**R156. Commerce, Professional Licensing.**

**R156-64. Deception Detection Examiners Licensing Act Rule.**

**R156-64-101. Title -- Authority -- Relationship to R156-1.**

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

(2) 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, Deception Detection Examiners Licensing Act.

(3) The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-101.

**R156-64-102. Definitions.**

Terms used in this rule are defined in Title 58, Chapter 1, Division of Professional Licensing Act, and Title 58, Chapter 64, Deception Detection Examiners Licensing Act. In addition:

(1) "Activity sensor" as used in Subsection R156-64-502(6)(d), 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) "Accredited program" as used in Section R156-64-302a means a university or college degree program that is nationally or regionally accredited.

(3) "Clinical polygraph examination" as used in Subsection R156-64-502(18) means a deception detection examination that is not intended to supplement and assist in a criminal investigation.

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

(5) "Concealed information examination" as used in Subsection R156-64-502(8) means a recognition examination administered to determine whether the examinee recognizes elements of an incident that were not released to the public and known only to the individual who engaged in the behavior and an individual investigating the incident.

(6) "Deception detection case file" as used in Subsection R156-64-502(16) means written records of a deception detection examination that includes the following:

(a)(i) a chart on each subject that is properly identified by name and date; and

(ii) if the examination was performed on an analog polygraph instrument, the chart is signed by the examinee;

(b) an index in either chronological or alphabetical order that includes the following:

(i) the name of each individual examined;

(ii) the type of examination conducted;

(iii) the date of the examination;

(iv) the name and license number of the deception detection examiner or deception detection intern;

(v) the file number where the records are maintained;

(vi) the examiner's written opinion of the test results; and

(vii) the time each examination began and ended;

(c) each written report or memoranda of a verbal report;

(d) a list of each question asked while the instrument was recording;

(e) background information obtained during each pretest interview;

(f) a copy of each chart recorded during the examination;

(g) audio and video recording of the examination;

(h) a form signed by the examinee where the examinee agrees to take the examination after being informed of the right to refuse; and

(i) a form containing the following statement that is 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 may report it to the Division of Professional Licensing."

(7) "Directed lie screening examination" means a screening examination in which the examinee is instructed to lie to one or more questions.

(8) "Experienced deception detection examiner" as used in Section R156-64-302c means a deception detection examiner who has completed over 250 deception detection examinations and has been licensed for at least three years.

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

(10) "Post-conviction sex offender testing" as used in Subsections R156-64-302c(2) and R156-64-502(18) means testing of a sex offender as defined in Subsection 77-27-21.7(1)(d) and includes:

(a) sexual history testing to determine if the examinee is accurately reporting each sexual offense before a conviction;

(b) maintenance testing to determine if the examinee is complying with the conditions of probation or parole;

(c) instant offense testing to determine if the examinee has denied accountability for behavioral allegations of the instant offense; and

(d) monitoring testing to determine if the examinee may have been involved in unlawful sexual behaviors, including sexual re-offense while under the supervision of probation or parole.

(11) "Pre-employment examination" as used in Section R156-64-502 means a deception detection screening examination administered as part of a pre-employment background investigation.

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

(13) "Relevant question" as used in Subsection R156-64-502(4) means a question which relates directly to a matter under inquiry in a deception detection examination.

(14) "Screening examination" as used in Subsection R156-64-502(4) means a deception detection examination conducted in the absence of any specific allegation and may be conducted as a single issue or multiple issue examination.

(15) "Specific-issue examination" or "single-issue examination" as used in Subsection R156-64-502(4)(b) means a deception detection examination administered to determine the examinee's truthfulness concerning one narrowly defined issue involving a specific allegation.

(16) "Supervision" means general supervision as defined under Subsection R156-1-102a(1)(c).

(17) "Unprofessional conduct" as defined in Title 58, Chapter 1, Division of Professional Licensing Act, and Chapter 64, Deception Detection Examiners Licensing Act, is further defined, under Subsection 58-1-203(1)(e), in Section R156-64-502.

**R156-64-302a. Qualifications for Licensure - Deception Detection Examiner and Deception Detection Examiner Intern Education and Experience Requirements.**

(1) Under Subsections 58-64-302(1)(f) and 58-64-302(2)(f), an applicant for licensure as a deception detection examiner or a deception detection examiner intern shall have completed one of the following:

(a) a bachelor's degree from an accredited program;

(b) 8,000 hours of investigation experience as a civil or criminal investigator with a federal, state, county, municipal law enforcement agency, or the equivalent as approved by the Division; or

(c) an equivalent combination of education and experience with 2,000 hours of investigations experience equal to one year of completed post-secondary education in an accredited program.

(2) Under Subsections 58-64-302(1)(g) and 58-64-302(2)(g), the required deception detection training program shall be accredited by the American Polygraph Association.

**R156-64-302b. Qualifications for Licensure - Examination Requirements.**

Under Section 58-1-309, an applicant for a deception detection examiner license or or a deception detection examiner intern license shall pass the Utah Deception Detection Examiner Law and Rules Examination with a score of at least 75%.

**R156-64-302c. Qualifications for Licensure - Supervision Requirements.**

Under Subsection 58-64-302(2)(i), each deception detection intern supervision agreement shall require the deception detection intern complete an internship under the general supervision of an experienced deception detection examiner as follows:

(1) the supervising deception detection examiner shall observe at least five complete examinations either directly or by audio and video recording;

(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 under Subsection 58-64-302(2)(i), shall be approved by the Division.

**R156-64-303. Renewal Cycle - Procedures.**

(1) Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle for licensees under Title 58, Chapter 64, Deception Detection Examiners Licensing Act, is established in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308a through R156-1-308l.

**R156-64-304. Professional Continuing Education -- Deception Detection Examiner License.**

(1) Under Subsections 58-1-203(1)(g) and 58-1-308(3)(b), the professional continuing education requirements for renewal or reinstatement of an individual licensed under Title 58, Chapter 64, Deception Detection Examiners Licensing Act are established in this section.

(2) During each two-year renewal cycle commencing on December 1 of each even-numbered year, a licensed deception detection examiner shall complete at least 30 hours of qualified professional continuing education directly related to the licensee's professional practice.

(3) If a renewal period is shortened or extended to effect a change of renewal cycle, the professional continuing education hours required for that renewal period shall be increased or decreased proportionately.

(4) Credit for professional continuing education during each two-year renewal cycle shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a deception detection examiner;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well-organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by an individual who is qualified by education, training, and experience; and

(e) have a competent method of registration of an individual who completed the professional continuing education program, and records of that registration and completion available for review.

(5) Qualified professional continuing education shall meet the following requirements:

(a) at least 15 hours of qualified instruction directly relating to deception detection completed through at least one of the following formats:

(i) college or university lecture and discussion;

(ii) professional conference;

(iii) seminar;

(iv) training session;

(v) synchronous webinar;

(vi) asynchronous online self-pace module;

(vii) case study review;

(viii) simulation;

(ix) workshop; or

(x) an equivalent course approved by the Division; and

(b)(i) up to 15 hours by completing a college or university course in one of the following areas:

(A) psychology;

(B) physiology;

(C) anatomy; or

(D) interview and interrogation techniques; and

(ii) under Subsection (b)(i), one college or university credit is equal to 15 hours of professional continuing education.

(6) A deception detection examiner who instructs a course that meets the definition of a qualified continuing education course under this section shall be given double credit for the first presentation.

(7) A licensee shall maintain documentation sufficient to prove compliance with this section, for a period of four years after the end of the renewal cycle for which the continuing education is due.

**R156-64-305. Criminal History Background Check Requirement for Licensees as Renewal Requirement.**

(1) Under Subsections 58-1-203(1)(g) and 58-1-308(3)(b), an applicant shall pass a criminal history background check as a condition of renewal or reinstatement of license issued under Title 58, Chapter 64, Deception Detection Examiners Licensing Act, for a license under this chapter.

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

(3) If the criminal history background check discloses a criminal background, the Division shall evaluate the criminal history background check under Section R156-1-401 to determine appropriate licensure action.

**R156-64-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) failing to immediately terminate an examination upon request of the examinee;

(2) failing to conduct pretest interview with the examinee where each question is reviewed word for word before conducting the examination;

(3) attempting to determine truth or deception on a matter or issue not discussed with the examinee during the pretest review;

(4) basing any decision concerning truthfulness or deception upon data that fails to meet the following minimum standards:

(a) three repetitions of relevant questions for a pre-employment examination;

(b) three repetitions of relevant questions for a screening examination that is followed by a specific-issue examination or a single-issue examination;

(c) three repetitions of each question on a directed lie screening examination; or

(d) at least three repetitions of relevant questions 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 a polygraph instrument that does not record the following as a minimum:

(a) respiration patterns recorded by two pneumograph components that record 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; and

(d) seat activity sensor to detect movement;

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

(a) four diagnostic or three evidentiary examinations; or

(b) five examinations of any type;

(8) failing to meet the minimum required examination duration time while conducting an examination including:

(a) concealed information examination for less than 30 minutes;

(b) pre-employment examination for less than 60 minutes; or

(c) any other type of examination for less than 90 minutes;

(9)(a) failing to create and maintain an audio and video recording for each examination; or

(b) failing to inform the examinee before the examination of the audio and video recording;

(10) during a pre-employment pretest interview or an examination, asking any question concerning the subject's sexual attitude, political belief, union sympathy, or religious belief without good cause;

(11) conducting an examination on an individual who is:

(a) under the influence of alcohol or drugs; or

(b) under the age of 18 without written permission from the individual's parent or guardian;

(12) failing to provide at least 20 seconds between the beginning of one question and the beginning of the next question;

(13) failing to exclude an individual that is determined to be unsuitable, as evidenced by one of the following:

(a) acute or active psychosis;

(b) unmanaged hallucinations or delusional thinking;

(c) ongoing panic attack;

(d) severe illness;

(e) severe pain; or

(f) a severe or profound intellectual disability that would potentially interfere with the examination process;

(14) 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;

(15) failing to use a numerical scoring system in each deception detection examination;

(16) failing to create and maintain a deception detection case file as defined in Subsection R156-64-102(6) for each examination administered;

(17) expressing a bias in any manner regarding the truthfulness of the examinee before the completion of any testing;

(18) conducting a clinical polygraph examination of a sex offender as defined in Subsection 77-27-21.7(1)(d) without holding a current certification from the American Polygraph Association for post-conviction sex offender testing (PCSOT);

(19) failing to conform to the generally accepted and recognized standards and ethics of the profession including:

(a) the American Polygraph Association Code of Ethics dated September 4, 2021, which is incorporated by reference; and

(b) the American Polygraph Association Standards of Practice dated August 25, 2023, which is incorporated by reference with the amendment that records of each examination shall be maintained for at least three years.

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

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**Authorizing, and Implemented or Interpreted Law: 58-64-101; 58-1-106(1)(a); 58-1-202(1)(a)**