



TEXAS FORENSIC SCIENCE COMMISSION

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

May 19, 2023

Via e-mail

RE: Notice of Incorporation of Texas Forensic Science Commission (“Commission”)
Accreditation Checklist in ANSI National Accreditation Board (“ANAB”)
Accreditation Process Effective September 1, 2023

Dear Laboratory Directors and Quality Managers:

On November 15, 2022, the Commission published a Final Investigative Report (“Final Report”) in self-disclosure matter #22.19 (Houston Forensic Science Center/Texas Department of Public Safety; Forensic Biology/DNA).¹ The Final Report includes three policy requirements regarding testimony preparation that crime laboratories accredited by the Commission must implement in advance of the laboratory’s next assessment activity *beginning September 1, 2023*.²

For assessment activities that occur beginning September 1, 2023, laboratories that fail to comply with these policy requirements may be cited with a nonconformity to ISO/IEC 17025:2017 5.4 “Laboratory activities shall be carried out in such a way as to meet the requirements of... regulatory authorities and organizations providing recognition...” such as the Texas Forensic Science Commission. ANAB will assess compliance with the three policy items using document review and staff interviews where applicable.

To help laboratories with implementation of the three policy items, the Texas Association of Forensic Quality Assurance Managers (“TAFQAM”) assisted the Commission with the attached guidance document. The Commission strongly encourages laboratory quality management to participate in the TAFQAM, as the Commission will not issue any accreditation checklist items without first seeking feedback from this group.

¹ Final Investigative Report: https://www.txcourts.gov/media/1455421/fr_colone-12052022-1.pdf

² Accreditation policy requirements by the Commission are issued pursuant to the Commission’s broad authority under the Code of Criminal Procedure, Article 38.01 § 4-d(b)(3) which gives the Commission the authority “to establish procedures, policies, standards, and practices to improve the quality of forensic analyses conducted...” in the State of Texas.



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In December 2022, the Commission's general counsel provided training on the report that generated the checklist items. If you do not already have access to the presentation and would like access, please send an email request to the following address: mark.smith@fsc.texas.gov. If you have any questions regarding this letter or the attached guidance, please let us know.

Sincerely,

Leigh M. Tomlin

Leigh M. Tomlin
Associate General Counsel
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Guidance on Complying with TFSC Investigative Report #22.18

1. Laboratories shall have a written policy or procedure that sets clear expectations for trial preparation. (*See, Report Recommendation #5*)

- Expectations for case review in preparation for testimony may be described in a laboratory-wide or department-specific procedure. If the policy is laboratory-wide, consideration shall be given on a discipline-by-discipline basis to whether any items maintained outside of the case record merit review by the analyst¹ in preparation for trial. If so, this should be specifically designated in the policy.
- At a minimum, an analyst must review all information in the case record covering the scope of their work before testifying.
 - During the review, the analyst shall determine whether any detail in the case record should be proactively discussed with the responsible attorney before trial and notify the attorney accordingly via email or other written correspondence.
 - If a discovery packet is issued by the laboratory, the analyst shall review the information contained in the packet to the extent it relates to the scope of the analyst's work in the case.

2. Laboratories shall have a written policy or procedure that sets expectations for departing analysts who may be called back to testify post-departure. (*See, Report Recommendation #6*)

- Analysts shall be informed that they are expected to adequately prepare for trial after separation should the analyst be called to testify on a case they worked while employed by the laboratory.²
- The notification to the analyst may be included in any document that requires employee verification it was read. The verification must be maintained by the laboratory. If the employee declines to sign the verification or the laboratory is unable to obtain the verification, the laboratory shall document the reason it could not obtain the verification.
 - Management shall commit to providing case records to the employee post-departure through appropriate means so the former employee may prepare for testimony.
 - Management shall inform the responsible attorney if they have any substantiated reservations regarding the testifying analyst (*e.g.*, prior disclosures of concern involving the analyst).

¹ **Note:** The Commission refers to “analysts” because analysts are most likely to testify; however, this requirement applies to any individual, regardless of job title or license category (including technicians), who may testify in court.

² **Note:** The Commission recognizes laboratories cannot control the actions of employees when they are no longer employed. The purpose of this provision is to encourage open communication regarding the fact that sometimes analysts are subpoenaed to testify even after separation of employment.

3. Laboratories shall have a written policy or procedure that sets expectations for employees required to testify for a former employer *subject to the jurisdiction of the Texas Forensic Science Commission.* (See, Report Recommendation #7)

- The policy shall require employees to notify their manager when they have been subpoenaed to testify for a former employer.
- The policy shall require management to allow the employee to adequately prepare and attend court during business hours.
 - Note: No numerical time needs to be stated in the policy; rather, open communication between employee and manager is encouraged to identify what is needed depending on the complexity of the case.
 - Note: The costs of travel and lodging required for the employee to testify are *not* the responsibility of the laboratory and should be arranged with the former employer or party issuing the subpoena.