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**Meeting Minutes**  
**Forensic Science Oversight Board**

**Date:** August 1, 2019 10am-4pm

**Place:** The McCormack Building  
One Ashburton Place, 21<sup>st</sup> floor  
Conference Room 1&2  
Boston, MA 02108

**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)  
Dr. Itiel Dror (Cognitive Bias Expertise) – remote attendance  
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)  
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 10:00AM. A quorum was present.

**1. Minutes approval**

The minutes were approved unanimously.

**2. MSP Crime Lab documents (Lucy Davis)**

- a. Lucy Davis reviewed the 2018-CAR-FIS document and pointed out an instance where the lab not only corrected their action but also reviewed over 750 older cases to check for the same error. She added that the lab notified the accreditation body of the issue.
  - i. Anne Goldbach expressed that she was surprised because she was not aware of this correction. Ms. Goldbach discussed disclosure and stated that a consistent and real process has to be established. She added that the board has to think about *when* disclosures happen and *when* they need to happen.

- ii. Nancy Gertner stated that the board's charge to do an audit is more than accreditation and added that the state has seen failures of people. Nancy Gertner stated that the board has to look back and identify what went wrong and look forward to make sure a better system is in place, which has a disclosure implication; the board needs to ensure that these failures do not occur. The chairperson added that these instances occurred or initiated in labs that lacked protocols and that in one of the instances the failure was brought to light as a result of the person joining the MSP crime lab which has protocols in place. She added that these failures are a result of human failures and lack of protocol and control.
- iii. Lisa Kavanaugh stated that the example identified by Lucy Davis shows how the existing audit requirements encourage improvements in how the lab is doing its work and a serious part of the board's consideration should be all of the unaccredited units within police departments who are also doing forensic work and do not have similar requirements or safety measures.
- iv. On the topic of disclosure, Adrienne Lynch added that in the case of the example Lucy Davis highlighted, had there been significant findings, there would have been a different course of action and the lab would have notified the DAA.

### **3. Public comment**

No public comment.

### **4. MSP Crime Lab presentation (Lynn Schneeweis) (PowerPoint attached)**

#### **a. MSP Crime Lab discussion:**

- i. Itiel Dror asked if examiners are prohibited from speaking to defense attorneys. The lab responded by explaining that the only time the lab would be cautioned to speak to the defense attorney is when the report has not been generated and reviewed in which case the lab cannot speak about the results with the prosecutor and the defense attorney. The lab added that the analyst just has to make sure that the defense attorney is, in fact, the attorney on the case.
- ii. Lucy Davis asked for clarification on the Crime Scene Services Section (CSSS) and Crime Scene Response Unit (CSRU). The lab responded that CSSS has analysts that do latent print, tire impressions and footwear and that CSRU consists of analysts from all of the other units who are part of the CSRU on a rotational basis. CSRU would, for instance, do blood pattern analysis. The lab added that criminalistics analysts also perform blood pattern analysis.
- iii. Sabra Botch Jones inquired if it is possible that the person that collected the evidence is also the person that processes that evidence. The lab responded that it is possible.
- iv. Anne Goldbach asked if there are protocols regarding the order of analysis in the case where evidence has to go to multiple units. The lab responded that there is and offered an example. In the case of guns, the lab would do prints first, DNA and then firearms for functionality testing. Anne Goldbach expressed concern because a survey she administered to BPD revealed an inconsistency in the order of their analysis. The MSP crime lab responded that there is not necessarily a right or wrong order and that it depends on how department procedures are written and what each person is doing to not interfere with testing.
- v. Itiel Dror asked for clarification on the crime lab's conversation logs, which are kept in the case record and provided for discovery. Dr. Dror asked if lab personnel are required to document a case-related conversation that occurred during off-hours and/or off-days or at a social event. The lab responded that the manual does not specify what constitutes case-relevant information and that the instructions are not that detailed.
- vi. Anne Goldbach asked about the digital evidence division. The lab informed her that the digital evidence division is no longer part of the MSP crime lab and is part of Homeland

Security instead. Anne Goldbach added that they are doing forensic work and that she believes they are part of the board's purview.

## **5. Audit discussion**

- a. The board discussed splitting into smaller groups or subcommittees to focus on different components and issues of the audit. The purpose of the subcommittees would be to embark on a fact-finding mission.
  - i. Timothy Palmbach cautioned against the idea of forming subcommittees because members of the board have different perspectives and there is room for bias.
    - 1. Nancy Gertner suggested that the subcommittees report to the general board so that the board could identify divisions
    - 2. Lisa Kavanaugh suggested that the board as a group should have a clear set of goals to determine the questions the subcommittee has to answer so that the subcommittee truly is information gathering
  - ii. Itiel Dror expressed that he approves of the idea because each member has a different specialty and expertise.
  - iii. Robin Cotton stated that the entire board would need to write a standard against which the board will assess
- b. The board reviewed board members, Lisa Kavanaugh, Nancy Gertner, and Anne Goldbach's proposed motions. A motion (Lisa Kavanaugh) was made to use the first motion as a guide for a questionnaire, seconded by Robin Cotton and approved unanimously.
  - i. Linear Sequential Unmasking (LSU) is referenced in section B of the proposed motions. Lisa Kavanaugh explained that LSU is an approach to minimize or limit the extent to which analysts may be influenced by information that they do not need. She added that with LSU, initially you know nothing and then you unmask.
  - ii. Itiel Dror expressed that for the board to make an impact, the board has to audit the lab on things that the lab can actually do and are practical. He added that the board should also note and consider solutions and improvements that could or should be done in the future once the restriction to the solution is removed.
  - iii. Timothy Palmbach stated that number 4 on the list of motions, a motion to create a comprehensive list of accredited and unaccredited labs that perform forensic analysis and to reach out to them, is a motion that the board agrees with. EOPSS agreed to reach out to PDs through MCOPA to form this list. Additionally, EOPSS will provide the board with the MSP crime lab's budget information along with a document that is compiled by the lab routinely referred to as a "Snapshot" that shows a statistical breakdown of analyses.
  - iv. A discussion on language and clarity ensued. Adrienne Lynch pointed out that a "lab" is sometimes one person and Lisa Kavanaugh replied that the word "entities" was used to avoid using the word "lab" versus units within police departments. Lucy Davis added that the board has to define what is meant by forensic analysis (i.e. toxicology, DNA) because there is a whole range of forensic analysis. Adrienne Lynch asked if the board would include the private labs that are used by the defense and Chairwoman Collins responded that the intent of statute does not transcend to the private realm.
  - v. The board reviewed, modified and finalized the questionnaire. A motion (Sabra Botch-Jones) to submit the questionnaire to the MSP lab for response, was made, seconded by Anne Goldbach and approved unanimously.
- c. **The following questionnaire was sent to the lab to respond by September 6, 2019:**

a. Documenting and minimizing communication with/cognitive contamination by submitting agencies & outside parties:

- Does the Lab have any written protocols or standard operating procedures (SOPs) governing the scope, nature and content of communications technicians/ analysts have with submitting agencies?
- What safeguards, if any, does the Lab already have in place to minimize contact between forensic examiners and submitting agencies (e.g. prosecutors, law enforcement personnel)?
- Does the Lab have any written protocols or standard operating procedures (SOPs) governing the scope, nature and content of communications technicians/analysts have with defense attorneys or defense experts?
- Does the Lab currently document all communications to/from law enforcement, prosecutors and/or defense team? If so, how is that information currently documented?
- Does the Lab have procedures and protocols regarding analysts and technicians who respond to and process crime scenes in terms of whether or not they can be involved in subsequent forensic analyses of the items collected?
- Ask that the Lab provide copies of any related protocols or SOPs and exemplar documentation of communications with outside parties/ agencies to FSOB prior to next meeting.
- Based on your answers to the above questions, can you identify any budgetary or personnel implications?

b. Documenting & minimizing exposure to task irrelevant information:

- How do individual units within the lab define task relevant information?
- What safeguards, if any, does the Lab already have in place to minimize exposure of analysts performing forensic analysis to task-irrelevant contextual information?
- How, if at all, are these safeguards memorialized by the Lab?
- Does the Lab use Linear Sequential Unmasking (LSU) to ensure that analysts examine & document their findings with respect to any crime scene evidence/ questioned samples first, before examining known samples (e.g. before exposing the analyst to information about the known samples)?
- Has the Lab taken steps to ensure that submission forms contain only task relevant information?
- Ask that Lab provide copies of any and all written protocols or SOPs governing applicable safeguards, including any protocols or SOPs that relate to LSU.
- To the extent that an analysis is provided information to complete their analysis, is that documented in some way?
- Based on your answers to the above questions, can you identify any budgetary or personnel implications?

c. Blind verification:

- How does the Lab currently conduct the “verification” process in forensic disciplines that require verification?
- Does the Lab engage in “blind” verification?
- If so, are there written protocols or SOPs already in place to describe how the verification process is conducted, and the safeguards to ensure that blind verification occurs?
- Based on your answers to the above questions, can you identify any budgetary or personnel implications?

d. Transparency:

- *Does the Lab currently make all protocols and SOPs available in the public domain?*
- *Are all protocols and SOPs available online through the Lab's website? If not, why not?*
- *How does the Lab ensure the transparency of its governing protocols and procedures?*
- *Based on your answers to the above questions, can you identify any budgetary or personnel implications?*

e. Discovery:

- *What information is currently included in the Lab's standard discovery disclosures of forensic analysis performed by the Lab?*
- *Does the Lab currently provide equal access to defense and prosecution to speak with examiners and obtain copies of bench notes generated in the course of forensic analysis?*
- *Does the standard discovery disclosure include provision of any and all communications to/from the Lab with submitting agencies (e.g. prosecutors and law enforcement agencies)?*
- *Does the Lab have written protocols or SOPs governing discovery? If so, ask the Lab to provide to FSOB prior to next meeting.*
- *Based on your answers to the above questions, can you identify any budgetary or personnel implications?*

f. Forensic reports:

- *Do forensic reports generated by the Lab currently specify any weaknesses, limitations, scope, exposure to task-irrelevant information, error rates, and/or potential for error and bias?*
- *If so, please provide the FSOB with a copy of a report that illustrates how this information is documented and described in reports authored at the Lab.*
- *Based on your answers to the above questions, can you identify any budgetary or personnel implications?*

g. Information sharing among analysts, and between the Lab and prosecution/ submitting agencies.

- *How does the Lab currently monitor/ control levels of information access to the LIMS system?*
- *Do all analysts and lab personnel have the ability to access the full range of case information that is included in the LIMS system?*
- *Do submitting agencies (law enforcement/ prosecution) have the ability to access LIMS?*
- *Based on your answers to the above questions, can you identify any budgetary or personnel implications?*

h. Whistleblower/ complaint procedures:

- *Does the Lab have any written protocols or standard operating procedures governing whistleblower or other internal complaints?*
- *Based on your answers to the above question, can you identify any budgetary or personnel implications?*

i. Nonconformities, issues requiring corrective action, and unsuccessful proficiency testing

- *What procedures and/or policies are in place to address various types of nonconformities, issues requiring corrective action, and unsuccessful proficiency testing?*

- *How are nonconformities, issues requiring corrective action, and unsuccessful proficiency testing?*
- *How are investigations into nonconformities, issues requiring corrective action, and unsuccessful proficiency testing, as well as corrective actions or remedial actions documented?*
- *Which individuals or entities outside of the crime lab are notified regarding nonconformities, issues requiring corrective action, and unsuccessful proficiency testing, and under what circumstances (e.g. degrees of seriousness)?*
- *Based on your answers to the above questions, can you identify any budgetary or personnel implications?*

j. Structure

- *What is the full SP organizational structure and where are you located? It was mentioned that DE is in another division, where are all the divisions.*
- *What is the overall process for submission, review, and determination of budget? How much input do you have in overall budget (e.g. what is requested, prioritization, review, approval).*
- *How responsive is the full chain of command to requests from the Lab Director?*
- *What are the specific command regulations directly affecting the laboratory*
- *What input does the applicable Unions in the forensic process and personnel management? How do the Unions influence the laboratory procedures or analysis?*

k. Lab Consideration

- *Are you aware of any measures that you feel would be helpful in regards to concerns with cognitive contamination?*
- *Are there concerns about this request that in your view hamper the ability to effectively carry out the duties of the lab?*
- *What resources do you need/want in order to effectively carry out the duties of the lab?*

**6. Topics not reasonably anticipated within 48 hours of the meeting**

**7. Public comment**

No public comment. A motion (Gina Kwon) to adjourn was made, seconded by (Anne Goldbach) and approved unanimously.