

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from April 19, 2018

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 10:00 a.m. on Thursday, April 19, 2018, at the Tom C. Clark Building's Texas State Law Library, 205 West 14th Street, Austin, Texas 78701.

Members of the Committee were present as follows:

Members Present: Greg Hilbig, Chair
James Miller
Robert Sailors
Timothy Sliter
Thomas Ashworth
Michael Ward

Members Absent: Keith Hampton
Chris Heartsill
Katie White

Staff Present: Lynn Garcia, General Counsel
Leigh Savage, Associate General Counsel
Jody Koehler, Senior Scientific Advisor

Review and adoption of minutes from March 19, 2018 meeting.

MOTION AND VOTE: *Sailors moved to approve the March 19, 2018 meeting minutes draft. Ashworth seconded the motion. The Committee unanimously adopted the motion.*

Administrative update (update on any outstanding reimbursements; update on licensing exam software, including license application and reporting functions added to software).

Staff and members discussed whether there were any outstanding reimbursement requests. Staff reviewed the timeline for implementation of the license application functions in TopClass as well as some of the reporting functions for reports from the pilot exam. Staff reported on successful administration of the pilot exam from March 15 through April 13. The exam was administered with a few technical difficulties that are being resolved by WBT Systems, the TopClass exam administration software company.

Review and discuss revisions to adopted rules for the Licensing Program, including the adjudication of public comments received, definition of interpretation for toxicology, exemption for retired or resigned employees, temporary licensing question from Louisiana lab, and tech reviewer exception category.

Members reviewed all changes to the licensing rules responsive to comments received during the comment period. Changes were approved by Committee members, including the addition of a toxicology interpretation definition, an exemption for retired or resigned employees, a tech reviewer exception category for tech reviewers who would not otherwise be available, and revisions

to requirements for hours for toxicologists (alcohol only). Staff will post the final, adopted version of the licensing rules following the Commission's quarterly meeting tomorrow.

Members briefly discussed the issue of a Louisiana lab obtaining a temporary license for each employee or getting all of its employees licensed. Members decided this issue is up to the laboratory itself.

Discuss proposed statistics requirement for examiners applying after January 1, 2019 and development of financially accessible, online statistics course for forensic examiners.

Members briefly discussed this item only to report that staff will continue to follow up with SHSU's Patrick Buzzini on whether an online statistics course can be offered at a discounted rate to all Texas licensees who will need to fulfill this requirement after January 1, 2019.

Discuss federal examiner exemption.

Members briefly discussed this item to report that there is no follow-up at this time. The Commission is waiting on a response from DOJ to its March 1 letter before taking any further action on the issue. Committee members will defer to the Commission since the issues are primarily legal issues and the Committee has already made its recommendation.

Review and discuss postmortem toxicology opinion from Attorney General's office.

Members briefly discussed the postmortem toxicology opinion (KP-0188) received from the Attorney General's office, stating that if the primary purpose of postmortem testing is "medical practice," the testing is not forensic analysis subject to accreditation requirements. Garcia explained Commissioners will review at their quarterly meeting tomorrow, a proposed exemption for postmortem toxicology testing from accreditation requirements due to the impracticality of the Commission being able to review on a case-by-case basis whether the primary purposes of postmortem testing was "medical practice" as described in the AG opinion. Staff will report the Commission's decision after tomorrow's quarterly meeting.

Review and approve laboratory application for Waiver of Laboratory Support Personnel.

Members reviewed and discussed the draft Waiver of Laboratory Support Personnel application. Staff explained the application will be available online for laboratories to fill out appropriate information and submit. Hilbig requested the job title be added to the form for each person for whom the lab is requesting the waiver in addition to the description of the job. Staff will revise the form accordingly and work on getting the application available online.

Discuss setting up workgroups for establishing knowledge-based competency requirements by forensic discipline.

Members discussed setting up focus groups by forensic discipline to establish knowledge-based competency requirements to take effect prior to January 1, 2019. Licensing Committee members will discuss this item at its next meeting and work on setting up meetings/calls for establishing minimum competency requirements by discipline.

Discuss general examination requirement, including update on pilot exam, exam study

material, questions, topics, structure and administration, and psychometric testing services.

Garcia gave a PowerPoint presentation on results from administration of the pilot exam, including detailed statistics on candidate score ranges dividing the scores into quarters and showing stats by forensic discipline and years of forensic experience. She explained the process for evaluation of the exam by the Commission's psychometricians and gave a proposed timeline for release of pilot exam scores. The Commission expects scores will be released by June this year. Commission staff will continue to work with the psychometricians to establish the pass/fail rate for the General Forensic Analyst Licensing Exam.

Committee members expressed an interest in reviewing statistics on how the group of test takers with less than 2 years of experience performed on the pilot exam given that the majority of those tested after January 1, 2019 will be new analysts. The test should focus on this group of candidates and establish a level of minimum competence of the exam topics covered.

Garcia explained two separate approaches for scoring of the exam—a compensatory approach versus a conjunctive approach. With a compensatory approach to establishing candidate scores, exam performance is evaluated as a whole, all correct answers for every domain is counted and a certain number or percentage of the entire test must be answered correctly. With a conjunctive approach, a minimum percentage or number of questions from each of the seven domains/topics must be answered correctly in conjunction with a minimum number of total questions answered correctly on the exam to meet the pass rate.

MOTION AND VOTE: *Sliter moved to recommend the full Commission adopt a conjunctive approach to establishing the minimum pass rate for the exam. Ward seconded the motion. The Committee unanimously adopted the motion.*

Garcia will revise the PowerPoint presentation given today to include the recommendation by the Committee for the full Commission meeting tomorrow.

Erin Reat, forensic biology analyst from the Bexar County Criminal Investigation Lab, gave feedback on the pilot exam. Reat discussed TACL D and other members of the scientific community's willingness to provide input on evaluation of the pilot exam questions. Members discussed putting together a group of nine people to conduct a comprehensive review of the exam questions before the General Forensic Exam is released.

MOTION AND VOTE: *Ward moved to recommend the full Commission ask the TACL D to provide a roster identifying members and/or analysts nominated to participate in the evaluation of the exam questions from which FSC staff will pick 4 or 5 people to participate. Sliter seconded the motion. The Committee unanimously adopted the motion.*

The 4 or 5 people from TACL D will work with two other members—possibly Drs. Kerrigan and Budowle to evaluate the exam questions. The target for release of the General Forensic Analyst Licensing Exam is between June 15 through July 1.

Henry Hollyday, forensic analyst from Bexar County Criminal Investigation lab also provided feedback on the pilot exam. Hollyday suggested a more detailed syllabus or outline on the topics would be helpful to test-takers.

Aliece Watts, Quality Manager for NMS Labs, provided feedback on the exam. Watts indicated the reading and material seemed excessive and beyond what minimum competency might be required of a beginning analyst.

Dawn Boswell, Chief of Tarrant County District Attorney's Office Conviction Integrity Unit, gave feedback on the development of exam questions and the difficulty in balancing what information to test about the law versus giving advice determinations to be made by the labs or district attorneys.

Update from the Texas Association of Crime Laboratory Directors ("TACL D"), including discussion of any comments and feedback related to the published program rules.

Several members of the TACL D, including Aliece Watts and Erin Reat gave public comment throughout the agenda as noted above.

Discuss program budget and breakout of exam fee.

Members did not discuss this item.

Schedule and location of future meetings.

Staff will circulate a Doodle poll to come up with the next Licensing Advisory Committee meeting date.

Hear public comment.

No public comment was given other than that noted throughout the agenda.

Adjourn.