

**MINUTES OF FORENSIC LABORATORY ADVISORY COMMITTEE (FLAC)  
MEETING**

**Tuesday, June 17, 2014, 10:10 – 11:35 A.M.**

Maryland State Police Forensic Sciences Division Laboratory  
221 Milford Mill Road  
Pikesville, MD 21208

**Members in Attendance:**

Patrick D. Dooley, DHMH Chief of Staff & Assistant Secretary for Regulatory Affairs,  
for Patricia Tomsko Nay, M.D., Executive Director, OHCQ (Chairperson)  
Yale Caplan, Ph.D., American Academy of Forensic Sciences (2015)  
Irvin Litofsky, Director, Baltimore County Police Dept. Forensic Services Section (2015)  
Francis Chiafari, Director, Baltimore City Police Dept. Laboratory (2016)  
Karin Athanas, American Association for Laboratory Accreditation (A2LA) (2014)  
Elissa Passiment, American Society for Clinical Laboratory Science (2015)  
Richard S. Frank, ASCLD/LAB (2015)

Quorum was established with 7 of 10 FLAC members in attendance.

**Members Unable to Attend:**

Robert Myers, Ph.D., DHMH Director of the Laboratories Administration, Ex officio  
Lilia Mijares, Ph.D., University of Maryland School of Medicine (2016)  
(One FLAC position is vacant and unfilled because of vacancy at the Maryland State Police Forensic Sciences Division.)

**DHMH Staff:**

Renee Webster, OHCQ, Assistant Director Hospitals, Laboratories, and Patient Safety  
Theresa DeAngelo, OHCQ Coordinator of Forensic Laboratories Program  
Maris Jaunakais, OHCQ Forensic Laboratory Surveyor

**Non-Members in Attendance:**

Craig Robinson, Acting Director, Anne Arundel County PD Identification/Crime Scene Section  
Teresa Long, Laboratory Director, Forensic Services Section, Howard County Police Dept.  
Wanda Kuperus, QA Manager, Maryland State Police Forensic Sciences Division  
Jacqueline Raskin-Burns, QA Manager, Montgomery County PD Crime Laboratory  
Cassandra Burke, QA Manager, Baltimore County Police Dept. Forensic Services Section  
William T. Vosburgh, D.D.S., Director, Prince George County Police Dept. Laboratory  
Steve O'Dell, Deputy Director, Baltimore City Police Dept. Laboratory  
Lynnett Redhead, DNA Technical Leader Prince George County Police Dept Laboratory

**AGENDA**

**I. Welcome and General Announcements**

Theresa DeAngelo, OHCQ Coordinator of Forensic Laboratories Program introduced herself, welcomed those in attendance and opened the FLAC meeting announcing that a Quorum was established for today's

meeting.

Discussion/comments about the January 8, 2104 FLAC meeting minutes were opened up for approval of the minutes. One issue raised about the minutes was about the comment in Agenda #6: “In Europe, forensic analysts are certified rather than having forensic laboratories accredited”. The group agreed to remove this comment from the minutes of the previous meeting because it was unsubstantiated.

Another topic was discussed regarding the updated information for on-site visits for Proficiency Test and Internal Audit reviews of Maryland licensed forensic laboratories located in Maryland. In addition to this, the topic of whether or not the review of Proficiency Tests and Internal Audits for licensed forensic laboratories not in Maryland occurred. The discussion focus on the previous meeting minutes did not address these topics clearly.

Clarification about the nature of the testing allowed for someone who receives a Letter of Permit Exception was also discussed. Anyone with a Letter of Permit Exception can review the work of other forensic examiners done in licensed laboratories and can also perform limited forensic testing, such as comparison of latent prints, conducting handwriting analysis, etc. The scope of forensic testing and review by a person who receives a Letter of Permit Exception is stated in both Maryland Health General Article §17-2A and COMAR 10.51.

Theresa DeAngelo stated that the minutes will be amended to address all issues raised. She will resend the minutes via email to the group for approval.

Patrick D. Dooley, the DHMH Chief of Staff & Assistant Secretary for Regulatory Affairs, Acting Chair, arrived to the meeting and was introduced to those in attendance. Those in attendance to the meeting were asked to introduce themselves to Patrick and the meeting was turned over to him.

## **II. Legislative Update from 2014 Legislative Session**

### **A. Bills that passed and effective dates**

1. Senate Bill 364 – Criminal Law – Possession of Marijuana – Civil Offense - **Passed**

This bill is about possession of less than 10 grams of the drug and takes effect October 1, 2104. States law enforcement agencies have been meeting to discuss implementation of the law and record keeping of civil offenses. Impact of this bill for forensic laboratories is unknown but is being monitored.

2. HB 1226 Public Health - Forensic Laboratories - Regulation -**Did not Pass (Withdrawn)**

3. HB 680 Public Safety - DNA Samples and Records - Collection, Use, Storage, and Expungement- **Did not Pass (Did not leave Committee)**

4. HB 879 (Similar to Senate Bill 364) - **Withdrawn**

5. HB 1159 Cigarettes – County Retail License Holder – Prohibited Sales- **Passed**

### **Final Chapter 447:**

This bill prohibits sale of cigarettes at retail if selling herbal incense or potpourri that includes a noncontrolled substance with a chemical structure that is substantially similar to the chemical structure of a controlled dangerous substance. The question is how will this law affect forensic laboratories in

attempting to determine if a substance is structurally similar? Who is a qualified person to make this judgment? What qualifications/experience must the person have? Are pharmacological effects also to be taken into consideration?

Additional information regarding this bill can be found at the following website:

[http://mgaleg.maryland.gov/2014RS/chapters\\_noln/Ch\\_447\\_hb1159E.pdf](http://mgaleg.maryland.gov/2014RS/chapters_noln/Ch_447_hb1159E.pdf)

6. SB 923- Final Chapter 256- Medical Marijuana Bill- **Passed in 2013**

Effective Date(s): June 1, 2014

**Bill Synopsis:** Altering the purpose of the Natalie M. LaPrade Medical Marijuana Commission to include the approval of physicians, development of a Web site, establishment of an application review process, and issuance of medical marijuana grower licenses; authorizing a medical marijuana grower to distribute marijuana at specified facilities; identifying patients and caregivers; requiring the Commission to report to the General Assembly on the level of competition in the market for medical marijuana on or before December 1, 2015; etc.

Additional information regarding this bill can be found at the following website:

[http://mgaleg.maryland.gov/2014RS/chapters\\_noln/Ch\\_256\\_sb0923E.pdf](http://mgaleg.maryland.gov/2014RS/chapters_noln/Ch_256_sb0923E.pdf)

Additional information regarding the Medical Marijuana Commission can be found at the following website:

<http://dhmh.maryland.gov/newsroom1/Pages/Medical-Marijuana-Commission.aspx>

The Commission members listed on the website appear to be mostly patient advocates. The next Commission meeting is Tuesday June 24, 2014 at 2 PM to be held at the Metro Executive Building, 4201 Patterson Avenue Room 100, Baltimore, MD 21215. Topics to be addressed by Commission are to establish standards, testing of Medical Marijuana, growing of Medical Marijuana, and other issues surrounding this bill. All functions regarding this bill must be done within Maryland; it cannot cross state lines because marijuana is still considered an illegal substance under Federal law.

### **III. MD Drug Chemistry Workgroup – Update**

#### **A. June 5, 2014 meeting information.**

Theresa gave the group a summary and update from the minutes of the Drug Chemistry Workgroup meeting held on June 5, 2014.

#### **B. Discussion points on Medical Marijuana and 10 grams Marijuana Citation Law**

Will the 10 gram Marijuana law result in more or less work for forensic laboratories? Some laboratories (such as MSP FSD) will not accept a Marijuana case less than 10 grams unless associated with a major crime, incident, investigation, etc.

A Medical Marijuana Commission member attended the Drug Chemistry Workgroup held June 5, 2014. No laboratory has been established to do quality assurance and Marijuana testing for potency. The Medical Marijuana will be controlled as a Schedule II drug. It was noted that Quest Diagnostics was the

last laboratory in Maryland State to test for Marijuana. The company moved the lab out of state. NMS, Inc. located in Willow Grove, PA has the capability to do the testing, but the Marijuana testing lab must be located in Maryland.

There has been DEA crackdown in a few states of medical doctors who prescribe medical Marijuana. In Massachusetts a few physicians stopped prescribing Marijuana rather than risk losing their DEA license.

#### **IV. Update on New Proficiency Test Providers**

An updated list which includes new DHMH OHCQ approved Proficiency Test Providers was disseminated.

#### **V. Information on OHCQ's 2014 Laboratory Proficiency Test and Annual Audit Review**

The OHCQ will be conducting in the near future Proficiency Test and Internal Audit reviews similar to last year for the year 2014. Site visits of all licensed laboratories located in Maryland will be scheduled soon. Licensed labs outside the State, which now total 14, will have their Proficiency Test and Internal Audits reviewed as well by submitting their documented information directly to the DHMH OHCQ. Many out of state labs submit their audit information to DHMH OHCQ on DVDs. A new DNA lab in North Carolina has recently been issued a Maryland forensic laboratory license. The DHMH OHCQ website lists the current Maryland licensed forensic laboratories.

#### **VI. Discussion of Definition of "Officially Closed" in COMAR 10.51**

An extensive discussion of what constitutes "Officially Closed" ensued. There is no COMAR 10.51 definition for "Officially Closed." In drafting the regulations in 2009, there were draft discussions on the subject, but nothing was documented in the draft regarding the intent behind the statement "Officially Closed".

It is generally understood that multiple legal appeals can drag out a case time line. DNA post conviction relief can extend the need for case documents and evidence for years. The question is, is it necessary to define the term "Officially Closed", how to define it, and what definition to include in COMAR? Are there other definitions that would serve the same purpose? When is lab work done? For how long should a file be retained? How long should evidence be retained?

Many forensic labs have a case file retention policy of 10 years after administrative reviews are done and the report sent to customers. If a laboratory was working within a paperless environment, this matter may not be an issue if files can readily be accessed. The question remains, when does the clock begin? Unless otherwise directed by the court, case files for must be retained for 10 years according to Maryland Health General Article §17-2A.

Some forensic laboratories' retention policies are dictated by the police department they are under. The Maryland law regarding the retention policy for homicide and rape cases is case retention for 65 years. Some laboratories are currently in the process of developing file retention policies to provide guidelines for their own police departments' policies and procedures.

A Court may “Officially Close” a case, but the laboratories are not always notified by the court system. Should “Officially Closed” be changed to “Closed?” This word would still require a definition in COMAR. “Officially Closed” should be referring to when the lab testing is completed and does not concern evidence retention.

The definition of “Officially Closed” will be addressed by OHCQ and disseminated to all laboratories for comment. If “Officially Closed” is not defined, a revised statement for COMAR 10.51.06.07 B11 (where the words “Officially Closed” are removed) will be disseminated to the group for comment.

## **VII. Announcement from Patrick Dooley**

Patrick Dooley, acting for DHMH Secretary Joshua M. Sharfstein, M.D., recognized and thanked former FLAC member Teresa Long for her years of service on the FLAC committee. A certificate signed by the Secretary is to be given to her shortly.

## **VIII. Questions/ Issues Not Discussed**

1. Two forensic laboratories have upcoming ASCLD/LAB International/ ISO 17025:2005 accreditation inspections and inquired about how accreditation organizations coordinate with the OHCQ regarding Maryland State regulations in order to incorporate the regulations in inspections items. One lab had 100 additional inspection items to address beyond their accrediting organization inspection items. The laboratory was requesting that DHMH OHCQ give consideration to accepting a deemed accrediting body’s accreditation standards and not assessing the additional requirements of COMAR. Realizing that there are some differences, such as educational requirements, DHMH OHCQ agreed to look at the situation and see if there is some way of reducing the impact on the State laboratories and accrediting bodies when conducting assessments.

State regulations are similar to inspections items. Each deemed accrediting organization has established a crosswalk to the Maryland State regulations, they have signed an agreement with OHCQ, and each are compelled to inspect per Maryland State regulations. The additional State inspection items exist because the regulations are “substantially different” from those standards of the accrediting organization.

2. The question was asked, what is DHMH’s position on Medical Marijuana? What are the forensic implications? What are the long-term implications?

Consequences on Medical Marijuana extend beyond legal issues. When comparing Marijuana and alcohol, each entity has their own set of issues. Testing impaired drivers for alcohol is not a problem. Testing impaired drivers for Medical Marijuana is; currently there is no toxicology testing established. Enhanced testing is required to address this issue.

It was suggested that the FLAC needs to take a proactive stance to address issues. The Medical Marijuana Commission is an independent committee established outside of the DHMH. The members of this Commission are appointed by the Governor. As stated before, the next Commission meeting is June 24, 2014 at 2 PM, to be held at the Metro Executive Building, 4201 Patterson Avenue Room 100, Baltimore, MD 21215. Expect marijuana growers and Medical Marijuana patients to attend this meeting. The question was asked by the group, are there any members on the Commission with forensic experience? It was discussed that this FLAC needs to participate in order to ensure the Commission covers topics that address forensic lab and testing issues. It was suggested to draft a plan to include

questions and concerns of the FLAC and meet with the Executive Director of the Commission to discuss the issues.

The comment was voiced that there should be a public service announcement about the public misperception of the 10 gram law and the belief that Marijuana is now legal.

A question was asked about DEA efforts to impinge on Maryland State Medical Marijuana law. The DEA interactions in this matter are unknown. It is known that other states have passed and implemented Medical Marijuana laws.

Several items were suggested to be completed by DHMH OHCQ before the next FLAC meeting:

1. As suggested and discussed earlier, amend the January 8, 2104 FLAC Meeting Minutes and resend to the group for approval
2. Address issue of "Officially Closed" and send out an email to address options for a definition or changes to COMAR 10.51
3. Review and address accreditation requirements imposed by the Maryland Health General Article §17-2A and COMAR 10.51
4. DHMH OHCQ will stay abreast of developments and disseminate information to the group as necessary about the 10 gram Marijuana law effective October 1, 2014
5. DHMH OHCQ will stay abreast of developments and disseminate information as necessary about Medical Marijuana Regulations and Commission issues

## **IX. Goals and Subject of Next Meeting**

Theresa DeAngelo suggested having the next FLAC meeting in early September 2014. This will be about the time frame when the Medical Marijuana Commission is required to have finalized the draft of the Maryland State Regulations.

## **X. Adjournment**

A motion was made by to adjourn the meeting. The motion was approved. The meeting adjourned at 11:35 A.M.