

## **Texas Forensic Science Commission – Task Group on Analytical Methods for Marihuana Minutes from October 24, 2019 Meeting in Austin, Texas**

The Texas Forensic Science Commission’s Task Group on Analytical Methods for Marihuana met at 2:00 p.m. on Thursday, October 24, 2019 at the Tom C. Clark Building, 1<sup>st</sup> Floor Conference Room, 205 West 14<sup>th</sup> Street, Austin, Texas 78701.

Members of the Task Group were present as follows:

Members Present: Jarvis Parsons  
Jasmine Drake  
Mark Daniel  
Pat Johnson  
Sarah Kerrigan  
Nicolas Hughes  
Dawn Boswell  
James Miller  
Charles Cline

Members Absent: None

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

### **1. Background/overview of analytical method questions in marihuana casework.**

Garcia described the background on issues related to analytical methods for marihuana prior to and since the passage of the 86<sup>th</sup> Legislature’s HB-1325 which legalized hemp. Garcia also provided the background on the Commission’s decision to address the issue of analytical methods for marihuana. On August 16, 2019, the Commission reviewed a complaint by Nicolas Hughes, Harris County Public Defender’s Office attorney, alleging Harris County Institute of Forensic Sciences does not use an analytical method sufficient to provide clear results to stakeholders regarding (1) whether any of the exceptions to the definition of “marihuana” in the Texas Health and Safety Code apply to the substance analyzed; or (2) whether the substance is hemp and therefore legal under the Federal Farm Act and now HB-1325. The complaint was filed before the passage of the 86<sup>th</sup> Legislature’s HB-1325. Commissioners dismissed the complaint at the August 2019 meeting, because the complaint did not allege negligence or misconduct with regard to any forensic analysis, but generally alleged that the analytical methods used by laboratories are not legally sufficient to provide clear enough results to stakeholders on whether any of the legal exceptions to the definition of marihuana apply. Commissioners moved to establish the task group to address the sufficiency issue with respect to the way laboratories identify marihuana.

### **2. Discuss and recommend possible implications and solutions.**

Kerrigan reported on the status of validating a qualitative method for distinguishing hemp from marihuana. Houston Forensic Science Center’s Seized Drugs Section Manager James Miller,

Department of Public Safety Seized Drugs Coordinator Charles Cline, and Harris County Institute of Forensic Sciences Drug Chemistry Manager Kay McClain are participating in the effort. The qualitative method is loosely based on the DEA's method for distinguishing hemp from marijuana. The group is currently waiting on materials and supplies for the validation. The group has been running the method and making tweaks/improvements and will begin validating soon.

Garcia reported on accrediting body ANAB's approval of the qualitative method. The Commission asked the accrediting body to approve the qualitative method, and ANAB confirmed its approval of the method as long as reports are limited to qualitative conclusions.

Kerrigan reported that the team discovered during its validation that they may be able to use the same qualitative method for distinguishing hemp from marijuana in oils (found in vape cartridges, etc.). Solids/edibles will always need a full laboratory quantitation. Toxicologists have already been trained to quantitate these substances, so it will just be a matter of training the drug chemists to do the same.

Members addressed issues raised with respect to the definition of marijuana and the analytical methods thought to be insufficient at eliminating some of the exceptions provided in the definition of marijuana. Hughes explained the insufficiency in the definition. Members discussed that laboratories report what is requested by the client—the identification of tetrahydrocannabinoids (THC). However, many attorneys feel the report is insufficient in addressing the exemptions from the definition of marijuana provided under Texas law. In Texas, “marijuana” means the plant *Cannabis sativa* L., whether growing or not, the seed of that plant, and every compound, manufacture, salt derivative, mixture, or preparation of that plant or its seeds. The term does not include: (A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin; (B) the mature stalks of the plant or fiber produced from the stalks; (C) oil or cake made from the seeds of the plant; (D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; (E) the sterilized seeds of the plant that are incapable of beginning germination; or (F) hemp, as that term is defined by Section 121.001, Agriculture Code. Members discussed that the definition was outdated and has not been revised in decades.

Members discussed different ways the definition might be addressed. Scientists and attorney members of the committee disagreed about the understanding of what parts of the plant and types of substances fit under the definition of marijuana such that they are considered a compound, manufacture, salt derivative, etc. Cline and Miller addressed the members to explain their understanding of the identification of marijuana and the laboratory's process in identifying and reporting marijuana. Miller felt the laboratory's identification or non-identification of THC and the manner in which the finding is reported is sufficient under Texas law.

Members also discussed the law with respect to punishment for certain marijuana offenses based on the weight of the substance, (*e.g.* a pan of marijuana brownies could carry a significantly larger penalty because of its weight relative to a smaller sample of plant materials that contains the same quantitative percent of THC). Parsons felt a recommendation by the Commission with regard to different punishment levels is beyond the scope of the Commission's mandate and any recommendation with regard to punishment levels should be left to the Legislature.

Members discussed that making some recommendation with respect to the definition of marihuana to the Legislature may be helpful. Garcia explained that given all the questions raised in light of the 86<sup>th</sup> Legislature's HB-1325, the Legislature will be looking to the Commission for answers to some of these questions, including issues related to prosecution of marihuana cases. Currently, most counties in Texas are opting out of prosecuting low-level marihuana offenses until the State's crime laboratory system (DPS) can offer a quantitative measurement of the percent of THC in a marihuana sample (oil or plant material).

The group decided to move forward in addressing some of the issues with Texas law with respect to the definition of marihuana given that the definition has not been revised in years and the current analytical methods used by laboratories may not sufficiently address the exemptions in the law.

Garcia will reach out to Office of Court Administration Executive Director David Slayton to discuss the possibility of publishing the group's recommendations on marihuana/hemp/THC cleanup in the Judicial Council's list of legislative priorities for next session.

### **3. Schedule and location of future meeting.**

Members will meet again January 30, 2020 at 2:00 p.m. in Austin, Texas.

### **4. Public comment.**