

INVESTIGATION OF MISSING DRUG EVIDENCE: PRELIMINARY FINDINGS

INTRODUCTION

On February 20, 2014, the Delaware State Police (“DSP”) and the Delaware Department of Justice (“DDOJ”) initiated an investigation of the Office of the Chief Medical Examiner (“OCME”) Controlled Substances Unit (“OCME-CSU” or “CSU”) and ordered the cessation of all day-to-day operations. This order was issued to allow for a thorough investigation of OCME-CSU operations based upon irregularities identified in evidence that had been submitted to that laboratory. The DDOJ and DSP, together with the assistance of law enforcement agencies statewide, have inspected thousands of pieces of drug evidence, interviewed current and former OCME employees and other witnesses identified in the investigation, and reviewed thousands of documents. It must be emphasized that this investigation is ongoing. However, to date, the investigation, has revealed that:

1. Systemic operational failings of the OCME resulted in an environment in which drug evidence could be lost, stolen or altered, thereby negatively impacting the integrity of many prosecutions. These systemic failings include:
 - a. Lack of management;
 - b. Lack of oversight;

- c. Lack of security;
 - d. Lack of effective policies and procedures.
2. As a result of the systemic failures, evidence in several cases has been lost or stolen.
 3. The loss of this evidence is not always traceable to any one individual.

This preliminary report sets forth the investigative findings that directly impact the integrity of forensic services offered by the OCME-CSU. The purpose of this report is to inform Delawareans on matters of public concern, to update the Delaware Judiciary on matters that directly impact its day-to-day operations, and to advise defendants of matters pertaining to the prosecution of their offenses. The General Assembly has moved quickly to address many of the identified issues and seeks to improve the provision of forensic science services to Delaware citizens.¹ The DDOJ and DSP respectfully submit this investigative summary.²

¹ SB 241, 147th GA.

² The Delaware Department of Justice maintains the “powers, duties and authority to investigate matters involving the public peace, safety and justice.” 29 *Del. C.* § 2504(4). In issuing this report, the DDOJ emphasizes its unique and special obligation to inform the public while, at the same time, refrain from making comments which may heighten public condemnation of any individuals. *See* DRPC 3.6, 3.8 and comments thereto. Based upon these obligations and in recognition of the pending prosecution of individuals affiliated with the OCME-CSU, the DDOJ and DSP are necessarily constrained in their ability to publicize every aspect of this investigation.

I. Initial Discovery

On January 14, 2014, the trial of Tyrone Walker began in the Superior Court of the State of Delaware, in and for Kent County. Walker had been arrested for drug dealing charges stemming from an undercover investigation. Walker and his co-defendant Jonah Pratt were arrested for drug offenses and sixty-seven 30mg oxycodone pills were seized. This evidence was secured in a DSP evidence envelope, and the quantity and type of evidence was documented on the exterior of that package; thereafter, the evidence was submitted to the OCME-CSU for testing. An OCME forensic chemist concluded that the pills contained oxycodone. Upon the completion of testing, the evidence was returned to DSP Troop 3 for storage.

During trial, the evidence envelope was presented to the investigating officer who observed that the original seal on the envelope was intact, that the left side of the envelope had a seal indicating that a chemist from the OCME-CSU had opened the package, and that there were no overt signs of tampering to the exterior packaging. The envelope was opened and found to contain ten pink, round pills with the inscription of "M 32" – a blood pressure medication known as metoprolol. All of the seized oxycodone was missing. Following this revelation, trial was recessed, and Walker was afforded the opportunity to, and did, enter a guilty plea to a lesser charge.

The evidence envelope and pills were returned to Delaware State Police Troop 3. Upon closer inspection, a small cut was discovered concealed beneath a

folded flap of OCME evidence tape. The discrepancy was noted, and the envelope was resealed and placed back into secure storage.

II. OCME Response

On January 15, 2014, OCME Deputy Director Hal Brown (“Brown”) was alerted to this occurrence. Brown advised investigators that, to eliminate the potential for inadvertent evidence exchange, OCME-CSU procedures require that a chemist have only one case open at a time. Brown reviewed all cases handled by the chemist on the same day that the evidence in Walker’s case was analyzed to determine whether any other case analyzed that day contained ten pink metoprolol pills that may have been inadvertently exchanged. The discrepancy was believed to be an OCME recordkeeping error and OCME lab managers reviewed the case paperwork. OCME was unable to locate the missing oxycodone pills, and was unable to determine the origin of the pink pills.

Thereafter, all “pill”³ cases secured within Delaware State Police Troop 3 were identified and examined. Each of the envelopes was visually examined, opened, and the contents were compared to the evidence listed on the exterior of the packaging. Some cases had not been sent to the OCME, while others had been sent but returned prior to testing. During this internal audit, one case was identified in which 212 oxycodone pills were missing. Investigators confirmed that OCME had received 240 pills of which three were sampled by an OCME chemist and tested positive for oxycodone.

³ Cases including pain pills and other prescription medication.

III. The Problem Expands

On January 27, 2014, a Forensic Evidence Specialist (“FES”) advised a Delaware State Police Evidence Detective of the issues that arose during the Walker trial. This FES also shared that a problem had been discovered with a case submitted by Delaware State Police Troop 2 in New Castle County. Seven evidence envelopes were submitted in that case, and the first envelope was labeled as containing 170 oxycodone pills. When the first envelope was opened, however, a chemist discovered that the 170 oxycodone pills were missing and had been replaced with 71 assorted pills. The chemist explained that 74 assorted pills were in the envelope when he opened it and that he tested three; his testing revealed that these three pills contained clonazepam – a muscle relaxant. This chemist acknowledged using the entirety of the three pills for testing, leaving 71 pills. Another OCME chemist was present for this discussion; both chemists suggested that, to avoid a similar mix-up from happening in a future case, investigators should not attempt to identify submitted evidence.⁴ All of the evidence associated with that case was then collected by DSP Investigators and returned to Troop 2.

On January 29, 2014, the investigator who seized the seven pieces of evidence in this case reopened the evidence envelope that was marked as containing 170 oxycodone pills. He immediately recognized that the envelope did not contain the evidence (pills) he had seized. The remaining six items were opened and reviewed

⁴ It is important to note that, while law enforcement investigators are not equipped to scientifically determine the composition of seized evidence, prescription drug makers employ a system of colors and pill labeling to allow consumers to differentiate medications. Investigators refer to databases, such as rx.com to identify seized evidence. Moreover, investigators must quantify, either by number or weight, their submissions.

and, in addition to the a large number of missing pills, four bags of marijuana were completely missing. An audit of all evidence held at Delaware State Police Troop 2 commenced.

Based on the expanding scope of compromised evidence, during the first week of February, Delaware State Police Executive Staff directed the suspension of any drug evidence submissions to OCME. A further review of drug evidence at all Delaware State Police Troops statewide was initiated.

IV. The OCME-CSU Investigation Begins.

On February 19, 2014, the formal investigation of OCME-CSU was launched. The investigation was divided into two parts: (1) the criminal investigation into the theft of drugs; and (2) the audit of all evidence submitted to, or held by, OCME. On February 20, 2014, members of the DDOJ and DSP responded to the OCME facility, located at 200 S. Adams St., Wilmington, Delaware, and informed OCME management of the criminal investigation and suspended OCME's internal audit as well as all operations within the OCME-CSU. All OCME employee access to the drug vault was revoked, and employees were directed to cease testing of any submitted evidence. As an added security measure, a separate key lock was placed on the drug vault door, which limited access to designated DSP personnel.

OFFICE OF THE CHIEF MEDICAL EXAMINER

I. Overview of the OCME

The OCME is one of twelve divisions that constitute the Department of Health and Social Services (“DHSS”) for the State of Delaware. The OCME was established in 1970, following the abolishment of the earlier coroner system. The Forensic Sciences Laboratory is, by statute, established within the OCME.⁵ In its present form, the OCME houses the following units: Death Investigation, Histology, Toxicology, Controlled Substances, DNA, and Arson. The OCME is overseen by a Chief Medical Examiner; presently, and at all times pertinent to this investigation, Dr. Richard Callery (“Callery”) has served as the Chief Medical Examiner.⁶ The OCME employs a senior management team comprised of the Chief Medical Examiner (also referred to as the Director), a Deputy Director, a Deputy Chief Medical Examiner, a DNA Technical Leader, a Chief Toxicologist, and a Controlled Substances Laboratory Manager.

The OCME-CSU receives and analyzes substances suspected of containing illegal or dangerous substances, collected and submitted by Delaware law enforcement agencies. To perform qualitative drug analyses, the OCME-CSU employs instrumentation capable of identifying a wide range of illegal substances. The most common drugs submitted for analysis are marijuana, cocaine, methamphetamine, amphetamine, heroin, prescription drugs and designer drugs.⁷

⁵ 29 *Del. C.* § 4708.

⁶ Callery reports to DHSS Deputy Secretary Henry Smith who, in turn, reports to DHSS Secretary Rita Landgraff.

⁷ <http://dhss.delaware.gov/dhss/ocme/controlled.html>.

There are three types of personnel positions in the OCME-CSU based upon the functions they perform: Analytical Chemist, Laboratory Technician, and Forensic Evidence Specialist; all are supervised by the Controlled Substances Unit Manager. Analytical Chemists are responsible for the analysis and identification of substances using established forensic scientific testing methodology; the results of these analyses are documented in reports maintained in the OCME's internal case management system, Forensic Laboratory Information Management System ("FLIMS"). Laboratory Technicians are responsible for maintaining the instrumentation within the CSU. Forensic Evidence Specialists ("FES") are responsible for receiving drug, toxicology, and DNA evidence from law enforcement agencies, either by appointment or through regular courier runs, logging evidence into FLIMS, storing evidence in the drug vault, transferring cases to chemists for analysis, and returning drug evidence to law enforcement agencies. FES seize, store and then destroy medications collected during death investigations. Finally, FES provide a statewide courier service to transport evidence from locations throughout the State to the OCME laboratory in Wilmington.

II. Evidence Submission to OCME-CSU

Controlled substance evidence, commonly referred to as "drug evidence," is submitted to OCME by law enforcement agencies in two ways: (1) through scheduled direct submission by law enforcement; or (2) through an OCME courier (in most instances, an FES). New Castle County law enforcement agencies, based on their close proximity to the OCME building, typically schedule an appointment

with a FES to submit drug evidence directly to OCME, while larger law enforcement agencies in New Castle County, such as the Wilmington Police Department, the New Castle County Police Department, and the Delaware State Police arrange appointments due to the regularity and volume of submissions. When a representative from the submitting agency arrives at OCME, the FES will cross check the submission sheet with the exterior packaging of the evidence being submitted. Thereafter, the FES brings the submitted evidence to the FES office and secures it in the drug vault.

Agencies in Kent and Sussex Counties use the OCME courier system to transport evidence to OCME in Wilmington. Law enforcement agencies notify the OCME FES of pending drug evidence submissions; the agencies then are instructed to have a representative meet at a predetermined collection location at a scheduled time. The FES will cross check the submission sheet with the evidence being submitted and cross check the return sheet for any evidence being returned from OCME to the law enforcement agency. The newly submitted evidence is then secured and transported back to OCME where it is ultimately documented in the OCME case management system and secured in the drug vault.

At the conclusion of both processes, the FES has possession of the drug evidence. The FES then logs the evidence into FLIMS, affixes the evidence container with an OCME evidence sticker and places it into the drug vault in sequential order. If the evidence submitted is an oversized package, it is placed in a designated area of the drug vault.

III. OCME Physical Layout

The CSU and FES office are located on the second floor of the main building at 200 South Adams Street in Wilmington, Delaware. Primary access to the building, including public access, is through an exterior door facing South Adams Street. Entry through this door is granted by the front desk receptionist, who is positioned to see visitors through glass doors, and communicates with visitors using an intercom system. Visitors to the lab are required to sign in on a log located at the front desk. There is an employee entrance on the north side of the building that is controlled by a programmed key fob supplied to OCME employees. The entrance to the morgue is located on the east side (rear) of the building behind a chain link fence and electronic gate; the morgue door contains a keyed lock. The electronic gates are frequently left open during business hours. The building is also equipped with a security alarm which may be activated and deactivated by employees granted this privilege.

The first floor houses administrative offices; the Chief Medical Examiner's office and the Deputy Director's office are located on this floor. The morgue, autopsy rooms, and the DNA lab are located on the basement level, and the Toxicology Lab, the Controlled Substances Lab, the Forensic Evidence Specialists Office, and the drug vault are located on the second floor. The basement and second floor may be accessed through stairwells or elevators; elevator access is controlled by a programmed key fob. Thus, while some employees may be limited in their

ability to use the elevator, all individuals within the building may access the various floors through the unsecured stairwell.

The FES office, Controlled Substances Unit and Toxicology Unit are located on the second floor. The Toxicology Unit is located at the southern end of the floor, and the offices and laboratory contain large banks of windows that allow full view into and from the hallway. The Controlled Substance Unit is located on the north side of the second floor. The FES office is centrally located on the second floor, and the drug vault is located through a doorway off of the FES office. The doors to access the Toxicology Laboratory, Controlled Substance Laboratory, and FES office are controlled by a numeric keypad. Each OCME employee is assigned a unique code that limits access to certain areas based on job responsibilities and as authorized by the Director or Deputy Director. A list of each employee's access to areas within the OCME building is maintained by the Quality Assurance Manager, when provided notification of changes.

Only personnel with access to the FES office may access the drug vault. In addition to the numeric keypad access required to access the FES office, the drug vault is secured with an alarm that may only be disarmed with the entry of a code. The alarm is generally armed at the close of normal business hours and disarmed at the start of the day. Additionally, a programmed key fob is required to open the drug vault door. In addition to these three layers of security, there is a camera located outside the drug vault which records activity at the vault door; there are no cameras inside the drug vault. The camera records to digital media in an unsecured

cabinet in an unsecured room on the first floor of OCME. Recorded video is overwritten each week.

OCME employs a system of pass through lockers to allow for the secure return of tested evidence. Drug evidence is distributed to chemists by FES personnel who place assigned cases in an individual chemist's secured locker. Once testing is complete, the chemist may return the evidence to FES in person or deposit the evidence in a pass through safe located on the wall of the second floor hallway. To use the evidence pass through, the employee opens the metal door, places the evidence inside the box, closes the door, and presses a metal button next to the door which locks that specific door. The drug vault is located on the other side of the pass through boxes, and there is one large metal panel that controls access to all the boxes from within the drug vault. The panel is secured by a keyed lock.

IV. OCME Security

OCME employs a combination of alarms, key fobs, electronic locks, and cameras. The OCME building alarm is activated at the end of normal business hours and is deactivated upon the commencement of the business day. A private alarm company maintains a list of OCME employees charged with responding to the facility in the event the alarm is triggered. The alarm code is provided to select employees with the approval of OCME senior staff; approval is generally cleared by the Deputy Director. Nonetheless, there are no consistent, established criteria for the distribution of the alarm code to OCME personnel. For example, one casual

seasonal employee was provided the building alarm code because she worked early hours, while another casual seasonal employee assigned to work similar hours was denied the code because she was “part time.”

Most OCME employees do not work during nighttime hours or on weekends. Of course, pathologists, forensic morgue assistants, and forensic investigators are required to work irregular hours as their duties require them to respond to and investigate suspicious deaths and homicides. One such employee advised that there were times when he would report to the building on a weekend and find that the alarm was turned off. Forensic investigators were known to come in early on the weekend, turn off the building alarm, then return later in the evening to reset the alarm. Moreover, some Forensic investigators occasionally slept in the OCME annex during their “on call” shifts. This provided them free access to the OCME buildings.

In addition to the alarm for the OCME building, there is another alarm for the drug vault. This alarm may be deactivated with a four digit alarm code. Much like the building alarm, the vault alarm is deactivated during normal business hours while forensic evidence specialists are working.

OCME uses a combination of electronic keypad locks and a Locknetics Touch Key I-Button system to control employee access to various areas within the building. The Locknetics Touch Key I-Button system uses a programmable key fob programmed by an OCME employee using proprietary software. OCME key fobs are programmed using the software on a laptop computer with employee access

being defined by the Deputy Director. Each employee who has a key fob is assigned a unique system identifier and assigned access rights accordingly. The Locknetic system tracks entries through each door. The system is capable of storing the most recent entries for each door; specifically, the system captures the user identifier, as well as the date and time of entry.

The laptop used to program the key fobs and store the entry data was originally kept on a cart in the maintenance shop; more recently, the cart was stored in the air handler room. Neither room affords appropriate security for the information maintained on this computer. The laptop employs the Windows 95 operating system. Investigators learned that sometime after the year 2000, the value of the entry data was compromised. Employees attribute this glitch to “Y2K” issues – computer programming issues prompted by the date change from 1999 to 2000. Regardless of the origin or explanation, all door entries now show an entry date of January 1, 1970, and do not provide an accurate date and time of access. This problem was known to OCME staff and management, yet no corrective action was taken. Thus, the stored entry key fob data is of no value to investigators.

The OCME has an external and internal camera system. Video captured by the camera system may be viewed on a monitor located in an unsecured storage closet on the first floor of the building. The camera located in the FES office faces the drug vault door. The camera records to digital media within an unsecured cabinet in the unsecured storage closet. The digital media is “rewritten,” that is, overwritten by newer video footage, at approximately 7-day intervals. There was no

system in place to review stored footage, and no efforts were made to record captured footage before the overwrite. The capabilities and limitations of the video surveillance equipment was common knowledge to OCME employees. Recently, OCME has contracted with a security firm to install additional cameras within the building.

Access to the building alarm code was distributed to several employees. Furthermore, key and key fob access permissions were not adjusted when employees moved to different assignments within OCME and were not withdrawn when employees left OCME employment. For example, one employee retained key fob access to the drug vault until February 2014, despite being reassigned to another unit in September 2013. Additionally, investigators learned that an employee who retired in 2008 was still in possession of an OCME key and key fob as recently as February 2014. When contacted, the retired employee was able to locate and return the key and key fob to OCME.

While not capable of identifying a precise date, employees recall having observed the door to the drug vault propped open numerous times over the years. When the DSP secured the drug vault on February 20, 2014, a well-worn, wooden chock was observed in the area adjacent to the door. Based on witness interviews, investigators believe this was used to hold the door open. It should be noted that while the door to the vault was left open to allow employees access while working in the FES office, one would need the code for the electronic key pad to enter the closed

FES office door. Thus, a level of physical security was retained while the vault remained open.

The practice of propping open doors was not limited to FES and the drug vault. During a June 2013 external audit, the back door with access to the laboratory through the morgue intake room was found propped open on two occasions. OCME management was notified of this finding and corrective action was taken to ensure the proper closing and locking of the door.

V. Hiring and Staffing at OCME-CSU

OCME employs a combination of full time and part time (casual/seasonal) personnel to fulfill its various responsibilities. OCME employs individuals with a wide range of education and experience, and some positions, such as laboratory technicians, experience frequent turnover. The human resources section of DHSS provides guidance and direction to OCME on issues pertaining to hiring and promotion. Vacancies are announced in job postings that outline the job duties and any unique requirements of the particular post. Prospective applicants are required to complete an employment application and supplemental questionnaire and are asked to provide a resume. Applicants are screened, and positions are filled pursuant to the State of Delaware hiring process. Upon hiring, OCME employees are required to submit to a fingerprint based criminal history check; this record check identifies offenses resulting in an arrest. Employees are not screened for drug use upon hiring, and are not subject to random or on demand drug screening while employed in any position within OCME. No additional formal background

assessment is completed; however, OCME management have employed publicly available internet tools to research prospective candidates.

The compromised cases discovered in Delaware in early February, coupled with the exposure of drug lab issues in other jurisdictions, prompted OCME senior management to revisit the feasibility of conducting background checks, polygraph exams, random drug testing, and pre-employment drug testing in selecting and monitoring OCME employees. To date, none of these procedures have been implemented.

The limited employee screening process has prompted numerous “red flags” to go unnoticed. For example, a casual seasonal administrative specialist, suspected of theft from a former employer, was hired and quickly granted security access. While the information concerning the prior conduct was, at the time of hiring, merely conjecture, no efforts were made to contact prior employers or coworkers to better understand the circumstances of the matter. The candidate was hired in 2008 and, within days, moved to a position within the Forensic Evidence Specialist Unit. Another employee, hired in 2010, left a previous post under suspicion of theft. In that instance, the prior employer was contacted and expressed concerns. Again, in the face of questionable prior conduct, the decision was made to hire this applicant as a forensic evidence specialist.

VI. Management

The Deputy Director of OCME is responsible for the day-to-day management of all OCME operations, except for the medical aspect of death investigations performed by the team of pathologists. A frequent practice at OCME was to hire an individual for a vacant position and thereafter move the employee to a position of greater immediate need. As a result of this practice, FES positions were frequently staffed by individuals neither qualified for, nor interested in, performing detailed, forensic evidence management.

The hiring of the previously described casual seasonal administrative specialist is illustrative of these assignment practices. While initially hired to serve as the front desk receptionist in 2008, within a week of joining OCME, the employee was tasked with completing work on controlled substances. Despite a lack of qualifications, this employee continued to work in the Controlled Substances Unit through 2013. Throughout this timeframe, this employee's assignments expanded to include tasks traditionally associated with forensic evidence specialists and lab managers. For example, the employee accepted and returned evidence, transferred evidence from the drug vault to chemists, assigned cases to chemists, and served as liaison with the DDOJ on drug testing issues. This employee was reassigned to the receptionist post and stripped of all controlled substances duties when the Controlled Substances Unit leadership changed in late 2013.

There were other instances of OCME employees performing tasks well beyond their designated assignments. In March 2010, a FES provided two weeks

notice of departure. Before leaving, the employee was asked to show other OCME employees how to perform the tasks of a FES. As a result of this hasty training, from March through June 2010, existing OCME employees were assigned to work as FES. Internal coverage of this job function continued until the vacancy was filled in July 2010. Similarly, in 2009, another FES was injured and reassigned to the front desk to answer phones for a period of three years; during this extended recovery period, this employee continued to perform some forensic evidence duties and assisted the Toxicology Unit while other OCME staff performed FES duties.

In 2013, a more senior management position was added to oversee CSU and FES operations. The position was filled from within the existing ranks of OCME by a manager with demonstrated management deficiencies. A 2009 internal audit found that FES, under the leadership of this individual, lacked operational policies or procedures. An evidence manual with a 2008 revision date was located during this investigation; the manual contains policies and procedures that are outdated, and witnesses have advised that the manual was never formally approved and distributed. A new manager now oversees CSU and FES operations and the 2014 internal audit of the unit was postponed to afford the new management the opportunity to assess operations. An expressed goal of OCME is to review and revise the entire CS Quality Manual to meet all ISO 17025 requirements.

VII. Accreditation

OCME is accredited by Forensic Quality Services (“FQS”) using standards developed by the International Organization for Standardization (“ISO”). FQS is a member of the American National Standards Institute – American Society for Quality (“ANSI-ASQ”) National Accreditation Board family of brands. FQS provides accreditation for forensic laboratories. An accreditation cycle includes the initial, on-site assessment for accreditation and follow-up surveillance assessments until the end of the cycle, when a re-accreditation starts a new cycle. Accreditation cycles cover two to five years, allowing the lab to determine what is best for its operations. OCME was issued its current Certificate of Accreditation on June 15, 2012. The certificate is valid until June 15, 2016.

In some instances, OCME has written policies and procedures in place that govern the actions of employees in the Controlled Substances Unit and FES. Investigators have concluded that established policies were not always followed, and changes in policy and procedures were not always properly updated or communicated. As a result of this investigation, DHSS has contracted with Andrews International to review and assess OCME policies and procedures, and any other areas of concern. It is expected that Andrews International will offer “best practices” to be implemented by OCME.

VIII. Evidence Receipt & Handling

Each piece of drug evidence submitted to OCME is assigned an internal tracking number. OCME employees manually enter the police complaint number, the defendant's name, the type of evidence, the submitting agency, and the submitting officer into the internal evidence tracking system; this information is garnered from the exterior packaging of the submitted evidence. This information, once entered, is associated with the submitted evidence by the internal tracking number. The internal tracking number is handwritten on a sticker and affixed to the exterior of the evidence package.

This unique identifier is used to track evidence within the evidence management system. The current system, FLIMS, has been used since 2012; prior to FLIMS, a Lotus Notes system was used to track evidence. Lotus Notes cases have a "CS" prefix, while FLIMS cases have a "FE" prefix. FLIMS allows law enforcement agencies to "pre-log" evidence scheduled for submission to OCME. Through a web-based system, referred to as "FA Web," agencies may enter basic data pertaining to evidence scheduled for submission. When evidence is pre-logged, OCME cross checks the submitted evidence with the law enforcement agency "pre-log" before evidence is accepted. This capability has greatly reduced the amount of data entry being conducted by FES personnel.

A paper receipt is generated for evidence received from law enforcement agencies. The receipt and submitted evidence are cross checked by the submitting officer and the receiving employee. The evidence is then logged into the tracking

system. Investigators have found that some evidence was not immediately logged into the tracking system upon receipt. Often, submitted evidence was placed in the drug vault to be logged into Lotus Notes or FLIMS at a later time. As a result of the delay between receipt and logging, many cases showed a discrepancy between the date the evidence was received by OCME and the date the law enforcement agency submitted the evidence. In most cases, the difference was a few days; however, cases have been identified with a difference of several weeks.

In addition to these logging delays, investigators discovered several data entry errors. Often, the errors involved documentation of the wrong officer or the wrong agency as submitting a particular piece of evidence. Based upon a review of available records, coupled with witness interviews, investigators have concluded that many of the data entry mistakes were made by employees assigned to perform tasks beyond the scope of their employment.

Seized drug evidence is packaged by law enforcement agencies in a variety of containers. During the investigative audit, investigators observed drug evidence stored in paper envelopes, plastic envelopes, paper bags, cardboard boxes, plastic bins, and metal cans. Most drug evidence submitted to OCME fit on the rolling evidence shelf system in the drug vault; oversized evidence was stored in another area within the drug vault. When DSP secured the drug testing laboratory on February 20, 2014, OCME records indicated that approximately 8,568 pieces of evidence were stored within the vault. The DSP audit revealed the actual number to be 9,273 pieces of evidence.

Investigators identified issues with respect to the storage of evidence within the OCME drug vault. Witnesses revealed that, at times, smaller evidence envelopes fell between shelves, fell to the floor, or shifted behind larger envelopes. When found, these smaller envelopes were placed inside larger envelopes by OCME employees. Witnesses also advised that small amounts of loose drugs were occasionally found on the floor of the drug vault. As these loose drugs could not be associated with a specific submission, they would be placed in a manila envelope inside the drug vault on a shelf by the door. One former employee opined that the loose drugs fell to the floor because the dehumidifier in the vault dried the evidence adhesive seal.

OCME-CSU failed to recognize the import of maintaining the integrity of submitted evidence. Witnesses advised that lab managers would remove evidence from the drug vault without properly logging it out. Another former OCME employee recalled seeing drug evidence in the lab manager's personal office. This same manager was known to maintain a separate box of "old" evidence in the drug vault.

Evidence was, at times, lost and there were instances of evidence being stored improperly. A former OCME employee described an instance where a marijuana plant was submitted for analysis, but was not sufficiently dry to test. Rather than returning the evidence, the plant was placed in a dryer in a back stairwell at OCME; all OCME employees have access to the stairwell. Another chemist advised that marijuana and heroin packets had fallen into the pockets of

their lab coat and bench drawer; as the origin of these drugs could not be determined, the evidence was disposed of without completing a report or notifying a supervisor.

Mishandling of evidence was not limited to drugs submitted for analysis by police agencies. OCME forensic investigators secure prescription drugs from death scenes, and the drugs accompany the body to the OCME building where the medication is transferred to FES for storage in the drug vault. The medications are sealed in clear evidence bags and are stored on an evidence shelf awaiting destruction after 90 days; after 90 days, the evidence bags are boxed and incinerated. Despite this protocol, during the removal of evidence from the drug vault, DSP investigators found a box containing medications from death cases dating back to 2012. One of the bags appeared to have been ripped open. While these cases should have been destroyed by, at latest, March 2013, an OCME employee explained that there was no method to log and track evidence secured in death cases and, thus, no system to determine when evidence should be destroyed. There was some documentation of destroyed evidence, and investigators were provided three lists of cases that had been destroyed in 2013.

IX. Evidence Analysis

Different procedures for transferring evidence to and from the drug vault to assigned chemists have been employed. Prior to the implementation of the FLIMS system in 2012, drug evidence was pulled from the drug vault by FES personnel and placed into the assigned chemist's locker for analysis. Once the evidence was

tested, it would be picked up by FES personnel and returned to the drug vault. Following the switch to FLIMS in 2012, chemists would hand deliver analyzed evidence to FES personnel or would place the evidence in the pass through locker system. At the end of 2012, the Lab Manager instructed chemists to check the FLIMS database frequently for case assignments and directed them to make arrangements with FES to receive cases for testing and then return the evidence through the pass through system.

FLIMS allowed for a more detailed accounting of evidence transfers than the Lotus Notes system it replaced. The value of the Lotus Notes and FLIMS data, however, is contingent upon the accuracy of the data input. As previously discussed, a lab manager was observed removing evidence from the drug vault without logging it out, and in February 2012, dozens of cases had been given to chemists without the assignment being documented in the system. Data entry issues continued into 2013 and, in February 2013, controlled substance chemists were reminded to properly document the return of evidence to FES.

A large portion of drug evidence submitted to OCME is never tested. Rather, it is held in the drug vault until testing is requested by the applicable law enforcement agency. In many instances, evidence is returned to the submitting agency without analysis because a resolution is reached in the associated criminal case. Prior to 2012, OCME attempted to analyze every piece of drug evidence submitted. However, chemists were unable to meet the demand and a backlog of cases developed. Thus, in 2012, OCME modified its policy to only analyze drug

evidence when requested. Tested drug evidence is generally returned to the submitting law enforcement agency shortly after the report is completed and approved, and untested drug evidence is generally returned after OCME learns of the resolution of the associated case.

One employee was advised by a laboratory manager that all drug evidence needed to be retained for three years. As the drug vault filled, the three year retention requirement was adjusted to two years then one year. “Old” evidence was to be returned to the submitting law enforcement agency; nevertheless, during the DSP investigative audit, evidence from as far back as 1989 was found in the drug vault. On an earlier occasion, a former employee had discovered drug evidence from the 1970’s.

Compounding these retention issues is the fact that some members of the controlled substances staff unnecessarily retained drug evidence for internal training and testing. Each chemist has drugs, provided by Collaborative Testing Services (“CTS”), in their locked drawers to use for proficiency testing; thus, there is no reason for holding seized evidence. Yet, during the investigative audit, two boxes containing various pieces of unrelated drug evidence were located inside the drug vault; the boxes were collected and inventoried. The former Lab Manager claimed that these boxes contained evidence from closed cases and that the drugs were retained for chemist training and proficiency testing. Another laboratory manager explained that he retained as much as 40 grams of marijuana from a case for use in future testing. Prior to the scheduled destruction of drug evidence in

2012, the former Lab Manager requested that the disposal be delayed to allow an assessment of whether any of the evidence could be used for future research or testing. One chemist was found to have had a marijuana case in their possession for approximately 6 days according to the OCME chain of custody; the case was opened and resealed, but was never tested, yet a quantity of marijuana was found to be missing.

Investigators also learned that chemists employed varying testing methodologies. When testing the chemical composition of submitted pills, most chemists would remove a portion of a pill for analysis and mark the tested pill with a number or, if the pill was too small, secure it in tape or wax paper. Investigators found that one chemist would “consume” all of the tested pills in the analysis; thus, when audited, several cases analyzed by this chemist contained one to three fewer pills than originally submitted. The issue was addressed internally through OCME training.

It was also discovered that one chemist was assigned to perform evidence analysis despite their failure of internal proficiency tests. This chemist was retrained, and again failed the tests. Nonetheless, OCME management determined that it was critical to have the chemist performing the essential duties of the position. Thus, despite failing to demonstrate proficiency, this chemist was assigned to analyze marijuana cases and cases within the jurisdiction of the Family Court of the State of Delaware. Investigators concluded that these assignments were made based on the fact that few of those cases proceed to trial.

OVERALL IMPACT/COST

DSP began its investigation into missing drugs on January 15, 2014. The investigation started at Troop 3, and by the end of January expanded to Troop 2. By mid February, a statewide investigation was launched. DSP has committed a team of four veteran investigators to lead this investigation. Additional DSP investigators have assisted, and during periods of this investigation twenty full-time sworn officers have provided full-time support. These investigators were pulled from their regular assignments, thus causing an increased workload on their co-workers.

All drug evidence removed from OCME was transported to and stored at DSP Troop 2. Shelving was purchased and installed to organize the storage of over 9,000 pieces of drug evidence. In addition to the investigative team, three troopers were assigned full time to oversee the process of auditing each piece of evidence secured from the OCME drug vault. The contents of each package was dual confirmed and the results documented. Many Delaware police agencies committed personnel and resources to support this phase of the operation. In addition to the audit of evidence stored at OCME, each DSP Troop, and every Delaware law enforcement agency reviewed drug evidence stored within their headquarters. Moreover, the Troop 2 Evidence Detection Unit has been and will continue to transport drug evidence to NMS Labs in Pennsylvania for testing.

DDOJ joined the investigation in February 2014. To date, thirteen DDOJ employees have been assigned to the investigation and have committed hundreds of

hours beyond their regular, full-time employment responsibilities to this investigation.

The impact of the issues identified in this report on Delaware's criminal justice system is profound. Criminal cases have been dismissed, charges have been reduced, and thousands of offenders are seeking to overturn their convictions. There are motions and appeals pending in Delaware Courts which raise claims based upon the facts uncovered in this investigation. As of this writing, over 500 pleadings have been filed state-wide and more are expected. As a direct results of the OCME failures, over 200 drug charges have been dismissed and over 60 cases have been reduced. An outside laboratory has been retained to test Drugs seized by Delaware law enforcement agencies; to date, over 400 pieces of evidence have been submitted to this lab at a cost of well over \$100,000.00.

Cases have been dismissed and reduced based upon compromises to evidence submitted to, or returned from, OCME. The compromised cases include lost or missing oxycontin, marijuana, heroin, and cocaine. Eighty-two defendants have been notified of discrepancies in the drug evidence in their cases. Discrepancies were identified in cases prosecuted by both State and Federal Authorities and the source of discrepancies range from theft to measurement inconsistency.⁸ The latter category – measurement inconsistency – have been dubbed “anomaly cases;” while a

⁸ Four types of measurement inconsistency were identified. First, some chemists “consumed” three complete pills in their testing process; thus, cases tested by these chemists would have three fewer pills than originally submitted. Second, the weight of some drugs is reduced as they continue to dry after seizure; the greatest weight reduction is observed in marijuana, a plant material. Third, seizing officers weigh drugs together with their packaging while forensic chemists remove submitted samples from their packaging. Fourth, counting errors occur in cases where large quantities of evidence is seized; it is not uncommon for thousands of bags of heroin to be seized at one time and for a slight counting error to be encountered.

more benign category, offenders impacted by measurement inconsistency, too, have been notified.

As a result of the facts and circumstances uncovered in this investigation, three OCME employees have been suspended, two of whom have been indicted in the Superior Court.

First, Callery is currently the subject of an ongoing investigation related to his position as Chief Medical Examiner. Therefore, a full description of his conduct cannot be offered at this time.

Next, CSU Laboratory Manager Farnam Daneshgar is the subject of a criminal prosecution related, in part, to his position as Lab Manager I/Analytical Chemist; while a full description of his conduct cannot be offered, it can be reported that Daneshgar was indicted by a New Castle County grand jury for Possession of Marijuana (Title 16 Section 4764), Possession of Drug Paraphernalia (Title 11 Section 4771), and 2 counts of Falsifying Business Records (Title 11 Section 871). Additionally, according to a witness, Farnam Daneshgar left OCME in 1990 after it was alleged that he was “dry labbing” testing results; the phrase “dry labbing” is used to describe the practice of declaring a result without performing the analytical testing to produce the result. Other witnesses claim that Daneshgar has engaged in other instances of “dry labbing” since his return to OCME in 2006.

Finally, James Woodson was hired as a forensic evidence specialist in 2010 and worked in that capacity until being hired as a forensic investigator in September 2013. Woodson, too, is the subject of a criminal prosecution related to

his position as a forensic evidence specialist; therefore, a full accounting of his role cannot be included at this time. Woodson was indicted by a New Castle County grand jury for Trafficking Cocaine 10-50 grams (Title 16 Section 4753A), Theft of a Controlled Substance (Title 16 Section 4756), Tampering with Physical Evidence (Title 11 Section 1269), Official Misconduct (Title 11 Section 1211), and Unlawful Dissemination of Criminal History Record Information (Title 11 Section 8253).

In total, thus far, the audits have revealed 51 pieces of potentially compromised evidence, stemming from 46 cases. The details of those compromised cases is as follows:

1. In 2010, the Wilmington Police Department (“WPD”) submitted a number of seized pills, based on labeling believed to contain Alprazolam and Adderall, to OCME for analysis. The evidence was tested, found to contain Alprazolam and Addreall, and returned to WPD. During an audit, 4 Alprazolam and 4 Adderall pills were found to be missing.
2. In 2010, the Newark Police Department (“NPD”) submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to NPD. During an audit, 79 grams of marijuana was found to be missing.
3. In 2010, the DSP submitted a number of seized pills, based on labeling believed to contain oxycodone, to OCME for analysis. This evidence was not analyzed by an OCME chemist and was returned to DSP. During an audit, it was discovered 58 oxycodone pills were missing.
4. In 2010, the DSP submitted a number of seized pills, based on labeling believed to contain oxycodone, to OCME for analysis. This was not analyzed by an OCME chemist and was returned to DSP. During an audit, it was discovered 99 oxycodone pills were missing.
5. In 2010, the Milford Police Department (“MPD”) submitted a number of seized pills, based on labeling believed to contain oxycodone, to

OCME for analysis. This was not analyzed by an OCME chemist and was returned to MPD. During an audit, it was discovered 60 oxycodone pills were missing.

6. In 2010, the MPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to MPD. During an audit, 55 grams of marijuana was found to be missing.
7. In 2011, the WPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to WPD. During an audit, 163 grams of marijuana was found to be missing.
8. In 2011, the WPD submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain prescription drugs, and returned to WPD. During an audit, 109 Endocet pills and 72 oxycodone pills were found to be missing.
9. In 2011, the WPD submitted seized plant material, believed to contain marijuana, to OCME for testing. The evidence was tested, found to contain marijuana, and returned to WPD. During an audit, 310 grams of marijuana was found to be missing.
10. In 2011, the DSP submitted a seized substance, believed to contain cocaine, to OCME for testing. The evidence was tested, found to contain cocaine, and returned to DSP. During an audit, 44 grams of cocaine was found to be missing.
11. In 2011, the DSP submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain oxycodone, and returned to DSP. During an audit, 107 oxycodone pills were found to be missing.
12. In 2011, the NPD submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain oxycodone, and returned to NPD. During an audit, 44 oxycodone pills were missing.
13. In 2011, the WPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to WPD. During an audit, it was discovered 3 pounds of marijuana was missing.

14. In 2011, the WPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to WPD. During an audit, it was discovered 6.25 pounds of marijuana was missing.
15. In 2011, the Bridgeville Police Department (“BPD”) submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain oxycodone, and returned to BPD. During an audit, it was discovered 27 oxycodone pills were missing.
16. In 2011, the WPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to WPD. During an audit, it was discovered 1 pound of marijuana was missing.
17. In 2011, the New Castle County Police Department (“NCCPD”) submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain oxycodone, and returned to NCCPD. During an audit, it was discovered 57 oxycodone pills were missing.
18. In 2011, the MPD submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain oxycodone, and returned to MPD. During an audit, it was discovered 100 oxycodone pills were missing.
19. In 2011, the NCCPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to NCCPD. During an audit, it was discovered 280 grams of marijuana was missing.
20. In 2013, the DSP submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain oxycodone, and returned to DSP. During an audit, it was discovered 150 oxycodone pills were missing.
21. In 2012, the WPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to WPD. During an audit, it was discovered 19.5 pounds of marijuana was missing.

22. In 2012, the DSP submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain oxycodone, and returned to DSP. During an audit, it was discovered 67 oxycodone pills were missing.
23. In 2012, the NPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to NPD. During an audit, it was discovered 799 grams of marijuana was missing.
24. In 2012, the DSP submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was not analyzed by an OCME chemist and returned to DSP. During an audit, it was discovered 502 oxycodone pills were missing.
25. In 2012, the NPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to NPD. During an audit, it was discovered 161 grams of marijuana was missing.
26. In 2012, the DSP submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain oxycodone, and returned to DSP. During an audit, it was discovered 170 oxycodone pills were missing.
27. In 2012, the DSP submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain oxycodone, and returned to DSP. During an audit, it was discovered 37 oxycodone pills were missing.
28. In 2012, the WPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to WPD. During an audit, it was discovered 7 pounds of marijuana was missing.
29. In 2012, the Middletown Police Department submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain oxycodone, and returned to Middletown Police Department. During an audit it was discovered 28 oxycodone pills were missing.
30. In 2012, the WPD submitted a seized brick, based on packaging believed to contain cocaine, to OCME for analysis. The evidence was

tested, found to contain cocaine, and returned to WPD. During an audit, it was discovered 2.282 kilograms of cocaine was missing.

31. In 2012, the NCCPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to NCCPD. During an audit, it was discovered 84 grams of marijuana was missing.
32. In 2012, the DSP submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was tested, found to contain oxycodone, and returned to DSP. During an audit, it was discovered 177 oxycodone pills were missing.
33. In 2012, the WPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to WPD. During an audit, it was discovered 1 pound of marijuana was missing.
34. In 2012, the DSP submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was not analyzed by an OCME chemist and returned to DSP. During an audit, it was discovered 165 oxycodone pills were missing.
35. In 2012, the WPD submitted a seized brick, based on packaging believed to contain cocaine, to OCME for analysis. The evidence was tested, found to contain cocaine, and returned to WPD. During an audit, it was discovered 1 kilogram of cocaine was missing.
36. In 2012, the DSP submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was not analyzed by an OCME chemist and returned to DSP. During an audit, it was discovered 212 oxycodone pills were missing.
37. In 2012, the WPD submitted a number of seized bags of material, based on labeling believed to contain heroin, to OCME for analysis. The evidence was tested, found to contain heroin, and returned to WPD. During an audit, it was discovered 1,533 bags of heroin were missing.
38. In 2012, the WPD submitted a number of seized pills, based on labeling believed to contain prescription drugs, to OCME for analysis. The evidence was not analyzed by an OCME chemist and returned to WPD. During an audit, it was discovered 118 oxycodone pills were missing.

39. In 2013, the WPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to WPD. During an audit, it was discovered 4 pounds of marijuana was missing.
40. In 2013, the NCCPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to NCCPD. During an audit, it was discovered 8 pounds of marijuana was missing.
41. In 2013, the DSP submitted a number of seized pills, based on labeling believed to contain oxycodone, to OCME for analysis. This evidence was not analyzed by an OCME chemist and was returned to DSP. During an audit, it was discovered 99 oxycodone pills were missing.
42. In 2013, the DSP submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to the DSP. During an audit, it was discovered 28 grams of marijuana was missing.
43. In 2013, the DSP submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to the DSP. During an audit, it was discovered 140 grams of marijuana was missing.
44. In 2013, the NCCPD submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was tested, found to contain marijuana, and returned to the NCCPD. During an audit, it was discovered approximately 1-3 pounds of marijuana was missing.
45. In 2013, the DSP submitted seized plant material a number of seized pills, believed to contain marijuana and oxycodone, to OCME for analysis. The evidence was not analyzed by an OCME chemist and returned to the DSP. During an audit, it was discovered 170 oxycodone pills and 2.6 pounds of marijuana was missing.
46. In 2013, the DSP submitted seized plant material, believed to contain marijuana, to OCME for analysis. The evidence was not analyzed and returned to the DSP. During an audit, it was discovered 1.8 pounds of marijuana was missing.