

## SENATE BILL No. 63

By Committee on Public Health and Welfare

1-21

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9 AN ACT concerning the Kansas board of healing arts; relating to licen-  
10 sure and education of polysomnographic technologists, technicians and  
11 students; establishing the polysomnography professional standards  
12 council.

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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. Sections 1 through 17, and amendments thereto, shall be  
16 known and may be cited as the polysomnography practice act.

17 Sec. 2. (a) As used in sections 1 through 17, and amendments  
18 thereto:

19 (1) “Act” means the polysomnography practice act.

20 (2) “Board” means the Kansas board of healing arts.

21 (3) “Council” means the polysomnography professional standards  
22 council established in section 4, and amendments thereto.

23 (4) “Direct supervision” means that the polysomnographic technol-  
24 ogist providing supervision must be on the premises and immediately  
25 available to furnish assistance and direction when sleep-related services  
26 are being performed.

27 (5) “General supervision” means that the sleep-related services are  
28 provided under a physician’s overall direction and control, but the phy-  
29 sician’s presence is not required during the performance of the  
30 procedure.

31 (6) “Physician” means a person who is licensed by the board to prac-  
32 tice medicine and surgery.

33 (7) “Polysomnographic student” means a person who is enrolled in  
34 an educational program that is accredited by the commission on accred-  
35 itation of allied health education programs, as provided in section 6, and  
36 amendments thereto, or other educational program recommended by the  
37 council and who may provide sleep-related services under the direct su-  
38 pervision of a polysomnographic technologist as a part of the person’s  
39 educational program.

40 (8) “Polysomnographic technician” means a person who has gradu-  
41 ated from an accredited educational program described in section 6, and  
42 amendments thereto, but has not yet passed a certifying examination as  
43 described in section 7, and amendments thereto, or as recommended by

1 the council and who has obtained a temporary permit to provide sleep-  
2 related services under the general supervision of a licensed physician.

3 (9) "Polysomnographic technologist" means a person who is licensed  
4 by the board to engage in the practice of polysomnography under the  
5 general supervision of a licensed physician.

6 (10) "Sleep-related services" means any act performed by a polysom-  
7 nographic technologist, technician, student or other person permitted to  
8 perform such services under the polysomnography practice act.

9 (b) "Polysomnography" is a health care profession whose technolo-  
10 gists practice under the supervision of a qualified licensed physician pro-  
11 viding diagnostic procedures, therapy, management, rehabilitation, as-  
12 sessment and care of patients with deficiencies and abnormalities which  
13 affect the human sleep and associated other systems functions. The duties  
14 which may be performed by a polysomnographic technologist include,  
15 but are not limited to:

16 (1) Monitoring and recording physiologic data during the evaluation  
17 of human sleep, sleep associated disorders as defined by the medical  
18 community, including sleep-related respiratory disturbances, by applying  
19 the following techniques, equipment and procedures:

20 (A) Positive airway pressure titration on spontaneously breathing pa-  
21 tients using appropriate interface or appliance;

22 (B) supplemental low flow oxygen therapy utilizing nasal cannula or  
23 positive airway pressure during a polysomnogram;

24 (C) capnography during a polysomnogram;

25 (D) cardiopulmonary resuscitation;

26 (E) pulse oximetry;

27 (F) gastroesophageal pH monitoring;

28 (G) esophageal pressure monitoring;

29 (H) sleep staging, including surface electroencephalography, surface  
30 electrooculography and surface submental electromyography;

31 (I) surface electromyography;

32 (J) electrocardiography;

33 (K) respiratory effort monitoring, including thoracic and abdominal  
34 movement;

35 (L) plethysmography blood flow monitoring;

36 (M) snore monitoring;

37 (N) audio or video monitoring, or both;

38 (O) body movement monitoring;

39 (P) nasal and oral airflow monitoring; and

40 (Q) body temperature monitoring;

41 (2) monitoring the effects that a mask or oral appliance used to treat  
42 sleep disorders has on sleep patterns;

43 (3) observing and monitoring physical signs and symptoms, general

1 behavior, and general physical response to polysomnographic evaluation  
2 and determining whether initiation, modification or discontinuation of a  
3 treatment regimen is warranted;

4 (4) analyzing and scoring data collected during or following monitor-  
5 ing, or both, for the purpose of assisting a licensed physician in the di-  
6 agnosis and treatment of sleep and wake disorders which result from  
7 developmental effects, the aging process, physical injury, disease or actual  
8 or anticipated somatic dysfunction;

9 (5) implementing polysomnographic protocols as defined by the  
10 medical staff of an institution or qualified physician or other written  
11 protocol;

12 (6) implementing a written or verbal order from a licensed physician  
13 which requires the practice of polysomnography; and

14 (7) educating a patient regarding the treatment regimen which assists  
15 in improving the sleep, including the set up and use of positive airway  
16 pressure therapy.

17 Sec. 3. (a) There is hereby established the polysomnography profes-  
18 sional standards council to advise and assist the board in carrying out the  
19 performance of its duties under the provisions of this act.

20 (b) The council shall consist of seven members, six of whom shall be  
21 appointed by the governor in the manner and for the terms as set forth  
22 in this section and one member who shall be the president of the board  
23 or a person designated by the president.

24 (c) Of the six members appointed by the governor:

25 (1) Three members shall be registered polysomnographic  
26 technologists;

27 (2) one member shall be a licensed physician who is certified in sleep  
28 medicine by a national certifying body recognized by the American acad-  
29 emy of sleep medicine;

30 (3) one member shall be a person who is the director of an accredited  
31 sleep center and who is registered as a polysomnographic technologist or  
32 a licensed physician; and

33 (4) one member shall be a consumer who is not commercially or  
34 professionally associated with the health care field.

35 (d) Of the initial appointments made by the governor, two members  
36 shall be appointed to terms of four years, two members shall be appointed  
37 to terms of three years, one member shall be appointed to a term of two  
38 years and one member shall be appointed to a term of one year. Each  
39 regular appointment thereafter shall be for a term of four years. Any  
40 vacant term shall be filled by the governor in a like manner as the original  
41 appointee for the balance of the term. Each member shall serve on the  
42 council until a successor is appointed in a like manner as the original  
43 appointee. In making appointments to the council, the governor shall

1 strive to ensure that at least one person serving on the council is 60 years  
2 of age or older and that at least one person serving on the council is a  
3 member of a racial minority. Each member of the council shall be a  
4 resident of the state of Kansas.

5 (e) The governor may consider for appointment to the council the  
6 names of persons recommended by the Kansas association of sleep pro-  
7 fessionals (KASP). KASP may submit a list of two names for each position  
8 to be filled by a polysomnographic technologist; a list of two names for  
9 the position to be filled by a licensed physician certified in sleep medicine;  
10 a list of two names for the position to be filled by a director of an ac-  
11 credited sleep center; and a list of two names for the position to be filled  
12 by a consumer.

13 (f) Members of the council attending meetings of the council, or at-  
14 tending a subcommittee meeting thereof authorized by the council or  
15 while engaged in business of the council authorized by the council, shall  
16 be paid amounts provided in subsection (e) of K.S.A. 75-3223, and  
17 amendments thereto, from the healing arts fee fund.

18 (g) The council shall choose, annually, a chair person and a secretary  
19 from among its members.

20 (h) The council shall hold at least one regular meeting each year and  
21 such other meetings as the council deems necessary to conduct its  
22 business.

23 (i) A majority of the members of the council shall constitute a quorum  
24 for the transaction of business. No action of the council shall be valid  
25 unless approved by a majority of members present at a meeting at which  
26 there is a quorum.

27 Sec. 4. The council shall advise the board regarding:

28 (a) Examination, licensing and other fees;

29 (b) rules and regulations to be adopted to carry out the provisions of  
30 this act;

31 (c) requirements of educational program and on the licensure  
32 examination;

33 (d) the content and quantity of any continuing education hours re-  
34 quired to maintain active licensure;

35 (e) changes and new requirements taking place in the area of poly-  
36 somnography; and

37 (f) such other duties and responsibilities as the board may assign.

38 Sec. 5. The board with the advice and assistance of the council, shall:

39 (a) Pass upon the qualifications of all applicants for examination and  
40 licensing, duly license applicants meeting the qualifications for licensure,  
41 and keep a roster of all individuals licensed;

42 (b) administer or contract for the administration of examinations for  
43 licensure;

1 (c) adopt rules and regulations as may be necessary to administer the  
2 provisions of this act and prescribe forms which shall be issued in the  
3 administration of this act;

4 (d) establish standards for approval of an educational course of study  
5 and clinical experience, criteria for continuing education and procedures  
6 for the examination of applicants; and

7 (e) establish standards of professional conduct, procedures for the  
8 discipline of licensees and keep a record of all proceedings.

9 Sec. 6. (a) An applicant applying for licensure as a polysomnographic  
10 technologist shall file a written application on forms provided by the  
11 board, showing to the satisfaction of the board that the applicant meets  
12 the following requirements:

13 (1) Education: The applicant shall present evidence satisfactory to the  
14 board of having successfully completed an educational program in poly-  
15 somnography recommended by the council and approved by the board.

16 (2) Examination: The applicant has passed an examination as pro-  
17 vided for in section 7, and amendments thereto.

18 (3) Fees: The applicant shall pay to the board all applicable fees es-  
19 tablished under section 9, and amendments thereto.

20 (b) The board shall adopt rules and regulations establishing the cri-  
21 teria for an educational program in polysomnographic technology to ob-  
22 tain approval by the board. The board may send a questionnaire devel-  
23 oped by the board to any program or other entity conducting an  
24 educational program in polysomnographic technology for which the board  
25 does not have sufficient information to determine whether the program  
26 should be approved by the board and whether the program meets the  
27 rules and regulations adopted under this section. The questionnaire pro-  
28 viding the necessary information shall be completed and returned to the  
29 board in order for the program to be considered for approval by the  
30 board. The board may contract with investigative agencies, commissions  
31 or consultants to assist the board in obtaining information about an ed-  
32 ucational program in polysomnographic technology. In entering such con-  
33 tracts the authority to approve of an educational program in polysom-  
34 nographic technology shall remain solely with the board.

35 Sec. 7. Each applicant for licensure under this act shall undergo an  
36 examination chosen by the board to test the applicant's knowledge of basic  
37 and clinical sciences relating to polysomnography and polysomnographic  
38 theory and practice, including the applicant's professional skills and judg-  
39 ment in the utilization of such techniques and methods, and such other  
40 subjects as the board may deem useful to determine the applicant's fitness  
41 to practice.

42 Sec. 8. (a) The board may waive the examination, education or ex-  
43 perience requirements and grant licensure to any applicant who presents

1 proof of current licensure or registration as a polysomnographic technol-  
2 ogist in another state, the District of Columbia or territory of the United  
3 States which requires standards for licensure or registration determined  
4 by the board to be equivalent to the requirements for licensure under  
5 this act.

6 (b) At the time of making an application under this section, the ap-  
7 plicant shall pay to the board the application fee as required under section  
8 9, and amendments thereto.

9 (c) The board may issue a special permit to a student enrolled in an  
10 approved program of polysomnography who applies for such special per-  
11 mit on a form provided by the board and who pays to the board the special  
12 permit fee as required under section 9, and amendments thereto. The  
13 special permit shall authorize a student who is enrolled in an approved  
14 program of polysomnographic technology and who holds such special per-  
15 mit to practice polysomnography under the supervision of a licensed po-  
16 lysomnographic technologist. Such special permit shall expire on the date  
17 that the student graduates from an approved program of polysomno-  
18 graphic technology or otherwise ceases to be enrolled in an approved  
19 program of polysomnographic technology.

20 (d) The board may issue a temporary license to an applicant for li-  
21 censure as a polysomnographic technologist who applies for temporary  
22 licensure on a form provided by the board, who meets the requirements  
23 for licensure or who meets all of the requirements for licensure except  
24 examination and who pays to the board the temporary license fee as re-  
25 quired under section 9, and amendments thereto. Such temporary licen-  
26 sure shall expire one year from the date of issue or on the date that the  
27 board approves the application for licensure, whichever occurs first. No  
28 more than one such temporary license shall be permitted to any one  
29 person.

30 Sec. 9. (a) The board shall charge and collect in advance fees pro-  
31 vided for in this act as fixed by the board by rules and regulations, subject  
32 to the following limitations:

33 Application fee, not more than .....	\$120
34 Temporary license fee, not more than .....	\$60
35 Special permit fee, not more than.....	\$120
36 License renewal fee, not more than .....	\$120
37 License late renewal fee, not more than .....	\$120
38 License reinstatement fee, not more than .....	\$120
39 Certified copy of license, not more than .....	\$40
40 Replacement license fee, not more than .....	\$40
41 Written verification of license, not more than.....	\$25

42 (b) The board shall charge and collect, in advance, fees for any ex-  
43 amination administered by the board under the polysomnographic prac-

1 tice act as fixed by the board by rules and regulations in an amount equal  
2 to the cost to the board of the examination. If the examination is not  
3 administered by the board, the board may require that fees paid for any  
4 examination under the polysomnographic practice act be paid directly to  
5 the examination service by the person taking the examination.

6 Sec. 10. The board shall remit all moneys received by or for the  
7 board from fees, charges or penalties to the state treasurer in accordance  
8 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon  
9 receipt of each such remittance, the state treasurer shall deposit the entire  
10 amount in the state treasury. Twenty percent of such amount shall be  
11 credited to the state general fund and the balance shall be credited to the  
12 healing arts fee fund. All expenditures from the healing arts fee fund shall  
13 be made in accordance with appropriation acts upon warrants of the di-  
14 rector of accounts and reports issued pursuant to vouchers approved by  
15 the president of the board or by a person or persons designated by the  
16 president.

17 Sec. 11. (a) Licenses shall be issued and renewed by the board pur-  
18 suant to the annual issuance and renewal system of the board.

19 (b) To be eligible for renewal of a license to engage in the practice  
20 of polysomnography, a polysomnographic technologist must continue to  
21 meet the licensure requirements of the board and maintain credentials  
22 recognized by the council.

23 (c) Any license issued by the board shall contain the name of the  
24 person to whom it is issued, the address of the person, the date and  
25 number of the license and such other information as the board deems  
26 necessary. The address contained on the license shall be the address  
27 where all correspondence and renewal forms from the board shall be sent.  
28 Any person whose address changes shall, within 30 days thereafter, notify  
29 the board of the address change. The most recent address contained in  
30 the board's records for each license holder shall be the address deemed  
31 sufficient for purposes of service of process.

32 (d) Every person issued a license under this act shall either keep such  
33 license prominently displayed in the place in which such person practices  
34 or immediately produced upon request.

35 (e) Any person whose license has been lost may make application to  
36 the board for a certified copy of such license.

37 (f) Any person whose name is changed by marriage or court order  
38 shall apply to the board for a replacement license containing the name  
39 change and pay the required replacement license fee.

40 Sec. 12. Foreign trained polysomnographic technologists shall satisfy  
41 the examination requirements of section 6, and amendments thereto. The  
42 board shall require foreign trained applicants to furnish proof of comple-  
43 tion of educational requirements, substantially equal to those contained

- 1 in section 6, and amendments thereto, prior to taking the examination.
- 2 Sec. 13. (a) On and after July 1, 2010, it shall be unlawful for any  
3 person to engage in the practice of polysomnography unless that person  
4 possesses a valid license issued under this act.
- 5 (b) It shall be unlawful for a licensee under this act to practice po-  
6 lysomnography in a location not approved by a qualified physician, except  
7 for the scoring of data and the education of patients. The use of positive  
8 airway pressure and interface fitting may take place in settings other than  
9 a sleep laboratory or sleep center.
- 10 (c) It shall be unlawful for a person who is not licensed under this  
11 act to depict one's self orally or in writing, expressly or by implication, as  
12 holder of a license who does not hold a current license under this act.
- 13 (d) It shall be unlawful for a person who is not licensed under this  
14 act to use the title "polysomnographic technologist", abbreviations  
15 thereof or words similar to such title.
- 16 (e) It shall be unlawful for a person who does not hold a valid permit  
17 under this act to function as a polysomnographic technician or use the  
18 title "polysomnographic technician".
- 19 (f) It shall be unlawful for any person to monitor, assess or implement  
20 other procedures designed to evaluate the effectiveness of a prescribed  
21 therapy unless that person is licensed under this act or acting pursuant  
22 to the delegation of a licensed polysomnographic technologist or other  
23 health care provider.
- 24 (g) Nothing in this act is intended to limit, preclude or otherwise  
25 interfere with the practices of other health care providers formally trained  
26 and licensed, registered, credentialed or certified by appropriate agencies  
27 of the state. The practice of polysomnography shall not be construed to  
28 include the following individuals:
- 29 (1) Persons rendering assistance in the case of an emergency.  
30 (2) Members of any church practicing their religious tenets.  
31 (3) Persons whose services are performed pursuant to the delegation  
32 of and under the supervision of a polysomnographic technologist who is  
33 licensed under this act.
- 34 (4) Health care providers in the United States armed forces, public  
35 health services, federal facilities and coast guard or other military service  
36 when acting in the line of duty in this state.
- 37 (5) Licensees under the healing arts act when licensed and practicing  
38 in accordance with the provisions of state law or persons performing serv-  
39 ices pursuant to the delegation of a licensed physician under subsection  
40 (g) of K.S.A. 65-2872, and amendments thereto.
- 41 (6) Dentists practicing their professions, when licensed and practic-  
42 ing in accordance with the provisions of state law.
- 43 (7) Nurses practicing their professions, when licensed and practicing



- 1 in accordance with the provisions of state law, or persons performing  
2 services pursuant to the delegation of a licensed nurse under subsection  
3 (m) of K.S.A. 65-1124, and amendments thereto.
- 4 (8) Health care providers who have been formally trained and are  
5 practicing in accordance with that training or have received specific train-  
6 ing in one or more functions included in this act pursuant to established  
7 educational protocols or both.
- 8 (9) Students while in actual attendance in an accredited health care  
9 occupational educational program and under the supervision of a quali-  
10 fied instructor.
- 11 (10) Self-care by a patient or gratuitous care by a friend or family  
12 member who does not represent or hold oneself out to the public to be  
13 a polysomnographic technologist.
- 14 (11) The monitoring, installation or delivery of medical devices, gases  
15 and equipment and the maintenance thereof by a non-licensed person  
16 for the express purpose of self-care by a patient or gratuitous care by a  
17 friend or family member.
- 18 (h) Nothing in this act shall be construed to permit the practice of  
19 medicine and surgery.
- 20 (i) No statute granting authority to licensees of the state board of  
21 healing arts shall be construed to confer authority upon a polysomno-  
22 graphic technologist to engage in any activity not conferred by this act.
- 23 (j) Nothing in this act shall apply to diagnostic electroencephalograms  
24 conducted in accordance with the guidelines of the American clinical  
25 neurophysiology society.
- 26 Sec. 14. (a) The license of a polysomnographic technologist may be  
27 limited, suspended or revoked or the licensee may be censured, repri-  
28 manded or fined pursuant to K.S.A. 65-2863a, and amendments thereto,  
29 or otherwise sanctioned by the board or an application for licensure may  
30 be denied if it is found that the licensee or applicant:
- 31 (1) Is guilty of fraud or deceit in the procurement or holding of a  
32 license;
- 33 (2) has been convicted of a felony in a court of competent jurisdiction,  
34 either within or outside of this state, unless the conviction has been re-  
35 versed and the holder of the license discharged or acquitted or if the  
36 holder has been pardoned with full restoration of civil rights in which  
37 case the license shall be restored;
- 38 (3) is addicted to or has distributed intoxicating liquors or drugs for  
39 other than lawful purposes;
- 40 (4) is found to be mentally or physically incapacitated to such a degree  
41 that in the opinion of the board continued practice by the licensee would  
42 constitute a danger to the public's health and safety;
- 43 (5) has aided and abetted a person to perform the practice of poly-

1 somnography who is not a licensee under this act or is not otherwise  
2 authorized to perform the duties under this act;

3 (6) has undertaken or engaged in any practice beyond the scope of  
4 duties permitted a licensee;

5 (7) has engaged in the practice of polysomnographic technology un-  
6 der a false or assumed name or impersonated another licensee;

7 (8) has been found guilty of unprofessional conduct under criteria  
8 which the board may establish by rules and regulations;

9 (9) has interpreted diagnostic data to a patient; or

10 (10) is, or has been, found guilty of incompetence or negligence while  
11 performing as a license holder.

12 (b) (1) The denial, refusal to renew, suspension, limitation or revo-  
13 cation of a license or other sanction may be ordered by the board after  
14 notice and hearing on the matter in accordance with the provisions of the  
15 Kansas administrative procedure act and shall be reviewable in accord-  
16 ance with the act for judicial review and civil enforcement of agency  
17 actions.

18 (2) A person whose license is suspended shall not engage in any con-  
19 duct or activity in violation of the order by which the license was sus-  
20 pended.

21 (c) Upon the end of the period of time established by the board for  
22 the revocation of a license, application may be made to the board for  
23 reinstatement. The board shall have discretion to accept or reject an ap-  
24 plication for reinstatement and may hold a hearing to consider such re-  
25 instatement. An application for reinstatement of a revoked license shall  
26 be accompanied by the license renewal fee and the license reinstatement  
27 fee established under section 9, and amendments thereto.

28 Sec. 15. When it appears that any person is violating any provision  
29 of this act, the board may bring an action in the name of the state in a  
30 court of competent jurisdiction for an injunction against such violation  
31 without regard as to whether proceedings have been or may be instituted  
32 before the board or whether criminal proceedings have been or may be  
33 instituted.

34 Sec. 16. Any person who engages in the practice of polysomnography  
35 in violation of the provisions of this act is guilty of a class B misdemeanor.

36 Sec. 17. If any section of this act, or any part thereof, is adjudged by  
37 any court of competent jurisdiction to be invalid, such judgment shall not  
38 affect, impair or invalidate the remainder or any other section or part  
39 thereof.

40 Sec. 18. This act shall take effect and be in force from and after its  
41 publication in the statute book.