

As described in more detail below, the Respiratory Care Practice Act identifies sleep related testing and monitoring for responses to respiratory care testing as activities that lie within the Practice of Respiratory Care. N.C. Gen. Stat. §§ 90-648 (2) and (10) and 21 NCAC 61 .0103 (3)(a). The Board concludes that the provision of diagnostic and therapeutic respiratory services in a sleep center are within the scope of the Practice of Respiratory Care.

FACTUAL BASIS FOR THE RULING

Based on information submitted by Mr. Kiger, RCPs who provide sleep testing at Forsyth Sleep Center provide services focused upon the diagnosis and therapeutic intervention of sleep related disorders. While performing these services, RCPs work under specific physician orders from physicians licensed under Article 90 of the North Carolina General Statutes.

Mr. Kiger has also indicated that under no circumstances would any RCP represent himself or herself as a RPSGT, unless the RCP is credentialed as a RPSGT by the BPRT and, on and after January 1, 2012, unless the RCP also is listed as a RPSGT with the North Carolina Medical Board per the requirements of N.C. Gen. Stat. § 90-677.5(a).

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

ANALYSIS

In this Ruling, the Board will address the following questions provided by Mr. Kiger:

1. *What jurisdiction will the North Carolina Respiratory Care Board have over RCPs (who are not RPSGTs) currently practicing in a sleep center in light of the enactment of the Polysomnography Practice Act?*
2. *Under what conditions will a licensed RCP be allowed to continue to work in a Sleep Center?*
6. *What jurisdiction will the Board have over RCPs (who are not RPSGTs) currently practicing in a sleep center in light of this current legislation?*

In regard to Questions 1 and 6, the North Carolina Respiratory Care Board continues to have jurisdiction over the conduct of RCPs who engage in these activities as part of their employment by a sleep center. The enactment of the Polysomnography Practice Act does not limit or affect the jurisdiction of the North Carolina Respiratory Care Board. Sleep-related testing and monitoring for responses to respiratory care testing are activities that constitute the practice of respiratory care. N.C. Gen. Stat. §§ 90-648 (2) and (10) and 21 NCAC 61 .0103 (3)(a). Therefore, RCPs who engage in these activities are functioning within the scope of their practice as RCPs.

21 NCAC 61 .0307 (12) prohibits an RCP from accepting and performing professional responsibilities which the licensee knows, or has reason to know, he is not competent to perform. Therefore, the Board finds that to comply with the Respiratory Care Practice Act, an RCP may provide sleep related testing only after training and competency reviews by that RCP's employing or contracting facility.

In regard to Question 2, the Respiratory Care Practice Act does not prohibit an RCP who is appropriately licensed and trained, who has demonstrated appropriate competencies as noted above, and who does not represent himself or herself as a Registered Polysomnographic Technologist ("RPSGT"), from continuing to engage in the Practice of Respiratory Care at a sleep center. In addition, and although the Board lacks authority to make a determination under the Polysomnography Practice Act, it would appear to the Board that a licensed RCP who is employed by a sleep center and is acting exclusively within the scope of practice as an RCP should be deemed to fall within the scope of the quoted statutory exemption in N.C. Gen. Stat § 90-677.4 (1). Since the Board lacks authority to interpret that statutory provision, no definitive response can be provided on that point.

3. *Must a licensed RCP obtain the Registered Polysomnographic Technologist ("RPSGT") credential issued by the Board of Registered Polysomnographic Technologists ("the BRPT") to keep their current or future job in a Sleep Center?*

The Board's position on this question is that the Respiratory Care Practice Act does not require an RCP to obtain the RPSGT credential in order to continue to engage in the Practice of Respiratory Care at a sleep center, so long as that RCP is appropriately licensed and trained, has demonstrated appropriate competencies as noted above, and does not represent himself or herself as a RPSGT. However, this question could implicate a number of considerations, including whether a particular sleep center may determine, as part of the policies and procedures that it decides to adopt, that employees must obtain the RPSGT credential. The Board has no authority to prohibit a sleep center from adopting such a policy.

4. *Will the Sleep Disorder Specialist ("SDS") specialty credential issued by the National Board for Respiratory Care be considered equally valid and acceptable as the RPSGT credential under this legislation?*

This question touches directly on an interpretation of the Polysomnography Practice Act, and since the Board has no authority to interpret that statute, this question cannot be addressed in this declaratory ruling.

5. *Will any current RCP, RPSGT, be required to register with the Medical Board to maintain his or her RPSGT credential issued by the BRPT to keep his or her job in a sleep center?*


This question also touches directly on an interpretation of the Polysomnography Practice Act, and since the Board has no authority to interpret that statute, this question cannot be addressed in this declaratory ruling.

CONCLUSION

For the foregoing reasons, the North Carolina Respiratory Care Board concludes that the jurisdiction of the Board over RCPs is unchanged by the Polysomnography Practice Act; and that licensed RCPs who are appropriately trained, with demonstrated competencies who continue to engage in the Practice of Respiratory Care in the course of their employment at a sleep center, are not in violation of the Respiratory Care Practice Act or the Board's rules.

The Board directs the Executive Director to send a copy of this declaratory ruling by regular and certified mail to Mr. Kiger to post this ruling on the Board's website, and to remove the superseded rulings from the Board's website.

This the 8th day of October, 2009.


Ralph D. Webb, BAS, RRT, RCP Chair
North Carolina Respiratory Care Board

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Declaratory Ruling on the following persons by depositing the copy by certified mail, return receipt requested in an official depository under the exclusive care and custody of the United States Postal Service in the properly addressed postage-paid wrapper.

Bill Kiger, RRT, RCP
Manager
Forsyth Sleep Center
1950 S. Hawthorne Road
Winston-Salem, NC 27103

This 16th day of October, 2009.



Floyd E. Boyer, RCP Executive Director