

AMENDED IN SENATE APRIL 27, 2009

SENATE BILL

No. 132

Introduced by Senator Denham

February 9, 2009

An act to add Chapter 7.8 (commencing with Section 3575) to Division 2 of the Business and Professions Code, relating to healing arts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 132, as amended, Denham. Polysomnographic technologists: sleep and wake disorders.

Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician assistants by the Physician Assistant Committee of the Medical Board of California. Existing law prescribes the medical services that may be performed by a physician assistant under the supervision of a licensed physician and surgeon.

Existing law, the Respiratory Care Practice Act, provides for the licensure and regulation of respiratory professionals by the Respiratory Care Board of California. Existing law defines the practice of respiratory therapy and prohibits its practice without a license issued by the board, subject to certain exceptions.

This bill would require the Medical Board of California to adopt regulations within a *one* year after the effective date of this act, relative to the qualifications for certified polysomnographic technologists, including requiring those technologists to be credentialed by a board-approved national accrediting agency, to have graduated from a board-approved educational program, and to have passed a board-approved national certifying examination, with a specified

exception for that examination requirement for a 3-year period. The bill would prohibit a person from using the title “certified polysomnographic technologist” or engaging in the practice of polysomnography unless he or she undergoes a Department of Justice background check, as specified, is registered as a certified polysomnographic technologist, is supervised and directed by a licensed physician and surgeon, and meets certain other requirements. The bill would define polysomnography to mean the treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders, as specified. The bill would further require the board, within a one year after the effective date of this act, to adopt regulations related to the employment of polysomnographic technicians and trainees.

This bill would require polysomnographic technologists to *apply to and* register with the Medical Board of California for a fee ~~fees~~ to be fixed by the board at no more than ~~\$100~~ \$50 *each*, and to renew their registration biennially for a fee of no more than \$50. The bill would require the deposit of those fees in the Contingent Fund of the Medical Board of California, a continuously appropriated fund, thereby making an appropriation. The bill would further set forth specified disciplinary standards and procedures.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 7.8 (commencing with Section 3575) is
2 added to Division 2 of the Business and Professions Code, to read:
3
4 CHAPTER 7.8. POLYSOMNOGRAPHIC TECHNOLOGISTS
5
6 3575. (a) For the purposes of this chapter, the following
7 definitions shall apply:
8 (1) “Board” means the Medical Board of California.
9 (2) “Polysomnography” means the treatment, management,
10 diagnostic testing, control, education, and care of patients with
11 sleep and wake disorders. Polysomnography shall include, but not
12 be limited to, the process of analysis, monitoring, and recording

1 of physiologic data during sleep and wakefulness to assist in the
2 treatment of disorders, syndromes, and dysfunctions that are
3 sleep-related, manifest during sleep, or disrupt normal sleep
4 activities. Polysomnography shall also include, but not be limited
5 to, the therapeutic and diagnostic use of oxygen, the use of positive
6 airway pressure including continuous positive airway pressure
7 (CPAP) and bilevel modalities, adaptive servo-ventilation, and
8 maintenance of nasal and oral airways that do not extend into the
9 trachea.

10 (3) "Supervision" means that the supervising physician and
11 surgeon shall remain available, either in person or through
12 telephonic or electronic means, at the time that the
13 polysomnographic services are provided.

14 (b) Within one year after the effective date of this chapter, the
15 board shall promulgate regulations relative to the qualifications
16 for the registration of individuals as certified polysomnographic
17 technologists, polysomnographic technicians, and
18 polysomnographic trainees. The qualifications for a certified
19 polysomnographic technologist shall include all of the following:

20 (1) He or she shall have valid, current credentials as a
21 polysomnographic technologist issued by a national accrediting
22 agency approved by the board.

23 (2) He or she shall have graduated from a polysomnographic
24 educational program that has been approved by the board.

25 (3) He or she shall have passed a national certifying examination
26 that has been approved by the board, or in the alternative, may
27 submit proof to the board that he or she has been practicing
28 polysomnography for at least five years in a manner that is
29 acceptable to the board. However, beginning three years after the
30 effective date of this chapter, all individuals seeking to obtain
31 certification as a polysomnographic technologist shall have passed
32 a national certifying examination that has been approved by the
33 board.

34 (c) In accordance with Section 144, any person seeking
35 registration from the board as a certified polysomnographic
36 technologist, a polysomnographic technician, or a
37 polysomnographic trainee shall be subject to a state and federal
38 level criminal offender record information search conducted
39 through the Department of Justice as specified in paragraphs (1)
40 to (5), inclusive, of this subdivision.

(1) The board shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all polysomnographic technologist, technician, or trainee certification candidates for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

(2) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this subdivision. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the board.

(3) The Department of Justice shall provide a response to the board pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(4) The board shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for persons described in this subdivision.

(5) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this subdivision. The individual seeking registration shall be responsible for this cost.

(d) Notwithstanding any other provision of law, an individual may use the title “certified polysomnographic technologist” and may engage in the practice of polysomnography only under the following circumstances:

(1) He or she is registered with the board.

(2) He or she works under the supervision and direction of a licensed physician and surgeon.

(3) He or she meets the requirements of this chapter.

(e) Within one year after the effective date of this chapter, the board shall adopt regulations that establish the means and circumstances in which a licensed physician and surgeon may employ polysomnographic technicians and polysomnographic trainees. The board may also adopt regulations specifying the scope of services that may be provided by a polysomnographic technician

1 or polysomnographic trainee. Any regulation adopted pursuant to
2 this section may specify the level of supervision that
3 polysomnographic technicians and trainees are required to have
4 when working under the supervision of a certified
5 polysomnographic technologist or licensed health care professional.

6 (f) This section shall not apply to California licensed allied
7 health professionals, including, but not limited to, respiratory care
8 practitioners, working within the scope of practice of their license.

9 (g) Nothing in this chapter shall be interpreted to authorize a
10 polysomnographic technologist, technician, or trainee to treat,
11 manage, control, educate, or care for patients other than those with
12 sleep disorders or to provide diagnostic testing for patients other
13 than those with suspected sleep disorders.

14 3576. (a) A registration under this chapter may be denied,
15 suspended, revoked, or otherwise subjected to discipline for any
16 of the following by the holder:

17 (1) Incompetence, gross negligence, or repeated similar
18 negligent acts performed by the registrant.

19 (2) An act of dishonesty or fraud.

20 (3) Committing any act or being convicted of a crime
21 constituting grounds for denial of licensure or registration under
22 Section 480.

23 (4) Violating or attempting to violate any provision of this
24 chapter or any regulation adopted under this chapter.

25 (b) Proceedings under this section shall be conducted in
26 accordance with Chapter 5 (commencing with Section 11500) of
27 Part 1 of Division 3 of Title 2 of the Government Code, and the
28 board shall have all powers granted therein.

29 3577. (a) ~~Each person to whom registration is granted under~~
30 ~~this chapter who applies for registration under this chapter~~ shall
31 pay into the Contingent Fund of the Medical Board of California
32 a fee to be fixed by the board at a sum not in excess of ~~one hundred~~
33 ~~dollars (\$100); fifty dollars (\$50).~~

34 (b) *Each person to whom registration is granted under this*
35 *chapter shall pay into the Contingent Fund of the Medical Board*
36 *of California a fee to be fixed by the board at a sum not in excess*
37 *of fifty dollars (\$50).*

38 (b)

39 (c) The registration shall expire after two years. The registration
40 may be renewed biennially at a fee which shall be paid into the

1 Contingent Fund of the Medical Board of California to be fixed
2 by the board at a sum not in excess of fifty dollars (\$50).

3 (e)

4 (d) The money in the Contingent Fund of the Medical Board of
5 California that is collected pursuant to this section shall be used
6 for the administration of this chapter.

7 3578. Notwithstanding any other provision of law, nothing in
8 this chapter shall prohibit a clinic or health facility licensed
9 pursuant to Division 2 (commencing with Section 1200) of the
10 Health and Safety Code from employing a certified
11 polysomnographic technologist.

12 SEC. 2. This act is an urgency statute necessary for the
13 immediate preservation of the public peace, health, or safety within
14 the meaning of Article IV of the Constitution and shall go into
15 immediate effect. The facts constituting the necessity are:

16 In order to protect the health and safety of the general public by
17 providing needed qualifications for, and oversight of, the practice
18 of polysomnography at the earliest possible time, it is necessary
19 that this act take effect immediately.