

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

**Wednesday, January 8, 2014, 10:00 A.M. – 1:00 P.M.**

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

**Members in Attendance:**

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)  
Lilia Mijares, Ph.D., University of Maryland School of Medicine (2016)

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  
Richard S. Frank, ASCLD/LAB (2015)  
(One FLAC position is vacant and unfilled because of recent January 1, 2014 retirement from the Maryland State Police.)

**DHMH Staff:**

Theresa DeAngelo, OHCQ Coordinator of Forensic Laboratories Program  
Christina Vogeley, OHCQ Chief of Staff  
Maris Jaunakais, OHCQ Forensic Laboratory Surveyor

**Non-Members in Attendance:**

Allen Hafner, Fingerprint Examiner, Forensic Services Section, Howard County Police Dept.  
Pamela Shaw, QA Manager, Baltimore City Police Dept. Laboratory  
Annette Box, Director, Anne Arundel County Police Dept. Crime Laboratory  
Jacqueline Raskin-Burns, QA Manager, Montgomery County PD Crime Laboratory  
Wanda Kuperus, QA Manager, Maryland State Police Forensic Sciences Division  
William T. Vosburgh, D.D.S., Director, Prince George County Police Dept. Laboratory  
Daniel Katz, Acting Director, Maryland State Police Forensic Sciences Division  
Cassandra Burke, QA Manager, Baltimore County Police Dept. Forensic Services Section  
Steve O'Dell, Deputy Director, Baltimore City Police Dept. Laboratory  
Teresa Long, Retired, Maryland State Police Forensic Sciences Division  
Craig Robinson, Acting Director, Anne Arundel County PD Identification/Crime Scene Section  
Jeffrey Kercheval, Director, Western Maryland Regional Crime Laboratory  
Leah King, Technical Leader Forensic Chem. Unit, Montgomery County PD Crime Laboratory

# **AGENDA**

## **I. Welcome and General Announcements**

Chairperson Dr. Patricia Tomsko Nay, Executive Director of the Office of Health Care Quality (OHCQ), introduced herself, welcomed attendees and commenced the meeting at 10:05 A.M. Dr. Nay also introduced the new Chief of Staff for OHCQ, Christina Vogeley. Ms. Vogeley briefly spoke about her professional background, her education, and her experience working in governmental affairs, including the Maryland General Assembly.

### **A. FLAC Member Reappointment Update 2014**

Theresa DeAngelo, OHCQ Coordinator of Forensic Laboratories Program, introduced herself and welcomed the newest FLAC member Dr. Lilia Mijares, Ph.D., from the University of Maryland School of Medicine. Dr. Mijares replaces Dr. Kimberly E. Walker, who left the University of Maryland School of Medicine. Dr. Mijares briefly introduced herself.

Ms. DeAngelo noted that because of Ms. Teresa Long's retirement as Director of the Maryland State Police Forensic Sciences Division, there is a FLAC vacancy.

Other FLAC members in attendance also introduced themselves.

No comments or objections were raised about the minutes from the August 27, 2013 FLAC meeting and these minutes were approved.

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

### **A. Changes to COMAR 10.10.09 Published in Maryland Register November 1, 2013**

COMAR 10.10.09 as agreed to by the MD Drug Chemistry Workgroup was published in the Maryland Register November 1, 2013. The Proposal as published was previously disseminated to attendees.

### **B. COMAR 10.10.09 Effective Date November 11, 2013**

The changes to COMAR 10.10.09 became effective in November 2013 without any amendments.

### **C. Uncertainty of Measurement Standardization Discussion**

Effective December 31, 2013 ASCLD/LAB mandates Uncertainty of Measurement in laboratory reports. There is no MD State standardized method of calculating or reporting uncertainty. It appears that each of the forensic laboratories in Maryland address Uncertainty of Measurement differently. It was noted that a few non-Maryland State forensic lab's policies/guidelines for Uncertainty of Measurement were disseminated to MD Drug Workgroup attendees.

A question was also asked if OHCQ should address the “Uncertainty of Measurement” topic with the Circuit Court and/or District Court judges at on their monthly meetings so as inform them of the forensic lab issues. Would it help if regulations were proposed that would help labs address the topic in a more streamlined process? Both suggestions would require that all the drug labs came to a consensus about how to address Uncertainty of Measurement.

### **III. Proficiency Test Review and Annual Audit Review**

#### **A. OHCQ PT Program Update**

The OHCQ conducted on-site reviews for Proficiency Tests and Internal Audits of all Maryland State licensed forensic laboratories in 2013 except for the Toxicology Laboratory located in the Office of the Chief Medical Examiner. The Toxicology Laboratory will be surveyed before the end of January 2014. For those licensed forensic laboratories not in Maryland, document review has been conducted by OHCQ for both Proficiency Tests for examiners and Internal Audits conducted by these laboratories in 2013.

#### **B. OHCQ Single Day Laboratory Surveillance Update**

Simultaneous with the PT Program review, the OHCQ also conducted a review of the forensic laboratories’ annual audits and were completed on the same day.

### **IV. Status of Non-Accredited Laboratories**

All four (4) non-accredited forensic laboratories in Maryland have met regulation requirements and are permanently licensed as of December 31, 2013. The four (4) laboratories are Anne Arundel County Police Department’s Identification/Crime Scene Section, Howard County Police Department’s Forensic Services Section, Harford County Sheriff’s Office Crime Scene Unit, and the Charles County Sheriff’s Office Forensic Science Unit.

### **V. Circuit Court and District Court Judges Meetings Updates**

#### **A. OHCQ Presentation in September 2013**

Theresa DeAngelo, OHCQ Coordinator of Forensic Laboratories Program gave presentation to the Circuit Court Judges about COMAR 10.51, including the Letter of Permit Exception requirement for expert witnesses who are not associated with a forensic laboratory. All who attended the Circuit Court Judges Meeting in September 2013 received a copy of Theresa’s presentation.

#### **B. Scheduled to Present End of January 2014**

Theresa DeAngelo is also scheduled to give a similar presentation at the District Court Judges Meeting in late January 2014.

## **VI. Proposed Federal House of Representatives Bill in September 2013 (H.R. 3064)**

Copies of Federal H.R. 3064 were distributed to attendees. A brief overview of the main points of the bill were reviewed and discussed including the 5 year NIST and research funding plan of the bill. Impact of the bill on Maryland State Forensic Laboratories was discussed, including certification of forensic examiners. The only Maryland State requirement for certification is to have controlled substance analysts to be certified by the DHMH. North Carolina State attempted to require forensic analysts certified but ran into difficulties.

It appears that the probability of the bill passing is low at this time. H.R. 3064 includes "Authorization of Appropriations" to fund the bill's mandates.

One provision of the bill is the establishment of a Forensic Science Advisory Committee co-chaired by NIST and the Attorney General. Committee membership will consist of balanced representation between forensic scientists at the Federal, State and local levels plus the legal, victim's advocate, and law enforcement communities. According to recent communication with NIST, a public announcement will be made in the near future about the committee's members and an initial meeting.

## **VII. Proposed Maryland Legislation Concerning Forensic Laboratories in 2014**

There are no Maryland State bills proposed at this time that would impact the forensic laboratories. The OHCQ will continue to monitor this legislative session which concludes early April.

Anyone can register to receive updates on the 2014 Legislative Session at the following website: <http://mgaleg.maryland.gov/webmga/frmTrackingMain.aspx?pid=trackpage>

This website allows one to register and track specific bills during the current legislative session.

Another portion of the Maryland General Assembly website provides information on important dates for the 2014 legislative session. This information can be found at the following website: <http://mgaleg.maryland.gov/Pubs-current/current-session-dates.pdf>

Local news announcements have publicized efforts by Maryland State legislators introducing bills decriminalizing small quantities of marijuana as well as complete legalization of marijuana. Neither one of these bills have been introduced as of January 15, 2014. Last session, Senator Bobby Zirkin introduced SB 297 which passed the Senate, but not the House. If enacted, this law would make possession of small amounts of marijuana a civil rather than criminal offense. The text of SB 297 can be found at the following website: <http://mgaleg.maryland.gov/webmga/frmMain.aspx?pid=billpage&stab=02&id=sb0297&tab=subject3&ys=2013rs>

## **VIII. Discussion on Potential Future Changes to COMAR 10.51**

#### A. Future Accreditation Requirements

Current state regulations about accredited and non-accredited labs were reviewed. Out-of state laboratories providing forensic services are now all accredited by ASCLD-LAB. Only four (4) forensic laboratories located in Maryland are not accredited. The four (4) laboratories offer only 1 or 2 forensic disciplines, such as latent print identification and firearms operability testing. Budget constraints and small staff size are cited as the main reasons that the four (4) laboratories do not attempt accreditation. Current state regulations require that these non-accredited laboratories be surveyed by OHCQ and meet the standards cited in COMAR 10.51 to be Maryland State licensed. Efforts at the national level (such as H.R. Bill 3064) to improve forensic laboratories and standards may compel all forensic laboratories to be accredited.

#### B. Discussion of Possible Fee Schedule Changes

The disparity in the amount a forensic laboratory pays to be accredited compared to one that is only surveyed by OHCQ was discussed. It was noted that the fee schedules throughout all of the units within OHCQ, including surveillance of forensic laboratories, was never intended to fully fund that particular unit program.

Comments were voiced about having consistency in the fees that are paid by Maryland State licensed forensic laboratories regardless of whether they are accredited or non-accredited. The Acting Director from Anne Arundel County Police Department's Identification/Crime Scene Section stated they would not be able to afford accreditation at this time. Accredited labs incur the high costs of having an on-site inspection done by an accrediting organization. Non-accredited laboratories have surveys done by the OHCQ, but do not incur costs consistent with an extensive on-site survey. The differences in costs can be significant. Note that while accreditation for forensic laboratories is voluntarily unless DNA analysis is done, 20 out of 24 forensic laboratories are currently accredited.

The process of issuing a Letter of Permit Exception was discussed. The Letter of Permit Exception was established in order to not exclude Public Defender's witnesses or other defense expert witnesses' abilities to testify. The Letter is issued to a qualified expert that is not associated with a public or private laboratory, but conducts tests, reviews results or conclusions of the original forensic analysis performed by licensed forensic laboratory. Questions were asked about those "experts" who have applied and were granted a Letter of Permit Exception by OHCQ. In the process of granting this Letter of Permit Exception, the OHCQ reviews the qualifications of the person, education, experience and other supporting information and makes a determination. The Letter of Permit Exception limits the scope of the person's expertise in an appropriate forensic discipline.

Suggestions were made about how best to maintain an undated list of experts that have been issued Letters of Permit Exception. Should Circuit and District Court Judges be provided such lists? Should OHCQ list those granted a letter on the web site?

In some situations, issuing a Letter of Permit Exception may not be appropriate. For example, one forensic laboratory required DNA testing of a canine DNA sample at an out of state

laboratory. In this case a Waiver was issued to that out of state laboratory. A question was asked about the COMAR 10.51 fee schedule for a “Waiver” for a laboratory. The fee for a Forensic Laboratory Waiver can be found in COMAR 10.51.03.04 D. (4), which states “A *person requesting a waiver as set forth in this subtitle shall submit a fee of \$60*”.

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

The website for OHCQ should be updated in the next few weeks to include a licensee directory of forensic laboratories.

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

Theresa DeAngelo suggested having the next FLAC meeting during or after the current Maryland State Legislative session concludes. Potential future meeting dates will be communicated by email.

### **VII. Adjournment**

A motion was made by Theresa DeAngelo to adjourn the meeting. The motion was approved. The meeting adjourned at 11:20 A.M.