

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from December 12, 2016 Meeting in Austin, Texas

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 10:00 a.m. on Monday, December 12, 2016, at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744.

Members of the Committee were present as follows:

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

Members Absent: Robert Middleberg
Inger Chandler

Staff Present: Lynn Garcia, General Counsel
Leigh M. Savage, Associate General Counsel

General updates from November 3, 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 November 3, 2016.

MOTION AND VOTE: *Sliter moved to adopt the November 3, 2016 minutes draft with suggested edits. Ward seconded the motion. The Committee unanimously adopted the motion.*

Administrative update (outstanding reimbursements, status of licensing program software acquisition, including presentation from iMIS software provider Advanced Solutions, progress on web design and processing of fees, Commission Legislative Appropriations Request update).

Members and Garcia discussed the status of acquiring necessary content management software for the management of licensing program data. Garcia and Savage reported on a recent teleconference with content management software provider iMIS and the provider for an integrated software called TopClass that would enable the Commission to administer the General Forensic Exam and CFE requirements. The software has not yet been acquired, but staff is working 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. Garcia expects the software companies will have a presentation for members to demonstrate how the software works at its next meeting.

Appointment of new Commissioners and resulting changes to Licensing Advisory Committee defense seat.

Garcia and members discussed that defense seat member Mark Daniel is now a member of the Forensic Science Commission and therefore can no longer serve on the Licensing Advisory Committee. Commission staff reached out to the Texas Criminal Defense Lawyers Association for nominations to fill the seat. Members expect to have the new member at the Committee's next meeting. The Commission can officially vote on the nominated member at its February 10, 2017 meeting.

Discussion of proposed education and training statutory requirements for each accredited forensic discipline for which licensing will be required, including potential waivers for certain requirements.

Garcia reviewed changes to a Prezi presentation and program summary on the Licensing Program to be presented to the full Commission at its February 10, 2016 meeting.

Members discussed feedback received from the Texas Association of Crime Lab Director's ("TACLD") on proposed education and training requirements. Members agreed to incorporate all comments into the draft version of the Licensing Program rules.

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

Members did not discuss the item in any detail other than an update that Garcia has reached out to potential exam developers and is working on the scope of work for the exam development to share with potential exam developers.

Discussion of proposed voluntary license for unaccredited disciplines and private practitioners not working in an accredited laboratory.

Members did not discuss this item.

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 revisions and comments to several of the knowledge-based competency requirement lists for each accredited forensic discipline. Members will incorporate comments to the knowledge-based competency criteria received from the TACLD in the final version of the documents.

Members also discussed how each laboratory will certify knowledge-based competency requirement have been fulfilled by a particular examiner. Staff proposed drafting a generic form for each forensic discipline for laboratory quality assurance managers to fill out and sign for each examiner. The form will contain checkboxes, but also will have a blank after each requirement where the quality manager may the extent to which the examiner was trained on the item. For example, a laboratory quality manager may wish to write, "this topic was briefly covered in training; however, because our laboratory does not perform function or use this method, the

examiner has a minimum understanding of the concept.” Members discussed that this will ensure that quality assurance managers aren’t signing off that each examiner knows or is qualified to perform certain methods or functions he/she may not be qualified for, but that the examiner has a cursory knowledge of the topic.

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

Members discussed revisions to the license discipline categories and subcategories chart. Members agreed three of the subcategories should be included under two of the main discipline categories as follows: Hair: Biology/DNA and Trace; Ink Testing: Questioned Document and Trace; and Gun Shot Residue: Trace and Firearm/Tool marks. Savage will make the appropriate changes to the chart and finalize for review at the Committee’s next meeting.

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

Members discussed several revisions to the component requirements matrix. Members requested staff add “accredited” before the word college for any college-level course requirements on the matrix. Members also discussed that any statistics course required should be at least a 3-hour college-level course and that training was not an equivalent for this requirement. Members assigned Chris Heartsill to finalize the specific course requirements for toxicology for the matrix. Savage will work with members on the requested edits to the matrix and bring it back for review at the Committee’s next meeting.

Members discussed the B.S. in Natural Science component on the matrix. Members discussed what subject areas should be labeled as Natural Science—should Physics, Geology, Math or other sciences be included? Members agreed to bring a proposed list of Natural Sciences to the Committee’s next meeting for discussion.

Members also discussed adding a NIBIN Tech category to the component requirements matrix, separate from the firearm/tool mark requirements. Members proposed NIBIN techs have an educational requirement of high diploma or equivalent and will take a modified general forensic exam that only covers topics such as evidence handling, legal and ethical questions, etc. Savage will add the additional category to the chart along with the modified requirements.

Members also discussed Continuing Forensic Education (“CFE”) requirements and what should be required of licensees. Members proposed 24 total hours (8/yr.) of CFE per 3-year cycle, with a minimum of 2 hours per year. Of the 24 total hours, 8 hours may be journal articles read by the licensee, 16 hours must be discipline-based (whether journal articles, conferences, trainings or otherwise), 8 hours may be general forensic training of any forensic discipline or forensic topic. All licensees must also complete an online, mandatory legal and ethics update sponsored by the Commission over each 3-year cycle (hours may vary depending on the relevant update each cycle but shall not exceed 4 hours each 3-year cycle).

Update from the Texas Association of Crime Laboratory Directors (“TACLD”) and comments related to the proposed license discipline categories and subcategories, the proposed requirements matrix, and the proposed general forensic licensing exam.

Roger Kahn, President of the TACLD attended the meeting and spoke on behalf of the organization throughout the meeting. The TACLD plans to meet again in January, prior to the Committee's meeting and will have comments ready for the program proposal as developed thus far.

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 did not discuss this item in any detail.

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

Members did not discuss this item in any detail, but will revisit the issue if they find a provisional license is necessary.

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 discussed issuing a temporary license for examiners who only testify in Texas once or twice a year. Members proposed temporary licensees may be issued a license if they can certify 1) they are working in an accredited laboratory that has a proficiency testing program, and 2) pay 75% of the full license fee.

Discussion of the "technician" licensing sub-category for each accredited forensic discipline and definition of "technician."

Members reviewed some of the proposed definitions of a technician license or technician exemption from the licensing requirement. None of the proposed definitions seems to fit across the different forensic disciplines. Sliter suggested that instead of a technician definition, members cut off the license requirement at laboratory employees who are proficiency tested in accordance with accreditation requirements. Laboratory employees who are not proficiency tested and not required to be proficiency tested under accreditation requirements will not be required to obtain a forensic analyst license. Members agreed with the proposal by Sliter. Members discussed that this would not include Tech Reviewers and Laboratory Managers who could still obtain a license because they are not required to be proficiency tested anyway under the current accreditation requirements. Members directed Hilbig to draft a definition for non-proficiency tested employees that should be exempt from the forensic analyst license requirement. Savage will incorporate the definition with a draft of the proposed rules for the Committee's next meeting.

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 January 13, 2017, and on February 9, 2017 at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744, the day prior to the Commission's next quarterly meeting.

Hear public comment.

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

Adjourn.