

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from September 13, 2018

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 10:00 a.m. on Tuesday, July 31, at the Stephen F. Austin Building, Room 172, 1700 N. Congress Avenue, Austin, TX 78701.

Members of the Committee were present as follows:

Members Present: Robert Sailors
Thomas Ashworth
Michael Ward
Tim Sliter
Katie White
Greg Hilbig

Members Absent: James Miller
Chris Heartsill
Keith Hampton

Review and adoption of minutes from July 31, 2018 meeting.

MOTION AND VOTE: *Sailors moved to approve the July 31, 2018 meeting minutes draft. Ward seconded the motion. The Committee unanimously adopted the motion.*

Administrative update and report on roll-out of online license applications in TopClass. Discuss progress on changes to application platform.

Koehler reported on the number of licenses issue thus far—25 licenses have been issued and several hundred are pending or in queue (waiting on submission of items from applicants). Koehler reported the turn-around time for complete applications submitted has been about a day or so, but that analysts should expect up to a week. Savage explained staff will set strict deadlines, sometime in the beginning of December for receipt of all application items and issuance of a license by January 1, 2019. If analysts don't meet this deadline, they may not have their license by the effective date of the licensing requirement—January 1, 2019. Savage also reported on progress in transitioning the license application function to the Office of Court Administration's system, ALIS. All data is expected to be transferred sometime after the licensing deadlines to avoid interference with getting licenses issued prior to January 1.

Update on Exam Evaluation Committee progress.

Savage reported the exam evaluation committee has enough data to evaluate the success/validity of the 10 piloted questions. Staff will reach out to the psychometricians with this data for initial evaluation of the questions. Exam Evaluation Committee members will continue to develop questions to be piloted for future iterations of the exam.

Discussion of proposed statistics requirement for examiners applying after January 1, 2019 and development of financially accessible, online statistics course for forensic examiners through Texas A&M University.

Savage reported Spiegelman has been retained is working on a statistics course that may be taken via Texas A&M's Continuing Education Program online. The FSC's website will have a link to the course. The course will cost about \$300 per student, much cheaper than a regular college course at a four-year University.

Discussion and recommendations regarding Waiver Applications for Laboratory Support Personnel.

Members reviewed and discussed pending waiver applications for support personnel under 651.206.

MOTION AND VOTE: *White moved to deny the waiver applications for two NIBIN examiners because the examiners perform activities beyond simple data entry (while the range master test-fires the recovered firearms, the individuals still identify markings left on cartridge cases, such as breech face marks, ejector marks, extractor marks, firing pin marks, and use those markings to orientate the cartridge cases for proper NIBIN entry based on ATF protocols). Ashworth seconded the motion. The Committee unanimously adopted the motion.*

*Ward recused himself from voting on this item.

MOTION AND VOTE: *Ward moved to deny the waiver application for a toxicology technician who performs extractions and confirmation testing, functions beyond the scope of limited support functions. White seconded the motion. The Committee unanimously adopted the motion.*

MOTION AND VOTE: *Ward moved to deny the waiver application for a laboratory technician position because the individual manages case samples, interprets data and determines proper GC-MS methods, functions beyond the scope of limited support functions. White seconded the motion. The Committee unanimously adopted the motion.*

MOTION AND VOTE: *Ward moved to deny the waiver application for two evidence technicians who process DNA extracts through extraction, quantification and amplification and results obtained from their work ultimately are utilized for interpretation and reporting. White seconded the motion. The Committee unanimously adopted the motion.*

*Hilbig recused himself from voting on this item.

Discussion and recommendations regarding criminal history evaluation requests and reported criminal convictions on license applications.

Members reviewed several outstanding criminal history evaluation requests and granted license eligibility for those applications reviewed. Members decided to change the text of the licensing application to simply state the applicant agrees to a criminal background check instead of

disclosing specific instances of their criminal history. This change was made to avoid any inquiry into whether an applicant has been honest or dishonest in disclosing his/her criminal history.

Discuss progress from workgroups for establishing knowledge-based competency requirements by forensic discipline.

Members discussed whether the knowledge-based competency requirements are the best approach to standardizing training topics across laboratories or whether discipline-specific competency exams should be developed in addition to the general forensic exam. Members requested guidance from the Commission on how to proceed with knowledge-based competency requirements. Specifically, members requested the full Commission's response on whether the Commission would like to 1) do nothing with the knowledge-based competency requirements (eliminate them altogether); 2) further develop the knowledge-based competency lists for publication prior to January 1; or 3) begin development of discipline-specific exam content in addition to the general forensic exam. Members noted that development of discipline-specific exam content would be a huge undertaking.

Discussion of licensing rule applicability to forensic analysis performed prior to January 1, 2019 by out-of-state analyst with testimony offered after January 1, 2019.

MOTION AND VOTE: *Ward moved to recommend staff edit the current version of the exemptions from licensing requirements in 651.206 to include out-of-state analysts who performed work prior to January 1, 2019 and return to testify after January 1, 2019. Sliter seconded the motion. The Committee unanimously adopted the motion.*

Discuss eligibility and applicable rules for a previous Texas lab employee who passed the pilot exam and currently works for a non-Texas accredited lab out-of-state and plans to return to Texas.

Members decided nothing special needed to be done with respect to licensing rules for this item. The person is ineligible to get a license until he/she returns to work at a Texas-accredited lab.

Discuss and make recommendations on continuing education requirements.

MOTION AND VOTE: *Ward moved to adopt a draft rule specifying continuing education requirements for analysts renewing their license each cycle. Ashworth seconded the motion. The Committee unanimously adopted the motion.*

Respond to inquiry from NMS Laboratories regarding temporary licenses.

Members discussed an inquiry from NMS Laboratories, requesting temporary licenses for all of its analysts who work in NMS's out-of-state toxicology laboratory, because the laboratory cannot justify the cost fully licensing all of these examiners for the small number of Texas cases worked every year (some years there may be none). Members discussed whether this would be a temporary license situation or a special exception for this particular laboratory. NMS's request would require revision to the temporary license option or creation of a special exception under

the Commission's authority to establish a classification or license to ensure the availability or properly training and qualified forensic analysts.

MOTION AND VOTE: *Ward moved to recommend denial of the special exception request from NMS. White seconded the motion. The Committee unanimously adopted the motion.*

Report on recommendation for appointment of Licensing Advisory Committee member.

Staff reported the full Commission will review and vote on the nomination of William "Bill" Hines, Texas Criminal Defense Lawyers Association nominee for the defense seat on the Licensing Advisory Committee, at its October 5, 2018 quarterly meeting.

Update from the Texas Association of Crime Laboratory Directors.

There was no update for this agenda item.

Schedule and location of future meetings.

Staff will circulate a Doodle poll to determine members' availability for the next meeting.

Hear public comment.

There was no public comment.

Adjourn.