

The House Committee on Health and Human Services offers the following substitute to HB 675:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to
2 physicians, physician's assistants, and others, so as to provide for the certification of
3 polysomnographic technologists; to provide a short title; to provide legislative findings; to
4 provide for definitions; to provide for applications to be made to the Composite State Board
5 of Medical Examiners to obtain certification to practice polysomnography; to provide for
6 powers and duties of the board; to provide for certification standards and requirements; to
7 provide for the issuance and renewal of certification; to provide for permitted and prohibited
8 activities; to provide for an advisory committee; to provide for sanctions; to provide for
9 statutory construction; to provide for administrative procedures; to provide for related
10 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians,
14 physician's assistants, and others, is amended by adding a new article to read as follows:

15 style="text-align:center">"ARTICLE 10

16 43-34-270.

17 This article shall be known and may be cited as the 'Polysomnography Practice Act.'

18 43-34-271.

19 The General Assembly finds and declares that in order to protect the health and safety of
20 the general public, it is necessary to establish qualifications for and oversight of individuals
21 who practice polysomnography in this state.

22 43-34-272.

23 As used in this article, the term:

24 (1) 'Advisory committee' means the advisory committee on polysomnography
25 established pursuant to Code Section 43-34-278.

26 (2) 'Board' means the Composite State Board of Medical Examiners as created by Code
27 Section 43-34-21.

28 (3) 'Polysomnography' means the treatment, management, diagnostic testing, control,
29 education, and care of patients with sleep and wake disorders. Polysomnography
30 includes, but is not limited to, the process of analysis, monitoring, and recording of
31 physiologic data during sleep and wakefulness to assist in the treatment of disorders,
32 syndromes, and dysfunctions that are sleep-related, manifest during sleep, or disrupt
33 normal sleep activities. Polysomnography also includes, but is not limited to, the
34 therapeutic and diagnostic use of low-flow oxygen, the use of positive airway pressure
35 including continuous positive airway pressure (CPAP) and bi-level modalities, adaptive
36 servo-ventilation, and maintenance of nasal and oral airways that do not extend into the
37 trachea.

38 (4) 'Polysomnographic technologist' means any person certified under this article to
39 practice polysomnography under the supervision of a physician licensed under Article 2
40 of this chapter.

41 (5) 'Supervision' means that the supervising physician licensed under Article 2 of this
42 chapter shall remain available, either in person or through telephonic or electronic means,
43 at the time that polysomnography services are provided.

44 43-34-273.

45 The board, in consultation with the advisory committee, shall have the power and
46 responsibility, with respect to polysomnographic technologists, to:

47 (1) Determine the qualifications and fitness of applicants for certification, renewal of the
48 certificate, and reciprocal certification;

49 (2) Adopt and revise rules consistent with the laws of the State of Georgia that are
50 necessary to conduct its business, carry out its duties, and administer this article;
51 provided, however, that the initial rules necessary to administer this article shall be
52 adopted no later than one year after the effective date of this article;

53 (3) Examine for, approve, issue, deny, revoke, suspend, and renew the certification of
54 applicants and certificate holders under this article and conduct hearings in connection
55 with these actions;

56 (4) Conduct hearings on complaints concerning violations of this article and the rules
57 adopted under this article and cause the prosecution and enjoinder of the violations;

- 58 (5) Establish application, examination, certification, and renewal fees;
 59 (6) Request and receive the assistance of state educational institutions or other state
 60 agencies and prepare information of consumer interest describing the regulatory functions
 61 of the board and describing the procedures by which consumer complaints are filed with
 62 and resolved by the board. The board shall make the information available to the general
 63 public and appropriate state agencies;
 64 (7) Solicit, receive, and accept gifts, grants, donations, or contributions from any person,
 65 firm, or corporation for the purposes of administering this article; and
 66 (8) Establish continuing education requirements.

67 43-34-274.

68 (a) Each applicant for certification as a polysomnographic technologist shall meet the
 69 following requirements:

- 70 (1) Is at least 18 years of age;
 71 (2) Has submitted a completed application as required by the board;
 72 (3) Has submitted any fees required by the board;
 73 (4)(A) Has valid, current credentials as a polysomnographic technologist issued by a
 74 national accrediting agency approved by the board; or
 75 (B) Has graduated from a nationally accredited polysomnographic educational
 76 program, including but not limited to such programs accredited by the Commission on
 77 Accreditation of Allied Health Education Programs, the Board of Polysomnographic
 78 Technologists, or the Council on Higher Education Accreditation, as approved by the
 79 board;
 80 (5)(A) Has passed a national certifying examination that has been approved by the
 81 board; provided, however, that an individual practicing polysomnography on June 30,
 82 2009, shall have three years after the effective date of this article to pass a national
 83 certifying examination that has been approved by the board in order to retain
 84 certification under this article; or
 85 (B) Has submitted proof to the board that he or she has been practicing
 86 polysomnography for at least five years in a manner that is acceptable to the board; and
 87 (6) Has met such other requirements as may be prescribed by the board;
 88 (b) In addition to the requirements specified in subsection (a) of this Code section, each
 89 polysomnographic technologist certified under this article shall work under the supervision
 90 of a physician licensed under Article 2 of this chapter and shall, in order to maintain
 91 certification, continue to work under the supervision of a physician licensed under Article
 92 2 of this chapter.

93 43-34-275.

94 After evaluation of an application and other evidence submitted, the board shall notify each
95 applicant that the application and evidence submitted are satisfactory and accepted or
96 unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection.

97 43-34-276.

98 (a) Any document evidencing certification issued by the board is the property of the board
99 and shall be surrendered on demand.

100 (b) The certificate holder shall display the document evidencing certification in an
101 appropriate and public manner.

102 (c) The certificate holder shall inform the board of any change of address.

103 (d) The certificate shall be renewed biennially if the certificate holder is not in violation
104 of this article at the time of application for renewal and if the applicant fulfills current
105 requirements of continuing education as established by the board.

106 (e) Each person certified under this article is responsible for renewing his or her certificate
107 before the expiration date.

108 (f) Under procedures and conditions established by the board, a certificate holder may
109 request that his or her certification be declared inactive. The certificate holder may apply
110 for active status at any time and upon meeting the conditions set by the board shall be
111 declared active.

112 43-34-277.

113 (a) The board, in consultation with the advisory committee, may:

114 (1) Refuse to grant or renew certification to an applicant;

115 (2) Administer a public or private reprimand, but a private reprimand shall not be
116 disclosed to any person except the certificate holder;

117 (3) Suspend the certificate of any certificate holder for a definite period or for an
118 indefinite period in connection with any condition which may be attached to the
119 restoration of said certificate;

120 (4) Limit or restrict any certificate as the board deems necessary for the protection of the
121 public;

122 (5) Revoke any certificate;

123 (6) Levy a fine; and

124 (7) Condition any penalty or withhold formal disposition of any matter pending the
125 applicant's or certificate holder's submission to such care, counseling, or treatment as the
126 board may direct.

127 (b) The board may take any action specified in subsection (a) of this Code section upon
128 a finding by the board that the certificate holder or applicant has:

129 (1) Failed to demonstrate the qualifications or standards for certification contained in this
130 article, or under the laws, rules, or regulations under which certification is sought or held;
131 it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board
132 that he or she meets all the requirements for certification, and, if the board is not satisfied
133 as to the certification holder or applicant's qualifications, it may deny certification
134 without a prior hearing; provided, however, that the certificate holder or applicant shall
135 be allowed to appear before the board if he or she so desires;

136 (2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the
137 practice certified under this article or on any document connected therewith, or practiced
138 fraud or deceit or intentionally made any false statement in obtaining certification to
139 practice a certified business or profession, or made a false statement or deceptive
140 registration with the board;

141 (3) Been convicted of any felony or of any crime involving moral turpitude in the courts
142 of this state or any other state, territory, or country or in the courts of the United States.
143 As used in this paragraph and paragraph (4) of this subsection, the term 'felony' shall
144 include any offense which, if committed in this state, would be deemed a felony, without
145 regard to its designation elsewhere; and, as used in this paragraph, the term 'conviction'
146 shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an
147 appeal of the conviction has been sought;

148 (4) Been arrested, charged, and sentenced for the commission of any felony or any crime
149 involving moral turpitude where:

150 (A) A plea of nolo contendere was entered to the charge;
151 (B) First offender treatment without adjudication of guilt pursuant to the charge was
152 granted; or

153 (C) An adjudication or sentence was otherwise withheld or not entered on the charge.
154 The plea of nolo contendere or the order entered pursuant to the provisions of Article 3
155 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender
156 treatment shall be conclusive evidence of arrest and sentencing for such crime;

157 (5) Had his or her certificate under this article revoked, suspended, or annulled by any
158 lawful authority other than the board; or had other disciplinary action taken against him
159 or her by any such lawful authority other than the board; or was refused the renewal of
160 certification by any such lawful authority other than the board, pursuant to disciplinary
161 proceedings;

162 (6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct
163 or practice harmful to the public, which conduct or practice materially affects the fitness

164 of the certificate holder or applicant to practice as certified under this article, or of a
 165 nature likely to jeopardize the interest of the public, which conduct or practice need not
 166 have resulted in actual injury to any person or be directly related to the practice of
 167 polysomnography but shows that the certificate holder or applicant has committed any
 168 act or omission which is indicative of bad moral character or untrustworthiness.
 169 Unprofessional conduct shall include any departure from, or the failure to conform to, the
 170 minimal standards of acceptable and prevailing practice of the business or profession
 171 certified under this article;

172 (7) Knowingly performed any act which in any way aids, assists, procures, advises, or
 173 encourages any uncertified person or any certificate holder whose certificate has been
 174 suspended or revoked by the board to engage in any practice outside the scope of any
 175 disciplinary limitation placed upon the certificate holder by the board;

176 (8) Violated, without regard to whether the violation is criminally punishable, a statute,
 177 law, or any rule or regulation of this state, any other state, the board, the United States,
 178 or any other lawful authority, which statute, law, or rule or regulation relates to or in part
 179 regulates the practice certified under this article, when the certificate holder or applicant
 180 knows or should know that such action is violative of such statute, law, or rule; or
 181 violated a lawful order of the board previously entered by the board in a disciplinary
 182 hearing, consent decree, or certification reinstatement;

183 (9) Been adjudged mentally incompetent by a court of competent jurisdiction inside or
 184 outside this state. Any such adjudication shall automatically suspend the certification of
 185 any such person and shall prevent the reissuance or renewal of any certification so
 186 suspended for as long as the adjudication of incompetence is in effect; or

187 (10) Displayed an inability to practice polysomnography with reasonable skill and safety
 188 to the public or has become unable to practice polysomnography with reasonable skill
 189 and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals,
 190 or any other type of material.

191 43-34-278.

192 The board shall appoint an advisory committee on polysomnography. The advisory
 193 committee shall be composed of five persons. Such members shall include one or more
 194 persons engaged in the practice of polysomnography, one or more persons licensed under
 195 Article 2 of this chapter who specializes in sleep medicine, and such other members as the
 196 board in its discretion may determine. Members shall receive no compensation for service
 197 on the advisory committee. The advisory committee shall advise the board on issues
 198 relating to certification and regulation of polysomnographic technologists under this article,
 199 including education and experience requirements. The advisory committee shall have such

200 other advisory duties and responsibilities in accordance with this article and as the board
 201 may determine.

202 43-34-279.

203 (a) On and after one year after the effective date of this article, unless certified under this
 204 article or exempted under subsection (b) of this Code section, no person shall:

205 (1) Practice polysomnography;

206 (2) Represent himself or herself to be a polysomnographic technologist who is certified
 207 under this article; or

208 (3) Attach the title 'certified polysomnographic technologist' to his or her name.

209 (b) The prohibition in subsection (a) of this Code section shall not apply to the practice of
 210 polysomnography which is an integral part of the program of study by students enrolled as
 211 a trainee in a polysomnography education program recognized by the board. Students
 212 enrolled in polysomnography education programs shall only provide polysomnography
 213 care under direct clinical supervision.

214 (c) Any person violating the prohibition of subsection (a) of this Code section shall be
 215 guilty of a misdemeanor.

216 (d) Nothing in this article shall be construed to permit the practice of medicine as defined
 217 in Article 2 of this chapter by polysomnographic technologists.

218 (e) Nothing in this article shall be construed to prohibit a health care provider licensed in
 219 this state from engaging in the practice for which he or she is licensed, including, but not
 220 limited to, respiratory care professionals certified under Article 6 of this chapter.

221 (f) Nothing in this article shall be construed to authorize a polysomnographic technologist
 222 or trainee to treat, manage, control, educate, or care for patients other than those with sleep
 223 disorders or to provide diagnostic testing for patients other than those with suspected sleep
 224 disorders.

225 43-34-280.

226 Proceedings under this article shall be governed by Chapter 13 of Title 50, the 'Georgia
 227 Administrative Procedure Act.'

228 **SECTION 2.**

229 This Act shall become effective upon its approval by the Governor or upon its becoming law
 230 without such approval.

231 **SECTION 3.**

232 All laws and parts of laws in conflict with this Act are repealed.