

August 5, 2008

Client-Matter: 58521-001

Daniel Rifkin, M.D.
President, New York State Society of Sleep Medicine
1120 Youngs Road
Williamsville, NY 14221

Re: August 4, 2008 Meeting with the New York State Education Department

Dear Dr. Rifkin:

Yesterday, on behalf of the New York State Society of Sleep Medicine (“NYSSSM”), my colleague Jim Walsh and I met with representatives from the New York State Education Department (“SED”) to discuss its enforcement position related to persons who practice polysomnographic technology (“PSGTs”) in New York State. Based on our discussion and a recent written request by the chairs of the Senate and Assembly Higher Education Committees urging SED to defer any action against PSGTs, sleep centers and health care professionals regarding the licensure issue, ***SED has agreed to refrain from undertaking any enforcement action against PSGTs and licensed health care providers pending the Legislature’s consideration of a bill which would require the licensure and registration of PSGTs.***

As you know, in December 2007, SED issued a memorandum which stated that PSGTs who provide oxygen titration and bi-level and continuous positive airway pressure titration to therapeutic levels without a respiratory therapy license “could face prosecution for illegal practice” and licensed health care providers who aid in such practice “could be charged with professional misconduct” after August 2008 unless “a satisfactory legislative solution” is reached to address SED’s concern.

During yesterday’s meeting with Associate Commissioner Frank Munoz and the senior members of the Office of the Professions, we reiterated our disagreement with SED’s interpretation that these diagnostic and treatment services may only be performed by licensed professionals. However, we also shared our appreciation to SED for their cooperation in drafting and supporting a bill, currently pending before the State Legislature, which would require the licensure and registration of PSGTs and thereby address SED’s concern and advance NYSSSM’s objective of ensuring that persons who provide PSGT services are appropriately qualified to work with patients suffering from sleep disorders. *See* S.8037-A/A.10961-A.

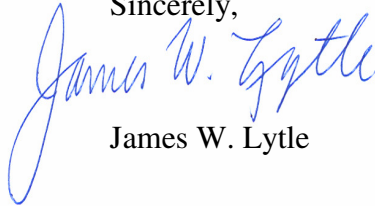
Most importantly, Mr. Munoz provided us with an assurance on behalf of the State Education Department that it would ***not*** take any action against PSGTs and licensed health care

Daniel Rifkin, M.D.
August 5, 2008
Page 2

providers for the foreseeable future provided there is continued progress on the legislation. While no explicit time frame was identified for the period of abeyance of the enforcement effort, it is worth noting that the chairs of the Senate and Assembly Higher Education Committees recently requested that SED defer any enforcement “until the Legislature has had reasonable and sufficient time to evaluate this matter and the bill.” As a result, we have been assured that there will not be any enforcement against PSGTs and others while there is good faith consideration of the bill by the Legislature.

We will, of course, continue to keep you updated of our efforts to enact this legislation on behalf of the NYSSSM and its members. If you have any questions or comments, please let us know.

Sincerely,



James W. Lytle

cc: F. Munoz
B. Zittel