

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 Title 58, Chapters 1 and 64 or this rule:

(1) "Activity sensor" 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 testing" means a deception detection examination which is not intended to supplement and assist in a criminal investigation.

(3) "Comparison question" means a nonrelevant test question used for comparison against a relevant test question in a deception detection examination.

(4) "Concealed information exam" means a recognition examination administered to determine whether the examinee recognizes elements of a crime not reported to the public that are known only to the individual who engaged in the behavior, an investigator or both.

(5) "Deception detection case file" means written records of a polygraph exam including:

- (a) case information;
- (b) examinee information;
- (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) "Experienced deception detection examiner" 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.

(7) "Irrelevant and relevant testing" means a deception detection examination which consists of relevant questions, interspersed with irrelevant questions, and does not include any type of comparison questions.

(8) "Irrelevant question" means a question of neutral impact, which does not relate to a matter under inquiry, in a deception detection examination.

(9) "Post conviction sex offender testing" 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 examinations.

(10) "Pre-employment exam" means a deception detection screening examination administered as part of a pre-employment background investigation.

(11) "Qualified continuing professional education" means continuing education that meets the standards set forth in Section R156-64-304.

(12) "Relevant question" means a question which relates directly to a matter under inquiry in a deception detection examination.

(13) "Screening exam" means a multiple issue deception detection examination administered to determine the examinee's truthfulness concerning more than one narrowly defined issue.

(14) "Specific issue/single issue examination" 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.

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.

R156-64-201. Education Peer Committee created - Membership - Duties.

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Deception Detection Education Peer Committee.

(a) The duties and responsibilities of the Deception Detection Education Peer Committee are to conduct an oral interview on behalf of the Board to evaluate the deception detection intern's performance and make a recommendation to the Board to:

- (i) approve the application; or
- (ii) deny the application but extend the intern period.

(b) The composition of the Deception Detection Education Peer Committee shall be three deception detection examiners licensed in Utah who are not members of the Deception Detection Examiners Licensing Board.

R156-64-302a. Qualifications for Licensure - Application Requirements.

(1) Pursuant to Section 58-64-302, an application for licensure as a deception detection examiner 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 check of records of:
 - (i) the Federal Bureau of Investigation; and
 - (ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

(2) Pursuant to Section 58-64-302, an application for licensure as a deception detection intern 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 check of records 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 - Education Requirements.

(1) In accordance with Subsections 58-64-302(1)(f)(i) and 58-64-302(2)(f)(i) the bachelor's degree shall have been earned 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.

(2) In accordance with Subsections 58-64-302(1)(f)(ii) and 58-64-302(2)(f)(ii), the 8,000 hours of investigation experience shall have been as a criminal or civil investigator with a federal, state, county or municipal law enforcement agency, or other equivalent investigation experience approved by the Division in collaboration with the Board.

(3) In accordance with Subsections 58-64-302(1)(f)(iii) and 58-64-302(2)(f)(iii), the college education and investigation experience may be combined in the ratio of 2000 hours of investigation experience for one year as a matriculated student in an accredited bachelor's degree program.

(4) In accordance with Subsections 58-64-302(1)(g) and 58-64-302(2)(g), the deception detection training program shall consist of:

(a) graduation from a course of instruction in deception detection in a school accredited by the American Polygraph Association; and

(b) passing the Utah Deception Detection Theory Exam with a score of at least 75%.

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

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

R156-64-302d. 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 supervision 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 in the classification of deception detection examiner.

(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.

"Unprofessional conduct" includes:

- (1) not immediately terminating the examination upon the request of the examinee;
- (2) not conducting a pre-examination review with the examinee reviewing each question word for word prior to conducting the examination;
- (3) attempting to determine truth or deception on matters or issues not discussed with the examinee during the pre-examination review;
- (4) basing decisions concerning truthfulness or deception upon less than:
 - (a) two charts for a pre-employment exam;
 - (b) two charts for a screening exam that is to be followed by a specific issue exam; or
 - (c) three charts for all other exams;
- (5) conducting an examination if the examinee is not physically present and aware that an examination is being conducted;
- (6) 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;
- (7) using a polygraph instrument that does not record as a minimum:
 - (a) respiration patterns recorded by two pneumograph components recording thoracic and abdominal patterns;
 - (b) electro dermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue;
 - (c) relative changes in pulse rate, pulse amplitude and relative blood volume by use of a cardiograph;
 - (d) continuous physiological recording of sufficient amplitude to be easily readable by the examiner; and
 - (e) pneumograph and cardiograph tracings no less than one-half inch in amplitude when using an analog polygraph instrument;
- (8) conducting in a 24-hour period more than:
 - (a) five specific issue examinations;
 - (b) five clinical examinations;
 - (c) five screening examinations;
 - (d) five pre-employment examinations; or
 - (e) 15 concealed information examinations;
- (9) conducting an examination of less than the required duration as follows:
 - (a) 30 minutes for a concealed information exam;

- (b) 60 minutes for a pre-employment exam; and
- (c) 90 minutes for all other exams;
- (10) failing, after January 1, 2011, to use an activity sensor in all testing unless the examinee suffers from a diagnosed medical condition that contraindicates its use;
- (11) not audibly recording all criminal/specific examinations and informing the examinee of such recording prior to the examination;
- (12) 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 demonstratable overriding reason;
- (13) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;
- (14) dividing fees or agreeing to split or divide the fees received for deception detection services with any person for referring a client;
- (15) 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;
- (16) conducting an examination:
 - (a) on a person who is under the influence of alcohol or drugs; or
 - (b) on a person who is under the age of 14 without written permission from the person's parent or guardian;
- (17) not providing at least 20 seconds between the beginning of one question and the beginning of the next;
- (18) 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;
- (19) failing to obtain a release from the individual being examined or a physician's statement if there is any reasonable doubt concerning the individual's ability to safely undergo an examination;
- (20) not using a numerical scoring system in all specific examinations;
- (21) not creating and maintaining a record for every examination administered;
- (22) creating records not containing at a minimum the following:
 - (a) 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;
 - (b) an index, either chronological or alphabetical, listing:
 - (i) the names of all persons examined;
 - (ii) the type of exam conducted;
 - (iii) the date of the exam;
 - (iv) the name of the examiner;
 - (v) the file number in which the records are maintained;
 - (vi) the examiner's written opinion of the test results; and
 - (vii) the time the examination began and ended;
 - (c) all written reports or memoranda of verbal reports;
 - (d) a list of all questions asked while the instrument was recording;
 - (e) background information elicited during the pre-test interviews;
 - (f) a form signed by the examinee agreeing to take the examination after being informed of his or her right to refuse;
 - (g) 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";
 - (h) any recordings made of the examination; and
 - (i) documentation of an instrument functionality check on a quarterly basis including a calibration chart;

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

(24) 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;

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

(26) 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 January 10, 1999, and Standards of Practice, dated January 20, 2007, which are hereby incorporated by reference.

KEY: licensing, deception detection examiner, deception detection intern

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DECEPTION DETECTION EXAMINERS
LICENSING ACT RULE

R156-64
Utah Administrative Code
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