

The Texas Forensic Science Commission met on April 22, 2022 at 9:00 AM Stephen F. Austin Building 1700 North Congress Avenue Room 170 Austin, Texas 78701

Members Present: Dr. Bruce Budowle
Dr. Patrick Buzzini
Dr. Michael Coble
Mr. Mark Daniel
Dr. Nancy Downing
Dr. Jasmine Drake
Dr. Sarah Kerrigan
Mr. Jarvis Parsons

Members Absent: None

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 acted on the following items. The Commission took breaks as necessary.

1. Call meeting to order. Roll call for members. (Barnard) (2 min)

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

2. Review and adopt minutes from January 21, 2022 Forensic Science Commission Quarterly meeting. (Barnard) (3 min)

MOTION AND VOTE: *Parsons moved to adopt the meeting minutes drafts. Drake seconded the motion. The Commission unanimously adopted the motion.*

3. Office administrative update (FY2022 budget status report; updates from February 2022 AAFS annual conference; update on database project with Office of Court Administration IT). (Garcia/Tomlin) (5 min)

Garcia gave an update on the FY2022 budget. Garcia explained the adjustments made to increase funds dedicated to travel now that commissioners and committee members are meeting in person. Garcia reported that staff attorneys Robert Smith and Leigh Tomlin attended the American Academy of Forensic Sciences (AAFS) annual meeting in Seattle in February on behalf of the Forensic Science Commission. AAFS jurisprudence section members selected Tomlin to chair the jurisprudence section program committee for the 2023 annual program to be held in Orlando, FL. Garcia and Tomlin gave an update on the database project. The Office of Court Administration is currently working on the database. The team is very close to finishing coding and internal testing has begun. Piloting of the website with the help of stakeholders is expected to begin in mid-May.

4. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through April 1, 2022. (Daniel) (75 min)

Disclosures Pending from January 21, 2022

1. No. 21.72; Brazoria County Crime Laboratory (Toxicology)

A self-disclosure by the Brazoria County Crime Laboratory reporting a systemic problem with variation among values obtained from blood samples exceeding the laboratory's 10% threshold for re-analysis.

MOTION AND VOTE: *Daniel moved to investigate the self-disclosure to assist the laboratory with assessing the scope of nonconformities in the laboratory's toxicology casework. Parsons seconded the motion. The Commission unanimously adopted the motion.*

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

Disclosures Received as of April 1, 2022

2. No. 22.01; Houston Forensic Science Center (Forensic Biology/DNA)

A self-disclosure by the Houston Forensic Science Center where, as part of a quality initiative to review past transcripts, the laboratory identified concerns regarding a forensic biology analyst's explanation of statistics in response to questions by the prosecutor.

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

3. No. 22.02; University of Texas Health Science Center – Center for Human Identification (Forensic Biology/DNA)

A self-disclosure by the University of Texas Health Science Center – Center for Human Identification (“UNTHSC”) reporting an incident where the laboratory's walk-in freezer entered an alarm state when the temperature exceeded the acceptable maximum on a Friday evening and employees did not discover the issue until Monday morning.

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

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

4. No. 22.06; NMS Labs (Seized Drugs)

A self-disclosure by NMS Labs reporting an incident in the laboratory's seized drugs section where the laboratory underestimated its uncertainty of measurement value/range for 76 cases that resulted in 65 corrected methamphetamine quantitation reports.

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

5. No. 22.07; Department of Public Safety Austin (Forensic Biology/DNA)

A self-disclosure by DPS Austin reporting the discovery of a missing piece of hair evidence.

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

6. No. 22.11; Fort Worth Police Department Crime Laboratory (Firearms/Toolmarks; NIBIN)

A self-disclosure by the Fort Worth Police Department Crime Laboratory ("FWPDCL") responsive to an allegation by a former laboratory employee that the firearms section "never documented any of their actions..." related to NIBIN test fires. While the general allegation was contradicted by documentary evidence, ANAB identified areas for improvement in documentation and directed FWPDCL to review its NIBIN processes to address any nonconforming work.

MOTION AND VOTE: *Daniel moved to take no further action on the condition that results of ANAB's request for review be forwarded to the Commission. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

7. No. 22.12; Bexar County Criminal Investigation Laboratory (Seized Drugs)

A self-disclosure by the Bexar County Criminal Investigation Laboratory reporting an incident in the laboratory's seized drugs section where employees failed to retest the toluene used for TLC tanks by the proper retest date, likely because the laboratory did not have a procedure for retesting toluene.

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

8. No. 22.17; Fort Worth Police Department Crime Laboratory (Multiple Disciplines; Proficiency Testing)

A self-disclosure by the FWPDCCL reporting observations by ANAB that certain proficiency test participants submitted proficiency test results after the manufacturer published the consensus results.

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

9. No. 22.18; Houston Forensic Science Center (Forensic Biology/DNA; Colone)

A self-disclosure by the Houston Forensic Science Center concerning testimony by DNA analyst Stephen Adam Vinson, which the trial court characterized as evasive, false, and misleading. The testimony occurred during a capital murder trial while the analyst was employed as a forensic biology screener at DPS Houston.

MOTION AND VOTE: *Daniel moved to investigate the self-disclosure to address possible professional negligence or professional misconduct by the analyst as well as related issues in evidence handling and DNA analysis. Drake seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Daniel moved to establish an investigative panel consisting of members Budowle, Downing, and Parsons. Coble seconded the motion. The Commission unanimously adopted the motion.*

Complaints Received as of April 1, 2022

10. No. 22.03; Banos, John (Department of Public Safety Garland; Forensic Biology/DNA)

A complaint against DPS Garland by defendant John Banos alleging the laboratory created “fake dried bloodstains” and sent them to the FBI for DNA analysis in 1989.

MOTION AND VOTE: *Daniel moved to dismiss the complaint due to the fact that blanket allegations regarding falsification of evidence are unsupported by the case record and insufficient to warrant an investigation. Drake seconded the motion. The Commission unanimously adopted the motion.*

11. No. 22.04; Bryant, Earl (Kimberly Light; Sexual Assault Nurse Examination)

A complaint filed by defendant Earl Eugene Bryant, alleging a SANE mischaracterized the outcry of a child by implying Bryant (stepfather) had abused the child repeatedly over a long period when in fact the child was referring to abuse by her biological father.

MOTION AND VOTE: *Daniel moved to dismiss the complaint because the record is ambiguous regarding whether the abuse allegation was related to this defendant or a former abuser, and the issue does not relate to an expert examination or test on physical evidence. Drake seconded the motion. The Commission unanimously adopted the motion.*

12. No. 22.09; King, Tommy Ray (Southwestern Institute of Forensic Science; Forensic Biology/DNA)

A complaint by defendant Tommy King alleging false DNA testimony by one SWIFS analyst regarding certain evidentiary stains and claiming another SWIFS DNA analyst planted blood on a knife after receipt in the lab.

MOTION AND VOTE: *Daniel moved to dismiss the complaint because the testimony allegations are contradicted by the record and the blanket allegation that SWIFS planted blood evidence with no supporting data or witness confirmation is insufficient to warrant an investigation. Coble seconded the motion. The commission unanimously adopted the motion.*

*Barnard recused from discussion and vote on this agenda item.

13. No. 22.13; Martin, Charles (Orchid Cellmark; Forensic Biology/DNA)

A complaint filed by defendant Charles Martin requesting the testing of DNA evidence utilizing newer technology and methods.

MOTION AND VOTE: *Daniel moved to dismiss the complaint because the Commission has no jurisdiction to order the testing of evidence. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

14. No. 22.16; Webster, Joseph (Ron Smith & Associates; Latent Prints)

A complaint filed by the Harris County Public Defender's Office on behalf of defendant Joseph Webster alleging the "positive identification" of a latent palm print obtained from a metal pole at the crime scene is scientifically unsupportable. The complaint also alleges the testimony of the analyst expressing her comparison conclusion included language that exceeds the limits of science.

MOTION AND VOTE: *Daniel moved to accept the complaint for investigation for purposes of making observations regarding the integrity and reliability of the forensic analysis and issuing relevant recommendations in the latent print discipline. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Daniel moved to establish an investigative panel consisting of members Buzzini, Coble, and Daniel. Parsons seconded the motion. The Commission unanimously adopted the motion.*

5. Discuss status of crime laboratory accreditation program, including accreditation non-conformances and reports received since January 21, 2022 quarterly meeting. (Garcia/Tomlin) (15 min)

Tomlin gave an update on the crime laboratory accreditation program. There were six accreditation related events this quarter. One of the CAP-accredited renewals cited several nonconformities of significant concern to staff, yet CAP renewed the laboratory's accreditation. Staff raised the

question of whether CAP should continue to be a recognized accrediting body, a question that has been raised by Commissioners in the past. Commissioners agreed the topic should be on the Commission's July agenda.

6. Discuss licensing advisory committee update, including:
 - a. Update on licenses issued and renewed;
 - b. Address reported licensing issues received since January 21, 2022 quarterly meeting;
 - c. Update on piloting of General Forensic Analyst Licensing Exam II and corresponding study material. (Garcia/Tomlin) (30 min)

Garcia and Tomlin gave an update on the current number of licenses and renewals to date. The Commission currently licenses 1352 forensic analysts and technicians. There will be many renewals this year, the majority of which will be in October, November, and December 2022.

Garcia and Tomlin gave an update on the new study materials. All of the study materials are ready to be sent out, except for two videos covering the reading materials for the human factors and root cause domains. Staff is in the process of finalizing questions with the contracted psychometricians based on the selected study materials. Tomlin explained staff will first pilot the test at the Texas Division of the International Association for Identification (TDIAI) annual conference in San Antonio Texas on June 9, 2022. Many TDIAI members are candidates who will soon be eligible for voluntary licensure and will need to fulfill the exam component of the license requirements anyway. Staff has distributed a flyer and Google sign-up sheet for participation in the pilot at TDIAI. Staff will send study materials directly to those signed up for the pilot test. Next week, Tomlin will distribute a revised flyer directed to the forensic anthropology and document examination disciplines who will soon be eligible for licensure to sign up for the pilot exam. The pilot exam is administered remotely through Blackboard and a security software called Respondus in collaboration with Sam Houston State University. The exam can be taken remotely from anywhere.

Tomlin reported one licensing issue for review by the Commission where the Austin Police Department discovered a Firearms analyst did not follow through with obtaining her license but performed casework. The laboratory is in the process of identifying cases for review and has notified the affected parties.

7. Update regarding ExperTox complaint #20.55. (Kerrigan/ Downing/Parsons/Daniel) (5 min)

Garcia informed the Commission that staff is still waiting on an investigative report from the accrediting body, CAP. CAP had told staff attorney Smith they would have an update within four months. That timeframe passed with no update provided. Commission and staff further discussed whether CAP should remain a recognized accrediting body in Texas. The issue will be further discussed at the next Commission meeting in July.

MOTION AND VOTE: *Kerrigan moved to send a letter to all laboratories accredited by CAP to inform them of the possibility of them removing CAP as a recognized accrediting body. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

8. Update from staff regarding final report in self-disclosure #21.49 Fort Worth Police Department Crime Laboratory (Forensic Biology/DNA); review, discuss and adopt report revisions. (Barnard/Kerrigan/Parsons) (10 min)

At the January Commission meeting, the Commission approved a draft of the report for this self-disclosure. The report included a finding of professional negligence against the laboratory management and professional misconduct against the analyst involved. Fort Worth City attorneys informed staff that they intended to appeal the finding of professional negligence and requested the Commission consider removing the professional negligence finding against the laboratory.

MOTION AND VOTE: *Barnard moved to accept the revision removing the finding of professional negligence against laboratory management. Budowle seconded the motion. Parsons and Daniel rejected the motion. The Commission adopted the motion by majority 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). (Budowle/Buzzini/Daniel) (10 min)

Garcia explained NIST is in the process of publishing a report resulting from an extensive scientific foundation review of published literature in the firearms discipline. Staff anticipates a draft may be available by the July meeting. The report may inform findings and/or recommendation in this investigation.

10. Discuss and adopt final report for complaint #21.46 Damon Earl Lewis (Sexual Assault Nurse Examination; Basinger). (Downing/Drake/Parsons) (10 min)

Smith gave an update on the report for complaint #21.46. Smith outlined recommendations that are intended to assist the forensic nursing community in efforts to improve the state of the science through training and standardization. These recommendations include clarification of terminology, review by a second qualified expert, thorough documentation, additional training, data-driven interpretation, and the consideration of human factors. Additionally, Smith noted that Forensic nursing was recently added as a subcommittee of the NIST organization of OSAC.

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

11. Discuss and adopt final report for complaint #21.54 James Smiley (Austin PD, Signature Science; Forensic Biology/DNA). (Budowle/Coble/Daniel) (10 min)

Garcia gave an update on the report for complaint #21.54. Garcia explained the report contains no finding of professional negligence or misconduct. Garcia discussed recommendations in the report made by commissioners and staff to the forensic science community. Specifically, laboratories

performing manual interpretations should ensure that protocols include guidance on how to assess an otherwise uninterpretable mixture for exclusionary purposes.

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

12. Update on Forensic Biology/DNA Mixture training in Bexar County in collaboration with the District Attorney's office and Judge Barbara Hervey.

Garcia gave an update on the training collaboration. The locations staff originally considered are not large enough to accommodate the number of people that would be attending the event. Staff is working with partners to consider possibilities for a Zoom conference or hybrid event.

13. Update from the Texas Association of Crime Laboratory Directors (Stout) (5 min)

Stout explained that there was no major update regarding the Texas Association of Crime Laboratory Directors. The TACL D meets again in July.

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

The Commission will include an agenda item considering the removal of CAP and SAMHSA as recognized accrediting bodies at the next quarterly meeting.

15. Schedule and location of future panel and quarterly meetings, including the July 22, 2022 and October 2022 quarterly meetings. (Barnard)

The next Commission meeting will take place in the same room on July 22, 2022.

16. Hear public comment. (Barnard)

The Commission did not address any public comment other than that noted above.

17. Adjourn.

MOTION AND VOTE: *Drake moved to adjourn the meeting. Parsons seconded the motion. The Commission unanimously adjourned.*