



NORTH CAROLINA RESPIRATORY CARE BOARD

1100 Navaho Drive, Suite 242

Raleigh, NC 27609

Position Statement Financial Relationships and Referral Incentives

From time to time during investigations or routine random reviews of the practice settings of respiratory care practitioners who are licensed by this Board, staff have received information that indicates the existence of financial incentives to encourage individuals or organizations to refer patients for respiratory care or to encourage the use of respiratory care and other services from particular companies. This position statement provides guidance to our licensees and the general public about this issue.

1. First and foremost, it is the position of the North Carolina Board of Respiratory Care that referral incentives which are offered or paid to respiratory care practitioners, or which are solicited or received by respiratory care practitioners, constitute a clear violation of key provisions of the Respiratory Care Practice Act and the Board's rules. These referral incentives introduce inappropriate financial considerations in the process of referral of persons for respiratory care. Therefore, they constitute practices that are "hazardous to public health, safety, or welfare," and are a basis for license denial, suspension, revocation, refusal to renew a license, or other appropriate discipline under N.C. Gen. Stat. § 90-659. These practices also constitute grounds for Board action under the provisions of 21 NCAC 61.0307(21), a Board Rule that prohibits paying commissions, bonuses, kickbacks or rebates for goods or services provided to patients.

Anyone who is aware of violations of these standards by a person who is already licensed, or who is seeking to be licensed by the North Carolina Respiratory Care Board should report these facts to this Board as soon as possible.

2. In addition to these standards in the Respiratory Care Practice Act and the Board's rules, there are other important state standards that relate to referrals of patients and financial incentives to do so. North Carolina has statutory provisions which prohibit any health care provider licensed under Chapter 90 of the General Statutes from receiving or paying financial compensation in order to be employed by a patient to receive health care services:

§ 90-401. Referral fees and payment for certain solicitations prohibited.

A health care provider shall not financially compensate in any manner a person, firm, or corporation for recommending or securing the health care provider's employment by a patient, or as a reward for having made a recommendation resulting in the health care provider's employment by a patient. No health care provider

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who refers a patient of that health care provider to another health care provider shall receive financial or other compensation from the health care provider receiving the referral as a payment solely or primarily for the referral. This section shall not be construed to prohibit a health care provider's purchase of advertising which does not entail direct personal contact or telephone contact of a potential patient.

In addition, the same statute also regulates direct personal or telephone contact with prospective patients within 90 days following the injury or onset of the disease for which they need treatment:

§ 90-401.1. Direct solicitation prohibited.

It shall be unlawful for a health care provider or the provider's employee or agent to initiate direct personal contact or telephone contact with any injured, diseased, or infirmed person, or with any other person residing in the injured, diseased, or infirmed person's household, for a period of 90 days following the injury or the onset of the disease or infirmity, if the purpose of initiating the contact, in whole or in part, is to attempt to induce or persuade the injured, diseased, or infirmed person to become a patient of the health care provider. This section shall not be construed to prohibit a health care provider's use of posted letters, brochures, or information packages to solicit injured, diseased, or infirmed persons, so long as such use does not entail direct personal contact with the person.

Violations of these statutory provisions by a person who is or is seeking to be licensed by this Board are a basis for the imposition of discipline, including the denial or revocation of a license or a refusal to renew a license. Known violations of these provisions by licensees should be reported to the Board.

3. Finally, there are also other provisions in law that relate to referrals, such as the so called "Kickback" Statute and the Stark Law. In general, the "Kickback" Statute prohibits offering or paying, or soliciting or receiving, any form of "remuneration" in return for the referral of a patient for care which will be reimbursed by Medicare and other government programs. The Stark Law restricts the ownership by physicians and other persons in a position to refer patients in enterprises which furnish services to those patients. However, there are very important exceptions and limitations on the Stark Law prohibitions. It is not the purpose of this position statement to articulate clear guidance on these kinds of issues but if persons licensed by this Board are involved in violations of

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the Kickback Statute, that would constitute conduct involving improper financial incentives which are addressed in the first part of this position statement. If a person who is not licensed by this Board are known to be involved in these sorts of activities, here is information on the relevant enforcement agencies who can be contacted:

Contact Agencies

North Carolina Attorney General, 9001 Mail Service Center, Raleigh, NC 27699, (919) 746-6400, <http://www.ncdoj.com/>

North Carolina Medical Board, PO Box 20007, Raleigh, NC 27619, (919) 326-1100, <http://www.ncmedboard.org/>

North Carolina Board of Pharmacy, 6015 Farrington Road, Chapel Hill, NC 27517, (919) 942-4454, <http://www.ncbop.org>

North Carolina Division of Facility Services, 2711 Mail Service Center, Raleigh, NC 27699, (919) 733-7461, <http://facility-services.state.nc.us/>

Health and Human Services Office of Inspector General, Room 5541 Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 619-1343, <http://oig.hhs.gov/>