

Agenda

DECEPTION DETECTION EXAMINER BOARD

September 18, 2013 - 1:00 p.m.

Room 474

Heber M. Wells Building

160 E. 300 S. Salt Lake City, Utah

This agenda is subject to change up to 24 hours prior to the meeting.

ADMINISTRATIVE BUSINESS:

1. Call Meeting to Order
2. Sign Per-Diem.
3. Welcome Steve Gamvroulas
4. Approval of the March 20, 2013 Board Meeting Minutes
5. Chair Nominations

APPOINTMENTS

DISCUSSION ITEMS:

6. Deception Detection Education Committee
7. Proposed Rule Changes
8. Changes to Open and Public Meetings Act

NEXT SCHEDULED MEETING:

March 12, 2014

Note: In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify, Dave Taylor, ADA Coordinator, at least three working days prior to the meeting. Division of Occupational & Professional Licensing, 160 East 300 South, Salt Lake City, Utah 84115, 801-530-6628 or toll-free in Utah only 866-275-3675

Posted to Web 9/12/2013 2:13 PM

Posted to Bulletin Board September 12, 2013

MINUTES

**UTAH
Deception Detection Examiner Board
Meeting**

March 20, 2013

**Room 402 – 4th Floor – 1:00 p.m.
Heber Wells Building
Salt Lake City, UT 84111**

CONVENED: 1:03 p.m.

ADJOURNED: 2:23 p.m.

Bureau Manager:

April Ellis

Board Secretary:

Yvonne King

Board Members Present:

Will Draughon, Board Chair
Scott Barnett
Tana Stone
Kelvin Williams
Chrystal Mancuso-Smith
D. Troy Denney
Marty Simon

Visitors

Maryann Clayson, Applicant

ADMINISTRATIVE BUSINESS

Introduction of April Ellis

Ms. Ellis introduced herself to the Board as the new Bureau Manager replacing Clyde Ormond.

Welcome Chrystal Mancuso-Smith

Ms. Ellis gave the Oath of Office to Ms. Mancuso-Smith as a new Board member.

Welcome Scott M. Barnett

Ms. Ellis gave the Oath of Office to Mr. Barnett as a new Board member.

Welcome Tana B. Stone

Ms. Ellis gave the Oath of Office to Ms. Stone as a new Board member.

Welcome Kelvin Williams

Ms. Ellis gave the Oath of Office to Mr. Williams as a new Board member.

MINUTES:

Approval of the March 21, 2012 Board Meeting Minutes

Mr. Denney seconded by Ms. Simon made a motion to approve the March 21, 2012 Board Meeting Minutes as written. The motion carried unanimously.

Chair Nominations

Ms. Simon seconded by Mr. Denney made a motion to nominate Mr. Draughon as the Board chair. The motion carried unanimously.

TOPICS FOR DISCUSSION

Deception Detection Education Committee

Proposed Rule Changes

APPOINTMENTS

Maryann Clayson, Application Review

Meeting adjourned

Next Scheduled Meeting

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

9/17/13

Date Approved

9/17/2013

Date Approved

DECISIONS AND RECOMMENDATIONS

Ms. Ellis addressed the issue about the Deception Detection Education Committee. Because there are a limited amount of licensees in the profession, there were not enough individuals to fill the committee. There was also the concern that an applicant would have to wait six months or longer for the approval of their application.

Ms. Ellis suggested amending the rule to include that after the committee's approval of an applicant, the Division would have the authority to approve the application. The Board agreed to such a proposal.

The Board also suggested that an electronic meeting might be a possibility.

The Board then determined that they will help by submitting names to fill the committee. This will be an agenda item for September's Board meeting.

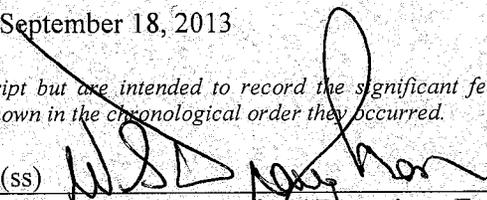
Mr. Draughon passed out proposed rule changes that were voted on in the previous meeting. Ms. Ellis stated that she would research the issue. This will be an agenda item for the next meeting.

Ms. Clayson appeared before the Board for her scheduled appointment. Ms. Ellis reviewed the application with the Board. It was determined that Ms. Clayson was missing the Employer Intern Verification form.

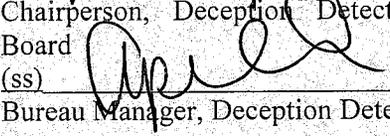
Ms. Stone seconded by Mr. Williams made a motion to approve Ms. Clayson as a Deception Detection Examiner pending the receipt and approval of the Employer Intern Verification form. The motion carried unanimously.

2:23 p.m.

September 18, 2013

(ss) 

Chairperson, Deception Detection Examiner Licensing Board

(ss) 

Bureau Manager, Deception Detection Examiner Licensing

REVISED CHECKLIST FOR PUBLIC MEETINGS

(Fill in the blanks to correspond to each respective board, commission, or committee.)

- I am, Will Draughon, chairperson of the Deception Detection Examiners Board.
- I would like to call this meeting of the Board to order.
- It is now (time) _____ on September 18, 2013.
- This meeting is being held in room 474 of the Heber Wells Building in Salt Lake City, Utah.
- Notice of this meeting was provided as required under Utah's Open Meeting laws.
- In compliance with Utah's Open Meetings laws, this meeting is being recorded in its entirety. The recording will be posted to the Utah Public Notice Website no later than three business days following the meeting.
- In compliance with Utah's Open Meeting laws, minutes will also be prepared of this meeting and will be posted to the Utah Public Notice Website. Appropriately marked "pending approval" minutes will be posted no later than 30 days after the close of the meeting and "approved" minutes no later than three business days after approval.
- The following Board members are in attendance:

	YES	NO
<u>Will Draughon</u> , Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Scott M. Barnett</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Chrystal Mancuso-Smith</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Tana Stone</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Kelvin Williams</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Steve Gamvroulas</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Marty Simon</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

- The following (Board / Committee / Commission) members are absent: (Refer to the above list.)
- The following individuals representing DOPL and the Department of Commerce are in attendance:

	YES	NO
<u>Mark B. Steinagel</u> , Division Director	<input type="checkbox"/>	<input type="checkbox"/>
<u>April Ellis</u> , Bureau Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Yvonne King</u> , Board Secretary	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Tracy Naff</u> , Compliance	<input type="checkbox"/>	<input type="checkbox"/>
_____, Compliance	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

- We welcome any visitors and interested persons at this time. Please be sure to sign the attendance report for the meeting and identify yourself before speaking.
- As a courtesy to everyone participating in this meeting, at this time we ask for all cell phones, pagers, and other electronic devices to be turned off or changed to silent mode.
- Board motions and votes will be recorded in the minutes.
- Let us now proceed with the agenda.
- (End of the Meeting) It is now (time) _____ (am / pm), and this meeting is adjourned.

**DECEPTION DETECTION EXAMINERS
LICENSING ACT RULE**

**R156-64.
Utah Administrative Code
Issued November 24, 2008**

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

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

(3) "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; and

(f) the Utah Deception Detection license number of the intern or examiner.

(4) "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.

(5) "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.

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

(7) "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.

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

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

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

(11) "Screening exam" 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.*

(12) "Specific issue/single issue examination" means a deception detection examination administered to determine the examinee's truthfulness concerning one narrowly defined issue.

(13) "Supervision" means general supervision as established in Subsection R156-1-102a(4)(c).

(14) "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.

(15) "Concealed information exam" means a recognition exam administered to determine whether the examinee recognizes elements of a incident not released to the public and known only to the person who engaged in the behavior and those investigating it.

(16) "Other Qualified forms or courses of instruction in continuing education" means a specific form or course of instruction for which an agenda or course outline and Curriculum Vitae of the instructor has been submitted to the Division and approved by the Division in consultation with the board.

(17) *Directed lie screening exam means a screening exam in which the examinee is instructed to lie to one or more questions*

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 other **qualified forms or courses 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 repetitions of each question on a directed lie screening exam**
 - ~~(e)~~ (d) 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 more than five deception detection examinations or more than 15 concealed information exams in a 24 hour period
- (9) Conducting an examination of less than the required duration;
 - (a) A concealed information exam of less than 30 minutes
 - (b) A pre employment examination of less than 60 minutes duration
 - (c) Any other type of exam of less the 90 minute duration
- (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 demonstrable 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~~ **Deception Detection examinations except for relevant irrelevant;** *Technique Type of a minimum*

(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~~ **Semi Annual** basis including a ~~calibration~~ **functionality** chart

(j) **The intern or examiner's Deception Detection license number listed within Deception Detection Case file of each exam conducted.**

(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 **1, 2012**, which are hereby incorporated by reference.