



POLYSOMNOGRAPHY PROFESSIONAL STANDARDS COMMITTEE
Regular Board Meeting

Tuesday, February 21, 2017

MINUTES

A regular meeting of the Tennessee Board of Medical Examiners' Polysomnography Professional Standards Committee was held in the Division of Health Related Boards, 665 Mainstream Drive, Poplar Room, Nashville, TN 37243.

Members Present: Roxanne M. Valentino, M.D.
 Jim O. Donaldson, PSGP
 Adam Clark, PSGP
 Dan Brown
 Charity Worrick, PSGP

Absent Members: Scott Vogt
 Theresa Hill

Staff Present: Maegan Carr Martin, JD, Executive Director
 Rene Saunders, MD, Medical Consultant
 Tracy Alcock, JD, Advisory Attorney
 Tammy Davis, Administrator
 Stacy Tarr, Administrative Manager

The Committee convened at 9:00 a.m. A quorum was present and Dr. Valentino, committee chair, called the meeting to order with a roll call.

Committee Elections

This committee is statutorily required to hold committee elections annually for a chair and a secretary. Those elections were currently due.

Jim Donaldson nominated Roxanne Valentino, MD to continue to serve as the chair. Dan Brown seconded. A vote was taken. The motion passed unanimously. Dr. Valentino accepted.

Dr. Valentino asked for nominations for secretary. Jim Donaldson nominated Adam Clark. Dan Brown seconded the motion. A vote was taken and the nomination passed unanimously. Mr. Clark accepted the nomination.

Rulemaking Hearing

Tracy Alcock, Assistant General Counsel, Office of General Counsel, called the rulemaking hearing to order.

The purpose of the rulemaking hearing was to solicit comments on rules proposed by the Committee to amend Rules 0880-14-.08 and 0880-14-.09.

Rule 0880-14-.08 [Officers, Consultants, Records, Advisory Rulings, and Screening Panels] is amended by deleting “member of the Committee” in paragraph (2) and by substituting the word “designee.”

Rule 0880-14-.09 [Continuing Education] is amended by deleting current subparagraph (1)(c) and by adding language detailing the organizations that the Committee has preapproved their programs for credit towards continuing education, and detailing the organizations that the Committee has stated may be approved on a case-by-case basis if the primary educational component of their course relates to the practice of polysomnography.

Ms. Martin stated that there is one member of the public that wished to speak. J. Brevard Haynes, Jr., MD approached the podium and introduced himself as a physician with St. Thomas Medical Partners. Dr. Haynes has practiced sleep medicine since the early 80s. He has been a board member for the Tennessee Sleep Society for a number of years. He stated that they hold an educational conference once a year. The purpose of this conference is to educate polysomnography technologists. He wanted those in attendance could get CE credits for attending. Ms. Martin asked if the Tennessee Sleep Society currently holds accreditation with any other organizations. Dr. Brevard stated they hold accreditation but he is unsure what organization. Jim Donaldson stated that he has been previously involved with Tennessee Sleep Society and that they sought and obtained approval through the American Academy of Sleep Medicine, American Association of Sleep Technologists. Dr. Valentino stated that her impression was that annual conferences were accredited through the AAST for CMEs so they would fall under these approved courses. Dr. Valentino said she has a comment for those present. If one is a sleep technologist and takes a course through another organization, they can apply through the AAST or BRPT for course approval for their certificate. Once they are approved, no further action is needed on the part of the Board.

0880-14-.08 Officers, Consultants, Records, Advisory Rulings, and Screening Panels is amended by deleting paragraph (2) in its entirety, but not its subparagraphs, and substituting instead the following language so that as amended, the new paragraph shall read:

- (2) The Committee shall select as a Committee consultant a designee who may serve as a consultant(s) to the Division and who may perform the following acts:

The second change under rule 0880-14-.09 Paragraph C will change to the following:

(c) Continuing Education –

1. Approved Continuing Education – Continuing education programs that are provided by, or approved for continuing education credit by, one of the following shall be acceptable to the Committee for credit towards the continuing education hour requirements of this rule:
 - (i) Board of Registered Polysomnographic Technologists
 - (ii) American Association of Sleep Technologists
 - (iii) Canadian Sleep Society
 - (iv) Australasian Sleep Technologists Association
 - (v) American Academy of Sleep Medicine.

2. Continuing Education Coursework that may be approved. – Continuing education courses provided by, or approved for continuing education credit by, one of the following organizations or associations may potentially, on a case-by-case basis, also be recognized as acceptable continuing education to satisfy the requirements of this rule, provided that the course’s primary educational component relates to the practice of polysomnography. In the event that the Committee or Division requests documentation of completion of all continuing education hours during its verification process, the licensee has the duty to provide not only proof of the course completion, but also proof that the course relates to the practice of polysomnography and that it has been provided by or approved by one of the following organizations:
 - (i) American Association for Respiratory Care and any of its chartered affiliates
 - (ii) American College of Chest Physicians
 - (iii) American Heart Association
 - (iv) American Lung Association
 - (v) American Medical Association
 - (vi) American Nurses Association
 - (vii) American Society of Cardiovascular Professionals
 - (viii) American Society of Anesthesiologists
 - (ix) American Thoracic Society
 - (x) Critical Care Nurse Association
 - (xi) Tennessee Association of Cardiovascular and Pulmonary Rehabilitation
 - (xii) Tennessee Medical Association
 - (xiii) All hospitals or institutions belonging to the Tennessee Hospital Association or which are JTC accredited.

3. The Committee consultant is vested with the authority to approve continuing education courses submitted in compliance with this rule. All such approvals must be presented to the full Board for ratification.

4. If a person submits documentation for coursework that is not clearly identifiable as acceptable continuing education because its primary educational component does not clearly relate to the practice of polysomnography, the Committee or its consultant will request further written description of the coursework and how it applies to the practice of polysomnography. If the Committee determines that it will not approve the continuing education, the individual may be granted an extension, not to exceed ninety (90) days, to replace the coursework hours that were not approved by the Committee. Those hours will be considered replacement hours and cannot be counted during the next calendar year.

Ms. Alcock asked the Committee whether they felt the need to address the public comment. Mr. Clark stated that he didn't see a need for any changes because any of the meetings received would be approved by one of the other approved agencies.

Approval of Minutes

After review of the minutes, there was a correction on page 5. Minutes should read "Ms. Briley was not present **nor** was an attorney present." Jim Donaldson made a motion to approve the minutes with the noted correction. Adam Clark seconded the motion. The minutes were approved unanimously.

Ratification of New Licenses & Reinstatements

Jim Donaldson made a motion to approve the new licenses, temporary permits and expired licenses. Adam Clark seconded the motion. The motion passed unanimously.

Office of General Counsel

The OGC has one open case pertaining to this Committee. The Committee has drafted two rule amendments which have now been approved.

Ms. Alcock reminded the Committee of the need to disclose conflicts of interest and asked that they share any potential conflict of interest with the Committee so that a decision can be made regarding the need for recusal. This applies to any contested case, rulemaking issue, or any other committee decision.

Agreed Order

Ms. Alcock asked the Committee if there were any conflicts of interest regarding **Respondent**, Anna Ealy. Jim Donaldson recused himself. Ms. Alcock confirmed that a quorum was still present and proceeded **with presentation of the order**. Ms. Ealy was not present but was represented by Susie Lodico, Esq. Ms. Alcock represented the

Department of Health and explained that an agreed order is a settlement reached prior to a Contested Case Hearing.

Pursuant to the terms of the order, Ms. Anna Ealy must pay twenty-two (22) Type “C” Civil Penalties, representative of the four (4) instances of misrepresentation and representative of the eighteen (18) studies that the Respondent scored for unlicensed technicians. The civil penalties shall be in the amount of Fifty Dollars (\$50.00) each for a total Civil Penalty of Eleven Hundred Dollars (\$1,100.00). The Respondent shall also pay the actual and reasonable costs of prosecuting this case to a maximum of Four Thousand Dollars (\$4,000.00). Additionally, Ms. Ealy’s license is suspended for a period of three months. Following the three month suspension, Ms. Ealy’s license shall immediately be placed on PROBATION for a period of one year, and until she complies with all provisions of the order. At the expiration of the probationary period and upon complying with all provisions of this order, she will become eligible to petition the Committee for an “Order of Compliance” lifting the probation on her license. Mr. Daniel Brown made a motion to accept the Agreed Order as written and Mr. Clark seconded the motion. The motion carried.

Maegan Carr Martin, JD, Executive Director presented the following agreed citations to the Committee:

Agreed Citation(s)

Michelle Trotter - Ms. Trotter was not present nor was she represented by counsel. Ms. Michelle Trotter admitted to engaging in the practice of polysomnography without a license in violation of TENN. CODE. ANN. 63-31-106(a)(1). Pursuant to the terms of the order, Ms. Trotter has agreed to pay a civil penalty of fifty dollars (\$50.00) per month for each month of unlicensed practice for a total of two hundred and fifty dollars (\$250.00). Mr. Donaldson made a motion to approve the agreed citation. Mr. Clark seconded the motion. The motion carried.

Kevin Leddy – Mr. Leddy was not present nor was he represented by counsel. Mr. Kevin Leddy admitted to engaging in the practice of polysomnography without a license in violation of TENN. CODE. ANN. 63-31-106(a)(1). Pursuant to the terms of the order, Mr. Leddy has agreed to pay a civil penalty of one hundred dollars (\$100.00) per month for each month of unlicensed practice for a total of four hundred dollars (\$400.00). Mr. Donaldson made a motion to approve the agreed citation. Mr. Clark seconded the motion. The motion carried.

Discussion of Penalties for Lapsed License vs. Unlicensed Practice

Maegan Martin, JD, Executive Director resumed discussion regarding penalties for lapsed licensure vs. unlicensed practice. This discussion commenced at the last meeting on August 23, 2016. At that time, the Committee was asked whether they want the penalty to be consistent for unlicensed practice and practice on a lapsed license. Currently, the penalty for practice on a

lapsed license is \$50 month up to six months. After six months we refer to Office of Investigations and have the ability to impose a higher penalty. The current penalty for unlicensed practice is \$100 per month. It could have been intentional and the Committee thinks that one is more serious than the other or it could be that the policies were adopted at different times. Dr. Valentino inquired as to what the other Boards do. Ms. Martin stated that the Medical Board imposes a penalty for lapsed license policy is \$1,000. The PA Committee has a \$300 penalty. She stated that the Medical Board doesn't have an unlicensed practice policy because it is a crime to engage in the unlicensed practice of medicine. The same is true for PAs. Mr. Clark asked what similar boards, such as respiratory therapy does. Ms. Martin said that she is happy to pull together some research to present at the next meeting. The Committee asked that Ms. Martin complete the research. Dr. Valentino stated that lapsed license is not as serious an issue as unlicensed practice in her opinion. This discussion was tabled until the next meeting on May 9, 2017.

Ms. Martin stated that the only other update from the Administrative office is that she sent out letters to the training programs. All training programs responded that they would be pleased to have a board member put a presentation together. She offered to facilitate this process and have slides prepared for the Committee members. The Committee stated that they would like for Ms. Martin to move forward with this project. Dr. Valentino stated that it would be nice to have a presentation specifically for new graduates and those who are not typically able to attend the meetings.

Manager's Report

Ms. Stacy Tarr reported that between August 1, 2016 and January 31, 2017, 17 technologists (full license), 4 technician (temporary permit), 3 Trainee/Student, and 1 reinstatement applications were received in the administrative office and 42 new licenses issued:

Total New Licenses Issued

| | |
|--------------------------------|-----|
| Technologist (Full) | 20 |
| Technicians (Temporary) | 20 |
| Trainee | 2 |
| Number of Renewals | 120 |
| Online Renewals | 100 |
| Percentage of renewals on-line | 83% |

The total number of active licensees as of January 31, 2017 is 549.

Reports from the Office of Investigations and Disciplinary Coordinator

Ms. Nichelle reported that there are currently no open complaints in the Office of Investigations. There are five (5) polysomnography licensees currently being monitored by the disciplinary coordinator.

Financial Report

Ms. Noranda French reviewed the financial report with the Committee. Ms. French stated for fiscal year ending June 30, 2016, direct expenditures were \$19,269.79, allocated expenditures were \$30,160.82 and total expenditures were \$49,430.61. Net Revenue was \$-4,160.61. The negative revenue balance was due, in large part, to unusually high legal expenses. The Committee also paid \$1,495 in LARS (licensing software) upgrades as the Division of Health Related Boards moves towards online licensure. Ms. French was not concerned at this time about the negative balance and expects to maintain a positive balance in the next closing.

Ms. Martin expressed concern regarding West Publishing. She asked that Ms. French pull the invoice for this and report back to her.

Mr. Donaldson asked whether the penalties that Ms. Ealy pays will be returned to the Committee. Ms. Alcock stated she believes that is the case.

There being no other Committee business, the meeting was adjourned at 9:57a.m.