

1/14/91



minnesota department of health

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December 21, 1990

Maryanne Hruby
Legislative Commission to Review Administrative Rules
Room 55, State Office Building
100 Constitution Avenue
St. Paul, MN 55155

Re: Proposed Rules of the Department of Health Governing the
Registration of Respiratory Care Practitioners

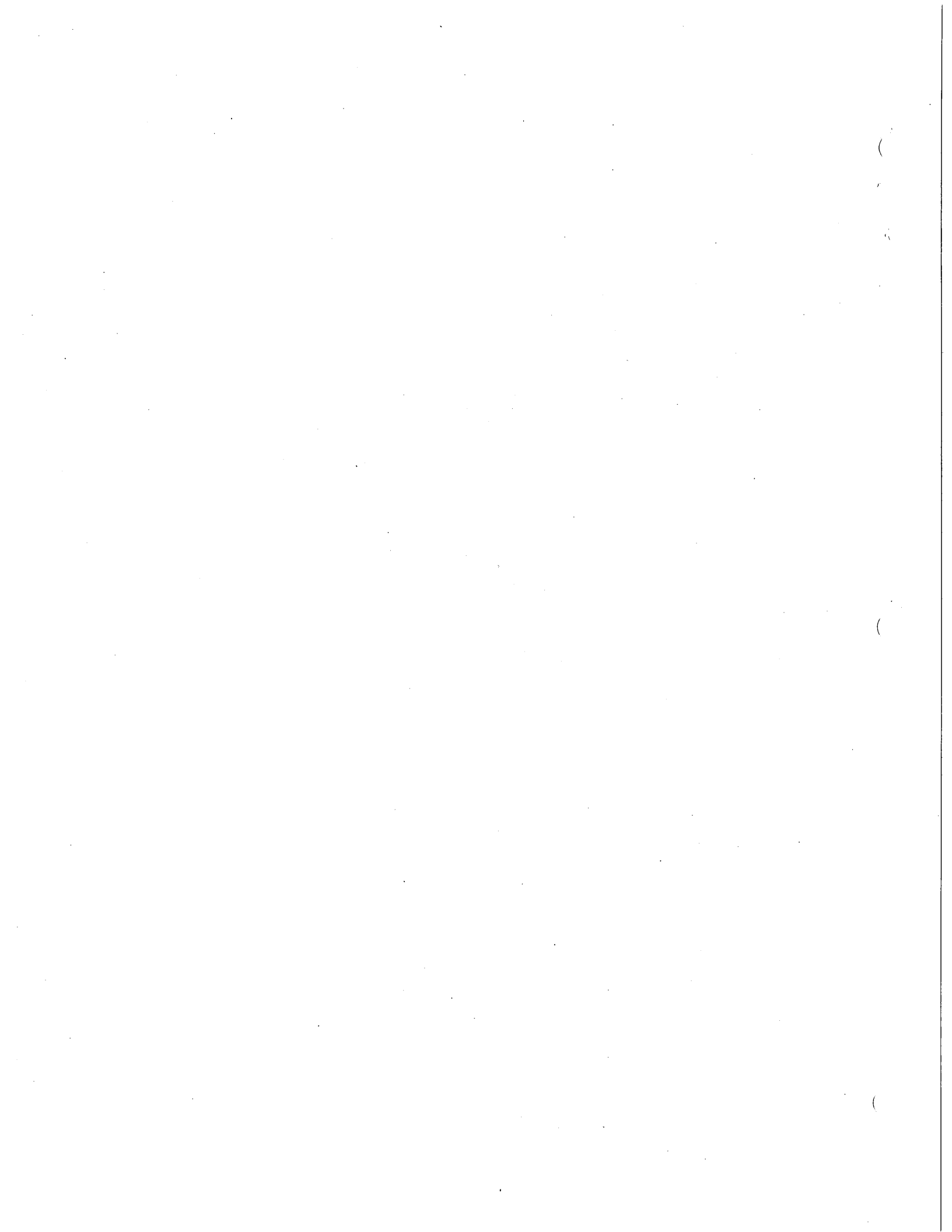
Dear Ms. Hruby:

Enclosed please find a copy of the proposed rules and statement of need and reasonableness for the above-mentioned matter. These rules are being filed with the LCRAR pursuant to Minnesota Statutes, section 14.131. If you have any questions regarding these documents please contact me at 623-5131.

Sincerely,

Annette Spencer

Enclosures



STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
DEPARTMENT OF HEALTH

IN THE MATTER OF THE
PROPOSED ADOPTION OF RULES
OF THE DEPARTMENT OF HEALTH
GOVERNING THE REGISTRATION
OF RESPIRATORY CARE PRACTITIONERS

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION

This statement of need and reasonableness is prepared pursuant to the requirements set forth in Minnesota Statutes Sections 14.131 and 14.23. It contains a summary of the evidence and arguments in support of the need for and reasonableness of the registration rules for respiratory care practitioners. Also included is a statement addressing the impact of these rules on small businesses and the approval of the Commissioner of Finance regarding the fees to be charged for the registration system.

BACKGROUND

Respiratory care practitioners were originally known as "oxygen technicians." Their primary responsibility was the administration of oxygen for treatment of heart and lung diseases. In 1946, the Inhalational Therapy Association was formed with the objective of promoting practice standards and professional advancement, increasing cooperation with physicians and other professions, advancing the knowledge of inhalation

therapy, and granting certificates of qualification to individuals completing prescribed requirements.

In 1950, the need for trained personnel in respiratory therapy was discussed in two separate journal articles. These articles also identified standards for practice. That same year, the Inhalational Therapy Association granted the first certificates to those individuals who had participated in the lecture and workshop series offered by the organization.

The Inhalational Therapy Association gradually expanded into an organization of national proportions and became the American Association of Inhalation Therapy in 1953. In 1969 the American Association of Inhalation Therapists organized the certification of technicians in response to a personnel shortage of qualified registered therapists and subsequent demand for entry level personnel. Currently this organization is known as the American Association of Respiratory Care (AARC) and has sponsorship of the American College of Chest Physicians, the American Society of Anesthesiologists, and the American Thoracic Society.

The Board of Schools for Inhalation Therapy was established in 1956 as an advisory committee to the American Medical Association with the purpose of maintaining high standards for inhalation therapy training programs and encouraging the development of the profession. By 1963, the Board of Schools for Inhalation Therapy was the organization responsible for inspecting and surveying inhalation therapy

training programs. The first program received accreditation from the Board in 1964.

The Board of Schools was originally opposed to an academic orientation for respiratory therapy training programs and accreditation of academically-based programs. This orientation changed when, in 1970, the board was disbanded and the Joint Review Committee for Inhalation Therapy Education was incorporated under Minnesota law under the leadership of H.F. Helmholtz, Jr. This body is now known as the Joint Review Committee for Respiratory Therapy Education (JRCRTE) and functions in association with the Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association.

The "Essentials for an Approved School of Inhalation Therapy Technicians" were developed by the American Medical Association in 1957, in a move towards establishing standards for training respiratory care personnel. In 1972 the "Essentials" were revised and a second level of education (the entry or technician level) for respiratory care practitioners was recognized. This revision also supported academic sponsorship of therapist level programs.

The "Essentials" were again revised in 1977. The 1977 revision directed that therapist level training be sponsored by educational institutions which would assume responsibility for the training program. Affiliation of technician level programs with educational institutions was also recommended. This

revision also expressed a need for "advanced standing" for key personnel of training programs, expanded curricula, and laboratory experience prior to clinical contact. By 1977 the American Medical Association's Committee for Allied Health Education Accreditation (CAHEA) had begun working with the JRCRTE in the accreditation of respiratory care practitioner training programs.

A third organization, the American Registry of Inhalation Therapists, was formed in 1960 to promote the understanding and use of inhalation therapy; to develop and maintain educational and ethical standards; to provide professional guidance of registrants; to establish standards for competency; and to monitor the qualifications of candidates for registry. The first written registration examination was conducted in 1961.

In 1974 the National Board for Respiratory Care (NBRC) came into existence with the merger of the registered therapist and certified technician boards. The NBRC has since administered both registry and certification credentialing.

Currently the AARC exists as the professional organization for respiratory care practitioners. Membership in the organization is voluntary. The NBRC continues as the national, voluntary credentialing organization, administering the credentialing examinations for both the entry level practitioner (certified respiratory care practitioner) and the advanced level practitioner (registered respiratory therapist). Educational

programs are accredited by the American Medical Association's CAHEA in cooperation with the JRCRTE. ¹

While the occupation has a history of dedication to excellence, the national registry program remains voluntary. Neither the AARC nor NBRC have the power to discipline or sanction a respiratory care practitioner, other than denying membership in their respective organizations. Twenty-six states now have a regulation system, either licensing or title protection, for respiratory care practitioners.

STATUTORY AUTHORITY

The Commissioner is directed by Minnesota Statutes, section 214.13, subdivision 1 to "promote the recognition of human services occupations useful in the effective delivery of human services." The Commissioner is authorized to

establish procedures for the identification of human services occupations not now credentialed by the state, recommend appropriate regulatory modes and promulgate by rule standards and procedures relating to the credentialing of persons practicing in the affected occupations.

Minnesota Statutes, section 214.13, subd. 1.

The Commissioner may determine that credentialing is needed based upon the criteria in Minnesota Statutes, section 214.001. The Commissioner, however, is empowered only to register the occupation. Minnesota Statutes, section 214.13, subdivision 1.

¹The following served as the primary reference for information on the history of respiratory care: George C. Burton and John E. Hodgkin, eds., Respiratory Care: A Guide to Clinical Practice, (Philadelphia: J.B. Lippincott Co., 1984), Chapter 1.

Registration is defined as "a system whereby practitioners are permitted to use a designated title and are listed on an official roster after having met predetermined qualifications." Minnesota Statutes, section 214.001, subd. 3(c). Unlike licensure, registration provides title protection only. Persons who are not registered are not prohibited from performing respiratory care tasks; however, they are prohibited from using the protected title designated in the rules or holding themselves out as a member of the occupation.

The Commissioner is required to delegate the administration of regulation activities, wherever possible, to a health related licensing board with the concurrence of that board. Minnesota Statutes, section 214.13, subd. 4. In addition, the Commissioner may establish an advisory council to advise the licensing board on matters relating to the registration and regulation of an occupation. Id.

In promulgating the rules, the Commissioner may include procedures and standards addressing registration requirements, the scope of authorized practice, fees, supervision, continuing education, career progression, and disciplinary matters. Minnesota Statutes, section 214.13, subd. 3. The rules may also include provisions for indicating functional differentiation of the group, qualifications for achieving registration via different entry routes, requirements for different levels of registered titles corresponding to steps in the occupation's career progression, the organizational structure of the advisory

council, requirements for registration renewal and disciplinary procedures. Minnesota Rules, part 4695.1500, subp. 2.

The Minnesota Society for Respiratory Care, a state organization of respiratory care practitioners, submitted an application for credentialing to the Commissioner of the Minnesota Department of Health (Commissioner) on November 21, 1986. This application was subsequently reviewed under criteria established in Minnesota Statutes, section 214.001 et seq. by staff of the Health Occupations Program of the Minnesota Department of Health (MDH) and the Human Services Occupations Advisory Council (HSOAC).

Following a review of the recommendations from the Health Occupations Program staff and the Human Services Occupations Advisory Council, the Commissioner determined on March 21, 1989, that respiratory care practitioners should be regulated within the state of Minnesota. She further determined that the form of regulation should be by a registration system administered by the Board of Medical Examiners.

GENERAL STATEMENT OF NEED AND REASONABLENESS

The legislature has declared that "no regulation shall be imposed unless it is required for the safety and well being of the citizens of the state." Minnesota Statutes, section 214.001, subd. 2. There are several factors which must be examined before regulation can be initiated. It must be determined "whether the unregulated practice of an occupation may

harm or endanger the health, safety, and welfare of citizens of the state and whether the potential for harm is recognizable and not remote." Minnesota Statutes, section 214.001, subd. 2(a). A second factor examines "whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability." Minnesota Statutes, section 214.001, subd. 2(b). Another consideration is "whether the citizens of the state are or may be effectively protected by other means." Minnesota Statutes, section 214.001, subd. 2(c). The final factor is "whether the overall cost effectiveness and economic impact of regulating the occupation would be positive for the citizens of the state." Minnesota Statutes, section 214.001, subd. 2(d).

Review of the occupation of respiratory care under these criteria resulted in findings, conclusions and recommendations by the Commissioner which are set out in the Determination of the Commissioner of Health dated March 21, 1989, a copy of which is attached as Appendix A and incorporated into this statement of need and reasonableness. Briefly, the HSOAC and MDH Staff reports and the Commissioner's Determination concluded that a regulation system for respiratory care practitioners was needed and reasonable for the following reasons:

1. There is a potential that the unregulated practice of respiratory care will harm or endanger the health, safety, and welfare of the citizens of the state. The potential for harm is recognizable and not remote.

The Commissioner determined that there is actual harm occurring to the health, safety, and welfare of the citizens of the state due to the unregulated practice of respiratory care. Harm resulting from the incompetent delivery of respiratory care services may be immediate, is recognizable, and may be great in magnitude. Appendix A p. 2. Actual and potential harm is the direct effect of respiratory care functions, resulting from improper rendering of respiratory care functions as well as from errors of omission. Instances of errors or omissions in the performance of respiratory care services are evidenced by a 1986 Minnesota Society for Respiratory Care survey of practitioners which is attached as Appendix B and incorporated into this statement of need and reasonableness.

Evidence presented in the review of the occupation showed that the harm resulting from incompetently performed respiratory care services is primarily physical, and includes consequences such as death, vascular damage, anoxic brain syndrome, blindness, cardiac arrest, acute and/or chronic pain, barrow trauma, rib fracture, nerve damage, hypoxia, hypoxemia, cardiac tamponade, dermal and/or mucosal burns, hypercapnea, infections, loss of speech, dental breakage, and fires and/or explosion. Emotional trauma and patient and/or family grief may also result from improper care. Additionally, improperly performed care may result in increased costs due to prolonged hospitalization and increased patient care needs.

The evidence also showed that the functions performed by respiratory care practitioners are critical in nature. Respiratory care practitioners use equipment, devices, and substances which are inherently dangerous in nature, such as oxygen and aerosol medications, in the delivery of their services. Although respiratory care practitioners perform their services pursuant to physician orders, they are not directly supervised and do exercise an observable degree of independent judgement. Respiratory care practitioners may be requested to suggest treatment or determine modifications in treatment. In addition, respiratory care practitioners are responsible for monitoring the patient's response to the prescribed treatment. Incompetent performance of respiratory care practitioner functions may have immediate, irreparable and life threatening consequences.

Based on the facts above, the Commissioner determined that the criterion for harm resulting from the unregulated practice of respiratory care was met.

2. The delivery of respiratory care services requires specialized skill and training. The public needs and will benefit by assurances of initial and continuing competency.

The Commissioner concluded that the practice of respiratory care requires specialized skills and training. The HSOAC and MDH Staff reviews found that the functions performed by respiratory care practitioners are many and varied, requiring that the respiratory care practitioner possess sufficient knowledge to be able to ascertain patient response to therapy and modify

treatment accordingly. Absence of specialized skills and training, such as knowledge of the use and care of equipment used to diagnose and treat respiratory disorders or the ability to assess patient response to respiratory care services, is likely to increase the incidence and degree of harm to the patient as evidenced by the information presented by the applicant group.

3. Regulation of respiratory care practitioners will provide the citizens of the state with an additional means of protection.

The Commissioner determined that Minnesotans are not effectively protected from improper delivery of respiratory care services by current means. A number of protective mechanisms were reviewed and the Commissioner found the following:

Respiratory care practitioners perform their services pursuant to physician orders for treatment. Although the physician is ultimately responsible for the patient's welfare, the respiratory care practitioner is not directly supervised by the physician in the performance of respiratory care services and exercises independent judgement in implementing respiratory care.

An informal system of checks and balances exists within health care facilities which aids in the assurance that respiratory care services are being correctly and safely performed. In the process of implementing physician orders for respiratory care, numerous health care professionals will review the orders, increasing the chances that an incorrect order will be spotted before any harm is done to the patient. However, this "safety net" is informal and does not assure that the respiratory

care will be provided by practitioners who possess a minimum level of competency. In addition, it is significant that this "safety net" is not available to those patients who are treated at home.

Minnesota has no statutes or rules in effect which address the practice of respiratory care. Respiratory care is defined in home health care rules developed by Minnesota Department of Health staff but regulation of respiratory care practitioners is not addressed in these rules.

There is currently a national voluntary credentialing process for respiratory care personnel which is administered by the National Board for Respiratory Care (NBRC). The NBRC has developed an examination which is task-based and designed to measure the knowledge required by an entry level practitioner. There are no continuing education requirements for maintaining national credentialing nor is there a requirement for periodic evaluation of continued competence. The NBRC does make the entry level examination available to those practitioners who wish to retake the examination as a measure of their continued competency in the field.

A second organization, the American Association for Respiratory Care (AARC), is a voluntary professional organization which provides standards for practice and supports professional activities. The AARC and its local affiliate, the Minnesota Society for Respiratory Care (MSRC), have committees which review practitioners who may have violated accepted standards of

practice, however, these organizations are limited to restricting membership in their respective organizations; they are not able to prohibit or prevent the practitioner from continuing to practice.

Another form of consumer protection is provided by the institutions employing respiratory care practitioners. The institution or agency that employs respiratory care practitioners provides a framework of policies and procedures which the respiratory care practitioner must follow in the delivery of services. In this manner the respiratory care practitioner is indirectly supervised and monitored in the performance of services.

Regulation of institutions by private bodies such as the Joint Commission on Accreditation of Hospitals (JCAH) can provide some regulation for the practice of respiratory care. The JCAH standards, however, require only that the personnel providing respiratory care are "qualified." They do not require a specific level of training or certification. It is therefore within the discretion of each hospital to determine the appropriate level of training needed by their staff. Not all hospitals in which respiratory care practitioners practice are affiliated with the JCAH, nor do all respiratory care practitioners work in hospitals.

Accredited educational programs for respiratory care practitioners exist on two levels. Educational programs are accredited by the Committee for Allied Health Education

Accreditation, (CAHEA), an affiliate of the American Medical Association, in conjunction with the Joint Review Committee for Respiratory Therapy Education (JRCRTE). There are two levels of education, entry level and advanced level. Completion of either type of program provides an individual eligibility for the NBRC credentialing examination. Not all employers will require that respiratory care personnel complete an accredited education program, and may even offer their own on the job training to an individual. There are no guidelines for informal or on the job training; the individual employer is free to implement its unique training program.

Malpractice insurance is another method by which the consumer may be able to obtain redress for any harms resulting from incompetent practice of respiratory care. Most respiratory care practitioners have some form of liability insurance provided by their employer. Malpractice insurance is available on an individual basis, but most individual practitioners do not carry malpractice insurance. Malpractice insurance, therefore, does not appear to be an effective means of protecting the consumer of respiratory care services.

The measures above do not provide sufficient safeguards for the public as they do not encompass all the respiratory care personnel in the state.

4. The overall cost and economic impact of regulation will be positive on the citizens of the state.

The Commissioner determined that "a registration system for respiratory care practitioners will provide the citizens of

Minnesota the necessary regulation in a cost effective manner consistent with the legislative intent of Minnesota Statutes, section 214.001." Specifically, the Commissioner found:

Regulation will not directly impact the cost of goods and services provided by respiratory care practitioners. Respiratory care practitioners are not directly reimbursed for their services, but are salaried employees of an institution or business which bills for services provided.

The supply of practitioners should not be significantly impaired by implementation of registration. The majority of the current practitioners should be able to meet the requirements for registration. Those who are not able to comply with registration requirements will not be prohibited from continuing in their current employment; they will only be restricted from using the protected titles. The future supply of practitioners should not be significantly affected either. Respiratory care practitioners are in demand. Those individuals graduating from respiratory care training programs should have no difficulty obtaining employment.

It is anticipated that regulation of respiratory care practitioners will have a beneficial effect on the quality of care. The provision of respiratory care services by qualified practitioners will result in less danger of errors which in turn will mean less litigation and medical intervention.

Regulation may facilitate access to reimbursement for services. Respiratory care practitioners are not directly

reimbursed by Medicare for their services at this time; however, regulation of the occupation by the state may lead to recognition and direct reimbursement of respiratory care services by Medicare and third party payers.

During the review process, representatives of small, rural hospitals expressed concern about the potential for a regulation system having a negative economic impact on citizens living in rural areas of Minnesota. A 1988 MSRC survey indicated that there are more individuals with informal training who may not be able to meet the requirements for registration in rural areas. In addition, rural areas are more likely to have a difficult time recruiting and supporting registered respiratory care practitioners on their staff. Despite these possibilities, the Commissioner has determined that the benefits from registration will outweigh any adverse effects on outstate Minnesotans.

ADDITIONAL REQUIREMENTS

Approval of Commissioner of Finance

Pursuant to Minnesota Statutes, section 16A.128, subdivision 1a, if a fee is to be fixed by rule, the Commissioner of Finance must approve the fee, and the Commissioner's approval must be included in the statement of need and reasonableness. The Commissioner of Finance's approval of the fees established in the proposed registration rules is contained in Appendix C which is incorporated into this statement of need and reasonableness.

Small Business Considerations

When an administrative agency proposes rules which may directly affect small businesses, the agency is required by Minnesota Statutes, section 14.115 to consider various methods for reducing the impact of the rules on small businesses. It is the Commissioner's position with respect to these proposed rules that the provisions of Minnesota Statutes, section 14.115 do not apply.

Minnesota Statutes, section 14.115, subdivision 7 specifies four types or classes of rules to which the small business requirements of section 14.115 are inapplicable. These proposed rules come within the terms of two of the exemptions.

The first exemption applies to "agency rules that do not affect businesses directly." Minnesota Statutes, section 14.115, subdivision 7(2). These rules have no direct impact on small business. Instead, they regulate individuals, in particular those who apply for and are registered as respiratory care practitioners. Registration is not mandatory, thus, individuals may still work in the field of respiratory care even though they choose to forgo registration. They may not operate as independent respiratory care practitioner small businesses, but instead, as respiratory care practitioners, provide respiratory care services only through other entities. Some of these businesses for which respiratory care practitioners work may meet the statutory definition of a small business. However, the mere linkage between registered individuals as employees or

independent contractors and businesses as employers does not make the rules directly applicable to the businesses. There is not a single word in the rules which is addressed to a small business or which by its direct application will force a small business to function in any manner different from the way it functioned prior to the creation of the rules.

That the proposed rules have no direct effect on small businesses is highlighted when the rules are analyzed under the standards contained in Minnesota Statutes, section 14.115, subdivision 2. Subdivision 2 requires an agency, when adopting rules which may effect small businesses, to consider five "methods for reducing the impact of the rule on small business." The Commissioner has considered these five methods, as explained below, in case these proposed rules are in some way construed as effecting small businesses. The methods are: (a) the establishment of less stringent compliance or reporting requirements for small businesses; (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses; (c) the consolidation or simplification of compliance or reporting requirements for small businesses; (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and (e) the exemption of small businesses from any or all requirements of the rule.

The Commissioner has considered the feasibility of implementing each of the five suggested methods, considered

whether implementing any of the five methods would be consistent with the statutory objectives that are the basis for this rulemaking, and concluded that it would not be feasible to incorporate any of the five suggested methods into these proposed rules. The Commissioner has also concluded that reducing the impact of these rules on small businesses would undermine the objectives of the registration system. The Commissioner's reasons are as follows.

Methods (a) through (c) of Minnesota Statutes, section 14.115, subdivision 2 relate to lessening compliance or reporting requirements for small businesses by (a) establishing less stringent requirements, (b) establishing less stringent schedules or deadlines for compliance with the requirements, or (c) consolidating or simplifying the requirements. The Commissioner is not proposing any compliance or reporting requirements for either small or large businesses; therefore there are no compliance or reporting requirements for the Commissioner to lessen with respect to small businesses. Method (d) suggests replacing design or operational standards with performance standards for small businesses. The Commissioner is not proposing any design or operational standards for any person or entity in business, and therefore there is no reason to implement performance standards for small businesses as a replacement for design or operational standards that do not exist. Finally, method (e) suggests exempting small businesses from any or all requirements of the rules. It would be contrary to the

Commissioner's statutory authority to adopt one set of regulations that would apply to those respiratory care practitioners who work in a large business setting and adopt another less stringent set of regulations to be applied to those respiratory care practitioners who work in a small business setting. Protection of the public and equitable treatment of all persons under the proposed rules require regulations that are consistent for all persons regardless of employment in small or large business settings.

As the foregoing amply demonstrates, these proposed rules do not directly affect small businesses and thus under Minnesota Statutes, section 14.115, subdivision 7(2) are not subject to the provisions of section 14.115.

These rules are also exempt from section 14.115 under the terms of subdivision 7(3). This exemption applies to rules governing service businesses which are regulated by government bodies for standards and cost. Nursing homes, long term care facilities, hospitals, providers of medical care, day care centers, group homes and residential care facilities are all specifically exempt from the small business provisions under this portion of the statute.

It is the Commissioner's position that the small businesses which may be affected by these proposed rules are exempted from small business protection because they are health care service businesses regulated by government bodies for standards and costs. According to information supplied by the occupational

group, respiratory care practitioners are employed primarily by hospitals but may also work within nursing homes or long term care facilities, all of which are regulated by state and federal laws. Durable medical equipment suppliers may also employ respiratory care practitioners to provide respiratory care services within the patient's home. Durable medical equipment suppliers will soon be regulated by the Minnesota Department of Health through the home health care licensure rules now under development. Because the employers of respiratory care practitioners are service businesses regulated by government bodies, it is the Commissioner's position that small business considerations are not applicable to these proposed rules.

Minnesota Statutes, section 214.13 charges the Commissioner with the duty of recommending appropriate regulatory modes for human service occupations not now credentialed by the state and further requires the Commissioner, should she decide that the appropriate mode of regulation for a specific group is registration, to promulgate rules for establishing standards and procedures to implement that decision. Given these statutory mandates, it is the Commissioner's duty to establish registration procedures which apply equally to and govern all applicants and registrants, regardless of the size of their business setting. As stated above, it is the Commissioner's position that the proposed rules are exempt from the small business considerations because the rules do not directly apply to employers of respiratory care practitioners and the employers are service

businesses which are regulated by government bodies. As explained above, the Commissioner considers implementation of any of the five suggested methods enumerated in Minnesota Statutes, section 14.115, subdivision 2 to be infeasible. Nonetheless, to the extent that the proposed rules may affect the business operation of a respiratory care practitioner and to the extent it may be feasible to implement any of the suggested methods for lessening the impact on small businesses, the Commissioner asserts that it would be contrary to the purposes to be served by these rules to exempt one group of respiratory care practitioners from the requirements of these proposed rules. It is the Commissioner's view that these proposed rules must apply equally to all respiratory care practitioners if the public whom they serve is to be adequately protected. For all of these reasons, it is not feasible for the Commissioner to incorporate into these proposed rules any of the five methods specified in Minnesota Statutes, section 14.115, subdivision 2.

Minnesota Statutes, section 14.115, subdivision 4 requires the agency to provide an opportunity for small businesses to participate in the rulemaking process. Throughout the rule drafting process, attempts have been made to obtain input from respiratory care practitioners from a variety of business settings. Meetings to discuss the draft rules have been held with respiratory care practitioners from a variety of practice settings including metropolitan hospitals, durable medical equipment suppliers, academic institutions, and small rural

hospitals. Individuals from all of these settings have been involved in an informal review of the proposed rules as well as the review required by law. Furthermore, in compliance with Minnesota Statutes, section 14.115, subdivision 4(a), the Department has included in its Notice initiating this rulemaking proceeding, a statement of the probable qualitative and quantitative impact of the proposed rules on affected classes of persons.

SPECIFIC STATEMENT OF NEED AND REASONABLENESS

PROPOSED REGISTRATION RULES FOR RESPIRATORY CARE PRACTITIONERS 4760.0010 DEFINITIONS

Subpart 1. SCOPE. FOR THE PURPOSE OF PARTS 4760.0010 TO 4760.0300, THE FOLLOWING TERMS HAVE THE MEANINGS GIVEN THEM.

This section provides definitions for the terms used within the respiratory care practitioner registration rules. It is necessary to provide definitions to enable users of the rules to understand the terms used within the rule provisions. These definitions are reasonably included as a means of providing a common basis for the understanding, interpretation and application of the respiratory care practitioner registration rules.

Subpart 2. ADVISORY COUNCIL. "ADVISORY COUNCIL" MEANS THE RESPIRATORY CARE PRACTITIONER ADVISORY COUNCIL ESTABLISHED UNDER MINNESOTA STATUTES, SECTION 214.13; SUBDIVISION 4.

It is necessary to identify the advisory council referred to in these rules to distinguish it from other advisory councils associated with the Board of Medical Examiners. It is also necessary to include identification of the advisory council as an

aid to understanding the distinction between the role of the advisory council and the Board of Medical Examiners in the rule administration processes set forth in these rules. It is reasonable to include this definition because it identifies the statutory authority for creation of the advisory council. Minnesota Statutes, section 214.13, subdivision 4 provides that "The commissioner of health may establish an advisory council to advise the commissioner or the appropriate health related licensing board on matters relating to the registration and regulation of an occupation."

Subpart 3. APPLICANT. "APPLICANT" MEANS AN INDIVIDUAL WHO APPLIES TO THE BOARD FOR INITIAL REGISTRATION AS A RESPIRATORY CARE PRACTITIONER.

Inclusion of the term "applicant" is necessary to identify individuals who have submitted applications to the Board for registration but have not yet been registered as a respiratory care practitioner. It is reasonable to include this term as a means of clarifying the status and role of an applicant within the registration process.

Subpart 4. APPROVED CONTINUING EDUCATION PROGRAM. "APPROVED CONTINUING EDUCATION PROGRAM" MEANS A CONTINUING EDUCATION PROGRAM MEETING THE CONTINUING EDUCATION REQUIREMENTS IN PART 4760.0090 AND APPROVED BY THE BOARD.

It is necessary to include the definition of approved continuing education program so that registered respiratory care practitioners and continuing education sponsors are aware that specific criteria must be met in order to fulfill continuing education requirements. The definition is reasonable because it refers to the specific criteria which are used to determine

credit for continuing education programs in part 4760.0090 of the rules. Board approval of a program is a reasonable means of substantiating a program's fulfillment of the continuing education requirements.

Subpart 5. APPROVED EDUCATION PROGRAM. "APPROVED EDUCATION PROGRAM" MEANS A UNIVERSITY, COLLEGE, OR OTHER POSTSECONDARY EDUCATION PROGRAM OF RESPIRATORY CARE TRAINING THAT, AT THE TIME THE STUDENT COMPLETES THE PROGRAM, IS ACCREDITED BY THE COMMITTEE ON ALLIED HEALTH EDUCATION AND ACCREDITATION OF THE AMERICAN MEDICAL ASSOCIATION IN COLLABORATION WITH THE JOINT REVIEW COMMITTEE FOR RESPIRATORY THERAPY EDUCATION OR OTHER NATIONAL ACCREDITING ORGANIZATION APPROVED BY THE BOARD.

It is necessary to define an approved education program because it refers to a requirement for registration. It is reasonable to define the program as inclusive of a university, college or other post secondary program of respiratory care training which has been accredited because such a definition likely assures that the program meets minimum standards in preparing individuals for practice as respiratory care practitioners. It is also reasonable to require that the program be accredited at the time the individual completes the program because it likely assures that the training actually received by the individual conforms to the accreditation standards. It is reasonable to refer to CAHEA and JRCRTE as the accrediting bodies because these organizations have developed specific standards for program accreditation. The National Board for Respiratory Care, a national credentialing organization, recognizes programs accredited by CAHEA and JRCRTE as assuring an adequate education for candidates for credentialing. Use of CAHEA and JRCRTE

accredited programs is reasonable because it promotes consistency in standards and mobility of respiratory care practitioners among the states. Reference to "other national accrediting organization approved by the board" is also reasonable because it provides the Board with the flexibility to utilize other educational accrediting organizations should that become necessary or desirable.

Subpart 6. BOARD. "BOARD" MEANS THE MINNESOTA BOARD OF MEDICAL EXAMINERS.

It is necessary to define this term because it identifies the health related licensing board to which the Commissioner of Health has delegated the administration of respiratory care practitioner regulation. This delegation is authorized by Minnesota Statutes, section 214.13, subdivision 4, with the concurrence of the Board. It is reasonable that the Board serve the role of administrative authority for respiratory care practitioners because respiratory care practitioners provide services pursuant to physician orders and work closely with physicians in coordinating respiratory care services within the medical plan of care.

Subpart 7. COMMISSIONER. "COMMISSIONER" MEANS THE COMMISSIONER OF THE MINNESOTA DEPARTMENT OF HEALTH.

This definition is necessary to distinguish the Commissioner of Health from commissioners of other state agencies. It is a reasonable means of identifying the authority under which these rules are promulgated.

Subpart 8. CONTACT HOUR. "CONTACT HOUR" MEANS AN INSTRUCTIONAL SESSION OF 50 CONSECUTIVE MINUTES, EXCLUDING COFFEE

BREAKS, REGISTRATION, MEALS WITHOUT A SPEAKER, AND SOCIAL ACTIVITIES.

It is necessary to define this term because it is used in the rules to establish a uniform unit of measurement for acquiring credit for continuing education activities. Fifty minutes is a reasonable period of time to use as the uniform unit of measure and allows for administrative activities which occur as part of any continuing education program. Fifty minutes conforms to the unit of measure used by the Board of Nursing for continuing education credits. Courses approved by the Board of Nursing will qualify for respiratory care practitioner continuing education credit; therefore, it is reasonable for respiratory care practitioners to use the same continuing education unit of measurement. Use of a fifty minute unit of measurement also accommodates the AARC and MSRC continuing education programs. It is reasonable that activities which are primarily social are not included as credit for continuing education activities. The Commissioner realizes that administrative and social functions are a part of the continuing education program, but they are not the type of educational activity to be included in determining the unit of measure for continuing education credits.

Subpart 9. CONTINUING EDUCATION PROGRAM. "CONTINUING EDUCATION PROGRAM" MEANS A CLASS, SEMINAR OR STRUCTURED LEARNING PROCESS RELATING TO RESPIRATORY CARE PRACTICE AND OFFERED FOR THE PURPOSE OF ADVANCING THE KNOWLEDGE AND SKILLS OF THE RESPIRATORY CARE PRACTITIONER.

It is necessary to define the term continuing education program because it is used to identify one of the requirements for maintaining registered status. Continuing education is a

reasonable method of attempting to assure the continued competency of those who are registered. Accepting classes, seminars or other structured learning processes for continuing education credit provides respiratory care practitioners with a variety of methods for acquiring continuing education credits and maintaining competency. In order to fulfill the purpose of assuring continued competency, it is necessary and reasonable to designate education relating to respiratory care practice and offered for the purpose of advancing knowledge and skills of the respiratory care practitioner.

Subpart 10. CREDENTIAL. "CREDENTIAL" MEANS A LICENSE, PERMIT, CERTIFICATION, REGISTRATION, OR OTHER EVIDENCE OF QUALIFICATION OR AUTHORIZATION TO ENGAGE IN RESPIRATORY CARE PRACTICE IN THIS STATE OR ANY OTHER STATE.

It is necessary to include this definition because the term is used within the rules. The definition is reasonable as it includes a variety of methods of qualification or authorization to practice in the area of respiratory care, any one of which may be used by another state or a private organization to recognize an individual's ability to engage in the practice of respiratory care.

Subpart 11. CREDENTIALING EXAMINATION. "CREDENTIALING EXAMINATION" MEANS AN EXAMINATION ADMINISTERED BY THE NATIONAL BOARD FOR RESPIRATORY CARE FOR CREDENTIALING AS A CERTIFIED RESPIRATORY THERAPY TECHNICIAN OR REGISTERED RESPIRATORY THERAPIST, OR AN EXAMINATION FOR CREDENTIALING OFFERED BY A NATIONAL TESTING SERVICE THAT IS APPROVED BY THE BOARD.

Definition of this term is necessary because it refers to one of the requirements for registration as a respiratory care practitioner. It is reasonable to have an objective means of

measuring an applicant's competency in the practice of respiratory care as a prerequisite to registration. The National Board for Respiratory Care has developed its credentialing examination to measure an individual's competency to perform as a respiratory care practitioner based upon a study of the tasks performed by practitioners. The credentialing examinations administered by the National Board for Respiratory Care are therefore reasonable instruments for measuring an applicant's competency for purposes of Minnesota registration. Designation of an examination for credentialing offered by a national testing service approved by the Board is reasonable because it provides the Board with the flexibility to accept a testing instrument not administered by the NBRC should that become necessary or desirable. Use of nationally recognized examinations avoids duplication of effort by the Board and aids in consistency in standards and in mobility of practitioners among the states.

Subpart 12. DIRECT SUPERVISION. "DIRECT SUPERVISION" MEANS WORKING UNDER A REGISTERED RESPIRATORY CARE PRACTITIONER OR QUALIFIED MEDICAL DIRECTOR WHO IS PRESENT IN THE FACILITY AT THE TIME THE RESPIRATORY CARE SERVICES ARE BEING PROVIDED.

It is necessary to define supervision as used in these rules because the rules require that a respiratory care practitioner with temporary registration provide respiratory care services under closer supervision than a practitioner who has demonstrated competence by completion of all registration requirements. It is reasonable that respiratory care services provided by temporary registrants be supervised by a registered practitioner or qualified medical director as a means of assuring that the

services are provided in a manner which does not harm the public. Requiring the presence of the supervisor within the facility provides a reasonable assurance that if any difficulty arises in the provision of respiratory care services by a temporary registrant, there will be a fully qualified practitioner or qualified medical director available for consultation or assistance.

Subpart 13. HEALTH CARE FACILITY. "HEALTH CARE FACILITY" MEANS A HOSPITAL AS DEFINED IN MINNESOTA STATUTES, SECTION 144.50, SUBDIVISION 2, A MEDICAL FACILITY AS DEFINED IN MINNESOTA STATUTES, SECTION 144.561, SUBDIVISION 1 PARAGRAPH (b), OR A NURSING HOME AS DEFINED IN MINNESOTA STATUTES, SECTION 144A.01, SUBDIVISION 5.

It is necessary to define this term as it is used in these rules to identify settings in which respiratory care is performed. It is reasonable to use the statutorily provided definitions to assure clarity and consistency in the use of the terms.

Subpart 14. QUALIFIED MEDICAL DIRECTOR. "QUALIFIED MEDICAL DIRECTOR" MEANS A LICENSED PHYSICIAN WHO IS ON THE STAFF OF A HEALTH CARE FACILITY AND WHO HAS A SPECIAL INTEREST IN AND KNOWLEDGE OF THE DIAGNOSIS AND TREATMENT OF DEFICIENCIES, ABNORMALITIES AND DISEASES OF THE CARDIOPULMONARY SYSTEM.

It is necessary to include a definition of a "qualified medical director" as this term is used to identify the individual responsible for guiding respiratory care practitioners in the provision of respiratory care services. It is reasonable that the physician have the stated qualifications in order to assure an interest and expertise in the area of respiratory care and in the conditions and situations which will be encountered by the practitioners providing respiratory care services. This

definition is also reasonable because it correlates with the definition of qualified medical director endorsed by the AARC's Board of Medical Advisors. The Model State Respiratory Care Practice Act, (Dallas: AARC), April, 1986. User's Guide to the Model State Respiratory Care Practice Act, (Dallas: AARC), April, 1986.

Subpart 15. REGISTERED STATUS. "REGISTERED STATUS" REFERS TO THE STATUS OF AN INDIVIDUAL WHO MEETS THE REQUIREMENTS OF PARTS 4760.0010 TO 4760.0300 AND IS AUTHORIZED BY THE BOARD TO USE THE TITLES IN PART 4760.0030, SUBPART 1.

Definition of the term "registered status" is necessary because it is used in these rules. The definition is reasonable because it clarifies the specific meaning of the term as it is used in these rules.

Subpart 16. REGISTRANT. "REGISTRANT" MEANS AN INDIVIDUAL WHO MEETS THE REQUIREMENTS OF PARTS 4760.0010 TO 4760.0300 AND IS AUTHORIZED BY THE BOARD TO USE THE TITLES IN PART 4760.0030, SUBPART 1.

It is necessary to define "registrant" because the term is used in the rules. The definition is reasonable because it clarifies the specific meaning of the term as it is used in these rules to refer to an individual who has met the requirements for registration and is registered.

Subpart 17. REGISTRATION. "REGISTRATION" MEANS A SYSTEM IN WHICH PRACTITIONERS, WHO WILL BE THE ONLY INDIVIDUALS PERMITTED TO USE THE DESIGNATED TITLES UNDER PART 4760.0030, SUBPART 1, ARE LISTED ON AN OFFICIAL ROSTER AFTER HAVING MET PREDETERMINED QUALIFICATIONS.

It is necessary to define "registration" in order to clarify use of the term within the rules. This definition is reasonable in order to promote consistency in the use of the term and

thereby reduce confusion. It correlates with the definition provided in the authorizing statute for this registration system.

Subpart 18. REGISTRATION BY EQUIVALENCY. "REGISTRATION BY EQUIVALENCY" MEANS A METHOD OF REGISTRATION DESCRIBED IN PART 4760.0060, SUBPART 1, BY WHICH AN INDIVIDUAL WHO POSSESSES CREDENTIALING FROM THE NATIONAL BOARD FOR RESPIRATORY CARE OR OTHER NATIONAL CREDENTIALING ORGANIZATION APPROVED BY THE BOARD MAY QUALIFY FOR MINNESOTA REGISTRATION.

It is necessary to define this term because it is used in the rules to signify an alternate method of acquiring registration as a respiratory care practitioner. It is reasonable that alternate methods of acquiring registration be identified so that applicants who are qualified may be registered.

Subpart 19. REGISTRATION BY RECIPROCITY. "REGISTRATION BY RECIPROCITY" MEANS A METHOD OF REGISTRATION DESCRIBED IN PART 4760.0060, SUBPART 2, BY WHICH AN INDIVIDUAL WHO POSSESSES A CREDENTIAL FROM ANOTHER JURISDICTION MAY QUALIFY FOR MINNESOTA REGISTRATION.

It is necessary to define this term because it is used in the rules to signify an alternate method of acquiring registration as a respiratory care practitioner. It is reasonable that alternate methods of acquiring registration be identified so that qualified applicants may be registered.

Subpart 20. RESPIRATORY CARE. "RESPIRATORY CARE" MEANS THE PROVISION OF SERVICES DESCRIBED UNDER PART 4760.0040 FOR THE ASSESSMENT, TREATMENT, MANAGEMENT, DIAGNOSTIC EVALUATION, AND CARE OF PATIENTS WITH DEFICIENCIES, ABNORMALITIES, AND DISEASES OF THE CARDIOPULMONARY SYSTEM, UNDER THE GUIDANCE OF A QUALIFIED MEDICAL DIRECTOR AND PURSUANT TO A REFERRAL FROM A PHYSICIAN WHO HAS MEDICAL RESPONSIBILITY FOR THE PATIENT.

It is necessary to define "respiratory care" so that there is a common understanding of the services which the regulated occupation provides. Designation of assessment, treatment,

management, diagnostic evaluation and care of patients with deficiencies, abnormalities and diseases of the cardiopulmonary system is reasonable as these are the respiratory care practitioner's areas of expertise. It is necessary and reasonable to require the guidance of a qualified medical director to provide general direction to the respiratory care program and the provision of respiratory care services pursuant to physician orders because respiratory care is a physician-dependent health care occupation, with the physician retaining ultimate responsibility for the patient. This definition correlates with the definition of respiratory care contained in the Statement of Principles, (Dallas: AARC), November, 1978.

Subpart 21. RESPIRATORY CARE PRACTITIONER. "RESPIRATORY CARE PRACTITIONER" MEANS AN INDIVIDUAL WHO ENGAGES IN RESPIRATORY CARE AS DEFINED IN SUBPART 20, MEETS THE QUALIFICATIONS OF PARTS 4760.0010 TO 4760.0300, AND REGISTERS WITH THE BOARD.

A definition of "respiratory care practitioner" is necessary because the term is used in the rules to indicate individuals meeting the requirements for registration contained in the rules and authorized by the Board to use the protected titles. The definition is reasonable because the Commissioner has authority to set prerequisites for registration and to protect certain titles as set out in Minnesota Statutes, sections 214.001, subdivision 3(c) and 214.13, subdivision 3. The term "respiratory care practitioner" is one of the designations suggested by the National Board for Respiratory Care to avoid confusion with the titles conferred by it on individuals it has credentialed. NBRC Licensure Guide, (Lenexa: NBRC), p.9. This

term is also accepted by the AARC Board of Medical Advisors.
Model State Respiratory Care Practice Act, (Dallas: AARC), 1986;
User's Guide to the Model State Respiratory Care Act, (Dallas:
AARC), 1986.

Subpart 22. TEMPORARY REGISTRATION. "TEMPORARY REGISTRATION" MEANS A METHOD OF REGISTRATION DESCRIBED IN PART 4760.0060, SUBPART 3, BY WHICH AN INDIVIDUAL WHO HAS COMPLETED AN APPROVED EDUCATION PROGRAM BUT HAS NOT MET THE EXAMINATION REQUIREMENT MAY QUALIFY FOR MINNESOTA REGISTRATION PENDING COMPLETION OF THE REQUIRED EXAMINATION.

It is necessary to define this term because it is used in the rules to indicate an alternate method of acquiring registration as a respiratory care practitioner. It is reasonable that alternate methods of acquiring registration be identified so that applicants may be registered. Temporary registration allows new graduates of approved education programs to enter the work force pending completion of the required credentialing examination.

Subpart 23. TRANSITIONAL REGISTRATION. "TRANSITIONAL REGISTRATION" MEANS A METHOD OF REGISTRATION DESCRIBED IN PART 4760.0060, SUBPART 4, IN EFFECT FOR A LIMITED TIME, BY WHICH AN INDIVIDUAL WHO HAS NOT COMPLETED AN APPROVED EDUCATION PROGRAM AND DOES NOT POSSESS A CREDENTIAL FROM A NATIONAL CREDENTIALING ORGANIZATION APPROVED BY THE BOARD OR ANOTHER JURISDICTION MAY QUALIFY FOR MINNESOTA REGISTRATION.

It is necessary that this term be defined because it refers to an alternate method of registration which is in existence for a limited period of time. It is reasonable to identify this method of registration for applicants so they may pursue this option of registration within the time frame allowed. Transitional registration is necessary and reasonable because it allows those practitioners, who are not otherwise credentialed or

formally educated but have acquired competency in respiratory care through work experience, to become registered as respiratory care practitioners.

4760.0020 PURPOSE

THE PURPOSE OF PARTS 4760.0010 TO 4760.0300 IS TO ESTABLISH THE ADMINISTRATIVE STRUCTURE, PROCEDURES, AND REQUIREMENTS FOR THE REGISTRATION AND REGULATION OF INDIVIDUALS SEEKING TO BE QUALIFIED AS RESPIRATORY CARE PRACTITIONERS IN MINNESOTA.

This section is necessary to define the scope of the rules. It is reasonable to define the purpose as establishing the administrative structure, procedures and requirements for registration and regulation because the Commissioner has this authority under Minnesota Statutes, section 214.13, subdivision 3.

4760.0030 PROTECTED TITLES AND RESTRICTIONS ON USE

Subpart 1. PROTECTED TITLES. NO INDIVIDUAL MAY USE THE TITLES "MINNESOTA REGISTERED RESPIRATORY CARE PRACTITIONER", "REGISTERED RESPIRATORY CARE PRACTITIONER", "RESPIRATORY CARE PRACTITIONER", OR USE, IN CONNECTION WITH THE INDIVIDUAL'S NAME, THE LETTERS "R.C.P." OR ANY OTHER WORDS, LETTERS, ABBREVIATIONS OR INSIGNIA INDICATING OR IMPLYING THAT THE INDIVIDUAL IS REGISTERED BY THE STATE UNLESS THEY HAVE BEEN REGISTERED AS A RESPIRATORY CARE PRACTITIONER ACCORDING TO PARTS 4760.0010 TO 4760.0300.

This section is necessary to identify those titles which are available for use only by registered individuals. The establishment of specific protected titles is reasonable for providing the consumer and the employer with a means for identifying individuals who have met the standards for registration as respiratory care practitioners. The language in this rule is intended to prohibit individuals from using the listed titles as well as any other titles or designations which

would infer that the individual has met minimum requirements for registration, unless that individual has complied with the registration rules. "Respiratory care practitioner" is one of the designations suggested by the National Board for Respiratory Care to avoid confusion with the titles conferred by it on individuals it has credentialed. NBRC Licensure Guide, (Lenexa: NBRC). This title is also accepted for use by the AARC Board of Medical Advisors. Model State Respiratory Care Practice Act, (Dallas: AARC), 1986; User's Guide to the Model State Respiratory Care Practice Act, (Dallas: AARC), 1986.

Subpart 2. HEALTH CARE PRACTITIONERS. INDIVIDUALS PRACTICING IN A HEALTH CARE OCCUPATION ARE NOT RESTRICTED IN THE PROVISION OF SERVICES INCLUDED IN PART 4760.0040 AS LONG AS THEY DO NOT HOLD THEMSELVES OUT AS A RESPIRATORY CARE PRACTITIONER BY OR THROUGH THE USE OF THE TITLES PROVIDED IN SUBPART 1 IN ASSOCIATION WITH PROVISION OF THESE SERVICES.

It is necessary to clarify the limited scope of the registration rules which is to provide title protection to those registered under these rules. It is reasonable that health care personnel not be restricted in providing those services for which they have been trained and to which they have been assigned by their employer. Since title protection is the purpose of the rules, it is reasonable to clarify that the only restriction on health care personnel is the prohibition on use of the protected titles without prior registration.

Subpart 3. IDENTIFICATION OF REGISTERED PRACTITIONERS. RESPIRATORY CARE PRACTITIONERS REGISTERED IN MINNESOTA SHALL WEAR A NAME TAG WHICH IDENTIFIES THEM AS A REGISTERED RESPIRATORY CARE PRACTITIONER.

In order to protect the public, it is necessary for the public to be able to readily identify those individuals who qualify for registration and are registered by the state. Requiring the wearing of a name tag is a reasonable means of providing this identification because it is not unduly burdensome for the practitioner.

Subpart 4. SANCTIONS. INDIVIDUALS WHO HOLD THEMSELVES OUT AS A RESPIRATORY CARE PRACTITIONER BY OR THROUGH THE USE OF ANY TITLE PROVIDED IN SUBPART 1 WITHOUT PRIOR REGISTRATION ACCORDING TO PARTS 4760.0010 TO 4760.0300 SHALL BE SUBJECT TO SANCTIONS OR ACTION AGAINST CONTINUING THE ACTIVITY ACCORDING TO MINNESOTA STATUTES, SECTION 214.11, OR OTHER STATUTORY AUTHORITY.

It is necessary to set forth the consequences of the unauthorized use of a protected title because it puts persons on notice that these rules may be enforced. This subpart is reasonable because the sanctions referred to are within the Commissioner's authority.

4760.0040 SCOPE OF PRACTICE

Subpart 1. SCOPE OF SERVICES. THE PRACTICE OF RESPIRATORY CARE BY A REGISTERED RESPIRATORY CARE PRACTITIONER INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING SERVICES:

It is necessary to delineate the scope of practice to provide a common reference to assist in the identification of those services which a registered respiratory care practitioner can be expected to provide. Delineation of services included in the scope of respiratory care practice is reasonable because it provides examples but does not limit registered respiratory care practitioners to the provision of only those services listed in the rules, nor does it prevent practitioners from utilizing any new techniques which may be developed in the future. The

language contained in the scope of practice section is also reasonable because it is patterned after the AARC's Model State Respiratory Care Practice Act. This language was approved by the AARC Board of Directors as indicative "of the current acceptable scope of respiratory care practice". Model State Respiratory Care Practice Act, (Dallas: AARC), 1986; User's Guide to the Model State Respiratory Care Practice Act, (Dallas: AARC), 1986.

A. OBTAINING PHYSIOLOGICAL SPECIMENS AND INTERPRETING PHYSIOLOGICAL DATA INCLUDING:

- (1) ANALYZING ARTERIAL BLOOD GAS;
- (2) ANALYZING RESPIRATORY SECRETIONS;
- (3) MEASURING VENTILATORY VOLUMES, PRESSURES AND FLOWS;
- (4) TESTING PULMONARY FUNCTION;
- (5) TESTING AND STUDYING THE CARDIOPULMONARY SYSTEM; AND
- (6) DIAGNOSTIC TESTING OF BREATHING PATTERNS RELATED TO SLEEP DISORDERS;

B. THERAPEUTIC APPLICATION AND MONITORING OF THE ADMINISTRATION OF MEDICAL GASES (EXCLUSIVE OF GENERAL ANESTHESIA), AEROSOLS, HUMIDIFICATION, AND PHARMACOLOGICAL AGENTS RELATED TO RESPIRATORY CARE PROCEDURES;

C. THERAPEUTIC APPLICATION AND MONITORING OF MECHANICAL VENTILATORY SUPPORT;

D. CARDIOPULMONARY REHABILITATION INCLUDING POSTURAL DRAINAGE, CHEST PHYSIOTHERAPY AND BREATHING EXERCISES;

E. CARDIOPULMONARY RESUSCITATION AND MAINTENANCE OF NATURAL AIRWAYS AND INSERTION AND MAINTENANCE OF ARTIFICIAL AIRWAYS;

F. HEMODYNAMIC MONITORING OF THE CARDIOPULMONARY SYSTEM;

G. OBSERVING AND MONITORING SIGNS AND SYMPTOMS, GENERAL BEHAVIOR, AND GENERAL PHYSICAL RESPONSE TO RESPIRATORY CARE TREATMENT AND DIAGNOSTIC TESTING, INCLUDING DETERMINATION OF WHETHER THE SIGNS, SYMPTOMS, REACTIONS, BEHAVIOR, OR GENERAL RESPONSE EXHIBIT ABNORMAL CHARACTERISTICS;

H. OBSERVING AND MAKING SUGGESTIONS FOR MODIFICATIONS IN THE TREATMENT REGIMEN BASED ON ABNORMALITIES, PROTOCOLS, OR CHANGES IN PATIENT RESPONSE TO RESPIRATORY CARE TREATMENT;

I. INSTRUCTING PATIENTS AND THEIR FAMILIES IN TECHNIQUES FOR THE PREVENTION, ALLEVIATION AND REHABILITATION OF DEFICIENCIES, ABNORMALITIES, AND DISEASES OF THE CARDIOPULMONARY SYSTEM; AND

J. TRANSCRIBING AND IMPLEMENTING PHYSICIAN ORDERS FOR RESPIRATORY CARE SERVICES.

It is necessary that the scope of respiratory care be defined according to the demand for the provision of particular services. It is reasonable that the scope of respiratory care include services for which respiratory care practitioners are specifically trained and specially qualified. The activities listed above are included in the definition of the performance of respiratory care contained in the Model State Respiratory Care Practice Act and/or in the AARC position statement regarding the scope of practice for respiratory care. Respiratory Care Scope of Practice, (Dallas: AARC), 1987. In addition, review and analysis of physiological specimens; evaluation of clinical information; selection, assembly and corrections of equipment malfunctions; conducting therapeutic procedures for artificial ventilation; therapeutic procedures for removal of bronchopulmonary secretions; initiation of emergency resuscitation; airway maintenance; evaluation and monitoring patient response to respiratory care; modification of therapy and recommendation for changes based on patient response; and education of patients regarding therapy and treatment goals are all examined by the NBRC entry level credentialing examination.

See NBRC Newsletter Special Supplement, "Examination Matrices and Detailed Content Outlines for the Revised Entry Level CRTT and Written Registry Examinations," July, 1987. The NBRC entry level credentialing examination is based upon a job analysis of respiratory care positions; therefore, inclusion of these items in the NBRC examination is evidence that provision of these services is occurring in actual respiratory care practice. It is, however, necessary and reasonable to exclude the administration of general anesthesia from the scope of respiratory care because respiratory care practitioners are not adequately prepared or trained in the provision of this service.

It is necessary for respiratory care practitioners to be able to instruct patients or their families to assure continuity of respiratory care treatments. It is reasonable that techniques for prevention, alleviation and rehabilitation of cardiopulmonary disorders are included as these are services which respiratory care practitioners are trained to provide. It is also reasonable that conditions encompassed by deficiencies, abnormalities and diseases of the cardiopulmonary system are included because this is the focus of the respiratory care practitioner's education and expertise.

It is reasonable and necessary that a respiratory care practitioner be able to transcribe orders given to the practitioner by the physician for modifications of respiratory care services. Because respiratory care practitioners are often in communication with the physician regarding the patient's

response to respiratory care, they must be able to transcribe any orders for subsequent modifications in the respiratory care treatment regimen. It is reasonable that a respiratory care practitioner be able to implement these orders for respiratory care services. The AARC position statement regarding verbal orders states that practitioners may accept verbal orders from physicians "for drugs and treatment directly related to the provision of respiratory care services, subject to local hospital policy." Verbal Orders, (Dallas: AARC), 1982.

Subpart 2. PHYSICIAN REFERRAL REQUIRED. RESPIRATORY CARE SERVICES PROVIDED BY A REGISTERED RESPIRATORY CARE PRACTITIONER, WHETHER DELIVERED IN A HEALTH CARE FACILITY OR THE PATIENT'S PLACE OF RESIDENCE, MUST NOT BE PROVIDED EXCEPT UPON REFERRAL FROM A PHYSICIAN.

It is necessary that a physician's order be received for provision of respiratory care services because respiratory care practitioners are physician-dependent health care providers. It is reasonable to require the direction of a physician regardless of the setting in which respiratory care services are provided in order to assure adequate public protection. The requirement for physician orders is included in the Model State Respiratory Care Practice Act definition of the practice of respiratory care.

4760.0050 GENERAL REGISTRATION REQUIREMENTS

Subpart 1. GENERAL REQUIREMENTS. TO BE ELIGIBLE FOR REGISTRATION, EACH APPLICANT FOR REGISTRATION MUST:

It is necessary to set forth the requirements an applicant must meet in order to be eligible for registration as a respiratory care practitioner because it puts an applicant on notice as to what must be done to become registered. It is

necessary that an applicant follow a designated procedure for submitting information to the Board so that the applicant's qualifications for registration can be assessed by the Board. The provisions which follow are reasonable because they help assure that the Board has adequate information for processing applications in a consistent and timely manner.

A. SUBMIT A COMPLETED APPLICATION ON FORMS PROVIDED BY THE BOARD ALONG WITH ALL FEES REQUIRED UNDER PART 4760.0300. THE APPLICATION MUST INCLUDE:

(1) THE APPLICANT'S NAME, SOCIAL SECURITY NUMBER, HOME ADDRESS AND TELEPHONE NUMBER, BUSINESS ADDRESS AND TELEPHONE NUMBER, BUSINESS SETTING;

(2) THE NAME AND LOCATION OF RESPIRATORY CARE EDUCATIONAL PROGRAM THE APPLICANT COMPLETED FOR REGISTRATION;

(3) A LIST OF THE DEGREES RECEIVED FROM EDUCATIONAL INSTITUTIONS;

(4) A DESCRIPTION OF THE APPLICANT'S PROFESSIONAL TRAINING BEYOND FIRST DEGREE RECEIVED;

(5) THE APPLICANT'S WORK HISTORY FOR THE FIVE YEARS PRECEDING THE APPLICATION, INCLUDING THE AVERAGE NUMBER OF HOURS WORKED PER WEEK;

(6) A LIST OF ANY CREDENTIALS HELD IN OTHER JURISDICTIONS;

(7) A DESCRIPTION OF ANY OTHER JURISDICTION'S REFUSAL TO CREDENTIAL THE APPLICANT;

(8) A DESCRIPTION OF ALL PROFESSIONAL DISCIPLINARY ACTIONS INITIATED AGAINST THE APPLICANT IN ANY JURISDICTION; AND

(9) ANY HISTORY OF DRUG OR ALCOHOL ABUSE, AND ANY MISDEMEANOR OR FELONY CONVICTION.

It is necessary that an applicant submit a completed application form to the Board containing this information so that the Board may assess the applicant's qualifications for registration. It is necessary to request the name of the applicant so that the applicant may be identified by the Board and differentiated from other applicants. The applicant's address and telephone numbers are required so that the Board may contact the applicant if necessary. The request for information

on educational background, professional training, work history, and credentialing in other jurisdictions is necessary for the Board to assess the applicant's qualifications for registration as a respiratory care practitioner. Information on any disciplinary actions, drug or alcohol abuse and any convictions is also necessary to avoid registering unqualified applicants. It is reasonable to request this information from the applicant because it is within the applicant's knowledge and is not unduly burdensome or intrusive.

It is necessary and reasonable to require the submission of fees for registration because Minnesota Statutes, sections 214.06, 214.13 and 16A.128 require the registration system be fee supported. Fees are assessed on applicants to cover the costs of administering the registration system. It is reasonable that the fees be submitted with the application because it is most efficient.

B. SUBMIT A CERTIFICATE OF COMPLETION FROM AN APPROVED EDUCATION PROGRAM.

One of the purposes of the registration system is to protect the public by assuring a minimum level of competency of registered practitioners. Possession of this minimum level of competency is ultimately demonstrated by achieving a qualifying score on the credentialing examination but can be accomplished in part by requiring a minimum level of training and education. It is therefore necessary that an applicant has completed a minimum level of training as a prerequisite for registration as a respiratory care practitioner and provide the Board with proof of

this training. Requiring completion of an approved education program reflects the determination by MDH Staff that the respiratory care practitioner is best prepared for practice through formal education. Submission of a certificate of completion from an approved education program is a reasonable means of ascertaining whether an applicant has acquired the necessary training and background which would entitle him or her to registration as a respiratory care practitioner because it is not burdensome for the applicant.

It is reasonable to designate an approved education program to assure the consistency and the adequacy of the training program. The national voluntary credentialing organization, NBRC, recognizes the importance of training and now requires completion of an accredited training program as a prerequisite to eligibility for credentialing. In addition, the Model State Respiratory Care Practice Act also recommends completion of an accredited respiratory care education program as a prerequisite for licensure.

It is reasonable to register individuals who have completed the training program for Certified Respiratory Therapy Technicians as well as those who have had training preparing them to be Registered Respiratory Therapists because the CRTT level is recommended as the basic level for credentialing respiratory care practitioners by the American Association for Respiratory Care. The CRTT level is recognized by the AARC as representing the minimum level of training required for competent performance of

respiratory care tasks. In addition, use of the CRTT level as the minimum competency level for Minnesota registration is consistent with other states which credential respiratory care practitioners, and may enable mobility of practitioners into Minnesota.

C. ACHIEVE A QUALIFYING SCORE ON A CREDENTIALING EXAMINATION.

This requirement is necessary so that an applicant can demonstrate a minimum level of competency in and knowledge of respiratory care skills to the Board. An examination is commonly accepted as a valid method of assessing minimum competency regarding specific tasks. It is reasonable for the Board to use a qualifying score on an examination designed to measure competency in respiratory care skills as a basis for this competency because it is an objective method of assessment.

It is reasonable to register individuals who achieve a qualifying score in the NBRC examination for Certified Respiratory Therapy Technicians as well as those who achieve a qualifying score in the NBRC examination for Registered Respiratory Therapists because the CRTT level examination is recognized by the AARC as representing the minimum level of knowledge required for competent performance of respiratory care tasks. In addition, use of the CRTT examination as the minimum competency level for Minnesota registration is consistent with other states which credential respiratory care practitioners, and may enable mobility of practitioners into Minnesota.

The National Board for Respiratory Care (NBRC) credentialing examination has developed and validated its credentialing examination as being job related. The procedure by which this examination was developed complies with the American Psychological Association guidelines and federal guidelines for construction of tests with content and criterion related validity.

The NBRC began developing its examination with a validity study in which experts in the respiratory care field studied the need for and desirability of creating a credentialing examination as well as determined whether a standardized position or job existed. The next step was to determine whether a population of practitioners sufficient to support a credentialing examination existed and whether a uniform job existed on a national level. These determinations were based upon information obtained through a questionnaire to the occupational group. Next, a national job analysis was conducted by a survey of practitioners. This job analysis reviewed the tasks performed, the extent to which they are performed, the importance of the job and the time spent in the job to produce task based and job related items. The test items were developed based upon identification of the most significant tasks performed on a national basis to ensure that each test question is directly linked to tasks identified in job analysis. The questions were then written and the examination assembled for administration to a sample population of practitioners. The test performance of the practitioners was

compared to job performance ratings for the same individuals. The resulting examination is revalidated at least every five years. Gary A. Smith, "An Overview of the NBRC's Five Step Examination Development Process," NBRC Newsletter, Sept., 1986, pp. 3-4.

Use of another credentialing examination administered by a national testing service approved by the Board is also necessary to provide for the contingency that the NBRC may dissolve or discontinue its testing at some point in the future. It is reasonable that the Board have the flexibility to approve another examination if that becomes necessary so that there is always an approved examination available for applicants.

D. SUBMIT ADDITIONAL INFORMATION AS REQUESTED BY THE BOARD.

It is necessary for the Board to be able to obtain additional information as needed in order to make a complete and accurate assessment of the applicant's suitability for registration. It is reasonable to expect that, should an applicant supply information that requires further clarification or supplementation, the applicant will cooperate with the Board and provide requested information so that the Board will be able to complete its evaluation of the applicant.

E. SIGN A STATEMENT THAT THE INFORMATION IN THE APPLICATION IS TRUE AND CORRECT TO THE BEST OF THE APPLICANT'S KNOWLEDGE AND BELIEF.

The Board must have justifiable and reliable information on which to base its decision to register an individual. This rule is necessary to assure the veracity of the application materials

submitted for review. It is reasonable to expect that an applicant, who has submitted an application for registration, attest to the truth and validity of the information provided, because the applicant is in the best position to know whether the information is true and to do so is not burdensome for the applicant.

F. SIGN A WAIVER AUTHORIZING THE BOARD TO OBTAIN ACCESS TO THE APPLICANT'S RECORDS IN THIS OR ANY OTHER STATE IN WHICH THE APPLICANT HAS COMPLETED AN APPROVED EDUCATION PROGRAM OR ENGAGED IN THE PRACTICE OF RESPIRATORY CARE.

It is necessary for the Board to be able to obtain information on the applicant's performance as a respiratory care practitioner in other jurisdictions as a basis for determining whether the applicant should be registered within Minnesota. This rule is reasonable because it not only provides the applicant with notice that his or her respiratory care background may be investigated, but also provides the Board with a means of access to records which enable investigation of the applicant's background.

Subpart 2. APPLICANT RESPONSIBILITY. THE APPLICANT IS RESPONSIBLE FOR MAKING ARRANGEMENTS TO TAKE THE CREDENTIALING EXAMINATION, BEARING ALL EXPENSES ASSOCIATED WITH TAKING THE CREDENTIALING EXAMINATION, AND SIGNING A RELEASE TO HAVE THE CREDENTIALING EXAMINATION SCORES SENT DIRECTLY TO THE BOARD FROM THE NATIONAL BOARD FOR RESPIRATORY CARE OR OTHER NATIONAL TESTING SERVICE APPROVED BY THE BOARD.

It is necessary and reasonable that the applicant bear the expenses associated with taking the examination because it is not feasible for the Board to pay the examination cost for every individual who applies for registration. It is reasonable that

the costs for taking the examination be borne by the applicant because it is not unduly burdensome for the individual.

It is also necessary and reasonable that the applicant sign a release to have the examination scores sent from the NBRC, or other national testing service approved by the Board, to the Board so that the Board may be assured of obtaining confidential information directly from the source.

4760.0060 EXCEPTIONS TO GENERAL REGISTRATION REQUIREMENTS

Subpart 1. REGISTRATION BY EQUIVALENCY. TO BE ELIGIBLE FOR REGISTRATION BY EQUIVALENCY, THE APPLICANT MUST:

This rule is necessary because there are a number of individuals providing respiratory care services who are credentialed by the NBRC as a Certified Respiratory Therapy Technician or Registered Respiratory Therapist but, because of former NBRC credentialing requirements and the pattern of development of the respiratory care occupation, have not completed an approved education program as required by Minnesota registration rules. This rule is reasonable because an applicant who is credentialed by the NBRC has already demonstrated a level of competency necessary for entry into practice consistent with that required by these registration rules.

It is necessary and reasonable to set forth the specific requirements for registration by equivalency so that applicants have notice of the alternate requirements for registration and the Board has guidelines to assure consistency and fairness in its assessment of applicants.

A. SUBMIT THE APPLICATION MATERIALS AND FEES AS
REQUIRED UNDER PART 4760.0050, SUBPART 1, ITEMS A, D, E AND F;
AND

It is necessary that an applicant submit a completed application form to the Board containing this information so that the Board may assess the applicant's qualifications for registration. It is necessary to request the name of the applicant so that the applicant may be identified by the Board and differentiated from other applicants. The applicant's address and telephone numbers are required so that the Board may contact the applicant if necessary. The request for information on educational background, professional training, work history, and credentialing in other jurisdictions is necessary for the Board's assessment of the applicant's qualifications for registration as a respiratory care practitioner. Information on any disciplinary actions, drug or alcohol abuse and any convictions is also necessary to avoid registering unqualified applicants. It is reasonable to request this information because it is within the applicant's knowledge and is not unduly burdensome or intrusive.

It is necessary and reasonable to require the submission of fees for registration because Minnesota Statutes, sections 214.06, 214.13 and 16A.128 require the registration system be fee supported. Fees are assessed on applicants to cover the costs of administering the registration system. It is reasonable that the fees be submitted with the application because it is an efficient method of processing registration materials.

It is necessary for the Board to be able to obtain additional information as needed in order to make a complete and accurate assessment of the applicant's suitability for registration. It is reasonable to expect that, should an applicant supply information that requires further clarification or supplementation, the applicant will cooperate with the Board and provide information so that the Board will be able to complete its evaluation of the applicant.

The Board must have justifiable and reliable information on which to base its decision to register an individual. This rule is necessary to assure the veracity of the application materials submitted for review. It is reasonable to expect that an applicant, who has submitted an application for registration, attest to the truth and validity of the information provided because the applicant is in the best position to know whether the information is true and to do so is not unduly burdensome for the applicant.

It is necessary for the Board to be able to obtain information on the applicant's performance as a respiratory care practitioner in other jurisdictions in order to determine whether the applicant should be registered within Minnesota. This rule is reasonable because it not only provides the applicant with notice that his or her respiratory care background may be investigated, but also provides the Board with a means of access to records which enable investigation of the applicant's background.

B. PROVIDE A VERIFIED COPY FROM THE NATIONAL BOARD FOR RESPIRATORY CARE OF A VALID AND CURRENT CREDENTIAL AS A REGISTERED RESPIRATORY THERAPIST OR CERTIFIED RESPIRATORY THERAPY TECHNICIAN.

It is necessary that an applicant provide a verified copy of NBRC credentialing as a confirmation of his or her qualifications for registration in Minnesota. It is reasonable that an applicant who provides a verified copy of current and valid registration from the NBRC should be allowed to be registered within the state without proof of additional qualifications because the standards followed by the NBRC are compatible with the requirements of these rules for Minnesota registration.

In order for a practitioner to be registered by the NBRC, he or she must have successfully completed the entry level examination as well as the registry examination. In recent years the NBRC has also required completion of a respiratory care practitioner training program for credentialing as a Registered Respiratory Therapist. It would be an unnecessary and unreasonable burden for a practitioner currently registered by the NBRC to be required to demonstrate competency pursuant to the general registration requirements, since such competency has already been demonstrated. It is also reasonable to assume that an individual who has attained credentialing as a Certified Respiratory Therapy Technician by the NBRC is qualified to become registered as a respiratory care practitioner in Minnesota. In order to become certified by the NBRC, the individual will have passed the entry level examination administered by the NBRC, the same examination used by the Board to determine eligibility for

Minnesota registration. In recent years the NBRC has also required completion of a respiratory care practitioner training program for credentialing as a Certified Respiratory Therapy Technician. It would be an unnecessary and unreasonable burden for individuals currently certified by the NBRC to be required to demonstrate competency pursuant to the general registration requirements, since such competency has already been demonstrated.

SUBPART 2. REGISTRATION BY RECIPROCITY. THE BOARD MAY ISSUE TEMPORARY REGISTRATION TO AN APPLICANT FOR REGISTRATION BY RECIPROCITY. TO BE ELIGIBLE FOR REGISTRATION BY RECIPROCITY, THE APPLICANT MUST:

It is necessary to include a reciprocity provision in these rules to accommodate credentialed respiratory care practitioners coming to Minnesota from other jurisdictions. It is reasonable that applicants who are already credentialed in another jurisdiction with initial credentialing requirements equivalent to or higher than Minnesota's may be registered upon proof of their credentialing.

It is necessary and reasonable to set forth the specific requirements for registration by reciprocity so that applicants have notice of alternate requirements for registration and the Board has guidelines to assure consistency and fairness in its assessment of applicants.

It is necessary to allow temporary registration to enable those individuals coming from out of state to begin working as respiratory care practitioners in Minnesota without undue delay. Because the review process may be lengthy, it may impose an

unreasonable burden to require an out of state individual who has been working as a credentialed practitioner in another state to wait to begin working until after the Board has completed a thorough investigation of the individual's credentials. However, it is reasonable that such an individual be required to work under supervision until the Board does make its final decision in order to protect the public.

A. SUBMIT THE APPLICATION MATERIALS AND FEES AS REQUIRED IN PART 4760.0050, SUBPART 1, ITEMS A, D, E AND F;

It is necessary that an applicant submit a completed application form to the Board containing this information so that the Board may assess the applicant's qualifications for registration. It is necessary to request the name of the applicant so that the applicant may be identified by the Board and differentiated from other applicants. The applicant's address and telephone numbers are required so that the Board may contact the applicant if necessary. The request for information on educational background, professional training, work history, and credentialing in other jurisdictions is necessary for the Board's assessment of the applicant's qualifications for registration as a respiratory care practitioner. Information on any disciplinary actions, drug or alcohol abuse and any convictions is also necessary to avoid registering unqualified applicants. It is reasonable to request this information because it is within the applicant's knowledge and is not unduly burdensome or intrusive.

It is necessary and reasonable to require the submission of fees for registration because Minnesota Statutes, sections 214.06, 214.13 and 16A.128 require the registration system be fee supported. Fees are assessed on applicants to cover the costs of administering the registration system. It is reasonable that the fees be submitted with the application because it is an efficient method of processing registration materials.

It is necessary for the Board to be able to obtain additional information as needed in order to make a complete and accurate assessment of the applicant's suitability for registration. It is reasonable to expect that, should an applicant supply information that requires further clarification or supplementation, the applicant will cooperate with the Board and provide information so that the Board will be able to complete its evaluation of the applicant.

The Board must have justifiable and reliable information on which to base its decision to register an individual. This rule is necessary to assure the veracity of the application materials submitted for review. It is reasonable to expect that an applicant, who has submitted an application for registration, attest to the truth and validity of the information provided because the applicant is in the best position to know whether the information is true and to do so is not unduly burdensome for the applicant.

It is necessary for the Board to be able to obtain information on the applicant's performance as a respiratory care

practitioner in other jurisdictions in order to determine whether the applicant should be registered within Minnesota. This rule is reasonable because it not only provides the applicant with notice that his or her respiratory care background may be investigated, but also provides the Board with a means of access to records which enable investigation of the applicant's background.

B. PROVIDE A VERIFIED COPY FROM THE APPROPRIATE GOVERNMENT BODY OF A CURRENT AND UNRESTRICTED CREDENTIAL FOR THE PRACTICE OF RESPIRATORY CARE IN ANOTHER JURISDICTION THAT HAS INITIAL CREDENTIALING REQUIREMENTS EQUIVALENT TO OR HIGHER THAN THE REQUIREMENTS IN PART 4760.0050; AND

It is necessary that the applicant provide a verified copy of a current and unrestricted credential granted by another jurisdiction so the Board has justifiable and reliable indications of the applicant's qualifications for registration. It is reasonable that credentialing from another jurisdiction may be used when that credentialing involves meeting minimum requirements equal to or greater than those in effect in Minnesota. It is also reasonable that the credentialing granted by the other jurisdiction be unrestricted to assure that individuals who are registered in Minnesota are qualified for registration and have not participated in any activity which would make them unsuitable for registration in Minnesota.

C. PROVIDE LETTERS OF VERIFICATION FROM THE APPROPRIATE GOVERNMENT BODY IN EACH JURISDICTION IN WHICH THE APPLICANT HOLDS A CREDENTIAL. EACH LETTER MUST STATE THE APPLICANT'S NAME, DATE OF BIRTH, CREDENTIAL NUMBER, DATE OF ISSUANCE, A STATEMENT REGARDING DISCIPLINARY ACTIONS, IF ANY, TAKEN AGAINST THE APPLICANT, AND THE TERMS UNDER WHICH THE CREDENTIAL WAS ISSUED.

It is necessary to verify an applicant's credentials in order to assure that an applicant fulfills the minimum competency criteria set forth in these rules. The information requested (name, date of birth, credential number, date of issuance) is necessary so the applicant may be correctly identified. Information regarding disciplinary actions is necessary so that the Board can maintain protection of the public health and safety by screening for those individuals who may pose a threat to the public on the basis of past practices in other states. It is necessary for the Board to know the terms under which the credentials were issued to assess whether the applicant has met minimum competency standards which are comparable to Minnesota standards. These requirements are reasonable because the information should be readily available to the applicant and it should not be burdensome to supply it to the Board.

Subpart 3. TEMPORARY REGISTRATION. THE BOARD MAY ISSUE TEMPORARY REGISTRATION AS A RESPIRATORY CARE PRACTITIONER TO QUALIFIED APPLICANTS.

Temporary registration is necessary to bring new graduates of approved education programs into the registration system as soon as possible. Without temporary registration, there would be a time lag between completion of the education program and receipt of the results of the credentialing examination. During this time period, the graduate would otherwise be ineligible for registration and could not be employed as a registered respiratory care practitioner. This not only places an unnecessary limitation on the supply of trained respiratory care

personnel, it imposes a burden on the graduate by restricting their employment as a respiratory care practitioner. It is reasonable to allow an individual who has completed an approved education program to apply for registration as a respiratory care practitioner and to obtain temporary registration pending availability of credentialing examination results because such applicants have evidence they possess knowledge of respiratory care procedures.

It is necessary, however, that there be additional safeguards to protect the public health and safety until the individual demonstrates full compliance with the registration requirements and competency to be registered as a fully qualified respiratory care practitioner through achievement of a qualifying score on the credentialing examination. It is therefore reasonable to require supervision for temporary registrants.

Temporary registration on the basis of graduation from an accredited education program is the first step in career progression for a respiratory care practitioner. The Commissioner is authorized by Minnesota Statutes, section 214.13, subdivision 3 to promulgate rules regarding career progression. In addition, Minnesota Rules, part 4695.1500, subpart 2, D, allows the Commissioner to promulgate rules regarding "requirements for different levels of registered titles corresponding to steps in the occupation's career progression."

A. EXCEPT AS PROVIDED IN SUBPART 2, ITEM A, RELATING TO REGISTRATION BY RECIPROCITY, AN APPLICANT FOR TEMPORARY REGISTRATION MUST SUBMIT THE APPLICATION MATERIALS AND FEES AS REQUIRED BY PART 4760.0050, SUBPART 1, ITEMS A, B, D, E AND F.

It is necessary that an applicant submit a completed application form to the Board containing this information so that the Board may assess the applicant's qualifications for registration. It is necessary to request the name of the applicant so that the applicant may be identified by the Board and differentiated from other applicants. The applicant's address and telephone numbers are required so that the Board may contact the applicant if necessary. The request for information on educational background, professional training, work history, and credentialing in other jurisdictions is necessary for the Board's assessment of the applicant's qualifications for registration as a respiratory care practitioner. Information on any disciplinary actions, drug or alcohol abuse and any convictions is also necessary to avoid registering unqualified applicants. It is reasonable to request this information because it is within the applicant's knowledge and is not unduly burdensome or intrusive.

It is necessary and reasonable to require the submission of fees for registration because Minnesota Statutes, sections 214.06, 214.13 and 16A.128 require the registration system be fee supported. Fees are assessed on applicants to cover the costs of administering the registration system. It is reasonable that the fees be submitted with the application because it is an efficient method of processing registration materials.

One of the purposes of the registration system is to protect the public by assuring a minimum level of competency of

registered practitioners. Possession of this minimum level of competency is ultimately demonstrated by achieving a qualifying score on the credentialing examination, but can be accomplished, in part, by demonstrating acquisition of a minimum level of training and education. It is therefore necessary that an applicant complete a minimum level of training as a prerequisite for temporary registration as a respiratory care practitioner. Submission of a certificate of completion from an approved education program is a reasonable means of ascertaining whether an applicant has acquired the necessary training and background which would entitle him or her to temporary registration as a respiratory care practitioner because it is not overly burdensome on the applicant.

It is necessary for the Board to be able to obtain additional information as needed in order to make a complete and accurate assessment of the applicant's suitability for registration. It is reasonable to expect that, should an applicant supply information that requires further clarification or supplementation, the applicant will cooperate with the Board and provide information so that the Board will be able to complete its evaluation of the applicant.

The Board must have justifiable and reliable information on which to base its decision to register an individual. This rule is necessary to assure the veracity of the application materials submitted for review. It is reasonable to expect that an applicant, who has submitted an application for registration,

attest to the truth and validity of the information provided because the applicant is in the best position to know whether the information is true and to do so is not unduly burdensome for the applicant.

It is necessary for the Board to be able to obtain information on the applicant's performance as a respiratory care practitioner in other jurisdictions, if any, in order to determine whether the applicant should be registered within Minnesota. This rule is reasonable because it not only provides the applicant with notice that his or her respiratory care background may be investigated, but also provides the Board with a means of access to records which enable investigation of the applicant's background.

B. TEMPORARY REGISTRATION AS A RESPIRATORY CARE PRACTITIONER IS ISSUED FOR A PERIOD OF ONE YEAR. A RESPIRATORY CARE PRACTITIONER WITH TEMPORARY REGISTRATION MAY QUALIFY FOR FULL REGISTERED STATUS UPON SUBMISSION OF VERIFIED DOCUMENTATION THAT THE RESPIRATORY CARE PRACTITIONER HAS ACHIEVED A QUALIFYING SCORE ON A CREDENTIALING EXAMINATION WITHIN ONE YEAR AFTER RECEIVING TEMPORARY REGISTERED STATUS.

It is necessary for a temporary registrant to demonstrate his or her competency by achieving a qualifying score on the credentialing examination because the credentialing examination is the ultimate measure of a practitioner's competency. A one year time period within which to complete this requirement is reasonable because it will allow the temporary registrant as many as three attempts to achieve a qualifying score on the examination. It is reasonable, in order to protect the public

from unqualified registrants, that temporary registration not be renewed after this one year time period.

C. A RESPIRATORY CARE PRACTITIONER WITH TEMPORARY REGISTRATION IS LIMITED TO WORKING UNDER THE DIRECT SUPERVISION OF A REGISTERED RESPIRATORY CARE PRACTITIONER OR QUALIFIED MEDICAL DIRECTOR AS DEFINED IN PART 4760.0010, SUBPART 12. A REGISTERED RESPIRATORY CARE PRACTITIONER MAY SUPERVISE NO MORE THAN TWO RESPIRATORY CARE PRACTITIONERS WITH TEMPORARY REGISTRATION STATUS.

It is necessary to provide additional assurances to the public that the services performed by temporary registrants are performed in a safe manner since these individuals have not demonstrated total compliance with the general registration requirements. It is reasonable that these additional assurances are provided through direct supervision by a qualified medical director or by a registered respiratory care practitioner. It is also reasonable that a registered respiratory care practitioner be limited to supervising two temporary registrants so that adequate supervision of temporary registrants may be assured. Supervision requirements are reasonably included in these rules pursuant to Minnesota Statutes, section 214.13, subdivision 3.

SUBPART 4. TRANSITIONAL REGISTRATION. FOR TWO YEARS AFTER THE EFFECTIVE DATE OF PARTS 4760.0010 TO 4760.0300, AN APPLICANT MAY QUALIFY FOR TRANSITIONAL REGISTRATION BY FULFILLING THE REQUIREMENTS OF ITEMS A AND B. THE BOARD SHALL NOTIFY POTENTIAL REGISTRANTS OF THE EFFECTIVE DATE OF PARTS 4760.0010 TO 4760.0300 SIGNIFYING THE OF THIS PERIOD AND OF THE FINAL DATE FOR SUBMITTING AN APPLICATION FOR TRANSITIONAL REGISTRATION. APPLICATIONS FOR REGISTRATION UNDER THIS SUBPART WILL NOT BE ACCEPTED AFTER THE EXPIRATION OF THE TWO-YEAR PERIOD. TO BE ELIGIBLE FOR REGISTRATION UNDER THE TRANSITIONAL REGISTRATION REQUIREMENTS, THE APPLICANT MUST MEET THE REQUIREMENTS OF ITEMS A AND B.

This provision is necessary because currently there are individuals providing respiratory care services who do not have

formal training or credentialing and have not completed an examination but who have acquired a level of competency by working in the capacity of a respiratory care practitioner. To provide the greatest opportunity for registration of those individuals who acquired experience in respiratory care prior to imposing formal registration requirements, it is reasonable that the requirements be modified during the implementation of the registration system. This provision is also reasonable because a larger percentage of on-the-job trained practitioners are located in rural Minnesota and it may minimize the impact of regulation on the provision of respiratory care services in rural areas; the rules allow rural practitioners who are qualified by experience to be registered without an examination in order to avoid any depletion in the number of practitioners in the rural areas where other practitioners may not be available to provide the necessary services.

Rules addressing registration of respiratory care practitioners during the period of transition are necessary for an orderly implementation of the registration system. It is reasonable that these rules are in effect for a limited time to allow assimilation of qualified respiratory care personnel into the registration system during the period of initial implementation until the registration system is fully operational.

It is necessary to clearly inform persons seeking registration of the limited nature of the transitional

registration requirements, and provide them with notice that after a certain date individuals applying for registration must comply with the general registration requirements. Applicants must be notified of the effective dates for the transitional registration rules and the general registration rules so that they have an adequate opportunity to apply for registration under the requirements which are most appropriate for their individual situation. It is reasonable to put a time limit on the transitional registration rules so as to implement the general registration requirements as soon as possible and attain uniformity in the minimum competency level of respiratory care practitioners registered by the Board.

A. THE INDIVIDUAL MUST SUBMIT THE APPLICATION MATERIALS AND FEES AS REQUIRED UNDER PART 4760.0050, SUBPART 1, ITEMS A, D, E AND F.

It is necessary that an applicant submit a completed application form to the Board containing this information so that the Board may assess the applicant's qualifications for registration. It is necessary to request the name of the applicant so that the applicant may be identified by the Board and differentiated from other applicants. The applicant's address and telephone numbers are required so that the Board may contact the applicant if necessary. The request for information on educational background, professional training, work history, and credentialing in other jurisdictions is necessary for the Board's assessment of the applicant's qualifications for registration as a respiratory care practitioner. Information on

any disciplinary actions, drug or alcohol abuse and any convictions is also necessary to avoid registering unqualified applicants. It is reasonable to request this information because it is within the applicant's knowledge and is not unduly burdensome or intrusive.

It is necessary and reasonable to require the submission of fees for registration because Minnesota Statutes, sections 214.06, 214.13 and 16A.128 require the registration system be fee supported. Fees are assessed on applicants to cover the costs of administering the registration system. It is reasonable that the fees be submitted with the application because it is an efficient method of processing registration materials.

It is necessary for the Board to be able to obtain additional information as needed in order to make a complete and accurate assessment of the applicant's suitability for registration. It is reasonable to expect that, should an applicant supply information that requires further clarification or supplementation, the applicant will cooperate with the Board and provide information so that the Board will be able to complete its evaluation of the applicant.

The Board must have justifiable and reliable information on which to base its decision to register an individual. This rule is necessary to assure the veracity of the application materials submitted for review. It is reasonable to expect that an applicant, who has submitted an application for registration, attest to the truth and validity of the information provided

because the applicant is in the best position to know whether the information is true and to do so is not unduly burdensome for the applicant.

It is necessary for the Board to be able to obtain information on the applicant's performance as a respiratory care practitioner in other jurisdictions in order to determine whether the applicant should be registered within Minnesota. This rule is reasonable because it not only provides the applicant with notice that his or her respiratory care background may be investigated, but also provides the Board with a means of access to records which enable investigation of the applicant's background.

B. THE INDIVIDUAL MUST:

(1) OBTAIN DOCUMENTATION FROM A QUALIFIED MEDICAL DIRECTOR VERIFYING EMPLOYMENT CONSISTING OF PERFORMANCE OF RESPIRATORY CARE PROCEDURES FOR AT LEAST 21 HOURS PER WEEK IN RESPIRATORY CARE FOR FOUR OF THE FIVE YEARS PRECEDING THE APPLICATION UNDER THE SUPERVISION OF A QUALIFIED MEDICAL DIRECTOR. THIS DOCUMENTATION MUST INCLUDE IDENTIFICATION OF EMPLOYMENT SETTING, DIAGNOSES OF PATIENTS SEEN FOR RESPIRATORY CARE, THE TYPE AND FREQUENCY OF PROCEDURES PERFORMED AND THE TYPE AND FREQUENCY OF DIAGNOSTIC EVALUATIONS PERFORMED; OR

It is necessary to require applicants to meet specific qualifications in order to assure minimum competency of those individuals registered as respiratory care practitioners. During the transitional period, work experience is a reasonable criterion to use to determine whether an individual possesses the minimum competency needed to become registered because through a review of the job tasks performed, it can be seen whether the individual's performance is equivalent to that required of a registered practitioner. Documentation of employment under a

qualified medical director is also reasonable because it will indicate that the job tasks performed consisted of respiratory care functions and that these tasks were performed properly.

It is necessary to require a minimum time period of practice in order to assure that the individual has acquired an adequate amount of on-the-job experience. The requirement of at least 21 hours per week for 4 of the 5 years preceding application is reasonable because it assures that an individual has acquired an adequate amount of experience while remaining flexible enough to account for various employment settings and situations.

(2) ACHIEVE A QUALIFYING SCORE ON THE CREDENTIALING EXAMINATION WITHIN THE TWO YEAR TRANSITIONAL REGISTRATION PERIOD.

It is necessary to provide an alternative requirement to work experience during the transitional period because there are individuals who have acquired competency in respiratory care skills but have not been working for the required four years. Achieving a qualifying score on the credentialing examination is a reasonable means of demonstrating the minimum competency needed to become registered as respiratory care practitioners because an examination is a well accepted method of assessing the knowledge and skills necessary to meet minimum competency requirements.

4760.0065 BOARD ACTION ON APPLICATIONS FOR REGISTRATION.

THE BOARD SHALL ACT ON EACH APPLICATION FOR REGISTRATION ACCORDING TO ITEMS A TO D.

This rule is necessary and reasonable to provide applicants with notice of the procedures used to evaluate applications and

to provide guidelines for the Board which will assure consistency and fairness in processing applications.

A. THE BOARD SHALL DETERMINE IF THE APPLICANT MEETS THE REQUIREMENTS FOR REGISTRATION UNDER PART 4760.0050, SUBPART 1 OR UNDER PART 4760,0060, SUBPART 1, 2, 3, OR 4. THE BOARD OR ADVISORY COUNCIL MAY INVESTIGATE INFORMATION PROVIDED BY AN APPLICANT TO DETERMINE WHETHER THE INFORMATION IS ACCURATE AND COMPLETE.

It is necessary that the Board or the Advisory Council be able to investigate the information provided by the applicant to determine its accuracy and completeness in order to assure that all registered respiratory care practitioners meet the requirements for registration. This rule is reasonable because one of the purposes of the registration system is to strengthen consumer protection by the exclusive use of protected titles. Use of the title should only be available to those who meet the minimum standards set forth in these rules and who have not engaged in any activity which should prevent the applicant from being registered. Investigation of the information provided by the applicant prior to issuance of registration will help promote consumer protection and avoid issuance of registration to applicants later determined to be unqualified.

B. THE BOARD SHALL DETERMINE THE QUALIFYING SCORE ON THE CREDENTIALING EXAMINATION BASED ON GUIDELINES PROVIDED BY THE NATIONAL BOARD FOR RESPIRATORY CARE OR THE ADVISORY COUNCIL.

It is necessary for the Board to set a qualifying score for the credentialing examination so that the Board can determine whether an applicant meets the requirements for registration as a respiratory care practitioner. It is reasonable for the Board to determine the qualifying score based upon guidelines developed by

the National Board for Respiratory Care or Advisory Council as these bodies have the necessary expertise to determine a satisfactory level of performance which would qualify an applicant for registration as a respiratory care practitioner.

C. THE BOARD SHALL NOTIFY EACH APPLICANT IN WRITING OF ACTION TAKEN ON THE APPLICATION AND OF THE GROUNDS FOR DENYING REGISTRATION IF REGISTRATION IS DENIED.

It is necessary that the Board notify an applicant of action taken on the application and provide an explanation for denial should registration not be granted, so that the applicant has an opportunity to review the reasons for denial and correct any deficiencies in information provided in the application. Knowledge of the specific grounds for denial also provides the applicant with the basis to challenge the Board determination and appeal registration denial if desired. It is reasonable to require this of the Board because it benefits the applicant without being unduly burdensome for the Board.

D. APPLICANTS DENIED REGISTRATION MAY MAKE A WRITTEN REQUEST TO THE BOARD, WITHIN 30 DAYS OF THE BOARD'S NOTICE, TO APPEAR BEFORE THE ADVISORY COUNCIL AND FOR THE ADVISORY COUNCIL TO REVIEW THE BOARD'S DECISION TO DENY THE APPLICANT'S REGISTRATION. AFTER REVIEWING THE DENIAL, THE ADVISORY COUNCIL SHALL MAKE A RECOMMENDATION TO THE BOARD AS TO WHETHER THE DENIAL SHALL BE AFFIRMED. EACH APPLICANT IS ALLOWED ONLY ONE REQUEST FOR REVIEW PER YEARLY REGISTRATION PERIOD.

This rule is necessary to provide notice to applicants of the procedure for appeal of a Board denial of registration. An appeal process is necessary and reasonable because it provides the applicant with an opportunity to present additional evidence of his or her qualifications for registration which may not have been provided during the original application process.

It is necessary and reasonable to place a time limit on applicants for appeal of the registration decision because a prolonged delay in reviewing the denial may mean that the individuals who made the decision are no longer available for consultation regarding the reasoning behind the decision. Prompt appeal assures that those individuals who made the decision to deny registration are available to provide information regarding the decision. A time limit also promotes proximate finality to Board decisions.

It is necessary and reasonable to limit applicants to only one appeal in one registration period in order to promote proximate finality to the Board's decision and prevent monopolization of the Board's time and resources by one individual.

4760.0070 REGISTRATION RENEWAL

Subpart 1. RENEWAL REQUIREMENTS. TO BE ELIGIBLE FOR REGISTRATION RENEWAL, A REGISTRANT MUST:

It is necessary to require renewal of registration as a method of ascertaining those registrants who continue to use the protected title while providing respiratory care services. Registration renewal is a reasonable requirements because it provides a mechanism for assuring that registrant information is updated and for monitoring compliance with continuing education requirements.

A. SUBMIT A COMPLETED APPLICATION FOR REGISTRATION RENEWAL ON FORMS PROVIDED BY THE BOARD ALONG WITH THE FEES REQUIRED UNDER PART 4760.0300. THE APPLICATION MUST INCLUDE THE REGISTRANT'S NAME, MINNESOTA REGISTRATION NUMBER, HOME ADDRESS AND TELEPHONE NUMBER, BUSINESS ADDRESS AND TELEPHONE NUMBER,

BUSINESS SETTING, WORK HISTORY FOR THE PAST YEAR INCLUDING THE AVERAGE NUMBER OF HOURS WORKED PER WEEK, AND A REPORT OF ANY CHANGE IN STATUS SINCE REGISTRATION OR PREVIOUS REGISTRATION RENEWAL.

It is necessary that a registered respiratory care practitioner submit an application form to the Board for registration renewal because it allows the Board to maintain updated information on registrants in a consistent and uniform manner. The registrant's name and Minnesota registration number are necessary so that the registrant may be identified by the Board and distinguished from other registrants. The registrant's address and telephone numbers are required so that the Board may contact the registrant if necessary. It is reasonable to require information on work history and any changes in status because the Commissioner is authorized to collect such information by Minnesota Statutes, sections 144.051 and 144.052. This is a reasonable requirement because it is not unduly burdensome for the registrant.

The renewal fee is necessary to cover the expenses incurred by the Board in administering the registration system. The legislature has determined that it is reasonable for the individuals using the registration system be responsible for the costs of maintaining the system. Minnesota Statutes, sections 214.06, 214.13 and 16A.128. This is accomplished by the renewal fee.

B. SUBMIT PROOF OF HAVING MET THE CONTINUING EDUCATION REQUIREMENTS OF PART 4760.0090 EVERY TWO YEARS.

It is necessary to require proof of participation in continuing education activities prior to renewal of registration every two years as a means of assuring that registrants are involved in activities that promote their continued competence. It is a reasonable requirement because the registrant has the information and it is not unduly burdensome to require that the registrant provide such information.

C. SUBMIT ADDITIONAL INFORMATION AS REQUESTED BY THE BOARD.

This rule is necessary because the Board must have adequate information to process an application for registration renewal to determine whether a registrant is qualified for registration renewal. It is reasonable to expect that, should a registrant provide insufficient or unclear information, the information needed to review the application for renewal will be provided by the registrant upon request from the Board, since providing additional information should not be unduly burdensome for the registrant.

SUBPART 2. RENEWAL DEADLINE. REGISTRATION MUST BE RENEWED ANNUALLY.

This rule is necessary because it puts registrants on notice that registration renewal is required annually. It is reasonable that registration renewal occur annually to enable the Board to keep accurate and current information on registrants.

A. AN APPLICATION FOR REGISTRATION RENEWAL MUST BE RECEIVED BY THE BOARD OR POSTMARKED ON OR BEFORE JULY 1 EACH YEAR. IF THE POSTMARK IS ILLEGIBLE, THE APPLICATION WILL BE CONSIDERED TIMELY IF RECEIVED BY THE THIRD WORKING DAY AFTER JULY 1.

This rule is necessary to provide notice to registrants of the date by which they must apply for a renewal of their registration to avoid a penalty fee for late renewal. The designation of July 1 is reasonable because it is compatible with the Board's administrative procedures for other occupational practitioners it regulates and it does not impose an undue hardship on registrants.

It is reasonable to allow a grace period of three days for illegible postmarks to assure fairness to registrants while providing a definite time beyond which applications will be considered late.

B. AN APPLICATION FOR REGISTRATION RENEWAL SUBMITTED AFTER THE DEADLINE DATE MUST BE ACCOMPANIED BY A LATE FEE IN ADDITION TO THE FEES REQUIRED UNDER PART 4760.0300.

The late fee is necessary to cover the extra costs incurred by the Board in expediting registration renewal for a registrant who applies for renewal after the deadline. It is reasonable that a registrant who submits an application for renewal after the deadline be required to pay this fee, since registrants are responsible for submitting timely renewal applications. In addition, it may reasonably act as an incentive for registrants to renew in a timely manner.

Subpart 3. REGISTRATION RENEWAL NOTICE. NO LATER THAN JUNE 1 OF EACH YEAR THE BOARD SHALL SEND OUT A RENEWAL NOTICE TO THE REGISTRANT'S LAST KNOWN ADDRESS ON FILE WITH THE BOARD. THE NOTICE SHALL INCLUDE AN APPLICATION FOR REGISTRATION RENEWAL AND NOTICE OF FEES REQUIRED FOR RENEWAL. THE REGISTRANT'S FAILURE TO RECEIVE NOTICE SHALL NOT RELIEVE THE REGISTRANT OF THE OBLIGATION TO MEET THE DEADLINE AND OTHER REQUIREMENTS FOR REGISTRATION RENEWAL.

This provision is necessary to provide notice to registrants regarding registration renewal procedures. It is reasonable to require that the Board make a good faith effort to provide notice to registrants of the registration renewal deadline and procedures since this would not be overly burdensome for the Board. However, it is also reasonable to expect that a registrant would be aware of the renewal deadline and take responsibility for maintaining his or her registration status and comply with the registration deadline in the event that notice is not received from the Board, because the Board cannot guarantee that its renewal notice will in fact be received by each registrant.

Subpart 4. REGISTRATION FOLLOWING LAPSE OF REGISTERED STATUS FOR TWO YEARS OR LESS. FOR ANY REGISTRANT WHOSE REGISTERED STATUS HAS LAPSED FOR TWO YEARS OR LESS, THE REGISTRANT MUST:

A provision for registration renewal following a lapse of registration status is necessary to provide registrants with notice of the procedures to be used and to provide guidelines for the Board for proceeding in the event of a lapse in registration. Two years is a reasonable amount of time to presume that registration can lapse without competency being lost because a registered therapist should be able to maintain practice skills sufficiently to resume practice without any deleterious effect on the public within this time frame.

A. APPLY FOR REGISTRATION RENEWAL ACCORDING TO SUBPART 1;

It is necessary that the individual provide the Board with the registration renewal information so that the Board is able to determine the registrant's qualifications for reinstatement of registered status. The application process for registration renewal is a reasonable means for obtaining the information necessary for the Board to adequately assess the registrant's suitability for reinstatement of registered status because the registrant possesses the information and it is not unduly burdensome for the registrant to provide it to the Board.

B. DOCUMENT COMPLIANCE WITH THE CONTINUING EDUCATION REQUIREMENTS OF PART 4760.0090 SINCE THE REGISTRANT'S INITIAL REGISTRATION OR LAST RENEWAL; AND

It is necessary that the registrant provide evidence of having complied with continuing education requirements so that the registrant can show that he or she has maintained competency in the field of practice despite the lapse in registration. It is reasonable for attendance at continuing education programs to be used as evidence of continued competency because attendance at these programs aids the Board in determining the registrant's qualifications for registration renewal.

C. SUBMIT THE FEES REQUIRED UNDER PART 4760.0300 AND THE FEE FOR LATE RENEWAL ALONG WITH THE APPLICATION FOR REGISTRATION RENEWAL.

It is necessary and reasonable that an applicant who has let his or her registration lapse be required to pay a late fee as an incentive to file promptly for renewal and due to the extra administrative costs incurred by the Board in handling a lapsed registration renewal. It is reasonable that such a registrant be

required to pay the late fee because it is the registrant's responsibility to renew registration in a timely manner.

Subpart 5. REGISTRATION FOLLOWING LAPSE OF REGISTERED STATUS OF MORE THAN TWO YEARS. REGISTERED STATUS EXPIRES FOR ANY INDIVIDUAL WHO HAS FAILED TO RENEW REGISTRATION FOR MORE THAN TWO YEARS. TO REGAIN REGISTERED STATUS, THE INDIVIDUAL MUST MEET THE REQUIREMENTS OF ITEMS A AND B.

It is necessary that an individual who has failed to renew registration for more than two years be required to provide additional proof of continuing competency in order to renew his or her registration because after a period of two years the respiratory care practitioner may not possess up-to-date skills which would allow reentry into or continuance in the work force without a risk of harm to the public. This is a reasonable requirement because one of the purposes of a registration system is to provide an assurance to the public that registered practitioners possess a minimum level of competency.

A. THE INDIVIDUAL MUST SUBMIT THE COMPLETED APPLICATION REQUIRED FOR INITIAL REGISTRATION ALONG WITH THE REQUIRED FEES.

It is necessary that an individual who has allowed his or her registration to lapse more than two years be required to submit the initial registration form so that the Board can acquire accurate and complete information on the individual's qualifications for registration. This is a reasonable requirement so that the Board will have sufficient information available to adequately assess the individual's qualifications for registration.

B. THE INDIVIDUAL MUST:

(1) SUBMIT VERIFIED DOCUMENTATION OF HAVING ACHIEVED A QUALIFYING SCORE ON A CREDENTIALING EXAMINATION ADMINISTERED WITHIN THE PAST YEAR BY THE NATIONAL BOARD FOR RESPIRATORY CARE OR OTHER NATIONAL TESTING SERVICE APPROVED BY THE BOARD OR SIGN A RELEASE TO HAVE THE CREDENTIALING EXAMINATION RESULTS SENT DIRECTLY TO THE BOARD; OR

It is necessary for an individual who has allowed his or her registration to lapse for more than two years to demonstrate that he or she remains qualified for registration. Achieving a qualifying score on an examination within the past year is one method of demonstrating qualification to be registered. This requirement is reasonable because achievement of a qualifying score on a credentialing examination is an accepted method for assessing whether an individual has the knowledge and skills in a given occupation.

(2) ATTEND CONTINUING EDUCATION HOURS EQUIVALENT TO 12 HOURS FOR EACH YEAR OF LAPSED REGISTRATION BEFORE SUBMITTING AN APPLICATION TO REGAIN REGISTERED STATUS.

It is necessary for an individual who has allowed his or her registration to lapse for more than two years to demonstrate that he or she remains qualified for registration. Continuing education is one means of assuring continued competency and qualification for registration. This rule is reasonable because it requires the registrant to attend a number of hours of continuing education which is comparable to that required of registrants to maintain their yearly registration.

Subpart 6. NOTICE OF EXPIRATION OF REGISTERED STATUS. AT LEAST 30 DAYS BEFORE THE EXPIRATION OF REGISTERED STATUS, THE BOARD SHALL SEND OUT A NOTICE TO THE REGISTRANT'S LAST KNOWN ADDRESS ON FILE WITH THE BOARD INFORMING THE REGISTRANT THAT REGISTRATION WILL EXPIRE WITHOUT FURTHER ACTION BY THE BOARD IF AN APPLICATION FOR REGISTRATION RENEWAL IS NOT RECEIVED BEFORE THE DEADLINE FOR RENEWAL. THE REGISTRANT'S FAILURE TO RECEIVE

THIS NOTICE SHALL NOT RELIEVE THE REGISTRANT OF THE OBLIGATION TO MEET THE DEADLINE AND OTHER REQUIREMENTS FOR REGISTRATION RENEWAL. FAILURE TO RECEIVE THIS NOTICE IS NOT GROUNDS FOR CHALLENGING EXPIRATION OF REGISTERED STATUS.

This provision is necessary because it provides that registrants with notice of a potential lapse in their registration status. It is, however, reasonable to expect that a registrant would be aware of the renewal deadline and take responsibility for maintaining his or her registration status and comply with the registration deadline whether or not notice is received from the Board, because the Board cannot guarantee that its notice will be received by each and every registrant.

4760.0080 CHANGE OF ADDRESS

A REGISTRANT WHO CHANGES ADDRESSES MUST IMMEDIATELY INFORM THE BOARD, IN WRITING, OF THE CHANGE OF ADDRESS. ALL NOTICES OR OTHER CORRESPONDENCE MAILED TO OR SERVED ON A REGISTRANT BY THE BOARD AT THE REGISTRANT'S ADDRESS ON FILE WITH THE BOARD SHALL BE CONSIDERED AS HAVING BEEN RECEIVED BY THE REGISTRANT.

It is necessary for registrants to keep the Board informed of their current address because the Board needs to know where to contact the registrant with any notices. In addition, at the time of registration renewal or should any disciplinary matter arise, the Board needs to know the location of the registrant for purposes of notification and for obtaining information from the registrant. However, it is reasonable to expect that a registrant will keep the Board informed of any address changes and for the Board to assume that materials mailed to the registrant's address on file are received by the registrant. This provision is also reasonable because it does not place an undue burden on registrants.

4760.0090 CONTINUING EDUCATION REQUIREMENTS

Subpart 1. NUMBER OF CONTACT HOURS REQUIRED. TWO YEARS AFTER THE DATE OF INITIAL REGISTRATION, AND EVERY TWO YEARS THEREAFTER, A REGISTRANT APPLYING FOR REGISTRATION RENEWAL MUST COMPLETE A MINIMUM OF 24 CONTACT HOURS OF BOARD APPROVED CONTINUING EDUCATION IN THE TWO YEARS PRECEDING REGISTRATION RENEWAL AND ATTEST TO COMPLETION OF CONTINUING EDUCATION REQUIREMENTS BY REPORTING TO THE BOARD.

It is necessary to require that a registrant complete a certain number of continuing education hours because attendance at continuing education programs is an accepted method for promoting continued competency of registered respiratory care practitioners. Twenty-four hours within a two-year period is a reasonable requirement. Continuing education requirements for respiratory care practitioners vary among the states, from zero hours required in Virginia, Washington, Louisiana and Connecticut to forty hours in a two-year period in New Mexico. The remainder of the states require from six to fifteen hours per year. The Minnesota Society for Respiratory Care has suggested that twenty-four hours per two-year period is feasible for Minnesota respiratory care practitioners, given the availability of continuing education programs within the state.

Subpart 2. APPROVED PROGRAMS. THE BOARD SHALL APPROVE CONTINUING EDUCATION PROGRAMS THAT HAVE BEEN APPROVED FOR CONTINUING EDUCATION CREDIT BY THE AMERICAN ASSOCIATION OF RESPIRATORY CARE OR THE MINNESOTA SOCIETY FOR RESPIRATORY CARE. THE BOARD WILL ALSO APPROVE PROGRAMS SUBSTANTIALLY RELATED TO RESPIRATORY CARE THAT ARE SPONSORED BY AN ACCREDITED UNIVERSITY OF COLLEGE, MEDICAL SCHOOL, STATE OR NATIONAL MEDICAL ASSOCIATION, NATIONAL MEDICAL SPECIALTY SOCIETY, OR THAT ARE APPROVED FOR CONTINUING EDUCATION CREDIT BY THE MINNESOTA BOARD OF NURSING.

This rule is necessary to simplify enforcement of the continuing education requirements. Approval of continuing

education programs offered by the named sponsors allows the Board to direct their attention to more complex matters in the administration of the rules. It is reasonable that the Board approve these programs because they have already been approved by a professional organization with similar standards for continuing education approval.

Subpart 3. APPROVAL OF CONTINUING EDUCATION PROGRAMS. THE BOARD SHALL APPROVE CONTINUING EDUCATION PROGRAMS THAT DO NOT MEET THE REQUIREMENTS OF SUBPART 2 BUT THAT MEET THE CRITERIA IN ITEMS A TO E.

It is necessary to provide criteria for Board evaluation of continuing education programs because delineation of specific criteria allows registrants as well as continuing education program sponsors to be apprised of the types of programs which fulfill the continuing education requirements and provides the Board with a tool by which they can objectively evaluate continuing education programs. The criteria listed below are reasonable because they correspond to the criteria used by the AARC in assessing programs for continuing education credit.

A. THE PROGRAM CONTENT DIRECTLY RELATES TO THE PRACTICE OF RESPIRATORY CARE;

This requirement is necessary and reasonable because the purpose of the continuing education requirements is to help assure the continuing competency of registrants and this can only be accomplished by registrants attending programs which are related to areas of respiratory care practice.

B. EACH MEMBER OF THE PROGRAM FACULTY IS KNOWLEDGEABLE IN THE SUBJECT MATTER AS DEMONSTRATED BY A DEGREE FROM AN ACCREDITED EDUCATIONAL PROGRAM, VERIFIABLE EXPERIENCE IN THE

FIELD OF RESPIRATORY CARE, SPECIAL TRAINING IN THE SUBJECT MATTER, OR EXPERIENCE TEACHING IN THE SUBJECT AREA;

It is necessary that program faculty be knowledgeable in the areas they are teaching so that registrants can learn new material and improve their knowledge of the field. This requirement is reasonable because completion of an educational program, work experience in a field, special training or teaching experience are recognized methods for acquiring knowledge in an area of practice.

C. THE PROGRAM LASTS AT LEAST ONE CONTACT HOUR;

It is necessary to require that a program will last at least one contact hour because the Board needs a minimum time unit with which to measure continuing education participation. This rule is reasonable because one contact hour is a commonly accepted and used by other health occupations for measuring continuing education participation.

D. THERE ARE SPECIFIC, MEASURABLE, WRITTEN OBJECTIVES, CONSISTENT WITH THE PROGRAM, DESCRIBING THE EXPECTED OUTCOMES FOR THE PARTICIPANTS; AND

This rule is necessary to provide a method for the Board to determine whether the program is sufficient to promote the continued competency of registrants. It is reasonable that objectives be specific, measurable and written so that the Board has a consistent means by which continuing education programs may be evaluated.

E. THE PROGRAM SPONSOR HAS A MECHANISM TO VERIFY PARTICIPATION AND MAINTAINS ATTENDANCE RECORDS FOR 3 YEARS.

It is necessary for sponsors to maintain records of attendance to enable the Board to verify registrant participation in a continuing education program. It is reasonable that sponsors maintain records for three years because it should not be overly burdensome for sponsors to maintain records for such a short time.

Subpart 4. HOSPITAL INSERVICES. HOSPITAL INSERVICES MAY QUALIFY FOR CONTINUING EDUCATION CREDITS PROVIDED THEY MEET THE REQUIREMENTS OF SUBPART 3.

This rule is necessary so that registrants have notice that hospital inservices will be eligible for continuing education credits. It is reasonable to specify hospital inservices as a means for obtaining continuing education credits because this is one method available to the majority of registrants for fulfilling continuing education requirements.

Subpart 5. ACCUMULATION OF CONTACT HOURS. A REGISTRANT CANNOT APPLY CONTACT HOURS ACQUIRED IN ONE TWO-YEAR REPORTING PERIOD TO A FUTURE CONTINUING EDUCATION REPORTING PERIOD.

It is necessary that a certain number of contact hours be accumulated during each two year period to assure that the registrant is participating in current continuing education activities. It is reasonable that hours not be accumulated in advance when the purpose of continuing education requirements is to maintain competency and keep up with the latest advances in the field.

Subpart 6. VERIFICATION OF CONTINUING EDUCATION CREDITS. THE BOARD SHALL PERIODICALLY SELECT A RANDOM SAMPLE OF REGISTRANTS AND REQUIRE THOSE REGISTRANTS TO SUPPLY THE BOARD WITH EVIDENCE OF HAVING COMPLETED THE CONTINUING EDUCATION TO WHICH THEY ATTESTED. DOCUMENTATION MAY COME DIRECTLY FROM THE

REGISTRANT OR FROM STATE OR NATIONAL ORGANIZATIONS THAT MAINTAIN CONTINUING EDUCATION RECORDS.

It is necessary for the Board to periodically audit the records of registrants to assure that continuing education requirements are being met and the system for recording compliance with these requirements is adequate. It is reasonable to require registrants to supply such verification, since they are most likely to have such information.

Subpart 7. RESTRICTION ON CONTINUING EDUCATION TOPICS. A REGISTRANT MAY APPLY NO MORE THAN A COMBINED TOTAL OF EIGHT HOURS OF CONTINUING EDUCATION IN THE AREAS OF MANAGEMENT, RISK MANAGEMENT, PERSONAL GROWTH AND EDUCATIONAL TECHNIQUES TO A TWO-YEAR REPORTING PERIOD.

In a system which is attempting to assure the continued competency of registrants in a technical field it is necessary to limit the number of continuing education hours acquired by attending programs on management or personal growth. It is a reasonable requirement because it allows the registrant flexibility to obtain credit hours in areas of interest while assuring attendance at continuing education programs of a more technical nature without being unduly burdensome.

Subpart 8. CREDIT FOR CREDENTIALING EXAMINATION. A REGISTRANT MAY FULFILL THE CONTINUING EDUCATION REQUIREMENTS FOR A TWO-YEAR REPORTING PERIOD BY COMPLETING ONE OF THE CREDENTIALING EXAMINATIONS OF THE NATIONAL BOARD FOR RESPIRATORY CARE. A REGISTRANT MAY ACHIEVE 12 HOURS OF CONTINUING EDUCATION CREDIT BY COMPLETING A NATIONAL BOARD FOR RESPIRATORY CARE SPECIALTY EXAMINATION.

This rule is necessary so that registrants have notice that the NBRC credentialing examination will be accepted for continuing education credit. It is reasonable that if a registrant has prepared for and completed the credentialing

examination the registrant be granted continuing education credit for this effort because 1) completion of the NBRC entry level examination requires knowledge of the skills required of entry level practitioners; and 2) completion of the NBRC advanced level accreditation examination indicates motivation and requires additional knowledge of the practice of respiratory care beyond that required for entry level practice. By completing either of these examinations, the respiratory care practitioner necessarily has participated in an activity to assure continued competence and to require additional participation in continuing education activities would be unduly burdensome for the practitioner.

4760.0100 DISCIPLINARY PROCESS

Subpart 1. INVESTIGATION OF COMPLAINTS. ACCORDING TO MINNESOTA STATUTES, SECTION 214.13, SUBDIVISION 6, UPON RECEIPT OF A COMPLAINT OR OTHER COMMUNICATION THAT ALLEGES OR IMPLIES A VIOLATION OF PARTS 4760.0010 TO 4760.0300 BY AN APPLICANT OR REGISTRANT, THE BOARD SHALL FOLLOW THE PROCEDURES IN MINNESOTA STATUTES, SECTION 214.10.

It is necessary for the protection of the public health, safety and welfare that the Board begin an investigation of any alleged wrongdoing on the part of a respiratory care practitioner. This rule is also necessary because it notifies registrants of the procedures to be followed upon receipt of a complaint. It is reasonable because it is mandated by Minnesota Statutes, section 214.13, subdivision 6.

Subpart 2. GROUNDS FOR DISCIPLINARY ACTION. THE BOARD MAY REFUSE TO REGISTER AN APPLICANT OR TAKE AGAINST A REGISTRANT ANY OF THE DISCIPLINARY ACTIONS LISTED IN SUBPART 3 UPON ANY OF THE FOLLOWING GROUNDS:

It is necessary that the specific grounds for disciplinary action be set forth in the rules so that respiratory care practitioners are put on notice of those actions which may result in disciplinary action by the Board. Identification of the grounds for disciplinary action also makes the public aware of the types of actions for which respiratory care practitioners may be held accountable.

This provision is reasonable because the Board has the authority to take disciplinary action against individuals pursuant to Minnesota Statutes, chapter 214.

A. SUBMISSION OF FALSE OR MISLEADING INFORMATION OR CREDENTIALS IN ORDER TO OBTAIN OR RENEW REGISTRATION;

This rule is necessary because meaningful regulatory procedures cannot be enforced without truthful information. This rule is reasonable because the Board needs to be able to rely on information submitted by applicants and registrants in order to make sound decisions on whether to grant or deny registration.

B. FAILURE TO MEET THE REQUIREMENTS FOR REGISTRATION OR RENEWAL OF REGISTRATION;

It is necessary that the Board be able to take action regarding applicants who fail to meet the requirements for initial registration or registration renewal in order to assure that registered respiratory care practitioners meet a minimum level of competency. This is a reasonable ground for disciplinary action because only those individuals who meet the necessary qualifications are eligible for registration.

C. PROVISION OF RESPIRATORY CARE SERVICES IN A MANNER THAT FALLS BELOW THE COMMUNITY STANDARD OF CARE;

It is necessary for the Board to be able to discipline respiratory care practitioners who perform respiratory care services in a manner which falls below the community standard of care in order to protect the public. This rule is reasonable because one of the purposes of the registration system is to assure a minimum level of competency in the performance of respiratory care services provided by registered respiratory care practitioners.

D. VIOLATION OF PARTS 4760.0010 TO 4760.0300;

It is necessary to provide the Board with a mechanism for disciplining respiratory care practitioners who violate these regulations, because these rules are effective only to the extent they may be enforced. It is reasonable that the Board be able to enforce these rules as the rules are intended to protect the public and any violation of the rules could represent a risk to the public.

E. DEMONSTRATION OF AN INABILITY TO PRACTICE RESPIRATORY CARE WITH REASONABLE SKILL AND SAFETY TO PATIENTS BY REASON OF ILLNESS OR AS A RESULT OF ANY MENTAL OR PHYSICAL CONDITION, INCLUDING DETERIORATION THROUGH THE AGING PROCESS OR LOSS OF MOTOR SKILLS;

It is necessary that the Board have the ability to discipline those respiratory care practitioners who are unable to perform respiratory care services safely due to impairment in order to protect the public. This is a reasonable rule because these mental or physical conditions may impair a respiratory care practitioner sufficiently to pose a risk to the public.

F. FAILURE TO COOPERATE WITH AN INVESTIGATION BY THE BOARD;

This rule is necessary to inform applicants and registrants that they must cooperate with the Board during an investigation. It is necessary that the Board be able to discipline a respiratory care practitioner for failing to cooperate with its investigation as a means of enforcing these regulations. It is reasonable to expect an applicant or registrant to cooperate with an investigation because they are seeking the use of the protected title and should be willing to expend the effort to show why they should be registered, become registered, or remain registered. Cooperation with the investigation described in this item should not be unduly burdensome to the applicant or registrant.

G. CONVICTION, INCLUDING A FINDING OF GUILT, AN ADMISSION OF GUILT, OR A NO CONTEST PLEA OF ANY OFFENSE WHICH IS REASONABLY RELATED TO THE PRACTICE OF RESPIRATORY CARE OR THAT BEARS UPON THE INDIVIDUAL'S ABILITY TO PERFORM AS A RESPIRATORY CARE PRACTITIONER AS EVIDENCED BY A CERTIFIED COPY OF CONVICTION;

It is necessary for protection of the public health and safety that the Board be able to discipline respiratory care practitioners who have been convicted of offenses which reflect on their ability to perform as a respiratory care practitioner. It is reasonable that an individual seeking the use of protected titles or using the titles as a registrant will not violate a federal, state or territorial law if an essential element of the law or violation of the law is reasonably related to the provision of respiratory care services. The use of the protected

titles indicates state recognition of minimum competency to provide respiratory care services. It is not reasonable that an individual be given such recognition if the laws mentioned have been violated.

H. AIDING OR ABETTING ANOTHER PERSON IN VIOLATING ANY PROVISIONS OF PARTS 4760.0010 TO 4760.0300;

This rule is necessary to allow the Board to discipline respiratory care practitioners who aid or abet another person in the violation of these regulations because assisting another person in violating these rules may be as harmful to the public as personally violating these rules. It is reasonable to expect a respiratory care practitioner to refrain from assisting another individual to violate these rules because assisting another to violate the rules indicates an inability to maintain the standards necessary for registration.

I. SUBJECTION TO DISCIPLINARY ACTION BY AN AGENCY OR BOARD OF ANOTHER STATE FOR RESPIRATORY CARE ACTIVITIES;

It is necessary and reasonable for the Board to be able to discipline a respiratory care practitioner who has been subject to discipline in another jurisdiction in order to protect the health and safety of the citizens of this state. The public would not be adequately protected if a respiratory care practitioner providing services in Minnesota was allowed to be registered despite conduct outside Minnesota which directly related to the qualifications of the respiratory care practitioner to provide respiratory care services. It is reasonable to expect respiratory care practitioners to abide by

all rules or laws of other jurisdictions which are the same or substantially equivalent to the rules set forth in this registration system because a failure to do so indicates an inability to maintain the standards necessary for registration.

J. ENGAGEMENT IN DISHONEST, UNETHICAL OR UNPROFESSIONAL CONDUCT WHILE IN THE PRACTICE OF RESPIRATORY CARE THAT IS LIKELY TO DECEIVE, DEFRAUD OR HARM THE PUBLIC;

This rule is necessary to assure protection of the public from respiratory care practitioners who engage in this type of behavior. It is reasonable to require a registered practitioner to perform respiratory care services in an ethical and professional manner because inability to perform respiratory care services in such a manner indicates a failure to maintain performance at a level meeting minimum competency requirements.

K. VIOLATION OF ANY STATE OR FEDERAL LAW, RULE, OR REGULATION THAT REASONABLY RELATES TO THE PRACTICE OF RESPIRATORY CARE;

It is necessary for protection of the public health and safety that the Board be able to discipline respiratory care practitioners who have violated state or federal laws which reflect on their ability to perform as a respiratory care practitioner. It is reasonable that an individual seeking the use of protected titles or using the titles as a registrant will not violate the laws described because violation of the laws indicates an inability to maintain the standards necessary for registration.

L. ENGAGEMENT IN CONDUCT WITH A PATIENT THAT IS SEXUAL OR MAY REASONABLY BE INTERPRETED BY THE PATIENT AS SEXUAL, OR IN ANY VERBAL BEHAVIOR WHICH IS SEDUCTIVE OR SEXUALLY DEMEANING TO A PATIENT;

It is necessary that the Board be able to discipline a respiratory care practitioner who has engaged in sexual conduct with a patient in order to protect the public. The Board is directed by Minnesota Statutes, section 214.10, subdivision 8, to assure investigation and appropriate disciplinary action in matters involving allegations of sexual contact between a member of a regulated health occupation and a patient or client. It is reasonable that such conduct be subject to discipline because of the position of trust which the practitioner occupies and the vulnerability of patients.

M. MISUSE OF ALCOHOL, DRUGS, NARCOTICS, CHEMICALS OR ANY OTHER SUBSTANCE;

It is necessary and reasonable that the Board have the ability to discipline those respiratory care practitioners who pose a threat to public safety due to misuse of alcohol, drugs, narcotics, chemicals of other substances.

N. VIOLATION OF ANY DISCIPLINARY ORDER ISSUED BY THE BOARD; OR

This rule is necessary to inform the applicant and registrant that compliance with a disciplinary order issued by the Board is required. It is reasonable that the Board have the ability to further discipline an individual who has been subject to disciplinary action if that individual fails to comply with the Board's initial mandate in order to protect the public from unqualified practitioners.

O. ANY OTHER JUST CAUSE RELATED TO THE PRACTICE OF RESPIRATORY CARE.

It is necessary and reasonable that the Board have the ability to discipline practitioners who demonstrate an inability to meet the standard of care expected of a registered respiratory care practitioner.

Subpart 3. DISCIPLINARY ACTIONS. UPON FINDING THAT GROUNDS FOR DISCIPLINARY ACTION EXIST UNDER SUBPART 2, THE BOARD MAY TAKE ANY ONE OR MORE OF THE FOLLOWING ACTIONS OR ANY LESSER ACTION:

- A. REFUSE TO GRANT OR RENEW REGISTRATION;
- B. REVOKE REGISTRATION;
- C. SUSPEND REGISTRATION;
- D. ADMINISTER A REPRIMAND;
- E. CONDITION, LIMIT, OR RESTRICT REGISTRATION; OR
- F. ANY OTHER ACTION JUSTIFIED BY THE FACTS OF THE CASE.

It is necessary that the options for disciplinary action be set forth so that applicants and registrants have notice of the possible actions which may be taken against them for failure to comply with these rules. It is reasonable that the Board have a variety of disciplinary options from which to choose so that it may appropriately address each infraction and tailor its action to the particular situation. A disciplinary mechanism strengthens the regulatory system by creating penalties for those respiratory care practitioners who fail to conform to the requirements of the rules. The options set forth in this rule are also reasonable because they are standard disciplinary options available to licensing and registration systems.

4760.0200 RESPIRATORY CARE PRACTITIONER ADVISORY COUNCIL

Subpart 1. MEMBERSHIP. SUBJECT TO APPROVAL BY THE BOARD, THE COMMISSIONER SHALL APPOINT A SEVEN MEMBER RESPIRATORY CARE PRACTITIONER ADVISORY COUNCIL CONSISTING OF THE FOLLOWING:

The Commissioner is authorized to appoint a seven member advisory council to advise the Board on matters relating to the registration and regulation of an occupation pursuant to Minnesota Statutes, section 214.13, subdivision 4. It is necessary and reasonable that an Advisory Council be appointed to assist the Board with technical matters arising in the administration of the respiratory care practitioner rules. It is reasonable because it is authorized by statute.

A. TWO PUBLIC MEMBERS AS DEFINED IN MINNESOTA STATUTES, SECTION 214.02;

This rule is reasonable because Minnesota Statutes, section 214.13, subdivision 4, requires that two of the members on the advisory council be public members. It is reasonable that public members be included on the advisory council so that they may represent the consumer perspective in issues affecting respiratory care services. It is also necessary and reasonable that the public members be defined pursuant to Minnesota Statutes, section 214.02 so that these rules comply with state law.

B. THREE MEMBERS WHO MEET THE REQUIREMENTS OF PARTS 4760.0010 TO 4760.0300 FOR REGISTRATION AS RESPIRATORY CARE PRACTITIONERS; AND

This rule is reasonable because Minnesota Statutes, section 214.13, subdivision 4 requires that five of the members of the advisory council be from the registered occupation or related registered or licensed occupation. The Human Services Occupations Advisory Council recommended in their report that the advisory council composition include three respiratory care

practitioners. It is reasonable that three respiratory care practitioners be included on the advisory council to provide expertise regarding the practice of respiratory care to the Board. Practitioners have experience in the field which is valuable to those attempting to apply the regulations to the practice of respiratory care.

C. TWO MEMBERS WHO ARE LICENSED PHYSICIANS WITH EXPERTISE IN THE AREA OF RESPIRATORY CARE.

It is necessary that the remaining two members of the advisory council be members of a related licensed occupation due to the mandate for Board composition contained in Minnesota Statutes, section 214.13, subdivision 4. It is necessary and reasonable that these two members be licensed physicians with expertise in the area of respiratory care because respiratory care practitioners perform their services pursuant to physician orders and under the direction of a physician. It is necessary and reasonable to require that the physician members have expertise in the area of respiratory care so that they will have an understanding of issues regarding the practice of respiratory care which come before the advisory council for consideration.

Subpart 2. ORGANIZATION. THE ADVISORY COUNCIL SHALL BE ORGANIZED AND ADMINISTERED UNDER MINNESOTA STATUTES, SECTION 15.059.

Minnesota Statutes, section 15.059, as referred to in Minnesota Statutes, section 214.13, subdivision 4, sets forth the terms, the compensation and the removal of members of an advisory council. It is necessary to include this provision because it puts the public on notice as to how the advisory council will be

organized and administered. It is reasonable to organize the advisory council pursuant to Minnesota Statutes, section 15.059 because it is required by Minnesota Statutes, section 214.13.

Subpart 3. DUTIES. THE ADVISORY COUNCIL SHALL:

A. ADVISE THE BOARD REGARDING STANDARDS FOR RESPIRATORY CARE PRACTITIONERS;

It is necessary for the Board to be able to obtain advice from the advisory council on matters pertaining to registration standards and standards for practice because the advisory council is likely to have greater expertise for assessing these standards for respiratory care practitioners. It is reasonable that the Board be able to consult the advisory council on technical matters because the advisory council will have the technical expertise to analyze such issues and will be able to provide the Board with guidance on issues regarding the standards of practice.

B. PROVIDE FOR DISTRIBUTION OF INFORMATION REGARDING RESPIRATORY CARE PRACTITIONER STANDARDS;

It is necessary that information regarding the respiratory care practitioner registration system be distributed to the public, applicants and registrants to promote a successful registration system. In order for the registration system to serve the purpose of protecting the public, the public will need to be informed of the significance of the protected titles. Applicants will need to be provided with information which will enable them to apply for registration and enter the regulatory system. Registrants will need information for registration

renewal. They will also need to be provided with information on any changes in the regulation of respiratory care practitioners. It is reasonable that the advisory council will fulfill the function of distributing information as they will be familiar with the registration rules and will have the expertise and experience need to handle the problems involved with the distribution of information.

C. ADVISE THE BOARD ON ENFORCEMENT OF PARTS 4760.0010 TO 4760.0300;

It is necessary that the Board be able to request the advice of the advisory council on enforcement of parts 4760.0010 to 4760.0300 because enforcement of these provisions directly relates to the regulation of respiratory care practitioners. It is reasonable to assign this function to the advisory council as this body has the necessary expertise to assess enforcement matters.

D. REVIEW APPLICATIONS AND RECOMMEND GRANTING OR DENYING REGISTRATION OR REGISTRATION RENEWAL;

It is necessary for the advisory council to review applications and make recommendations to the Board as it will have the expertise necessary for assessing applications and determining whether applicants for registration or registration renewal meet minimum competency requirements. It is reasonable that the advisory council perform this function because the composition of the advisory council will provide a fair review mechanism for applications.

E. RECEIVE AND PROCESS COMPLAINTS IN ACCORDANCE WITH MINNESOTA STATUTES, SECTIONS 214.10 AND 214.13, SUBDIVISIONS 6 AND 7;

This rule is necessary because it puts the public on notice that the advisory council will receive and process complaints in accordance with statutory requirements. It is reasonable that the advisory council perform this function because of its expertise in the area of respiratory care practice.

F. REVIEW REPORTS OF INVESTIGATIONS OF COMPLAINTS AND RECOMMEND TO THE BOARD WHETHER DISCIPLINARY ACTION SHOULD BE TAKEN;

This rule is necessary to clarify the advisory function of the advisory council in the review of investigations of complaints. It is reasonable to specify its role as advisory because the Board has the ultimate responsibility for disciplinary actions.

G. ADVISE THE BOARD REGARDING APPROVAL OF CONTINUING EDUCATION PROGRAMS USING THE CRITERIA SET OUT IN PART 4760.0090, SUBPART 3; AND

It is necessary that the Board be able to consult the advisory council regarding continuing education sponsors because this is a function which relates to the regulation of the respiratory care occupation. It is reasonable that the advisory council would perform this function due to the expertise of the advisory council in dealing with matters related to the competency of respiratory care practitioners.

H. PERFORM OTHER DUTIES AUTHORIZED FOR ADVISORY COUNCILS BY MINNESOTA STATUTES, CHAPTER 214, AS DIRECTED BY THE BOARD.

It is necessary for the advisory council to be able to perform additional duties as directed by the Board in order to promote efficient and proper enforcement of these rules. It is reasonable to expect the advisory council to perform additional duties which are authorized by law because it will promote efficiency.

4760.0300 FEES

Subpart 1. REGISTRATION FEE. THE FEE FOR INITIAL REGISTRATION AND ANNUAL REGISTRATION RENEWAL SHALL BE \$59.

This subpart is necessary because Minnesota Statutes, section 214.13, requires the registration system to be entirely fee supported. Therefore, the Commissioner of Health, with the approval of the Commissioner of Finance, must assess fees in an amount that closely approximates the anticipated expenditures under the registration system. The amount is reasonable because the registration fee of \$59.00 is derived from the estimated average annual budget for the first five years of registration. The total estimated budget for fiscal years 1992 through 1996 is \$282,449.00. This estimated budget includes the advisory council meeting costs, attorney general fees for attendance at advisory council meetings, the computer design and program for the registration system, start-up costs, investigations by the Board into violations, costs for handling registration and renewal of registration and Board of Medical Examiner staff costs. The average of this budget equals \$56,489.80 per year, which was rounded to \$56,490.00. The estimated number of registrants per year is 950. This number was arrived at by taking the total

estimated number of respiratory care personnel practicing within Minnesota and estimating that approximately 90% of the practitioners would register. \$56,490.00 divided by 950 equals \$59.46, which was rounded to \$59.00 for the registration fee.

SUBPART 2. PRORATION OF FEES. THE BOARD SHALL PRORATE REGISTRATION FEES FOR FIRST TIME REGISTRANTS AS FOLLOWS:

A. FIRST TIME REGISTRANTS APPLYING BETWEEN JULY 1 AND DECEMBER 31 SHALL PAY THE FULL REGISTRATION FEE;

B. FIRST TIME REGISTRANTS APPLYING BETWEEN JANUARY 1 AND JUNE 30 SHALL PAY ONE HALF THE REGISTRATION FEE.

ALL REGISTRANTS ARE REQUIRED TO PAY THE FULL FEE UPON REGISTRATION RENEWAL.

This rule is necessary to provide for more equitable treatment of applicants. Applicants who apply for registration with six months or less before registration renewal is required pay a higher rate for registration unless some form of proration is used. It is reasonable to prorate fees based upon the portion of the year for which an applicant will be registered because it does not unfairly penalize those registrants who register just prior to the registration renewal date while at the same time assures sufficient revenue to process the application.

Subpart 3. PENALTY FOR LATE RENEWALS. THE PENALTY FOR LATE SUBMISSION OF A RENEWAL APPLICATION SHALL BE \$15.

A penalty fee is necessary for registration renewal made beyond the required deadline in order to create an incentive for submitting applications for registration in a timely manner. A penalty fee is also necessary because a registrant who fails to renew registration will cause the Board to incur administrative costs because of the need to send letters of reminder to register

and letters explaining the lapse in registered status. The Board may also be required to incur legal expenses if the registrant continues to use the protected title without having current registration. The fee is reasonable because it is not set at such a level as to present a hardship to the registrant. In addition, the fee is reasonable because the primary purpose of the fee is not to generate revenue but to cover administrative and legal costs incurred due to late registration.

Subpart 4. SURCHARGE. FOR A PERIOD OF FIVE YEARS FOLLOWING THE EFFECTIVE DATE OF PARTS 4760.0010 TO 4760.0300, EACH APPLICANT FOR INITIAL REGISTRATION AND REGISTRANT APPLYING FOR REGISTRATION RENEWAL MUST PAY A SURCHARGE FEE OF \$19.

This provision is necessary because Minnesota Statutes, section 214.06, subdivision 1 states in part:

For members of an occupation registered after July 1, 1984 by the commissioner of health under the provisions of section 214.13, the fee established must include an amount necessary to recover, over a five-year period, the commissioner's direct expenditures for adoption of the rules providing for registration of members of the occupation.

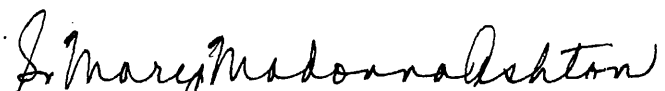
As stated above, the surcharge fee must be recovered over a five-year period. This amount is reasonable because the surcharge fee of \$31.00 was derived from the following formula: the estimated expenditures for fiscal years 1990 and 1991 are \$92,201.00. The costs included in this estimate are the salaries of Minnesota Department of Health staff developing the rules, the attorney general fees for review of rules and supporting documents, the revisor's fees for review of the rules, costs for publication in the State Register and administrative law judge of the rules. This figure must be divided by the number of years (five) the

surcharge fee will be in effect. The resulting figure is then divided by the number of estimated registrants, or 950. The end result is \$19.41. This number was rounded to \$19.00.

Subpart 5. NONREFUNDABLE FEES. ALL OF THE ABOVE FEES ARE NONREFUNDABLE.

This rule is necessary to inform applicants for registration that all fees described in the registration system are nonrefundable. The nonrefundable fee requirement is reasonable because the administrative costs begin when the Board sends the application for registration to applicants and continues when the Board receives the applications for review. If an applicant were denied registration and allowed a refund of the money, the Board would not be reimbursed for the costs of mailing the applications and reviewing them. The application fee also takes into account an estimate of costs that will be incurred if an applicant who has been denied registration seeks to have the Advisory Council and the Board review the decision to deny. Failure to cover all of the costs described above would not be in compliance with Minnesota Statutes, sections 214.06, 214.13 and 16A.128.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH


SISTER MARY MADONNA ASHTON
Commissioner of Health