

AN ACT

relating to the license qualifications and continuing education requirements for polygraph examiners.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (3), Section 1703.003, Occupations Code, is amended to read as follows:

(3) "Instrument" means a device used to test a subject to detect deception or verify the truth of a statement including by recording visually, permanently, and simultaneously a subject's cardiovascular and respiratory patterns. The term includes a lie detector, polygraph, deceptograph, or any other similar or related device used to detect deception or verify the truth of a statement.

SECTION 2. Subsection (a), Section 1703.201, Occupations Code, is amended to read as follows:

(a) A person may not use or offer to use, for compensation or for a law enforcement purpose, an instrument, including a polygraph, to detect deception or verify the truth of a statement unless the person is licensed under this chapter.

SECTION 3. Subsection (a), Section 1703.203, Occupations Code, is amended to read as follows:

(a) A person is qualified for a polygraph examiner license if the person:

(1) has not been convicted of an offense that directly relates to the duties and responsibilities of a polygraph examiner;

(2) either:

(A) holds a baccalaureate degree from a college or university accredited by an organization designated by the department that the department determines has accreditation standards ensuring a high level of student scholarship; or

(B) has active investigative experience during the five years preceding the date of application;

(3) has completed an acceptable ~~[either:~~

~~[(A) is a graduate of a department approved]~~  
polygraph examiner ~~[examiners]~~ course of study taught by a school  
recognized by the department and has satisfactorily completed at  
least six months of a polygraph examiner internship; ~~[or~~

~~[(B) has satisfactorily completed at least 12~~  
~~months of a polygraph examiner internship;]~~ and

(4) has passed an examination conducted by, under the  
supervision of, or approved by the department to determine the  
person's competency for a license.

SECTION 4. Section 1703.207, Occupations Code, is amended to  
read as follows:

Sec. 1703.207. WAIVER OF LICENSE REQUIREMENTS FOR APPLICANT  
WITH OUT-OF-STATE LICENSE OR OTHER RECOGNIZED EDUCATION OR  
EXPERIENCE. The executive director may waive any license  
requirement for an applicant who:

(1) holds a license from another state that has license  
requirements substantially equivalent to those of this state;

(2) has verified service, training, or experience in  
using an instrument to detect deception or verify the truth of a  
statement while serving in the military;

(3) has verified service, training, or experience in  
using an instrument to detect deception or verify the truth of a  
statement while employed by the federal government; or

(4) has a combination of education and experience the  
executive director determines to be substantially equivalent to  
that required under Section 1703.203.

SECTION 5. Section 1703.255, Occupations Code, is amended to  
read as follows:

Sec. 1703.255. CONTINUING EDUCATION. (a) The department may  
recognize, prepare, or implement continuing education programs for  
polygraph examiners ~~[and trainees]~~.

(b) Participation in a continuing education program is  
mandatory ~~[voluntary]~~.

(c) The commission by rule shall provide continuing education requirements for license holders.

SECTION 6. Section 1703.305, Occupations Code, is amended to read as follows:

Sec. 1703.305. INSTRUMENTS AND MINIMUM INSTRUMENTATION REQUIREMENTS. (a) An instrument used by a polygraph examiner, in addition to recording visually, permanently, and simultaneously a subject's cardiovascular and respiratory patterns, may also record patterns of other physiological changes. The commission may adopt rules to identify other instruments and instrumentation requirements that are acceptable for use in this state.

(b) A polygraph examiner who uses an instrument that does not comply with the instrumentation requirements of Subsection (a) or commission rule is subject to penalties and may be enjoined in the manner provided by this chapter.

SECTION 7. Not later than January 1, 2014, the Texas Commission of Licensing and Regulation shall adopt rules necessary to implement the changes in law made by this Act.

SECTION 8. (a) Subsection (a), Section 1703.203, Occupations Code, as amended by this Act, applies only to an initial license application that is submitted to the Texas Department of Licensing and Regulation on or after March 1, 2014. An initial license application that is submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

(b) Section 1703.207, Occupations Code, as amended by this Act, applies only to an initial license application that is submitted to the Texas Department of Licensing and Regulation on or after January 1, 2014. An initial license application that is submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

(c) Section 1703.255, Occupations Code, as amended by this Act, and the rules adopted under Subsection (c), Section 1703.255,

Occupations Code, as added by this Act, apply only to the renewal of a license that expires on or after December 1, 2014. The renewal of a license that expires before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2013.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 562 passed the Senate on March 13, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 22, 2013, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 562 passed the House, with amendment, on May 17, 2013, by the following vote: Yeas 127, Nays 7, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

Staff Report, Compliance Division  
To the Polygraph Advisory Board  
November 4, 2014  
By Russel Taulli, Program Specialist, Compliance Division

**Item a: Synopsis of the Texas Polygraph Summit**

Held March 18, 2014. Austin, Texas.  
Hosted by the Texas Department of Licensing and Regulation

The key goal of having the Polygraph Summit was to allow TDLR to gather information on currently available technologies/instruments that purport to detect “truth or deception” of a subject in an interview setting. The summit sought to provide to TDLR background information that will allow the agency to acquire the knowledge needed to address the law changes made by Senate Bill 562.

This Summit was a forum where industry was invited to show the Polygraph Advisory Board and TDLR how their devices worked; to discuss what education and experience would be needed to operate their device; discuss continuing education needs; and discuss what rule or statutory changes should be made in order to recognize their device.

The Summit offered each company the opportunity to speak to the attendees and demonstrate their instruments. Each presenter was also given a table where they could hold Q&A discussions, provide their literature and demonstrate their products.

**Schedule as initially created for the Summit**

- 9:00 – 9:20 Opening Remarks, TDLR
- 9:20 – 10:20 Presentation 1: Arthur Herring, III, Dektor Corp., PSE --Psychological Stress Evaluator
- 10:30 – 11:15 Presentation 2: Ken Merchant, Director of Legislative Affairs, NACVSA – National Association of Computer Voice Stress Analysts
- 11:15 – 12:00 Presentation 3: Bill Endler, NITV -- National Institute for Truth Verification
- 12:00 – 12:45 Lunch
- 12:45 – 1:30 Presentation 4: Ivan A. Ortega, CEO of Management Intelligence Agency LLC of El Paso, Texas. CVSA Applications in Kidnapping Investigations.
- 1:30 – 2:15 Presentation 5: Ivan A. Ortega. Vibralmage: Video Stress Analysis and Lie Detections Technologies
- 2:15 – 2:30 Break
- 2:30 – 3:15 Presentation 6: J. Patrick O’Burke, The Polygraph Institute, San Antonio, Texas. Assessing Credibility with Guilty Knowledge & Concealed Information
- 3:15 – 4:00 Presentation 7: Hector Ruiz, Ruiz Protective Service and Raymond Nelson, APA.
- 4:00 – 6:00 Table Visits

### Tables provided to:

Michael Sylvestre, Truth & Deception Technologies

Arthur Herring III, Dektor Corp.

National Institute for Truth Verification

Management Intelligence Agency LLC of El Paso

TAPE, Texas Association of Polygraph Examiners

TALEPI, Texas Association of Law Enforcement Polygraph Investigators

J. Patrick O'Burke, the Polygraph Institute, San Antonio, Texas

Hector Ruiz & Raymond Nelson on behalf of the American Polygraph Association

Maria "Ree" Hubbard, Stoelting Instrument Company

### Presenters

1 Arthur Herring, III. Dektor Corp.

2 Bill Endler. National Institute for Truth Verification Federal Services, Instructor (\*Bill is both a CVSA examiner and polygraph examiner)

3 Ivan A. Ortega. CEO of Management Intelligence Agency LLC of El Paso, Texas (\*Mr. Ortega is also on the Board of Directors of NACVSA)

4 Ken Merchant. Director of Legislative Affairs, National Association of Computer Voice Stress Analysts; also, Instructor at National Institute for Truth Verification Federal Services

5 J. Patrick O'Burke, (\*Mr. O'Burke is also on the Board of Directors of the APA)

6 Hector Ruiz, polygraph examiner and Raymond Nelson, APA President Elect., on behalf of the American Polygraph Association.

### Bios

#### **Commander Ivan A. Ortega**

From the NACVSA (National Association of Computer Voice Stress Analysts)

Board of Executive Directors

Ivan Ortega has over 30 years of experience in Managing Critical Incidents, Kidnapping Recovery, Hostage Negotiation and assisting Victims with Post-Traumatic Stress Disorder for Law Enforcement Agencies worldwide. He has been recognized by the NACVSA as a leading authority on conducting remote VSA examinations, primarily by telephone, which is a highly specialized and unique skill.

#### **Lt. Kenneth R. Merchant**

From the NACVSA (National Association of Computer Voice Stress Analysts)

Board of Executive Directors

Ken Merchant has served continuously with the Erie Police Department in Pennsylvania since 1986, and is currently a Lieutenant with the Criminal Investigation Unit. He has investigated and

supervised all types of cases and has been a member of the Major Crimes Unit. He became a CVSA Examiner in 1999 and has earned the distinction of being certified as an “Expert CVSA Examiner.” Ken has extensive experience using the CVSA for criminal and internal affairs cases, as well as pre-employment testing. He is the CVSA Supervisor for the Erie PD, and is known for his interview and interrogation skills. Ken is also a certified Firearms Instructor and a team leader on the Erie PD Hostage Negotiation Team.

**Chief William Frederick Endler (Ret.)** Instructor, National Institute for Truth Verification Federal Services

Chief Endler retired from the Elkhart P.D. (IN) following 23 years of service and has held the position of Chief of Police with two law enforcement agencies prior to joining our staff. His 30 years of law enforcement and established reputation as both a CVSA examiner and polygraph examiner make him a valuable asset to the company. Chief Endler also has the distinction of serving as a Subject Matter Expert on the CVSA in Iraq and the U.S. government where he conducted CVSA examinations on many High Value Detainees, receiving numerous letters of commendation for his outstanding work. Bill has also conducted Certified Examiners Courses on the CVSA for the FBI. Chief Endler is a graduate of Indiana University.

**J. Patrick O'Burke**

J. Patrick O'Burke is the owner of Excalibur Consulting and the Polygraph Institute, and retired from the Texas Department of Public Safety as a Commander in Criminal Law Enforcement Division. Patrick has been a polygraph examiner for more than 30 years and has conducted more than 8000 polygraph interviews and thousands of criminal and screening interrogations. He is the primary school director for the Polygraph Institute and has conducted polygraph schools in Iraq and domestically at his home office in San Antonio, Texas. Mr. O'Burke is the author of the *Validated Interview Technique*, an interview methodology relying on cognitive interview methods, personality assessment, and the use of research validated behavioral cues to identify deception.

**Arthur Herring III, Dektor Corporation**

Arthur Herring III has been the owner of Dektor for 14 years. He has sold and trained PSE worldwide to government departments, law enforcement agencies, security companies and other businesses in the private sector. Arthur started as a PSE examiner in 1982 after taking a special 4 week course in Monterey, California by a former U.S. Army Counter-Intelligence officer. Arthur has 20 years' experience in various types of lie detection tests and psychological evaluations using the PSE for law enforcement, lawyers, private investigators, security guard companies, businesses and psychiatrists and psychologists worldwide.

**Raymond Nelson, APA President Elect.**

Raymond Nelson is a distinguished polygraph researcher, trainer, and field examiner, universally known in the industry today. Holding a graduate degree in psychology, he is a

National Certification Counselor (NCC), with expertise in sex offender and victim treatment, family therapy, attachment and trauma. Trained in Polygraph in 2000, he is the President Elect of the American Polygraph Association (APA), and is an elected member of the Board of Directors. His past experience also includes serving as the past Vice President of the Colorado Association of Polygraph Examiners. Mr. Nelson is the curriculum director of the International Polygraph Training Center, an APA accredited polygraph school, Mr. Nelson is an APA Certified Primary Instructor in polygraph methods, and teaches at several polygraph schools in the U.S.

### **Hector Ruiz**

Hector Ruiz is the founder and CEO of a 600 employee security and investigations company, Ruiz Protective Service, Inc. of Dallas. RPS is a successful security guard, investigations and Polygraph Company that provides a range of services in security and loss prevention. Mr. Ruiz is a former FBI agent and City of Dallas police officer; and a polygraph examiner, and private investigator. Graduate of University of Texas at El Paso; graduate of the FBI Academy; and a Graduate of the Dallas Police Academy. Mr. Ruiz serves as a polygraph school inspector for the American Polygraph Association and has inspected schools in Israel, Colombia, Mexico and the United States.

### **Report on Presentations**

Arthur Herrington, III, was scheduled to hold the first presentation. However, due to travel delays Mr. Herrington did not arrive at the Summit until noon. Accordingly, Bill Endler and Ken Merchant provided the first presentation of the morning.

Mr. Endler and Mr. Merchant conducted a coordinated presentation on the uses of, and technology behind, their company's product. Note that although their company's name is The National Institute for Truth Verification Federal Services, the company is not part of, or established by, the Federal government. NITVFS sells CVSA instruments and provides CVSA training for operators.

The next presentation was by Ivan A. Ortega, CEO of Management Intelligence Agency LLC of El Paso, Texas. Mr. Ortega described his usage of CVSA in kidnapping investigations in Latin America. Mr. Ortega is a strong proponent of CVSA and described multiple cases of using the technology is telephone conversations with kidnappers. Mr. Ortega then presented a PowerPoint presentation on an Israeli company product called Vibralmage. Vibralmage is a video camera based technology that purports to visualize individuals that under stress; stress that is undetectable by unaided casual viewing.

Arthur Herrington arrived at the Summit after lunch. When he was asked to make his presentation on his company's product, PSE, he declined to do so. Mr. Herrington instead argued with other attendees on various issues: that the Summit proceeding were not adequate

to fairly consider his product; that he was not allowed enough time to present his product; that polygraph examiners were unfairly preventing his product from being sold; that his product PSE was the only authentic voice stress analyzer, etc.

Raymond Nelson provided an extensive review of the theoretical underpinnings of VSA. He also discussed the research literature on VSA and PSE and summarized the research as not validating VSA or PSE technologies.

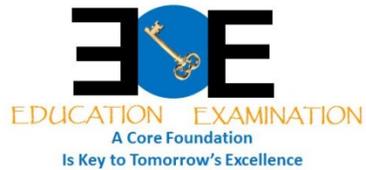
**Item C: Discussion regarding devices marketed as polygraph instruments that do not meet all requirements of Chapter 1703**

Products that claim to be “lie detectors” are easily available online for under \$100. While TDLR does not register these or any other polygraph instrument, TDLR does license practitioners who use polygraphs in business or law enforcement.



Polygraph Examiners  
Polygraph Advisory Committee Meeting

November 4, 2014



**Examination Statistics**

| <b>Fiscal 2012</b> | Pass | Fail | Total | Rate   |
|--------------------|------|------|-------|--------|
| Written            | 10   | 3    | 13    | 76.92% |
| Scenario           | 8    | 1    | 9     | 88.89% |
| Practical          | 10   | 1    | 11    | 90.91% |
| Total              | 28   | 5    | 33    | 84.85% |

| <b>Fiscal 2013</b> | Pass | Fail | Total | Rate   |
|--------------------|------|------|-------|--------|
| Written            | 13   | 2    | 15    | 86.67% |
| Scenario           | 1    | 1    | 2     | 50.00% |
| Practical          | 9    | 2    | 11    | 81.82% |
| Total              | 23   | 5    | 28    | 82.14% |

| <b>Fiscal 2014</b> | Pass | Fail | Total | Rate    |
|--------------------|------|------|-------|---------|
| Written            | 16   | 0    | 16    | 100.00% |
| Scenario           | 15   | 3    | 18    | 83.00%  |
| Practical          | 17   | 2    | 19    | 89.00%  |
| Total              | 48   | 5    | 53    | 90.66%  |

- PSI facilitated an Exam Review Committee Meeting on October 2 and 3, 2014 as well as a webinar with TDLR and the Polygraph Subject Matter Experts (SME) on October 27, 2014. The purpose of the meetings was to discuss improvements to the Polygraph Examinations. The SME's have been working diligently to ensure the exams will cover all that is needed for the minimally competent candidate. TDLR and PSI will be sure to give advance notice when the updates to the exams go into effect

## Continuing Education Statistics

- In November 2013, the Texas Commission of Licensing and Regulation approved a reduction in the application fees for Continuing Education Providers. The initial and renewal application fees were reduced from \$250 to \$200. The fee reductions were effective March 1, 2014 for initial applications and April 1, 2014 for renewals.
- The Commission also changed CE provider registrations so that they are no longer required to register for each occupation. One provider registration covers all TDLR programs.
- At the end of FY 2014, there were a total of 396 continuing education providers.
- Currently for FY 2015, we have a total of 393 continuing education providers.

| POLYGRAPH FY 2014       | SEP | OCT | NOV | Q1 | DEC | JAN | FEB | Q2 | MAR | APR | MAY | Q3 | JUN | JUL | AUG | Q4 | TOT |
|-------------------------|-----|-----|-----|----|-----|-----|-----|----|-----|-----|-----|----|-----|-----|-----|----|-----|
| COURSE APPROVALS ISSUED | 0   | 0   | 0   | 0  | 0   | 0   | 0   | 0  | 0   | 1   | 1   | 2  | 0   | 0   | 0   | 0  | 2   |

| POLYGRAPH FY 2015       | SEP | OCT | NOV | Q1 | DEC | JAN | FEB | Q2 | MAR | APR | MAY | Q3 | JUN | JUL | AUG | Q4 | TOT |
|-------------------------|-----|-----|-----|----|-----|-----|-----|----|-----|-----|-----|----|-----|-----|-----|----|-----|
| COURSE APPROVALS ISSUED | 0   | 3   | 0   | 3  | 0   | 0   | 0   | 0  | 0   | 0   | 0   | 0  | 0   | 0   | 0   | 0  | 3   |

## Polygraph Examiners Education Providers

| Provider Name                            | Provider # | City        | State | Expiration Date |
|--|------------|-------------|-------|-----------------|
| TX DPS LAW ENFORCEMENT POLYGRAPH SCHOOL  | 1960       | AUSTIN      | TX    | 5/28/2015       |
| TEXAS ASSOCIATION OF POLYGRAPH EXAMINERS | 1946       | CONROE      | TX    | 3/25/2015       |
| THE POLYGRAPH INSTITUTE, LLC             | 1976       | SAN ANTONIO | TX    | 10/3/2015       |
| FENIAN POLYGRAPH SERVICES                | 1977       | DALLAS      | TX    | 10/20/2015      |

# Polygraph Examiners Advisory Committee

## Enforcement Division Staff Report

November 4, 2014

### Statistics for Polygraph Examiners Program

- Cases Opened from 09/01/09 to 10/20/2014 – 26
  
- Cases Closed –20
  - 16 – insufficient evidence
  - 3 – license granted
  - 1 – warning letter
  - 0 – disciplinary actions
  
- Cases Pending – 6

### Key Statistics -- Fiscal Years 2013 and 2014

Shown below are the key statistics for the Polygraph Examiners program and for all TDLR programs combined, for Fiscal Year 2014.

| <u>Statistic</u>                       | <u>POL</u> | <u>TDLR</u> |
|--|------------|-------------|
| • Number of cases opened:              | 9          | 12,172      |
| • Number of cases resolved:            | 4          | 11,346      |
| • Number of Agreed Orders:             | 0          | 1,924       |
| • Total amount of penalties assessed:  | \$ 0       | \$3,650,829 |
| • Total amount of penalties collected: | \$ 0       | \$1,971,417 |

Shown below are the key statistics for the Polygraph Examiners program and for all TDLR programs combined, for Fiscal Year 2015 through September 30, 2014.

| <u>Statistic</u>                       | <u>POL</u> | <u>TDLR</u> |
|--|------------|-------------|
| • Number of cases opened:              | 1          | 933         |
| • Number of cases resolved:            | 4          | 1,149       |
| • Number of Agreed Orders:             | 0          | 239         |
| • Total amount of penalties assessed:  | \$ 0       | \$512,170   |
| • Total amount of penalties collected: | \$ 0       | \$166,980   |

# Polygraph Examiner Licensing Report November 4, 2014

## POLYGRAPH EXAMINERS

|                         | TOTAL<br>FY 2012 | TOTAL<br>FY 2013 | TOTAL<br>FY 2014 |
|-------------------------|------------------|------------------|------------------|
| New Licenses Issued     | 11               | 15               | 14               |
| Renewed Licenses Issued | 231              | 228              | 234              |
| *Total Population       | 242              | 244              | 251              |

## POLYGRAPH TRAINEES

|                         | TOTAL<br>FY 2012 | TOTAL<br>FY 2013 | TOTAL<br>FY 2014 |
|-------------------------|------------------|------------------|------------------|
| New Licenses Issued     | 13               | 19               | 20               |
| Renewed Licenses Issued | 7                | 6                | 6                |
| *Total Population       | 15               | 19               | 21               |

## COMBINED

|                         | TOTAL<br>FY 2012 | TOTAL<br>FY 2013 | TOTAL<br>FY 2014 |
|-------------------------|------------------|------------------|------------------|
| New Licenses Issued     | 24               | 34               | 34               |
| Renewed Licenses Issued | 238              | 234              | 240              |
| *Total Population       | 257              | 263              | 272              |

\*The population number is a snapshot of the number of active licenses on the first day of the month. The number of licenses issued and renewed is the total activity performed during the fiscal year.