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The Problem:

- Current COMAR regulations (10.51.01.03 and 10.51.03.01) require anyone who wishes to review forensics laboratory documents to obtain a Letter of Permit Exception in a specific discipline to do so:
 - o COMAR 10.51.01.03.54 states:
“Letter of permit exception means a letter granting limited authority to an individual not associated with a public or commercial laboratory, **who reviews results or conclusions of the original forensic analysis performed by a licensed forensic laboratory solely for the purpose of assessing the original opinion, interpretation, or conclusion of the licensed forensic laboratory.**”
- Since 2016 there have been zero individuals with a Letter of Permit Exception in the discipline of Controlled Dangerous Substances
 - o Despite being in place since 2012, there are no formally established criteria for who is permitted to interpret forensic laboratory reports.
- Therefore, no one may independently challenge the drug evidence presented against them in court.
 - o There is no exception in the COMAR for attorneys. A strict reading of the regulation would prevent defendants themselves from evaluating the evidence against them.
 - o On several occasions, the Letter of Permit Exception regulation has been used to prevent defendants from calling qualified expert witnesses in court.^{1,2}

Why Changing the Law to Allow Assessment of Forensic Lab Evidence is Necessary:

There is no need for it:

- Maryland has adopted the *Daubert* standard for admissibility of experts and scientific evidence: there is already a robust system in place to prevent bad science from reaching the court room.
 - o Duplicating these efforts through the Department of Health is unnecessary
 - o Forensic evidence and opinions vary from case to case, a single Letter of Permit Exception does not prevent bad science from entering the courtroom – the *Daubert* standard does.

¹ FLAC meeting minutes re: Joseph Bono

² Ben Streifel in ~2019

It prevents qualified people from assisting :

- I, Benjamin Streifel, PhD (Chemistry, Johns Hopkins University), have been excluded from trial as an expert witness due to a lack of a Letter of Permit exception, despite the presiding judge agreeing that I was qualified as an expert.
- As a broader example – none of the world-class chemists in Maryland’s universities would be allowed to interpret a routine drug analysis, and could be subject to sanctions for doing so without Department of Health approval.

How HB863 Fixes the Problem

- HB863 prevents the Department of Health from requiring a Letter of Permit Exception to review opinions or conclusions from other forensic labs or experts.
- HB863 does not affect how forensic analyses are performed, nor the quality of those analyses. It merely allows others to assess the analysis and the conclusions drawn from it.

Impacted Groups

- Per the FBI UCR, Black Americans are far more likely to be arrested for drug possession than other groups. Thus, a *de facto* ban on challenging forensic evidence in court overwhelmingly harms this group.
- All Maryland citizens arrested for possession of controlled dangerous substances.

For these reasons, I am in favor of HB0863.



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