

REPORT OF THE NORTH CAROLINA RESPIRATORY CARE BOARD
July 1, 2015 – June 30, 2016

To: Attorney General Roy Cooper
Secretary of State Elaine Marshall
Joint Legislative Administrative Procedure Oversight Committee
State Publications Clearinghouse

From: William L. Croft, PhD, RRT, RCP
Executive Director
North Carolina Respiratory Care Board

Re: Report of Activities of the North Carolina Respiratory Care Board
July 1, 2015 – June 30, 2016

INTRODUCTION

The North Carolina Respiratory Care Board was established by Act of the General Assembly during its 2000 session, with the passage of the North Carolina Respiratory Care Practice Act. The Act is codified at N.C. Gen. Stat. § 90-646 *et seq.* This report is being submitted at the direction of the Board, and after being approved by the Board at its regular quarterly meeting on July 14, 2016, to fulfill its duty under N.C. Gen. Stat §93B-2 (a), to submit an annual report addressing the following 11 items, and to submit an annual financial report, (attached), under N.C. Gen. Stat §93B-2 (b).

(1) The address of the Board, and the names of its members and officers
[Current as of July 10, 2016]:

North Carolina Respiratory Care Board
125 Edinburgh South Drive, Suite 100
Cary, NC 27511
www.ncrcb.org
Phone (919) 878-5595
FAX (919) 878-5565

Chairman

Larry Simpson, RCP (3)
 Appointment Expires: August 31, 2018

Vice Chairman

Lawrence Klima, MD (4)
 Appointment Expires: October 31, 2019

Eric L. Olson, MD (3)
 Appointment Expires: August 31, 2018

Mary Hooks, R.Ph. (5)
 Appointment Expires: October 31, 2018

Bernard Nobles (1)
 Appointment Expires: October 31, 2018

Secretary

Robin Ross, RCP (2)
 Appointment Expires: June 30, 2019

Treasurer

Kathy Short, RN, RCP (7)
 Appointment Expires: October 31, 2018

Daniel Mulcrone, MD (2)
 Appointment Expires: October 31, 2018

Albert Curseen, MD (6)
 Appointment Expires: October 31, 2017

Open Seat: TBD (1)
 Appointment Expires: TBD

Open Seats: Appointing Authority: Governor –Public Member.

Appointments Code: (1) Governor (2) President Pro Tem of the Senate (3) Speaker of the House (4) NC Medical Society (5) NC Medical Equipment Association (6) Old North State Medical Society (7) NC Hospital Association

Executive Director: William L. Croft, PhD, RRT, RCP, RRT, RCP

(1a) The total number of licensees supervised by the board. (new, added 2014-120, s.4)

As of June, 30, 2016, the North Carolina Respiratory Care Board was supervising 4760 Active and 84 Inactive licensees. This number will vary throughout the year.

(2) The number of persons who applied to the Board for examination:

The North Carolina Respiratory Care Board utilizes the services of the National Board for Respiratory Care (NBRC) to conduct examinations of candidates for the Respiratory Care Practitioner License, and candidates pay their fees directly to NBRC. Based on data obtained from the NBRC, 200 persons who were residents of North Carolina applied between July 1, 2015 and June 30, 2016 to take the NBRC examination, but the Board does not have information to determine which of these persons applied for licensure in North Carolina.

(3) The number who were refused examination: 0

(4) The number who took the examination:

As indicated above, 163 residents of North Carolina took and passed the NBRC examination between July 1, 2015 and June 30, 2016. A total of 425 persons applied for initial licensure in North Carolina between July 1, 2015 and June 30, 2016. Of the 425 applications, there are 81 pending licenses and 23 that failed to complete or withdrew their application.

(5) The number to whom initial licenses were issued: 344

(5a) The number who failed the examination. (new, added 2014-120, s.4): 34

(6) The number who applied for license by reciprocity or comity: 0

(7) The number who were granted licenses by reciprocity or comity: 0

(7a) The number of official complaints received involving licensed or unlicensed activity: 52

(7b) The number of disciplinary actions taken against licensees: 33

The number of other actions taken against non-licensees: 0

(8) The number of licenses suspended or revoked this fiscal year: 0

(9) The number of licenses terminated this fiscal year for any reason other than failure to pay the required renewal fee: 0

(10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.

Discussions at Board meetings and among respiratory care practitioners led to the introduction of House Bill 267 to amend the Respiratory Care Practice Act, which was filed on March 17, 2015 and has passed the House on the first reading and was referred to the House Finance Committee. It is currently in the Senate Rules and Operations Committee. Over the past 15 years, NCRCB has made strenuous efforts to enhance the practice of respiratory care in North Carolina. We have made regular presentations to classes at the North Carolina community college respiratory care programs to alert future practitioners to the role and mission of the Board. We have worked closely with the North Carolina Society for Respiratory Care, which is the state association of respiratory professionals, to keep them informed about the board's activities and to stay current with the challenges they face in their everyday practice. NCRCB also been actively involved in the national dialogue about the future development of respiratory care through our work with the National Board for Respiratory Care, the American Association of Respiratory Care, and the Commission on Accreditation for Respiratory Care

In keeping with our mission, NCRCB has been involved in the following initiatives:

- Ensuring that Respiratory Departments in health care organizations are staffed at levels that permit good care to be provided to patients.
- Issuing Declaratory Rulings and Position Statements to guide practitioners in administering increasingly complex procedures in new work environments.
- Addressing licensure issues affecting current and former military personnel
- Increasing respiratory education levels
- Establishing a relationship with a counseling service that can provide treatment and support for practitioners facing psychological or chemical dependency issues.
- Implementation of procedures based on observed abnormalities of appropriate reporting or referral or respiratory care protocols, or changes in treatment regimen, pursuant to a prescription by a physician.
- Improved Board efficiencies including adding educational and credential levels, complaint tracking, and date of last renewal for the online verifications to the website
- Utilizing technology to provide greater service to the public and licensees to include a survey system for supervisory reports, complaint tracking, and continuing education monitoring and compliance program
- Partnered with CE Broker, Inc. to manage continuing education compliance for Respiratory Care Professionals throughout the state of North Carolina

With House Bill 267, we are seeking to introduce a higher level of testing for licensure that would be attained with the Registry Examination System offered by the National Board for Respiratory Care. The Registry Examination System was developed objectively to measure essential knowledge, skills, and abilities required of advanced respiratory therapists, and to set uniform standards for measuring such knowledge. Based on the scope of practice, this credential would better reflect the competency required upon entry into the profession. The examination system is in two parts.

The first part is the Therapist Multiple-Choice Examination objectively measures essential knowledge, skills, and abilities required of entry-level respiratory therapists, as well as determine eligibility for the second part of the exam, which is the Clinical Simulation Examination (CSE). The Clinical Simulation Examination consists of 22 problems (20 scored items and two pretest items). The clinical setting and patient situation for each problem are designed to simulate reality and be relevant to the clinical practice of respiratory care. Thus, a higher level of critical thinking is tested. For this reason, the RRT credential represents a higher level of skills testing to ensure the competency of licensed RCPs with greater certainty. Upon successful completion of the written and simulation exams, candidates are awarded the Registered Respiratory Therapy (RRT) credential.

To ensure credentialing success as they face the demands of increasingly complex therapeutic procedures and more potent medications, and the interpretation of detailed treatment protocols, respiratory care practitioners will need a broader educational base to support their work. As a first step, the bill also clearly states the minimal requirements for education as an associate degree in respiratory care.

(11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

If the General Assembly enacts House Bill 1007 and/or H267, the Board will review its rules based on ratified version of these Bills and other considerations and consider proposing changes to its rules during the 2016-2017 fiscal year, including the following specific rules:

- 21 NCAC 61 .0201 APPLICATION PROCESS
- 21 NCAC 61 .0301 LICENSE NUMBER: DISPLAY OF LICENSE
- 21 NCAC 61 .0302 LICENSE RENEWAL
- 21 NCAC 61 .0303 LICENSE WITH PROVISIONAL ENDORSEMENT
- 21 NCAC 61 .0305 INACTIVE STATUS
- 21 NCAC 61 .0306 LICENSE BY RECIPROCITY
- 21 NCAC 61 .0701 APPLICABLE HEARING RULES
- 21 NCAC 61 .0702 RIGHT TO HEARING
- 21 NCAC 61 .0703 REQUEST FOR HEARING
- 21 NCAC 61 .0704 GRANTING OR DENYING HEARING REQUEST
- 21 NCAC 61 .0705 NOTICE OF HEARING
- 21 NCAC 61 .0706 CONTESTED CASES
- 21 NCAC 61 .0707 PREHEARING PROCEDURES
- 21 NCAC 61 .0708 PETITION FOR INTERVENTION
- 21 NCAC 61 .0709 TYPES OF INTERVENTION
- 21 NCAC 61 .0711 SUBPOENAS
- 21 NCAC 61 .0712 WITNESSES
- 21 NCAC 61 .0713 FINAL DECISION
- 21 NCAC 61 .0714 PROPOSALS FOR DECISION

Each of the above rules were readopted in accordance with G.S. 150B-21.3A(c)(1) in 2015. The Board approved the above rules for re-adoption on during the required Quarterly Board meeting and filed the report with the RCC on October 24, 2014. The comment period closed on December 31, 2014 with no comments received. The Rules Review Commission review and approved the rules on June 16, 2015. If H267 passes, changes to the above rules will be determined.

The Board identified one rule which has substantive public interest, 21 NCAC .0202. The Board approved this rule for re-adoption on July 9, 2015 during the required Quarterly Board meeting. All of the Board's other rules were readopted or eliminated in accordance with G.S. 150B-21.3A(c) (1). For this reason, the Respiratory Care Board Rule 21 NCAC 61 .0202 was readopted on April 14, 2016 and submitted to the NC Rules Review Commission as published in 30:12 NCR 1296. The section addressed was the exemption section of G.S. 90-664, which provides exemptions for licensing if they meet certain criteria. The NC Rules Review Commission approved the rule with technical changes at their June 16, 2016 meeting.

Amended Rules

The amendments to the Respiratory Care Practice Act in House Bill 267 essentially fall into several broad categories and may necessitate amendments to the rules regarding: 1) clarifying changes relating to defining the scope of respiratory care and the Board's powers and obligations with respect to individuals that are not licensed by it; 2) clarifying the scope of the Board's powers with regard to the supervision of its licensees and broadening the disciplinary measures which may be used to include continuing education; and 3) moving the respiratory care profession toward the day when all of its practitioners will be holders of a baccalaureate degree, while providing grandfathering protection for all persons currently licensed by the Board and also allowing persons in the future who become licensed without a baccalaureate degree to receive a provisional license for up to five years, allowing them a generous amount of time to complete that requirement. The licensure provisions of the Bill become effective on October 1, 2016.

Several parts of the Bill address the scope of practice of respiratory care:

- Section 1 adds the assessment of the therapeutic effectiveness of medical equipment for individual patients to the definition of the practice of respiratory care, and makes a similar change to the definition of unlicensed support activities to clarify that those activities do not include any evaluation or assessment of therapeutic effectiveness.
- Section 2 includes recognition that the Board's power includes investigating the activities of persons who are not licensed but whom it has reasonable cause to believe are engaged in the practice of respiratory care and should therefore be licensed. This has been the Board's practice already in light of its responsibilities under the current law with regard to the quality of respiratory care, but this amendment makes this authority explicit.
- Section 6 provides liability protection for persons who report the unlicensed practice of respiratory care and for the Board and its agents in investigating and taking action in good faith against such persons.

The Bill contains several provisions that relate to its relationship with persons who are licensed by it or who apply for licenses:

- Section 5 broadens the specific penalties and remedies that the Board may assess to include limiting the scope of an individual's practice of respiratory care and requiring satisfactory completion of medical treatment or educational programs.
- Section 5 also expands the grounds for the Board to impose discipline, with several of these provisions drawn from existing statutes of other licensing boards, as noted in the attached detailed summary.
- Section 5 also contains a provision allowing the Board to deny an initial application for a license without a hearing if the required components of a completed application are not presented.

- Section 5 also contains a protection from liability for persons who report improper conduct of licensees in good faith, as well as protection for the Board itself in investigating and prosecuting violations.

New Rules

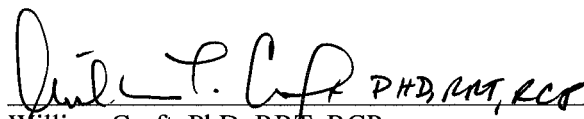
Rules to be adopted include those rules pursuant to § 93B-17 and § 93B-18 in the proposed House Bill 1007 titled, *Amend Occupational Licensing Boards Statutes*. These new rules will include the NCRCB's receipt and resolution of complaints, disciplinary or enforcement actions against licensees, and enforcement actions against persons not licensed by the board. In addition, the Board will consider if any interpretation, clarification, or other delineation of the scope of practice is required. These rules will clarify the investigative process involving licensees as currently published in the NCRCB Disciplinary Manual as well as adding rules for unlicensed activity. For the licensee and unlicensed individual or entity, the rule will include notifying licensed and unlicensed persons and entities of the possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court without indicating that the board has made any finding of a violation. The rules may indicate the board's belief or opinion that a particular act may violate the board's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the board's intention to pursue administrative remedies or court proceedings with regard to the potential violation.

CONCLUSION

The North Carolina Respiratory Care Board appreciates the opportunity to make this report, highlighting our activities and achievements over the past 12 months and identifying additional issues to be addressed in the future. The Board is committed to carrying out the charge given it by the enactment of the Respiratory Care Practice Act. We look forward to working with the Governor, General Assembly, and all interested parties in ensuring that the health, safety and welfare of the citizens of North Carolina is protected, and providing for an effective and efficient regulation of the practice of Respiratory Care.

Copies of Board Minutes and other materials will be made available on request. Please direct any comments or questions to the Board at the address shown below.

Respectfully submitted, this 30th day of July, 2016



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