



TEXAS FORENSIC
SCIENCE COMMISSION

Justice Through Science

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

May 28, 2018

Via email to eobi@obilawfirm.com

Emmanuel U. Obi, Esq.
Obi Law Firm
1910 Pacific Avenue
Suite 11700
Dallas, Texas 75201

Re: TFSC Complaint No. 18.12 (Obi; Montgomery Co. SO/BPA Analysis)

Dear Mr. Obi:

At its April 20, 2018 quarterly meeting the Commission voted to dismiss the complaint referenced above based on the jurisdictional limitations set forth both in the applicable law (TEX. CODE CRIM. PROC. 38.01 and 38.35) and in the Commission's policies and procedures.¹

First, with respect to concerns raised about Ms. Hopson's cause and manner of death, the Commission has no jurisdiction over autopsies. *See* TEX. CODE CRIM. PROC. 38.35 which defines the term "forensic analysis" to mean "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.**"

With respect to the complaint regarding bloodstain pattern analysis ("BPA"), the Commission voted at its February 2, 2018 meeting to explicitly exempt bloodstain pattern analysis from the accreditation requirement set forth in TEX. CODE CRIM. PROC. 38.35 until May 2019, at which point it will be made subject to the accreditation requirement via a rulemaking proceeding. When the Commission assumed authority for the statewide accreditation program in September 2015, all accreditation rules were carried over from the Texas Department of Public Safety, the prior accrediting authority. Because the rules were unclear regarding whether BPA was subject to accreditation or not, with some judges admitting analysis from unaccredited entities and some not, the Commission found it necessary to clarify the rule. This decision resulted from the prior work of an investigative panel on cases filed by other complainants as well as a hearing sponsored by the Commission on the subject of BPA. A one-year exemption period was deemed necessary to afford entities not currently accredited that perform BPA to achieve accreditation.

¹ <http://www.txcourts.gov/fsc/publications-reports/policies-procedures/>

Because BPA is not subject to accreditation until May 2019, the Commission has limited jurisdiction over any complaints involving BPA. The Commission may choose to investigate but for the limited purposes of: (1) making observations regarding the integrity and reliability of the forensic analysis conducted; (2) issuing best practices identified during the course of the investigation; and (3) issuing other relevant recommendations. The Commission's general counsel has consistently advised Commissioners they should pursue investigations in this category only if there is consensus the forensic community in Texas would benefit from best practices and other recommendations identified during the review.

In this case, any recommendations or best practices regarding BPA that could have been made to benefit the greater forensic community were already addressed during the Commission's prior review of these exact issues, which led to the accreditation decision made by members in February 2018. The Commission cannot make a finding of professional negligence or misconduct in the case you filed, and any other more generalized observations regarding the discipline are already being addressed as a result of complaints filed previously.

Finally, Texas prosecutors have discretion regarding whether to file a criminal action in a given case. The Commission has no control or authority over the decision of the prosecutor in this case to bring the matter in front of a grand jury or to decline to do so.

Sincerely,



Kathryn Adams

Commission Coordinator

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