

**Texas Forensic Science Commission  
Minutes from October 23, 2020 Meeting in Austin, Texas**

The Texas Forensic Science Commission met virtually via Zoom at 9:00 a.m. on Friday, October 23, 2020 as authorized under Government Code section 551.125 pursuant to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster and October 8, 2020 extension of the proclamation affecting all counties in Texas due to the Coronavirus (COVID-19), 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, Nancy Downing, Jasmine Drake, Sarah Kerrigan, Jarvis Parsons

Members Absent: Mark Daniel

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 Zoom at 9:00 a.m. Commission Presiding Officer Barnard called the roll. Commissioners were present as indicated above.

**2. Instructions for public participation and meeting process.**

Tomlin gave instructions for stakeholders joining the webinar to engage with commissioners and staff during the meeting. Participants were able to chat virtually and ask questions during the meeting or seek technical support. Members of the public were permitted to make public comment throughout the meeting and during the designated public comment item on the agenda.

**3. Review and adopt minutes from July 24, 2020 Forensic Science Commission Quarterly meeting.**

**MOTION AND VOTE:** *Downing moved to adopt the July 24, 2020 meeting minutes draft. Drake seconded the motion. The FSC unanimously adopted the motion.*

**4. Office administrative update (Budget items, including FY2021 first quarter budget status report, FY2020 budget closing report, discussion of final budget reductions and Legislative Appropriations Request for FY2022-FY2023 biennium; update on staff work and travel policies pursuant to the Governor's orders; retirement of Commissioner Johnson; election of Commission Vice Chairperson).**

Garcia reported on the Commission's budget status for FY2021 and budget reductions as requested by the Governor, Lieutenant Governor and Speaker of the House. Garcia reviewed the Commission's section of the Office of Court Administration's (the Commission's parent agency's) Legislative Appropriations Request for FY2022-FY2023. Garcia announced Commissioner D. Pat Johnson resigned from the Commission to continue his retirement. The Commission elected Dr. Jasmine Drake as Vice Chair of the Commission.

**MOTION AND VOTE:** *Barnard moved to elect Commissioner Drake as Vice Chair of the Commission to preside over quarterly Commission meetings in the event the Presiding Officer cannot attend the meeting. Parsons seconded the motion. The FSC unanimously adopted the motion.*

**5. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through October 9, 2020.**

Disclosures Pending from July 24, 2020

1. 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.

The laboratory expects their internal investigation and case review to wrap up by November 2, 2020.

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

Disclosures Received as of October 9, 2020

2. No. 20.48; Department of Public Safety Austin (Seized Drugs)

A self-disclosure by Department Public Safety (Austin) reporting an incident in the laboratory's seized drugs section where an analyst trainee copied the answers from another person's assessment materials and submitted them as his own during his new employee training process.

**MOTION AND VOTE:** *Parsons moved to accept the self-disclosure for investigation to determine whether the laboratory's conclusions regarding professional misconduct and violations of the Code of Professional Responsibility are supported. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

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

3. No. 20.49; Tarrant County Medical Examiner's Office Crime Laboratory (Toxicology Evidence Handling/Packaging)

A self-disclosure by Tarrant County Medical Examiner's Office Crime Laboratory reporting an incident in its toxicology section where hospital admit tubes submitted for toxicology testing from two different cases were mislabeled, resulting in switched samples and results reported under the wrong case number.

**MOTION AND VOTE:** *Budowle moved to take no further action on the self-disclosure given the root cause analysis and corrective actions by the laboratory. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

4. No. 20.50; Tarrant County Medical Examiner's Office Crime Laboratory (Toxicology Proficiency Test)

A self-disclosure by Tarrant County Medical Examiner's Office Crime Laboratory reporting an incident in its toxicology section where phencyclidine (PCP) was not detected in a toxicology proficiency test resulting in a false negative.

**MOTION AND VOTE:** *Budowle moved to take no further action on the self-disclosure given the root cause analysis and corrective actions by the laboratory. Parsons seconded the motion. The Commission unanimously adopted the motion.*

5. No. 20.54; Southwestern Institute of Forensic Sciences; (Toxicology)

A self-disclosure by the Southwestern Institute of Forensic Sciences reporting an incident in its drug chemistry section where incorrect results were reported by an analyst on two items in a seized drugs case. The analyst is no longer employed by SWIFS or any other accredited crime laboratory in Texas.

Staff noted that while the analyst in this self-disclosure appears to have had difficulties with seized drugs analysis in general, there is no indication these difficulties included professional misconduct or violations of the Code of Professional Responsibility.

**MOTION AND VOTE:** *Budowle moved to take no further action on the self-disclosure given the root cause analysis and corrective actions by the laboratory. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

\*Commissioner Barnard recused himself from discussion and vote on this item.

#### Complaints Pending from July 24, 2020

6. 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 alleged expert on drowning deaths. The complaint alleges that Zafares has no medical or scientific background that would support her claim that she can differentiate an accidental drowning from a homicide, and that her analysis and related testimony was scientifically unsupportable.

**MOTION AND VOTE:** *Parsons moved to refer the complaint to the crime scene reconstruction working group to consider the possibility of publishing guidance in this area of analysis. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

Complainant and defense attorney Angela Moore, representing the defendant in the criminal case in which drowning expert Laura Day gave her opinion, provided public comment. Mr. Gaines West, attorney for Laura Day, also provided public comment.

#### Complaints Received as of October 9, 2020

##### 7. No. 20.46; Coker, Bobby Dean (Bode; Forensic Biology/DNA)

A complaint by defendant Bobby Dean Coker against Bode Technologies that makes broad allegations related to the forensic analysis of evidence post-conviction. The analysis was performed as part of HFSC's sexual assault kit backlog reduction efforts.

**MOTION AND VOTE:** *Kerrigan moved to dismiss the complaint for failure to assert any specific, credible allegations regarding the post-conviction DNA analysis in the criminal case. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

##### 8. No. 20.47; Crutcher, Trisha (Fort Worth Police Department Crime Laboratory/DNA)

A complaint by Ft. Worth Police Department Crime Laboratory ("FWPDCL") analyst Trisa Crutcher against FWPDCL alleging numerous violations of federal and state criminal laws, laboratory policies with respect to evidence analyzed by the DNA section, accreditation standards and corruption of laboratory personnel. Additionally, the complaint alleges retaliatory actions by laboratory management in response to reporting violations.

**MOTION AND VOTE:** *Barnard moved to investigate the complaint to determine if the reported violations are supported and to review laboratory management's response to analysts' concerns. Parsons seconded the motion. The Commission unanimously adopted the motion.*

**MOTION AND VOTE:** *Drake moved to form an investigative panel consisting of Commissioners Parsons, Budowle and Downing. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

#### **6. Discuss status of crime laboratory accreditation program, including:**

##### **a. Accreditation non-conformances and reports received since July 24, 2020 quarterly meeting;**

Staff and commissioners discussed accreditation non-conformances and reports received since the July 24, 2020 quarterly meeting. Kerrigan emphasized the need for better quality in corrective

action reports from some laboratories, including more detailed descriptions of quality incidents and corresponding corrective actions taken. Staff and commissioners discussed issuing guidance to laboratories on documenting non-conformances and other quality incidents for better clarity and uniformity in reporting, documenting and handling non-conformances in the laboratory. Staff will begin working with commissioners and the TACLD to develop a guidance document and accompanying training materials.

**b. Update on review of Expertox responses to cited nonconformances and renewal of accreditation;**

Members reviewed Expertox's list of nonconformances and corresponding responses from its most recent CAP on-site audit.

**c. Discuss the Commission's recognition of the College of American Pathologists (CAP) – Forensic Drug Testing program, including CAP's responses to the Commission's questions.**

Members reviewed responses to questions posed to CAP, a Commission-recognized accrediting body for the forensic toxicology discipline with regard to CAP's process for accreditation of crime laboratories.

**d. Address outstanding pipetting issue cited for Quality Forensic Toxicology.**

Members addressed the pipetting issue cited in QFT's last on-site audit by ANAB and discussed providing better clarity to laboratories on how to document non-conformances and corresponding corrective actions taken in response.

**7. Discuss licensing advisory committee update, including:**

**a. Update on licenses issued and renewed;**

Tomlin gave an update on the number of licenses issued, renewed and pending renewal. The Commission currently licenses 1,348 forensic analysts and technicians. Staff has renewed 176 licenses and expects to renew 509 more before December 31, 2020.

**b. Review outstanding licensing rules and proposed rule concepts for approval, including:**

**i. Rule addressing continuing education requirements for licensees upgrading their license at renewal;**

**MOTION AND VOTE:** *Kerrigan moved to adopt the rule addressing continuing education requirements for licensees upgrading their licenses at renewal. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

**ii. Rule addressing indefinite grace period for exemption from elevated coursework requirements for licensees with a gap in employment;**

**MOTION AND VOTE:** *Kerrigan moved to adopt the rule providing an indefinite grace period for exemption from elevated coursework requirements for licensees with a gap in employment. Budowle seconded the motion. The Commission unanimously adopted the motion.*

**iii. Rule addressing mitigating factors to consider in Commission disciplinary actions; and**

**MOTION AND VOTE:** *Budowle moved to adopted the rule addressing mitigating factors to consider in Commission disciplinary actions. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

**iv. Rule removing the laboratory license category “necessary to ensure the availability of timely forensic analyses in counties for which access to forensic analyses is limited.”**

**MOTION AND VOTE:** *Kerrigan moved to adopt the rule removing the laboratory license category “necessary to ensure the availability of timely forensic analyses in counties for which access to forensic analyses is limited.” Parsons seconded the motion. The Commission unanimously adopted the motion.*

**8. Update on development and launch of Mandatory Legal and Professional Responsibility Training.**

Garcia and Smith reported on the launch of the licensee Mandatory Legal and Professional Responsibility course developed in collaboration with Sam Houston State University. Commission staff discussed wider distribution of the course (to laboratory management and to attorneys). Staff will distribute instructions for course access to the Texas Association of Crime Laboratory Directors and to interested attorneys. Staff will request feedback from the attorneys taking the course and discuss possible wider distribution, possibly through the Texas District and County Attorneys Association and the Texas Criminal Defense Lawyers Association.

**9. Update on interlaboratory validation of qualitative method to distinguish hemp from marihuana.**

Kerrigan provided a PowerPoint presentation updating Commissioners on the completion of the interlaboratory validation of a qualitative method (with a quantitative decision point) for distinguishing hemp from marihuana. The participating laboratories included various DPS regional laboratories, Harris County Institute of Forensic Sciences, and Houston Forensic Science Center.

**10. Update regarding Collins, Robert (DPS Houston; Forensic Biology) complaint #19.04 investigative panel.**

Garcia provided a brief update on the issuance of a revised quality incident report by DPS in the matter. Staff and commissioners will review the revised documents submitted and develop a draft report for review and adoption at the Commission's January 29, 2021 quarterly meeting.

**11. Discuss and adopt final report from investigative panel regarding Signature Science (Forensic Biology/DNA) disclosure #20.13.**

Garcia and panel members Johnson, Daniel and Drake presented a draft final report addressing the matter.

**MIOTION AND VOTE:** *Kerrigan moved to adopt the report draft. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

**12. Update from investigative panel regarding DPS Austin (Materials (Trace)) disclosure #20.40.**

Garcia, Smith and panel members Buzzini, Daniel and Parsons provided an update on the investigation of the self-disclosure. Staff and the panel expect to interview supervisors and other individuals involved between now and the Commission's January 29, 2021 quarterly. Staff plans to prepare a draft final report for adoption at the Commission's January 29, 2021 quarterly meeting.

**13. Update on release of Quattrone Report regarding Austin Police Department DNA Lab and scheduling of special meeting to review report findings and recommendations.**

Garcia updated members on the recent publication of a report by the Quattrone Center for the Fair Administration of Justice regarding the Austin Police Department Forensic Services Division DNA Laboratory.

**MOTION AND VOTE:** *Parsons moved to instruct staff to schedule a publicly noticed Commission meeting between now and the Commission's January 29, 2021 quarterly meeting for purposes of discussing the APD DNA report findings and recommendations with Quattrone Center Executive Director John Hollway. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

**14. Discuss developments by the committee addressing follow-up initiatives for pediatric sexual assault examinations.**

Downing provided an update from the committee addressing follow-up initiatives for pediatric sexual assault examinations.

**15. Update from Crime Scene Working Group, including development of voluntary license requirements for crime scene reconstructionists and discussion of guidance document regarding the limitations of DNA analysis (especially mixtures) as a tool in scene reconstruction.**

Garcia and staff provided an update on the development of voluntary licensing requirements for crime scene reconstructionists. Garcia also discussed a guidance document being developed by the group and DNA experts in Texas to address the limitations of DNA analysis (especially mixtures) as a tool in crime scene reconstruction. The group will meet again before the Commission's January 29, 2021 quarterly meeting.

**16. Update from Texas Association of Crime Laboratory Directors, including an update on the collaborative work groups discussing implementation of OSAC Registry standards.**

Stout reported on the 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 should have another update at the January 29, 2021 meeting.

Garcia and commissioners discussed possibly hiring a project manager to manage the evaluation and implementation of OSAC standards for Texas crime laboratories. Garcia will discuss with OSAC and NIST whether NIST might assist with partial funding for such a position to help Texas manage the implementation of these standards.

**17. 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.

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

The Commission will meet for its next quarterly meeting January 29, 2021 (virtual via Zoom).

**19. Hear public comment.**

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

**20. Adjourn.**