

R156. Commerce, Occupational and Professional Licensing.

R156-64. Deception Detection Examiners Licensing Act Rule.

R156-64-101. Title.

This rule is known as the "Deception Detection Examiners Licensing Act Rule".

R156-64-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 64, as used in this rule:

- (1) "Activity sensor", as used in Subsection R156-64-502(2)(i), means a sensor attached to a deception detection instrument that is approved for use by the manufacturer of the instrument for placement under the buttocks of the examinee to detect movement and attempts at countermeasures by the examinee.
- (2) "Clinical examination", as used in Subsection R156-64-502(2)(g), means a deception detection examination which is not intended to supplement and assist in a criminal investigation.
- (3) "Comparison question", as used in Subsection R156-64-102(8), means a nonrelevant test question used for comparison against a relevant test question in a deception detection examination.
- (4) "Concealed information examination", as used in Subsection R156-64-502(2)(g), means a psychophysiological technique for examining whether a person has knowledge of crime-relevant information.
- (5) "Deception detection case file", as used in Subsection R156-64-502(2)(o), means written records of a polygraph exam including:
 - (a) case information;
 - (b) the name and license number of the examiner;
 - (c) a list of all questions used during the examination;
 - (d) copies of all charts recorded during the examination; and
 - (e) either the audio or video recording of the examination.
- (6) "Directed lie screening exam", as used in Subsection R156-64-502(2)(d), means a screening exam in which the examinee is instructed to lie to one or more questions.
- (7) "Experienced deception detection examiner", as used in Section R156-64-302f, means a deception detection examiner who has completed over 250 deception detection examinations and has been licensed or certified by the United States Government for three years or more.
- (8) "Irrelevant and relevant testing", as used in Subsection R156-64-502(2)(e), means a deception detection examination which consists of relevant questions, interspersed with irrelevant questions, and does not include any type of comparison questions.
- (9) "Irrelevant question", as used in Subsection R156-64-102(8), means a question of neutral impact, which does not relate to a matter under inquiry, in a deception detection examination.
- (10) "Post conviction sex offender testing", as used in Subsections R156-64-302f(2) and R156-64-502(2)(p), means testing of sex offenders and includes:
 - (a) sexual history testing to determine if the examinee is accurately reporting all sexual offenses prior to a conviction;
 - (b) maintenance testing to determine if the examinee is complying with the conditions of probation or parole; and
 - (c) specific issue/single issue examinations.
- (11) "Pre-employment examination", as used in Subsection R156-64-502(2)(d) and (g), means a deception detection screening examination administered as part of a pre-employment background investigation.
- (12) "Relevant question", as used in Subsection R156-64-102(8), means a question which relates directly to a matter under inquiry in a deception detection examination.
- (13) "Screening examination", as used in Subsections R156-64-502(2)(d) and (g), means a multiple issue deception detection examination administered to determine the examinee's truthfulness concerning more than one narrowly defined issue in the absence of any specific allegation.
- (14) "Specific issue/single issue examination", as used in Subsections R156-64-102(10)(c) and R156-64-502(2)(d) and (g), means a deception detection examination administered to determine the examinee's truthfulness concerning one narrowly defined issue.
- (15) "Supervision" means general supervision as established in Subsection R156-1-102a(4)(c).
- (16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 64, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-64-502.
- (17) "Work experience", as used in Subsection 58-64-302(3)(f) and R156-64-302c(3), means work done while licensed as a deception detection examiner, deception detection examiner intern, deception detection examiner administrator, or while exempt from licensure under this chapter.

R156-64-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 64.

R156-64-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-64-302a. Qualifications for Licensure - Application Requirements - Criminal Background Check.

Pursuant to Section 58-64-302, an application for licensure under all classifications under Title 58, Chapter 64 shall be accompanied by:

- (a) two fingerprint cards for the applicant; and
- (b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a records check of:
 - (i) the Federal Bureau of Investigation; and
 - (ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

R156-64-302b. Qualifications for Licensure - Deception Detection Examiner and Deception Detection Examiner Intern Education Requirements.

In accordance with Subsections 58-64-302(1)(f)(i) and 58-64-302(2)(f)(i), deception detection examiner and deception detection examiner intern applicants shall have earned a bachelor's degree from a university or college program, that at the time the applicant graduated, was accredited through the U.S. Department of Education or one of the regional accrediting association of schools and colleges.

R156-64-302c. Qualifications for Licensure - Experience Requirements.

- (1) In accordance with Subsections 58-64-302(1)(f)(ii) and 58-64-302(2)(f)(ii), deception detection examiner and deception detection examiner intern applicants shall have 8,000 hours of investigation experience with a federal, state, county, or municipal law enforcement agency. Equivalent investigation experience may be approved by the Division in collaboration with the Board.
- (2) In accordance with Subsection 58-64-302(1)(f)(iii) and 58-64-302(2)(f)(iii), deception detection examiner and deception detection examiner intern applicants may complete, in part or in whole, the college education requirements in Subsection R156-64-302b through additional investigation experience in the ratio of 2,000 hours of investigation experience, beyond the required 8,000 hour requirement in Subsection R156-64-302c(1), for one year as a matriculated student in an accredited bachelor's degree program.
- (3) In accordance with Subsection 58-64-302(3)(f), deception detection examination administrator applicants may complete, in part or in whole, the college education requirements in Subsection 58-64-302(3)(f) through additional work experience in the ratio of 2,000 hours of work experience for one year as a matriculated student in an accredited associate's degree program.

R156-64-302d. Qualifications for Licensure - Deception Detection Training Requirements.

- (1) In accordance with Subsection 58-64-302(1)(g) and 58-64-302(2)(g), a deception detection training program for a deception detection examiner or a deception detection examiner intern shall consist of graduation from a deception detection training program in a school accredited by the American Polygraph Association.
- (2) In accordance with Subsection 58-64-302(3)(g), a deception detection training program for a deception detection examination administrator shall consist of graduation from a certification program provided by a software manufacturer.

R156-64-302e. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-1-309, deception detection examiner and deception detection examiner intern applicants shall pass the Utah Deception Detection Examiners Law and Rule Examination with a score of at least 75%.

R156-64-302f. Qualifications for Licensure - Supervision Requirements.

In accordance with Subsection 58-64-302(2)(h), each deception detection intern supervision agreement shall be in a form that requires a deception detection intern to serve an internship under the direct supervision of an experienced deception detection examiner as follows:

- (1) the supervising deception detection examiner shall observe either directly or by video recording a minimum of five complete examinations;
- (2) if the deception detection intern is performing post-conviction sex offender testing, the supervising deception detection examiner shall hold a certification for post-conviction sex offender testing by the American Polygraph Association; and
- (3) the "Internship Supervision Agreement", as required in Subsection 58-64-302(2)(h), shall be approved by the Division in collaboration with the Board.

R156-64-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 64 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-64-304. Continuing Education.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of a license in the classification of deception detection examiner.

(2) Continuing education shall consist of 60 hours of qualified continuing professional education in each preceding two year period of licensure or expiration of licensure.

(3) If a renewal period is shortened or extended to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(4) Qualified continuing professional education shall consist of the following:

(a) A minimum of 30 hours shall be from institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction directly relating to deception detection; and

(b) 30 hours may be in the following college courses with one college credit being equal to 15 hours;

(i) psychology;

(ii) physiology;

(iii) anatomy; and

(iv) interview and interrogation techniques.

(5) A deception detection examiner who instructs an approved course shall be given double credit for the first presentation.

(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain.

R156-64-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), an applicant shall demonstrate a clear criminal history as a condition of renewal or reinstatement of license issued under Title 58, Chapter 64 for all classifications under this chapter.

(2) A criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Section R156-1-302 to determine appropriate licensure action.

R156-64-502. Unprofessional Conduct.

(1) "Unprofessional conduct for all classifications under this chapter includes:

(a) conducting an examination if the examinee is not physically present and aware than an examination is being conducted;

(b) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;

(c) refusing to render deception detection services to or for any person on account of race, color, creed, national origin, sex, or age of such person;

(d) conducting an examination:

(i) on a person who is under the influence of alcohol or drugs; or

(ii) on a person who is under the age of 14 without written permission from the person's parent or guardian;

(e) failing during a pretest interview to specifically inquire whether the individual to be examined is currently receiving or has in the past received medical or psychiatric treatment or consultation;

(f) failing to obtain a release or a physician's statement from the individual being examined if there is any reasonable doubt concerning the individual's ability to safely undergo an examination;

(g) not creating and maintaining a record for every examination administered;

(h) expressing a bias in any manner regarding the truthfulness of the examinee prior to the completion of any testing;

(i) not maintaining records of all deception detection examinations for a minimum of three years; and

(j) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the American Polygraph Association Code of Ethics, dated September 1, 2015, and Standards of Practice, dated September 1, 2015, which are hereby incorporated by reference.

(2) "Unprofessional conduct" specific to deception detection examiners and deception detection examiner interns includes:

(a) not immediately terminating an examination upon request of the examinee;

(b) not conducting a pre-examination review with the examinee where each question is reviewed word for word;

(c) attempting to determine truth or deception on matters or issues not discussed with the examinee during the pre-

examination review;

(d) basing decisions concerning truthfulness or deception upon data that fails to meet the following minimum standards:

- (i) two charts for a pre-employment exam;
- (ii) two charts for a screening examination that is to be followed by a specific issue/single issue examination;
- (iii) three repetitions of each question on a directed lie screening exam; or
- (iv) three charts for all other exams;

(e) using irrelevant and relevant testing techniques in other than pre-employment and periodic testing, without prior approval of the Division in collaboration with the Board;

(f) using a polygraph instrument that does not record as a minimum:

- (i) respiration patterns recorded by two pneumograph components recording thoracic and abdominal patterns;
- (ii) electro dermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue;
- (iii) relative changes in pulse rate, pulse amplitude and relative blood volume by use of a cardiograph;
- (iv) continuous physiological recording of sufficient amplitude to be easily readable by the examiner; and
- (v) pneumograph and cardiograph tracings no less than one-half inch in amplitude when using an analog polygraph

instrument;

(g) conducting in a 24-hour period more than:

- (i) five specific issue/single issue examinations;
- (ii) five clinical examinations;
- (iii) five screening examinations;
- (iv) five pre-employment examinations; or
- (v) 15 concealed information examinations;

(h) conducting an examination of less than the required duration as follows:

- (i) 30 minutes for a concealed information exam;
- (ii) 60 minutes for a pre-employment exam; and
- (iii) 90 minutes for all other exams;

(i) failing to use an activity sensor in all testing unless the examinee suffers from a diagnosed medical condition that contraindicates its use;

(j) not audibly recording all criminal/specific examinations and informing the examinee of such recording prior to the examination;

(k) during a pre-employment pre-test interview or actual examination, asking any questions concerning the subject's sexual attitudes, political beliefs, union sympathies or religious beliefs unless there is a demonstrable overriding reason;

(l) splitting, or dividing fees received for deception detection services or otherwise paying any person for referring a client;

(m) not providing at least 20 seconds between the beginning of one question and the beginning of the next;

(n) not using a validated scoring method in all examinations;

(o) creating deception detection case files not containing at a minimum the following:

(i) all charts on each subject properly identified by name and date and if the exam was performed on an analog polygraph instrument, signed by the examinee;

(ii) an index, either chronological or alphabetical, listing:

- (A) the names of all persons examined;
- (B) the type of exam conducted;
- (C) the date of the exam;
- (D) the name and license number of the examiner;
- (E) the file number in which the records are maintained;
- (F) the examiner's written opinion of the test results; and
- (G) the time the examination began and ended;

(iii) all written reports or memoranda of verbal reports;

(iv) a list of all questions asked while the instrument was recording;

(v) background information elicited during the pre-test interviews;

(vi) a form signed by the examinee agreeing to take the examination after being informed of his or her right to refuse;

(vii) the following statement, dated and signed by the examinee: "If I have any reason to believe that the examination was not completely impartial, fair and conducted professionally, I am aware that I can report it to the Division of Occupational and Professional Licensing";

(viii) any recordings made of the examination; and

(ix) documentation of an instrument functionality check as mandated by the manufacture of the instrument being used; and

(p) conducting a clinical polygraph examination of a sex offender without holding a current certification from the American

Polygraph Association for post-conviction sex offender testing.

KEY: licensing, deception detection examiner, deception detection intern, deception detection examination administrator

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DECEPTION DETECTION EXAMINERS
LICENSING ACT RULE

R156-64.
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