

**Texas Forensic Science Commission
Minutes from July 24, 2020 Meeting in Austin, Texas**

The Texas Forensic Science Commission met virtually via GoToWebinar at 9:00 a.m. on Friday, July 24, 2020 as authorized under Government Code section 551.125 pursuant to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) which was extended on July 2, 2020, as well as the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act.

Members of the Commission were present as follows:

Members Present: Jeffrey Barnard (Presiding Officer), Bruce Budowle, Patrick Buzzini, Mark Daniel, Nancy Downing, Jasmine Drake, Sarah Kerrigan, D. Pat Johnson

Members Absent: Jarvis Parsons

Staff Present: Lynn Garcia, General Counsel
Leigh Savage, Associate General Counsel
Robert Smith, Senior Staff Attorney
Kathryn Adams, Commission Coordinator

1. Call meeting to order. Roll call for members.

The Commission's virtual meeting convened via live broadcast on GoToWebinar at 9:00 a.m. Commission Presiding Officer Barnard called the roll. One Commissioner, Jarvis Parsons, was absent.

2. Instructions for public participation and meeting process.

Savage gave instructions for stakeholders joining the webinar to engage with commissioners and staff during the meeting. Participants had the ability to chat virtually and ask questions during the meeting or seek technical support.

3. Review and adopt minutes from June 11, 2020 Forensic Science Commission Complaint Screening Committee Meeting and June 12, 2020 Forensic Science Commission Quarterly meeting.

MOTION AND VOTE: Daniel moved to adopt the June 11, 2020 meeting minutes draft. Kerrigan seconded the motion. The FSC unanimously adopted the motion.

MOTION AND VOTE: Parsons moved to adopt the June 12, 2020 meeting minutes draft. Downing seconded the motion. The FSC unanimously adopted the motion.

4. Office administrative update (FY2020 budget status report fourth quarter; review final reduced budget for FY20-21).

Garcia reported on the Commission's budget status and budget reductions as requested by the Governor, Lieutenant Governor and Speaker of the House. The Governor has asked state agencies to reduce their budgets by 5% for the remaining quarter left in fiscal year 2020 through fiscal year 2021.

MOTION AND VOTE: *Kerrigan moved to approve the reduced budget presented by staff. Buzzini seconded the motion. The FSC unanimously adopted the motion.*

5. Update on statistics course exam administration and list of qualifying courses.

Garcia gave an update on the statistics course taught by Dr. Cliff Spiegelman in light of his passing. All of the currently enrolled students were offered the option of enrolling in a statistics course taught by Dr. Buzzini at Sam Houston State University during the second summer session. One student who had already finished Dr. Spiegelman's coursework took Dr. Spiegelman's exam with the assistance of Dr. Michael Longecker from Texas A&M University. Garcia discussed a variety of options for future licensees looking to fulfill the statistics requirement, including the possibility of collaborating with the Center for Statistics and Applications in Forensic Evidence ("CSAFE"). Garcia sent the current (Spiegelman) course material to CSAFE so they can begin developing content for the course. Once Garcia has the course content, she will circulate it to the licensing committee for review. NMS also expects to offer their statistics course virtually before the end of the year. NMS is offering a statistics course that was initially intended to be held in person but is now virtual in light of the COVID-19 pandemic. NMS expects to be able to expand the virtual course offering to anyone who wants to take their statistics course.

Buzzini indicated he was looking forward to feedback from practicing analysts on the value of the statistics course to their profession after the July course concludes.

6. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through May 29, 2020.

Disclosures Received as of July 10, 2020

1. No. 20.35; Houston Forensic Science Center (Crime Scene Investigation)

A self-disclosure by the Houston Forensic Science Center ("HFSC") reporting an incident in its crime scene unit where a crime scene investigator's ("CSI") testimony regarding footwear comparison exceeded the bounds of his expertise. The Houston Forensic Science Center discovered the quality incident during a transcript review project.

MOTION AND VOTE: *Johnson moved to take no further action on the self-disclosure given the root cause analysis and corrective action taken by the laboratory, including review of the three cases in which the CSI testified during his employment with HFSC, interviews and review of the transcript with the CSI, the CSI's departure of employment from HFSC and from the forensic field, and the fact HFSC now provides testimony training to all new employees, regardless of their previous testimony experience. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

2. No. 20.37; NMS Horsham, PA (Toxicology)

A self-disclosure by NMS Labs Horsham, PA reporting an incident where the laboratory issued toxicology reports for cannabinoids in blood, serum or plasma from October 14, 2019 through May 1, 2020, utilizing a protocol inconsistent with that validated and established in the method standard operating procedure (“SOP”).

Commissioners requested the laboratory re-issue reports in 11 Texas cases affected by the errors and the laboratory agreed to do so. **MOTION AND VOTE:** *Daniel moved to take no further action on the self-disclosure pursuant to the laboratory’s agreement to re-issue reports in the 11 Texas cases affected by the error. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

3. No. 20.40; Department of Public Safety Austin (Materials (Trace))

A self-disclosure by DPS Austin reporting an incident in its trace evidence section where a licensed Materials (Trace) analyst lost a hair sample during transfer of the evidentiary items from glass slides used during analysis to storage containers and subsequently falsified the record by renumbering the evidentiary items to make it appear as if the hair had not been lost.

MOTION AND VOTE: *Daniel moved to accept the self-disclosure for investigation to determine whether the laboratory’s professional misconduct finding is supported. Drake seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Daniel moved to form an investigative panel consisting of commissioners Parsons, Buzzini, and Daniel. Budowle seconded the motion. The Commission unanimously adopted the motion.*

*Commissioner Johnson recused from discussion and vote on all DPS items.

4. No. 20.41; Department of Public Safety Houston/Weslaco (Seized Drugs)

A self-disclosure by DPS reporting an incident where the DPS Houston laboratory shipped a container containing controlled substance cases to DPS Weslaco for in-sourcing and the box arrived damaged and missing one controlled substance case.

MOTION AND VOTE: *Daniel moved to take no further action on the self-disclosure given the root cause analysis and corrective actions taken by the laboratory, including notification to affected stakeholders, development of guidance and training for packaging and shipping cases, and changes to the quality assurance program to ensure system quality processes are being carried out as necessary. Drake seconded the motion. The Commission unanimously adopted the motion.*

5. No. 20.42; Department of Public Safety Crime Laboratory System (Seized Drugs, Quantitative Analysis)

A self-disclosure by DPS Crime Laboratory Service reporting the laboratory discovered it was underestimating the expanded measurement uncertainty in certain seized drugs cases involving

quantitative analysis.

MOTION AND VOTE: *Daniel moved to take no further action on the self-disclosure given the description of the recommendations obtained from statisticians consulted, implementation of the revised expanded measurement uncertainty and notification to affected stakeholders. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

6. No. 20.43; Department of Public Safety Tyler (Toxicology)

A self-disclosure by DPS Tyler reporting an incident in its toxicology section where a report was issued with a negative result for blood for a case that had not actually been opened or sampled by the analyst.

MOTION AND VOTE: *Daniel moved to take no further action on the self-disclosure given the root cause analysis and corrective actions taken by the laboratory, including interviews with and explanations by the analyst and technical reviewer, case review of the analyst's work with no additional issues discovered, notification to affected stakeholders, communication of expectations for technical review of toxicology cases, and other cited changes implemented by the Tyler laboratory. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

7. No. 20.44; NMS Labs Horsham, PA (Forensic Biology/DNA)

A self-disclosure by NMS Labs Horsham, PA reporting an incident in the laboratory's forensic biology section where incorrect allele frequencies were used to calculate and report statistical values in casework.

Barry Logan, Senior Vice President of Forensic Services and Chief Scientist at NMS Labs, addressed the Commission regarding the case review being conducted. The laboratory expects their internal investigation and case review to wrap up by November 2, 2020.

MOTION AND VOTE: *Daniel moved to table the self-disclosure pending the outcome of NMS's internal investigation and case review. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

Complaints Received as of July 10, 2020

8. No. 20.08; Day, Laura (Andrea Zafares; Homicidal Drowning Investigation)

A complaint by attorney Angela Moore on behalf of defendant Laura Day against Andrea Zafares, an expert on drowning deaths. The complaint alleges that Zafares has no medical or scientific background that would support her assertion that she can reliably and accurately differentiate an accidental drowning from a homicide.

MOTION AND VOTE: *Daniel moved to table the complaint pending a response by the expert as requested by her counsel. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

7. Review, discuss and refer past cases to the Office of Capital and Forensic Writs.

Members discussed formal referral of a list of cases to the Office of Capital and Forensic Writs pursuant to Code of Criminal Procedure Article 38.01 § 4(h).

MOTION AND VOTE: *Kerrigan moved to refer the list of cases to the Office of Capital and Forensic Writs. Daniel seconded the motion. The Commission unanimously adopted the motion.*

8. Discuss status of crime laboratory accreditation program, including accreditation non-conformances and reports received since June 12, 2020 quarterly meeting.

Savage reported on recent accreditation activities as reported by Commission-accredited laboratories during the fourth quarter.

9. Discuss Licensing Advisory Committee, including:

a. Update on licenses issued;

Savage provided an update on licenses issued. There are currently 1,339 forensic analyst and technician licensees in Texas. Staff will renew approximately 1037 forensic analyst licenses before December 31, 2020.

b. Review outstanding licensing rules and proposed rule concepts for approval, including rule addressing continuing forensic education requirements when adding a forensic discipline during the current license cycle;

MOTION AND VOTE: *Buzzini moved to adopt the rule addressing continuing forensic education requirements when adding a forensic discipline during the current license cycle. Drake seconded the motion. The Commission unanimously adopted the motion.*

c. Review nominations and appoint licensing advisory committee members for expiring seats.

MOTION AND VOTE: *Daniel moved to re-appoint attorneys Bill Hines and Calli Bailey to the Licensing Advisory Committee. Johnson seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Kerrigan moved to appoint Sandy Parent (Materials/Trace) and Deborah Smith (Latent Prints) to the Licensing Advisory Committee. Johnson seconded the motion. The Commission unanimously adopted the motion.*

10. Update on development and launch of licensee-required Mandatory Legal and Professional Responsibility Training.

Garcia and Smith reported on the development of the legal and professional responsibility course being developed in collaboration with Sam Houston State University. The substance of the

training has been developed, SHSU course designers have provided a mockup of the course and SHSU staff is working to finalize content. Commission staff hopes to have the course available by the end of August. The course will not delay any forensic analyst renewal applications.

11. Update on statewide validation of qualitative method to distinguish hemp from marihuana.

Kerrigan provided an update on statewide efforts to validate a qualitative method (with a quantitative cutoff) for distinguishing hemp from marihuana. The participating laboratories (DPS, Harris County Institute of Forensic Sciences, and Houston Forensic Science Center) are just a few weeks away from completing their validations. A significant challenge to the team was securing authentic substances from the National Institute on Drug Abuse (“NIDA”) drug supply program. Kerrigan reported that NIST is developing a new project where they will have known liquid and plant materials available and suggested laboratories might want to include these materials as part of their method validations. Kerrigan stated that requests for NIDA materials should be made through the Texas Association of Crime Laboratory Directors (TACL D).

Peter Stout, CEO and Laboratory Director of the Houston Forensic Science Center, indicated the laboratories participating in the validation study hope to launch the services on the same day and distribute notice and instructions regarding the same to TDCAA and other stakeholders.

12. Discuss recommendations from investigative panel regarding NMS Labs Grand Prairie (Seized Drugs) disclosure #19.46.

Garcia presented a PowerPoint describing the steps taken by investigative panel members Daniel, Kerrigan and Johnson regarding professional misconduct by forensic analyst, Jessica Almond, for her actions in inappropriately manipulating data during a competency test on a new quantitative procedure. The panel finalized a draft report that found the analyst committee professional misconduct and recommended disciplinary action that includes revocation of the analyst’s license.

MOTION AND VOTE: *Kerrigan moved to adopt the draft report concurring with the laboratory’s reported finding of professional misconduct against the analyst, Jessica Almond. Drake seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Drake moved to revoke the subject analyst Jessica Almond’s forensic analyst license. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

Staff will provide proper notification to the analyst regarding the findings, disciplinary action and report.

13. Update regarding Signature Science (Forensic Biology/DNA) disclosure #20.13 investigative panel.

Garcia and panel members Johnson, Daniel and Drake reported on their interview with analyst that is the subject of the self-disclosure. The panel plans to interview staff members at the laboratory

involved in the incident prior to the Commission's October 23, 2020 quarterly meeting. The panel will report back to commissioners with an update in October.

14. Discuss developments with respect to kit backlog reduction and standardization efforts as well as statewide sexual assault task force and recommendations from Dr. Downing re: pediatric examinations.

Downing addressed the Commission regarding follow-up initiatives regarding pediatric examinations. Budowle reported on his involvement in the committee addressing the protocols.

15. Update from Texas Association of Crime Laboratory Directors

Peter Stout addressed the Commission regarding the TACLD's July 22, 2020 meeting. Stout reported the group has seen an expansion in its membership. Stout reported the group has been working with Dawn Boswell regarding issues in forensic expert testimony during the COVID-19 pandemic.

Stout also reported on collaborative workgroups being established by TACLD to evaluate published OSAC standards and decide whether the Commission should recommend adoption of the standards. Activity by the groups has been delayed due to the COVID-19 pandemic. The first group assembled has addressed the toxicology standards. Stout explained the current published standards should not be an issue for implementation; however, there are some in the pipeline that will need to be addressed by the groups. Stout should have an update at the October 23, 2020 meeting.

16. Consider proposed agenda items for next quarterly meeting.

Staff will include all discussed items on the next quarterly meeting agenda and circulate the proposed agenda for additions.

17. Schedule and location of future panel and quarterly meetings, including October 23, 2020 quarterly meeting.

The Commission will meet for its next quarterly meetings October 23, 2020 (virtual) and January 29, 2021 (virtual).

18. Hear public comment.

No further public comments were given other than those noted throughout the agenda above.

19. Adjourn.