

**NORTH CAROLINA RESPIRATORY CARE BOARD
RALEIGH, NORTH CAROLINA**

**IN RE: REQUEST FOR DECLARATORY RULING) DECLARATORY RULING
BY CAROLINAS SLEEP SERVICES, INC.)**

I, Joseph Coyle, as Chair of the North Carolina Respiratory Care Board (the “Board”), and based on a resolution by the Board of this date, duly adopted pursuant to N.C. Gen. Stat. § 150B-4, do hereby issue this declaratory ruling. This declaratory ruling will interpret N.C. Gen. Stat. § 90-664 (1) in regard to the activities of Polysomnographic Technologists, Polysomnographic Technicians and Polysomnographic Trainees working in hospital-based and freestanding sleep centers. This ruling is issued after earlier declaratory rulings issued by the Board on 12 November, 2001 in the case of Rex Healthcare, Inc.; and on 10 September, 2002 in the case of Sleep Analysis, Inc.

For the reasons set out below, and under the circumstances described, the Board concludes that N.C. Gen. Stat. § 90-664 (1) does exempt Polysomnographic Technologists, as well as Polysomnographic Technicians and Polysomnographic Trainees, engaged in an organized course of study, who work in hospital-based and freestanding sleep centers from the requirement of being licensed as Respiratory Care Practitioners, based on the information provided and within the limitations described. The basis for the Board’s conclusion is set forth below in the Analysis section of this declaratory ruling.

The original declaratory rulings were issued at the request of Mr. Bob Ricker, RCP on behalf of Rex Healthcare, Inc. and Ms. Mary M. Markovich, counsel for Sleep Analysis, Inc. This ruling is issued at the request of Michael Stolzenbach on behalf of Carolinas Sleep Services. Mr. Stolzenbach provided facts on which this ruling is based. The Board also has relied on facts provided for the earlier declaratory rulings. This ruling is binding upon the Board so long as the facts that the Board deems to be material are accurately stated, but the ruling only pertains to this request. The Board also reserves the right, prospectively, to change the conclusions which are contained in this ruling.

FACTUAL BASIS FOR THE RULING

Based on information submitted by Mr. Stolzenbach the Polysomnographic Technologists, Polysomnographic Technicians and Polysomnographic Trainees who provide service at Carolinas Sleep Services work on the premises of the acute care hospital and free standing facilities in space dedicated to sleep services. Their services are focused upon the diagnosis and therapeutic intervention of sleep-related disorders. While performing these services, Polysomnographic Technologists, Polysomnographic Technicians and Polysomnographic Trainees work based on specific physician orders from licensed physicians. At all times the Polysomnographic Technologists, Polysomnographic Technicians and Polysomnographic Trainees are under the general supervision of a licensed physician who serves as Medical Director of the sleep testing facility.

Personnel at Carolinas Sleep Services perform the following Respiratory Care practice functions:

1. Sleep Related Testing;
2. Application and titration of continuous positive airway pressure (CPAP) and Bi-Level therapy;
3. Application and titration of supplemental low-flow oxygen;

4. Application and monitoring of capnometry;
5. Application and monitoring of pulse oximetry; and
6. Patient education on the application of the above measures for the ongoing management of sleep-related disorders.

Each of these tasks is performed only by Polysomnographic Technologists, Polysomnographic Technicians and Polysomnographic Trainees under the specific circumstances described below.

While performing any of these services, Polysomnographic Technologist, Polysomnographic Technicians and Polysomnographic Trainees work based on specific physician orders from licensed physicians; and at all times the Polysomnographic Technologists, Polysomnographic Technicians and Polysomnographic Trainees are under the general supervision of a licensed physician who serves as Medical Director of the sleep testing facility. Under no circumstances do these personnel ever represent themselves as respiratory care practitioners, unless they are licensed by this Board.

Polysomnographic Technologists are credentialed by the Board of Registered Polysomnographic Technologists (BRPT) which sets standards for safe and effective practice in conjunction with the Association of Polysomnographic Technologists (APT). Based upon national job analysis data about the tasks performed by Polysomnographic Technologists, the BRPT compiles a Registry Exam which currently includes test questions specifically designed to measure competent job performance in each of the six practice functions listed above. In order to be credentialed as a registered Polysomnographic Technologist, a candidate must achieve a passing score on the BRPT exam; and successful candidates receive a certificate with a registry number issued by the BRPT, confirming their successful completion of the examination. Persons who successfully complete the Registry Exam hold the credential of Registered Polysomnographic Technologist (RPSGT).

Polysomnographic Technicians and Polysomnographic Trainees follow a defined course of study covering the skills and knowledge needed to pass the Registry Exam during their period of training. According to the APT, in order to be recognized as a Polysomnographic Trainee the individual must be a high school graduate with 6 months of direct patient care experience or 1 year of post-secondary education or enrolled in an accredited polysomnographic educational program leading to an associate degree. According to the APT, in order to be recognized as a Polysomnographic Technician the individual must complete a polysomnography program of no less than 1 year duration or have a minimum of 6 months experience as a polysomnographic trainee with documented proficiency in all required competencies.

This constitutes the complete and exclusive statement of facts upon which this ruling is based.

ANALYSIS

Under the circumstances described in the request for the Declaratory Ruling, all of the activities of the Polysomnographic Technologists, Polysomnographic Technicians and Polysomnographic Trainees would occur in a sleep center, with the ongoing direction provided by a qualified Medical Director, and in an area established for, and dedicated to, the provision of these services.

The provisions to which the declaratory ruling is addressed are clear and explicit. Those provisions of N.C. Gen. Stat. § 90-664 (1) essentially exempt individuals identified from the requirements of the North Carolina Respiratory Care Practice Act. In order to come within the exemption granted under this provision, a person must meet each of several different criteria:

- The person must be “registered, certified, credentialed, or licensed to engage in another profession or occupation in this State, or must be working under the supervision of such a person”;
- The person must be performing work incidental to or within the practice of that profession or occupation; and
- The person may not represent himself or herself as a respiratory care practitioner.

The Board has reviewed each of these requirements in analyzing the issues framed by this declaratory ruling petition. The first requirement addresses whether an individual is engaged in a profession or occupation that is sufficiently well-defined through some registration, certification, credentialing, or licensing. The Board has noted that the General Assembly chose to recognize several different ways in which such a distinct profession or occupation could be defined. It did not require that the distinct profession or occupation should itself also be subject to professional licensure under the North Carolina General Statutes. The additional references to registration, certification, or credentialing clearly imply a legislative intent to exempt more activities than those for which there is a licensing requirement in the North Carolina General Statutes. Thus, in analyzing this part of the exemption provision in N.C. Gen. Stat. § 90-664 (1), the Board does not presently believe that it may require that a profession or occupation demonstrate that it is subject to State licensing in order to be exempt.

As we understand it from the information provided by Mr. Stolzenbach and from the earlier declaratory ruling requests, each of the enumerated practice functions, including patient education, are among the recognized responsibilities that are addressed and covered by the BPRT Registry Exam and hence each of these tasks falls within the scope of the profession or occupation for which a Polysomnographic Technologist is certified and credentialed by virtue of taking the Registry Exam. A person who holds the RPSGT credential has successfully completed the Registry Exam and has therefore been certified as competent and credentialed to perform each of the enumerated services listed. Viewed in this light, we conclude that a person who has passed the Registry Exam for Polysomnographic Technologist that is administered by the BRPT, and has been credentialed has demonstrated that he or she is credentialed to carry on a distinct occupation, within the meaning of N.C. Gen. Stat. § 90-664(1).

In addition, since each of the practice functions identified in the Declaratory Ruling request relates directly to areas covered by the BPRT Registry Exam, we also have concluded that the performance of these functions by a credentialed RPSGT is integral to the practice of polysomnography.

A Polysomnographic Technician who performs sleep testing procedures leading to eligibility to take the Registry Exam, and who works under the general supervision of a credentialed RPSGT or a Respiratory Care Practitioner licensed by the Board with documented competency in the enumerated sleep related practice procedures, also is within the scope of the statutory exemption. For purposes of this declaratory ruling documented competency shall mean the Polysomnographic Technician has taken and successfully passed a Board approved Polysomnographic Technician certification examination administered by a Board approved testing facility. General supervision shall mean that the supervising RPSGT or RCP is available for supervision and consultation to the Polysomnographic Technician. The supervision/consultation may be by telephone or in person. If required the supervisor must be readily available by telephone and able to respond on-site.

A Polysomnographic Trainee who performs sleep testing procedures leading to eligibility to take the Registry Exam, and who works under the direct supervision of a credentialed RPSGT or a Respiratory Care Practitioner licensed by the Board with documented competency in the enumerated sleep related practice procedures, also is within the scope of the statutory exemption. For purposes of this declaratory ruling documented competency for the Respiratory Care Practitioner supervisor shall mean the RCP has taken and successfully passed a Board approved Polysomnographic Technician certification examination administered by a Board approved testing facility. Direct supervision shall mean that the supervising RPSGT or RCP is in the same sleep facility and actively supervising the trainee.

Mr. Stolzenbach has also indicated that under no circumstances would any Polysomnographic Technologist, Polysomnographic Technician and Polysomnographic Trainee who is not licensed as a respiratory care practitioner, represent themselves as a respiratory care practitioner.

Under the circumstances based on the information provided, the Board finds that any Polysomnographic Technologist who holds the RPSGT credential and performs only the enumerated functions within an established sleep center, without any representation of being a Respiratory Care Practitioner, has met each of the three requirements outlined in the statutory exemption under N.C. Gen. Stat. § 90-664(1).

A Polysomnographic Technician who performs sleep testing procedures leading to eligibility for the Registry Exam and is working at all times under the general supervision of a Respiratory Care Practitioner licensed by the Board or a Polysomnographic Technologist who holds the RPSGT credential, and performs the enumerated functions within an established sleep center, without any representation of being a Respiratory Care Practitioner, also has met each of the three requirements outlined in the statutory exemption under N.C. Gen. Stat. § 90-664(1)

A Polysomnographic Trainee who performs sleep testing procedures leading to eligibility for the Registry Exam and is working at all times under the direct supervision of a Respiratory Care Practitioner licensed by the Board or a Polysomnographic Technologist who holds the RPSGT credential, and performs the enumerated functions within an established sleep center, without any representation of being a Respiratory Care Practitioner, also has met each of the three requirements outlined in the statutory exemption under N.C. Gen. Stat. § 90-664(1).

In addition, Polysomnographic Technologists, Polysomnographic Technicians and Polysomnographic Trainees must maintain, at a minimum, certification in Basic Life Support which includes Adult, Child and Infant Cardiopulmonary Resuscitation (CPR), the Heimlich Maneuver, and Automatic External Defibrillator (AED) use by the American Heart Association, the American Red Cross or the American Safety and Health Institute.

The Board concludes that the duration of the time period during which any Polysomnographic Trainee qualifies for the statutory exemption under N.C. Gen. Stat. § 90-664 (1), is 12 months from the start of training. The Board also concludes that the duration of the time period during which any Polysomnographic Technician qualifies for the statutory exemption under N.C. Gen. Stat. § 90-664 (1) is 24 months from the start of technician status.

CONCLUSION

For the foregoing reasons, in the setting of an established sleep center, and within the parameters spelled out above, the North Carolina Respiratory Care Board concludes that pursuant to

the current provisions of N.C. Gen. Stat. § 90-664(1), in performing the functions enumerated above, and so long as they do not represent themselves as respiratory care practitioners, neither Polysomnographic Technologists who have passed the Registry Exam, nor Polysomnographic Technicians and Polysomnographic Trainees who are engaged in a course of study and employed as described above, need be licensed as Respiratory Care Practitioners.

This ruling is effective upon approval of the Board and signature of the Board Chair and applies to all polysomnographic trainees, technicians, technologists and RCP's performing sleep studies or supervising sleep studies on and after January 1, 2006.

The Board directs the Executive Director as part of the resolution approving this Declaratory Ruling, to monitor and assess the quality of services provided by non-credentialed individuals providing sleep testing services over the next 36 months. At the conclusion of a 36-month period, the Board will review the data available and reassess the question of non-credentialed individuals providing sleep testing procedures.

The Board directs the Executive Director to send a copy of this declaratory ruling by regular and certified mail to Mr. Stolzenbach, as well as to Mr. Ricker, Mr. DeNeal and to Mrs. Markovich; and to post this ruling on the Board's website and remove the earlier rulings which this ruling has been issued to clarify.

This the 7th day of July 2005.

Joseph Coyle, MD
Chair
North Carolina Respiratory Care Board