

Texas Forensic Science Commission – Bloodstain Pattern Analysis Investigative Panel Meeting Minutes from February 1, 2018 Meeting

The Bloodstain Pattern Analysis Investigative Panel of the Texas Forensic Science Commission met at 3:00 p.m. on Thursday, February 1, 2018, at the Stephen F. Austin building, 1700 North Congress Ave., Suite 172, Austin, Texas 78701.

Members of the Panel were present as follows:

Panel Members Present: Dennis Pat Johnson (Chair)
Sheree Hughes-Stamm
Jarvis Parsons

Other Members Present: Jeffrey Barnard
Bruce Budowle
Mark Daniel
Nancy Downing

Panel Members Absent: None

Staff Present: Lynn Garcia, General Counsel
Leigh Savage, Associate General Counsel
Jody Koehler, Senior Scientific Advisor

Update from January 22, 2018 Bloodstain Pattern Analysis hearing and discussion of presentations on foundational reliability, accreditation, certification, the work of the Organization of Scientific Area Committees, the Scientific Working Group on Bloodstain Pattern Analysis and related deliberations.

Garcia presented a PowerPoint summarizing the background of Texas accreditation in general, including the different bases of exemption from accreditation, issues with admission of evidence, the scientific basis and validity of BPA, the current state of training and education in the discipline and collateral concerns, need for clarity in the existing rules regarding the discipline's accreditation status and possible accreditation scenarios to be considered by the Commission.

Members discussed the scientific method and its applicability to BPA. BPA analyst from the Montgomery County Sheriff's office, Celestina Rossi, addressed the Panel and explained her use of reference materials and peer review in her case analyses.

A member of the Texas Rangers commented that imposition of accreditation requirements by the Commission will effectively put BPA in Texas "out of business," particularly BPA conducted by Texas Rangers. Garcia addressed some perceived misconceptions about accreditation and acknowledged disagreement within the BPA community regarding whether there should be a formal education requirement for BPA analysts. Commenters all agreed that attendance at one 40-hour course does not render a person a BPA expert. However, courts still admit examiners with this course as their only training to testify in court.

Robert Freyer, First Assistant District Attorney at the Montgomery County District Attorney's Office in Conroe, Texas, offered comments with regard to bloodstain pattern analysis and how it is used in criminal cases in his county. Rossi reported that the Montgomery County Sheriff's office is close to achieving accreditation in their firearms/toolmarks section.

Christine Ramirez, director of the TEEX program that provides the 40-hour course on BPA, addressed commissioners. She explained how the program works and emphasized that the course does not create an expert in BPA and that additional training and experience are required.

Discussion of possible regulatory outcomes for bloodstain pattern analysis in Texas, including accreditation and exemption options and related implications for licensing.

Members discussed exempting BPA from accreditation altogether. Admissibility would then be determined by gatekeepers solely under the Rules of Evidence instead of under the current two-pronged approach that considers both the Code of Criminal Procedure and the Rules of Evidence). Other options would be to temporarily exempt the discipline and require accreditation at a future date (this option would require clarification of the current rules) or require accreditation according to internal standards set by the Commission.

Garcia pointed out if accreditation is required for a discipline, licensing for its analysts will follow under the Code of Criminal Procedure. Members discussed the benefits and drawbacks of each of the options for BPA. Hughes-Stamm suggested a temporary exemption from accreditation oversight for clarity and until laboratories have time to achieve accreditation in BPA.

Discussion of the impact on practitioners of requiring accreditation by national accrediting bodies including perceived barriers and possibilities for overcoming same.

Members discussed the practical impact of imposing accreditation on entities that perform BPA. A representative from the Texas Rangers reiterated that the Rangers would not be able to perform BPA if accreditation is required. Some expressed concern with the cost of accreditation and the volume of documentation involved in achieving accreditation.

Discussion of resource factors in developing an accreditation process for bloodstain pattern analysis outside of existing national accrediting bodies.

The Scientific Working Group, Organization of Scientific Area Committees and International Association for Identification all have potential resource material for the Commission to utilize should it choose to accredit BPA on its own, outside of recommending traditional accreditation. Garcia explained that the development of recommendations in the discipline being adopted and published by OSAC is not likely in the next year or so because of the lengthy process involved in adopting documents for publication to the registry.

Members discussed that the FSC does not have the resources to establish a "stand alone" accreditation program for BPA. The FSC generally acts as a supplement to national bodies and

not as an independent accrediting body. Most national accrediting bodies are also accredited under ISO standards.

Deliberations by panel members and formulation of recommendations to the full Commission.

Members deliberated on and concluded the following related to the state of bloodstain pattern analysis in Texas:

1. BPA shall be exempt from FSC accreditation at this time by administrative rule;
2. The BPA exemption shall be removed in 15 months resulting in the requirement for accreditation of the discipline pursuant to Texas statute;
3. The FSC's Licensing Advisory Committee will be asked for proposals on education, training, and other requirements when the statutory requirement for BPA accreditation becomes applicable and licensing of BPA analysts is necessary.

MOTION AND VOTE: *Hughes-Stamm moved to recommend the Commission exempt BPA from accreditation requirements until May 1, 2019 followed by a requirement for accreditation by a recognized national accrediting body. Parsons seconded the motion. The panel unanimously adopted the motion.*

Members briefly discussed that crime scene and shooting trajectory may also need to be included in the exemption. Daniel pointed out the issue would need to be considered at a future meeting because it was not posted as an agenda item for this meeting as required under the Open Meetings Act. Garcia agreed.

Schedule and location of future panel meetings.

No future panel meetings were scheduled at this time.

Hear public comment.

Rossi relayed the Montgomery County Sheriff's Office will likely seek BPA accreditation under ISO 17020 versus 17025. Other public comment was given as noted above.

Adjourn.