



# **POLYSOMNOGRAPHY PROFESSIONAL STANDARDS COMMITTEE**

## **Regular Board Meeting**

**Tuesday, August 22, 2017**

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### **MINUTES**

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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 Valentino, M.D.  
Jim O. Donaldson, PSGP  
Adam Clark, PSGP  
Scott Vogt, PSGP  
Dan Brown, PSGP  
Charity Worrick, PSGP

Absent Members: Theresa Hill, Consumer Member

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

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

### **Approval of Minutes**

After review of the minutes, Jim Donaldson made a motion to approve the minutes. The motion was seconded by Dan Brown. The minutes were approved unanimously.

### **Applicant Interviews**

**Tracey Campbell** – Ms. Campbell appeared before the Committee to address her 2009 conviction for voluntary manslaughter. Ms. Campbell had a physical altercation with a woman her boyfriend was romantically involved with that resulted in the woman's death. Ms. Alcock, Committee's counsel,

reminded the Committee, that they have broad statutory authorization to deny, suspend, revoke, restrict, or impose one or more conditions as deemed necessary or appropriate at the time of licensing.

Dr. Valentino asked Ms. Campbell what led her to polysomnography. Ms. Campbell responded that she has always wanted to be in the medical field. She started as a CNA. She worked in hospitals and in private-duty. She trained at the VA hospital and developed a passion for helping others. Scott Vogt asked if Ms. Campbell is BRPT registered. She stated that, due to financial limitations, she is not currently certified but is pursuing certification. Dr. Saunders reminded the Committee that Ms. Campbell is an applicant for a technician license, which does not require certification. Since Ms. Campbell graduated in November 2016, if the license is granted today, it will be good until November 2017 with the possibility of one three-month extension.

Ms. Campbell graduated from Concorde Career College which is CAAHEP accredited. Ms. Alcock went through the Committee's options. They can:

- 1) issue the license without any encumbrance;
- 2) deny the license and cite the reason(s) for denying the license. A denial of the license is reportable discipline which would result in the applicant having a right to a contested case;
- 3) a contingent license may be issued which would be a license granted contingent on any requirements the Committee places on the license. This could, for example, be contingent on a TNPAPE evaluation and subsequent compliance with any recommendations. Upon compliance with any contingencies, the license will be granted with no encumbrances and the contingency would not be reportable discipline to NPBD;
- 4) another option is a conditional license, a license would be granted with conditions that must be complied with. Violations of the conditions would be reportable discipline to NPDB.
- 5) The final option is to table the application altogether.

Ms. Alcock read the the statutes regarding Committee powers and applicant requirements for licensure as well as list of actions that are sanctionable for the Board's understanding. Ms. Martin stated that these materials were circulated to the Committee prior to today's meeting for their review.

Dr. Valentino inquired as to what a TNPAPE evaluation involves. Dr. Saunders stated that a TNPAPE evaluation is obtained when there are issues related to substance use or abuse. She stated that this applicant is not appropriate for this type of evaluation. This applicant committed a felony, paid her debt to society, and has done what is necessary to obtain a license. She has some outstanding letters of recommendation from people who know her. Ms. Martin stated that the applicant is eligible for licensure and the issue is moral turpitude. She stated that the relevant question for the Committee might be whether they have any concern that Ms. Campbell is a danger to the citizens of Tennessee.

Mr. Clark asked whether she has any job opportunities pending. She stated that she has a potential opportunity at LeBonheur. Ms. Alcock asked that the Committee engage in discussion for the record. Mr. Clark stated that he feels she is eligible for licensure based on today's discussion. Mr. Clark made a motion to approve a full license with no conditions/contingencies. Mr. Vogt seconded the motion. The motion passed with no opposition. There were no recusals.

**Matt Phillips** – Mr. Phillips is applying for reinstatement of his polysomnography technologist license. Prior to beginning this applicant interview, Ms. Alcock asked if there were any recusals. There were two. Mr. Clark and Ms. Worrick recused themselves from this discussion. A quorum was still present. Mr. Phillips left clinical practice in 2015 to pursue other career opportunities. His license expired October, 2015. Dr. Saunders stated that this Committee has not previously addressed reentry situations. She has reached out to a couple of other States to see what their policies are for this type of situation. She added that it is up to the Committee to determine what length of time out of practice is appropriate before some

type of remediation is required. Ms. Alcock, stated that there is no rule that speaks to clinical inactivity other than the Committee's "Retirement and Reinstatement" rule which provides that someone who actively retires their license may be, , if retirement was in excess of two (2) years, required to successfully complete whatever educational and/or testing requirement the Committee determines is necessary to establish current levels of competency.

The issue before the Committee is whether, in light of this applicant's time spent out of practice, the license should be granted or denied, and/or whether there should be conditions such as additional training required. Ms. Alcock also asked the Committee to determine, if they felt that two years of clinical inactivity should trigger a reentry situation, whether the two years begins when the applicant last practiced or when the license expired.

Ms. Alcock then asked Mr. Phillips to tell the Committee about his reason for getting back into polysomnography. Mr. Phillips said that he started experiencing burn-out and decided to go in a different career path. He said that within two years, he started missing patient care and would like to reinstate his license so that he may work in the field again. Mr. Vogt asked Mr. Phillips if he kept his BRPT registration current and maintained the education required during the time his license was expired. Mr. Phillips stated that he did maintain both. Mr. Vogt asked if Mr. Phillips had practiced since his license expired. Mr. Phillips responded that he did not.

Ms. Martin stated that as a Unit, the BME has been looking at reentry since we seem to have more and more clinicians returning to practice after a period of clinical inactivity. She stated that the data she has is for medical doctors, but 37 states currently have a "trigger" identifying the point at which an applicant would be subject to a remediation or reentry plan. There is data showing that outcomes seems to be less positive after a certain period of time out of practice but there is no data showing definitively what that appropriate timeframe is. The Board of Medical Examiners approach is two years, but there is a lot of difference between this profession's and a physician's training, education, and scope of practice. She emphasized that there is no settled research in this area. Dr. Valentino asked whether this research is for someone who has let their license expire or just chose not to work while holding an active license. Ms. Martin stated that there are more options available when someone is applying for an initial licensure because you are deciding whether or not to grant someone a license. When someone never allows their license to lapse, or never retires it, we have no way of knowing whether they are practicing or not.

This decision will set a precedent moving forward. The Committee should be sure that if remediation is required, they must develop a plan or expectation that can actually be accomplished or carried out. Currently, there are no known remediation programs for this profession. Ms. Martin asked the Committee whether they want the trigger to be license expiration date or last practice date. After discussion, it was decided that the trigger would be the last date of clinical practice. Ms. Alcock stated that the Committee can take these cases on a case-by case basis and the Committee agreed. Dr. Valentino asked whether someone who renews their license but does not practice will remain under the radar. Ms. Martin answered that that they would for the foreseeable future.. Once this discussion was concluded, Mr. Vogt made a motion to approve the application with no contingency or remediation. Jim Donaldson seconded the motion. The motion passed.

### **Ratification of New Licenses & Reinstatements**

Mr. Adams made a motion to approve new licenses, temporary permits, and expired licenses. Mr. Donaldson seconded the motion. The motion carried with no abstentions or opposition.

### **Legislative Update**

Jim Layman, Legislative Liaison with the Tennessee Department of Health, appeared before the Committee to give an update on the following Public Chapters: 350, 215, 240, 481, and 230.

**Public Chapter 350** – This will allow healthcare providers to satisfy one hour of continuing education requirements through the performance of one hour of voluntary provision of healthcare services. The maximum amount of annual hours of continuing education that a provider can receive through providing volunteer healthcare services is the lesser of 8 hours or 20% of the provider’s annual continuing education requirement. The legislation allows for rulemaking by the division of health related boards in order to administer this section. This took effect on May 12, 2017.

**Public Chapter 215** – This will require state governmental entities that establish or adopt guidelines to practice to do so through the promulgation of rules, rather than policy. The rules so promulgated must specify all provisions included in and relating to the guide to practice. Any changes to guides to practice made after the guides are adopted must also be promulgated by rule in order to be effective. For purposes of this part, guides to practice includes codes of ethics and other quality standards, but does not include tests, examinations, building codes, safety codes, or drug standards. This legislation took effect on April 28, 2017.

**Public Chapter 240** – This legislation was brought by the Department of Health and was designed to address a number of issues throughout all licensing boards, committees, and councils. This legislation will:

- Ensure the integrity of licensure examinations by making examination questions, answer sheets, scoring keys, and other examination data confidential and closed to public inspection.
- Allow the issuance of limited licenses to applicants who have been out of clinical practice or inactive, or who are engaged in administrative practice. Limited licenses may be of restricted scope, restricted duration, and have additional conditions placed upon them in order to obtain full licensure.
- Clarify that other documents prepared by or on behalf of the Department with regard to an investigation are confidential until such time as formal disciplinary charges are filed against the provider.
- Eliminate the “locality rule” for administrative law.
- Require the chief administrative official for each health care facility to report within 60 days any disciplinary action taken against an employee for matters related to ethics, incompetence or negligence, moral turpitude, or substance abuse, to the employee’s respective licensing board. All records pertaining to the disciplinary action shall be made available for examination to the licensing board.

This act became effective on May 2, 2017.

**Public Chapter 481** – This legislation creates a new violation of a healthcare practitioner’s practice act if that practitioner refuses to submit to or tests positive for any drug the practitioner does not have a lawful prescription for or a valid medical reason for using. It is the duty of the employers to report any violation to the Department of Health. If the practitioner fails a drug test, the practitioner has 3 business days to either produce the requisite prescription or medical reason, or report to their board approved peer assistance program. If the practitioner does not comply with any of these measures, it is the duty of the employer to report this violation of the practice act to the employee’s licensing board for investigation and action. If the practitioner reports to the peer assistance program and obtains and maintains advocacy of the program, the employer is not required to notify the board.

As long as the practitioner obtains, maintains and complies with the terms of a peer assistance program, the board shall not take action on the licensee for the sole reason of a failed or refused drug test. If a practitioner fails to obtain or maintain advocacy from the peer assistance program, the program is

required to report that information to the appropriate licensing board. The board SHALL suspend the license of a practitioner who fails to comply with the terms of the program. Employer drug testing must be compliant with the Drug-free Workplace requirements. This legislation allows a quality improvement committee to share information regarding substance abuse by a practitioner with other quality improvement committees. Additionally, this legislation specifies that the Department of Health is not required to obtain prior approval from the Attorney General in order to take any emergency action on a licensee. This legislation took effect on July 1, 2017.

**Public Chapter 230** – This legislation authorizes the commissioners or supervising officials of departments to evaluate certain actions by a regulatory board to determine whether the action may constitute a potentially unreasonable restraint of trade. Supervising officials must ensure that the actions of regulatory boards that displace competition are consistent with a clearly articulated state policy. If a board action constitutes a potentially unreasonable restraint of free trade, the supervising official must conduct a further review of the action and either approve, remand or veto the action. The supervising official may not be licensed by, participate in, or have a financial interest in the occupation, business or trade regulated by the board who is subject to further review, nor be a voting or ex-officio member of the board. The supervising official must provide written notice of any vetoed actions to the senate and house government operations committees.

Prior to filing a regulatory board's rule with the secretary of state, the commissioner or chief executive officer of the administrative department under which a regulatory board operates or to which a regulatory board is administratively attached, or a designee to the extent a conflict of interest may exist with respect to the commissioner or chief executive officer, must remand a rule that may constitute a potentially unreasonable restraint of trade to the regulatory board for additional information, further proceedings, or modification, if the rule is not consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board. This act took effect on April 24, 2017.

Dr. Valentino asked whether Public Chapter 350 really applies to polysomnography licensees since they must adhere to BRPT continuing education. Ms. Martin stated that this development might make it conceivable for a licensee to meet the continuing education requirements required for state licensure even if they were slightly deficient in hours required for BRPT. Ms. Martin believes rulemaking will be Division-wide. Updates will be provided as they are available.

### **Office of General Counsel Report**

Ms. Alcock stated there are no open cases pertaining to the Polysomnography Professional Standards Committee.

The Committee held a rulemaking hearing at its February 2017 meeting regarding two rule amendments. The first amends the continuing education rule by removing existing language regarding acceptable continuing education programs and substituting language that list the organizations whose courses the Committee has preapproved for credit towards the continuing education requirement. The second amends the board consultant definition. The Committee's rule amendments have been reviewed and approved by the Attorney General's Office and went before the Joint Government Operations Committee on July 20, 2017. Mr. Clark attended the Government Operations Committee meeting along with Ms. Alcock on July 20, 2017. The Committee had one question and one comment. The question was what the Polysomnography Committee does. Mr. Clark was able to answer that question. The comment was that the Committee was very proud of what polysomnography Committee does and had helped to save a life. The rule amendments will have an effective date of August 23, 2017.

Ms. Alcock reminded the Committee of the Conflict of Interest Policy. She urged the Committee members to consider whether they might have a personal or financial interest, or what might appear to be a conflict of interest, in a contested case, a rulemaking issue, or any other Committee decision. If they do have a conflict, they should recuse themselves from the deliberations.

Ms. Alcock discussed Public Chapter 481 in further detail. She stated that this will have direct impact on how cases are handled in investigations. Prior to this legislation, these cases were handled on a case-by-case basis and the employer did not have to report. Now, if steps are not taken as directed, the employer must report the offense.

The Committee voted to increase the penalty for a lapsed license violation to \$100 a month at the last Committee meeting. Ms. Alcock handed out the finalized version of the lapsed license violation policy. She stated the only difference in what she presented at the last meeting and this policy is the amount of the violation per month. She asked that the Committee vote on the revised policy. Adam Clark made a motion to accept the lapsed license policy as presented. Jim Donaldson seconded the motion. The motion passed.

### **Manager's Report**

Ms. Stacy Tarr reported the activities that have transpired in the administrative office between May 1, 2017 and July 31, 2017 concerning Polysomnography professionals:

#### New Applications Received:

|                 |    |
|-----------------|----|
| Full Technician | 1  |
| Technician/Temp | 0  |
| Trainee/Student | 16 |
| Reinstatements  | 0  |

#### Total New Licenses Issued:

|                  |   |
|------------------|---|
| Full Technician  | 7 |
| Technician /Temp | 6 |
| Trainee/Student  | 0 |

Number of Renewals                      65

Online Renewals

78 or 83%

Total number of active licensees as of July 31, 2017 is 538.

**Office of Investigations**

Antoinette Welch, Director of the Office of Investigations, appeared before the Board and introduced Lori Leonard, Disciplinary Coordinator for the Committee. The Office of Investigations has received the first complaint for the Committee this year. It was filed this month (August) and is for a drug allegation. There are five people that are currently being supervised in the Office of Investigations. Three of the cases have been forwarded to the Attorney General's Office for collection of the costs.

The meeting was adjourned at 10:10a.m.