

**Texas Forensic Science Commission
Minutes from January 24, 2019 Meeting in Austin, Texas**

The Texas Forensic Science Commission's Complaint Screening Committee met at 3:30 p.m. on Thursday, January 24, 2019 at the Tom C. Clark Building, 1st Floor Conference Room, 205 West 14th Street, Austin, Texas 78701.

Members of the Committee were present as follows:

Committee Members Present: Daniel, Drake, Johnson

Staff Present: Lynn Garcia, General Counsel
Leigh Savage, Associate General Counsel

- 1. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through January 11, 2019.**

Disclosures Pending from October 5, 2018 Quarterly Meeting

1. No. 18.39; Department of Public Safety – Garland (Seized Drugs)

A self-disclosure by DPS – Garland reporting an incident in its seized drugs section where the laboratory discovered drug evidence was lost during the process of outsourcing the evidence to NMS for analysis.

MOTION AND VOTE: *Drake moved to recommend the Commission take no further action on the disclosure in light of the additional efforts to ascertain how the evidence was lost undertaken by DPS and NMS as well as the corrective action by both laboratories. Daniel seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

Disclosures Received as of January 11, 2019

2. No. 18.45; Houston Forensic Science Center (Latent Prints)

A self-disclosure by Houston Forensic Science Center reporting an incident in its latent print section where an examiner issued a preliminary AFIS association report under the wrong HFSC forensic case number. The error was not identified during the review process.

MOTION AND VOTE: *Johnson moved to recommend the full Commission take no further action on the disclosure given the corrective actions taken by the laboratory, including revisions to the SOP and retroactive case review. Drake seconded the motion. The Committee unanimously adopted the motion.*

3. No. 18.48; Department of Public Safety – Lubbock (Blood Alcohol)

A self-disclosure by DPS Lubbock reporting an incident in its toxicology section where a blood kit was lost.

MOTION AND VOTE: *Drake moved to recommend the full Commission take no further action on the disclosure given the corrective actions taken by the laboratory, including the 100% vault review and other attempts to retrieve the missing evidence. Daniel seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

4. No. 18.51; Department of Public Safety – Lubbock (Seized Drugs)

A self-disclosure by DPS Lubbock reporting an incident in its seized drugs section where evidence from a case was destroyed by mistake.

MOTION AND VOTE: *Drake moved to recommend the full Commission take no further action on the disclosure given the corrective actions taken by the laboratory. Daniel seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

5. No. 18.52; Houston Forensic Science Center (Crime Scene)

A self-disclosure by Houston Forensic Science Center reporting an incident in its crime scene section where a crime scene investigator used her own alternate light source at multiple crime scenes to identify biological fluids such as blood, saliva and semen.

MOTION AND VOTE: *Drake moved to recommend the full Commission take no further action on the disclosure given the corrective actions taken by the laboratory and to concur with the laboratory's misconduct finding. Johnson seconded the motion. The Committee unanimously adopted the motion.*

6. No. 18.56; Department of Public Safety – Midland (Seized Drugs)

A self-disclosure by DPS Midland reporting an incident in the laboratory's seized drug section where .13 grams of cocaine for one case was missing.

MOTION AND VOTE: *Drake moved to recommend the Commission take no further action on the disclosure given the corrective actions taken by the laboratory, including attempts to retrieve/locate the evidence and repositioning the analyst's workplace. Daniel seconded the motion. Committee unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

7. No. 19.03; Department of Public Safety – Austin (Forensic Biology)

A self-disclosure by DPS Austin reporting an incident where DNA evidence was excluded during a pre-trial evidentiary hearing due to policy violations by an analyst that came to light during testimony by the analyst at the hearing.

MOTION AND VOTE: *Drake moved to recommend the full Commission refer the disclosure to an outside panel of experts for investigation, review and disposition (consisting of Dawn Boswell, Tarrant County Assistant Criminal District Attorney and Conviction Integrity Unit Chief, Michael Coble, Associate Director of the University of North Texas Health Science Center – Center for Human Identification (“UNTHSC-CHI”), and Christina Capt, UNTHSC-CHI Forensic Analyst Technical Leader) given that the analyst who is the subject of the disclosure is currently employed at the Forensic Science Commission. Daniel seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

Complaints Pending from October 5, 2018 Quarterly Meeting

8. No. 18.25; Keller, Chance D. (Department of Public Safety – Waco; Firearms/Toolmarks)

A complaint by Rob Keller for defendant Chance D. Keller, alleging incomplete DNA mixture and blood analyses by a DPS Waco analyst who retired without reporting all results obtained in the case, inadequacies in DPS Austin and DPS Waco laboratories for their inability to perform requested testing (DNA on bullet casings and testing to determine whether bullet casings were from a particular weapon) and failure to send items to other qualified laboratories or individuals to perform testing not done in DPS laboratories.

MOTION AND VOTE: *Daniel moved to recommend the full Commission dismiss the complaint and follow up with DPS on its system-level review of quality issues identified in the case folder. Drake seconded the motion. The Committee unanimously adopted the motion.*

9. No. 18.40; Tyler Flood & Associates (Department of Public Safety – Houston; Blood Alcohol)

A complaint by Tyler Flood & Associates reporting blood evidence mis-delivered by DPS to Mr. Flood’s law office.

MOTION AND VOTE: *Drake moved to recommend the full Commission dismiss the complaint and send a letter to Mr. Flood describing the circumstances and corrective actions taken by DPS. Daniel seconded the motion. The FSC unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

Complaints Received as of January 11, 2019

10. No. 18.42; Richard, Tyrone D. (Houston Forensic Science Center/HPD; Toxicology)

A complaint by Tyrone Richard alleging a probation officer in Harris County withheld urinalysis records of negative drug tests in what appears to be a revocation of his parole for a possession of cocaine charge.

MOTION AND VOTE: *Drake moved to recommend the full Commission dismiss the complaint for failure to state an allegation of negligence or misconduct with regard to the analysis in the criminal case as the complaint is about the urinalysis performed during probation compliance and to explain to the complainant that the test is a presumptive test not subject to the Commission's jurisdiction. Daniel seconded the motion. The Committee unanimously adopted the motion.*

11. No. 18.43; Davis, Tommy W. (SANE K. Tarla-Rash; Sexual Assault Examination)

A complaint by Tommy Davis alleging a sexual assault nurse examiner caused injuries to the victim in his case, not Mr. Davis's assault of the victim.

MOTION AND VOTE: *Drake moved to recommend the full Commission dismiss the complaint for failure to state a credible allegation of negligence or misconduct related to the sexual assault nurse's exam in the case and because the issues are credibility issues to be decided in a court setting. Johnson seconded the motion. The Committee unanimously adopted the motion.*

12. No. 18.47; Mediano, Jacob (UNTHSC-CHI; DNA Paternity – Criminal)

A complaint by Jacob Mediano alleging UNTHSC-CHI failed to follow protocol and the law with respect to the DNA (paternity) analysis in his case.

MOTION AND VOTE: *Johnson moved to recommend the full Commission dismiss the complaint as there is no indication of any irregularity with the work performed by the laboratory. Drake seconded the motion. The Committee unanimously adopted the motion.*

13. No. 18.49; Sharmen, George for Patel & Guzman (Department of Public Safety – Austin; Blood Alcohol)

A complaint by defense attorney George Scharmen alleging DPS – Austin denied his request for copies of blood alcohol control data charts (or “batch rejection data”) from a blood alcohol batch that includes data for two of his clients in violation of the laboratory's own disclosure policy.

MOTION AND VOTE: *Daniel moved to dismiss the complaint and provide Mr. Scharmen with the explanation prepared by DPS. Drake seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

14. No. 18.50; Scharmen, George for Seaman (Department of Public Safety – Austin; Blood Alcohol)

A complaint by defense attorney George Scharmen alleging blood alcohol batch results that included results for his client were not scientifically reliable and notification to other defendants included in the batch should occur.

MOTION AND VOTE: *Drake moved to defer to the Commission's subject matter expert in this area, Dr. Sarah Kerrigan. Daniel seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

15. No. 18.53; Spence, Michael (Department of Public Safety – Weslaco; Forensic Biology)

A complaint by DNA consultant Michael Spence alleging forensic biology test results in a case he reviewed involving defendant Sam Benson, III were not obtained by DPS – Weslaco analyst Vanessa Nelson pursuant to policy and that Nelson's professionalism/integrity may be called into question based on a prior incident when Nelson was employed at HPD.

MOTION AND VOTE: *Daniel moved to defer to the Commission's forensic biology subject matter expert, Dr. Bruce Budowle. Drake seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

16. No. 18.54; Morgan; Brandon (HCIFS; Toxicology)

A complaint by Brandon Morgan alleging Harris County Institute of Forensic Sciences toxicologists delayed COHb testing to secure probable cause that led to his arrest and conviction for murder.

MOTION AND VOTE: *Drake moved to recommend the full Commission dismiss the complaint for failure to state an allegation of negligence or misconduct with respect to the forensic analysis in the case. Johnson seconded the motion. The Committee unanimously adopted the motion.*

17. No. 18.57; O'Brien, George (Houston Forensic Science Center; Latent Prints)

A complaint by George O'Brien alleging the Houston Police Department withheld fingerprint evidence that could have cleared him in the unauthorized use of a motor vehicle charge.

MOTION AND VOTE: *Johnson moved to recommend the full Commission dismiss the complaint for failure to state an allegation of negligence or misconduct with respect to the forensic analysis in the case. Drake seconded the motion. The Committee unanimously adopted the motion.*

18. No. 19.01; Waterfield, Robert (SWIFS/Dallas PD; DNA)

A complaint by Robert Warterfield alleging law enforcement used fabricated evidence to obtain a DNA search warrant in his case.

MOTION AND VOTE: *Drake moved to recommend the full Commission dismiss the complaint for failure to state an allegation of negligence or misconduct with respect to the forensic analysis in the case. Johnson seconded the motion. The Committee unanimously adopted the motion.*

19. No. 19.02; Benson, Sam (Department of Public Safety – Weslaco; Maintenance Issue)

A complaint by Samuel Benson regarding the Alerton Building Automation System at the DPS Weslaco lab.

MOTION AND VOTE: *Drake moved to recommend the full Commission dismiss the complaint for failure to state any allegation that would impact the results of a forensic analysis. Daniel seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

**Complainant Sam Benson attended the meeting in person and gave comments later in the agenda with respect to this complaint and Complaint No. 18.53 above. Benson requested the Commission investigate the complaints.

2. Hear public comment.

No public comment was provided at the meeting.

3. Adjourn.