NORTH CAROLINA RESPIRATORY CARE BOARD
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DISCIPLINARY MANUAL

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NORTH CAROLINA RESPIRATORY CARE BOARD DISCIPLINARY MANUAL

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INTRODUCTION

The North Carolina Respiratory Care Board has adopted this Disciplinary Manual to explain how it will proceed in conducting investigations of possible violations of the Respiratory Care Practice Act (the "***Act***") or of the ***Board's Rules***. However, the Board may invoke any of the powers and remedies authorized under the Act or the Board's Rules, and is not restricted to the procedures and Disciplinary Sanctions described in this Manual.

Unless specifically stated otherwise in this Disciplinary Manual, the Executive Director of the Board is authorized to deviate from these policies when deemed necessary to fulfill the Board's statutory responsibilities, so long as the Executive Director has documented the basis for such actions in writing, and follows any other guidelines that apply. Any such departure from the procedures in this Manual will be reviewed at the Board's next regularly scheduled meeting.

This revision of the Disciplinary Manual was approved by the Board at its meeting on January 12, 2017, and these policies and procedures are subject to change by majority vote of the Board at any time. When any of the policies or procedures outlined in this Disciplinary Manual are changed, the Board will publish notice of the change on its website and will post the revised manual as a PDF Document at the Discipline Page on the Board's website:

http://www.ncrcb.org/discipline.htm

In addition, the Board will mail notice of the change and a copy of the revised Disciplinary Manual to any individual or organization that has previously submitted a written request to receive such notices.

A number of the terms used in this Disciplinary Manual are defined in the Glossary found on page 31. Those terms and their abbreviations are show in bold and italics where they appear for the first time.

Basic Outline of the Board's Investigation and Disciplinary Process

This Manual presents a general description of the how the Board responds to complaints or concerns about conduct relating to the Act or to the Board's Rules, as well as a description of the disciplinary sanctions that it may determine to apply in particular cases.

The key components of the Board's investigation and disciplinary process are illustrated by the chart on the next page. However, please note that the entire manual, rather than the chart, should be consulted for a detailed and thorough description of the process.

The chart illustrates how the Board proceeds after it has received a ***Report*** about the conduct of a ***Licensee***, or of another individual or an organization that may be engaged in the Practice of Respiratory Care as defined in the Act. The chart notes the steps that the Board takes in response, leading in some cases to interviews with the Board's Investigation and Informal Settlement Committee ("***IISC***"). After reviewing information gathered in the interviews and otherwise, the Committee may recommend:

- That no action be taken;
- That a licensee be offered a ***Consent Order*** with some form of discipline, or other required compliance or performance steps, with the additional proviso that a hearing or other action should follow if the Licensee or other person does not accept the Consent Order; or
- That no Consent Order be offered and that a hearing should proceed.

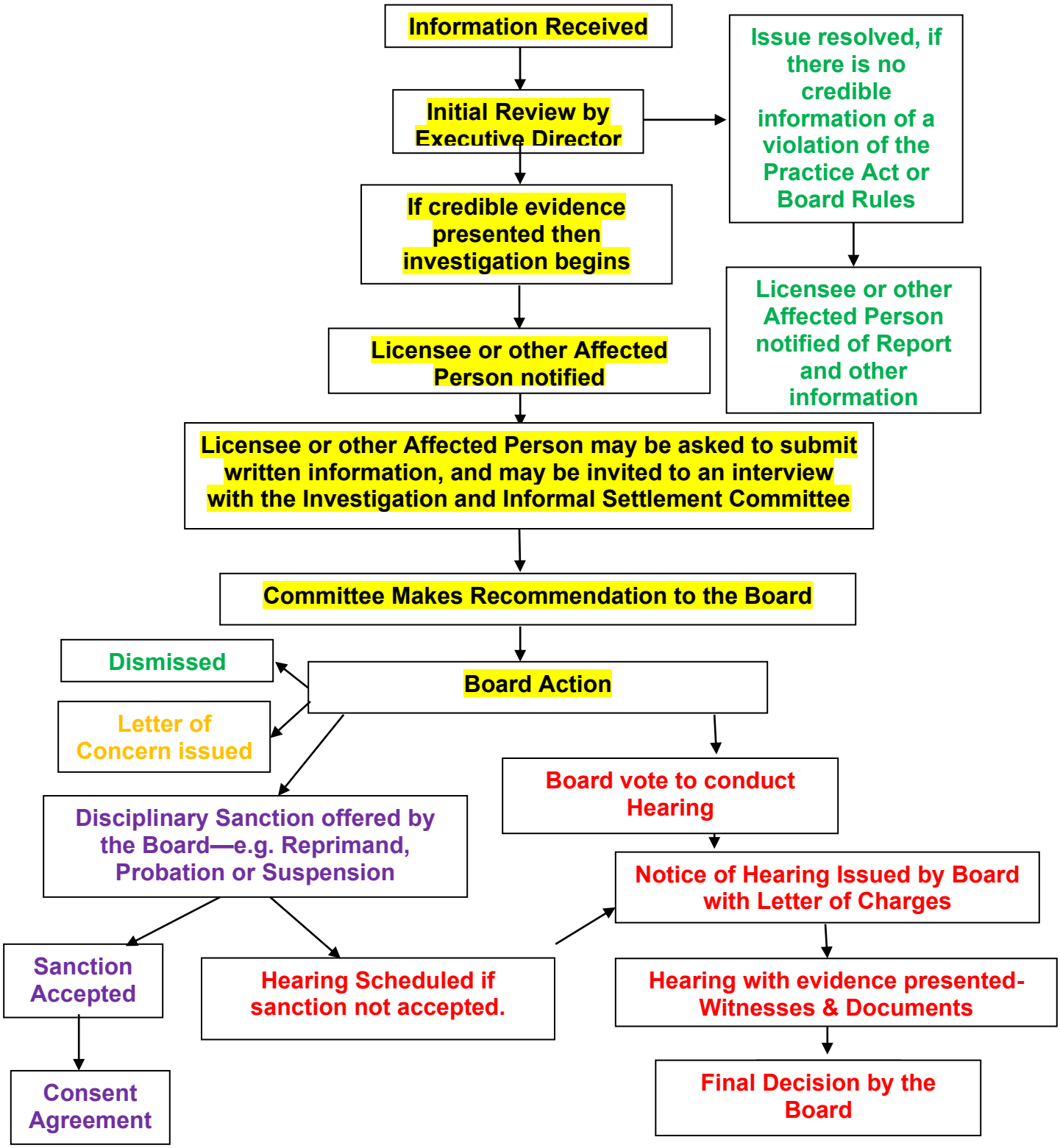
The full Board reviews and acts on the Committee recommendations, usually at its next regular quarterly meeting.

Part A of this Manual describes the steps that the Board will take when it receives or uncovers information indicating that there has been a violation of the Act or of the Board's Rules. Part B presents an overview of the disciplinary sanctions and other actions that the Board may pursue.

Certain disciplinary actions taken by the Board will be reported on the Board's website, to the National Practitioner Data Bank ("NPDB") maintained by the U.S. Department of Health and Human Services, and to the National Databank maintained by the National Board for Respiratory Care ("NBRC"). More details about reporting disciplinary actions and the information that will be provided in these reports is found in Section B.10, on page 28.

Any records of proceedings following the procedures in this Disciplinary Manual will be will be maintained in accordance with the Board's Records Disposal Policy.

INVESTIGATION/DISCIPLINE PROCESS FLOW CHART



A. THE BOARD'S INVESTIGATIVE PROCEDURES

A.1 HOW THE BOARD PROVIDES NOTICES:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011, April 10, 2014; January 12, 2017

PURPOSE: To explain how the Board will issue notices to Licensees and other parties.

Each Licensee is required to notify the Board of any name change or change in the Licensee's residence or business mailing address under 21 NCAC 61 .0501. Therefore, the Board will rely on the mailing address information (the "***Address of Record***") and any email address provided by each Licensee to identify the addresses to which notices to a Licensee should be sent.

In general, notices required in this Disciplinary Manual will be provided as described in this Section A.1. The Executive Director is authorized to deviate from these notice procedures in regard to notices of interviews; but the procedures set forth in this Section will be followed to provide notices of any disciplinary hearings before the full Board, and may not be changed except by authorization of the full Board. Whenever feasible, notices of interviews and of other scheduled events that a Licensee must attend, other than disciplinary hearings, will be sent 10 days before the date of the event that is the subject of the notice, except in the case of a Board meeting called to discuss a possible ***Summary Suspension*** of a License under Policy B. 6, for which there will be no minimal period of notice of such meetings.

Notices to a current or previous Licensee of the Board will be sent by Certified Mail, Return Receipt Requested, to that Licensee's most recent mailing Address of Record in the Board's files, as well as to the Licensee's most recent electronic mail Address of Record in the Board's files. If a mailed notice is returned undelivered, the Executive Director will attempt to determine the Licensee's current mailing address by contacting the most recent practice site previously identified by the Licensee, and will send a notice by Certified Mail, Return Receipt Requested to each additional address for that Licensee that is provided to the Executive Director by that practice site.

Notices to any other individual who is not a Licensee will be sent by Certified Mail, Return Receipt Requested or any other means available, directed to each physical and electronic address for any such individual that is recorded on the records of another state agency such as the North Carolina Secretary of State's Office, or is otherwise known to the Board at the time the Notice is sent.

Notices to a company or other organization will be sent by Certified Mail, Return Receipt Requested, directed to each physical and electronic address for any such organization that is available on the website of the North Carolina Secretary of State, or on a website maintained by the organization, or is otherwise known to the Board at the time the Notice is sent.

If after following these procedures, the Board is unsuccessful in reaching a Licensee, or other individual or organization, it will proceed with the Interview, disciplinary hearing or other proceeding that is the subject of the notice.

A.2 PRESENTING CONCERNS TO THE BOARD ABOUT CONDUCT RELATING TO THE RESPIRATORY CARE PRACTICE ACT AND THE BOARD'S RULES:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain how to submit complaints or other concerns about the conduct of Licensees or other individuals or organizations that relate to the Act or to the Board's Rules.

Complaints and other concerns about the conduct or activities of Licensees, or about individuals who may be practicing Respiratory Care without a license, or regarding other conduct or activities that may violate the Act or the Board's Rules, should be submitted to the Board Office, or on the Board's website. These Reports should specify facts or circumstances which indicate that a violation of the Act or the Board's Rules may have occurred, or that a violation of another North Carolina statute has occurred which can be the basis for a determination that a violation of the Act or Board's Rules has occurred.

All persons with complaints or concerns to report to the Board are encouraged to submit any Report electronically on the Board's website, using the "***Report Form***" that is available on the Board's website. Reports submitted in writing may also be delivered to the Board Office by mail, private carrier, or in person but should follow the general format of the Report Form. When persons submit oral reports by telephone or in person, Board Staff will gather the information needed to complete the Report Form. Anonymous allegations will not be accepted or considered, except in unusual circumstances when the Executive Director determines that it is appropriate to proceed; and in those cases the Executive Director will document the basis for the decision to proceed.

SUBMITTING INFORMATION TO THE BOARD:

Reports should provide all available information about each of the following points:

- The name, mailing address and phone number of each person providing information;

- The name of each Licensee or other person involved in the conduct or activities in question, and the name and location of each organization or site where the Licensee or any other person involved is alleged to have engaged in the conduct or activities in question;

- A detailed description of the alleged conduct or activities, including identification of each date, time, and location of any alleged conduct or activities, where possible:

- The identity of any other individuals with information about the alleged conduct or activities, and

- The identity and location of any documents that are known to be pertinent to the content of the Report.

A.3 THE BOARD'S INITIAL ASSESSMENT OF REPORTS:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011, April 10, 2014; January 12, 2017

PURPOSE: To explain how the Board responds to a Report about a Licensee or other party.

The Executive Director has the authority to decide to investigate any personal or professional conduct of a Licensee that relates to a Licensee's fitness or competence; and may also decide to investigate the conduct of an unlicensed individual, or the conduct of an organization that appears to be engaged in the Practice of Respiratory Care without using the services of a Licensee. Investigations may be started based upon information that comes to the Board through its own efforts, through a review of its own files, or by means of a Report presented to the Board by some other third party, including another governmental agency. After an initial review and analysis of the information received about a particular course of conduct or other activity (hereafter called a "***Matter***"), the Executive Director will follow the process described below to decide whether an investigation should begin.

INITIAL DATA COLLECTION AND ANALYSIS:

In compiling information to assess whether to start an investigation of a Matter, the Executive Director will attempt to gather at least the following information:

- Contact information for any person, other than a Board member or staff member, who has provided information about the Matter, including name, mailing address and phone number; and the basis for each person's knowledge about the information provided;

- The name of each Licensee involved in the alleged conduct or activities, and the name and location of each other person or organization involved in the alleged conduct or activities;

- A detailed description of the alleged conduct or activities, including any available identification of date, time, and location of the alleged conduct or activities,

- The identity of any other individuals who are known to have information about the alleged conduct or activities; and

- Copies of any documents identified in the Report, or which come to the Board's immediate attention and which relate to the alleged conduct or activities.

If in the judgment of the Executive Director, it is necessary to subpoena documents to make an initial assessment of the information contained in a Report, the Executive Director may issue a subpoena for any documents needed, following the procedure outlined in Section A.6.

ASSESSMENT OF INITIAL INFORMATION GATHERED

After reviewing the information that has been submitted and completing any initial follow-up fact gathering that is deemed appropriate, the Executive Director will determine whether there is credible information to support a conclusion that a violation of the Act, or of the Board's Rules, may have occurred. In making this assessment the Executive Director may, but is not required to, consult with the Chair of the Investigative Committee and with Board Counsel.

After considering the information available from interviews, documents and any other source, the Executive Director will determine whether to close the Matter under Section A.4, or open and investigation under Section A.5.

If the Executive Director determines that the Investigative Committee should conduct interviews to address the Matter, the Executive Director will schedule interviews with the Board's Investigation and Informal Settlement Committee concerning the Matter. If a determination is made to schedule any interview for a Matter, the procedures outlined in Section A.7 and A.8 will be followed to their conclusion.

If it is determined that further action by the Board is needed to address the Matter, but no interviews with the Investigative Committee are needed, then it will be put on the agenda of the Committee for consideration without interviews.

A.4 CLOSING A MATTER AFTER AN INITIAL REVIEW:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain how the Board will decide not to open an Investigative File.

If the Executive Director determines at any point that there is insufficient basis to find a violation of the Act or the Board's Rules, the Executive Director may, but is not required to, confer with the Investigative Committee Chair or with the Board Chair if the Committee Chair is unavailable, and may also seek guidance from Board Counsel to determine whether a Matter should be closed.

After a decision to close a Matter, no further investigation or review will occur, and no further action will be taken by the Board except that if it has been determined that another board or agency, within or outside the State, has jurisdiction over the conduct or activity described in the Report, then if directed by the Board, the Executive Director will refer the Matter to each other board or agency with jurisdiction.

After an Investigation File is closed, any person who furnished information about the alleged conduct or activity involved in the Matter will be notified by U.S. Mail at the address provided in the Report. In addition, each Licensee and any other Person whose alleged conduct or activity was the subject of the Report (each of whom is an "***Affected Person****")* will be notified, using the procedures identified in the Notices Policy in Section A.1. This notice will also inform each Affected Person that they may make an appointment through the Board Office to review information compiled by the Board relating to the Matter. If the Matter has been referred to another board or agency, that fact will be disclosed in the notice.

Records of Matters closed under this procedure remain subject to North Carolina's Public Records Act, and will be maintained in accordance with the Board's Records Disposal Policy.

A.5 THE BOARD'S INVESTIGATORY PROCESS:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain the process for Board investigations.

OPENING AN INVESTIGATION

If the assessment of the information relating to a Matter leads to the conclusion that there is substantial credible evidence to indicate that a violation of the Act or the Board's Rules is likely to have occurred, then the Executive Director will enter the information into the NCRCB Investigation Database and assign a case number for the Matter.

Upon making that determination, the Executive Director will send a ***Letter of Investigation*** to each Affected Person. The Letter of Investigation will contain a summary of the information that has prompted the investigation, and will enclose The Basic Outline of the Disciplinary Process, The Discipline Flow Chart, and Board contact information. The Letter of Investigation will notify any recipients of the Board's status as a Health Oversight Agency under HIPAA, as described below, and of their right to have counsel represent them in the Matter and that when the Executive Director determines that an Investigative File, or a distinct segment of the Investigative File, is complete, that an appointment may be made through the Board Office to review information compiled by the Board relating to the Matter. However, the identity of any person who has furnished information about a Matter or who has been identified as having knowledge about a Matter will not be disclosed until the Executive Director determines whether interviews should be scheduled following the policy in Section A.7. Each Letter of Investigation will be transmitted using the procedures outlined in the Board's Notices Policy in Section A.1, and if feasible, will be sent within 10 days after the decision to begin the investigation; but the investigation will not be delayed pending any Affected Person's receipt of notice.

Each investigation will be oriented toward identifying any credible evidence of a violation of the Act or of the Board's Rules. The Executive Director, will determine and define the scope of each investigation, which may be framed more broadly than the scope of the information contained in a Report; and in making this determination, the Executive Director may, but is not required to, consult with the Investigative Committee Chair or the Board Chair if the Committee Chair is unavailable, and may also seek guidance from Board Counsel.

If credible evidence of other violations that were not previously reported comes to light during an investigation, the Board also will investigate those other possible violations. Each Affected Person will be notified promptly of any such additional issues.

GATHERING ADDITIONAL INFORMATION IN THE INVESTIGATION

After issuing a Letter of Investigation, the Board staff will continue to identify persons who are likely to have knowledge of the circumstances related to a Matter and to identify sources of relevant documents. When the Executive Director deems it appropriate, the Board staff may consult with the Chair of the Investigative Committee and with Board Counsel to identify and pursue sources of information to investigate a Matter.

CONTACTING SOURCES OF INFORMATION IN AN INVESTIGATION

The Board staff will notify Affected Persons, individuals who have knowledge pertinent to the Matter, and any person or organization that holds documents pertinent to the Matter, of the Board's status as a "***Health Oversight Agency***" to which persons and organizations governed by the HIPAA Privacy Rule adopted by the United States Department of Health and Human Services may disclose Protected Health Information. When requested, Board staff also will provide a copy of the letter dated July 10, 2013 from the North Carolina Department of Justice confirming that the Board is a Health Oversight Agency under HIPAA and that it may view individuals' health records.

Investigations will be conducted by the Executive Director, by the Board Investigator, and in some cases by another person with special expertise who is authorized by the Executive Director to conduct the investigation of a Matter, or of a particular issue or issues relating to a Matter, and with the guidance and assistance of the Board's Legal Counsel when needed in the judgment of the Executive Director. Each investigation will be conducted as expeditiously as possible in light of the nature of the conduct or activity under review and the workload of Board staff, and other pertinent considerations. Information gathered during an investigation will be put in writing at the earliest feasible time after collection of the information**.**

Each individual with pertinent knowledge or who has custody of pertinent documents will be contacted by telephone or E-mail to arrange a ***Field Interview*** which will be conducted by telephone or in person, at a location in or near the town where the individual works or lives.

The Executive Director also may decide to invite one or more of the Affected Persons in a Matter to participate in a Field Interview with a member of the Board staff. When an Affected Person is contacted to arrange a Field Interview, that person will be notified of the nature of the Matter under investigation, the right to refuse to be interviewed, the right to have legal counsel present during an interview, and of the possibility of sanctions that might be imposed by the Board including revocation of license or other sanctions under the ACT [EXECUTIVE DIRECTOR TO DEVELOP A FORM DOCUMENT TO PROVIDE THIS NOTICE AT TIME OF CONTACT].

When an individual or organization that is a source of information in an investigation is licensed by another state board or agency, Board Staff may contact the other state board or agency to obtain information and documents pertinent to the Matter.

OBTAINING COPIES OF DOCUMENTS IN AN INVESTIGATION

During Field Interview and other investigative activities, Board Staff may request persons who have custody of documents that are pertinent to a Matter to provide the documents voluntarily. In obtaining pertinent documents that are not submitted to the Board voluntarily during interviews and other investigative activities, the Board staff will follow the subpoena procedures set forth in Section A.6.

A.6 OBTAINING COPIES OF RECORDS FOR INVESTIGATIONS:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011, April 10, 2014; January 12, 2017

PURPOSE: To explain how the Board will obtain medical records and other data needed to conduct an investigation

The Board may receive documents related to its investigation of a Matter without issuance of a subpoena, but may issue subpoenas to persons or organizations holding relevant documents.Subpoenas may be issued by the Board for the production of copies of records, including medical records. The Board Chair or Executive Director is authorized to sign subpoenas needed for investigations or for use as exhibits at Administrative Hearings. Each subpoena will be sent by Certified Mail, Return Receipt Requested, to the addressee, but a courtesy copy may be delivered by other means.

Each subpoena will identify the records needed by the Board with as much specificity as is possible in light of the information available to the Board at the time. Each subpoena will specify a Return Date as the deadline for providing the documents. Whenever possible, the ***Return Date*** will be at least two weeks before a scheduled Interview or Administrative Hearing. Each subpoena will be accompanied by a copy of the portion of the Act that gives the Board subpoena power, as well as a copy of the letter dated July 10, 2013 from the North Carolina Department of Justice confirming that the Board is a “Health Oversight Agency” to which Covered Entities governed by the HIPAA Privacy Rule adopted by the United States Department of Health and Human Services may disclose Protected Health Information.

In issuing subpoenas and other requests for documents, the Board will make every effort to limit its request to the minimum necessary information required in order to complete its investigation.

Documents that the Board receives in the course of investigating a Matter whichare pertinent to the investigation will be retained in its Investigation Files so long as the documents are not original records. Under no circumstances will the Board or Board staff request or retain the original of any medical record or business record. if the Board determines that any documents it has received are originals, they will be returned to the proper custodian after copies are made of any portions of the records that are the subject of a subpoena or are pertinent to a Matter under investigation.

A.7 INTERVIEWS BY THE INVESTIGATIVE COMMITTEE:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain the procedures for interviews by the IISC.

Any Licensee or other Affected Person whose alleged conduct or activity is the subject of an investigation may be invited to an interview with the IISC. In the case of a company or other organization, the Board will invite the owner of the organization or an executive who has knowledge of the circumstances described in the Report.

When scheduling an interview with any person, the Executive Director will describe the nature of the Matter under investigation, and will inform any Affected Person that he or she may decline to participate in an interview, may be accompanied by counsel and one family member to the interview, and that whether an Affected Person decides to attend or not, the Affected Person may submit written information in response to the Matter under investigation, including written references attesting to quality of practice. Once the Interview is scheduled, the Licensee or other Affected Person may schedule a time during the Board's normal business hours on or before the day of the interview, to view all documents in the Board's possession related to the Matter, before responding to any questions.

The Executive Director shall have discretion to postpone scheduled interviews, when there is a good reason to do so.

The Executive Director also may invite the person or persons who have submitted the Report, and other individuals with unique knowledge about the subject of the investigation, to attend the IISC meeting. Any individual invited to attend an interview may refuse to be interviewed and may choose to provide written statements to the Board instead of attending, and an individual also may refuse to answer specific questions posed during the interview. The IISC will proceed based on information available from interviews and other sources, and will make a recommendation to the Board as to the disposition of the Matter, based on the credible information obtained in the investigation.

Each Interview will be directed by the Chair of the Investigative Committee, and before any substantive questions are asked, the Licensee or other Affected Person interviewed will receive an oral summary of the Matter being investigated. No Affected Person whose conduct or activities is the subject of an investigation will be required to give sworn testimony; but other persons interviewed may be asked to provide a sworn statement.

> The members of the IISC, the Executive Director, each Board Investigator, the Board Counsel, and where deemed appropriate and in the interest of the Board, the Board Chair or a Board Member designated by the Chair also may attend. The Licensee or other Affected Person, and the Affected person's Legal Counsel, may be present during interviews of other persons related to the conduct or activities under investigation. At the discretion and under the direction and limitation of the Chair of the committee, the Affected Person or Legal Counsel may pose questions to any other person interviewed or suggest questions be posed by the Committee to another person who is interviewed.

A.8 RECOMMENDATIONS OF THE INVESTIGATIVE COMMITTEE:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain the Board's procedures for consideration of the recommendations of the IISC.

After reviewing the information provided during interviews and other pertinent information the Investigative Committee may recommend that the Matter be dismissed, or if it determines that substantial credible evidence exists to demonstrate that it is likely that the Licensee, or other Affected Person, whose conduct or other activity is the subject of the investigation, has violated the Act or the Board's Rules, then the Committee may recommend: 1) That the Board offer the Licensee or other Affected Person a Consent Order, with specified disciplinary sanctions and required performance criteria, with the proviso that a hearing be scheduled if the Licensee does not accept the Consent Order; 2) That a hearing should be scheduled to consider disciplinary action against a Licensee; or 3) in the case of unlicensed individuals or organizations, that other action be taken to address their conduct.

The recommendations of the Committee will be considered at the next scheduled meeting of the full Board, or at a subsequent meeting, During the Board meeting when this Matter comes before the Board, it may accept the recommendation of the Committee, approve offering a Consent Order with a different sanction to the Licensee or other Affected Person, approve another Disciplinary Action, determine that other measures be adopted to address the conduct in question; or determine that no sanction should be imposed.

The Executive Director will contact the Licensee or other Affected Person whose conduct or other activity is the subject of the investigation within five business days after the Board meeting to communicate the result of the Board's consideration of the Matter.

When the Board has determined to offer a sanction via a Consent Order, the Executive Director will communicate that, and if that offer is accepted by the Licensee or other Affected Person, then the Executive Director will prepare a Consent Order containing those terms for signature by the Licensee or other Affected Person. After a consent order is signed, the Executive Director will enter the summary of findings and sanction into each Affected Licensee's NCRCB Database file and will make any required reports to NPDB and NBRC Databank, as stated in Section B.10.

If the Licensee whose conduct or other activity is the subject of the investigation does not agree to the sanction offered by the Board, or if the full Board determines to proceed with a hearing instead of offering the Consent Order, the Board will issue notice to the Licensee of its action and of the scheduling of an Administrative Hearing, following the Notices Procedure in Section A.1, and will proceed with the hearing according to the Board Rules.

If an Affected Person who is not licensed is offered a Consent Order and chooses not to accept it, then the Board will consider how to proceed at its next regularly scheduled meeting, unless it is determined to schedule a special meeting of the Board to consider the Matter.

A.9. PUBLIC ACCESS TO FILES OF ONGOING INVESTIGATIONS:

ORIGINAL EFFECTIVE DATE: January 12, 2017
DATE (S) REVISED:

PURPOSE: To explain when investigation materials are made available for public inspection.

ACCESS TO INFORMATION ABOUT AN INVESTIGATION BY MEMBERS OF THE PUBLIC

While an investigation is conducted by the Board, its contents are confidential, and any information collected before an investigation is complete, as well as the identity of individuals furnishing information in the investigation will not be available for public inspection, except when the Executive Director deems portions of investigations to be sufficiently complete that information can be made available for public inspection.

However, the Board cannot guarantee persons who furnish information to the Board that their identity will remain confidential throughout the entire process. If the Board schedules an interview under Section A.7 with a Licensee or other Affected Person whose conduct or activity is the subject of an investigation, then the identity of the persons who have furnished information relating to the conduct or activity will be disclosed prior to the interview. In addition, if the Board schedules a hearing with regard to a matter that has been investigated, any material and information accumulated by the Board in the course of the investigation of that matter will become a matter of public record, once the Board schedules the hearing.

A.10. SPECIAL CONSIDERATIONS IN INVESTIGATIONS OF UNLICENSED PERSONS:

ORIGINAL EFFECTIVE DATE: January 12, 2017
DATE (S) REVISED:

PURPOSE: To explain the Board's procedures to address the conduct of persons not licensed by the Board.

The Act requires that persons who engage in activities that constitute the ***Practice of Respiratory Care*** must be licensed by the Board, unless their activities are exempt under the provisions of G.S. 90-664. As the agency charged with administering the Act, the Board is responsible to investigate reports of the practice of Respiratory Care without a license. When the Board receives a report indicating that any individual has engaged in the unlicensed practice of Respiratory Care, it will follow these additional procedures in addition to the other procedures outlined in this Disciplinary Manual.

In its Initial Review of a Report of unlicensed practice, the Board will review whether the activities fall within the scope of G.S. 90-664, and are therefore not subject to licensure by the Board, focusing on the precise nature of an Affected Person's conduct, the nature of any registration, license, certification, or other credential held by an Affected person, and the scope of practice recognized by any such registration, license, certification, or other credential, including the commonly accepted course of the training leading to issuance of the pertinent registration, license, certification, or other credential.

In any communications with unlicensed persons about a Report of unlicensed practice of Respiratory Care, the Board will include this notice:

> You are hereby notified that any opinion expressed by the Board in this communication is not a legal determination. An occupational licensing board does not have the authority to order you to discontinue your current practices or activities. Only a court may determine that you have violated or are violating any law and, if appropriate, impose a remedy or penalty for the violation. Further, pursuant to G.S. 150B-4, you may have the right, prior to initiation of any court action by the Board, to request a declaratory ruling regarding whether your particular conduct is lawful. You are further notified that any right to a declaratory ruling supplements any other legal rights that you may already have to establish the legality of your conduct with respect to the goods or services you offer or provide.

A.11 REIMBURSING WITNESS EXPENSES:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain Board procedures for reimbursing expenses of witnesses who testify at administrative hearings or in depositions scheduled by the Board.

Witnesses who are not Affected Persons and who appear at the Board's office to testify under subpoena or at the Board's request, or who appear to be interviewed under subpoena or at the Board's request,will be reimbursed for actual expenses at the state rate for mileage and meals.

An information sheet which describes the costs that the Board will reimburse will be supplied to all witnesses at the time a subpoena or other request to testify is issued.

Reimbursement for lodging for a witness will only be provided if, in the judgment of the Executive Director, the witness lives more than 100 miles as the crow flies from the Board's Office or other location of a hearing, and there are other special circumstances documented by the Executive Director that make such reimbursement appropriate, and only upon presentation of a receipt for lodging at a location approved in advance by the Executive Director.

Requests for reimbursement should be made on the date of the testimony, but in no case more than fifteen (15) days after appearing as a witness.

All reimbursement requests must be submitted on a form supplied by the Board and the original itemized receipt for any claimed expense other than mileage must be attached. The Executive Director will check the expense form, verify its accuracy, and issue a check to reimburse the witness within 30 days after receipt of a complete expense form, including all required receipts. A copy of the expense form will be attached to the subpoena and placed in the Investigative File.

B. BOARD DISCIPLINARY SANCTIONS

B.1 OVERVIEW OF BOARD SANCTIONS:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017; January 11, 2024

PURPOSE: To define the levels of sanctions that may be utilized to discipline a Licensee.

The following are the sanctions authorized by the North Carolina Respiratory Care Board to discipline a Licensee. The Investigative Committee may recommend any of these sanctions to the Board, and may recommend that any of these, except Summary Suspension or Revocation of a License be offered to a Licensee as part of a Consent Order.

Letter of Concern
Letter of Reprimand
Probation
Suspension of License
Suspension of License withStay
Summary Suspension of License
Revocation of License

When another board or agency, in North Carolina or elsewhere, takes disciplinary action, after a hearing, against a person who is licensed by the NC Respiratory Care Board, and that action is based on a determination that the individual engaged in conduct which the Board determines to be a violation of the Act or Board Rules, then the Board may initiate the process to impose a corresponding or lesser disciplinary action upon the Licensee as the other board or agency has, after receipt of a certified copy of the action by the other Board or Agency, which includes the findings of fact and legal conclusions establishing the basis for the action by the other Board or Agency.

Suppose a Licensee has entered a Consent Order with another board or agency, and stipulates to conduct which the Board determines to be a violation of the Act or Board Rules. In that case, the Board may require the Licensee to enter a Consent Order with the Board with regard to that same conduct of the Licensee.

B.2 LETTER OF CONCERN:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain the Board's procedures for issuing a Letter of Concern.

A Letter of Concern is a written warning from the Board. A Letter of Concern may be issued by the Executive Director at the direction of the Board following its consideration of a recommendation from the Investigative Committee, or after an Administrative Hearing. The letter will be directed to a specific individual or to an organization. It is not a disciplinary action, and is not considered public information. Therefore, it will not be reported to NPDB or NBRC, and will not be posted on the Board's website, but it will be made part of the file of any Licensee whose conduct is at issue.

A Letter of concern may be issued in the following circumstances:

A Letter of concern may be issued to warn a Licensee that a standard or code of conduct has been breached, but the conduct is not determined to be a violation of the Act, or of the Board's Rules.

A Letter of Concern also may be issued following an investigation if the Board believes that there is insufficient evidence to support other disciplinary action against the Licensee, but there is sufficient evidence for the committee or the Board to warn the Licensee that continuing the activities which led to the complaint being submitted to the Board may result in other disciplinary action against the Licensee.

A Letter of Concern also may be issued following an investigation of an organization or unlicensed individual if the Board believes that there is substantial credible evidence to show that the organization or unlicensed individual is engaged in conduct that violates the Act or the Board's Rules. The Letter of Concern will include the language set forth in Policy A.10. The Board may also direct the Executive Director to send a copy of the Letter of Concern to other state agencies who license or oversee the conduct of the organization or unlicensed individual.

B.3 REPRIMAND:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain the Board's procedures for issuing a Reprimand.

A Reprimand is a formal sanction that expresses concern about the actions of a Licensee but does not restrict the Licensee's practice of respiratory care.

A Reprimand may be issued at the direction of the Board by the Executive Director to a Licensee, at the direction of the Board following an Investigation and Informal Settlement Committee meeting or an Administrative Hearing.

A Reprimand may be offered by the Board to a Licensee if there is substantial evidence that a violation of the Act, or the Board's Rules has occurred, but the violation is not sufficiently serious to warrant more severe action.

Under appropriate circumstances, including situations where the conduct did create any risk of harm to a patient, the Board may determine to offer a Licensee a Reprimand as part of a Non-Public Consent Order. If the Licensee accepts such a Consent Order, then it will not be published on the Board's website; and will not be reported to the National Practitioner Data Bank or the National Board for Respiratory Care, but it will be made part of the Licensee's file.

B.4 PROBATION:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain the Board's procedures for utilizing probationary remedies against a Licensee rather than Suspension or Revocation of the License.

The Board may determine that a Licensee has violated the Act or the Board's Rules, but that it is appropriate to allow the Licensee to continue to practice, while imposing limitations on the Licensee's practice of respiratory care to address the violations that have been determined to exist. In these situations, ***Probation*** also may be offered to a Licensee as part of the issuance of a license after a revocation, or as part of the reinstatement of a license after a suspension.

A probationary sanction may last up to thirty-six (36) months. In assessing the appropriateness of a probationary penalty, the Board will consider each of the following factors, along with all other pertinent facts and circumstances of the conduct at issue:

- the nature, severity, and scope of the violations;
- the degree and scope of ***Harm*** to patients;
- the Licensee's prior professional practice, and the Licensee's prior violations of the Act or the Board's Rules, especially prior violations that relate directly to the conduct in question;
- the nature of the motivations of the Licensee that led to the conduct in question; and
- whether any probationary conditions on the Licensee's practice of respiratory care that might be imposed will provide sufficient safeguards to ensure the safety and welfare of the public and the successful remediation of the Licensee's conduct.

Under appropriate circumstances, including situations where the conduct did create a risk of harm to a patient, the Board may determine to offer a Licensee a Probation as part of a Non-Public Consent Order. If such a Consent Order is accepted, then it will not be published on the Board's website; but it will be made part of the Licensee's file, and will be reported to NBRC and NPDB.

Probationary Requirements or Limitations may include but are not limited to the following:

- Monitoring of the Licensee's Practice
- Restricted Practice
- Direct Supervision of the Licensee's Practice
- Additional Continuing Education
- Education Course Work
- Statute and Rules Study and Exam
- Completion of a Chemical Dependency Program
- Psychological Evaluation
- Competency Examination

Non-compliance with any stated condition will be grounds for additional disciplinary action.

B.5 SUSPENSION:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain the Board's procedures for Suspension of a License.

When the Board determines it is appropriate, it may offer a Licensee through a Consent Order, the sanction of a ***Suspension*** of the license for a fixed period up to twelve (12) months, with the understanding that at the end of the specified period of time, and if the Licensee has completed any attached conditions, including but not limited to completion of any conditions imposed, the license will be reinstated automatically and reissued upon the Licensee's payment of any penalties or disciplinary costs and the standard cost for the issuance of a replacement or renewal license, if applicable. However, at the time of the suspension, or at any time before the point when the license is becomes active, the Board may determine that it should impose other conditions or limitations on a Licensee after reinstatement of licensure following suspension. The License will be re-issued with the same calendar expiration date as the original license**.**

During the period of time while a Suspension of a License is effective, the Licensee may not engage in the Practice of Respiratory Care in North Carolina; but the Board also may determine that a Suspension of a License should be ***stayed*** for a period of time that includes conditions or limitations on the Licensee's scope of practice, or the weekly amount of time that the Licensee may practice, or other conditions that the Licensee must follow to continue the practice of Respiratory Care during the stay. However, if the Licensee fails to comply with any of the conditions imposed or limitations imposed on the scope of practice, then the Board may immediately end the stay and activate the suspension, and from that point forward, the Licensee will not be authorized to practice Respiratory Care in North Carolina. If that occurs, the Board will also schedule a hearing for the permanent revocation of the License.

Conditions or Limitations that may be incorporated into a stay of a Suspension include but are not limited to the following:

- Monitoring of the Licensee's Practice
- Restricted of Practice
- Direct Supervision of the Licensee's Practice
- Additional Continuing Education Requirement
- Education Course Work
- Statute and Rules Study and Exam
- Completion of a Chemical Dependency Program
- Psychological Evaluation
- Competency Examination

B.6 SUMMARY SUSPENSION OF LICENSE:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain the Board's procedures for issuing a Summary Suspension.

The Board may issue a ***Summary Suspension*** of a license if it Board finds, based on clear and convincing evidence which has been documented through records of convictions, sworn statements by eyewitnesses, or other unambiguous evidence, that a Licensee's conduct has jeopardized the public health, safety and welfare and that the public health, safety and welfare would continue to be jeopardized by the continued practice of Respiratory Care by that Licensee. At any point that the Executive Director, in consultation with the Board Chair, believes that such an action is warranted, an emergency meeting of the Board will be called by the Board Chair. The emergency meeting may be carried out by telephone conference, and notice will be provided to interested parties and to those media outlets that have expressed an interest in being notified of meetings of the Board. All interested parties will be provided a way to participate in the meeting.

Notice of a Summary Suspension will be sent to the Licensee according to the Board's Notices Policy in Section A.1; but in addition, using contact information that the Licensee has provided to Board for telephone, facsimile, and e-mail, the Executive Director will make other efforts to inform the Licensee about the Summary Suspension. Using contact information provided to the Board by the Licensee about the Licensee's practice site, the Executive Director also will attempt to contact the organization that is currently employing the Licensee.

Upon issuance of a Summary Suspension, the Board will notify the Licensee of its action, and that it is scheduling a Revocation hearing, as provided in Section B.7, and will proceed with the hearing according to the Board Rules.

B.7 REVOCATION OF LICENSE:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain the Board's procedures for a Revocation of a License.

Revocation entails loss of the individual's permission to practice respiratory care for a specified period of time. A new license may be issued after the specified period, after the Licensee has petitioned for reinstatement, has provided sufficient evidence of fitness to re-enter practice, and has documented compliance with any conditions imposed by the Board at the time of the revocation.

Upon a determination by the Board that a license should be revoked, a notice will be sent to the Licensee advising the Licensee that a hearing will be scheduled on this Matter, and identifying the time and place that the Board will conduct the hearing; or indicating that the hearing will be conducted under the auspices of the North Carolina Office of Administrative Hearings (***OAH***), and referring the Licensee to OAH for information about the scheduling of the hearing. With the Notice of Hearing, the Board also will include specific information about the facts and circumstances leading to the decision to initiate the revocation action, and identifying the particular portions of the Act or the Board's Rules that provide the basis for the revocation.

The Licensee may apply to the Board, if it is conducting the hearing, or to OAH when it is conducting the hearing, to subpoena witnesses or subpoena the production of documents for the hearing.

The conduct of a hearing conducted by the Board will be governed by the Board's Rules.

At the hearing, the Board will present its evidence first and the Board will have the burden of demonstrating, by the greater weight of the evidence, that the allegations in the Notice of Hearing concerning the Licensee's conduct are true. The Licensee may be represented by Legal Counsel at the hearing and may cross examine witnesses called by the Board, call witnesses to offer is relevant and material testimony, and may present documentary evidence that is relevant and material to the matters charged.

B.8 PRACTICING WITH A LAPSED LICENSE OR SUPERVISING A PRACTITIONER WITH A LAPSED LICENSE:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017; January 11, 2024

PURPOSE: To explain the Board's procedures for disciplining an individual practicing Respiratory Care with a lapsed license, or a Licensee who supervises someone with a lapsed license.

All Respiratory Care Practitioners are responsible for ensuring that their licenses are renewed on a timely basis.

Any Respiratory Care Practitioner who accepts a respiratory care administration position supervising other respiratory care personnel is responsible for ensuring that all such personnel are properly licensed. The supervisor must report to the Board any RCP found practicing with a lapsed license within 72 hours of the discovery.

When the license in question has lapsed less than 90 days, the Executive Director is authorized to offer a Letter of Reprimand without an Interview by the Investigative Committee to RCPs who practice with a lapsed license and to their Supervising RCP's. The lapsed Licensee will be required to submit the Renewal fee and Late Renewal fee before a new license is issued, and must also pay the civil penalties and disciplinary costs authorized by 21 NCAC 61 .0309 and 21 NCAC 61 .0310 within 90 days.

Practicing RCP's with a license that has lapsed longer than 90 days must appear before the Investigative Committee.

B.9 FALSE CERTIFICATION OF CE REQUIREMENTS:

ORIGINAL EFFECTIVE DATE: January 12, 2017
DATE (S) REVISED: January 11, 2024

PURPOSE: To explain the Board's procedures for disciplining Licensees practicing respiratory care who are noncompliant or who falsely attested to their CE requirements when audited.

The Board authorizes the Executive Director to offer the disciplinary options outlined in this Section to a Licensee practicing respiratory care who is noncompliant or falsely attests to the certification of his/her continuing education requirements.

- ❑ A practicing Licensee who falsely attests to completion of CE requirements for the first time but provides the proper evidence within 30 days of renewal will receive a Letter of Concern. The Licensee's CE requirements will also be audited during the next License renewal cycle and the Licensee will be required to complete the audit using the NCRCB online service made available by the Board within 15 days of their next renewal date.

- ❑ A practicing Licensee who falsely attests to completion of CE requirements for the first time but provides the proper evidence within 90 days of renewal will receive a Letter of Reprimand. The Licensee must pay associated civil penalties ($250.00) and disciplinary costs ($100.00) within 90 days of signing the Consent Order. The Licensee's CE requirements will also be audited during the next License renewal cycle and the Licensee will be required to complete the audit using the NCRCB online service made available by the Board within 15 days of their next renewal date.

- ❑ A practicing Licensee who falsely attests to completion of CE requirements more than once, or a practicing Licensee who falsely attests to completion of CE requirements for the first time but does not provide the proper evidence within 90 days of renewal, or who does not accept the offer of a Letter of Concern or Reprimand as described above in this Section, will be scheduled for an interview with the Investigative Committee and placed on Contact Board.

B. 10 RECORDS OF DISCIPLINARY ACTIONS:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain the Board's procedures for changing a Licensee's status on the Board website, the Board's procedures to make disciplinary actions public; and to report disciplinary actions to the National Practitioner Data Bank (NPDB) maintained by the U.S. Department of Health and Human Services, to the databank maintained by the National Board for Respiratory Care (NBRC), and to other agencies.

CHANGING A LICENSEE'S STATUS ON THE BOARD WEBSITE TO "CONTACT BOARD"

If a determination is made to schedule a Licensee for an interview with the Investigative Committee, then unless the Executive Director, in consultation with the Chair of the Investigative Committee, determines that the conduct or activities of the Licensee do not pose a threat to the health safety or welfare of any Individual, the Executive Director will change the License Verification Status of any Licensee who is an Affected Person in the NCRCB Database to read "Contact Board."

From that point, and until final disposition of the Matter by the Board, any person contacting the Board about a Licensee whose status has been changed to "Contact Board" will be advised that the conduct of that Licensee is under investigation by the Board, but under no circumstances will any further details about the Matter be furnished to persons contacting the Board about the Licensee, until the full Board has made a determination. Further details about the contents of a Consent Order will be made available on request after the Consent Order is signed by the Affected Person; and the contents of a Notice of Hearing will be made available on request after it is issued.

If there is a determination that a Licensee's status should be changed to "Contact Board," this change in status will be communicated to the Licensee. In addition, this change in status will be communicated in writing to each organization listed by the Licensee in the Board files as a current practice site, but under no circumstances will any further details about the Matter be furnished to any current employer until the investigation is complete and the full Board has made a determination.

MAKING DISCIPLINARY ACTIONS PUBLIC

Records of all Final Decisions and other disciplinary actions taken by the Board against a Licensee, including Non-Public Consent Orders, will be maintained in the Board file for the Licensee, and available for public inspection, unless and until expunged under Section B.10.

All Final Decisions and other disciplinary actions taken by the Board will be reported on the Board website, except Letters of Concern and those Reprimands that the Board determines should be issued as Non-Public Consent Orders.

The Board will maintain records of investigations in its investigation files.

REPORTING DISCIPLINARY ACTIONS

In addition, as required by federal law, a report of certain actions will be made to the National Practitioner Data Bank (NPDB) maintained by the U.S. Department of Health and Human Services, following the guidelines set forth in the *National Provider Data Bank Guidebook*, as it is revised from time to time. The Board will also report any disciplinary actions reported to the NPDB to the National Databank maintained by the National Board for Respiratory Care.

The information to be provided in these reports to NPDB and NBRC will include:

Name, address of record, date of birth, gender, and Social Security Number;
Type of license (Active or Provisional);
License number;
Final Board action;
Charges/information/administrative complaint; and
If there has been a voluntary surrender of the license, a copy of communications from the Licensee confirming voluntary surrender.

Copies of any such notice will be provided to each Licensee, to the Licensee's current practice site listed in the Board files, and to to each organization that furnished any services that were provided by the Licensee and were involved in the conduct or activities that were the subject of the investigation.

If an administrative hearing is conducted on a Matter, no report will be sent to NPDB or the NBRC Databank until the Board enters a Final Decision that includes a reportable sanction

B.11 EXPUNGING A LICENSEE'S RECORD OF A VIOLATION OR SANCTION:

ORIGINAL EFFECTIVE DATE: September 10, 2002
DATE (S) REVISED: April 14, 2011; January 12, 2017

PURPOSE: To explain the Board's procedures to expunge a record of a violation or sanction.

Under appropriate circumstances, the Board will consider whether, after the lapse of at least one year and documentation of satisfactory performance by a Licensee who was subject to prior discipline, the record of the Licensee's prior discipline should be expunged from the Licensee's file. This expunging of prior violations will not be available in the case of a prior revocation of a license. It will be available in cases where a Licensee's license has been suspended, or where a Licensee has received a letter of reprimand or has had a probationary sanction applied without a revocation.

In those cases where the Board determines that expunging a Licensee's record of a prior disciplinary sanction is appropriate, all references to the prior discipline will be removed from the Licensee's file and no record of the discipline will be made available to the public. Upon inquiry by any member of the public or of the press with regard to the prior history of a Licensee, the Board will respond that it has no record of a violation by the Licensee. The Board also will notify the National Practitioner Data Bank and the Data Bank maintained by the National Board for Respiratory Care of its action.

The Board will not consider any evidence of the expunged violation in any subsequent investigation or proceedings against the Licensee. In addition, in any case where a record of a violation is expunged, the Board does not consider that a violation that has been expunged should be reported by the Licensee in subsequent applications to other boards, agencies or organizations, but the Board recognizes that is an issue for determination by those other boards, agencies or organizations in their discretion.

B.12 REINSTATEMENT OF A RESPIRATORY CARE LICENSE:

ORIGINAL EFFECTIVE DATE: October 9, 2025
DATE (S) REVISED:

PURPOSE: This policy establishes the requirements and procedures for reinstatement of a license that was held by respiratory care practitioner and which was revoked or summarily suspended as a result of disciplinary action taken by the Board, or which was surrendered voluntarily by the respiratory care practitioner prior to charges being filed by the Board under circumstances which indicated that there had been a violation of the Respiratory Care Practice Act, of the Board's Policy or its Code of Ethics, or other alleged misconduct by the respiratory care practitioner.

(a) For purposes of this Policy, a "petitioner" is a person seeking reinstatement of a license that was previously revoked, suspended, or surrendered under circumstances involving alleged or proven misconduct. The Board will not consider a petition for reinstatement unless at least a full calendar year has elapsed since the license was revoked, summarily suspended, or surrendered. The Board will take no action on any untimely petition for reinstatement and will not begin processing an application until the petitioner seeking reinstatement of a license has met all of the requirements stated in subsections (d) and (e) of this Policy.

(b) Each petitioner for reinstatement shall:

(1) submit a complete notarized petition on a form provided by the Board, attesting under oath or affirmation that information on the petition is true and complete, and authorizing the release to the Board of all information pertaining to the petition;

(2) submit a digital copy of an unexpired state issued driver's license, state identification card, military identification card, or US passport;

(3) submit documentation of any legal name change, if applicable;

(4) submit a credential verification letter from the NBRC meeting the requirement of 21 NCAC 61 .0201(5);

(5) submit documentation of continuing education activities completed since the license was revoked, summarily suspended, or surrendered, in accordance with 21 NCAC 61 .0401;

(6) submit a fingerprint card or proof of Livescan fingerprints on a form approved by the Board;

(7) submit a signed consent allowing a search of local, state, and national files to disclose any criminal record;

(8) arrange for submission of three original references from persons with no family or marital relationship to the petitioner. Each of these references shall:

(A) be submitted from a respiratory care practitioner who has observed the petitioner's work in a clinical environment;

(B) be submitted on forms supplied by the Board, with all required and pertinent fields completed;

(C) be dated no more than three months prior to the date of submission of the petition for reinstatement; and

(D) be submitted directly to the Board from the source and bear an original notarized signature of the author;

(9) pay to the Board a non-refundable fee pursuant to G.S. 90-660 (b) and 21 NCAC 61 .0204 (1) and (2), and pay the cost of a criminal background check pursuant to 90-652(1); and

(10) upon request, provide any additional information the Board deems necessary to evaluate the petitioner's qualifications.

(d) The petitioner shall appear in person for an interview with the Board or its designee to evaluate the petitioner's competence and character in person.

(e) Upon the petitioner's completion of all the requirements stated in subsections (d) and (e) of this Policy, the Board will reinstate a license only after finding that reinstatement of the license is appropriate under the Respiratory Care Practice Act, the Board's Policys, and the Board's Code of Ethics. In deciding on whether to reinstate a license, and in deciding whether any conditions or limitations should be imposed on a reinstated license, the Board will consider the following factors:

1) The gravity of the misconduct that caused the summary suspension or revocation, or which preceded the surrender of the license, including any related criminal history, consistent with the principles set forth in G.S. 93B-8.1;

2) Other aspects of the petitioner's conduct prior to the summary suspension or revocation including the petitioner's compliance with the Respiratory Care Practice Act, with the Board's Policys and Code of Ethics, the petitioner's prior compliance with any Consent Orders or other requirements issued by the Board, and the petitioner's compliance with professional standards adopted by other regulatory boards or organizations which are pertinent to the petitioner's conduct prior to the summary suspension, revocation, or surrender of the license;

3) the petitioner's current ability to practice respiratory care with reasonable skill, competence, and safety to the public, based upon the petitioner's conduct, work experience, and recent continuing education;

4) Any pertinent aspects of the petitioner's conduct since the summary suspension, revocation, or surrender of the license, including any criminal history, consistent with principles set forth in G.S. 93B-8.1.

(f) If the Board determines to reinstate a license under this Policy, it also may determine:

(1) to require the petitioner to complete additional continuing education before the reinstatement is effective, and to complete additional continuing education within a defined time period after reinstatement as a condition of maintaining the reinstated license;

(2) to attach scope of practice limitations, or supervisory requirements to the reinstated license; and

(3) to attach other probationary conditions to the reinstated license, including substance abuse testing.

(g) If the Board grants reinstatement, the petitioner must then complete and submit a licensure application in accordance with 21 NCAC 61 .0201.

(h) If the petitioner fails to submit a completed application pursuant to G.S. 90-653 and 21 NCAC 61 .0201 within one year of submission, the petitioner also shall be charged for the cost of an additional criminal background check.

DISCIPLINE GLOSSARY

The following terms are used in the Disciplinary Manual and this glossary is provided as a general guide or reference to the use of these terms, but the Board will interpret these terms in accordance with the Respiratory Care Practice Act and the Board's Rules.

ACT, or Respiratory Care Practice Act means the version of the Respiratory Care Practice Act that is in force at the time of the relevant conduct. The ACT can be found on the Board's website at

http://www.ncrcb.org/rules&Laws.html.

Affected Person means the individual, company or other organization whose activities or conduct is the subject of a Board investigation or disciplinary proceeding.

Board Rules means the version of the Board's Rules that is in force at the time of the relevant conduct. The Board Rules have been codified beginning at 21 NCAC 61 . 0101, and can be found on the Board's website at:

http://www.ncrcb.org/rules&Laws.html.

Chemical Dependency Program means a program designed for practitioners who are chemically dependent; have violated the Respiratory Care Practice Act; and, requested an Informal Settlement Conference or Administrative Hearing. Such practitioners may be placed on Probation as long as compliance with the program is maintained.

Consent Order means an order in which a licensee or other Affected Person voluntarily accepts a sanction by the Board. [See Also, Non-Public Consent Order]

Direct Supervision refers to a range of measures that the Board has approved to provide enhanced, on-site, close supervision for the practice of a Licensee who is under Probation.

Disciplinary Sanction means any disciplinary action that the Board takes against a Licensee.

Executive Director means the individual responsible for the overall operations and services of the Board. The Executive Director is accountable to the Board of Directors and responsible for oversight of the investigative process.

Expungement (also called "expunction") means is a process in which the sanction record of a licensee is "sealed," or erased in the eyes of the law. When a sanction is expunged, the process may also be referred to as "setting aside the sanction."

Harm means physical or mental damage or injury.

Investigation and Informal Settlement Committee is the committee authorized by the Board to investigate, with the help of the Executive Director and others designated by the Board, all complaints received concerning a Licensee, and any applicants that the Board designates for investigation.

Investigator means an individual who investigate complaints against individuals licensed by the Board as directed by the Executive Director and Board Chair. Perform surveys of facilities in North Carolina that hire Respiratory Care Practitioners to determine compliance with the Respiratory Care Practice Act and Board Rules as directed by the Executive Director and Board Chair.

Licensee means a person holding any license issued by the Board.

Monitoring is the process of allowing a Licensee to return to respiratory care practice by requiring compliance with conditions of probation, such as, requiring quarterly performance reports. The monitoring may be for a specific number of months or for the duration of the probation. An individual must be employed as a licensed respiratory care practitioner to satisfy the monitoring requirements.

Non-Public Consent Order means an order in which a licensee or other Affected Person voluntarily accepts a sanction by the Board when the activity is not published on the Board's website; nor is it reported to the National Provider Data Bank (NPDB) maintained by the U.S. Department of Health and Human Services, or to the National Board for Respiratory Care.

Restricted Practice is a determination that a Licensee will be allowed to return to respiratory care practice under probationary conditions that will restrict the Licensee's practice by excluding supervisory activities, home health care practice, critical care practice or other particular practice areas or procedures that the Board has determined might create risks or problems. The restriction may be for a specified number of months or for the entire duration of the Licensee's probation.