

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from January 30, 2020 Meeting

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 11:00 a.m. on January 30, 2020, at the Tom C. Clark Building, 205 West 14th Street, 1st Floor Conference Room, Austin, Texas 78701.

Members of the Committee were present as follows:

Members Present: Greg Hilbig
Robert Sailors
Bill Hines
Erin Reat
Emily Esquivel
Donna Eudaley
Crystina Vachon
Alicie Watts

Members Absent: Calli Bailey

Staff Present: Lynn Garcia, General Counsel
Leigh Savage, Associate General Counsel
Rodney Soward, Licensing Program Specialist
Robert Smith, Senior Staff Attorney

1. Review and adoption of minutes from December 6, 2019 meeting.

MOTION AND VOTE: *Reat moved to approve the December 6, 2019 meeting minutes draft. Esquivel seconded the motion. The Committee unanimously adopted the motion.*

2. Administrative update, including update on number of licenses issued and number of blanket license renewals processed.

Soward provided an update on licenses issued. There are currently 1266 licensees, consisting of 841 regular licenses, 20 provisional, 2 technical reviewer, and 403 blanket.

3. Review any outstanding statistics course evaluation requests.

Members discussed approval of a three-hour college-level equivalent statistics course presented by NMS. The course is managed and taught by a professor at the Center for Forensic Science Research and Education (“CFSRE”), an organization that provides continuing professional education and training courses for forensic practitioners. The statistics course is a 15-week course titled Statistical Principles and Applications for Forensic Science administered and includes several exams throughout the course administered by CFSRE. Committee members approved the course content at the Committee’s December 6, 2020 meeting but wanted more information on the administration and testing related to the course. NMS provided information member felt

was sufficient for approval of the course. A link to sign-up for the course will be provided on the Commission's website when available.

MOTION AND VOTE: *Reat moved to approve the content, administration and testing procedures for CFSRE's Statistical Principles and Applications for Forensic Science course as equivalent to the three-hour college-level statistics course the Commission requires for licensing candidates. Sailors seconded the motion. The Committee unanimously adopted the motion.*

4. Discuss and evaluate any outstanding blanket license applications; discuss proposed revisions to blanket rule; decide whether to recommend blanket licensees complete CFE requirements.

At its December 6, 2019 meeting, the Committee developed recommendations for further changes to the outstanding blanket license rule revisions by the Commission after addressing public comments from two laboratories. At the December 6, 2019 meeting, members agreed on a proposed "*de minimis* Texas casework" method of distinguishing laboratories for qualification of blanket licensure as a more equitable method to balancing the level of oversight required for in-state and out-of-state laboratories while at the same time taking into account the necessity for outsourced forensic services for Texas law enforcement agencies. The newly recommended evaluation method eliminates the dichotomy between in-state and out-of-state crime laboratories altogether and provides for a uniform assessment of the percentage of a laboratory's involvement in Texas cases. Also at the December 6, 2019 meeting, members directed staff to develop specific parameters for meeting the *de minimus* threshold and to determine associated costs.

Garcia presented an outline describing the parameters for laboratories meeting the *de minimus* threshold, and further, the requirements for licensure of analysts from laboratories who qualify.

The following parameters were discussed by the Committee:

1. Remove the distinction between Texas labs and out-of-state labs.
2. Extend the current one-year term to a two-year laboratory blanket license term.
3. Create a *de minimis* casework threshold of 10% for all laboratories, regardless of where they are physically located. If the laboratory's Texas casework constitutes less than 10% of its overall volume of casework during the five calendar years preceding the application (calculated as a rolling average), the laboratory will qualify for *de minimis* status. The evaluation will occur initially and again at each expiration of the two-year term the laboratory's blanket license is granted. In the absence of historical data, the best available data shall be used to determine whether a laboratory has exceeded or is expected to exceed the 10% *de minimis* threshold.
4. The *de minimis* assessment will be calculated for each laboratory site. For example, if a laboratory has national presence with various locations throughout the country, the casework calculation should be made for cases analyzed at each location.

5. If the laboratory's Texas casework is determined to be *de minimis*, the following rules apply:

With the exception of the "interpreting analysts" described below who will be fully licensed at the regular cost (\$220 per 2-year term), all other analysts and technicians employed by a laboratory with *de minimis* Texas casework shall be licensed under the blanket provision. (37 TAC Pt. 15 §651.203(d)). The laboratory will be required to provide the following to the Commission with respect to analysts and technicians who are licensed under this provision:

- a. A list with the name of each individual who is licensed under the blanket provision including the forensic discipline(s) for which they are qualified to perform independent casework.
- b. The sponsoring laboratory will provide a certification that:
 - i. Each person who is licensed under the blanket provision works under the supervision of a fully licensed forensic analyst when performing work for Texas criminal cases.
 - ii. Each person who is licensed under the blanket provision has read and acknowledged completion of *Brady*/Michael Morton training material, the Code of Professional Responsibility, and Evidence Handling.
 - iii. Each person who is licensed under the blanket provision has participated in the online *Brady*/Michael Morton update trainings provided by the Commission every two years. These trainings are provided at no cost to the user.
 - iv. Any failed proficiency test by an individual who is licensed under the blanket provision that is not attributable to a mistake by the proficiency test provider will be disclosed to the Commission.
 - v. Professional negligence or misconduct will be disclosed to the Commission, and the Commission will be copied on any material correspondence with the accrediting body.
 - vi. Any criminal conviction of a blanket licensee for an offense equivalent to a Texas Class B misdemeanor or above will be disclosed to the Commission.
- c. The laboratory will pay a fee of \$20 for each individual on the list of blanket licensees.

- d. Where the scope of a blanket licensee's work changes to include interpreting analyst activities as described below, the employing laboratory must notify the Commission of the change and the licensee must become fully licensed.

I. Full Licensing of Interpreting Analysts

Laboratories that are granted *de minimis* status shall license all "interpreting analysts" under the main licensing provisions of the applicable administrative rules. (37 Tex. Admin. Code § 651.207).

However named, an "interpreting analyst" **uses** his or her scientific expertise and judgment to interpret data resulting from an expert examination or test and provides information to the trier of fact either by signing a report or testifying in a criminal action. Interpreting analysts have significant decision-making authority regarding the progress, evaluation and conclusion of forensic analyses and are qualified to both perform independent casework and technically review the work of other analysts. An interpreting analyst exercises judgment in casework and may be called to testify regarding the results of forensic analysis, including not only the steps involved in the physical processing of the evidence, but also the potential significance of information obtained from the examination or test. **Technical reviewers who perform technical reviews of an interpreting analyst's casework are considered interpreting analysts.**

Any interpreting analyst who was licensed initially under the blanket program will be required to comply with the rules that were in effect for the applicable forensic discipline(s) prior to January 1, 2019. Interpreting analysts not previously licensed will be required to comply with the rules in place at the time of application.

II. Blanket license for forensic analysis not widely available.

Accredited laboratories that perform categories of analysis not commonly available in Texas may apply to the Commission for recognition of the method as fulfilling a necessary function for a Texas law enforcement agency, prosecutor, defense attorney or court. The analyst(s) who perform the uncommon analytical method on behalf of the accredited laboratory shall be blanket licensed upon recognition of the method as not widely available and necessary to ensure a public function. The request shall be reviewed and adjudicated by the Commission's presiding officer or designee. Commission staff shall issue a letter setting forth the finding upon request of the laboratory and report the decision to the Commission at the quarterly meeting immediately following the determination by the presiding officer or designee.

Members discussed the proposal drafted pursuant to the Committee's December 6, 2019 recommendations for blanket licensure. Members made additions and changes described in the motion below and highlighted in the proposal above.

MOTION AND VOTE: *Reat moved to recommend the proposal for full Commission adoption with the following additions/edits: 1) a statement with regard to newly established labs explaining that, in the absences of historical data, the best available data will be used to determine whether a laboratory exceeds the 10% threshold; 2) if the scope of a blanket licensed analyst changes to work covered under the interpreting analyst definition, the laboratory is obligated to notify the Commission of the change and the analyst must apply for a full forensic analyst license; 3) remove*

the term “deemed” licensed and replace with “blanket” licensed; 4) edits to the definition of ‘interpreting analyst’, including removing the word “forensic analyst” and adding the words “however named” to prevent confusion about job or employee titles in determining whether an analyst is an ‘interpreting analyst’; and 5) add tech reviewers qualified to tech review the work of an interpreting analyst are also considered interpreting analysts and must be fully licensed. Sailors seconded the motion. The Committee unanimously adopted the motion.

- 5. Discuss and evaluate any outstanding continuing forensic education (CFE) requests; discuss the limit on number of hours awarded for giving and preparing a CFE presentation and other training opportunities, including but not limited to participating in an internal audit or external assessment, publication of an article or book, and training another analyst.**

Members discussed whether an internal assessor may receive CFE credit for an assessment and declined to award credit. Members discussed whether training another analyst qualifies for CFE credit and declined to award credit. Members discussed whether publication of a peer-reviewed, forensic-specific journal article qualifies for CFE credit and agreed the activity is approved for up to 10 hours of CFE credit. Members discussed whether CFE credit should be awarded for being the primary author of or otherwise making a substantial scientific contribution to a book. Members agreed that up to 15 hours of CFE credit should be awarded for authoring or otherwise making a substantial scientific contribution to a book. Members discussed whether presenting at a conference on a forensic or scientific topic and agreed to approve up to 5 hours of credit for the activity.

MOTION AND VOTE: *Watts moved to approve the determinations with regard to CFE in the paragraph above. Esquivel seconded the motion. The Committee unanimously adopted the motion.*

Committee members directed staff to revise and post a chart of non-standard CFE activities approved by the Committee.

- 6. Discuss and make recommendations on any specific coursework and minimum education requirement transcript review request.**

Members discussed whether license applicants should have to qualify with current (recently elevated) FEPAC standards for minimum coursework. Members agreed that license applicants must meet FEPAC standards for coursework and education that were in place at the time the candidate’s degree was obtained.

- 7. Review outstanding licensing rules and proposed rule concepts for approval at the Commission’s January 31, 2020 quarterly meeting, including:**
 - a. Rule addressing exam eligibility for unaccredited forensic disciplines; removal of physical comparison from the Materials (Trace) categories of analysis under accreditation and licensing rules; and clarifications to provisional fees.**

- b. **Rule providing clarification for one-time provisional license; and**
- c. **Blanket rule revisions, including responses to any comments, withdrawal of initial blanket rule proposal and review of new blanket rule proposal.**
- d. **Rule addressing exception from coursework requirements for toxicology analysts who applied for a license prior to January 1, 2019 and are now adding the Seized Drugs discipline to their license.**

Savage provided a description of each rule with the exception of “c” discussed in agenda item 4. Members discussed their approval of the changes.

MOTION AND VOTE: *Reat moved to recommend adoption of rules a. b. and d. above. Esquivel seconded the motion. The Committee unanimously adopted the motion.*

8. Discuss and make recommendations regarding any Waiver Applications for Laboratory Support Personnel.

There were no waiver applications for approval at this meeting.

9. Discuss and make recommendations regarding any outstanding criminal history results.

There were no criminal history reports to review at this meeting.

10. Discuss and evaluate any technical reviewer license applications.

There were no technical reviewer applications to review at this meeting.

11. Discuss and evaluate any temporary license application requests.

There were no temporary license applications to review at this meeting.

12. Discuss and evaluate any fourth exam requests.

There were no fourth exam requests to review at this meeting.

13. Update on Exam Evaluation Committee progress, including status of exam questions and progress on re-recording evidence handling and root cause analysis exam study videos.

Staff is working with the Office of Court Administration’s purchasing department to finalize a contract for payment of the psychometrician review necessary for further exam development.

14. Update from Mandatory Legal and Professional Responsibility Training Development group.

Garcia and Smith reviewed a PowerPoint document describing the planned content for the course

thus far, including specific real-world case examples both from Texas cases and out-of-state cases comparing the response to nonconformances and describing disclosure obligations for forensic analysts. Smith will continue to work on the content and will publish a video with a production specialist at the Office of Court Administration. The video is expected to be complete by early April.

15. Update and discussion of new OSAC Registry standards to be adopted by the Commission, including the development of collaborative work groups to discuss new standards.

Garcia described the collaborative working groups being formed by Texas Association of Crime Laboratory Directors President, Peter Stout. Stout is working to form diverse groups of analysts to review and make recommendations on the different standards being published on the OSAC Registry.

16. Update from the Texas Association of Crime Laboratory Directors.

Stout described initiatives and action items the TACL D discussed at its January 30, 2019 meeting.

17. Schedule and location of future meetings.

The Committee will meet again April 16, 2020, July 23, 2020, and October 23, 2020.

18. Hear public comment.

There was no public comment other than that noted throughout the agenda.

19. Adjourn.