

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from October 4, 2016 Meeting in Austin, Texas

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 1:00 p.m. on Tuesday, October 4, 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
Michael Ward
Robert Middleberg
Mark Daniel
Inger Chandler

Members Absent: Timothy Sliter

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

General updates from August 23, 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 August 23, 2016.

MOTION AND VOTE: *Ward moved to adopt the August 23, 2016 minutes draft. Heartsill seconded the motion. The Committee unanimously adopted the motion.*

Garcia and Hilbig 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, to continue discussion on the development of a general forensic exam, and to hear from experts who represent the potential voluntary licensing disciplines—Digital Evidence, Latent Prints and Crime Scene.

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

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.

Members discussed the software should provide a way for users to access information about a particular licensee, including downloading a copy of the examiner's license from the Commission's licensing website.

Garcia gave a brief update on the Commission's outstanding Legislative Appropriations Request that includes an increase request for fiscal years 18 and 19 to support the implementation of the licensing program by the January 2019 legislative deadline. Garcia explained staff attended a budget hearing for Texas State University System and there were no questions about the licensing program budget increase request by the Legislative Budget Board members and representatives. Garcia will continue to update members on the status of the request.

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.

Pursuant to its statutory mandate, the Committee has considered at recent meetings offering a voluntary license for examiners practicing in forensic disciplines not required to be accredited in Texas. At its last meeting, Committee members decided to invite representatives from three unaccredited disciplines—Latent Prints, Digital Evidence and Crime Scene.

Presentation and discussion with representatives from potential voluntary license forensic disciplines, including Bill Gibbens, Austin Police Department (Crime Scene), Troy Lawrence, Fort Worth Police Department (Digital Evidence), Peter Salicco, Dallas Police Department (Latent Print).

The following representatives were invited to present at this meeting and gave presentations to the Committee answering the following questions 1) is there an interest among practitioners in your forensic discipline for a voluntary license? and 2) if so, what should the requirements for the license entail?:

1. Mr. Peter Salicco, Forensic Fingerprint Expert, Dallas Police Department

Mr. Salicco addressed the Committee concerning Latent Print examiners in Texas. Mr. Salicco explained there are three paths to certification in Latent Prints available, the FBI program, the International Association for Identification ("IAI") program and private programs such as Ron Smith and Associates' program. All programs are expensive, take hundreds of hours of classroom time and require years of practice before certification is achieved. Mr. Salicco explained many examiners, especially those from accredited laboratories like his (Dallas PD), would like the opportunity for a voluntary license from the Commission. In the past, there has been a cheaper, introductory-style training program offered by the Texas Department of Public Safety ("DPS") for latent print examiners, but Salicco explained even if it is still available the program lacks the level of rigor and casework time necessary to prepare a latent print examiner for actual casework.

Mr. Salicco explained the main issue facing latent print examiners across Texas is the need for standardized, scientific training and he is hopeful a licensing program may help foster some of that standardization. Mr. Salicco believes that, at least in the accredited laboratories that perform latent print examinations, most examiners will be able to fulfill the requirements

set forth in the current recommendations by the Committee for the accredited forensic disciplines. However, in unaccredited agencies such as many of the police departments across the State, hundreds of examiners would likely be unable to meet the educational and other requirements the Committee currently recommends for adoption for the accredited forensic disciplines. There is a significant divide between the smaller police agencies and the larger laboratories that perform Latent Print analysis in terms of education, training and certification to perform latent print examination.

2. Sgt. Troy Lawrence, Digital Evidence Expert, Fort Worth Police Department

Sgt. Lawrence addressed the Committee concerning digital evidence examiners in Texas. Sgt. Lawrence gave a PowerPoint presentation outlining the different areas of digital evidence that should be considered and believes that if a license is offered it should be divided by the following sub-disciplines: Computer Forensics; Forensic Video Analysis; Forensic Audio; Image Analysis; and Mobile Device Analysis. Sgt. Lawrence explained the disciplines are too diverse to combine into one category. Moreover, the International Society of Forensic Computer Examiners (“ISFCE”) divides the disciplines this way and each have different requirements for certification through the ISFCE.

As Sgt. Lawrence explains, currently there are no standard minimum requirements to perform digital evidence examination and testimony in Texas. The discipline is exempt by law for the accreditation requirement in Texas. Lawrence estimates there are a couple hundred digital evidence examiners either practicing privately or in police departments and district attorneys offices statewide. Sgt. Lawrence believes digital evidence examiners in the state would like the opportunity to obtain a voluntary license through the Commission.

Committee members and Sgt. Lawrence discussed the issue of digital evidence examiners coming from unaccredited crime laboratories and the fact these examiners will have a hard time meeting the currently proposed requirements for the accredited forensic disciplines, particularly the proficiency testing, competency testing requirements and educational requirements. Committee members generally agreed they did not want to lower the bar just to allow examiners from unaccredited laboratories to obtain a license.

3. Mr. Bill Gibbens, Crime Scene Evidence, Austin Police Department

Bill Gibbens addressed the Committee concerning crime scene analysts in Texas. Mr. Gibbens indicated there are four different IAI certifications for crime scene analysts available. The discipline, much like digital evidence examination, is sub-divided and examiners considered crime scene analysts across the State perform very different tasks. Therefore, as Mr. Gibbens explains, it will be difficult to come up with standards for a licensing program that would be applicable across the board for all crime scene analysts in the State.

Moreover, just as in the digital evidence and latent print disciplines, there are many crime scene analysts that come from unaccredited law enforcement agencies across the State that would be unable to fulfill some of the proficiency testing and degree requirements currently being proposed by the Committee for the six accredited forensic disciplines. For the accredited crime labs, however, it should not be difficult for crime scene analysts to fulfill the requirements proposed by the Committee. The difficulty will be in defining who and

what is a crime scene analyst eligible for a voluntary license. Overall, Gibbens believes a voluntary licensing program would be appealing to crime scene analysts from accredited crime laboratories in Texas.

Members discussed that the task of developing voluntary license categories may be much more of a task than originally anticipated because of the diversity in standards, sub-disciplines and accreditation requirements. Members generally agreed they did not want to lower the bar for examiners performing analyses in unaccredited laboratories and offering a voluntary license that only those performing analysis in accredited crime laboratories would be able to obtain would create an undesirable divide in the different disciplines.

Members will table the discussion of potentially offering a voluntary license for these three forensic disciplines and continue to seek the expertise of the consultants invited to today's meeting, but focus first on the finalization of the requirements for the accredited forensic disciplines required to have a license by January 2019. Once requirements for these disciplines are developed and finalized, Committee members will revisit the issue of voluntary licensing.

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.

Committee members discussed draft educational and other statutory requirements developed at the Committee's previous meetings.

Forensic Science Commissioner Dr. Ashraf Mozayani, who attended a portion of the Committee's meeting, expressed concern related to the Bachelor's Degree in Natural or Applied Science requirement for Firearm/Tool mark analysts. The Committee plans to recommend the BA requirement should take effect for anyone applying after January 1, 2019. However, Mozayani made the point that a lot of firearm/tool mark examiners come from law enforcement and have criminal justice degrees, not scientific degrees. Committee members generally agree that the standard should be elevated, however, to require a scientific degree to perform firearm/tool mark analysis in Texas. The Committee will continue address the issue at its next meeting, and Committee member Michael Ward will send out a survey to his firearm/tool mark analyst colleagues to find out how many firearms examiners may not meet that BA requirement.

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

Garcia and committee members discussed contacting 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

Garcia and committee members will reach out to experts to find out if they may be interested in developing the content of the exam and bring responses to the Committee's next meeting.

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 discussed feedback received on some of the firearm/tool mark competency recommendations and will revise the recommendations as necessary. Committee members hope to have firm proposals for review and adoption by the Commission by the Commission's February 2017 meeting.

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

Members did not discuss or make any revisions to the license discipline categories chart at this meeting.

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

Members discussed and reviewed the proposed recommended requirements contained in the matrix for the six forensic disciplines required to obtain a license by January 1, 2019. Members hope to finalize the requirements matrix for review and potential adoption by the Commission at the Commission's February 2017 meeting.

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

Members discussed re-distributing information regarding the proposed, recommended competency requirements for the six accredited disciplines to the TACLD for further feedback before finalizing. Members will also distribute any information related to the general forensic exam developments for feedback from the TACLD.

Roger Kahn, President of TACLD, spoke on behalf of the organization. The TACLD has not met since the Committee's last meeting, but some members may have further feedback by the Committee's next 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 the need to determine the number of forensic examiners who will apply for a forensic analyst license so the Committee can better estimate funding necessary for FY19 in particular. The Committee expects to start receiving at least some revenue from the licensing program in May 2018, but the majority of the revenue from licensing fees will be received in FY19, which starts September 1, 2018. To get a better estimate of fees necessary to support the program in FY19, Committee members discussed sending a survey to the Forensic Science Commission-accredited crime laboratories to determine how many proficiency-tested analysts each lab has that would need to get a license.

Garcia explained it is difficult to predict the number of out-of-state examiners who may apply for a license as it will be a business decision made by each laboratory. The number also depends whether the Commissions decide to offer voluntary licenses for lab managers and directors.

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 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 definition of “technician”.

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.

Members reviewed the following definition for “technician” developed at the Committee’s August 23, 2016 meeting:

“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.”

Members discussed the difficulty in defining technician as it varies by forensic discipline and sub-discipline *and* from laboratory to laboratory. Garcia will work with committee members on further clarifying the definition and bring it back to the Committee's next meeting for comment and/or revisions.

Roger Kahn provided input on the definition and how the Committee might separate purely technician work that should not require an analyst license from forensic analysis work.

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 a date to be determined in November or December 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.