

I. COMMISSION BACKGROUND

A. History and Mission of the Texas Forensic Science Commission

The Texas Forensic Science Commission (“Commission”) was created during the 79th Legislative Session in 2005 with the passage of HB-1068. The Act amended the 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 jurisdictional 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 The Act 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 Commission has nine members appointed by the Governor of Texas.⁵ 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

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).

³ TEX. CODE CRIM. PROC. art. 38.01 § 4(a)(3).

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 OF CRIM. PROC. art. 38.01 § 3.

attorney nominated by the Texas Criminal Defense Lawyer's Association).⁶ The Commission's Presiding Officer is Jeffrey Barnard, M.D. 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 the investigation.⁷ The ultimate result is the issuance of a final report. The Commission's administrative rules include the process for appealing final investigative reports by the Commission and, separately, disciplinary actions by the Commission against a license holder or applicant.⁸

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.⁹ The term "forensic analysis" is defined 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).¹⁰

The term "crime laboratory" includes a public or private laboratory or other entity that conducts a forensic analysis subject to Article 38.35 of the Texas Code of Criminal Procedure.¹¹ As part of

⁶ *Id.*

⁷ *See*, 37 Tex. Admin. Code § 651.304-307 (2019).

⁸ 37 Tex. Admin. Code § 651.309; *Id.* at § 651.216.

⁹ TEX. CODE CRIM. PROC. art. 38.35 § (d)(1) (2015).

¹⁰ TEX. CODE CRIM. PROC. art. 38.01 § 2(4) (2019).

¹¹ TEX. CODE CRIM. PROC. art. 38.35 § (a)(1) (2015).

its accreditation authority, the Commission may establish minimum standards relating to the timely production of forensic analysis; validate or approve specific forensic methods or methodologies; and establish procedures, policies, and practices to improve the quality of forensic analysis in the state.¹² The Commission is permitted, at any reasonable time, to enter and inspect the premises or audit the records, reports, or other quality assurance matters of a crime laboratory that is accredited.¹³ The Commission has adopted a Code of Professional Responsibility for Forensic Analysts and Crime Laboratory Management.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 or crime laboratory" must hold a forensic analyst license issued by the Commission, effective January 1, 2019.¹⁷

¹² TEX. CODE CRIM. PROC. art. 38.01 § 4-d (b-1).

¹³ TEX. CODE CRIM. PROC. art. 38.01 § 4-d(d).

¹⁴ See, Tex. Admin. Code § 651.219 (2020).

¹⁵ TEX. CODE CRIM. PROC. art. 38.01 § 4-a(d) (2019).

¹⁶ TEX. CODE CRIM. PROC. art. 38.01 § 4-a(a)(2) (2019).

¹⁷ *Id.* at § 4-a(b).

Pursuant to its licensing authority, the Commission may take disciplinary action against a license holder or applicant for a license on a determination by the Commission that a license holder or applicant for a license has committed professional misconduct or has 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 Disclosure

The forensic discipline discussed in this final investigative report—Forensic Biology (DNA)—is subject to the accreditation and licensing authority of the Commission. The analyst involved in the complaint, Andrea Morrison, is currently licensed by the Commission. The Fort Worth Police Department Laboratory (“FWPDCL”) is accredited by the Commission and the ANSI National Accreditation Board (“ANAB”) under the International Organization for Standardization (“ISO”) accreditation standard 17025: 2017.²²

E. Limitations of this Report

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 *See*, <http://www.txcourts.gov/fsc/accreditation/> for a list of accredited laboratories.

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.²³ The Commission's written reports are not admissible in civil or criminal actions.²⁴ The Commission has no authority to subpoena documents or testimony. 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. INVESTIGATIVE PROCESS

A. Investigative Panel

The Commission's administrative rules set forth the procedure by which it determines whether to accept a complaint or self-disclosure for investigation as well as the process used to conduct the investigation.²⁵ The rules include the process for appealing investigative reports by the Commission and, separately, disciplinary actions by the Commission against a license holder or applicant.²⁶

At its October 8, 2021, quarterly meeting, the Commission voted to form an investigative panel ("Panel") to assist in determining whether the allegations in the disclosure(s) are supported by the facts and circumstances, available data, and related documents. The Panel included Dr. Jeffery Barnard, Dr. Sarah Kerrigan, and Brazos County Elected District Attorney Jarvis Parsons.

B. Document Review and Interviews

²³ *Id.* at § 4(g) (2019).

²⁴ *Id.* at § 11 (2019).

²⁵ *See*, Tex. Admin. Code § 651.304-307 (2018).

²⁶ 37 Tex. Admin. Code § 651.309 (2020); *Id.* at § 651.216 (2021).

Once an investigative panel is created, the Commission investigation includes: (1) relevant document review; (2) interviews with members of the laboratory as needed to assess the facts and issues raised; (3) collaboration with the accrediting body and any other relevant agency; (4) requests for follow-up information as necessary; (5) hiring subject matter experts where necessary; and (6) any other steps needed to meet the Commission's statutory obligation.

The Commission interviewed the following individuals: (1) the DNA Analyst who is the subject of the disclosure, Andrea Morrison ("Morrison"); (2) Latent Prints Analyst Pat Wertheim ("Wertheim"); (3) Former Technical Leader/Biology Unit Supervisor, now Assistant Forensic Division Manager, Cassie Johnson ("Johnson"); (4) Quality Manager Phil Aviles ("Aviles"); and (5) Laboratory Forensic Science Division Manager Michael Ward ("Ward"). Commission staff also spoke with the former FWPDCL CODIS Administrator Uvonna Alexander ("Alexander").

Commission staff reviewed relevant documents as well as the original and supplemental disclosures. Staff also spoke with Assistant District Attorney ("ADA") Dan Monte from the Tarrant County Criminal District Attorney's Office ("TCCDAO") and Pamela Sale, Vice President for Forensics at ANAB.

III. GENERAL SUMMARY OF THE DISCLOSURES

A. First Disclosure

On September 8, 2021, Aviles submitted a self-disclosure to the Commission ("First Disclosure") concerning events that occurred during and after the employment application and hiring process for Morrison. In August 2021, Johnson reported to Aviles her concern that during the hiring process, Morrison knowingly provided an incorrect answer on her City of Fort Worth Application for Employment ("Application"). The First Disclosure alleges Morrison answered the question falsely to ensure her application survived the Human Resources ("HR") screening

process, and that the interview panel was “aware of the answer on the application.” The First Disclosure also states that during his investigation, Aviles contacted Ward and Johnson, and they discussed the circumstances surrounding the application. According to the First Disclosure,” [i]t is obvious from the e-mail correspondence that they [the hiring committee] all agreed to offer the position to [Morrison], *knowing she had misrepresented her qualifications on the application*, but requiring her to complete the required course as a condition of employment.”

B. Supplemental Disclosure

On October 5, 2021, Aviles submitted a second disclosure (“Supplemental Disclosure”) following an internal meeting between Morrison, Ward, Johnson, Wertheim and himself on September 21, 2021. The Supplemental Disclosure changes course to state that, even though the interview panel was aware that Morrison lacked one of the required courses for employment consideration, the *interview panel was not aware there had been a misrepresentation on the application*. According to the Supplemental Disclosure, members of the interview panel assumed HR “would have done their due diligence” in verifying answers during the screening process.

IV. TIMELINE OF THE KEY DISCLOSURE EVENTS

A. TCCDAO Legal Disclosure Training that Triggered the Disclosures

On August 6, 2021, TCCDAO ADA Dan Monte (“Monte”) gave a presentation to laboratory staff regarding the legal disclosure compliance obligations of forensic laboratories under *Brady v. Maryland* and the Michael Morton Act.²⁷ Monte presented the example of a false statement on an employment application as the type of information that would be subject to disclosure. This example caused Johnson to realize there might be an issue with respect to Morrison’s application. At some point in mid-July 2021, she heard Morrison make an “offhand

²⁷ *Brady v. Maryland*, 373 US 83 (1963); TEX. CODE CRIM. PROC. art. 39.14 (2014).

comment” about answering a question regarding completed coursework on her application “yes” instead of “no” in order to avoid being screened out by HR. The comment did not immediately register with Johnson as problematic, but it raised questions in her mind within the context of Monte’s legal disclosure training.

Immediately after the presentation concluded, Johnson asked to meet with Ward, Aviles and Monte. She posed a hypothetical question regarding the information she knew about Morrison's application. In response, Monte stated that the laboratory needed to ascertain the facts and report any disclosable information (such as lying on an application) to the TCCDAO.

Aviles investigated the matter beginning with an August 25, 2021, interview of Morrison. Wertheim attended this interview as a witness. Aviles spoke with Ward and Johnson but did not formally interview them. He submitted the First Disclosure to the Commission and the TCCDAO without notifying Ward, Johnson, or Morrison. He did not seek input regarding the contents of the document. When asked why, Aviles explained he wanted to ensure his review and assessment were independent, especially with respect to undue influence from Ward whom he believed would not respond well to information that could reflect negatively on him. When asked, Wertheim concurred that Aviles’ concerns were well-founded.

B. Facts Not in Dispute

The following facts contained in the First Disclosure are not in dispute.

Morrison applied for a FWPDCCL DNA analyst position on October 2, 2020. On the City of Fort Worth employment application, applicants for the DNA analyst position were asked the following question:

Have you successfully completed college coursework in ALL of the following areas: Genetics, biochemistry, molecular biology, and statistics or population genetics? (Emphasis in original).

Morrison answered this question “yes” knowing she had not completed a college course in molecular biology.

On November 6, 2020, Morrison was interviewed by a hiring committee consisting of Johnson and Alexander. Morrison disclosed at this time that she had not completed the required course in molecular biology. FWPDCCL continued with the hiring process.

On November 12, 2020, Morrison was interviewed by the hiring committee a second time. During this second interview, Morrison again stated clearly that she had not completed the molecular biology course.

FWPDCL formally offered Morrison the DNA position through the City of Fort Worth’s HR Department on November 24, 2020, conditioned upon her successful completion of the molecular biology course within a specified timeframe.

On December 8, 2020, Morrison sent her college transcripts to Johnson for review. On March 1, 2021, Morrison began work. She passed the Texas Forensic Analyst General Forensic Examination (“GFE”) three weeks later, on March 22, 2021. The GFE has seven domains including Professional Responsibility pursuant to which examinees read and become familiar with the Texas Code of Professional Responsibility for Forensic Analysts, Forensic Technicians, and Crime Laboratory Management.²⁸

In June 2021, Morrison completed the required molecular biology course. Shortly thereafter, Johnson formally documented Morrison’s education review on the “Review of Education/Degree Requirements–DNA Analyst” form required under the Federal Bureau of Investigation’s Quality Assurance Standards for Forensic DNA Testing Laboratories (“QAS”).

²⁸ Other domains covered by the exam include evidence handling, human factors, *Brady*/Michael Morton Act, expert testimony, statistics in forensic applications, and root cause analysis.

C. Fact in Dispute

The First Disclosure states that the hiring committee “all agreed with the decision to offer the position to [Morrison] knowing she had misrepresented her qualifications on the application ...” Ward and Johnson dispute this assertion, stating they did not realize Morrison had provided false information on the application when they offered her the position.

Ward learned the contents of the First Disclosure at some point after it was submitted to the Commission and the TCCDAO. He requested a copy of the First Disclosure via email to Aviles on September 15, 2021. (**Exhibit _.**) On September 16, 2021, Ward informed Aviles via email that a key fact in the First Disclosure was incorrect; the hiring panel was unaware of Morrison’s misrepresentation on her job application. (**Exhibit _.**)

On September 21, 2021, Ward convened an in-person meeting with Morrison, Johnson, Aviles to address the contents of the First Disclosure. Wertheim also attended the meeting as a witness. Ward and Johnson stated they were aware Morrison did not have the molecular biology course but did not realize she made a false statement on her application for purposes of surviving the HR screening process. During the meeting, Morrison also stated that she did not remember proactively disclosing to the hiring committee that she had answered the application question “yes,” to avoid being screened out. She was certain, however, that she made the hiring committee aware that she still needed to complete a course in molecular biology.

D. Supplemental Disclosure

Aviles filed a supplemental disclosure with the Commission on October 5, 2021. (“Supplemental Disclosure”) The Supplemental Disclosure corrects the misimpression that the hiring committee knew Morrison provided inaccurate information on her application. Additionally, the Supplemental Disclosure recounts statements made by Ward and Johnson during

the September meeting where “they” stated their belief “that HR would have done their due diligence in verifying the answers by comparing them to her college transcripts.” Aviles submitted the Supplemental Disclosure without notifying management of the filing or its contents, for the same reason he declined to do so with the First Disclosure. He believed his work product needed to be independent from any influence by Ward.

E. The Role of HR in Vetting DNA Analyst Applications

On October 6, 2021, in response to the Supplemental Disclosure blaming HR for failing to properly vet the application, Commission staff contacted Aviles and Ward via email to seek clarification. Aviles deferred the question to Johnson. Johnson was clear (and accurate) in her assertion that HR would simply review the “yes” or “no” answer to the required coursework screening question and take the answer at face value. It was also her understanding that HR performs a limited “education verification” including confirmation of the degree conferred, the major, and the start/end dates, but she would never expect HR to vet college transcripts.

On October 7, 2021, Ward responded to the Commission stating he was “in complete agreement” with the information provided by Johnson. Ward also informed the Commission that Aviles independently submitted his reports to the Commission without sharing the contents with him. Ward indicated his belief that this was due to the Commission’s prior recommendation regarding the need for the Lab Manager to allow the quality division independence in conducting investigations.²⁹

V. COMMISSION OBSERVATIONS AND FINDINGS

²⁹ In a July 2021 report, the Commission recommended the “Lab Manager should refrain from assuming the Quality Manager role at any point because this leads to confusion among laboratory staff regarding roles and responsibilities. The Quality Division’s independence from the Lab Manager should be sacrosanct.” *See*, Final Report on Complaint No. 20.47 Crutcher, Trisa (Fort Worth Police Department Crime Lab: Multiple) dated July 16, 2021.

A. Difficulties in the FWPDCCL Biology Unit and Accreditation Repercussions

In August 2019, a FWPDCCL DNA analyst resigned her employment and her forensic analyst license due to an incident of professional misconduct involving dishonesty.³⁰ The analyst failed to run a routine performance check. Instead of admitting this fact and correcting the oversight, she lied and took various steps to conceal her mistake, including trying to pass off an unused plate for one that had been discarded in a trash receptacle. The laboratory performed an internal investigation and disclosed all facts related to the incident to stakeholders.

Approximately one year later, another FWPDCCL DNA analyst filed a complaint with the Commission alleging a host of problems at the laboratory, including allegations of a hostile work environment and management retaliatory acts.³¹ Factual allegations in this complaint were unrelated to the first disclosure.

Between August 2020 and February 2021, the Biology Unit experienced a series of departures of qualified DNA analysts. On April 1, 2021, the analyst who filed the complaint was terminated by the City of Fort Worth Police Department, thereby leaving the Biology Supervisor as the only qualified DNA analyst left in the Biology Unit.

On May 14, 2021, ANAB limited the scope of the FWPDCCL's Biology Unit's activities due to the shortage of staff. E-mail correspondence shows the laboratory was eager to hire DNA analysts and get the laboratory's accreditation scope returned to full capacity in the DNA unit. Morrison was an attractive candidate because she had biology screening experience, thereby shortening some aspects of what is typically a lengthy training process to be approved for independent casework as a DNA analyst.

³⁰ See, Final Report on Self Disclosure by the Fort Worth Police Department Crime Laboratory Regarding Amanda Schaffner (Forensic Biology/DNA) dated August 16, 2019.

³¹ See, *infra* n.31.

ANAB conducted an off-site surveillance assessment of the laboratory and reinstated the Biology Unit's scope of accreditation on October 6, 2021. Commission staff asked ANAB whether the representatives responsible for the accreditation decision considered the contents of the First Disclosure and Supplemental Disclosure in reinstating the full scope of accreditation. While considered, both International and ANAB accreditation requirements related to personnel focus on education, training, and competence; they are silent on hiring practices. ANAB shares the Commission's concerns regarding the hiring decisions described in this report, but under the accreditation standards, it is the laboratory's responsibility to evaluate risks as part of its management system and mitigate or accept risks based on its tolerance for the potential outcome.

B. Finding Regarding Morrison's Decision to Provide False Information

The Commission finds that Morrison knowingly submitted a false entry on her application.

The question was clear:

“Have you successfully completed college course work in ALL of the following areas: genetics, biochemistry, molecular biology, and statistics or population genetics?”

Morrison answered this question “yes” knowing she had not completed a college course in molecular biology. Her reason for doing so was to ensure her application was not screened out during the hiring process. Morrison explained she intended to complete the molecular biology course but could not complete it as planned because of a microbiology prerequisite at the University of Central Florida. She later found an online molecular biology course offered at the University of California at Berkeley and completed it successfully after being hired.

Morrison correctly perceived her application would have been screened out by HR if she answered the employment application question truthfully. The Commission reviewed internal FWPDCL documentation revealing several applicants were not selected for interviews with the

notation, “application indicates candidate does not have all the required courses.” However, Morrison had options available to her that did not involve dishonesty if she wanted to increase the likelihood her application would be considered, including reaching out to the HR department, the Lab Manager or both with a request for consideration on the condition the molecular biology course be completed before the end of her training program.

Regardless of her motive or her intention to complete the course, Morrison’s answer on the application was knowingly false when made.

C. Finding Regarding Management’s Knowledge at the Time of Hiring

The First Disclosure stated management was aware Morrison answered the application question falsely before they offered her a job. Interviews with the participants of the hiring committee, Morrison and Aviles revealed an initial disagreement regarding whether management appreciated the fact that Morrison must have answered the application question incorrectly prior to offering her a position.

It is undisputed she told the hiring committee that she had not completed the molecular biology course. Ward and Johnson explained it did not occur to them she must have responded to the employment screening question with information she knew was inaccurate. Former CODIS Administrator Alexander agreed the panel did not realize she had given false information on her application, in part because they did not have candidate applications, but rather focused on CV’s during the interview process. Morrison also asserted that she never specifically mentioned the application during her interviews, and there must have been a misunderstanding during her interview with Aviles.

Aviles believed the hiring committee knew she had submitted incorrect information based on questions he asked during his August 25, 2021 interview of Morrison. The confusion may be attributable to the following series of questions:

Q. If you were aware of the fact that you had not completed [the] molecular biology course, why did you answer the question in the affirmative?

A. Yes – To get the interview.

Q. Did you answer “yes” because you were concerned that you would not get an interview if you answered the question “no”?

A. Yes.

Q. Did you disclose *this answer* to the committee prior to the interview, or during the interview? [emphasis added]

A. 2nd int. – MW [Ward] asked. 1st phone w/ Cassie [Johnson].

There appears to have been a disconnect between the question Aviles believed he was asking and the question Morrison heard. She believed the phrase “this answer” referred to the substance of the underlying question (whether she had the molecular biology course), not the fact that she answered an application question “yes,” when the correct answer was “no.” Johnson supplied the Commission with notes she took during both employment interviews. There is nothing in the notes to indicate Morrison told the panel she answered an application question dishonestly.

Aviles also believed the fact that Ward and Johnson knew the course was required for the position should have led them to conclude she could not possibly have answered the question accurately. Considering the question originated from the Biology Unit in the first place, one could make a reasonable deduction that Johnson and Ward must have—or at the very least should have—been aware she provided incorrect information during the application process.

On August 25, 2021, Wertheim served as a witness to the interview of Morrison. After the interview, he created a memorandum of record documenting his observations (**Exhibit _**). His memorandum states that Morrison told the hiring committee members she did not have the molecular biology course, but “she did not remember whether she mentioned the misstatement [on her application] during the preliminary phone interview or even prior to the beginning of the formal interview.”

Viewing the e-mail correspondence, disclosure documents, Wertheim memorandum and various interviews in their totality, the Commission finds the hiring committee did not realize that Morrison had knowingly provided a false answer to an application question at the time they offered her a position as a DNA Analyst. Notwithstanding this, by failing to read her application before extending an offer of employment, the FWPDCCL management³² missed an opportunity to identify a red flag bearing directly on her credibility and veracity.

D. Finding Regarding Attempts to Shift Responsibility to HR

Both the Supplemental Disclosure and a contemporaneous memorandum Wertheim prepared after the September 21, 2021 meeting indicate that FWPDCCL management claimed they had relied on HR to screen applicants. Both documents state that this screening included a college transcript review. The issue is relevant because it indicates an attempt by FWPDCCL management to shift blame to the HR screening process rather than accept responsibility for their failure to flag Morrison's false statement. This explanation of events was especially curious to the Commission knowing it is not possible for most HR departments to screen for forensic science coursework compliance due to HR's lack of subject matter expertise.

Pursuant to an inquiry by Commission staff immediately following receipt of the Supplemental Disclosure, Johnson advised that she was not totally familiar with the process HR undertakes when screening applications, but she believed they would simply be looking for a "yes" or "no" response to the position-specific screening question and had no expectation they would review transcripts for coursework compliance. Ward subsequently sent the Commission an email stating he was in "complete agreement" with the information provided by Johnson.

³² By FWPDCCL management, we refer to those individuals with the authority to make both hiring and disciplinary recommendations to the Fort Worth Police Department. In this scenario those individuals include the laboratory manager and assistant manager/biology unit supervisor.

Johnson also told the investigative panel she had no recollection of stating that HR would review and compare transcripts to the application during the September 21 meeting. In his interview, Ward also maintained he made no such comment. Ward speculated that since he and Johnson may have said “something about HR screening” Aviles and Wertheim may have inferred this meant HR would compare the transcript to the application to ensure accuracy. During interviews with the Commission, Johnson and Ward both stated they had no expectation HR would review transcripts and expressed their doubt that HR even had Morrison’s transcripts.

Regardless of whether specific mention was made of a transcript review by HR, it is clear from Wertheim’s memorandum, interviews with both Wertheim and Aviles, and the Supplemental Disclosure, that FWPDCCL management placed significant emphasis during the September 21st meeting on the fact that the hiring committee relied on HR to screen applications. At no point in any document or during any interview did Ward or Johnson accept personal responsibility for failing to identify Morrison’s dishonesty despite being on the hiring committee and having access to her application. While it is understandable that most of the focus would be on the CV, even the most basic, cursory review of the application would have revealed that Morrison provided incorrect information in response to a direct question.

E. Observations Regarding Management and the Quality System

The current relationship between laboratory management and quality assurance at FWPDCCL is deeply concerning. In a well-functioning laboratory, roles are understood, and members of the organization work together in a respectful and collaborative manner. Here, Aviles, who is responsible for what is a critical component of any well-functioning laboratory (the quality division) did not share two laboratory self-disclosures with Ward based on his belief that Ward

would exert undue influence on him to change information that may reflect poorly on Ward or the laboratory.

In the Commission's July 2021 report, the Commission was critical of Ward for having assumed the role of quality manager in taking over drafting of a Nonconformance Report that included personal attacks against the complaining DNA analyst. We described the quality manager's need for independence from the lab manager as "sacrosanct." While the principle stands, it is not meant to imply that a quality manager should operate on an island without seeking input from those who have relevant factual information regarding a given situation. In a well-functioning organization, the quality manager would seek input from others within the organization regarding the contents of a self-disclosure, ensuring the factual accuracy of the information. The fact that Aviles was hesitant to show the disclosures to Ward due to concerns about what level of pressure might be exerted is extremely problematic. This dysfunctional dynamic is a major area of risk for the FWPDCL going forward and must be addressed.³³

VI. PROFESSIONAL MISCONDUCT BY MORRISON

The Commission shall 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 the crime laboratory.³⁴ Professional Misconduct means "the forensic analyst, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst would have followed, and the deliberate act or omission

³³ During the investigation the Commission heard witnesses describe Aviles raising his voice during phone initial conversations with management regarding the first disclosure. Others described Ward as pointing his finger at Aviles while threatening to "take the issue up the chain of command" if Aviles did not correct the first disclosure.

³⁴ TEX. CODE CRIM. PROC. art. 38.01 §4(a) (3)(3).

would substantially affect the results of a forensic analysis. An act or omission was deliberate if the forensic analyst was aware of and consciously disregarded an accepted standard.”³⁵

The Commission has long maintained the phrase “would substantially affect the integrity of the results of a forensic analysis” does not necessarily require adverse impact on a criminal case, or that a report be issued to a customer in error. The term includes acts or omissions that would call into question the integrity of the forensic analysis, the forensic analyst, or the crime laboratory as a whole regardless of the ultimate outcome in the underlying criminal case.³⁶

Morrison has been employed at the FWPDCL since March 1, 2021, is currently in training and has not yet been authorized to perform independent casework. The deliberate act of falsifying an answer on her employment application calls into question her integrity as a forensic analyst, as well as the integrity of the crime laboratory as a whole.³⁷ Perhaps the most troubling aspect of the Commission’s investigation was Morrison’s response to Commissioner Parsons’ question regarding whether she “would have done anything differently.” She replied:

Obviously, I would prefer to answer properly on my application.
However, the outcome could have been different, so at this point, I
would say no because I do enjoy having a job and doing the job I
have, but I would also like to represent myself properly.

This response shows a fundamental lack of understanding of the principles set forth in the Code of Professional Responsibility, which she was required to study and be tested on in order to receive her forensic analyst license.³⁸ The Commission draws specific attention to provisions (b)(1) and (b)(16) of the Code, requiring the forensic analyst to:

- Accurately represent his/her education, training, experience, and areas of expertise.

³⁵ Tex. Admin. Code §651.302(7) (2020).

³⁶ 37 Tex. Admin. Code §651.302 (10) (2020).

³⁷ “Integrity” means the quality of being honest and fair. Merriam-Webster Dictionary.

³⁸ Tex. Admin. Code §651.219 (2020).

- Document and notify management or quality assurance personnel of adverse events, such as an unintended mistake or a breach of ethical, legal, scientific standards, or questionable conduct.

The Code does not require honesty only when convenient and allow for dishonesty when it leads to a desired personal outcome. It does not require ethical breaches to be reported when they pertain to others, but not to the analyst herself. The Commission finds Morrison committed Professional Misconduct when she deliberately submitted a false answer to a direct question related to her formal education on the City of Fort Worth employment application, and subsequently showed no real regret or understanding of her related disclosure obligations.

VII. PROFESSIONAL NEGLIGENCE BY FWPDCCL MANAGEMENT FOR FAILURE TO TAKE SUFFICIENT CORRECTIVE ACTION

“Professional Negligence” means the ...crime laboratory, through a material act or omission, negligently failed to follow the standard of practice that an ordinary ... 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 ... crime laboratory should have been aware of an accepted standard of practice.”³⁹

The term “crime laboratory” includes a public or private laboratory or other entity that conducts a forensic analysis.⁴⁰ In August 2021, FWPDCCL management became aware that Morrison knowingly submitted a false answer regarding her QAS-required coursework on her application, and that the event was significant enough to merit disclosure to the TCCDAO. As of this writing, Morrison continues to be employed as a DNA analyst.

Ward and Johnson told the investigative panel they would not have hired Morrison if they knew upfront that she lied on her application because it would have been a “red flag.” When asked

³⁹ 37 Tex. Admin. Code §651.302(8) (2020).

⁴⁰ Tex. Code Crim. Proc. art. 38.35 (a)(1).

whether they have any concerns about her serving in this capacity *now*, they both said it is less of a concern because she is hard-working and gets along well with others. They expressed the view that it would be unfortunate for a new DNA analyst's career to be severely impacted by a "mistake." They recognized that Morrison would need to face the "mistake" whenever she testified but did not express concerns about her honesty or integrity moving forward.

Ward also conveyed his belief that the TCCDAO would not exclude Morrison from testifying, relaying his understanding that "this is not going to be an issue." This understanding was based on statements Aviles and Wertheim made to Morrison during the August 25, 2021 interview and the September 21, 2021 meeting. Despite being the leader of the organization, Ward has not spoken with anyone from the TCCDAO regarding the issue himself, and thus has no firsthand knowledge of TCCDAO's concerns or the potential ramifications within the criminal justice system. His rationale for not participating in conversations with the TCCDAO was that he did not want to be perceived by Aviles as inserting himself into quality assurance matters.

FYPDCL management (specifically Ward and Johnson) do not seem to appreciate the significance of Morrison's decision to make a knowingly false statement on the application. While the decision can certainly be described as a mistake, it is much more than that. It calls the analyst's character and credibility into question. What is particularly baffling is the fact that the FYPDCL DNA Unit *has recent experience with an analyst who lied about a performance check to avoid disciplinary action*. This experience alone begs the question: if an analyst would provide false information to obtain a position, how can FYPDCL management be sure she would not provide false information to keep it?

The employment application expressly requires applicants to acknowledge that "any misrepresentation, omission, or falsification will result in my removal from employment

consideration or dismissal, if hired.” It strains credulity to believe FWPDCCL management has no recourse against an employee who lied on an employment application to avoid being screened out by HR, as many other truthful candidates were. Indeed, the Commission’s July 2020 report describes a circumstance in which an analyst was terminated. The City of Fort Worth Police Department stated in a formal letter to the analyst that the sole reason for terminating her was that TCCDAO described calling her as a witness as potentially “problematic,” because of allegations she had made against the laboratory.⁴¹ One wonders why a similar concern on the part of the FWPDCCL does not apply here.⁴² FWPDCCL management misunderstands the position of the TCCDAO. While it is true the TCCDAO does not maintain a “Do Not Sponsor” list, they consider the issue of Morrison’s credibility and prospective testimony to be highly problematic and deeply concerning. The Commission shares this view.

In response to questioning by Commissioner Parsons on whether Ward still considers Morrison’s lie a “red flag,” Ward responded that he considers it “less of a red flag” because everything he hears about her is positive, such as she works hard and is easy to get along with. But “maybe if she was a horrible employee, maybe if she was giving everybody grief and wasn’t following policies and wasn’t doing what she’s supposed to” his view might be different.

A forensic analyst’s capacity to be honest cannot be measured by how hard the analyst works or whether the analyst gets along with co-workers. Indeed, the Commission refers FWPDCCL management to the example of Jonathan Salvador, a well-liked analyst at the Texas Department of Public Safety in Houston who dry-labbed a case involving the analysis of

⁴¹ See, Crutcher termination letter and Crutcher termination audio.

⁴² The Commission understands the hierarchy of the Fort Worth Police Department and the City of Fort Worth’s Employment Services Department may prohibit laboratory management from terminating the employment of Morrison unilaterally. However, the Commission also expects that IF laboratory management had made a recommendation for disciplinary action against an employee who was found to have falsified an entry on the employment application, such a request would be taken seriously.

alprazolam. By all accounts, Salvador related well with co-workers. In fact, they described him as the person in the laboratory most likely to show kindness to newcomers or those celebrating a special occasion. He also showed a willingness to perform the most tedious tasks in the laboratory without complaint. Yet, none of this prevented him from making a poor decision that resulted in thousands of cases being called into question, and countless hours of review work by DPS with resulting upheaval in the criminal justice system.⁴³

The Commission finds FWPDCCL professionally negligent due to laboratory management's failure to take sufficient corrective action by allowing an analyst who made a knowingly false statement on her application for employment to remain on the path to be signed off as a DNA analyst. While the Commission agrees it is tragic for a junior analyst to face extreme consequences due to a poor decision, the seriousness of this work demands the utmost in honesty and integrity. The lives of Texas citizens—both victims of crime and those accused—are at stake.

⁴³ See *Ex parte Coty*, 418 S.W.3d 597 (Tex. Crim. App. 2014).