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MAURA T. HEALEY

Governor

KIMBERLEY DRISCOLL

Lieutenant Governor

TERRENCE M. REIDY

Secretary

Undersecretary Collins brought the meeting to order at 10:04am.

1. Roll Call

Forensic Science Oversight Board - Attendance		
Name	Present	Absent
Undersecretary Kerry Collins, Chair	X	
Sabra Jones, PhD	X	
Dr. Robin Cotton	X	
Richard Lempert, PhD	X	
Gina Papagiorgakis		X
Dr. Ann Marie Mires**	X	
Clifford Goodband		X
Professor Timothy Palmbach		X
Lucy Davis*	X	
Adrienne Lynch, Esq.	X	
AAG Gabriel Thornton	X	
Lisa Kavanaugh, Esq.	X	
Justice Nancy Gertner *	X	
*Left at 11:03		
**Arrived at 10:17am		

2. April Meeting Minutes

A comment was noted on page 4 regarding the presentation, specifically about the most frequently implemented standards in **ISO/IEC 17025**, with **145 reported implementations**. The question was followed up on, and the matter has been resolved. The Board approved the minutes.

3. Sub-section D complaint received

US Collins informed the board that they received a signed letter from Penelope McGee, who has submitted as a formal complaint against Dr. Rebecca Diedrich of the Office of the Chief Medical Examiner (OCME) regarding an autopsy. Ms. McGee outlined her concerns in the letter and also sent a follow-up letter to the Board of Registration in Medicine, which was shared with the board.

This complaint has been categorized as a Subsection D complaint, referencing the statute that directs the board to investigate forensic techniques used in criminal matters if five members (including the Undersecretary or designee) agree the technique is potentially invalid or that an investigation would enhance forensic science reliability in the Commonwealth.

Adrienne Lynch, in reviewing the Penelope McGee complaint against Dr. Rebecca Diedrich, attempted to gather publicly available information about the case. According to media reports, the issue arose during a trial in Norfolk Superior Court, but when trying to access the court docket, no record was available suggesting the case may be sealed or impounded, potentially due to the defendant's acquittal.

Adrienne was able to find a Court TV excerpt of Dr. Diedrich's testimony, including both direct and cross-examination, though it wasn't the full transcript. Since it was a jury-waived trial, the manner of death was discussed openly—something typically not included in jury trials. Dr. Diedrich had explained the difference between medical and legal definitions of homicide, clarifying that her statement referred to the medical definition (death caused by another person).

Adrienne referenced a 1976 case where a pathologist attributed a heart attack death during a robbery to fright as the cause, noting the relevance to how nuanced and fact-specific these determinations can be. Dr. Diedrich had testified to following **National Association of Medical Examiners (NAME)** standards, citing relevant guidance, although the board does not have access to the medical records since they pertain to a third party, not the complainant.

It was identified that the Medico-Legal Commission may be a more suitable forum for this complaint. Also discussed was the role of the Board of Registration in Medicine, speculating that it may not take up complaints involving post-mortem care, and might refer them elsewhere if the issue does not involve living patient care.

Concerns about the board's ability to conduct a proper investigation into the complaint against Dr. Diedrich without access to full case information or input from a medical professional, noting that the board lacks a medical doctor among its members.

This also emphasizes the need to clarify jurisdictional boundaries between the Forensic Science Oversight Board, the Medico-Legal Commission, and the Board of Registration in Medicine.

US Collins reminded the board that if members have additional questions or require more information before proceeding, they should raise those now, the board will ultimately need to vote on whether to initiate an investigation into the complaint against Dr. Diedrich.

Judge Gertner noted that aspects of the complaint—like omission of key records and possible misinterpretation of standards—could be within the board's scope to review as forensic, evidentiary issues. Judge Gertner also referenced past concerns with the medical examiner's role in controversial cases like shaken baby syndrome, affirming this is not an isolated concern.

Attorney Ben Selman commented regarding the reason behind the missing information. As of May 2023, acquittals are automatically sealed unless the defendant requests otherwise. This explains why no case docket or record appeared when searched the Norfolk Superior Court case. Additionally, once a case is sealed, the For The Record (FTR) audio service will not release recordings, as the contents are legally impounded. If the board wishes to access sealed materials, the defendant or her attorney (possibly Larry Tipton) would need to file a motion for relief from impoundment in court. Ben suggested the board could inform the complainant of this procedural step if they believe pursuing access is necessary.

Ben Selman also commented that the complaint highlighted confusion between the medical and legal concepts of homicide. The complainant seemed to expect the medical examiner to account for legal liability, including factors like self-defense, which is outside the scope of a forensic autopsy.

Ann Marie Mires joined the meeting late but supports much of what has already been discussed. She brought attention to a second complaint, the BORIM complaint, which was not on the agenda for today but has similarities to this complaint.

It was suggested that the board examine both complaints together to determine which elements fall within the board's jurisdiction, particularly around training, supervision, and interpretation of forensic findings.

US Collins clarified the role of the FSOB stating that the

- FSOB is statutorily charged with oversight of the integrity of forensic analysis performed in state and municipal laboratories. It does not have jurisdiction over the Office of the Chief Medical Examiner (OCME) or its staff, as they are licensed medical professionals, not forensic laboratory personnel. The board also lacks medical expertise among its members, a limitation the board has acknowledged in previous discussions about the medical examiner's office.
- US Collins also clarified that she serves as chair of the Medical-Legal Commission, in her role as Undersecretary of Forensic Science and Technology, and that the OCME is one of the agencies under her direct oversight. The Medical-Legal Commission has statutory authority over the OCME.

Lastly, she clarified that the Board of Registration in Medicine oversees licensed physicians but is uncertain if it reviews post-mortem care or only patient care during life. It was suggested that the FSOB could reach out to BORIM for clarity on their jurisdiction over autopsy-related complaints involving medical judgment. Also noted was board's past position when a similar issue arose, the FSOB determined that complaints involving the OCME fall outside its scope based on the:

- Statutory language, which centers on forensic labs, not medical professionals.
- Existing authority of the Medical-Legal Commission over the OCME;
- Absence of medical expertise on the FSOB itself.

US Collins suggested that a member of the board volunteer to draft a letter to the complainant, outlining what additional information is needed to further investigate this complaint. Interested members should notify Kathy if they wish to take on this task.

US Collins also suggested that a Board member could draft a letter to the Medical-Legal Commission regarding the Complaint discussed today, we can include that on the agenda for the June meeting.

4. Legislative Outreach

US Collins explained that the Board itself should draft a letter to the legislature, rather than EOPSS, to ensure that the members' opinions were articulated clearly. She suggested that a member(s) volunteer to draft a letter with the Board's concerns and suggestions to amend the FSOB statute and the Board could vote on it.

It was proposed that Anne Marie would possibly oversee drafting a letter to the Legislators regarding a line item in the budget for the Board. Sabra would also help with that letter. Anne Marie also agreed to draft a letter regarding the Subsection D complaint and Judge Gertner also volunteered to help with the draft as well.

5. Social Law Library Updates

- Fact Pattern Document for Board Collaboration

Anne Goldbach provided an update on the fact pattern document. She indicated that a draft fact pattern has been created but was intentionally left open-ended to allow Board members to contribute facts and shape the direction. Board members are encouraged to review the document and suggest key facts, scenarios, or expert-related challenges they think should be included. She asked that particular attention be paid to the final paragraph, which was left flexible for members to add input (e.g., surprise forensic results, toxicology reports, etc.).

Anne advised that they are looking to narrow the focus to 2–3 disciplines (tentatively: toxicology, DNA, and possibly trace evidence or blood spatter).

Anne indicated that this event is designed to be the Social Law Library's second major training and hopefully serve as a model for other jurisdictions as well. The objective of this training is to explore and educate on the guardrails and limitations of expert testimony. Their target audience is legal professionals (prosecutors, defense, judges), forensic experts, and broader forensic/legal community.

Specifically, the training will focus on:

- What are the limits of expert testimony?
- What are the pitfalls that experts encounter during cross-examination?
- How can we train legal and forensic professionals to understand and respect these limitations?
- How does the judge as gatekeeper evaluate whether expert testimony is appropriate?

Anne indicated that the confirmed and Proposed Participants are:

Judge Isaac Borenstein (Ret.) – confirmed.

Robin Cotton – DNA expert – confirmed.

Still exploring additional experts based on the direction the fact pattern takes.

Suggestions welcome for experts in:

- Toxicology
- Blood Spatter
- Trace evidence
- Other areas relevant to evolving fact pattern

Anne asked the Board for input and suggestions on the topics and the participants.

6. Lab Auditing Procedure

US Collins began this agenda item by thanking Lucy Davis for coordinating efforts around OSAC standards and principles. She also gave special thanks to Vincent D'Addario, now at NIST with 25 years of experience in forensic science, for sharing insights and providing documentation for the board's review.

The purpose of the presentation was to help the board develop ideas to create a standardized audit procedure for forensic service providers, particularly those not currently accredited. Building upon the groundwork laid by Robin and Tim's audit of Springfield, to create a replicable model.

Members discussed the distinction Between Accredited and Non-Accredited Providers for future audits.

They are aware of some that are accredited but also acknowledge that while others are not accredited, they still perform forensic work and may lack guidance or infrastructure for improvement, therefore opening them to an audit by the board.

The board discussed that its mandate is not intended to be punitive, but guidance oriented and they have an opportunity to establish best practices for audit and continuous improvement in departments that may be resource-limited or unaware of standards.

Members discussed the Goals for standardizing the audit procedure. A core goal of the enabling legislation is to evaluate and support the potential for accreditation among all forensic service providers in the Commonwealth. Members discussed what an audit procedure should include. The following items were discussed:

- Alignment with OSAC standards?
- Evaluation of Case documentation and retention
- Chain of custody procedures
- Training and qualifications of personnel
- Use of validated methods
- Internal quality assurance mechanisms
- Who Conducts the Audit?
- Should board members or appointed external experts lead audits?
- Could a template or checklist be developed for internal department use first?
- How Do We Engage Departments?
- Voluntary participation?
- Pilot programs (like Springfield)?
- Provide incentives or support (e.g., guidance toward accreditation)?
- Outcome Expectations
- Are we issuing findings, recommendations, or both?
- Are results published? Shared privately with departments?
- Will there be follow-up reviews?

US Collins asked that members send feedback to Kathy, who will compile feedback for discussion at the next board meeting. June date has not been confirmed.

7. Topics not reasonably anticipated within 48 hours

US Collins to reach out to Lynn Garcia regarding the T. Roy Complaint

Ann Marie - The National FSOB Conference is looking for presenters at the October meeting

8. Public Comment

No Public Comment

Meeting was adjourned at 11:40am

