

**Texas Forensic Science Commission
Minutes from June 11, 2020 Complaint Screening Committee Meeting**

The Texas Forensic Science Commission's Complaint Screening Committee met virtually via GoToWebinar at 2:00 p.m. on Thursday, June 11, 2020 as authorized under Government Code section 551.125 pursuant to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act.

Members of the Complaint Screening Committee were present as follows:

Members Present: Drake, Daniel, Johnson

Members Absent: None

Staff Present: Lynn Garcia, General Counsel
Leigh Savage, Associate General Counsel
Robert Smith, Senior Staff Attorney
Kathryn Adams, Commission Coordinator

- 1. Roll call for members.**
- 2. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through May 29, 2020.**

Disclosures Pending from January 31, 2020

1. No. 19.26; Department of Public Safety Austin (Toxicology)

A self-disclosure by DPS Austin laboratory reporting an incident in the laboratory's toxicology section where two calibrators for morphine did not meet acceptance criteria in a batch, and subsequent investigation revealed five additional batches impacted by the same issues totaling approximately 50 affected cases.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the receipt of the final quality incident report describing corrective actions taken by the laboratory, including a review of all affected batches, amended reports, notification to affected counties and/or district attorneys, and a final description of the risk evaluation and root cause analysis. Drake seconded the motion. The Committee unanimously adopted the motion*

*Commissioner Johnson recused from discussion and vote on this item.

2. No. 20.03; Harris County Institute of Forensic Sciences (Toxicology)

A self-disclosure by the Harris County Institute of Forensic Sciences reporting the malfunction of

an off-site storage refrigerator used for long-term storage of tested blood vials. The entire contents of the refrigerator froze, resulting in 347 broken blood vials affecting 298 total cases.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the root cause and corrective actions by the laboratory, including notification to the district attorney's office, changes to the laboratory's standard operating procedures to address actions to be taken in the event of a refrigerator malfunction at an off-site facility, the addition of a toxicology designee/contact for refrigerator alarms, and a long-term plan to bring storage refrigerators on-site. Drake seconded the motion. The Committee unanimously adopted the motion.*

3. No. 20.11; NMS Labs Winston-Salem (Blood Alcohol)

A self-disclosure by NMS Labs Winston-Salem reporting a failed Blood Alcohol Concentration proficiency test ("PT"). The data indicate the failure occurred due to evaporative loss from previous testing and shipping of the sample from another NMS location. Subsequent re-testing of the PT samples PT by the Winston-Salem laboratory (again) and then at NMS Labs – Horsham, PA revealed consistent results. However, during the process of evaluating the incident, NMS observed inconsistencies in uncertainty of measurement across the laboratories.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on self-disclosure in light of the root cause analysis and corrective action taken by the laboratory contingent on the laboratory's response to Drake's questions at the full Commission meeting. Drake seconded the motion. The Committee unanimously adopted the motion.*

4. No. 20.13; Signature Science (Forensic Biology/DNA)

A self-disclosure by Signature Science, LLC reporting professional misconduct by an evidence technician where the technician misrepresented that she opened a sexual assault kit to check for blood evidence and further revised chain-of-custody documentation. The analyst took steps to make it appear as if she had opened the kit by re-taping the evidence, providing her initials on the tape and back-dating the initials.

Members discussed the letter response and explanation from the analyst citing the toxic work environment at the laboratory that led to her actions in back-dating the kit. Members will request an interview with the analyst as part of the investigation.

MOTION AND VOTE: *Daniel moved to investigate the self-disclosure for purposes of determining whether the laboratory's conclusion regarding professional misconduct is supported. Drake seconded the motion. The Committee unanimously adopted the motion.*

MOTION AND VOTE: *Daniel moved to recommend the Commission establish an investigative panel consisting of commissioners Johnson, Daniel and Drake. Drake seconded the motion. The Committee unanimously adopted the motion.*

5. No. 20.14; Fort Worth Police Department (Seized Drugs)

A self-disclosure by the Fort Worth Police Department Crime Laboratory reporting an incident in the laboratory's seized drugs section where an annual review of Val-Pro quality control data revealed a loss of data in 124 drug cases. The loss occurred during transfer of the data from the original computer to the network server.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the corrective actions by the laboratory, including re-analysis of all affected cases, notification to the district attorney's office, and changes to the laboratory's chemistry SOP. Drake seconded the motion. The Committee unanimously adopted the motion.*

6. No. 20.15; Department of Public Safety Austin (Toxicology)

A self-disclosure by the DPS Austin laboratory disclosing an incident in its toxicology section where a routine audit of evidence in LIMS showed a DPS blood kit never left the possession of the receiving evidence technician and was never located.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the explanation by the laboratory, the efforts to increase the evidence receiving workspace, removal of the trash cans in the receiving area, and notification to affected parties. Parsons seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused from discussion and vote on this item.

7. No. 20.17; Jefferson County Regional Crime Laboratory (Seized Drugs)

A self-disclosure by Jefferson County Regional Crime Laboratory reporting ten (10) seized drugs reports identifying the synthetic cannabinoid MDMB-4en-PINACA included the incorrect disclaimer "Isomer Not Determined" in the note section of the report.

Drake provided an explanation of how the errors made by the analyst and technical reviewer most likely occurred. Emily Esquivel, Jefferson County Regional Crime Laboratory Director, spoke on behalf of the laboratory and confirmed Drake's explanation of events concerning the analyst not finding the presence of a controlled substance when one was present.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the corrective actions by the laboratory, including changes to the laboratory's SOPs to address the identification of new synthetic cannabinoids, removal of the "isomer not determined" data entry field, case review and notification to the district attorney's offices and law enforcement agencies affected. Johnson seconded the motion. The Committee unanimously adopted the motion.*

8. No. 20.18; NMS Labs Horsham, PA (Toxicology)

A self-disclosure by NMS Labs Horsham, PA reporting an incident where incorrect numbers were

mistakenly used in the uncertainty of measurement calculations for cannabinoid tests leading to inaccurate, wider measurement uncertainty intervals being reported in 495 cases, including 13 Texas cases.

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

9. No. 20.25; Jefferson County Regional Crime Laboratory (Seized Drugs)

A self-disclosure by the Jefferson County Regional Crime Laboratory reporting an incident where an analyst incorrectly reported “no controlled substance or dangerous drug identified” in a case sample that in fact had a potential synthetic cannabinoid detected and the error was not caught on technical review. Drake provided an explanation of how the incident likely occurred and suggested the laboratory include a history of all analyses performed on substances in their reports.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the corrective actions taken by the laboratory, including remedial training for the analyst, review of the analyst’s cases from the previous six months with no issues identified, and changes made to the seized drugs technical review policy to include review of raw data for any case that will be reported as “no controlled substance or dangerous drug identified”. Drake seconded the motion. The Committee unanimously adopted the motion.*

Complaints Received as of May 29, 2020

10. No. 20.25; Cochran, Antonio (Southwestern Institute of Forensic Sciences; Forensic Biology/DNA, Serology)

A complaint by defendant Antonio Cochran against Southwestern Institute of Forensic Sciences alleging analysts did not follow laboratory quality control protocols when collecting and processing evidence, and that the serology analysts conspired with prosecutors by fabricating evidence and giving false court testimony in an effort to frame him for murder.

MOTION AND VOTE: *Daniel moved to recommend the Commission dismiss the complaint because a review of the case record does not support the numerous generalized allegations made by the defendant. The defendant was identified as the suspect based on a CODIS hit (both a hit at the state level and at the national level to an Arkansas case). This hit was substantiated with a known reference sample and the analysis of the knife used to kill the victim yielded a strong random match probability. Johnson seconded the motion. The Committee unanimously adopted the motion.*

11. No. 20.10; Rangel, Jerry (Bryan Police Department, Texas Department of Public Safety Austin; Bloodstain Pattern Analysis, Forensic Biology/DNA)

A complaint by defendant Jerry Rangel against the Bryan Police Department and DPS Austin alleging results of DNA testing performed in his case for sexual assault of a child were “suspicious” since DNA has been “discredited,” and that the blood spatter analysis testified to at

trial by Bryan police officer was “strikingly similar” to another analysis performed by a different investigator, and was based on “false science.”

MOTION AND VOTE: *Daniel moved to recommend the Commission dismiss the complaint because the DNA mixture complaint has been addressed by the statewide mixture review team, and the bloodstain pattern analysis complaint does not merit an investigation for the purposes of issuing best practices or other recommendations. Drake seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused from discussion and vote on this item.

12. No. 20.24; Schmucker, Margaret (Tom Green County Prosecutors; Bloodstain Pattern Analysis)

A complaint by attorney Margaret Schmucker on behalf of defendant Isidro Delacruz against Tom Green County prosecutors for ignoring results of a bloodstain pattern analysis performed by independent analyst Christine Ramirez that was favorable to the defendant, and subsequently utilizing the San Angelo crime scene technician who had less training.

Garcia explained concerns brought to light by this case concerning the use of DNA analysis in scene reconstruction and proposed forming an interdisciplinary working group to provide guidance on DNA analysis (and its limitations) for experts engaged in crime scene reconstruction.

MOTION AND VOTE: *Daniel moved to recommend the Commission dismiss the complaint because the Commission has no jurisdiction over the witness sponsoring decisions by prosecutors in Tom Green County and to direct staff to work with the crime scene reconstruction working group to form a multidisciplinary subcommittee for the purpose of issuing guidance regarding the limitations of DNA analysis (especially mixtures) as a tool in scene reconstruction. Drake seconded the motion. The Committee unanimously adopted the motion.*

13. No. 20.26; Gonzales, Joe (SANE Cynthia Garcia, Bexar County Criminal Investigation Laboratory; Trial Testimony, Forensic Biology)

A complaint by defendant Joe Gonzales against SANE Christine Garcia for allegedly providing unscientific trial testimony, and Bexar County Criminal Investigation Laboratory for providing “ambiguous” DNA results and for refusal to perform any Y-STR or mitochondrial DNA testing.

Commissioner Downing addressed the committee and reviewed her findings in the case. Downing observed the SANE’s testimony was appropriate at the time it was made as well as under today’s standards. She emphasized examinations performed when outcries are not made close to the time of the event rarely find evidence of sexual assault, and the jury’s decision in this case was likely based not on the physical examination but rather on the testimony of the victim.

MOTION AND VOTE: *Daniel moved to recommend the Commission dismiss the complaint because the SANE examination and testimony were consistent with the evidence and literature at the time of trial and are consistent with current guidelines. Additionally, the complainant does*

not allege negligence or misconduct by the Bexar County Criminal Investigation Laboratory with respect to the DNA analysis, but rather complains that the laboratory did not perform enough test methods, citing Y-STRs and mtDNA as examples. Johnson seconded the motion. The Committee unanimously adopted the motion.

14. No. 20.28; Therrell, John (DPS Houston; Blood Alcohol)

A complaint by defendant John Therrell against the Department of Public Safety Houston, alleging results of blood alcohol and drug testing were never disclosed to him, and alleging the possibility that contaminated blood vials were used for testing in his case.

MOTION AND VOTE: *Daniel moved to recommend the Commission dismiss the complaint because there is no evidence of negligence or misconduct related to the forensic analysis in the case. Further, the Becton-Dickinson blood tube recall did not affect this defendant's case as alleged in his complaint as his blood was drawn before the issue arose. Drake seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused from discussion and vote on this item.

15. No. 20.29; Tawater, Royce W. (Department of Public Safety Garland; Forensic Biology/DNA; Southwestern Institute of Forensic Science (SWIFS); Forensic Biology/GSR)

A complaint by defendant Royce Tawater alleging a CODIS hit against the Missouri state offender database directly contradicted the State of Texas's theory of the case therefore calling into question his murder conviction. The original DNA analysis in the case was performed at DPS Garland. The complainant states none of his fingerprints or DNA were found on the alleged murder weapon, a firearm. The CODIS hit to DNA from the firearm allegedly owned by complainant and recovered from near the crime scene was a match for a different Missouri offender.

MOTION AND VOTE: *Daniel moved to recommend the Commission dismiss the complaint as there is no indication of negligence or misconduct related to the forensic analysis in the case, and the question of materiality of the CODIS hit in light of the type of evidence in question (gun swab) should be addressed by the court system. Commissioners further directed staff to send a letter to SWIFS with suggestions regarding testimony seeking speculation about GSR and the passage of time, as well as discussion of ways to more clearly flag the presence of weak mixture data in the STRmix working group. Drake seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Johnson recused from discussion and vote on this item.

In addition to the above cases, Daniel reported fifteen complaints dismissed by commission staff as follows:

- two complaints were dismissed because the laboratories with case records indicated the analyses were never requested and therefore were not performed;

- six complaints were dismissed because claims in their complaints involved legal matters (such as law enforcement forcing defendants to submit to DNA testing, requests for disclosure of test results, a request for us to provide an expert witness, and procedural problems with arrests and indictments) and are out of the scope of TFSC's jurisdiction;
- four were dismissed for failure to state a credible complaint of negligence or misconduct against a forensic laboratory or analyst. These complaints contained very general, sweeping allegations such as overall misconduct, lack of oversight, and issues involving discovery and the conduct of law enforcement and prosecutors without any facts regarding the case.
- one complaint was dismissed because it made no allegations concerning a forensic analysis, only that results came in after his trial and may have affected the jury's understanding of defendant's proximity to the victim in a murder case;
- one was dismissed because the same defendant filed a similar complaint in 2017 that was dismissed and referred to the Tarrant County Conviction Integrity Unit; the CIU declined to take further action.

Two additional cases were referred to Bob Wicoff and the statewide DNA mixture review project.

MOTION AND VOTE: *Daniel moved to recommend the Commission accept commission staff's actions on all 15 complaints discussed above. Drake seconded the motion. The Committee unanimously adopted the motion.*

3. Schedule and location of future meetings.
4. Hear public comment.
5. Adjourn.