



Houston Forensic Science Center, Inc.

Board of Directors Public Meeting ~ Minutes ~

Friday, November 18, 2022

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1. **CALL TO ORDER:**

At 9 a.m., Board Chairwoman Stacey Mitchell called the meeting to order.

The Houston Forensic Science Center, Inc. (“HFSC” and/or the “corporation”) board of directors (the “board”) convened this in-person meeting on Friday, November 18, 2022, in the City Hall Council Annex Chamber, 900 Bagby St. (public level), Houston, Texas 77002. In a manner permitted by the corporation’s bylaws, the meeting was called by providing all directors with notice of the date, time and purpose of the meeting at least three days before the scheduled date.

In accordance with Chapter 551 of the Texas Government Code (Texas Open Meetings Act) a notice of this meeting was posted on the bulletin board located on the exterior wall of the City Hall building at 901 Bagby on November 15.

2. **ROLL CALL:**

The following board members were present in-person:

Chairwoman Stacey Mitchell
Vice-chairwoman Mary Lentschke
Anna Vasquez
Philip Hilder
Vanessa Goodwin
Ellen Cohen
Lois Moore
Vicki Huff
Tracy Calabrese

The following board member was absent:

Francisco Medina

Chairwoman Mitchell declared a quorum was present noting that all members were physically present in-person.

3. **PUBLIC COMMENT:**

Chairwoman Mitchell gave members of the public an opportunity to address the board. No members of the public addressed the board.

4. **REVIEW AND APPROVAL OF MINUTES FROM PRIOR MEETING:**

Following a motion by Director Lois Moore and seconded by Director Ellen Cohen, the board unanimously approved the September 9, 2022 meeting minutes.

5. **CHAIRWOMAN MITCHELL’S REPORT:**

The chairwoman first congratulated Director Moore on Harris Health’s recent dedication of a building in her honor, in recognition of her contributions to the medical community – the Lois J. Moore Center for Nursing Excellence. The facility is utilized for educating nurses and student

nurses. Next, she reminded members to mark their calendars for the next meeting on Friday, January 13, 2023.

She later acknowledged the observation of Veteran's Day by expressing appreciation to the men and women who sacrificed to serve in the military and protect our country, many of them at HFSC, including Dr. Peter Stout, president, and CEO.

Chairwoman Mitchell wrapped up by informing members of the corporation's annual holiday party on December 10 at Karbach Brewery from 7 p.m. to 10 p.m. She encouraged all members to attend and to make monetary donations to help pay for the party since HFSC does not use taxpayer dollars for such events.

6. **DISCUSSION REGARDING A PROPOSED FOURTH AMENDMENT TO THE CORPORATION'S CERTIFICATE OF FORMATION:**

Dr. Peter Stout began by explaining the need for a proposed amendment to HFSC's Certificate of Formation since the corporation is ineligible for some federal grant programs. Article 13, in its Certificate of Formation, defines the corporation as not being a political subdivision, political authority, or public instrumentality of Texas within the meaning of the constitutional laws, a statement Dr. Stout acknowledged the need for more accurate language. The article's goal centers around the laboratory not creating debt for the City of Houston without the City's input. That article creates a problem for the Department of Justice and its interpretation of HFSC. He mentioned in 2017, HFSC applied for a grant through the Paul Coverdell Forensic Science Improvement Grants program. A program that awards roughly \$30 million in grants annually to states and units of local government to help improve forensic science. The state awards range from \$10,000 to \$15,000, while the competitive awards range from \$200,000 to \$500,000. In addition, federal funding can be used for all technical disciplines. However, HFSC was deemed ineligible for the Paul Coverdell grant because it required it to be an instrumentality or political subdivision of the state. The language in article 13 says otherwise. He requested to remove that language in the article for HFSC to be eligible to apply for the Paul Coverdell program for the next grant cycle between March and April 2023. Finally, Dr. Stout discussed that if the board approves the amendment and resolution, it will then be sent to city council for consideration and approval before being filed with the Secretary of State. The chairwoman yielded the floor to Senior Assistant City Attorney Rashaad Gambrell with the city legal department to respond to any questions.

Director Vanessa Goodwin asked if the language was initially included for any purpose related to the tax-exempt status. Dr. Stout said it should not impact the tax-exempt status but that he's still determining the reason behind the initial language in the Certificate of Formation. Mr. Gambrell emphasized that the government code does not require the current language to exist in the Certificate of Formation or Articles of Incorporation and that it is not required by statute. He pointed out that removing the language does not change the entity's nature, and for clarification, HFSC is a separate legal entity from the City of Houston. Mr. Gambrell stated his extensive research did not indicate the reason behind the current language in the Certificate of Formation.

Director Moore made a motion to approve the resolution for the proposed fourth amendment to the corporation's Certificate of Formation. Director Anna Vasquez seconded the motion, and the board unanimously approved the motion.

7. **PRESIDENT AND CEO DR. PETER STOUT'S REPORT:**

Dr. Stout began by discussing operational highlights. Dr. Stout started with noting HFSC continues to be an accredited laboratory and has recently been re-accredited. He then discussed how Latent Prints and Toxicology have downsized their case backlog to about 1000 each, for toxicology it is a review backlog not an outsourcing backlog. Dr. Stout then discussed that CSU had made progress on their backlog and they are now below 300 cases. Dr. Stout then said he was scheduled to talk with the Harris County felony judges next month on December 7th where he plans to discuss the backlog with them and how cases are prioritized at HFSC.

Dr. Stout then moved to the HFSC company goals for 2022-2023. Dr. Stout highlighted the industry-wide struggle with turnover rates. Dr. Stout gave the results of HFSC's 2021-2022 company goal ratings. Chair Mitchell asked if there was a way to incorporate continuing education training into new employee initial training so that HFSC could get better compliance on that goal, and Dr. Stout said he believed there was a way to do that and that he and Amy Castillo were working on those logistics.

8. **DISCUSSION REGARDING THE CORPORATION'S TECHNICAL ADVISORY GROUP:**

(Item taken out of turn)

Item back on agenda for Board to continue discussion about the Technical Advisory Group ("TAG"). Chair Mitchell wanted to give the Board another opportunity to ask any comments or questions regarding the TAG's composition, eligibility requirements, potential new members, and ideas on how to identify areas where the Board can engage the TAG more. The Board will be looking for additional members in the coming months. Chair Mitchell asked that if the Board Members had any ideas for additional TAG members to let her know and reminded them of the eligibility requirements. Chair Mitchell recognized 3 former TAG members for their service to HFSC, Dr. Robin Cotton, Dr. Antonios Mikos, and Mr. Stefan Garrard. The Board will be sending them a certificate of appreciation in the mail to acknowledge the contributions and expertise. Chair Mitchell opened the floor for discussion from the Board. Dr. Stout discussed engaging an expert in human factors to address issues such as cognitive biases. Dr. Stout also stated engaging a statistician could be helpful for HFSC.

Chairwoman Mitchell discussed how important the TAG was in the early years of HFSC's formation and asked how the Board can keep the TAG engaged and how they can be utilized to ensure HFSC is leading the industry and being the model lab for the nation.

Director Huff asked questions about how the TAG engages with the Board and if they attend meetings. Director Hilder posed having a zoom meeting for the Board to meet with them and understand more about their backgrounds and what they do. Chair Mitchell said she will have legal look into whether a zoom meeting can be facilitated.

Dr. Stout said that he had been having ongoing discussions regarding potential ways TAG members could be of assistance and named several other possible candidates for the TAG.

9. **QUALITY DIRECTOR ERIKA ZIEMAK'S REPORT:** (Item taken out of turn)

Erika Ziemak discussed metrics from the blind quality program for September and October. She started with discussing a collaboration between HFSC and Sam Houston University (“SHU”) utilizing “DART” technology (which stands for “direct analysis in real time” technology). SHU wants to use the residue left on HFSC weighing vessels to analyze samples using this technology. Ms. Ziemak stated the Quality Division is appreciative of participating in this research initiative and its future benefit to the forensic community.

Ms. Ziemak then discussed how HFSC was reaccredited by ANAB until December 2026 following a lengthy accreditation assessment. The assessment found that HFSC had 5 nonconformities and those were satisfactory resolved within the 60-day window. The Quality Division performed a risk assessment and took stock of logistical pros and cons of the assessment process. Going forward HFSC will ask ANAB for more assessors dedicated to each section and a longer assessment window to provide all the documentation that is requested. Chair Mitchell congratulated the Quality Division and HFSC for their work during the assessment process.

Ms. Ziemak then discussed the internal safety and security audit. There were 3 findings this year, 2 for safety and one for security, with no impact on case work. The security finding dealt with the process of key transfers from one staff member to another. The process was not originally designed for multiple key transfers and is now being revamped to accommodate this scenario.

Ms. Ziemak then discussed TFSC disclosures. She reminded the Board of the *Colon* disclosure that dealt with a former HFSC analyst who testified in a capital murder case associated with his previous employment at Texas DPS. The Criminal Court of Appeals found the analyst’s testimony to be false and misleading. As a result, HFSC requested TFSC assist in the investigation, since multiple agencies were impacted. The Harris County DA’s Office has stated they will not sponsor the former analyst’s testimony and has requested a rework and rewriting of all his casework due to documented credibility issues. HFSC is working with Harris County DA’s Office and the Harris County Public Defender’s Office to review affected cases.

TFSC released their findings on this investigation in their October 2022 meeting and Ms. Ziemak shared the highlights with the Board. TFSC found the analyst professionally negligent, in addition to a finding of professional misconduct, and that he violated code of professional responsibility. The analyst was terminated from HFSC in May 2022, and TFSC suspended his license and stated they reserve the right to deny his application or opt for conditions on his license if the analyst attempts to renew.

In addition, in response to this incident, TFSC made recommendations to all accredited laboratories in Texas and equipped ANAB with authority to assess all accredited laboratories’ compliance with TFSC’s recommendations. The first recommendation deals with adequately preparing for trial and making it the analyst’s responsibility to notify the court if they have not had proper time to prepare for trial. The second recommendation is that accredited labs must review their policies and exit interview documentation to determine if expectations about preparation for trial are clearly stated and acknowledged. HFSC has created a notice to departing and current employees in response to this recommendation. Lastly, TFSC recommended accredited labs review their policy documentation and ensure managers understand the importance of pre-trial meetings and provide flexibility in scheduling for analysts to attend them.

Dr. Stout discussed the economic impact of *Colon* on HFSC due to having to re-work the former analysts’ cases and the need for an inter-laboratory notification system to let other labs know when

their employees are testifying for cases outside of their laboratory. Ms. Ziemak highlighted that there is a mechanism for analysts to track their testimony for the lab and that same tool can be used to report testimony for other agencies. Chair Mitchell highlighted that the onus should be on analysts and HFSC staff should be required to report all testimony in and out of the laboratory so that it can be properly tracked. Ms. Ziemak said all pertinent information should also be required so that transcripts can be pulled, and information tracked. Dr. Stout discussed the far-reaching implication of *Colon* and how the conditions analysts testify in can have far-reaching effects on their license and career. Dr. Stout emphasized how he has made this very clear to all HFSC's stakeholders. Chair Mitchell discussed how important it is for analysts to speak up early and often on the trial record when they are not prepared. Dr. Stout emphasized how years of training for each analyst is fundamental to their ability to be prepared.

Ms. Ziemak continued by discussing the Quality Division's testimony training that was held in October 2022. The training was 5 hours and held over 2 days for all staff and spanned topics such as the Michael Morton Act, *Brady v. Maryland*, and courtroom etiquette, etc. Ms. Ziemak also discussed the Quality Divisions' ethics training that was held in November 2022 and included 3 panelists and a Q&A session. Each panelist spoke for 30 minutes on how ethics intersected with their respective office's role in the criminal justice system. This exposed to HFSC staff to the broader justice system beyond trial testimony.

Ms. Ziemak concluded her presentation with a brief discussion regarding HFSC testimony in 2022. She stated HFSC has had 67 analysts testify, 62 have been monitored, and transcripts for the remaining 5 will be analyzed. The Transcript Review Project has 40 transcripts awaiting review, and the first round will review ten transcripts.

10. **CLOSED MEETING/EXECUTIVE SESSION:** (Item taken out of turn)

The board convened in a closed meeting, also referred to as executive session. The executive session was held in accordance with Texas Government Code Sections 551.071 and 551.074(a)(1), et seq., for personnel matters, to discuss and finalize Dr. Peter Stout, president and CEO's annual evaluation.

Chairwoman Mitchell closed the open meeting at 10:30 a.m. and convened the executive session, at 10:35 a.m.

11. **RECONVENE INTO OPEN MEETING:** (Item taken out of turn)

At 11:38 a.m., Chairwoman Mitchell reconvened the open meeting. She announced a quorum was present.

Chairwoman Mitchell opened the floor to any discussion, action, or motions related to the executive session. Director Huff made a motion to give Dr. Stout a 2.5% increase in annual salary. Director Hilder seconded the motion. The chairwoman opened the floor for additional discussion on the motion, noting the board wanted to convey its appreciation for his work and role as a great representative for the corporation and city of Houston. She also applauded his vision for the organization and for being an inspiration to staff and the forensic community. Chairwoman Mitchell then called for a vote on the motion, effective the first day of the next pay period, which the board passed unanimously.

The Chair requested any additional motions related to the executive session be presented at this time, namely motions relating to Dr. Stout's performance objectives for the next review period. Vice Chairwoman Lentschke made a motion to approve the following performance objectives for

Dr. Stout during the 2022-2023 review period: (1) Lead a minimum of three outreach education sessions in Texas, related to toxicology issues; (2) begin the succession planning process for the executive team and chief executive officer position; and (3) collaborate with the Houston Police Department over the next year, to address property/ evidence management, from concept to conclusion. Director Hilder seconded the motion. Chairwoman Mitchell then called for a vote on the motion, effective the first day of the next pay period, which the board passed unanimously.

12. **ADJOURNMENT:**

Chairwoman Mitchell requested a motion to adjourn the meeting. Director Moore made a motion to adjourn. Director Vasquez seconded the motion. The motion passed unanimously. The meeting adjourned at 11:44 a.m.

The undersigned secretary of the board hereby certifies the following are true and correct minutes of the November 18, 2022 public meeting of the board.

By: Ashley Henry Ashley Henry, Interim Secretary