

**Texas Forensic Science Commission
Minutes from January 10, 2014 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 8:30 a.m. on Friday, January 10, 2014, at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744.

Members of the Commission were present as follows:

Members Present: Alpert, Di Maio, Barnard, Lerma, Eisenberg

Members Absent: Peerwani, Hutson, Hampton, Kerrigan

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

Review and adopt minutes from 10/31/13 and 11/1/13 FSC Meetings.

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

Office administrative update.

Staff discussed FY2014 budget plans, information technology improvements, website plans, FSC appointment/membership changes, and the distribution of the FSC's second annual report.

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

Staff discussed new complaint forms and access to complaints.

1. #13-04 ExperTox, Inc. (Controlled Substance – Starkey)

MOTION AND VOTE: *Alpert moved to dismiss the complaint, because any further action on the complaint is outside the FSC's jurisdiction and DPS expressed satisfaction with the response provided by the laboratory. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

2. #13-07 DPS – Garland (Controlled Substance – Hawkins)

MOTION AND VOTE: *Alpert moved to table the complaint until the April meeting so that FSC members may review laboratory reports and testimony information related to the complaint. Barnard seconded the motion. The FSC unanimously adopted the motion.*

3. #13-06 – McAllen (DNA – Mireles)

FSC members discussed they would not re-open the complaint (previously dismissed at the FSC's November 1, 2013 meeting), because the facts of the complaint pre-date the crime laboratory accreditation program and the Innocence Project of Texas is in the process of working with the complainant to determine whether any further relief is available under Texas law.

Members also discussed the DNA reports from the complaint appear to follow appropriate protocols in place at the time of testing and no negligence or misconduct is indicated by the results obtained from DNA analysis.

4. #13-08 DPS – Abilene (Controlled Substance – Hutchinson)

MOTION AND VOTE: *Eisenberg moved to direct staff to obtain copies of laboratory reports in the case for review by FSC members. Lerma seconded the motion. The FSC unanimously adopted the motion.*

5. #13-12 Fort Worth PD - (Firearms – Gaines)

MOTION AND VOTE: *Barnard moved to dismiss the complaint, because it does not allege an adequate claim for review by the FSC and because the forensic analysis occurred in 2002, prior to the implementation of the DPS crime lab accreditation program. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

6. #13-13 TCME (Toxicology – Roche)

MOTION AND VOTE: *Eisenberg moved to dismiss the complaint, because it does not allege any negligence or misconduct related to the forensic analysis, but alleges clerical error in reporting the results of the forensic analysis. Lerma seconded the motion. The FSC unanimously adopted the motion.*

FSC General Counsel will contact the Denton County District Attorney's Office to notify the District Attorney of the complaint and will forward the complaint to the Innocence Project of Texas to assess whether any remedies are available under Texas law.

Update on Attorney General Opinion Request submitted by District Attorney Rod Ponton and status of responses.

An Attorney General Opinion related to the request has not yet been issued.

Update on arson case review and implementation of recommendations.

State Fire Marshal Chris Connealy provided FSC members with an update on the arson case review. Connealy explained the committee has performed six reviews thus far, five are

public and the sixth is being finalized. The committee initially limited its review to felony murder arson convictions, but will now extend its review to lesser arson convictions. The Innocence Project of Texas' Nick Vilbas also addressed the FSC with a brief update on the review.

Update from FSC's Hair Microscopy Panel, including November 22, 2013 meeting in Houston and recommended action items.

FSC General Counsel, Lynn Garcia, provided an update from the hair microscopy panel's November 22, 2013 meeting at the DPS – Houston crime laboratory.

MOTION AND VOTE: *Lerma moved to allocate \$50,000 of the FSC budget to assist laboratories with costs incurred in the hair microscopy case review. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Alpert moved to delegate to the FSC's Hair Microscopy Panel (Lerma, Kerrigan, Peerwani, Alpert) to gather a group of attorneys and subject matter experts to establish the criteria for the hair microscopy review in consultation with TDCAA, TCDLA and the TACLD. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

Bill Gibbens, Texas Association of Crime Lab Directors' (TACLD) President, addressed the FSC and explained TACLD will provide a statement next week regarding its position on the FSC's hair microscopy review. TACLD's biggest concern is that subject matter experts are appointed to review the cases. FSC General Counsel, Lynn Garcia, will work with Gibbens to get a list of subject matter experts from TACLD.

Texas Department of Public Safety – Houston Self-Disclosure #12-06: latest retest results and status of Texas Court of Criminal Appeals opinion in *Ex Parte Coty*.

Garcia reported no Court of Criminal Appeals decision has been handed down in the *Coty* case. Laboratory re-testing has been suspended until a decision is handed down.

Forensic Development Committee update, including white papers distributed from certification and defendant notification roundtables hosted with Texas Criminal Justice Integrity Unit (TCJIU) on July 11, follow-up action items, update on extending crime lab manager academy including cost proposal from WVU, discussion collaboration on web-based training and backlog reduction programs.

Garcia provided an update on distribution of the FSC and TCJIU's white papers on certification and defendant notification. The reports have been published on the FSC's website and distributed to stakeholders. The group discussed extending the University of West Virginia forensic leadership academy training course, as well as collaborative web-based training with the Office of Forensic Services in New York, and follow-up with the crime laboratories on the Foresight program.

MOTION AND VOTE: *Alpert moved to allocate \$50,000 of the FSC's FY14 budget to host two separate West Virginia University Crime Laboratory Manager Academies, one in Houston and one in the Metroplex area. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Alpert moved to approve \$15,000 of the FSC's FY14 budget for collaborative web-based training with New York's Office of Forensic Services, designed to address the ASCLD-LAB ethics requirement for forensic examiners. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Barnard moved to invite the Foresight program's director, Paul Speaker, to Texas to work with crime laboratory directors to develop good data for efficiency in using the Foresight program. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

Members also discussed exploring a cognitive bias presentation for crime laboratory employees. The Forensic Development Committee will discuss moving forward with the potential training.

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

The *Brady* video has not yet been developed but Judge Hervey's office is working on it.

Review and adoption of policies and procedures reflecting changes from 83rd Legislative Session.

MOTION AND VOTE: *Eisenberg moved to adopt an edited version of the FSC's policies and procedures. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Report from Attorney General's December 2013 Open Government Conference.

Staff members Lynn Garcia and Leigh Heidenreich reported on attendance at the AG's Open Government Conference.

Report from presentation at TDCAA December 2013 Elected District Attorney conference.

Lynn Garcia reported on her presentation at the TDCAA conference.

Report from January 2014 TACLD meeting.

Lynn Garcia reported on FSC staff attendance at the TACLD meeting. Bill Gibbens, TACLD President, briefly addressed the FSC.

Discussion of AAFS February 2014 annual meeting attendance and presentations.

Members and General Counsel discussed setting up conference calls to discuss logistics for the upcoming AAFS presentations at the annual meeting in Seattle.

Consider proposed agenda items for next quarterly meeting.

Members will add an agenda item to address/clarify particular language in the FSC's El Paso Police Department report relating to use of a particular instrument for controlled substance testing.

Schedule and location of future meetings.

The Commission will meet for its next quarterly meeting April 4, 2014.

Hear public comment.

Devin Potts, National Innocence Project.

Adjourn.