

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from March 3, 2017 Meeting in Dallas, Texas

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 10:00 a.m. on Friday, March 3, 2017, at the Southwestern Institute of Forensic Sciences, 2355 N. Stemmons Freeway, Dallas, Texas 75207.

Members of the Committee were present as follows:

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

Members Absent: Chris Heartsill

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

Review and adoption of minutes from February 9, 2017 meeting.

MOTION AND VOTE: *Middleberg moved to adopt the February 9, 2017 minutes draft. Ward seconded the motion. The Committee unanimously adopted the motion.*

Administrative update (update on any outstanding reimbursements or other administrative items from staff).

Members and staff briefly discussed whether there were any outstanding reimbursement requests from Committee members.

Garcia briefly reviewed the background and legislative mandate for the Commission's Licensing Program with members.

Members and staff each introduced themselves to the group, including two new members appointed by Commissioners February 10, 2017—Keith Hampton, representative from the Texas Criminal Defense Lawyers Association and Thomas Ashworth, representative from the Texas District and County Attorneys Association.

Review and discussion of updates to proposed license discipline categories and subcategories chart, components requirements matrix for each forensic discipline and program summary.

Members reviewed and made changes and edits to current program documents, including edits to the program summary.

Members briefly addressed whether impression evidence should be included in the trace evidence disciplines. Impression evidence is missing from the list of subdisciplines of trace evidence in the list of disciplines and subdisciplines subject to the Commission accreditation requirement. The Commission will address the issue at its next meeting and likely add impression evidence to the list of subdisciplines for trace evidence. Licensing Advisory Committee members agree that impression evidence, particularly footwear and tire tread, should be subject to the accreditation and licensing requirements.

Members discussed that the formal educational requirements for each forensic discipline license may be adjusted to mirror the OSAC's requirements as they are developed in the future, but for now will remain as recommended by the Committee thus far.

Members discussed that the same chemistry specific coursework requirements that apply to controlled substances analysts should also apply to trace evidence analysts working in any of the chemical analysis subdisciplines of trace. Staff will update the draft rules and requirements chart to reflect this change.

MOTION AND VOTE: *Hampton moved to match the trace evidence—specifically the chemical analysis subdisciplines of trace evidence—specific coursework requirements with the controlled substance analyst specific coursework requirements. Ward seconded the motion. The Committee unanimously adopted the motion.*

Members discussed removing microscopic hair analysis from the subdisciplines listed for forensic biology.

MOTION AND VOTE: *Sailors moved to remove microscopic hair analysis from the forensic biology subdisciplines list. Sliter seconded the motion. The Committee unanimously adopted the motion.*

Members requested staff add “barrel length determination” to the list of subdisciplines in the draft rules for the firearm/toolmark discipline. Staff will make the edit.

Members discussed adding handwriting analysis to the list of subdisciplines in the draft rules for the questioned documents discipline.

MOTION AND VOTE: *Hampton moved to add handwriting analysis to the list of subdisciplines for questioned documents. Ward seconded the motion. The Committee unanimously adopted the motion.*

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

Sliter reported that he reached out to Patrick Buzzini, Professor at Sam Houston State University. Buzzini is willing to work with the Committee and the Commission on the development of an online statistics course. Sliter will follow up with Buzzini again with further details before the Committee's next meeting.

Review and discussion of proposed draft rules for Licensing Program to be presented to the Commission at its May 26, 2017 quarterly meeting.

Members discussed changing the continuing forensic education (“CFE”) requirements to require at least 4 hours per year of CFE in a licensee’s 3-year license cycle.

MOTION AND VOTE: *Sliter moved to add the 4-hour yearly requirement for CFE. Ward seconded the motion. The Committee unanimously adopted the motion.*

Members discussed changing the language in the draft rules to state the licensee’s 3-year license cycle will begin on each licensee’s birthdate *after* he/she is licensed. Staff will edit the rules to reflect the same. The current rules state the “birthdate the year he/she is licensed.”

Discussion of proposed general exam requirement, including potential exam developer agreements, topics, structure and administration of the exam and discussion of whether recognized certification body exams may fulfill the general forensic exam requirement.

Members discussed the general forensic exam requirement and the funding necessary to support the exam development, software and administration. Garcia indicated that the Commission is waiting on notification from the legislature on whether the licensing program will receive the supplemental funding requested to support the exam development and exam software purchase needed to administer the exam.

MOTION AND VOTE: *Hampton moved to edit the language in the draft rules to indicate the general forensic exam is a requirement contingent on sufficient appropriation of funds for exam development. Sailors seconded the motion. The Committee unanimously adopted the motion.*

Members discussed the issue of whether certain certification body exams may supplant the general forensic exam requirement. Committee members agree that the available certification body exams do not cover a majority of the topics proposed to be tested on the general forensic exam. Members discussed whether the American Board of Forensic Toxicology’s (“ABFT”) certification exam may cover some of the requirements expected on the general forensic exam. Garcia suggested requesting the ABFT and/or other certification bodies send a letter to the Commission requesting their certification exam fulfill the Texas general forensic exam requirement and explain which topics are covered on the exam. Members will address the topic again at their next meeting.

Review proposed draft list of qualifying Natural Science degrees to fulfill educational component and waiver/exception process for same.

Members will continue to work on developing a list of generally accepted natural science degrees both in Texas and outside of Texas.

Discussion of disciplinary process for licensees as well as application questions/certification for employment.

Commission member Mark Daniel attended the meeting and addressed Committee members on this agenda item. Daniel explained that the laboratory disclosure form must provide the name of the analyst(s) or actor(s) involved in any potential negligence and/or misconduct. Garcia

explained that the names are now provided. Daniel also requested the Committee recommend to the Commission that the licensing application have questions about an examiner's prior employment, including a list of at least 3 references that can be contacted to verify information on the application. The application should also request the examiner state the circumstances and/or reasons he/she left employment with any previous laboratory, whether in state or out of Texas. The examiner should also be asked to indicate whether he/she has ever been investigated for negligence and/or misconduct related to his/her employment as a forensic scientist.

Committee members directed staff to get copies of the lawyer's board certification application and the nursing application to come up with a draft of these questions for the Forensic Analyst Licensing Application.

Discussion of whether federal forensic examiners should be subject to the Texas licensing requirement.

Members discussed that the law as written subjects federal forensic examiners to both the accreditation requirement and the licensing requirement. Members saw no reason to recommend an exemption from the requirement which applies to Texas state-level criminal cases only.

Discussion of whether and how to consider criminal convictions in license application process.

Members agreed the consideration of criminal convictions should be part of the forensic analyst license application. Members proposed a 10-year window where crimes of moral turpitude committed in the 10 years prior to the application date would be considered by the Committee and/or Commission upon application. Hampton suggested reviewing and modeling some of the rules for nurses with criminal convictions, particularly how the nursing board handles drug convictions for nurses. Staff will conduct research on the issue and come up with draft language in the rules for review at the Committee's next meeting.

Discussion regarding testing accommodations for persons with disabilities and special application requirements for current military, military veteran and veteran spouses.

Members reviewed draft rules on testing accommodations that follow the mandates in the Texas Occupations Code. Members agreed the rules are necessary and approved them as drafted thus far.

Update from Texas Association of Crime Lab Directors ("TACL D"), including discussion of any comments and feedback related to the program summary, proposed program timeline, proposed requirements matrix, and proposed general forensic licensing exam.

There was no representative from the TACL D at this meeting to provide an update.

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

Members did not discuss this agenda item but will continue to follow up with any legislative recommendations for the forensic analyst licensing mandate.

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.

Garcia briefly addressed this item to let Committee members know the Commission is still waiting on word related to supplemental funding for the forensic analyst licensing program and other Commission activities. Garcia will continue to monitor the budget situation as the legislative session progresses and will update members at the Committee's next meeting.

Discussion of the "non-proficiency tested laboratory personnel" proposed exemption and review of definition, including discussion of whether NIBIN techs should have different license requirements than firearm/toolmark examiners.

Members did not discuss this item, because it was voted on at the Committee's last meeting.

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.

Committee members plan to meet in April 2017 and again May 25, 2017 in Austin.

Hear public comment.

No public comment was given other than that noted above.

Adjourn.