

the limitations of and possibilities for error in the technique of polygraphic interrogation, and

(4) appropriate jury instructions.

It is unquestioned that an administrative agency is not bound by the rules of evidence that govern court proceedings, see s. 227.08(1), Wis. Stats. The strict rules set out in the Stanislowski case are not automatically transferrable to an administrative proceeding. The court did note:

"Experts in the field give a high degree of accuracy or dependability to polygraph examinations, conducted by a competent examiner. Polygraph test accuracy is viewed as comparing favorably with other types of expert psychiatrists, document examiners, and physicians . . . While experts agree that the training and experience of the examiner are crucial in attaining accurate results, those most familiar with the field believe that polygraph examinations constitute a reasonably reliable diagnosis of truth and deception responses to questions asked." 62 Wis. 2d at 738-739.

Despite this relative degree of reliability of competently administered polygraph tests noted by the court, there are policy factors peculiar to criminal trials that underlie the requirement of a written stipulation between the parties. In an administrative proceeding there is no basis for a blanket exclusion of what might well be highly probative evidence, depending on the skill of the examiner and the nature of the facts, because both parties have not agreed on the use of such evidence. Therefore, it is the preliminary ruling of the hearing examiner that the appellant will not be barred from introducing the results of any polygraph tests solely because of the absence of a stipulation. The offer of any such evidence must be accompanied by the appropriate foundation by a competent examiner, who will be subject to cross examination. Only then will a ruling on admissibility be made.

The question of whether the board can or should order the examination of respondent's witnesses is another matter. There is a dearth of authority or precedent for such action. See, e.g., note, 29 U. of Florida Law Review 286

Christianson v. DHSS & Bur.
Case No. 77-62
Page Three

(1977); 29 Am. Jur. 2d Evidence §831. Given the lack of precedent and the cautious approach taken by the Supreme Court in the Stanislawski case, an order compelling examination appears to be a step beyond that which the distinction between a criminal and an administrative proceeding will support. Therefore, the hearing examiner will not enter an order requiring the examination of respondent's witnesses.

Dated: January 5, 197⁹.

STATE PERSONNEL BOARD

Anthony J. Theodore
Anthony J. Theodore, Hearing Examiner