



F2 Licensing of Forensic Analysts in Texas and Implications for Individual Professional Misconduct

Leigh M. Tomlin, JD, Austin, TX 78701*

Learning Overview: After attending this presentation, attendees will understand the oversight approach taken in Texas with respect to individual forensic analysts, including licensure of practicing forensic analysts and disciplinary action taken pursuant to a finding by the Forensic Science Commission (FSC) of professional negligence or misconduct.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by demonstrating one approach to tracking negligence and misconduct by state forensic practitioners, including examples of disciplinary action taken by the Commission pursuant to its investigative and forensic analyst licensing authority.

In Texas, the FSC is the oversight body tasked with improving the integrity and reliability of forensic science in Texas criminal cases. As part of its mandate, the FSC investigates allegations of professional negligence and misconduct in accredited crime laboratories—allegations that are received in the form of a complaint or a required disclosure from a crime laboratory. In addition to its investigative authority, the Texas Legislature more recently tasked the Commission with creating a forensic analyst licensing program. Forensic analysts in Texas were required to be licensed by the Commission effective January 1, 2019. As part of its licensing authority, the Commission may take disciplinary action against a license holder or applicant for a license after an investigative finding of professional misconduct or on a determination a license holder has violated a rule or order of the Commission, including violations of the Texas Code of Professional Responsibility for Forensic Analysts and Crime Laboratory Management. Findings by the Commission with respect to analyst conduct are based on the outcome of a full investigation by the Commission and described in a publicly available investigative report.

Disciplinary action may include revocation or suspension of a person's license, refusal to renew a person's license, reprimanding the license holder, or denying a person a license. The Commission may also place on probation a person whose license is suspended. Where a license suspension is probated, the Commission may require the license holder to report regularly to the Commission on matters that are the basis of the probation or continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the Commission in those areas that are the basis of the probation. In instances where the person's license is suspended or revoked, the Commission records and publishes this information on its website.

Recently, the Commission revoked a Seized Drugs Analyst's license as a result of its investigation of a self-disclosure by the employing laboratory in which the analyst engaged in the inappropriate manipulation of data during a competency test for a new qualitative analytical method. The method was used to distinguish legal hemp from illegal marijuana. The analyst acknowledged having manipulated the data when confronted. In its normal course of an investigation, the Commission notified the analyst of its investigation of the self-disclosure but never received a response from the analyst. Based on the information received from interviews with laboratory staff and documentation provided by the laboratory, the Commission found the act of data manipulation by the analyst constituted professional misconduct and recommended revocation of the analyst's license. The Commission notified the analyst of the finding and her right to appeal the finding, but received no response. Subsequently, the analyst's license was revoked, and the revocation was recorded in the Commission's published list of licensees.

In its consideration of disciplinary actions to be taken against an analyst, the Commission carefully considers mitigating and aggravating factors and circumstances specific to the incident, including an analyst's willingness to come forward and own up to a mistake or an analyst's ability to be retrained or rehabilitated.

Forensic Analyst Licensing, Oversight Regulation, Misconduct