



Office of the Attorney General
Washington, D. C. 20530

September 6, 2016

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM:

THE ATTORNEY GENERAL

SUBJECT:

Recommendations of the National Commission on Forensic Science;
Announcement for NCFS Meeting Eleven

As part of the Department's ongoing coordination with the National Commission on Forensic Science (NCFS), I am responding today to several NCFS recommendations to advance and strengthen forensic science. These recommendations involve promoting professional responsibility among forensic practitioners, instituting best practices in quality management of forensic laboratories, and advancing the relationship between academic forensic research and practical implementation.

I am pleased to announce today that I am directing Department components to take several steps to support these goals. I ask that you work with the Deputy Attorney General to implement these policies and issue guidance as appropriate.

1. Department forensic laboratories will review their policies and procedures to ensure that forensic examiners are not using the expressions "reasonable scientific certainty" or "reasonable [forensic discipline] certainty" in their reports or testimony. Department prosecutors will abstain from use of these expressions when presenting forensic reports or questioning forensic experts in court unless required by a judge or applicable law.
2. The Department is adopting a new code of professional responsibility for Department forensic laboratories. This code, which builds on the Department's Scientific Research and Integrity Policy and the Guiding Principles of Professional Responsibility of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board, will apply to Departmental forensic examiners. The code is attached here.
3. The Department's forensic laboratories that support criminal investigation and prosecution will post current quality management system (QMS) documents¹ and existing summaries of internal validation studies online within 18 months. QMS documents and

¹ QMS documents are documents in existence or that would be created as part of the ordinary course of business or in accordance with other existing obligations and include policies, procedures or specifications for forensic testing, examination, and analysis, and classification standards for forensic examiners.

existing summaries of internal validation studies may be posted in a format of each laboratory's choice and redacted for security, investigative, intelligence, and other statutory exemption reasons. This mandate does not alter existing discovery obligations.

4. The National Institute of Justice will explore the possibility of implementing a grant program to fund multiyear post-doctoral fellowships at federal, state, and local forensic science service providers and forensic medicine service providers.

Department of Justice
Code of Professional Responsibility for the Practice of Forensic Science

The following Code of Professional Responsibility for the Practice of Forensic Science (Code) defines a framework for promoting integrity and respect for the scientific process.¹ Forensic science 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 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. Conduct research and forensic casework using the scientific method or agency best practices. Where validation tools are not known to exist or cannot be obtained, conduct internal or inter-laboratory validation tests in accordance with the quality management system in place.
6. Handle evidentiary materials to prevent tampering, adulteration, loss, or nonessential consumption of evidentiary materials.
7. Avoid participation in any case in which there is a conflict of interest.
8. Conduct 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.

¹ These provisions are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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. Reports should disclose known limitations that are necessary to understand the significance of the findings.
13. Do not alter reports and other records or withhold information for strategic or tactical advantage.
14. Document and, if appropriate, inform management or quality assurance personnel of nonconformities² and breaches of law or professional standards.
15. Honestly communicate with all parties (the investigator, prosecutor, defense, and other expert witnesses) about all information relating to their analyses, when communications are permitted by law and agency practice.³
16. Inform the prosecutors involved through proper laboratory management channels of material nonconformities or breaches of law or professional standards that adversely affect a previously issued report or testimony.⁴

² 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.

³ Agency practice may vary depending on the status of the case or due to safety concerns.

⁴ Prosecutors have independent reporting requirements based on codes of professional responsibility and ethics.