STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

Board Meeting Agenda
Friday, June 7, 2019
TELECONFERENCE
10 AM- 12 PM

TELECONFERENCE LOCATIONS OPEN TO THE PUBLIC

DCA Headquarters
North Market Hearing Rm 102
1625 North Market,
Sacramento, CA 95834

DCA DOI – Valencia Field Office
MBC Conference Room, Dist. 05
27202 Turnberry Lane, Ste 280
Valencia, CA 91355

Pima Medical Institute
111 Campus Way, Suite 100, Rm 125
San Marcos, CA 92078

South San Francisco Public Library
Grand Meeting Room
306 Walnut Avenue
South San Francisco, CA 94080

3750 Rosin Court, Suite 100
Sacramento, CA 95834
Telephone: (916) 999.2190
Toll Free: (866) 375-0386
Website: www.rcb.ca.gov

10:00 a.m. Call to Order, Establishment of Quorum

1. President's Opening Remarks

a. New Member Introduction: Sherleen Bose, BA, RCP, RRT, CHT

b. Public Comment: Public comment will be accepted after each agenda item and toward the end of the agenda for public comment not related to any particular agenda item. The President may set a time limit, as needed.

2. March 1, 2019 Meeting Minutes (Approval)

3. Legislation

a. New Legislation of Interest - Members to review and take formal positions on legislation of interest to the Board such as watch, support or oppose and/or take other action as appropriate.

AB 613 (Lowe) Professions and vocations: regulatory fees
SB 53 (Wilk) Open meetings
HR 2508 Breathe Act

b. Legislative Update - Members to review status updates for the following bills to which they have already taken a position, and take any action as appropriate.

AB 193 (Patterson): Professions and vocations (licensing requirements)
AB 241 (Kamalager-Dove): Implicit bias: continuing education: requirements
AB 476 (BlancaRubio): DCA Taskforce, foreign-trained professionals
AB 496 (Low): Business & professions (board member removal/gender terms)
SB 181 (Chang): Healing arts boards (license display in office)
SB 207 (Hurtado): Medi-Cal, asthma preventive services

4. **Proposed Regulatory Language for Approval: Basic, Intermediate, and Advanced Respiratory Care-**Review proposed regulatory text and determine to move forward with the regulatory process or take other action as appropriate. Language ratifies the RCB and BVNPT Joint Statement Disseminated April 2019.

5. **Proposed Regulatory Language for Approval: Amend Disciplinary Guidelines, Substantial Relationship Criteria (for Licensees), Rehabilitation Criteria (for Licensees), Driving Record, and Handling of Military Applications; Add Substantial Relationship Criteria for Applicants and Rehabilitation Criteria for Applicants (AB 2138); Repeal Sponsored Events Provisions -** Review modified proposed regulatory text and determine to move forward with the regulatory process or take other action as appropriate.

6. **Future Agenda Items**

7. **Public Comment on Items Not on the Agenda**
   The Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting (Government Code section 11125, 11125.7(a)).

CLOSED SESSION

(Not Open to the Public)
Pursuant to subdivision (c) (3) of Government Code section 11126, the Board will meet in closed session to consider proposed disciplinary actions, stipulated settlements, and petitions for modifications/termination of probation and reinstatement.

12:00 p.m. Adjournment

NOTICE

The meeting may be cancelled or changed without notice. For verification, please check the Board's website at http://www.rcb.ca.gov

Action may be taken on any item on the agenda. Time and order of agenda items are subject to change at the discretion of the President. Meetings of the Respiratory Care Board are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. In addition to the agenda item which addresses public comment, the audience will be given appropriate opportunities to comment on any issue before the Board, but the President may, at his discretion, apportion available time among those who wish to speak. The public may comment on items not on the agenda, but Board members cannot discuss or take action on items not on the agenda. The agenda is available on the Board's website at www.rcb.ca.gov. This meeting may be canceled or changed without any notice. For verification, please check the Board's website at www.rcb.ca.gov or call (916) 999-2190.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Paula Velasquez at (916) 999-2190 or sending a written request to: Paula Velasquez, Respiratory Care Board, 3750 Rosin Court, Suite 100, Sacramento, CA 95834. Providing your request at least nine (9) business days before the meeting will help ensure availability of the requested accommodation.

PUBLIC SESSION MINUTES

Friday, March 1, 2019

Children's Hospital of Orange County
Wade Center, 2nd Floor
1201 W. La Veta Avenue
Orange, CA 92868

Members Present:	Mary Ellen Early
	Rebecca Franzoia
	Ricardo Guzman
	Michael Hardeman
	Sam Kbushyan, MBA
	Ronald Lewis, M.D.
Staff Present:	Fred Chan-You, Legal Counsel
	Stephanie Nunez, Executive Officer
	Christine Molina, Staff Services Manager

CALL TO ORDER

The Public Session was called to order at 9:00 a.m. by Ms. Nunez. Due to inclement weather and an unexpected emergency, the Board's President and Vice President were not able to attend the meeting.

Ms. Molina called roll (present: Early, Franzoia, Guzman, Hardeman, Kbushyan, Lewis), and a quorum was established.

Ms. Nunez thanked Mark Rogers and Children's Hospital of Orange County for hosting the Board's meeting. She added that Children's Hospital of Orange County is one of sixteen organizations honored by the American Association for Respiratory Care for best practices in the profession and promoting patient safety by providing access to respiratory therapist to deliver their care.

Ms. Nunez introduced the Board's newest members, Ricardo Guzman, a Respiratory Care Practitioner and Clinical Director at Napa Valley College. She stated Mr. Guzman is actively involved in the respiratory professional community and the Board is excited to have him as a member.

Mr. Guzman stated he is honored to serve as a member of the Board and looks forward to learning from the Board and promoting its mission. He added, as an educator he tells his students the Board's mission is all about patients. He is looking forward to serving in any capacity that the Board needs.

PUBLIC COMMENT

Ms. Nunez stated the Board encourages public comment as the issues being discussed directly affect the profession and the RCP's in attendance. She explained that public comment would be allowed on agenda items, as those items are discussed by the Board during the meeting. She added that under the Bagley-Keene Open Meeting Act, the Board may not take action on items raised by public comment that are not on the Agenda, other than to decide whether to schedule that item for a future meeting.

11. ELECTION OF OFFICERS FOR 2019

Ms. Nunez explained that Board President, Alan Roth needed to step down due to an out-of-state move. Judy McKeever will remain in her position of Vice President, but a new president needs to be elected to serve for the remainder of the calendar year.

Ms. Nunez opened the floor for nominations for Respiratory Care Board President.

A motion to nominate Mr. Guzman for President was made by Ms. Franzoia and seconded by Mr. Guzman.

M/Franzoia /S/Guzman
In favor: Franzoia, Guzman

A motion to nominate Mr. Goldstein for President was made by Dr. Lewis and seconded by Ms. Early.

Request for Public Comment: No public comment was received.

M/Lewis /S/Early
In favor: Early, Hardeman, Kbushyan, Lewis
MOTION PASSED

Ms. Nunez acknowledged the outstanding contributions President Roth made to the Board. She added he consistently went above and beyond and was always there when needed. He was exceptional at presenting the respiratory care profession and the Board is thankful for all his efforts.

2. APPROVAL OF OCTOBER 26, 2018 MEETING MINUTES

Mr. Hardemen moved to approve the October 26, 2018 Public Session minutes as written.

Request for Public Comment: No public comment was received.

M/Hardeman /S/Kbushyan
In favor: Early, Franzoia, Guzman, Hardeman, Kbushyan, Lewis
MOTION PASSED

3. LEGISLATION OF INTEREST

Ms. Molina reviewed the Legislation of Interest and staff recommended positions as listed below:

AB 193: Professions and vocations
AB 193, would require the Department of Consumer Affairs to conduct a comprehensive review of all the occupational licensee requirements (beginning January 2021) and identify any that are unnecessary. This is in line with the elimination of barriers to licensure The information they collect will be presented to the Legislature to see what action, if any, is needed for the boards to move forward and possibly change licensure requirements.
Status: Referred to Assembly Business and Professions Committee on 2/4/19
Board's Position: Watch

AB 241: Implicit bias
AB 241, declares the intent of the Legislature to enact legislation that would address implicit bias in the healing arts professions essentially saying anyone who seeks a license, should not be discriminated against.
Status: Pending referral: may be heard in committee after 2/21/19
Board's Position: Watch

AB 476: DCA: task force: foreign-trained professionals
AB 476, would require the Department of Consumer Affairs to create a task force to study and write a report of its finding and recommendations regarding the licensing of foreign-trained professionals with the goal of integrating foreign-trained professionals into the state's workforce.
Status: Pending referral as of 2/12/19
Board's Position: Watch

AB 496: Business and professions
AB 496, would replace gendered terms with nongendered terms and make various other nonsubstantive changes.
Status: Pending referral as of 2/12/19
Board's Position: Watch

SB 181: Healing arts boards
SB 181, would make nonsubstantive changes to the displaying of licenses.
Status: Referred to Senate Rules Committee on 2/6/19
Board's Position: Watch

SB 207: Medi-Cal: asthma preventive services
SB 207, would include asthma preventative service, as a covered benefit under the Medi-Cal program. This bill is looking at having the Department of Public Health, in consultation with external stake holders, develop a coverage policy
Board's Position: Watch
Status: Pending referral: may be acted upon on or after 3/7/19

Dr. Lewis inquired about the votes for AB 241.

Ms. Molina responded it is early in the legislative cycle and the bill has not yet been assigned to an initial policy committee.

Request for Public Comment: No public comment was received.

M/Lewis /S/Franzoia
In favor: Early, Franzoia, Guzman, Hardeman, Kbushyan, Lewis
MOTION PASSED

4. 2020 LEGISLATIVE PROPOSAL

Ms. Nunez reviewed the staff's recommendation to amend section 3758 of the Business and Professions Code to include registries as an entity required to provide mandatory reports. She explained that currently if a person comes from a registry to a hospital, and faces a disciplinary situation, the hospital is not in the position to suspend or required to report them.

Dr. Lewis inquired if a registry terminates their employment and it doesn't involve patient care are they required to report it.

Ms. Molina responded it must be for the six specified causes specified within the mandatory reporting statute.

Ms. Nunez stated the legislation would also add mandatory reporting if someone resigns in lieu of termination for those same causes currently in the law.

Mr. Guzman moved to approve the legislative proposal.

Request for Public Comment: No public comment was received.

M/Guzman /S/Lewis
In favor: Early, Franzoia, Guzman, Hardeman, Kbushyan, Lewis
MOTION PASSED

5. INFORMATIONAL UPDATE ON MEETINGS WITH THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

Ms. Nunez updated the Board on the progress made between the RCB and the BVNPT regarding respiratory tasks performed in sub-acute facilities. She stated meetings with President Roth, RCP expert, Michael Santos, Board staff, Agency, DCA Executives, Legal Counsels and BVNPT members were held where they were able to clarify roles and reach an agreement that LVNs are not authorized to provide care for patients requiring invasive mechanical ventilation.

Within the next month, the boards will have a finalized Joint Statement which will be posted on both websites as well as distributed to all interested parties and subacute facilities in California as some have been using LVNs in placed of RCPs to perform these tasks. Ms. Nunez stated these were very successful meetings and the Board is looking forward to continuing its great relationship with the BVNPT moving forward.

Request for Public Comment:

An unidentified attendee stated this was "good work" by the Board and that he understands the Board has been working very hard for a long time on this.

Ms. Nunez stated it was a group effort involving staff, investigators, board members, experts, the BVNPT, the Department, and Agency with a good outcome.

6. CLINICAL EDUCATION

Ms. Nunez stated one of the things the Board wanted to accomplish from its Strategic Plan was to develop an action plan to establish laws and regulations or accrediting standards for student clinical requirements to increase consumer protection and improve education outcomes. The Board recognized that clinical education was not similar in all institutions. While some were great, others need improvement. The Board recognizes any school that has been approved by CoARC (the Committee on Accreditation for Respiratory Care). However, CoARC only reviews schools every ten years and it is hard to make changes as CoARC is a national organization.

The Board reviewed different options presented by staff for consideration:

1. Send an education letter to clinical directors at education programs
2. Ask CoARC to include the Board's standards in its standards for approval.
3. Establish legislative and regulatory requirements that allow for inspection and administrative fines as a form of reactive enforcement in response to complaints.

Ms. Nunez stated the main requirement would be to have qualified preceptors that meet certain requirements (all the suggestions made by the Board at its October 2018 meeting are included in the proposal):

- holds a current and valid RRT credential
- has a minimum of 5 years' experience practicing as a respiratory care practitioner
- has no prior or existing relationship with any student that he or she precepts

Ms. Nunez added, as proposed preceptors responsible for direct supervision and instruction to students may claim CE credits as live hours of leadership. The proposal also requires clinical educators to meet with the student and the preceptor an hour per week while they are practicing at the facility.

Mr. Guzman stated CoARC has been very interested in preceptors for training respiratory care students. As a clinical director, he appreciates the intent of this proposal. However, his concern is how this will be implemented at hospitals. Due to turnover, he anticipates some difficulty making sure that there will be someone who has gone through the training and has been approved. Planning schedules months ahead would be problematic not knowing if a qualified preceptor would be available.

Ms. Nunez requested the Board allow her and staff to work with Mr. Guzman and President Goldstein at getting a proposal together to bring back to the Board.

Request for Public Comment:

Kevin Booth, East Los Angeles College, stated this will be problematic when the responsibility is on the education program as the programs have no authority over the preceptors since they are hospital employees. CoARC offers preceptor training and encourages programs to provide it for their respective institutions. Still, there are a large number of practitioners who have no desire or capability to be a clinical instructor. She stated, it is an excellent idea in theory, but it seems there is a gap between the idea and possible action.

Jim Hutchinson, Mt. San Antonio College, Director of Clinical Education, stated he likes the idea and it would benefit students to have better qualified preceptors. However, he agrees with his colleague from East LA College and recognizes there is a gap from where we are now to where we want to be. He suggested the Board gather information by surveying hospitals to find out how many have dedicated preceptors. He added, in his experience, most do not.

Jeff Davis, Director of Respiratory Care at UCLA, stated coming from the clinical side, his expectation is that his staff are to precept a student on any given day. He added, he tries to make it a point to put students with stronger therapists. The way this is worded, it looks like he might have to require all his staff (or at least a majority) to go through this training program.

Ms. Early stated consideration needs to be taken in how to deal with preceptors who might, unexpectedly, not be available. Unless an institution has an additional preceptor available as a backup, there will be a gap in that student's learning experience if that backup that fills in does not have the training necessary.

Dr. Lewis moved to table this agenda item to a later meeting.

M/Lewis /S/Guzman
In favor: Early, Franzoia, Guzman, Hardeman, Kbushyan, Lewis
MOTION PASSED

7. PROPOSED CONTINUING EDUCATION REGULATORY LANGUAGE

Ms. Nunez reviewed a summary of hundreds of comments received through December 7, 2018, on the proposed changes to the continuing education regulatory language, highlighting some of the most contentious. The requirement would be changed to include online courses as long as there is live interaction.

Mr. Kbushyan inquired, of the people who had issues, did any of them express that this would alleviate those issues.

Ms. Nunez responded they did not have any input into the suggested solution

Dr. Lewis inquired if there was an interested party meeting with stakeholders.

Ms. Nunez responded, the original language was sent out in August, giving stakeholders until December to comment. At the October meeting, the Board elected to add the live interaction requirement but that was not sent back out to the public. Public comment is not required until the Board begins the regulatory process. She added, if changes need to be made, they ideally should be done prior to starting the process.

Dr. Lewis moved to adopt the proposed changes and instruct staff to begin the rulemaking process and to allow staff the authority to make any non-substantive and technical changes.

Request for Public Comment:

Kevin Booth inquired what the opposition was, adding a lot of the continuing education courses are free, such as online webinars and some are interactive. She stated, providers need to better publicize adding maybe the Board can reach out to let people know these courses are available.

Ms. Franzoia requested ideas and comments from the public in attendance stating the Board and staff put a lot of thought and effort into these suggestions and input would be appreciated.

An unidentified attendee stated he likes how the Board answered the public comments and elaborated on what constitutes live CEUs. It clarifies for people that they do not always have to go to a conference, that webinars are available. AARC always has live webinars as well as other companies. He added, he feels like this is clear and fair and has no problems with it.

Mr. Kbushyan stated one of the things the Board looked at was the comprehensive process and contemplated the consequences of developing this. Staff has done a great job. He added in today's world of technology, there are times when webinars can have technical difficulties, which is why you see the research compiled here.

M/Lewis /S/Kbushyan
In favor: Early, Franzoia, Guzman, Hardeman, Kbushyan, Lewis
MOTION PASSED

8. RESPIRATORY CARE EDUCATION: FUTURE DIRECTION, BACCALAUREATE PROGRAMS

Ms. Nunez stated President Roth requested the Issue Paper: "Entry to Respiratory Therapy Practice 2025" be included in the agenda for members to be aware of the AARC's commitment to ensuring all respiratory therapists entering practice in 2025 have a baccalaureate degree in respiratory therapy and to encourage members to consider moving forward towards the advancement of the minimum education requirements.

Request for Public Comment: No public comment received.

Ms. Early stated she thought it was interesting there is so much talk about increasing the level of education. Looking at the nursing profession and how far they have come mandating nurse-to-patient ratios, but she is not aware of any ratio for respiratory care therapist and patients at this time. She fully supports increasing the level of education for RCPs but salaries need to be commensurate with other health care professionals as nurses currently make more money than respiratory therapist.

Dr. Lewis inquired if the Board has ever looked at therapist-to-patient ratio and if this something that might need to be put on a future agenda item.

Ms. Nunez responded, a couple of years ago, the Board asked for CSRCs help to establish some ratios partly as a result of an inquiry from the Department of Health. CSRC spent a lot of time and resources to develop this but the way respiratory is set up, makes it difficult to develop a ratio.

A member of the CSRC, stated the challenge was the fact that each facility assigns the work to therapist differently. They don't all use a certain number of RVUs (Relative Value Units) per patient. RVUs essentially convert specific work to minutes so that it could be determined how many minutes would be assign per therapist. With nursing it is more straight forward where as respiratory therapist are more varied in their patients and all over the hospital. Different hospitals do it differently.

Mr. Chan-You, Legal Counsel, reminded the Board the agenda item is about the white paper and recommends the discussion be limited to this white paper. A full discussion about what ratios should be is outside the scope of this agenda item.

A member of the AARC stated, the point of the paper is that the associate degree is entry level and does not prepare the therapist adequately for what they are required to do. The AARC is proposing that a respiratory therapist, in the future, should have necessary skills a be a good practitioner in the environment they work in. A more educated respiratory therapist will be able to take on the challenges more adequately and be more prepared. Proposing that respiratory therapist pursue additional education is something that every agency involved in respiratory care supports (CoARC, AARC, CSRC, NBRC). Therapists want to be equal players in the hospital and come to the table with equal education.

Kevin Booth agreed with the comment and reminded everyone that CoARC already established a mechanism for an advanced practice respiratory therapist but there has been little response. She stated, if the goal is to have a better prepared graduate on par with other health care practitioners, then the advance practice might be the more practical way to pursue it. She added she wishes the Board would consider an add on or extra license, something mandated, to give practitioners an incentive to work towards the advance practice respiratory therapist commensurate with an increase in pay, authority and responsibility.

Wayne Walls, practicing RCP, former educator stated this is a complex issue and it will take a team effort (involving the RCB, CSRC, CoARC, AARC and NBRC) to move the profession forward. The profession needs more baccalaureate level training programs to consider a mandate in California. Associate programs sometimes don't offer enough time to get all the entry level requirements in much less the advanced practice education. He suggested finding some other vehicle that everyone can collaborate and agree upon might be a solution and added, maybe a committee can come together and help provide guidance to the Board.

9. PROPOSED REGULATORY LANGUAGE FOR APPROVAL: AMEND DISCIPLINARY GUIDELINES, SUBSTANTIAL RELATIONSHIP CRITERIA (FOR LICESEES), REHABILITATION CRITERIA (FOR LICENSEES), AND HANDLING OF MILITARY APPLICATIONS; ADD SUBSTNTIAL RELATIONSHIP CRITERIA FOR APPLICANTS AND REHABILITATION CRITERIA FOR APPLICANTS (AB 2138); REPEAL SPONSORED EVENT PROVISIONS

Ms. Nunez reviewed the following proposed regulatory language and Disciplinary Guidelines (2020 Edition) in accordance with the Board's strategic plan and the passage of AB 2138:

§1399.326 Driving Record

Dr. Lewis moved to adopt the proposed amendments giving staff the authority to proceed with the rule making process and allowing staff to make technical non-substantive changes as necessary.

Request for Public Comment: No public comment was received.

M/Lewis /S/Hardeman
In favor: Early, Franzoia, Guzman, Hardeman, Kbushyan, Lewis
MOTION PASSED

§1399.329. Handling of Military and Spouse Applications

Mr. Guzman moved to adopt the proposed amendments giving staff the authority to proceed with the rule making process and allowing staff to make technical non-substantive changes as necessary.

Request for Public Comment:

An unidentified attendee stated, as an active member of the military, he wanted to thank the Board for their efforts concerning this legislation.

M/Guzman /S/Early
In favor: Early, Franzoia, Guzman, Hardeman, Kbushyan, Lewis
MOTION PASSED

§1399.343 - §1399.346 Definitions (Repeal section)

Dr. Lewis moved to adopt the proposed amendments giving staff the authority to proceed with the rule making process and allowing staff to make technical non-substantive changes as necessary.

Request for Public Comment: No public comment was received.

M/Lewis /S/Kbushyan
In favor: Early, Franzoia, Guzman, Hardeman, Kbushyan, Lewis
MOTION PASSED

§1399.370 - §1399.372.1 Substantial Relationship Criteria

Mr. Kbushyan moved to adopt the proposed amendments giving staff the authority to proceed with the rule making process and allowing staff to make technical non-substantive changes as necessary.

Request for Public Comment: No public comment was received.

M/Kbushyan /S/Guzman
In favor: Early, Franzoia, Guzman, Hardeman, Kbushyan, Lewis
MOTION PASSED

§1399.374 Disciplinary Guidelines (2020 Edition)

Mr. Guzman moved to adopt the proposed amendments giving staff the authority to proceed with the rule making process and allowing staff to make technical non-substantive changes as necessary.

Request for Public Comment: No public comment was received.

M/Guzman /S/Franzoia
In favor: Early, Franzoia, Guzman, Hardeman, Kbushyan, Lewis
MOTION PASSED

10. COST RECOVERY HISTORY

Ms. Nunez presented the cost recovery history as requested by Ms. McKeever at the last Board meeting.

Ms. Molina stated the Board recently changed collection agencies contracting with a new vendor and staff is hopeful to see an increase in the amount of costs collected.

Ms. Nunez stated in the past the Board has been recognized for having the highest amount of costs recovered of any board.

Ms. Molina added, it is part of the Board's process to send out monthly invoices which make an impact on the amounts recovered.

Dr. Lewis expressed his concern for excessive AG fees stating they need to be monitored.

Ms. Molina stated they are monitored carefully and reported in the final meeting of each calendar year.

Ms. Early commented there are also expert witness's costs.

Request for Public Comment: No public comment was received.

12. FUTURE AGENDA ITEMS

Dr. Lewis asked to have some document giving an idea of the type of violations the Board sees most often to share with students.

Request for Public Comment: No public comment was received.

13. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Mr. Rogers stated he appreciated the Board meeting at CHOC and appreciates all the Board does for the profession.

An unidentified attendee commented on Dr. Lewis's idea about the sharing violation information with students. He stated there are memberships, especially the CSRC who do go out to the schools and talk to the students. If an outline or script was provided, that would add on to the conversation they have with the students and would be important information to relay to the students especially those getting closer to graduation.

Dr. Lewis added one of the Board's members may want to be involved in the sharing of such information with students.

Ms. Booth stated hearing this information from the powers that be is extremely effective and added that, in the past, she would just show her students the disciplinary actions listed on the RCB's website. Ms. Booth commented, that this Board, with all its iterations, has been the most proactive, professional and supportive board for the profession. She thanked the members of the Board and their predecessors for all the work they have done to support the profession.

Sherleen Bose suggested using social media outlets as a tool to reach out and share information.

A representative from American Career College stated he appreciates all the Board does for the profession. Adding Ricardo Guzman as a Board member is a positive as he has been an amazing asset to the community and will be a great addition to the Board.

ADJOURNMENT

The Public Session Meeting was adjourned by Ms. Nunez at 10:30 a.m.

Not in Attendance _____ _____

STEPHANIE A. NUNEZ

President Executive Officer

Item: **2019 Legislation of Interest**

Item Summary: Following are three additional bills that have been identified as legislation of interest (as of 5/20/19), as well as an update on those bills for which the Board previously adopted positions.

Item 3a
Board Action:

1. President asks for motion to adopt the staff recommended positions on the newly identified legislation of interest.
2. President may request if there is a second to the motion, if not already made.
3. Board member discussion/edits (if applicable).
4. Inquire for public comment / Further Board discussion as applicable
5. Repeat motion and vote:
   1) aye, in favor, 2) no, not in favor, or 3) abstain
   Board members may choose to take alternate positions on each bill: Watch, Support, Support if amended, Oppose, or Oppose unless amended.

AB 613 (Low) - Staff Recommended Position: WATCH

Title: Professions and vocations: regulatory fees.

Status: Referred to Senate Business, Professions and Economic Development Committee on 5/8/19.

This bill would authorize each board with the Department of Consumer Affairs to increase their fees every 4 years in an amount not to exceed the increase in the Consumer Price Index in the last 4 years. Fees increased pursuant to this bill would be exempt from the Administrative Procedure Act.

SB 53 (Wilk) - Staff Recommended Position: OPPOSE UNLESS AMENDED

Title: Open meetings.

Status: In Assembly, held at desk.

This bill would revise the Bagley-Keene Open Meeting Act regarding state body-created advisory committees, by requiring two-member advisory committees to hold open and public comments if one or more of the advisory committee members is a member of the larger board, committee, or commission, and the advisory committee is supported either wholly or partially by state funds. The purpose of this bill is to make the Bagley-Keene Act mirror provisions of the Ralph M. Brown Act, which governs local governments' open meetings.

H.R. 2508 - Rep. Mike Thompson (CA) - Staff Recommended Position: SUPPORT

Title: BREATHE Act

Status: Introduced 5/2/19.

This legislation is a 3-year pilot that allows respiratory therapists to furnish disease management services, such as self-management education and training, demonstration/evaluation of proper inhaler techniques, smoking cessation and remote patient monitoring to Medicare beneficiaries with Chronic Obstructive Pulmonary Disease (COPD). Its purpose is to demonstrate the value RTs bring to the health care system and their patients through improved health outcomes and lower costs and to identify RTs as telehealth practitioners in the Medicare statute.

Note: This bill is co-sponsored by T. J. Cox, (CA), Mike Kelly (PA) and Buddy Carter (GA)

Item 3b
Board Action:

1. President calls the agenda item and it is presented by or as directed by the President.
2. For information purposes only. Discussion may ensue.

AB 193 (Patterson) - Board Position: Watch

Title: Professions and vocations.

Status: This is a two-year bill and dead for 2019.

This bill would require the Department of Consumer Affairs, beginning on January 1, 2021, to conduct a comprehensive review of all occupational licensing requirements and identify unnecessary licensing requirements that cannot be adequately justified. The bill would require the department to report to the Legislature on January 1, 2023, and every 2 years thereafter, on the department's progress, and would require the department to issue a final report to the Legislature no later than January 1, 2033. The bill would require the department to apply for federal funds that have been made available specifically for the purpose of reviewing, updating, and eliminating overly burdensome licensing requirements, as provided.

AB 241 (Kamlager-Dove) - Board Position: Watch

Title: Implicit bias: continuing education: requirements.

Status: Referred to Senate Rules Committee on 5/14/19.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Under the act, a physician and surgeon is required to demonstrate satisfaction of continuing education requirements, including cultural and linguistic competency in the practice of medicine, as specified.

This bill, by January 1, 2022, would require all continuing education courses for a physician and surgeon to contain curriculum that includes specified instruction in the understanding of implicit bias in medical treatment.

Existing law, the Nursing Practice Act, regulates the practice of nursing by the Board of Registered Nursing. The act requires persons licensed by the board to complete specified courses of instruction, including instruction regarding alcoholism and substance dependency and spousal abuse.

This bill would require the Board of Registered Nursing, by January 1, 2022, to adopt regulations requiring all continuing education courses for its licensees to contain curriculum that includes specified instruction in the understanding of implicit bias in treatment.

Existing law, the Physician Assistant Practice Act, authorizes the Physician Assistant Board to require a licensee to complete not more than 50 hours of continuing education every two years as a condition of license renewal.

This bill would require the Physician Assistant Board, by January 1, 2022, to adopt regulations requiring all continuing education courses for its licensees to contain curriculum that includes specified instruction in the understanding of implicit bias in treatment.

AB 476 (Blanca Rubio) - Board Position: Watch

Title: Department of Consumer Affairs: task force: foreign-trained professionals.

Status: Referred to Assembly 2nd Reading on 5/20/19.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law establishes the Bagley-Keene Open Meeting Act, which requires state boards, commissions, and similar state-created multi-member bodies to give public notice of meetings and conduct their meetings in public unless authorized to meet in closed session.

This bill, the California Opportunity Act of 2019, would require the Department of Consumer Affairs to create a task force, as specified, to study and write a report of its findings and recommendations regarding the licensing of foreign-trained professionals with the goal of integrating foreign-trained professionals into the state's workforce, as specified. The bill would authorize the task force to hold hearings and invite testimony from experts and the public to gather information. The bill would require the task force to submit the report to the Legislature no later than January 1, 2021, as specified.

The bill also would require the task force to meet at least once each calendar quarter, as specified, and to hold its meetings in accordance with the Bagley-Keene Open Meeting Act. The bill would require each member of the task force to receive per diem and reimbursement for expenses incurred, as specified, and would require the task force to solicit input from a variety of government agencies, stakeholders, and the public, including, among others, the Little Hoover Commission and the California Workforce Development Board.

AB 496 (Low) - Board Position: Watch

Title: Business and professions.

Status: Referred to Senate Rules Committee on 5/14/19.

Under existing law, the Department of Consumer Affairs, which is under the control of the director of the Director of Consumer Affairs, is comprised of various boards, as defined, that license and regulate various professions and vocations. With respect to the Department of Consumer Affairs, existing law

provides that the Governor has power to remove from office any member of any board appointed by the Governor for specified reasons, including incompetence.

This bill would instead provide that the appointing authority has power to remove a board member from office for those specified reasons.

Existing law authorizes the director to audit and review, upon the director's own initiative or upon the request of a consumer or licensee, inquiries and complaints regarding, among other things, dismissals of disciplinary cases of specified licensees and requires the director to report to the Chairpersons of the Senate Business and Professions Committee and the Assembly Health Committee annually regarding any findings from such an audit or review.

This bill would instead require the director to report to the Chairpersons of the Senate Business, Professions and Economic Development Committee and the Assembly Business and Professions Committee.

Existing law defines the term "licentiate" to mean any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated or referred to, as specified.

This bill would instead define "licensee" to mean any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated or referred to, as specified, and would provide that any reference to licentiate be deemed to refer to licensee.

This bill would make other conforming and nonsubstantive changes, including replacing gendered terms with nongendered terms, updating cross-references, and deleting obsolete provisions.

SB 181 (Chang) - Board Position: Watch

Title: Healing arts boards.

Status: In Senate, referred to Committee on Rules on 2/6/19.

Existing law creates various regulatory boards within the Department of Consumer Affairs. Existing law authorizes health-related boards to adopt regulations requiring licensees to display their licenses in the locality in which they are treating patients and to make specified disclosures to patients.

This bill would make nonsubstantive changes to that license display and disclosure provision.

SB 207 (Hurtado) - Board Position: Watch

Title: Medi-Cal: asthma preventive services.

Status: Senate Third Reading as of 5/16/19.

This bill would include asthma preventive services, as defined, as a covered benefit under the Medi-Cal program. The bill would require the department, in consultation with external stakeholders, to develop a coverage policy consistent with specified federal and clinically appropriate guidelines. The bill would require an entity or supervising licensed Medi-Cal provider and the Medi-Cal asthma services provider to satisfy specified requirements. The bill would authorize the department to implement, interpret, or make specific its provisions without taking regulatory action until regulations are adopted. The bill would require the department to adopt regulations by July 1, 2023, and to provide semiannual status reports to the Legislature until regulations have been adopted. The bill would require the department to seek any federal waivers or other state plan amendments as necessary, and would require these provisions to be implemented if federal approvals are obtained, as specified.

ASSEMBLY BILL No. 613

Introduced by Assembly Member Low

February 14, 2019

An act to add Section 101.1 to the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 613, as introduced, Low. Professions and vocations: regulatory fees.

Exiting law establishes the Department of Consumer Affairs, which is comprised of boards that are established for the purpose of regulating various professions and vocations, and generally authorizes a board to charge fees for the reasonable regulatory cost of administering the regulatory program for the profession or vocation. Existing law establishes the Professions and Vocations Fund in the State Treasury, which consists of specified special funds and accounts, some of which are continuously appropriated.

This bill would authorize each board within the department to increase every 4 years any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index for the preceding 4 years, subject to specified conditions. The bill would require the Director of Consumer Affairs to approve any fee increase proposed by a board except under specified circumstances. By authorizing an increase in the amount of fees deposited into a continuously appropriated fund, this bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 101.1 is added to the Business and Professions Code, to read:

101.1. (a) Notwithstanding any other law, no more than once every four years, any board listed in Section 101 may increase any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding four years in accordance with the following:

(1) The board shall provide its calculations and proposed fee, rounded to the nearest whole dollar, to the director and the director shall approve the fee increase unless any of the following apply:

(A) The board has unencumbered funds in an amount that is equal to more than the board's operating budget for the next two fiscal years.

(B) The fee would exceed the reasonable regulatory costs to the board in administering the provisions for which the fee is authorized.

(C) The director determines that the fee increase would be injurious to the public health, safety, or welfare.

(2) The adjustment of fees and publication of the adjusted fee list is not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2) of the Government Code.

(b) For purposes of this section, "fee" includes any fees authorized to be imposed by a board for regulatory costs. "Fee" does not include administrative fines, civil penalties, or criminal penalties.

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AMENDED IN SENATE MARCH 5, 2019

SENATE BILL No. 53

Introduced by Senator Wilk
~~(Coauthor: Assembly Member Lackey)~~
(Coauthors: Senators Bates, Glazer, Jones, and Portantino)
(Coauthors: Assembly Members Choi, Gallagher, Lackey, Mathis, and Patterson)

December 10, 2018

An act to amend Section 11121 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 53, as amended, Wilk. Open meetings.

The Bagley-Keene Open Meeting Act requires that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in a meeting of a state body, subject to certain conditions and exceptions.

This bill would specify that the definition of "state body" includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as prescribed, except a board, commission, committee, or similar multimember body on which a member of a body serves in ~~his or her~~ *their* official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11121 of the Government Code is amended to read:

11121. As used in this article, "state body" means each of the following:

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons, except as provided in subdivision (d).

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in ~~his or her~~ *their* official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

(e) Notwithstanding subdivision (a) of Section 11121.1, the State Bar of California, as described in Section 6001 of the Business and Professions Code. This subdivision shall become operative on April 1, 2016.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid unnecessary litigation and ensure the people's right to access the meetings of public bodies pursuant to Section 3 of Article 1 of the California Constitution, it is necessary that this act take effect immediately.

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116TH CONGRESS
1ST SESSION

H. R. 2508

To provide for a pilot program to include respiratory therapists as telehealth practitioners under the Medicare program.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2019

Mr. THOMPSON of California (for himself, Mr. COX of California, Mr. CARTER of Georgia, and Mr. KELLY of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide for a pilot program to include respiratory therapists as telehealth practitioners under the Medicare program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Better Respiration through Expanding Access to Tele-Health Act'' or the ''BREATHE Act''.

SEC. 2. PILOT PROGRAM FOR INCLUDING RESPIRATORY THERAPISTS AS TELEHEALTH PRACTITIONERS UNDER THE MEDICARE PROGRAM.

(a) IN GENERAL.—Beginning not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish a 3-year pilot program under title XVIII of the Social Security Act with respect to furnishing telehealth disease management services to eligible telehealth individuals who are diagnosed with chronic obstructive pulmonary disease for purposes of determining the value of including qualifying respiratory therapists as telehealth practitioners under the Medicare program to improve health outcomes for, reduce unnecessary emergency department visits and hospital admissions and readmissions of, and lower the cost of care provided to such individuals.

(b) TELEHEALTH ACCESS.—Under the pilot program, coverage shall be provided under title XVIII of the Social Security Act for telehealth disease management services furnished to eligible telehealth individuals who are diagnosed with chronic obstructive pulmonary disease by applying section 1834(m) of such Act (42 U.S.C. 1395m(m)), as if—

(1) the reference in paragraph (1) of such section to ''a practitioner (as described in section

1842(b)(18)(C))'' were a reference to ''a practitioner (as defined in paragraph (4)(E))'';

(2) paragraph (2)(B) of such section does not apply to any site that satisfies the definition of the term ''originating site'' applied pursuant to paragraph (3) and that would not otherwise be included as an originating site without application of such paragraph;

(3) the definition under paragraph (4)(C) of such section for the term ''originating site'' included as a site described in clause (ii) of such paragraph the place of residence of such individual, regardless of whether such place of residence satisfies the conditions described in subclause (I), (II), or (III) of clause (i) of such paragraph;

(4) the definition in paragraph (4)(E) of such section for the term ''practitioner'' included qualifying respiratory therapists; and

(5) the definition in paragraph (4)(F) of such section for ''telehealth services'' included the following HCPCS codes 98960, 94664, 99406, 99407, and 99091.

(c) PAYMENT MODIFIER.—For purposes of the pilot program, the Secretary shall establish a payment modifier to ensure the collection of data relevant to telehealth dis-

ease management services furnished directly by a qualifying respiratory therapist to eligible telehealth individuals who are diagnosed with chronic obstructive pulmonary disease.

(d) REPORT.—Not later than one year after the last date of the pilot program, the Secretary of Health and Human Services shall submit to Congress a report on the findings of the program, including if acute care interventions were reduced and the health status of eligible telehealth individuals who are diagnosed with chronic obstructive pulmonary disease was improved based on the lower utilization of services.

(e) DEFINITIONS.—For purposes of this section:

(1) The term ''eligible telehealth individual'' has the meaning given such term in section 1834(m)(4) of the Social Security Act (42 U.S.C. 1395m(m)(4)).

(2) The term ''qualifying respiratory therapist'' means a respiratory therapist who—

(A) is credentialed by a national credentialing board recognized by the Secretary of Health and Human Services;

(B) if applicable, is licensed in the State in which the therapist furnishes the services involved;

(C) holds the credential of Registered Respiratory Therapist; and

(D) has a minimum of a bachelor's degree or other advanced degree in biological or health science.

(3) The term ''telehealth disease management services'' means any of the following disease management services furnished via a telecommunications system by a qualifying respiratory therapist:

(A) Self-management education and training.

(B) Demonstration and evaluation of inhaler techniques.

(C) Smoking cessation counseling.

(D) Remote patient monitoring.

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Item: **Proposed Regulatory Language for Approval: Basic, Intermediate, and Advanced Respiratory Care**

Item Summary: With the exception of "advance respiratory care," this language comes nearly verbatim from the Respiratory Care Board (RCB) Board of Vocational Nursing and Psychiatric Technicians (BVNPT) Joint Statement (attached), which was developed by attorneys, members, and staff from both boards. The response to the Joint Statement, following its publication, resulted in numerous inquiries. As such, both boards have agreed to move forward with promulgating regulations to ratify the language provided in the Joint Statement that interprets existing law and provide interested parties the opportunity to comment. In the future, the Board may expand all of these sections to be more inclusive of the entire respiratory care scope of practice.

Board Action:

1. President calls the agenda item and it is presented by or as directed by the President.
2. President requests motion on Proposed Regulatory Language:

   - move for board staff to pursue the promulgation of regulatory language establishing sections 1399.365, 1399.366 and 1399.367 identifying basic, intermediate and advance levels of respiratory care and authorize board staff to make non-substantive changes as necessary;

   - any other appropriate motion.
3. President may request if there is a second to the motion, if not already made.
4. Board member discussion/edits (if applicable).
5. Inquire for public comment / further Board discussion as applicable.
6. Repeat motion and vote: 1) aye, in favor, 2) no, not in favor, or 3) abstain

RESPIRATORY CARE BOARD
Department of Consumer Affairs
California Code of Regulations. Title 16. Division 13.6 Respiratory Care Board. Article 5
BASIC, INTERMEDIATE AND ADVANCED RESPIRATORY CARE

PROPOSED LANGUAGE

§ 1399.365. Basic Respiratory Tasks.

Basic respiratory tasks and services that do not require a respiratory assessment and only require manual, technical skills, or data collection include:

1) Administration of ordered medications that do not require manipulation of a mechanical ventilator. This does not include pre-treatment assessment beyond data collection, use of medical gas mixtures (other than oxygen), preoxygenation, or post treatment assessment beyond data collection.

§ 1399.366. Intermediate Respiratory Care.

Intermediate respiratory tasks, services, and procedures that require formal respiratory education and training and current licensure as a respiratory care practitioner include, but are not limited to:

a) As it pertains to invasive mechanical ventilation:

1) Changing any setting on a ventilator, with or without a physician's order.

2) Routine and/or emergent changing of inner and/or outer cannulas.

3) Reconfiguring or changing aerosol or ventilator circuits.

4) Manipulating ventilator breathing circuits including disconnecting or reconnecting the circuit, for any purpose, including, but not limited to administering bronchodilator or nebulizer treatments.

5) Troubleshooting artificial airway problems and ventilator-related controls and alarms.

6) Assessment of a patient's response to ventilator adjustments or current settings.

7) Assessment for the placement and/or placement of a speaking valve or trach plugging.

8) Ensuring the security of an artificial airway while transporting patients intra or inter facility to daily activities and/or scheduled shower days.

b) Educating students, health care professionals or consumers about respiratory care, including, but not limited to, education of respiratory care core courses or clinical instruction provided as part of a respiratory educational program and educating health care professionals or consumers about the operation or application of respiratory care equipment and appliances.

c) Recommending appropriate respiratory care intervention/s, and managing, or modifying, respiratory care interventions based on the patient's response to therapy and written protocols.

§ 1399.367. Advanced Respiratory Care.

Advanced respiratory tasks, services, and procedures that require formal respiratory education and training and current licensure as a respiratory care practitioner, and supplemental education, training or additional credentialing consistent with national standards, as applicable, include but are not limited to:

1) Administration of medical gases and pharmacological agents for the purpose of inducing conscious or deep sedation under physician and surgeon supervision and the direct orders of the physician and surgeon performing the procedure.

2) Performing extracorporeal life support including extracorporeal membrane oxygenation (ECMO) and extracorporeal carbon dioxide removal (ECCO2R).

Respiratory Care Board of California and Board of Vocational Nursing and Psychiatric Technicians Joint Statement - April 2019

The Respiratory Care Board (RCB) and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) began meeting in 2018 to discuss concerns related to reports of scope of practice issues occurring in sub-acute facilities, long-term care, skilled nursing facilities, and at-home care locations in California. Board members, staff, legal counsel and experts weighed in on the issues by considering current laws, education and training. Prioritizing both boards' highest priority of public protection, the boards have agreed on a joint statement.

Both boards agree that respiratory care practitioners (RCPs), licensed vocational nurses (LVNs) and psychiatric technicians (PTs) are invaluable members of the patient care team in providing optimum care to patients. Each health care professional relies on others to perform their practice well. They establish a therapeutic interface among all health care personnel that benefits patients in their care and safety.

Both boards' mandates require that "protection of the public shall be the highest priority… 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." (*Business and Professions Code sections* 2841.1, 3710.1 and 4501.1) Each board's oversight responsibility is summarized below:

Respiratory Care Board of California (RCB)	Board of Vocational Nursing and Psychiatric Technicians (BVNPT)
Responsible for licensing and regulating the practice of respiratory care pursuant to the Respiratory Care Practice Act *(Business and Professions Code section 3700 et seq.)*. The RCB is statutorily charged with protecting the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care (*Business and Professions Code section 3701)*.	Responsible for licensing and regulating the practice of vocational nurses and psychiatric technicians pursuant to the Vocational Nursing Practice Act and the Psychiatric Technicians Law *(Business and Professions Code Section 2840 et seq. and Section 4500 et seq., respectively)*.

The boards jointly agree that stakeholders should be aware that RCPs, LVNs and PTs must follow their respective scopes of practice for patient safety. Violating the respective scope of practice could lead to patient harm and the license being formally disciplined by the respective boards.

A concern to both boards is unlicensed and/or unqualified vendors instructing health care professionals to provide ventilator care. Both boards agree this is an unsafe practice. Further, section 3702.7 of the Business and Professions Code provides that the education of health care

professionals about respiratory care, including clinical instruction and the operation or application of respiratory care equipment and appliances is within the respiratory care scope of practice and would require licensure as an RCP.

Given that numerous patients admitted to sub-acute facilities, long-term care, skilled nursing facilities, and at-home care locations require respiratory care, with some dependent upon ventilators to sustain life, and given concerns for care that is being provided at some facilities in California, the RCB and the BVNPT issues this joint statement to inform administrators and staff at sub-acute facilities, long-term care, skilled nursing facilities, and at-home care locations on the following issues:

PATIENT CARE PRACTICES

Invasive Mechanical Ventilation

Invasive mechanical ventilation is a lifesaving intervention for patients with respiratory failure and is at the core of respiratory care practitioners' education, training, and competency testing. Given the clinical knowledge of the hazards, indications, contraindications of mechanical ventilation, and complexity associated with invasive mechanical ventilation, and that extensive and formal education and training is required to provide such care.

Respiratory Care Practitioners are authorized to provide the following types of care (LVNs and PTs are not authorized to provide this care):	Licensed Vocational Nurses and Psychiatric Technicians role in patient care:
• Changing any setting on a ventilator, with or without a physician's order. • Routine and/or emergent changing inner and/or outer cannulas. • Reconfiguring or changing aerosol or ventilator circuits. • Manipulating ventilator breathing circuits including disconnecting or reconnecting the circuit, for any purpose, including, but not limited to administering bronchodilator or nebulizer treatments. • Troubleshooting artificial airway problems and ventilator-related controls and alarms. • Assessment of a patient's response to ventilator adjustments or current settings. • Assessment for the placement and/or placement of a speaking valve or trach plugging. • Transporting patients intra or inter facility to daily activities and/or scheduled shower days.	The LVN and PT are authorized to provide care to the patient receiving invasive mechanical ventilation when the care is **not** specifically related to the mechanical ventilation but is within the LVN or PT's scope of practice. That care includes but is not limited to: • Basic Assessment (data gathering) of total patient. • Administration of ordered medications that do not require manipulation of the mechanical ventilator. • Provision of ordered treatments. • Hygiene care. • Comfort care. • Patient and family education. • LVNs and PTs are not responsible for ensuring the security of the artificial airway and related functionality of the ventilator before, during and after transport. However, LVNs and PTs can go as part of the team, but they are not responsible for the ventilator or related care.

CARE/TREATMENT PLANS

Respiratory Care Practitioner	Licensed Vocational Nurses and Psychiatric Technicians
Recommend appropriate respiratory care intervention/s, and manage, or modify, respiratory care interventions based on the patient's response to therapy and written protocols approved by the medical staff.	Contribute data to the registered nurse needed for the evaluation process. However, LVNs and PTs cannot make clinical diagnosis of the patient's respiratory condition, and/or make respiratory care recommendations based on their clinical findings.

Both boards recognize that working titles using any derivative or synonymous meaning of the word "respiratory" for LVNs and PTs is prohibited. This includes but is not limited to: Respiratory Aide, Respiratory Nurse, Inhalation Nurse, etc.

Scope of Practice Questions and Information

Both Boards prefer written inquiries to ensure accurate and complete responses. Phone calls are accepted, and you will be requested to submit the inquiry in writing. Responses to written inquiries may take up to five business days depending on the complexity of the question.

Respiratory Care Board	Board of Vocational Nursing and Psychiatric Technicians
E-mail: rcbinfo@dca.ca.gov Telephone: 916.999.2190 Toll-free: 866-375-0386 Website: www.rcb.ca.gov	Email: bvnpt.sop@dca.ca.gov Telephone: 916.263.7843 Website: www.bvnpt.ca.gov

RESPIRATORY CARE BOARD OF CALIFORNIA

BVNPT
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

FACT SHEET

Given that numerous patients admitted to sub-acute facilities, long-term care, skilled nursing facilities, and at-home care locations require respiratory care, with some dependent upon ventilators to sustain life, and given concerns for care that is being provided at some facilities in California, the RCB and the BVNPT issues this joint statement to inform administrators and staff at sub-acute facilities, long-term care, skilled nursing facilities, and at-home care locations on the following issues:

PATIENT CARE PRACTICES

Invasive Mechanical Ventilation

Invasive mechanical ventilation is a lifesaving intervention for patients with respiratory failure and is at the core of respiratory care practitioners' education, training, and competency testing. Given the clinical knowledge of the hazards, indications, contraindications of mechanical ventilation, and complexity associated with invasive mechanical ventilation, and that extensive and formal education and training is required to provide such care.

Respiratory Care Practitioners are authorized to provide the following types of care (LVNs and PTs are not authorized to provide this care):	Licensed Vocational Nurses and Psychiatric Technicians role in patient care:
• Changing any setting on a ventilator, with or without a physician's order. • Routine and/or emergent changing inner and/or outer cannulas. • Reconfiguring or changing aerosol or ventilator circuits. • Manipulating ventilator breathing circuits including disconnecting or reconnecting the circuit, for any purpose, including, but not limited to administering bronchodilator or nebulizer treatments. • Troubleshooting artificial airway problems and ventilator-related controls and alarms. • Assessment of a patient's response to ventilator adjustments or current settings. • Assessment for the placement and/or placement of a speaking valve or trach plugging. • Transporting patients intra or inter facility to daily activities and/or scheduled shower days.	The LVN and PT are authorized to provide care to the patient receiving invasive mechanical ventilation when the care is **not** specifically related to the mechanical ventilation but is within the LVN or PT's scope of practice. That care includes but is not limited to: • Basic Assessment (data gathering) of total patient. • Administration of ordered medications that do not require manipulation of the mechanical ventilator. • Provision of ordered treatments. • Hygiene care. • Comfort care. • Patient and family education. • LVNs and PTs are not responsible for ensuring the security of the artificial airway and related functionality of the ventilator before, during and after transport. However, LVNs and PTs can go as part of the team, but they are not responsible for the ventilator or related care.

CARE/TREATMENT PLANS

Respiratory Care Practitioner	Licensed Vocational Nurses and Psychiatric Technicians
Recommend appropriate respiratory care intervention/s, and manage, or modify, respiratory care interventions based on the patient's response to therapy and written protocols approved by the medical staff.	Contribute data to the registered nurse needed for the evaluation process. However, LVNs and PTs cannot make clinical diagnosis of the patient's respiratory condition, and/or make respiratory care recommendations based on their clinical findings.

The boards jointly agree that stakeholders should be aware that RCPs, LVNs and PTs must follow their respective scopes of practice for patient safety. Violating the respective scope of practice could lead to patient harm and the license being formally disciplined by the respective boards.

A concern to both boards is unlicensed and/or unqualified vendors instructing health care professionals to provide ventilator care. Both boards agree this is an unsafe practice. Further, section 3702.7 of the Business and Professions Code provides that the education of health care professionals about respiratory care, including clinical instruction and the operation or application of respiratory care equipment and appliances is within the respiratory care scope of practice and would require licensure as an RCP.

Both boards recognize that working titles using any derivative or synonymous meaning of the word "respiratory" for LVNs and PTs is prohibited. This includes but is not limited to: Respiratory Aide, Respiratory Nurse, Inhalation Nurse, etc.

Scope of Practice Questions and Information

Both Boards prefer written inquiries to ensure accurate and complete responses. Phone calls are accepted, and you will be requested to submit the inquiry in writing. Responses to written inquiries may take up to five business days depending on the complexity of the question.

Respiratory Care Board	Board of Vocational Nursing and Psychiatric Technicians
E-mail: rcbinfo@dca.ca.gov Telephone: 916.999.2190 Toll-free: 866-375-0386 Website: www.rcb.ca.gov	Email: bvnpt.sop@dca.ca.gov Telephone: 916.263.7843 Website: www.bvnpt.ca.gov

Respiratory Care Board of California and Board of Vocational Nursing and Psychiatric Technicians Joint Statement Update – May 2019

The Respiratory Care Board (RCB) and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) have met throughout 2018 and identified various scope-of-practice issues that may be impacting patients in sub-acute facilities, long-term care, skilled nursing facilitates, and at-home care locations in California. This led to the release of the April 2018 RCB / BVNPT Joint Statement, available here.

Since the release of the joint statement, both boards have received numerous inquiries related to allowable duties and patient standard of care for Licensed Vocational Nurses and Respiratory Care Practitioners.

In the next few months, both the RCB and the BVNPT intend to pursue regulations on the issues identified on the joint statement. As part of the rulemaking process, draft regulatory language will be issued and considered at upcoming board meetings. The RCB plans to consider such regulatory language as part of its June 2019 meeting, and the BVNPT plans to do the same at its August 2019 board meeting.

Public input is a critical component of the rulemaking process, and both boards encourage stakeholder participation in these upcoming discussions. The boards will post updates on the regulation process on their respective websites at www.RCB.ca.gov and www.BVNPT.ca.gov

If you would like to be on an email list and receive notices/updates, or if you have any additional technical inquiries regarding the joint statement, please send an email to either address listed below and request that your email address be added to the public comment list.

Please note that emails will only be sent to notify actual progress and/or upcoming important events for the regulatory process concerning the joint statement.

The Respiratory Care Board and the Board of Vocational Nursing and Psychiatric Technicians thank you in advance for your support and patience.

Respiratory Care Board	Board of Vocational Nursing and Psychiatric Technicians
E-mail: rcbinfo@dca.ca.gov Telephone: 916.999.2190 Toll-free: 866-375-0386 Website: www.rcb.ca.gov	Email: bvnpt.sop@dca.ca.gov Telephone: 916.263.7800 Website: www.bvnpt.ca.gov

Item: **Proposed Regulatory Language for Approval: Amend Disciplinary Guidelines, Substantial Relationship Criteria (for Licensees), Rehabilitation Criteria (for Licensees), Driving Record, and Handling of Military Applications; Add Substantial Relationship Criteria for Applicants and Rehabilitation Criteria for Applicants (AB 2138); Repeal Sponsored Events Provisions**

Item Summary: In accordance with the Board's Strategic Plan 2017-2021 and the passage of AB 2138 (statutes of 2018), the attached Proposed Regulatory Language is presented to the Board for approval to pursue promulgating regulatory amendments. Please note, following adoption of similarly proposed regulatory language at its March 1, 2019 meeting, the Department of Consumer Affairs Legal Office suggested additional revisions related to the implementation of the AB 2138 provisions which are reflected in the current materials. Accordingly, the language is being re-presented to the Board for consideration.

Board Action:

1. President calls the agenda item and it is presented by or as directed by the President.
2. President requests motion on Proposed Regulatory Language and revisions to the Disciplinary Guidelines 2020 Edition incorporated by reference:

   - move for board staff to pursue the promulgation of regulatory amendments as outlined in the attached proposed regulatory text and the 2020 edition of the Disciplinary Guidelines incorporated by reference, and authorize board staff to make non-substantive changes as necessary;

   - any other appropriate motion.
3. President may request if there is a second to the motion, if not already made.
4. Board member discussion/edits (if applicable).
5. Inquire for public comment / further Board discussion as applicable.
6. Repeat motion and vote: 1) aye, in favor, 2) no, not in favor, or 3) abstain

RESPIRATORY CARE BOARD OF CALIFORNIA
Department of Consumer Affairs
California Code of Regulations. Title 16. Division 13.6. Respiratory Care Board
Disciplinary Guidelines, Substantial Relationship and Rehabilitation Criteria, Driving Record, Handling of Military Applications, and Sponsored Events

PROPOSED REGULATORY LANGUAGE

§ 1399.326. Driving Record.

The board ~~shall~~ may review the driving history for each applicant as part of its investigation prior to licensure.

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Sections 3730 and 3732, Business and Professions Code.

§ 1399.329. ~~Military Renewal Application Exemptions.~~ Handling of Military and Spouse Applications

(a) Pursuant to subdivision (c) of section 114.3 of the B&P, the board shall prorate the renewal fee and the number of CE hours required in order for a licensee to engage in any activities requiring licensure, upon discharge from active duty service as a member of the United States Armed Forces or the California National Guard.

(b) The Board shall provide expedited handling of applications for licensure and renewal for military personnel and military spouses as provided in sections 114, 114.3, 115.4, and 115.5 of the B&P.

(c) Evidence of discharge from active duty or from the military may include an order issued by the U.S. Armed Forces on a DD Form 214 or the National Guard on form NGB-22.

Note: Authority cited: Sections 114.3, 115.4, 115.5 and 3722, Business and Professions Code. Reference: Section 114, 114.3, 114.5, 115, 115.4, 115.5, Business and Professions Code.

~~**§ 1399.343. Definitions.**~~

~~For the purposes of section 901 of the B&P:~~

~~(a) "Community-based organization" means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.~~

~~(b) "Out-of-state practitioner" means a person who is not licensed in California to engage in the practice of respiratory care, but who holds a current valid license or certificate in good standing in another state, district, or territory of the United States to practice respiratory care.~~

~~Note: Authority cited: Sections 901 and 3722, Business and Professions Code. Reference: Section 901, Business and Professions Code.~~

§ 1399.344. Sponsoring Entity Registration and Recordkeeping Requirements.

(a) Registration. A sponsoring entity that wishes to provide, or arrange for the provision of, respiratory care services at a sponsored event under section 901 of the B&P shall register with the board not later than 90 calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsoring entity shall register with the board by submitting to the board a completed "Registration of Sponsoring Entity under Business & Professions Code Section 901," Form 901-A (DCA/2016 - revised), which is hereby incorporated by reference.

(b) Determination of Completeness of Form. The board may, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process "Registration of Sponsoring Entity under Business & Professions Code Section 901," Form 901-A (DCA/2016 - revised) on behalf of the board. The board or its delegatee shall inform the sponsoring entity in writing within 15 calendar days of receipt of the form that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The board or its delegatee shall reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the commencement of the sponsored event.

(c) Recordkeeping Requirements. Regardless of where it is located, a sponsoring entity shall maintain at a physical location in California a copy of all records required by section 901 as well as a copy of the authorization for participation issued by the board to an out-of-state practitioner. The sponsoring entity shall maintain these records for a period of at least five years after the date on which a sponsored event ended. The records may be maintained in either paper or electronic form. The sponsoring entity shall notify the board at the time of registration as to the form in which it will maintain the records. In addition, the sponsoring entity shall keep a copy of all records required by section 901(g) of the B&P at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the board.

(d) A sponsoring entity shall place a notice visible to patients at every station where patients are being seen by a respiratory care practitioner. The notice shall be in at least 48-point type in Arial font and shall include the following statement and information:

NOTICE

Respiratory Care Practitioners providing respiratory care services at this health fair are either licensed and regulated by the Respiratory Care Board of California or hold a current valid license from another state and have been authorized to provide respiratory care services in California only at this specific health fair.

Respiratory Care Board of California

(866) 375-0386

www.rcb.ca.gov

(e) Requirement for Prior Board Approval of Out-of-State Practitioner. A sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval of such practitioner from the board.

(f) Report. Within 15 calendar days after a sponsored event has concluded, the sponsoring entity shall file a report with the board summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity's choosing, but shall include, at a minimum, the following information:

(1) The date(s) of the sponsored event;

(2) The location(s) of the sponsored event;

(3) The type(s) and general description of all respiratory care services provided at the sponsored event; and

(4) A list of each out-of-state practitioner granted authorization pursuant to this article who participated in the sponsored event, along with the license number of that practitioner.

Note: Authority cited: Sections 901 and 3722, Business and Professions Code. Reference: Section 901, Business and Professions Code.

§ 1399.345. Out-of-State Practitioner Authorization to Participate in Sponsored Event.

(a) Request for Authorization to Participate. An out-of-state practitioner ("applicant") may request authorization from the board to participate in a sponsored event and provide such respiratory care services at the sponsored event as would be permitted if the applicant were licensed by the board to provide those services. Authorization must be obtained for each sponsored event in which the applicant seeks to participate.

(1) An applicant shall request authorization by submitting to the board a completed "Request for Authorization to Practice Without a California License at a Sponsored Free Health Care Event," Form 901-RCB (RCB/2014), which is hereby incorporated by reference, accompanied by a non-refundable, non-transferable processing fee of $25.

(2) The applicant also shall furnish either a full set of fingerprints or submit a Live Scan inquiry to establish the identity of the applicant and to permit the board to conduct a criminal history record check. The applicant shall pay any costs for furnishing the fingerprints and conducting the criminal history record check.

(b) Response to Request for Authorization to Participate. Within 20 calendar days of receiving a completed request for authorization, the board shall notify the sponsoring entity or local government entity whether that request is approved or denied.

(c) Denial of Request for Authorization to Participate.

(1) The board shall deny a request for authorization to participate if:

(A) The submitted form is incomplete and the applicant has not responded within 7 calendar days to the board's request for additional information; or

(B) The applicant has not completed a respiratory care program which complies with B&PC section 3740; or

(C) The applicant has failed to comply with a requirement of this article or has committed any act that would constitute grounds for denial of an application for licensure by the board; or

(D) The applicant does not possess a current valid active license in good standing. The term "good standing" means the applicant:

i. Has not been charged with an offense for any act substantially related to the practice for which the applicant is licensed by any public agency;

ii. Has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed upon the applicant's professional conduct or practice, including any voluntary surrender of license;

iii. Has not been the subject of an adverse judgment resulting from the practice for which the applicant is licensed that the board determines constitutes evidence of a pattern of negligence or incompetence.

(E) The board has been unable to obtain a timely report of the results of the criminal history check.

(2) The board may deny a request for authorization to participate if:

(A) The request is received less than 20 calendars days before the date on which the sponsored event will begin; or

(B) The applicant has been previously denied a request for authorization by the board to participate in a sponsored event; or

(C) The applicant has previously had an authorization to participate in a sponsored event terminated by the board.

(d) Appeal of Denial. An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in B&P section 1399.346(d).

(e) An out-of-state practitioner who receives authorization to practice respiratory care at an event sponsored by a local government entity shall place a notice visible to patients at every station at which that person will be seeing patients. The notice shall be in at least 48-point type in Arial font and shall include the following statement and information:

NOTICE

I hold a current valid license to practice respiratory care in a state other than California. I have been authorized by the Respiratory Care Board of California to provide respiratory care services in California only at this specific health fair.

Respiratory Care Board of California

(866) 375-0386

www.rcb.ca.gov

Note: Authority cited: Sections 144, 901 and 3722, Business and Professions Code. Reference: Section 901, Business and Professions Code.

§ 1399.346. Termination of Authorization and Appeal.

(a) Grounds for Termination. The board may terminate an out-of-state practitioner's authorization to participate in a sponsored event for any of the following reasons:

(1) The out-of-state practitioner has failed to comply with any applicable provision of this article, or any applicable practice requirement or regulation of the board.

(2) The out-of-state practitioner has committed an act that would constitute grounds for discipline if done by a licensee of the board.

(3) The board has received a credible complaint indicating that the out-of-state practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner's services.

(b) Notice of Termination. The board shall provide both the sponsoring entity or local government entity and the out-of-state practitioner with a written notice of the termination, including the basis for the termination. If the written notice is provided during a sponsored event,

~~the board may provide the notice to any representative of the sponsored event on the premises of the event.~~

~~(c) Consequences of Termination. An out-of-state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination. Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data banks. In addition, the board shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.~~

~~(d) Appeal of Termination. An out-of-state practitioner may appeal the board's decision to terminate an authorization in the manner provided by section 901(j)(2) of the B&P. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act, Government Code section 11445.10-11445.60.~~

~~(e) Informal Conference Option. In addition to requesting a hearing, the out-of-state practitioner may request an informal conference with the executive officer regarding the reasons for the termination of authorization to participate. The executive officer shall, within 30 days from receipt of the request, hold an informal conference with the out-of-state practitioner. At the conclusion of the informal conference, the Executive Director or his/her designee may affirm or dismiss the termination of authorization to participate. The executive officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out-of-state practitioner within ten days from the date of the informal conference. The out-of-state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an informal conference. If the termination is dismissed after the informal conference, the request for a hearing shall be deemed to be withdrawn.~~

~~Note: Authority cited: Sections 901 and 3722, Business and Professions Code. Reference: Section 901, Business and Professions Code; and Section 11445.10 et seq., Government Code.~~

§ 1399.370. Substantial Relationship Criteria.

(a) For the purposes of denial, suspension~~,~~ or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with section 475) of the B&P , a crime, professional misconduct 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.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:

(1) The nature and gravity of the offense;
(2) The number of years elapsed since the date of the offense; and
(3) The nature and duties of a respiratory care practitioner.

(c) For purposes of subdivision (a), ~~Such~~ substantially related crimes, professional misconduct or acts include but are not limited to those involving the following:

(~~a~~1) 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~~2) Commission of an act or conviction of a crime involving fraud, fiscal dishonesty theft, or larceny.

(~~c~~3) Commission of an act or conviction of a crime involving driving under the influence or reckless driving while under the influence.

(~~d~~4) Commission of an act or conviction of a crime involving harassment or stalking ~~as defined by the Penal Code and/or Civil Code~~.

(~~e~~5) 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~~6) Commission of an act or conviction of a crime involving human trafficking~~, as defined by the Penal Code~~.

(~~g~~7) 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~~8) Failure to comply with a court order.

(~~i~~9) Commission of an act or conviction of a crime, involving verbally abusive conduct or unlawful possession of a firearm or weapon.

(10) Commission of an act or conviction of a crime, of neglect, endangerment, or abuse involving a person under 18 years of age or over 65 years of age, or a dependent adult, without regard to whether the person was a patient.

Note: Authority cited: Sections 480, 481, 493, and 3722, Business and Professions Code. Reference: Sections 141, 480, 481, 488, 490, 492, 493, 3750, 3750.5, 3752, 3752.5, 3752.6, 3752.7, 3754.5 and 3755, Business and Professions Code~~; and Sections 266, 288, 314, 646.9, 647, 1203.097, 11414, 13519.6 and 13519.7, Penal Code~~.

§ 1399.372. Rehabilitation Criteria for Denial, Suspensions or Revocations For Crimes Substantially Related to the Duties and Qualifications of a Licensee

(a) When considering the denial~~, petition for reinstatement, modification of probation, suspension or revocation~~ of an RCP license~~,~~ pursuant to section 480 of the B&P on the ground that the applicant was convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the following criteria in evaluating the rehabilitation of such person and his or her eligibility for a license:

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) If subdivision (a) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:

(1) The nature and severity of the act(s) or crimes(s) under consideration as grounds for denial.

(2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the B&P.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the Applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the Applicant.

(5) The criteria in subdivision (a)(1)-(5), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the Applicant.

(c) When considering the petition for reinstatement, modification of probation, suspension or revocation of a Respiratory Care Practitioner license on the ground that the licensee was convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation and is presently eligible for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(d) If subdivision (c) is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (c), the board shall apply the following criteria in evaluating a licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated:

(1) The nature and severity of the act(s) or crimes(s).

(2) The Total Criminal Record

(3) The time that has elapsed since commission of the act(s) or crime(s).

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

(5) The criteria in subdivision (c)(1)-(5), as applicable.

(6) If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.

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

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

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

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

(iii) 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.

(9) 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).

~~.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 or 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).~~

Note: Authority cited: Sections 482 and 3722, Business and Professions Code. Reference: Sections 475, 480, 481, 482, 488, 490, 493, 3750, 3751 and 3753, Business and Professions Code.

§ 1399.374. Disciplinary Guidelines.

In reaching a decision on the disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), determining terms and conditions of probation, or consequences for non compliance of ordered probation, the board shall consider the disciplinary guidelines entitled “Disciplinary Guidelines” [~~2011~~ 2020 Edition] which are hereby incorporated by reference. Deviation from these standards, guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

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

Agenda Item: 5
Meeting Date: 6/7/19

Respiratory Care Board Disciplinary Guidelines

"Protection of the Public Shall be the Highest Priority"

Business and Professions Code, Section 3710.1

~~2011~~ 2020 Edition

~~444 North 3rd Street, Suite 270~~ 3750 Rosin Court, Suite 100
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These guidelines are incorporated by reference in Section 1399.374 of Division 13.6 of Title 16 of the California Code of Regulations

INTRODUCTION

Licensed Respiratory Care Practitioners (RCPs) regularly perform critical lifesaving and life support procedures prescribed by physicians that directly affect major organs of the body. Respiratory care provides relief to millions of Americans, from newborns to the elderly, who have difficulty breathing or cannot breathe on their own due to impaired or nonfunctioning lungs. Typical patients of RCPs suffer from asthma, chronic obstructive pulmonary disease (COPD), bronchitis, lung cancer, stroke, drowning accidents, heart attacks, birth defects, emphysema, cystic fibrosis, or sleep apnea. Trauma victims and surgery patients are also treated by respiratory therapists. In addition to treatment, respiratory care also includes education and rehabilitation services, plus diagnostic testing.

Respiratory care practitioners are employed for the therapy, management, rehabilitation, diagnostic evaluation and care of patients with deficiencies and abnormalities which affect the pulmonary, cardiopulmonary and other systems functions. Typical respiratory care duties may include~~, but are not limited to~~:

- Employing life support mechanical ventilation including assessment, analysis, application and monitoring.
- Administrating of medications in aerosol form.
- Administrating medical gases and pharmacological agents for the purpose of inducing conscious or deep sedation.
- Employing extracorporeal life support to provide prolonged cardiac and respiratory support to persons whose heart and lungs are unable to provide an adequate amount of gas exchange or perfusion to sustain life.
- Monitoring equipment and patients' responses to therapy.
- Obtaining blood specimens and analyzing them to determine levels of oxygen, carbon dioxide, and other gases.
- Maintaining artificial airways (tracheostomy or intubation).
- Measuring the capacity of patients' lungs to determine if there is impairment.
- Obtaining and analyzing sputum specimens and chest X-rays.
- Interpreting data from tests.
- Assessing vital signs and other indicators of respiratory dysfunction.

- Performing stress tests and other studies of the cardiopulmonary system.
- Assessing and treating people with disruptive sleep patterns.
- Conducting rehabilitation activities.
- Leading asthma education and smoking cessation programs.
- Educating students, health care professionals and consumers about respiratory care and the operation and application of respiratory care equipment and appliances.

Most respiratory care therapists work in hospitals (emergency, intensive care, neonatal/pediatric units, cardiac care, etc.), but there is a growing number being employed in other settings, including:

- Medical flight transports
- Subacute care facilities
- Skilled nursing facilities
- Hyperbaric oxygen units
- Private homes
- Various laboratories (e.g., Rehabilitation, Cardiopulmonary, Blood gas, Sleep testing)

The minimum education requirements for licensure as an RCP include an associate degree with completion of an approved respiratory care program. However, over 1/3 of licensed RCPs hold baccalaureate, masters or doctorate degrees. There are approximately ~~33~~ 37 schools throughout California that offer respiratory care programs; three are baccalaureate programs. Areas of study include human anatomy and physiology, chemistry, physics, microbiology, and mathematics. Programs also include clinical practice at ~~local hospitals~~ a range of facilities. Respiratory care students receive on average, 300 hours of intense education and training specific to ventilator assessments and care. ~~Programs take more than two years of full-time dedication to complete.~~ Associate degree-level programs generally take over three years of full-time dedication to complete.

The Respiratory Care Board of California (Board) has issued over ~~30,000~~ 41,000 RCP licenses since its inception in 1985. Applicants for licensure complete a criminal background check (DOJ/FBI~~/ DMV~~), are competency tested, and must provide official transcripts and other documentation to verify they have met educational and other requirements.

The Board's mandate is "...to protect the public from the **unauthorized and unqualified practice** of respiratory care and from **unprofessional conduct** by persons licensed to practice respiratory care..." *[reference, §3701, Business and Professions Code]*. In addition, "**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" *[reference §3710.1, Business and Professions Code]*.

The Board's mission is to protect and serve the consumer by licensing qualified respiratory care practitioners, enforcing the provisions of the Respiratory Care Practice Act ~~and its regulations~~, expanding the ~~delivery and~~ availability of respiratory care services, increasing public awareness of r~~espiratory care as a~~ the profession, and supporting the development and education of ~~all~~ respiratory care practitioners.

The Board has the authority to issue or deny, suspend, and revoke licenses to practice respiratory care as provided in ~~the Respiratory Care Practice Act and respiratory care regulations (~~Business and Profession Code, sections 475, 480, 490, 494, 3718, 3732, 3750, 3750.5, 3752.5, 3752.6, 3752.7, 3754, 3754.5, 3755, 3757, ~~3752.5, 3752.6,~~ and California Code of Regulations, Title 16, Division 13.6, sections 1399.303, 1399.370, 1399.374~~)~~.

The Board strives to ensure that only eligible, qualified, capable and competent individuals are licensed, and to expeditiously respond to all consumer complaints by efficiently and effectively investigating every complaint and pursuing disciplinary action in all appropriate cases. Finally, the Board strives to ensure that appropriate and aggressive post-disciplinary monitoring occurs.

The Board's disciplinary guidelines were designed for use by Administrative Law Judges, attorneys, licensees and others involved in the Board's disciplinary process and are to be followed in all disciplinary actions involving the Board. The Board has the final authority over the disposition of its cases, and to complete its work, it utilizes the Office of the Attorney General and the Office of Administrative Hearings.

This manual includes factors to be considered in aggravation or mitigation, guidelines to be used by Administrative Law Judges for a violation(s) of specific statutes, and standard and speciality probationary terms and conditions.

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that aggravating or mitigating circumstances and other factors may necessitate deviation from these guidelines in particular cases.

The Board's mandate is "...to protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care..."

reference, §3701, Business and Professions Code

"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."

reference §3710.1, Business and Professions Code

PUBLIC RECORD

It is the Board's policy that all letters of license denial, citations issued, legal pleadings filed and final decisions will be published as a matter of public record.

COST RECOVERY

The Board seeks recovery of all investigative and prosecution costs in all disciplinary cases. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including but not limited to expert consultant opinions and services. The Board seeks recovery of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct had required investigation and prosecution, not upon the profession as a whole.

References (Business and Professions Code)

§ 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...

§ 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.

PROBATION MONITORING COSTS

The Board also seeks recovery of all costs incurred for probation monitoring. The burden of such costs should fall upon those who are incurring the expenses, not upon the profession as a whole.

Reference (Business and Professions Code)

§ 3753.1. Probation Monitoring Cost Recovery

(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...

PROBATION MONITORING PURPOSE

The purpose of the probation monitoring program is to maintain public protection by proactively monitoring probationers to ensure terms and conditions are met. **The purpose is NOT for the Board to rehabilitate the probationer.** Probation is a privilege afforded by the Board to:

1) Allow for the probationer's rehabilitation if that is his/her choice;

2) Allow the probationer an opportunity to practice in a professional manner with restrictions and guidance from a community support system and designated probation monitor to prevent future occurrences, and

3) Allow for education of the individual as to the responsibilities, requirements and professionalism mandated of a respiratory care practitioner.

It is the policy of the Board that if a probationer is found to be in violation of any term of probation at any time during the probation period, the Board shall immediately be notified of the violation so that disciplinary action may be considered.

CITATIONS

The Board has the authority to issue citations and fines for violations of several sections of the Respiratory Care Practice Act and its regulations. Citations issued may include an order for abatement, a fine, or both. Citations are issued at the discretion of the Board. The issuance of a citation is separate from and may be in addition to any other administrative discipline, civil remedies, or criminal penalties. [Reference: California Code of Regulations section 1399.380(h)]. Any prior citation may be used in future actions as aggravating evidence.

STIPULATED SETTLEMENTS

The Board will consider stipulated settlements to promote cost effectiveness and to expedite disciplinary decisions if such agreements are consistent with the Board's mandate.

EVIDENCE IN AGGRAVATION/~~MITIGATION~~ OF PENALTY

The following are examples of aggravating ~~and mitigating~~ circumstances which may be considered by Administrative Law Judges in providing for discipline in their proposed decisions:

~~EVIDENCE IN AGGRAVATION OF PENALTY~~

1. Patient's trust, health, safety or well-being was jeopardized.
2. Patient's or employer's trust violated (i.e. theft, embezzlement, fraud, etc...).
3. History of prior discipline.
4. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
5. ~~Perjury on official Board forms~~ Providing false statements or information on any form provided by the Board or to any person representing the Board.
6. Verbally abusive conduct or v~~V~~iolent nature of crime or act.
7. Violation of Board Probation.
8. Failure to provide a specimen for testing in violation of terms and conditions of probation.
9. Commission of any crime against a minor, or while knowingly in the presence of, or while caring for, a minor.
10. Any act of neglect, endangerment, or abuse involving a person under 18 years of age or over 65 years of age, or a dependent adult, without regard to whether the person was a patient.
11. Any act involving gross negligence in the care of any animal or any form of animal cruelty.

EVIDENCE IN MITIGATION OF PENALTY

The following are examples of mitigating circumstances which may be considered by Administrative Law Judges in providing for discipline in their proposed decisions:

1. Recognition by Respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.
2. Respondent was forthcoming and reported violation or conviction to the Board.
3. A substantial amount of time since the violation or conviction occurred.
4. No prior criminal or disciplinary history.

DISCIPLINARY GUIDELINES SUMMARY
FOR USE BY ADMINISTRATIVE LAW JUDGES

These guidelines were developed for use by Administrative Law Judges. In determining the appropriate discipline, consideration should be given to any mitigating or aggravating circumstances. All decisions shall include cost recovery and probation monitoring costs in accordance with Business and Professions Code sections 3753.1 and 3753.5.

KEY
"R" - Required Term and Condition
"W" - Include Term and Condition if Warranted

B&P Code		CONDITIONS OF PROBATION											
		1-~~13~~15. Standard Terms	14~~6~~. Work Schedules	15~~7~~. Biological Fluid Testing	16~~8~~. Abstention Substances	17~~9~~. Suspension	~~18. Restriction of Practice~~	19~~20~~. Direct Supervision	20~~1~~. Education	21~~2~~. Competency Exam	22~~3~~. Alcohol/Drug Treatment	23~~4~~. Psychological Evaluation	24~~5~~. Physical Examination
3750 (a)	**False/Misleading Advertising** Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	R				W	~~W~~	W					
3750 (b)	**Fraud in Procurement of License** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R				W	~~R~~	W					
3750 (c)	**Knowingly Employing Unlicensed Persons** Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	R				W	~~R~~	R					
3750 (d)	**Conviction of a Crime** Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	R	W	W	W	W	~~W~~	W	W	W	W	W	W
3750 (e)	**Impersonating/Acting as a Proxy for Applicant** Maximum: Revocation or Denial Minimum: Revocation stayed, 5 years probation	R				W	~~R~~	W					
3750 (f)	**Negligence** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R				W	~~W~~	R	R	W		W	W
3750 (g)	**Violation of Any Provision** Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	R	W	W	W	W	~~W~~	W	W	W	W	W	W
3750 (h)	**Aiding or Abetting a Violation** Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	R				W	~~R~~	W					

DISCIPLINARY GUIDELINES SUMMARY (continued)

KEY
"R" - Required Term and Condition
"W" - Include Term and Condition if Warranted

B&P Code		CONDITIONS OF PROBATION											
		1-~~13~~15. Standard Terms	14~~6~~. Work Schedules	15~~7~~. Biological Fluid Testing	16~~8~~. Abstention Substamces	17~~9~~. Suspension	~~18.~~ Restriction of Practice	~~19~~20. Direct Supervision	20~~1~~. Education	21~~2~~. Competency Exam	22~~3~~. Alcohol/Drug Treatment	23~~4~~. Psychological Evaluation	24~~5~~. Physical Examination
3750 (i)	**Aiding or Abetting Unlawful Practice** Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	**R**				**W**	**~~R~~**	**R**					
3750 (j)	**Fraudulent, Dishonest or Corrupt Act** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**				**W**	**~~R~~**	**W**				**W**	
3750 (k)	**Patient, Hospital, or Other Records - Entries** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**				**W**	**~~W~~**	**R**	**R**	**W**		**W**	**W**
3750 (l)	**Falsifying Verbal or Written Order/Prescription** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**	**W**	**W**	**W**	**W**	**~~R~~**	**R**				**W**	
3750 (m)	**Discipline Taken by Another Agency** Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	**R**	**W**	**W**	**W**	**W**	**~~W~~**	**W**	**W**	**W**	**W**	**W**	**W**
3750 (n)	**Failure to Follow Infection Control Guidelines** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**				**W**	**~~W~~**	**R**	**R**	**W**		**W**	**W**
3750 (o)	**Incompetence** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**				**W**	**~~W~~**	**R**	**R**	**R**		**W**	**W**
3750 (p)	**Pattern of Substandard Care** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**				**W**	**~~W~~**	**R**	**R**	**W**		**W**	**W**
3750 (q)	**Perjury/False Statements** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**				**W**		**R**				**W**	
3750.5 (a)	**Obtained, Possessed, Used, or Administered Controlled Substance or Dangerous Drug** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**	**R**	**R**	**R**	**R**	**~~W~~**	**W**			**W**	**W**	
3750.5 (b)	**Used Drugs or Alcohol in Dangerous Manner or Impaired Ability to Practice Safely** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**	**R**	**R**	**R**	**R**	**~~W~~**	**W**			**W**	**W**	

DISCIPLINARY GUIDELINES SUMMARY (continued)

KEY
"R" - Required Term and Condition
"W" - Include Term and Condition if Warranted

B&P Code		CONDITIONS OF PROBATION											
		1~~13~~15. Standard Terms	14~~6~~. Work Schedules	15~~7~~. Biological Fluid Testing	16~~8~~. Abstention Substamces	17~~9~~. Suspension	~~18.~~ ~~Restriction of Practice~~	~~19~~20. Direct Supervision	201. Education	21~~2~~. Competency Exam	22~~3~~. Alcohol/Drug Treatment	23~~4~~. Psychological Evaluation	24~~5~~. Physical Examination
3750.5 (c)	**Applied for Employment or Worked While Under the Influence of Alcohol** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**	**R**	**R**	**R**	**R**	**~~W~~**	**W**			**W**	**W**	
3750.5 (d)	**Conviction of Offense Involving (a) or (b), Falsify Record Pertaining to Substances** Maximum: Revocation or Denial Minimum: Revocation stayed, 5 years probation	**R**	**R**	**R**	**R**	**R**	**~~R~~**	**R**			**W**	**W**	
3750.5 (e)	**Committed or Confined for Use of or Addiction to Substances Described in 3750.5 (a) (b) & (c)** Maximum: Revocation or Denial Minimum: Revocation stayed, 5 years probation	**R**	**R**	**R**	**R**	**R**	**~~R~~**	**R**			**W**	**W**	
3752.5	**Bodily Injury or Attempted Bodily Injury** Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	**R**	**W**	**W**	**W**	**W**	**~~R~~**	**W**			**W**	**W**	
3752.6	**Sexual Misconduct** Maximum: Revocation or Denial Minimum: Revocation or Denial	See Statute											
3752.7	**Sexual Contact w/Patient or Conviction of Sexual Offense** Maximum: Revocation or Denial Minimum: Revocation or Denial	See Statute											
3755	**Unprofessional Conduct** Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	**R**				**W**	**~~W~~**	**W**				**W**	
3760	**Unlawful Practice** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**				**W**	**~~R~~**	**R**					
3761	**Misrepresentation** Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	**R**				**W**	**~~R~~**	**R**					

PROBATIONARY TERMS & CONDITIONS

A probationary or conditional license is generally issued for a period between 2 and 5 years (see corresponding code violations on pages ~~6-9~~ 8-10), with consideration given to any aggravating or mitigating factors present. Following is a summary of terms and conditions of probation:

STANDARD CONDITIONS

1. Obey All Laws
2. Quarterly Reports
3. Probation Monitoring Program
4. Probation Monitoring Costs
5. Employment Requirement
6. Restriction of Practice
~~6~~7. Notice to Employer
~~7~~8. Supervisor Quarterly Reports
~~8~~9. Changes of Employment or Residence
~~9~~10. Cost Recovery
~~10~~11. Tolling for Out-of-State Residence or Practice
~~11~~12. Valid License Status
~~12~~13. Violation of Probation
~~13~~14. Completion of Probation
15. Surrender of License

STANDARD ALCOHOL/DRUG CONDITIONS

~~14~~16. Work Schedules
~~15~~17. Biological Fluid Testing
~~16~~18. Abstention from Use of Mood Altering Substances

SPECIALTY CONDITIONS

~~17~~19. Suspension
~~18. Restriction of Practice~~
~~19~~20. Direct Supervision
~~20~~21. Education
~~21~~22. Competency Examination
~~22~~23. Alcohol and Drug Treatment
~~23~~24. Psychological Evaluation
~~24~~25. Physical Examination

STANDARD TERMS & CONDITIONS

Standard conditions are imposed on each and every probationer, regardless of cause for discipline.

1. **OBEY ALL LAWS** Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of respiratory care in California.

   Respondent shall notify the Board in writing within three (3) days of any incident resulting in his/her arrest, or charges filed against, or a citation issued against, Respondent.

2. **QUARTERLY REPORTS** Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an ~~a~~Accusation and/or a ~~p~~Petition to ~~r~~ Revoke ~~p~~Probation against Respondent's respiratory care practitioner license.

   Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

   For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

   For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

   For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

   For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

3. **PROBATION MONITORING PROGRAM** Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

   Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, appear as requested by the Board, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

   Respondent shall provide to the Board the names, physical work addresses, work mailing

addresses, telephone numbers, and e-mail addresses of all employers, human resources personnel, directors, managers, supervisors, and contractors, and any person providing direct supervision, and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, human resources personnel, directors, managers, supervisors, and contractors, and any person providing direct supervision, to communicate regarding the Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation or potential violation of any probationary term and condition.

Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his/her terms and conditions of probation.

4. **PROBATION MONITORING COSTS** All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased. Probation monitoring costs will not be tolled.

   All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

   If Respondent is unable to submit costs for any month, he/she shall be required, instead to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

   Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

   Further, the entire unpaid balance of probation monitoring fees already incurred, shall become immediately due and payable to the Board upon the filing of a Petition to Revoke Probation, an Accusation and Petition to Revoke Probation, a Petition for Interim Suspension Order, or a Cease Practice Order alleging violation of any law(s) or condition(s) of probation against Respondent.

   In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.

   The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for costs incurred.

5. EMPLOYMENT REQUIREMENT Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his/her probation period.

Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each eight (8) months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

~~18~~6. RESTRICTION OF PRACTICE Except as may be pre-approved by the Board in its sole discretion and confirmed in writing, Respondent may ~~not~~ NOT do any of the following:

- ~~b~~Be employed or function as a member of respiratory care management or supervisory staff during the entire length of probation, including lead roles or functions . ~~This includes lead functions.~~
- ~~Respondent is prohibited from working~~ Work as part of a transport team.

~~[ ]~~

- ~~Respondent is prohibited from working~~ Work in home care.
- Work ~~or~~ for or through a registry.
- ~~Respondent is also prohibited from providing~~ Provide instruction or supervision to respiratory care students or applicants whether in a clinical or classroom setting.

[A decision may also include the following restriction:]

~~[ ] Respondent is prohibited from working with _____(i.e. neonates, elderly, comatose patients, children).~~

- Work with _____ (i.e. neonates, elderly, comatose patients, children).

67. NOTICE TO EMPLOYER Respondent shall be required to inform all current and subsequent employers, directors, managers, supervisors, and contractors during the probation period, of the discipline imposed by this decision by providing his/her current and subsequent human resources personnel, directors, managers, supervisors, and contractors with a complete copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within three (3) days from each change in a supervisor or director.

If Respondent is employed by or through a registry [and is not restricted from working for a registry], Respondent shall also make **each** hospital or establishment to which he/she is sent aware of the discipline imposed by this decision by providing his/her human resources personnel, manager, and supervisor for each shift, at each hospital or establishment with

a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the Board, in writing, that he/she is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

In addition, any **employer, director, manager, supervisor or contractor, shall report to the Board immediately, within 24 hours, if he/she suspects Respondent is under the influence of alcohol or any substance or has had any occurrence of substance abuse.**

~~7~~8. **SUPERVISOR QUARTERLY REPORTS** Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Respondent is ultimately responsible for ensuring his/her employer(s) submits complete and timely reports.

~~8~~9. **CHANGES OF EMPLOYMENT OR RESIDENCE** Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within three (3) days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within three (3) days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide his/her physical residence address as well.

~~9~~10. COST RECOVERY Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be $ _____ and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision unless a Petition to Revoke Probation, an Accusation and Petition to Revoke Probation, a Petition for Interim Suspension Order, or Cease Practice Order is filed against Respondent, as set forth below. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he/she shall be required, instead to submit an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) he/she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action. The entire sum of $_____, or the unpaid balance, shall become immediately due and payable to the Board upon the filing of a Petition to Revoke Probation, an Accusation and Petition to Revoke Probation, a Petition for Interim Suspension Order, or a Cease Practice Order alleging violation of any law(s) or condition(s) of probation against Respondent.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for these costs.

~~10~~11. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the obey all laws, quarterly reports, probation monitoring program, probation monitoring costs, or cost recovery requirements. Travel out of California for more than thirty (30) days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within three (3) days, upon his/her return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

~~Respondent's license shall automatically be cancelled if respondent's cumulative period tolling is greater than five years. However, the cancellation of the license does not relieve the respondent from outstanding cost recovery or probation monitoring costs.~~

~~11~~12. **VALID LICENSE STATUS** Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

~~12~~13. **VIOLATION OF PROBATION** If Respondent commits a "Major Violation," as identified in the Disciplinary Guidelines, incorporated by reference pursuant to section 1399.374, he/she shall receive a notice to cease the practice of respiratory care, as directed by the Board. The Board shall attempt to contact Respondent 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.

If the Respondent is ordered to cease practice, he/she may file a written appeal, within ten (10) 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 (10) 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.

Respondent shall not resume the practice of respiratory care until a final decision on an ~~a~~Accusation and/or a ~~p~~Petition to ~~r~~ Revoke ~~p~~Probation is made or until such time as the Board delivers written notification that the notice to cease practice has been dissolved. The cessation of practice shall not apply to the reduction of the probationary time period.

The Board will contact the Respondent and his/her employers, human resources personnel, directors, managers, supervisors, and contractors and notify them that Respondent has been issued a notice to cease practice.

In addition, if Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed.

If a ~~p~~Petition to ~~r~~ Revoke ~~p~~Probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

~~13~~14. **COMPLETION OF PROBATION** Upon successful completion of probation, Respondent's license shall be fully restored.

15. **SURRENDER OF LICENSE** If Respondent ceases practice due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, he/she may request the voluntary surrender of his/her license.

STANDARD ALCOHOL/DRUG CONDITIONS

~~14~~16. **WORK SCHEDULES** Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation for each and every place of employment. Respondent shall ensure the Board has a copy of her/his current work schedule at all times for each place of employment.

~~15~~17. **BIOLOGICAL FLUID TESTING** Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, and/or any drug screening program approved by the Board.

Respondent shall be required to make daily contact, to determine if he/she is required to submit a specimen for testing, each day, including weekends, holidays, and vacations in or outside of California, at a lab approved by the Board. Board representatives may also appear unannounced, at any time to collect a specimen. All collections will be observed.

At all times, Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All alternative testing sites, due to vacation or travel outside of California must be approved by the Board, thirty (30) days prior to the vacation or travel.

If Respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, Respondent understands that any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

If Respondent tests positive for a banned substance (including testing positive for ETG), the Board will contact the Respondent and his/her employers, human resources personnel, directors, managers, supervisors, and/or contractors and notify them of the positive test, including the substance(s) and levels detected. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and/or support group facilitators to determine whether the positive test is evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall inform the Respondent and others previously contacted, that the positive test was not a violation of his/her probationary order.

~~16~~18. ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES For purposes of these terms and conditions, a banned substance includes alcohol, marijuana, controlled substances and any and all other mood altering drugs and substances. Respondent shall completely abstain from the possession or use of all banned substances and their associated paraphernalia. Respondent may take other medication when lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Respondent shall provide the Board a copy of a prescription within five (5) days of the date the prescription was filled.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Respondent shall also ensure he/she is not ingesting or using any product that contains trace amounts of alcohol or any other banned substances (~~e.g.~~including but not limited to: cold/flu medications, cough syrups, diet pills/products, mouth wash, skin care or hygiene products, perfumes, poppy seeds, dessert or any foods, etc...).

Any positive result that registers over the established laboratory cutoff level for a banned substance, shall be reported to each of Respondent's employers.

SPECIALTY CONDITIONS

The following conditions imposed are dependent upon the violation(s) committed.

~~17~~19. **SUSPENSION** As part of probation, Respondent shall be suspended from the practice of respiratory care for a period of _____, beginning the effective date of this decision. ~~If not employed as a respiratory care practitioner or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period.~~ Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.

Respondents required to engage in Biological Fluid Testing, shall be suspended for a minimum of 10-60 days.

Respondents required to undergo a Psychological Evaluation, shall be suspended for a minimum of 30-90 days.

~~19~~20. **DIRECT SUPERVISION** During the period of probation, Respondent shall be under the direct supervision of a person holding a current and valid non-restricted Board license, who has not previously been disciplined by the Board. The Respondent shall not have a financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability to provide supervision and render impartial and unbiased reports to the ~~b~~Board.

Respondent shall be required to provide a copy of the Statement of Issues or Accusation and decision in this matter and the person providing direct supervision shall inform the Board in writing that he/she is aware of the discipline. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the persons authorized to provide supervision and the level of supervision prior to the commencement of work.

Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation and identify who is providing supervision for each shift. Respondent shall ensure the Board has a copy of her/his current work schedule identifying supervisor(s) at all times for each place of employment.

In addition to completing supervisor quarterly reports, any **employer, director, manager, supervisor or contractor, shall report to the Board immediately, within 24 hours, if he/she suspects Respondent is under the influence of alcohol or any substance or has had any occurrence of substance abuse.**

At the Board's discretion and confirmed in writing, the period or level of direct supervision may be reduced.

~~20~~21. EDUCATION

[ ] **CONTINUING EDUCATION** Respondent shall be required to complete additional Continuing Education, approved by the Board, beyond that which is required for license renewal. A minimum of fifteen (15) additional hours is required for each year of probation. Respondent shall submit proposed courses to the Board thirty (30) days in advance for approval consideration. Respondent shall also submit proof to the Board of successful completion of all continuing education requirements.

[ ] **EDUCATION/COURSE WORK** As directed by the Board, Respondent shall be required to successfully complete 3-12 semester units (or its equivalent) of education courses in California at an institution approved by the Board in addition to the continuing education required for the renewal of licensure. The course selection shall be submitted to and approved by the Board in advance. The Board, at its discretion, may require the education to be in a specific area of study. Successful completion is a grade of "C" or "70%" or better for any completed course.

Respondent shall be required to submit proof of successful completion in the form of official transcripts no later than twelve (12) months prior to the date probation is scheduled to end.

Failure to timely and successfully complete approved courses at an approved institution(s), or provide documentation thereof shall constitute a violation of probation.

Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

~~21~~22. COMPETENCY EXAMINATION Within six (6) months of the effective date of this decision and/or as designated by the Board, Respondent shall be required to take and pass a written competency examination as designated by the Board. This examination shall be taken on a date specified by the Board and Respondent shall pay all examination fees.

Respondent's failure to appear for or pass any scheduled examination will be noted as failure to pass or failure to successfully complete the examination. Respondent's failure to successfully complete the examination after one (1) scheduled examination, shall constitute incompetence and a violation of probation. Failure to pay costs for the examination, shall also constitute a violation of probation.

~~22~~23. ALCOHOL AND DRUG TREATMENT Respondent, at his/her expense, shall successfully complete a treatment regimen at a recognized and established program in California of at least six (6) months duration approved by the Board. The treatment program shall be successfully completed within the first nine (9) months of probation. The program director, psychiatrist or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she believes the Respondent cannot safely practice. Respondent shall execute a release authorizing divulgence of this information to the Board.

Respondent shall inform the program director, psychiatrist or psychologist, of his/her probationary status with the Board, and shall cause that individual to submit monthly reports to the Board providing information concerning Respondent's progress and prognosis. Such reports shall include results of biological fluid testing. Positive results shall be reported immediately to the Board and shall be used in administrative discipline. Respondent shall execute a release authorizing clinical providers to divulge the aforementioned information to the Board.

~~23~~24. PSYCHOLOGICAL EVALUATION Within sixty (60) days of the effective date of this decision, and on a periodic basis thereafter as may be required or directed by the Board, Respondent, at his/her own expense, shall have a mental health examination, including psychological assessment and testing as appropriate, to determine his/her capacity to perform all professional duties with safety to self and to the public.

The examination will be performed by a licensed psychiatrist or psychologist appointed by the Board. The evaluator shall have three (3) years experience in conducting evaluations in accordance with acceptable professional standards. The evaluator shall not have a current or past financial relationship, personal relationship, or business relationship with the licensee.

Respondent shall provide this evaluator with a copy of the Board's disciplinary order prior to the evaluation.

The examiner must submit a written report of that assessment and recommendations to the Board within ten (10) days, unless additional time is needed, but not to exceed thirty (30) days. If the evaluator determines that a licensee is a threat to himself/herself or others, the evaluator shall notify the ~~b~~Board within 24 hours of such a determination. Recommendations for cessation or restriction of practice for the safety of patients, treatment, therapy or counseling made as a result of the mental health examination, will be instituted and followed by the Respondent.

Respondent shall execute a release authorizing the evaluator to divulge all findings and/or information revealed through the evaluation process, to the Board.

All costs incurred for evaluation and treatment are the responsibility of the Respondent. Failure to timely pay for the evaluation shall also constitute a violation of probation.

~~24~~25. PHYSICAL EXAMINATION Within sixty (60) days of the effective date of this decision, Respondent, at his/her expense, shall undergo an assessment of his/her physical condition by a physician appointed by the Board. Respondent shall provide the examining physician with a copy of the Board's disciplinary order prior to the examination. The examining physician must submit a written report of his/her findings to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician providing written reports to the Board on forms provided by the Board.

If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board within three (3) working days. The Board shall notify Respondent in writing of the examining physician's determination of unfitness to practice and shall order the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified the Respondent. Respondent shall document compliance in the manner required by the Board.

Respondent shall execute a release authorizing the physician to divulge the aforementioned information to the Board.

Failure to timely pay for the evaluation shall also constitute a violation of probation.

A major violation of probation will result in an order to immediately cease the practice of respiratory care.

VIOLATION STANDARDS

MAJOR VIOLATIONS

Major violations include, but are not limited to, the following:

1. Any act that presents a threat to a patient, the public, or the respondent him/herself;
2. Failure to timely complete a ~~b~~Board-ordered program or evaluation;
3. Committing two (2) or more minor violations of probation;
4. Practicing respiratory care or making patient contact while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense, or any other offense that may or may not be related to drugs or alcohol, that is a violation of the Business and Professions Code or state or federal law;
6. Failure to make daily contact as directed, submit to testing on the day requested, or appear as requested by any Board representative for testing, in accordance with the "biological fluid testing" term and condition;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of a banned substance;
9. Failure to adhere to any suspension or restriction in practice;
10. Falsifying any document in connection with the terms and conditions of probation;

If a Respondent commits a major violation, the Board shall issue a notice to cease practice, pursuant to section 1399.375 of Division 13.6, Title 16, California Code of Regulations, and the Board shall refer the matter for formal disciplinary action.

MINOR VIOLATIONS

Minor violations include, but are not limited to, the following:

1. Failure to submit complete and required documentation in a timely manner to the Board, an employer, or any other party, in accordance with the terms and conditions of probation;
2. Unexcused absence at required meetings;
3. Failure to contact a monitor as required;
4. Failure to submit cost recovery or monthly probation monitoring costs timely.
5. Any other violation that does not present a threat to the Respondent or public.

If a Respondent commits a minor violation, the Board shall determine the appropriate action, up to and including referral of the matter for disciplinary action.

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