

## Respiratory Care Board of California

# Laws & Regulations as they relate to Mandatory Reporting

### RESPIRATORY CARE PRACTICE ACT Business and Professions Code, Sections 3700 et. Division 2, Chapter 8.3

### CALIFORNIA CODE OF REGULATIONS Title 16, Division 13.6

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## Employer Mandatory Reporting

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### **B&PC § 3758. Report on suspension or termination for cause**

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

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

- (1) Suspected or actual use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care.
- (2) Suspected or actual unlawful sale of controlled substances or other prescription items.
- (3) Suspected or actual patient neglect, physical harm to a patient, or sexual contact with a patient.
- (4) Suspected or actual falsification of medical records.
- (5) Suspected or actual gross incompetence or negligence.
- (6) Suspected or actual theft from patients, other employees, or the employer.

(c) An owner, director, partner, or manager of a registry or agency that places one or more respiratory care practitioners at any facility to practice respiratory care shall report to the Respiratory Care Board of California pursuant to subdivision (a) if either of the following apply:

- (1) The owner, director, partner, or manager is aware that a respiratory care practitioner is no longer employed at the facility they were placed at by the registry or agency for any behavior described in subdivision (b).
- (2) The owner, director, partner, or manager is asked to place the practitioner on a “do not call” list or other status indicating the facility does not want that practitioner placed at their facility for any behavior described in subdivision (b).

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

*(Amended by Stats. 2022, Ch. 624, Sec. 5. (SB 1436) Effective January 1, 2023.)*

### **B&PC § 3758.6. Report on Supervisor**

(a) In addition to the reporting required under Section 3758, an employer shall also report to the board the name, professional licensure type and number, and title of the person supervising the licensee who has been subject to leave, resignation, suspension, or termination for cause, as defined in subdivision (b) of Section 3758. If the supervisor is a licensee under this chapter, the board shall investigate whether due care was exercised by that supervisor in accordance with this chapter. If the supervisor is a health professional, licensed by another licensing board under this division, the employer shall report the name of that supervisor and any and all information pertaining to the leave, resignation, suspension, or termination for cause of the person licensed under this chapter to the appropriate licensing board.

(b) The failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

*(Amended by Stats. 2022, Ch. 624, Sec. 6. (SB 1436) Effective January 1, 2023.)*

**B&PC § 3759. No civil penalties**

Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

**CCR § 1399.379. Employer Reporting**

Information required to be disclosed by any employer of a respiratory care practitioner as provided in section 3758 or 3758.6 of the B&P shall be disclosed to the board within 10 calendar days from the date of suspension or termination, whichever occurs first.

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## Citation and Fine

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**CCR § 1399.380. Citations**

(a) The executive officer of the board or his or her designee is authorized to issue a citation to any person or employer for a violation of any provision of division 1.5 and chapter 1 of division 2 of the B&P, as permitted, the Act, or any regulation adopted by the board.

**CCR § 1399.381. Fines**

(a) Fines shall be assessed in accordance with the following schedule as provided for by law:

B&P § 3758	Employer report on suspension/termination	\$10,000
B&P § 3758.6	Employer report on supervisor	\$10,000

(b) The methodology for assessing fine amounts shall be for each inspection or investigation made with respect to the violation, except as provided below:

(3) The assessment of fine amounts for a violation of section 3758, 3758.5 or 3758.6 of the B&P, or section 1399.378 or 1399.379 of these regulations, shall be based upon each person and/or each incident required to be reported to the board.

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## Definitions

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**CCR § 1399.302. Definitions**

Unless the context otherwise requires, the following definitions shall apply:

(a) “Board” means the Respiratory Care Board of California.

(b) “B&PC” means the Business and Professions Code.

(c) “Act” means the Respiratory Care Practice Act.

(d) “Direct Supervision” means assigned to a currently licensed respiratory care practitioner who is on duty and immediately available in the assigned patient area.

(e) “Employer” means any company, corporation, partnership, health maintenance organization, or any other entity or person that employs or contracts with, one or more respiratory care practitioners or unlicensed personnel to provide respiratory care services as provided in the Act.

(f) “Licensed Home Care Employer” means a Home Medical Device Retail Facility, Home Health Agency, or any home care provider licensed by the Department of Health Services or its successor.

(g) “Regulations” means Division 13.6 of Title 16 of the California Code of Regulations.

(h) “Unlicensed Personnel” means an individual not otherwise authorized or exempt to provide respiratory care services except as provided for in Article 6.