

**Texas Forensic Science Commission
Minutes from October 5, 2018 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 8:30 a.m. on Friday, October 5, 2018 at the Tom C. Clark Building, 1st Floor Conference Room, 205 West 14th Street, Austin, Texas 78701.

Members of the Commission were present as follows:

Members Present: Barnard, Budowle, Daniel, Drake, Johnson, Kerrigan, Parsons, Downing

Staff Present: Lynn Garcia, General Counsel
Jody Koehler, Senior Scientific Advisor
Kathryn Adams, Commission Coordinator
Leigh Savage, Associate General Counsel

- 1. Review and adopt minutes from July 20, 2018 Forensic Science Commission Quarterly meeting.**

MOTION AND VOTE: *Daniel moved to adopt the meeting minutes draft with edits by Kerrigan. Parsons seconded the motion. The FSC unanimously adopted the motion.*

- 2. Office administrative update (FY2019 budget status report first quarter; update regarding content management software required for the FSC Licensing Program and implementation of exam and license application functions; update on strategic fiscal review; discuss LBB request for interim report on forensic oversight and laboratory funding).**

Staff reported on the status of the FY2019 budget. Staff explained the \$138,000 reduction in budget this fiscal year per the Commission's legislative appropriation for this biennium and the offset of funds in the amount of up to \$70,000 in licensing fees this fiscal year. Staff is working with software developers contracted by the Office of Court Administration to develop and implement its licensing application system and content management system and to transition from TopClass to ALIS for its license application function. Garcia reported on the strategic fiscal review reported included in Commissioners' meeting materials as well as a pending report on crime laboratory funding by the Legislative Budget Board.

- 3. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through June 29, 2018.**

Disclosures Received as of September 21, 2018

1. No. 19.02; DPS – Garland (Seized Drugs)

A self-disclosure by DPS – Garland reporting an incident in its seized drugs section where the laboratory discovered drug evidence was lost during the process of outsourcing the evidence to NMS for analysis.

MOTION AND VOTE: *Drake moved to table the complaint pending review of several items, including chain of custody SOP's for both of the laboratories, billing records and other items. Budowle seconded the motion. The FSC unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

Complaints Pending from July 20, 2018 Quarterly Meeting

2. No. 18.21; Culbertson, Amanda (DPS – El Paso; Blood Alcohol)

A complaint by Amanda Culbertson, a former laboratory supervisor now a private consultant, alleging an employee at DPS – El Paso took data from a February 7, 2014 blood alcohol analysis batch run that was compromised and slated for re-analysis, and used those results for the supposed re-run on March 12, 2014.

Culbertson gave a presentation describing details of the incident at the meeting. Culbertson believes the analyst acted intentionally.

MOTION AND VOTE: *Drake moved to establish an investigative panel for the complaint consisting of Commissioners Kerrigan, Daniel, and Drake. Parsons seconded the motion. The FSC unanimously adopted the motion.*

Brady Mills, DPS Deputy Assistant Director of Crime Laboratory Services, agreed to work with the Panel and Culbertson in resolving the complaint.

*Commissioner Johnson recused himself from discussion and vote on this item.

3. No. 18.25; Keller, Chance D. (DPS – Waco; Firearms/Toolmarks)

A complaint by Rob Keller for defendant Chance D. Keller, alleging incomplete DNA mixture and blood analyses by a DPS Waco analyst who retired without reporting all results obtained in the case, inadequacies in DPS Austin and DPS Waco laboratories for their inability to perform requested testing (DNA on bullet casings and testing to determine whether bullet casings were from a particular weapon) and failure to send items to other qualified laboratories or individuals to perform testing not done in DPS laboratories.

MOTION AND VOTE: *Kerrigan moved to table the complaint with respect to the DNA issues and consult with Bob Wicoff, Harris County Public Defender and person in charge of the DNA Mixture Review. Barnard seconded the motion. The FSC unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

Complaints Received as of September 21, 2018

4. No. 18.32; Sharper, Calvin V. (SWIFS; Firearms/Toolmarks; GSR)

A complaint by Calvin Sharper requesting the Commission conduct a reconstruction of the video of a bank robbery that led to Sharper's convictions for aggravated robbery and aggravated assault on a peace officer and also alleging fingernail scrapings taken by police were never sent to SWIFS for testing/analysis.

Senior Scientific Advisory, Jody Koehler, pointed out that further testing on the fingernail scrapings the complainant is requesting would not likely yield any additional probative information as they are the defendant's finger nail scrapings. Further, the Commission does not have any authority to order testing in any particular case.

MOTION AND VOTE: *Kerrigan moved to dismiss the complaint for failure to state an allegation of negligence and/or misconduct with regard to the forensic analyses in the case. Daniel seconded the motion. The FSC unanimously adopted the motion.*

*Commissioner Barnard recused himself from discussion and vote on this item.

5. No. 18.33; Miller, Jeremy BJ (Fort Worth PD; Firearms/Toolmarks)

A complaint by defendant Jeremy Miller alleging a Fort Worth Police Department Firearms/Toolmarks expert committed misconduct in her testimony with regard to a .38 caliber class including a 9-millimeter, testimony that led to his November 2010 conviction for murder.

MOTION AND VOTE: *Drake moved to dismiss the complaint given the technical explanation provided by the laboratory. Johnson seconded the motion. The FSC unanimously adopted the motion.*

6. No. 19.01; Whitfield, Jeffrey A. (DPS – Waco; Acid Phosphatase Test)

A complaint by defendant Jeffery A. Whitfield alleging a DPS – Waco analyst made speculative/presumptive conclusions in her testimony about AP testing at Whitfield's trial that led to his conviction for aggravated sexual assault and that she could have provided further information or done further testing.

MOTION AND VOTE: *Budowle moved to dismiss the complaint because the analyst followed standard operating procedures with respect to screening items that may need to be forwarded for DNA testing and the Commission has no authority to order additional testing. Drake seconded the motion. The FSC unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

7. No. 19.03; Tyler Flood & Associates (DPS – Houston; Blood Alcohol)

A complaint by Tyler Flood & Associates reporting drug evidence misdelivered by DPS to Mr. Flood's law office.

MOTION AND VOTE: *Parsons moved to table the complaint pending a response from DPS, including details about changes made to standard operating procedures with respect to printing mailing labels to prevent further errors in mailing of evidence. Drake seconded the motion. The FSC unanimously adopted the motion.*

*Commissioner Johnson recused himself from discussion and vote on this item.

4. Discuss status of crime laboratory accreditation program, including:

a. Accreditation non-conformances received since July 20, 2018 quarterly meeting;

Staff described accreditation reports and non-conformances received since the July 2018 meeting. Commissioners requested staff follow-up with those laboratories that have not provided copies of assessment reports.

b. Update on publishing of federal forensic examiner exemption;

Staff reported the federal forensic examiner exemption has been published and will be adopted prior to January 1, 2019—when the licensing requirement takes effect.

c. Review of administrative rule cleanups, including harmonization of licensing and accreditation rules.

Staff described changes to the administrative rules with respect to the list of exempt disciplines and harmonizing the exemption list in the licensing rules with the exemption list in the accreditation rules.

MOTION AND VOTE: *Kerrigan moved to adopt the administrative rule cleanups as drafted by staff. Parsons seconded the motion. The FSC unanimously adopted the motion.*

5. Discuss Licensing Advisory Committee, including:

a. Update on exam results;

Koehler provided an update on current exam results. Most examinees receive their reported scores within a week of taking the exam. Koehler also provided an update on the status of pending and issued licenses. Staff will send an email reminder with impending deadlines for licensees to meet the January 1, 2019 statutory requirement.

b. Update from exam evaluation committee;

Staff reported the exam evaluation committee is working with psychometricians in evaluating piloted test questions and continued development of test questions for future iterations of the General Forensic Analyst Licensing exam.

c. Review and adoption of continuing education rules;

Savage presented a draft rule containing detailed continuing education requirements for publication in the Texas Administrative Code.

MOTION AND VOTE: *Parsons moved to adopt the proposed draft rule for continuing education requirements. Budowle seconded the motion. The FSC unanimously adopted the motion.*

d. Review and adoption of amendment to 651.206 that addresses exemption for forensic analysts currently employed at an out-of-state laboratory who performed forensic analysis prior to January 1, 2019 and may testify after January 1, 2019;

MOTION AND VOTE: *Daniel moved to adopt the proposed draft to address the exemption for out-of-state examiners testifying after January 1, 2019 with regard to evidence tested prior to January 1, 2019. Drake seconded the motion. The FSC unanimously adopted the motion.*

e. Review and adoption of veteran's fee waiver 651.213;

MOTION AND VOTE: *Daniel moved to adopt the proposed draft rule waiving all licensing fees for all military and military spouses. Budowle seconded the motion. The FSC unanimously adopted the motion.*

f. Discuss knowledge-based competency requirements and related examination development question;

MOTION AND VOTE: *Kerrigan moved to eliminate the requirement for knowledge-based competency requirements in the licensing rules pending evaluation of the topics by the Commission and development of plans moving forward. Daniel seconded the motion. The FSC unanimously adopted the motion.*

Staff will draft a rule proposal for adoption in the Texas Administrative Code that removes the knowledge-based competency requirement.

g. Discuss inquiry from NMS laboratories regarding temporary licenses; and

Dr. Robert Middleberg spoke on behalf of NMS Laboratories with regard to the laboratory's request for a temporary license for out-of-state NMS examiners who may work Texas cases. Middleberg has 124 people that work in the Pennsylvania laboratory that would need to be at least temporarily licensed. The laboratory uses an "assembly-line" type system for casework where not just one or more examiners are dedicated to a particular case but any examiner may touch a Texas

case. Middleberg explained the laboratory cannot justify the cost of fully licensing all of these examiners for the small number of Texas cases worked every year (some years there may be none). The laboratory performs special types of testing other laboratories in Texas may not be able to provide. The laboratory also performs post mortem testing for Texas cases.

MOTION AND VOTE: *Kerrigan moved to direct commission staff to edit the rules to allow for licensing of the referenced NMS analysts and to give commissioners additional time to consider the best course of action for NMS and labs similarly situated. Drake seconded the motion. The FSC unanimously adopted the motion.*

h. Consider nomination on Licensing Advisory Board.

MOTION AND VOTE: *Daniel moved to approve the nomination of William Hines to the Licensing Advisory Committee. Budowle seconded the motion. The FSC unanimously approved the motion.*

6. Review and adopt final report from investigative panel regarding Joe Bryan complaint (Blood Spatter/Serology) #16.56.

Garcia and members reviewed the draft report for the Joe Bryan case, including detailed recommendations by the Commission. Kerrigan recommended clarifying what is meant by Commission-accreditation of crime scene analysis in the recommendations. Members discussed the possibility of forming a working group as described in the recommendations, to review prior bloodstain pattern cases.

MOTION AND VOTE: *Drake moved to adopt and publish the draft report with edits as discussed. Budowle seconded the motion. The FSC unanimously adopted the motion.*

7. Update on NMS Torney DNA review and letter to ANAB re: same.

Garcia provided an update on corrective action by NMS and commended NMS on the thoroughness of its root cause analysis with respect to management issues.

8. Update from investigative panel regarding Sorenson (Forensic Biology) #18.30.

Denise Anderson, Associate Laboratory Director of Sorenson Forensics, gave a presentation on contamination issues at the laboratory, root cause analysis, the laboratory's case review and other corrective actions taken by the laboratory. Anderson responded to questions from commissioners, staff, and the criminal justice community, including laboratories that have outsourced work to Sorenson that may have been affected. Investigative panel members and staff will proceed with an on-site audit at the laboratory. Anderson, investigative panel members and staff will be in touch regarding next steps in the investigation.

9. Update from Crime Scene Investigation Working Group, including report from September 18, 2018 meeting in Austin and deliberation on accreditation moving forward.

Garcia and members discussed recommendations from the Crime Scene Investigation Working Group, including recommendations with respect to training on preserving and processing crime scenes for all peace officers. Garcia reported that the Texas Commission on Law Enforcement (“TCOLE”) is working with the group to revise its requirements for crime scene training to include an intermediate course on crime scene preservation and processing in its basic peace officer training course. The Commission also discussed plans for accreditation of crime scene reconstruction.

Members also discussed Texas implementation of National Institute of Science and Technology (“NIST”) Office of Scientific Area Committees (“OSAC”) standards being published. Members will address this topic at the next quarterly meeting. Members agreed to invite NIST representatives to the next quarterly meeting to provide information about NIST OSAC activities, including the national implementation plan.

10. Discuss statistical sampling issues in context of retroactive case reviews.

Dr. Cliff Spiegelman gave a presentation regarding the application of statistical concepts to retroactive case review in various scenarios.

Members agreed to setup a working group to discuss the possibility of issuing guidance to laboratories on this subject. Commissioners Drake, Kerrigan, Parsons and Budowle will serve on the working group and will work closely with Dr. Spiegelman in developing recommendations on the issue. The group plans to hold their first meeting in Bryan/College Station before the end of the year.

11. Discuss progress on HB-34 legislative initiatives on crime scene and drug field tests.

Brady Mills gave a presentation on DPS’s validation study on the Raman technology the agency hopes to incorporate in its drug chemistry program.

Staff continues to work with the Office of Court Administration in development the report mandated by the legislature with respect to crime scene processing and analysis and field drug tests. The report, including recommendations for both topics will be available by December 1, 2019.

12. Discuss SWGDAM guidelines on likelihood ratios and the verbal scale.

Budowle briefly discussed this agenda item with Commissioners and staff.

13. Update on triage projects for DNA mixture review. Discuss STRMix software symposium hosted by Commission and UNTHSC-CHI; update on Austin Police Department cases under review by UNTHSC-CHI.

Garcia and members provided a brief update on triage project for DNA mixture review. Boswell provided an update on the review in Tarrant County. Wicoff provided an update on the statewide review. Garcia briefly addressed the STRMix software symposium being hosted by UNTHSC-CHI and the Commission. Budowle provided an update on Austin Police Department cases being reviewed.

14. Discuss developments regarding efforts to identify human remains discovered along Texas border.

Budowle provided an update on progress with the FBI with respect to comparing family reference samples to profiles in CODIS. Efforts to identify/compare samples cannot be pursued without permission from the FBI.

15. Discuss progress on project to standardize sexual assault kits.

Commissioner Downing provided an update on the efforts to standardize sexual assault kits. Koehler will work with Downing on identifying what paperwork is necessary once the samples reach the laboratory.

16. Update from Texas Association of Crime Laboratory Directors.

There was no update for this agenda item. Peter Stout, President of the TACLD, provided comment throughout the meeting.

17. Report from various recent and upcoming conference presentations by staff.

Garcia briefly reported on staff presentations at various conferences.

18. Consider proposed agenda items for next quarterly meeting.

Staff will include agenda items as indicated throughout the meeting on next meeting's agenda.

19. Schedule and location of future panel and quarterly meetings.

Staff will circulate a Doodle poll proposing dates for the January meeting. Members may meet either January 11, 18 or 25th.

20. Hear public comment.

There was no public comment other than that noted throughout the agenda.

21. Adjourn.