rrc staff OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: RESPIRATORY CARE BOARD

RULE CITATION: 21 NCAC 61 .0202

RECOMMENDED ACTION:

 Approve, but note staff’s comment

X Object, based on:

 X Lack of statutory authority

 Unclear or ambiguous

 Unnecessary

 Failure to comply with the APA

 Extend the period of review

COMMENT:

There is no authority cited for the Board to require training, competency review and oversight of a person providing support activities. Pursuant to G.S. 90-664(4), a person who performs only support activities as defined in G.S. 90-648(13) is exempt from the requirements of the Respiratory Care Protective Act. If the activities meet the statutory definition, the Board has cited no authority for it to set any requirements for persons performing them.

Robert A. Bryan, Jr.

Commission Counsel

§ 90-648. Definitions.

The following definitions apply in this Article:

(1)        Board. – The North Carolina Respiratory Care Board.

(2)        Diagnostic testing. – Cardiopulmonary procedures and tests performed on the written order of a physician licensed under Article 1 of this Chapter that provide information to the physician to formulate a diagnosis of the patient's condition. The tests and procedures may include pulmonary function testing, electrocardiograph testing, cardiac stress testing, and sleep related testing.

(3)        Direct supervision. – The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of services.

(4)        Individual. – A human being.

(5)        License. – A certificate issued by the Board recognizing the person named therein as having met the requirements to practice respiratory care as defined in this Article.

(6)        Licensee. – A person who has been issued a license under this Article.

(7)        Medical director. – An appointed physician who is licensed under Article 1 of this Chapter and a member of the entity's medical staff, and who is granted the authority and responsibility for assuring and establishing policies and procedures and that the provision of such is provided to the quality, safety, and appropriateness standards as recognized within the defined scope of practice for the entity.

(8)        Person. – An individual, corporation, partnership, association, unit of government, or other legal entity.

(9)        Physician. – A doctor of medicine licensed by the State of North Carolina in accordance with Article 1 of this Chapter.

(10)      Practice of respiratory care. – As defined by the written order of a physician licensed under Article 1 of this Chapter, the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics, and the performance of diagnostic testing and therapeutic application of:

a.         Medical gases, humidity, and aerosols including the maintenance of associated apparatus, except for the purpose of anesthesia.

b.         Pharmacologic agents related to respiratory care procedures, including those agents necessary to perform hemodynamic monitoring.

c.         Mechanical or physiological ventilatory support.

d.         Cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways under the direct supervision of a recognized medical director in a health care environment which identifies these services within the scope of practice by the facility's governing board.

e.         Hyperbaric oxygen therapy.

f.          New and innovative respiratory care and related support activities in appropriately identified environments and under the training and practice guidelines established by the American Association of Respiratory Care.

The term also means the interpretation and implementation of a physician's written or verbal order pertaining to the acts described in this subdivision.

(11)      Respiratory care. – As defined by the written order of a physician licensed under Article 1 of Chapter 90, the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.

(12)      Respiratory care practitioner. – A person who has been licensed by the Board to engage in the practice of respiratory care.

(13)      Support activities. – Procedures that do not require formal academic training, including the delivery, setup, and maintenance of apparatus. The term also includes giving instructions on the use, fitting, and application of apparatus, but does not include therapeutic evaluation and assessment. (2000-162, s. 1.)

§ 90‑652. Powers and duties of the Board.

The Board shall have the power and duty to:

(1)        Determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure. The Board shall, in its discretion, investigate the background of an applicant to determine the applicant's qualifications with due regard given to the applicant's competency, honesty, truthfulness, and integrity. The Department of Justice may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(2)        Establish and adopt rules necessary to conduct its business, carry out its duties, and administer this Article.

(3)        Adopt and publish a code of ethics.

(4)        Deny, issue, suspend, revoke, and renew licenses in accordance with this Article.

(5)        Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(6)        Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article and purchase or rent office space, equipment, and supplies.

(7)        Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8)        Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9)        Establish certain reasonable fees as authorized by this Article for applications for examination, licensure, provisional licensure, renewal of licensure, and other services provided by the Board.

(10)      Submit an annual report to the North Carolina Medical Board, the North Carolina Hospital Association, the North Carolina Society of Respiratory Care, the Governor, and the General Assembly of all the Board's official actions during the preceding year, together with any recommendations and findings regarding improvements of the practice of respiratory care.

(11)      Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted pursuant to this Article.

(12)      Request and receive the assistance of State educational institutions or other State agencies.

(13)      Establish and approve continuing education requirements for persons seeking licensure under this Article. (2000-162, s. 1; 2003-384, s. 2; 2004-89, s. 1.)

**§ 90-664. Persons and practices not affected.**

The requirements of this Article shall not apply to:

(1)        Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State who is performing work incidental to or within the practice of that profession or occupation and does not represent himself or herself as a respiratory care practitioner.

(2)        A student or trainee working under the direct supervision of a respiratory care practitioner while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure in accordance with rules adopted pursuant to this Article.

(3)        A respiratory care practitioner serving in the Armed Forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment.

(4)        A person who performs only support activities as defined in G.S. 90‑648(13). (2000-162, s. 1; 2011-183, s. 67.)