

**Texas Forensic Science Commission – Licensing Advisory Committee
Minutes from July 7, 2016 Meeting in Austin, Texas**

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 9:30 a.m. on Thursday, July 7, 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
Inger Chandler
James Miller
Robert Sailors
Chris Heartsill
Michael Ward

Members Absent: Timothy Sliter
Robert Middleberg
Mark Daniel

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

General updates from June 14, 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 June 14, 2016.

MOTION AND VOTE: *Ward moved to adopt the June 14, 2016 minutes draft. Heartsill seconded the motion. The Committee unanimously adopted the motion.*

Savage 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 that a laboratory’s knowledge-based competency exam must cover to fulfill the exam portion of the license requirement. Savage discussed with members the positive feedback and comments from the Texas Association of Crime Laboratory Director’s meeting that morning.

Administrative update (outstanding reimbursements, status of licensing program software acquisition, and Legislative Appropriations Request update)

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 the examiner licensing fee may be closer to \$100.00. Members discussed with Associate General Counsel Savage the Legislative Appropriations Request submitted for FY2018 and FY2019. Savage explained much of the requested funds for FY2018 will be absorbed by examiner licensing fees in FY2019.

Review proposed, outlined educational and other statutory requirements for each accredited forensic discipline for which licensing will be required, including possible waivers for certain requirements.

Committee members discussed draft educational and other statutory requirements developed at the Committee's June 14, 2016 meeting.

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

Members reviewed proposed 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 to obtain a forensic examiner license. At its June 14, 2016 meeting, the licensing advisory committee assigned individual members to develop the exam criteria for each subdivided discipline. After discussion of the minutiae and specificity required for almost 37 different knowledge-based competency exams, members discussed that perhaps a more general exam for all forensic scientists would better serve the purpose of the licensing program.

Members discussed that confirmation from the laboratory of an examiner's successful completion of a competency exam may still be necessary. Members discussed that years down the road, when the Committee has the resources available, it may administer these knowledge-based competency exams, but at this time, the Committee simply does not have the resources or expertise necessary for such a enormous task.

Members discussed that all other components previously discussed (e.g. courtroom testimony, statistics, bias training, Brady and Michael Morton Act) would still be requirements and will be tested as part of the general exam, but the exam component should be covered not by the laboratory's knowledge-based competency exams but by a general forensic exam that covers a base-level knowledge that all forensic examiners in Texas must possess before obtaining a license.

Members discussed whether examiners working in disciplines not required to be accredited or in an unaccredited laboratory will be able to obtain a voluntary license. There was some consensus that unaccredited disciplines should be brought into the fold as well, however the Committee believes the Commission should publish a specific list of priority disciplines for which the Commission may issue voluntary licenses. Disciplines members discussed to be added to the initial list of the voluntary license option are as follows:

- Latent Prints
- Digital Evidence
- Crime Scene Investigation

Members discussed that all voluntary licensees will need to fulfill all of the requirements (including proficiency testing, competency testing, etc.) to obtain a license regardless of whether they are practicing in a laboratory or independently. This may be more difficult for examiners not working in the laboratory setting (e.g. private questioned document examiners), but as long as they fulfill the requirements, they can obtain a forensic examiner license.

Members also discussed permitting laboratory directors and quality directors to obtain a voluntary license.

Garcia and committee members discussed several national and local experts that could help provide resources for development of the general exam. The following were discussed as potential subject areas:

- Psychometrics/Exam Development
- Evidence handling
- Cognitive Bias
- Statistics
- Ethics
- Root Cause Analysis
- Legal and Ethics
- Uncertainty of Measurement

Members also discussed adding a judicial representative to the exam development team. Garcia agreed to reach out to those mentioned and ask if they are willing to contribute to developing the general forensic exam. The exam would ideally be accessible online.

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

Members reviewed the draft license discipline categories and subcategories chart. Members discussed revising the categories to include only the six main categories—Controlled Substances, Toxicology, Biology/DNA, Firearm/Tool mark, Questioned Documents, and Trace Evidence. Each licensed examiner would have a profile on the Commission’s website that shows the main forensic discipline and any sub-categories for which they are qualified for analysis and testimony.

Update from the Texas Association of Crime Laboratory Director’s July 7, 2016 meeting and comments related to the proposed license discipline categories and subcategories, the proposed requirements matrix, and the proposed exam criteria for each forensic discipline.

Members and General Counsel Garcia discussed positive feedback on the Licensing Advisory Committee’s recommendations from the July 7 Texas Association of Crime Laboratory Director’s meeting held earlier that morning in a room adjacent to the Licensing Advisory Committee’s meeting. Members will provide the Texas Association of Crime Lab Directors with an update on the suggestion for a general forensic licensing exam versus knowledge-based competency exam to fulfill the exam portion of the licensing requirement and seek feed back from the TACL D members.

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

Members briefly discussed the constitutional issues raised by Committee members and defense lawyers related to access to forensic experts. The examiner licensing mandate does not apply to defense experts. However, the accreditation requirement for admission of forensic analysis and/or testimony in a court in Texas *does* apply across-the-board. Therefore, as Garcia explained at previous meetings, 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 admission of forensic analysis and testimony from an *unaccredited* crime laboratory.

Members briefly 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 could be drawn at someone who is *manipulating evidence for the purpose of forensic testing*.

Discuss funding necessary to fulfill the licensing requirement including application processing fees, continuing education requirements and renewal costs.

Members had no further discussion related to funding other than that noted above under the Administrative Update agenda item.

Discuss temporary licensing issue for examiners who primarily practice out of state, but occasionally testify in Texas and legislative recommendations regarding the same.

Members discussed that an application and evaluation process for a temporary license would probably not be necessary. The process for obtaining a temporary license would simply be an approval process and on a case-by-case basis.

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

This discussion occurred under the “Discuss legislative requests, revisions and/or clarifications” agenda item above.

Consider proposed agenda items for next meeting.

Staff will include all items discussed at this meeting on the next meeting’s agenda and additional items as requested by Committee members.

Schedule and location of future meetings.

Staff will circulate a link requesting members to respond with their availability for the Committee’s next two meetings.

Hear public comment.

Roger Kahn, President of the Texas Association of Crime Laboratory Directors made comments throughout the Committee’s discussion.

Adjourn.