PERMANENT ADMINISTRATIVE ORDER

DPSST 17-2017
CHAPTER 259
DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

FILING CAPTION: Rule division reorganization; Amends internship process and requirements, PLAC duties, review of convictions and conduct.

EFFECTIVE DATE: 10/20/2017
AGENCY APPROVED DATE: 09/22/2017

CONTACT: Jennifer Howald
503-378-2432
jennifer.howald@state.or.us
4190 Aumsville Hwy SE
Salem, OR 97317

Filed By:
Jennifer Howald
Rules Coordinator

RULES:

REPEAL: 259-020-0000

RULE TITLE: Objectives

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is repealed because it was determined to be duplicative of ORS language and not required to be included as a rule. This action is taken as a part of the Department’s revision of OAR chapter 259 division 20.

RULE TEXT:
The objectives of the Board’s polygraph licensing rules are: To regulate all persons who purport to be able to detect deception or to verify the truth of statements through the use of instrumentation or mechanical devices, including but not limited to lie detectors, polygraphs, and deceptographs.

(1) By establishing minimum standards for applicants for polygraph examiner’s licenses.

(2) By establishing minimum qualifications for licensed polygraph examiners, including appropriate examinations to measure competency of applicants, and reexamination of the licensee should the Department deem a reexamination to be necessary.

(3) By enforcement of all provisions of the Polygraph Examiners Act.

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230
(1) "Board" means the Board on Public Safety Standards and Training.
(2) "Completed Examination" means an examination in which charts are recorded.
(3) "Department" means the Department of Public Safety Standards and Training.
(4) "Director" means the director of the Department.
(5) "Internship" means the study by a trainee of polygraph examinations and of the administration of polygraph examinations under the personal supervision and control of a polygraph examiner in accordance with the course of study prescribed by the Board at the commencement of such study.
(6) "Person" means any individual, firm, association, partnership, or corporation.
(7) "Polygraph Examiner" means a person who purports to be able to detect deception or verify the truth of statements through the use of instrumentation or of a mechanical device that records visually, permanently and simultaneously the cardiovascular pattern, the respiratory pattern and the galvanic skin response of the individual being examined.
(8) "The Act" means the Polygraph Examiners Act (ORS 703.010 to 703.310).
(9) "Trainee" means a person licensed under the Act to engage in an internship.
REPEAL: 259-020-0010

RULE TITLE: Minimum Standards for a Polygraph Examiner Trainee License

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is repealed. The standards contained in the rule have been updated and reorganized. New rules have been adopted to facilitate the reorganization. This action is taken as a part of the Department's revision of OAR chapter 259 division 20.

RULE TEXT:
(1) Any applicant for a license as a polygraph examiner trainee must:
(a)(A) Have graduated from a polygraph examiner's course approved by the Department; or
(B) Provide documentation of military experience or training that the Department determines is substantially equivalent to the education required by subsection (a)(A) above.
(b) Be at least 18 years of age;
(c) Be a citizen of the United States;
(d) Not have demonstrated a course of behavior in the preceding 10 years that would indicate the applicant is unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public. When the Department refuses to issue a license based upon an applicant's failure to meet this requirement, the Department must follow the procedures set forth in OAR 259-020-0030.
(e) For the purposes of this rule, an applicant demonstrates a course of behavior indicating they are unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public if the applicant:
(A) Has been convicted of a Person Felony as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on February 4, 2014 or any crime with similar elements in any other jurisdiction;
(B) Has been convicted of a Person Class A Misdemeanor as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on February 4, 2014 or any crime with similar elements in any other jurisdiction;
(C) Demonstrates a lack of respect for the laws of this state and nation by engaging in a pattern of behavior which leads to 3 or more arrests; or
(D) Engages in conduct involving untruthfulness.
(f) Provide any information required by the Department relating to the circumstances of a conviction, if the applicant has previously been convicted of a criminal offense. ORS 670.280 is applicable when the Department considers information provided under this paragraph.
(g) Be fingerprinted and submit one completed fingerprint card to the Department for submission to the Oregon State Police, Identification Services Section.
(A) Appropriate fees must accompany the applicant's fingerprints to pay the costs of the state and federal fingerprint background checks.
(B) Currently employed corrections officers, parole and probation officers, or police officers as defined in ORS 181.610, whose fingerprints are on file in accordance with OAR 259-008-0010, are exempt from this fingerprinting requirement.
(h) Submit a completed Application for Polygraph Examiner's License (DPSST Form F-203) as prescribed by OAR 259-020-0060, accompanied by documentation of qualifications as required by the Department.
(i) Submit appropriate fees to the Department as prescribed by OAR 259-020-0035.
(2) The internship requirements of any person who is licensed as a trainee under this rule include:
(a) Periodic consultation with licensed general polygraph examiners of the trainee's own choice;
(b) A total review of 20 examinations from the first 200 examinations conducted must be reviewed by a licensed general polygraph examiner. The following review format is mandatory:
(A) 1st series — 5 examinations reviewed of the first 20 conducted;
(B) 2nd series — 5 examinations reviewed of the next 30 conducted;
(C) 3rd series — 5 examinations reviewed of the next 50 conducted;
(D) 4th series — 5 examinations reviewed of the last 100 conducted.
(E) During each review series, the trainee must have a general polygraph examiner complete a Polygraph Review Critique (DPSST Form F-203a) on each set of examinations reviewed. The trainee must forward the original critiques to the Department. One copy of the form must be retained by the reviewer, and one copy must be retained by the trainee. These reviews must be completed and forwarded to the Department within 30 days of the completion date of each of the four (4) series of examinations shown above. The Department will not renew a trainee license unless the trainee has complied with the examination requirements in this subsection.

(F) At least two of the review series must be completed with a general polygraph examiner during personal interviews. However, if time and distance are a distinct problem, up to two of the review series may be completed by mail. These review procedures cannot be interpreted as detracting from the trainee examiner’s ability or expertise, but will be considered as legitimate, professional consultation.

(c) When participating in this prescribed course of study, trainees may administer specific issue examinations. If the trainee conducts a test which is to be offered as evidence in a court of law, the trainee must seek and utilize the assistance of a general polygraph examiner during the administration of the case and must have that general polygraph examiner available for continued consultation, including joint court appearances, if necessary. Each trainee should obtain legal advice concerning all questions relating to admissibility of polygraph examination evidence.

(d) Every trainee must maintain basic records of examinations conducted. A numerical log or ledger (beginning with #1) must provide a brief record of the name of the person examined, date, time, type of examination, and results, as well as other information the trainee examiner considers pertinent. Folder or envelope “case” files containing all available test information, including notes, questions, charts, reports, and correspondence, must be maintained for a minimum of five years unless State Archivist rules require longer maintenance.

(e) A person may not hold a license as a trainee for more than two years. An extension of the two-year period may be granted for good cause.

(A) If the applicant requests an extension of time to hold the trainee license beyond the initial two year limitation, the Department may grant an extension to the date of the next regularly scheduled Polygraph Licensing Advisory Committee meeting. The applicant will be scheduled to appear at the next committee meeting. The applicant must provide his or her request and justification for the extension, polygraph log, and the last ten polygraph reports and charts performed by the trainee. If just cause is presented, the Polygraph Licensing Advisory Committee may recommend an extension to the Department.

(B) The Polygraph Licensing Advisory Committee may recommend additional requirements that must be met during the extension period. Failure to complete any additional requirements imposed by the Department during an extension period may be grounds to deny any additional extension requests.

(f) Trainees must clearly indicate their trainee status on all letterhead, business cards, advertising, signage, and any other type of written material that describes a polygraph examination.

(3) A trainee must not conduct more than five completed examinations, of any type, in any one calendar day.

(4) A trainee must not perform any type of review or provide a professional opinion of any completed polygraph examination performed by another polygraph examiner or polygraph trainee.

[ED. NOTE: Forms referenced are available from the agency.]

STATUTORY/OTHER AUTHORITY: ORS 703.230
STATUTES/OTHER IMPLEMENTED: ORS 703.230
REPEAL: 259-020-0015
RULE TITLE: Minimum Standards for a Polygraph Examiner
NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is repealed. The standards contained in the rule have been updated and reorganized. New rules have been adopted to facilitate the reorganization. This action is taken as a part of the Department's revision of OAR chapter 259 division 20.

RULE TEXT:
(1) Any applicant for a license as a general polygraph examiner must:
(a) Be at least 18 years of age;
(b) Be a citizen of the United States;
(c) Not have demonstrated a course of behavior in the preceding 10 years that would indicate the applicant is unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public. When the Department refuses to issue a license based upon an applicant's failure to meet this requirement, the Department must follow the procedures set forth in OAR 259-020-0030;
(d) For the purposes of this rule, an applicant demonstrates a course of behavior indicating they are unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public if the applicant:
(A) Has been convicted of a Person Felony as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on February 4, 2014 or any crime with similar elements in any other jurisdiction;
(B) Has been convicted of a Person Class A Misdemeanor as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on February 4, 2014 or any crime with similar elements in any other jurisdiction;
(C) Demonstrates a lack of respect for the laws of this state and nation by engaging in a pattern of behavior which leads to 3 or more arrests; or
(D) Engages in conduct involving untruthfulness.
(e) If previously convicted for a criminal offense, provide information relating to the circumstances of the conviction as required by the Department. ORS 670.280 is applicable when the Department considers information provided under this paragraph;
(f) Be fingerprinted and submit one (1) completed fingerprint cards to the Department for subsequent submission to the Oregon State Police, Identification Services Section.
(A) Appropriate fees must accompany the applicant's fingerprints to pay costs of the state and federal fingerprint background checks. No general license will be issued until the Department has received fingerprint clearance from the Oregon State Police Identification Services Section.
(B) Currently employed corrections officers, parole and probation officers, or police officers, as defined in ORS 181.610, whose fingerprints are on file in accordance with OAR 259-008-0010, are exempt from this fingerprinting requirement.
(g)(A) Have received a baccalaureate degree from an accredited college or university; or
(B) Have graduated from high school or have been awarded a General Educational Development (GED) certificate; and have at least five years of active investigative experience before the date of the application.
(i) Active investigative experience is acquired through full-time employment as an investigator. An investigator is a person whose primary assigned duty is the investigation of actual or suspected violations of law, either criminal or civil.
(ii) Administering polygraph examinations will satisfy the investigative experience requirement of this section.
(iii) The Department may, upon application of an individual polygraph examiner, accept the examiner's professional experience as being equal in professional value to the five years of active investigative experience required by this section.
(h) Have graduated from a polygraph examiner's course approved by the Department and have completed at least 200 examinations, or have worked as a polygraph examiner for a period of at least five years for a governmental agency within the State of Oregon and have satisfactorily completed at least 200 examinations.
(i) An applicant may meet the requirements of subsection (f) and (g) of this section if the applicant provides the
Department with documentation of military training or experience that the Department determines is substantially
equivalent to the education or experience requirements.

(j) Have successfully completed an examination conducted by the Department in consultation with the Advisory
Committee as defined in OAR 259-020-0055, to determine competency to act as a polygraph examiner. The
Department, in consultation with the Advisory Committee, will prescribe the manner and contents of any examination
conducted by the Department under provisions of the Act.

(k) Submit a fully-completed Application for Polygraph Examiner's License (DPSST Form F-203) as prescribed by OAR
259-020-0060, accompanied by documentation of qualifications as required by the Department.

(l) Submit to the Department appropriate fees as prescribed by OAR 259-020-0035.

(2) Any person who has held a trainee license for longer than 12 months and who has completed the 200 exams required
under OAR 259-020-0015 must take the general license examination within 12 months of completing the required
exams.

(3) The Department in consultation with the advisory committee may prescribe requirements for:
(a) The internship of an applicant who fails to pass the first or second oral or written part of the examination described
in OAR 259-020-0015(1)(h);
(b) An applicant who resides in a state other than Oregon. The minimum requirements for an out-of-state examiner who
does not qualify under ORS 703.130 must include:
(A) Substantial compliance with the applicable requirements for in-state examiners;
(B) A log meeting Oregon guidelines;
(C) Passing the Oregon licensing examination;
(D) Submitting at least 20 of the last 100 polygraph examinations conducted to a licensed Oregon general polygraph
examiner for review. A Polygraph Review Critique (DPSST Form F-203a) must be completed on the examinations and
provided to the Department for review by the Polygraph Licensing Advisory Committee; and
(E) Demonstrating proficiency in the field of polygraphy by an oral interview with the Polygraph Licensing Advisory
Committee.

(c) Any individual whose license has expired for a period of more than two years and who reapplies for licensure. These
requirements may include, but are not limited to:
(A) Documentation indicating any necessary training requirements have been met; and
(B) Verification that the individual has the current knowledge, skills and ability to perform the duties of a polygraph
examiner.

(4) The Department will immediately suspend an applicant's trainee license if the applicant fails the third examination.
The applicant may submit a new application for a general license only after retaking and successfully completing a
polygraph examiner's course approved by the Department and meeting any additional requirements.

(5) The Director, acting on the written recommendation of the Polygraph Examiners Licensing Advisory Committee,
may require a licensed general polygraph examiner to appear for reexamination as directed.
(a) In preparing its written recommendation, the Committee must identify the good cause reasons for its
recommendation.
(b) Based on the written recommendation, the reexamination may include the written examination, the oral
examination, or both.
(c) Failure of the licensee to comply with the directive to appear for reexamination will result in the suspension of the
license by the Department, until the licensee appears as directed.

(6) Every examiner must maintain basic records of examinations conducted. A numerical log or ledger (beginning with
#1) will provide a brief record of the name of the person examined, date, time, type of examination, and results, as well
as other information the examiner considers pertinent. Folder or envelope "case" files containing all available test
information, including notes, questions, charts, reports, and correspondence, must be maintained for a minimum of five
years unless any applicable Oregon State Archives Records Retention Schedules require longer retention.

(7) An examiner must not conduct more than five (5) completed examinations, of any type, in any one calendar day.
[ED. NOTE: Forms referenced are available from the agency.]

STATUTORY/OTHER AUTHORITY: ORS 703.230
STATUTES/OTHER IMPLEMENTED: ORS 703.210, 703.230
REPEAL: 259-020-0020

RULE TITLE: Special Licenses

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is repealed. The standards contained in the rule have been updated and reorganized. New rules have been adopted to facilitate the reorganization. This action is taken as a part of the Department's revision of OAR chapter 259 division 20.

RULE TEXT:

(1) The Department may license a person who is not a resident of this state as a polygraph examiner in accordance with the Act. However, any person receiving such a license must include an irrevocable written consent with the application for a license or renewal permitting the Director to act as an agent for the service of all legal process in this state. In any action in a court of competent jurisdiction in this state, service of process may be made upon a polygraph examiner who does not reside in this state by mailing two copies of the process to the Director. The Director must retain one copy of the process in the records and immediately send, by certified or registered mail, the other copy to the polygraph examiner at the most current address as indicated by the records of the Department.

(2) The Department may grant a license as a polygraph examiner in this State to a person who is licensed as a polygraph examiner by another state or territory of the United States, without examination, upon application by such person in the manner prescribed by the Department and upon payment to the Department of a fee of $50, payable to the Department, if the Department finds that such person:
   (a) Is at least 18 years of age;
   (b) Is a citizen of the United States;
   (c) Has been fingerprinted and has submitted one (1) completed fingerprint card to the Department for subsequent submission to the Oregon State Police, Identification Services Section. Appropriate fees must accompany the applicant's fingerprints to pay costs of the state and federal fingerprint background checks. No General License shall be issued until the Department has received fingerprint clearance from the Oregon State Police Identification Services Section;
   (d) Was licensed pursuant to the requirements of such other state or territory that, at the date of the issuance of such license by such other state or territory, were substantially equivalent to the requirements of the Act for licensing and regulation of polygraph examiners in this state;
   (e) Is licensed by another state or territory that grants reciprocity to polygraph examiners licensed in this state; and
   (f) If a nonresident of this state has complied with the requirements of section (1) of this rule.

(3) The Director, acting on the written recommendation of the Polygraph Licensing Advisory Committee, may require a licensed general polygraph examiner, licensed under this section, to appear for reexamination as directed. Failure of the licensee to comply with the directive to appear for reexamination shall result in the suspension of the polygraph license by the Department.

(4) The Department may, upon application of an individual polygraph examiner, accept the examiner's professional experience as being equal in professional value to the five years of active investigative experience required by ORS 703.090(1)(e) and OAR 259-020-0015(1)(f).

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230
REPEAL: 259-020-0025
RULE TITLE: Expiration and Renewal of Licenses
NOTICE FILED DATE: 07/31/2017
RULE SUMMARY: This rule is repealed. The standards contained in the rule have been updated and reorganized. New rules have been adopted to facilitate the reorganization. This action is taken as a part of the Department's revision of OAR chapter 259 division 20.
RULE TEXT:
(1) Each polygraph examiner's license issued by the Department will be issued for a period of one year. The Department may renew the license of a polygraph examiner, unless such license has been suspended or revoked, upon compliance by the person with such conditions as the Department may prescribe.
(2) A person whose polygraph examiner's license has expired may obtain a renewal license without examination within two years after the date of the expiration of such license by;
(a) Submitting an application for renewal;
(b) Payment of the required fee; and
(c) Documentation that the required total number of training hours for the period of time of the expiration of the license has been met, as mandated in OAR 259-020-0025(4).
(3) In addition to the renewal requirements of section (2), a person whose polygraph examiner's license has expired for a period of more than two years may obtain a renewal license by:
(a) Verifying that the individual has the current knowledge, skills and abilities to perform the duties of a polygraph examiner or polygraph examiner trainee; and
(b) Meeting any additional requirements recommended by the Polygraph Licensing Advisory Committee and approved by the Department. Additional requirements may include, but are not limited to:
(A) Attending additional training;
(B) Submitting examinations to other licensed general polygraph examiners for review; and
(c) Successfully completing a written polygraph examination test.
(4) Every two (2) years from the date of issue, all persons licensed under the Act must successfully complete a minimum of thirty (30) hours of Department approved training specifically related to the field of polygraphy. Department approved training in this field includes but is not limited to seminars sponsored by regional and national polygraph associations.
(a) All persons licensed under this Act must document satisfactory completion of this training to the Department. Documentation must include but is not limited to a certificate or letter of completion.
(b) Failure to comply with this section will result in the Department's refusal to reissue a license. This requirement becomes effective 01-01-97.
(c) A license may be reissued upon written application and receipt by the Department of evidence that the conditions which caused the denial have been corrected to the satisfaction of the Department.
STATUTORY/OTHER AUTHORITY: ORS 703.230
STATUTES/OTHER IMPLEMENTED: ORS 703.230
REPEAL: 259-020-0030

RULE TITLE: Denial, Suspension, or Revocation of Licenses

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is repealed. The standards contained in the rule have been updated and reorganized. New rules have been adopted to facilitate the reorganization. This action is taken as a part of the Department's revision of OAR chapter 259 division 20.

RULE TEXT:

(1) It is the responsibility of the Department to set and uphold the standards to ensure the highest level of professionalism and discipline. These standards will be upheld at all times unless the Department determines that neither the safety of the public or respect of the profession is compromised.

(2) Definitions: For the purposes of this rule, the following definitions apply:

(a) “Denial” or “Deny” means the Department’s refusal to issue a general polygraph examiner or polygraph examiner trainee license to an applicant who fails to meet the minimum standards for licensure as identified in OAR 259-020-0010 and 259-020-0015.

(b) “Revocation” or “Revoke” means action taken by the Department to rescind the licensure of a polygraph examiner or trainee for behavior identified in section (3) of this rule.

(c) “Surrender” means the voluntary relinquishment of a general polygraph examiner or polygraph examiner trainee licensure to the Department.

(d) “Suspension” or “Suspend” means action taken by the Department temporarily depriving the license of a polygraph examiner trainee.

(e) “Withdraw” means action taken by the applicant, polygraph examiner or trainee to remove an application from consideration.

(3) The Department may deny or revoke the license of any applicant, general polygraph examiner or trainee after written notice and hearing, upon finding that the applicant, general polygraph examiner or trainee:

(a) Fails to appear for re-examination as directed by the Director, on the recommendation of the Polygraph Licensing Advisory Committee;

(b) Engages in any of the behaviors described in ORS 703.210.

(c) For the purposes of ORS 703.210(6), the following are indicators that an applicant, general polygraph examiner or trainee demonstrates the inability or incompetency to carry out the duties of a polygraph examiner:

(A) Misconduct. Misconduct includes conduct that violates the law, practices or standards generally followed in the polygraph profession;

(B) Criminal convictions;

(C) Conduct that is prejudicial to the administration of justice;

(D) Use of test questions relating to sexual, religious, or political matters, unless such matters relate to the issue under investigation;

(E) Deliberately using unclear, misleading, circuitous, or ambiguous language in describing or explaining the relevant issue of the examination, including, but not limited to, the results of the examination;

(F) Failing to maintain any or all written records of all polygraph examinations conducted, along with polygraph charts or polygrams in a manner consistent with State Archivist rules pertaining to reports of investigations conducted by Oregon State Police; or

(G) Failing to meet the minimum standards for a polygraph examiner or trainee as described in OAR 259-020-0010 and 259-020-0015.

(4) The Department will suspend the license of any trainee who fails to pass the oral or written portion of the examination required by OAR 259-020-0015 after three attempts. The applicant may not reapply for internship until after retaking and successfully completing a polygraph examiner’s course approved by the Department.

(5) Procedure for Denial or Revocation of Licensure: Denial and Revocation Procedure.
(a)(A) Citizen Request: When the Department receives information that a polygraph examiner or trainee may not meet established standards for Oregon polygraph examiners or trainees, the Polygraph Licensing Advisory Committee will review the request and supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(B) Department Initiated Review: Upon receipt of factual information from any source, the Department may request that a polygraph examiner’s or trainee’s license be denied, suspended or revoked.

(b) The Polygraph Licensing Advisory Committee will review and investigate any complaints and allegations, including the basis for the complaint and all supporting factual information, and make a recommendation to the Director on all allegations against the polygraph examiner or trainee.

(c) The Director will review the complaint and the Committee recommendation to determine whether to proceed with denial, suspension or revocation.

(d) If the issues of a citizen complaint do not meet the statutory and administrative rule requirements, the Department will notify the citizen.

(e) If the complaint and the Committee recommendation meets statutory and administrative rule requirements, but are not supported by adequate factual information, the Department may request further information from the complaining citizen or Polygraph Licensing Advisory Committee.

(f) The Department may choose to conduct its own investigation of the matter separate from, or in conjunction with, that of the Polygraph Licensing Advisory Committee.

(g) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, the Department will prepare a Contested Case Notice.

(h) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the person whose license is being affected.

(i) Response time:

(A) A party who has been served with a Contested Case Notice of Intent to Deny Licensure has 60 calendar days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing or a written notice withdrawing their application for consideration.

(B) A party who has been served with a Contested Case Notice of Intent to Revoke Licensure has 20 calendar days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing or written notice surrendering their license.

(C) A party who has been served with a Contested Case Notice of Intent to Suspend Licensure has 10 calendar days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing or written notice surrendering their license.

(j) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying, revoking or suspending licensure pursuant to OAR 137-003-0672.

(k) Stipulated Order Revoking Licensure: The Department may enter a stipulated order revoking the licensure of a general polygraph examiner or trainee upon the person’s voluntary agreement to terminate an administrative proceeding to revoke a license under the terms and conditions outlines in the stipulated order.

(l) Upon receipt of written notification of the suspension or revocation of a license by the Department, a polygraph examiner or trainee must immediately surrender the license to the Director.

6) Appeal Procedure. General polygraph examiners or trainees aggrieved by the findings and Order of the Department may file an appeal with the Court of Appeals from the Final Order of the Department, as provided in ORS 183.480.

7) The Department may restore a suspended licensure to the prior holder upon written application and receipt by the Department of evidence that the conditions which caused the suspension have been corrected to the satisfaction of the Department.

8) In denial or revocation cases, the Department and the Polygraph Licensing Advisory Committee will take into
consideration any aggravating or mitigating factors surrounding the incident.

(9) Notwithstanding subsection (10), any general polygraph examiner or trainee whose licensure is denied or revoked will be ineligible to hold any polygraph examiner licensure for a period of ten years from the date of the final order issued by the Department.

(10) Reconsideration Process. Any individual whose licensure has been denied or revoked for grounds other than a failure to meet the minimum standards for polygraph examiner or trainee as described in OAR 259-020-0010 and 259-020-0015 may apply for reconsideration after a minimum three-year ineligibility period from the date of the final order.

(a) All applicants for reconsideration are required to submit an application in accordance with OAR 259-020-0060. The applicant may provide any mitigating information for the consideration of the Department, Polygraph Licensing Advisory Committee, and Director.

(b) In reconsidering the application of an applicant whose licensure was previously denied or revoked, the Department and the Polygraph Licensing Advisory Committee may consider any mitigating and aggravating circumstances.

(c) If a polygraph examiner or trainee whose licensure has been denied or revoked has satisfied the minimum three-year ineligibility period and the Director, in collaboration with the Polygraph Licensing Advisory Committee, denies an application for reconsideration, the individual will remain ineligible to apply for licensure. The original ineligibility date remains in effect as described in subsection (8) of this rule and the Department will not consider any further requests for reconsideration.

(d) The Director's decision to deny an application for reconsideration will be subject to the contested case procedure described under subsection (5) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 703.230
STATUTES/OTHER IMPLEMENTED: ORS 703.230
RULE TITLE: License Fees

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is repealed. The standards contained in the rule have been updated and reorganized. New rules have been adopted to facilitate the reorganization. This action is taken as a part of the Department's revision of OAR chapter 259 division 20.

RULE TEXT:
The following fees shall be charged by the Department in carrying out provisions of the Act:
(1) The fee of $50 for the issuance of each original license as a general polygraph examiner.
(2) The fee of $50 for the annual renewal of a license as a general polygraph examiner.
(3) The fee of $50 for examination by the Department to determine the competency of an applicant as a polygraph examiner.
(4) The fee of $35 for the issuance of a trainee license.
(5) The fee of $35 for the annual extension or renewal of a trainee license.
(6) The fee of $5 for issuance by the Department of a duplicate polygraph examiner or trainee license upon satisfactory proof that the original license has been lost or stolen.
(7) All fees, moneys, or other revenues received or collected by the Department under the Act shall be deposited in the Police Standards and Training Account.

STATUTORY/OTHER AUTHORITY: ORS 181, 703

STATUTES/OTHER IMPLEMENTED: ORS 181, 703
REPEAL: 259-020-0040

RULE TITLE: License Display and Registry

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is repealed. The standards contained in the rule have been updated and reorganized. New rules have been adopted to facilitate the reorganization. This action is taken as a part of the Department's revision of OAR chapter 259 division 20.

RULE TEXT:
(1) A polygraph examiner shall display prominently the license at the place of business or employment, and a trainee shall display prominently the license at the place of internship.
(2) A polygraph examiner and trainees shall notify the Director in writing of any change in the principal place of business within 30 days after the date of such change. Upon discovery by the Director of failure by a licensee to comply with this section, the Director shall suspend immediately such license.

STATUTORY/OTHER AUTHORITY: ORS 181, 703

STATUTES/OTHER IMPLEMENTED: ORS 181, 703
RULE TEXT:
(1) All instruments or mechanical devices that are used to test or question individuals for the purpose of detecting deception or of verifying the truth of statements made by the individuals at least shall record visually, permanently, and simultaneously the cardio-vascular pattern, the respiratory pattern, and the galvanic skin response of each such individual. The patterns of other physiological changes of any such individual also may be recorded.
(2) No person may use any instrument or mechanical device to test or question individuals for the purpose of detecting deception or verifying the truth of statements made by the individuals that does not comply with the minimum requirements therefor under section (1) of this rule. The Department, in consultation with the Board, may, in the name of the State of Oregon, initiate and maintain appropriate judicial proceeding, in the manner provided by law for such proceedings, to enjoin the use of any instrumentation or mechanical device that does not comply with the minimum requirements specified in section (1) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 181, 703
STATUTES/OTHER IMPLEMENTED: ORS 181, 703
REPEAL: 259-020-0050
RULE TITLE: Penalties
NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is repealed because it was determined to be duplicative of ORS language and not required to be included as a rule. This action is taken as a part of the Department's revision of OAR chapter 259 division 20.

RULE TEXT:
Violation of any provision of the Act or of any rule adopted thereunder is a Class A Misdemeanor.

STATUTORY/OTHER AUTHORITY: ORS 181, 703
STATUTES/OTHER IMPLEMENTED: ORS 181, 703
REPEAL: 259-020-0055

RULE TITLE: Polygraph Licensing Advisory Committee

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is repealed. The standards contained in the rule have been updated and reorganized. New rules have been adopted to facilitate the reorganization. This action is taken as a part of the Department's revision of OAR chapter 259 division 20.

RULE TEXT:

(1) The Department may appoint a polygraph licensing advisory committee whose function is to assist and advise the Department concerning the administration of the Act. The advisory committee's duties may include, but are not limited to, providing advice and assistance to the Department regarding content and procedures for required examinations, evaluation, and selection of polygraph examiners courses to be approved by the Department; evaluation of applications received for polygraph examiners licenses; examination and approval of instruments; investigation of complaints which could lead to license denial, suspension, or revocation; and general enforcement of all provisions of the Act.

(2) The advisory committee will consist of a minimum of five members to be appointed by the Director, each appointment to be subject to ratification by the Board at its next regular meeting. Members of the committee will be initially appointed for a two-year term, with additional two-year term reappointments.

(3) The advisory committee will select one of its members to serve as chairperson, and one to serve as vice-chairperson.

(4) The advisory committee will hold regular meetings a minimum of three times per year; approximately once every four months. The advisory committee will also coordinate the scheduling of special meetings with the Director and submit written reports as requested by the Director.

(5) Membership of the advisory committee will consist of at least four persons qualified as general examiners; two currently employed law enforcement members and two members from the private sector. Additional members of the committee may be selected on the basis of special qualifications to be determined by the Director, subject to the provisions of section (2) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230
REPEAL: 259-020-0060
RULE TITLE: Applications
NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is repealed. The standards contained in the rule have been updated and reorganized. New rules have been adopted to facilitate the reorganization. This action is taken as a part of the Department's revision of OAR chapter 259 division 20.

RULE TEXT:
(1) Applications for polygraph examiner trainee licenses and general polygraph examiners licenses shall be submitted on an Application for Polygraph Examiners License (DPSST Form F-203).
(2) Applications for polygraph examiners licenses shall be accompanied by copies of certificates and such other documents as may be specified and required by the Board.
(3) Applications for polygraph licenses shall be accompanied by a check or money order payable to Department of Public Safety Standards and Training in the amount specified in OAR 259-020-0035.
(4) Original polygraph review critiques (DPSST Form F-203a) shall be submitted to the Department of Public Safety Standards and Training, according to the requirements outlined in OAR 259-020-0010(2).
[ED. NOTE: Forms referenced are available from the agency.]

STATUTORY/OTHER AUTHORITY: ORS 703.230
STATUTES/OTHER IMPLEMENTED: ORS 703.230
REPEAL: 259-020-0065
RULE TITLE: Licenses
NOTICE FILED DATE: 07/31/2017
RULE SUMMARY: This rule is repealed because it was determined to be duplicative of ORS language and not required to be included as a rule. This action is taken as a part of the Department’s revision of OAR chapter 259 division 20.
RULE TEXT:
Polygraph examiners trainee licenses and general polygraph examiners licenses will be issued on forms approved by the Department. Each license will:
(1) Clearly designate the type of license awarded;
(2) Display the licensee's name;
(3) List the expiration date for the licensee; and
(4) Bear the signature of the Director.
STATUTORY/OTHER AUTHORITY: ORS 703.230
STATUTES/OTHER IMPLEMENTED: ORS 703.230
ADOPT: 259-020-0100

RULE TITLE: Polygraph Examiner Responsibilities

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is adopted. This action is taken as a part of the Department's revision of OAR chapter 259 division 20. The responsibilities included in this rule represent actions or standards that polygraph examiners and trainees are required to follow. The majority of the rule content has been carried over from the repealed rules but has been reorganized in the process. Changes to the standards include updated requirements for maintaining examination records and reporting convictions.

This rule includes requirements for maintaining examination records. The previous requirements have been expanded to include documentation related to a trainee's internship requirements.

This rule includes the requirement to provide information related to convictions at the time of application. The requirement for notification of conviction has been expanded to include notification to DPSST if convicted of a criminal offense while licensed as a polygraph examiner.

RULE TEXT:
(1) A person may not administer polygraph examinations, advertise services, or assume any titles, words or abbreviations, including the title or designation of polygraph examiner or polygraph examiner trainee, that indicate the person is authorized to administer polygraph examinations unless that person holds a license issued under the Act and these rules.
(a) This requirement includes persons employed by a state agency or public body in this state.
(b) A person who purports to be able to detect deception or to verify the truth of statements is not exempt from the provisions of the Act and these rules because of the terminology used to describe the person, the instruments or mechanical devices of the person, or the nature of the services of the person.
(2) Polygraph examiners must display prominently their license at the place of business or employment, and a trainee must display prominently their license at the place of internship.
(3) Trainees must clearly indicate their trainee status on all letterhead, business cards, advertising, signage, and any other type of written material that describes a polygraph examination.
(4) Licensed polygraph examiners and trainees must notify the Department in writing of any change in the licensee's business name, address or contact information within 30 days after the date of such change. A licensee's failure to comply with this requirement makes their license subject to immediate suspension per ORS 703.140.
(5) Polygraph examiners and trainees must maintain polygraph examination records for a minimum of five years unless any applicable Oregon State Archives Records Retention Schedule requires longer retention.
(a) A licensee's examination records must include a numerical log.
(A) The numerical log must begin with the number 1, continue with consecutive numbering for each additional record, include the name of the person examined, date, time, type of examination and results, and reference the corresponding record identifier if additional examination records are maintained using a different identification method.
(B) If the polygraph examination is administered by a polygraph examiner trainee and the polygraph examination is observed or reviewed pursuant to OAR 259-020-0140 to satisfy an internship requirement, the numerical log must also include a record of the date of the observation or the review and the name and license number of the polygraph examiner trainee's mentor.
(b) A licensee's examination records may also include pre-examination records; examination questions for individuals interviewed; statements of consent; polygraph analysis reports; the examiner's original test questions; examination chart tracing reports; polygraph results charts; conclusions; interviewee statements; and background information.
(c) Licensees must provide copies of examination records when requested by the Department.

(6) Notification of Conviction.

(a) Applicants for licensure as a polygraph examiner or trainee must provide notification to the Department relating to the circumstances of a conviction if the applicant has previously been convicted of a criminal offense.

(b) Currently licensed polygraph examiners or trainees who are convicted of a crime must provide notification to the Department within five business days of the conviction.

(c) Notifications to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(7) Polygraph Equipment. Licensed polygraph examiners and trainees are required to use instruments or mechanical devices that satisfy the minimum requirements provided in ORS 703.310 to record visually, permanently and simultaneously the cardiovascular pattern, the respiratory pattern and the galvanic skin response of the individual.

(8) Licensed polygraph examiners and trainees must not conduct more than five completed examinations, of any type, in any one calendar day.

(9) A licensed polygraph examiner trainee is prohibited from performing any type of review or providing a professional opinion of any completed polygraph examination performed by another polygraph examiner or polygraph trainee.

(10) A violation of, or a failure to comply with, the requirements defined in this rule may result in the denial, suspension, or revocation of licensure as a polygraph examiner or trainee pursuant to OAR 259-020-0200.

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230, ORS 703.030, ORS 703.050, ORS 703.140, ORS 703.310
ADOPT: 259-020-0120

RULE TITLE: Minimum Standards for Licensure as a Polygraph Examiner

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is adopted. This action is taken as a part of the Department's revision of OAR chapter 259 division 20. The majority of the rule content has been carried over from the repealed rules but has been reorganized in the process. Additions to the rule include a definition for full-time as a minimum of 1,200 hours completed annually performing the investigation of actual or suspected violations of law, either criminal or civil; clarification on a grandfather clause that is included in ORS for polygraph examiners who were licensed prior to 1978; and a new definition of professional fitness, see below.

ORS 703.090 states that an applicant or licensee must “not have demonstrated, in the preceding 10 years, a course of behavior that indicates a high degree of probability that the applicant will be unlikely to perform the duties of a polygraph examiner in a manner that would serve the interests of the public.” In recognition that the Department must review the facts and circumstances pertaining to a conviction, the use and definition of “a course of behavior” has been amended in both the minimum standards for licensure as a general examiner and as a trainee to identify that in order to determine if an applicant may have demonstrated a course of behavior, the Department will conduct a criminal records check. Any information obtained as a result of the application for licensure, the criminal records check, any Department investigation or other reliable sources that may indicate the applicant is unlikely to perform the duties of a polygraph examiner in a manner that would serve the interests of the public will be reviewed in accordance with OAR 259-020-0200 (Denial, Suspension or Revocation).

RULE TEXT:

(1) Age. A person must be at least 18 years of age to be licensed as polygraph examiner.

(2) Citizenship. A person must be a citizen of the United States to be licensed as a polygraph examiner.

(3) Education. Applicants for licensure as a polygraph examiner must have one of the following:

(a) A baccalaureate degree from an accredited college or university; or

(b) A high school diploma or a General Educational Development (GED) certificate and have at least five years of active investigative experience before the date of the application.

(A) Active investigative experience is acquired through full-time employment as an investigator. An investigator is a person whose primary assigned duty is the investigation of actual or suspected violations of law, either criminal or civil. Full-time employment as an investigator is a minimum of 1,200 hours completed annually performing the investigation of actual or suspected violations of law, either criminal or civil.

(B) Administering polygraph examinations will satisfy the investigative experience requirement of this section.

(C) The Department may, upon receipt of an application for licensure as a polygraph examiner, accept the applicant’s professional experience as being equal in professional value toward the five years of active investigative experience required by this section.

(4) Training. Applicants for licensure as a polygraph examiner must have graduated from a polygraph examiner's course approved by the Department and have satisfactorily completed at least 200 polygraph examinations.

(5) In accordance with ORS 703.090, a person may be exempt from the training requirement in section (4) of this rule if the person worked as a polygraph examiner for a period of at least five years for a governmental agency within the State of Oregon and completed at least 200 polygraph examinations prior to 1978.

(6) An applicant may meet the education and training requirements of sections (3) and (4) of this rule if the applicant provides the Department with documentation of military training or experience that the Department determines is substantially equivalent to the education or experience requirements.

(7) Examination for Licensure. Applicants for licensure as a polygraph examiner must have achieved a passing score on an examination for licensure conducted by the Department.
(8) Professional Fitness. Applicants for licensure as a polygraph examiner must not have demonstrated a course of
behavior within the preceding 10 years which would indicate a high degree of probability that the applicant will be
unlikely to perform the duties of a polygraph examiner in a manner that would serve the interests of the public.
(a) In order to determine if an applicant may have demonstrated a course of behavior, the Department will conduct a
criminal records check.
(b) Any information obtained as a result of the application for licensure, the criminal records check, any Department
investigation or other reliable sources that may indicate the applicant is unlikely to perform the duties of a polygraph
examiner in a manner that would serve the interests of the public will be reviewed in accordance with OAR 259-020-0200.

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230, ORS 703.060, ORS 703.090, ORS 703.210, ORS 670.280
ORS 703.090 states that an applicant or licensee must “not have demonstrated, in the preceding 10 years, a course of behavior that indicates a high degree of probability that the applicant will be unlikely to perform the duties of a polygraph examiner in a manner that would serve the interests of the public.” In recognition that the Department must review the facts and circumstances pertaining to a conviction, the use and definition of “a course of behavior” has been amended in both the minimum standards for licensure as a general examiner and as a trainee to identify that in order to determine if an applicant may have demonstrated a course of behavior, the Department will conduct a criminal records check. Any information obtained as a result of the application for licensure, the criminal records check, any Department investigation or other reliable sources that may indicate the applicant is unlikely to perform the duties of a polygraph examiner in a manner that would serve the interests of the public will be reviewed in accordance with OAR 259-020-0200 (Denial, Suspension or Revocation).

RULE TEXT:
(1) Age. A person must be at least 18 years of age to be licensed as polygraph examiner trainee.
(2) Citizenship. A person must be a citizen of the United States to be licensed as a polygraph examiner trainee.
(3) Training. Applicants for licensure as a polygraph examiner trainee must:
(a) Have graduated from a polygraph examiner's course approved by the Department; or
(b) Provide documentation of military experience or training that the Department determines is substantially equivalent to the education required.
(4) Internship. Persons licensed as a polygraph examiner trainee must complete an internship. The Board prescribed internship requirements of any person who is licensed as a trainee are defined in OAR 259-020-0140.
(5) Professional Fitness. Applicants for licensure as a polygraph examiner trainee must not have demonstrated a course of behavior within the preceding 10 years which would indicate a high degree of probability that the applicant will be unlikely to perform the duties of a polygraph examiner in a manner that would serve the interests of the public.
(a) In order to determine if an applicant may have demonstrated a course of behavior, the Department will conduct a criminal records check.
(b) Any information obtained as a result of the application for licensure, the criminal records check, any Department investigation or other reliable sources that may indicate the applicant is unlikely to perform the duties of a polygraph examiner in a manner that would serve the interests of the public will be reviewed in accordance with OAR 259-020-0200.

STATUTORY/OTHER AUTHORITY: ORS 703.230
STATUTES/OTHER IMPLEMENTED: ORS 703.230, ORS 703.060, ORS 703.080, ORS 703.090, ORS 703.200, ORS 703.210, ORS 670.280
ADOPT: 259-020-0140

RULE TITLE: Polygraph Examiner Trainee Internship

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is adopted. This action is taken as a part of the Department's revision of OAR chapter 259 division 20. This rule was created to define the Board prescribed course of study for a person licensed as a trainee.

The requirements for an internship defined in this rule remove the critique; add observation of the administration of examinations; and maintain review of completed examinations. The review of a completed polygraph examination no longer requires completion and submission of a critique form and the requirement to complete a specific number of reviews within a specific series of examinations has been removed to allow for more flexibility when coordinating with a mentor. The proposed internship requirements still incorporate the completion of 15 reviews, but allow that those can be completed at any time within the trainee’s internship. The direct observation of polygraph examinations is a new component of the internship. While the periodic consultation with a polygraph examiner to conduct examination reviews existed within the prior rule, the use of the term “mentor” is a new addition to this rule. Those acting as mentors are required to be currently licensed and a trainee cannot be a mentor to another trainee. Trainees will be required to identify their mentor on their application for licensure or renewal for licensure. Trainees will also be required to provide information on the application for renewal that indicates that they are completing the internship review and observation requirements. Their signature on the application attests to the truth of the information provided. Should the applicant or license be determined to have falsified information on their application, their license would be subject to denial or revocation.

RULE TEXT:

(1) The purpose of this rule is to define the Board prescribed course of study for a person licensed as a polygraph examiner trainee.

(2) The Board prescribed internship observations and reviews are not meant to be interpreted as a measure of the polygraph examiner trainee's ability or expertise, but will be considered as legitimate, professional consultation.

(3) Persons licensed as polygraph examiner trainees must complete an internship program in its entirety, which includes the following:

(a) The selection of a polygraph examiner to act as a mentor to provide periodic professional consultation;
(b) The observation and review of polygraph examinations with a mentor as defined in section (5) of this rule;
(c) Achieving a passing score on the Department's examination for licensure in accordance with OAR 259-020-0150.

(4) Selection of an Internship Mentor.

(a) Mentors must be currently licensed polygraph examiners who are in good standing with the Department.
(b) In accordance with OAR 259-020-0100, licensed polygraph examiner trainees are not eligible to serve as mentors.
(c) A polygraph examiner trainee may select more than one mentor during their internship.
(d) Applicants for licensure as a polygraph examiner trainee or renewal of a polygraph examiner trainee license must provide their mentor’s name and license number when submitting an application for licensure or renewal.

(5) The internship observation and review requirements are:

(a) The trainee must complete a minimum of five observations of their mentor administering polygraph examinations;
(b) The mentor must complete a minimum of five observations of the trainee administering polygraph examinations; and
(c) The trainee must have their mentor complete a post-examination review for a minimum of 15 of the trainee’s completed polygraph examinations.
(d) A polygraph examiner trainee may request more observation or review opportunities with a mentor than the minimum requirements prescribed.

(6) Polygraph examiner trainees licensed prior to October 1, 2017 who have completed more than 100 polygraph examinations are exempt from the observation requirements of subsections (5) (a) and (b) of this rule.
(7) The Department may waive internship requirements for a person who is licensed as a trainee and has met the minimum requirement to complete 200 polygraph examinations but is still engaged in meeting either, or both of, the education or examination for licensure requirements defined in OAR 259-020-0120.

(a) When internship requirements are waived, the Department may request additional documentation that would demonstrate that the polygraph examiner trainee is engaged in meeting the education or examination for licensure requirements.

(b) Documentation may include, but is not limited to, college transcripts, a copy of the polygraph examiner trainee’s numerical log, or the Department’s records regarding the licensee’s attempts to pass the examination for licensure.

(8) A person’s failure to maintain, and provide to the Department when requested, documentation of the progress or completion of internship requirements may make the person’s application or license subject to denial, suspension or revocation pursuant to OAR 259-020-0200.

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.200
ADOPT: 259-020-0150

RULE TITLE: Examination for Licensure

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is adopted. This action is taken as a part of the Department's revision of OAR chapter 259 division 20. This rule identifies successful completion of the examination for licensure administered by the Department. The oral examination portion has been removed and the process for retesting in the event of an exam failure has been changed deleting the prior rule requirement to take a polygraph training course again and adding a period where the person who has failed three times must wait for 2 years before reapplying for licensure as defined in OAR 259-020-0200, denial/revocation.

RULE TEXT:

(1) The Department, in consultation with the Polygraph Licensing Advisory Committee, will prescribe the manner and contents of any examination for licensure (exam) conducted by the Department under provisions of the Act.

(2) Each exam requires submission of the examination fee prescribed by OAR 259-020-0220.

(3) The minimum passing score for the exam is 75%.

(4) Applicants and polygraph examiner trainees are limited to three attempts to pass the exam.

(5) A person who does not achieve a passing score on the exam may retake the exam a second time without a minimum waiting period.

(6) A person who does not achieve a passing score on their second attempt to pass the exam must wait a minimum of six months from the date of the second exam before retaking the exam a third time.

(7) The licensure of a person who does not achieve a passing score on the exam within three attempts is subject to denial or revocation pursuant to OAR 259-020-0200.

(8) Persons who take the exam are prohibited from disclosing the contents of the exam, including the exam questions and answers, to anyone or any entity.

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230, ORS 703.080, ORS 703.090, ORS 703.110, ORS 703.200
ADOPT: 259-020-0160

RULE TITLE: Continuing Education Requirements for Renewal of a Polygraph Examiner or Trainee License

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is adopted. This action is taken as a part of the Department's revision of OAR chapter 259 division 20. This new rule aligns the continuing education requirement to the annual cycle of licensure and ties continuing education to a licensee's ongoing maintenance of current knowledge, skills or abilities as an examiner. The continuing education requirement is 15 hours every year. Provisions are included allowing a roll over of extra hours from one year to another.

RULE TEXT:

(1) In order to renew licensure as a polygraph examiner or trainee, a person must document current knowledge, skills or abilities as a polygraph examiner or trainee. Documentation of current knowledge, skills or abilities may be satisfied by completing continuing education requirements in accordance with this rule.

(2) A person must document a minimum of 15 hours of continuing education, per licensing period, at the time of application in order to be eligible to renew their license.

(3) Continuing education includes, but is not limited to:
   (a) Seminars sponsored by regional and national polygraph associations; or
   (b) Department approved training specifically related to the field of polygraphy.

(4) In order to satisfy the requirements for the renewal of a polygraph examiner or trainee license, the continuing education must have been completed within the 24 month period prior to the application for renewal of a license and documentation of completion of the continuing education must be submitted to the Department. Documentation includes, but is not limited to, a certificate or letter of completion.

(5) The polygraph examiner’s or trainee’s license will not be renewed until documentation of the completed continuing education requirements has been received by the Department.

(6) A licensed polygraph examiner or trainee may carry over up to 15 hours of unused continuing education from the current licensing renewal application to the next licensing renewal period provided that the unused hours still meet the requirements for section (3) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230, ORS 703.100
ADOPT: 259-020-0170

RULE TITLE: Applications for Licensure / Applications for Renewal

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is adopted. This action is taken as a part of the Department's revision of OAR chapter 259 division 20. This rule outlines application requirements and supporting documentation for a new application for licensure, an application for renewal of a license or a request for a duplicate license. Section (4), renewal of licensure, specifies how a person can document current knowledge skills or abilities to satisfy the requirements for continuing education in order to renew their license. Section (8) has been added to address the process for the administrative termination of an application process in the event that an applicant does not correct their application deficiencies in a timely manner. Once an application has been administratively terminated, the applicant or licensee would be required to submit a new application and fee in order to obtain or renew a license.

RULE TEXT:

(1) An applicant for licensure as a polygraph examiner trainee must meet all minimum standards as described in OAR 259-020-0130.

(2) An applicant for licensure as a polygraph examiner must meet all minimum standards as described in OAR 259-020-0120.

(3) New Application for Licensure. The application packet for a new polygraph examiner or trainee license must include:

(a) A completed application form;
(b) The required license fee as prescribed in OAR 259-020-0220;
(c) Fingerprints submitted to the Department on a standard applicant fingerprint card or through a Department approved vendor of electronic fingerprint capture services;
(d) The required fingerprint processing fee as prescribed in OAR 259-020-0220; and
(e) Supporting documentation showing the applicant meets the minimum standards pursuant to OAR 259-020-0120 or OAR 259-020-0130. Documentation may include but is not limited to:
(A) Certificate of completion of a polygraph examiners training course;
(B) Verifiable documentation in the form of official transcripts or an official certificate from the administering institution showing successful completion of the education requirements;
(C) Proof of employment or experience; and
(D) A copy of the polygraph examiner's or trainee's numerical log of completed exams.

(4) Renewal of Licensure. The application packet for renewal of a polygraph examiner or trainee license must include:

(a) A completed application form;
(b) The required license renewal fee as prescribed in OAR 259-020-0220; and
(c) Documentation of current knowledge, skills or abilities as a polygraph examiner or trainee. For the purpose of this rule, documentation of current knowledge, skills or abilities as a polygraph examiner or trainee may be satisfied by:
(A) Completing continuing education requirements pursuant to OAR 259-020-0160; or
(B) Achieving a passing score on an examination for licensure conducted by the Department.

(5) Requests for a Duplicate License. A licensed polygraph examiner or trainee may obtain a duplicate license by submitting a written request to the Department with the duplicate license fee as prescribed in OAR 259-020-0220. When the duplicate license is requested due to a legal name change, the licensee must also submit documentation of the name change.

(6) The Department may request additional documentation as needed for any application for licensure or license renewal or a request for a duplicate license.

(7) Applicants for licensure as a polygraph examiner or trainee who are not residents of this state must provide an irrevocable written consent with the application for a license or renewal permitting the Director to act as an agent for the service of all legal process in this state.

(a) In any action in a court of competent jurisdiction in this state, service of process may be made upon a polygraph
examiner or trainee who does not reside in this state by mailing two copies of the process to the Director.

(b) The Director must retain one copy of the process in the records and immediately send, by certified or registered mail, the other copy to the polygraph examiner or trainee at the most current address as indicated by the records of the Department.

(8) The Department may administratively terminate the application process if the Department is unable to complete the licensure process due to non-response or non-compliance by the applicant to correct application deficiencies. To re-apply, applicants will be required to re-submit an application packet with all deficiencies corrected, including new fees.

(9) Any exception to the application process found in this rule must be approved by the Department.

[ED. NOTE: Forms referenced and required fingerprint processing fee amount are available from the agency.]

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230, ORS 703.070, ORS 703.080, ORS 703.090, ORS 703.100, ORS 703.110, ORS 703.120, ORS 181A.195
ADOPT: 259-020-0180

RULE TITLE: Period of Licensure / Expired Licenses

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is adopted. This action is taken as a part of the Department's revision of OAR chapter 259 division 20. This rule identifies the expiration of a license after one year; prescribes a time limit for licensure as a trainee; and identifies the timelines for which a person is eligible to renew a license after an expiration and when they must apply for a new license based on the length of the expiration period.

RULE TEXT:

(1) Polygraph examiner and polygraph examiner trainee licenses expire one year from the date of issuance.

(2) Maximum Period for Licensure as a Polygraph Examiner Trainee.

(a) A person may not be licensed as a polygraph examiner trainee for an aggregate period greater than four years unless the person requests, and the Department approves, a time extension.

(b) The Department may approve a time extension in order for the polygraph examiner trainee to meet the minimum standards for licensure as a polygraph examiner for education, training or examination for licensure as defined in OAR 259-020-0120.

(c) Department approved time extensions will not exceed one year.

(d) When a person has exhausted the allowed polygraph examiner trainee license renewals and the time extension, they are prohibited from holding licensure as a polygraph examiner trainee until two years and one day have elapsed from the expiration of the last polygraph examiner trainee license held by the person.

(e) Any application for licensure submitted prior to satisfying the two years and one day ineligibility period will be denied pursuant to OAR 259-020-0200.

(3) Expired Polygraph Examiner Licenses.

(a) A person whose polygraph examiner license has been expired for two years or less must apply for renewal of the license in accordance with OAR 259-020-0170.

(b) A person whose polygraph examiner license has been expired for more than two years must submit a new application for licensure in accordance with OAR 259-020-0170 and must successfully complete the examination for licensure.

(4) Expired Polygraph Examiner Trainee Licenses.

(a) A person whose polygraph examiner trainee license has been expired for two years or less must apply for renewal of the license in accordance with OAR 259-020-0170.

(b) A person whose polygraph examiner trainee license has been expired for more than two years must submit a new application for licensure in accordance with OAR 259-020-0170 and must complete the internship requirements defined in OAR 259-020-0140.

(5) A person whose polygraph examiner's or trainee's license has expired while the person was employed by any federal agency or while the person was on active duty as a member of the Armed Forces of the United States or on active duty as a member of the National Guard of this state may apply for renewal of their license without an examination for licensure within two years after the date of the termination of such employment or active duty by submitting an application for renewal in accordance with OAR 259-020-0170.

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230, ORS 703.100
RULE TEXT:

(1) The Department may issue a license as a polygraph examiner in this State to a person who is licensed as a polygraph examiner by another state or territory of the United States, without an examination for licensure by the Department, if the person submits an application for licensure pursuant to OAR 259-020-0170 and the Department finds that the person:

(a) Is at least 18 years of age;
(b) Is a citizen of the United States;
(c) Was licensed pursuant to the requirements of such other state or territory that, at the date of the issuance of such license by such other state or territory, were substantially equivalent to the requirements of the Act for the licensing and regulation of polygraph examiners in this state; and
(d) Is licensed by another state or territory that grants reciprocity to polygraph examiners licensed in this state.

(2) In accordance with the requirements of ORS 703.120, if the person is not a resident of this state, the person must provide an irrevocable written consent permitting the Director to act as the agent of the person for the service of all legal process in this state.

(3) When making a determination regarding the equivalency of the requirements for licensure by another state, the Department may, upon receipt of an application for licensure as a polygraph examiner, accept the applicant’s professional experience as being equal in professional value toward the five years of active investigative experience required by ORS 703.090(1)(e) and OAR 259-020-0120(3)(b).

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.070, ORS 703.090, ORS 703.110, ORS 703.130
ADOPT: 259-020-0200

RULE TITLE: Denial, Suspension or Revocation of Licensure

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is adopted. This action is taken as a part of the Department's revision of OAR chapter 259 division 20. This rule outlines the denial, suspension and revocation process.

Section (3) clarifies when the Department will initiate a professional standards case and section (4) clarifies how complaints will be reviewed. Sections (5) and (6) amend the review process for a professional standards case outlining that the Department, upon a finding that the conduct may meet the statutory and administrative rule requirements, will present the case to the Director who will make a recommendation to the Board regarding denial or revocation. The Director may consult with the PLAC as needed. Section (6) also outlines that opportunity to submit verbal or written mitigation for consideration during the review process.

Once a determination has been made that a license will be denied or revoked, an ineligibility period is determined. In the prior rule the ineligibility period was 10 years with the ability to apply for reconsideration after a minimum of 3 years. Section (7) of the new rule changes the ineligibility period for licensure from the 10 years to a period up to 10 years allowing for the ineligibility period to be determined based upon the conduct. The reconsideration process outlined in the prior rule was replaced with language in section (9) that identifies that once the determined ineligibility period has been satisfied, a person may reapply for licensure if they meet all of the minimum requirements and the conduct resulting in the denial or revocation will no longer be considered a course of behavior that would prohibit licensure.

RULE TEXT:

(1) The Department may deny, suspend or revoke the license of any applicant, polygraph examiner or trainee after written notice, and a hearing if requested, upon finding that the applicant, polygraph examiner or trainee:

(a) Failed to meet the minimum standards for a polygraph examiner or trainee as described in OAR 259-020-0120 and OAR 259-020-0130;
(b) Failed to pass the examination for licensure within three attempts pursuant to OAR 259-020-0150;
(c) Engaged in conduct that violates any provisions found within the Act or these rules; or
(d) Engaged in any of the behaviors described in ORS 703.210. For the purposes of this rule, ORS 703.210(6), demonstrating an inability or incompetency to carry out the duties of a polygraph examiner or trainee, is defined as:
(A) Conduct that violates the law;
(B) Conduct that violates the practices or standards generally followed in the polygraph profession;
(C) Conduct that is prejudicial to the administration of justice;
(D) Conduct that involves untruthfulness;
(E) The use of test questions relating to sexual, religious, or political matters, unless such matters relate to the issue under investigation; or
(F) The deliberate use of unclear, misleading, circuitous, or ambiguous language in describing or explaining the relevant issue of the examination or the results of the examination.

(2) In accordance with ORS 703.140, the Department will immediately suspend the license of a polygraph examiner or trainee after written Notice, and a hearing if requested, based upon a finding that the licensee failed to provide written notification of a change in the licensee's business name, address or contact information as required by OAR 259-020-0130.

(3) The Department will initiate a professional standards case upon receipt or discovery of information that would lead an objectively reasonable person to conclude that the applicant or licensee has violated the provisions of the Act or the
rules established by the Board for licensure as a polygraph examiner or trainee. For the purpose of this rule, receipt of information may include, but is not limited to:

(a) Notification of a conviction, or any other criminal disposition, of a licensed polygraph examiner, trainee or applicant; or

(b) Any complaint submitted to the Department alleging that a licensed polygraph examiner, trainee or applicant may have engaged in conduct that violates the statutory and administrative rule requirements for licensure as a polygraph examiner or trainee.

(4) Complaints. All complaints will be reviewed by the Department to determine if the allegations, if founded, may violate the statutory and administrative rule requirements for licensure as a polygraph examiner or trainee. Complaints determined to fall outside of the Department’s jurisdiction will be administratively closed.

(5) Review of a Professional Standards Case by the Department. When the Department receives factual information from any source, the Department will review the information to determine if the conduct may meet statutory and administrative rule requirements for denial, suspension or revocation as defined in section (1) of this rule.

(a) If the Department determines that the conduct being reviewed does not meet the statutory and administrative rule requirements for denial, suspension or revocation, the case will be administratively closed.

(b) If the Department determines that the conduct being reviewed may meet the statutory and administrative rule requirements for denial, suspension or revocation, but is not supported by adequate factual information, the Department may request further information from the parties involved or conduct its own investigation of the matter.

(c) When the Department determines that the conduct being reviewed may meet the statutory and administrative rule requirements for denial, suspension or revocation, the case may be presented to the Board, in consultation with the Director.

(6) Review of a Professional Standards Case by the Board in Consultation with the Director.

(a) In making a decision to authorize initiation of proceedings under section (10) of this rule, the Director may consult the Polygraph Licensing Advisory Committee.

(b) When the Department presents a professional standards case to the Board, through the Director, a notification will be sent to the affected applicant or licensee by the Department. The notification will include the deadlines for the affected person to present evidence of factors that may support mitigation. The affected person may present mitigation evidence by one or both of the following:

(A) Submitting documents or written statements as supporting evidence for mitigation of the conduct under review to the Department for consideration by the Director and the Board.

(B) Arranging with the Department to present a verbal statement. Verbal statements are limited to a maximum of five minutes and must be presented, in person, by the affected person, or the representative of their choice.

(c) In order to determine whether or not the conduct engaged in by the applicant or licensee meets the statutory and administrative rule requirements for denial, suspension or revocation, the Board, in consultation with the Director, will review the conduct and consider mitigating and aggravating circumstances.

(d) When the Board, in consultation with the Director, determines that the conduct being reviewed meets the statutory and administrative rule requirements for denial, suspension or revocation and that the conduct reviewed rises to the level to warrant denial, suspension or revocation of the person’s licensure, the affected person will be ineligible for licensure as a polygraph examiner or trainee for up to 10 years.

(e) The Board, in consultation with the Director, will determine how long the applicant or licensee will be ineligible for licensure as a polygraph examiner or trainee based on the totality of the professional standards case which includes review of the misconduct and factors supporting aggravation or mitigation pursuant to this rule.

(f) An individual whose licensure has been denied, suspended or revoked is prohibited from conducting polygraph examinations, referring to themselves as a polygraph examiner or trainee or offering or advertising services as a polygraph examiner or trainee.

(7) Ineligibility Period. Any applicant, polygraph examiner or trainee whose licensure is denied, suspended or revoked will be ineligible to hold any polygraph examiner or trainee license for a period up to 10 years.
(a) The period of ineligibility will be included in any Final Order of the Department.
(b) The first day of the ineligibility period will be based upon the date the conduct or behavior, identified as cause for denial, suspension or revocation, occurred.
(c) The ineligibility period will cease when the applicable timeframe stated in the Final Order has been satisfied.
(d) The prescribed ineligibility period for subsection (1)(b) of this rule, failure to pass the examination for licensure, is a period of two years and one day.

The Board's decision to deny, suspend or revoke certifications will be subject to the contested case procedure described in section (10) of this rule.

(9) Eligibility for Licensure after Satisfying an Ineligibility Period.
(a) In order to be eligible for licensure after satisfying an ineligibility period, the affected person must meet all of the minimum requirements as described in OAR 259-020-0120 or OAR 259-020-0130.
(b) Satisfaction of ineligibility period means the conduct for which the person was denied, suspended or revoked is no longer a course of behavior that would prohibit them licensure.
(c) Any application for licensure submitted by a person whose ineligibility period has not been satisfied will be denied pursuant to section (10) of this rule.

(10) Initiation of Proceedings: Upon determination that the reason for denial, suspension or revocation is supported by factual data meeting the statutory and administrative rule requirements, the Department will prepare a Contested Case Notice.
(a) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the person whose license is being affected.
(b) Response time:
(A) A party who has been served with a Contested Case Notice of Intent to Deny Licensure has 60 calendar days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing or a written notice withdrawing their application for consideration.
(B) A party who has been served with a Contested Case Notice of Intent to Revoke Licensure has 20 calendar days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing.
(C) A party who has been served with a Contested Case Notice of Intent to Suspend Licensure has 10 calendar days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing.
(c) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying, revoking or suspending licensure pursuant to OAR 137-003-0672.
(d) The Department may enter a Final Order revoking the licensure of a polygraph examiner or trainee upon the person’s withdrawal of a request for hearing and written agreement to accept the Department’s revocation of licensure as a polygraph examiner or trainee. If the person’s licensure as a polygraph examiner or trainee is revoked pursuant to this subsection, the person is ineligible for licensure as a polygraph examiner or trainee for 10 years. The Department will deny any application that the person submits for licensure as a polygraph examiner or trainee, pursuant to section (10) of this rule, if the 10 year ineligibility period has not been satisfied.

(11) Upon receipt of written notification of the suspension or revocation of a license by the Department, a polygraph examiner or trainee must immediately surrender the license to the Department.

(12) Appeal Procedure. Polygraph examiners or trainees aggrieved by the findings and Order of the Department may file an appeal with the Court of Appeals from the Final Order of the Department, as provided in ORS 183.480.

(13) A licensed polygraph examiner or trainee may request the Department accept the surrender of their license.
(a) In considering whether to accept the request to surrender licensure as a polygraph examiner or trainee, the Department may request further information from the licensee or conduct its own investigation to determine if any minimum standards for licensure have been violated and proceed pursuant to this rule.
(b) If an administrative proceeding has commenced pursuant to section (10) of this rule, the Department may, in its
discretion, withdraw its Contested Case Notice of Intent and accept the person’s surrender of the polygraph examiner or trainee license.

(c) The polygraph examiner or trainee license will remain active until the Department accepts the surrender.

(d) Once the surrender has been accepted by the Department, the individual may no longer conduct polygraph examinations, refer to themselves as a polygraph examiner or offer or advertise services as a polygraph examiner.

(14) Pursuant to ORS 703.220, the Department may restore a suspended or revoked license to the prior holder upon written application and receipt by the Department of evidence that the conditions which caused the suspension or revocation have been corrected to the satisfaction of the Department.

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230, ORS 703.210, ORS 703.220
RULE TITLE: Polygraph Licensing Advisory Committee

RULE SUMMARY: This rule is adopted. This action is taken as a part of the Department's revision of OAR chapter 259 division 20. This rule outlines the duties and membership of the Polygraph Licensing Advisory Committee (PLAC). The membership was amended to include three licensed polygraph examiners; two representing private sector examiners and one representing law enforcement examiners. The term of service was amended to a three year period and limited to reappointment of one additional term. The requirement to meet three times per year was amended to meeting once per year at minimum and additionally as needed.

RULE TEXT:

(1) The Department may appoint a polygraph licensing advisory committee whose function is to assist and advise the Department concerning the administration of the Act.

(2) The advisory committee's duties may include, but are not limited to:

(a) The development, review or revision of exam questions for the examination for licensure as a polygraph examiner;
(b) The evaluation and selection of polygraph examiners courses to be recommended for approval by the Department;
(c) Upon the request of the Director, the review and recommendation of professional standards cases presented by the Department; and

(d) Providing consultation in the form of subject matter expert review regarding, but not limited to, polygraph instrumentation and technical or professional practices within the polygraph profession.

(3) The advisory committee will consist of three members to be appointed by the Director, each appointment to be subject to ratification by the Board at its next regular meeting.

(4) Membership of the advisory committee will consist of currently licensed polygraph examiners, one of which will be a currently employed law enforcement examiner and two of which will be from the private sector.

(5) Members of the advisory committee will be initially appointed for a three-year term and may be reappointed for one additional three-year term.

(6) The advisory committee will meet at least once per calendar year and additionally as needed.

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230
ADOPT: 259-020-0220

RULE TITLE: Fees

NOTICE FILED DATE: 07/31/2017

RULE SUMMARY: This rule is adopted. This action is taken as a part of the Department's revision of OAR chapter 259 division 20. The repeal of the prior rule and the adoption of the new rule was meant to rearrange the order of placement of the fee rule within the rule division. There are no changes to the fees as these are established by ORS. The requirement to submit a fee that covers the cost of fingerprinting was moved from the minimum standards sections of the prior rule to this new rule. Language identifying the accepted forms of payment has been added.

RULE TEXT:

(1) Payments to the Department are due at the time of application. All payments are non-refundable and must be paid by business check, money order, cashier’s check or credit card. No personal checks or cash will be accepted.

(2) The Department will charge the following fees:

(a) The fee of $50 for the issuance of each original license as a polygraph examiner.

(b) The fee of $50 for the annual renewal of a license as a polygraph examiner.

(c) The fee of $50 for examination by the Department for licensure as a polygraph examiner.

(d) The fee of $35 for the issuance of a trainee license.

(e) The fee of $35 for the annual renewal of a polygraph examiner trainee license.

(f) The fee of $5 for the issuance of a duplicate license.

(g) Appropriate fees must be submitted with each application for licensure as polygraph examiner or as a trainee, pursuant to OAR 259-020-0170, for a fingerprint criminal records check. These fees are to recover the costs of administering the fingerprint check through the Oregon State Police and Federal Bureau of Investigation. An additional fee will be charged for the third submittal of fingerprint cards when rejected for filing by FBI. Current fee schedules for processing fingerprints may be obtained from the Department.

STATUTORY/OTHER AUTHORITY: ORS 703.230

STATUTES/OTHER IMPLEMENTED: ORS 703.230, ORS 703.070, ORS 703.110, ORS 703.240