

Rulemaking Hearing Rules of the
Department of Commerce and Insurance
Division of Regulatory Boards
Tennessee State Private Investigation and Polygraph Commission

Substance of Proposed Rules

Chapter 1160-1
Administration and Enforcement

Amendments

Rule 1160-1-.02 Applications is amended by deleting the text of the rule in its entirety and substituting in its place the following language so that, as amended, the rule shall read as follows:

1160-1-.02 Applications.

- (1) An applicant for a polygraph examiner's license or an internship permit shall file an application with the Commission with the following:
 - (a) A non-refundable application fee to obtain a polygraph examiner's license or an internship permit required by rule 1160-1-.08;
 - (b) A 2" x 3" or 3" x 3" photograph of the applicant; and
 - (c) A full set of fingerprints made at a law enforcement agency by an agent or officer of such agency. The fingerprint card shall be entirely completed in the presence of such agent or officer.
- (2) The Commission shall only consider those applications that are complete. A completed application is one in which all of the application questions are answered and the application is accompanied by the items in paragraph (1) above. An applicant shall file a complete application with the Commission within ninety (90) days of the initial application date or the Commission shall return the incomplete application to the applicant.

Authority: Tenn. Code Ann. §§62-27-105(a)(1), 62-27-108, 62-27-111(a)(2) and 62-27-112(a).

Rule 1160-1-.03 Examinations is amended by deleting the text of the rule in its entirety and substituting in its place the following language so that, as amended, the rule shall read as follows:

1160-1-.03 Examinations.

- (1) A polygraph examiner license applicant may take the licensing examination only after the applicant has fulfilled the requirements in Tenn. Code Ann. §62-27-107(a)(1) through (6) and submitted an application with the Commission.
- (2) A polygraph examiner intern may take the examination for a polygraph examiner's license during his or her internship period.
- (3) Polygraph examiner and intern applicants shall schedule their respective examinations a minimum of ten (10) days prior to any scheduled or requested examination date.
- (4) A polygraph examiner or intern applicant shall pay the examination fee prior to sitting for the examination.

Authority: Tenn. Code Ann. §§62-27-105(a)(1), 62-27-107(a)(7), 62-27-111(d), 62-27-112(a).

Rule 1160-1-.04 Intern Sponsors is amended by deleting the text of the rule in its entirety and substituting in its place the following language so that, as amended, the rule shall read as follows:

1160-1-.04 Intern Sponsors.

The intern sponsor shall have the intern conduct at least fifty (50) polygraph examinations during the twelve (12) month internship period.

Authority: Tenn. Code Ann. §§62-27-105(a)(1) and 62-27-111(b) and (f).

Rule 1160-1-.05 Course of Study for Internship is amended by deleting paragraph (6) in its entirety and substituting in its place the following language so that, as amended, the paragraph shall read as follows:

- (6) During the remaining ten (10) months of an intern's internship period, the sponsor, at least one (1) time per week, will be physically present to observe the intern administer polygraph examinations and the sponsor will be available to assist the intern with any problems encountered relating to polygraph matters.

Authority: Tenn. Code Ann. §§62-27-105 and 62-27-111.

Rule 1160-1-.06 Professional Standards is amended by deleting the text of the rule in its entirety and substituting in its place the following language so that, as amended, the rule shall read as follows:

1160-1-.06 Professional Standards.

- (1) Before beginning an examination, the polygraph examiner shall:
 - (a) give the examinee a reasonable explanation of the polygraph technique;
 - (b) notify the examinee of the nature of the examination;
 - (c) notify the examinee of his right to consult an attorney;
 - (d) if the examination is an employment examination, present to the examinee the following form:

Employment Examination

This examination will not cover any of the following areas, unless the examination is administered as a result of an investigation of illegal activity in such area, and the inability to pose relevant questions in relation to such illegal activity would be detrimental to such investigation:

- (i) religious beliefs or affiliations;
- (ii) beliefs or opinions regarding racial matters;
- (iii) political beliefs or affiliations;
- (iv) beliefs, affiliations or lawful activities regarding unions or labor organizations;
- (v) sexual preferences or activities;
- (vi) any disability covered by the Americans with Disabilities Act; or
- (vii) actions or activities more than five (5) years preceding the date of the examination, except for felony convictions and violations of the Tennessee Drug Control Act, codified in title 39, chapter 17, part 4.

The questions that will be asked on this examination are:

(List of Questions)

I certify that I have read this form, and that the polygraph examiner whose signature appears below has reviewed the questions listed above with me prior to the examination.

(Signature of Examinee)

(Signature of Examiner)

(Date)

(e) require the examinee to sign and receive the following form(s):

Consent to Polygraph Examination

- (A) I understand that I am voluntarily consenting to take this polygraph examination; that I have the right to refuse to take the polygraph examination; that I have the right to refuse to answer any questions; and that I may terminate the examination at any time.
- (B) I understand that upon written request to the examiner within thirty (30) days of the examination, accompanied by payment of a fee of \$_____ (not to exceed forty (\$40.00) dollars), I shall be provided with a written copy of any opinions or conclusions rendered as a result of the examination within thirty (30) days of receiving the written request.
- (C) I understand that I or my attorney have/has the right to make an audio or video recording of the examination and pretest interview.
- (D) I understand that the State of Tennessee Private Investigation and Polygraph Commission is located at 500 James Robertson Parkway, Davy Crockett Tower, 2nd Floor in Nashville, Tennessee 37243; (615) 741-4827.
- (E) I understand that this polygraph examination will be conducted by _____, located at _____,
(name of examiner) (address of examiner)
Tennessee polygraph examiner license number or Tennessee polygraph
examiner intern permit number _____.

I certify that I have read and understand the above and that I have received a copy of this document.

Date

Signature of Examinee

- (2) A polygraph examiner shall disclose to the examinee prior to the commencement of the examination that he or she is a law enforcement official or other officer of the court, and that should the examinee choose to proceed with the examination, that any illegal activity disclosed during such examination may be used against the examinee in a court of law.
- (3) A polygraph examiner shall maintain verification of compliance with paragraph (1) of this rule in the examiner's records.
- (4) A polygraph examiner shall not conduct a polygraph examination if he or she believes through observation or other credible evidence, that the examinee is physically or psychologically unfit for such examination.
- (5) A polygraph examiner shall appropriately mark all of the questions and answers on the polygraph chart during a polygraph examination. If a numbered question sheet is used, the number of the question and the answer shall be noted on the chart at the point asked,

and the question sheet shall either be attached to the chart or entered in the examinee's file.

- (6) A polygraph examiner shall ensure that there is an interval of at least ten (10) seconds between the completion of the examinee's answer to a question and the beginning of the next question.
- (7) The polygraph examiner shall not render a verbal or written opinion, based on chart analysis, until the examinee:
 - (a) has been asked the same pertinent and relevant question(s) on at least two (2) separate charts; and
 - (b) has been afforded a reasonable opportunity to explain any deceptive reactions which are evident on the charts unless the examinee is represented by legal counsel and such counsel requests the results be given to counsel rather than the examinee.
- (8) The polygraph examiner shall request the examinee to sign his name to the last polygraph chart conducted.
- (9) The polygraph examiner shall ensure that the inquiry, investigation, and interview in a pre-employment or employment verification examination shall be restricted to questions relevant to the examinee's suitability for the position of employment.

Authority: Tenn. Code Ann. §§62-27-105(a)(1), 62-27-123 and 62-27-125.

Rule 1160-1-.08 Fees for Licenses is amended by adding the following language as new paragraph (1) and renumbering the subsequent paragraphs accordingly:

- (1) An applicant for a polygraph examiner's license or an internship permit shall pay a nonrefundable application fee of fifty dollars (\$50.00) to accompany the application submitted to the Commission.

Tenn. Code Ann. §§62-27-105(a)(1) and 62-27-112(a).

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 14th day of December, 2006 and will become effective on the 27 day of February, 2007.