

**Texas Forensic Science Commission
Minutes from October 22, 2021, Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 9:00 a.m. on October 22, 2021, at the Stephen F. Austin Building, 1700 North Congress Avenue, Suite 170, Austin, Texas.

Members of the Commission were present as follows:

Members Present: Jeffrey Barnard
Bruce Budowle
Patrick Buzzini
Michael Coble
Mark Daniel
Jarvis Parsons

Members Absent: Nancy Downing
Jasmine Drake
Sarah Kerrigan

Staff Present: Lynn Garcia, General Counsel
Leigh Tomlin, Associate General Counsel
Robert Smith, Senior Staff Attorney
Kathryn Adams, Commission Coordinator
Maggie Sowatzka, Program Specialist

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

1. Call meeting to order. Roll call for members. (Barnard)

Barnard called the meeting to order. Commissioners were present as indicated above.

2. Review and adopt minutes from July 16, 2021, Forensic Science Commission Quarterly meeting and July 15, 2021, Forensic Science Commission Complaint Screening Committee meeting. (Barnard)

MOTION AND VOTE: Daniel moved to adopt the meeting minutes drafts. Parsons seconded the motion. The Commission unanimously adopted the motion.

3. Office administrative update (FY2022 budget status report; updates from September 2021 Administrative Law Conference; update on database project with Office of Court Administration IT). (Garcia/Tomlin)

Garcia gave an update on the budget. Travel has been reintroduced to the budget and the Commission hired a new staff member, Maggie Sowatzka. Sowatzka introduced herself. Tomlin

gave a brief update from her attendance at the Attorney General's Office Administrative Law conference September 9-10, 2021. Garcia and Tomlin updated members on the status of the Commission's database currently in development by the Office of Court Administration's IT department. Components will include searchable databases for accredited laboratories, licensed analysts, complaints, self-disclosures, and information about OSAC standards implemented by Texas-accredited laboratories. Staff expects to launch the database in staggered segments and hopes to have the first segment of the project launched before the end of the year.

4. Update from investigative panel regarding NMS (Seized Drugs) self-disclosure #21.41. (Buzzini, Drake, Kerrigan, Parsons)

Garcia and the investigative panel gave an update. Members of the panel discussed the panel's progress in the investigation and noted NMS has been very helpful in providing all requested information. Garcia explained that Dr. Barry Logan, Senior Vice President of Forensic Sciences and Chief Scientist at NMS Labs, will provide an updated root cause analysis addressing the remaining validation issues identified by the panel in the next month. The panel expects the matter will conclude with a final report adopted at the Commission's next quarterly meeting on January 22, 2022.

5. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through October 1, 2021. (Daniel)

Disclosures Received as of October 1, 2021

1. No. 21.21; Houston Forensic Science Center (Crime Scene Investigation Unit)

A self-disclosure by the Houston Forensic Science Center reporting an incident in its Crime Scene Unit where staff released two vehicles from separate cases to the vehicle owners before processing them for potential evidence collection.

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

2. No. 21.40; Corpus Christi Police Department (Serial Number Restoration)

A self-disclosure by the Corpus Christi Police Department Crime Laboratory reporting a firearms analyst's unsatisfactory serial number restoration proficiency test and temporary suspension from casework.

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

3. No. 21.44; Jefferson County Regional Crime Laboratory (Forensic Biology Screening)

A self-disclosure by the Jefferson County Regional Crime Laboratory in its Forensic Biology section where, on a proficiency test, an analyst reported “inconclusive” for a sample that had no semen present, failed to follow the appropriate verification procedure, and provided a statement in the comments section of her report that implied a positive identification while reporting an “inconclusive” conclusion.

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

4. No. 21.47; Department of Public Safety El Paso (Forensic Biology/DNA)

A self-disclosure by the Department of Public Safety - El Paso reporting an incident in its Forensic Biology section where a freezer containing DNA evidence that must maintain a temperature below 0 degrees Celsius reached a temperature reading of 48 degrees Celsius.

Heather Greco, Department of Public Safety Crime Laboratory System Quality Manager, addressed the Commission to explain that a DPS freezer in El Paso needed to stay below 0 degrees Celsius but spiked up to 48 degrees Celsius. A number of items of DNA evidence affecting about 807 cases were stored in the freezer. The analysis of the items had already been completed. The laboratory contacted a freezer repair technician who explained the freezer is meant to be kept in a temperature-controlled facility, but DPS stored the freezer in a warehouse that was not temperature-controlled. DPS moved the freezer to a temperature-controlled location. Additionally, analysts are performing regular temperature checks and the laboratory is implementing a digital temperature monitoring system.

Budowle emphasized the need for staff-wide training across all employees/all departments on general concepts like appropriate freezer temperatures.

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

5. No. 21.49; Fort Worth Police Department Crime Laboratory (Forensic Biology/DNA)

A self-disclosure and supplemental self-disclosure by the Fort Worth Police Department Crime Laboratory reporting an incident in its Forensic Biology section where the forensic biology section supervisor reported to quality management that the laboratory hired an analyst who provided false information regarding her coursework qualifications on her application for employment. The initial disclosure indicated the false entry on the application was known to management at the time of employment offer, but the supplemental disclosure indicates that management did not realize she made a false entry until months after the job interview.

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

MOTION AND VOTE: *Daniel moved to establish an investigative panel consisting of members Barnard, Parsons, and Kerrigan. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

6. No. 21.50; Harris County Institute of Forensic Science (Materials (Trace): Paint Analysis)

A self-disclosure by the Harris County Institute of Forensic Science reporting an incident in its Materials (Trace) unit where an analyst performed unsatisfactorily on an automotive paint proficiency test based on discrepancies between the analyst's conclusions and the results released by the test manufacturer.

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

7. No. 21.52; Harris County Institute of Forensic Science (Seized Drugs)

A self-disclosure by the Harris County Institute of Forensic Science reporting an incident in its Seized Drugs section where, during a review of balance quality check criteria, the laboratory discovered the values entered for line 3 of its uncertainty of measurement (UM) budget sheets for some of the balances were not consistent with the values established in its standard operating procedure.

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

8. No. 21.53; Houston Forensic Science Center (Forensic Biology/DNA)

A self-disclosure by the Houston Forensic Science Center reporting an incident in the laboratory's Forensic Biology/DNA section where, during an evidence audit, the laboratory discovered missing buccal swabs that the laboratory's electronic chain of custody indicated were in the vault. The laboratory did not address the missing evidentiary items until January 2021, even though the laboratory's case management team determined they were missing during a March 2020 audit.

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

Complaints Received as of October 1, 2021

9. No. 21.27; University of Colorado Law School (Houston Police Department Crime Laboratory; Firearms/Toolmarks)

A complaint filed by the University of Colorado Boulder School of Law Criminal Defense Clinic and the National Innocence Project, on behalf of convicted capital murder defendant Nanon Williams, alleging an analyst at the former Houston Police Department Crime Laboratory misidentified the caliber of a fired projectile recovered from the victim at autopsy and testified to the erroneous identification at the defendant's trial.

Peter Stout, CEO and Director of the Houston Forensic Science Center, shared a presentation detailing the laboratory's blind quality testing program that includes blind verification of firearms testing.

Tanya Brief from the strategic litigation department at the Innocence Project, addressed the commission about the importance of the accuracy of the firearm and tool mark examination discipline. She urged the Commission to investigate the complaint.

MOTION AND VOTE: *Daniel moved to accept the complaint for investigation for purposes of observations regarding the integrity and reliability of the forensic analysis conducted and to identify best practices and other recommendations related to the field of firearm and toolmark examination to ensure the reliability of tool mark examination and to identify best practices moving forward. Parsons seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Daniel moved to refer the matter to the Office of Capital and Forensic Writs. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Parsons moved to establish an investigative panel consisting of members Budowle, Daniel, and Buzzini and to approve seeking consultant expertise on the matter. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

10. No. 21.45; Fuller, Lawrence (Southwestern Institute of Forensic Sciences; Firearms/Toolmarks)

A complaint filed by defendant Lawrence Fuller alleging his conviction for aggravated robbery is based on insufficient evidence due to the laboratory "permitting the district attorney" to use what the laboratory found to be a non-functional .22 caliber pistol to assert the charges against him.

MOTION AND VOTE: *Daniel moved to dismiss the complaint and refer it to the Dallas County Conviction Integrity Unit because the question of whether the evidence is legally sufficient to support a conviction of aggravated robbery in light of the conclusion that the firearm was non-functional is a legal question for the court system. Parsons seconded the motion. The Commission unanimously adopted the motion.*

*Barnard recused from discussion and vote on this agenda item.

11. 21.46; Lewis, Damon Earl (Kim Bassinger; Sexual Assault Nurse Examination)

A complaint filed by defendant Damon Lewis alleging false and incorrect testimony by a SANE at his child sexual abuse trial.

MOTION AND VOTE: *Daniel moved to accept the complaint for investigation for the purposes of issuing observations regarding the integrity and reliability of the forensic analysis and best practice guidelines in the area of pediatric sexual assault nurse examination. Budowle seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Daniel moved to refer the matter to Office of Capital and Forensic Writs. Parsons seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Barnard moved to create an investigative panel consisting of members Downing, Drake, and Parsons. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

12. No. 21.54; Smiley, James (Austin Police Department Crime Laboratory/Signature Science; Forensic Biology/DNA)

A complaint by defendant James Smiley alleging wrongful conviction due to information withheld by the prosecution, an unlicensed analyst working on his case, fraudulent DNA testing and reports, and requesting retesting of the evidence.

MOTION AND VOTE: *Daniel moved to accept the complaint for investigation including for the purpose of issuing guidance to distinguish inconclusive/uninterpretable results in DNA mixture analysis. Parsons seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Daniel moved to refer the motion to Office of Capital and Forensic Writs. Coble seconded the motion. The Commission unanimously adopted the motion.*

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

13. No. 21.55; Johnson, Jerry (Department of Public Safety Lubbock; Serology and Footwear Analysis)

A complaint by defendant Jerry Johnson alleging the serology and footwear impression analysis and testimony in his cases were false or inaccurate.

MOTION AND VOTE: *Daniel moved to dismiss the complaint because a review of the analytical reports and trial testimony do not support the complainant's generalized allegations. Parsons seconded the motion. The Commission unanimously adopted the motion.*

6. Discuss and vote on general administrative rulemaking, including rule revisions responsive to legislative changes to the Commission's statute effective September 1, 2021. (Garcia/Tomlin)

Garcia and Tomlin gave an update on general administrative rulemaking items. The 87th Texas Legislature updated the Commission's statute to help clarify the Commission's roles and responsibilities. The legislature has expressly required the adoption of a code of professional responsibility. Staff proposed a draft of edits to its administrative rules responsive to the legislative changes.

MOTION AND VOTE: *Daniel moved to adopt the proposed changes to the administrative rules. Parsons seconded the motion. The Commission unanimously adopted the motion.*

7. Discuss status of crime laboratory accreditation program, including accreditation non-conformances and reports received since July 16, 2021, quarterly meeting. (Garcia/Tomlin)

Tomlin gave an update on the crime laboratory accreditation program. This quarter the Commission had ten accreditation-related events; seven were accreditation renewals and two were continuations of accreditation.

8. Discuss licensing advisory committee update, including:

- a. Update on licenses issued and renewed;
- b. Address reported licensing issues received since July 16, 2021, quarterly meeting;
- c. Update on launch of remote exam testing and proctoring;
- d. Update on piloting of General Forensic Analyst Licensing Exam II; and
- e. Consider and vote on candidates for Licensing Advisory Committee open seats. (Garcia/Tomlin)

Tomlin gave an update on the number of licenses and renewals to date. The Commission currently licenses a total of 1306 forensic analysts and technicians who perform forensic analysis on Texas criminal cases. Tomlin also gave an update on the database project. The project is moving along but is behind schedule. Staff expects parts of the project to be released before the end of the year with more features available early next year.

Licensing Committee members and staff are currently working on a second version of the general forensic analyst licensing exam. The Committee are hopes to launch the exam in the first quarter of 2022 but will start by piloting the exam. Staff also reported on the successful launch of a remote version of the licensing exam that uses online security proctoring software.

Members discussed the expiration of five seats on its Licensing Advisory Committee that expired August 31, 2021. Four of the five committee members seek reappointment.

MOTION AND VOTE: *Parsons moved to approve those seeking reappointment and to appoint new member Kelly Wouters, Ph.D., of Armstrong Forensic Laboratory, to the open seat. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

9. Review and adopt final report from investigative panel regarding Southwestern Institute of Forensic Science (Firearms/Toolmarks) self-disclosure #21.17. (Budowle/Daniel/Parsons)

Panel members finalized a draft report. The analyst who is the subject of the complaint did not respond to the Commission's notice and request for an interview.

*Commissioner Daniel assumed the role of Chair on this agenda item and Presiding Officer Barnard recused from discussion and vote on this item.

MOTION AND VOTE: *Daniel motioned to adopt the final report draft. Parsons seconded the motion. The Commission unanimously adopted the motion.*

*Barnard recused from discussion and vote on this agenda item.

10. Update from investigative panel regarding Expertox complaint #20.55. (Kerrigan/ Downing/Parsons/Daniel)

The investigative panel gave an update. The panel contracted with expert forensic toxicologist, Tim Rohrig, Ph.D. who is reviewing the case materials. The panel expects to have a final report from Dr. Rohrig for the Commission's January 21, 2022, meeting.

11. Update from investigative panel regarding complaint #21.32; Harris County Public Defender's Office for Theodore Schmidt (Melba Ketchum; Forensic Biology/DNA (Wildlife, Canine DNA)) (Budowle/Coble/Daniel)

Garcia gave an update on the case involving canine DNA. The investigative panel interviewed Christina Lindquist, Quality Director at the Veterinary Genetics Laboratory at University of California – Davis, who gave a helpful summation to panel members on the history of accreditation in animal DNA testing. Members of the panel also sent Ketchum a letter requesting the case file and other relevant data. Ketchum is currently working on retrieving the files. Garcia and the panel expect to have a draft report based on the information available to the panel by the Commission's January 21, 2022, meeting.

12. Update from the Texas Association of Crime Laboratory Directors. (Stout)

Peter Stout, TACL D President, briefly addressed the Commission. The TACL D will meet again in January in coordination with the Commission's quarterly meeting.

13. Consider proposed agenda items for next quarterly meeting. (Barnard)

14. Schedule and location of future panel and quarterly meetings, including January 21, 2022, quarterly meeting. (Barnard)

The Commission will meet for its next quarterly meeting January 21, 2022.

15. Hear public comment. (Barnard)

Commissioners heard no further public comments other than that noted in the agenda items above.

16. Adjourn.

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