

**STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
RESPIRATORY CARE BOARD OF CALIFORNIA**

Notice of Proposed Regulatory Action Concerning:
Continuing Education, Continuing Education Providers, Law and Professional Ethics
Course, Approved CE Programs, Preceptors,
and Citation and Fine

TITLE 16. DIVISION 13.6. RESPIRATORY CARE BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs, Respiratory Care Board of California (Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

WRITTEN COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than **5:00 p.m. on Tuesday, September 27, 2022**, or must be received by the Board at the hearing, if a hearing is held.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding any requested hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact person listed in this Notice at the address indicated in the below ‘contact person’ section. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 125.9, 701, 704, 3719, 3719.5, and 3722 of the Business and Professions Code¹ (B&P), and to implement, interpret or make specific sections 3719, 3719.5, 3742, 3750, and 3755, the Respiratory Care Board of

¹ Unless otherwise specified, all sections refer to the Business and Professions Code.

California is considering changes to and addition of sections 1399.349, 1399.350, 1399.350.5, 1399.351, 1399.352, 1399.352.5, 1399.352.6, 1399.352.7, and 1399.381 of Division 13.6, Title 16 of the California Code of Regulations (CCR) as described herein.

INFORMATIVE DIGEST

A. Informative Digest

The Respiratory Care Board (Board) enforces the Respiratory Care Practice Act at Business and Professions Code (BPC) sections 3700-3779 and oversees approximately 23,600 licensed respiratory care practitioners and respiratory care practitioner applicants.

BPC section 3719 and 16 CCR 1399.350 currently require licensed respiratory care practitioners (RCPs) to complete 30 hours of continuing education (CE) every two years in alignment with the biennial renewal of each license. BPC section 3719 also authorizes the Board to identify and approve examinations that qualify for CE hours.

BPC section 3719.5 authorizes the Board to require the completion of courses offered by the Board, the American Association for Respiratory Care and the California Society for Respiratory Care as part of required CE and prior to initial licensure or consideration of a reinstatement petition.

Existing regulation, 16 CCR 1399.349-1399.359, establishes the criteria for various continuing education and license requirements. 16 CCR 1399.381 establishes the fine amount for a violation of the Respiratory Care Practice Act (RCPA) that is addressed through the Board's citation and fine program.

To meet some of the Board's strategic plan goals, the Board proposes to revise all of Article 5, Continuing Education, by reorganizing and amending sections 1399.349-1399.359.

Problems being addressed include:

- 1) The need to restructure Article 5 of Division 13.6 of the CCR to accommodate new language, provide clarity and improve program effectiveness.
- 2) The need for live and interactive continuing education to ensure licensees have the most current information relative to their profession, as well as foster leadership and the sharing of information among licensees.
- 3) The need to encourage and develop skills and knowledge in leadership to fill the expected gap in management attrition.

4) The need to encourage qualified preceptors to strengthen the clinical education of students to improve education outcomes, provide greater consumer protection and foster leadership skills.

5) The need to update the Citation and Fine Schedule to include legislative amendments to Section 3750.

Specifically, the Board proposes to:

1) Amend 16 CCR 1399.349 to delete the word “basic,” an unnecessary and confusing term used in the context of this section.

2) Amend 16 CCR 1399.350 to revise the existing requirement that at least two thirds of continuing education hours be directly related to clinical practice to a new set of standards describing that 25 of the 30 required hours be completed within an enumerated list of content areas.

- a. Subdivision (b) is being amended to include a subdivision allowing for RCPs to obtain continuing education credit through physical attendance at certain meetings and describing how credit for attendance is calculated and how record of attendance is made.
- b. Subdivision (c) of this section is being amended to describe 15 hours of instruction must be earned from live courses or meetings, and to define what counts as ‘live courses or meetings’.
- c. Subdivision (d) of this section is being added to note licensees may not claim continuing education hours for the same course or credentialing or certification examination more than once per renewal period.
- d. Existing subdivision (b) is being renumbered to (e) and is being amended to improve language clarity and to define “supporting documentation” and “documentation supporting compliance”.
- e. Existing subdivision (c) is being renumbered to (f).

3) Amend 16 CCR 1399.350.5(b) to change which CE requirement the Law and Professional Ethics course may be credited toward, from “non-clinical practice” to “RCP Leadership.” This subdivision is also being modified to clarify an existing cross reference to section 1399.350(a)(1).

4) Amend 16 CCR 1399.351 as follows:

- a. Subdivision (b) is being amended to improve readability by noting that 15 hours of credit shall be approved for the listed initial credentials upon completion of examination. The existing regulation separately lists that 15 hours credit be given for each examination type; the proposed regulation moves those separate notations into a single notation. Further revisions are made to the names of the

examinations to reflect their current names. Registered Respiratory Therapist is also being added to the list of allowable examinations, subject to conditions.

- b. Subdivision (c) is being added to note the Board shall approve 15 hours of CE for each initial certification and 5 hours for each renewal or recertification for the listed certification examinations. The enumerated examinations currently allow for a “number of CE hours to be designated by the provider”; this is being revised to a flat 15 hour allowance. Further revisions are made to the names of the examinations to reflect their current names. Asthma Educator Certified is also being added to the list of allowable examinations.
- c. Throughout section 1399.351, existing examinations have been renumbered to fall under proposed subdivisions (b) and (c).
- d. Subdivision (d) is being added to allow for CE credit for initial certification for a number of hours given by the provider for Pulmonary Rehabilitation-Certified, Tobacco and Smoking-Cessation Certified, and COPD Educator-Certified.
- e. Existing subdivision (c) is being renumbered to (e), its contents repealed and moved to proposed section 1399.352, and replaced with language noting CE credit will not be granted for any review and/or preparation courses for credentialing or certification examinations, basic life support credentialing, renewal or recertification of any certification not expressly identified in subdivision (c), or employment-related courses on subjects not described in this Article.
- f. Existing subdivision (e) is being renumbered to (f). The existing regulatory language noting that credit may be obtained only once for credit for initial certifications is being removed, as is the language cross-referencing section 1399.352 for re-certification. Additional clarifying language is being added to this subdivision noting programs listed in subdivision (c) of this section shall be provided by an approved entity.
- g. Existing subdivision (f) is being removed. Authority to audit programs offering CE for compliance is provided in 1399.352(m).

5) Amend 16 CCR 1399.352 as follows:

- a. Subdivision (a) is being amended to cross-reference proposed section 1399.350 to clarify that the referenced areas of education are relevant to the scope of practice of respiratory care. The phrase “not directly related to clinical practice” is being replaced by “related to the role of a health care practitioner or indirectly related to respiratory care.” Related courses described in this subdivision are being revised as well, affecting which courses and subject matters may be deemed acceptable.
- b. Subdivision (h) is being amended to improve clarity and readability,

to clarify that course “in any format” are affected, and to remove the requirement that courses provided by any of the listed entities be “approved by the entity’s president, director, or other appropriate personnel.” The entities described in subdivision (h) are also being amended to reflect current acceptable entities. Several entities are being added.

- c. Existing subdivision (h)(10) is being amended as subdivision (i) and is being changed to note which CE additional providers may provide live, “real-time” courses.
- d. Existing subdivision (i) is being renumbered as (j) and record retention standards for course organizers are being updated.
- e. Existing subdivision (j) is being repealed.
- f. Subdivision (k) is being amended to clarify what documentation must be provided to course participants upon completion of a course.
- g. Other conforming changes are made to subdivision (l) to correct cross-references to this section.

6) Amend section 1399.352.5(a) to remove the phrase “as it pertains to their own course or a course approved by them.”

7) Adopt section 1399.352.6 regarding preceptors. This new section defines ‘preceptor’ and sets out qualifying criteria. This new section describes how preceptors may claim continuing education credit. This new section also defines ‘instructor’ as it relates to preceptors, sets out qualifying criteria for instructors, and outlines rules for how instructors may claim continuing education credit.

8) Amend section 1399.352.7 to clarify that the board or its designee may approve a course in law and professional ethics.

- a. Subdivision (c) of this section is also amended to note that “at least two hours” of the law and professional ethics course must “be dedicated to professional ethics with a concentration in” enumerated subject areas.
- b. Subdivision (d) is added to reflect that “up to one hour of material” with a concentration in certain subject matter areas may be included in the course content. These subject matter areas include ‘acts that jeopardize licensure and licensure status’ and a new subject matter area, ‘current activities of the RCP profession.’
- c. Existing subdivision (d) is renumbered to (e), and the requirements of the law and professional ethics course are being amended to modify examination requirements and what the course must contain. Clarifications are also made to this subdivision relating to how much a provider may charge.
- d. Subdivisions (e) through (h) are renumbered to fit the proposed changes, and subdivision (h) as amended is amended to reflect that the Board or its designee may rescind approval of a course.

9) Amend section 1399.381 to include a fine for false statements as defined by Business and Professions Code section 3750(g).

B. Policy Statement Overview/Anticipated Benefits of Proposal

The Board's highest priority is protection of the public in exercising its licensing, regulatory, and disciplinary functions. To continue performing these functions, the Board's continuing education and fine regulations must be kept current to reflect the underlying statutory requirements and to meet the most up-to-date standards and practices.

To that end, this proposal modernizes the Board's continuing education system by offering improved flexibility for licensees in how continuing education credit is obtained. Promoting attendance at association meetings will improve licensees' engagement and expose the licensee population to the current issues affecting their profession. Broadly, the changes in this proposal will provide greater access to a larger range of providers and subject matters and will more accurately attune the Board's definition of related coursework to one more fitting health care practitioners. Further, this proposal will include new rules for preceptors and instructors that will help those qualifying participants complete their required continuing education hours.

This proposal will also expressly disallow certain unrelated education and activity from being used for continuing education credit and will clarify the responsibilities of providers to give completion documentation to attendees who have completed coursework. Finally, this rulemaking will place in regulation known maximum fines for false statements, in line with violations finable by the Board through the most current statutes.

Taken together, these changes will promote better access to continuing education, better incentivize instructional participation, modernize course access, and clarify the Board's disciplinary authority, all of which will further the Board's primary goal to protect the public by ensuring its licensees remain well educated and regulated.

C. Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

BUSINESS REPORTING REQUIREMENTS

The regulatory action does not require businesses to file a report with the Board.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The regulations do not result in a fiscal impact to the state.

The proposed amendments specify CE coursework and fulfillment requirements for licensees as part of license renewal. The regulations do not increase the total number of CE hours required. As a result, the Board does not anticipate an increase in workload or costs.

The proposed amendments provide for the issuance of a fine of up to \$5,000 for making a false statement, as specified. However, this addition is intended to specify a violation, which is currently delineated as unprofessional conduct. As a result, no addition revenues related to the issuance of a fine for making a false statement is anticipated.

Nondiscretionary Costs/Savings to Local Agencies:

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The proposed amendments provide for the issuance of a fine of up to \$5,000 for making a false statement, as specified. However, this addition is intended to specify a violation, which is currently delineated as unprofessional conduct. As a result, no addition costs related to the issuance of a fine for making a false statement is anticipated.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined the proposed regulations are not anticipated to affect small businesses operating in the state because the required CE courses, as specified, are currently readily available.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety and the state's environment: None. This proposal is not related to residents' health and welfare, and is unrelated to the environment.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the proposal or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 3750 Rosin Court, Suite 100, Sacramento CA 95834 and/or present such statements or arguments orally or in writing at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 3750 Rosin Court, Suite 100, Sacramento, CA 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Stephanie Nunez
Address: Respiratory Care Board
3750 Rosin Court, Suite 100
Sacramento, CA 95834
Telephone No: (916) 999-2190
E-mail: rcbinfo@dca.ca.gov

The backup contact person is:

Name: Christine Molina
Address: Respiratory Care Board
3750 Rosin Court, Suite 100
Sacramento, CA 95834
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E-mail: rcbinfo@dca.ca.gov

Website Access: Materials regarding this proposal can be found at:
<https://rcb.ca.gov/enforcement/lawsregs.shtml>