

# **Forensic Science Oversight Board: Recommendations on Professional Negligence and Misconduct**

## **1 Forward**

The Massachusetts Forensic Science Oversight Board (FSOB) was established by Chapter 69, Section 9 of the Acts of 2018. Per Statute Section: (e) The Board shall develop, implement and periodically review a system for forensic laboratories to report professional negligence or misconduct and any such facility shall be required to report to the board any instance of professional negligence and misconduct. This document presents the recommendations and proposed guidance by the FSOB for handling allegations of professional negligence and misconduct.

## **2 Scope**

This document addresses the FSOB's review of suspected professional negligence and misconduct identified within forensic science service providers (FSSP). It provides direction on identification and reporting to the FSOB any instances of such issues.

### **Normative References**

The following reference is an indispensable document for the application of this document.

ANAB GD 3150 Guiding Principles of Professional Responsibility for Forensic Service Providers and Forensic Personnel

## **3 Terms and Definitions**

### **3.1.1 Massachusetts Forensic Science Oversight Board (FSOB)**

Chapter 69, Section 9 of the Acts of 2018 established the FSOB. The Board "shall have oversight authority over all commonwealth facilities engaged in forensic services in criminal investigations, and shall provide enhanced, objective and independent auditing and oversight of forensic evidence used in criminal matters, and of the analysis, including the integrity of such forensic analysis performed in state and municipal laboratories".

### **3.1.2 Professional Misconduct**

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<sup>1</sup> or omission substantially affected the integrity of the results of forensic analysis. An act or omission was deliberate if the actor was aware of and consciously disregarded an accepted standard of practice required for forensic analysis, including engaging in conduct involving dishonesty, fraud, or misrepresentation.

### **3.1.3 Professional Negligence**

The actor, through a material act or negligence 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 substantially affected the integrity of the results of 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 forensic analysis.

### **3.1.4 Forensic Science Service Providers**

FSSPs include agencies, organizations, businesses, or individual parties, who apply scientific or technical techniques in examining crime scenes, recovering evidence, extracting and recovering electronic data, conducting analysis, examination, or testing; and provide an interpretation of findings, conclusions, and reports for investigative, intelligence, regulatory and litigation purposes, or for policy development. See Annex A for full list of disciplines.

### **3.1.5 Forensic Science Service Stakeholders**

Forensic science service stakeholders include members of the legal community (such as judges, prosecutors, and defense attorneys), members of the medico-legal community (such as police departments, medical examiners, etc.), members of the forensic science academic community, and members of the public directly impacted by forensic services (such as defendants, expert witnesses, jurors, victims/victim advocates, etc.).

## **4 Professional Responsibility<sup>2</sup>**

The following protocols promote the integrity and respect for the scientific process and encourage transparency in forensic analysis in the Commonwealth of Massachusetts. The following components provide the responsibilities of FSSPs.

### **4.1.1 Each forensic science service provider shall:**

- (1) Accurately represent their education, training, experience, and areas of expertise.

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<sup>1</sup> Professional misconduct includes, but is not limited to, falsifying results from forensic analysis, falsifying case information, misrepresenting educational background, intentionally tampering with forensic evidence, etc.

<sup>2</sup> Adapted from the Texas Forensic Science Commission's Code of Professional Responsibility  
[http://txrules.elaws.us/rule/title37\\_chapter651\\_sec.651.219](http://txrules.elaws.us/rule/title37_chapter651_sec.651.219)

- (2) Commit to continuous learning in the forensic disciplines and stay abreast of new findings, equipment, and techniques to maintain professional competency.
- (3) Promote validation and incorporation of new technologies, guarding against the use of non-valid methods in casework and the misapplication of validated methods.
- (4) Not engage in tampering, adulteration, loss, or unnecessary consumption of evidentiary materials.
- (5) Not participate in any case where there are personal, financial, employment-related, or other conflicts of interest.
- (6) Conduct thorough, fair, and unbiased examinations, leading to independent, impartial, and objective opinions and conclusions.
- (7) Base conclusions on procedures supported by sufficient data, standards, and controls, not on political pressure or other outside influence.
- (8) Not offer opinions or conclusions that are outside one's expertise or scope of analysis performed.
- (9) Prepare reports in clear terms, distinguishing data from interpretations and opinions, and disclosing any relevant limitations to guard against making invalid inferences or misleading the forensic science services stakeholders.
- (10) Not issue reports or other records, or withhold information from reports for strategic or tactical litigation advantage.
- (11) Present accurate and complete data in reports, oral and written presentations, and testimony based on good scientific practices and valid methodologies.
- (12) Testify in a manner that is clear, straightforward, and objective, and avoid phrasing testimony in an ambiguous, biased, or misleading manner.
- (13) Retain any record, item, or object related to a case, such as work notes, data, and peer or technical review information pursuant to the laboratory's retention policy.
- (14) Communicate honestly and fully with all parties (investigators, prosecutors, defense attorneys, and other expert witnesses), unless prohibited by law.
- (15) Participate in proficiency testing based on the scope of accreditation in which the individual conducts work.

(16) Document and notify management or quality assurance personnel of adverse events, such as an unintended mistake or a breach of ethical, legal, or scientific standards, questionable conduct, as well as any failed proficiency tests including any remediation.

(16) Ensure reporting, through appropriate channels, to all impacted scientific and legal parties of any adverse event that affects a previously issued report or testimony.

#### **4.1.2 Agencies and organizations that provide forensic science services shall:**

(1) Encourage a quality-focused culture that embraces transparency, accountability, and continuing education while resisting individual blame or scapegoating.

(2) Provide opportunities for FSSPs to stay abreast of new scientific findings, technology, and techniques while guarding against the use of non-valid methodologies in casework, the misapplication of validated methods, or improper testimony regarding a particular analytical method or result.

(3) Maintain document retention and management policies and systems based on the presumption that there is potential evidentiary value for any information related to a case, including work notes, analytical and validation data, and peer or technical review.

(4) At a minimum, FSSPs must provide at least one proficiency test, when available, per calendar year for each discipline in which forensic services are provided. Every FSSP must complete at least one proficiency test per calendar year. This monitoring shall ensure that all personnel who perform testing or calibration shall successfully complete at least one intralaboratory comparison, interlaboratory comparison, or externally provided proficiency test per calendar year in each forensic discipline, outlined in Annex A in so far that it's applicable, in which the individual conducts work. The laboratory shall evaluate proficiency test results and maintain documentation supporting the proficiency test results. (Note: Specific laboratory accreditation requirements or federal statutes such as DNA Identification Act - 34 U.S.C. §12592 may have requirements that exceed this.)

## **5 Reporting Professional Negligence and Misconduct**

### **5.1.1 Reporting by Forensic Science Service Provider**

FSSPs should have a procedure for documenting professional negligence and misconduct. When issues of professional negligence or misconduct occur, the FSSP is obligated to report these to the FSOB and provide all relevant documentation for review. Accredited FSSPs are also required to report issues of professional negligence or misconduct to their Accrediting Body.

The FSOB shall review the complaints of professional negligence or misconduct during the next scheduled FSOB meeting. If the issues of professional negligence or misconduct affect the adjudication of criminal cases, all legal parties involved should be notified.

#### **5.1.2 Reporting by Forensic Science Service Stakeholders**

Forensic scientists employed by FSSPs may report issues of professional negligence and misconduct to the FSOB.

The FSOB shall review the complaints of professional negligence or misconduct during the next scheduled FSOB meeting. If the issues of professional negligence or misconduct affect the adjudication of criminal cases, all legal parties involved should be notified.

#### **5.1.3 Reporting by Forensic Science Service Stakeholders**

Entities outside the FSSPs may report issues of professional negligence and misconduct to the FSOB via online form on the FSOB website.

The FSOB shall review the complaints of professional negligence or misconduct during the next scheduled FSOB meeting. If the issues of professional negligence or misconduct affect the adjudication of criminal cases, all legal parties involved should be notified.

#### **5.1.4 Reporting Process and Dispositions**

Forensic laboratories, forensic scientists, or other entities may report allegations of professional negligence or misconduct to the FSOB. Allegations shall be reviewed by a standing review committee. Reports, including recommendations, and associated documentation of professional negligence or misconduct will be disseminated to the FSOB, who will then make a final disposition.

The FSOB may assign staff to collect preliminary information related to a report of professional negligence or misconduct, including research into the status of any underlying criminal or civil case, and whether the report addresses a forensic analysis subject to investigation by the standing review committee. Further, an actor named in a report of professional negligence or misconduct and/or the involved FSSP or entity may be given an opportunity to provide a brief written response, offering any reasons for or against accepting the report for investigation.

The standing review committee may recommend the following:

- (1) dismiss the report of professional negligence or misconduct;
- (2) accept the report of professional negligence or misconduct and submit for review by the FSOB;

While FSOB meetings are open to the public, discussions of allegations will be held in Executive Session. Interested parties either reporting allegations of professional negligence or misconduct or those involved in such allegations may be permitted to attend the meeting at the discretion of the FSOB. The Chair or any member of the FSOB may call an emergency meeting to handle urgent request of professional negligence or misconduct.

The FSOB may vote one of the following dispositions:

- (1) dismiss the report of professional negligence or misconduct;
- (2) provide guidance for educational purposes in the event of negligence; or
- (3) take such other action as appropriate in the event of misconduct.

## **6 Personnel Records**

Pursuant to MGL 149 c. 52C, an employer shall notify an employee within 10 days of the employer placing in the employee's personnel record any information to the extent that the information is, has been used or may be used, to negatively affect the employee's qualification for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action.

## **7 Retention of Documentation**

Reports of professional negligence or misconduct, and of subsequent investigations and outcomes received, or made by, the FSOB, should be retained indefinitely. Documentation presented during Executive Session is not subject to public record.

## **8 Resources**

All interested parties, including FSSPs, forensic scientists, and stakeholders, may consult with the [Massachusetts State Ethics Commission](#) (MSEC) to confidentially report or request advice regarding possible professional negligence and misconduct. At the discretion of the MSEC, they may consult with the FSOB for further guidance.

All interested parties may also seek guidance directly from the FSOB to confirm if a particular action can be deemed professional negligence or misconduct.

## 9 **Annex A References**

### *Forensic Science Service Providers Disciplines (OSAC)*

Biology	Medicine
Human Forensic Biology	Forensic Anthropology
Wildlife Forensic Biology	Forensic Odontology
Chemistry - Seized Drugs & Toxicology	Forensic Nursing
Seized Drugs	Medicolegal Death Investigation
Forensic Toxicology	Physics/Pattern Interpretation
Chemistry - Trace Evidence	Bloodstain Pattern Analysis
Ignitable Liquids, Explosives, & Gunshot Residue	Firearms & Toolmarks
	Footwear & Tire
Trace Materials	Forensic Document Examination
Digital/Multimedia	Friction Ridge
Digital Evidence	Scene Examination
Facial Identification	Crime Scene Investigation & Reconstruction
Speaker Recognition	Dogs & Sensors
Video/Imaging Technology & Analysis	Fire & Explosion Investigation

## 10 **Annex B Bibliography**

1. <https://www.txcourts.gov/media/1440369/fsc-policies-and-procedures-adopted-20131101.pdf> Texas Forensic Science Commission
2. <https://www.justice.gov/sites/default/files/open/legacy/2013/07/29/doj-scientific-integrity-policy.pdf> DOJ Scientific Integrity Policy
3. <https://www.justice.gov/open/doj-scientific-integrity-policy.pdf> DOJ Scientific and Research Integrity Policy
4. [http://txrules.elaws.us/rule/title37\\_chapter651\\_sec.651.219](http://txrules.elaws.us/rule/title37_chapter651_sec.651.219) Texas Code of Professional Responsibility
5. <https://anab.qualtraxcloud.com/ShowDocument.aspx?ID=6732> Guiding Principles of Professional Responsibility for Forensic Service Providers and Forensic Personnel
6. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/880708/Codes\\_of\\_Practice\\_and\\_Conduct\\_-\\_Issue\\_5.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880708/Codes_of_Practice_and_Conduct_-_Issue_5.pdf) Forensic Science Regulator Codes of Practice and Conduct
7. <https://malegislature.gov/Laws/GeneralLaws/Part/TitleXXI/Chapter149/Section52C> MGL - Personnel Records
8. <https://www.nist.gov/osac/osac-subcommittees> The Organizational of Scientific Area Committees (OSAC) for Forensic Science Subcommittees