



Item: **Proposed Regulatory Language**

Item Summary: In accordance with the Board's recently drafted Strategic Plan 2017-2021 and the passage of AB 2138, the attached Proposed Regulatory Language and Disciplinary Guidelines 2020 Edition (incorporated into the regulations by reference) are presented to the Board for approval to pursue promulgating regulatory amendments.

- 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

Summary of Changes

§ 1399.326 (page 1): The amendment changes the requirement to review DMV records from "shall" to "may." This change aligns with agreements made with the Legislative Sunset Review Committee to further streamline the application process.

This amendment also supports Enforcement Goal no. 12 of the Board's 2017-2021 Strategic Plan referenced at the end of this document.

§ 1399.329 (page 1): The amendments in this section serve to recognize recent legislative changes that require expeditious and special handling of applications for licensure or renewal for military personnel and their spouses (including legal unions and domestic partnerships). They also identify evidence that may be provided by military personnel to demonstrate discharge from active duty.

This amendment also supports Organizational Effectiveness Goal no. 2 of the Board's 2017-2021 Strategic Plan referenced at the end of this document.

§§ 1399.343-1399.346 (pages 1-5): These sections were added in 2015 as a result of legislation requiring boards to adopt regulations to temporarily authorize health care practitioners licensed in another state, to provide health care services in California at sponsored events. Since the enactment of the legislation in 2012, the Board has not had any inquires regarding temporary authorization, nor has the Board relied upon or had the need to reference these regulations. The legislative language authorizing this program was repealed in January 2018 and therefore these sections are unnecessary and are proposed to be repealed.

§ 1399.370 (page 5): This section includes an amendment to recognize AB 2138 and to also make an act or crime of neglect, endangerment, or abuse of a vulnerable person substantially related to the practice of respiratory care. The Board has encountered licensees who have committed acts of neglect or abuse against vulnerable individuals (e.g. children, dependent adults, elderly) endangering their well-being. Sometimes these acts result in convictions and other times they do not. The Board has had incidents where abuse or neglect has occurred, but could not pursue disciplinary action because it did not have the authority or has been advised that the acts would likely not be deemed to be substantially related. The Board believes that any act endangering a child, a dependent adult or the elderly causes grave concerns for RCPs' ability to care for another vulnerable population: respiratory care patients. Licensed RCPs regularly care for the vulnerable population without direct oversight and demonstration of neglect or abuse causes serious concern for patient safety. Any act endangering the well-being of a vulnerable person should be substantially related to the practice of respiratory care.

This amendment also supports Enforcement Goal no. 1 of the Board's 2017-2021 Strategic Plan referenced at the end of this document.

§1399.370, §1399.372, and §1399.372.1 (pages 5-7): These sections are amended and added to comply with AB 2138 (Chiu, Statutes of 2018, Chapter 995) intended to reduce barriers for people to enter licensed professions by limiting the action regulatory agencies can take to deny a license and requiring agencies to consider new rehabilitation criteria. As a result, the denial of a license will now be treated differently than the discipline of an existing license.

§ 1399.374 (page 8): The amendment in this section references the 2020 edition of the Board's Disciplinary Guidelines incorporated by reference. This amendment also supports Enforcement Goal no. 10 of the Board's 2017-2021 Strategic Plan referenced at the end of this document.

The referenced Disciplinary Guidelines, also attached, include amendments to:

- Cover: Update the edition from 2011 to 2020 and provide the Board’s current contact information.
- Table of Contents: Update and renumber the Table of Contents to reflect changes made to the document.
- Pages 1-3: Update the introduction to include additional tasks within the scope of practice of an RCP, an additional location where RCPs are employed, a more accurate representation of the education RCPs obtain, and reflect the Board’s current mission statement.
- Page 4: Update format by adding a page that highlights the Board’s mandate and highest priority of consumer protection.
- Page 5: Reference to existing law to recover probation monitoring costs is added.
- Page 7: Update format and evidence in aggravation of penalty to reflect acts the Board finds especially concerning for patient safety.
- Pages 8-10: Edits made on these two pages reflect changes to numbering and the addition of “Standard Terms” discussed below.
- Page 11: A new term and condition “Surrender of License” is added and an existing specialty condition, “Restriction of Practice” was changed to become a standard condition. Hence the reason for renumbering on pages 8-10.
- Page 13: Update the term and condition, “Probation Monitoring Costs” to make outstanding costs immediately due upon the filing of subsequent disciplinary pleadings or administrative action. This change is not a change in procedure for stipulated decisions, but rather provides a streamlined mechanism to ensure all outstanding costs, regardless of the type of decision, are captured in a sole subsequent disciplinary order.
- Page 14: The term and condition, “Restriction of Practice” has been moved from “Specialty Conditions” to “Standard Term & Conditions” since the Board has found it necessary to include it in nearly every decision. It is also reworded to be inclusive of nearly all restrictions thereby provide the Board flexibility in lifting those restrictions at anytime throughout probation.
- Page 16: Update the term and condition, “Cost Recovery” to make outstanding costs immediately due upon the filing of subsequent disciplinary pleadings or administrative action. This change is not a change in procedure, but rather provides a streamlined mechanism to ensure all outstanding costs are captured in a sole subsequent disciplinary order.
- Update the term and condition, “Tolling for Out-of-State Residence or Practice” to delete the last paragraph that provided a probationer’s license shall automatically be canceled if he/she tolled for greater than five years. Immediately following amendments made to the Disciplinary Guidelines in 2011, board staff were advised by the Office of the Attorney General that this language violated due process rights. As such, board staff have never enforced this section and subsequent stipulated orders to not include this language.

- Page 17: A new Standard Term and Condition is added “Surrender of License.” This term has been used in all stipulated decisions and it is appropriate for it to be included in Administrative Law Judges’ decisions as well. It provides the probationer notice that surrendering his/her license is an option.
- Pages 20: The term “Suspension” is modified to remove language that a suspension would begin once a probationer was employed. Probationers were unable to secure employment in the field as a result of this language, creating an unreasonable hardship and a barrier to practice.
- The term “Restriction of Practice” is moved to page 14.
- Update the term and condition, “Direct Supervision” to allow the Board flexibility to modify the length or level of direct supervision. For example, a probationer who is not subject to random drug screening may be released from the obligation to provide current work schedules.
- Page 24: Update formatting to allow for an additional page that highlights a probationer will be ordered to cease practice immediately following a major violation of probation.
- Back Cover: Update the edition from 2011 to 2020 and provide the Board’s current contact information.

REFERENCES

Respiratory Care Board 2017-2021 Strategic Plan

- ▶ Enforcement Goal no. 1: “Seek regulatory amendment to provide that “Commission of an act or conviction of a crime involving neglect, endangerment, or abuse involving a person under 18 years of age, a person 65 years of age or older, or a dependent adult ..., without regard to whether the person was a patient” shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, in order to ensure the Board may take disciplinary action against a licensee for such crimes and to increase consumer protection.”
- ▶ Enforcement Goal no. 10: “Update disciplinary guidelines to ensure they are current and reflect current laws.”
- ▶ Enforcement Goal no. 12: “Eliminate the submission of a Department of Motor Vehicles history as a standard application requirement to increase efficiency in the application process.”
- ▶ Organizational Effectiveness Goal no 2: 2. Establish regulations to distinguish documentation required to prove an honorable discharge to codify the process in accordance with Senate Bill 1226 (statutes of 2014) to expedite applications from military personnel that were honorably discharged.

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, 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:

(a₁) 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 and 3722, Business and Professions Code. Reference: Sections 480, 481, 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 Suspensions or Revocations.

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

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

(b) The total criminal record.

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

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

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

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

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

(2) Active continued attendance or successful completion 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 482, 3750, 3751 and 3753, Business and Professions Code.

§ 1399.372.1 . Rehabilitation Criteria for Denials of Applications for Crimes Substantially Related to the Duties and Qualifications of a Licensee.

(a) When considering the denial 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 crime(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) The criteria in subdivision (a)(1)-(5), as applicable.

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

Note: Authority cited: Sections 482 and 3722, Business and Professions Code. Reference: Sections 482, 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.

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
Sacramento, CA ~~95811-95834~~ ~~T: 916.323.9983~~ • ~~F: 916.323.9999~~
T: (916) 999-2190 • F: (916) 263-7311 • W: rcb.ca.gov • E: rcbinfo@dca.ca.gov

Table of Contents

Introduction	1
Public Record	24
Cost Recovery	25
<u>Probation Monitoring Costs</u>	<u>5</u>
Probation Monitoring Purpose	36
Citations	36
Stipulated Settlements	36
DISCIPLINARY GUIDELINES	5
Evidence in Aggravation/ Mitigation of Penalty	57
<u>Evidence in Mitigation of Penalty</u>	<u>7</u>
Disciplinary Guidelines Summary for Use By ALJs	58
PROBATIONARY TERMS AND CONDITIONS	1011
Standard Terms and Conditions	11 12
Standard Alcohol/Drug Conditions	15 18
Specialty Conditions	16 20
VIOLATION STANDARDS	1925

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 ~~respiratory 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 violent 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											
	1-1315. Standard Terms	146. Work Schedules	157. Biological Fluid Testing	168. Abstinence Substances	179. Suspension	18. Restriction of Practice	1920. Direct Supervision	201. Education	212. Competency Exam	223. Alcohol/Drug Treatment	234. Psychological Evaluation	245. 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											
		1-1315. Standard Terms	146. Work Schedules	157. Biological Fluid Testing	168. Abstinence Substances	179. Suspension	18. Restriction of Practice	1920. Direct Supervision	201. Education	212. Competency Exam	223. Alcohol/Drug Treatment	234. Psychological Evaluation	245. 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											
	1-1315. Standard Terms	146. Work Schedules	157. Biological Fluid Testing	168. Abstinence Substances	179. Suspension	18. Restriction of Practice	1920. Direct Supervision	201. Education	212. Competency Exam	223. Alcohol/Drug Treatment	234. Psychological Evaluation	245. 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
67. Notice to Employer
78. Supervisor Quarterly Reports
89. Changes of Employment or Residence
910. Cost Recovery
1011. Tolling for Out-of-State Residence or Practice
1112. Valid License Status
1213. Violation of Probation
1314. Completion of Probation
15. Surrender of License

STANDARD ALCOHOL/DRUG CONDITIONS

1416. Work Schedules
1517. Biological Fluid Testing
1618. Abstention from Use of Mood Altering Substances

SPECIALTY CONDITIONS

1719. Suspension
18. ~~Restriction of Practice~~
1920. Direct Supervision
2021. Education
2122. Competency Examination
2223. Alcohol and Drug Treatment
2324. Psychological Evaluation
2425. 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 aAccusation and/or a petition to revoke 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.

186. 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:

~~- 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.**

78. 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.

89. 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.

910. 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.

1011. 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.~~

1112. 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.

1213. 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.

1314. 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

1416. 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.

1517. 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.

1618. 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.

1719. 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.

1920. 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.

2021. 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.

2122. 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.

2223. 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.

2324. 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 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.

2425. 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 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.

Disciplinary Guidelines
2011 2020 Edition

Published by

Respiratory Care Board of California

~~444 North 3rd Street, Suite 270~~ 3750 Rosin Court, Suite 100

Sacramento, CA ~~95811-95834~~ ~~T: 916.323.9983~~ • ~~F: 916.323.9999~~

T: (916) 999-2190 • F: (916) 263-7311 • W: rcb.ca.gov • E: rcbinfo@dca.ca.gov