



Board of Respiratory Care Practitioners

TO: Legislative Interim Economic Affairs Committee

FROM: Board of Respiratory Care Practitioners

DATE: May 21, 2013

SUBJECT: HB525 – RCP response to the Economic Affairs Interim Committee questions

1. What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?

37-28-101 MCA states:

“The legislature finds and declares that the practice of respiratory care in the state affects the public health, safety, and welfare. To protect the public from the unqualified practice of respiratory care or unprofessional conduct by qualified practitioners, respiratory care is subject to regulation and control. The purpose of this chapter is to regulate the practice of respiratory care. The legislature recognizes that the practice of respiratory care is a dynamic and changing art and science that is continually evolving to include new ideas and more sophisticated techniques in patient care.”

The Board of Respiratory Care Practitioners takes its responsibility seriously. It is not overstating to say that the practitioners licensed and regulated by this board literally help their patients and clients with the breath of life. From chronic illness to emergency care, management of the respiratory system is critical for individual health. Appropriate regulation of these caregivers is important for the protection of public health and safety, as is the effort to keep unqualified or unscrupulous individuals out of the practice.

2. If your profession/occupation were not licensed, what public protection would be lost?

Put simply, without a system of licensing for RCPs, any individual could claim to offer cures or treatments for respiratory illnesses or conditions without any education, training or experience. Montana’s licensing of RCPs as professionals assures that standards must be met before a practitioner treats a patient. This gives the public a level of confidence that their respiratory care provider is not only qualified, but also subject to disciplinary sanction should a violation of state law or board rule occur.

3. If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.

The legislature first created the Board of RCP in 1991. That, in itself, signals that a board is necessary to regulate the practice of respiratory care and respiratory therapy. Without a board and the rulemaking and compliance authority granted it, Montana would have little or no ability to regulate RCPs effectively or discipline those who violate standards of care or engage in other unprofessional conduct. Further, the existence of a board made up of respiratory care professionals, along with a lay member of the public, provides the expertise to make thoughtful and informed decisions about the profession and its practitioners.

4. Does your board deal with unlicensed practice issues? If yes, what types of issues?

Yes. Although complaints have been rare (only 6 from FY 2009 through FY 2012) the board is vigilant regarding individuals advertising as (or otherwise claiming to be) respiratory care professionals when they are not licensed. By the same token, the board has recognized instances when it has no authority over individuals because of their employment status (such as with a federal health facility) or because the treatment involved is not covered by state statute or board rule.

5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living -- what is your response?

This question has not been posed to the board. However, it is worth noting that licensure as an RCP does not pose an undue burden on an individual. Initial licensure costs only \$100.00, while annual renewal is only \$75. This is far less than many other licensed professions in Montana. Individuals who wish to become RCPs must invest much more time, effort and money in the education and examination that renders them fit for licensure. The board also notes that, because of its straightforward licensing standards, very few applications for licensure become “non-routine” and require extra scrutiny by the board.

The board also believes that Montana citizens benefit from licensure of RCPs because licensed individuals are subject to a disciplinary process should they violate state laws or board rules regarding the profession. In short, licensing protects the public in two ways—by allowing only qualified individuals to practice and by establishing processes to punish those who violate state standards.

6. How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?

The Board of RCP licenses only one type of health care provider. Should a board member have a bias or a conflict of interest with a particular provider, licensee or alleged violator, that board member has an obligation to recuse himself or herself from the decision-making process involving that individual. That board has not been made aware of any cases of alleged bias.

7. Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body?

The board works with the Montana Society for Respiratory Care and its national umbrella organization, the American Association for Respiratory care. Those organizations promote the profession and seek paid membership. While valuable to their members, those organizations do not have a regulatory role and would not be an impartial body when it comes to rulemaking or discipline.

8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?

In Montana, a respiratory care practitioner must be licensed in order to bill and receive payment through insurance.

9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?

Members of the Board of RCP have specific, in-depth, knowledge of the practice of respiratory care. Only individuals with this knowledge are qualified to judge the care rendered by fellow professionals.

10. Is there an optimum ratio between licensees, board size, or public representation?

Currently, the board has five members, including one public member. It regulates about 880 licensees without difficulty. What the "optimum" number of licensees to Board members might be is unknown, but the board seems to function well at present.

11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?

As noted earlier, members of the Board of RCP have specific, in-depth, knowledge of the practice of respiratory care. Only individuals with this knowledge are qualified to judge the care rendered by fellow professionals. This also is true of the evaluation of potential fraud. Only a trained RCP with knowledge of the profession would be able to distinguish between legitimate treatments and therapies and fraudulent ones.

12. If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?

The Board of RCP believes in collaborative discussions with other licensing or regulatory boards in the rare instance where scope of practice may cross boundaries with another board. Should

such an instance occur, the Board of RCP would reach out to the other entity and begin a dialogue. In the event a successful resolution cannot be reached through dialogue, the RCP Board would notify the leadership of the Business Standards Division and discuss what should happen next.

13. Should any board have the ability to limit use of certain terminology to only a licensee?

Yes. While the board of RCP cannot speak for any other board or its licensees, it recognizes the need for providers of health care to be clearly and accurately identified by profession. Whether “nurse,” “dentist” or “acupuncturist,” titles of licensure have specific meaning and should only apply to those professionals who have the education, training, experience or other qualifications to provide the care associated with that profession.