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Sequence Number: 02-18-10  
Rule ID(s): 4639  
File Date: 2/22/2010  
Effective Date: 5/23/2010

## Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

<b>Agency/Board/Commission:</b>	Tennessee Board of Respiratory Care
<b>Division:</b>	
<b>Contact Person:</b>	Shiva Bozarth
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1330-01	General Rules Governing Respiratory Care Practitioners
Rule Number	Rule Title
1330-01-.02	Scope of Practice
1330-01-.12	Continuing Education
1330-01-.15	Disciplinary Grounds, Actions, and Civil Penalties
1330-01-.19	Board Officers, Consultants, Records, Declaratory Orders, Advisory Rulings, Subpoenas and Screening Panels

## Amendments

Rule 1330-01-.02, Scope of Practice, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Use of Titles
- (a) Only a certified respiratory therapist who is a member of the National Board of Respiratory Care (NBRC) and who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to use the titles and/or acronyms "Certified Respiratory Therapist (CRT)" or "Certified Respiratory Therapy Technician (CRTT)" as defined in T.C.A. § 63-27-102.
  - (b) Only a registered respiratory therapist who is a member of the National Board of Respiratory Care (NBRC) and who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to use the title and/or acronym "Registered Respiratory Therapist (RRT)" as defined in T.C.A. § 63-27-102.
  - (c) Any person who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to practice as a respiratory care practitioner as defined in T.C.A. § 63-27-102.
  - (d) Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every advertisement he or she publishes. Failure to do so may constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the practitioner to disciplinary action pursuant to T.C.A. § 63-27-112 (a) (2) and (9).

Authority: T.C.A. §§ 63-1-145, 63-1-146, 63-27-102, 63-27-104, and 63-27-112.

Rule 1330-01-.12, Continuing Education, is amended by deleting part (6) (c) 1. in its entirety and substituting instead the following language, so that as amended, the new language shall read:

- (6) (c) 1. Except for licensees who have been practicing in another state during the period of expiration, the continuing education hours documented at the time of reinstatement must equal ten (10) contact hours for every calendar year for which the license was expired, although under no circumstances shall the maximum number of contact hours required be more than sixty (60) hours, and must have been successfully completed before the date of reinstatement.

Authority: T.C.A. §§ 63-27-104, 63-27-105, and 63-27-109.

Rule 1330-01-.15, Disciplinary Grounds, Actions, and Civil Penalties, is amended by deleting subparagraph (2) (g) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (g) shall read:

- (2) (g) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:
- 1. During any period of probation, suspension; or
  - 2. During any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license; or

3. As a prerequisite to the lifting of probation or suspension or as a prerequisite to the reinstatement of a revoked license; or
4. As a stand-alone requirement(s) in any disciplinary order.

Authority: T.C.A. §§ 63-27-104 and 63-27-112.

Rule 1330-01-.19, Board Officers, Consultants, Records, Declaratory Orders, Advisory Rulings, Subpoenas and Screening Panels, is amended by deleting paragraph (2) but not its subparagraphs, and substituting instead the following language, so that as amended, the new paragraph (2) but not its subparagraphs shall read:

- (2) The Board shall select consultants who, along with each individual member of the Board, may serve as consultants to the Division and who are vested with the authority to do the following acts:

Authority: T.C.A. §§ 63-1-115, 63-1-132, 63-1-142, 63-27-103, and 63-27-104.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Candace Partee	X				
Roger Major	X				
Gene Gantt	X				
Delmar Mack, Ed.D.	X				
Teresa Hatcher	X				
Darryl Jordan, M.D.				X	
Colleen Schabacker				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Respiratory Care (board/commission/ other authority) on 02/26/2009, and is in compliance with the provisions of TCA 4-5-222.

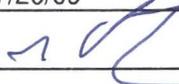
I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/23/08

Notice published in the Tennessee Administrative Register on: 01/15/09

Rulemaking Hearing(s) Conducted on: (add more dates). 02/26/09

Date: 07/20/09

Signature: 

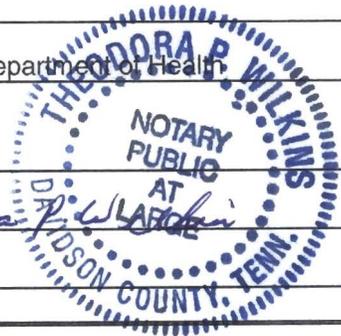
Name of Officer: Shiva Bozarth

Title of Officer: Deputy General Counsel, Department of Health

Subscribed and sworn to before me on: 7/20/09

Notary Public Signature: 

My commission expires on: 11/7/2011



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.



Robert E. Cooper, Jr.  
Attorney General and Reporter

2-18-10  
Date

Department of State Use Only

Filed with the Department of State on: 2/22/10

Effective on: 5/23/10

Tre Hargett  
Tre Hargett  
Secretary of State

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## **Public Hearing Comments**

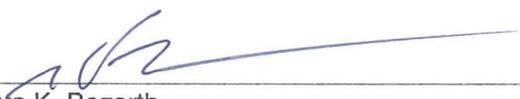
One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

**Public Hearing Comments**

The rulemaking hearing for the Tennessee Board of Respiratory Care was called to order at 9:30 a.m. CST, on February 26, 2009 in the Department of Health Conference Center's Iris Room on the first floor of the Heritage Place building located at 227 French Landing, Nashville, Tennessee. Ernest Sykes served as the moderator of the hearing.

No members of the public attended the rulemaking hearing and no written comments were received.

The rulemaking hearing concluded at 9:40 a.m. CST.

  
\_\_\_\_\_  
Shiva K. Bozarth  
Deputy General Counsel  
Tennessee Department of Health

Date 2/26/09

## **Regulatory Flexibility Addendum**

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

## REGULATORY FLEXIBILITY ANALYSIS

Tennessee Board of Respiratory Care; Rule Nos.1330-01-.02, .12., .15 and .19.

Pursuant to the Regulatory Flexibility Act of 2007, T.C.A. §§ 4-5-401, *et seq.*, the Department of Health submits the following regulatory flexibility analysis:

- (1) The proposed rule amendment does not overlap, duplicate, or conflict with other federal, state, and local governmental rules.
- (2) The proposed rule amendment exhibits clarity, conciseness, and lack of ambiguity.
- (3) The proposed rule amendment clarifies existing licensure requirements, and it caps the number of continuing education hours certain reinstatement licensees must obtain. The proposed rules do not allow for flexible compliance or reporting requirements for respiratory therapists applying to reinstate their Tennessee licensure. The Department of Health and the Board of Respiratory Care believe that this is necessary to protect the health and safety of the citizens of the state.
- (4) The proposed rule amendment does not affect any schedules or deadlines for compliance and/or reporting requirements for small businesses.
- (5) The proposed rule amendment does not affect compliance or reporting requirements for small businesses.
- (6) The proposed rule amendment does not establish performance standards for small businesses as opposed to design or operational standards; and
- (7) The proposed rule amendment ensures that all respiratory care reinstatement applicants will have a minimum level of continuing education, but it will not require them to get a prohibitively expensive number of continuing education hours. The Department of Health and the Board of Respiratory Care believe that this continuing education "cap" provision will reduce entry barriers for former practitioners who are looking to reinstate their practices. The provision will at the same time ensure that the citizens of the state receive an adequate level of care from respiratory care therapists.

## STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. **Name of Board, Committee or Council:** Board of Respiratory Care

2. **Rulemaking hearing date:** May 22, 2008

3. **Types of small businesses that will be directly affected by the proposed rules:**

These rule changes affect licensed respiratory therapists and the various types of businesses and offices in which they work. Those types of business entities can include a wide range: small private physicians' offices and private nursing home and other health care facilities such as home health companies and hospice companies. The types of businesses also could include private or closely held hospitals.

4. **Types of small businesses that will bear the cost of the proposed rules:**

The rule changes might minimally impact small home health companies, hospices, physicians' offices, and closely held health care facilities such as nursing homes and hospitals, all of which might employ respiratory therapists. The rule changes mandate the use of certain title(s) in all advertisements for professional services by a licensed respiratory therapist. It is possible that such a requirement could entail printing expenses for some businesses.

5. **Types of small businesses that will directly benefit from the proposed rules:**

By the same token, the rule changes might benefit all of those same small businesses referenced above in question 4 that employ licensed respiratory therapists. That is so because the rule changes make it somewhat more practicable for respiratory therapists whose licenses have lapsed to have their licenses reinstated. The greater ability for expired licensees to become reinstated will, if anything, benefit small businesses by giving them a greater pool of qualified licensees to staff respiratory care positions.

6. **Description of how small business will be adversely impacted by the proposed rules:**

The rule changes might minimally impact small businesses that employ respiratory therapists, in that the rule changes mandate the use of certain title(s) in all advertisements for professional services by a licensed respiratory therapist. It is possible that such requirement could entail printing expenses for some businesses. Again, though, the board believes that any such adverse impact will be offset by the benefit of having a potentially larger pool of qualified respiratory therapists.

7. **Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:**

The Board of Respiratory Care does not believe there are less burdensome alternatives to the proposed rule amendments.

8. **Comparison of the proposed rule with federal or state counterparts:**

Federal: The Board of Respiratory Care is not aware of any federal counterparts.

State: The proposed rule amendments regarding respiratory therapists will have no state counterpart because the Board of Respiratory Care is the only agency charged with regulating this class of health care professionals.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rule amendments clarify existing licensure requirements, and it caps the number of continuing education hours certain reinstatement licensees must obtain. The proposed rule amendments also clarify requirements concerning the use of certain titles for respiratory therapists, and they clarify the disciplinary conditions the Board may impose on a licensee. Finally, the rule proposed amendments make clear that the Board may use have multiple consultants.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None known.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Small home health companies, hospices, physicians' offices, and closely held health care facilities such as nursing homes and hospitals, all of which might employ respiratory therapists. The rule changes mandate the use of certain title(s) in all advertisements for professional services by a licensed respiratory therapist. It is possible that such requirement could entail printing expenses for some businesses. No comments were submitted to the Board regarding these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None known.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No impact expected on government revenues or expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Shiva Bozarth, Deputy General Counsel, Tennessee Department of Health

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Ernest Sykes, Jr., Assistant General Counsel, Tennessee Department of Health

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Health, Office of General Counsel; Plaza One, Suite 210; 220 Athens Way; Nashville, TN 37243; (615) 741-1611

(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

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(Rule 1330-1-.01, continued)

- (20) Maintain - For purposes of the licensure exemption allowed for licensed practical nurses, means the setting up, attaching to or replacement of devices onto a life support system, and includes initiation of, replacement of and/or maintenance on any type of life support system.
- (21) Manage - For purposes of the licensure exemption allowed for licensed practical nurses means the making of adjustments to the controls or settings of any life support system.
- (22) NBRC - National Board for Respiratory Care.
- (23) Person - Any individual, firm, corporation, partnership, organization, or body politic.
- (24) Practice of Respiratory Care – Shall have the same meaning as set forth in T.C.A. § 63-27-102 (4).
- (25) Respiratory Care Practitioner – Shall have the same meaning as set forth in T.C.A. § 63-27-102 (7).
- (26) Use of Title or Description - To hold oneself out to the public as having a particular status by means signs, mailboxes, address plates, stationary, announcements, business cards, or other means of professional identification.
- (27) Written Evidence - Includes, but is not limited to, written verification from supervisors or other colleagues familiar with the applicant's work.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 63-1-107, 63-1-115, 63-1-132, 63-1-142, 63-27-102, 63-27-104, 63-27-105, 63-27-113, and 68-1-101. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed September 26, 2001; effective December 10, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003.

#### 1330-1-.02 SCOPE OF PRACTICE.

- (1) The scope of practice for registered respiratory therapist, certified respiratory therapist or assistant is defined in T.C.A. § 63-27-102 (3) and (4), and T.C.A. §§ 63-27-106, 107 and 108.
- ~~(2) Use of Titles~~
  - ~~(a) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles and/or acronyms "Certified Respiratory Therapist (CRT)" or "Certified Respiratory Therapy Technician (CRTT)" as defined in T.C.A. §§ 63-27-102.~~
  - ~~(b) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title and/or acronym "Registered Respiratory Therapist (RRT)" as defined in T.C.A. §§ 63-27-102.~~
  - ~~(c) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to practice as a respiratory care practitioner as defined in T.C.A. §§ 63-27-102.~~
  - ~~(d) Violation of this rule regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.~~

(Rule 1330-1-.02, continued)

(2) Use of Titles

- (a) Only a certified respiratory therapist who is a member of the National Board of Respiratory Care (NBRC) and who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to use the titles and/or acronyms "Certified Respiratory Therapist (CRT)" or "Certified Respiratory Therapy Technician (CRTT)" as defined in T.C.A. § 63-27-102.
- (b) Only a registered respiratory therapist who is a member of the National Board of Respiratory Care (NBRC) and who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to use the title and/or acronym "Registered Respiratory Therapist (RRT)" as defined in T.C.A. § 63-27-102.
- (c) Any person who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to practice as a respiratory care practitioner as defined in T.C.A. § 63-27-102.
- (d) Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every advertisement he or she publishes. Failure to do so may constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the practitioner to disciplinary action pursuant to T.C.A. § 63-27-112 (a) (2) and (9).

**Authority:** Authority: T.C.A. §§ 63-1-145, 63-1-146, 63-27-102, 63-27-104, and 63-27-112.

*T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-27-102, 63-27-104, 63-27-106, 63-27-107, 63-27-108, 63-27-111, and 63-27-112. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed June 16, 2006; effective August 30, 2006.*

**1330-1-.03 DELIVERY OF RESPIRATORY EQUIPMENT TO A PATIENT'S PLACE OF RESIDENCE.**

- (1) When respiratory equipment is delivered and installed in a patient's place of residence, the following acts constitute the practice of respiratory care because they are a part of the administration of medical gasses:
  - (a) Initial patient assessment;
  - (b) Attachment of the respiratory equipment to the patient;
  - (c) Ongoing assessment of the patient's response to the administration of the medical gas;
  - (d) Initial and ongoing instruction and education of the patient (and of the patient's family or other caregiver, where relevant) with respect to the role of the respiratory equipment in managing the patient's disease or condition; and
  - (e) Recommendation to the physician of needed modifications in the physician's order.

(Rule 1330-1-.11, continued)

provided in rule 1330-1-.12.

- (5) Reinstatement applications shall be treated as licensure applications and review decisions shall be governed by rule 1330-1-.07.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-27-104, 63-27-105, 63-27-109, and 63-27-113.

**Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003.

#### 1330-1-.12 CONTINUING EDUCATION.

- (1) Hours required.

- (a) Each therapist and assistant licensed by the Board must complete ten (10) contact hours of continuing education every calendar year. All courses must be at least thirty (30) minutes in length.

1. At least five (5) hours of the ten (10) hour requirement shall pertain to the clinical practice of respiratory care, or to education, or to research relating to the cardio-pulmonary system.
2. Up to five (5) hours of the ten (10) hour requirement may pertain to the management of practicing respiratory care or may pertain to ethics and substance abuse.

- (b) For new licensees, submitting proof of successful completion of the respiratory care program required by T.C.A. §§ 63-27-106 or 63-27-107 shall be considered proof of sufficient preparatory education to constitute continuing education contact hour requirements for the calendar year in which the program was completed.

- (2) Acceptable Continuing Education.

- (a) The following organizations' or associations' and their local and state affiliates' continuing education activities, which pertain to the practice of respiratory care, shall be considered prior approved for fulfilling the contact hour requirements of this rule:
1. All hospitals or institutions belonging to the Tennessee Hospital Association, or which are J.C.A.H.O. accredited.
  2. American Association for Respiratory Care and any of its chartered affiliates
  3. American Association of Critical Care Nurses
  4. American Association of Pediatric Physicians
  5. American Cancer Society
  6. American College of Chest Physicians
  7. American College of Emergency Physicians

(Rule 1330-1-.15, continued)

8. American College of Physicians
  9. American Heart Association
  10. American Lung Association
  11. American Medical Association
  12. American Nurses Association
  13. American Nurses Credentialing Center's Commission on Accreditation
  14. American Society of Anesthesiologists
  15. American Society of Cardiovascular Professionals
  16. American Thoracic Society
  17. Association of Certified Registered Nurse Anesthetists
  18. Committee on Accreditation for Respiratory Care
  19. Society of Critical Care Medicine
  20. Tennessee Association for Home Care
  21. Tennessee Association of Cardiovascular and Pulmonary Rehabilitation
  22. Tennessee Medical Association
- (b) In lieu of obtaining continuing education contact hours from one of the organizations listed in (a), a licensee may obtain his or her continuing education contact hours in any of the following ways:
1. By taking and passing (with a grade point average of 2.0 or its equivalent, or better) a college or university course which focuses on the clinical practice of respiratory care and/or on education, management or research relating to the cardiopulmonary system. The licensee will receive continuing education contact hours equal to three (3) times the number of hours for which the course is accredited by the college or university.
  2. By taking and passing advanced training courses (either the initial, renewal, or instructor courses) on advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or neonatal resuscitation programs (NRP). The licensee will receive ten (10) continuing education contact hours for one of these courses (unless the number of hours attended by the licensee is actually less than ten (10) hours).
  3. By taking and passing a national re-credentialing examination (either of the advanced practitioner examinations for registered respiratory therapists or the certification examination for certified respiratory therapists). The licensee will receive twelve (12) continuing education

(Rule 1330-1-.12, continued)

contact hours for passing the examination.

4. By completing a self study course, as provided in subparagraph (2) (c).
- (c) Multi-Media Formats—Continuing education activities/courses may be presented in the traditional lecture and classroom formats or in multi-media formats.
1. Multi-media courses are courses utilizing:
    - (i) The Internet
    - (ii) Closed circuit television
    - (iii) Satellite broadcasts
    - (iv) Correspondence courses
    - (v) Videotapes
    - (vi) CD-ROM
    - (vii) DVD
    - (viii) Teleconferencing
    - (ix) Videoconferencing
    - (x) Distance learning
  2. A maximum of five (5) credit hours may be granted for multi-media courses during each calendar year.
- (3) Continuing Education Program Approval Process
- (a) All entities offering education activities not granted prior approval by these rules must request and receive prior approval of their content by the Board in order to be considered valid for fulfilling any of the continuing education requirements as set forth in this act.
  - (b) Application for approval shall contain the topic, speaker credentials, a brief description of content or content objectives, the sponsoring institution or organization, the length in minutes of each presentation, and the number of credit hours requested. Activities/courses that are being offered in traditional classroom and lecture formats shall also include the date and the place of instruction.
  - (c) All applications must be submitted to the Board a minimum of forty-five (45) calendar days prior to the educational offering. The Board or Board Consultant shall review each application and shall rule on whether the offering(s) in whole or in part shall be accepted as valid for the purposes of the continuing education requirements of this act. The decision of the Board shall be final in all such matters.

(Rule 1330-1-.12, continued)

- (4) Documentation
- (a) Each individual must retain independent proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of three (3) years from the end of the renewal period in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process. Such documentation must be one (1) or more of the following:
1. Certificates verifying the individual's attendance.
  2. Official transcript verifying credit hours earned.
  3. Written documentation of training that is kept by the respiratory care practitioner and meets the following criteria:
    - (i) Written or printed on official stationery of the organization which provided the continuing education;
    - (ii) The licensee's name;
    - (iii) The total number of continuing education hours;
    - (iv) The course title;
    - (v) The date of the continuing education; and
    - (vi) The licensee's signature and license number.
  4. Certificates or letters verifying successful completion of a multi-media course.
- (b) If, after request by the Board during its verification process, a person submits documentation for training that is not clearly identifiable as appropriate continuing education, the Board will request a written description of the training and how it applies to the practice of respiratory care. If the Board determines that the training cannot be considered appropriate continuing education, the individual will be given ninety (90) days to replace the hours not allowed. Those hours will be considered replacement hours and cannot be counted during the next renewal period.
- (5) Continuing education credit will not be allowed for the following:
- (a) Regular work activities, administrative staff meetings, case staffing/reporting, etc.
  - (b) Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches.
  - (c) Independent unstructured or self-structured learning such as home study programs, except as authorized pursuant to subparagraph (2) (c).
  - (d) Training specifically related to policies and procedures of an agency (Examples-

(Rule 1330-1-.12, continued)

universal precautions, infection control, emergency or disaster preparedness, employee orientation, employee relations).

- (e) College or university course(s), except as authorized pursuant to subparagraph (2) (b).
  - (f) Provider CPR courses of any type.
- (6) Continuing Education for Reinstatement of Retired, Revoked, or Expired License.
- (a) Reinstatement of Retired License
    - 1. An individual whose license has been retired for one (1) year or less will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reinstatement. Those hours can not be counted toward future continuing education requirements.
    - 2. Any individual requesting reinstatement of a license which has been retired for more than one (1) year must submit, along with the reinstatement request, verification which indicates the attendance and completion of ten (10) contact hours of continuing education for every calendar year for which the license has been retired, although under no circumstances shall the maximum number of contact hours required be more than twenty (20) hours. The continuing education hours must have been obtained during the period of retirement with the exception of the most recent calendar year requirement, which must have been completed within the twelve (12) months preceding reinstatement.
  - (b) Reinstatement of Revoked License - Any individual requesting reinstatement of a license which has been revoked for non-compliance with the continuing education requirements of this rule must submit, along with the reinstatement request, verification which indicates the attendance and completion of ten (10) contact hours of continuing education for every calendar year for which the license has been revoked. The continuing education hours must have been obtained during the period of revocation with the exception of the most recent calendar year requirement, which must have been completed within the twelve (12) months preceding reinstatement.
  - (c) Reinstatement of Expired License – No person whose license has expired may be reinstated without submitting evidence of fulfillment of the continuing education requirements as outlined in this rule.
    - ~~1. Except for licensees who have been practicing in another state during the period of expiration, the continuing education hours documented at the time of reinstatement must equal ten (10) contact hours for every calendar year for which the license was expired, and must have been begun and successfully completed before the date of reinstatement.~~
    - 1. Except for licensees who have been practicing in another state during the period of expiration, the continuing education hours documented at the time of reinstatement must equal ten (10) contact hours for every calendar year for which the license was expired, although under no circumstances shall the maximum number of contact hours required be more than sixty (60) hours,

(Rule 1330-1-.12, continued)

and must have been successfully completed before the date of reinstatement.

2. For licensees who have been practicing in another state during the period of expiration, the continuing education hours documented at the time of reinstatement must equal ten (10) contact hours for every calendar year for which the license was expired, although under no circumstances shall the maximum number of contact hours required be more than forty (40) hours, and must have been begun and successfully completed before the date of reinstatement.
    - (d) Continuing education hours obtained as a prerequisite for reinstating a license may not be counted toward the calendar year requirement.
- (7) Violations - Any licensee who fails to successfully complete or who falsely certifies attendance and completion of the required hours of continuing education may be subject to disciplinary action.
- (a) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.
  - (b) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.
  - (c) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraphs (7) (a) and (7) (b) above may be subject to disciplinary action.
  - (d) Continuing education hours obtained as a result of compliance with the terms of a Board Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.
- (8) Waiver or Extension of Continuing Education
- (a) The Board may grant a waiver of the need to attend and complete the required hours of continuing education or the Board may grant an extension of the deadline to complete the required hours of continuing education if it can be shown that compliance was beyond the physical or mental capabilities of the person seeking the waiver.
  - (b) Waivers or extension of the deadline will be considered only on an individual basis and may be requested by submitting the following items to the Board office:
    1. A written request for a waiver or deadline extension which specifies which requirements are sought to be waived or which deadline is sought to be extended and a written and signed explanation of the reason for the request; and
    2. Any documentation which supports the reason(s) for the waiver or deadline extension requested or which is subsequently requested by the Board.

(Rule 1330-1-.12, continued)

- (c) A waiver or deadline extension approved by the Board is effective only for the renewal period for which the waiver is sought

**Authority:** T.C.A. §§ 63-27-104 and 63-27-109. T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-27-104, 63-27-105, 63-27-106, 63-27-107, 63-27-109, 63-27-112, and 63-27-116. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed March 17, 2005; effective May 31, 2005.

#### 1330-1-.13 RESERVED.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-27-101, 63-27-104, 63-27-112. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 27, 2003; effective June 10, 2003.

#### 1330-1-.14 TEMPORARY LICENSE.

- (1) Temporary licenses may be obtained by any applicant for licensure as a registered respiratory therapist or certified respiratory therapist who has done the following:
- (a) Filed with the Board office all the documentation required by rule 1330-1-.05, except proof of examination passage. A temporary license can be issued not to exceed a cumulative period of twelve (12) months.
1. An applicant for temporary license as a registered respiratory therapist shall submit proof of successful completion of a program accredited by the American Medical Association Committee on Allied Health Education and Accreditation (CAHEA) in collaboration with the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or their successor organizations
  2. An applicant for temporary license as a certified respiratory therapist shall submit proof of successful completion of academic and clinical preparation in a respiratory care program approved by the Commission on Accreditation of Allied Health Education Programs or its successor organization or other accrediting organization recognized by the Board pursuant to Rule 1330-1-.05 (2) (b) 1.  
  
“Academic and clinical preparation in a respiratory care program approved by the Commission on Accreditation of Allied Health Education Programs or its successor organization or other accrediting organization recognized by the Board” means successful completion of a program accredited by the American Medical Association Committee on Allied Health Education and Accreditation (CAHEA) in collaboration with the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or their successor organizations.
- (b) Applications for temporary licenses may be used for purposes of applying for full licensure. Those applications shall be held open for a period of one (1) year from the date of issuance while awaiting notification of the results of the NBRC examination. If notification of successful completion of the examination is not received in the Board office directly from the NBRC before the expiration of that year, the application will be considered abandoned pursuant to 1330-1-.07.

(Rule 1330-1-.15, continued)

- (2) A temporary license will always become invalid at the time a permanent license is issued.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-27-102, 63-27-104, 63-27-110, 63-27-114, and 63-27-116.  
*Administrative History:* Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003.

#### **1330-1-.15 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.**

- (1) The Board may take any disciplinary action described in paragraph (2) when a licensee has been found guilty of committing any act or offense provided in T.C.A. § 63-27-112 (a), or has violated any of the provisions of Tennessee Code Annotated, Title 63, Chapter 1 or Chapter 27 or the rules promulgated pursuant thereto.
- (2) Actions – Upon a finding by the Board that a respiratory care practitioner has violated any provision of the Respiratory Care Practitioner Act or the rules promulgated pursuant thereto, the Board may impose any of the following actions separately or in any combination deemed appropriate to the offense.
- (a) Denial of an application for licensure
- (b) Advisory Censure – This is a written action issued to the respiratory care practitioner for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
- (c) Formal reprimand – This is a written action issued to a respiratory care practitioner for one time and less severe violation(s). It is a formal disciplinary action.
- (d) Probation – This is a formal disciplinary action which places a respiratory care practitioner on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
- (e) Licensure Suspension – This is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the re-entry of the individual into the practice under the licensure previously issued.
- (f) Licensure Revocation For Cause – This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the license previously issued. The Board, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time which it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Board's revocation order.
- (g) ~~Conditions – These include any action deemed appropriate by the Board to be required of an individual applying for initial licensure or renewal or who has been disciplined during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked license.~~

(Rule 1330-1-.15, continued)

- (g) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:
    - 1. During any period of probation, suspension; or
    - 2. During any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license; or
    - 3. As a prerequisite to the lifting of probation or suspension or as a prerequisite to the reinstatement of a revoked license; or
    - 4. As a stand-alone requirement(s) in any disciplinary order.
  - (h) Civil penalty – A monetary disciplinary action assessed by the Board pursuant to paragraph (5) of this rule.
  - (i) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee or certificate holder petitions, pursuant to paragraph (3) of this rule, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.
- (3) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed or uncertified practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
- (a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:
    - 1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
    - 2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
    - 3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license or certificate previously revoked.
  - (b) Procedures
    - 1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative Office that shall contain all of the following:
      - (i) A copy of the previously issued order; and

(Rule 1330-1-.15, continued)

- (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
- (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.

2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:

- (i) Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or
- (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.

3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.

4. If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.

5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order of Compliance  
Board of Respiratory Care

Petitioner's Name: \_\_\_\_\_  
 Petitioner's Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Petitioner's E-Mail Address: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_

(Rule 1330-1-.15, continued)

Attorney for Petitioner: \_\_\_\_\_  
 Attorney’s Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attorney’s E-Mail Address: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a license or certificate previously revoked.

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board’s consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the \_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
 Petitioner’s Signature

- (4) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed or uncertified practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, *et seq.*). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.
  - (a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term “impossible” does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(Rule 1330-1-.15, continued)

(b) Procedures

1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board's Administrative Office that shall contain all of the following:
  - (i) A copy of the previously issued order; and
  - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
  - (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
  - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or
  - (ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification  
Board of Respiratory Care

(Rule 1330-1-.15, continued)

Petitioner's Name: \_\_\_\_\_  
Petitioner's Mailing Address: \_\_\_\_\_

Petitioner's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

Attorney for Petitioner: \_\_\_\_\_  
Attorney's Mailing Address: \_\_\_\_\_

Attorney's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the \_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Petitioner's Signature

(5) Civil Penalties - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.

(a) Schedule of Civil Penalties

1. A Type A civil penalty may be imposed whenever the Board finds the person who is required to be licensed by the Board is guilty of a willful and knowing violation of the Respiratory Care Practitioner Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an imminent substantial threat to the health, safety and welfare of an individual client or the public. For purposes of this section, a type A penalty shall include, but not be limited to, a person who willfully and knowingly is or was practicing as a respiratory care practitioner without a license from the Board.

(Rule 1330-1-.15, continued)

2. A Type B civil penalty may be imposed whenever the Board finds the person required to be licensed by the Board is guilty of a violation of the Respiratory Care Practitioner Act or regulations promulgated pursuant thereto in such manner as to impact directly on the care of clients or the public.
3. A Type C civil penalty may be imposed whenever the Board finds the person required to be licensed, permitted, or authorized by the Board is guilty of a violation of the Respiratory Care Practitioner Act or regulations promulgated pursuant thereto, which are neither directly detrimental to the clients or public, nor directly impact their care, but have only an indirect relationship to client care or the public.

(b) Amount of Civil Penalties

1. Type A civil penalties shall be assessed in the amount of not less than \$500 and not more than \$1,000.
2. Type B civil penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. Type C civil penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(c) Procedures for Assessing Civil Penalties

1. The Division may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
2. Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition, the Board may, upon good cause shown, assess type and amount of civil penalty which was not recommended by the Division.
3. In assessing the civil penalties pursuant to these rules the Board may consider the following factors:
  - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
  - (ii) The circumstances leading to the violation;
  - (iii) The severity of the violation and the risk of harm to the public;
  - (iv) The economic benefits gained by the violator as a result of non-compliance; and
  - (v) The interest of the public.

(Rule 1330-1-.15, continued)

4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

**Authority:** T.C.A. §§ 4-5-105, 4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-1-134, 63-27-104, 63-27-111, and 63-27-112. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed February 13, 2002; effective April 29, 2002. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed August 9, 2004; effective October 23, 2004.

#### **1330-1-.16 LICENSE.**

- (1) Issuance - Upon the Board determining that an applicant has successfully met all statutory and regulatory requirements, the Board shall direct the Division to issue the applicant a license in the classification for which he is qualified to practice.
- (2) Display of License - Every person licensed by the Board shall have on file a copy of his license in his office and, whenever required, exhibit such license to the Board or its authorized representatives.
- (3) Replacement License, or Renewal Document- A person's whose license, certificate, or renewal document has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Board office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the required fee pursuant to rule 1330-1-.06. The damaged license, if available, must accompany the affidavit.
- (4) Verification of License - Requests for verification or endorsement of a license must be made in writing to the Board office and accompanied by the fee required by rule 1330-1-.06.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-109, 63-1-106, and 63-27-104. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000.

**1330-1-.17 CHANGE OF NAME AND/OR ADDRESS.** The name and address contained in the applicant's license application shall be the name and address of the licensee where all correspondence and renewal forms from the Board shall be sent.

- (1) Change of Name - An individual licensed by the Board shall notify the Board in writing within thirty (30) days of a name change and will provide both the old and new names. A request for name change must also include a copy of the official document involved and reference the individual's profession, board, social security and license numbers.
- (2) Change of Address - Each person holding a license who has had a change of address or place of employment, shall file in writing with the Board his current address, giving both old and new addresses. Such requests shall be received in the Board office no later than thirty (30) days after such change is effective and must reference the individual's name, profession, board, social security and license numbers.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-108, 63-27-104, 63-27-105, and 63-27-106. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 27, 2003; effective June 10, 2003.

**1330-1-.18 MANDATORY RELEASE OF PATIENT RECORDS.** Patient records release shall be governed by Tennessee Code Annotated, Title 63, Chapter 2.

(Rule 1330-1-.15, continued)

4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

**Authority:** T.C.A. §§ 63-27-104, 63-27-105(c)(2), and 63-27-112 T.C.A. §§ 4-5-105, 4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-1-134, 63-27-104, 63-27-111, and 63-27-112. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed February 13, 2002; effective April 29, 2002. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed August 9, 2004; effective October 23, 2004.

#### 1330-1-.16 LICENSE.

- (1) Issuance - Upon the Board determining that an applicant has successfully met all statutory and regulatory requirements, the Board shall direct the Division to issue the applicant a license in the classification for which he is qualified to practice.
- (2) Display of License - Every person licensed by the Board shall have on file a copy of his license in his office and, whenever required, exhibit such license to the Board or its authorized representatives.
- (3) Replacement License, or Renewal Document- A person's whose license, certificate, or renewal document has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Board office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the required fee pursuant to rule 1330-1-.06. The damaged license, if available, must accompany the affidavit.
- (4) Verification of License - Requests for verification or endorsement of a license must be made in writing to the Board office and accompanied by the fee required by rule 1330-1-.06.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-109, 63-1-106, and 63-27-104. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000.

**1330-1-.17 CHANGE OF NAME AND/OR ADDRESS.** The name and address contained in the applicant's license application shall be the name and address of the licensee where all correspondence and renewal forms from the Board shall be sent.

- (1) Change of Name - An individual licensed by the Board shall notify the Board in writing within thirty (30) days of a name change and will provide both the old and new names. A request for name change must also include a copy of the official document involved and reference the individual's profession, board, social security and license numbers.
- (2) Change of Address - Each person holding a license who has had a change of address or place of employment, shall file in writing with the Board his current address, giving both old and new addresses. Such requests shall be received in the Board office no later than thirty (30) days after such change is effective and must reference the individual's name, profession, board, social security and license numbers.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-108, 63-27-104, 63-27-105, and 63-27-106. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 27, 2003; effective June 10, 2003.

**1330-1-.18 MANDATORY RELEASE OF PATIENT RECORDS.** Patient records release shall be

(Rule 1330-1-.18, continued)

governed by Tennessee Code Annotated, Title 63, Chapter 2.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-27-104, 63-2-101, and 63-2-102. *Administrative History:* Original rule filed January 31, 2000; effective April 15, 2000.

**1330-1-.19 BOARD OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, ADVISORY RULINGS, SUBPOENAS AND SCREENING PANELS.**

- (1) The Board, shall elect annually from its members the following officers:
  - (a) Chairman - who shall preside at all Board meetings, and appoint committees.
  - (b) Secretary - who in the absence of the chairperson shall preside at Board meetings and who, along with the Board's Unit Director, shall be responsible for correspondence from the Board and execution of all official documents requiring the seal of the Board to be affixed.
- ~~(2) The Board shall select a Board consultant who, along with each individual member of the Board, may serve as a consultant(s) to the Division and who is/are vested with the authority to do the following acts:~~
- (2) The Board shall select consultants who, along with each individual member of the Board, may serve as consultants to the Division and who are vested with the authority to do the following acts:
  - (a) Review complaints and recommend whether and what type disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.
  - (b) Recommend whether and what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently reviewed, evaluated and ratified by the full Board before it becomes effective.
  - (c) Review and approve all types of applications for issuance of a temporary authorization pursuant T.C.A. § 63-27-116 (d), subject to subsequent ratification by the Board before full licensure, renewal or reinstatement can issue.
  - (d) Undertake any other matter authorized by a majority vote of the Board.
- (3) Records and Complaints
  - (a) All requests, applications, notices, other communications and correspondence shall be directed to the Board office. Any requests or inquiries requiring a Board decision or official Board action, except documents relating to disciplinary actions or hearing requests, must be received fourteen (14) days prior to a scheduled Board meeting. Requests or inquiries not timely received will be retained in the Board office and presented at the next Board meeting.
  - (b) All records of the Board, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Board office during normal business hours.
  - (c) Copies of public records shall be provided to any person upon payment of a fee.

(Rule 1330-1-.19, continued)

- (d) All complaints should be directed to the Division’s Investigations Section.
- (4) Declaratory Orders - The Board adopts, as if fully set out herein, rule 1200-10-1-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board’s administrative office.
- (5) Advisory Rulings - Any person who is affected by any matter within the jurisdiction of the Board and who holds a license issued pursuant to Chapter 27 of Title 63 of the Tennessee Code Annotated, may submit a written request for an advisory ruling subject to the limitations imposed by T.C.A. § 63-27-104 (b). The procedures for obtaining and issuance of advisory rulings are as follows:
  - (a) The licensee shall submit the request to the Board Administrative Office on the form contained in subparagraph (5)(e) providing all the necessary information; and
  - (b) The request, upon receipt, shall be referred to the Board's administrative staff for research, review and submission of a proposed ruling to the Board for its consideration at the next meeting after the draft ruling has been approved by the Board's consultant and advisory attorney; and
  - (c) The Board shall review the proposed ruling and either make whatever revisions or substitutions it deems necessary for issuance or refer it back to the administrative staff for further research and drafting recommended by the Board; and
  - (d) Upon adoption by the Board the ruling shall be transmitted to the requesting licensee. The ruling shall have only such affect as is set forth in T.C.A. § 63-27-104 (b).
  - (e) Any request for an advisory ruling shall be made on the following form, a copy of which may be obtained from the Board's Administrative Office:

Board of Respiratory Care  
Request for Advisory Ruling

Date: \_\_\_\_\_  
 Licensee's Name: \_\_\_\_\_  
 Licensee's Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 License Number: \_\_\_\_\_

1. The specific question or issue for which the ruling is requested:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
2. The facts that gave rise to the specific question or issue:

(Rule 1330-1-.19, continued)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The specific statutes and/or rules which are applicable to the question or issue:

\_\_\_\_\_  
\_\_\_\_\_

Licensee's Signature \_\_\_\_\_

Mail or Deliver to: Unit Director  
Tennessee Board of Respiratory Care  
227 French Landing, Suite 300  
Heritage Place, MetroCenter  
Nashville, TN 37243

(6) Subpoenas

(a) Purpose - Although this rule applies to persons and entities other than respiratory care practitioners, it is the Board's intent as to respiratory care practitioners that they be free to comprehensively treat and document treatment of their patients without fear that the treatment or its documentation will be unduly subjected to scrutiny outside the profession. Consequently, balancing that intent against the interest of the public and patients to be protected against substandard care and activities requires that persons seeking to subpoena such information and/or materials must comply with the substance and procedures of these rules.

It is the intent of the Board that the subpoena power outlined herein shall be strictly construed. Such power shall not be used by the Division or Board investigators to seek other incriminating evidence against respiratory care practitioners when the Division or Board does not have a complaint or basis to pursue such an investigation. Thus, unless the Division or its investigators have previously considered, discovered, or otherwise received a complaint from either the public or a governmental entity, no subpoena as contemplated herein shall issue.

(b) Definitions - As used in this chapter of rules the following words shall have the meanings ascribed to them:

1. Probable Cause

(i) For Investigative Subpoenas - Shall mean that probable cause, as defined by case law at the time of request for subpoena issuance is made, exists that a violation of the Respiratory Care Practitioner Act or rules promulgated pursuant thereto has occurred or is occurring and that it is more probable than not that the person(s), or item(s) to be subpoenaed possess or contain evidence which is more probable than not relevant to the conduct constituting the violation.

(ii) The utilization of the probable cause evidentiary burden in proceedings pursuant to this rule shall not in any way, nor

(Rule 1330-1-.19, continued)

should it be construed in any way to establish a more restrictive burden of proof than the existing preponderance of the evidence in any civil disciplinary action which may involve the person(s) or items that are the subject of the subpoena.

2. Presiding Officer - For investigative subpoenas shall mean the Board chair.

(c) Procedures

1. Investigative Subpoenas

- (i) Investigative Subpoenas are available only for issuance to the authorized representatives of the Tennessee Department of Health, its investigators and its legal staff.

- (ii) An applicant for such a subpoena must either orally or in writing notify the Board's Unit Director of the intention to seek issuance of a subpoena. That notification must include the following:

- (I) The time frame in which issuance is required so the matter can be timely scheduled; and

- (II) A particular description of the material or documents sought, which must relate directly to an ongoing investigation or contested case, and shall, in the instance of documentary materials, be limited to the records of the patient or patients whose complaint, complaints, or records are being considered by the Division or Board, although in no event shall such subpoena be broadly drafted to provide investigative access to medical records of other patients who are not referenced in a complaint received from an individual or governmental entity, or who have not otherwise sought relief, review, or Board consideration of a respiratory care practitioner's conduct, act, or omission; and

- (III) Whether the proceedings for the issuance is to be conducted by physical appearance or electronic means; and

- (IV) The name and address of the person for whom the subpoena is being sought or who has possession of the item(s) being subpoenaed.

- (iii) The Board's Unit Director shall cause to have the following done:

- (I) In as timely a manner as possible arrange for the Board chair to preside and determine if the subpoena should be issued; and

(Rule 1330-1-.19, continued)

- (II) Establish a date, time and place for the proceedings to be conducted and notify the applicant and the court reporter; and
- (III) Maintain a complete record of the proceedings including an audio tape in such a manner as to:
  - I. Preserve a verbatim record of the proceeding; and
  - II. Prevent the presiding officer from being allowed to participate in any manner in any disciplinary action of any kind, formal or informal, which may result which involves either the person or the documents or records for which the subpoena was issued.
- (iv) The Proceedings
  - (I) The applicant shall do the following:
    - I. Provide for the attendance of all persons whose testimony is to be relied upon to establish probable cause; and
    - II. Produce and make part of the record copies of all documents to be utilized to establish probable cause; and
    - III. Obtain, complete and provide to the presiding officer a subpoena which specifies the following:
      - A. The name and address of the person for whom the subpoena is being sought or who has possession of the item(s) being subpoenaed; and
      - B. The location of the materials, documents or reports for which production pursuant to the subpoena is sought, if that location is known; and
      - C. A brief, particular description of any materials, documents or items to be produced pursuant to the subpoena; and
      - D. The date, time and place for compliance with the subpoena.
    - IV. Provide the presiding officer testimony and/or documentary evidence which in good

(Rule 1330-1-.19, continued)

faith the applicant believes is sufficient to establish that probable cause exists for issuance of the subpoena as well as sufficient proof that all other reasonably available alternative means of securing the materials, documents or items have been unsuccessful.

- (II) The presiding officer shall do the following:
- I. Commence the proceedings and swear all necessary witnesses; and
  - II. Hear and maintain the confidentiality of the evidence, if any, presented at the proceedings; and
  - III. Control the manner and extent of inquiry during the proceedings and be allowed to question any witness who testifies; and
  - IV. Determine, based solely on the evidence presented in the proceedings, whether probable cause exists and, if so, issue the subpoena for the person(s) or items specifically found to be relevant to the inquiry; and
  - V. Sign the subpoena as ordered to be issued; and
  - VI. Not participate in any way in any other proceeding whether formal or informal which involves the matters, items or person(s) which are the subject of the subpoena. This does not preclude the presiding officer from presiding at further proceedings for issuance of subpoenas in the matter.

2. Post-Notice of Charges Subpoenas - If the subpoena is sought for a contested case being heard with an Administrative Law Judge from the Secretary of State's office presiding, the procedure in part 1330-1-.19 (6) (c) 1. shall not apply and all such post-notice of charges subpoenas should be obtained from the office of the Administrative Procedures Division of the Office of the Secretary of State pursuant to the Uniform Administrative Procedures Act and rules promulgated pursuant thereto.

(d) Subpoena Forms

1. All subpoena shall be issued on forms approved by the Board chair.
2. The subpoena forms may be obtained by contacting the Board's Administrative Office.

(Rule 1330-1-.19, continued)

- (e) Subpoena Service - Any method of service of subpoenas authorized by the Tennessee Rules of Civil Procedure or the rules of the Tennessee Department of State, Administrative Procedures Division may be utilized to serve subpoenas pursuant to this rule.
- (7) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.
- (8) Reconsiderations and Stays - The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

**Authority:** T.C.A. §§ 63-1-115, 63-1-132, 63-1-142, 63-27-103, and 63-27-104, T.C.A. §§ 4-5-202, 4-5-204, 4-5-223, 8-44-101, *et seq.*, 63-1-117, 63-1-124, 63-1-138, 63-27-103, 63-27-104, and 63-27-112. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed March 16, 2007; effective May 30, 2007.

**1330-1-.20 ADVERTISING.** The following acts or omissions in the context of advertisements by any licensee shall subject the licensee to disciplinary action pursuant to T.C.A. § 63-27-112.

- (1) Claims that convey the message that one licensee is better than another when superiority cannot be substantiated.
- (2) Misleading use of an unearned or non-health degree.
- (3) Misrepresentation of a licensee's credentials, training, experience, or ability.
- (4) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
- (5) Use of any personal testimonial attesting to a quality of competency offered by a licensee that is not reasonably verifiable.
- (6) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (7) Communication of personal identifiable facts, data, or information about a patient without first obtaining the patient's consent.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-27-104, and 63-27-112. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed June 16, 2006; effective August 30, 2006.

**1330-1-.21 UPGRADING CLASSIFICATION REQUIREMENTS.**

- (1) A respiratory assistant may upgrade to certified respiratory therapist by doing the following: