



**AMERICAN SOCIETY OF  
CRIME LABORATORY DIRECTORS, INC.**

**139 A Technology Drive Garner, NC 27529**

December 22, 2015

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Attn: Interim Solutions Subcommittee

The American Society of Crime Laboratory Directors represents more than 600 members of crime laboratory directors and forensic science managers dedicated to providing excellence in forensic science through leadership and innovation. The membership represents both private and public institutions from all 50 states in the U.S. and eighteen countries from across the globe. Our mission is to promote the effectiveness of crime laboratory leaders throughout the world by facilitating communication among members, sharing critical information, providing relevant training, promoting crime laboratory accreditation, and encouraging scientific and managerial excellence in the global forensic science community.

ASCLD is dedicated to advancing forensic science through a multitude of initiatives including the National Commission on Forensic Science. ASCLD currently has twenty-five members serving on the Commission and its subcommittees. The efforts of the Commission are important and have significant implications for the entire criminal justice community. As a result, the ASCLD Board of Directors offers the following comments, recommendations, and impact statements for consideration by the subcommittee for the “National Code of Professional Responsibility for Forensic Science and Forensic Medicine Service Providers”.

ASCLD remains ready to be a continuing resource to assist the Commission and the Department of Justice in the development of these important work products for the forensic science community so that a broader based acceptance and implementation of these products may be realized.

Regards,

ASCLD Board of Directors



# The American Society of Crime Laboratory Directors

**"Excellence Through Leadership in Forensic Science Management"**

## ASCLD Board Comments

### **Directive Recommendation: "National Code of Professional Responsibility for Forensic Science and Forensic Medicine Service Providers"**

ASCLD is very supportive of the development of a National Code of Professional Responsibility that transcends accreditation program, professional society, or jurisdiction. Additionally, ASCLD largely endorses the current draft of the Code with the exception of two related areas of the Code. ASCLD would also like to request the addition of one requirement to the National Code of Professional Responsibility.

**1. ASCLD requests the National Commission on Forensic Science define the term, "nonconformance".** If no clarification is made, the use of this language is problematic and could have unintended consequences resulting in an under-adoption of the Code making it largely ineffective.

**Discussion:** For those FSSPs/FSMPs which participate in an accreditation system, nonconformance encompasses a broad range of events within a quality system. These events range in severity from those that only minimally impact the quality of the FSSP's/FSMP's work product (i.e. misspelled word or grammar error in report) to catastrophic events which call into question the integrity of the FSSP's/FSMP's overall work product (i.e. dry-labbing).

Generally, a broad-based disclosure to interested parties is not merited when a nonconformance event occurs that minimally impacts the quality of the work product and is disclosed to interested parties through routine discovery processes. Conversely, ASCLD fully supports the notification to interested parties when a catastrophic event of misconduct or negligence occurs along with an appropriate corrective action and/or investigation.

**Recommendation:** ASCLD recommends that non-conformances which occur as a result of serious negligence or misconduct substantially affecting the integrity of the forensic results be reported to affected recipients.



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**2. ASCLD requests the National Commission on Forensic Science clarify the responsibility for notification of non-conformances to affected recipients.** As it is currently written, the code places a tremendous burden regarding disclosure of the nonconformance upon the employee, and only marginally on the employer.

**Discussion:** The National Code of Professional Responsibility states, "16. Appropriately inform affected recipients (either directly or through proper management channels) of all nonconformities or breaches of law or ethical standards that adversely affect a previously issued report or testimony and encourage others to inform all relevant stakeholders, including affected professional and legal parties, victim(s) and defendant(s)."

As currently written, the Code does not place enough emphasis on the responsibility of the parent organization, i.e. crime laboratory, to make the notification of non-conformances and too much emphasis on the individual practitioner. The principle of #16 should apply to specific instances of examiner professional negligence and misconduct as well as systemic irregularities that have the potential to compromise the integrity of convictions. Practitioners should report non-conformances to their supervisors, and management must communicate the scientific issues and their potential impact to potentially affected stakeholders. If the practitioner is operating independently of a parent organization, then the practitioner bears all responsibility for making notifications of non-conformances.

In cases of a discrete irregularity impacting a single case, notice will likely be sufficient when limited to the affected parties in the case. Broader public notice (website postings or sending to state criminal prosecutor and defense associations) may be necessary in cases of systemic irregularities. Once this type of notification is made to the broader criminal justice community, It is up to the other members of the stakeholder community (not just the scientists but certainly including the scientists) to explain the scientific issues, their potential impact, and to work to make disclosure of non-conformances effective. Everyone should play their part to ensure notice goes to affected individuals in a timely manner. No single component of the system can accomplish the task alone—it must be a collaborative effort in the interest of justice.

**Recommendation:** Clarify the role of the individual analyst and the parent organization, if applicable, regarding notifications of non-conformances to affected parties.



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- 3. ASCLD requests the following be added to the document, "Ensure that all proficiency tests, competency tests, examinations, or assessment tools however named are solely the independent work of the scientist in order to assess their capabilities and understanding."**

ASCLD believes that with the revision addressing these two areas, as well as incorporating the addition, the Code could become the standard for the industry and allow all stakeholders to have a clear expectation regarding professional conduct of FSSPs and FSMPs.

ASCLD Board of Directors