

Department of State Health Services
Agenda Item for State Health Services Council
August 6, 2007

Agenda Item Title: Repeal of 25 TAC, §§123.1 - 123.16 and new §§140.201 - 140.216 concerning the certification of respiratory care practitioners

Agenda Number: 3-i

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The proposed repeal and new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 TAC Chapter 140 Health Professions Regulation.

Sections 123.1 - 123.16 constitute the agency review of rules required by Government Code, §2001.039.

Summary:

Existing rule text is being transferred and updated in the new rules. One change affects continuing education. In response to stakeholder input, licensees will be able to take more continuing education hours through self-directed study (including Internet based courses). The current rules allow up to six hours each renewal period; the new rules will permit up to 12 of the required 24 hours to be taken as self-directed study.

Summary of Stakeholder Input to Date (including advisory committees):

The rules were reviewed and discussed by the Respiratory Care Practitioners Advisory Committee on September 22, 2006.

The rules are not anticipated to be controversial.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item # 3-i.

Agenda Item Approved by: _____
Kathryn C. Perkins, RN, MBA
Assistant Commissioner, Division for Regulatory Services

Date Submitted
6/25/07

Presented by: Debbie Peterson **Title:** Unit Manager

Program/Division: PLC **Contact Name/Phone:** Debbie Peterson 834-2725

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 123.1 Respiratory Care Practitioners Certification Program
Repeal §§123.1-123.16
Chapter 140. Health Professions Regulation
Subchapter E. Respiratory Care
New §§140.201-140.216

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§123.1-123.16 and new §§140.201-140.216, concerning the regulation and certification of respiratory care practitioners.

BACKGROUND AND PURPOSE

The proposed repeal and new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 TAC Chapter 140 Health Professions Regulation. The new rules transfer and update existing language, and do not impose any new requirements or fees on applicants or licensees. One change affects continuing education. In response to stakeholder input, licensees will be able to take more continuing education hours through self-directed study (including Internet based courses). The current rules allow up to six hours each renewal period; the new rules will permit up to 12 of the required 24 hours to be taken as self-directed study.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 123.1 - 123.16 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, the department is proposing to repeal the existing sections and adopt the rules in 25 TAC Chapter 140 Health Professions Regulation.

SECTION-BY-SECTION SUMMARY

New §140.201 sets forth purpose and scope of the rules. New §140.202 includes definitions for terms used within the rules. New §140.203 covers the membership and operations of the advisory committee. New §140.204 lists the fees required for application, registration, upgrade, renewal, and issuance of a duplicate certificate. New §140.205 cover exemptions from certification as a respiratory care practitioner, including the definition of a student. New §140.206 describes the procedures and criteria for approval or disapproval of an application by the department. New §140.207 explains the types of certificates and temporary permits and applicant eligibility for respiratory care practitioners. New §140.208 sets forth information concerning the procedures for examination eligibility for respiratory care practitioners. New §140.209 provides timelines for the processing of renewal and late renewal applications, and sets forth the requirements for inactive status, the provision of renewal for voluntary charity care and military status. New §140.210 sets forth continuing education requirements and the self-directed study hours, including Internet-based or computer based studies increases the number of

acceptable hours from six to twelve hours during each renewal period. New §140.211 covers procedures for changes of name and address. New §140.212 establishes professional and ethical standards for respiratory care practitioners. New §140.213 concerns certifying or permitting persons with criminal backgrounds. New §140.214 sets out violations and prohibited actions, procedures concerning complaints, and actions the department may take against a person when violations have occurred. New §140.215 covers the informal disposition of any complaint or contested case. New §140.216 explains suspension of a license relating to child support and child custody.

FISCAL NOTE

Debbie Peterson, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five-year period that the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Peterson has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This determination was made because the repeal and new rules do not impose any new requirements. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Peterson has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the certification and regulation of respiratory care practitioners.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Pam K. Kaderka, Program Director, Respiratory Care Practitioners Certification Program, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6634 or by email to Pam.Kaderka@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

LEGAL CERTIFICATION

The Department of State Health Services Deputy General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed repeal and new rules are authorized by Occupations Code, §604.052, which authorizes the adoption of rules for the regulation of respiratory care practitioners; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeal and new rules affect the Occupations Code, Chapter 604, and Health and Safety Code, Chapter 1001. Review of these rules implements Government Code, §2001.039.

Sections for repeal

§123.1. Context.

§123.2. Definitions.

§123.3. Respiratory Care Practitioners Advisory Committee.

§123.4. Fees.

§123.5. Exemptions.

§123.6. Application Requirements and Procedures.

§123.7. Types of Certificates and Temporary Permits and Applicant Eligibility.

§123.8. Examination.

§123.9. Certificate Renewal.

§123.10. Continuing Education Requirements.

§123.11. Changes of Name or Address.

§123.12. Professional and Ethical Standards.

§123.13. Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners.

§123.14. Violations, Complaints, and Subsequent Actions.

§123.15. Informal Disposition.

§123.16. Suspension of License Relating to Child Support and Child Custody.

Legend: Proposed New Rules
Regular Print = Proposed new language

§140.201. Purpose and Scope.

These sections cover definitions; the advisory committee; fees; exceptions to certification; application requirements and procedures; types of certificates, temporary permits, and applicant eligibility; examination; certificate renewal; continuing education requirements; changes of name or address; professional and ethical standards; certifying or permitting persons with criminal background to be respiratory care practitioners; violations, complaints and subsequent actions; informal dispositions; and suspension of license relating to child support and child custody.

§140.202. Definitions.

The following words and terms when used in these sections, shall have the following meanings, unless the content clearly indicates otherwise:

(1) AARC--The American Association for Respiratory Care and its predecessor or successor organizations.

(2) Act--Texas Occupations Code, Chapter 604.

(3) Advisory committee--The Respiratory Care Practitioners Advisory Committee.

(4) Aides/orderlies--Health care workers who perform routine tasks under the direct supervision of a respiratory care practitioner such as transporting patients, assembling treatment equipment, preparing work areas, and other assigned duties. Aides/orderlies may not perform respiratory care procedures.

(5) AMA--The American Medical Association.

(6) Applicant--A person who applies to the Department of State Health Services for a certificate or temporary permit.

(7) Appropriate educational agency--The Texas Education Agency or other governmental agency authorized by law or statute to approve educational institutions and curriculum, or an educational accrediting body of a professional organization, such as the Committee on Accreditation for Respiratory Care (COARC) and its predecessor or successor organization.

(8) Certificate--A respiratory care practitioner certificate issued by the Department of State Health Services.

(9) Commissioner--The commissioner of the Department of State Health Services.

(10) Delegated authority--As defined in the Texas Medical Practice Act, Texas Occupations Code, Chapter 157 and the rules pertaining thereto adopted by the Texas Medical Board.

(11) Department--The Department of State Health Services.

(12) Diagnostic--Of or relating to or used in the art or act of identifying a disease or disorder.

(13) Educational accrediting body--The Committee on Allied Health Education and Accreditation of the American Medical Association, or its successor organization which approves respiratory care education programs.

(14) Executive Commissioner – Executive Commissioner of Health and Human Services Commission.

(15) Formally trained--Completion of an organized educational activity which:

(A) includes supervised and directed instruction specific to the respiratory care procedures to be performed by the individual;

(B) includes specific objectives, activities, and an evaluation of competency; and

(C) is supervised and directed by another individual qualified to provide the training and supervision.

(16) NBRC--The National Board for Respiratory Care, Inc., and its predecessor or successor organizations.

(17) Palliative--Serving to moderate the intensity of pain or other disease process.

(18) Practice--Engaging in respiratory care as a clinician, educator, or consultant.

(19) Qualified medical director--A physician licensed and in good standing with the Texas Medical Board, and who has special interest and knowledge in the diagnosis and treatment of respiratory care problems and who is actively engaged in the practice of medicine. This physician must be a member of the active medical staff of a health care facility, agency or organization who supervises the provision of respiratory care.

(20) Respiratory care--The treatment, management, control, diagnostic evaluation, and care of inpatients or outpatients who have deficiencies and abnormalities associated with the cardiorespiratory system. Respiratory care does not include the delivery, assembly, set up, testing, and demonstration of respiratory care equipment upon the order of a licensed physician. Demonstration is not to be interpreted here as the actual patient assessment and education, administration, or performance of the respiratory care procedure(s).

(21) Respiratory care education program—

(A) a program in respiratory care approved by the educational accrediting body;

(B) a program approved by an appropriate education agency and working toward becoming an approved program in respiratory care. A program will qualify as a respiratory care education program under this subparagraph only for a period of one year from the date of the first class offered by the program; after that one year, the program must be an approved program in respiratory care; or

(C) a program accredited by the Canadian Medical Association and whose graduates are eligible to take the national registry exam given by the Canadian Board of Respiratory Care.

(22) Respiratory care practitioner (RCP)--A person permitted or certified under the Act to practice respiratory care.

(23) Respiratory care procedure--Respiratory care provided by the therapeutic and diagnostic use of medical gases, the delivery of humidification and aerosols, the administration of drugs and medications to the cardiorespiratory system, ventilatory assistance and ventilatory control, postural drainage, chest drainage, chest percussion or vibration, breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, maintenance of natural airways, and the insertion and maintenance of artificial airways. The term includes a technique employed to assist in diagnosis, monitoring, treatment, and research, including the measurement of ventilatory volumes, pressures and flows, the specimen collection of blood and other materials, pulmonary function testing, and hemodynamic and other related physiological forms of monitoring or treating, as ordered by the patient's physician, the cardiorespiratory system. These procedures include:

(A) administration of medical gases--such as nitric oxide, helium and carbon dioxide;

(B) providing ventilatory assistance and ventilatory control--including high frequency oscillatory ventilation and high frequency jet ventilation;

(C) providing artificial airways--including insertion, maintenance and removal;

(D) performing pulmonary function testing--including neonatal and pediatric studies;

(E) hyperbaric oxygen therapy;

apnea monitoring; (F) monitoring--including pulse oximeter, end-tidal carbon dioxide and

(G) extracorporeal membrane oxygenation (ECMO);

(H) patient assessment, respiratory patient care planning; and

(I) implementation of respiratory care protocols.

(24) Temporary permit--A permit issued in accordance with §140.207(d) of this title (relating to Types of Certificates, Temporary Permits, and Applicant Eligibility) for a period of six months.

(25) TMB-Texas Medical Board.

(26) Therapeutic--Of or relating to the treatment of disorders by remedial agents or methods.

(27) Under the direction--Assuring that established policies are carried out; monitoring and evaluating the quality, safety, and appropriateness of respiratory care services and taking action based on findings; and providing consultation whenever required, particularly on patients receiving continuous ventilatory or oxygenation support.

§140.203. Respiratory Care Practitioners Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Respiratory Care Practitioners Advisory Committee (committee).

(2) The committee is established under Government Code, §531.012, which allows the Executive Commissioner of the Health and Human Services Commission to appoint advisory committees as needed.

(b) Applicable law. The committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to recommend rules and examinations for the approval of the Executive Commissioner of the Health and Human Services Commission.

(d) Tasks.

(1) The committee shall advise the Executive Commissioner of the Health and Human Services Commission concerning rules relating to the certification of respiratory care practitioners.

(2) The committee shall carry out any other tasks given to the committee by the Executive Commissioner of the Health and Human Services Commission.

(e) Review and duration. By November 1, 2011, the Executive Commissioner of the Health and Human Services Commission will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of nine members appointed by the Executive Commissioner of the Health and Human Services Commission. The composition of the committee shall include:

- (1) three consumer representatives;
- (2) three physicians with an interest in the practice of respiratory care; and
- (3) three certified respiratory care practitioners.

(g) Terms of office. The term of office for each member shall be six years, and members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of three members will expire on January 1st of each even-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall select from its members the presiding officer and an assistant presiding officer to begin serving on November 1 of each odd-numbered year.

(1) Each officer shall serve until October 31 of each odd-numbered year. Each officer may continue to serve until his or her replacement is elected.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the Executive Commissioner of the Health and Human Services Commission. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled by vote of the committee.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of the Department of State Health Services (department) staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because

of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff. After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members.

(1) The Executive Commissioner of the Health and Human Services Commission, department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific

instructions from the Executive Commissioner of the Health and Human Services Commission, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the Executive Commissioner of the Health and Human Services Commission, department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, §2110.004, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

(p) Impartiality and Nondiscrimination. The committee shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, gender, national origin, age, disability, sexual orientation, genetic information, or family health history.

§140.204. Fees.

The following fees are required to be paid to the department before any certificate or permit is issued. All fees shall be submitted in the form of a check or money order and are nonrefundable. The department may direct examination applicants to submit examination fees to the National Board for Respiratory Care, Inc. (NBRC).

(1) Schedule of fees for certification as a respiratory care practitioner:

- (A) application (includes initial certificate) fee--\$120;
- (B) renewal fee for a license issued for a two-year term is \$100;
- (C) renewal fee for a license issued to a retired respiratory care practitioner performing voluntary charity care for a two-year term is \$50;
- (D) certificate and/or identification card replacement fee--\$20;
- (E) NBRC examination fee--the fee designated by the NBRC at the time of examination or reexamination;
- (F) certificate fee for upgrade of temporary permit--\$30;
- (G) written verification of certification status--\$10;
- (H) returned check fee--\$50;
- (I) annual inactive status fee--\$25;
- (J) reinstatement fee for a license that was suspended for failure to pay child support--\$50;
- (K) one to 90 days late renewal fee--one and one half times the normally required renewal fee;
- (L) 91days to one year late renewal fee--two times the normally required renewal fee;
- (M) for all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online; and

(N) for all applications and renewal applications, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(2) Schedule of fees for a temporary permit as a respiratory care practitioner:

(A) application (including initial permit) fee--\$50;

(B) temporary permit renewal fee--\$20;

(C) temporary permit and/or identification card replacement fee--\$20;

(D) written verification of certification status--\$10;

(E) returned check fee--\$50.

(3) Any certificate holder whose check to the department is returned marked insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the check submitted to the department plus the returned check fee within 30 days of the date of receipt of the department's notice. Failure to comply with this requirement may be the grounds for disciplinary action, up to and including denial of the certificate holder application or the revocation of the certificate. If a certificate is issued or renewed or an application processed upon the submission of a check to the department, and if such check is later returned unpaid, the department may cancel the certificate or application if the certificate holder or applicant does not redeem the check in compliance with this section. The effect of such a cancellation shall be the same as if the application for renewal or for licensure had not been submitted.

(4) If the department's notice, as set out in paragraph (3) of this section, is returned unclaimed, the department shall mail the notice to the applicant or certificate holder by first class mail. If a money order or check for guaranteed funds is not received by the department's cashier within 30 days of the postmarked date on the second mailing, the approval or certificate issued shall be invalid. The department shall notify the applicant's or certificate holder's employer that the person has failed to comply with this section.

(5) The department shall make periodic reviews of the fee schedule and recommend any adjustments necessary to provide sufficient funds to meet the expenses of the respiratory care practitioner certification program without creating an unnecessary surplus. Such adjustments shall be made through rule amendments approved by the Executive Commissioner of the Health and Human Services Commission.

§140.205. Exemptions.

(a) Except as specifically exempted by subsection (b) of this section, the provisions of the Act and this chapter apply to any person representing that he or she practices or provides respiratory care services.

(b) This section does not prohibit:

(1) the practice of respiratory care that is an integral part of the program of study by a student enrolled in a respiratory care education program approved by the department;

(2) the employment by a health care facility of a person to deliver limited respiratory care support services under the supervision of an individual who holds a certificate issued under this Act, if such a person does not perform an invasive procedure related to critical respiratory care, including therapeutic, diagnostic, or palliative procedures as part of the person's employment and if the person:

(A) is enrolled for credit in the clinical portion of an approved respiratory care education program; or

(B) has completed all of the clinical portion of an approved respiratory care education program within the preceding 12 months and is actively pursuing a course of study leading to graduation from the program;

(3) the gratuitous care of the ill by a friend or member of the family or care provided in an emergency situation by a person who does not claim to be a respiratory care practitioner who holds a temporary permit or certificate issued under the provisions of the Act;

(4) a respiratory care practitioner from performing advances in the art and techniques of respiratory care, as defined in the Act and in §140.202 of this title (relating to Definitions), learned through formal or specialized training;

(5) the practice of respiratory care by health care personnel who have been formally trained in the care being provided and who are:

(A) licensed under the practice acts regulating their professions; or

(B) acting under the delegated authority of a physician licensed by the Texas Medical Board;

(6) the practice of any legally qualified respiratory care practitioner employed by the United States government while in the discharge of official duties; or

(7) any person who is licensed, registered, or certified under another law of this state from engaging in the profession or occupation for which the person is licensed, registered, or certified.

(c) Student status.

(1) Students who are not enrolled in the clinical portion or have not completed the clinical portion of their respiratory care education program within the preceding 12 months may

not be employed by a health care facility to provide limited respiratory care services unless they hold a temporary permit.

(2) Students in a nontraditional accredited respiratory care education program may be considered as being engaged in the clinical portion of their education program during its entire duration. For the purposes of this section nontraditional shall mean those respiratory care education programs recognized as nontraditional education systems by the Committee on Accreditation for Respiratory Care or its successor organization.

(3) A clinical student who is employed by any health care facility, agency or organization to provide limited respiratory care services should provide his or her employer, on a semi-annual basis, verification that he or she is a bona fide student in an approved respiratory care education program. Acceptable verification shall be a letter on program letterhead with the original signature of the program director attesting to the student's bona fide status as an active student in the clinical portion of that program or that the student has completed the clinical portion of the course within the preceding 12 months and is actively pursuing a course of study leading to graduation from the program.

(4) Limited respiratory care services provided by an employed clinical student must be supervised by a practitioner certified under this Act. Students may not perform invasive procedures related to critical respiratory care.

(5) Students who are within 30 days of graduation may apply to the department for a temporary permit in accordance with §140.206 of this title (relating to Application Requirements and Procedures). A person who holds a temporary permit may perform any and all respiratory care procedures which he or she has been trained to perform.

(d) All persons who apply to become certified or permitted as a practitioner, all persons who believe they are exempt under the Act and this chapter, and all other persons who are interested in practicing respiratory care need to be aware that:

(1) the penalty provisions under the Texas Occupations Code §604.351, state that a person who commits an offense if the person knowingly violates a provision of the Act and commits a Class B misdemeanor; and

(2) a person who does not hold a certificate or temporary permit under this chapter as a respiratory care practitioner or whose certificate or permit has been suspended or revoked may not use in connection with the person's practice or employment the words "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," or the letters "RCP," or any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner.

§140.206. Application Requirements and Procedures.

(a) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department forms.

(2) The department shall not consider an application as officially submitted until the applicant pays the application fee and the fee clears the appropriate financial institution. The fee must accompany the application form.

(3) The administrator shall send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of the notice shall be invalid.

(b) Required application materials.

(1) Application form. The application form shall contain:

(A) specific information regarding personal data, social security number, birth month and day, place of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Act and these sections and agrees to abide by them;

(C) the applicant's permission to the department to seek any information or references it deems fit to determine the applicant's qualifications;

(D) a statement that the applicant, if issued a certificate or temporary permit, shall return the certificate or temporary permit and identification card(s) to the department upon the revocation or suspension of the certificate or temporary permit;

(E) a statement that the applicant understands that fees submitted are nonrefundable;

(F) a statement that the applicant understands that materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);

(G) a statement that the information in the application is truthful and that the applicant understands that providing false information of any kind may result in the voiding of the application and failure to be granted a certificate or permit, or the revocation of a certificate or permit issued;

(H) a statement that if issued a certificate or permit the practitioner shall keep the department advised of his or her current mailing address; and

(I) the signature of the applicant which has been dated.

(2) Educational record for regular certification. The department shall issue a regular certificate to an applicant who is currently credentialed by the National Board for Respiratory Care (NBRC) and nationally certified as a Certified Respiratory Therapist (CRT), or a Registered Respiratory Therapist (RRT) upon payment of the application fee, submission of the application forms and approval by the department.

(3) Education record for temporary permit. Individuals applying for a temporary permit who do not meet the requirements of subsection (b) of this section shall provide the following documents to the department.

(A) An expected graduation statement, including the expected date of graduation, signed by the respiratory care program director at the school.

(B) Within 30 days following the expected date of graduation, the applicant must provide to the department:

(i) a copy of the certificate of completion; or

(ii) a statement signed by the program director indicating that the applicant officially completed the program but the certificate is not available within 30 days of the completion date.

(4) Examination results.

(A) If the applicant is making application for a temporary permit, an examination score release form shall be signed allowing the department to obtain the applicant's examination results from the NBRC, or other agency administering the examination prescribed by the department.

(B) If an applicant for a regular certificate is:

(i) recognized as a certified respiratory therapist or registered respiratory therapist by the NBRC at the time of application, a photocopy of the certificate issued by NBRC shall be submitted in lieu of examination results; or

(ii) unable to show proof of successful completion or otherwise provide documentation acceptable to the department of the applicant's examination results, the application shall be disapproved.

(5) Documentation of prior employment/experience. Persons applying for any certificate or permit who are not recognized as a certified respiratory therapist or registered respiratory therapist by the NBRC and who are licensed, registered, or otherwise regulated in another state, territory, or country at the time of application must submit with their applications documentation of their employment/experience statement signed by their medical director attesting that the applicant is currently practicing, or has practiced respiratory care within the 12-month period immediately preceding application to the department.

(c) Information on other licenses held. Persons applying for any certificate or permit who are licensed, registered, or otherwise regulated in any profession at the time of application to the department must submit with their applications proof of good standing signed by an agency official.

(d) Application processing.

(1) Time periods. The department shall comply with the following procedures in processing applications for a permit or certificate.

(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(i) letter of acceptance of application for permit or certification--14 working days. The notice of acceptance may include a statement that an application for temporary permit received more than 30 days from the date of the applicant's graduation will be held pending until the applicant is within 30 days of graduation; and

(ii) letter of application deficiency--14 working days.

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law, and of the opportunity for a formal hearing. The time periods are as follows:

(i) letter of approval--14 working days; and

(ii) letter of denial of permit or certificate--90 working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Requests for reimbursement shall be made to the department. If the department does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for licensure and licensure renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year, another public or private entity relied upon by the department in the application process caused the delay, or any other condition exists giving the department good cause for exceeding the time period.

(3) Contested cases. The time periods for contested cases related to the denial of licensure renewals are not included with the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable.

(e) Application approval.

(1) The department shall be responsible for reviewing all applications.

(2) The department shall approve all applications which are in compliance with subsections (a) - (c) of this section and which properly document applicant eligibility, unless the application is disapproved under the provisions of subsection (f) of this section.

(f) Disapproved applications.

(1) The department shall disapprove the application if the person:

(A) has not completed the requirements in subsection (b) of this section;

(B) has failed to pass the examination as set out in §140.208 of this title (relating to Examination) during the period for which the temporary certificate, or temporary permit was valid, if applicable;

(C) has failed to remit any applicable fees required in §140.204 of this title (relating to Fees);

(D) has failed or refused to properly complete or submit any application form(s) or endorsement(s), or presented false information on the application form, or any other form or document required by the department to verify the applicant's qualifications;

(E) has been in violation of the Act, §140.214 of this title (relating to Violations, Complaints, and Subsequent Actions), the code of ethics as set out in §140.212 of this title (relating to Professional and Ethical Standards), or any other applicable provision of this chapter;

(F) has been convicted of a felony or misdemeanor, if the crime directly relates to the duties and responsibilities of a respiratory care practitioner as set out in §140.213 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners);

(G) holds a license, certification, or registration to practice respiratory care in another state or jurisdiction and that license, certification, or registration has been suspended, revoked, or otherwise restricted by the licensing entity in that state or jurisdiction for reasons to the person's professional competence or conduct which could adversely affect the health and welfare of a patient;

(H) is not currently practicing, or has not practiced within the 12-month period preceding the date of application, respiratory care, as set out in §140.207(d)(1)(B) of this title (relating to Types of Certificates and Temporary Permits and Applicant Eligibility); or

(I) has submitted a copy of a National Board for Respiratory Care, Inc. (NBRC) certificate in lieu of examination results in accordance with subsection (b)(4)(B)(i) of this section, but is not recognized by the NBRC as a certified respiratory therapist or registered respiratory therapist.

(g) Application Denial. The department shall deny renewal if required by the Education Code, §57.491 (relating to Defaults on Guaranteed Student Loans).

(1) If after review the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the Administrative Procedure Act, Texas Government Code 2001, et seq. Within 10 days after receipt of the written notice, the applicant shall give written notice to the department that the applicant either waives the hearing, or wants the hearing. Receipt of the written notice is deemed to occur on the tenth day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt. If the applicant fails to respond within 10 days after receipt of the notice of opportunity, or if the applicant notifies the department that the hearing be waived, the applicant is deemed to have waived the hearing. If the hearing has been waived, the department shall disapprove the application.

(2) An applicant whose application has been disapproved under subsection (f)(1)(E) and (F) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication proof satisfactory to the department of compliance with all rules of the department and the provisions of the Act in effect at the time of reapplication. The date of disapproval is the effective date of a disapproval order signed by the commissioner of the Department of State Health Services or the commissioner's designee.

§140.207. Types of Certificates and Temporary Permits and Applicant Eligibility.

(a) General. This section sets out the types of certificates and permits issued, and the qualifications of applicants for certification as respiratory care practitioners.

(1) The department shall prepare and provide to each respiratory care practitioner a certificate or temporary permit with an identification card which contains the practitioner's name, certificate or permit number, and date of certificate or permit issue. The temporary permit and all identification cards shall indicate an expiration date.

(2) Any certificate or permit and identification cards issued by the department remain the property of the department and shall be surrendered to the department on demand.

(3) Employers shall keep on file an unaltered photocopy of the practitioner's original certificate or permit and current identification card.

(4) Neither the practitioner nor anyone else shall display or present to another person, employer or potential employer a certificate or permit or carry an identification card which has been photocopied or otherwise reproduced.

(5) Neither the practitioner nor anyone else shall make any alteration on any certificate, permit, or identification card issued by the department.

(b) Issuance of certificates and permits.

(1) The department shall send each applicant whose application has been approved a certificate or temporary permit and identification card(s) with a certificate or permit number.

(2) Certificates shall expire on the last day of the practitioner's birth month.

(c) Replacements. The department shall replace a lost, damaged, or destroyed certificate or temporary permit and/or identification card(s) upon a written request from the practitioner and payment of the replacement fee.

(d) Applicant eligibility.

(1) Temporary permit. Temporary permits are valid for a six-month period. The department shall issue a temporary permit to practice respiratory care to:

(A) an applicant who:

(i) has applied on the forms prescribed by the department;

(ii) has paid the prescribed application fee;

(iii) will complete a respiratory care education program within 30 days after the date of issuance of the permit or is a graduate of a respiratory care education program approved by the department; and

(iv) meets all qualifications for a certificate except taking the written examination prescribed by the department for certification. An applicant may file an application if he or she is within 30 days prior to graduation. A temporary permit is valid for six months from date of issuance by the department. After the applicant passes the examination, as set out in §140.208 of this title (relating to Examination), and pays the prescribed fee, a regular certificate shall be issued and the temporary permit shall become null and void; or

(B) an applicant who has applied on the forms prescribed by the department; who has paid the prescribed application fee; who is currently practicing respiratory

care or has within the 12-month period immediately preceding the date of the application to the department practiced respiratory care in another state, territory, or country; who holds a valid license or other form of registration to practice respiratory care in that state, territory, or country; who is in good standing in that state, territory, or country and who is not recognized, at the time of application to the department, as a certified respiratory therapist or registered respiratory therapist by the National Board for Respiratory Care, Inc. (NBRC).

(2) Regular certificate. The department shall issue a regular certificate to practice respiratory care to an applicant who has applied on a form prescribed by the department, who has paid the prescribed application fee and who:

(A) has, prior to making application to the department, passed the entry level certified respiratory therapist examination administered by or under the auspices of the NBRC with a score equal to or exceeding the pass rate determined by the NBRC at the time of examination or reexamination;

(B) has, prior to making application to the department, passed the registered respiratory therapist (RRT) examination administered by or under the auspices of the NBRC;

(C) holds a valid temporary permit and who has passed, prior to the expiration of the temporary permit, the examination as set out in §140.208 of this title (relating to Examination); or

(D) has completed the education requirements as set out in §140.206 of this title (relating to Application Requirements and Procedures) and who has passed the examination as set out in §140.208 of this title (relating to Examination).

(3) Out-of-State License/Certification/Registration. The department shall issue a regular certificate to practice respiratory care to an applicant who is in good standing and holds a valid license or other form of registration to practice respiratory care in another state, territory, or country, whose requirements for licensure or certification were at the time of approval substantially equal to the requirements set forth in the Act and this chapter, and who:

(A) has applied on forms prescribed by the department;

(B) has paid the prescribed application fee;

(C) at the time of application to the department, has completed the educational requirements as set out in §140.206 of this title (relating to Application Requirements and Procedures);

(D) has passed the examination, as set out in §140.208 of this title, with a score equal to or exceeding the pass rate determined by the department at the time the application for certification is submitted to the department;

(E) Documentation of prior employment/experience. Persons applying for any certificate or permit who are not recognized as a certified respiratory therapist or registered respiratory therapist by the NBRC and who are licensed, registered, or otherwise regulated in another state, territory, or country at the time of application must submit with their applications documentation of their employment/experience statement signed by their medical director attesting that the applicant is currently practicing, or has practiced respiratory care within the 12-month period immediately preceding application to the department.

(F) has submitted proof on a form prescribed by the department that the applicant is in good standing and holds a valid license or other form of registration to practice respiratory care in another state, territory, or country.

§140.208. Examination.

(a) Examination eligibility. Holders of temporary permits are allowed to take the examination provided the holder complies with the requirements of the Act and these sections. Persons who are certified or registered in respiratory care by the NBRC at the time of application to the department are not required to be reexamined for state certification.

(b) Approved examination. The approved examination for all applicants consists of an entry level certified respiratory therapist (CRT) examination administered for the National Board for Respiratory Care, Inc. (NBRC) or its designee, or the advisory committee may recommend an equivalent examination.

(c) Standards of acceptable performance. The cut-score determined by the NBRC at the time of examination or reexamination shall be the cut-score utilized by the department to determine pass or fail performance.

(d) Completion of application forms. Each applicant shall be responsible for completing and submitting appropriate application forms and paying appropriate fees by the deadlines set by the NBRC, if an NBRC examination is required.

(e) Results.

(1) Results of an examination prescribed by the department but administered under the auspices of another agency will be communicated to the applicant by the department, unless the contract between the department and that agency provides otherwise.

(2) The applicant or temporary permit holder is responsible for arranging to have examination scores forwarded to the department. If the score report does not come directly from the NBRC in writing, the results shall be in the form of a copy of the original of either:

(A) a letter, or other official notification, from the examining agency to the examinee; or

(B) the CRT certificate issued by the NBRC.

(3) If the examination is graded by a national or state testing service, or by the NBRC or its designee, the department shall notify each examinee of the examination results within 14 days of the date the department receives the results.

(4) If the examination is graded by the department or its designee, the department shall notify each examinee of the results of the examination within 60 days of the date of the exam. If the results will be delayed for more than 60 days after the examination, the department shall notify each applicant of the reason for the delay.

(5) If the department is required to provide official notice of examination results to the applicant, no matter what numerical or other scoring system is used in arriving at examination results, the results shall be stated in terms of pass or fail.

(f) Refunds. Examination fee refunds to persons who fail to appear for the examination will be in accordance with policies and procedures of the NBRC, or other agency approved by the department to administer an examination prescribed in this section.

§140.209. Certificate Renewal.

(a) General. Except as provided by subsection (b) of this section, a practitioner shall renew the certificate biennially on or before the last day of the practitioner's birth month.

(1) The renewal date of a certificate shall be the last day of the practitioner's birth month.

(2) Each practitioner shall be responsible for renewing the certificate on or before the expiration date and shall not be excused from paying reinstatement fees. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal or reinstatement.

(3) The department may not renew the certificate or permit of the practitioner who is in violation of the Act or board rules at the time of application for renewal.

(4) The department shall deny renewal of a certificate or permit if renewal is prohibited by the Education Code, §57.491, concerning guaranteed student loan defaults.

(b) Staggered renewals. The department shall use a staggered system for certificate renewals.

(c) Certificate renewal.

(1) At least 30 days prior to the expiration date of a person's certificate, the department shall send notice to the practitioner of the expiration date of the certificate, the amount of the renewal fee due, and a renewal form which the practitioner must complete and return to the department with the required renewal fee.

(2) The renewal form for all practitioners shall require the provision of the preferred mailing address, primary employment address and telephone number, misdemeanor and felony convictions, and continuing education completed.

(3) A practitioner has renewed the certificate when the department has received the completed renewal form, continuing education as set out in §140.210 of this title (relating to Continuing Education Requirements), and the required renewal fee on or prior to the expiration date of the certificate. The postmark date shall be considered as the date of mailing.

(4) The department shall issue identification cards for the current renewal period to a practitioner who has met all requirements for renewal.

(5) A temporary permit may be renewed once for an additional six-month period.

(d) Late renewal or reapplication.

(1) A person whose certificate has expired may renew the certificate by submitting to the department the renewal form, continuing education as set out in §140.210 of this title (relating to Continuing Education Requirements) completed since the last renewal, and if respiratory care procedures were performed after the certificate expired, a statement indicating how the person complied with the Act, §604.003.

(A) If renewal is requested from one day up to 90 days after expiration, the applicant shall submit a fee that is equal to one and one half times the renewal fee, as set out in §140.204 of this title (relating to Fees).

(B) If renewal is requested more than 90 days after expiration but less than one year after expiration, the applicant shall submit a fee that is equal to two times the renewal fee, as set out in §140.204 of this title.

(C) After the certificate is renewed, the next continuing education reporting period starts on the date the certificate is renewed and continues until the next expiration date.

(2) A person whose certificate has been expired for one year or more may apply for a new certificate by complying with the then-current requirements for obtaining a certificate.

(3) After a certificate is expired and until a person has renewed the certificate, a person may not practice respiratory care in violation of the Act.

(4) A person who fails to renew a certificate within one year may obtain a new certificate without examination if the person:

(A) pays a fee that is equal to two times the renewal fee;

(B) is currently certified as a respiratory care practitioner in another state;

(C) has been practicing respiratory care in the state where the certification is held for the two years preceding the date of application for renewal; and

(D) submits proof of completion of the continuing education requirements as set out in §140.210 of this title within the 24-month period preceding the date of the renewal application.

(e) Renewal Processing.

(1) The department shall issue a renewal certificate within 14 days after receipt of documentation of all renewal requirements.

(2) The reimbursement of fees, appeals, and contested cases relating to renewals shall be governed by the provisions of §140.206(d)(2) - (3) of this title (relating to Application Requirements and Procedures).

(f) Military duty. If a practitioner fails to timely renew his or her permit or certificate because the practitioner is or was on active duty with the armed forces of the United States of America, serving outside the State of Texas, the practitioner may renew the permit or certificate pursuant to this subsection.

(1) Renewal of the permit or certificate may be requested by the practitioner, the practitioner's spouse, or an individual having power of attorney from the practitioner. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the permit or certificate.

(3) A copy of the official orders or other official military documentation showing that the practitioner is or was on active duty, serving outside the State of Texas, shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the practitioner shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(5) A practitioner renewing under this subsection shall pay the renewal fee.

(6) A practitioner renewing under this subsection is not required to submit continuing education.

(g) Inactive status. A respiratory care practitioner who holds a certificate under the Act and who is not actively engaged in the practice of respiratory care may make application to the department in writing on a form prescribed by the department to be placed on an inactive status list maintained by the department. The application for inactive status and the inactive fee must be

postmarked prior to the expiration of the respiratory practitioner's annual certificate. No refund will be made of any fees paid prior to application for inactive status.

(1) A person on inactive status is required to pay an annual inactive status fee as set out in §140.204 of this title (relating to Fees).

(2) A person on inactive status may not perform any activities regulated under this Act. Practice as a respiratory care practitioner in any capacity for compensation or as a volunteer is prohibited, and the person may not use the title respiratory care practitioner while on inactive status.

(3) A person on inactive status is not required to complete the requirements in accordance with §140.210 of this title (relating to Continuing Education Requirements), except when returning to active practice as provided in paragraph (8)(D) of this subsection.

(4) Inactive status shall not be granted to a person whose certificate is not current and in good standing. Inactive status periods shall not exceed five years past the expiration date of the certificate, unless an extension for a longer period is specifically authorized by the department.

(5) The person on inactive status shall be notified annually that in order for the certificate to remain on inactive status, the inactive status notice shall be completed, signed and dated, and the inactive status fee shall be submitted to the department.

(6) A certificate that is not reactivated within the five year period cannot be renewed, restored, reissued or reinstated. If the person wishes to practice, he or she may reapply for the certificate and meet the current requirements for certification.

(7) A person on inactive status is subject to investigation and action under §140.214 (relating to Violations, Complaints, and Subsequent Actions).

(8) If a person on inactive status desires to reenter active practice, the person shall:

(A) notify the department in writing;

(B) complete appropriate forms;

(C) pay a renewal fee for the current renewal period; and

(D) submit to the department proof of successful completion, within 24-month period prior to reentering active status, of the continuing education hours as set out in §140.210 of this title.

(h) Expiration of certificate. A person whose certificate has expired may not use the title or represent or imply that he has the title of certified respiratory care practitioner, respiratory care

practitioner, or respiratory therapist, or use the letters RCP, and may not use any facsimile of those titles in any manner.

(i) Renewal for retired respiratory care practitioners performing voluntary charity care.

(1) A "retired respiratory care practitioner" is defined as a person who is:

(A) above the age of 55;

(B) is not employed for compensation in the practice of respiratory care;

and

(C) has notified the department in writing of his or her intention to retire and provide only voluntary charity care.

(2) "Voluntary charity care" for the purposes of this subsection is defined as the practice of respiratory care by a retired respiratory care practitioner without compensation or expectation of compensation.

(3) A retired respiratory care practitioner providing only voluntary charity care may renew his or her license by submitting a renewal form; the retired respiratory care practitioner renewal fee required by §140.204 of this title (relating to Fees); and the continuing education hours required by §140.210 of this title.

§140.210. Continuing Education Requirements.

(a) General. Continuing education requirements for renewal shall be fulfilled each renewal period.

(1) The initial period shall begin with the date the department issues the certificate and end on the last day of the birth month at the time of renewal.

(2) A respiratory care practitioner must complete 24 hours of continuing education acceptable to the department during each renewal period.

(3) A clock hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(4) A retired respiratory care practitioner who is approved by the department for renewal in accordance with §140.209(i) of this title (relating to Certificate Renewal) may complete reduced continuing education requirements equal to half of the number of continuing education hours required for renewal for a certified respiratory care practitioner.

(b) Types of acceptable continuing education. Continuing education must be in skills relevant to the practice of respiratory care and must have a direct benefit to patients and clients and shall be acceptable if the experience falls in one or more of the following categories:

(1) respiratory care course work seminars, workshops, review sessions, or other organized educational programs completed at or through any respiratory care education program;

(2) participation in any program (e.g., in-service educational training programs, institutes, seminars, workshops and conferences) which is:

(A) directly related to the profession of respiratory care;

(B) instructor directed; and

(C) approved, recognized, accepted, or assigned continuing education credits by professional organizations or associations or offered by a federal, state, or local government entity.

(3) instruction or teaching in programs set out in paragraphs (1) and (2) of this subsection.

(4) up to twelve credit hours during each renewal period of self-directed study to include Internet-based or computer-based studies, journals, including a post-test, which meets the requirements described in paragraphs (2)(A) and (C) of this subsection.

(c) Determination of clock hours. The department shall credit continuing education experiences as follows.

(1) Completion of course work at or through a respiratory care educational program as set out in subsection (b)(1) of this section shall be credited on the basis of 15 clock hours for each semester hour successfully completed for credit or audit, evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs, activities, workshops, seminars, sessions, etc., which meet the criteria of subsection (b)(1) or (2) of this section shall be credited on a one-for-one basis with one clock hour for each clock hour spent in the continuing education activity.

(3) Teaching in programs which meet the department's criteria as set out in subsection (b)(3) of this section shall be credited on the basis of two clock hours for each hour actually taught. Continuing education credit will be given only once for teaching a particular course.

(4) Passing the certified respiratory therapist recertification examination shall be credited on the basis of ten clock hours.

(5) Passing the written registry examination for advanced respiratory therapy practitioners for credentialing or recertification shall be credited on the basis of nine clock hours.

(6) Passing the registered respiratory therapist clinical simulation examination for credentialing or recredentialing shall be credited on the basis of nine clock hours.

(7) Passing the National Board for Respiratory Care, Inc. (NBRC) pediatric specialty examination shall be credited on the basis of ten clock hours.

(8) Successful completion of the initial course in advanced cardiac life-support, pediatric advanced life-support, the neonatal advanced life-support course, basic trauma life-support, or pre-hospital trauma life-support shall be credited on the basis of 12 clock hours. Recertification courses shall be credited for the number of hours actually completed during the recertification course, but shall not count for more than 12 hours.

(9) Passing the certification examination for entry level pulmonary function technologists or the registry examination for advanced pulmonary function technologists for credentialing shall be credited on the basis of ten clock hours.

(10) Passing the registration examination offered by the Board of Registered Polysomnographic Technologists shall be credited on the basis of ten clock hours.

(d) Reporting of continuing education. Each practitioner shall be responsible for reporting to the department the continuing education activities completed.

(1) A practitioner shall report the number of hours of continuing education completed during the renewal period. If requested by the department, each practitioner shall submit proof of completion of the required continuing education activity to the department at the time of certificate renewal, or at other times as directed by the department.

(2) If required by the department, each continuing education activity filed by a practitioner must be accompanied by appropriate documentation of the continuing education claimed as follows:

(A) for a program attended, signed certification by a program leader or instructor of the practitioner's participation in the program by certificate, or letter on letterhead of the sponsoring agency, or official continuing education validation form or official transcript of the sponsoring agency accompanied by a brochure, agenda, program, or other applicable information, indicating content of the program;

(B) for teaching or instruction in approved programs, a letter on sponsoring agency's letterhead giving name of program, location, dates, and subjects taught, and giving total clock hours of teaching or instruction;

(C) for completion of course work at or through respiratory care education programs, a certificate of successful completion or an official transcript.

(e) Activities unacceptable as continuing education. The department may not grant continuing education credit to any practitioner for:

(1) education incidental to the regular professional activities of a practitioner such as learning occurring from experience or research;

(2) organization activity such as serving on committees or councils or as an officer in a professional organization;

(3) any program or activity which is not approved in accordance with subsection (b)(2) of this section;

(4) any experience which does not fit the types of acceptable continuing education in subsection (b) of this section;

(5) activities which have been completed more than once during the continuing education period.

(f) Failure to complete required continuing education. A practitioner who has failed to complete the requirements for continuing education as specified in subsection (a) of this section shall return the certificate and identification cards to the department and shall not advertise or represent himself or herself as a respiratory care practitioner in any manner. The person may renew the certificate in accordance with §140.209(d) of this title or reapply for a new certificate.

(g) Other miscellaneous provisions.

(1) Audiovisual programs may be accepted by the department if such a program represents one of the instructional methods or strategies rather than constituting the entire program and provided the program meets the criteria as set out in subsection (b) of this section.

(2) A practitioner who also holds a current license, registration, or certification in another health care profession or a current license, registration, or certification as a respiratory care practitioner in another state, territory, or country may satisfy the continuing education requirements for renewal in Texas with hours counted toward renewal of another license, registration, or certification as long as all of the hours meet all of the requirements of this section.

(3) Continuing education extensions are based on hardships and will be considered and granted by the department on a case by case basis.

(4) The department may conduct random audits of continuing education completed by practitioners to determine compliance with this section.

(5) No continuing education hours may be carried over from one renewal period to another renewal period.

§140.211. Changes of Name or Address.

(a) The practitioner shall notify the department of changes in name, preferred mailing address, or place(s) of business or employment within 30 days of such change(s).

(b) Notification of address changes should be made in writing, including the name, mailing address, and zip code.

(c) All notices required by this chapter shall be addressed to the last known preferred mailing address of the practitioner or applicant.

(d) Before any certificate or permit and identification cards will be issued by the department, notification of name changes must be mailed to the department and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The practitioner shall remit the appropriate replacement fee as set out in §140.204 of this title (relating to Fees).

§140.212. Professional and Ethical Standards.

The purpose of this section shall be to establish the standards of professional and ethical conduct required of a respiratory care practitioner pursuant to the Act, §604.201(b)(4).

(1) Professional representation and responsibilities.

(A) A practitioner shall not misrepresent any professional qualifications or credentials or provide any information that is false, deceptive, or misleading to the department, for employment or work assignment as a respiratory care practitioner, or fail to disclose any information that could affect the decision to employ or assign a task as a respiratory care practitioner.

(B) A practitioner shall not make any false or misleading claims about the efficacy of any services or methods of treatment.

(C) A practitioner shall not extend his or her practice beyond his or her competence and authority vested in him or her by a physician or this Act.

(D) A practitioner shall not permit the use of his or her name for the purpose of documenting that respiratory care services have been rendered unless that practitioner has provided those services.

(E) A practitioner shall not promote or endorse products, services, or equipment in a manner that is false and misleading.

(F) A practitioner shall maintain knowledge and skills for continuing professional competence. A practitioner shall participate in continuing education programs and activities as set out in §140.210 of this title (relating to Continuing Education Requirements).

(G) A practitioner shall not use alcohol or any drugs in any manner which detrimentally affects the provision of respiratory care.

(H) A practitioner shall have the responsibility of reporting alleged misrepresentations or violations of the Act or these sections to the department.

(I) The practitioner shall be responsible for competent and efficient performance of his assigned duties and shall report to the department incompetence and illegal or unethical conduct of members of the profession.

(J) A practitioner shall not retaliate against any person who reported in good faith to the department alleged incompetence; illegal, unethical, or negligent conduct of any practitioner; or alleged misrepresentation or any violation(s) of the Act or these sections.

(K) A practitioner shall keep his or her file updated by notifying the department of changes in preferred mailing address and telephone number.

(L) A practitioner shall not make any false, misleading, or deceptive claims in any advertisement, announcement, presentation, or in competitive bidding.

(M) A practitioner shall conform to medically accepted principles and standards of respiratory care which are generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the American Association for Respiratory Care, the National Board for Respiratory Care, the Texas Society for Respiratory Therapy, the department, and other professional or governmental bodies.

(N) A practitioner shall not delegate respiratory care functions or responsibilities to a person who lacks the ability or knowledge to perform the function or responsibility. A practitioner providing respiratory care services may be assisted by an aide or orderly. Aides, orderlies and other unlicensed assistive personnel may not perform respiratory care procedures.

(O) A practitioner shall not leave an assignment without being properly relieved by appropriate personnel.

(P) The department shall consider the failure of a practitioner to respond to a request for information or other correspondence relating to the certification process or these sections as unprofessional conduct and grounds for disciplinary proceedings in accordance with §140.214 of this title (relating to Violations, Complaints and Subsequent Actions).

(Q) A practitioner shall not employ another person in the capacity of a respiratory care practitioner who does not hold a certificate or permit to practice respiratory care.

(R) A respiratory care practitioner shall not falsify or make grossly incorrect, grossly inconsistent, or unintelligible entries in a patient, hospital or other record.

(S) A respiratory care practitioner shall not exhibit a pattern of substandard care in the performance of duties related to the practice of respiratory care.

(T) A respiratory care practitioner shall not change the prescription of a physician or falsify verbal or written orders for treatment diagnostic regimen received, whether or not that action resulted in actual patient harm.

(2) Relationships with patients/clients.

(A) A practitioner shall make known to a prospective patient the important aspects of the professional relationship, including fees and arrangement for payment which might affect the decision to enter into a contractual relationship.

(B) A practitioner shall not receive or give a commission or rebate or any other form of direct or indirect remuneration or benefit for the referral of patients/clients for professional services.

(C) A practitioner shall disclose to patients or clients any interest in commercial enterprises which the practitioner promotes through patients or clients for the purpose of direct or indirect personal gain or profit.

(D) A practitioner shall not accept gratuities for preferential consideration of the patient. The practitioner shall guard against conflicts of interest.

(E) A practitioner shall take reasonable action to inform a patient's/client's physician and any appropriate allied health care provider in cases where a patient's/client's cardiorespiratory status indicates a change in medical status.

(F) A practitioner shall not violate any provision of any federal or state statute relating to confidentiality of patient/client communication and/or records. All inquiries shall be referred to the physician in charge of the patient's medical care.

(G) A practitioner shall not engage in any activities that seek to meet the practitioner's personal needs at the expense or detriment of a patient/client.

(H) A practitioner shall practice respiratory care only under the direction of a qualified medical director or other physician licensed by the Texas Medical Board. For the purpose of this section direction shall mean:

(i) assuring that established policies are carried out;

(ii) monitoring and evaluating the quality, safety, and appropriateness of respiratory care services and taking action based on findings; and

(iii) providing consultation whenever required, particularly on patients receiving continuous ventilatory or oxygenation support.

(I) A practitioner or temporary permit holder shall not engage in sexual conduct with a client, patient, co-worker, employee, staff member, contract employee,

practitioner, temporary permit holder or any other person on the premises of any job establishment. For the purposes of this section, sexual conduct includes:

- (i) any touching of any part of the genitalia or anus;
- (ii) any touching of the breasts of a female except as necessary for the performance of a respiratory care procedure as defined in §140.202 of this title (relating to Definitions);
- (iii) any offer or agreement to engage in any activity described in this subsection;
- (iv) kissing without the consent of both persons;
- (v) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotion of prostitution as described in the Texas Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in any such activities;
- (vi) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual; or
- (vii) inappropriate sexual comments, including making sexual comments about a person's body.

(3) Billing information required; prohibited practice.

(A) On the written request of a client, a client's guardian, or a client's parent, if the client is a minor, a practitioner shall provide, in plain language, a written explanation of the charges for respiratory care services previously made on a bill or a statement for the client. This requirement applies even if the charges are to be paid by a third party.

(B) A practitioner may not persistently or flagrantly overcharge or overtreat a client.

(4) Sanctions. A practitioner shall be subject to disciplinary action by the department if the practitioner is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Crime Victims Compensation Act, Code of Criminal Procedure, Article 56.31 et seq.

(5) Disclosure. A practitioner shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department by providing notification:

- (A) on each written contract for services of a practitioner;

(B) on a sign prominently displayed in the primary place of business of each practitioner; or

(C) in a bill for service provided by a practitioner to a client or third party.

(6) Unlawful, false, misleading, or deceptive advertising.

(A) A practitioner shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.

(B) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that;

(i) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(ii) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(iii) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(iv) contains a testimonial;

(v) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(vi) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(vii) advertises or represents that the benefits of a health benefit plan will be accepted full payment when deductibles or copayments are required;

(viii) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(ix) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional. A "health care professional" includes a certified respiratory care practitioner, temporary permitted respiratory care practitioner, or any other person licensed, certified, or registered by the state in a health-related profession.

§140.213. Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners.

(a) Criminal convictions which directly relate to the profession of respiratory care.

(1) The department may suspend or revoke any existing certificate or permit, disqualify a person from receiving any certificate or permit, or deny to a person the opportunity to be examined for a certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a respiratory care practitioner.

(2) In considering whether a criminal conviction directly relates to the occupation of a respiratory care practitioner, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification as a respiratory care practitioner. The following felonies and misdemeanors relate to any certificate or permit of a respiratory care practitioner because these criminal offenses indicate an inability or a tendency to be unable to perform as a respiratory care practitioner:

(i) the misdemeanor of knowingly or intentionally acting as a respiratory care practitioner without any certificate or permit under the Texas Occupations Code, §604.352;

(ii) any misdemeanor and/or felony offense involving moral turpitude by statute or common law;

(iii) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against public order and decency (Title 9);

(IV) offenses against public health, safety, and morals (Title 10); and

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4);

(C) the extent to which any certificate or permit might offer an opportunity to engage in further criminal history activity of the same type as that in which the person previously has been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of a respiratory care practitioner. In

making this determination, the department will apply the criteria outlined in Texas Occupations Code, Chapter 53 the legal authority for the provisions of this section.

(3) The misdemeanors and felonies listed in paragraph (2)(B)(i) - (iii) of this subsection are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the Act and these sections.

(b) Procedures for revoking, suspending, suspending on an emergency basis, or denying a certificate or temporary permit to persons with criminal backgrounds.

(1) The department shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate or temporary permit after hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code, Texas Occupations Code, Chapter 53.

(2) If the department denies, suspends, suspends on an emergency basis, or revokes a certificate or temporary permit under these sections after hearing, the department shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas for review of the evidence presented to the department and its decision;

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable; and

(D) of the earliest date the person may appeal.

§140.214. Violations, Complaints, and Subsequent Actions.

(a) General. This section establishes standards relating to:

(1) offenses and prohibited actions under Texas Occupations Code, §604.102 which result in the penalty of a Class B misdemeanor;

(2) violations which result in disciplinary actions;

(3) procedures for filing complaints alleging violations and prohibited actions under the Act or rules; and

(4) the department's investigation of complaints and the department's and commissioner's actions, on behalf of the department, when offenses and prohibited actions and violations have occurred.

(b) Types of offenses and prohibited actions. A person is guilty of a Class B misdemeanor if:

(1) a person intentionally or knowingly represents oneself as able to practice respiratory care or represents oneself as a respiratory care practitioner unless the person holds a certificate or permit issued under the Act;

(2) a person who is not permitted or certified under the Act as a respiratory care practitioner or whose temporary permit or certificate has been suspended or revoked uses in connection with his or her practice the words "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," "respiratory therapy technician," or the letters "RCP" or any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner. Such a person may not in any way, either orally, in writing, in print, or by sign, directly or by implication, represent himself or herself as a respiratory care practitioner;

(3) a person practices respiratory care other than under the direction of a qualified medical director or other physician licensed by the Texas Medical Board;

(4) a person sells, fraudulently obtains, or furnishes any respiratory care diploma, certificate, permit, or record;

(5) a person practices respiratory care under a respiratory care diploma, certificate, permit, or record illegally or fraudulently obtained or issued;

(6) a person practices respiratory care during the time that person's certificate or permit is suspended, revoked, or expired;

(7) a person conducts a formal respiratory care education program for the preparation of respiratory care personnel unless the program is approved by the department;

(8) a person employs another person who does not hold a certificate or permit to practice respiratory care in the capacity of a respiratory care practitioner;

(9) a person who holds a certificate or permit to practice respiratory care practices medicine, as defined by the Medical Practice Act, Texas Occupations Code, Chapter 157 without holding an appropriate license issued by the Texas Medical Board; or

(10) a person otherwise violates Texas Occupations Code, §§604.002, 604.102, 604.351, or 604.352.

(c) Filing of complaints.

(1) Anyone may complain to the department alleging that a person has committed an offense or action prohibited under the Act or that a certificate or permit holder has violated the Act or this chapter.

(2) A person wishing to complain about an offense, prohibited action, or alleged violation against a practitioner or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department. The department's mailing address is 1100 West 49th Street, Austin, Texas 78756-3183, Phone: (512) 834-6632.

(3) Upon receipt of a complaint the department or the department's designee shall send an acknowledgment letter to the complainant and the department's complaint form which the complainant must complete and return to the department or the department's designee before action can be taken. If the complaint is made by a visit to the department, the form may be given to the complainant at that time; however, it must be completed and returned to the department or the department's designee before further action may be taken. Copies of the complaint form may be obtained from the department.

(4) Anonymous complaints shall be investigated by the department, provided sufficient information is submitted.

(d) Investigation of complaints. The department is responsible for investigating complaints.

(e) The department's action.

(1) The department shall take one or more actions described in this section.

(2) The department may determine that an allegation is groundless and dismiss the complaint.

(3) The department may determine that a practitioner has violated the Act or a department rule and may institute disciplinary action in accordance with subsection (f) of this section.

(4) Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the advisory committee, the complainant, and the accused party.

(f) Disciplinary actions.

(1) The department may reprimand a practitioner or initiate action to deny, suspend, suspend on an emergency basis, probate, not renew, or revoke a certificate or a temporary permit. The department may also impose an administrative penalty in accordance with the Act, 604, Subchapter F.

(2) The department may take disciplinary action if it determines that a person who holds a certificate or temporary permit is in violation of §140.212 of this title (relating to Professional and Ethical Standards).

(3) The department may also take action under §140.213 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners).

(4) The department shall take into consideration the following factors in determining the appropriate action to be imposed in each case:

- (A) the severity of the offense;
- (B) the danger to the public;
- (C) the number of repetitions of offenses;
- (D) the length of time since the date of the violation;
- (E) the number and type of previous disciplinary cases filed against the respiratory care practitioner (RCP);
- (F) the length of time the RCP has performed respiratory care procedures;
- (G) the actual damage, physical or otherwise, to the patient, if applicable;
- (H) the deterrent effect of the penalty imposed;
- (I) the effect of the penalty upon the livelihood of the RCP;
- (J) any efforts for rehabilitation; and
- (K) any other mitigating or aggravating circumstances.

(5) The department may take action for violation of the Act or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department.

(g) Formal hearing.

(1) The formal hearing shall be conducted according to the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001.

(2) Prior to institution of formal proceedings to revoke or suspend a permit or certificate, the department shall give written notice to the permit or certificate holder by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the person shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(3) To initiate formal hearing procedures, the department shall give the practitioner written notice for the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the practitioner must give written notice to the department that he or she either waives the hearing or wants the hearing. Receipt of the notice is deemed to occur on the 10th day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt.

(A) If the practitioner fails to request a hearing, the practitioner is deemed to have waived the hearing. If the hearing has been waived, the department shall recommend to the commissioner that the proposed action be taken.

(B) If the practitioner requests a hearing within 10 days after receiving the notice of opportunity for hearing, APA, Texas Government Code §2001.

(h) Final action.

(1) If the department suspends a certificate or permit, the suspension remains in effect until the department determines that the reasons for suspension no longer exist. The respiratory practitioner whose certificate or permit has been suspended is responsible for securing and providing to the department such evidence, as may be required by the department that the reasons for the suspension no longer exist. The department shall investigate prior to making a determination.

(2) During the time of suspension, the former certificate or permit holder shall return the certificate or permit and identification card(s) to the department.

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in these sections; however, the department may not renew the certificate until the department determines that the reasons for suspension have been removed.

(4) A person whose application is denied or whose temporary permit or certificate is revoked or surrendered is ineligible for a temporary permit or certificate under this Act for one year from the date of the denial or revocation or surrender.

(5) Upon revocation or nonrenewal, the former certificate or permit holder shall return the certificate or permit and any identification card(s) to the department.

§140.215. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a temporary permit or certificate holder or an applicant for licensure may be made through an informal settlement conference held to determine whether an agreed settlement order may be approved.

(b) If the department determines that the public interest might be served by attempting to resolve a complaint or contested case by an agreed order in lieu of a formal hearing, the

provisions of this section shall apply. A temporary permit or certificate holder, or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the department.

(c) An informal conference shall be voluntary. It shall not be a prerequisite to a formal hearing.

(d) The department shall decide upon the time, date, and place of the settlement conference and provide written notice to the temporary permit or certificate holder or applicant of the same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested to the last known address of the temporary permit or certificate holder or applicant or by personal delivery. The ten days shall begin on the date of mailing or personal delivery. The temporary permit or certificate holder or applicant may waive the ten-day notice requirement.

(1) The notice shall inform the temporary permit or certificate holder or applicant of the following:

(A) the nature of the alleged violation;

(B) that the temporary permit or certificate holder or applicant may be represented by legal counsel;

(C) that the temporary permit or certificate holder or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;

(D) that the temporary permit or certificate holder or applicant's attendance and participation is voluntary;

(E) that the complainant may be present; and

(F) that the settlement conference shall be canceled if the temporary permit or certificate holder or applicant notifies the program administrator that he or she or his or her legal counsel will not attend.

(2) A copy of this section concerning informal disposition shall be enclosed with the notice of the settlement conference.

(e) The notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is canceled.

(f) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(g) The temporary permit or certificate holder or applicant's attorney, and department staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(h) The program's legal counsel will be requested to attend each settlement conference. The department may call upon the program's attorney at any time for assistance in the settlement conference.

(i) The respondent shall be afforded the opportunity to make statements that are material and relevant.

(j) Access to the investigative file may be prohibited or limited in accordance with the APA, Texas Government Code, Chapter 552.

(k) At the discretion of the department the settlement conference may be tape recorded.

(l) The complainant shall not be considered a party in the settlement conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(m) At the conclusion of the settlement conference, the department may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. They may also conclude that the department lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, or refer the matter for further investigation.

(n) The temporary permit or certificate holder or applicant may either accept or reject the settlement recommendations at the conference. If the recommendations are accepted, an agreed settlement order shall be prepared by the program staff and approved by the program's legal counsel and forwarded to the temporary permit or certificate holder or applicant. The order shall contain agreed findings of fact and conclusions of law. The temporary permit or certificate holder or applicant shall execute the order and return the signed order to the department office within ten days of his or her receipt of the order. If the temporary permit or certificate holder or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(o) If the temporary permit or certificate holder or applicant rejects the proposed settlement, the matter shall be referred to the department for appropriate action.

(p) If the temporary permit or certificate holder or applicant signs and accepts the recommendations, the agreed order shall be submitted to the department for its approval.

(q) The department shall enter an agreed order approving the accepted settlement recommendations. The department may not change the terms of a proposed order but may only

approve or disapprove an agreed order unless the temporary permit or certificate holder or applicant agrees to other terms proposed by the department.

(r) If the department does not approve a proposed agreed order, the temporary permit or certificate holder or applicant and the complainant shall be so informed.

(s) A temporary permit or certificate holder or applicant's opportunity for an informal conference under this section shall satisfy the requirement of the APA, §2001.054(c).

(1) If the department determines that an informal conference shall not be held, the department shall give written notice to the temporary permit or certificate holder or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the temporary permit or certificate holder or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirements of the Act and this chapter.

(2) The complainant shall be sent a copy of the written notice described in paragraph (1) of this subsection. The complainant shall be informed that he or she may also submit a written statement to the department.

§140.216. Suspension of License Relating to Child Support and Child Custody.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if the Respiratory Care Practitioner Certification has issued a certificate to the person named in the order. If a license has been issued the department shall:

(1) record the suspension of the license in the departments records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The department will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Texas Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the standard renewal procedures in the

Respiratory Care Practitioner Certification Act, Texas Occupations Code, §604.153, and §604.157, concerning the issuance of renewal certificates. However, the license will not be renewed until the requirements of subsections (g) and (h) of this section are met.

(f) An individual who continues to use the titles "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," "respiratory therapy technician," or the letters "RCP" or any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the department.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the department shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee as referred in §140.204 of this title (relating to Fees) prior to issuance of the license under subsection (g) of this section.

~~§123.1 Context~~

~~These sections cover definitions; the advisory committee; fees; exceptions to certification; application requirements and procedures; types of certificates, temporary permits, and applicant eligibility; examination; certificate renewal; continuing education requirements; changes of name or address; professional and ethical standards; certifying or permitting persons with criminal background to be respiratory care practitioners; violations, complaints and subsequent actions.~~

~~§123.2 Definitions~~

~~The following words and terms when used in these sections, shall have the following meanings, unless the content clearly indicates otherwise:~~

~~(1) AARC—The American Association for Respiratory Care and its predecessor or successor organizations.~~

~~(2) Act—Texas Occupations Code, Chapter 604; and Texas Revised Civil Statutes portions of 45121, as amended.~~

~~(3) Advisory committee—The Respiratory Care Practitioners Advisory Committee.~~

~~(4) Aides/orderlies—Health care workers who perform routine tasks under the direct supervision of a respiratory care practitioner such as transporting patients, assembling treatment equipment, preparing work areas, and other assigned duties. Aides/orderlies may not perform respiratory care procedures.~~

~~(5) A(MA)—The American Medical Association.~~

~~(6) Applicant—A person who applies to the Department of State Health Services for a certificate or temporary permit.~~

~~(7) Appropriate educational agency—The Texas Education Agency or other governmental agency authorized by law or statute to approve educational institutions and curriculum, or an educational accrediting body of a professional organization, such as the Committee on Accreditation for Respiratory Care (COARC) and its predecessor or successor organization.~~

~~(8) BME—Texas State Board of Medical Examiners.~~

~~(9) Certificate—A respiratory care practitioner certificate issued by the Department of State Health Services.~~

~~(10) Commissioner—The commissioner of the Department of State Health Services.~~

~~(11) Delegated authority—As defined in the Texas Medical Practice Act, Texas Occupations Code, Chapter 157 and the rules pertaining thereto adopted by the BME.~~

~~(12) Department—The Department of State Health Services.~~

~~(13) Diagnostic—Of or relating to or used in the art or act of identifying a disease or disorder.~~

~~(14) Educational accrediting body—The Committee on Allied Health Education and Accreditation of the American Medical Association, or its successor organization which approves respiratory care education programs.~~

~~(15) Formally trained—Completion of an organized educational activity which:~~

~~(A) includes supervised and directed instruction specific to the respiratory care procedures to be performed by the individual;~~

~~(B) includes specific objectives, activities, and an evaluation of competency; and~~

~~(C) is supervised and directed by another individual qualified to provide the training and supervision.~~

~~(16) NBRC—The National Board for Respiratory Care, Inc., and its predecessor or successor organizations.~~

~~(17) Palliative—Serving to moderate the intensity of pain or other disease process.~~

~~(18) Practice—Engaging in respiratory care as a clinician, educator, or consultant.~~

~~(19) Qualified medical director—A physician licensed and in good standing with the BME, and who has special interest and knowledge in the diagnosis and treatment of respiratory care problems who is actively engaged in the practice of medicine. This physician must be a member of the active medical staff of a health care facility, agency or organization who supervises the provision of respiratory care.~~

~~(20) Respiratory care—The treatment, management, control, diagnostic evaluation, and care of inpatients or outpatients who have deficiencies and abnormalities associated with the cardiorespiratory system. Respiratory care does not include the delivery, assembly, set up, testing, and demonstration of respiratory care equipment upon the order of a licensed physician. Demonstration is not to be interpreted here as the actual patient assessment and education, administration, or performance of the respiratory care procedure(s).~~

~~(21) Respiratory care education program~~

(A) a program in respiratory care approved by the educational accrediting body;

(B) a program approved by an appropriate education agency and working toward becoming an approved program in respiratory care. A program will qualify as a respiratory care education program under this subparagraph only for a period of one year from the date of the first class offered by the program; after that one year, the program must be an approved program in respiratory care; or

(C) a program accredited by the Canadian Medical Association and whose graduates are eligible to take the national registry exam given by the Canadian Board of Respiratory Care.

(22) ~~Respiratory care practitioner (RCP)~~—A person permitted or certified under the Act to practice respiratory care.

(23) ~~Respiratory care procedure~~—Respiratory care provided by the therapeutic and diagnostic use of medical gases, the delivery of humidification and aerosols, the administration of drugs and medications to the cardiorespiratory system, ventilatory assistance and ventilatory control, postural drainage, chest drainage, chest percussion or vibration, breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, maintenance of natural airways, and the insertion and maintenance of artificial airways. The term includes a technique employed to assist in diagnosis, monitoring, treatment, and research, including the measurement of ventilatory volumes, pressures and flows, the specimen collection of blood and other materials, pulmonary function testing, and hemodynamic and other related physiological forms of monitoring or treating, as ordered by the patient's physician, the cardiorespiratory system. These procedures include:

(A) ~~administration of medical gases—such as nitric oxide, helium and carbon dioxide;~~

(B) ~~providing ventilatory assistance and ventilatory control—including high frequency oscillatory ventilation and high frequency jet ventilation;~~

(C) ~~providing artificial airways—including insertion, maintenance and removal;~~

(D) ~~performing pulmonary function testing—including neonatal and pediatric studies;~~

(E) ~~hyperbaric oxygen therapy;~~

(F) ~~monitoring—including pulse oximeter, end-tidal carbon dioxide and apnea monitoring;~~

(G) ~~extracorporeal membrane oxygenation (ECMO);~~

~~(H) patient assessment, respiratory patient care planning; and~~

~~(I) implementation of respiratory care protocols.~~

~~(24) Respiratory therapist—A person permitted or certified under the Act to practice respiratory care.~~

~~(25) Temporary permit—A permit issued in accordance with §123.7(d) of this title (relating to Types of Certificates, Temporary Permits, and Applicant Eligibility) for a period of six months.~~

~~(26) Therapeutic—Of or relating to the treatment of disorders by remedial agents or methods.~~

~~(27) Under the direction—Assuring that established policies are carried out; monitoring and evaluating the quality, safety, and appropriateness of respiratory care services and taking action based on findings; and providing consultation whenever required, particularly on patients receiving continuous ventilatory or oxygenation support.~~

~~§123.3 Respiratory Care Practitioners Advisory Committee~~

~~(a) The committee. An advisory committee shall be appointed under and governed by this section.~~

~~(1) The name of the committee shall be the Respiratory Care Practitioners Advisory Committee (committee).~~

~~(2) The committee is established under Government Code, §531.012, which allows the Executive Commissioner of the Health and Human Services Commission to appoint advisory committees as needed.~~

~~(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.~~

~~(c) Purpose. The purpose of the committee is to recommend rules and examinations for the approval of the Executive Commissioner of the Health and Human Services Commission.~~

~~(d) Tasks.~~

~~(1) The committee shall advise the Executive Commissioner of the Health and Human Services Commission concerning rules relating to the certification of respiratory care practitioners.~~

~~(2) The committee shall carry out any other tasks given to the committee by the Executive Commissioner of the Health and Human Services Commission.~~

~~(e) Review and duration. By November 1, 2007, the Executive Commissioner of the Health and Human Services Commission will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.~~

~~(f) Composition. The committee shall be composed of nine members appointed by the Executive Commissioner of the Health and Human Services Commission. The composition of the committee shall include:~~

- ~~(1) three consumer representatives;~~
- ~~(2) three physicians with an interest in the practice of respiratory care; and~~
- ~~(3) three certified respiratory care practitioners.~~

~~(g) Terms of office. The term of office for each member shall be six years, and members shall serve after expiration of their term until a replacement is appointed.~~

~~(1) Members shall be appointed for staggered terms so that the terms of three members will expire on January 1st of each even numbered year.~~

~~(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.~~

~~(h) Officers. The committee shall select from its members the presiding officer and an assistant presiding officer to begin serving on November 1 of each odd numbered year.~~

~~(1) Each officer shall serve until October 31 of each odd numbered year. Each officer may holdover until his or her replacement is elected.~~

~~(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the Executive Commissioner of the Health and Human Services Commission. The presiding officer may serve as an ex officio member of any subcommittee of the committee.~~

~~(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will complete the unexpired portion of the term of the office of presiding officer.~~

~~(4) If the office of assistant presiding officer becomes vacant, it may be filled by vote of the committee.~~

~~(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.~~

~~(6) The committee may reference its officers by other terms, such as chairperson and vice chairperson.~~

~~(i) Meetings. The committee shall meet only as necessary to conduct committee business.~~

~~(1) A meeting may be called by agreement of the Department of State Health Services (department) staff and either the presiding officer or at least three members of the committee.~~

~~(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.~~

~~(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.~~

~~(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.~~

~~(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.~~

~~(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.~~

~~(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.~~

~~(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.~~

~~(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.~~

~~(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.~~

~~(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.~~

~~(k) Staff. Staff support for the committee shall be provided by the department.~~

~~(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.~~

~~(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.~~

~~(2) Each member shall have one vote.~~

~~(3) A member may not authorize another individual to represent the member by proxy.~~

~~(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.~~

~~(5) Minutes of each committee meeting shall be taken by department staff.~~

~~(A) A summary of the meeting shall be provided to the Executive Commissioner of the Health and Human Services Commission and each member of the committee within 30 days of each meeting.~~

~~(B) After approval by the committee, the minutes shall be signed by the presiding officer.~~

~~(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.~~

~~(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.~~

~~(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.~~

~~(3) A subcommittee chairperson shall make regular reports to the committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.~~

~~(n) Statement by members.~~

~~(1) The Executive Commissioner of the Health and Human Services Commission, department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner of the Health and Human Services Commission, department, or committee.~~

~~(2) The committee and its members may not participate in legislative activity in the name of the Executive Commissioner of the Health and Human Services Commission, department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.~~

~~(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.~~

~~(4) A committee member should not disclose confidential information acquired through his or her committee membership.~~

~~(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.~~

~~(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.~~

~~(g) Reports to Executive Commissioner of the Health and Human Services Commission. The committee shall file an annual written report with the Executive Commissioner of the Health and Human Services Commission.~~

~~(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the Executive Commissioner of the Health and Human Services Commission, the status of any rules which were recommended by the committee to the Executive Commissioner of the Health and Human Services Commission, and anticipated activities of the committee for the next year.~~

~~(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.~~

~~(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the Executive Commissioner of the Health and Human Services Commission each November. It shall be signed by the presiding officer and appropriate department staff.~~

~~(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, §2110.004, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.~~

~~(1) No compensatory per diem shall be paid to committee members unless required by law.~~

~~(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.~~

~~(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.~~

~~(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.~~

~~(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.~~

~~(q) Impartiality and Nondiscrimination. The committee shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, gender, national origin, age, disability, sexual orientation, genetic information, or family health history.~~

~~§123.4 Fees~~

~~The following fees are required to be paid to the department before any certificate or permit is issued. All fees shall be submitted in the form of a check or money order and are nonrefundable. The department may direct examination applicants to submit examination fees to the National Board for Respiratory Care, Inc. (NBRC).~~

~~(1) Schedule of fees for certification as a respiratory care practitioner:~~

~~(A) application (includes initial certificate) fee \$120;~~

~~(B) renewal fee for a license issued for a one year term is \$50;~~

~~(C) renewal fee for a license issued for a two year term is \$100;~~

~~(D) renewal fee for a license issued to a retired respiratory care practitioner performing voluntary charity care for a two year term is \$50;~~

~~(E) certificate and/or identification card replacement fee—\$20;~~

~~(F) NBRC examination fee—the fee designated by the NBRC at the time of examination or reexamination;~~

~~(G) certificate fee for upgrade of temporary permit—\$30;~~

~~(H) written verification of certification status—\$10;~~

~~(I) returned check fee—\$50;~~

~~(J) annual inactive status fee—\$25;~~

~~(K) reinstatement fee for a license that was suspended for failure to pay child support—\$50;~~

~~(L) one to 90 days late renewal fee—one and one half times the normally required renewal fee;~~

~~(M) 91 days to one year late renewal fee—two times the normally required renewal fee;~~

~~(N) for all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online; and~~

~~(O) for all applications and renewal applications, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.~~

~~(2) Schedule of fees for a temporary permit as a respiratory care practitioner:~~

~~(A) application (including initial permit) fee—\$50;~~

~~(B) temporary permit renewal fee—\$20;~~

~~(C) temporary permit and/or identification card replacement fee—\$20;~~

~~(D) written verification of certification status—\$10;~~

~~(E) returned check fee—\$50.~~

~~(3) Any certificate holder whose check to the department is returned marked insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the check submitted to the department plus the returned check fee within 30 days of the date of receipt of the department's notice. Failure to comply with this requirement may be the grounds for disciplinary action, up to and including denial of the certificate holder application or the revocation of the certificate. If a certificate is issued or renewed or an application processed upon the submission of a check to the department, and if such check is later returned unpaid, the department may cancel the certificate or application if the certificate holder or applicant does not redeem the check in compliance with this section. The effect of such a cancellation shall be the same as if the application for renewal or for licensure had not been submitted.~~

~~(4) If the department's notice, as set out in paragraph 3 of this section, is returned unclaimed, the department shall mail the notice to the applicant or certificate holder by first class mail. If a money order or check for guaranteed funds is not received by the department's cashier within 30 days of the postmarked date on the second mailing, the approval or certificate issued shall be invalid. The department shall notify the applicant's or certificate holder's employer that the person has failed to comply with this section.~~

~~(5) The department shall make periodic reviews of the fee schedule and recommend any adjustments necessary to provide sufficient funds to meet the expenses of the respiratory care practitioner certification program without creating an unnecessary surplus. Such adjustments shall be made through rule amendments approved by the Executive Commissioner of the Health and Human Services Commission.~~

~~§123.5 Exemptions~~

~~(a) Except as specifically exempted by subsection (b) of this section, the provisions of the Act and this chapter apply to any person representing that he or she practices or provides respiratory care services.~~

~~(b) These sections do not prohibit:~~

~~(1) the practice of respiratory care that is an integral part of the program of study by a student enrolled in a respiratory care education program approved by the department;~~

~~(2) the employment by a health care facility of a person to deliver limited respiratory care support services under the supervision of an individual who holds a certificate issued under this Act, if such a person does not perform an invasive procedure related to critical respiratory care, including therapeutic, diagnostic, or palliative procedures as part of the person's employment and if the person:~~

~~(A) is enrolled for credit in the clinical portion of an approved respiratory care education program; or~~

~~(B) has completed all of the clinical portion of an approved respiratory care education program within the preceding 12 months and is actively pursuing a course of study leading to graduation from the program;~~

~~(3) the gratuitous care of the ill by a friend or member of the family or care provided in an emergency situation by a person who does not claim to be a respiratory care practitioner who holds a temporary permit or certificate issued under the provisions of the Act;~~

~~(4) a respiratory care practitioner from performing advances in the art and techniques of respiratory care, as defined in the Act and in §123.2 of this title (relating to Definitions), learned through formal or specialized training;~~

~~(5) the practice of respiratory care by health care personnel who have been formally trained in the care used and who are:~~

~~(A) licensed under the practice acts regulating their professions; or~~

~~(B) acting under the delegated authority of a physician licensed by the Board of Medical Examiners;~~

~~(6) the practice of any legally qualified respiratory care practitioner employed by the United States government while in the discharge of official duties; or~~

~~(7) any person who is licensed, registered, or certified under another law of this state from engaging in the profession or occupation for which the person is licensed, registered, or certified.~~

~~(e) Student status.~~

~~(1) Students who are not enrolled in the clinical portion or have not completed the clinical portion of their respiratory care education program within the preceding 12 months may not be employed by a health care facility to provide limited respiratory care services unless they hold a temporary permit.~~

~~(2) Students in a nontraditional accredited respiratory care education program may be considered as being engaged in the clinical portion of their education program during its entire duration. For the purposes of this section nontraditional shall mean those respiratory care education programs recognized as nontraditional education systems by the Committee on Accreditation for Respiratory Care or its successor organization.~~

~~(3) A clinical student who is employed by any health care facility, agency or organization to provide limited respiratory care services should provide his or her employer, on a semi-annual basis, verification that he or she is a bona fide student in an approved respiratory care education program. Acceptable verification shall be a letter on program letterhead with the original signature of the program director attesting to the student's bona fide status as an active student in the clinical portion of that program or that the student has completed the clinical~~

~~portion of the course within the preceding 12 months and is actively pursuing a course of study leading to graduation from the program.~~

~~(4) Limited respiratory care services provided by an employed clinical student must be supervised by a practitioner certified under this Act. Students may not perform invasive procedures related to critical respiratory care.~~

~~(5) Students who are within 30 days of graduation may apply to the department for a temporary permit in accordance with §123.6 of this title (relating to Application Requirements and Procedures). A person who holds a temporary permit may perform any and all respiratory care procedures which he or she has been trained to perform.~~

~~(d) All persons who apply to become certified or permitted as a practitioner, all persons who believe they are exempt under the Act and this chapter, and all other persons who are interested in practicing respiratory care need to be aware of the:~~

~~(1) penalty provisions under the Texas Occupations Code §604.351, violations. Any person who knowingly or intentionally violates a provision of the Act commits a Class B misdemeanor; and~~

~~(2) prohibited acts provisions under the Texas Occupations Code §604.102. Persons who are not certified or permitted under the Act may not use in connection with their practice or employment the words "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," or the letters "RCP," or any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner.~~

~~§123.6 Application Requirements and Procedures~~

~~(a) General.~~

~~(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department forms.~~

~~(2) The department shall not consider an application as officially submitted until the applicant pays the application fee and the fee clears the appropriate financial institution. The fee must accompany the application form.~~

~~(3) The administrator shall send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of the notice shall be invalid.~~

~~(b) Required application materials.~~

~~(1) Application form. The application form shall contain:~~

~~(A) specific information regarding personal data, social security number, birth month and day, place of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;~~

~~(B) a statement that the applicant has read the Act and these sections and agrees to abide by them;~~

~~(C) the applicant's permission to the department to seek any information or references it deems fit to determine the applicant's qualifications;~~

~~(D) a statement that the applicant, if issued a certificate or temporary permit, shall return the certificate or temporary permit and identification card(s) to the department upon the revocation or suspension of the certificate or temporary permit;~~

~~(E) a statement that the applicant understands that fees submitted are nonrefundable;~~

~~(F) a statement that the applicant understands that materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);~~

~~(G) a statement that the information in the application is truthful and that the applicant understands that providing false information of any kind may result in the voiding of the application and failure to be granted a certificate or permit, or the revocation of a certificate or permit issued;~~

~~(H) a statement that if issued a certificate or permit the practitioner shall keep the department advised of his or her current mailing address; and~~

~~(I) the signature of the applicant which has been dated.~~

~~(2) Educational record for regular certification. The department shall issue a regular certificate to an applicant who is currently credentialed by the National Board for Respiratory Care (NBRC) and nationally certified as a Certified Respiratory Therapist (CRT), or a Registered Respiratory Therapist (RRT), upon payment of the application fee, submission of the application forms and approval by the department, the department shall issue a regular certificate to a person which is currently credentialed by the National Board for Respiratory Care (NBRC).~~

~~(3) Education record for temporary permit. Individuals applying for a temporary permit who do not meet the requirements of subsection (b) of this section shall provide the following documents to the department.~~

~~(A) An expected graduation statement, including the expected date of graduation, signed by the respiratory care program director at the school.~~

~~(B) Within 30 days following the expected date of graduation, the applicant must provide to the department:~~

~~(i) a copy of the certificate of completion; or~~

~~(ii) a statement signed by the program director indicating that the applicant officially completed the program but the certificate is not available within 30 days of the completion date.~~

~~(4) Examination results.~~

~~(A) If the applicant is making application for a temporary permit, an examination score release form shall be signed allowing the department to obtain the applicant's examination results from the NBRC, or other agency administering the examination prescribed by the department.~~

~~(B) If an applicant for a regular certificate is:~~

~~(i) recognized as a certified respiratory therapist or registered respiratory therapist by the NBRC at the time of application, a photocopy of the certificate issued by NBRC shall be submitted in lieu of examination results; or~~

~~(ii) unable to show proof of successful completion or otherwise provide documentation acceptable to the department of the applicant's examination results, the application shall be disapproved.~~

~~(5) Employment/experience documentation report form. Persons applying for any certificate or permit who are not recognized as a certified respiratory therapist or registered respiratory therapist by the NBRC and who are licensed, registered, or otherwise regulated in another state, territory, or country at the time of application must submit with their applications a properly completed employment/experience documentation report form signed by their medical director as defined in §123.2 of this title (relating to Definitions), attesting that the applicant is currently practicing, or has practiced respiratory care within the 12-month period immediately preceding application to the department.~~

~~(c) Information/Documentation form. Persons applying for any certificate or permit who are licensed, registered, or otherwise regulated in any profession at the time of application to the department must submit with their applications a properly completed information/documentation form signed by an agency official.~~

~~(d) Application processing.~~

~~(1) Time periods. The department shall comply with the following procedures in processing applications for a permit or certificate.~~

~~(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:~~

~~(i) letter of acceptance of application for permit or certification—14 working days. The notice of acceptance may include a statement that an application for temporary permit received more than 30 days from the date of the applicant's graduation will be held pending until the applicant is within 30 days of graduation; and~~

~~(ii) letter of application deficiency—14 working days.~~

~~(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law, and of the opportunity for a formal hearing. The time periods are as follows:~~

~~(i) letter of approval—14 working days; and~~

~~(ii) letter of denial of permit or certificate—90 working days.~~

~~(2) Reimbursement of fees.~~

~~(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Requests for reimbursement shall be made to the department. If the department does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.~~

~~(B) Good cause for exceeding the time period is considered to exist if the number of applications for licensure and licensure renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year, another public or private entity relied upon by the department in the application process caused the delay, or any other condition exists giving the department good cause for exceeding the time period.~~

~~(3) Contested cases. The time periods for contested cases related to the denial of licensure renewals are not included with the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable.~~

~~(e) Application approval.~~

~~(1) The department shall be responsible for reviewing all applications.~~

~~(2) The department shall approve all applications which are in compliance with subsections (a)–(e) of this section and which properly document applicant eligibility, unless the application is disapproved under the provisions of subsection (f) of this section.~~

~~(f) Disapproved applications:~~

~~(1) The department shall disapprove the application if the person:~~

~~(A) has not completed the requirements in subsection (b) of this section;~~

~~(B) has failed to pass the examination as set out in §123.8 of this title (relating to Examination) during the period for which the temporary certificate, or temporary permit was valid, if applicable;~~

~~(C) has failed to remit any applicable fees required in §123.4 of this title (relating to Fees);~~

~~(D) has failed or refused to properly complete or submit any application form(s) or endorsement(s), or presented false information on the application form, or any other form or document required by the department to verify the applicant's qualifications;~~

~~(E) has been in violation of the Act, §123.14 of this title (relating to Violations, Complaints, and Subsequent Actions), the code of ethics as set out in §123.12 of this title (relating to Professional and Ethical Standards), or any other applicable provision of this chapter;~~

~~(F) has been convicted of a felony or misdemeanor, if the crime directly relates to the duties and responsibilities of a respiratory care practitioner as set out in §123.13 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners);~~

~~(G) holds a license, certification, or registration to practice respiratory care in another state or jurisdiction and that license, certification, or registration has been suspended, revoked, or otherwise restricted by the licensing entity in that state or jurisdiction for reasons to the person's professional competence or conduct which could adversely affect the health and welfare of a patient;~~

~~(H) is not currently practicing, or has not practiced within the 12-month period preceding the date of application, respiratory care, as set out in §123.7(d)(1)(B) of this title (relating to Types of Certificates and Temporary Permits and Applicant Eligibility); or~~

~~(I) has submitted a copy of a National Board for Respiratory Care, Inc. (NBRC) certificate in lieu of examination results in accordance with subsection (b)(4)(B)(i) of this section, but is not recognized by the NBRC as a certified respiratory therapist or registered respiratory therapist.~~

~~(2) If after review the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the Administrative Procedure Act, Texas Government Code 2001, et seq. Within 10 days after receipt of the written notice, the applicant shall give written notice to the department that the applicant either waives the hearing, or wants the hearing. Receipt of the written notice is deemed to occur on the tenth day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt. If the applicant fails to respond within 10 days after receipt of the notice of opportunity, or if the applicant notifies the department that the hearing be waived, the applicant is deemed to have waived the hearing. If the hearing has been waived, the department shall disapprove the application.~~

~~(3) An applicant whose application has been disapproved under paragraph (1)(E) and (F) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication proof satisfactory to the department of compliance with all rules of the department and the provisions of the Act in effect at the time of reapplication. The date of disapproval is the effective date of a disapproval order signed by the commissioner of the Department of State Health Services or the commissioner's designee.~~

~~§123.7 Types of Certificates and Temporary Permits and Applicant Eligibility~~

~~(a) General. This section sets out the types of certificates and permits issued, and the qualifications of applicants for certification as respiratory care practitioners.~~

~~(1) The department shall prepare and provide to each respiratory care practitioner a certificate or temporary permit with an identification card(s) which contain the practitioner's name, certificate or permit number, and date of certificate or permit issue. The temporary permit and all identification cards shall indicate an expiration date.~~

~~(2) Any certificate or permit and identification cards issued by the department remain the property of the department and shall be surrendered to the department on demand.~~

~~(3) Employers shall keep on file an unaltered photocopy of the practitioner's original certificate or permit and current identification card.~~

~~(4) Neither the practitioner nor anyone else shall display or present to another person, employer or potential employer a certificate or permit or carry an identification card which has been photocopied or otherwise reproduced.~~

~~(5) Neither the practitioner nor anyone else shall make any alteration on any certificate, permit, or identification card issued by the department.~~

~~(b) Issuance of certificates and permits.~~

~~(1) The department shall send each applicant whose application has been approved a certificate or temporary permit and identification card(s) with a certificate or permit number.~~

~~(2) Certificates shall expire on the last day of the practitioner's birth month.~~

~~(c) Replacements. The department shall replace a lost, damaged, or destroyed certificate or temporary permit and/or identification card(s) upon a written request from the practitioner and payment of the replacement fee. Requests shall include a statement detailing the loss or destruction of the original certificate, temporary permit and/or identification card(s), or be accompanied by the damaged certificate, permit, or card(s).~~

~~(d) Applicant eligibility.~~

~~(1) Temporary permit. Temporary permits are valid for a six-month period. The department shall issue a temporary permit to practice respiratory care to:~~

~~(A) an applicant who:~~

~~(i) has applied on the forms prescribed by the department;~~

~~(ii) has paid the prescribed application fee;~~

~~(iii) will complete a respiratory care education program within 30 days after the date of issuance of the permit or is a graduate of a respiratory care education program approved by the department; and~~

~~(iv) meets all qualifications for a certificate except taking the written examination prescribed by the department for certification. An applicant may file an application if he or she is within 30 days prior to graduation. A temporary permit is valid for six months from date of issuance by the department. After the applicant passes the examination, as set out in §123.8 of this title (relating to Examination), and pays the prescribed fee, a regular certificate shall be issued and the temporary permit shall become null and void;~~

~~(B) an applicant who has applied on the forms prescribed by the department; who has paid the prescribed application fee; who is currently practicing respiratory care or has within the 12-month period immediately preceding the date of the application to the department practiced respiratory care in another state, territory, or country; who holds a valid license or other form of registration to practice respiratory care in that state, territory, or country; who is in good standing in that state, territory, or country and who is not recognized, at the time of application to the department, as a certified respiratory therapist or registered respiratory therapist by the National Board for Respiratory Care, Inc. (NBRC). A regular certificate may be issued by the department upon approval of the application and payment of prescribed fees to an applicant who submits evidence, satisfactory to the department, that he or she has passed the examination, as set out in §123.8 of this title (relating to Examination), and is in good standing with the agency or organization with which they are licensed or registered to practice respiratory~~

care. Applicants for a temporary permit under this paragraph who have not passed the examination, as set out in §123.8 of this title (relating to Examination), shall not be issued a regular certificate; or

~~(2) Regular certificate. The department shall issue a regular certificate to practice respiratory care to an applicant who has applied on a form prescribed by the department, who has paid the prescribed application fee and who:~~

~~(A) has, prior to making application to the department, passed the entry level certified respiratory therapist examination administered by or under the auspices of the NBRC with a score equal to or exceeding the pass rate determined by the NBRC at the time of examination or reexamination;~~

~~(B) has, prior to making application to the department, passed the registered respiratory therapist (RRT) examination administered by or under the auspices of the NBRC;~~

~~(C) holds a valid temporary permit and who has passed, prior to the expiration of the temporary permit, the examination as set out in §123.8 of this title (relating to Examination); or~~

~~(D) has completed the education requirements as set out in §123.6 of this title (relating to Application Requirements and Procedures) and who has passed the examination as set out in §123.8 of this title (relating to Examination).~~

~~(3) Out of State License/Certification/Registration. The department shall issue a regular certificate to practice respiratory care to an applicant who is in good standing and holds a valid license or other form of registration to practice respiratory care in another state, territory, or country, whose requirements for licensure or certification were at the time of approval substantially equal to the requirements set forth in the Act and this chapter, and who:~~

~~(A) has applied on forms prescribed by the department;~~

~~(B) has paid the prescribed application fee;~~

~~(C) at the time of application to the department, has completed the educational requirements as set out in §123.6 of this title (relating to Application Requirements and Procedures);~~

~~(D) has passed the examination, as set out in §123.8 of this title (relating to Examination), with a score equal to or exceeding the pass rate determined by the department at the time the application for certification is submitted to the department;~~

~~(E) has submitted satisfactory evidence on a form prescribed by the department that the applicant is currently practicing or has within the 12 month period immediately preceding the date of application to the department practiced respiratory care in the~~

state, territory, or country in which the applicant is licensed or otherwise regulated if the applicant is not recognized, at the time of application to the department, as a certified respiratory therapist or registered respiratory therapist; and

(F) has submitted proof on a form prescribed by the department that the applicant is in good standing and holds a valid license or other form of registration to practice respiratory care in another state, territory, or country.

§123.8 Examination

(a) Examination eligibility. Holders of temporary permits are allowed to take the examination provided the holder complies with the requirements of the Act and these sections. Persons who are certified or registered in respiratory care by the NBRC at the time of application to the department are not required to be reexamined for state certification.

(b) Approved examination. The approved examination for all applicants consists of an entry level certified respiratory therapist (CRT) examination administered for the National Board for Respiratory Care, Inc. (NBRC) or its designee, or the advisory committee may recommend an equivalent examination.

(c) Standards of acceptable performance. The cut score determined by the NBRC at the time of examination or reexamination shall be the cut score utilized by the department to determine pass or fail performance.

(d) Completion of application forms. Each applicant shall be responsible for completing and transmitting appropriate application forms and paying appropriate fees by the deadlines set by the NBRC, if an NBRC examination is prescribed.

(e) Results.

(1) Results of an examination prescribed by the department but administered under the auspices of another agency will be communicated to the applicant by the department, unless the contract between the department and that agency provides otherwise.

(2) The applicant or temporary permit holder is responsible for arranging to have examination scores forwarded to the department. If the score report does not come directly from the NBRC in writing or on data tape, the results shall be in the form of a copy of the original of either:

(A) a letter, or other official notification, from the examining agency to the examinee; or

(B) the CRT certificate issued by the NBRC.

~~(3) If the examination is graded by a national or state testing service, or by the NBRC or its designee, the department shall notify each examinee of the examination results within 14 days of the date the department receives the results.~~

~~(4) If the examination is graded by the department or its designee, the department shall notify each examinee of the results of the examination within 60 days of the date of the exam. If the results will be delayed for more than 60 days after the examination, the department shall notify each applicant of the reason for the delay.~~

~~(5) If the department is required to provide official notice of examination results to the applicant, no matter what numerical or other scoring system is used in arriving at examination results, the results shall be stated in terms of pass or fail.~~

~~(f) Refunds. Examination fee refunds to persons who fail to appear for the examination will be in accordance with policies and procedures of the NBRC, or other agency approved by the department to administer an examination prescribed in this section.~~

~~§123.9 Certificate Renewal~~

~~(a) General. Except as provided by subsection (b) of this section, a practitioner shall renew the certificate biennially on or before the last day of the practitioner's birth month.~~

~~(1) The renewal date of a certificate shall be the last day of the practitioner's birth month.~~

~~(2) Each practitioner shall be responsible for renewing the certificate on or before the expiration date and shall not be excused from paying reinstatement fees. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal or reinstatement.~~

~~(3) The department may not renew the certificate or permit of the practitioner who is in violation of the Act or board rules at the time of application for renewal.~~

~~(4) The department shall deny renewal of a certificate or permit if renewal is prohibited by the Education Code, §57.491, concerning guaranteed student loan defaults.~~

~~(b) Staggered renewals. The department shall use a staggered system for certificate renewals.~~

~~(c) Certificate renewal.~~

~~(1) At least 30 days prior to the expiration date of a person's certificate, the department shall send notice to the practitioner of the expiration date of the certificate, the amount of the renewal fee due, and a renewal form which the practitioner must complete and return to the department with the required renewal fee.~~

~~(2) The renewal form for all practitioners shall require the provision of the preferred mailing address, primary employment address and telephone number, and category of employment, misdemeanor and felony convictions, statement concerning status with The National Board for Respiratory Care, Inc., and continuing education completed.~~

~~(3) A practitioner has renewed the certificate when the department has received the completed renewal form, continuing education as set out in §123.10 of this title (relating to Continuing Education Requirements), and the required renewal fee on or prior to the expiration date of the certificate. The postmark date shall be considered as the date of mailing.~~

~~(4) The department shall issue identification cards for the current renewal period to a practitioner who has met all requirements for renewal.~~

~~(5) A temporary permit may be renewed once for an additional six-month period.~~

~~(d) Late renewal or reapplication.~~

~~(1) A person whose certificate has expired may renew the certificate by submitting to the department the renewal form, continuing education as set out in §123.10 of this title (relating to Continuing Education Requirements) completed since the last renewal, and if respiratory care procedures were performed after the certificate expired, a statement indicating how the person complied with the Act, §604.003.~~

~~(A) If renewal is requested from one day up to 90 days after expiration, the applicant shall submit a fee that is equal to one and one-half times the renewal fee, as set out in §123.4 of this title (relating to Fees).~~

~~(B) If renewal is requested more than 90 days after expiration but less than one year after expiration, the applicant shall submit a fee that is equal to two times the renewal fee, as set out in §123.4 of this title.~~

~~(C) After the certificate is renewed, the next continuing education reporting period starts on the date the certificate is renewed and continues until the next expiration date.~~

~~(2) A person whose certificate has been expired for one year or more may apply for a new certificate by complying with the then-current requirements for obtaining a certificate.~~

~~(3) After a certificate is expired and until a person has renewed the certificate, a person may not practice respiratory care in violation of the Act.~~

~~(4) A person who fails to renew a certificate within one year may obtain a new certificate without examination if the person:~~

~~(A) pays a fee that is equal to two times the renewal fee;~~

~~(B) is currently certified as a respiratory care practitioner in another state;~~

~~(C) has been practicing respiratory care in the state where the certification is held for the two years preceding the date of application for renewal; and~~

~~(D) submits proof of completion of the continuing education requirements as set out in §123.10 of this title within the 24 month period preceding the date of the renewal application.~~

~~(e) Renewal Processing.~~

~~(1) The department shall issue a certificate renewal within 14 days after receipt of documentation of all renewal requirements.~~

~~(2) The reimbursement of fees, appeals, and contested cases relating to renewals shall be governed by the provisions of §123.6(d)(2)–(4) of this title (relating to Application Requirements and Procedures).~~

~~(f) Military duty. If a practitioner fails to timely renew his or her permit or certificate because the practitioner is or was on active duty with the armed forces of the United States of America, serving outside the State of Texas, the practitioner may renew the permit or certificate pursuant to this subsection.~~

~~(1) Renewal of the permit or certificate may be requested by the practitioner, the practitioner's spouse, or an individual having power of attorney from the practitioner. The renewal form shall include a current address and telephone number for the individual requesting the renewal.~~

~~(2) Renewal may be requested before or after expiration of the permit or certificate.~~

~~(3) A copy of the official orders or other official military documentation showing that the practitioner is or was on active duty, serving outside the State of Texas, shall be filed with the department along with the renewal form.~~

~~(4) A copy of the power of attorney from the practitioner shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.~~

~~(5) A practitioner renewing under this subsection shall pay the renewal fee.~~

~~(6) A practitioner renewing under this subsection shall submit proof of having earned any clock hours of continuing education prior to being called to active duty serving outside the State of Texas and no further continuing education hours shall be required for renewal.~~

~~(g) Inactive status. A respiratory care practitioner who holds a certificate under the Act and who is not actively engaged in the practice of respiratory care may make application to the department in writing on a form prescribed by the department to be placed on an inactive status list maintained by the department. The application for inactive status and the inactive fee must be postmarked prior to the expiration of the respiratory practitioner's annual certificate. No refund will be made of any fees paid prior to application for inactive status.~~

~~(1) A person on inactive status is required to pay an annual inactive status fee as set out in §123.4 of this title (relating to Fees).~~

~~(2) A person on inactive status may not perform any activities regulated under this Act. Practice as a respiratory care practitioner in any capacity for compensation or as a volunteer is prohibited, and the person may not use the title respiratory care practitioner while on inactive status.~~

~~(3) A person on inactive status is not required to complete the requirements in accordance with §123.10 of this title (relating to Continuing Education Requirements), except when returning to active practice as provided in paragraph (8)(D) of this subsection.~~

~~(4) Inactive status shall not be granted to a person whose certificate is not current and in good standing. Inactive status periods shall not exceed five years past the expiration date of the certificate, unless an extension for a longer period is specifically authorized by the department.~~

~~(5) The person on inactive status shall be notified annually that in order for the certificate to remain on inactive status, the inactive status notice shall be completed, signed and dated, and the inactive status fee shall be submitted to the department.~~

~~(6) A certificate that is not reactivated within the five year period cannot be renewed, restored, reissued or reinstated. If the person wishes to practice, he or she shall reapply for the certificate if requirements of the Texas Occupations Code, §604.103 are met.~~

~~(7) A person is subject to investigation and action under §123.14 (relating to Violations, Complaints, and Subsequent Actions).~~

~~(8) If a person on inactive status desires to reenter active practice, the person shall:~~

~~(A) notify the department in writing;~~

~~(B) complete appropriate forms;~~

~~(C) pay a renewal fee for the current renewal period; and~~

~~(D) submit to the department proof of successful completion, within 24-month period prior to reentering active status, of the continuing education hours as set out in §123.10 of this title.~~

~~(9) A person in compliance with this subsection is not subject to subsection (d) of this section.~~

~~(h) Expiration of certificate. A person whose certificate has expired may not use the title or represent or imply that he has the title of certified respiratory care practitioner, respiratory care practitioner, or respiratory therapist, or use the letters RCP, and may not use any facsimile of those titles in any manner. Until a person has renewed the certificate, a person may not practice respiratory care in violation of the Act.~~

~~(i) Renewal for retired respiratory care practitioners performing voluntary charity care.~~

~~(1) A "retired respiratory care practitioner" is defined as a person who is:~~

~~(A) above the age of 55;~~

~~(B) is not employed for compensation in the practice of respiratory care;~~
and

~~(C) has notified the department in writing of his or her intention to retire and provide only voluntary charity care.~~

~~(2) "Voluntary charity care" for the purposes of this subsection is defined as the practice of respiratory care by a retired respiratory care practitioner without compensation or expectation of compensation.~~

~~(3) A retired respiratory care practitioner providing only voluntary charity care may renew his or her license by submitting a renewal form; the retired respiratory care practitioner renewal fee required by §123.4 of this title (relating to Fees); and the continuing education hours required by §123.10 of this title (relating to Continuing Education Requirements).~~

~~§123.10 Continuing Education Requirements~~

~~(a) General. Continuing education requirements for renewal shall be fulfilled each renewal period.~~

~~(1) The initial period shall begin with the date the department issues the certificate and end on the last day of the birth month at the time of renewal.~~

~~(2) A respiratory care practitioner must complete 24 hours of continuing education acceptable to the department during each renewal period.~~

~~(3) A clock hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.~~

~~(4) A respiratory care practitioner who is approved by the department for renewal in accordance with §123.9 of this title (relating to Certificate Renewal) may complete reduced continuing education requirements equal to half of the number of continuing education hours required for renewal for a certified respiratory care practitioner.~~

~~(b) Types of acceptable continuing education. Continuing education must be in skills relevant to the practice of respiratory care and must have a direct benefit to patients and clients and shall be acceptable if the experience falls in one or more of the following categories:~~

~~(1) respiratory care course work seminars, workshops, review sessions, or other organized educational programs completed at or through any respiratory care education program;~~

~~(2) participation in any program (e.g., in service educational training programs, institutes, seminars, workshops and conferences) which is:~~

~~(A) directly related to the profession of respiratory care;~~

~~(B) instructor directed; and~~

~~(C) approved, recognized, accepted, or assigned continuing education credits by professional organizations or associations or offered by a federal, state, or local government entity. A list approved by the advisory committee is available from the department upon request;~~

~~(3) instruction or teaching in programs set out in paragraphs (1) and (2) of this subsection, provided that such instruction or teaching is not a part of, or required as a part of, one's employment, or;~~

~~(4) up to six credit hours during each renewal period of self directed study to include Internet-based or computer-based studies, journals, including a post-test, which meets the requirements described in paragraphs (2)(A) and (2)(C) of this subsection.~~

~~(c) Determination of clock hours. The department shall credit continuing education experiences as follows.~~

~~(1) Completion of course work at or through a respiratory care educational program as set out in subsection (b)(1) of this section shall be credited on the basis of 15 clock hours for each semester hour successfully completed for credit or audit, evidenced by a certificate of successful completion or official transcript.~~

~~(2) Parts of programs, activities, workshops, seminars, sessions, etc., which meet the criteria of subsections (b)(1) or (2) of this section shall be credited on a one for one basis with one clock hour for each clock hour spent in the continuing education activity.~~

~~(3) Teaching in programs which meet the department's criteria as set out in subsection (b)(3) of this section shall be credited on the basis of two clock hours for each hour actually taught.~~

~~(4) Passing the certified respiratory therapist recertifying examination shall be credited on the basis of ten clock hours.~~

~~(5) Passing the written registry examination for advanced respiratory therapy practitioners for credentialing or recertifying shall be credited on the basis of nine clock hours.~~

~~(6) Passing the registered respiratory therapist clinical simulation examination for credentialing or recertifying shall be credited on the basis of nine clock hours.~~

~~(7) Passing the National Board for Respiratory Care, Inc. (NBRC) pediatric specialty examination shall be credited on the basis of ten clock hours.~~

~~(8) Successful completion of the initial course in advanced cardiac life support, pediatric advanced life support, the neonatal advanced life support course, basic trauma life support, or pre-hospital trauma life support shall be credited on the basis of 12 clock hours. Recertification courses shall be credited for the number of hours actually completed during the recertification course, but shall not count for more than 12 hours.~~

~~(9) Passing the certification examination for entry level pulmonary function technologists or the registry examination for advanced pulmonary function technologists for credentialing shall be credited on the basis of ten clock hours.~~

~~(10) Passing the registration examination offered by the Board of Registered Polysomnographic Technologists shall be credited on the basis of ten clock hours.~~

~~(d) Reporting of continuing education. Each practitioner shall be responsible for reporting to the department the continuing education activities completed.~~

~~(1) A practitioner shall report the number of hours of continuing education completed during the renewal period. If requested by the department, each practitioner shall submit proof of completion of the required continuing education activity to the department at the time of certificate renewal, or at other times as directed by the department.~~

~~(2) If required by the department, each continuing education activity filed by a practitioner must be accompanied by appropriate documentation of the continuing education claimed as follows:~~

~~(A) for a program attended, signed certification by a program leader or instructor of the practitioner's participation in the program by certificate, or letter on letterhead of the sponsoring agency, or official continuing education validation form or official transcript of~~

the sponsoring agency accompanied by a brochure, agenda, program, or other applicable information, indicating content of the program;

~~(B) for teaching or instruction in approved programs, a letter on sponsoring agency's letterhead giving name of program, location, dates, and subjects taught, and giving total clock hours of teaching or instruction;~~

~~(C) for completion of course work at or through respiratory care education programs, a certificate of successful completion or an official transcript.~~

~~(e) Activities unacceptable as continuing education. The department may not grant continuing education credit to any practitioner for:~~

~~(1) education incidental to the regular professional activities of a practitioner such as learning occurring from experience or research;~~

~~(2) organization activity such as serving on committees or councils or as an officer in a professional organization;~~

~~(3) any program or activity which is not approved in accordance with subsection (b)(2) of this section;~~

~~(4) any experience which does not fit the types of acceptable continuing education in subsection (b) of this section;~~

~~(5) activities which have been completed more than once during the continuing education period.~~

~~(f) Failure to complete required continuing education. A practitioner who has failed to complete the requirements for continuing education as specified in subsection (a) of this section shall return the certificate and identification cards to the department and shall not advertise or represent himself or herself as a respiratory care practitioner in any manner. The person may renew the certificate or reapply for a new certificate in accordance with §123.9(d) of this title (relating to Certificate Renewal).~~

~~(g) Other miscellaneous provisions.~~

~~(1) Audiovisual programs may be accepted by the department if such a program represents one of the instructional methods or strategies rather than constituting the entire program and provided the program meets the criteria as set out in subsection (b) of this section.~~

~~(2) A practitioner who also holds a current license, registration, or certification in another health care profession or a current license, registration, or certification as a respiratory care practitioner in another state, territory, or country may satisfy the continuing education requirements for renewal in Texas with hours counted toward renewal of another license,~~

registration, or certification as long as all of the hours meet all of the requirements of this section.

~~(3) Hardships will be considered and granted by the department on a case by case basis.~~

~~(4) The department may conduct random audits of continuing education completed by practitioners to determine compliance with this section.~~

~~(5) No continuing education hours may be carried over from one renewal period to another renewal period.~~

~~§123.11 Changes of Name or Address~~

~~(a) The practitioner shall notify the department of changes in name, preferred mailing address, or place(s) of business or employment within 30 days of such change(s).~~

~~(b) Notification of address changes shall be made in writing, including the name, mailing address, and zip code and be mailed to the department.~~

~~(c) All notices required by this chapter shall be addressed to the last known preferred mailing address of the practitioner or applicant.~~

~~(d) Before any certificate or permit and identification cards will be issued by the department, notification of name changes must be mailed to the administrator and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The practitioner shall remit the appropriate replacement fee as set out in §123.4 of this title (relating to Fees).~~

~~§123.12 Professional and Ethical Standards~~

~~The purpose of this section shall be to establish the standards of professional and ethical conduct required of a respiratory practitioner pursuant to the Act, §604.201(b)(4).~~

~~(1) Professional representation and responsibilities.~~

~~(A) A practitioner shall not misrepresent any professional qualifications or credentials or provide any information that is false, deceptive, or misleading to the department, for employment or work assignment as a respiratory care practitioner, or fail to disclose any information that could affect the decision to employ or assign a task as a respiratory care practitioner.~~

~~(B) A practitioner shall not make any false or misleading claims about the efficacy of any services or methods of treatment.~~

~~(C) A practitioner shall not extend his or her practice beyond his or her competence and authority vested in him or her by a physician or this Act.~~

~~(D) A practitioner shall not permit the use of his or her name for the purpose of documenting that respiratory care services have been rendered unless that practitioner has provided those services.~~

~~(E) A practitioner shall not promote or endorse products, services, or equipment in a manner that is false and misleading.~~

~~(F) A practitioner shall maintain knowledge and skills for continuing professional competence. A practitioner shall participate in continuing education programs and activities as set out in §123.10 of this title (relating to Continuing Education Requirements).~~

~~(G) A practitioner shall not use alcohol or any drugs in any manner which detrimentally affects the provision of respiratory care.~~

~~(H) A practitioner shall have the responsibility of reporting alleged misrepresentations or violations of the Act or these sections to the department.~~

~~(I) The practitioner shall be responsible for competent and efficient performance of his assigned duties and shall report to the department incompetence and illegal or unethical conduct of members of the profession.~~

~~(J) A practitioner shall not retaliate against any person who reported in good faith to the department alleged incompetence; illegal, unethical, or negligent conduct of any practitioner; or alleged misrepresentation or any violation(s) of the Act or these sections.~~

~~(K) A practitioner shall keep his or her file updated by notifying the department of changes in preferred mailing address and telephone number.~~

~~(L) A practitioner shall not make any false, misleading, or deceptive claims in any advertisement, announcement, presentation, or in competitive bidding.~~

~~(M) A practitioner shall conform to medically accepted principles and standards of respiratory care which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the American Association for Respiratory Care, the National Board for Respiratory Care, the Texas Society for Respiratory Therapy, the department, and other professional or governmental bodies.~~

~~(N) A practitioner shall not delegate respiratory care functions or responsibilities to a person who lacks the ability or knowledge to perform the function or responsibility. A practitioner providing respiratory care services may be assisted by an aide or orderly. Aides, orderlies and other unlicensed assistive personnel may not perform respiratory care procedures.~~

~~(O) A practitioner shall not leave an assignment without being properly relieved by appropriate personnel.~~

~~(P) The department shall consider the failure of a practitioner to respond to a request for information or other correspondence relating to the certification process or these sections as unprofessional conduct and grounds for disciplinary proceedings in accordance with §123.14 of this title (relating to Violations, Complaints and Subsequent Actions).~~

~~(Q) A practitioner shall not employ another person in the capacity of a respiratory care practitioner who does not hold a certificate or permit to practice respiratory care.~~

~~(R) A respiratory care practitioner shall not falsify or make grossly incorrect, grossly inconsistent, or unintelligible entries in any patient's, hospital or other record.~~

~~(S) A respiratory care practitioner shall not exhibit a pattern of substandard care in the performance of duties related to the practice of respiratory care.~~

~~(T) A respiratory care practitioner shall not change the prescription of a physician or falsify verbal or written orders for treatment diagnostic regimen received, whether or not that action resulted in actual patient harm.~~

~~(2) Relationships with patients/clients.~~

~~(A) A practitioner shall make known to a prospective patient the important aspects of the professional relationship, including fees and arrangement for payment which might affect the decision to enter into a contractual relationship.~~

~~(B) A practitioner shall not receive or give a commission or rebate or any other form of direct or indirect remuneration or benefit for the referral of patients/clients for professional services.~~

~~(C) A practitioner shall disclose to patients or clients any interest in commercial enterprises which the practitioner promotes through patients or clients for the purpose of direct or indirect personal gain or profit.~~

~~(D) A practitioner shall not accept gratuities for preferential consideration of the patient. The practitioner shall guard against conflicts of interest.~~

~~(E) A practitioner shall take reasonable action to inform a patient's/client's physician and any appropriate allied health care provider in cases where a patient's/client's cardiorespiratory status indicates a change in medical status.~~

~~(F) A practitioner shall not violate any provision of any federal or state statute relating to confidentiality of patient/client communication and/or records. All inquiries shall be referred to the physician in charge of the patient's medical care.~~

~~(G) A practitioner shall not engage in any activities that seek to meet the practitioner's personal needs at the expense or detriment of a patient/client.~~

~~(H) A practitioner shall practice respiratory care only under the direction of a qualified medical director or other physician licensed by the Texas State Board of Medical Examiners. For the purpose of this section direction shall mean:~~

~~(i) assuring that established policies are carried out;~~

~~(ii) monitoring and evaluating the quality, safety, and appropriateness of respiratory care services and taking action based on findings; and~~

~~(iii) providing consultation whenever required, particularly on patients receiving continuous ventilatory or oxygenation support.~~

~~(I) A practitioner or temporary permit holder shall not engage in sexual conduct with a client, patient, co-worker, employee, staff member, contract employee, practitioner or temporary permit holder on the premises of any job establishment. For the purposes of this section, sexual conduct includes:~~

~~(i) any touching of any part of the genitalia or anus;~~

~~(ii) any touching of the breasts of a female except as necessary for the performance of a respiratory care procedure as defined in §123.2 of this title (relating to Definitions);~~

~~(iii) any offer or agreement to engage in any activity described in this subsection;~~

~~(iv) kissing without the consent of both persons;~~

~~(v) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotion of prostitution as described in the Texas Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in any such activities;~~

~~(vi) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual; or~~

~~(vii) inappropriate sexual comments, including making sexual comments about a person's body.~~

~~(J) A practitioner shall not allow any individual, including a client, temporary permit holder, another practitioner, employee, or one's self to engage in sexual contact on the premises of any job establishment.~~

~~(3) Billing information required; prohibited practice.~~

~~(A) On the written request of a client, a client's guardian, or a client's parent, if the client is a minor, a practitioner shall provide, in plain language, a written explanation of the charges for respiratory care services previously made on a bill or a statement for the client. This requirement applies even if the charges are to be paid by a third party.~~

~~(B) A practitioner may not persistently or flagrantly overcharge or overtreat a client.~~

~~(4) Sanctions. A practitioner shall be subject to disciplinary action by the board if the practitioner is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Crime Victims compensation Act, Code of Criminal Procedure, Article 56.31 et seq.~~

~~(5) Disclosure. A practitioner shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department by providing notification:~~

~~(A) on each written contract for services of a practitioner;~~

~~(B) on a sign prominently displayed in the primary place of business of each practitioner; or~~

~~(C) in a bill for service provided by a practitioner to a client or third party.~~

~~(6) Unlawful false, misleading, or deceptive advertising.~~

~~(A) A practitioner shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.~~

~~(B) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that;~~

~~(i) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;~~

~~(ii) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;~~

~~(iii) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;~~

~~(iv) contains a testimonial;~~

~~(v) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;~~

~~(vi) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;~~

~~(vii) advertises or represents that the benefits of a health benefit plan will be accepted full payment when deductibles or copayments are required;~~

~~(viii) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or~~

~~(ix) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional. A "health care professional" includes a certified respiratory care practitioner, temporary permitted respiratory care practitioner, or any other person licensed, certified, or registered by the state in a health related profession.~~

~~§123.13 Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners~~

~~(a) Criminal convictions which directly relate to the profession of respiratory care.~~

~~(1) The department may suspend or revoke any existing certificate or permit, disqualify a person from receiving any certificate or permit, or deny to a person the opportunity to be examined for a certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a respiratory care practitioner.~~

~~(2) In considering whether a criminal conviction directly relates to the occupation of a respiratory care practitioner, the department shall consider:~~

~~(A) the nature and seriousness of the crime;~~

~~(B) the relationship of the crime to the purposes for certification as a respiratory care practitioner. The following felonies and misdemeanors relate to any certificate or permit of a respiratory care practitioner because these criminal offenses indicate an inability or a tendency to be unable to perform as a respiratory care practitioner:~~

~~(i) the misdemeanor of knowingly or intentionally acting as a respiratory care practitioner without any certificate or permit under the Texas Occupations Code, §604.352;~~

~~(ii) any misdemeanor and/or felony offense defined as a crime of moral turpitude by statute or common law;~~

~~(iii) a misdemeanor or felony offense under various titles of the Texas Penal Code:~~

~~(I) offenses against the person (Title 5);~~

~~(II) offenses against property (Title 7);~~

~~(III) offenses against public order and decency (Title 9);~~

~~(IV) offenses against public health, safety, and morals (Title 10); and~~

~~(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4);~~

~~(C) the extent to which any certificate or permit might offer an opportunity to engage in further criminal history activity of the same type as that in which the person previously has been involved; and~~

~~(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of a respiratory care practitioner. In making this determination, the department will apply the criteria outlined in Texas Occupations Code, Chapter 53 the legal authority for the provisions of this section.~~

~~(3) The misdemeanors and felonies listed in paragraph (2)(B)(i)–(iii) of this subsection are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the Act and these sections.~~

~~(b) Procedures for revoking, suspending, suspending on an emergency basis, or denying a certificate or temporary permit to persons with criminal backgrounds.~~

~~(1) The department shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate or temporary permit after hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code, Texas Occupations Code, Chapter 53.~~

~~(2) If the department denies, suspends, suspends on an emergency basis, or revokes a certificate or temporary permit under these sections after hearing, the department shall give the person written notice:~~

~~(A) of the reasons for the decision;~~

~~(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas for review of the evidence presented to the department and its decision;~~

~~(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable; and~~

~~(D) of the earliest date the person may appeal.~~

~~§123.14 Violations, Complaints, and Subsequent Actions~~

~~(a) General. This section establishes standards relating to:~~

~~(1) offenses and prohibited actions under Texas Occupations Code, §604.102 which result in the penalty of a Class B misdemeanor;~~

~~(2) violations which result in disciplinary actions;~~

~~(3) procedures for filing complaints alleging violations and prohibited actions under the Act or rules; and~~

~~(4) the department's investigation of complaints and the department's and commissioner's actions, on behalf of the department, when offenses and prohibited actions and violations have occurred.~~

~~(b) Types of offenses and prohibited actions. A person is guilty of a Class B misdemeanor if:~~

~~(1) a person intentionally or knowingly represents oneself as able to practice respiratory care or represents oneself as a respiratory care practitioner unless the person holds a certificate or permit issued under the Act;~~

~~(2) a person who is not permitted or certified under the Act as a respiratory care practitioner or whose temporary permit or certificate has been suspended or revoked uses in connection with his or her practice the words "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," "respiratory therapy technician," or the letters "RCP" or any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner. Such a person may not in any way, either orally, in writing, in print, or by sign, directly or by implication, represent himself or herself as a respiratory care practitioner;~~

~~(3) a person practices respiratory care other than under the direction of a qualified medical director or other physician licensed by the Board of Medical Examiners (BME);~~

~~(4) a person sells, fraudulently obtains, or furnishes any respiratory care diploma, certificate, permit, or record;~~

~~(5) a person practices respiratory care under a respiratory care diploma, certificate, permit, or record illegally or fraudulently obtained or issued;~~

~~(6) a person practices respiratory care during the time that person's certificate or permit is suspended, revoked, or expired;~~

~~(7) a person conducts a formal respiratory care education program for the preparation of respiratory care personnel unless the program is approved by the department;~~

~~(8) a person employs another person who does not hold a certificate or permit to practice respiratory care in the capacity of a respiratory care practitioner;~~

~~(9) a person who holds a certificate or permit to practice respiratory care practices medicine, as defined by the Medical Practice Act, Texas Occupations Code, Chapter 157 without holding an appropriate license issued by the BME; or~~

~~(10) a person otherwise violates Texas Occupations Code, §§604.002, 604.102, 604.351, or 604.352.~~

~~(c) Filing of complaints.~~

~~(1) Anyone may complain to the department alleging that a person has committed an offense or action prohibited under the Act or that a certificate or permit holder has violated the Act or a this chapter.~~

~~(2) A person wishing to complain about an offense, prohibited action, or alleged violation against a practitioner or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department. (Mailing address: 1100 West 49th Street, Austin, Texas 78756 3183, Phone: (512) 834 6632.~~

~~(3) Upon receipt of a complaint the department or the department's designee shall send an acknowledgment letter to the complainant and the department's complaint form which the complainant must complete and return to the department or the department's designee before action can be taken. If the complaint is made by a visit to the department, the form may be given to the complainant at that time; however, it must be completed and returned to the department or the department's designee before further action may be taken. Copies of the complaint form may be obtained from the Department of State Health Services.~~

~~(4) Anonymous complaints shall be investigated by the department, provided sufficient information is submitted.~~

~~(d) Investigation of complaints.~~

~~(1) The department is responsible for handling complaints.~~

~~(2) The department shall make the initial investigation and report the findings to the manager of Professional Licensing and Certification Unit or his or her designee, or the manager or designee of its successor.~~

~~(e) The department's action.~~

~~(1) The department shall take one or more actions described in this section.~~

~~(2) The department may determine that an allegation is groundless and dismiss the complaint.~~

~~(3) The department may determine that a practitioner has violated the Act or a department rule and may institute disciplinary action in accordance with subsection (f) of this section.~~

~~(4) Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the advisory committee, the complainant, and the accused party.~~

~~(f) Disciplinary actions.~~

~~(1) The department may reprimand a practitioner or initiate action to deny, suspend, suspend on an emergency basis, probate, not renew, or revoke a certificate or a temporary permit.~~

~~(2) The department may take disciplinary action if it determines that a person who holds a certificate or temporary permit is in violation of §123.12 of this title (relating to Professional and Ethical Standards).~~

~~(3) The department may also take action under §123.13 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners).~~

~~(4) The department shall take into consideration the following factors in determining the appropriate action to be imposed in each case:~~

~~(A) the severity of the offense;~~

~~(B) the danger to the public;~~

~~(C) the number of repetitions of offenses;~~

~~(D) the length of time since the date of the violation;~~

~~(E) the number and type of previous disciplinary cases filed against the respiratory care practitioner (RCP);~~

~~(F) the length of time the RCP has performed respiratory care procedures;~~

~~(G) the actual damage, physical or otherwise, to the patient, if applicable;~~

~~(H) the deterrent effect of the penalty imposed;~~

~~(I) the effect of the penalty upon the livelihood of the RCP;~~

~~(J) any efforts for rehabilitation; and~~

~~(K) any other mitigating or aggravating circumstances.~~

~~(5) The department may take action for violation of the Act or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department.~~

~~(g) Formal hearing.~~

~~(1) The formal hearing shall be conducted according to the Administrative Procedure Act (APA), Texas Government Code Chapter 2001.~~

~~(2) Prior to institution of formal proceedings to revoke or suspend a permit or certificate, the department shall give written notice to the permit or certificate holder by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the person shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.~~

~~(3) To initiate formal hearing procedures, the department shall give the practitioner written notice for the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the practitioner must give written notice to the department that he or she either waives the hearing or wants the hearing. Receipt of the notice is deemed to occur on the 10th day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt.~~

~~(A) If the practitioner fails to request a hearing, the practitioner is deemed to have waived the hearing. If the hearing has been waived, the department shall recommend to the commissioner that the proposed action be taken.~~

~~(B) If the practitioner requests a hearing within 10 days after receiving the notice of opportunity for hearing, APA, Texas Government Code §2001.~~

~~(h) Final action.~~

~~(1) If the department suspends a certificate or permit, the suspension remains in effect until the department determines that the reasons for suspension no longer exist. The respiratory practitioner whose certificate or permit has been suspended is responsible for securing and providing to the department such evidence, as may be required by the department that the reasons for the suspension no longer exist. The department shall investigate prior to making a determination.~~

~~(2) During the time of suspension, the former certificate or permit holder shall return the certificate or permit and identification card(s) to the department.~~

~~(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in these sections; however, the department may not renew the certificate until the department determines that the reasons for suspension have been removed.~~

~~(4) A person whose application is denied or whose temporary permit or certificate is revoked or surrendered is ineligible for a temporary permit or certificate under this Act for one year from the date of the denial or revocation or surrender.~~

~~(5) Upon revocation or nonrenewal, the former certificate or permit holder shall return the certificate or permit and any identification card(s) to the department.~~

~~§123.15 Informal Disposition~~

~~(a) Informal disposition of any complaint or contested case involving a temporary permit or certificate holder or an applicant for licensure may be made through an informal settlement conference held to determine whether an agreed settlement order may be approved.~~

~~(b) If the department determines that the public interest might be served by attempting to resolve a complaint or contested case by an agreed order in lieu of a formal hearing, the provisions of this section shall apply. A temporary permit or certificate holder, or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the department.~~

~~(c) An informal conference shall be voluntary. It shall not be a prerequisite to a formal hearing.~~

~~(d) The department shall decide upon the time, date, and place of the settlement conference and provide written notice to the temporary permit or certificate holder or applicant of the same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested to the last known address of the temporary permit or certificate holder or applicant or by personal delivery. The ten days shall begin on the date of mailing or personal delivery. The temporary permit or certificate holder or applicant may waive the ten day notice requirement.~~

~~(1) The notice shall inform the temporary permit or certificate holder or applicant of the following:~~

~~(A) the nature of the alleged violation;~~

~~(B) that the temporary permit or certificate holder or applicant may be represented by legal counsel;~~

~~(C) that the temporary permit or certificate holder or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;~~

~~(D) that the temporary permit or certificate holder or applicant's attendance and participation is voluntary;~~

~~(E) that the complainant may be present; and~~

~~(F) that the settlement conference shall be canceled if the temporary permit or certificate holder or applicant notifies the program administrator that he or she or his or her legal counsel will not attend.~~

~~(2) A copy of this section concerning informal disposition shall be enclosed with the notice of the settlement conference.~~

~~(e) The notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is canceled.~~

~~(f) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.~~

~~(g) The temporary permit or certificate holder or applicant's attorney, and department staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.~~

~~(h) The program's legal counsel will be requested to attend each settlement conference. The department may call upon the program's attorney at any time for assistance in the settlement conference.~~

~~(i) The respondent shall be afforded the opportunity to make statements that are material and relevant.~~

~~(j) Access to the investigative file may be prohibited or limited in accordance with the APA, Texas Government Code, Chapter 552.~~

~~(k) At the discretion of the program administrator, a tape recording may be made of none or all of the settlement conference.~~

~~(l) The complainant shall not be considered a party in the settlement conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.~~

~~(m) At the conclusion of the settlement conference, the department may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. They may also conclude that the department lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, or refer the matter for further investigation.~~

~~(n) The temporary permit or certificate holder or applicant may either accept or reject at the conference the settlement recommendations. If the recommendations are accepted, an agreed settlement order shall be prepared by the program staff and approved by the program's legal counsel and forwarded to the temporary permit or certificate holder or applicant. The order shall contain agreed findings of fact and conclusions of law. The temporary permit or certificate holder or applicant shall execute the order and return the signed order to the department office within ten days of his or her receipt of the order. If the temporary permit or certificate holder or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.~~

~~(o) If the temporary permit or certificate holder or applicant rejects the proposed settlement, the matter shall be referred to the department for appropriate action.~~

~~(p) If the temporary permit or certificate holder or applicant signs and accepts the recommendations, the agreed order shall be submitted to the department for its approval.~~

~~(q) The department shall enter an agreed order approving the accepted settlement recommendations. The department may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the temporary permit or certificate holder or applicant agrees to other terms proposed by the department.~~

~~(r) If the department does not approve a proposed agreed order, the temporary permit or certificate holder or applicant and the complainant shall be so informed.~~

~~(s) A temporary permit or certificate holder or applicant's opportunity for an informal conference under this section shall satisfy the requirement of the APA, §2001.054(c).~~

~~(1) If the department determines that an informal conference shall not be held, the department shall give written notice to the temporary permit or certificate holder or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the temporary permit or certificate holder or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirements of the Act and this chapter.~~

~~(2) The complainant shall be sent a copy of the written notice described in paragraph (1) of this subsection. The complainant shall be informed that he or she may also submit a written statement to the department.~~

~~§123.16 Suspension of License Relating to Child Support and Child Custody~~

~~(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if the Respiratory Care Practitioner Certification has issued a certificate to the person named in the order. If a license has been issued the department shall:~~

~~(1) record the suspension of the license in the departments records;~~

~~(2) report the suspension as appropriate; and~~

~~(3) demand surrender of the suspended license.~~

~~(b) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The department will provide notice as appropriate to the licensee or to others concerned with the license.~~

~~(c) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Texas Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.~~

~~(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.~~

~~(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the standard renewal procedures in the Respiratory Care Practitioner Certification Act, Texas Occupations Code, §604.153, and §604.157, concerning the issuance of renewal certificates. However, the license will not be renewed until the requirements of subsections (g) and (h) of this section are met.~~

~~(f) An individual who continues to use the titles "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," "respiratory therapy technician," or the letters "RCP" or any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the department.~~

~~(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the department shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.~~

~~(h) The individual must pay a reinstatement fee as referred in §123.4 of this title (relating to Fees) prior to issuance of the license under subsection (g) of this section.~~