

State of Oklahoma
Board of Polygraph Examiners



OAC Title 560. Polygraph Examiners Board
(Permanent rules adopted as of July 1st, 2016)

and

59 O.S. §1451 et. Seq.

(State Laws Relating to the Polygraph Examiners Act)

Revised: June 1st, 2006

Oklahoma Board of Polygraph Examiners



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STATUTORY REFERENCES: Statutory references contained in this document reflect statute in effect as of June 1, 2006. Current statute and subsequent changes after publication of this document may be found on the Oklahoma Supreme Court Network website, <http://www.oscn.net> under the title Legal Research.

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Summary of rule changes effective July 1, 2006:

CHAPTER 1. ADMINISTRATIVE OPERATIONS

560:1-1-2 [AMENDED]

560:1-1-4 [AMENDED]

560:1-1-7 [AMENDED]

Amended sections would add clarity to the definition of a polygraph examiner by inserting a statutory reference, update address information and correct a reference from a "competent" to "certified" court reporter

CHAPTER 10. LICENSURE AND REGULATION OF POLYGRAPH EXAMINERS

560:10-1-13.1 [NEW]

During a recent complaint investigation, the lack of a formal procedure caused confusion and misunderstanding on the part of the complainant and licensee. The proposed rule would establish a formal procedure to investigate complaints against a licensee to address concerns raised during the past year.

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TITLE 560. POLYGRAPH EXAMINERS BOARD

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CHAPTER 1. ADMINISTRATIVE OPERATIONS

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[**Authority:** 59 O.S. §§ 1452, 1453, 1456(A), 1470, 1471 as amended; 75 O.S. §§ 250 et seq., 301 renumbered 1987]

[**Source:** Codified 01-10-92]

560:1-1-1. Purpose

(a) The purpose of this chapter is to set forth general provisions for the administrative operation of the Polygraph Examiners Board.

(b) Further, the chapter also provides a description of the organizational structure, statutory authority, definitions and powers vested in the board.

560:1-1-2. Definitions

The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Board**" means the Polygraph Examiners Board.

"**Chairman**" means that Board member elected as Chairman who presides over Board meetings, functions as coordinator between the Board and the Council (as hereinafter defined), and monitors correspondence received daily by the Board Executive Secretary.

"**Council**" means the Council on Law Enforcement Education and Training.

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"Executive Secretary" means that individual appointed by the Council to act as Executive Secretary to the Board. He is responsible for the preparation of the meeting agendas and the daily administrative activities of the Board.

"He/His" as used herein, is representative of he/she or his/her.

"Internship" means the study of polygraph examination and the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner in accordance with a course of study prescribed by the Board at the commencement of such internship.

"Person" means any natural person, firm, association, partnership, or corporation.

"Polygraph Examiner" means any person who purports to be able to detect deception or verify truth of statements through instrumentation or the use of a mechanical or electronic device as defined in 59 O.S., Section 1454.

"Secretary/Treasurer" means that Board member elected by the Board to handle all correspondence, as directed by the Chairman.

"Vice-Chairman" means that Board member elected as Vice-Chairman who presides over Board meetings and assumes the duties of the Chairman in the absence of such Chairman.

"Voluntary" as used herein, does not apply to public employees of units of government with existing policy and/or rules or regulations regarding mandatory polygraph utilization in internal investigations.

560:1-1-3. Statutory authority and powers

(a) **Creation.** The Oklahoma Legislature created the Oklahoma Board of Polygraph Examiners and established the Oklahoma Polygraph Examiners Act and statutes relating thereto in 59 O.S. 1981 §§ 1451 through 1476.

(b) **Rules.**

(1) The Board shall have the full power to establish and promulgate Rules and Regulations for the administration and enforcement of the Polygraph Examiners Act.

(2) The Board hereby adopts (as a Rule) all provisions of the Polygraph Examiners Act and establishes Rules and Regulations, for all polygraph examiners in the State of Oklahoma to protect the public and ensure polygraph examiners maintain professional standards.

(c) **Witnesses.**

(1) **Subpoena.** The Board, upon request of a party, or upon its own motion, may order the Secretary to issue a subpoena in the name of the Board, in any pending proceeding requiring attendance of a witness from any place in the state to the place of hearing. Praecipe for Subpoena shall be filed with the Secretary and the Order of the Board endorsed thereon.

(2) **Subpoena Duces Tecum.** A subpoena may require the witness to produce at the hearing books, records, polygraph charts, papers and other instruments and tangible objects, which shall be described with reasonable particularity in the subpoena. A subpoena duces tecum directed to a party not an individual, may direct that the records be produced by an officer or employee responsible therefore.

(3) **Service of Subpoena.** A subpoena may be served by a law enforcement

officer, by an attorney, or by any other person competent to make an oath; and the person serving the same shall attach his affidavit of the person served, and time and manner of service. Service also may be made in any other manner provided by law. A party may be served by leaving a copy thereof at the principal place of business of the party, with the party or an employee who customarily serves as the secretary or receptionist of the party.

(4) **Return.** The original subpoena, with affidavit of service thereon, shall be filed with the Secretary of the Board. The attendance of a witness shall not be enforced unless the original subpoena is on file at the time of the hearing.

(5) **Fees.** The attendance of a witness will not be enforced unless the party causing subpoena to be issued, tenders the witness fee provided by law for a witness subpoenaed to testify in the District Court of Oklahoma; and in addition, mileage to and from the place of hearing and the place of residence of the witness at the current State mileage rate. Attendance of a witness shall not be enforced at the second or subsequent day of hearing, unless the party causing the subpoena be issued tenders additional mileage to and from the place of hearing, and the current State per diem rate for each additional day of attendance. The payment of fees shall not be required when a subpoena is issued on behalf of the Board.

(6) **Testimony.** A witness present at a hearing pursuant to subpoena may be called to testify by the Board or by any party.

(7) **Protective orders.** The Board may make any orders with respect to subpoena and attendance of witnesses with or without application or notice, as may be appropriate for the protection of parties and witnesses, including an order excusing attendance, or limiting documents to be produced.

(d) **Conditional license.** In special cases, the Board shall have the authority to issue a Conditional License. It will be for a fixed period of time, not to exceed one (1) year, with specific terms to be met. Such license is designed to permit either retraining (under the auspices of the Board) or to allow for special provisions during the Internship. If the recipient of a conditional license fails to meet the stated terms, then said license shall be null and void. The recipient of a conditional license shall sign an agreement to immediately return his intern authorization or polygraph examiners license and pocket identification card to the Board upon request.

(e) **Refusal, suspension or revocation of license.** The Board may refuse to issue, suspend or revoke a license pursuant to the provisions of the Polygraph Examiners Act.

560:1-1-4. Description of organization

(a) The Board consists of five (5) members who shall be citizens of the United States and residents of the state for at least two (2) years prior to appointment, all of whom shall have been engaged for a period of two (2) consecutive years as polygraph examiners prior to appointment to the Board, and at the time of appointment active polygraph examiners. No two (2) Board members may be employed by the same person or agency. No more than two (2) members may be appointed from one (1) Congressional District. At least two members must be qualified examiners of a governmental law enforcement agency, and at least two (2) members must be qualified polygraph examiners in private practice. The members

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shall be appointed by the Governor of the State of Oklahoma, with the advice and consent of the Senate, for terms of six (6) years. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate, for the unexpired term. Members of the Board are paid actual expense reimbursement only, but no wages or fees for their services.

(b) The Council on Law Enforcement Education and Training shall have the powers, duties and responsibilities as are specified by the Polygraph Examiners Act. In addition, the Council shall designate the representative of the Council to attend any meeting held by the Polygraph Examiners Board. It shall be the duty of the Council to provide telephone and mailing services and such secretarial duties and administrative functions as are designated by the Board.

(c) The Council is authorized to appoint and fix the duties and compensation pursuant to law of the employees necessary to carry out the duties imposed upon the Council by the Polygraph Examiners Act.

(d) The Board shall elect a Chairman, Vice Chairman, and Secretary every two years from among its members, and shall meet at specified dates spaced at three-month intervals.

(e) At all meetings of the Board, three members shall constitute a quorum. An affirmative vote by a simple majority of the members in attendance, shall be necessary to pass all motions presented before the Board.

(f) The Executive Secretary of the Board, at the direction of the Chairman, shall prepare the agenda for meetings of the Board. Any member may introduce items of business at any meeting of the Board.

(g) Meetings shall be conducted according to the latest edition of Roberts Rules of Order.

(h) Minutes of all meetings shall be kept in accordance with State law by the Council and

shall be open for inspection to the public during regular business hours pursuant to the Oklahoma Open Records Act, codified 51 O.S., Supp. 1989 § 24a.1 et seq.

(i) The Board hereby adopts as a Rule all provisions of the Administrative Procedures Act, Title 75 O.S. 1981, and the Oklahoma Open Meeting Act, 25 O.S. 1981, as amended.

(j) The public may obtain information or make submissions or requests at the Board office.

(k) All Rules and Regulations, decisions, opinions, final orders and all other written statements of policy or interpretations formulated, adopted or used by the Board, are available for public inspection at the Board office.

(l) Nothing in these Rules and Regulations shall be interpreted or applied so as to affect the validity and enforceability of any additional requirements, rules or regulations of any other governmental entity, public agency or instrumentality which may otherwise be applicable. These Rules and Regulations shall be deemed cumulative and supplemental to all other applicable rules.

(m) These Rules and Regulations may be amended or repealed from time-to-time and new Rules and Regulations adopted by the Board pursuant to the Polygraph Examiners Act, and the Administrative Procedures Act.

(n) No Board member shall be individually or personally liable for any action of the Board.

560:1-1-5. Duties

It shall be the duty of the Board to regulate all persons who purport to be able to detect deception or verify truth of statements through the use of instrumentation such as lie detectors, computerized and/or analog polygraph, psychological stress evaluators, voice analysis, deceptographs, and/or similar or related devices and instruments without regard to the nomenclature applied thereto, or without regard to the terminology he may use to refer to himself or his services.

560:1-1-6. Meetings

(a) Regular meetings will be held once each quarter with the date, time and place to be determined by the Board. The Board shall file with the Secretary of State, in writing, no later than December 15th of each Calendar year the schedule showing the date, time and place of the regularly scheduled meetings for the following year. If any change is to be made in the date, time or place of a regularly scheduled meeting, notice in writing shall be made to the Secretary of State not less than ten (10) days prior to such change.

(b) Reconvened meetings will be announced as to time, place and date of such meeting by an announcement at the original meeting.

(c) Special meetings may be called by the Chairman, or the Vice-Chairman in the Chairman's absence, or any three members of the Board. Public notice will be given at least forty-eight (48) hours in advance of special meetings either in writing, in person or by telephone to the Secretary of State.

(d) Emergency meetings may be held without public notice, but the person calling such a meeting shall give as much advance notice as is reasonable and possible under the circumstances.

560:1-1-7. Hearings

(a) General.

(1) In any case where the Board shall hold a hearing on any licensee or application therefore, the procedures for such hearing shall be governed generally by the Administrative Procedures Act (75 O.S. 1981, §§ 301 through 327).

(2) Any hearing under this subsection shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Act or any other law of this State or the United States.

(b) Notice of hearing. Notices of all hearings shall be given by the Board not less than ten (10) days in advance thereof to all persons directly affected by such hearing. The notice of the hearing shall contain the following information:

- (1) The time and place of hearing;
- (2) A statement of the matters to be considered thereat;
- (3) A statement of the legal authority and jurisdiction under which the hearing is to be held.
- (4) A short, plain statement of the matters to be asserted. If such statement of the issues is not sufficient, upon application, a more definite and detailed statement will be furnished.
- (5) A reference to the particular sections of the statutes and/or Rules or

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Regulations involved.

(c) **Open meetings.** All hearings shall be open to the public.

(d) **Right to counsel.** Any person affected by the hearing, shall have the right to appear in person, and be represented by counsel, provided that such counsel representing the party is duly licensed to practice law by the Supreme Court of Oklahoma, and may be present during the giving of evidence, may have a reasonable opportunity to examine and inspect all documentary evidence, may examine witnesses, and may present evidence in his own behalf.

(e) **Rules of evidence.** The formal rules of pleading and evidence need not be observed. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available, and, upon request, a party shall be given an opportunity to compare the copy with the original. Notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the specialized knowledge of the Board. The Board's experience, technical competence, and specialized knowledge shall be utilized in the evaluation of evidence.

(f) **Transcript of hearing.** Upon written request reasonably made by any person affected by the hearing, and at such person's expense, a full stenographic record of the proceedings may be made by a certified court reporter. When such transcription shall be made a part of the record of the Board, any other person having a direct interest therein, shall be furnished with a copy of such stenographic record at his expense.

(g) **Content of the record.** The record in any hearing, shall include the following information:

- (1) All pleadings, motions, and intermediate rulings;
- (2) All evidence received or considered, including a statement of matters officially noted;
- (3) Questions or offers of proof, objections and rulings thereon;
- (4) Proposed findings and exceptions;
- (5) The decision, opinion, report, or order of the Board.

560:1-1-8. Findings of fact

All findings of fact, shall be based exclusively on the evidence presented and on matters officially noticed. A final order adverse to a party in an individual proceeding shall be in writing or stated in the record. A final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, upon request, a party submits proposed findings of fact, the order shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any order. Upon request, a copy of the order shall be delivered or mailed forthwith to each party and to his attorney of record.

560:1-1-9. Rehearings

(a) At the discretion of the Board, a rehearing may be granted to any party if a written request is made therefore within ten (10) days after any order is mailed or delivered to the person entitled to receive same. In the request for rehearing, the

party shall set forth one (1) or more of the following grounds:

- (1) Newly discovered or newly available evidence relevant to the issues;
- (2) Need for additional evidence to adequately develop the facts essential for proper decision;
- (3) Probable error committed by the Board in the proceeding or in its decision, such as would be grounds for reversal on judicial review of the order;
- (4) Need for further consideration of the issues and the evidence in the public interest; or,
- (5) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter.

(b) Nothing in this section shall prevent the Board from rehearing, reopening, or reconsidering any matter in accordance with other statutory provisions applicable to the Board, or at any time, on the grounds of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

(c) On rehearing, the hearing shall be confined to those grounds upon which the rehearing was granted.

560:1-1-10. Appeals from orders of the board

Appeals shall be taken from orders of the Board pursuant to the provisions of Title 59 O.S. 1981 § 1471 as amended. Any order made pursuant to a hearing, shall be made within thirty (30) days after the termination of the hearing or any rehearing thereof. Such time may be extended by stipulation. The order shall contain a concise statement of the facts was found by the Board, a concise statement of its conclusions therefrom, and the effective date of the order.

560:1-1-11. Declaratory rulings

(a) Any interested person or entity may petition the Board of Polygraph Examiners for a declaratory order as to the applicability of any rule of the Board.

(b) The petition must identify the rule questioned, the date on which such rule became effective, and shall set forth the contents of the rule. The petition shall contain a brief statement of the issue or issues raised by the rule which cause such a request to be made and a statement of the petitioner's personal interest in the ruling of the Board and how a ruling of the Board would affect those interests.

(c) Upon receipt of the petition for declaratory ruling the Board shall consider the petition and within a reasonable time following receipt of thereof, either deny the petition in writing, stating its reasons for denial, or issue a declaratory ruling on the matter(s) contained in the petition.

560:1-1-12. Copying fees for dissemination of records

Pursuant to the Open Records Act, there will be a fee of \$.25 cents per copy/per page for any dissemination of records.

560:1-1-13. Separability

If any provision of the rules of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Rules and Regulations and the application of such provisions to other persons or

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circumstances shall not be affected thereby.

560:1-1-14. Severability

The provisions of the rules of this chapter are severable and if any part or provision hereof shall be held void, the decision of the court so holding, shall not affect or impair any of the remaining parts or provisions.

CHAPTER 10. LICENSURE AND REGULATION OF POLYGRAPH EXAMINERS

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560:10-1-12.	Polygraph Bill of Rights
560:10-1-13.	Notice to persons taking polygraph examinations
560:10-1-13.1	Complaint Procedures
560:10-1-14.	Separability
560:10-1-15.	Severability

[**Authority:** 59 O.S. Supp. 1985 §§ 1457, 1458, 1459 repealed, 1466, 1467, 1468, et seq., Polygraph Protection Act 102 Stat. 646, Public Law 100-347, 100th Congress]

[**Source:** Codified 01-10-92]

560:10-1-1. Purpose

- (a) The purpose of this chapter is to set forth the procedures governing polygraph examinations.
- (b) This chapter outlines the procedures for obtaining and maintaining licenses for administering polygraph examinations.
- (c) This chapter also informs licensees of the procedures governing complaints.

560:10-1-2. Intern programs

- (a) Before a trainee may begin an intern program, he must be licensed as an intern examiner in the State of Oklahoma. This requires:
 - (1) Filing with the Board, the name of his proposed internship sponsor. Sponsor shall not be employer of Intern except when approved by the Board.
 - (2) Filing with the Board, a written statement from his sponsor agreeing to undertake the responsibilities for such training and agreeing to abide by regulations adopted by the Board; and
 - (3) Obtaining the Board's permission to begin the intern program under the control of a Board approved sponsor, while appearing personally before the Board with all required material.
- (b) During the intern program, the sponsor must be available for instruction and consultation with the intern examiner. The sponsor will review and critique the

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polygraph charts of all examinations conducted by the intern on at least a monthly basis, and must place the date of the review and his initials at the end of each chart.

(c) The sponsor will make reports to the Board no later than ten (10) business days prior to each regularly scheduled Board meeting, on forms provided by the Board, concerning the intern's progress.

(d) The Board may request and require inspection and review of the internship program of any intern at any time and in a manner prescribed by the Board.

(e) If at any time, a conflict arises between an intern and sponsor during an internship program, either the intern or the sponsor shall have the right to appeal in writing to the Board for mediation of the conflict. The Board, at its discretion, may call upon any resident licensed examiner, who is qualified to be a trainee sponsor, to assist in any hearings, reviews, or critiques in order to resolve the conflict and reach a satisfactory solution.

(f) It shall be the duty of both the trainee and the sponsor to report any infraction or violation of the Rules and Regulations to the Board for appropriate action.

(g) To be eligible to serve as a sponsor, a polygraph examiner must have held an original Oklahoma Polygraph Examiners license continually for at least two (2) years and be currently licensed.

(h) No licensed examiner shall have more than two (2) interns under his sponsorship at any time.

(i) The Board may require an intern applicant and sponsor to personally appear before the Board at the time the intern license application is to be considered, or at any subsequent time the Board may direct. Records to support the trainee's application or intern program must be produced upon request by the Board. Failure to appear or produce the required records may cause the application to be tabled until the next regularly scheduled Board meeting. In the case of an already licensed intern and his sponsor, failure to appear or produce records may lead to the suspension or revocation of the license of the intern and/or his sponsor.

(j) Trainees shall be required to conduct at least thirty-five (35) specific examinations during the intern program.

(k) At the discretion of the Board, an applicant for an intern license may be asked to take a polygraph examination concerning any questioned information on his application. The applicant may refuse to take the examination, but granting of an intern license will be delayed or refused until the questioned information can be verified.

(l) Intern examiners shall be bound by all provisions of the Act and by all Rules and Regulations established by the Board for fully licensed examiners.

(m) The applicant will be required, at each regularly scheduled Board meeting, to present all charts, question lists, logbook, determinations, and opinions of examinations conducted during the internship period. The applicant may be required to explain the polygraph chart recordings and his opinions.

560:10-1-3. Intern examinations

(a) Prior to the issuance of an Intern License, the applicant will be required to take and pass all sections of the written and oral examinations, as prescribed by the Board. All applicants will be notified of the results of the examination no later than fifteen (15) days after the examination. An applicant need only pass each component

of the examination one (1) time and will be required to retake only the component or components failed.

(b) If an applicant fails to pass one or more sections of the examination, the Board may conduct a second examination within sixty (60) days, upon receipt of proper fees and an affidavit from the applicant's sponsor that he has given the additional training necessary to assure the trainee can pass the portions of the examination he failed.

(c) If the applicant fails to pass the examination for the third time, he must wait for a period of one (1) year before again applying for such license, and show proof of Board approved retraining.

(d) The examination shall consist of a written test and an oral interview. A score of seventy (70) percent correct answers shall be considered passing on the written examination.

(e) Examinations will be given at a time and place designated by the Board. In addition to the written examination, the Board may require each license applicant to demonstrate his competence and proficiency by conducting a polygraph examination under the supervision of a qualified observer(s) appointed by the Board.

560:10-1-4. Conducting polygraph examinations

(a) The examiner shall not conduct an examination when he has reason to believe the examination is intended to circumvent or defy the law.

(b) The examiner shall not knowingly issue, or permit an employee to issue, a polygraph examination report which is misleading, biased, or falsified in any way. Each report shall be factual, impartial, and an objective account of the pertinent information developed during the examination. The examiner's professional opinion shall be based solely upon an analysis of the polygraph charts.

(c) Based on chart analysis, the examiner shall not render a conclusive verbal or written opinion as to the deception of the examinee without having administered two (2) or more polygraph charts covering the same relevant issue, unless after the examinee has submitted to one (1) test he refuses to submit to additional tests. The fact of the examinee's refusal shall be noted in the verbal and/or written report of the examination. This shall not preclude the examiner from terminating an examination in progress at his own discretion when, in his opinion, the examinee has become physically or psychologically unfit or has become uncooperative to the point that it would be useless to continue the examination. If admissions or confessions relevant to the issue under examination occur prior to the completion of the examination, the examination may be construed as completed, and the admissions or confessions may be reported as being self-evident.

(d) The examiner shall not, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal, or psychiatric opinion which would infringe upon areas under the cognizance of professionals in those fields. This shall not preclude the examiner from describing the appearance or behavior of the examinee, if this is pertinent to the examination, as long as the examiner refrains from offering any diagnosis which he is professionally unqualified to make.

(e) The examiner shall not offer testimony concerning the charts or opinions presented by another examiner, unless he is thoroughly familiar with the techniques

and procedures used by the other examiner. This shall not prohibit an examiner from testifying concerning his independent examination of the same examinee.

(f) All instruments used in an examination must meet manufacturer's specifications.

(g) The examiner shall not inflate the cardiosphygmograph section during the exam, while on a subject, higher than 100 mm of mercury; nor, shall the cuff be inflated for a period of time that would cause the subject significant discomfort.

(h) A polygraph examiner shall not perform more than eight (8) polygraph examinations in any one calendar day, at not less than one hour intervals.

(i) The examiner shall allow a minimum of fifteen (15) seconds after a question, before the start of the next question.

(j) A list of each question as asked during the examination, shall be made a part of the subject's permanent file. All polygraph charts shall be marked at the appropriate place indicating the question number, the beginning and end of each question, the point of answer, and the answer given.

(k) All physical movement of a subject noted by the examiner, such as coughing, clearing the throat, yawning, etc., and any manual movement of a component by the examiner, shall be noted and identified at the appropriate place on the polygraph chart.

(l) All polygraph charts are to be numbered and shall contain appropriate identification, including but not limited to, full name of the examinee, identification of the examiner, the date of the examination, beginning and ending cuff pressure on each chart, the beginning sensitivity on all components and any changes thereto, and exact time noted at the end of each chart.

(m) The examiner shall not conduct an examination on any person whom he believes, through observation or any other credible evidence, to be physically or psychologically unfit for such an examination at that time.

(n) No Board member shall be individually or personally liable for any action of the Board.

560:10-1-5. Display of license

A license or duplicate license must be prominently displayed at the place of business of the polygraph examiner or at the place of internship. When working away from the office, the polygraph examiner will carry his pocket polygraph examiners license and display upon request.

560:10-1-6. Change of business address

Notice in writing shall be given to the Council by the examiner of any change in business or home address or telephone number from that in the most recent application to the Council. This shall be accomplished within thirty (30) days of the time the change occurs. A change of business location without such notification to the Council shall automatically suspend the license theretofore issued.

560:10-1-7. Retention of records

(a) Examiners.

(l) The examiner shall maintain on file for at least two (2) years all physical and/or electronic records, including audio and video tapes, papers, discs, polygraph charts, consent to examination forms, notes, question lists and

- reports of polygraph examinations conducted.
 - (2) An examiner who leaves the employment of another examiner, agency, firm, or company shall be allowed access, after showing reasonable cause, to the files of examinations conducted by him during the two (2) year period prior to the date of his request. However, without the approval of the employing examiner, agency, firm, or company, the examiner may not remove any of the material contained in the file or make notes of any of the information contained therein.
 - (3) The Board may, at any time, inspect all physical and/or electronic records connected with an examination.
- (b) Record of examinations for interns. Each intern shall keep a chronological record in a bound book of all polygraph examinations conducted. Notations will be made in ink and loose leaf records will not be accepted.
- (1) This record will include:
 - (A) Full name of person being tested.
 - (B) Type of test being administered.
 - (C) Date of examination; and
 - (D) Time examination actually started and ended.
 - (2) This information shall be available to the Board upon request.

560:10-1-8. Continuing education of polygraph examiners

Each intern or examiner licensed by the State of Oklahoma, shall complete at least six (6) hours of continuing education each year and such training shall be sponsored by any recognized Polygraph Association, or an accredited polygraph school, or be approved by the Board.

560:10-1-9. Reciprocity

Applicants for a polygraph examiners license by reciprocity shall be required to pass a written test covering the Polygraph Examiners Act and Rules and Regulations promulgated by the Board. This test will be sent to each applicant along with a copy of the Act and the Rules and Regulations.

560:10-1-10. Refusal, suspension or revocation of license

The Board may refuse to issue or may suspend or revoke a license on any one (1) or more of the following grounds, or any other willful disregard or violation of the Act or any Rule or Regulation promulgated by the Board.

- (1) For failing to inform a subject to be examined as to the nature of the examination;
- (2) For failing to inform a subject to be examined that his participation in the examination is voluntary (when so required);
- (3) Material misstatement in the application for original license or in the application for renewal license;
- (4) Willfully making a false report concerning a polygraph examination;
- (5) If the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;
- (6) Making any willful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or

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- (7) indirectly obtaining business or trainees.
Having demonstrated unworthiness or incompetency to act as a polygraph examiner.
- (8) Allowing one's license to be used by any unlicensed person;
- (9) Willfully aiding or abetting another in the violation of the Act or any Rule or Regulation issued by the Board.
- (10) If the license holder has been adjudged a habitual drunkard or mentally incompetent as provided in the Probate Code;
- (11) Failing, within fifteen (15) business days, to provide information requested by the Secretary as a result of a formal complaint to the Board which would indicate a violation of the Act or any Rule or Regulation;
- (12) Failing to inform the subject of the results of the examination, if so requested;
- (13) Knowingly violating or encouraging the violation of any court order or injunction; or,
- (14) Impersonating a law enforcement officer or an employee of any State, the United States, or any political subdivision thereof.

560:10-1-11. Renewal and duration of examiners license

- (a) Each polygraph examiner's license shall be issued for the term of one (1) year or less, unless suspended or revoked, and shall cover a period from January 1st through December 31st of that calendar year. After December 31st, the Executive Secretary shall serve notice by registered or certified mail that such examiner's license is no longer valid, and that no polygraph examination can be conducted until payment of license fees has been accomplished and all other requirements have been met. Should the Board determine polygraph examinations have been conducted, they shall initiate proper prosecution of the examiner.
- (b) A polygraph examiner whose license has expired at any time within two (2) years, may obtain a renewal license without examination, at the discretion of the Board, by making a renewal application and satisfying the other requirements. However, any polygraph examiner whose license expired while on active duty with the armed forces of the United States, may have his license renewed without examination at the discretion of the Board.

560:10-1-12. Polygraph Bill of Rights

- (a) Taking a polygraph examination in the State of Oklahoma, is a voluntary act unless the examinee is an employee of a governmental body which has a policy or Rules and Regulations requiring mandatory polygraph examinations as a part of internal investigations.
- (b) The examinee has the right to know the nature of the examination.
- (c) The examinee may terminate the examination at any time.
- (d) The polygraph examiner may not ask any questions during the test that is not in writing and has not been reviewed, prior to the examination exactly as it will be asked.
- (e) The examiner shall not render a final opinion based on chart analysis, until the examinee has had a reasonable opportunity to explain any reactions to pertinent questions.

- (f) The examinee is entitled to a thorough explanation of what to expect during the examination prior to any test being conducted.
- (g) A minimum of two charts shall be required to render an opinion based on chart analysis.
- (h) The examiner may not ask any questions which may reasonably be construed as being sexually oriented, or concerning religious, racial, labor or political beliefs or affiliations of the person being tested, unless they refer to a matter pertinent to the examination.
- (i) The person being tested, has the right to know the results of the examination in a timely manner, if so requested.

560:10-1-13. Notice to persons taking polygraph examinations

- (a) Persons taking polygraph examinations in the State of Oklahoma, have specific legal rights and remedies if the polygraph examination has not been conducted pursuant to the Polygraph Examiners Act and the Rules and Regulations.
- (b) Each polygraph examiner shall provide each person about to take a polygraph examination, a copy of the Polygraph Bill of Rights (560:10-1-12) at the beginning of the interview. This must be on a written form and will be kept in the permanent file. It will contain:

- (1) All of the provisions of 560:10-1-12.
 - (2) The signature of the examinee stating that he has read and understands his rights.
 - (3) Date and time of the examination.
 - (4) A statement that if the examinee feels any of his rights have been violated, he may notify the Oklahoma Board of Polygraph Examiners.
 - (5) The address and telephone number of the Board.
- (c) Upon request, an examinee shall be given a copy of this form.

560:10-1-13.1 Complaint Procedure

- (a) **Purpose of order.** The purpose of this order is to establish Board procedures for initiation, receipt, and investigation of complaints related to matters under the authority of the Board of Polygraph Examiners.
- (b) **Receipt of complaints.** It shall be the policy of the Board to investigate all complaints or allegations of misconduct committed by person(s) under the Board's authority whether initiated by the Board or complainants.
- (c) **Requirement for complaint.** The investigation of a complaint concerning a licensed polygraph examiner, whether the complaint is made by the Board or by other complainants, may be initiated only when the complaint is in writing, signed, notarized, and filed with the Board.
 - (1) The notarized complaint form provided by the Board must contain a statement setting forth the allegations of fact and naming the licensee or licensees against whom the complaint is filed.
 - (2) The complaint provides the basis for the Chair of the Board to request an informal meeting with the licensee, whose participation is voluntary, and/or appointment of an investigator for the matter.
 - (3) The licensed polygraph examiner will be provided a copy of the complaint prior to any disciplinary action being taken.

(d) **Independently verified allegations – written complaint may not be required.** In all matters of complaints or inquiries, the Board shall require the complaint or inquiry to be in writing, signed, and notarized. However, alleged violations of the Polygraph Examiners Act which can be independently verified by the Board may not require a written complaint.

(e) **Selection of investigator.** The Board shall select a licensed polygraph examiner to investigate complaints against polygraph examiners.

- (1) The selection may be by appointment by the Chair or Vice Chair.
- (2) Complaints initiated will be assigned to an investigator who will cause a preliminary investigation to be initiated into the facts and circumstances surrounding such allegations.
- (3) A preliminary or final investigative report is due to the complaint Review Panel within thirty (30) calendar days of receiving the complaint.

(f) **Investigator's gathering of information.** The licensed polygraph examiner authorized to receive and investigate complaints shall gather all information necessary to adequately apprise a Review Panel.

- (1) The investigation may include interviews with the complainant, the licensee complained against, and others as appropriate.
- (2) The licensee will have the opportunity during the investigator's interview to show compliance with all lawful requirements.
- (3) Gathering information to assist the Board in its disposition of complaints is the only designated function of the investigator during the conduct of the investigation.
- (4) The investigator shall not offer an opinion to the complainant and/or to the licensee about the merit of the complaint or any other matter.

(g) **Presentation of Review Panel's summary and recommendation.** The Review Panel, comprised of the investigator, the Assistant Attorney General representing the Board, and the Board member appointed by the Chair or Vice Chair, is an advisory body whose function is to summarize the complaint and to make an informed recommendation regarding disposition of the complaint to the Board.

- (1) The Review Panel's summary, consisting of the alleged violation(s), and applicable laws, rules and/or ethical principles(s) and code(s) of conduct, and the recommendation will be presented at an open meeting of the Board.
- (2) The complainant and licensee complained against will be given prior notification by mail of the date, time, and place of such meeting.
- (3) During the Review Panel's presentation, no questions will be posed by or to the licensee or the complaining witness pertaining to the substance of the case.
- (4) Such questions may be submitted in writing to the Assistant Attorney General representing the Board following the Board meeting.

(h) **Dismissal of complaint by majority vote.** Upon considering the basis of the complaint, the circumstances of the alleged violation, the summary and recommendation of the Review Panel, or a combination of these, the Board may decide not to pursue further the allegations, and may dismiss the complaint by any approving vote of a majority of the members present in open meeting. Upon

dismissal, all related documents shall be filed and maintained in an unfounded complaint file.

(i) **Informal disposition of certain complaints.** In some situations including, but not limited to, cases where the inquiry or complaint does not allege conduct punishable by suspension or revocation of a license, the matter may be handled informally. However, no matter can be considered closed until so voted by a majority of the Board in open meeting.

(j) **Recusal of board member.** A Board member, who acts as a Review Panel member, shall be recused from all Board decisions relating to the complaint.

(k) **Investigator's expenses.** At the conclusion of the inquiry, the investigator may complete a Council expense reimbursement form for payment of investigative expenses.

(l) **Complaints received at the Board.** Complaints received in person should be completed on the complaint form.

(m) **Complaints received by mail or telephone.** Complaints received by mail or telephone shall be completed on the complaint form by the Board secretary.

(n) **Complaints received in the field.** If the complaint is received by a Board representative, the representative will complete the complaint form.

(o) **Assignment of complaints.** A copy of all complaints received shall be forwarded to the Chair or Vice Chair after being recorded on a complaint log, establishing a file and number. Recorded information shall include:

- (1) Name of the licensed polygraph examiner.
- (2) Name of the complainant.
- (3) Nature of the complaint.
- (4) Date complaint was received.
- (5) Name of the investigator and date assigned.
- (6) Case number.

(p) **Investigative reporting procedures.**

- (1) The investigator will receive a copy of all available information concerning the incident. The investigator will maintain all materials of the investigation until submitted to the Review Panel.
- (2) Each investigation shall be conducted in accordance with professionally recognized standards, and in accordance with the laws of the State of Oklahoma and the Constitution of the United States.
- (3) Each investigation should include:
 - (A) Interview with complainant.
 - (B) Interview with witnesses (if applicable).
 - (C) Interview with licensed examiner.
 - (D) Investigative findings.
 - (E) Judgment and sentence documents or other documents, photographs, and other evidence if needed to prove the case in a hearing.
 - (F) A report submitted to the Review Panel.
 - (G) Review and copy of the licensed polygraph examiner's examinee polygraph file.
 - (H) Review audio and visual recordings of examinee's polygraph examination.

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(l) All information may be forwarded to the District Attorney's office for the consideration of the filing of criminal charges.

(q) **Completed Investigations.** The investigator shall include the case number on all materials related to the investigation, and upon completion, submit all materials to the Review Panel. No reference to the complaint or any copies will be maintained by the investigator.

560:10-1-14. Separability

If any provision of the Rules of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Rules and Regulations and the application of such provisions to other persons or circumstances shall not be affected thereby.

560:10-1-15. Severability

The provisions of the rules of this chapter are severable and if any part or provision hereof shall be held void, the decision of the court so holding, shall not affect or impair any of the remaining parts or provisions.

Title 59. Professions and Occupations
Chapter 36 Polygraph Examiners Act

§1451 - Short Title

This act shall be known, and may be cited, as the Polygraph Examiners Act.

§1452 - Purpose

It is the purpose of this act to regulate all persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation (as lie detectors, polygraphs, deceptographs, and/or similar or related devices and instruments without regard to the nomenclature applied thereto) and this act shall be liberally construed to regulate all such persons and instruments. No person who purports to be able to detect deception or to verify truth of statements through instrumentation shall be held exempt from the provisions of this act because of the terminology which he may use to refer to himself, to his instrument, or to his services.

§1453 - Definitions

In the Polygraph Examiners Act, unless the context requires a different definition,

1. "Board" means the Polygraph Examiners Board,
2. "Secretary" means that member of the Polygraph Examiners Board selected by the Board to act as secretary,
3. "Internship" means the study of polygraph examination and of the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner in accordance with a course of study prescribed by the Board at the commencement of such internship,
4. "Person" means any natural person, firm, association, copartnership or corporation,
5. "Polygraph examiner" means any person who purports to be able to detect deception or verify truth of statements through instrumentation or the use of a mechanical device, and
6. "Council" means the Council on Law Enforcement Education and Training.

§1454 - Minimum Instrumentation Requirements

Any instrument used to test or question individuals for the purpose of detecting deception or verifying truth of statements shall record visually, permanently and simultaneously:

1. a subject's cardiovascular pattern,
2. a subject's respiratory pattern, and
3. galvanic skin response pattern.

Patterns of other physiological changes in addition to 1, 2 and 3 may also be recorded. The use of any instrument or device to detect deception or to verify truth of statements which does not meet these minimum instrumentation requirements is hereby prohibited and the operation or use of such equipment shall be subject to penalties and may be enjoined in the manner hereinafter provided.

§1455 - Polygraph Examiners Board

- A. There is hereby re-created, to continue until July 1, 2011, in accordance with the provisions of the Oklahoma Sunset Law, the Polygraph Examiners Board.
- B.
1. The persons serving on the Board on June 30, 1988, shall continue to serve the full terms for which they were originally appointed until their successors have been duly appointed and approved with the advice and consent of the Senate. All future Boards shall continue the staggered terms of office established for the Polygraph Examiners Board prior to July 1, 1988.
 2. Any actions taken by any state agency on behalf of the Polygraph Examiners Board or in an attempt to enforce the provisions of the Polygraph Examiners Act shall be subject to review by the Board. Any such acts may be rescinded or modified as deemed appropriate by the Board, provided that such action shall not affect any accrued right, or penalty incurred, or proceeding begun between July 1, 1988, and October 12, 1988.
 3. All funds collected after June 30, 1988, equipment, files, fixtures, furniture, and supplies of the Board which were transferred to the Department of Central Services or State Treasury pursuant to Section 3909 of Title 74 of the Oklahoma Statutes shall be returned to the care and custody of the Board.
 4. All orders, determinations, rules, regulations, permits, certificates, licenses, contracts, rates, and privileges which have been issued, made, granted, or allowed by the Board and are in effect on June 30, 1988, shall continue in effect according to their terms until further action is taken by the Board or as modified by law.
- C. The Board shall consist of five (5) members who shall be citizens of the United States and residents of the state for at least two (2) years prior to appointment, all of whom shall have been engaged for a period of two (2) consecutive years as polygraph examiners prior to appointment to the Board, and at the time of appointment active polygraph examiners. No two Board members may be employed by the same person or agency. No more than two members may be appointed from one congressional district. However, when congressional districts are redrawn, each member appointed prior to July 1 of the year in which such modification becomes effective shall complete the current term of office and appointments made after July 1 of the year in which such modification becomes effective shall be based on the redrawn districts. No appointments may be made after July 1 of the year in which such modification becomes effective if such appointment would result in more than two members serving from the same modified district. At least two members must be qualified examiners of a

governmental law enforcement agency and at least two members must be qualified polygraph examiners in the commercial field. The members shall be appointed by the Governor of the State of Oklahoma, with the advice and consent of the Senate, for terms of six (6) years. Any vacancy in an unexpired term shall be filled by appointment of the Governor, with the advice and consent of the Senate, for the unexpired term. Except as authorized by the Polygraph Examiners Act, members of the Board shall be paid no fee, expense reimbursement, wage or other compensation for their services.

- D. The vote of a majority of the Board members is sufficient for passage of any business or proposal which comes before the Board. The Board shall elect a chair, vice-chair, and secretary from among its members.

§1456 - Regulations and Orders - Disposition of Fees Collected - Expenses

- A. The Board shall issue regulations consistent with the provisions of this act for the administration and enforcement of this act and shall prescribe forms which shall be issued in connection therewith.
- B. An order or a certified copy thereof, over the Board seal and purporting to be signed by the Board members, shall be prima facie proof that the signatures are the genuine signatures of the Board members, and that the Board members are fully qualified to act.
- C. All fees collected under the provisions of this act shall be deposited in the State Treasury to the credit of the General Revenue Fund.
- D. The Council may reimburse in accordance with the State Travel Reimbursement Act, upon submission of proper claim, each Board member for any actual expense incurred while in the performance of his duties pursuant to the Polygraph Examiners Act.

§1457 - License Required

It shall be unlawful for any person, including a city, county or state employee, to administer polygraph or other examinations utilizing instrumentation for the purpose of detecting deception or verifying truth of statements or to attempt to hold himself out as a polygraph examiner or to refer to himself by any other title which would indicate or which is intended to indicate or calculated to mislead members of the public into believing that he is qualified to apply instrumentation to detect deception or to verify truth of statements without first securing a license as herein provided.

§1458 - Minimum Qualifications for Registration

- A. The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration as a polygraph examiner:
1. Attainment of at least twenty-one (21) years of age;
 2. Citizenship of the United States;
 3. Be a person of honesty, truthfulness, integrity, and moral fitness;
 4. Never have been convicted of a felony or a misdemeanor involving moral

5. a. turpitude; and
a. hold a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers, or, in lieu thereof, be a graduate of an accredited high school and have five (5) consecutive years of active investigative experience of a character satisfactory to the Board,
b. be a graduate of a polygraph examiners course approved by the Board and have satisfactorily completed not less than six (6) months of internship training, and
c. have passed an examination conducted by and to the satisfaction of the Board, or under its supervision, to determine his competency to obtain a license to practice as an examiner.

- B. Beginning July 1, 1996, employees of the Oklahoma State Bureau of Investigation (OSBI) who are employed on that date by the OSBI as polygraphers shall become licensed pursuant to the Polygraph Examiners Act without undergoing the testing and training requirements provided for in subparagraphs b and c of paragraph 5 of subsection A of this section. Any person who is employed as a polygrapher for the OSBI after July 1, 1996, shall be required to meet the testing and training requirements prior to licensure.

§1459 - Repealed by Laws 1980, c. 68, § 1, eff. April 10, 1980

§1460 - Applications

Applications for original licenses shall be made to the Council in writing under oath on forms prescribed by the Board and shall be accompanied by the required fee, which is not refundable. Any such applications shall require such information as in the judgment of the Board will enable it to pass on the qualifications of the applicant for a license.

§1461 - Nonresident Applicants - Consent to Suit

- A. Each nonresident applicant for an original license or a renewal license shall file with the Council an irrevocable consent that actions against said applicants may be filed in any appropriate court of any county or municipality of this state in which plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose and that process on any such action may be served on the applicant by leaving two copies thereof with the Council. Such consent shall stipulate and agree that such service or process shall be taken and held to be valid and binding for all purposes. The Council shall send forthwith one copy of the process to the applicant at the address shown on the records of the Council by registered or certified mail.
- B. Nonresident applicants must satisfy the requirements of Section 1458 of this title.

§1462 - Reciprocity

An applicant who is a polygraph examiner licensed under the laws of another state or territory of the United States may be issued a license without examination by the Board, in its discretion, upon payment of a fee of One Hundred Dollars (\$100.00) and the production of satisfactory proof that:

1. He is at least twenty-one (21) years of age;
2. He is a citizen of the United States;
3. He is of good moral character;
4. The requirements for the licensing of polygraph examiner in such particular state or territory of the United States were at the date of the applicant's licensing therein substantially equivalent to the requirements now in force in this state;
5. The applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state or territory for at least two (2) years prior to his application for license hereunder;
6. Such other state or territory grants similar reciprocity to license holders of this state; and
7. He has complied with Section 1461 of this title.

§1463 - Internship License

- A. Upon approval by the Board, the Council shall issue an internship license to a trainee provided he applies for such license and pays the required fee prior to the commencement of his internship. The application shall contain such information as may be required by the Board.
- B. An internship license shall be valid for the term of twelve (12) months from the date of issue. Such license may be extended or renewed for any term not to exceed six (6) months upon good cause shown to the Board.
- C. A trainee shall not be entitled to hold an internship license after the expiration of the original twelvemonth period and six-month extension, if such extension is granted by the Board, until twelve (12) months after the date of expiration of the last internship license held by the said trainee.

§1464 - Fees

- A. The fee to be paid by the applicant for an initial examination to determine if the applicant is qualified to receive a polygraph examiner's license is Fifty Dollars (\$50.00), which is not to be credited as payment against the license fee. The fee for subsequent examinations shall be the same as for the initial examination.
- B. The fee to be paid for an initial polygraph examiner's license is One Hundred Dollars (\$100.00).
- C. The fee to be paid for an internship license is One Hundred Dollars (\$100.00).
- D. The fee to be paid for the issuance of a duplicate polygraph examiner's license is Twenty Dollars (\$20.00).
- E. The fee to be paid for a polygraph examiner's renewal license is One Hundred Dollars (\$100.00).
- F. The fee to be paid for the extension or renewal of an internship license is Fifty Dollars (\$50.00).

G. The fee to be paid for a duplicate internship license is Twenty Dollars (\$20.00).

§1465 - Display of License - Signatures and Seal

A license or duplicate license must be prominently displayed at the place of business of the polygraph examiner or at the place of internship. Each license shall be signed by the Board members and shall be issued under the seal of the Board.

§1466 - Change of Business Location

Notice in writing shall be given to the Council by the licensed examiner of any change of principal business location within thirty (30) days of the time he changes location. A change of business location without notification to the Council shall automatically suspend the license theretofore issued.

§1467 - Term of License - Renewal - Expired Licenses

Each polygraph examiner's license shall be issued for the term of one (1) year and shall, unless suspended or revoked, be renewed annually as prescribed by the Board. A polygraph examiner whose license has expired may at any time within two (2) years after the expiration thereof obtain a renewal license without examination by making a renewal application therefor and satisfying Section 8, subsections 2, 3 and 4. However, any polygraph examiner whose license expired while he was in the federal service on active duty with the armed forces of the United States, or the national guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without examination if within two (2) years after termination of such service, training or education except under conditions other than honorable, he furnishes the Board with an affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated. Section 8, subsections 2, 3 and 4 of this act must also be satisfied.

§1468 - Suspension or Revocation of License

The Board may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

1. For failing to inform a subject to be examined as to the nature of the examination;
2. For failing to inform a subject to be examined that his participation in the examination is voluntary, unless the subject is an employee of a governmental body which has a policy or rules and regulations requiring mandatory polygraph examinations as a part of internal investigations;
3. Material misstatement in the application for original license or in the application for any renewal license under this act;
4. Willful disregard or violation of this act or any regulation or rule issued pursuant thereto, including, but not limited to, willfully making a false report concerning an examination for polygraph examination purposes;
5. If the holder of any license has been adjudged guilty of the commission of a felony or misdemeanor involving moral turpitude;
6. Making any willful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly

- obtaining business or trainees;
7. Having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this act;
8. Allowing one's license under this act to be used by any unlicensed person in violation of the provisions of this act;
9. Willfully aiding or abetting another in the violation of this act or any regulation or rule issued pursuant thereto;
10. If the license holder has been adjudged an habitual drunkard or mentally incompetent as provided in the Probate Code;
11. Failing, within a reasonable time, to provide information requested by the secretary as the result of a formal complaint to the Board which would indicate a violation of this act; or
12. Failing to inform the subject of the results of the examination if so requested.

§1469 - Violations on Part of Polygraph Examiner or Trainee - Effect on Employer

Any unlawful act or violation of any of the provisions of this act on the part of any polygraph examiner or trainee shall not be cause for revocation of the license of any other polygraph examiner for whom the offending examiner or trainee may have been employed, unless it shall appear to the satisfaction of the Board that the polygraph examiner-employer has willfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.

§1470 - Administrative Hearing

When there is a cause to refuse an application or to suspend or revoke the license of any polygraph examiner, the Council shall, not less than thirty (30) days before refusal, suspension or revocation action is taken, notify such person in writing, in person or by certified mail at the last address supplied to the Council by such person, of such impending refusal, suspension or revocation, the reasons therefor and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension or revocation action proposed to be taken by the Board. If, within twenty (20) days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the Board for this administrative hearing, the Board is authorized to suspend or revoke the polygraph examiner's license of such person without a hearing. Upon receipt by the Council of such written request of such person within the twenty-day period as set out above, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than ten (10) days after written notification thereof, accompanied by a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the Council by the applicant or licensee. The administrative hearing in such cases shall be before the Board.

§1471 - Appeal to District Court

Any person dissatisfied with the action of the Board in refusing his application or suspending or revoking his license, or any other action of the Board, may appeal the action of the Board by filing a petition within thirty (30) days thereafter in the district court of Oklahoma County, Oklahoma, and the court is vested with jurisdiction and it shall be the duty of the court to set the matter for hearing upon ten (10) days' written

notice to the Council and the attorney representing the Board. The court in which the petition of appeal is filed shall determine whether or not a cancellation or suspension of a license shall be abated until the hearing shall have been consummated with final judgment thereon or whether any other action of the Board should be suspended pending hearing, and enter its order accordingly, which shall be operative when served upon the Board, and the court shall provide the attorney representing the Board with a copy of the petition and order. The Board and Council shall be represented in such appeals by the Attorney General or any of his assistants. The Board shall initially determine all facts, but the court upon appeal may set aside the determination of the Board if the Board's determination:

1. is not based upon substantial evidence determinable upon the entire record;
2. is arbitrary or capricious;
3. is in violation of statutory requirements; or
4. was made without affording to licensee or applicant due process of law.

§1472 - Surrender of License - Restoration

Upon the revocation or suspension of any license, the licensee shall forthwith surrender the license or licenses to the Council; failure of a licensee to do so shall be a violation of this act and, upon conviction, shall be subject to the penalties hereinafter set forth. At any time after the suspension or revocation of any license, the Council shall restore it to the former licensee, upon the written recommendations of the Board.

§1473 - Injunction

If any person violates any provisions of this act, the Council shall, upon direction of a majority of the Board, or the Board in the name of the State of Oklahoma, through the Attorney General of the State of Oklahoma, apply in any district court of competent jurisdiction for an order enjoining such violation or for an order enforcing compliance with this act. Upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise that the person has violated this act, may issue a temporary injunction, without notice or bond, enjoining such continued violation and if it is established that the person has violated or is violating this act, the court, or any judge thereof, may enter a decree perpetually enjoining the violation or enforcing compliance with this act. In case of violation of any order or decree issued under the provisions of this section, the court, or any judge thereof, may try and punish the offender for contempt of court. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this act.

§1474 - Penalties

- A. Any person who violates any provision of this act or any person who falsely states or represents that he has been or is a polygraph examiner or trainee or that he is qualified to apply instrumentation to the detection of deception or verification of truth of statements shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment in the county jail for a term of not to exceed six (6) months, or both such fine and imprisonment.
- B. 1. In addition to the penalties authorized by this section, any person who has

- been determined by the Board to have violated any provision of the Polygraph Examiners Act or any rule, regulation, or order issued pursuant thereto may also be liable for a penalty assessed by the Board of not more than Five Thousand Dollars (\$5,000.00) for any related series of violations.
2. The amount of the penalty shall be assessed by the Board pursuant to the provisions of paragraph 1 of this subsection, after notice and hearing pursuant to Sections 310 through 326 of Title 75 of the Oklahoma Statutes. In determining the amount of the penalty, the Board shall include but not be limited to consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the effect on ability of the person to continue to do business, and any show of good faith in attempting to achieve compliance with state laws.
 3. Any person aggrieved by a final order or other final determination of the Board may petition for a judicial review for rehearing, reopening or reconsideration of the matter as provided for in Title 75 of the Oklahoma Statutes. If an appeal is not made by the person to whom such an order is directed within thirty (30) days after notice has been sent to the parties, the order of the Board shall become final and binding on all parties and shall be docketed with the district court in the county of the residence of the violator, or the district court in the county in which the violation occurred. The order shall be enforced in the same manner as an order of the district court.
- C. Except as otherwise expressly provided by law, any notice, order or other instrument issued by or pursuant to authority of the Board may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by certified mail, return receipt requested, directed to the person affected at his last-known post office address as shown by the files or records of the Council. Proof of service shall be made as in the case of service of a summons or by publication in a civil action or may be made by the affidavit of the person who did the mailing. Such proof of service shall be filed in the office of the Council. Every certificate or affidavit of service made and filed as provided for in this section shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.
- D. Any penalty assessed under the provisions of this section shall constitute a lien upon all the property of said violator within this state except the homestead of the violator. Before any such penalty becomes a lien upon such property as against third persons, a copy of the order of the Board assessing the penalty shall be filed in the office of the county clerk of the county wherein the property is located. The copy of the order shall be filed and may be enforced as provided by the provisions of Section 143.1 and Sections 171 through 178 of Title 42 of the Oklahoma Statutes.
- E. Any penalties collected by the Board pursuant to this section shall be deposited in the State Treasury to the credit of the Polygraph Examiners Fund.

§1475 - Administrative Procedures Act

This act is subject in all respects to the provisions of the Administrative Procedures Act as now existing or hereafter amended.

§1476 - Repealed by Laws 1989, c. 154, § 2, operative July 1, 1989