

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from August 17, 2017 Meeting

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 9:00 a.m. on Thursday, August 17, 2017, at the Stephen F. Austin building, 1700 North Congress Ave., Suite 172, Austin, Texas 78701.

Members of the Committee were present as follows:

Members Present: Greg Hilbig, Chair
James Miller
Robert Sailors
Timothy Sliter
Chris Heartsill
Thomas Ashworth

Members Absent: Keith Hampton
Michael Ward

Commission Members Present: Bruce Budowle

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

Review and adoption of minutes from July 10, 2017 meeting.

The July 10, 2017 meeting minutes will be reviewed and approved at the Committee's next meeting due to technical difficulties with the meeting recorder.

Administrative update (update on any outstanding reimbursements or other administrative items from staff; update on software programs and implementation progress).

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

Garcia and members discussed the implementation of ALIS software for the licensing program. Garcia and staff are working with staff at the Office of Court Administration ("OCA") (the Commission's new administrative attachment) to determine whether the ALIS system the OCA uses for its licensing functions will work for the Forensic Analyst Licensing Program as well. Staff will provide an update on any developments related to the software for the licensing program at the Committee's next meeting.

Review and discuss revisions to rules for the Licensing Program and recommendations regarding and the adjudication of public comments received.

Members discussed and addressed further comments from the public on the licensing rules and resolved the comments as described below.

Members discussed the issue of clarifying the licensing requirements for non-human DNA analysts. Members reworded the reference to non-human DNA analysts to state that an individual whose work is limited to analysis of nucleic acids other than human DNA shall comply with licensing requirements *limited to* nucleic acids other than human DNA.

Members discussed comments related to the chemistry specific coursework requirements and the comment that the specific coursework requirements should be the same across disciplines. Members disagreed with the comment, because each discipline is fundamentally different (citing accreditation requirements as evidence of this) and agreed to leave the coursework requirements as drafted in the rule proposal.

Members reviewed comments on the requirement that toxicologists follow the SWGTOX guidelines for specific coursework requirements. The reference to compliance with SWGTOX specific coursework requirements was removed from the rules for all examiners applying before January 1, 2019. Members still need to decide what the requirements should be after January 1, 2019.

Members discussed whether disciplines and subdisciplines (or categories of testing) should be separated out the same way ANAB has them categorized. For example, ANAB has pulled out some of the subdisciplines and made them disciplines (e.g., GSR and footwear and tire tread from the Materials (Trace) discipline). Garcia explained that we can keep the disciplines categorized differently from the way ANAB categorizes them as long as they don't contradict what the accrediting body has. Other members agreed. Hilbig also pointed out the Committee is not necessarily endorsing the way one accrediting body identifies the disciplines and subdisciplines anyway. Members decided to substitute the word "subdiscipline" with "category of analysis" for consistency and clarification throughout the rules.

Members discussed a comment that there should be specific coursework requirements for firearm/toolmark examiners. Members agreed that at this time, the rules should be left as is since the rules already take the discipline at least a step forward, and if the group wants to raise the expectations in the future, the rules can be changed.

Members discussed how the specific categories of testing should be expressed on a Forensic Analyst License. The license will reflect the main category of testing and, on the Commission's website, specific categories of testing for which a particular examiner has been approved for independent casework will be noted accordingly.

Committee members reviewed the serial number restoration exemption and discussed whether it should say "non-firearms serial number restoration." Garcia agreed to look into the issue and edit the exemption as previously decided by the Commission.

Garcia mentioned that at least one university in Texas has reached out to inquire about the educational requirements for examiners. Members discussed the FEPAC-accredited university requirement for forensic science degrees. Most members agreed the requirement at least sets a bar for core scientific curricula that will be minimally acceptable and the language related to FEPAC was left in the rules.

Members changed the knowledge-based competency requirements section to require certification by an "authorized representative" of the lab instead of a quality manager at the lab.

Members discussed adding a toxicology technician category of analyst for individuals who perform basic analytical functions but do not evaluate data, reach conclusions or sign any report for court or investigative purposes. Members discussed that the toxicology technician will be required to have a minimum of an associate's degree or equivalent to meet the educational requirement. After January 1, 2019, as the rules are currently written, the SWGTOX Appendix A requirements for specific coursework apply to both toxicology analysts and toxicology technicians.

Members discussed and made edits to the temporary license section of the licensing rules in response to multiple comments received requesting the Commission clarify the language stating the eligibility and qualifications to obtain a temporary license. An individual who performs forensic analysis primarily for non-Texas cases may apply to the Commission for a temporary Forensic Analyst License for forensic analysis in Texas related to a single criminal action. Members also discussed that an applicant may apply for a temporary Forensic Analyst License for each criminal action for which the analyst is retained to perform analysis. If there are multiple defendants in the same criminal action, an applicant is not required to apply for more than one temporary license for the forensic analyses performed.

Members also discussed changing the Forensic Analyst License cycle to two years instead of three years to harmonize with other Office of Court Administration license cycles. Garcia explained this should not impact the license requirements at all since the continuing education requirements are still in development anyway.

After discussion, the Committee removed the exemption for out-of-state examiners from the licensing requirements that are imposed after January 1, 2019. The original rationale was that the group did not want to limit a laboratory's ability to attract lateral employees from other states who are unable to meet the qualifications imposed on examiners after January 1, 2019, but after discussion, the group agreed the goal is to raise the standard and not carve out multiple exemptions such as the out-of-state examiner exemption. Out-of-state examiners can still take advantage of the 9-month grace period to obtain a license by applying for a provisional license if they cannot fulfill one or more of the requirements. Most Committee members agreed the January 1, 2019 requirements are not overly burdensome anyway and that a seasoned examiner, no matter what state they've been practicing in, should be able to meet the requirements.

MOTION AND VOTE: *Miller moved to recommend the full Commission remove from the licensing rules draft the out-of-state examiner exemption from post-January 1, 2019 requirements. Sailors seconded the motion. The motion was unanimously adopted by the Committee.*

Members discussed comments related to certification substituting for the licensing requirement in Texas. Garcia explained the statute does not allow for this. What the statute allows for is a certification examination taking the place of the statutory exam requirement where the tested topics are substantially similar. Members reviewed a proposed master's license for examiners who are certified by certain recognized certifying bodies. However, most members agreed this was unnecessary as an examiner can simply note in court that he/she is certified and does not need a master's license to recognize this. Members discussed that the available certification exams and topics currently cannot substitute those topics proposed to be tested on the licensing exam because they are for the most part wholly different topics and concepts.

Members also discussed a comment that postmortem toxicology is an area exempt from the licensing requirement pursuant to Tex. Code Crim. Proc. art. 38.35 § (a)(F) which exempts "an expert examination or test conducted principally for the purpose of...medical practice" from the definition of forensic analysis. Garcia will ask Commissioners whether they want to submit an Attorney General opinion request on the issue, and she expects they will direct her to do that.

Review and discuss response draft to Dr. Middleberg's letter and replacement nomination from TACLD for seat.

Members reviewed and approved a draft response to Dr. Middleberg's letter.

Members discussed the issue of interns performing casework at NMS as stated in Dr. Frederick Strathmann's letter regarding the licensing program.

MOTION AND VOTE: *Ashworth moved to recommend Commissioners ask NMS what the entire scope of work is for their interns. Sliter seconded the motion. The Committee unanimously adopted the motion.*

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

Members did not discuss this agenda item.

Discussion of proposed general exam requirement, including potential exam material and question development, exam developer agreements, topics, structure and administration of the exam and contract for psychometric testing services.

Members briefly discussed development of the exam. Garcia is working with exam developers and the psychometric testing service vendor to collaborate on the development stages of creating exam questions. Staff will have an update at the next licensing meeting.

Update from the Texas Association of Crime Laboratory Directors, including discussion of any comments and feedback related to the published program rules.

Roger Kahn, President of the Texas Association of Crime Laboratory Directors attended the meeting and offered comments throughout the agenda items as noted.

Discussion of program budget.

Garcia discussed several budget items related to the licensing program, including an update on the administrative position at the Office of Court Administration to help manage the licensing program and screen applicants, hiring the senior-level forensic scientist and the exam development costs.

Schedule and location of future meetings.

Staff will circulate a Doodle poll to schedule the Committee's next meeting.

Hear public comment.

Alice Watts, Quality Director for NMS Labs, offered comments throughout the meeting.

Adjourn.