

Texas Forensic Science Commission – Licensing Advisory Committee Minutes from December 6, 2019 Meeting

The Licensing Advisory Committee of the Texas Forensic Science Commission met at 10:00 a.m. on December 6, 2019, at the Tom C. Clark Building, Texas State Library Conference Room, 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
Alicia Watts
Calli Bailey

Staff Present: Lynn Garcia, General Counsel
Leigh Savage, Associate General Counsel
Robert Smith, Senior Staff Attorney

1. Review and adoption of minutes from October 24, 2019 meeting.

MOTION AND VOTE: *Reat moved to approve the October 24, 2019 meeting minutes draft. Sailors seconded the motion. The Committee unanimously adopted the motion.*

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

Garcia introduced the Commission's new Senior Staff Attorney, Robert Smith. Savage gave an update on licenses issued. Staff has issued a total of 1240 licenses to date. Staff has processed over half of the 440 expected blanket license renewals. Staff will continue to process renewals through the end of the year to meet the blanket licensee's 12/31/2019 deadline for renewal.

3. Discuss general forensic analyst licensing exam eligibility for forensic analysts in unaccredited forensic disciplines.

Members discussed whether to offer the General Forensic Analyst Licensing Exam to analysts practicing in forensic disciplines not required to be accredited under Texas law. Currently, the exam is only offered to forensic analysts employed at Texas-accredited crime laboratories who are practicing in one of the forensic disciplines subject to accreditation by the Commission—Seized Drugs, Forensic Biology, Materials (Trace), Firearms/Toolmarks, and Toxicology. Analysts from unaccredited disciplines such as Anthropology, Crime Scene Reconstruction, Latent Prints, Digital/Multimedia, Breath Testing Calibrators and others have requested

permission to study for and take the licensing exam. Staff will develop a proposal for expansion of eligibility requirements for the General Forensic Analyst Licensing Exam for Texas-accredited crime laboratory employees practicing in certain unaccredited forensic disciplines. Staff will send the proposal to Peter Stout, President of the Texas Association of Crime Laboratory Directors.

MOTION AND VOTE: *Sailors moved to recommend expanding the eligibility requirements for the General Forensic Analyst Licensing Exam to include Texas-accredited crime laboratory employees practicing in certain unaccredited forensic disciplines such as Anthropology, Crime Scene Reconstruction, Latent Prints, Digital/Multimedia and Breath Testing Calibrators. Watts seconded the motion. The Committee unanimously adopted the motion.*

Members discussed the development of voluntary licensing programs over time for unaccredited forensic disciplines. The Commission will begin with the development of the Crime Scene Reconstruction voluntary licensing program.

4. Discuss statistics requirement, including evaluation of NMS statistics course equivalency; review any outstanding statistics course evaluation requests.

Members discussed the statistics exam offered by Texas A&M. Several students have successfully finished the course. The course is now offered to anyone who would like to take it, whether sitting for the final exam or just auditing the course.

Members reviewed a statistics course proposal/syllabus from NMS Labs. The course as described meets the minimum criteria developed by the Licensing Advisory Committee. Members discussed their preference that the exam (or exams) be administered by a local academic institution. M.J. Menendez, Counsel for NMS Labs, indicated the laboratory is associated with several area universities that may be able to collaborate on the course. Watts will update the Commission on plans for administration of the course and provide staff with a link and course details that can be published on the Commission's website.

MOTION AND VOTE: *Reat moved to recommend approval of the proposed NMS Statistics course for fulfillment of the statistics coursework requirements for forensic analyst licensure pending the confirmation of satisfactory administration details. Sailors seconded the motion. The Committee unanimously adopted the motion.*

5. Discuss and evaluate any outstanding blanket license applications and blanket license applications approved since the Committee's October 24, 2019 meeting; discuss blanket laboratories licensed for specific types of testing not widely available in Texas; discuss and adopt recommended responses to comments on proposed laboratory blanket license changes; decide whether to recommend blanket licensees complete CFE requirements; review proposed blanket licensee transfer rule permitting blanket-licensed analysts transferring to a laboratory in Texas and seeking full licensure to comply with requirements in place at the time of the analyst's original blanket-license date.

Savage reviewed laboratory blanket license applications approved by the Commission and updated the Commission on pending applications and renewals for blanket licensure. Hilbig discussed distinguishing laboratories qualifying for blanket licensure strictly for uncommon forensic analyses not widely available in Texas from laboratories qualifying strictly under the necessary to ensure the availability of timely forensic analysis prong. Members will address this in revisions to its blanket rule requirements currently outstanding.

Members addressed public comments received from two laboratories in response to the Committee's proposed administrative rule changes elevating coursework and other requirements for blanket-licensed analysts.

The Committee reviewed two separate proposals (Proposals A and B) from NMS Labs, a private laboratory that provides outsourced forensic services to Texas law enforcement agencies the bulk of which are backlogged DWI and DUI toxicology cases. Both proposals eliminate the distinction between in-state and out-of-state crime laboratories subject to Commission licensing rules and propose establishing a baseline requirement of *de minimis* Texas casework pursuant to a certain percentage and proportion of a laboratory's casework for qualification of the blanket license. Proposal A provides no exam requirement for analysts and a certification regarding required training on the Code of Professional Responsibility, *Brady v. Maryland*, and the Michael Morton Act. Proposal B provides for full licensure of forensic toxicologists/certifying scientists and a "deemed licensure" for all other personnel. All analysts and laboratory personnel would be required to meet the current blanket license requirements of completion of the Code of Professional Responsibility, *Brady v. Maryland*, and the Michael Morton Act training with required certification by the employing blanket laboratory. Proposal B also provides that the laboratory will continue to inform the Commission of any misconduct, malfeasance or other inappropriate actions taken by individual staff members or the laboratory as a whole.

Members agreed the proposed "*de minimis* Texas casework" method of distinguishing laboratories for qualification of blanket licensure is 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 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.

Members addressed comments from Texas private laboratory Quality Forensic Toxicology. The primary complaint in the comments provided by Quality Forensic Toxicology is the dichotomy between what is required of in-state and out-of-state forensic analysts and the perceived competitive advantage lesser requirements for out-of-state crime laboratories may provide. Under the *de minimis* assessment however, the dichotomy between in-state and out-of-state crime laboratories is eliminated altogether. Using this assessment rather than the dichotomy between in-state and out-of-state laboratories allows the State to fairly balance the need for out-sourced forensic services with the need for ensuring quality forensic services in Texas criminal casework.

MOTION AND VOTE: *Eudaley moved to recommend rescinding the current blanket rule as proposed and to revise the proposal to include a de minimis assessment of laboratories seeking*

licensure under the provision, require full licensure for all forensic toxicologists/certifying scientists and a “deemed licensure” for all lower-level employees of laboratories who qualify under the provision. Sailors seconded the motion. The Committee unanimously adopted the motion.

*Watts abstained from voting on this motion.

Members will discuss and develop the parameters of the *de minimis* Texas casework assessment that may include the percentage of Texas cases proportionate to the laboratory’s total casework and the percentage of courtroom testimonies the laboratory has in Texas in a given year.

Staff will determine the appropriate new proposed fee pursuant to the level of administration required for the program.

Members briefly discussed whether continuing forensic education should be required of blanket licensees. Members tabled the discussion until the new rule is further developed.

Members reviewed a proposed blanket license transfer rule permitting blanket-licensed analysts transferring to a laboratory in Texas and seeking full licensure to comply with requirements in place at the time of the analyst’s original blanket-license date. Members agreed with the transfer rule change. Staff will work on redrafting the rule pursuant to other blanket license changes.

6. Discuss any outstanding continuing forensic education (CFE) requests, including whether CFE should be awarded for poster sessions and time spent on assessments and/or training for ANAB assessors; address whether CFE should be counted during provisional license period; update on options for sponsoring CFE for disciplines that don’t have as many available options for CFE (e.g., Materials (Trace), including contracting with an expert to provide discipline-specific training to licensees.

Members discussed whether continuing forensic education credit should be awarded for scientific poster sessions. Members agreed up to 5 hours of continuing forensic education credit should be awarded for preparing and presenting a technical poster presentation. No credit hours are awarded for attending a poster session. Members also discussed whether to award credit for external assessments. Members agreed up to 10 hours may be awarded for an unpaid assessment. Members also discussed whether continuing forensic education hours should be awarded during the provisional license period.

MOTION AND VOTE: *Reat moved to approve up to 5 hours of CFE for technical poster presentations and up to 10 hours of CFE for an unpaid laboratory assessment, and that CFE credits should not be awarded during the provisional license period. Vachon seconded the motion. The Committee unanimously adopted the motion.*

Members discussed the status on efforts to provide discipline-specific Materials (Trace) training for Texas analysts and the difficulty in addressing the different categories of analysis under Materials (Trace). DPS Comparative Disciplines Program Coordinator, Sandy Parent, is working with Commission staff on developing options for training for Materials (Trace) analysts.

- 7. Discuss and make recommendations on any specific coursework and minimum education requirement transcript review requests, including inquiry on medical technology degree, update on candidate missing a genetics course required for licensure, and inquiry regarding DPS Document Examination analysts performing physical comparisons of paper now considered to be a Materials (Trace) category of analysis pursuant to ANAB's categorization of the analysis and the Commissions' exemption for Document Examination.**

MOTION AND VOTE: *Sailors moved to approve the Medical Technology degree of a licensing candidate as satisfying the Commission's education requirement. Esquivel seconded the motion. The Committee unanimously adopted the motion.*

Members discussed the genetics course for an individual who was missing the requirement. The candidate is currently enrolled in a genetics course so the course is no longer an issue once she passes.

Members discussed an inquiry with regard to DPS document examiners who perform physical comparisons of paper, now considered to be a Materials (Trace) category of analysis given the Commission's exemption of Document Examination and accrediting body ANAB's categorization of the analysis. Under current rules, the analysts performing the physical comparisons would need to get a Materials (Trace) license. The analysts do not perform any chemical analyses. Staff proposed removing the term "physical comparison" from the categories of analysis under Materials (Trace) to address the issue. Removing the term "physical comparison" from the Material (Trace) categories of analysis makes the best sense with respect to the analysts performing these analyses as they are not Trace examiners.

MOTION AND VOTE: *Watts moved to recommend excluding physical paper comparisons or paper reconstruction from the Materials (Trace) categories of analysis. Reat seconded the motion. The Committee unanimously adopted the motion.*

Staff will work with DPS Trace analysts on a definition for paper reconstruction and draft a rule remove the "physical comparison" term.

- 8. Discussion and recommendations regarding any Waiver Applications for Support Personnel.**

There were no waiver applications for review.

- 9. Discussion and recommendations regarding any outstanding criminal history results.**

There were no criminal history evaluations to be completed.

- 10. Discuss and evaluate outstanding technical reviewer license applications.**

There were no technical reviewer license applications for review at this meeting.

11. Discuss and evaluate any temporary license applications.

MOTION AND VOTE: *Vachon moved to approve two temporary license applications for analysts at Microtrace, LLC. Sailors seconded the motion. The Committee unanimously adopted the motion.*

12. Discuss and evaluate any fourth exam requests.

There were no fourth exam requests for 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.

Garcia gave an update on question development for the General Forensic Analyst Licensing Exam. The Committee is in the process of piloting an additional 10 questions. Members discussed that opening the exam to unaccredited disciplines may speed up the process of piloting exam questions. Garcia will discuss with the Commission's psychometricians how permitting unaccredited forensic discipline analysts to take the exam may impact the psychometric analysis of the exam.

Members discussed re-recording the Human Factors and Root Cause analysis videos. Committee volunteers will meet with a production specialist at the Office of Court Administration today regarding re-producing the videos.

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

Garcia and Smith are currently working on an outline to the course and hope to have plans for the course at the Committee's next meeting. Staff will meet with the video production specialist at the Office of Court Administration regarding production of the video today.

15. Update on the Commission's recommendation to adopt OSAC Registry standards.

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

There was no update for this agenda item.

17. Schedule and location of future meetings.

The Committee will meet again January 30, 2019 in Austin.

18. Hear public comment.

All public comment made at the meeting is noted herein.

19. Adjourn.