



POLYSOMNOGRAPHY PROFESSIONAL STANDARDS COMMITTEE
Regular Board Meeting

Tuesday, October 27, 2015

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

Absent Members:

Bryan P. Hughes, PSGP
Madelyn K. Cunningham, Consumer Member

Staff Present:

Rene Saunders, M.D., Medical Director
Mary Katherine Bratton, Advisory Attorney
Tracy Alcock, Advisory Attorney
Jennifer Shell, Administrator
Stacy Tarr, Manager

The Committee convened at 9:01 a.m. A quorum was present and Dr. Valentino, Chair, called the meeting to order with a roll call.

Approval of Minutes

Mr. Donaldson made a motion to approve the minutes from the May 12, 2015 Committee meeting. Mr. Samples seconded the motion. The motion passed unanimously.

Elections

The Committee proceeded to hold elections for Secretary. Jim Donaldson nominated Donald Samples as the Secretary. Mr. Clark seconded the motion. Mr. Samples accepted. The motion passed unanimously.

Ratification of New Licenses & Reinstatements

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

Office of General Counsel

Ms. Bratton introduced Ms. Tracy Alcock, who will serve as the new advisory attorney for the Polysomnography Professional Standards Committee. Ms. Alcock informed the Committee that there were originally two contested cases scheduled for today but they have been moved to the next Committee meeting.

Agreed Citation(s)

Allyn Boatwright – Ms. Boatwright was engaged in the practice of Polysomnography for seven months without a license. To address her unlicensed practice, Ms. Boatwright has agreed to pay a civil penalty of \$700 which represents a \$100 penalty for each month of unlicensed practice. Mr. Vogt recused himself. Mr. Samples made a motion to accept the agreed citation. Mr. Donaldson seconded the motion, which passed.

Interpretation of Lapsed License Policy

Ms. Bratton summarized the Committee's existing lapsed license policy. She then asked the Committee how those licensees who have been practicing on a license that has been expired for more than six months should be handled, as some clarification is needed. The Committee essentially has three options. It can present applicants with an agreed citation that includes a per-month penalty for each month of practice on a lapsed license, or it can present applicants with a consent order that also includes a per-month penalty. Alternatively, the Committee can direct staff to open a complaint against individuals who have been practicing on a lapsed license and not address the practice on a lapsed license as part of the application process. In the latter situation, Ms. Bratton would recommend a reprimand as the appropriate discipline.

Mr. Clark preferred the option that allows the applicant to get back to work sooner, but with a harsher penalty. Dr. Valentino agreed and added that the Committee is here to uphold standards, but not restrict people who are qualified from working. Mr. Clark asked what would be required for a longer time frame, such as four years. Ms. Bratton stated that the Committee had a fair amount of discretion, as the policy statement doesn't set a limit, and the rules allow the Committee to judge whether someone is competent if they have been out of practice for an extended period of time. Dr. Valentino and Ms. Alcock will deal with the each case, on a case-by-case basis and Dr. Saunders would notify them if someone is out of practice for a long time.

Dr. Valentino then sought to clarify that this policy applies to those who have been working in Tennessee on a lapsed Tennessee license. It will not apply to anyone who is working and licensed in another state but has allowed his or her license to lapse. Dr. Saunders confirmed Dr. Valentino's reading of the policy. Dr. Valentino stated that it sounds like the Committee agrees that they want the least restrictive way to allow the person to return to work or to continue working, and they want to be able to evaluate on a case-by-case basis those that have more than

six months, to potentially consider a higher fine in those cases than the \$50 per month penalty for the first six months. The other Committee members agreed with that summary.

Ms. Bratton stated that the Committee does not have a policy statement covering a lapsed certificate (BRPT), but she asked if the Committee would like that to be handled similarly or if there should be a different approach. Dr. Valentino asked if there was a grace period, or if it the response to a lapsed BRPT certification is immediate. Ms. Bratton indicated it was immediate and noted that the statutes and rules don't clarify what should happen, but that the Committee has expressed in the past that it would be treated similarly to a lapsed license, in that there would be a monetary penalty assessed. She added that many places of employment suspend the work of the individual until they can get their BRPT, but the Committee has not in the past suspended someone for allowing that to lapse. It was Ms. Bratton's understanding that at some point people were grandfathered into the BRPT, but that changed and some practitioners may be confused that it is no longer a lifetime thing.

Dr. Valentino asked the Committee members who are registered technicians that if they've kept up with their CEU requirements, and they forgot to renew their BRPT, how long they have. Mr. Clark noted that they have to register their CEUs on the website and there is a fee that they would pay. Ms. Bratton pulled up the recertification table from the BRPT's website. Based on the table it is her understanding that the RPSGT exam is required if someone didn't do continuing education at all. Ms. Bratton noted again that this is something not currently in their policy statement but it is something that can be added and presented at a future meeting. Most of the boards do not have a national certification that they are required to maintain. If a board or committee has a national certification at all, it is only required to for initial licensure and does not have to be maintained. Dr. Valentino stated that one option would be to treat it exactly the same as a lapsed license. Ms. Bratton added that the Committee could also charge a monthly fee, or a fee based on how many hours the individual practiced. The maximum they are allowed to charge by statute is \$1,000.00 a day for unlicensed practice or a violation of the practice act, which includes letting the BRPT lapse. They could assess some sort of discipline: reprimand, suspension, probation. She felt keeping the license current but letting the BRPT lapse was a lesser offense, but she deferred to the committee.

Dr. Valentino asked if they could be brought before the committee on a case-by-case basis. Ms. Bratton replied that they could. She added that if someone is renewing their license and they have not had their BRPT, this is something that could be handled with an agreed citation. Dr. Saunders noted that the administrative office would miss those who renewed online. Ms. Tarr stated that the midwifery licensees have to have their certification in order to renew their license. This means they do not have online renewals. Ms. Bratton noted the issue of adding a question to the online renewal is not an option because the renewal is standard across all professions. Dr. Saunders said that the administrative staff could check the BRPT website to figure out who is certified and who is not. Dr. Valentino mentioned auditing, and whether that was an option so that changes to the renewal weren't required.

Dr. Saunders stated that if the committee is comfortable with BRPT certification expiring, and allowing someone to continue to practice, then perhaps they should leave things as they are. Dr. Valentino replied that they can't be comfortable with it, as it is a statutory requirement. The

question is how far can the Committee go to ensure this requirement is met? She was also thinking about someone who is within 90 days of lapse. It appears that the BRPT thinks it's fair to deal with these professionals with just a penalty.

Ms. Bratton clarified there is not a current, applicable policy and the statute doesn't have a grace period. The statute also doesn't prohibit a grace period. Additionally, there are other places in the practice act where the statute defers to the BRPT. She felt that the Committee would be safe to say that they would like to have a 30-day grace period for a lapsed license, and a 90-day grace period for the BRPT certification lapse. That is consistent with current BRPT policy. Ms. Bratton explained that increasing the audit percentage would increase the time billed to the committee, and though she was not there to give the committee financial advice, she would suggest keeping the 5% audit percentage, and begin including a BRPT check as part of that process. Mr. Samples noted that he thought it was a pretty serious offense, if someone was practicing and they let their license expire, and he didn't think it would take too many hours per year to check with the BRPT website. Ms. Tarr noted that it is not a great amount of time to check everyone renewing. Ms. Tarr stated that administrative staff would print a report and see who renewed every month and ensure the BRPT certification is current.

The Committee returned to consideration of how to address those who have allowed their BRPT to lapse. Ms. Bratton felt sure that the Committee could respond to these issues with an agreed citation, similar to the lapsed license situations. She asked the Committee whether it wanted to treat these licensees like applicants who have been practicing on lapsed license. The Committee agreed that it did.

Manager's Report

Ms. Stacy Tarr reported that between May 1, 2015 and September 30, 2015, 10 technologist (full license), 8 technician (temporary permit), 19 Trainee/Student, and 3 reinstatement applications were received by the administrative office.

Total New Licenses Issued

Technologist (Full)	22
Technicians (Temporary)	10
Trainee	14
Number of Renewals	102
Online Renewals	79
Percentage of renewals on-line	77%

The total number of active licensees as of September 30, 2015 is 541.

Office of Investigation & Disciplinary Report

Ms. Nichelle Dorroh reported that there are three (3) complaints in the Office of Investigations as of October 09, 2015. There are three (3) polysomnography technologists currently being monitored by the disciplinary coordinator.

Rulemaking discussion regarding continuing education

Mr. Donaldson discussed how he had been contacted by some polysomnographic technologists whose continuing education was audited by the State. They had completed a sufficient number of hours of continuing education, but not all of the credits were the type accepted by the State under the current rules, though they were all accepted by the BRPT. The Tennessee Sleep Society also sent a letter asking if the committee would expand continuing education to include other organizations. That information was sent to administrative staff who then distributed the e-mail to the Committee members. After a discussion of whether the Committee should proceed on the issue of continuing education, and how they should proceed, Mr. Vogt made a motion to vote on changing the rule to be more inclusive for education. Mr. Clark seconded the motion, which was unanimously approved.

The committee members then discussed and voted on which organizations they wanted to include or not include in the draft rule to be created and discussed. The exact language will be refined by staff, but it will be similar to the following:

“The program must be provided by, or approved, in content, structure, and format by one of the following organizations: Board of Registered Polysomnographic Technologist, American Association of Sleep Technologists, Canadian Sleep Society, Australasian Sleep Technologist Association, American Association of Sleep Medicine.” Further proposed language regarding other courses will be similar to: “Courses provided by or approved for continuing education credit by one of the following organizations may be recognized as acceptable continuing education, provided its primary component is sleep-related: American Association for Respiratory Care and any of its chartered affiliates, American College of Chest Physicians, American Heart Association, American Lung Association, American Medical Association, American Nurses Association, American Society of Cardiovascular Professionals, American Society of Anesthesiologists, American Thoracic Society, Critical Care Nurse Association, Tennessee Association of Cardiovascular and Pulmonary Rehabilitation, Tennessee Medical Association, and All hospitals or institutions belonging to the Tennessee Hospital Association, or which are J.C.A.H.O. accredited.”

The draft to be created will include language to the effect of: “The onus is on the licensee, if they submit the coursework approved by one of those organizations, to provide proof from that organization that the individual course has been approved. These courses may be approved if they are sleep-related.”

Ms. Bratton explained that a section will also be added specifying who has the authority to make the determination on whether the course will be accepted. She also suggested adopting language for when the continuing education is not implicit on its face, and it is determined by the individual reviewing the continuing education to not be accepted, that there be an appeal process, which some other boards and committees have.

Ms. Bratton proposed using the following language which is in the Physician Assistant rules:

“If a person submits documentation for training that is not clearly identifiable as appropriate continuing education, the Committee will request a written description of the training and how it applies to the practice as a physician assistant. If the Committee determines that the training cannot be considered appropriate continuing education, the individual will be given 90 days to replace the hours not allowed. Those hours will be considered replacement hours and cannot be counted during the next renewal period”.

The committee agreed to include the proposed language for the draft. During the discussion of the organizations being considered, the following courses were voted not to be recognized as acceptable: American Cancer Association, American College of Emergency Physicians, Association of Certified Registered Nurse Anesthetists, Tennessee Association for Home Care, American Nurses Credentialing Center's Commission on Accreditation, American Association of Pediatric Physicians, and Tennessee Sleep Society.

During the discussion, Coleen Schalbecker, representing the AARC, noted that there are topics for managers that are not specifically sleep-related, but would be helpful for managers. She was concerned with the term “sleep-related” and whether it might cause some confusion. The committee briefly discussed the issue but ultimately determined that some additional types of courses may be required for a job, but that would be separate from what is required for maintaining licensure. Dr. Valentino was appointed by the committee to be the point person in case any tweaking needed to be done.

Appointment of Committee Consultant(s)

Ms. Bratton explained that the rules specifically state that the consultant has to be a committee member. Occasionally there are issues with this requirement, for example, if there is a case that comes before the Committee, that person may need to recuse himself or herself, and there could be quorum issues as a result. She recommend they delegate authority to someone outside the Committee; someone in the field who is knowledgeable about the rules. The Committee agreed with that suggestion. The rule change will include language to address the issue of the Committee consultant.

Discussion of upcoming Board Meeting dates

Ms. Bratton discussed the issue of adding or shifting the dates of future Committee meetings. The financial report is not available until after October of each year and so the Committee would not have the financial statement available to make decisions until the May meeting. After some discussion amongst the Committee members and staff, the Committee decided to look into changing the dates.

Adjourned 11:22 am.

These minutes were ratified by the Committee on February 23, 2016