

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY RUTHERFORD HOSPITAL )       **DECLARATORY RULING****

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 N.C. Gen. Stat. § 90-664 (1) in regard to the activities of Medical Technologists, Medical Laboratory Technicians and Phlebotomy Technicians in hospital-based Medical Laboratories.

For the reasons set out below, the Board concludes that N.C. Gen. Stat. § 90-664 (1) does exempt Medical Technologists, Medical Laboratory Technicians and Phlebotomy Technicians in hospital-based Medical Laboratories, as well as trainees engaged in a recognized and organized course of study through those departments, from the requirement of being licensed as Respiratory Care Practitioners, based on the information provided and within the limitations described. The basis for the Board’s conclusion is set forth below in the Analysis section of this declaratory ruling.

Lynn C. Reinhardt, MT (ASCP), has requested this ruling on behalf of Rutherford Hospital, Inc. and he has provided the facts on which this ruling is based. 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 also reserves the right, prospectively, to change the conclusions which are contained in this ruling.

**FACTUAL BASIS FOR THE RULING**

Based on information submitted by Ms. Reinhardt, the Medical Technologists, Medical Laboratory Technicians and Phlebotomy Technicians who provide services at Rutherford Hospital work exclusively on the premises of the hospital. Their services are focused upon collecting and processing biological specimens for testing. While performing these services, Medical Technologists, Medical Laboratory Technicians and Phlebotomy Technicians work based on specific physician orders from licensed physicians. At all times the Medical Technologists, Medical Laboratory Technicians and Phlebotomy Technicians are under the general supervision of a licensed physician who serves as Medical Director of the Department, and who generally is on the premises of the hospital during regular business hours.

Medical Technologists and Medical Laboratory Technicians at Rutherford Hospital perform the following Respiratory Care practice functions:

- Arterial Punctures
- Arterial Blood gas and Co-oximetry analysis

Phlebotomy Technicians at Rutherford Hospital perform the following Respiratory Care practice functions:

- Arterial Punctures

Each of these tasks is performed only by a credentialed Medical Technologist, Medical Laboratory Technicians and Phlebotomy Technicians, or by a trainee under the circumstances described below.

Medical Technologists, Medical Laboratory Technicians and Phlebotomy Technicians are credentialed by The American Society for Clinical Pathology (ASCP). Based upon national job analysis data about the tasks performed by Medical Technologists, Medical Laboratory Technicians and Phlebotomy Technicians, ASCP compiles a registry examination based upon skills which currently includes test questions specifically designed to measure competent job performance in each of the above-listed practice functions.

In order to be credentialed as a Medical Technologist, Medical Laboratory Technician or a Phlebotomy Technician, a candidate must achieve a passing score on the ASCP exam; and successful candidates receive a certificate issued by the ASCP, confirming their successful completion of the examination. Persons who have successfully completed the Certification Exam hold the credential of a Medical Technologist [MT(ASCP)], a Medical Laboratory Technician (MLT) or a Phlebotomy Technician.

Trainees who seek to become a Medical Technologist, Medical Laboratory Technician or Phlebotomy Technician follow a defined course of study covering the skills and knowledge needed to pass the Examination during their period of training. While training, they function under the supervision of a credentialed Medical Technologist

Under no circumstances would Medical Technologists, Medical Laboratory Technicians, Phlebotomy Technicians or trainees, ever represent themselves as respiratory care practitioners, unless they are licensed by this Board.

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

### **ANALYSIS**

The provisions to which Ms. Reinhardt'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 each of these requirements. The first 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), the Board may not require that 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. Reinhardt, each of the enumerated functions performed by Medical Technologists, Medical Laboratory Technicians and Phlebotomy Technicians at Rutherford Hospital are among the recognized responsibilities that are addressed and covered by the Certification Examination. Thus, each of these tasks falls within the scope of the profession or occupation for which a Medical Technologist, Medical Laboratory Technician or a Phlebotomy Technician is certified and credentialed by virtue of taking the Exam. A person who holds any of these credentials has successfully completed the Examination and has therefore been certified as competent and credentialed to perform each of the enumerated services listed. Viewed in this light, we conclude that a person who has passed the Registry Exam for Medical Technologist, Medical Laboratory Technician or Phlebotomy Technician that is administered by the ASCP and has been credentialed has demonstrated that he or he is credentialed to carry on a distinct occupation, within the meaning of N.C. Gen. Stat. § 90-664 (1).

Under the circumstances described in the request for the Declaratory Ruling, all of the activities of the Medical Technologist, Medical Laboratory Technician or Phlebotomy Technician or trainee would occur in the clinical environment of a hospital, with the ongoing direction provided by a qualified Medical Director.

In addition, since each of the practice functions identified in the Declaratory Ruling request relates directly to areas covered by the ASCP Certification Exam, we also have concluded that the performance of these functions by a credentialed Medical Technologist, Medical Laboratory Technician or a Phlebotomy Technician is integral to the practice of Medical Laboratory Technology.

By the same token, a trainee who is seeking to become a Medical Technologist, Medical Laboratory Technician or Phlebotomy Technician, who performs tasks which are part of a defined educational track that is recognized as leading to eligibility to take the Certification Exam, and who works under the direct supervision of a credentialed Medical Technologist also is within the scope of the statutory exemption.

Finally, Ms. Reinhardt has also indicated that under no circumstances would any Medical Technologist, Medical Laboratory Technician or a Phlebotomy Technician or trainee who is not licensed as a respiratory care practitioner, represent themselves as a respiratory care practitioner.

Therefore, under the circumstances based on the information provided, the Board finds that any Medical Technologist, Medical Laboratory Technician or a Phlebotomy Technician who holds a credential from ASCP and performs only the enumerated functions, without any representation of being a Respiratory Care Practitioner, has met each of the three requirements outlined in the statutory exemption under N.C. Gen. Stat. § 90-664 (1). Also, any Medical Technologist, Medical Laboratory Technician or Phlebotomy Technician trainee who is following a recognized course of study leading to eligibility for the Certification Exam and is working at all times under the direct supervision of a credentialed Medical Technologist also has met each of the three requirements outlined in the statutory exemption under N.C. Gen. Stat. § 90-664 (1).

### **CONCLUSION**

For the foregoing reasons, and within the specific parameters of a hospital-based Medical Laboratory, the North Carolina Respiratory Care Board concludes that pursuant to the current provisions of N.C. Gen. Stat. § 90-664 (1), in performing the functions enumerated above, and so long as they do not represent themselves as respiratory care practitioners, neither Medical Technologists, Medical Laboratory Technicians and Phlebotomy Technicians who have passed the Certification Examination, nor Medical Technologist, Medical Laboratory Technician or Phlebotomy Technician trainees who are engaged in a course of study as described above, need to be licensed as Respiratory Care Practitioners.

This the 10th day of September, 2002

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Joseph Coyle, MD  
Chair  
North Carolina Respiratory Care Board