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To: New York State Licensed Respiratory Therapy Care Practitioners, Legislators, Health Care Facilities, Polysomnographers and Other Interested Parties

From: Frank Muñoz, Associate Commissioner, Office of the Professions,
and
Barbara Zittel, Executive Secretary to the State Board for Respiratory Therapy

Date: December 2007

Subject: Health Care Services in Sleep Laboratories

This memorandum is provided in response to many inquiries seeking clarification from the State Education Department (the Department) about the role of licensed respiratory therapy practitioners and non-licensed persons in providing health care services in sleep laboratories across the State.

The diagnosis of sleep disorders, with its estimated cost of approximately \$3.4 billion annually, is becoming an extremely important field of medicine in the United States. Untreated obstructive sleep apnea is associated with increased risk of cardiovascular and cerebrovascular disease, insulin resistance, motor vehicle accidents, and a decrease in the ability to maintain attention to tasks due to daytime sleepiness with a resultant negative impact on quality of work and life.

Obstructive sleep apnea is estimated to occur in as many as 25% of middle-aged people. The Joint Commission, which is the major accreditor of acute care facilities, is recommending the future performance of obstructive sleep apnea examinations on all patients prior to surgical procedures involving the use of centrally-acting anesthetic and/or analgesic agents. Additionally, the disorder is being recognized as a major public health problem within the pediatric age group. This awareness has prompted the American Academy of Pediatrics to develop a clinical practice guideline intended for use by primary care clinicians, which recommends that polysomnography (sleep studies) be performed on all children who snore.

The demand for sleep apnea evaluations and treatment is increasing exponentially and with it increasing profits and the potential for patient exploitation. Simultaneous with this increase in demand, members of the State Board for Respiratory Therapy have noted a change in venue where

evaluations are conducted--from hospital-associated clinics, to free-standing facilities, hotels and patient homes. Clearly, patient safety and the assurance of competent care needs to be addressed.

Within the last year Department staff has met with key stakeholders, including the legislature, in an effort to address the mounting concern regarding the issue of whether unlicensed individuals (polysomnographic technologist) are providing professional services in these settings. Based on these meetings the Department, the State Board for Respiratory Therapy, and other interested parties have worked together to develop a legislative proposal that would institute a licensing framework for polysomnographic technologists. This legislation would ensure that only qualified personnel would provide licensed services in sleep labs. Essentially, that proposed legislation would establish a grandparent pathway for currently qualified individuals to gain licensure and continue to provide services in New York, while also providing a more traditional pathway for individuals in the future to gain licensure after completing an appropriate educational program and passing an acceptable exam.

Applicants licensed through the grandparent provision would need to demonstrate completion of eighteen months of acceptable experience, completion of an acceptable educational program such as that provided by A-STEP, and national credentialing. Future applicants would need to complete an associate degree education and pass a national examination. The practice of Respiratory Therapy by Respiratory Therapists licensed by the Department would not be diminished. We expect that this legislative proposal would not generally disturb the current capacity of New York sleep labs to provide patient services. We have achieved consensus as generally described above on the proposed bill language in discussions with the respiratory therapy and sleep lab communities.

While we are hopeful and have urged a legislative solution that would provide an acceptable resolution to the current issues that are presented in New York's sleep labs, we are mindful that not all legislative proposals result in enacted statutes. Currently, we recognize that sleep laboratories provide a range of services that include services within the lawful scope of respiratory therapy such as the oxygen titration and the modalities of bi-level and continuous positive airway pressure titration to therapeutic levels. Those services have traditionally been performed by only licensed professionals. In the event that we do not have a satisfactory legislative solution by the end of August, 2008, individuals who provide those services without appropriate licensure could face prosecution for illegal practice and licensees who aid such practice could be charged with professional misconduct.

We hope that we have a successful resolution to this important issue relating to public safety and hope that you will join us in our ongoing efforts to protect the public.

If you have additional questions, please contact Barbara Zittel by mail: Education Department Building, 89 Washington Ave., Nursing Board Office, Second Floor, West Wing, Albany, NY 12234; e-mail: nursebd@mail.nysed.gov; phone: 518-474-3817 Ext. 120; or fax: 518-474-3706.