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LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF POLYSOMNOGRAPHY**

Adopted New Rules: N.J.A.C. 13:44L

State Board of Polysomnography Rules

Proposed: April 20, 2009 at 41 N.J.R. 1663(a).

Adopted: September 8, 2009 by the State Board of Polysomnography, Michael J. Lahey, RPSGT, Chairperson.

Filed: January 15, 2010 as R.2010 d.48, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.6).

Authority: N.J.S.A. 45:14G-1 et seq., specifically 45:14G-7.

Effective Date: May 17, 2010.

Expiration Date: May 17, 2015.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted new rules.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus*** ; deletions from proposal indicated in brackets with asterisks ***[thus]***):

CHAPTER 44L

STATE BOARD OF POLYSOMNOGRAPHY

SUBCHAPTER 1. GENERAL PROVISIONS

13:44L-1.1 Purpose and scope

(a) The purpose of this chapter is to implement the provisions of P.L. 2005, c. 244 (N.J.S.A. 45:14G-1 et seq.), the Polysomnography Practice Act.

(b) This chapter shall apply to all applicants who seek to be licensed by the Board to practice polysomnography and all persons who are licensed by the Board and practice as polysomnographic technologists, polysomnographic technicians or polysomnographic trainees in this State.

(c) This chapter does not apply to any other healthcare professional licensed or certified by the State who is performing duties that are consistent with his or her scope of practice and does not represent that he or she is a licensed polysomnographic technologist, licensed polysomnographic technician or a licensed polysomnographic trainee.

13:44L-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"AASM" means the American Academy of Sleep Medicine.

"AAST" means the American Association of Sleep Technologists.

"Act" means the Polysomnography Practice Act, N.J.S.A. 45:14G-1 et seq.

"A-STEP" means the Accredited Sleep Technologist Education Program offered by the AASM.

"Board" means the State Board of Polysomnography.

"BRPT" means the Board of Registered Polysomnographic Technologists.

"CAAHEP" means the Commission on the Accreditation of Allied Health Education Programs.

"Direct supervision" means continuous on-site presence of a supervising licensed polysomnographic technologist, or supervising licensed physician, available to render immediate physical assistance as required.

"Direction" means a licensed polysomnographic technologist only provides polysomnographic services when he or she is working in a facility that has a qualified medical director and when a physician who has medical responsibility for a patient has referred the patient to the polysomnographic technologist or the sleep center or laboratory at which the polysomnographic technologist works.

"Licensed physician" means a physician licensed by the State Board of Medical Examiners.

"On-site presence" means that the supervising licensed polysomnographic technologist or licensed physician is in the same room as the polysomnographic trainee whenever the polysomnographic trainee performs polysomnography.

"Polysomnography" means the allied health specialty involving the treatment, management, diagnostic testing, research, education and care of patients with sleep and wake disorders.

"Polysomnographic technician" means a person who holds a temporary license issued by the Board and who practices polysomnography under the supervision of either a licensed polysomnographic technologist or a licensed physician in a sleep center or laboratory, which is provisionally accredited or fully accredited by AASM.

"Polysomnographic technologist" means a person licensed by the Board to practice polysomnography under the direction of a licensed physician.

"Polysomnographic trainee" means a person who holds a provisional license issued by the Board and performs polysomnography under the direct supervision of either a licensed polysomnographic technologist or a licensed physician in a sleep center or laboratory, which is provisionally accredited or fully accredited by AASM.

"Qualified medical director" means a licensed physician who is either eligible for board certification or is board certified in sleep medicine by the American Board of Sleep Medicine, or a certification board recognized by the American Board of Medical Specialties, which bases its certification in sleep medicine upon the sleep medicine examination created by the American Board of Internal Medicine, and who acts as the medical director of any:

1. In-patient or out-patient sleep center or laboratory provisionally accredited or fully accredited by AASM ***or accredited by Joint Commission*** ;

2. Ambulatory care facility or general acute care hospital licensed by the Department of Health and Senior Services;

[page=946]*[2.]* ***3.*** Home health agencies, assisted living residences, comprehensive personal care homes, assisted living programs and alternate family care sponsor agencies licensed by the Department of Health and Senior Services; or

*[3.]****4.*** Health care service firms *[licensed by]* ***registered with*** the Division of Consumer Affairs.

"Supervision" means a licensed polysomnographic technologist or licensed physician is constantly accessible, either on-site or through voice or electronic communication.

"Unattended diagnostic test" means a polysomnographic test that is not set up by, or performed in the presence of, any health care provider, including a licensed polysomnographic technologist, technician or trainee or his or her designee.

SUBCHAPTER 2. LICENSURE

13:44L-2.1 Application for a provisional license as a polysomnographic trainee

(a) An applicant for a provisional license as a polysomnographic trainee shall submit, or arrange to have submitted, to the Board:

1. A completed application on a form provided by the Board;
2. A completed Criminal History Certification of Authorization form;
3. A high school diploma, sent by the high school, or a General Educational Development (GED) certificate;
4. Proof that the applicant has successfully completed the A-STEP Introductory Course;
5. Proof that the applicant holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross;
6. Proof that the applicant will be directly supervised by a licensed polysomnographic technologist or a licensed physician while acting as a polysomnographic trainee pursuant to N.J.A.C. 13:44L-5.3; and
7. The application fee set forth in N.J.A.C. 13:44L-6.1(a)1 and the licensing fee set forth in N.J.A.C. 13:44L-6.1(a)4.

(b) A provisional license as a polysomnographic trainee shall be issued for a one-year period and shall not be renewed.

13:44L-2.2 Application for a temporary license as a polysomnographic technician

(a) A provisionally licensed polysomnographic trainee applying for a temporary license as a polysomnographic technician shall submit to the Board:

1. A completed application on a form provided by the Board;
2. Proof that the applicant has ***successfully*** completed the A-STEP Self-Study Modules within the last year;
3. Proof that the applicant holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross;
4. Documentary proof signed by a supervising polysomnographic technologist or qualified medical director, indicating that the applicant has completed at least 50 sleep studies in one or more facilities that are provisionally or fully accredited by AASM during a period that was at least two months long within the last year;
5. Proof that the applicant will be supervised by a licensed polysomnographic technologist or a licensed physician while acting as a polysomnographic technician pursuant to N.J.A.C. 13:44L-5.2; and
6. The licensing fee set forth in N.J.A.C. 13:44L-6.1(a)3.

(b) An applicant for a temporary license as a polysomnographic technician who does not hold a provisional license as a polysomnographic trainee shall submit, or arrange to have submitted, to the Board:

1. A completed application on a form provided by the Board;
2. A completed Criminal History Certification of Authorization form;
3. A high school diploma, sent by the high school, or a General Educational Development (GED) certificate;
4. Proof that the applicant holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross;
5. Proof that the applicant has successfully completed a CAAHEP accredited polysomnographic course;
6. Proof that the applicant will be supervised by a licensed polysomnographic technologist or a licensed physician while acting as a polysomnographic technician pursuant to N.J.A.C. 13:44L-5.2; and
7. The application fee set forth in N.J.A.C. 13:44L-6.1(a)1 and the licensing fee set forth in N.J.A.C. 13:44L-6.1(a)3.

(c) A temporary license as a polysomnographic technician shall be issued for a one-year period. The temporary license may be renewed for an additional one-year period pursuant to N.J.A.C. 13:44L-3.3 to afford the holder of a temporary license the opportunity to take the certification examination.

13:44L-2.3 Application for license as a polysomnographic technologist

(a) A licensed polysomnographic technician applying for licensure as a polysomnographic technologist shall submit to the Board:

1. A completed application on a form provided by the Board;
2. Proof that applicant has completed 10 continuing education credits over the past year that qualify for credit pursuant to N.J.A.C. 13:44L-4.1;
3. Proof that the applicant holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross;
4. Documentary proof signed by a supervising polysomnographic technologist or qualified medical director indicating that the applicant has completed at least 50 sleep studies in one or more facilities that are provisionally or fully accredited by AASM;
5. Proof that the applicant has successfully completed the certification examination administered by the BRPT; and
6. The licensing fee set forth in N.J.A.C. 13:44L-6.1(a)2.

(b) An applicant for licensure as a polysomnographic technologist who does not hold a temporary license as a polysomnographic technician shall submit to the Board:

1. A completed application on a form provided by the Board;
2. A completed Criminal History Certification of Authorization form;
3. Proof that the applicant has successfully completed a CAAHEP accredited polysomnographic course;

4. Proof that the applicant holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross;
5. Proof that the applicant has successfully completed the certification examination administered by the BRPT; and
6. The application fee set forth in N.J.A.C. 13:44L-6.1(a)1 and the licensing fee set forth in N.J.A.C. 13:44L-6.1(a)2.

13:44L-2.4 Application for licensure by out-of-State licensed polysomnographic technologist

(a) An applicant for licensure as a licensed polysomnographic technologist who is licensed as a polysomnographic technologist in another state shall submit to the Board:

1. A completed application on a form provided by the Board;
2. A completed Criminal History Certification of Authorization form;
3. Proof that the applicant is licensed in a state that requires successful completion of either:
 - i. A CAAHEP accredited polysomnographic course; or
 - ii. The A-STEP Introductory Course, A-STEP Self-Study Modules and at least 50 case studies;
4. Proof that the applicant holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross;
5. Proof that the applicant has successfully completed the certification examination administered by the BRPT; and
6. The application fee set forth in N.J.A.C. 13:44L-6.1(a)1 and the licensing fee set forth in N.J.A.C. 13:44L-6.1(a)2.

[page=947] 13:44L-2.5 Licensure for those who passed BRPT examination or practiced prior to *[effective date of this chapter]* ***May 17, 2010***

(a) Prior to *[six months from the effective date of this chapter]* ***November 17, 2010***, a person who has passed the certification examination administered by the BRPT prior to *[the effective date of this chapter]* ***May 17, 2010***, may apply to the Board for a license as a polysomnographic technologist.

- (b) A person applying for a polysomnographic technologist license pursuant to (a) above shall submit:
1. A completed application on a form provided by the Board;
 2. A completed Criminal History Certification of Authorization form;
 3. Proof that the applicant holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross;
 4. Proof that the applicant has successfully completed the certification examination administered by the BRPT; and
 5. The application fee set forth in N.J.A.C. 13:44L-6.1(a)1 and the licensing fee set forth in N.J.A.C. 13:44L-6.1(a)2.

(c) Prior to *[six months from the effective date of this chapter]* ***November 17, 2010***, a person who is performing polysomnography but who has not completed the certification examination administered by the BRPT by *[the effective date of this chapter]* ***May 17, 2010***, may apply to the Board for a temporary license as a polysomnographic technician.

- (d) A person applying for a temporary license as polysomnographic technician pursuant to (c) above shall submit:
1. A completed application on a form provided by the Board;
 2. A completed Criminal History Certification of Authorization form;
 3. Proof that he or she has successfully completed either:
 - i. A CAAHEP accredited polysomnographic course; or
 - ii. At least 720 hours performing polysomnography indicated by documentary proof signed by a qualified medical director;
 4. Proof that the applicant holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross;
 5. Proof that the applicant will be supervised by a licensed polysomnographic technologist or a licensed physician while acting as a polysomnographic technician pursuant to N.J.A.C. 13:44L-5.2;
 6. The application fee set forth in N.J.A.C. 13:44L-6.1(a)1 and the licensing fee set forth in N.J.A.C. 13:44L-6.1(a)3.

(e) A temporary license granted pursuant to (c) above shall be effective until *[two years from the effective date of this chapter]* ***May 17, 2012***.

(f) An applicant who receives a temporary license pursuant to (c) above shall pass the certification examination required by the BRPT prior to applying for a license as a polysomnographic technologist pursuant to N.J.A.C. 13:44L-2.3.

SUBCHAPTER 3. RENEWAL

13:44L-3.1 Change in address of record or name

(a) A licensed polysomnographic technologist, technician or trainee shall notify the Board in writing, within 30 days, of changes to:

1. The licensee's address of record. Service to the address of record registered with the Board shall constitute effective notice pursuant to N.J.A.C. 13:45-3.2; or
2. The licensee's legal name. Notification of a name change shall include a copy of the marriage license or a court order, which authorized the legal name change.

13:44L-3.2 Renewal of polysomnographic technologist license

(a) Licenses shall be renewed biennially on a form provided by the Board. Each licensed polysomnographic technologist shall attest that the continuing education requirements of N.J.A.C. 13:44L-4.1 have been completed during the prior biennial period.

(b) The Board shall send a notice of renewal to each licensed polysomnographic technologist, at least 60 days prior to the expiration of the license. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for any unlicensed practice during the period following the licensure expiration, not to exceed the number of days short of 60 before the renewals were issued.

(c) The licensed polysomnographic technologist shall submit the renewal application and pay the renewal fee pursuant to N.J.A.C. 13:44L-6.1(a)5 prior to the date of expiration of the license. If the licensed polysomnographic technologist

does not renew the license prior to its expiration date, the licensed polysomnographic technologist may renew it no later than 30 days after its expiration date by submitting a renewal application and paying a renewal fee and a late fee pursuant to N.J.A.C. 13:44L-6.1(a)7. A licensed polysomnographic technologist who fails to renew the license within 30 days after the expiration date of the license shall be suspended without a hearing.

(d) Individuals who continue to practice or hold themselves out as licensed polysomnographic technologists after being suspended shall be deemed to have violated N.J.S.A. 45:14G-9, even if no notice of suspension had been provided to the person.

(e) A person seeking reinstatement as a polysomnographic technologist within five years following the suspension of a license shall submit the following to the Board:

1. A completed reinstatement application on a form provided by the Board;
2. Proof that the person holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross;
3. Payment of all past delinquent renewal fees as set forth in N.J.A.C. 13:44L-6.1(a)5;
4. Payment of a reinstatement fee as set forth in N.J.A.C. 13:44L-6.1(a)8;
5. A certification verifying completion of the continuing education credits required pursuant to N.J.A.C. 13:44L-4.1 for the renewal of a license for each biennial renewal period during which the person was suspended; and
6. An affidavit of employment listing each job held during the period of suspension which includes the names, addresses, and telephone numbers of each employer.

(f) A person seeking reinstatement after more than five years following the suspension of a licensure shall satisfy the requirements of (e)1, 2, 3, 4 and 6 above and shall successfully pass the examination required for initial licensure as set forth in N.J.A.C. 13:44L-2.3.

(g) Renewal applications for all licenses shall provide the licensed polysomnographic technologist with the option of either active or inactive renewal. Licensed polysomnographic technologists electing to renew as inactive shall not practice or hold themselves out to the public in New Jersey as licensed polysomnographic technologists.

(h) The Board may permit a licensed polysomnographic technologist who has been on inactive status to return to active status upon application to the Board.

(i) A licensed polysomnographic technologist who elected inactive status and has been on inactive status for five years or less may be reinstated by the Board upon submission of the following to the Board:

1. Proof that the licensed polysomnographic technologist holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross;
2. A certification verifying completion of the continuing education hours required pursuant to N.J.A.C. 13:44L-4.1 for the renewal of a license for each biennial renewal period during which the person was on inactive status;
3. An affidavit of employment listing each job held during the period the licensed polysomnographic technologist was on inactive status which includes the name, address, and telephone number of each employer; and
4. Payment of the renewal fee as set forth in N.J.A.C. 13:44L-6.1(a)5.

(j) A licensed polysomnographic technologist who has been on inactive status for more than five years who wishes to return to the practice of polysomnography shall reapply for licensure. The applicant [page=948] shall fulfill all of the

initial licensure requirements found at N.J.A.C. 13:44L-2.3.

13:44L-3.3 Renewal of polysomnographic technician license

- (a) A licensed polysomnographic technician may renew his or her temporary license once.
- (b) A licensed polysomnographic technician who wishes to renew his or her temporary license shall apply to the Board for renewal 60 days prior to the expiration of his or her temporary license.
- (c) A licensed polysomnographic technician applying for renewal of a temporary license pursuant to (b) above shall submit to the Board:
 1. A completed renewal of temporary license application on a form provided by the Board;
 2. Proof that the licensed polysomnographic technician holds current certification in Basic Life support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross;
 3. Proof that the licensed polysomnographic technician will be supervised by a licensed polysomnographic technologist or a licensed physician while acting as a polysomnographic technician pursuant to N.J.A.C. 13:44L-5.2;
 4. Documentary proof signed by a supervising polysomnographic technologist or qualified medical director indicating that, within the last year, the applicant has completed at least 100 sleep studies in a facility that is provisionally or fully accredited by AASM;
 5. Proof that the licensed polysomnographic technician has completed 10 continuing education credits pursuant to N.J.A.C. 13:44L-4.1 within the last year; and
 6. The license renewal fee set forth in N.J.A.C. 13:44L-6.1(a)6.

13:44L-3.4 Inactive status for provisional and temporary license

- (a) A polysomnographic trainee or technician may request the Board to place a provisional or temporary license on inactive status for reasons of hardship, which prevent the individual from acting as a polysomnographic trainee or technician, such as severe illness, disability or military service.
- (b) A request for inactive status shall be submitted to the Board in writing and shall set forth in specific detail the reasons for requesting inactive status. The polysomnographic trainee or technician shall provide the Board with supplemental materials that support the request for inactive status.
- (c) If the Board determines that the individual will not be able to act as a trainee or technician due to the hardship identified in the written request, the Board shall put the individual's provisional or temporary license on inactive status.
- (d) A polysomnographic trainee or technician on inactive status shall not practice or hold him- or herself out as a polysomnographic trainee or technician.
- (e) If a provisional or temporary license is placed on inactive status, the period during which the license is inactive shall not count towards the one-year effective period of the license set forth in N.J.A.C. 13:44L-2.1(b) or 2.2(c).
- (f) A polysomnographic trainee or technician on inactive status may request a return to active status by submitting a written request to the Board, indicating why he or she is able to recommence acting as a polysomnographic trainee or technician. A written request for return from inactive status shall also include:
 1. Proof that the applicant holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross; and

2. Proof that the applicant will be supervised by a licensed polysomnographic technologist or a licensed physician while acting as a polysomnographic trainee or technician pursuant to N.J.A.C. 13:44L-5.2 or 5.3.

(g) If the Board determines that an individual applying for reactivation pursuant to (f) above is able to continue acting as a polysomnographic trainee or technician, the Board shall reactivate the individual's provisional or temporary license.

(h) When a license has been reactivated pursuant to (g) above, the one-year effective period of the license set forth in N.J.A.C. 13:44L-2.1(b) or 2.2(c) shall recommence starting from the point at which it was effective prior to the granting of inactive status. For example, a license that was effective for four months prior to becoming inactive will be effective for an additional eight months after reactivation.

(i) If a provisional or temporary license placed on inactive status is not reactivated pursuant to (g) above, it shall be on inactive status for one year. An inactive polysomnographic trainee or technician who wishes to extend the period of inactive status shall submit a written request for inactive status pursuant to (b) above at least 60 days prior to the end of the period of inactive status.

(j) If an inactive polysomnographic trainee or technician does not renew inactive license status pursuant to (i) above, the license shall lapse after the one-year period of inactive status and the individual will no longer be licensed by the Board.

SUBCHAPTER 4. CONTINUING EDUCATION

13:44L-4.1 Continuing education

(a) Upon biennial licensure renewal, each licensed polysomnographic technologist shall attest that he or she has completed courses of continuing education of the types and number of credits specified in (b), (c) and (d) below and N.J.A.C. 13:44L-4.2. Falsification of any information submitted on the renewal application may require an appearance before the Board and may subject a licensee to penalties and/or suspension or revocation of the licensure pursuant to N.J.S.A. 45:1-21 through 45:1-25.

(b) Each applicant for biennial license renewal as a licensed polysomnographic technologist shall be required to obtain current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross.

(c) Each applicant for biennial license renewal as a licensed polysomnographic technologist shall be required to complete, during the preceding biennial period, except as provided in (d) below, a minimum of 20 credits of continuing education related to the practice of polysomnography, with at least five of those credits being completed in each year.

(d) A licensed polysomnographic technologist who is initially licensed in the second year of a biennial renewal period shall be required to complete 10 credits of continuing education.

13:44L-4.2 Continuing education programs

(a) A licensed polysomnographic technologist may obtain continuing education credits from the following:

1. Successful completion of continuing education courses or programs related to the practice of polysomnography recognized by the BRPT Education Advisory Board (BRPT-EAC), the AASM, the AAST, the American Society of Electroneurodiagnostic Technologists, Inc. (ASET) *, * *[and]* the American Association for Respiratory Care (AARC) *, **the American Nurses Association (ANA), the American Medical Association (AMA), the American College of Chest Physicians (ACCP) and the American Physical Therapy Association (APTA)***; one credit for each hour of attendance;

2. Reading articles, and completing self tests on those articles, that have been approved by BRPT-EAC, AAST or AASM; one and one-half credit hours for every four articles completed, up to 12 credits.

13:44L-4.3 Continuing education audits; records of continuing education

(a) The Board shall perform audits on randomly selected licensees to determine compliance with continuing education requirements.

(b) A licensed polysomnographic technologist shall maintain the following documentation for a period of four years after completion of the credit hours and shall submit such documentation to the Board upon request for:

1. Attendance at programs or courses: a certificate of completion from the sponsor; and

[page=949] 2. Reading articles: a certificate of completion from either BRPT, AAST or AASM.

13:44L-4.4 Additional continuing education credits

(a) The Board may direct or order a licensed polysomnographic technologist to complete continuing education credit hours:

1. As part of a disciplinary or remedial measure in addition to the required 20 hours of continuing education; or

2. To correct a deficiency in the licensee's continuing education requirements.

(b) Any continuing education credit hours completed by the licensed polysomnographic technologist in compliance with an order or directive from the Board as set forth in (a) above shall not be used to satisfy the minimum continuing education requirements as set forth in N.J.A.C. 13:44L-4.1.

SUBCHAPTER 5. PRACTICE REQUIREMENTS

13:44L-5.1 Scope of practice: licensed polysomnographic technologist

(a) The following functions are within the scope of practice of a licensed polysomnographic technologist:

1. Analyzing, monitoring and recording physiologic data during sleep and wakefulness;

2. Assessing, diagnosing and assisting in the treatment and research of disorders, syndromes and dysfunctions that are sleep related, manifest during sleep or disrupt normal sleep and wake cycles and activities;

3. The therapeutic and diagnostic use of oxygen;

4. The use of positive airway pressure, which includes continuous positive airway pressure (CPAP), bi-level modalities and multiple function modalities;

5. Cardiopulmonary resuscitation;

6. Maintaining nasal and oral airways that do not extend in the trachea;

7. Transcribing and implementing written or verbal orders of a physician pertaining to the practice of polysomnography;

8. Reading and analyzing test results obtained from home-based, self-administered diagnostic tests; and

9. Recognizing wake and sleep stages.

(b) A licensed polysomnographic technologist shall provide the services from (a) above only when a physician who

has medical responsibility for the patient has referred the patient to the licensed polysomnographic technologist or to the sleep center or laboratory at which the licensed polysomnographic technologist works.

(c) A licensed polysomnographic technologist may provide the services from (a) above only if he or she is working at a State-licensed facility that has a qualified medical director.

13:44L-5.2 Scope of practice: licensed polysomnographic technician

(a) The following functions are within the scope of practice of a licensed polysomnographic technician:

1. Analyzing, monitoring and recording physiologic data during sleep and wakefulness;
2. Assessing, diagnosing and assisting in the treatment and research of disorders, syndromes and dysfunctions that are sleep related, manifest during sleep or disrupt normal sleep and wake cycles and activities;
3. The therapeutic and diagnostic use of oxygen;
4. The use of positive airway pressure, which includes continuous positive airway pressure (CPAP), bi-level modalities and multiple level modalities;
5. Cardiopulmonary resuscitation;
6. Maintaining nasal and oral airways that do not extend in the trachea;
7. Transcribing and implementing written or verbal orders of a physician pertaining to the practice of polysomnography;
8. Assisting licensed polysomnographic technologists and licensed physicians with reading and analyzing test results obtained from home-based, self-administered diagnostic tests; and
9. Recognizing wake and sleep stages.

(b) A licensed polysomnographic technician shall provide the services from (a) above only when a physician who has medical responsibility for the patient has referred the patient to the licensed polysomnographic technician or to the sleep center or laboratory at which the licensed polysomnographic technician works.

(c) A licensed polysomnographic technician may provide the services from (a) above only if he or she is working at a State-licensed facility that has a qualified medical director and is under the supervision of a licensed polysomnographic technologist or licensed physician.

(d) A licensed polysomnographic technician who is not under the supervision of a licensed polysomnographic technologist or licensed physician shall not provide any of the services listed in (a) above.

13:44L-5.3 Scope of practice: licensed polysomnographic trainee

(a) A licensed polysomnographic trainee may assist a licensed polysomnographic technologist or licensed physician in the performance of the following functions:

1. Analyzing, monitoring and recording physiologic data during sleep and wakefulness;
2. Assessing, diagnosing and assisting in the treatment and research of disorders, syndromes and dysfunctions that are sleep related, manifest during sleep or disrupt normal sleep and wake cycles and activities;
3. The therapeutic and diagnostic use of oxygen;
4. The use of positive airway pressure, which includes continuous positive airway pressure (CPAP), bi-level modalities

and multiple level modalities;

5. Cardiopulmonary resuscitation;
6. Maintaining nasal and oral airways that do not extend in the trachea;
7. Implementing written orders of a physician pertaining to the practice of polysomnography;
8. Reading and analyzing test results obtained from home-based, self-administered diagnostic tests; and
9. Recognizing wake and sleep stages.

(b) A licensed polysomnographic trainee may provide the services from (a) above only if he or she is working at a State-licensed facility that has a qualified medical director and is under the direct supervision of a licensed polysomnographic technologist or licensed physician.

(c) A licensed polysomnographic trainee who is not under the direct supervision of a licensed polysomnographic technologist or licensed physician shall not provide any of the services from (a) above.

13:44L-5.4 Unlicensed practice of polysomnography; exemptions

(a) An individual is engaging in unlicensed practice of polysomnography if the individual engages in any of the practices set forth in N.J.A.C. 13:44L-5.1, 5.2 or 5.3 and is not either:

1. Licensed by the Board as a polysomnographic technologist, technician or trainee; or
2. Exempt from the requirements of this chapter pursuant to (b) or (c) below.

(b) Pursuant to N.J.S.A. 45:14G-9, an individual who is licensed by another State agency is exempt from the requirements of this chapter if his or her licensed scope of practice includes the performance of the practices set forth in N.J.A.C. 13:44L-5.1, 5.2 or 5.3.

(c) Pursuant to N.J.S.A. 45:14G-9, an individual who is enrolled in a CAAHEP-accredited polysomnographic course is exempt from the provisions of this chapter while he or she is performing any of the practices set forth in N.J.A.C. 13:44L-5.1, 5.2 or 5.3 that are part of the course in which he or she is enrolled.

(d) A person exempt from this chapter pursuant to (b) or (c) above shall not identify him or herself as a Board licensed polysomnographic technologist, technician or trainee.

(e) This chapter shall not apply to an unattended diagnostic test when:

1. The test is performed in a patient's home;
2. The patient places any sensors on him or herself; and
3. The test is performed using a testing device that records three or fewer channels of data.

(f) A diagnostic test that is exempt from this chapter pursuant to (e) above shall be explained to a patient by a licensed polysomnographic technologist or a licensed physician.

(g) The result from a diagnostic test that is exempt from this chapter pursuant to (e) above shall be read or analyzed by a licensed polysomnographic technologist or a licensed physician.

[page=950] 13:44L-5.5 Aiding and abetting unlicensed practice

It shall be unlawful for a licensed polysomnographic technologist, technician or trainee to aid or abet any unlicensed

person engaging in any of the practices identified at N.J.A.C. 13:44L-5.1, 5.2 and 5.3.

13:44L-5.6 Sexual misconduct

(a) The purpose of this section is to identify for licensees conduct which shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

"Licensee" means any person who holds a license from the Board as a licensed polysomnographic technologist, technician or trainee.

"Patient" means any person who is the recipient of polysomnographic services.

"Patient-licensee relationship" means a relationship between a licensee and a patient in which the licensee owes a continuing duty to the patient to render polysomnographic services consistent with his or her training and experience.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes the imposition of a part of the licensee's body upon a part of the patient's body, sexual penetration or the insertion or imposition of any object or any part of a licensee or patient's body into or near the genital, anal or other opening of the other person's body. "Sexual contact" does not include the touching of a patient's body, which is necessary during the performance of a generally accepted and recognized polysomnographic procedure.

"Sexual harassment" means solicitation of any sexual act, physical advances or verbal or non-verbal conduct that is sexual in nature and which occurs in connection with a licensee's activities or role as a provider of polysomnographic services and that either: is unwelcome, is offensive to a reasonable person or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act or of multiple acts and may include conduct of a licensee with a patient, co-worker, employee, student or supervisee, whether or not such individual is in a subordinate position to the licensee.

"Spouse" means the husband, wife or fiancee of the licensee or an individual involved in a long-term committed relationship with the licensee. For purposes of the definition of "spouse," a long-term committed relationship means a relationship, which is at least six months in duration.

(c) A licensee shall not engage in sexual contact with a patient with whom he or she has a patient-licensee relationship. The patient-licensee relationship is considered ongoing for purposes of this section, unless:

1. Terminated by way of written notice to the patient and documented in the patient's record; or
2. Three months have lapsed since the last professional service was rendered by the practitioner to the patient.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-licensee relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a person with whom the licensee has a patient-licensee relationship, unless that discussion is directly related to a proper polysomnographic purpose. Such discussion shall not include disclosure by the licensee of his or her own sexual relationships.

(f) A licensee shall provide privacy conditions, which prevent the exposure of the unclothed body of the patient. Appropriate draping measures shall be employed to protect patient privacy.

(g) A licensee shall not engage in sexual harassment either within or outside of the professional setting.

(h) A licensee shall not engage in any other activity, which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or which is for the sexual arousal or sexual gratification of the licensee or patient or which constitutes an act of sexual abuse.

(i) Violation of any of the prohibitions or directives set forth in (c) through (h) above shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(j) Nothing in this section shall be construed to prevent a licensee from rendering polysomnography to his or her spouse, providing that the rendering of such polysomnography is consistent with accepted practice standards and that the performance of polysomnography is not utilized to exploit the spouse for the sexual arousal or sexual gratification of the licensee.

(k) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or
2. The licensee is in love with or held affection for the patient.

13:44L-5.7 Posting of notification of licensure; Duty to provide license

(a) Every licensed polysomnographic technologist, technician and trainee shall prominently display in every place where he or she practices polysomnography the following notice:

"(Name of Licensed polysomnographic technologist, technician or trainee) is licensed by the New Jersey Board of Polysomnography, an agency of the Division of Consumer Affairs. (Name of licensed polysomnographic technologist, technician or trainee) must present his or her license to you upon request. Any member of the consuming public may notify the Board of any complaint relative to the practice conducted under this license at the Division of Consumer Affairs, New Jersey Board of Polysomnography, Post Office Box 45051, 124 Halsey Street, Newark, New Jersey 07101 or through the New Jersey Board of Polysomnography's website:

<http://www.nj.gov/oag/ca/medical/poly.htm>."

(b) Every licensed polysomnographic technologist, technician and trainee shall present his or her current biennial renewal certificate to any patient who requests to see the license or any individual who employs the licensed polysomnographic technologist, technician or trainee upon request.

13:44L-5.8 Identification tags

(a) Every licensed polysomnographic technologist, technician or trainee shall wear an identification tag when engaging in the practice of polysomnography. The identification tag shall be clearly visible at all times and shall bear the first name or initial, the full surname and the term reflecting the individual's level of licensure. The letters on the tag shall be of equal size in type, not smaller than one-quarter inch. The size of the identification tag shall be equal to or greater than that of any other identification worn by the licensee.

(b) Where a general hospital requires a facility staff member who is a licensed polysomnographic technologist, technician or trainee to wear an identifying badge pursuant to P.L. 1997, c. 76 (N.J.S.A. *[26:21H]* ***26:2H*** -12.8a), that staff member need wear only one identification badge, as long as the badge meets requirements of both P.L. 1997, c. 76 (N.J.S.A. *[26:21H]* ***26:2H*** -12.8a) and (a) above.

(c) In order to protect his or her personal safety or to prevent the substantial invasion of his or her privacy or to prevent the identification tag from causing physical harm to the patient, a licensed polysomnographic technologist, technician or trainee may request an exemption from the requirements of (a) above. Such requests for an exemption shall be made by the licensed polysomnographic technologist, technician or trainee in writing to the Board and shall set forth the reasons why wearing the tag would endanger his or her personal safety, substantially invade his or her privacy or physically harm a patient.

(d) The exemption set forth in (c) above shall not apply to those facility staff members in a general hospital, where such general hospital requires a facility staff member to wear an identifying badge pursuant to P.L. 1997, c. 76 (N.J.S.A. 26:2H-12.8a).

13:44L-5.9 Documentation of patient services

(a) Licensed polysomnographic technologists shall make contemporaneous, permanent entries into facility patient records, which shall accurately reflect the polysomnographic services rendered. These entries shall contain, at a minimum:

- [page=951] 1. An intake record;
- 2. The date of service;
- 3. Reasons for the visit;
- 4. The name and license number of the licensed polysomnographic technologist, technician or trainee who provided services;
- 5. Polysomnographic observation notes on each service provided by the licensed polysomnographic technologist, technician or trainee. Observation notes entered by a polysomnographic technician or trainee shall include the signature of the technician's or trainee's supervising polysomnographic technologist or licensed physician; and
- 6. A summary of any verbal orders taken by the licensed polysomnographic technologist or technician.

13:44L-5.10 Recordkeeping: qualified medical director

(a) Every licensed polysomnographic technologist shall obtain documentation from the qualified medical director with whom he or she is working that indicates that the qualified medical director is:

- 1. A licensed physician who is either eligible for board certification or is board certified in sleep medicine by either the American Board of Sleep Medicine or a certification board recognized by the American Board of Medical Specialties, which bases its certification in sleep medicine upon the sleep medicine examination created by the American Board of Internal Medicine; and
- 2. Acting as the medical director of an in-patient or out-patient:
 - i. Sleep center or laboratory provisionally accredited or fully accredited by AASM; or
 - ii. Home health agencies, assisted living residences, comprehensive personal care homes, assisted living programs and alternate family care sponsor agencies licensed by the Department of Health and Senior Services; or
 - iii. Health care service firms licensed by the Division of Consumer Affairs.

(b) If a qualified medical director's board certification has an expiration date, the documentation required by (a) above shall include this expiration date.

(c) Every licensed polysomnographic technologist shall maintain the documentation required by (a) above as part of his or her records and shall submit this documentation to the Board upon request.

SUBCHAPTER 6. FEE SCHEDULE

13:44L-6.1 Fees

(a) The following fees shall be charged by the Board in connection with the licensure of polysomnographic technologists, technicians and trainees:

