

**Texas Forensic Science Commission
Minutes from October 7, 2014 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 8:30 a.m. on Tuesday, October 7, 2014, at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744.

Members of the Commission were present as follows:

Members Present: Alpert, Peerwani, Barnard, Eisenberg, Mozayani,
Kerrigan, Lerma, Di Maio

Members Absent: Kessler

Staff Present: Lynn Garcia, FSC General Counsel
Leigh Heidenreich, Commission Coordinator

Review and adopt minutes from August 1, 2014 quarterly meeting and July 31, 2014 complaint screening committee meeting.

MOTION AND VOTE: *Lerma moved to adopt the meeting minutes drafts. Alpert seconded the motion. The FSC unanimously adopted the drafts.*

Executive Session

The Commission broke for an executive session for legal advice from FSC General Counsel, Lynn Robitaille Garcia.

Office administrative update.

Staff discussed the closing of FY2014 budget, the budget forecast for FY2015, developments in database management, an upgrade for the office copy machine, and potentially hiring additional administrative staff on a contracted basis.

MOTION AND VOTE: *Kerrigan moved to approve a contracted administrative position up to the amount of funds the FSC may have available. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

Report on D. Pat Johnson's retirement and promotion of Brady Mills.

FSC general counsel, Garcia, announced Pat Johnson's retirement from DPS and Brady Mills briefly addressed the FSC regarding DPS leadership and continued working relationship.

Discuss and consider recommendations from Complaint Screening Committee concerning pending complaints and self-disclosures.

1. #14-16 HPD - Lentz (DNA)

MOTION AND VOTE: *Kerrigan moved to table the complaint until more information can be obtained from the laboratory and to readdress the complaint at the FSC's January 2015 meeting. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

2. #14-17 Rivas (Cameron County DA's Office – DNA)

MOTION AND VOTE: *Eisenberg moved to dismiss the complaint, because it does not allege any negligence and/or misconduct related to any forensic analysis and to direct staff to send a letter to the complainant, providing contact information for the various Texas innocence clinics. Alpert seconded the motion. The FSC unanimously adopted the motion.*

3. #14-19 Bexar County Medical Examiner's Office – Maddex (DNA)

MOTION AND VOTE: *Alpert moved to dismiss the complaint, because it does not allege any negligence and/or misconduct related to the DNA analysis referenced in the complaint. Kerrigan seconded the motion. Di Maio abstained from deliberation and voting. All other members present voted in favor of the motion. The FSC adopted the motion.*

4. #14-18 DPS – Breath Alcohol Program Disclosure (Proficiency Test)

MOTION AND VOTE: *Eisenberg moved to dismiss the complaint and issue a letter to DPS Office of Scientific Director stating that, given the information provided in the laboratory self-disclosure, no further action is necessary at this time. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

5. #14-20 DPS – Tyler (Controlled Substance)

MOTION AND VOTE: *Peerwani moved to dismiss the complaint and issue a letter to DPS stating that, given the information provided in the laboratory self-disclosure, no further action is necessary at this time. Eisenberg seconded the motion. The FSC unanimously adopted the motion.*

6. #14-21 DPS – El Paso (Controlled Substance)

MOTION AND VOTE: *Peerwani moved to table the complaint until the laboratory has the opportunity to reweigh the 100 cases it has sent to the Lubbock laboratory. Barnard seconded the motion. The FSC unanimously adopted the motion.*

Discussion of Attorney General opinion request regarding confidentiality of pending laboratory self-disclosures under Article 38.01, Section 10 of the Texas Code of Criminal Procedure.

Garcia reported the Attorney General responded to the FSC's opinion request, clarifying that the confidentiality exception in the Commission's statute applies to both complaints *and* laboratory self-disclosures.

Update on arson case review and implementation of recommendations.

Nick Vilbas (Executive Director of the Innocence Project of Texas) provided an update on the ongoing arson case review.

Update from hair microscopy panel meeting on September 12, 2014; discussion and deliberation on recommended action items.

Hair Microscopy Review Team members Deborah Lind, Nick Vilbas, and Melissa Valadez provided the Commission with an update on the hair review team's activities thus far. Garcia provided further information on documents and processes created by the team members.

Update on Texas Department of Public Safety ("DPS") Houston regional crime laboratory self-disclosure #12-06, including latest re-test results from DPS.

Garcia provided an update from the DPS Houston regional crime laboratory's latest re-testing results provided by the laboratory.

Discuss and consider adopting El Paso Police Department Crime Laboratory #11-11 language clarification addendum request from Texas Association of Crime Laboratory Directors ("TACLD").

Garcia provided a description of the language clarification from TACLD.

MOTION AND VOTE: *Kerrigan moved to adopt the revised language in the El Paso PD Crime Lab #11-11 final report. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Update from Houston Forensic Science Center (Toxicology) #14-13 investigative panel.

MOTION AND VOTE: *Alpert moved to instruct the FSC's general counsel to draft a final report issuing a negligence finding, including but not limited to the following observations:*

- 1) *Lack of timeliness in responding;*
- 2) *Delay in issuance of amended report and corrective action;*
- 3) *Facts and related observations communicated in the general counsel's summary memorandum and presentation by Mr. Alpert; and*
- 4) *Scientific leadership and laboratory culture issues.*

Staff will present the draft report for review and adoption by commission members at its January 2015 meeting. Eisenberg seconded the motion. The FSC unanimously adopted the motion.

Update from Blazek (SWIFS – Firearms/Tool Marks) #14-08 investigative panel.

See MOTION AND VOTE below.

Update from IFL (Firearms/Tool Marks) #14-07 investigative panel.

The following motion and vote relates to the two above named complaints.

MOTION AND VOTE: *Alpert moved to delegate to the complaint’s investigative panels the authority to approve any estimate and hire expert John Murdock, assuming the cost is within the FSC’s budget for subject matter experts. Peerwani seconded the motion. The FSC unanimously adopted the motion.*

Update from Bell County (Digital Video Evidence) #14-1 investigative panel.

MOTION AND VOTE: *Barnard moved to defer to the Chair of the investigative panel to get an estimate and hire expert Grant Fredericks, assuming the estimate is within the FSC’s budget for subject matter experts. Alpert seconded the motion. The FSC unanimously adopted the motion.*

Update from forensic development committee.

- a. Progress regarding certification training support at Sam Houston State University, including Commission partnership;
- b. Status of Web-based forensic training program in collaboration with New York Office of Forensic Services;
- c. Status of scenario-based ethics training program;
- d. Update from ASCLD/LAB assessor training held August 4-8, 2014 in Austin;
- e. Update from August 18-19 crime lab manager leadership academy in Houston;
- f. Update on Foresight support for Texas laboratories;
- g. Michael Morton Act training request from TACL; and
- h. AAFS annual meeting abstracts.

Commission members discussed the above forensic development items. Members also discussed developing a root-cause analysis training for analysts to better understand root-cause analysis. Staff will work to develop the training initiative.

Discussion of Texas Association of Crime Lab Director’s final position statement on statewide forensic certification/licensure in Texas and legislative request regarding same.

Members discussed the certification/licensure position statement from TACLD and will work with TACLD members to respond to related legislative inquiries.

Report from State Fire Marshal's Office and Texas Criminal Justice Integrity Unit's August 19, 2014 fire science conference, Withstanding Heat: Fire Science In and Out of the Courtroom.

Garcia briefly reported on the SFMO's and TCJIU's joint fire-science conference.

Report from National Commission on Forensic Science August Meeting.

Di Maio gave a brief report from the National Commission on Forensic Science meeting.

Update on NIST/DOJ Organization for Scientific Area Committees (OSAC).

Kerrigan and Garcia provide comments on the status of NIST/DOJ's OSACs.

Consider proposed agenda items for next quarterly meeting.

Schedule and location of future meetings.

The Commission's next meeting will be either January 16 or January 23, 2014.

Hear public comment.

None.

Adjourn.