

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from August 23, 2016 Meeting in Austin, Texas

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 10:30 a.m. on Tuesday, August 23, 2016, at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 172, Austin, Texas 78701

Members of the Committee were present as follows:

Members Present: Greg Hilbig, Chair
James Miller
Robert Sailors
Chris Heartsill
Michael Ward
Timothy Sliter
Robert Middleberg
Mark Daniel

Members Absent: Inger Chandler

Staff Present: Lynn Garcia, General Counsel
Kathryn Adams, Commission Coordinator

General updates from July 7, 2016 Licensing Advisory Committee meeting including review and adoption of minutes.

Hilbig gave a brief update on activities and progress since the Committee's last meeting on July 7, 2016.

MOTION AND VOTE: *Ward moved to adopt the July 7, 2016 minutes draft. Heartsill seconded the motion. The Committee unanimously adopted the motion.*

Garcia provided a brief introduction and review of the tasks at hand. The main task before the Committee at this meeting is to finalize drafts of recommended criteria to obtain an examiner license for each of six accredited forensic disciplines—Controlled Substances, Toxicology, Biology/DNA, Firearm/Tool mark, Questioned Documents, and Trace Evidence and to continue discussion on the development of a general forensic exam.

Administrative update (outstanding reimbursements, status of licensing program software acquisition, progress on web design and processing of fees, and Commission Legislative Appropriations Request update)

Members discussed the costs related to the implementation and operation of the licensing program and how its functions might be supported by examiner licensing fees. Members discussed the status of acquiring necessary content management software for the management of licensing program data. The software has not yet been acquired, but staff will continue to work with Sam Houston State University's purchasing department to discuss how the software and regular maintenance will be worked into the Commission's FY17 budget.

Review proposed, outlined educational and other statutory requirements for each accredited forensic discipline for which licensing will be required, including potential waivers for certain requirements.

Committee members discussed draft educational and other statutory requirements developed at the Committee's July 7, 2016 meeting.

Members discussed the issue of cross disciplines. For example, a toxicologist may only do blood alcohol and may or may not do drug chemistry at all. Members discussed having a main license category—either Controlled Substances, Toxicology, Biology/DNA, Firearm/Tool mark, Questioned Documents, or Trace Evidence and listing any limitations and/or sub-disciplines on the examiner's profile on the Commission's website.

Members discussed the issue regarding certain forensic experts who may not be proficiency tested. The examiner licensing statute requires examiners, as a criterion to obtain an examiner license, to complete proficiency testing. For most accredited laboratories, an examiner can easily satisfy this requirement, as it is already a requirement for the laboratory to achieve and maintain accreditation. However, some forensic experts such as laboratory management are not currently proficiency tested. Therefore, they would be unable to meet the requirement. Members discussed how to deal with the issue of non-proficiency tested examiners who want to obtain a license. Members may recommend an exemption or waiver be applied in certain extraordinary situations where the proficiency testing requirement is impractical or unnecessary.

Discussion of proposed general exam requirement, including potential exam developers, topics, structure and administration of the exam.

Garcia and committee members discussed several national and local experts that may help provide resources for development of the general exam. The following were discussed as potential subject areas and sub-categories for the exam:

- Psychometrics/Exam Development
- Evidence handling (Proper sealing, chain of custody issues)
- Cognitive Bias (Task relevance/irrelevance, blind verification)
- Statistics – (Expression of evidentiary weight)
- Ethics
- Root Cause Analysis
- Legal and Ethics (Criminal Law and Procedure; Brady and Michael Morton Act)
- Uncertainty of Measurement
- Traceability
- Error Rate

Members discussed recommending the general forensic exam should be an electronically administered multiple-choice exam. Garcia will reach out to potential subject area experts to request whether they may be interested in participating in the development of the general forensic examiner license exam for Texas, including the development of preparation and other study materials for the exam.

Members also discussed preparation materials for the exam, including a potential reading list and a half-day or full-day of course instruction on exam material (offered live and electronically). Members will continue to discuss what materials may or may not be offered to students in preparation for the general forensic exam as it is developed.

Discussion of proposed voluntary license for unaccredited disciplines and private practitioners not working in an accredited laboratory, including discussion of which particular unaccredited forensic disciplines the Commission should offer a voluntary license.

Members discussed the possibility of offering a voluntary license option for unaccredited forensic disciplines (*i.e. disciplines not required to be from an accredited laboratory to be admissible in Texas criminal courts*) and private practitioners not working in accredited laboratories.

Members discussed recommending the full Commission initially offer a voluntary license for the following disciplines—Latent Prints, Crime Scene, and Digital Evidence. Members discussed inviting representatives from each of the three disciplines to participate in the Licensing Advisory Committee’s next meeting in Austin on October 4, 2016. Garcia will reach out to representatives discussed by the group as potential sources of information related to these disciplines and invite them to attend the Committee’s next meeting.

As the criteria is developed/recommended by the Committee, members will create a matrix showing the requirements for the three voluntary license disciplines and a chart of any applicable sub-disciplines or limitations that should be included as part of a license just as they have done for the accredited disciplines.

Discussion of proposed knowledge-based competency criteria recommended for each accredited discipline, including process for laboratories to confirm examiners have satisfied the criteria on their knowledge-based competency exams.

Members discussed they received positive feedback from the Texas Association of Crime Lab Director’s membership on proposed competency criteria at the Committee’s July 7 meeting. Members expect further comment on proposed knowledge-based competency criteria and the proposed general exam requirement from TACL D by the Committee’s October 4 meeting. Members will discuss any comments at the October 4 meeting and make revisions to the criteria as necessary. A representative from TACL D will be invited to the October 4 meeting for comment and discussion.

Review and discussion of revisions to proposed license discipline categories and subcategories chart.

Members reviewed the draft license discipline categories and subcategories chart. Members discussed revising the categories to include only the six main categories—Controlled Substances, Toxicology, Biology/DNA, Firearm/Tool mark, Questioned Documents, and Trace Evidence. Each licensed examiner would have a profile on the Commission’s website that shows the main forensic discipline and any sub-categories for which they are qualified for analysis and testimony.

Review and discussion of revisions to component requirements matrix for each forensic discipline.

Members proposed recommending categories and requirements for the voluntary license disciplines discussed above be included on the component requirements matrix. As the criteria for each voluntary license is developed, members will update the matrix to include those requirements.

Update from the Texas Association of Crime Laboratory Director's July 7, 2016 meeting and comments related to the proposed license discipline categories and subcategories, the proposed requirements matrix, and the proposed general forensic licensing exam.

Members discussed the distribution of information, including feedback from TACLD on recommended criteria developed thus far for each accredited forensic discipline license category. Members discussed positive feedback from the TACLD membership. Members will seek comment and feedback from TACLD on the general forensic exam developments for its October 4 meeting.

Discussion of legislative recommendations, revisions and/or clarifications to the statutory licensing requirement and report to legislature for 85th Legislative Session.

Members did not discuss this item in any detail, but agreed to continue to address potential legislative issues for the 85th Legislative Session at its next few meetings.

Discussion of funding necessary to fulfill the licensing mandate including the cost of examinations, Forensic Science Commission application processing fees, continuing education requirements and renewal or re-certification costs.

Members briefly discussed this item and agreed to revisit the item at its future meetings and as the 85th Legislative Session approaches.

Discussion of the provisional licensing issue and the forensic disciplines for which a provisional license may be necessary.

Members discussed that the general forensic exam requirement will likely render the provisional license issue moot, because the general forensic exam will immediately be available for those examiners qualified to sit for it. Members will revisit the issue if they find a provisional license is necessary for some reason.

Discussion of temporary licensing issue for examiners who primarily practice out of state, but occasionally testify in Texas and legislative recommendations regarding the same.

Members did not discuss this item in detail, but will continue to discuss the necessity of temporary licenses for visiting examiners at future meetings.

Discussion of the "technician" licensing sub-category for each accredited forensic discipline and whether a "technician" designated license is necessary.

Members discussed recommending a definition of "technician" through its rule-making authority

to distinguish the technician role from the “forensic analyst” who actually performs forensic analysis or has any input to the conclusion of a forensic analysis.

After discussion, members developed the following recommended definition for “technician”:

“A person whose work is limited to preparatory tasks performed in advance of a "forensic analysis" as that term is defined in Tex. Code Crim. Proc. 38.01 Sec. 2(4) is not a "forensic analyst" required to obtain a license under Tex. Code Crim. Proc. 38.01 Sec. 4-a, provided the preparatory tasks performed by the person are not an essential component of the analytical process, interpretation of results or conclusions rendered.”

Garcia will work on further clarifying the definition and bring it back to the Committee’s next meeting for comment and/or revisions.

Discussion of issues related to licensing exemptions and/or grandfathering for examiners who retire or leave the forensic science profession but are called back to testify.

Members did not discuss this item in detail, but will continue to discuss the necessity of exemptions and/or grandfathering for examiners who retire or leave the forensic science profession at future meetings.

Development and discussion of next steps to fulfill statutory requirements contained in Tex. Code Crim. Proc. art. 38.01 § 4-a (b)-(f), including questions received from community.

Members discussed this agenda item throughout the meeting as noted in the agenda items above.

Consider proposed agenda items for next meeting.

Staff will circulate a proposed agenda containing items for continued discussion and any additional items members may propose.

Schedule and location of future meetings.

The Committee will meet again on October 4, 2016 at 1:00 p.m. at the Omni Austin Southpark, 4140 Governor’s Row, Austin, Texas 78744.

Hear public comment.

Members of the public gave no public comment at this meeting.

Adjourn.