

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

**IN RE: REQUEST FOR DECLARATORY)
RULING REGARDING CARE PROVIDED BY) **DECLARATORY RULING**
PERSONAL CARE AIDES IN ADULT CARE)
FACILITIES**

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 Personal Care Aides in Adult Care Home Facilities that are licensed by the North Carolina Department of Health and Human Services under N.C. Gen. Stat. § 131D-2 et seq.

Mr. Doug Barrick of The Adult Care Licensure Section of the Division of Facility Services (DFS) has requested this ruling and provided the facts on which it is based. For the reasons set out below, the Board concludes that Personal Care Aides who perform 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.

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 also reserves the right, prospectively, to change the conclusion that is contained in this ruling.

FACTUAL BASIS FOR THE RULING

Based on information submitted by Mr. Barrick, the Personal Care Aides who provide services in DFS licensed Adult Care Home facilities work only on the premises of a licensed facility. Their services are focused upon the care of residents of those facilities. Mr. Barrick has indicated that the Personal Care Aides who are the focus of this ruling are non-credentialed individuals who have received 45 hours of personal care training within 6 months of their hire date. For the purposes of this ruling, we have assumed that none of the Personal Care Aides have received any other training or education relevant to tasks that they perform in the facility, and which are the subject of this declaratory ruling.

Mr. Barrick has stated that Personal Care Aides at licensed Adult Care Facilities perform the following functions, which are outlined in 10 NCAC 42C .3703:

- Chest physiotherapy or postural drainage
- Inhalation medication by machine
- Oxygen administration and monitoring
- Care of established Tracheostomy

A Registered Nurse or Licensed RCP is required to validate the Personal Care Aides’ competence to perform the items enumerated in 10 NCAC 42C .3703.

Mr. Barrick has asked the Board to determine if Personal Care Aides may also administer and monitor the following Respiratory Care Equipment without being licensed by this Board:

- Continuous Positive Airway Pressure (CPAP)
- BiLevel Positive Airway Pressure Equipment (BiPAP)

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

ANALYSIS

The provisions to which Mr. Barrick'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 Mr. Barrick, the additional tasks requested are not included in the recognized responsibilities for Personal Care Aides listed in 10 NCAC 42C .3703 in the rules governing Adult Care Home facilities. Also, Personal Care Aides are not credentialed by the state or other nationally known credentialing body; and we have assumed for the purposes of this ruling that none of the aides in question holds any other licensure or credential, that might be relevant to our review of this issue. We also have assumed that none of the aides in question has completed, or is enrolled in, any other program or training regimen that is relevant to our review of these issues.

Under the circumstances described, and based on the information provided, the Board finds that a Personal Care Aide who administers Continuous Positive Airway Pressure (CPAP), or BiLevel Positive Airway Pressure Equipment (BiPAP), 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). Since we have received no information addressing the impact of any other qualifications of particular aides that may bear on this issue, we do not address that question here.

CONCLUSION

For the foregoing reasons, and based upon the information provided and within the limitation expressed above, the North Carolina Respiratory Care Board concludes that Personal Care Aides who administer Continuous Positive Airway Pressure (CPAP), or BiLevel Positive Airway Pressure Equipment (BiPAP), do not meet the requirements to be exempt from licensure pursuant to the current provisions of N.C. Gen. Stat. § 90-664 (1), and must be licensed by this Board or otherwise demonstrate a basis for exemption from licensure under the remaining provisions of N.C. Gen. Stat. § 90-664.

Mr. Barrick has not requested a ruling with regard to the performance by Personal Care Aides of the other tasks enumerated in 10 NCAC 42C .3703, and so the Board has not addressed that issue in this ruling. However, the Board has instructed its Executive Director to work with the Adult Care Licensure Section of the Division of Facility Services to present and discuss the patient health and welfare issues that relate to having Personal Care Aides perform those tasks.

This the 2nd day of January 2003.

Joseph Coyle, MD
Chair
North Carolina Respiratory Care Board