

**NORTH CAROLINA RESPIRATORY CARE BOARD
RALEIGH, NORTH CAROLINA**

**IN RE: REQUEST FOR DECLARATORY)
RULING REGARDING CARE PROVIDED BY) **DECLARATORY RULING**
NURSING ASSISTANTS)**

I, Joseph Coyle, as Chair of the North Carolina Respiratory Care Board (the “Board”), and based on a resolution by the Board of this date, duly adopted pursuant to N.C. Gen. Stat. § 150B-4, do hereby issue this declaratory ruling. This declaratory ruling will interpret the applicability of N.C. Gen. Stat. § 90-664 (1) in regard to the activities of individuals licensed by the North Carolina Board of Nursing at the Nursing Assistant II level (“NA II”). Ms. Daniel’s request is focused on the activities of NA II’s in hospital facilities licensed by the North Carolina Department of Health and Human Services under N.C. Gen. Stat. § 131E-75 et seq.

Ms. Penny Daniel of Moses Cone Health System has requested this ruling and provided the facts on which it is based. For the reasons set out below, the Board concludes that NA II’s who perform some of the tasks that are the subject of the declaratory ruling request, are not exempt from licensure by this Board, based on the information provided and within the limitations described. However, under some circumstances described in more detail in the Conclusion of this Declaratory Ruling, NA II’s may perform some of these functions without being licensed by this Board.

The basis for the Board’s conclusion is set forth below in the Analysis section of this declaratory ruling. This ruling is binding upon the Board so long as the facts that the Board deems to be material are accurately stated, but the ruling only pertains to this request. The Board will continue to be open to input from the North Carolina Board of Nursing and other professional licensing boards and organizations on the issues presented in this declaratory ruling. The Board reserves the right, prospectively, to change the conclusion that is contained in this ruling.

FACTUAL BASIS FOR THE RULING

Based on information submitted by Ms. Daniel, the NA II’s who provide services work on the premises of Moses Cone Health System, a licensed facility. Their services are focused upon the care of patients in this facility. Ms. Daniel has indicated that the NA II’s who are the focus of this ruling are credentialed as NA II’s by the North Carolina Board of Nursing. Ms. Daniel has indicated that the NA II’s have had additional training at Moses Cone Staff Education Department. Ms. Daniel has stated that NA II’s at Moses Cone Health System perform the following Respiratory Care Functions:

- Deliver aerosolized medications in small volume nebulizers
- Deliver Metered Dose Inhaler treatments
- Chest Physiotherapy
- Incentive Spirometry
- Cough and deep breathing exercises

- Peak flow meter measurements
- Insert Oral airways

This constitutes the complete and exclusive statement of facts upon which this ruling is based.

Ms. Daniel has asked the Board to determine if NA II's may administer and monitor the Respiratory Care procedures enumerated without being licensed by this Board.

ANALYSIS

The provisions to which Ms. Daniel's declaratory ruling is addressed are clear and explicit. Those provisions of N.C. Gen. Stat. § 90-664 (1) essentially exempt individuals identified from the requirements of the North Carolina Respiratory Care Practice Act. In order to come within the exemption granted under this provision, a person must meet each of several different criteria:

- The person must be "registered, certified, credentialed, or licensed to engage in another profession or occupation in this State, or must be working under the supervision of such a person";
- The person must be performing work incidental to or within the practice of that profession or occupation; and
- The person may not represent himself or herself as a respiratory care practitioner.

The Board has reviewed and analyzed these requirements on several other occasions, in responding to other declaratory ruling requests. The first point enumerated above addresses whether an individual is engaged in a profession or occupation that is sufficiently well-defined by virtue of some registration, certification, credentialing, or licensing. The Board notes that the General Assembly chose to recognize several different ways in which such a distinct profession or occupation could be defined. It did not require that the distinct profession or occupation should itself also be subject to professional licensure under the North Carolina General Statutes. The additional references to registration, certification, or credentialing clearly imply a legislative intent to exempt more activities than those for which there is a licensing requirement in the North Carolina General Statutes. Thus, in analyzing this part of the exemption provision in N.C. Gen. Stat. § 90-664 (1) in other declaratory rulings, the Board has not required the profession or occupation in question demonstrate that it is subject to State licensing in order to be exempt.

As we understand it from the information provided by Ms. Daniel, the procedures performed by NA II's at Moses Cone Health Systems are not included in the recognized responsibilities for NA II's. The North Carolina Board of Nursing has published a Nurse Assistant II Tasks List upon which this conclusion may be based. We have assumed for the purposes of this ruling that none of the NA II's in question hold any other licensure or credential, which might be relevant to our review of this issue.

Under the circumstances described, and based on the information provided, the Board finds that an NA II who administers the procedures enumerated does not meet the three

requirements to qualify for the statutory exemption from licensure under N.C. Gen. Stat. § 90-664 (1), or the parallel provision in the Board's rules found at 21 NCAC 61 .0202 (4).

In addition, based on the information presently available, the Board had determined that the delivery of aerosolized medications in any device constitutes the Practice of Respiratory Care and should only be carried out by a person who is appropriately licensed or credentialed to do so. Thus, the Board does not see any circumstance under which any NA II could be permitted to administer aerosolized medications in any device without being licensed as a Respiratory Care Practitioner.

CONCLUSION

Based on the foregoing analysis, the Board concludes that the delivery of aerosolized medications in any device constitutes the Practice of Respiratory Care and that any person who does so in North Carolina must be licensed by the Board, unless the individual personally qualifies for an exemption under N.C. Gen. Stat. § 90-664 (1).

With respect to the other procedures enumerated in Ms. Daniel's request, the Board finds that since NA II's are not specifically educated to perform these procedures and these procedures are not currently approved by the North Carolina Nursing Board for NA II's, the Respiratory Care Board does not condone their performance by NA II's at this time.

This the 3rd day of July 2003.

Joseph Coyle, MD
Chair
North Carolina Respiratory Care Board

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Declaratory Ruling on the following persons by depositing the copy by certified mail, return receipt requested in an official depository under the exclusive care and custody of the United States Postal Service in the properly addressed postage-paid wrapper.

Ms. Penny Daniel, RRT, RCP
Respiratory Care Department
Moses Cone Health System
1200 N. Elm Street
Greensboro, NC 27401

This the ____ day of July 2003.

Floyd E. Boyer, RRT, RCP
Executive Director
North Carolina Respiratory Care Board