

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
... ADMINISTRATIVE LAW
DIVISION**

Form #2

Do Not Mark In This Box

JUN 21 11 07 AM '99

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Board of Respiratory Care TITLE NUMBER: 30

RULE TYPE: Legislative CITE AUTHORITY: 30-34

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Continuing Education Requirements

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 30, 1999 8:00am AT O N L Y WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Board of Respiratory Care

106 Dee Drive Suite 1

Charleston, WV 25311

558-1382

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Karen Stewart President
Authorized Signature

\$4.00

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

The Board of Respiratory Care establishes a comment period for revision of the Continuing Education Requirements.

**STATEMENT OF CIRCUMSTANCES FOR PROPOSED AMENDMENT TO
SERIES 3 – CONTINUING EDUCATION REQUIREMENTS**

This revision removes ambiguous language and correct grammatical errors.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

2000 0000
 JUN 24 11 09 AM '99
 OFFICE OF THE COMPTROLLER
 SECRETARY OF TREASURY

Rule Title: Continuing Education Requirments

Type of Rule: Legislative Interpretive Procedural

Agency: Board of Respiratory Care

Address: 106 Dee Drive Suite 1

Charleston, WV 25311

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST					
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

none

3. Objectives of These Rules:

To clarify the continuing education requirements for respiratory therapists in West Virginia

Rule Title: Continuing Education Requirements

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

none

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

none

C. Economic Impact on Citizens/Public at Large.

None

Date: June 25, 1999

Signature of Agency Head or Authorized Representative:

Karen Stewart

TITLE 30
LEGISLATIVE RULE

WEST VIRGINIA BOARD OF RESPIRATORY CARE

SERIES 3
CONTINUING EDUCATION REQUIREMENTS

JUN 24 11 03 AM '99
OFFICE OF THE SECRETARY OF STATE

§30-34-1 General

- 1.1 Scope – This legislative rule delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.
- 1.2 Authority: WV Code §30-34-5
- 1.3 Filing Date:
- 1.4 Effective Date:

§30-3-2 Definitions

- 2.1 “Academic Course” offered by an accredited post-secondary institution means a respiratory care course ~~designated by a respiratory care course~~
or a course which may be applicable to
~~number beyond the mandatory entry level. The academic course shall be~~
to respiratory care practice and appropriate for the respiratory care
~~applicable to respiratory care practice and appropriate for the respiratory~~
provider employed in the areas of clinical practice, health care
~~care provider employed in the areas of clinical practice, administration,~~
administration, respiratory care or health care education and clinical
~~education, or research~~ research.

- 2.2 “American Association for Respiratory Care for Continuing Respiratory Care Education approval” means any program, which has received recognition by the AARC.
- 2.3 “Continuing Education Unit” means fifty (50) contact minutes of participating in approved continuing education program.
- 2.4 “Program” means an organized learning experience planned and evaluated to meet behavioral objectives; programs may be presented in one session or in a series.
- 2.5 “Provider” means an organization approved by the Board for offering continuing education programs.
- 2.6 “Relevant” means having content applicable to the practice of respiratory care as defined by the Board.
- 2.7 “Successful completion” means that the respiratory care license has satisfactorily met the specific requirements of the offering and that the respiratory care licensee has earned the continuing education units. The Board will not grant continuing education units for repeated instruction of the same course.

§30-34-3 Accrual of Continuing Education Units: Mandatory Computation of Accrual.

- 3.1 A licensee shall accrue a minimum of twenty (20) continuing education units every two (2) years.
- 3.2 A licensee shall submit continuing education units to the Board by ~~March 14 of the year proceeding the accrual period.~~ between ~~The initial accrual period is October 15 and December 31, following the accrual period. The revised from January 1, 1997 to December 31, 1998. The first reporting deadline is March 14, 1999.~~ accrual period is from January 1, 1999 to October 1, 2000. The reporting deadline is December 31, 2000. The continuing education units required for the adjusted accrual period of January 1, 1999 to October 1, 2000 shall be prorated to fifteen (15) units and will revert to twenty (20) every two years for the following accrual period.
- 3.3 The accrual period is ~~January 1~~ of one year through ~~December 31~~ of the October 1 September 30 following calendar year.
- 3.4 All continuing education units must be relevant to the field of respiratory care.
- 3.5 Continuing education units will be prorated for new licensees.
- 3.6 A license of a licensee who fails to meet the continuing education requirements lapses. The Board shall notify the licensee in writing within ten (10) working

twenty (20)

days of receipt of CEU forms. If the Board fails to notify the licensee within this time period, the requested continued education units shall be considered approved by the Board.

§30-3-4 Methods of Acquiring Continuing Education Units

- 4.1 Continuing education units applicable to the renewal of the license shall be directly related to the professional growth and development of the respiratory care licensee, and shall be relevant to the practice of respiratory care.
- 4.2 A licensee may earn continuing education units completing any of the educational offerings of the American Association of Respiratory Care approved courses or programs.
- 4.3 A licensee may earn continuing education units by completing academic courses as set forth in subsection 2.5 of the rule. For the purposes of this rule, one (1) credit hour of academic course equals fifteen (15) continuing education units.
- 4.4 Relevant offerings provided by other organizations or institutions may be approved by the Board for continuing education units. Approved organizations may include but are not limited to the West Virginia Society for Respiratory Care, the West Virginia Lung Association, the West Virginia Thoracic Society, the

Board of Examiners for Registered Professional Nurses, the American Medical Association, or the National Association of Medical Equipment Suppliers.

- 4.5 The Board may approve continuing education units for successful completion of the “National Board of Respiratory Care, Inc.”, advanced practitioner exams including but, not limited to the Perinatal Pediatric Exam, the Certified Pulmonary Function Exam, the Registered Pulmonary Function Exam, or any other future exam developed and administered by the NBRC or its successor organization. The Board shall grant ten (10) continuing education units to a licensee upon passing each exam. The Board encourages licensees to retake the “National Board of Respiratory Care, Inc.” exams and the Board shall grant five (5) continuing education units for those licensees passing the exam.
- 4.6 The Board may approve related areas not specifically a part of the field of respiratory care for up to two (2) continuing education units, if the Board believes that the related areas may serve to enhance the licensee’s ability to practice.
- 4.7 The Board may approve continuing education units for up to five (5) units for authorship of a research article printed in a Board approved medical journal or Board approved textbook.
- 4.8 The Board may approve continuing education units for the authorship of continuing education material used in conducting continuing education program offerings. The approval may qualify as double that of the offering.

§30-3-5 Procedures For Accreditation of Sponsors and Approval of Continuing Education Activities

- 5.1 Any organization desiring to establish accreditation of a continuing education program prior to the program offering. The program shall be approval to the Board at least thirty (30) days in advance of the commencement of the program, on a form provided by the Board, stating the type of learning activity, the subject matter, the names and qualifications of the instructors, the number of continuing education units offered, and pay the fees as established by the Board.
- 5.2 A continuing education activity is qualified for approval if the Board determines that the activity being presented is an organized program of learning; pertains to subject matters which integrally relate to the practice of respiratory care; contributes to the professional competency of the licensee; and is conducted by individuals who have educational training, or experience acceptable to the Board.
- 5.3 The Board may pre-approve a provider of continuing education. The continuing education activity must be an organized program of learning. Each activity must have a content outline, demonstrate relevance to respiratory care, maintain a roster of attendees, be reviewed by a respiratory therapist, and must be conducted by individuals who have educational training or experience acceptable to the Board.
- 5.4 A pre-approved provider must maintain records of each continuing education offering and shall include, but not be limited to: continuing education offering

title, course outline, attendance roster, signature of the respiratory therapist reviewing the course content and CEU's granted.

5.5 The pre-approved provider must provide to the attendee of the continuing education activity the following, but not limited to: and agenda or listing of course content and a certificate of completion signed by the provider of the continuing education offering.

5.6 The pre-approved provider must supply, upon request by the Board, a copy of files of all continuing education offerings.

5.7 The pre-approved provider of continuing education activity may be subject to Board suspension of privilege if the provider fails to submit requested documentation of continuing education activity. Future pre-approval will be subject to Board decision.

§30-3-6 Responsibilities and Reporting Requirements of the License Holders.

6.1 A licensee is responsible for obtaining the required number of continuing education units. The licensee shall identify his or her own continuing education needs, take initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes relevant to the practice of respiratory care.

- 6.2 Each licensee shall select approved activities by which to earn continuing education units and obtain from the board, prior approval for continuing education not accredited by the Board.
- 6.3 Each licensee shall maintain records of continuing education units and submit record of them to the board postmarked by ~~March 15~~ of each year ~~preceeding~~ December 31 after the ~~the accrual period.~~ accrual period.
- 6.4 Each licensee shall document attendance and participation in a continuing education activity in form of, but not limited to, official documents such as transcripts, certificates, or affidavits signed by instructors. The type of documentation required varies depending on the specific activity submitted to the Board for approval.
- 6.5 Each licensee shall full comply with the provisions of this rule. The Board may revoke or refuse to renew a licensee's license if he or she fails to comply with the provisions of this rule.

§30-3-7 Carry Over of Continuing Education Units

- 7.1 A licensee may carry over six (6) continuing education units earned in excess of those required under subsection 3.1 of this rule into the immediately following accrual period.

§30-3-8 Board to Approve Continuing Education Units; Appeal When Approval Denied

- 8.1 In the event of denial, in whole or part, of any application for approval of continuing education units, the licensee has the right to appeal in writing to the Board. Notice of appeal must be received by the Board within thirty (30) days after the date of the receipt of the Board's order denying approval of continuing education units.
- 8.2 A hearing before the full Board may be held at the request of the licensee, if the written appeal is denied. The board must receive the written request for a hearing within (10) business days after the date the Board mails the notification of denial.

§30-3-9 Temporary License Holders and Inactive Status

- 9.1 Continuing education requirements shall not apply to the holders of a temporary license.
- 9.2 The Board may, in individual cases involving medical disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports. A written request for waiver or extension of time shall be submitted by the licensee and shall be accompanied by a verifying document signed by a licensed physician. Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements may be granted by the Board for a

period of time not to exceed one (1) calendar year. If the granted continues beyond the period of the waiver or extension, the licensee must apply for another waiver.

- 9.3 The Board may waive continuing education requirements for a licensee on inactive status during the period her or she remain inactive. If the licensee applies to the Board to return to active status, the licensee shall submit proof of completion of five (5) continuing education units within the twelve (12) month period immediately preceding the date on which the application is submitted. The licensee may request to be allowed to return to active status immediately. The Board shall grant the request, if the licensee agrees to successfully complete ten (10) continuing education units within twelve (12) months of the date on which the Board approves active status.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2348

**(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATES GALLAGHER,
LEACH, COMPTON, KISS, CALVERT AND SPROUSE)**

[Passed March 10, 1995; in effect ninety days from passage.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-four, relating to creating a self-supporting state board for respiratory care practitioners; requiring a license to practice; defining the scope of practice and related terms; specifying board composition, powers, responsibilities and operating procedures; establishing criteria and fees for issuing, renewing and reinstating full and limited licenses and temporary permits; creating misdemeanor penalties for nonlicensure and other acts; exempting certain categories from licensure; providing a grandfather clause; setting standards for disciplinary action, license revocation and suspension and due process; and delineating exceptions.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-four, to read as follows:

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-1. License required to practice.

In order to protect the life, health and safety of the public, any person practicing or offering to practice as a respiratory care technician or respiratory therapist is required to submit evidence that he or she is qualified to practice, and is licensed as provided in this article. After the thirtieth day of June, one thousand nine hundred ninety-six, it shall be unlawful for any person not licensed under the provisions of this article to practice as a respiratory care technician or respiratory therapist in this state, to deliver any portion of the description of services or scope of practice, or to use any title, sign, card or device to indicate that he or she is a respiratory care technician or respiratory therapist. The provisions of this article are not intended to limit, preclude or otherwise interfere with the practice of other health care providers including those health care providers working in any setting and licensed by appropriate agencies or boards of the state of West Virginia whose practices and training may include elements of the same nature as the practice of a licensed respiratory care technician or a licensed respiratory therapist.

§30-34-2. Definitions.

- a) "Board" means the West Virginia board for respiratory care;
- b) "Formal training" means a supervised, structured educational activity that includes preclinical didactic and laboratory activities and clinical activities. The training must be approved by an accrediting agency recognized by the board. It must include an evaluation of competence through standardized testing mechanisms that the board determines to be both valid and reliable;
- c) "Graduate respiratory care technician" means an individual who has graduated from a respiratory care technician education program and who is scheduled to take the next available examination administered by the state or a national organization approved by the board;
- (d) "Graduate respiratory care therapist" means an individual who has graduated from a respiratory therapist educational program and is scheduled to take the next available examination administered by the state or a national organization approved by the board;
- e) "Practice of respiratory care" means the practice of respiratory care, and any part of respiratory care, by persons licensed under the provisions of this article and shall be limited to that which has been learned through formal or special training including performance evaluation to evaluate competence. The practice of respiratory care may be performed in any clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate or necessary by the board in accordance with the prescription or verbal orders of a licensed physician or other legally authorized person with prescriptive authority, and/or under the direction of a qualified medical director.

Practice of respiratory care includes, but is not limited to:

- 1) The administration of pharmacological, diagnostic therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician;
- 2) Transcription and implementation of written or verbal orders of a physician or other legally authorized person with prescriptive authority, pertaining to the practice of respiratory care;
- 3) Observing and monitoring signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics;

- 4) Based on observed abnormalities, appropriate reporting, referral or implementation of respiratory care protocols or changes in treatment pursuant to the written or verbal orders of a person with prescriptive authority under the laws of the state of West Virginia; or
- 5) The initiation of emergency procedures under the regulations of the board or as otherwise permitted in this article;
- f) "Qualified medical director" means the medical director of any inpatient or outpatient respiratory care service, department or home care agency. The medical director shall be a licensed physician who is knowledgeable in the diagnosis and treatment of respiratory problems. This physician shall be responsible for the quality, safety and appropriateness of the respiratory services provided and require that respiratory care be ordered by a physician, or other legally authorized person with prescriptive authority, who has medical responsibility for the patient. The medical director shall be readily accessible to the respiratory care practitioners and assure their competency;
- g) "Respiratory care" means the allied health profession responsible for the direct and indirect services in the treatment, management, diagnostic testing and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system, under a qualified medical director. Respiratory care includes inhalation therapy and respiratory therapy;
- h) "Respiratory care education program" means a course of study leading to eligibility for registry or certification in respiratory care and the program is approved by the board;
- i) (i) "Respiratory therapist" means an individual who has successfully completed an accredited training program, and who has successfully completed an examination for respiratory therapists administered by the state or a national organization approved by the board and who is licensed by the board as a licensed respiratory therapist;
- j) "Respiratory care technician" means an individual who has successfully completed an accredited training program and who has successfully completed a certification examination for respiratory care technicians administered by the state or a national organization approved by the board, and who is licensed by the board as a licensed respiratory care technician; and
- k) "Student respiratory care therapist or student respiratory care technician" means an individual enrolled in a respiratory educational program and whose sponsoring educational institution assumes responsibility for the supervision of, and the services rendered by, the student respiratory care practitioner while he or she is functioning in a clinical training capacity.

§30-34-3. Board of respiratory care.

- a) There is hereby created the West Virginia board of respiratory care. The board shall consist of seven members, appointed by the governor with the advice and consent of the senate and shall consist of one lay citizen member; one practicing physician member currently licensed in West Virginia with board certification, clinical training and experience in the management of pulmonary disease; and five members, licensed under the provisions of this article and engaged in the practice of respiratory care for the five years immediately preceding their appointment. One of the respiratory practitioners appointed shall be employed full time in home respiratory care by a home medical equipment supplier. All appointees shall be citizens of the United States and residents of this state. The West Virginia society for respiratory care or its successor organization shall make recommendations to the governor regarding individuals to be considered for initial and subsequent appointments.

- b) The members of the board shall each serve terms that commence on the first day of July, one thousand nine hundred ninety-five. Of the initial appointments to the board, one physician and one respiratory care practitioner shall serve for two year terms, one public member and two respiratory care practitioners shall serve for three year terms, and two respiratory care practitioners shall serve for four year terms. Thereafter, each appointment shall be for a four year term commencing upon the expiration of the term of his or her previous term or of his or her predecessor's term. No member may be appointed for more than three consecutive terms. Vacancies shall be appointed in a like manner for the balance of an unexpired term.
- c) The West Virginia medical association, or other organizations if requested by the governor, may submit the names of three physicians qualified to serve in that designated position on the board.
- e) The governor may remove any member from the board for neglect of any duty required by law or for incompetence or unethical or dishonorable conduct.

§30-34-4. Organization and meetings of board; quorum; expenses.

- (a) The board shall meet at least twice a year and elect annually a chairperson and a vice chairperson from its members. The board may hold other meetings during the year as the chairperson or board deem necessary to transact its business.
- (b) A majority, including one officer, constitutes a quorum at any meeting, but a majority of the board is required to take action by vote. The board members shall receive travel and other necessary expenses actually incurred while engaged in board activities up to a maximum of two hundred dollars per board meeting. All reimbursement of expenses shall be paid out of the board of respiratory care fund created by the provisions of this article.

§30-34-5. Board responsibilities.

The board shall:

- (a) Provide public notice to all state hospitals and to all persons currently practicing as respiratory care practitioners that a license shall be required to continue practicing as a respiratory care technician or respiratory therapist, after the thirtieth day of June, one thousand nine hundred ninety-six;
- (b) Examine, license and renew the licenses of duly qualified applicants;
- (c) Maintain a current registry of persons licensed to practice respiratory care under this article which shall contain information on the licensee's place of employment, address, license number and the date of licensure;
- (d) Cause the prosecution of all persons violating this article, incurring any expenses necessary;
- (e) Keep a record of all proceedings of the board and make it available to the public for inspection during reasonable business hours;
- (f) Conduct hearings on charges that subject a licensee to disciplinary action and on the denial, revocation or suspension of a license;
- (g) Maintain an information registry of persons whose licenses have been suspended, revoked or denied. The information shall include the individual's name, social security number, type and cause of action, date of board action, type of penalty incurred and the length of penalty. This information shall be available for public inspection during reasonable business hours and supplied to similar boards in other states upon request;

(h) Establish rules pursuant to the provisions of chapter twenty-nine-a of this code regarding relicensure and continuing education requirements. Continuing education requirements shall be established pursuant to a recognized continuing respiratory care education program such as, but not limited to, the program established by the American Association for Respiratory Care;

(i) Maintain continuing education records; and

(j) Approve the training, continuing education and competency evaluation methods for respiratory care practitioners to perform entry level and advanced procedures the art and techniques of respiratory care.

§30-34-6. Powers of the board; fund.

(a) The board may:

- 1) Adopt rules pursuant to article three, chapter twenty-nine-a of the code, as may be necessary to enable it to effect the provisions of this article;
- 2) Employ such personnel as necessary to perform the functions of the board, including an administrative secretary, and pay all personnel from the board of respiratory care fund;
- 3) Establish relicensure requirements, rules of probation for licensees, and other procedures as deemed appropriate;
- 4) Secure the services of resource consultants, as deemed necessary by the board, who shall receive travel and other necessary expenses, consistent with state laws and policies, while engaged in consultative service to the board and who shall be reimbursed exclusively from the board of respiratory care fund;
- 5) Fix appropriate and reasonable fees for mandatory licensure, which shall be no greater than two hundred dollars for initial licensure or one hundred fifty dollars for annual license renewal. All fees shall be reviewed periodically and modified as necessary.

(b) The board shall designate one person to accept and deposit moneys paid to the board. The money so collected shall be deposited with the treasurer of the state and credited to an account to be known as the "board of respiratory care fund." Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. No part of the state's general revenue fund shall be expended to carry out the purposes of this article.

(c) The board may contract with other state boards or state agencies to share offices, personnel and other administrative functions as authorized under this article.

§30-34-7. Issuance of license; renewal of license; renewal fee; display of license.

(a) When the board finds that an applicant meets all of the requirements of this article for a license to engage in the practice of respiratory care, it shall forthwith issue to that person a license. otherwise, the board shall deny the application. The application is to be submitted with a license fee of two hundred dollars. If any application is rejected, the board shall return the fee less any actual costs incurred in processing the application.

(b) Every licensee shall renew his or her license on or before the first day of January of each year by payment of a fee established by the board which shall be no greater than one hundred fifty dollars. Any license that is not so renewed shall automatically lapse. A license which has lapsed may be renewed within five years of its expiration date by meeting the requirements set forth by the board and payment of a fee equal to that established for the initial license. After the expiration of such five-year period, a license may be renewed only by complying with the provisions relating to the issuance of an original license.

(c) A person currently licensed to practice pursuant to this article may apply for an inactive status by providing written notice to the board and ceasing to engage in the practice of respiratory care in this state: *Provided*, That the inactive status is granted for no longer than five years. The board shall maintain a list of licensees on inactive status. Any person granted inactive status is not subject to the payment of any fees otherwise required by the board. Prior to engaging in the practice of respiratory care, the person shall submit to the board an application for the renewal of the license and payment of a renewal fee for the current year.

- d) The board may deny any application for renewal of a license for any reason which would justify the denial of an original application for a license as specified by provisions of this article.
- e) The board shall prescribe the form of licenses.

§30-34-8. Criteria for licensure.

- a) Upon payment of the proper fees, an applicant for a license to practice respiratory care shall submit to the board written evidence, verified by oath, that the applicant:
 - 1) Has completed an approved respiratory care educational program;
 - 2) Passed an examination, except where otherwise provided in this article. This examination may be administered by the state or by a national agency approved by the board. The board shall set the passing score for the examination.
- b) The board may also issue a license to practice respiratory care by endorsement to an applicant who is currently licensed to practice respiratory care under the laws of another state, territory or country if the qualifications of the applicant are deemed by the board to be equivalent to, or greater than, those required in this state.
- c) The board may also issue a license to practice respiratory care by endorsement to respiratory therapists and respiratory care technicians holding credentials conferred by the national board for respiratory care, inc. or its successor organizations, if the credentials have not been suspended or revoked. Applicants applying under the conditions of this section shall be required to certify under oath that their credentials have not been suspended or revoked.
- d) If an applicant fails to complete the requirements for licensure within ninety days from the date of filing, the application is deemed to be abandoned.

§30-34-9. Temporary permits.

Upon payment of the proper fee the board may issue a temporary permit to practice respiratory care for a period of six months under the following conditions:

- (a) The applicant is currently practicing or has practiced within the last twelve months in another state, territory or country, and is completing the requirements for licensing in this state: *Provided*, That the applicant provides written evidence, verified by oath of that practice;

- (b) The applicant is a graduate of a respiratory educational program and is scheduled to take the next available examination: *Provided*, That the temporary permit shall be revoked in the event that the applicant does not achieve a passing score on the examination.

§30-34-10. Prohibitions and penalties

It shall be a misdemeanor for any person, including any corporation or association, to:

- (a) Sell or fraudulently obtain or furnish any respiratory care provider license or record or abet therein;
- (b) Practice as a respiratory care provider under cover of any diploma, license or record illegally or fraudulently obtained or signed or issued under fraudulent representation;
- (c) Practice as a respiratory care provider unless duly licensed to practice under the provision of this article;
- (d) Use in connection with his or her name any designation tending to imply that he or she is licensed to practice as a respiratory care provider unless duly licensed so to practice under the provision of this article;
- (e) Practice as a respiratory care provider during time his or her license issued under the provisions of this article is suspended or revoked;
- (f) Conduct a respiratory care provider licensing program for the preparation of a respiratory care provider unless such a program has been accredited by the board; or
- (g) Otherwise violate any provisions of this article.

Upon conviction, each misdemeanor shall be punishable by a fine of not less than twenty five nor more than two hundred fifty dollars.

§30-34-11. Grandfather clause

- (b) Applicants who have not passed either of these national examinations or their equivalent on the effective date of this article and who, through written evidence and verified by oath, demonstrate that they have been functioning for two years in the capacity of a respiratory care provider as defined by this article shall be issued a temporary license to practice respiratory care. A temporary license issued pursuant to this section shall be renewed at intervals prescribed by the board. A temporary license shall not be valid after the first day of June, one thousand nine hundred ninety-seven. Persons holding a temporary license shall be issued a license to practice only after achieving a passing score on a licensure exam administered or approved by the board.
- (c) Any person issued a license pursuant to this section shall be required to pay the license or renewal fees established in section seven of this article.

§30-34-12. Professional identification.

- (a) A person holding a license to practice respiratory care as a technician in this state may use the title "licensed respiratory care technician" and the abbreviation "LRCT".
- (b) A person holding a license to practice respiratory care as a respiratory therapist in this state may use the title "licensed respiratory therapist" and the abbreviation "LRT".
- (c) A licensee shall either show his or her license or provide a copy thereof within twenty-four hours of a request from an employer or the board.

§30-34-13. Disciplinary criteria.

The board may revoke, suspend or refuse to renew any license, or place on probation, or otherwise reprimand a licensee or permit holder, or deny a license to an applicant if it finds that the person:

- (a) Is guilty of fraud or deceit in procuring or attempting to procure a license or renewal of a license to
- (b) practice respiratory care;
- (c) Is unfit or incompetent by reason of negligence, habits or other causes of incompetence;

- (d) Is habitually intemperate in the use of alcoholic beverages;
- (e) Is addicted to or has improperly obtained, possessed, used or distributed habit-forming drugs or narcotics;
- (f) Is convicted of a felony that materially affects the person's ability to safely practice respiratory care;
- (g) Is guilty of dishonest or unethical conduct as determined by the board of respiratory care;
- (h) Has practiced respiratory care after his or her license or permit has expired, been suspended or revoked;
- (i) Has practiced respiratory care under cover of any permit or license illegally or fraudulently obtained or issued; or
- (j) Has violated or aided or abetted others in violation of any provision of this article.

§30-34-14. Due process procedure.

(a) Upon filing with the board a written complaint charging a person with being guilty of any of the acts described in section thirteen of this article, the administrative secretary or other authorized employee of the board shall provide a copy of the complaint or list of allegations to the person about whom the complaint was filed. That person will have twenty days thereafter to file a written response to the complaint. The board shall thereafter, if the allegations warrant, make an investigation. If the board finds reasonable grounds for the complaint, a time and place for a hearing shall be set, notice of which shall be served on the licensee, permit holder or applicant at least fifteen calendar days in advance of the hearing date. The notice shall be by personal service or by certified or registered mail sent to the last known address of the person.

(b) The board may petition the circuit court for the county within which the hearing is being held to issue subpoenas for the attendance of witnesses and the production of necessary evidence in any hearing before it. Upon request of the respondent or of his or her counsel, the board shall petition the court to issue subpoenas in behalf of the respondent. The circuit court upon petition may issue such subpoenas as it deems necessary.

(c) Unless otherwise provided in this article, hearing procedures shall be promulgated in accordance with, and a person who feels aggrieved by a decision of the board may take an appeal pursuant to, the administrative procedures in this state as provided in chapter twenty-nine-a of this code.

§30-34-15. Exceptions.

(a) A person may not practice respiratory care or represent himself or herself to be a respiratory care practitioner unless he or she is licensed under this article except as otherwise provided by this article.

(b) This article does not prohibit:

- (1) The practice of respiratory care which is an integral part of the program of study by students enrolled in respiratory care education programs accredited by organizations approved by the board. Students enrolled in respiratory care education programs shall be identified as "student RCP" and may only provide respiratory care under clinical supervision;
- (2) Self-care by a patient, or gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner;
- (3) Respiratory care services rendered in the course of an emergency;
- (4) Persons in the military services or working in federal facilities providing respiratory care services when
- (5) functioning in the course of their assigned duties; and
- (6) The respiratory care practitioner from performing advances in the art and techniques of respiratory care
- (7) learned through formalized or specialized training approved by the board.

(c) Nothing in this article is intended to limit, preclude or otherwise interfere with the practices of other persons and health care providers licensed by appropriate agencies of the state.

- d) Nothing in this article shall prohibit home medical equipment dealers from delivering and instructing persons in the operation of home medical respiratory equipment, or, from receiving requests for changes in equipment and settings from physicians or other authorized individuals.
- e) An individual who passes an examination that includes content in one or more of the functions included in this article is not prohibited from performing such procedures for which he or she was tested, so long as the offering the examination is approved by the board.

§30-34-16. Practice of medicine prohibited.

Nothing in this article may be construed to permit the practice of medicine.

**TITLE 30
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF RESPIRATORY CARE**

**SERIES 1
PROCEDURE FOR LICENSURE APPLICATION**

§30-1-1. General.

1.1. Scope. -- This legislative rule establishes the application process for licensure by the West Virginia Board of Respiratory Care.

1.2. Authority. -- W. Va. Code §30-34-6.

1.3. Filing Date. -- June 24, 1997.

1.4. Effective Date -- June 24, 1997.

§30-1-2. Application for License.

2.1. An applicant for licensure shall file with the West Virginia Board of Respiratory Care, a signed application form and shall pay an initial application fee of two hundred dollars (\$200.00).

2.2. The applicant for a license shall indicate the level of license requested, Licensed Respiratory Care Technician or Licensed Respiratory Therapist. The applicant shall also submit a notarized copy of the "National Board of Respiratory Care, Inc." certificate designating the applicant's registry or certification status.

§30-1-3. Temporary Permits.

3.1. The board may issue a temporary permit to practice respiratory care for a period of six months to an individual who is currently practicing in another state, territory or country, and is completing requirements for licensure in this state. The applicant applying for a permit under this provision must submit a completed application form, a letter of good standing from the board of the state where they hold a license and must submit the application fee of two hundred dollars (\$200.00).

3.2. The board may issue a temporary permit to practice respiratory care for a period of six months to a graduate of a board approved educational program who is scheduled to take the next available entry level examination or is waiting for the results of that examination. An applicant for a temporary permit shall include a notarized copy of a certificate of completion from a respiratory care program accredited by the "Joint Review Committee for Respiratory Therapy Education" or its board approved successor and shall pay an initial application fee of two hundred dollars (\$200.00).

3.2.a. An applicant who has not yet graduated may apply for a temporary permit no earlier than 30 days prior to graduation. The applicant shall file a certificate of completion with the board no later than 30 days after graduation. The board shall revoke the temporary permit of an applicant who does not file the certificate of completion within 30 days of graduation.

3.2.b. The board may issue an applicant under a temporary permit shall file an application to take the next available entry level examination offered by the "National Board of Respiratory Care, Inc." The applicant must submit a score release form to the "National Board of Respiratory Care, Inc." The results of the examination shall be recorded by the board as reported by the National Board of Respiratory Care, Inc." or its testing service.

3.2.c. The applicant under a temporary permit shall provide a letter of intent to graduate with the application. The letter must be signed by the program director, and a principal administrative office of the institution where the program is completed.

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3.2.d. Upon notification of passage of the examination by the NBRC, the board shall issue a license as a Licensed Respiratory Care Technician to the applicant. A notarized copy of the NBRC certificate must be submitted with the next renewal.

3.2.e. Upon notification that the applicant under a temporary permit failed the examination, the board shall revoke the temporary permit and refund the application fee less a processing fee of thirty dollars (\$30.00).

§30-14. Grandfather Applicants.

4.1. An applicant who has not passed the board approved entry level examination may apply for a temporary license whose term expires June 1, 1997.

4.2. The applicant must submit a letter from an employer verifying that he or she has been employed as a respiratory care provider for a minimum of two years. The two year employment period shall have begun on or before June 15, 1994. The applicant shall have worked a minimum of one thousand (1000) hours each year. The letter shall be signed by a principle administrative officer of the institution where the applicant is employed, and the applicant's direct supervisor. The applicant must submit an application, pay an application fee of two hundred dollars (\$200.00) and shall submit the employment verification letter.

4.3. Those individuals currently licensed by appropriate agencies or boards of the State of West Virginia may not apply for a license under this section.

4.4. Upon review the board shall issue an appropriate license. An applicant who is granted a license under this provision shall hold a temporary license as a Licensed Respiratory Care Assistant (RCA), and must work under the supervision of a Licensed Respiratory Care Technician, Licensed Respiratory Therapist or other qualified health

care professional as designated by the board. The board shall revoke the license of a licensee who fails to pass the licensing examination on or before June 1 1997.

§30-1-5. Restricted Titles.

5.1. The following titles are prohibited from use by persons who are not licensed under this provision: respiratory care professional; respiratory care educator; respiratory care practitioner; respiratory therapist; respiratory technologist; respiratory technician; inhalation therapist; cardiopulmonary technician; respiratory care associate; cardiopulmonary associate; or any similar title.

**TITLE 30
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF RESPIRATORY CARE**

**SERIES 2
ESTABLISHMENT OF FEES**

§30-2-1. General.

1.1. Scope. -- This legislative rule sets forth in detail all fees charged by the board.

1.2. Authority. -- W. Va. Code §30-34-6.

1.3. Filing Date. -- June 24, 1997.

1.4. Effective Date. -- June 24, 1997.

§30-2-2. Application Fee.

2.1. An applicant for licensure shall file with the West Virginia Board of Respiratory Care, a signed application form and pay an initial application fee of two hundred dollars (\$200.00).

§30-2-3. Renewal Fees Schedule.

3.1. Every licensee shall renew his or her license on or before the first of January of each year.

3.2. The renewal fee is sixty-five dollars (\$65.00).

3.3. The first renewal date is January 1, 1998.

3.4. Any licensee who files for early renewal between the dates of November 1 and November 30, in any year, is entitled to a \$10.00 discount on the license renewal.

3.5. The renewal fee for renewal of a licensee's inactive status is twenty dollars (\$20.00).

3.6. Any license that is not renewed on January 1 automatically lapses and the person whose license has lapsed shall submit a new application and the two hundred dollar (\$200.00) application fee.

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**SERIES 3
CONTINUING EDUCATION REQUIREMENTS**

§30-3-1. General.

1.1. Scope. -- This legislative rule delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

1.2. Authority. -- W. Va. Code §30-34-5.

1.3. Filing Date. -- June 24, 1997.

1.4. Effective Date. -- June 24, 1997.

§30-3-2. Definitions.

2.1. "Academic Course" offered by an accredited post-secondary institution means a respiratory care course, designated by a respiratory care course number, beyond the mandatory entry level. The academic course shall be applicable to respiratory care practice and appropriate for the respiratory care provider employed in the areas of clinical practice, administration, education or research.

2.2. "American Association for Respiratory Care for Continuing Respiratory Care Education approval" means any program which has received recognition by the AARC.

2.3. "Continuing Education Unit" means fifty (50) contact minutes of participating in approved continuing educational program.

2.4. "Program" means an organized learning experience planned and evaluated to meet behavioral objectives; programs may be presented in one session or in a series.

2.5. "Provider" means an organization approved by the board for offering continuing education programs.

2.6. "Relevant" means having content applicable to the practice of respiratory care as defined by the board.

2.7. "Successful completion" means that the respiratory care license has satisfactorily met the specific requirements of the offering and that the respiratory care licensee has earned the continuing education units. The board will not grant continuing education units for repeated instruction of the same course.

§30-3-3. Accrual of Continuing Education Units Mandatory: Computation of Accrual.

3.1. A licensee shall accrue a minimum of twenty (20) continuing education units every two (2) years.

3.2. A licensee shall submit continuing education units to the board by March 14 of the year proceeding the accrual period. The initial accrual period is from January 1, 1997 to December 31, 1998. The first reporting deadline is March 14, 1999.

3.3. The accrual period is January 1 of one year through December 31 of the following calendar year.

3.4. All continuing education units must be relevant to the field of respiratory calendar year.

3.5. A license of a licensee who fails to meet the continuing education requirements lapses. The board shall notify the licensee in writing within 10 working days of receipt of CEU forms. If the board fails to notify the licensee within this time period, the requested continuing education

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units shall be considered approved by the board.

§30-34. Methods of Acquiring Continuing Education Units.

4.1. Continuing education units applicable to the renewal of the license shall be directly related to the professional growth and development of the respiratory care licensee.

4.2. A licensee may earn continuing education units completing any of the educational offerings of the American Association of Respiratory Care approved courses or programs.

4.3. A licensee may earn continuing education units by completing academic courses as set forth in subsection 2.5. of this rule. For the purposes of this rule, one (1) credit hour of academic course equals fifteen (15) continuing education units.

4.4. Relevant offerings provided by other organizations or institutions may be approved by the board for continuing education units. Approved organizations may include but are not limited to the West Virginia Society for Respiratory Care, the West Virginia Lung Association, the West Virginia Thoracic Society, the Board of Examiners for Registered Professional Nurses, the American Medical Association, or the National Association of Medical Equipment Suppliers.

4.5. The board may approve continuing education units for successful completion of the "National Board of Respiratory Care, Inc." advanced practitioner exams including but not limited to the Perinatal Pediatric Exam, the Certified Pulmonary Function Exam, the Registered Pulmonary Function exam or any other future exam developed and administered by the NBRC or its successor organization. The board shall grant ten (10) continuing education units to a licensee upon passing each exam. The board encourages licensees to retake the "National Board of Respiratory Care, Inc." exams and the board shall grant five (5) continuing education units for those licensees passing the exam.

4.6. The board may approve related areas not specifically a part of the field of respiratory care for up to two (2) continuing education units, if the board believes that the related areas may serve to enhance the licensee's ability to practice.

4.7. The board may approve continuing education units for up to five (5) units for authorship of a research article printed in a board approved medical journal or board approved textbook.

§30-3-5. Procedures For Accreditation of Sponsors and Approval of Continuing Education Activities.

5.1. Any organization desiring to establish accreditation of a continuing education program prior to the program offering. The program shall be approval to the board at least thirty (30) days in advance of the commencement of the program, on a form provided by the board, stating the type of learning activity, the subject matter, the names and qualifications of the instructors, the number of continuing education units offered, and pay the fees as established by the board.

5.2. A continuing education activity is qualified for approval if the board determines that the activity being presented is an organized program of learning; pertains to subject matters which integrally relate to the practice of respiratory care; contributes to the professional competency of the licensee; and is conducted by individuals who have educational training, or experience acceptable to the board.

§30-3-6. Responsibilities and Reporting Requirements of the License Holders.

6.1. A licensee is responsible for obtaining the required number of continuing education units. The licensee shall identify his or her own continuing education needs, take initiative in seeking continuing professional education

- activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes.

6.2. Each licensee shall select approved

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activities by which to earn continuing education units and obtain from the board prior approval for continuing education not accredited by the board.

6.3. Each licensee shall maintain records of continuing education units and submit records of them to the board postmarked by March 15 of each year proceeding the accrual period.

6.4. Each licensee shall document attendance and participation in a continuing education activity in form of, but not limited to, official documents such as transcripts, certificates, or affidavits signed by instructors. The type of documentation required varies depending on the specific activity submitted to the board for approval.

6.5. Each licensee shall fully comply with the provisions of this rule. The board may revoke or refuse to renew a licensee's license if he or she fails to comply with the provisions of this rule.

§30-3-7. Carry-Over of Continuing Education Units.

7.1. A licensee may carry over six (6) continuing education units earned in excess of those required under subsection 3.1. of this rule into the immediately following accrual period.

§30-3-8. Board to Approve Continuing Education Units; Appeal When Approval Denied.

8.1. In the event of denial, in whole or part, of any application for approval of continuing education units, the licensee has the right to appeal in writing to the board. Notice of the appeal must be received by the board within thirty (30) days after the date of the receipt of the board's order denying approval of continuing education units.

8.2. A hearing before the full board may be held at the request of the licensee, if the written appeal is denied. The board must receive the written request for a hearing within ten (10) business days after the date the board mails the notification of denial.

§30-3-9. Temporary License Holders and Inactive Status.

9.1. Continuing education requirements shall not apply to the holders of a temporary license.

9.2. The board may, in individual cases involving medical disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports. A written request for waiver or extension of time shall be submitted by the licensee and shall be accompanied by a verifying document signed by a licensed physician. Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements may be granted by the board for a period of time not to exceed one (1) calendar year. If the granted continues beyond the period of the waiver or extension, the licensee must apply for another waiver.

9.3. The board may waive continuing education requirements for a licensee on inactive status during the period he or she remain inactive. If the licensee applies to the board to return to active status, the licensee shall submit proof of completion of five (5) continuing education units within the twelve (12) month period immediately preceding the date on which the application is submitted. The licensee may request to be allowed to return to active status immediately. The board shall grant the request, if the licensee agrees to successfully complete ten (10) continuing education units within twelve (12) months of the date on which the board approves active status.