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Sequence Number: 07-10-12
 Rule ID(s): 5252
 File Date: 7/13/12
 Effective Date: 10/11/12

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Board of Respiratory Care
Division:	
Contact Person:	Mary Katherine Bratton, Assistant General Counsel
Address:	Office of General Counsel 220 Athens Way, Suite 210 Nashville, Tennessee
Zip:	37243
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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 to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1330-01	General Rules and Regulations Governing Respiratory Care Practitioners
Rule Number	Rule Title
1330-01-06	Fees

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rule 1330-01-.06 Fees is amended by deleting the monetary figure in subparagraph (3)(d) and substituting the following language, so that as amended, the new subparagraph (3)(d) shall read:

(3)	Fee Schedule:	Amount
(d)	Renewal (biennial) Fee	120.00

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 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				
Ray Davis	X				
Gene Gantt	X				
Jeffrey McCartney, MD				X	
Teresa Hathcher	X				
Delmar Mack, Ed.D	X				
Roger Major				X	
Vacant					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Respiratory Care Board on 05/31/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/09/12

Rulemaking Hearing(s) Conducted on: (add more dates). 05/31/12

Date: 6/19/12

Signature: Mary Katherine Bratton

Name of Officer: Mary Katherine Bratton

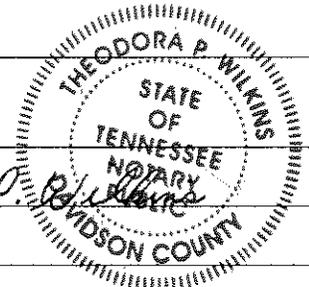
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 6/19/12

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/3/15



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.

Robert E. Cooper, Jr.
Attorney General and Reporter

7-6-12
Date

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Effective on: 10/11/12

Tre Hargett
Tre Hargett
Secretary of State

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.

Respiratory Care Board

May 24, 2012

Public Comments

There was one comment made by David Johnson on behalf of the Tennessee Society for Respiratory Care. Mr. Johnson stated that the Tennessee Society for Respiratory Care was very much in favor of this rule change.

The Board thanked Mr. Johnson for his comments.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 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

(1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Respiratory Therapists and businesses that employ respiratory therapists such as hospitals may benefit from the proposed rule amendment.

(2) Identification and estimate of the number of small businesses subject to the proposed rule:

The proposed rule changes would affect all Respiratory Therapists. There are currently Four Thousand, Four Hundred (4,400) active licensees. The proposed rule change may also affect businesses that employ respiratory therapists such as hospitals.

(3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The proposed amendments that have economic impact on small businesses have no increased or new reporting, recordkeeping, or other administrative costs that are required for compliance.

(4) Statement of the probable effect on impacted small businesses and consumers:

The decrease in the renewal fee for Respiratory Therapists will directly benefit all Respiratory Therapists and thereby any that are sole proprietors of their own business as well as any programs or hospitals that may pay any portion of renewal fees.

(5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

These rule amendments are not burdensome, intrusive, or costly. On the contrary, these rule amendments will have a positive impact on business.

(6) Comparison of the proposed rule with any federal or state counterparts:

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

State: The Board is not aware of any State counterparts.

(7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

The rule change does not provide for any exemptions.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. **Name of Board, Committee or Council:** Tennessee Board of Respiratory Care
2. **Rulemaking hearing date:** May 24, 2012
3. **Type or types of small businesses that will be directly affected by the proposed rules:**
Respiratory Therapists and those that employ them, such as hospitals, will be affected.
4. **Types of small businesses that will bear the cost of the proposed rules:**
The Board does not anticipate that there will be costs to small businesses.
5. **Types of small businesses that will directly benefit from the proposed rules:**
Self-employed Respiratory Therapists and businesses that employ them will be benefitted.
6. **Description of how small business will be adversely impacted by the proposed rules:**
The Board does not anticipate that there will be adverse impacts to small businesses.
7. **Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:**
These rule amendments are not burdensome, intrusive, or costly. On the contrary, these rule amendments will have a positive impact on business.
8. **Comparison of the proposed rule with any federal or state counterparts:**
 - (a) **Federal:** The Board is not aware of any federal counterparts.
 - (b) **State:** The Board is not aware of any state counterparts.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule amendment is not expected to have any impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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;

This rule change decreases the biennial renewal fee for certified and registered respiratory therapists.

- (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;

Tennessee Code Annotated 63-27-105(c)(1) mandates that the Board of Respiratory Care has the authority to, and shall, set the biennial fee. The rule states that each respiratory care practitioner licensed pursuant to this chapter shall biennially apply to the board for renewal of the license and shall pay a renewal fee set by the board.

- (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;

Respiratory Care practitioners will be affected by this rule as they will have to pay lower renewal fees. The Tennessee Society for Respiratory Care commented at the Rulemaking Hearing that it is in favor of this rule change.

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

The Board is not aware of any such opinions and/or rulings.

- (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;

The Board of Respiratory Care has approximately forty-six hundred (4,600) licensees. The decrease in the fee is thirty dollars (\$30.00), and the fee is paid biennially. The Board's revenue will decrease approximately sixty-nine thousand dollars (\$69,000.00) annually. The Board's surplus is currently over two hundred thousand dollars (\$200,000.00).

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

Mary Katherine Bratton, Department of Health, Assistant General Counsel, Attorney for the Board.

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

Mary Katherine Bratton, Department of Health, Assistant General Counsel, Attorney for the Board.

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

220 Athens Way, Plaza One, Suite 220, Nashville, Tennessee 37243; (615) 741-1611; Mary.Bratton@tn.gov

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

(Rule 1330-01-.05, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, 63-27-102, 63-27-104, 63-27-105, 63-27-106, 63-27-107, 63-27-108, 63-27-112, 63-27-113, 63-27-115, 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. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed March 14, 2006; effective May 28, 2006.

1330-01-.06 FEES.

- (1) The fees are as follows:
 - (a) Total Application fee - A fee to be paid by all applicants seeking initial licensure, including those seeking licensure by reciprocity. This fee consists of the Application Fee and License Fee. In cases where an applicant is denied licensure or the application file is closed due to abandonment, only the portion representing the License Fee will be refundable.
 - (b) Endorsement/Verification fee - A non-refundable fee to be paid for each certification, endorsement or verification of an individual's record for any purpose.
 - (c) Late Renewal fee - A Division established non-refundable fee to be paid when an individual fails to timely renew a license.
 - (d) License Renewal fee - A non-refundable fee to be paid by all licensees. This fee also applies to individuals who reinstate a retired or lapsed license.
 - (e) Replacement license fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed "initial" license.
 - (f) State Regulatory fee - A non-refundable fee to be paid by all individuals with all applications.
 - (g) Upgrade fee - A non-refundable fee to be paid by a respiratory assistant or a certified respiratory therapist when seeking to upgrade his/her authorization to practice respiratory care as provided in rule 1330-01-.21.
- (2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Board of Respiratory Care.

(3) Fee Schedule:	Amount
(a) Total Application Fee	
1. Application Fee	\$120.00
2. License Fee	<u>80.00</u>
Total Application Fee	\$200.00
(b) Endorsement/Verification	15.00
(c) Late Renewal Fee	50.00

(Rule 1330-01-.06, continued)

(d) Renewal (biennial) Fee	150.00
(d) Renewal (biennial) Fee	120.00
(e) Replacement License	25.00
(f) State Regulatory (biennial)	10.00
(g) Upgrade Fee	20.00
(h) License Fee	80.00

- (4) The total application fee must be paid at the time of application.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, and 63-27-104. **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 December 5, 2003; effective February 18, 2004. Amendment filed July 18, 2007; effective October 1, 2007.

1330-01-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

- (1) Application files are not considered completed until all information, including fees, have been received by the Division. Preliminary review of all applications to determine whether or not the application file is complete may be delegated to the Board's Unit Director.
- (2) Completed applications may be approved by a Board member, by the Board consultant, or by the Board designee for a temporary authorization pursuant to T.C.A. §§ 63-1-142 and 63-27-116.
- (3) If an application is incomplete when received in the Board office, and all other reasonable efforts to correct any deficiency have failed, a deficiency letter will be sent by certified mail to the applicant notifying him of the deficiency. This letter shall request specified additional material necessary to complete the application. The requested information must be received in the Board office on or before the sixtieth (60th) day after receipt of the notification.
 - (a) Such notification shall be sent certified mail return receipt requested from the Board office.
 - (b) If the requested information is not timely received, the application file shall be deemed abandoned and closed and the applicant notified. No further action will take place until a new application is received pursuant to the rules governing the application process, including another payment of all fees.
- (4) If a completed application has been denied by the Board the action shall become final and the following shall occur:
 - (a) A notification of the denial shall be sent by the Board office by certified mail, return receipt requested. Specific reasons for denial will be stated, such as incomplete or unofficial records, examination failure, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or administrative authorities for the denial.
 - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures