



TEXAS FORENSIC SCIENCE COMMISSION

*1700 North Congress Ave., Suite 445
Austin, Texas 78701*

TEXAS FORENSIC SCIENCE COMMISSION INVESTIGATIVE PANEL **MEETING MINUTES**

Complaint 24.45 Thiessen, Mark (DPS Houston, Toxicology)

The Texas Forensic Science Commission (Commission) Investigative Panel met in person and by videoconference on September 5, 2025, at the Brazos County District Attorney's Office at 300 E. 26th Street, Suite 3200, Bryan, Texas 77803.

Panel Members Present: Jarvis Parsons, JD
Erika Ziemak, MS
Sarah Kerrigan, PhD
Jasmine Drake, PhD

The following members attended the meeting via Zoom video conference: Dr. Sarah Kerrigan and Dr. Jasmine Drake

Staff Present: Lynn Garcia, General Counsel
Leigh Tomlin, Associate General Counsel
Robert Smith, Senior Staff Attorney
Chelsea Estes, Commission Coordinator

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

1. Discuss the allegations and evidence related to Complaint 24.45, including interviews.

Garcia gave an introduction of the agenda and roadmap for the meeting. Smith outlined the complaint history in a PowerPoint presentation to panel members. The subject analyst is a licensed interpretive toxicologist (the highest level of toxicology licensure by the Texas Forensic Science Commission (Commission)). The analyst is currently employed at the Department of Public Safety – Houston (DPS). The analyst's license expires May 31, 2026.

On November 6, 2024, defense attorney Mark Thiessen filed a complaint on behalf of a group of defense attorneys who represent defendants in Harris and surrounding counties. The complaint alleges the analyst committed professional negligence and/or professional misconduct and/or violated the Texas Code of Professional Responsibility in connection with the analyst's disclosure responsibilities and testimony in three different criminal cases. The complaint, more specifically, alleges the analyst withheld information from the defense, exhibited bias against defense and defense expert, testified beyond the scope of



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his expertise, relied on data despite having concerns about the data, and testified untruthfully leaving a false impression with the jury.

The investigative panel and staff interviewed the subject analyst on May 5, 2025 and August 13, 2025, the complainant on June 25, 2025 and defense expert Amanda Culbertson, on June 20, 2025.

Smith explained that the first key concern in the complaint is the analyst's failure to disclose two pending (in the process of being investigated) quality incidents (QIs) when the analyst testified at the *State v. Momin* trial on August 29, 2024. The quality incidents covered two issues: 1) failure to reseal evidence in December 2023; and 2) two cases where the analyst failed to notice swapped defendant information and the swapped defendant information was caught before reports were released.

The complaint cites training on *Brady* and the Michael Morton Act and the Professional Code of Responsibility that include examples of pending investigations and completed corrective actions. The complaint alleges this shows the analyst was trained and that he should have disclosed. The Commission's Mandatory Legal and Professional Responsibility training video (which the analyst took) gives examples that describe real court cases across the United States to illustrate the scope and depth of disclosure obligations under state and federal law. The specific examples cited by the complaint, however, do not encompass analyst responsibilities in the case of pending QI's like those at issue in this case.

The second key concern cites issues related to the analyst's communication and testimony. Specifically, in an email to a prosecutor asking "are there any bad facts you know of we need to address," the analyst replied, "I have other QI's that are currently being processed that occurred in the beginning of 2024, he [the defense attorney] *should not be aware of these* as they were not complete and finalized yet, so they *should not be brought up yet*...Again, these QI's are not finalized so they shouldn't have a record of them yet, but it's wise for you to be aware of them."

The complaint alleges the email response demonstrates the analyst's intent to keep the defense from knowing the information regarding the pending QI's. The complaint further alleges that the analyst's testimony related to the pending QI's supports the allegation that the analyst attempted to hide the pending QIs from the defense.

Specifically, the complainant cites that, in the analyst's testimony in one case, the analyst stated, "the things I was *hiding* I believe were two quality incidents that I had disclosed to the prosecutor..." In another case, during testimony, defense counsel asked the analyst if he would send defense counsel a copy of an email the analyst sent to the prosecutor about



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the defense's expert, Amanda Culbertson (Culbertson). The analyst refused to provide the email in that instance. The defense counsel asked him if he was taking it upon himself to advocate for the State against another witness, another scientist. The analyst replied, "it would appear that way" in his testimony.

The investigative panel must decide whether a professional negligence or misconduct finding against the analyst is warranted, as well assess possible violations of the Code of Professional Responsibility.

2. Discuss the response by and interview of the analyst, Zachary Augustyn.

Smith shared that the Commission notified the analyst of the complaint on November 22, 2024. The analyst filed a written response on December 27, 2024. Panel members and staff interviewed the analyst on May 5, 2025, and August 13, 2025.

The analyst maintained his understanding is that "QI's that are in progress are not routinely provided in discovery." This is because "they are not finalized, and additional information may be entered." He believed that to do so would be to give out an "inaccurate" or "incomplete" QI. The analyst expressed his understanding that pending QIs are only disclosed if the QI involves the case on trial and that his belief comes from DPS's standard operating procedures.

With regard to bias attributed to the analyst's email correspondence with the prosecutor, the analyst stated his response that "he should not be aware of them" was a poor choice of words, and that he should have clarified (his belief) that the QI's are still pending review; so, no party would be aware of them until finalized. He explained he understood why the pending QI's may be information subject to disclosure. He further added that, during the testimony related to the QI's and correspondence with the prosecutor, he heard the bench conference comments by defense counsel assert that the analyst was "hiding" information and that he used the same terminology in his response. The analyst explained he understands why his response is a problem and asserts he would never intentionally withhold information he knew needed to be disclosed from either party.

With regard to the analyst's comments about the defense attorney's expert Culbertson, the analyst explained the email about Culbertson involved her anticipated testimony regarding area counts for internal standards that the laboratory uses to quantify ethanol and information about the concept baseline drift. He explained he was trying to articulate the scientific reasons her arguments were flawed.

3. Review ruling from the post-complaint motion for new trial hearing in State v. Momin, Cause No. 22-CCR-230111 (Fort Bend County)



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The analyst testified in the trial *State v. Momin* trial on August 29, 2024. Smith explained the analyst disclosed all completed QIs, but the pending QIs were not disclosed to the State or the defense. The defense learned the pending QIs were not disclosed after the trial and filed a Motion for New Trial (MNT). The court held the MNT hearing after this complaint was filed, and the analyst and DPS management testified at the hearing. On November 12, 2024, the trial court granted the MNT. The court ultimately found that the timely disclosure of the pending investigations may have been used by the defense in mitigation or exculpation or considered by the court in consideration of the requested suppression of evidence.

4. Discuss current Texas Department of Public Safety policy regarding quality incident disclosure, including for pending quality matters in the laboratory

Garcia explained DPS's current policy provides an employee's disclosure form must include founded or sustained disciplinary actions, complaints, allegations of misconduct, violations of department policy, or falsification of governmental records. These forms also include resolved QIs and corrective actions that are determined to be significant quality events. The DPS policy does not expressly address pending QIs where significance has not yet been assessed. QIs are posted on a public website once completed.

5. Discuss observations and recommendations for the Commission's Final Report for Complaint 24.45, including possible accreditation checklist items.

Members discussed that the analyst's interpretation of DPS policy in effect at the time was not unreasonable. If DPS expected the analyst to disclose all pending QIs, DPS did not effectively communicate this expectation to staff.

Members concluded that, notwithstanding DPS's policy, in order to mitigate risk, DPS and other laboratories should consider revising standard operating procedures to include a mechanism for alerting parties to the existence of pending QIs. The investigative panel recommends the logistics of the requirement be discussed with the Texas Association of Forensic Quality Assurance Managers.

The committee reviewed the Commission's definitions of professional misconduct and professional negligence found in Texas Administrative Code Section 651.302 (7), (8), and (10). Given the totality of the information and the plain language of DPS's policy related to pending QI's, the panel did not recommend a finding of professional negligence or misconduct for the analyst's failure to disclose the unrelated pending QI in the *Momin* case.



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With regard to the complaints regarding the analyst's communication and testimony cited in the complaint, the panel found several violations of the Code of Professional Responsibility. The panel recommended a reprimand of the analyst's license due to the nature and number of concerns under the Code of Professional Responsibility and due to the rehabilitative efforts already undertaken by the analyst and by DPS.

The panel further recommended DPS and other accredited laboratories in Texas evaluate the risk involved in not disclosing pending QIs related to the work of a testifying forensic analyst and adjust existing policies accordingly. Further, DPS should take this opportunity to revisit and update its toxicology training program as needed to ensure analysts understand and are able to accurately convey key technical issues. Quality assurance personnel should take the Mandatory Legal and Professional Responsibility training even if they are not licensed. Finally, the panel recommended all laboratories must have a written disclosure compliance policy that includes a statement regarding how the laboratory handles pending quality matters and should seek input from the Texas Association of Forensic Quality Assurance Managers on implementation and timing.

MOTION: Parsons moved to instruct staff to draft a final investigative report that incorporates all the recommendations discussed by the investigative panel during the meeting. Drake seconded the motion. The panel unanimously adopted the motion.

Panel members will present the findings and recommendations discussed today at the Commission's October 24, 2025 quarterly meeting in the form of a draft final investigative report.

6. Public comments.

Several members of the public provided comments during discussion of the complaint, particularly in offering comments on what the laboratory's policy should be related to disclosure of pending QI's, including the following people: Brady Mills, DPS Deputy Director of the Crime Laboratory Division, Heather Greco, DPS Crime Laboratory Division Quality Manager, Andrew Gardiner DPS, Dawn Boswell, Center for Human Identification, Angelica Cogliano, Defense Attorney, Adam Poole, Assistant District Attorney Galveston, Erika Ziemak, Center for Human Identification.

7. Schedule additional meeting, if necessary.

The panel did not schedule another meeting other than the Commission's October 24, 2025 quarterly meeting.

8. Adjourn