

**Texas Forensic Science Commission
Minutes from July 23rd, 2010 Meeting in Houston, Texas**

The Texas Forensic Science Commission met at 9:30 a.m. on Friday, July 23rd, 2010, at the Doubletree IAH, 15747 JFK Boulevard, in Houston, TX. Members of the Commission were present as follows:

Members Present: Bradley, Kerrigan, Peerwani, Farley, Adams, Hampton, Hamilton, Evans

Members Absent: Eisenberg

Staff Present: Leigh Tomlin, Commission Coordinator

Invited Speakers: Pat Johnson, DPS

Adoption of minutes

Texas Forensic Science Commission April 23rd, 2010 meeting minutes

MOTION AND VOTE: *Kerrigan moved for approval of the minutes from the April 23rd, 2010 meeting. Adams seconded the motion. The FSC unanimously approved the minutes.*

Discuss FSC organizational structure and alternatives for administrative support

Commission members discussed potential alternatives for administrative support and expressed concerns over independence and integrity of FSC work without sufficient support staff. At the October 15, 2010 meeting, the FSC will invite representatives from potential alternative agencies to offer comments on the issue. The Legislative Development Committee plans to coordinate the investigation of potential alternatives.

Update on creation of General Counsel position

Members discussed status of hiring GC for FSC as a consultant rather than as employee of SHSU. GC for SHSU opposes creation of employee position.

MOTION AND VOTE: *Adams moved to approve General Counsel documents (including an RFP and Finding of Fact Memo) drafted by Coordinator Tomlin. Kerrigan seconded the motion. The FSC unanimously approved the motion.*

Presentation of jurisdictional memorandum

Members moved into a closed session at approximately 10:45 a.m., pursuant to the Texas Open Meetings Act, concerning the TFSC jurisdictional memorandum, to receive legal advice from its attorney under section 551.071 of the Open Meetings Act. Members returned from the closed session at approximately 11:14 a.m.

MOTION AND VOTE: *Evans moved that the FSC not formally adopt any particular memo, leaving the jurisdictional memorandum and the various other letters and memos submitted by other offices and individuals available for review and consideration by FSC members, as appropriate, and continuing to review each case individually, applying a consistent standard. Adams seconded the motion. The FSC unanimously approved the motion.*

Presentation and discussion of DPS lab accreditation process

Pat Johnson presented FSC members with information on the DPS accreditation process, including an explanation of DPS rule-making authority. He explained how the rules recognize and exclude certain disciplines for accreditation. The presentation may assist the FSC in future cases because the definition of forensic analysis used by DPS mirrors the definition provided by statute for FSC.

Discuss and consider form for final disposition of complaints

MOTION AND VOTE: *Evans moved to adopt a complaint disposition form as drafted by Coordinator Tomlin. Hamilton seconded the motion. The FSC unanimously approved the motion.*

Discuss and consider recommendations from Complaint Screening Committee

MOTIONS AND VOTES:

Complaint No. 09-15: *Peerwani moved that the complaint be abated in light of pending litigation and a letter be sent to complainant. Evans moved to approve the recommendation. Hamilton seconded the motion. The FSC unanimously approved the recommendation.*

Complaint No. 09-19: *Evans moved to abate any decision on whether or not to accept the case until such time as the pending post conviction writ is completed. Peerwani seconded the motion. The FSC unanimously approved the motion.*

Complaint No. 10-21: *Hamilton moved to dismiss the complaint as it falls outside of the jurisdiction of the FSC, in accordance with FSC policies and procedures §3.0(c)(1) and under 37 TAC Ch. 28.146, which expressly excludes any question pertaining to the determination in an autopsy or analysis performed by a medical examiner from the jurisdiction of the FSC. Adams seconded the motion. The FSC unanimously approved the motion.*

Complaint No. 09-08: *Peerwani moved to reaffirm FSC's original action, dismissing this complaint. Bradley seconded the motion. The FSC unanimously approved the motion.*

Discuss and consider recommendations from investigation panel for complaint #09-01 (Willingham/Willis)

FSC members discussed the preliminary conclusion that arson experts in this case conducted their examinations in accordance with the standard of practice that was available at the time of the examination and trial. Members focused on the conclusion, as indicated in the expert's report (Beyler), that the NFPA 921 standard of practice was not adopted until well after the examination and trial in 1992. FSC members tentatively concluded that the arson experts did not commit professional negligence or misconduct by following the standard of practice as it existed at that time.

MOTIONS AND VOTES:

Kerrigan moved that a final report be drafted while seeking additional comment from several experts on the tentative conclusion. Bradley seconded the motion. The FSC unanimously approved the motion.

Kerrigan moved to set a deadline for comments approximately three weeks from July 23rd, 2010, and consider those comments at a full FSC meeting prior to the next scheduled quarterly meeting on October 15th, 2010. Farley seconded the motion. The FSC unanimously approved the motion.

The Commission Coordinator will schedule a full FSC meeting for review of the report for this complaint sometime before the next quarterly meeting.

Discuss and consider recommendations from investigation panel for complaint #09-02 (Moon)

FSC members discussed soliciting opinions in this case from 4-5 serologists on the following question: Should a well-trained serologist (at the time of the analysis) have known or been suspect of the results of the serology test in this case? The panel proposed the following preliminary finding pursuant to the FSC policies and procedures §3.0(c)(3): the finding of clear and convincing negligence and/or misconduct on behalf of the serologist by failing to notice when he obtained the results (or non-results), and that he should have been suspect of those results given the case information.

MOTION AND VOTE: *Bradley moved to approve the proposed recommendation and findings of the Moon investigative panel and the solicitation of the experts' opinions. Farley seconded the motion. The FSC unanimously approved the motion.*

Discuss and adopt standard form for report

MOTION AND VOTE: *Hampton moved to adopt a form for FSC final reports, leaving flexibility to alter the form on a case by case basis. Kerrigan seconded the motion. The FSC unanimously approved the motion.*

Discuss and consider amendment to policies and procedures for anonymous complaints

FSC members discussed accepting anonymous complaints, providing that they draft a disclaimer to anonymous complainants. Counsel for AG, Barbara Deane and Coordinator Tomlin will draft language to be included on anonymous complaint forms and to amend policies and procedures.

MOTION AND VOTE: *Bradley moved to strike the following from section 3.0 of the policies and procedures: “any complaint must be identified by name and provide all contact information specified in the complaint form”. By deleting the language, the FSC is allowing, although discouraging, anonymous complaints. Hamilton seconded the motion. The FSC unanimously approved the motion.*

Discuss and consider amendment to policies and procedures for communications

MOTION AND VOTE: *Peerwani moved to approve the communications amendment to policies and procedures, as edited by FSC. Hampton seconded the motion. The FSC unanimously approved the motion.*

Discuss and consider records retention policy

MOTION AND VOTE: *Adams moved to delegate authority to Coordinator Tomlin to move forward on the development of a records retention policy as an amendment to Sam Houston State University’s records retention schedule. Hamilton seconded the motion. The FSC unanimously approved the motion.*

Update and recommendations from the Forensic Development Committee

Kerrigan provided an update on Forensic Development Committee activities. FSC members discussed plans to develop roundtable discussions and participate in forensic training initiatives.

MOTION AND VOTE: *Peerwani moved to approve the direction of the Forensic Development Committee as listed in their recommendations presented at the meeting. Adams seconded the motion. The FSC unanimously approved the motion*

Update and recommendations from the Legislative Development Committee

Evans provided an update on the Legislative Development Committee activities since the last quarterly meeting. The Committee continues to work with SHSU in

the development of budget proposals. The Committee plans to seek information on alternative administrative supporting agencies for the FSC and to work on any development for clarification of the FSC enabling statute.

MOTION AND VOTE: *Bradley moved to delegate authority to Evans to develop the next legislative budget request. Hampton seconded the motion. The FSC unanimously approved the motion.*

Reclassification of commission coordinator position

MOTION AND VOTE: *Kerrigan moved to approve the reclassification and salary change for the Commission Coordinator position. Hamilton seconded the motion. The FSC unanimously approved the motion.*

Consider proposed agenda items for October 15th meeting

Kerrigan discussed recommendations for changes to website and news information published on the website for discussion at the next meeting.

MOTION AND VOTE: *Bradley moved to add clear language to the Moon and Willingham panel recommendations documents that they are drafts only and not final conclusions made by the panel. Evans seconded the motion. The FSC unanimously approved the motion.*

Members discussed making the legislative budget an ongoing agenda item.

Hear public comments

Public comments were presented by:

Charles Cupp
Patricia Cox
Barry Scheck
Tim Fallon

Schedule and location of future meetings

MOTION AND VOTE: *Adams moved to approve the dates of 1/21/2011, 4/15/2011, and 7/15/2011 as future, quarterly meetings. Peerwani seconded the motion. The FSC unanimously approved the motion.*

The meeting adjourned at approximately 4:06 p.m.

Leigh Tomlin, Commission Coordinator