

Senate Bill 252

By: Senators Thomas of the 54th, Goggans of the 7th, Mullis of the 53rd, Unterman of the 45th and Hill of the 4th

AS PASSED SENATE

**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 **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 "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 person licensed under Article 2 of
40 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;
61 (7) Solicit, receive, and accept gifts, grants, donations, or contributions from any person,
62 firm, or corporation for the purposes of administering this article;
63 (8) Prepare information of consumer interest describing the regulatory functions of the
64 board and describing the procedures by which consumer complaints are filed with and
65 resolved by the board. The board shall make the information available to the general
66 public and appropriate state agencies; and
67 (9) Establish continuing education requirements.

68 43-34-274.

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

- 71 (1) Is at least 18 years of age;
72 (2) Has submitted a completed application as required by the board;
73 (3) Has submitted any fees required by the board;
74 (4) Has satisfactory results from a fingerprint record check report conducted by the
75 Georgia Crime Information Center and the Federal Bureau of Investigation, as
76 determined by the board. Application for certification under this article shall constitute
77 express consent and authorization for the board or its representative to perform a criminal
78 background check. Each applicant agrees to provide the board with any and all
79 information necessary to run a criminal background check, including, but not limited to,
80 classifiable sets of fingerprints. The applicant shall be responsible for all fees associated
81 with the performance of such background check;
82 (5) Has valid, current credentials as a polysomnographic technologist issued by a
83 national accrediting agency approved by the board;
84 (6) Has graduated from a nationally accredited polysomnographic educational program,
85 including such programs accredited by the Commission on Accreditation of Allied Health
86 Education Programs and the Council on Higher Education Accreditation, that has been
87 approved by the board;
88 (7) Has passed a national certifying examination that has been approved by the board,
89 or in the alternative, has submitted proof to the board that he or she has been practicing
90 polysomnography for at least five years in a manner that is acceptable to the board;
91 provided, however, that an individual practicing polysomnography on June 30, 2009,
92 shall have three years after the effective date of this article to pass a national certifying

93 examination that has been approved by the board in order to retain certification under this
94 article; and

95 (8) Has met such other requirements as may be prescribed by the board.

96 (b) In addition to the requirements specified in subsection (a) of this Code section, each
97 polysomnographic technologist certified under this article shall work under the supervision
98 of a physician licensed under Article 2 of this chapter and shall, in order to maintain
99 certification, continue to work under the supervision of a physician licensed under Article
100 2 of this chapter.

101 43-34-275.

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

105 43-34-276.

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

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

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

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

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

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

120 43-34-277.

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

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

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

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

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

130 (5) Revoke any certificate;

131 (6) Levy a fine; and

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

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

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

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

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

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

158 (A) A plea of nolo contendere was entered to the charge;

159 (B) First offender treatment without adjudication of guilt pursuant to the charge was
160 granted; or

161 (C) An adjudication or sentence was otherwise withheld or not entered on the charge.

162 The plea of nolo contendere or the order entered pursuant to the provisions of Article 3
163 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender
164 treatment shall be conclusive evidence of arrest and sentencing for such crime;

165 (5) Had his or her certificate under this article revoked, suspended, or annulled by any
166 lawful authority other than the board; or had other disciplinary action taken against him
167 or her by any such lawful authority other than the board; or was refused the renewal of
168 certification by any such lawful authority other than the board, pursuant to disciplinary
169 proceedings;

170 (6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct
171 or practice harmful to the public, which conduct or practice materially affects the fitness
172 of the certificate holder or applicant to practice as certified under this article, or of a
173 nature likely to jeopardize the interest of the public, which conduct or practice need not
174 have resulted in actual injury to any person or be directly related to the practice of
175 polysomnography but shows that the certificate holder or applicant has committed any
176 act or omission which is indicative of bad moral character or untrustworthiness.
177 Unprofessional conduct shall include any departure from, or the failure to conform to, the
178 minimal standards of acceptable and prevailing practice of the business or profession
179 certified under this article;

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

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

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

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

199 43-34-278.

200 The board shall appoint an advisory committee on polysomnography. The advisory
201 committee shall be composed of five persons. Such members shall include one or more
202 persons engaged in the practice of polysomnography, one or more persons licensed under
203 Article 2 of this chapter who specializes in sleep medicine, and such other members as the
204 board in its discretion may determine. Members shall receive no compensation for service
205 on the advisory committee. The advisory committee shall advise the board on issues
206 relating to certification and regulation of polysomnographic technologists under this article,
207 including education and experience requirements. The advisory committee shall have such
208 other advisory duties and responsibilities in accordance with this article and as the board
209 may determine.

210 43-34-279.

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

213 (1) Practice polysomnography;

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

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

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

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

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

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

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

233 43-34-280.

234 Proceedings under this article shall be governed by Chapter 13 of Title 50, the 'Georgia

235 Administrative Procedure Act.'"

236 **SECTION 2.**

237 This Act shall become effective upon its approval by the Governor or upon its becoming law

238 without such approval.

239 **SECTION 3.**

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