

Allegations May Cast Cloud Over DUI Cases

State lab manager quits after she's accused of signing false statements

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Allegations that the manager of the state toxicology lab has repeatedly signed false statements over nearly seven years could raise questions about criminal cases and prompt hundreds of drunken-driving suspects to challenge their breath tests.

Ann Marie Gordon resigned July 20, several days after the Washington State Patrol began investigating an anonymous tip about work done in its own Seattle toxicology lab.

Gordon is accused of signing sworn statements -- under penalty of perjury -- that she tested ethanol-water solutions used to make sure breath-test machines are working properly even though she didn't do any such tests.

Defense attorneys said the revelation that such a high-ranking official lied could cast doubt on criminal cases in which she's testified, as well as affect whether breath-test readings can be used against drunken-driving suspects in court.

But state toxicologist Barry Logan said Monday that there's "no evidence that any of the results issued by the lab are compromised," and he doubted that any drunken drivers would get a break.

King County prosecutors declined to speculate what would happen to any pending cases. The legal consequences may become clearer in the coming weeks as the State Patrol wraps up its internal investigation and judges begin considering the situation.

"I think this is an issue for every DUI case currently pending in this state," said Bellevue defense attorney Francisco Duarte. "Every single machine in the state of Washington relies on the solution prepared by the Washington state toxicology lab."

Defense attorney Ted Vosk said he was concerned that the person in charge of the lab apparently committed perjury and questioned whether anyone working for her may have done the same thing.

"In my mind, it's a constitutional issue when the state lies," he said. "I want drunk idiots off the road as much as anyone else, but it's got to be done right."

Logan said there's no evidence that anyone else certified tests they didn't perform, though that's part of the investigation. The State Patrol will consult with King County prosecutors to determine whether Gordon should face any criminal charges, he said.

Under the toxicology lab's own guidelines, the ethanol-water solution must be mixed at a precise ratio before it is used to test the state's 200 breath-test machines, which are kept at various police stations and do not include the portable devices that officers carry. The idea is to make sure each one gives an accurate reading.

A certificate showing that the solution was mixed properly is often part of the evidence necessary for prosecutors to present breath-test results in court.

Logan said Gordon has likely signed 20 to 30 of the certificates in each of her seven years running the lab, though it's not yet clear whether she tested the solution in some cases and not in others.

But because between three and 15 technicians test each batch, he said, any doubts about certificates can be handled by simply having one of the other technicians testify about it in court.

Logan said he could not explain why Gordon would sign the certificates without testing the solution, but added, "I don't believe there was any intent to deceive."

He said she has been in toxicology-related professions for more than two decades, and "her testimony has never been brought into question before."

Gordon could not be reached Monday for comment.

Since November 2000, Gordon was responsible for reviewing all of the lab's data and signing off on all reports, as well as hiring, training and handling quality-control programs.

She has likely testified in hundreds of criminal cases, mainly those in which someone was accused of driving under the influence of drugs, Logan said. Other lab employees typically testify in alcohol-related driving cases.

A problem with her work came to light last week in Whitman County, where former fugitive Fred Russell is facing trial in an alleged drunken-driving crash that killed three Washington State University students in 2001.

In a pretrial hearing, Logan testified that Gordon inadvertently threw away two blood samples taken from Russell after the crash.

Duarte, who represents Russell in the vehicular homicide case, is now asking that Russell's blood-alcohol test results be kept out of court. A judge is expected to decide next month.

For now, how Gordon's actions affect DUI cases in Washington remains to be seen, said attorney Bill Bowman, who also specializes in drunken-driving cases.

"It could be an issue that's used to challenge the admissibility of hundreds of breath tests," he said.

"Now that her credibility has been challenged, there will be challenges to any blood analyses she's done as well."

He said he didn't know why Gordon would not have done the testing that she certified doing.

"It's not a particularly difficult process, so it doesn't make any sense to me why she would do that," he said. "Apparently to cut corners."

Gordon has been at the state toxicology lab since 1998, working two years as a forensic toxicologist before being promoted to manager.

Before that she worked for a private drug-testing lab in California and for Army labs in Maryland and Germany. She studied genetics and microbiology at the University of California-Berkeley.

RECENT CRIME LAB PROBLEMS

The Washington State Patrol's crime lab system has suffered some embarrassing setbacks in recent years:

September 2000: State Patrol forensic scientist John Brown resigns while under investigation for concealing an error on a DNA test.

November 2001: Forensic scientist Michael Hoover confesses to sniffing heroin from evidence samples, pleads guilty to two misdemeanors and receives an 11-month jail sentence.

November 2002: Forensic scientist Arnold Melnikoff is placed on paid leave while under internal investigation after a complaint about his role in two wrongful rape convictions in Montana. He is accused of providing incorrect hair-analysis testimony.

April 2003: An internal audit of 100 drug-analysis tests done by Melnikoff finds flaws with 30 cases, something Melnikoff disputes.

March 2004: State Patrol fires Melnikoff.

July 2004: A P-I investigation documents that DNA errors and contamination by forensic scientists are a recurring problem in the crime lab.

December 2004: Forensic scientist Charles Vaughan's lab work and testimony played a role in the state of Oregon's murder case against two men who were wrongfully convicted in the 1980s, the P-I reports.

July 2007: Ann Marie Gordon, who managed the toxicology lab in Seattle since 2000, resigns after being accused of signing false statements related to ensuring the accuracy of breath-test machines.

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