



TEXAS FORENSIC
SCIENCE COMMISSION

Justice Through Science

1700 North Congress Ave., Suite 445
Austin, Texas 78701

August 25, 2015

Ms. Deandra M. Grant
800 East Campbell Road
Suite 110
Richardson, Texas 75081

Re: Complaint # 1123.15.06 (Integrated Forensic Laboratories)

Dear Ms. Grant:

On June 9, 2015, you submitted a complaint to the Texas Forensic Science Commission ("Commission") describing concerns regarding re-analysis of blood alcohol cases performed by Integrated Forensic Laboratories ("IFL"). The Commission considered your complaint at its quarterly meeting on August 14, 2015.

The re-analysis of cases referenced in your complaint was precipitated by the termination of an IFL employee, Elizabeth Feller, after the Tarrant County District Attorney's office ("DA's Office") refused to sponsor her as a witness due to the circumstances surrounding her prior separation from Cellmark Forensics ("Cellmark"). Ms. Feller was separated from Cellmark for violating two casework protocols for the prevention of transfer errors and sample switches.

After Feller separated from IFL, the laboratory adopted the following plan to re-analyze her casework, which is substantiated in written email communications between IFL and the DA's Office:

- (1) For all cases in which Ms. Feller performed the physical testing of evidence, IFL would re-test the evidence and issue a supplemental report.
- (2) For all cases in which Ms. Feller interpreted and analyzed data but did not come into physical contact with the evidence, IFL would re-interpret the data and issue a supplemental report, but not physically re-test the evidence.

The Commission believes this two-pronged plan for re-analysis of Feller's cases was reasonable. However, information regarding IFL's re-analysis plan does not appear to have been communicated clearly to the defense community in all cases. On June 11, 2015, Larry Moore, Chief of the Criminal Division of the DA's Office explained in a

letter to you that “it appears not all of the attorneys in our office were aware of the above described procedure being utilized by IFL, so it is quite possible that some were indicating that blood would be retested, when, in fact, the results were only being re-interpreted. I therefore understand how this could lead to confusion, and to the concerns expressed in your letter.”

Indeed, if members of the DA’s Office did not understand the re-analysis plan and communicated to defense attorneys that all evidence was being physically re-tested regardless of whether Feller ever came into contact with the evidence, it is possible defense attorneys made strategic decisions or provided recommendations to their clients based on a misunderstanding of the work that had been performed in those cases. While the Commission understands the concerns surrounding these issues (*i.e.*, that defense counsel may have made decisions based on incomplete information) misunderstandings between the DA’s Office and the local defense bar is not an issue over which the Commission has jurisdiction. Counsel who are concerned about the potential impact of any misunderstandings are encouraged to bring those concerns before local judges with jurisdiction over their cases.

However, Commissioners were concerned about a lack of clarity in the “Supplemental” reports issued by IFL regarding the work performed by the laboratory between the issuance of the original results and the supplemental results. As described in IFL’s internal procedures as well as articulated in ASCLD/LAB accreditation standards, including but not limited to the ASCLD/LAB *Guiding Principles of Professional Responsibility for Crime Laboratories and Forensic Scientists* under the Section entitled “Clear Communications,” laboratories must provide accurate and complete data in their reports. While IFL was clear and complete in its communications with the DA’s Office regarding its re-analysis plan for Feller cases, the reports issued after the plan was implemented contained the word “Supplemental” but did not describe in any further detail the additional work performed (*i.e.*, physical re-testing vs. data interpretation) so the end-users (*i.e.*, members of the criminal justice system including prosecutors, defense counsel and triers of fact) could understand precisely what had been done in the form of either evidence re-testing or data re-analysis. Though IFL maintains this information is provided in the case notes, including a clear statement in the “Supplemental” reports regarding the additional work performed would have provided better information to the end-user and helped alleviate the miscommunications described in Mr. Moore’s June 11, 2015 letter.

Finally, you allege in your complaint that “it is extremely unlikely” a blood sample containing ethanol could be re-analyzed months later and produce an identical result, and that if this happened, it would be worthy of submission to the Journal of Forensic Sciences. It is true that one may expect some degree of variation in results if a significant group of blood alcohol samples were physically re-tested and the blood was re-tested from the same original tubes. However, the mere fact that a single blood sample was re-tested and the results did not change months later is not particularly remarkable, especially if the re-testing was done using blood from a second unopened tube stored under appropriate conditions.

The Commission communicated its concerns regarding lack of specificity in the “Supplemental” reports to IFL management directly during the quarterly meeting and will be sending a letter to IFL expressing the same concerns and recommending more detailed information be communicated to end-users. After sending the letter to IFL, no further investigative action will be taken in this matter absent material new or additional information.

If you have any questions, please feel free to contact me at 512-936-0649 or lynn.garcia@fsc.texas.gov. Thank you for submitting a complaint to the Commission.

Sincerely,


Lynn Robitaille García (by MRA w/
General Counsel permission)