Senate Business, Professions and Economic Development Committee
COMMITTEE BILL: 2020 PROPOSED LEGISLATION

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

REQUESTOR & CONTACT INFORMATION

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DATE SUBMITTED September xx, 2019

SUMMARY

This proposal adds "leave" and "resignation" of employment and employees of registries placed on "do not call" lists for any suspected or actual violation of serious offenses, as cause to mandatorily report such action to the Board.

IDENTIFICATION OF PROBLEM

The Board has encountered several respiratory care practitioners who were not reported by facilities because they were advised to resign instead of face termination, or facilities rightfully claimed they did not have to report RCPs who were employed by registries. Instead, facilities using registry employees notify the registry that they do not want the employee assigned to their facility ever again. And while in most instances the registry is made aware of the reason the facility refuses assignments by certain RCPs, the registry (nor the facility) is obligated to inform the Board, even in those cases of serious violations as outlined in section 3758.

PROPOSED SOLUTION

Amend §3758 to require all employers of respiratory care practitioners to adhere to mandatory reporting requirements of serious offenses as outlined in section 3758 of the Business and Professions Code.

RCP BACKGROUND & LEGISLATIVE HISTORY

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

The Board ensures that applicants meet the minimum education and competency standards and conducts a thorough criminal background check on each applicant prior to licensure. The Board also pursues discipline for violations of its Act. Over 40,000 licenses have been issued to date.

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

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

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

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

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

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

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

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

JUSTIFICATION

B&P §3701 states, "The Legislature finds and declares that the practice of respiratory care in California affects the public health, safety, and welfare and is to be subject to regulation and control in the public interest to protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care." As such, licenses are issued in accordance with the Board's mandate to protect and serve the consumer in the interest of the safe practice of respiratory care.

B&P §3710.1 provides "Protection of the public shall be the highest priority for the [Board] in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

Amending section 3758 as proposed is in line with the Board's mandate by ensuring mandatory reporting is completed on all respiratory care practitioners for suspected or actual 1) use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care, 2) sale of controlled substances or other prescription items 3) patient neglect, physical harm to a patient, or sexual contact with a patient, 4) falsification of medical records, 5) gross incompetence or negligence and 6) theft from patients, other employees, or the employer. This amendment enables the Board to conduct a timely investigation and prevent harm to consumers.

ARGUMENTS PRO & CON

Pro: Consumer protection provisions are strengthened by providing the Board notification of potential serious behaviors that may result in harm to or additional harm to other consumers.

Con: *None.*

PROBABLE SUPPORT & OPPOSITION

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

FISCAL IMPACT

The Board expects additional reporting to be minimal and any costs associated with the proposal to be absorbed by existing resources.

ECONOMIC IMPACT

None.

FINDINGS FROM OTHER STATES

The Board is unaware of other states with similar statutes.

PROPOSED LANGUAGE

Section 3758 of the Business and Professions Code is amended to read:

3758. (a) Any employer of a respiratory care practitioner shall report to the Respiratory Care Board ~~the~~ any leave, resignation, suspension or termination for cause of any practitioner in their employ. The reporting required herein shall not act as a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, and shall not be subject to discovery in civil cases.

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

(1) Suspected or actual ~~U~~use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care.

(2) Suspected or actual ~~U~~unlawful sale of controlled substances or other prescription items.

(3) Suspected or actual ~~P~~patient neglect, physical harm to a patient, or sexual contact with a patient.

(4) Suspected or actual ~~F~~falsification of medical records.

(5) Suspected or actual ~~G~~gross incompetence or negligence.

(6) Suspected or actual ~~T~~theft from patients, other employees, or the employer.

(c) The provisions provided in subdivisions (a) and (b) shall also apply to owners, directors, partners or managers of any registry or agency who places one or more respiratory care practitioners at facilities to practice respiratory care and is asked to place the practitioner on a "do not call" list or other status indicating the facility does not want that practitioner placed at their facility for any behavior described in subdivision (b).

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

(Added by Stats. 1998, Ch. 553, Sec. 4. Effective January 1, 1999.)