

## **CHAPTER 43-31 DETECTION OF DECEPTION EXAMINERS**

### **43-31-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Detection of deception examiner" or "examiner" means any person who uses any device or instrument to test or question individuals for the purpose of detecting deception.
2. "Internship" means the study of polygraph examinations and of the administration of polygraph examinations by a trainee under the personal supervision and control of a licensed examiner in accordance with a course of study prescribed by the attorney general at the commencement of such internship.
3. "Person" includes any natural person, partnership, association, corporation, limited liability company, or trust.

### **43-31-02. Instruments to be used.**

Every examiner shall use an instrument which records physiologic activity with four sensors: a blood pressure cuff, electrodermal sensors, and two respirator sensors, but such an instrument may record additional physiological changes pertinent to the detection of deception. An examiner shall, when requested by the person being examined, provide the results of the examination within a reasonable amount of time.

### **43-31-03. Unlawful acts.**

It is unlawful for any person to administer detection of deception examinations, or attempt to hold out as an examiner, without a license issued by the attorney general of the state.

### **43-31-04. Applications for licenses.**

Applications for licenses must be made to the attorney general in writing on forms prescribed by the attorney general and must be accompanied by the required fee, which is not returnable. Any such application must require such information as in the judgment of the attorney general will enable the attorney general to pass on the qualifications of the applicant for a license.

### **43-31-05. Renewal of licenses.**

The license of an examiner which has not been revoked or is not suspended must be renewed annually upon payment of the required fee by the examiner.

### **43-31-06. Consent for service of process.**

Each nonresident applicant for an original license or a renewal license shall file an irrevocable consent that actions against the applicant may be filed in any appropriate court of any county of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged claim for relief arose and that process in any action may be served on the applicant by leaving two copies thereof with the attorney general. Such consent must stipulate and agree that such service of process is valid and binding for all purposes. The attorney general shall send forthwith one copy of the process to the applicant at the address shown on the records of the attorney general's office by registered mail.

### **43-31-07. Qualifications of applicant.**

A person is qualified to receive a license as an examiner:

1. Who is at least twenty-one years of age.
2. Who establishes that the person is a person of honesty, truthfulness, integrity, and moral fitness.
3. Who has not been convicted of an offense determined by the attorney general to have a direct bearing upon a person's ability to serve the public as an examiner, or who, following conviction of any offense, is determined, pursuant to section 12.1-33-02.1, to

- be rehabilitated, or who has not been released or discharged under other than honorable conditions from any of the armed services of the United States.
4. Who has passed a test conducted by the attorney general, or under the attorney general's supervision, to determine the applicant's competency to obtain a license to practice as an examiner.
  5. Who has satisfactorily completed a polygraph examiners course approved by the attorney general and has satisfactorily completed not less than six months of internship training.

**43-31-07.1. Internship license.**

1. Upon approval by the attorney general, an internship license must be issued to a trainee provided the trainee applies for such license and pays the required fee within ten days prior to the commencement of the internship. The application must contain such information as may be required by the attorney general.
2. An internship license is valid for the term of twelve months from the date of issue. Such license may be extended or renewed for any term not to exceed six months upon good cause shown to the attorney general.
3. A trainee is not entitled to hold an internship license after the expiration of the original twelve-month period and six-month extension, if such extension is granted by the attorney general until twelve months after the date of expiration of the last internship license held by said trainee.

**43-31-08. Reinstatement of license.**

An examiner whose license has expired may be reinstated at any time within one year after the expiration thereof, by making a renewal application therefor and by paying the renewal license fee.

**43-31-09. Contents of license - Posting.**

A license must be prominently displayed at the principal place of business of every examiner. Each license must be signed by the attorney general and must be issued under the seal of the attorney general's office.

**43-31-10. Revocation or suspension.**

The attorney general may refuse to issue or renew or may suspend or revoke a license for any one of the following grounds:

1. Material misstatement in the application for original license or in the application for any renewal license under this chapter.
2. Willful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto.
3. Conviction of an offense determined by the attorney general to have a direct bearing upon a person's ability to serve the public as an examiner, or when the attorney general determines, following a person's conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
4. Making any willful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees.
5. Having demonstrated incompetency to act as an examiner as defined under this chapter.
6. Allowing one's license under this chapter to be used by an unlicensed person in violation of the provisions of this chapter.
7. Willfully aiding or abetting another in the violation of this chapter or of any rule issued by the attorney general pursuant thereto.
8. The licenseholder has been adjudged mentally ill, mentally deficient, or in need of mental treatment.

9. Failing, within a reasonable time, to provide information requested by the attorney general as the result of a formal or informal complaint to the attorney general, which would indicate a violation of this chapter.

**43-31-11. Notice and hearing on license revocation.**

The attorney general may, upon the attorney general's own motion, and shall, upon the verified complaint in writing of any person setting forth facts which, if proven, would constitute grounds for refusal, suspension, or revocation, as herein set forth, investigate the actions of any person holding or claiming to hold a license. The attorney general shall, before refusing to issue, suspending, or revoking any license, at least ten days prior to the date set for the hearing notify in writing the applicant or holder of such license of any charges made and shall afford such accused person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of the same personally to the accused person, or by mailing the same by registered mail to the place of business last theretofore specified by the accused person in the person's last notification to the attorney general. At the time and place fixed in the notice, the attorney general shall proceed to hearing of the charges and both the accused person and the complainant must be accorded ample opportunity to present in person or by counsel such statements, testimony, evidence, and argument as may be pertinent to the charges or to any defense thereto. The attorney general may continue such hearing from time to time.

**43-31-12. Appeal from decision.**

The district court of the county wherein the accused person resides has power to review any order of revocation or suspension and all questions of law and fact thereon provided application therefor is made by either party within thirty days from the date of service of such order.

**43-31-13. Attorney general may issue regulations.**

The attorney general may issue regulations, consistent with the provisions of this chapter, for the administration and enforcement thereof and may prescribe forms which shall be issued in connection therewith.

**43-31-14. Examination and license fees.**

1. The fee to be paid by an applicant for examination to determine the applicant's fitness to receive an examiner's license is fifty dollars.
2. The annual license fee is thirty-five dollars, and is due and payable on or before October first of each year. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after September thirtieth.
3. The fee to be paid for the issuance of a duplicate license is five dollars.
4. The fee to be paid for an internship license, and for the extension or renewal thereof, is twenty-five dollars.

**43-31-15. Exemptions.**

The provisions of this chapter do not apply to any examiner in the exclusive employment of the United States of America or any department, bureau, or agency thereof.

**43-31-16. Exemption from testing requirements.**

An applicant may be issued a license without being tested by the attorney general if:

1. The applicant is at least twenty-one years of age;
2. The applicant is a citizen of the United States;
3. The applicant is of good moral character; and
4. The applicant:
  - a. Is licensed in a state that has substantially equivalent licensing requirements and grants reciprocity to examiners licensed in North Dakota; or

- b. Is a North Dakota resident and has within the previous twelve months successfully completed a basic polygraph examiners course taught by an accredited school and approved by the attorney general.

**43-31-17. Violation - Penalty.**

Any person who violates any provision of this chapter or any person who falsely states or represents that that person has been or is an examiner or trainee is guilty of a class B misdemeanor.