



Item: **2018 Board Sponsored Legislation**  
**Proposal to amend §3751, §3753, and §3753.1 of the Business and Professions Code (Reinstatement requirements, exam name clarification, and probation monitoring costs)**

Item Summary: Attached is the legislative proposal containing the following proposed amendments that were approved by the Board at its October 13, 2017 board meeting:

- Amend §3751 to require an individual petitioning for reinstatement of licensure to pass the current licensing exams to ensure competency at the current minimum required level.
- Amend §3735 to accurately reflect the name(s) of examinations for licensure to ensure clarity in the law.
- Amend §3753.1 to clarify that once a person is placed on probation, he/she is subject to monthly probation monitoring costs that he/she incurs.

This purpose of this item is to inform the Board of the status of this proposal.

[Reference: RCB Strategic Plan 2017-2021, Enforcement #3 and #11, Organizational Effectiveness #4]

Board Action: Information only.

### **STATUS UPDATES**

- 11/8/17 Legislative proposal was submitted to the Senate Business, Professions, and Economic Development Committee (Senate B&P).
- 12/19/17 Meeting with legislative staff representing both the Senate B&P and the Assembly Business and Professions Committee.
- 1/10/18 Decision to carry language is expected within the next month.
- 2/2/18 An additional update will be provided at the board meeting.

## Senate Business, Professions and Economic Development Committee COMMITTEE BILL: 2018 PROPOSED LEGISLATION

**Note:** Submit the completed form to the Committee electronically by email and attach any additional information or documentation as necessary.

### **REQUESTOR & CONTACT INFORMATION**

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**Omnibus Legislative Proposal**

**DATE SUBMITTED** November 19, 2017

### **SUMMARY**

This proposal requires individuals who choose to petition for reinstatement of a revoked license to meet the current exam competency threshold, and it will clarify the titles of those examinations. This bill will also clarify that an applicant placed on probation may be ordered to submit monthly probation monitoring costs.

### **IDENTIFICATION OF PROBLEM**

In 2014, the Board amended section 3735 of the B&P to require all licensees to pass a higher-level competency examination prior to licensure. Up to this point, the Board had used the same entry-level national exam (despite name changes) since its inception in 1985. Section 3751 outlines the requirements to petition the Board for reinstatement of a revoked license. Included among those, petitioners must meet current education requirements. However, there is no requirement that petitioners meet current competency exam requirements.

In addition, section 3735 of the B&P cites the examination as “all parts of the national registered respiratory therapist exam” which is now outdated. The examination has been retitled to reflect the new structure of the examination that was implemented in 2015.

The Board has also noticed a trend over the last several years where decisions ordered by administrative law judges fail to order costs/reimbursement for monitoring applicants and licensees placed on probation. The Board prides itself on recovering a significant portion of its enforcement related costs from those that incur those costs. It is a costly and lengthy process to non-adopt such proposed decisions for the sole purpose of recovering monitoring costs. More often, such action defeats the very purpose to reduce enforcement expenditures. As a result, many licensees with no enforcement history end up paying for probation monitoring in addition to other enforcement activities that cannot be recovered.

### **PROPOSED SOLUTION**

- Amend §3751 to require an individual petitioning for reinstatement of licensure to pass the current licensing exams to ensure competency at the current minimum required level.
- Amend §3735 to accurately reflect the name(s) of examinations for licensure to ensure clarity in the law.
- Amend §3753.1 to clarify that once a person is placed on probation, he/she is subject to monthly probation monitoring costs that he/she incurs.

## **RCP BACKGROUND & LEGISLATIVE HISTORY**

The enabling statute to license Respiratory Care Practitioners (RCPs) was signed into law in 1982, thus establishing the Respiratory Care Board of California. The Board is mandated to protect the public from the unauthorized and/or unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care.

The Board ensures that applicants meet the minimum education and competency standards and conducts a thorough criminal background check on each applicant prior to licensure. The Board also pursues discipline for violations of its Act. Over 39,000 licenses have been issued to date.

An RCP is a specialized healthcare practitioner who has graduated from a college or university, passed a national board certifying examination and holds state licensure. RCPs work most often in intensive care units (ICUs) and operating rooms, but are also commonly found in acute care settings, outpatient clinics, sleep clinics and home-health environments. RCPs work with patients of all ages from newborn infants to the elderly.

RCPs are specialists and educators in cardiology and pulmonology. RCPs are also advanced-practice clinicians in airway management; establishing and maintaining the airway during management of trauma, intensive care, and may administer medications or pharmacological agents for conscious sedation.

RCPs educate, diagnose, and treat people who are suffering from heart and lung problems. Specialized in both cardiac and pulmonary care, RCPs often collaborate with specialists in pulmonology and anesthesia in various aspects of clinical care of patients. RCPs provide a vital role in both medicine and nursing. A vital role in ICUs and emergency departments is the initiation and management of mechanical ventilation and the care of artificial airways.

RCPs with advanced education or credentialing evaluate and treat patients with a great deal of autonomy under the direction of a pulmonologist. In facilities that maintain critical care transport teams, RCPs are a preferred addition to all types of surface or air transport.

RCPs serve as clinical providers in pulmonary rehabilitation programs, cardiology clinics and catheterization labs. They are also primary clinicians in conducting tests to measure lung function and teaching people to manage asthma, chronic obstructive pulmonary disease among many other cardiac and lung functions.

Outside of clinics and hospitals, RCPs often manage home oxygen needs of patients and their families, providing around the clock support for home ventilators and other equipment for conditions like sleep apnea.

RCPs in the United States are migrating toward a role with autonomy similar to the nurse practitioner, or as an extension of the physician like the physician assistant. RCPs are frequently utilized as complete cardiovascular specialists being utilized to place and manage arterial accesses along with peripherally-inserted central catheters.

The respiratory care profession is relatively young and has grown at a rapid rate. This is evident in part by the fact that the first professional association, now known as the American Association for Respiratory Care, was founded in 1947. This Association estimates that there are over 174,000 “active” respiratory therapists in the United States with California contributing 14% of this figure.

## **JUSTIFICATION**

B&P §3701 states, “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.” As such, licenses are issued in accordance with the Board’s mandate to protect and serve the consumer in the interest of the safe practice of respiratory care.

B&P §3710.1 provides “Protection of the public shall be the highest priority for the [Board] 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.”

Adding the requirement for revoked licensees to meet the current exam competency threshold prior to reinstatement, is in line with the Board’s mandate.

Amending section 3735 will provide all readers with clarity on the specific competency examinations (that were renamed in 2015), that must be successfully passed.

Amending section 3753.1 to require probationers to compensate the board for the direct costs of monitoring their probation will ensure the Board’s cost recovery program remains equitable and will ease the financial burden on all other license holders.

## **ARGUMENTS PRO & CON**

Pro: *Consumer protection provisions are strengthened, clarity is provided, and probation monitoring costs are reimbursed by all probationers.* This proposed language strengthens the legal framework by requiring holders of revoked licenses to pass the current competency exam, clarifies the names of the competency examinations, and ensure the Board’s cost recovery program remains equitable.

Con: *None.*

## **PROBABLE SUPPORT & OPPOSITION**

The Board anticipates the California Society for Respiratory Care (CSRC) will take a neutral or support position on this proposed legislation.

## **FISCAL IMPACT**

Reimbursements have declined from \$206,000 in FY 12/13 to \$144,000 in FY 15/16. This is largely associated with a decline in the number of probationers, as well as probation monitoring costs not being ordered by administrative law judges. The Board expects that with the amendment to section 3753.1, the costs recovered will increase by approximately \$12,000/year. More importantly, it will provide equity in the application of the reimbursement program so that all probationers are paying their own expenses.

## **ECONOMIC IMPACT**

Insignificant. Private parties subject to discipline are the only parties affected.

## **FINDINGS FROM OTHER STATES**

The Board is unaware of other states with similar statutes.

## **PROPOSED LANGUAGE**

### ***Section 3751 of the Business and Professions Code is amended to read:***

3751. (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 and examination 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.

(Amended by Stats. 2005, Ch. 658, Sec. 15. Effective January 1, 2006.)

**Section 3753.1 of the Business and Professions Code is amended to read:**

3753.1. (a) An administrative ~~disciplinary~~ decision and order imposing terms of probation ~~may~~ shall include, among other ~~things~~ terms and conditions, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.

(b) For purposes of this section, probationer means any applicant or licensee placed on board probation through an administrative order resulting from the filing of a statement of issues, accusation, petition for reinstatement, or any other similar pleading.

~~(b)~~ (c) 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.

(Amended by Stats. 2002, Ch. 1150, Sec. 31. Effective January 1, 2003.)

**Section 3735 of the Business and Professions Code is amended to read:**

3735. (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.~~ the National Board for Respiratory Care's Therapist Multiple-Choice Examination, at the cut-off level required to qualify for the Clinical Simulation Examination, and Clinical Simulation Examination, or any succeeding exam(s)

(b) Notwithstanding subdivision (a), any person applying for licensure who provides evidence that he or she passed the national Certified Respiratory Therapist examination or Written Registry Exam prior to January 1, 2015, shall ~~not be required to pass the national registered respiratory therapist examination,~~ be deemed to have met the exam requirement, provided if there is no evidence of prior license or job-related discipline, as determined by the board in its discretion.

(Amended by Stats. 2014, Ch. 179, Sec. 2. Effective January 1, 2015.)