DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

RESPIRATORY CARE ADVISORY COUNCIL OF THE DELAWARE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Statutory Authority: 24 Delaware Code, Section 1775 (c)) (24 **Del.C.** §1775 (c))
24 **DE Admin. Code** 1770

FINAL

REPORT

The Respiratory Care Advisory Council ("Council") established to assist the Board of Medical Licensure and Discipline ("Board") in the performance of its duty relating to the regulation of Respiratory Care Practitioners is authorized by 24 **Del.C.** §1775(c) to promulgate rules and regulations governing the practice of respiratory care.

Pursuant to 24 **Del.C.** §1775(c), the Council proposes to modify *Regulation 12.0 Unlicensed Home Equipment Personnel* by deleting the specific reference to home equipment personnel in order to clarify that the regulation applies to all unlicensed personnel.

Pursuant to 29 **Del.C.** §10115, notice of the proposed amendments to the rules and regulations was published on July, 1, 2011, in the Delaware *Register of Regulations*, Volume 15, Issue 1. Public notice of these proposed modifications to the Rules and Regulations was also published in two (2) newspapers of general circulation.

Pursuant to such notice a public hearing was conducted by the Council on August 10, 2011.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No members of the public commented at the hearing. No written comments were received in response to the proposed regulations.

FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION SUBMITTED

There was no public comment received at the public hearing. No written comments were received in response to the proposed regulations.

The Council finds that the amendments to Regulation 12.0 dealing with unlicensed personnel clarify that the provisions related to unlicensed personnel are applicable to all unlicensed individuals and not just those engaged in home medical equipment set up. The changes describe what the unlicensed personnel cannot do as opposed to an inclusive list of what they can do. The changes also remove wording related to specific equipment to avoid the need to re-write the regulations when new equipment is introduced into clinical care. Finally, the amendments clarify that unlicensed personnel may not perform clinical assessments or provide patient care thereby continuing to ensure the protection of the public. As noted when the Council and Board originally enacted Regulation 12 this is an area about which the Council frequently receives questions.

These recent amendments are the result of extended presentations and discussions with respiratory care practitioners and provider of home equipment who did not participate during the initial drafting and implementation of the first version of Regulation 12 on February 2, 2010. The Council has considered their proposals and, as a result, is advancing the proposed revisions to Regulation 12.

The Medical Practice Act *Statement of Purpose* at 24 **Del.C.** §1701 provides:

> "Recognizing that the practice of medicine and the practice of certain other healthcare professions are privileges and not natural rights, it is hereby considered a matter of policy in the interest of public health, safety and welfare to provide laws covering the granting of those privileges and their subsequent use and control to provide regulations to the end that the public health, safety and welfare are promoted and that the public is properly protected from the unprofessional, improper, unauthorized, or unqualified practice of medicine and practice of certain other healthcare professions and from unprofessional conduct by persons unauthorized to practice medicine or to practice certain other healthcare professions."

The Council finds that the proposed amendments meet the Council's primary objectives of protecting the public by addressing unlicensed practice.

In summary, the Council finds that adopting the proposed amendments to Regulation 12 meets the objectives of protecting the public as set forth in 24 **Del.C.** §1701 and are in the best interest of the citizens of the State of Delaware.

THE LAW

The rulemaking authority of the Counsel and Board is provided by 24 **Del.C.** §1775(c).

RECOMMENDATION

Based on the findings, conclusions and the above discussion, it is the recommendation of the undersigned members of the Respiratory Care Practice Advisory Council to the Board of Medical Licensure and Discipline that the Board approve these changes to the Rules and Regulations of the Respiratory Care Practice Advisory Council to be effective ten (10) days after their final publication in the Delaware *Register of Regulations*.

Respectfully submitted this 10th day of August, 2011:

Karen Bartuski, RRT
Juanita Bernard, RRT
Thomas Blackson, RRT
Joel M. Brown, II, RRT Chairperson
Christine Cipolla, RRT
Joseph M. Parise, D.O., Physician Council Member
Theresa Q. Thompson, RRT, Vice Chairperson

ORDER

1770 Respiratory Care Practice Advisory Council

AND NOW, to-wit, this 13th day of September, 2011;

WHEREAS, the Board has considered the attached Report of the Respiratory Care Practice Advisory Council concerning the hearing on the proposed modifications of the Rules and Regulations of the Respiratory Care Practice Advisory Council; and

WHEREAS, the Board has determined to accept such Report and approve the proposed Rule and Regulation modifications set forth in the attached report.

NOW THEREFORE:

The proposed modifications to the Rules and Regulations of the Respiratory Care Practice Advisory Council as set forth on the attached report are hereby approved without any changes as originally published in the Register of Regulations on July 1, 2011, Volume 15, Issue 1.

IT IS SO ORDERED:

BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Gregory Adams, M.D.
John Banks, Public Member, Secretary
George Brown, Public Member
Vonda Calhoun, Public Member
Stephen Cooper, M.D.
Thomas Desperito, M.D.
Vincent Lobo, D.O.
Evelyn Mendez, Public Member
Raymond L. Moore, Sr., Public Member, President
Anthony M. Policastro, M.D.
Karyl Rattay, M.D.
Mary Ryan, Public Member
Oluseyi Senu-Oke, M.D.
Daryl Sharman, M.D.

1770 Respiratory Care Practice Advisory Council

1.0 Definitions

"Board" - means Delaware Board of Medical Practice.

"Certified Respiratory Therapist (CRT)" - means the credential awarded by the NBRC to individuals who pass the certification examination for entry level respiratory therapy practitioners.

"Council" - means the Respiratory Care Practice Advisory Council of the Board of Medical Practice.

"Direct Supervision" - means supervising licensee or supervising physician will be present and immediately available within the treatment area.

"General Supervision" - means whether by direct observation and monitoring, protocols approved by physicians, or orders written or verbally given by physicians.

"NBRC" means the National Board for Respiratory Care, Inc.

"Programs Approved by the Board" - means initial course of study programs accredited by the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or its successor organizations which have been approved by the Board.

"Registered Respiratory Therapist (RRT)" - means the credential awarded by the NBRC to individuals who pass the registry examination for advanced respiratory therapy practitioners.

"Respiratory Care" - means treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under the direction of a physician. Respiratory care includes inhalation therapy and respiratory therapy under 24 **Del.C.** §1770B(a)(2), Medical Practices Act.

"Respiratory Care Practitioner (RCP)" - means an individual who practices respiratory care under 24 **Del.C.** §1770B(a)(1) and (7), Medical Practices Act.

"Student Respiratory Care Practitioner (Student-RCP)" - means an individual enrolled in an accredited Respiratory Care Program recognized and approved by the Board.

"**Unlicensed Personnel (UP)**" - means an individual not otherwise authorized or exempt to provide respiratory care services except as provided in Rule 12.0.

"Working Student Respiratory Care Practitioner" - means a student respiratory care practitioner who is employed to perform respiratory care under a limited scope of practice established by the Board.

13 DE Reg. 1223 (03/01/10)

2.0 Purpose

The purpose of the standards is to establish minimal acceptable levels of safe practice to protect the general public and to serve as a guide for the Board to evaluate safe and effective practice of respiratory care.

3.0 Standards of Practice for the Respiratory Care Practitioner

3.1 The respiratory care practitioner shall conduct and document respiratory care assessments of individuals and groups by various appropriate means including but not limited to the following:

3.1.1 Collecting objective and subjective data from observations, examinations, physiologic tests, interviews and written records in an accurate and timely manner.

3.1.2 Sorting, selecting, reporting, and recording the data.

3.1.3 Analyzing data.

3.1.4 Validating, refining and modifying the data by using available resources including interactions with the patient, family, and health team members.

3.1.5 Evaluating data.

3.1.6 Respiratory care practitioners shall establish and document data that serves as the basis for the strategy of care.

3.2 Respiratory care practitioners may develop strategies of care such as a treatment plan.

3.3 Respiratory care practitioners may participate under the direction and supervision of a physician in the implementation of patient care.

4.0 Standards Related to the Respiratory Care Practitioner's Competence and Responsibilities

4.1 Respiratory care practitioners shall:

4.1.1 Have knowledge of the statutes and regulations governing the practice of respiratory care.

4.1.2 Accept responsibility for competent practice of respiratory care.

4.1.3 Obtain instructions and supervision from physicians.

4.1.4 Function as a member of a health care team by collaborating with other members of the team to provide appropriate care.

4.1.5 Consult with respiratory care practitioners and others and seek guidance as necessary.

4.1.6 Obtain instruction and supervision as necessary when implementing respiratory care techniques.

4.1.7 Contribute to the formulation, interpretation, implementation and evaluation of objectives and policies related to the practice of respiratory care within the employment setting.

4.1.8 Report unsafe respiratory care practice and conditions to the Respiratory Care Practice Advisory Council, (Council), or other authorities as appropriate.

4.1.9 Practice without unlawful discrimination as to age, race, religion, sex, national origin or disability.

4.1.10 Respect the dignity and rights of patients regardless of social or economic status, personal attributes or nature of health problems.

4.1.11 Respect patients' right-to-privacy by protecting confidentiality unless obligated by law to disclose the information.

4.1.12 Respect the property of patients and their families.

4.1.13 Teach safe respiratory care practice to other health care workers as appropriate.

5.0 Administration of Medications

5.1 Respiratory care practitioners may administer pharmacological agents, aerosols, or medical gases via the respiratory route. Administration of medication by routes other than the respiratory route require the direct supervision of a physician.

5.2 A respiratory care practitioner shall not deliver any medication unless the order, written or oral by a physician or other person authorized by the Board of Medical Practice, to prescribe that class of medication includes:

5.2.1 Patient identification

5.2.2 Date of the order

5.2.3 Time of the order

5.2.4 Name of medication

5.2.5 Dosage

5.2.6 Frequency of administration

5.2.7 Route of administration

5.2.8 Method of administration

No respiratory care practitioner holding a permit or a license in the state of Delaware may administer medications for the testing or treatment of cardiopulmonary impairment for which the respiratory care provider is untrained or incompetent.

5.3 Respiratory care practitioners must be able to document appropriate training and proficiency on the route of medication delivery, drug pharmacology, and dosage calculations for any cardiopulmonary medications for which they are responsible to administer. Appropriate training includes but is not limited to the following components:

5.3.1 Pharmacology. Subject matter shall include terminology, drug standards, applicable laws and legal aspects, identification of drugs by name and classification, and the principles of pharmacodynamics of medications used in the treatment and testing of cardiopulmonary impairment.

5.3.2 Techniques of drug administration. Subject matter shall include principles of asepsis, safety and accuracy in drug administration, applicable anatomy and physiology, and techniques of administration and any route of administration for cardiopulmonary medications that fall within the legal scope of practice of a respiratory care practitioner.

5.3.3 Dosage calculations. Subject matter shall include a review of arithmetic and methods of calculation required in the administration of drug dosages.

5.3.4 Clinical experience. Subject matter shall include clinical experience in administration of the cardiopulmonary medication(s), planned under the direction of a qualified respiratory care practitioner or other qualified health care provider responsible for teaching cardiopulmonary medication administration.

5.3.5 Role of the respiratory care practitioner in administration of cardio-pulmonary medications. Subject matter shall include constraints of medication administration under the legal scope of practice for respiratory care practitioners, the rationale for specific respiratory care in relation to drug administration; observations and actions associated with desired drug effects, side effects and toxic effects; communication between respiratory care practitioners and other health care teams; respiratory care practitioner - client interactions; and the documentation of cardiopulmonary medication administration.

5.4 Each respiratory care practitioner shall maintain a record that documents training and proficiency and medications that each practitioner is authorized to administer. At the request of the Council such records may be audited, reviewed, or copied.

5.5 Documentation of medication administration by the respiratory care practitioner shall include at a minimum:

5.5.1 Patient identification

5.5.2 Date of the order

5.5.3 Time of the order

5.5.4 Name of medication

5.5.5 Dosage

5.5.6 Frequency of administration

5.5.7 Route of administration

5.5.8 Method of administration

5.5.9 Respiratory care practitioner’s name

5.5.10 Date and time of administration

5.5.11 Documentation of effectiveness

5.5.12 Documentation of adverse reactions and notifications if any

6.0 Disciplinary Proceedings

6.1 The license or permit of a respiratory care practitioner or student found to have committed unprofessional conduct may be subject to revocation, suspension, or non-renewal. The practitioner or student may be placed on probation subject to reasonable terms and conditions, or reprimanded.

6.2 Any licensed respiratory care practitioner found, after notice and hearing, to have engaged in behavior in his or her professional activity which is likely to endanger the public health, safety or welfare or who is unable to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol may have his or her license revoked, suspended, not renewed or may be placed on probation.

6.3 Unprofessional Conduct

Unprofessional conduct includes any act of fraud, deceit, incompetence, negligence, or dishonesty and shall include, without limitation, the following:

6.3.1 Performing acts beyond the scope of authorized practice by a respiratory care practitioner to include violations of 24 **Del.C.** §1770B or of these regulations.

6.3.2 Assuming duties and responsibilities within the practice of respiratory care without adequate preparation or supervision or when competency has not been maintained.

6.3.3 Performing new respiratory care techniques and/or procedures without adequate education and practice or without proper supervision.

6.3.4 Failing to take appropriate action or follow policies and procedures in the practice situation designed to safeguard the patient from incompetent, unethical or illegal health care practices.

6.3.5 Inaccurately recording on, falsifying or altering a patient or agency record.

6.3.6 Committing verbal, physical or sexual abuse or harassment of patients or co-employees.

6.3.7 Assigning unqualified persons to perform the practice of licensed respiratory care practitioners.

6.3.8 Delegating respiratory care responsibilities to unqualified persons.

6.3.9 Failing to supervise persons to whom respiratory care responsibilities have been properly delegated.

6.3.10 Leaving a patient assignment in circumstances which endangers the patient except in documented emergency situations.

6.3.11 Failing to safeguard a patient's dignity and right to privacy in providing respiratory care services which shall be provided without regard to race, color, creed or status.

6.3.12 Violating the confidentiality of information concerning a patient except where disclosure is required by law.

6.3.13 Practicing respiratory care when unfit to perform procedures and make decisions when physically, psychologically, or mentally impaired.

6.3.14 Diverting drugs, supplies, or property of a patient or agency or attempting to do so.

6.3.15 Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs or attempting to do so.

6.3.16 Providing respiratory care in this state without a currently valid license or permit and without other lawful authority to do so.

6.3.17 Allowing another person to use his/her license or temporary permit to provide respiratory care for any purpose.

6.3.18 Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule or regulation intended to guide the conduct of a respiratory care practitioner or other health care provider.

6.3.19 Resorting to, or aiding in any fraud, misrepresentation or deceit directly or indirectly in connection with acquiring or maintaining a license to practice respiratory care.

6.3.20 Failing to report unprofessional conduct by another respiratory care practitioner licensee or permit holder or as specified in 4.1.8.

6.3.21 Failing to provide respiratory care to a patient in accordance with the orders of the responsible physician without just cause.

6.3.22 Violating a lawful provision of Title 24, Chapter 17. Subchapter VII, or any lawful regulation established thereunder.

6.4 Disciplinary Investigations And Hearings

6.4.1 Upon receipt of a written complaint against a respiratory care practitioner or upon its own motion, the Council may request the Division of Professional Regulation to investigate the complaint or a charge

against a respiratory care practitioner and the process established by 29 **Del.C.** §8807 shall be followed with respect to any such matter.

6.4.2 Where feasible, within sixty (60) days of receiving a complaint from the Attorney General's Office after an investigation pursuant to 29 **Del.C.** §8807(h), the Council shall conduct an evidentiary hearing upon notice to the licensee. Written findings of fact and conclusions of law shall be sent to the Board of Medical Practice along with any recommendation to revoke, to suspend, to refuse to renew a license, to place a licensee on probation, or to otherwise reprimand a licensee found guilty of unprofessional conduct in the licensee's professional activity which is likely to endanger the public health, safety or welfare, or the inability to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol.

13 DE Reg. 1223 (03/01/10)

7.0 Working Student Respiratory Care Practitioner

7.1 A working student respiratory care practitioner may only practice under the direct supervision of a licensed respiratory care practitioner. The scope of practice is limited to those activities for which there is documented evidence of competency.

7.2 Direct supervision means that a licensed respiratory care practitioner will be personally present and immediately available within the treatment area to provide aid, direction, and instruction when procedures are performed. All evaluations, progress notes, and/or chart entries must be co-signed by a licensed respiratory care practitioner.

7.3 A student may apply for a student temporary permit. If approved by the Board, such permit may be issued by the Division of Professional Regulation and may not be renewed. An application will be considered by the Council provided that the applicant meets the following criteria:

7.3.1 Applicant is matriculated in an approved Respiratory Care Program.

7.3.2 Application is submitted no more than 20 weeks prior to the program's announced graduation date.

7.3.3 Applicant shall submit to the Council a certified list of respiratory care services which have been successfully completed as a part of the respiratory care curriculum.

7.4 A student temporary permit shall automatically cease upon graduation or on the date that the holder is no longer matriculated in and not a graduate of a Respiratory Care Program. Any holder of a temporary student permit which ceases for any of the reasons stated above shall within five (5) working days surrender the permit to the Division of Professional Regulation.

7.5 Subject to Rule 7.4, a student temporary permit shall be valid for 16 weeks.

7.6 Respiratory care services which may be performed by the holder of a student temporary permit are limited to only those services which have been successfully completed by the student as part of a respiratory care program. Successful completion of these services must be certified by the program director on the Verification of Respiratory Care Education Form and submitted to the Council along with an attached competency check list. The holder of the student temporary permit must also meet the employer's standards for those procedures in specified patient care situations.

8.0 Continuing Education

8.1 Contact Hours Required for Renewal

8.1.1 The respiratory care practitioner shall be required to complete twenty (20) contact hours of continuing education biennially. At least ten (10) of the required twenty (20) contact hours shall be from traditional programs attended either in person or remotely by the use of telecommunication technology that allows the attendee to interact with and ask questions of the presenter during the presentation. The remaining ten (10) hours may be obtained in non-traditional programs in which the participant learns the material at their own pace and place of choosing and demonstrates their mastery of the course content by examination in order to earn contact hours or by participating in the activities described in rules 8.3.1.8 or 8.3.1.9 below.

8.1.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of Rule 8.0.

8.1.3 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.

8.1.3 Licensees selected for random audit will be required to supplement the attendance verification pursuant to Rule 8.1.4.

8.1.4 The respiratory care practitioner shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon

request, such documentation shall be made available to the Council for random audit and verification purposes.

8.1.5 Contact hours shall be prorated for new licensees in accordance with the following schedule:

Two years remaining in the licensing cycle requires -	20 hours
One year remaining in the licensing cycle requires -	10 hours
Less than one year remaining in the licensing cycle -	exempt

8.2 Exemptions

8.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Practice for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

8.2.2 A request for a waiver must be submitted sixty (60) days prior to the license renewal date.

8.3 Criteria for Qualification of Continuing Education Program Offerings

The following criteria are given to guide respiratory care practitioners in selecting an appropriate activity/ program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to the professional competence of the respiratory care practitioner.

8.3.1 Definition of Contact Hours

8.3.1.1 Fifty consecutive minutes of academic course work, correspondence course, or seminar/workshop shall be equivalent to one (1) contact hour. A fraction of a contact hour may be computed by dividing the minutes of an activity by 50 and expressed as a decimal.

8.3.1.2 Recredentialing examination for certified respiratory therapist, (CRT), and registered respiratory therapist, (RRT), shall be equivalent to five (5) contact hours.

8.3.1.3 Successful completion of advanced specialty exams administered by the National Board for Respiratory Care, (NBRC), shall be equal to five (5) contact hours for each exam.

8.3.1.4 One (1) semester hour shall be equal to fifteen (15) contact hours.

8.3.1.5 One (1) quarter hour shall be equal to ten (10) contact hours.

8.3.1.6 Two (2) hours (120 minutes) of clinical educational experience shall be equal to one (1) contact hour.

8.3.1.7 Fifty (50) consecutive minutes of presentation of lectures, seminars or workshops in respiratory care or health care subjects shall be equivalent to one (1) contact hour.

8.3.1.8 Preparing original lectures, seminars, or workshops in respiratory care or health care subjects shall be granted no more than two (2) contact hours for each contact hour of presentation.

8.3.1.9 Performing clinical or laboratory research in health care shall be reviewed and may be granted an appropriate number of contact hour(s) at the Council's discretion.

8.3.2 Learner Objectives

8.3.2.1 Objectives shall be written and be the basis for determining content, learning experience, teaching methodologies, and evaluation.

8.3.2.2 Objectives shall be specific, attainable, measurable, and describe expected outcomes for the learner.

8.3.3 Subject Matter

Appropriate subject matter for continuing education shall include the following:

8.3.3.1 Respiratory care science and practice and other scientific topics related thereto

8.3.3.2 Respiratory care education

8.3.3.3 Research in respiratory care and health care

8.3.3.4 Management, administration and supervision in health care delivery

8.3.3.5 Social, economic, political, legal aspects of health care

8.3.3.6 Teaching health care and consumer health education

8.3.3.7 Professional requirements for a formal respiratory care program or a related field beyond those that were completed for the issuance of the original license

8.3.4 Description

Subject matter shall be described in outline form and shall include learner objectives, content, time allotment, teaching methods, faculty, and evaluation format.

8.3.5 Types of Activities/Programs

8.3.5.1 An academic course shall be an activity that is approved and presented by an accredited post-secondary educational institution which carries academic credit. The course may be within the framework of a curriculum that leads to an academic degree in respiratory care beyond that required for the original license, or relevant to respiratory care, or any course that shall be necessary to a respiratory care practitioner's professional growth and development.

8.3.5.2 A correspondence course contains the following elements:

8.3.5.2.1 developed by a professional group, such s an education corporation or professional association.

8.3.5.2.2 follows a logical sequence.

8.3.5.2.3 involves the learner by requiring active response to module materials and provides feedback.

8.3.5.2.4 contains a test to indicate progress and to verify completion of module.

8.3.5.2.5 supplies a bibliography for continued study.

8.3.5.3 A workshop contains the following elements:

8.3.5.3.1 developed by a knowledgeable individual or group in the subject matter.

8.3.5.3.2 follows a logical sequence.

8.3.5.3.3 involves the learner by requiring active response, demonstration and feedback.

8.3.5.3.4 requires hands-on experience.

8.3.5.3.5 supplies a bibliography for continued study.

8.3.5.4 Advanced and specialty examinations offered by the NBRC or other examinations as approved by the Council including:

- Recredential exam.
- Neonatal pediatric specialty exam.
- Pulmonary function credentialing exams
- Sleep Disorders Specialty (SDS) Certification
- Advanced practitioner exam

8.3.5.5 Course preparation

8.3.5.6 Clinical education experience must be:

8.3.5.6.1 Planned and supervised.

8.3.5.6.2 Extended beyond the basic level of preparation of the individual who is licensed.

8.3.5.6.3 Based on a planned program of study.

8.3.5.6.4 Instructed and supervised by individual(s) who possess the appropriate credentials related to the discipline being taught.

8.3.5.6.5 Conducted in a clinical setting.

8.4 Educational Providers

8.4.1 Continuing education contact hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

- American Association for Respiratory Care.
- American Medical Association under Physician Category I.
- American Thoracic Society
- American Association of Cardiovascular and Pulmonary Rehabilitation
- American Heart Association
- American Nurses Association
- American College of Chest Physicians
- American Society of Anesthesiologists
- American Sleep Disorders Association
- Other professional or educational organizations as approved periodically by the Council.

8.5 Accumulation of Continuing Education

8.5.1 When a licensee applies for license renewal, a minimum of twenty (20) contact hours in activities that update skills and knowledge levels in respiratory care theory, practice and science is required. The total of twenty (20) contact hours per renewal period shall include the following categories:

8.5.1.1 A minimum of 12 contact hours of continuing education required for renewal must be acquired in a field related to the science and practice of respiratory care as set forth in Subsection 8.3.3, Subject Matter, 8.3.3.1, 8.3.3.2, or 8.3.3.3.

8.5.1.2 The remaining 8 contact hours of the continuing education required for renewal may be selected from Subsection 8.3.3, Subject Matter.

8.5.2 Contact hours, accumulated through preparation for, presentation of, or participation in activities/programs as defined are limited to application in meeting the required number of contact hours per renewal period as follows:

8.5.2.1 Presentation of respiratory care education programs, including preparation time, to a maximum of four contact hours.

8.5.2.2 Presentation of a new respiratory care curriculum, including preparation, to a respiratory care education program, to a maximum of four contact hours.

8.5.2.3 Preparation and publication of respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.4 Research projects in health care, respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.5 Infection control programs from facility or agency to a maximum of one contact hour.

8.5.2.6 Academic course work, related to health care or health care administration, to a maximum of four contact hours.

8.6 Audit of Continuing Education Contact Hours

8.6.1 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage of licensees, determined by the Council, to be audited. The Council may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.

8.6.2 Documentation. When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score).The Council shall attempt to verify the CEUs shown on the documentation provided by the licensee. Upon completion of the review, the Council decide whether the licensee's CEU's meet the requirements of these rules and regulations.

8.6.2.1 Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council

8.6.2.2 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.

8.6.2.3 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.

8.6.3 Council Review and Hearing Process. The Council shall review all documentation requested of any licensee shown on the audit list. If the Council determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Council initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered unprofessional conduct in the practice of respiratory care pursuant to Rule 6.3.

8.6.4 Sanctions for Unjustified Noncompliance. The minimum penalty for the first finding of unjustified noncompliance shall be a letter of reprimand and a $250.00 monetary penalty; however, the Council may recommend to the Board imposing any of the additional penalties specified in 24 **Del.C.** §1777(e). The minimum penalty for the second finding of unjustified noncompliance shall be a thirty (30) day license suspension; however, the Council may recommend to the Board imposing any of the additional penalties specified in 24 **Del.C.** §1777(e).

8.6.5 Requests for Extension- Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with

whatever documentation he/she feels is relevant. The Council shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must accompany the renewal application. The Council shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEU's. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Council. Make-up credits may not be used in the next renewal period.

8.6.6 Appeal. Any licensee sanctioned pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

4 DE Reg. 694 (10/1/00)
8 DE Reg. 1438 (4/1/05)
8 DE Reg. 1587 (5/1/05)
10 DE Reg. 354 (08/01/06)
13 DE Reg. 1223 (03/01/10)

9.0 Application for a License

9.1 Application

9.1.1 An application for a license to practice respiratory care must be completed on a form provided by the Board of Medical Practice and returned to the Board Office with the required, non-refundable fee.

9.2 Completed Application

9.2.1 An application for a license to practice respiratory care shall be considered completed when the Board has received the following documentation:

9.2.1.1 Non-refundable application fee

9.2.1.2 Completed application for licensure

9.2.1.3 Verification of education form

9.2.1.4 Verification of national examination score. Individuals who have not been licensed in any jurisdiction within three (3) years of initially passing the NBRC entry level examination will be required to re-take the NBRC examination and provide proof of a current passing score before a license will be issued.

9.2.1.5 Letter(s) of good standing from other states where the applicant may hold a license, if applicable.

9.2.1.6 Any other information requested in the application.

9.3 Appeals Process

9.3.1 When the Council determines that an applicant does not meet the qualifications for licensure as prescribed under 24 **Del.C.** §1770B and the Rules and Regulations governing the practice of respiratory care, the Council shall make such recommendation to the Board proposing to deny the application. The Council shall notify the applicant of its intended action and reasons thereof. The Council shall inform the applicant of an appeals process prescribed under 29 **Del.C.** §10131.

10 DE Reg. 354 (08/01/06)

10.0 Renewal of Licenses

10.1 Each license shall be renewed biennially. The failure of the Council/Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Council's regulations and 24 **Del.C.** Ch. 17.

10.2 Renewal may be effected by:

10.2.1 filing a renewal application online at www.dpr.delaware.gov;

10.2.2 attesting on the renewal application to the completing of continuing education as required by Rule 8.0;

10.2.3 payment of fees as determined by the Division of Professional Regulation.

10.3 Failure of a licensee to renew his/her license shall cause his/her license to expire.

10.3.1 A license which has expired may, within a period of three years thereafter, be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware and by the applicant providing documentation establishing that he/she has completed 20 hours of continuing education during the two-year period preceding the application for reinstatement.

10.3.2 An applicant whose license has been expired for a period of three (3) or more years and who has been actively engaged in the practice of respiratory care during the period of expiration in another jurisdiction

shall be required to submit an application for reinstatement demonstrating proof of active practice satisfactory to the Council and shall demonstrate proof of completion of 20 hours of continuing education during the two-year period preceding the application.

10.3.3 An applicant whose license has been expired for three (3) or more years and who has not been actively engaged in the practice of respiratory care during the period of expiration shall be required to submit an application for reinstatement and shall be required to give evidence of satisfactory completion of an approved respiratory care examination within two (2) years prior to the application for reinstatement before licensure will be granted. In addition the applicant shall demonstrate completion of 20 hours of continuing education during the two-year period preceding the application.

13 DE Reg. 1223 (03/01/10)

11.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

11.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

11.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

11.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

11.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

11.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 11.8 of this section.

11.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

11.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

11.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

11.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

11.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs

associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

11.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

11.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

11.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

11.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

11.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

11.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

11.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

11.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

7 DE Reg. 761 (12/1/03)

8 DE Reg. 1438 (4/1/05)

12.0 Unlicensed ~~Home Equipment~~ Personnel (UP)

12.1 Unlicensed personnel ~~(~~UP~~)~~ working ~~for a home medical equipment company may only perform the following indirect respiratory care related services in the home setting or for the purposes of patient transfer to the home setting:~~ in the State of Delaware may not perform any clinical assessments or provide patient care during the course of their job duties.

~~12.1.1 Deliver durable medical equipment to patients including, but not limited to, ventilators and C-PAP/Bi-PAP devices; and~~

~~12.1.2 Assemble equipment and instruct in the safety and care of the equipment including C-PAP/Bi-PAP for sleep apnea.~~

~~12.2 The UP shall not:~~

~~12.2.1 Perform any clinical assessments including, but not limited to, pulse oximetry;~~

~~12.2.2 Instruct in the use of the equipment delivered; or~~

~~12.2.3 Have any clinical patient contact including touching the patient or placing any device upon the patient while engaged in the set up and instruction of the equipment.~~

12.~~3~~2 Any UP found to have violated the provisions of this section shall be prosecuted for the unlicensed practice of respiratory care.

13 DE Reg. 1223 (03/01/10)

15 DE Reg. 543 (10/01/11) (Final)