

MEETING 11
SUBCOMMITTEE
REPORTS



NATIONAL COMMISSION ON FORENSIC SCIENCE

NIST
National Institute of
Standards and Technology
U.S. Department of Commerce

Accreditation & Proficiency Testing Subcommittee Report September 12-13, 2016

Project
Accreditation of Digital and Multimedia Forensic Science Service Providers – Recommendation to the Attorney General
Status
Initial Draft for Public Comment (APT Subcommittee Vote = 13 Yes, 0 No, 2 Abstain)
Discussion
<p>Due to the high volume of public comments made with concerns regarding the first iteration of this work product (submitted for public comment at Meeting 9), it was revised and is being submitted as an initial draft to go out for a second round of public comments. Initial feedback on the revisions from SMEs in the community is positive. Additional public comments are welcomed and the subcommittee anticipates a recommendation will be finalized shortly. The recommendations made in this revised work product include the following:</p> <ul style="list-style-type: none">• The Attorney General should direct the DOJ DME FSSPs to maintain accreditation, or if not accredited, to prepare for accreditation using accrediting bodies that submit to and are in compliance with ISO/IEC 17011 and are a signatory to the ILAC MRA. Ideally, accreditation shall be to internationally recognized standards (i.e., ISO/IEC 17025 <i>General Requirements for the Competence of Testing and Calibration Laboratories</i> or ISO/IEC 17020 <i>General Criteria for the Operation of Various Types of Bodies Performing Inspection</i>).• The Attorney General should direct the DOJ DME FSSPs to implement the Critical Steps to Accreditation as best practices until accreditation can be achieved. These elements include: 1) written procedures for evidence (security/control/handling), 2) written reports, 3) technical and administrative review of reports and supporting records, 4) testimony monitoring, 5) note-taking, 6) technical procedures, 7) training programs, 8) proficiency testing, and 9) corrective and preventive action processes.• The Attorney General should require that Federal prosecutors, where practicable and in cases in which they are in a position to request forensic testing, contract with accredited DME FSSPs. This provision does not apply to analyses conducted prior to the involvement of a Federal prosecutor.• The Attorney General should appoint a group to determine best standards and supplemental requirements for accreditation of DME FSSPs, especially if they are not affiliated with an FSSP with existing accredited services.• The Attorney General should provide education to the DME community on accreditation, applicability, requirements, and benefits for the digital evidence discipline.

<ul style="list-style-type: none"> • The Attorney General should encourage, by all means possible, the path to accreditation for all DME FSSPs utilizing any available mechanisms.
Project
Proficiency Testing – Recommendation to the Attorney General
Status
Final Draft for Vote by NCFS (APT Subcommittee Vote = 14 Yes, 0 No, 1 Abstain)
Discussion
<p>The National Commission on Forensic Science (NCFS) previously adopted the policy recommendation on the Universal Accreditation of all Forensic Science Service Providers (FSSPs) and also a Views document on the current state of Proficiency Testing in Forensic Science. The NCFS has expressed the view that as a recognized quality control tool, proficiency testing should also be implemented by non-accredited FSSPs in disciplines where proficiency tests are available from external organizations. This document takes these concepts further and includes recommended actions for the Attorney General in this area:</p> <ul style="list-style-type: none"> • Recommendation #1: Require all DOJ FSSP’s to participate in a proficiency testing program applicable to the area(s) in which they conduct forensic analysis within three years of acceptance of this recommendation. • Recommendation #2: Encourage all FSSP’s to participate in proficiency testing programs using the tools available to DOJ including grant funding, training and education and preferential selection to FSSPs that engage in proficiency test programs for grants and work on federal cases. • Recommendation #3: Require all DOJ FSSP’s to seek proficiency testing programs that provide sufficiently rigorous samples that are representative of the challenges of forensic casework. • Recommendation #4: Encourage external vendors that provide proficiency tests to DOJ to share their aggregate data with entities doing research and analysis. <p>All public comments were discussed and adjudicated by the subcommittee; some minor changes and clarifications were incorporated into this final version. It is now presented to the NFCS for a final vote and adoption.</p>

Project
Certification of Forensic Science Practitioners – Views Document
Status
Final Draft for Vote by NCFS (APT Subcommittee Vote = 14 Yes, 0 No, 1 Abstain)
Discussion
<p>The subcommittee developed a document discussing the complex issues surrounding certification in forensic sciences that includes an overview of the current state and challenges in certification of forensic science practitioners. All public comments were discussed and adjudicated by the subcommittee; changes were incorporated into this final version to address suggestions and clarify language. The appendices were updated with best available information</p>

and made consistent between the two certification documents. Additional language was added to the appendix describing the differences between accreditation and certification. It is now presented to the NFCS for a final vote and adoption.

Project

Accreditation of Forensic Science Certification Bodies – Views Document

Status

Final Draft for Vote by NCFS (APT Subcommittee Vote = 14 Yes, 0 No, 1 Abstain)

Discussion

The subcommittee developed a document discussing the complex issues surrounding certification in forensic sciences that includes an overview of the current state and challenges relating to certifying bodies and entities that accrediting certifying bodies. All public comments were discussed and adjudicated by the subcommittee; changes were incorporated into this final version to address suggestions and clarify language. The appendices were updated with best available information and made consistent between the two certification documents. Additional language was added to the appendix describing the differences between accreditation and certification. It is now presented to the NFCS for a final vote and adoption.

Project

Accreditation Programs Requirements – Views Document

Status

Final Draft for Vote by NCFS (APT Subcommittee Vote = 14 Yes, 0 No, 1 Abstain)

Discussion

After completion of the Universal Accreditation recommendation the subcommittee felt there was value in an evaluation and review of the existing accreditation programs for FSSPs. While universal accreditation can demonstrate ongoing compliance with industry best practices, promote standardization, and improve the quality of services provided by FSSPs nationally; it is recognized that strengthening the accreditation programs will also strengthen the FSSPs and forensic science overall. The initial draft received significant public comments requesting clarification of the document statements and suggested program changes. All public comments were discussed and adjudicated by the subcommittee; changes were incorporated into this final version to address each point and clarify language. Additional information on the variation between accrediting bodies and importance of guidance from external bodies such as SDOs and OSAC was included. It is now presented to the NFCS for a final vote and adoption.



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Scientific Inquiry and Research Subcommittee Report September 12-13, 2016

Project
Technical Merit Evaluation of Forensic Science Methods and Practices – Recommendation to the Attorney General
Status
Final Draft
Discussion
<p>This document was sent back to the Subcommittee at Meeting 10, revised and sent out for an interim public comment period in July, and is now being presented at Meeting 11 for vote and ultimately adoption by the Commission. The recommendations made in this document are as follows:</p> <p>Recommendation #1: NIST should establish an in-house entity with the capacity to conduct independent scientific evaluations of the technical merit of test methods and practices used in forensic science disciplines.</p> <p>Recommendation #2: The results of the evaluations will be issued by NIST as publicly available resource documents. NIST's evaluation may include but is not limited to: a) research performed by other agencies and laboratories, b) its own intramural research program, or c) research studies documented in already published scientific literature. NIST should initially begin its work by piloting three resource documents to establish their design and requirements. The release of these documents should be broadly disseminated in the scientific and criminal justice communities and accompanied by judicial trainings.</p> <p>Recommendation #3: The Organization of Scientific Area Committees for Forensic Science (OSAC) leadership, the Forensic Science Standards Board (FSSB), should commit to placing consensus documentary standards on the OSAC Registry of Approved Standards for only those forensic science test methods and practices where technical merit has been established by NIST, or in the interim, established by an independent scientific body. An example of an interim independent scientific body could be an OSAC created Technical Merit Resource Committee composed of measurement scientists and statisticians appointed by NIST and tasked with the evaluation of technical merit.</p>



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Reporting and Testimony Subcommittee Report September 12-13, 2016

Project
Documentation, Case Record and Report Contents – A Recommendation to the Attorney General
Status
Final Draft
Discussion
This document assumes adoption by the commission of the proposed Report and Case Records Content - Views Document . Following adoption of that document it recommends that Forensic Science Service Providers within the Department of Justice develop and maintain written policies for the documentation, testing and analysis of evidence and its reporting. It offers five recommendations. Those recommendations address timing and completeness of the documentation, accessibility of other case-related documents and laboratory protocols, report case record content consistent with its companion views document. The subcommittee voted 18 to 0 to forward this document to the commission. Julia Leighton will report on the adjudication of comments following the last meeting and assist in answering any questions posed by members of the Commission.

Project
Statistical Statements in Forensic Testimony – Views Document
Status
Initial Draft
Discussion
This views document presents background information on the following question: When experts present the results of forensic science examinations, tests, or measurements, what quantitative or qualitative statistical statements of relevance and reliability should they provide? The subcommittee voted 16 – 4 in favor of sending the Views Document to the Commission. Stephen Feinberg will assist in answering questions on this document.

Project
Report and Case Records Content - Views Document
Status
Discussion
<p>This document expresses the view that certain information should be contained within a laboratory report. The document identifies other information that should be contained outside the report, in the “case record,” also known as the “case file.” The document takes the view that if the case record is discoverable (subject to certain limitations), it is not necessary for many items to be included in the” report.” The document identifies what information, in the proposed view of the commission, should be contained in the report and what information is appropriate for inclusion in the “record.” The draft borrows heavily on recommendations developed by the White House Office of Science and Technology Policy, Subcommittee on Forensic Science (SOFS) and to other identified sources as well. The subcommittee approved submission of this views document by a vote of 22-0.</p>

Project
Access of Indigents to Defense Experts – Views Document
Status
Abstract presented at Meeting #8
Discussion
<p>Statement of the Issue - The reliability of expert evidence often cannot be fully understood, challenged or tested by defense counsel without assistance from a defense expert. Indigent defendants however, often have difficulty obtaining expert assistance. This is not true in most cases of prosecutors or defense counsel representing more affluent defendants.</p> <p>Background - In many criminal cases, securing the services of experts to examine evidence, to advise counsel, and/or to testify at trial is critical. As the commentary to the American Bar Association’s Standards on Criminal Justice notes: “The quality of representation at trial . . . may be excellent and yet unhelpful to the defendant if the defense requires the assistance of a psychiatrist or handwriting expert and no such services are available.”</p> <p>Recent U.S. Supreme Court cases concerning ineffective assistance of counsel have also emphasized the need for defense experts. In <i>Harrington v. Richter</i> (2011), the Court wrote: “Criminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence.” “Prosecution experts, of course, can sometimes make mistakes. Indeed, we have recognized the threat to fair criminal trials posed by the potential for incompetent or fraudulent prosecution forensics experts This threat is minimized when the defense retains a competent expert to counter the testimony of the prosecution’s expert witnesses; it is maximized when the defense instead fails to understand the resources available to it by law.” <i>Hinton v. Alabama</i> (2014)</p> <p>The Commission should address this issue.</p>



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Human Factors Subcommittee Report September 12-13, 2016

Project
Facilitating Research on Laboratory Performance - Views Document
Status
Final Draft
Discussion
This is a views document discussing performance testing in crime laboratories and its potential to achieve a variety of important goals, including helping to establish the accuracy, reliability and validity of forensic science evidence

Project
Use of Checklists in Forensic Science - Views Document
Status
Initial Draft
Discussion
This views document discusses the criticality of ensuring the precise performance of repetitive activities and avoid bias in all forensic activities in order to generate accurate forensic data and increase the likelihood that justice will be served. The subcommittee recommends a research agenda to identify specific procedures, programs, or areas of practice for forensic science service providers (FSSPs) or forensic science medical providers (FSMPs) that might benefit from checklist applications. Such targets could then be the focus of forensic research on checklist development, using scientifically proven methods to identify the utility of checklists in forensic science.

Project
Forensic Pathology and Biasing Information Control
Status
Work in progress
Discussion
Sub-group of subcommittee, with two added members from the medical pathology profession, are exchanging ideas and drafts on how the field of forensic pathology can and should apply practices such as information management and sequential unmasking to address and reduce the risk of biasing information distorting judgment and reporting. The subcommittee is assessing whether this should be submitted for discussion to the entire Commission.

Project
Lab Questionnaire
Status
Previously reported on the NCFS; data continues to be reviewed
Discussion
A sub-group of the subcommittee continues to analyze the data from the lab questionnaire previously sent out via ASCLD.



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Medicolegal Death Investigation Subcommittee Report September 12-13, 2016

Project
Next of Kin Communication and Interactions during Medicolegal Death Investigations – Views Document
Status
Final Draft
Discussion
<p>“When a death requiring a medicolegal death investigation occurs, families will have many questions and concerns as they assimilate and accept information about the death of their loved one. Families of individuals who died in situations requiring an investigation experience additional challenges and emotions not faced by families following “normal or anticipated” deaths. Sudden deaths exacerbate the experience of grief and loss- regardless of the manner of death. The investigation generally delays and often affects mourning rituals, and thus has the potential to create uncertainty, additional frustration and psychological stress.</p> <p>How medicolegal professionals communicate with families in the aftermath of a death will have a direct impact on their ability to cope, their view of the medicolegal system, and their willingness to cooperate with the investigation and future proceedings.”(1) Therefore, the impact of communication issues affects not only next of kin, but all investigators and the general public as well. It is the intention of the Medicolegal Death Investigation subcommittee to create a views document to address the issues surrounding next of kin communications and interactions during medicolegal death investigations to support consistency and sensitivity for the benefit of all.</p>

Project
Formation of a National Office for Medicolegal Death Investigation – Recommendation to the Attorney General
Status
Final Draft
Discussion
<p>The medicolegal death investigation system has many needs which are not being met. These needs involve accreditation of facilities, certification of personnel, development of modern facilities to replace outdated facilities and in areas which lack readily available qualified service providers (underserved areas), and improved recruitment and retention of professionals in the specialty of forensic pathology. There is not a single federal, other governmental or private-sector organization or agency whose primary responsibility and goal is to coordinate and enable ongoing support of these needs. A permanent office is needed to coordinate support the medicolegal death investigation system.</p> <p>The National Commission on Forensic Science recommends that the Attorney General take the following action(s):</p> <ul style="list-style-type: none"> • Recommendation #1: The Attorney General should work with the Whitehouse Office of Science and Technology Policy’s Medicolegal Death Investigation Working Group and other federal agencies and professional organizations to develop a permanent National Office of Medicolegal Death Investigation which would coordinate ongoing support of the nation’s medicolegal death investigation systems to improve quality, consistency and the meeting of criminal justice and public health needs. Such support would not only be for daily and routine operations, but for development and implementation of new technologies, equipment, personnel, and the fostering of research with federal funding and agency support. • Recommendation #2: The Attorney General should, through the National Office in conjunction with the National Institute of Justice, recommend ongoing funding and support to improve the recruitment and retention of forensic pathologists, modernization of facilities and creation of facilities in underserve areas, accreditation of medicolegal offices and certification of its personnel, and the establishment of a national information network for the nation’s medical examiner and coroner offices. <p>The intent of the recommendations does not include "federalization" of medicolegal death investigation which has been a matter for state and local governance and primary support. Instead, the concept of a national office is to support local and state efforts with research, development and necessary grant funding, not to supplant state and local control.</p>

Project
Model Legislation for Medicolegal Death Investigation Systems – Recommendation to the Attorney General
Status
Initial Draft
Discussion
<p>The National Commission on Forensic Science requests that the Attorney General of the United States advocate and provide financial support for the drafting of model medicolegal death investigation legislation by the Uniform Law Commission.</p> <p>The 1954 Postmortem Examinations Act was an early model medical examiner act; no equivalent model coroner act exists. The 1954 act is so obsolete that it provides little guidance for either modern medical examiner or coroner legislation and needs to be updated. Model legislation would assist State governments to improve the quality of their medicolegal death investigation statutory framework and their ability to conduct adequate medicolegal death investigations.</p>

Project
Recognizing the Autonomy and Neutrality of Forensic Pathologists – Views Document
Status
Initial Draft
Discussion
<p>Currently, many medicolegal offices do not allow (or they restrict) forensic pathologists (FPs) from performing private work outside of their full-time employment, to include consultative work and/or locum tenens for reasons of alleged conflicts of commitment and/or interest. Because of the national shortage of forensic pathologists, this means that the public, courts and defendants, both civil and criminal, are deprived of forensic services.</p> <p>There must be recognition that forensic pathologists operate as autonomous and neutral scientists, and that forensic pathologists must be available to consult with prosecuting, plaintiff and/or defense attorneys and investigators in both criminal and civil law cases arising from their official death investigation duties as well as on private, independent consultations.¹</p> <p>Conflict-of-interest rules pertaining to private consult work need to be narrowly defined (e.g. salaried pathologists are only restricted from personal gain on cases that fall in their jurisdiction, or be limited from doing private work on government time or with government resources), but not so broadly defined that the pathologist cannot speak out in the public interest in cases outside their employing public entity's jurisdiction or on their own time.</p>