



**NORTH CAROLINA RESPIRATORY CARE BOARD**  
**1100 Navaho Drive, Suite 242**  
**Raleigh, NC 27609**

## **DISCIPLINARY MANUAL**

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# NORTH CAROLINA RESPIRATORY CARE BOARD DISCIPLINARY MANUAL

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## INTRODUCTION

The North Carolina Respiratory Care Board has adopted the procedures set forth in this Disciplinary Manual to set out guidelines for its staff in conducting investigations of possible violations of the Respiratory Care Practice Act (the "**Act**") or the **Board's Rules**, and to define the circumstances for the Board's issuance of any **Disciplinary Sanction** for any individual who holds a License issued by the Board, as well as other individuals who engage in the Practice of Respiratory Care without a license from the Board. However, and except as specifically provided in this Disciplinary Manual, the Executive Director of the Board is authorized to deviate from these policies when deemed necessary to fulfill the Board's statutory responsibilities, so long as the Executive Director has documented the basis for such actions in writing. Any such departure from the procedures in this Manual will be reviewed at the Board's next regularly scheduled meeting.

The Board is not restricted to the measures and Disciplinary Sanctions set forth in this Manual and may invoke the other powers and remedies authorized under the Act.

Since this Disciplinary Manual describes the internal procedures that the Board will follow to exercise its authority and carry out certain responsibilities outlined for it in the Respiratory Care Practice Act and in the Board's Rules, these policies and procedures do not constitute administrative rules, and are not subject to the rulemaking procedures outlined in the North Carolina Administrative Procedure Act.

This revision of the Disciplinary Manual was approved by the Board at its meeting on April 14, 2011. These policies and procedures are subject to change by majority vote of the Board at any time. When any of the policies or procedures outlined in this Disciplinary Manual are changed, the Board will publish notice of the change and create a link to the revised policy on its website. In addition, the Board will mail notice of the change and a copy of the revised Disciplinary Manual to any individual or organization that has previously submitted a written request to receive such notices.

## **Basic Outline of the Board's Investigation and Disciplinary Process**

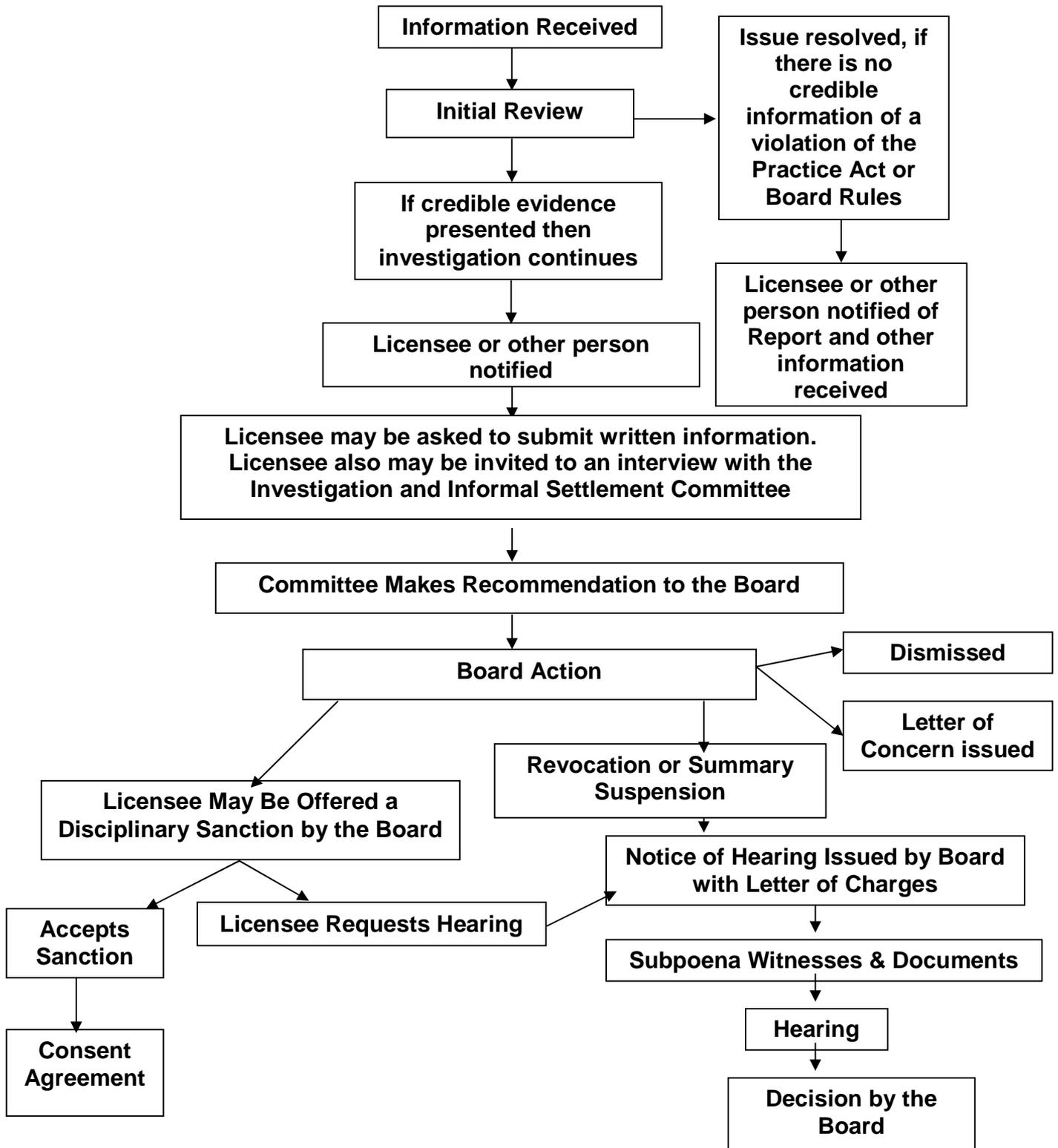
This Manual presents a general description of the Board's investigative process and a description of the disciplinary sanctions that it may determine to apply in particular cases. In the Glossary at the end of this Manual, you will find explanatory information about each of the terms that are presented in **Bold** and *Italics*.

When information comes to the Board about a potential violation of the Act or the Board's Rules, the Board will review the information received, make a determination about whether an investigation of the alleged conduct or activity should proceed, and follow the other steps outlined in Section A of this Manual in making a determination about whether a sanction should be issued. Section B presents an overview of the Board's sanctions.

The key components of the Board's investigation and disciplinary process can be illustrated by the following chart, but please note that the entire manual, rather than the chart, should be consulted for a detailed and description of the process. You will find a link to this manual as a PDF Document at the Discipline Page on the Board's website at <http://www.ncrcb.org/discipline.htm>.

All disciplinary actions taken by the Board will be reported on the Board website. In addition, as required by federal law, a report of certain actions will be made to the Healthcare Integrity and Protection Data Bank ("HIPDB") maintained by the U.S. Department of Health and Human Services. The Board will also report any disciplinary actions to the National Databank maintained by the National Board for Respiratory Care ("NBRC"). More details about reporting disciplinary actions and the information that will be provided in these reports is found in Section B.10, on page 25.

# INVESTIGATION/DISCIPLINE PROCESS FLOW CHART



## **A. INVESTIGATIVE PROCEDURES**

## **A.1 NOTICES**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish procedures for providing notices to Licensees and other parties.**

Each *Licensee* is required to notify the Board of any name change or change in the Licensee's residence or business mailing address under 21 NCAC .0501. Therefore, the Board will rely on the residential address information provided by each Licensee to identify the address to which notices to each Licensee should be sent.

Whenever possible, notices required in this Disciplinary Manual will be provided as follows. The Executive Director is authorized to deviate from these notice procedures in regard to notices of interviews; but the procedures set forth in this section must be followed to provide notices of any hearings before the full Board, and may not be changed except by authorization of the full Board.

Whenever feasible, notices will be sent 10 days before the date of the event that is the subject of the notice, except that notices of hearings must always be sent according to the time limits set forth in the Board's Rules.

Notices to a current or previous Licensee of the Board will be sent by First Class Certified mail to that Licensee's most recent mailing Address of Record in the Board's files, as well as to the Licensee's most recent electronic mail address in the Board's files. If a mailed notice is returned undelivered, the Executive Director will attempt to determine the Licensee's current mailing address by contacting the most recent practice site previously identified by the Licensee, and will send a notice by First Class Certified mail to each additional address for that Licensee that is provided by that practice site.

Any other individual who is not a Licensee will be notified by First Class Certified Mail or any other means available, directed to each physical or electronic address for any such organization or individual that is recorded on the records of another state agency, such as, the North Carolina Secretary of State's Office or otherwise becomes known to the Board up to the date of the Interview or Hearing.

A company or other organization will be notified by First Class Certified Mail directed to each physical or electronic address for any such organization that is available on the website of the North Carolina Secretary of State, or otherwise becomes known to the Board up to the date of the Interview or Hearing.

If after following these procedures, the Board is unsuccessful in reaching a Licensee, other individual, or organization, it will proceed to conduct the Interview or Hearing that is the subject of the notice.

## **A.2 PRESENTING CONCERNS ABOUT CONDUCT TO THE BOARD**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish procedures for submitting complaints or other concerns about the conduct of Licensees or other individuals or organizations.**

Complaints and other concerns about the conduct or activities of Licensees, or about individuals who may be practicing Respiratory Care without a license, or regarding other conduct or activities that may violate the Respiratory Care Practice Act or the Board's Rules, shall be submitted to the Board Office. These Reports should specify facts or circumstances which indicate that a violation of the Respiratory Care Practice Act or the Board's Rules may have occurred, or that a violation of another North Carolina statute has occurred which can be the basis for a determination that a violation of the Board's Statute or Rules.

Each Report should be submitted in writing, and delivered to the Board Office by mail, private carrier, or in person. Persons submitting Reports by fax, e-mail, telephone, or voice mail will be asked to submit an original signed written Report. Anonymous Reports will not be accepted or considered, except in unusual circumstances in which the Executive Director, in his sole discretion, considers it appropriate to proceed.

### **Submitting information to the Board:**

A Report may be submitted in a letter or by using the "**REPORT FORM**" that is available on the Board's website. Reports should provide all available information about each of the following points:

- The name, mailing address and phone number of each person providing information;
- The name of the Licensee or person involved, and the name and location of each organization where the Licensee or any other person involved is alleged to have engaged in the conduct or activities in question;
- A detailed description of the alleged conduct or activities, including identification of date, time, and location of the alleged conduct or activities, as well as the identity of other individuals with information about the alleged conduct or activities, and
- The identity and location of any pertinent documents that are known to be pertinent to the content of the Report.

### **A.3 STARTING AN INVESTIGATION**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To define when an investigation should begin and initial steps.**

The Board may initiate an investigation into the conduct or activities of any individual or organization, based upon information that comes to the Board through its own efforts, or by means of a Report presented to the Board by some other third party, including another governmental agency. Based upon all the information received about a particular course of conduct or other activity, the Executive Director will determine whether an investigation should proceed after a review and analysis of the initial information received.

#### **INITIAL DATA COLLECTION:**

In compiling information to assess whether to start an investigation, the Board will attempt to gather at least the following information:

- The name, mailing address and phone number of each person providing information, as well as, the basis for each person's knowledge about the information provided;
- The name of the Licensee or person involved, and the name and location of each organization where the Licensee or any other person involved has engaged in the alleged conduct or activities;
- A detailed description of the alleged conduct or activities, including identification of date, time, and location of the alleged conduct or activities, as well as, the identity of any other individuals who are known to have information about the alleged conduct or activities; and
- The identity and location of any documents known to be pertinent to the alleged conduct or activities.

After a report is received, the Executive Director may open an Investigation File and may conduct an Initial Review to determine if there is sufficient information to start an Investigation. This Initial Review will determine whether the credible information received supports a conclusion that a violation of the North Carolina Respiratory Care Practice Act, or of the Board's Rules may have occurred. In making this assessment the Executive Director may decide to consult with the Chair of the ***Investigation and Informal Settlement Committee*** or with the Board Chair, but the Executive Director has authority to determine that an investigation should begin without such a consultation. If the initial assessment of the information leads to the conclusion that there is sufficient credible evidence to indicate that a violation of the North Carolina Respiratory Care Practice Act or the Board's Rules has occurred, then the Executive Director will input the information into the NCRCB Investigation Database and assign a case number.

If a determination is made to start an Investigation, the Executive Director shall notify each **Affected Person** known to the Board whose conduct or activity is the subject of the Investigation by sending a Letter of Investigation, following the procedures outlined in the Notices policy of this Disciplinary Manual. The Letter of Investigation will contain a summary of the information that has prompted the investigation, and will enclose The Basic Outline of the Disciplinary Process, The Discipline Flow Chart, and Board contact information. Each Letter of Investigation will be transmitted using the procedures outlined in the Board's Notices Policy, and if feasible will be sent within 10 days after the decision to begin the investigation; but the investigation will not be delayed pending any Affected Person's receipt of notice.

After the issuance of a Letter of Investigation, the License Verification Status of any Licensee who is an Affected Person in the NCRCB Database will be changed to "Contact Board". Any person contacting the Board about a Licensee whose status has been changed to "Contact Board" will be advised that the conduct of that individual is under investigation by the Board, but under no circumstances will any further details be furnished.

#### **A.4 CLOSING AN INVESTIGATIVE FILE**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To define procedures following a determination that no investigation is warranted.**

If the Executive Director determines after reviewing a Report, together with any other available information relating to the subject of the Report, that there is insufficient basis to find a violation of the North Carolina Respiratory Care Practice Act, or the Board's Rules during this initial review, the Executive Director will confer with the Investigation and Informal Settlement Committee Chair or the Board Chair, and if there is agreement, the Investigation File will be closed.

After an Investigation File is closed, no further action will be taken by the Board except that if it has been determined that another board or agency within or outside the State, has been determined to have jurisdiction over the conduct or activity described in the Report, then the Executive Director will refer the matter to each other board or agency with jurisdiction.

After an Investigation File is closed, any person who furnished information about the conduct or activity involved, as well as, each Licensee and other Affected Person whose conduct or activity was the subject of the Report will be notified, using the procedures identified in the Notices policy. If the matter has been referred to another board or agency, that fact will be disclosed in the notice.

## **A.5 THE BOARD'S INVESTIGATORY PROCESS**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To define procedures for conducting an investigation.**

Each investigation will be oriented toward identifying whether there is any credible evidence of a violation of the Respiratory Care Practice Act or of the Board's Rules. The Executive Director, in consultation with the Board and with Legal Counsel when necessary, will determine and define the scope of each investigation, which may be framed more broadly than the scope of the information contained in a Report.

If credible evidence of other violations that were not previously reported comes to light during an investigation, the Board also will investigate those matters. The Licensee or other Affected Person will be notified promptly of any such additional matters.

Investigations will be conducted by the Executive Director or Board Investigator, with the guidance and assistance of the Board's Legal Counsel when needed. Each investigation will be conducted as expeditiously as possible in light of the nature of the conduct or activity under review, the workload of Board staff, and other pertinent considerations. Information gathered during an investigation will be put in writing whenever feasible, and at the earliest possible time after collection of the information.

In the conduct of an investigation, the Executive Director may subpoena witnesses to appear and may subpoena medical records for review.

### **Access to information about an investigation by members of the public:**

While an investigation is conducted by the Board, its contents are confidential. However, the Board cannot guarantee persons who furnish information to the Board that their identity will remain confidential throughout the entire process. If the Board schedules an interview with a Licensee or other Affected Person whose conduct or activity is the subject of an investigation, then the identity of the persons who have furnished information relating to the conduct or activity will be disclosed. In addition, if the Board conducts a hearing with regard to a matter that has been investigated, any evidence submitted during that hearing and any resulting decision of the Board will become a matter of public record.

### **Review by the Investigation and Informal Settlement Committee:**

After the Executive Director determines that an investigation is complete, and if there is no determination to close the Investigative File, the next step in the process is the consideration of the matter by the Board's Investigation and Informal Settlement Committee. As part of the review by the Investigation and Informal Settlement Committee, each Licensee or other Affected Person will be invited to submit written information in response to the matters under investigation, and will be invited to attend an interview with the Committee.

## **A.6 OBTAINING RECORDS FOR INVESTIGATIONS**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish procedures for obtaining medical records and other data needed to conduct an investigation [or for other purposes].**

Subpoenas may be issued by the Board for the production of records, including medical records. The Board Chair, Executive Director or Board Counsel is authorized by the Board to sign subpoenas needed for investigation purposes and administrative hearings.

Each subpoena will identify the medical records or other pertinent documents needed by the Board. A time shall be specified in the subpoena by which the documents shall be produced. The return date shall be at least two weeks before a scheduled Interview or Hearing. Each subpoena will be accompanied by a copy of the portion of the Respiratory Care Practice Act that gives the Board subpoena power, as well as a copy of that portion of the HIPAA Privacy Rule adopted by the United States Department of Health and Human Services which establishes the right of agencies like the Board to obtain Protected Health Information.

In issuing subpoenas and other requests for documents, the Board shall make every effort to limit its request to the minimum necessary information required in order to complete its investigation. The Board will comply with the HIPAA Privacy Rule adopted by the United States Department of Health and Human Services and codified at 45 CFR § 164.500 *et seq.* in its treatment of all information containing Protected Health Information.

For Administrative Hearings two certified copies of records should be provided. One certified copy should be presented in a sealed envelope to be opened during the Administrative Hearing. Upon receipt of the two certified copies, the Board's Counsel will review the unsealed certified copy for completeness.

## **A.7 REIMBURSING WITNESS EXPENSES**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish the procedures for the reimbursement of witness expenses.**

Witnesses requested to appear on behalf of the Board will be reimbursed for actual expenses at the state rate for mileage, meals and lodging.

An information sheet will be supplied to all witnesses at the time a subpoena or other request to testify is issued.

Reimbursement for lodging for a witness will only be provided if in the judgment of the Executive Director, the witness lives more than 100 miles as the crow flies from the location of the hearing, and upon presentation of a receipt for lodging at a location approved in advance by the Board.

Requests for reimbursement should be made within fifteen (15) days of appearing as a witness.

All reimbursement requests must be submitted on a form supplied by the Board and the original itemized receipt must be attached. The Executive Director will check the expense form, verify if correct and reimburse the witness within 30 days of receipt of a correct expense form. A copy of the expense form shall be attached to the subpoena and placed in the Licensee's file.

## **A.8 The Interview Process:**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish the procedures for interviews.**

Each Licensee or other Affected Person whose conduct or activity is the subject of an investigation will be invited to an interview with the Board's Investigation and Informal Settlement Committee. In the case of a company or other organization, the Board will invite the owner or a senior corporate executive with knowledge of the facts described in the Report.

The Board also will invite the person or persons who have submitted any Report, as well as, other individuals known to have unique knowledge of the subject matter of the investigation. Any individual invited to attend an interview may refuse to be interviewed or to provide written statements to the Board, and also may refuse to answer specific questions and in that event, the Informal Settlement and Investigation Committee will proceed based on information available from other sources, and will make a recommendation for disposition based on the other credible information obtained in the investigation.

At the Interview, the Licensee or other Affected Person may be represented by an attorney, who may accompany the Licensee or other Affected Person in the interview.

No Affected Person whose conduct or activities is the subject of an investigation will be required to give sworn testimony. Other persons providing information about the conduct or activities under investigation may be requested to provide a sworn statement.

Prior to the Interview, and at any time during the Board's normal business hours, the Licensee or other Affected Person may view all documents in the Board's possession related to the case, and to do so before responding to any questions.

Interviews shall be directed by the Chair of the Investigation and Informal Settlement Committee. At the beginning of the interview, before any substantive questions are asked, the Licensee will receive an oral summary of the matter being investigated.

The persons permitted to be present during an interview of an Affected Person shall be the Affected Person, one member of the Affected Person's family, the Affected Person's legal counsel, the members of the Investigation and Informal Settlement Committee, the Executive Director, the Board Investigator(s), the Board Counsel, and where deemed appropriate and in the interest of the Board, the Board Chair or a Board Member designated by the Chair also may attend. The Licensee or other Affected Person, as well as Counsel, may be present during any interviews of other persons related to the conduct or activities under investigation. At the discretion and under the direction of the Chair of the Investigation and Informal Settlement Committee, the Licensee, other Affected Person or legal counsel may be permitted to pose questions to any witness or to make oral suggestions to the committee as to questions that should be posed to a witness, in the discretion of the Chair of the Committee.

## **A.9 Recommendations of the Investigation and Informal Settlement Committee:**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish the procedures for consideration of the recommendations of the Investigation and Informal Settlement Committee.**

If the Investigation and Informal Settlement Committee determines, after reviewing the information provided during interviews and other pertinent information, that sufficient evidence exists that the Licensee or other Affected Person, whose conduct or other activity is the subject of the investigation, has violated the Respiratory Care Practice Act or the Board's Rules, then at the next scheduled meeting of the full Board, or at a subsequent meeting, the Committee may recommend that the Board offer the Licensee or other Affected Person a sanction against his/her license to be incorporated in a **Consent Order**.

During the Board meeting when this matter comes before the Board, it may accept the recommendation of the Committee, approve another sanction to be offered to the Licensee or other Affected Person in a Consent Order, or determine that no sanction should be imposed.

The Executive Director will contact the Licensee or other Affected Person whose conduct or other activity is the subject of the investigation as soon as possible after the Board meeting to communicate the result of the Board's consideration of the matter. When the Board has determined to offer a sanction via a Consent Order, the Executive Director will communicate that, and if that offer is accepted by the Licensee or other Affected Person, then the Executive Director will prepare a Consent Order containing those terms for signature by the Licensee or other Affected Person.

After a consent order is signed, the Executive Director will enter the summary of findings and sanction into each Affected Licensee's NCRCB Database file and will make such reports to HIPDB and NBRC Databank as are appropriate.

If the Licensee or other Affected Person whose conduct or other activity is the subject of the investigation does not agree to the sanction offered by the Board, or if the full Board determines not to offer a disciplinary sanction to the Licensee and proceed with action against a Licensee, the Board will issue notice to the Licensee or other Affected Person of its action. If the Board has determined to take action on a license, Notice of an Administrative Hearing will be issued, following the Notices Procedure.

## **B. BOARD DISCIPLINARY SANCTIONS**

## **B.1 OVERVIEW OF BOARD SANCTIONS**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To define the levels of sanctions that may be utilized to discipline a Licensee.**

The following are the sanctions authorized by the North Carolina Respiratory Care Board to discipline a Licensee. The Investigational and Informal Settlement Committee is authorized to recommend sanctions to the Board as part of a consent agreement with a Licensee.

Letter of Concern  
Reprimand  
Probation  
Suspension  
Suspension with Stay  
Summary Suspension  
Revocation

When another board or agency, in North Carolina or elsewhere, takes disciplinary action against a Licensee that is based on a determination that the individual engaged in conduct which violated the statutes or rules of the other jurisdiction, and that conduct also would be a violation of the Board's Statutes or Rules, then the Board may summarily impose the same or lesser disciplinary action upon the Licensee as the other board or agency, after receipt of a certified copy of the action by the other Board or Agency, which includes the findings of fact and legal conclusions establishing the basis for the action by the other Board or Agency.

## **B.2 LETTER OF CONCERN**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish guidelines for issuing a Letter of Concern.**

A Letter of Concern is a written warning from the Board. A Letter of Concern may be issued by the Executive Director at the direction of the Board following its consideration of a recommendation from the Investigation and Informal Settlement Committee or after an Administrative Hearing. The letter may be directed to a specific individual or to an organization. It is not a disciplinary action, and is not considered public information.

A Letter of concern may be issued in two circumstances:

A Letter of concern may be issued to warn a Licensee that a standard or code of conduct has been breached, but the conduct is not determined to be a violation of the Respiratory Care Practice Act, or of the Board's Rules.

A Letter of Concern also may will be issued following an investigation if the Board believes that there is insufficient evidence to support other disciplinary action against the Licensee, but there is sufficient evidence for the committee or the Board to warn the Licensee that continuing the activities which led to the complaint being submitted to the Board may result in other disciplinary action against the Licensee.

### **B.3 REPRIMAND**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish guidelines for issuing a Reprimand.**

A Reprimand is a formal sanction that expresses concern about the actions of a Licensee but does not restrict the Licensee's practice of respiratory care.

A Reprimand may be issued by the Executive Director to a Licensee, to an unlicensed individual, or to an organization at the direction of the Board following an Informal Settlement and Investigational Committee meeting or an Administrative Hearing. A Reprimand is considered public information and will be reported to the HIBPD Data Bank, as well as to the Data Bank maintained by the NBRC.

A Reprimand may be offered by the Board to a Licensee if there is sufficient evidence that a violation of the Respiratory Care Practice Act, or the Board's Rules has occurred, but the violation is not sufficiently serious to warrant more severe action.

## **B.4 PROBATION**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish guidelines for utilizing probationary remedies against a Licensee Instead of Suspension or Revocation of the License.**

The Board may determine that a Licensee has violated the Respiratory Care Practice Act or the Board's Rules, but it is appropriate to allow the Licensee to continue to practice, while imposing limitations on the Licensee's practice of respiratory care to address the violations that have been determined to exist. A probationary sanction may last up to thirty-six (36) months. In assessing the appropriateness of a probationary penalty, the Board will consider each of the following factors, along with all other pertinent facts and circumstances of the conduct at issue:

- the nature, severity, and scope of the violations;
- the degree and scope of **Harm** to patients;
- the Licensee's prior professional practice;
- the Licensee's prior violations of the Respiratory Care Practice Act or the Board's Rules, especially prior violations that relate directly to the conduct in question;
- the nature of the motivations of the Licensee that led to the conduct in question; and
- whether any probationary conditions on the Licensee's practice of respiratory care that might be imposed will provide sufficient safeguards to ensure the safety and welfare of the public and the successful remediation of the Licensee's conduct.

Probationary Conditions, Requirements, or Limitations may include but are not limited to the following:

- **Monitoring**
- **Restricted Practice**
- **Direct Supervision**
- Additional Continuing Education
- Education Course Work
- Statute and Rules Study and Exam
- Completion of a Chemical Dependency Program
- Psychological Evaluation
- Competency Examination

Failure to comply with any of the stated conditions will be grounds for summary suspension or revocation of the license.

Probation also may be offered to a Licensee by the Board as part of the issuance of a new license after a revocation of a license or as part of the reinstatement of a license after a suspension.

## **B.5 SUSPENSION**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish guidelines for Suspension of a License.**

When the Board determines it is appropriate, it may offer a Licensee the sanction of a suspension of the license for a fixed period up to twelve (12) months, with the understanding that at the end of the specified period of time, and if the Licensee has completed any attached conditions, including but not limited to completion of any conditions imposed, the license will be reinstated automatically and reissued upon the Licensee's payment of any penalties or disciplinary costs and the standard cost for the issuance of a replacement or renewal license, if applicable. However, at the time of the suspension, or at the point when the license is becomes active, the Board may determine that it should impose other conditions or limitations on a Licensee after reinstatement of licensure following suspension. The License will be re-issued with the same calendar expiration date as the original license.

A Suspension may be stayed for a period of time that includes conditions or limitations on the scope, or the weekly amount of time that the Licensee may practice, or other conditions that the Licensee must follow to continue the practice of Respiratory Care during the stay. However, if the Licensee fails to comply with any of the conditions imposed or limitations imposed on the scope of practice, then the Board may immediately end the stay and activate the suspension.

Conditions or Limitations include but are not limited to the following:

- Monitoring
- Restricted of Practice
- Direct Supervision
- Additional Continuing Education Requirement
- Education Course Work
- Statute and Rules Study and Exam
- Completion of a Chemical Dependency Program
- Psychological Evaluation
- Competency Examination

Failure to comply with any of the stated conditions will be grounds for summary suspension or revocation of the license.

## **B.6 SUMMARY SUSPENSION OF LICENSE**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish guidelines for issuing a Summary Suspension.**

The Board may issue a Summary Suspension of a license if it Board finds that the conduct that has been documented through records of convictions, sworn statements by eyewitnesses, or other clear and convincing evidence demonstrates that the public health, safety and welfare has been jeopardized and would continue to be jeopardized by the continued practice of a Licensee. At any point that the Board believes that such an action is warranted, an emergency meeting will be called by the Board Chair. The emergency meeting may be carried out by telephone conference, and notice provided to interested parties and those media outlets that have expressed an interest in being notified of meetings of the Board. All interested parties will be provided a way to monitor the discussion at the meeting.

Notice of the Summary Suspension will be sent to the Licensee by registered mail, return receipt requested; but in addition, using contact information that the Licensee has provided to Board for telephone, facsimile, and e-mail, the Executive Director will make other efforts to inform the Licensee about the Summary Suspension. Using contact information provided to the Board by the Licensee about the Licensee's practice site, the Executive Director also will attempt to contact the organization that has employed the Licensee.

Upon issuance of a Summary Suspension, the Board shall also notify the Licensee that it is scheduling a Revocation hearing, as provided in the policy on Revocations.

## **B.7 REVOCATION OF LICENSE**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish guidelines for a Revocation of a License.**

Revocation entails loss of the individual's permission to practice respiratory care for a specified period of time. A new license may be issued after the specified period, after the Licensee has petitioned for reinstatement, has provided sufficient evidence of fitness to re-enter practice, and has documented compliance with any conditions imposed by the Board at the time of the revocation.

Upon a determination by the Board that a license should be revoked, a notice shall be sent to the Licensee advising the Licensee that a hearing will be scheduled on this matter, and identifying the time and place that the Board will conduct the hearing; or indicating that the hearing will be conducted under the auspices of the North Carolina Office of Administrative Hearings (OAH), and referring the Licensee to OAH for information about the scheduling of the hearing. With the Notice of Hearing, the Board also shall include specific information about the facts and circumstances leading to the decision to initiate the revocation action, and identifying the particular portions of the North Carolina statutes or rules that provide the basis for the revocation action.

The Licensee may apply to the Board, if it is conducting the hearing, or to OAH when applicable, to subpoena witnesses or subpoena the production of documents for the hearing.

The conduct of a hearing will be governed by the Board's Rules.

At the hearing, the Board will present its evidence first and the Board will have the burden of demonstrating, by the greater weight of the evidence, that the matters referenced in the Notice of Hearing are true and correct. The Licensee may be represented by legal counsel at the hearing and may cross examine witnesses called by the Board, call witnesses to offer relevant and material testimony, and may present documentary evidence that is relevant and material to the matters charged.

## **B.8 PRACTICING WITH A LAPSED LICENSE OR EMPLOYING A PRACTITIONER WITH A LAPSED LICENSE**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish the procedures for disciplining an individual practicing Respiratory Care with a lapsed license, or a Licensee who employs someone with a lapsed license.**

The Board authorizes the Executive Director to offer the option of a Reprimand to a Licensee practicing respiratory care with a lapsed license or to a Licensee employing an individual with a lapsed license. A Reprimand becomes part of the Licensee's file. Issuance of a Reprimand is public information that will be posted on the Board website. The sanction shall also include the presumptive civil penalties and disciplinary cost authorized by 21 NCAC 61 .0309 and 21 NCAC 61 .0310.

The Executive Director is authorized to offer the option of a Reprimand in lieu of an Interview with the Investigation and Informal Settlement Committee as follows:

For practicing RCP's and Supervising RCP's when the license has lapsed less than 90 days, the Executive Director may issue a Letter of Reprimand. The lapsed Licensee will be required to submit the Renewal fee and Late Renewal fee before a new license is issued that authorizes continuing the practice of Respiratory Care. The Licensee must pay the civil penalties and disciplinary cost within 90 of signing of the Consent Order.

Practicing RCP's with a license that has lapsed longer than 90 days must appear before the Investigation and Informal Settlement Committee.

A Respiratory Care Practitioner who accepts a respiratory care administration position supervising other respiratory care personnel is accountable for ensuring that all such personnel are properly licensed. The supervisor must report to the Board any RCP found practicing with a lapsed license within 72 hours of the discovery.

## **B.9 PRACTICING WITHOUT A LICENSE OR EMPLOYING A PRACTITIONER WITHOUT A LICENSE**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish the procedures for disciplining an individual practicing Respiratory Care without a license.**

The Executive Director is authorized, after consultation with the Board Counsel, to apply to Superior Court for an order enjoining an individual who is practicing Respiratory Care without a license. In making this determination, the Executive Director and counsel will be guided by the principles and reasoning set forth in the Board's prior declaratory rulings.

A Respiratory Care Practitioner who accepts a respiratory care administration position supervising other respiratory care personnel is responsible for ensuring that all such personnel are properly licensed. The supervisor must report to the Board any RCP found practicing with a lapsed license within 72 hours of the discovery that a license has lapsed.

## **B. 10 REPORTING DISCIPLINARY ACTIONS:**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish a procedure to make disciplinary actions public, and to report disciplinary actions to the Healthcare Integrity and Protection Data Bank (HIPDB) maintained by the U.S. Department of Health and Human Services, to the databank maintained by the National Board for Respiratory Care (NBRC), and to other agencies.**

All Final Decisions and other public disciplinary actions taken by the Board as defined in this manual will be reported on the Board website. In addition, as required by federal law, a report of certain actions will be made to the Healthcare Integrity and Protection Data Bank (HIPDB) maintained by the U.S. Department of Health and Human Services. Pursuant to 45 CFR 61.7, the Board will report to the HIPDB any revocation, suspension or surrender of a license, as well as, any other negative action that is made public by the Board.

The Board will also report any disciplinary actions to the National Databank maintained by the National Board for Respiratory Care.

The information to be provided in these reports will include:

Name, address of record, date of birth, gender, and Social Security Number;

Type of license (Active or Provisional);

License number;

Final Board action;

Charges/information/administrative complaint; and

If there has been a voluntary surrender of the license, a copy of communications from the Licensee confirming voluntary surrender.

Copies of any such notice will be provided to each Affected Person and to each organization that furnished any services in question by each Affected Person.

If the Board issues notice of an administrative hearing, no report will be sent to HIPDB or the NBRC Databank until the Board enters a Final Decision which includes a reportable sanction.

When so directed by the Board, in cases where it has been established by Consent Order, or by a Final Decision after a hearing, that an individual has practiced with a lapsed license, or that an individual was employed and practiced without a license, the Executive Director also will report that to any agency or board which licenses the employing organization or the supervising health professional, as well as, to any state or federal agency known to have issued payment for services rendered by the individual during the period when they practiced without an active license. Copies of any such notice will be provided to each such organization and supervising health professional.

## **B.11 EXPUNGING A LICENSEE'S RECORD OF A VIOLATION OR SANCTION**

ORIGINAL EFFECTIVE DATE: September 10, 2002

DATE (S) REVISED: April 14, 2011

**PURPOSE: To establish a procedure to expunge a record of a violation or sanction.**

Under appropriate circumstances, the Board will consider whether, after the lapse of at least one year and documentation of satisfactory performance by a Licensee that was subject to prior discipline, the record of the Licensee's prior discipline should be expunged from the Licensee's file. This expunging of prior violations shall not be available in the case of a prior revocation of a license. It shall be available in cases where a Licensee's license has been suspended, or where a Licensee has received a letter of reprimand or has had a probationary sanction applied without a revocation.

In those cases where the Board determines that expunging a Licensee's record of a prior disciplinary sanction is appropriate, all references to the prior discipline shall be removed from the Licensee's file and no record of the discipline shall be made available to the public. Upon inquiry by any member of the public or of the press with regard to the prior history of a Licensee, the Board will respond that it has no record of a violation by the Licensee.

In addition, the Board shall not consider any evidence of the expunged violation in any subsequent investigation or proceedings against the Licensee. In addition, in any case where a record of a violation is expunged, the Board does not consider that a violation that has been expunged should be reported by the Licensee in subsequent applications to other boards, agencies or organizations, but the Board recognizes that is a matter for determination by those other boards, agencies or organizations in their discretion.

## **C. DISCIPLINE GLOSSARY**

The following terms are used in the Disciplinary Manual and this glossary is provided as a general guide or reference to the use of these terms, but the Board will interpret these terms in accordance with the Respiratory Care Practice Act and the Board's Rules.

**Act, or Respiratory Care Practice Act** means the version of the Respiratory Care Practice Act that is in force at the time of the relevant conduct. The Act can be found on the Board's website at <http://www.ncrcb.org/rules&Laws.html>.

**Affected Person** means the individual, company or other organization whose activities or conduct is the subject of a Board investigation or disciplinary proceeding.

**Board Rules** means the version of the Board's Rules that is in force at the time of the relevant conduct. The Board Rules have been codified beginning at 21 NCAC 61 . 0101, and can be found on the Board's website at <http://www.ncrcb.org/rules&Laws.html>.

**Chemical Dependency Program** means a program designed for practitioners who are chemically dependent; have violated the Respiratory Care Practice Act; and, requested an Informal Settlement Conference or Administrative Hearing. Such practitioners may be placed on Probation as long as compliance with the program is maintained.

**Consent Order** means an order in which a licensee or other Affected Person voluntarily accepts a sanction by the Board.

**Direct Supervision** refers to a range of measures that the Board has approved to provide enhanced, on-site, close supervision for the practice of a Licensee who is under Probation.

**Disciplinary Sanction** means any disciplinary action taken against a license by the Board.

**Harm** means physical or mental damage or injury.

**Investigation and Informal Settlement Committee** is the committee authorized by the Board to investigate, with the help of the Executive Director and others designated by the Board, all complaints received concerning a Licensee. After an investigation the committee is authorized to propose, to the Board, a sanction to be offered to a Licensee. The committee will also investigate any applicants that the Board designates for investigation.

**Licensee** means a person holding any license issued by the Board.

**Monitoring** is the process of allowing a Licensee to return to respiratory care practice by requiring compliance with conditions of probation, such as, requiring quarterly performance reports. The monitoring may be for a specific number of months or for the duration of the probation. An individual must be employed as a licensed respiratory care practitioner to satisfy the monitoring requirements.

**Restricted Practice** is a determination that a Licensee will be allowed to return to respiratory care practice under probationary conditions restricting practice to exclude supervisory activities, home health care practice, critical care practice or other particular practice areas or procedures that the Board has determined might create risks or problems. The restriction may be for a specific number of months or for the duration of the probation.