

**Texas Forensic Science Commission
Minutes from January 31, 2020 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 8:30 a.m. on Friday, January 31, 2020 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 (Presiding Officer), Budowle, Buzzini, Daniel, Downing, Johnson, Kerrigan, Parsons

Members Absent: Drake

Staff Present: Lynn Garcia, General Counsel
Kathryn Adams, Commission Coordinator
Leigh Savage, Associate General Counsel
Robert Smith, Senior Staff Attorney

- 1. Review and adopt minutes from October 25, 2019 Forensic Science Commission Quarterly meeting.**

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

- 2. Office administrative update (FY2020 budget status report second quarter; introduction of Robert Smith, Senior Staff Attorney).**

Staff reported on the status of the FY 2020 budget including the new attorney position. Garcia introduced Robert Smith, the Commission's new senior staff attorney. Staff reported plans for the Office of Court Administrations Information Technology Department to create a database to serve as a central, keyword searchable repository for laboratory corrective actions, forensic analyst licensing information and laboratory accreditation information. OCA's IT staff is currently working on a solution and will have an update for commissioners at the April 17, 2020 quarterly meeting.

- 3. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through January 10, 2020.**

Disclosures Pending from October 25, 2019

1. No. 19.26; Department of Public Safety – Austin (Toxicology)

A self-disclosure by DPS Austin laboratory reporting an incident in the laboratory's toxicology section where two calibrators for morphine did not meet acceptance criteria in a batch, and subsequent investigation revealed five additional batches impacted by the same issues totaling approximately 50 affected cases.

MOTION AND VOTE: *Daniel moved to table the self-disclosure pending receipt of the finalized quality incident report in the matter. Parsons seconded the motion. The FSC unanimously adopted the motion.*

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

Disclosures Received as of January 10, 2020

2. No. 19.42; Department of Public Safety – Midland (Seized Drugs)

A self-disclosure by the DPS Midland laboratory reporting the accidental destruction of suspected controlled substance evidence before analysis.

MOTION AND VOTE: *Daniel moved to take no further action on the self-disclosure given the corrective actions taken by the laboratory, including notification to the submitting agency and changes to the local destruction processes that include a required verification of the evidence description and rescan of the submission form for Seized Drugs/Authority for Destruction. Buzzini seconded the motion. The FSC unanimously adopted the motion.*

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

3. No. 19.43; Bexar County Criminal Investigation Laboratory (Materials (Trace))

A self-disclosure by the Bexar County Criminal Investigation Laboratory describing an incident where the laboratory's Materials (Trace) evidence supervisor, Michael Martinez, provided an opinion regarding a Mississippi case during a podcast. Laboratory management were concerned Martinez exceeded the scope of his expertise in violation of the ANAB Guiding Principles of Professional Responsibility for Forensic Service Providers and Forensic Personnel, the laboratory's own conduct policy and the Texas Code of Professional Responsibility.

Bexar County Criminal Investigation Laboratory Director Orin Dym addressed the Commission. Commissioners discussed limitations on jurisdiction since the opinion did not involve a case that would be considered a Texas criminal action pursuant to Tex. Code. Crim. Proc. Art. 38.01 and related rules.

MOTION AND VOTE: *Kerrigan moved take no further action regarding the laboratory's self-disclosure because the conduct did not relate to a "forensic analysis in Texas" as specified in the preamble of the Commission's Code of Professional Responsibility for Forensic Analysts and Crime Laboratory Management and pursuant to 'forensic analysis' definitions provided in Code of Criminal Procedure, Article 38.01 § 2(4) and Article 38.35 § a(4). Kerrigan further moved to send a letter to Mr. Martinez warning that similar conduct involving a Texas case could result in an investigation. Johnson seconded the motion. The FSC unanimously adopted the motion.*

Materials (Trace) evidence supervisor Michael Martinez addressed the commission, describing the extent of his involvement in the podcast and emphasizing the case at issue is outside of Texas and does not concern a pending criminal matter.

4. No. 19.45; Department of Public Safety – Amarillo (Seized Drugs)

A self-disclosure by the DPS Amarillo laboratory reporting missing evidence in a misdemeanor drug paraphernalia possession case that was discovered during the laboratory's 2019 system-wide evidence vault audit.

MOTION AND VOTE: *Daniel moved to take no further action given the corrective actions taken by the laboratory and notice to affected parties. Parsons seconded the motion. The FSC unanimously adopted the motion.*

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

5. No. 19.46; NMS Labs – Grand Prairie (Seized Drugs)

A self-disclosure by NMS Labs – Grand Prairie reporting professional misconduct by an analyst including the inappropriate manipulation of data during a competency test on a new quantitative procedure. The analyst was terminated by the laboratory.

MOTION AND VOTE: *Kerrigan moved to accept the self-disclosure for investigation of professional misconduct and to form an investigation panel consisting of three commissioners. Budowle seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Buzzini moved to establish an investigative panel of commissioners consisting of Daniel, Kerrigan and Johnson. Budowle seconded the motion. The FSC unanimously adopted the motion.*

6. No. 19.51; Austin Police Department Crime Laboratory (Seized Drugs)

A self-disclosure by the Austin Police Department Forensic Science Bureau reporting an incident in its Seized Drugs section involving the mislabeling of two items of evidence from the laboratory's drug vault. The mislabeling resulted in an erroneously reported test result for casework that was not actually tested. (Staff Recommendation: No further action given the corrective actions taken by the laboratory, including changes to the laboratory's processes, the case review and other corrective actions.)

MOTION AND VOTE: *Daniel moved to take no further action on the disclosure given the corrective actions taken by the laboratory, including changes to the laboratory's processes, the case review and other corrective actions. Johnson seconded the motion. The FSC unanimously adopted the motion.*

7. No. 19.52; Department of Public Safety – Abilene (Seized Drugs)

A self-disclosure by DPS Abilene reporting 71 tablets missing during a system-wide evidence vault audit. (Staff Recommendation: No further action given the explanation by the laboratory, the supplemental case review and other corrective actions taken by the laboratory system to improve evidence storage, auditing and tracking.)

MOTION AND VOTE: *Daniel moved to take no further action on the disclosure given the explanation by the laboratory, the supplemental case review and other corrective actions taken by the laboratory system to improve evidence storage, auditing and tracking. Buzzini seconded the motion. The FSC unanimously adopted the motion.*

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

8. No. 19.54; Jefferson County Regional Crime Laboratory (Seized Drugs)

A self-disclosure by the Jefferson County Regional Crime Laboratory reporting a mistake in evidence handling where the analyst tested 3 of 4 items of seized drug evidence submitted to the laboratory in a single envelope. The oversight of one item of evidence was discovered when the same envelope was submitted a second time for re-testing by the United States Attorney's Office. The item was stuck to some evidence tape inside the package and was missed by the analyst who initially opened, inventoried and analyzed the case due to the item's small size and the way in which the package was opened. (Staff Recommendation: No further action on the disclosure given the corrective actions taken by the laboratory, notification to the submitting and prosecuting agencies, and changes to the procedure manual requiring packaging to be opened in a manner that ensures complete inspection of the contents).

MOTION AND VOTE: *Daniel moved to take no further action on the disclosure given the corrective actions taken by the laboratory, including notification to the submitting and prosecuting agencies, and changes to the procedure manual requiring non-viewable packaging be opened in a manner that allows for complete inspection of the contents. Johnson seconded the motion. The FSC unanimously adopted the motion.*

Complaints Received as of January 10, 2020

9. No. 19.40; Torres, Rolando (Harris County Institute of Forensic Sciences; Forensic Biology/DNA)

A complaint by defendant Rolando Torres involving the Harris County Institute of Forensic Sciences Forensic Biology section. The complainant alleges blood evidence on his tennis shoes was analyzed three times with no determination as to whether the stains were animal or human blood, or even blood at all. Torres believes the stains were barbecue sauce and requests retesting of the spots on his shoes to support this claim. Trial testimony established that a presumptive test for blood from the same evidence was positive and attempts to obtain DNA evidence were unsuccessful.

MOTION AND VOTE: *Daniel moved to dismiss the complaint for failure to allege professional negligence or misconduct with respect to the forensic analysis in the case and because the Commission has no authority to order retesting of evidence. Budowle seconded the motion. The FSC unanimously adopted the motion.*

10. No. 19.44; Scott, Joseph Pastquinel (Department of Public Safety – Waco; Forensic Biology/DNA)

A complaint by defendant Joseph Scott making generalized allegations of mistakes in the analysis of sexual assault evidence by the DPS Waco laboratory.

Bob Wicoff, Chief of the Appellate Division at the Harris County Public Defender’s Office and Director of the DNA Mixture Review Team, reported a request for recalculation of the DNA mixture evidence in Scott’s case has been requested to the district attorney’s office, and Wicoff is waiting on the district attorney to request recalculation by the DPS – Waco laboratory.

MOTION AND VOTE: *Daniel moved to dismiss the complaint because there are no factual allegations of professional negligence or misconduct and the case is pending review and recalculation by the DNA Mixture Review Team. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

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

11. No. 19.47; Lee, Charles (Reliagene; Forensic Biology/DNA)

A complaint by defendant Charles Lee alleging a report by defense expert Megan Shaffer of Reliagene Technologies, Inc. falsely claimed she had conducted a thorough review of the State’s DNA file, because Shaffer only had access to a portion of the file. Information from Lee’s defense attorney contradicts this assertion; he received the DNA file from the State and forwarded the entire file to Reliagene for review.

MOTION AND VOTE: *Daniel moved to dismiss the complaint for failure to assert any credible allegation of professional negligence or misconduct with respect to the forensic analysis in the case. Parsons seconded the motion. The FSC unanimously adopted the motion.*

12. No. 19.48; Durden, Gerald J. (Harris County Institute of Forensic Sciences; Forensic Biology/DNA)

A complaint by defendant Gerald Durden alleging Harris County Institute of Forensic Sciences (“HCIFS”) DNA analyst Joseph Mathews provided false testimony regarding the DNA profile obtained from the sperm fraction in his sexual assault case, because no sperm or semen was detected in the analysis and Mathews’ testimony indicated otherwise.

Michal Pierce, Quality Director at the Harris County Institute of Forensic Sciences, briefly addressed the Commission regarding the initial analyses conducted in the case. HCIFS is ready to conduct the retesting, but is waiting to receive the evidence.

MOTION AND VOTE: *Daniel moved to dismiss the complaint because the case is pending review by the DNA Mixture Review Team, the State has agreed to retesting of the DNA evidence, and the DNA analysis is pending. Johnson seconded the motion. The FSC unanimously adopted the motion.*

13. No. 19.49; Smiley, James A. (Department of Public Safety – Capitol Area; Forensic Biology/DNA)

A complaint by defendant James Smiley alleging Austin Police Department investigators illegally obtained a DNA sample from Smiley during the investigation of his aggravated sexual assault/kidnapping case.

MOTION AND VOTE: *Daniel moved to dismiss the complaint for failure to allege an allegation of professional negligence or misconduct with respect to the forensic analysis in the case, and because forensic testing is not yet complete and, further, allegations of wrongdoing against police with respect to collection of the initial DNA sample from the defendant are beyond the scope of the Commission's jurisdiction. Parsons seconded the motion. The FSC unanimously adopted the motion.*

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

14. No. 19.53; Jackson, John H. (Houston Police Department/Houston Forensic Science Center/Serology)

A complaint by defendant John Henry Jackson alleging police misconduct by the Houston Police Department resulting in his coerced confession, complaints about his trial counsel and trial judge, an assertion that he was excluded as the contributor of the semen and hair samples recovered from the victim at autopsy in analyses conducted by the Houston Forensic Science Center, and a request for retesting for comparison of the samples to implicate other individuals in his case for capital murder, sexual assault and kidnapping.

MOTION AND VOTE: *Daniel moved to dismiss the complaint for failure to allege any credible allegation of professional negligence or misconduct with respect to the forensic analysis in the case. Further, the Commission does not have the authority to order any forensic analysis in any particular criminal case. Parsons seconded the motion. The FSC unanimously adopted the motion.*

15. No. 20.01; Crowley, Inez (Department of Public Safety – Houston, Montgomery County Sheriff's Office; Forensic Biology/DNA, Firearms/Toolmarks, Latent Prints)

A complaint filed on behalf of defendant James Crowley alleging the DPS Houston laboratory delayed the disclosure of a quality event where an investigator's DNA was discovered on an evidentiary item and affected the outcome of Crowley's aggravated robbery case, and requesting a review of all data and laboratory procedures, citing changes in acceptable methods for mixture interpretation and a recent Michigan court case disallowing certain STRmix results.

MOTION AND VOTE: *Daniel moved to dismiss the complaint for failure to allege any professional negligence or misconduct with respect to the forensic analysis at issue in the case. Further, complaints about the timeliness of the disclosure of a particular quality even to a*

defendant are beyond the scope of the Commission's jurisdiction. Budowle seconded the motion. The FSC unanimously adopted the motion.

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

4. Update on collaboration with the Standards Coordination Office at the National Institute for Standards and Technology (NIST) regarding possible pathways for improving accreditation for forensic science service providers in Texas.

Garcia gave an update collaboration with the Standards Coordination office at NIST. Staff has shared examples of laboratory self-disclosures with Warren Merkel, Chief of the Standards Services Group. The team is working on an outline of key issues, including an analysis of the gaps between assessment and the accreditation process. Garcia should have more to report at the Commission's April 17, 2020 quarterly meeting.

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

a. Accreditation non-conformances received since October 25, 2019 quarterly meeting;

Staff described accreditation reports and non-conformances received since the October 25, 2019 meeting. Members discussed a reported quality incident by Quality Forensic Toxicology laboratory involving pipettes that were determined to be out of tolerance during calibration. Documentation implied that the identified issues went unaddressed and no determination was made as to the effect the issue had on any forensic analyses. Kerrigan requested supplemental information from the laboratory regarding the quality incident.

b. Review Expertox responses to cited nonconformances;

Staff received descriptions of the responses from Expertox to numerous CAP nonconformances considered resolved at the laboratory's last CAP assessment in 2017. The Commission's main concern is the nature of the recurring deficiencies, including analysts without degrees or associate degrees working without supervision. Staff reported reaching out to the laboratory multiple times requesting an organized spreadsheet describing each cited nonconformance and corresponding action and resolution. Staff has not received a response from the laboratory. Staff will follow up with the laboratory one additional time. Savage reported that the laboratory's accreditation with CAP expires July 29, 2020 and the Commission can reconsider the laboratory's accreditation status at that point.

c. Discuss the Commission's recognition of the College of American Pathologists (CAP) – Forensic Drug Testing program;

Staff reported reaching out to CAP, one of the Commission's recognized accrediting bodies, with questions regarding its accreditation program for forensic drug testing. Staff received no response from CAP on the Commission's questions about the program. Members directed staff to draft a formal letter to CAP addressing the questions again and giving a 30-day deadline for response. If

staff receives no response within 30 days, staff will draft a rule removing CAP from the Commission list of recognized accrediting bodies for approval at the Commission's April 17, 2020 quarterly meeting.

6. Discuss Licensing Advisory Committee, including:

a. Update on licenses issued;

Savage provided an update on licenses issued. There are currently 1266 licensees, consisting of 841 regular licenses, 20 provisional, 2 technical reviewer, and 403 blanket.

b. Review outstanding licensing rules and proposed rule concepts for approval, including:

- i. Rule addressing exam eligibility for unaccredited forensic disciplines; removal of physical evidence comparison from the Materials (Trace) categories of analysis under accreditation and licensing rules; and clarifications to provisional fees;**
- ii. Rule providing clarification for one-time provisional license;**
- iii. Blanket rule revisions, including responses to any comments, withdrawal of initial blanket rule proposal and review and approval of new blanket rule proposal; and**
- iv. Rule addressing exception from coursework requirements for toxicology analysts who applied for a license prior to January 1, 2019 and are now adding the Seized Drugs discipline to their license.**

Savage summarized the outstanding rule proposals for i, ii, and iv above.

MOTION AND VOTE: *Parsons moved to adopt the rule addressing exam eligibility for unaccredited forensic disciplines, removing the term “physical evidence comparison” from the Materials (Trace) categories of analysis under accreditation and licensing rules, and clarifications to provisional fees. Daniel seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Parsons moved to adopt the rule providing clarification for one-time provisional license. Downing seconded the motion. The FSC unanimously adopted the motion.*

MOTION AND VOTE: *Parsons moved to adopt the rule addressing the exception from coursework requirements for toxicology analysts who applied for a license prior to January 1, 2019 and are now adding the Seized Drugs discipline to their licenses. Buzzini seconded the motion. The FSC unanimously adopted the motion.*

Garcia presented a revised blanket rule proposal recommended by the Commission's Licensing Advisory Committee. In response to the formerly proposed blanket rule revisions, the Commission received two sets of comments, from National Medical Services (NMS) Labs and Quality Forensic Toxicology (QFT). The Commission's Licensing Advisory Committee reviewed comments from NMS and QFT and had a lengthy discussion about the pros and cons of various approaches.

The Licensing Advisory Committee recommended the following for the blanket licensing rules in light of the comments received by the Commission:

1. Remove the distinction between “Texas” labs and “out-of-state” labs.
2. Extend the current one-year term to a two-year laboratory blanket license term.
3. Create a *de minimis* casework threshold of 10% for all laboratories, regardless of where they are physically located. If the laboratory’s Texas casework constitutes less than 10% of its overall volume of casework during the five calendar years preceding the application (calculated as a rolling average), the laboratory will qualify for *de minimis* status. The evaluation will occur initially and again at each expiration of the two-year term the laboratory’s blanket license is granted. In the absence of historical data, the best available data shall be used to determine whether a laboratory has exceeded or is expected to exceed the 10% *de minimis* threshold.
4. The *de minimis* assessment will be calculated for each laboratory site. For example, if a laboratory has national presence with various locations throughout the country, the casework calculation should be made for cases analyzed at each location.
5. If the laboratory’s Texas casework is determined to be *de minimis*, the following rules will apply:

With the exception of the “interpreting analysts” described below who will be fully licensed at the regular cost (\$220 per 2-year term), all other analysts and technicians employed by a laboratory with *de minimis* Texas casework shall be licensed under the blanket provision. (37 TAC Pt. 15 §651.203(d)). The laboratory will be required to provide the following to the Commission with respect to analysts and technicians who are licensed under this provision:

- a. A list with the name of each individual who is licensed under the blanket provision including the forensic discipline(s) for which they are qualified to perform independent casework.
- b. The sponsoring laboratory will provide a certification that:
 - i. Each person who is licensed under the blanket provision works under the supervision of a fully licensed forensic analyst when performing work for Texas criminal cases.
 - ii. Each person who is licensed under the blanket provision has read and acknowledged completion of *Brady*/Michael Morton training material, the Code of Professional Responsibility, and Evidence Handling.

- iii. Each person who is licensed under the blanket provision has participated in the online *Brady/Michael Morton* update trainings provided by the Commission every two years. These trainings are provided at no cost to the user.
 - iv. Any failed proficiency test by an individual who is licensed under the blanket provision that is not attributable to a mistake by the proficiency test provider will be disclosed to the Commission.
 - v. Professional negligence or misconduct will be disclosed to the Commission, and the Commission will be copied on any material correspondence with the accrediting body.
 - vi. Any criminal conviction of a blanket licensee for an offense equivalent to a Texas Class B misdemeanor or above will be disclosed to the Commission.
- c. The laboratory will pay a fee of \$20 for each individual on the list of blanket licensees.
 - d. Where the scope of a blanket licensee's work changes to include interpreting analyst activities as described below, the employing laboratory must notify the Commission of the change and the individual must become fully licensed.

Full Licensing of Interpreting Analysts

Laboratories that are granted *de minimis* status shall license all “interpreting analysts” under the main licensing provisions of the applicable administrative rules. (37 Tex. Admin. Code § 651.207).

However named, an “interpreting analyst” uses his or her scientific expertise and judgment to interpret data resulting from an expert examination or test and provides information to the trier of fact either by signing a report or testifying in a criminal action. Interpreting analysts have significant decision-making authority regarding the progress, evaluation and conclusion of forensic analyses and are qualified to both perform independent casework and technically review the work of other analysts. An interpreting analyst exercises judgment in casework and may be called to testify regarding the results of forensic analysis, including not only the steps involved in the physical processing of the evidence, but also the potential significance of information obtained from the examination or test. Technical reviewers who perform technical reviews of an interpreting analyst's casework are considered interpreting analysts.

Any interpreting analyst who was licensed initially under the blanket program will be required to comply with the rules that were in effect for the applicable forensic discipline(s) prior to January 1, 2019. Interpreting analysts not previously licensed will be required to comply with the rules in place at the time of application.

Blanket license for forensic analysis not widely available.

Accredited laboratories that perform categories of analysis not commonly available in Texas may apply to the Commission for recognition of the method as fulfilling a necessary function for a Texas law enforcement agency, prosecutor, defense attorney or court. The analyst(s) who perform the uncommon analytical method on behalf of the accredited laboratory shall be blanket licensed upon recognition of the method as not widely available and necessary to ensure a public function. The request shall be reviewed and adjudicated by the Commission's presiding officer or designee. Commission staff shall issue a letter setting forth the finding upon request of the laboratory and report the decision to the Commission at the quarterly meeting immediately following the determination by the presiding officer or designee.

Members discussed the new recommended proposal for blanket licensure.

MOTION AND VOTE: *Parsons moved to adopt the recommended revisions to the current blanket license rule, withdraw the current blanket license proposal outstanding, and direct staff to draft a rule regarding the same for approval at the Commission's April 17, 2020 quarterly meeting. Buzzini seconded the motion. The FSC unanimously adopted the motion.*

7. Review and approve draft of policies and procedures addressing the incorporation of Director of Information Resources (DIR) rules for video conferencing.

Savage described additions to the Commission's Policies and Procedures that incorporate the Government Code §551.127 rules regarding videoconferencing for Commission meetings. Savage

MOTION AND VOTE: *Parsons moved to approve the Policies and Procedures draft. Daniel seconded the motion. The FSC unanimously adopted the motion.*

8. Review outstanding general rulemaking proposed rule concepts, including:

a. Development of procedures for referral of cases to the Office of Capital and Forensic Writs pursuant to Code of Criminal Procedure, Article 38.01 § 4(h).

Savage described the rule proposal which provides a procedure for referral of investigative cases to the Office of Capital and Forensic Writs.

MOTION AND VOTE: *Johnson moved to adopt the rule proposal adding a procedure for referral of cases to the Office of Capital and Forensic Writs. Budowle seconded the motion. The FSC unanimously adopted the motion.*

b. Rule addressing statutory reference to the definition of forensic analysis in the Commission's investigative procedures.

Savage described the rule addressing a change in the statutory reference to the definition of "forensic analysis" to ensure consistency between the subject matter of the rule and the accompanying statutory reference.

MOTION AND VOTE: *Daniel moved to adopt the rule addressing the reference to the definition of forensic analysis with regard to the Commission’s investigative authority. Parsons seconded the motion. The FSC unanimously adopted the motion.*

9. Update regarding Collins, Robert (DPS Houston; Forensic Biology) complaint #19.04 investigative panel.

Dr. Vanessa Nelson, Forensic Biology Program Coordinator for the Department of Public Safety Crime Laboratory System, addressed the Commission regarding the agency’s case review. Nelson’s initial query flagged 69 cases from DPS Houston. Of the 69, 30 were identified where inconclusive results will be reevaluated. Additionally, Nelson ran a similar query for other regional laboratories. Last week, DPS ceased using the inconclusive range and DPS laboratories are reporting all values going forward. Of the 30 cases identified from DPS Houston, there were 16 where Nelson believed a manual interpretation should have resulted in an exclusion. The DPS Houston lab is currently reviewing the 30 identified cases and plans to complete its review by the end of February. Nelson has also identified 120 cases in her system-wide review of other DPS laboratories and has contacted the three laboratories with the fewest cases. The cases are being imaged and Nelson is working on completing the review for those cases. Where there are any differences in Nelson’s conclusion, the cases will be sent back to the original reporting analyst for review. Nelson reported she will have more information on the laboratory’s findings by mid-March 2020.

Budowle emphasized the inconclusive range was not developed by DPS but rather by ESR, so many laboratories took this approach. Laboratories must remember the software is a tool, but the analyst must still take a critical look at the data before making a final decision in interpretation.

10. Update from Crime Scene Investigation Working Group.

The group plans to meet again April 7 to discuss proposed plans for a voluntary licensing program for crime scene analysts. Commissioners will address the topic again at the April 17, 2020 quarterly meeting.

11. Develop collaborative work groups to discuss the following new OSAC Registry standards, including implementation:

- a. Toxicology
 - i. ANSI/ASB 037, Best Practices Recommendations, Guidelines for Opinions and Testimony in Forensic Toxicology, First Edition.
- b. Interdisciplinary
 - i. ISO 21043-2 Forensic Sciences – Part 2 Recognition, recording, collecting, transport and storage of items.
 - ii. ASTM E2917-19a Standard Practice of Forensic Science Practitioner Training, Continuing Education, and Professional Development Programs.

Garcia updated the Commission on collaborative workgroups being established by TACLD to evaluate published standards and decide whether the Commission should recommend adoption.

Stout has a list of analysts for the toxicology workgroup, which consists of people not currently or recently on an OSAC and also geographically distributed across the state and in various types and sizes of labs. Stout reported he should have the group together shortly. Stout explained the current published standards should not be an issue for implementation; however, there are some in the pipeline that may be.

Kerrigan added that these standards, regardless of whether the Commission recognizes them or not, are already being used in Texas cases. The standards on the OSAC Registry have already been vetted through a consensus-based process. Kerrigan expressed the Commission's interest should be focused on what the impact is going to be for laboratories, so the Commission can identify effective ways to help laboratories meet the standards.

Budowle gave examples of technical issues with published DNA standards that are significant and that the Commission may not want to fully endorse or recommend. Budowle emphasized the Commission should be cautious about outright acceptance of all standards.

Kerrigan agreed there will be some disciplines that need more of a technical review, but that laboratories should be fully engaged in the vetting process when these standards documents go out for comment as part of the OSAC process. The draft documents can now be reviewed even before they are sent to the SDO. The Commission should encourage operational laboratories to review the standards and guidelines in the pipeline and provide comment.

12. Update on statewide validation of qualitative method to distinguish hemp from marijuana.

Kerrigan presented a PowerPoint update on statewide efforts to validate a qualitative method (with a quantitative cutoff) for distinguishing hemp from marijuana. Kerrigan described some key differences between the method used by the DEA and the Texas method. The team is first working on validating the method for plant material, with liquids to follow. Seven laboratory sites are participating in the validation—Harris County Institute of Forensic Sciences, Houston Forensic Science Center and four DPS regional laboratories. The team has secured authentic substances from the National Institute on Drug Abuse (“NIDA”) drug supply program. The overall analytical approach is not new in the forensic world and includes methods already widely accepted. Kerrigan estimates the team will complete its validation work by the end of March 2020.

13. Discussion of Lydell Grant exoneration, including DNA analysis, the role of probabilistic genotyping, CODIS issues and lessons learned for statewide application.

Garcia described some of the DNA issues in the recent Lydell Grant exoneration in Harris County. Among other issues, Garcia expressed concern regarding the gap between what experts like Drs. Budowle, Coble and Perlin concluded from the data (Grant was excluded as a contributor) and what the laboratory concluded (results were inconclusive) given the same data.

Stout addressed the Commission regarding HFSC's involvement in the Lydell Grant case. He believes laboratories are doing a good job at mitigating the risk of suspect driven bias but in doing that have created a whole separate kind of risk due to a reluctance to evaluate data for exclusionary

purposes. The question is how to structure a change to address this that produces a result that is objective, consistent between laboratories and reproducible. One approach may be to have another separate analyst review the entire case and corresponding data for exclusionary purposes, even where the data were deemed insufficient for an affirmative association.

Budowle believes analysts can be re-trained to understand the meaning of “conservative” in their approach to analytical conclusions. Garcia mentioned the Commission could use its GoTo Meeting platform to give a training for up to 150 analysts.

Nelson indicated she would love to see real case examples and suggested the Commission provide these case examples to the training participants for review beforehand.

14. Update on triage projects for DNA mixture review; update on Austin Police Department cases under review by UNTHSC-CHI.

Bob Wicoff, Director of the DNA Mixture Review Team and Chief of the Appellate Division at the Harris County Public Defenders Office gave a presentation on a DNA mixture capital murder case out of Harris County where much of the DNA evidence has been reinterpreted as inconclusive—including one STR result that went from 1 in 509,100 to inconclusive. The interesting legal issues in the case are whether this constitutes original and false evidence or whether the available scientific evidence merely changed. In the case, there is a significant amount of circumstantial evidence. The DNA plays a supportive role, but is not the linchpin of the case which Wicoff often sees in mixture cases.

Commissioners discussed possible approaches to resolution of these issues outside the adversarial setting which is far more efficient than litigation, including the designation of UNTHSC-CHI as a resource in cases where the integrity of a conviction has come into question and the DNA evidence is critical.

15. Discuss plans for March 27, 2020 DNA training for criminal lawyers at Bexar County Central Jury Room.

Garcia updated Commissioners on plans for the conference. Staff plans to deliver a scenario-based training throughout the day that tracks one DNA case addressing all the issues that may arise from the beginning to the end of the case (through a Chapter 64 appeal). Bexar County Criminal Investigation Laboratory will be heavily involved in the training since the laboratory is the primary forensic service provider for Bexar county.

16. Update staff attendance at the December 12-13, 2019 Texas Attorney General’s Office Government Law and Liability Conference.

Savage reported on staff attendance at the Government Law and Liability Conference. Staff created a list of items to address, including the video conferencing guidelines adopted in agenda item 7 above, developing an updated training manual for commissioners that includes clear instruction on the rulemaking process, and a description of required appointee trainings.

17. Discuss developments with respect to kit backlog reduction and standardization efforts as well as statewide sexual assault task force and state auditor's office developments.

Downing reported on the new sexual assault kits and had samples of the kits available for review at the meeting. On September 1, 2019 the sexual assault kit tracking program began. The new sexual assault kit boxes are coded and have the kit tracking numbers right on the box beginning at the manufacturer's site. Brady Mills, DPS Deputy Assistant Director of Crime Laboratory Services, addressed the Commission on DPS's efforts to meet the HB-8 90-day turn-around time for sexual assault kit Forensic Biology/DNA testing that takes effect in January 2021. DPS started implementing the 90-day policy September 1, 2019 to give the lab 18 months to address any issues in meeting the deadline.

18. Update on Rio Grande Identification Project.

Budowle gave a brief update on the Rio Grande ID project. UNTHSC-CHI and other entities have made progress with the FBI, the Government of Mexico and other governments in the northern triangle region on the process for comparing family reference samples to samples from unidentified remains discovered in Texas. Budowle expects to begin comparisons soon and will provide an update at the Commission's April 17, 2020 meeting.

19. Discuss NIST/RTI Working Group on DNA Analysis and Human Factors.

Garcia was invited to join the NIST/RTI Working Group on DNA Analysis and Human Factors. Garcia's first meeting with the group is February 10-12 in Washington, D.C.

20. Discuss Commission staff attendance at American Academy of Forensic Science (AAFS) 2020 Annual Scientific Meeting.

Garcia and Smith will attend the AAFS annual meeting in Sacramento.

21. Update from Texas Association of Crime Laboratory Directors.

Stout provided an update from TACLD's January 30, 2020 meeting. At the TACLD meeting, members addressed the hemp validation discussed in agenda item 17 above. TACLD members also discussed legislative items to be addressed next legislative session.

22. Convene executive session pursuant to Government Code §551.071, Consultations with Attorney to seek advice about pending or contemplated litigation.

Commissioners convened an executive session at 12:39 p.m. pursuant to Government Code § 551.071 for consultations with its attorney to seek advice about pending litigation involving Commissioners and staff. The Commission reconvened at 1:11 p.m.

23. Consider proposed agenda items for next quarterly meeting.

Staff will include all discussed items on the next quarterly meeting agenda and circulate the proposed agenda for additions.

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

The Commission will meet for its next three quarterly meetings April 17, 2020, July 24, 2020 and October 23, 2020 in Austin.

25. Hear public comment.

No further public comments were given other than that noted throughout the agenda above.

26. Adjourn.