

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OSTEOPATHIC MEDICINE [49 PA. CODE CH. 25] Respiratory Therapists

The State Board of Osteopathic Medicine (Board) amends §§ 25.502 and 25.509 (relating to definitions; and renewal of certification) and adds §§ 25.509a and 25.509b (relating to requirement of continuing education; and approved educational programs) to read as set forth in Annex A.

A. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

The final-form rulemaking implements the act of July 2, 2004 (No. 56, P. L. 486) (Act 56), which directs the Board to adopt, promulgate and enforce regulations that establish requirements for continuing education to be met by individuals holding certification as respiratory therapists in this Commonwealth.

C. *Background and Purpose*

Act 56, which became effective August 31, 2004, amended the Osteopathic Medical Practice Act (act) (63 P. S. § 271.1—271.18) by adding section 10.2(f) of the act (63 P. S. § 271.10b(f)) to provide for the continuing education of respiratory therapists. The Board is amending its regulations to establish requirements for completion of continuing education for the practice of respiratory therapists.

D. *Summary of Comments and Responses to Proposed Rulemaking*

Proposed rulemaking was published at 35 Pa.B. 5523 (October 8, 2005). The Board received comments from the House Professional Licensure Committee (HPLC), the Independent Regulatory Review Commission (IRRC) and the Pennsylvania Society for Respiratory Care (PSRC).

The HPLC and IRRC requested that the Board clearly state its intention that the continuing education requirements, as set forth in § 25.509a, would be effective starting with the biennial period that begins on November 1, 2006. For ease of administration, however, the Board, in final-form rulemaking, is requiring applicants for biennial renewal to complete 20 hours of continuing education beginning January 1, 2007, through December 31, 2008. Also, the commentators suggested that the Board allow nontraditional continuing education methods for a portion of the 20-hour continuing education requirement. The Board agreed with this suggestion and has amended the language to permit up to 10 of the 20 credits to be completed through nontraditional means such as pre-recorded presentations and Internet-based presentations.

The HPLC recommended that the Board substitute the language in section 10.2(f)(3) of the act for the language in proposed § 25.509a(b). The Board agreed and made

this change. The HPLC and IRRC suggested adding the words “all or a portion” after the word “waive” in § 25.509a(c) so that the language accurately tracks section 10.2(f)(4) of the act. The Board agreed with this suggestion and amended the language accordingly. Also, the HPLC and IRRC suggested that the Board include in § 25.509a(c) specific language from section 10.2(f)(4) of the act pertaining to waiver of continuing education. The Board agreed with this suggestion and added language accordingly.

The HPLC asked the Board to consider clarifying the meaning of “advanced course work in respiratory care” in § 25.509b(b). The Board agreed and added language clarifying that advanced course work is course work beyond the academic requirements necessary for certification as a respiratory care practitioner.

The PSRC asked that the Board consider requiring at least 1 continuing education credit hour be completed in the category of ethics and 1 credit hour be completed in the category of patient safety. The Board agreed and added this requirement in § 25.509a(a).

E. *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will have a fiscal and paperwork impact on the Commonwealth in that the Board will incur costs related to reviewing and approving continuing education courses for respiratory care practitioners.

F. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 5523, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 3, 2006, the final-form rulemaking was approved by the HPLC. On October 18, 2006, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 19, 2006, and approved the final-form rulemaking.

H. *Contact Person*

Interested persons may obtain information regarding the final-form rulemaking by writing to Beth Sender Michlovitz, Board Counsel, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, bmichlovit@state.pa.us.

I. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968

(P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this preamble.

(4) The amendments to the final-form rulemaking are necessary and appropriate for administration and enforcement of the authorizing act and do not enlarge the purpose of the proposed rulemaking published at 35 Pa.B. 5523.

J. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 25, are amended by amending §§ 25.502 and 25.509 and adding §§ 25.509a and 25.509b to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

OLIVER C. BULLOCK, D. O.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 6742 (November 4, 2006).)

Fiscal Note: Fiscal Note 16A-5317 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter K. RESPIRATORY CARE PRACTITIONERS

§ 25.502. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

AARC—American Association for Respiratory Care, an organization which provides continuing professional development programs.

AMA—American Medical Association, an organization which provides continuing professional development programs.

AOA—American Osteopathic Association, an organization which provides continuing professional development programs.

Act—The Osteopathic Medical Practice Act (63 P. S. §§ 271.1—271.18).

CRTT—The Certification Examination For Entry Level Respiratory Therapy Practitioners, a National uniform examination developed and administered by the NBRC for certified respiratory care therapy practitioners.

CSRT—Canadian Society of Respiratory Therapists, an organization which provides continuing professional development programs.

JRCRTE—The Joint Review Committee on Respiratory Therapy Education, which accredits respiratory care programs.

NBRC—The National Board for Respiratory Care, the agency recognized by the Board to certify respiratory care practitioners.

Respiratory care practitioner—A person who has been certified in accordance with the act and this subchapter.

§ 25.509. Renewal of certification.

(a) A certification issued under this subchapter expires on December 31 of every even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last mailing address given to the Board.

(c) To retain the right to engage in practice, the certificateholder shall renew certification in the manner prescribed by the Board, pay the required fee and comply with the continuing education requirement of § 25.509a (relating to requirement of continuing education), prior to the expiration of the current biennium.

(d) When a certification is renewed after December 31 of an even-numbered year, a penalty fee of \$5 for each month or part of a month of practice beyond the renewal date will be charged in addition to the renewal fee.

§ 25.509a. Requirement of continuing education.

(a) Commencing with the biennial period January 1, 2007, through December 31, 2008, and each subsequent biennial period, an applicant for biennial renewal or reactivation of certification is required to complete a minimum of 20 hours of continuing education as set forth in section 10.2(f)(2) of the act (63 P. S. § 271.10b(f)(2)) subject to the following:

(1) No more than 10 credit hours may be completed in nontraditional continuing education such as prerecorded presentations, Internet-based presentations and journal review programs. To qualify, the provider shall make available documented verification of completion of the course or program.

(2) One hour each must be completed in medical ethics and in patient safety.

(b) An individual applying for the first time for certification in this Commonwealth is exempt from the continuing education requirement for the biennial renewal period following initial certification.

(c) The Board may waive all or a portion of the requirements of continuing education in cases of serious illness, undue hardship or military service. It shall be the duty of each certificateholder who seeks a waiver to notify the Board in writing and request the waiver prior to the end of the renewal period. The request must be made in writing, with appropriate documentation, and include a description of circumstances sufficient to show why the certificateholder is unable to comply with the continuing education requirement. The Board will grant, deny or grant in part the request for waiver and will send the certificateholder written notification of its approval or

denial of the waiver request. A certificateholder who requests a waiver may not practice as a respiratory care practitioner after the expiration of the certificateholder's current certificate until the Board grants the waiver request.

(d) A certificateholder shall maintain the information and documentation concerning compliance with the continuing education requirement or the waiver granted for a period of at least 2 years.

§ 25.509b. Approved educational programs.

(a) The Board approves respiratory care continuing education programs designated for professional development credits by the AARC, the AMA, the AOA and the CSRT.

(1) Qualifying AMA continuing education programs must be in AMA PRA Category I credits, as defined in § 25.1 (relating to definitions).

(2) Qualifying AOA continuing education programs must be in Category I-A or I-B credits, as defined in § 25.1.

(b) Advanced course work in respiratory care successfully completed at a degree-granting institution of higher education approved by the United States Department of Education which offers academic credits are also approved for continuing education credit by the Board. Advanced course work is course work beyond the academic requirements necessary for certification as a respiratory care practitioner.

(c) The Board will not accept courses of study which do not relate to the actual provision of respiratory care. Examples of unacceptable courses are those in office management and financial procedures.

[Pa.B. Doc. No. 06-2310. Filed for public inspection November 22, 2006, 9:00 a.m.]