



TEXAS FORENSIC
SCIENCE COMMISSION

Justice Through Science

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

June 8, 2017

Ms. Ava Newman
7202 Fall Springs Lane
Humble, TX 77396

Re: Disposition of TFSC Complaint No. 17.37 (Newman/Nat'l Screening
Center- DNA for Paternity)

Dear Ms. Newman:

This is to inform you that the referenced complaint against National Screening Center has been dismissed because TFSC lacks jurisdiction to investigate cases concerning DNA testing for the purpose of determining paternity.

For your information and reference, I have enclosed highlighted portions of statutes pertaining to TFSC that illustrate its authority relative to DNA testing. You will see under the definition of "forensic analysis" that examinations and analyses subject to TFSC jurisdiction must be performed on physical evidence "for the purpose of determining the connection of the evidence to a criminal action."

The included excerpt from the Texas Administrative Code specifically excludes "non-criminal paternity testing" from the definition of "forensic analysis" and also excludes it from consideration for accreditation by the Commission.

Thank you and please feel free to contact me if I may be of any additional assistance.

Sincerely,


Kathryn Adams
Commission Coordinator

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Encl.

CODE OF CRIMINAL PROCEDURE

TITLE 1. CODE OF CRIMINAL PROCEDURE

CHAPTER 38. EVIDENCE IN CRIMINAL ACTIONS

Art. 38.01. TEXAS FORENSIC SCIENCE COMMISSION

Sec. 1. CREATION. The Texas Forensic Science Commission is created.

Sec. 2. DEFINITIONS. In this article:

(1) "Accredited field of forensic science" means a specific forensic method or methodology validated or approved by the commission under this article.

(2) "Commission" means the Texas Forensic Science Commission.

(3) "Crime laboratory" has the meaning assigned by Article 38.35.

(4) "Forensic analysis" means a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, ~~for the purpose of determining the connection of the evidence to a criminal action,~~ except that the term does not include the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

Text of subdivision as added by Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 8

(5) "Office of capital and forensic writs" means the office of capital and forensic writs established under Subchapter B, Chapter 78, Government Code.

Text of subdivision as added by Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. 1287), Sec. 1

(5) "Physical evidence" has the meaning assigned by Article 38.35.

Sec. 3. COMPOSITION. (a) The commission is composed of nine members appointed by the governor as follows:

(1) two members who must have expertise in the field of

Code of Criminal Procedure 38.35 on 7/18/2017

Art. 38.35. FORENSIC ANALYSIS OF EVIDENCE; ADMISSIBILITY. (a) In this article:

(1) "Crime laboratory" includes a public or private laboratory or other entity that conducts a forensic analysis subject to this article.

(2) "Criminal action" includes an investigation, complaint, arrest, bail, bond, trial, appeal, punishment, or other matter related to conduct proscribed by a criminal offense.

(5) "Physical evidence" means any tangible object, thing, or substance relating to a criminal action.

(3) "Commission" means the Texas Forensic Science Commission established under Article 38.01.

(4) "Forensic analysis" means a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. The term includes an examination or test requested by a law enforcement agency, prosecutor, criminal suspect or defendant, or court. The term does not include:

(A) latent print examination;

(B) a test of a specimen of breath under Chapter 724, Transportation Code;

(C) digital evidence;

(D) an examination or test excluded by rule under Article 38.01;

(E) a presumptive test performed for the purpose of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or

(F) an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action.

(b) A law enforcement agency, prosecutor, or court may request a forensic analysis by a crime laboratory of physical evidence if the evidence was obtained in connection with the requesting entity's investigation or disposition of a criminal action and the requesting entity:

(1) controls the evidence;

Texas Administrative Code

[TITLE 37](#)

PUBLIC SAFETY AND CORRECTIONS

[PART 15](#)

TEXAS FORENSIC SCIENCE COMMISSION

[CHAPTER 651](#)

DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

[SUBCHAPTER A](#)

ACCREDITATION


RULE §651.6

Disciplines, Subdisciplines, and Procedures to Which Statutory Commission Accreditation Does Not Apply

This section describes disciplines, subdisciplines, or procedures excluded from the definition of forensic analysis or otherwise exempted by the Code of Criminal Procedure, Article 38.35, or by this subchapter based on their nature.

(1) This paragraph describes a discipline, subdiscipline, or procedure that is excluded from the definition of forensic analysis or otherwise exempted by the Code of Criminal Procedure, Article 38.35, and for which no recognized accreditation is appropriate or available. A laboratory may not apply for Commission accreditation for:

- (A) breath specimen testing under Transportation Code, Chapter 724;
- (B) latent print examination;
- (C) digital evidence (including computer forensics, audio, or imaging); or
- (D) an examination or test excluded by rule under Code of Criminal Procedure, Article 38.01 §4-d(c).
- (E) the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

 (2) This paragraph describes a discipline, subdiscipline, or procedure that does not normally involve forensic analysis of physical evidence for use in a criminal proceeding and for which recognized accreditation is inappropriate or unavailable. A laboratory may not apply for Commission accreditation for:

- (A) forensic photography;
 - (B) non-criminal paternity testing;
 - (C) non-criminal testing of human or nonhuman blood, urine, or tissue;
 - (D) a crime scene search team (whether or not associated with an accredited laboratory) if the team does not engage in forensic analysis because it only engages in the location, identification, collection, or preservation of physical evidence and the activity is not integral to an expert examination or test;
 - (E) other evidence processing or handling that is excluded under §651.2(2) of this title (relating to Definitions); or
 - (F) other discipline or subdiscipline so determined by the Commission.
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