

**Respiratory Care Board of California**  
**Scope of Practice: Sleep & Wake Disorders**

**Initial Statement of Reasons**

Hearing Date: June 1, 2009

Subject Matter of Proposed Regulations: Scope of Practice: Sleep & Wake Disorders

Section Affected: 1399.363

Specific Purpose of Each Adoption, Amendment or Repeal

This regulatory action adopts Section 1399.363 of Article 6 of Division 13.6 of Title 16 of the California code of Regulations. Specifically, this regulatory action clarifies that the treatment, management, assessment, diagnostic testing, control, education, and care of patients with sleep and wake disorders is within the scope of practice of a respiratory care practitioner.

Factual Basis/Rationale

SB 132 (R-Denham) introduced February 9, 2009, will establish a new certification category for polysomnography technologists, technicians, and trainees enforced through the Medical Board of California. SB 132 provides an exemption for respiratory care practitioners as follows:

“(f) This section shall not apply to California licensed allied health professionals, including, but not limited to, respiratory care practitioners, working within the scope of practice of their license.”

The proposed regulation will ascertain that polysomnography, as defined in SB132, is within the scope of practice of a respiratory care practitioner.

Respiratory care practitioners have long been involved in the evolution of polysomnography. It has been deemed a subspecialty of respiratory care recognized by national associations, accrediting bodies as well as recognized and authentic respiratory care testing agencies. The National Board for Respiratory Care (NBRC) is the national body which provides the competency test for respiratory therapists nation-wide. The NBRC also provides several additional “sub-specialty” credentials to respiratory therapists: 1) advanced Registered Respiratory Therapist; 2) Certified Pulmonary Function Technologist; 3) Registered Pulmonary Function Technologist; 4) Neonatal/Pediatric Respiratory Care Specialist, and 5) Sleep Disorders Testing and Therapeutic Intervention Respiratory Care Specialist. No state requires additional licensure to practice in any of these subspecialties. Rather, it is something self-regulated through employers that indicates the person has achieved a high level of expertise in the particular area of respiratory care, therefore additional training is very limited.

References to respiratory care as the foundation of polysomnography are made throughout literature from the 1960s to present day. The Board estimates that as many as 40% of the personnel currently practicing polysomnography are licensed respiratory care practitioners.

SB 132 does not establish a full licensing practice act, nor does it establish a pure title act. A practice act confers the exclusive right to practice a given profession on practitioners who meet specified criteria related to education, experience and examination and often is embodied in a licensing act (i.e., those who are not licensed cannot lawfully practice the profession). A practice act is the highest and most restrictive form of professional regulation, and is intended to avert severe harm to the public health, safety or welfare that could be caused by unlicensed practitioners.

A title act, on the other hand, reserves the use of a particular professional designation to practitioners who have demonstrated specified education, experience or other criteria. A title act typically does not restrict the practice of a profession or occupation; it merely differentiates between practitioners who meet the specified criteria, and are authorized by law to represent themselves accordingly, and those who do not.

SB 132 is a modest hybrid proposal which would require those who engage in the practice of polysomnography or use the title "certified polysomnography technologist" to meet certain education, examination and certification requirements, work under the supervision and direction of a licensed physician and surgeon, and undergo a criminal record clearance.

So while SB 132, is hybrid proposal and provides an exemption for licensed respiratory care practitioners, this regulation will ascertain that the practice of polysomnography currently being performed by licensed respiratory care practitioners will continue to be within the scope of the respiratory care practice.

#### Underlying Data

This regulation is broadly based upon the following study and report:

Study: The California Respiratory Care Practitioner Workforce Study, June 2007  
Conducted by the Institute for Social Research, California State University, Sacramento

Report: Review of Unlicensed Personnel in The Practice of Polysomnography, April 2005  
Prepared by the Respiratory Care Board of California

#### Business Impact

This regulation will not have an adverse economic impact on businesses.

#### Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

#### Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.