

## Corrective Action Response

### BCCL-21-0744: Unapproved Method & Personal Commentary

**Date of Incident:** December 29, 2021 – August 19, 2022

**Date of Corrective Action:** September 15, 2022 – October 21, 2022

#### **Description of Corrective Action(s) Taken:**

1. The analyst was required to pass an in-house created technical review proficiency exam, SD-19-0684, prior to continuing technical review. The analyst was given two days to complete the technical review, with the exam due on October 18, 2022. In order to pass, the analyst had to demonstrate best Laboratory practices while following the Laboratory's standard operating procedures. Findings included but were not limited to the following:
  - a. Proper labeling of TIC and printouts
  - b. Completing casework in a timely manner
  - c. Demonstrating consistency in analysis
  - d. Open communication when questions or concerns arise

Based on the review of the technical review proficiency exams by the Jr. Seized Drug Analyst, Quality Assurance Manager, and Laboratory Director, the analyst was able to correctly identify incorrect or missing information, as well as identify some mistakes that were missed in the creation of the proficiency, such as the following:

- a. Consistency of information between the worksheet and JusticeTrax was not always present.
  - b. When there were no run numbers or notes on the TIC, in the case file, or in JusticeTrax regarding GC/MS runs.
  - c. Retention time was not labeled on all peaks identified.
  - d. The use of No Controlled Substance (NCS) or Non Analytical Match (NAM) or Insufficient Ions for Comparison (IIFC) was missing on data.
  - e. The blank used in GC/MS analysis did not always match the solvent used.
- These findings were reviewed with the analyst. Due to the analyst achieving the correct results, the analyst has been approved to continue technical review of casework as of October 20, 2022.
2. The analyst was notified of priority cases in their list of outstanding cases and given the following deadlines, which include technical and administrative review, for all outstanding cases:
    - a. All prioritized, open cases were due October 7, 2022
    - b. All remaining open cases were due October 21, 2022

The analyst completed three of the 11 prioritized cases by the October 7 deadline. The remaining priority cases were completed by October 20. The analyst completed all except one outstanding case, BCCL-22-0641, by the October 21 deadline. A

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report for BCCL-22-0641 was issued on November 3, 2022. The analyst, even when told which exhibit(s) of each case to analyze, appeared to lack a sense of urgency to complete the casework assigned. The analyst would put off (re)analysis in favor of working uncomplicated cases and miss deadlines.

3. Cases which were in the analyst's possession for longer than 60 or 90 days but were completed by the analyst by their due dates of October 7 and October 21, a note was not required in LIMS or in the case file.
4. The analyst's cases were spot checked by the Quality Manager and Laboratory Director in order to observe improvement in consistency. Cases analyzed will be continued to be spot checked for the remaining 90 days after analysis started on September 15, 2022. Findings during these spot checks included:
  - a. Written case file did not match electronic case file
  - b. Identification of run number and reasoning, if more than one.
  - c. Exhibits which were previously presumptively tested were in need of analysis completion.

#### Laboratory Number(s) (if applicable):

Cases (11) which were given priority and due October 7, 2022:

BCCL-20-1024	BCCL-21-1327	BCCL-22-0589
BCCL-21-0114	BCCL-21-1363	BCCL-22-1117
BCCL-21-0499	BCCL-21-1512 <sup>†</sup>	BCCL-22-1130 <sup>†</sup>
BCCL-21-1214 <sup>†</sup>	BCCL-21-2022	

<sup>†</sup>Cases completed prior to the deadline

All remaining open cases (25) due October 21, 2022:

BCCL-20-1400	BCCL-22-0336	BCCL-22-0857
BCCL-20-1618	BCCL-22-0368	BCCL-22-1036
BCCL-21-0744	BCCL-22-0392	BCCL-22-1095
BCCL-21-1101	BCCL-22-0481	BCCL-22-1169
BCCL-21-1306	BCCL-22-0489	BCCL-22-1177
BCCL-21-1489	BCCL-22-0500	BCCL-22-1100
BCCL-21-2062	BCCL-22-0641	BCCL-22-1443
BCCL-21-2098	BCCL-22-0695	
BCCL-22-0335	BCCL-22-0799	

**Comment(s):** This is the second part of a continued corrective action response as the casework produced by the analyst is monitored. The corrective actions taken are in addition

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to the previous corrective action response. The Laboratory Director has attached a supplemental document regarding the surveillance of the analyst's performance.

**Date of Resolution:** November 3, 2022

Shirley Old Seized Drugs  
Applicable Analyst / Discipline

11/10/22  
Date

Shirley W. W. W.  
Lab Quality Manager

11 Nov 2022  
Date

Derek S. J. C.  
Laboratory Director

10 Nov 2022  
Date

October 28, 2022

Supplement to Corrective Action Response – BCCL-21-0744: Unapproved Method & Personal Commentary

As this Corrective Action Response is closed, I felt it necessary to elaborate on the mechanisms that were required to get to this point. The issue of the heart of the corrective action (personal commentary on case documentation) has been addressed and I do believe a sense of contriteness has been the order of the day. However, the other part of the corrective action (use of approved method) has raised added concern. In seeking to understand how the analyst got to the point of using an unapproved method, other areas of concern were unearthed.

Principally, the analyst does not have a well-defined protocol for the continual progression of case analysis. On some assignments, analysis was straightforward with opening, inventorying, processing, and eventual conclusion within a matter of days. On more complex assignments, the time frame might extend months. In an attempt to address the perceived compliancy, new protocols were adopted, mainly, any assignments requiring greater than thirty days to completion would require an update in the Laboratory LIMS system. Greater than sixty days would require a written letter in the case file. Before this corrective action was initiated, bi-weekly updates were provided to each working analyst identifying any outstanding cases based on LIMS analysis. It was discovered that the LIMS was not always properly updated to reflect when cases were assigned to the working analysts thereby defeating the bi-weekly updates. This has since been corrected in that the evidence technician now assigns all cases to the working analysts.

Also, it was noted that in the corrective action response that the analyst had a difficult time prioritizing assignments. The corrective action plan highlighted which assignments needed completion by a certain date. The analyst missed the mark on many of those highly prioritized samples. On the lower tier samples, all cases with the exception of one met the required deadline. This begs the question did the analyst not understand the corrective action plan or simply decided to go in their own direction. It has been noted in the past, the analyst decidedly struggled with completing in-jail assignment in the prerequisite time frame of two weeks and all other assignments within thirty days.

Finally, as the analyst was closing out all outstanding assignments, a case was completed that utilized the Laboratory's newly acquired instrument. While that instrument has been qualified, it has not yet had any methods validated for sectional use. However, the instrument was used in attempt to verify it was in working condition with a case sample that was needed for judicial purposes. All generated documentation was kept with the case folder. Once again, this begs the question if the analyst had any perceived awareness that this was inappropriate or just didn't care.

In speaking with the analyst on numerous occasions, it is quite clear that the analyst is knowledgeable of the their discipline and quite intuitive concerning a number of issues within their discipline. However, the desire to be meet organizational templates is sketchy as best, totally elusive at its worst. As we move forward as a Laboratory, it is totally appropriate in my opinion to continually monitor whether the analyst is engaged. Although we acknowledge our professional responsibility every two years as a part of Texas Forensic Science Commission licensing requirements, I do believe that we must remind ourselves on a continual basis of our professional requirements to our field of choice. I do not take comfort in having to construct this diagnosis of an analyst perceived lack of professionalism, but essentially this is what this synopsis boils down to - either we commit to doing the best we can on a daily basis or we need to remove ourselves from this field.

As we move forward as a Laboratory, we will seek to balance all facets of our approach to evidence handling, sample analysis, interpretation and adherence to operational principles. This goal lies within our grasp and underscores the commitment we have to our stakeholders.



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Derek Sanders, Laboratory Director