

**Texas Forensic Science Commission
Minutes from August 14, 2015 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 9:00 a.m. on Friday, August 14, 2015, at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744.

Members of the Commission were present as follows:

Members Present: Di Maio, Alpert, Barnard, Eisenberg, Hughes-Stamm, Kessler, Lerma, Mozayani, Peerwani

Members Absent: None

Staff Present: Lynn Garcia, General Counsel
Leigh Tomlin, Commission Coordinator
Kathryn Adams, Legal Assistant

Review and adopt minutes from April 10, 2015 quarterly meeting.

MOTION AND VOTE: *Lerma moved to accept the April 10, 2014 meeting minutes draft. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

Discuss passage of SB-1287 and new responsibilities for Commission, including action plan for implementation of accreditation program, licensure requirement, and amendment requiring establishment of a method for collecting DNA and other forensic evidence related to unidentified bodies within 120 miles of the Rio Grande River.

Garcia provided a brief overview of SB-1287 and the Commission's new legislative mandates. The FSC's new legislative mandate will take effect September 1, 2015 with the exception of the licensing requirement that requires examiners to be licensed by January 1, 2019.

Members discussed implementation procedures and notification protocol for the Commission's accreditation and licensure programs.

Members and stakeholders discussed the timeline and selection process for the Commission's Licensing Advisory Panel, and nominated and elected Commission members to serve on a Licensing Program Committee for the Commission.

MOTION AND VOTE: *Alpert moved to nominate Eisenberg, Peerwani, and Mozayani to the Commission's Licensing Program Committee with Mozayani to serve as Chair of the panel. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

Members discussed the Commission's new mandate requiring the Commission to establish a method for collecting DNA and other forensic evidence related to unidentified bodies located less than 120 miles from the Rio Grande River.

MOTION AND VOTE: *Alpert moved to establish a Rio Grande Identification Project Committee to draft protocol and procedures for the project. Di Maio seconded the motion. The FSC unanimously adopted the motion.*

Update from TACLD regarding licensure Advisory Group selection process and timeline.

Bill Gibbens (TACLD President) had planned to give an update on this item, but was out sick. Commissioners proceeded without deliberation on this item other than related items discussed in the SB-1287 agenda item above.

Office Administrative Update.

Staff and members reviewed budget updates and FY15 budget closing, and discussed staff planning in light of SB-1287. Members also discussed position re-classifications as well as proposed staffing/consulting additions for the administration of the licensure program, the accreditation program and discipline-based reviews. Staff briefly updated members on technology developments and planned office construction.

MOTION AND VOTE: *Peerwani moved to change staff member Leigh Tomlin's salary (increase to attorney position with salary of \$77,000) and job title (to Deputy/Associate General Counsel or other title as designated by SHSU Human Resources), as per the budgetary recommendation. Alpert seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Eisenberg moved to change staff member Kathryn Adam's position to full-time employee and adjust the salary to \$53,000 annually per the budgetary recommendation. Alpert seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Peerwani moved to accept the Commission's proposed FY16 budget projections. Mozayani seconded the motion. The FSC unanimously adopted the motion.*

Report on passage of SB-1743 and discussion of referral process per statute (Office of Capital and Forensic Writs).

Members briefly discussed a new case referral process as set forth in SB-1743 with the Office of Capital and Forensic Writs. Interim Director of the Office of Capital and Forensic Writs, Robert Romig, addressed the Commission regarding the implementation of the forensic writ program in his office.

Discussion of FBI notification regarding allele frequency amendments and prosecutor requests for assistance in understanding implications.

Bruce Budowle gave a presentation on the allele frequency restatement and DNA mixture interpretation changes and addressed questions from the audience.

MOTION AND VOTE: *Eisenberg moved to form a DNA Mixture Interpretation Panel to consist of Eisenberg, Hughes-Stamm, Barnard, Lerma and Alpert. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Mozayani moved to establish a panel of volunteer stakeholders to serve as a DNA reference panel. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

Discuss and consider recommendations from complaint screening committee concerning pending complaints and laboratory self-disclosures and all complaints or self-disclosures received through July 31, 2015.

1. #1106.15.03 Pearsall Police Department (Destruction of Evidence)

James Taylor (recently resigned from Pearsall Police Department) filed this complaint expressing concerns regarding evidence storage, handling and preservation by the City of Pearsall, Texas.

MOTION AND VOTE: *Hughes-Stamm moved to dismiss the complaint, because the complaint falls outside the Commission's jurisdiction, because it concerns local evidence storage issues. Kessler seconded the motion. The FSC unanimously adopted the motion.*

*Members also discussed recommending FSC counsel contact an appropriate agency regarding the issues in the complaint.

2. #1113.14.28 James Legate (Bexar County Crime Lab, GSR)

Inmate James Legate filed this complaint. The complaint alleges a trace evidence analyst in the Bexar County crime laboratory used misleading language in expressing his conclusion regarding gunshot residue analysis.

MOTION AND VOTE: *Barnard moved to dismiss the complaint, because the examiner appropriately expressed a conclusion per SWGGUN guidelines and therefore no allegation of negligence or misconduct was stated. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

*Di Maio abstained from any voting and deliberation on this complaint.

3. #1122.14.31 DPS – Stephanie Beckendam (DPS, Toxicology)

Inmate Stephanie Beckendam filed this complaint, alleging a DPS forensic scientist falsified information in a report involving the presence of benzoylecognine (a cocaine metabolite) in the complainant's blood.

MOTION AND VOTE: *Alpert moved to dismiss the complaint, because the literature supports degradation of benzoylecognine under the conditions stated in the complaint, and therefore one would expect a discrepancy between DPS testing results and NMS testing results as a result of passage of time and storage conditions. Mozayani seconded the motion. The FSC unanimously adopted the motion.*

4. #1123.15.06 Grant, Deandra (IFL, Blood Alcohol)

Defense Attorney Deandra Grant filed this complaint, alleging IFL blood alcohol analyst Nate Stevens failed to follow IFL's standard operating procedures when retesting blood samples and re-issuing corresponding reports. The complaint was tabled until the full FSC meeting the following day.

MOTION AND VOTE: *Mozayani moved to dismiss the complaint, because the main issue in the case is a lack of understanding by the criminal defense bar regarding the re-testing protocol adopted by IFL. Mozayani further moved a letter should be sent to the laboratory requesting they specify clearly in laboratory reports whether evidence has been re-tested or data re-analyzed. Peerwani seconded the motion. The FSC adopted the motion.*

*Alpert and Eisenberg abstained from any deliberation and voting for this complaint.

5. #1121.11.15 Adams, Curtis (Bexar Co. Crime Lab, DNA)

Inmate Curtis Adams filed this complaint, alleging various inadequacies and misconduct by investigators and forensic analysts in his sexual assault case.

MOTION AND VOTE: *Alpert moved to dismiss the complaint, because there is no allegation of negligence or misconduct related to any forensic analysis, and to send a referral letter the complainant directing him to the various innocence clinics in Texas. Barnard seconded the motion. The FSC unanimously adopted the motion.*

6. #1124.15.07 Chaney (Bite Mark Comparison)

The National Innocence Project filed this complaint, requesting the Commission investigate the integrity and reliability of the bite mark comparison sub-discipline of forensic odontology.

Chris Fabricant from the Innocence Project gave a brief presentation to the Commission outlining the complaint.

MOTION AND VOTE: *Eisenberg moved to recommend the full FSC form an investigative panel consisting of Kessler, Di Maio, Mozayani and Alpert to look into the scientific reliability of bite mark evidence. Alpert seconded the motion. The FSC adopted the motion.*

*Barnard abstained from any deliberation and voting for this complaint.

Update from Hair Microscopy Panel, including notification recommendations based on June 26, 2015 review team meeting and transcript review at DPS headquarters in Austin; discussion of criteria and national developments.

Garcia gave a presentation on pending hair cases awaiting Commission vote.

1. Ira Clark (Harris Co.—HPD)

Garcia presented transcript excerpts and the conclusions of the review panel. Members discussed concerns regarding the egregious nature of the overstatements in the transcript, especially the first question (individual identification) and third question (other potential misleading statements). Garcia conveyed the review team’s recommendation that all cases by the examiner should be reviewed.

MOTION AND VOTE: *Alpert moved to notify Harris County District Attorney’s office. Mozayani seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Kessler moved to direct the hair review team to recommend review of additional hair cases analyzed by HPD analyst Robert Workington. Mozayani seconded the motion. The FSC unanimously adopted the motion.*

2. Charles Albright (Dallas Co.—SWIFS)

Garcia presented transcript excerpts and the conclusions of the review panel. Statements meriting notification to prosecutor and defendant were found in the hair testimony in the Charles Albright case under all three questions posed by the panel.

MOTION AND VOTE: *Alpert moved to notify the Dallas County District Attorney in the Albright case based on the team’s transcript review. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

3. Antonio Varias (Harris Co.—HPD)

Garcia presented transcript excerpts. Members discussed that no notification was necessary in this case based on the totality of the examiner’s testimony when viewed under the three-question criteria.

4. Gary Allen Fox (Harris Co.—HPD)

Garcia presented transcript excerpts and recommendations of the panel. Concerns were discussed under the second review question (statistical significance or weight) regarding the use of a limited study by Barry Gaudette to attribute a statistical significance (1 in 800) to likelihood of someone other than defendant having contributed the hair.

MOTION AND VOTE: *Alpert moved to notify the Harris County District Attorney in the Fox case based on the team's transcript review. Mozayani seconded the motion. The FSC unanimously adopted the motion.*

5. Garza Case (Lubbock Co.—DPS)

Garcia provided an overview of the case and described outreach from defense counsel (White and Case) on testimony regarding macroscopic screening of hair for DNA testing. Members discussed that evidence in this case is being tested for both mtDNA (UNTHSC) and nuclear DNA (DPS Lubbock) under an agreed order. No action by the Commission is necessary at this time.

Garcia discussed staffing needs to expedite hair review and requested the Commission retain Nick Vilbas to assist with obtaining transcripts, expediting reviews and training of pro bono attorneys.

MOTION AND VOTE: *Eisenberg moved to retain Nick Vilbas' consulting services on a temporary basis to assist in the hair case review using the funds approved for staffing in the Commission's budget. Hughes-Stamm seconded the motion. The FSC unanimously passed the motion.*

Members discussed and agreed to expedite the identification and review of any death row hair cases. Texas Defender Service Policy Director Kathryn Case briefly addressed the Commission and expressed she can help identify any death cases that should be reviewed by the team.

Update from Blazek (SWIFS – Firearms/Tool Marks) #14-08 investigative panel including report from expert John Murdock and discussion of final report.

Members discussed the complaint and expert report with John Murdock. Murdock reviewed his report with Commissioners and fielded questions from Commissioners and laboratory staff.

MOTION AND VOTE: *Hughes-Stamm moved to adopt a finding of negligence for the reasons listed in Mr. Murdock's report. Mozayani seconded the motion. The FSC adopted the motion.*

MOTION AND VOTE: *Alpert moved to adopt recommendations A through E in Mr. Murdock's report and for general counsel Lynn Garcia to come back with feedback and*

suggestions on the recommendations. Mozayani seconded the motion. The FSC adopted the motion.

*Dr. Barnard abstained from any deliberation and voting for this complaint.

MOTION AND VOTE: *Kessler moved to obtain a proposal for a 20-hour workshop by Murdock to be given to firearms examiners in Texas. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Update from IFL (Firearms/Tool Marks) #14-07 investigative panel including report from expert John Murdock and discussion of final report issuance.

Mozayani led a discussion of the complaint and final expert report by John Murdock. Murdock then reviewed his findings with Commissioners and staff from the laboratory.

Members asked General Counsel Lynn Garcia to develop a written report draft in the case addressing expert Murdock's conclusions and recommendations.

Update from Bell County (Digital Video Evidence) #14-1 investigative panel including discussion of next steps.

Members briefly discussed the case and explained they are awaiting a report from the contracted expert, Grant Fredericks as well as a peer review of the use of PhotoModeler software. The complaint and a final report from the expert will be addressed at the Commission's October meeting.

Update on arson case review and implementation of recommendations.

Nick Vilbas gave a brief update to the Commission on the arson case review. He explained Texas State Fire Marshal Chris Connealy is soliciting new arson cases to be reviewed. Connealy only has jurisdiction over State Fire Marshal cases not local cases, so he is relying on local jurisdictions to bring forth the cases.

Update on Texas Department of Public Safety ("DPS") Houston Regional Crime Laboratory self-disclosure #12-06, including latest retesting results from DPS.

Staff and members discussed they would talk with Brady Mills at DPS about finalizing a supplementary report in this matter.

Update from Forensic Development Committee.

Garcia and Commissioners briefly discussed pending and recent forensic development projects and training including:

1. Root cause analysis training (June—Austin);
2. Cognitive bias training (June—Houston);

3. Hair/Fiber training (April and May—Fort Worth);
4. AFDAA workshop on mixture interpretation (July—Dallas);
5. TACLD lab training survey needs;
6. Scenario-based ethics training; and
7. *Morton/Brady* training project with TCJIU

Report from National Commission on Forensic Science

Di Maio gave a brief update on national forensic science developments.

Report from Organization of Scientific Area Committees

Garcia gave a brief update on activities with the OSAC.

Report on various recent and upcoming conferences

Garcia provided an update from various recent and upcoming conferences including the following:

1. June 5 ABA Prescription Conference in New York;
2. July 20-24 NIST Error Symposium in Washington;
3. August 7 TCDLA Innocence Seminar in Austin;
4. August 19-20 CAILAW Innocence Seminar in Plano;
5. August 25-27 NIJ Trace Evidence Symposium in San Antonio.

Consider proposed agenda items for next quarterly meeting.

Schedule and location of future meeting.

The Commission will try to meet next on October 2, pending schedule checks.

Hear public comment.

The Commission addressed public comment and questions throughout the agenda on different items. No specific public comment was given during this agenda item.

Adjourn.