

**Texas Forensic Science Commission  
Minutes from April 20, 2018 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 8:30 a.m. on Friday, April 20, 2018 at the Tom C. Clark Building, 1<sup>st</sup> Floor Conference Room, 205 West 14<sup>th</sup> Street, Austin, Texas 78701.

Members of the Commission were present as follows:

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

Members Absent: None

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

**Review and adopt minutes from February 1, 2018 Bloodstain Pattern Analysis Committee meeting and February 2, 2018 Forensic Science Commission Quarterly meeting.**

**MOTION AND VOTE:** *Johnson moved to adopt the meeting minutes drafts. Hughes-Stamm seconded the motion. The FSC unanimously adopted the motion.*

**Update on triage projects for DNA Mixture Review.**

Bob Wicoff, Harris County Public Defender's Office Appellate Division Chief and director of the statewide DNA Mixture case review, reported on the status of the case review and recalculations made by laboratories thus far. Wicoff noted dramatic differences in recalculations in some cases. The team is working on determining the potential legal ramifications of the differences and will report back to the Commission at its July meeting. Wicoff also noted delays in responses to recalculation requests that he is in the process of addressing with laboratory management.

Trudy Strassburger, Deputy Director of the Capital Area Defender Service and head of the DNA Mixture case review for Travis county also provided a brief update. The team continues to review cases and will report any significant developments back to the Commission in the coming months.

**Office administrative update (FY2018 budget status report quarter two; update regarding content management software required for the FSC Licensing Program and implementation of exam and license application functions; update on any outstanding reimbursement requests; update on new website; update on electronic binder transition; discussion of OCA strategic measures for Legislative Budget Board).**

Staff and members discussed the current budget status report for fiscal year 2018. Staff reported on the status of implementing the exam and license application functions through software

provider, TopClass. Staff administered the pilot exam in mid-March and is currently working on the development of the license application in TopClass. Staff reported on the development of the new website. The website is live now and connected to the Office of Court Administration's ("OCA") website. Staff briefly discussed OCA's desire to move from paper meeting documents to digital meeting material software for all boards and commissions within OCA's purview.

Staff also introduced new staff member and licensing specialist, Brian Keenan. Keenan has been key in the continued development of the licensing application thus far and has worked closely with Commission staff on evaluating and analyzing data from the Commission's pilot exam.

Garcia also reported on certain strategic measures that the legislature requires the Commission and OCA to report each year. The strategic measures require state agencies to set benchmarks and evaluate progress periodically. Garcia is working with OCA finance staff on the specific wording and development of the Commission's strategic measures for approval by the Legislative Budget Board. Staff will provide a final copy of the proposed measures at the Commission's July meeting.

**Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through January 18, 2018.**

**Complaints Received as of April 5, 2018**

1. No. 18.12; Obi (Montgomery County Sheriff's Lab; Bloodstain Pattern Analysis)

Complainant Emmanuel Obi, attorney for the deceased's family, alleges negligence and/or misconduct related to an October 9, 2016 death investigation and crime scene investigation of a suicide by the Nacogdoches County Sheriff's Office. The complaint also alleges the bloodstain pattern analysis conducted by the Montgomery County Sheriff's Office was flawed and led to an erroneous determination of suicide in the case.

Members discussed the case and the issues are primarily autopsy-related and beyond the scope of the Commission's jurisdiction. To the extent complainant alleges flaws in the blood stain pattern analysis, the Commission has already deliberated regarding new requirements for bloodstain pattern analysis and issued a recommendation for accreditation after May 2019. Per the Commission's limited jurisdiction over disciplines not subject to accreditation, a review of this case would at best result in duplication of prior Commission action.

**MOTION AND VOTE:** *Kerrigan moved to dismiss the complaint because the allegations primarily concern the findings of forensic pathologists and the Commission already addressed bloodstain pattern analysis issues during the last quarterly meeting. Drake seconded the motion. The FSC unanimously adopted the motion.*

2. No. 18.16; Gipson (DPS – Austin; Toxicology/Urine Drug Analysis)

A complaint by Richard Gipson alleging state prosecutors used a falsified urine toxicology report to secure his conviction in a 2006 intoxication manslaughter case.

DPS provided documents to the Commission that supported the analytical results in the case.

**MOTION AND VOTE:** *Parsons moved to dismiss the complaint for failure to state any facts that could constitute professional negligence and/or misconduct in the case. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

3. No. 18.19; Anonymous (DPS – Capitol Area; Forensic Biology)

An anonymous complaint from a DNA analyst at the DPS Capitol Area Regional Laboratory, former Austin Police Department DNA Lab, describing quality concerns, management and workplace environment issues that have led to high employee turnover.

**MOTION AND VOTE:** *Parsons moved to dismiss and refer the complaint to the Quattrone Center for the Fair Administration of Justice which has been retained by the City of Austin and Travis County to perform a root cause analysis regarding previously observed issues in the Austin Police Department DNA laboratory and offer recommendations for how the lab should be structured going forward. Parsons further moved that staff request that if any laboratory quality issues are observed during Quattrone’s review of the former employee’s allegations, that such issues be referred back to the Commission for consideration. Hughes-Stamm seconded the motion. The FSC unanimously adopted the motion.*

**Disclosures Received as of April 5, 2018**

4. No. 18.11; Fort Worth Police Department (Latent Prints)

A self-disclosure by the Fort Worth Police Department Crime Lab reporting an incident in its latent print section where an examiner discovered numerous errors in previous casework by two other examiners who are no longer employed at the lab.

**MOTION AND VOTE:** *Parsons moved to table the disclosure pending the retroactive review of latent print cases currently underway at the laboratory. Hughes-Stamm seconded the motion. The FSC unanimously adopted the motion.*

5. No. 18.13; Signature Science (Forensic Biology)

A self-disclosure by Signature Science reporting a contamination incident in its Forensic Biology section where the lab identified low-level alleles in some reagent blanks that matched one of the lab’s employees.

**MOTION AND VOTE:** *Daniel moved to take no further action on the disclosure given the root cause analysis and corrective actions taken by the laboratory. Hughes-Stamm seconded the motion. The FSC unanimously adopted the motion.*

6. No. 18.14; DPS – Weslaco (Forensic Biology)

A self-disclosure by DPS – Weslaco describing an incident in its Forensic Biology section where incongruous Acid Phosphatase (AP) testing results were observed during the re-analysis of casework as part of the quality assurance process.

**MOTION AND VOTE:** *Daniel moved to table the disclosure until the final quality action report can be reviewed and the case review has concluded. Parsons seconded the motion. The FSC unanimously adopted the motion.*

7. No. 18.15; DPS – Waco (Forensic Biology)

A self-disclosure by DPS – Waco describing an incident in its Forensic Biology section where the lab received a complaint describing discrepancies in crime lab records and the complainant presented a timeline of events and requested an explanation of chronological inconsistencies.

**MOTION AND VOTE:** *Daniel moved to take no further action on the disclosure given the response by the laboratory, except to recommend a quality incident report should have been generated by the laboratory related to the incident. Hughes-Stamm seconded the motion. The FSC unanimously adopted the motion.*

Garcia will address the recommendation regarding generation of a quality incident with Deputy Assistant Director Mills.

8. No. 18.18; HFSC (Forensic Video Analysis)

A self-disclosure by the Houston Forensic Science Center describing an incident in its Forensic Multimedia section where an analyst failed to document DVR storage settings, earliest/latest recording, and camera recording settings in accordance with the section SOP and then shredded/destroyed original scene notes before scanning them into LIMS or copying.

**MOTION AND VOTE:** *Johnson moved to take no further action on the disclosure given the actions taken by the lab, including isolation of the event root cause to this particular examiner, termination of the analyst, the subsequent case review conducted by the lab and investigation by the Harris County DA's office. Parsons seconded the motion. The FSC unanimously adopted the motion.*

**Discuss status of crime laboratory accreditation program, including accreditation non-conformances received since November 2017 quarterly meeting. Update on attorney general opinion request regarding whether postmortem toxicology is subject to Commission accreditation requirements. Update on publication and adoption of bloodstain pattern, shooting trajectory, and crime scene reconstruction exemption. Review proposal for postmortem toxicology and workplace/workforce drug testing exemption.**

Savage reviewed with Commissioners quarterly accreditation reports from laboratories, including reported nonconformances.

Garcia discussed the attorney general opinion related to postmortem toxicology. In sum, the opinion states that if the primary purpose of postmortem testing in a particular case is the practice of medicine, the analysis is exempt from accreditation requirements under Section 38.35 of the Texas Code of Criminal Procedure. The opinion noted that the Commission has the authority to determine this on a case-by-case basis. The opinion also emphasized the Commission has authority to exempt or clarify which forensic disciplines are subject to accreditation requirements through its administrative rulemaking authority.

Staff proposed a broad exemption for postmortem testing due to the impracticality of assessing the “medical purpose” of a given postmortem toxicology analysis on a case-by-case basis. Members declined to adopt an exemption but rather opted to allow laboratories to make the legal argument under Section 38.35 of the Texas Code of Criminal Procedure in the courts where such analysis will be offered.

**MOTION AND VOTE:** *Kerrigan moved to take no action on the proposed postmortem toxicology exemption. Johnson seconded the motion. The FSC unanimously adopted the motion.*

Savage briefly explained the need for a workplace drug testing exemption and presented the proposed rule language.

**MOTION AND VOTE:** *Kerrigan moved to adopt the proposed workplace/employment drug testing rule. Parsons seconded the motion. The FSC unanimously adopted the motion.*

Garcia informed members of the invitation received by Commission staff to attend a bloodstain pattern analysis training class hosted by the Texas Rangers in Waco. Staff will attend and talk with the Rangers about their approach to crime scene analysis and upcoming rulemaking regarding bloodstain pattern analysis.

Rossi from Montgomery County spoke about her lab’s accreditation process, experience and status. Montgomery County Sheriff’s Office crime scene unit is close to achieving accreditation for bloodstain pattern analysis.

**Discuss licensing advisory committee program, including adjudication of public comments and updates from March 19, 2018 Licensing Advisory Committee meeting, update on pilot exam, including any comments on study materials and exam. Address inquiry related to applicability of temporary forensic analyst license for Louisiana laboratory. Status update on federal examiner licensing. Discuss tech reviewer license issue for outside tech reviewers who are not eligible for a license. Review adopted licensing program rules (including final changes resulting from comments).**

Garcia presented a PowerPoint on the licensing pilot exam, including a breakdown of the disciplines and experience levels of test takers and how they scored on the pilot exam. Garcia also described the process for eliminating 40 questions from the pilot for the 100-question exam. Members also discussed feedback from the community regarding the exam. The Commission plans to set up an exam evaluation committee to address concerns from the community and to work on future iterations of the exam. Staff expects pilot participant scores will be released soon.

Members discussed whether a compensatory or conjunctive approach to scoring the exam is best. A compensatory approach would require accounting for all questions on the exam and an overall score versus the conjunctive approach where a test-taker must have at least some minimum number of questions correct in each of seven domains tested on the exam.

**MOTION AND VOTE:** *Kerrigan to delegate to the Licensing Advisory Committee the decision on whether a compensatory or conjunctive approach should be used to calculate exam scores with final approval by Barnard. Daniel seconded the motion. The FSC unanimously adopted the motion.*

Savage briefly addressed some of the technical issues exam takers reported throughout the pilot. Most of the issues have been resolved by the software developer at this time.

Members discussed whether federal examiners should be exempt from the licensing requirements. The Commission is currently waiting on a response from DOJ to its last letter which proposed modified requirements for federal examiners to achieve the license. Staff will report back at the Commission's next meeting.

Members reviewed final changes to the licensing rules, including an exemption for technical reviewers who would not otherwise be available to a lab and are not eligible for the license. Members also addressed an inquiry from a Louisiana lab that was trying to decide whether the temporary license or the full license is appropriate for its staff. Savage explained the issues brought by the lab and members decided it is essentially up to the lab to decide which route they should pursue.

Members also discussed modifying the toxicology interpretation definition. Kerrigan will work on modifying the language and provide any revisions to staff before the rules are published.

**MOTION AND VOTE:** *Hughes-Stamm moved to adopt the current draft of the licensing rules to include the changes discussed. Budowle seconded the motion. The FSC unanimously adopted the motion.*

#### **Update from investigative panel regarding #17.04 Gefrides (HFSC; DNA).**

Koehler provided a PowerPoint updating members on the status of the complaint including a timeline of events, site visit process, staff concerns expressed during the site visit, steps for improvement, and panel recommendations for the lab.

HFSC representatives addressed the Commission and described how concerns are being addressed.

Staff will draft a final report for deliberation and adoption at the Commission's July meeting.

**Review and adopt final report from investigative panel regarding combined Clark (Blood Spatter/GSR—Houston PD/Harris Co. Institute of Forensic Sciences) #16.40 case and Bryan (Blood Spatter) #16.56 case.**

Garcia explained that some necessary information had just been provided to Commission staff by DPS and has not yet been reviewed. Staff will review the supplemental information and provide an update at the Commission's July meeting.

**Review and adopt final report from investigative panel regarding Harris Co. Institute of Forensic Sciences (Blood Alcohol—Guale) #16.48.**

Kerrigan reviewed the report and had no further edits. The report was approved for publication pending any comments from Kerrigan at the Commission's February quarterly meeting. The report will be published by staff.

**Review and adopt final report on DPS Garland (Blood Alcohol—Youngkin) #17.28.**

**MOTION AND VOTE:** *Parsons moved to accept the draft final report for publication. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

Staff will publish the final report in the matter.

**Review and adopt final report from investigative panel regarding order by Judge Herbert B. Dixon in *United States v. Torney*.**

**MOTION AND VOTE:** *Hughes-Stamm moved to accept the draft final report for publication. Parsons seconded the motion. The FSC unanimously adopted the motion.*

\*Budowle recused himself from discussion and vote on this agenda item.

Staff will publish the final report. Garcia informed members the Commission will receive periodic updates from a private consultant hired by NMS to review cases.

**Update on staff initiatives on crime scene and drug field tests as required by HB-34.**

Pursuant to the 85<sup>th</sup> Legislature's HB-34, the Commission is charged with publishing a written report evaluating standard procedures used in processing a crime scene, the quality of crime scene investigations, the availability and adequacy of training and continuing education provided to crime scene investigators and to develop any legislative recommendations regarding improvements to crime scene investigation in general. HB-34 also charges the Commission with conducting a study and publishing a report related to drug field testing. Garcia, Koehler and Savage met with staff at OCA who will assist project management and development of a final report for both of the legislative mandates.

With regard to the field drug testing issues, Brady Mills, Assistant Division Director of DPS Crime Laboratory System, reported that DPS is working on ideas for addressing concerns with drug field tests and is purchasing, testing and validating the Rahman device as a solution to field drug testing.

**Update on Austin Police Department cases being reviewed by UNTHSC-CHI, AP reagent study and related issues at DPS Capitol Area Laboratory.**

Budowle reported he has been reviewing the AP reagent study results and will report back with further information at the Commission's July meeting. Budowle cited several initial observations with regard to the reagent study. Mills explained DPS is looking further into some observed discrepancies and will report back before the next quarterly meeting.

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

Downing reported on the efforts to revise protocols for sexual assault kits in Texas. A draft of the protocols is expected to be released by May 15 and will be posted for public comment for a period of 30 days. Downing will provide Commissioners with a copy of the draft. Downing reported that the protocol does not address physical evidence which was key to the Commission's original discussion on the issue. Downing hopes that a final draft of the report may address these issues. The goal date for a final draft is September 1, 2018.

**Update from Texas Association of Crime Laboratory Directors.**

No representative from TACLD was present.

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

Koehler will give a presentation at the TCDA in June. She also attended the Missing Migrant International Summit in McAllen in April. Garcia met with a forensic pathologist from Honduras (Dr. Julissa Villanueva) who won the International Woman of Courage award. The northern triangle countries are in the process of improving their DNA practices with the support of major grant funding from the U.S. Department of State.

**Consider proposed agenda items for next quarterly meeting.**

Budowle discussed his continued review of private laboratory DNA protocols and sample cases. Koehler will also continue to work with private labs to assess mixture analysis protocols. Staff will include an update on this agenda item at its next quarterly meeting.

With regard to the *Torney* matter, members discussed going back to the national accrediting body for NMS, ANAB, and presenting the Commission's final report in the matter and asking for a root cause analysis. Members believe a response is necessary from ANAB. Staff will reach out to ANAB and report back at the Commission's next quarterly meeting.

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

The Commission will meet again July 20, 2018.

**Hear public comment.**



There was no public comment other than that mentioned above.

**Adjourn.**

**MOTION AND VOTE:** *Parson moved to adjourn the meeting. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

The meeting was adjourned at 12:28 pm.