LAWS AND REGULATIONS
Related to the Practice of Respiratory Care in the State of California

[Includes amendments through January 2015]

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Division 2, Chapter 8.3

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Business and Professions Code
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§ 3700. Citation of act

This chapter may be cited as the "Respiratory Care Practice Act."

§ 3701. Legislative finding and declaration; Legislative intent

The Legislature finds and declares that the practice of respiratory care in California affects the public health, safety, and welfare and is to be subject to regulation and control in the public interest to protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care. The Legislature also recognizes the practice of respiratory care to be a dynamic and changing art and science, the practice of which is continually evolving to include newer ideas and more sophisticated techniques in patient care.

It is the intent of the Legislature in this chapter to provide clear legal authority for functions and procedures which have common acceptance and usage. It is the intent also to recognize the existence of overlapping functions between physicians and surgeons, registered nurses, physical therapists, respiratory care practitioners, and other licensed health care personnel, and to permit additional sharing of functions within organized health care systems. The organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services.

§ 3702. Practice of respiratory care; Components; "Respiratory care protocols"

Respiratory care as a practice means a health care profession employed under the supervision of a medical director in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems functions, and includes all of the following:

(a) Direct and indirect pulmonary care services that are safe, aseptic, preventive, and restorative to the patient.

(b) Direct and indirect respiratory care services, including but not limited to, the administration of pharmacological and diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician and surgeon.

(c) Observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing and

(1) determination of whether such signs, symptoms, reactions, behavior or general response exhibits abnormal characteristics;

(2) implementation based on observed abnormalities of appropriate reporting or referral or respiratory care protocols, or changes in treatment regimen, pursuant to a prescription by a physician and surgeon or the initiation of emergency procedures.

(d) The diagnostic and therapeutic use of any of the following, in accordance with the prescription of a physician and surgeon: administration of medical gases, exclusive of general anesthesia; aerosols; humidification; environmental control systems and baromedical therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; cardiopulmonary resuscitation; maintenance of the natural airways; insertion without cutting tissues and maintenance of artificial airways; diagnostic and testing techniques required for implementation of respiratory care protocols; collection of specimens of blood; collection of specimens from the respiratory tract; analysis of blood gases and respiratory secretions.

(e) The transcription and implementation of the written and verbal orders of a physician and surgeon pertaining to the practice of respiratory care.

"Respiratory care protocols" as used in this section means policies and protocols developed by a licensed health facility through collaboration, when appropriate, with administrators, physicians and surgeons, registered nurses, physical therapists, respiratory care practitioners, and other licensed health care practitioners.

§ 3702.7. Mechanical and ventilatory support defined

Mechanical or physiological ventilatory support as used in subdivision (d) of Section 3702 includes, but is not limited to, any system, procedure, machine, catheter, equipment, or other device used in whole or in part, to provide ventilatory or oxygenating support.

§ 3703. Settings for respiratory care

(a) The settings in which respiratory care may be practiced include licensed health care facilities, hospitals, clinics, ambulatory or home health care, physicians' offices, and public or community health services. Respiratory care may also be provided during the transportation of a patient, and under any circumstances where an emergency necessitates respiratory care.

(b) The practice of respiratory care shall be performed under the supervision of a medical director in accordance with a prescription of a physician and surgeon or pursuant to respiratory care protocols as specified in Section 3702.

§ 3704. Definitions

As used in this chapter, these terms shall be defined as follows:

(a) "Board" means the Respiratory Care Board of California.

(b) "Department" means the Department of Consumer Affairs.

(c) "Medical director" means a physician and surgeon who is a member of a health care facility's active medical staff and who is knowledgeable in respiratory care.

(d) "Respiratory care" includes "respiratory therapy" or "inhalation therapy," where those terms mean respiratory care.

(e) "Respiratory therapy school" means a program reviewed and approved by the board.

§ 3705. Scope of authority to practice

Nothing in this chapter shall be construed as authorizing a respiratory care practitioner to practice medicine, surgery, or any other form of healing, except as authorized by this chapter.

§ 3706. Immunity from liability for rendering emergency care; Exception

A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of employment shall not be liable for any civil damages as the result of acts or omissions by the person in rendering the emergency care.

This section does not grant immunity from civil damages when the person is grossly negligent.

§ 3710. Respiratory Care Board

(a) The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

§ 3710.1. Public Protection

Protection of the public shall be the highest priority for the Respiratory Care Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

§ 3711. Members

The members of the board shall be the following: one physician and surgeon, four respiratory care practitioners, each of whom shall have practiced respiratory care and four public members who shall not be licensed by the board.

§ 3712. Appointment of members; Terms; Removal

The members of the board shall be appointed as follows:

(a) Two respiratory care practitioners and one public member shall be appointed by the Speaker of the Assembly.

(b) One physician and surgeon, one respiratory care practitioner, and one public member shall be appointed by the Senate Rules Committee.

(c) One respiratory care practitioner, and two public members shall be appointed by the Governor.

Appointments shall be made for four-year terms, expiring on the first day of June of each year, and vacancies shall be filled for the unexpired term.

No member shall serve for more than two consecutive terms.

Not more than two members of the board shall be appointed from the full-time faculty of any university, college, or other educational institution.

Annually, the board shall elect one of its members as president.

The appointing power shall have the authority to remove any member of the board from office for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct.

§ 3713. Qualifications of public members

(a) The public members shall be appointed from persons having the following qualifications:

(1) Be a citizen of the United States of America.

(2) Be a resident of the State of California.

(3) Shall not be an officer or faculty member of any college, school, or institution engaged in respiratory therapy education.

(4) Shall not be licensed by the board or by any board under this division.

(5) Shall have no pecuniary interests in the provision of health care.

(b) The respiratory care practitioner members shall be appointed from persons licensed as respiratory care practitioners having the following qualifications:

(1) Be a citizen of the United States of America.

(2) Be a resident of the State of California.

(3) One respiratory care practitioner shall be an officer or faculty member of any college, school, or institution engaged in respiratory therapy education.

(4) Three respiratory care practitioners shall be involved in direct patient care.

(5) Have at least five years' experience in respiratory care or respiratory therapy education, and have been actively engaged therein for at least three years immediately preceding appointment.

(c) The physician and surgeon member shall be appointed from persons having the following qualifications:

(1) Be a citizen of the United States of America.

(2) Be a resident of the State of California.

(3) Be a licensed practicing physician and surgeon in the State of California.

(4) Be knowledgeable in respiratory care.

§ 3715. Payment of expenses

Each member of the board shall receive a per diem and expenses as provided in Section 103.

§ 3716. Authority to hire employees

The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

§ 3717. Authority to make inspections of and require reports from hospitals or facilities

(a) The board, or any licensed respiratory care practitioner, enforcement staff, or investigative unit appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility or corporation providing respiratory care, treatment, or services and the respiratory care staff thereof, with respect to the respiratory care, treatment, services, or facilities provided therein, or the employment of staff providing the respiratory care, treatment, or services, and may inspect and copy respiratory care patient records with respect to that care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section is subject to the restrictions against disclosure contained in Section 2225. Those persons may also inspect and copy employment records relevant to an official investigation provided that the written request to inspect the records specifies the portion of the records to be inspected.

(b) The failure of an employer to provide documents as required by this section is punishable by an administrative fine not to exceed ten thousand dollars ($10,000) per violation. This penalty shall be in addition to, and not in lieu of, any other civil or criminal remedies.

§ 3718. Issuance, suspension, and revocation of licenses

The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.

§ 3719. Continuing education requirements; Submission of examination by licensee

Each person renewing his or her license shall submit proof satisfactory to the board that, during the preceding two-year period, he or she completed the required number of continuing education hours established by regulation of the board. Required continuing education shall not exceed 30 hours every two years.

Successful completion of an examination approved by the board may be submitted by a licensee for a designated portion of continuing education credit. The board shall determine the hours of credit to be granted for the passage of particular examinations.

§ 3719.5. Professional course requirement

The board may require successful completion of one or more professional courses offered by the board, the American Association for Respiratory Care, or the California Society for Respiratory Care in any or all of the following circumstances:

(a) As part of continuing education.

(b) Prior to initial licensure.

(c) Prior to consideration of a reinstatement petition.

§ 3720. Meetings

The board shall hold at least one regular meeting annually. The board may convene from time to time until its business is concluded. Special meetings may be held at the time and place the board may designate. Additional meetings may be held upon call of the president or at the written request of any two members of the board.

§ 3722. Adoption of rules and regulations; Compliance with Government Code

The board shall adopt any regulations as may be necessary to effectuate this chapter. In adopting rules and regulations, the board shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

§ 3730. Issuance of license; Filing of application; Fee

(a) All licenses for the practice of respiratory care in this state shall be issued by the board, and all applications for those licenses shall be submitted directly to and filed with the board. Except as otherwise required by the director pursuant to Section 164, the license issued by the board shall describe the license holder as a "respiratory care practitioner licensed by the Respiratory Care Board of California."

(b) Each application shall be accompanied by the application fee prescribed in Section 3775, shall be signed by the applicant, and shall contain a statement under oath of the facts entitling the applicant to receive a license without examination or to take one or more examinations.

(c) The application shall contain other information as the board deems necessary to determine the qualifications of the applicant.

§ 3731. Use of title or initials permitted by license holder

A person holding a license as a respiratory care practitioner issued by the board shall use the title "respiratory care practitioner" or the letters "RCP." The license as a respiratory care practitioner shall not authorize the use of the prefix "Dr.," or the word "doctor," or any suffix or affix indicating or implying that the licensed person is a doctor or a physician and surgeon.

The suffix "M.D." shall not be used unless the licensed practitioner is licensed as a physician and surgeon in this state.

§ 3732. Investigation of applicant

(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.

§ 3735. Successful completion of written examination prerequisite to license

(a) Except as otherwise provided in this chapter, an applicant shall not receive a license under this chapter without first successfully passing all parts of the national registered respiratory therapist examination.

(b) Notwithstanding subdivision (a), any person applying for licensure who provides evidence that he or she passed the national certified respiratory therapist examination prior to January 1, 2015, shall not be required to pass the national registered respiratory therapist examination, if there is no evidence of prior license or job-related discipline, as determined by the board in its discretion.

§ 3736. Uniform examination system

Examinations for a license as a respiratory care practitioner may be conducted by the board under a uniform examination system, and for that purpose the board may make any arrangements with organizations furnishing examination material as may in its discretion be desirable.

§ 3739. Practice by graduate prior to receipt of license

(a) Except as otherwise provided in this section, every person who has filed an application for licensure with the board may, between the dates specified by the board, perform as a respiratory care practitioner applicant under the direct supervision of a respiratory care practitioner licensed in this state if he or she has met education requirements for licensure as may be certified by his or her respiratory care program.

(b) The board may extend the dates an applicant may perform as a respiratory care practitioner applicant under either of the following circumstances:

(1) When the applicant is unable to complete the licensure application due to causes completely outside his or her control.

(2) When the applicant provides evidence that he or she has successfully passed the national certified respiratory therapist examination, and the applicant has otherwise completed the application for licensure process and has not previously been authorized to practice as a respiratory care practitioner applicant under this subdivision.

(c) Authorization to practice as a respiratory care practitioner applicant pursuant to paragraph (2) of subdivision (b) shall not exceed six months from the date of graduation or the date the application was filed, whenever is later.

(d) During this period the applicant shall identify himself or herself only as a "respiratory care practitioner applicant."

(e) If for any reason the license is not issued, all privileges under subdivision (a) shall automatically cease on teh date specified by the board.

(f) This section shall not be construed to prohibit the board from denying or rescinding the privilege to work as a respiratory care practitioner applicant for any reason, including, but not limited to, failure to pass teh registered respiratory therapist examination or if cuase exists to deny the license.

(g) "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient care area.

§ 3740. Minimum educational requirements of applicants; Evaluation of applicant with foreign diploma or license; Disapproval of school by board

(a) Except as otherwise provided in this chapter, all applicants for licensure under this chapter shall have completed an education program for respiratory care that is accredited by the Committee on Accreditation for Respiratory Care or its successor and been awarded a minimum of an associate degree from an institution or university accredited by a regional accreditation agency or association recognized by the United States Department of Education.

(b) Notwithstanding subdivision (a), meeting the following qualifications shall be deemed equivalent to the required education:

(1) Enrollment in a baccalaureate degree program in an institution or university accredited by a regional accreditation agency or

association recognized by the United States Department of Education.

(2) Completion of science, general academic, and respiratory therapy coursework commensurate with the requirements for an associate degree in subdivision (a).

(c) An applicant whose application is based on a diploma issued to the applicant by a foreign respiratory therapy school or a certificate or license issued by another state, district, or territory of the United States that does not meet the requirements in subdivision (a) or (b), shall enroll in an advanced standing and approved respiratory educational program for evaluation of his or her education and training and furnish documentary evidence, satisfactory to the board, that he or she satisfies all of the following requirements:

(1) Holds an associate degree or higher level degree equivalent to that required in subdivision (a) or (b).

(2) Completion of a respiratory therapy educational program equivalent to that required in subdivision (a) or (b).

(3) Possession of knowledge and skills to competently and safely practice respiratory care in accordance with national standards.

(d) Notwithstanding subdivision (c), an applicant whose application is based on education provided by a Canadian institution or university that does not meet the requirements in subdivision (a) or (b) shall furnish documentary evidence, satisfactory to the board, that he or she satisfies both of the following requirements:

(1) Holds a degree equivalent to that required in subdivision (a) or (b).

(2) Completion of a respiratory therapy educational program recognized by the Canadian Board of Respiratory Care.

(e) A school shall give the director of a respiratory care program adequate release time to perform his or her administrative duties consistent with the established policies of the educational institution.

(f) Satisfactory evidence as to educational qualifications shall take the form of certified transcripts of the applicant's college record mailed directly to the board from the educational institution. However, the board may require an evaluation of educational credentials by an evaluation service approved by the board.

(g) At the board's discretion, it may waive its educational requirements if evidence is presented and the board deems it as meeting the current educational requirements that will ensure the safe and competent practice of respiratory care. This evidence may include, but is not limited to:

(1) Work experience.

(2) Good standing of licensure in another state.

(3) Previous good standing of licensure in the State of California.

(h) Nothing contained in this section shall prohibit the board from disapproving any respiratory therapy school, nor from denying the applicant if the instruction, including modalities and advancements in technology, received by the applicant or the courses were not equivalent to that required by the board.

§ 3741. Services rendered by student in approved program; Designation as student

(a) During the period of any clinical training, respiratory care services may be rendered by a student enrolled in an approved respiratory care training program when these services are incidental to his or her course of study.

(b) A person engaged in a respiratory care training program as a student shall be identified only as a "student respiratory care practitioner."

§ 3742. Supervision of student respiratory care practitioner

During the period of any clinical training, a student respiratory care practitioner shall be under the direct supervision of a person holding a valid and current license issued under this chapter. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient care area.

§ 3750. Causes for denial of, suspension of, revocation of, or probationary conditions upon license

The board may order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

(a) Advertising in violation of Section 651 or Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Knowingly employing unlicensed persons who present themselves as licensed respiratory care practitioners.

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Negligence in his or her practice as a respiratory care practitioner.

(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

(h) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(i) The aiding or abetting of any person to engage in the unlawful practice of respiratory care.

(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record.

(l) Changing the prescription of a physician and surgeon, or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.

(m) Denial, suspension, or revocation of any license to practice by another agency, state, or territory of the United States for any act or omission that would constitute grounds for the denial, suspension, or revocation of a license in this state.

(n) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of

the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision. The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(o) Incompetence in his or her practice as a respiratory care practitioner.

(p) A pattern of substandard care or negligence in his or her practice as a respiratory care practitioner; or in any capacity as a health care worker, consultant, supervisor, manager or health facility owner; or as party responsible for the care of another.

§ 3750.5. Additional grounds for denial, suspension, or revocation of license

In addition to any other grounds specified in this chapter, the board may deny, suspend, place on probation, or revoke the license of any applicant or license holder who has done any of the following:

(a) Obtained, possessed, used, or administered to himself or herself in violation of law, or furnished or administered to another any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9, except as directed by a licensed physician and surgeon, dentist, podiatrist, or other authorized health care provider, or illegally possessed any associated paraphernalia.

(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, or to others, or that impaired his or her ability to conduct with safety the practice authorized by his or her license.

(c) Applied for employment or worked in any health care profession or environment while under the influence of alcohol.

(d) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

(e) Been committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a), (b), and (c), in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.

(f) Falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a).

§ 3750.51. Limitations period for filing accusation against licensee

(a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

§ 3750.6. Original pocket license or work permit to be produced for inspection

Upon request, every holder of a pocket license shall produce for inspection the original pocket license issued by the board. A facsimile of the license is not sufficient for that purpose.

Upon request, every applicant issued a work permit shall produce for inspection the original permit issued by the board. A facsimile of the work permit is not sufficient for that purpose.

§ 3751. Petition for reinstatement, modification, or termination of probation; Discretion of board

(a) A person whose license has been revoked, surrendered, or suspended, or placed on probation, may petition the board for reinstatement, modification, or termination of probation, provided the person has paid all outstanding fees, fines, and cost recovery in full, and monthly probation monitoring payments are current.

(b) A person petitioning for reinstatement of his or her license that has been revoked or surrendered for three or more years shall also meet the current education requirements required for initial licensure.

(c) A petition may be filed only after a period of time has elapsed, but not less than the following minimum periods from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license that has been revoked or surrendered.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked or surrendered for mental or physical illness, or termination of probation of less than three years.

(d) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from licensed health care practitioners who have personal knowledge of the professional activities of the petitioner since the disciplinary penalty was imposed. The board may accept or reject the petition.

(e) Written or oral argument may be provided by the petitioner or, at the request of the board, by the Attorney General. Unless the board or the petitioner requests the presentation of oral argument, the petition shall be considered and voted upon by mail. If the petitioner or the board requests the opportunity for oral argument, the petition shall be heard by the board or the board may assign the petition to an administrative law judge.

(f) Consideration shall be given to all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(g) The board may deny the petition for reinstatement, reinstate the license without terms and conditions, require an examination for the reinstatement, restoration, or modification of probation, or reinstate the license with terms and conditions as it deems necessary. Where a petition is heard by an administrative law judge, the administrative law judge shall render a proposed decision to the board denying the petition for reinstatement, reinstating the license without terms and conditions, requiring an examination for the reinstatement, or reinstating the license with terms and conditions as he or she deems necessary. The board may take any action with respect to the proposed decision and petition as it deems appropriate.

(h) No petition shall be considered under either of the following circumstances:

(1) If the petitioner is under sentence for any criminal offense including any period during which the petitioner is on court-imposed probation or parole.

(2) If an accusation or a petition to revoke probation is pending against the person.

(i) The board may deny without a hearing or argument any petition filed pursuant to this section within a period of three years from the effective date of the prior decision.

(j) Petitions for reinstatement shall include a processing fee equal to fees charged pursuant to subdivisions (a) and (h) of Section 3775. In addition, petitions for reinstatement that are granted shall include a fee equal to the fee charged pursuant to subdivision (d) of Section 3775, before the license may be reinstated.

(k) Nothing in this section shall be deemed to alter Sections 822 and 823.

§ 3751.5. Time period prior to reapplication for licensure after denial for cause

Notwithstanding Section 489, a person whose application for licensure has been denied for cause may reapply to the board for licensure only after a period of three years has elapsed from the date of the denial.

§ 3752. Procedure on conviction of felony or other offense relating to professional qualifications

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

§ 3752.5. Crime involving bodily injury or attempted bodily injury

For purposes of Division 1.5 (commencing with Section 475), and this chapter, a crime involving bodily injury or attempted bodily injury shall be considered a crime substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

§ 3752.6. Crime involving sexual misconduct

For purposes of Division 1.5 (commencing with Section 475), and this chapter, a crime involving sexual misconduct or attempted sexual misconduct, whether or not with a patient, shall be considered a crime substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

§ 3752.7. Sexual contact with patient; Conviction of sexual offense; Revocation

Notwithstanding Section 3750, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. For purposes of this section, the patient shall no longer be considered a patient of the respiratory care practitioner when the order for respiratory procedures is terminated, discontinued, or not renewed by the prescribing physician and surgeon.

§ 3753. Application of provisions of Administrative Procedure Act

The procedure in all matters and proceedings relating to the denial, suspension, or revocation of licenses under this chapter shall be governed by the provisions of the Administrative Procedure Act (Chapter 5, commencing with Section 11500, of Part 1 of Division 3 of Title 2 of the Government Code).

§ 3753.1. Administrative disciplinary decision imposing terms of probation

(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.

(b) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section once a licensee has served his or her term of probation.

§ 3753.5. Payment of costs of investigation and prosecution of disciplinary action

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law or any term and condition of board probation to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the official custodian of the record or his or her designated representative shall be prima facie evidence of the actual costs of the investigation and prosecution of the case.

(b) The costs shall be assessed by the administrative law judge and shall not be increased by the board; however, the costs may be imposed or increased by the board if it does not adopt the proposed decision of the case.

Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any practitioner directed to pay costs.

(c) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(d) (1) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew, for a maximum of one year, the license of any licensee who demonstrates financial hardship, through documentation satisfactory to the board, and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs.

§ 3753.7. Items included in costs of prosecution

For purposes of this chapter, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.

§ 3754. Action of board after hearing

The board may deny an application for, or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license in any decision made after a hearing, as provided in Section 3753.

§ 3754.5. Action against licensee obtaining license by fraud, misrepresentation or mistake

The board shall initiate action against any licensee who obtains a license by fraud or misrepresentation. The board shall take action against any licensee whose license was issued by mistake.

§ 3755. Action for unprofessional conduct

The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section 3750. The board may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner. Any person who engages in repeated acts of unprofessional conduct shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000), or by imprisonment for a term not to exceed six months, or by both that fine and imprisonment.

§ 3756. Fitness to practice; Professional competency examination; Petition of charges before board

(a) A respiratory care practitioner who provides respiratory care may be ordered to undergo a professional competency examination approved by the board if, after investigation and review by one or more respiratory care practitioner consultants of the board, there is reasonable cause to believe that the person providing respiratory care is unable or unwilling to practice respiratory care with reasonable skill and patient safety. Reasonable cause shall be determined by the board and may include, but shall not be limited to, the following:

(1) Negligence.

(2) A pattern of inappropriate direct or indirect administration of respiratory care protocols, procedures, therapeutic regimens, or diagnostic testing of monitoring techniques.

(3) An act of incompetence or negligence causing death or serious bodily injury.

(4) A pattern of substandard care.

(5) Violation of any provision of this chapter.

(b) The matter shall be presented by the board's executive officer or designee by way of a written petition detailing the reasonable cause. The petition shall contain all conclusions and facts upon which the presumption of reasonable cause is based. A copy of the petition shall be served on the person who shall have 45 days after receipt of the copy of the petition to file written opposition to the petition. Service of the petition and any order shall be in accordance with the methods of service authorized by subdivision (c) of Section 11505 of the Government Code.

(c) The board shall review the petition and any written opposition from the person who has charges brought against him or her, or the board may hold a hearing in accordance with the Administrative Procedure Act to determine if reasonable cause exists, as specified in subdivision (a). The person who has charges brought against him or her shall have the right to be represented at that hearing by a person of his or her choice. If the board is satisfied that reasonable cause exists that is considered by the board as unprofessional conduct, the board shall issue an order compelling the person who has charges brought against him or her to undergo an examination of professional competency, as measured by community standards. For purposes of this section, "community standards" means the statewide standards of the community of licensees. Failure to comply with the order duly served the person charged shall constitute unprofessional conduct for purposes of disciplinary proceedings and failure to pass the examination shall result in denial, suspension, or

revocation of the license, or registration which shall be determined by the board in its discretion.

(d) If the board proceeds pursuant to Sections 3755 and 3756 and the person charged passes the professional competency examination administered, the board shall be precluded from filing an accusation of incompetency based solely on the circumstances giving rise to the reasonable cause for the examination.

(e) If the board determines there is insufficient cause to file an accusation based on the examination results, then all agency records of the proceedings, including the petition and order for the examination, investigative reports, if any, reports of staff or the board's consultants, and the reports of the examiners, shall be kept confidential and shall not be subject to discovery or subpoena.

(f) If no further proceedings are conducted to determine the person's fitness to practice during a period of five years from the date of the petition under Section 3756, then the agency shall purge and destroy all records pertaining to the proceeding.

§ 3757. Mental illness or chemical dependency

The board may refuse to issue a license or an authorization to work as a "respiratory care practitioner applicant" whenever it appears that the applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to any denial of a license or authorization pursuant to this section.

§ 3758. Report on suspension or termination for cause

(a) Any employer of a respiratory care practitioner shall report to the Respiratory Care Board the suspension or termination for cause of any practitioner in their employ. The reporting required herein shall not act as a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, and shall not be subject to discovery in civil cases.

(b) For purposes of the section, "suspension of termination for cause" is defined to mean suspension or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care.

(2) Unlawful sale of controlled substances or other prescription items.

(3) Patient neglect, physical harm to a patient, or sexual contact with a patient.

(4) Falsification of medical records.

(5) Gross incompetence or negligence.

(6) Theft from patients, other employees, or the employer.

(c) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars ($10,000) per violation.

§ 3758.5. Reporting violations

If a licensee has knowledge that another person may be in violation of, or has violated, any of the statutes or regulations administered by the board, the licensee shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.

§ 3758.6. Report on supervisor

(a) In addition to the reporting required under Section 3758, an employer shall also report to the board the name, professional licensure type and number, and title of the person supervising the licensee who has been suspended or terminated for cause, as defined in subdivision (b) of Section 3758. If the supervisor is a licensee under this chapter, the board shall investigate whether due care was exercised by that supervisor in accordance with this chapter. If the supervisor is a health professional, licensed by another licensing board under this division, the employer shall report the name of that supervisor and any and all information pertaining to the suspension or termination for cause of the person licensed under this chapter to the appropriate licensing board.

(b) The failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars ($10,000) per violation.

§ 3759. No civil penalties

Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

§ 3760. Unauthorized practice or use of title

(a) Except as otherwise provided in this chapter, no person shall engage in the practice of respiratory care, respiratory therapy, or inhalation therapy. For purposes of this section, engaging in the practice of respiratory care includes, but is not limited to, representations by a person whether through verbal claim, sign, advertisement, letterhead, business card, or other representation that he or she is able to perform any respiratory care service, or performance of any respiratory care service.

(b) No person who is unlicensed or whose respiratory care practitioner license has been revoked or suspended, or whose license is not valid shall engage in the practice of respiratory care during the period of suspension or revocation, even though the person may continue to hold a certificate or registration issued by a private certifying entity.

(c) Except as otherwise provided in this chapter, no person may represent himself or herself to be a respiratory care practitioner, a respiratory therapist, a respiratory care technician, or an inhalation therapist, or use the abbreviation or letters "R.C.P.," "R.P.," "R.T.," or "I.T.," or use any modifications or derivatives of those abbreviations or letters without a current and valid license issued under this chapter.

(d) No respiratory care practitioner applicant shall begin practice as a "respiratory care practitioner applicant" pursuant to Section 3739 until the applicant meets the applicable requirements of this chapter and obtains a valid work permit.

§ 3761. License required for practice

(a) No person may practice respiratory care or represent himself or herself to be a respiratory care practitioner in this state, without a valid license granted under this chapter, except as otherwise provided in this chapter.

(b) No person or corporation shall knowingly employ a person who holds himself or herself out to be a respiratory care practitioner without a valid license granted under this chapter, except as otherwise provided in this chapter.

§ 3762. Chapter not intended to limit authorized and customary duties

Nothing in this chapter is intended to limit preclude, or otherwise interfere with the practices of other licensed personnel in carrying out authorized and customary duties and functions.

§ 3763. Violations as misdemeanors; Punishment

Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000) or imprisonment in a county jail not exceeding six months, or both, for each offense.

§ 3764. Application for injunction or order restraining unlawful conduct

Whenever any person has engaged or is about to engage in any acts or practices that constitute or will constitute an offense against this chapter, the superior court of any county, on application of the board, the Medical Board of California, or by 10 or more persons holding respiratory care practitioner licenses issued under this chapter, may issue an injunction or other appropriate order restraining that conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required in any action commenced by the board.

§ 3765. Acts not prohibited

This act does not prohibit any of the following activities:

(a) The performance of respiratory care that is an integral part of the program of study by students enrolled in approved respiratory therapy training programs.

(b) Self-care by the patient or the gratuitous care by a friend or member of the family who does not represent or hold himself or herself out to be a respiratory care practitioner licensed under the provisions of this chapter.

(c) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formal or specialized training.

(d) The performance of respiratory care in an emergency situation by paramedical personnel who have been formally trained in these modalities and are duly licensed under the provisions of an act pertaining to their speciality.

(e) Respiratory care services in case of an emergency. “Emergency,” as used in this subdivision, includes an epidemic or public disaster.

(f) Persons from engaging in cardiopulmonary research.

(g) Formally trained licensees and staff of child day care facilities from administering to a child inhaled medication as defined in Section 1596.798 of the Health and Safety Code.

(h) The performance by a person employed by a home medical device retail facility or by a home health agency licensed by the State Department of Health Services of specified, limited, and basic respiratory care or respiratory care related services that have been authorized by the board.

(i) The performance of pulmonary function testing by persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years.

§ 3766. Unlicensed Personnel - Citation and Fines

(a) The board may issue a citation containing an order of abatement and civil penalties against 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 issued pursuant to this chapter.

(b) The board may issue a citation containing an order of abatement and civil penalties against a person employing or contracting with 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 issued pursuant to this chapter.

§ 3767. Unlicensed Personnel - Cite and Fine Issuance

(a) The board shall issue a citation to a person and to his or her employer or contractor, if, upon inspection or investigation, either upon complaint or otherwise, the following conditions are met:

(1) The board has probable cause to believe that the person is acting in the capacity of, or engaging in the practice of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(2) The person is not otherwise exempted from the provisions of this chapter.

(b) Each citation issued pursuant to subdivision (a) shall meet all of the following requirements:

(1) Be in writing and describe with particularity the basis of the citation.

(2) Contain an order of abatement and an assessment of a civil penalty in an amount not less than two hundred dollars ($200) nor more than fifteen thousand dollars ($15,000).

(c) A person served with a citation may appeal to the board within 15 calendar days after service of the citation with respect to any of the following:

(1) The violations alleged.

(2) The scope of the order of abatement.

(3) The amount of the civil penalty assessed.

(d) If, within 15 calendar days after service of the citation, the person cited fails to notify the board that he or she intends to appeal the citation, the citation shall be deemed a final order of the board and not subject to review by any court or agency. The board may extend the 15-day period for good cause.

(e)(1) If a person cited under this section notifies the board in a timely manner that he or she intends to contest the citation, the board shall afford an opportunity for a hearing.

(2) The board shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation, or directing other appropriate relief.

(f) With the approval of the board, the executive officer shall prescribe procedures for the issuance and appeal of a citation and procedures for a hearing under this section. The board shall adopt regulations covering the assessment of a civil penalty that shall give due consideration to the gravity of the violation, and any history of previous violations.

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

§ 3768. Unlicensed Personnel - Fine Collections

(a) After the exhaustion of the review procedures provided for in Section 3767, and as adopted by regulation, the board may apply to the appropriate superior court for both of the following:

(1) A judgment in the amount of the civil penalty.

(2) An order compelling the cited person to comply with the order of abatement.

(b) The application described in subdivision (a) shall include a certified copy of the final order of the board.

(c) The application described in subdivision (a) shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(d) The board may employ collection agencies or other methods in order to collect civil penalties.

§ 3769.3. Stipulation for Public Reprimand

(a) Notwithstanding any other provision, the board may, by stipulation with the affected licensee, issue a public reprimand, after it has conducted an investigation, in lieu of filing or prosecuting a formal accusation.

(b) The stipulation shall contain the authority, grounds, and causes and circumstances for taking such action and by way of waiving the affected licensee's rights, inform the licensee of his or her rights to have a formal accusation filed and stipulate to a settlement thereafter or have the matter in the statement of issues heard before an administrative law judge in accordance with the Administrative Procedures Act.

(c) The stipulation shall be public information and shall be used as evidence in any future disciplinary or penalty action taken by the board.

§ 3770. Records of proceedings; Registry of license holders; Publication and sale of list of practitioners

The department shall keep a record of its proceedings under this chapter, and a register of all persons licensed under it. The register shall show the name of every living licensed respiratory care practitioner, his or her last known place of residence, or address of record, and the date and number of his or her certificate as a respiratory care practitioner. The department shall, once every two years, compile a list of respiratory care practitioners authorized to practice respiratory care in the state. Any interested person is entitled to obtain a copy of that list upon application to the department and payment of an amount as may be fixed by the department, which amount shall not exceed the cost of the list so furnished.

§ 3771. Monthly report to Controller; Payment and credit of moneys received

Within 10 days after the beginning of each calendar month, the board shall report to the Controller the amount and source of all collections made from persons licensed or seeking to be licensed under this chapter, and all fines and forfeitures to which the board is entitled, and at the same time, pay all these sums into the State Treasury, where they shall be credited to the Respiratory Care Fund, which is hereby created to carry out the purposes of this chapter.

§ 3770.1 Licensees: Data Collection

(a) The board shall collect, at least biennially, at the times of both issuing an initial license and issuing a renewa license, all of the following data on respiratory therapists licensed under this chapter:

(1) Location of practice, including city, county, and ZIP code.

(2) Race or ethnicity, subject to subdivision (c).

(3) Gender.

(4) Languages spoken.

(5) Educational background.

(6) Classificaiton of primary practice site among the types of practice sites specified by the board, including, but not limited to, clinic, hospital, managed care organization, or private practice.

(b) The board shall annually provide the data collected pursuant to subdivision (a) to the Office of Statewide Health Planning and Development in a manner directed by the office that allows for inclusion of the data into the annual report required by Section 128052 of the Health and Safety Code.

(c) A licensee may, but is not required to, report his or her race or ethnicity to the board.

§ 3772. Respiratory Care Fund

(a) There is established in the State Treasury the Respiratory Care Fund. All collections from persons licensed or seeking to be licensed under this chapter shall be paid by the board into the fund after the report to the Controller at the beginning of each month of the amount and source of the collections.

§ 3773. Notification at time of application for renewal of license

(a) At the time of application for renewal of a respiratory care practitioner license, the licensee shall notify the board of all of the following:

(1) Whether he or she has been convicted of any crime subsequent to the licensee's previous renewal.

(2) The name and address of the licensee's current employer or employers.

(b) The licensee shall cooperate in furnishing additional information as requested by the board. If the licensee fails to provide the requested information within 30 days, the license shall be made inactive until the information is received.

§ 3774. Renewal of license; Expiration

On or before the birthday of a licensed practitioner in every other year, following the initial licensure, the board shall mail to each practitioner licensed under this chapter, at the latest address furnished by the licensed practitioner to the executive officer of the board, a notice stating the amount of the renewal fee and the date on which it is due. The notice shall state that failure to pay the renewal fee on or before the due date and submit evidence of compliance with Sections 3719 and 3773 shall result in expiration of the license.

Each license not renewed in accordance with this section shall expire but may within a period of three years thereafter be reinstated upon payment of all accrued and unpaid renewal fees and penalty fees required by this chapter. The board may also require submission of proof of the applicant's qualifications, except that during the three-year period no examination shall be required as a condition for the reinstatement of any expired license that has lapsed solely by reason of nonpayment of the renewal fee.

§ 3775. Amount of fees

The amount of fees provided in connection with licenses or ap-

provals for the practice of respiratory care shall be as follows:

(a) The application fee shall be established by the board at not more than three hundred dollars ($300). The application fee for the applicant under subdivision (c) of Section 3740 shall be established by the board at not more than three hundred fifty dollars ($350).

(b) The fees for any examination or reexamination required by the board shall be the actual cost to the board for developing, purchasing, grading, and administering each examination or reexamination.

(c) The initial license fee for a respiratory care practitioner shall be no more than three hundred dollars ($300).

(d) For any license term beginning on or after January 1, 1999, the renewal fee shall be established at two hundred thirty dollars ($230). The board may increase the renewal fee, by regulation, to an amount not to exceed three hundred thirty dollars ($330). The board shall fix the renewal fee so that, together with the estimated amount from revenue, the reserve balance in the board's contingent fund shall be equal to approximately six months of annual authorized expenditures. If the estimated reserve balance in the board's contingent fund will be greater than six months, the board shall reduce the renewal fee. In no case shall the fee in any year be more than 10 percent greater than the amount of the fee in the preceding year.

(e) The delinquency fee shall be established by the board at not more than the following amounts:

(1) If the license is renewed not more than two years from the date of its expiration, the delinquency fee shall be 100 percent of the renewal fee in effect at the time or renewal.

(2) If the license is renewed after two years, but not more than three years, from the date of expiration of the license, the delinquency fee shall be 200 percent of the renewal fee in effect at the time of renewal.

(f) The duplicate license fee shall not exceed seventy-five dollars ($75).

(g) The endorsement fee shall not exceed one hundred dollars ($100).

(h) Costs incurred by the board in order to obtain and review documents or information related to the criminal history of, rehabilitation of, disciplinary actions taken by another state agency against, or acts of negligence in the practice of respiratory care by, an applicant or licensee, shall be paid by the applicant or licensee before a license will be issued or a subsequent renewal processed.

(i) Fees paid in any form other than check, money order, or cashier's check shall be subject to an additional processing charge equal to the board's actual processing costs.

(j) Fees incurred by the board to process return mail shall be paid by the applicant or licensee for whom the charges were incurred.

(k) Notwithstanding any other provision of this chapter, the board, in its discretion, may reduce the amount of any fee otherwise prescribed by this section.

§ 3775.5. Application and renewal fee for inactive license

The fee for an inactive license shall be the same as the renewal fee for the practice of respiratory care as specified in Section 3775.

§ 3775.6. Request for retired status

(a) A licensee may request that his or her license be placed in a "retired" status at any time, provided the license has not been canceled, and any outstanding fines, cost recovery, and monthly probation monitoring costs are paid in full.

(b) An individual with retired status is not subject to any renewal or reporting requirements.

(c) Once an individual is placed on retired status, all privileges to practice respiratory care are rescinded. If an individual practices with a "retired" license, the individual will be subject to discipline as prescribed by this chapter for the unlicensed practice of respiratory care.

§ 3776. Payment of fees following return of check for insufficient funds

(a) Any person who submits to the board a check for fees that is returned unpaid shall pay all subsequent required fees by cashier's check or money order.

(b) Any person who submits to the board a check for fees that is returned unpaid shall be assessed an additional processing fee as determined by the board.

§ 3777. Nonrenewal or nonreinstatement of license for failure to pay fees or meet all requirements

Where an applicant is issued a license to practice respiratory care, and it is later discovered that all required fees have not been paid, approved continuing education is not reported or completed, employer information is not reported, or any other requirements as prescribed by this chapter are not met, the license shall not be renewed or reinstated unless all past and current required fees have been paid and all requirements are met.

3778. Authority to contract with collection service; Terms of contract

Notwithstanding any other provision of law, the board may contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts, and may release personal information, including the birth date, telephone number, and social security number of any applicant or licensee for this purpose. The contractual agreement shall provide that the collection service shall not inappropriately use or release personal information, and shall provide safeguards to ensure that the information is protected from inappropriate disclosure. The contractual agreement shall hold the collection service liable for inappropriate use or disclosure of personal information.

3779. Reliance on web printout for license verification

For purposes of license verification, a person may rely upon the licensing information as it is displayed on the board's Internet Web site that includes the issuance and expiration dates of any license issued by the board.

California Code of Regulations
Title 16, Division 13.6

§1399.300. Citation

These regulations shall be cited and referred to as the "Respiratory Care Regulations."

§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 95811.

§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 employes or contracts with, one of more respiratory care practitioners, unlicensed personnel, or any person, to provide respiratory care services.

(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 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.

§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; 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 business-like 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 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.

§1399.304. Filing of Address

Each person holding a license as a respiratory care practitioner or any person with an application for licensure pending, shall file, in writing, with the board his or her proper and current mailing address, and shall give written notice within 14 days, to the board at its Sacramento office of any and all changes of address, giving both the old and new address.

§1399.305. Officers

(a) The election of a president and vice president shall be held annually at the last regularly-scheduled meeting of the board during the calendar year. The newly-elected officers shall assume office on the first day of the calendar year following the election.

(b) In the case of a vacancy occurring in either of the offices, the vacancy may be filled at any regular or specially-called meeting. The member filling the vacancy shall serve the remainder of the one year term.

§1399.320. Applications

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

§1399.321. Abandonment of Applications

Each applicant shall have one year from the time his or her initial application is received by the Board to meet licensure requirements and complete the application and initial licensure process. If the application and initial licensure process is not completed within the one-year period, the application shall be deemed abandoned.

§1399.327. Satisfactory Completion of Law and Professional Ethics Course Prerequisite to License

Every applicant shall successfully complete a course in law and professional ethics as provided in section 1399.352.7 of this division, prior to initial licensure.

§1399.330. Education Waiver Criteria

(a) The board may waive the education requirements in 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 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.

§1399.349. Continuing Education Defined

"Continuing Education'' means the variety of forms of learning experiences, including, but not limited to, lectures, conferences, academic studies, in-service education, institutes, seminars, home study, internet courses, and workshops, taken by respiratory care practitioners for licensure renewal. These learning experiences are meant to enhance the knowledge of the respiratory care practitioner in the practice of respiratory care in direct and indirect patient care. Continuing education does not include basic education or training needed to become a licensed RCP.

§1399.350. Continuing Education Required

(a) Each respiratory care practitioner (RCP) is required to complete 15 hours of approved continuing education (CE) every 2 years. At least two-thirds of the required CE hours shall be directly related to clinical practice.

(b) To renew the license, each RCP shall report compliance with the CE requirement. Supporting documentation, showing evidence of compliance with each requirement under this Article, shall be submitted if requested by the board.

(c) CE supporting documentation shall be retained by the licensee for a period of four years.

§1399.350.5 Law and Professional Ethics Course

(a) As part of required continuing education, every person licensed under this chapter shall successfully complete a course in law and professional ethics as provided in section 1399.352.7 of this division, during every other license renewal cycle.

(b) Continuing education units earned in accordance with this section shall represent three units toward the non-clinical practice requirements set forth in section 1399.350(a). However, the course may be taken for continuing education credit only once during any renewal period.

§1399.351. Approved CE Programs

(a) Any course or program meeting the criteria set forth in this Article will be accepted by the board for CE credit.

(b) Passing an official credentialing or proctored self-evaluation examination shall be approved for CE as follows:

(1) Registered Respiratory Therapist (RRT) - 15 CE hours if not taken for licensure;

(2) Certified Pulmonary Function Technologist (CPFT) - 15 CE hours;

(3) Registered Pulmonary Function Technologist (RPFT) - 15 CE hours;

(4) Neonatal/Pediatric Respiratory Care Specialist (NPS) - 15 CE hours;

(5) Advanced Cardiac Life Support (ACLS) - number of CE hours to be designated by the provider;

(6) Neonatal Resuscitation Program (NRP) - number of CE hours to be designated by the provider; and

(7) Pediatrics Advanced Life Support (PALS) - number of CE hours to be designated by the provider.

(8) Advanced Trauma Life Support (ATLS) - number of CE hours to be designated by the provider.

(c) Examinations listed in subdivisions (b)(1) through (b)(4) of this section shall be those offered by the National Board for Respiratory Care and each successfully completed examination may be counted only once for credit.

(d) Successful completion of each examination listed in subdivisions (b)(5) through (b)(8) of this section may be counted only once for credit and must be for the initial certification. See section 1399.352 for re-certification CE. These programs and examinations shall be provided by an approved entity listed in subdivision (h) of Section 1399.352.

(e) The board shall have the authority to audit programs offering CE for compliance with the criteria set forth in this Article.

§1399.352. Criteria for Acceptability of Courses

Acceptable courses and programs shall meet the following criteria:

(a) The content of the course or program shall be relevant to the scope of practice of respiratory care. Credit may be given for a course that is not directly related to clinical practice if the content of the course or program relates to any of the following:

(1) Those activities relevant to specialized aspects of respiratory care, which activities include education, supervision, and management.

(2) Health care cost containment or cost management.

(3) Preventative health services and health promotion.

(4) Required abuse reporting.

(5) Other subject matter which is directed by legislation to be included in CE for licensed healing arts practitioners.

(6) Re-certification for ACLS, NRP, PALS, and ATLS.

(7) Review and/or preparation courses for credentialing examinations provided by the National Board for Respiratory Care, excluding those courses for entry-level respiratory therapy certification.

(b) The faculty shall be knowledgeable in the subject matter as evidenced by:

(1) A degree from an accredited college or university and verifiable experience in the subject matter, or

(2) Teaching and/or clinical experience in the same or similar subject matter.

(c) Educational objectives shall be listed.

(d) The teaching methods shall be described, e.g., lecture, seminar, audio-visual, simulation.

(e) Evaluation methods shall document that the objectives have been met.

(f) Each course must be provided in accordance with this Article.

(g) Each course or provider shall hold approval from one of the entities listed in subdivision (h) from the time the course is distributed or instruction is given through the completion of the course.

(h) Each course must be provided or approved by one of the following entities. Courses that are provided by one of the following entities must be approved by the entity's president, director, or other appropriate personnel:

(1) Any post-secondary institution accredited by a regional accreditation agency or association recognized by the United States Department of Education.

(2) A hospital or health-care facility licensed by the California Department of Health Services.

(3) The American Association for Respiratory Care.

(4) The California Society for Respiratory Care (and all other state societies directly affiliated with the American Association for Respiratory Care).

(5) The American Medical Association.

(6) The California Medical Association.

(7) The California Thoracic Society.

(8) The American College of Surgeons.

(9) The American College of Chest Physicians.

(10) Any entity approved or accredited by the California Board of Registered Nursing or the Accreditation Council for Continuing Medical Education.

(i) Course organizers shall maintain a record of attendance of participants, documentation of participant's completion, and evidence of course approval for four years.

(j) All program information by providers of CE shall state: ''This course meets the requirements for CE for RCPs in California.''

(k) All course providers shall provide documentation to course participants that includes participant name, RCP number, course title, course approval identifying information, number of hours of CE, date(s), and name and address of course provider.

(l) For quarter or semester-long courses (or their equivalent) completed at any post-secondary institution accredited by a regional accreditation agency or association recognized by the United States Department of Education, an official transcript showing successful completion of the course accompanied by the catalog's course description shall fulfill the requirements in subdivisions (i), (j) and (k).

(m) The board may audit providers offering CE for compliance with the criteria set forth in this Article.

§1399.352.5. CE Hours

The board will accept hours of approved CE as follows:

(a) The number of hours designated by those entities identified in subdivision (h) of Section 1399.352 as it pertains to their own course or a course approved by them.

(b) Notwithstanding subdivision (a), one (1) academic quarter unit is equal to ten (10) CE hours and one (1) academic semester unit is equal to fifteen (15) CE hours.

(c) Providers may not grant partial credit for any CE course. Partial credit is defined as any time segment less than the total designated course duration or time period.

§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) 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.

(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.

(g) 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.

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

§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&P.

(c) Notwithstanding subdivision (b), if the board determines that through no fault of the licensee the CE completed does not meet the criteria set forth in this article, the board 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.

§1399.354. Waiver of Requirements

At the time of making application for renewal of a license, an RCP may request a waiver from completion of the CE requirements. The board shall grant a waiver only if the RCP verifies in writing that, during the two-year period immediately prior to the expiration date of the license, he or she:

(a) Has been absent from California for at least one year because of military service reasonably preventing completion of the CE requirements; or

(b) Has been prevented from completing the CE requirements for reasons of health or other good cause which includes:

(1) Total medical disability of the RCP for at least one year; or

(2) Total medical disability of an immediate family member for at least one year where the RCP has total responsibility for the care of that family member.

Verification of the disability under subsection (b) shall be verified in writing by a licensed physician and surgeon.

§1399.355. Renewal After Inactive or Delinquent Status

(a) For the renewal of an expired license more than two years and within three years of the date of expiration, the applicant shall provide documentation of completion of the required 30 hours of CE during the four-year period preceding the application for renewal.

(b) For the renewal of an expired license two years or less from the expiration date, the applicant shall provide documentation of completion of the required 15 hours of CE during the two-year period preceding the application for renewal.

(c) After a license has been expired for three years, it will be cancelled and the applicant must make application just as for an initial license and meet all the current criteria required for licensure.

§1399.356. License Status

A licensee may request, in writing, to change the status of his/her license as follows:

(a) To change the status of a license from active to inactive, the licensee shall make application to the board for such a change.

(b) To change the status of a license from inactive to active, the licensee shall request such in writing, pay all current, delinquent and accrued renewal fees, and provide documentation of completion of 15 hours of CE during the two-year period preceding the request for active status.

§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, 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 anually, 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;

(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 to an extent that it constitutes patient care, including, but not limited to, applying or fitting any device to the patient or making any adjustment;

(B) Taking any action 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, inlcluding but not limited to applying positive pressure.

(C) Providing any instruction in the operation or use of the equipment or instruction in the clinical application of equipment and/or supplies;

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

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

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

(G) 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;

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

(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 oxygen;

(B) Handling or adjusting 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) 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;

(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.

§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.

§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 shall include but not be 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 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.

§1399.372. Rehabilitation Criteria for Suspensions or Revocations

When considering the denial, petition for reinstatement, modification of probation, suspension or revocation of an RCP license, the board will consider the following criteria in evaluating the rehabilitation of such person and his or her eligibility for a license:

(a) The nature and severity of the act(s) or offense(s).

(b) The total criminal record.

(c) The time that has elapsed since the commission of the act(s) or offense(s).

(d) Compliance with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against such person.

(e) Evidence of any subsequent act(s) or crime(s) committed.

(f) Any other evidence of rehabilitation submitted that is acceptable to the board, including:

(1) Successful completion of respiratory care courses with a "C" or better, as determined by the institution;

(2) Active continued attendance or successful completion of rehabilitative programs such as 12-step recovery programs or psychotherapy counseling;

(3) Letters relating to the quality of practice signed under penalty of perjury from licensed health care providers responsible for the supervision of his/her work.

(g) Statements, letters, attestations of good moral character, or references relating to character, reputation, personality, marital/family status, or habits shall not be considered rehabilitation unless they relate to quality of practice as listed in section (f).

§1399.372.5 Satisfactory Completion of a Law and Professional Ethics Course Prerequisite to Reinstatement

Every petitioner for reinstatement shall successfully complete a course in law and professional ethics as provided in section 1399.352.7 of this division, within 6 months prior to the date a petition for reinstatement is filed with the board.

§1399.373. Permit Processing Times

''Permit'' as defined by the Permit Reform Act of 1981 means any license, registration permit or any other form of authorization required by a state agency to engage in a particular activity or act. Processing times for the board's respiratory care practitioner program are set forth below. The actual processing times apply to those applicants who have passed all appropriate examinations.

Maximum time for notifying the applicant in writing that the application is complete and accepted for filing, or that the application is deficient and what specific information is required: 30 days

Maximum time after receipt of a complete application to issue or deny: 150 days

Actual processing time for issuance of a license based on prior two years:

Minimum: 70 days Median: 242 days Maximum: 344 days

§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 or probation, or consequences for non compliance of ordered probation, the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" [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.

§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.

§1399.377. Records from Employers

Records requested by the board, or on behalf of the board, as provided for 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.

§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.

§1399.379. Employer Reporting

Information required to be disclosed by any employer of a respiratory care practitioner as provided in sections 3758 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.

§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 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) A citation shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the statute or regulation determined to have been violated.

(c) A citation shall, where appropriate, contain an order of abatement fixing a reasonable time for abatement of the violation.

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

(e) A 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 be made in writing within 30 calendar days from the issuance date of the citation.

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

(g) 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

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

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

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

§1399.381. Fines

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

BUSINESS AND PROFESSIONS CODES	Maximum Fine
3717 Records from employer	$10,000
3731 Title Used by licensee	$5,000
3739 Practice during license process	$5,000
3750(a) Advertising	$5,000
3750(b) Fraud in the procurement of any license	$5,000
3750(c) Knowingly employing unlicensed persons	$15,000
3750(d) Conviction of crime	$5,000
3750(e) Impersonating an applicant in any examination	$5,000
3750(f) Negligence	$5,000
3750(g) Conviction of any violation of division 2	$5,000
3750(h) Aiding/Abetting person to violate this chapter	$5,000
3750(i) Aiding/abetting person to engage in unlawful practice	$5,000
3750(j) Commission of fraudulent, dishonest or corrupt act	$5,000
3750(k) Falsifying/ incorrect/ inconsistent entries in record	$5,000
3750(l) Changing prescription/falsifying orders for treatment	$5,000
3750(m) Discipline taken by another agency	$5,000
3750(n) Knowing failure to protect patients -infection control	$5,000
3750(o) Incompetence	$5,000
3750(p) Pattern of substandard care	$5,000
3750.5 Obtained/possessed/use of drugs	$5,000
3750.6 Production of work permit/pocket license	$5,000
3753.1 Probation monitoring costs	$5,000
3753.5 Cost recovery	$5,000
3754.5 Obtains license by fraud or misrepresentation	$5,000
3755 Unprofessional conduct	$5,000
3758 Employer report on suspension/termination	$10,000
3758.5 RCP report on violation made by other RCP	$5,000
3758.6 Employer report on supervisor	$10,000
3760 Practice without a license/Misrepresentation	$15,000
3761(a) Misrepresentation in claim of license to practice	$15,000
3761(b) Knowingly employing an unlicensed person	$15,000
3773(a)(1) License renewal - notice of conviction	$5,000
3773(a)(2) License renewal - identify employer	$5,000
3773(b) License renewal - additional information	$5,000

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

(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 these 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 these 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 these 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 these 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.

§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 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 shall hold, within 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 may affirm, modify or dismiss the citation, including any fine levied.

The executive officer shall state in writing the reasons for the action and serve a copy of the findings and decision on the person cited within 30 calendar days of the date of the citation review. 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 of the decision resulting from the citation review.

§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 a cited person or employer requests a hearing to appeal the citation, the board shall afford an opportunity for 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.

§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.

§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.

§1399.395. Fee Schedule

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

(a)	Application fee	$ 300
(b)	Examination fee	$ 190
(c)	Re-examination fee	$ 150
(d)	Renewal fee for licenses expiring on or after January 1, 2002	$ 230
(e)	Delinquency fee (not more than 2 years after expiration)	$ 230
(f)	Delinquency fee (after 2 years but not more than 3 years after expiration)	$ 460
(g)	Inactive license fee	$ 230
(h)	Duplicate license fee	$ 25
(i)	Endorsement fee	$ 25