

North Carolina Respiratory Care Board

Meeting Minutes October 8, 2009

Members Present:

Arnold Frazier, MD
Timothy Safley, RCP
Sherry Samuels
Margaret A. Mitchell, RRT, RCP
Thomas Goodin, MD
Karl Karlson, MD
Ralph Webb, RRT, RCP
William Croft, RRT, RCP
Kimberly Roseman

Others Present:

Floyd Boyer, RRT, RCP –Executive Director
William Shenton –Board Counsel
Jane Carter – Administrative Secretary
Judy Green – Board Investigator

Absent:

Wayne Beauford, MD

Call to Order: Mr. Webb called the meeting to order at 10:01 AM.

Conflict of Interest Notice: Mr. Webb read the North Carolina Board of Ethics' Conflict of Interest Reminder, indicating that if there are any conflicts of interest on any matters that come before the Board; Board members should refrain from voting and inform the Chair at that time.

Mr. Webb reminded the audience that the Board meetings are recorded and are a matter of public record. Comments and questions raised by the audience are recorded and may be part of the minutes.

Approval of Minutes: Mr. Webb presented the minutes from the July 9, 2009 Board meeting. Mr. Croft made a motion to approve the minutes as written. The motion was seconded and carried unanimously.

Mr. Webb presented the minutes from the July 30, 2009 Special Board meeting. Mr. Shenton made a correction in the spelling of Ms Tina Hlabse's name and stated that she is with the Attorney General's office. Dr. Karlson made a motion to approve the minutes with the correction. The motion was seconded and carried unanimously.

Auditor's Report: Lindy Faulconer from Koonce, Wooten & Haywood, LLP presented the audit report for the years ending June 2008 and June 2009 and a letter. The cash flow has met the

operational needs of the Board. The internal control was examined, not audited. Dr. Goodin made a motion to approve the draft audit report. The motion was seconded and passed unanimously.

Treasurer's Report:

Ms Samuels reported that as of September 30, 2009, there was \$53,211.71 in the checking account and \$115,156.34 in the money market account making a total of \$168,368.05 in the bank accounts. The Profit & Loss Budget vs Actual shows that total income and total expenses are under budget.

Executive Director's Report:

Mr. Boyer reported on the events that had occurred since the last Board meeting.

- Mr. Boyer attended the NCSRC Annual Symposium held in Winston Salem on September 16. At the annual business meeting Board Chair Ralph Webb, BAS, RRT, RCP was awarded the NCSRC life membership in honor of his service to the Respiratory Care profession in North Carolina.
- Mr. Boyer attended a NCSRC sponsored Respiratory Care Manager's meeting held in Winston Salem on September 16 to inform the group of the passage of the Polysomnography Practice Act and other Board news.
- Mr. Boyer attended the annual NBRC Licensure Liaison conference held on September 25 and 26 in Kansas City, KS. Presentations were given by the NBRC, AARC, and the Committee on Accreditation for Respiratory Care.
- The Practice Committee met on October 7. The Rules Committee and the Education Committee have not met. Any recommendations from the Practice Committee will be presented during the Committee report.
- The Board's Investigators have completed 18 investigations. Six of these investigations were scheduled for interview with the Board's Investigation and Informal Settlement Committee on October 7. There are currently 5 ongoing investigations.
- As of September 30, 2009: there have been 6116 Respiratory Care Practitioner Licenses applied for. Current totals: 4189 Active, 46 Inactive, 1 Temporary, and 53 Provisional. There are currently 36 Respiratory Care Assistant Registrations. There are 25 pending applicants, 1575 expired licenses, 107 failed to complete applications, 33 practitioners deceased, 45 withdrawn applications, 5 voluntarily surrendered licenses, 1 summary suspension, 23 revoked licenses,

and 13 denied applications.

Ethics Committee Report: Dr. Goodin reported that the new Board members are mandated to attend ethic educational meetings and will have six months to do so. They are to read the presentation material before attending the meeting.

Practice Committee Report: Dr. Karlson reported that the committee met on October 7 to discuss the following issues:

- A request for a declaratory ruling was received from Mr. Bill Kiger, RCP at Forsyth Medical Center, concerning RCP's providing sleep studies in light of the passage of the Polysomnography Practice Act. Mr. Kiger's request included several questions, and the practice committee worked with counsel to develop a draft declaratory ruling to respond.

One group of questions regarded jurisdiction of the Board over RCP's who are not RPSGT's currently practicing in a sleep center. The draft declaratory ruling notes that sleep-related testing and monitoring for responses to respiratory care testing are activities that constitute the practice of respiratory care. The draft ruling states that RCP's may continue to provide sleep related testing without violating the Respiratory Care Practice Act, but only after successful completion training and competency reviews by the employing or contracting facility.

Another question posed in the request was whether RCP's had to obtain the RPSGT credential to keep their current or future jobs in a sleep center. The draft declaratory ruling states that the Respiratory Care Practice Act does not require a RCP to obtain the RPSGT credential, but the Board has no authority to prohibit a sleep center from adopting such a policy.

Other issues raised in the request included questions asking if the NBRC's SDS credential would be considered equally valid and acceptable as the RPSGT credential and if any current RCP, RPSGT will be required to register with the Medical Board to maintain the credential or to keep a job in a sleep center. Each of these questions calls for interpretation of the Polysomnography Practice Act. The draft ruling declines to offer guidance on these questions because the Board has no authority to interpret that statute.

The committee recommends approval of the Declaratory Ruling. There was a discussion by the Board. Mr. Croft stated that the sleep committee did meet to discuss this issue and had forwarded it to the Practice Committee in August. The practice Committee's recommendation to adopt the draft ruling passed unanimously.

Per the conclusion of the declaratory ruling, Mr. Boyer will post this ruling on the Board's website and remove the superseded rulings from the website.

- There was a request from Kathleen Short, RCP of UNC Hospitals, concerning Respiratory Care Practitioners providing flu shots and subcutaneous Xolair Injections. The committee did not find any prohibition to RCP's providing flu shots and subcutaneous Xolair Injections. The committee finds that these pharmacologic agents are related to respiratory care procedures. The committee recommends that the Board direct the Executive Director to inform Ms Short by written correspondence of its interpretation. The recommendation passed unanimously.
- There was a request from Bill Wisell of the Nebraska Department of Health and Human Services concerning Respiratory Care Practitioners' use of lasers. The committee is not aware of any use of lasers by RPC's and recommends that the Board direct the Executive Director to inform Mr. Wisell by written correspondence that this procedure is not within the scope of practice of RCP's in North Carolina. The recommendation passed unanimously.

Education Committee Report:

Mr. Croft reported that the 2015 Conference information is not available at this time.

Rules Committee Report:

Mr. Safley stated that there was no report.

Investigation and Informal Settlement Committee:

Ms Samuels reported that the committee met on October 7 and interviewed five individuals. One individual did not show. Any disciplinary actions are pending and awaiting the closed session of today's meeting.

Unfinished Business:

There was none.

New Business:

Mr. Croft reported that he has worked with Terry Smith and Dan Grady on the issue of the management of respiratory care departments. They have drafted a document which addresses the concerns regarding the competency issues of managers in charge of respiratory care departments. The draft states that the person in charge of the department must be appropriately trained and competent to oversee the competency of the therapists and to sign off on the competencies. Following a discussion by the Board, Mr. Webb assigned the issue to the Rules Committee to develop a workable solution.

Mr. John Kight of Kight's Medical, Raleigh, NC was recognized by Mr. Webb to comment on this issue. Mr. Kight stated that the accreditation standards for hospitals address this issue.

Mr. Webb announced that the next Board meeting will be on January 14, 2010 at 10:00 AM at the Board office, and asked if there were comments from members of the public who were attending the meeting.

Mr. John Kight was recognized by Mr. Webb for comments. Mr. Kight stated that he believes the public isn't being sufficiently involved by the Board and getting the opportunity to respond on some of the Board's processes. He suggested that all drafts of committee reports and the Board minutes be posted on the Board's website prior to the Board meeting. Mr. Shenton stated that the meetings are public and the public has every opportunity to comment, but the draft minutes are drafts that are subject to the review and approval of the Board and are not subject to review and approval by the public. He also noted that once the minutes are approved, they are posted on the Board's website. In terms of the other documents that Mr. Kight asked about being posted on the website, Mr. Shenton stated that the Board could look at those and determine if it is appropriate to circulate drafts in advance while they are under consideration, but suggested that those documents need to be looked at on a case-by-case basis. Mr. Kight stated that other Boards post their draft minutes on their websites. Mr. Shenton asked Mr. Kight if he would send Mr. Boyer the names of the boards that post draft minutes. Mr. Kight stated that he would do so.

Mr. Safley thanked the students who were attending the meeting and stated that all therapists need to be well informed about the activities of the Board.

Mr. John Kight was recognized by Mr. Webb for a comment on the auditor's statements and financial reports. He stated that based on the financial reports, it appears that the RCP's in this state are being possibly a little overcharged.

Mr. Webb presented plaques to Mr. Croft, Ms Mitchell, Dr. Karlson, Dr. Goodin, and Dr. Beauford (not present) and thanked them for their service to the Board.

Mr. Croft thanked Mr. Webb and Mr. Boyer for their service to the Board and to the respiratory care profession.

Ms Samuels made a motion to enter into Executive Session to discuss disciplinary actions. The motion was seconded and carried unanimously.

Executive Session:

Ms. Samuels made a motion to enter into Public Session. The motion was seconded and carried unanimously.

Public Session:

Hearing for James M. Gordon – License # 5620

Neither Mr. Gordon nor anyone representing Mr. Gordon was present at the start of the hearing. Mr. Shenton, Counsel for the Board, called Mr. Boyer, the Board's Executive Director, as a witness for the Board, and Board Exhibits consisting of copies of material from Mr. Gordon's file were introduced.

The Board audio taped the Hearing and will maintain an audio recording of the Hearing, as well as, a copy of the Exhibits that were introduced. At the conclusion of the Hearing, and while still under oath, Mr. Boyer checked the Board offices and he stated that neither Mr. Gordon nor anyone representing Mr. Gordon was present.

Mr. Shenton requested that Mr. Gordon's license be permanently revoked.

Mr. Croft made a motion to enter into Executive Session to deliberate Mr. Gordon's case, to hear from Counsel on any other matters, and to discuss disciplinary actions. The motion was seconded and carried unanimously.

Executive Session:

Dr. Goodin made a motion to enter into Public Session. The motion was seconded and carried unanimously.

Public Session:

Ms Samuels announced the findings of the Board in regard to the matters reported for action by the Investigation and Informal Settlement Committee.

During the Executive Session, the Board voted unanimously to approve the following:

Kenneth Pacheco, License # 4553. Report working without a license to the NC Division of Health Services Regulation, Medicare, to the California Respiratory Care Board, and to the Board of Nursing; obtain a plan of correction from the facility; \$250 discipline cost and \$500 civil penalty.

Robert Strickland, License # 2994. 12 months probation, random drug screens, quarterly reports upon gaining employment, \$100 disciplinary cost and \$100 civil penalty.

Carolyn Zarsky, License # 2631 Pending. Obtain more information.

Carmita Smith, License # 5663. Reprimand, \$150 disciplinary cost and \$250 civil penalty.

Expungements:

- Mandy Foreman, RCP # 4879. Approved
- Crystal Bickford, RCP # 4813. Denied
- Thilo Hanisch, RCP # 2313. Approved

Mr. Webb announced the finding for the Hearing for James M. Gordon, License # 5620. The Board voted unanimously to permanently revoke his license.

Dr. Goodin made a motion to adjourn. The motion was seconded and carried unanimously.

Adjournment:

The meeting was adjourned at 2:03 PM.