

**Texas Forensic Science Commission  
Minutes from July 12, 2013 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 8:30 a.m. on Friday, July 12, 2013, at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744.

Members of the Commission were present as follows:

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

Members Absent: Lerma

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

**Review and adopt minutes from 4/5/13 FSC Meeting.**

**MOTION AND VOTE:** *Kerrigan moved to adopt the meeting minutes draft. Barnard seconded the motion. The FSC unanimously adopted the motion.*

**Office administrative update.**

Staff briefly discussed the remainder of FY13 budget, office purchases, office network and infrastructure and live-streaming quarterly meetings. The meeting was live-streamed through a video link on the Commission's website. A record of the recording will be available for future access on the meetings page of the Commission's website.

**Wrap-up discussion regarding 83<sup>rd</sup> Legislative Session, with focus on SB-1238.**

Garcia gave an overview and commission members discussed SB-1238, the FSC statute adopted by the Texas Legislature this session and its relative impact on the FSC's a) jurisdiction; b) budget; c) investigative, education and forensic development priorities; and d) the exclusion of autopsy examinations.

**Discuss and consider recommendations from Complaint Screening Committee concerning pending complaints and self-disclosures.**

1. #13-03 HPD Crime Laboratory (DNA – Ellis)

**MOTION AND VOTE:** *Kerrigan moved to dismiss the complaint, because the complaint does not articulate any ground for review. The request for retesting is appropriate for consideration by a court of competent jurisdiction, but not by the Commission. Hutson seconded the motion. The Commission unanimously adopted the motion.*

2. #13-04 ExperTox, Inc. (Controlled Substance – Starkey)

**MOTION AND VOTE:** *Barnard moved to table the complaint until the Commission's next meeting and in the meantime work with DPS to determine accreditation status and eligibility for the laboratory, and report back to Commission members for consideration at the Commission's November 2013 meeting. Alpert seconded the motion. The Commission unanimously adopted the motion.*

3. #13-05 Lubbock County DA's Office (Trace Evidence, DNA – Williams)

**MOTION AND VOTE:** *Alpert moved to dismiss the complaint, because 1) the complaint facts pre-date the crime laboratory accreditation program and 2) the complaint fails to articulate a claim worthy of investigation under either of the FSC's jurisdictional categories. The alleged negligence or misconduct committed by the prosecutor even if true is beyond the scope of the Commission's jurisdiction. Peerwani seconded the motion. The Commission unanimously adopted the motion.*

4. #13-06 DPS – McAllen (DNA – Mireles)

**MOTION AND VOTE:** *Peerwani moved to table the complaint until the Commission's November 2013 meeting and also to refer the complaint to the Innocence Project of Texas. The Innocence Project of Texas will provide an update on the status of the complaint at the Commission's November 2013 meeting and DPS will provide in the meantime, more thorough DNA data for review by Eisenberg. Eisenberg seconded the motion. The Commission unanimously adopted the motion.*

5. #12-09 DPS – Houston (DNA – Desormeaux)

**MOTION AND VOTE:** *Barnard moved to dismiss the complaint, because it fails to allege any negligence or misconduct related to the DNA testing completed in the case. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

**Update on arson case review and implementation of recommendations.**

Jeff Blackburn addressed the Commission regarding the status of the arson case review. Blackburn explained the Scientific Working Group initiated by the Texas State Fire Marshal's office identified seven cases that have subsequently been recommended for post-conviction review by the corresponding prosecuting agency. Blackburn explained several additional cases are pending review by the work group.

**DPS – Houston Self-Disclosure #12-06**

Commission members and Garcia discussed finalization of the DPS-Houston investigative report, latest re-test results, and Texas Court of Criminal Appeals decisions affecting cases. Members discussed releasing an addendum report to the DPS-Houston investigative report to provide supplemental re-testing results.

## **Update regarding status of federal forensic science reform efforts (Robert Thompson, NIST).**

Robert Thompson from the National Institute of Science and Technology provided an update on standards and recommendations developed for forensic science reform on the national level.

## **Forensic Development Committee update**

Garcia and Kerrigan provided reports from the Commission's certification and defendant notification roundtables hosted with the Texas Criminal Justice Integrity Unit on July 11. Commission staff will publish a policy report of informational points from both the certification and defendant roundtable sessions. Members also discussed the August crime lab manager academy that will be held in Austin and taught by the West Virginia University Forensic Science Initiative.

Eisenberg discussed working with UT Arlington graduate program to conduct a research project and survey related to the impact of the cost of certified forensic testing on laboratories and police agencies and the effects of some of the new legislative decrees. Eisenberg will report back at the Commission's next quarterly meeting.

## **Update from Kenneth Melson regarding status of federal forensic reform efforts.**

Kenneth Melson from the Office of the Inspector General provided an update on national forensic science reform legislation.

## **Discussion regarding challenges faced by Texas laboratories in identifying and reporting synthetic drugs, including possibility of statewide TTAG to address issues.**

Pat Johnson (DPS), Irma Rios (Houston Police Department Crime Laboratory), and Azell Carter (Pasadena Police Department Crime Laboratory) discussed synthetic drug issues that remain to be addressed by the Texas legislature.

## **Presentation regarding status of FBI hair analysis task force with discussion of American Society of Crime Lab Directors memorandum to laboratories and potential impact of FBI review on states. (Norman Reimer, NACDL)**

Norman Reimer from the National Association of Criminal Defense Lawyers gave a presentation on the FBI hair analysis task force and corresponding case review.

Commission members directed staff to send a survey to Texas crime laboratories, asking each laboratory to provide information on whether they did hair comparison testing and what case documents/testimony records may be available for any cases where a laboratory might have used hair comparison testing. Staff will report results of the survey at the Commission's next meeting.

**Discussion regarding development of training video on *Brady v. Maryland* for forensic scientists in collaboration with the Texas Criminal Justice Integrity Unit.**

The Commission staff plans to develop a video in collaboration with the Texas Criminal Justice Integrity Unit and the State Bar of Texas related to *Brady* training for forensic scientists.

**Discussion of updates to policies and procedures to reflect changes from 83<sup>rd</sup> Legislative Session.**

Staff will develop an updated version of the policies and procedures to reflect the changes from the 83<sup>rd</sup> Legislative Session and present the document for review by Commission members at its next quarterly meeting.

**Report on panel discussion at North Carolina Innocence Network seminar.**

Garcia reported on her attendance and presentation at the April 19, 2013 North Carolina Innocence Network seminar.

**Report on webinar series for West Virginia University Forensic Science Initiative.**

Garcia reported on an informational webinar on the Texas Forensic Science Commission she hosted for the West Virginia University Forensic Science Initiative. Garcia reported the Commission received \$112.00 for her time on the webinar.

**Report from general counsel discussions with representatives from Massachusetts.**

Garcia reported on her visit with Massachusetts representatives in wake of forensic scientist Annie Dookhan's forensic scandal. Massachusetts representatives listened to a brief presentation from and discussed with Garcia Texas' approach to major forensic non-conformance cases.

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

Staff will circulate a proposed agenda for additions and edits by commission members prior to the Commission's next quarterly meeting.

**Schedule and location of future meetings.**

The Commission will meet for its next quarterly meeting on November 1, 2013 in Austin.

**Hear public comment.**

Devin Potts, The Innocence Project

**Adjourn.**