

10.32.[06]20 [~~Licensure of~~] Polysomnographic Technologists

.01 Scope.

A. This chapter governs the practice of polysomnographic technology.

B. Except as provided in §C or D of this regulation, [~~on or before October 1, 2013,~~] an individual shall be licensed by the Board before the individual may practice polysomnography.

C. This chapter does not prohibit any polysomnographic technology student who is currently enrolled in an approved polysomnographic technology educational program from performing any of the procedures described in this chapter as part of that program's polysomnographic technology clinical curriculum.

D. This chapter does not prohibit an individual from practicing a health occupation that the individual is authorized to practice under Health Occupations Article, Annotated Code of Maryland.

~~[E. This chapter does not prohibit a licensed respiratory care practitioner from practicing respiratory care within the scope of practice of the respiratory care practitioner's license, including practicing respiratory care in a sleep laboratory.]~~

~~[F. This chapter does not prohibit the practice of respiratory care by a practitioner who was licensed by the Board to practice respiratory care [~~on or before December 31, 2012,~~] and whose duties include practicing polysomnography.]~~

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Board" [~~means the State Board of Physicians.~~] *has the meaning stated in Health Occupations, § 14-101, Annotated Code of Maryland.*

(2) "Board eligible" means a physician's status that starts upon completion of all the requirements to take a sleep medicine certifying examination and lasts for a limited period of time, as determined by the American Board of Medical Specialties or the American Osteopathic Association.

(3) "Capnography" means measurement of the amount of CO₂ being eliminated from the lungs.

(4) "Committee" means the Polysomnography ~~[Professional Standards]~~ Advisory Committee ~~[established under Health Occupations Article, §14-5C-05, Annotated Code of Maryland].~~

~~[(5) "Direct supervision" means supervision by a licensed physician who is physically present on the premises while services are provided.]~~

(6) "Electroencephalography" means a test that measures the electrical activity of the brain as recorded by electrodes placed on the scalp.

(7) "Electromyography" means a test that measures the electrical activity of the muscles.

(8) "Electrooculography" means a test that measures the movements of the eye.

(9) "Enrolled in a sleep technologist educational program" means that a student has started the Accredited Sleep Technology Program self-study online modules developed by the American Academy of Sleep Medicine but has not completed the final self-study module.

(10) ~~["General]~~ "Immediately available supervision" means ~~[supervision by a physician who is available to give immediately available direction, either in person, by telephone, or by electronic means.]~~ to provide necessary direction in person, by telephone, or by other electronic means.

(11) "Good standing" means the health care practitioner is not suspended, on probation, under restrictions, or subject to any pending disciplinary proceedings.

~~[(11) "License" means a license issued by the Board.]~~

(12) ~~["Licensed]~~ "Polysomnographic technologist" means an individual licensed by the Board to practice polysomnography ~~[under the supervision of a licensed physician].~~

(13) "Physician" means ~~[an individual who is licensed by the Board to practice medicine]~~ an individual licensed to practice medicine in Maryland under Health Occupations Article, Title 14, Annotated Code of Maryland.

(14) "Oximetry" means a test that measures the concentration of oxygen in the blood.

(15) "PH probe" means a device to measure the acidity of the esophagus.

(16) "Plethysmography" means a test to measure changes in blood flow or air volume in different parts of the body.

(17) "Practice polysomnography" means:

(a) Monitoring and recording physiologic data during sleep, including sleep-related respiratory disturbances, under the *immediately available* supervision of a licensed physician; and

(b) Using the data collected under §B (17)(a) of this regulation for the purposes of assisting a licensed physician in the diagnosis and treatment of sleep and wake disorders.

~~[(18) "Registered polysomnographic technologist" means a polysomnographic technologist who is registered by the Board of Registered Polysomnographic Technologists.~~

~~[(19)] (18) "Student" means an individual who is:~~

~~(a) Enrolled in an accredited educational program [in order to qualify for a license as a polysomnographic technologist]; and~~

~~(b) Performing [polysomnography services] procedures within the accredited program [under the supervision of a licensed physician and] without compensation.~~

~~[(20) "Supervision" means general supervision or direct supervision of a licensed polysomnographic technologist by a licensed physician.]~~

.03 Polysomnographic Advisory Committee.

A. The Board shall appoint members of the Polysomnographic ~~[Professional Standards]~~ *Advisory Committee* as follows:

(1) Three polysomnographic technologists ~~[who:~~

~~(a) Before October 1, 2009, are registered polysomnographic technologists; and~~

~~(b) On or after October 1, 2009, are both registered polysomnographic technologists and licensed polysomnographic technologists];~~

(2) Three licensed physicians with specialty certification in sleep medicine who are specialists in the following areas:

(a) One in psychiatry or internal medicine;

(b) One in pulmonary medicine; and

(c) One in neurology; and

(3) One consumer member who ~~[is a member of the general public and who:]~~ *meets the requirements of Health Occupations, § 14-5C-06, Annotated Code of Maryland;*

~~[(a) May not be or ever has been:~~

~~(i) A polysomnographic technologist;~~

~~(ii) A health care professional;~~

~~(iii) In training to be a polysomnographic technologist or other health care professional; or~~

~~(iv) A household member of a health care professional or an individual in training to be a health care professional; and~~

~~(b) May not:~~

~~(i) Participate, or ever have participated, in a commercial or professional field related to polysomnography;~~

~~(ii) Have a household member who participates in a commercial or professional field related to polysomnography;~~

~~(iii) Have had, within 2 years before appointment, a financial interest in a individual regulated by the Board; or~~

~~(iv) Have had, within 2 years before appointment, a financial interest in the provision of goods or services to polysomnographic technologists or to the field of polysomnography.]~~

B. Each member of the Committee shall:

(a) Be a resident of the State; and

(b) Be in good standing with the Board if licensed by the Board.

~~[B:]~~ C. Tenure.

(1) The term of a member is 3 years.

(2) The terms of the members are staggered.

(3) At the end of a term, a member continues to serve until a successor is appointed.

(4) An individual may be reappointed for a second term but the individual may not serve more than two full consecutive terms.

~~[C:]~~ D. Vacancy.

(1) If a vacancy occurs, the Board shall appoint a new member to serve *on the Committee*.

(2) The successor member shall only serve for the remainder of the term, unless reappointed.

~~[D:]~~ E. Removal. The Board, by a majority, may vote to remove any member of the Committee for:

(1) Neglect of duty, including but not limited to:

(a) Failure to attend two successive committee meetings without adequate reason;

(b) Failure to attend Board-mandated training; or

(c) Failure to complete necessary ethics filing requirements;

(2) Misconduct; or

(3) Incompetency.

F. Chair.

(1) From among its members, the Committee shall elect a chair every 2 years.

(2) The Chair, or Chair's designee, shall serve in an advisory capacity to the Board as a representative to the Committee.

~~[E:]~~ G. Quorum.

(1) ~~[A majority of the members then serving on the Committee is a quorum.]~~ A quorum of the Committee consists of four members.

(2) Business may not be conducted at a Committee meeting unless there is a quorum.

~~[F:]~~ Chair.

~~(1) The Committee shall elect a chair from among its members once every 2 years.~~

~~(2) The Chair, or the Chair's designee, shall serve in an advisory capacity to the Board as a representative to the Committee.~~

G. The Committee shall:

~~(1) Make recommendations to the Board regarding the practice of, and regulations governing, polysomnographic technologists;~~

~~(2) Make recommendations to the Board on the requirements for licensure as a polysomnographic technologist;~~

~~(3) Review selected applications for licensure as a polysomnographic technologist and make recommendations to the Board on the applications;~~

~~(4) At the request of the Board, review complaints against polysomnographic technologists and respond to the Board's questions; and~~

~~(5) Keep a record of the Committee's proceedings.]~~

H. The Committee shall:

(1) Develop and recommend to the Board:

(a) Regulations to carry out Health Occupations, § 14-5C, Annotated Code of Maryland;

(b) Any statutory changes that affect the profession; and

(2) Keep a record of its meetings.

I. The Committee may:

(i) Provide recommendations regarding the practice of polysomnography; and

(ii) Advise the Board on any other matters related to polysomnographic technologists.

J. A Committee member shall meet any other requirements as established in Health Occupations, § 14-5C-06, Annotated Code of Maryland.

.04 [Application] Qualifications for Initial Licensure as a Polysomnographic Technologist.

~~A. [An applicant shall:~~

~~(1) Complete an application on a form supplied by the Board;~~

~~(2) Pay the required application fee set by the Board in Regulation .09 of this chapter;~~

~~(3) Be 18 years old or older;~~

~~(4) Be of good moral character;~~

~~(5) Demonstrate spoken and written competency in English by any of the following:~~

~~(a) Documentation of graduation from a recognized English-speaking high school or undergraduate school after at least 3 years of enrollment;~~

~~(b) Documentation of graduation from a recognized English-speaking professional school; or~~

~~(c) Documentation of receiving a grade of at least:~~

~~(i) 26 on the "Speaking Section" of the Internet-based Test of English as a Foreign Language; and~~

~~(ii) 79 on the Internet-based Test of English as a Foreign Language;~~

~~(6) Provide documentation of current certification as a registered polysomnographic technologist by the Board of Registered Polysomnographic Technologists or by another national certification agency approved by the Board;~~

~~(7) Provide documentation of licensure, certification, or registration from all states where the applicant has ever held a license, certificate, or registration in any health profession; and~~

~~(8) Meet the requirements of §B of this regulation.] To qualify for a license, a polysomnographic technologist shall meet the requirements of 10.32.01 of this subtitle and §§ B and C of this regulation.~~

B. An applicant for a license as a licensed polysomnographic technologist shall ~~[meet the requirements of one of the following pathways to licensure]~~ submit satisfactory evidence of:

(1) Completion of the Sleep Disorders Specialty (SDS) examination administered by the National Board of Respiratory Care (NBRC); or

(2) Completion of an alternative examination approved by the Board.

C. An applicant for a license as a licensed polysomnographic technologist shall submit:

(1) Satisfactory evidence of current certification as a registered polysomnographic technologist by the Board of Registered Polysomnographic Technologists or by another national certification agency approved by the Board; and

(2) Satisfactory evidence of graduation from a polysomnographic educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs; ~~or~~

~~(2) In regard to a respiratory care educational program:~~

~~(a)] (3) Satisfactory evidence of:~~

~~(a) Graduation from a respiratory care educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs; and~~

(b) Completion of the Committee on Accreditation for Respiratory Care's curriculum for a polysomnography certificate that is accredited by the Commission on Accreditation of Allied Health Education Programs;

~~[(3) In regard to an electroneurodiagnostic technology educational program:~~

~~(a)] (4) Satisfactory evidence of:~~

~~(a) Graduation from an electroneurodiagnostic technology educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs; and~~

~~(b) Completion of an add-on track in polysomnography for electroneurodiagnostic technologists that is accredited by the Commission on Accreditation of Allied Health Education Programs; or~~

~~[(4) In regard to a sleep technologist educational program, completion of the requirements of §C of this regulation.~~

~~C. An applicant who has graduated from a sleep technologist education program accredited by the American Academy of Sleep Medicine shall:] (5) Satisfactory evidence of:~~

~~(a) Graduation from a sleep technologist education program accredited by the American Academy of Sleep Medicine;~~

~~[(1) Provide proof of] (b) Meeting core competencies in the 3 years preceding the date of the submission of the licensure application as assessed by a sleep technologist credentialed as a Registered Polysomnographic Technologist, a sleep technologist with national certification approved by the Board, or a physician who is either board-eligible or board-certified in sleep medicine by the American Board of Sleep Medicine, American Board of Medical Specialties, or American Osteopathic Association;~~

~~[(2) Provide] (c) A letter of attestation for completion of clinical hours and competencies from a physician who is either board-eligible or board-certified in sleep medicine by the American Board of Sleep Medicine, American Board of Medical Specialties, or American Osteopathic Association where the applicant practiced; and~~

~~[(3) Provide proof of] (d) Completion of a minimum of [546] 960 hours of clinical experience in the 3 years preceding the date of the submission of the licensure application as either:~~

~~[(a)] (i) A student enrolled in a sleep technologist educational program supervised at a sleep laboratory accredited by the American Academy of Sleep Medicine or The Joint Commission by:~~

[(i)] (A) A sleep technologist credentialed as a Registered Polysomnographic Technologist;

[(ii)] (B) A sleep technologist with national certification approved by the Board; or

[(iii)] (C) A licensed physician who is either board-eligible or board-certified in sleep medicine by the American Board of Sleep Medicine, American Board of Medical Specialties, or American Osteopathic Association; or

[(b)] (ii) A sleep technologist with a current, active, unrestricted license in another state or is otherwise recognized and has practiced as a sleep technologist in another state who has:

[(i)] (A) Full-time practice experience as a sleep technologist in another state at a sleep laboratory accredited by the American Academy of Sleep Medicine or The Joint Commission for a minimum of 6 months in the 3 years preceding the date of the submission of the licensure application; and

[(ii)] (B) Completed at least 30 hours of approved continuing education in the 3 years preceding the date of the submission of the licensure application.

.05 Scope of Practice.

A. A [licensed] polysomnographic technologist may practice only under the *immediately available* supervision of a licensed physician.

B. A [licensed] polysomnographic technologist may practice only in a hospital sleep laboratory or a stand-alone sleep center.

C. The scope of practice of a [licensed] polysomnographic technologist includes and is limited to the following:

(1) Monitoring and recording physiologic data during sleep, including sleep-related respiratory disturbances;

(2) Using data collected under §C(1) of this regulation to assist a [licensed] physician in the diagnosis and treatment of sleep and wake disorders;

(3) Assisting with the diagnosis and treatment of individuals who suffer from sleep disorders as a result of developmental defects, the aging process, physical injury, disease, or actual or anticipated somatic dysfunction;

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

(5) Using evaluation techniques that include limited cardiopulmonary function assessments, the need and effectiveness of therapeutic modalities and procedures, and the assessment and evaluation of the need for extended care; and

(6) Using the following techniques, equipment, and procedures:

(a) Continuous positive airway pressure, bi-level positive airway pressure titration, or adaptive servo-ventilation on spontaneously breathing patients;

(b) Supplemental low flow oxygen therapy during polysomnogram;

(c) Capnography during polysomnogram;

(d) Cardiopulmonary resuscitation;

(e) Pulse oximetry;

(f) PH probe placement and monitoring;

(g) Esophageal pressure;

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

(i) Surface electromyography of arms and legs;

(j) Electrocardiography;

(k) Respiratory effort, including thoracic and abdominal;

(l) Plethysmography blood flow;

(m) Snore monitoring;

(n) Audio or video monitoring;

(o) Implementation of a written or verbal order from a licensed physician that requires the practice of polysomnography;

(p) Monitoring the effects a nasal device used to treat sleep apnea has on sleep patterns provided that the device does not extend into the trachea; and

(q) Monitoring the effects an oral device used to treat sleep apnea has on sleep patterns provided that:

(i) The oral device does not extend into the trachea;

(ii) A dentist has evaluated the structures of the patient's oral and maxillofacial region for purposes of fitting the oral device;

(iii) A dentist made or directed the making of the oral device; and

(iv) A dentist directs the use of the oral device.

D. The scope of practice of a polysomnographic technologist does not include administering medications.

~~10.06 Identification; Notice.~~

~~A. A licensed polysomnographic technologist shall wear an identification tag or a badge which identifies that individual as a licensed polysomnographic technologist.~~

~~B. Change of Name or Address:~~

~~(1) A licensed polysomnographic technologist shall advise the Board in writing of any change in name or mailing address within 60 days.~~

~~(2) The Board may impose a fine of \$100 for failure to notify the Board of a change in name or mailing address.]~~

~~10.07~~ .06 Renewal, ~~and~~ Reinstatement, and Continuing Education.

A. Renewal. The Board shall renew the license of a polysomnographic technologist if the polysomnographic technologist meets:

(1) The requirements of 10.32.01 of this subtitle; and

(2) The continuing education requirements of § C of this regulation.

~~[(1) The Board may not renew a license until the Comptroller of Maryland has verified that the individual has paid all undisputed taxes and unemployment insurance contributions, or arranged for repayment;~~

~~(2) An individual who has been licensed by the Board as a polysomnographic technologist may renew the license on or before the date specified by the Board by:~~

~~(a) Submitting a renewal application on a form supplied by the Board;~~

~~(b) Paying the required renewal fee set by the Board in Regulation .09 of this chapter;~~

~~(c) Attesting to the completion of at least 20 hours of approved continuing education, earned during the 2-year period preceding the expiration of the license, as specified in Regulation .08 of this chapter; and~~

~~(d) Meeting any other requirement set by the Board.]~~

B. Reinstatement.

(1) This section does not apply to a post-disciplinary reinstatement as defined under 10.32.02.

(2) A genetic counselor applying for reinstatement may be denied reinstatement subject to the hearing provisions of Health Occupations Article, §14-405, Annotated Code of Maryland, for any of the grounds listed in Health Occupations Article, §14-5C-17, Annotated Code of Maryland.

(3) The Board shall reinstate the license of a polysomnographic technologist if the polysomnographic technologist:

~~(a) [Completes a] Is of good moral character;~~

~~(b) Applies for reinstatement [application on a form supplied by the Board] after the date the license expires;~~

~~(c) Provides documentation of the continuing education requirements of §C of this regulation;~~

~~(d) Completes a criminal history records check in accordance with Health Occupations Article, §14-308.1, Annotated Code of Maryland; and~~

~~[(2)] (e) Pays the required reinstatement fee and any other fees specified in Regulation [-09].07 of this chapter;~~

~~[(3) Documents evidence of completion of at least 20 hours of approved continuing education in the 2-year period preceding the date of the submission of the application for reinstatement, as specified in Regulation .08 of this chapter;~~

~~(4) Meets any additional requirements set by the Board for reinstatement of a license.]~~

C. Continuing Education.

(1) A polysomnographic technologist shall complete at least 20 hours of approved continuing education credits, earned during the 2-year period preceding:

(a) For license renewal, the expiration of a license for polysomnographic technology; or

(b) For license reinstatement, the date of submission of the application for reinstatement.

(2) A polysomnographic technologist shall obtain the required documentation of continuing education attendance and retain this documentation for the succeeding 6 years for possible inspection by the Board.

(3) The required documentation shall contain, at a minimum, the following information:

- (a) Program title;*
- (b) Sponsor's name;*
- (c) Polysomnographic technologist's name;*
- (d) Inclusive date or dates and location of the program;*
- (e) The number of continuing education hours earned; and*
- (f) Documented verification that the polysomnographic technologist attended the program by stamp, signature, print-out, or other official proof.*

(4) The Board may request a polysomnographic technologist to submit evidence of having met the continuing education requirements specified in this regulation.

(5) If a polysomnographic technologist cannot demonstrate completion of the required continuing education credit hours, the Board may impose a civil penalty of up to \$100 per missing continuing education credit hour.

(6) Approved continuing education is as follows:

(a) Sleep-related continuing education hours approved by one of the following organizations or any other organization recommended by the Committee and approved by the Board:

(i) American Medical Association;

(ii) American Association of Sleep Technologists;

(iii) American Academy of Sleep Medicine;

(iv) American Society of Electroneurodiagnostic Technologists, Inc.;

(v) American Association for Respiratory Care;

(vi) American Nursing Association; or

(vii) Board of Registered Polysomnographic Technologists

(7) The continuing education requirement applies to all renewal applications after the first renewal.

~~§.08 Continuing Education.~~

~~A. Application.~~

~~(1) A licensed polysomnographic technologist is not required to obtain continuing education hours for the first renewal after initial licensure or reinstatement.~~

~~(2) Except as stated in §A(1) of this regulation, the Board may not renew or reinstate the license of a polysomnographic technologist unless the polysomnographic technologist has met the requirements for continuing education described in §B of this regulation.~~

~~B. Requirements.~~

~~(1) A polysomnographic technologist shall earn at least 20 continuing education hours as described in §B(2) of this regulation during the 2-year period preceding:~~

~~(a) For license renewal, the expiration of the license for polysomnographic technologist; or~~

~~(b) For license reinstatement, the date of the submission of the application for reinstatement.~~

~~(2) The Board shall recognize sleep-related continuing education hours approved by one of the following organizations or any other organization recommended by the Committee and approved by the Board:~~

~~(a) American Medical Association;~~

~~(b) American Association of Sleep Technologists;~~

~~(c) American Academy of Sleep Medicine;~~

~~(d) American Society of Electrodiagnostic Technologists, Inc.;~~

~~(e) American Association for Respiratory Care;~~

~~(f) American Nursing Association; or~~

~~(g) Board of Registered Polysomnographic Technologists~~

~~C. Documentation of Continuing Education Hours:~~

~~(1) A polysomnographic technologist shall obtain the required documentation of continuing education attendance and retain this documentation for the succeeding 6 years for possible inspection by the Board.~~

~~(2) The required documentation shall contain the:~~

~~(a) Program title;~~

~~(b) Sponsor's name;~~

~~(c) Polysomnographic technologist's name;~~

~~(d) Number of continuing education hours earned;~~

~~(e) Verification of successful completion by signature, stamp, or other official proof; and~~

~~(f) Date of the continuing education activity.]~~

~~[-09]~~ .07 Fees.

~~[A.]~~ The following fees are applicable to polysomnographic technologists:

~~[(+)]~~ A. Initial Licensure.

~~(1)~~ *Initial licensure* application fee — \$200; and

~~(2)~~ *Fee for remaining months until first renewal* - \$5 per month;

~~[(2)]~~ B. ~~[License renewal fees]~~ *Renewal of Licensure:*

~~[(a)]~~ (1) License renewal *application* fee — \$150; and

~~[(b)]~~ (2) Maryland Health Care Commission (MHCC) fee — As determined by MHCC in accordance with COMAR 10.25.02;

~~[(3)]~~ C. Reinstatement fee — \$200; and

~~[(4)]~~ D. Written verification of licensure fee — \$25.

~~[B. Fees paid to the Board are non-refundable.]~~

~~[.10 Prohibited Conduct~~

~~A. Subject to the hearing provisions of Health Occupations Article, §14-405, Annotated Code of Maryland, and in accordance with COMAR 10.32.02, a disciplinary panel may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:~~

~~(1) Fraudulently, or deceptively obtains or attempts to obtain a license for the applicant or licensee, or for another;~~

~~(2) Fraudulently or deceptively uses a license;~~

~~(3) Is guilty of unprofessional or immoral conduct in the practice of polysomnography;~~

~~(4) Is professionally, physically, or mentally incompetent;~~

~~(5) Abandons a patient;~~

- ~~(6) Is habitually intoxicated;~~
- ~~(7) Is addicted to or habitually abuses any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland;~~
- ~~(8) Provides professional services while:
 - ~~(a) Under the influence of alcohol; or~~
 - ~~(b) Using any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland, or any other drug that is in excess of therapeutic amounts or without valid medical indication;~~~~
- ~~(9) Promotes the sale of services, drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain;~~
- ~~(10) Willfully makes or files a false report or record in the practice of polysomnography;~~
- ~~(11) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of a report, or induces another to fail to file or record a report;~~
- ~~(12) Breaches patient confidentiality;~~
- ~~(13) Pays or agrees to pay any sum or provide any form of remuneration or material benefit to any individual for bringing or referring a patient, or accepts or agrees to accept any sum or any form of remuneration or material benefit from an individual for bringing or referring a patient;~~
- ~~(14) Knowingly makes a misrepresentation while practicing polysomnography;~~
- ~~(15) Knowingly practices polysomnography with an unauthorized individual, or aids an unauthorized individual in the practice of polysomnography;~~
- ~~(16) Knowingly delegates a polysomnographic duty to an unlicensed individual;~~
- ~~(17) Offers, undertakes, or agrees to cure or treat disease by a secret method, treatment, or medicine;~~
- ~~(18) Is disciplined by a licensing or disciplinary authority, is convicted or disciplined by a court of any state or country, or is disciplined by any branch of the United States uniformed services or the U.S. Department of Veterans Affairs for an act that would be grounds for disciplinary action under the Board's disciplinary statutes;~~

~~(19) Fails to meet appropriate standards for the delivery of polysomnographic services performed in a hospital sleep laboratory or a stand-alone sleep center;~~

~~(20) Knowingly submits false statements to collect fees for which services are not provided;~~

~~(21) Has been subject to investigation or disciplinary action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes and has:~~

~~(a) Surrendered the license, if any, issued by the state or country; or~~

~~(b) Allowed the license, if any, issued by the state or country to expire or lapse;~~

~~(22) Knowingly fails to report suspected child abuse in violation of Family Law Article, §5-704, Annotated Code of Maryland;~~

~~(23) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes;~~

~~(24) Practices or attempts to practice beyond the authorized scope of practice;~~

~~(25) Is convicted of, or pleads guilty or nolo contendere to, a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;~~

~~(26) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee is licensed and qualified to render because the individual is HIV positive;~~

~~(27) Practices or attempts to practice a polysomnography procedure or uses or attempts to use polysomnography equipment if the applicant or licensee has not received education and training in the performance of the procedure or the use of the equipment; or~~

~~(28) Fails to cooperate with a lawful investigation conducted by the Board.~~

B. Crimes of Moral Turpitude:

~~(1) Proceedings for crimes of moral turpitude under Health Occupations Article, §14-5C-17(e), Annotated Code of Maryland, shall be held in accordance with COMAR 10.32.02.07.~~

~~(2) On the filing of certified docket entries with the Board by the Office of the Attorney General, a disciplinary panel shall order the suspension of a license if the licensee is convicted of, or pleads guilty or nolo contendere with respect to, a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.~~

~~(3) After completion of the appellate process, if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, the disciplinary panel shall order the revocation of a license on the certification by the Office of the Attorney General.]~~

~~[.11 Required Reports:~~

~~A reporting entity, as defined in COMAR 10.32.22.02, shall file all required reports in accordance with Health Occupations Article, §14-5C-18, Annotated Code of Maryland, and COMAR 10.32.22.]~~

~~[.12 Penalties, Fines, and Sanctions~~

~~A. An individual who violates any provision of Health Occupations Article, Title 14, Subtitle 5C, Annotated Code of Maryland, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year, or both.~~

~~B. An individual who violates any provision of Health Occupations Article, Title 14, Subtitle 5C, Annotated Code of Maryland, or any regulation in this chapter, is subject to a civil fine of not more than \$5,000 to be levied by the Board or a disciplinary panel.~~

~~C. The Board shall pay any penalty collected under §A or B of this regulation into the Board of Physicians Fund.~~

~~D. Employment of Unlicensed Polysomnography Practitioner.~~

~~(1) A person who violates Health Occupations Article, §14-5C-22.1, Annotated Code of Maryland, is subject to a civil fine of not more than \$5,000 to be levied by the Board.~~

~~(2) The Board shall pay any fine collected under §D of this regulation into the State's General Fund.~~

~~E. The Board may impose a fine up to \$1,000 for a reporting entity, as defined in COMAR 10.32.22.02, that fails to make a report to the Board required by COMAR 10.32.22.~~

~~F. General Application of Sanctioning Guidelines:~~

~~(1) Sections F and G of this regulation and Regulation .13 of this chapter do not apply to offenses for which a mandatory sanction is set by statute or regulation.~~

~~(2) Except as provided in §G of this regulation, for violations of the sections of the Maryland Polysomnography Act listed in the sanctioning guidelines, a disciplinary panel shall impose a sanction not less severe than the minimum listed in the sanctioning guidelines nor more severe than the maximum listed in the sanctioning guidelines for each offense.~~

~~(3) Ranking of Sanctions:~~

~~(a) For the purposes of this regulation, the severity of sanctions is ranked as follows, from the least severe to the most severe:~~

~~(i) Reprimand;~~

~~(ii) Probation;~~

~~(iii) Suspension; and~~

~~(iv) Revocation.~~

~~(b) A stayed suspension in which the stay is conditioned on the completion of certain requirements is ranked as probation.~~

~~(c) A stayed suspension not meeting the criteria for §F(3)(b) of this regulation is ranked as a reprimand.~~

~~(4) The disciplinary panel may impose more than one sanction, provided that the most severe sanction neither exceeds the maximum nor is less than the minimum sanction permitted in the chart.~~

~~(5) Any sanction may be accompanied by conditions reasonably related to the offense or to the rehabilitation of the offender. The inclusion of conditions does not change the ranking of the sanction.~~

~~(6) If a licensee has violated more than one ground for discipline as set out in the sanctioning guidelines:~~

~~(a) The sanction with the highest severity ranking shall be used to determine which ground will be used in developing a sanction; and~~

~~(b) The disciplinary panel may impose concurrent sanctions based on other grounds violated.~~

~~(7) Notwithstanding the sanctioning guidelines set forth in Regulation .13 of this chapter, in order to resolve a pending disciplinary action, the disciplinary panel and the licensee may agree to a surrender of license or a consent order with terms and sanction agreed to by the disciplinary panel, the administrative prosecutor, and the licensee.~~

~~(8) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the disciplinary panel may consider the aggravating and mitigating factors set out in §G(4) and (5) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and that the sanction in a particular case should fall outside the range of sanctions listed in the sanctioning guidelines.~~

~~(9) If the disciplinary panel imposes a sanction that departs from the sanctioning guidelines as set forth in Regulation .13 of this chapter, the disciplinary panel shall state its reasons for doing so in its final decision and order.~~

~~G. Aggravating and Mitigating Factors.~~

~~(1) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the disciplinary panel may consider the aggravating and mitigating factors set out in §G(4) — (5) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and that the sanction in a particular case should fall outside the range of sanctions listed in the sanctioning guidelines.~~

~~(2) Nothing in this regulation requires the disciplinary panel or an Administrative Law Judge to make findings of fact with respect to any of these factors.~~

~~(3) The existence of one or more of these factors does not impose on the disciplinary panel or an Administrative Law Judge any requirement to articulate its reasoning for not exercising its discretion to impose a sanction outside of the range of sanctions set out in the sanctioning guidelines.~~

~~(4) Mitigating factors may include, but are not limited to, the following:~~

~~(a) The absence of a prior disciplinary record;~~

~~(b) The offender self-reported the incident;~~

- ~~(c) The offender voluntarily admitted the misconduct, made full disclosure to the Board, and was cooperative during the Board proceedings;~~
- ~~(d) The offender implemented remedial measures to correct or mitigate the harm arising from the misconduct;~~
- ~~(e) The offender made good faith efforts to make restitution or to rectify the consequences of the misconduct;~~
- ~~(f) The offender has been rehabilitated or exhibits rehabilitative potential;~~
- ~~(g) The misconduct was not premeditated;~~
- ~~(h) There was no potential harm to patients or the public or other adverse impact; or~~
- ~~(i) The incident was isolated and is not likely to recur.~~
- ~~(5) Aggravating factors may include, but are not limited to, the following:~~
 - ~~(a) The offender has a previous criminal or administrative disciplinary history;~~
 - ~~(b) The offense was committed deliberately or with gross negligence or recklessness;~~
 - ~~(c) The offense had the potential for or actually did cause patient harm;~~
 - ~~(d) The offense was part of a pattern of detrimental conduct;~~
 - ~~(e) The offender committed a combination of factually discrete offenses adjudicated in a single action;~~
 - ~~(f) The offender pursued his or her financial gain over the patient's welfare;~~
 - ~~(g) The patient was especially vulnerable;~~
 - ~~(h) The offender attempted to hide the error or misconduct from patients or others;~~
 - ~~(i) The offender concealed, falsified, or destroyed evidence or presented false testimony or evidence;~~
 - ~~(j) The offender did not cooperate with the investigation; or~~
 - ~~(k) Previous attempts to rehabilitate the offender were unsuccessful.~~
- ~~(6) A departure from the sanctioning guidelines set forth in Regulation .13 of this chapter is not a ground for any hearing or appeal of a disciplinary panel action.~~

H. Offenses Related to Continuing Education Requirements:

~~(1) If a licensee has submitted an application claiming the completion of continuing education credits and the licensee fails to document the completion of such continuing education credits when audited by the Board, the licensee may be charged under one or more of the following, as appropriate:~~

~~(a) Health Occupations Article, §14-5C-17(a)(3), Annotated Code of Maryland;~~

~~(b) Health Occupations Article, §14-5C-17(a)(10), Annotated Code of Maryland; and~~

~~(c) Health Occupations Article, §14-5C-17(a)(11), Annotated Code of Maryland.~~

~~(2) Upon a finding of a violation, the disciplinary panel may impose any discipline authorized under Health Occupations Article, §14-5C-17, Annotated Code of Maryland, and the sanctioning guidelines.~~

I. Payment of Fines Imposed by the Board or a Disciplinary Panel:

~~(1) An individual shall pay to the Board any fine imposed pursuant to this regulation within 15 calendar days of the date of the order, unless the order specifies otherwise.~~

~~(2) Filing an appeal under State Government Article, §10-222, Annotated Code of Maryland, does not stay payment of a fine imposed pursuant to this regulation.~~

~~(3) If an individual fails to pay, in whole or in part, a fine imposed pursuant to this regulation, the Board may not restore, reinstate, or renew a license until the fine has been paid in full.~~

~~(4) In its discretion, the Board may refer all cases of delinquent payment to the Central Collection Unit of the State Department of Budget and Management to institute and maintain proceedings to ensure an individual's prompt payment.]~~

[.13] .08 Sanctioning Guidelines [for Polysomnographic Technologists].

A. Subject to provisions of ~~[Regulation .12F and G of this chapter]~~ *COMAR 10.32.02.10*, a disciplinary panel may impose sanctions as outlined in §B of this regulation on a polysomnographic technologist for violations of Health Occupations Article, §14-5C-17(a), Annotated Code of Maryland.

B. Range of Sanctions.

Ground	[Maximum] <i>Minimum</i> Sanction	[Minimum] <i>Maximum</i> Sanction	[Maximum] <i>Minimum</i> Fine	[Minimum] <i>Maximum</i> Fine
(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant, licensee, or for another	[Revocation] <i>Reprimand with probation for 2 years</i>	[Reprimand with probation for 2 years] <i>Revocation</i>	[\$5,000] \$0	[\$1,000] \$5,000
(2) Fraudulently or deceptively uses a license	[Revocation] <i>Probation</i>	[Probation] <i>Revocation</i>	[\$5,000] \$0	[\$1,000] \$5,000
(3) Is guilty of: <i>(a) [unprofessional or] Immoral conduct while practicing polysomnographic technology; or</i> <i>(b) Unprofessional conduct while practicing polysomnographic technology.</i>	[Revocation] <i>Reprimand</i>	[Reprimand with probation for 2 years] <i>Revocation</i>	[\$5,000] \$0	[\$1,000] \$5,000
(4) Incompetence.				

<p>[(4) Incompetence:]</p> <p>(a) Is professionally incompetent</p>	<p>[Revocation]</p> <p><i>Suspension until professional incompetence is addressed to Board's satisfaction</i></p>	<p>[Suspension until professional incompetence is addressed to Board's satisfaction]</p> <p><i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$1,000] \$5,000</p>
<p>(b) Is physically [or mentally] incompetent</p>	<p>[Revocation]</p> <p><i>Suspension until physical incompetence is addressed to Board's satisfaction</i></p>	<p>[Suspension until physical or mental incompetence is addressed to Board's satisfaction]</p> <p><i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$0] \$5,000</p>
<p>(c) <i>Is mentally incompetent</i></p>	<p><i>Suspension until mental incompetence is addressed to Board's satisfaction</i></p>	<p><i>Revocation</i></p>	<p>\$0</p>	<p>\$5,000</p>
<p>(5) Abandons a patient</p>	<p>[Revocation]</p> <p><i>Reprimand</i></p>	<p>[Reprimand]</p> <p><i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$1,000] \$5,000</p>
<p>(6) Is habitually intoxicated</p>	<p>[Revocation]</p> <p><i>Suspension until the polysomnographic technologist is in treatment and has been abstinent for 6 months</i></p>	<p>[Suspension until licensee is in treatment and has been abstinent for 6 months]</p> <p><i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$0] \$5,000</p>

<p>(7) Is addicted to or habitually abuses any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland</p>	<p>[Revocation] <i>Suspension until the polysomnographic technologist is in treatment and has been abstinent for 6 months</i></p>	<p>[Suspension until licensee is in treatment and has been abstinent for 6 months] <i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$0] \$5,000</p>
<p>(8) Provides professional services while: (a) Under the influence of alcohol; or (b) Using any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland, or any other drug that is in excess of therapeutic amounts or without valid medical indication</p>	<p>[Revocation] <i>Suspension until the polysomnographic technologist is in treatment and has been abstinent for 6 months</i></p>	<p>[Suspension until licensee is in treatment and has been abstinent for 6 months] <i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$500] \$5,000</p>
<p>(9) Promotes the sale of services, drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain</p>	<p>[Suspension for 5 years] <i>Reprimand</i></p>	<p>[Reprimand] <i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$1,000] \$5,000</p>
<p>(10) Willfully makes or files a false report or record in the practice of polysomnography</p>	<p>[Revocation] <i>Reprimand</i></p>	<p>[Reprimand] <i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$1,000] \$5,000</p>
<p>(11) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of a report, or induces another to fail to file or record a report</p>	<p>[Revocation] <i>Reprimand</i></p>	<p>[Reprimand] <i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$1,000] \$5,000</p>

(12) Breaches patient confidentiality	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$5,000] \$0	[\$1,000] \$5,000
(13) Pays or agrees to pay any sum or provide any form of remuneration or material benefit to any person for bringing or referring a patient or accepts or agrees to accept any sum or any form of remuneration or material benefit from an individual for bringing or referring a patient	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$5,000] \$0	[\$500] \$5,000
(14) [Knowingly] <i>Willfully</i> makes a misrepresentation while practicing polysomnography	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$5,000] \$0	[\$1,000] \$5,000
(15) [Knowingly] <i>Willfully</i> practices polysomnography with an unauthorized individual or aids an unauthorized individual in the practice of polysomnography	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$5,000] \$0	[\$1,000] \$5,000
(16) [Knowingly] <i>Willfully</i> delegates a polysomnographic duty to an unlicensed individual	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$5,000] \$0	[\$1,000] \$5,000
(17) Offers, undertakes, or agrees to cure or treat disease by a secret method, treatment, or medicine	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$5,000] \$0	[\$1,000] \$5,000

<p>(18) Is disciplined by a licensing or disciplinary authority or is convicted or disciplined by a court of any state or country or is disciplined by any branch of the United States uniformed services or the U.S. Department of Veterans Affairs for an act that would be grounds for disciplinary action under the Board's disciplinary statutes</p>	<p>[Penalty comparable to what the Board imposes under equivalent State ground for discipline]</p> <p><i>Penalty equivalent to that imposed by original licensing authority if this is less than the Board sanction would be</i></p>	<p>[Penalty equivalent to that imposed by original licensing authority if this is less than the Board sanction would be]</p> <p><i>Penalty comparable to what the Board imposes under equivalent State ground for discipline</i></p>	<p>[Fine comparable to what the Board imposes under equivalent State ground for discipline]</p> <p><i>Fine equivalent to that imposed by the original licensing authority if this is lesser than the Board sanction would be</i></p>	<p>[Fine equivalent to that imposed by the original licensing authority if this is lesser than the Board sanction would be]</p> <p><i>Fine comparable to what the Board imposes under equivalent State ground for discipline</i></p>
<p>(19) Fails to meet appropriate standards for the delivery of polysomnographic services performed in a hospital sleep laboratory or stand-alone sleep center</p>	<p>[Revocation]</p> <p><i>Reprimand</i></p>	<p>[Reprimand]</p> <p><i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$500] \$5,000</p>
<p>(20) [Knowingly] <i>Willfully</i> submits false statements to collect fees for which services are not provided</p>	<p>[Revocation]</p> <p><i>Reprimand</i></p>	<p>[Reprimand]</p> <p><i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$1,000] \$5,000</p>

<p>(21) Has been subject to investigation or disciplinary action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes and has:</p> <p>(a) Surrendered the license, if any, issued by the state or country; or</p> <p>(b) Allowed the license, if any, issued by the state or country to expire or lapse</p>	<p>[Penalty comparable to what the Board imposes under equivalent State ground for discipline]</p> <p><i>Penalty equivalent to that imposed by original licensing authority if this is less than the Board sanction would be</i></p>	<p>[Penalty equivalent to that imposed by original licensing authority if this is less than the Board sanction would be]</p> <p><i>Penalty comparable to what the Board imposes under equivalent State ground for discipline</i></p>	<p>[Fine comparable to what the Board imposes under equivalent Maryland ground for discipline]</p> <p><i>Fine equivalent to that imposed by the original licensing authority if this is lesser than the Board sanction would be</i></p>	<p>[Fine equivalent to that imposed by the original licensing authority if this is lesser than the Board sanction would be]</p> <p><i>Fine comparable to what the Board imposes under equivalent Maryland ground for discipline</i></p>
<p>(22) [Knowingly] <i>Willfully</i> fails to report suspected child abuse in violation of Family Law Article, §5-704, Annotated Code of Maryland</p>	<p>[Revocation]</p> <p><i>Reprimand</i></p>	<p>[Reprimand]</p> <p><i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$500] \$5,000</p>
<p>(23) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes</p>	<p>[Revocation]</p> <p><i>Reprimand, probation for 3 years with practice oversight</i></p>	<p>[Reprimand, probation for 3 years with practice oversight]</p> <p><i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$500] \$5,000</p>
<p>(24) Practices or attempts to practice beyond the authorized scope of practice</p>	<p>[Revocation]</p> <p><i>Suspension for 3 months</i></p>	<p>[Suspension for 3 months]</p> <p><i>Revocation</i></p>	<p>[\$5,000] \$0</p>	<p>[\$2,500] \$5,000</p>

(25) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside	[Revocation] <i>Suspension</i>	[Suspension] <i>Revocation</i>	[\$5,000] \$0	[\$500] \$5,000
(26) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee is licensed and qualified to render because the individual is HIV positive	[Suspension for 1 year] <i>Reprimand</i>	[Reprimand] <i>Suspension for 1 year</i>	[\$5,000] \$0	[\$500] \$5,000
(27) Practices or attempts to practice a polysomnography procedure or uses or attempts to use polysomnography equipment if the applicant or licensee has not received education and training in the performance of the procedure or the use of the equipment	[Revocation] <i>Suspension for 3 months</i>	[Suspension for 3 months] <i>Revocation</i>	[\$5,000] \$0	[\$2,500] \$5,000
(28) Fails to cooperate with a lawful investigation conducted by the Board	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$5,000] \$0	[\$1,000] \$5,000
(29) <i>Fails to complete a criminal history records check under Health Occupations, § 14-308.1, Annotated Code of Maryland.</i>	<i>Reprimand</i>	<i>Revocation</i>	\$0	\$5,000