

## **Statement of Final Agency Action**

### **18 VAC 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care Practitioners**

On November 19, 1999, the Board of Medicine reviewed proposed regulations governing requirements for licensure of respiratory care practitioners and adopted the proposed amendments as final regulations.

## **SUMMARY OF COMMENTS ON PROPOSED REGULATIONS**

**Virginia Board of Medicine**

### **Regulations Governing the Practice of Respiratory Care Practitioners 18 VAC 85-40-10 et seq.**

#### **Licensure regulations for Respiratory Care Practitioners**

**Proposed regulations were published in the Virginia Register of Regulations on August 2, 1999. Public comment was requested for a 60-day period ending October 1, 1999; during that period comments were received from individuals and organizations.**

**A Public Hearing before the Advisory Board on Respiratory Care was held on September 9, 1999 at which time there were no comments on the proposed regulations under consideration by the Board.**

## **Summary of Final Regulations**

### **18 VAC 85-40-10 et seq.**

## **Regulations Governing the Practice of Respiratory Care Practitioners**

Amendments to regulations are adopted pursuant to changes in the Code of Virginia made in Chapter 557 of the 1998 Acts of the Assembly which required the Board to promulgate regulations for the licensure of respiratory care practitioners. In accordance with the second enactment clause, the Board promulgated emergency regulations which became effective on January 21, 1999. These final amended regulations replace the emergency regulations and are intended to establish those qualifications for licensure and renewal which are necessary to protect the public health and safety in the delivery of respiratory care services.

The only change that was made from what the Board adopted as proposed regulations was to delete in 18 VAC 85-40-45 the credential of "Certified Respiratory Therapy Technician (CRTT)" since it is no longer a credential offered by the National Board for Respiratory Care. The initials approved for use by a Certified Respiratory Therapist (CRT) was also added for clarification.

# **REGISTRAR'S SUBMISSION PACKAGE**

## **BOARD OF MEDICINE**

### **18 VAC 85-40-10 et seq.**

#### **Analysis of Final Amendments to Regulation**

##### **1. Basis of Regulation:**

Title 54.1, Chapter 24 and Chapter 29 of the Code of Virginia provide the basis for these regulations.

Chapter 24 establishes the general powers and duties of health regulatory boards including the power to establish qualifications for licensure and responsibility to promulgate regulations.

§§ 54.1-2954 through 54.1-2956.01 establishes the definition of a respiratory care practitioner and requirements for the licensure of this profession and specifies the powers and duties of the Advisory Board on Respiratory Care.

##### **2. Statement of Purpose:**

The purpose of the amendments is to promulgate regulations for the licensure of respiratory care practitioners regulations pursuant to changes in the Code of Virginia made in Chapter 557 of the 1998 Acts of the Assembly. In accordance with the second enactment clause, the Board promulgated emergency regulations, which became effective on January 21, 1999. These final regulations replace the emergency regulations and are intended to establish those qualifications for licensure which are necessary to protect the public health and safety in the delivery of respiratory care services.

##### **3. Substance of Regulations:**

**18 VAC 85-40-10.** A definition of an “accredited educational program” was added in order to specify the accrediting body for respiratory care programs recognized by the Board as the Committee on Accreditation for Respiratory Care of the National Board for Respiratory Care (NBRC). A definition of “active practice” is added (not included in the emergency regulations) to specify that the active practice of respiratory care may include activities which are not direct patient care and which include 160 hours of practice within a 24-month period immediately preceding renewal or application for licensure from a person previously licensed or certified in another jurisdiction.

**18 VAC 85-40-25.** A new section was added to require licensees to furnish current name and address within 30 days of any change and to specify that notices mailed or served by the Board to the name and address on file shall be validly given.

**18 VAC 85-40-40.** Application requirements have been amended to state some of the current requirements that are found in other sections and to specify the documentation or verification necessary to become licensed as a respiratory care practitioner.

**18 VAC 85-40-45.** A new section is adopted to state the educational requirements as required by the statute. The requirements are those of the NBRC to sit for the entry level certification examination or to hold credentials as a CRTT or a RRT.

**18 VAC 85-40-50.** Amendments are editorial; current requirements for an applicant are restated in section 40.

**18 VAC 85-40-60.** An amendment to the requirements for renewal of license will provide for evidence of active practice which is defined in 18 VAC 85-40-10 as at least 160 hours of practice during the biennial renewal cycle, which is the minimal requirement for other licensed professions (such as occupational therapy or physical therapy) under the Board of Medicine.

**18 VAC 85-40-65.** The current regulations have no provision for reinstatement of an expired license regardless of length of expiration or lack of active practice. The new section will require the applicant for reinstatement of a license lapsed for more than two years to submit evidence of competency to practice – which may be active practice in another jurisdiction, continuing education or retraining in the profession. The proposed regulation also provides for reinstatement of a revoked license in accordance with provisions of § 54.1-2921 of the Code of Virginia.

**18 VAC 85-40-80.** The fee for late renewal of licensure was amended from \$10 to \$25 to be consistent with all other licensed professions under the Board of Medicine. Fees for reinstatement of a revoked license, for issuance of a duplicate license or a duplicate wall certificate were also added for consistency with other regulations and to recover costs incurred by the Board in the performance of these activities.

#### **4. Issues of the Regulations**

##### **ISSUE 1: Qualifications for licensure as a respiratory care practitioner.**

In the statutory definition of a “respiratory care practitioner”, there is a requirement that the person shall have passed the national examination for entry level practice of respiratory care administered by the National Board for Respiratory Care, Inc. (NBRC), or other examination

approved by the Board. Regulations for certification specified passage of that examination in order to hold the title of “respiratory therapist.” The proposed regulations for licensure would also require that the applicant be a graduate of an accredited educational program or hold current credentialing as a Certified Respiratory Therapy Technician (CRTT) or as a Registered Respiratory Therapist (RRT) from the NBRC. If a person has passed the entry-level examination for respiratory therapy practitioners, which is required for licensure in Virginia, he is allowed to use the credential of CRTT. If a person has earned the higher credential of RRT, it indicates that they have taken the Registry Examination for Advanced Respiratory Therapy Practitioners.

Currently, all candidates for the national examination must be graduates of an accredited respiratory therapy educational program to qualify for testing. However, some RRT’s prior to 1970 and CRTT’s prior to 1974 were not required to be graduates of accredited educational programs since schools did not exist in an organized manner before those dates. Training was given on the job, typically in a hospital setting. Therefore, the NBRC recommends the language that the Board has proposed to enable persons to become licensed who have held the credentials and been practicing for a number of years.

### **Advantage or disadvantages**

There are no disadvantages to the public which is better protected by having respiratory care delivered by persons who have graduated from an accredited educational program or have met the criteria for certification as a CRTT or a RRT and have passed a national examination which tests the knowledge and abilities of those who will be licensed in Virginia.

The proposed regulation also offers several advantages to the respiratory care practitioners. By having nationally recognized standards, the Board enhances the ability of a practitioner licensed in Virginia to transfer to another jurisdiction and become licensed. The regulations also recognize the different pathways to national certification by the NBRC (as discussed in Issue 1) and impose no additional burden on applicants for licensure.

### **ISSUE 2: Evidence of continuing competency for renewal of licensure.**

The Board of Medicine currently requires some evidence of continuing competency for licensed practitioners such as physical therapists (320 hours of active practice within the past four years), licensed acupuncturists (certification by NCCAOM requiring 100 hours of CME’s in a two-year period), physician assistants (certification by NCCPA requiring 60 professional development activities in a four-year period) and occupational therapists (requirement for active practice during the renewal cycle). In addition, the Board is proposing specific hours of continued competency for physicians, chiropractors, podiatrists, occupational therapists and radiologic technologists.

Before July 1, 1998, respiratory care practitioners were certified by the Board of Medicine; no competency requirement was imposed for certification, which was title protection and therefore voluntary for practitioners. The Board considered what type of requirement would be reasonable and appropriate for respiratory care practitioners and would, at the same time, provide the needed assurance to the public that minimal competency had been maintained. Since there is no national credentialing body or standard within the profession for continuing education or competency, the Board determined that evidence of 160 hours of active practice in the profession was the least burdensome regulation it could reasonably impose at this time. While it does not assure that the practitioner is learning new techniques and information, it does provide some assurance that he is remaining current in his professional knowledge and skills.

To accommodate persons whose respiratory care practice may now include educational, administrative, supervisory or consultative services rather than direct patient care, the Board added a definition of “active practice” to clarify that those professional activities were acceptable for the purpose of fulfilled the renewal requirements.

### **Advantages and disadvantages**

There are no disadvantages to the public which is better protected by having a requirement for hours of active practice in order to renew an active license. Since most respiratory care practitioners work for an organization, which itself must be credentialed, there is also some continued oversight of their competency to practice.

A respiratory care practitioner who is maintaining an active license to practice should be required to work a minimal number of hours during the biennium in order to keep up with a rapidly changing, highly technical field. The requirement of 160 hours of practice with a two-year period is easily obtainable, even for persons who are working only on a part-time basis.

### **ISSUE 3: Requirements for reinstatement of an expired or revoked license.**

The Board determined that it was also necessary to amend requirements for reinstatement of a license which had expired for two years or more or had been revoked. It has specified that the expired license may only be reinstated by payment of a reinstatement fee and submission of a reinstatement application which includes information on practice and licensure in other states during the period in which the license was lapsed in Virginia. A practitioner whose license has been revoked must submit a new application and meet requirements of § 54.1-2921.

### **Advantages and disadvantages**

The proposed regulation protects the public by requiring that the applicant provide complete information on practice and licensure in other jurisdictions during that period. That provides the Board with an opportunity to check on the safety and disciplinary history of a licensee who may have been in practice elsewhere during the time the license was lapsed in Virginia. The Board

also maintains its authority to deny reinstatement to anyone who has committed acts in violation of law or regulation.

#### **ISSUE 4: Amendments to fees.**

Fees were amended or added for consistency with other professions licensed by the Board. Therefore, the administrative fee for processing a late renewal by hand within the agency is raised from \$10 to \$25; a fee of \$500 for renewing a revoked license is added; and fees of \$10 for a duplicate license and \$25 for a duplicate wall certificate were added.

#### **Advantages and disadvantages**

There are no disadvantages of the amended fees to the public; they will not positively or negatively affect the delivery or quality of health care provided to the citizens of the Commonwealth.

Only a small number of practitioners will be affected by these changes in fees. There may be 25 to 35 persons who will pay the additional \$15 for a late renewal of licensure. Less than 10 persons will request a duplicate license or certificate, and thus far, the Board has never revoked the license of a respiratory care practitioner.

### **5. Estimated Fiscal Impact of the Regulations**

#### **I. Fiscal Impact Prepared by the Agency:**

##### **Number of entities affected by this regulation:**

There are 2,706 respiratory care practitioners licensed in Virginia.

##### **Projected cost to the agency:**

The agency will incur some costs (less than \$1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Since these regulations are being amended simultaneously with other regulations of the Board, the costs of mailings, meetings and hearings will be shared by several professions. In addition, every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

##### **Projected costs to the affected entities:**

There would be no additional costs for compliance with these regulations for vast majority of respiratory care practitioners in the Commonwealth. There may be 25 to 35 persons

who will pay the additional \$15 for a late renewal of licensure. Less than 10 persons will request a duplicate license or certificate, and thus far, the Board has never revoked the license of a respiratory care practitioner.

**Citizen input in development of regulation:**

In the development of regulations, notices were sent to persons on the public participation guidelines mailing list of every meeting of the Advisory Board on Respiratory Care, the Legislative Committee of the Board, and of the Board itself. A Notice of Intended Regulatory Action was also sent to persons on the list; no comment was received on the NOIRA. Public comment was also received at each meeting.

**Localities affected:**

There are no localities affected by these regulations in the Commonwealth.

**II. Fiscal Impact Prepared by the Department of Planning and Budget:**

(Attached to proposed regulations)

**III. Agency Response:** The agency concurred with the economic impact analysis prepared by the Department.