

# Respiratory Care Board of California

## Department of Consumer Affairs

### Initial Statement of Reasons

**Hearing Date:** No hearing has been scheduled for the proposed action.

**Subject Matter of Proposed Regulations:** Driving Record, Handling of Military Applications, and Disciplinary Guidelines.

**Problem Being Addressed:**

The Respiratory Care Board (Board) seeks to amend existing regulations to streamline applications, to implement laws passed regarding military personnel and to update the Board's Disciplinary Guidelines, which have not been updated for over 9 years, all for the benefit of licensees, the public, and other stakeholders.

During the Board's last sunset review, it was determined that the requirement that all Respiratory Care Practitioner (RCP) applicants submit driving histories was creating a potential barrier to licensure. Only during the last decade have Driving Under the Influence (DUI) or Reckless Driving involving drugs and/or alcohol arrests and convictions been consistently reported on Reports of Arrest and Prosecution (RAP) sheets or as subsequent arrest notifications to the Board. Prior to this, the Department of Motor Vehicles (DMV) printout which included an applicant's entire driving history was the only means of knowing if an applicant possessed a criminal history involving driving under the influence and using alcohol in a dangerous manner. Since this information is now consistently obtained by the Department of Justice (DOJ), the Board determined that it was no longer necessary to require all applicants to submit this document. Instead, the printout is only requested if there appears to be a pattern of alcohol use/abuse that may span a significant period of time, eliminating the application barrier for nearly all RCP applicants.

Separately, military personnel and their spouses are often subject to relocation as part of military orders. However, existing regulation 16 CCR 1399.329 only addresses the Board prorating renewal fees and the number of continuing education hours required for discharged members of the military or the California National Guard seeking to renew their license. Several pieces of legislation passed within the last seven (7) years provide for special handling for military personnel and their spouses, and the Board seeks to amend 16 CCR 1399.329 to make clear to the public the special handling available.

Finally, the existing version of the Disciplinary Guidelines is outdated and requires an update to reflect current information and practices. Since the last revision of the Board's Disciplinary Guidelines in 2011, the Board's laws related to the respiratory care scope of practice have been further defined to include conscious or deep sedation, extracorporeal membrane oxygenation (ECMO), polysomnography, and educating students, health care professionals, and consumers about respiratory care and equipment. The Board's law was also amended to include a new cause for discipline for providing false statements to a Board investigator or probation monitor, and there have been several updates to enforcement processes and goals established as part the Board's most recent Strategic Plan.

**Sections Affected:**

1399.326, 1399.329, and 1399.374 of Division 13.6, Title 16 of the California Code of Regulations (CCR).

**Background:**

The Respiratory Care Board (Board) enforces the Respiratory Care Practice Act at Business and Professions Code (BPC) sections 3700-3779 and oversees approximately 23,600 licensed respiratory care practitioners and respiratory care practitioner applicants. This regulatory proposal contains a proposed amendment for 16 CCR 1399.326 to streamline the application process, a proposed amendment for 16 CCR 1399.329 to effectuate statutory changes regarding the spouses of, domestic partners of, and those in legal union with, military personnel, and a proposed amendment to 16 CCR 1399.374 to update the Board's Disciplinary Guidelines, which have not been formally revised since 2011.

These proposed regulatory changes were first adopted at the March 1, 2019, Board Meeting. The proposed regulatory language was voted on as a part of a larger regulatory package, and staff was given the authority to proceed with the rule-making process and allowing staff to make technical non-substantive changes as necessary. The larger regulatory package contained, along with the three regulation sections discussed herein, amendments to sections 1399.370, 1399.372, and 1399.372.1 to comply with AB 2138 (Chiu, Statutes of 2018, Chapter 995), and the repeal of sections 1399.343 through 1399.346 temporarily authorizing health care practitioners licensed in other states to provide health care services in CA in sponsored events (the statutes permitting such health care events expired in January 2018, rendering those regulations unnecessary). At the June 7, 2019 Board meeting it was explained that at the March 1, 2019 meeting, the discussion of amending 16 CCR 1399.326 had not been properly noticed, so the Board again reviewed that regulatory language and re-voted to make the proposed change. Staff has since made two technical non-substantive changes to the larger regulatory package approved at the March 1, 2019 meeting: first, splitting off the amendments to sections 1399.370, 1399.372, and 1399.372.1 into a separate regulatory package so that package could more quickly move through the review, to better comply with the AB 2138 statutory changes that become effective July 1, 2020; and splitting off the repeal of sections 1399.343 through 1399.346 into a Section 100 package. This regulatory proposal deals only with the proposed amendments to sections 16 CCR 1399.326, 1399.329, and 1399.374.

**SPECIFIC PURPOSE, ANTICIPATED BENEFIT, AND RATIONALE****Amend Title 16 CCR Section 1399.326:**

Purpose: This amendment changes the requirement to review Department of Motor Vehicles records from "shall" to "may."

Anticipated Benefit: This amendment would streamline the application process.

Rationale: This change is necessary to align with recommendations made by the Legislative Sunset Review Committee to further streamline the application process by reducing the amount of review to be done by the Department of Motor Vehicles to only

situations where such review is required. These amendments are also necessary to support Enforcement Goal #12 of the Board's 2017-2021 Strategic Plan.

**Amend Title 16 CCR Section 1399.329:**

Purpose: In the last seven years, the legislature has passed several bills instructing the boards, commissions and bureaus within the Department of Consumer Affairs to give special consideration to license applications and renewals of military personnel and the spouses of, domestic partners of, and those in a legal union with, military personnel (BPC 114 was effective January 1, 2012; BPC sections 114.3 and 115.5 became effective January 1, 2013, BPC section 115.4 became effective January 1, 2015; BPC section 114.5 became effective January 1, 2017; and most recently, BPC section 115.6 became effective January 1, 2018). With these amendments, the Board facilitates expeditious and special handling of applications for licensure or renewal for military personnel and spouses of, domestic partners of, and those in legal union with, military personnel. These amendments also clarify what type of evidence can be presented to demonstrate discharge from active duty. These amendments increase public awareness of the Board's processes for the applications and renewals for military personnel and the spouses of, domestic partners of, and those in legal union with, military personnel.

Anticipated Benefit: These amendments should result in a shorter processing period for military personnel and the spouses of, domestic partners of, and those in legal union with, military personnel.

Rationale: These amendments are necessary to put into effect legislative changes over the last seven years that require expeditious and special handling of applications for licensure or renewal for military personnel and the spouses of, domestic partners of, and those in legal union with, military personnel. These amendments are necessary to also clarify for the public what evidence may be provided by military personnel to demonstrate discharge from active duty to ensure members of the military and their families are aware of those forms required for expedited handling of applications. The DD Form 214 and the NGB-22 have been identified by the U.S. Department of Defense as the forms that provide all pertinent information about an individual's military career, including the nature of discharge. Therefore, the Board has opted to identify these specific forms as acceptable documentation for determining military status and service to alleviate any potential confusion. These amendments support Organizational Effectiveness Goal #2 of the Board's 2017-2021 Strategic Plan. These amendments implement BPC section 114 requirements that under specific circumstances license reinstatement without penalty or fee for military personnel, whether the California National Guard or the U.S. Armed Forces. These amendments implement BPC section 114.3 requirements that under specific circumstances waive renewal fees, continuing education requirements and other renewal requirements for military personnel, whether the California National Guard or the U.S. Armed Forces. These amendments implement BPC section 115.4, which requires special handling and expedition of licensing and renewals for honorably discharged military personnel. These amendments implement BPC section 115.5, which requires an expedited license process for applicants who are married to, in a domestic partnership or other legal union with, active duty members of the Armed Forces.

**Amend Section 1399.374 - Disciplinary Guidelines:**

Section 1399.374: These amendments reference the 2020 edition of the Board's revised Disciplinary Guidelines, incorporated by reference. These amendments also support

Enforcement Goal #10 of the Board's 2017-2021 Strategic Plan. The specific changes to the Disciplinary Guidelines are individually identified below and include:

### **Cover (amendments) Update Cover**

Purpose: These amendments update the edition of the Disciplinary Guidelines from 2011 to 2020 and provide the Board's current contact information.

Anticipated Benefit: These amendments ensure readers are aware this version of the disciplinary guidelines is the most current and provide the Board's most up-to-date office location and contact information.

Rationale: There have been many different versions of the disciplinary guidelines. These amendments are necessary to ensure that an individual referencing the document can determine that he or she is reviewing the most current edition available. The amendments also ensure an individual wishing to contact the Board has easy access to the Board's most current office location and contact information.

### **Table of Contents (amendments) Update and Renumber Table of Contents**

Purpose: These amendments renumber the pages to reflect text changes and renumbering made within the revised disciplinary guidelines.

Anticipated Benefit: These amendments provide readers with a clear and detailed guide as to where to find information within the disciplinary guidelines.

Rationale: These amendments are necessary to ensure clarity to stakeholders, including Administrative Law Judges and Deputy Attorneys General, when reviewing the disciplinary guidelines.

### **Pages 1-3 (amendments) Update Introduction**

Purpose: These amendments list additional tasks within the scope of practice of an RCP, add an additional location where RCPs are employed, provide a more accurate representation of the education RCPs obtain, and reflect the Board's current mission statement.

Anticipated Benefit: These amendments provide individuals with a greater understanding of the vital role RCPs exercise in the healthcare field, including information regarding required competencies and the Board's current mission statement as a consumer protection agency.

Rationale: These amendments are necessary to specify that the Respiratory Care Practice Act requires individuals licensed to practice respiratory care in the State of California meet specified requirements aimed at ensuring consumer protection, which is the Board's highest priority in conducting business and pursuing its mission. Specifically, since last updating its Disciplinary Guidelines, the Respiratory Care Practice Act (RCPA) was amended by Senate Bill 525 (Nielsen, Chapter 247, Statutes of 2015) to further define the respiratory care scope of practice. Among the procedures now included are 1) administering medical gases and pharmacological agents for the purpose of inducing conscious or deep sedation; 2) employing extracorporeal life support to provide prolonged cardiac and respiratory support to persons whose heart and lungs are unable to provide adequate amount of gas exchange or perfusion to sustain life; and 3) educating students,

health care professionals and consumers about respiratory care and the operation and application of respiratory care equipment and appliances.

The Board determined these procedures should be added to the Introduction section of the Disciplinary Guidelines to give readers a current understanding of the respiratory care scope of practice, and practice locations including subacute settings where respiratory therapists have a dominant presence in caring for those receiving invasive and non-invasive respiratory care. Moreover, there was an added reference to the amount of time it takes to complete a respiratory care program as a means of emphasizing the rigorousness of the program and mention of the three (3) baccalaureate programs to demonstrate trend toward the advancement for respiratory care education. Finally, this version of the Disciplinary Guidelines includes a reference to the Board's mandate and consumer protection priority as its mandate is ultimately what guides the Board in all of its activities, including when disciplinary action for violation of the RCPA is taken.

#### **Page 4 (amendment) Update Format**

Purpose: This amendment adds a page that highlights the Board's mandate and highest priority of consumer protection.

Anticipated Benefit: This amendment is necessary to provide a dedicated page highlighting Business and Professions Code section 3710.1 which states: "Protection of the public shall be the highest priority for the Respiratory Care Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

Rationale: This amendment provides clarity to licensees and the public by providing the citation to, and quoting, the law that is the lodestar for all the Board's decisions, and further clarifies to licensees and the public that protection of the public is the Board's mandate.

#### **Page 5 (amendments) Update Statutory References**

Purpose: These amendments add a reference to existing law regarding probation monitoring costs.

Anticipated Benefit: These amendments are necessary to highlight the Board's stance as it relates to the recovery of probation monitoring costs for all licensee-probationers.

Rationale: These amendments clarify the statutory burden of probation monitoring costs and the Board's philosophy vis-à-vis costs and rehabilitation. They are necessary because probation monitoring costs may be assessed via the disciplinary process under existing law.

#### **Page 7 (amendments) Update Format and Evidence in Aggravation of Penalty**

Purpose: These amendments make clear what acts the Board finds especially concerning for patient safety.

Anticipated Benefit: These amendments provide Administrative Law Judges with examples of aggravating circumstances which may be considered in making discipline determinations in their proposed decisions.

Rationale: This section is split from “Mitigation” for clarity. These amendments are necessary to specify acts the Board finds particularly concerning and/or egregious and which the Board has determined should be taken into consideration when a decision is being proposed. In lieu of “perjury” the Guidelines will now refer to “false statements” which is easier to understand for the regulated public and may include additional areas on which, although not covered by statutory requirements for attestation, licensees are expected to be truthful. Licensees must be trustworthy, and false statements void that trust. Verbally abusive conduct is added as a factor in aggravation because it indicates a disturbing lack of respect for the individual, akin to physical violence, and such behavior is impermissible given the fragile population the Board serves. The Board has found that neglect, endangerment, or abuse of a person under 18 or over 65 or a dependent adult is also dangerous behavior towards vulnerable persons and for that reason is being added as a factor in aggravation when assessing penalties. Animal cruelty and gross negligence in the care of any animal shows blatant disregard for dependent creatures, and given the vulnerable population the Board serves, the Board had decided to add this behavior as an aggravating factor in assessing penalties.

### **Page 7 (amendment) Update Format and Add Section for Evidence in Mitigation of Penalty**

Purpose: This amendment adds a specific section for evidence in mitigation of penalty.

Anticipated Benefit: This amendment provides Administrative Law Judges with examples of mitigating circumstances which the Board has determined may be considered in making discipline determinations in their proposed decisions.

Rationale: This amendment is necessary to specify acts the Board finds constructive to be taken into consideration when a decision is being proposed. The section was split out from the previous section on “Aggravation” for clarity purposes.

### **Pages 8-10 (amendments) Renumbering and Reformatting of Disciplinary Guidelines Chart/Summary**

Purpose: These amendments add that all decisions shall include probation monitoring costs in accordance with B&P 3753.1, make conforming changes to numbering, delete “Restriction of Practice” from the “Specialty Terms and Conditions” and add BPC section 3750(q) Perjury/False Statements as a violation type, consistent with the changes made in the rest of these guidelines.

Anticipated Benefit: These amendments provide Administrative Law Judges with a current reference table of causes for discipline for violations of the Respiratory Care Practice Act, including appropriate terms and conditions for each violation type.

Rationale: These amendments are necessary to reflect the Board’s recommendations for consideration on appropriate penalties for violations of the RCPA, which should be taken into consideration when a decision is being proposed or considered. The reasons for the amendments are discussed below. Moreover, the adding of Perjury/False Statements resulted from a legislative change per AB 923 (Steinorth, Chapter 253, Statutes of 2016) which modified the RCPA to make the providing of false statements or information to a Board representative, investigator or probation monitor cause for disciplinary action. In considering what standard or specialty terms and conditions may be associated with a

violation for providing a false statement, the Board's enforcement manager recommended direct supervision as a means of proactively monitoring an individual who has demonstrated potential for dishonesty, as a means of preventing a similar dishonest act that may pose a risk to respiratory care consumers. Likewise, the enforcement manager also asked for the inclusion of suspension and psychological evaluation "if warranted" based on her nearly 20 years of the Board's enforcement program oversight noting that dishonesty during an investigation is often indicative of an additional issues and, should these pose an immediate threat to the public, suspension should be a viable alternative, as well as receiving expertise from a psychologist trained at recognizing and recommending appropriate action based on certain corrupt behaviors.

**Page 11 (addition) Add the term and condition "Restriction of Practice" to Standard Terms and Conditions**

Purpose: This addition place restrictions of practice to all administrative decisions concerning Licensee discipline and to provide the Board the ability to lift most restrictions at any time throughout the probation.

Anticipated Benefit: This addition eliminates the need to add the term as a specialty condition on all administrative decisions requiring the imposition of terms on licensees. The Board will have more flexibility in lifting nearly all restrictions at any time throughout the probation period.

Rationale: "Restriction of Practice," in the Board's experience, is an essential condition because it is the primary means by which the Board fulfills its mandate to protect the public. The Board has included the term "Restriction of Practice" in nearly every single administrative decision it rendered where imposition of terms were required. The term "Restriction of Practice" has essentially become a "Standard Term & Condition" in practice, and these amendments are needed to make this practice official.

**Page 11 (addition) Add the term and condition "Surrender of License" to Standard Terms and Conditions**

Purpose: This addition is to add the term and condition "Surrender of License" to all administrative decisions concerning licensee discipline.

Anticipated Benefit: These amendments will allow a licensee on probation to choose to surrender his or her license due to retirement, health reasons, or if her or she is otherwise unable to satisfy the terms and conditions of probation.

Rationale: These amendments are necessary to provide flexibility to those probationers who are in compliance, but for other reasons may choose to opt out of continued participation. Without this condition, if a probationer wanted to opt out of probation, the only option would be to cease compliance, resulting in the need for the Board to pursue further discipline at a cost to the both the Board and to the licensee. This amendment provides an alternative that allows a probationer who no longer wishes to practice respiratory care to relinquish his or her license without violating probation and being subject to additional disciplinary action and cost recovery reimbursement.

**Page 11 (deletion) Remove the term and condition "Restriction of Practice" from Specialty Conditions**

As described and explained above, the "Restriction of Practice" term was added as

standard and therefore may be removed as a specialty condition. In the Board's experience, this term has become a standardized term, making it superfluous here.

### **Page 13 (amendments) Update the term and condition, "Probation Monitoring Costs"**

Purpose: These amendments make outstanding costs immediately due upon the filing of subsequent disciplinary pleadings or administrative action.

Anticipated Benefit: These amendments are not a change in procedure for stipulated decisions, but rather provide a streamlined mechanism to ensure all outstanding costs, regardless of the type of decision, are captured in a sole subsequent disciplinary order. Recovery of costs incurred in enforcement from those who have generated such costs keeps general licensing costs stable; effectively not requiring those who obey the rules from having to subsidize those who do not.

Rationale: These amendments are necessary to ensure all outstanding costs are included within any subsequent disciplinary order. The Board has found that in subsequent disciplinary proceedings before an Administrative Law Judge, it often becomes ambiguous to calculate what costs remain outstanding from a prior disciplinary order and what cost recovery stems from a current disciplinary action. The Board has found that proposed decisions oftentimes only include costs associated with the current case and are not inclusive of all outstanding monies due. By leaving recoverable costs unaccounted for, the Board is thereby forced to absorb these enforcement costs which are then recouped through licensing fees. This in turn results in the general license population becoming responsible for paying for those who violate the law. By making all outstanding costs due upon the filing of a subsequent disciplinary action, Board staff can reflect all current and outstanding investigative, attorney and probation costs in one clear and concise declaration to be relied upon by an Administrative Law Judge overseeing a disciplinary matter to determine a finding of costs to be awarded.

### **Pages 14-23 (amendments) Renumbering of Terms and Conditions**

Purpose: These amendments renumber items 6-25 of the Standard, Standard Alcohol/Drug, and Specialty Conditions following the moving of the "Restriction of Practice" term and condition from a specialty condition to standard condition, and the addition of "Surrender of License: as a standard term and condition.

Anticipated Benefit: These amendments provide readers with a clear and detailed guide to the Board's terms and conditions of probation, both standard and specialty terms, within the disciplinary guidelines.

Rationale: These amendments are necessary to ensure clarity to stakeholders, including Administrative Law Judges and Deputy Attorneys General, when reviewing or applying the disciplinary guidelines.

### **Page 14 (amendments) Move "Restriction of Practice" from "Specialty Conditions" to "Standard Terms & Conditions"**

Purpose: These amendments place restrictions of practice on all administrative decisions concerning Licensee discipline and provide the Board with the ability to lift most restrictions at any time throughout the probation.



Anticipated Benefit: These amendments eliminate the need to add the term as a specialty condition on all administrative decisions requiring the imposition of terms on licensees. The Board then has more flexibility in lifting nearly all restrictions at any time throughout the probation period.

Rationale: These amendments are necessary because the Board had to include the term “Restriction of Practice” in nearly every single administrative decision it rendered where the imposition of terms was required. In essence, the term “Restriction of Practice” had become a “Standard Term & Condition” in practice, and this amendment is to take this practice from an unofficial practice to an official practice.

### **Page 16 (amendments) Update the term and condition, “Cost Recovery”**

Purpose: These amendments make outstanding costs immediately due upon the filing of subsequent disciplinary pleadings or administrative action.

Anticipated Benefit: These amendments are not a change in procedure, but rather provide a streamlined mechanism to ensure all outstanding costs are captured in a sole subsequent disciplinary order.

Rationale: As discussed and explained above, these amendments are necessary to ensure all outstanding costs are included within any subsequent disciplinary order.

### **Page 16 (amendments) Update the term and condition “Tolling for Out-of-State Residence or Practice”**

Purpose: These amendments delete the last paragraph that provided a probationer’s license shall automatically be canceled if he/she tolled for more than five years.

Anticipated Benefit: These amendments ensure the Board is not violating a probationer’s due process rights.

Rationale: These amendments are necessary as immediately following amendments made to the disciplinary guidelines in 2011, Board staff were advised by the Office of the Attorney General that this language violated due process rights. As such, board staff have never enforced this section and subsequent stipulated orders do not include this language. These amendments are needed to make this practice official.

### **Page 17 (addition) Standard Term and Condition “Surrender of License”**

Purpose: This amendment adds “Surrender of License” as a standard term and condition of probation.

Anticipated Benefit: As discussed and explained above, this amendment provides the probationer with notice of the option to surrender his or her license should he or she choose to discontinue participation in the probation program.

Rationale: This term is already being used in all Stipulated decisions, thus this amendment is necessary to ensure it is appropriately included in Administrative Law Judges’ decisions

as well.

### **Page 20 (amendment) Update Term and condition “Suspension”**

Purpose: This amendment updates the term and condition “Suspension” to remove language that a suspension would begin once a probationer was employed.

Anticipated Benefit: This amendment prevents a hardship for probationers who experience difficulties securing employment due to the language requiring that a suspension be served upon the start of any new employment.

Rationale: This amendment is necessary to prevent an unreasonable hardship and barrier to practice as probationers subject to this condition were often unable to secure employment in the field as a result of this language.

### **Page 20 (amendment) Update the term and condition, “Direct Supervision”**

Purpose: This amendment allows the Board to modify the length or level of direct supervision.

Anticipated Benefit: This amendment allows the Board under certain circumstances to reduce the period or level of direct supervision for those probationer’s subject to this term and condition, creating a mechanism other than the filing of a petition for modification of probation.

Rationale: This amendment is necessary to prevent an unreasonable hardship and barrier to practice. Probationers subject to this condition often find it difficult to sustain long term employment, and are subject or remain subject to, direct supervision even after performance evaluations have reflected outstanding performance while on probation. This will not only eliminate a hardship for the probationer, but for the employer as well. In 16 CCR 1399.374, the regulation in which the Board adopts the Disciplinary Guidelines by reference, the Board specifically preserves the right, in the Board’s sole discretion, to deviate from the Disciplinary Guidelines and to modify orders, including standard terms of probation. 16 CCR 1399.374 states that in doing so, the Board may consider the facts of the particular case, and examples of potentially relevant facts are provided, including the presence of mitigating factors, the age of the case, and evidentiary problems. This amendment allowing the Board to modify the length or level of direct supervision is a part of the Board’s reserved discretion to make modifications and deviate from the Disciplinary Guidelines.

### **Page 21, 22, and 23 (amendments) Clarify by making formatting for numbers consistent and correcting an uncapitalized reference to the Board**

Purpose: These amendments update the disciplinary guidelines to ensuring consistent formatting for numbers when used in the document, by having the number written out, and then followed by the numeral in parenthesis for clarity. This change is made in 3 locations on page 21, in 6 locations on page 22, and in one location on page 23. These amendments also capitalize a reference to the Board on page 23, making it consistent with other references to the Board within the disciplinary guidelines.

Anticipated Benefit: These amendments improve the clarity of the disciplinary guidelines by applying consistent formatting and correcting an uncapitalized reference to the Board.

Rationale: These amendments are needed to ensure the formatting and capitalization within the disciplinary guidelines are consistent so as to improve readability for stakeholders.

### **Page 24 (amendment) Update Format by Adding Page Specific to Cease Practice Orders**

Purpose: This amendment updates formatting to allow for an additional page highlighting that a probationer will be ordered to cease practice immediately following a major violation of probation.

Anticipated Benefit: Licensees and the public are on notice that an individual on probation will be ordered to cease practice for committing a major violation of probation.

Rationale: This amendment is necessary to clarify and emphasize that if a probationer commits a major violation of probation, it will result in the immediate issuance of a cease practice order.

### **Back Cover (amendments) Update Back Cover**

Purpose: These amendments update the edition from 2011 to 2020 and provide the Board's current contact information.

Anticipated Benefit: These amendments ensure readers are aware this version of the disciplinary guidelines is the most current and has the Board's up-to-date contact information.

Rationale: Since there have been different versions of the disciplinary guidelines, these amendments are necessary to ensure that an individual referencing the document can determine that he or she is reviewing the most current edition available. It is also necessary that an individual wishing to contact the Board have easy access to its most current office location and contact information.

### **Underlying Data**

- Respiratory Care Board 2017-2021 Strategic Plan
- June 7, 2019, Board Meeting Agenda Item and Minutes
- November 1, 2019, Board Meeting Agenda Item and Minutes

### **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. Amending the regulations to make DMV record review optional will not have an economic impact because the Board already eliminated the DMV check for applicants at the suggestion of the Sunset committee. DMV record review is now only conducted for enforcement

applicants who disclose a conviction or the Board receives notification of a conviction from the fingerprint check. There is no economic impact because the regulations will conform to current practice and because enforcement applicants are required to submit for other reasons. Amending the regulation regarding RCP applicants and licensees who are military personnel and spouses of, domestic partners of, or those in legal unions with, military personnel will not have an economic impact because the Board has already been required to do this by law, and these regulations will now conform to current practice. Amending the Disciplinary guidelines will not have an economic impact as it does not change any fine amounts within the Disciplinary Guidelines.

The Board has approximately 23,600 licensees for the current fiscal year. During the 2016/2017 fiscal year the Board issued 1,105 licenses, and in fiscal year 2017/2018 the Board issued 1,116 licenses. The proposed regulations will only minimally decrease the time to process applications and are not expected to result in an increase in applications. Updating the Disciplinary Guidelines improves the Board's service to the public and provides greater clarity to licensees, but this is unlikely to impact businesses, or the ability of California business to compete with businesses in other states.

### **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 regulation does not make any changes or provide for any new provisions that would affect the creation or elimination of jobs.
- 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.
- 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.
- This regulatory proposal will benefit the health and welfare of California residents because this proposal ensures the Board will have the ability to effectively administer and enforce the provisions of the Respiratory Care Practice Act, in the interests of consumer protection.
- This regulatory proposal does not affect worker safety or the state's environmental safety because this proposal is specific to speeding up some RCP applicant's processing time, to military personnel and spouses of, domestic partners of, and those in legal union with, military personnel and to updating the Disciplinary Guidelines. These issues are not anticipated to impact worker safety or the state's environment.

### **Specific Technologies or Equipment**

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

## **Duplication or Conflict With Federal Regulations**

None.

## **Incorporation of Document by Reference**

This regulatory proposal continues the incorporation by reference of the Board's Disciplinary Guidelines and revises the information therein. The incorporation by reference method is being used because it would be impractical to publish a 30-page full-color booklet in the California Code of Regulations, which is published in multiple formats, from small booklets to online text, usually in black and white. The rationale for amendments to the Disciplinary Guidelines in this regulatory proposal may be found under the discussion to amendments to Section 1399.374, above.

## **Consideration of Alternatives**

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.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 3750 Rosin Court, Suite 100, Sacramento, California 95834.