

CHAPTER 44F**STATE BOARD OF RESPIRATORY CARE****Authority**

N.J.S.A. 45:14E-7, 45:14E-9, 45:14E-10 and 45:14E-14.

Source and Effective Date

R.1997 d.260, effective May 23, 1997.
See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 44F, State Board of Respiratory Care, expires on November 19, 2002. See: 34 N.J.R. 1625(a).

Chapter Historical Note

Chapter 44F, State Board of Respiratory Care, consisting of Subchapter 8, Fees, was adopted as R.1992 d.248, effective June 15, 1992. See: 24 N.J.R. 52(a), 24 N.J.R. 2285(b). Subchapter 1, Purpose and Scope; Definitions; Subchapter 2, Agency Organization; Subchapter 3, Authorized Practice; Subchapter 4, Applicant Qualifications; Board-Approved Examination; Subchapter 5, Temporary Licensure; Subchapter 6, Licensure by Endorsement; Subchapter 7, License Renewals; and Subchapter 9, Unlicensed Practice, were adopted and Subchapter 8, Fees, was renamed General Provisions, by R.1993 d.7, effective January 4, 1993. See: 24 N.J.R. 2336(a), 25 N.J.R. 185(a).

Pursuant to Executive Order No. 66(1978), Chapter 44F, State Board of Respiratory Care, was readopted as R.1997 d.260, effective May 23, 1997. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. PURPOSE AND SCOPE;
DEFINITIONS****13:44F-1.1 Purpose and scope**

(a) This chapter, as effective January 4, 1993, is promulgated by the Director of the Division of Consumer Affairs. The rules contained in this chapter implement the provisions of the Respiratory Care Practitioner Licensing Act, P.L. 1991, c.31, and regulate the practice of respiratory care within the State of New Jersey.

(b) This chapter shall apply to all individuals who render respiratory care, as hereinafter defined, under the direction or supervision of a plenary licensed physician and to anyone within the jurisdiction of the Board of Respiratory Care.

(c) This chapter shall not apply to persons and health care providers licensed by appropriate agencies of the State of New Jersey, provided such duties are consistent with the accepted standards of the member's profession and the member does not present himself or herself as a respiratory care practitioner.

13:44F-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Board” means the State Board of Respiratory Care.

“Director” means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

“Respiratory care” means the health specialty involving the treatment, management, control, and care of patients

with deficiencies and abnormalities of the cardio-respiratory system, as further defined in N.J.S.A. 45:14E-3(c).

“Trainee” means a student enrolled in a Board-approved respiratory care training program.

Amended by R.1997 d.260, effective June 16, 1997.
See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).
Added “Trainee”.

SUBCHAPTER 2. AGENCY ORGANIZATION AND ADMINISTRATION

13:44F-2.1 Description of Board

The State Board of Respiratory Care, created in the Division of Consumer Affairs of the Department of Law and Public Safety pursuant to P.L. 1991, c.31, shall consist of 11 members appointed by the Governor. Six board members shall be licensed respiratory care practitioners who have been actively engaged in the practice of respiratory care in this State for at least five years immediately preceding their appointment; one board member shall be an administrator of a hospital licensed pursuant to P.L. 1971, c.136; one board member shall be a physician licensed to practice medicine and surgery pursuant to chapter 9 of Title 45 of the Revised Statutes; two board members shall be public members; and one board member shall be a State executive department member appointed pursuant to P.L. 1971, c.60.

13:44F-2.2 Office location

The offices of the Board are located at 124 Halsey Street, Newark, New Jersey 07102.

13:44F-2.3 Meetings of the Board

The Board shall meet twice per year and may hold additional meetings as necessary to discharge its duties.

13:44F-2.4 Election of officers

The Board shall annually elect from among its members a chairman and a vice-chairman.

13:44F-2.5 Notification of change of address

A licensee of the State Board of Respiratory Care shall notify the Board in writing of any change of address from that which the Board maintains in its records and which the licensee's current license displays. The licensee shall forward the notice to the Board by certified mail, return receipt requested, no later than 30 days following the change of address.

New Rule, R.1997 d.260, effective June 16, 1997.
See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

13:44F-2.6 Change of name

(a) Any licensee whose name has been legally changed shall forward to the Board by certified mail, return receipt requested, no later than 30 days following the change of name the following:

1. Legal evidence of such change;
2. A copy of the licensee's original license with satisfactory evidence that the licensee is the same person to whom the Board issued the license; and
3. The appropriate duplicate license fee as set forth in N.J.A.C. 13:44F-8.1.

(b) Upon receipt of the items set forth in (a) above, the Board shall issue a new license to the licensee.

(c) Upon receipt of the new license as set forth in (b) above, the licensee shall remit the original license to the Board.

New Rule, R.1997 d.260, effective June 16, 1997.
See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

13:44F-2.7 Duplicate licenses

(a) Any licensee seeking a duplicate license shall forward to the Board the following:

1. A notarized statement that the license has been lost or destroyed; and
2. The appropriate duplicate license fee as set forth in N.J.A.C. 13:44F-8.1.

(b) Upon receipt of the items outlined in (a) above, the Board shall forward a duplicate license to the licensee.

New Rule, R.1997 d.260, effective June 16, 1997.
See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

SUBCHAPTER 3. AUTHORIZED PRACTICE

13:44F-3.1 Scope of practice

(a) For the purposes of treating, managing, controlling and caring for patients with deficiencies and abnormalities of the cardio-respiratory system, a respiratory care practitioner may perform the following duties under the direction or supervision of a physician:

1. Use of medical gases, air and oxygen-administering apparatus;
2. Use of environmental control systems;
3. Use of humidification and aerosols;
4. Administration of drugs and medications;

5. Use of apparatus for cardio-respiratory support and control;
6. Postural drainage;
7. Chest percussion;
8. Vibration;
9. Breathing exercises;
10. Respiratory rehabilitation;
11. Performance of cardio-pulmonary resuscitation;
12. Maintenance of natural and mechanical airways;
13. Insertion and maintenance of artificial airways; and
14. Testing techniques to assist in diagnosis, monitoring, treatment and research including, but not limited to:
 - i. Measurement of cardio-respiratory volumes, pressure and flow;
 - ii. Drawing and analyzing of samples of arterial, capillary and venous blood; and
 - iii. Establishment and maintenance of arterial lines, provided the licensee is appropriately trained in this procedure.

(b) For purposes of this subchapter, "under the direction of a physician" means that respiratory care shall not be rendered unless one of the following conditions is met:

1. The licensee has obtained a written order or prescription from a plenary licensed physician or from such other health care practitioner authorized by law to prescribe or order respiratory care;
2. The licensee has documented the physician's clearance for treatment of the patient, which may include the physician's countersigning of the respiratory care practitioner's proposed plan of treatment; or
3. The licensee has received a verbal order or prescription, in person or by telephone. In an outpatient setting, the verbal order or prescription shall be memorialized by the prescriber in writing within two weeks. In an inpatient setting, the verbal order or prescription shall be memorialized by the prescriber within 24 hours.

(c) In no case will physician direction be construed to have been provided on the basis of a patient's representation that he or she has obtained a physician's clearance.

(d) For the purposes of this subchapter, "under the supervision of a physician" means that respiratory care shall not be rendered unless a physician is constantly accessible, either on-site or through electronic communication, and available to render physical assistance when required.

13:44F-3.2 Practice by trainees

(a) A trainee may perform those duties essential for completion of his or her clinical service, without having to obtain a license, provided the duties are performed under the direction of a physician, as defined in N.J.A.C. 13:44F-3.1(b)1 and 2, and the supervision of a physician as defined in N.J.A.C. 13:44F-3.1(d), or under the direct supervision of a licensed respiratory care practitioner, as defined in N.J.A.C. 13:44F-5.1.

(b) The trainee shall, when performing duties pursuant to (a) above, wear a badge which identifies the person as a trainee. Additionally, the supervising licensee or physician shall inform the patient that the person rendering care is a trainee.

Amended by R.1997 d.260, effective June 16, 1997.
See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

In (a), substituted "trainee" for "person enrolled in a Board-approved respiratory care training program" and amended N.J.A.C. references; and in (b), inserted reference to physician in second sentence.

13:44F-3.3 Delegation by a respiratory care practitioner to unlicensed persons

(a) For the purposes of this section, the following words shall have the following meanings unless the context clearly indicates otherwise and except as otherwise expressly provided:

"Assistant" means a respiratory assistant, respiratory aide, equipment technician or any other unlicensed person to whom a licensed respiratory care practitioner delegates tasks as set forth in (b) below.

"Inpatient setting" means residential care facilities, hospitals, subacute care facilities and skilled nursing care facilities.

"Outpatient setting" means assisted living facilities and home care.

(b) Activities which a licensed respiratory care practitioner may delegate to individuals employed as assistants are limited to the following routine tasks which relate to the cleanliness and maintenance of equipment:

1. Disassembling equipment;
2. Cleaning equipment;
3. Preparing equipment for sterilization;
4. Maintaining oxygen cylinder and other specialty gas cylinders; and
5. Making oxygen checks and charges.

i. An assistant who has received a level of training to ensure that the assistant can satisfactorily complete activities set forth in (b) above may set up, test, exchange and demonstrate equipment relating to oxygen delivery systems, except that a licensed respiratory care

practitioner shall not permit an assistant to set up, test, exchange or demonstrate the equipment when oxygen is to be used on any life support system. This includes mechanical ventilation, either positive or negative pressure, with or without artificial airways, in use continuously or intermittently.

ii. In performance of the tasks enumerated in (b)5i above, the assistant is limited to basic oxygen delivery devices and shall not perform these duties in conjunction with any other respiratory therapy equipment.

(c) A licensed respiratory care practitioner shall ensure that an assistant who performs the activities set forth in (b) above shall first receive a level of training to ensure that the assistant can satisfactorily complete the outlined activities.

1. The licensed respiratory care practitioner shall ensure that training records are completed and kept in the employee's file. The training records shall include the following:

- i. The dates upon which each training session occurred;
- ii. The length of each training session;
- iii. The topics addressed during each training session; and
- iv. Whether the employee demonstrated satisfactory skill in each task.

(d) A licensed respiratory care practitioner shall not authorize or permit an unlicensed person to engage in direct patient care.

(e) A licensed respiratory care practitioner shall be responsible for any activities which an assistant performs pursuant to (b) above.

(f) The licensed respiratory care practitioner who delegates tasks as set forth in (b) above in an inpatient setting shall, prior to patient use, conduct an in-person assessment of the equipment and its application to the patient to ensure that the assistant has performed the delegated setup tasks such that the equipment and other devices are safe for patient care.

(g) The licensed respiratory care practitioner who delegates tasks set forth in (b) above in an outpatient setting shall ensure that a follow-up visit from a licensee or a person exempt from licensure takes place within 24 hours of the delivery of the equipment to the patient for the purpose of conducting an in-person assessment of the equipment.

1. The follow-up visit shall be documented in writing.

i. The documentation shall be maintained for all patients during the course of respiratory care, and for a period of one year following the termination of respiratory care services.

ii. The documentation shall be available for the Board's inspection on the business premises of the licensee or person exempt from licensure who conducts the follow-up visit, within 12 business hours of the Board's request. For the purposes of this section, "business hours" is defined as the hours between 9:00 A.M. and 5:00 P.M. Monday through Friday.

Amended by R.1997 d.260, effective June 16, 1997.

See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

Inserted new (a) and (c); recodified former (a) and (c) as (b) and (d); deleted former (b), relating to use of titles "respiratory aide" and "equipment technician"; in (b), deleted reference to respiratory aide and equipment technician, and added 5i and 5ii; and added (e) through (g).

Amended by R.1998 d.384, effective August 3, 1998.

See: 29 N.J.R. 4656(a), 30 N.J.R. 2929(a).

In (g)1ii, substituted a reference to business hours for a reference to hours in the first sentence, and added a second sentence.

SUBCHAPTER 4. APPLICANT QUALIFICATIONS; BOARD-APPROVED EXAMINATION

13:44F-4.1 Eligibility for licensure

(a) Applications for licensure may be obtained from the office of the Board of Respiratory Care.

(b) An applicant shall submit, with the completed application form and the required fee, satisfactory proof that the applicant:

1. Has a high school diploma or its equivalent as approved by the Board;
2. Has successfully completed a training program accredited by the Joint Review Committee for Respiratory Care Education (JRCRCE) of the Council on Allied Health Education and Accreditation, or its successor; and
3. Has passed the examination specified in N.J.A.C. 13:44F-4.2.

Amended by R.1997 d.260, effective June 16, 1997.

See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

In (b)1, added "as approved by the Board."; and in (b)3, deleted examination exception for persons pursuing licensure under N.J.A.C. 13:44F-5.

13:44F-4.2 Nature of examination; passing grade

(a) The examination shall be the National Board for Respiratory Care Entry Level Examination or the substantial equivalent thereof.

1. Applications for examination should be obtained from the National Board for Respiratory Care.

2. Examinations shall be held within the State at least twice per year at a time and place to be determined by the Board. The Board shall give adequate written notice of the examination to applicants for licensure and examination.

3. The passing score required in order to be licensed shall be the same as the passing score identified by the National Board for Respiratory Care or, if a substantially equivalent examination is used, the passing score is identified by the body administering that examination.

Amended by R.1997 d.260, effective June 16, 1997.

See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

Deleted (b), relating to non-Board exams taken prior to August 20, 1991.

13:44F-4.3 Refusal to issue, suspension or revocation of license

The Board may refuse to issue or may suspend or revoke any license issued by the Board, after an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., for any of the reasons set forth in N.J.S.A. 45:1-21.

SUBCHAPTER 5. TEMPORARY LICENSURE

13:44F-5.1 Temporary license

(a) Any person deemed eligible to sit for the licensure examination by virtue of completion of an accredited training program may apply for the issuance of a temporary license which is effective for no more than six months.

(b) All temporary license holders under this section shall be required to work under the direct supervision of a physician or licensed respiratory care practitioner. For purposes of this section, "direct supervision" means continuous on-site presence of a supervising licensed respiratory care practitioner or supervising physician either of whom is constantly accessible through electronic communication and available to render immediate physical assistance as required.

(c) The temporary license holder shall advise the Board, in writing, of the name and permanent license number of the licensee(s) under whose direct supervision the temporary licensee is or will be working. The temporary licensee shall keep the Board advised, in writing, of any subsequent change in supervising licensee(s).

(d) The holder of a temporary license shall take the examination administered by the National Board of Respiratory Care or its successor organization within six months of issuance of the temporary license unless the temporary license holder can demonstrate undue hardship to the Board. The temporary licensee shall submit a request to the National Board of Respiratory Care to inform the Board of the temporary licensee's test results. The temporary license shall expire six months from the date of issuance except that if the candidate fails the examination, the provisions of (d)2 and 3 below apply.

1. Upon notification that he or she has passed the examination, the temporary licensee shall submit the initial license fee as set forth in N.J.A.C. 13:44-8.1 within 10 days if the temporary licensee intends to practice respiratory care in the State of New Jersey.

2. If a temporary licensee is notified that he or she has failed the examination for the first time, the temporary license shall expire 10 days from such notification and if he or she intends to continue in the practice of respiratory care, he or she shall:

i. Apply to the Board for a one-time temporary license renewal; and

ii. Submit to the Board the temporary license renewal fee as set forth in N.J.A.C. 13:44F-8.1.

3. Upon issuance of the second temporary license, the temporary licensee shall take the respiratory care examination within six months of the issuance of the temporary license.

4. Upon notification by the Board that he or she has passed the second examination, the temporary licensee shall submit the initial license fee as set forth in N.J.A.C. 13:44-8.1 within 10 days if he or she intends to practice respiratory care in the State of New Jersey. If a temporary licensee fails the examination for the second time, the temporary license shall expire and he or she shall surrender the license to the Board.

(e) Unless the temporary license holder can demonstrate undue hardship to the Board, the second temporary license shall expire at the end of the six month period.

Amended by R.1997 d.260, effective June 16, 1997.

See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

In (a), added "which is effective for no more than six months"; in (b), inserted reference to physician supervision and inserted "immediate" preceding "physical assistance"; substantially amended (d); deleted (e) and (g), relating to renewals and expirations of temporary licenses, respectively; and recodified former (f) as (e).

Amended by R.2002 d.39, effective February 4, 2002.

See: 33 N.J.R. 2244(a), 34 N.J.R. 744(a)

Rewrote (d) and (e).

13:44F-5.2 (Reserved)

Repealed by R.1997 d.260, effective June 16, 1997.

See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

Section was "Temporary licensure of individuals practicing respiratory care as of August 20, 1991".

SUBCHAPTER 6. LICENSURE BY ENDORSEMENT

13:44F-6.1 Eligibility for licensure by endorsement

(a) An applicant possessing a valid license issued by another state or possession of the United States or the

District of Columbia shall be issued a license to practice respiratory care in New Jersey provided that:

1. The requirements for licensure in that state or possession of the United States or the District of Columbia are substantially equivalent to the requirements of this chapter; and
2. The applicant has not previously failed the Board-approved examination.

(b) Nothing herein shall preclude the Board, in its discretion, from deeming an applicant who possesses a license issued by another jurisdiction but who has failed the examination to be eligible for licensure.

13:44F-6.2 Application requirements for licensure by endorsement

(a) An applicant seeking licensure by endorsement shall submit the following to the Board:

1. An application form together with the required fee;
2. Proof satisfactory to the Board that the applicant is currently licensed in another state or possession of the United States or the District of Columbia and that the license is in good standing; and
3. An affidavit that the applicant has not failed the Board-approved examination.

SUBCHAPTER 7. LICENSE RENEWALS

13:44F-7.1 Biennial license renewal

(a) Prior to the expiration of the current biennial license period, the licensee shall submit an application for license renewal together with the biennial license renewal fee.

(b) If the licensee fails to renew his or her license on or before the date specified in the license renewal notice, the license shall automatically expire.

13:44F-7.2 Reinstatement

(a) If a license expires due to nonpayment of the biennial renewal fee, it may be reinstated within two years upon application to the Board and payment of the current and any past due biennial renewal fee together with the pertinent late fee or reinstatement fee as set forth in N.J.A.C. 13:44F-8.

(b) The Board will not renew a license if the renewal application is submitted to the Board more than two years after the date of license expiration. In such event, the individual shall be required to apply for an initial license and to take the next scheduled examination.

SUBCHAPTER 8. GENERAL PROVISIONS

13:44F-8.1 Fees

(a) State Board of Respiratory Care charges for licensure and other services as follows:

1. Application fee\$125.00
2. Initial license fee
 - i. During the first year of a biennial renewal period160.00
 - ii. During the second year of a biennial renewal period80.00
3. License renewal fee, biennial.....160.00
4. Late renewal fee (within 30 days).....100.00
5. Duplicate license fee.....50.00
6. Six-month temporary license40.00
 - i. Temporary license renewal.....40.00
7. Temporary visiting license80.00
 - i. Temporary visiting license renewal80.00
8. Reinstatement fee (after 60 days).....175.00
9. Duplicate wall certificate50.00
10. Verification of licensure25.00

Amended by R.1996 d.111, effective February 20, 1996.
See: 27 N.J.R. 4497(a), 28 N.J.R. 1221(b).

Decreased fees and eliminated the fee for 18 month temporary licenses.

13:44F-8.2 Patient records

(a) Respiratory care practitioners shall prepare contemporaneous, permanent treatment records. Every patient record shall be kept for at least seven years from the date of the most recent entry, except that if a patient is a minor, the records shall be kept for an additional two years beyond the age of 18. Such records shall include:

1. The dates and times of all treatments including adverse effects, if any;
2. Findings of patient assessment;
3. A patient care plan which includes treatment goals;
4. The chief complaint and diagnosis;
5. Progress notes;
6. Written prescription for care or a care plan signed by a physician, or a verbal order or prescription memorialized by the prescriber in writing pursuant to the provisions of N.J.A.C. 13:44F-3.1(b)3. The licensee shall document verbal prescriptions in the patient record contemporaneously with administration of treatment;
7. Results of appropriate tests;
8. In an outpatient setting, a discharge summary which includes the outcome of respiratory care treatment and the status of the patient at the time of discharge; and
9. The signature or initials of the licensee who rendered the care. If the licensee chooses to sign by means of initials, his or her complete signature must appear at least once in the records.

(b) Respiratory care practitioners shall document any addenda or corrections to a patient's medical record in a separately dated, signed and timed note.

(c) In addition to the requirements of (a) above, a licensee employed in a setting regulated by the Department of Health and Senior Services shall comply with all applicable Department of Health and Senior Services rules.

(d) In an outpatient setting, access to patient treatment records by patients or duly authorized representatives shall be in accordance with the following:

1. Reports of all care and/or tests performed by respiratory care practitioners shall be provided no later than 30 days from the receipt of a written request from the patient or authorized representative. To the extent that the record is illegible or prepared in a language other than English, the licensee shall provide a typed transcription and/or translation at no cost to the patient.

2. Except where the complete record is required by applicable law, the licensee may elect to provide a summary of the record, as long as that summary adequately reflects the patient's history and treatment, where the written request comes from an insurance carrier or its agent with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement:

3. A licensee shall provide copies of records in a timely manner to a patient or another designated health care provider where the patient's continued care is contingent upon their receipt. The licensee shall not refuse to provide a patient record on the grounds that the patient owes an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

4. The licensee may charge a reasonable fee for the reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the cost of copying or transcription.

Amended by R.1997 d.260, effective June 16, 1997.

See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

In (a), provided additional requirements for maintaining records of minors; inserted new (b); and recodified former (b) and (c) as (c) and (d).

13:44F-8.3 Sexual misconduct

(a) By this section, the Board is identifying for its licensees conduct which it shall deem to be violative of law.

(b) As used in this section, the following terms have the following meanings unless the context indicates otherwise:

1. "Licensee" means any person licensed or authorized to engage in the practice of respiratory care as regulated by the Board.

2. "Patient" means any person who is the recipient of a professional service rendered by a licensee for purposes of diagnostic testing, treatment or a consultation relating to treatment. For purposes of this section, "patient" also means a person who is the subject of professional examination or assessment even if the purpose of that examination or assessment is unrelated to treatment.

3. "Patient-respiratory care practitioner relationship" means an association between a respiratory care practitioner and a patient wherein the respiratory care practitioner performs any professional service consistent with his or her training and experience in accordance with N.J.A.C. 13:44F-3.1 or acts in a supervisory capacity for the patient.

4. "Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes, but is not limited to, the imposition of a part of the licensee's body upon a part of the patient's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or patient's body into or near the genital, anal or other opening of the other person's body.

5. "Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or nonverbal conduct that is sexual in nature, and which occurs in connection with a licensee's activities or role as a provider of respiratory care services, and that either: is unwelcome, offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense so as to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act or multiple acts and may include, but is not limited to, conduct of a licensee with a patient, co-worker, employee, student, or supervisee, whether or not such individual is in a subordinate position to the licensee. "Sexual harassment" may also include conduct of a nonsexual nature if it is based on the sex of an individual.

6. "Spouse" means either the husband or wife of the licensee or an individual in a long-term committed relationship with the licensee.

- i. For purposes of this section, "a long-term committed relationship" is a relationship that has existed for greater than six months.

(c) A licensee shall not engage in sexual contact with a patient with whom he or she has a patient-respiratory care practitioner relationship. The patient-respiratory care practitioner relationship is considered ongoing for purposes of this section unless:

1. Actively terminated, by way of written notice to the patient and documentation in the patient record; or

2. The last professional service was rendered more than three months earlier.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-respiratory care practitioner relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient, unless that discussion is related to legitimate patient needs. Such discussion shall not include disclosure by the licensee of his or her own intimate sexual relationships.

(f) A licensee shall provide privacy and examination conditions which prevent the exposure of the unclothed body of the patient unless necessary to the professional services rendered.

(g) A licensee shall not engage in sexual harassment, whether in a professional setting, including, but not limited to, an office, hospital, residence or health care facility, or outside of the professional setting.

(h) A licensee shall not engage in any other activity, such as, but not limited to, voyeurism or exposure of the genitalia of the licensee which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interest or is for the sexual arousal, the sexual gratification or the sexual abuse of the licensee or patient.

(i) Violation of any of the prohibitions or directives set forth at (c) through (h) above shall be deemed to constitute gross or repeated malpractice as proscribed by N.J.S.A. 45:1-21(c) or (d) or professional misconduct in violation of N.J.S.A. 45:1-21(e).

(j) Nothing in this section shall be construed to prevent a licensee from rendering professional services to a spouse, providing that the rendering of such services is consistent with accepted standards of respiratory care and that the performance of those services is not utilized to exploit the patient for the sexual arousal or sexual gratification of the licensee.

(k) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or
2. The licensee was in love with or had affection for the patient.

New Rule, R.1998 d.467, effective September 8, 1998.
See: 30 N.J.R. 1198(a), 30 N.J.R. 3252(a).

SUBCHAPTER 9. UNLICENSED PRACTICE

13:44F-9.1 Acts amounting to unlicensed practice

(a) The following acts or practices shall be deemed to be the unlicensed practice of respiratory care:

1. Offering or performance of any respiratory care services by any person other than a licensed respiratory care practitioner, an M.D., a D.O., or by any other health care provider not exempt from the provisions of this chapter pursuant to N.J.S.A. 45:14E-9(c);

2. The use of the words respiratory care, respiratory therapy or other such similar words or their related abbreviations in connection with the offering of measures or services which are utilized in the rendition of respiratory care by any person who does not hold a license to render respiratory care services or is not otherwise exempt from the licensure requirement;

3. The use of the designation respiratory care practitioner, respiratory therapist, or other such similar terms and their related abbreviations in connection with the offering of measures or services which are utilized in the rendition of respiratory care by any person who does not hold a license to render respiratory care services or is not otherwise exempt from licensure; or

4. Billing any patient or third party payor for "respiratory care" or "respiratory therapy," in connection with the use of respiratory care agents, measures or services, if the individual providing the services does not hold a license to practice respiratory care, is not a licensed physician or is not otherwise exempt from the licensure requirement.

Amended by R.1997 d.260, effective June 16, 1997.
See: 29 N.J.R. 1253(b), 29 N.J.R. 2665(b).

In (a)1, inserted reference to performance of respiratory services; in (a)2, deleted reference to respiratory care practitioner and respiratory therapist and substituted "to render respiratory . . . from the licensure requirements;" for "as a respiratory care practitioner, an M.D. or a D.O. or"; inserted new (a)3; recodified former (a)3 as (a)4; and in (a)4, added "or is otherwise exempt from the licensure requirement".

13:44F-9.2 Aiding and abetting unlicensed practice

It shall be unlawful for a licensee to aid or assist any person engaging in any of the practices identified at N.J.A.C. 13:44F-9.1.