

**Texas Forensic Science Commission
Minutes from January 13, 2012 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 9:30 a.m. on Friday, January 13, 2012, at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744. Members of the Commission were present as follows:

Members Present: Kerrigan, Adams, Lerma, Hampton, Eisenberg, Alpert, Peerwani, Di Maio, Barnard

Members Absent: None

Staff Present: Lynn Robitaille, FSC General Counsel
Leigh Tomlin, Commission Coordinator

Review and adopt minutes from 10/28/11 meeting

MOTION AND VOTE: *Eisenberg moved to adopt the draft of the 10/28/11 Complaint Screening Committee meeting minutes. Hampton seconded the motion. The FSC unanimously adopted the motion.*

Update on FSC Appointments, introduction and orientation

Commission members introduced themselves, and staff presented a PowerPoint presentation with member profiles. Robitaille delivered a detailed presentation on the history of the FSC for new members.

MOTION AND VOTE: *Kerrigan moved to add Alpert to the El Paso Police Department Crime Lab Investigative Panel. Hampton seconded the motion. The FSC unanimously adopted the motion.*

Discuss and consider any amendments to the policies and procedures

MOTION AND VOTE: *Peerwani moved to elect Kerrigan as Vice Chair of the FSC. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

Executive Session

The Commission broke for an executive session from 10:15-10:36 for legal advice from FSC General Counsel, Robitaille.

Discuss facts and recommendations in EPPD crime lab investigation

MOTION AND VOTE: *After extended discussion, including participation from ASCLD-LAB, DPS, the City of El Paso, the El Paso District Attorney's Office, and the El Paso Police Department, Peerwani moved to recommend the following:*

1. By February 7, 2012, the Texas Department of Public Safety (“DPS”) will conduct an audit of the EPPDCL, including but not limited to: (a) technical and administrative review of every controlled substance case processed by EPPDCL since November 1, 2011; (b) interviews with each laboratory employee, ensuring that new policies and procedures have been implemented and are understood by the examiners; and (c) any other applicable audit standards that DPS would typically utilize when conducting an internal audit of a DPS system laboratory.
2. By April 6, 2012, DPS will re-test every controlled substance examination performed by analyst Sifuentes, giving priority to the 60 cases on the DPS list with the greatest possible impact.
3. Within seven days, the City of El Paso will retain a qualified full-time interim laboratory director for EPPDCL until a permanent qualified laboratory director is hired. The hiring of a permanent qualified laboratory director shall be accomplished by April 6, 2012 (the expiration date for EPPDCL’s ASCLD-LAB Legacy accreditation).
4. The interim laboratory director will conduct technical and administrative review of all casework performed during his or her tenure.
5. The EPPDCL shall provide periodic progress reports to the Commission regarding the hiring of the permanent qualified laboratory director.

Adams seconded the motion. The FSC unanimously adopted the motion.

Update on legislative issues

Robitaille reported on several meetings with legislative stakeholders interested in the FSC’s activities.

Eisenberg reported on testimony provided to the House Committee on Criminal Jurisprudence related to DNA testing in Texas criminal cases.

Office administrative update (website, budget, technology, annual report, quarterly newsletter)

Robitaille delivered a presentation on office administrative activities, including a newly designed website and a quarterly newsletter.

MOTION AND VOTE: *Adams moved to adopt the new website design. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Eisenberg moved to have members send any comments related to the newsletter by January 20, 2012, have staff make corresponding edits and subsequently send the newsletter to all FSC stakeholders. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Peerwani moved to publish the annual report. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

Discuss and consider committee composition

MOTION AND VOTE: *Peerwani moved to elect Alpert, Eisenberg and Barnard to the FSC Complaint Screening Committee and name Eisenberg Chair of the committee. Barnard seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Peerwani moved to elect Di Maio and Eisenberg to the Forensic Development Committee to join Kerrigan, Chair of the committee. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Peerwani moved to elect Robert Lerma to the Legislative Development Committee to serve with committee members Adams and Hampton. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

Discuss and consider recommendations from Complaint Screening Committee

Complaint Screening Committee Chair, Eisenberg, lead a discussion on pending FSC cases.

Complaint #11-14, (Edna Fire Department -Arson)

MOTION AND VOTE: *Eisenberg moved to dismiss the complaint based on members' recognition that it does not involve a forensic analysis conducted by an accredited laboratory. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Staff forwarded the complaint to the Innocence Project of Texas ("IPOT") for inclusion in the arson case review.

Arrellano Inquiry (Arson)

Inquiry was forwarded to IPOT by FSC staff.

Garrett (Arson – Tennessee Case)

Staff will send letter explaining jurisdiction of the FSC is limited to Texas.

Austin Police Department Crime Lab letter responding to news article

Members discussed APD's response to a news article related to a discrepancy in a blood alcohol test. APD explained the discrepancy was due to a 10-month degradation period that occurred between the two tests. Members discussed the fact that such discrepancy in the testing was normal.

MOTION AND VOTE: *Eisenberg moved to take no further action relative to the disclosure. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

Members discussed the fact that all DPS-accredited labs in Texas should be encouraged to submit similar disclosures. FSC statute requires labs to report any potential problems to the FSC where there is a question of negligence or misconduct.

MOTION AND VOTE: *Eisenberg moved for staff to develop a lab disclosure form containing guidance for reporting any allegations of negligence or misconduct to the FSC. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Complaint #11-07 (APD - Controlled Substance) (Information forwarded from Travis County District Attorney's Office ("TCDA"))

MOTION AND VOTE: *Eisenberg moved to request from APD, DPS, and TCDA any further information they have relative to the additional allegations against the APD Crime Lab's controlled substance section, and to reopen the complaint so that staff may gather appropriate information. Alpert seconded the motion. The FSC adopted the motion. Adams voted against the motion.*

Complaint #11-13 (UNTHSC – DNA)

Dr. Eisenberg recused himself from any discussion related to this complaint.

MOTION AND VOTE: *Barnard moved to dismiss the complaint, because the allegations in the complaint have no merit according to complainant's own expert. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Update on arson case review

Ryan Brown spoke on behalf of IPOT to provide the FSC with an update on the arson case review. Brown indicated post cards were sent to prisoners who are incarcerated for arson convictions, requesting information designed to flag potentially faulty arson science. IPOT will send questionnaires to those responses that indicate problems in the science and await responses. IPOT will provide further update at the FSC's next quarterly meeting.

Report on meeting of the Texas Commission on Fire Protection

Robitaille reported on her attendance and presentation at the TCFP meeting and explained TCFP's function for setting certification standards for fire and arson investigators. Robitaille reported TCFP is using four of the Willingham recommendations as they move forward in strategic planning. TCFP may attend the FSC's next meeting to present a report on recommendations from the Willingham report that relate to the agency. TCFP will also submit a written document highlighting initiatives related to the four points related to the TCFP in the Willingham report.

Update on forensic development initiatives

Kerrigan provided an update on the joint FSC/Texas Criminal Justice Integrity Unit forensic science seminar to occur June 4-6 in Austin at the Capitol.

Discuss NRJ/FJC Reference Manual on Scientific Evidence and similar resources for commissioners

Peerwani and Robitaille recommended members have a copy of the manual.

Report from member presentations at various conferences

Peerwani reported on his presentation at a Texas State Bar meeting that occurred in December 2011. Alpert also gave a presentation at the conference, related to blood-alcohol evidence.

Robitaille attended a forensic science panel hosted by the Texas Criminal Defense Lawyer's Association. At the panel, Robitaille explained the function of the FSC.

Consider proposed agendas items for next quarterly meeting

Members will submit any items they have for the next agenda to FSC staff.

Schedule and location for future meetings

The next quarterly meeting will be held on April 13, 2012 in Austin at the Omni Austin Southpark.

Hear public comment

No public comment was given during this period; however, members participated in interactive discussion with stakeholders during several of the agenda items.

Adjourn