

**Texas Forensic Science Commission
Minutes from October 2, 2015 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 9:00 a.m. on Friday, October 2, 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, Lerma, Mozayani, Peerwani

Members Absent: Kessler

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

Review and adopt minutes from August 13, 2015 Blazek (SWIFS Firearms/Tool marks) Investigative Meeting, August 13, 2015 Powell (Forensic Video Analysis) Investigative Panel Meeting, August 13, 2015 Complaint Screening Committee Meeting, August 14, 2015 IFL Self-disclosure (Firearms/Tool marks) Investigative Panel Meeting, and August 14, 2015 Forensic Science Commission Quarterly Meeting.

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

Office administrative update (FY2015 budget closing; staff position re-classifications, staffing/consulting additions and recommendations; office minor construction; technology/database improvements; laboratory accreditation tracking/reporting system)

Garcia provided a brief overview of the FY2015 budget closing and the current status of the Commission's budget. Garcia also discussed other administrative items as listed above.

Members discussed hiring Nick Vilbas as a staff contract attorney for a 6-month period for assistance with the Commission's discipline-specific reviews.

MOTION AND VOTE: *Lerma moved to approve hiring Nick Vilbas for Legal services for a 6-month period pursuant to a written contract to be drafted by general counsel, Lynn Garcia. 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 September 18, 2015.

1. #2012.15.02 Austin Police Department Crime Lab (Crime Scene Reports)

The Austin Police Department Crime Laboratory self-disclosed this issue to the Commission, related to an incident in the laboratory's crime scene department where a crime scene technician failed to issue reports in 121 field cases.

MOTION AND VOTE: *Eisenberg moved to table the complaint until the laboratory provides its final corrective action report and to re-evaluate the self-disclosure at the Commission's next quarterly meeting. Alpert seconded the motion. The FSC unanimously adopted the motion.*

2. #2013.15.03 Corpus Christi Police Department Forensic Services (Missing Bullet Fragment)

The Corpus Christi Police Department Crime Laboratory self-disclosed this incident to the Commission, related to missing evidence (1 bullet fragment) in an aggravated assault case in the laboratory's possession.

MOTION AND VOTE: *Alpert moved to issue a letter to the laboratory explaining no further action by the laboratory is necessary at this time given the corrective action and other remedial measures completed by the laboratory. Lerma seconded the motion. The FSC unanimously adopted the motion.*

3. #1110.15.08 Redd, Eloy (Deb Parks; Sexual Assault Nurse Examination)

Inmate Eloy Redd filed this complaint, alleging Fort Bend County and Harris County Child Protective Services forensic interviewers, police interviewers, a Sexual Assault Nurse Examiner (S.A.N.E.), and the alleged victim in the case provided false information in the videotaped interviews and testimony used to convict him at trial.

MOTION AND VOTE: *Alpert moved to dismiss the complaint, because the complaint does not allege any negligence or misconduct related to a forensic analysis. Alpert directed staff to refer the complaint to the Board of Nursing and the various innocence clinics in Texas. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

4. #1111.15.09 Wilcox, James (DPS – Waco; DNA)

Inmate James Edward Wilcox filed this complaint, alleging DPS (Waco) DNA analysts used improper methods and techniques in his case. Wilcox also challenges the handling of the blood draw used for DNA testing.

Brady Mills, DPS Deputy Assistant Director, provided public comment during this discussion, stating that he pulled the laboratory case file and confirmed Standard Operating Procedures that were in place at the time of testing were followed.

MOTION AND VOTE: *Alpert moved to dismiss the complaint, because the complaint does not allege any negligence or misconduct related to a forensic analysis, but to instruct staff to follow up on the information in the attorney letter attached to the complaint at the Commission's next quarterly meeting. Hughes-Stamm seconded the motion. The FSC unanimously adopted the motion.*

5. #1112.15.10 Davis, Stevie L. (DPS – Garland; Blood Alcohol)

Inmate Stevie L. Davis filed this complaint, alleging a DPS (Garland) analyst gave a false report and testimony related to the blood alcohol analysis in his case, because the analyst failed to consider the alcohol contained in intravenous drugs given to him during a life-flight after the accident.

DPS Deputy Assistant Director Brady Mills provided an explanation regarding the ability of the instrument used in this case to distinguish between alcohol types.

MOTION AND VOTE: *Alpert moved to dismiss the complaint, because the complaint fails to state an allegation of professional negligence or misconduct relative to a forensic analysis. In light of the fact that a GC/MS instrument has the ability to separate different alcohols, the allegations are unfounded. Hughes-Stamm seconded the motion. The FSC unanimously adopted the motion.*

6. #1113.15.11 Hazlip, Rodney (DPS – Houston; Blood Alcohol)

Inmate Rodney Hazlip filed this complaint, alleging a DPS (Houston) forensic scientist performed an erroneous retrograde extrapolation in his case and provided false testimony related to the analysis at his trial.

Mack Cowan, DPS Scientific Director of the Texas Breath Alcohol Testing Program, provided public comment during this complaint discussion. Cowan felt the analyst did not exceed the appropriate bounds of the science given the hypothetical scenario in which the question related to retrograde extrapolation was presented to the analyst at trial.

Inger Chandler, Harris County Conviction Integrity Unit Chief, also commented and there was extensive discussion regarding clarity (or lack thereof) of analyst testimony.

MOTION AND VOTE: *Alpert moved to dismiss the complaint, because the complaint fails to state an allegation of professional negligence or misconduct relative to the blood alcohol analysis in the case, but to use the case as an educational example of the limits of retrograde extrapolation reporting and testimony in blood alcohol cases. Mozayani seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Alpert moved to develop an educational curriculum related to retrograde extrapolation, its proper uses and limitations for guidance to judges, prosecutors and defense attorneys. Lerma seconded the motion. The FSC unanimously adopted the motion.*

7. #1114.15.12 Sailus, Jeff (Procedural Complaint Against FSC)

Austin Police Department Crime Laboratory DNA Technical Leader Jeff Sailus filed this complaint, criticizing the Commission's original notification letter regarding DNA mixture interpretation. Mr. Sailus complains the FSC did not consult members of the state and local forensic DNA laboratory community before issuing the directive. Sailus also alleges the Commission does not understand the scope of the problem and the issues.

MOTION AND VOTE: *Barnard moved to dismiss the complaint with no further action as the complaint is moot and unfounded. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

Discuss development and implementation of crime laboratory accreditation program.

Tomlin gave an update and presentation on the implementation of the Commission's crime laboratory accreditation program that began September 1, 2015 pursuant to the 84th Texas Legislature's passage of Senate Bill 1287.

MOTION AND VOTE: *Mozayani moved to approve a draft proposal to correct references to the Texas Department of Public Safety, internal rule citations and to repeal § 651.12 in 37 Tex. Admin. Code §§ 651.1 – 651.11 and §§ 651.101 – 105. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

Discuss Rio Grande Identification Project, including September 28, 2015 meeting in Edinburg regarding establishing a method for collecting DNA and other forensic evidence related to unidentified bodies located within 120 miles of the Rio Grande River.

Garcia and Hughes-Stamm discussed action items developing from the Rio Grande Identification Project Panel's meeting in Edinburg on September 28 and steady progress in establishing best practices for the collection and processing of DNA and other forensic evidence related to unidentified remains along the Texas border.

The Panel plans to host a conference call with key stakeholders to determine what additional information needs to be gathered to take the next steps in the project.

Discuss status of forensic examiner licensure requirement, including discussion of advisory committee establishment, selection of members and scheduling of additional December 2015 meeting to review applications and select members in time for January 2015 statutory deadline.

Members discussed the status of the licensing advisory committee requirement under SB-1287. The Commission has received nominations for each of the seven positions to be filled on the licensing advisory committee, and plans to make its selections after careful review of all applicant materials at a December 2, 2015 meeting in Austin, Texas at the Stephen F. Austin Building in the Capitol Complex from 11:00 a.m. to 3:00 p.m. Meeting details and an agenda are TBA.

Update from Texas Association of Crime Laboratory Directors

Linda Johnson, Secretary of the Texas Association of Crime Laboratory Directors, briefly addressed the Commission regarding the selection process for nominations to the Commission's Licensing Advisory Panel. Johnson announced the TACLD's next meeting will be held in Fort Worth in January 2016.

Update from Hair Microscopy Panel, including notification recommendations based on September 11, 2015 review team meeting, finalization of notification letters and communication of same to stakeholders; discussion of transcript review, distribution of workload and training for clinic/law firm participants.

Vilbas and Garcia gave a presentation on pending hair cases awaiting Commission vote. Jack Roady, elected District Attorney for Galveston County, Texas and member of the hair review team, provided comment and answered questions during this agenda item.

1. Carl Scott (Harris Co.—HPD)

Vilbas presented transcript excerpts and the conclusions of the review Panel. Members discussed concerns regarding the nature of the overstatements in the transcript, especially the second question (assigning probability or statistical weight) and third question (other potential misleading statements). Vilbas conveyed the review team's recommendation that notification to the prosecutor and defendant are appropriate in the case.

MOTION AND VOTE: *Barnard moved to notify the Harris County District Attorney and the defendant based on the team's transcript review. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

2. Kevin Jamal Rogers (Harris Co.—HPD)

Vilbas presented transcript excerpts and the conclusions of the Panel. Statements meriting notification to prosecutor and defendant were found in the hair testimony in the Kevin Jamal Rogers case under the third question posed by the Panel (other potential misleading statements or inferences).

MOTION AND VOTE: *Lerma moved to notify the Harris County District Attorney and the defendant based on the team's transcript review. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

Members discussed the transcript review process will speed up as Vilbas trains law students to review the transcripts. Staff drafted guidelines for the transcript review to be used for guiding students in their review of the transcripts going forward.

Update from Blazek (SWIFS – Firearms/Tool Marks) #14-08 investigative panel including reconsideration of professional negligence analysis.

Members discussed concerns related to a negligence finding in the case and whether a negligence finding is appropriate as to the incident and the analyst and technical reviewer involved.

Dr. Tim Sliter from the Southwestern Institute of Forensic Science provided comments to the Commission on this agenda item, relating his opinion that a negligence finding should not rest on the one examiner alone in this case.

MOTION AND VOTE: *Mozayani moved that Commissioners and staff work with the laboratory in asking the Association of Firearm and Toolmark Examiners (“AFTE”) for input and opinion on the case. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

Update from IFL (Firearms/Tool Marks) #14-07 Investigative Panel, including review and adoption of final report.

MOTION AND VOTE: *Peerwani moved to adopt the draft report findings and recommendations 1-4, but to request any input from the Texas Association of Firearm and Toolmark Examiners on the recommendations before publishing the report. Hughes-Stamm seconded the motion. The Commission unanimously adopted the motion.*

Update from Bell County (Digital Video Evidence) #14-1 Investigative Panel, including review of expert (Fredericks/Mills) report and findings.

Barnard led a discussion and review of the report issued by expert Grant Fredericks.

MOTION AND VOTE: *Lerma moved to instruct staff to generate a draft final report in the case pending response from the PhotoModeler reviewer, Mr. Mills. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Update from Bite Mark Panel (Chaney—National Innocence Project) #1109.15.07 including report on September 16, 2015 meeting in Dallas; analysis of integrity and reliability per statutory requirement; retroactive case identification; communications with American Board of Forensic Odontology, other members of forensic odontology community and criminal justice stakeholders; scheduling of next Panel meeting.

Members discussed the status of the bite mark review, including the items above. The next meeting will be held in Fort Worth at the District Attorney's office on November 16, 2015. Panel members will update Commissioners at its next quarterly meeting.

Update from DNA Mixture Interpretation Panel including meeting in Dallas on September 18, 2014, meeting with national experts and discussion of action items, budget, resource needs, notification issues, retroactive case review process.

Garcia led a discussion of current actions items by the DNA Mixture Interpretation Panel as developed from the Panel's last two meetings, September 18, 2015 in Dallas, and October 1, 2015 in Austin. From those meetings, Garcia prepared a list of action items for the project that includes 1) an assessment of current mixture interpretation protocols from laboratories; 2) a plan for a sample case review; 3) an intensive teaching plan for mixture interpretations; 4) a mixture case list compilation and strategies for narrowing the list; 5) an assessment of conviction status for mixture case lists; 6) notification to defendants and other interested parties; and 7) development of a process for providing writ lawyers to defendants.

MOTION AND VOTE: *Hughes-Stamm moved to recommend the approach for assessing the DNA mixture interpretation issues and action items as outlined by Garcia. Barnard seconded the motion. The FSC unanimously adopted the motion.*

Dr. Tim Sliter, Southwestern Institute of Forensic Science Chief of Physical Evidence, Patricia Cummings, Inger Chandler, Harris County Conviction Integrity Unit Chief, Jack Roady, elected Galveston County District Attorney, and other members of the public provided comment on this agenda item related to the action plan for DNA mixture interpretation issues.

Update on arson case review and implementation of recommendations.

Nick Vilbas gave a brief update to the Commission on the arson case review. Vilbas also gave a brief overview of a recent arson case received by the Commission from complainant Angela Nickerson. The case will be sent to the State Fire Marshal's Office, but no further action is necessary by the Commission at this time.

Update from Forensic Development Committee.

Garcia and Commissioners briefly discussed pending forensic development projects including:

1. Status of scenario-based ethics training; and
2. Status of *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 of the OSAC.

Report on various recent and upcoming conferences

Garcia provided an update from recent conferences including the following:

1. August 19-20 CAILAW Innocence Seminar in Plano;
2. August 25-27 NIJ Trace Evidence Symposium in San Antonio.

Consider proposed agenda items for next quarterly meeting.

Schedule and location of future meetings.

The Commission will meet again in Austin on December 2, 2015 for the purpose of establishing the licensing advisory committee as required by SB-1287. The Commission will try to meet for its next quarterly meeting on February 12, 2016, 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.