

# POLYGRAPH EXAMINERS

*Administrative Rules of the Texas Department of Licensing and Regulation  
16 Texas Administrative Code, Chapter 88  
(effective September 1, 2015)*

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**88.1. Authority.** *(New rule effective January 11, 2010, 35 TexReg 235)*

This chapter is promulgated under the authority of Texas Occupations Code, Chapters 51 and 1703.

**88.10. Definitions.** *(New rule effective January 11, 2010, 35 TexReg 235; amended effective January 1, 2014, 38 TexReg 9523)*

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly shows otherwise.

- (1) **Active investigative experience**--Documentation that the applicant has been engaged in the business of conducting investigations during the five (5) years preceding the application; or documentation that the applicant has obtained the minimum training hours necessary to obtain a basic law enforcement certificate issued by the Texas Commission on Law Enforcement Officer's Standards and has utilized the training during the five (5) years preceding the application.
- (2) **Applicant**--The person submitting an application for a license issued by the department under this chapter.
- (3) **Commission**--The Texas Commission of Licensing and Regulation.
- (4) **Committee**--The Polygraph Advisory Committee.
- (5) **Department**--The Texas Department of Licensing and Regulation.
- (6) **Executive director**--The executive director of the department.
- (7) **Instrument**--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.
- (8) **Investigation**--Obtaining or furnishing information related to the identity, business, occupation, movement, location, acts, associations, reputation or character of a person; or to the location or recovery of lost or stolen property or the cause or responsibility for a fire, libel, loss, accident, damage, or injury to a person or property; or securing evidence to be used before a court, board, officer, or investigative committee.
- (9) **License holder or licensee**--The person to whom the department issued a license.
- (10) **Polygraph examination**--The use of any instrument to graphically record simultaneously the physiological changes in human respiration, cardiovascular activity, and any other physiological changes that can be recorded for the purpose of verifying truth or deception and includes the reading and interpretation of the polygraph records and results. A polygraph examination may contain four (4) phases known as the Pre-test phase, Testing phase, Chart analysis phase and Post-test phase, any one of which constitutes a polygraph examination.
- (11) **Polygraph examiner**--A person licensed under this chapter to use an instrument to detect deception or verify the truth of a statement.
- (12) **Polygraph examiner internship**--A course of study of polygraph examinations and of the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner as prescribed by the department.

- (13) **Sponsor**--A person licensed under this chapter for not less than two (2) years as a polygraph examiner who provides instruction and supervision to a trainee.
- (14) **Trainee**--A person who holds a polygraph examiner internship license under this chapter.

**88.20. Licensing Requirements--Polygraph Examiner.** *(New rule effective January 11, 2010, 35 TexReg 235; amended effective January 1, 2014, 38 TexReg 9523)*

To be eligible for a polygraph examiner license, an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) pay the fee required under §88.80;
- (3) provide a copy of an insurance policy, surety bond or bond continuation certificate required under §88.40;
- (4) either:
  - (A) hold a baccalaureate degree from a college or university; or
  - (B) have active investigative experience during the five (5) years preceding the application;
- (5) complete an acceptable polygraph examiner course of study and satisfactorily complete a six (6) month polygraph examiner internship;
- (6) pass a written and practical examination required under §88.29; and
- (7) successfully pass a criminal background check.

**88.21. Licensing Requirements--Polygraph Examiner Renewal.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) A polygraph examiner license is valid for one (1) year from the date of issuance and may be renewed annually.
- (b) To renew a license, an applicant must:
  - (1) submit a completed application on a department-approved form;
  - (2) pay the applicable fee required under §88.80;
  - (3) provide proof of an insurance policy, surety bond or bond continuation certificate required under §88.40; and
  - (4) successfully pass a criminal background check.
- (c) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

**88.22. Licensing Requirements--Polygraph Examiner Non-resident Applicants.** *(New rule effective January 11, 2010, 35 TexReg 235)*

An applicant for the issuance or renewal of a polygraph examiner license who is not a resident of this state must file with the department an irrevocable consent required under Texas Occupations Code §1703.206.

**88.23. Licensing Requirements--Registration with County Clerk.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) A polygraph examiner must register with the county clerk of the county in which the examiner maintains a business address.
- (b) A polygraph examiner who holds a Texas license but has no Texas address must register with the County Clerk of Travis County, Texas.

**88.24. Licensing Requirements--Polygraph Examiner Applicant with Out-of-State License.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) The holder of an out-of-state polygraph examiner license must meet the following requirements:
  - (1) submit a completed application on a department-approved form;
  - (2) provide information sufficient for the department to verify that the applicant has, for at least one (1) year, held an active and valid license in another jurisdiction and that the applicant's license is in good standing;
  - (3) provide information sufficient for the department to verify that the applicant has not been convicted of an offense that directly relates to the duties and responsibilities of a polygraph examiner;
  - (4) provide information sufficient for the department to verify that the applicant has administered thirty (30) polygraph examinations before applying for a Texas license;
  - (5) provide a copy of an insurance policy, surety bond or bond continuation certificate required under §88.40;
  - (6) furnish a copy of the applicant's valid license; and
  - (7) pay the applicable license application fee required under §88.80.
- (b) A person who is applying from a jurisdiction where the examination standards are not substantially equivalent to those in Texas must pass the written and practical examination required under §88.29.
- (c) A person who is applying from a jurisdiction whose examination standards have been determined by the department to be substantially equivalent to those in Texas may waive the written and practical examination required under §88.29.

**88.25. Continuing Education.** *(New rule effective January 1, 2014, 38 TexReg 9523)*

- (a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.
- (b) To renew a license as a polygraph examiner, a licensee must complete six hours of continuing education in courses approved by the department.
- (c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.
- (d) A licensee may not receive continuing education credit for attending the same course more than once.
- (e) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

- (1) Texas Occupations Code, Chapter 1703, polygraph examiners;
  - (2) Title 16, Texas Administrative Code, Chapter 88, Polygraph Examiners Administrative Rules;
  - (3) other laws and rules that regulate the conduct of polygraph examiners;
  - (4) polygraph examiner-related laws, such as history and development of polygraph, legal and ethical aspects of polygraph, physiology, psychology, interrogation and interviews, chart interpretation, question formulation and test construction, instrumentation supervised testing and interviewing, and counseling and critique; and
  - (5) business practices, such as insurance, polygraph examiner ethics, contracts, maintenance of trust accounts, and marketing.
- (f) This section shall apply to providers and courses for polygraph examiners upon the effective date of this section.
- (g) This section shall apply to polygraph examiner licenses issued under Texas Occupations Code, Chapter 1703, Subchapter E that expire on or after December 1, 2014.
- (h) A licensee whose license has been placed on inactive status, pursuant to Texas Occupations Code, §51.4011 is not required to complete continuing education as required by this section until the licensee seeks to change to “active” status.

**88.26. Licensing Requirements--Polygraph Examiner Internship License.** *(New rule effective January 11, 2010, 35 TexReg 235)*

To be eligible for a polygraph examiner internship license, an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) pay the fee required under §88.80; and
- (3) successfully pass a criminal background check.

**88.27. Polygraph Examiner Internship License Term.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) A polygraph examiner internship license expires on the first anniversary of the date of issuance and may be renewed once.
- (b) A trainee may not hold another internship license until the first anniversary of the date the previous internship license expired.

**88.28. Responsibilities of Registered Curriculum Providers.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) To be eligible to provide a polygraph examiner education course, a registrant must:
  - (1) submit a completed application on a department-approved form; and
  - (2) file and obtain approval of the course curriculum required under §88.100.
- (b) A registration under this chapter is valid for one (1) year and may be renewed annually.

**88.29. State Examination for Polygraph Examiner License.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) To be eligible to sit for an examination, an applicant must:
  - (1) submit a completed license application on a department-approved form;
  - (2) pay the applicable license application fee required under §88.80;
  - (3) satisfy the requirements to obtain a polygraph examiner license required under §88.20(4) and (5); and
  - (4) have completed thirty (30) polygraph examinations.
- (b) The polygraph examiner state examination consists of a written, scenario, and practical portion.
- (c) A score of seventy is required to pass each portion of the examination.
- (d) The practical examination consists of five polygraph examinations selected by the applicant and conducted within 24 months prior to the filing of the application for licensure. The examinations will be evaluated and graded by three (3) subject matter experts and the average of these grades will be the score awarded to the applicant for the practical examination.
- (e) Mock polygraph examinations do not qualify as polygraph examinations for purposes of satisfying the practical examination requirements.

**88.40. Financial Security.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) Before a license is issued and upon each renewal, a polygraph examiner applicant must provide proof to the department that the applicant has obtained a \$5,000 insurance policy or surety bond guaranteeing payment of up to \$5,000 arising out of judgments recovered against the applicant for any wrongful or illegal act committed by the applicant in the course of administering a polygraph examination.
- (b) A polygraph examiner applicant must maintain an insurance policy, surety bond or continuation bond at all times during the license period.
- (c) The insurance policy or bond must be issued by a company authorized to do business in the State of Texas.
- (d) The insurance policy or bond must remain in effect for two (2) years after the effective cancellation date.
- (e) A polygraph examiner employed by a state agency and exclusively performing duties authorized by the state agency is not required to provide a bond or insurance policy if the polygraph examiner and state agency is otherwise insured as authorized by the State Employee Bonding Act, Title 6, Government Code, Chapter 653.

**88.70. General Responsibilities--Sponsor.** *(New rule effective January 11, 2010, 35 TexReg 235; amended effective January 1, 2014, 38 TexReg 9523)*

- (a) To serve as a sponsor for a trainee, a Texas licensed polygraph examiner must have held a Texas Polygraph Examiner license continuously for at least two (2) years immediately preceding submission of the sponsor application.
- (b) No licensed polygraph examiner may sponsor more than two (2) trainees at any one time.
- (c) The sponsor must be present to directly observe a total of eight (8) polygraph examinations conducted by the trainee during the course of the polygraph examiner internship.

- (1) The sponsor must directly observe the first five (5) polygraph examinations and must directly observe a minimum of three (3) additional polygraph examinations during the remainder of the polygraph examiner internship.
- (2) When polygraph examinations are conducted outside the direct observation of the sponsor, the sponsor must be available either by phone, text messaging, email or other real time communication method to assist the trainee.
- (d) The sponsor is responsible for all chart interpretations of polygraph examinations conducted by a polygraph examiner internship trainee and must carefully review each polygraph examination administered by the trainee for accurate chart interpretation before giving a final opinion.
- (e) At the conclusion of each week a sponsor must review the report submitted by the trainee describing all polygraph related work conducted during the week.
- (f) The sponsor must prepare and keep a monthly report of all polygraph related work conducted by the trainee and all training materials used in the course of supervised instruction. The report must contain the following information:
  - (1) For examinations directly observed by the sponsor:
    - (A) the examination date;
    - (B) the examinee's name;
    - (C) the employer's name (if applicable);
    - (D) the technique and type of instrument used;
    - (E) the type of test; and
    - (F) the result of test.
  - (2) For examinations conducted outside the direct observation of the sponsor, the report must include paragraph (1)(A) - (E) and:
    - (A) the trainee's preliminary opinion of examination results;
    - (B) the date the sponsor reviewed the trainee's preliminary opinion;
    - (C) whether the sponsor's opinion confirmed or contradicted the trainee's preliminary opinion;
    - (D) documentation of any real time communication method used by the trainee to confer with the sponsor during the course of the examination; and
    - (E) a description of the assistance provided by the sponsor.
  - (3) For training:
    - (A) the number of hours of supervised instruction provided to trainee; and
    - (B) the type of training materials used in the course of supervised instruction.

- (g) The sponsor must use in the course of supervised instruction the training materials approved and adopted under §88.100.
- (h) At the completion of the polygraph examiner internship, the sponsor must, within ten (10) days, submit notice of the completion of internship to the department on a department-approved form or in a manner set by the department.
- (i) A sponsor who terminates the sponsorship of a trainee must, within ten (10) days:
  - (1) notify the trainee in writing;
  - (2) submit notice of the termination to the department on a department-approved form or in a manner set by the department; and
  - (3) submit a copy of all monthly reports required under subsection (f) to both the department and the trainee.
- (j) The sponsor must retain all polygraph examiner internship records for at least two (2) years and upon request, must make available to the department all records required by the law and this chapter to determine compliance with the program.

**88.71. General Responsibilities--Polygraph Examiner Internship.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) A trainee must observe the sponsor conduct a minimum of two (2) polygraph examinations prior to beginning field work in the polygraph examiner internship program.
- (b) At the conclusion of each week, a trainee must provide the sponsor with a report describing all polygraph related work conducted during the week.
- (c) A preliminary opinion of the results of a polygraph examination must, if requested, be given by the trainee for examinations that are administered outside the direct observation of the sponsor. The trainee must advise the examinee that the opinion is preliminary until the examination is reviewed and an opinion is given by the sponsor.
- (d) A trainee who terminates the polygraph examiner internship with a sponsor must, within ten (10) days:
  - (1) notify the former sponsor in writing; and
  - (2) submit notice of the termination to the department on a department-approved form or in a manner set by the department.
- (e) A trainee who changes sponsors must, within ten (10) days:
  - (1) notify the former sponsor in writing;
  - (2) submit notice of the change of sponsor to the department on a department-approved form or in a manner set by the department; and
  - (3) pay the fee required under §88.80.

**88.72. Responsibility of Licensee--Change of Name and/or Address.** *(New rule effective January 11, 2010, 35 TexReg 235)*

A licensee must notify the department in writing of a name change, change in principal business address or change in mailing address not later than the 30th day after the date the change is made.

**88.73. Responsibility of Licensee--Display of License.** *(New rule effective January 11, 2010, 35 TexReg 235)*

A licensee must prominently display their license at their place of business or place of internship and must present their pocket license upon request when conducting remote polygraph examinations.

**88.74. Responsibility of Licensee--Conducting Polygraph Examinations.** *(New rule effective January 11, 2010, 35 TexReg 235)*

When conducting a polygraph examination, a licensee must:

- (1) Mark questions and answers. All questions asked a subject during a polygraph examination and all of the subject's answers must be marked on each polygraph chart.
  - (A) These markings must be done by making a stimulus mark at the exact point on each polygraph chart where questions began, ended, and the subject's answer was given.
  - (B) Each polygraph examination given must have a written question sheet which contains the exact wording of every question asked.
  - (C) The use of abbreviations is prohibited, unless they are defined on the question sheet.
  - (D) Questions on question sheets may be identified by numbers, letters, or any number-letter combination.
  - (E) Each question asked on every polygraph chart must be noted by marking the letter, number, or number-letter combination near the stimulus marks so that the relationship of the question asked on the chart and the question sheet may be easily identified.
- (2) Ask questions two (2) separate times. The licensee must not give a verbal or written opinion, based on chart analysis, until the same relevant questions have been asked a minimum of two (2) separate times.
- (3) Observe response intervals. The licensee must allow a minimum of twenty (20) seconds between each question to give the examinee enough time to physiologically respond to each verbal stimulus.
  - (A) The twenty (20) second period is measured from the beginning of one question until the beginning of the next question, or the ending of the examination.
  - (B) The requirement does not apply to chart markings such as the announcement of the start of the examination nor does it apply to any comment made by the examiner during the examination that does not require an answer from the examinee such as answering instructions or movement instructions by the examiner.

**88.75. Responsibility of Licensee--Prohibited Acts.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) A licensee must not conduct an examination when the licensee has reason to believe the examination is intended to circumvent or defy the law.
- (b) A licensee must not include in the testing phase, questions that are intended to inquire into or develop information about an examinee's religious, racial or political beliefs except when it is relevant to a specific investigation.
- (c) A licensee must not interrogate or conduct an examination on the subject's sexual behavior, unless the topic is a specific issue or is relevant to the examination or is necessary for the development of comparison questions.

- (d) A licensee must not conduct a polygraph examination on a subject whom the licensee believes, through observation or any other credible evidence, to be physically or psychologically unfit for an examination.

**88.76. Responsibility of Licensee--Polygraph Examination Results.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) The polygraph examiner must, if requested, advise the examinee of the results of the examination prior to the termination of the polygraph examination. The results will be given to the examinee as it relates to the specific polygraph testing format:
  - (1) deception indicated;
  - (2) no deception indicated;
  - (3) inconclusive; or
  - (4) no opinion.
- (b) The examinee must be given an opportunity to explain the results of the examination to the polygraph examiner.

**88.77. Responsibility of Licensee--Confidentiality of Examination Results.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) A polygraph examiner, trainee or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person may not disclose information acquired from a polygraph examination to another person other than:
  - (1) the examinee or any other person specifically designated in writing by the examinee;
  - (2) the person that requested the examination;
  - (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiners activities;
  - (4) another polygraph examiner in private consultation; or
  - (5) any other person required by due process of law.
- (b) The department or any other governmental agency that acquires information from a polygraph examination under this section must maintain the confidentiality of the information.
- (c) A polygraph examiner to whom information acquired from polygraph examination is disclosed under subsection (a)(4) may not disclose the information except as provided by this section.

**88.78. Responsibility of Licensee--Contract for Services and Waiver of Liability.** *(New rule effective January 11, 2010, 35 TexReg 235; amended effective September 1, 2015, 40 TexReg 5149)*

- (a) A written contract for a polygraph examiner's services must include the following information: "To file a complaint against a polygraph examiner, contact the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, (512) 463-6599, www.tdlr.texas.gov or cs.polygraph.examiners@tdlr.texas.gov."
- (b) A waiver of liability signed by the subject of a polygraph examination must include the following information: "To file a complaint against a polygraph examiner, contact the Texas Department of Licensing

and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, (512) 463-6599, www.tdlr.texas.gov or cs.polygraph.examiners@tdlr.texas.gov.”

**88.79. Responsibility of Licensee--Record Keeping.** *(New rule effective January 11, 2010, 35 TexReg 235)*

- (a) All polygraph charts, question sheets, written reports, data sheets, films, audio and video tapes, opinions of the examiner from chart analysis, electronic records of examinations and other relevant documents must be retained for inspection pursuant to an investigation by the department as authorized in Texas Occupations Code, Chapter 51 for at least two (2) years from the date of the examination.
- (b) The licensee, upon request, must make available to the department all records and other relevant documents required by the law and this chapter.

**88.80. Fees.** *(New rule effective January 11, 2010, 35 TexReg 235; amended effective February 1, 2012, 37 TexReg 322)*

- (a) Application Fees
  - (1) Polygraph Examiner
    - (A) Original application--\$400
    - (B) Renewal--\$350
    - (C) Duplicate--\$15
    - (D) Out-of-State--\$500
  - (2) Internship
    - (A) Original application--\$50
    - (B) Renewal--\$50
    - (C) Duplicate--\$15
    - (D) Change of Sponsor--\$25
- (b) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).
- (c) All fees are nonrefundable except as provided for by commission rules or statute.

**88.90. Sanctions and Administrative Penalties.** *(New rule effective January 11, 2010, 35 TexReg 235)*

A person who violates Texas Occupations Code, Chapter 1703, a rule, or an order of the executive director or commission relating to Texas Occupations Code, Chapter 1703, will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 1703 and applicable agency rules.

**88.91. Enforcement Authority.** *(New rule effective January 11, 2010, 35 TexReg 235)*

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 1703 and any associated rules may be used to enforce Texas Occupations Code, Chapter 1703 and this chapter.

**88.100. Technical Requirements--Polygraph Examiner Course Training Material and Internship.** *(New rule effective January 1, 2014, 38 TexReg 9523)*

- (a) Polygraph Examiner Course--320 Hours
- (1) Polygraph techniques, methodology, instrumentation--20 hours
  - (2) History and development--8 hours
  - (3) Mechanics and functioning of the instrument components (both analog and computerized), basic procedures for instrument activation and operation, chart marking, etc.--20 hours
  - (4) Semantics and test question construction--30 hours
  - (5) Techniques of understanding the use of multi-technique procedures, instruction for understanding the use of comparison question techniques, relevant-irrelevant techniques, peak of tension procedures--60 hours
  - (6) Test data analysis. Skill development in chart analysis providing an introductory knowledge of different chart analysis procedures such as global procedures, numerical scoring procedures, etc.--50 hours
  - (7) Interviewing/Post-Test Procedures. Skill development in pre and post-test interview methods and procedures taught--14 hours
  - (8) Ethics. A thorough understanding of the ethical obligations of the examiner to the polygraph examinee, to the client, and to the profession--6 hours
  - (9) Development of Student Skills. Development of the student's proficiency in chart work, includes the student producing, a minimum of 60 minutes of charts to be maintained in the student files; not to include calibration charts and instruments maintenance time--40 hours
  - (10) Legal issues. Instruction in the basic legal matters pertinent to the practice of polygraph; local, state, and federal applicable regulations, admissibility issues, courtroom testimony, and others--8 hours
  - (11) Psychological issues. Basic psychological and psychophysiological issues forming the foundation of polygraph sciences--24 hours
  - (12) Physiological issues. Basic physiological and psychophysiological issues forming the foundation of polygraph sciences--20 hours
  - (13) Student evaluation--20 hours
- (b) Polygraph Examiner Internship--200 hours. A six month internship training must contain at least the following:
- (1) Interrogation and interviews including receiving case briefing, pre-test interview and post-test interview--50 hours
  - (2) Chart interpretation including all types of tests and responses, chart marking and test results; no deception indicated, deception indicated, inconclusive or no opinion--65 hours
  - (3) Question formulation and test construction consisting of all types of tests, all types of question and semantics--65 hours
  - (4) Instrumentation to include construction and maintenance, trouble shooting and nomenclature--10 hours

- (5) Summary and general review--10 hours
  - (6) Supervised testing and interviewing--minimum of 20 tests conducted in accordance with Texas Occupations Code, Chapter 1703
  - (7) Counseling and critique as required in opinion of sponsor--NA
- (c) This section shall apply to Polygraph Examinees license applications received under Texas Occupations Code, Chapter 1703, Subchapter E on or after March 1, 2014.

**88.101. Other Instruments and Instrumentation.** *(New rule effective January 1, 2014, 38 TexReg 9523)*

The commission may adopt rules to identify other instruments and instrumentation requirements that are acceptable for use in this state.