

**Texas Forensic Science Commission  
Minutes from May 25, 2017 Quarterly Meeting in Austin, Texas**

The Texas Forensic Science Commission's Complaint Screening Committee ("CSC") met at 10:00 a.m. on Thursday, May 25, 2017 at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744.

Members of the Commission and CSC were present as follows:

Members Present: Barnard, Daniel, Johnson, Drake

Members Absent: None

Staff Present: Lynn Garcia, General Counsel  
Leigh Savage, Associate General Counsel

**Discuss factual information, allegations and potential recommendations for complaints and laboratory self-disclosures received through May 11, 2017, the Commission's 15-day deadline for receipt of complaints and self-disclosures this quarter, or left pending from the Commission's February 10, 2017 quarterly meeting.**

Complaints Pending from February 10, 2017

**1. No. 16.54; Gulley, Britney (SWIFS; Firearms/Toolmarks)**

Defendant Britney Gulley filed this complaint alleging a Southwestern Institute of Forensic Sciences ("SWIFS") firearms analyst misidentified a firearm and bullets that led to her wrongful conviction for murder. The lab agreed to reanalyze the evidence in this case which is amenable to both the Dallas County Public Defender's Office (Gulley's attorney) and the Dallas County District Attorney. Staff of the DA's conviction integrity unit are currently working to retrieve the evidence from storage and re-submit it to SWIFS.

**MOTION AND VOTE:** *Johnson moved to recommend the full Commission table the complaint pending reanalysis of the firearms in the case by SWIFS. Drake seconded the motion. The CSC unanimously adopted motion.*

**2. No. 16.69; Richards, Dylan (DPS Garland; Blood Alcohol)**

Defendant Dylan Richards filed this complaint alleging DPS Garland crime lab analyst Chris Youngkin may have falsely represented the blood alcohol level reported in his case that led to Richards' conviction for intoxication manslaughter of a peace officer. Members agreed to discuss this complaint in consolidation with the #17.28 DPS Garland (Blood Alcohol) self-disclosure.

\*Commission Pat Johnson recused himself from discussion of this complaint.

**3. No. 17.04; Gefrides, Lisa (Houston Forensic Science Center (“HFSC”); Biology/DNA)**

Forensic biology consultant Lisa Gefrides filed this complaint alleging the HFSC’s biology section is not adequately identifying and controlling errors during testing of biological evidence. Members discussed that this complaint was tabled at the last Commission quarterly meeting pending an update from the lab on any additional contamination events. Since the Commission’s February meeting, the lab provided two supplements for review by the Commission. Members would like Commissioner Dr. Bruce Budowle to review the material before recommending final disposition on the complaint.

Robin Guidry, HFSC DNA/Biology Section Manager, offered comments and answered questions on behalf of HFSC.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission table the complaint pending Commissioner Bruce Budowle’s review of the responsive material provided by HFSC. Johnson seconded the motion. The CSC unanimously adopted the motion.*

**4. No. 17.05; Innocence Project of Texas (DPS Austin; DNA-CODIS)**

The Innocence Project of Texas filed this complaint alleging the DPS Austin CODIS Laboratory failed to comply with National DNA Index System (“NDIS”) procedures when uploading a DNA search profile into the Combined DNA Index System (“CODIS”) such that one of the obligate alleles would have excluded the particular defendant being compared had the profile been properly uploaded.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission table the complaint pending receipt of a revised, new complaint from the Innocence Project of Texas. Daniel seconded the motion. The CSC adopted the motion.*

\*Commissioner Pat Johnson recused himself from discussion and vote on this complaint.

Complaints Received as of May 11, 2017

**5. No. 16.41; Moreno, Jr., Valentin (Dr. A.J. Alamia; Forensic Psychology Testimony)**

Defendant Valentin Moreno filed this complaint alleging forensic psychologist Dr. A.J. Alamia gave scientifically unacceptable testimony at his trial and that prosecutors falsely mislead an eyewitness to identify Moreno at trial, factors that Moreno believes led to his wrongful conviction for murder. Members discussed that the Commission has no

jurisdiction over the complaint as presented by Moreno. Garcia reported that she forwarded the complaint to IP of Texas Board member Gary Udashen for review.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission dismiss the complaint because it does not allege any negligence and/or misconduct related to a forensic analysis of physical evidence and therefore the allegations are not subject to review by the Commission. Johnson seconded the motion. The CSC unanimously adopted the motion.*

**6. No. 16.52; Resendez, Eustorgio (DPS Austin; Firearm/Toolmark)**

Defendant Eustorgio Guzman Resendez filed this complaint alleging a DPS Austin firearm/toolmark expert could not identify a weapon that would have connected Resendez to the crime and therefore he should not have been convicted.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission dismiss the complaint because it does not allege any negligence and/or misconduct related to the firearm/toolmark analysis in the case, but simply states that the examiner could not connect Resendez to the murder weapon and other complaints Resendez cites are autopsy-related and thus fall outside the Commission's jurisdiction. Daniel seconded the motion. The CSC adopted the motion.*

\*Pat Johnson recused himself from discussion and vote on this complaint.

**7. No. 17.07; Turner, Bronwen (Harris County Institute of Forensic Sciences; Firearm/Toolmark)**

Defendant Bronwen Turner filed this complaint alleging that because Harris County Institute of Forensic Sciences ("HCIFS") was unable to confirm any gunshot residue particles on a vehicle used to commit the crime nor on Turner's hands and DNA testing comparing blood found on the victim to Turner's results were inconclusive, Turner should not have been convicted for capital murder.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission dismiss the complaint because it does not allege any negligence and/or misconduct related to the forensic analysis in the case, but simply asserts that Turner should not have been convicted without stronger evidence. Johnson seconded the motion. The CSC unanimously adopted the motion.*

**8. No. 17.09; Washington, Kenneth Wayne (Harris County Institute of Forensic Sciences; Serology/DNA)**

Defendant Kenneth Wayne Washington filed this complaint alleging DNA analysis and testimony by HCIFS analyst Jennifer Petrash confirming the DNA profile developed from a buccal swab obtained from Mr. Washington's matched blood found at the crime scene was not sufficient to support Washington's conviction for burglary.

**MOTION AND VOTE:** *Johnson moved to recommend the full Commission dismiss the complaint because it fails to allege any negligence and/or misconduct related to the forensic analysis in Washington's case by simply alleging that Washington should not have been convicted based on the available evidence. Drake seconded the motion. The CSC unanimously adopted the motion.*

**9. No. 17.13; Hill, Anthony (Max Courtney; Crime Scene Reconstruction)**

Defendant Anthony D. Hill filed this complaint alleging crime scene reconstructionist Max Courtney gave scientifically unsupportable analysis and testimony that led to Hill's wrongful conviction for capital murder.

**MOTION AND VOTE:** *Johnson moved to recommend the full Commission table the complaint pending a review by the Tarrant County Conviction Integrity Unit. Drake seconded the motion. The CSC unanimously adopted the motion.*

**10. No. 17.16; Booker, Billy Joe (NMS/IFL Bedford; Blood Alcohol)**

Defendant Billy Booker filed this complaint alleging former IFL analyst Elizabeth Feller performed unreliable blood alcohol testing in his criminal case, and although the report she issued was not admitted at trial, the prosecutor was allowed to reference the blood alcohol result during argument, which Booker alleges led to his wrongful conviction for DWI.

**MOTION AND VOTE:** *Johnson moved to recommend the full Commission dismiss the complaint for failure to state an allegation of negligence and/or misconduct related to the forensic analysis in Booker's case. The issues complained about relate to court proceedings and a prosecutor's statement during argument, allegations outside the Commission's investigative jurisdiction. Drake seconded the motion. The CSC unanimously adopted the motion.*

**11. No. 17.19; Thain, Blake Allen (Harris County Sheriff's Office; Firearm/Toolmark)**

Defendant Blake Allen Thain filed this complaint alleging a firearm/tool mark analyst from the Harris County Sheriff's Department exceeded the bounds of scientifically acceptable testimony when he stated at Thain's trial that all of the .380 shell casings he examined were fired from the same weapon—which led to Thain's wrongful conviction for murder.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission dismiss the complaint because the allegation occurred in 2001, prior to the accreditation program in Texas. Any investigation would be limited to a best practices-type review and the facts as presented by Thain do not merit a best-practices review. Johnson seconded the motion. The CSC unanimously adopted the motion.*

**12. No. 17.21; Cervantes, Reynaldo (DPS McAllen; Serology)**

Defendant Reynaldo Cobio Cervantes filed this complaint requesting DNA testing and alleging DPS McAllen lab director Joe Marchan perjured testimony related to the blood type of blood found on a jacket that connected Cervantes to a murder and eventually led to his conviction.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission dismiss the complaint because the facts as presented do not merit further review, and the Commission has no authority to order DNA testing in any particular case. Daniel seconded the motion. The CSC unanimously adopted the motion.*

\*Commissioner Pat Johnson recused himself from discussion and vote on this complaint.

**13. No. 17.23; Ghant, Travis (Scott & White – Temple Sexual Assault Nurse Examiner Alice Lindner; S.A.N.E)**

Defendant Travis Ghant filed this complaint alleging S.A.N.E. nurse Alice Linder from Scott & White Temple gave scientifically insupportable testimony related to a “V-shaped” tear in the victim’s hymen that led to his wrongful conviction for sexual assault of a child.

**MOTION AND VOTE:** *Drake moved to table the complaint for review by the full Commission and discussion with Commissioner Nancy Downing who is an expert in sexual assault nurse examinations. Johnson seconded the motion. The CSC unanimously adopted the motion.*

**14. No. 17.24; Smithwick, Roy (Bexar County Criminal Investigation Lab; Serology and Ballistic)**

Defendant Roy Louis Smithwick, Jr. filed this complaint alleging Bexar County Criminal Investigation Lab former analysts Ron Dodson and Fred Zain gave false and misleading ballistic and serology testimony that led to his wrongful conviction for murder.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission table the complaint pending receipt of follow-up information from the laboratory. Johnson seconded the motion. The CSC unanimously adopted the motion.*

**15. No. 17.29; Drummer, Cornell (Bexar County Criminal Investigation Lab; Firearm/Toolmark)**

Defendant Cornell Drummer filed this complaint alleging Bexar County Medical Examiner’s Office firearm and tool mark examiner Richard Stengels gave scientifically invalid testimony at Drummer’s trial that led to his wrongful conviction for murder.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission dismiss the complaint because the analysis in question occurred in 1990, prior the creation of the State's crime lab accreditation program in 2003 and the facts as presented do not appear to merit any best practices review.*

The Committee then addressed the following combined self-disclosure and complaint received since May 11, 2017.

**#17.28; DPS Garland (Blood Alcohol)/#16.69; Richards, Dylan (DPS Garland; Blood Alcohol)**

#17.28 is a self-disclosure by DPS Garland (Blood Alcohol) where an examiner (Chris Youngkin) had a switched sample in 2014. A corrective action was implemented for the switched sample, but the analyst subsequently testified regarding the incident in a manner that was not forthcoming and resulted in various district attorney offices served by DPS Garland declining to sponsor Mr. Youngkin as an expert.

#16.69 is a complaint filed by Defendant Dylan Richards alleging DPS Garland crime lab analyst Chris Youngkin may have falsely represented the blood alcohol level reported in his case that led to Richards' conviction for intoxication manslaughter of a peace officer. Members agreed to discuss this complaint in consolidation with the #17.28 DPS Garland (Blood Alcohol) self-disclosure.

**MOTION AND VOTE:** *Drake moved to recommend the Commission form an investigative panel to investigate the self-disclosure in combination with the complaint and to conduct a thorough root cause analysis in collaboration with the Quattrone Center for the Fair Administration of Justice. Daniel seconded the motion. The CSC adopted the motion.*

\*Commissioner Pat Johnson recused himself from discussion and voting on this self-disclosure and complaint.

Disclosures Pending from February 10, 2017

**1. No. 17.01; Houston Forensic Science Center (Biological Screening/DNA)**

Houston Forensic Science Center ("HFSC") self-disclosed an incident in its biology/DNA section where a screening analyst mistakenly identified the presence of semen in a small amount of fecal matter using an acid phosphatase press out method. The analyst noted a strong positive color change, and a portion of the underwear was sent for DNA testing. DNA was not obtained in the sperm fraction of the cutting and only two alleles were present in the epithelial fraction. Re-examination of other cuttings of the underwear produced negative results. The laboratory took corrective action including removing the screener from casework and providing retraining, reviewing all of the analyst's cases, and amending the initial report in the case for which the semen was

mistakenly identified. Members discussed that this complaint was tabled from the Commission's February 10 meeting. The lab was asked to respond with supplemental information and provided that to the Commission. Robin Guidry spoke on behalf of the lab and answered questions related to the disclosure.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission take no further action on the disclosure based on the lab's review of the examiner's casework, the root cause analysis, and the retraining and remedial period for the examiner. Johnson seconded the motion. The CSC unanimously adopted the motion.*

## **2. No. 17.03; Houston Forensic Science Center (Toxicology)**

The HFSC self-disclosed an incident in its toxicology section where an examiner incorrectly reported preliminary results were positive for one or more drugs where the report should have stated results were negative for all. Members discussed this complaint was tabled at the Commission's February 10 meeting pending receipt of further information requested from the lab. The Commission received the supplemental information and response from the lab. The laboratory's toxicology section manager, Dr. Dayong Lee, spoke on behalf of the laboratory and answered questions from Committee members.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission take no further action on the disclosure based on the information provided by the lab, including the lab's review of reports, the explanations in the corrective action report, updated administrative review process and implementation of colored sheets for scanned analytical data. Johnson seconded the motion. The CSC unanimously adopted the motion.*

Disclosures Received as of May 11, 2017

## **1. No. 17.12; NMS (Toxicology – Signature Issue)**

NMS Labs Willow Grove, PA self-disclosed an incident in its toxicology section where 152 analytical toxicology reports were released to the Houston Forensic Science Center without a toxicologist's signature during the time period August 30, 2016 to January 18, 2017. The issue occurred after an update was made in the laboratory's LIMS that prevented the reports from being sent for final toxicologist review and signature as they had been in the past.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission take no further action on the disclosure based on the information provided by the lab, including the lab's case review of the affected reports and the lab's update to the LIMS system resolving the issue. Johnson seconded the motion. The CSC unanimously adopted the motion.*

## **2. No. 17.17; NMS (Toxicology – Cannabinoids)**

NMS Labs Willow Grove, PA self-disclosed an incident in its toxicology section where 20 toxicology cases did not undergo proper screening for cannabinoids and reports were released to the HFSC without uncertainty of measurement applied to the positive confirmation results. The issue occurred when a test code for cannabinoids panel was incorrectly provided to the HFSC by NMS. The particular test code did not include an ELISA screen or the reporting of uncertainty of measurement with positive results.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission take no further action on the disclosure because the issue is limited to the improper communication of a test code and not any component of the lab's analytical process. Johnson seconded the motion. The CSC unanimously adopted the motion.*

### **3. No. 17.18; Tarrant County Medical Examiner's Office (Toxicology)**

The Tarrant County Medical Examiner's Office disclosed an incident in its toxicology section where data used to report the blood alcohol result for one case was incorrectly reported for another case; therefore, the results of each case were typed and reported out incorrectly to each corresponding submitting agency.

**MOTION AND VOTE:** *Johnson moved to recommend the full Commission take no further action on the disclosure based on the information and corrective action provided by the lab, including the case review, revisions to the administrative and technical review processes, revisions to the location of the identification number on instrument data printouts, and the follow-up evaluation of cases after implementing changes. Drake seconded the motion. The CSC unanimously adopted the motion.*

### **4. No 17.22; Houston Forensic Science Center (Crime Scene Unit)**

The HFSC self-disclosed issues in its Crime Scene Unit including deficiencies in documentation, collection, recovery and preservation of evidence at multiple crime scenes that led to the removal of a crime scene investigator and a technical supervisor. Jerry Peña, director of the Evidence Collection Division at HFSC, explained the circumstances of the disclosure and answered questions from Committee members.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission establish an investigative panel to review the disclosure and issue best practices recommendations to the criminal justice community in the area of crime scene investigation. Johnson seconded the motion. The CSC unanimously adopted the motion.*

### **5. No. 17.25; Jefferson County Regional Crime Lab (Drug Chemistry)**

Jefferson County Regional Crime Laboratory self-disclosed an issue in its drug chemistry section where the laboratory discovered that since March 2016 it had been incorrectly reporting the "Group A component" for the drug fluoro-ADB as methyl methoxy oxobutane instead of the correct methoxy dimethyl oxobutane where fluoro-ADB was



reported in combination with FUB-AMB. Commissioner Drake explained the issue of identifying the underlying drug compounds that support the identification of synthetic cannabinoids and that the underlying drug compounds may change over time, but the identification of the drug remains accurate. Drake felt no additional information was needed from the lab other than that provided, including the corrective actions taken by the lab and updates to its LIMS system that now correctly identify the underlying compounds in an option drop-down menu.

**MOTION AND VOTE:** *Drake moved to recommend the full Commission take no further action on the disclosure given the information, actions and explanation provided by the lab. Johnson seconded the motion. The CSC unanimously adopted the motion.*

#### **6. No. 17.26; DPS El Paso (Lost DNA Evidence)**

DPS El Paso self-disclosed an incident in its DNA section where an analyst was unable to locate an envelope containing three cuttings for DNA testing which were believed to have been returned to the evidence section.

**MOTION AND VOTE:** *Drake moved to recommend tabling the complaint pending receipt of additional information and review by the full Commission tomorrow. Daniel seconded the motion. The CSC adopted the motion.*

\*Commissioner Pat Johnson recused himself from discussion and vote of this self-disclosure.

#### **7. No. 17.27; DPS Midland (Barcode Issue/Lost Evidence)**

DPS Midland self-disclosed an incident where evidence for three cases in its controlled substance section believed to be labeled for destruction could not be located.

**MOTION AND VOTE:** *Drake moved to recommend tabling the complaint pending receipt of additional information and review by the full Commission tomorrow. Daniel seconded the motion. The CSC adopted the motion.*

\*Commissioner Pat Johnson recused himself from discussion and vote of this self-disclosure.

#### **8. No. 17.28; DPS Garland (Blood Alcohol)**

This complaint was addressed earlier in the agenda as noted above.

**Discuss granting staff discretion to dismiss complaints that are requests for DNA testing and complaints related to non-physical evidence, such as forensic psychology and forensic hypnosis because these disciplines fall outside the Commission's jurisdiction as they are not "forensic analysis" in accordance with Tex. Code Crim. Proc. art. 38.35 (a)(4).**

**MOTION AND VOTE:** *Drake moved to recommended deferring the issue of granting staff permission to dismiss complaints that are requests for DNA testing and related to non-physical evidence to the full Commission at its meeting tomorrow. Johnson seconded the motion. The CSC unanimously adopted the motion.*

**Hear public comment.**

Committee members heard public comment from meeting attendees as noted throughout the agenda above.

**Adjourn.**