

AMENDED IN ASSEMBLY JULY 6, 2009

AMENDED IN ASSEMBLY JUNE 24, 2009

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 \$100 each, and to renew their registration biennially for a fee of no more than \$100. 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.

The bill would specify that these provisions do not apply to diagnostic electroencephalograms conducted in accordance with the guidelines of the American Clinical Neurophysiology Society.

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:

CHAPTER 7.8. POLYSOMNOGRAPHIC TECHNOLOGISTS

3575. (a) For the purposes of this chapter, the following definitions shall apply:

(1) “Board” means the Medical Board of California.

(2) “Polysomnography” means the treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders. Polysomnography shall include, but not be limited to, the process of analysis, monitoring, and recording of physiologic data during sleep and wakefulness to assist in the treatment of disorders, syndromes, and dysfunctions that are sleep-related, manifest during sleep, or disrupt normal sleep activities. Polysomnography shall also include, but not be limited to, the therapeutic and diagnostic use of oxygen, the use of positive airway pressure including continuous positive airway pressure (CPAP) and bilevel modalities, adaptive servo-ventilation, and maintenance of nasal and oral airways that do not extend into the trachea.

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

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

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

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

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

1 a national certifying examination that has been approved by the
2 board.

3 (c) In accordance with Section 144, any person seeking
4 registration from the board as a certified polysomnographic
5 technologist, a polysomnographic technician, or a
6 polysomnographic trainee shall be subject to a state and federal
7 level criminal offender record information search conducted
8 through the Department of Justice as specified in paragraphs (1)
9 to (5), inclusive, of this subdivision.

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

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

26 (3) The Department of Justice shall provide state and federal
27 responses to the board pursuant to paragraph (1) of subdivision
28 (p) of Section 11105 of the Penal Code.

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

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

36 ~~(d) Notwithstanding any other provision of law, an individual~~

37 (d) *An individual* may use the title “certified polysomnographic
38 technologist” and may engage in the practice of polysomnography
39 only under the following circumstances:

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

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

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

7 (e) Within one year after the effective date of this chapter, the
8 board shall adopt regulations that establish the means and
9 circumstances in which a licensed physician and surgeon may
10 employ polysomnographic technicians and polysomnographic
11 trainees. The board may also adopt regulations specifying the scope
12 of services that may be provided by a polysomnographic technician
13 or polysomnographic trainee. Any regulation adopted pursuant to
14 this section may specify the level of supervision that
15 polysomnographic technicians and trainees are required to have
16 when working under the supervision of a certified
17 polysomnographic technologist or licensed health care professional.

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

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

26 3576. (a) A registration under this chapter may be denied,
27 suspended, revoked, or otherwise subjected to discipline for any
28 of the following by the holder:

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

31 (2) An act of dishonesty or fraud.

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

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

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

1 3577. (a) Each person who applies for registration under this
2 chapter shall pay into the Contingent Fund of the Medical Board
3 of California a fee to be fixed by the board at a sum not in excess
4 of one hundred dollars (\$100).

5 (b) Each person to whom registration is granted under this
6 chapter shall pay into the Contingent Fund of the Medical Board
7 of California a fee to be fixed by the board at a sum not in excess
8 of one hundred dollars (\$100).

9 (c) The registration shall expire after two years. The registration
10 may be renewed biennially at a fee which shall be paid into the
11 Contingent Fund of the Medical Board of California to be fixed
12 by the board at a sum not in excess of one hundred dollars (\$100).

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

16 ~~3578. Notwithstanding any other provision of law, nothing in~~

17 3578. *Nothing in* this chapter shall prohibit a clinic or health
18 facility licensed pursuant to Division 2 (commencing with Section
19 1200) of the Health and Safety Code from employing a certified
20 polysomnographic technologist.

21 ~~3579. Notwithstanding any other provision of law, nothing in~~

22 3579. *Nothing in* this chapter shall apply to diagnostic
23 electroencephalograms conducted in accordance with the guidelines
24 of the American Clinical Neurophysiology Society.

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

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