

Crime Laboratory Oversight in Maryland

A work in progress...

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A little history...

- In the early part of this decade, the crime lab directors worked to assemble a Forensic Science Advisory Board for the state.
- The Board would be composed of all the Directors in the state, plus a selected group of interested citizens.
- Our goal was to mandate accreditation of all labs in the state, and in turn encourage the state to provide us with sufficient funding to meet our needs.

A little history...

- The idea was written and re-written many times over two or three years, and was finally signed by the outgoing Governor and issued as an Executive Order in December 2006.
- The eight directors (including the Chief Medical Examiner) were appointed to the Board
- The remaining vacancies were left to the new Governor to appoint.

Our Mission

- The purpose of this group, at the time, was not oversight.
- Our intent was to encourage quality improvements in our labs, and obtain funding commitments that would allow us to meet this goal.
- Although the mandate for accreditation was still there, the timeline had been removed. Labs were only required to “move towards accreditation”.

Now for the plot twist...

- In the spring of 2007, legislation was introduced to place all non-Federal forensic labs in the state under the control of the Department of Health and Mental Hygiene.
 - This agency was chosen because they already had responsibility for regulating clinical labs in the state.
 - The problems with this “marriage” were apparent from the start.

The Motivation

- The legislation was introduced at the encouragement of the Public Defender's Office and the ACLU.
- A case was made before the legislature that crime labs were totally out of control, producing erroneous results, convicting innocent people, and in need of oversight.
 - Most of the examples cited were from cases done in the 1980's
 - No evidence of any recent systemic problems was introduced

The Opposition

- I was allowed to testify before the legislature in opposition to this bill.
 - We did not oppose the concept of oversight, only the assignment of this responsibility to an agency that did not have the expertise to do so.
 - The fact that no recent problems had occurred, especially after most labs in the state had become ASCLD/LAB accredited, was highlighted.

The Counter-Offer

- Since the Forensic Science Advisory Board had already been chartered, we looked to re-write the responsibilities of the group to include oversight.
- The proposal was finalized, and sent to the Governor for his review.

The White Knight

- Although it appeared the bill would be passed by the legislature, we were offering the Governor a better option.
 - He could veto the bill and substitute the new advisory board for the oversight role.
 - He could appoint relevant members from the community to serve along with the Directors in this role.
 - The state would save \$2 to 3 million a year.
- The perfect solution... ?

The Perfect Storm

- During this process, a firearms examiner in the state was exposed for having testified to earning a Bachelor's Degree that he did not actually possess.
- Before this was widely known, he retired quickly and immediately after took his own life.
- The details of this story were made public by his agency within a few days.
- The momentum shift caused by these revelations ensured passage of a veto-proof bill.

...and now the rest of the story.

- The legislation as originally crafted had some major issues.
 - Composition of the Board
 - Administration of individual proficiency tests by the Health Department
 - Licensing of individual analysts by the Health Department
 - ...and more.

- We were allowed to work with the subcommittee to help refine the bill before it was presented to the full legislature for a vote.
- Participants in this process included our lab (me) and one of our attorneys (my “mouthpiece”), and representatives from the Department of Health and Mental Hygiene, the Public Defender’s office, and the ACLU.
- Major changes were made to the legislation in order to increase it’s chances of a successful implementation.

The Changes

- The composition of the Advisory Committee was changed to include three lab directors (increased from only one).
- Representatives from ASCLD/LAB, AAFS, A2LA, the American Society for Clinical Laboratory Science, University of Maryland, and DHMH.
- Many of the originally required members, some from organizations that may no longer exist, were removed.
- It was agreed that neither the State's Attorney's office or the Office of the Public Defender would have representation on the Committee.

More Changes

- The licensing requirement was changed:
 - DHMH will now license the laboratory, not the individual analyst
 - Proficiency testing will continue to be administered as it is now, with DHMH informed of the results
- A few other administrative changes that would assist enforcement of the regulations.

A Qualified Success

- The bill, as amended, passed both houses unanimously
- Not what we wanted in the beginning, but a workable regulation that did give us laboratory oversight

...and now the work begins.

- Passage of the bill only put a process in motion.
- The bill became effective October 1, 2007.
- The Maryland Forensic Laboratory Advisory Committee did not have all appointments finalized until December 1, 2008
 - The group, however, began meeting in October 2008
- The process of drafting and codifying regulations began

More Timelines

- MFLAC has been working for about a year to draft a regulation.
- The first draft was issued a few weeks ago, and will be further refined at a meeting next week.
- Our goal is to have a final regulation by the end of 2009.

- Most of 2010 will be spent putting this regulation through all the required codification processes, including a public comment period.
- Final regulations will be adopted on or before the end of 2010.
- During the year 2011:
 - Office of Health Care Quality (OHCQ) reviews license applications, conducts surveys and/or approves accrediting programs for inspecting, etc.
 - OHCQ issues a forensic laboratory license to persons who meet the statutory requirements and regulatory standards.
 - By December 31, 2011 all entities offering or performing forensic testing are required to obtain a license.
- January 1, 2012 – the real effective date of this legislation.

The Draft Regulations

- We just received our first look at the proposed regulations
- A little premature to talk at length about them here
- Changes will certainly be made by the committee now, and after the public comment period

The Important Part for Accredited Labs and for ASCLD/LAB

.05 Accredited Forensic Laboratory and Accrediting Organization.

- A. Accredited Forensic Laboratory—Determination. The Secretary shall accept as meeting the survey requirements of this chapter a forensic laboratory accredited by an organization approved by the Secretary, as set forth in §C of this regulation, if the OHCQ determines that the standards of the forensic laboratory's accrediting organization are equivalent to those under this chapter.
- B. Accredited Forensic Laboratory—Requirements. In addition to meeting the requirements for its certificate of accreditation, as set forth by its accrediting organization, an accredited forensic laboratory shall:
- (1) Obtain and maintain a valid license issued by the Secretary; and
 - (2) Be subject to survey by the OHCQ for the purpose of investigating complaints or validating findings of the forensic laboratory's accrediting organization.
- C. Accrediting Organization.
- (1) A private, nonprofit forensic laboratory accrediting organization may inspect and accredit forensic laboratories in the State for the purpose of Maryland State licensure only after applying for and receiving approval of the OHCQ.

Some say I'm insane, but...

- I've invited members of the DHMH staff to observe my laboratory's ASCLD/LAB reaccreditation inspection at the end of this month.
- This will help them understand the survey process for a forensic lab, which will be their responsibility under the new regulations.

What you can do in your state

- Get involved.
- Stay involved.
- Be willing to compromise.
- A lot!!
- Keep in mind that our common goal is to maintain the highest level of quality and integrity in our labs and in the oversight process.

Watch for the next
installment of our story,
sometime on or before
January 1, 2012.

Questions?