

**Texas Forensic Science Commission
Minutes from January 21, 2022 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 9:00 a.m. on January 21, 2022, at the Stephen F. Austin Building, 1700 North Congress Avenue, Suite 170, Austin, Texas.

Members of the Commission were present as follows:

Members Present: Jeffrey Barnard
Bruce Budowle
Patrick Buzzini
Michael Coble
Mark Daniel
Nancy Downing
Jasmine Drake
Sarah Kerrigan

Members Absent: Jarvis Parsons

Staff Present: Lynn Garcia, General Counsel
Leigh Tomlin, Associate General Counsel
Robert Smith, Senior Staff Attorney
Kathryn Adams, Commission Coordinator
Maggie Sowatzka, Program Specialist

During this meeting, the Commission considered and took action on the following items. The Commission took breaks as necessary.

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

Barnard called the meeting to order. Commissioners were present as indicated above.

2. Review and adopt minutes from October 22, 2021 Forensic Science Commission Quarterly meeting.

MOTION AND VOTE: Daniel moved to adopt the meeting minutes draft. Budowle seconded the motion. The Commission unanimously adopted the motion.

3. Office administrative update (FY2022 budget status report; updates from conferences and presentations by staff including November 11-14 AJEI Summit and Itiel Dror cognitive bias training at Harris County Institute of Forensic Science, update on database project with Office of Court Administration IT)

Garcia gave an update on the budget. Staff adjusted the budget to reflected additional travel this year since the Commission is meeting in person. Garcia reported staff will attend the American Academy of Forensic Sciences Annual conference this year. Garcia also addressed the cognitive bias training co-hosted by the Commission at the Harris County Institute of Forensic Science in November 2021. Sixteen agencies attended the training and over 400 Texas forensic analysts took

part in the training. Garcia updated members on the status of the Commission's database currently in development by the Office of Court Administration. Components will include searchable databases for accredited laboratories, licensed analysts, complaints, self-disclosures, and information about OSAC standards implemented by Texas-accredited laboratories. Staff expects to launch the database in staggered segments after testing each component.

4. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through January 3, 2022.

Disclosures Received as of January 3, 2022

1. No. 17.50; Houston Forensic Science Center (CODIS)

A supplemental corrective action report by the Houston Forensic Science Center (HFSC) related to a 2017 self-disclosure where the Commission took no further action but requested the laboratory report any material changes or supplemental information. The original self-disclosure reported an incident in the laboratory's Forensic Biology section where a local CODIS (LDIS) case-to-case hit occurred, and no notification letter was generated as required by the National DNA Index System (NDIS) and HFSC policy until an investigator inquired as to why the lab did not get a hit for the two cases.

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

2. No. 21.51; Tarrant County Medical Examiner's Office Crime Laboratory (Seized Drugs)

A self-disclosure by the Tarrant County Medical Examiner's Crime Laboratory reporting an extraction error in its seized drugs section. An analyst used concentrated glacial acetic acid instead of 6% glacial acetic acid and discovered the error when a Weber color test resulted in a presumptive positive test and GC/MS confirmation testing rendered a negative for the same sample.

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

3. No. 21.56; Houston Forensic Science Center (Firearms/Toolmarks)

A self-disclosure by HFSC reporting an incident in its firearms section where an analyst switched two sets of NIBIN test fire bullets (from two separate cases) and packaged the bullets for each case into the wrong case file.

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

4. No. 21.58; Austin Police Department Forensic Science Bureau (Seized Drugs)

A self-disclosure by the Austin Police Department Forensic Science Bureau related to the laboratory's seized drugs section where, after performing a quality audit of its GC-MS libraries as part of a quality incident where an analyst discovered an incorrect lot number for a Eutylone standard on two different GCMS instruments, the laboratory's technical leader also discovered the lot number missing for N,N-Dimethylamphetamine and identified three cases where the laboratory reported incorrect compounds.

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

5. No. 21.64; Tarrant County Medical Examiner's Office Crime Laboratory (Toxicology)

A self-disclosure by the Tarrant County Medical Examiner' Office Crime Laboratory reporting an incident in its seized drugs section where a toxicologist switched two case samples and consequently reported incorrect results for each case.

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

6. No. 21.65; Department of Public Safety Houston (Seized Drugs)

A self-disclosure by the Department of Public Safety Houston reporting an incident in its Seized Drugs section where the laboratory inadvertently destroyed seized drugs evidence due to a lack of defined instructions at the submitting agency on how to evaluate cases for destruction.

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

7. No. 21.66; Houston Forensic Science Center (Forensic Biology/DNA)

A self-disclosure by the Houston Forensic Science Center reporting an incident in its Forensic Biology section where an analyst inadvertently consumed the incorrect item of evidence when performing additional testing for a 2010 case at the request of a Houston Police Department Homicide Unit investigator.

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

8. No. 21.67; Bexar County Criminal Investigation Laboratory (Forensic Biology/DNA)

A self-disclosure by Bexar County Criminal Investigation Laboratory (BCCIL) reporting an incident in its Forensic Biology/DNA section where analysts used a nuclear fast red chemical beyond its laboratory-designated expiration date.

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

9. No. 21.68; Bexar County Criminal Investigation Laboratory (Firearms/Toolmarks)

A self-disclosure by BCCIL reporting an incident in its firearms section where an analyst reported that class characteristics on cartridge cases and/or bullets could have come from Generation 4 and 5 Glock pistols, but the report should have only listed Generation 5 Glock pistols.

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

10. No. 21.69; NMS Labs, Inc. (Seized Drugs)

A self-disclosure by NMS Labs reporting an incident in its Horsham, PA laboratory where the laboratory discovered an error in preparing substocks used in validation of a special investigation/Bromazolam Case Study and in all testing thereafter.

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

11. No. 21.72; Brazoria County Crime Laboratory (Blood Alcohol)

A self-disclosure by the Brazoria County Crime Laboratory reporting a systemic problem with a requirement that variation among values obtained from blood samples run in triplicate stay below 10% or be re-analyzed. The issue was discovered after the laboratory contracted with the Jefferson County Crime Laboratory to technically and administratively review blood alcohol cases. Questions from reviewers in the Jefferson County laboratory revealed several defects in the application of the laboratory's standard operating procedure for toxicology. The laboratory is in the process of assessing the scope of these issues and has made disclosure to stakeholders.

MOTION AND VOTE: *Daniel moved to table the discussion until the April Commission meeting. Drake seconded the motion. The Commission unanimously adopted the motion.*

Complaints Received as of January 3, 2022

12. No. 21.59; Qadir, Muqtasid (Fort Worth Police Department Crime Laboratory; Serology/DNA)

A complaint filed by defendant Muqtasid Qadir alleging the Fort Worth Police Department Crime Laboratory committed professional negligence and misconduct in failing to test certain items of evidence in his case. The complaint also alleges the serologist at his trial testified there is a way to determine the age of blood evidence.

MOTION AND VOTE: *Daniel moved dismiss the complaint. Budowle seconded the motion. The Commission unanimously adopted the motion.*

13. No. 21.62; Farmer/Robeson, Howard Wayne (Southwestern Institute of Forensic Sciences; Gunshot Residue)

A complaint filed by Howard Wayne Farmer/Robeson related to the death of Janice Willhelm alleging the determination of the manner of death as suicide by SWIFS was incorrect and a GSR test was performed but the results were never reported.

MOTION AND VOTE: *Daniel moved to dismiss the complaint. Coble seconded the motion. The Commission unanimously adopted the motion.*

14. No. 21.70; Floyd, James (University of North Texas Health Science Center – Center for Human Identification; DNA)

A complaint filed against UNTHSC/CHI by capital murder defendant James Floyd alleging “fabricated DNA reports” with no substantive information related to these allegations.

MOTION AND VOTE: *Daniel moved to dismiss the complaint. Drake seconded the motion. The Commission unanimously adopted the motion.*

5. Discuss and vote on general administrative rulemaking, including rule revisions responsive to legislative changes to the Commission’s statute effective September 1, 2021.

Tomlin gave an update on the general administrative rulemaking that is responsive to the 87th legislature’s minor changes to the Commission’s statute. The changes formalized the requirement that the Commission publish a Code of Responsibility for individuals and entities subject to the Commission’s jurisdiction. The Commission has a Code established as part of its administrative rules that applies to forensic analysts and crime laboratory managers subject to the Commission’s jurisdiction. The rules also address the appeals process cited Code sanctions, disciplinary actions and other investigative action by the Commission.

MOTION AND VOTE: *Kerrigan moved adopt the rule revisions. Downing seconded the motion. The Commission unanimously adopted the motion.*

6. Discuss status of crime laboratory accreditation program, including accreditation non-conformances and reports received since October 22, 2021 quarterly meeting. (Garcia/Tomlin)

Tomlin gave an update on the laboratory accreditation program. This quarter, there were seven accreditation related events: four renewals, two continuations, and one extension. Members discussed some of the accreditation issues cited by ANAB as part of the Brazoria County Crime Laboratory's most recent assessment. These issues will be addressed together with the self-disclosure #21.72 as noted above.

7. Discuss licensing advisory committee update, including:

- a. Discuss and consider applications to appoint TCDLA nominee to fill open seat on the Licensing Advisory Committee;**
- b. Update on licenses issued and renewed;**
- c. Voluntary licensure, including approval of draft rules for forensic anthropologists and document examiners;**
- d. Update on piloting of General Forensic Analyst Licensing Exam II; and**
- e. Institute for Forensic Research Training and Innovation statistics course option. (Garcia/Tomlin)**

Commissioners discussed applications to appoint a nominee to fill the open Texas Criminal Defense Lawyer's ("TDCAA") seat on the Licensing Advisory Committee. TDCAA nominated Austin defense attorney Angelica Cogliano for the seat. Tomlin introduced Cogliano. Cogliano then gave a brief presentation on her background as a defense attorney.

MOTION AND VOTE: *Daniel moved to accept Angelica Cogliano as the new appointee. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

Tomlin gave an update on licenses issued and renewed. There are currently 1309 licensees, most of which are due for renewal in October, November, or December of 2022. Staff will be preparing for a wave of renewals before the end of 2022.

Tomlin also gave an update on progress of the voluntary licensing program development. The program will begin with forensic anthropology, because educational and other requirements for the discipline are already established by the American Board of Forensic Anthropology. ("ABFA") The Commission will recognize licensure for anyone certified by ABFA. Staff is also focusing on document examination analysts since the group has already been subject to licensure in the past.

MOTION AND VOTE: *Daniel moved to adopt the rulemaking draft for voluntary licensure of Forensic Anthropologists. Budowle seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Daniel moved to adopt the rulemaking draft for voluntary licensure of document examination analysts. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

Tomlin provided an update on the development plans for the deployment of the General Forensic Analyst Licensing Exam II. Staff is preparing study materials for distribution and piloting is expected to begin in early June. Staff hopes a group of the pilot participants will be those seeking voluntary licensure. The Commission's contracted psychometricians are currently reviewing test questions drafted by committees of Licensing Advisory Board members and Commission staff established by topic.

Staff informed commissioners of the release of the "Institute for Forensic Research Training and Innovation" statistics course as an option for fulfillment of the licensing statistics education requirement. Information about the course is published on the Commission's website. NMS may also offer such a course in the future.

8. Review and adopt final report from investigative panel regarding NMS (Seized Drugs) self-disclosure #21.41. (Buzzini, Drake, Kerrigan, Parsons)

Garcia reviewed the facts of a self-disclosure by NMS Labs regarding CBD to delta-9 THC conversion observed in some cases using the laboratory's hemp/marijuana differentiation method. Garcia described corrective actions taken by the laboratory and reviewed the draft final investigative report with commissioners.

MOTION AND VOTE: *Daniel moved to adopt the final draft of the report. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

9. Update from investigative panel regarding complaint #20.55 Expertox (Toxicology). (Kerrigan/ Downing/Parsons/Daniel)

Garcia and Kerrigan gave an update on the progress of the Expertox complaint investigation. Staff and panel members are waiting on a response from CAP to a December 7, 2021 letter from Robert Smith. Staff will report back with its findings at the Commission's April quarterly meeting.

10. Review and adopt final report from investigative panel regarding complaint #21.32; Harris County Public Defender's Office for Theodore Schmidt (Ketchum; Forensic Biology/DNA (Wildlife, Canine DNA)). (Budowle/Coble/Daniel)

Smith provided a summary of the investigation of Dr. Melba Ketchum and the contents of the final report in which the Commission found Ketchum professionally negligent for failing achieve

accreditation for her laboratory before performing forensic analysis and offering unclear related testimony in a Texas 2010 criminal case regarding canine DNA. The Commission also found Dr. Ketchum committed professional misconduct when she testified that the DNA sequences from the evidentiary item were “identical” to the reference sample sequences, without providing any quantitative statement or statistical weight to the association, after she co-authored a paper years earlier addressing the need for a quantitative statement in the context of non-human DNA. Members and staff discussed the report.

MOTION AND VOTE: *Daniel moved to adopt the final draft of the report. Budowle seconded the motion. The Commission unanimously adopted the motion.*

11. Update from investigative panel regarding complaint #21.27 University of Colorado, National Innocence Project on behalf of Nanon Williams (Houston PD/Houston Forensic Science Center; Firearms/Toolmarks). (Budowle/Buzzini/Daniel)

Staff had no significant update for this agenda item. The investigative panel met to discuss subject matter experts for consultation and the panel will move forward in its investigation. Staff will provide an update at the Commission’s April quarterly meeting.

12. Update from investigative panel regarding complaint #21.46 Damon Earl Lewis (Sexual Assault Nurse Examination; Basinger). (Downing/Drake/Parsons)

Staff and the investigative panel provided a brief update on the matter. Members of the panel will have a draft report for this agenda item at the April quarterly meeting.

13. Review and adopt final report from investigative panel regarding self-disclosure #21.49 Fort Worth Police Department (Forensic Biology/DNA). (Barnard/Kerrigan/Parsons)

Garcia summarized a final investigative report regarding a DNA analyst’s knowingly false statement about fulfillment of molecular biology coursework on a City of Fort Worth employment application.

MOTION AND VOTE: *Daniel moved to adopt the final investigative report draft. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

14. Update from investigative panel regarding #21.54 James Smiley (Austin PD, Signature Science; Forensic Biology/DNA). (Budowle/Coble/Daniel)

There were no significant updates for this agenda item. The investigative panel met and expects to have a draft report for the April quarterly meeting.

15. Discuss Forensic Science Commission statement regarding alternate firearms opinion terminology. (Garcia)

Garcia summarized a statement the Commission issued in response to a document authored by an assistant general counsel for the Federal Bureau of Investigation Laboratory titled, “Dealing with Alternate Firearms Opinion Terminology.”

16. Discuss Houston Forensic Science Center Latent Print Section’s Procedure for Judgement and Sentencing with regard to phase comparisons performed once a finding of guilt has been established, including outreach for guidance to ANAB and response. (Garcia/Stout)

Peter Stout, CEO of the Houston Forensic Science Center, addressed the Commission regarding challenges faced by the laboratory with respect to latent print comparisons for purpose of judgment and sentencing.

17. Update from the Texas Association of Crime Laboratory Directors. (Stout)

Stout informed the Commission that TACLDC is currently discussing an appropriate organizational structure (such as an LLC). The group also plans to develop a website.

18. Consider proposed agenda items for next quarterly meeting. (Barnard)

No discussion occurred for this agenda item.

19. Schedule and location of future panel and quarterly meetings, including April 22, 2022 quarterly meeting. (Barnard)

There was no discussion for this agenda item.

Adjourn.