are doing some or all of these measures. Itiel Dror stated that he does not expect the board to adopt the countermeasures yet. Timothy Palmbach responded that the countermeasures need to be more specific and need to be reworded.
- d. Clifford Goodband asked if these suggestions are for labs that are accredited or unaccredited. Itiel Dror responded that is for all the labs and that he is generally referring to competent examiners.
- e. Nancy Gertner stated that the objective of the board is to come up with a set of standards by which to judge the crime lab. She added that it may not make sense to vote on Itiel Dror's suggestions just as the board did not vote on the ISO/IEC; it may make more sense to vote after considering a number of presentations and issues. Robin Cotton echoed the same sentiment.
- f. Timothy Palmbach motioned a vote to for the board to "agree that the issues of cognitive bias in forensic science examinations are important and will certainly be a part of our decision making and policies moving forward and in that light we are requesting information from all laboratories in the state of Massachusetts and this can frame those questions". Lucy Davis seconded and the motion was approved unanimously.
- g. **Discussion on the five countermeasures recommended by Itiel Dror:**
 - i. **"The evidence should be driving the forensic work, not a 'target' suspect"**
 - 1. Lucy Davis stated that the ISO/IEC 2017 supplemental requirements ask that the examiner documents what they see and the information they were exposed to. Itiel Dror responded that not all labs do this.
 - ii. **"Minimize exposure to task irrelevant contextual information"**
 - 1. Lucy Davis stated that there are new reporting requirements, but that ISO/IEC does not require specific information to be on the examiner's submission form. Itiel Dror added that they also do not prohibit certain information to be on the form such as irrelevant information and that this is the problem that needs to be addressed
 - 2. Nancy Gertner stated that it is not necessary for these standards to affect accreditation or be included in accreditation, the board can come up with best practices. Lucy Davis added that if the lab adds these countermeasures to their policies, the accrediting body will include these countermeasures in their audit.
 - 3. Timothy Palmbach expressed that applying this suggestion may not be practical or applicable in real life because there are instances where the examiner will inevitably come across information and have conversations. He added that a suspect's name and DOB is sometimes relevant. Itiel Dror agreed that it may not be always possible and added that this is an ideal that the board should strive for and that labs should do it as much as possible when possible. He added that if the examiner comes across irrelevant information, they should document the information and the reason they came across that information.
 - 4. Anne Goldbach added that she is familiar with some of the state lab's practices and she knows that they are aware of Linear Sequential Unmasking (LSU) and that there are things in place that the board does not know yet. She added that the board may be pleasantly surprised with some of the procedures in place already.
 - iii. **"State Crime Lab to give full access to defense and also take work for defense"**
 - 1. Adrienne Lynch commented that having the state lab do defense work may be a violation of the conflict of interest statute because if the state is the submitting agency, the lab cannot take work from the defense on that case.

2. Lucy Davis stated that in Kentucky the state lab would occasionally take defense work and that the Kentucky state lab made sure the analysts did not talk to each other and only additional analysis were made (no reexaminations).
 3. Nancy Gertner added that some of these changes have been implemented in other labs such as Texas.
 4. Lisa Kavanaugh stated that there are existing domains where this could be feasible such as post-conviction cases. She also stated that this type of collaboration could be beneficial and could be positive in terms of the integrity of forensics.
 5. Adrienne Lynch added that there are logistical considerations, where the defense may not want to submit evidence to the state lab because they may feel it is impractical or may have tactical or strategic reasons to not use the state lab. She added that the defense has the option of arranging for the state lab to analyze evidence during pretrial. Also, half of the evidence is reserved for the defense in case they want to re-examine. If the testing is exhaustive, the defense can be present at the time of testing. Lisa Kavanaugh expressed that the strategic reasons for the defense to not go to the state lab disappears in a post-conviction context.
 6. Regarding transparency and full disclosure, Adrienne Lynch stated that the defense attorney gets full access to the lab's case jacket including notes. Documents are fully available to the defense.
- iv. **“All forensic reports should specify weaknesses, limitations, scope, exposure to irrelevant information, and potential for error and bias”**
1. Itiel Dror stated that he could provide the board with examples from other labs.
 2. Lucy Davis stated that ISO/IEC 17025 2017 requires that the examiner gives a qualifying statement in the report to the weight of any match or association. Lucy stated that she agrees with this new requirement because it makes things clearer and that the ISO/IEC standards are advancing towards addressing this. She expressed that she does not completely agree with everything being included because it is a lot of information, but it is helpful for the examiner to include some of this information as required by ISO/IEC.
 3. Timothy Palmbach expressed that this countermeasure is too wide and broad, and the examiner may spend an exhaustive amount of time writing this report. Itiel Dror responded that the explanation can be a paragraph stating the limitations and potential errors. He added that they should also include a notice of instances where the examiner was exposed to extraneous information that could lead to bias and what the information was.
- v. **“Verifications should be as blind as possible”**
1. Lucy Davis mentioned that ISO requires verification but doesn't require it to be blind.
 2. Lisa Kavanaugh stated that she is curious to know if there are any labs that do not tell the verifier that they are verifying and asked if there is a reason why the verifier needs to know that they are verifying. Adrienne Lynch responded that she is aware that the NYPD is trying to implement a protocol where the people that are doing verifications do not know that they are doing verifications.

3. MSP Crime Lab Documents (Lucy Davis)- Documents available upon request

- a. Lucy Davis reviewed The FBI Quality Assurance Standards Audit for Forensic DNA Testing Laboratories, The FBI Quality Assurance Standards Audit for DNA Databasing Laboratories, the Updated MASP Non-Conforming Report and the 2018 Corrective Action Form CSSS-01 with the board and highlighted important aspects of the documents.
- b. The remaining documents will be reviewing in the August 1st meeting.

4. Topics not Reasonably Anticipated within 48 Hours of the Meeting

- a. Lisa Kavanaugh motioned for a vote to have the board begin the audit with the MSP crime lab. Gina Papagiorgakis seconded the vote and this motion was approved unanimously.
- b. The next five meetings will now run from 10am-4pm with breaks. The board decided the next five meetings will be held August 1, September 12, October 25, November 20 and December 12 in one of the McCormack Building's 21st floor conference rooms.
- c. Any documents or research the board would like to disseminate should be sent to Lis Pimentel to prevent a violation of the Open Meeting Law.

5. Public Comment

No public comment as time did not allow for it. A motion (Gina Kwon) to adjourn was made, seconded by (Gina Papagiorgakis) and approved unanimously.