

STATE OF WEST VIRGINIA
BOARD OF RESPIRATORY CARE



2021 EDITION
LAWS AND REGULATIONS
FOR
RESPIRATORY CARE PRACTITIONERS

WEST VIRGINIA BOARD OF RESPIRATORY CARE
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**ENROLLED
COMMITTEE SUBSTITUTE**

FOR

H. B. 2348

(By Mr. Speaker, Mr. Chambers, and Delegates Gallagher,
Leach, Compton, Kiss, Calvert and Sprouse)

(Passed March 10, 1995 - in effect ninety days from passage)

An act to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-four, relating to creating a self-supporting state board for respiratory care practitioners; requiring a license to practice; defining the scope of practice and related terms; specifying board composition, powers, responsibilities and operating procedures; establishing criteria and fees for issuing, renewing and reinstating full and limited licenses and temporary permits; creating misdemeanor penalties for non-licensure and other acts; exempting certain categories from licensure; providing a grandfather clause; setting standards for disciplinary action, license revocation and suspension and due process; and delineating exceptions.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended be amended by adding thereto a new article, designated article thirty-four, to read as follows:

ARTICLE 34 - BOARD OF RESPIRATORY CARE PRACTITIONERS

§30-34-1. License required to practice.

In order to protect the life, health and safety of the public, any person practicing or offering to practice as a respiratory care technician or respiratory therapist is required to submit evidence that he or she is qualified to practice and is licensed as provided in this article. It is unlawful for any person not licensed under the provisions of this article to practice as a respiratory therapist in this state, to deliver any portion of the description of services or scope of practice, or to use any title, sign, card or device to indicate that he or she is a respiratory therapist. The provisions of this article are not intended to limit, preclude or otherwise interfere with the practice of other health care providers including those health care providers working in any setting and licensed by appropriate agencies or boards of the state of West Virginia whose practices and training may include elements of the same nature as the practice of a licensed, certified or registered respiratory therapist.

§30-34-2. Definitions.

- a) "Board" means the West Virginia board for respiratory care;
- b) "Formal training" means a supervised, structured educational activity that includes preclinical didactic and laboratory activities and clinical activities. The training must be approved by an accrediting agency recognized by the board. It must include an evaluation of competence through standardized testing mechanisms that the board determines to be both valid and reliable;
- c) "Graduate respiratory care technician" means an individual who has graduated from a respiratory care technician education program and who is scheduled to take the next available examination administered by the state or a national organization approved by the board;
- d) "Practice of respiratory care" means the practice of respiratory care, and any part of respiratory care, by persons licensed under the provisions of this article and shall be limited to that which has been learned through formal or special training including performance evaluation to evaluate competence. The practice of respiratory care may be performed in any clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate or necessary by the board in accordance with the prescription or verbal orders of a licensed physician or other legally authorized person with prescriptive authority, or under the direction of a qualified medical director.
Practice of respiratory care includes, but is not limited to:
 - 1) The administration of pharmacological, diagnostic therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician;
 - 2) Transcription and implementation of written or verbal orders of a physician or other legally authorized person with prescriptive authority, pertaining to the practice of respiratory care;
 - 3) Observing and monitoring signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics;
 - 4) Based on observed abnormalities, appropriate reporting, referral or implementation of respiratory care protocols or changes in treatment pursuant to the written or verbal orders of a person with prescriptive authority under the laws of the state of West Virginia; or
 - 5) The initiation of emergency procedures under the regulations of the board or as otherwise permitted in this article;
- e) "Qualified medical director" means the medical director of any inpatient or outpatient respiratory care service, department or home care agency. The medical director shall be a licensed physician who is knowledgeable in the diagnosis and treatment of respiratory problems. This physician shall be responsible for the quality, safety and appropriateness of the respiratory services provided and require that respiratory care be ordered by a physician or other legally authorized person with prescriptive authority, who has medical responsibility for the patient. The medical director shall be readily accessible to the respiratory care practitioners and assure their competency;
- f) "Respiratory care" means the allied health profession responsible for the direct and indirect services in the treatment, management, diagnostic testing and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system, under a qualified medical director. Respiratory care includes inhalation therapy and respiratory therapy;
- g) "Respiratory care education program" means a course of study leading to eligibility for registry or

- certification in respiratory care and the program is approved by the board;
- h) "Respiratory Therapist" means an individual who has successfully completed an accredited training program, and who has successfully completed an examination for respiratory therapists administered by the state or a national organization approved by the board and who is licensed by the board as a licensed respiratory therapist;
 - i) "Student Respiratory Care Therapist" means an individual enrolled in a respiratory educational program and whose sponsoring educational institution assumes responsibility for the supervision of, and the services rendered by, the student respiratory care practitioner while he or she is functioning in a clinical training capacity.

§30-34-3. Board of respiratory care.

- a) There is hereby created the West Virginia board of respiratory care. The board shall consist of seven members, appointed by the governor with the advice and consent of the senate and shall consist of one lay citizen member; one practicing physician member currently licensed in West Virginia with board certification, clinical training and experience in the management of pulmonary disease; and five members, licensed under the provisions of this article and engaged in the practice of respiratory care for the five years immediately preceding their appointment. One of the respiratory practitioners appointed shall be employed full time in home respiratory care by a home medical equipment supplier. All appointees shall be citizens of the United States and residents of this state. The West Virginia society for respiratory care or its successor organization shall make recommendations to the governor regarding individuals to be considered for initial and subsequent appointments.
- b) The members of the board shall each serve terms that commence on the first day of July, one thousand nine hundred ninety-five. Of the initial appointments to the board, one physician and one respiratory care practitioner shall serve for two year terms, one public member and two respiratory care practitioners shall serve for three year terms, and two respiratory care practitioners shall serve for four year terms. Thereafter, each appointment shall be for a four year term commencing upon the expiration of the term of his or her previous term or of his or her predecessor's term. No member may be appointed for more than three consecutive terms. Vacancies shall be appointed in a like manner for the balance of an unexpired term.
- c) The West Virginia Medical Association or other organizations if requested by the governor, may submit the names of three physicians qualified to serve in that designated position on the board.
- d) The governor may remove any member from the board for neglect of any duty required by law or for incompetence or unethical or dishonorable conduct.

§30-34-4. Organization and meetings of board; quorum; expenses.

- (a) The board shall meet at least twice a year and elect annually a chairperson and a vice chairperson from its members. The board may hold other meetings during the year as the chairperson or board deem necessary to transact its business.
- (b) A majority, including one officer, constitutes a quorum at any meeting, but a majority of the board is required to take action by vote. The board members shall receive travel and other necessary expenses actually incurred while engaged in board activities up to a maximum of two hundred dollars per board meeting. All reimbursement of expenses shall be paid out of the board of respiratory care fund created by the provisions of this article.

§30-34-5. Board responsibilities.

The board shall:

- (a) Provide public notice to all state hospitals and to all persons currently practicing as respiratory care practitioners that a license shall be required to continue practicing as a respiratory care technician or respiratory therapist, after the thirtieth day of June, one thousand nine hundred ninety-six;
- (b) Examine, license and renew the licenses of duly qualified applicants;
- (c) Maintain a current registry of persons licensed to practice respiratory care under this article which shall contain information on the licensee's place of employment, address, license number and the date of licensure;
- (d) Cause the prosecution of all persons violating this article, incurring any expenses necessary;

- (e) Keep a record of all proceedings of the board and make it available to the public for inspection during reasonable business hours;
- (f) Conduct hearings on charges that subject a licensee to disciplinary action and on the denial, revocation or suspension of a license;
- (g) Maintain an information registry of persons whose licenses have been suspended, revoked or denied. The information shall include the individual's name, social security number, type and cause of action, date of board action, type of penalty incurred and the length of penalty. This information shall be available for public inspection during reasonable business hours and supplied to similar boards in other states upon request;
- (h) Establish rules pursuant to the provisions of chapter twenty-nine-a of this code regarding re-licensure and continuing education requirements. Continuing education requirements shall be established pursuant to a recognized continuing respiratory care education program such as, but not limited to, the program established by the American Association for Respiratory Care;
- (i) Maintain continuing education records; and
- (j) Approve the training, continuing education, and competency evaluation methods for respiratory care practitioners to perform entry level and advanced procedures the art and techniques of respiratory care.

§30-34-6. Powers of the board; fund.

- (a) The board may:
 - 1) Adopt rules pursuant to article three, chapter twenty-nine-a of the code, as may be necessary to enable it to effect the provisions of this article;
 - 2) Employ such personnel as necessary to perform the functions of the board, including an administrative secretary, and pay all personnel from the board of respiratory care fund;
 - 3) Establish re-licensure requirements, rules of probation for licensees, and other procedures as deemed appropriate;
 - 4) Secure the services of resource consultants, as deemed necessary by the board, who shall receive travel and other necessary expenses, consistent with state laws and policies, while engaged in consultative service to the board and who shall be reimbursed exclusively from the board of respiratory care fund;
 - 5) Fix appropriate and reasonable fees for mandatory licensure, which shall be no greater than two hundred dollars for initial licensure or one hundred fifty dollars for annual license renewal. All fees shall be reviewed periodically and modified, as necessary.
 - 6) The board shall designate one person to accept and deposit moneys paid to the board. The money so collected shall be deposited with the treasurer of the state and credited to an account to be known as the "board of respiratory care fund." Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. No part of the state's general revenue fund shall be expended to carry out the purposes of this article.
 - 7) The board may contract with other state boards or state agencies to share offices, personnel and other administrative functions as authorized under this article.

§30-34-6a. Rulemaking authority.

- (a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:
 - (1) Standards and requirements for licensure and permits to practice respiratory care;
 - (2) Procedures for examination and reexamination;
 - (3) Educational and experience requirements;
 - (4) Standards for approval of courses;
 - (5) Procedures for the issuance and renewal of licenses and temporary permits;
 - (6) Procedures which may be delegated to a student practicing under a temporary student permit;

- (7) A fee schedule;
- (8) Continuing education requirements for licensees;
- (9) The procedure for denying, suspending, revoking, reinstating or limiting the practice of a licensee or permittee;
- (10) Requirements for inactive or revoked licensees or temporary permits; and
- (11) Any other rules necessary to effectuate the provisions of this article.

(b) All rules in effect on the effective date of this section remain in effect until they are amended, repealed or replaced.

§30-34-7. Issuance of license, renewal of license, renewal fee, display of license

- (a) When the board finds that an applicant meets all of the requirements of this article for a license to engage in the practice of respiratory care, it shall forthwith issue to that person a license, otherwise, the board shall deny the application. The application is to be submitted with a license fee of two hundred dollars. If any application is rejected, the board shall return the fee less any actual costs incurred in processing the application.
- (b) Every licensee shall renew his or her license on or before the first day of January of each year by payment of a fee established by the board which shall be no greater than one hundred fifty dollars. Any license that is not so renewed shall automatically lapse. A license which has lapsed may be renewed within five years of its expiration date by meeting the requirements set forth by the board and payment of a fee equal to that established for the initial license. After the expiration of such five-year period, a license may be renewed only by complying with the provisions relating to the issuance of an original license.
- (c) A person currently licensed to practice pursuant to this article may apply for an inactive status by providing written notice to the board and ceasing to engage in the practice of respiratory care in this state: *Provided*, That the inactive status is granted for no longer than five years. The board shall maintain a list of licensees on inactive status. Any person granted inactive status is not subject to the payment of any fees otherwise required by the board. Prior to engaging in the practice of respiratory care, the person shall submit to the board an application for the renewal of the license and payment of a renewal fee for the current year.
- (d) The board may deny any application for renewal of a license for any reason which would justify the denial of an original application for a license as specified by provisions of this article.
- (e) The board shall prescribe the form of licenses.

§30-34-8 Criteria for licensure

- a) Upon payment of the proper fees, an applicant for a license to practice respiratory care shall submit to the board written evidence, verified by oath, that the applicant:
 - 1) Has completed an approved respiratory care educational program; and
 - 2) Passed a certification or registration examination, except where otherwise provided in this article. This examination may be administered by the state or by a national agency approved by the board. The board shall set the passing score for the examination.
- b) The board may also issue a license to practice respiratory care by endorsement to an applicant who is currently licensed to practice respiratory care under the laws of another state, territory or country if the qualifications of the applicant are deemed by the board to be equivalent to, or greater than, those required in this state.
- c) The board may also issue a license to practice respiratory care by endorsement to respiratory therapists and respiratory care technicians holding credentials conferred by the national board for respiratory care, inc. or its successor organizations, if the credentials have not been suspended or revoked. Applicants applying under the conditions of this section shall be required to certify under oath that their credentials have not been suspended or revoked.
- d) If an applicant fails to complete the requirements for licensure within ninety days from the date of filing, the application is considered to be abandoned.

§30-34-9. Temporary student permits.

- (a) Subject to the provisions of subsection (d) of this section, the board may issue a temporary student

permit to practice respiratory care for a period of up to six months to a student enrolled in a respiratory care educational program which is approved by the board if the student submits:

- (1) A student work permit form signed by the program director and by a principal administrative official of the institution where the program is located;
 - (2) An official transcript indicating successful completion of a minimum of thirty semester hours or the quarter hour equivalent, eighteen of which must be specific to respiratory care core curriculum, and at least two hundred clinical hours;
 - (3) Documentation from the program director and by a principal administrative official of the institution where the program is located stating that the student has successfully completed didactic and clinical competency requirements equal to the first year curriculum and approved by the board; and
 - (4) A signed permit application form and an initial permit application fee as prescribed by rule.
- (b) A student practicing under a temporary student permit may work only under the supervision of an employee of the same department with a minimum Licensed Respiratory Therapist Certified credential issued by the board and who is present on the premises and available to the student at all times.
- (c) A student practicing under a temporary student permit may not use worked paid hours as a substitute for clinical rotations required by his or her respiratory care educational program.
- (d) Upon expiration of the initial permit, the student may apply for one renewal permit for up to six additional months by providing documentation from the program director stating the student is actively enrolled in at least nine semester hours, and is making satisfactory progress in his or her respiratory care core curriculum and clinical rotations, and payment of a renewal fee as prescribed by rule.
- (e) The board may promulgate emergency rules, pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code, to set forth those procedures which may be delegated to a student practicing under a temporary student permit and fees for issuance and renewal of temporary student permits. The board may not issue temporary student permits unless and until the rule authorized by this subsection is in effect.

§30-34-10. Prohibitions and penalties

It shall be a misdemeanor for any person, including any corporation or association, to:

- (a) Sell or fraudulently obtain or furnish any respiratory care provider license or record or abet therein;
- (b) Practice as a respiratory care provider under cover of any diploma, license or record illegally or fraudulently obtained or signed or issued under fraudulent representation;
- (c) Practice as a respiratory care provider unless duly licensed to practice under the provision of this article;
- (d) Use in connection with his or her name any designation tending to imply that he or she is licensed to practice as a respiratory care provider unless duly licensed so to practice under the provision of this article;
- (e) Practice as a respiratory care provider during time his or her license issued under the provisions of this article is suspended or revoked;
- (f) Conduct a respiratory care provider licensing program for the preparation of a respiratory care provider unless such a program has been accredited by the board; or
- (g) Otherwise violate any provisions of this article.

Upon conviction, each misdemeanor shall be punishable by a fine of not less than twenty five nor more than two hundred fifty dollars.

§30-34-11. Grandfather clause

- (a) Applicants who have not passed either of these national examinations or their equivalent on the effective date of this article and who, through written evidence and verified by oath, demonstrate that they have been functioning for two years in the capacity of a respiratory care provider as defined by this article shall be issued a temporary license to practice respiratory care. A temporary license issued pursuant to this section shall be renewed at intervals prescribed by the board. A temporary license shall not be valid after the first day of June, one thousand nine hundred ninety-seven. Persons holding a temporary license shall be issued a license to practice only after achieving a passing score on a licensure exam administered or approved by the board.
- (b) Any person issued a license pursuant to this section shall be required to pay the license or renewal

fees established in section seven of this article.

§30-34-12. Professional Identification

- (a) A person holding a license to practice respiratory care as a respiratory therapist in this state who has successfully completed the entry level examination of the National board of Respiratory Care or any successor organization may use the title "Licensed Respiratory Therapist Certified" and the abbreviation "LRTC".
- (b) A person holding a license to practice respiratory care as a respiratory therapist in this state who has successfully completed the registry examination of the National Board of Respiratory Care or any successor organization may use the title "Licensed Respiratory Therapist Registered" and the abbreviation "LRTR".
- (c) The board may change the professional identification for its profession should the accepted reference to the providers of respiratory care be changed by the National Board of Respiratory Care or its successor organization
- (d) A licensee shall either show his or her license or provide a copy thereof within twenty-four hours of a request from an employer or the board.

§30-34-13. Disciplinary criteria

The board may revoke, suspend or refuse to renew any license, or place on probation, or otherwise reprimand a licensee or permit holder, or deny a license to an applicant if it finds that the person:

- (a) Is guilty of fraud or deceit in procuring or attempting to procure a license or renewal of a license to practice respiratory care;
- (c) Is unfit or incompetent by reason of negligence, habits or other causes of incompetence;
- (d) Is habitually intemperate in the use of alcoholic beverages;
- (e) Is addicted to or has improperly obtained, possessed, used or distributed habit-forming drugs or narcotics;
- (f) Is convicted of a felony that materially affects the person's ability to safely practice respiratory care;
- (g) Is guilty of dishonest or unethical conduct as determined by the board of respiratory care;
- (h) Has practiced respiratory care after his or her license or permit has expired, been suspended or revoked;
- (i) Has practiced respiratory care under cover of any permit or license illegally or fraudulently obtained or issued; or
- (j) Has violated or aided or abetted others in violation of any provision of this article.

§30-34-14. Due process procedure.

- (a) Upon filing with the board, a written complaint charging a person with being guilty of any of the acts described in section thirteen of this article, the administrative secretary or other authorized employee of the board shall provide a copy of the complaint or list of allegations to the person about whom the complaint was filed. That person will have twenty days thereafter to file a written response to the complaint. The board shall thereafter, if the allegations warrant, make an investigation. If the board finds reasonable grounds for the complaint, a time and place for a hearing shall be set, notice of which shall be served on the licensee, permit holder or applicant at least fifteen calendar days in advance of the hearing date. The notice shall be by personal service or by certified or registered mail sent to the last known address of the person.
- (b) The board may petition the circuit court for the county within which the hearing is being held to issue subpoenas for the attendance of witnesses and the production of necessary evidence in any hearing. Upon request of the respondent or of his or her counsel, the board shall petition the court to issue subpoenas on behalf of the respondent. The circuit court upon petition may issue such subpoenas as it deems necessary.
- (c) Unless otherwise provided in this article, hearing procedures shall be promulgated in accordance with, and a person who feels aggrieved by a decision of the board may take an appeal pursuant to, the administrative procedures in this state as provided in chapter twenty-nine-a of this code.

§30-34-15. Exceptions

- (a) A person may not practice respiratory care or represent himself or herself to be a respiratory care practitioner unless he or she is licensed under this article except as otherwise provided by this article.
- (b) This article does not prohibit:
 - (1) The practice of respiratory care, which is an integral part of the program of study, by students enrolled in respiratory care education programs accredited by organizations approved by the board. Students enrolled in respiratory care education programs shall be identified as "Student RCP" and may only provide respiratory care under clinical supervision;
 - (2) Self-care by a patient, or gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner;
 - (3) Respiratory care services rendered in the course of an emergency;
 - (4) Persons in the military services or working in federal facilities providing respiratory care services when functioning in the course of their assigned duties; and
 - (5) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formalized or specialized training approved by the board.
- (c) Nothing in this article is intended to limit, preclude or otherwise interfere with the practices of other persons and health care providers licensed by appropriate agencies of the state.
- (d) Nothing in this article shall prohibit home medical equipment dealers from delivering and instructing persons in the operation of home medical respiratory equipment, or, from receiving requests for changes in equipment and settings from physicians or other authorized individuals.
- (e) An individual who passes an examination or successfully completes training that includes content in one or more of the functions included in this article is not prohibited from performing such procedures for which he or she was tested, so long as the testing body offering the examination or training is approved by the board.

§30-34-16. Practice of medicine prohibited.

Nothing in this article may be construed to permit the practice of medicine.

30CSR1
LEGISLATIVE RULE
CRITERIA FOR LICENSURE

§30-1-1. General

- 1.1. Scope. -- This legislative rule establishes criteria for licensure by the West Virginia Board of Respiratory Care.
- 1.2. Authority. -- W. Va. Code §30-34-6, and W. Va. Code §30-34-6a
- 1.3. Filing Date. – April 8, 2021
- 1.4. Effective Date. – April 8, 2021
- 1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon April 8, 2026

§30-1-2. Definitions

- 2.1. “Board” means the West Virginia Board of Respiratory Care established pursuant to W. Va. Code §30-34-1 *et seq.*
- 2.2. “Initial License” means obtaining a license in West Virginia for the practice of respiratory care for the first time.
- 2.3. “Reinstatement of License” means obtaining a license in West Virginia for the practice of respiratory care when the applicant had a previous license.

§30-1-3. Criteria for Licensure

- 3.1. Upon payment of required fees, an applicant for a license to practice respiratory care shall submit to the board official written, verified by oath, evidence that the applicant:
 - 3.1.1. Has completed a board approved respiratory care educational program; and
 - 3.1.2. On or after July 1, 2022 holds a current valid Registered Respiratory Therapist Credential conferred by the National Board of Respiratory Care or its successor organizations.
 - 3.1.3. Prior to July 1, 2022 holds a current valid Certified Respiratory Therapist or Registered Respiratory Therapist credential from the National Board of Respiratory Care or its successor organizations.
 - 3.1.4. Successfully passing an examination administered by the state or by a national agency approved by the board. The board shall set the passing score for the examination.
 - 3.1.5. The board may issue a license to practice respiratory care to an applicant who is currently licensed to practice respiratory care under the laws of another state, territory, or country if the

qualifications of the applicant are deemed by the board to be equivalent to, or greater than, those required in West Virginia. Applicants applying under this section shall be required to provide official verification of license from the state where they currently hold a valid license directly to this state.

3.1.6. The board may also issue a license to practice respiratory Care by endorsement to respiratory therapists holding valid credentials conferred by the National Board of Respiratory Care, or its successor organizations, if the credentials have not been suspended or revoked. Applicants applying under this section shall be required to provide official verification of valid credentials directly from the National Board of Respiratory Care to this board.

3.1.7. If an applicant fails to complete the requirements for licensure within ninety days from the date of filing, the application is considered abandoned.

§30-1-4. Criteria for Reinstatement of License

4.1. Respiratory therapists licensed prior to July 1, 2022, whose license has expired and wish to reapply for a license in West Virginia shall provide proof of holding a current valid Certified Respiratory Therapist or Registered Respiratory Therapist credential from the National Board for Respiratory Care or successor organizations within a year of application and completing continuing education credits requirements as set by the board.

4.2. Respiratory therapists licensed after July 1, 2022 reapplying for a new license shall provide proof of holding a current valid Registered Respiratory Therapist credential from the National Board for Respiratory Care or successor organizations within a year of application and completing continuing education credit requirements as set by the board.

30CSR2
ESTABLISHMENT OF FEES

§30-2-1. General.

- 1.1 Scope: This legislative rule sets forth in detail all fees charged by the board.
- 1.2 Authority: W. Va. Code §30-34-6.
- 1.3 Filing Date: June 24, 1997.
- 1.4 Effective Date: June 24, 1997.

§30-2-2. Application Fee.

- 2.1 An applicant for licensure shall file with the West Virginia Board of Respiratory Care, a signed application form and pay an initial application fee of two hundred dollars (\$200.00).

§30-2-3. Renewal Fees Schedule.

- 3.1 Every licensee shall renew his or her license on or before the first of January of each year.
- 3.2 The renewal fee is sixty-five dollars (\$65.00).
- 3.3 The first renewal date is January 1, 1998.
- 3.4 Any licensee who files for early renewal between the dates of November 1 and November 30, in any year is entitled to a \$10.00 discount on the license renewal.
- 3.5 The renewal fee for renewal of a licensee's inactive status is twenty dollars (\$20.00).
- 3.6 Any license that is not renewed on January 1 automatically lapses and the person whose license has lapsed shall submit a new application and the two hundred dollar (\$200.00) application fee.

30CSR3
LEGISLATIVE RULE
CONTINUING EDUCATION REQUIREMENTS

'30-3-1. General.

1.1. Scope. -- This legislative rule delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

1.2. Authority. -- W. Va. Code '30-34-5.

1.3. Filing Date. -- April 6, 2000.

1.4. Effective Date. -- April 20, 2000.

'30-3-2. Definitions.

2.1. An Academic Course@ offered by an accredited post-secondary institution means a respiratory care course, or a course which may be applicable to the practice of respiratory care and appropriate for the respiratory care provider employed in the areas of clinical practice, health care administration, respiratory care or health care education, or clinical research.

2.2. American Association for Respiratory Care for Continuing Respiratory Care Education Approval@ means any program, which has received recognition by the American Association of Respiratory Care.

2.3. A Continuing Education Unit@ means fifty (50) contact minutes of participating in an approved continuing education program.

2.4. A Program means an organized learning experience planned and evaluated to meet behavioral objectives; programs may be presented in one session or in a series.

2.5. A Provider means an organization approved by the Board for offering continuing education programs.

2.6. Revelant means having content applicable to the practice of respiratory care as defined by the Board.

2.7. Successful completion@ means that the respiratory care licensee has satisfactorily met the specific requirements of the offering and that the respiratory care licensee has earned the continuing education units. The Board shall not grant continuing education units for repeated instruction of the same course.

'30-3-3. Accrual of Continuing Education Units Mandatory: Computation of Accrual.

3.1. A licensee shall accrue a minimum of twenty (20) continuing education units every two (2) years.

3.2. The current accrual period of January 1, 1999 through December 31, 2000 is revised to January 1, 1999 through September 30, 2000. Licensees shall report their continuing education to the Board office between October 1st and December 31st following the accrual period. The continuing education units required for this revised accrual period of January 1, 1999 to October 1, 2000 are prorated to fifteen (15)

units. Each licensee shall report twenty (20) continuing education units for each subsequent two-year accrual period. The new deadline will be December 31st.

3.3. Beginning October 1, 1999, the accrual period is October 1, of one year through September 30, of the following calendar year.

3.4. All continuing education units shall be relevant to the field of respiratory care.

3.5. The license of a licensee who fails to meet the continuing education requirements lapses. The Board shall notify the licensee, in writing, that his or her continuing education requirements are not in compliance and his or her license has lapsed within twenty (20) working days of receipt of Continuing Education Unit reporting forms. If the Board fails to notify the licensee of non-compliance within this time period, the requested continued education units shall be considered approved by the Board.

3.6. Continuing education units shall be prorated for new licensees.

'30-3-4. Methods of Acquiring Continuing Education Units.

4.1. Continuing education units applicable to the renewal of the license shall be directly related to the professional growth and development of the respiratory care licensee, and shall be relevant to the practice of respiratory care.

4.2. A licensee may earn continuing education units by completing any of the educational offerings of the American Association of Respiratory Care approved courses or programs.

4.3. A licensee may earn continuing education units by completing academic courses as defined in subsection 2.1 of this rule. For the purposes of this rule, one (1) credit hour of academic course equals fifteen (15) continuing education units.

4.4. Relevant offerings provided by other organizations or institutions may be approved by the Board for continuing education units. Approved organizations may include but are not limited to the West Virginia Society for Respiratory Care, the West Virginia Lung Association, the West Virginia Thoracic Society, the Board of Examiners for Registered Professional Nurses, the American Medical Association, or the National Association of Medical Equipment Suppliers.

4.5. The Board may approve continuing education units for successful completion of the ANational Board of Respiratory Care, Inc. @, advanced practitioner exams including, but, not limited to the Perinatal Pediatric Exam, Certified Pulmonary Function Exam, Registered Pulmonary Function Exam, or any other future exam developed and administered by the National Board of Respiratory Care or its successor organization. The Board shall grant ten (10) continuing education units to a licensee upon passing each advanced practitioner exam.

The Board encourages licensees to retake the ANational Board of Respiratory Care, Inc. @ exams, and the Board shall grant five (5) continuing education units for those licensees retaking and passing the exam.

4.6. The Board may approve related areas not specifically a part of the field of respiratory care for up to two (2) continuing education units, if the Board believes that the related areas may serve to enhance the licensee's ability to practice.

4.7. The Board may approve continuing education units for up to five (5) units for authorship of a

research article printed in a Board approved medical journal or Board approved textbook.

4.8. The Board may approve continuing education units for the authorship of continuing education material used in conducting continuing education program offerings. The Board shall grant the licensee twice the amount of continuing education units available to licensees attending the course or program was written. For example, if a course or program qualifies for five (5) continuing education units, the Board shall grant ten (10) continuing education units to the author of the continuing education material.

'30-3-5. Procedures For Accreditation of Sponsors and Approval of Continuing Education Activities.

5.1. Any organization desiring to establish accreditation of a continuing education program shall apply to the Board prior to the program offering. The application for accreditation shall be approved by the Board at least thirty (30) days in advance of the program being offered. The organization shall submit an application on forms provided by the Board. The application shall state the type of learning activity, subject matter, names and qualifications of the instructors, number of continuing education units offered, and shall also submit the fees established by the Board.

5.2. A continuing education activity is qualified for approval if the Board determines that the activity being presented is an organized program of learning; pertains to subject matters which integrally relate to the practice of respiratory care; contributes to the professional competency of the licensee; and is conducted by individuals who have educational training or experience acceptable to the Board.

5.3. The Board may pre-approve a provider of continuing education. The continuing education offering shall be an organized program of learning. Each approved provider of continuing education shall maintain accurate records of each course to include; a course content outline, a statement of the course's relevancy to respiratory care, a roster of attendees, and the name of the Respiratory Therapist reviewing the course. Individuals who have educational training or experience acceptable to the Board shall conduct the course offerings.

5.4. A pre-approved provider must maintain records of each continuing education offering which shall include, but not be limited to; the continuing education offering title, the course outline, an attendance roster, the signature of the respiratory therapist reviewing the course content and the number of continuing education units granted.

5.5. The pre-approved provider shall provide the attendee of the continuing education activity an agenda or listing of course content and a certificate of completion signed by the provider of the continuing education offering.

5.6. The pre-approved provider shall supply, upon request by the Board, a copy of files of all continuing education offerings.

5.7. The pre-approved provider of continuing education offerings may be subject to Board suspension of privilege if the provider fails to submit requested documentation of continuing education activity. Future pre-approval is subject to the Board's decision.

'30-3-6. Responsibilities and Reporting Requirements of the Licensees.

6.1. A licensee is responsible for obtaining the required number of continuing education units. The licensee shall identify his or her own continuing education needs, take initiative in seeking continuing

professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes relevant to the practice of respiratory care.

6.2. Each licensee shall select approved activities by which to earn continuing education units and obtain prior approval from the board for continuing education not accredited by the Board.

6.3. Each licensee shall maintain records of continuing education units and submit record of them to the board postmarked by December 31st, of each year proceeding the accrual period.

6.4. Each licensee shall document attendance and participation in a continuing education activity in the form of, but not limited to, official documents such as transcripts, certificates, or affidavits signed by instructors. The type of documentation required varies depending on the specific activity submitted to the Board for approval.

6.5. Each licensee shall full comply with the provisions of this rule. The Board may revoke or refuse to renew a licensee=s license if he or she fails to comply with the provisions of this rule.

'30-3-7. Carry Over of Continuing Education Units.

7.1. A licensee may carry over six (6) continuing education units earned in excess of those required under subsection 3.1 of this rule into the immediately following accrual period.

'30-3-8. Board to Approve Continuing Education Units; Appeal When Approval Denied.

8.1. In the event of denial, in whole or part, of any application for approval of continuing education units, the licensee may appeal in writing to the Board. The notice of appeal must be received by the Board within thirty (30) days after the date of the receipt of the Board=s order denying approval of continuing education units.

8.2. A hearing before the full Board may be held at the request of the licensee if the written appeal is denied. The board must receive the written request for a hearing within (10) business days after the date the Board mails the notification of denial.

'30-3-9. Temporary License Holders and Inactive Status.

9.1. Continuing education requirements shall not apply to the holders of a temporary license.

9.2. The Board may, in individual cases involving medical disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports. A written request for waiver or extension of time shall be submitted by the licensee and shall be accompanied by a verifying document signed by a licensed physician. Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements may be granted by the Board for a period of time not to exceed one (1) calendar year. If the granted allowance continues beyond the period of the waiver or extension, the licensee shall apply for another waiver.

9.3. The Board may waive continuing education requirements for a licensee on inactive status during the period he or she remain inactive. If the licensee applies to the Board to return to active status, the licensee shall submit proof of completion of five (5) continuing education units within the twelve (12) month period immediately preceding the date on which the application is submitted. The licensee may

request to be allowed to return to active status immediately. The Board shall grant the request, if the licensee agrees to successfully complete ten (10) continuing education units within twelve (12) months of the date on which the Board approves active status.

30CSR4
LEGISLATIVE RULE
DISCIPLINARY ACTION

§ 30-34-1 General

- 1.1 Scope: This legislative rule defines the roles and authority of the Board in investigation and resolution of disciplinary matters.
- 1.2 Authority - WV Code § 30-34-5
- 1.3 Filing Date: April 6, 2000
- 1.4 Effective Date: April 21, 2000

§30-4-2 Definitions

- 2.1 “Board” means the WV Board of Respiratory Care.
- 2.2 “Complaint” refers to any written communication with the Board or its representative which indicates or tends to indicate that a licensee is acting in violation of the WV Code §30-34-1 et seq., or the rules governing the practice of the respiratory care licensee.
- 2.3 “Impaired” refers to the condition of a licensee whose performance or behavior is altered through the use of alcohol, drugs, or other means.
- 2.4 “Proof” refers to all types of evidence except testimony, including but not limited to records, documents, exhibits, concrete objects, and laboratory or other tests.
- 2.5 “Structured Treatment Program” refers to a program for physical, psychological and social rehabilitation.
- 2.6 “Testimony” refers to evidence given by a witness under oath or affirmation, including but not limited to oral statements, affidavits, or depositions.

§30-4-3 Investigation

- 3.1 Upon complaint or on its own initiative, the board or its employees may investigate conduct, which is occurring or has occurred that would violate WV Code §30-34-1 et seq., or rules governing the practice of Respiratory Care License.
- 3.2 For the purpose of an investigation by the board,
 - 3.2.1 The executive secretary may subpoena witnesses and documents and administer oaths;
 - 3.2.2 The board or its authorized agents may depose witnesses, take sworn statements and collect other evidence;
 - 3.2.3 The board may institute proceedings in the courts of the State of West Virginia to enforce its subpoenas for the production of witnesses and documents and its order to restrain and enjoin violation of WV code §30-34-1 et seq., or rules governing the practice of the Respiratory Care License;
 - 3.2.4 The board shall review pertinent medical records during the course of its investigation, and shall remove patient identifying information from records which are introduced at any disciplinary hearings;
 - 3.2.5 The board, or its executive secretary, within the limits of authority granted by the board, may employ investigators, consultants, and other personnel as may be considered necessary to assist in any investigation;
 - 3.2.6 All powers of the board and its employees or designees may be exercised to investigate a matter, even if a hearing or disciplinary action does not result from the investigative findings; and
 - 3.2.7 Upon finding of probable cause that the basis for disciplinary action exists, the Board may require a Respiratory Therapist Licensee, or a person applying for a license to practice as a Respiratory Therapist in the State of West Virginia, to submit to a physical or psychological examination by a practitioner, approved by the Board. Any individual who applies for or accepts the privilege of

practicing as a Respiratory Therapist in the State of West Virginia is considered to have given consent to submit to all such examinations upon request to do so, in writing by the Board, and to have waived all objections to the admissibility of the testimony or examination report of any examining practitioner on the ground that the testimony or report is privileged communication. If an applicant or licensee fails or refuses to submit to any examination under circumstances which the board finds is not beyond his or her control, the failure is prima facie evidence of his or her inability to practice as a licensed Respiratory Therapist completely, and in accordance with acceptable standard of professional practice. A licensed Respiratory Therapist or a person applying for a license as a Respiratory Therapist may request a hearing within thirty (30) days of any action taken by the Board.

30-4-4 Disciplinary Action

- 4.1 The Board may deny, revoke, or suspend a license or otherwise discipline a licensee or applicant has violated provision set forth in WV Code §30-34-1 et seq.
- 4.2 The Board shall afford every person subjected to disciplinary proceedings an opportunity for a hearing as set forth in the WV Code §30-34-14 et seq.
- 4.3 If an applicant for licensure or licensee fails to appear at a scheduled hearing or fails to reply to the notification of hearing, the charges specified may be taken as true and the Board may proceed with disciplinary action.
- 4.4 Following a hearing before the Board or its hearing examiner, the Board shall issue its decision on any disciplinary matter.
- 4.5 The Board may establish a committee that has the authority to resolve disciplinary matter through a formal consent agreement with the licensee, permitting the licensee to voluntarily agree to disciplinary action in lieu of a formal evidentiary hearing.
- 4.6 The Board or its authorized committee may take disciplinary action which includes, but is not limited to the denial, suspension, or revocation of a license to practice as a Respiratory Therapist, or probation of a Respiratory Therapist with terms to be met for continued practice, or the assessment of additional renewal, reinstatement, or monitoring fees and costs against a licensee, or combination of these or other actions. A monitoring fee assessed at the time of suspension or revocation of a license is due at the time the licensee requests reinstatement of the license. A monitoring fee imposed in conjunction with penalties other than the suspension of the licensee is due and payable within the time frame determined by the Board. A licensee who fails to pay a monitoring fee assessed by the Board as part of the disciplinary proceeding within the time period contained in this rule or as otherwise agreed upon between the parties is not eligible for renewal of his or her license until the fee is paid.

§30-4-5 Professional Misconduct

- 5.1 Pursuant to WV Code §30-34-13, the Board may take disciplinary action against an applicant or licensee upon proof that the individual is guilty of dishonest or unethical conduct as determined by the Board. The Board determines that the following conduct, if proven by a preponderance of evidence, constitutes professional misconduct subject to disciplinary action pursuant to WV Code §30-34-13 et seq.:
 - 5.1.1 Failing to adhere to common and current standards for a Respiratory Therapist's practice, including but not limited to standards established by a national respiratory care organization, respiratory care research, respiratory care education, or the Board;
 - 5.1.2 Failing to adhere to established standards in the practice setting to safeguard patient care;
 - 5.1.3 Knowingly committing an act which could adversely affect the knowing physical or psychological welfare of a patient;

- 5.1.4 Abandoning patients by terminating responsibility for respiratory care, intervention, or observation, without properly notifying appropriate personnel and ensuring the safety of the patients;
- 5.1.5 Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the Respiratory Therapist knows or has reason to know that he or she is not licensed, qualified or competent to perform;
- 5.1.6 Impersonating another licensed practitioner;
- 5.1.7 Falsifying a licensee's license for any purpose;
- 5.1.8 Permitting, aiding, or abetting an unlicensed person to perform activities requiring a license;
- 5.1.9 Practicing as a Respiratory Therapist when that person's license is suspended, lapsed, or inactive;
- 5.1.10 Delegating professional responsibilities to a person the Respiratory Therapist knows or has reason to know that the person is not qualified by training, experience, demonstrated competency, or licensed to perform;
- 5.1.11 Failing to comply with terms and conditions as imposed by the Board, based upon disciplinary action;
- 5.1.12 Practicing as a Respiratory Therapist while the ability to safely and effectively practice, is compromised by alcohol and drugs;
- 5.1.13 Practicing as a Respiratory Therapist while the ability to safely and effectively practice, is compromised by physical and mental disability;
- 5.1.14 Refusing or failing to report for a physical or mental examination including, but not limited to, laboratory or other tests as required by the Board.
- 5.1.15 Providing false or incorrect information to an employer regarding the status of a license or failing to inform an employer of a change in the status of a license;
- 5.1.16 Knowingly falsifying an application for employment;
- 5.1.17 Knowingly provide false information regarding completion of educational programs;
- 5.1.18 Falsifying patient records or intentionally charting incorrectly;
- 5.1.19 Falsifying credentials;
- 5.1.20 Improperly, incompletely, or illegibly documenting the delivery of patient care including, but not limited to treatment or medicine;
- 5.1.21 Knowingly making of filing a false report;
- 5.1.22 Willfully impeding or obstructing the filing of a report required by state or federal law; or
- 5.1.23 Failing to report to the Board of Respiratory Care any action or activity that is in violation of WV Code §30-34-1 et seq., or rules governing the practice of respiratory care.

30CSR5
DISCIPLINARY AND COMPLAINT PROCEDURES

§30-5-1 General.

- 1.1 Scope. - This rule specifies a procedure for the investigation and resolution of complaints against Respiratory Practitioners Licensed by the West Virginia Board of Respiratory Care.
- 1.2 Authority -- W. Va. Code §30-34-5 et seq. and 30-1-1 et seq.
- 1.3 Filing Date - August 8, 2000
- 1.4 Effective Date - March 1, 2001

§30-5-2 Application This rule applies to all licensed respiratory practitioners.

§30-5-3 Definitions The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

- 3.1 “Applicant” means any person making application for an original or renewal license or a temporary permit pursuant to W. Va. Code §30-34-1 et seq.
- 3.2 “Board” means the West Virginia Board of Respiratory Care.
- 3.3 “License” means a license or temporary permit issued by the Board pursuant to W. Va. Code §30-34-1 et seq.
- 3.4 “Physical Practitioner” means a person who practices Respiratory Care. as defined in defined in W. Va. Code §30-34-2.
- 3.5 “Ethics investigator” means a person licensed to practice respiratory care in this state, and who is hired by the Board for the purpose of reviewing complaints against respiratory practitioners.

§30-5-4 Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Respiratory Practitioners.

- 4.1 The Board may deny an application for license, place a licensee on probation, limit or restrict a license, suspend a license, or revoke any license issued by the Board, upon satisfactory proof that a licensee has been convicted of a felony, or is in his or her professional capacity, engaged in conduct, practices, or acts, constituting professional negligence, or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-34-1 et seq. or the rules of the Board.

§ 30-5-5 Disposition of Complaints

- 5.1 Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board, which charges a respiratory practitioner or applicant with a violation of W. Va. Code §30-34-1 et seq. or of the rules of the Board. The Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation, which prompted the complaint, the complaint should contain the following:
 - 5.1.1 The name and address of the respiratory practitioner against whom the complaint is lodged;
 - 5.1.2 The date of care;
 - 5.1.3 The name of any person who may have treated the patient after the alleged incident; and,
 - 5.1.4 The name of any health care institution in which the patient was an inpatient or outpatient after or during the alleged incident.
- 5.2 A complaint against a respiratory practitioner shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-34-1 et seq. or the rules of the Board.
- 5.3 Complainants are immune from liability for the allegations contained in their complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose.

- 5.4 The Board shall maintain a complaint log, which records the receipt of each complaint, its nature and its disposition.
- 5.5 The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.
- 5.6 Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:
 - 5.6.1 That the matter will be reviewed by the Board;
 - 5.6.2 That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,
 - 5.6.3 That more information will be required in order to adequately review the individual complaint.
- 5.7 The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee or permittee or applicant in question for his or her written comment, and he or she shall submit a written response to the Board within thirty (30) days of the date of such correspondence, or waive the right to do so.
- 5.8 Requests for comment on complaints sent to licensees, permittees or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the licensee or permittee or applicants to keep the Board informed of his or her current address.
- 5.9 Upon receipt of a licensee's or applicant's comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.
- 5.10 After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 5.6.2 of this rule, the Board shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints and any view or investigation thereof may, at the discretion of the Board, be assigned to a committee of the Board.
- 5.11 At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to an ethics investigator for review and investigation.
- 5.12 Upon receipt of a complaint the ethics investigator shall, within sixty (60) days, review and investigate the same and provide the Board with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint including a description of the care provided, the records reviewed and a statement of the ethics investigator's findings and recommendations. The ethics investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, permittee or applicant in question or other involved parties, a report of which shall be placed in the investigation file.
- 5.13 To facilitate the disposition of a complaint, the Board or the committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. The Board or the committee shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.
- 5.14 The Board, its president, the investigating committee or chairperson may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The ethics investigator may request the Board or its president to issue a subpoena or subpoena duces tecum. Any such request shall be accompanied by a brief statement specifying the necessity for the same.
- 5.15 At any point in the course of an investigation or inquiry into a complaint, the Board may determine that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which a respiratory practitioner or permittee may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the committee or an ethics investigator, the committee or ethics

investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§30-5-6 Contested Case Hearings

6.1 The Board may refuse to renew a license or suspend a license if it determines there is probable cause to believe that respiratory practitioner's conduct, practices or acts constitute an immediate danger to the public.

§30-6-7 Appeals

7.1.1 Any applicant who has had his or her application for a license denied by order of the Board may appeal the order within thirty (30) days of that action in accordance with the contested case hearing procedures set forth in W. Va. Code §29A-6-1 et seq. and the rules of the Board: Provided, that the appeal shall not include cases in which the Board denies a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

30CSR6
CONTESTED CASE HEARING PROCEDURE

§30-6-1 General

- 1.1 Scope - This rule specifies the procedure for the adjudication of contested case hearings before the Board.
- 1.2 Authority - W. Va. Code §30-34-5 et seq. and 30-1-1 et seq.
- 1.3 Filing Date:
- 1.4 Effective Date: March 1, 2001

§30-6-2 Definitions

The following words and phrases as used in this rule shall have the following meanings, unless the context otherwise requires:

- 2.1 "Board" means the West Virginia Board of Respiratory Care.
- 2.2 "Demanding party" means an individual who has been denied a license to practice respiratory care by the Board and who, as a result, demands that a hearing be held before the Board on the issue of such denial.
- 2.3 The term "Charged party" means an individual who holds a license to practice respiratory care issued by the Board and who has been charged by the Board as described in Section 3.4 of these rules.
- 2.4 "License" means a license or temporary permit issued by the Board pursuant to W. Va. Code §30-34-1 et seq.
- 2.5 The term "Licensee" means an individual who holds a license to practice respiratory care issued by the Board. A "permittee" is a person who holds a temporary permit.
- 2.6 "Practice of respiratory care" means the practice of respiratory care as defined in W. Va. Code §30-34-2.

§30-6-3 Hearing Procedure

- 3.1 Any applicant denied a license or any licensee or permit holder who has had their license suspended by the Board who believes such denial was in violation of W. Va. Code §§30-1-1 et seq. and/or 30-34-1 et seq. shall be entitled to a hearing on the action denying or suspending such license.
- 3.2 Any person who desires a hearing for the reason described in subsection 3.1 of this section must present a written demand for such to the Board.
- 3.3 When the chair of the Board or his or her authorized designee is presented with such a demand for a hearing, he or she shall schedule a hearing within forty-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement.
- 3.4 Charges may be instituted against any licensee or permittee by the Board when probable cause exists for believing that the licensee or permittee may have engaged in conduct, practices or acts in such condition that his or her license should be suspended, revoked or otherwise disciplined for one or more of the grounds set forth in W. Va. Code §30-34-10 et seq, or the Board's legislative rules. Charges may be based upon information received by way of a verified written complaint filed with the Board and further information gathered by the Board in the process of investigating such complaint. Charges may also be based upon information received solely through investigative activities undertaken by the Board.
- 3.5 Charges instituted against a licensee or permittee as described in subsection 3.4 of this section shall be set forth in a Complaint and Notice of Hearing issued in the name of the Board as the agency of the state regulating the practice of registered professional nursing. Such Complaint and Notice of Hearing shall designate the Board as the "Complaint", and shall designate the licensee or permittee involved in the proceeding as the "Respondent"; shall set out the substance of each

- offense charged with sufficient, particularity to reasonably apprise the Respondent of the nature, time and place of the conduct or condition complained of therein; and shall state the date, time and place for the hearing.
- 3.6 Upon receipt of a demand for a hearing described in subsections 3.1 and 3.2 of this section, the chair or his or her designee shall provide the demanding party, with a Complaint and Notice of Hearing issued in the name of the Board as the agency of the state regulating the practice of physical therapy. Such Complaint and Notice of Hearing shall designate the demanding party as the "Complainant and shall designate the Board as the "Respondent"; shall set out the substance of each and every reason that the Board has denied the demanding party a license or permit with sufficient particularity to reasonably apprise the demanding party of the nature, time and place of the conduct or condition at issue therein; and shall state the date, time and place for the hearing.
- 3.7 The Board may amend the charges set forth in a Complaint and Notice of Hearing as it deems proper.
- 3.8 A Complaint and Notice of Hearing shall be served upon the demanding or charged party at least thirty (30) days prior to the date of hearing.
- 3.9 Upon written motion received by the Board no later than twenty (20) days prior to the date of hearing, a more definite statement of the matters charged or the reasons stated for denial of Licensure shall be provided to the demanding or charged party or his or her counsel, at least fifteen (15) days prior to the hearing date.
- 3.10 Hearings shall be conducted as follows:
- 3.10.1 Any party to a hearing shall have the right to be represented by an attorney-at-law, duly qualified to practice law in the state of West Virginia.
- 3.10.2 The Board shall be represented by the West Virginia Attorney General's Office.
- 3.10.3 Irrelevant, immaterial, or unduly repetitious evidence shall be excluded from the hearing. Furthermore, the rules of evidence as applied in civil cases in the circuit courts of this state shall be followed. However, when necessary, to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs
- 3.10.4 The rules of privilege recognized by the law of this state shall be followed.
- 3.10.5 Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.
- 3.10.6 Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Board and, when appropriate, may cross-examine witnesses called by the Board in support of the charges or in defense of its decision to deny licensure or a permit.
- 3.10.7 The hearing shall be held at such time and place as is designated by the Board, but no hearing shall be conducted unless and until at least thirty (30) days written notice thereof has been served upon the charged or demanding party and/or his or her attorney in person; or if he or she cannot be found, by delivering such notice at his or her usual place of abode and giving information of its purport, to his wife or her husband, or to any other person found there who is a member of his or her family and above the age of sixteen (16) years; or if neither his wife or her husband nor any such person can be found there, and he or she cannot be found, by leaving such notice posted at the front door of such place of abode; or if he or she does not reside in this state, such notice may be served by the publication thereof once a week for three successive weeks in a newspaper published in this state; or such notice may be served by registered or certified mail.
- 3.10.8 The hearing shall be open to the general public.
- 3.10.9 Members of the Board and its officers, agents and employees shall be competent to testify at the hearing as to material and relevant matters: Provided that no member of the Board who testifies at

- such hearing shall thereafter participate in the deliberations or decisions of the Board with respect to the case in which he testified.
- 3.10.10 The hearing shall be conducted by a quorum of the Board.
- 3.10.11 A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Board's files. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.
- 3.10.12 Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.
- 3.10.13 Where a hearing is held upon the instance of the Board after charges have been brought against a licensee pursuant to subsection 3.4 and 3.5 of this section, the Board shall have the burden of proof and shall present its evidence and/or testimony in support of the charges first.
- 3.10.14 Where a hearing is held upon demand under the provisions of subsections 3.1, 3.2, 3.3, and 3.6 of this action, the demanding party shall have the burden of proof and shall therefore be required to present his or her evidence first. The Board may require the person demanding the hearing to give security for the costs thereof and if the demanding party does not substantially prevail, such facts may be assessed against them and may be collected in a civil action or by other proper remedy.
- 3.10.15 Following the conclusion of the Board's presentation of evidence in accordance with subsection 3.10.13 of this section the Respondent or charged party shall have the right to submit his or her evidence in defense.
- 3.10.16 Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 3.10.14 of this section, the Board shall have the right to offer its evidence in rebuttal.
- 3.10.17 The Board may call witnesses to testify in support of its decision to deny licensure to deny a permit or in support of the charges instituted against a licensee or permittee; may present such other evidence to support its position; and may cross-examine witnesses called by the demanding party or charged party in support of his or her position.
- 3.10.18 All parties shall have the right to offer opening and closing arguments, not to exceed ten (10) minutes for each presentation.
- 3.10.19 Hearings held by the Board as a result of charges instituted against a licensee or permittee may Be continued or adjourned to a later date or different place by the Board or its designee by appropriate notice to all parties.
- 3.10.20 Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for continuance must be in writing and received in the office of the Board no later than seven (7) days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting the continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven (7) days from the hearing date may be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of hearing shall be ruled on by the chair or executive secretary of the Board. All other motions for continuance shall be ruled on by the Board member(s) or the member presiding over the hearing.
- 3.10.21 All motions related to a case set for hearing before the Board, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Board at least ten (10) days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the hearing prior to the commencement of testimony. The Board member(s) presiding at the hearing shall hear the motions and the response from the non-moving party and shall rule on such motions accordingly.

§30-6-4 Transcription of Testimony and Evidence

- 4.1 All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.
- 4.2 All reported materials shall be transcribed. The Board shall have the responsibility to make arrangements for the transcription of the reported testimony and evidence.
- 4.3 Upon the motion of the Board or any party assigning error or omission in any part of any transcript, the Board chair or presiding member shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and/or revised as appropriate so as to make it conform to the truth.
- 4.4 A transcript of the hearing shall be provided to all members of the Board for review at least ten (10) days before the vote is taken on its decision in any licensure or permit disciplinary matter.

§30-6-5 Submission of Proposed Findings of Fact and Conclusions of Law

- 5.1 Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Board.

§30-6-6 Conferences; Informal Disposition of Cases

- 6.1 At any time prior to the hearing or thereafter, the Board, its designee may hold conferences for the following purposes:
 - 6.1.1 To dispose of procedural requests, pre-hearing motions or similar matters;
 - 6.1.2 To simplify or settle issues by consent of the parties; or,
 - 6.1.3 To provide for the informal disposition of cases by stipulation or agreement.
- 6.2 The Board may cause such conferences to be held on its own motion or by the request of a party.
- 6.3 The Board may also initiate or consider stipulation or agreement proposals with regard to the informal disposition of cases and may enter into such stipulations and/or agreements without conference.

§30-6-7 Depositions

- 7.1 Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state.

§30-6-8 Subpoenas

- 8.1 Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by any member of the Board, its Executive Secretary, its Assistant Executive Secretary. Such subpoenas shall be issued pursuant to W. Va. Code §29A-5-1 (b).
- 8.2 Written requests by a party for the issuance of subpoenas or subpoenas duces tecum as provided in subsection 8.1 of this section must be received by the Board no later than ten (10) days before a scheduled hearing. Any party requesting the issuance of subpoenas duces tecum shall see that they are properly served in accordance with W. Va. Code §29A-5-1 (b)

§30-6-9 Orders

- 9.1 Any final order entered by the Board following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of W. Va. Code §§29A-5-3 and 30-1-8(d). Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law.
- 9.2 The findings of fact and conclusions of law must be approved by a majority of the Board either by a poll or vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Board shall be served upon the demanding or charged party and/or

his or her attorney of record, if any, within ten (10) days after entry by the Board by personal service or by registered or certified mail.

§30-6-10 Appeal

10.1 An appeal from any final order entered in accordance with these rules shall comply with the provisions of W. Va. Code §30-1-9 and 29A-6-1 et seq.

30CSR7
HOME MEDICAL SUPPLIERS

§30-7-1 General

- 1.1.1 Scope: This interpretative rule delineates the role of personnel involved with delivering respiratory care in the home care setting.
- 1.1.2 Authority: §30-34-15d
- 1.1.3 Filing Date: August 7, 2000
- 1.1.4 Effective Date: September 7, 2000

§30-7-2 Application

This rule applies to all individuals who are providing respiratory care in the home care setting.

§ 30-7-3 Definitions

“Home Medical Equipment Dealers and Agents” means any person working in home care and not licensed under the provisions of W. Va. Code § 30-34-1 et seq.

§30-7-4 Actions allowed by non-licensed home medical equipment dealers or their agents.

- 4.1 Home medical equipment dealers who are not licensed in the state of West Virginia under are limited to delivering and instructing persons in the operation of home medical equipment.
- 4.2 Instructing in the operation of home medical equipment is limited to:
 - a) Connection to an electrical source
 - b) Turning the unit on.
 - c) Cleaning.
 - d) Maintenance such as filter changes.
 - e) Placement and location of controls.

§30-7-5 Restrictions of non-licensed home medical equipment dealers or their agents.

- 5.2 Home medical dealers and their agents who are not licensed are restricted from the following:
 - a) Administration of pharmacological, diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitation, or a diagnostic regimen.
 - b) Placing a patient on oxygen.
 - c) Placing a patient on any device used for intermittent ventilation, non-invasive ventilation, BI-Level, CPAP, and mechanical ventilation.
 - d) Placing a patient on any form of aerosolized medication.
 - e) Placing a patient on a positive pressure or negative pressure device.
 - f) Providing clinical instruction to any person.

**30CSR8
OPEN MEETINGS**

§30-8-1. General

- 1.1 Scope – As required in W.VA Code §6-9A-3, this rule sets forth the means by which the time, place, and agenda of all regular and special meetings are made available in advance to the public and the news media, except in the event of an emergency requiring immediate official action.
- 1.2. Authority – WV Code §30-34-4 and §6-9A-1 through 12.
- 1.3 Filing Date – November 28, 2007
- 1.4 Effective Date – December 28, 2007

§30-8-2. Application and Enforcement

This rule applies to the board and any and all individuals desiring to attend or to address the West Virginia Board of Respiratory Care.

§30-8-3. Definitions

- 3.1 Board – The West Virginia Board of Respiratory.
- 3.2 Meeting – the convening of the governing body of the West Virginia Board of Respiratory Care for which a quorum is required.
- 3.3 Quorum – a simple majority of the constituent membership of the board.
- 3.4 Decision – any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present.
- 3.5 Governing body - means the members of the board having the authority to make decisions for or recommendations on policy or administration.
- 3.6 Executive session – means any meeting or part of a meeting of a governing body which is closed to the public.

§30-8-4. Regular Meetings

- 4.1 The board meets in regular session during the months of April and October. The length of the meeting is determined by the amount of business to be addressed by the board.
- 4.2 Meeting dates are determined for one (1) year in advance beginning July 1 and ending on June 30. A majority of the board members shall agree upon specific meeting dates.
- 4.3 The executive secretary shall provide written notice of the date, time, location and purpose of each regular meeting to appropriate professional associations, and state agencies, as well as persons and organizations who have requested notification, and to the Secretary of State to permit the publication

of the notice in the State Register a minimum of five (5) calendar days (not counting the day of the meeting, Saturdays, Sundays, or legal holidays) before the regular meeting.

- 4.4 The board shall convene all regular meetings at 11:00 o'clock a.m. unless otherwise changed by a majority vote of those members present and voting.
- 4.5 The board shall convene all regular meetings at the board office unless otherwise changed by a majority vote of those board members present and voting.
- 4.6 In the event the meeting room cannot accommodate all members of the public who wish to attend, the board may move the meeting to another location, provided another suitable location is readily available, and the public arriving at the original meeting location are given appropriate directions to the new meeting location.
- 4.7 The board shall issue a meeting agenda no later than three business days, not counting Saturdays, Sundays, legal holidays or the day of the meeting. The meeting agenda shall be posted or otherwise readily available to the public during regular business hours at the board office. After an agenda has been issued, it can only be amended to add additional items of business up to two business days in advance of the meeting, unless the additional agenda item involves an emergency requiring immediate official action by the board. In case of emergency the amended agenda is to explain the nature of the emergency which caused the board to add the item to the agenda and this explanation is to be included in the meeting minutes.
- 4.8 Board members may submit agenda items at any time prior to mailing of the agenda.
- 4.9 Individuals may submit items for board consideration. The items should be submitted not less than thirty (30) days prior to the date of the regularly scheduled meeting. The Chairperson makes the final determination on whether an item submitted less than thirty (30) days in advance shall be considered.
- 4.10 The Chairperson may cancel a meeting if a quorum cannot be convened or if there are no items of business to be conducted by the board.
- 4.11 Individuals who desire to address the board during a regularly scheduled meeting may do so by making their wish known to the Chairperson at any time prior to the call to order.

§ 30-8-5. Special Meetings

- 5.1 The Chairperson, the Secretary, or any two (2) members of the board may call a special meeting.
- 5.2 The executive secretary shall provide written notice of the date, time, location and purpose of each special meeting to appropriate professional associations, and state agencies, as well as persons and organizations who have requested notification, and to the Secretary of State to permit the publication of the notice in the State Register a minimum of five (5) calendar days (not counting the day of the meeting, Saturdays, Sundays, or legal holidays) before the special meeting.
- 5.3 The board shall issue a meeting agenda no later than two business days, not counting Saturdays, Sundays, legal holidays, or the day of the meeting. The meeting agenda shall be posted or otherwise readily available to the public during regular business hours at the board office. If an emergency arises which

requires immediate official board action, then the amended agenda is to explain the nature of the emergency which caused the board to add the item to the agenda and this explanation is to be included in the meeting minutes.

§30-8-6. Emergency Meetings

6.1 The Chairperson may call a meeting in the event of an emergency requiring immediate official action by the board.

6.2 The executive secretary shall notify members by telephone or other expedient method.

6.3 The executive secretary shall file a written explanation containing the time, place, purpose of the meeting, facts, and circumstances of the emergency prior to the meeting, with the Secretary of State and such explanation is to be included in the minutes of the emergency meeting.

§30-8-7 Exceptions

7.1 The governing body of the West Virginia Board of Respiratory Care may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the board shall identify the authorization under this section for holding the executive session and present it to the members of the board and to the public.

7.2 An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

- a. To consider acts of war, threatened attack from a foreign power, civil insurrection or riot;
- b. To consider personnel or employee matters;
- c. To issue, effect, deny, suspend or revoke a license, under the laws of this state or any political subdivision, unless the person seeking the license, whose license was denied, suspended, or revoked requests an open meeting;
- d. To consider the physical or mental health of any person, unless the person requests an open meeting;
- e. To discuss any material the disclosure of which would constitute an unwarranted invasion of an individual's privacy such as any records, data, reports, recommendations or other personal material of any educational, training, social service, rehabilitation, welfare, housing, relocation, insurance and similar program or institution operated by a public agency pertaining to any specific individual admitted to or served by the institution or program, the individual's personal and family circumstances;
- f. To plan or consider an official investigation or matter relating to crime prevention or law enforcement;
- g. To development security personnel or devices;
- h. To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public might adversely affect the financial or other interest of the state or any political subdivision;
- i. To avoid the premature disclosure of an honorary degree, scholarship, prize or similar award;
- j. Nothing in this article permits the board to close a meeting that otherwise would be open merely because an agency attorney is a participant. If the board has approved or considered a

settlement in closed session, and the terms of the settlement allow disclosure, the terms of that settlement shall be reported by the board and entered into its minutes within a reasonable time after the settlement is concluded.

- k. To discuss any matter which, by express provision of federal law or state statute or rule of the court is rendered confidential, or which is not considered a public record within the freedom of information act as set forth in article one, chapter twenty-nine-b of this code.

7.3 No decision or vote may be made during an executive or closed session.

§30-8-9. Minutes

9.1 The board shall provide written minutes of all of its meetings. Subject to the exceptions for executive session set forth in section four (§6-9A-4) of this article, minutes of all meetings except minutes of executive sessions, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- a. The date, time and place of the meeting
- b. The name of each member of the board present and absent;
- c. All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition;
- d. The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the board for recording roll call votes, the vote of each member, by name.

§30-8-9. Meetings by Conference Call

9.1 Occasions may arise when one or more board members are not available to attend a meeting in person. On such occasions, members may attend and participate in the meeting by telephone or video teleconference to the same extent as if physically present. A speakerphone or other audio/video device shall be used at the meeting site to enable those present, including the public, to hear/see the members who are attending and participating by telephone or video/ teleconference.

30CSR9
LEGISLATIVE RULE
STUDENT TEMPORARY PERMIT

§30-9-1. General.

1.1. Scope. -- This legislative rule establishes the temporary permit process, fees and practice limitations for students enrolled in accredited respiratory care schools.

1.2. Authority. -- W. Va. Code §§ 30-34-6 and 30-34-9.

1.3. Filing Date. -- May 11, 2020.

1.4. Effective Date. -- August 11, 2020.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect after August 11, 2030.

§30-9-2. Application for Student Temporary Permit.

2.1. An applicant for student temporary permit shall file with the West Virginia Board of Respiratory Care a signed permit application form and shall pay an initial six (6) month permit application fee of seventy-five dollars (\$75.00).

2.2. The applicant shall submit:

2.2.1. A student work permit form signed by the program director of an accredited respiratory care program and by a principal administrative official of the institution where the program is located.

2.2.2. An official transcript indicating successful completion of a minimum of thirty semester hours or the quarter hour equivalent, eighteen of which must be specific to respiratory care core curriculum, and at least two hundred clinical hours.

2.2.3. Documentation from the program director indicating clinical competencies completed indicating successful completion of tasks by didactic testing and clinical observation by school faculty.

2.3. Upon expiration of initial six (6) month permit the student may apply for ~~an~~ additional six month permit by payment of an additional fee of twenty-five dollars (\$25.00) and providing the WV Board of Respiratory Care with documentation from the program director of the school where the student is enrolled stating the student is actively enrolled and taking a minimum of 9 satisfactory semester hours in respiratory care curriculum. Graduate respiratory care therapists may continue to work under their student temporary permit until the permit expires.

§30-9-3. Practice Limitations for the Student Temporary Permit holder.

3.1. The following procedures, approved by the Board, may be assigned to a student temporary permit holder if the permit holder has demonstrated the completion and competence of such tasks in the documentation from the school facility:

- 3.1.1. Set up and maintenance of low flow oxygen devices of 6 LPM or less to include nasal cannula or a simple mask.
- 3.1.2. Set up and maintenance of aerosol devices with oxygen percentage equal to or less than 50%.
- 3.1.3. Delivery of medications through a spontaneous small volume nebulizer.
- 3.1.4. Medication delivery via Metered Dose Inhaler or Dry Powder Inhaler.
- 3.1.5. Measurement of peak flow.
- 3.1.6. Measurement of simple spirometry.
- 3.1.7. Measurement of pulse oximetry.
- 3.1.8. Use of the following airway clearance devices or techniques: therapy vest, chest physiotherapy, incentive spirometry, suctioning via artificial airway, and positive expiratory pressure therapies.
- 3.1.9. Cardiopulmonary Resuscitation after Basic Life Support Certification.³⁰
- 3.2. A holder of the student temporary permit must work under the supervision of a licensed respiratory therapist. The licensed respiratory therapist must be present in the facility where the holder of the student temporary permit is working. Direct observational supervision is not required but the licensed respiratory therapist must be available in the event of an emergent need and act as source of reference for the holder of the student temporary permit.
- 3.3. A holder of the student temporary permit is not allowed to perform procedures on patients requiring mechanical ventilation, or on patients in any critical care situation or environments, such as: emergency rooms, intensive care units, and post anesthesia care units.
- 3.4. Mass casualty situations are permitted if the student temporary permit holder has received the proper training and supervised directly by a licensed respiratory therapist.
- 3.5. A holder of the student temporary permit is strictly prohibited from performing positive pressure procedures such as: Intermittent Positive Pressure Breathing, Bi-Level, Continuous Positive Airway Pressure devices.
- 3.6. A holder of the student temporary permit is strictly prohibited from performing any procedure which is not written within this rule.

30CSR10
LEGISLATIVE RULE
CONSIDERATION OF PRIOR CRIMINAL CONVICTIONS
IN INITIAL LICENSURE DETERMINATIONS

§30-10-1. General.

- 1.1. Scope. -- This rule establishes procedures for consideration of prior criminal convictions in initial licensure determinations.
- 1.2. Authority. -- W. Va. Code §30-34-6, and W. Va. Code §30-34-6a
- 1.3. Filing Date. -- May 4, 2020
- 1.4. Effective Date. -- July 1, 2020
- 1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect after July 1, 2025.

§30-10-2. Definitions.

- 2.1. "Board" means the West Virginia Board of Respiratory Care established pursuant to W. Va. Code §30-34-1 *et seq.*
- 2.2. "Initial licensure" means obtaining a license in West Virginia for the practice of respiratory care for the first time.
- 2.3. "License" or "licensure" means the official authorization by the board to practice respiratory care.
- 2.4. "Unreversed", as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.

§30-10-3. Rational nexus to the practice of respiratory care.

- 3.1. The board may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the practice of respiratory care. In determining whether a criminal conviction bears a rational nexus to respiratory care, the board shall consider at a minimum:
 - 3.1.1. The nature and seriousness of the crime for which the individual was convicted;
 - 3.1.2. The passage of time since the commission of the crime;
 - 3.1.3. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a respiratory therapist; and
 - 3.1.4. Any evidence of rehabilitation or treatment undertaken by the individual.

§30-10-4. Application after denial.

4.1. If an applicant has been denied licensure because of a prior criminal conviction, the board shall permit the applicant to apply for initial licensure if:

4.1.1. A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

4.1.2. The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

4.1.3. The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the board on a case by case basis.

§30-10-5. Petition for licensure eligibility determination.

5.1. An individual with a criminal record who has not previously applied for licensure may petition the board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license.

5.2. The petition shall be submitted on an application form prescribed by the board and shall include sufficient details about the individual's criminal record to enable the board to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction.

5.3. The applicant may submit, with the petition for licensure eligibility, evidence of rehabilitation, letters of reference, and any other information the applicant deems relevant to show fitness and the ability to practice respiratory care.

5.4. The board shall provide the determination within 60 days of receiving the petition and the applicable fee, as prescribed by the board, from the applicant.