

# Tennessee Polysomnography Professional Standards Committee



## Newsletter



2010

A regulatory agency of the State of Tennessee

Vol 1, No 1

Bureau of Health Licensure and Regulation • Health Related Boards • 227 French Landing, Suite 300, Heritage Place MetroCenter, Nashville, TN 37243  
Phone: (615) 532-4384 - Toll Free: (800) 778-4123 ext. 24384 - Fax: (615) 253-4484 - [tennessee.gov/health](http://tennessee.gov/health)

### CURRENT COMPOSITION OF THE BOARD

TENN. CODE ANN. SECT. 63-31-101 created the Polysomnographic Professional Standards Committee to assist the Board of Medical Examiners in developing licensure requirements and practice standards for polysomnography professionals in Tennessee. The statute created a committee of seven members composed of: three (3) registered polysomnographic technologists; one (1) physician certified in sleep medicine by the national certifying body recognized by the American Academy of Sleep Medicine; one (1) person who is the director of an accredited, hospital-based sleep center; one (1) respiratory therapist who is also registered as a polysomnographic technologist; and one (1) consumer member.

The Committee is composed of the following members: Thomas G. Higgins, M.D., Chairman; Kristen W. Lester, PSGP, Secretary; Kelia C. Ingram, PSGP; Natasha C. Webb, PSGP; Donna J. Lovitt, Director, Accredited Sleep-Based Center; Donald A. Samples, Ed.D.; and Madelyn K. Cunningham, public member.

**As licensees, it is extremely important for you to know and abide by the Committee's statutes, rules and policies. You are strongly encouraged to stay abreast of changes in your practice act, rules and policies that govern your professional.** You can do this by being familiar with the information found at the following website:  
<http://health.state.tn.us/boards/Polysomnography/index.htm>

### POWERS OF THE BOARD TO IMPOSE SANCTIONS

TENN. CODE ANN. SECT. 63-31-109 describes the power of the Board to impose any sanctions on a licensee, up to and including license revocation, if the licensee is found guilty of violating any of the provisions of the polysomnography

practice act or of committing any of the following acts or offenses:

- (1) Making false or misleading statements or committing fraud in procuring a license;
- (2) Moral turpitude;
- (3) Habitual intoxication or personal misuse of narcotics, controlled substances or any other drugs or the use of alcoholic beverages or stimulants in a manner that adversely affects the person's ability to practice polysomnography;
- (4) Conviction of a felony or of any offense involving moral turpitude or any violation of the drug laws of this or any other state or of the United States;
- (5) Violation or attempted violation, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate, this chapter or any lawful order of the board or any criminal statute of this state;
- (6) Gross malpractice, ignorance, negligence or incompetence in the course of professional practice;
- (7) Making or signing in one's professional capacity any document that is known to be false at the time it is made or signed;
- (8) Engaging in the practice of polysomnography when mentally or physically unable to safely do so;
- (9) Making false statements or representations or being guilty of fraud or deceit in the practice of polysomnography when mentally or physically unable to safely do so;
- (10) Having disciplinary action imposed by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a person licensed to practice polysomnography in this state; provided, that a certified copy of the order or other document memorializing the disciplinary action by the other state or territory constitutes prima facie evidence of a violation of this section;
- (11) Undertaking any duties that are outside the authorized scope of practice of a licensed polysomnographic technologist, as set forth in this chapter;
- (12) Violating the code of ethics adopted by the committee for polysomnographic technologists;
- (13) Use or attempted use of a polysomnographic procedure or equipment for which the licensee has not

received sufficient education or training in the proper use of that procedure or equipment;

(14) Promoting the sale of services, drugs, devices, appliances, or goods to a patient to exploit the patient for financial gain;

(15) Willfully failing to file, or willfully impeding the filing of, any report or record that is required by law;

(16) Knowingly engaging in the practice of polysomnography with an unlicensed person, knowingly aiding an unlicensed person in the practice of polysomnography, or knowingly delegating a task involved in the practice of polysomnography to an unlicensed person;

(17) Knowingly failing to meet appropriate standards for the delivery of polysomnographic services;

(18) Breaching patient confidentiality;

(19) Paying or agreeing to pay any sum or providing any form of remuneration or material benefit to any person for bringing or referring a patient, or accepting or agreeing to accept any form of remuneration or material benefit from a person for bringing or referring a patient; or

(20) Any other unprofessional or unethical conduct specified in the rules of the board.

## SANCTIONS

Upon a finding by the Committee that any provision of the Polysomnography Act or the rules promulgated pursuant thereto has been violated, the Committee may impose any of the following actions separately or in any combination deemed appropriate to the offense.

(a) "Letter of warning" This is a written action. It is informal and advisory in nature and does not constitute a formal disciplinary action.

(b) "Formal reprimand" This is a written action. It is a formal disciplinary action.

(c) "Probation" This is a formal disciplinary action for a fixed period of time.

(d) "Licensure suspension" This is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the re-entry of the individual into the practice under the licensure previously issued.

(e) "Licensure revocation" This is a formal disciplinary action which removes an individual from the practice of the profession and terminates the license previously issued. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Committee's revocation order.

(f) Conditions - Any action deemed appropriate by the Committee to be required of a disciplined licensee in any of the following circumstances:

1. During any period of probation, suspension;
2. As a prerequisite to the lifting of probation or suspension; or
3. As a stand-alone requirement or requirements in any disciplinary action.

(g) Civil penalty - A monetary disciplinary action assessed by the Committee.

You may review this Rule in its entirety at: <http://tennessee.gov/sos/rules/0880/0880-14.20100531.pdf>.

## CODE OF ETHICS

It is a violation of the Committee's rules and regulations, that may result in discipline, for a Polysomnographic Technologist, Technician, or person practicing polysomnography pursuant to T.C.A. § 63-31-107(a)(4) to do any of the following:

(a) Fail to maintain in strict confidence all privileged information concerning a patient except as disclosure or use of information is permitted or required by law.

(b) Have sexual relations with a current or former patient unless the practitioner has not provided any polysomnographic services to the patient within the one year period preceding the beginning of the sexual relationship.

## CONTINUING EDUCATION

It is **imperative** that you be familiar with continuing education requirements. All licensees must comply with the following as a prerequisite to licensure renewal:

A licensee must complete ten (10) hours of continuing education every calendar year (January 1-December 31).

For new licensees, submitting proof of successful completion of all education and training requirements required for licensure in Tennessee, pursuant to Rule 0880-14-.03, shall be considered proof of sufficient preparatory education to constitute continuing education credit for the calendar year in which such education and training requirements were completed.

The Committee may approve a course for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual.

The Committee may waive or otherwise modify the requirements of this rule in cases where there is retirement, or an illness, disability or other undue hardship that prevents a licensee from obtaining the requisite number of continuing education hours. Requests for waivers or modification must be sent in writing to the Committee Office prior to the expiration of the renewal period in which the continuing education is due.

### Proof of Compliance

The due date for completion of the required continuing education is December 31st of every calendar year.

Licensees must, on the license renewal form, enter a signature, electronic or otherwise, which indicates completion of the required continuing education hours and that such hours were obtained during the applicable calendar years.

All licensees must retain independent documentation of completion of all continuing education hours for a period of five (5) years from the end of the renewal period in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Division during its verification process. Documentation verifying the licensee's completion of the continuing education program(s) may consist of any one or more of the following:

(i) Certificates from the continuing education program's sponsor, indicating the date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensee's name, license number and social security number; or

(ii) An original letter on official stationery from the continuing education program's sponsor indicating date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensee's name, license number and social security number.

### Acceptable Continuing Education

To satisfy the continuing education requirements of this rule, the continuing education program must be approved in content, structure and format by the American Association of Sleep Technologists.

### Violations

A licensee who fails to obtain the required continuing education hours shall pay a fee of \$30.00 per hour deficient, may be subject to disciplinary action and shall not be eligible for licensure renewal.

A licensee who falsely attests to completion of the required hours of continuing education may be subject to disciplinary.

Education hours obtained as a result of compliance with the terms of Committee and/or Board Orders in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any calendar year.

## RETIREMENT OF A PROFESSIONAL LICENSE

A licensee who holds a current license and does not intend to practice as a polysomnographic technologist may apply to convert an active license to retired status. A licensee who holds a retired license will not be required to pay a renewal fee to maintain the license in retired status.

To retire your license, you must apply for retired status in the following manner by obtaining, completing and submitting to

the Committee Office an Affidavit of Retirement form. The effective date of retirement will be the date the Affidavit of Retirement is received in the Committee Office.

## HIGHLIGHTS FROM JUNE 29, 2010 COMMITTEE MEETING

The Committee met on June 29, 2010 to conduct Committee business. Highlights include the development of several important policies you should be aware of.

## POLICY STATEMENT PRACTICING ON A LAPSED LICENSE

The Polysomnography Professional Standards Committee recognizes that an individual may inadvertently allow his/her license to lapse/expire. However, it is unlawful for an individual to provide polysomnography services as a polysomnographic technologist unless he/she has an active license. While the Committee does not condone an individual working on an expired license, recognition is given to the fact that the problem does exist. As such, the Committee has adopted the following procedures for reinstatement of an expired license.

- Immediately upon recognition that his/her license has expired, the individual must stop practicing and contact the Committee's Administrative Office to request a reinstatement application.
- Upon receipt of the reinstatement application, the individuals are to complete the application in its entirety, providing a detailed work history, including duties performed, since the license expiration date. The application is to be signed, notarized, and returned to the Committee's Administrative Office along with any additional information required for the application and the applicable fees.
- Upon receipt of a completed reinstatement application, supporting documentation, including continuing education, and fees, the Committee's administrative office may immediately reinstate a license, which has been in expired status **for less than thirty (30) calendar days**, upon approval from the Committee's Consultant.
- If the work history accompanying the reinstatement application reflects that the individual has worked in **excess of thirty (30) calendar days** on an expired license, the Committee will present to the licensee an Agreed Citation which specifies payment of a civil penalty in the amount of \$50.00 per month for every month worked in excess of thirty (30) calendar days from the expiration date.
- This remedy is only available to those who have worked on an expired license for less than six (6) months from the date the license went into expired status.

- If the licensee refuses to execute the Agreed Citation and remit the civil penalty described therein within sixty (60) days of the date of the Agreed Citation, the licensee shall be referred to the Office of Investigations and Office of General Counsel for formal disciplinary action.

This policy was adopted by the Committee on the 29<sup>th</sup> of June 2010 and the Board of Medical Examiners on the 20<sup>th</sup> day of July 2010.

## **POLICY STATEMENT FAILURE TO OBTAIN REQUIRED CONTINUING MEDICAL EDUCATION**

A polysomnographic technologist in Tennessee is required to complete ten (10) hours of continuing education courses every calendar year (January 1 – December 31) that precede the licensure renewal year. (See Tenn. Comp. R. & Regs. 0880-14-.09 regarding continuing education requirements.)

Should the polysomnographic technologist fail to obtain the continuing education hours for a calendar year, the following shall occur:

1. The polysomnographic technologist must pay a civil penalty in the amount of thirty dollars (\$30.00) for each hour missed. Payment must be rendered within sixty days of notification from the Committee that the polysomnographic technologist has been found to have failed to obtain the required continuing education hours.
2. The polysomnographic technologist must make up the amount of continuing education hours that he/she is lacking, in addition to completing the continuing education hours requirement for the current calendar year. The deficient hours must be made up within one hundred eighty (180) days of receipt of this policy. Documented proof of the deficient hours obtained must be submitted to the Committee upon completion.
3. The polysomnographic technologist must complete an additional ten (10) continuing education hours. This requirement is in addition to the requirement that the polysomnographic technologist make up the continuing education hours that he/she is lacking, and in addition to the continuing education hours' requirement for the current calendar year. The ten (10) hours must be made up within two years of receipt of this policy. Documented proof of completion of the deficient hours must be submitted to the polysomnographic technologist upon completion.

Failure to comply with this policy may result in disciplinary action. Failure to respond to the Committee request for documentation or to make up deficient continuing education hours after notification by the Committee may also result in

disciplinary action. The Committee has authorized the use of an agreed citation for such disciplinary purposes. An agreed citation is reportable on the Department of Health's website and its monthly disciplinary action report.

This policy was adopted by the Polysomnographic Professional Standards Committee on the 29<sup>th</sup> day of June 2010 and Board of Medical Examiners on the 20<sup>th</sup> day of July 2010.

### **COMMITTEE MEETING DATES**

May 11, 2011

November 1, 2011

All Committee meetings begin at 9:30 a.m., Central Time. Board meetings are held at the Board's office and are open to the public. Dates are subject to change, but are listed on the Board's Website. [In the event of an electronic meeting, a conference room is made available to the public and is the location from which the electronic meeting is conducted.]

### **LICENSURE STATISTICS**

Since the July 1, 2010 deadline for licensure, the Committee has licensed the following:

Polysomnography Technologists: 390  
 Polysomnography Technicians: 84  
 Polysomnography Trainee/Students: 39

### **CHANGE OF ADDRESS**

Must be reported (in writing or by e-mail) to the Committee's Office within 30 days! Please include the following:

- Your name and license number;
- Your profession;
- Your old address and phone number;
- Your new address and phone number, e-mail address, and/or your fax number;
- Your SIGNATURE!

Keeping the Committee's administrative staff up to date on your location facilitates the timely notification to you of important information such as your application for licensure renewal and important statutory and rule changes. You may fax your change to the Committee's administrative office at (615) 253-4484 or by mail at: 227 French Landing, Heritage Place MetroCenter, Suite 300, Nashville, TN 37243. You also can e-mail the Committee at: [tn.health@tn.gov](mailto:tn.health@tn.gov).

Committee's fax number: (615) 253-4484

Committee's website:

<http://health.state.tn.us/Boards/Polysomnography/>

## RENEWING YOUR PROFESSIONAL LICENSE

You may renew your professional license on line. The Department of Health provides an online process that allows all professions to renew their licenses online and/or update their information. The process is quick, simple, secure, and convenient – and even allows you to pay for your renewal with a credit card.

### Okay, So How Do I Renew Online?

#### In just four quick steps you'll be there...

**Step One – Login In.** As a professional, you'll need to select your board, profession and enter your profession license number, your date of birth and social security number or your transaction number from your renewal notice.

**Step Two – Update Your Information.** Here you'll have the opportunity to update your home address, your work address and even your billing address. Once you've completed entering that information, you're halfway done!

**Step Three – Enter your Renewal Information.** At this step you'll answer all necessary questions and provide information on licenses from other states. You'll have the ability to update your education information and list your principal place of employment.

**Step Four – Payment.** Here's where it all comes together. By entering your credit card through the secure site and choosing "submit," you will have completed the online renewal application. **Only choose submit one time!**

### What Happens Next?

Your renewal information will be posted to the Department of Health's licensing system and once you have met all of the criteria for your profession, you will be mailed your renewal certificate.

That's it – you're done! So, come check it out and renew online – or even just update your information. We'll see you at:

<https://www.tennesseeanytime.org/hlrs/begin.jsp;jsessionid=kLvjQXINbkhsyRz0Vs>

## MAKING THE RENEWAL PROCESS WORK

### Common Pitfalls to Avoid

If you choose not to renew online, you can ensure that the renewal process will work...and work the first time, every time for you. There are common pitfalls that are shared by persons in each profession. Recognizing these common errors may assist you in avoiding them and ensure trouble-free renewals. Here's how:

**Sign your renewal** - All applications must bear the licensee's signature.

**Return the renewal form intact** - Don't separate the one-page renewal form. While it looks like you could, and perhaps should separate your renewal application, return the original form in ONE PIECE.

**Keep your address current** – Mail (including your renewal form) is generated using a computer program, which downloads the address the Committee's Office has on file for you. If the Committee's Office has an incorrect address, the incorrect address will be used for your renewal.

**If answering "YES" to any one of the three questions on the back of your renewal, provide an explanation** - The Committee's Office cannot process your renewal until we have written documentation [letter from your physician, court/disciplinary board order(s), etc.] and your written explanation of the events which made you answer "Yes" on your renewal.

**Mail the appropriate fee with your renewal application** – Some renewals are received without the fees, or fees are sent separately from renewals, or fees are sent in the wrong amounts.

If any of these errors are made, the renewal application will not be smoothly processed, if at all. Remember, failure to renew by the end of the 30 day grace period will subject the license/registration to administrative revocation for which reinstatement will be required.

## STATUTORY CHANGES OF INTEREST TO HEALTH CARE PROVIDERS IN TENNESSEE

The 2010 Legislative Session has ended, and the administrative staff for the Polysomnography Professional Standards Committee has monitored several bills that are of interest to healthcare providers in the state of Tennessee. Below is a brief summary of those bills. If you wish to review any of these public chapters in their entirety, please visit: <http://www.tennessee.gov/sos/acts/index.htm>.

### Public Chapter No. 1043

This Public Chapter amends Tenn. Code Ann. Sect. 63-6-210(b)(2) and (c) and provides that a licensee may renew a license within sixty (60) days following the license expiration date upon payment of the renewal fee in addition to a late penalty established by the board for each month or fraction of a month that payment for renewal is late; provided that the late penalty shall not exceed twice the renewal fee. When any licensee fails to renew a license and pay the biennial renewal fee within sixty (60) days after renewal becomes due, as provided in this section, the license shall be automatically revoked at the expiration of sixty (60) days after the renewal was required without further notice or hearing.

Further, any licensee whose license is automatically revoked as provided in subsection (b), may apply in writing to the board for reinstatement of such license, which may be granted by the board upon the payment of all past due fees and reinstatement fees established by the board, and upon further conditions as the board may require.

#### **Public Chapter No. 1122**

This Public Chapter amends Tenn. Code Ann. Sect. 63-6-211, by adding the following as a new subsection (c): (c) For purposes of enforcing federal immigration laws which relate to the licensure of foreign physicians in this state, the board of medical examiners shall enter into a written agreement, in accordance with federal and other applicable law, between the board and the United States Department of Homeland Security concerning the enforcement of federal immigration laws, which may include participation in the federal systematic alien verification of entitlements program, referred to as the "SAVE program", and its verification information system, operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security or any additional certifying agent within the department or approved by the department.

#### **Public Chapter No. 724**

This Public Chapter creates a new licensure category for those individuals practicing medicine at St. Jude Children's Research Hospital Global Collaboration. The applicants must meet all the requirements for licensure contained in current law with the exception of completing a residency or training program. The bill provides that the Board of Medical Examiners ("Board") may use its discretion to issue the license and that the Board has the authority to promulgate rules to implement this new licensure category, including, but not limited to establishing fees. The bill also provides that the physician with this license may only practice medicine at St. Jude. Should the licensee's employment with St. Jude terminate, then this special license shall terminate as well. St. Jude would be responsible for submitting all necessary information and applications to the Board on behalf of the applicant and St. Jude would be responsible for notifying the Board office when a licensee's employment with St. Jude is terminated.

#### **Public Chapter No. 677**

This Public Chapter sets the Board of Medical Examiners' Committee on Physician Assistants' termination date at June 30, 2013.

#### **Public Chapter No. 663**

This Public Chapter requires all physicians, dentists, optometrists, podiatrists, veterinarians, and advance practice nurses with a certificate of fitness, to report a person to local law enforcement within five (5) business days if the health care provider has good reason to believe that the person has obtained controlled substances unlawfully. The Public Chapter also changes current law by providing that the health care provider must have actual knowledge that the person has

obtained the controlled substances unlawfully. Further, the controlled substance database advisory committee has the authority to develop a form that health care providers may choose to use to make reports; this provision is not contained in current law. Further, the Public Chapter provides that a health care provider may, but is not required, to report this information who is providing treatment to a person with a mental illness. This Public Chapter further provides that a health care provider is not prohibited from conveying information to local law enforcement if the information was obtained from the controlled substance monitoring database as long as the information is pertinent and is for the period of time thirty (30) days prior to the date of treatment leading to the alleged offense. This thirty (30) day report is grounds to obtain more detailed controlled substance database information. Current law provides that the health care provider would be immune from liability for notifying local law enforcement of the controlled substance information. This Public Chapter expands this by providing immunity from liability to persons working under the direction of a health care provider. The Public Chapter also amends current law by adding language to the current law providing that the penalty against a health care provider for violating the provisions of this law would be a civil penalty assessed by the licensing board that regulates the health care provider and shall be limited to cases involving a pattern of willful failure to make a report.

#### **Public Chapter No. 790**

This Public Chapter amends Tenn. Code Ann. Title 37 (Juveniles), Chapter 10 (Miscellaneous Provisions), Part 3 (Parental Consent for Abortion of Minors); Title 39 (Criminal Offenses), Chapter 15 (Offenses Against the Family), Part 2 (Abortion); Title 63 (Healing Arts), and Title 68 (Health, Safety and Environmental Protection), relative to preventing forced abortions. The Public Chapter amends current law by providing that a physician's office in which abortions are performed and ambulatory surgical treatment centers shall conspicuously post a sign notifying patients that an abortion can only be performed with the patient's voluntary consent and without coercion. The Public Chapter also provides that should a physician's office or ambulatory surgical treatment center fail to post the required sign, the facility shall be assessed a two thousand five hundred dollar (\$2,500.00) civil penalty. In the event that the patient is a minor, then the physician or other health care professional (nurse, physician assistant, midwife, psychologist, or social worker) shall inform the patient that she cannot be forced to have an abortion and that she must give her voluntary consent to have the abortion performed. Prior to the performance of the abortion, the patient shall certify in writing that she was properly informed and the certification shall be placed in the patient's file. The Public Chapter provides that the Board for Licensing Health Care Facilities shall be responsible for enforcing these provisions in physician's offices where abortions are performed, ambulatory surgical treatment centers, and hospitals. The Public Chapter is effective on October 1, 2010.

#### **Public Chapter No. 865**

This Public Chapter amends Tenn. Code Ann. Title 63 (Healing Arts), Chapter 2 (Medical Records), Part 1, relative to charges for copying and certifying medical records. The Public Chapter increases the costs of obtaining medical records from health care providers by lowering the threshold amount of pages that can be provided to a requestor for twenty dollars (\$20.00). Current law (Tenn. Code Ann. §63-2-102, Costs of reproduction, copying or mailing of records) provides that the cost for obtaining medical records shall not exceed twenty dollars (\$20.00) for medical records that do not exceed forty (40) pages; the bill changes forty (40) page limit to five (5) pages. Current law provides that the cost for those records exceeding forty (40) pages is twenty-five cents (\$.25) for each page. The Public Chapter changes the per page cost from twenty-five cents (\$.25) to fifty cents (\$.50) for those pages of the medical record that exceed the five (5) page limit. The Public Chapter also adds a provision that is not contained in current law providing that if the requested records are delivered by email, then the processing fee may not exceed fifty dollars (\$50.00). Mailing or shipping costs may be added on to this processing fee should the digital or electronic records be shipped to the requestor. The Public Chapter adds another provision indicating that the health care provider may charge a fee not to exceed twenty dollars (\$20.00) for certifying medical records that require notarization. The Public Chapter removes provisions contained in current law that provide that payment of the costs may be required by the provider prior to the records being furnished and that upon payment, the records shall be provided without delay. Also removed is a provision providing that in workers' compensation cases, a request for medical records shall include a medical or anatomical impairment rating. The Public Chapter also removes a provision providing that the payment requirements contained in current law will not supersede any other provision of the law that establishes costs for reproduction and copying. The Public Chapter became effective July 1, 2010.

#### **Public Chapter No. 1100**

This Public Chapter sets the Council for Certified Professional Midwifery's termination date at June 30, 2011.

#### **Public Chapter No. 976**

This Public Chapter amends Tenn. Code Ann. Sect. 63-6-207(b), and requires the Board of Medical Examiners to grant an extension to applicants who have not passed the United States Medical Licensing Examination within seven (7) years so long as the applicant is licensed in good standing in at least three (3) other jurisdictions and who has otherwise met the requirements under this section.

#### **Public Chapter No. 995**

This Public Chapter set the termination date of the Tennessee Acupuncture Advisory Committee at June 30, 2013.

#### **Public Chapter No. 637**

This Public Chapter amends Tenn. Code Ann. §63-6-221 by requiring physicians performing Level III office-based surgery

to report the following to the Board of Medical Examiners within fifteen (15) days after the physician discovers the event: death of a patient during a level III surgery or within seventy-two (72) hours thereafter; transport of a patient to a hospital emergency department; unplanned admission of a patient to a hospital within seventy-two (72) hours of discharge; discovery of a foreign object erroneously remaining in a patient; or performance of a the incorrect surgical procedure, surgery on the incorrect site, or surgery on the wrong patient. Current law only requires physicians performing Level II office-based surgery to report this information to the Board. Level II office-based surgery is surgery performed outside of a hospital, ambulatory surgical treatment center or other licensed medical facility pursuant to Board of Medical Examiner rules, including, but not limited to biopsies, hernia repairs, colonoscopy, or liposuction. Level III surgeries can be the same type of surgeries, but require greater sedation than Level II surgeries. The Public Chapter also renames the definition of "Office-based surgery" to "Office-based surgery" or "Level III office-based surgery" in an effort to distinguish between Level II and Level III office-based surgery. This Public Chapter is effective July 1, 2010.

#### **Public Chapter No. 862**

This Public Chapter amends Tenn. Code Ann. Title 63 (Professions of the Healing Arts), Chapter 2 (Medical Records), Part 1 (Release of Medical Records) and Title 68 (Health, Safety and Environmental Protection), Chapter 11 (Health Facilities and Resources), Part 15 (Protection of Patient's Privacy), to enact the "Colby Stansberry Act" relative to the authorized release of medical records. This Public Chapter allows a patient's authorized representative or next of kin (in the event that there is no authorized representative) to obtain the patient's medical records after the patient is incapacitated or deceased. Current law (Tenn. Code Ann. §63-2-101, Release of medical records) already provides that a health care provider shall provide a patient or the patient's authorized representative with a copy or summary of the patient's medical records upon the patient's or authorized representative's written request. Current law does not require that the informed consent must be presented to the health care provider when the patient is alive or is competent. The Public Chapter, which adds a new section to current law, does not change an authorized representative's ability to obtain the patient's medical records; it clarifies that the authorized representative's informed consent survives the patient's death and incapacity and that a health care provider shall provide the medical records to the representative even if the representative provides the informed consent after the patient's death or incapacity. The Public Chapter also provides that should the patient not have an authorized representative, upon the patient's death or incapacity, the patient's next of kin could obtain the patient's medical records. Current law does not contain a provision authorizing the patient's next of kin to obtain the patient's medical records. The Public Chapter also adds a new subsection to the law to specify what the patient's informed consent must contain. The form must include the name of the patient; type of information; name of facility; permitted purpose; individuals, agencies, or organizations to whom disclosure may be made; signature of patient or representative; date signed; and effective time period of

consent. Current law does not contain a provision about what must be contained in a informed consent. The Public Chapter also amends current law (T.C.A. 68-11-1503(a)(1) Confidentiality) relative to the obligations of a licensed health care facility in releasing a patient's medical records. The Public Chapter contains the same language about the release of medical records after the patient's death or incapacity that was placed in Title 63 as stated above. The Public Chapter also adds a new subsection to the law relative to licensed health care facilities to specify what the patient's informed consent must contain; the Public Chapter contains the same language as provided in Title 63 as stated above. This bill became effective April 30, 2010.

### **Public Chapter No. 904**

This Public Chapter amends Tennessee Code Annotated, Section 63-6-214, by deleting subdivision (b)(10) and substituting instead the following:

(10) Conviction of a felony, conviction of any offense under state or federal laws relative to drugs or the practice of medicine, conviction of any offense involving moral turpitude or conviction of any offense for which the person is required to register as a sexual offender or violent sexual offender pursuant to Title 40, Chapter 39, Part 2;

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 6, Part 2, is amended by adding the following new section:

Section 63-6-238.

(a)(1) The general assembly finds that a person who is licensed to practice medicine in this state and who is required to register with the Tennessee Bureau of Investigation as a sexual offender or violent sexual offender is injurious to the public safety, health and welfare as well as the public's perception of and confidence in the medical profession.

(2) The general assembly further finds that the strongest remedial action possible should be taken against a person's license to practice medicine when such person has been convicted of a sexual offense, or violent sexual offense as both are defined in Title 40, Chapter 39, Part 2, and continues to engage in the practice of medicine in this state after such conviction.

(3) Enactment of this section by the general assembly is declared to be a remedial action necessary to assure the safety of the citizens of this state and their faith and confidence in the medical profession. This section is not to be construed to be punitive against any person to whom this section may apply.

(b) As used in this section:

(1) "Registry" means the registry created by the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004, codified in Title 40, Chapter 39, Part 2.

(2) "Registering agency" means a sheriff's office, municipal police department, metropolitan police department, campus law enforcement agency, the Tennessee Department of Correction, a private contractor with the Tennessee Department of Correction or the board with whom sexual offenders and violent sexual offenders are required to register under Title 40, Chapter 39, Part 2;

(3) "Sexual offense" means those offenses defined as "sexual offenses" in § 40-39-202;

(4) "Violent sexual offense" means those offenses defined as "violent sexual offenses" in § 40-39-202;

(c)(1) If the registering agency of a person who registers as a sexual offender or violent sexual offender, as defined by Title 40, Chapter 39, Part 2, has reason to believe that such person is licensed to practice medicine in this state pursuant to this chapter, the registering agency shall prepare and forward to the board of medical examiners a certified copy of the offender's TBI registration form within thirty (30) days of the sexual offender's or violent sexual offender's registration.

(2) Upon receipt of the form, or upon receipt of credible evidence from any other source indicating that a person licensed to practice medicine in this state has been convicted of a sexual offense or a violent sexual offense, the board shall investigate to determine whether such person is a sexual offender or violent sexual offender, as defined by § 40-39-202, and a person licensed to practice medicine pursuant to this chapter.

(A) If the board determines that the person named on the TBI registration form, or by another source, is a person licensed to practice medicine in this state pursuant to this chapter and the offense for which the person is required to register a violent sexual offense, such conviction constitutes a material change in the person's licensure qualifications, and the board shall conduct a hearing at which the person may present evidence that the information received by the board is incorrect. If, after the hearing, the board finds the person was convicted of a violent sexual offense and is required to register with the TBI as a violent sexual offender, the board shall revoke the person's license to practice medicine in accordance with §63-6-216. The person may appeal the ruling of the board as provided in the Uniform Administrative Procedures Act, but such appeal shall be limited to the issue of whether or not such person has been convicted of a violent sexual offense and is therefore required to register as a violent sexual offender. The license revocation shall remain in effect during the pendency of any appeal.

(B) If the person licensed to practice medicine is required to register as a sexual offender, the board shall conduct a hearing to determine the extent to which the person poses a continuing risk to patients; the degree to which the person has been rehabilitated; what treatment, if any, the person has undergone; the areas of medicine in which the person is qualified to engage without endangering the safety of patients; and any other factor the board deems relevant in determining the outcome most likely



to protect the public while considering the interests of the person. At the conclusion of the hearing, the board may:

(i) Revoke the license of the person; or

(ii) If the board does not revoke the license, it may place such conditions on the person's license as it deems appropriate and advisable to protect the interests and safety of the public; provided, the board shall place the following restrictions on the person's license:

(a) Prohibit the physician from engaging in direct patient care or contact; and

(b) Such other conditions and limitations on the person's license as the board deems advisable.

(C)(i) If a person's license to practice medicine was revoked, suspended or conditioned pursuant to subdivision (c)(2)(B) because such person was convicted of a sexual offense and such person applies for and is granted termination of sexual offender registry requirements pursuant to § 40-39-207, such person may petition the board for reinstatement of the person's license to practice medicine.

(ii) If a petition is filed for reinstatement pursuant to this subsection, the board shall hear the petition within thirty (30) calendar days of its receipt. At the hearing the board shall use the same analysis set out in subdivision (c)(2)(B) to determine whether the person should be permitted to practice medicine in this state under any circumstances.

(iii) If the written findings of the board are that the person is no longer a threat to public safety and could return to the practice of medicine in some capacity, it may:

(a) Reinstatement of the person's license without conditions;

(b) Reinstatement of the person's license with any or all the conditions available under subdivision (c)(2)(B); or

(c) Removal of some or all of the restrictions or conditions that were placed on a license made conditional pursuant to subdivision (c)(2)(B).

(iv) If the written findings of the board are that the person could not safely return to the practice of medicine, it shall deny the person's petition and set a date certain after which the person may petition the board.

(D) If the board receives credible evidence from any source indicating that the person is in violation of the restrictions placed upon such person's license to practice medicine pursuant to this section, the board shall conduct a hearing as provided in subdivision (c)(2)(B). If at the conclusion of the hearing, the board finds that the person is in

violation of the restrictions placed upon the person's license in a material respect or in a repetitive manner, the board shall revoke the license. If the board finds that the violation is minor or isolated, it may place other conditions on the person's license, such as increased reporting to the board by both the person and the person's employer or contractor, if any.

(E) The provisions of this subdivision (c)(2) shall apply regardless of whether commission of the sexual offense or violent sexual offense resulting in the person being required to register as a sexual or violent sexual offender occurred prior to or subsequent to the date the person was licensed to practice medicine in this state.

(d) By September 1, 2010, the board shall compare or have compared a list of all persons who are licensed to practice medicine in this state against the list of persons who are registered as sexual offenders or violent sexual offenders pursuant to Title 40, Chapter 39, Part 2. If it appears from this comparison that the same name appears on both lists, the board shall request a certified copy of that person's TBI registration form. Upon receipt of the form from the TBI, the board shall conduct an investigation to determine if the person licensed to practice medicine in this state is the same person who is a registered sexual offender or violent sexual offender. Such investigation shall take no more than thirty (30) days. If the board determines that the person whose name appears on both lists is the same person, it shall immediately take action as provided in subdivision (c)(2) of this section. If the person whose name appears on both lists is not the same person, the board shall take no action.

(e)(1) Upon the effective date of this act, the board shall determine, before granting a license to practice medicine in this state, or renewing an existing license, if the person who is applying for such a license is registered or is required to be registered as a sexual offender or violent sexual offender pursuant to Title 40, Chapter 39, Part 2.

(2) If any applicant for a license to practice medicine in this state is a registered violent sexual offender or is required to register as a violent sexual offender, the board shall deny the application. If any person who is licensed to practice medicine in this state and is seeking to renew such license is a registered violent sexual offender or is required to register as a violent sexual offender, the board shall revoke the physician's license.

(3) If any applicant to the board is registered as a sexual offender or is required to register as a sexual offender, the board shall consider whether the applicant poses a risk to patients; the degree to which the person has been rehabilitated; what treatment, if any, the person has undergone; the areas of medicine in which the applicant is qualified to engage without endangering the safety of patients; and any other factor the board deems relevant in determining what conditions are most likely to protect the public while considering the interests of the applicant. The board may deny the application or may place such conditions upon the applicant as are necessary to protect the public. If the board grants the license, at a minimum the board shall prohibit the applicant from engaging in direct patient care or contact for so

long as the applicant is required to register as a sexual offender.

SECTION 3. This act shall take effect July 1, 2010, the public welfare requiring it and shall apply to any person licensed to practice medicine in this state, whether such license was issued prior to or after the effective date of this act, and to any person applying to practice medicine in this state, whether the application was filed prior to or after the effective date of this act.

### Public Chapter 1084

This Public Chapter amends Tenn. Code Ann. Sect. 63-1-149. and requires that on and after October 1, 2010, before employing or contracting with any person who would be providing direct patient care, for whom a background check has not been completed, a health care professional licensed under any chapter of title 63 or title 68, chapters 24 and 140, shall initiate and perform a "registry check" which for the purposes of this section is defined as:

- (1) A state-by-state look in any state in which the person has lived in the previous seven (7) years of the national sex offender public registry website coordinated by the United States department of justice, including but not limited to the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and
- (2) Any adult abuse registry maintained for any state in which the person has lived in the previous seven (7) years; and
- (3) The department of health's elder abuse registry established pursuant to title 68, chapter 11, part 10.

Additionally, should an applicant be listed on any of the registries listed above in subdivisions (a)(1)-(3), the health care professional shall not employ or contract with the person if the person would be providing direct patient care.

A health care professional who complies with the requirements to perform registry checks under subsection (a), or relies on a documented representation provided by an entity with which the health care professional contracts that the person who will work in the office is not on any of these registries, shall not be subject to civil or criminal liability solely based upon the information provided through a registry check under this section. This immunity shall extend to a claim related to the professional's refusal to employ or contract with a person based on information obtained from a registry check.

This section is not intended to apply to contracted, external staff who provide such services as cleaning services, maintenance of office or medical equipment or other services where direct patient contact is not intended.

This section shall not apply to health care professionals licensed under title 63, chapter 12.

The Department of Health shall post no later than October 1, 2010 in a conspicuous location on its website as well as the website of each applicable licensing board a link to all potential databases the health care professional would be required to check pursuant to subsection (a) above. In addition, each applicable licensing board shall notify all of its licensees at least annually through board newsletters of their obligations under this statute.



### DISCIPLINARY ACTION 2010

The Polysomnography Professional Standards Committee has taken no disciplinary action against its licensees in 2010.