

**Board of Respiratory Care
Minutes**

Date: August 21, 2008

Time: 9:00 a.m., C.D.T.

Location: Iris Conference Room, Ground Floor
227 French Landing Drive
Heritage Place, Metro Center
Nashville, TN 37243

Members Present: Candace Partee, Secretary
Gene Gantt
Roger Major
Colleen Schabacker
Delmar Mack, Ed.D.

Members Absent: Billy Alred, Chair
Timothy McGill
Darryl Jordan, M.D.

Staff Present: Marva Swann, Unit Director
Mary Webb, Board Administrator
Ernie Sykes, Advisory Attorney
Elizabeth Miller, HRB Director
Juanita Stone, Investigations Coordinator

Guests Present: Mike Harkreader, Tennessee Professional Assistance Program
John Williams, Tennessee Society of Respiratory Care

With a quorum being present, Candace Partee, Secretary, called the meeting to order at 9:10 a.m.

Conflict of Interest

Mr. Sykes presented the Conflict of Interest Policy and reminded the Board Members of their responsibilities under the policy.

Office of General Counsel Report

Mr. Sykes presented the following report from the Office of General Counsel:

Rules:

1. *Fee Increase* {1330-1-.06} – (06-1533) The rulemaking notice was filed and the rule went to hearing on January 4, 2007. The Board approved the amendment on February 15, 2007, and it was sent to the Attorney General on March 16, 2007. It became effective October 1, 2007.
2. *Use of Titles, Continuing Education, Disciplinary Conditions, Board Consultants* [1330-1-.02, .12, .15, 019] – The Board on November 15, 2007 authorized a rulemaking hearing. The rule still awqits departmental approval before it goes to rulemaking hearing. The hearing is planned for the November 13, 2008 Board meeting.

Litigation

OGC currently has nine (9) open disciplinary cases pertaining to the Board of Respiratory Care. One of those cases is before the Board today in the form of an Agreed Order.

Agreed Order

Mr. Sykes presented the following Agreed Order:

Connie Akins, CRT, License # 1474—Ms Akins was employed as a respiratory therapist at NHC Healthcare Fort Sanders from March 11, 2002, until she was terminated on September 6, 2006 for developing an inappropriate personal relationship with a patient under her care. This was found to be grounds for disciplinary action under TCA 63-27-112 and Rule 1330-1-.15. As a result of this violation, Ms. Akins agreed to the following stipulations:

- that her license to practice as a respiratory therapist in Tennessee pursuant to the authority vested the Board under TCA 63-27-101 shall be suspended retroactively from September 6, 2006 until either the date on which this Agreed Order is ratified by the Board or the date on which she enters into a monitoring contract with TNPAP, whichever is later
- Once she has demonstrated to the Board that she has entered into a contract with TNPAP, the suspension of her license shall be lifted and the license then shall be placed on probation to run throughout the period of her contract with TNPAP
- This suspension and probation are formal disciplinary actions and will be reported to the Health Integrity and Protection Data Bank (HIPD).
- Ms. Akins shall also pay all costs for this action pursuant to TCA 63-1-144.

Following discussion by the Board, a motion was made by Delmar Mack and seconded by Gene Gantt to approve the Agreed Order as presented. The motion carried unanimously.

Charles Buckholts, attorney for Ms. Aikens, was present during the proceeding and offered no comment.

Agreed Citations Relating to Lapsed Licenses and Deficiencies in Continuing Education

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Alison Cleaves, OGC Deputy General Counsel, addressed the Board regarding agreed citations as they relate to a licensee practicing on a lapsed license or a licensee who is deficient in continuing education requirements.

The Board currently has policies on both lapsed licenses and continuing education. Ms. Cleaves stated that she was in no way asking the Board to change their policies but to make it clear that if the Board was seeking civil penalties for policy violations these would become reportable violations subject to listing on the Health Departments monthly Disciplinary Action Report (DAR). She was also asking that the Board implement their policies by agreed citation rather than a demand letter as has been used in the past. The agreed citation is a legal document that would outline the licensee's rights and privileges under the law.

After discussion, a motion was made by Ms. Schabacker and seconded by Mr. Gantt to use the agreed citation with regard to lapsed licenses and deficient continuing education hours with the understanding that such action would be considered reportable discipline. The motion carried unanimously.

Emergency Medical Services Ventilation Care

The Board requested that a discussion of Emergency Medical Services ventilation care and CPAP be sunshined to the next meeting to be held November 13, 2008.

Investigation and Disciplinary Reports

Ms. Juanita Stone, Disciplinary Coordinator for the Bureau of Investigations (BIV), presented the RRT and CRT investigative reports.

Fifteen (15) RRT complaints were carried over from December 2007. In 2008 one (1) new complaint was received in January, two (2) complaints were received in May, and one (1) was received in July making a total of nineteen (19). Of these complaints nine (9) were closed in January and two (2) were closed in April leaving eight still open as of this meeting.

Eleven (11) CRT complaints were carried over from December 2007. In 2008 one (1) new complaint was received in January, one (1) was received in March, two (2) were received in May, and two (2) were received in July making a total of seventeen (17). Of these complaints nine (9) were closed leaving eight still open as of this meeting.

The Board disciplinary report shows a total of twenty-one (21) practitioners being currently monitored. Eleven (11) are on probation, two (2) on suspension, three (3) under Board orders and five (5) whose licenses have been revoked.

Tennessee Professional Assistance Program (TNPAP) Report

Mike Harkreader, Director of Tennessee Professional Assistance Program (TNPAP), presented the report. This report represents the statistics for the period of July 1, 2007 thru June 30, 2008. Two (2) practitioners signed monitoring agreements and eight (8) referrals were received. Source of the referrals were five (5) from the Board, one (1) from an employer, and one (1) from a treatment provider. Reasons were five (5) for

history of arrest/illegal drug use/DUI, one (1) for positive use of drugs in the workplace and one (1) for unprofessional conduct.

An overview of respiratory practitioners involvement with TNPAP during this period is as follows: three (3) are in treatment participation, seven (7) are being monitored, eight (8) have been discharged with three (3) discharged due to monitoring being unnecessary, three (3) discharged for noncompliance, one (1) discharged after being unable to contact and one (1) discharged after successful completion of the program.

Applicant Interviews/File Reviews

Alvin King – Mr. King’s file was reviewed by the Board due to a conviction of criminal trespass on 7/13/04. After review and discussion, a motion was made by Dr. Mack and seconded by Mr. Major to defer a decision on Mr. King’s licensure until more documentation regarding charges has been received.

Leslie Hauck—Ms. Hauck appeared before the Board seeking licensure through reciprocity. She had been licensed as an RRT in the State of Missouri from which her license was revoked by the Missouri Board for failure to obtain required continuing education hours. A motion was made by Dr. Mack and seconded by Mr. Gantt to deny Ms. Hauck licensure by reciprocity due to her not having an active license to practice in Missouri. The motion carried unanimously. Ms. Hauck must reinstate her license in Missouri before she can be licensed through reciprocity to practice in Tennessee pursuant to rule 1330-1-.05 (3) (b).

Amen-Ra McCarthy—Mr. McCarthy appeared before the Board due to a conviction of simple possession on 9/2/1999. After interview and discussion, a motion was made by Mr. Major and seconded by Dr. Mack to approved Mr. McCarthy for licensure. The motion carried unanimously.

Reginald Powell—Mr. Powell appeared before the Board due to a conviction of assault and battery on 8/29/1983. After interview and discussion, a motion was made by Ms. Schabacker and seconded by Dr. Mack to approved Mr. Powell for licensure. The motion carried unanimously.

Teresa Rippee—Ms. Rippee appeared before the Board due to a conviction of Driving Under the Influence on 11/2/02. After interview and discussion, a motion was made by Ms. Schabacker and seconded by Dr. Mack to approve Ms. Rippee for licensure pending an evaluation by TNPAP. The motion carried unanimously. Ernie Sykes is to draft a letter to Ms. Rippee outlining the Board’s requirements.

Lisa Bortel—Ms. Bortel’s file was reviewed by the Board due to a conviction of criminal mischief in the 2nd degree and assault in the 2nd degree. After review and discussion, a motion was made by Ms. Schabacker and seconded by Mr. Gantt to approve Ms. Bortel for licensure.

Approval of Minutes

A motion was made by Ms. Schabacker and seconded by Dr. Mack to approve the February 26, 2008 task force minutes. The motion carried unanimously.

A was made by Ms Schabacker and seconded by Mr. Major to approve the April 22, 2008 task force minutes. The motion carried unanimously.

A motion was made by Ms. Schabacker and seconded by Mr. Major to approve the minutes of the May 22, 2008 board meeting as amended. The motion carried unanimously.

A motion was made by Ms. Schabacker and seconded by Mr. Major to approve the minutes of the June 24, 2008 task force meeting as amended. The motion carried unanimously.

Discussion on Minimum Standards for Ventilator Care in Skilled Nursing Facilities

Gene Gantt presented a proposed position statement on recommended standards for ventilator care in rehabilitation facilities. Ernie Sykes was asked to revise some of the language of the position statement; however, he stated that the oversight of these standards would be the jurisdiction of Health Care Facilities. Health Care Facilities has initiated the rulemaking process and Mr. Gantt will keep the Board updated throughout this process.

Assistant Commissioner, Christy Allen, was present for this presentation and was introduced to the Board.

Discussion of Attorney General’s Opinion RE: Licensed Practical Nurses Providing Ventilator Care

The Board discussed an Opinion from the Attorney General’s Office regarding the extent of home health care an LPN may provide to a patient that requires the use of a ventilator. According to the Opinion an LPN employed by a home care organization pursuant to 68-11-201 (21) (H) is permitted to provide physician-ordered respiratory care to a patient, except for the maintenance and management of life support equipment. Ernie Sykes is to draft rules regarding this issue for the next meeting.

Administrative Report

Ms. Webb, presented the Administrator’s report as follows:

STATISTICAL REPORT

Following are the total active licensees, retired licensees, and failed to renew licensees as of July, 2008.

RRT	CRT	RCA
Active Licensees- 2394	Active Licensees- 1943	Active Licensees- 28

STATUS TOTALS FROM May 15, 2008 Thru August 19, 2008

RRT	CRT
New Licenses – 92	New Licenses – 74
Reinstated Licenses- 3	Reinstated Licenses– 10
Retired Licenses- 3	Retired Licenses– 48
Failed to Renew Licenses- 13	Failed to Renew Licenses- 51

There were a total of 99 practitioners who renewed their license online during this period.

Financial Report

Ms. Swann presented the financial report with a projected cumulative carryover of \$36,234.68 at June 30, 2008.

Board Members

Dr. Darryl Jordan was reappointed to serve another term to expire 3/31/2010 and Ms. Colleen Schabacker was reappointed to serve another term to expire 3/31/11. Mr. Billy Alred, Consumer Member and Board Chair has resigned. His replacement has not been appointed at this time. The Board wanted to go on record in wishing Mr. Alred well and thank him for his many years of dedicated service to the Board.

Continuing Education Audit

In April 2008 Mr. Rick Agee and his staff conducted an audit of forty-eight (48) respiratory practitioners which included both Registered Respiratory Therapists and Certified Respiratory Therapists. Of those audited there were ten (10) with deficiencies and four (4) who failed to respond.

Ratifications

Gene Gantt and Colleen Schabacker revealed knowledge of an applicant on the lists for initial licensure. They were advised by Ernie Skyes that their recusal from the vote to ratify these licenses would not be necessary as the criteria for licensure is objective in nature. That having been said, a motion was made by Ms. Schabacker and seconded by Dr. Mack to approve the listing of new licenses and reinstated licenses for both RRTs and CRTs. The motion carried unanimously.

New Application for Licensure Upgrade

Mary Webb presented the new application for upgrade from CRT to RRT for the Board's approval. A motion was made by Mr. Major and seconded by Dr. Mack to approve the new application for upgrade with revisions. The motion carried unanimously. Ms Webb will make the revisions and submit the application to the forms approval committee.

Correspondence

A letter was received from Karyn Moon, Cardiopulmonary Manager, of Fort Loudoun Medical Center, in Lenoir City, TN. She inquired as to whether a licensed RRT or CRT can administer medications used during a patient's stress test with a cardiologist's acknowledgement. After discussion, a motion was made by Ms. Schabacker and seconded by Dr. Mack that a licensed respiratory therapist either RRT or CRT could administer medication during a stress test as long as it is done under the supervision of a physician. The motion carried unanimously. Mr. Sykes is to draft the Board's response to Ms. Moon.

A letter was received from Wendy Yates, Privacy and Compliance Leader of Respiroics Colorado, Inc. regarding her company's providing home medical equipment to Tennesseans. After discussion, a motion was made by Ms. Schabacker and seconded by Dr. Mack that Mr. Sykes draft a letter to Ms. Yates

explaining that the Tennessee Board of Respiratory Care does not get involved in business solicitation practices and must adhere to the Board's statutes. The motion carried unanimously.

Polysomnography

Shiva Bozarth, OGC attorney for the Board of Polysomnography presented the Board with a draft of their proposed rules. The Board of Polysomnography met on August 19, 2008. Mr. Bozarth indicated that the earliest date that a rulemaking hearing could be held would be November 16, 2008 and invited the Board of Respiratory Care to share their thoughts on the proposed rules by November 13, 2008. He also would like, in addition to Board members, a list of any other interested parties in order that they might be sent notification of the hearing. Dr. Mack suggested that the three (3) schools in Tennessee that offer a polysomnography curriculum be included in that list.

Board Meeting Dates for 2009

The Board approved the following dates:

- February 26
- May, 28
- August, 27
- November 17

There being no further business, the meeting was adjourned at 12:10 pm.

These minutes were ratified by the Board on 11/13/2008