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Sequence Number: 04-22-12
 Rule ID(s): 5200
 File Date: 04/26/2012
 Effective Date: 07/25/2012

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Board of Respiratory Care
Division:	
Contact Person:	Mona N. Jean-Baptiste, Assistant General Counsel
Address:	Plaza One, Suite 210, 220 Athens Way, Nashville, Tennessee
Zip:	37243
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1330-01	General Rules and Regulations Governing Respiratory Care Practitioners
Rule Number	Rule Title
1330-01-.24	Endorsement of Respiratory Therapists to Provide Polysomnographic Services

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rule 1330-01-.24 Endorsement of Respiratory Therapists to Provide Polysomnographic Services is amended by deleting part (1)(c) 3. but not its subparts, and substituting instead the following language, so as amended, the new part (1)(c) 3. shall read:

3. Proof of completion of the Sleep Center or Sleep Lab Competency Checklist, as approved by this Board, signed by both the director of the sleep lab and the medical director from a current employing facility, verifying that an individual certified as a respiratory therapist has obtained a minimum of five hundred and four (504) hours in a sleep center or sleep laboratory or that an individual registered as a respiratory therapist has obtained a minimum of two hundred and fifty-two (252) hours in a sleep lab or sleep center, and outlining competency relative to the following topics, which include, but are not limited to:

Authority: T.C.A. §§ 63-31-107 and 63-27-104.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Teresa Dudley Hatcher	X				
Roger M. Major	X				
Candace Partee	X				
Ray Davis	X				
Delmar Mack, Ed.D	X				
Brian T. Cook	X				
Gene Gantt	X				
Jeffery McCartney, M.D.				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Respiratory Care on 11/10/2011, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/02/2011

Rulemaking Hearing(s) Conducted on: (add more dates). 11/10/2011

Date: 21 December 2011

Signature: Mona N. Jean-Baptiste

Name of Officer: Mona Nicole Jean-Baptiste
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 12/21/11

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/3/15



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper Jr
Robert E. Cooper, Jr.
Attorney General and Reporter
4-22-12
Date

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Filed with the Department of State on: 4/26/2012

Effective on: 7/25/2012

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Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Kelly A. Carden, M.D., St. Thomas Physician Services, commented that of the nine (9) states that license polysomnography Tennessee is the only state that allows respiratory care therapists to practice as polysomnographic technologists without the training and allow this "third pathway". All other jurisdictions allow respiratory care therapists to practice polysomnography to the extent that their current training and duties *overlap with* polysomnographic duties rather than fully functioning as polysomnographic technologists.

The Board declined to respond to this comment as it was outside the scope of the rule being considered at the rulemaking hearing.

J. Brevard Haynes, St. Thomas Physician Services, expressed concern that these respiratory care therapists were not getting the requisite number of hours to meet the rule's requirement at accredited sleep centers under the supervision of doctors certified in sleep medicine.

The Board declined to respond to this comment as it was outside the scope of the rule being considered at the rulemaking hearing.

Walter Holland, Tennessee Sleep Society, the hours are in line with the national certification exam which is an appropriate subjective measure of competency. The hours in these sleep labs do not, however, objectively measure a respiratory therapist's competency to perform sleep studies.

The Board declined to respond to this comment as it was outside the scope of the rule being considered at the rulemaking hearing.

Paul Anderson, St. Thomas Health Services, supports bringing respiratory care therapists into the field of sleep medicine. Further, Mr. Anderson believes that the hours are acceptable. Respiratory Therapists can be watched under the tutelage of supervising physicians and can be provided a basis to launch and the citizens of Tennessee can continue to be cared for. Mr. Anderson also indicated a concern that these competency hours would be obtained in unaccredited sleep labs.

As the portions of this comment that required response went outside the scope of the rule being considered the Board declined to respond.

Colleen Schahbacker, Cookeville Regional Medical Center, opposes the increase in the hours to prove competency. Ms. Schahbacker believes that respiratory therapists will have difficulty finding sites to acquire the required hours. She also believes that respiratory therapists are more than capable of providing sleep services as they are passing the Board of Registered Polysomnographic Technologists Exam at a higher rate than persons trained as polysomnographic technologists.

The Board declined to respond to this comment.

R. David Johnson, Tennessee Society for Respiratory Care, believes that this rule is a reasonable compromise that is the result of hours of negotiation. Mr. Johnson recognizes that sleep topics are not covered in respiratory care curriculum which is why this is a reasonable measure that the Tennessee Society for Respiratory Care supports.

The Board thanked Mr. Johnson for his comment.

Burke L. Mays, Mays & Associates, wrote a letter expressing concern about the 252 hour requirement that respiratory therapists must obtain in sleep centers in order to prove competence. He believes that this requirement is difficult to meet in rural settings operates under the premise that the sleep centers must be accredited. Mr. Mays claims that these requirements are an undue burden on the respiratory therapists, their

families and the rural centers for which they work.

The Board declined to answer this comment as it was outside the scope of the rule being considered at the rulemaking hearing.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Addendum

Regulatory Flexibility Analysis

Pursuant to the regulatory Flexibility Act of 2007, 2007 Pub. Acts, c. 464, § 4, eff. June 21, 2007, the Department of Health submits the following regulatory flexibility analysis:

- (1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The proposed rule does not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

- (2) Clarity, conciseness, and lack of ambiguity in the rule:

The proposed rule exhibits clarity, conciseness, and lack of ambiguity in the rule.

- (3) The establishment of flexible compliance and reporting requirements for small businesses:

The proposed rule does not create an ongoing reporting requirement and allows for flexible mechanisms for initial compliance.

- (4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

There are no reporting requirements contained in the proposed rule.

- (5) The consolidation or simplification of compliance or reporting requirements for small businesses:

There are no reporting requirements contained in the proposed rule.

- (6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

The proposed rule does not establish design or operational standards.

- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rule creates no entry barriers or other effects that would stifle entrepreneurial activity, curb innovation, or increase cost.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules will not have an effect on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rule 1330-01-.24 (1) outlines the three methods by which certified and registered respiratory therapists may become endorsed by the Board of Respiratory Care to provide polysomnographic services pursuant to T.C.A. §63-31-107(a)(5). The primary method requires credentialing as a registered polysomnographic technologist by the board of polysomnographic technologists. The second method requires the respiratory therapist be credentialed as a sleep disorder specialist by the national board of respiratory care. The third mechanism requires that an individual certified as a respiratory therapist provide proof of completion of a minimum of five hundred and four (504) hours in a sleep lab or an individual registered as a respiratory therapist has obtained a minimum of two hundred and fifty-two (252) hours in a sleep lab or center and submit a board approved Sleep Center or Lab Competency Checklist documenting the required hours and competency relative to polysomnography.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The new rule was promulgated to implement Public Chapter 421 of the 2009 Public Acts codified in T.C.A. §§ 63-31-107(a)(5).

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Persons certified or registered as respiratory care therapists that wish to provide polysomnographic services after July 1, 2010.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

I am unaware of any opinion of the Attorney General or any judicial ruling which directly relates to this rule.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The amended rule will have neither a positive nor a negative fiscal impact.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Marva Swann, Executive Director and I possess substantial knowledge and understanding of the amended rule.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Marva Swann, Executive Director and I will explain the amended rule at a scheduled meeting of the Committee.

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

I, Mona Nicole Jean-Baptiste, may be reached at the Department of Health, Office of General Counsel, Plaza One, Suite 210, 220 Athens Way, Nashville, Tennessee 37243 ((615) 741-1611); Mona.N.Jean-Baptiste@tn.gov. Marva Swann may be reached at the Department of Health, Health Related Boards, 227

French Landing, Suite 300, Nashville, Tennessee 37243 ((615) 532-5163); Marva.Swann@tn.gov

(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

I, as well as the Executive Director, Marva Swann will provide any additional information requested by the Committee relative to the amended rule.

**1330-01-.24 ENDORSEMENT OF RESPIRATORY THERAPISTS TO PROVIDE
POLYSOMNOGRAPHIC SERVICES.**

- (1) In order for a licensee of this Board to practice polysomnography without obtaining licensure from the Polysomnographic Professional Standards Committee, the licensee must obtain an endorsement from this Board. In order to obtain an endorsement, a licensee shall provide this Board with the following:
- (a) A completed and signed polysomnographic services endorsement form, as approved by this Board; and
 - (b) Proof of possessing a valid, active, and unrestricted license as a Registered Respiratory Therapist or Certified Respiratory Therapist, issued by this Board; and
 - (c) One of the following:
 - 1. Certification by the National Board of Registered Polysomnographic Technologists as a registered polysomnographic technologist; or
 - 2. Certification by the National Board of Respiratory Care as a sleep disorder specialist; or
 - ~~3. Proof of completion of the Sleep Center or Sleep Lab Competency Checklist, as approved by this Board, signed by both the director of the sleep lab and medical director from a current employing facility, verifying a minimum of one hundred (100) hours in a sleep lab or sleep center, and outlining competency relative to the following topics, which include, but are not limited to:~~
 - 3. Proof of completion of the Sleep Center or Sleep Lab Competency Checklist, as approved by this Board, signed by both the director of the sleep lab and the medical director from a current employing facility, verifying that an individual certified as a respiratory therapist has obtained a minimum of five hundred and four (504) hours in a sleep center or sleep laboratory or that an individual registered as a respiratory therapist has obtained a minimum of two hundred and fifty-two (252) hours in a sleep lab or sleep center, and outlining competency relative to the following topics, which include, but are not limited to:
 - (i) Patient safety, rapport, preparation, education and confidentiality;
 - (ii) Setup, function, calibration, operation and maintenance of all relative equipment;
 - (iii) Monitoring, recording, and analysis of physiologic data as defined under T.C.A. § 63-31-101(9)(a)(i);
 - (iv) Appropriate corrective and emergency procedures as appropriate, according to lab/center policies; and
 - (v) Implementation of the applicable treatment procedures according to lab/center policy and procedure.

Authority: T.C.A. §§ 63-31-107 and 63-27-104. **Administrative History:** Emergency rule filed June 30, 2010; effective through December 27, 2010. Original rule filed September 24, 2010; effective December 23, 2010.