

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

Tuesday, September 23, 2014, 10:10 – 12:15 P.M.

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

Members in Attendance:

Renee Webster, DHMH, OHCQ, Assistant Director 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)
Karin Athanas, American Association for Laboratory Accreditation (A2LA) (2017)
Lilia Mijares, Ph.D., University of Maryland School of Medicine (2016)
Richard S. Frank, ASCLD/LAB (2015)
Daniel Katz, Director, Maryland State Police Forensic Sciences Division

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
Elissa Passiment, American Society for Clinical Laboratory Science (2015)
(One FLAC position is vacant while paper work is being processed)

DHMH Staff:

Theresa DeAngelo, OHCQ Coordinator of Forensic Laboratories Program
Maris Jaunakais, OHCQ Forensic Laboratory Surveyor

Non-Members in Attendance:

Steve O'Dell, Director, Baltimore City Police Dept. Laboratory (pending FLAC appointment)
Rana Santos, Acting Deputy Director, Baltimore City Police Dept. Laboratory
Pamela Shaw, QA, Baltimore City PD Laboratory
Francis Chiafari, Director, Montgomery County PD Crime Laboratory
Jacqueline Raskin-Burns, QA Manager, Montgomery County PD Crime Laboratory
Wanda Kuperus, QA Manager, Maryland State Police Forensic Sciences Division
Cassandra Burke, QA Manager, Baltimore County Police Dept. Forensic Services Section
William T. Vosburgh, D.D.S., Director, Prince George County Police Dept. Laboratory
Herbert Hasenpusch, Captain, Anne Arundel County PD
Craig Robinson, Acting Director, Anne Arundel County PD Identification/Crime Scene Section
Teresa Long, Laboratory Director, Forensic Services Section, Howard County Police Dept.

AGENDA

I. Welcome and General Announcements

Theresa DeAngelo, OHCQ Coordinator of Forensic Laboratories Program introduced herself, welcomed

FLAC Committee members and others in attendance and opened the FLAC meeting announcing that a Quorum was established for today's meeting.

Discussion/comments about the June 27, 2104 FLAC meeting minutes were opened up to the FLAC Committee. No comments were made. Suggestion was made to have the FLAC Committee approve the minutes. Minutes were approved.

On behalf of the Secretary of Maryland DHMH, Theresa DeAngelo presented a certificate of appreciation Francis Chiafari, Director, Montgomery County PD Crime Laboratory, for his years of service to the FLAC Committee while Director of the Baltimore City Police Dept. Laboratory.

II. FLAC Member Updates and Reappointments

Karin Athanas, American Association for Laboratory Accreditation (A2LA) was reappointed to the FLAC Committee with her new term expiring in 2017.

Daniel Katz was officially named the Director of the Maryland State Police Forensic Sciences Division and was officially appointed to the FLAC Committee with a term expiring in 2017.

Paperwork for appointment to the FLAC Committee for Steve O'Dell, Director, Baltimore City Police Department Laboratory is currently being processed.

III. Updates for Federal Organization for Scientific Area Committees (OSAC)

Congratulations were extended to Karin Athanas, Program Manager at American Association for Laboratory Accreditation (A2LA) for her appointment to the Quality Infrastructure Committee within the Forensic Science Standards Board through the National Institute of Standards and Technology (NIST).

IV. Medical Marijuana Regulations Update

The latest about information on Medical Marijuana can be found at the Commission web site. The most recent draft of the Medical Marijuana Regulations was released to the public on September 9, 2014. The deadline for the Medical Marijuana Commission to provide draft regulations to the Governor's office was September 15, 2104; however this deadline was not met. There is a firm November 15, 2014 deadline for the regulations to be finished and posted to the Maryland Register Online to allow time for public comment.

V. Marijuana 10 Gram Citation Law Update- Training Provided by GOCCP

Theresa DeAngelo attended Maryland's Marijuana Decriminalization Training given by the Governor's Office of Crime Control & Prevention (GOCCP) September 19, 2014 and provided a summary. Implementing the 10 gram law at the State Police/States Attorney levels implies that seized marijuana under 10 grams will not be submitted to laboratories for testing unless it is in conjunction with a criminal offense (some examples are illegal firearms possession or marijuana possession with intent to distribute). Police will be trained by their individual Departments to recognize what approximately 10 grams of

marijuana looks like so that weighing the vegetation will not be necessary. Police will also be trained to conduct field tests for marijuana.

County and local police departments have or are implementing similar policies and providing training to address the 10 gram Marijuana law that takes effect October 1, 2104. Evidence retention/destruction policies and dealing with juvenile cases vary by police department. There are differing opinions as to whether possession of less than 10 grams of Marijuana constitutes a probable cause for a search for other contraband.

The 10 gram law does not address the smoking or ingestion of Marijuana.

VI. Updates on OHCQ's 2014 Laboratory Proficiency Test and Annual Audit Review

The Department of Health and Mental Hygiene Office of Health Care Quality's (DHMH OHCQ) annual requirement to review each Maryland State forensic laboratory proficiency test programs and internal audit reviews has begun. The goal is to visit each licensed Maryland lab before December 31, 2014. DHMH OHCQ will be contacting laboratories to schedule site visits. The 14 licensed labs outside the State will have their proficiency tests and internal audit programs reviewed by having documents submitted directly to the DHMH OHCQ.

VII. Edits to Definition of "Officially Closed" for COMAR 10.51

DHMH OHCQ prepared 4 definitions/solutions to address the term "Officially Closed" (which is undefined in COMAR 10.51) and provided them for review. The FLAC Committee voted for definition IV to remove the term "Officially Closed" by changing the original language in COMAR 10.51.06.07 B11 from "*(11) A case file is maintained for a minimum of 10 years after the case is officially closed*" to state instead "*(11) A case file is maintained for a minimum of 10 years*".

The reference to case file does not imply evidence retention.

The process to amend COMAR10.51 will require a review by the Secretary of DHMH and the Attorney General, and a 30 day announcement period in the Maryland State Register Online to allow for public comment. If no comments are received, the final review/approval is handled by the General Assembly's Joint Committee on Administrative, Executive & Legislative Review (AELR).

VIII. Review Accreditation Requirements Imposed by the Maryland Health General Article §17-2A and COMAR 10.51

A. Language in §17-2A Causing Requirements in COMAR 10.51

B. Possible Changes to COMAR 10.51

At the last FLAC meeting, DHMH OHCQ was tasked to review requirements imposed on forensic laboratories by the Maryland State COMAR 10.51 Regulations that go beyond the scope of accreditation organizations. Documents were provided at this meeting that included a list of "Possible Changes for COMAR 10.51 – Forensic Laboratory Regulations – Discussion for FLAC 09/23/2014," a "Maryland State OHCQ Forensic Survey Checklist (Unique Standards)" and a "MEMORANDUM dated July 18,

2104 RE: Legislative History of the Forensic Laboratories' Licensing Statute: Regulation and Accreditation" prepared by the Maryland State Assistant Attorney General assigned to DHMH OHCQ, Paul J. Ballard.

Discussion of some of the COMAR 10.51 Regulations ensued. FLAC Committee members and other attendees and stakeholders were provided the documents with the specific task to provide comment to DHMH OHCQ by October 7, 2014. The DHMH OHCQ was tasked to disseminate these documents also by email to the group and to those who were not in attendance at the meeting. The intent is to have DHMH OHCQ compile the comments, provide them to the FLAC Committee members for final review/comment, and finally have the FLAC Committee members vote on specific COMAR 10.51 changes either by email or a FLAC meeting before November 15, 2104. [The reason for this deadline date is described previously in the meeting minutes under Topic VII.]

The general agreement is that if the Maryland Forensic Laboratory Regulations do not affect the quality of forensic laboratory testing, the requirement is not necessary. Some regulations are duplications of inspections by other agencies having oversight responsibilities, such as OSHA and Fire Department.

IX. Questions/ Issues Not Discussed

1. Adequate forensic laboratory staffing levels/case turnaround time. A range of opinions was voiced about how best to document the need for adequate staffing levels in forensic laboratories. One approach is to provide statistic information regarding the case backlog in the individual forensic disciplines. Another approach is to show the case turnaround time in each discipline. This discussion came about due to the language in COMAR 10.51.06.14 Forensic Analysis Employees- Requirement, where it is stated that "*A licensee shall ensure that a forensic laboratory has a sufficient number of individuals who meet the employee qualification requirements of this chapter, to perform the functions set forth in this chapter, for the volume and type of forensic tests and examinations performed in the laboratory.*" There was a consensus that adequate staff levels/case turnaround time should not be a requirement addressed through COMAR. This specific section of COMAR is already up for comment and discussion to change the language requirement.

2. Lab responsibilities for providing protective equipment to defense witnesses. Forensic laboratory policies about providing personal protective equipment (PPE) for defense experts who are to re-examine evidence in a Maryland State laboratory vary from laboratory to laboratory and by the forensic discipline. Some Maryland laboratories allow use of its technical equipment and some laboratories do not. Some experts bring their own technical equipment to perform the re-examination. Some laboratories require that liability waivers be signed by the defense expert. It is most ideal if evidence can be mailed under chain-of-custody control to a third party qualified and accredited laboratory for re-examination, and then returned. But this is not possible or advisable to do with certain types of evidence.

3. Inability to recruit a qualified Laboratory Director with a Masters Degree in Science. Anne Arundel County Police Department Identification Division has been unable to successfully recruit a Laboratory Director with a Master's degree to manage their Identification Division. The difficulty is that the COMAR 10.51.06.05 Regulation Director's Qualifications require that person have a master degree in one of the hard sciences or natural sciences. The question was asked if there is any provision to request a waiver for someone with a Master Degree in Business or Criminal Justice. Some applicants had the education qualifications but did not have experience to process crime scenes that the Identification Division needs.

The AA County Identification Division is a limited testing lab which only performs latent print identification and processes shoe impressions. Similar situations of labs having limited testing capabilities exist in three other counties and they also experience recruitment difficulties. This topic has been discussed before at FLAC Meetings with general agreement to keep the current education requirements for Laboratory Director in place.

Several suggestions were made including recruiting a part time Director who would be identified in the organization chart but have a full time qualified program manager oversee the daily operations of the Identification Division. Another suggestion made was to realign the ID Division under the AA County Forensic Laboratory which has a qualified Laboratory Director. This discussion topic was also task to the group to provide comments to DHMH OHCQ by October 7, 2014.

X. Goals and Subject of Next Meeting

Theresa DeAngelo suggested having a possible FLAC meeting before November 15, 2014. This meeting would focus on comments that were provided to DHMH OHCQ regarding changes to COMAR 10.51 which were mentioned during this meeting with provided documentation of each COMAR 10.51 section in question. This possible meeting would finalize the FLAC Committees opinions on those COMAR 10.51 changes so that final documentation can be moved forward for review by the Secretary of the DHMH and the Attorney General's Office.

XI. Adjournment

A motion was made by to adjourn the meeting. The meeting adjourned at 12:15 P.M.