

**Texas Forensic Science Commission  
Minutes from April 16, 2021 Meeting in Austin, Texas**

The Texas Forensic Science Commission met virtually via Zoom at 9:00 a.m. on Friday, April 16, 2021 as authorized under Government Code section 551.125 pursuant to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster and April 5, 2021 extended proclamation affecting all counties in Texas due to the Coronavirus (COVID-19), as well as the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act.

Members of the Commission were present as follows:

Members Present: Jeffrey Barnard (Presiding Officer)  
Bruce Budowle  
Patrick Buzzini  
Michael Coble  
Mark Daniel  
Nancy Downing  
Jasmine Drake  
Sarah Kerrigan  
Jarvis Parsons

Members Absent: None

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

**1. Call meeting to order. Roll call for members.**

The Commission's virtual meeting convened via live broadcast on Zoom at 9:00 a.m. Presiding Officer Barnard called the roll. Commissioners were present as indicated above.

**2. Instructions for public participation and meeting process.**

Tomlin gave instructions for public comment during the meeting. Members of the public were permitted to make public comment throughout the meeting and during the designated public comment item on the agenda.

**3. Review and adopt minutes from January 29, 2021 Forensic Science Commission Quarterly meeting.**

**MOTION AND VOTE:** *Kerrigan moved to adopt the minutes draft. Parsons seconded the motion. The Commission unanimously adopted the motion.*

**4. Office administrative update (FY2021 budget status report; discuss American Academy of Forensic Sciences February 2021 annual (virtual) conference presentations; discuss database project with Office of Court Administration IT).**

Garcia described abstracts presented by staff at the American Academy of Forensic Sciences Annual Conference (AAFS) February 13-19 either as workshops or section presentations. Executive Director of the Office of Court Administration, David Slayton, presented on Texas' approach to addressing challenges faced by the court system during the COVID-19 pandemic, including special considerations regarding remote expert testimony and efforts to keep testifying experts safe. Tomlin presented on Texas' oversight approach with respect to individual forensic analysts and disciplinary action taken pursuant Commission investigations. Garcia presented to the jurisprudence section on Texas' approach to implementation of OSAC Registry standards. She also participated in a panel with Judge Chris Plourd and Dallas exoneree Richard Miles during the plenary session of the meeting, titled *One Academy – Pursuing Justice Through Truth of Evidence*. Kerrigan described a workshop she presented on the subject of hemp/marihuana differentiation including a presentation on the interlaboratory validation effort facilitated by the Commission with assistance from Sam Houston State University in collaboration with HFSC, HCIFS and Texas DPS. The workshops are accessible online to meeting participants for three months following the conference.

Garcia described the database project currently being developed by the Office of Court Administration's IT development group. Brett Watkins, Systems Analyst of Office of Court Administration, provided a demonstration of the content on the site. The team is developing an online platform to provide better access to Commission data, including information regarding accredited labs, licensees, self-disclosures, complaints, quality incidents OSAC Registry Standards implementation. The team hopes to launch the site in 6-8 weeks.

**5. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through March 26, 2021.**

Disclosures Received as of March 26, 2021

1. No. 21.01; Bexar County Criminal Investigation Laboratory (Seized Drugs)

A self-disclosure by the Bexar County Criminal Investigation Laboratory reporting an incident in the laboratory's seized drugs section where a trainee shadowing an analyst observed the analyst using leftover sample residue for a presumptive color test rather than placing the suspected controlled substance in the well of the spot plate for presumptive testing in accordance with laboratory standard operating procedures.

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

2. No. 21.03; University of North Texas Health Science Center – Center for Human Identification (Forensic Biology/DNA)

A self-disclosure by University of North Texas Health Science Center – Center for Human Identification reporting an incident in the laboratory’s forensic biology section where during an overnight soak in xylene, the cover slip on a slide containing hair fragments partially dissolved, sliding down and off the slide, taking with it most of the hair fragments.

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

\*Commissioners Budowle and Coble recused themselves from discussion and vote on this item.

3. No. 21.04; Houston Forensic Science Center (Forensic Biology/DNA)

A self-disclosure by the Houston Forensic Science Center reporting a complaint from a former employee who communicated concerns to a current employee regarding another current Forensic Biology/DNA staff member. The laboratory’s investigation yielded no evidence to support the alleged misconduct. However, in reviewing its evidence examination/screening process, the laboratory identified risk inherent to the process of determining that an item has a “negative” result because negative items do not proceed to DNA analysis and the negative result is not subject to independent verification.

**MOTION AND VOTE:** *Daniel moved to table the self-disclosure pending results of the laboratory’s review of a sampling of negative forensic biology screening results. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

4. No. 21.05; Harris County Institute of Forensic Sciences (Firearms/Toolmarks)

A self-disclosure by the Harris County Institute of Forensic Sciences reporting the termination of a firearms/toolmarks analyst for falsifying her time productivity report.

**MOTION AND VOTE:** *Daniel moved to take no further action on the self-disclosure given that the laboratory terminated the analyst and the analyst’s provisional license expired. Daniel further moved to retain the disclosure for use in evaluating the applicant’s fitness for licensure should she apply in the future. Parsons seconded the motion. The Commission unanimously adopted the motion.*

5. No. 21.06; NMS Labs (Toxicology)

A self-disclosure by NMS Labs reporting a mistake by Cerilliant, the laboratory’s THC reference standard manufacturer, in calculating measurement uncertainty for the laboratory’s THC standard.

**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 and the fact that no Texas cases were affected. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

6. No. 21.07; Houston Forensic Science Center (Crime Scene Investigation)

A self-disclosure by the Houston Forensic Science Center reporting an incident in the laboratory's crime scene unit where non-consensus results were reported on a proficiency test for body fluid identification.

**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. Drake seconded the motion. The Commission unanimously adopted the motion.*

7. No. 21.11; Bexar County Criminal Investigation Laboratory (Seized Drugs)

A self-disclosure by the Bexar County Criminal Investigation Laboratory reporting the inclusion of incorrect certificates of analysis in case notes by three separate seized drugs analysts.

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

8. No. 21.14; Austin Police Department Forensic Science Bureau (Toxicology)

A self-disclosure by the Austin Police Department Forensic Science Bureau reporting an incident in which the laboratory mistakenly released a blood sample for retesting, and the retesting laboratory reported results based on an incorrect blood sample with the wrong suspect's name.

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

9. No. 21.15; Houston Forensic Science Center (Latent Prints)

A self-disclosure by the Houston Forensic Science Center reporting an incident in its latent print section where, during the laboratory's review of a latent print corrective action involving a former employee, discrepancies between case records and data stored in AFIS were identified.

**MOTION AND VOTE:** *Daniel moved to table the self-disclosure pending receipt of the final corrective action in the matter. Drake seconded the motion. The Commission unanimously adopted the motion.*

10. No. 21.17; Southwestern Institute of Forensic Science (Firearms/Toolmarks)

A self-disclosure by the Southwestern Institute of Forensic Sciences reporting an incident in its firearms section where an analyst made changes to contemporaneously recorded values and observations in thirteen cases and three proficiency tests using erasable ink thereby failing to retain the original observations; he then provided false and misleading information when asked about the changes.

**MOTION AND VOTE:** *Daniel moved to accept the self-disclosure for investigation to determine whether the laboratory's conclusion regarding professional misconduct and violations of the Code of Professional Responsibility are supported. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

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

\*Presiding Officer Barnard recused himself from discussion and vote on this item.

11. No. 21.18; Department of Public Safety Crime Laboratory System (Firearms/Toolmarks)

A self-disclosure by the Department of Public Safety Crime Laboratory System reporting an incident in its El Paso and Laredo laboratories where a firearms analyst discovered one magazine missing from a long gun box containing an AK-47 shipped from the El Paso laboratory to the Laredo laboratory.

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

12. No. 21.19; Bexar County Criminal Investigation Laboratory (Seized Drugs)

A self-disclosure by the Bexar County Criminal Investigation Laboratory reporting an incident in its seized drugs section where during a routine post-sampling check of his sampling area, an analyst found one small Ziplock bag containing drug evidence on the floor beneath his chair.

**MOTION AND VOTE:** *Daniel moved to table the self-disclosure pending the conclusion of the laboratory's internal investigation and receipt of the final corrective action report. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

13. No. 21.20; Department of Public Safety Austin (Fire Debris)

A self-disclosure by the Department of Public Safety Austin laboratory reporting an incident where the laboratory discovered missing extraction vials in a fire debris case.

**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. Drake seconded the motion. The Commission unanimously adopted the motion.*

Complaints Received as of March 26, 2021

14. No. 21.10; Gaines, Ernest (Department of Public Safety Austin; Forensic Biology/DNA)

A complaint against DPS (Austin) by defendant Ernest Gaines alleging a DNA analyst falsified a post-conviction DNA report that found no interpretable DNA profiles were obtained from certain swabs from a vehicle.

**MOTION AND VOTE:** *Daniel moved to dismiss the complaint based on a review of the underlying data in the DNA report which support the results. Drake seconded the motion. The Commission unanimously adopted the motion.*

15. No. 21.12; Glen Dale Horner (Houston Police Department/Houston Forensic Science Center; Forensic Biology/DNA)

A complaint against the former Houston Police Department laboratory by defendant Glen Dale Horner alleging the report from a DNA analysis conducted in his 1998 case is missing.

**MOTION AND VOTE:** *Daniel moved to table the complaint until documents recently obtained from the Houston Police Department's archives are reviewed by HFSC. Budowle seconded the motion. The Commission unanimously adopted the motion.*

16. No.21.13; Banks, Holston (Department of Public Safety Lubbock; Forensic Biology/CODIS)

A complaint against DPS (Lubbock) by defendant Holston Banks alleging the DNA results in his case were not eligible for CODIS entry because an insufficient number of loci were observed in the analysis.

**MOTION AND VOTE:** *Daniel moved to dismiss the complaint because the defendant's complaint is inconsistent with the reported information. Parsons seconded the motion. The Commission unanimously adopted the motion.*

17. No. 20.16; Layfield, Rickey (SANE Paula Wilson; Sexual Assault Examination)

A complaint by defendant Rickey Layfield alleging the sexual assault nurse examiner's trial testimony regarding the implications of the physical examination on the question of whether an assault occurred was false and misleading.

**MOTION AND VOTE:** *Daniel moved to dismiss the complaint because the SANE's trial testimony was appropriate. Drake seconded the motion. The Commission unanimously adopted the motion.*

#### Staff complaint dismissals

**MOTION AND VOTE:** *Daniel moved to accept Commission staff's dismissal of four complaints that contained no allegation of negligence or misconduct relative to a forensic analysis. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

- 6. Discuss status of crime laboratory accreditation program, including accreditation non-conformances and reports received since January 29, 2021 quarterly meeting; discuss development of sample quality assurance documents for quality incidents and corrective actions; discuss and vote on rulemakings, including removal of the term "collection" as a category for the discipline Forensic Biology/DNA.**

Tomlin reported on accreditation non-conformances and reports received since the January 29, 2021 quarterly meeting. In following up on a non-conformance cited during DPS's last internal audit by ANAB, Kerrigan asked whether the non-conformance concerning the absence of mass spectral reference library data used to evaluate unknown samples in case records was applicable to one regional laboratory or the entire system. Mills reported that DPS treated the nonconformance as a systemwide issue because similar events were reported from multiple locations.

Kerrigan and Garcia discussed developing a training program to assist laboratories with the process of documenting quality incidents and corrective actions more effectively and consistently.

Tomlin described a rulemaking addressing Commission accreditation and licensing requirements as applicable to laboratory employees "swabbing" or "collecting" evidence. Evidence collection activities related to forensic biology cases may be performed by another unit at a crime laboratory for evidence processing efficiency and other purposes. The rules as currently written may be read to subject such evidence collection activities to Forensic Biology/DNA accreditation and licensing requirements. The Licensing Advisory Committee recommended the change to clarify that "collection" activities are not subject to the requirements and may be performed by a non-Forensic Biology/DNA analyst or other qualified crime laboratory employee.

**MOTION AND VOTE:** *Kerrigan moved to adopt the rulemaking removing the term "collection". Parsons seconded the motion. The Committee unanimously adopted the motion.*

**7. Discuss licensing advisory committee update, including:**

**a. Update on licenses issued and renewed;**

Staff reported there are currently 1,215 licensees, consisting of 981 regular licenses, 8 blanket, 3 provisional, 2 temporary, 1 technical review, and 220 non-interpretive under the *de minimis* program.

**b. Review outstanding licensing rules and any proposed rule concepts for approval, including:**

**i. revisions to licensing program continuing forensic education requirements to align with OSAC continuing forensic education; and**

Commissioners and staff discussed a comparison chart of requirements recommended in the OSAC Registry training and education standard ASTM E2917-19a as compared to what is required by the Commission for continuing education. Tomlin explained the Commission's requirements are generally more rigorous than the requirements in the OSAC Registry standard, with one exception—the number of total hours required. The OSAC Registry standard recommends an additional 8 hours every two years beyond what the Commission requires. Commissioners discussed the recommended change to the Commission's continuing forensic education requirements, including an increase of 8 hours per two-year license cycle required for renewal and a minimum of 16 hours of the total 32 that must be discipline-specific training hours.

**MOTION AND VOTE:** *Kerrigan moved to adopt the rulemaking to aligning with the recommended number of training hours described in ASTM E2917-19a with the Commission's recommended number. Budowle seconded the motion. The Commission unanimously adopted the motion.*

**ii. and training requirements; and license expiration policy.**

Commissioners discussed and voted on a draft administrative rule that creates a license expiration policy to discourage renewal beyond a licensee's expiration date by imposing additional fees for late renewals. Members approved the rule with edits to section (g) that addresses an exemption from expiration penalties for licensees who no longer need a license or are taking a leave of absence.

**MOTION AND VOTE:** *Daniel moved to adopt the rulemaking creating a license expiration policy. Downing seconded the motion. The Commission unanimously adopted the motion.*

**8. Update from investigative panel regarding Fort Worth Police Department Crime Laboratory complaint #20.47.**

Garcia gave an update on the investigative panel's progress. Garcia expects to have a draft report ready by the July 16, 2021 quarterly meeting regarding the allegations made in the complaint that are within the Commission's jurisdiction to investigate.

**9. Update from investigative panel regarding Expertox complaint #20.55; discussion and vote to add Dr. Downing to panel.**

Garcia gave a brief update on the investigative panel's progress. Garcia expects to have a draft report for review in the case by the July 16, 2021 quarterly meeting. Members discussed adding Downing to the investigative panel.

**MOTION AND VOTE:** *Budowle moved to add Downing to the investigative panel for complaint #20.55. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

**10. Update from investigative panel regarding Armstrong complaint #20.60.**

Garcia gave an update on the investigative panel's progress. Garcia expects to have a draft report in the case by the July 16, 2021 quarterly meeting. Kerrigan agreed and stated the panel has the information it needs to draft the report.

**11. Discuss developments regarding task force for training and requirements for sexual assault nurse examiners.**

Downing provided an update from the committee addressing initiatives for sexual assault examinations. Downing explained that many exams are performed by non-experts. The committee intends to have these exams reviewed by experts in the future, and to look at the trial testimony of SANE's for appropriateness. Trial testimony has not routinely been reviewed by the



Board of Nursing in the past. The committee also intends to address the issue of cognitive bias in the future.

**12. Update re: forensic science related legislation filed to date (87<sup>th</sup> Session).**

Garcia gave a brief update on outstanding legislation affecting the Commission incorporated within the judicial omnibus bill (SB-1530 by Huffman/HB-3774 by Leach). Changes affecting the Commission do not impact the Commissions core objectives, but do provide helpful clarification on the intersection between articles 38.01 and 38.35 of the Texas Code of Criminal Procedure. Staff will continue to monitor any legislation affecting the Commission and crime laboratories.

**13. Update from Texas Association of Crime Laboratory Directors, including an update on the collaborative work groups discussing implementation of OSAC Registry standards, plan in collaboration with NIST for implementation of OSAC Registry standards and hiring of project manager.**

Watts provided a brief update from the TACLD on members' efforts to incorporate OSAC Registry standards. The TACLD will meet again in July 2021.

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

Staff will include all discussed items on the next quarterly meeting agenda and circulate the proposed agenda for additions.

**15. Schedule and location of future panel and quarterly meetings, including July 16, 2021 quarterly meeting.**

The Commission will meet for its next quarterly meeting July 16, 2021 (virtual via Zoom). Staff will determine a date for the Commission's fall quarterly meeting pending updates on whether the Commission will meet virtually or in-person.

**16. Hear public comment.**

One public participant, complainant Mrs. Banks, addressed case # 21.13 (Holston Banks complaint against DPS Lubbock) dismissed by Commissioners during the complaint screening section of the agenda. In addressing Mrs. Banks comments, Garcia explained her questions in the case are outside the jurisdiction of the Commission, because none of the allegations relate to the performance of a forensic analysis. The allegations related to evidence collection and attorney disclosure obligations, factual questions that fall within the jurisdiction of the court.

**17. Adjourn.**

**MOTION AND VOTE:** *Kerrigan moved to adjourn the meeting. Parsons seconded the motion. The Commission unanimously adjourned at 11:06 a.m.*