

**Texas Forensic Science Commission
Minutes from August 1, 2014 Meeting in Fort Worth, Texas**

The Texas Forensic Science Commission met at 8:30 a.m. on Friday, August 1, 2014, at the Courtyard Marriott Downtown – Blackstone, 601 Main Street, Fort Worth, Texas 76102.

Members of the Commission were present as follows:

Members Present: Alpert, Peerwani, Barnard, Eisenberg, Mozayani, Kerrigan, Lerma, Kessler

Members Absent: Di Maio

Staff Present: Lynn Garcia, FSC General Counsel
Leigh Heidenreich, Commission Coordinator
Esteban Serrano, Summer Intern

Review and adopt minutes from 4/4/14 quarterly and complaint screening committee meetings.

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

Office administrative update.

Staff introduced the summer intern, Esteban Serrano, discussed budget items remaining for FY 2014, the budget outlook for FY 2015, and developments in database management for case files.

Staff discussed the significant cost that would be associated with translating the Commission’s website and members agreed they would not proceed with translating the website at this time.

MOTION AND VOTE: *Eisenberg moved to approve and publish Spanish-translated drafts of the FSC’s complaint forms. Kessler seconded the motion. The FSC unanimously adopted the motion.*

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

1. #14-01 Powell (Digital Evidence)

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

2. #14-06 Robinson (Autopsy)

MOTION AND VOTE: *Peerwani moved to dismiss the complaint, because it falls outside the Commission's jurisdiction and direct staff to send a letter to the complainant, providing contact information for the various Texas innocence clinics. The FSC unanimously adopted the motion.*

3. #14-08 Blazek (Firearms/Tool Marks)

MOTION AND VOTE: *Alpert moved to accept the complaint for investigation and establish an investigative panel. Eisenberg seconded the motion. Barnard abstained from deliberation and voting. All other members present voted in favor of the motion. The FSC adopted the motion.*

4. #14-09 Gambles (DNA)

MOTION AND VOTE: *Barnard moved to dismiss the complaint because it falls outside the Commission's jurisdiction and direct staff to provide the Innocence Project of Texas with a copy of the corresponding laboratory report to determine if additional legal remedies are available to the complainant. Lerma seconded the motion. The FSC unanimously adopted the motion.*

5. #14-12 Scharmen (Breath Alcohol)

MOTION AND VOTE: *Eisenberg moved to dismiss the complaint and issue a letter to the complainant directing him to seek additional information from Alamo Forensic Services. Alpert seconded the motion. The FSC unanimously adopted the motion.*

6. #14-07 IFL (Firearms/Tool Marks)

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

7. #14-10 IFL (Blood Alcohol)

MOTION AND VOTE: *Mozayani moved to direct staff to send a letter to IFL stating that, given the information provided in the laboratory self-disclosure, no further action is necessary at this time. Alpert seconded the motion. The FSC unanimously adopted the motion.*

8. #14-11 DPS (Toxicology)

MOTION AND VOTE: *Mozayani moved to direct staff to send a letter to DPS stating that, given the information provided in the laboratory self-disclosure, no further action is necessary at this time. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

9. #14-13 Houston Forensic Science Center (Blood Alcohol)

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

The FSC took a 5-minute break after discussing complaint #14-11. After the break, Judge Barbara Hervey provided the Commission with an update on the Texas Criminal Justice Integrity Unit's defendant notification initiatives.

10. #14-16 Houston Police Department (DNA)

MOTION AND VOTE: *Peerwani moved to table the complaint until further information can be obtained from ASCLD/LAB regarding the status of the disclosure. Alpert seconded the motion. The FSC unanimously adopted the motion.*

11. #14-14 DPS Garland (DNA)

MOTION AND VOTE: *Eisenberg moved to direct staff to send a letter to the DPS regional laboratory in Garland stating that, given the information provided in the laboratory's self-disclosure, no further action is necessary at this time. Barnard seconded the motion. The FSC unanimously adopted the motion.*

12. #14-15 SWIFS (Controlled Substance)

MOTION AND VOTE: *Peerwani moved to direct staff to send a letter to SWIFS stating that, given the information provided in the laboratory's self-disclosure, no further action is necessary at this time. Mozayani seconded the motion. The FSC unanimously adopted the motion.*

“Massively Parallel Sequencing and Forensic Identity Testing” by Dr. Bruce Budowle, Institute of Applied Genetics, University of North Texas Health Science Center.

Dr. Bruce Budowle delivered the above presentation to the Commission during their lunch break. After Dr. Budowle's presentation, the Commission continued with its Complaint Screening Committee agenda item.

MOTION AND VOTE: *Alpert moved to adopt the following investigative panel assignments for newly accepted complaints:*

#14-01 Powell (Digital Evidence)

1. Barnard (Chair)
2. Kessler
3. Lerma

#14-08 Blazek (Firearms/Toolmarks)

1. Di Maio (Chair)
2. Kerrigan
3. Alpert

#14-07 IFL (Firearms/Toolmarks)

1. Mozayani (Chair)
2. Barnard
3. Lerma

#14-13 HFSC (Blood Alcohol)

1. Alpert (Chair)
2. Kerrigan
3. Peerwani

Lerma seconded the motion. The FSC unanimously approved the motion.

Update on Attorney General Abbott's response to opinion request submitted by District Attorney Rod Ponton regarding arson review by State Fire Marshal.

Garcia reported the AG's response explained the State Fire Marshal was acting within their jurisdictional authority in establishing the arson review panel.

Discussion of Attorney General opinion request regarding confidentiality of pending laboratory self-disclosures under Article 38.01, Section 10 of the Texas Code of Criminal Procedure.

Garcia reported that staff submitted an opinion request to the Attorney General to clarify the confidentiality exception in the Commission's statute as it relates to laboratory self-disclosures. Commission staff is awaiting a response to the request and will report the response at the next Commission meeting as available.

Update on arson case review and implementation of recommendations

Nick Vilbas (Executive Director of the Innocence Project of Texas) provided an update on the ongoing arson case review.

Update from hair microscopy panel meeting on July 31, 2014, and hair microscopy review team meetings on June 20, 2014 and July 25, 2014; discussion and deliberation on recommended action items.

Hair Microscopy Review Team members Deborah Lind and Nick Vilbas provided the Commission with an update on the hair review team's activities thus far. Garcia and Kerrigan provided further information on documents and processes created by the team members.

MOTION AND VOTE: *Alpert moved to appoint Baldwin Chin as an additional TDCAA member of the hair review team. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Lerma moved to appoint Phillip Aviles as an additional hair microscopy expert member of the hair review team. Alpert seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Lerma moved to have Nick Vilbas replace Jeff Blackburn as the Innocence Project representative on the hair microscopy review team. Barnard seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Barnard moved to approve the notification letters presented by the hair microscopy review team. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

Update on Texas Department of Public Safety (“DPS”) Houston regional crime laboratory self-disclosure #12-06, including final Harris County Coty appellate decision denying relief, Montgomery County Cavit decision granting relief, and latest re-test results from DPS.

Garcia provided an update from the DPS Houston regional crime laboratory’s latest re-testing results and an overview of the Court of Criminal Appeals decisions named above.

Discuss and consider adopting El Paso Police Department Crime Laboratory #11-11 language clarification addendum request from Texas Association of Crime Laboratory Directors (“TACLD”).

Garcia provided a description of the language clarification from TACLD.

MOTION AND VOTE: *Alpert moved to amend Complaint #11-11’s final investigative report language to reflect the language clarification provided by TACLD. Lerma seconded the motion. The FSC unanimously adopted the motion.*

Discuss the possibility of conducting a survey of latent print forensic service providers in Texas.

Garcia discussed the idea of conducting a survey in the State to determine the number and categories of latent print examiners in Texas. Members asked staff to look into the project and come back to the next quarterly meeting with a proposal for the project cost. The item was tabled until the next Commission meeting.

Update from Forensic Development Committee.

The following forensic development activities were reported on by the Committee:

1. Update on certification/licensure positions from June 27, 2014 TACLD meeting an subsequent vote by membership;
2. Progress regarding certification training support at SHSU including Commission partnership;
3. Status of web-based forensic training program in collaboration with New York Office of Forensic Services;
4. Addition of scenario-based ethics training program;
5. ASCLD/LAB assessor training to be held August 4-8 in Austin.

MOTION AND VOTE: *Alpert moved to approve fully funding the assessor training in Austin. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

6. August 18-19 crime lab manager leadership academy in Houston;
7. Discussion of Foresight support for Texas laboratories.

MOTION AND VOTE: *Lerma moved to provide Foresight funding and support for Texas laboratories that would like to participate in the initiative. Barnard seconded the motion. The FSC unanimously adopted the motion.*

8. Addition of TACLD member to Commission's forensic development committee, including any necessary revisions to policies and procedures.

MOTION AND VOTE: *Alpert moved to amend the FSC's policies and procedures to include a TACLD member on the Commission's Forensic Development Committee. Lerma seconded the motion. The FSC unanimously adopted the motion.*

9. Michael Morton Act training request from TACLD; and

MOTION AND VOTE: *Alpert moved to contribute up to \$5,000 to collaborate with the Texas Criminal Justice Integrity Unit on training initiatives related to the Michael Morton Act. Mozayani seconded the motion. The FSC unanimously adopted the motion.*

10. AAFS annual meeting abstracts.

Garcia and Kerrigan will submit an abstract for the AAFS annual meeting related to state-wide, discipline-specific reviews, focused on the Texas method used in its hair microscopy review.

Review of policies and procedures, including clarification of professional negligence and professional misconduct definitions, particularly with respect to laboratory self-disclosure obligations under Article 38.01, Section 4(a)(2) of the Texas Code of Criminal Procedure.

MOTION AND VOTE: *Alpert moved to adopt the revised policies and procedures as presented by Garcia. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Eisenberg moved to accept the revised language as presented by Garcia related to the Commission's self-disclosure guidelines. Kessler seconded the motion. The FSC unanimously adopted the motion.*

Discussion of potential notification issue regarding ISO-17025 measurement uncertainty reporting changes.

Members discussed some potential notification issues related to the ISO-17024 measurement uncertainty reporting changes, but it was determined no further action was necessary.

Report from May 12-13, 2014 National Commission on Forensic Science meeting.

Garcia provided an update regarding the activities of the NCFS.

Report regarding appointments to National Institute for Standards and Technology ("NIST") Organization for Scientific Area Committees ("OSAC"), Forensic Science Standards Board ("FSSB"), and Legal Resource Committee ("LRC").

Garcia reported that Kerrigan was appointed to the OSAC's FSSB and Garcia was appointed to the OSAC's LRC. Kerrigan gave an overview of the OSAC.

Report from June 6, 2014 American Academy of Forensic Sciences/American Bar Association's June "Prescription for Criminal Forensics" conference.

Garcia reported on staff attendance at the conference and information learned related to Firearms/Tool Marks and DNA forensic disciplines.

Report from June 9, 2014 Fire Death Investigations/Post Blast: "Positive Identification of Buried Remains: Resources for Investigators" seminar sponsored by the Collin County Fire and Arson Investigation Association ("CCF&AIA").

Peerwani briefly reported on his presentation at the conference.

Steve Seddig, President of the CCF&AIA, addressed the Commission on the seminar and other possible training initiatives.

MOTION AND VOTE: *Barnard moved to allocate \$4,000 to fund arson-related training initiatives sponsored by the CCF&AIA. Peerwani seconded the motion. The FSC unanimously approved the motion.*

Consider updates to composition of Commission committees including complaint screening, legislative, and forensic development.

MOTION AND VOTE: *Alpert moved to approve the following Legislative Committee members:*

1. Lerma (Chair)
2. Kessler
3. Peerwani

Barnard seconded the motion. The FSC unanimously adopted the motion.

Consider proposed agenda items for next quarterly meeting.

Schedule and location of future meeting.

Members proposed the next meeting be held in Austin, TX.

MOTION AND VOTE: *Alpert moved to approve the budget items as listed for the remaining FY 2014 budget and as forecasted for the FY 2015 budget. Kessler seconded the motion. The FSC unanimously adopted the motion.*

Hear public comment.

Devin Potts, The National Innocence Project

Adjourn.