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RULE ADOPTIONS

Reporter

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Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > NEW JERSEY STATE BOARD OF RESPIRATORY CARE

Administrative Code Citation

Adopted Repeal and New Rule: N.J.A.C. 13:44F-5.1

Adopted Amendments: N.J.A.C. 13:44F-1.1, 1.2, 3.1, 3.2, 4.1, 4.2, 4.4, 8.2, 8.4, 9.1, and 10.2A

Text

Respiratory Care Practitioner Licensing Act Rules; Continuing Education

Proposed: August 19, 2019, at 51 N.J.R. 1346(a).

Adopted: March 3, 2020, by the State Board of Respiratory Care, Kenneth Capek, Chairman.

Filed: August 12, 2020, as R.2020 d.083, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:1-15 and 45:14E-7; and P.L. 2017, c. 120.

Effective Date: September 8, 2020.

Expiration Date: March 4, 2022.

Summary of Public Comment and Agency Response:

The official comment period ended October 18, 2019. The State Board of Respiratory Care (Board) received comments from:

1. Robert Guardabasco, CRT, President, New Jersey Society for Respiratory Care;

2. Amy Ceconi, PhD, RRT, RRT-NPS, RPFT, Program Director, Bergen Community College; and

3. John Rutkowski, RRT, MBA, MPA, FACHE, FAARC, Respiratory Therapy Program Director, County College of Morris.

1. COMMENT: One commenter expressed support for the Board's proposed amendments to N.J.A.C. 13:44F-1.1(a) and (b), 1.2, 3.1, 4.2, 5.1, 9.1, and 10.2A.

RESPONSE: The Board thanks the commenter for its support.

2. COMMENT: The commenters expressed concern with the amendments to N.J.A.C. 13:44F-4.1(b)1i, concerning the documentation, in lieu of producing a copy of a high school diploma, that an applicant may submit as evidence of having obtained a high school diploma or its educational equivalent. The commenters believe that limiting the documentation to a bachelor's degree or higher from an accredited educational institution of higher learning will continue to make it difficult for graduates of an associate degree program.

Several of the commenters noted that all programs in New Jersey are associate degree programs with the closest baccalaureate programs being West Chester University in Pennsylvania and Long Island University in New York.

The commenters stated that the educational requirements of respiratory care have moved beyond the time when the initial rule requiring a high school diploma was established. The commenters believe that maintaining the high school diploma rule places a hardship on a graduate who cannot access their high school diploma and foreign graduates that need to spend time and money on a service that evaluates their educational qualifications. In addition, one of the commenters noted that foreign graduates with a college degree are not required to produce their high school diploma to enter its college.

The commenters request that the Board amend the rule to include an associate degree or higher, conferred by an accredited educational institution, and to remove the requirement for a high school diploma.

RESPONSE: As the commenters noted, the Board's intent with proposed N.J.A.C. 13:44F-4.1(b)1i was to assist applicants who have difficulty producing a copy of their high school diploma and agrees with the commenters that an associate's degree or higher is acceptable evidence. Accordingly, upon adoption, the Board will change N.J.A.C. 13:44F-4.1(b)1i to replace "a bachelor's degree or higher from an accredited educational institution of higher learning" with "an associate's degree or higher from an accredited educational institution of higher learning."

The Board believes that a minimum level of education is necessary for applicants to become licensed and declines to remove the requirement for an applicant to have a high school diploma or its educational equivalent.

3. COMMENT: One commenter noted that P.L. 2017, c. 120 also amended N.J.S.A. 45:14E-16.b(3) concerning changes to the continuing education credits recognized at symposiums and multi-day programs and contended that these changes are not reflected in the Board's rulemaking.

The commenter states that the statute provides:

"[i]n the case of education courses or programs, each hour of instruction shall be equivalent to one credit; however, credit shall not be denied for education programs provided as part of a symposium or multi-day program event if the aggregate duration of the accredited continuing education completed at the symposium or multi-day program event is at least one hour in duration."

RESPONSE: The Board previously adopted amendments to its continuing education rules at N.J.A.C. 13:44F-10.2(b) to allow for partial credits awarded in excess of one instructional hour for the same continuing education program, course, or seminar (see 51 N.J.R. 1277(a)). N.J.A.C. 13:44F-10.2(b) provides that,

"The Board will accept partial credit after the first credit hour increment has been earned for the same program, course, and seminar offered by one of the organizations listed in (a)1 above. Credit shall not be granted for programs, courses, and seminars that are less than one instructional hour long."

The Board believes that N.J.A.C. 13:44F-10.2(b) is consistent with N.J.S.A. 45:14E-16(b)3.

A Federal standards analysis is not required because the adopted amendments, repeal, and new rule are governed by N.J.S.A. 45:1-15 and 45:14E-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adopted amendments and new rule follows (additions to proposal indicated in boldface with asterisks * **thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:44F-1.1 Purpose and scope

(a) This chapter is promulgated by the Director of the Division of Consumer Affairs. The rules contained in this chapter implement the provisions of the Respiratory Care Practitioner Licensing Act, P.L. 1991, c. 31 and P.L. 2017, c. 120, and regulate the practice of respiratory care within the State of New Jersey.

(b) This chapter shall apply to all individuals who render respiratory care, as defined in N.J.A.C. 13:44F-1.2, under the direction or supervision of a plenary licensed physician, physician assistant, or advanced practice [page=1676] nurse, and to anyone within the jurisdiction of the Board of Respiratory Care.

(c) (No change.)

13:44F-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...

"Respiratory care" means the health specialty involving disease prevention, the treatment, management, control, and care for patients with deficiencies and abnormalities of the cardiac and pulmonary system, as further defined in N.J.S.A. 45:14E-3.c.

"Respiratory care education program" means a program of respiratory care education accredited by the Commission on Accreditation for Respiratory Care (CoARC), or its predecessor, or successor organization.

"Respiratory care practitioner" means a person licensed by the Board to practice respiratory care under the direction or supervision of a licensed physician, physician assistant, or advanced practice nurse, and who may transcribe and implement written, verbal, and protocol orders for respiratory care.

"Respiratory care protocols" means policies and protocols developed by a licensed health care facility through collaboration, when appropriate, with administrators, physicians, registered nurses, physical therapists, respiratory care practitioners, and other licensed health care practitioners.

...

SUBCHAPTER 3. AUTHORIZED PRACTICE

13:44F-3.1 Scope of practice

(a) For the purposes of treating, managing, controlling, and caring for patients with deficiencies and abnormalities of the cardiac and pulmonary system, a respiratory care practitioner may perform the following duties under the direction or supervision of a physician, physician assistant, or advanced practice nurse:

1.-13. (No change.)

(b) A respiratory care practitioner may perform the following duties under the direction or supervision of a physician, physician assistant, or advanced practice nurse:

1. Educate patients and caregivers about respiratory care procedures as part of a patient's disease management program; and

2. Provide professional consultation services to health care, educational, and community organizations, and State and local agencies.

(c) For purposes of this subchapter, "under the direction of a physician, physician assistant, or advanced practice nurse" means that respiratory care shall not be rendered unless one of the following conditions is met:

1. The licensee has obtained a written order or prescription from a plenary licensed physician, physician assistant, or advanced practice nurse, or from such other health care practitioner authorized by law to prescribe or order respiratory care;

2. The licensee has documented the physician, physician assistant, or advanced practice nurse's clearance for treatment of the patient, which may include the physician, physician assistant, or advanced practice nurse's countersigning of the respiratory care practitioner's proposed plan of treatment;

3. The licensee has followed the respiratory care protocols established by the health care facility at which he or she practices; or

4. (No change in text.)

(d) In no case will physician, physician assistant, or advance practice nurse direction be construed to have been provided on the basis of a patient's representation that he or she has obtained a physician, physician assistant, or advanced practice nurse's clearance.

(e) For the purposes of this subchapter, "under the supervision of a physician, physician assistant, or advanced practice nurse" means that respiratory care shall not be rendered unless a physician, physician assistant, or advanced practice nurse is constantly accessible, either on-site or through electronic communication, and available to render physical assistance when required.

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, physician assistant, or advanced practice nurse, as defined in N.J.A.C. 13:44F-3.1(c)1 and 2, and the supervision of a physician, physician assistant, or advanced practice nurse as defined in N.J.A.C. 13:44F-3.1(e), or under the direct supervision of a respiratory care practitioner.

(b) The trainee shall, when performing duties pursuant to (a) above, wear a badge which identifies the person as a trainee. Additionally, the supervising licensee or physician, physician assistant, or advanced practice nurse shall inform the patient that the person rendering care is a trainee.

SUBCHAPTER 4. APPLICANT QUALIFICATIONS; BOARD-APPROVED EXAMINATION

13:44F-4.1 Eligibility for licensure

(a) (No change.)

(b) An applicant shall submit, with the completed application form and the required fee, satisfactory proof that the applicant:

1. Has a high school diploma or its educational equivalent*[*;]* ***.***

i. If an applicant is unable to produce a copy of his or her high school diploma, the Board shall accept as evidence of having obtained a high school diploma or its educational equivalent, ***[a bachelor's]* *an associate's*** degree or higher from an accredited educational institution of higher learning.

2.-3. (No change.)

13:44F-4.2 Nature of examination; passing grade

(a) The respiratory care examination shall be the Registered Respiratory Therapist examination offered by the National Board for Respiratory Care, or its successor organization.

1.-2. (No change.)

13:44F-4.4 Credit towards licensure for education, training, and experience received while serving as a member of the Armed Forces

(a) (No change.)

(b) The Board shall issue a license to the applicant if the applicant presents evidence to the Board that:

1.-2. (No change.)

3. The applicant complies with all other requirements for licensure, including successful completion of the Registered Respiratory Therapist examination offered by the National Board for Respiratory Care, as set forth in N.J.A.C. 13:44F-4.1 and 4.2.

(c)-(e) (No change.)

SUBCHAPTER 5. TEMPORARY LICENSURE

13:44F-5.1 Temporary license

(a) In accordance with N.J.S.A. 45:14E-14, the Board may issue, without examination, a temporary license to practice respiratory care in this State provided that the person:

1. Submits an application on the forms provided by the Board;

2. Pays the fee set forth at N.J.A.C. 13:44F-8.1;

3. Provides evidence that he or she is qualified to engage in the practice of respiratory care; and

4. Is in the State on a temporary basis to assist in a medical emergency or to engage in a special project or teaching assignment relating to respiratory care practice.

(b) A temporary license shall expire one year from its date of issuance and may be renewed by the Board for an additional one-year period.

SUBCHAPTER 8. GENERAL PROVISIONS

13:44F-8.2 Patient records

(a) Respiratory care practitioners shall prepare contemporaneous, permanent treatment records. If custody of the patient records is within the responsibility of the licensee, the licensee shall ensure that every patient record shall be kept for at least seven years from the date of the most recent entry, except that if a patient is a minor, the records shall be kept for an additional two years beyond the age of 18. Such records shall include:

1.-5. (No change.)

[page=1677] 6. Written prescription for care or a care plan signed by a physician or such other health care practitioners authorized by law to prescribe, or a verbal order or prescription memorialized by the prescriber in writing pursuant to the provisions of N.J.A.C. 13:44F-3.1(c)3. The licensee shall document verbal prescriptions in the patient record contemporaneously with administration of treatment;

7.-9. (No change.)

(b) (No change.)

(c) In addition to the requirements of (a) above, a licensee employed in a setting regulated by the Department of Health shall comply with all applicable Department of Health rules.

(d) (No change.)

13:44F-8.4 Office location; Board information

(a) (No change.)

(b) Information related to Board operations may be obtained at the following website:
<http://www.njconsumeraffairs.gov/resp/Pages/regulations.aspx>.

SUBCHAPTER 9. UNLICENSED PRACTICE

13:44F-9.1 Acts amounting to unlicensed practice

(a) The following acts or practices shall be deemed to be the unlicensed practice of respiratory care:

1. (No change.)

2. The use of the words inhalation therapy, respiratory care, respiratory therapy, pulmonary therapy, or other such similar words or their related terms, letters, insignia, or abbreviations in connection with the offering of measures or services that are utilized in the rendition of respiratory care by any person who does not hold a license

to render respiratory care services or is not otherwise exempt from the licensure requirement;

3. The use of the designation respiratory care practitioner, respiratory therapist, respiratory therapy technician, pulmonary technician, or other such similar terms, letters, insignia, and their related abbreviations in connection with the offering of measures or services that are utilized in the rendition of respiratory care by any person who does not hold a license to render respiratory care services or is not otherwise exempt from licensure; or

4. (No change.)

SUBCHAPTER 10. CONTINUING EDUCATION

13:44F-10.2A Performance-based competency assessment; approval; determination of credits

(a)-(c) (No change.)

(d) Notwithstanding the provisions of (a), (b), and (c) above, pursuant to N.J.S.A. 45:14E-16.b(3), the Board shall not grant credit for continuing education for any program of activities designed to fulfill assigned general employment responsibilities specific to the expectations of an employer.

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