

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from January 13, 2017 Meeting in Austin, Texas

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 12:00 p.m. on Friday, January 13, 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
Chris Heartsill
Timothy Sliter
Robert Middleberg*

Members Absent: Inger Chandler
Michael Ward

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

*Dr. Middleberg attended the meeting via two-way video conferencing.

General updates from December 12, 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 December 12, 2016.

MOTION AND VOTE: *Sliter moved to adopt the December 12, 2016 minutes draft. Heartsill seconded the motion. The Committee unanimously adopted the motion.*

Administrative update (outstanding reimbursements, status of licensing program software acquisition, including presentation from iMIS software provider Advanced Solutions, progress on web design and processing of fees, Commission Legislative Appropriations Request update).

Members and staff briefly discussed any outstanding reimbursements and the status of the acquiring the licensing program software.

Presentations from iMIS software provider Advance Solutions and integrated exam and CFE software provider TopClass, including description of programs and their functions and answering questions from members related to the programs' capabilities, progress on web design and processing of fees.

Members and Garcia discussed the status of acquiring necessary content management software for the management of licensing program data. Garcia reported on several staff teleconferences

with software providers Advanced Solutions and TopClass. Martin Nappi from Advance Solutions International gave a brief presentation on the iMIS content management software program proposed for managing the licensing program content and user profiles. Mike Bourassa gave a brief presentation on TopClass, the iMIS integrated software that will allow administration of the general forensic exam and continuing forensic education component requirements for the licensing program. Both presenters answered questions about the software programs. Garcia and Savage report the software has not yet been acquired, but staff is working with Sam Houston State University's purchasing and contracting department to discuss how the software and regular maintenance may be worked into the Commission's FY17 budget.

Review and discussion of updates to proposed license discipline categories and subcategories chart, component requirements matrix for each forensic discipline and program summary.

Members addressed concerns related to no coursework requirements for serology analysts on the requirements matrix. Because the Committee's draft matrix currently proposes Biology/DNA analysts fulfill QAS requirements and the QAS requirements do not require specific coursework for serology analysts, the matrix in turn does not appear to require any coursework for biology screeners/serology analysts. As the requirements are set out in the matrix however, biology screeners are required to have a BS/BA degree. Members agreed to draft particular coursework requirements specific to serology analysts/biology screeners and bring to the Committee's next meeting.

Members addressed a question about examiners who may have 25+ years of experience, but do not have proper documentation of some of the training components list in the knowledge-based training requirements to be signed-off on by quality assurance supervisors. Members agreed that a laboratory's quality assurance manager should be able to provide an authorization-type memo indicating the examiner understands the particular concept for which he/she is missing documented training for.

MOTION AND VOTE: *Sliter moved to recommend quality assurance managers be able to write in an authorization-type note indicating a particular examiner, while he/she may not have the proper documentation of the training component, understands and has had training on the particular knowledge-based training topic. Miller seconded the motion. The Committee unanimously adopted the motion.*

Members discussed the issue of whether NIBIN techs should have their own category on the matrix and discipline categories chart and separate requirements from firearm/toolmark examiners to obtain a license. Members left the issue open for discussion at its February 9 meeting.

Review and discussion of proposed draft rules for Licensing Program to be presented to the Commission at its February 10, 2017 quarterly meeting.

In reviewing a proposed draft of licensing rules, members discussed the following issues:

Members discussed the issue of whether the Committee should recommend a provisional license for lateral hires waiting to be fully trained and cleared for independent casework. Most laboratories require a 3-9 month training period before an experienced analyst making a lateral

transfer is cleared for independent casework, depending on the forensic discipline and experience level. Members proposed recommending a 9-month provisional license be granted to those lateral new-hire employees that have come from another accredited laboratory outside of Texas and do not already have a Texas license.

Members also discussed whether those employees who do not fulfill the statistics requirement when they are hired should be able to get a provisional license for a 9-month period until they are able to fulfill the requirement. Members agreed this should be an option.

MOTION AND VOTE: *Sliter moved to recommend the Commission adopt a 9-month provisional license option for new hires transferring from out-of-state laboratories that do not already have a Texas forensic analyst license, if the analyst is transferring from a Texas-recognized accredited laboratory where he/she was approved for independent casework and for new hires that do not yet meet the statistics requirement. Sailors seconded the motion. The Committee unanimously adopted the motion.**

**A Texas Criminal Defense Lawyers Association (“TCDLA”) representative voiced concern with members making this vote without a TCDLA member present as the Committee is awaiting the Commission’s appointment of a new TCDLA representative to fill the position on the Committee. Members agreed to revisit the issue at its next meeting and address all concerns raised by TCDLA.*

Members addressed the issue of lapses in renewal of an examiner’s license. Members agreed to mirror the state bar requirements which require a licensee to submit a renewal application, sign a Did Not Practice form, and update their current CLE (in this case CFE) status with the Commission.

MOTION AND VOTE: *Sliter moved to approve the language mirroring the State Bar’s requirements for reinstating a lapsed or expired analyst license as outlined in the proposed draft rules. Miller seconded the motion. The Committee unanimously adopted the motion.*

Members readdressed the issue of what degrees should qualify as a Natural Science degree or Natural Science major. Hilbig will bring a more comprehensive list for review at the Committee’s February 9, 2017 meeting. Heartsill will assist in looking at out-of-state degrees that may qualify and bring a list to the next meeting as well. Members agreed a coursework equivalent exemption may be an option for degrees that do not appear on a final approved list, but may still qualify. Staff will add language about the coursework equivalent exemption request to the draft rules.

Members discussed the issue of temporary licenses for examiners visiting Texas for only one criminal case per year. Members suggested edits to the language in the draft rules to clarify what one case means. Members also suggested adding clear language about what the fee should be. Staff agreed to do some research on temporary occupational license fees and will bring findings to the Committee’s next meeting.

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

Members discussed whether to break the general exam components (evidence handling, cognitive bias, scientific validation, statistics including measurement uncertainty and error rates, ethics, root cause analysis, legal and ethical issues and traceability) into separate electronic modules with an attached training video and exam questions following. Members agreed this was the best and most efficient way to administer the exam both from the laboratories' perspective and from the licensing advisory committee's perspective.

MOTION AND VOTE: *Sliter moved to administer the general forensic licensing exam in modules broken down by topics that can be taken together or separately as an examiner is ready for each section. Sailors seconded the motion. The Committee unanimously adopted the motion.*

Members discussed whether certification body exams from Commission-approved certification bodies may fulfill the general forensic analyst licensing exam requirement. Members agreed to defer the discussion for decision by the Commission; however, the consensus of the Committee was that the general forensic analyst exam and the certification exams cover almost entirely different subject matter.

Update from the Texas Association of Crime Laboratory Directors (“TACL D”), 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, President of the TACL D, attended a portion of the meeting and spoke on behalf of the organization. The TACL D expressed concern with the statistics requirement and examiners being able to meet the requirement to obtain the license in time. Members discussed this issue may be addressed with the 9-month provisional license option for examiners who do not have a statistics course. The provisional license will allow examiners (applying after the January 1, 2019 deadline) the time to obtain a statistics course and still allow them to perform casework.

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.

Garcia reported on general mandatory restraints on funding throughout the Legislature and agreed to update the Committee as the Session continues.

Discussion of the “technician” licensing sub-category for each accredited forensic discipline and definition of “technician.”

Members reviewed a draft definition for “non-proficiency tested laboratory personnel” exempt from the licensing requirement in the draft licensing program rules. The category exempts from the licensing requirement any employee who performs only “support functions” that do not require participation in proficiency testing in accordance with the laboratory's accrediting body

requirements. Individuals who technically review or draw conclusions from or interpret forensic analysis must obtain a forensic analyst license regardless of whether the individual is required to be proficiency tested by the laboratory's accrediting body. Member will address the definition again at the February 9, 2017 meeting.

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 February 9, 2017 at the Omni Austin Southpark.

Hear public comment.

Susan Kerr, manager of the firearm/toolmark section of the Dallas Police Department Crime Lab, offered comments on the NIBIN tech issue. NIBIN techs at Ms. Kerr's lab are only proficiency tested by the lab (not required to be proficiency tested by the accrediting body). The NIBIN techs only perform trigger pull and other non-forensic analysis functions at Dallas PD's lab. NIBIN techs perform different function at difference labs. Ms. Kerr expressed the difficulty in Dallas PD's NIBIN techs being able to fulfill some of the requirements to obtain a license as a firearm/toolmark examiner.

Adjourn.