

HOUSE BILL 1885

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 29 and Title 63, to enact the Tennessee
Polysomnography Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, is amended by adding the following language as a new chapter thereto:

63-52-101. As used in this chapter, unless the context requires otherwise:

(1) "Board" means the board of medical examiners;

(2) "Committee" means the polysomnography professional standards committee established by this chapter;

(3) "Direct supervision" means that the polysomnographic technologist providing supervision must be present in the area where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure;

(4) "General supervision" means that the polysomnographic procedure is provided under a physician's overall direction and control, but the physician's presence is not required during the performance of the procedure;

(5) "Polysomnographic technologist" means a person who is credentialed by the board of registered polysomnographic technologists and is licensed by the board to engage in the practice of polysomnography under the general supervision of a licensed physician;

(6) "Polysomnographic technician" means a person who has graduated from an accredited educational program described in § 63-52-106(b)(1) but has not yet passed the national certifying examination given by the board of registered polysomnographic

technologists, who has obtained a temporary permit from the board, and who may provide sleep-related services under the general supervision of a licensed physician;

(7) "Polysomnographic trainee" means a person who is enrolled in an Accredited Sleep Technologist Education Program (A-STEP) that is accredited by the American Academy of Sleep Medicine and who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program;

(8) "Polysomnographic student" means a person who is enrolled in an educational program that is accredited by the commission on accreditation of allied health education programs, as provided in § 63-52-106(b)(1), and who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program;

(9)

(A) "Practice of polysomnography" means the performance of any of the following tasks, under the general supervision of a licensed physician:

(i) Monitoring and recording physiologic data during the evaluation of sleep-related disorders, including sleep-related respiratory disturbances, by applying the following techniques, equipment, and procedures:

(a) Continuous or bi-level positive airway pressure titration on spontaneously breathing patients using a mask or oral appliance, provided the mask or oral appliance does not extend into the trachea or attach to an artificial airway;

- (b) Supplemental low flow oxygen therapy (less than six (6) liters per minute) utilizing nasal cannula or continuous or bi-level positive airway pressure during a polysomnogram;
- (c) Capnography during a polysomnogram;
- (d) Cardiopulmonary resuscitation;
- (e) Pulse oximetry;
- (f) Gastroesophageal pH monitoring;
- (g) Esophageal pressure monitoring;
- (h) Sleep staging (including surface electroencephalography, surface electrooculography, and surface submental electromyography);
- (i) Surface electromyography;
- (j) Electrocardiography;
- (k) Respiratory effort monitoring, including thoracic and abdominal movement;
- (l) Plethysmography blood flow monitoring;
- (m) Snore monitoring;
- (n) Audio or video monitoring;
- (o) Body movement monitoring;
- (p) Nocturnal penile tumescence monitoring;
- (q) Nasal and oral airflow monitoring;
- (r) Body temperature monitoring; and
- (s) Monitoring the effects that a mask or oral appliance used to treat sleep disorders has on sleep patterns; provided,

however, the mask or oral appliance shall not extend into the trachea or attach to an artificial airway;

(ii) Observing and monitoring physical signs and symptoms, general behavior, and general physical response to polysomnographic evaluation and determining whether initiation, modification, or discontinuation of a treatment regimen is warranted;

(iii) Analyzing and scoring data collected during the monitoring described in subdivisions (9)(A)(i) and (ii) for the purpose of assisting a licensed physician in the diagnosis and treatment of sleep and wake disorders which result from developmental defects, the aging process, physical injury, disease, or actual or anticipated somatic dysfunction;

(iv) Implementation of a written or verbal order from a licensed physician which requires the practice of polysomnography; and

(v) Education of a patient regarding the treatment regimen which assists that patient in improving the patient's sleep.

(B) A licensed dentist shall make or direct the making and use of any oral appliance used to treat sleep disordered breathing and shall evaluate the structures of the patient's oral and maxillofacial region for purposes of fitting the appliance; and

(C) The practice of polysomnography shall take place only in a hospital or a standalone sleep laboratory or sleep center; provided, however, the scoring of data and the education of patients may take place in settings other than a sleep laboratory or sleep center; and

(10) "Sleep-related services" means acts performed by polysomnographic technicians, polysomnographic trainees, polysomnographic students, and other persons

permitted to perform such services under this act, in a setting described in subdivision (9)(C) which would be considered the practice of polysomnography if performed by a polysomnographic technologist.

Section 63-52-102.

(a) Nothing in this chapter shall be interpreted to limit or restrict a health care practitioner licensed under title 63 from engaging in the full scope of practice of such person's profession.

(b) Nothing in this chapter shall apply to diagnostic electroencephalograms conducted in accordance with the guidelines of the American Clinical Neurophysiology Society.

Section 63-52-103.

(a) To assist the board in the performance of its duties under this chapter, there is established the polysomnography professional standards committee.

(b) The committee shall consist of seven (7) members, who shall be appointed by the governor in the manner and for the terms of office as set forth in this section.

(c) The committee shall be composed of:

(1) Three (3) registered polysomnographic technologists;

(2) One (1) physician who is certified in sleep medicine by a national certifying body recognized by the American Academy of Sleep Medicine;

(3) One (1) person who is the director of an accredited, hospital-based sleep center;

(4) One (1) respiratory therapist who is also a registered polysomnographic technologist; and

(5) One (1) consumer member who is not commercially or professionally associated with the health care field.

(d) Initial appointments to the committee shall be made as follows: two (2) members shall be appointed to terms of four (4) years, two (2) members shall be appointed to terms of three (3) years, two (2) members shall be appointed to terms of two (2) years, and one (1) member shall be appointed to a term of one (1) year. Each regular appointment thereafter shall be for a term of four (4) years. Any vacant term shall be filled by the governor for the balance of the four-year term and each member shall serve on the committee until a successor is appointed. In making appointments to the committee, the governor shall strive to ensure that at least one (1) person serving on the committee is sixty (60) years of age or older and that at least one (1) person serving on the committee is a member of a racial minority. Each member of the committee shall be a resident of the state of Tennessee.

(e) The governor may consider for appointment to the committee the names of persons recommended by the professional organizations for each profession represented on the committee. The Tennessee Sleep Society may submit a list of three (3) names for each position to be filled by a polysomnographic technologist. The Tennessee Society for Respiratory Care may submit a list of three (3) names for the position to be filled by a respiratory therapist. The Tennessee Medical Association may submit a list of three (3) names for the position to be filled by a physician. The THA-An Association of Hospitals and Health Systems may submit a list of three (3) names for the position to be filled by a director of a hospital-based sleep center.

(f) While engaged in the business of the committee, members shall receive a per diem of one hundred dollars (\$100) and shall also receive compensation for actual expenses to be paid in accordance with comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(g) The committee shall choose annually a chair and a secretary from among its members.

(h) The committee shall hold at least one (1) regular meeting each year and such other meetings as the committee deems necessary to conduct its business.

(i) A majority of the members of the committee shall constitute a quorum for the transaction of business. No action of the committee shall be valid unless approved by a majority of members present at a meeting at which there is a quorum.

(j) The governor has the power to remove from office any member of the committee for neglect of duties required by this chapter, for malfeasance in office, for incompetence, or for unprofessional conduct.

(k) All funds received by the committee shall be deposited into the state treasury, and the department of health shall make such allotments out of the committee's account in the general fund as the department deems proper for the necessary expenses of the committee.

(l) The division of health related boards shall provide administrative, investigatory, and clerical services to the committee as necessary to implement and enforce the provisions of this chapter.

Section 63-52-104. The committee shall have the power to:

(1) Promulgate, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, all rules that are necessary for the implementation and administration of this chapter;

(2) Establish the fees to be paid for temporary permits and for initial licensure, renewal or reinstatement of a license, late renewal of a license, and replacement of a lost license, at a level which is adequate to pay all the expenses of implementing and administering this chapter, in accordance with the provisions of § 63-1-137;

(3) Review and approve or reject the application of each person who applies for licensure as a polysomnographic technologist;

(4) Biennially review and approve or reject each application for license renewal;

(5) Issue, in the board's name, all temporary permits and all approved licenses and renewal of licenses;

(6) Collect or receive all fees, fines, and money owed pursuant to the provisions of this chapter and pay the same into the general fund of the state;

(7) Deny, suspend, revoke, restrict, or impose one (1) or more conditions on a license, as the committee deems necessary or appropriate at the time a license is issued, renewed, or reinstated, or as a sanction imposed at the conclusion of a disciplinary hearing;

(8) Issue private advisory letter rulings to any person licensed under this chapter who makes a request for such a ruling regarding any matter within the committee's jurisdiction; provided, however, the ruling shall affect only the licensee making the inquiry and shall have no precedential value for any other contested case or inquiry before the committee;

(9) Develop a code of ethics for the practice of polysomnography in this state;

(10) Develop standards of care for the practice of polysomnography in this state;

(11) Develop standards for the educational and clinical training of polysomnographic technologists, including the evaluation of the accreditation status of educational programs in polysomnography;

(12) Develop criteria for the evaluation of applications for licensure submitted by registered polysomnographic technologists who are licensed in other states;

(13) Develop continuing education requirements which must be met by licensed polysomnographic technologists; and

(14) Conduct disciplinary hearings in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and impose whatever sanctions the committee deems appropriate on an applicant or licensee.

Section 63-52-105. All actions of the committee must be approved by the board in order to become final actions. All actions of the committee shall be considered by the board at its next regular meeting after the committee has taken its actions.

Section 63-52-106.

(a)

(1) On and after July 1, 2010, any person who is engaged in the practice of polysomnography must be licensed as provided in this chapter. It shall be unlawful for any person to engage in the practice of polysomnography after that date unless the person has been duly licensed as a polysomnographic technologist under the provisions of this chapter.

(2) Prior to July 1, 2010, any person who is engaged in the practice of polysomnography without being licensed under this chapter shall not be deemed to be in violation of this chapter or the Respiratory Care Practitioner Act, compiled in title 63, chapter 27 of this title.

(b) A person seeking licensure as a polysomnographic technologist must be of good moral character, must be at least eighteen (18) years of age, must pay the fees established by the board for licensure, and must present proof that the person meets all the following requirements:

(1) The applicant must have met one (1) of the following educational requirements:

(A) Graduation from a polysomnographic educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs;

(B) Graduation from a respiratory care educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs and completion of the curriculum for a polysomnography certificate established and accredited by the Committee on Accreditation for Respiratory Care of the Commission on Accreditation of the Allied Health Education Programs;

(C) Graduation from an electroneurodiagnostic technologist educational program with a polysomnographic technology track that is accredited by the Commission on Accreditation of Allied Health Education Programs; or

(D) Successful completion of an Accredited Sleep Technologist Educational Program (A-STEP) that is accredited by the American Academy of Sleep Medicine; provided, however, this option shall not remain available after July 1, 2012, if there are at least four (4) polysomnographic technologist educational programs in Tennessee (at least two (2) in the east grand division and one (1) each in the middle and west grand divisions) which remain accredited by the Commission on Accreditation of Allied Health Educational Programs for two (2) years. If there are not four (4) such accredited educational programs by July 12, 2012, this option shall remain available until there are four (4) such programs which have been accredited for two (2) years;

(2) The applicant must have passed the national certifying examination given by the board of registered polysomnographic technologists;

(3) The applicant must be credentialed by the board of registered polysomnographic technologists; and

(4) The applicant must meet any additional educational or clinical requirements established by the committee.

(c) Any person who is engaged in the practice of polysomnography on July 1, 2007, shall be eligible for licensure under this chapter without meeting the educational requirement of subdivision (b)(1), provided the person meets the requirements of subdivisions (b)(2)-(4).

(d) To be eligible for renewal of a license to engage in the practice of polysomnography, a polysomnographic technologist must continue to be credentialed by the board of registered polysomnographic technologists.

Section 63-52-107.

(a) The following classes of persons may provide sleep-related services without being licensed as a polysomnographic technologist under the provisions of this chapter:

(1) A polysomnographic technician may provide sleep-related services under the general supervision of a licensed physician for a period of up to one (1) year from the date of the person's graduation from one (1) of the accredited programs described in § 63-52-106(b)(1), and the board may in its sole discretion grant a one-time extension of up to three (3) months beyond this one-year period;

(2) A polysomnographic trainee may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program while actively enrolled in an Accredited Sleep

Technologist Educational Program (A-STEP) that is accredited by the American Academy of Sleep Medicine;

(3) A polysomnographic student may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program while actively enrolled in a polysomnographic educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs;

(4) A person who is credentialed in one of the health-related fields accepted by the Board of Registered Polysomnographic Technologists may provide sleep-related services under the direct supervision of a polysomnographic technologist, for a period of up to one (1) year, while obtaining the clinical experience necessary to be eligible to sit for the examination given by the board of registered polysomnographic technologists; and

(5) A respiratory therapist licensed under chapter 27 of this title, may provide sleep-related services under the general supervision of a licensed physician if the licensed respiratory therapist is credentialed by the board of registered polysomnographic technologists. Respiratory therapists performing sleep-related services shall be subject to disciplinary action by the board of respiratory care if they fail to adhere to the standards established under this chapter.

(b) Before providing any sleep-related services, a polysomnographic technician must obtain a temporary permit from the board. While providing such services, the technologist must wear a badge that appropriately identifies such person as a polysomnographic technician.

(c) Before providing any sleep-related services, a polysomnographic trainee must give notice to the board that the trainee is enrolled in an A-STEP educational program accredited by the American Academy of Sleep Medicine. Trainees must wear a badge that appropriately identifies the trainee as a polysomnographic trainee while providing such services.

(d) Before providing any sleep-related services, a person who is obtaining clinical experience pursuant to subdivision (a)(4) must give notice to the board that the person is working under the direct supervision of a polysomnographic technologist in order to gain the experience to be eligible to sit for the examination given by the board of registered polysomnographic technologists. The person must wear a badge that appropriately identifies such person while providing such services.

(e) Polysomnographic students shall not receive compensation for the sleep-related services they provide and shall wear badges that appropriately identify them as students.

Section 63-52-108.

(a) Licenses shall be issued and renewed by the board pursuant to the biennial issuance and renewal system of the division of health related boards.

(b) Any person who has been issued a license to practice under this chapter who wishes to retire that license shall file with the committee an affidavit on a form to be furnished by the committee stating the date on which the person retired from such practice and such other facts as shall tend to verify such retirement as the board deems necessary. Any such person who thereafter wishes to reenter practice must request reinstatement of licensure.

(c) Any license issued by the board shall contain the name of the person to whom it is issued, the address of the person, the date and number of the license and

such other information as the board deems necessary. The address contained on the license shall be the address where all correspondence and renewal forms from the board shall be sent. Any person whose address changes shall, within thirty (30) days thereafter, notify the board of the address change. The most recent address contained in the board's records for each license holder shall be the address deemed sufficient for purposes of service of process.

(d) Every person issued a license pursuant to this chapter shall either keep such license prominently displayed in the office or place in which such person practices or have it stored in a place from which it can be immediately produced upon request of a patient or representative of the department of health.

(e) Any person whose license has been lost may make application to the committee for a replacement. Such application shall be accompanied by an affidavit setting out the facts concerning the loss of the original license.

(f) Any person whose name is changed by marriage or court order may surrender his or her license and apply to the board for a replacement license.

Section 63-52-109. The board has the power to impose any sanctions on a licensee, up to and including license revocation, if the licensee is found guilty of violating any of the provisions of this chapter or of committing any of the following acts or offenses:

(1) Making false or misleading statements or committing fraud in procuring a license;

(2) Immoral, unethical, unprofessional or dishonorable conduct;

(3) Habitual intoxication or personal misuse of narcotics, controlled substances or any other drugs or the use of alcoholic beverages or stimulants in such manner as to adversely affect the person's ability to practice polysomnography;

(4) Conviction of a felony or of any offense involving moral turpitude or any violation of the drug laws of this or any other state or of the United States;

(5) Violation or attempted violation, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any lawful order of the board or any criminal statute of this state;

(6) Gross malpractice, ignorance, negligence or incompetence in the course of professional practice;

(7) Making or signing in one's professional capacity any document that is known to be false at the time it is made or signed;

(8) Engaging in the practice of polysomnography when mentally or physically unable to safely do so;

(9) Making false statements or representations or being guilty of fraud or deceit in the practice of polysomnography when mentally or physically unable to safely do so;

(10) Having disciplinary action imposed by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a person licensed to practice polysomnography in this state; provided, further, that a certified copy of the order or other document memorializing the disciplinary action by the other state or territory shall constitute prima facie evidence of a violation of this section;

(11) Undertaking any duties that are outside the authorized scope of practice of a licensed polysomnographic technologist, as set forth in this chapter;

(12) Violating the code of ethics adopted by the committee for polysomnographic technologists;

(13) Use or attempted use of a polysomnographic procedure or equipment for which the licensee has not received sufficient education or training in the proper use of that procedure or equipment;

(14) Promoting the sale of services, drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain;

(15) Willfully failing to file, or willfully impeding the filing of, any report or record which is required by law;

(16) Knowingly engaging in the practice of polysomnography with an unlicensed person, knowingly aiding an unlicensed person in the practice of polysomnography, or knowingly delegating a task involved in the practice of polysomnography to an unlicensed person;

(17) Knowingly failing to meet appropriate standards for the delivery of polysomnographic services;

(18) Breaching patient confidentiality;

(19) Paying or agreeing to pay any sum or providing any form of remuneration or material benefit to any person for bringing or referring a patient, or accepting or agreeing to accept any form of remuneration or material benefit from a person for bringing or referring a patient; or

(20) Any other unprofessional or unethical conduct specified in the rules of the board.

Section 63-52-110. Any person who engages in the practice of polysomnography in violation of the provisions of this chapter is guilty of a Class B misdemeanor.

Section 63-52-111.

(a) The board shall have the authority to petition any circuit or chancery court having jurisdiction over any person who is practicing without a license, or to whom a license has been denied, or whose license has been suspended or revoked by action of the board, to enjoin such person from continuing to practice within this state.

(b) Jurisdiction is conferred upon the circuit and chancery courts of this state to hear and determine all such causes and to exercise full and complete jurisdiction in such injunctive proceedings.

Section 63-52-112.

(a) The committee may utilize one (1) or more screening panels in its investigative and disciplinary process to assure that complaints filed and investigations conducted are meritorious and to act as a mechanism for resolution of complaints or diversion to professional peer review organizations or impaired professionals' associations or foundations of those cases which the board, through established guidelines, deems appropriate.

(b) The screening panel has the authority to administer oaths to witnesses.

(c) Members of a screening panel may be drawn from the membership of the committee or may be appointed by the committee. Non-committee members shall meet the requirements of membership on the committee and may include a consumer member. A committee member serving on a panel shall not participate in a contested case involving any matter heard by the panel.

Section 63-52-113. Any person who is licensed to engage in the practice of polysomnography in this state shall have the right to use the title "polysomnographic technologist" or the abbreviation "PSGP." No other person may use such title or abbreviation or any other words or letters indicating that the person is a polysomnographic technologist.

Section 63-52-114. The polysomnographic professional standards committee shall conduct at least one (1) meeting in each of the years 2007-2010 to allow public discussion of new developments in the practice of polysomnography, including but not limited to the availability of accredited polysomnographic educational programs to persons in all parts of the state, the availability of other certification examinations and credentialing bodies, and the

settings in which the practice of polysomnography may properly take place. The committee shall notify the Tennessee Sleep Society, the Tennessee Society for Respiratory Care, the Tennessee Medical Association, the THA-An Association of Hospitals and Health Systems, and any other person or organization which requests to be notified as to the time and place of such annual meeting.

SECTION 2. Tennessee Code Annotated, Section 4-29-230, is amended by adding the following as a new subdivision thereto:

() Polysomnographic professional standards committee, created by § 63-52-101(2)

SECTION 3. This act shall take effect on July 1, 2007, the public welfare requiring it.