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LICENSES: Forensic Polygraph Examiner.

BOARD OF FORENSIC POLYGRAPH EXAMINER: Use of Psychological Stress Evaluator.

A person is not required to be licensed as a forensic polygraph examiner where he uses a psychological stress evaluator for purposes other than to detect deception or verify truthfulness.

Opinion No. 4855

April 23, 1975.

Representative Harold J. Scott
State Capitol Building
Lansing, Michigan 48901

You have asked my opinion concerning the Forensic Polygraph Examiners Act, 1972 PA 295; MCLA 338.1701 *et seq*; MSA 18.186(1) *et seq*. Specifically you have asked:

"1. May a person, whether engaged in law enforcement (both public and private agencies), medicine, psychiatry or commerce, use a psychological stress evaluator (PSE) as described above for the purpose of ascertaining stress without a license from the State of Michigan, if the conditions of Section 8 of the Act are met, i.e., if the user does not purport to be able; or purport to offer or have available; or purport to or represent that he can or does offer the service of; or advertise or represent that he can or does offer the service of; detecting deception, verifying truthfulness or reporting a diagnostic opinion regarding an individual's deception or truthfulness and, if the user does not hold himself out as a polygraph examiner or refer to himself by any terminology which would indicate or convey the impression that he can or does purport to detect deception or verify truthfulness through instrumentation; or use any of the technical descriptive terminology peculiar to, or interchangeable with, the administration of polygraph examinations, the interpretation thereof or the detection of deception and verification of truthfulness resulting therefrom?

"2. May a person (as defined in Question 1) use the psychological stress evaluator (PSE) as described above for the purpose of ascertaining stress in an individual, if the user does not imply in any manner written, oral or otherwise that he or she is licensed by the State of Michigan as an examiner of detection of deception or verification of truthfulness under the Forensic Polygraph Examiners Act; and the user specifically states that the test is not a detection of deception or verification of truthfulness test under the Forensic Polygraph Examiners Act; and the person otherwise meets the conditions of Section 8 (as set forth in Question 1)?"

1972 PA 295 § 8, *supra*, which describes those persons within the meaning of the act who are required to obtain a license from the State Board of Forensic Polygraph Examiners, states:

"A person, including city, county, or state employees, shall not use or attempt to use any instrumentation or mechanical device for the purpose of detecting deception, verifying truthfulness or reporting a diagnostic opinion regarding either of these; purport to detect deception or verify truthfulness through instrumentation or mechanical devices; advertise or represent that he can or does offer the service of detecting deception, verifying truthfulness or reporting a diagnostic opinion regarding an individual's deception or truthfulness through instrumentation or mechanical devices; attempt to hold himself out as a polygraph examiner or refer to himself by any terminology which would indicate or convey the impression that he can or does purport to detect deception or verify truthfulness through instrumentation; or use any of the technical descriptive terminology peculiar to, or interchangeable with, the administration of polygraph examinations, the interpretation thereof or the detection of deception and the verification of truthfulness resulting therefrom without first securing a license as provided in this act."

This section clearly applies to all persons who hold themselves out as being able "to detect deception or verify truthfulness through instrumentation." Section 8 covers persons, including city, county or state employees, who use "any instrumentation or mechanical device for the purpose of detecting deception, verifying truthfulness or reporting a diagnostic opinion regarding either of these."

It can be seen that if one does not hold himself out or refer to himself as a user of a mechanical device for the purpose of verifying truthfulness or detecting deception, he can still fall into the section 8 category by the fact that he *does use* the device for the purpose indicated. Therefore, a determination must be made, on a case by case basis, of whether the person does in fact detect deception, verify truthfulness or report a diagnostic opinion regarding either of these. This must be done even when the person does not purport or hold himself out as doing these things, or even causes the impression that he is doing these things.

In order to further define those persons and purposes covered by 1972 PA 295, *supra*, it is to be noted that the express mention in a statute implies exclusion of other similar things, *Stowers v Wolodzko*, 386 Mich 119; 191 NW2d 355 (1971). It has been stated by the Michigan Supreme Court that:

"It is a general principle of interpretation that the mention of one thing implies the exclusion of another thing; . . ." *Dave's Place Inc. v Liquor Control Commission*, 277 Mich 551; 555; 269 NW 594 (1936)

It has further been stated:

"Under the legal maximum of construction that express mention of one thing implies the exclusion of other similar things, there is reason in the contention that, the act having expressly named certain liens made subordinate, it by implication excludes others not mentioned, upon the presumption that, having designated some, the legislature designated all it was intended the act should include."

Marshall v Wabash Railway Co., 201 Mich 167, 172; 167 NW 19 (1918); 8 ALR 435. *Sebewaing Industries v Sebewaing*, 337 Mich 530; 60 NW2d 444 (1953)

Section 8 of 1972 PA 295, *supra*, refers only to persons who use instrumentation or mechanical devices for the *purpose of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding either of these*. Applying the aforementioned principle and assuming that the subject has given his or her consent, it appears that use of devices such as a psychological stress evaluator solely to measure stress or anxiety, would not be included in those activities covered by section 8. As 1972 PA 295, § 2 points out, the terminology one uses to describe his activity is not determinative of the act's application, and if a device is used for the purpose of detecting deception, verifying truthfulness or for reporting a diagnostic opinion regarding either of these, then the act will apply.

Therefore, it is my conclusion that 1972 PA 295, *supra*, was not intended to cover the activity described in your first question.

It should be noted, however, that a very narrow line separates the use of mechanical devices for the purpose of measuring stress and the use of such device to determine truthfulness. While the act does not apply to persons who may use such equipment for the former purpose, it clearly does apply to those who use it as a means of verifying truthfulness.

In answer to your second question, it will not matter what the person implies or represents his activity to be. The question is: for what purpose is the device being used, and therefore a *representation* that a person is not using the device to verify truthfulness is not sufficient to avoid the operation of 1972 PA 295, *supra*. Only when it is determined that a psychological stress evaluator is not *in fact* being used for the purposes indicated in section 8, will one fall outside the purview of the act.

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Attorney General.