

The Texas Forensic Science Commission met on October 7, 2022 at the Southwestern Institute of Forensic Sciences, 2355 North Stemmons Freeway, Dallas, Texas 75208.

**Members Present:** Dr. Jeffrey Barnard  
Dr. Patrick Buzzini  
Dr. Michael Coble  
Mr. Mark Daniel  
Dr. Nancy Downing  
Dr. Sarah Kerrigan  
Mr. Jarvis Parsons

**Members Absent:** Dr. Jasmine Drake, Dr. Bruce Budowle

**Staff Present:** Lynn Garcia, General Counsel  
Leigh Tomlin, Associate General Counsel  
Robert Smith, Senior Staff Attorney  
Kathryn Adams, Commission Coordinator  
Mark Smith, Forensic Project Coordinator

**During this meeting, the Commission considered and acted on the following items. The Commission took breaks as necessary.**

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

Barnard called the meeting to order at 9:00 a.m. Commissioners were present as indicated above.

**2. Moment of silence in memory of former Forensic Science Commission Presiding Officer Dr. Vincent Di Maio.**

Barnard gave remarks regarding Dr. DiMaio's career and contributions to the Commission, followed by a moment of silence.

**3. Announcement of Dr. Budowle's retirement due to residence requirement.**

Barnard announced Dr. Budowle's retirement from the University of North Texas Health Science Center/Center for Human Identification (UNTHSC/CHI). Because he has relocated out of state, he will not be reappointed by the Governor due to residency requirements. The Governor's office has not yet announced a new appointment.

**4. Review and adopt minutes from July 22, 2022 Forensic Science Commission Quarterly meeting.**

**MOTION AND VOTE:** *Kerrigan moved to adopt the meeting minutes drafts. Coble seconded the motion. The Commission unanimously adopted the motion.*

5. **Office administrative update (FY2023 first quarter budget status report; updates from conferences and trainings by staff, including September 1-2, 2022 Administrative Law Conference; launch of staff accreditation and licensing functions with Office of Court Administration IT).**

Garcia called members' attention to budget item for funds to allow some laboratory directors to attend the National Forensic Science Academy 3-tiered management training program. Kerrigan commented on the benefits of the program.

**MOTION AND VOTE:** *Kerrigan moved to adopt the budget as reflected in the meeting materials. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

Garcia explained that OCA's IT team has other major judicial branch projects to work on that are slowing their progress on TFSC's new database. An update will be provided at the January quarterly meeting.

6. **Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through September 16, 2022.**

**Disclosures Received as of September 16, 2022**

1. No. 22.35; Tarrant County Medical Examiner's Office (Seized Drugs)

**MOTION AND VOTE:** *Daniel moved to take no further action based on corrective actions taken by the laboratory. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

2. No. 22.39; Bode Technology (Forensic Biology/DNA)

**MOTION AND VOTE:** *Daniel moved to accept the disclosure for investigation. Downing seconded the motion. The Commission unanimously adopted the motion.*

A recommendation for an investigative committee including Coble, Parsons and Kerrigan was made.

**MOTION AND VOTE:** *Daniel moved to accept the members recommended for the investigative panel. Daniel seconded the motion. The Commission unanimously adopted the motion.*

3. No. 22.41; NMS Labs (Seized Drugs)

**MOTION AND VOTE:** *Daniel moved to take no further action based upon the laboratory's corrective actions and notification of affected parties. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

**Complaints Received as of September 16, 2022**

4. No. 22.37; Johnson, Otis (Southwestern Institute of Forensic Sciences; Firearms/Toolmarks)

**MOTION AND VOTE:** *Daniel moved to dismiss the complaint based upon the fact that allegations made were not consistent with the record. Parsons seconded the motion. The Commission unanimously adopted the motion.*

Barnard recused himself from voting on this matter.

5. No. 22.38; Comley, Derek (Armstrong Forensic Laboratory; Seized Drugs)

**MOTION AND VOTE:** *Kerrigan moved to dismiss the complaint for failure to state an allegation of negligence or misconduct relative to a forensic analysis. Daniel seconded the motion. The Commission unanimously adopted the motion.*

Parsons recused himself because the underlying criminal action is in Brazos County.

6. No. 22.40; Nix, Meda (Texas Department of Public Safety – Austin; Breath Alcohol)

**MOTION AND VOTE:** *Daniel moved to table the complaint pending completion of the DPS Inspector General’s internal investigation of the matter. Parsons seconded the motion. The Commission unanimously adopted the motion.*

**MOTION AND VOTE:** *Daniel moved to accept the administrative dismissal of three complaints by commission staff. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

7. **Discuss status of crime laboratory accreditation program, including accreditation activities, communications and reports received since July 22, 2022 quarterly meeting; discuss progress on incorporation of TFSC recommendations in ANAB assessment checklist and feedback from TAFQAM; status update on removal of recognition of CAP and SAMHSA.**

Tomlin gave an update on the crime laboratory accreditation program. There were eight accreditation-related events this quarter. Withdrawal of the Commission’s recognition of CAP and SAMHSA accreditation is effective on November 16, 2022. There are 5 laboratories affected by this. The Commission received no comments on the rulemaking.

Garcia related that progress on the development of a TFSC accreditation checklist will be detailed in connection with the Colone report to be discussed at Agenda Item 10. She reported that the Texas Association of Forensic Quality Assurance Managers is actively participating in this process.

8. **Discuss licensing advisory committee update, including:**
  - a. **Update on licenses issued and renewed;**
  - b. **Address reported licensing issues received since January 21, 2022 quarterly meeting;**
  - c. **Update on piloting of General Forensic Analyst Licensing Exam II and corresponding study material.**

Garcia and Tomlin gave an update on the current number of licenses and renewals to date. The Commission currently licenses over 1400 forensic analysts and technicians. Two hundred licenses were renewed this quarter so far and there are 600 more due for renewal between now and December.

Garcia described voluntary licensure paths for digital/multimedia and friction ridge disciplines.

Garcia emphasized the effort to incorporate individuals from diverse backgrounds to provide input into the voluntary licensing requirements.

Garcia presented recommendations from the Licensing Advisory Committee (LAC) pertaining to IAI (International Association for Identification) certification and OSAC (Organization for Scientific Area Committees) Registry standard adoption as threshold requirements.

**MOTION AND VOTE:** *Daniel moved to accept standards for voluntary licensure in digital/multimedia as proposed. Parsons seconded the motion. The Commission unanimously adopted the motion.*

**MOTION AND VOTE:** *Kerrigan moved to accept standards for voluntary licensure for friction ridge with the LAC's recommendation that IAI certification should not be required for applicants working at accredited labs. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

Tomlin gave an overview of contents of the psychometricians' Standard Setting Report in connection with exams administered by the Commission.

Garcia explained the LAC's discussion regarding a rule clarification for NIBIN entry, and a related recommendation regarding a limited exemption for test firing to determine NIBIN suitability and NIBIN entry.

**MOTION AND VOTE:** *Kerrigan moved to adopt the rulemaking exempting NIBIN suitability determinations and NIBIN entries from accreditation and licensing requirements. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

Garcia explained NMS's request for an exception for their de minimis licensees to be subject to the Commission's 2-hour online professional responsibility and legal disclosure continuing education course and to substitute NMS's in-house training instead. Kerrigan and Daniel expressed concern that granting an exception in this case would lead to other similar requests.

Barnard asked whether there was a motion to permit NMS to use the alternative in-house course. Commissioners made no motion.

**9. Update from investigative panel for self-disclosure #22.17 Fort Worth Police Department Crime Laboratory (Proficiency Testing; Reaccreditation Assessment by ANAB).**

Tomlin attended and observed the ANAB assessment. There were 9 non-conformities noted and 2 conforming with comments. Commission staff will have an update and final report ready for the January 2023 quarterly meeting.

**10. Discuss and approve final report from investigative panel for self-disclosure #22.18 Houston Forensic Science Center (Forensic Biology/DNA).**

Garcia presented a PowerPoint outlining facts of the underlying death penalty case, work background of the analyst involved, and facts concerning the analyst's subsequent trial testimony and post-conviction deposition.

The criminal case was assigned to the Office of Capital and Forensic Writs (OCFW) for post-conviction representation on a writ of habeas corpus. OCFW obtained the laboratory case files, reviewed the contents, and notified HFSC regarding their observations and concerns. HFSC reviewed the information and filed a self-disclosure, which was followed by a self-disclosure from DPS given that the analyst worked for DPS at the time the forensic biology screening was originally performed.

Garcia outlined the bases for findings of professional misconduct and professional negligence against the analyst. Recommendations resulting from the investigation of the case were discussed. The Commission plans an online CFE training about the findings and recommendations made in the case, including the trial court's *Brady* and Michael Morton Act-related findings.

Parsons pointed out prosecutor difficulties with inconsistency in fees charged for analyst's time to testify in court for work at a previous lab. Barnard mentioned challenges related to accounting for analyst time properly in accordance with local funding obligations. TACLD will discuss this issue and the accreditation checklist and report their suggestions to the Commission.

**MOTION AND VOTE:** *Kerrigan moved to accept the Final Report draft as written for the disclosure. Daniel seconded the motion. The Commission unanimously adopted the motion.*

**11. Update regarding ExperTox complaint #20.55 final investigative report and appeal.**

The Commission is working with the Attorney General's office on handling ExperTox's appeal to SOAH of the findings in this matter's final investigative report. ExperTox retained counsel who will meet with commission attorneys on October 17, 2022.

**12. Update regarding complaint #21.27 University of Colorado, National Innocence Project on behalf of Nanon Williams (Houston PD/Houston Forensic Science Center; Firearms/Toolmarks).**

Staff is still waiting for NIST to issue the final foundational scientific literature review on firearms. The material is due for completion before the end of the year, so staff should have a case update at the January 2023 quarterly meeting.

**13. Update from investigative panel for self-disclosure #21.72 Brazoria County Crime Laboratory (Toxicology).**

Staff will provide an update on the laboratory's progress at the January 2023 meeting.

**14. Update from investigative panel for complaint #22.16 Webster, Joseph (Ron Smith & Associates; Latent Prints).**

Staff hired Glenn Langenburg of Elite Forensic Services to advise on the case. Ron Smith asked to postpone his interview due to a significant medical issue. Staff will provide an update at the next meeting.

**15. Discuss current forensic development training and education projects, including DNA Training for lawyers in collaboration with Court of Criminal Appeals Judge Barbara Hervey; update on meeting with DNA labs regarding evaluation of profiles for exclusionary purposes that are deemed otherwise uninterpretable; discuss development of training regarding Commission reports released; update on OSAC implementation initiative under NIST grant to American Academy of Forensic Science; potential for sponsoring lab directors attendance at National Forensic Leadership Academy.**

Garcia introduced new staff member Mark Smith (formerly of the Center for American and International Law in Plano) and discussed various training projects he will facilitate including a DNA training for lawyers and judges in collaboration with CCA Judge Barbara Hervey; a meeting of DNA technical leaders regarding approaches to suitability evaluation for DNA mixture profiles; and remote training for forensic laboratory management and analysts regarding Commission-published reports, beginning with the Colone report.

Kerrigan reported on the implementation initiative under the NIST grant to AAFS to provide tools, training, and resources to the forensic community at no cost. Fact sheets (primarily for use by prosecutors, defense attorneys and judges) and checklists (primarily for use by operational labs) are in development; many are already on the AAFS website. Many laboratories provided input for the project. An additional 100 resources in each category will be developed in 2023.

**16. Update from the Texas Association of Crime Laboratory Directors.**

There was no update for this agenda item.

**17. Consider proposed agenda items for next quarterly meeting.**

There was no discussion of this agenda item.

**18. Schedule and location of future panel and quarterly meetings, including the January 27, 2023 and April 14, 2023 quarterly meetings.**

**19. Hear public comment.**

There was no public comment.

The Commission did not address any public comment other than that noted above.

**20. Adjourn.**

**MOTION AND VOTE:** *Parsons moved to adjourn the meeting. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*