

S8037 FUSCHILLO No Same as
NOT ON FILE Education Law
TITLE....Relates to licensing the practice of polysomnographic technology
04/28/08 REFERRED TO HIGHER EDUCATION

STATE OF NEW YORK

8037

IN SENATE

April 28, 2008

Introduced by Sen. FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to licensing the practice of polysomnographic technology

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The education law is amended by adding a new article 167 to
2 read as follows:

ARTICLE 167

POLYSOMNOGRAPHIC TECHNOLOGY PRACTICE

Section 8800. Introduction.

8801. Definitions.

8802. Practice of polysomnographic technology.

8803. Use of the title "polysomnographic technologist".

8804. State committee for polysomnographic technology.

8805. Requirements and procedures for professional licensure and registration.

8806. Limited permits.

8807. Exemptions.

8808. Special provisions.

8809. Mandatory continuing education.

16 § 8800. Introduction. This article applies to the profession of
17 licensed polysomnographic technology. The general provisions for all
18 professions contained in article one hundred thirty of this title apply
19 to this article.

20 § 8801. Definitions. As used in this article:

21 1. The term "practice of polysomnographic technology" shall mean the
22 process of analyzing, scoring, monitoring and recording of physiologic
23 data during sleep and wakefulness to assist in the clinical assessment
24 and diagnosis of sleep/wake disorders and other disorders, syndromes and
25 dysfunctions that either are sleep related, manifest during sleep or
26 disrupt normal sleep/wake cycles and activities.

27 2. The term "practice of the profession of polysomnographic technolo-
28 gy" shall mean the professional services practiced in any setting under

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD16570-01-8

S. 8037

2

1 the direction and supervision of a licensed physician involving the
2 monitoring, testing and treatment of individuals suffering from any
3 sleep disorder as listed in an authoritative classification of sleep
4 disorders acceptable to the department. Such procedures include but are
5 not limited to:

6 (a) application of electrodes and apparatus necessary to monitor and
7 evaluate sleep disturbances, including application of devices that allow
8 a physician to diagnose and treat sleep disorders, which disorders
9 include but shall not be limited to insomnia, sleep breathing disorders,
10 movement disorders, disorders of excessive somnolence, and parasomnias;

11 (b) institution of any type of physiologic monitoring applicable to
12 polysomnography including the therapeutic and diagnostic use of oxygen,
13 continuous positive airway pressure (CPAP) and bi-level positive airway
14 pressure (BiPAP) of non-ventilated patients;

15 (c) initiation of cardiopulmonary resuscitation, maintenance of
16 patient's airway (which does not include endotracheal intubation), tran-
17 scription and implementation of physician orders pertaining to the prac-
18 tice of polysomnographic technology;

19 (d) initiation of treatment changes and testing techniques required
20 for the implementation of polysomnographic protocols under the direction
21 and supervision of a licensed physician who specializes in the practice
22 of sleep medicine; and

23 (e) education of patients, family and public on the procedures and
24 treatments used during polysomnographic technology or any equipment or
25 procedure used for the treatment of any sleep disorder.

26 § 8802. Practice of polysomnographic technology. Only a person
27 licensed and registered or exempt under this article shall practice
28 polysomnographic technology.

29 § 8803. Use of the title "polysomnographic technologist". Only a
30 person licensed under this article shall use the title "licensed poly-
31 somnographic technologist," "polysomnographic technologist," or
32 "licensed sleep tech".

33 § 8804. State committee for polysomnographic technology. 1. A state
34 committee for polysomnographic technology shall be appointed by the
35 board of regents upon the recommendation of the commissioner and shall
36 assist on matters of professional licensing, practice and conduct in
37 accordance with section sixty-five hundred eight of this title.

38 2. Notwithstanding the provisions of section sixty-five hundred eight
39 of this title, the committee shall assist the state board for medicine
40 solely in polysomnographic technology matters, which board shall also
41 function as the state board for polysomnographic technology. Any member
42 of the first board appointed who is a polysomnographic technologist need
43 not be licensed prior to appointment on the board; provided however,
44 that any first appointed polysomnographic technologist shall be regis-
45 tered by a national certifying or accrediting board acceptable to the
46 department.

47 3. The committee shall consist of nine individuals, to be composed of
48 the following:

49 (a) five licensed polysomnographic technologists, who are not licensed
50 to practice any other profession regulated pursuant to this title;

51 (b) two licensed respiratory therapists who have training and/or expe-
52 rience in the diagnosis or treatment of sleep disorders;

53 (c) one licensed physician who practices in the field of sleep medi-
54 cine; and

55 (d) a representative of the public at large.

S. 8037

3

1 § 8805. Requirements and procedures for professional licensure and
2 registration. 1. To qualify for a license as a licensed polysomnographic
3 technologist, an applicant shall fulfill the following requirements:

4 (a) Application: file an application with the department;

5 (b) Education: (i) received an associate degree in polysomnographic
6 technology from a program registered by the department, or another asso-
7 ciate degree program determined by the department to be substantially
8 equivalent, from an accredited college or university in accordance with
9 the commissioner's regulations; provided however, that this education
10 requirement shall not become effective until such time as there are at
11 least four licensure qualifying associate degree programs acceptable to
12 the department in polysomnographic technology operated by accredited
13 colleges or universities in the state; or

14 (ii) completed a course of study substantially equivalent to an asso-
15 ciate degree program determined to be acceptable pursuant to subpara-
16 graph (i) of this paragraph, and which is satisfactory to the commis-
17 sioner and in accordance with the commissioner's regulations for the
18 practice of polysomnographic technology;

19 (c) Experience: have experience satisfactory to the board and in
20 accordance with the commissioner's regulations;

21 (d) Examination: pass an examination satisfactory to the board and in
22 accordance with the commissioner's regulations;

23 (e) Age: be at least eighteen years of age;

24 (f) Character: be of good moral character as determined by the depart-
25 ment; and

26 (g) Fee: pay a one-time fee of three hundred dollars for licensure.

27 2. Except as provided in section eighty-eight hundred seven of this
28 article, each licensed polysomnographic technologist shall be required
29 to register triennially with the department to practice in the state,
30 and shall pay a fee of three hundred dollars for each triennial regis-
31 tration period.

32 § 8806. Limited permits. Limited permits may be issued by the depart-
33 ment to eligible applicants, as follows:

34 1. Eligibility: A person who fulfills all requirements for a license
35 as a polysomnographic technologist except those relating to examination
36 shall be eligible for a limited permit;

37 2. Limit of practice: All practice under a limited permit shall be
38 under the direction and supervision of a licensed physician and only
39 while under the direct and immediate supervision of a health care
40 provider regulated pursuant to this title including, but not limited to,
41 a physician, polysomnographic technologist, registered nurse, respir-
42 atory therapist, and nurse practitioner; provided however, that the
43 tasks or responsibilities supervised by the health care provider are
44 within the scope of his or her practice;

45 3. Duration: A limited permit shall be valid for one year and may be
46 renewed for one additional year; and

47 4. Fee: The fee for each limited permit and for each renewal shall be
48 fifty dollars.

49 § 8807. Exemptions. This article shall not prohibit:

50 1. The practice of licensed polysomnographic technology as an integral
51 part of a program of study by students enrolled in registered polysomno-
52 graphic technology education programs or registered respiratory care
53 programs;

54 2. The performance of any of the functions included in the definition
55 of polysomnographic technology by any other duly licensed, certified or

S. 8037

4

1 registered health care provider, provided that such functions are within
2 the scope of her or his practice;

3 3. The practice of polysomnographic technology by any legally author-
4 ized polysomnographic practitioner of any other state or territory who
5 is serving in the armed forces or the public health service of the
6 United States or who is employed by the veteran's administration, while
7 engaged in the performance of such duties;

8 4. The practice of polysomnographic technology by a licensed respir-
9 atory therapist or a respiratory therapy technician; and

10 5. The practice of polysomnographic technology for the purposes of
11 clinical research, provided that the research has been approved by a
12 duly authorized institutional review board and such practice is under
13 the direction and supervision of a licensed physician.

14 § 8808. Special provisions. A person shall be licensed without exam-
15 ination or satisfying the education requirement, provided that within
16 one year of the effective date of regulations implementing the
17 provisions of this article, the individual meets the following require-
18 ments:

19 1. files an application and pays the appropriate fees to the depart-
20 ment;

21 2. is certified by a national certifying or accrediting board for
22 polysomnography acceptable to the department; and

23 3. has practiced polysomnographic technology under the direction and
24 supervision of a licensed physician who specializes in the practice of
25 sleep medicine for not less than eighteen months within the last three
26 years; provided however, such experience shall not be acceptable after
27 December thirty-first, two thousand eleven.

28 § 8809. Mandatory continuing education. 1. A licensed polysomnographic
29 technologist required under this article to register triennially with
30 the department shall comply with the provisions of the mandatory contin-
31 uing education requirements prescribed in subdivision four of this
32 section except as set forth in subdivisions two and three of this
33 section. A licensed polysomnographic technologist who does not satisfy
34 the mandatory continuing education requirements shall not practice until
35 he or she has met such requirements, and he or she has been issued a
36 registration certificate, except that a licensed polysomnographic tech-
37 nologist may practice without having met such requirements if he or she
38 is issued a conditional registration certificate pursuant to subdivision
39 five of this section.

40 2. A licensed polysomnographic technologist shall be exempt from the
41 mandatory continuing education requirement for the triennial registra-
42 tion period during which he or she is first licensed. In accord with the
43 intent of this section, adjustment to the mandatory continuing education
44 requirement may be granted by the department for reasons of health
45 certified by an appropriate health care professional, for extended
46 active duty with the armed forces of the United States, or for other
47 good cause acceptable to the department which may prevent compliance.

48 3. A licensed polysomnographic technologist not engaged in the prac-
49 tice of polysomnographic technology, as determined by the department,
50 shall be exempt from the mandatory continuing education requirement upon
51 the filing of a statement with the department declaring such status. A
52 licensee who returns to the practice of polysomnographic technology
53 during the triennial registration period shall notify the department
54 prior to reentering the profession and shall meet such mandatory educa-
55 tion requirements in accordance with commissioner's regulations.

S. 8037

5

1 4. During each triennial registration period an applicant for regis-
2 tration as a licensed polysomnographic technologist shall complete a
3 minimum of twenty-four hours of acceptable formal continuing education,
4 as specified in subdivision six of this section. A licensee who has not
5 satisfied the mandatory continuing education requirements shall not be
6 issued a triennial registration certificate by the department and shall
7 not practice unless and until a conditional registration certificate is
8 issued, as provided for in subdivision five of this section. Continuing
9 education hours taken during one triennium may not be transferred to a
10 subsequent triennium.

11 5. The department, in its discretion, may issue a conditional regis-
12 tration to a licensee who fails to meet the mandatory continuing educa-
13 tion requirements established in subdivision one of this section but who
14 agrees to make up any deficiencies and complete any additional education
15 which the department may require. The fee for such a conditional regis-
16 tration shall be the same as, and in addition to, the fee for the trien-
17 niel registration. The duration of such conditional registration shall
18 be determined by the department but shall not exceed one year. Any
19 licensee who is notified of the denial of registration for failure to
20 submit evidence, satisfactory to the department, of mandatory continuing
21 education and who practices without such registration, may be subject to
22 disciplinary proceedings pursuant to section sixty-five hundred ten of
23 this title.

24 6. As used in subdivision four of this section, "acceptable formal
25 continuing education" shall mean formal courses of learning which
26 contribute to professional practice in polysomnographic technology and
27 which meet the standards prescribed by regulations of the commissioner.
28 Such formal courses of learning shall include, but shall not be limited
29 to, collegiate level credit and non-credit courses, professional devel-
30 opment programs and technical sessions offered by national, state and
31 local professional associations and other organizations acceptable to
32 the department, and any other organized educational and technical
33 programs acceptable to the department. The department may, in its
34 discretion and as needed to contribute to the health and welfare of the
35 public, require the completion of continuing education courses in
36 specific subjects to fulfill the mandatory continuing education require-
37 ment. Courses must be taken from a sponsor approved by the department,
38 pursuant to the regulations of the commissioner.

39 7. A licensed polysomnographic technologist shall maintain adequate
40 documentation of completion of acceptable formal continuing education
41 and shall provide such documentation at the request of the department.
42 Failure to provide such documentation upon the request of the department
43 shall be an act of misconduct subject to disciplinary proceedings pursu-
44 ant to section sixty-five hundred ten of this title.

45 § 2. This act shall take effect on the five hundred forty-fifth day
46 after it shall become a law; provided, however, that within 180 days of
47 the enactment of this act the addition, amendment and/or repeal of any
48 rule or regulation necessary for the implementation of this act on its
49 effective date is authorized and directed to be made and completed;
50 provided further, however, subdivision 2 of section 8805 of the educa-
51 tion law, as added by section one of this act, shall not take effect
52 until such time as there are at least four licensure qualifying associ-
53 ate degree programs, acceptable to the department of education, in poly-
54 somnographic technology operated by accredited colleges or universities
55 in the state; provided further, however, that the department of educa-
56 tion shall notify the legislative bill drafting commission upon the

S. 8037

6

1 creation of four acceptable qualifying associate degree programs in
2 order that the commission may maintain an accurate and timely effective
3 data base of the official text of the laws of the state of New York in
4 furtherance of effectuating the provisions of section 44 of the legisla-
5 tive law and section 70-b of the public officers law.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S8037

SPONSOR: FUSCHILLO

TITLE OF BILL: An act to amend the education law, in relation to licensing the practice of polysomnographic technology

PURPOSE: To ensure that persons suffering from sleep disorders are diagnosed and treated only by competent and qualified polysomnographic technology professionals who are licensed and registered with the State Education Department.

SUMMARY OF PROVISIONS: Section 1 of the bill would add a new Article 167 (§ 8800 to § 8809) to the Education Law to prescribe the requirements and related provisions for the practice of polysomnographic technology in New York State, as follows:

§ 8800. Provide that Education Law Article 130, related to standards of professional misconduct and unauthorized acts, would apply to the practice of polysomnographic technology.

§ 8801. Define the terms "practice of polysomnographic technology" and "practice of the profession of polysomnographic technology" which relate to the diagnosis and treatment of sleep/wake disorders, syndromes and dysfunctions.

§ 8802. Require that only a person who is licensed and registered, or exempt from such requirements, shall practice polysomnographic technology.

§ 8803. Authorize only a person licensed pursuant to this new article to use the title of "licensed polysomnographic technologist", "polysomnographic technologist" or "licensed sleep tech".

§ 8804. Establish the State Committee for Polysomnographic Technology to assist the State Board of Medicine on polysomnographic technology matters, and which shall also function as the State Board of Polysomnographic Technology. The Committee shall be comprised of nine members appointed by the Board of Regents, upon recommendation of the Commissioner of Education, and shall include five licensed polysomnographic technologists, two licensed respiratory therapists with training and/or experience in sleep disorders, one licensed physician who practices in the field of sleep medicine, and one representative of the public.

§ 8805. Prescribe the qualifications for a polysomnographic technology license, including that a prospective licensee:

- a. File an application with the State Education Department;
- b. Have an associate degree in polysomnographic technology from an accredited college or university, or completed course work substantially

equivalent to an associate degree program in polysomnographic technology which is satisfactory to the Commissioner of Education for the practice of polysomnographic technology;

- c. Have experience satisfactory to the State Board of Polysomnographic Technology;
- d. Pass an examination satisfactory to the Board;
- e. Be at least eighteen years of age;
- f. Be of good moral character, as determined by the State Education Department; and
- g. Pay a one-time licensure fee of three hundred dollars.

Require each licensed polysomnographic technologist to register every three years with the State Education Department and pay a fee of three hundred dollars for each registration period.

§ 8806. Authorize the State Education Department to issue limited permits to persons who fulfill all of the licensing requirements except the examination requirement. Such permittee would only be authorized to practice under the direction and supervision of a licensed physician, and under the direct and immediate supervision of a licensed polysomnographic technologist or other appropriately competent physician or health care professional. The limited permits would be valid for one year, may be renewed for an additional year, and would be issued upon payment of a fifty dollar fee.

§ 8807. Exempt from the licensure and registration requirements would be those persons who are:

- a. Students enrolled in registered polysomnographic technology education programs or registered respiratory care programs;
- b. Qualified and licensed, certified, or registered health care providers;
- c. Polysomnographic practitioners legally qualified in any other state or territory and who are performing duties related to their service in the armed forces, the United States Public Health Service, or the Veteran's Administration;
- d. Licensed respiratory therapists or respiratory therapy technicians; and
- e. Practicing polysomnographic technology for approved clinical research purposes, under the direction and supervision of a licensed physician.

§ 8808. Authorize a person who has not passed the examination or satisfied the education requirement to be licensed as a polysomnographic technologist if, within one year of the effective date of the implementing regulations, the person:

- a. Files an application and pays the appropriate licensing fee to the State Education Department;
- b. Is certified by a national certifying or accrediting board for polysomnography acceptable to the State Education Department; and
- c. Has practiced polysomnography under the direction and supervision of a licensed physician who specializes in the practice of sleep medicine

for eighteen months or more in the previous three years; provided that such experience shall not be acceptable for licensure after December 31, 2011.

§ 8809. Require each licensed polysomnographic technologist to complete a minimum of twenty-four hours of continuing education acceptable to the State Education Department during each triennial period, with such person not being issued a certificate of registration unless such requirement has been satisfied. Exemptions from the continuing education requirement would be provided to licensed polysomnographic technologists in their first triennial registration period and those licensees not engaged in the practice of polysomnographic technology, evidenced by a filing statement with the Department. The State Education Department would be authorized to issue a one-year, conditional registration to a licensee who fails to meet the mandatory continuing education requirement, provided the licensee agrees to complete any additional education the Department may require and pay the triennial registration fee. Licensed polysomnographic technologists would be required to maintain adequate documentation of completion of the continuing education course work and provide such documentation upon request of the Department.

JUSTIFICATION: Insufficient or irregular sleep is a growing national health issue. It is estimated that between 40 and 70 million Americans suffer from sleep disorders and an additional 20 to 30 million people have intermittent sleep-related problems. The human and economic costs resulting from sleep deprivation and sleep disorders are staggering with sleep disorders having repeatedly been found to greatly heighten the risk of many serious illnesses including colon cancer, breast cancer, heart disease, stroke, diabetes, Sudden Infant Death Syndrome and obesity. Additionally, there are thousands of deaths and injuries attributable to sleep-related vehicular accidents each year, which account for approximately twenty percent of all vehicular accidents. The economic cost of sleep-related disorders is estimated to be up to \$150 billion annually in employment absenteeism and lost productivity with an additional \$50 billion to \$100 billion in indirect costs related to accident litigation, destruction of property, medical care, and death.

There are over eighty different classified sleep disorders including chronic insomnia, sleep apnea, restless leg syndrome, narcolepsy, and parasomnias. In addition to the millions of Americans known to suffer from sleep disorders, ninety-five percent of all persons with sleep disorders remain undiagnosed because many health care providers are neither adequately trained nor informed to diagnose and treat sleep disorders.

Given the compelling health issues and costs at stake, the diagnosis and treatment of sleep disorders has become a vital health care issue. In response to this need, there has been an emergence of independent sleep centers, sleep labs and hospitals using state-of-the-art equipment to monitor, test and treat patients suffering from sleep disorders. These facilities rely upon a team of professionals including physicians specializing in sleep disorders, nurses, respiratory therapists, and polysomnographic technologists.

As the diagnosis and treatment of sleep disorders has developed, polysomnographic technologists have played an integral and, perhaps, the most visible function in patient care including administering sleep tests and working with physicians to provide information needed for the accurate diagnosis and treatment of such disorders. They typically are responsible for: gathering and analyzing patient information and ensuring the appropriate tests are performed; administering tests which may involve connections of electrodes, sensors, and air masks; monitoring, scoring and evaluating test results; and ensuring patient safety. Polysomnographic technologists are highly trained and often experienced

professionals who work under the supervision of, and in cooperation with, physicians and other health care providers. Importantly, since the diagnosis of a patient usually occurs over a one- or two-night period, polysomnographic technologists are relied upon to work overnight shifts unlike other health care providers.

Because polysomnographic technologists provide such a vital service which often involves, for instance, connecting and monitoring breathing apparatus, the State Education Department (SED) has mandated that by the end of 2008 they demonstrate the appropriate training and experience through a state licensure and registration regulatory scheme. SED has determined that if a legislative solution does not occur by the end of 2008, persons who provide polysomnographic services without the appropriate license could be prosecuted for illegal practice and licensed health care providers who assist in such practice may be charged with professional misconduct. As a result, enactment of this bill is essential in the current legislative session to ensure the continuation of the important work by polysomnographic technologists and that state resources are not diminished in enforcing against well-intentioned and qualified health care practitioners.

This bill would require the licensure and registration of the profession of polysomnographic technology with an emphasis on ensuring that polysomnographic technologists practicing in New York State are adequately educated, trained, supervised and regulated for the protection of patients under their care. It would make certain that they are both competent and qualified to work with patients and in cooperation with other health care providers, who similarly are required by law to be qualified and regulated by SED or the State Health Department.

LEGISLATIVE HISTORY: New Bill FISCAL IMPLICATIONS: None

EFFECTIVE DATE: This act shall take effect on the five hundred forty-fifth day after it shall have become law; provided, however, that 180 days of the enactment of this act the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed; provided further, however, subdivision 2 of section 8805 of the education law, as added by section one of this act, shall not take effect until such time as there are at least four licensure qualifying associate degree programs, acceptable to the department of education, in polysomnographic technology operated by accredited colleges universities in the state.
