

**Texas Forensic Science Commission
Minutes from July 20, 2018 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 8:30 a.m. on Friday, July 20, 2018 at the Tom C. Clark Building, 1st Floor Conference Room, 205 West 14th Street, Austin, Texas 78701.

Members of the Commission were present as follows:

Members Present: Barnard, Budowle, Daniel, Drake, Johnson, Kerrigan, Parsons

Members Absent: Downing, Hughes-Stamm

Staff Present: Lynn Garcia, General Counsel
Jody Koehler, Senior Scientific Advisor
Kathryn Adams, Commission Coordinator
Brian Keenan, Licensing Specialist

Staff Absent: Leigh Savage, Associate General Counsel

Review and adopt minutes from April 20, 2018 Forensic Science Commission Quarterly meeting.

MOTION AND VOTE: *Kerrigan moved to adopt the meeting minutes draft. Parsons seconded the motion. The FSC unanimously adopted the motion.*

Office administrative update (FY2018 budget status report quarter three; update regarding content management software required for the FSC Licensing Program and implementation of exam and license application functions; update on electronic binder transition; review final LBB strategic measures and HB-91 documents).

Staff reported on the budget closing for fiscal year 2018. Staff described the content management software transition from TopClass to ALIS—the software program used by the licensing programs administered by the Judicial Branch Certification Commission. The Commission will continue to use TopClass for licensing exam administration and continuing education purposes. Members gave feedback on staff’s new electronic binder system. Criminal History Specialist, Brian Keenan, explained he will perform criminal background checks on all license applicants. Garcia reported on strategic measures due to the Legislative Budget Board and documents being developed as required under HB-91.

Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through June 29, 2018.

Disclosures Pending from April 20, 2018 Quarterly Meeting

1. No. 18.11; Fort Worth Police Department (Latent Prints)

A self-disclosure by the Fort Worth Police Department Crime Lab reporting an incident in its latent print section where an examiner discovered numerous errors in previous casework by two examiners who are no longer employed at the lab.

MOTION AND VOTE: *Daniel moved to take no further action on the disclosure. Johnson seconded the motion. The FSC unanimously adopted the motion.*

2. No. 18.14; DPS – Weslaco (Forensic Biology)

A self-disclosure by DPS - Weslaco describing an incident in its Forensic Biology section where incongruous Acid Phosphatase (AP) testing results were observed during proficiency testing and re-analysis of casework as part of the quality assurance process.

Garcia referred members to new information received from DPS. There is currently one case pending reanalysis. DPS will inform the commission of the results.

*Johnson recused himself from deliberation and vote on this agenda item.

MOTION AND VOTE: *Budowle moved to take no further action on the disclosure. Daniel seconded the motion. The FSC unanimously adopted the motion.*

Disclosures Received as of June 29, 2018

3. No. 18.20; DPS – Garland (Seized Drugs)

A self-disclosure by DPS – Garland reporting an incident in its seized drugs section where information on a case was incorrectly entered into LIMS as a destruction request and the evidence destroyed in a case where it should not have been destroyed.

MOTION AND VOTE: *Daniel moved to take no further action on the disclosure. Parsons seconded the motion. The FSC unanimously adopted the motion.*

4. No. 18.22; Corpus Christi Police Department (Serial Number Restoration)

A self-disclosure by Corpus Christi Police Department crime lab in its firearms/toolmarks section where an examiner reported incorrect results on a serial number restoration proficiency test.

MOTION AND VOTE: *Daniel moved to take no further action on the disclosure. Drake seconded the motion. The FSC unanimously adopted the motion.*

5. No. 18.23; Harris County Institute of Forensic Sciences (Seized Drugs)

A self-disclosure by Harris County Institute of Forensic Sciences in its seized drugs section where an examiner failed to perform microscopic analysis as required by the SOP in a 1999 case recently

resubmitted for confirmation testing (for a destruction order). A second case was identified. The analyst was terminated as a result of the lab's internal review.

MOTION AND VOTE: *Daniel moved to accept the laboratory's misconduct finding and take no further action on the disclosure. Drake seconded the motion. The FSC unanimously adopted the motion.*

6. No. 18.24; DPS – Austin (Breath Alcohol)

A self-disclosure by DPS Austin reporting an incident wherein a breath alcohol analyst performed an analysis on a rotational instrument that had been configured incorrectly. The instrument reported the subject's breath results as a complete test when in fact the test was not complete.

MOTION AND VOTE: *Parsons moved to take no further action on the disclosure. Budowle seconded the motion. The FSC unanimously adopted the motion.*

7. No. 18.26; State Fire Marshal's Office (Fire Debris)

A self-disclosure by the State Fire Marshal's Office reporting an incident wherein a departing employee made allegations of incorrect documentation of evidence, inadequate training of analysts, and inefficient performance of the lab (including verification of test results) due to a staffing shortage.

Garcia summarized details of her telephone conference with the State Fire Marshal's Office. The incident was investigated by subject matter experts from DPS and the Texas Rangers. Nothing was found to substantiate the allegations made by the complaining employee.

DPS is taking over lab operations and will operate under DPS's SOP's. Accreditation for fire debris should occur in August. Garcia requested copies of ANAB's audit results be provided to the Commission; DPS agreed to provide a copy upon receipt.

MOTION AND VOTE: *Daniel moved to take no further action on the disclosure. Budowle seconded the motion. The FSC unanimously adopted the motion.*

8. No. 18.29; NMS Labs (Toxicology)

A self-disclosure by NMS Labs describing an incident in its toxicology section wherein a blood alcohol proficiency test was found with a high bias on two of the four samples tested.

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

9. No. 18.30; Sorenson (Forensic Biology)

A self-disclosure by Sorenson Forensics describing two incidents of contamination that were not identified prior to case reports being released. These incidents were detected by Sorenson's client.

MOTION AND VOTE: *Kerrigan moved to form an investigative panel. Parsons seconded the motion. The FSC unanimously adopted the motion.*

The investigative panel consists of Budowle, Daniel and Kerrigan.

Complaints Received as of June 29, 2018

10. No. 18.21; Culbertson, Amanda (DPS—El Paso, Blood Alcohol)

A complaint by Amanda Culbertson, a former lab supervisor now a private consultant, alleging an employee at DPS El Paso took data from a February 7, 2014 blood alcohol analysis batch run that was compromised and slated for re-analysis, and used those results for the supposed re-run on March 12, 2014. This was not caught by the technical reviewer.

DPS Deputy Assistant Director Brady Mills presented a PowerPoint describing DPS's internal review.

MOTION AND VOTE: *Daniel moved to table the complaint until additional information is received. Parsons seconded the motion. The FSC unanimously adopted the motion.*

11. No. 18.25; Keller, Chance D. (DPS - Waco, Firearms/Tool Marks)

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.

Garcia informed members of additional case material received recently. Staff needs time to review the additional materials.

MOTION AND VOTE: *Parsons moved to table the complaint until new the information is reviewed. Budowle seconded the motion. The FSC unanimously adopted the motion.*

12. No. 18.27; Holmes, George Ray (DPS – Tyler, Seized Drugs)

A complaint by Kenneth G. Mouton for defendant George Ray Holmes alleging a DPS Tyler analyst testified in court that a piece of evidence consisting of a clear zip-lock bag containing clear crystals was positively identified as methamphetamine when the lab report reflects the item was not subjected to analysis.

Staff received a supplemental report from DPS demonstrating that allegations in the complaint were unfounded.

MOTION AND VOTE: *Daniel moved to dismiss the complaint. Drake seconded the motion. The FSC unanimously adopted the motion.*

Discuss status of crime laboratory accreditation program, including:

a. Accreditation non-conformances received since April 2018 quarterly meeting;

Staff described accreditation reports and non-conformances received since the April 2018 meeting.

b. Update on publishing of workplace drug testing rule;

The final version of the workplace drug testing rule has been published and is included in the meeting materials.

Update on adoption of bloodstain pattern, shooting trajectory, and crime scene reconstruction exemption and discuss accreditation options moving forward;

The published rule reflecting a temporary exemption for these disciplines is included in the meeting materials.

c. Update from teleconference with forensic pathologists regarding postmortem toxicology accreditation and review of proposal for postmortem toxicology exemption for testing ordered by a medical examiner or licensed forensic pathologist;

Garcia summarized a teleconference she had with several Texas medical examiners to report the Commission's decision to decline to adopt an exemption for postmortem testing. Some medical examiners on the call requested the Commission re-consider its decision. Staff drafted a rule proposal pursuant to the request by State medical examiners for consideration by the Commission.

Garcia reviewed the attorney general opinion related to postmortem toxicology previously addressed by the Commission. In sum, the opinion stated that if the primary purpose of postmortem testing in a particular case is the practice of medicine, the analysis is exempt from accreditation requirements under Section 38.35 of the Texas Code of Criminal Procedure. The opinion noted that the Commission has the authority to determine this on a case-by-case basis. The opinion also emphasized the Commission has authority to exempt or clarify which forensic disciplines are subject to accreditation requirements through its administrative rulemaking authority.

Members declined to adopt the draft rule and reaffirmed its earlier decision not to provide an exemption on a case-by-case basis due to practical considerations.

d. Review proposed blanket accreditation exemption for forensic disciplines the Commission has not previously considered.

Members reviewed a proposed blanket accreditation exemption for forensic disciplines the Commission has not previously considered. Members declined to adopt the draft blanket exemption for these forensic disciplines and no further action was taken on this item.

Discuss licensing advisory committee, including:

a. Update on results from pilot exam, including review of statistics for deciding the cut-rate or pass/fail rate for the exam;

Garcia presented a PowerPoint illustrating the process used by its cut-rate committee with the guidance of the psychometricians to establish a cut-rate for the licensing exam using the Angoff Method.

b. Update from exam evaluation committee;

Garcia explained the process for choosing the 100 final questions for the exam. Staff drafted and distributed a study syllabus pursuant to requests from the laboratory community.

c. Consider re-appointment of licensing advisory committee members;

All current members agreed to be reappointed with the exception of Keith Hampton. The Texas Criminal Defense Lawyers Association (“TCDLA”) will provide a list of new candidates for consideration.

MOTION AND VOTE: *Daniel moved to approve re-appointment of all current LAC members with the exception of Keith Hampton. Drake seconded the motion. The FSC unanimously adopted the motion.*

d. Review proposal for federal examiner exemption;

Members discussed that the United States Department of Justice (“DOJ”) has made clear in written communications to the Commission that the federal government will not comply with Texas forensic analyst licensing requirements. Therefore, the Commission has no choice but adopt a rule proposal that carves out an exception for federal analysts or risk a reduction in service by federal agencies.

Mills discussed impact assessment by DPS to determine how a lack of federal analysts would affect Texas.

TDCAA plans to develop training for prosecutors who might have federal analysts testifying in cases so they can prepare for Michael Morton issues that might come up in trial.

MOTION AND VOTE: *Kerrigan moved to approve the proposed amendment to the licensing rules to provide an exemption for federal examiners from the licensing requirement. Johnson seconded the motion. Barnard and Daniel opposed the motion. The motion carried with 5 in favor and 2 opposing.*

Members discussed statistics course development by Cliff Spiegelman as an affordable option for fulfilling the statistics requirement that takes effect post-January 1, 2019.

MOTION AND VOTE: *Daniel moved to approve Dr. Spiegelman's development of an online statistics course for the licensing program. Parsons seconded the motion. The FSC unanimously adopted the motion.*

Garcia asked members to email suggestions for continuing education programs for licensees.

e. Update on publication of adopted licensing rules. (Hilbig/Garcia) (45 min)

The licensing rules as published are available on the Commission's website.

Review and adopt final report from investigative panel regarding #17.04 Gefrides (HFSC; DNA).

Members reviewed a draft report for the case. Garcia reviewed the Commission's final recommendations. The Houston Forensic Science Center's DNA section is beginning a 10-month training program during which time casework will be outsourced to Bode.

MOTION AND VOTE: *Kerrigan moved to accept the draft report. Johnson seconded the motion. The FSC unanimously adopted the motion.*

Review presentation and develop final report from investigative panel regarding Joseph Bryan complaint (Blood Spatter/Serology) #16.56.

Garcia presented a PowerPoint outlining the timeline of the case, status of the investigation and a bloodstain pattern analysis performed by Celestina Rossi of the Montgomery County Sheriff's Office. Rossi's conclusions echoed the Commission's prior contracted expert Bob Henderson's that the BPA work in the case was unsupportable. Rossi addressed supplemental questions in her report that were not addressed by Henderson.

Rossi explained the rationale for her conclusion that the original analysis was unsupportable by any published data, unscientific, fundamentally flawed, and that the trial testimony contained statements that were erroneous.

Garcia reviewed questions the Commission had concerning forensic analyses not performed in the case. A representative from DPS explained additional DNA work is possible with the remaining evidence.

The presentation proceeded to a discussion about accreditation for crime scene reconstruction and BPA in particular. Garcia reviewed a list outlining what a crime scene accreditation program administered by the FSC might look like as an alternative to national accreditation for smaller jurisdictions that are unable afford national accreditation.

Members, Major Huff of the Texas Rangers and other meeting attendees engaged in a discussion concerning accreditation of BPA and crime scene. Garcia stated conversations among Texas stakeholders need to occur so the Commission can understand the impact of requiring accreditation and promulgate higher guidelines/standards that are practical and achievable.

MOTION AND VOTE: *Kerrigan moved to delegate authority to Garcia on the Bryan case including recommendations for crime scene reconstruction accreditation. Parsons seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Budowle moved to convene a working group on the crime scene accreditation issues to determine the future path for accreditation of crime scene disciplines. Daniel seconded the motion. The FSC unanimously adopted the motion.*

Update on NMS Torney DNA review and letter to ANAB re: same.

Garcia reviewed a letter from NMS President Barry Logan that cited over-reliance on the national accrediting body as a contributing factor in the case. She related the process for filing a complaint against ANAB for which the first step is contacting the accrediting body itself.

Garcia directed members to a draft letter in the materials to ANAB concerning the nonconformities at NMS and APD and why they were not identified. Members discussed adding language about other instances outside Texas concerning ANAB shortcomings of which the Commission is aware.

MOTION AND VOTE: *Parsons moved to approve filing a complaint with respect to instances of oversight of nonconformities by ANAB in Texas-accredited laboratories. Daniel seconded the motion. The FSC unanimously adopted the motion.*

Update on triage projects for DNA mixture review. Discuss possibility of probabilistic genotyping software symposium hosted by Commission and UNTHSC-CHI; update on Austin Police Department cases under review by UNTHSC-CHI; discuss AP Reagent study review completed by DPS.

Garcia explained the Commission will receive a disclosure from DPS about STRmix in a Travis County case in which Koehler was the analyst. The DNA was excluded by the court. The case review will have to be outsourced due to conflict of interest.

Members discussed co-hosting a symposium to bring DNA experts to UNTHSC-CHI to address concerns with STRmix.

Budowle provided an update on APD cases sent to UNTHSC-CHI.

Bob Wicoff provided an update on the ongoing DNA mixture review. They have about 700 cases left to review.

Dawn Boswell provided an update on Tarrant County's DNA mixture case review. There are 87 more cases to be evaluated.

Lindsay Bellinger provided an update on the Capitol Area Public Defender Service's DNA mixture case review. Out of 565 cases for review, slightly over half have been addressed. They are still identifying cases to send to Budowle for interpretation. No requested reinterpretations have been received thus far from DPS. By the end of the grant period (September 2018), only cases identified as the 5 top priority cases will be recalculated. A total of 29 need to be recalculated at present.

DPS Deputy Assistant Director Mills provided an update regarding the AP Reagent study. The results of the study were noticeably different between the DPS Austin laboratory and the capital area laboratory (formerly the APD laboratory), and the Texas Forensic Science Commission requested that DPS perform a root cause analysis to identify the reasons for the discrepancies. Based on their internal study, DPS concluded that the APD Lab analysts had not understood that the instructions for the study were different from the approach they would utilize in casework. The analysts defaulted to the approach that would be used during casework which yielded the discrepancies. DPS identified and implemented improvements to the AP-Reagent procedure to support consistent system-wide application of the method. The reason for conducting the AP reagent study in the first place was to assess the extent to which the AP reagent performed effectively even when the analysts did not mix the reagent according to the manufacturer's instructions. The study performed by DPS indicated that the AP reagent did persist sufficiently to reduce concerns raised in the Commission's report that semen stains could have been missed during APD biology screening based on analyst's practice of mixing the reagent when it ran out as opposed to making it fresh daily.

Discuss developments regarding efforts to identify human remains discovered along Texas border.

Budowle reported on the progress at UNTHSC-CHI to identify human remains. Budowle stated progress is slow because permission to perform comparisons must be given by the FBI. He provided an update on Honduras and Mexico, as well as outreach to the FBI.

Garcia stated the FSC needs to work with the FBI to determine a satisfactory process for comparing DNA with the reference samples at Bode in Virginia.

Garcia reported that countries in the Northern Triangle received State Department grants that will allow them to greatly increase their capacity to perform their own DNA work.

Discuss progress on project to standardize sexual assault kits.

Downing provided a written update on this project which can be found and reviewed in the meeting materials. Members did not discuss this agenda item.

Update from Texas Association of Crime Laboratory Directors ("TACLD").

Peter Stout, President of the TACLD, explained he will deliver the licensing information to his membership that was discussed at today's meeting. TACLD is contemplating drafting a Texas version of Borkenstein courses from Indiana University.

Report from various recent and upcoming conference presentations by staff.

Koehler recently presented at IAI and TDCAA conferences. She will give a workshop on Root Cause Analysis at SWAFS, and a talk at AFDAA on August 3rd. Garcia will give a presentation with Parsons at the TDCAA Annual Conference. Garcia will also give talks at ISHI, CAILAW and the Arizona Forensic Advisory Board.

Consider proposed agenda items for next quarterly meeting.

An agenda will be circulated in accordance with FSC's rules prior to the next meeting.

Hear public comment.

There was no public comment other than that referenced above.

Adjourn.

The meeting was adjourned at 1:31 pm.