

**Texas Forensic Science Commission  
Minutes from April 13, 2012 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 9:30 a.m. on Friday, April 13, 2012, at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744. Members of the Commission were present as follows:

Members Present: Kerrigan, Adams, Lerma, Hampton, Eisenberg, Alpert, Peerwani, Di Maio, Barnard

Members Absent: None

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

**Review and adopt minutes from 2/10/12, 3/2/2012, and 1/13/2012 meetings**

**MOTION AND VOTE:** *Di Maio moved to adopt the drafts of the 2/10/12, 3/2/2012, and 1/13/2012 meeting minutes. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

**Discuss and consider recommendations from Complaint Screening Committee**

Complaint #12-01 (Austin Police Department – Controlled Substance)

MOTION AND VOTE: *Di Maio moved to adopt the Complaint Screening Committee's recommendation to accept the APD complaint for further investigation. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Complaint #12-02 (SWIFS – Autopsy)

Dr. Barnard recused himself from any discussion regarding this case.

MOTION AND VOTE: *Peerwani moved to dismiss the complaint because it falls outside the limited jurisdiction of the FSC. Adams seconded the motion. The FSC unanimously adopted the motion.*

The date of the forensic analysis related to this complaint occurred before the effective date of the FSC's enabling statute. Also, the forensic analysis in question (autopsy/medical examiner) is expressly excluded from the FSC's jurisdiction in accordance with Tex. Code Crim. Pro. art. 38.35(a)(4)(A-C & E-F) & (f).

Complaint #12-05 (Meledez - California – DNA)

MOTION AND VOTE: *Di Maio moved to dismiss the complaint because it falls outside the limited jurisdiction of the FSC. Eisenberg seconded the motion. The FSC unanimously dismissed the complaint.*

The date of the original analysis in this case occurred before the effective date of the FSC's enabling statute. Though DNA analysis is within the FSC's jurisdiction, the testing was not performed by a DPS-accredited lab and thus falls outside the FSC's limited jurisdiction. FSC members acknowledged that there could be pertinent evidence that needs to be tested in this case. The FSC will recommend that the National Innocence Project or other entities try to compel the return of the evidence. Eisenberg offered his lab to conduct any testing if the evidence is returned to Texas from California.

#### Complaint #12-03 (Tarrant Crime Laboratory Disclosure – Serology)

Dr. Peerwani recused himself from any discussion regarding this case.

MOTION AND VOTE: *Di Maio moved to accept the complaint for investigation and establish an investigative panel. Hampton seconded the motion. The FSC unanimously adopted the motion.*

FSC members exchanged comments and feedback with Lab Director, Sue Howe, and other representatives from Tarrant County.

#### **Establishment of Investigative Panels**

MOTION AND VOTE: *Di Maio moved to nominate Barnard, Alpert and Hampton to the Austin Police Department – Controlled Substance investigative panel. Adams seconded their motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Di Maio moved to nominate Eisenberg, Lerma and Adams to the Tarrant County Laboratory Disclosure investigative panel. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Dr. Peerwani recused himself from the Tarrant County Laboratory Disclosure vote.

MOTION AND VOTE: *Di Maio moved to hold the Austin Police Department – Controlled Substance investigative panel meetings via teleconference for investigative purposes only. Adams seconded the motion. The FSC unanimously adopted the motion.*

#### **Update on forensic development initiatives and FSC/TCJIU June conference**

Judge Hervey, Court of Criminal Appeals, addressed the FSC on collaborative plans for the upcoming June 2012 Forensic Science Seminar.

## **Update on legislative issues**

Robitaille discussed plans to meet with any criminal forensic science stakeholders in the legislature prior to the next legislative session.

## **Office Administrative Update**

MOTION AND VOTE: *Di Maio moved to direct staff to use budget for remainder of office equipment and file storage needs. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

## **Discuss facts and recommendations in EPPD crime lab investigation**

MOTION AND VOTE: *Kerrigan moved to instruct Robitaille to draft a report for the El Paso Police Department Crime Lab Complaint for review and open discussion at the next FSC quarterly meeting. Alpert seconded the motion. The FSC unanimously adopted the motion.*

## **Informational update on complaint previously dismissed by Commission due to lack of jurisdiction (Devening #11-08)**

FSC members and Pat Johnson discussed the need for a neutral independent database outlining certified forensic examiner credentials, providing comments, etc.

## **Update on arson case review**

Ryan Brown from the Innocence Project of Texas provided a brief status update for the arson case inquiry. Brown has evaluated cases and their responses and identified 20-30 cases in to which IPOT will further inquire. Brown reported IPOT expects to have a specific list of cases for which a scientific inquiry will be recommended at the FSC's July 2012 meeting.

## **TCFP Update**

### **Discuss possibility of obtaining agreements from DPS-accredited crime labs to permit ASCLD-LAB to release relevant communications to the FSC**

DPS (Pat Johnson) explained that if DPS accredits the lab, any communication between ASCLD-LAB and the lab, with only a few exceptions, also goes to DPS and everything DPS has is open record.

### **Discuss draft of self-disclosure guidelines for DPS-accredited crime laboratories**

MOTION AND VOTE: *Di Maio moved to direct Robitaille to re-draft the laboratory disclosure guidelines in accordance with the FSC's discussion. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

**Discuss and consider any amendments to policies and procedures, including but not limited to an amendment for establishing a deadline for receipt of complaints before meetings**

MOTION AND VOTE: *Adams moved to establish a 15-day deadline for receipt of complaints prior to the date of the FSC's next quarterly meeting. Di Maio seconded the motion. The FSC unanimously adopted the motion.*

**Report from member presentations/attendance at various conferences**

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

Di Maio discussed confronting the following issues proactively:

1. Personnel (education level of employees in crime labs, training, experience)
2. Certification/Licensure of examiners
3. Methods of analysis (sensitivity, accuracy, scientific validity)
4. Testimony - pseudo-science (anything without scientific basis)
5. Validity of analyses checks for labs
6. Regional labs

**Schedule and location of future meetings**

The FSC will meet again in July 2012.

**Hear public comment**

Public comment was heard and exchange with commission member throughout the course of the meeting.

Sarah Chu – discussed the importance that the FSC not restrict the type of complaints it receives and the FSC's role in relation to accreditation and accreditation standards. Accreditation does not cover everything.

**Adjourn**