

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: June 29, 2010
 ATTENTION: Licensing Committee
 SUBJECT: Polysomnography Program
 STAFF CONTACT: Jennifer Simoes, Chief of Legislation

RECOMMENDED ACTION:

Staff recommends that the Committee approve the draft regulatory proposal provided on the attached copy of Section 1378.1, 1378.3, 1378.5, 1378.7, 1378.9, 1378.11, 1378.13, 1378.15, 1378.17, 1378.19, 1378.25, 1378.27, 1378.29, and 1378.35 along with any edits or additional provisions that the Committee may suggest for inclusion in the regulation. Staff may also suggest additional Regulations at a later date. An example of a possible addition to the Regulations could be adding continuing education requirements.

Upon approval, staff recommends the Licensing Committee recommend the Board direct staff to schedule a public hearing at the November 4, 2010, Board meeting to review proposed regulatory language to add Articles 1 through 6 in Chapter 3.5 of Division 13 of Title 16, California Code of Regulations.

BACKGROUND AND ANALYSIS:

Legislation, SB 132, effective October 23, 2009, requires the Medical Board of California to adopt regulations within one year after the effective date of this act relative to the qualifications for certified polysomnographic technologists, technicians and trainees. SB132 prohibits a person from using the title "certified polysomnographic technologist" or engaging in the practice of polysomnography unless he or she is registered as a certified polysomnographic technologist in California.

Staff prepared a draft regulatory proposal to add language to Division 13 of Title 16, California Code of Regulations, to set forth the requirements and criteria for polysomnography registration. On June 16, 2010, the Board held an Interested Parties Meeting to review and discuss the proposed regulatory language. Based on feedback received at the meeting and in writing, suggestions were incorporated into the polysomnography program proposed regulations.

PROJECT STATUS:

The implementation plan is on schedule. Staff will continue to complete tasks as follows:

Tasks to be completed August – September

- Create and test the Applicant Tracking System for new registration categories
- Identify license status for Polysomnography Registration on Consumer Affairs System
- Create wall certificate for each registrant category
- Draft new forms, applications and instructions

Tasks to be completed for October – December:

- Hold public hearing at November Board Meeting to adopt the proposed regulations
- Begin to develop Polysomnography Program policies and procedures manual
- Work with the Department of Justice regarding contracted data
- Develop and execute appropriate contracts for fingerprint services, printing services, etc

Tasks to be completed after regulation package is approved

- Develop language for License Look-up on Web site
- Train Licensing and CIU staff
- Update Web site with polysomnography registration application, information, and FAQ's
- Begin to prepare outreach pamphlets and prepare article for Board's Newsletter
- Implement tasks/program upon approval by the Secretary of State

Polysomnography Program
Draft Regulations—6-30-2010

Add Chapter 3.5 to Division 13 of Title 16, California Code of Regulations, to read as follows:

Chapter 3.5. Polysomnography

Article 1. General Provisions

1378.1. Definitions.

For the purposes of the regulations contained in this chapter and for purposes of Chapter 7.8 of Division 2 (commencing with section 3575) of the code:

(a) "Approved polysomnographic education program" means (1) a polysomnographic education program accredited either by the Commission on Accreditation of Allied Health Education Programs ("CAAHEP") or by the Commission on Accreditation for Respiratory Care; or (2) a sleep technologist program accredited by the American Academy of Sleep Medicine.

(b) "Board" means the Medical Board of California.

(c) "Code" means the Business and Professions Code.

(d) "National certifying examination" means the examination given by the Board of Registered Polysomnographic Technologists.

(e) "Polysomnography registrant" includes any person registered as a trainee, technician or technologist under this chapter.

(f) "Supervising physician and surgeon" means physician and surgeon who holds a valid license in California and who (1) possesses a current certification or subspecialty certification or is eligible for such a certification in sleep medicine by a member board of

the American Board of Medical Specialties ("ABMS"); or (2) holds active staff membership at a sleep center or laboratory accredited by the American Academy of Sleep Medicine or by the Joint Commission.

(g) "Valid, current credentials as a polysomnographic technologist issued by a national accrediting agency approved by the board" means current valid registration as a polysomnographic technologist issued by the Board of Registered Polysomnographic Technologists.

NOTE: Authority cited: Sections 2018 and 3575, Business and Professions Code. Reference: Section 3575, Business and Professions Code.

1378.3. Delegation of Functions.

Except for those powers reserved exclusively to the "agency itself" or for the adoption of stipulated settlements under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the board delegates and confers upon the executive director of the board, or his/her designee, all functions necessary to the dispatch of business of the board in connection with investigative and administrative proceedings under the jurisdiction of the board.

NOTE: Authority cited: Sections 2018 and 3575, Business and Professions Code. Reference: Section 3575-3577, Business and Professions Code.

Article 2. Applications

1378.5. Application for Registration as a Polysomnographic Technologist, Technician or Trainee.

An application for registration as a polysomnographic technologist, technician, or trainee shall be filed with the board at its principal office on the prescribed application form (Polysomnography Registration Application—insert form no. and revision date, which is incorporated by reference. The application shall be accompanied by such evidence, statements or documents as therein required and filed with the fee required by section 1378.23.

NOTE: Authority cited: Sections 2018 and 3577, Business and Professions Code. Reference: Section 3575-3577, Business and Professions Code.

1378.7. Abandonment of Applications.

An applicant shall be deemed to have abandoned an application if he or she does not complete the requirements for registration within one year from the date on which the application was filed. An application submitted subsequent to an abandoned application shall be treated as a new application.

NOTE: Authority cited: Sections 2018 and 3575, Business and Professions Code. Reference: Section 3575-3577, Business and Professions Code.

Article 3. Qualifications for Registration

1378.9. Examination

(a) The certification examination offered by the Board of Registered Polysomnographic Technologists is approved by the board for purposes of qualifying for registration pursuant to Chapter 7.8 of Division 2 of the code:

(b) An applicant who applies for registration as a polysomnographic technologist on or before October 22, 2012, may, in lieu of successful completion of the examination

approved by the board, submit any of the following as proof that the applicant has been practicing polysomnography safely for at least five years:

(1) One or more declarations under penalty of perjury by a supervising physician attesting to the period of time the physician supervised the applicant, the tasks performed by the applicant, and the applicant's ability to practice polysomnography safely.

(2) A letter of good standing from each state in which the applicant is registered or licensed.

NOTE: Authority cited: Sections 2018 and 3575, Business and Professions Code. Reference: Section 3575-3577, Business and Professions Code.

1378.11. Registration Requirements.

(a). Polysomnographic Trainee. In addition to the requirements set forth in Section 3575(c) of the code, an applicant for registration as a polysomnographic trainee shall meet the following requirements:

(1) Not be subject to denial under Section 3576 of the code; and

(2) Have either (A) a high school diploma or GED and six months of supervised direct polysomnographic patient care experience; or (B) be currently enrolled in an approved polysomnographic education program; and

(3) Possess at the time of application a current certificate in Basic Life Support issued by the American Heart Association.

(b) Polysomnographic Technician. In addition to the requirements set forth in Section 3575(c) of the code, an applicant for registration as a polysomnographic technician shall meet the following requirements:

(1) Not be subject to denial under Section 3576 of the code; and

(2) Have successfully completed an approved polysomnographic education program;

and

(3) Possess a minimum of six months experience as a registered polysomnographic trainee; and

(4) Possess at the time of application a current certificate in Basic Life Support issued by the American Heart Association.

(c) Polysomnographic Technologist. An applicant for registration as a polysomnographic technologist shall meet the requirements set forth in Sections 3575 and 3576 of the code and shall possess at the time of application a current certificate in Basic Life Support issued by the American Heart Association.

NOTE: Authority cited: Sections 2018 and 3575, Business and Professions Code. Reference: Section 3575-3577, Business and Professions Code.

Article 4. Polysomnography Practice

1378.13. Employment and Supervision of Registrants.

(a) A physician and surgeon who does not meet one of the requirements set forth in section 1378.1(e) shall not supervise polysomnography registrants . No physician and surgeon shall supervise more than eight polysomnographic technologists at any one time. A physician and surgeon shall comply with the supervision requirement of Section 3575(a) of the code.

(b) A supervising physician and surgeon, supervising polysomnographic technologist or other licensed health care professional shall not supervise more than a total of eight polysomnographic technicians and/or trainees at any one time. If a supervising

physician and surgeon is not physically present on the premises, a supervising polysomnographic technologist or other licensed health care professional shall be physically present on the premises and available to the polysomnographic technicians and/or trainees under his/her supervision. For purposes of this section, "other licensed health care professional" means registered nurse, physician assistant and respiratory care practitioner who possesses a current California license.

(c) A supervising polysomnographic technologist and his or her supervising physician and surgeon shall establish written guidelines for the adequate supervision by the technologist of polysomnographic technicians and trainees. This requirement may be satisfied by the supervising physician and surgeon adopting protocols for some or all of the tasks performed by the technicians and trainees. Protocols shall be signed and dated by the supervising physician and surgeon and the polysomnographic technologist.

(d) The delegation of procedures to a registrant or other licensed health care professional shall not relieve the supervising physician of primary continued responsibility for the welfare of the patient.

NOTE: Authority cited: Sections 2018 and 3575, Business and Professions Code. Reference: Section 3575-3577, Business and Professions Code.

1378.15. Scope of Services—Polysomnographic Trainee.

Under the direct supervision of a supervising physician and surgeon, polysomnographic technologist or other licensed health care professional, a polysomnographic trainee may provide basic supportive services as part of the trainee's educational program, including but not limited to gathering and verifying patient information, testing preparation and

monitoring, documenting routine observations, data acquisition and scoring, and assisting with appropriate interventions for patient safety.

NOTE: Authority cited: Sections 2018 and 3575, Business and Professions Code. Reference: Section 3575-3577, Business and Professions Code.

1378.17. Scope of Services—Polysomnographic Technician.

A polysomnographic technician may perform the services described in section 1378.15 under general supervision and may implement appropriate interventions necessary for patient safety.

NOTE: Authority cited: Sections 2018 and 3575, Business and Professions Code. Reference: Section 3575-3577, Business and Professions Code.

1378.19 . Notice to Consumers.

(a) A polysomnography registrant shall provide notice to each patient of the fact that the person is registered and regulated by the board. The notice shall include the following statement and information:

NOTICE TO CONSUMERS

Medical doctors and polysomnographic technologists,
technicians, and trainees are licensed and regulated

by the Medical Board of California

(800) 633-2322

www.mbc.ca.gov

(b) The notice required by this section shall be provided by one of the following methods:

(1) Prominently posting the notice in an area visible to patients on the premises where the registrant provides the services for which registration is required, in which case the notice shall be in at least 48-point type in Arial font.

(2) Including the notice in a written statement, signed and dated by the patient or the patient's representative and retained in that patient's medical records, stating the patient understands the polysomnographic registrant is registered and regulated by the board.

(3) Including the notice in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

NOTE: Authority cited: Section 2018, Business and Professions Code; Reference: Sections 138 and 680, Business and Professions Code.

Article 5. Enforcement

1378.25. Substantial Relationship Criteria.

For the purpose of denial, suspension, or revocation of the registration of a polysomnography registrant pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a polysomnographic registrant if to a substantial degree it evidences present or potential unfitness of a polysomnographic registrant to perform the functions authorized by his or her registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of Chapter 7.8 of Division 2 of the code.

(b) Conviction of a crime involving fiscal dishonesty, or theft.

(c) Battery or assault

(d) Sexual misconduct or abuse.

(e) Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure, as defined by the Penal Code.

Note: Authority cited: Sections 481 and 2558, Business and Professions Code.

Reference: Sections 481, 2555.1 and 2556, Business and Professions Code.

1378.27. Criteria for Rehabilitation—Denial and Reinstatement

When considering the denial of a registration under Section 480 of the code, or a petition for reinstatement under Section 11522 of the code, the board in evaluating the rehabilitation of the applicant and his or her present eligibility for registration, shall consider the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration.

(b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b).

(d) The extent to which the applicant or petitioner has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against him or her.

(e) Evidence, if any, of rehabilitation submitted by the applicant or petitioner.

Note: Authority cited: Sections 482, 2018, and 3576, Business and Professions Code.
Reference: Sections 482, 3576, Business and Professions Code.

1378.29. Rehabilitation Criteria for Suspensions and Revocations.

When considering the suspension or revocation of a registration on the grounds that the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his or her present eligibility for a registration, shall consider the following criteria:

(a) Nature and severity of the act(s) or offense(s).

(b) Total criminal record.

(c) Extent of time that has elapsed since commission of the act(s) or offense(s).

(d) Whether the registrant has complied with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the registrant.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(f) Evidence, if any, of rehabilitation submitted by the registrant.

Note: Authority cited: Sections 482 and 3576, Business and Professions Code.
Reference: Sections 482, 3576, Business and Professions Code.

Article 6. Fees.

1378.35. Fees.

The polysomnography registrant fees are fixed as follows:

(a) The application fee shall be \$100.00.

(b) The registration fee shall be \$100.00.

(c) The biennial renewal fee shall be \$150.00.

(d) The delinquency fee shall be \$75.00.

NOTE: Authority cited: Sections 163.5, 2018 and 3577, Business and Professions Code.
Reference: Section 163.5 and 3577, Business and Professions Code.