SECTION IV-B

GROUNDS FOR DENIAL, SUSPENSION, REVOCATION OR PROBATIONARY CONDITIONS OF LICENSE

Scenario # 2 – I Know What’s Best for the Patient

RCP Joe is working the evening shift at Memorial Hospital. He has received a report on his patients in the ICU. RCP Joe has reviewed the chart for his patient in bed #2 and the physician’s orders for ventilator settings, recent ABG’s on current settings and has completed a full assessment of patient’s other history of recent laboratory results. The hospital where he works does not have approved protocols in place. The last physician order states an FiO2 order of 0.40. RCP Joe notes the SpO2 to read 100% and weans the patient from FiO2 of 0.35% down to 0.30, and then to 0.25.

Fifteen minutes later, RCP Joe is called to the general medical floor to assess a patient who is having difficulty breathing. He performs an assessment and finds the patient is retaining secretions and unable to generate a forceful cough. The family relayed that their loved one was suctioned with a tube before and it helped to alleviate the difficult breathing. He decides to nasotracheal suction the patient. As he inserts the catheter into the left nare entering the hypopharynx, he notes bleeding immediately. He stops the procedure and calls the nurse for assistance. They attend to the bleeding until it subsides. After the incident, the nurse indicates the physician had written an order earlier in the day stating ‘no nasal suctioning’ as the patient’s platelet count was very low. RCP Joe documents the procedure and heads back to the ICU. Later that evening a bronchoscopy is performed to insure that the bleeding had, in fact, ceased.

Discussion

If we look at our case scenario, RCP Joe has several violations. Changing the FiO2 or any other ventilator setting without hospital-approved protocols in place is a clear violation and demonstrates “negligence in his or her practice as a respiratory care practitioner”. In addition, Section 3750 has been violated “changing the prescription of a physician and surgeon, or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.”

The Respiratory Care Board has defined respiratory protocols under Scope of Practice as: “A Respiratory Care Protocol is defined as policies and protocols developed by a licensed health facility through collaboration, when appropriate, with administrators, physicians and surgeons, registered nurses, physical therapists, respiratory care practitioners, and other licensed health care practitioners.”¹

In the second incident, RCP Joe did not review the orders prior to entering the patient’s room and provided therapy without an order. Moreover, physician orders were written and not followed with regard to a “no nasal suctioning” order. Again, a violation of B&P Code Section (f), “negligence” and Section (l), changing the prescription of a physician.

In the absence of hospital-approved protocols, physician orders are just that - orders.

¹ Scope of Practice, Business and Professions Code, § 3702. Practice of respiratory care; Components; "Respiratory care protocols"
The Respiratory Care Board may order denial, suspension, revocation of, or probationary conditions upon RCP Joe’s license. Had there been only one incident, RCP Joe’s future may have had a different outcome. But clearly a pattern of a departure of standard of care has developed. B&P Section 3750 (p), states: “a pattern of substandard care or negligence in his or her practice as a respiratory care practitioner”.

The Respiratory Care Board filed an accusation seeking the revocation of RCP Joe’s license, and ordered RCP Joe to pay the Respiratory Care Board costs to investigate and enforce this case. Section 3753.5 of the B&P code clearly states what costs may be reimbursed to the Respiratory Care Board for investigation and prosecution of disciplinary action.

### Laws and Regulations Governing Respiratory Care

#### § 3750. Causes for denial of, suspension of, revocation of, or probationary conditions upon license

The board may order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

(a) Advertising in violation of Section 651 or Section 17500.
(b) Fraud in the procurement of any license under this chapter.
(c) Knowingly employing unlicensed persons who present themselves as licensed respiratory care practitioners.
(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.
(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.
(f) Negligence in his or her practice as a respiratory care practitioner.
(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).
(h) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.
(i) The aiding or abetting of any person to engage in the unlawful practice of respiratory care.
(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.
(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record.
(l) Changing the prescription of a physician and surgeon, or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.
(m) Denial, suspension, or revocation of any license to practice by another agency, state, or territory of the United States for any act or omission that would constitute grounds for the denial, suspension, or revocation of a license in this state.
(n) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to
licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(o) Incompetence in his or her practice as a respiratory care practitioner.
(p) A pattern of substandard care or negligence in his or her practice as a respiratory care practitioner; or in any capacity as a health care worker, consultant, supervisor, manager or health facility owner; or as party responsible for the care of another.

§ 3750.5. Additional grounds for denial, suspension, or revocation of license

In addition to any other grounds specified in this chapter, the board may deny, suspend, place on probation, or revoke the license of any applicant or license holder who has done any of the following:
(a) Obtained, possessed, used, or administered to himself or herself in violation of law, or furnished or administered to another any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9, except as directed by a licensed physician and surgeon, dentist, podiatrist, or other authorized health care provider, or illegally possessed any associated paraphernalia.
(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, or to others, or that impaired his or her ability to conduct with safety the practice authorized by his or her license.
(c) Applied for employment or worked in any health care profession or environment while under the influence of alcohol.
(d) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.
(e) Been committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a), (b), and (c), in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.
(f) Falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a).

§ 3750.51. Limitations period for filing accusation against licensee
(a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

§ 3750.6. Original pocket license or work permit to be produced for inspection
Upon request, every holder of a pocket license shall produce for inspection the original pocket license issued by the board. A facsimile of the license is not sufficient for that purpose.

Upon request, every applicant issued a work permit shall produce for inspection the original permit issued by the board. A facsimile of the work permit is not sufficient for that purpose.

§ 3753.5. Payment of costs of investigation and prosecution of disciplinary action
(a) In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law or any term and condition of board probation to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the official custodian of the record or his or her designated representative shall be prima facie evidence of the actual costs of the investigation and prosecution of the case.

(b) The costs shall be assessed by the administrative law judge and shall not be increased by the board; however, the costs may be imposed or increased by the board if it does not adopt the proposed decision of the case.

Where an order for recovery of costs is made and timely payment is not made as directed in the board’s decision the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any practitioner directed to pay costs.

(c) In any action for recovery of costs, proof of the board’s decision shall be conclusive proof of the validity of the order of payment and the terms for payment.
(d) (1) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.
(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew, for a maximum of one year, the license of any licensee who demonstrates financial hardship, through documentation satisfactory to the board, and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs.

§3753.7 Items included in costs of prosecution
For purposes of this chapter, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.

§3755 Action for unprofessional conduct
The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section 3750. The board may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner. Any person who engages in repeated acts of unprofessional conduct shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000), or by imprisonment for a term not to exceed six months, or by both that fine and imprisonment.