

**Texas Forensic Science Commission  
Minutes from November 1, 2013 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 8:30 a.m. on Friday, November 1, 2013, at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744.

Members of the Commission were present as follows:

Members Present: Alpert, Di Maio, Barnard, Peerwani, Lerma

Members Absent: Eisenberg, Hutson, Hampton, Kerrigan

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

**Review and adopt minutes from 7/12/13 FSC Meeting.**

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

**Office administrative update.**

Staff discussed the FY2014 budget plan, information technology improvements, new website plans, new FSC letterhead and briefly reviewed travel reimbursement rules for commission members.

**Discuss and consider recommendations from Complaint Screening Committee concerning pending complaints and self-disclosures.**

1. #13-04 ExperTox, Inc. (Controlled Substance – Starkey)

**MOTION AND VOTE:** *Alpert moved to table the complaint until further information is obtained from DPS. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

2. #13-06 – McAllen (DNA – Mireles)

**MOTION AND VOTE:** *Alpert moved to dismiss the complaint because the facts of the complaint pre-date the crime laboratory accreditation program and the Innocence Project of Texas is in the process of working with the complainant to determine whether any further relief is available under Texas law. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

3. #13-07 DPS – Garland (Controlled Substance – Hawkins)

**MOTION AND VOTE:** *Alpert moved to table the complaint and direct staff to obtain laboratory reports and testimony information related to the complaint for review at the FSC's January meeting. Lerma seconded the motion. The FSC unanimously adopted the motion.*

4. #13-08 DPS – Abilene (Controlled Substance – Hutchinson)

**MOTION AND VOTE:** *Alpert moved to dismiss the complaint because the complaint does not allege any negligence or misconduct occurred in the forensic analysis of the evidence in the case. Lerma seconded the motion. The FSC unanimously adopted the motion.*

5. #13-09 Christus Spohn Memorial Hospital (Pregnancy testing – Barganski)

**MOTION AND VOTE:** *Alpert moved to dismiss the complaint, because the FSC does not have the authority to issue a negligence or misconduct finding in the case, and the committee sees no potential forensic educational value in an investigation of the complaint considering it involves pregnancy testing performed in a hospital setting. Lerma seconded the motion. The FSC unanimously adopted the motion.*

6. #13-10 SWIFS (DNA – Eldridge)

**MOTION AND VOTE:** *Peerwani moved to dismiss the complaint, but include the complaint for educational purposes as part of the FSC's hair microscopy review. Lerma seconded the motion. The FSC unanimously adopted the motion.*

Members discussed the complaint transcript will be sent to the FBI for review to determine whether the FBI would support the National Association of Criminal Defense Lawyer's finding that no errors were committed in the hair microscopy testimony.

7. #13-11 DPS – Houston (Controlled Substance – Johnson)

**MOTION AND VOTE:** *Alpert moved to dismiss the complaint because there is no forensic analysis in question. Lerma seconded the motion. The FSC unanimously adopted the motion.*

8. #09-18 Plano PD; Collin County Laboratory; Collin County District Attorney; SWIFS (Propes)

**MOTION AND VOTE:** *Peerwani moved to dismiss the complaint because there is no specific allegation of forensic negligence or misconduct. Lerma seconded the motion. The FSC unanimously adopted the motion.*

**MOTION AND VOTE:** *Alpert moved to adopt new complaint form drafts presented by FSC staff. Barnard seconded the motion. The FSC unanimously adopted the motion*

**Discussion of opinion request from District Attorney Ponton and Commission response.**

General counsel briefly described the FSC's response to District Attorney Ponton's Attorney General opinion request.

**Update on arson case review and implementation of recommendations.**

Kelly Kistner, Assistant State Fire Marshal, addressed the Commission regarding the State Fire Marshal's collaborative review of arson cases. Kistner explained the Science Advisory Workgroup reviewing the arson cases will meet again December 3-6, 2013 in Plano and follow with a February 2014 meeting in Corpus Christi. Kistner explained that district attorneys from the original prosecuting counties in the cases will be invited to all future workgroup meetings.

Jeff Blackburn from the Innocence Project of Texas also addressed the Commission regarding the status of the arson case review. Blackburn explained the Science Advisory Workgroup initiated by the Texas State Fire Marshal's office identified a small group of cases for post-conviction review by the corresponding prosecuting agency and has an additional few cases for consideration at future meetings.

**Discussion of FBI hair microscopic hair analysis review, Commission's notification letter distributed to labs, responses received and possible next steps.**

**MOTION AND VOTE:** *Lerma moved to appoint a panel comprised of commission members Kerrigan, Alpert, Peerwani, and Lerma, to begin working with stakeholders on a possible review of Texas hair microscopy cases. Alpert seconded the motion. The FSC unanimously adopted the motion.*

**Texas Department of Public Safety – Houston Self-Disclosure #12-06: latest re-test results, and Texas Court of Criminal Appeals oral argument.**

Garcia provided a brief update on the re-test spreadsheet provided by DPS – Houston laboratory director, Keith Gibson. No new discrepancies have been identified since the Commission's last quarterly meeting. DPS – Houston will provide an additional case re-test update at the FSC's January meeting. An update regarding the Court of Criminal Appeals opinion in *Ex Parte Coty* will be provided when the Court releases its decision.

**Forensic Development Committee update, including reports distributed from certification and defendant notification roundtables hosted with Texas Criminal Justice Integrity Unit on July 11, August crime lab manager academy.**

Garcia reviewed the FSC's recent forensic development activities with members. Members discussed publication of the certification and notification white papers that were drafted after the joint roundtables hosted in July 2013.

**MOTION AND VOTE:** *Barnard moved to publish the certification and notification roundtable reports and incorporate any final edits from the Forensic Development Committee. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

**MOTION AND VOTE:** *Lerma moved to permit staff to move forward on any action items and reasonable expenditures identified as necessary in the action items for the certification and notification roundtable reports. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Members discussed hosting an additional West Virginia University laboratory manager training in another area of the state for those that could not attend the August 2013 training. Bill Gibbens, President of the Texas Association of Crime Laboratory Directors, indicated that laboratory managers would be interested in sending additional staff and mid-management to the training if it were offered.

**MOTION AND VOTE:** *Alpert moved to explore expanding the West Virginia University lab manager training to other locations, including obtaining a cost proposal for discussion at the next quarterly meeting. Lerma seconded the motion. The FSC unanimously adopted the motion.*

Members discussed the Foresight program. The Forensic Development Committee will report back at the January 2014 meeting on where Texas labs stand on the project and what resources they might need to move forward.

**Discussion regarding development of training video on *Brady v. Maryland* for forensic scientists in collaboration with Texas Criminal Justice Integrity Unit.**

Carson Guy, research attorney for Texas Criminal Justice Integrity Unit's Judge Barbara Hervey, reported he was working with the State Bar to develop a transcript for the forensic scientist *Brady* training video.

**Review and adoption of new policies and procedures reflecting changes from 83<sup>rd</sup> Legislative Session.**

**MOTION AND VOTE:** *Lerma moved to table discussion and adoption of the edited policies and procedures until the January 2014 meeting. Barnard seconded the motion. The FSC unanimously adopted the motion.*

**Report on 9/28/13 panel discussion at Texas Tribune Festival**

Garcia provided an update on Kerrigan's panel participation at the Texas Tribune Festival.

**Discussion of AAFS submissions and member and staff attendance at the February 2014 annual conference.**

Members briefly discussed abstracts submitted for the American Academy of Forensic Science's 2014 annual conference. Several commission members and staff plan to attend the conference in February.

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

Staff will incorporate in the January 2014 agenda any items discussed today requiring follow-up.

**Schedule and location of future meetings.**

The Commission will meet again either January 10<sup>th</sup> or January 24<sup>th</sup>, 2014 depending upon availability. Staff will determine the best date and publish appropriate notice.

**Hear public comment.**

Devin Potts, National Innocence Project

**Adjourn.**