



Meeting Minutes Nevada Interim Committee on Testing for Intoxication (COTI)

Attendance	DATE	December 12, 2022
	TIME	9:34 a.m.
	METHOD	Zoom Teleconference Meeting ID: 211 396 194 328 Dial in: +1 (775) 325-0620
	RECORDER	Meg Matta
Appointed Voting Members		
Shannon Bryant, Chair	Deputy District Attorney, Washoe County District Attorney's Office	X
Dr. William Anderson	Forensic Toxicologist, NMS Labs	X
Eric Bauman	Chief Deputy District Attorney, Clark County District Attorney's Office	X
Stephen Johnson	Supervising Criminalist, Washoe County Sheriff's Office Forensic Science Division	X
Kim Murga	Executive Director, Las Vegas Metropolitan Police Department Forensic Laboratory	X
Others Invited		
David Astle		X
Marlissa Collins	Las Vegas Forensic Laboratory	
David Johnson		
Darby Lantz	Las Vegas Metropolitan Police Department Forensic Laboratory	X
Anastacia Melendy	Supervising Criminalist, Washoe County Laboratory	X
Rebecca Nelson	Washoe County Laboratory	
Michael Stypa	Forensic Laboratory Supervisor, Las Vegas Metropolitan Police Department Forensic Laboratory	X
Terri Suffecool	Las Vegas Metropolitan Police Department Forensic Laboratory	X
Brad Taylor		
Legal and Support		
Nathan L. Hastings	Senior Deputy Attorney General, State of Nevada / Office of the Attorney General – Transportation Division	X
Meg Matta	Impaired Driving Program Manager, Department of Public Safety, Office of Traffic Safety	X

1. **CALL TO ORDER** (Non-Action Item)
Mr. Bryant, Chair, opened the meeting at 9:34 a.m.
2. **ROLL CALL, CONFIRM QUORUM, AND INTRODUCTIONS** (Non-Action Item)
Roll was taken, introductions were made, and a quorum was established.
3. **PUBLIC COMMENT** (Non-Action Item)
There was no public comment.
4. **FAA RECERTIFICATION REQUIREMENT UNDER NAC 484C.030** (Discussion / Non-Action Item)
The COTI members and current Nevada Forensic Analysts of Alcohol (FAAs) from the forensic laboratories at Las Vegas Metropolitan Police Department and Washoe County Sheriff's Office discussed the status of FAA certification and recertification requirements. Mr. Bryant explained the problem with the language in NAC 484C.030 subsection 2(c) which states that as a condition of renewal of the FAA certificate, a candidate must show "*proof of acceptance as an expert in the field of breath alcohol testing in no less than four courts of law. The proof must include the*

names of the courts, date of acceptance and the names of the cases for which the person was accepted as an expert". This is problematic language, Mr. Bryant stated, because courts do not certify experts, they simply accept the choice of attorneys, who select experts based upon experience. Ms. Lantz commented that this issue was raised three years ago in the COTI meeting of August 2020 and tabled. Due to COVID, the courts closed their doors and FAAs were not being called to testify in court proceedings. Even now during a comeback from the pandemic, FAAs are not being called to court enough to meet the requirements. Mr. Astle confirmed that being called to court to testify is the exception not the rule; he sees similar issues in northern Nevada. He added that it is not reasonable to establish requirements for recertification as testifying in four courts of law and then put the opportunity to testify in third-party hands. The candidate does not have control over when and where they will be called to testify. He also commented that in northern Nevada, judges avoid using the designation of "expert".

With regard to other requirements on approved courses and seminars, as found in 484C.030 subsections 1 and 2(b), Ms. Murga stated that all lab workers are initially accredited in the calibration of the instruments and asked if that could be used again in the recertification to fulfill requirements. She also suggested the possibility of the COTI creating a standardized proficiency test that would be less ambiguous than the current language and ensure that all requirements were met. Mr. Johnson pointed out that subsection 1 indicates acceptance of competence in calibrating breath-testing devices. He agreed that the Committee should more specifically define what accreditation looks like. He went on to relay a message from Mr. Taylor, who was unable to attend the meeting, regarding his experience with initial certification in 2009 where he submitted evidence of training and subpoenas as proof of meeting requirements; and these were accepted.

Mr. Astles pointed out that subsections 1 and 2 are written as an either/or. With regard to ongoing training, he stated that the field is mature, and there is not that much new information on which to be trained. Ms. Lantz added that for subsection 1, the training on calibration has historically been taught by the manufacturer in the beginning and would not necessarily apply to recertification. Mr. Stypa noted that pertaining to subsection 1, the requirement to "successfully complete a course approved by the Committee" no guidance exists on what courses are approved or what would count. Ms. Melendy suggested 1) formation of a user's group, 2) reference to the International Association of Chemical Testing (IACT), 3) and manufacturer's training as a first goal. Ms. Suffacool concurred that participation in a User's Group and passing or meeting IACT standards should be sufficient to meet the requirements. She suggested that for subsection 2, they vote to remove both (b) and (c) and rely on training and verification of continued practice in the field.

Ms. Murga asked to move on to Agenda Item 5 to vote on the issue, then craft language to modify the regs. Mr. Bryant suggested that additionally, the FAAs should develop the recertification test. Ms. Murga said that in the interest of calendar time, the Committee should first eliminate subsection 2(c) so that the FAAs can proceed to recertification. She would like to eventually see a competency test or knowledge test to replace the expert testimony requirement.

Mr. Hastings interjected that Agenda Item 5 was not written explicitly enough to accommodate all the suggested revisions; they would need to be taken up in a subsequent meeting.

Ms. Murga asked if it was possible to procure a COVID waiver to accomplish recertification for a short amount of time. Mr. Stypa mentioned that the 2023 Legislative year begins in February, and the Committee has a little time to define and propose corrections. Mr. Bryant wanted to leave the details of what is the appropriate fix to the FAAs.

Dr. Anderson pointed out that nowhere in subsection 2 does it define a time period for the requirements – they are required by not explicitly stated. Shannon confirmed that in subsection 2: a) does not specify time, b) shows no period for completion, c) does not specify a time period and d) could be implied as the current two-year period since last certified. Mr. Baumann agreed with that interpretation. Ms. Murga concluded that the revelation removes the previous sense of urgency, and the language can be left as is for the time being without interfering with FAA recertification. Mr. Johnson agreed and commented that this gives the Committee time to revise the language. Mr. Bryant thanked Dr. Anderson for his keen observation and concluded that the only requirement for a recertification of an FAA is to remain active, and previous training can be used to fulfill that requirement.

5. NAC 484C.030 RETENTION OR REMOVAL (Discussion / For Possible Action)

Per guidance of Mr. Hastings, a new motion was made for future action that would be more specific to the results of this meeting's discussions. Ms. Murga moved to engage in rule-making process and amend or revise changes to regulations 484C.020 and 484C.030. Mr. Stypa seconded, and the motion passed unanimously. The question will be taken up in the next meeting.

6. PUBLIC COMMENT (Non-action item) Requested that the Committee on Testing for Intoxication webpage be updated with regard to membership and the list of approved evidentiary breath testing devices. It would be helpful if the minutes from the 2020 meeting could be posted as well. Also, the minutes of 2019 cannot be opened. Ms. Matta commented that the minutes of 2020 and 2019 are in the hands of the former Committee Chair who is no longer with the Office of Traffic Safety; she will ask for copies to post.

7. ADJOURNMENT (Discussion / For Possible Action)

Mr. Bryant moved, and Mr. Baumann seconded that the meeting be adjourned.

ACTION:

Mr. Bryant moved to add the CMI Intoxilyzer Model 9000 to the Nevada Committee on Testing for Intoxication's list of approved evidentiary breath testing devices for use in this state.

Ms. Murga seconded the motion.

It was unanimously approved.

8. PUBLIC COMMENT (Non-Action Item)

There was no public comment.

9. ADJOURNMENT (Discussion / For Possible Action)

Mr. Bryant moved to adjourn the meeting.

Dr. Anderson seconded the motion.

The meeting was adjourned at 9:40 a.m.