



POLYSOMNOGRAPHY PROFESSIONAL STANDARDS COMMITTEE **Regular Board Meeting**

August 25, 2020

MINUTES

A WebEx meeting of the **Tennessee Polysomnography Professional Standards Committee** was called to order at 9:10 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Charity Worrick, Committee Chairperson.

Members Present: Stephen Heyman, MD
Mark Spiceland, RPSGT
Penny Sprigs-Smith, RPSGT
Jim O. Donaldson, RPSGT
Charity Worrick, RPSGT
Scott Vogt, RPSGT

Absent Members: Theresa Hill, Consumer Member

Staff Present: Angela Lawrence, Executive Director
Rene Saunders, MD, Medical Consultant
Samuel Moore, Advisory Attorney
Tammy Hulseley, Administrator
Candyce Wilson, Administrative Director
Stacy Tarr, Administrative Director

Ms. Lawrence made opening remarks to the Committee and outlined the requirements for a WebEx meeting. Ms. Lawrence conducted a rollcall of the Committee members to confirm attendance. Ms. Sprigs-Smith made a motion to proceed with the meeting in order to consider time sensitive matters considering the covid-19 pandemic and adhere to CDC requirements for limiting attendance at in-person meetings. Dr. Heyman seconded the motion. A roll call vote was taken, and the motion passed. Ms. Sprigs-Smith motioned that all requirements for a WebEx meeting were satisfied. Dr. Heyman seconded the motion. The motion passed by roll call vote.

Ms. Lawrence then confirmed, by roll call, that all present members received the materials relevant to this meeting prior to today's meeting.

At this time, the meeting was turned over to Ms. Sprigs-Smith, Board Chairperson.

Ms. Sprigs-Smith called the meeting to order.

Approval of Minutes

After review, Mr. Donaldson made a motion to approve the minutes for the May 12, 2020 Committee meeting. Mr. Vogt identified one typographical error and seconded the motion. The motion passed by roll call vote.

Legislative Update

Patrick Powell, Legislative Liaison, provided a legislative update from the most recent legislative session:

Public Chapter 594 – This is the Department of Health's legislative effort and is known as the Health Licensure and Accountability Act. This bill allows all Health Related Boards to act against licensees who have been disciplined by another State Board for any act or omission that constitute grounds for discipline in Tennessee. Previously, most Boards could not act until a Tennessee resident was harmed. This act allows the Boards to take action based on another State's discipline. The bill also expands the available emergency actions by allowing action beyond a summary suspension, such as suspension of prescribing practices. This bill also establishes that the notification of law changes to healthcare practitioners can be satisfied by the online posting of the law changes by the respective Boards. The changes must be maintained online for a period of at least two years. These laws were effective March 20, 2020.

Public Chapter 738 – This act prohibits a governmental entity authorizing destruction of public records if the entity knows that the records are subject to a pending public records request. Prior to authorizing destruction of any public records, the governmental entity must contact the Public Records Request Coordinator to ensure that the records are not subject to any pending public records request. Records may still be destroyed in accordance with an established records retention policy or in the ordinary course of business if the records custodian is without knowledge that the records are not subject to a pending public records request. The act was effective June 22, 2020.

Public Chapter 4 (Telehealth Bill) – This public chapter deals with telehealth and reimbursement. Much of the legislation is focused on provisions related to insurance and reimbursement for telehealth services. Section 9 of the public chapter, however,

focuses on the definition of telehealth and what health practitioners are authorized to do telehealth.

Section 9 of the bill defines "telehealth," "telemedicine," and "provider-based telemedicine" as the use of real time audio, video, or other electronic media and telecommunication technology that enables interaction between a healthcare provider and a patient for the purpose of diagnosis, consultation, or treatment of a patient at a distant site where there may be no in-person exchange between a healthcare provider and a patient. The definition also includes store-and-forward telemedicine services.

Until April 1, 2022, all licensed providers under title 63 (as well as licensed alcohol and drug abuse counselors under title 68, or any state-contracted crisis service provider that is employed by a facility licensed under title 33) are defined as healthcare providers under the telehealth bill. After April 1, 2022, the definition of a healthcare provider eligible to perform telehealth services will change to an individual acting within the scope of a valid license issued pursuant to title 63 (as well as licensed alcohol and drug abuse counselors under title 68, or any state-contracted crisis service provider that is employed by a facility licensed under title 33). Telehealth is not authorized for use at pain management clinics or for the treatment of chronic nonmalignant pain. It is also not available for veterinarians.

A patient-provider relationship regarding telehealth is created by mutual consent and communication. No new standards of care are created, and the provider will be held to the same standard of care as if the case was in person. Finally, the board shall not establish a more restrictive standard of practice for telehealth than what is specifically authorized by the provider's practice act or other applicable statutes. This act took effect August 20, 2020.

Sunset Bill – This bill did not pass. Tennessee's sunset law requires that each agency, board, commission and other entity be reviewed at least once every eight years by the legislative Joint Government Operations Committee. If the legislature determines that they are not to continue, the entity is allowed to “sunset”. The polysomnography committee went through a review process over the past year and a recommendation was made to extend the Committee. The bill passed the Senate. However, the House sponsor did not go with the subcommittee’s recommendation. The House sponsor amended the bill by changing licensure to certification and some rule changes with little substance. This bill passed the House. However, the bill that passed the Senate and the bill that passed the House are not the same. Ultimately, that means that this bill did not pass in its final state. What this means for the Committee is that the Committee is basically in limbo. The Committee will go into what is called “wind-down” and will ultimately cease to exist as of July 2021. However, after discussion with the Senate sponsor, future legislation is anticipated that will extend the Committee. Mr. Powell answered various questions from Committee members regarding the sunset bill. He pointed out that the House sponsor of this bill will retire prior to next legislative session

and the sunset of this Committee. Mr. Powell encouraged the members of the Committee to reach out to their individual legislators as constituents (not Committee members) to show support for the continuation of this Committee.

Office of General Counsel

Mr. Samuel Moore reminded the Committee of the Conflict of Interest Policy: If any Committee member has a personal or financial interest in the outcome of any issue or matter before the Committee which may suggest a bias on your part, you are asked to state that interest for the record so that a determination can be made as to whether there exists a need for recusal. He also reminded the Committee that it is the Committee's duty to protect the health, safety, and welfare of the citizens of Tennessee and that the administration of this solemn responsibility is dependent upon avoiding even the appearance of impropriety.

Mr. Moore reported that there are currently three open cases pertaining to respondents who hold Polysomnographic licenses. Two of these cases pertain to continuing education hours and one regarding practice on a lapsed license. One of these respondents, Shoquana Henderson, has a consent order pending before the Committee.

Consent Order(s)

Shoquana Henderson, PSGP – did not appear before the Committee nor did legal representation appear on her behalf. Mr. Samuel Moore represented the state. Ms. Henderson was granted a license on September 15, 2014. The license currently has an expiration date of June 31, 2021. Ms. Henderson's license expired on June 30, 2019. She worked as a polysomnography technologist from approximately September 2019 until December 2019, for a total of three (3) months on an expired license. Ms. Henderson applied to reinstate her expired license on or about February 20, 2020, and on March 30, 2020, she was notified that her application for reinstatement had been initially approved. As a result of this order, she is reprimanded. She must pay three type "C" civil penalties, representative of three months unlicensed practice. Each civil penalty is in the amount of \$100 for a total civil penalty of \$300. She must also pay the actual and reasonable cost of prosecuting this case to the extent allowed by law up to a maximum amount of \$1,000. This is a formal disciplinary action and will be reported to the National Practitioner Data Bank (NPDB).

Mr. Donaldson motioned to approve the consent order. Mr. Sprigs-Smith seconded the motion. A roll call vote was taken. Dr. Heyman recused himself. The motion passed.

Agreed Citation(s)

Chelsie Thompson, PSGP – did not appear before the Committee nor did legal representation appear on her behalf. Mr. Samuel Moore represented the state. Ms. Thompson acknowledges that she failed to obtain four hours of required continuing

education credits. She has agreed to pay \$120 civil penalty and make up the deficient hours within 60 days. Mr. Donaldson motioned to approve the Agreed Citation. Mr. Vogt seconded the motion. A roll call vote was taken. The motion passed.

Ms. Moore reported that the two policies (extension of technician licenses and remediation of applicants out of a practice for extended time) that were approved at our last meeting were both ratified by the Board of Medical Examiners and are now available on the Committee's website.

Mr. Moore reported that the Commissioner has the authority to waive in person/live continuing education requirements. For continuing education credits/hours required to be obtained in any period that encompasses the calendar year 2020, all continuing education credits/hours that are obtained through non in-person/live methods will be accepted as proof of completing any continuing education requirements that are a condition of renewing and/or reinstating a license, certificate or registration.

Manager's Report

Ms. Tarr reported that between May 1, 2020 and July 31, 2020, 11 technologists (full license), 3 technicians (temporary permit), 1 Trainee/Student, and 0 reinstatement applications were received in the administrative office and 18 new licenses issued:

Total New Licenses Issued

Technologist (Full)	3
Technicians (Temporary)	6
Trainee	9
Number of Renewals	52
Online Renewals	43
Percentage of renewals on-line	82%

The total number of active licensees as of July 31, 2020 is 541. The total number of temporary permits is 39, and total student/trainee permits is 150.

Reports from the Office of Investigations and Disciplinary Coordinator

Ms. Lori Leonard, Disciplinary Coordinator reported that there are three currently monitored licensees under Board Order. These are all older cases and are currently in collections. They will most likely soon be closed out with a note in LARS so that, should they try to reinstate or reapply, they will be unable to do so until they are paid in full. There is one licensee under suspension for three years. The suspension will be up next year. The licensee is under a TNPap order.

In 2020, the Office of Investigations received two complaints for polysomnography. One was for a lapsed license and one was regarding a CE violation. A total of three

complaints were closed. All three of the closed complaints were sent to the Office of General Counsel for formal discipline.

Financial Report

Dr. Saunders introduced and welcomed Ms. Alicia Grice, Fiscal Director. Ms. Grice pointed out that the fiscal year has not officially closed so today's report is an estimate of what is expected to close within the next week or so. Ms. Grice will finalize these numbers and come to the next meeting to present the final report.

Ms. Grice prepared a comparison of the past three fiscal years so that the Committee can see expenditure/revenue. For 2020, total direct expenditures were just over \$20,000.00. Estimates for administration, cash office, and investigations were projected using the last three fiscal years, averaged those numbers, and added 5%. The final numbers are most likely going to be somewhat less than the estimates. Estimated total expenditures for 2020 are right at \$37,000. Revenue was just over \$41,000. That leaves the Committee in the positive approximately \$4,000. Carryover is expected to be just over \$21,000. No fee increases or decrease is expected to be considered.

Public Comment

No public attendees were present.

Dr. Saunders reiterated to the Committee members that if they want to contact their legislators regarding the sunset of the committee to reach out to them but cautioned that they should do so as individual constituents. They should not reach out as a committee.

There being no other Committee business, the meeting was adjourned at 9:58 a.m.