

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

Wednesday, August 22, 2012 10:00 a.m.

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

Members in Attendance:

Renee Webster, OHCQ (for Nancy Grimm – Chairperson, OHCQ)
Theresa DeAngelo, OHCQ (for Nancy Grimm – Chairperson, OHCQ)
Robert Myers, Ph.D., DHMH Director of the Laboratories Administration, Ex officio
Richard S. Frank, ASCLD/LAB (2013)
Yale Caplan, Ph.D., American Academy of Forensic Sciences (2012)
Lynnda Watson, Baltimore County P.D. Laboratory (for Irvin Litofsky (2012))
Francis Chiafari, Baltimore City Police Dept Laboratory (2013)
Teresa Long, Maryland State Police Forensic Science Div. (2014)
Karin Athanas, American Association for Laboratory Accreditation (A2LA) (2014)

Members Unable to Attend:

Elissa Passiment, American Society for Clinical Laboratory Science (2012)
Kimberly E. Walker, Ph.D., University of Maryland School of Medicine (2013)

Non-Members in Attendance:

Pamela Shaw, Baltimore City PD Laboratory
Ray Wickenheiser, Montgomery County PD Laboratory
Dr. Wanda Kuperus, Maryland State Police Forensic Science Div.
Jeff Kercheval, Hagerstown PD Laboratory
Lynnett Redhead, Prince George County PD Laboratory
Mitra Baral, Prince George County PD Laboratory
Michelle Serafin, A2LA
Maris Jaunakais, OHCQ

Quorum was established with 8 of 10 FLAC members in attendance.

Discussion

I. Welcome and General Announcements

Ms. Renee Webster and Ms. Theresa DeAngelo welcomed the members and commenced the meeting at 10 a.m. Introduced as the new OHCQ Forensic Laboratory Surveyor, Mr. Maris Jaunakais provided an overview of his years of forensic laboratory experience and duties at OHCQ. Each FLAC Committee member and non-member in attendance introduced themselves.

II. Update on COMAR Regulations:

Ms. Theresa DeAngelo and Ms. Renee Webster provided updates about the MD State Forensic Laboratory regulations that became effective May 28, 2012.

III. Update on Forensic Regulations Program

Regulations became effective May 28, 2012. The license is issued for a three (3) year term and must be renewed before the term expires.

A. Deemed Accreditation Organizations

Crosswalk agreements which involve the sharing of information by forensic laboratory accrediting organizations are being established with 4 organizations. Once the agreements are in place, by regulation, these organizations are deemed approved by the Department, and their accreditation programs are accepted for MD State forensic lab licensing. The organizations currently in this deeming process are:

1. American Association for Laboratory Accreditation (A2LA) (Program cycle is 2 years)
2. American Board of Forensic Toxicology (ABFT) (Program cycle is 2 years)
3. American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) (Program cycle is 5 years)
4. Forensic Quality Services (FQS) (Program cycle is 4 years)

B. Proficiency Test Providers

Questions were fielded about how OHCQ approves proficiency test (PT) providers. OHCQ approves PT providers that are approved by accrediting organizations. For example, ASCLD-LAB web site identifies their approved PT providers and identifies specific tests PT providers are authorized to offer. Based on the approval by ASCLD-LAB these PT providers would also be approved for Maryland state licensure. Similarly, PT approved by any other DHMH approved accreditation organization would also be approved for state licensure.

OHCQ approves PT providers because they satisfy regulation requirements for an external proficiency test program. A list of seven (7) OHCQ approved PT providers and the basic criteria as set forth in COMAR 10.51.04 was disseminated. COMAR 10.51.04 states:

- “Proficiency testing provider” means an entity external to the participating forensic laboratory that:*
- (a) Has one or more samples with values initially known only by the proficiency testing provider;*
 - (b) Sends one or more samples to a participating forensic laboratory to perform forensic analyses;*
- and*
- (c) Reports the results to the provider.*

There was a discussion about how PT results would be reviewed and handled by OHCQ. It was agreed that OHCQ would provide guidance to the laboratories and the AO related to PT review.

C. Updated list of Temporary Licensed Labs

A list identifying Temporary Licensed Labs falling under MD State Forensic Laboratory regulations was distributed.

D. Flow Charts- Licensing Procedures

Flow charts identifying the process for Accredited and Non-Accredited laboratories to be licensed were distributed. Suggestion was made that the flow chart for Non-Accredited Labs should include a step after “Laboratory’s Plan of Correction Implemented and DHMH OHCQ Assesses Plan of Correction in Place” that states “Implemented Plan of Correction Accepted: . . .” [A similar statement in the Accredited Lab flow chart was also inserted: “Must be Accepted by the Accreditation Organization.” The suggested changes will be made and distributed.

IV. Questions/ Issues Regarding Regulations Since Effective Date

Request was made to have OHCQ share information with FLAC committee members and others on a web site. OHCQ will be establishing a web site to include information about recognized forensic lab accreditation organizations, approved proficiency test providers, and to include other relevant information.

Concern was raised that forensic labs have to be gate keepers when defense attorneys send forensic experts over to review evidence examined by the lab. Yet the members concur that the experts should be held accountable to obtain licensure or a letter of permit exception. Comment was made that the local State Attorney's Office and other pertinent groups should be contacted for assistance and guidance in properly addressing these types of issues and to make the defense attorneys aware of the requirements for licensure.

Discussions also centered on issues of defense discovery motions and what lab accreditation report(s) can be provided as public documents. The consensus is that the previous most recent accreditation report with findings and corrections is to be provided. Documents associated with an on-going re-accreditation process are "in process" and not the final report or product. Therefore, they are not discoverable and should not be provided. Only final inspection reports should be discoverable as noted in the regulations. OHCQ staff will clarify this with our AAG.

A question was asked about the definition of Data Integrity as it pertains to requirements in the regulations. The definition for "Data integrity" in COMAR states "the condition existing when data is unchanged from its source and has not been accidentally or maliciously modified, altered, or destroyed during any operation, such as transfer, storage, or retrieval." Additional information and requirements about Data Integrity can be found throughout the regulations, i.e., under 10.51.05 Forensic Laboratories—Quality Assurance, Section .16 Ethics and Data Integrity Policy—Requirement.

There was concern raised about newly added substances being placed under control by Federal Regulations and when the substances are added under MD state regulation. It appears there is a delay when Federal agencies are not actively notifying states when a substance is added to the Controlled Substances Schedule. Per the Maryland DHMH Laboratories Administration Section, "Maryland State automatically "adopts" the DEA schedule (unless the Department objects, per the Secretary)."

MD State Regulations require that laboratory tests, methods, and technologies be validated before employing the new tests, methods, and technologies. The question was asked about how far back in time should a lab go to validate a test? Although COMAR 10.51.01 dates back to 2007, the full COMAR Regulations 10.51.01 thru 10.51.07 did not become effective until May 28, 2012. Hence, this date forward is the one establishing time requirement. Laboratory policies and procedures should be updated to reflect that validations will be made as tests, methods or technologies change, they need not look back.

Standard Operating Procedural Manual (SOPM) is the manual that details the step by step procedure for performing standardized tests, methods, and technologies. Question was raised about what constitutes "sufficient steps"? The criteria that ASCLD-LAB uses to gauge adequate number of steps, and one that OHCQ will adopt, is "When the absence of an instruction affects test results" it is then considered insufficient.

A topic concerning CDS analysis and COMAR Title 10 Chapter 09: Law enforcement laboratories- Personnel Certification and Approval of Laboratory Procedures was discussed. There were discussions and a clarification was requested as to how the new regulations inter-relate with these old regulations for CDS analysis. Of particular interest, was the approval needed by the labs from DHMH for the lab's training programs and compliance to the statement: "chemists, chemical analysts, and analysts certified under this chapter are certified only when performing those drug identification procedures approved by the Department and contained in the *Forensic Chemists and Analysts Training and Procedures Manual, 1992, which is incorporated by reference*".

It was noted that this manual is out dated and doesn't contain all the current technologies that can be employed by the law enforcement agencies. In addition, the labs need to have written approval for the current procedures.

Frequency of holding FLAC meetings was discussed. Suggestions made were to hold meetings annually, semi-annually, or quarterly. Majority of FLAC members were in agreement to meet quarterly. Next meeting is scheduled for November, date to be determined. OHCQ will contact and invite all forensic laboratory directors regarding this next meeting, not just FLAC members.

An announcement was made that Congressional Hearings have been held to introduce legislation with funding to strengthen and improve the quality of forensic laboratories. The legislation will establish standards in the forensic science disciplines, including standards for accreditation of forensic labs and certification of examiners.

V. Adjournment

Motion was made to adjourn the meeting. Motion was seconded and approved.