

ALABAMA STATE BOARD OF RESPIRATORY THERAPY
ADMINISTRATIVE CODECHAPTER 798-X-7
DISCIPLINARY ACTION

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798-X-7-.01 Definitions.

(1) Reprimand: A formal censure by the Board.

(2) Fine: A monetary penalty imposed by the Board.

(3) Probation: The monitored practice of respiratory therapy which permits the respiratory therapist to continue to practice respiratory therapy pursuant to specified conditions as set forth by the Board.

(4) Suspension: The temporary withdrawal of the license by Board action.

(5) Revocation: The withdrawal of the license by Board action.

(6) Voluntary Surrender: The voluntary relinquishment of a license that has the force and effect of revocation.

(7) Abandonment: Acceptance of a patient assignment, thus establishing a respiratory therapist-patient relationship, and then ending the respiratory therapist-patient relationship without giving reasonable notice to supervisory personnel so that others can make arrangements for continuation of respiratory care.

Author: The Alabama State Board of Respiratory Therapy

Statutory Authority: Code of Ala. 1975, §§34-27B-1 thru 34-27B-17.

History: New Rule: Filed May 16, 2005; refilled August 10, 2005; effective September 14, 2005.

798-X-7-.02 Grounds For Denial Of A License.

The following may be grounds for denial of a license:

- (1) Failure to meet any requirement or standard established by law or by rules and regulations adopted by the Board.
- (2) Engaging in fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing licensure or taking any examination required for licensure.
- (3) A course of conduct that would be grounds for discipline under Chapter 798-X-7-.03.
- (4) Having disciplinary action pending or having a license denied, conditionally issued, reprimanded, placed on probation, suspended, revoked, or voluntarily surrendered in another state, territory or country.
- (5) Having been court-martialed or administratively discharged by a branch of the United States Armed Forces for any act or conduct that would constitute grounds for discipline in this state under Chapter 798-X-7-.03.
- (6) Failure to produce evidence of good moral character.
 - (a) The decision as to whether the applicant is of good moral character is within the discretion of the Board.
 - (b) Failure to show good moral character includes but is not limited to a criminal history or pattern of illegal conduct or disregard for the law.
- (7) Any other reasons authorized by law.

Author: The Alabama State Board of Respiratory Therapy
Statutory Authority: Code of Ala. 1975, §§34-27B-1 thru 34-27B-17.

History: New Rule: Filed May 16, 2005; refilled August 10, 2005; effective September 14, 2005.

798-X-7-.03 Grounds For Discipline Of A Licensee Or Denial Of Renewal Or Reinstatement.

The Board may reprimand, fine, probate, suspend, revoke or otherwise discipline any respiratory therapist upon proof that the person:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license by:

(a) Filing false, forged or altered documents or credentials, including required continuing education documentation.

(b) Misrepresenting or falsifying facts in applying for original licensure, renewal, reactivation, or reinstatement of license.

(c) Having another person appear for a licensing or certification examination.

(2) Has been convicted of a felony offense.

(3) Has been convicted of, or has entered a plea of no contest, nolo contendere, nolo contendere, or has entered a plea of guilt, regardless of court disposition (including adjudication withheld), to a charged criminal act involving moral turpitude or of gross immorality that would tend to bring reproach upon the respiratory therapy profession. Such criminal acts include, but are not limited to, offenses involving drugs, theft, lewdness, sexual misconduct, abuse, violence, fraud, or any other conduct deemed detrimental to the public's health, safety or welfare.

(4) Is impaired due to the use of alcohol, or is addicted to the use of habit-forming drugs to such an extent as to render the respiratory therapist unsafe or unreliable which includes but is not limited to:

(a) Testing positive for alcohol and/or unauthorized drugs.

(b) Misappropriation or diversion of drugs from the workplace.

(c) A pattern of abuse or misuse of habit forming and/or mood-altering drugs or alcohol.

(d) Impairment while on duty due to the use of drugs or alcohol.

(e) Refusal to submit to drug screen for cause.

(f) The use of alcohol or habit forming or mood altering drugs to the extent that medical or psychiatric treatment, rehabilitation, or counseling is medically determined or otherwise recommended by a legally authorized practitioner.

(5) Has been convicted of any violation of a federal or state law relating to controlled substances, including misdemeanor and felony offenses.

(6) Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, which includes but is not limited to:

(a) Failure to comply with the Alabama Respiratory Therapy Act and rules and regulations as well as federal, state or local laws, rules or regulations applicable to the area of respiratory therapy practice.

(b) Failure to practice respiratory therapy in accordance with the standards of practice adopted by the Board.

(c) Practice beyond the scope of practice as determined by, but not limited to educational preparation; license status; state and federal statutes and regulations; state and national standards appropriate to the type of practice; respiratory therapy experience; standardized procedures; knowledge, skills and ability to manage risks and potential complications; and required instruction and supervision.

(d) Failure to assess and evaluate a patient's status.

(e) Failure to institute respiratory therapy interventions that might be required to stabilize a patient's condition or to prevent complications.

(f) Failure to:

(i) Use appropriate respiratory therapy judgment;

(ii) Administer medications and treatments in a responsible manner; or

(iii) Demonstrate competence in administering or carrying out patient care.

(g) Failure to make entries, destroying or altering entries, charting before assessment or delivery of care, or making false entries in patient, employer, or employee records.

(h) Failure to timely, accurately, legibly, and completely report and document on appropriate records a patient's status, including signs and symptoms, responses, treatments, medications, other respiratory care rendered, communication of pertinent information to other health team members, and unusual occurrences involving the patient.

(i) Assigning patient care in a manner that fails to take into consideration patient safety.

(j) Assigning respiratory therapy functions to others who lack the educational preparation, license, credentials, competence, experience, knowledge, or physical, mental or emotional ability to perform the assigned functions.

(k) Failure to provide adequate supervision, management, or training of individuals to whom respiratory therapy functions or responsibilities are delegated or assigned.

(l) Gross negligence in the practice of respiratory therapy.

(m) Abandoning or neglecting patients. A certified copy of the record of a state or federal agency that substantiated neglect of a patient shall be conclusive evidence of patient neglect.

(n) Failure to safeguard the patient's dignity, right to privacy, and confidential health information.

(o) Intentionally or negligently causing or permitting physical, sexual, emotional, or verbal abuse of a patient, willfully harassing or intimidating a patient. A certified copy of the record of a state or federal agency that substantiated patient abuse shall be conclusive evidence of abuse, harassment, or intimidation of a patient.

(p) Violating professional boundaries of the respiratory therapist-patient relationship which includes but is not limited to:

(i) Sexual or intimate conduct with a patient, patient's immediate family member(s) or significant other(s); or

(ii) Emotional or financial exploitation of the patient or the patient's immediate family member(s) or significant other(s).

(q) Exhibiting unethical or unprofessional conduct or behavior in the workplace.

(r) Engaging in fraud, deceit or misrepresentation in seeking employment, practicing, or seeking to practice that includes but is not limited to:

(i) Alteration of a temporary permit, identification card or license,

- (ii) Falsification of credentials,
- (iii) Falsification of employment records, and
- (iv) Representing oneself as a respiratory therapist without a license. Representation as a respiratory therapist includes using in connection with a person's practice the words "respiratory care professional," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," "licensed respiratory therapist," "inhalation therapist," or "respiratory therapy technician," or use the letters "R.C.P." or "L.R.T." or use any other words, letters, abbreviations, or insignia implying that the person is a respiratory therapist.
- (s) Commission of fraudulent acts in advertising, insurance, or in billing for services, which includes, but is not limited to:
 - (i) Medicare or other federal government programs,
 - (ii) Medicaid or other state government programs, and
 - (iii) Commercial insurance or health plan.
- (t) Aiding, abetting, or assisting an individual to violate or circumvent any law or rule intended to guide the conduct of a respiratory therapist or any other licensed health care provider.
- (u) Failure to ensure verification of current Alabama licensure and credentials of respiratory therapy personnel for whom the respiratory therapist is administratively responsible.
- (v) Personal use of unauthorized or illegal drugs or substances or obtaining, furnishing or administering drugs or controlled substances to any person, except as directed by a legally authorized prescriber.
- (w) Appropriating anything of value, use or benefit, including but not limited to:
 - (i) Any real or personal property of the patient, employer, or any other person or entity; or
 - (ii) Failing to take precautions to prevent such misappropriation.
- (x) Practicing while the mental or physical ability to practice is impaired by any mood-altering drugs or

substances or by a physical, mental, or emotional disorder that renders the respiratory therapist unable to perform with reasonable skill and safety.

(y) Failure to report illegal, substandard, unethical, unsafe or incompetent respiratory therapy practices.

(z) Having a license denied, conditionally issued, reprimanded, placed on probation, suspended, revoked, or voluntarily surrendered in another state, territory or country, or having been court-martialed or administratively discharged by a branch of the United States Armed Forces for any act or conduct which would constitute grounds for disciplinary action in this state. A certified copy of the record of the agency that took such action shall be conclusive evidence of the grounds for discipline.

(7) Has failed to respond to official Board correspondence, including but not limited to requests for information, subpoenas, or notices.

(8) Has willfully or repeatedly violated any of the provisions of a statute or rule that includes but is not limited to:

(a) Practicing or seeking to practice respiratory therapy without a current license.

(b) Impersonating an applicant for licensure or another licensed practitioner or permitting or allowing another person to use the respiratory therapy license.

(c) Continued violation of statute or rule after notice by the Board.

(d) Failure to comply with any stipulated terms and conditions of any Board order or contract.

(9) Failed to comply with continuing education requirements.

(10) Submitted payment of any fees or fines to the Board with a worthless check, invalid credit card, or by any other method that is not honored by the financial institution.

(11) Poses a risk to public safety for any other reasons stated by law.

(12) Violates the code of ethics adopted and published by the AARC or its successor organization.

Author: The Alabama State Board of Respiratory Therapy
Statutory Authority: Code of Ala. 1975, §§34-27B-1 thru 34-27B-17.

History: New Rule: Filed May 16, 2005; refilled August 10, 2005; effective September 14, 2005. **Amended:** Filed December 22, 2009; effective January 26, 2010.

798-X-7-.04 Investigation.

(1) Upon self-disclosure or receipt of a written complaint alleging that a respiratory therapist has violated a statute or rule by committing one or more of the actions specified as grounds for disciplinary action, the Executive Director shall perform a preliminary review to determine if there is merit and sufficient evidence to warrant formal proceedings as outlined in Chapter 798-X-7-.04 (2).

(2) When the Executive Director determines there may be merit and sufficient evidence exists to warrant proceedings, an investigative committee shall be formed consisting of one Board member, one Board counsel, and the Executive Director.

(a) Within 30 days of self-disclosure or receipt of a written complaint, the Executive Director shall provide the respiratory therapist, against whom the complaint was made, written notification of the complaint, allegation(s), and investigation process by certified mail. The respiratory therapist may submit, to the Executive Director, a written response and any supporting documentation within 15 days of the receipt of the written notification.

(b) The committee shall review the complaint and other information submitted to determine if further investigation is warranted.

(i) If an investigation is warranted, an investigator shall be retained. The investigator shall work under the direction of the Executive Director to conduct further investigation

(ii) At the conclusion of the investigation, the investigator shall submit an investigation report to be reviewed by the Investigative Committee who has the authority to act on the report as described in Chapter 798-X-7-.05. The investigative committee shall send written notification to the complainant and the respiratory therapist, against whom the complaint was made, of any action it decides to take in response to the investigation report.

(c) If the committee determines that an investigation is not warranted, the Executive Director may close the investigative file, provided that the matter may be reinvestigated at any time if circumstances so warrant. The Executive Director shall

notify the complainant and the respiratory therapist, against whom the complaint was made.

(3) When a preliminary review discloses that further investigation is not warranted, the Executive Director may close the investigative file provided that the matter may be reinvestigated at any time if circumstances so warrant.

Author: The Alabama State Board of Respiratory Therapy

Statutory Authority: Code of Ala. 1975, §§34-27B-1 thru 34-27B-17.

History: New Rule: Filed May 16, 2005; refilled August 10, 2005; effective September 14, 2005.

798-X-7-.05 Board Action Following Investigation.

The Board or its authorized designee shall have the power to act on the report of the investigation as follows:

(1) Dismiss complaint.

(2) Commence disciplinary proceedings.

(3) Accept voluntary surrender of a license.

Author: The Alabama State Board of Respiratory Therapy

Statutory Authority: Code of Ala. 1975, §§34-27B-1 thru 34-27B-17.

History: New Rule: Filed May 16, 2005; refilled August 10, 2005; effective September 14, 2005.

798-X-7-.06 Administrative Procedure Act.

The Board hereby adopts by reference as its rules Sections 41-22-1 et seq., Alabama Administrative Procedure Act, Code of Ala. 1975, as amended, governing contested cases, appeals, and related proceedings.

Author: The Alabama State Board of Respiratory Therapy

Statutory Authority: Code of Ala. 1975, §§34-27B-1 thru 34-27B-17.

History: New Rule: Filed May 16, 2005; refilled August 10, 2005; effective September 14, 2005. **Amended:** Filed March 24, 2006; effective April 28, 2006.

798-X-7-.07 Formal Disposition Of Contested Cases.

(1) At least thirty days prior to the administrative hearing, a notice of hearing and a copy of the charges shall be served on the applicant or respiratory therapist personally or by registered or

certified mail to the last known address shown on the records of the Board.

(2) The Board's complaint may be amended prior to the hearing but no amendment shall be permitted which is not germane to the charge or charges or which materially alters the nature of any offense charged. The Board shall have the right to determine the sufficiency of the complaint.

(3) A motion for withdrawal of the complaint may be filed with the Board's designee. The circumstances surrounding the attempt to withdraw the complaint may be explained by the person who is attempting to withdraw the complaint and the explanation shall be considered. No complaint that is well-founded will be dismissed solely upon the motion of the original complainant.

(4) Pleadings relating to disciplinary proceedings pending before the Board shall be filed with the Board's designee. Pleadings shall be deemed filed upon actual receipt.

(5) Requests for subpoenas shall be filed with the Board at least ten days prior to the hearing along with the appropriate subpoena-processing fee. Any expense for service by a sheriff, process server or other entity shall be the responsibility of the party requesting the subpoena. Any expenses incurred relative to subpoenas requested by a respondent, either for witnesses or related to production of documents are the responsibility of the party who requested the issuance of said subpoena.

(6) The hearing shall be conducted by the Board or by a hearing officer appointed by the Board. All testimony shall be under oath and shall be transcribed by a court reporter scheduled by the Board. Telephonic or other real-time electronic testimony is admissible at the discretion of the hearing officer.

(7) A continuance may be granted by the Board or its designee upon the filing of a written motion and affidavit detailing the reasons for the continuance. No motion for continuance shall be granted unless filed at least five days prior to the hearing. This provision may be waived upon showing of an emergency.

Author: The Alabama State Board of Respiratory Therapy
Statutory Authority: Code of Ala. 1975, §§34-27B-1 thru 34-27B-17.

History: New Rule: Filed May 16, 2005; refilled August 10, 2005; effective September 14, 2005.

798-X-7-.08

Informal Disposition Of Contested Cases.

(1) Complaints or controversies may be considered and resolved by the Board or Board designee through alternative dispute resolution, informal conferences, meetings, or other informal

means. Such informal measures shall be held without prejudice to the right of the Board thereafter to institute formal proceedings based upon the same or related material if circumstances so warrant.

(2) Informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing and as approved by the Board.

Author: The Alabama State Board of Respiratory Therapy

Statutory Authority: Code of Ala. 1975, §§34-27B-1 thru 34-27B-17.

History: New Rule: Filed May 16, 2005; refilled August 10, 2005; effective September 14, 2005.

798-X-7-.09 Decisions Of The Board.

(1) Based upon the evidence presented at the administrative hearing or pursuant to informal disposition the Board action may be one or more of the following:

- (a) Dismiss the complaint.
- (b) Reprimand the respondent.
- (c) Probate the respondent's license.
- (d) Suspend the respondent's license. A suspended license is subject to expiration during the suspension period.
- (e) Revoke the respondent's license.
- (f) Deny approval of the application.
- (g) Deny renewal or reinstatement of a license.
- (h) Impose other sanctions or restrictions.

(2) The Board may levy a fine not to exceed \$500.00 per violation. Each day of a violation after notice may be considered as a separate violation.

(3) The decisions of the Board shall be in writing in the form of an order, a copy of which shall be mailed or delivered to the respondent or the respondent's attorney.

(4) The decisions of the Board shall be subject to public dissemination.

(5) Appeals from decisions of the Board are to the Circuit Court of Montgomery County, Montgomery, Alabama and are to be perfected in accordance with the Administrative Procedure Act.

Author: The Alabama State Board of Respiratory Therapy

Statutory Authority: Code of Ala. 1975, §§34-27B-1 thru 34-27B-17.

History: New Rule: Filed May 16, 2005; refilled August 10, 2005; effective September 14, 2005.

798-X-7-.10 Application Following Denial Of Licensure.

(1) Application for a license following denial of licensure shall:

(a) Include evidence of rehabilitation, or elimination or resolution of the conditions for denial.

(b) Be made according to Chapter 798-X-5.

(2) Board action on applications following denial of licensure may be resolved either informally or through the formal hearing process.

(3) In considering a subsequent application for licensure, the Board may evaluate factors that include but are not limited to:

(a) The severity of the act(s) or omission(s) which resulted in the denial of license.

(b) The conduct of the applicant subsequent to the denial of license.

(c) The lapse of time since denial of license.

(d) Compliance with any conditions stipulated by the Board as a prerequisite for a subsequent application.

(e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.

(f) Whether the applicant is in violation of any applicable statute or rule.

Author: The Alabama State Board of Respiratory Therapy

Statutory Authority: Code of Ala. 1975, §§34-27B-1 thru 34-27B-17.

History: New Rule: Filed May 16, 2005; refilled August 10, 2005; effective September 14, 2005.

798-X-7-.11 Reinstatement Of A Revoked License.

(1) Application for reinstatement:

(a) May be made twelve months after the effective date of revocation unless otherwise specified in Order or Agreement.

(b) Shall be made according to forms and guidelines provided by the Board.

(2) Applications for reinstatement of a revoked license may be resolved informally or through the formal hearing process.

(3) In considering reinstatement of a revoked license, the Board may evaluate factors that include but are not limited to:

(a) Severity of the act(s) that resulted in revocation of the license.

(b) Conduct of the applicant subsequent to the revocation of license.

(c) Lapse of time since revocation.

(d) Compliance with all reinstatement requirements stipulated by the Board.

(e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.

(f) Whether the applicant is in violation of any applicable statute or rule.

Author: The Alabama State Board of Respiratory Therapy

Statutory Authority: Code of Ala. 1975, §§34-27B-1 thru 34-27B-17.

History: New Rule: Filed May 16, 2005; refilled August 10, 2005; effective September 14, 2005.