

The Texas Forensic Science Commission met on April 14, 2023, at the Stephen F. Austin Building at 1700 North Congress Avenue, Room 170, Austin, Texas 78701

Members Present: Patrick Buzzini, Ph.D.
Michael Coble, Ph.D.
Mark Daniel, J.D.
Jasmine Drake, Ph.D.
Jarvis Parsons, J.D.
Jeffrey Barnard, M.D.

Members Absent: Sarah Kerrigan, Ph.D.
Nancy Downing, Ph.D.

Staff Present: Lynn Garcia, General Counsel
Leigh Tomlin, Associate General Counsel
Robert Smith, Senior Staff Attorney
Veena Mohan, Assistant General Counsel, Office of Court Administration
Kathryn Adams, Commission Coordinator

During this meeting, the Forensic Science Commission (“Commission”) considered and acted on the following items. The Commission took breaks as necessary.

1. Call meeting to order. Roll call for members. Excuse any absent board members.

Barnard called the meeting to order at 9:01 a.m. Commissioners were present as indicated above.

MOTION AND VOTE: *Daniel moved to excuse Kerrigan’s and Downing’s absence. Parsons seconded the motion. The Commission adopted the motion by a unanimous vote.*

2. Review and adopt minutes from January 27, 2023, Commission quarterly meeting.

MOTION AND VOTE: *Daniel moved to adopt the meeting minutes draft. Buzzini seconded the motion. The Commission adopted the motion by a unanimous vote.*

3. Office administrative update (Announcement of Governor’s March 21, 2023, re-appointment of commissioners Patrick Buzzini, Michael Coble, Jasmine Drake, and Nancy Downing; FY2023 second quarter budget status report; updates from conferences and trainings by staff, including February 2023 American Academy of Forensic Sciences Annual Meeting; update on status of launch of database functions). (Garcia/Tomlin)

Garcia gave an update on Governor’s [reappointment](#) of Drs. Coble, Drake, Buzzini, and Downing. On March 21, 2023, Governor Abbott reappointed Drs. Coble, Drake, Buzzini and Downing for terms set to expire on September 1, 2024.

Garcia gave an update on plans to launch the OSAC Registry implementation section of the Commission's public database. Garcia also updated members on the other public database components, including the component for accredited laboratories and the reported quality incident database.

Staff and Commissioners reported on their attendance and presentations from the American Academy of Forensic Science's 2023 annual meeting in February 2023. Tomlin served as the jurisprudence committee program section chair for the 2023 program and will serve as the chair for the 2024 program as well.

4. Update on National Institute of Standards and Technology (NIST) Organization of Scientific Area Committee Registry standards implementation tools available to state crime laboratories and agencies.

There will be an update on OSAC Registry implementation tools at the July 2023 meeting.

5. Discuss and consider complaints and laboratory self-disclosures pending from January 27, 2023 quarterly meeting and new complaints and laboratory self-disclosures received through March 24, 2023, as detailed below.

Self-disclosure pending from January 27, 2023:

1. No. 23.02; Fort Worth Police Department Crime Laboratory (Quality System)

A self-disclosure by the Fort Worth Police Department Crime Laboratory reporting an incident where the laboratory discovered a loss of data to its quality management system after the former quality assurance director allegedly deleted or discarded laboratory data when she departed employment from the laboratory.

MOTION AND VOTE: *Daniel moved to take no further action due to the additional investigation by the laboratory and response from the former employee indicating the initial concerns were unfounded. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

The Commission also discussed sending guidance in its disposition letter to the laboratory to emphasize that, while it appreciates and encourages timely self-disclosure, the repercussions for the criminal justice system may be severe when the laboratory makes professional misconduct allegations against a former employee, especially one with responsibility over an entire quality system without evidentiary support. Laboratories have the option of contacting the Commission to inform staff of a potential issue or concern when initially identified and follow with a written disclosure once the laboratory has developed a better sense of the scope of the issue or concern.

Self-disclosures received as of March 24, 2023:

2. No. 22.53; Tarrant County Medical Examiner's Office Crime Laboratory (Latent Prints)

A self-disclosure by the Tarrant County Medical Examiner's Office Crime laboratory reporting a non-consensus result on a latent print analyst proficiency test (PT).

MOTION AND VOTE: *Daniel moved to take no further action based on the root cause analysis and corrective actions taken by the laboratory. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

3. No. 23.04; University of North Texas Health Science Center – Center for Human Identification (Anthropology; Forensic Biology (DNA))

A self-disclosure by the University of North Texas Health Science Center – Center for Human Identification (UNTHSC-CHI) reporting an incident in the laboratory's forensic anthropology section where the laboratory discovered an employee in its evidence intake unit inadvertently misclassified and mistakenly routed a case for forensic biology/DNA analysis and discovered the error only after an analyst pulverized one portion of the vertebra in the case into bone powder, and DNA testing procedures were already in process.

MOTION AND VOTE: *Daniel moved to take no further action based on the root cause analysis and corrective actions taken by the laboratory. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

4. No. 23.05; Department of Public Safety – Midland (Seized Drugs)

A self-disclosure by the Department of Public Safety – Midland reporting an incident of inadvertent evidence destruction of a specific case by evidence technicians conducting their first independent destruction event.

MOTION AND VOTE: *Daniel moved to take no further action based on the root cause analysis and corrective actions taken by the laboratory. Buzzini seconded the motion. The Commission adopted the motion by a unanimous vote.*

5. No. 23.06; Department of Public Safety – Houston (Multiple Forensic Disciplines)

A self-disclosure by Department of Public Safety – Houston reporting an incident where the laboratory's heater coils on the roof of the building froze and burst after ice storm Elliott causing water to enter the ventilation system and flood certain areas of the crime laboratory.

MOTION AND VOTE: *Daniel moved to take no further action based on the root cause analysis and corrective actions taken by the laboratory. Parsons seconded the motion. The Commission adopted the motion by a unanimous vote.*

6. No. 23.07; Fort Worth Police Department Crime Laboratory (Seized Drugs)

A self-disclosure by the Fort Worth Police Department Crime Laboratory (FWPD) reporting an incident in the laboratory's seized drugs section where an analyst made a mathematical error that resulted in a much lower quantitated concentration than reported for a botanical marijuana sample on a proficiency test than the expected result.

While reviewing the materials provided by the laboratory, Committee members Kerrigan and Drake had questions regarding the laboratory's delta-9 THC quantitation method for LCMS. In the context of the proficiency test examples that were the subject of the disclosure, the laboratory ran a calibration curve and then approximately five days later, ran controls to verify the calibration curve. It appears from the documentation that the laboratory did not use an internal standard. Instead, the laboratory changed the injection volume for purposes of verifying the calibration curve. Members directed staff to request the laboratory provide further information regarding the process utilized to verify the calibration curve using LCMS. Drake also requested the laboratory provide documentation of its validation of the method to 0.3 µL, and confirmation that the validation was reviewed by ANAB in conjunction with accreditation assessment activities.

FWPDCL Quality Director Casandra Setser addressed the Commission to answer questions from Dr. Drake. Setser responded that the laboratory will follow up with the appropriate supporting documentation and answers to Commissioners' questions.

MOTION AND VOTE: *Daniel moved to table the self-disclosure pending a request for additional information from the laboratory in response to the questions raised by Dr. Drake. Parsons seconded the motion. The Commission adopted the motion by a unanimous vote.*

7. No. 23.08; Fort Worth Police Department Crime Laboratory
(Firearms/Toolmarks)

A self-disclosure by FWPDCL reporting an incident in the laboratory's firearms/toolmarks section where a firearms analyst reported proficiency test results on her firearms proficiency test inconsistent with the consensus results.

MOTION AND VOTE: *Daniel moved to take no further action based on the root cause analysis and corrective actions taken by the laboratory; the proficiency testing and inconclusive reporting issues with general applicability raised in this self-disclosure will be addressed in the report to be published in response to the Nanon Williams complaint. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

8. No. 23.09; Department of Public Safety – Garland (Seized Drugs)

A self-disclosure by Department of Public Safety – Garland reporting an incident in the laboratory's seized drugs section where an analyst incorrectly reported the weight of a methamphetamine sample due to a transposition in numbers error.

MOTION AND VOTE: *Daniel moved to take no further action based on the root cause analysis and corrective actions taken by the laboratory. Buzzini seconded the motion. The Commission adopted the motion by a unanimous vote.*

9. No. 23.10; Department of Public Safety Crime Laboratory System (Seized Drugs)

A self-disclosure by the Department of Public Safety Crime Laboratory System where the laboratory discovered a systemwide issue of insufficient reporting of information related to controlled substances containing hydrocodone that could significantly affect the categorization of a defendant's penalty group for the controlled substance. Specifically, the laboratory released hydrocodone analysis reports without noting the presence or possible presence of the *non-narcotic*, therapeutic amount in the sample.

MOTION AND VOTE: *Daniel moved to take no further action based on the root cause analysis and corrective actions taken by the laboratory. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

10. No. 23.11; Department of Public Safety – Austin (Toxicology)

A self-disclosure by the Department of Public Safety – Austin reporting an incident in the laboratory's toxicology section where the laboratory discovered samples switched in two toxicology cases.

MOTION AND VOTE: *Daniel moved to take no further action based on the root cause analysis and corrective actions taken by the laboratory. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

11. No. 23.13; Department of Public Safety – Houston (Materials (Trace))

A self-disclosure by the Department of Public Safety – Houston reporting an incident in the laboratory's materials trace section where trace analyst did not attain the expected result on a bulb filament proficiency.

MOTION AND VOTE: *Daniel moved to take no further action based on the root cause analysis and corrective actions taken by the laboratory. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

12. No. 23.14; Department of Public Safety – Austin (Digital/Multimedia)

A self-disclosure by the Department of Public Safety – Austin reporting an incident in the laboratory's digital/multimedia section where an analyst reached a conclusion inconsistent with consensus results on a proficiency test. The laboratory did not consider the conclusion incorrect because the section does not perform that component of interpretation in laboratory casework.

MOTION AND VOTE: *Daniel moved to take no further action based on the root cause analysis and corrective actions taken by the laboratory. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

Complaint pending from January 27, 2023:

13. No. 22.40; Nix, Meda (Texas Department of Public Safety - Austin; Breath Alcohol)

A complaint by DPS forensic scientist Meda Nix alleging unfair and discriminatory promotional practices at Texas Department of Public Safety Crime Laboratory – Austin’s Breath Alcohol section. The allegations were investigated by the DPS Office of Inspector General and deemed unfounded.

MOTION AND VOTE: *Daniel moved to dismiss the complaint given the Office of Inspector General’s findings that the allegations were unfounded and the fact that the allegations are unrelated to forensic analysis or related testimony but rather concern human resource matters such as evaluation of candidates for promotion. Buzzini seconded the motion. The Commission adopted the motion by a unanimous vote.*

Complaints received as of March 24, 2023:

14. No. 23.15; Polk, Frankie (unspecified Houston Lab; Forensic Biology/DNA)

A complaint by defendant Frankie Polk alleging a “suppressed” report by Cellmark Forensics contradicts the DNA mixture results utilized at his trial. The statewide DNA mixture review team previously reviewed the case and recommended the case be closed due to single source DNA profile results implicating the defendant.

MOTION AND VOTE: *Daniel moved to dismiss the complaint because the case has already been reviewed by the statewide DNA mixture review panel and allegations regarding suppressed evidence are outside the scope of the Commission’s jurisdiction. Parsons seconded the motion. The Commission adopted the motion by a unanimous vote.*

15. No. 23.16; Lovett, Lamar (Austin PD; Forensic Biology/DNA)

A complaint by defendant Lamar Lovett alleging post-conviction DNA results are inconsistent with an "inconclusive" result obtained by the APD DNA lab in 2010.

MOTION AND VOTE: *Daniel moved to dismiss the complaint because the allegations omit key information and because post-conviction testing did not exclude the defendant as a possible contributor to the DNA mixture obtained from the vaginal swab. Buzzini seconded the motion. The Commission adopted the motion by a unanimous vote.*

16. No. 23.20; Dues, Miranda (ExperTox; Hair Analysis)

A complaint by an attorney for a North Carolina defendant convicted of sexual assault and kidnapping alleging the results of a hair analysis conducted by ExperTox in 2017 conflicted with blood and urine tests results by another laboratory’s results in North Carolina. The complaint alleges ExperTox’s expert, Dr. Lykissa, gave unscientific expert testimony regarding the synergistic effects of the drug rendering the victim incapacitated.

MOTION AND VOTE: *Daniel moved to table the complaint pending additional information. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

Staff Dismissals

1. No. 23.12; Carrio, Norman (Harris County DA, Houston Police Department; Autopsy, Firearms/Toolmarks)

A complaint filed by defendant Norman Carrio alleging the prosecution and law enforcement suppressed exculpatory evidence related to his case and the State failed to correct the testimony of several witnesses. The complaint alleges a Houston Police Department witness and the medical examiner failed to show the actual path of the fired projectile and failed to explain how one projectile caused injury to two victims.

2. No. 23.17; McKinley, Charles (no laboratory specified; Toxicology)

A complaint by defendant Charles McKinley alleging a medical examiner testified regarding the results of a urinalysis collected in connection with his prosecution for intoxication manslaughter. The complaint does not specify the laboratory that collected and tested the urine specimen. The appellate opinion refers to the records regarding the test as “medical records” suggesting the sample was obtained by the hospital.

3. No. 23.22; Trevino, Eduardo A. (Bexar County Criminal Investigation Laboratory; Forensic Biology/DNA)

A complaint by defendant Eduardo Trevino alleging several issues related to his conviction that are outside the scope of the Commission’s jurisdiction and which contains questions or alternative explanations of the DNA evidence connecting him to the case, but which do not contain allegations of professional negligence or misconduct related to the forensic analysis of the evidence in his case.

MOTION AND VOTE: *Daniel moved to accept the administrative dismissal of six complaints by commission staff. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

- 6. Discuss status of crime laboratory accreditation program, including accreditation activities, communications and reports received since January 27, 2023, quarterly meeting; discuss progress on incorporation of Commission assessment checklist. (Garcia/Tomlin)**

Tomlin gave an update on the laboratory accreditation program. This quarter there were nine accreditation related events: 3 reassessments, 2 new accreditations, 1 reactivation of accreditation, 1 surveillance assessment, and 2 proficiency test nonconformities.

Staff is working with the ANSI National Accrediting Board (ANAB) and American Association for Laboratory Accreditation (A2LA) on implementation of the Commission’s checklist of

universally applicable recommendations extending from its recommendations in the [Colone Report](#), to be incorporated into the laboratory's accreditation checklist beginning with July 1, 2023 accreditation activities. Commission staff plans to distribute specific instructions for implementation and compliance developed in collaboration with the Texas Association of Forensic Quality Managers in early May.

7. Discuss licensing advisory committee update, including:
 - a. Licenses issued and renewed;
 - b. Licensee nonconformance report;
 - c. Review and possible proposal of rule changes to 37 Texas Administrative Code, Subchapter C, § 651.211 related to a temporary license fee waiver;
 - d. Review and possible proposal of rule changes to 37 Texas Administrative Code, Subchapter A, § 651.5 and Subchapter C, § 651.203 related to changes in terminology from "SNP" to "massively parallel sequencing" for forensic biology/DNA categories of testing to align with ANAB accreditation terminology; and
 - e. Update on voluntary licensure. (Garcia/Tomlin)

Tomlin reported on the Licensing Advisory Committee's (Committee) April 13, 2023 meeting. There are currently 1,279 Texas-licensed forensic analysts. Staff is considering transitioning from licenses expiring two years from their current start date, to expiring on the licensee's birthdays. Licensing staff is gathering data for a proposal for the Committee to consider changing the license term expirations to end on the candidate's birthdates to ease the burden of licenses expiring all at the same time. Currently, since the license programs' inception in Fall 2018, most licenses expire in late Fall of even-numbered years placing a burden on staff and licensees during this time. Staff will gather data for the Committee to assess the best way to transition to a better method for renewing licenses that eases the burden on the program at the Committee's July 2023 meeting.

Garcia reported on the status of the voluntary licensure program. The Commission's voluntary licensing rules require applicants to be employed by a laboratory or agency that can demonstrate, regardless of Commission accreditation status, compliance with specific standards as applicable to the applicant's forensic discipline as published on the Commission's website and updated January 15 of each calendar year. The Committee discussed at its meeting which standards should apply to licensure in friction ridge and digital/multimedia. The Committee suggested that, rather than recommending full OSAC Registry standards and other standards implementation by laboratories, the Committee recommend laboratories implement certain critical quality provisions excerpted from ISO 17025:2017 and AR-3125 and other standards that the Committee feels are critical to a laboratory's quality system and the particular forensic disciplines being addressed. Before its July meeting, the Committee will form working groups to develop recommendations for which provisions of which standards should apply for each of these of the voluntary license disciplines before the Committee meets again on July 20, 2023.

Tomlin and Garcia discussed with Commission members waiving the fee for a temporary license. Members agreed the fee for a temporary license should be waived.

MOTION AND VOTE: *Daniel moved to propose the amendments to rule 651.211, subject to suggested revisions from the Office of the Governor. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

The Commission discussed changing a reference to the category of testing under Forensic Biology/DNA from “SNP” to “massively parallel sequencing”.

MOTION AND VOTE: *Drake moved to propose the amendments to rules 651.5 and 651.203, subject to suggested revisions from the Office of the Governor. Coble seconded the motion. The Commission adopted the motion by a unanimous vote.*

8. Review and possible adoption of final investigative report from investigative panel for self-disclosure #22.17 Fort Worth Police Department Crime Laboratory (Proficiency Testing; Reaccreditation Assessment by ANAB).

Garcia gave a PowerPoint presentation on the case discussing the case background and findings by the Commission in its report. In August, FWPDCL underwent a full re-accreditation assessment regarding the issues with their proficiency testing process. All the nonconformities, including the proficiency testing nonconformities, were resolved by ANAB in October. There were no findings of professional negligence or misconduct by the Commission, but multiple recommendations were made in the report.

MOTION AND VOTE: *Parsons moved to accept the final investigative report draft. Coble seconded the motion. The Commission adopted the motion by a unanimous vote.*

9. Update regarding complaint #21.27 University of Colorado, National Innocence Project on behalf of Nanon Williams (Houston PD/Houston Forensic Science Center) (Firearms/Toolmarks).

Staff are waiting on the National Institute of Standards and Technology (NIST) foundational report for the firearms discipline and will have an update at the July meeting.

10. Update regarding complaint #22.16 Harris County Public Defender’s Office on behalf of Webster, Joseph (Ron Smith & Associates; Latent Prints).

Smith gave a PowerPoint presentation update on complaint #22.16. The Commission’s subject matter expert is evaluating information provided by Ron Smith & Associates, the Harris County Public Defender’s Office, and the Houston Forensic Science Center. Staff expects a final report will be completed by the July 2023 meeting.

11. Review and adoption of final investigative report from investigative panel for self-disclosure #22.39 Bode Technology (Forensic Biology/DNA).

Smith presented an update on self-disclosure #22.39 and reviewed the final report including various corrective actions by Bode and Commission recommendations. There were no findings of professional misconduct or negligence.

MOTION AND VOTE: *Parsons moved to adopt the final investigative report draft for the self-disclosure. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*

12. Discuss current forensic development training and education projects, including:

- a. **March 30-31, 2023, meeting with DNA laboratories at the University of North Texas Health Science Center/Center for Human Identification to discuss suitability determinations for DNA mixture profile interpretation;**
- b. **DNA training for lawyers and judges in collaboration with the Court of Criminal Appeals (Judge Barbara Hervey);**
- f. **Sponsorship of laboratory manager class at National Forensic Leadership Academy.**

Garcia shared that the March 30-31st DNA mixture meetings were a success. Staff hopes to hold the event once or twice a year from this point forward.

Staff plans to host a DNA training for lawyers and judges in collaboration with the Court of Criminal Appeals.

13. Update regarding 88th Legislative Session, including SB 991 on development of crime laboratory portal.

Garcia reported on filed legislation from the 88th Legislative Session affecting the Commission and crime laboratories, including SB-991 which creates a statewide technology solution to facilitate full discovery of forensic crime laboratory records. The portal will allow crime labs to meet the legal disclosure and discovery obligations of the Texas Code of Criminal Procedure, including the Michael Morton Act. Through the portal, crime laboratory records will be made available to authorized criminal justice stakeholders, including prosecutors and defense attorneys, on a case-by-case basis.

The committee substitute for the bill also makes minor changes to the Commission's existing disciplinary and appeals process to cover any non-compliance with the portal solution and to allow for a uniform and clear appeals process for any entity or individual subject to the Commission's jurisdiction to appeal to the Judicial Branch Certification Commission.

14. Update from the Texas Association of Crime Laboratory Directors (TACLD).

Stout gave an update on behalf of TACLD. They are circulating possible changes to the bylaws that would create a treasurer and allow for dues collection. Their next meeting is in July. They are

currently tracking about 70 different bills in the legislative session, many of which relate to testing methods for controlled substances, specifically in penalty group 1-B.

15. Discuss rulemaking impacting the Commission's investigative process.

The Commission went into closed session to receive legal advice at 12:13 pm. The Commission reconvened in open session at 12:27 pm.

16. Discuss and possibly take action on ExperTox #20.55 (Toxicology) appeal, including consideration of proposed amended final investigative report(s).

Garcia summarized final changes to the report. The Commission went into a closed session to receive legal advice at 12:02 pm. The Commission reconvened in open session at 12:12 pm.

MOTION AND VOTE: *Daniel moved to adopt the final investigative report draft. Coble seconded the motion. Parsons opposed. The Commission voted in favor of the motion.*

17. Consider proposed agenda items for next quarterly meeting.

18. Schedule and location of future panel and quarterly meetings, including and April 14, 2023, July 21, 2023, October 20, 2023, and January 2024 quarterly meetings.

The Commission discussed possibly holding its October 20th, 2023, meeting in Dallas; staff will provide an update regarding the October meeting location at the July meeting.

19. Hear public comment.

There was no public comment other than that noted above.

20. Adjourn.

MOTION AND VOTE: *Parsons moved to adjourn the meeting. Drake seconded the motion. The Commission adopted the motion by a unanimous vote.*