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Proposed Legislation

West's New Mexico Statutes Annotated

Chapter 61. Professional and Occupational Licenses (Refs & Annos)

Article 6b. Polysomnography Practice Act

N. M. S. A. 1978, § 61-6B-1

§ 61-6B-1. Short title

Effective: July 15, 2008

Currentness

Sections 1 through 10 of this act may be cited as the “Polysomnography Practice Act”.

Credits

Added by L. 2008, Ch. 54, § 1, eff. July 1, 2008.

NMSA 1978, § 61-6B-1, NM ST § 61-6B-1

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N. M. S. A. 1978, § 61-6B-2

§ 61-6B-2. Definitions

Effective: July 15, 2008

Currentness

As used in the Polysomnography Practice Act:

A. “board” means the New Mexico medical board;

B. “committee” means the polysomnography practice advisory committee;

C. “direct supervision” means that the polysomnographic technologist providing supervision shall be present in the area where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure;

D. “general supervision” means that the polysomnographic procedure is provided under a physician’s direction and control, but the physician’s presence is not required during the performance of the procedure;

E. “license” means an authorization issued by the board that permits a person to engage in the

practice of polysomnography in the state;

F. “licensed provider” means a licensed physician, licensed physician assistant, licensed certified nurse practitioner or licensed psychologist;

G. “licensee” means a person licensed by the board to engage in the practice of polysomnography;

H. “polysomnographic student” means a person who is enrolled in an educational program that is accredited by the commission on accreditation of allied health education programs, as provided in Section 5 of the Polysomnography Practice Act, and who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person’s educational program;

I. “polysomnographic technician” means a person who has graduated from an accredited educational program described in Section 5 of the Polysomnography Practice Act but has not yet passed the national certifying examination given by the board of registered polysomnographic technologists, who has obtained a temporary permit from the board and who may provide sleep-related services under the general supervision of a licensed physician;

J. “polysomnographic technologist” means a person who is credentialed by the board of registered polysomnographic technologists and is licensed by the board to engage in the practice of polysomnography under the general supervision of a licensed physician;

K. “polysomnographic trainee” means a person who is enrolled in an accredited sleep technologist educational program that is accredited by the American academy of sleep medicine and who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person’s educational program;

L. “practice of polysomnography” means the performance of diagnostic and therapeutic tasks, under the general supervision of a licensed physician, including:

(1) monitoring and recording physiologic activity and data during the evaluation or treatment of sleep-related disorders, including sleep-related respiratory disturbances, by applying appropriate techniques, equipment and procedures, including:

(a) continuous or bi-level positive airway pressure titration on patients using a nasal or oral or a nasal and oral mask or appliance that does not extend into the trachea or attach to an artificial airway, including the fitting and selection of a mask or appliance and the selection and implementation of treatment settings;

(b) supplemental low-flow oxygen therapy that is less than ten liters per minute using nasal cannula or continuous or bi-level positive airway pressure during a polysomnogram;

(c) capnography during a polysomnogram;

(d) cardiopulmonary resuscitation;

(e) pulse oximetry;

(f) gastroesophageal pH monitoring;

(g) esophageal pressure monitoring;

(h) sleep staging, including surface electroencephalography, surface electrooculography and surface submental electromyography;

(i) surface electromyography;

(j) electrocardiography;

(k) respiratory effort monitoring, including thoracic and abdominal movement;

(l) respiratory plethysmography;

(m) arterial tonometry and additional measures of autonomic nervous system tone;

(n) snore monitoring;

(o) audio or video monitoring;

(p) body movement monitoring;

(q) nocturnal penile tumescence monitoring;

(r) nasal and oral airflow monitoring;

(s) body temperature monitoring; and

(t) use of additional sleep-related diagnostic technologies as determined by a rule adopted by the board;

(2) observing and monitoring physical signs and symptoms, general behavior and general physical response to polysomnographic evaluation or treatment and determining whether initiation, modification or discontinuation of a treatment regimen is warranted;

(3) analyzing and scoring data collected during the monitoring described in Paragraphs (1) and (2) of this subsection for the purpose of assisting a licensed provider in the diagnosis and treatment of sleep and wake disorders that result from developmental defects, the aging process, physical injury, disease or actual or anticipated somatic dysfunction;

(4) implementing a written or verbal order from a licensed provider that requires the practice of polysomnography;

(5) educating a patient regarding the treatment regimen that assists that patient in improving the patient's sleep; and

(6) initiating and monitoring treatment, under the orders of a licensed provider, for sleep-related breathing disorders by providing continuous positive airway pressure and bi-level positive airway pressure devices and accessories, including masks that do not extend into the trachea or attach to an artificial airway, to a patient for home use, together with educating the patient about the treatment and managing the treatment; and

M. "sleep-related services" means acts performed by polysomnographic technicians,

polysomnographic trainees, polysomnographic students and other persons permitted to perform these services under the Polysomnography Practice Act, in a setting described in Subsection D of Section 4 of the Polysomnography Practice Act, that would be considered the practice of polysomnography if performed by a polysomnographic technologist.

Credits

Added by L. 2008, Ch. 54, § 2, eff. July 1, 2008.

NMSA 1978, § 61-6B-2, NM ST § 61-6B-2

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N. M. S. A. 1978, § 61-6B-3

§ 61-6B-3. License required; exceptions; practice limitations; applicability

Effective: July 15, 2008

Currentness

A. On and after July 1, 2010, a person who is engaged in the practice of polysomnography must have a valid polysomnographic technologist license issued by the board. It shall be unlawful for a person to engage in the practice of polysomnography after that date unless the person has a valid polysomnographic technologist license issued by the board.

B. Prior to July 1, 2010, any person who is engaged in the practice of polysomnography without being licensed under the Polysomnography Practice Act shall not be deemed to be in violation of that act.

Credits

Added by L. 2008, Ch. 54, § 3, eff. July 1, 2008.

NMSA 1978, § 61-6B-3, NM ST § 61-6B-3

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N. M. S. A. 1978, § 61-6B-4

§ 61-6B-4. Exemptions

Effective: July 15, 2008

Currentness

A. The following classes of persons may provide sleep-related services without being licensed as a polysomnographic technologist:

(1) a polysomnographic technician under the general supervision of a licensed physician for no more than two years from the date of the person's graduation from one of the accredited programs described in Section 5 of the Polysomnography Practice Act; provided that the board may grant a one-time extension of up to one year beyond the original two-year period;

(2) a polysomnographic trainee who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the trainee's educational program while actively enrolled in an accredited sleep technologist educational program that is accredited by the American academy of sleep medicine;

(3) a polysomnographic student who may provide uncompensated sleep-related services under the direct supervision of a polysomnographic technologist as a part of the student's educational program while actively enrolled in a polysomnographic educational program that is accredited by the commission on accreditation of allied health education programs; and

(4) a person, other than a respiratory care practitioner licensed under the Respiratory Care Act, credentialed in one of the health-related fields accepted by the board of registered polysomnographic technologists, who may provide sleep-related services under the direct supervision of a polysomnographic technologist for a period of up to one year while obtaining the clinical experience necessary to be eligible to take the examination given by the board of registered polysomnographic technologists.

B. Before providing any sleep-related services:

(1) a polysomnographic technician shall obtain a temporary permit from the board and when providing services shall wear a badge that appropriately identifies the person as a polysomnographic technician;

(2) a polysomnographic trainee shall give notice to the board that the trainee is enrolled in an accredited sleep technologist educational program accredited by the American academy of sleep medicine. When providing services, the trainee shall wear a badge that appropriately identifies the person as a polysomnographic trainee;

(3) a person who is obtaining clinical experience pursuant to Paragraph (4) of Subsection A of this section shall give notice to the board that the person is working under the direct supervision of a polysomnographic technologist in order to gain the experience to be eligible to take the examination given by the board of registered polysomnographic technologists. When providing services, the person shall wear a badge that appropriately identifies that the person is obtaining clinical experience; and

(4) a polysomnographic student shall wear a badge that appropriately identifies the person as a polysomnographic student.

C. A licensed dentist shall make or direct the making and use of any oral appliance used in the practice of polysomnography and shall evaluate the structures of a patient's oral and maxillofacial region for purposes of fitting the appliance.

D. The practice of polysomnography shall take place only in a hospital, a stand-alone sleep laboratory or sleep center or in a patient's home in accordance with a licensed provider's order; provided that the scoring of data and the education of patients may take place in settings other than in a hospital, sleep laboratory, sleep center or patient's home.

E. The Polysomnography Practice Act shall not apply to:

(1) a physician licensed under the Medical Practice Act;

(2) diagnostic electroencephalograms conducted in accordance with the guidelines of the American clinical neurophysiology society;

(3) a person who is employed in the practice of polysomnography by a federal government facility or agency in New Mexico; or

(4) a person qualified as a member of a recognized profession, the practice of which requires a license or is regulated pursuant to the laws of New Mexico, who renders services within the scope of the person's license or other regulatory authority; provided that the person does not represent that the person is a polysomnographic technologist.

Credits

Added by L. 2008, Ch. 54, § 4, eff. July 1, 2008.

NMSA 1978, § 61-6B-4, NM ST § 61-6B-4

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N. M. S. A. 1978, § 61-6B-5

§ 61-6B-5. Requirements for licensing

Effective: July 1, 2020

Currentness

A. The board shall grant a license to engage in the practice of polysomnography to a person who has submitted to the board:

(1) a completed application for licensing on the form provided by the board;

(2) required documentation as determined by the board;

(3) except as provided in Section 61-1-34 NMSA 1978, the required fees;

(4) an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetence;

(5) satisfactory documentation of either:

(a) graduation from a polysomnographic educational program that is accredited by the commission on accreditation of allied health education programs;

(b) graduation from a respiratory care educational program that is accredited by the commission on accreditation of allied health education programs and completion of the curriculum for a polysomnography certificate established and accredited by the committee on accreditation for respiratory care of the commission on accreditation of allied health education programs;

(c) graduation from an electroneurodiagnostic technologist educational program with a polysomnographic technology track that is accredited by the commission on accreditation of allied health education programs; or

(d) successful completion of an accredited sleep technologist educational program that is accredited by the American academy of sleep medicine; provided, however, this optional requirement shall not be available after the date on which there are at least three polysomnographic technologist educational programs in New Mexico that have been accredited by the commission on accreditation of allied health education programs for at least the two years immediately preceding that date; and

(6) satisfactory documentation of having:

(a) passed the national certifying examination given by the board of registered polysomnographic technologists or having passed a national certifying examination equivalent to the board of registered polysomnographic technologists' examination as determined by a rule adopted by the New Mexico medical board;

(b) been credentialed by the board of registered polysomnographic technologists or by another national entity equivalent to the board of polysomnographic technologists as determined by rule adopted by the New Mexico medical board;

(c) met any additional educational or clinical requirements established by the board pursuant to rule; and

(d) met all other requirements of the Polysomnography Practice Act.

B. A person who is engaged in the practice of polysomnography on July 1, 2008 shall be eligible for a license under the Polysomnography Practice Act without meeting the educational requirement of Paragraph (5) of Subsection A of this section, provided that the person meets the requirements of Paragraph (6) of Subsection A of this section.

C. The board may require:

(1) a personal interview with an applicant to evaluate that person's qualifications for a license; and

(2) fingerprints and other information necessary for a state and national criminal background check.

Credits

Added by L. 2008, Ch. 54, § 5, eff. July 1, 2008. Amended by L. 2020, Ch. 6, § 18, eff. July 1, 2020.

NMSA 1978, § 61-6B-5, NM ST § 61-6B-5

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§ 61-6B-5. Requirements for licensing, NM ST § 61-6B-5

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N. M. S. A. 1978, § 61-6B-6

§ 61-6B-6. License renewal

Effective: July 15, 2008

Currentness

A. A licensee shall renew the licensee's polysomnographic technologist's license biennially by submitting prior to the date established by the board:

(1) the completed application for license renewal on the form provided by the board; and

(2) the required fee for biennial license renewal.

B. The board may require proof of continuing education or other proof of competence as a requirement for renewal.

C. A sixty-day grace period shall be allowed a licensee after the end of the licensing period, during which time the license may be renewed by submitting:

(1) the completed application for license renewal on the form provided by the board;

(2) the required fee for biennial license renewal; and

(3) the required late fee.

D. A polysomnographic technologist's license not renewed at the end of the grace period shall be considered expired, and the licensee shall not be eligible to practice within the state. For reinstatement of an expired license within one year of the date of renewal, the board shall establish requirements or fees that are in addition to the fee for biennial license renewal and may require the former licensee to reapply as a new applicant.

Credits

Added by L. 2008, Ch. 54, § 6, eff. July 1, 2008.

NMSA 1978, § 61-6B-6, NM ST § 61-6B-6

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N. M. S. A. 1978, § 61-6B-7

§ 61-6B-7. License; contents; display; fees

Effective: July 1, 2020

Currentness

A. A license issued by the board shall contain the name of the person to whom it is issued, the date and number of the license and other information the board may require.

B. The most recent address contained in the board's records for each licensee is the address deemed sufficient for purposes of service of process and correspondence and notice from the board. Any licensee whose address changes shall, within thirty days of the change, notify the board of the address change.

C. A licensee who wishes to retire from the practice of polysomnography shall file with the board an affidavit, in a form to be furnished by the board, stating the date on which the person retired from practice and other information the board may require. If that person wishes to reenter the practice of polysomnography, the person shall meet requirements established by the board for license renewal.

D. A licensee shall display the license in the office or place in which the licensee practices in a location clearly visible to patients.

E. Except as provided in Section 61-1-34 NMSA 1978, the board shall establish license and administrative fees, but no individual fee shall exceed five hundred dollars (\$500).

Credits

Added by L. 2008, Ch. 54, § 7, eff. July 1, 2008. Amended by L. 2020, Ch. 6, § 19, eff. July 1, 2020.

NMSA 1978, § 61-6B-7, NM ST § 61-6B-7

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N. M. S. A. 1978, § 61-6B-8

§ 61-6B-8. Committee; creation; organization; per diem and mileage; removal

Effective: July 15, 2008

Currentness

A. The “polysomnography practice advisory committee” is created to advise the board on all matters related to the Polysomnography Practice Act. The board shall provide administrative and financial support to the committee.

B. The committee shall have five members, who are residents of New Mexico, appointed by the board as follows:

(1) two members who are credentialed by the board of registered polysomnographic technologists; provided that when the New Mexico medical board begins issuing licenses, this category of committee members shall be three licensed polysomnographic technologists, with the then-sitting members in this category being given a reasonable amount of time to become licensed;

(2) one licensed physician who is certified in sleep medicine by a national certifying body recognized by the American academy of sleep medicine;

(3) one person whose background is at the discretion of the board; and

(4) one member of the public who is not economically or professionally associated with the health care field.

C. Term-length conditions for appointments to the committee are:

(1) for initial appointments, two members each for four-year, three-year and two-year terms and one member for a one-year term;

(2) for regular appointments after the initial appointments, four-year terms;

(3) for a vacancy appointment, the balance of the term; and

(4) for any one member, no more than two terms, including an initial appointment term; provided that a member shall continue to serve on the committee until a replacement is appointed.

D. The committee shall elect annually a chairperson and other officers as the committee determines to be necessary.

E. The committee shall meet at least twice per calendar year and otherwise as often as necessary to conduct business, with four members constituting a quorum and meetings subject to the Open Meetings Act.

F. Members of the committee shall be reimbursed as nonsalaried public officers pursuant to the

Per Diem and Mileage Act, and members shall receive no other compensation, perquisite or allowance for their service on the committee.

G. The board may remove from office a member of the committee for neglect of duties required by the Polysomnography Practice Act, malfeasance in office, incompetence or unprofessional conduct.

Credits

Added by L. 2008, Ch. 54, § 8, eff. July 1, 2008.

NMSA 1978, § 61-6B-8, NM ST § 61-6B-8

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N. M. S. A. 1978, § 61-6B-9

§ 61-6B-9. Board; committee; powers and duties

Effective: July 15, 2008

Currentness

A. The board, with the advice of the committee, shall have powers regarding licensing of polysomnographic technologists, temporary permitting of polysomnographic technicians, approval of polysomnography curricula, approval of degree programs in polysomnography and any other matters that are necessary to ensure the training and licensing of competent polysomnographic technologists.

B. The board, with the advice of the committee, shall hold hearings and adopt rules regarding:

(1) the licensing of polysomnographic technologists, the practice of polysomnography and the minimum qualifications and hours of clinical experience and standards of care required for being licensed as a polysomnographic technologist;

(2) criteria for continuing education requirements;

(3) the manner in which records of examinations and treatments shall be kept and maintained;

(4) professional conduct, ethics and responsibility;

(5) disciplinary actions, including the denial, suspension or revocation of or the imposition of restrictions or conditions on a license, and the circumstances that require disciplinary action;

(6) a means to provide information to all polysomnographic technologists licensed in the state;

(7) the inspection of the business premises of a licensee when the board determines that an inspection is necessary;

(8) the investigation of complaints against licensees or persons holding themselves out as engaging in the practice of polysomnography in the state;

(9) the publication of information for the public about licensees and the practice of polysomnography in the state;

(10) an orderly process for reinstatement of a license;

(11) criteria for acceptance of polysomnography credentials or licenses issued in other jurisdictions;

(12) criteria for advertising or promotional materials; and

(13) any matter necessary to implement the Polysomnography Practice Act.

Credits

Added by L. 2008, Ch. 54, § 9, eff. July 1, 2008.

NMSA 1978, § 61-6B-9, NM ST § 61-6B-9

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N. M. S. A. 1978, § 61-6B-10

§ 61-6B-10. Offenses; criminal penalties

Effective: July 15, 2008

Currentness

A person who engages in the practice of polysomnography without a license is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

Credits

Added by L. 2008, Ch. 54, § 10, eff. July 1, 2008.

NMSA 1978, § 61-6B-10, NM ST § 61-6B-10

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