

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from May 25, 2017 Meeting

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 10:00 a.m. on Thursday, May 25, 2017, 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
Timothy Sliter
Robert Middleberg
Chris Heartsill
Keith Hampton
Thomas Ashworth
Michael Ward

Members Absent: None

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

Review and adoption of minutes from April 24, 2017 meeting.

MOTION AND VOTE: *Middleberg moved to adopt the April 24, 2017 meeting minutes draft. Heartsill 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 gave a summary and update on the status of outstanding legislative items related to the licensing program. Garcia explained funding necessary to support the licensing program passed in the Legislature unless the Governor vetoes the bill to which the funding is attached (SB-1124). Garcia also explained SB-298 passed, allowing the Commission to retain revenues received from licensing fees for use in supporting the licensing program in future fiscal years.

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

Miller described an issue related to clandestine testing raised by Texas DPS Drug Chemistry Supervisor Drew Fout. Fout raised the issues at the April 30, 2017 ASCLD Symposium presentation about the licensing program. Fout explained at the symposium that DPS has dropped clandestine testing from its scope of accreditation due in part to weaknesses in

proficiency testing options. Therefore, examiners (even those who have significant experience in clandestine testing) will not be able to obtain a license and thus will not be able to testify on topics related to clandestine testing.

Miller explained this does not restrict the examiner's ability to testify about the identification of any particular drug but restricts an analyst (with no license) from testifying about the manufacturing of a particular drug or the quantity of a particular drug that might be produced from a set of items/paraphernalia and ingredients found at a crime scene. If DPS decides to add clandestine back to its scope at a later date, examiners who are proficient in clandestine testing will be eligible for a license in this particular category and will be able to offer clandestine testimony once they get the additional "clandestine" category added to their license.

Garcia pointed out that the most important piece for examiners to understand is that even where they have significant experience in clandestine testing, if their lab is not accredited in clandestine testing and they don't have a license from the Commission in this sub-category of controlled substance testing, they cannot testify about it in court even if asked or pressed. Miller and Roger Kahn, President of the Texas Association of Crime Lab Directors, agreed to work on a draft email/notice to lab directors to be distributed to examiners explaining the issue so that examiners are aware and do not inadvertently offer expertise if not licensed.

Garcia briefed members on her conversation with commissioner Bruce Budowle who felt the continuing forensic education ("CFE") requirements as recommended for the licensing program thus far are not robust enough and should include a method for evaluating the quality of the coursework and whether the particular examiner is retaining and using the information. Members also discussed that journal articles sponsored by the Commission for CFE should be "peer-reviewed" articles. Staff will update the language in the rules to clarify this as it has always been the intention of the Committee. Garcia also mentioned the OSAC is working on an ASTM Training Standard that recommends a more robust set of CFE requirements for forensic examiners (about 16 hours per year versus the Committee's recommended 24 per 3-year license cycle). Committee members will continue to develop the CFE program. Members have significantly more time to work on the CFE program since the requirement won't take effect until examiners are licensed in January 2019.

Members again addressed whether federal examiners should have an exemption from the licensing requirement. All members agree federal examiners should not be exempt from the requirements where the examiner is testifying in a state-level criminal case where the licensing requirement applies to them. However, if other states begin implementing similar licensing requirements, Texas will need to consider adding some reciprocity rules for these examiners.

Members discussed a license for laboratory managers (who are not performing forensic analysis), and Garcia explained the Commission does not currently have the authority to grant a license for non-forensic analysts per the forensic analyst license program enabling statute. *See* TEX. CODE CRIM. PROC. art. 38.01 § 4-a (related to the licensing of *forensic analysts*).

Members reviewed the modified exemption from the Commission's accreditation requirements proposed for serial number restoration used for identification of VIN numbers for motor vehicle thefts. Members believe serial number restoration is used not just for vehicle thefts but for many other purposes such as restoration of numbers on stereo or other technological equipment. Members agreed the exemption should remain for all non-firearm serial number restorations

because there are too many law enforcement agencies that perform this type of restoration in Texas.

MOTION AND VOTE: *Sailors moved to recommend the exemption for serial number restoration language remain unchanged as currently published. Miller seconded the motion. The Committee unanimously adopted the motion.*

Members discussed harmonizing the new forensic discipline and subdiscipline categories expected to be adopted as ANAB accreditation requirements for crime laboratories with the forensic discipline and subdiscipline categories in the licensing rules. Members agreed the categories should be harmonized. Staff will work to revise the draft rules accordingly.

Review and discussion of updates to components requirements matrix for each forensic discipline and program summary.

Members discussed adding the language, “as it relates to yield determinations” next to “clandestine testing” on the matrix. Staff will check whether this is necessary after harmonizing the forensic disciplines and subdisciplines with the draft rules and edit the matrix accordingly.

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

Members addressed the statistics requirement and different options suggested for offering the course. Most members felt it should be an in-person, college-level training. Garcia mentioned that UT or SHSU may be able to help develop a tailored course for forensic examiners. Members will continue to explore options for the stats course requirement.

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 a quote/proposal from ACS Ventures related psychometric and other test development services necessary to administer the general forensic exam. Members and staff believed the proposal covered all areas of concerns for the Committee at a reasonable price. Staff will continue to seek informal bids/proposals from at least two other vendors before proceeding with a contract for these services.

MOTION AND VOTE: *Sliter moved to recommend beginning the procurement process for psychometric services. Sailors seconded the motion. The Committee unanimously adopted the motion.*

Members addressed the proposed general forensic exam topics—Evidence Handling, Human Factors (including cognitive, contextual confirmation and other human biases), Scientific Validation and Statistics in Forensic Applications (including measurement uncertainty, sampling and error rates), Root Cause Analysis, and Legal and Ethical Issues. Members agreed these topics need to be distributed to analysts for comment and feedback as part of the validation process for the exam. Staff will develop a draft email to all lab directors asking them to distribute the topics to their staff for feedback in a survey via Survey Monkey. Members and Garcia also discussed the different subject matter experts that have been asked to develop test

questions for particular topic categories on the exam. Garcia will work on contracting with these individuals so they may begin the work. The Committee itself will develop the material and questions for the Evidence Handling section of the exam.

Members discussed there should be a standard model/format for the study material and corresponding exam questions.

Members discussed adding lab security/storage practices to exam—probably covered in evidence handling. Members also discussed specifying courtroom testimony under the Legal and Ethical section of the exam. Members discussed reaching out to expert Ron Smith for assistance in exam development on courtroom testimony.

Members revisited the topic of certain examiner certifications replacing or fulfilling the general exam requirement. Most members agreed the purpose and the topics on a certification exam versus what is being proposed from the general forensic exam differ significantly. Members suggested including certification notations on an examiner's searchable license profile with the Commission, but otherwise most members agreed the certification cannot take the place of the general forensic exam requirement.

MOTION AND VOTE: *Heartsill moved to ask Commissioners for a recommendation/vote on the subject of national certification exams replacing the general forensic exam requirement and how certifications might be recognized by the Commission's licensing program. Hampton seconded the motion. The Committee unanimously adopted the motion.*

MOTION AND VOTE: *Hampton moved to recommend the full Commission adopt the draft licensing program rules as proposed at today's meeting with the exception of the few changes discussed during today's meeting. Sailors seconded the motion. The Committee unanimously adopted the motion.*

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

Members discussed mirroring the language in ANAB's new accreditation requirements with the education requirements for the forensic analyst license. Staff will edit the draft rules and the matrix accordingly. Members discussed that Quality Assurance/Quality Control Managers should be able to certify a particular examiner has fulfilled the accrediting body's educational requirements on the same form we ask them to certify the examiner has fulfilled the knowledge-based competency requirements.

Review and discuss revisions to Forensic Analyst License Application draft questions.

Members discussed the draft Licensing Application questions. Hampton mentioned he would like staff to explore further the issue with the Commission legally being able to deny, revoke or suspend a license based on a Class C misdemeanor, as he feels at least Class C thefts would be important in making a license eligibility determination. Savage explained the limitations under the Occupations Code. Staff will research the issue again and give a final answer to the LAC at the next meeting.

Review and discuss revisions to required published Guidelines for Consideration of Criminal Convictions draft.

Members discussed changes to the Guidelines for Consideration of Criminal Convictions document. All edits/suggestions from last meeting and the interim have been made. The guidelines will be published in the Texas Register once the licensing program rules take effect.

Discussion of costs associated with criminal background checks.

Members discussed that publicdata.com was probably the best/cheapest option for background screens/checks. The total cost would only be \$178/year, much lower than originally anticipated.

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

Roger Kahn addressed the Committee throughout the meeting and offered comments on several items. Staff will revise program documents and send them to Kahn for distribution to TACLD members before the Committee meets again.

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

Members discussed this item under the “administrative update” item above.

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 discussed fees associated with the license. Staff will survey lab directors to get a better idea of how many examiners will be licensed—a number key to assessing the cost of the application fee for a license. Staff will perform an analysis to assess what the cost should be including consideration of software and personnel costs of the program and bring the analysis to the next Committee meeting.

Discuss presentation of program to Commissioners at May 26, 2017 quarterly meeting.

Nothing additional was discussed under this item other than what is already noted above.

Consider proposed agenda items for next meeting.

Staff will circulate a draft agenda prior to the next meeting for comments and additions by members.

Schedule and location of future meetings.

Staff will circulate a Doodle poll to schedule a meeting in July.

Hear public comment.

Commission member Dennis Pat Johnson asked questions regarding the program's application to individuals transferring to Texas from other states. He also commented that fibers should be included as a subcategory under trace evidence. Staff will edit the categories to include fibers. Roger Kahn offered comment throughout the meeting as noted above.

Adjourn.