

**BOARD OF RESPIRATORY CARE  
PUBLIC SESSION MINUTES  
FEBRUARY 5, 2008  
SOMERSET CONFERENCE ROOM,  
6th Floor**

**FINAL**

The February meeting of the New Jersey State Board of Respiratory Care was convened in accordance with its notice to the Secretary of State, the Bergen Record, the Trenton Times, the Courier Post and the Star-Ledger and was conducted in accordance with the provisions of the Open Public Meetings Act.

Chairman, Capek convened the meeting at 10:30 a.m. A roll call was taken and the following attendance was recorded for these minutes.

**PRESENT:**

Jeffrey Brozoski  
Kenneth Capek  
Michael G. Brown  
James Brophy  
Janet Castronovo

**ABSENT:** Tajwar Aamir, M.D. Robert Malovany, M.D.

Also in attendance: Dorcas K .O'Neal, Executive Director, Tobey Palan, Deputy Attorney General, Maryann Sheehan, Regulatory Analyst and Bernadette Abercrombie, staff.

Public attendance: Joseph Goss, RRT.

**I. APPROVAL OF MINUTES**

The Board reviewed the Public Minutes of January 8, 2008. On a motion by James Brophy, seconded by Jeffrey Brozoski, the Board unanimously approved the Public Session Minutes as amended.

**II. OLD BUSINESS**

- a. Proposed Criteria for Eligibility For Educational Sponsors for Non-Clinical Respiratory Care Continuing Education Credits and guidelines from New York and Ohio, were reagendaized for further review.
- b. Board Member James Brophy, submitted a copy of the Deborah Heart and Lung Symposium to ascertain whether the Board will approve courses offered. The Board determined that this matter be reagendaized for further review. REAGENDIZED.
- c. RC Educational Consulting Services, Inc., listing of 2008 AARC Course Approval Numbers, was reagendaized for further review. REAGENDIZED.

**III. NEW BUSINESS**

- a. The Board reviewed a fax from Gina Gazitano, Program Coordinator, UMDNJ- SPH-Centers for Education & Training, inquiring as to whether James Cleaves, RRT/CPFT, Manager of the Respiratory Care Services at Hoboken University Medical Center, is qualified to administer Pulmonary Function Tests (PFTS) to new firefighters in the State of New Jersey. The Board determined that, any one who is a licensed respiratory care practitioner and is in good standing with the New Jersey State Board of Respiratory Care is permitted to administer/perform pulmonary function testings. Ms. Gazitano will be so advised.

b. The Board reviewed a fax from PETRA SMITH, inquiring as to whether CE's from Kettering are acceptable. The Board determined that AARC approved programs are acceptable. Ms. Smith will be so advised and a copy of the law will be mail to her.

c. The Board reviewed a fax from Ms. Desai, inquiring as to how many CE's she can earn for NRP, which she took from 12/1/2005 to 12/1/2007. The Board determined that any course taken prior to 3/5/06 will not count towards the requisite 15 CE's for the cycle ending 3/31/2008. Ms. Desai will be so advised.

d. The Board reviewed a fax from Mary Kelley, stating that she is getting 10 CE's in respiratory related topics. She is also a registered nurse with 30 CE's. She is inquiring as to whether the other 5 CE's (from nursing) will satisfy the respiratory CE requirement. It was the consensus of the Board that so long as the courses are approved by AARC, they may be applied towards the CE's. Ms. Kelly will be so advised and a copy of the law will be mailed to her.

e. The Board reviewed a fax from Amit Nar, inquiring as to whether a person doing CPAP set-ups on patients in the State of New Jersey must be a licensed respiratory therapist, or nurse. The Board determined that a license is required in the State of New Jersey to perform CPAP. However, pursuant to N.J.S.A.45:14E-9c, nothing in this act is intended to limit, preclude or otherwise interfere with the practices of other person and health providers licensed by appropriate agencies of the State of New Jersey, provided such duties are consistent with the accepted standards of the member's profession and if the member does not present himself as a respiratory care practitioner. Ms. Nar will be so advised.

f. The Board reviewed a fax from Lawrence Rudesyle, inquiring as to whether the Board should be consulted about a Spirometry program offered by UMDNJ. The Board determined that a letter be sent to Mr. Rudesyle, along with a copy of the NOTICE OF THE BOARD OF RESPIRATORY CARE REGARDING PULMONARY FUNCTION TESTING, June, 2002.

g. The Board reviewed a fax from Gow-Hsiang Swei, who submitted a Certificate of completion from Kettering, inquiring as to how many of the 25.5, hours can be used to meet the CE requirement. The Board determined that Ms. Swei does not need to obtain CE's at this time as she was licensed between 4/1/2006 and 3/31/2008. Also, the Board determined that she may carry over 5 credits for the next licensing period ending 3/31/2010.

h. The Board received an E-mail from Thomas A. Lawyer, inquiring as to whether there are any free CE's available. The Board determined that Mr. Lawyer be advised that approved sponsors are AARC and NJSRC. Also he will be referred to the Board of Respiratory Care website and the New Jersey Society of Respiratory Care website at [www.njsrc.org](http://www.njsrc.org).

i. The Board received an E-mail from Sheila Conville, inquiring as to whether the 10 CE's have to be live or online; whether she can use all respiratory CE's or whether the 5 have to be other medical topics. The Board determined that she may take all of the CE's on line for this period only and that all may be in respiratory care.

#### **IV. INFORMATIONAL/FYI**

a. The Board reviewed Respiratory Care Total Revenues for Jan-Dec., 2007, as informational.

#### **V. PUBLIC COMMENTS**

Joseph Goss, RRT., attended the Public meeting, made specific comment on his submission in response to N.J.A.C.13:44F., which is included in the Summary of Comments.

#### **VI. LEGISLATION AND PROPOSED REGULATIONS**

a. The Board reviewed the summary of Comments to the Proposed Readoption of N.J.A.C.13:44F. The comment period on the proposal ended January 4, 2008. The Board received comments from the following:

1. Joseph Goss, RRT;
2. Nancy D'Ambrosio, RRT-NPS, BS, Director, Respiratory Therapy, Allcare Medical;
3. John Kalynovych, Clinical Coordinator, Respiratory Care, Overlook Hospital;
4. John Africano;
5. Robert G. Miller;
6. Robert Guardabasco, President, New Jersey Society for Respiratory Care; and
7. Anthony Cardinale.

1. COMMENT: Several commenters objected to the proposed amendment to N.J.A.C. 13:44F-3.2(a), which would permit a trainee to be supervised by a physician "and/or" a respiratory care practitioner. Currently, the rule requires a trainee to be supervised by a physician or a respiratory care practitioner. The commenters note that the proposed amendment does not alter the current practice of allowing a trainee to be supervised by a physician or a respiratory care practitioner. The commenters believe that a reference to "and" will lead to confusion in educational programs.

The reference to "and/or" could be interpreted to require a trainee to be supervised by both a physician and a respiratory care practitioner. Such supervision, the commenters claim, would not be practical. The commenters suggest that the Board not adopt the proposed amendment to N.J.A.C. 13:44F-3.2(a). RESPONSE: The Board intended the proposed amendment to N.J.A.C. 13:44F-3.2(a) to permit a trainee to perform clinical services under the direction or supervision of a physician or a licensed respiratory care practitioner, or under the supervision of both a physician and a licensed respiratory care therapist, in order to provide greater flexibility to the healthcare professionals providing such supervision, as well as to the educational programs administering the training. The Board did not intend the proposed amendment to suggest to members of the respiratory care community or to educational training program administrators that supervision of a trainee must be conducted by both a physician and a respiratory care practitioner. The Board, therefore, has declined to adopt the proposed amendment to N.J.A.C. 13:44F-3.2(a). Upon adoption, N.J.A.C. 13:44F-3.2(a) will continue to provide that a trainee may be supervised by a physician or by a licensed respiratory care therapist.

2. COMMENT: Several commenters objected to the Board's proposed amendments to N.J.A.C. 13:44F-3.3(d), which delineate the activities that a licensed respiratory care practitioner may delegate to unlicensed assistants. The commenters believe that the proposed amendments to N.J.A.C. 13:44F-3.3(d) attempt to expand the role of unlicensed assistants in the provision of respiratory care services. The commenters claim that direct patient care, which unlicensed assistants may not provide to patients under existing Board rule, should be viewed as providing assessment, treatment and education related to patients' wellness or disease state, including education on the use of any medication, device or equipment used in the treatment and management of respiratory conditions. The commenters believe that the proposed amendments to N.J.A.C. 13:44F-3.3(d)3, which permit a practitioner to delegate "exchanging and demonstrating equipment related to basic respiratory care" to unlicensed assistants, will permit an unlicensed assistant to be involved in direct patient care. The commenters suggest that the Board amend N.J.A.C. 13:44F-3.3(d)3 on adoption to delete the reference to exchanging and demonstrating equipment. RESPONSE: The Board disagrees with the commenters' suggestion that the proposed amendments to N.J.A.C. 13:44F-3.3(d)3 will permit unlicensed assistants to engage in direct patient care. Existing Board rule N.J.A.C. 13:44F-3.3(d), which is being recodified as subsection ', expressly provides that a licensed respiratory care practitioner shall not authorize or permit an assistant to engage in direct patient care. The Board does not believe that the exchanging and demonstrating of basic respiratory care equipment by an unlicensed assistant amounts to the provision of direct patient care. The Board, however, is aware that some confusion appears to exist with respect to what activities fall within the ambit of "exchanging and demonstrating" basic respiratory equipment. The Board intends to revisit this issue in a future rulemaking to provide clarification regarding such activities.

3. COMMENT: One commenter noted that the Respiratory Care Practice Act does not delineate the services or equipment that an unlicensed assistant may provide to patients. The commenter suggests that this lack of statutory authority to regulate the conduct of unlicensed assistants, in addition to the fact that the Board has not provided direction concerning the training that such assistants should receive, weigh in favor of deleting N.J.A.C. 13:44F-3.3 in its entirety. RESPONSE: The Board disagrees with the commenter's suggestion that no standards exist concerning the training that unlicensed assistants must undergo in order to perform certain delegated tasks. The

proposed amendments to N.J.A.C. 13:44F-3.3(b) provide that a licensed respiratory care practitioner may only delegate tasks to an unlicensed assistant if the assistant has received training necessary to ensure that the assistant can satisfactorily complete the delegated tasks. Consistent with N.J.A.C. 13:44F-3.3(b), the delegating respiratory care practitioner must ensure that his or her unlicensed assistants have sufficient training to complete the tasks the practitioner has decided to delegate to such individuals. In addition, the Board disagrees with the commenter's suggestion that the Board lacks the statutory authority to permit delegation of certain tasks to unlicensed assistants. N.J.S.A. 45:14E-7 of the Respiratory Care Practitioner Licensing Act authorizes the Board to promulgate regulations to carry out the provisions of the Act. The Board believes that regulations concerning the delegation to unlicensed assistants of certain tasks that do not involve direct patient care further the underlying purpose of the Respiratory Care Practitioner Licensing Act, which is to safeguard the health, safety and welfare of New Jersey citizens receiving respiratory care services.

4. COMMENT: Several commenters object to the proposed deletion of subsection (f) of N.J.A.C. 13:44F-3.3, which requires a licensed respiratory care practitioner who delegates certain tasks to unlicensed assistants in an in-patient setting to conduct an in-person assessment of the equipment and its application to the patient prior to patient use. The commenters note that a licensed respiratory care practitioner is specifically qualified to verify the proper operation of respiratory care-related equipment. The commenters note that other licensed health care practitioners do not possess this specialized education and training and, therefore, would not be qualified to make this assessment. The commenters believe that deleting the requirement in subsection (f) will be detrimental to members of the public receiving respiratory care services. The commenters believe that deleting subsection (f) conflicts with the requirement that licensed practitioners be responsible for the activities performed by unlicensed assistants. The commenters, therefore, recommend that the Board not delete N.J.A.C. 13:44F-3.3(f). RESPONSE: The Board is deleting the requirement in N.J.A.C. 13:44F-3.3(f) that a respiratory care practitioner who has delegated certain tasks to unlicensed assistants in an inpatient setting conduct an in-person assessment of the equipment prior to patient use, because, in practice, this check is often performed by other licensed healthcare practitioners in an in-patient setting. The Board does not disagree with the commenters' assertion that respiratory care practitioners are specifically qualified to perform this assessment. The Board notes, however, that other health care practitioners in an in-patient setting are also qualified to make such assessment. The Board does not agree that permitting other healthcare practitioners to make this assessment will be harmful to patients. Rather, permitting this assessment to be made by other healthcare professionals who may be available at the patient's bedside before a licensed respiratory care practitioner may be available, will help to ensure that patients are provided treatment in as timely a manner as possible. The Board also disagrees that permitting a healthcare practitioner to make this assessment may create a conflict with the requirement that a licensed respiratory care practitioner be responsible for the tasks delegated to an unlicensed assistant. The licensed respiratory care practitioner retains responsibility for all tasks he or she delegates to an unlicensed assistant pursuant to N.J.A.C. 13:44F-3.3(e), irrespective of whether another healthcare professional conducts the in-person assessment of the equipment.

5. COMMENT: Several of the commenters objected to the proposed amendments to N.J.A.C. 13:44F-3.3(d)3i. The commenters noted that a shortage of qualified licensed respiratory care therapists exists in New Jersey. In light of this, the commenters do not believe that it is reasonable to require a licensed respiratory care therapist to go to a patient's home to drop off another machine that is the same as the one that a patient is currently utilizing. Although the commenters agree that certain equipment, such as continuous positive airway pressure and bi-level positive airway pressure devices, should be set only by a qualified respiratory therapist, when the exchange of existing equipment is being done, usually because the machine is not working, the respiratory care therapist should not be required to make the exchange. The commenters note that a patient will already have been educated in the use of the machine. RESPONSE: The Board did not intend the proposed amendments to N.J.A.C. 13:44F-3.3(d)3i, which prohibit an unlicensed assistant from setting up, testing, exchanging or demonstrating mechanical ventilators or positive pressure equipment, such as continuous positive airway pressure and bi-level positive airway pressure devices, to prohibit the delivery of equipment by unlicensed persons. The Board did not intend use of the term "exchange" to include delivery of equipment to patients. The Board, therefore, is amending N.J.A.C. 13:44F-3.3(d)3i, on adoption, to clarify that the word "exchange" does not preclude a licensed respiratory care practitioner from delegating to unlicensed assistants the delivery of such equipment to patients. The Board notes, however, that N.J.A.C. 13:44F-3.3(f) requires a licensee to make a follow-up visit within 24 hours of the delivery

of such equipment.

6. COMMENT: Some of the commenters object to the requirement in N.J.A.C. 13:44F-3.3(f), requiring a respiratory care practitioner who delegates certain tasks to unlicensed individuals in an outpatient setting to ensure that a follow-up visit from a licensee is provided within 24 hours of the delivery of equipment. The commenters note that it is not always feasible for a licensee to comply with this requirement in an outpatient setting. Many times, the commenters note, licensees are asked by the patient, or his or her family, to wait a few days before making a home visit. The commenters recommend that the Board amend N.J.A.C. 13:44F-3.3(f) to require a follow-up visit to be made within 72 hours. One commenter suggested that N.J.A.C. 13:44F-3.3(f) be amended to require telephone contact with a patient within 24 hours of delivery, with a follow-up visit to be made within 72 hours. One commenter suggested that, if the Board retains the 24 hour requirement, the rule be amended to provide a licensee with the option to override this requirement if a medical need to delay the visits exists. RESPONSE: The Board believes that it is necessary for a licensed respiratory care practitioner to provide a follow-up visit to a patient within 24 hours of the delivery equipment as required in N.J.A.C. 13:44F-3.3(f) in order to ensure the health, safety and welfare of patients receiving respiratory care services. The Board believes that the 72 hour time frame suggested by the commenters is too long a period of time to permit the patient to go unchecked. The Board believes that the 24 hour timeframe established in the rule is both reasonable and necessary to safeguard patient health. The in-person visit provides the respiratory care practitioner with important information concerning the patient's condition and the equipment being used. For this reason, the Board also declines to amend the rule to permit the respiratory care practitioner to satisfy the requirements of the rule by contacting the patient by telephone during the initial 24 hour period following delivery of equipment.

7. COMMENT: One commenter inquired whether the rule, which provides that a licensed respiratory care practitioner "shall not permit an assistant to set up, test, exchange or demonstrate the equipment when oxygen is to be used on any life support system"[including] mechanical ventilation, either positive or negative pressure, with or without artificial airways, in use continuously or intermittently" would prohibit unlicensed assistants from cleaning, setting up and testing ventilators because they require the use of oxygen.

RESPONSE: The Board notes that the provision that the commenter cites to is currently contained in N.J.A.C. 13:44F-3.3(b) which the Board is deleting as part of this proposed readoption. The requirements applicable to the delegation to unlicensed assistants with respect to setting up, testing, exchanging and demonstrating equipment are set forth in N.J.A.C. 13:44F-3.3(d)3. N.J.A.C. 13:44F-3.3(d)3i provides that an assistant shall not be permitted to set up, test, exchange or demonstrate mechanical ventilators or positive pressure equipment, such as continuous positive airway pressure and bi-level positive airway pressure devices, with or without artificial airways, in use continuously or intermittently. An unlicensed assistant would, therefore, be prohibited under N.J.A.C. 13:44F-3.3(d) from setting up and testing ventilators.

8. COMMENT: One commenter requested an amendment to the Board's rules to require a licensed respiratory care practitioner to notify all of his or her supervisors upon a license suspension. The commenter suggests that such notification, which could be verbal or written, be provided within 24 hours of the licensee receiving notification of a license suspension from the Board. The commenter believes that such a requirement would protect managers and directors against unknowingly aiding and abetting unlicensed practice by a licensee who has had his or her license suspended. RESPONSE: The Board has proposed amendments to N.J.A.C. 13:44F-9.2(b) to require a licensee who supervises or manages the provision of services by licensed respiratory care practitioners to must ensure that all persons providing such services are licensed. The Board continues to believe that supervisors or managers must be responsible for ensuring that all persons providing respiratory care services hold a valid license issued by the Board. The Board, however, agrees with the commenter that licensees should be required to notify their supervisors or managers of a license suspension or revocation. The Board intends to propose a new requirement that licensees notify their employers of such Board action in a separate rulemaking in the future. Licensees and members of the general public may comment on the appropriateness of such a requirement at that time.

9. COMMENT: One commenter objected to permitting unlicensed assistants to "set up" any life support equipment. The setting up of such equipment should only be performed by a licensed respiratory care practitioner.

RESPONSE: N.J.A.C. 13:44F-3.3(d)3 permits unlicensed assistants to set up equipment related to basic respiratory delivery systems. N.J.A.C. 13:44F-3.3(d)3i prohibits unlicensed assistants from setting up life support equipment, as the commenter suggests. N.J.A.C. 13:44F-3.3(d)3i provides that an assistant shall not be permitted to set up, test, exchange or demonstrate mechanical ventilators or positive pressure equipment, such as continuous positive airway pressure and bi-level positive airway pressure devices, with or without artificial airways, in use continuously or intermittently.

10. COMMENT: One commenter recommended that the Board delineate the duties and responsibilities of RRTs and CRTs, and suggested that the rules be amended to provide that CRTs may only work under the direct supervision of RRTs. RESPONSE: The Respiratory Care Practitioner Licensing Act authorizes the Board to license respiratory care practitioners. The Act makes no reference to the credentials awarded by the National Board for Respiratory Care, or any other organization. The Board, therefore, cannot create differing duties and responsibility for licensed practitioners in New Jersey based on the designations provided to individuals by private organizations. A person who meets the qualifications for licensure outlined in N.J.S.A. 45:14E-10 and satisfies the requirements in N.J.A.C. 13:44F- 4.1, will be licensed as a respiratory care practitioner in the State of New Jersey. Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 13:44F. Full text of the adopted amendments follow (additions indicated in boldface thus; deletions indicated in brackets [thus]):

13:44F-3.2 Practice by trainees (a) A trainee may perform those duties essential for completion of his or her clinical service, without having to obtain a license, provided the duties are performed under the direction of a physician, as defined in N.J.A.C. 13:44F-3.1(b)1 and 2, and the supervision of a physician as defined in N.J.A.C. 13:44F-3.1(d), \*and/or\* under the direct supervision of a licensed respiratory care practitioner, as defined in N.J.A.C. 13:44F-5.1. (b) (No change from proposal.)

13:44F-3.3 Delegation by a respiratory care practitioner to unlicensed persons (a) (No change from proposal.) (d) Activities which a licensed respiratory care practitioner may delegate to assistants are limited to the following routine tasks: 1. — 2. (No change from proposal.) 3. Setting up, testing, exchanging and demonstrating equipment relating to basic respiratory delivery systems. i. An assistant shall not be permitted to set up, test, exchange or demonstrate mechanical ventilators or positive pressure equipment, such as continuous positive airway pressure and bi-level positive airway pressure devices, with or without artificial airways, in use continuously or intermittently. \*For purposes of this section, the term "exchange" does not mean delivery, and this section shall not preclude an unlicensed assistant from delivering such equipment to a patient's home.\* (e) - (f) (No change from proposal.)

On a motion by James Brophy, seconded by Jeffrey Brozoski, the Board unanimously approved N.J.A.C.13:44F, for adoption which is to publish in the May, 2008, New Jersey Register.

b. The Board reviewed Summary of Bills considered by the Board, as informational.

## **VII. OTHER BUSINESS**

None.

There being no other business to come before the Board in Public Session, on a motion by Michael G. Brown, seconded by Janet Castronovo, the Board adjourned the Public Session and moved into Executive Session for the purpose of receiving counsel, to review five items of old business, one item of new business and one applications.

The Board reconvened in public Session. The following disciplinary action is being reported in Public Session.

## **DISCIPLINARY ACTION**

I/M/O DELORES MALLOY - Filed Interim Consent Order January 16, 2007. Respondent cited in connection with her license being suspended indefinitely by Order of the Commonwealth of Pennsylvania Department of State, State Board of Medicine, for failure to appear for a mental and physical examination. She was found to be unable to practice respiratory care with reasonable skill and safety to patients.

An Interim Consent Order was entered with conditions that Respondent agrees not to practice respiratory care in New Jersey until further order of this Board. Respondent represented by her signature on this Order that she cannot return her original New Jersey license and most recent biennial registration to the New Jersey State Board of Respiratory Care, since she does not have these in her possession.

The Board Ordered that:

1. Effective immediately and until further order of the Board, Respondent voluntarily agrees to, and shall cease and desist the practice of respiratory care in the State of New Jersey.
2. Respondent hereby acknowledges and agrees that entry of this Interim Order shall not in any way preclude any further action against Respondent by the Board or any administrative or law enforcement entity resulting from Respondent's conduct prior to the entry of the within Interim Order.

The next schedule meeting is March 4, 2008. There being no other business to come before the Board, on a motion by Janet Castronovo, seconded by Michael G. Brown, the Board adjourned the meeting at 1:45 p.m.

Respectfully submitted,

Dorcas K. O'Neal  
Executive Director

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