

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Polysomnography Advisory Council
Statutory Authority: 24 Delaware Code, Section 1799W(c) (24 Del.C. §1799W(c))

FINAL

ORDER

1725 Polysomnography Advisory Council

The Delaware Polysomnography Advisory Council, pursuant to 24 Del.C. §1799W(c), proposed to adopt regulations governing the practice of polysomnography in the State of Delaware. As a newly created Council, regulating a profession that first required licensure by virtue of legislation enacted September 12, 2012, these regulations are comprehensive, and all newly created.

Following publication in the Delaware *Register of Regulations* on March 1, 2014 a public hearing was held on March 28, 2014. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on March 28, 2014. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 Del.C. §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 Del.C. §1799W(c), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed regulations seek to adopt regulations governing the practice of polysomnography in the State of Delaware. As a newly created Council, regulating a profession that first required licensure by virtue of legislation enacted September 12, 2012, these regulations are comprehensive, and all newly created.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

The Board hereby adopts the changes to its rules and regulations as proposed, to be effective 10 days following publication of this order in the *Register of Regulations*. The new regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 14th day of April, 2014, by the Delaware Polysomnography Advisory Council.

Steven D. Conley, President
Grace R. Denault
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Stephen G. Cooper, MD
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1725 Polysomnography Advisory Council

1.0 Purpose

The purpose of these regulations is to establish minimal standards of education, experience and examination for professional polysomnographers to ensure licensees practice with reasonable skill and safety in order to protect the health of the public while broadening access to competent, professional polysomnography services.

2.0 Definitions

“Board” means Delaware Board of Medical Licensure and Discipline.

“Council” means the Polysomnography Advisory Council of the Board of Medical Licensure and Discipline.

“Out of Center Sleep Testing” means analyzing and scoring polysomnographic data collected outside of a sleep center for the purposes of assisting a licensed medical doctor in the diagnosis and treatment of sleep and wake disorders. Out of Center Sleep Testing includes remote monitoring as well as Home Sleep Testing.

“Polysomnographer” means a professional duly licensed by the Delaware Polysomnography Advisory Council of the Board of Medical Licensure and Discipline.

3.0 Standards of Practice for the Polysomnographer

- 3.1 The polysomnographer shall conduct and document polysomnography assessments of individuals and groups by various appropriate means including but not limited to the following:
 - 3.1.1 Collecting objective and subjective data from observations, examinations, physiologic tests, interviews and written records in an accurate and timely manner;
 - 3.1.2 Sorting, selecting, reporting, and recording the data;
 - 3.1.3 Analyzing data;
 - 3.1.4 Validating, refining and modifying the data by using available resources including interactions with the patient, family, and health team members;
 - 3.1.5 Evaluating data.
- 3.2 Polysomnographers shall establish and document data that serves as the basis for the strategy of care.
- 3.3 Polysomnographers may develop strategies of care such as a treatment plan.
- 3.4 Polysomnographers may participate under the direction and supervision of a physician in the implementation of patient care.
- 3.5 The practice of polysomnography may occur in a hospital setting, independent sleep laboratory, and includes out of center sleep testing. In the case of out of center sleep testing, the practice of polysomnography shall be deemed to be occurring where the patient is located.

4.0 Standards Related to the Polysomnographer’s Competence and Responsibilities

- 4.1 Polysomnographers shall:
 - 4.1.1 Have knowledge of the statutes and regulations governing the practice of polysomnography;
 - 4.1.2 Accept responsibility for competent practice of polysomnography;
 - 4.1.3 Function as a member of a health care team by collaborating with other members of the team to provide appropriate care;
 - 4.1.4 Consult with polysomnographers and others and seek guidance as necessary;
 - 4.1.5 Obtain instruction and supervision as necessary when implementing polysomnography techniques;
 - 4.1.6 Contribute to the formulation, interpretation, implementation and evaluation of objectives and policies related to the practice of polysomnography within the employment setting;
 - 4.1.7 Report unsafe polysomnography practice or conditions to the Council or other authorities, as appropriate;
 - 4.1.8 Practice without unlawful discrimination as to age, race, religion, sex, national origin or disability;
 - 4.1.9 Respect the dignity and rights of patients regardless of social or economic status, personal attributes or nature of health problems;
 - 4.1.10 Respect patients’ right-to-privacy by protecting confidentiality unless obligated by law to disclose the information;
 - 4.1.11 Respect the property of patients and their families;
 - 4.1.12 Teach safe polysomnography practice to other health care workers as appropriate.
- 4.2 Polysomnographers must provide the Division of Professional Regulation his/her current home mailing address. Any change in home mailing address must be reported to the Division within ten days of such change. All notifications and correspondence pertaining to a polysomnographer’s license that are sent through the mail will be sent only to the most recent address provided by the licensee. The failure to provide the Division with a current home mailing address will not operate to excuse any duty or responsibility of the licensee and confirmed delivery to the most recent address provided by the licensee will be considered proper notice.

5.0 Disciplinary Proceedings

- 5.1 The license of a polysomnographer found to have committed unprofessional conduct may be subject to revocation, suspension, probation, denial, non-renewal, fine, censure, or a letter of reprimand.
- 5.2 Unprofessional conduct includes any act of fraud, deceit, incompetence, negligence, dishonesty or other behavior in the licensee's professional activity which is likely to endanger the public health, safety, or welfare including, without limitation, the following:
 - 5.2.1 Performing acts beyond the scope of authorized practice by a polysomnographer to include violations of 24 Del.C. §1799AA et seq. or of these regulations;
 - 5.2.2 Assuming duties and responsibilities within the practice of polysomnography without adequate preparation or supervision or when competency has not been maintained;
 - 5.2.3 Performing new polysomnographic techniques and/or procedures without adequate education and practice or without proper supervision;
 - 5.2.4 Failing to take appropriate action or follow policies and procedures in the practice situation designed to safeguard the patient from incompetent, unethical or illegal health care practices;
 - 5.2.5 Inaccurately recording on, falsifying or altering a patient or agency record;
 - 5.2.6 Committing verbal, physical or sexual abuse or harassment of patients or co-employees;
 - 5.2.7 Assigning unqualified persons to perform the practice of licensed polysomnographers;
 - 5.2.8 Delegating polysomnography responsibilities to unqualified persons;
 - 5.2.9 Failing to supervise persons to whom polysomnographic responsibilities have been properly delegated;
 - 5.2.10 Leaving a patient assignment in circumstances which endangers the patient except in documented emergency situations;
 - 5.2.11 Failing to safeguard a patient's dignity and right to privacy in providing polysomnography services which shall be provided without regard to race, color, creed or status;
 - 5.2.12 Violating the confidentiality of information concerning a patient except where disclosure is required by law;
 - 5.2.13 Practicing polysomnography when unfit to perform procedures and make decisions when physically, psychologically, or mentally impaired;
 - 5.2.14 Diverting drugs, supplies, or property of a patient or agency or attempting to do so;
 - 5.2.15 Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs or attempting to do so;
 - 5.2.16 Providing polysomnography services in this State without a currently valid license or without other lawful authority to do so;
 - 5.2.17 Allowing another person to use his/her license to provide polysomnography services for any purpose;
 - 5.2.18 Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule or regulation intended to guide the conduct of a polysomnographer or other health care provider;
 - 5.2.19 Resorting to, or aiding in any fraud, misrepresentation or deceit directly or indirectly in connection with acquiring or maintaining a license to practice polysomnography;
 - 5.2.20 Failing to report unprofessional conduct by another polysomnographer licensee;
 - 5.2.21 Failing to provide polysomnography to a patient in accordance with the orders of the responsible physician without just cause;
 - 5.2.22 Violating a lawful provision of Title 24, Chapter 17 or any lawful regulation established thereunder.

6.0 Polysomnographic Students and Polysomnographic Trainees

- 6.1 A polysomnographic student may only practice under the direct supervision of a licensed polysomnographer.
- 6.2 Direct supervision means that a licensed polysomnographer will be personally present and immediately available within the treatment area to provide aid, direction, and instruction when procedures are performed. All evaluations, progress notes, and/or chart entries must be co-signed by a licensed polysomnographer.
- 6.3 A polysomnographic trainee may provide sleep-related services under the direct supervision of a licensed polysomnographer as part of the trainee's clinical experience for no more than two years following his/her completion of an approved accredited educational program.

7.0 Continuing Education

- 7.1 Continuing Education Hours Required for Renewal
 - 7.1.1 The polysomnographer shall be required to complete twenty hours of continuing education acceptable to the Council biennially.

- 7.1.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of this Rule.
- 7.1.3 Attestation may be completed electronically at the time of online renewal.
- 7.1.4 The polysomnographer shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes.
- 7.1.5 Continuing education hours shall be prorated for new licensees in accordance with the following schedule: Two years remaining in the licensing cycle requires twenty hours. One year or more, but less than two years, remaining in the licensing cycle requires ten hours. Licensees obtaining initial licensure with less than one year remaining in the licensing cycle are exempt from the continuing education requirement.

7.2 Exemptions and Extensions

- 7.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply to the Council for a waiver. A waiver may provide for an extension of time or an exemption from some or all of the continuing education requirements for one renewal period. A separate request must be submitted for every renewal period during which a waiver is requested.
- 7.2.2 A request for a waiver must be submitted sixty days prior to the license renewal date.
- 7.2.3 Requests for Extension - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve months to make up all outstanding required hours providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Council shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must be received prior to the renewal deadline. The Council shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required hours. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Council. Make-up credits may not be used in the next renewal period.

7.3 Acceptable Continuing Education. The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is whether the program is a planned program of learning that contributes directly to the professional competence of the polysomnographer. Continuing education hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

- 7.3.1 The American Academy of Sleep Medicine
- 7.3.2 The American Association of Sleep Technologists
- 7.3.3 Other professional or education organizations so long as the specific program is acceptable to the Council.

7.4 Audit of Continuing Education Hours

- 7.4.1 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage of licensees, determined by the Council, to be audited. The Council may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 7.4.2 Documentation. When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various hours claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Council shall attempt to verify the hours shown on the documentation provided by the licensee. Upon completion of the review, the Council will determine whether the licensee's hours meet the requirements of these rules.
 - 7.4.2.1 Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council.
 - 7.4.2.2 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.
 - 7.4.2.3 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.

- 7.4.3 Council Review and Hearing Process. The Council shall review all documentation requested of any licensee shown on the audit list. If the Council initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing will be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if the licensee has met the requirement and if not, if there are any extenuating circumstances justifying the noncompliance with these requirements. Unjustified noncompliance with these regulations shall be considered unprofessional conduct in the practice of polysomnography and subject to discipline.
- 7.4.4 Sanctions for Unjustified Noncompliance. The minimum penalty for the first finding of unjustified noncompliance shall be a letter of reprimand and a \$250.00 monetary penalty. The minimum penalty for the second finding of unjustified noncompliance shall be a thirty-day license suspension.

8.0 Application for a License

- 8.1 Application. An application for a license to practice polysomnography must be completed on a form provided by the Council and returned to the Division of Professional Regulation with the required, non-refundable fee.
- 8.2 An application for a license to practice polysomnography shall be considered completed when the Division has received the following documentation:
- 8.2.1 Non-refundable application fee
- 8.2.2 Completed application for licensure
- 8.2.3 Verification of education form
- 8.2.4 Verification of passage of an exam accredited by an independent outside agency that has been approved by the Council. The following exams have been approved by the Council:
- 8.2.4.1 Board of Registered Polysomnographic Technologists CPSGT exam
- 8.2.4.2 Board of Registered Polysomnographic Technologists RPSGT exam
- 8.2.4.3 National Board of Respiratory Care SDS exam
- 8.2.4.4 Any other exam accredited by an independent outside agency as approved periodically by the Council.
- 8.2.5 Verification of active credentials in good standing as either a Board of Registered Polysomnographic Technologists CPSGT, RPSGT, or as a National Board of Respiratory Care SDS.
- 8.2.6 Verification of Basic Life Support certification that includes hands on skills training.
- 8.2.7 Letters of good standing from all other states where the applicant is licensed, if applicable.
- 8.2.8 Applicants for licensure by endorsement must provide the statute and regulations pertaining to the licensure requirements for polysomnographers in the state where the applicant currently holds a license so a determination may be made as to whether the licensing requirements of that state are substantially similar to or exceeding the requirements for licensure in Delaware.
- 8.2.9 Any other information requested in the application.

9.0 Renewal of Licenses

- 9.1 Each license shall be renewed biennially. The failure of the Council to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her license.
- 9.2 Renewal may be effected by:
- 9.2.1 filing a renewal application online at www.dpr.delaware.gov;
- 9.2.2 attesting on the renewal application to completing the continuing education as required by these Rules;
- 9.2.3 payment of fees determined by the Division of Professional Regulation;
- 9.2.4 attesting that the licensee has active credentials in good standing as either a Board of Registered Polysomnographic Technologist CPSGT, RPSGT, or as a National Board of Respiratory Care SDS; and
- 9.2.5 attesting that the licensee has a current Basic Life Support certification that includes hands on skills training.
- 9.3 Failure of a licensee to renew his/her license shall cause his/her license to expire.
- 9.3.1 A license which has expired may, within a period of sixty days thereafter, be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware and by the applicant providing documentation establishing that he/she has completed 20 hours of continuing education during the two-year period preceding the application for reinstatement, and that he/she has active credentials in good standing as either a Board of Registered Polysomnographic Technologist CPSGT, RPSGT, or as a

National Board of Respiratory Care SDS and a current Basic Life Support certification that includes hands on skills training.

9.4 A license may be placed on inactive status at the request of a licensee for no more than five years. An inactive license will convert to expired if it is not reinstated within five years.

9.4.1 An inactive license may be reinstated if the licensee provides all of the following:

9.4.1.1 Payment of the reinstatement fee established by the Division of Professional Regulation;

9.4.1.2 Verification of active credentials in good standing as either a Board of Registered Polysomnographic Technologists CPSGT, RPSGT, or as a National Board of Respiratory Care SDS; and

9.4.1.3 Verification of Basic Life Support certification that includes hands on skills training.

10.0 Responsibilities of Supervisors and Polysomnographic Students and Trainees

10.1 A licensed polysomnographer serving as a supervisor to either a polysomnographic student or trainee accepts total responsibility for the sleep-related services provided by the student or trainee.

10.2 A student or trainee is permitted to have more than one supervising licensed polysomnographer.

10.3 Only licensed polysomnographers in good standing may supervise students or trainees.

10.4 A licensed polysomnographer may supervise no more than three students or trainees at one time.

11.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals – The Delaware Professionals' Health Monitoring Program

11.1 If information regarding a suspected chemically dependent or impaired licensee is received by the Council, the Council shall immediately notify the Division of Professional Regulation.

11.2 Upon receipt of information concerning a suspected chemically dependent or impaired licensee, the Division of Professional Regulation or its designee shall contact the licensee and inform him or her of the report, provide the licensee information describing the Delaware Professional Health Monitoring Program (DPHMP), and give him or her the opportunity to enter the DPHMP.

11.3 In order for the licensee to participate in the DPHMP, he/she shall execute a monitoring agreement.

11.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the DPHMP and continue to practice, subject to any limitations on practice imposed by either the DPHMP or the Council following a determination that disciplinable conduct has occurred.

11.5 Failure to cooperate fully with the DPHMP, the Division, or any employee of the same, or to comply with their requests for evaluations and screens may disqualify the licensee from the provisions of the DPHMP and there may be activated an immediate investigation and institution of disciplinary proceedings, if appropriate.

11.6 The DPHMP may require a licensee to execute a monitoring agreement that includes, but is not limited to, the following provisions:

11.6.1 Evaluation and entry into a treatment program;

11.6.2 Consent of the licensee, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program;

11.6.3 Agreement by the licensee to be personally responsible for all costs and charges associated with the DPHMP and any associated treatment programs;

11.6.4 Agreement by the licensee that failure to satisfactorily progress shall be reported to the Division of Professional Regulation for investigation and the institution of disciplinary proceedings;

11.6.5 Compliance with any terms or restrictions placed on professional practice as outlined in the monitoring agreement under the DPHMP.

11.7 The licensee's records of participation in the DPHMP will not reflect disciplinary action if the licensee voluntarily entered the Program and shall not be considered public records open to public inspection. However, the Council may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

11.8 Any licensee who complies with all of the terms and completes the DPHMP shall have his/her confidentiality protected.