

16 DEPARTMENT OF PUBLIC SAFETY
219 OFFICE OF THE COMMISSIONER
CHAPTER 51 POLYGRAPH EXAMINER LICENSE REGULATION

SUMMARY: This chapter, which repeals and replaces the prior version of the chapter, establishes rules to ensure for the effective administration of the Maine Polygraph Examiners Act, 32 M.R.S. c. 86.

§1. DEFINITIONS

- A. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.
1. Commissioner. "Commissioner" means the Commissioner of the Department of Public Safety.
 2. Department. "Department" means the Department of Public Safety.
 3. Instrument. "Instrument" means a device used to test a subject to directly or indirectly detect deception or verify the truth of a statement by, at a minimum, recording visually, permanently and simultaneously a subject's cardiovascular, respiratory and electrodermal patterns.
 4. Intern. "Intern" means a person who holds a polygraph examiner intern license under 32 M.R.S. c. 86.
 5. Polygraph examination. "Polygraph examination" means an examination conducted by a polygraph examiner that consists of a pre-test phase, an in-test phase, and a post-test phase.
 6. Polygraph examiner. "Polygraph examiner" means a person licensed under 32 M.R.S. c. 86 to use an instrument, as that word is defined in subsection 3.
 7. Polygraph examiner internship. "Polygraph examiner internship" means a course of study of polygraph examinations and of the administration of polygraph examinations by an intern under the supervision and control of a polygraph examiner.

§2. COMMISSIONER-APPROVED POLYGRAPH EXAMINER COURSES

- A. For the purposes of 32 M.R.S. § 7382(1)(C), the Commissioner-approved polygraph examiner courses are those that were accredited by the American Polygraph Association at the time a person participated in and completed the courses.

§3. POLYGRAPH EXAMINER INTERN LICENSE

- A. Qualifications. A person is qualified to be issued a polygraph examiner intern license if he or she:
1. Has not been convicted of a crime for which a license may be denied under 5 M.R.S. ch. 341;
 2. Either:
 - (1) Holds a baccalaureate degree from an accredited college or university; or
 - (2) Has at least 5 years of experience , including 3 years on a full-time basis, as a sworn member of an investigative service of a branch of the United States Armed Forces, a federal investigative agency or a law enforcement agency;
 3. Is a graduate of a Commissioner-approved polygraph examiner course; and
 4. Has arranged to participate in a polygraph examiner internship that will be supervised by a sponsor.

Documentation to substantiate that a person meets those qualifications may be requested by the Department.

- B. Application. A person applying for a polygraph examiner intern license shall complete and submit to the Office of the Commissioner an application form for such a license. The application must be accompanied by the appropriate application fee, as set forth in 32 M.R.S. § 7381(1)(B)(3), and any documentation requested by the Department to substantiate information provided in the application form.

- C. Intern polygraph examiner sponsor. As a condition of licensure, a polygraph examiner intern license applicant shall arrange to participate in, and must satisfactorily complete, a polygraph examiner internship that will be supervised by a sponsor.
1. To be eligible to be a sponsor for an intern polygraph examiner, a person shall have held a polygraph examiner license for at least twenty-four (24) months.
 2. A polygraph examiner only may sponsor up to two (2) interns at any given time.
 3. A polygraph examiner who has agreed to serve as a sponsor shall notify the Department in writing that he or she has agreed to do so. Such notification must include the name of the intern who is being sponsored and the date on which the internship will begin.
 4. During the term of a polygraph examiner internship, a sponsor shall:
 - (A) Supervise each polygraph examination conducted by each intern with whom he or she is working;
 - (B) Speak at least once a month with each intern whom he or she is sponsoring, to discuss each intern's proficiency in administering polygraph examinations and interpreting charts.
 5. At the conclusion of the internship, the sponsor must submit to the Department a report that states:
 - (A) The dates on which the internship began and ended;
 - (B) The number of polygraph examinations conducted by the intern that were personally supervised by the sponsor;
 - (C) The number of times the sponsor spoke with the intern to discuss the intern's proficiency in administering polygraph examinations and interpreting charts;
and
 - (D) The sponsor's professional opinion of whether the intern has satisfactorily completed the internship.

§4. POLYGRAPH EXAMINER LICENSE

- A. Qualifications. A person is qualified to be issued a polygraph examiner license if he or she meets the qualifications set forth in 32 M.R.S. § 7382. Documentation to substantiate that a person meets those qualifications may be requested by the Department.

- B. Application. A person applying for a polygraph examiner license shall complete and submit to the Office of the Commissioner an application form for such a license, and applies for a license prior to the expiration of his or her intern license, or within 12 months after the expiration of such license. The application must be accompanied by the appropriate application fee, as set forth in 32 M.R.S. § 7381(1)(B)(3), and any documentation requested by the Department to substantiate information provided in the application form.

§5. CONTINUING EDUCATION REQUIREMENT

- A. A licensed polygraph examiner shall attend at least twenty-four (24) hours of polygraph examination-related coursework during the four-year period of the examiner's licensure.
 - 1. Such coursework may include, but is not limited to, classes, seminars, and lectures, whether conducted in-person, via video and/or audio transmission, or online.

- B. Before or by the date on which a licensed examiner applies for her or his license to be renewed, the examiner shall submit documentation to the Office of the Commissioner that substantiates that the examiner attended at least twenty-four (24) hours of polygraph examination-related coursework during the preceding four-year licensure period.
 - 1. Such documentation may include, as examples only, certificates of class completion and course transcripts.

2. To supplement, or in lieu of, such documentation, a polygraph examiner may compose and submit a letter certifying that he or she has completed the required number of hours of continuing education. Such a letter must be signed by the examiner, and also bear the printed name and signature of a person who witnessed the examiner signing the certification letter.

- C. The failure of a polygraph examiner to meet his or her continuing education obligation during the preceding two-year licensure period is grounds for nonrenewal of the examiner's polygraph examiner license.

§6. DUTY TO COMPLY WITH STANDARDS OF ACCEPTABLE PROFESSIONAL CONDUCT

- A. In conducting their work, licensed polygraph examiners and intern polygraph examiners shall abide by the most up-to-date standards of acceptable professional conduct set forth by the American Polygraph Association, which standards are incorporated by reference into this regulation.
- B. In addition, licensed polygraph examiners and intern polygraph examiners shall abide by following standards of acceptable professional conduct:
 1. A licensee shall not advise or instruct any person about any method to influence the results of a polygraph examination, or the opinion of the examiner administering the exam, if the intent of such advice or instruction is to assist the person in compromising the integrity of or changing the results of a polygraph examination.

AUTHORITY FOR RULE: 32 M.R.S. 7353(2).

APA STANDARDS OF PRACTICE
(Effective September 1, 2015)

- 1 Statement of Purpose: To promote the highest degree of decision accuracy in credibility assessment, the APA establishes for its membership the following Standards of Practice. All examinations are required to be conducted in compliance with governing local, state, and federal regulations and laws.
- 1.1 Definitions
 - 1.1.1 Polygraph examination: a psychophysiological test of deception or recognition sometimes referred to as lie-detection as a term of convenience. The polygraph examination is a standardized, evidence-based test of the margin of uncertainty or level of confidence surrounding a categorical conclusion of deception or the possession of knowledge or information regarding a test target issue. Test data are a combination of physiological proxies that have been shown to vary significantly with different types of test stimuli as a function of deception or truth-telling in response to the relevant investigation target stimuli as a function of deception or truth-telling in response to the relevant investigation target stimuli. The psychological basis of responses to polygraph stimuli is thought to involve attention, cognition, emotion, and behavioral conditions. The examination consists of an interview phase, to clarify the issue under investigation and related test stimuli, a data acquisition phase, during which physiological responses to test stimuli are permanently recorded, and an analysis phase during which differences in responses to different types of test stimuli are numerically quantified to calculate a statistical classifier for a categorical test result. The examiner may also provide the examinee an opportunity to explain any physiological responses and resolve any remaining inconsistencies.
 - 1.1.2 Evidentiary Examination: A polygraph examination in which the written and stated purpose agreed to by the parties involved is to provide a diagnostic opinion as evidence in a pending judicial proceeding.
 - 1.1.3 Paired Testing Examination: Polygraph examinations conducted in tandem on two or more individuals by different examiners who are mutually blind to the other test results regarding a single central contested fact to which all examinees are expected to know the truth thereof. Paired-testing is used by voluntary stipulation between the testifying parties to resolve disputed facts.
 - 1.1.4 Investigative Examination: A polygraph examination which is intended to supplement and/or assist an investigation and for which the examiner has not been informed and does not reasonably believe that the results of the examination will be tendered for admission as evidence in a court proceeding. Investigative examinations may be conducted for screening purposes or to investigate known allegations or known incidents.

- 1.1.5 Diagnostic examination: An event-specific evidentiary or investigative polygraph examination conducted to assist in determining the veracity of an examinee regarding his or her knowledge of or involvement in a reported issue or allegation. Diagnostic examinations may address a single aspect or multiple-facts of an event.
- 1.1.6 Screening examination: A polygraph examination conducted in the absence of a reported incident or allegation. Screening examinations may be conducted as single issue or multiple issue exams.
- 1.1.7 Test data analysis in polygraph refers to any structured method, whether manual or automated, for the evaluation and interpretation of the recorded physiological data in terms of probabilistic margins of uncertainty and/or categorical test decisions concerning the examinee's truthfulness or concealed knowledge. Decisions for diagnostic and screening examinations include:
 - 1.1.7.1 Diagnostic Opinion: A professional opinion based on the results of a polygraph technique that meets the criterion validity requirements for evidentiary testing or paired testing. Results of deception tests can be described in terms of statistical significance, and are normally reported using the terms Deception Indicated, No Deception Indicated, Inconclusive, and No Opinion (DI or NDI, INC, or NO). Test results of recognition tests are normally reported using the terms Recognition Indicated, No Recognition Indicated, or No Opinion (RI, NRI, NO).
 - 1.1.7.2 Screening Opinion: A professional opinion based on the results of a polygraph technique that meets the requirements for screening purposes; normally reported using the terms Significant Response, No Significant Response, Inconclusive, or No Opinion (SR, NSR, INC, or NO).
 - 1.1.7.3 Polygraph Technique: A polygraph technique consists of a combination of: 1) a polygraph testing format for which there is a published description of test administration procedures that conforms to evidence-based principles for target selection, test question construction, and test administration; and 2) a published description of the test data analyses model, including physiological features, transformation, decision rules, and normative data.
 - 1.1.7.3.1 Polygraph techniques for evidentiary examinations shall be those for which there exists at least two published empirical studies, original and replicated, demonstrating an unweighted average accuracy rate of 90% or greater excluding inconclusive results, which shall not exceed 20%.

- 1.1.7.3.2 Polygraph techniques for paired testing shall be those for which there exists at least two published empirical studies, original and replicated, demonstrating an unweighted average accuracy rate of 86% or greater, excluding inconclusive results, which shall not exceed 20%.
- 1.1.7.3.3 Polygraph techniques for investigative testing shall be those for which there exist at least two published empirical studies, original and replicated, demonstrating an unweighted average accuracy rate of 80% or greater, excluding inconclusive results, which shall not exceed 20%.
- 1.1.7.3.4 Polygraph techniques used for screening purposes shall be those for which there exist at least two published empirical studies, original and replicated, demonstrating an unweighted accuracy rate that is significantly greater than chance, and should be used in a “successive hurdles” approach which entails additional testing with validated methods when the screening test is not favorably resolved.
- 1.1.7.4 A Polygraph Examiner: a person who meets the training and education requirements as set forth in the APA Bylaws.
- 1.1.7.5 Post Conviction Sex Offender Testing (PCSOT) Examiner: a polygraph examiner who conducts examinations of sex offenders as a condition of treatment, probation, parole or supervised release, and who has completed specialized training consistent with APA standards.

1.2 Examiner Responsibilities

- 1.2.1 A polygraph examiner shall, where applicable, comply with all state continuing education requirements. Practicing examiners shall complete a minimum of 30 continuing education hours every two years in coursework related to the field of polygraphy. Examiners are responsible for maintaining their own records to document that they have met the continuing education requirement.
- 1.2.2 Examiners shall accurately represent their APA membership category, their academic credentials, licensure, and certification status.
- 1.2.3 Polygraph examiners conducting PCSOT tests shall complete at least half of the required 30 hours of continuing education in areas that pertain to the testing, treatment, or supervision of sex offenders.
- 1.2.4 The examiner should make reasonable efforts to determine that the examinee is a suitable candidate for polygraph testing. Basic inquiries into the medical and psychological condition of the examinee should be made where allowed by law. Mental, physical, or medical conditions of the

examinee that are observable by or reasonably known to the examiner should be considered when conducting and evaluating an examination.

1.3 Instrumentation and Recording

1.3.1 Polygraph examinations shall be conducted with properly functioning instrumentation that records with, at a minimum, the following physiological data:

1.3.1.1 Respiration patterns recorded by pneumograph components. Thoracic and abdominal patterns should be recorded separately, using two pneumograph components;

1.3.1.2 Electrodermal activity reflecting relative changes in the conductance or resistance of electrical current by the epidermal tissue;

1.3.1.3 Cardiovascular activity including changes in relative blood pressure, pulse rate, and pulse amplitude; and,

1.3.1.4 A seat activity sensor.

1.3.1.5 Other physiological data may also be recorded during testing, but may not be used to formulate probabilistic or categorical conclusions unless their validity is supported by replicated and published research.

1.3.2 Physiological recordings during each test shall be continuous and should be of sufficient amplitude to be easily readable by the examiner and any reviewing examiner.

1.4 Test Location and Conditions

1.4.1 The testing environment should be reasonably free from distractions.

1.4.2 Examiners conducting polygraph examinations during public viewing are prohibited from rendering opinions regarding the truthfulness of the examinees on the basis of these examinations. Examiners should ensure that reenactments of polygraph examinations are clearly conveyed as such to viewers. If the examiner determines that the reenactment will not or has not been clearly conveyed as a reenactment, the examiner shall immediately notify the APA National Office.

1.5 Preparation

1.5.1 Prior to an examination, the examiner shall dedicate sufficient time to identify and discuss the examination issues and potential problem areas.

1.6 Pretest Practices

- 1.6.1 The examiner shall obtain information sufficient to identify the examinee.
- 1.6.2 The examiner shall obtain the informed consent of the examinee prior to testing. It is recommended that the informed consent of the examinee be obtained after an overview of the polygraph process, including polygraph instrumentation and sensors, use of video/audio recording, issues to be discussed, requirements for cooperation during testing, and the need to report information and results to the referring professionals.
- 1.6.3 The examiner shall review all test questions prior to recording the physiological responses of the examinee.
- 1.6.4 The examiner shall conduct the examination in a neutral manner and shall not display or express any bias regarding the truthfulness of the examinee prior to the completion of testing.

1.7 Testing

- 1.7.1 A Member polygraph examiner shall use evidence-based validated testing techniques. For purposes of these standards, a testing technique shall be considered valid if supported by research conducted in accordance with the APA's research standards. Where examinations deviate from the protocols of a validated polygraph technique, the deviations should be explained in writing.
- 1.7.2 Nothing in these standards of practice shall be construed as preventing examiners and researchers from investigation and developing improved methods. Polygraph techniques that do not meet these standard for validation shall be considered experimental methods.
- 1.7.3 Field examiners who employ experimental techniques shall be in compliance with applicable law related to human subject research and should inform the examinee and the party requesting the examination of the use of any experimental techniques. Results from experimental techniques used in field settings shall not be used in isolation to render diagnostic or screening decisions.
- 1.7.4 Nothing in these standards of practice shall be construed as prohibiting the use of other supportive methodologies that do not meet the requirements of these standards (e.g.: Yes Test, Searching Peak of Tension, etc.). However, non-validated techniques shall not be used in isolation to render screening or diagnostic decisions

- 1.7.5 Examiners shall conduct an acquaintance test for all diagnostic, evidentiary, paired-testing, initial screening, and initial investigative examinations.
- 1.7.6 Questions used in the assessment of truth and deception shall be followed by time intervals of not less than 20 seconds from question onset to question onset.
- 1.7.7 Examiners should use standardized chart markings.
- 1.7.8 An audio and video recording of all phases of the exam shall be maintained as part of the examination files, consistent with agency policy, regulation or law, for a minimum of one year.
- 1.7.9 A member polygraph examiner shall not conduct more than four diagnostic or three evidentiary examinations in one day, and no more than five examinations of any type in one day.
- 1.7.10 Examiners who test sex offenders as a condition of treatment probation, parole or supervise release, shall have earned a certificate of training for a minimum of 40 hours of specialized instruction in post conviction testing, beyond the basic polygraph training course requirements, through a PCSOT trainer, curriculum and examination approved by the APA.
- 1.8.0 Scoring
 - 1.8.1 Examiner conclusions and opinions shall be based on validated scoring methods and decision rules.
 - 1.8.2 Examiner notes shall have sufficient clarity and precision so that another examiner could read them and replicate the analysis and conclusion.
 - 1.8.3 Examiners shall not disclose or report the results of the examination until the analysis has been completed.
 - 1.8.4 Examiners shall maintain the confidentiality of their work conducted until a release by the client is obtained.
 - 1.8.5 An examiner subject to quality control review shall fully disclose all pertinent information regarding the case under review.