

AMENDED IN SENATE MAY 14, 2009

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 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 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 fees to be fixed by the board at no more than \$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

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

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

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

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

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

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

35 (c) In accordance with Section 144, any person seeking
36 registration from the board as a certified polysomnographic
37 technologist, a polysomnographic technician, or a
38 polysomnographic trainee shall be subject to a state and federal
39 level criminal offender record information search conducted

1 through the Department of Justice as specified in paragraphs (1)
2 to (5), inclusive, of this subdivision.

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

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

19 (3) The Department of Justice shall provide ~~a response~~ *state*
20 *and federal responses* to the board pursuant to paragraph (1) of
21 subdivision (p) of Section 11105 of the Penal Code.

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

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

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

33 (1) He or she is registered with the board *and has successfully*
34 *undergone a state and federal level criminal offender record*
35 *information search pursuant to subdivision (c).*

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

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

39 (e) Within one year after the effective date of this chapter, the
40 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 or polysomnographic trainee. Any regulation adopted pursuant to this section may specify the level of supervision that polysomnographic technicians and trainees are required to have when working under the supervision of a certified polysomnographic technologist or licensed health care professional.

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

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

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

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

(2) An act of dishonesty or fraud.

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

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

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

3577. (a) Each person who applies for registration under this chapter shall pay into the Contingent Fund of the Medical Board of California a fee to be fixed by the board at a sum not in excess of fifty dollars (\$50).

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

1 (c) The registration shall expire after two years. The registration
2 may be renewed biennially at a fee which shall be paid into the
3 Contingent Fund of the Medical Board of California to be fixed
4 by the board at a sum not in excess of fifty dollars (\$50).

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

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

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

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