



POLYSOMNOGRAPHY PROFESSIONAL STANDARDS COMMITTEE

Regular Board Meeting

Tuesday, February 23, 2016

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
Scott Vogt, PSGP
Donald Samples, Ed.D
Adam Clark, PSGP
Daniel Brown, PSGP

Absent Members: Theresa Hill, Consumer Member

Staff Present: Rene Saunders, M.D., Medical Director
Maegan Carr Martin, Executive Director
Tracy Alcock, Advisory Attorney
Mary Katherine Bratton, Advisory Attorney
Jennifer Shell, Administrator
Stacy Tarr, Manager

The Committee convened at 9:07 a.m. A quorum was present and Dr. Valentino, Chair, called the meeting to order with a roll call.

Approval of Minutes

Ms. Bratton request that on page 6, the last sentence under the section "Appointment of Committee Consultant(s)" be amended to read "The rule change will include language to address the issue of the Committee consultant." Mr. Vogt made a motion to approve the amended minutes from the October Committee meeting. Mr. Samples seconded the motion. The motion passed unanimously.

Applicant Interview(s)

Allen Hogue - was invited to appear before the Committee to address his unlicensed practice since October 2014. Mr. Vogt recused himself. During the interview, Ms. Martin noted that Mr. Hogue had been sent an Agreed Citation prepared in accordance with the Committee's unlicensed practice policy the day before. Prior to commencement of the meeting, she had spent several minutes with Mr. Hogue explaining the policy to him. She told him that the Committee would likely give him the option to execute the citation and have it ratified by the Committee this morning.

Also during the course of interviewing the applicant, the issue was brought up about where applicants were getting incorrect information regarding practicing as a Student/Trainee or with a Temporary permit. Ms. Shell stated that she was not sure where this incorrect information was coming from. Ms. Donna Lovitt, a previous Committee Member, addressed the Committee and stated that she felt the problem was that the expiration dates for the temporary permits were not on the website. Ms. Shell mentioned the applicant did not have a temporary permit, and that they had become aware of the issue of the expiration date not showing up on the website and were looking into it. Ms. Alcock reminded the Committee that an Agreed Citation had been created and the. Mr. Mr. Samples seconded the motion, which passed unanimously.

Ratification of New Licenses & Reinstatements

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

REPORT FROM THE OFFICE OF GENERAL COUNSEL

Conflict of Interest Statement

Ms. Alcock explained to the Committee that they are being asked to sign the Conflict of Interest Statement, which must be done annually.

OGC Report

Ms. Alcock explained that there are currently two open cases regarding against licensees of this Committee. There will be one Agreed Order to present and there will be a Contested Case at the May 2016 meeting. There aren't any rules pending in the Secretary of State's office.

Agreed Order(s)

Candace Meek – Ms. Meek did not appear. Ms. Alcock appeared on behalf of the State. Ms. Meek's RPSGT credential expired on July 17, 2012. From July 17, 2012 through November 2013, Ms. Meek was employed in a position at Vanderbilt University Medical Center as a polysomnographic technologist scoring sleep studies. When Ms. Meek became aware of her expired RPSGT credential, she self-reported to her employer and was suspended from work on December 5, 2013. She sat for and passed the RPSGT exam on December 26, 2013. Ms. Meek became recredentialed with the BRPT on December 26, 2013. The agreed order seeks payment of 17 type "B" civil penalties in the amount of \$100.00 each, for a total of \$1,700.00, as well as

costs not to exceed \$500.00. Mr. Vogt made a motion to approve the agreed order, which was seconded by Mr. Donaldson. The motion passed unanimously.

Agreed Citation(s)

Allen Hogue – Dr. Roxanne Valentino signed the agreed citation

REPORT FROM THE ADMINISTRATIVE OFFICE

Manager’s Report

Ms. Stacy Tarr, administrative director, reported that between October 1, 2015 and January 31, 2016, 7 technologist (full license), 8 technician (temporary permit), 1 Trainee/Student, and 1 reinstatement applications were received by the administrative office.

Total New Licenses Issued

Technologist (Full)	14
Technicians (Temporary)	8
Trainee/Student	0
Number of Renewals	83
Online Renewals	69
Percentage of renewals on-line	83%

The total number of active licensees as of January 31, 2016 is 546.

Dr. Valentino asked what the trend was over the past couple of years regarding the number of active licenses. Ms. Tarr replied that she can prepare a bar graph for the next meeting with that information.

Review Results of Comptroller’s Audit

Ms. Martin explained that the Polysomnography Committee, the Clinical Perfusion Committee, and the Board of Medical Examiners were all audited in 2015. The audit began in 2014 and concluded in 2015. They went before the Joint Committee of Government Operations in November 2015 to explain the findings. The one audit finding was related to self-sufficiency, which has been an ongoing issue. The Committee had previously been in the red but pulled out of it in 2015. There were no findings related to administrative functioning, the disciplinary process, or any other issues. They have an obligation to respond to the findings in April. The response has already been drafted and will notify the Comptroller’s Office of the good financial report.

Ms. Martin also reiterated the importance of Conflict of Interest Statements. They will need to be signed at the first meeting of every calendar year.

Office of Investigation & Disciplinary Report

Ms. Nichelle Dorroh reported that there are three (3) complaints in the Office of Investigations as of February 19, 2016. There are three (3) polysomnography technologists currently being monitored by the disciplinary coordinator.

The new director of the Office of Investigations, Antoinette Welch, was present and introduced herself to the Committee.

Financial Report

Vanessa Crutcher summarized the financial report with the Committee. The current net for fiscal year 2015 was a positive. Ms. Crutcher detailed the various expenditures and the revenue that was received. She explained that in fiscal year 2016 the Committee is expected to pull out of the carry-over deficit. At the following meeting, they may be able to receive projections for the current fiscal year. Mr. Vogt asked if the revenue was just from license renewals and applications, not the civil penalties Ms. Crutcher stated that the revenue did include civil penalties. Ms. Alcock then added that since there is a trial set in May, the Committee should expect that legal fees may increase. Dr. Valentino stated that when they had previously dealt with the issue of a fee increase, the civil penalties were taken out of the equation because they are variable and unpredictable, and when they happen, there is an increase in administrative and legal costs.

Legislative Report

Ms. Martin explained there was one bill pending as a result of the Comptroller's audit. There bill pending would extend the Committee until 2020.

Discuss Policies

Ms. Alcock passed out the proposed policies as well as the originals so the Committee can see the changes that were made.

Lapsed License Policy

Ms. Alcock explained that some of the language had changed to mirror the other Boards so that the language would be consistent across the Division. She filled in the numbers based upon the discussion at the last meeting and based upon their prior lapsed license policy.

Item three reads:

Upon receipt of a completed reinstatement application, supporting documentation (including any required proof of continuing education), and the applicant's payment of all fees, **the Committee's administrator may reinstate a license which has been in an expired status for less than thirty (30) calendar days immediately upon approval from the Committee's consultant.** Although the Committee and administrative staff recognize the applicant's urgent interest in having his or her license reinstated, preferential treatment will not be given to these

applicants. All applications are reviewed in the order in which they are received.

Item four reads:

If the work history reflects that the individual has practiced in excess of thirty (30) calendar days, but less than six (6) months on an expired license, the Committee will present to the licensee, an Agreed Citation which specifies payment of a fine in the amount of **\$50 per month for every month in which the individual has worked at least one day beyond the thirty (30) calendar day grace period.** The individual's license will not be reinstated unless and until the Agreed Citation is executed by the licensee and payment of the fine remitted to the Committee's administrative office.

A. The licensee shall be notified that all Agreed Citations prepared in accordance with this policy shall be reportable on the Department of Health's website, its disciplinary action report issued in the month the action is taken and to all appropriate federal databanks including the National Practitioner Data Bank (NPDB).

B. This remedy is only available to those polysomnographic technologists who have practiced on a lapsed license for **less than six (6) months from the date the license went into expired status.**

Item five reads:

If the licensee refuses to execute the Agreed Citation and/or remit the civil penalty described therein within sixty (60) days of the date the Agreed Citation is sent to the licensee, or if the licensee practiced on a lapsed license for six (6) months or longer, the licensee shall be referred to the Office of Investigations and Office of General Counsel for formal disciplinary action. Upon a proven violation, the minimum disciplinary action for this violation shall be:

A. A formal and reportable Reprimand on the license;

B. Assessment of civil penalties in an amount to exceed \$50 per month for every month in which the individual has worked at least one day beyond the thirty (30) calendar day grace period;

C. Assessment of costs associated with investigating and prosecuting the matter; and

D. Any and all other remedies the Committee deems appropriate

Item six reads:

In the event the matter is referred to the Office of Investigations and Office of General Counsel for formal disciplinary action, **the Committee's administrative office shall be permitted to reinstate those applicants for whom they have received a completed reinstatement application,** supporting documentation (including any required proof of continuing education), and the applicant's payment of all fees, **subject to further action on the license as described in paragraph five (5) above.** Though the Committee's administrator may reinstate such a license upon approval from the Committee's consultant, preferential treatment will not be given to these

applicants. These applications will be reviewed in the order in which they are received. For those applicants who have declined an Agreed Citation, their application will be deemed received sixty (60) days from the date the Agreed Citation was sent.

Dr. Valentino asked if the fees mentioned in section 6 were just the regular fees, not the civil penalties. Ms. Alcock replied yes. Mr. Donaldson noted that, in terms of consistency and looking at number five, both the cases that were in front of the Committee earlier this morning involved penalties of one hundred dollars per month; is there ever a situation where another amount would be appropriate? Ms. Alcock clarified that the first case involved an unlicensed practitioner, which falls under another policy, the policy that is in front of them is for an expired license. The other case that was before them that day was for an expired RPSGT, and the time period was more than six months.

Dr. Valentino asked what would happen if someone is granted a license and then they decline the agreed citation. Ms. Alcock replied that situation would fall under item five and the person would be referred to the Office of General Counsel. Dr. Saunders noted that if they were referred to OGC, if they had a reinstatement application and had met all the requirements, including fees, they would still be reinstated before the end of action occurs. Ms. Alcock replied that that was true, but then the person would still have a case in OGC, which is a bigger deal than an agreed citation. Ms. Martin added that the reinstatement does preserve some due process for the applicant: they are entitled to a hearing if they decline the agreed citation. Ms. Martin has never had an applicant for reinstatement dispute that he or she has been working on a lapsed license and demand the contested case hearing. The findings of fact that typically occur during the investigation and disciplinary processes is perfunctory at that point.

Ms. Bratton added that the reason the policy statement is before the Committee is not to alter what the Committee's current processes are, but to clarify them. The Office of General Counsel is asking all boards to adopt a similar policy statement based on the fees authorized by their current policy statements. They have already asked the Board of Medical Examiners to adopt something very similar, which they did at their last meeting. The policy intends to clarify that if a licensee wants to exercise their right to their day in court, or if they have been practicing for longer than the time period outlined, that is a more serious matter and the administrative staff should issue the license so the licensee can get back to work right away. The licensee will still be penalized if a violation has occurred, and it will result in a higher penalty and with an actual reprimand on the license, since the exercise of a formal proceeding makes the penalty a true disciplinary action instead of an informal, administrative action. Mr. Clark made a motion to approve the Lapsed License Policy. Mr. Donaldson seconded the motion, which passed.

Lapsed BRPT Policy

Ms. Bratton developed this policy based on the discussion at the last meeting and the lapsed license policy language. It was prompted by an issue that had not been brought up before, which is, what is the appropriate response when a licensee has allowed his or her RPSGT to lapse. One way it could come up was during a license renewal, and another way was self-reporting. Ms. Bratton gave the Committee a brief summary of the policy then allowed them to read the policy themselves before moving forward with the discussion. Dr. Valentino noted that she liked that the six months was consistent with the Lapsed License Policy, that the penalty is consistent, and that they are in line with the BRPT's stance on the ninety day grace period. Ms. Alcock asked if there were any other thoughts or comments. There were none. Item one especially asked them to

self-report. She said that they can't go out and tell everyone they have to self-report, but it would be in the policy on the website. Mr. Donaldson made a motion to approve the Lapsed BRPT Policy. The motion was seconded by Mr. Samples. The motion passed.

Discussion regarding rulemaking

Regarding Rule 0880-14-.08(2)(a)-(c), Ms. Alcock and Ms. Bratton believe the language needs to be changed to allow a consultant to be outside the committee to prevent conflict-of-interest issues amongst cases. They have had the case come up at least once where the consultant who reviews the complaint has to recuse themselves when that case is put before the committee for a disciplinary matter. Ms. Bratton added that they can take the entire section of language out. The rules refer to a consultant in other places so they can just clarify that the Committee can appoint a consultant in their discretion. That would be her recommendation because it gives the Committee the most flexibility. Most of the boards have their rules set up that way. They can have one consultant; they can have one consultant that reviews both the cases and applications; they can have one consultant that does the investigatory part of it and then keep committee members reviewing applications; they can have multiple consultants.

Ms. Alcock and Ms. Bratton strongly recommended altering the language regarding investigative consultants because of the frequency with which conflicts arise in Committee members' review of complaints. Dr. Valentino sought confirmation that changing the language would not prevent a Committee member from serving as a consultant to administrative staff. She noted that the Committee members are already very familiar with the rules that apply to licensure. Ms. Bratton responded that a Committee member could still serve in that role. Dr. Valentino asked if the process to remove the wording "a member of the committee" required a rulemaking hearing. Ms. Bratton replied that it did, and since they are having a continuing education rulemaking change, they could add it to that and take care of it at the same rulemaking hearing, but until then, they would still have a committee member do all the consultant work, including reviewing complaints. Ms. Alcock stated that they would need a vote on whether to remove the language "a member of the committee." Mr. Vogt made a motion to remove that language changing the language to "a designee." Mr. Clark seconded the motion, which passed.

Discussion of Miscellaneous Matters

Ms. Martin asked the Committee how many times an applicant should be permitted to reschedule their appearance before the Committee. The consensus was that an applicant should have two opportunities to come for an interview. If the applicant doesn't appear within two meetings from the date their application is reviewed, the application should be closed.

Miller-Motte Technical College

Ms. Martin explained to the Committee that Miller-Motte Technical College surrendered its CAAHEP accreditation, which leaves three CAAHEP approved programs in the state. TCA 63-31-106(b)(1)(D) reads:

“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.”

Since all four programs were accredited for at least two years, Ms. Martin does not think this means the Committee is required to begin A-Step graduates again, but she wanted to notify the Committee and offer them the opportunity to disagree or agree with that interpretation. It has not been Sunshined, so no formal action can be taken, but it can be placed on the Agenda for the next meeting if needed. The Committee indicated it agrees with that interpretation.

The meeting adjourned at 10:31 a.m.

These minutes were ratified by the Committee on May 10, 2016