



## TEXAS FORENSIC SCIENCE COMMISSION

*Justice Through Science*

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### **Texas Forensic Science Commission Minutes from February 2, 2018 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 8:00 a.m. on Friday, February 2, 2018 at the Tom C. Clark Building, 1<sup>st</sup> Floor Conference Room, 205 West 14<sup>th</sup> Street, Austin, Texas 78701.

Members of the Commission were present as follows:

Members Present: Barnard, Budlowle, Daniel, Downing, Drake, Hughes-Stamm, Johnson, Parsons

Members Absent: Kerrigan

Staff Present: Lynn Garcia, General Counsel  
Jody Koehler, Senior Scientific Advisor  
Leigh Tomlin, Associate General Counsel  
Kathryn Adams, Commission Coordinator

**Review and adopt minutes from August 2, 2017 Clark (Harris Co. IFS, HPD, Harris Co. Sheriff's Department; GSR, DNA, Blood Spatter) #16-40 investigative panel meeting, November 3, 2017 Forensic Science Commission Quarterly meeting and January 22, 2018 Bloodstain Pattern Analysis Hearing.**

**MOTION AND VOTE:** *Budowle moved to adopt the meeting minutes. Parsons seconded the motion. The FSC unanimously adopted the motion.*

**Office administrative update (FY2018 budget status report; update regarding content management software required for the FSC Licensing Program; update on any outstanding reimbursement requests; transition to electronic format for meeting binders).**

Garcia provided a budget and administrative update and relayed the Office of Court Administration's policy to transition from hard copy binder materials to electronic binders. Several commissioners expressed their preference for retaining hard copy binders. Garcia committed to discussing the issue with Executive Director David Slayton and reporting back to the Commission at the next meeting.

There were no motions or votes for this agenda item.

**Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through January 18, 2018.**

Complaints Pending from November 3, 2017

1. No. 17.04; Gefrides, Lisa (Houston Forensic Science Center)

Commissioners reviewed a complaint by forensic biology consultant Lisa Gefrides alleging the HFSC's biology section is not adequately identifying and controlling possible contamination events during testing of biological evidence. Koehler provided a summary of the complaint allegations and history of the FSC's review. She also reported on communications with the complainant and information received from the laboratory since the last quarterly meeting.

**MOTION AND VOTE:** *Hughes-Stamm moved to accept the complaint for investigation and create an investigative panel. Budowle seconded the motion. The FSC unanimously adopted the motion. An investigative panel was formed consisting of members Budowle, Hughes-Stamm and Daniel.*

Disclosures Received as of January 18, 2018

2. No. 18.01; Houston Forensic Science Center (Digital Evidence/Multimedia)

Commissioners reviewed a self-disclosure by the Houston Forensic Science Center describing an incident in its Digital Evidence/Multimedia section where an analyst did not export the video date requested by an investigator to a call-out location, and because of the delay between the call-out and the discovery of the nonconformance, it was not possible to obtain the correct video. During the time between the call-out and the technical review, the scene video had been overwritten and was no longer retrievable. A representative from the laboratory responded to questions regarding the error and corrective actions implemented.

**MOTION AND VOTE:** *Daniel moved to recommend no further action on the disclosure based on the root cause analysis and corrective action taken by the laboratory. Parsons seconded the motion. The FSC unanimously adopted the motion.*

3. No. 18.03; NMS (Seized Drugs)

Commissioners reviewed a self-disclosure by NMS describing an incident in the lab's controlled substance section where results from an external proficiency test indicated that the lab had a low bias on methamphetamine samples analyzed using the lab's standard quantitative method. A representative from the laboratory responded to questions.

**MOTION AND VOTE:** *Budowle moved to recommend no further action on the disclosure based on the root cause analysis and corrective action taken by the laboratory. Johnson seconded the motion. The FSC unanimously adopted the motion.*

4. No. 18.04; SWIFS (Toxicology)

Commissioners reviewed a self-disclosure by the Southwestern Institute of Forensic Sciences describing an incident in its toxicology section where an analyst prepared an ELISA screening control for cannabinoids with 1000 ug/mL of THC instead of the correct 100 ug/mL of COOH-THC.

**MOTION AND VOTE:** *Daniel moved to recommend no further action on the disclosure based on the root cause analysis and corrective action taken by the laboratory. Parsons seconded the motion. The FSC adopted the motion. Barnard recused himself from deliberation and voting on the disclosure.*

5. No. 18.06; DPS Garland (Forensic Biology)

Commissioners reviewed a self-disclosure by DPS Garland regarding an incident in the forensic biology section where it was discovered that evidence indicated in the original case notes (an oral rinse container) was missing and one evidence item was not properly forwarded for trace evidence analysis as indicated on the initial report. The director of the Garland regional laboratory responded to questions and committed to providing the Quality Incident Report when it is completed.

**MOTION AND VOTE:** *Daniel moved to take no further action on the disclosure based on the root cause analysis and corrective action taken by the laboratory. Parsons seconded the motion. The FSC adopted the motion. Johnson recused himself from deliberation and voting on the disclosure.*

No. 18.07; Austin Police Department (Firearms)

Commissioners reviewed a self-disclosure by the Austin Police Department describing an incident in the laboratory's firearms section where an examiner failed two annual serial number restoration proficiency tests and provided inconsistent explanations regarding his approach to completing the second exam.

**MOTION AND VOTE:** *Parsons moved to recommend no further action on the disclosure considering the corrective action taken and the fact that the analyst is no longer with the laboratory. Johnson seconded the motion. The FSC unanimously adopted the motion.*

**Discuss status of crime laboratory accreditation program, including accreditation non-conformances received since November 2017 quarterly meeting. Update on attorney general opinion request regarding whether postmortem toxicology is subject to Commission accreditation requirements. Update on adoption and publication of footwear and tire tread category of analysis added to Materials (Trace) and non-human DNA category of analysis added to Forensic Biology.**

Garcia provided an update concerning the Attorney General opinion regarding postmortem toxicology. The Attorney General's response is still pending but staff expect to receive it before the April quarterly meeting.

Members discussed the accreditation status of the crime scene reconstruction and bullet trajectory determination disciplines. Garcia will provide information on both for discussion at the next quarterly commission meeting.

There were no motions or votes for this agenda item.

**Update on adoption and publication of rules mirroring the Commission's complaint and disclosure process published in its Policies and Procedures to comply with Administrative Procedures Act and review and adopt draft rules related the Commission's process for appeals to final investigative reports. Review and adopt revised draft of Commission Policies and Procedures to include process for appeals to final investigative reports and compliance with Open Meetings Act and Rule 12.**

**MOTION AND VOTE:** *Daniel moved to adopt revisions to the Policies & Procedures to reflect Rule 12 and compliance with the Open Meetings Act. Parsons seconded the motion. The FSC unanimously adopted the motion.*

**MOTION AND VOTE:** *Drake moved to accept the proposed edits to the administrative rules to reflect the same language as set forth in the Policies & Procedures. Hughes-Stamm seconded the motion. The FSC unanimously adopted the motion.*

**Discuss licensing advisory committee program, including adjudication of public comments and updates from January 18, 2018 Licensing Advisory Committee meeting, update on general forensic exam development, including proposed reading materials and piloting of general forensic exam. Discuss exemption for federal forensic examiners. Review final revisions to proposed licensing program rules (including final changes resulting from comments).**

Members discussed a number of outstanding issues regarding the licensing program and proposed rules including a waiver from formal coursework requirements for experienced out-of-state transfers and licensees who promote internally; reducing the 8-year experience requirement for the waiver provision in 651.207 of the licensing rules; removing the word "collection" throughout the rules to prevent confusion (e.g., DNA analysts "collecting" hairs from bedding clothing could technically be considered a trace examiner though this is not the intent of the rules); process for recognizing non-U.S. degree programs; equalizing the requirements for biology screeners and technicians; adding chemical engineering to the list of approved degrees; reviewing the change to fee timing to comply with other OCA licensing programs; potential impact of rules on bloodstain pattern analysis; and a change to degree requirements for examiners who perform impression evidence categories of trace analysis only.

Members also discussed the status of licensure for federal analysts. Garcia will draft and send a response letter to Ted Hunt at the Department of Justice outlining the Commission's concerns

regarding the differences in disclosure requirements under article 39.14 of the Texas Code of Criminal Procedure (Michael Morton Act) versus applicable federal law regarding discovery and disclosure.

**MOTION AND VOTE:** *Johnson moved to change the waiver for course work requirements for lateral hires from “8 years or more credible experience” to 5 years. Parsons seconded the motion. Budowle opposed the motion. The FSC passed the motion 7-1.*

**MOTION AND VOTE:** *Budowle moved to approve the final revision to the proposed licensing program rules. Parsons seconded the motion. The FSC unanimously adopted the motion.*

**Presentation from Peter Stout, Houston Forensic Science Center CEO and President, on HFSC's efforts with respect to establishing confidence intervals for retroactive case review presented at the 2017 NIST Forensic Error Symposium.**

Dr. Stout presented a PowerPoint about HFSC’s use of statistical applications for quality, including introduction of “blinds” into laboratory case flow. Dr. Spiegelman provided additional commentary regarding his experience assisting the laboratory with these efforts.

There were no motions or votes for this agenda item.

**Update from investigative panel regarding Bloodstain Pattern Analysis, including report from January 22, 2018 hearing in Austin.**

Garcia gave a presentation on the legal background and options regarding accreditation of bloodstain pattern analysis in Texas. Panel members discussed the January 22, 2018 hearing including various national experts. Members discussed legal and practical considerations and received extensive public comment.

**MOTION AND VOTE:** *Daniel moved to exempt bloodstain pattern analysis from the accreditation requirement under Tex. Code Crim. Proc. 38.35 until May 1, 2019. Parsons seconded the motion. The FSC unanimously adopted the motion.*

**Update from investigative panel regarding combined Clark (Blood Spatter/GSR—Houston PD/Harris Co. Institute of Forensic Sciences) #16-40 case and Bryan (Blood Spatter) #16.56 case.**

Members discussed final resolution of the report section involving the Norma Clark complaint. Garcia will provide a draft of the Bryan section of the report by the next quarterly meeting, as material requested from DPS regarding the serology/DNA complaint has not yet been received.

**MOTION AND VOTE:** *Hughes-Stamm moved to approve the Clark section of the report. Parsons seconded the motion. The FSC unanimously adopted the motion.*

**Review and adoption of final report from investigative panel regarding Harris Co. Institute of Forensic Sciences (Blood Alcohol—Guale) #16.48.**

Members discussed the report draft and expressed a need to consult with Commissioner Sarah Kerrigan before publishing the report. Garcia committed to obtaining feedback from Dr. Kerrigan before the next Commission meeting.

**MOTION AND VOTE:** *Drake moved to accept the current draft report with any revisions proposed by Dr. Kerrigan to be discussed at the next quarterly meeting. Budowle seconded the motion. The FSC unanimously adopted the motion.*

**Update from investigative panel regarding Houston Forensic Science Center Self-Disclosure (Crime Scene) #17.22 and discussion of staff initiatives on crime scene as required by HB-34.**

Garcia explained no investigative panel is necessary for this case in light of the extensive changes to the division enacted by HFSC and the fact that HB-34 requires the FSC to conduct a study and make recommendations on CSI procedures and training.

**MOTION AND VOTE:** *Daniel moved to issue a no further action letter on the disclosure. Parsons seconded the motion. The FSC unanimously adopted the motion.*

**Update regarding report on DPS Garland (Blood Alcohol—Youngkin) #17.28**

Garcia estimated a draft report containing information in outlined in her PowerPoint presentation (summary of the case facts, the OIG report, and the FSC's observations and recommendations) should be ready by next week.

**Update from investigative panel regarding order by Judge Herbert B. Dixon in United States v. Torney, report from NMS on-site interviews, document/data review, laboratory corrective actions and discussion of next steps.**

Two members of the review team (Koehler and Sliter) provided a summary of material reviewed to date, including a site visit to NMS in Pennsylvania. The third member of the team (Dr. Jack Ballantyne) participated via gotomeeting. Koehler will prepare a draft report for review at the next quarterly meeting. Garcia will draft a letter to ANAB requesting an explanation as to why no casework was reviewed at the internal validation special assessment.

There were no motions or votes for this agenda item.

**Update on triage projects for DNA mixture review.**

Wicoff reported the Indigent Defense Commission provided funds to continue the case review for one more year. He estimates completion of the statewide review and generation of a report by this time next year.

There were no motions or votes for this agenda item.

**Discussion of hair microscopy review final report.**

There was no discussion and no motions or votes for this agenda item.

**Rapid DNA Update.**

Peter Stout gave a presentation outlining concerns with evidence consumption in a Rapid DNA case example in Houston. Gary Molina (statewide CODIS administrator) provided an update regarding recent national meetings on the subject. There were no motions or votes for this agenda item.

**Update on Austin Police Department cases being reviewed by UNTHSC-CHI, AP reagent study and hiring of new director.**

Members were introduced to Dr. Dana Kadavy, APD's new lab director. DPS is working on the AP reagent study and will update the Commission with results.

There were no motions or votes for this agenda item.

**Discuss progress on project to standardize sexual assault kits.**

The task force met January 4, 2018 at Texas A&M University College of Nursing. DPS is working with the task force and they expect to have a new kit developed by September 1, 2019. Kit tracking processes is an issue of concern for members of the task force. Additional updates will be provided by Dr. Downing at the next quarterly meeting.

There were no motions or votes for this agenda item.

**Update from Texas Association of Crime Laboratory Directors.**

There were no motions or votes for this agenda item.

**Report from Austin meeting and DPS lab tour with Kazakhstan criminal justice representatives working on forensic reform in Kazakhstan.**

A brief report was provided for this agenda item.

**Report from various recent and upcoming conference presentations by staff.**

There were no motions or votes for this agenda item.

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

Discussion of licensing knowledge-based competency requirements was proposed as an agenda item for the next quarterly meeting.

**Schedule and location of future panel and quarterly meetings.**

Adams will send a Doodle poll to Commissioners to check availability for July and October meeting dates.

**Hear public comment.**

There was no public comment beyond that referenced above.

**Adjourn.**

The meeting was adjourned at 3:30 p.m.