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## New Jersey Office of the Attorney General

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### BOARD OF RESPIRATORY CARE PUBLIC SESSION MINUTES

#### SOMERSET CONFERENCE ROOM, 6<sup>th</sup> Floor

May 4, 2010

The May meeting of the New Jersey State Board of Respiratory Care was convened in accordance with its notice to the Secretary of State, the Bergen Record, the Trenton Times, the Courier Post and the Star-Ledger and was conducted in accordance with the provisions of the Open Public Meetings Act.

Chairman, Capek convened the meeting at 10:00 a.m. A roll call was taken and the following attendance was recorded for these minutes.

**PRESENT:**            Kenneth Capek                            James Brophy  
                         Michael G. Brown                        Christopher Lange  
                         Janet Castronovo                        Philip Freeman (Arrived late)

**ABSENT:**            Robert Malovany, M.D.

**Also in attendance:** Dorcas K. O’Neal, Executive Director, Tobey Palan, Deputy Attorney and Bernadette Augustus, staff.

**Public attendance:** None.

#### **I. APPROVAL OF MINUTES**

The Board reviewed the **Public Session Minutes of April 6, 2010**. **On a motion by** Michael G. Brown, seconded by Christopher Lange, the Board unanimously approved the Public Session Minutes as amended.

## II. OLD BUSINESS/REAGENDIZED

None.

## III. NEW BUSINESS

- a. Maryann Sheehan, Regulatory Analyst, attended the Public Meeting to review Board of Respiratory Care rule, Executive Order #2. She stated that under Governor Christie's Executive Order # 2, all Board rules must be reviewed to ensure that they comply with the "Common Sense Principles" established in the E.O. The most important of which is that rules should be drafted so as to impose the least burden and costs to business.

As part of this review of the Board's rules, Regulatory Analyst, Sheehan, must identify rules that impede responsible economic development and that place the State at a competitive disadvantage in attracting investments and jobs, rules that provide insufficient or contradictory guidance and rules that exceed legislative intent or federal standards. Regulatory Analyst Sheehan, must also identify rules where federal regulation adequately regulated the subject area.

Recommendations were presented to the Board in the following areas: lowering the cost for CEU by making available, in-house training and getting more sponsors; re-examining the reinstatement rule; repealing, in part, the eligibility for licensure rule at N.J.A.C.13:44F4.1(b)2.i, which provides that, if applying more than three years after completion of training, an applicant shall submit proof of having completed a refresher course approved by the Board. It was recommended that the Board repeal the requirement of the refresher course.

- b. The Board reviewed a fax from Michelangelo Williams, inquiring as to the laws and regulation or guidelines he must follow while working under the direction of a Pulmonologist. The Board determined that he must operate under a plenary licensed physician order pursuant to N.J.A.C.13:44F-3.1(b)1-3 or from such other health care practitioner authorized by law to prescribe or order respiratory care and must adhere to the facility policies.
- c. The Board reviewed a fax from Douglas Johnson, inquiring as to whether DME companies are allowed to send CPAP units to patients homes and do the set-up over the phone. **The Board determined that, pursuant to N.J.A.C. 13:44F-3.3 (g), a licensed respiratory care practitioner who delegates tasks in an outpatient setting shall ensure that a 24 hour follow-up visit takes place after delivery of equipment to the patient, by a licensed respiratory care practitioner or a person exempt from licensure pursuant to N.J.S.A.45:14E-9 ©, for the purpose of conducting an in-person assessment of the equipment. The following shall be documented in writing.**
  1. **The documentation of the follow-up visit shall be maintained for all patients during the course of respiratory care, and for a period of one year following the termination of respiratory care services.**

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

**Mr. Johnson will be so advised.**

- d. The Board reviewed Respiratory Care Total Revenues for March, 2010, as informational.

#### **IV. INFORMATIONAL/FYI**

None.

#### **VI. LEGISLATION/REGULATIONS**

- a. The Board reviewed a letter from New Jersey Foundation for Aging, regarding Senate Bill 1799 or Assembly Bill 853, which requires that professionals licensed by the Board of Respiratory Care report incidents of abuse, neglect and exploitation of persons 18 years and over to Adult Protective Services Providers, inquiring as to what guidance the Board have provided licensees and what professional education opportunities has or will the Board make available to be sure licensees comply with this new law.

The Board reviewed this matter as informational. DAG Palan, advised the Board that Acting Director, Sharon Joyce, will inform MIS department to put a link on the Board of Respiratory Care website acknowledging that respiratory care practitioners are required to adhere to Mandatory Adult Protective Services (APS).

#### **VII. APPLICATION REVIEW**

None.

#### **VII. PUBLIC COMMENTS**

**None.**

#### **VIII. OTHER BUSINESS**

There being no other business to come before the Board in Public Session, on a motion by Janet Castronovo, seconded by Michael G. Brown, the meeting was adjourned and the Board moved

into Executive Session for the purpose of receiving counsel, to conduct one investigative inquiry to review seven items of old business.

The Board reconvened in public Session. The following disciplinary action is being reported in Public Session.

#### DISCIPLINARY ACTION

- a. I/M/O ALBERT MUSTILLO -A Consent Order was filed on April 27, 2010. Mr. Mustillo is cited for repeated acts of negligence by failing to set the external PEEP valve after changing the ventilator circuit and failed to perform a final ventilator setting review for his patient pursuant to N.J.S.A. 45:1-2(d). Respondent's license to practice respiratory care in the State of New Jersey is suspended for a minimum of five (5) years and he shall cease and desist from the practice of respiratory care.
  
- b. I/M/O DAVIS JOHN - A Consent Order was filed on April 28, 2010. The Board finding Respondent's admissions to stealing a blank prescription from a doctor's prescription pad, forging a prescription for Percocet and improperly attempting to have the prescription for Percocet filled at a pharmacy are acts of dishonesty and deception, pursuant to N.J.S.A. 45:1-21 (b). Respondent's license to practice respiratory care in the State of New Jersey is suspended for a minimum of two (2) years and he shall cease and desist from the practice of respiratory care.

The next scheduled meeting is June 1, 2010. There being no other business to come before the Board, on a motion by Michael G. Brown, seconded by Janet Castronovo, the Board adjourned the meeting at 2:30 p.m.

*Respectfully submitted,*

Dorcas K. O'Neal  
Executive Director





