



# NATIONAL COMMISSION ON FORENSIC SCIENCE



## Recommendation to the Attorney General National Code of Professional Responsibility for Forensic Science and Forensic Medicine Service Providers

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<b>Subcommittee</b>
Interim Solutions

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<b>Approved by Subcommittee</b>	02/29/2016
<b>Approved by Commission</b>	03/22/2016
<b>Action by Attorney General</b>	09/16/2016

### Attorney General Action

The Department of Justice (DOJ) responded on September 16, 2016, by adopting a new code of professional responsibility for Department forensic laboratories based on the recommendation. For more information, please see the Attorney General’s Memorandum at: <https://www.justice.gov/opa/file/891366/download>.

### Commission Action

The Commission voted to adopt this Recommendation on March 22, 2016 by more than a two-thirds majority vote (77% yes, 20% no, 3% abstain).

*Note: This document includes recommendations developed and adopted by the National Commission on Forensic Science and proposes specific acts that the Attorney General could take to further the goals of the Commission. The portion of the document directly labeled “Recommendations” represents the formal recommendations of the Commission. Information beyond that section is provided for context. This document does not necessarily represent the views of the Department of Justice or the National Institute of Standards and Technology. The National Commission on Forensic Science is a Federal Advisory Committee established by the Department of Justice. For more information, please visit: <https://www.justice.gov/ncfs>.*

### Overview

The US Attorney General should require the forensic science service providers within the Department of Justice to adopt the National Code of Professional Responsibility for Forensic Science and Forensic Medicine Service Providers<sup>1</sup>, that the Code be annually reviewed

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<sup>1</sup> A forensic science service provider is defined by the NCFS as any forensic science agency or forensic science practitioner providing forensic science services. A forensic medicine service provider is any forensic medicine agency or forensic medicine practitioner providing forensic medicine services.

and signed by all forensic science service providers, and that steps be defined to address violations.

The US Attorney General should strongly urge all forensic science and forensic medicine service providers, associated certification and accreditation bodies, and professional societies to adopt the National Code of Professional Responsibility for Forensic Science and Forensic Medicine Service Providers, and for their management systems to develop policies and procedures to enforce the standards embodied in this code.

### **Statement of Issue**

The 2009 National Research Council of the National Academies report entitled *Strengthening Forensic Science in the United States: A Path Forward* (“NAS Report”) recommended a national code of ethics for all forensic science disciplines and encouraged professional forensic science societies to incorporate the national code into their own codes of professional responsibility and code of ethics. The NAS Report also recommended exploring mechanisms to enforce serious ethical violations. In 2010, the Education, Ethics, and Terminology Inter-Agency Working Group (EETIWG) of the National Science and Technology Council’s Subcommittee on Forensic Science developed a National Code of Ethics and Professional Responsibility for the Forensic Sciences (NCEPRFS). Further, the EETIWG recommended that all practitioners “who provide reports and expert opinion testimony with respect to forensic evidence in United States courts of law, adopt the NCEPRFS.” Unfortunately, this recommendation was not acted upon and no NCEPRFS exists today.

### **Background**

The EETIWG reviewed codes of ethics in use by forensic science organizations. While it noted the lack of a single code of ethics that covered all forensic disciplines, the working group identified four major categories addressed by every code of ethics it reviewed: 1) working within professional competence, 2) providing clear and objective testimony, 3) avoiding conflicts of interest, and 4) avoiding bias and influence, real or perceived.

The EETIWG found that the most broadly applicable code of ethics that would best serve as the NCEPRFS was the *ASCLD/LAB Guiding Principles of Professional Responsibility for Crime Laboratories and Forensic Scientists*. The working group found that the principles in this document were appropriate to the work conducted in the federal forensic laboratories, and ultimately proposed that the ASCLD/LAB document be adopted as the NCEPRFS. The Interim Solutions Subcommittee of the National Commission on Forensic Sciences utilized this code as its starting point for a National Code of Professional Responsibility (“Code”) for all forensic science and forensic medicine service providers. The subcommittee chose professional responsibility rather than ethics as the title because ethics is a much broader term referring to many issues beyond those directly associated with forensic science and forensic medicine service providers’ professional responsibilities.

Perhaps the key element lacking from the proposed NCEPRFS was the acknowledgement and address of serious violations of professional conduct, as recommended in the NAS Report.

Oversight and enforcement are critical to compliance.

Most practitioners in forensic science and forensic medicine are committed, hard-working, ethical professionals; however, education and guidance on professional responsibility is uneven and there is no enforceable universal code of professional responsibility. In addition, when nonconformities or breaches of law or professional standards that adversely affects a previously issued report or testimony occur, there must be a process in place for reporting and remediation.

## **THE CODE**

### **The National Code of Professional Responsibility for Forensic Science and Forensic Medicine Service Providers**

The National Code of Professional Responsibility (“Code”) defines a framework for promoting integrity and respect for the scientific process among forensic science and forensic medicine service providers, both practitioners and agencies, including its managers, must meet requirements 1-15 enumerated below. Requirement 16 specifically refers to the responsibility of forensic science and forensic medicine management rather than individual practitioners.

1. Accurately represent relevant education, training, experience, and areas of expertise
2. Be honest and truthful in all professional affairs including not representing the work of others as one’s own
3. Foster and pursue professional competency through such activities as training, proficiency testing, certification, and presentation and publication of research findings
4. Commit to continuous learning in relevant forensic disciplines and stay abreast of new findings, equipment, and techniques
5. Utilize scientifically validated methods and new technologies, while guarding against the use of unproven methods in casework and the misapplication of generally-accepted standards
6. Handle evidentiary materials to prevent tampering, adulteration, loss, or nonessential consumption of evidentiary materials
7. Participation in any case in which there is a conflict of interest shall be avoided
8. Conduct independent, impartial, and objective examinations that are fair, unbiased, and fit-for-purpose
9. Make and retain contemporaneous, clear, complete, and accurate records of all examinations, tests, measurements, and conclusions, in sufficient detail to allow meaningful review and assessment by an independent professional proficient in the discipline
10. Ensure interpretations, opinions, and conclusions are supported by sufficient data and minimize influences and biases for or against any party
11. Render interpretations, opinions, or conclusions only when within the practitioner’s proficiency or expertise

12. Prepare reports and testify using clear and straightforward terminology, clearly distinguishing data from interpretations, opinions, and conclusions and disclosing known limitations that are necessary to understand the significance of the findings
13. Reports and other records shall not be altered and information shall not be withheld for strategic or tactical advantage
14. Document and, if appropriate, inform management or quality assurance personnel of nonconformities<sup>2</sup> and breaches of law or professional standards
15. Once a report is issued and the adjudicative process has commenced, communicate fully when requested with the parties through their investigators, attorneys, and experts, except when instructed that a legal privilege, protective order or law prevents disclosure.
16. Appropriately inform affected recipients (either directly or through proper management channels) of all nonconformities or breaches of law or professional standards that adversely affect a previously issued report or testimony and make reasonable efforts to inform all relevant stakeholders, including affected professional and legal parties, victim(s) and defendant(s).

## Recommendations

The National Commission on Forensic Science recommends that the Attorney General take the following action(s):

- **Recommendation #1: The Attorney General should require all DOJ forensic science service providers to adopt the Code and for their management systems to develop policies and procedures to enforce the standards embodied in this code.**

Policies and procedures should describe or define a system whereby individuals are protected when reporting suspicious, unscrupulous, unethical, or criminal actions without punitive concerns. The Code must be annually reviewed and signed by all DOJ forensic science service providers. In addition, there must be an effective process to report and correct nonconformities or breaches of law or professional standards that adversely affects a previously issued report or testimony.

- **Recommendation #2: The Attorney General should strongly urge all forensic science and medicine service providers, associated certification and accreditation bodies, and professional societies to adopt the Code, and for their management systems to develop policies and procedures to enforce the standards embodied in this code.**

Policies and procedures should describe or define a system whereby individuals are protected when reporting suspicious, unscrupulous, unethical, or criminal actions without punitive concerns. The Code should be annually reviewed and signed by all forensic science and forensic medicine service providers. In addition, there should be an effective process to report and correct nonconformities or breaches of law or professional standards that adversely affects a previously issued report or testimony.

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<sup>2</sup> Nonconformities are any aspect of laboratory work that does not conform to its established procedures. An evaluation of the nonconformity risk is appropriate to deciding whether or not reporting is necessary.