

Texas Forensic Science Commission

Minutes from March 10, 2017 Bite Mark Review Team Meeting in Austin, Texas

The Texas Forensic Science Commission's Bite Mark Review Team met at 8:30 a.m. on Friday, March 10, 2017 at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744.

Review Team Members Present: Russell Wilson (co-chair), Franklin Wright (co-chair), David Senn, Paula Brumit, Adam Freeman, Bob Wicoff, Bill Wirsky, and Lee Hon

Review Team Members Absent: None

Staff Present: Lynn Garcia, General Counsel
Nick Vilbas, Assistant General Counsel

Review and adopt minutes from January 27, 2017 Bite Mark Comparison Review Team Meeting

The Review Team discussed the minutes from the January 27, 2017 meeting. Dr. Brumit suggested the term "Texas odontologists" be revised to "Texas ABFO odontologists" in the minutes. Senn questioned the recap portion of the minutes and whether it has been adjudicated that bite mark comparison does not meet current scientific standards. Garcia described the Attorney General's January 2017 opinion on admissibility of bite mark comparison evidence under article 38.35 of the Texas Code of Criminal Procedure (*see* KP-0127). Senn also questioned whether the courts are the ones who determine what is admissible evidence in court. Garcia explained the Commission's statutory role in determining what forensic evidence is admissible, specifically those forensic disciplines either requiring accreditation or a Commission-granted exemption. Hon and Wirsky expressed agreement with Garcia's explanation of applicable law and the Attorney General's opinion interpreting article 38.35 of the Code.

MOTION AND VOTE: *Hon moved to adopt the January 27, 2017 meeting minutes with Brumit's edits. Wilson seconded the motion. The team unanimously adopted the motion.*

Administrative Update.

Garcia verified with all members that all reimbursements have been handled properly. No issues were noted by the team.

Update from American Academy of Forensic Sciences annual meeting in New Orleans.

Brumit, the President of the American Board of Forensic Odontology (ABFO), informed the group that there are new committee members and chairs of various committees and they are hopeful they will accomplish a significant amount this year. Dr. Senn explained that the bite mark guidelines are currently being worked on and may be released in late May. Senn also expressed concern that a draft of the guidelines was released to Commission staff without approval by the ABFO. Garcia explained her understanding that the draft is a working document and is likely to change but is also useful to gauge progress. Wright explained that he provided the draft for possible methodology to review cases due to the current guidelines being unacceptable, therefore leaving the group with no

workable methodology. Garcia discussed the overall culture in the forensic community is that of transparency and sharing the draft guidelines follows that trend. Wirsky expressed his agreement with the need for transparency in forensic science. Wright expressed his view that there has been little to no progress by the ABFO over the past year with examples including a lack of proficiency exam, lack of new research, and a lack of approved guidelines and methodology.

Update from Texas Forensic Science Commission quarterly meeting on February 10, 2017 including approval of recommended review criteria and issuance of accreditation exemption for age estimation/human identification.

Garcia shared with the Review Team that the Commission approved the recommended review criteria and approved the accreditation exemption for the forensic odontology sub-disciplines of age estimation and human identification. Members discussed that the proper language now is either age “assessment” or “estimation, not “determination.” The rule language will be changed accordingly.

Update regarding request for collection of additional cases from Texas forensic odontologists.

Garcia updated the Review Team concerning receiving case lists for Brumit, Senn, Crow, Metcalf and the Tarrant County Medical Examiner’s Office generally. Vilbas discussed the lists provided and resulting cases to be reviewed. Senn discussed receiving feedback from some Texas ABFO Diplomates, including concerns regarding case list submissions. Wright and Freeman expressed their willingness to share their own out-of-state cases if it would encourage Texas diplomates to do the same.

Presentation and discussion of additional specific case information requested by members at January 27, 2017 meeting.

Vincent Baker Case:

MOTION AND VOTE: *Wilson moved to answer question two from the screening criteria affirmatively, therefore ending the inquiry into the case. Senn seconded the motion. The team unanimously adopted the motion.*

David Coronado Case:

MOTION AND VOTE: *Wicoff moved to answer question two from the screening criteria affirmatively, therefore ending the inquiry into the case. Wright seconded the motion. The team unanimously adopted the motion.*

William Jefferson Case:

MOTION AND VOTE: *Wilson moved to answer question two from the screening criteria affirmatively, therefore ending the inquiry into the case. Hon seconded the motion. The team unanimously adopted the motion.*

Melissa Lucio Case:

MOTION AND VOTE: *Wirsky moved to answer question two from the screening criteria*

affirmatively, therefore ending the inquiry into the case. Freeman seconded the motion. The team unanimously adopted the motion.

Kenneth Patterson Case:

MOTION AND VOTE: *Wilson moved to review the trial transcript of this case at the next team meeting. Freeman seconded the motion. The team unanimously adopted the motion.*

Jay Pinkerton Case:

Team members instructed staff to gather the punishment hearing testimony to determine if bite mark evidence was offered. Further discussion will be had at the team's next meeting.

Michael Eddie Rios Case:

MOTION AND VOTE: *Wilson moved to answer question two from the screening criteria affirmatively, therefore ending the inquiry into the case. Senn seconded the motion. The team unanimously adopted the motion.*

Roberto Salazar Case:

MOTION AND VOTE: *Wilson moved to review the trial transcript of this case. Freeman seconded the motion. The team unanimously adopted the motion.*

Edward Villa Case:

MOTION AND VOTE: *Wilson moved to answer question two from the screening criteria affirmatively, therefore ending the inquiry into the case. Freeman seconded the motion. The team unanimously adopted the motion.*

**Senn recused himself from discussion and voting for this case.*

Review trial transcripts, analyze same using review criteria and vote on notification recommendations.

Aaron Litaker Case:

Vilbas requested the proper transcript from the Fourth Court of Appeals; transcript review is postponed until full transcript is received.

David Wayne Spence Case:

MOTION AND VOTE: *Wirsky moved to answer all three review criteria questions affirmatively for both trials in this case, and to include it in the report in lieu of notification. Freeman seconded the motion. The team unanimously adopted the motion.*

Christopher Furtado Case:

MOTION AND VOTE: *Freeman moved to answer all three review criteria questions affirmatively for Homer Campbell's testimony in this case and to send a notification letter to interested parties. Hon seconded the motion. The team unanimously adopted the motion.*

MOTION AND VOTE: *Wilson moved to answer the first review criteria question affirmatively for Peter Loomis's testimony in this case and to send a notification letter to interested parties. Wirskye seconded the motion. The team unanimously adopted the motion.*

Yesenia Hernandez Case:

MOTION AND VOTE: *Wilson moved to answer all three review criteria questions affirmatively and to send a notification letter to interested parties. Freeman seconded the motion. The team unanimously adopted the motion.*

Francis Pelkey Case:

MOTION AND VOTE: *Freeman moved to answer all three review criteria questions negatively in this case, with no notification required. Wicoff seconded the motion. The team unanimously adopted the motion.*

Anthony Tyrone Bell Case:

MOTION AND VOTE: *Wilson moved to answer all three review criteria questions affirmatively for this case and to send a notification letter to interested parties. Hon seconded the motion. The team unanimously adopted the motion.*

Cases sent by Texas ABFO odontologists: Garcia discussed staff review of other cases submitted since the last meeting, including cases received from Brumit and the Tarrant County Medical Examiner's Office.

Charles West Case:

MOTION AND VOTE: *Senn moved to end inquiry into this case due to lack of positive probative association. Wilson seconded the motion. The team unanimously adopted the motion.*

Enrique Arochi Case:

Garcia explained this case did not involve any comparisons therefore there is nothing for the team to review.

Joy Lynn Doud Case:

MOTION AND VOTE: *Wicoff moved to admit the case to transcript review and to direct staff to obtain the trial transcript. Wirskye seconded the motion. The team unanimously adopted the motion.*

Roger Vaughn Case:

MOTION AND VOTE: *Hon moved to answer question two from the screening criteria affirmatively, therefore ending the inquiry into the case Wirskye seconded the motion. The team unanimously adopted the motion.*

Review model notification letter and discuss revisions to same.

Garcia presented the model notification letter to the team and explained that it follows closely after the notification letter utilized in the Commission's Hair Microscopy Review.

For cases in which notification is recommended, discuss possibility of expert review of underlying comparison material and proposed criteria for evaluating same.

Members discussed the possibility of offering team member subject matter experts to assist with review of photographs and other relevant material (to the extent available) on cases where notification has been sent to interested parties. The team decided it would be best to wait and see if a request for review is made before establishing a protocol. If a request is made the team will address it at that time.

Assignment of staff action items/follow-up.

Schedule next meeting.

The next Bite Mark Comparison Review Team meeting is tentatively scheduled for May 12 depending scheduling and meeting space availability.

Public comment.

No public comment was offered.

Adjourn.