

**Texas Forensic Science Commission
Minutes from January 25, 2013 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 8:30 a.m. on Friday, January 25, 2013, at the Doubletree Hilton Austin University Area, 1617 North IH-35, Austin, Texas 78702.

Members of the Commission were present as follows:

Members Present: Hampton, Kerrigan, Eisenberg, Alpert, Di Maio, Barnard, Hutson, Peerwani

Members Absent: Lerma

Staff Present: Lynn Garcia, FSC General Counsel
Leigh Tomlin, Commission Coordinator

Review and adopt minutes from 10/05/12 FSC Meeting.

MOTION AND VOTE: *Eisenberg moved to adopt the meeting minutes draft. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Office administrative update

Staff briefly discussed the FY13 budget status, office purchases, network infrastructure, and a case status report sent to the Governor's office.

Update on distribution of Tarrant County Disclosure and Austin Police Department controlled substance investigative reports and progress on recommendations.

Garcia provided brief updates on the finalization and distribution of the two investigative reports.

Garcia discussed ASCLD-LAB's decision to extend Legacy accreditation of the El Paso Police Department crime laboratory, as the laboratory is now managed as a satellite office of Integrated Forensic Laboratories.

Discuss and consider recommendations from Complaint Screening Committee concerning complaints and self-disclosures received since last FSC meeting.

1. Yoakum (TCME – Toxicology) - #12-11

MOTION AND VOTE: *Alpert moved to dismiss the complaint because it falls outside the FSC's jurisdiction, because the DNA analysis in question occurred on June 20, 2005, prior to the FSC statute's effective date. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

2. Hines (DPS – Austin – DNA) - #12-12

MOTION AND VOTE: *Alpert moved to dismiss the complaint because it falls outside the FSC's jurisdiction, because the DNA analysis in question occurred in August 2004, prior to the FSC statute's effective date. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

3. Ketchum (DNA Diagnostics, Inc.) - #12-13

Complaint Screening Committee Chairman Eisenberg, as a courtesy to the Texas Attorney General's Office, contacted Dr. Ketchum to request she return the evidence in this case. The evidence was returned and the issue resolved. The Commission did not deliberate further on the matter.

4. Desormeaux (DPS – Houston – DNA) - #12-09

The FSC discussed requesting information from agencies that performed DNA testing in the case, including DPS, Orchid Cellmark and the Jefferson County Crime Laboratory. The following information will be requested from each agency:

1. Copies of any reports and/or case files (including copies of electropherograms) DPS may have related to laboratory case number L2H-188242 indicated in the complaint form.
2. Copies of the DNA Section procedural manual and interpretation guidelines for analysis of mixtures at the time case L2H-188242 was analyzed.
3. Copies of the validation work performed, including the underlying data/statistical analysis used in formulating the interpretation guidelines.

The Commission has not yet decided whether to accept the complaint, but would like to review this information before making its decision.

Texoma Medical Center (Sexual Assault Nurse Examiner Kit) Complaint #12-08 update.

Garcia provided Commission members with an update on complaint #12-08. The complaint was forwarded to the Texas Board of Nursing. A response was received from the Texas Board of Nursing indicating they have initiated a preliminary investigation into the complaint. The letter from the Texas Board of Nursing was subsequently mailed to the complainant. No further action was necessary in the matter.

Report from DPS – Houston Investigative Panel; Complaint #12-06

Kerrigan provided a background and progress report, including information on additional material reviewed by the Commission since its last meeting and a report from a January 8, 2013 site visit to the laboratory where Garcia and Kerrigan interviewed key laboratory staff members and management.

Garcia updated members on the defendant notification model developed in response to the complaint in collaboration with the Texas Commission on Indigent Defense, the Innocence Project of Texas, and the Houston Public Defender's Office. Garcia also reported on collaborative efforts with the Texas District and County Attorneys' Association, the Harris County District Attorney's office and the Montgomery County District Attorney's office, as well as communications with the Galveston County District Attorney's office and attempts at outreach to the district attorneys in the remaining 33 counties affected. Finally, Garcia reported on efforts undertaken in cooperation with the Office of Court Administration to provide information and model notice letters to affected judges.

Skylor Hearn, Assistant Director of Law Enforcement Support for DPS; Keith Gibson, crime lab manager at DPS Houston; and Severo Lopez, the controlled substance section manager at DPS Houston, added comments to the discussion with commission members. Nick Vilbas and Scott Henson from the Innocence Project of Texas also added brief comments during the discussion.

MOTION AND VOTE: *Kerrigan moved to find the laboratory employee that is the subject of the complaint, Jonathon Salvador, committed professional misconduct. Alpert seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Kerrigan moved to instruct staff to draft a report with the content discussing the following points and recommendations:*

- 1. Full discussion of performance issues with Salvador, including a full description of the old evaluation system and the new evaluation system DPS has implemented.*
- 2. Suggest laboratories think about methods such as the use of policies and procedures that might help minimize the chance of these types of events from occurring. Ways to minimize someone's attempt to substitute samples for example.*
- 3. Discussion on the supervision and evaluation process at DPS.*
- 4. Make evaluation system recommendation, including proactive evaluation system and consequences for underperformance.*
- 5. Discussion of the openness and complete cooperation of DPS – Houston Laboratory.*
- 6. Endorse and encourage continued self-disclosure to the FSC.*
- 7. Point out staff deficiencies/needs.*
- 8. Development component – how much is it costing that state as opposed to having appropriate amount of staff in laboratories?*
- 9. Recommend regular status updates, including collection of a monthly re-testing update from the laboratory.*
- 10. Include future addendum reporting on final outcome of re-testing.*

Eisenberg seconded the motion. The FSC unanimously adopted the motion.

Staff will prepare and finalize a report for review, deliberation and a vote at the FSC's April 5, 2013 meeting.

Forensic Development Committee Update

Members discussed the following action items from the committee:

1. Complete survey for laboratory directors re: certification and research.
2. Set up Texas Technical Advisory Groups specific to certain forensic disciplines, starting with toxicology and controlled substance. Ask for input from Texas Association of Crime Lab Directors.
3. Conduct cost-benefit analysis behind properly staffing and funding crime laboratories in Texas (Eisenberg in collaboration with UT Arlington).
4. Find out the cost to accredit all disciplines and certify all examiners.
5. Attendance at AAFS annual conference.
6. Proceed in co-hosting a forensic science seminar and/or roundtables with Texas Criminal Justice Integrity Unit.
7. Plan conference/boot camp for Texas Laboratory Directors, focused on effective lab management.

Update on arson case review

Nick Vilbas presented an update on the arson case review being conducted by the Innocence Project of Texas in collaboration with State Fire Marshal Chris Connealy. Vilbas explained IPOT will have a full case list of those that will be presented to the Fire Marshal for review by the end of May 2013. Vilbas forecasted 6-8 cases will go to the scientific advisory workgroup.

Chris Connealy, Texas State Fire Marshal, also provided comments related to the arson case discussion, updating members on activities organized by the Texas State Fire Marshal's office to develop the education of fire investigators throughout the state and conduct retroactive reviews of casework.

Legislative Discussion

Garcia addressed the commission on potential legislation that may be filed affecting the FSC's jurisdiction, particularly bills by Senator Hinojosa (D-McAllen) and Senator Carona (R-Dallas).

Consider any amendments to the policies and procedures

None discussed.

Consider proposed agenda items for next quarterly meeting

Staff will include any items discussed at today's meeting and any additional items suggested by commission members.

Schedule and location of future meetings

The FSC will meet for their next quarterly meeting, April 5, 2013 in Austin, Texas. Staff will make best efforts to hold the meeting at the Omni Southpark.

Hear public comment

Irma Rios, City of Houston Crime Laboratory Director

Adjourn