

**Texas Forensic Science Commission – Licensing Advisory Committee  
Minutes from June 14, 2016 Meeting in Austin, Texas**

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 10:00 a.m. on Tuesday, June 14, 2016, at the Stephen F. Austin Building, 1700 North Congress Ave. Room 172, Austin, Texas 78701.

Members of the Committee were present as follows:

Members Present: Greg Hilbig, Chair  
Inger Chandler  
James Miller  
Robert Sailors  
Timothy Sliter  
Robert Middleberg  
Chris Heartsill  
Mark Daniel  
Michael Ward

Members Absent: None

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

**General updates from May 10, 2016 Licensing Advisory Committee meeting including review and adoption of minutes from May 10, 2016 meeting.**

Hilbig gave a brief update on activities and progress since the Committee's last meeting on May 10, 2016.

**MOTION AND VOTE:** *Daniel moved to adopt the May 10, 2016 minutes draft. Miller seconded the motion. The Committee unanimously adopted the motion.*

Garcia provided an introduction and explanation of the tasks at hand, including an outline of questions related to the licensing program that the Advisory Committee needs to answer for the full Commission. Garcia briefly summarized the recommended draft discipline categories and corresponding requirements developed at the Committee's May 10, 2016 meeting. The main task before the Committee at this meeting is to finalize drafts of recommended criteria lists laboratories' knowledge-based competency exams must cover to fulfill the exam portion of the license requirement.

**Administrative update (outstanding reimbursements, discussion of staff research related to cost of licensing program including software, web design and processing fees, Commission Legislative Appropriations Request update, review of Licensing FAQ's for Commission website).**

Members discussed the costs related to the implementation and operation of the licensing program and how its functions might be supported by examiner licensing fees. Members discussed getting a firm number of examiners who will seek a license to better estimate the revenue that would be generated by examiner fees. Staff will inquire with TACLD to get accurate numbers of examiners.

**Review proposed, outlined educational and other 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 May 10, 2016 meeting.

**Review of proposed knowledge-based competency exam criteria for each accredited discipline.**

Members reviewed draft criteria lists for each accredited forensic discipline that a laboratory's knowledge-based competency exam must cover in order to fulfill the examination requirement for an examiner license. Criteria for trace evidence had not yet been developed so Committee members discussed adding a trace evidence examiner representative to the Committee for input related to what the trace evidence examiner license requirements should entail. Members will seek input on the best representative for trace evidence examiners and invite the representative to the Committee's July 7 meeting.

Middleberg requested to add items to the toxicology criteria lists. Upon completion of the criteria lists, Committee members plan to send the proposed drafts of statutory requirements for an examiner license, including proposed exam criteria for each accredited forensic discipline, to the Texas Association of Crime Laboratory Directors (TACLD) for initial feedback. Feedback from TACLD will be reviewed by Committee members at its July 7, 2016 meeting and final comment from TACLD will be requested to be received by the Committee's October 2016 meeting.

**Review and discussion of proposed license discipline categories and subcategories chart.**

Members reviewed the draft license discipline categories and subcategories chart. Members discussed revising some of the categories to provide better clarification. Members will revise as necessary after receiving feedback from TACLD.

Members discussed the issue of whether forensic "technicians" need to be licensed under Texas law. Members decided that the term "technician" must be clearly defined for each forensic discipline's categories and subcategories and that true, *non-analyst* technicians probably do not need to be licensed under Texas law.

**MOTION AND VOTE:** *Hilbig moved to table the discussion related to a technician's obligation to be certified until the Committee's July 7 meeting. Daniel seconded the motion. The Committee unanimously adopted the motion.*

**Discussion of potential educational and other requirements for accredited forensic disciplines for which certification or a certification body is not yet available or for which there is no specific examination available.**

Members discussed recommended Continuing Forensic Education (CFE) requirements for each accredited forensic discipline. Members discussed whether the program will require CFE calculated on a cumulative hour basis versus using a point system to track CFE credits. Members will recommend to the Commission CFE hours or credits should be required every 3-year period beginning on the examiner's birthdate. Under the point system, a minimum amount of points would be required per year so that all points aren't accumulated in the final year of the period. Members will decide after further input from the community and committee members whether to use a point-system versus an hour system for tracking CFE requirements.

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

Members discussed the constitutional issues raised by Committee members and defense lawyers related to access to forensic experts. Garcia reviewed and summarized Texas law related to the licensing of forensic examiners and the accreditation of crime laboratories in Texas and how they apply to the admission of forensic evidence in a Texas court. The examiner licensing mandate does not apply to defense experts. However, the accreditation requirement for admittance of forensic analysis and/or testimony in a court in Texas *does* apply across-the-board. Therefore, as Garcia explained, the issues related to "access" are an accreditation requirement issue, not a licensing requirement issue. To resolve the issue, legislators would have to *exempt* defense experts from the accreditation requirement by changing the definitions of *crime laboratory* and *forensic analysis* in Texas. As Texas law currently stands, however, and since 2003, the law precludes admittance of forensic evidence and testimony from an *unaccredited* crime laboratory.

Members discussed the definition of *forensic analyst* at length because it is critical to the application of the licensing statute. Some members believe the definition should be revised or clarified to clearly decipher *technician* versus forensic analyst. Members discussed that the line may be drawn at someone who is *manipulating evidence for the purpose of forensic testing*.

**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 the examiner licensing fee and how the fees might cover the cost of the program.

**Discussion of the provisional licensing issue and the forensics disciplines for which a provisional license will be necessary to fill the interim period between certification and certification eligibility.**

Members discussed issuing a provisional license to those examiners who are not yet eligible for licensing and will recommend to the full Commission where a provisional license should apply.

**Discussion of concerns regarding defense access to forensic analysis in light of requirements.**

This discussion occurred under the legislative revisions/recommendations item above.

**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 discussed issuing temporary or *pro hac vice* licenses to forensic examiners who only testify in Texas occasionally and what the rules regarding a temporary license might be. Garcia outlined some of the requirements for lawyers who visit a Texas court *pro hac vice*.

**Discussion of grandfathering issues related to licensing including examiners who retire but come back to testify**

Members discussed adding an administrative rule related to retired examiners who come back to testify. Members may recommend retired examiners who come back to testify for evidence analyzed on or after January 1, 2019 be issued a temporary license.

**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 assigned tasks, including the further development of criteria for knowledge-based competency exams for each forensic discipline. Members will also distribute the proposed draft criteria lists, the discipline/subdisciplines chart and the statutory requirements chart to the TACLD for initial feedback and review. Members will discuss feedback and make further revisions at the July 7, 2016 meeting.

**Schedule and location of future meetings.**

The Licensing Advisory Committee will meet again July 7, 2016 in Austin.

**Hear public comment.**

No public comment was made at the meeting.

**Adjourn.**