TEXAS FORENSIC SCIENCE COMMISSION

Justice Through Science

FINAL REPORT ON SELF-DISCLOSURE BY NMS LABS CONCERNING SEIZED DRUG ANALYST JESSICA ALMOND

July 24, 2020

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I. COMMISSION BACKGROUND

A. History and Mission of the Texas Forensic Science Commission

In May 2005, the Texas Legislature created the Texas Forensic Science Commission ("FSC" or "Commission"). The Legislature amended the Texas Code of Criminal Procedure to add Article 38.01, which describes the composition and authority of the Commission.[1] During subsequent legislative sessions, the Texas Legislature further amended the Code of Criminal Procedure to clarify and expand the Commission's responsibilities and authority.[2]

Texas law requires the Commission to "investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by crime laboratory."[3] Texas law also requires the Commission to develop and implement a reporting system through which a crime laboratory must report professional negligence or professional misconduct and require crime laboratories that conduct forensic analyses to report professional negligence or professional misconduct to the Commission.[4]

The term "forensic analysis" is defined as a medical, chemical, toxicological, ballistic, or other examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action.[5] The statute excludes certain types of analyses from the "forensic analysis" definition, such as latent fingerprint analysis, a breath test specimen, and the portion of an autopsy conducted by a medical examiner or licensed

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[1] *See*, Act of May 30, 2005, 79th Leg., R.S., ch. 1224, § 1 (2005).
[2] *See e.g.*, Acts 2013, 83rd Leg. ch. 782 (S.B. 1238) §§ 1-4 (2013); Acts 2015, 84th Leg. ch. 1276 (S.B. 1287) §§ 1-7 (2015); TEX. CODE CRIM. PROC. art 38.01 § 4-a(b) (2019).
[3] TEX. CODE CRIM. PROC. art. 38.01 § 4(a)(3) (2019).
[4] *Id.* at § 4(a)(1)-(2) (2019). Additionally, pursuant to the Forensic Analyst Licensing Program Code of Professional Responsibility, members of crime lab management shall make timely and full disclosure to the Texas Forensic Science Commission of any non-conformance that may rise to the level of professional negligence or professional misconduct. *See,* 37 Tex. Admin. Code § 651.219(c)(5) (2018).
[5] TEX. CODE CRIM. PROC. art. § 38.35(a)(4) (2015).

physician.[6] The statute does not define the terms "professional negligence" and "professional misconduct." The Commission has defined those terms in its administrative rules.[7]

The Commission has nine members appointed by the Governor of Texas.[8] Seven of the nine commissioners are scientists or medical doctors and two are attorneys (one prosecutor nominated by the Texas District and County Attorney's Association and one criminal defense attorney nominated by the Texas Criminal Defense Lawyer's Association).[9] The Commission's Presiding Officer is Jeffrey Barnard, MD. Dr. Barnard is the Chief Medical Examiner of Dallas County and Director of the Southwestern Institute of Forensic Sciences in Dallas.

B. Investigative Process

The Commission's administrative rules set forth the process by which it determines whether to accept a complaint or self-disclosure for investigation as well as the process used to conduct an investigation.[10] The ultimate result is the issuance of a final report that under certain circumstances may result in disciplinary action against a forensic analyst license holder. The Commission's administrative rules include the process for appealing final investigative reports and, separately, disciplinary actions by the Commission against a license holder.[11]

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[6] For complete list of statutory exclusions, *see* TEX. CODE CRIM. PROC. art. 38.35(a)(4)(A)-(F) & (f) (2015).
[7] "Professional misconduct" means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.
"Professional negligence" means the forensic analyst or crime laboratory, through a material act or omission, negligently failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the negligent act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was negligent if the forensic analyst or crime laboratory should have been but was not aware of an accepted standard of practice. 37 Tex. Admin. Code § 651.302 (7) and (8) (2019).
[8] TEX. CODE OF CRIM. PROC. art. 38.01 § 3 (2019).
[9] *Id*.
[10] *See*, 37 Tex. Admin. Code § 651.304-307 (2019).
[11] 37 Tex. Admin. Code § 651.309 (2020); *Id.* at § 651.216.(2019)

C. Accreditation and Licensing Jurisdiction

The Texas Code of Criminal Procedure prohibits forensic analysis from being admitted in criminal cases if the crime laboratory conducting the analysis is not accredited by the Commission:[12] The term "forensic analysis" is defined in the Commission's enabling statute as follows:

> "Forensic analysis" means a medical, chemical, toxicological, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action (except that the term does not include the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician).[13]

The term "crime laboratory" includes a public or private laboratory or other entity that conducts a forensic analysis subject to this article.[14]

In addition to its crime laboratory accreditation authority, the 84th Texas Legislature expanded the Commission's responsibilities by creating a forensic analyst licensing program that: (1) establishes the qualifications for a license; (2) sets fees for the issuance and renewal of a license; and (3) establishes the term of a forensic analyst license.[15] The law also defines the term "forensic analyst" as "a person who on behalf of a crime laboratory [accredited by the Commission] that technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory.[16] The law further requires that any person who on behalf of a crime laboratory accredited by the Commission "technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court

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[12] TEX. CODE CRIM. PROC. art. 38.35 § (d)(1) (2015).
[13] TEX. CODE CRIM. PROC. art. 38.01 § 2(4) (2019).
[14] TEX. CODE CRIM. PROC. art. 38.35 § (a)(1).(2015)
[15] TEX. CODE CRIM. PROC. art. 38.01 § 4-a(d)(2019).
[16] Id. at § 4-a(a)(2).

or crime laboratory" must hold a forensic analyst license issued by the Commission, effective January 1, 2019.[17]

Pursuant to its licensing authority, the Commission may take disciplinary action against a license holder on a determination by the Commission that a license holder has committed professional misconduct or has otherwise violated Texas Code of Criminal Procedure Article 38.01 or an administrative rule or other order by the Commission.[18] If the Commission determines a license holder has committed professional misconduct or has violated an administrative rule or order by the Commission, the Commission may: (1) revoke or suspend the person's license; (2) refuse to renew the person's license; (3) reprimand the license holder; or (4) deny the person a license.[19] The Commission may place on probation a person whose license is suspended.[20] Disciplinary proceedings and the process for appealing a disciplinary action by the Commission are governed by the Judicial Branch Certification Commission.[21]

D. Jurisdiction Applicable to this Self-Disclosure

The forensic discipline at issue in this final investigative report, seized drugs analysis, is a category of forensic analysis subject to accreditation requirements by the Commission. A person performing seized drugs analysis for a crime laboratory subject to the Commission's jurisdiction is required to be licensed by the Commission under Texas law.[22] The laboratory that submitted the self-disclosure in this case, NMS Labs – Grand Prairie, Texas ("NMS"), is accredited by the Commission and the ANSI-ASQ National Accreditation Board ("ANAB") under the International

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[17] *Id* at § 4-a(b).
[18] Tex. Code Crim. Proc. art. 38.01 § 4-c (2019); 37 Tex. Admin Code § 651.216(b).(2019).
[19] *Id.* at 651.216(b)(1)-(4).
[20] *Id.* at (c).
[21] TEX. CODE CRIM. PROC. art. 38.01 § 4-c(e) (2019); 37 Tex. Admin. Code § 651.216(d) (2019).
[22] TEX. CODE CRIM. PROC. art. 38.35 § (d)(1) (2015); *Id* at § 4-a(b) (2019).

Organization for Standardization accreditation standard 17025 ("ISO").[23] The forensic analyst that is the subject of this final investigative report, Jessica Almond ("Almond"), is forensic analyst license holder, licensed by the Commission on December 7, 2018 to perform seized drugs analysis.[24]

E. Limitations of this Report

The Commission's authority contains important statutory limitations. For example, no finding by the Commission constitutes a comment upon the guilt or innocence of any individual.[25] The Commission's written reports are not admissible in civil or criminal actions.[26] The Commission has no authority to subpoena documents or testimony. The information the Commission receives during the course of any investigation is dependent on the willingness of stakeholders to submit relevant documents and respond to questions posed. The information gathered in this report has ***not*** been subject to the standards for admission of evidence in a courtroom. For example, no individual testified under oath, was limited by either the Texas or Federal Rules of Evidence (*e.g.,* against the admission of hearsay) or was subject to cross-examination under a judge's supervision.

II. SUMMARY OF SELF-DISCLOSURE

A. Establishment of Investigative Panel

This report contains observations and recommendations regarding an October 16, 2019 self-disclosure by NMS Labs[27] reporting an incident of professional misconduct regarding Seized

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[23] *See*, http://www.txcourts.gov/fsc/accreditation/ for a list of accredited laboratories.

[24] *See*, http://www.txcourts.gov/fsc/licensing/licensees/ for a list of current forensic analyst licensees.

[25] TEX. CODE CRIM. PROC. art. 38.01 § 4(g) (2019).

[26] *Id*. at § 11.

[27] Though NMS Labs is headquartered in Pennsylvania, the incident that is the subject of the self-disclosure discussed here occurred in NMS' facility in Grand Prairie, Texas.

Drugs analyst Jessica Almond. At its January 31, 2020 quarterly meeting, the Commission voted to form an investigative panel ("Panel") to assist the Commission in determining whether NMS' conclusion regarding professional misconduct is supported by the available and relevant data. The Panel included Commissioners Sarah Kerrigan, Ph.D., Mark Daniel, Esq. and Dennis "Pat" Johnson, M.S.

B. General Summary of Reported Incident

The self-disclosure reports that Seized Drugs analyst Jessica Almond engaged in inappropriate manipulation of data during a competency test for a new qualitative analytical method that includes a quantitative decision point. The method is used to distinguish legal hemp from illegal marijuana. Almond acknowledged having manipulated the data when confronted by a supervisor. (*See,* **Exhibit A**). Because it was a competency test, the incident did not involve any pending criminal casework. Almond's actions were detected within two days of the incident through a routine data review for all competency tests. The laboratory took proactive corrective action in response to the incident. (*See,* **Exhibit B**).

C. Background on Laboratory Training and Competency Test

On September 5, 2019, before training or competency samples were distributed for a new analytical method to distinguish hemp from marijuana, the laboratory held a continuing education session ("CE") for all analysts. The CE presentation focused on why and how NMS was in the process of developing a new qualitative method with a quantitative decision point for tetrahydrocannabinol ("THC"). A large portion of the CE focused on the procedure the analyst should follow. On-site training on the new method included the process of sample preparation, run setup, data processing and reporting. Competency training samples were then distributed to the

analysts. Supporting data from analyst competency training samples were reviewed for accuracy and completeness.

D. Key Facts

On September 26, 2019, Almond submitted her GCMS semi-quantification competency sample data to the NMS Forensic Chemistry Training Specialist for review. While reviewing the data, the training specialist identified an issue with the manual integration of the THC peak in Almond's control sample. The peak was improperly integrated, resulting in a smaller peak area and therefore a smaller quantitative value being assigned to the sample THC as a result. The training specialist reviewed the remaining data provided by Almond and observed that no other peaks in the unknowns or calibrators were manually integrated. The training specialist asked Almond to provide the original data files for review. When the original data files were processed by the training specialist using the autointegration parameters saved in the GCMS, she found the integration drawn by the software was appropriate and the resulting quantitative value of the THC control was outside the acceptable range. The quantitative value from Almond's manual integration brought the integration of the THC control into the acceptable range allowing what would have been a failed run to pass.

On October 2, 2019, the analyst's supervisor discussed the competency test and manual integration with the analyst. During the meeting, Almond was asked to explain how she chose to manually integrate the data. Almond responded she checked her controls and saw that day they were high (outside the acceptable range). Almond informed the supervisor that "It was Thursday, and the samples were due that day." She stated she had "a lot of other things to get done," so she manually integrated the controls. The supervisor asked Almond if she understood this action was unacceptable. Almond confirmed she understood. Supervisors informed her she was removed from

casework and that some type of remediation and possible retraining would be required. After the meeting, the supervisor and other laboratory management were concerned with the explanation provided. Almond was formally removed from casework and the lab began an internal investigation. On October 9, 2019, the laboratory decided to terminate Almond and informed her of the decision.

The laboratory determined the root cause of the incident was the analyst's choice to inappropriately manually integrate a control to get a better (more acceptable) number, because the competency test was due and she had "a lot of other things to do." This brought the control into the acceptable range allowing what would have been a failed run to pass.

E. Case Review and Disclosure to Affected Parties by NMS

The laboratory determined that Almond had worked 532 cases as an Analyst during the last six months of her tenure. The laboratory initially reviewed 54 randomly selected cases (10%) and found no other indication of data manipulation. The lab did discover some documentation issues and an issue involving bulk weight determinations that were outside the laboratory's standard operating procedures. These issues prompted the lab to review 27 more cases. The subsequent review did not reveal any other instance of data manipulation. The laboratory reviewed a total of 81 of Almond's cases. Of the issues discovered during retroactive case review, the only additional substantive issue was a case in which a typographical error by Almond resulted in an injection of the same vial for two different samples. NMS reanalyzed the samples in that case and issued a corrected report.

Regarding the incident that is the subject of this complaint, NMS made disclosure to affected parties in the Texas criminal justice system. Almond was employed at NMS between July

2017 and October 2019. She worked a total of 1665 cases during that time period. Notably, she had never worked any quantitative or semi-quantitative methods during her employment.

Notification regarding this incident was made to Tarrant (558 cases), Collin (172 cases), Dallas (1 case), Dawson, Gaines and Lynn (26 cases) counties and the Texas Department of Public Safety (730 cases).

III. INVESTIGATION

A. Investigative Notice to Analyst and Interview Request

The Commission notified Almond the self-disclosure was accepted for investigation on February 12, 2020. (*See,* **Exhibit C** letter). The Panel and Commission staff reviewed all documents provided by NMS, including the initial disclosure form and proposed corrective action plan, chromatograms related to the competency test run at issue in the disclosure, the results of the initial retroactive casework review and subsequent casework review expansion, and the root cause analysis performed by NMS.

On May 13, 2020, Commission staff again notified the analyst the self-disclosure was accepted for investigation and informed her of the investigative process and her opportunity to speak to or address the Commission in writing. (*See*, **Exhibit D**). In the same letter, the Panel requested an interview the Analyst. The 30-day deadline for the analyst to respond was June 12, 2020. (*See*, **Exhibit D**). The Commission received no response or input from Almond during its investigation. Accordingly, the description of the incident and subsequent actions described in this report are solely based on interviews, documents and input from NMS.

IV.   OBSERVATIONS AND FINDINGS

A. Interviews with NMS Staff

On May 28, 2020, the Panel and Commission staff met with representatives of NMS to discuss the details of the disclosure. Present during the video conference were Sarah Shuda, Chemical Technical Lead, Sally Ullman, Supervisor, and Aliece Watts, Quality Assurance Manager. Interviews confirmed that Almond manually integrated the THC control during the competency run. None of the other calibrators, blanks or sample had been manually integrated, just the Delta-9 THC control. Upon inspection it appeared where the integration was drawn was "coming off the bottom of the peak." Upon inspection, they determined the control value was too high and would have been out of acceptable range. However, when Almond manually integrated the date, the value was inside acceptance criteria.

NMS arranged a phone conference with Almond to determine her thought process on manually integrating the control. Almond informed management that she looked at the control and saw that it was high, but since the competency test and other casework was due the next day, she changed it. Almond provided no excuse for manually integrating the data other than the test was due, and she was running out of time.

NMS stated several other analysts undertook the same competency training at the same time and none of the other analysts manually integrated the THC control. All the analysts were given one week to complete the competency test and no one else had an issue completing the assignment on time.

B. Assessment Regarding Professional Misconduct

"Professional Misconduct" means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow a standard of practice that an ordinary

forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice.

The Commission finds this act of data manipulation by the Analyst was a failure to follow a standard of practice an ordinary forensic analyst would have followed. The Commission further finds this act of data manipulation by the Analyst "would substantially affect the integrity of the results of a forensic analysis" as that phrase is defined by administrative rule. The phrase "would substantially affect the integrity of the results of a forensic analysis" does not necessarily require that a criminal case be impacted or a report be issued to a customer in error.[28] The phrase includes acts that would call into question the integrity of the *forensic analysis, the forensic analyst, or the crime laboratory as a whole.*[29]

In this case, the integrity of any forensic analysis by this analyst, especially with respect to the analytical method for distinguishing hemp from marijuana described in this report, would be severely compromised. The analyst admitted to the manual manipulation of data related to a control sample during a competency test. What would be a failed run in the competency test was altered to make the data acceptable.

The Commission finds the evidence sufficient to support a finding of professional misconduct given the materials and description of the incident provided by the laboratory, interviews with laboratory personnel involved in the incident, and supporting data provided by laboratory. The Commission agrees with NMS's conclusion that the analyst committed professional misconduct when she deliberately manipulated data during the course of completing the competency exam.

[28] 37 Tex. Admin. Code § 651.302(10) (2019).
[29] See, *Id*

C. Code of Professional Responsibility Violations

Pursuant to its Forensic Analyst Licensing authority, the Commission may take disciplinary action against a license holder where the Commission finds the license holder has committed professional misconduct *or* violated a rule or order of the Commission up to and including revocation, suspension, refusal to renew, reprimand, denial of a license or probation.[30]

The Commission's administrative rules set forth a Code of Professional Responsibility for Forensic Analysts and Crime Laboratory Management designed to provide a framework for promoting integrity and respect for the scientific process and to encourage transparency in forensic analysis in Texas.[31] While it is important to emphasize the violations in this incident occurred during a competency test by the analyst, the Commission's professional responsibility rules, including the expectation of integrity, transparency and respect for the scientific process, apply regardless of whether a forensic test will be admitted in a criminal proceeding, and violations of the Code of Professional Responsibility, even in the context of a competency test, could severely impact the integrity of any forensic analysis conducted by that analyst. The analyst's manipulation of data in this incident is a violation that brings the analyst's integrity into question and demonstrates her lack of respect for the scientific process. Further, her actions lack the transparency expected of forensic analysts in Texas. In addition to violations of the Commission's Code of Professional Responsibility with regard to integrity, respect for the scientific process and transparency in forensic analysis, the analyst failed to conduct a *fair and unbiased examination*, leading to independent impartial, and objective opinions and conclusions as expected under the Code of Professional Responsibility, when she presented manipulated data to support her

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[30] 37 Tex. Admin. Code § 651.216 (b) (2019).
[31] *Id.* at § 651.219 (2019).

conclusions on her competency test.[32] Finally, the analyst failed to *base her conclusions on procedures supported by sufficient data, standards and controls*, and not on…other outside influences, such as perceived time constraints.[33]

D.   Recommended Disciplinary Action Pursuant the Commission's Forensic Analyst Licensing Authority

Given the finding of professional misconduct and violations described above, the Commission hereby revokes Almond's forensic analyst license. This revocation shall take effect the first business day after the period for requesting hearing before the Judicial Branch Certification Commission expires. Revocation of Ms. Almond's license triggers important deadlines for appealing this disciplinary action by the Commission.[34] The Commission must give written notice by certified mail to any license holder against which disciplinary action is taken pursuant to a determination by the Commission that a license holder committed professional misconduct or violated a rule or order of the Commission.[35] The Commission must include a copy of this report in its notice to the license holder.[36] The license holder has the right to request a hearing not later than the 20th day after the date the license holder receives notice of the finding and disciplinary action by submitting a written request to the Judicial Branch Certification Commission.[37]

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[32] *Id.* at § 651.219(b)(6) (2018).
[33] *Id.* at (8).
[34] 37 Tex. Admin. Code § 651.216(d)-(e) (2019).
[35] *Id.* at § 651.216(d).

EXHIBIT A

TEXAS FORENSIC SCIENCE COMMISSION
LAB DISCLOSURE FORM

Please complete this form and return to:

Texas Forensic Science Commission
1700 North Congress Avenue, Suite 445
Austin, Texas 78701
Email: info@fsc.texas.gov
[P] 1.888.296.4232
[F] 1.888.305.2432

The Texas Forensic Science Commission ("FSC") is legislatively mandated to require crime laboratories that conduct forensic analyses to report professional negligence or professional misconduct to the Commission. (See Tex. Code Crim. Proc. 38.01 as amended by Tex. S.B. 1238, 83rd Leg., R.S. (2013)).

Please keep in mind that the FSC investigates matters subject to its statutory authority only. The term "forensic analysis" includes any medical, chemical, toxicological, ballistic, or other examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. The term does not include the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician. The term "crime laboratory" is defined in Article 38.35 of the Texas Code of Criminal Procedure to include "a public or private laboratory or other entity that conducts a forensic analysis subject to this article."

The FSC will examine the details of your disclosure to determine what level of review to perform, if any. All disclosures are taken seriously. Because of the complex nature and number of complaints and disclosures received by the FSC, we cannot give you any specific date by which that review may be completed. However, we aim to resolve all disclosures in a timely and expeditious manner, and to minimize disruption in the laboratory.

The Commission's statute allows it to withhold from disclosure information submitted in the context of an investigation but only until the final report is released. Upon release of the final report, all information provided to the Commission is subject to disclosure under the Texas Public Information Act ("PIA") (Texas Government Code Chapter 552).

IMPORTANT: If your disclosure involves a pending criminal matter(s), please be sure to indicate that on the form below because certain PIA exceptions may apply.

1. PERSON COMPLETING THIS FORM

Name: Aliece Watts

Laboratory: NMS Labs Criminalistics (DFW)

Address: 2302 113th St. Suite 200

City: Grand Prairie

State: TX   Zip Code: 75050

Home Phone: 817-614-9474

Work Phone: 215-366-2123

Email Address *(if any):* aliece.watts@nmslabs.com

2. SUBJECT OF DISCLOSURE

List the full name, address of the laboratory, facility or individual that is the subject of this disclosure:

Individual/Laboratory: Jessica Almond/NMS Labs

Address: 2302 113th St., Suite 200

City: Grand Prairie

State: TX   Zip Code: 75050

Year Laboratory Accreditation Obtained:

Name of National Accrediting Agency: ANAB

Date of Examination, Analysis, or Report:

Type of Forensic Analysis: THC Semi-Quantitation

Laboratory Case Number *(if known):* N/A (Competency test)

Is the forensic analysis associated with any law enforcement investigation, prosecution or criminal litigation?

Yes ☐   No ☒

* If you answered "Yes" above, provide the following information *(if possible):*

* Name of Defendant:

* Case Number/Cause Number:
   (if unknown, leave blank)

* Nature of Case:
   (e.g burglary, murder, etc.)

*The county where case was investigated, prosecuted or filed:

*The Court:

*The Outcome of Case:

* Names of attorneys in case on both sides *(if known):*

3. WITNESSES

Provide the following about any person with factual knowledge or expertise regarding the facts of the disclosure. Attach separate sheet(s), if necessary.

First Witness *(if any):*

Name: Sarah Shuda

Address: 2300 Stratford Ave., Willow Grove, PA 19090

Daytime Phone: 215-366-1331

Evening Phone:

Fax:

Email Address: sarah.shuda@nmslabs.com

Second Witness *(if any):*

Name: Sally Tokarz

Address: 2300 Stratford Ave., Willow Grove, PA 19090

Daytime Phone: 215-366-2122

Evening Phone:

Fax:

Email Address: sally.tokarz@nmslabs.com

Third Witness *(if any):*

Name: Daniel Hall

Address: 2302 113th St., Suite 200, Grand Prairie, TX 75050

Daytime Phone: 215-366-2132

Evening Phone:

Fax:

Email Address: daniel.hall@nmslabs.com

4. DESCRIPTION OF DISCLOSURE

Please write a brief statement of the event(s), acts or omissions that are the subject of the disclosure. See Page 6 of this form for guidance on what information should be disclosed to the Commission.

NMS Labs advises that Drug Identification Analyst Jessica Almond has been terminated for cause from NMS Labs as of October 10, 2019. Ms. Almond engaged in inappropriate manipulation of data during competency testing on a new quantitative procedure and admitted the manipulation upon confrontation, with explanation.   The incident did not involve casework. Ms. Almond's actions were detected within two days through routine review. A corrective action is in progress under NMS protocols and SOPs and will be provided upon completion. At this writing, ongoing review of Ms. Almond's work has not revealed any similar or dissimilar reportable misconduct. NMS Labs files this disclosure in accordance with internal and external ethical requirements and acknowledges ongoing duty of disclosure in accordance with all professional and legal obligations.

5. DESCRIPTION OF CORRECTIVE ACTION TAKEN

Please describe any corrective actions or corrective action plans the laboratory has developed to address the issues discussed in this disclosure. Please attach copies of the actions taken and/or future corrective plan to this disclosure form.

Please let the Commission know if any other agencies (e.g., Texas Rangers, local district attorney, Inspector General's Office, etc.) are also conducting an investigation of the matter in question. If possible, provide a contact name and phone number for the individual responsible for any other investigation(s).

Corrective action plan
A corrective action has been opened and is currently in progress to investigate an incident of inappropriate manual integration of data by Jessica Almond in order to complete a competency test. A root cause analysis has been initiated along with an action plan for remediation. A sampling of cases previously worked by the analyst from the last six months is being reviewed as a quality measure, and will be expanded if needed. NMS Labs administratively and technically reviews 100% of case data prior to reporting. As of this writing, ongoing review of Ms. Almond's work has not revealed any similar or dissimilar reportable misconduct. Any further issues or conclusions will be communicated once the investigation and corrective action are complete.

6. EXHIBITS AND ATTACHMENT(S)

Whenever possible, disclosures should be accompanied by readable copies **(NO ORIGINALS)** of any laboratory reports, relevant witness testimony, affidavits of experts about the forensic analysis, or other documents related to your disclosure. Please list and attach any documents that might assist the Commission in evaluating the disclosure. Documents provided will **NOT** be returned. List of attachments:

N/A

7. YOUR SIGNATURE AND VERIFICATION

By signing below, I certify that the statements made by me in this disclosure are true. I also certify that any documents or exhibits attached are true and correct copies, to the best of my knowledge.

Signature _____Alice Watts_____

Date Signed: 2019-10-16

TEXAS FORENSIC SCIENCE COMMISSION
GUIDELINES FOR LABORATORY SELF-DISCLOSURE

One of the Commission's statutory duties is to "require a crime laboratory that conducts forensic analyses to report professional negligence or professional misconduct to the Commission." TEX. CODE CRIM. PROC. § 38.01, Sec. 4(a)(2).

This document is designed to provide guidance to laboratories in determining whether they should disclose particular events to the Commission under the statute. Any questions regarding these guidelines should be directed to the Commission's General Counsel at (512) 936-0770.
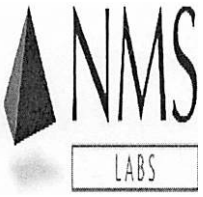
Self-Disclosure Categories:

- Probation: If the national accrediting body responsible for accrediting your laboratory and/or the Department of Public Safety notifies you that it intends to put your laboratory on probation, you should inform the Commission as soon as possible, but no later than five (5) business days from receiving notification from the accrediting body.

- Suspension of Accreditation: If the national accrediting body responsible for accrediting your laboratory and/or the Department of Public Safety notifies you that it intends to suspend your laboratory's accreditation for any reason, you should inform the Commission as soon as possible, but no later than five (5) business days from receiving notification from the accrediting body.

- Significant Irregularity in the Laboratory: Laboratories shall disclose any irregularity that may rise to the level of professional negligence or misconduct using the disclosure form on the Commission's website. **The disclosure should be submitted to the Commission as soon as possible, but no later than thirty (30) days after the irregularity is discovered.** If the laboratory needs a longer period to submit its disclosure, it should contact the Commission's General Counsel with an explanation and a request for additional time.

Please note that the outcome of any particular criminal case should not be a consideration in your decision regarding whether to disclose an issue to the Commission. You should disclose any significant laboratory irregularity regardless of the criminal case outcome, and regardless of whether the quality controls in the laboratory caught the issue of concern before a final report was issued to the customer. When using the term "significant irregularity," we refer to facts that *if true*, would indicate the existence of negligence or misconduct such that the integrity of the forensic examination, the individual forensic examiner, or the laboratory as a whole would be called into question.

If your self-disclosure involves a pending criminal case, or you believe that anyone involved in the disclosure may be the subject of criminal investigation, please alert the Commission when submitting your disclosure, as certain law enforcement exceptions to the Public Information Act may apply to the information submitted.

EXHIBIT B

Print Date: October 22, 2019

CORRECTIVE ACTION REQUEST
C.A.R. # 2019-DFW-053

Request status: Pending Resolution

Site:
!FL-Dallas Ft Worth

Description of Deficiency:
Quality concern related to data interpretation.

Source Type:
Internal

Source:
Determine if this incident on a competency test has occurred in casework. Review casework for other issues. Check packaging of worked cases still in-house for condition of seals.

Significant condition Adverse to Quality? Y

Response Due Date: 10/2-V2019

Unit Affected: **Chemistry**
Plan Accepted By: **Aliece Watts, MT (ASCP), MS, 0-ABC (ALWATTS) on 10/22/2019**
Describe the preventive Actions already taken to address deficiency:

un t;eptemoer :Ib, :IU1 Jessica Almond suommea ner Gt;Mti sem1-quant competency sample data to tne t-orenslc l;nemlstry Training Specialist and the Forensic Chemistry Technical Leader for review While reviewing the data an issue was identified with the integration of the THC peak in her control sample. The peak was improperly integrated, resulting in a smaller peak area and therefore a smaller quantitative value being assigned to the THC as a result. The remaining data provided by the analyst was reviewed and no other peaks in the unknowns or calibrators were manually integrated.

The Forensic Chemistry Training Specialist asked that Ms. Almond provide the original data files for review. When the original data files were processed by the Training Specialist using the autointegration parameters saved in the GCMS semi-quant method, she found that the integration drawn by the software was appropriate and the resulting quantitative value of the THC control was outside of the acceptable range. The quantitative value from MS. Almond's integration brought the integration of the THC control into the acceptable range allowing what would have been a failed run to pass.

The Forensic Chemistry Training Specialist and Technical Leader brought their concerns to the Forensic Chemistry Supervisor and Forensic Chemistry Assistant Lab Director. A meeting was set up by the Forensic Chemistry Supervisor on 10/2/19 to discuss the competency test and manual integration with the analyst, the Training Specialist, and the Team Leader of the site where the analyst works.

On October 2, 2019 the Team Leader, Training Specialist, Forensic Chemistry Supervisor and analyst had a phone conference tc discuss the competency data. Ms. Almond was asked to explain how she chose to manually integrate the data. She responded that she had checked her controls and saw that they were high {outside the acceptable range), it was Thursday and the samples were due, she had a lot of other things to get done, so she manually integrated the controls. Ms. Almond was asked if she understood that that you cannot integrate a peak to try to make it acceptable to which she said that she understood. It was then communicated to her that she did not pass the competency and would not be signed off at this time but would require some type of remediation with possible retraining. She was also asked to go back and look at both sets of data and the integration and email with any questions.

After the meeting, the Team Leader, Training Specialist and Supervisor were all concerned with the explanation as to why manual integration was done. The Forensic Chemistry Assistant Lab director, QA, the Laboratory Director and HR were all notified. It was determined that MS. Almond should be removed from casework and an investigation was initiated. On 10/3/19, Ms. Almond was notified in a phone conference by the Forensic Chemistry supervisor that she was suspended from all casework and training and that an investigation had been initiated. An HR representative, the Team Leader and the Forensic Chemistry Assistant Lab Director were also present on the phone conference. The Quality Assurance Regulatory Manager initiated a Corrective Action and further meetings were held to determine the correct course of action

Prior to any training or competency samples being distributed, a continuing education was held for all analysts on 9/5/19. This power point presentation focused on the why and the how NMS was developing this new method. . A large portion of the continuing education focused on the process or procedure that the analysts would be following. Data review, including manual integration of peaks with examples of acceptable and unacceptable examples, acceptance criteria and reporting were covered. On-site training/demonstration with a trained/signed off analyst on the new method was done on site at each site location slated to go live with the new method. This on-site training included process of sample preparation, setting up runs, processing data and reports. Then training samples were distributed to the analysts, 4 botanical and 2 liquid samples. The data from all of the analysts training samples were reviewed by the Training Specialist and the Technical Director for accuracy and completeness Only after the training samples were verified to have no issues, were the competency samples distributed to the staff to complete. It was at the time of the data review of the competency samples for Ms. Almond that the issue was discovered. All competency sample data for all analysts was reviewed and this was the only occurrence of inappropriate manual integration that was found not due to a training issue.

On October 9, 2019 Ms. Almond was terminated due the incident.

At this time 22 cases have been reviewed, this review includes standard administrative and technical review of the case file, a review of the evidence, descriptions and seals. A review of the evidence is also being done for any cases that were worked by Ms. Almond at IFS-DFW that were then sent to the Willow Grove IFS site for quantitative analysis.

NMS Labs disclosed the incident to the appropriate parties on Wednesday, October16, 2019.

Describe here the results of the root cause analysis:

uuauty concern relatea to aata interpretation:

Why: Upon review of competency sample data it was found that the THC control peak was improperly integrated resulting in smaller peak area and subsequently a smaller quantitative value
Why: The analyst inappropriately manually integrated the THC control peak
Why: The analyst checked control and it was high (out of acceptable range), it was Thursday and the samples were due, she had a lot of things to get done so she manually integrated control and got a better number. Her explanation of why she manually integrated the peak established that this was not a training issue, but an independent decisions to alter data. This choice to adjust data to meet deadlines in non-casework samples would continuously bring into question any future casework results.

Root Cause: Analyst inappropriately manually integrated a control that was unacceptable to get a better number (acceptable) because it was due and she had a lot of other things to do. This brought the control into the acceptable range allowing what would have been a failed run to pass.

Describe the action plan for remediation of the root cause:

An IT ticket was submitted to get a full list of cases that the analyst had worked from March 2019 through September 2019. A total of 532 cases were identified during that timeframe. One hundred percent of analyst cases at NMS Labs/IFS are administratively and technically reviewed prior to reporting. Ten percent of the 532 cases will be reviewed as a quality measure, and expanded if necessary. The review of these cases will be looking for compliance with SOPs to ensure that all standards set forth are met. The review of these cases has commenced and is ongoing but has not revealed any similar or dissimilar issues. Once the review is complete any other issues identified will be disclosed in accordance with all professional and legal obligations. It is anticipated that the review of cases will be completed by December 1, 2019.

Examiners Affected

Name	Date Completed	Execution Remarks
Sarah A. Shuda, M.S.F.S., F-ABC (SAKEELIN)	10/22/2019	I have read and agree.
Sally J. Ullman, M.S.F.S. (SATOKARZ)	10/22/2019	I have read and agree with the remarks and the suggested remediation.

nctona A. JJanr
Victoria A. Davis (Oct 22, 2019)

Victoria A. Davis
E-signed 2019-10-22 01:SSPM EDT
victoria.davis@nmslabs.com

Barry Logan
E-signed 2019-10-24 10:25AM EDT
barry.logan@nmslabs.com

Aliece Watts

Aliece Watts
E-signed 2019-10-24 09:27AM CDT
aliece.watts@nmslabs.com
NMS Labs, Inc.

2019-DFW-053

Final Audit Report   2019-10-24

Created:	2019-10-22
By:	Alexandria Shults (Alexandria.Shults@nmslabs.com)
Status:	Signed
Transaction ID:	**CBJCHBCAABAA41vqvCe9xP2L-VMe1g5uF_Sr2EZ-n-OT**

"2019-DFW-053" History

Document created by Alexandria Shults (Alexandria.Shults@nmslabs.com)
2019-10-22 - 5:50:10 PM GMT- IP address: 76.204.62.202

g   Document emailed to Victoria A. Davis (victoria.davis@nmslabs.com) for signature
2019-10-22- 5:51:58 PM GMT

Email viewed by Victoria A. Davis (victoria.davis@nmslabs.com)
2019-10-22 - 5:52:35 PM GMT- IP address: 209.202.237.41

0o   Document e-signed by Victoria A. Davis (victoria.davis@nmslabs.com)
Signature Date: 2019-10-22 - 5:58:59 PM GMT - Time Source: server- IP address: 209.202.237.41

Document emailed to Barry Logan (barry.logan@nmslabs.com) for signature
2019-10-22 - 5:59:00 PM GMT

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'El Email viewed by Barry Logan (barry.logan@nmslabs.com)
2019-10-24-2:25:14 PM GMT- IP address: 209.202.237.41

0o Document e-signed by Barry Logan (barry.logan@nmslabs.com)
Signature Date: 2019-10-24 - 2:25:34 PM GMT - Time Source: server- IP address: 209.202.237.41

q   Document emailed to Aliece Watts (aliece.watts@nmslabs.com) for signature
2019-10-24 - 2:25:35 PM GMT

'E:l Email viewed by Aliece Watts (aliece.watts@nmslabs.com)
2019-10-24 -2:26:59 PM GMT- IP address: 107.77.197.22

0'o Document e-signed by Aliece Watts (aliece.watts@nmslabs.com)
Signature Date: 2019-10-24- 2:27:47 PM GMT - Time Source: server- IP address: 107.77.197.22

■ AdobeSign

0 Signed document emailed to Alexandria Shults (Alexandria.Shults@nmslabs.com), Aliece Watts (aliece.watts@nmslabs.com), Barry Logan (barry.logan@nmslabs.com), and Victoria A. Davis (victoria.davis@nmslabs.com)

2019-10-24-2:27:47 PM GMT

EXHIBIT C

TEXAS FORENSIC
SCIENCE COMMISSION

justiceThrough *Scie11ce*

1700 '\.▷rth C,lll. rcs.,-l.1·;., Sĩ1ĩ1c ..J-I5 .-l11s1ĩ1,' Ji,x,1s ? i'C O I

February 12, 2020

Via First Class Mail

Ms. Jessica Almond
212 Creekside Dr.
Murphy, TX 75094

    Re: TFSC Laboratory Disclosure No. 19.46- NMS Labs Grand Prairie (Seized Drugs)

Dear Ms. Almond,

    At its January 31, 2020 meeting the Commission voted to accept the referenced laboratory disclosure for investigation. An investigative panel was formed consisting of Commissioners Dr. Sarah Kerrigan, Mr. Pat Johnson and Mr. Mark Daniel.

    As the subject of the disclosure, the Commission's policy is to notify you concerning investigation of the case, and to inform you that you may choose to participate in the process or decline to do so. You are under no obligation to cooperate, but you may still provide input to the investigative panel if you would like.

    You may submit written responses to me electronically or via regular mail to the address on this letterhead; you may also address the investigative panel personally if you wish. If you would like to speak to panel members in person, please let me know so I can provide you with meeting details and information to facilitate your appearance.

    The investigative process may take several months to complete. A written report will be published on the Commission's website (www.fsc.texas.gov) upon conclusion of the investigation.

    A copy of NMS's disclosure is enclosed for your review. Thank you and let me know if I may be of any additional assistance.

Sincerely,

Kathryn Adams
Commission Coordinator

/mka
Encl.

1. PERSON COMPLETING THIS FORM

Name: Aliece Watts

Laboratory: NMS Labs Criminalistics (DFW)

Address: 2302 113th St. Suite 200

City: Grand Prairie

State: TX   Zip Code: 75050

Home Phone: 817-614-9474

Work Phone: 215-366-2123

Email Address *(if any)*: aliece. watts@nmslabs.com

2. SUBJECT OF DISCLOSURE

List the full name, address of the laboratory, facility or individual that is the subject of this disclosure:

Individual/Laboratory: Jessica Almond/NMS Labs

Address: 2302 113th St., Suite 200

City: Grand Prairie

State: TX   Zip Code: 75050

Year Laboratory Accreditation Obtained:

Name of National Accrediting Agency: ANAB

Date of Examination, Analysis, or Report:

Type of Forensic Analysis: THC Semi-Quantitation

Laboratory Case Number *(if known):* NIA (Competency test)

Is the forensic analysis associated with any law enforce-ment investigation, prosecution or criminal litigation?
Yes D   No{?$]

If you answered " Yes" above, provide the following mformation *(if possible):*

* Name of Defendant:

* Case Number / Cause Number:
(ij 11nknown, leavebla11k)

* Nature of Case:
(e.g 611,glary,11111rder, etc.)

* T he county where case was investigated, prosecuted or filed:

* The Court:

* The Outcome of Case:

* Names of attorneys in case on both sides *(if k,1011111):*

3. WITNESSES

Provide the following about any person with factual knowledge or expertise regard ing the facts of the disclosure. Attac h separate shee t(s), if necessary.

First Witness *(i(any):*

Name: Sarah Shuda

Addr ess: 2300 Stratfor d Ave., Willow Grove, PA 19090

Daytime Phone: 215-366-1331

Evening Pho ne:

Fax:

Email Address: sarah.shuda@nmslabs.com

Second Witness *(if any):*

Name: Sally Tokarz

Addre ss: 2300 St ratfo rd Ave., Willo w Grove, PA 19090

Daytime Phon e: 215-366-2122

Evening Phone:

Fax:

Email Address: sa lly.tokarz@nms la bs.com

Third Witness *(if a11y):*

Name: Danie l Hall

Address: 2302 113th St., Suite 200, Grand Prairie, TX 75050

Daytime Phone: 215-366-2132

Eve11ing Phone:

Fax:

Email Address: danie l.ha ll@nms la bs.com

4. DESCRIPTIO N OF D ISCLOSURE

Please w rite a brief statement of the event(s),acts or o missions that are the subject of the disclosure. See Page 6 of this form for guidance on what information should be disclosed to the Commissio n.

NMS I abs advises that Dnig Identification Analyst ,lessica Almand bas been terminated far ca11se from NMS Labs as of October 1 0. 2019 . Ms . Almond engaged in inappropriate manipulation of data during competency testing on a new quantitative procedure and admitted the manipulation upon confrontation, with explanation.   The incident did not involve casework. Ms. Almond 's actions were detected within two days through routine review. A corrective action is in progress under NMS protocols and SOPs and will be provided upon completion. At this writing. ongoing review of Ms. Almond's work has not revealed any similar or d1ss1 m1lar reportable misconduct. l'JMS Labs files this disclosure 1n accordance with internal and external ethical requirements and acknowledges ongoing duty of disclosure in accordance witt1 all professional arid legal obligations.

5. D ESCR IPT IO N OF C O R RE C T IVE ACTI O N TAKEN

Please describe any corrective actions or corrective action plans th e laboratory has developed to address the issues discussed in this disclosure. Please attach copies of the actions taken and/ or futur e co rrective plan to this disclosure form.

Please let the Conm lission know if any o ther agencies (e.g., Texas Rangers, local distri ct attorney, Inspector General's Office, etc.) are also condu cting an investigation of th e matt er in question . If possible, provide a contact name and phone number for the individual responsible for any other investigati o n(s).

Corrective action plan
A corrective action has been opened and is currently in progress to investigate an incident of inappropriate manual integration of data by Jessica Almond in order to complete a competency test. A root cause analysis has been initiated along with an action plan for remediation. A sampling of cases previously worked by the analyst from the last six months is being reviewed as a quality measure, and will be expanded 1f needed . NMS Labs administratively and technically reviews 100% of case data prior to reporting. As of tfi1s writing, ongoing review of Ms. Almond's work ttas not r e vealed any similar or dissimilar reportable misconduct. Any fur tller issues or co11clusio11s will be co111111u11icated 01ice ti1e i11ves tigatio 11 a11d co11e cti ve actio11 a1e con,plete.

6. EXHIBITS AN D ATTACHMENT(S)

Whenever possible, disclosures should be accompanied by readable co pies **(NO ORIGINALS)** of any laborato ry report s, relevant witness testimony, affidavits of expe rts abo ut the forensic analysis, or other documents r lated to your disclosure. Please list and attach any documents that might assist the Commission in evaluatin g the disclosure. Documents provided will **NOT** be return ed. List of attachm ents:

N/A

7. YOUR SIGNATURE AND VERIFICATION

By signing below, I ce rti fy th at the statements made by me in this disclosure are tru e. I also certi fy th at any documents or exhibits attached are true and correct copies, to the best of my knowledge.

Signa ture: *Alice Watts*

Date Signed: 2019-10-16

TEXAS FORENSIC SCIENCE COMMISSION
GUIDELINES FOR LABORATORY SELF-DISCLOSURE

One of the Commission's statutory duties is to "require a crime laboratory that conducts forensic analyses to report professional negligence or professional misconduct to the Commission." TEX. CODE CRIM. PROC. § 38.01, Sec. 4(a)(2).

This document is designed to provide guidance to laboratories in determining whether they should disclose particular events to the Commission under the statute. Any questions regarding these guidelines should be directed to the Commission's General Counsel at (512) 936-0770.

Self-Disclosure Categories:

- <u>Probation:</u> If the national accrediting body responsible for accrediting your laboratory and/or the Department of Public Safety notifies you that it intends to put your laboratory on probation, you should inform the Commission as soon as possible, but no later than five (5) business days from receiving notification from the accrediting body.

- <u>Suspension</u> of <u>Accreditation</u>: If the national accrediting body responsible for accrediting your laboratory and/or the Department of Public Safety notifies you that it intends to suspend your laboratory's accreditation for any reason, you should inform the Commission as soon as possible, but no later than five (5) business days from receiving notification from the accrediting body.

- <u>Significant Irregularity in the Laboratory:</u> Laboratories shall disclose any irregularity that may rise to the level of professional negligence or misconduct using the disclosure form on the Commission's website. **The disclosure should be submitted to the Commission as soon as possible, but no later than thirty (30) days after the irregularity is discovered.** If the laboratory needs a longer period to submit its disclosure, it should contact the Commission's General Counsel with an explanation and a request for additional time.

Please note that the outcome of any particular criminal case should not be a consideration in your decision regarding whether to disclose an issue to the Commission. You should disclose any significant laboratory irregularity regardless of the criminal case outcome, and regardless of whether the quality controls in the laboratory caught the issue of concern before a final report was issued to the customer. When using the term "significant irregularity," we refer to facts that *if true,* would indicate the existence of negligence or misconduct such that the integrity of the forensic examination, the individual forensic examiner, or the laboratory as a whole would be called into question.

If your self-disclosure involves a pending criminal case, or you believe that anyone involved in the disclosure may be the subject of criminal investigation, please alert the Commission when submitting your disclosure, as certain law enforcement exceptions to the Public Information Act may apply to the information submitted.

EXHIBITD

May 13, 2020

Via Federal Express No. 7704 5478 4822

Ms. Jess ica Almond
212 Creekside Dr.
Murph y, TX 75094

Re: Forensic Science Commiss ion Laboratory Self-Disclosure No. 19.4 6 - NMS Labs Grand
    Prairie (Seized Drugs) - Requested Action by June l 5, 2020

Dear Ms. Almond:

    As you know fr6m our letter dated February 12, 2020, the Commission voted at its January
31, 2020 quarterly meeting to in vestigate the la boratory self-disclosure referenced above regarding
an incid ent related to your work as a forensic analyst at NMS Labs, Inc. - Grand Prairie, Texas ("
NMS"). S pecifi cally, the Co mmission is revie wing NMS's determination that you co mmitted
professional misconduct in the incident described in the enclosed la boratory correct ive action form.

    Under Code of Crimina l Procedure, Article 38 .01 , the Commiss ion is the acc red iti ng
autho rity for crime laboratories in Texas. [1] The Commiss io n is a lso responsible for lice nsing
forensic analysts. *Id.* Laboratories are required to self- disc lose instances of professional neg lige nce
and misco nduct. The Co mmi ss ion appointed commissioners Dr. Sarah Kerrigan, Mr. Pat Johnson ,
and Mr. Mark Daniel to review the disclosure submitt e d by NMS. The purpose of the inves tigation
is to determ ine whe ther the Co mm iss io n agrees with NMS' findings regardin g professiona l
misco nduct. Co mmissio n in vestigat io ns may inc lude co llection and rev iew of docum ents , case
records, review by subj ect matter experts, int erv iews with individuals in volved in the inc ident and
ot her action as appropriate. [2]

    **Please be aware that the outcome of the Commission's review may have an impact on
your forensic analyst license.** On a determination by the Commissio n th at a lice nse ho lder has
committed professional misconduct, the Commiss io n may (I) re voke or suspend the person' s lice
nse; (2) refuse to renew the person's lic ense; (3) reprimand the lic ense ho lder; o r (4) place the lic e
nse holder on a probationary period. [3]

    The in vest iga ti ve panel requests an opportunit y to interview you w ith respect to the events
and circ um sta nces described in the enclose d self-disc los ure. If you w ish to respond to the

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[1] TEX. CODE CRIM. PROC. art. 38.01 § 4(a)(3) ; *Id* at§ 4(b).
[2] Tex. Admin. Code § 651.3 07.
[3] Tex. Admin. Code § 651.2 16.

allegat ions in writing, we welcome your response. To date, all information we have received is from the laboratory, and the laboratory concluded you committed misconduct. While you are not required to respond , the Commission strongly encourages your input, particularly if you disagree with the misconduct finding by NMS. Absent other information, the Comm ission may accept the misconduct finding by NMS which could result in the revocation of your forensic analyst license. If you wish to respond in writing or otherwise, the Commission requests your response by **June 12, 2020.**

The Commission's investigative process may take several months to complete. Any finding by the Commission that includes adverse action with regard to your forensic analyst license *(e.g.,* a finding of misconduct that includes a revocation or suspe nsion of your license) may be appealed to the Judicial Branch Certification Commiss ion ("JBCC").[4] A written request for a hearing before the JBCC must be received by the Commission or by the JBCC within twenty (20) days of the date you receive notice of the disci plinary action, or the Commission's decis ion becomes final and is not subject to further review by the JBCC or the Commiss ion. [5]

To sc hedu le an interview , you may reach me directly by telephone at (512) 936-0661 or via email at le ig h@fsc.texas.gov. You may submit written responses to me ele ctron ically or via regular mail to the address on this letterhead. You may also address the investigative panel personally if you wish. If you would li ke to speak to panel members in person or virt uall y, please let me know so I can provide you with meeting details and info rmatio n to facilitate your appearance.

Sincerely ,

M. S

Leigh M. Savage
Associate General Counse l

encl.

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[4] Tex. Admin. Co de § 651.216 (d).
[5] *Id* at (e).

Subject:	Follow-up NMS Labs self-disclosure
Date :	Monday, January 27, 2020 at 5:57:29 PM Central Standard Time
From:	Watts, Aliece
To:	Lynn Garcia, Leigh Savage
CC:	Logan, Barry, Corvo, Joseph, Davis, Victoria, Shults, Alexandria, Andrews, Amanda
Attachments:	image003.png, image004.png, image005.png, image006.png

Good Afternoon,

On January 9, 2020, NMS Labs self-disclosed an incident involving an analyst and Professional Misconduct. The initial review of 50 of her cases did not contain any further indications of Professional Misconduct. However, they did contain other issues that prompted an additional 25 cases to be reviewed. The second batch review has been completed and has not revealed any further indications of Professional Misconduct. While there were a total of nine additional issues noted by the second reviewer , none resulted in a corrected report or were considered significant enough to re-test.

NMS Labs is satisfied that the original incident was an isolated event, as we identified no other instances where it had occurred.

Thank you,

N M S O

Aliece Watts
Quality Assurance Regulatory Manage*e*
(p) 215.366.1200
Aliece.Watts@nmslabs.com I www.nmslabs.com

inWf

March 27, 2020

Texas Forensic Science Commission

Case# 19-46 Supplemental

On September 26, 2019 Forensic Chemist I Jessica Almond submitted her GCMS semi-quant competency sample data to the Forensic Chemistry Training Specialist and the Forensic Chemistry Technical Leader for review. While reviewing the data an issue was identified with the integration of the THC peak in her control sample. The peak was improperly integrated, resulting in a smaller peak area and therefore a smaller quantitative value being assigned to the THC as a result. The remaining data provided by the analyst was reviewed and no other peaks in the unknowns or calibrators were manually integrated.

The original files were re-processed by the Forensic Chemistry Training Specialist using the autointegration parameters saved in the GCMS semi-quant method. The autointegration data brought the THC control outside the acceptable range and the run would have failed. The quantitative value from the manual processed data showed the THC control to be inside the acceptable range so the run would pass.

Interviews with the analyst revealed that she chose to manually integrate the data because the controls were high and the competency test was due the next day. The analyst was removed from casework and training and an investigation was initiated. Consultation with the Laboratory Director, Forensic Chemistry Assistant Lab Director and a representative from Human Resour ces concluded that this was an instance of professional misconduct and not a training or understanding issue.

Ms. Almond was terminated on October 9, 2019.

This incident was associated with training/competency of a new method that allowed for manual integration of data. There were no cases reported using this method by this analyst, however, a representative sample of other cases was reviewed for possible misconduct.

The Dallas County District Attorney was notified of the one case she had worked in their jurisdiction . The 106th District (Dawson, Garza, Gaine s and Lynn Counties) was notified of the 26 cases that were affected from their jurisdiction. The Tarrant County District Attorney and Texas Department of Public Safety were also notified of the incident.

Of the 532 cases worked by the analyst in the six months prior to the incident , 54 we re randomly selected for re-review. No other instances of misconduct were noted. However , there were several minor errors noted and one major error that resulted in a corrected report. It is believed that this major error was not intentional, but a typographical error that resulted in one sample not being tested. This sample was recalled from the agency and retested. The result was the same as what had been

originally reported.

An additional 27 cases were re-reviewed to further check for instances of misconduct. There were no occurrences of data manipulation noted. However, there were other errors found on nine cases, none requiring a corrected report. These errors should have been detected during Technical Review and has resulted in an additional corrective action to address the Technical Review process.

The event appears to be an isolated one and no further investigation is planned at this time.

Respectfully Submitted,

Aliece Watts, MT(ASCP), MS, D-ABC

Print Date: October 22, 2019

CORRECTIVE ACTION REQUEST

C.A.R. # 2019-DFW-053

Request status: Pending Resolution

Site:

IFL-Dallas Ft Worth

Description of Deficiency:

Quality concern related to data interpretation.

Source Type:

Internal

Source:

Determine if this incident on a competency test has occurred in casework. Review casework for other issues. Check packaging of worked cases still in-house for condition of seals.

Significant condition Adverse to Quality? Y

Response Due Date: 10/2V2019

Unit Affected: **Chemistry**

Plan Accepted By: **Allece Watts, MT (ASCP), MS, D-ABC (ALWATTS) on 10/22/2019**

Describe the preventive Actions already taken to address deficiency:

On September 26, 2019 Jessica Almond submitted her GCMS sem quant competency sample data to the Forensic Chemistry Training Specialist and the Forensic Chemistry Technical Leader for review While reviewing the data an issue was identified with the integration of the THC peak in her control sample. The peak was improperly integrated, resulting in a smaller peak area and therefore a smaller quantitative value being assigned to the THC as a result. The remaining data provided by the analyst was reviewed and no other peaks in the unknowns or calibrators were manually integrated.

The Forensic Chemistry Training Specialist asked that Ms. Almond provide the original data files for review. When the original data files were processed by the Training Specialist using the autointegration parameters saved in the GCMS semfquant method, she found that the integration drawn by the software was appropriate and the resulting quantitative value of the THC control was outside of the acceptable range. The quantitative value from MS. Almond's integration brought the integration of the THC control into the acceptable range allowing what would have been a failed run to pass.

The Forensic Chemistry Training Specialist and Technical Leader brought their concerns to the Forensic Chemistry Supervisor and Forensic Chemistry Assistant Lab Director. A meeting was set up by the Forensic Chemistry Supervisor on 10/2/19 to discuss the competency test and manual integration with the analyst, the Training Specialist, and the Team Leader of the site where the analyst works.

On October 2, 2019 the Team Leader, Training Specialist, Forensic Chemistry Supervisor and analyst had a phone conference tc discuss the competency data. Ms. Almond was asked to explain how she chose to manually integrate the data. She responded that she had checked her controls and saw that they were high (outside the acceptable range), it was Thursday and the samples were due, she had a lot of other things to get done, so she manually integrated the controls. Ms. Almond was asked if she understood that that you cannot integrate a peak to try to make it acceptable to which she said that she understood. It was then communicated to her that she did not pass the competency and would not be signed off at this time but would require some type of remediation with possible retraining. She was also asked to go back and look at both sets of data and the integration and email with any questions.

After the meeting, the Team Leader, Training Specialist and Supervisor were all concerned with the explanation as to why manual integration was done. The Forensic Chemistry Assistant Lab director, QA, the Laboratory Director and HR were all notified. It was determined that MS. Almond should be removed from casework and an investigation was initiated. On 10/3/19, Ms. Almond was notified in a phone conference by the Forensic Chemistry supervisor that she was suspended from all casework and training and that an investigation had been initiated. An HR representative, the Team Leader and the Forensic Chemistry Assistant Lab Director were also present on the phone conference. The Quality Assurance Regulatory Manager initiated a Corrective Action and further meetings were held to determine the correct course of action.

Prior to any training or competency samples being distributed, a continuing education was held for all analysts on 9/5/19. This power point presentation focused on the why and the how NMS was developing this new method.. A large portion of the continuing education focused on the process or procedure that the analysts would be following. Data review, including manual integration of peaks with examples of acceptable and unacceptable examples, acceptance criteria and reporting were covered. On-site training/demonstration with a trained/signed off analyst on the new method was done on site at each site location slated to go live with the new method. This on-site training included process of sample preparation, setting up runs, processing data and reports. Then training samples were distributed to the analysts, 4 botanical and 2 liquid samples. The data from all of the analysts training samples were reviewed by the Training Specialist and the Technical Director for accuracy and completeness Only after the training samples were verified to have no issues, were the competency samples distributed to the staff to complete. It was at the time of the data review of the competency samples for Ms. Almond that the issue was discovered. All competency sample data for all analysts was reviewed and this was the only occurrence of inappropriate manual integration that was found not due to a training issue.

On October 9, 2019 Ms. Almond was terminated due the incident.

At this time 22 cases have been reviewed, this review includes standard administrative and technical review of the case file, a review of the evidence, descriptions and seals. A review of the evidence is also being done for any cases that were worked by Ms. Almond at IFS-DFW that were then sent to the Willow Grove IFS site for quantitative analysis.

NMS Labs disclosed the incident to the appropriate parties on Wednesday, October 16, 2019.

Describe here the results of the root cause analysis:

Quality concern related to data interpretation:

Why: Upon review of competency sample data it was found that the THC control peak was improperly integrated resulting in smaller peak area and subsequently a smaller quantitative value
Why: The analyst inappropriately manually integrated the THC control peak
Why: The analyst checked control and it was high (out of acceptable range), it was Thursday and the samples were due, she had a lot of things to get done so she manually integrated control and got a better number. Her explanation of why she manually integrated the peak established that this was not a training issue, but an independent decisions to alter data. This choice to adjust data to meet deadlines in non-casework samples would continuously bring into question any future casework results.

Root Cause: Analyst inappropriately manually integrated a control that was unacceptable to get a better number (acceptable) because it was due and she had a lot of other things to do. This brought the control into the acceptable range allowing what would have been a failed run to pass.

Describe the action plan for remediation of the root cause:

An IT ticket was submitted to get a full list of cases that the analyst had worked from March 2019 through September 2019. A total of 532 cases were identified during that timeframe. One hundred percent of analyst cases at NMS Labs/IFS are administratively and technically reviewed prior to reporting. Ten percent of the 532 cases will be reviewed as a quality measure, and expanded if necessary. The review of these cases will be looking for compliance with SOPs to ensure that all standards set forth are met. The review of these cases has commenced and is ongoing but has not revealed any similar or dissimilar issues. Once the review is complete any other issues identified will be disclosed in accordance with all professional and legal obligations. It is anticipated that the review of cases will be completed by December 1, 2019.

Examiners Affected

Name	Date Completed	Execution Remarks
Sarah A. Shuda, M.S.F.S., F-ABC (SAKEELIN)	10/22/2019	I have read and agree.
Sally J. Ullman, M.S.F.S. (SATOKARZ)	10/22/2019	I have read and agree with the remarks and the suggested remediation.

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v,ctona A Oav1s (Oct 22, 2019)

Victoria A. Davis
E-signed 2019-10-22 01:58PM EDT
victoria.davis@nmslabs.com

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D'

Barry Logan
E-signed 2019-10-24 10:25AM EDT
barry.logan@nmslabs.com

Aliece Watts

Aliece Watts
E-signed 2019-10-24 09:27 AM CDT
aliece.watts@nmslabs.com
NMS Labs, Inc.

2019-DFW-053

Final Audit Report   2019-10-24

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By:	Alexandria Shults (Alexandria.Shults@nmslabs.com)
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