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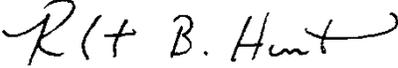
No. 277

H.P. 195

House of Representatives, February 5, 2015

An Act To License Polysomnography

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative NUTTING of Oakland.
Cosponsored by Senator CUSHING of Penobscot and
Representatives: AUSTIN of Gray, MASTRACCIO of Sanford, SIROCKI of Scarborough,
Senator: KATZ of Kennebec.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §12004-A, sub-§33-B** is enacted to read:

3 **33-B.**

4 Board of Polysomnography \$35/Day 32 MRSA §3672

5 **Sec. 2. 32 MRSA c. 52** is enacted to read:

6 **CHAPTER 52**

7 **POLYSOMNOGRAPHIC TECHNOLOGISTS**

8 **§3671. Definitions**

9 As used in this chapter, unless the context otherwise indicates, the following terms
10 have the following meanings.

11 **1. Board.** "Board" means the Board of Polysomnography within the Department of
12 Professional and Financial Regulation under section 3672.

13 **2. Department.** "Department" means the Department of Professional and Financial
14 Regulation.

15 **3. Direct supervision.** "Direct supervision" means supervision by a
16 polysomnographic technologist who is present in the area where a polysomnographic
17 procedure is being performed and who is immediately available to furnish assistance and
18 direction throughout the performance of the procedure.

19 **4. General supervision.** "General supervision" means overall direction and control
20 by a licensed physician over the performance of a polysomnographic procedure. The
21 physician's presence is not required during the performance of the procedure.

22 **5. Polysomnographic student.** "Polysomnographic student" means a person who is
23 enrolled in a polysomnography educational program that is accredited by a national
24 accrediting agency approved by the board, as provided in section 3674.

25 **6. Polysomnographic technician.** "Polysomnographic technician" means a person
26 who has graduated from an approved polysomnography educational program described in
27 section 3674 but has not yet passed a national certifying examination given by an
28 accrediting agency approved by the board or other examination approved by the board.

29 **7. Polysomnographic technologist.** "Polysomnographic technologist" means a
30 person who is licensed by the board to engage in the practice of polysomnography under
31 general supervision.

32 **8. Polysomnographic trainee.** "Polysomnographic trainee" means a person who is
33 enrolled in a sleep technologist educational program that is accredited by a national
34 accrediting agency approved by the board or by rule of the board.

1 **9. Practice of polysomnography.** "Practice of polysomnography" means the
2 performance of any of the following tasks under general supervision in a hospital, stand-
3 alone sleep laboratory or sleep center, or in a patient's home or residence in accordance
4 with a licensed physician's order, except that the scoring of data and the education of
5 patients may take place in other settings in accordance with a physician's order:

6 A. Monitoring and recording physiological data during an evaluation of sleep-related
7 disorders, including sleep-related respiratory disturbances, by applying the following
8 techniques, equipment and procedures:

9 (1) Positive airway pressure titration or acclimation on spontaneously breathing
10 patients using a mask or oral appliance as long as the mask or oral appliance does
11 not extend into the trachea or attach to an artificial airway. Positive airway
12 pressure titration or acclimation may be set up in a patient's home and instruction
13 given on use of the technique in the patient's home;

14 (2) Supplemental low-flow oxygen therapy of no more than 6 liters per minute,
15 using nasal cannula or continuous or bilevel positive airway pressure;

16 (3) Capnography;

17 (4) Cardiopulmonary resuscitation;

18 (5) Pulse oximetry;

19 (6) Esophageal pH monitoring;

20 (7) Esophageal pressure monitoring;

21 (8) Sleep staging, including surface electroencephalography, surface
22 electrooculography and submental surface electromyography;

23 (9) Surface electromyography of arms and legs;

24 (10) Electrocardiography;

25 (11) Respiratory effort monitoring, including thoracic and abdominal movement;

26 (12) Plethysmography blood flow monitoring, including peripheral arterial tone;

27 (13) Snore monitoring;

28 (14) Audio or video monitoring;

29 (15) Body movement monitoring;

30 (16) Nocturnal penile tumescence monitoring;

31 (17) Nasal and oral airflow monitoring;

32 (18) Actigraphy;

33 (19) Body temperature monitoring; and

34 (20) Monitoring the effects of a mask or oral appliance used to treat sleep
35 disorders, as long as the mask or oral appliance does not extend into the trachea
36 or attach to an artificial airway;

1 B. Observing and monitoring physical signs and symptoms, general behavior and
2 general physical response to polysomnographic evaluation and determining whether
3 initiation, modification or discontinuation of a polysomnographic treatment regimen
4 is warranted;

5 C. Analyzing and scoring data collected pursuant to paragraph A or B for the
6 purpose of assisting a licensed physician in the diagnosis and treatment of sleep
7 disorders or other disorders;

8 D. Implementing a written or oral order from a licensed physician that requires the
9 practice of polysomnography; and

10 E. Educating a patient regarding a treatment regimen that assists the patient in
11 improving the patient's sleep.

12 "Practice of polysomnography" does not include making or directing the making or use of
13 any oral appliance used to treat sleep-disordered breathing or evaluating the structures of
14 the patient's oral and maxillofacial region for purposes of fitting the appliance; these tasks
15 must be performed by a licensed dentist.

16 **10. Sleep-related service.** "Sleep-related service" means a task performed by a
17 polysomnographic technician, polysomnographic trainee, polysomnographic student or
18 other person permitted to perform services described in this chapter in a hospital, stand-
19 alone sleep laboratory or sleep center, or in a patient's home or residence or other setting
20 in accordance with a licensed physician's order, that would be considered the practice of
21 polysomnography if performed by a polysomnographic technologist.

22 **§3672. Board of Polysomnography**

23 **1. Board established; membership; terms.** The Board of Polysomnography, as
24 established by Title 5, section 12004-A, subsection 33-B, is within the Department of
25 Professional and Financial Regulation and consists of 7 members appointed by the
26 Governor as follows:

27 A. Three members must be registered polysomnographic technologists or registered
28 sleep technologists as described in section 3674, subsection 1, paragraph C;

29 B. One member must be a licensed physician who is certified in sleep medicine by a
30 national certifying body approved by the board;

31 C. One member must be the director of a nationally accredited, hospital-based sleep
32 center;

33 D. One member must be a respiratory therapist who is also a registered
34 polysomnographic technologist, registered sleep technologist or sleep disorders
35 specialist as described in section 3674, subsection 1, paragraph C; and

36 E. One member must be a consumer of polysomnographic services who is not
37 commercially or professionally associated with the health care field.

38 The Governor may consider for appointment to the board persons recommended by
39 applicable professional organizations. Appointments of members must comply with Title

1 10, section 8009. In making appointments, the Governor shall strive to ensure that each
2 member of the board is a resident of this State. Appointments are for 4-year terms.

3 2. Officers. The board shall choose annually a chair and a secretary from its
4 members.

5 3. Meetings. The board shall hold at least one regular meeting each year and other
6 meetings as the board determines necessary to conduct its business.

7 4. Quorum. A majority of the members of the board constitutes a quorum. No
8 action of the board is valid unless approved by a majority of members present at a
9 meeting at which there is a quorum.

10 5. Removal. The Governor may remove any member of the board for neglect of
11 duties required by this chapter, for malfeasance in office, for incompetence or for
12 unprofessional conduct.

13 **§3673. Powers and duties of the board**

14 The board has the following powers and duties in addition to all other powers and
15 duties otherwise set forth in this chapter.

16 1. Rules. The board shall adopt all rules necessary for the implementation and
17 administration of this chapter. Rules adopted pursuant to this subsection are routine
18 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

19 2. Applications. The board shall review and approve or reject the application of a
20 person who applies for licensure as a polysomnographic technologist. The board shall
21 develop criteria for the evaluation of applications for licensure submitted by registered
22 polysomnographic technologists who are licensed in other states.

23 3. Renewals. The board shall review and approve or reject an application for license
24 renewal.

25 4. Issuance. The board shall issue all temporary permits and all approved licenses
26 and renewal of licenses. The board shall collect or receive all fees, fines and money owed
27 pursuant to this chapter.

28 5. Disciplinary actions. The board shall deny, suspend, revoke, restrict or impose
29 one or more conditions on a license as the board determines necessary or appropriate at
30 the time a license is issued, renewed or reinstated or as a sanction imposed at the
31 conclusion of a disciplinary hearing.

32 6. Advisory private letter rulings. The board shall issue advisory private letter
33 rulings to any person licensed under this chapter who makes a request for a ruling
34 regarding any matter within the board's jurisdiction, as long as the ruling affects only the
35 licensee making the inquiry. Advisory private letter rulings set no precedent for any other
36 contested case or inquiry before the board.

1 **7. Code of ethics.** The board shall develop a code of ethics for the practice of
2 polysomnography in this State.

3 **8. Standards.** The board shall develop credentialing standards and standards of care
4 for the practice of polysomnography in this State.

5 **9. Education and training.** The board shall develop standards for the education and
6 clinical training of polysomnographic technologists, including the evaluation of the
7 accreditation status of educational programs in polysomnography.

8 **10. Continuing education.** The board shall develop continuing education
9 requirements that must be met by polysomnographic technologists.

10 **§3674. Licensing requirements**

11 A person who is engaged in the practice of polysomnography must be licensed as
12 provided in this chapter. It is unlawful for a person to engage in the practice of
13 polysomnography unless the person has been duly licensed as a polysomnographic
14 technologist under this chapter.

15 **1. Qualifications.** A person seeking licensure as a polysomnographic technologist
16 must be of good moral character, be at least 18 years of age, pay the fees established by
17 the board for licensure and present proof that the person:

18 **A. Meets one of the following education requirements:**

19 (1) Has graduated from a polysomnography educational program that is
20 accredited by a national accrediting agency approved by the board;

21 (2) Has graduated from a respiratory care educational program that is accredited
22 by a national accrediting agency approved by the board and completed a
23 curriculum for a polysomnography certificate established and accredited by a
24 national accrediting agency approved by the board;

25 (3) Has graduated from a neurodiagnostic technology educational program with
26 a polysomnography track that is accredited by a national accrediting agency
27 approved by the board; and

28 (4) Has successfully completed an accredited sleep technologist educational
29 program that is accredited by a national accrediting agency approved by the
30 board;

31 **B. Has passed a national certifying examination as established by rule of the board or**
32 **other examination approved by the board;**

33 **C. Is credentialed by a national board of registered polysomnographic technologists**
34 **as a registered polysomnographic technologist, by a national board of sleep medicine**
35 **as a registered sleep technologist or by a national board of respiratory care as a sleep**
36 **disorders specialist or has passed an examination approved by the board. To be**
37 **eligible for renewal of a license to engage in the practice of polysomnography, a**
38 **polysomnographic technologist must continue to be credentialed as provided in this**
39 **paragraph or by an examination approved by the board; and**

1 D. Meets educational or clinical requirements established by the board.

2 A person who is engaged in the practice of polysomnography on the effective date of this
3 chapter is eligible for licensure under this chapter without meeting the education
4 requirement of paragraph A; the person must still meet the requirements of paragraphs B
5 to D.

6 **§3675. Exemptions to licensure; polysomnographic technicians, trainees and**
7 **students**

8 **1. Exempt providers.** The following persons may provide sleep-related services
9 without being licensed as a polysomnographic technologist under this chapter.

10 A. A polysomnographic technician may provide sleep-related services under general
11 supervision for a period of up to one year from the date of the person's graduation
12 from one of the educational programs described in section 3674, subsection 1,
13 paragraph A. The board may in its sole discretion grant a one-time extension of up to
14 3 months beyond this one-year period.

15 B. A polysomnographic trainee may provide sleep-related services under direct
16 supervision as a part of the person's educational program while actively enrolled in a
17 nationally accredited sleep technologist educational program.

18 C. A polysomnographic student may provide sleep-related services under direct
19 supervision as a part of the person's educational program while actively enrolled in a
20 polysomnography educational program that is accredited by rule of the board.

21 D. A health care practitioner licensed by this State or who holds a nationally
22 recognized credential in a health care profession may engage in the delivery of
23 polysomnographic services for which the practitioner has been formally trained. That
24 training must include supervised preclinical didactic and laboratory activities and
25 supervised clinical activities and must be approved by the board or an accrediting
26 agency recognized by the board. It also must include an evaluation of competence
27 through a standardized testing mechanism that is determined by the board to be both
28 valid and reliable.

29 **2. Polysomnographic technicians.** Before providing sleep-related services, a
30 polysomnographic technician shall obtain a temporary permit from the board. While
31 providing sleep-related services, the technician shall wear a badge that appropriately
32 identifies the person as a polysomnographic technician.

33 **3. Polysomnographic trainees.** Before providing sleep-related services, a
34 polysomnographic trainee shall give notice to the board that the trainee is enrolled in a
35 sleep technologist educational program pursuant to this chapter. While providing sleep-
36 related services, the trainee shall wear a badge that appropriately identifies the trainee as
37 a polysomnographic trainee.

38 **4. Polysomnographic students.** A polysomnographic student may not receive
39 compensation for the sleep-related services the student provides and shall wear a badge
40 that appropriately identifies the student as a polysomnographic student.

1 **5. Other professionals.** Except as provided in subsection 1, paragraph D, nothing in
2 this chapter may be construed to limit or restrict a health care practitioner licensed in this
3 State from engaging in the full scope of the practitioner's professional practice. Nothing
4 in this chapter applies to diagnostic electroencephalograms.

5 **§3676. Issuance, renewal and voluntary surrender of license; display of license; lost**
6 **license; change of address or name**

7 **1. Issuance; renewal.** Licenses expire after 2 years on the date designated by the
8 board and are renewable by the board. Licenses must be issued and renewed by the board
9 pursuant to rules adopted by the board. Rules adopted pursuant to this subsection are
10 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

11 **2. Voluntary surrender.** A person who has been issued a license to practice under
12 this chapter who wishes to voluntarily surrender that license must file with the board an
13 affidavit on a form to be furnished by the board stating the date on which the person
14 ceased practicing and other facts as the board determines necessary. A person who has
15 surrendered a license under this chapter who thereafter wishes to reenter practice must
16 request reinstatement of licensure by the board.

17 **3. License information.** A license issued by the board must contain the name of the
18 person to whom it is issued, the address of the person, the date and number of the license
19 and other information that the board considers necessary. The address contained on the
20 license must be the address where all correspondence and renewal forms from the board
21 are sent. A person whose address changes shall, within 30 days after the change in
22 address, notify the board of the address change. The most recent address contained in the
23 board's records for each license holder is the address deemed sufficient for purposes of
24 service of process.

25 **4. Display of license.** A person issued a license pursuant to this chapter shall either
26 keep the license prominently displayed in the office or place in which the person practices
27 or have it stored in a place from which it can be immediately produced upon request of a
28 patient or representative of the department.

29 **5. Lost license.** A person whose license has been lost may make application to the
30 board for a replacement. The application must be accompanied by an affidavit setting out
31 the facts concerning the loss of the license.

32 **6. Name change.** A person whose name is changed by marriage or court order may
33 surrender the person's license and apply to the board for a replacement license.

34 **§3677. Power of board to impose sanctions**

35 The board may impose any sanctions on a person licensed under this chapter, up to
36 and including license revocation, if the licensee violates any of the provisions of this
37 chapter or of the board's rules.

1 **§3678. Violation**

2 A person who engages in the practice of polysomnography in violation of section
3 3674 is subject to the provisions of Title 10, section 8003-C.

4 **§3679. Fees**

5 The Director of the Office of Professional and Occupational Regulation within the
6 Department of Professional and Financial Regulation may establish by rule fees for the
7 purposes authorized under this chapter in amounts that are reasonable and necessary for
8 their respective purposes. Rules adopted pursuant to this section are major substantive
9 rules pursuant to Title 5, chapter 375, subchapter 2-A.

10 **§3680. Screening panel for investigative and disciplinary process**

11 The board may use one or more screening panels in its investigative and disciplinary
12 process to determine whether complaints filed and investigations conducted are without
13 merit and to act as a mechanism for resolution of complaints or diversion of cases to
14 professional peer review organizations or impaired professionals' associations as the
15 board, through established guidelines, determines appropriate. The screening panel may
16 administer oaths to witnesses. Members of a screening panel may be drawn from the
17 membership of the board or may be appointed by the board. Panel members who are not
18 board members must meet the requirements for membership on the board, and a
19 screening panel may include a member who is a consumer of polysomnographic services.
20 A board member serving on a panel may not participate as a board member in a contested
21 case involving any matter heard by the panel.

22 **§3681. Public annual meeting**

23 The board shall conduct at least one public meeting each year as determined by the
24 board to allow public discussion of new developments in the practice of
25 polysomnography, including, but not limited to, the availability of accredited
26 polysomnography educational programs to persons in all parts of this State, the
27 availability of other certification examinations and credentialing bodies and the settings
28 in which the practice of polysomnography may properly take place. The board shall
29 notify any person or organization that requests to be notified of the time and place of the
30 annual public meeting.

31 **Sec. 3. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 32,
32 section 3672, subsection 1, initial appointments to the Department of Professional and
33 Financial Regulation, Board of Polysomnography must be made as follows: 2 members
34 must be appointed to terms of 4 years, 2 members must be appointed to terms of 3 years,
35 2 members must be appointed to terms of 2 years and one member must be appointed to a
36 term of one year.

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SUMMARY

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This bill creates a new license category for the practice of polysomnography and

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establishes the Board of Polysomnography within the Department of Professional and

4

Financial Regulation.