

RESPIRATORY CARE BOARD
Department of Consumer Affairs
California Code of Regulations. Title 16. Division 13.6 Respiratory Care Board
DISCIPLINARY GUIDELINES, CITATION AND FINE, FEES, AND VARIOUS REGULATORY REVISIONS

PROPOSED LANGUAGE

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 13.6. Respiratory Care Board of California

ARTICLE 1. GENERAL PROVISIONS

Amend Section 1399.301 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.301. Location of Office.

The principal office of the Respiratory Care Board of California is located at 444 North 3rd Street, Suite 270, Sacramento, CA 95841.

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Section 3722, Business and Professions Code.

Amend Section 1399.302 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.302. Definitions.

Unless the context otherwise requires, the following definitions shall apply:

- (a) "Board" means the Respiratory Care Board of California.
- (b) "B&PC" means the Business and Professions Code.
- (c) "Act" means the Respiratory Care Practice Act.
- (d) "Direct Supervision" means assigned to a currently licensed respiratory care practitioner who is on duty and immediately available in the assigned patient area.
- (e) "Employer" means any company, corporation, partnership, health maintenance organization, registry, staffing agent or agency, or any other entity or person that employs or contracts with, one or more respiratory care practitioners, ~~or unlicensed personnel, or any person,~~ to provide respiratory care services as provided in the Act.
- (f) "Licensed Home Care Employer" means a Home Medical Device Retail Facility, Home Health Agency, or any home care provider licensed by the California Department of Public Health, the Department of Health Care Services or its their successors.
- (g) "Regulations" means Division 13.6 of Title 16 of the California Code of Regulations.
- (h) "Unlicensed Personnel" means any individual who is not otherwise exempt, or who does not hold a valid and current license issued by the board. ~~not otherwise authorized or exempt to provide respiratory care services except as provided for in Article 6.~~

Note: Authority cited: Sections 3704, ~~and~~ 3722, 3739, 3742, 3760, and 3761 Business and Professions Code. Reference: Sections 3704, ~~and~~ 3717, 3722, 3739, 3742, 3758, 3758.6, 3760, 3761, 3767, 3773, and 3777 Business and Professions Code.

Amend Section 1399.303 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.303. Delegation of Authority.

(a) Except for those powers reserved exclusively for the "agency itself" under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the board delegates and confers upon the executive officer of the board, or in his or her absence, the president of the board, the power and discretion to prepare, receive and file accusations, statements of issues and stipulated settlements; issue notices of hearings; and statements to respondents and statements of issues; receive and file notices of defense and proposed and final decisions; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; calendar cases for hearing; prepare and file, proposed default decisions; adopt stipulated settlements where an action to revoke the license has been filed, and the respondent agrees to surrender his or her license, and perform other functions necessary to the businesslike dispatch of the business of the board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code.

(b) The executive officer is further authorized, ~~subject to the approval of the board~~, to investigate and evaluate each applicant for licensure under the Act, and to issue or deny a license in conformance with the provisions of the B&PC, the Act, this chapter, and disciplinary guidelines.

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Sections 3716 and 3753, Business and Professions Code.

ARTICLE 2. APPLICATIONS

Amend Section 1399.320 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.320. Applications.

(a) Documentation related to the initial application process shall not be submitted more than ~~30~~ 90 days prior to the receipt of an initial application. If an application is not received within ~~30~~ 90 days, the submitted material will be destroyed.

Note: Authority cited: Section 3730, Business and Professions Code. Reference: Sections 3732, 3733, 3735, ~~3735.3~~, 3735.5 and 3740, Business and Professions Code.

ARTICLE 3. EDUCATION AND EXPERIENCE

Amend Section 1399.330 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.330. Education Waiver Criteria.

(a) The board may waive the education requirements in ~~s~~Section 3740 of the B&PC if an applicant for licensure

(1) Either successfully completed a minimum of a one-year respiratory care program supported by the Committee on Accreditation for Respiratory Care or its predecessor, prior to July 1, 2004 or previously held a license in good standing issued by the board and

(A) Holds a current valid license in good standing in another state, United States territory or Canadian province and has practiced respiratory care in that jurisdiction for a minimum of two years full time within the three years immediately preceding filing an application for licensure in this state; or

(B) Has practiced respiratory care in another state or United States territory, for a minimum of three years full time within the four years immediately preceding filing an application for licensure in this

state, and that state or territory does not regulate the practice of respiratory care at the time the application for licensure is filed.

(2) Has not completed a respiratory care program described in subdivision (1) above but either
(A) Holds a current valid license in good standing in another state, United States territory or Canadian province and has competently practiced respiratory care in that state, United States territory or Canadian province for a minimum of four years full time within the five years immediately preceding filing an application for licensure in this state; or

(B) Has practiced respiratory care in another state or United States territory, for a minimum of five years full time within the six years immediately preceding filing an application for licensure in this state, and that state or territory does not license the practice of respiratory care at the time the application for licensure is filed.

(3) Does not meet the criteria described in subdivisions (1) or (2) above, but

(A) Has completed a minimum of a one-year respiratory care program supported by the Committee on Accreditation for Respiratory Care or its predecessor, and

(B) Has practiced respiratory care while serving in the U.S. military for a minimum of two years, full time, within the four years immediately preceding filing an application for licensure in this state, and

(C) The U.S. military verifies the applicant is in "good standing" as it pertains to his or her past or current employment.

(b) As used in this section, "good standing" means the applicant

(1) is not currently under investigation;

(2) has not been charged with an offense for any act substantially related to the practice of respiratory care by any public agency;

(3) has not entered into any consent agreement or been subject to an administrative disciplinary decision including any voluntary surrender of license; and

(4) has not been the subject of an adverse judgment or arbitration award resulting from a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in the practice of respiratory care.

(c) An applicant must provide sufficient documentary evidence to establish to the satisfaction of the board, that the applicant meets each requirement in the pathway under which the applicant is attempting to qualify. An applicant shall sign a release authorizing the board to obtain copies of personnel records or any other documentation that establishes the applicant's qualifications for a waiver of the educational requirements.

(d) This section shall not be construed to require the board to waive education requirements for any reason including, but not limited to, poor work performance, habits or communication, insufficient documentation to ascertain waiver criteria has been met, or employment with staffing agencies or registries where the applicant's experience is based on working at three or more sites.

(e) The application fee shall not be refunded for any application where education requirements are not waived pursuant to this section.

Note: Authority cited: Sections 3722 and 3740, Business and Professions Code. Reference: Sections 35 and 3740, Business and Professions Code.

ARTICLE 4. EXAMINATIONS

Repeal Section 1399.340 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

~~§ 1399.340. Failure on Examinations:~~

~~For purposes of B&PC section 3739, the "next available examination" shall mean the board's state licensing examination, or the National Board for Respiratory Care, Inc. entry level certification examination for respiratory therapy. Failure of either examination, or failure to take either examination as scheduled except for due cause, shall result in termination of the privilege to work as a "respiratory care practitioner applicant".~~

~~Note: Authority cited: Section 3722, Business and Professions Code. Reference: Section 3739, Business and Professions Code.~~

ARTICLE 5. CONTINUING EDUCATION

Amend Section 1399.352.7 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.352.7. Law and Professional Ethics Course Criteria.

An acceptable course in law and professional ethics shall meet the following criteria and be approved by the board:

(a) The course shall be provided by the American Association for Respiratory Care or the California Society for Respiratory Care.

(b) The course shall be three hours in length. One hour of instruction shall consist of not less than 50 minutes of actual classroom time or actual time spent by the licensee completing the coursework on the internet.

(c) The content of the course shall consist of the following subject areas:

- (1) Obligations of licensed respiratory care practitioners to patients under their care;
- (2) Responsibilities of respiratory care practitioners to report illegal activities occurring in the work place; and
- (3) Acts that jeopardize licensure and licensure status.

~~(d) One hour of instruction shall consist of not less than 50 minutes of actual classroom time or actual time spent by the licensee completing the coursework on the internet.~~

(d) The course shall meet all of the following requirements:

(1) The course shall consist of two (2) hours dedicated to professional ethics and one (1) hour toward California law. The board may opt to prepare or edit in full or part, any portion of the course.

(2) The course title shall be "Law and Professional Ethics."

(3) Delivery and format of the course shall be user-friendly and captivating with sufficient visual capabilities as determined by the board.

(4) The course will be at least thirty (30) pages of written material with at least twenty (20) test questions related to professional ethics and ten (10) related to California law.

(5) Course content must include course description, course objectives, references, scenarios, questions, certificate of completion and legal disclosures, as applicable.

(6) The course shall provide several segments. Each segment must include a narrative or discussion, a scenario, and at least one question. For each question there must be between three and six possible responses with only one correct answer. Each response must include an explanation as to why the response is incorrect or correct. The number of questions tied to each segment may vary, as each component will differ in length and content.

(7) The course will include at least thirty (30) scenario-based questions that require critical thinking skills.

(8) The provider shall submit course test scores, names and other course related information to the board, as requested by the board.

(9) The provider shall not charge more than thirty dollars (\$30) for board applicants and sixty dollars (\$60) for board licensees or petitioners.

(10) The provider shall ensure that procedures are in place to address Americans with Disabilities Act (ADA) requests.

(11) The participant shall be allowed one (1) year to complete the course/exam after enrollment.

(12) The participant shall not be able to exit the post examination once commenced.

(13) The participant shall not have a time limit to take the post examination.

(14) The minimum post examination passing score shall be 70%. The post examination shall be scored on all cumulative components, not by each section.

(15) As applicable, the provider shall offer and allow participants who failed the initial post examination to retake the post examination free of charge. There shall be no wait time to retake the post examination if previously failed.

(16) The course will include a survey, optional to participants, to gather feedback for the board.

(e) The course is solely the product of the provider and the provider assumes full responsibility for the course.

(f) The course must be revised once every four years. Each revision must be approved by the board. The board's Education Committee may rescind the approval of a course at any time if it believes it has been altered or finds that the course does not meet the requirements as provided for in this Article.

(g) The provider may advertise and or reference that an approved course is "approved" by the board.

Note: Authority cited: Sections 3719.5 and 3722, Business and Professions Code. Reference: Sections 3719 and 3719.5, Business and Professions Code.

Amend Section 1399.353 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.353. Audit and Sanctions for Noncompliance.

(a) The board shall audit a random sample of RCPs for compliance with the CE requirements.

(b) If documentation of the CE requirement is improper or inadequate, or the licensee fails to provide the requested documentation within 30 days, the license becomes inactive. The practice of respiratory care, or representation that one is an RCP, is prohibited while the license is inactive. Practice on an inactive license shall constitute grounds for appropriate disciplinary action pursuant to the B&PG.

(c) Notwithstanding subdivision (b), if the Bboard determines that through no fault of the licensee the CE completed does not meet the criteria set forth in this Article, the Bboard may grant an extension, not to exceed six months, for the licensee to complete approved CE.

(d) Misrepresentation of compliance shall constitute grounds for disciplinary action.

(e) Documentation supporting compliance with CE requirements shall be available to the board upon request during the four year period following relicensure.

Note: Authority cited: Sections 3719 and 3722, Business and Professions Code. Reference: Sections 3719, 3719.5 and 3750, Business and Professions Code.

ARTICLE 6. SCOPE OF PRACTICE

Amend Section 1399.360 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.360. Unlicensed Personnel Services; Home Care.

(a) Unlicensed personnel (UP) may perform limited and basic respiratory care or respiratory care related services identified in subdivisions (b) and (c) in the home setting, ~~or~~ for the purposes of patient transfer to the home setting, or at the facility of a Licensed Home Care Employer, provided the following conditions are met:

(1) The UP is providing services through his or her employment with a Licensed Home Care Employer (LHCE);

(2) The UP has been provided initial training, and at least annually, ongoing in-service education, and periodic competency testing specific to each service and equipment-type by either a California licensed respiratory care practitioner (RCP) or other qualified licensed personnel, in accordance with his or her scope of practice, and documentation of such training, education and testing is maintained by the LHCE for a period of four years, and

(3) The LHCE ensures that the patient, the patient's family, or the patient's caregiver(s) are advised prior to or at the time equipment or supplies are delivered, that a RCP or other qualified licensed personnel, in accordance with his or her scope of practice, shall provide follow up checks, by telephone or in-person as appropriate, at the request of the patient or the patient's family, caregiver, or physician, or any person who has had contact with the patient, or as otherwise directed by a plan of care, and such services are provided accordingly.

(b) In accordance with this section and as it relates to:

- positive airway pressure (with or without a back-up rate) devices and supplies;
- intermittent positive pressure breathing devices and supplies;
- ventilators, ventilatory devices and supplies;
- nasotracheal or tracheal suctioning devices and supplies;
- apnea monitors and alarms and supplies;
- tracheostomy care devices and supplies;
- respiratory diagnostic testing devices and supplies, including but not limited to pulse oximetry, CO2 monitoring, and spirometry devices and supplies;
- pulse-dose type or demand conserving oxygen delivery devices or high flow oxygen systems beyond the capabilities of a simple mask or cannula or requiring particulate or molecular therapy in conjunction with oxygen, and

- any other respiratory care equipment and supplies not identified in subdivisions (b) and (c),

(1) UP may:

(A) Deliver equipment and supplies; and

(B) Instruct the patient, the patient's family or the patient's caregiver(s) on how to order equipment and supplies and the telephone number to call 24 hours a day, 7 days a week, in case of emergency in which a live person will be available to respond;

(C) Set up equipment to the extent that the set-up is not dependent upon or influenced by any written or oral communication with the patient or the patient's family, caregiver(s) or physician (with the exception of identifying a physical location in the home for set-up), and

(D) Provide instruction to the patient, the patient's family or the patient's caregiver(s) limited to the mechanical operation of the equipment (e.g. switch, knob, and dial locations) or the general use of equipment or supplies.

(2) UP are prohibited from:

(A) Setting up equipment, including but not limited to, ~~to an extent that it constitutes patient care such as applying or fitting any device to the patient or making any adjustment or taking any action, including but not limited to, applying positive pressure,~~ that requires or is dependent upon or influenced by a

prescription or any written or oral communication with the patient or the patient's family, caregiver(s) or physician;

~~(B) Providing any instruction to an extent that it constitutes patient care, such as instruction in the operation or use of the equipment for the purpose of deriving an intended medical benefit or instruction in the clinical application of equipment and/or supplies;~~

(C) Performing any level of clinical assessment of the patient;

(D) Directly engaging in any discussion of clinical care plans, therapy, prescriptions, or clinical application;

(E) Touching the patient for the purposes of making an assessment or placing any device upon the patient, and

(F) Providing any service that is not expressly authorized by this section.

(c) In accordance with this section and as it relates to oxygen delivery systems and prefilled cylinders, with the exception of pulse-dose or demand conserving oxygen systems and high flow oxygen systems beyond the capabilities of a simple mask or cannula or requiring particulate or molecular therapy in conjunction with oxygen,

(1) UP may:

(A) Deliver equipment and supplies;

(B) Instruct the patient, the patient's family or the patient's caregiver(s) on how to order oxygen equipment and supplies and the telephone number to call 24 hours a day, 7 days a week, in case of emergency in which a live person will be available to respond;

(C) Instruct the patient, the patient's family or the patient's caregiver(s) in the proper and safe operation of oxygen equipment including:

(i) equipment set-up for the purpose of making the equipment patient-ready;

(ii) connecting disposable tubing, cannulas, and masks;

(iii) verification of oxygen flow;

(iv) demonstration to the patient of prescribed flow rate(s);

(v) connection and cleaning of oxygen humidifying equipment and devices;

(vi) use of portable back-up oxygen cylinders and equipment, and

(vii) removal and disposition of disposable tubing, cannulas, and masks, and

(D) Use a mock, self-demonstration as a method of instruction for subdivision (c)(1)(C).

(E) Conduct regular in-home evaluations and gather information from the patient and home setting pertaining to the set-up, instruction, and provision of information as described in this subdivision for the use of the prescribing physician.

(2) UP are prohibited from:

(A) Direct administration of ~~home~~ oxygen;

(B) Handling or adjusting ~~home~~ oxygen equipment while it is in use by the patient or on the patient;

~~(C) Performing any level of clinical assessment of the patient;~~

~~(D)~~ (D) Touching the patient or placing any device upon the patient while engaged in the set-up and instruction of equipment, including, but not limited to, applying a cannula or performing an oximetry evaluation or oxygen saturation test, and

~~(E)~~ (E) Directly engaging in any discussion of clinical care plans, oxygen therapy or any modifications of physician prescribe equipment, dosages, or instructions or clinical applications.

Note: Authority cited: Sections 3722 and 3765, Business and Professions Code. Reference: Sections 3701, 3702, 3703, 3704, 3717 and 3760, and 3761, Business and Professions Code; and Sections 109948.1 and 111656.3, Health and Safety Code.

Adopt Section 1399.364 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.364. Orders

(a) RCPs may work under the orders of qualified and licensed practitioners who are authorized by the licensed health facility's medical staff, pursuant to protocol(s) developed in accordance with Sections 3702 and 3703 of the B&P.

Note: Authority cited: Sections 3702, 3703, and 3722, Business and Professions Code. Reference: Sections 3702, 3702.7, and 3703, Business and Professions Code.

ARTICLE 7. MISCELLANEOUS

Amend Section 1399.370 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.370. Substantial Relationship Criteria.

For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts include but are not limited to those involving the following:

- (a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the ~~Act~~B&P.
- (b) Commission of an act or ~~Conviction~~ of a crime involving fraud, fiscal dishonesty theft, or larceny.
- (c) Commission of an act or ~~Conviction~~ of a crime involving driving under the influence or reckless driving while under the influence.
- (d) Commission of an act or ~~Conviction~~ of a crime involving harassment or stalking as defined by the Penal Code and/or Civil Code.
- (e) Commission of an act or ~~Conviction~~ of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure, as defined by the Penal Code.
- (f) Commission of an act or conviction of a crime involving human trafficking, as defined by the Penal Code.
- (g) Commission of an act or conviction of a crime involving gross negligence in the care of an animal or any form of animal cruelty as defined by the B&P or Penal Code.
- (h) Failure to comply with a court order.
- (i) Commission of an act or conviction of a crime, involving verbally abusive conduct or unlawful possession of a firearm or weapon.

Note: Authority cited: Section 481 and 3722, Business and Professions Code. Reference: Sections 481, 3750, 3750.5, 3752, 3752.5, 3752.6, ~~and 3752.7~~, 3754.5, and 3755, Business and Professions Code; and Sections 266, 288, 314, 646.9, 647, 1203.097, 11414, 13519.6 and 13519.7, Penal Code.

Amend Section 1399.374 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.374. Disciplinary Guidelines.

In reaching a decision on the disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), determining terms and conditions of probation, or consequences for non compliance of ordered probation, the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" [~~3/02~~ 2011 Edition] which are hereby incorporated by reference. Deviation from these standards, guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 315, 3718, 3722 and 3750, Business and Professions Code; and Sections 11400.20 and 11400.21, Government Code. Reference: Section 315, Business and Professions Code and Sections 11400.20 and 11425.50(e), Government Code.

Adopt Section 1399.375 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

1399.375. Cease Practice-Probation

a) Any licensee placed on probation who has committed a "Major Violation," as identified in the Disciplinary Guidelines, incorporated by reference pursuant to section 1399.374, shall receive a notice to cease the practice of respiratory care, as directed by the Board.

b) The Board shall attempt to contact the probationer by electronic and/or telephonic means to advise him/her of the notice to cease practice and shall deliver such notice by certified and regular mail. The Board shall update its licensing database to reflect the status of the license.

c) The probationer may file a written appeal, within ten days of the date of the notice to cease practice, to provide additional evidence disputing the finding of the violation(s) that was cause for the notice to cease practice. The Executive Officer will review the appeal and make a determination in the matter, within ten days from the date the written appeal and all supporting evidence or documentation is received. The probationer shall be notified of the outcome by certified mail.

d) The probationer shall not resume the practice of respiratory care until a final decision on an accusation and/or petition to revoke probation is made or until such time as the Board delivers written notification that the notice to cease practice has been dissolved.

e) The cessation of practice shall not apply to the reduction of the probationary period.

Note: Authority cited: Sections 315.2, 315.4, and 3722, Business and Professions Code. Reference: Sections 315.2 and 315.4, Business and Professions Code and Section 1399.374, Title 16, California Code of Regulations.

Adopt Section 1399.377 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.377. Records from Employer

Records requested by the board, or on behalf of the board, as provided in Section 3717 of the B&P, shall be provided by the employer, within 10 business days from a written, electronic or oral request or be made available for review at the time of an inspection.

Note: Authority cited: Section 3717, Business and Professions Code. Reference: Section 3717, Business and Professions Code.

Amend and Renumber Section 1399.384 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ ~~1399.384~~-1399.378. Licensee Reporting.

Information required to be disclosed by any person issued a license to practice respiratory care, whether that license is valid or invalid, as provided in Section 3758.5 of the B&P shall be disclosed to the board within 10 calendar days from the date the person knows or should have reasonably known of a violation or probable violation has occurred.

Note: Authority cited: Sections 3722, ~~and~~ 3758, and 3758.5, Business and Professions Code. Reference: Section 3758 and 3758.5, Business and Professions Code.

Amend and Renumber Section 1399.385 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ ~~1399.385~~-1399.379. Employer Reporting.

Information required to be disclosed by any employer of a respiratory care practitioner as provided in Sections 3758 or ~~and~~ 3758.6 of the B&P shall be disclosed to the board within 10 calendar days from the date of suspension or termination, whichever occurs first.

Note: Authority cited: Sections 3722, ~~and~~ 3758, and 3758.6, Business and Professions Code. Reference: Section 3758 and 3758.6, Business and Professions Code.

ARTICLE 8. CITATIONS AND FINES

Amend Section 1399.380 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.380. Citations.

(a) The executive officer of the board or his or her designee is authorized to issue a citation to any person or employer who holds a permit, certificate or license from the board for a violation of any provision of Division 1.5 and Chapter 1 of Division 2 of the B&P, as permitted, the Act, or any regulation adopted by the board.

(b) Each A citation shall be in writing and shall describe with particularity the nature ~~and facts of each the~~ violation ~~specified in the citation~~, including a specific reference to the statute or regulation ~~alleged~~ determined to have been violated.

(c) Each A citation ~~may~~ shall, where appropriate, contain an ~~assessment of an administrative fine, payable within a time period designated by the board, not to exceed 365 days, an order of abatement fixing a reasonable time for abatement of the violation, or both, for each alleged violation.~~

(d) A citation may also contain an assessment of an administrative fine as provided for in Section 1399.381, payable within 120 days.

~~(de)~~ Each citation shall inform the cited person or employer of his or her right to a citation review, as provided in Section 1399.382, and/or a hearing to appeal the citation, as provided in Section 1399.383, and that such a request ~~for a hearing~~ be made in writing within 30 calendar days from the issuance date of the citation.

~~(ef)~~ Each citation shall be served upon the individual or employer by certified mail at the last address of record.

~~(fg)~~ In assessing an administrative fine or issuing an order of correction or abatement, due consideration shall be given to the following factors:

- (1) the gravity of the violation
- (2) the good or bad faith exhibited by the cited person or employer
- (3) the history of previous violations
- (4) the extent to which the cited person or employer has cooperated with the board's investigation

~~(gh)~~ The sanctions authorized under this section shall be separate from and in addition to any other administrative discipline, civil remedies, or criminal penalties.

~~(hi)~~ Every citation ~~that is~~ issued pursuant to this article is a public record.

~~(ij)~~ Once a fine is paid to satisfy an assessment based on the finding of a violation, the payment of the fine becomes public record.

Note: Authority cited: Sections 125.9, ~~and~~ 3722, 3766, and 3767, Business and Professions Code. Reference: Sections 125.9, 3766, and 3767 Business and Professions Code and Sections 1399.382 and 1399.383, Title 16, California Code of Regulations.

Repeal Section 1399.381 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

~~§ 1399.381. Fines:~~

~~(a) Fines shall be assessed in accordance with the following schedule, provided, however, in no case shall the total exceed \$2,500 for each violation:~~

B&PC	Description	Range of Fines
480	Grounds for denial of an application for licensure/certificate	\$100 to \$2,500
3731	Title Used by Licensee	\$25 to \$2,500
3739	Practice During License Process	\$100 to \$2,500
3750(a)	Advertising	\$250 to \$2,500
3750(b)	Fraud in the procurement of any license	\$1,000 to \$2,500
3750(c)	Knowingly employing unlicensed persons	\$100 to \$2,500
3750(d)	Conviction of Crime	\$100 to \$500
3750(e)	Impersonating an applicant in any examination	\$1,500 to \$2,500
3750(f)	Negligence	\$100 to \$2,500
3750(g)	Conviction of a violation of any provision of Division 2	\$100 to \$2,500
3750(h)	Aiding/Abetting person to violate this chapter	\$1000 to \$2,500
3750(i)	Aiding/abetting person to engage in unlawful practice	\$1000 to \$2,500
3750(j)	Commission of any fraudulent, dishonest or corrupt act	\$100 to \$2,500
3750(k)	Falsifying/ incorrect/ inconsistent entries in record	\$500 to \$2,500
3750(l)	Changing prescription/falsifying orders for treatment	\$1000 to \$2,500
3750(m)	Discipline taken by another agency	\$100 to \$2,500

3750(n) Knowing failure to protect patients -infection control	\$1000 to \$2,500
3750(o) Incompetence	\$500 to \$2,500
3750(p) Pattern of substandard care	\$1000 to \$2,500
3750.5 Obtained/Possessed/Use of Drugs	\$100 to \$2,500
3750.6 Production of Work Permit or Pocket License for Inspection	\$25 to \$100
3753.1 Probation Monitoring Costs	Actual +\$25 to \$500
3753.5 Cost Recovery	Actual +\$25 to \$500
3754.5 Licensee who obtains license by fraud or misrepresentation	\$1000 to \$2,500
3755 Unprofessional Conduct	\$250 to \$2,500
3758.5 RCP to report any known violation made by other RCP	\$250 to \$2,500
3760(a) Practice without a License	\$50 to \$2,500
3761(a) Misrepresentation in claim of license to practice	\$100 to \$1,000
3761(b) Knowingly employ unlicensed personnel	\$100 to \$2,500
3773(a) License renewal - notice of conviction	\$100 to \$2,500
3773(b) License renewal - identification of current employer(s)	\$100 to \$2,500
Regulations — Description	Range of Fines
1399.304 Current address	\$25 to \$250
1399.350 CE requirements	\$50 to \$1,500

(b) Administrative fines collected pursuant to this section shall be deposited into the board's special fund.

Adopt Section 1399.381 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.381. Fines.

(a) Fines shall be assessed in accordance with the following schedule as provided for by law:

<u>BUSINESS AND PROFESSIONS CODES</u>	<u>Maximum Fine</u>
<u>3717 Records from employer</u>	<u>\$10,000</u>
<u>3731 Title Used by licensee</u>	<u>\$5,000</u>
<u>3739 Practice during license process</u>	<u>\$5,000</u>
<u>3750(a) Advertising</u>	<u>\$5,000</u>
<u>3750(b) Fraud in the procurement of any license</u>	<u>\$5,000</u>
<u>3750(c) Knowingly employing unlicensed persons</u>	<u>\$15,000</u>
<u>3750(d) Conviction of crime</u>	<u>\$5,000</u>
<u>3750(e) Impersonating an applicant in any examination</u>	<u>\$5,000</u>
<u>3750(f) Negligence</u>	<u>\$5,000</u>
<u>3750(g) Conviction of any violation of Division 2</u>	<u>\$5,000</u>
<u>3750(h) Aiding/Abetting person to violate this chapter</u>	<u>\$5,000</u>
<u>3750(i) Aiding/abetting person to engage in unlawful practice</u>	<u>\$5,000</u>
<u>3750(j) Commission of fraudulent, dishonest or corrupt act</u>	<u>\$5,000</u>
<u>3750(k) Falsifying/ incorrect/ inconsistent entries in record</u>	<u>\$5,000</u>
<u>3750(l) Changing prescription/falsifying orders for treatment</u>	<u>\$5,000</u>
<u>3750(m) Discipline taken by another agency</u>	<u>\$5,000</u>
<u>3750(n) Knowing failure to protect patients -infection control</u>	<u>\$5,000</u>
<u>3750(o) Incompetence</u>	<u>\$5,000</u>
<u>3750(p) Pattern of substandard care</u>	<u>\$5,000</u>
<u>3750.5 Obtained/possessed/use of drugs</u>	<u>\$5,000</u>
<u>3750.6 Production of work permit/pocket license</u>	<u>\$5,000</u>
<u>3753.1 Probation monitoring costs</u>	<u>\$5,000</u>
<u>3753.5 Cost recovery</u>	<u>\$5,000</u>

<u>3754.5 Obtains license by fraud or misrepresentation</u>	<u>\$5,000</u>
<u>3755 Unprofessional conduct</u>	<u>\$5,000</u>
<u>3758 Employer report on suspension/termination</u>	<u>\$10,000</u>
<u>3758.5 RCP report on violation made by other RCP</u>	<u>\$5,000</u>
<u>3758.6 Employer report on supervisor</u>	<u>\$10,000</u>
<u>3760 Practice without a license/Misrepresentation</u>	<u>\$15,000</u>
<u>3761(a) Misrepresentation in claim of license to practice</u>	<u>\$15,000</u>
<u>3761(b) Knowingly employing an unlicensed person</u>	<u>\$15,000</u>
<u>3773(a)(1) License renewal - notice of conviction</u>	<u>\$5,000</u>
<u>3773(a)(2) License renewal - identify employer</u>	<u>\$5,000</u>
<u>3773(b) License renewal - additional information</u>	<u>\$5,000</u>

REGULATIONS

<u>1399.304 Current address</u>	<u>\$5,000</u>
<u>1399.350 CE requirements</u>	<u>\$5,000</u>
<u>1399.350.5 Completion of ethics/professional law course</u>	<u>\$5,000</u>
<u>1399.360 Unlicensed personnel/home care</u>	<u>\$15,000</u>
<u>1399.377 Records from employer</u>	<u>\$10,000</u>
<u>1399.378 Licensee reporting</u>	<u>\$5,000</u>
<u>1399.379 Employer reporting</u>	<u>\$10,000</u>

(b) The methodology for assessing fine amounts shall be for each inspection or investigation made with respect to the violation, except as provided below:

(1) The assessment of fine amounts for a violation involving fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare, shall be based on each violation or count.

(2) The assessment of fine amounts for a violation of Section 3717 of the B&P or Section 1399.377 of the regulations, shall be based upon each incident in which the employer fails to respond to a request to inspect or produce records as provided for in Section 3717 of the B&P or Section 1399.377 of the regulations.

(3) The assessment of fine amounts for a violation of Section 3758, 3758.5 or 3758.6 of the B&P, or Section 1399.378 or 1399.379 of the regulations, shall be based upon each person and/or each incident required to be reported to the board.

(4) The assessment of fine amounts for a violation of Section 3750(c), 3760, 3761(a), or 3761(b) of the B&P or Section 1399.360 of the regulations, shall be based upon each person who acts in the capacity of, or engages in the business of, or represents themselves as, a respiratory care practitioner, at each facility or location.

(c) Administrative fines collected pursuant to this section shall be deposited into the board's special fund.

Note: Authority cited: Sections 125.9, ~~and~~ 3722, 3758, 3766, and 3767, Business and Professions Code. Reference: Sections 125.9, 436, ~~480~~, 3717, 3731, 3739, 3750, 3750.5, 3750.6, 3753.1, 3753.5, 3754.5, 3755, 3758, 3758.5, 3758.6, 3760, 3761, 3766, 3767, and 3773, Business and Professions Code; and Sections 1399.304, ~~and~~ 1399.350, 1399.350.5, 1399.360, 1399.377, 1399.378, and 1399.379 Title 16, California Code of Regulations.

Amend and Renumber Section 1399.376 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ ~~1399.376~~. 1399.382. Citation Review.

(a) ~~If the person cited is afforded the opportunity for a citation review, he or she may, within 30 calendar days after the date of service of the citation, notify the Executive Officer, in writing, of his or her request for a citation review by the executive officer, or a designated committee of the Board regarding the acts~~

charged in the citation. Notification shall be through the United States Postal Service by certified or registered mail.

(b) The executive officer ~~or committee~~ shall hold, within ~~240~~ 60 calendar days from the receipt of the request, a citation review with the person cited or his or her legal counsel or other authorized representative in person or by telephone. At the conclusion of the citation review, the ~~executive officer~~ committee may affirm, modify or dismiss the citation, including any fine levied. The executive officer ~~or committee~~ shall state in writing the reasons for the action and serve a copy of ~~its~~ the findings and decision on the person cited within 30 calendar days of the date of the citation review. ~~This decision shall be deemed to be a final order of the Board with regard to the citation issued, including the fine levied. The decision shall inform the cited person of his or her right to a hearing as provided in Section 1399.383 of this Article, and that such a request must be made in writing within 30 calendar days from the issuance date of the decision resulting from the citation review.~~

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Sections ~~3764~~ 125.9, 3766, and 3767, Business and Professions Code.

Amend and Renumber Section 1399.382 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.382- 1399.383. Appeals.

(a) Any person or employer served with a citation or a decision resulting from a citation review, as provided in Section 1399.382 of this Article, may contest the citation by appealing to the board in writing, within 30 calendar days of the issuance of the citation or decision.

~~(b) If the cited person fails to notify the board of his or her intent to contest the citation, the citation shall be deemed a final order of the board.~~

~~(c) If a cited person or employer requests a hearing to appeal the citation, notifies the board that he or she intends to contest a citation, the board shall afford an opportunity for a citation review in accordance with section 1399.376 of the board's regulations or a hearing in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(d) The failure of a cited person who has appealed to the board to appear at the time and place of the citation review or hearing shall be deemed a withdrawal of his or her appeal, and the citation shall constitute a final order of the board.~~

Note: Authority cited: Sections 125.9, and 3722, and 3767, Business and Professions Code. Reference: Section 125.9, and 3767, Business and Professions Code; Sections ~~1399.376, 1399.380, and 1399.382~~, Title 16, California Code of Regulations; and Sections 11500, et seq., Government Code.

Adopt Section 1399.384 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

1399.384. Failure to Respond or Appear

(a) If the cited person or employer fails to request a citation review or a hearing as provided in subdivision (e) of Section 1399.380, or fails to request a hearing as provided in subdivision (a) of Section 1399.383, the citation shall be deemed a final order of the board and shall not be subject to administrative review.

(b) The failure of a cited person or employer who has requested a citation review, if applicable, or hearing, to appear at the time and place of the citation review or hearing shall be deemed a withdrawal of his or her

request, and the citation shall be deemed a final order of the board and shall not be subject to administrative review.

Note: Authority cited: Sections 125.9, 3722, and 3767, Business and Professions Code. Reference: Section 125.9, and 3767, Business and Professions Code; Sections 1399.380, 1399.382, and 1399.383, Title 16, California Code of Regulations; and Sections 11500, et seq., Government Code.

Amend and Renumber Section 1399.383 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ ~~1399.383~~. 1399.385. Failure to Comply with Citation.

The failure to comply with a citation containing an assessment of an administrative fine or an order of abatement or both, after the citation is final and has been properly served, shall result in one or more of the following:

- (a) the non renewal of a license.
- (b) referral to collection entities to collect the fine.
- (c) the pursuit of further legal action by the board to collect the fine.

Note: Authority cited: Sections 125.9, and 3722, ~~3768, and 3778~~, Business and Professions Code. Reference: Sections ~~125.9, 3767, and 3768~~, Business and Professions Code.

Repeal Section 1399.387 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

~~§ 1399.387. Citations – Employer.~~

~~(a) The executive officer of the board or his or her designee is authorized to issue a citation to any employer for a violation of sections 3717, 3758 and 3758.6 of the B&PC or Section 1399.385 of the regulations.~~

~~(b) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the statute or regulation alleged to have been violated.~~

~~(c) Each citation may contain an assessment of an administrative fine, payable within a time period designated by the board, not to exceed 365 days, an order of abatement fixing a reasonable time for abatement of the violation, or both, for each alleged violation.~~

~~(d) Each citation shall inform the cited employer of its right to a hearing and that such a request for a hearing be made in writing within 30 days from the issuance date of the citation.~~

~~(e) Each citation shall be served upon the employer by certified mail at the last address of record.~~

~~(f) In assessing an administrative fine or issuing an order of correction or abatement, due consideration shall be given to the following factors:~~

- ~~(1) the gravity of the violation~~
- ~~(2) the good or bad faith exhibited by the employer~~
- ~~(3) the history of previous violations~~
- ~~(4) the extent to which the employer has cooperated with the board's investigation~~

(g) The sanctions authorized under this section shall be separate from and in addition to any other administrative discipline, civil remedies, or criminal penalties.

(h) Every citation that is issued pursuant to this article is a public record.

(l) Once a fine is paid to satisfy an assessment based on the finding of a violation, the payment of the fine becomes a public record.

Note: Authority cited: Sections 125.9, 3722, 3758 and 3758.6, Business and Professions Code. Reference: Sections 125.9, 3717, 3758 and 3758.6, Business and Professions Code.

Repeal Section 1399.388 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

~~§ 1399.388. Fines – Employer.~~

~~(a) Failure of an employer to provide reports or records or allow inspections as required by Section 3717 of the B&PC shall be punishable by an administrative fine ranging from \$250 to \$2,500.~~

~~(b) Failure of an employer to make a report required by Section 3758 of the B&PC shall be punishable by an administrative fine ranging from \$2,500 to \$10,000.~~

~~(c) Failure of an employer to make a report as required by Section 3758.6 of the B&PC shall be punishable by an administrative fine ranging from \$500 to \$2,500.~~

~~(d) Administrative fines collected pursuant to this section shall be deposited into the board's special fund.~~

Note: Authority cited: Sections 3722 and 3758, Business and Professions Code. Reference: Sections 3717, 3758 and 3758.6, Business and Professions Code.

Repeal Section 1399.389 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

~~§ 1399.389. Appeals – Employer.~~

~~(a) Any employer served with a citation, may contest the citation by appealing to the board in writing, within 30 calendar days of the issuance of the citation.~~

~~(b) If the cited employer fails to notify the board of his or her intent to contest the citation, the citation shall be deemed a final order of the board and shall not be subject to administrative review.~~

~~(c) If a cited employer notifies the board that it intends to contest a citation, the board shall afford an opportunity for a hearing. The board shall thereafter issue a decision based on findings of fact, affirming, modifying or vacating the citation or penalty or both, or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(d) The failure of a cited employer that has appealed to the board to appear at the time and place of the hearing shall be deemed a withdrawal of its appeal, and the citation shall constitute a final order of the board and shall not be subject to administrative review.~~

Note: Authority cited: Sections 125.9 and 3722, Business and Professions Code. Reference: Section 125.9, Business and Professions Code; and Section 11500, et seq., Government Code.

Repeal Section 1399.390 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

~~§ 1399.390. Failure to Comply with Citation – Employer.~~

~~The failure to comply with a citation containing an assessment of an administrative fine or an order of abatement or both after the citation is final and has been properly served shall result in the pursuit of further action by the board to collect the fine.~~

~~Note: Authority cited: Sections 3722 and 3758, Business and Professions Code. Reference: Section 3758, Business and Professions Code.~~

Repeal Section 1399.391 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

~~§ 1399.391. Citation and Fine – Unlicensed Personnel.~~

~~(a) The executive officer or his or her designee is authorized to determine when and against whom a citation will be issued and to issue a citation to any person, or employer of a person, who acts in the capacity of or engages in the business of a respiratory care practitioner in this state without having a license in good standing pursuant to the Act and who is not otherwise exempted from the provisions of the Act. Each citation for unlicensed activity shall contain an order of abatement, and shall be in writing and state with particularity the basis of the citation. "Employer," as used in this section, means any entity or person that employs or contracts with one or more persons who are acting in the capacity of, or engaged in the business of, a respiratory care practitioner, including but not limited to, any person, facility, company, corporation, partnership, organization or health maintenance organization.~~

~~(b) An administrative fine shall be paid within the time period designated in the citation, not to exceed 365 days. The amount of an administrative fine shall be separate from section 1399.381 and in accordance with section 3767(b)(2) of the B&PC.~~

~~(c) A citation shall inform the cited person or employer of his or her right to a hearing and that such a request for a hearing be made in writing within 15 calendar days after service of the citation. A citation shall be served upon the individual or employer by certified mail.~~

~~(d) In assessing an administrative fine and issuing an order of abatement, due consideration shall be given to the following factors for each violation:~~

- ~~(1) the gravity of the violation;~~
- ~~(2) the good or bad faith exhibited by the cited person or employer;~~
- ~~(3) the history of previous violations;~~
- ~~(4) the extent to which the cited person or employer has cooperated with the board's investigation.~~

~~(e) A cited person or employer who wishes to contest the citation may serve a written appeal on the board, within 15 calendar days after service of the citation, through the United States Postal Service by certified or registered mail.~~

~~(f) If the cited person or employer notifies the board that he/she/it intends to contest a citation, the board shall afford an opportunity for a hearing. The board shall thereafter issue a decision based on findings of fact, affirming, modifying or vacating the citation with its fine or order of abatement, or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(g) The failure of a cited person or employer to appear at the time and place of the hearing shall be deemed a withdrawal of the appeal, and the citation shall constitute a final order of the board and shall not be subject to further administrative review.~~

Note: Authority cited: Sections 3722, 3760, 3761, 3766 and 3767, Business and Professions Code. Reference: Sections 3760, 3761, 3766 and 3767, Business and Professions Code.

ARTICLE 9. FEES

Amend Section 1399.395 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.395. Fee Schedule.

The following schedule of fees is hereby adopted pursuant to Sections 3775 and 3775.5 of the B&PG:

(a) Application fee	\$200 <u>300</u>
(b) Application fee [pursuant to Section 3740(c)]	\$250
(<u>b</u> e) Examination fee	\$190
(<u>c</u> d) Re-examination fee	\$150
(e) Initial license fee	\$200
(This fee is prorated based on the length of the initial license period)	
(<u>d</u> f) Renewal fee for licenses expiring on or after January 1, 2002	\$230
(<u>e</u> g) Delinquency fee (not more than 2 years after expiration)	\$230
(<u>f</u> h) Delinquency fee (after 2 years but not more than 3 years after expiration)	\$460
(<u>g</u> i) Inactive license fee	\$230
(<u>h</u> j) Duplicate license fee	\$25
(<u>i</u> k) Endorsement fee	\$75 <u>25</u>

Note: Authority cited: Sections 3722, 3775 and 3775.5, Business and Professions Code. Reference: Sections 3775 and 3775.5, Business and Professions Code.