RESPIRATORY CARE BOARD OF CALIFORNIA

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing date has been scheduled.

Subject Matter of Proposed Regulations:
Continuing Education, continuing education providers, preceptors, continuing education waiver for military personnel, and citation and fine.

Sections Affected:
1399.349, 1399.350, 1399.350.5, 1399.351, 1399.352, 1399.352.5, 1399.352.6, 1399.352.7, and 1399.381 of Division 13.6, Title 16 of the California Code of Regulations (CCR).

I. Background and Problem Being Addressed
The Respiratory Care Board (Board) enforces the Respiratory Care Practice Act at Business and Professions Code (B&P) sections 3700-3779 and oversees approximately 23,600 licensed respiratory care practitioners and respiratory care practitioner applicants.

B&P section 3719 and 16 CCR 1399.350 currently require licensed respiratory care practitioners (RCPs) to complete 30 hours of continuing education (CE) every two years in alignment with the biennial renewal of each license. B&P section 3719 also authorizes the Board to identify and approve examinations that qualify for CE hours.

BPC section 3719.5 specifically lists American Association for Respiratory Care (AARC) and the California Society for Respiratory Care (CSRC) as having expertise in the field by providing that continuing education, pre-licensure education, and education for purposes of reinstatement may be completed by professional courses offered either by the Board or by AARC or CSRC.

The National Board for Respiratory Care (NBRC) is the nationally recognized credentialling organization not only for licensure but for numerous other credentials. Existing laws, such as B&P section 3735, mention the NBRC by name. The CSRC is a professional membership organization advocating on behalf of respiratory care professionals, and who offers continuing education and professional events. The AARC is a national professional membership organization that similarly offers, among other things, education, training, and advocacy services to its members.

In addition to professional organizations, the healthcare industry has traditionally relied on the concept of “preceptorship,” wherein healthcare professionals take a leadership role in mentoring students. Medical education has traditionally employed a form of apprenticeship when training new clinicians to work in the hospital environment. In this format, a more experienced clinician takes on the title of preceptor and serves as both

an educator and guide for the student during the student's clinical rotation as part of the student's education program.

The Board's "Strategic Plan 2017-2021" identified as one of its education goals to "Revise continuing education (CE) regulations to provide clarity and improve program effectiveness."

At the Board's May 14, 2018 meeting, the Board began to discuss revisions to its CE program and requirements. Proposed language was presented as a starting point to help facilitate discussion. Adding a section of required CE in leadership/management was the result of feedback from the Board's last Workforce Study (see, for example, Underlying Data, page 25 of the Workforce Study: "…a few education directors referred to a lack of leadership as an overarching issue that affects quality clinical education"). However, there was a notable concern from members and the public (see May 2018 board meeting minutes) with this earlier version of the language, that required a portion of CE to be obtained through live, in person attendance. Ultimately, the Board requested the language be shared with interested parties to obtain feedback.

In August 2018, the Board issued a notice to interested parties providing the suggested changes and requesting feedback by December 1, 2018.

At the Board's October 26, 2018 meeting, the Board further discussed the issue after reviewing the written comments received to date and suggested revisions (approximately 10 comments and one petition with 66 signatures). The most contentious item was a requirement that 15 hours must be earned from live, in-person courses and there were a few comments regarding the requirement to obtain 10 hours from leadership/management courses. The president noted the Board's interest is in learned competency and it needs to ensure respiratory care practitioners have the most current information relative to their profession by requiring a certain number of in-person CEs. It was noted that these requirements are an opportunity for the profession to grow and possibly develop more educators within individual institutions which is seen extensively in nursing. The executive officer noted the proposed changes derived directly from feedback received as part of the 2017 Workforce Study.

The leadership/management requirement will promote critical thinking with a wider perception at the leadership level. Leadership includes critical thinking skills, making ethical and sound decisions independently as well as with a team, understanding the major forms of service reimbursement, the scope and role of state and federal regulatory entities, the impact these agencies have on the scope of practice, understanding healthcare policy including research and analysis, and understanding competencies related to supervising and evaluating personnel.

As noted in the Workforce Study, there are many areas in the respiratory care field that need to strengthen leadership, from students entering the workforce, to RCPs practicing in the field, to supervisors or organizations employing RCPs. While CE is not meant to

replace formal education needed to build a solid foundation in these areas, CE can be an adjunct to such education. In addition to providing greater safeguards to patients, further developing leadership among RCPs will better prepare and expose RCPs to potential opportunities for advancement in the field and help alleviate the gap of experienced RTs retiring. Better prepared and educated leaders in the profession will improve patient care by ensuring better decision making, making sure that resources are put to their best uses and personnel are most effectively managed.

The president noted that 35% of people in management are expected to retire in the next few years. Practitioners need exposure to management and leadership roles to fill in these projected gaps. He pointed out there are multiple sources to get CEs. Much discussion ensued regarding the availability of live, in-person courses.

At the Board's March 1, 2019 meeting, the Board reviewed a summary of hundreds of comments received on the proposed changes to the CE regulatory language, highlighting some of the most contentious. Language was revised in response to comments and the Board approved the motion to adopt the proposed changes and instruct staff to begin the rulemaking process.

At the Board's November 1, 2019 meeting, the proposed language was again submitted for approval with revisions. This proposal included two substantive changes: One, unrelated to CE, Board staff had encountered an issue because the law had been updated to include section (q) of B&P section 3750[1] (providing false statements as a cause for discipline), yet this change had not been reflected in 16 CCR 1399.381 which lists fine amounts for violations warranting the issuance of a citation and fine; and two, another issue that had been discussed since the Board's October 26, 2018 meeting, aside from the CE issue, was "Clinical Education" and the recommended action included additional regulatory changes that crossed over the CE regulation changes proposed in March 2019.

The Board's "Strategic Plan 2017-2021" identified as another one of its education goals to:

> "Develop an action plan to establish laws and regulations or accrediting standards for student clinical requirements to increase consumer protection and improve education outcomes."

As noted above, the Board began to review literature on the topic of Clinical Education at its October 26, 2018 meeting.

At the Board's March 1, 2019 meeting, a proposal was put forward which included proposed legislative and regulatory changes and several alternatives mandating the use of qualified preceptors.

[1]Subdivision (q) was added to B&P section 3750 via AB 923, statutes of 2016

The Board was concerned that mandating the use of qualified preceptors would create a hardship and that many hospitals would simply close their doors to providing clinical education for respiratory care students. Many education programs have commented over the years, in addition to members of the Board, that finding preceptors for their students is one of the significant hurdles for clinical education instructors, primarily because it is additional workload for the employee with no additional incentives or compensation. Therefore, any RCP who volunteers to precept a student will be eagerly accepted regardless of their experience or other qualifications.

A proposed solution to further the goal for Clinical Education was presented to the Board for approval at its November 1, 2019 meeting. Rather than mandating qualified preceptors, the Board provided a pathway of incentives through CE to encourage more RCP licensees to become preceptors, and thus to take on a leadership role.

At the Board's November 1, 2019 meeting, additional changes were requested to the proposed language presented, though members expressed concern over further delays in beginning the rulemaking process. It was noted the overall goal was that the changes provide another CE opportunity in leadership as provided in section 1399.350(a)(1), which would create better candidates out of schools, and better employees. It was also noted trying to find well-qualified people willing to sacrifice their time to teach was affecting not just the Board but many health professions. With the proposed regulation, licensees would have an incentive to become a preceptor. After additional edits were proposed by staff, the Board approved the motion to move forward with the clarifications and changes to the proposed regulatory language and authorizing staff to make non-substantive changes as necessary.

Since November 2019, the language has been reviewed by the Department of Consumer Affairs' Legal Office (DCA Legal) and was organizationally redrafted to retain the existing regulatory language in its current location where possible, while including the policy changes approved by the Board at its November 2019 meeting. However, in addition to this reorganization, discussions between Board staff and DCA Legal have led to a number of further clarifications to be made to the text. Language was clarified or modified from the November 2019 version for consistency and clarity and presented to the Board for review and approval at its June 9, 2022 meeting.

Existing regulations: 16 CCR 1399.349-1399.359 establishes the criteria for various continuing education and license requirements. 16 CCR 1399.381 establishes the fine amount for a violation of the Respiratory Care Practice Act (RCPA) that is addressed through the Board's citation and fine program.

Problems being addressed include:

1) The need to restructure Article 5 of Division 13.6 of the CCR to accommodate new language, provide clarity, and improve program effectiveness.

2) The need for live and interactive continuing education to ensure licensees have the most current information relative to their profession as well as foster leadership and the sharing of information among licensees.

3) The need to encourage and develop skills and knowledge in leadership to fill the expected gap in management attrition.

4) The need to encourage qualified preceptors to strengthen the clinical education of students to improve education outcomes, provide greater consumer protection, and foster leadership skills.

5) The need to update the Citation and Fine Schedule to include recent legislative amendments to Section 3750.

II. Specific Purpose, Anticipated Benefit, and Rationale

1. Amend section 1399.349 – Continuing Education Defined

The Board proposes removing the word 'basic' from the last sentence of the existing section as follows:

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

Purpose: The purpose of amending 16 CCR 1399.350 is to remove an unnecessary and confusing term used to describe continuing education (CE) that does not qualify for credit.

Anticipated Benefit: The proposed amendments to 16 CCR 1399.350 will provide readers with a clearer understanding that the education and training required to become a licensed RCP does not qualify for CE credit.

Rationale: This amendment is necessary to provide clarity and transparency to all licensees. By removing the word "basic" there is no confusion on which education or training does not qualify for CE credit. Rather all education or training needed to become a licensed RCP does not qualify for CE credit.

2. Amend Section 1399.350 – Continuing Education Required

As described below, the Board is seeking through this rulemaking proposal to modify existing section 1399.350 relating to continuing education requirements:

Section 1399.350(a)
The Board proposes deleting existing language and adding text as follows:

"At least ~~two-thirds~~ 25 of the 30 required CE hours shall be ~~directly related to clinical practice.~~ completed in the following content areas:

Purpose: The purpose of amending 16 CCR 1399.350(a) is to make room for a new framework for required continuing education while not change the total number of hours required within a two-year renewal period. One aspect of the new framework is that the existing requirement that two-thirds of the CE hours be directly related to clinical practice is deleted here in subdivision (a) and brought back as the requirement that one-half of CE hours must be directly related to clinical practice in a later paragraph (proposed 16 CCR section 1399.350(a)(2)).

In proposing a new framework for CE, the Board has balanced several competing priorities: the need to develop leadership among licensees to take over management roles, the need for licensees to maintain and grow their clinical practice skills, and the Board's desire to encourage licensee participation in Board meetings and the meetings of specific industry associations.

The Board took into consideration:

- The Board's "Strategic Plan 2017-2021,"
- The Board's Workforce Study,
- The public responses received from the Notice to interested parties on changes to CE requirements sent out in August 2018 (see the Materials from the Board's October 2018 meeting), and
- The input of the public and Board members at the board meetings held on October 26, 2018, Mar 1, 2019, November 1, 2019, and April 3, 2020.

Anticipated Benefit: Reducing the previous requirement that two-thirds of mandatory CE hours (20 hours) must be directly related to clinical practice enables the Board to adopt other mandatory CE requirements that further Board goals in the new framework. The Board seeks to address the education needs of licensees as well as the needs of the profession as a whole. Further benefits are discussed in greater detail below in the discussion of each of the newly proposed requirement within the new framework.

Rationale: The Board's 2017-2021 Strategic Plan provides two goals aimed at revising (CE) regulations to provide clarity and improve program effectiveness and a mechanism to improve student clinical education and improve education outcomes. After review of the Board's Workforce Study, other underlying documents, and public feedback, the Board determined replacing the previous requirement of 20 hours with a requirement of 15 hours along with adopting the proposed language in new subdivisions (a)(1)-(2), new subdivisions (b)-(d), and amending former subdivisions (b) and (c) is the best way to achieve the goals listed in its strategic plan, and address the problems outlined above.

The amendments, taken together, are necessary to improve skills among the profession and to keep pace with current events and advancements in the profession.

Section 1399.350(a)(1)
The Board proposes adding the following language:

> (1) A minimum of 10 hours must be directly related to RCP leadership, including training for educators who provide instruction in respiratory care practice as defined in Sections 3702 and 3702.7 of the B&P, or training in case management, health-care financial reimbursement, health care cost containment or health care management. Hours earned as part of a licensee's successful completion of the Law and Professional Ethics Course as provided in section 1399.350.5, and credit earned by a licensee for preceptor participation as provided in section 1399.352.6 shall be considered qualifying RCP leadership hours and counted by the Board toward meeting the requirements of this subsection in accordance with sections 1399.350.5 or 1399.352.6, as applicable.

Purpose: 16 CCR section 1399.350(a)(1) establishes that licensees must acquire a minimum of 10 hours of practitioner leadership, by taking courses or attending conventions that encompass the subject matter listed in new paragraph (a)(1), by completing the law and professional ethics course as described in 16 CCR section 1399.350.5, and/or by earning credit for preceptor participation as described in 16 CCR section 1399.352.6. Of the three types of CE that the proposed new framework would require, 16 CCR 1399.350(a)(1) sets out the first category of CE the new framework requires, practitioner leadership, and requires licensees obtain a minimum of ten hours of this type of CE.

Anticipated Benefit: Broadening the types of training courses and experiential learning that CE licensees take to renew a license will result in licensees being better prepared to serve the profession as a whole, which will lead to better service for health-care consumers. Allowing licensees to choose for themselves how many hours of the three different types of practitioner leadership CE (courses and convention attendance, completion of law and professional ethics coursework, and preceptor participation credit) described should increase licensee interest, which may increase knowledge absorption and retention. Licensees can choose for themselves to fulfill the practitioner leadership CE requirement with the courses and experiences of greatest interest to them.

Of the three types of practitioner leadership CE, paragraph (a)(1) describes the law and professional ethics course, which is a pre-existing requirement, revised and discussed in more detail in 16 CCR sections 1399.350.5 and 1399.352.7. The other two newly added practitioner leadership CE options encourage licensees to learn about management-related topics and to serve as preceptors as discussed in detail in 16 CCR 1399.352.6. When more licensees understand management-related issues, more licensees will be prepared to step into professional leadership roles (for which there is

growing need).

Preceptors are licensed RCPs employed at the clinical site. They volunteer with the education program to take on the additional assignment of providing hands-on instruction for students in a real-world learning environment. Preceptors are needed to educate the next generation of practitioners and awarding CE credit for such service will increase the number of licensees willing to serve as preceptors.

Rationale: As described in the "Background and Problem Being Addressed" section above, the expected retirement of 35% of people in management in the next few years, and the need for leadership development among existing licensees to fill that void was discussed at the October 26, 2018, Board meeting. The anticipated gaps in management were brought to light by the Board's last Workforce Study. Based on anecdotal evidence, the Board believes this trend is accurate. The Board is proposing the new framework require a minimum of 10 practitioner leadership CE hours in training in case management, health-care financial reimbursement, health care cost containment or health care management to promote a greater understanding of management issues among licensees and prepare more licensees to take on leadership roles. Understanding these concepts will serve the public by ensuring practitioners have case management skills that will translate to efficient delivery of patient care through problem solving and maximizing the services rendered to patients through the understanding of administrative and financial rules and procedures.

The inclusion of credit for the Law and Professional Ethics course will promote greater participation in ethics education, and the inclusion of preceptor participation is intended to increase the number of licensees serving as preceptors. Given the great need for qualified preceptors and management attrition, the Board believed a significant number of the total CE required needed to focus in this area.

Section 1399.350(a)(2)
The Board proposes adding the following text:

> (2) A minimum of 15 hours must be directly related to the clinical practice of respiratory care, including training on all activities involving the practice of respiratory care as defined in B&P sections 3702 and 3702.7. Hours earned as part of a licensee's successful completion of credentialing or certification examinations shall be considered qualifying CE and shall be counted by the Board toward meeting the requirements of this subsection in accordance with section 1399.351.

Purpose: Reducing the existing required minimum clinical practice of respiratory care CE hours from two-thirds of the total required CE hours (20 hours) to one-half (15 hours) makes room within the required 30 hours of CE for the Board to require licensees to take a broader range of CE units for license renewal. This proposal also

allows credentialing or certification exams as described in 16 CCR section 1399.351 to count towards the required 15 clinical practice of respiratory care CE hours.

Anticipated benefits: This proposal maintains high clinical practice standards while "making room" in the total required 30 CE hours for the Board to require licensees to take CE hours on other topics to meet other important Board goals. Also, by providing CE credit, this proposal is likely to benefit the profession by increasing the number of licensees taking credentialing or certification exams as set out in 16 CCR section 1399.351.

Rationale: The Board has crafted a complete revision of its CE regulations to meet a number of important objectives. After reviewing public input discussed above in the "Background and Problems Being Addressed" section, the Board concluded slightly reducing the number of required clinical practice of respiratory care CE hours would be the best way for the Board to achieve the goals set out in the Board's strategic plan. The Board also decided, as a part of the new CE framework, to allow successful completion of credentialing and certification exams to count towards the clinical practice of respiratory care CE hours, to encourage licensees to pursue such credentials or certifications.

Section 1399.350(b)
The Board proposes adding the following text:

> (b) An RCP may earn up to 5 hours of CE credit through physical attendance at Respiratory Care Board, California Society for Respiratory Care (CSRC), or American Association for Respiratory Care (AARC) meetings open to the public, or courses related to the role of a health care practitioner or indirectly related to respiratory care as defined in section 1399.352.
>
> > (1) For attendance at meetings open to the public, CE shall be calculated on an hour-for-hour basis with one hour of CE credit accepted for each hour spent in attendance at the meeting.
> >
> > (2) An RCP requesting CE credit for attending a meeting pursuant to this subdivision must sign in and out on an attendance sheet at the meeting that requires the individual to provide the following:
> >
> > > (A) the RCP's first and last name,
> > > (B) license number,
> > > (C) time of arrival and time of departure from the meeting, and,
> > > (D) disclose whether they are requesting CE credit for attendance at the board meeting.
> >
> > (3) An RCP requesting CE credit for attending a CSRC or AARC meeting shall obtain from the CSRC or AARC a written confirmation on the

letterhead of the organization confirming the RCP's physical attendance at the meeting.

Purpose: To allow for up to five hours of continuing education credit to be earned by attending board meetings of the Board, the California Society for Respiratory Care, and the American Association for Respiratory Care (the three specified organizations), and/or courses related to the role of the healthcare practitioner or indirectly related to respiratory care as described in 16 CCR section 1399.352. Subdivisions (1)-(3) of section 1399.350(b) provide how attendance is calculated and records that should be created to show proof of attendance in the event of a licensee CE audit.

Anticipated benefit: This proposal will increase and encourage licensee attendance and/or participation at board meetings of the three specified organizations, and attendance of courses related to the role of the healthcare practitioner or indirectly related to respiratory care as described section 1399.352. The Board values the input and participation of licensees in Board meetings. Licensee involvement in the board meetings of the other two specified organizations provides benefits to those organizations as well. The Board believes there is an important educative component when licensees attend and/or participate at board meetings of the three specified organizations. Licensees gain a greater understanding of the broader issues faced by the profession, and will learn, by taking courses as described in 16 CCR section 1399.352, about overarching issues for healthcare practitioners and other matters less directly related to respiratory care. Subdivisions 1-3 provide clear instruction for both licensees and the providers on how hours are calculated and records for evidence of attendance.

Rationale: The Board considered the benefits licensee attendance brings to all three specified organizations, and how attending and/or participating exposes licensees to a broad variety of issues and concerns within the profession. After examining other California healthcare board regulations awarding CE credit for attending licensing board meetings and sometimes other industry organizations[2], the Board decided to allow licensees to earn up to 5 hours of CE credit for physical attendance at meetings of the three specified organizations. As noted by their inclusion in B&P section 3719.5, the CSRC and the AARC historically represent, at the state and national level respectively, professionals in the respiratory care field. These organizations educate and advocate in the Board's regulatory area and are at the forefront of discussing new issues or advancements that may affect the profession. It is beneficial to licensees of the Board to participate or be aware of the efforts of these organizations to remain current with the practice, and attendance at their meeting accomplishes this.

The Board also considered giving credit to licensees for attending courses related to the role of the healthcare practitioner or courses indirectly related respiratory care as

[2] Pharmacy, 16 CCR section 1732.2(d) & (e); Optometry, 16 CCR section 1536(c)(4), Chiropractic, 16 CCR section 361(g)(15); Dentistry, 16 CCR section 1017(j)(1); Physical Therapists, 16 CCR section 1399.94(b) Alternate Pathway (H).

described in section 1399.352 and concluded this would benefit licensees by helping them better understand how their practice as respiratory care practitioners fits into and interacts with the greater context of all healthcare providers. While this type of CE benefits licensees and the profession as a whole, the Board has decided to limit licensees to earning only up to 5 hours of CE credit for the in-person attendance of meetings of the three specified organizations and attending general health care practitioner courses as described in 16 CCR section 1388.352. Five hours of CE in this area encourages licensees to at least introduce themselves to learning in the area, while not overshadowing the importance of clinical education and leadership education that make up the total required 30 hours of CE.

Proposed subdivision (b)(1) settled on an 'hour-for-hour' basis of time credit calculation, as it was the simplest way to match actual attendance time with CE credit. Any other method of time-to-credit calculation may have led to attendance at parts of a meeting being credited for more time than was actually spent in attendance.

Proposed subdivision (b)(2) settled on a requirement that attendees sign in and out on an attendance sheet to establish a clear evidentiary threshold for attendance. Signing an attendance sheet creates a reproduceable record of attendance. Likewise, further subdivisions (2)(A) through (2)(D) create points of information to be logged that can accurately identify the attendee, their time actually present at the meeting, and their intent to request CE credit at the time of attendance. These points of data can aid both the attendee and the Board in confirming the attendance for compliance with CE requirements.

Proposed subdivision (b)(3) clarifies to both attendees and providers of CE-related meeting evidence the manner in which the attendance can be confirmed and places the responsibility for obtaining proof of attendance on the attendee. Doing this will ensure the Board and the attendee both have access to attendance information at the time CE compliance is demonstrated.

Section 1399.350(c)
The Board proposes adding the following text:

> (c) Subject to the requirements and limitations of this Article, CE credit may be earned in any of the forms of learning experiences set forth in section 1399.349. However, a minimum of 15 hours of CE as outlined in subdivision (a) must be earned from live courses or meetings provided with interaction between the licensee and instructor in real time. The instructor and the licensee need not be in the same place, but they must be able to communicate either verbally or in writing with each other during the time the learning activity is occurring. For the purposes of this section, live courses or meetings include, in-person lecture educational sessions that are part of conventions, courses, seminars, workshops, lecture series, and online meetings with participatory interaction between the licensee and the instructor via computer networks or the internet such as via web casts, video

conferences, and audio conferences in which the licensee can directly interact with the instructor in real time during the instructional period.

Purpose: To ensure that at least half of the CE earned by licensees be from live courses or meetings, to ensure the continuing education requirement cannot be completed with more than half of the credits being for online courses having only video lectures, written materials, and testing, with no interactive component.

Anticipated Benefit: This proposal will increase and encourage communication and platforms for open dialogue of experiences, concerns, and information as it relates to the role of a respiratory care practitioner. The Board values open oral communication as a learning methodology which allows for broader discussions and responses to questions in real time. The Board believes there is an important educative component when licensees participate in active, real-time courses and activities. However, the Board also recognizes that virtual attendance may increase learning opportunities due to travel restrictions (time, traffic, cost). Finally, the Board understands that some instruction may be accomplished by asynchronous distance learning and provides for up to half of the required credits to be earned in this manner, which may benefit licensees working non-traditional hours, such as graveyard shifts, when the majority of live courses are offered.

Rationale: The Board discussed the importance of requiring at least half of the CE earned by licensees be from live courses or meetings and considered considerable public comment on this requirement. The Board gave consideration to the benefits of live, real-time attendance brings to its CE program objectives by ensuring licensees participate in a broader spectrum of learning modalities. After concerns were expressed that many RCPs are missing meaningful learning discussions by only taking correspondence-type courses, the Board concluded requiring live, in-person courses would benefit licensees' real-time exchange of ideas, questions, and issues. The Board also considered numerous comments from many people who live in rural areas of California and the concerns they expressed regarding physically attending a course or activity. As a result, the Board eliminated the "in-person" attendance proposal and instead pursued "live" courses. Live courses as defined by this section includes courses provided online where the provider and the learner can communicate either verbally or in writing with each other during the time the learning activity is occurring. The precise language defining 'live courses' creates a description broad enough to encompass not only traditional in-person events, but also events conducted electronically. Doing this creates flexibility for the participant and keeps the standard in line with improvements in teaching technology.

Section 1399.350(d)
The Board proposes adding the following text:

> (d) A licensee may not claim CE hours, and the Board shall not accept CE hours, for the same course or credentialing or certification examination more than once per renewal period.

Purpose: The purpose of adding section 1399.350(c) is part of the new framework and reorganization of the CE regulations. This section limits licensees from repeating courses or credentialling or certification examination to earn CE credit during any one renewal period.

Anticipated Benefit: This proposal will provide clarity by providing simply that courses or certifications may not be repeated during the same renewal cycle.

Rationale: It has always been presumed, by all stakeholders, that repeating the same course twice during one renewal cycle is not permissible, as section 1399.349 provides the meaning of CE to enhance the knowledge of an RCP. The Board is unaware of any instance through auditing CE where a licensee has attempted to report the same course during one renewal period for CE credit.

This section provides the broad framework and understanding that no CE course may be repeated in the same renewal period.

Section 1399.350(e)
The Board proposes renumbering existing 16 CCR section 1399.350(b) to 1399.350(e) and amending the section as follows:

> ~~(b)~~(e) To renew the license, each RCP shall report compliance with the CE requirement. Supporting documentation showing evidence of compliance with each requirement under this Article, shall be submitted ~~if requested~~ upon request to ~~by~~ the board. For the purposes of this article, "supporting documentation" or "documentation supporting compliance" shall include certificates of completion as provided in subdivision (b) of section 1399.352 or, for courses completed through an approved post-secondary institution, an official transcript showing successful completion of the course accompanied by the catalog's course description. For CSRC or AARC meeting attendance as provided in subdivision (b)(3) of section 1399.350, "supporting documentation" or "documentation supporting compliance" includes written confirmation of physical attendance.

Purpose: The purpose of amending section 1399.350(b) to become section 1399.350(e) is part of the new framework and reorganization of the CE regulations as well as providing detail to RCPs of expected evidence of CE completion. Section 1399.350 provides the overarching "rules" for RCPs and their responsibilities toward the CE requirement. This section also provides the documentation that must be submitted to

the Board upon request as evidence of completion and adds a definition of documentation that will allow attendees and providers guidance on creating and obtaining proof of compliance.

Anticipated Benefit: This proposal provides clarity for RCPs the evidence expected should his/her license be audited. The reorganization of this information into section 1399.350 also provides easy reference for RCPs as to their overarching responsibilities for CE compliance.

Rationale: Currently, subdivision (b) of section 1399.50 provides that "supporting documentation showing evidence of compliance…shall be submitted if requested by the board." This proposed amendment provides clarity of what consists of evidence, summarized in one location. Certificates of completion, transcripts, and meeting attendance documentation all meet the Board's standards of reliability for proof of compliance.

Text changing "if requested by" to "upon request to" clarifies that the standard is intended to describe where the materials should be sent, regardless of whether the materials are requested by the Board. The Board has concluded expanding this requirement will fit the Board's practical needs and clarify to RCPs where the information should be submitted.

Section 1399.350(f)
No substantive change is made to this subdivision, it is simply being renumbered within section 1399.350 from subdivision (c) to subdivision (f).

3. Amend Section 1399.350.5 – Law and Professional Ethics Course
As described below, the Board is seeking through this rulemaking proposal to modify subdivision (b) of section 1399.350.5 relating to Law and Professional Ethics Course as follows:

> (b) Continuing education units earned in accordance with this section shall represent three units toward the ~~non-clinical practice~~ RCP leadership requirements set forth in section 1399.350(a)(1). However, the course may be taken for continuing education credit only once during any renewal period.

Purpose: This amendment will provide that credit for completion of a Law and Professional Ethics Course shall count as credit in the "RCP leadership" category of CE as amended in section 1399.350(a)(1) rather than for "non-clinical practice" CE.

Anticipated Benefit: This amendment broadens the types of CE courses available to meet the leadership category of CE as provided in section 1399.350(a)(1). Moreover, this required CE course covers a vast array of scenarios and information that allow for critical thinking and development of independent and team leadership skills and is appropriately aligned in this category. When more licensees understand independent

and critical thinking concepts, more licensees will be prepared to step into professional leadership roles for which there is currently a growing need. As discussed above, leadership skills translate into better patient care and public protection.

Rationale: The Law and Professional Ethics course is required to be completed at a minimum of every other renewal cycle. The phrase “non-clinical practice” is being replaced by “RCP leadership” to align with the new framework provided in section 1399.350 wherein such courses previously considered as “non-clinical practice” are now being recognized as leadership courses. Further, the existing reference to section 1399.350(a) is corrected to subdivision (a)(1) to give the reader a more precise location to find the relevant information.

4. Amend Section 1399.351 – Approved CE Programs

As described below, the Board is seeking through this rulemaking proposal to modify existing section 1399.351 relating to approved continuing education programs.

Section 1399.351(a)

No change is made to this subdivision.

Section 1399.351(b)

The Board proposes the following amendments to section 1399.351(b):

> (b) ~~Passing an official credentialling or proctored self-evaluation examination shall be approved for CE as follows~~ The Board shall approve 15 hours of continuing education (CE) credit for the award of any of the following initial credentials after successful completion of an examination given by the National Board for Respiratory Care:
>
> (1) Adult Critical Care ~~Specialty Examination~~ Specialist (ACCS) ~~- 15 hours~~;
>
> (2) Certified Pulmonary Function Technologist (CPFT) ~~- 15 CE hours~~;
>
> (3) Registered Pulmonary Function Technologist (RPFT) ~~- 15 CE hours~~;
>
> (4) Neonatal/Pediatric ~~Respiratory Care~~ Specialist (NPS) ~~- 15 CE hours~~;
>
> (5) Sleep Disorders ~~Testing and Therapeutic Intervention Respiratory Care~~ Specialist (SDS) ~~- 15 hours~~; and,
>
> (6) Registered Respiratory Therapist, if not required at the time of initial licensure pursuant to B&P section 3735.

Purpose: To provide a current and accurate list of credentials/examinations the Board accepts for 15 hours of continuing education credit and to accurately list the names of the corresponding examinations.

Anticipated Benefit: The proposed amendments provide the reader with a clearer understanding by providing a clean and current list of credentials offered by one entity that the Board approves for 15 hours of continuing education.

Rationale: The current list of credentials was determined by review of existing examinations/credentials provided by the National Board for Respiratory Care since the Board's last review. Some of the titles of the examinations were changed by the provider since then, as well as minimum competency examination requirements for RCP licensure in California. The "Registered Respiratory Therapist" exam identified in subdivision (6) is added with the caveat of "if not required at the time of initial licensure" because the Board still has thousands of licensees who were licensed prior to January 1, 2015, when the lower level "certified respiratory therapist" examination was required for licensure. Effective January 1, 2015, B&P Section 3735 was amended to require the passage of the Registered Respiratory Therapist exam including the clinical simulation section. By recognizing the advanced Registered Respiratory Therapist credential, the Board hopes to encourage licensees to secure the advance credential through its CE program benefitting both the licensee and the consumers of California. Further, because 15 hours of CE is provided for each credential in proposed subdivision (b), further references in subdivisions (1) through (5) are being stricken. The Board has historically only accepted "initial credentialing" for CE credit as provided in 1399.351(d).

Section 1399.351(c)
Subdivision (c) is amended to identify certifications, often given by several providers, for initial certification and recertification as follows:

> (c) The Board shall approve 15 hours of CE for each initial certification and 5 hours of CE for each renewal or recertification for a licensee's successful completion of the following certification examinations:
>
> (~~6~~1) Advanced ~~Cardiac~~ Cardiovascular Life Support (ACLS) ~~- number of CE hours to be designated by the provider~~;
>
> (~~7~~2) Neonatal Resuscitation Program (NRP); - ~~number of CE hours to be designated by the provider; and~~
>
> (~~8~~3) Pediatrics Advanced Life Support (PALS) ~~- number of CE hours to be designated by the provider~~.
>
> (~~9~~4) Advanced Trauma Life Support (ATLS) ~~- number of CE hours to be designated by the provider~~.
>
> (5) Asthma Educator Certified (AE-C) (provided by the National Asthma Educator Certification Board).

Purpose: To break up existing subdivision (b) into two proposed sections (b) and (c). Subdivision 1399.351(c) provides a current and accurate list of certifications the Board accepts as well as clearly indicate the number of CE hours that will be accepted for initial certification and recertification of those identified. The term “Cardiac” in section 1399.351(c)(1) is replaced with “Cardiovascular” to refer to the current name. “Asthma Educator Certified” was added after the Board deemed it a bona fide certification worthy of distinct recognition for CE credit (see October 26, 2018 Board meeting materials at page 4).

The number of CE hours is now designated for 15 hours each instead of being designated by the provider. Further, recertification is designated to count as 5 hours of CE counted toward direct clinical education whereas currently section 1399.352 provides that recertification does not count toward direct clinical education and no mention is made of the number of CE hours awarded.

Anticipated Benefit: Identifying these certifications in one area provides users greater clarity. Adding the Asthma Educator certification provides more opportunity to obtain and awareness of certifications that directly corelate to the respiratory care practice.

Rationale: The current list of certifications and recertifications recognized by the Board were determined by review of the existing list and professional experience in the field since the last review of CE regulations. These certification examinations are proposed to be separated from other credentialling exams (listed in subdivisions (b) and (d)) because they are certifications and are provided by multiple approved providers and handled differently. Existing subdivision (e) awkwardly separates these sections. The reorganization will provide much greater clarity for licensees and all readers. The Board also determined through the experience of RCP members that recertification for these listed was valuable and should be granted five hours of CE credit, well below the actual numbers invested in any recertification course, but still recognized for refreshing knowledge in these areas that are the core foundation and specialty of the practice. Because the breadth of these courses refresh knowledge in the discipline, five hours of credit was deemed the appropriate amount.

Finally, the National Asthma Educator Certification Board was deemed an appropriate certifying organization because of their historical role in offering educator certifications. The National Asthma Educator Certification Board has been in operation since 2000 and its accreditor, the National Commission for Certifying Agencies, has accredited certifications in health care fields since 1977.

Section 1399.351(d)
Subdivision (d) is repealed and new language is added to recognize three additional initial certifications for CE credit as follows:

~~(d) Examinations listed in subdivisions (b)(1) through (b)(5) of this section shall be those offered by the National Board for Respiratory Care and each successfully completed examination may be counted only once for credit.~~

(d) The following certifications are approved by the Board for continuing education credit for initial certification only and for the number of hours given by the provider named below:

(1) Pulmonary Rehabilitation-Certified (provided by the American Association for Respiratory Care (AARC) and the American Association of Cardiovascular and Pulmonary Rehabilitation);

(2) Tobacco and Smoking Cessation-Certified (provided by the AARC); and,

(3) COPD Educator-Certified (provided by the AARC).

Purpose: To provide a current and accurate list of certifications the Board accepts from specific providers and for the number of hours given by the provider for initial certification. Existing subdivision (d) is repealed and replaced by subdivision 1399.351(b).

Anticipated Benefit: These are certifications not previously recognized by the Board in regulation. The Board anticipates licensees may become familiar with them by listing them. The Board also wanted to clarify that CE credit would only be granted for initial certification.

Rationale: The current list of certifications recognized by the board were determined by review of the existing list and professional experience in the field since the last review of CE regulations. These are nationally recognized certifications in areas that are best served by educated and trained RCPs. Listing them in regulation will bring greater awareness of the certifications. At the same time, the Board clarifies that CE credit will only be granted for initial certification. Once the training is provided, the Board decided, based on the experience of RCP members, that updates or revisions to the courses would not warrant CE credit. Further, the number of hours given can slightly fluctuate by the provider, therefore, no specific number of CEs was listed. The language proposed to be repealed in existing subdivision 1399.351(d) is replaced with 1399.351(b) as described above in that section.

Section 1399.351(e)
The Board proposes the repeal of existing subdivision 1399.351(c) and replacing this section with new language for subdivision 1399.351(e):

(~~c~~e) ~~Any course including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS) meeting the criteria set for in this Article, will be accepted by the board for CE credit~~ CE credit will not be granted for:

(1) any review and/or preparation courses for credentialing or certification examinations,

(2) basic life support credentialing,

(3) the renewal or recertification of any certification not expressly identified in subdivision (c), or

(4) employment-related courses on subjects not described in this Article.

Purpose: To identify the most common courses that often provide confusion to licensees as whether they are accepted for CE credit or not and clarify that such courses will not be accepted toward meeting the CE requirement. The Board also moved the language repealed at the beginning of subdivision 1399.351(e) to section 1399.352(a)(4) to provide consistency in grouping courses accepted for CE credit not directly related to the practice of respiratory care.

Anticipated Benefit: This addition provides clarity. It provides the counter summary of the above subdivisions in what will not be counted for credit also notes that basic life support does not qualify for CE credit.

Rationale: Given the length of this section and the caveats for what will and will not count for CE credit, the Board believed it was important to clearly state what would not count as credit to alleviate confusion. In addition, staff are most often asked if Basic Life Support courses required by employers can be counted for CE credit. It has long been the position of the Board that it does not. This amendment will ratify that position.

Similar language to subdivision (1) currently exists in section 1399.352(a)(6) but provides that such review courses would count as CE credit not directly related to the practice. After reviewing all the courses, the Board determined it was no longer appropriate to provide CE credit for preparation courses. The Board opted to only recognize passage of the examinations as qualified continuing education as evidence of learning the subject matter at hand. Education in the assessment and treatment of AIDS (found at the beginning of subdivision 1399.351(e) was moved to proposed

1399.352(a)(4) to provide consistency in grouping courses accepted for CE credit not directly related to the practice of respiratory care.

Section 1399.351(f)
The Board proposes repealing existing subdivision 1399.351(f) and amending and renumbering subdivision 1399.351(e) to 1399.351(f) as follows:

> (~~e~~f) ~~Successful completion of each examination listed in subdivisions (b)(6) through (b)(9) of this section may be counted only once for credit and must be for the initial certification. See section 1399.352 for re-certification CE. These p~~Programs and examinations listed in subdivision (c) shall be provided by an approved entity listed in subdivision (h) of Section 1399.352.
>
> (~~f~~) ~~The board shall have the authority to audit programs offering CE for compliance with the criteria set forth in this Article.~~

Purpose: To provide clarity and streamline this section by repealing existing subdivision 1399.351(f) and the first portion of subdivision 1399.351(e). Also, by amending this subdivision to correctly cite the new subdivision 1399.351(c) as courses that must be provided by an approved entity.

Anticipated Benefit: These repeals and amendments provide clarity and remove outdated or unnecessary language.

Rationale: The certifications listed in subdivision 1399.351(c) must be provided by an approved entity since unlike the credentials and certifications listed in subdivisions 1399.351(b) and 1399.351(d) where the providers are named, the certifications in subdivision 1399.351(c) may be provided by multiple approved entities. Citing subdivision 1399.351(c) affirms that those certifications in subdivision 1399.351(c) must be provided by an approved entity. The language repealed at the beginning of subdivision 1399.351(e) was replaced with new language as provided in subdivision 1399.351(c). The language repealed in subdivision 1399.351(f) was repealed as duplicative because language that provides this authority to audit programs already exists in section 1399.352 subdivision (m)), albeit with “providers” in place of “programs offering.” Thus, the Board retains the ability to audit providers notwithstanding the repeal of (f).

5. Amend Section 1399.352 – Criteria for Acceptability of Courses

As described below, the Board is seeking through this rulemaking proposal to amend section 1399.352 relating to criteria for acceptability of courses.

Section 1399.352 Preamble and Subdivision (a)

Acceptable courses and programs shall meet the following criteria:

(a) The content of the course or program shall be relevant to the scope of practice of respiratory care, including the content areas listed in section 1399.350(a)(1)-(2). Credit may be given for a course that is ~~not directly related to clinical practice~~ related to the role of a health care practitioner or indirectly related to respiratory care if the content of the course or program relates to any of the following:

Purpose: To provide clarity.

Anticipated Benefit: The amendments to subdivision 1399.352(a) provide additional references and language that better describes acceptable CE courses.

Rationale: The proposed amendments provider readers with greater clarity of acceptable courses providing specific explanation of acceptable courses as described in the subdivision 1399.352(a). The phrase “not directly related to clinical practice” is replaced with “related to the role of a health care practitioner or indirectly related to respiratory care” to better describe the types of courses that are accepted for CE credit. For example, subdivision 1399.352(a)(2) “Required abuse reporting” is not directly or indirectly related to respiratory care, but it is related the role of a health care practitioner. Therefore, this change provides clarity for the reader in describing the types of courses accepted for credit listed in subdivisions 1399.352(a)(1)-(5).

Section 1399.352 Subdivisions (a)(1)-(a)(5)

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

~~(2) Health care cost containment or cost management.~~

(~~2~~1) Preventative health services and health promotion, including tobacco and smoking cessation counseling.

(~~3~~2) Required abuse reporting.

(~~4~~3) Other subject matter which is directed by legislation to be included in CE for licensed healing arts practitioners.

(~~5~~4) ~~Re-certification for ACLS, NRP, PALS, and ATLS.~~ Courses regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS).

(~~6~~5) ~~Review and/or preparation courses for credentialing examinations provided by the National Board for Respiratory Care, excluding those courses for entry-level or advance level respiratory therapy certification.~~ Courses in electronic systems used for purposes of medical billing or treatment of respiratory care patients.

Purpose: The purpose of amending subdivisions 1399.352(a)(1)-(a)(5) is to provide better organization and structure of courses “indirectly” related to respiratory care and accepted for credit under section 1399.350(a)(3) by adding language and removing courses the Board no longer recognized and “indirectly” related to the practice.

This section adds courses in electronic systems used for medical billing or treatment and tobacco and smoking cessation counseling as courses that would count for continuing education (CE) credit in this category. It also adds courses related to acquired immune deficiency syndrome (AIDS) which is being repealed in this package as subdivision (c) of section 1399.351.

Anticipated Benefit: The proposed amendments to 16 CCR 1399.354 will provide readers with a current and clearer understanding of courses – in one location - that qualify for CE credit that is not direct respiratory care as provided in subdivision (a)(3) of section 1399.350.

Rationale: The current list of courses indirectly related to respiratory care recognized by the Board were determined by review of Article 5 and in relation to the new structure established in Section 1399.350.

As a result, subdivisions 1399.352(a)(1) and 1399.352(a)(2) were repealed and instead recognized as “leadership” courses as provided in Section 1399.350 subdivision (a). Tobacco and smoking cessation was added to the new subdivision 1399.352(a)(1) as the Board recognized this is a common course among the profession and wanted to highlight it.

New subdivision 1399.352(a)(4) regarding courses in AIDS is recognized by law and is proposed to be moved from section 1399.351 subdivision (c). The placement of this course is better placed in subdivision 1399.352(a). Finally, the existing language of subdivision 1399.352(a)(6) review and preparation courses for credentialling examinations is being moved to subdivision 1399.352(a)(5) with new language recognizing courses in electronic systems used for purposes of medical billing or treatment of respiratory care patients. The repeal of subdivision 1399.352(a)(6) is done because the Board no longer considers that preparation courses should be recognized for CE credit as the credential being issued demonstrates the learned experience and therefore CE credit is limited to after an exam is complete and the credential is earned as provided in section 1399.351. The Board also believed that with advancements in technology, it was important to recognize courses in electronic systems used for medical billing and treatment and therefore added the language to subdivision to this renumbered subdivision now 1399.352(a)(5).

The amendments in subdivisions 1399.352(a)(1) through 1399.352(a)(5) provide readers clarity on courses that qualify for indirect respiratory course CE credit under subdivision (a)(3) of section 1399.350. These changes allow licensees to have a clear reference when seeking CE credit.

Section 1399.352 Subdivisions (b)-(g)
No changes were made to these subdivisions.

Section 1399.352 Subdivision (h)
Subdivision (h) is amended as follows:

(h) ~~Each~~ Approved continuing education courses, in any format, must be provided or approved by one of the following entities~~. Courses that are provided by one of the following entities must be approved by the entity's president, director, or other appropriate personnel~~:

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

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

(3) The American Association for Respiratory Care.

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

(5) The American Medical Association.

(6) The California Medical Association.

(7) The California Thoracic Society.

(8) The American College of Surgeons.

(9) The American College of Chest Physicians.

(10) The American Heart Association

(11) American Lung Association

(12) Allergy and Asthma Network

(13) Society for Critical Care Medicine

(14) National Asthma Education Certification Board

Purpose: Subdivision 1399.352(h) is amended to provide a distinction in approved providers by the method of delivery of CE courses. “Each course” is amended to “approved continuing education courses, in any format” as described in section 1399.349. However, subdivision 1399.350(c) provides a new requirement that 15 hours of the required 30 hours of CE must be provide in a live interactive format. Subdivision 1399.352(h) proposes to identify providers who are approved to provide courses in any format while subdivision 1399.352(i) proposes to identify providers approved to only provide courses in a live interactive format as described in greater detail under 1399.352(i).

Subdivision 1399.352 is also amended to add five organizations that the Board considered to provide meaningful courses but that have not yet been recognized by the Board to provide CE in any format. The amendments also remove “any entity approved or accredited by the California Board of Registered Nursing or the Accreditation Council for Continuing Medical Education” and any “health care facility” licensed by the California Department of Public Health from providing CE in any format (some of these organizations are still recognized to provide CE in a “real-time” format – see subdivision 1399.352(i) that follows next.

Anticipated Benefit: The proposed amendments in subdivision 1399.352(h) will provide readers with a clearer understanding of which entities are approved by the Board to provide required CE in any format. Further, the addition of five additional providers will provide greater opportunity for licensees to obtain required CE credit by providers the Board has identified to provide meaningful education, in any format, as it relates to the field of respiratory care.

Rationale: The proposed amendments in subdivision 1399.352(h) provide readers with a clear understanding of which entities are approved by the Board to provide required CE in any format. To that end, the existing language “each course” is amended to “approved continuing education courses, in any format.” This revision clarifies that the regulation applies to courses regardless of format, but also reminds the reader that the regulation text is intended to apply to approved courses. “Courses that are provided by one of the following entities must be approved by the entity’s president, director, or other appropriate personnel:” is being repealed and replaced with “Approved continuing education courses, in any format, must be provided or approved by one of the following entities” because the application of the regulation does not require the Board to know the detail or title of the person or group that approved the course, just that the entity has approved it.

The Board removed any “health care facility” that is currently found in section 1399.352(h)(2). The Board found no consistency in education provided by non-acute care facilities. Through review of enforcement efforts, the Board has found that many

non-acute care facilities had little documentation to support the class, class structure, or delivery. Education at these facilities have shown to be very informal. As a result, those sessions/courses if claimed and audited would not be accepted. Removing this language ensures that RCPs do not mistake a course provided by a non-acute care facility counts toward CE credit, while courses provided by a general acute care hospital continue to be accepted. General acute care hospitals have departments and units specifically aimed to provide education. They have historically been found to be organized, formal, and thorough in their documentation of education provided.

Finally, the current list of approved providers was determined by review of existing providers and professional experience in the field since the last review of CE providers. The Board identified, based on its collective experience five additional bona fide providers that had not previously been recognized.

Section 1399.352 Subdivision (i)

(~~10~~i) Additional CE providers are approved by the Board to provide live, "real-time" courses if the entity is ~~Any entity~~ approved or accredited by:

(1) any entity identified in subdivision (h),

(2) ~~T~~the California Board of Registered Nursing, or

(3) the Accreditation Council for Continuing Medical Education.

Purpose: The purpose of adding subdivision 1399.352(i) is to delineate which providers are approved to provide CE in a live "real-time" format. This proposed section recognizes all the providers listed in subdivision (h) and lists the two organizations that accredit providers that were not included in subdivision (a): the California Board of Registered Nursing and the Accreditation Council for Continuing Medical Education.

Anticipated Benefit: The anticipated benefits of this addition include 1) greater clarity to the reader in identifying approved providers for "real-time" CE and 2) encourages users to select live courses that will provide the greatest benefit to them by making all course providers accountable for quality of content and delivery. Unlike correspondence courses that are at times taken simply to earn CE credit regardless of the content, licensees are investing their time through active participation and hence indirectly encouraged to spend their time on quality courses that will benefit them through the instruction but also through information shared by other participants.

Rationale: The Board is proposing to limit two course providers to only provide qualifying "live" courses to strengthen the CE program by ending the facilitation of asynchronous courses that often lack critical thinking, communication and/or accountability in the field of respiratory care. The Board considered course quality and content offered by all providers. The two organizations named in subdivision 1399.352(i)

"approve" other entities from a wide variety of disciplines; many courses are completely unrelated to the respiratory care practice and concerns of course quality by some of the "approved" entities has been in question over the years as comments received by the Board from members of the Board and the public. Rather than eliminate access, the Board determined that licensees would be more apt to select pertinent and quality courses when investing their time through active participation. This alternative was also found to provide licensees with greater access to meet the new demand for "real-time" courses, providing a plethora of providers.

Section 1399.352 Subdivision (j)

(~~i~~j) Course organizers shall maintain a record of attendance of participants, documentation of participant's completion as provided in subdivision (k), and a description of the course, ~~and evidence of course approval~~ for four years.

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

Purpose: To repeal and replace the language of subdivision 1399.352(j) with amended language from subdivision 1399.352(i) concerning providers record of attendance of participants.

Anticipated Benefit: To repeal unnecessary language and requirements currently found in subdivision 1399.352(j) and to provide clarity of former subdivision 1399.352(i).

Rationale: The Board reviewed the requirements concerning the issuance of a certificate of completion to participants and records that should be retained by the provider. The Board found that the language in the existing subdivision 1399.352(j), "This course meets the requirements for CE for RCPs in California" was unnecessary and outdated and has therefore proposed the repeal of this language. While renumbering existing subdivision 1399.352(i) to subdivision 1399.352(j), the Board added language so that certificates of completion issued to a participant have all the pertinent information on the certificate as referenced in subdivision 1399.352(k) and also added language to the newly proposed subdivision 1399.352(j) that requires providers to also retain a "description of the course." The description of the course is important to retain for audit evaluation to ensure that no false representations are being presented.

Section 1399.352 Subdivision (k)

(k) Except as otherwise provided in this section, upon successful completion of a course, ~~A~~all course providers shall provide a certificate of completion or other documentation to course participants that includes participant name, RCP license number, course title, the course delivery method (e.g. on-line, live-on-line, in-person), the entity approving the course as provided in section 1399.351 and any

other number or code uniquely assigned by that entity to represent that approval, if applicable, number of hours of CE awarded, date(s) CE hours awarded, and name and address of course provider.

Purpose: To ensure providers are issuing certificates of completion that meaningfully reflect the course taken.

Anticipated Benefit: The amendments in this section will allow the licensee to reflect upon courses completed when determining CE compliance over each two-year renewal period. Given that the structure of CE has changed significantly, the information on the certificates of completion will be necessary to reflect which CE requirements are fulfilled or outstanding. These certificates will also be beneficial for staff during CE audits to determine if CE requirements have been met.

Rationale: This proposed package has made significant changes in the structure and types of CE required for renewal of an RCP license, primarily found in section 1399.350. Following the impact of those changes through the completion of a course and possible audits thereafter, this change was necessary to ensure that providers, licensees and Board staff, were able to easily identify the characteristics of a course up to four years after completion (in the event of an audit). The Board found these changes necessary to resolve these concerns.

The language “except as otherwise provided in this section, upon successful completion of a course” clarifies when the regulation is intended to apply. The previous language specified only that all course providers were required to supply certain documentation.

The revision of “RCP number” to “RCP license number” resolves any ambiguity about the number to which the phrase is intended to refer.

Revisions to the information that must be supplied, including “course delivery method,” “the entity approving the course as provided in section 1399.351” and “any other number or code uniquely assigned by the entity to represent that approval, if applicable” are all designed to assist the course provider in understanding which information is required. These pieces of information were chosen by the Board because the Board determined the entity’s name and any other identifying number or code would help the Board, attendees, and provider in confirming who offered the course and how the course was administered. The addition of “awarded” to “number of hours of CE” clarifies that the documentation should reflect the actual completed work, and not some other number; similarly, the addition of “CE hours awarded” to “dates” clarifies which date must be included in the documentation. The date the CE was awarded is relevant to the Board in determining whether the credit qualifies under a certain renewal cycle for the licensee seeking the credit.

Section 1399.352 Subdivision (l)

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

Purpose: To correctly cite other subdivisions that were renumbered as part of this rulemaking package.

Anticipated Benefit: References to other subdivisions intended will be correct.

Rationale: These amendments are nonsubstantive and necessary to cite the correct subdivisions in line with amendments to section 1399.352.

6. Amend Section 1399.352.5 – CE Hours

The amendments found in subdivision 1399.352.5(a) is the only amendment made to this section as follows:

The board will accept hours of approved CE as follows:

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

Purpose: To remove unnecessary language.

Anticipated Benefit: Removing unnecessary language provides greater clarity for the reader.

Rationale: The language proposed to be repealed is unnecessary and redundant. The number of hours designated by providers is the same with or without the language, "as it pertains to their own course, or a course approved by them." Removing the language will prevent confusion that might not otherwise exist.

7. Adopt Section 1399.352.6 – Preceptors

Purpose: The purpose of adding 1399.352.6 Preceptors is to adopt an entirely new concept for qualifying training and education related to preceptors for CE credit.

Anticipated Benefit: The anticipated benefits from adding this section include improving student clinical education outcomes and increasing consumer protection as well as

providing incentives to develop leaders and strengthen critical thinking skills among the profession.

Rationale: The Board's 2017-2021 Strategic Plan provides two goals aimed at revising (CE) regulations to provide clarity and improve program effectiveness and a mechanism to improve student clinical education and improve education outcomes. Most healthcare education programs lack skilled preceptors for clinical training at facilities. Resources at most facilities are limited and providing oversight of students requires preceptors to take on additional workload outside their normal job duties on a volunteer basis. The Board believes imposing any mandate on facilities would be counterproductive.

Several current and past members of the Board have also been educators and are aware of difficulties in finding placement for students at facilities. Many facilities are reluctant to take students. The Board believes mandating a facility meet preceptor requirements would result in a sharp decline of participation. After review of the Board's Workforce Study and other underlying documents, the Board determined this language is the best way to effectuate the goals listed in its strategic plan. Rather than mandating preceptors have the required training, which was feared to halt facility participation in clinical education programs, the Board instead is offering incentives to its licensees to participate in a preceptor training program.

Section 1399.352.6 is described in greater detail by each subdivision as follows:

Section 1399.352.6 Subdivision (a)
The Board proposes adding the following language to subdivision 1399.352.6(a):

> (a) For the purposes of this division, "preceptor" means any person responsible for the direct supervision and clinical instruction of a student, as part of an approved respiratory education program per B&P section 3740, at an acute care facility who meets all of the following criteria:
>
> (1) Holds a valid, current, and unrestricted license issued under this chapter.
>
> (2) Holds a current and valid Registered Respiratory Therapist credential issued by the National Board for Respiratory Care.
>
> (3) Has a minimum of two (2) years of full-time experience practicing as a respiratory care practitioner.
>
> (4) Has completed a preceptor course within the last four years from the current date of expiration for the license, provided by:
>
> (A) the American Association for Respiratory Care,
>
> (B) the California Society for Respiratory Care, or

(C) An acute care facility and employer using the course materials from the provider listed in (A) or (B) of this subdivision.

(5) Is employed by an acute care facility to provide patient care as an RCP.

Purpose: The purpose of subdivision (a) of section 1399.352.5 is to define and qualify a preceptor for purposes of being recognized for continuing education.

Anticipated Benefit: All the qualifications listed in subdivision (a) provide basic qualifications of a well-rounded RCP meeting the minimum criteria to provide quality oversight. The Board anticipates RCPs who do not meet these qualifications will work towards meeting them, given the CE incentive. Thus, the Board anticipates these requirements will become a "standard" in the field. By moving more RCPs to meet these qualifications, the Board believes it will improve job readiness and patient outcomes by increasing the number of students who have oversight from an experienced and trained preceptor.

Rationale: Subdivision (a) states "Preceptor means any person responsible for the direct supervision and clinical instruction of a student, as part of an approved respiratory education program, at an acute care facility who meets all of the following criteria…"

Direct supervision is defined in Business and Professions Code section 3742: "During the period of any clinical training, a student respiratory care practitioner shall be under the direct supervision of a person holding a valid, current, and unrestricted license issued under this chapter. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient care area."

It is also defined in Code of Regulations, section 1399.302 subdivision (d): "'Direct Supervision' means assigned to a currently licensed respiratory care practitioner who is on duty and immediately available in the assigned patient area."

The Board added "as part of an approved respiratory education program" to be clear that only persons working with a respiratory education program and hence providing guidance to students of an education program qualify as a preceptor for the purpose of receiving CE incentives, in the event the term "preceptor" is ever used to define other forms of training.

Nearly all clinical education is provided at acute care facilities. In general, acute care facilities are organized, have education departments, and are held to a higher standard by regulatory and credentialling entities. They have multiple areas where RCPs are most often employed (e.g. emergency, neonatal, acute care, ICU, transport, etc.) Therefore, the Board believed it prudent to offer CE incentive for preceptors at these facilities.

Subdivision (a) qualifies a preceptor with requirements laid out in five subdivisions as follows:

(1) Holds a valid, current, and unrestricted license issued under this chapter.

This requirement ensures a preceptor is not currently on suspension or probation. There are numerous reasons an RCP could be placed in these positions including negligence or incompetence. To ensure public protection, the Board believes any RCP providing instruction and supervision should be free of current restrictions.

(2) Holds a current and valid Registered Respiratory Therapist credential issued by the National Board for Respiratory Care.

Effective January 1, 2015, the minimum requirement for licensure was raised to this level. The Board estimates that nearly one-third of its licensees who were licensed prior to this date also voluntarily achieved this higher level of demonstrated competence. To obtain licensure and the Registered Respiratory Therapist (RRT) credential, applicants must complete a written exam at a higher pass cut-off level AND successfully pass a clinical simulation exam. The Board believed that holding an RRT credential was a minimum requirement for a person providing clinical instruction and oversight in that they have demonstrated the necessary knowledge and skill in the respiratory care field and qualify to guide a student.

(3) Has a minimum of two (2) years of full-time experience practicing as a respiratory care practitioner.

The Board believes a minimum of two years full-time experience is the bare minimum amount of time necessary to typically apply most of the knowledge and skills acquired through education and training. This is based on RCP members' own experience and observed experience of others. Thus, this proposal requires a well-rounded RCP with the experience needed to share with students.

(4) Has completed a preceptor course within the last four years from the date of license expiration, provided by:

(A) the American Association for Respiratory Care,

(B) the California Society for Respiratory Care, or

(C) An acute care facility and employer using either the American Association for Respiratory or California Society for Respiratory course.

Several years ago, the American Association for Respiratory Care (AARC) developed a Preceptor Training Course that is highly regarded according to current and past RCP

board members; others have mentioned this as well over the years. The AARC offers the course directly and allows acute care facilities to provide their course. The California Society for Respiratory Care has not yet developed a course but has expressed interest. The Board has included the California Society for Respiratory Care in this regulatory language because of their status as a representative organization as recognized in B&P section 3719.5, and their history of offering other education courses.

The Board believed that only these three providers would be the best qualified to provide the training modules specific to respiratory care training as the membership of both groups is made up of RCPs with the direct knowledge and experience in this area. In addition, the AARC provides an additional module for acute care facilities to train the preceptors. Acute care facilities have a vested interest in turning out job-ready and qualified RCPs. For these reasons, the Board determined these providers were the best qualified to provide the most advantageous training.

(5) Is employed by an acute care facility to provide patient care as an RCP.

The Board somewhat restates this requirement about an acute care facility, but here it ensures the preceptor is employed by an acute care facility as intended and is added to provide clarity. To ensure that duties are focused, an individual could not be in a role *other* than an RCP (hospital administrator, for example) and qualify as a preceptor – this distinction may be important in a smaller facility.

Section 1399.352.6 Subdivision (b)
The Board proposes adding the following language to subdivision 1399.352.6(b):

(b) Preceptors who meet the criteria in subdivision (a) may claim continuing education as follows:

(1) Up to two times the listed amount of CE hours earned for successful completion of a course identified in subdivision (a)(4). The amount of CE claimed per course under this subdivision may not exceed six (6) hours for each renewal cycle.

(2) Preceptors responsible for direct supervision and instruction to students in an acute care setting, in their role as an respiratory care practitioner (RCP) employed to provide patient care, may claim the following CE earned during any one renewal cycle period:

(A) Five (5) CE hours for one thousand (1000) to one thousand nine hundred ninety-nine (1999) hours of preceptor supervision and instruction.

(B) Ten (10) CE hours for two thousand (2000) to two thousand nine hundred ninety-nine (2999) hours of preceptor supervision and instruction.

(C) Fifteen (15) CE hours for three thousand (3000) or more hours of preceptor supervision and instruction.

(D) Preceptors claiming CE credit shall retain records that clearly indicate the name(s) of the student(s) supervised, the hours precepted on each date and written time logs signed or initialed by the education program's clinical director of all hours for a period of four (4) years from the date of instruction.

(E) Preceptor hours identified in this subdivision are for hours of instruction, regardless of the number of students instructed at one time.

Purpose: The purpose of subdivision (b) of section 1399.352.5 is to provide details on the amount of CE that may be claimed for preceptor participation.

Anticipated Benefit: This section outlines the incentive for RCPs to participate as a preceptor by providing CE credit. These regulations provide double credit, up to six hours, for completing preceptor training and additional CE credit for providing preceptor supervision and instruction. The Board believes those who already volunteer to be preceptors will take advantage of these new rules and take the steps necessary to become qualified and trained preceptors as outlined in subdivision (a). Moreover, the Board believes with these incentives, RCPs who have not previously participated will now do so which will lead to better clinical education placements. In both scenarios, the Board believes patients and employers benefit by producing better prepared and job-ready RCPs. Employers will spend less time with on-the-job training. Patient outcomes are improved when providers' education and training are improved.

Rationale: The Board is incentivizing RCPs to become qualified preceptors by providing CE credit as follows:

(1) Up to two times the listed amount of CE hours earned for successful completion of a course identified in subdivision (a)(4). The amount of CE claimed per course under this subdivision may not exceed six (6) hours for each renewal cycle.

The AARC preceptor training course targets employers to purchase the course ($200 member; $250 non-member) to provide for free to employees. The course currently grants 2 CE credits but may fluctuate with revisions. With these proposed regulations, RCPs could claim 4 CE credits every renewal cycle (2 years) for completing this course through their employer for free or by purchasing the course for themselves. The Board believes providing options for RCPs to obtain CE in the "leadership" category free of charge through their employer and at double credit is a great incentive for RCPs to take the course and will lead to developing a larger pool of qualified preceptors. Those facilities who are not providing this training will also have incentive to begin providing it as it will benefit many of their employees in meeting CE requirements and at the same

time, provide bona fide training that will ultimately help their facilities to have job-ready RCPs and provide safeguards for patients.

The Board anticipates the incentives provided in subdivision (2) are significant enough to encourage numerous RCPs to meet preceptor qualifications and volunteer as a preceptor. The Board anticipates with these incentives, the preceptor qualifications will be regarded as an industry standard without imposing mandates that the Board suspects would result in a decline in participation. The Board anticipates these incentives to foster participation as a qualified preceptor.

The provisions of subdivision (2)(D) are designed to clarify for preceptors claiming CE credit the types of information that must be retained for proof of hours precepted. The Board believes the information outlined in this subdivision will be sufficient to demonstrate proof of work. The record retention period of four years is consistent with the existing standard for proof of other CE work, for example in existing section 1399.350(c).

The provisions of subdivision (2)(E) clarify that there is no minimum number of students instructed for credit. This will avoid any confusion about whether a certain attendance is required for credit to count for preceptors seeking CE credit.

Section 1399.352.6 Subdivision (c)
The Board proposes adding the following language to subdivision 1399.352.6(c):

> (c)(1) Instructor, for purposes of this section, means a person who teaches a preceptor course specified in subdivision (a)(4), to potential preceptors and meets the following requirements:
>
> (A) Holds a valid, current, and unrestricted license issued under this chapter.
>
> (B) Holds a current and valid Registered Respiratory Therapist credential issued by the National Board for Respiratory Care.
>
> (C) Has a minimum of four (4) years of full-time experience practicing as a respiratory care practitioner prior to the time of the instruction.
>
> (D) Is employed by an acute care facility.
>
> (2) This subdivision does not include instruction to students in the role of an educator or clinical instructor employed by a respiratory care education program.

Purpose: The purpose of subdivision (c) of section 1399.352.5 is to define the role of instructor.

Anticipated Benefit: This section clearly delineates who qualifies as an “instructor” for purposes of this section and receiving CE incentives.

Rationale: The Board lists the minimum qualifications for an RCP to provide preceptor training. Someone who meets the requirements of this section (a “trainer of trainers”) will be eligible to receive the CE incentives in this proposed rulemaking. This language also provides needed clarity that instructors that are part of a respiratory education program do not qualify nor are eligible for the CE incentive as the day-to-day and hands-on training conducted in the classroom is part of their employment as an instructor with an education institution.

Subdivision (c)(1) establishes a basic definition for ‘instructor’ for the purposes of proposed section 1399.352.6 and serves as a bridge to further subdivisions describing the necessary requirements for an instructor. This language clarifies that ‘instructors’ in this sense refers to those who teach specific courses relating to precepting, as opposed to another topic. This language also clarifies that this definition of “instructor” applies only to section 1399.352.6. This language is narrowly tailored to limit the definition of instructor to this section and to notify potential CE credit-seekers of when they may be considered an ‘instructor’.

Subdivisions (c)(1)(A) and (B) are the same as those for preceptors. They are minimum qualifications demonstrating current ability to practice. Subdivision (c)(1)(C) differs from the requirements for preceptors by requiring four years of experience rather than two. An instructor of preceptors should have greater experience than those they are teaching. The Board believes four years of experience is sufficient to demonstrate additional knowledge and experience necessary to instruct others.

Subdivision (c)(1)(D) requires employment by an acute care facility because the Board found no consistency in education provided by non-acute care facilities. Through review of enforcement efforts, the Board has found that many of these non-acute care facilities had little documentation to support education in either class structure or delivery. Education at non-acute care facilities has shown to be very informal. Requiring instructors to be employed by an acute care facility provides greater assurance there is component of investment by the employer to oversee preceptorships. In contrast, the Board has found that education provided at acute care facilities is organized, formal, and thorough.

Subdivision (c)(2) provides that persons providing instruction to students in the role of an educator or clinical instructor employed by a respiratory care education program are not recognized as “instructors” for purposes of subdivision (c). Section 1399.352.6 is intended to provide CE incentives and credit to instructors who specifically teach a preceptor course as provided in subdivision 1399.352.6(a)(4).

Section 1399.352.6 Subdivision (d)
The Board proposes adding the following language to subdivision 1399.352.6(d);

> (d) Instructors who meet all of the criteria in subdivision (c) may claim up to ten (10) hours of CE for each renewal cycle for actual time spent teaching preceptor courses meeting the criteria in subdivision (a)(4). CE shall be calculated on an hour-for-hour basis with one hour of CE credit accepted for each hour spent teaching.

Purpose: The purpose of subdivision (d) of section 1399.352.5 is to define how instructors may claim instruction time as continuing education.

Anticipated Benefit: This section provides CE incentives for those qualified RCPs teaching the preceptor course to licensed RCPs encouraging education departments in hospitals and/or respiratory departments to include this training.

Rationale: Instructors of the preceptor course must stay current on changes and advancements in the respiratory care field and then use that knowledge to effectively deliver the preceptor course. By providing CE incentives to teach the course, the Board is also encouraging providers to offer the course.

Section 1399.352.6 Subdivision (e)
The Board proposes adding the following language to subdivision 1399.352.6(e):

> (e) The CE earned as provided in this section may be counted toward hours required for the RCP leadership requirement as provided in section 1399.350 (a)(1) and toward the hours required for live, real-time CE requirement as provided in section 1399.350(c).

Purpose: The purpose of subdivision (e) of section 1399.352.5 is describe how credit earned pursuant to section 1399.352.5 may be counted toward the practice leadership requirement.

Anticipated Benefit: While this language is somewhat repetitive of section 1399.350(a)(1), by placing it here, readers can see all the benefits and incentives for participating in the preceptor program.

Rationale: The Board is striving to usher RCPs toward leadership roles and behavior and at the same time improve clinical outcomes by strengthening preceptorship programs. Including this language in the “preceptor” section allows readers to see all the incentives under one section or heading so that this incentive is clear and available.

Section 1399.352.6 Note and Reference
The following Note and Reference is added as follows:

> Note: Authority cited: Section 3722, Business and Professions Code. Reference: Sections 3719, 3719.5, and 3742 Business and Professions Code.

The added Note to this proposed section cites as authority Business and Professions Code Section 3722, which allows the Board to adopt regulations. The Note contains reference citations to Business and Professions Code sections 3719, 3719.5, and 3742. Section 3719 relates to submission of proof of compliance with continuing education requirements; section 3719.5 allows the Board to require continuing education. Section 3742 requires student respiratory care practitioners to be under the direct supervision of a person holding a valid and current license.

8. Amend Section 1399.352.7 – Law and Professional Ethics Course Criteria

Purpose: Since the requirement for this course was established, Board staff have noted areas of the regulations that could be improved. The purpose of amending this language is also to make these improvements and to establish transparency for all readers on the current guidelines for the required Law and Professional Ethics Course.

Anticipated Benefit: The proposed amendments to existing 16 CCR 1399.352.7 will provide readers with a clearer understanding of the Law and Professional Ethics Course provider's obligations. This section also ratifies practices that have become standards since the course was first offered as noted in detail under "Rationale."

Finally, the proposed amendments to this section will provide transparency and correct references in relation to other amendments made in this package.

Rationale: The Board has overseen the approval of the Law and Professional Ethics Course since the enactment of Business and Professions Code, section 3719.5 in 2005. Since that time, new ideas, suggestions, and interests have been put forth to modify the course and/or the process. The movement for licensees to have leadership skills and the need for some to reinforce critical thinking skills is responsible for the substantive changes in this section. A description of each of the changes to this section follows:

Section 1399.352.7 Preamble
The Board is proposing to amend the preamble of section 1399.352.7 as follows:

> An acceptable course in law and professional ethics shall meet the following criteria and be approved by the board or its designee:

The Board is adding "or its designee" as an option to it to designate another party to approve the law and professional ethics courses provided by the American Association for Respiratory Care and the California Society for Respiratory Care. Currently, the

Board is required to approve the courses every four years. There have been two cycles since this requirement was implemented in 2012 with the first course made available in January 2014.

During each cycle, the Board had concerns with meeting the Bagley Keene Open Meetings Act (Article 9 (commencing with Section 11120), Chapter 1, Part 1, Division 3, Title 2 of the Government Code). The materials for a law and ethics examination may not be reviewed nor discussed in public, because of copyright and exam security issues, yet the final decision is made in public. Approving the course in this manner has a huge potential to create the appearance of wrongdoing. Allowing a two-person committee of the Board or its executive officer to approve the courses is a prudent option as staff relies on a one or two-person committee (not subject to the Bagley Keene Open Meetings Act) to provide feedback and input during the ten months of development to ensure staff review is in alignment with issues presented.

Section 1399.352.7 Subdivision (c)
The Board is proposing to amend subdivision 1399.352.7(c) as follows:

> (c) At least two hours of ~~T~~the content of the course shall ~~consist of~~ be dedicated to professional ethics with a concentration in the following subject areas:
>
> (1) Obligations of licensed respiratory care practitioners to patients under their care; and,
>
> (2) Responsibilities of respiratory care practitioners to report illegal activities occurring in the work place~~; and~~.

Subdivision 1399.352.7(c) is amended to provide clarity. Existing language found in subdivision 1399.352.7(d)(1) [proposed to be new subdivision 1399.352(e)(1)] currently provides that two hours shall be dedicated to professional ethics. The amendments in Section 1399.352.7 clarify and reaffirm that the course content in the two areas listed are part of the two hours required to be dedicated to professional ethics.

Section 1399.352.7 Subdivision (d)
The Board is proposing to amend subdivision 1399.352.7(d) as follows:

> (d) The course content may also include up to one hour of material with a concentration in:
>
> (~~3~~1) Acts that jeopardize licensure and licensure status~~.~~ and,
>
> (2) Current activities of the RCP profession.

Similarly, to subdivision 1399.352.7(c), subdivision 1399.3.52.7 is affirming the one hour dedicated to California law as provided in existing language found in subdivision

1399.352.7(d)-proposed to be 1399.352(e). In addition, this subdivision, 1399.352.7(d) is also adding an additional category in item 2, “current activities of the RCP profession.” Current activities may include, for example, new continuing education or regulatory requirements or new legislation, technology, or other advancements in the field. The addition of this language piggybacks on the requirements found in 1399.350(a)(1) and (b) requiring 10 of the 30 hours of required CE to be directly related to practitioner leadership and 5 hours through participation at public meetings of the board or professional respiratory associations. Board members felt strongly that licensees should be engaged in the profession, but if not, they should at least be aware of the current issues governing their license or impacting the respiratory care field. Board members believe this encourages licensees to have a broader vision and is hopeful it will encourage more to enter the management field, being better armed with knowledge of governing the profession. This language provides another avenue for the Board to share important information with licensees.

Section 1399.352.7 Subdivision (e)
Subdivision 1399.352.7(d) was renumbered to subdivision (e) to align with other amendments made in this section. No substantive changes were made.

Section 1399.352.7 Subdivision (e)(4)
The Board is proposing to amend subdivision 1399.352.7(e)(4) as follows:

> (4) The course will be at least thirty (30) pages of written material ~~with at least twenty (20) test questions related to professional ethics and ten (10) related to California law~~.

The amendments in subdivision 1399.352.7(e)(4) will allow providers to be more creative by possibly creating more scenarios or segments to ultimately developing a more meaningful course as well as design post-examination questions the providers find most beneficial to measure learning outcomes. Repealing this text also removes confusion on whether the “test questions” are referencing questions found in each segment as described in Subdivision 1399.352.7(e)(6) or questions related to the post-examination as described in section 1399.352.7(e)(7).

Subdivision 1399.352.7(e)(4) still provides for 30 pages of written material, but instead of dividing content by the number of test questions, the new format is driven by time only with two hours dedicated to professional ethics and up to one hour dedicated to topics the Board will provide. This change is proposed as the providers pointed out and the Board agreed that material making up the three-hour course should not be driven by the number of test questions but rather by time. This change will provide more creativity for the development of a more meaningful course.

Section 1399.352.7 Subdivision (e)(5)
The Board is proposing to amend subdivision 1399.352.7(e)(5) as follows:

> (5) The ~~C~~course ~~content~~ must include a course description including course content segments as defined in subdivision (d)(6), course objectives, ~~references, scenarios, questions~~, a post-examination (a test provided to the student at the end of the instructional period), a certificate of completion as provided in section 1399.352, ~~and~~ legal disclosures to students required by State or federal law, and a list of course materials as applicable.

The amendments in subdivision 1399.352.7(e)(5) provide clarity of the items included in the overall course. "Content" is deleted because it mischaracterizes the overall course. Content is covered in subdivisions 1399.352.7 (c) and (d). "Scenarios and questions" are deleted because those are covered in subdivision 1399.352.7(e)(6). "References" is deleted because it was found to be unnecessary and created ambiguity and the Board found that adding "a list of course materials" at the end of this section, instead provided the mechanism to capture all the materials, including references, used. "Post-examination" was added to subdivision 1399.352.7(e)(5) to reaffirm that the post-examination is in fact part of the course. "As provided in section 1399.352" was added to provide a reference for what consists of a certificate of completion. Finally, "to students required by State of federal law" was added to legal disclosure to provide clarity on the type of legal disclosures required (for example, any disclosures that may be required under the Americans with Disabilities Act).

Section 1399.352.7 Subdivision (e)(6)
No changes were made to this subdivision.

Section 1399.352.7 Subdivision (e)(7)
The Board is proposing to amend subdivision 1399.352.7(e)(7) as follows:

> (7) The ~~course~~ post-examination will include at least thirty (30) ~~scenario-based~~ questions ~~that require critical thinking skills~~ related to the instructional materials presented.

Subdivision 1399.352.7(e)(7) is being amended to provide clarity. Previously, this section was ambiguous citing that the course will include at least 30 questions. The course is designed in segments that each have questions after each scenario. Then test-takers are presented with a post examination. By deleting "course" and adding "post-examination" the Board is clarifying that the "30 questions" noted here are required for the post examination. The Board also found that "scenario based" could limit the professional organizations in testing for learned outcomes and therefore opted to remove this identifier and instead added "related to the instructional materials presented" to provide a greater depth to test for learned experiences. "That require critical thinking skills" was also deleted as this was found to be subjective and not supportive of the effort to determine learned outcomes.

Section 1399.352.7 Subdivision (e)(8)
The Board is proposing to amend subdivision 1399.352.7(e)(8) as follows:

> (8) The provider shall submit course test scores, names and other course related information to the board, ~~as requested~~ upon request by the board.

The amendment in subdivision 1399.352.7(e)(8) is nonsubstantive. The Board does not have a systematic method of requesting this information – though providers often submit the information periodically. Rather the Board requests such verification if it does not possess the information and it is needed to verify, for example, as part of a CE audit. The Board believed that "upon request" provided more specificity in that information may or may not be requested rather than presumed it will be requested.

Section 1399.352.7 Subdivision (e)(9)
The Board is proposing to amend subdivision 1399.352.7(e)(9) as follows:

> (9) The provider shall not charge more than thirty dollars ($30) for board applicants and sixty dollars ($60) for board licensees or petitioners for reinstatement.

The amendment is subdivision 1399.352.7(e)(9) in nonsubstantive and intended to provide clarity. While the Board does not refer to any other request or person making the request as a "petitioner" other than those petitioning for reinstatement, the Board believes the addition of "for reinstatement" helps all readers of the regulations clearly understand that "petitioners" refers to petitioners who have petitioned for reinstatement.

Section 1399.352.7 Subdivisions (f) and (g)
These subdivisions were renumbered to align with other amendments made in this subdivision. No substantive changes were made.

Section 1399.352.7 Subdivision (h)
The Board is proposing to amend subdivision 1399.352.7(h) as follows:

> (~~g~~h) The board~~'s Education Committee~~or its designee may rescind the approval of a course at any time if it believes it has been altered or finds that the course does not meet the requirements as provided for in this article.

The amendment to subdivision 1399.352.7(h) follows the same reasoning described for changes made to the preamble of section 1399.352.7 but in this subdivision the Board is proposing to delete the "Education Committee" and replace it with "its designee" as the party responsible for rescinding an approval of a law and professional ethics course. This will allow the Board more flexibility in recognizing other two-member committees to rescind approval should the need arise in alignment with whomever is responsible for approving the course.

Section 1399.352.7 Subdivision (i)
This section was renumbered to align with other amendments made in this subdivision. No substantive changes were made.

9. Amend Section 1399.381 – Fines

Purpose: The purpose of amending 16 CCR 1399.381 is to add a new Business and Professions Code as a one of the violations that is subject to a fine amount as part of the Board's citation and fine program. Specifically, the following language is being added to this section:

3750(q) False statements	$5,000

Anticipated Benefit: The proposed amendment to 16 CCR 1399.381 will properly align Business and Professions Code violations subject to fines. The anticipated benefit is transparency and clarity to readers. It also benefits the Board in its ability to utilize its administrative tool of citation and fine rather than pursue formal discipline in every case for a violation of subdivision (q) of Business and Professions Code 3750.

Rationale: AB 924 (Chapter 253, Statutes of 2016) amended section 3750 of the Business and Professions Code. Specifically, it added subdivision (q) as a cause for discipline and reads:

(q) Providing false statements or information on any form provided by the board or to any person representing the board during an investigation, probation monitoring compliance check, or any other enforcement-related action when the individual knew or should have known the statements or information was false.

The proposed amendment to section 1399.381 includes this new section of the Business and Professions Code and aligns this section appropriately. The purpose of the Board's citations and fine program was to provide the Board another tool, less intrusive and burdensome, to penalize licensees rather than pursue formal discipline in every case. While it would be unlikely the Board would pursue formal discipline for this sole cause, it does provide a beneficial deterrent to those investigated from providing false statements. Having the authority to fine a person for this cause strengthens the Board's ability to effectively perform its functions and ultimately better protects the public.

III. Underlying Data

1) Board's Strategic Plan 2017-2021
2) Board's May 14, 2018 meeting agenda
3) Board's May 14, 2018 relevant meeting materials (agenda item 4)
4) Board's May 14, 2018 relevant meeting minutes (agenda item 4)
5) California Respiratory Care Workforce Study May 1, 2017
6) August 2018 Notice Issued to Interested Parties
7) Board's October 26, 2018 meeting agenda
8) Board's October 26, 2018 relevant meeting materials (agenda item 6)
9) Board's October 26, 2018 relevant meeting minutes (agenda items 6 and 8)
10) Board's March 1, 2019 meeting agenda
11) Board's March 1, 2019 relevant meeting materials (agenda items 6 and 7)
12) Board's March 1, 2019 relevant meeting minutes (agenda items 6 and 7)
13) Board's November 1, 2019 meeting agenda
14) Board's November 1, 2019 relevant meeting materials (agenda item 7d)
15) Board's November 1, 2019 relevant meeting minutes (agenda item 7d)
16) Board's June, 9, 2022 meeting agenda
17) Board's June 9, 2022 relevant meeting materials (agenda item 3)
18) Board's June 9, 2022 relevant meeting minutes (agenda item 3)

IV. Business Impact

The Board has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The Board has approximately 23,600 licensees for the current fiscal year. Each licensee is required to obtain 30 hours of continuing education (CE). The proposed amendments do not change the number of CE hours licensees are required to complete as part of license renewal and the specified CE courses are currently readily available. As a result, there is no economic impact to businesses in the state.

Further, the addition of a fine amount for cause is expected to have no impact. The proposed amendments provide for the issuance of a fine of up to $5,000 for making a false statement, as specified. However, this addition is intended to specify a violation, which is currently delineated as unprofessional conduct. As a result, no addition costs related to the issuance of a fine for making a false statement is anticipated.

V. Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the regulations do not make any changes or provide for any new provisions that would affect the creation or elimination of jobs. The regulations are aimed primarily at reorganizing Article 5 Continuing Education, regulations that overall provide more opportunities for licensees to acquire CE credit.

- It will not create new business or eliminate existing businesses within the State of California because the regulation does not make any changes or provide for any new provisions that would result in the creation or elimination of new businesses. The regulations are aimed at providing more opportunities for licensees to acquire CE credit. With the hundreds of providers available, and the understanding that most licensee already obtain their CE credits from their employer or a respiratory-affiliated organization, it is highly unlikely that these changes would create any new jobs.

- It will not result in expansion of any businesses currently doing business within the State of California because the regulation does not make any changes or provide for new provisions that would directly affect the expansion of any businesses. The regulations are not expected to create new jobs nor expand businesses.

- This regulatory proposal will benefit the health and welfare of California residents because this proposal encourages licensees to move toward developing or reinforcing leadership skills and reinforce critical thinking skills. Overall, licensees are expected to expand their resources and knowledge base that ultimately will benefit California consumers.

- This regulatory proposal does not affect worker safety because it only establishes criteria for CE and one cause for the issuance of a fine. The regulatory proposal does not involve worker safety.

- This regulatory proposal does not affect the state's environmental safety because it only regulates licensees of the Respiratory Care Board. The regulatory proposal does not involve environmental issues.

VI. Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

VII. Consideration of Alternatives

The Board has made the initial determination that no reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. The public is invited to comment on this proposal.