

# TEXAS FORENSIC SCIENCE COMMISSION

*Justice Through Science*

FINAL REPORT ON SELF-DISCLOSURE BY  
SOUTHWESTERN INSTITUTE OF  
FORENSIC SCIENCES CONCERNING  
FIREARMS/TOOLMARKS ANALYST  
PHONG NGO, Ph.D.

October 22, 2021



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## **I. COMMISSION BACKGROUND**

### **A. History and Mission of the Texas Forensic Science Commission**

The Texas Forensic Science Commission (“Commission”) was created during the 79<sup>th</sup> Legislative Session in 2005 with the passage of HB-1068. The Act amended the Texas Code of Criminal Procedure to add Article 38.01, which describes the composition and authority of the Commission.<sup>1</sup> During subsequent legislative sessions, the Texas Legislature further amended the Code of Criminal Procedure to clarify and expand the Commission’s jurisdictional responsibilities and authority.<sup>2</sup>

Texas law requires the Commission to “investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory.”<sup>3</sup> The Commission is also required to develop and implement a reporting system through which a crime laboratory must report professional negligence or professional misconduct and require crime laboratories that conduct forensic analyses to report professional negligence or professional misconduct.<sup>4</sup>

The term “forensic analysis” is defined as a medical, chemical, toxicological, 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.<sup>5</sup> The statute excludes certain types of analyses from the “forensic analysis” definition, such as latent

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<sup>1</sup> See, Act of May 30, 2005, 79th Leg., R.S., ch. 1224, § 1 (2005).

<sup>2</sup> See e.g., Acts 2013, 83rd Leg. ch. 782 (S.B. 1238) §§ 1-4 (2013); Acts 2015, 84th Leg. ch. 1276 (S.B. 1287) §§ 1-7 (2015); TEX. CODE CRIM. PROC. art 38.01 § 4-a(b) (2019).

<sup>3</sup> TEX. CODE CRIM. PROC. art. 38.01 § 4(a)(3) (2019).

<sup>4</sup> *Id.* at § 4(a)(1)-(2) (2019). Additionally, pursuant to the Forensic Analyst Licensing Program Code of Professional Responsibility, members of crime lab management shall make timely and full disclosure to the Texas Forensic Science Commission of any non-conformance that may rise to the level of professional negligence or professional misconduct. See, 37 Tex. Admin. Code § 651.219(c)(5) (2018).

<sup>5</sup> TEX. CODE CRIM. PROC. art. § 38.35(a)(4) (2015).

fingerprint analysis, a breath test specimen, and the portion of an autopsy conducted by a medical examiner or licensed physician.<sup>6</sup> The statute does not define the terms “professional negligence” and “professional misconduct.” The Commission has defined those terms in its administrative rules.<sup>7</sup>

The Commission has nine members appointed by the Governor of Texas.<sup>8</sup> Seven members are scientists or medical doctors and two are attorneys (one prosecutor nominated by the Texas District and County Attorney’s Association and one criminal defense attorney nominated by the Texas Criminal Defense Lawyer’s Association).<sup>9</sup> The Commission’s Presiding Officer is Jeffrey Barnard, MD. Dr. Barnard is the Chief Medical Examiner of Dallas County and Director of the Southwestern Institute of Forensic Sciences in Dallas.

## **B. Investigative Process**

The Commission’s administrative rules set forth the process by which it decides whether to accept a complaint or self-disclosure for investigation as well as the process used to conduct the investigation.<sup>10</sup> The ultimate result is the issuance of a final report. The Commission’s administrative rules describe the process for appealing final investigative reports as well as any resulting disciplinary action against a license holder or applicant.<sup>11</sup>

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<sup>6</sup> For complete list of statutory exclusions see TEX. CODE CRIM. PROC. art. 38.35 (a)(4)(A)-(F) and (f) (2015).

<sup>7</sup> “Professional misconduct” means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, 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 forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis. “Professional negligence” means the forensic analyst or crime laboratory, through a material act or omission, negligently failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, 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 forensic analyst or crime laboratory should have been but was not aware of an accepted standard of practice. 37 Tex. Admin. Code § 651.302 (7) and (8) (2020).

<sup>8</sup> TEX. CODE OF CRIM. PROC. art. 38.01 § 3 (2019).

<sup>9</sup> *Id.*

<sup>10</sup> *See*, 37 Tex. Admin. Code § 651.304-307 (2019).

<sup>11</sup> 37 Tex. Admin. Code § 651.309; *Id.* at § 651.216.

### C. Licensing Jurisdiction

The Commission is charged with administering a forensic analyst licensing program that: (1) establishes the qualifications for a license; (2) sets fees for the issuance and renewal of a license; and (3) establishes the term of a forensic analyst license.<sup>12</sup> The law defines the term “forensic analyst” as “a person who on behalf of a crime laboratory [accredited by the Commission] technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory.”<sup>13</sup> The law further requires that any person who on behalf of a crime laboratory accredited by the Commission “technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory” hold a forensic analyst license issued by the Commission, effective January 1, 2019.<sup>14</sup>

Pursuant to its licensing authority, the Commission may take disciplinary action against a license holder or applicant on a determination that the individual has committed professional misconduct or violated Texas Code of Criminal Procedure Article 38.01 or an administrative rule or other order of the Commission.<sup>15</sup> If the Commission determines a license holder has committed professional misconduct or has violated an administrative rule or order by the Commission, the Commission may, (1) revoke or suspend the person’s license; (2) refuse to renew the person’s license; (3) reprimand the license holder; or (4) deny the person a license.<sup>16</sup> The Commission may place on probation a person whose license is suspended.<sup>17</sup> Disciplinary

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<sup>12</sup> *Id.* at art. 38.01 §4-a(d) (2019).

<sup>13</sup> *Id.* at art. 38.01 §4-a(a)(2) (2019).

<sup>14</sup> *Id.* at § 4-a(b).

<sup>15</sup> TEX. CODE CRIM. PROC. art. 38.01 §4-c (2019); 37 Tex. Admin Code § 651.216(b) (2019).

<sup>16</sup> *Id.* at 651.216(b)(1)-(4).

<sup>17</sup> *Id.* at (c).

proceedings and the process for appealing a disciplinary action by the Commission are governed by the Judicial Branch Certification Commission.<sup>18</sup>

#### **D. Jurisdiction Applicable to this Self-Disclosure**

The forensic discipline discussed in this final investigative report, firearm and toolmark analysis, is subject to the accreditation and licensing authority of the Commission. The disclosing laboratory in this case, the Southwestern Institute of Forensic Sciences (“SWIFS”), is accredited by the Commission and the ANSI-ASQ National Accreditation Board (“ANAB”) under the International Organization for Standardization (“ISO”) accreditation standard 17025:2017.<sup>19</sup> Dr. Phong Ngo is the subject of this final investigative report. He was a licensed forensic analyst in Texas until February 23, 2021, at which point his license expired. He has not sought renewal of his license.

#### **E. Limitations of this Report**

The Commission’s authority contains important statutory limitations. For example, no finding by the Commission constitutes a comment upon the guilt or innocence of any individual.<sup>20</sup> The Commission’s written reports are not admissible in civil or criminal actions.<sup>21</sup> The Commission has no authority to subpoena documents or testimony. The information the Commission receives during any investigation is dependent on the willingness of stakeholders to submit relevant documents and respond to questions posed. The information gathered in this report has not been subject to the standards for admission of evidence in a courtroom. For example, no individual testified under oath, was limited by either the Texas or Federal Rules of

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<sup>18</sup> TEX. CODE CRIM. PROC. art. 38.01 § 4-c(e) (2019); 37 Tex. Admin. Code § 651.216(d) (2019).

<sup>19</sup> ISO/IEC 17025:2017 General requirements for the competence of testing and calibration laboratories. *See*, <http://www.txcourts.gov/fsc/accreditation/> for a list of accredited laboratories.

<sup>20</sup> *Id.* at § 4(g) (2019).

<sup>21</sup> *Id.* at § 11 (2019).

Evidence (*e.g.*, against the admission of hearsay) or was subject to cross-examination under a judge's supervision.

## **II. SUMMARY OF SELF-DISCLOSURE**

This report concerns a March 25, 2021 self-disclosure by SWIFS describing professional misconduct by Phong Ngo, Ph.D., a former analyst in SWIFS' Firearm and Toolmark unit.

In January 2021, a technical reviewer identified notations on two pages of Ngo's hardcopy examination records that appeared to be erasures and overwrites. The reviewer brought the matter to the attention of the unit supervisor who instructed the reviewer to complete the technical review, and as part of that process, to include comments to Ngo seeking clarification regarding the apparent erasures and overwrites.

Upon completion of the technical review, the examination records were returned to Ngo who made the necessary corrections and provided responses to the comments regarding the apparent erasures and overwrites.

The self-disclosure reports that Ngo responded with false and misleading statements to management regarding the reasons for the apparent erasures. According to the self-disclosure, management ultimately confronted Ngo with photographic evidence of the erasures and overwrites. He subsequently acknowledged that he had intentionally corrected hardcopy records by erasure and overwriting in violation of the laboratory's standard operating procedures.

## **III. SELF-DISCLOSURE FACTS**

### **A. Background**

Dr. Phong Ngo was an analyst in SWIFS' Firearm and Toolmark unit for approximately 18 months. During that time, he received training in several sub-disciplines of firearm analysis, including firearm identification, toolmark identification, range of fire analysis, and serial number

restoration. In the fall of 2020, after completing a year-long training program, he began independent casework in firearms analysis.

## **B. Initial SWIFS Technical Review Questions and Ngo Responses**

In January 2021, during the course of a technical review of an analysis performed by Ngo, the reviewer (Heather Francis) identified notations on two pages of hardcopy examination records related to a Firearms Analysis report (IFS-20-10513-003) that appeared to be erasures and overwrites. She brought the matter to the attention of the firearms section supervisor (April Kendrick) who instructed her to complete the technical review and include comments to Ngo regarding the apparent anomalies. The technical reviewer completed the review, and the examination records were returned to Ngo. Ngo responded to the comments and returned the examination records to the technical reviewer for final review and sign off.

The questions posed by the reviewer included:

- “Why does it look like some of these measurements were erased?”
- “Why does it look like a line through was erased?”
- “Why does it look like a circle was erased?”

Ngo responded to these inquiries by attributing the anomalies to pressing down too hard when writing on a previous page, smears, and smudge erasures. (**See, Exhibit A- Ngo Technical Review responses**).

Before the final technical review, the section supervisor took possession of the records and communicated the quality concern to the Deputy Chief of Physical Evidence (Dr. Stacy McDonald). The section supervisor and Deputy Chief visually examined the hardcopy examination records and concurred with the concerns expressed by the technical reviewer. The Deputy Section Chief initiated a review of the incident.

### **C. Initial Management Discussion with Ngo**

On January 26, 2021, the Chief (Dr. Tim Sliter) and Deputy Chief (Dr. Stacy McDonald) of the Physical Evidence Section at SWIFS met with Dr. Ngo to discuss the concerns raised regarding his casework, namely that his hardcopy examination records contained indications of erasures and overwrites, which is a violation of SWIFS policy. SWIFS policies and procedures require that corrections to hardcopy examination records be made by striking through the original value, initialing the strike-through, and writing the correct value.

During the discussion with Ngo, he indicated he knew exactly what instance brought about the concern. He explained he was using a pen that was writing too faintly. He claimed he tried to write over the text using the same pen, but it did not work. He then wrote over the text using a different pen. He maintained that he did not erase the original text. He indicated he clearly understood that erasures and overwrites were a violation of laboratory policy and stated that he would “never erase.” He added that if someone reviewed his records, they would find a “gazillion strike-throughs.” He reiterated on multiple occasions that his intention was not to erase data.

Ngo submitted a written memorandum detailing his explanation of the anomalies observed in case number IFS-20-10513. **(See, Exhibit B: Ngo Memorandum dated January 26, 2021).**

SWIFS suspended Ngo from casework effective January 26, 2021.

#### **D. SWIFS Internal Investigation**

During the investigation by SWIFS, the firearm section supervisor inspected the work area of Ngo and identified an erasable-ink pen (Pilot FriXion Ball pen) labeled with Ngo's name. This type of pen utilizes an "erasable" ink that is chemically converted from a colored to an uncolored form by the heat of friction generated by rubbing the ink with the pen's plastic eraser.

At the direction of the Section Chief, on January 26, 2021, an analyst prepared an exemplar using Ngo's erasable-ink pen. The analyst who prepared the exemplar used the pen to write on standard photocopier paper, then erased the writing using the pen's eraser tip. The analyst examined the erasure under UV lighting using a variable wavelength alternate light source. The analyst used the exemplar to establish UV light conditions that would be sufficient to detect ink following erasure.

Staff used the alternate light source procedure to examine the two pages of hardcopy examination records in question. The examination confirmed the presence of erasures and overwrites. **(See, Exhibit A – Ngo's technical review responses).**

Staff performed additional alternate light source examination of other hardcopy analyses performed by Ngo in the report packet. The examination revealed approximately 75 erasures and overwrites on 15 pages of hardcopy examination records. The vast majority of these could not be readily identifiable except with the application of an appropriate alternate light source. The changes to the hardcopy examination records consisted of both substantive (e.g., measurement of land and groove impressions) and non-substantive changes (e.g., spelling corrections).

The results of this internal evaluation of hardcopy examination records in IFS-20-10513 prompted a subsequent evaluation of Ngo's hardcopy examination records in other finalized and in-progress cases.<sup>22</sup>

In addition to the in-progress report in IFS-20-10513, between September 4, 2020, and January 26, 2021, Ngo had finalized 12 reports and another requested examination was in progress at the time of the event. The hardcopy examination records for these cases were also examined under an alternate light source. Erasures and overwrites were identified in every case.

To confirm these observations, SWIFS submitted a sample of examination records to the Texas Department of Public Safety ("DPS") in Austin for forensic document examination.

#### **E. Post-Investigation Admissions by Ngo**

On February 1, 2021, the Chief and Deputy Chief of Physical Evidence met with Ngo to discuss the results of their internal investigation and to provide Ngo with an opportunity to respond and provide additional information. They reviewed the examples in his case records that were initially flagged by the technical reviewer. Management reiterated the laboratory requirements for making corrections and Ngo acknowledged that he understood the policy.

Management told Ngo the investigation revealed he had been using an erasable pen when recording case-related notes and records. Dr Ngo acknowledged that he did possess and use erasable pens in casework.

Management confronted Ngo with the results of their alternate light source examination, which included the original items flagged during technical review. Management informed Ngo

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<sup>22</sup> During the normal course of report finalization in the firearms section, the hardcopy examination records are scanned to the LIMS-Plus casefile following completion of the technical review. The scan in LIMS-Plus then becomes the official examination record. The hardcopy examination records are retained for an a certain period of time (minimum of six months), then shredded. Because Ngo had only recently completed the training on September 4, 2020, all of his finalized report packets containing original hardcopy examination records were still available for inspection.

that all three items originally noted during technical review were determined to be erasures. Management presented photographic evidence to Ngo for review. Management then presented additional photographic evidence of 80 erasures they had identified in the case record for IFS-20-10513. Management determined many of the erased notations were substantive in nature.

Ngo explained he had been using erasable pens his entire life. He stated he preferred the way they write. He maintained that he had no recollection of the erasures in the case file. He stated he must have been erasing things subconsciously.

Management then informed Ngo they identified erasures in the supporting documentation for every report he issued and every proficiency test he took while at SWIFS, including laboratory-related records such as the reagent logbook. Ngo admitted this was a policy violation but maintained he “must be doing it subconsciously.” He added the records at his previous lab were exclusively digital, so he was not accustomed to hardcopy records.

After further discussion, management summarized Ngo’s response to the results of the investigation as: 1) his practice of erasing information was a habit; 2) he used the pen as a matter of personal preference, and 3) he used erasable pens in everyday life, and this practice carried over into casework. Ngo agreed with this summation.

Management then sought to square this explanation with the response he originally provided the technical reviewer. Ngo stated he stood by the response he gave the technical reviewer.

Management explained that because case-related records were not prepared according to internal SWIFS policies as well as generally accepted principles in forensic laboratories,<sup>23</sup> Ngo's

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<sup>23</sup> See, National Commission on Forensic Science Recommendation to the Attorney General Documentation, Case Records, and Report Contents (2016); ANAB Guiding Principles of Professional Responsibility for Forensic Service Providers and Forensic Personnel (2003); and 37 Texas Admin. Code § 651.219(b)(7) (2021).

actions constituted a nonconformity. The laboratory must retain original values and the records Ngo generated did not contain original values. The laboratory notified all affected submitting agencies and recalled all of Ngo's previously issued reports. Management explained to Ngo that the evidence would also need to be reanalyzed.

Ngo acknowledged that he understood and apologized for creating the issue. Management advised him that he was free to provide additional information to consider as part of the laboratory's root cause analysis. Ngo submitted a memorandum to management on February 1, 2021, in which he admitted that he "erased original values on [his] handwritten notes only to overwrite them with corrected values" and that such actions were "most definitely intentional, because when erasing, [his] goal was to correct an error." (**See, Exhibit C – Memorandum by Ngo dated February 1, 2021**).

The laboratory issued a statement of non-compliant job performance to Ngo on February 9, 2021, detailing the allegations of non-compliance and supporting evidence. On February 10, 2021, Ngo provided a six (6) page response explaining his actions and detailing contributing factors such as the "lack of a 'just-culture' at SWIFS, constantly changing expectations, hostile treatment by his superiors, and an environment of hypocrisy."

Ngo's resignation in lieu of termination was accepted by SWIFS on February 23, 2021.

#### **F. DPS Forensic Document Examination**

SWIFS submitted select examination records consisting of four questioned documents (projectile worksheets and examiner notes) related to four different cases to DPS Austin on February 1, 2021. Each of these cases involved final reports.

DPS viewed the questioned documents macroscopically and microscopically with the aid of various light sources, filters, and magnifications. The examination revealed multiple instances

of alterations, obliterations, and erasures present on each of the questioned documents. These changes to hardcopy examination records involved both substantive and non-substantive changes. DPS issued a report of the findings to SWIFS on February 8, 2021.

#### **G. Laboratory Root Cause Analysis and Corrective Actions**

The laboratory determined that the root cause of the event was Ngo's intentional failure to comply with the laboratory's policy regarding corrections to hardcopy examination records.

SWIFS did not release the report for IFS-20-10513 and reassigned the request to another analyst to rework. For the other in-progress case, the examinations were repeated by a different examiner.

For finalized reports, SWIFS notified its customers that the reports were recalled. SWIFS also arranged to re-examine the evidence with the submitting agencies and issue corrected reports as needed.

#### **IV. CASE REVIEW AND LEGAL DISCLOSURES**

The laboratory issued *Brady*<sup>24</sup> notifications to the Dallas, Kaufman, and McClennan County District Attorney's Offices.

#### **V. COMMISSION INVESTIGATION**

At its April 16, 2021 quarterly meeting, the Commission voted to form an investigative panel ("Panel") to assist in determining whether SWIFS's conclusions are supported by the facts and circumstances, available data and related documentation. The Panel includes Bruce Budowle, Ph.D., Mark Daniel, Esq., and District Attorney Jarvis Parsons.

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<sup>24</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

The Panel and Commission staff reviewed all documents provided by SWIFS and DPS, including the initial disclosure, statements of the witnesses, and the results of the root cause analysis and corrective action submitted by SWIFS.

**A. Investigative Notice to Analyst and Interview Request**

The Commission notified Ngo the self-disclosure was accepted for investigation on April 27, 2021. (See, **Exhibit D, Letter to Ngo**). The letter extended Ngo the opportunity to be interviewed but he did not respond.

**B. Witness Interview**

The Commission interviewed the Deputy Chief of Physical Evidence (Dr. Stacy McDonald) regarding the facts outlined in the self-disclosure. The Deputy Chief explained that Dr. Ngo was hired in 2020 and had previous experience as a firearms examiner in a laboratory in Alabama. After he was hired, Dr. Ngo started preparing for the Commission's licensing exam and SWIFS' internal firearms training. During the internal SWIFS' training, he reviewed all of SWIFS' policies and procedures, including those regarding the permanent nature of data entry and the strike-through and initial policy regarding mistake correction.<sup>25</sup>

The Deputy Chief stated that when Dr. Ngo was initially questioned regarding possible erasures on his hardcopy examination records, he denied erasing any writing and offered possible alternative explanations for the appearance of suspected erasures. However, when Dr. Ngo was confronted with evidence of the alternate light source examination of the records revealing

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<sup>25</sup> SWIFS Quality Manual §7.5.1.4 entitled "Permanence of examination and calibration records" provides, in pertinent part, that "Examination and calibration records will be permanent in nature." SWIFS Quality Manual §7.5.2 entitled "Corrections to technical records" provides, in pertinent part, that "Corrections will be made to hardcopy examination records by strike-through of the original value and entering of the corrected value." and "Strike-throughs will be initialed by the staff member making the correction."

multiple erasures of originally recorded values, he admitted to the use of an erasable pen and the erasure of entries to make corrections.

## **VI. FINDINGS OF THE COMMISSION**

### **A. Determination Regarding Professional Misconduct**

“Professional Misconduct” means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow a standard of practice that an ordinary forensic analyst or crime laboratory would have followed, 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 forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice.<sup>26</sup>

The Commission finds that Ngo committed professional misconduct when he erased and obscured original recorded values related to his forensic examination of firearms evidence, and subsequently provided a false explanation to management when asked about the erasures. The expectation that original recorded values and observations be retained is a fundamental technical requirement for the preparation of examination records in forensic science examinations. It is a foundational principle of professional responsibility in forensic science that is codified in various published standards.<sup>27</sup> It is also a requirement for forensic scientists licensed by the State of Texas, as described below.

### **B. Texas Code of Professional Responsibility for Forensic Analysts**

The Commission’s administrative rules include a Code of Professional Responsibility for Forensic Analysts and Crime Laboratory Management designed to provide a framework for

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<sup>26</sup> 37 Tex. Admin. Code §651.302(7) (2020).

<sup>27</sup> *Supra* at note 23.

promoting integrity and respect for the scientific process and to encourage transparency in forensic analysis in Texas.<sup>28</sup>

Ngo's conduct as described in this report violated numerous provisions of the Code. For example, analysts are expected to: 1) make and retain full, contemporaneous, clear and accurate written records of all examinations; 2) present accurate and complete data in reports, oral and written presentation; 3) retain any record, item, or object related to a case, such as work notes, data, and peer or technical review; 4) communicate honestly and fully with all parties; and 5) document and notify management or quality assurance personnel of adverse events, such as an unintended mistake, or breach of ethical, legal, scientific standards, or questionable conduct.<sup>29</sup> Ngo failed to meet these expectations during the course of the events described in this report.

**C. Recommended Disciplinary Action Pursuant to the Commission's Forensic Analyst Licensing Authority**

No disciplinary action will be taken against Ngo's forensic analyst license because the license has expired. Should Ngo reapply for a forensic analyst license in the future, the misconduct finding contained herein will be considered during the application evaluation process.<sup>30</sup>

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<sup>28</sup> *Id.* at §651.219 (2019).

<sup>29</sup> *See, Id.* at §651.219(4)(6)(7)(8)(12)(14)(15) and (16) (2019).

<sup>30</sup> *See, 37 Tex. Admin. Code § 651.2 651.216(d)(1)(C) (2021).*

## **VII. RECOMMENDATION/OBSERVATION**

The Commission commends SWIFS for the thorough review undertaken during the course of this investigation, including enlisting the assistance of Texas DPS.

In closing, all forensic laboratories should adopt explicit policies and procedures designed to ensure that contemporaneously recorded values related to a forensic examination of physical evidence are permanent in nature.<sup>31</sup> Those policies should be sufficiently clear to set appropriate expectations for all laboratory personnel.

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<sup>31</sup> *Supra* at note 23.

# **EXHIBIT A**

IFS-20-10513-003

**Tech Review Question:** “Why does it look like some of these measurements were erased?”

**Ngo:** “I was writing with a pen that was faint, like it was running of [sic] out of ink, so I tried to write over it with another pen and it smeared so I rubbed with an eraser to try to get rid of the smear marks. Should I strike through and just write them again?”

**Visible light**

Functional:  Y  N Ejection Port Location:  R  L  Top N/A NIBIN Entry: Y:   N UNSUT  
BFM:  P  A  C  G  S  X FPI Shape:  H  C  E  R  W Other \_\_\_\_\_ FPI Micro: C  G  S  P FP Drag:  Y  N  
Measurements: *inches* **1A** → 0.057, 0.057, 0.055, 0.055, 0.057, 0.055 N/A (GS) *inches* 0.125, 0.126, 0.125, 0.126, 0.124, 0.125 ← **1B**  
Measuring Device Used: IFS # 0992 Test Fire Measured: 4-ITF  Day of Use Check Performed 1/4/2021

**495 nm UV-light, orange filter**

BFM:  P  A  C  G  S  X FPI Shape:  H  C  E  R  W Other \_\_\_\_\_  
Measurements: *inches* **1A** → 0.057, 0.057, 0.055, 0.055, 0.057, 0.055 N/A  
Measuring Device Used: IFS # 0992 Test Fire Measured: 4-ITF

FPI Micro: C  G  S  P FP Drag:  Y  N  
*inches* (GS) 0.125, 0.126, 0.125, 0.126, 0.124, 0.125 ← **1B** N/A  
 Day of Use Check Performed 1/4/2021

1A – Substantive change. 1A is documentation of the measurements of land impression widths.

1B – Substantive change. 1B is documentation of the measurements of groove impression widths.

IFS-20-10513-003

Tech Review Question: "Why does it look like a line through was erased?"

Ngo: "I think this was just smearing of my ink."

Visible light

als, Date Location: Right Side of Frame & magazine

Cylinder	Cylinder Bore	Adjustable	Sawed-off	Other		
er	Swing Open	Auto Loading		Single Barrel		
	Break Open	Lever Action		Double Barrel		
	Pin Type	Pump Action		Other: _____		
	Bolt Action	Loading Gate				
Blocks:	Hammer	Sear	Slide	Firing Pin	Trigger	Glock-type Safe
cking Lever		Disconnecter			Trigger Lock	Trigger
ck		Auto Firing Pin Block <i>POW</i>			Firing Pin Lock <i>POW</i>	Firing Pin
and		Transfer Bar			Two Piece Firing Pin	Drop

495 nm UV-light, orange filter

type		Pump Action		Other: _____
Action		Loading Gate		
mer	Sear	Slide	Firing Pin	Trigger
	Disconnecter			Trigger Lock
	Auto Firing Pin Block <i>POW</i>			Firing Pin Lock <i>POW</i>
	Transfer Bar			Two Piece Firing Pin

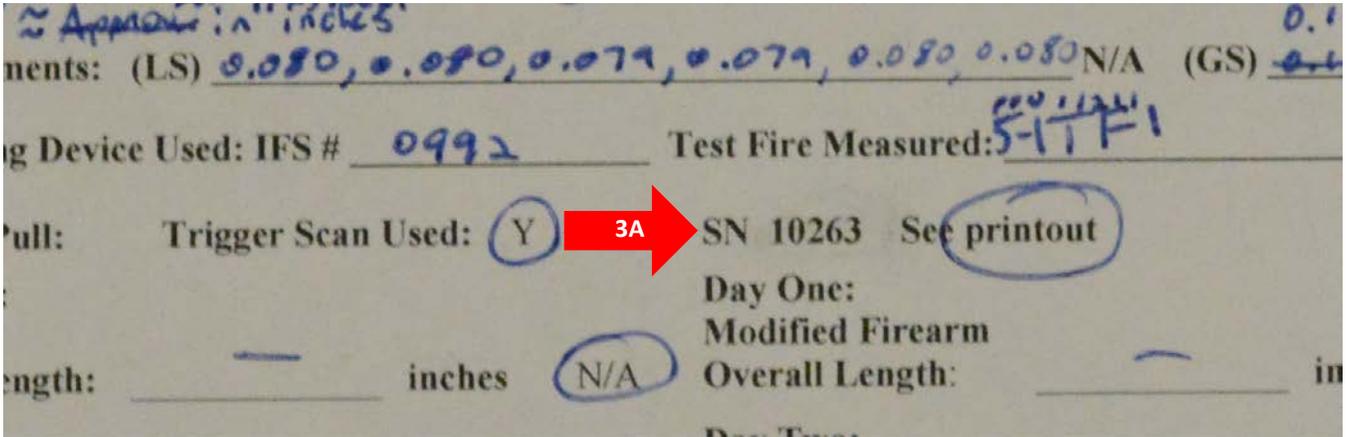
2A – Substantive change. 2B is documentation of the internal safeties of a firearm.

IFS-20-10513-003

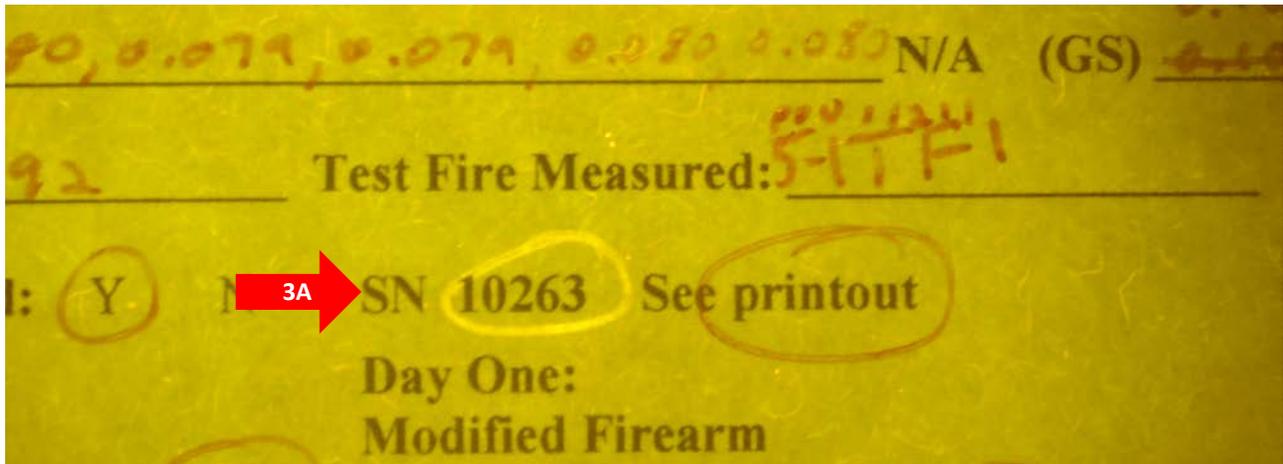
**Tech Review Question:** “Why does it look like a circle was erased?”

**Ngo:** “Not sure. Maybe circle from a previous page. I tend to press down harder when starts to write faint.”

**Visible light**



**495 nm UV-light, orange filter**



3A – Substantive change. 3A is documentation indicating that a printout of the trigger pull measurement of a firearm is available. “See printout” should have been circled, rather than “SN 10263”.

# **EXHIBIT B**



SOUTHWESTERN  
INSTITUTE OF FORENSIC SCIENCES  
AT DALLAS

Firearm and Toolmark Unit

2355 North Stemmons Freeway  
Dallas, Texas 75207

## MEMORANDUM

**DATE:** January 26, 2021

**TO:** Timothy J. Sliter, PhD, Section Chief

**FROM:** Phong Ngo, PhD, Firearms Examiner *PDN*

**RE:** Investigation of Quality Concern

---

Concerning the incident question, that day I was measuring the widths of land and groove signatures of a test fired bullet from a firearm in case IFS-20-10513, request 0003. As I was recording the measurements from the scope's stage micrometer, unbeknownst to myself, the pen I was using started running faint. I could still see the numbers as I was writing, so I did not concern myself with it until I had completed measuring that bullet. The data I collected was dark enough that I see it but on a few of the measurements, it was questionable on whether or not a scanner would pick it up. I have been flagged for this multiple times during Technical Review. My immediate instinct, though in hindsight was clearly incorrect, was to attempt to write over the numbers using the same pen in an attempt to make the ink darker. After that failed, I attempted to write the numbers over again with a different pen, which made my numbers darker but in some cases had smeared from multiple attempts of writing the same spot. I then attempted to clean up those marks with an eraser.

In truth, I had completely forgotten that that had happened that until it was flagged in Technical Review. I am extraordinarily experienced with the SWIFS protocol regarding using the strike-through method to correct mistakes. In fact, my report packets are filled strike-throughs and initials/dates because I have a tendency to think faster than I can write and thus employing the method regularly. And while my intention was never to overwrite or erase any of my measurements or mistakes, I do understand fully that the net effect is not only a violation of SWIFS protocol and Quality procedure, but it also puts in question my credibility as scientist, and the labs credibility as a whole. I thought at the time that my intentions were benign, but I made a mistake for which I am extremely regretful. For this incalculable lapse in judgement, I do sincerely apologize. Your consideration is greatly appreciated.

# **EXHIBIT C**



SOUTHWESTERN  
INSTITUTE OF FORENSIC SCIENCES  
AT DALLAS

Firearm and Toolmark Unit

2355 North Stemmons Freeway  
Dallas, Texas 75207

**MEMORANDUM**

**DATE:** February 1, 2021

**TO:** Timothy J. Sliter, PhD, Section Chief

**FROM:** Phong Ngo, PhD, Firearms Examiner *PNW*

**RE:** Investigation of Quality Concern

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I have been using an erasable pen since I began employment here at SWIFS. I use these particular pens for reasons other than the fact that they are erasable, and have used them for most of my professional life. In spite of my reasons for using such pens, they are in fact erasable. So, on multiple occasions, I have erased original values on my handwritten notes only to overwrite them with corrected values while also striking through and initialing other errors.

Though I am fully aware of the standards that govern the Forensic Science community in regards to the preservation of all original documentation, my actions were antithetical. Also, they were most definitely intentional, because when erasing, my goal is to correct an error. And while I know the correct course of action is to strike through and initial, I can only offer the explanation that erasing is an incredibly bad habit that I have not grown out of. I can also definitively state that I meant no malice because when I am actually thinking about it, I do strike through and initial my errors.

I cannot express how sorry I am that I have put every case I have completed here at SWIFS in to question and compromised the integrity of this institute. The implications of this are far reaching practically and ethically, and are therefore deserving of heavy consequences. So, I take full responsibility for what I have done and I sincerely apologize for it.

If I am fortunate enough to retain my employment here at SWIFS, my first action, in addition to punitive measures, is to dispose of all my erasable pens, and begin using normal pens. I only wish to convey that, in spite of my spectacular failure at one the most significant guiding principles in our discipline, I do vehemently believe in scientific truth and the mission before us here at SWIFS. And thank you for allowing me multiple opportunities to explain myself.

# **EXHIBIT D**



TEXAS FORENSIC  
SCIENCE COMMISSION

*Justice Through Science*

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

April 27, 2021

***Via email to [phongngo.phd@gmail.com](mailto:phongngo.phd@gmail.com) and Certified Mail  
Return Receipt Requested No. 9214 8901 9403 8300 0038 6317 32***

Mr. Phong Ngo, Ph.D.  
646 Harris Ridge Drive  
Arlington, Texas 76002

Re: Texas Forensic Science Commission Laboratory Self-Disclosure No. 21.17;  
Southwestern Institute of Forensic Science (“SWIFS”) (Firearms/Toolmarks);  
Requested Action by May 31, 2021

Dear Dr. Ngo:

At its April 16, 2021 quarterly meeting, the Forensic Science Commission (“Commission”) voted to accept the referenced laboratory self-disclosure for investigation. Specifically, the Commission will investigate whether SWIFS’ conclusion that you committed professional misconduct and violated the Texas Code of Professional Responsibility for Forensic Analysts related to the incidents described in the laboratory’s self-disclosure is supported. In its self-disclosure, the laboratory describes an incident where you made changes to contemporaneously recorded values and observations in thirteen cases and three proficiency tests using erasable ink thereby failing to retain the original observations and further provided false and misleading information when questioned about the changes. A copy of the self-disclosure is enclosed with this letter.

Pursuant to Code of Criminal Procedure, Article 38.01§ 4, the Commission is required to investigate allegations of professional negligence or professional misconduct that would substantially affect the integrity of a forensic analysis conducted by an accredited crime laboratory and issue a written report on its findings.<sup>1</sup> Complaints and disclosures are investigated by a panel of Commissioners in preparation of a completed, written report.<sup>2</sup> Commissioners Mr. Jarvis Parsons, Esq., Dr. Bruce Budowle, and Mr. Mark Daniel, Esq. are the members appointed to the investigative panel that will evaluate the allegations of professional misconduct made against you. Commission investigations may include collection and review of documents, case records, review by subject matter experts, interviews with individuals involved in the incident and other action as appropriate.<sup>3</sup>

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<sup>1</sup> Tex. Code Crim. Proc. art 38.01 § 4(a)(3); *Id.* at § 4(b).

<sup>2</sup> 37 Tex. Admin. Code §651.304 (2019).

<sup>3</sup> *Id.* at §651.307 (2020).

**Please be aware that the outcome of the Commission investigation may have an impact on your forensic analyst license.** On a determination by the Commission that a license holder or applicant has committed professional misconduct, the Commission may (1) revoke or suspend the person's license; (2) refuse to renew the person's license; (3) reprimand the license holder; (4) deny the person a license; or (5) place the license holder on a probationary period.<sup>4</sup>

The investigative panel requests an opportunity to interview you with respect to the events and circumstances described in the enclosed laboratory disclosure. The Commission strongly encourages your input, especially if you disagree with the professional misconduct finding by the laboratory. Absent other information, the Commission may accept the laboratory's misconduct finding which may result in disciplinary action by the Commission, up to and including the revocation of your forensic analyst license. If you wish to respond in writing or otherwise, the Commission requests that you do so by **May 31, 2021**.

The Commission's investigative process may take several months to complete. A final written report will be published on the Commission's website at [www.fsc.texas.gov](http://www.fsc.texas.gov) after conclusion of the investigation. Any finding by the Commission that includes adverse action with regard to your forensic analyst license (*e.g.*, a finding of misconduct that includes a revocation or suspension of your license) may be appealed to the Judicial Branch Certification Commission ("JBCC").<sup>5</sup> A written request for a hearing before the JBCC must be received by the Commission or by the JBCC within twenty (20) days of the date you receive notice of the disciplinary action, or the Commission's decision becomes final and is not subject to further review by the JBCC or the Commission.<sup>6</sup>

To schedule an interview, you may reach me directly at (512) 936-0661 or via email at [leigh.tomlin@fsc.texas.gov](mailto:leigh.tomlin@fsc.texas.gov). You may submit written responses to me electronically or via regular mail to the address on this letterhead. You may also address the investigative panel personally if you wish. If you would like to speak to the panel members virtually or otherwise, please let me know so I can provide you with meeting details and information to facilitate your appearance.

Sincerely,  
  
Leigh M. Tomlin  
Associate General Counsel

encl.

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<sup>4</sup> *Id.* at § 651.216(b) (2019).

<sup>5</sup> *Id.* at § 651.216 (2019).

<sup>6</sup> *Id.* at § 651.216(e) (2019).



TEXAS FORENSIC  
SCIENCE COMMISSION

*Justice Through Science*

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

TEXAS FORENSIC SCIENCE COMMISSION  
LAB DISCLOSURE FORM

*Please complete this form and return to:*

Texas Forensic Science Commission  
1700 North Congress Avenue, Suite 445  
Austin, Texas 78701  
Email: [info@fsc.texas.gov](mailto:info@fsc.texas.gov)  
[P] 1.888.296.4232  
[F] 1.888.305.2432

The Texas Forensic Science Commission ("FSC") is legislatively mandated to require crime laboratories that conduct forensic analyses to report professional negligence or professional misconduct to the Commission. (See Tex. Code Crim. Proc. 38.01 as amended by Tex. S.B. 1238, 83rd Leg., R.S. (2013)).

Please keep in mind that the FSC investigates matters subject to its statutory authority only. The term "forensic analysis" includes any medical, chemical, toxicological, ballistic, or other 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 does not include the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician. The term "crime laboratory" is defined in Article 38.35 of the Texas Code of Criminal Procedure to include "a public or private laboratory or other entity that conducts a forensic analysis subject to this article."

The FSC will examine the details of your disclosure to determine what level of review to perform, if any. All disclosures are taken seriously. Because of the complex nature and number of complaints and disclosures received by the FSC, we cannot give you any specific date by which that review may be completed. However, we aim to resolve all disclosures in a timely and expeditious manner, and to minimize disruption in the laboratory.

The Commission's statute allows it to withhold from disclosure information submitted in the context of an investigation but only until the final report is released. Upon release of the final report, all information provided to the Commission is subject to disclosure under the Texas Public Information Act ("PIA") (Texas Government Code Chapter 552).

**IMPORTANT:** If your disclosure involves a pending criminal matter(s), please be sure to indicate that on the form below because certain PIA exceptions may apply.

TEXAS FORENSIC SCIENCE COMMISSION • LAB DISCLOSURE FORM (Cont.)

1. PERSON COMPLETING THIS FORM

Name: Timothy J. Sliter, PhD
Laboratory: SWIFS
Address: 2235 N Stemmons Fwy
City: Dallas
State: TX Zip Code: 75207
Home Phone:
Work Phone: 214-920-5980
Email Address (if any): timothy.sliter@dallascounty.org

2. SUBJECT OF DISCLOSURE

List the full name, address of the laboratory, facility or individual that is the subject of this disclosure:

Individual/Laboratory: Phong Ngo, PhD / SWIFS
Address: SWIFS, 2355 N Stemmons Fwy
City: Dallas
State: TX Zip Code: 75207
Year Laboratory Accreditation Obtained: 2003
Name of National Accrediting Agency: ANAB
Date of Examination, Analysis, or Report: 9/1/2020 - 1/26/2021
Type of Forensic Analysis: Firearms Analysis
Laboratory Case Number (if known): Multiple

Is the forensic analysis associated with any law enforcement investigation, prosecution or criminal litigation?

Yes [X] No [ ]

\* If you answered "Yes" above, provide the following information (if possible):

\* Name of Defendant: Multiple

\* Case Number/Cause Number: Multiple (if unknown, leave blank)

\* Nature of Case: Multiple (e.g burglary, murder, etc.)

\* The county where case was investigated, prosecuted or filed: Dallas, Kaufman, McLennan

\* The Court: Multiple

\* The Outcome of Case:

Pending

\* Names of attorneys in case on both sides (if known):

Unknown

3. WITNESSES

Provide the following about any person with factual knowledge or expertise regarding the facts of the disclosure. Attach separate sheet(s), if necessary.

First Witness (if any):
Name: Timothy J. Sliter, PhD, Section Chief
Address: SWIFS, 2355 N Stemmons Fwy, Dallas, TX 75207
Daytime Phone: 214-920-5980
Evening Phone:
Fax:
Email Address: timothy.sliter@dallascounty.org

Second Witness (if any):
Name: April Kendrick, MS, Firearms Supervisor
Address: SWIFS, 2355 N Stemmons Fwy, Dallas, TX 75207
Daytime Phone: 214-920-5978
Evening Phone:
Fax:
Email Address: april.kendrick@dallascounty.org

Third Witness (if any):
Name: Stacy McDonald, PhD, Deputy Section Chief
Address: SWIFS, 2355 N Stemmons Fwy, Dallas, TX 75207
Daytime Phone: 214-920-5834
Evening Phone:
Fax:
Email Address: stacy.mcdonald@dallascounty.org

4. DESCRIPTION OF DISCLOSURE

Please write a brief statement of the event(s), acts or omissions that are the subject of the disclosure. See Page 6 of this form for guidance on what information should be disclosed to the Commission.

Disclosure category: Significant Irregularity in the Laboratory

Between September 4, 2020 and January 26, 2021, firearms examiner Phong Ngo, PhD (license #1470) prepared hardcopy examination records for thirteen (13) cases and three (3) proficiency tests that did not comply with laboratory policies and procedures regarding the retention of original observations, results, and conclusions. Specifically, in each instance, Dr. Ngo made multiple corrections to hardcopy examination records by erasing and overwriting original entries using a personal erasable-ink pen. These corrections included both cosmetic changes, and substantive changes to contemporaneously recorded values and observations.

During the initial investigation into this matter, Dr. Ngo provided false and misleading information to laboratory staff. Specifically, in January 2021, upon questioning from a technical reviewer regarding several irregularities in a hardcopy examination record under review, Dr. Ngo failed to admit that he had intentionally erased items; instead, he claimed the observed irregularities were the result of pressing down too hard on his pen when writing on a previous page, smears, and smudge erasures. He repeated these false and misleading explanations when questioned by his supervisors during a quality system review of the incident.

The Department later confirmed the questioned documents contained erasures by reviewing the documents under various light sources. The Department then asked the Texas Department of Public Safety to conduct an independent review. That agency confirmed erasures existed in all records submitted for examination. At that point, when presented with photographic evidence of erasures in hardcopy examination records, Dr. Ngo acknowledged that he had intentionally made erasures, alterations, and obliterations as alleged, and he acknowledged that his conduct did not conform with laboratory standards.

In erasing notations, Dr. Ngo knowingly violated the laboratory's technical requirements. He also violated the laboratory's ethical requirements, the laboratory's accreditation requirements for professional conduct, and state professional standards for the conduct of forensic examinations by licensed examiners. Dr. Ngo also failed to comply with Dallas County Code. Specifically, he failed to perform his tasks in a manner deserving of public trust; he engaged in falsifying acts detrimental to the County; and he engaged in gross or repeated neglect of duty.

5. DESCRIPTION OF CORRECTIVE ACTION TAKEN

Please describe any corrective actions or corrective action plans the laboratory has developed to address the issues discussed in this disclosure. Please attach copies of the actions taken and/or future corrective plan to this disclosure form.

Please let the Commission know if any other agencies (e.g., Texas Rangers, local district attorney, Inspector General's Office, etc.) are also conducting an investigation of the matter in question. If possible, provide a contact name and phone number for the individual responsible for any other investigation(s).

1. For in-progress cases, the examinations are being repeated by a different examiner.

2. For finalized reports, customers have been notified that the reports have been recalled. Arrangements are being made to re-examine the evidence and issue corrected reports. Retesting is in progress.

3. Brady notifications have been communicated to the Dallas, Kaufman, and McLennan County District Attorney's Offices.

4. The laboratory has accepted Dr. Ngo's resignation in lieu of termination.



**TEXAS FORENSIC SCIENCE COMMISSION  
GUIDELINES FOR LABORATORY SELF-DISCLOSURE**

One of the Commission's statutory duties is to "require a crime laboratory that conducts forensic analyses to report professional negligence or professional misconduct to the Commission." TEX. CODE CRIM. PROC. § 38.01, Sec. 4(a)(2).

This document is designed to provide guidance to laboratories in determining whether they should disclose particular events to the Commission under the statute. Any questions regarding these guidelines should be directed to the Commission's General Counsel at (512) 936-0770.

***Self-Disclosure Categories:***

- **Probation:** If the national accrediting body responsible for accrediting your laboratory and/or the Department of Public Safety notifies you that it intends to put your laboratory on probation, you should inform the Commission as soon as possible, but no later than five (5) business days from receiving notification from the accrediting body.
- **Suspension of Accreditation:** If the national accrediting body responsible for accrediting your laboratory and/or the Department of Public Safety notifies you that it intends to suspend your laboratory's accreditation for any reason, you should inform the Commission as soon as possible, but no later than five (5) business days from receiving notification from the accrediting body.
- **Significant Irregularity in the Laboratory:** Laboratories shall disclose any irregularity that may rise to the level of professional negligence or misconduct using the disclosure form on the Commission's website. **The disclosure should be submitted to the Commission as soon as possible, but no later than thirty (30) days after the irregularity is discovered.** If the laboratory needs a longer period to submit its disclosure, it should contact the Commission's General Counsel with an explanation and a request for additional time.

Please note that the outcome of any particular criminal case should not be a consideration in your decision regarding whether to disclose an issue to the Commission. You should disclose any significant laboratory irregularity regardless of the criminal case outcome, and regardless of whether the quality controls in the laboratory caught the issue of concern before a final report was issued to the customer. When using the term "significant irregularity," we refer to facts that *if true*, would indicate the existence of negligence or misconduct such that the integrity of the forensic examination, the individual forensic examiner, or the laboratory as a whole would be called into question.

***If your self-disclosure involves a pending criminal case, or you believe that anyone involved in the disclosure may be the subject of criminal investigation, please alert the Commission when submitting your disclosure, as certain law enforcement exceptions to the Public Information Act may apply to the information submitted.***

# Nonconformance Evaluation and Remediation Form

RFR: 21R-003

## PART 1: DESCRIPTION OF THE EVENT

Reported by: April Kendrick

Date Reported: 1/25/2021

### 1. Describe the event:

On 1/25/2021, Firearms Supervisor April Kendrick (AK) communicated a quality concern and a potential casework nonconformity to Deputy Section Chief Stacy McDonald (SM).

The concern related to a Firearms Analysis report (IFS-20-10513-003; analyst Phong Ngo; technical reviewer Heather Francis).

During the course of a technical review, the technical reviewer identified notations on two pages of hardcopy examination records that appeared to be erasures and over-writes. She brought the matter to the attention of AK, who instructed her to complete the technical review, and as part of that process, to include comments to the analyst seeking clarification regarding the apparent erasures and over-writes.

The technical review was completed and the examination records were returned to the analyst who made the necessary corrections, and provided responses to the comments regarding the apparent erasures and overwrites. The examination records were then returned to the technical reviewer for final review and signoff. Prior to the technical reviewer performing a final review of the examination packet, AK took possession of the packet. She then communicated the quality concern to SM, who initiated a review of the incident.

The hardcopy examination records in question were visually examined by AK and SM, who confirmed the concern of the technical reviewer that there were indications of erasures and over-writes.

### Principle Findings

An investigation was performed of the event (see below), with the following principle findings:

1. It was established that the anomalous notations of concern to the technical reviewer were instances of erasure and over-writing. This was made possible by the analyst's intentional use of a personal erasable-ink pen to prepare hardcopy examination records. In response to the technical reviewer's questions, the analyst provided false and misleading explanations for these anomalous notations in his hardcopy examination records.
2. It was established that the analyst made many other corrections to hardcopy examination records in IFS-20-10513-003 using erasure and over-writing.
3. It was established that the analyst had made corrections to examination records by erasure and over-writing in each of the 14 report packets (12 finalized requests; 2 in progress requests) that he had prepared since his qualification for casework in September 2020.
4. During the investigation of the quality concern, the analyst made false and misleading statements to managers regarding the reasons for the apparent erasures. When presented with photographic

documentation of the erasures, the analyst acknowledged that he had intentionally corrected hardcopy records by erasure and over-writing, in violation of the laboratory's technical requirements, and in violation of the laboratory's guidelines regarding professional responsibility.

### **Investigation Summary**

AK inspected the laboratory work area of the analyst and identified an erasable-ink pen (Pilot FriXion Ball pen) labeled with the analyst's name. The Pilot FriXion Ball pen utilizes an "erasable" ink that is chemically converted from a colored to an uncolored form by the heat of friction generated by rubbing the ink with the pen's plastic eraser.

At the direction of the Section Chief, on 1/26 an exemplar was prepared using the analyst's erasable-ink pen. The exemplar consisted of using the pen to write on standard photocopier paper, and then erasing the writing using the pen's eraser tip. The erasure was examined under UV illumination using a variable wavelength alternate light source. The exemplar was used to establish UV light conditions (495 nm using orange goggles) that would be sufficient to detect ink following erasure.

A UV light examination was performed on the two pages of examination records that were concern to the technical reviewer. This examination confirmed the presence of erasures and over-writes.

Additional UV light examination was performed on other hardcopy examination records in the report packet. In total, approximately 75 erasures and over-writes were identified on 15 pages of hardcopy examination records. The vast majority of these could not be readily identified except under appropriate UV lighting.

### **Impact Upon Previous Casework**

The results of the evaluation of hardcopy examination records in IFS-20-10513 Request 003 prompted a subsequent evaluation of the analyst's hardcopy examination records in other finalized and in-progress cases.

Note: During the normal course of report finalization in Firearms, the packet of hardcopy examination records is scanned to the LIMS-Plus casefile following completion of the technical review. The scan in LIMS-Plus then becomes the official examination record following finalizing of the request. The hardcopy record is retained for an indeterminate period of time and then shredded. Because the analyst had only recently completed the training on 9/4/2020, all of his finalized report packets containing original hardcopy examination records were still available for inspection.

At the time of the incident, the analyst had completed the following training programs which included hardcopy examination records:

- Firearms identification
- Toolmark identification
- Range-of-fire analysis
- Serial number restoration

In addition to the in-progress report at issue (IFS-20-10513-003 Firearms Analysis), the analyst had finalized the following 12 reports:

Case number	Request #	Requested Service
06P01583	3	Firearms Analysis
IFS-19-06331	6	Firearms Analysis
IFS-19-15260	13	Firearms Analysis
IFS-19-16676	2	Firearms Analysis
IFS-19-21437	9	Firearms Analysis
IFS-20-00918	4	Firearms Analysis
IFS-20-11913	2	Firearms Analysis
IFS-20-13357	2	Firearms Analysis
IFS-20-14833	2	Firearms Analysis
IFS-20-15088	8	Firearms Analysis
IFS-20-15088	9	GSR Analysis - Clothing/Hair/Range of Fire
IFS-20-19852	9	Firearms Analysis

In addition to IFS-20-10513-003, the following request was in progress at the time of the event.

IFS-19-19558	9	Firearms Analysis
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The hardcopy examination records for these requests were examined under UV illumination. Erasures and over-writings were identified in the report packets for all reports. To confirm these observations, selected examination records were submitted to DPS-Austin for forensic document examination. That examination confirmed the presence of erasures and over-writings.

### **Issues of Profession Responsibility**

During the technical review process, the analyst offered false and misleading explanations for the anomalous notations that were of concern to the technical reviewer.

During the investigation of the quality concern, the analyst initially made verbal and written statements to managers that included false and misleading explanations of the apparent erasures in his examination records.

Upon presentation of photographic evidence of the erasures (collected from UV inspection of the records), the analyst acknowledged that that he had routinely used an erasable-ink pen to prepare examination records, and had routinely made corrections to these records by erasure and over-writing. Additionally, he indicated that he fully understood that this practice was in violation of the laboratory's technical requirements and its standards of professional responsibility.

**PART 2: EVALUATION OF SIGNIFICANCE**

**Evaluated By:**

**Name:** Timothy Sliter

**Title:** Section Chief

**Signature:**  \_\_\_\_\_

**Date:** 3/23/2021

**1. What is the future risk level?**

- Low
- Medium
- High
- Extreme

**2. Is there a potential for an impact on previous work?**

No  Yes See above

**If Yes, has the potential impact on previous work been evaluated?**  No  Yes  N/A

**3. Discuss the significance of the event, including scope, frequency, and severity.**

This event was determined to be a nonconformance. Correction of hardcopy examination records in IFS-20-10513-003 by erasure and over-writing was in violation of laboratory policy, which requires that corrections to examination records be made by striking through the original recorded value, initialing the strike-thru, and then writing the corrected value. This procedure for correcting examination is intended to avoid hiding or obscuring the original recorded values.

The investigation determined that this was an intentional and systematic practice of the analyst. As such, it was also a violation of the laboratory's standards for professional conduct.

This is a significant nonconformance. The expectation that original recorded values and observations be retained is a fundamental technical requirement for the preparation of examination records in the forensic science examinations. It is also a bedrock principle of professional responsibility and ethics in the forensic sciences that is codified in laboratory accreditation requirements. It is also a statutory requirement for forensic scientists licensed by the State of Texas.

The scope of the incident is broad. Upon investigation, the original incident revealed a pervasive pattern of intentional violations of laboratory policies and procedures related to the correction of errors in hardcopy examination records.

The frequency of the incident is high. All of the casework record packets prepared by the analyst contained erased corrections that were made in violation of laboratory policies and procedures.

The severity of the incident is high. The nature of the violation means that many of the original values and observations made by the analyst are not retained in the official scanned electronic examination records retained in LIMS-Plus. Furthermore, there is no way to determine from the scanned electronic examination records which values and observations were original, and which

were subsequently corrected. Therefore, the scanned electronic examination records prepared by the analyst have no value as case records.

4. (Optional) Was a cause analysis performed? If Yes, describe.  No  Yes

The cause of the event was the analyst's intentional failure to comply with the laboratory's policy regarding corrections to hardcopy examination records.

**PART 3: ACTIONS (REMEDIATIONS) TAKEN TO CONTROL NONCONFORMITY**

1. Describe the actions taken to control and correct the immediate effects of the nonconformity.

1. The analyst was suspended from casework and casework-related activities.
2. The report in question for IFS-20-10513-003 was not released. The request was reassigned to another analyst to rework.
3. Retesting of evidence was initiated.
4. The analyst's resignation was accepted in lieu of termination.
5. Recall letters were issued to customers.

2. Is the work acceptable?  No  Yes

3. As part of remediation, was work halted?  No  Yes If Yes, date: 1/26/2021

If work was halted, was resumption authorized:  No  Yes  N/A

If work was resumed, date resumed: N/A

4. Is there a need to recall work?  No  Yes

5. Is there a need to repeat work?  No  Yes

6. Is there a need to notify customers?  No  Yes Notified via recall letters

**PART 4. VERIFICATION OF REMEDIATIONS**

**Date remediations completed:**

1. Suspension of analyst from casework 1/26/2021
2. Reassignment of IFS-20-10513-003 2/9/2021
3. Retesting of evidence initiated. 2/9/2021
4. Analyst's resignation accepted. 2/23/2021
5. Recall letters issued to customers. 3/3/2021

**PART 5: EXTERNAL REPORTING**

1. Is there a need to disclose significant changes, events, and nonconformities to accrediting bodies?	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
2. Is there a need to report the incident to the Texas Forensic Science Commission (professional negligence or professional misconduct)?	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes

3. Is there a need to report the incident to applicable district attorney offices as outlined in "Dallas County District Attorney's Office Laboratories and Medical Examiner's Office Disclosure Compliance"?	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
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**PART 6: CLOSEOUT**

Closed by: Executive Committee

Date Closed: 3/24/2021

Deputy Chief Medical Examiner [Signature] Date: 3.24.21

Forensic Administrator [Signature] Date: 3.24.21

PES Section Chief [Signature] Date: 3/24/21

FC Section Chief Brittany Carey Date: 03/25/21

Quality Manager [Signature] Date: 3/24/2021

**ATTACHMENTS:**

1. Memo from April Kendrick dated 3/23/2021; Re: Phong Ngo – Quality Concern – Status of Reworked Cases



SOUTHWESTERN  
INSTITUTE OF FORENSIC SCIENCES  
AT DALLAS

Firearm and Toolmark Unit

2355 North Stemmons Freeway  
Dallas, Texas 75207

**MEMORANDUM**

**DATE:** March 23, 2021  
**TO:** Timothy Sliter, PhD – Chief of Physical Evidence  
**FROM:** April Kendrick, MSFS – Firearms Supervisor *AK*  
**RE:** Phong Ngo – Quality Concern – Status of Reworked Cases

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Per your request, I have compiled a list of the reports completed by Phong Ngo. In the table below, I have documented the status of each report.

Case number	Analysis Type	Report recalled	Customer has authorized retesting	Retesting Status
06P01583	Firearms Analysis	Yes	Yes	In progress
IFS-19-06331	Firearms Analysis	Yes	Yes	Completed, 3/10/2021
IFS-19-15260	Firearms Analysis	Yes	Yes	Completed, 3/23/2021
IFS-19-16676	Firearms Analysis	Yes	Yes	Completed, 3/11/2021
IFS-19-21437	Firearms Analysis	Yes	Yes	Completed, 3/10/2021
IFS-20-00918	Firearms Analysis	Yes	Yes	Pending
IFS-20-11913	Firearms Analysis	Yes	Yes	Completed, 3/16/2021
IFS-20-13357	Firearms Analysis	Yes	Yes	Pending
IFS-20-14833	Firearms Analysis	Yes	Yes	Completed, 3/16/2021
IFS-20-15088	Firearms Analysis	Yes	Yes	Pending
IFS-20-15088	Range of Fire Analysis	Yes	Yes	Pending
IFS-20-19852	Firearms Analysis	Yes	Yes	Pending

# EXHIBIT B

See preceding Exhibit D to the Final Investigative Report.