

MEETING 12
SUBCOMMITTEE
REPORTS



NATIONAL COMMISSION ON FORENSIC SCIENCE

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

Accreditation & Proficiency Testing Subcommittee Report January 9-10, 2017

Project
Accreditation of Digital and Multimedia Forensic Science Service Providers – Recommendation to the Attorney General
Status
Final Draft for vote by the Commission (APT Subcommittee Vote = 15 Yes, 0 No, 0 Abstain)
Discussion
Due to the high volume of public comments made regarding the first iteration of this work product (submitted for public comment at Meeting 9), this recommendation document was revised and sent go out for a second round of public comments. Public comments were received, adjudicated by the subcommittee on October 27, 2016 and this document is now being presented as a Final draft for vote by the Commission.



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Human Factors Subcommittee Report January 9-10, 2017

Project
Use of Checklists in Forensic Science - Views Document
Status
Final Draft for vote by the Commission
Discussion
<p>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.</p>

Project
Forensic Pathology and Biasing Information Control
Status
<p>Discussions on this topic are completed at this point in time. Depending on future goals of the Commission, we hope to undertake [perhaps in conjunction with Reporting and Testimony] the issue of how to effectively communicate science results in the courtroom.</p>
Discussion
<p>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.</p>

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 January 9-10, 2017

Project
Model Legislation for Medicolegal Death Investigation Systems – Recommendation to the Attorney General
Status
Final Draft for vote by the Commission
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
Final Draft for vote by the Commission
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>

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.

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.

The MDI Subcommittee does not plan to undertake any new projects until after the NCFS meeting scheduled for April 2017, and/or the future of the Commission after April 2017 has been determined.



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Reporting and Testimony Subcommittee Report January 9-10, 2017

Project
Statistical Statements in Forensic Testimony – Views Document
Status
Final Draft for vote by the Commission
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.

Project
Report and Case Records Content - Views Document
Status
Final Draft for vote by the Commission
Discussion
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.

Project
Indigent Access 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>