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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 8.3. Respiratory Therapy [3700 - 3779] (*Chapter 8.3 added by Stats. 1982, Ch. 1344, Sec. 1.*)

ARTICLE 6. Offenses and Enforcement [3760 - 3769.3] (*Article 6 added by Stats. 1982, Ch. 1344, Sec. 1.*)

3760. (a) Except as otherwise provided in this chapter, no person shall engage in the practice of respiratory care, respiratory therapy, or inhalation therapy. For purposes of this section, engaging in the practice of respiratory care includes, but is not limited to, representations by a person whether through verbal claim, sign, advertisement, letterhead, business card, or other representation that he or she is able to perform any respiratory care service, or performance of any respiratory care service.

(b) No person who is unlicensed or whose respiratory care practitioner license has been revoked or suspended, or whose license is not valid shall engage in the practice of respiratory care during the period of suspension or revocation, even though the person may continue to hold a certificate or registration issued by a private certifying entity.

(c) Except as otherwise provided in this chapter, no person may represent himself or herself to be a respiratory care practitioner, a respiratory therapist, a respiratory care technician, or an inhalation therapist, or use the abbreviation or letters "R.C.P.," "R.P.," "R.T.," or "I.T.," or use any modifications or derivatives of those abbreviations or letters without a current and valid license issued under this chapter.

(d) No respiratory care practitioner applicant shall begin practice as a "respiratory care practitioner applicant" pursuant to Section 3739 until the applicant meets the applicable requirements of this chapter and obtains a valid work permit.

(Amended by Stats. 2003, Ch. 586, Sec. 14. Effective January 1, 2004.)

3760.5. The board shall share all complaints and information related to investigations involving a person licensed pursuant to Chapter 6.5 (commencing with Section 2840), including, but not limited to, data, findings, interviews, and evidence, with the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(Added by Stats. 2022, Ch. 624, Sec. 7. (SB 1436) Effective January 1, 2023.)

3761. (a) No person may practice respiratory care or represent himself or herself to be a respiratory care practitioner in this state, without a valid license granted under this chapter, except as otherwise provided in this chapter.

(b) No person or corporation shall knowingly employ a person who holds himself or herself out to be a respiratory care practitioner without a valid license granted under this chapter, except as otherwise provided in this chapter.

(Amended by Stats. 2003, Ch. 586, Sec. 15. Effective January 1, 2004.)

3762. Nothing in this chapter is intended to limit, preclude, or otherwise interfere with the practices of other licensed personnel in carrying out authorized and customary duties and functions.

(Amended by Stats. 1994, Ch. 1274, Sec. 25. Effective January 1, 1995.)

3763. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment in a county jail not exceeding six months, or both, for each offense.

(Amended by Stats. 1994, Ch. 1274, Sec. 26. Effective January 1, 1995.)

3764. Whenever any person has engaged or is about to engage in any acts or practices that constitute or will constitute an offense against this chapter, the superior court of any county, on application of the board, the Medical Board of California, or by 10 or more persons holding respiratory care practitioner licenses issued under this chapter, may issue an injunction or other appropriate order

restraining that conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required in any action commenced by the board.

(Amended by Stats. 1995, Ch. 279, Sec. 23. Effective January 1, 1996.)

3765. This act does not prohibit any of the following activities:

- (a) The performance of respiratory care that is an integral part of the program of study by students enrolled in approved respiratory therapy training programs.
- (b) Self-care by the patient or the gratuitous care by a friend or member of the family who does not represent or hold themselves out to be a respiratory care practitioner licensed under the provisions of this chapter.
- (c) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formal or specialized training.
- (d) The performance of respiratory care in an emergency situation by paramedical personnel who have been formally trained in these modalities and are duly licensed under the provisions of an act pertaining to their specialty.
- (e) Temporary performance, by other health care personnel, students, or groups, of respiratory care services, as identified and authorized by the board, in the event of an epidemic, pandemic, public disaster, or emergency.
- (f) Persons from engaging in cardiopulmonary research.
- (g) Formally trained licensees and staff of child day care facilities from administering to a child inhaled medication as defined in Section 1596.798 of the Health and Safety Code.
- (h) The performance by a person employed by a home medical device retail facility or by a home health agency licensed by the State Department of Public Health of specific, limited, and basic respiratory care or respiratory care-related services that have been authorized by the board.
- (i) The performance, by a vocational nurse licensed by the Board of Vocational Nursing and Psychiatric Technicians of the State of California who is employed by a home health agency licensed by the State Department of Public Health, of respiratory tasks and services identified by the board, if the licensed vocational nurse complies with the following:
 - (1) Before January 1, 2028, the licensed vocational nurse has completed patient-specific training satisfactory to their employer.
 - (2) On or after January 1, 2028, the licensed vocational nurse has completed patient-specific training by the employer in accordance with guidelines that shall be promulgated by the board no later than January 1, 2028, in collaboration with the Board of Vocational Nursing and Psychiatric Technicians of the State of California.
- (j) The performance of respiratory care services identified by the board by a licensed vocational nurse who satisfies the requirements in paragraph (1) in the settings listed in paragraph (2).
 - (1) (A) The licensed vocational nurse is licensed pursuant to Chapter 6.5 (commencing with Section 2840).
 - (B) The licensed vocational nurse has completed patient-specific training satisfactory to their employer.
 - (C) The licensed vocational nurse holds a current and valid certification of competency for each respiratory task to be performed from the California Association of Medical Product Suppliers, the California Society for Respiratory Care, or another organization identified by the board.
- (2) A licensed vocational nurse may perform the respiratory care services identified by the board pursuant to this subdivision in the following settings:
 - (A) At a congregate living health facility licensed by the State Department of Public Health that is designated as six beds or fewer.
 - (B) At an intermediate care facility licensed by the State Department of Public Health that is designated as six beds or fewer.
 - (C) At an adult day health care center licensed by the State Department of Public Health.
 - (D) As an employee of a home health agency licensed by the State Department of Public Health or an individual nurse provider working in a residential home.
 - (E) At a pediatric day health and respite care facility licensed by the State Department of Public Health.

(F) At a small family home licensed by the State Department of Social Services that is designated as six beds or fewer.

(G) As a private duty nurse as part of daily transportation and activities outside a patient's residence or family respite for home- and community-based patients.

(3) This subdivision is operative on January 1, 2028.

(k) The performance of pulmonary function testing by persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years.

(Amended by Stats. 2024, Ch. 481, Sec. 13. (SB 1451) Effective January 1, 2025.)

3766. (a) The board may issue a citation containing an order of abatement and civil penalties against a person who acts in the capacity of, or engages in the business of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(b) The board may issue a citation containing an order of abatement and civil penalties against a person employing or contracting with a person who acts in the capacity of, or engages in the business of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(Added by Stats. 2002, Ch. 1150, Sec. 34. Effective January 1, 2003.)

3767. (a) The board shall issue a citation to a person and to his or her employer or contractor, if, upon inspection or investigation, either upon complaint or otherwise, the following conditions are met:

(1) The board has probable cause to believe that the person is acting in the capacity of, or engaging in the practice of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(2) The person is not otherwise exempted from the provisions of this chapter.

(b) Each citation issued pursuant to subdivision (a) shall meet all of the following requirements:

(1) Be in writing and describe with particularity the basis of the citation.

(2) Contain an order of abatement and an assessment of a civil penalty in an amount not less than two hundred dollars (\$200) nor more than fifteen thousand dollars (\$15,000).

(c) A person served with a citation may appeal to the board within 15 calendar days after service of the citation with respect to any of the following:

(1) The violations alleged.

(2) The scope of the order of abatement.

(3) The amount of the civil penalty assessed.

(d) If, within 15 calendar days after service of the citation, the person cited fails to notify the board that he or she intends to appeal the citation, the citation shall be deemed a final order of the board and not subject to review by any court or agency. The board may extend the 15-day period for good cause.

(e) (1) If a person cited under this section notifies the board in a timely manner that he or she intends to contest the citation, the board shall afford an opportunity for a hearing.

(2) The board shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation, or directing other appropriate relief.

(f) With the approval of the board, the executive officer shall prescribe procedures for the issuance and appeal of a citation and procedures for a hearing under this section. The board shall adopt regulations covering the assessment of a civil penalty that shall give due consideration to the gravity of the violation, and any history of previous violations.

(g) The sanctions authorized under this section shall be separate from and in addition to, any other civil or criminal remedies.

(Added by Stats. 2002, Ch. 1150, Sec. 35. Effective January 1, 2003.)

3768. (a) After the exhaustion of the review procedures provided for in Section 3767, and as adopted by regulation, the board may apply to the appropriate superior court for both of the following:

(1) A judgment in the amount of the civil penalty.

(2) An order compelling the cited person to comply with the order of abatement.

(b) The application described in subdivision (a) shall include a certified copy of the final order of the board.

(c) The application described in subdivision (a) shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(d) The board may employ collection agencies or other methods in order to collect civil penalties.

(Added by Stats. 2002, Ch. 1150, Sec. 36. Effective January 1, 2003.)

3769.3. (a) Notwithstanding any other provision, the board may, by stipulation with the affected licensee, issue a public reprimand, after it has conducted an investigation, in lieu of filing or prosecuting a formal accusation.

(b) The stipulation shall contain the authority, grounds, and causes and circumstances for taking such action and by way of waiving the affected licensee's rights, inform the licensee of his or her rights to have a formal accusation filed and stipulate to a settlement thereafter or have the matter in the statement of issues heard before an administrative law judge in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) The stipulation shall be public information and shall be used as evidence in any future disciplinary or penalty action taken by the board.

(Amended by Stats. 2011, Ch. 296, Sec. 5. (AB 1023) Effective January 1, 2012.)