



NOTICE OF TEXT [Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- Notice with a scheduled hearing
 Notice without a scheduled hearing
 Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 13. If a hearing is scheduled, complete block 5.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: North Carolina Respiratory Care Board
2. Link to agency website pursuant to G.S. 150B-19.1(c): www.ncrcb.org
3. Proposed Action -- Check the appropriate box(es) and list <u>rule citation(s)</u> beside proposed action: <input type="checkbox"/> ADOPTION: <input type="checkbox"/> READOPTION <u>with</u> substantive changes: <input type="checkbox"/> READOPTION <u>without</u> substantive changes: <input checked="" type="checkbox"/> AMENDMENT: 21 NCAC 61 .0103 <input type="checkbox"/> REPEAL:
4. Proposed effective date: 04/01/18
5. Is a public hearing planned? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes: Public Hearing date: January 4, 2018 Public Hearing time: 9:00 AM-11:00 AM Public Hearing Location: 125 Edinburgh South Drive, Suite 100, Cary, NC 27511
6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s): The North Carolina Respiratory Care Board determined a need to clarify existing language in the rule 21 NCAC 61 .0103 DEFINITIONS to meet the required format after reviewing the rules. The North Carolina Respiratory Care Board also determined additional terms identified in the statute not previously defined. Pursuant to G.S. 90-652 (2), the North Carolina Respiratory Care Board is adding definitions to existing rules for clarity.

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: William Croft, Ed.D., Ph.D., RRT, RCP

Address: 125 Edinburgh South Drive, Suite 100, Cary, NC 27511

Phone (optional): 919-878-5595

Fax (optional): 919-878-5565

E-Mail (optional): bcroft@ncrcb.org

10. Comment Period Ends:

11. Fiscal impact (check all that apply).

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

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- Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
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- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

12. Rule-making Coordinator: William Croft, Ed.D., Ph.D., RRT, RCP

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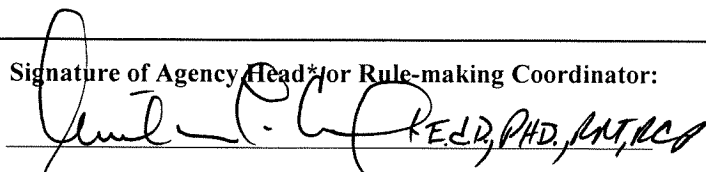
Agency contact, if any: William Croft

Phone: 919-878-5595

E-mail:

13. The Agency formally proposed the text of this rule(s) on
Date: 10/12/2017

14. Signature of Agency Head* for Rule-making Coordinator:



*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: William Croft, Ed.D., Ph.D., RRT, RCP

Title: Executive Director

1 21 NCAC 61 .0103 is proposed for amendment as follows:

2
3 **21 NCAC 61 .0103 DEFINITIONS**

4 The definitions of terms contained in G.S. 90-648 apply to the rules in this Chapter. In addition, the following
5 definitions apply ~~with regard to these Rules;~~ to the rules in this Chapter:

- 6 (1) Assessment means a clinical evaluation of ~~the~~ an individual patient ~~and by a Respiratory Care~~
7 Practitioner (RCP) or other licensed health care provider within their scope of practice to determine
8 the ability and efficacy of a respiratory care procedure, protocol or treatment, including
9 an assessment of the suitability and efficacy of equipment for the an individual patient if equipment
10 is to be used in the procedure or treatment. ~~Assessment can be performed by physician, Respiratory~~
11 Care Practitioner (RCP) or other licensed health care provider within their scope of practice.
- 12 (2) Respiratory care ~~includes any~~ means acts, tests, procedures, treatments or modalities that are
13 routinely the health care discipline that specializes in the promotion of optimum cardiopulmonary
14 function and health and wellness using scientific principles to identify, treat and prevent acute or
15 chronic dysfunction of the cardiopulmonary system pursuant to G.S. 90-648 (11) that is taught in
16 accredited educational programs pursuant to G.S. 90-653 (3) or in approved continuing education
17 programs pursuant to the rules of this Chapter for respiratory care practitioners and within the
18 guidelines established by the American Association for Respiratory Care that are routinely
19 performed in respiratory care practice settings, pursuant to G.S. 90-648 (10) (f) which is
20 incorporated by reference including subsequent amendments and editions;
- 21 (3) The practice of respiratory care ~~includes means~~ the application performance of a range of evaluation
22 assessments and diagnostic tests, and implementation of treatment procedures and protocols related
23 to the observing and monitoring of signs and symptoms, general behavior, and general physical
24 response to respiratory care treatment and diagnostic testing, including the determination of whether
25 such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics. In
26 addition to the general activities identified in G.S. 90-648(10), each of the following specific
27 activities constitutes the practice of Respiratory care: the general activities the cardiopulmonary
28 system identified in pursuant to G.S. 90-648(10) and the activities defined by the American
29 Association of Respiratory Care clinical guidelines pursuant to G.S. 90-648 (10) (f) which is
30 incorporated by reference including subsequent amendments and editions;
- 31 (a) ~~the performance of performing pulmonary diagnostic and sleep related testing;~~
32 (b) ~~the administration of pharmacologic agents related to respiratory care procedures;~~
33 (c) ~~establishment and maintenance of arterial lines for hemodynamic monitoring;~~
34 (d) ~~therapeutic evaluation and assessment relating to mechanical or physiological ventilatory~~
35 support, including positive pressure support apparatus;
36 (e) ~~airway clearance techniques, postural drainage and chest percussion;~~
37 (f) ~~assistance with bronchoscopy;~~

- 1 ~~(g) — asthma and respiratory disease management;~~
2 ~~(h) — cardiopulmonary rehabilitation;~~
3 ~~(i) — alleviating respiratory impairment and functional limitation by designing, implementing,~~
4 ~~and modifying therapeutic care plans; plans using evidenced based protocols;~~
5 ~~(j) — patient instruction in respiratory care, functional training in self care and home respiratory~~
6 ~~care management, and the promotion promoting and maintenance of respiratory care~~
7 ~~fitness, health, and quality of life;~~
8 ~~(k) — those advanced practice procedures that are recognized by the Board in declaratory rulings~~
9 ~~as being within the scope of respiratory care, when performed by an RCP with appropriate~~
10 ~~training; and~~
11 ~~(l) — managing the clinical delivery of respiratory care services through the on going~~
12 ~~supervision, teaching and evaluation of respiratory care.~~

13 (4) Medical gases mean those inhaled gases used in the treatment of cardiopulmonary disease.

14 (5) Humidity means adding heat or moisture to an inhaled medical gas.

15 (6) Aerosols mean the suspension of particles dispersed in air or gas to deliver medication or humidity
16 to the airways.

17 (7) Pharmacologic agent means a medication or medical gas delivered during a respiratory care
18 procedure for the treatment of cardiopulmonary disease.

19 (8) Hyperbaric oxygen therapy means inhalation of high concentrations of oxygen at increased levels
20 of atmospheric pressures within a total body chamber for the treatment of cardiopulmonary disorders
21 or wound management.

22 (9) Mechanical or physiological ventilatory support means the provision of an apparatus to support gas
23 exchange issues associated with cardiopulmonary dysfunction.

24 (10) Hemodynamic monitoring means a procedure required to monitor blood pressure invasively or
25 noninvasively.

26 (11) Diagnostic testing means a procedure for assessing the function of the cardiopulmonary system and
27 diagnosing cardiopulmonary disease or sleep related disorders.

28 (12) Therapeutic application means utilizing evidenced-based protocols, procedures, treatments or
29 modalities defined in this Chapter to maintain cardiopulmonary health or treat cardiopulmonary
30 disease.

31 (10) Active status means a license issued to an individual after meeting the requirements pursuant to G.S.
32 90-653.

33 (11) Individual therapy means the provision of therapy services by one licensee to one patient at a time.

34 (12) Concurrent therapy means the provision of therapy services by one licensee treating two patients at
35 the same time.

36 (13) Group therapy means the provision of therapy services by one licensee treating three to six patients
37 at the same time.

- 1 (14) Co-treatment therapy means the provision of therapy services by more than one licensee from
2 different therapy disciplines to one patient at the same time.
3 (15) Endorsement means a license issued by the Board recognizing the person named on the certificate
4 as having met the requirements to perform respiratory care procedures pursuant to the rules of this
5 Chapter.
6

7 *History Note: Authority G.S. 90-652; G.S. 90-648 (2), (10), and (11); G.S. 90-660;*
8 *Temporary Adoption Eff. October 15, 2001;*
9 *Eff. August 1, 2002;*
10 *Amended Eff. April 1, 2018; September 1, 2010; January 1, 2007; March 1, 2006;*
11 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22,*
12 *2015.*
13



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3. Proposed Action -- Check the appropriate box(es) and list <u>rule citation(s)</u> beside proposed action: <input checked="" type="checkbox"/> ADOPTION: 21 NCAC 61 .0104 <input type="checkbox"/> READOPTION <u>with</u> substantive changes: <input type="checkbox"/> READOPTION <u>without</u> substantive changes: <input type="checkbox"/> AMENDMENT: <input type="checkbox"/> REPEAL:
4. Proposed effective date: 04/01/18
5. Is a public hearing planned? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes: Public Hearing date: January 4, 2018 Public Hearing time: 9:00 AM-11:00 AM Public Hearing Location: 125 Edinburgh South Drive, Suite 100, Cary, NC 27511
6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s): The North Carolina Respiratory Care Board previously adopted and published Code of Ethics on the website in 2002. Upon further review of new rules, the North Carolina Respiratory Care Board determined pursuant to G.S. 90-652 (3) that the Code of Ethics be adopted by rule.

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: William Croft, Ed.D., Ph.D., RRT, RCP

Address: 125 Edinburgh South Drive, Suite 100, Cary, NC 27511

Phone (optional): 919-878-5595

Fax (optional): 919-878-5565

E-Mail (optional): bcroft@ncrcb.org

10. Comment Period Ends:

11. Fiscal impact (check all that apply).

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

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- Environmental permitting of DOT affected
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- Approved by OSBM
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- No fiscal note required by G.S. 150B-21.3A(d)(2)

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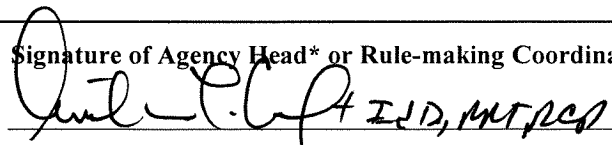
Agency contact, if any: William Croft

Phone: 919-878-5595

E-mail:

13. The Agency formally proposed the text of this rule(s) on
Date: 10/12/2017

14. Signature of Agency Head* or Rule-making Coordinator:



***If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: William Croft, Ed.D., Ph.D., RRT, RCP

Title: Executive Director

1 21 NCAC 61 .0104 is proposed for adoption as follows:

2

3 **21 NCAC 61 .0104 CODE OF ETHICS**

4 (a) The North Carolina Respiratory Care Board has adopted the American Association of Respiratory Care (AARC)
5 Code of Ethics that are hereby incorporated by reference, including subsequent amendments and editions. A free
6 copy may be obtained from the American Association of Respiratory Care online at www.aarc.org.

7

8 *History Note: Authority G.S. 90-652 (3);*

9 *Adopted Eff. April 1, 2018.*



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4. Proposed effective date: 04/01/18
5. Is a public hearing planned? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes: Public Hearing date: January 4, 2018 Public Hearing time: 9:00 AM-11:00 AM Public Hearing Location: 125 Edinburgh South Drive, Suite 100, Cary, NC 27511
6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s): A request was made to consider changing the requirements for license display to include the website publication of the licensee information. Pursuant to G.S. 90-658 (b), the North Carolina Respiratory Care Board considered the request and concluded that a paper copy would no longer be required. The proposed amendment makes the website display sufficient as an electronic format display necessary to meet this requirement in lieu of the paper copy.

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E-Mail (optional): bcroft@ncrcb.org

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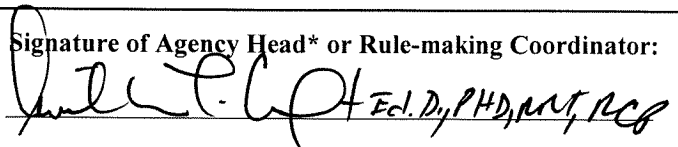
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Typed Name: William Croft, Ed.D., Ph.D., RRT, RCP

Title: Executive Director

1 21 NCAC 61 .0301 is proposed for amendment as follows:

2
3 **21 NCAC 61 .0301 LICENSE NUMBER: DISPLAY OF LICENSE**

4 (a) Each license issued by the Board shall be valid for a period of one year, except as otherwise provided in ~~the~~
5 ~~Rules in this Section.~~ G.S. 90-654 and G.S. 93B-15.1.

6 (b) Each individual who is issued a license shall be issued a license number that shall be displayed on the Board's
7 website. Should that number be retired for any reason (such as death, failure to renew the license, or any other
8 reason) that number ~~will~~ shall not be reissued. A web-based license verification card showing displaying the status,
9 credentials, degree level, dates for registration, renewal, and expiration date must shall be ~~filed or on display~~
10 accessible at by the licensee's licensee in their principal place of business so as to be available for inspection in a
11 printed or electronic format. ~~Each licensee also shall keep a copy of the license wallet card available for inspection~~
12 ~~to anyone on request in the course of delivering services.~~

13 (c) In accordance with the provisions of G.S. 90-640, whenever a licensee is providing respiratory care to a patient,
14 the licensee shall wear ~~a badge or nameplate~~ identification that displays, in easily readily visible type, the licensee's
15 name ~~followed by a comma~~ and the designation "RCP," ~~that is an abbreviation for respiratory care practitioner.~~
16 "RCP". Provisional license holders shall wear ~~a badge or nameplate~~ identification which that displays, in easily
17 readily visible type, the licensee's ~~name~~ name, and the designation "RCP Provisional." "RCP-Provisional". ~~RCP~~
18 ~~students shall wear a badge or nameplate that displays, in easily visible type, the student's name, the designation~~
19 ~~"RCP Student" and the name of the school the student is attending.~~ A licensee shall ensure any person working
20 under his or her supervision, who is exempted by G.S. 90-664 (2) and (4), is properly identified by wearing
21 identification that designates the person's affiliation and position in readily visible type.

22
23 *History Note: Authority G.S. 90-652(2) ;(4); 90-658(b); 90-640;*

24 *Temporary Adoption Eff. October 15, 2001;*

25 *Eff. August 1, 2002;*

26 *Amended Eff. April 1, 2018; April 1, 2004;*

27 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22,*
28 *2015.*

29



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4. Proposed effective date: 04/01/18
5. Is a public hearing planned? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes: Public Hearing date: January 4, 2018 Public Hearing time: 9:00 AM-11:00 AM Public Hearing Location: 125 Edinburgh South Drive, Suite 100, Cary, NC 27511
6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s): North Carolina Respiratory Care Board determined a need to clarify existing language in the rule 21 NCAC 61 .0307 as well as meet the required formatting for this entire section. The North Carolina Respiratory Care Board determined a need to more clear and accurate in this section by stating that the behaviors and conduct that may constitute unprofessional conduct pursuant to G.S. 90-647 and be grounds for license denial or disciplinary action by the Board pursuant to G.S. 90-659 (a) and (b), G.S. 90-652 (4).

In addition, the North Carolina Respiratory Care Board considered a request regarding concurrent therapy for clarification. For this reason, North Carolina Respiratory Care Board determined adding language was necessary to identify performing co-treatment, concurrent, group, or individual therapy that is not in accordance with protocols established by the health care organization employing the licensee as behaviors and conduct that may constitute unprofessional conduct pursuant to G.S. 90-647.

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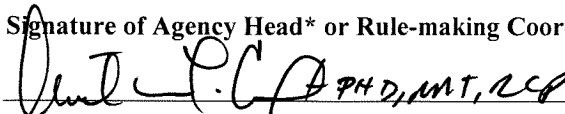
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14. Signature of Agency Head* or Rule-making Coordinator:



*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: William Croft, Ed.D., Ph.D., RRT, RCP

Title: Executive Director

1 21 NCAC 61 .0307 is proposed for amendment as follows:

2
3 **21 NCAC 61 .0307 GROUNDS FOR LICENSE DENIAL OR DISCIPLINE**

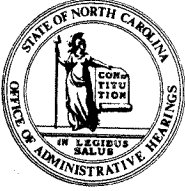
4 ~~In addition to the conduct set forth in G.S. 90-659, the Board may deny, suspend, or revoke a license, or issue a letter~~
5 ~~of reprimand to a licensee, upon any of the following grounds:~~ Behaviors and conduct that may constitute
6 unprofessional conduct by persons licensed pursuant to G.S. 90-647 and may be grounds for license denial or
7 disciplinary action by the Board pursuant to G.S. 90-659 (a) and (b), G.S. 90-652 (4);

- 8 (1) ~~Failure failing~~ to meet minimum licensure requirements set by ~~statute Article 38 of G.S. 90~~ or ~~rule-~~
9 rules of this Chapter;
- 10 (2) ~~Procuring,~~ attempting to procure, or renewing a license as provided by this ~~part~~ Chapter by bribery,
11 by fraudulent misrepresentation, or by knowingly perpetuating an error of the ~~Board.~~ Board;
- 12 (3) ~~Violation of any violating a~~ rule adopted by the Board or of a lawful order of the ~~Board.~~ Board
13 including violations of the Code of Ethics pursuant to 21 NCAC 61 .0104;-
- 14 (4) ~~Engaging engaging~~ in the delivery of respiratory care with a revoked, suspended, or inactive ~~license.~~
15 license;
- 16 (5) ~~Failing failing~~ to perform ~~any a~~ statutory or legal obligation placed upon a respiratory care
17 practitioner licensed pursuant to this ~~part.~~ Chapter;
- 18 (6) ~~Failing failing~~ to ~~properly~~ make the disclosures required by ~~21 NCAC 61 .0308.~~ 21 NCAC 61 .0308;
- 19 (7) ~~Permitting,~~ permitting, aiding, assisting, procuring, or advising ~~any a~~ person to violate ~~any a~~ rule of
20 the Board or provision of the Respiratory Care Practice Act, including engaging in the practice of
21 respiratory care without a ~~license.~~ license;
- 22 (8) ~~Having having~~ licensure, certification, registration, or other authority, by whatever name known, to
23 deliver respiratory care revoked, suspended, or otherwise acted against, including the denial of
24 licensure, certification, registration, or other authority to deliver respiratory care by the licensing
25 authority of another state, territory, or ~~country.~~ country;
- 26 (9) ~~Willfully willfully~~ failing to report ~~any a~~ violation of these ~~rules.~~ rules;
- 27 (10) ~~Unprofessional engaging in unprofessional~~ conduct related to the delivery of respiratory care, ~~which~~
28 ~~includes, but is not limited to,~~ engaging including in any an act or practice that is hazardous to public
29 health, safety or ~~welfare.~~ welfare;
- 30 (11) ~~Performing performing~~ professional services ~~which that~~ have not been duly ordered by a physician
31 licensed pursuant to G.S. 90, Article 1 and ~~which that~~ are not in accordance with protocols
32 established by the hospital, other health care provider, or the ~~Board.~~ Board;
- 33 (12) ~~Accepting accepting~~ and performing professional responsibilities ~~which that~~ the licensee knows, or
34 has reason to know, he or she is not competent to ~~perform.~~ perform;
- 35 (13) ~~Delegating delegating~~ professional responsibilities to a person when the licensee delegating such
36 responsibilities knows, or has reason to know, that such person is not qualified by training,
37 experience, or licensure to ~~perform.~~ perform;

- 1 (14) ~~Being being~~ unable to deliver respiratory care services with reasonable skill and safety to patients
2 by reason of incapacitating illness or use of alcohol, drugs, narcotics, chemicals, or ~~any other type~~
3 ~~of material.~~ material; ~~In enforcing this Paragraph, the Board shall, upon probable cause, have~~
4 ~~authority to compel a respiratory care practitioner to submit to a mental or physical examination by~~
5 ~~physicians designated by the Board. The cost of examination shall be borne by the licensee being~~
6 ~~examined. The failure of a respiratory care practitioner to submit to such an examination when so~~
7 ~~directed constitutes an admission that the licensee is unable to deliver respiratory care services with~~
8 ~~reasonable skill and safety, upon which a default and a final order may be entered without the taking~~
9 ~~of testimony or presentation of evidence, unless the failure was due to circumstances beyond his~~
10 ~~control. A respiratory care practitioner affected under this Paragraph shall at reasonable intervals be~~
11 ~~afforded an opportunity to demonstrate that he can resume the competent delivery of respiratory~~
12 ~~care with reasonable skill and safety to his patients. Neither the record of the proceedings nor any~~
13 ~~an order of the Board based solely on a licensee's failure to submit to an examination shall be~~
14 ~~deemed by the Board to constitute a conclusive determination that licensee engaged in any conduct.~~
- 15 (15) ~~Failing failing~~ to create and maintain respiratory care records documenting the assessment and
16 treatment provided to each ~~patient.~~ patient;
- 17 (16) ~~Discontinuing discontinuing~~ professional services unless services have been completed, the client
18 requests the discontinuation, alternative or replacement services are arranged, or the client is given
19 reasonable opportunity to arrange alternative or replacement ~~services.~~ services;
- 20 (17) ~~Exercising influence within a respiratory care relationship for the purpose of engaging or attempting~~
21 ~~to engage a patient in a sexual activity.~~ relationship; ~~A patient is presumed to be incapable of giving~~
22 ~~free, full, and informed consent to sexual activity with the patient's respiratory care practitioner.~~
- 23 (18) ~~Exercising influence on the patient for the financial gain of the licensee or a third party by promoting~~
24 ~~or selling services, goods, appliances, or drugs that are not medically indicated or necessary.~~
25 necessary to a patient;
- 26 (19) ~~Making making~~ deceptive, untrue, or fraudulent representations in the delivery of respiratory care
27 or employing a trick or scheme in the delivery of respiratory ~~care.~~ care;
- 28 (20) ~~Circulating false, misleading, or intentionally communicating deceptive advertising.~~ information to
29 a patient;
- 30 (21) ~~Paying paying~~ or receiving any commission, bonus, kickback, or rebate to or from, or engaging in
31 any fee-splitting arrangement in any form whatsoever with, a person, organization, or agency, either
32 directly or indirectly, for goods or services rendered to patients referred by or to providers of health
33 care goods and services, ~~including, including but not limited to,~~ hospitals, nursing homes, clinical
34 laboratories, ambulatory surgical centers, ~~or and~~ pharmacies. The provisions of this paragraph shall
35 not be construed to prevent the licensee from receiving a fee for professional consultation ~~services.~~
36 services;

- 1 (22) ~~Soliciting~~ soliciting patients, either personally or through an ~~agent,~~ agent ~~through the use of fraud,~~
2 ~~deception, or otherwise misleading statements or through the exercise~~ by means of intimidation or
3 ~~undue influence.~~ influence;
- 4 (23) ~~Willfully~~ willfully making or filing a false report or record, ~~or willfully failing to file a report or~~
5 ~~record required by state or federal law,~~ or willfully impeding or obstructing such filing or inducing
6 another person to do so. Such reports or records include only those reports or records ~~which~~ that
7 require the signature of a ~~respiratory care practitioner or a respiratory therapist licensed pursuant to~~
8 ~~this part.~~ licensee;
- 9 (24) ~~Being~~ being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of
10 adjudication, a crime in any jurisdiction ~~which~~ that directly relates to a licensee's competence or
11 ability to provide respiratory ~~care.~~ care;
- 12 (25) ~~Engaging or attempting to engage in the possession, sale, or distribution of controlled substances,~~
13 ~~as set forth by law, for any purpose other than a lawful purpose.~~
- 14 (26) ~~Failing~~ failing to comply with a court order for child support or failing to comply with a subpoena
15 issued pursuant to child support or paternity establishment proceedings as defined in G.S. 110-142.1.
16 In revoking or reinstating a license under this provision, the Board shall follow the procedures
17 outlined in ~~G.S. 93B-13.~~ G.S. 93B-13; or
- 18 (27) performing co-treatment, concurrent, group, or individual therapy that is not in accordance with
19 protocols established by the health care organization employing the licensee.

20
21 *History Note:* Authority G.S. 90-652(2), (4); ~~90-659;~~ G.S. 90-647; G.S. 90-659 (a), (b); G.S. 90-652 (1), (2),(4);
22 150B-3;
23 Temporary Adoption Eff. October 15, 2001;
24 Eff. August 1, 2002;
25 Amended Eff. April 1, 2018;
26 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22,
27 2015.



NOTICE OF TEXT [Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- Notice with a scheduled hearing
- Notice without a scheduled hearing
- Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 13. If a hearing is scheduled, complete block 5.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: North Carolina Respiratory Care Board
2. Link to agency website pursuant to G.S. 150B-19.1(c): www.ncrcb.org
3. Proposed Action -- Check the appropriate box(es) and list <u>rule citation(s)</u> beside proposed action: <input checked="" type="checkbox"/> ADOPTION: 21 NCAC 61 .0801 <input type="checkbox"/> READOPTION <u>with</u> substantive changes: <input type="checkbox"/> READOPTION <u>without</u> substantive changes: <input type="checkbox"/> AMENDMENT: <input type="checkbox"/> REPEAL:
4. Proposed effective date: 04/01/18
5. Is a public hearing planned? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes: Public Hearing date: January 4, 2018 Public Hearing time: 9:00 AM-11:00 AM Public Hearing Location: 125 Edinburgh South Drive, Suite 100, Cary, NC 27511
6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s): The General Assembly is poised to require that Occupational Licensing Boards adopt rules for receiving and processing complaints. The North Carolina Respiratory Care Board publishes these as policies located at www.ncrc.org in a manual titled, Disciplinary Manual. The North Carolina Respiratory Care Board considered the proposed legislation and elected to take steps proactively for complete public transparency pursuant to G.S. 90-652 (2) (5).

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: William Croft, Ed.D., Ph.D., RRT, RCP

Address: 125 Edinburgh South Drive, Suite 100, Cary, NC 27511

Phone (optional): 919-878-5595

Fax (optional): 919-878-5565

E-Mail (optional): bcroft@ncrcb.org

10. Comment Period Ends:

11. Fiscal impact (check all that apply).

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

- State funds affected
- Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

12. Rule-making Coordinator: William Croft, Ed.D., Ph.D., RRT, RCP

Address: 125 Edinburgh South Drive, Suite 100, Cary, NC 27511

Phone: 919-878-5595

E-Mail: bcroft@ncrcb.org

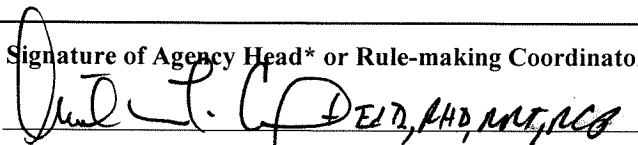
Agency contact, if any: William Croft

Phone: 919-878-5595

E-mail:

13. The Agency formally proposed the text of this rule(s) on
Date: 10/12/2017

14. Signature of Agency Head* or Rule-making Coordinator:



*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: William Croft, Ed.D., Ph.D., RRT, RCP

Title: Executive Director

1 21 NCAC 61 .0801 is proposed for adoption as follows:

2
3 **21 NCAC 61 .0801 RECEIVING AND PROCESSING COMPLAINTS**

4 (a) Any person who has a concern or adverse information about the conduct or competence of a person licensed by
5 the Board, or of a person who has applied to the Board for a license, may present a complaint to the Board.

6 (b) Complaints may be delivered to the Board by transmitting a paper copy of the completed complaint by mail, hand-
7 delivery, or other means to the Board's office; by sending the completed complaint form to the email account identified
8 on the Board's website; or by completing the complaint form online on the Board's website at www.ncrcb.org.

9 (c) Each complaint shall identify the sender of the complaint, provide the sender's contact information, and set forth
10 specific facts known to the sender relating to the conduct or competence of each person who is the subject of the
11 complaint.

12 (d) Upon receipt of a complaint, the Board's staff shall confirm receipt of the complaint to the sender and shall send
13 each person who is a subject of the complaint, using the mail or electronic mail address of record in the Board's
14 records for each person, a summary of the complaint.

15 (e) Investigations may be conducted by the Board staff or by other persons authorized by the Board.

16 (f) The Board staff shall assign a case number to the initial complaint, review the contents of the complaint, and
17 conduct a preliminary review of information to determine whether an individual's conduct or competence relates to
18 the Respiratory Care Practice Act or the Board's rules.

19 (g) If preliminary information in the complaint does not relate to an individual's conduct or competence related to the
20 Respiratory Care Practice Act or the Board's rules, the Board staff shall close the case and send a notice to the sender
21 and to each person who was the subject of the complaint and no further action shall be taken by the Board.

22 (h) If the information about an individual's conduct or competence is related to the Respiratory Care Practice Act or
23 the Board's rules, Board staff shall open an investigative file and begin an investigation of the matters described in
24 the complaint.

25 (i) If the Board staff concludes from the information received that it is possible that there has been a violation of the
26 Respiratory Care Practice Act or the Board's rules, the Board staff shall place the matter on the quarterly schedule of
27 the Board's investigative committee and issue notice to each person who is the subject of the investigation, requesting
28 that each person attend the committee meeting to be interviewed.

29 (j) When a matter comes before the investigative committee, the committee shall conduct an interview with each
30 person whose conduct or competence is the subject of the investigation if he or she is willing to be interviewed.

31 (k) The Board shall authorize the Investigative Committee to make a recommendation at the next quarterly Board
32 meeting if the complaint is not resolved by the Investigative Committee.

33 (l) The Board shall consider the investigative committee recommendation on unresolved complaints at the next
34 regularly scheduled meeting and shall determine what action should be taken.

35 (1) conduct further investigation of particular aspects of the matter;

36 (2) close the case;

1 (3) issue a consent order to a subject of an investigation, specifying disciplinary sanctions to be applied,
2 and if the consent order is not accepted, issue a notice of hearing;

3 (4) issue a notice of hearing to a subject, specifying disciplinary sanctions; or

4 (5) apply to the courts for injunctive relief, refer a matter to a district attorney for prosecution, or take
5 other actions, including reporting matter to appropriate state or federal agencies.

6 (m) A copy notice of hearing shall be sent to the complainant.

7 (n) Notification of the Board's final decision shall be sent to the complainant.

8

9 *History Note: Authority G.S. 90-652 (2) (5);*

10 *Eff. April 1, 2018.*

11