

**Texas Forensic Science Commission – Complaint Screening Committee
Minutes from July 15, 2021 Meeting in Austin, Texas**

The Texas Forensic Science Commission met virtually via Zoom at 3:00 p.m. on Thursday, July 15, 2021 as authorized under Government Code section 551.125 pursuant to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster and July 1, 2021 extended proclamation affecting all counties in Texas due to the Coronavirus (COVID-19), as well as the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act.

Members of the Commission's Complaint Screening Committee were present as follows:

Members Present: Michael Coble
Mark Daniel
Jasmine Drake

Members Absent: None

Staff Present: Lynn Garcia, General Counsel
Leigh Tomlin, Associate General Counsel
Robert Smith, Senior Staff Attorney

1. Call meeting to order. Roll call for members.

The Commission's virtual meeting convened via live broadcast on Zoom at 3:00 p.m. Daniel called the roll. Commissioners were present as indicated above.

2. Instructions for public participation and meeting process.

Tomlin gave instructions for public comment during the meeting. Members of the public were permitted to make public comment throughout the meeting and during the designated public comment item on the agenda.

3. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through July 2, 2021.

Disclosures Pending from April 16, 2021

1. No. 21.04; Houston Forensic Science Center (Forensic Biology/DNA)

A self-disclosure by the Houston Forensic Science Center reporting a complaint from a former employee who communicated concerns to a current employee regarding another current Forensic Biology/DNA staff member. The laboratory's investigation yielded no evidence to support the alleged misconduct. However, in reviewing its evidence examination/screening process, the laboratory identified risk inherent to the process of determining that an item has a "negative" result because negative items do not proceed to DNA analysis and the negative result is not subject to independent verification.

Houston Forensic Science Center Quality Director, Erika Ziemak, updated commissioners on the progress of the laboratory's case review. In total, the laboratory is recalling 23 cases within the designated five-year period affected, targeting approximately 15% of all casework with negative results. Reanalysis is complete in over 20 of the cases and the reported results are consistent with the original analyses in those cases.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the root cause analysis, case review, and corrective actions by the laboratory. Drake seconded the motion. The Committee unanimously adopted the motion.*

2. No. 21.15; Houston Forensic Science Center (Latent Prints)

A self-disclosure by the Houston Forensic Science Center reporting an incident in its latent prints section where the laboratory identified discrepancies between case records and data stored in AFIS during the laboratory's review of a latent print corrective action.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the root cause analysis, case review, and corrective actions by the laboratory. Drake seconded the motion. The Committee unanimously adopted the motion.*

3. No. 21.19; Bexar County Criminal Investigation Laboratory (Seized Drugs)

A self-disclosure by the Bexar County Criminal Investigation Laboratory reporting an incident in its seized drugs section where during a routine post-sampling check of his sampling area, an analyst found one small Ziplock bag containing drug evidence on the floor beneath his chair.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the root cause analysis, case review, and corrective actions by the laboratory. Drake seconded the motion. The Committee unanimously adopted the motion.*

Disclosures Received as of July 2, 2021

4. No. 21.22; Tarrant County Medical Examiner's Office Crime Laboratory (Forensic Biology/DNA)

A self-disclosure by Tarrant County Medical Examiner's Crime Laboratory describing an incident in its Forensic Biology Unit where, following the quantitation step of DNA typing, an analyst switched four victim reference buccal swab DNA extract tube lids and processed the wrong case number through DNA typing due to the error.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the root cause analysis, case review, and corrective actions by the laboratory. Coble seconded the motion. The Committee unanimously adopted the motion.*

5. No. 21.23; Tarrant County Medical Examiner's Office Crime Laboratory (Forensic Biology/DNA; CODIS)

A self-disclosure by the Tarrant County Medical Examiner's Office Crime Laboratory reporting an incident in its Forensic Biology Unit where the CODIS administrator performed a performance check of the recently updated CODIS software 9.0 rather than a full validation as prescribed in the latest FBI QAS. The laboratory identified 16 affected cases and determined that no amended reports were necessary.

Tarrant County Medical Examiner's Office Quality Director Jody Klann briefly addressed the Committee to confirm the Commission's understanding of the self-disclosure.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the root cause analysis, case review, and corrective actions by the laboratory. Drake seconded the motion. The Committee unanimously adopted the motion.*

6. No. 21.24; Department of Public Safety Austin (Digital/Multimedia)

A self-disclosure by Department of Public Safety Austin reporting an incident in its Digital/Multimedia Evidence Unit where an analyst in the section received an unsatisfactory assessment for audio enhancement proficiency test that raised concerns about the quality of the examiner's work product.

Brady Mills addressed the Committee to explain the case review being conducted by the laboratory. Mills further explained the type of work conducted by the subject analyst is typically part of the investigative process by law enforcement and not work that is introduced at trial. The analyst is no longer employed by the laboratory.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the additional information provided by DPS. Drake seconded the motion. The Committee unanimously adopted the motion.*

7. No. 21.30; Jefferson County Regional Crime Laboratory (Seized Drugs)

A self-disclosure by Jefferson County Regional Crime Laboratory reporting an incident in its Seized Drugs section where an analyst found a single white round tablet on the wet laboratory floor after having stepped on the tablet.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the root cause analysis and corrective actions by the laboratory. Coble seconded the motion. The Committee unanimously adopted the motion.*

8. No. 21.34; Jefferson County Regional Crime Laboratory (Seized Drugs)

A self-disclosure by Jefferson County Regional Crime Laboratory reporting an incident in its Seized Drugs section where evidence in a case reported as methamphetamine should have been reported as phencyclidine. The laboratory discovered additional errors by the same technical reviewer after a review of casework by both the analyst and technical reviewer.

Members briefly addressed the issue of the same person performing technical and administrative reviews. Members recommended best practice would be for different employees to conduct each

review.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the root cause analysis, case review and corrective actions by the laboratory. Coble seconded the motion. The Committee unanimously adopted the motion.*

9. No. 21.38; University of North Texas Health Science Center – Center for Human Identification (Forensic Biology/DNA; CODIS)

A self-disclosure by University of North Texas Health Science Center – Center for Human Identification (UNTHSC-CHI) disclosing an incident in its Forensic Biology section where the laboratory recorded a specimen after comparison in its State DNA Index System (SDIS) as a “no match” and later, in April 2021, the laboratory discovered the specimen should have been recorded as a valid match.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the root cause analysis, case review and corrective actions by the laboratory. Drake seconded the motion. The Committee unanimously adopted the motion.*

*Commissioner Coble recused from discussion and vote on this item.

10. No. 21.41; NMS Labs (Seized Drugs)

A self-disclosure by NMS Labs reporting an incident in its Seized Drugs section where, during qualification of a new GCMS instrument for hemp-marihuana differentiation, the laboratory noted higher rates of CBD to THC conversion than during the original validation. NMS Labs also noted that any laboratory performing a similar method could experience similar challenges in CBD to THC conversion.

MOTION AND VOTE: *Daniel moved to recommend the Commission accept the self-disclosure for investigation. Coble seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Daniel moved to recommend the Commission establish an investigative panel consisting of commissioners Drake, Buzzini, and Kerrigan. Coble seconded the motion. The Committee unanimously adopted the motion.*

11. No. 21.42; Department of Public Safety (Forensic Biology/DNA)

A self-disclosure by Department of Public Safety Austin reporting an incident in its Forensic Biology/DNA section where an analyst accidentally lost a hair sample that another analyst in the Materials/Trace section had identified as suitable for DNA testing.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the root cause analysis, case review and corrective actions by the laboratory. Coble seconded the motion. The Committee unanimously adopted the motion.*

12. No. 21.43 University of North Texas Health Science Center – Center for Human Identification (Forensic Biology/DNA; mtDNA)

A self-disclosure by University of North Texas Health Science Center – Center for Human Identification (UNTHSC-CHI) disclosing an incident in its Forensic Biology section where the laboratory discovered differences between an mtDNA profile produced by the laboratory and the FBI mtDNA profile for the same case.

MOTION AND VOTE: *Daniel moved to recommend the Commission take no further action on the self-disclosure given the root cause analysis, case review and corrective actions by the laboratory. Drake seconded the motion. The Commission unanimously adopted the motion.*

*Commissioner Coble recused from discussion and vote on this item.

13. No. 21.12; Glen Dale Horner (Houston Police Department/Houston Forensic Science Center; Forensic Biology/DNA)

A complaint against the former Houston Police Department laboratory by defendant Glen Dale Horner alleging the report from a DNA analysis conducted in his 1998 case is missing.

MOTION AND VOTE: *Daniel moved to recommend the Commission dismiss the complaint and direct the laboratory to report any observations regarding the archived case record to the appropriate stakeholders in the criminal justice system. Coble seconded the motion. The Committee unanimously adopted the motion.*

14. No. 21.25; Brooks, Randall (Fort Worth Police Department Crime Laboratory; Serology)

A complaint by defendant Randall Brooks alleging prosecutors and the Fort Worth Police Department Crime Laboratory failed to disclose the results of the analysis of a sexual assault kit swab.

MOTION AND VOTE: *Daniel moved to recommend the Commission dismiss the complaint because the Commission does not have jurisdiction over disclosure compliance by the State and the reported court decisions are inconsistent with the claim. Drake seconded the motion. The Committee unanimously adopted the motion.*

15. No. 21.26; Pride, Derek (Department of Public Safety Midland; Seized Drugs)

A complaint by defendant Derek Pride alleging DPS Midland denied his right to confront witnesses, because there were two seized drug analyses conducted which produced “two different weights.”

MOTION AND VOTE: *Daniel moved to recommend the Commission dismiss the complaint because the Commission does not have jurisdiction over the admission of affidavits in a criminal case and because differing weights are expected in the sequential analysis of drugs during retesting. Drake seconded the motion. The Committee unanimously adopted the motion.*

16. No. 21.31; Gutierrez, Roland (Department of Public Safety Houston; Seized Drugs)

A complaint by defendant Roland Gutierrez questioning why witnesses at his trial testified about the odor of cocaine in the courtroom, but at an earlier trial of a codefendant, a different analyst did not offer the same or similar testimony concerning the same evidence.

MOTION AND VOTE: *Daniel moved to recommend the Commission dismiss the complaint for failure to allege professional negligence or misconduct related to a forensic analysis. Drake seconded the motion. The Commission unanimously adopted the motion.*

17. No. 21.32; Harris County Public Defender's Office on behalf of defendant Theodore Schmidt (Dr. Melba Ketchum; Wildlife (Canine) DNA)

A complaint by the Harris County Public Defender's Office on behalf of defendant Timothy Schmidt, alleging Dr. Melba Ketchum committed misconduct when she testified in a criminal case regarding the results of canine DNA analysis because her laboratory was not accredited. The complaint also alleges Dr. Ketchum failed to estimate the frequency of the DNA sequence obtained from the reference and questioned samples in the larger canine population, thereby giving incomplete and misleading information to the trier of fact.

MOTION AND VOTE: *Daniel moved to recommend the Commission accept the complaint for investigation and form an investigative panel to determine whether the allegations of misconduct are supported. Coble seconded the motion. The Committee unanimously adopted the motion.*

18. No. 21.39; Johnson, Jerry (DPS Lubbock; Materials/Trace)

A complaint by defendant Jerry Johnson alleging the microscopic hair comparison testimony at his trial was invalid.

MOTION AND VOTE: *Daniel moved to recommend the Commission refer the complaint to the Commission's Hair Microscopy Panel. Coble seconded the motion. The Committee unanimously adopted the motion.*

In addition to the above complaints and self-disclosures, staff dismissed the following 3 complaints:

- 21.28: a complaint filed by defendant Melvin Nicholas seeking information regarding the evidence against him in a pending criminal case in Hays County. Case dismissed for failure to allege negligence or misconduct related to forensic analysis of physical evidence.
- 21.29: a complaint filed by defendant Cyrus Gray III seeking information regarding the evidence against him in a pending criminal case in Hays County. Case dismissed for failure to allege negligence or misconduct related to forensic analysis of physical evidence.
- 21.36: a complaint filed by defendant Charles Lee alleging law enforcement collected DNA samples from him on two different occasions. The defendant made a prior complaint

dismissed by the Commission (19.47). Case dismissed for failure to allege negligence or misconduct related to forensic analysis.

MOTION AND VOTE: *Daniel moved to recommend the Commission approve the staff dismissals. Coble seconded the motion. The Committee unanimously adopted the motion.*

4. Hear public comment.

Commissioners addressed no additional public comments other than that noted throughout the agenda.

5. Adjourn.

MOTION AND VOTE: *Daniel moved to adjourn the meeting. Drake seconded the motion. The Committee unanimously adjourned at 4:50 p.m.*