

# A MODEL FOR A NATIONAL CODE OF PROFESSIONAL CONDUCT IN THE FORENSIC SCIENCES

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This Code of Professional Conduct for Forensic Scientists has been developed in response to Recommendation 9 in the National Academy of Sciences' Report, *Strengthening Forensic Science in the United States: A Path Forward*. (NAS Report) This recommendation calls for a "national code of ethics for all forensic science disciplines . . .[that] could be enforced through a certification process for forensic scientists." (NAS Report, p. 7-19) This document is therefore intended to serve as a model which could be adopted by organizations that provide certification for forensic scientists, without which certification "no person (public or private) should be allowed to practice in a forensic discipline or testify as a forensic scientist." (Recommendation 7, NAS Report, p.7-18)

This document was prepared by an ad hoc committee of the California Association of Criminalists including Peter Barnett, Carolyn Gannett, James White, Jeff Thompson, Jasmine Jefferson, Hiram Evans, John Murdock and Peter DeForest. The Board of Directors of the California Association of Criminalists approved the publication of this document on the CAC website on February 9, 2011.

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## **Model for a National Code of Professional Conduct for Forensic Scientists**

### **PREAMBLE**

#### Purpose

The purposes of this document are:

- To provide principles and rules for individual professional conduct in the practice of forensic science.
- To provide a template for evaluating an individual's professional actions.
- To offer protection to individuals if asked to perform unethical acts.
- To ensure uniformity and quality of service to colleagues, the justice system, and the general public.

#### Scope

This document outlines principles and rules for the practice of forensic science and applies to individuals who:

- Recognize, preserve, collect, examine, or analyze evidence.
- Write or review forensic science reports or testify in a court of law as an expert witness in forensic science.
- Manage or supervise within a forensic laboratory.
- Consult, advise, research, or teach in forensic science.

These individuals are referred to as "forensic scientists" in the Code of Professional Conduct.

Additional principles and rules specific to an area of expertise, an agency, a company, or an accrediting body may be addressed by that body as a supplement to this document.

#### Introduction

Forensic professions include those that are concerned with the examination or scientific analysis of evidence and related testimony. They involve the application of principles, techniques, and methods of science, and have as their primary objective the determination of facts and formation of opinions that may be significant in legal cases. In fulfilling these duties, forensic scientists should use all of the means at their command to ascertain the facts relevant to the matters under investigation. Having made factual determinations, forensic scientists may then interpret and evaluate those facts. Forensic scientists should practice within the limitations of their knowledge, skills, and abilities.

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Conclusions, opinions, and facts should be reported with the appropriate accuracy and skill. In carrying out these functions, the forensic scientist should be guided by those practices and procedures that are generally recognized within the profession to be consistent with a high level of professional ethics.

Forensic scientists should strive to be aware of recent scientific advances and new standards, guidelines, policies, and regulations. Staying current may be accomplished by, but not limited to, reading peer-reviewed technical publications and other relevant literature, attending professional conferences, taking classes, or exchanging information with other forensic scientists. New developments should be presented to the profession. In order to continually improve the profession. Research and training should be encouraged.

Although no set of standards can precisely fit every occasion, the principles and rules set forth in this document describe the conduct expected of forensic scientists. The motives, methods, and actions of each forensic scientist should be consistent with ethical conduct described in this code. Failure to meet or maintain these standards can justifiably cast doubt upon an individual's fitness for such responsibilities.

Forensic scientists should take responsibility for work done under their direction. Managers and supervisors should be aware of this Code of Professional Conduct and act in a manner that supports it.

## **STANDARDS OF PRACTICE**

### **1. Objectivity**

Forensic scientists should strive to be objective and unbiased. They should strive to recognize any biases, and then design procedures and experiments to address them. The forensic scientist should determine the information required to effectively conduct analyses and examinations and reach reliable conclusions. Whenever possible, examined evidence should be preserved to facilitate reanalysis or reexamination by another expert.

#### **1.1. Analyses and Examinations**

- 1.1.1. Reasonable steps shall be taken to obtain all relevant data needed to complete an analysis.
- 1.1.2. All available relevant data shall be assessed.
- 1.1.3. Additional information or evidence which may be relevant to the examination shall be documented in examination records.
- 1.1.4. All observations, examinations, analyses, alterations, and results shall be documented in the examination records at the time they are performed.
- 1.1.5. Conclusions or opinions shall be based on the analysis or examination of all available relevant evidence.
- 1.1.6. Assumptions shall be documented in examination records.
- 1.1.7. Reasonable steps shall be taken to encourage that all relevant evidence in a case receives appropriate technical analyses.

#### **1.2. Conflicts of Interest**

- 1.2.1. All conflicts of interest with an employer, client, or the justice system shall be documented and disclosed.
- 1.2.2. Services shall not be provided on a contingency-fee basis.
- 1.2.3. An assignment in which there is a conflict of interest shall not be accepted.

### **2. Communication**

The forensic scientist should be truthful and forthright in all aspects of professional activity. Whenever possible, commonly accepted terminology should be used. Information should not be intentionally obscured by inclusion, omission, or any other means. Scientific and legal principles require that those who utilize or evaluate the conclusions or opinions of the scientist should be able to verify them by the review of data, the replication of experiments, the testing of alternative hypotheses, or by challenging the process used in arriving at the expressed conclusions. For this reason, clear and complete documentation of data and methods used to form a conclusion or opinion should be provided and readily available for evaluation by all who have a legal right to them.

#### **2.1. Communication shall be precise, accurate, and clear.**

- 2.2. Any stated qualifications shall be accurately represented, including, but not limited to, education, training, experience, areas of expertise, and certification status.

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## 2.3. Reports and Testimony

- 2.3.1. Intentionally misleading language shall not be used.
- 2.3.2. Relevant facts, and conclusions and opinions, including qualifications and limitations, shall be fully explained.
  - 2.3.2.1. Yes-or-no answers in testimony shall be explained or qualified when not doing so would be misleading.
- 2.3.3. Data and opinion based on that data shall be clearly differentiated.
- 2.3.4. Court exhibits and tutorials shall accurately reflect the work done. Exhibits used for illustrative purposes not related to the actual evidence that was examined shall be clearly described as such.
- 2.3.5. If the answer to a question is not known, or if that question is outside the forensic scientist's area of expertise, the forensic scientist shall say so.
- 2.3.6. Technically correct statements shall be made in all written and oral reports, testimony, technical publications, and technical presentations.
- 2.3.7. Testimony shall be restricted to matters within the forensic scientist's knowledge, skills, and abilities.

## 2.4. Disclosure

- 2.4.1. A complete and accurate disclosure of all methods, findings, conclusions, and opinions shall be written into technical records for all work done.
- 2.4.2. When apparent, any errors or omissions shall be documented and disclosed to the employer or client.
- 2.4.3. Any changes in conclusions or opinions shall be documented and disclosed to the employer or client.
- 2.4.4. Additional information or evidence which may be relevant shall be documented in the report.
- 2.4.5. Any attempt by a second party to alter results or improperly influence conclusions shall be documented and disclosed to appropriate statutory or legal authority.
- 2.4.6. The authorized release of material shall not be obstructed nor shall the released material be misrepresented.
- 2.4.7. Confidential information, including information derived from evidence, shall not be inappropriately disclosed.
- 2.4.8. Reports or other records shall not be constructed, and information shall not be withheld, for strategic or tactical litigation advantage.

## 2.5. Professional Associations

- 2.5.1. Information on membership application forms to professional associations shall be accurately represented.
- 2.5.2. Membership status in any professional association shall be accurately represented.
- 2.5.3. In dealing with professional association boards or their representatives, the forensic scientist shall be forthright.
- 2.5.4. Certification shall only be attained from certifying bodies accredited by the Forensic Specialties Accreditation Board.
- 2.5.5. Statements or beliefs expressed at professional meetings shall not be repeated without putting them into the context in which they were made.

## 3. Procedures

The forensic scientist should determine the most appropriate protocol for analyses. While being open to new and novel concepts and methods, the forensic scientist is responsible for evaluating them critically prior to applying them to casework. Novel methods may be used when required. Whenever possible, validated reliable methods that are generally accepted should be used.

### 3.1. Methods and Materials

- 3.1.1. Methods used shall have appropriate accuracy and precision.
- 3.1.2. Appropriate and reliable reagents, standards, and controls shall be used.
- 3.1.3. Appropriate equipment in adequate facilities shall be used.
- 3.1.4. Superfluous tests shall not be done in an attempt to give a conclusion or opinion more weight.

### 3.2. Sampling

- 3.2.1. The identity and integrity of evidence shall be confirmed prior to examination.
- 3.2.2. Evidence shall be sampled in a representative manner.
- 3.2.3. Sufficient sample shall be retained for additional testing whenever possible, and evidence shall not be consumed unnecessarily.

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## 4. Responsibility

Forensic scientists should be fair and respectful when interacting with colleagues, clients, attorneys, and the public. Forensic scientists should take responsibility for their own work and for work done under their direction. Each individual should take responsibility for conforming to the Code of Professional Conduct. When a forensic scientist is hired as a consultant by an individual, a confidential relationship is presumed to exist between them. When a forensic scientist is retained by an attorney representing a litigant, an attorney-client relationship is presumed to exist between them. A reasonable fee may be charged for the services of a forensic scientist.

On occasion different conclusions or opinions in a case may be reached by different experts. If aware that there is a difference, the forensic scientist should give due consideration to potential sources of that difference, including acknowledging that differences can be legitimate. The forensic scientist should consider means by which differences of opinions might be resolved. Such means may include the exchange of information, samples, or data; jointly conducting appropriately designed experiments; referral to a third expert; or other means.

### 4.1 Violations of the Code of Professional Conduct shall not be tolerated or concealed.

4.1.1. Serious or repeated violations of the Code of Professional Conduct shall be reported to the relevant association.

4.1.2. Any conflict between the Code of Professional Conduct and responsibilities as defined by the employer, policies, law, regulation, or other legal authority shall be reported to the employer or client.

4.1.2.1. Reasonable measures shall be taken to resolve the conflict.

4.1.3. Any report of a violation of the Code of Professional Conduct shall follow the policies and procedures outlined in the Enforcement of the Code of Professional Conduct.

### 4.2 Responsibilities to the Profession

4.2.1. Conduct detrimental to the profession shall be avoided, including illegal conduct.

4.2.2. Forensic scientists shall discourage the association of their names with developments, publications, or organizations to which no significant contributions were made.

4.2.3. Forensic scientists shall not engage in plagiarism; work done by others shall be properly credited.

4.2.4. When giving advice regarding the questioning of another witness, the purpose shall be to prevent incompetent and misleading testimony, and make known facts that are legally relevant.

4.2.5. Membership in an association or employment in an agency or company shall not be used to obtain unjustified benefits, privileges, or exemptions.

### 4.3 Responsibilities of Managers and Supervisors

4.3.1. Laboratory managers and supervisors shall facilitate, support, and promote an environment conducive to ethical conduct.

4.3.2. Laboratory managers and supervisors shall ensure that laboratory services are provided in a manner which maximizes organizational efficiency and ensures an economical expenditure of resources and personnel while maintaining necessary quality standards.

4.3.3. Laboratory managers and supervisors shall ensure that employees have sufficient academic qualifications, experience, knowledge, and training to perform work within their areas of expertise and operate in accordance with the Code of Professional Conduct.

4.3.4. Laboratory managers and supervisors shall establish and maintain an appropriate quality assurance system.

4.3.5. Laboratory managers and supervisors shall promote and support participation in professional associations, certification programs, and technical working groups.

4.3.6. Laboratory managers and supervisors shall not allow employees to be pressured to perform substandard work, take technical shortcuts, or arrive at conclusions not supported by scientific data.

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## GUIDELINES AND RATIONALE: An Addendum to the proposed Code of Professional Conduct

Organizations adopting a Code of Professional Conduct shall have a written procedure which provides procedural due process rights for all those who are accused of a violation, involved in the process of bringing an accusation, investigating complaints, and making a determination of sanctions.

Members of the organization must be encouraged to bring serious violations of the ethics code to the attention of an ethics committee of the organization.

Anonymous complaints or accusations are inappropriate and shall not initiate an investigation. The entire investigative process must be absolutely confidential.

Organizations adopting a Code of Professional Conduct should indemnify members who, *in good faith*, bring ethics complaints; otherwise the code and process will be ineffective.

Any Code of Professional Conduct and associated procedures cannot be effective if would-be complainants are intimidated or otherwise reluctant to bring complaints to the appropriate organization. Assuming the procedure for investigation and resolution of charges of violation of the Code have been followed, there should be no basis for any legal action against those involved in the process.