



TEXAS FORENSIC
SCIENCE COMMISSION

Justice Through Science

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

October 31, 2014

Via email and U.S. mail

Mr. J. Mack Cowan
DPS Breath Alcohol Laboratory
Office of the Scientific Director
P.O. Box 4087
Austin, Texas 78773-0570

RE: Texas Forensic Science Commission Disclosure #14-18

Dear Mr. Cowan:

At its October 7, 2014 meeting, the Commission reviewed the disclosure referenced above and determined the following:

Based on the information provided, including the description of the nonconformance, root cause analysis, and quality action plan, no further action by the laboratory is necessary at this time.

In the particular case referenced above, a DPS staff member made a mistake in preparing a proficiency test that was distributed to technical supervisors throughout the State of Texas. The individual did not realize proficiency test samples must be prepared as certified reference material. To address the deficiency, the Department withdrew the tests from all affected supervisors, performed a root cause analysis, conducted a retroactive review of the 2013 proficiency test sample, and implemented corrective actions.

The Texas Code of Criminal Procedure requires accredited crime laboratories to report professional negligence or professional misconduct to the Commission. (*See* TEX. CODE CRIM. PROC. 38.01, Sec. 4(a)(2).) Though the statute does not define these terms, the Commission has defined them in Section 1.2 of its Policies and Procedures:

“Professional Misconduct” means the actor, through a material act or omission, deliberately failed to follow the standard of practice generally accepted at the time of the forensic analysis that an ordinary forensic professional or entity would have exercised, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the actor was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.

“Professional Negligence” means the actor, through a material act or omission, negligently failed to follow the standard of practice generally accepted at the time of the forensic analysis that an ordinary forensic professional or entity would have exercised, and the negligent act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was negligent if the actor should have been but was not aware of an accepted standard of practice required for a forensic analysis.

Note: The term “would substantially affect the integrity of the results of a forensic analysis” does not necessarily require that a criminal case be impacted or a report be issued to a customer in error. The term includes acts or omissions that would call the integrity of the forensic analysis, the individual forensic examiner, or the laboratory as a whole into question regardless of outcome on the underlying criminal case.

Because the incident involved proficiency testing (not forensic analysis) and there was no overarching laboratory integrity issue identified, we do not believe the incident required disclosure to the Commission under the statute.

We appreciate that the question of whether to disclose a particular set of facts involves substantial judgment on the part of laboratory management, and we encourage an approach that errs on the side of disclosure. In the future, if you would like to discuss whether particular factual scenarios merit disclosure, please feel free to contact our office.

Thank you again for your commitment to the integrity of forensic analysis in Texas. The Department’s dedication to transparency is recognized and valued by members of the Commission and its staff.

Sincerely,



Lynn Robitaille Garcia
General Counsel

Cc: Skylor Hearn, Assistant Director, Texas DPS
Brady Mills, Deputy Assistant Director, Texas DPS
Forrest Davis, Quality Assurance Coordinator, Texas DPS