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Governor

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Lt. Governor

THOMAS A. TURCO, III  
Secretary

**Forensic Science Oversight Board Meeting**  
Meeting Minutes

**Place:** WebEx Meeting

**Date:** August 3, 2020

**Members in Attendance:**

Chairwoman Kerry Collins (Undersecretary for Forensic Science)  
Sabra Botch-Jones (Forensic Science Expertise)  
Lucy A. Davis (Clinical Quality Management Expertise)  
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)  
Nancy Rothstein (Nominee from Attorney General's Office)

**Members Not in Attendance:**

Dr. Robin Cotton (Forensic Laboratory Management 1)  
Judge Nancy Gertner (New England Innocence Project)  
Professor Timothy Palmbach (Forensic Laboratory Management 2)  
Gina Papagiorgakis (Expertise in Statistics 1)  
Vacant seat (Cognitive Bias Expertise)

**The chair called the meeting to order at 10:02 AM. A quorum was present.**

**1. Minutes approval March**

- i. The March meeting minutes were approved unanimously.

**2. Minutes approval June**

- i. The June meeting minutes were approved unanimously.

**3. Forensic Service Provider notification for interested parties**

- i. There is current litigation and it would not be beneficial for any of the interested parties for the lab to comment or provide a presentation at the moment.

- ii. The Board would like to address notification:
  - 1. L. Kavanaugh to present at the December FSOB meeting regarding proper notification of interested parties concerning situations with forensic service providers.
  - 2. The Board will think about different entities that should be receiving notice, when they should receive notice and how they should be notified.
  - 3. The Board requested an October presentation from the MSPCL regarding notifications in previous issues.\*
  - 4. Vince DeMore to be contacted for a potential presentation.
  - 5. A. Lynch to check who can provide a presentation of the DA perspective.

#### **4. EOPSS follow-up from the previous meeting**

- i. EOPSS to circulate Bridgeman case to the Board.
  - 1. Sent via email.
- ii. EOPSS will consult with the EOPSS Legislative Director if the bill regarding storage at courthouses passed.
  - 1. The EOPSS Legislative Director is looking into this matter.
- iii. EOPSS to look into the status of DOC storage.
  - 1. There is space but EOPSS will report on the entities that can access the space
  - 2. The chairwoman is discussing the storage capabilities at Milford and wants to make sure the facility has storage capabilities that would comply with post-conviction evidence retention regulations.
- iv. EOPSS to speak to the Communications Director about press conferences and a public-facing website.
  - 1. The FSOB webpage will be created on the EOPSS page.

#### **5. General updates on subsections of the FSOB statute**

- i. S. Botch-Jones presentation.
  - 1. Document shared with the Board through One Drive to capture feedback
    - a. Adapted guidelines from Texas commission.
  - 2. Looking into reporting mechanisms. The Board will be exploring which entities can report and how.
    - a. The website may be a mechanism for laboratories and potentially other entities, to report misconduct.
    - b. Other entities to consider are judges, defense attorney, etc.
      - i. This question may be addressed through subsection (f) (actively engaging stakeholders).
      - ii. The Board suggested the language refer to stakeholders (prosecutors, defense attorneys, and judges).
      - iii. The mechanism may be separate from reported concerns from members of the public.
    - c. The Board there should be a mechanism to allow subjects to be able to call proactively by either self-reporting or to ask questions.
    - d. EOPSS will invite the Ethics Commissions and BBO to present what is done in their agency as a way to guide the Board's decisions.\*
  - 3. The proficiency test (PT) piece has not been added yet but it will be added within section 4 of the existing document.

- a. The Board is seeking more information on how PTs are scored at the Massachusetts State Police Crime Lab (MSPCL) and Boston Police Department Crime Lab (BPDCL):
    - i. EOPSS to reach out to BPDCL to understand how they score their PTs (i.e. pass/fail?).
    - ii. T. Palmbach and R. Cotton to gather this information from the Springfield PD Lab when they visit.
  - b. ANAB has specific criteria for a lab to report to them if a subject failed a PT or not. L. Davis to send the document.
  - c. L. Davis will send list of what ISO considers an interlaboratory and an intralaboratory PT.
- ii. N. Rothstein and A. Lynch will give an update at the October meeting protocols to ensure proper chain of custody and evidence.\*
- iii. L. Kavanaugh will work on a presentation for October on how Texas Commission handles the requirements outline in the FSOB statute subsection (d).\* Additionally,
  - 1. L. Kavanaugh will be reaching out to outside entities to gather input that she will share with the Board.

#### **6. Vote on feedback on Familial DNA Bill**

- i. Voting was moved to October.
- ii. A. Mires provided an update on the status of the recommendations of the Familial DNA Bill.
  - 1. The Board has been reviewing the legislation and commenting and clarifying the information contained. A. Mires inserted pieces of the Virginia legislation.
  - 2. The Board considered adding a definition of what profiles are in CODIS. L. Davis disagreed and stated it would be better to keep it more succinct and indices can change.
  - 3. The Board discussed private databases and the quality control issues these present.
  - 4. The Board would like feedback from stakeholders.
    - a. EOPSS to share feedback document with the BPDCL and the MSPCL to provide their feedback by October.
    - b. Massachusetts Association of Criminal Defense Lawyers (MACDL) to provide their feedback through L. Kavanaugh. Massachusetts District Attorney Association (MDAA) and the Attorney General's Office (AGO) to provide their feedback through A. Lynch and N. Rothstein.
    - c. A. Mires to research and draft a document to summarize both sides of the argument.
  - 5. Subsection (c) of the document is the section that permits familial searching. The current legislation uses language from the New York statute and A. Mires suggested using the Virginia statute instead. The Board will look at the comments in this section to provide feedback and criteria for court approval.

#### **7. Familial DNA Presentation (see presentation)**

- i. Sarah Chu and Susan Friedman from the Innocence Project presented. The Innocence Project does not support familial searching but offered suggestions and recommendations in the event that it is used.

## **8. Items not anticipated within 48 hours**

- i. L. Kavanaugh discussed her article titled “Pseudoscience goes on trial”:
  - 1. The Board should think about how does the board engage stakeholders and who are the relevant stakeholders
  - 2. The article points to the opportunity and limitations of the Board.
- ii. The Board would like to have an educational webinar about what FSOB is doing.
  - 1. The Board would like to initiate outreach and educate members of the legal and judicial community through the MCLE, Bar Associations, and the Fleischner institute.
  - 2. N. Rothstein is member of the Women’s Bar Associations. She mentioned the Association would be interested.
- iii. The next meeting dates are October 8<sup>th</sup>, 2020, and December 3<sup>rd</sup>, 2020.

## **9. Public Comment (permitted during the meeting)**

- i. Bill Feedback:
  - 1. Sidney Collins agreed with L. Davis that indices change and can be added (see section 6.2.a).
    - a. Ira Grant agrees but there should be clarification in this area with CODIS because CODIS is a federally managed combined database. Additionally, “databanks”, “database” and “CODIS” should have separate definitions because the Bill erroneously uses these terms interchangeably.
    - b. Sidney Collins added that CODIS is the only database that should be legal in MA, to avoid the proliferation of local databases.
    - c. Sidney Collins stated that 22E already has a definition for these and the Board should make sure the definitions do not contradict 22E. **EOPSS circulate 22E to the Board.**

There was a motion to adjourn by A. Mires and seconded by L. Davis. The meeting adjourned at 12:42 PM.

**Red = action items**

\*Item moved to future meeting.