

**Board of Respiratory Care  
Task Force Meeting  
Minutes**

**Date:** April 22, 2008

**Time:** 2:00 p.m., C.S.T.

**Location:** Health Related Boards  
Poplar Conference Room  
Heritage Place, Metro Center  
Nashville, TN 37243

**Member(s) Present** Colleen Schabacker, Board Member & Acting Moderator  
Candace Partee, Board Member  
Roger Major, Board Member  
Darryl Jordan, MD., Board Member

**Member(s) Absent:** Delmar Mack, Ed.D, Board Member

**Staff Present:** Marva Swann, Board Director  
Mary Webb, Board Administrator  
Ernie Sykes, OGC Attorney

**Guest(s):** John Williams, Representative of Tennessee Society of Respiratory Care  
Shiva Bozarth, Office of General Counsel for the Board of  
Polysomnography  
David Johnson, Chair of Tennessee Society for Respiratory Care  
Pam Ditto, Systems Svcs Dir. of Resp.and Sleep, Mtn. States Health  
Alliance  
Dr. Haynes, Internist Pulmonologist, St. Thomas Hospital Ctr. for Sleep

Ms. Colleen Schabacker called the meeting to order at 2:25 pm.

Ernie Sykes, OGC Attorney, stated that the reason the task force committee was formed was because of issues that were brought forth after this year's legislative session. The law that recently passed would require every polysomnographer or sleep technician to become licensed no later than July 1, 2010. However, before that date there is no licensure requirement to become licensed.

Ms. Colleen Schabacker stated that at the November 15, 2007 board meeting the Board Members came to an agreement to draft a position statement regarding the credentialing for respiratory

therapists who provide sleep related services and to address issues of the Polysomnography Act. Ms. Schabacker stated that is why the task force was formed.

Mr. Sykes stated that the Board of Respiratory brought three (3) issues to his attention that needed to be investigated. They are as follows with his analysis and opinion:

**1. Whether, and if so, to what extent polysomnography trainees and technicians are required to document competency prior to rendering services that are included under the scope of practice.**

The requirements for someone to become licensed as a polysomnographic professional are set forth in the recently enacted polysomnography act at T.C.A. § 63-31-106 -- Licensing; requirements; renewal

The statute sets July 1, 2010 as the deadline by which polysomnographers must become licensed in order to practice in Tennessee. Before that date, there are no specific and enforceable licensure requirements for practicing polysomnography in this State. Regulation of sleep technology therefore will, until July 1, 2010, remain indirect, and largely left up to two related de facto oversight mechanisms:

- a. Physician and/or respiratory therapist oversight of the polysomnography practitioner (depending on the setting at which polysomnography services are provided). Failure to provide proper oversight to a polysom practitioner under one's supervision could subject a physician or respiratory therapist to disciplinary action by his or her own licensing board; and
- b. Liability concerns of both (i) practitioners (e.g., physicians or respiratory therapists) and (ii) facilities which employ polysomnographers.

Prior to the July 1, 2010 licensure deadline, practitioners of polysomnography (as the term is defined in the new legislation) are expressly exempted from discipline by the Board of Respiratory Care (assuming that their practice does not tread into other realms of respiratory care), or by the nascent Polysomnography Professional Standards Committee ("Polysomnography Committee"):

(a)(1) On and after July 1, 2010, any person who is engaged in the practice of polysomnography shall be licensed as provided in this chapter. It shall be unlawful for any person to engage in the practice of polysomnography after July 1, 2010, unless the person has been duly licensed as a polysomnographic technologist under 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 chapter 27 of this title.

T.C.A. § 63-31-106(a) (Emphasis added.)

The statutory regulation requirements “kick in” as of July 1, 2010. All polysomnographers in Tennessee must be licensed as of that date, or they will face civil penalties from the Polysomnography Committee.

Before that time, someone who as of July 1, 2007 has been practicing polysomnography can of his or her own volition, pursuant to T.C.A. § 63-31-106(c), be “grandfathered in” to licensure by meeting fewer requirements than he or she would be required to meet as of July 1, 2010. The requirements for being “grandfathered in” to polysom licensure are as follows:

- Passage of the national certifying examination given by the board of registered polysomnographic technologists; and
- Be credentialed by the board of registered polysomnographic technologists; and
- Meet any additional educational or clinical requirements established by the committee. (These criteria still are to be established as the Polysomnography Committee develops and implements its rules. I note that the Board of Respiratory Care – like any other legal person in Tennessee – will have an opportunity to comment and make its voice heard during that rulemaking process.)

The benefit of the “grandfather” provision is that such an applicant will not have to meet any of the educational requirements that will become mandatory for anyone who applies for polysomnography licensure on or after July 1, 2010. Those education requirements are set forth at T.C.A. § 63-31-106(b)(1):

(1) Meet 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, that this option shall not remain available after July 1, 2012, if there are at least four (4) polysomnographic technologist educational programs in this state, at least two (2) in the east grand division and one (1) each in the middle and west grand divisions that 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 that have been accredited for two (2) years;

For ease of reference, I attach a complete copy of T.C.A. § 63-31-106 to this memo.

**2. Whether respiratory therapists who do not possess an additional RPSGT credential are currently in violation of the law when providing such services;**

No, they are not currently in violation of the law.

However, Tennessee-licensed respiratory care therapists who wish to engage in the “practice of polysomnography” after July 1, 2010 must by that date possess the RPSGT credential. Failure to have such credential by July 1, 2010 could subject a respiratory therapist who provides sleep-related services to discipline -- but I point out that such discipline is to be exercised by the Board of Respiratory Care:

(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.

T.C.A. § 63-31-107(a)(5) (Emphasis added.)

**3. Whether licensees of the respiratory care board who provide respiratory care services to sleep-disorder patients are additionally subject to the newly created polysomnography committee.**

No. Licensed respiratory therapists who provide sleep-related services are subject to discipline only by the board which issues their license: the Tennessee Board of Respiratory Care. That is true for various constitutional and other esoteric reasons that I need not go into here; but it is also true because the Polysomnography Act itself expressly states as much. I reiterate the statutory passage emphasized above:

...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.

T.C.A. § 63-31-107(a)(5).

That language from the Polysomnography Act makes it clear that even after the polysomnography licensure deadline of July 1, 2010, respiratory therapists who provide sleep-related services will remain exclusively under the disciplinary jurisdiction of their own licensing board – the Tennessee Board of Respiratory Care.

Following Mr. Sykes presentation, Dr. Darryl Jordan asked if it was correct that if the Board of Respiratory Care offered guidelines to the Board of Polysomnography it does not have to accept them; and, if a respiratory therapist is supervising a polysomnographer the respiratory therapist must adhere to the rules of the Board of polysomnography? Mr. Sykes answered yes.

Shiva Bozarth, OGC Attorney for the Board of Polysomnography stated that as they move through the rulemaking process one of the factors they must consider is the economic impact this will have not only on the licensees but for everyone in the state of Tennessee. By order of the Governor any comments made must be taken seriously because respiratory therapists will be the most affected either negatively or positively by this law.

Mr. David Johnson , Chair of the Tennessee Society for Respiratory Therapy Care explained the difference between a polysomnographic trainee and a polysomnographic technician. Mr. Johnson stated that a trainee is a student whose level of competency is being developed and they are paid in an A-Step program. A technician is an individual who has graduated from a training program and must get a temporary license.

Ms. Schabacker asked Mr. Johnson if trainees are defined as students in an A Step program even though they are paid to work and do not have to show competency to work on a patient?

Mr. Johnson stated that in order for one to go through the A Step program he/she must be in a paid position.

John Williams, Attorney for the Tennessee Society for Respiratory Care further defined the difference between the two (2) entities. Mr. Williams stated that a polysomnographic trainee is someone who is enrolled in an A Step program 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 ones educational program.

A technician is one who has graduated from an educational program but, has not yet passed the examination and is limited to a one (1) year temporary license. A technician will not be the one who is supervising the trainee but a licensed polysomnographic technician who has graduated and passed the examination.

Ms. Pam Ditto, Systems Service Director stated that the A Step program will eventually go away when there are four (4) accredited programs established. Currently there are only three (3) programs. Ms. Ditto would like to commend the state of Tennessee for enforcing the licensure requirements for polysomnographers to ensure the safety of all patients.

Ms. Schabacker stated that what Mr. Sykes put together did accomplish part of the goals for the task force which were to address the issues of the polysomnography act. An additional issue was to draft a position statement for therapists who provide sleep related services.

Dr. Jordan asked Dr. Haynes if he would brief the task force on his article regarding the skills and clinical guidelines for treating someone with sleep apnea and how they should be monitored.

Dr. Haynes, Internist Pulmonologist, for St. Thomas Hospital Sleep Center, stated that in his own personal opinion respiratory therapists do not have the training to step right into becoming a polysomnographic technologist without additional training. Dr. Haynes stated that additional training would be necessary to take care of sleep apnea patients.

Ms. Schabacker requested from Mr. Bozarth that the Board of Respiratory Care be informed when the Board of Polysomnography has all board members appointed and ready for their first meeting.

Mr. Bozarth stated that the Board of Respiratory Care would be informed and to keep in mind that all state meetings have a public notice and are open to the public.

Mr. Sykes informed the Committee that Dr. Delmar Mack had submitted a letter for their review and that he did not want to try to interpret Dr. Mack's letter in his absence. He asked the Committee to read the letter and discuss it at the May 22, 2008 board meeting.

Mr. Sykes suggested to the Committee that members start keeping a log of all concerns and suggestions that they may have so that when the Task Force committee reconvenes they will have material to compile into one (1) document. Mr. Sykes informed the Committee that they should not discuss any suggestions amongst themselves.

With no further discussion the meeting was adjourned at 4:20 p.m.

These minutes were ratified at the August 21, 2008 board meeting.