

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY ASHE MEMORIAL 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 Nuclear Medicine Technologists in hospital-based Nuclear or Diagnostic Imaging Departments.

For the reasons set out below, the Board concludes that N.C. Gen. Stat. § 90-664 (1) does exempt Nuclear Medicine Technologists in hospital-based Nuclear or Diagnostic Imaging Departments, and 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.

David Barlow, CRT, RCP has requested this ruling on behalf of Ashe Memorial Hospital 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 Mr. Barlow, the Nuclear Medicine Technologists who provide services at Ashe Memorial Hospital work exclusively on the premises of the hospital. Their services are focused upon radiopharmaceutical imaging. While performing these services, Nuclear Medicine Technologists work based on specific physician orders from licensed physicians. At all times the Nuclear Medicine Technologists are under the general supervision of a licensed physician who serves as Medical Director of the Imaging Department, and who generally is on the premises of the hospital during regular business hours.

Nuclear Medicine Technologists at Ashe Memorial Hospital perform the following Respiratory Care practice functions:

- Electrocardiograph Testing (EKG)
- Cardiac Stress Testing
- Monitoring Oxygen Delivery Devices

Each of these tasks is performed only by a credentialed Nuclear Medicine Technologist, or by a trainee under the circumstances described below.

Nuclear Medicine Technologists are credentialed by The Nuclear Medicine Technology Certification Board (NMTCB). Based upon national job analysis data about the tasks performed by Nuclear Medicine Technologists, NMTCB compiles a Certification 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 Nuclear Medicine Technologist, a candidate must achieve a passing score on the NMTCB exam; and successful candidates receive a certificate issued by the NMTCB, confirming their successful completion of the examination. Persons who have successfully completed the Certification Exam hold the credential of Certified Nuclear Medicine Technologist (CNMT).

Nuclear Medicine Technologist trainees 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 Certified Nuclear Medicine Technologist.

Under no circumstances do any of these personnel, Nuclear Medicine Technologists 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 Mr. Barlow'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 Mr. Barlow, each of the enumerated functions performed by Nuclear Medicine Technologists at Ashe Memorial 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 Nuclear Medicine Technologist is certified and credentialed by virtue of taking the Exam. A person who holds the CNMT credential 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 Certification Exam for Nuclear Medicine Technologist that is administered by the NMTCB and has been credentialed has demonstrated that he or she 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 Nuclear Medicine Technologist or trainee would occur in the clinical environment of a hospital Nuclear or Diagnostic Imaging Department, with the ongoing direction provided by a qualified Medical Director, and in an area established for the provision of these services.

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

By the same token, a trainee Nuclear Medicine Technologist, 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 Nuclear Medicine Technologist, also is within the scope of the statutory exemption.

Finally, Mr. Barlow has also indicated that under no circumstances would any Nuclear Medicine Technologist 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 Nuclear Medicine Technologist who holds the CNMT credential 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 Nuclear Medicine Technologist 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 Nuclear Medicine Technologist who holds the CNMT credential, 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 Nuclear or Diagnostic Imaging Department, 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 Nuclear Medicine Technologists who have passed the Certification Examination, nor Nuclear Medicine Technologist 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

---

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.

David Barlow, CRT, RCP  
Manager  
Cardiopulmonary Department  
Ashe Memorial Hospital  
200 Hospital Avenue  
Jefferson, NC 28640

This 30th day of September, 2002.

---

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