State Legislative Issues

Summer 2007

Tom McCarthy, RRT
Chair
AARC State Government Affairs Committee
✓ Legislative sessions usually run for 90 - 120 days.

✓ During that time, >2,000 pieces of legislation can be considered.

✓ Legislators can’t devote hours to investigate every aspect of a bill. They will, often time, rely on advice from staff or information from lobbyists and professional groups.

✓ The process is fast, and if you are not informed & prepared and you don’t have access to legislators, …..the train will leave without you!

90 days Maryland & New Mexico Jan-Mar; Montana 120 days Jan-April; New Jersey 2 years – 40 sessions/yr
Fiduciary Responsibility & Due Diligence

✓ State Society Boards are required to do their homework and be prepared.

✓ Monitoring legislation, reading legislation, to determine how legislation might effect the profession.

✓ All this takes a great deal of time & effort, but is required.

“State Society Boards of Directors: Legislative Impact of Board Behavior”

“State Society Boards of Directors: Legislative Impact of Board Behavior” HOD Newsletter Dec 2006

These days, I wouldn’t sit on a Board unless it had adequate D&O insurance and few exclusionary clauses.

The costs associated with defending an allegation of a wrongful act can easily exceed $50,000 and the publicity associated with the defense could potentially destroy the credibility of the Society.
Boards dealing with legislation of this type should absolutely have a well versed lobbyist.

Boards may also utilize the resources of the AARC for information, position statements, language analysis, etc.

Remember…the purpose of a Board is to serve the membership.

“Well versed lobbyist” is someone who understands your issues well, not someone you have to train.

If you can’t afford a lobbyist determine how best to have Society Board members work with the AARC.

Sometimes Board members are too close to the language of a bill or only focused on certain parts of it. An external third party review is always a good idea.
Time & effort requirements are increased when the language in a bill is misleading and/or confusing.

Sometimes the strategy is to mislead and confuse so as to camouflage the actual intent of the bill.

Proponents will also attempt to further confuse the issue by portraying legitimate opposition as the initiation of a “turf war”.

The more misleading and confusing the language is, the more time, money and effort you will utilize to decipher it and then rationally explain it to a legislator.

Legislators have an acute disdain for mediating turf wars. If a proponent can convince a legislator that you are opposing a bill solely to protect your turf, they have diminished your argument. You have to be clear, concise and have factual arguments in order to prevail.
Hidden Agenda Bills

Bill may be portrayed as a "Patient Safety" or "Patient Access" bill protecting the public. Sounds good.

The actual language contained in the bill, however, may serve to benefit a specific business enterprise.

This type of bill would actually be classified as an "Industry Bill"

Language in a bill is not always what it appears to be on its face. Once a bill is law, that's it. You live with what it says.
✓ Outcomes from legislation crafted in this manner often time have consequences that no one perceived.

✓ These are exactly the outcomes that proponents of such legislation desire.

✓ Identification of the facts, the composition and intent of a bill, is of primary importance.

✓ It is also part of a Boards’ fiduciary responsibility to the membership.

None of this is easy and it takes a lot of time and effort. Some times debating the merits or the language of a bill can become heated. Yet the consequences can be significant for patients and the profession with any of these legislative initiatives.
Case in Point

- Legislation to license Polysoms in several states.

- Utilizes misleading language that would lead the reader of the bill to assume, among other things, that business enterprises such as A-STEP are on the same level as CAAHEP accredited programs.
Some of the Language (clustering)

“….a polysomnography program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), an Accredited Sleep Technologist Educational Program (A-STEP), or the Committee on Accreditation of Education for Polysomnographic Technologists (CoA-PSG)”

Clustering places disjointed entities together so that they appear, to the eye of the reader, to be equivalent. Alphabet soup enhances the clustering effect. Keep in mind that legislators don’t have the time to identify and compare the merits of the components. That’s your job.
Intent

The intent is to make the reader believe that A-STEP is accredited at the same level that a CAAHEP program is accredited at and has the same standards.

Reference to CoA-PSG is thrown in for good measure to stir the alphabet soup so that legislators are impressed.
The Reality

✓ CAAHEP is an educational accrediting body recognized by CHEA.

✓ A-STEP is an 80 hour (48.25 hours of didactic) employee based industry course, based on a job description and accredited by the industry (AASM)

✓ CoA-PSG does not accredit educational programs.

Commission on Accreditation of Allied Health Education Programs; Council for Higher Education Accreditation; Committee on Accreditation for Polysomnographic Technology (CoA-PSG).
Contradiction in the Cluster

✓ In 2004 CoA-PSG (AASM, AAST, BRPT & CAAHEP) agreed to "minimum standards" for accreditation.

✓ The A-STEP "standards" fall woefully short of these agreed to CoA-PSG standards.

✓ The AASM & AAST have endorsed both at the same time and want legislators to believe that they are equivalent.
Linked Language

“Polysomnographic technician” means a person who has graduated from an accredited educational program described in § (Reference Sec.) but has not yet passed the national certifying examination given by the board of registered polysomnographic technologists, who has obtained a temporary permit from the board, and who may provide sleep-related services under the general supervision of a licensed physician;

Linked language appears in almost all legislation for purposes of clarifying and defining. It can also be used to link a definition to a disjointed cluster. General supervision here means that “the physician’s presence is not required during the performance of the procedure” General supervision means the physician doesn’t have to even be on site.

We have seen this exact language in several bills.
1. Graduation from a Polysomnographic educational program that is accredited by CAAHEP.

2. Graduation from a Respiratory Care educational program accredited by CAAHEP and completion of the curriculum for a polysomnography certificate established by CoARC.

Cluster 1-4 complete with alphabet soup.
§ Reference Sec.

3. Graduation from an electroneurodiagnostic technologist educational program with a polysomnographic technology track that is accredited by CAAHEP.

4. Successful completion of an Accredited Sleep Technologist Educational Program (A-STEP) that is accredited by the American Academy of Sleep Medicine.
1. = CAAHEP accredited 1yr or 2yr post secondary education program.

2. = CAAHEP accredited 2yr post secondary education program with specialty certificate (CoARC).

3. = CAAHEP accredited 2yr post secondary education program.

4. = 2 week course accredited by a non accrediting agency.
Essentially, what this means in the context of this particular bill is that a person can walk in off the street, be hired, graduate A-STEP in a few weeks time, and then work with patients under the general supervision of a physician for 15 months.

*Meanwhile, licensed Respiratory Therapists are specifically limited from functioning under the general supervision of a physician unless they are also an RPsgT.*
“A respiratory therapist licensed under chapter XX of this title, may provide sleep-related services under the general supervision of a licensed physician if the licensed respiratory therapist is credentialed by the BRPT”

“Respiratory therapists performing sleep-related services shall be subject to disciplinary action by the board of respiratory care if they fail to adhere to the standards established under this chapter.”

This language restricts practice and imposes disciplinary action specifically on Respiratory Therapists.
This is extremely restrictive language that specifically targets Respiratory Therapists.

> 60% of the Polysom scope is comprised of the scope of Respiratory Therapy

What this language says is that if you graduate a CAAHEP program and are credentialed, there are restrictions on your practice.

While if you are not a graduate of a CAAHEP program and are not credentialed, there are no restrictions.
Additionally, as of July 1, 2008 in order to take the BRPT exam and become an RPsgT, a licensed RCP must, per the BRPT, complete the A-STEP 14 learning modules course. At a cost of about $610.00.

The language also indicates that the licensed RCP would be working at a Technician’s rate.

Since the AASM is not recognized as an educational accrediting body by CHEA or the USDE, Federal educational assistance is unlikely.

$50.00 registration and $40.00 per module.
Thus, RT services that are part of the scope of practice of the licensed RCP who wishes to practice in a sleep facility will be restricted.

The RT will have to take the A-STEP course and the RPSGT exam.

That may very well cost at least $970.00, and the RT will most likely be paid at a "technician" rate.

RT members will have a bone to pick with their State Society if the Society is on record as having supported this type of legislation.

Since A-STEP is not accredited by a CHEA or USDE recognized accrediting agency, the RT cannot apply for Federal education funds.
✓ The A-Step course is “on the job” training required to take place in an AASM approved sleep facility/entity.

✓ How does the RT obtain the training if the sleep facility where he/she is employed is NOT AASM approved?

✓ This will essentially take the RT out of the work force.
If I am a patient with co-morbidities undergoing tests in a free standing sleep entity with a technician who was working at Pizza Hut just last month, and is now functioning under general supervision, my only link to salvation may be the 911 operator.

If any harm befalls me either I or my family will have a bone to pick with any professional society that endorsed placing me in an unsafe situation.

Hypertension, diabetes, CAD.
When the Smoke Clears

We have language that:
- Limits the practice of other licensed professions
- By arrangement with the BRPT, requires A-STEP
- Can impose educational costs of $610.00 for A-STEP
- Can impose exam costs of $360.00 from the BRPT
- Negates requirements for post secondary education
- Lowers standards
- Decreases public expectations for education & safety
- Precludes Federal educational assistance
- Assures a cheap and plentiful labor force for the industry
Several Arguments We Hear

✓ Often time we hear the same arguments as we attempt to debate the language in many of these bills.

✓ They appear to be pre set positions.

✓ Attempting to debate them and/or discern factual data, will heat the tone of the debate.

✓ Facts, however, do speak for themselves.

Data to frame these arguments in realistic terms is often a matter of public record. Society board members should do their homework and review all of the data that they can to clarify arguments presented to them.
Argument #1

✓ These positions are often sustained and forwarded by official position statements and publications of several prestigious organizations, so they must be credible.

✓ American Academy of Sleep Medicine (AASM); American Association of Sleep Technologists (AAST); American Sleep Foundation (ASF); American Insomnia Association (AIA); Associated Professional Sleep Societies (APSS); Academy of Dental Sleep Medicine (ADSM); Sleep Journal; American Board of Sleep Medicine (ABSM); Sleep Research Society (SRS)

Access and review of publicly available IRS 990 forms can provide this type of information.
American Academy of Sleep Medicine

501 (c) (6) Business League

1 Westbrook Corporate Center, Suite 920
Westchester, IL 60154

Executive Director: Jerome Barrett

The AASM was originally formed as the Association of Sleep Disorders Centers in 1975.
American Sleep Foundation

501 (c) (3) Public Charity

1 Westbrook Corporate Center, Suite 920
Westchester, IL 60154

Executive Director: Jerome Barrett
American Insomnia Association

501 (c) (3) Public Charity

1 Westbrook Corporate Center, Suite 920
Westchester, IL 60154

Executive Director: Jerome Barrett
Associated Professional Sleep Societies, LLC

1 Westbrook Corporate Center, Suite 920
Westchester, IL 60154

Executive Director: Jerome Barrett

Business that is in partnership with and financially supports the Sleep Research Society

Journal Sleep is the official publication of Associated Professionals Sleep Societies and is a joint venture with AASM and the Sleep Research Society
Academy of Dental Sleep Medicine

501 (c) (3) Public Charity

1 Westbrook Corporate Center, Suite 920
Westchester, IL 60154

Executive Director:  Jerome Barrett
Association of Polysomnographic Technologists
AKA
American Association of Sleep Technologists

501 (c) (6) Business league

1 Westbrook Corporate Center, Suite 920
Westchester, IL 60154

Executive Director: Jerome Barrett
Sleep Journal

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American Board of Sleep Medicine

501 (c) (6) Business League

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The ABSM is not affiliated with the American Board of Medical Specialties

In 2007 the ABSM ceased administering its examination.

Sleep Medicine is viewed by the ABMS as a sub specialty of American Board of Internal Medicine, American Board of Psychiatry and Neurology, American Board of Pediatrics and American Board of Otolaryngology
Sleep Research Society

501(c) (3) Public Charity

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Westchester, IL 60154

2003 Partnership income of $206,034 from Associated Professional Sleep Societies
Argument #2

✓ We need to have A-Step and forgo post secondary education because there are no CAAHEP accredited educational programs. We are an emerging profession.
The lack of existing post secondary education, by definition, makes Polysomnography an occupation in this context....not a profession.

- How do the Canadians handle this issue?
- How is New York handling this issue?

AASM has been established since 1975 (32 years).
College of Physicians & Surgeons of Alberta

Sleep Medicine – Private Facility
Standards and Guidelines

September 2002
3.31 Technical staff performing sleep studies shall:

1. Be registered by the BRPT and maintain active certification -or-, 

2. Be a graduate of a community college or a university in a health care related subject. This may include, but is not limited to RRT, RPFT, ReegT, RN, Biomedical Engineer -and-

have completed a minimum of three months supervised training in a sleep medicine laboratory.
The Canadians handle this “lack of educational programs” issue by recognizing other health related professions that require post secondary education.

Most of the legislation we have been reviewing in several states takes the counter intuitive approach of excluding other professions and dropping the requirement for post secondary education.

Most but not all.
New York

“Education: have received an education including an associate degree in polysomnographic studies from a program registered by the department, or another associate degree program determined by the department to be substantially equivalent, from an accredited college or university in accordance with the commissioner's regulations.”
In addition, the New York language clearly prohibits any restriction of the practice of Respiratory Care

**This article shall not prohibit:**

“Licensed respiratory therapists or respiratory therapy technicians practicing those professional services and procedures within the practice of polysomnographic technology.”
In Conclusion

✓ Things move fast !!!!

✓ Legislative language can be very confusing.

✓ Outcomes can be deleterious to the membership

✓ You can be held accountable to the membership, patient advocacy groups or the AG.
➢ Pursue your fiduciary responsibilities.

➢ Avoid conflicts of interest.

➢ Keep the membership informed.

➢ Get a savvy lobbyist who has no conflict of interest !!!

➢ Utilize available resources.