



TEXAS COMMISSION ON LAW ENFORCEMENT

Advisory Committee Meeting Minutes

Examination of Licensee (Fit for Duty)

November 9, 2023

On Thursday, November 9, 2023, at 1:00 p.m., an advisory committee meeting for the Texas Commission on Law Enforcement (TCOLE) was held at the TCOLE Headquarters, 2nd Floor, Training Room, 6330 East Highway 290, Austin, Texas, 78723.

Committee Members attending were: Presiding Officer Constable Shawn Kennington (virtual), Assistant Presiding Officer Chief Mike Harmon, Chief Robert Crawford (virtual), Curtis Howard, Bob Leonard, Lieutenant Lisette Rivera, Dr. Jonathan Sheinberg (virtual), Dr. Stephen Tate, Clay Taylor, and Sheriff Johnwayne Valdez.

TCOLE Executive staff attending were: Interim Executive Director John Beauchamp; Credentialing, Education and Field Services Director Cullen Grissom; Information Technology and Special Services Director Jessica Capraro; and Enforcement Major T.J. Vineyard.

Agenda item 1, Call to order.

Assistant Presiding Officer Chief Mike Harmon called the meeting to order at 1:02 p.m.

Roll call of members was called, and a quorum was present.

Welcoming remarks were made by Assistant Presiding Officer Chief Mike Harmon and Interim Executive Director John Beauchamp.

Agenda item 2, Approval of the minutes of the October 11, 2023 Advisory Committee meeting.

Clay Taylor made a motion to approve the October 2023 Exam of Licensee Advisory Committee Meeting Minutes. Curtis Howard seconded the motion. The motion passed unanimously.

Agenda item 3, Discuss and take action on matters related to developing a model policy prescribing standards and procedures for the medical and psychological examination of new licensees, existing licensees, or those whose employing agency has reason to believe a new examination is necessary as established under Texas Occupation Code § 1701.167.

Sample model policies were brought before the committee by Clay Taylor and Assistant Presiding Officer Mike Harmon. Assistant Presiding Officer Harmon advised that the sample policy he brought

before the committee mirrors that of civil service. Director Grissom proposed that any policy adopted by the committee needed to harmonize with civil service statutes.

Director Grissom introduced a flowchart created by TCOLE to demonstrate the procedural processes initiated once TCOLE has been notified of a licensee's refusal of a requested examination or treatment. Assistant General Counsel Aaron Heath provided a detailed overview of the flowchart and processes, including the timeline and notification requirements. However, he advised that some details are still being worked out with the State Office of Administrative Hearings (SOAH) which will further clarify the timeline.

Assistant Presiding Officer Mike Harmon brought up the question of employee Family and Medical Leave Act (FMLA) leave taken by a licensee at the time of a requested examination.

Major Vineyard advised that this process should not interfere with an agency's ability to address issues within their own agency. However, once an agency has come to the point of requesting an examination of a licensee and they refuse, the TCOLE reporting requirement and process is initiated. Major Vineyard advised that if the licensee is allowed FMLA leave by their agency which does not pose a threat to their license then they would not need to be "fit for duty" at that time and the agency could order the examination once that is resolved and the licensee is ready to come back to work.

Lieutenant Rivera advised that contacting or requesting an examination of a licensee who has been approved for FMLA leave may open up liability issues. Curtis Howard advised that the underlying issues which triggered the request for examination may be resolved in some cases by a licensee's FMLA leave.

Director Grissom advised that the primary driver behind the establishment of a "fit for duty" minimum standards model policy is citizen welfare and whether an officer is physically and psychologically "fit for duty" to best serve the citizens of Texas. Therefore, if a licensee is on FMLA leave and not working or "on duty", they would not need to be "fit for duty" and the process would be stalled, or the request for examination may be withdrawn until the licensee decides to come back to work. At that point, the process may restart if deemed necessary by the agency.

Clay Taylor inquired whether a licensee may choose their own doctor to conduct the examination. Director Grissom advised that the licensee may choose their own doctor, although the agency may request a re-examination by a doctor of the agency's choice if the agency wishes to do so.

Dr. Tate inquired whether the employee or employer is responsible for paying the doctor for the examination. Bob Leonard advised that usually the payment is provided by the licensee's insurance provider, but that the county will pay if they require the licensee to see a specific doctor of the county's choice. If the doctor is chosen by the licensee, the licensee typically pays the doctor.

Dr. Tate and Dr. Sheinberg discussed the benefits of compiling a list of qualified physicians as well as criteria for the State standards of "fitness for duty" to provide to physicians who conduct fit for

duty examinations.

Sheriff Valdez raised the question of the requirement to evaluate current employees once a state minimum standard has been established, and whether “fit for duty” standards may evolve with age or years of service.

Director Grissom asked Dr. Sheinberg if he was aware of any medical industry standards that the committee could review, giving an example of a Department of Transportation (DOT) commercial driver’s physical examination. Dr. Sheinberg advised that he would research such industry standards to report back to the committee for future discussion.

Interim Executive Director John Beauchamp advised the committee that around 60% of law enforcement agencies in the state employ ten or less officers and emphasized the importance of accessibility to physicians for rural agencies.

Bob Leonard advised the committee of an Attorney General Open Record Decision (O.R.D. GA 681) regarding potential Health Insurance Portability and Accountability Act (HIPPA) issues and the release of licensee information for the committee to review.

Director Grissom provided an overview of a model policy created by Lexipol for the committee to review. The Lexipol model policy covers supervisor responsibilities, identifying employee behavioral changes, and confidentiality. Director Grissom advised that the provided model policy may be built upon to include statute requirements including the 10-day notice period and the process for reporting to TCOLE.

Lieutenant Rivera advised Director Grissom that she sent a Dallas Police Department’s model policy, as well as IACP (International Associations of Chiefs of Police) guidelines, for the committee to review.

Interim Executive Director Beauchamp advised that the committee’s charge is to create minimum standards and agencies may expand on those standards in their department’s policies.

There was further discussion regarding what details ought to be provided to physicians conducting “fit for duty” exams. The committee determined that the committee must create two criteria, one for physical fitness and one for psychological fitness. The committee formed the following two subcommittees to report back to the committee at the next meeting:

Subcommittee on Physical Fitness For Duty

Dr. Jonathan Sheinberg, Clay Taylor, Sheriff JohnWayne Valdez, Assistant Presiding Officer Chief Harmon.

Subcommittee on Psychological Fitness For Duty

Bob Leonard, Dr. Stephen Tate, Curtis Howard, Chief Robert Crawford.

Agenda item 4, Discuss and take action on future Advisory Committee meeting dates and location, including videoconferencing.

The next meeting of the TCOLE Advisory Committee on Examination of a Licensee (Fit for Duty) will be held Thursday, December 5, 2023, at 1:00 p.m. at the TCOLE Headquarters, 2nd Floor, Training Room, 6330 East Highway 290, Austin, Texas, 78723.

Agenda item 5, Receive public comment on any topic, without action.

No public comment.

Agenda item 6, Adjourn.

The meeting adjourned at 3:07 p.m.