

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from May 2, 2019 Meeting

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 10:00 a.m. on May 3, 2019, at the Tom C. Clark Building, 205 West 14th Street, 1st Floor Conference Room, Austin, Texas 78701.

Members of the Committee were present as follows:

Members Present: Robert Sailors
Tim Sliter
Greg Hilbig
James Miller
Bill Hines
Katie White
Michael Ward
Thomas Ashworth

Members Absent: Chris Heartsill

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

Review and adoption of minutes from February 14, 2019 meeting.

MOTION AND VOTE: *Sailors moved to approve the February 14, 2019 meeting minutes draft. Ward seconded the motion. The Committee unanimously adopted the motion.*

Administrative update, including number of licenses issued, progress on changes to application platform, implementation of continuing forensic education reporting function in TopClass, and revisions to website to provide information on exam, qualifications for a license and procedures for applying.

Staff provided an update on licenses issued. Staff has issued a total of 1201 licenses, consisting of 747 regular licenses, 31 provisional, and 423 blanket licenses. Staff issued one additional blanket license that licensed one examiner since the Commission's January 2019 quarterly meeting.

Staff described changes to the Commission's website with respect to licensing, including publication of a descriptive "requirements" document showing the requirements for licensure by discipline. The Commission's website also provides details on exam registration, student exams, reporting continuing forensic education, and renewal of licensure and a description about how to apply and how to access study materials. Further, staff has published guidelines for reviewing continuing forensic education programs for credit and guidelines for review and approval of courses that fulfill the statistics course requirements.

Staff to continue to work with the software provider, TopClass, in launching its continuing forensic education reporting platform and plans to have the system ready by the end of May 2019.

Discuss proposed statistics requirement for examiners applying after January 1, 2019, including timeline for availability of the online course and discussion of syllabus from Dr. Spiegelman. Review of any outstanding statistics course evaluation requests. Update on publication of statistics course evaluation guidance document.

Members and staff discussed the proposed statistics requirement. Dr. Cliff Spiegelman, Statistics expert at Texas A&M University in College Station, has offered seats in a two-week course spanning about 14 lectures beginning Monday in College Station. Spiegelman will record the lecture series over the two-week period. The lectures will be published for registered students through Texas A&M's continuing education program online. The cost of the course for students is \$300. Student will receive recognition for fulfillment of the statistics component of the licensing requirements for completion of the course. Commission staff expects the course to be ready and instructions for registration posted on the Commission's website by the end of May 2019.

Discussion and recommendations regarding Waiver Applications for Support Personnel.

There were no waiver applications for review on this agenda item.

Discussion and recommendations regarding criminal history results.

There were no criminal history evaluations to be completed at this meeting.

Discussion of any State Office of Administrative Hearing ("SOAH") requests, including discussion of Agreed Order in the Committee's recommended denial of a candidate's license for recent criminal history.

Members reviewed a draft Agreed Order pursuant to the denial of a candidate's license for recent criminal history and probation status. The Commission will issue the candidate a license as long as the candidate continues to comply with the terms of the Order, including regular reporting to the Commission on the candidate's current probation status.

MOTION AND VOTE: *Ashworth moved to recommend the full Commission approve the draft Agreed Order. Hines seconded the motion. The Committee unanimously adopted the motion.*

Discussion and evaluation of any outstanding conduct reports from licensing applications and update on outstanding conduct inquiry requested at the Committee's 2/14/19 meeting.

At the Committee's February 14, 2019 meeting, members requested staff inquire with the employing laboratory referenced in a conduct disclosure about whether a disclosed incident was considered professional misconduct. Staff reported on contacting the former supervisor (now laboratory director) of the laboratory where the reported incident occurred. The former supervisor confirmed there was no issue of professional misconduct related to the incident or with

regard to the license applicant. The person applying for a license (who disclosed the incident) was issued a license.

Discussion and evaluation of outstanding technical reviewer license applications.

Members reviewed a technical reviewer license application for the following individual who will conduct technical reviews of Materials (Trace) casework for Bexar County Criminal Investigation Laboratory.

Timothy Fallon, Former Laboratory Director at Bexar County Criminal Investigation Laboratory (Retired)

*Sailors recused from vote and discussion on this item.

MOTION AND VOTE: *Ward moved to grant the technical reviewers license for Fallon. White seconded the motion. The Committee unanimously adopted the motion.*

Discussion and evaluation of any outstanding blanket license applications, including discussion and update from March 26, 2019 blanket rule task group meeting.

Staff reported one blanket license has been issued since the Committee's February meeting and one corresponding individual license was issued under the new blanket license. The laboratory is the North Louisiana Criminalistics Laboratory. The Commission now licenses 9 entities under its blanket license provision and a total of 423 individual analysts.

Staff and members reported on the March 26, 2019 Blanket Rule Task Group conference call. The group was assembled to make recommendations with regard to the appropriate level of oversight for out-of-state forensic service providers. The group requested staff survey current blanket laboratories to determine the percentage of each laboratory's caseload that is Texas casework and the total number of Texas cases each laboratory analyzed for Texas in 2018. The range of responses from the survey received thus far span from less than 1% to 7% of total cases in 2018 that are Texas cases, representing numbers from 13 to 14,386 total Texas cases. The group will meet again to discuss findings from the survey and to determine the appropriate recommendation. Members discussed establishing a threshold for qualifying for the discounted blanket license set at 50% and at a certain number of cases to be determined. Members from the task group will report back on progress at the Committee's next meeting.

Discussion and evaluation on any temporary license application requests.

Members did not have any temporary license applications for review at this meeting.

Discussion and evaluation of outstanding fourth exam requests.

Members reviewed a written request for a candidate to take the exam a fourth time. Members also reviewed a supporting letter from the employing laboratory for the candidate.

MOTION AND VOTE: *Ward moved to approve the fourth exam request. Sailors seconded the motion. The Committee unanimously adopted the motion.*

*Hilbig recused from discussion and vote on this item.

Update on Exam Evaluation Committee progress.

Members discussed reconvening the exam evaluation committee for development and implementation of new exam questions on the forensic analyst licensing and technician exams. Staff is working to set a date for the group's next meeting. The Committee has piloted questions ready for the psychometrician's review. Staff will organize this material and send to the psychometricians for review before the next meeting.

Discuss cross-discipline issue where laboratory categorizes a particular sub-discipline in a different forensic discipline than the Commission's rules do and proposed solution for same (simple designation on the licensee's license).

Members discussed the cross-discipline issue where a laboratory and/or its accrediting body may categorize a certain forensic sub-discipline under a different forensic discipline than the Commission categorizes the sub-discipline. Members agreed the best way to handle the difference in categorization is to clearly notate on an analyst's license the forensic discipline and sub-discipline in which the analyst is cleared for casework. Staff will continue to make these notations where necessary when issuing licenses.

Review approved/published licensing rules, including:

- i. Rule expanding pre-Jan 1 exemption to include forensic disciplines later subject to accreditation requirements (e.g., bloodstain pattern analysis);**
- ii. Rule allowing university students to take forensic analyst exam and provisional license expiration on fourth exam attempts.**
- iii. Rule regarding Presiding Officer or Designee authority on criminal history reviews/denials;**
- iv. Rule revision to technical reviewers license.**

Staff reviewed adopted licensing rules with members. Rules noted above became effective as of May 3, 2019. No changes were made to the rules as adopted by Committee members and the full Commission.

Review outstanding draft licensing rules and proposed rule concepts for approval, including:

- i. Continuing forensic education rule updates, including number of discipline-specific training hours required for multiple disciplines, rollover of hours from previous license cycle and clarification of credit for "date-delivered";**

Members discussed whether analysts should be permitted to roll-over hours of CFE credit to the next licensing cycle to count towards their 24 total hours required each two-year license period.

Members decided against permitting rollover hours because of the length of the license period (2 years) and the issue that someone could fulfill all of their hours in the first quarter and not have training for potentially four years. Members also discussed the issue with finding relevant, affordable continuing forensic education training for certain disciplines like Materials (Trace) and Firearms. Members discussed potentially offering scholarships to candidates to attend approved conferences and/or training or offering sponsored trainings through the Commission's education platform. Staff will explore different options that may be available.

MOTION AND VOTE: *White moved to recommend approval of the draft continuing forensic education rule without changes. Ward seconded the motion. The Committee unanimously adopted the motion.*

ii. Rule regarding authority to deny for conduct on initial application; and

MOTION AND VOTE: *Ward moved to recommend approval of the draft rule regarding the authority to deny for conduct on an initial application. Miller seconded the motion. The Committee unanimously adopted the motion.*

iii. Revisions to rules post-January 1 requirements.

MOTION AND VOTE: *Sailors moved to recommend approval of the draft rule revisions to remove references to any pre-January 1, 2019 requirements. White seconded the motion. The Committee unanimously adopted the motion.*

Update from Mandatory Legal and Professional Responsibility Training Development group.

Members provided an update from the Mandatory Legal and Professional Responsibility Training Development group call. Garcia is drafting an outline of the training topics for the course and the group will solicit feedback and subject matter expertise on the topics. The group discussed the possibility of seeking assistance from University of Texas students who may be interested in creating the training video for the Commission.

Review Licensing Advisory Committee appointments and terms; discuss soliciting applications from TACL D.

Members reviewed the terms of at least five members of the Committee that are expiring August 31. Members discussed with Texas Association of Crime Laboratory Directors (TACL D) President, Peter Stout, the need for a list of 20 nominees for appointed seats on the Licensing Advisory Committee. TACL D plans to get the Commission a list of 20 nominees sometime in early July. The Commission plans to select 5 candidates from the list of nominees at its August 16 quarterly meeting.

Review any specific coursework and minimum education requirements transcript review requests.

Members reviewed one outstanding request for coursework evaluation to determine 1) whether the candidate had the requisite chemistry coursework required for a Materials (Trace) performing chemical analyses license and 2) whether the candidate has sufficient coursework to satisfy the requisite statistics component. Members determined the candidate did not meet the requirements for either. Staff will notify the candidate of the outcome of the Committee's evaluation.

Discuss licensing requirements for crime scene reconstruction, including bloodstain pattern analysis.

Staff reported on progress in development of the crime scene reconstruction accreditation/oversight program. The Crime Scene Working Group plans to meet again before the Commission's August 16 quarterly meeting to evaluate and edit the draft requirements. Staff will work with OSAC in development of the requirements, including evaluating OSAC's current bloodstain pattern standards documents published in the OSAC registry and will circulate the draft accreditation document to the larger bloodstain pattern community through OSAC for comment and recommendation. Staff will provide an update on progress at the Committee's next meeting.

Update from Texas Association of Crime Laboratory Directors

Peter Stout, TACLD President, attended the meeting and provided comment as noted throughout the agenda. The TACLD meets today, after the Licensing Advisory Committee meeting in the same room.

Schedule and location of future meetings.

The Committee will meet again sometime before August and then again August 15, the day prior to the full Commission's August 16 quarterly meeting. Staff will send a Doodle poll to schedule the next meeting date.

Hear public comment.

The following individuals provided public comment throughout the agenda:

NIST Representatives:

John Paul Jones, OSAC Program Manager
Karen Reczek, NIST Ex-Officio, FSSB,
Mark Stolorow, NIST/OSAC Consultant

Texas Department of Public Safety Representative:

Brady Mills, DPS Assistant Chief, Law Enforcement Support

Any other public comment is noted in the agenda accordingly.

Adjourn.