COMMONWEALTH OF MASSACHUSETTS

THIS AGENDA CONSTITUTES NOTICE OF THE REGULARLY SCHEDULED MEETING OF THE BOARD OF RESPIRATORY CARE
IN COMPLIANCE WITH THE OPEN MEETING LAW, M.G.L. c. 30A, § 20
Thursday, January 16, 2025
1:00 p.m.
General Session is open to the public and will be held via Zoom at:
https://zoom.us/j/92499144012?pwd=pRqy5rw1L0WJxlAXBNCECgVwAinRLo.1
Call-In Telephone number: 1-929-436-2866
Meeting ID: 924 9914 4012

Agenda

All votes must be via roll call

Time	Item #	Item	Staff Contact
1:00p.m.	**I**	**Call to Order & Introductions** **Determination of Quorum** **Notice of Electronic Recording**	Board Chair
	II	**Approval of Agenda**	Board Chair
	III	**Approval of Minutes** A. Approval of December 19, 2024, General Session Minutes.	Board Chair
	IV	**Telehealth Policy for the Board of Respiratory Care: Sub-Regulatory Guidance on Telehealth Services**	Board Counsel
	V	**261 CMR 3.06 Respiratory Care Limited License Clarification Memo**	Executive Director Assistant Executive Director
	VI	**Triage: N/A** **Staff Assignment(s): N/A** **Complaints: N/A**	N/A

Board of Respiratory Care

ADA Compliance Notice: If you need reasonable accommodations in order to participate in the meeting, contact Stacy Hart the DPH ADA Coordinator at phone number 857-274-1120 in advance of the meeting. While the Board will do its best to accommodate you, certain accommodations may require distinctive requests or the hiring of outside contractors and may not be available if requested immediately before the meeting.

	VII	**Flex Session** A. Who will attend the next board meeting? B. Discussion on regulation updates for 261 CMR C. Topics for next agenda	Executive Director
	VIII	**Adjournment:** Next meeting scheduled for February 20, 2025.	Board Chair

ADA Compliance Notice: If you need reasonable accommodations in order to participate in the meeting, contact Stacy Hart the DPH ADA Coordinator at phone number 857-274-1120 in advance of the meeting. While the Board will do its best to accommodate you, certain accommodations may require distinctive requests or the hiring of outside contractors and may not be available if requested immediately before the meeting.

Commonwealth of Massachusetts
Department of Public Health
Bureau of Health Profession Licensure
Board of Respiratory Care
250 Washington Street
Boston, MA 02108

January 16, 2025
Via Zoom

GENERAL SESSION MINUTES (OPEN SESSION)

Board Members Present	William Beal, Consumer, Board Vice Chair Jason Morin, Respiratory Therapist, Board Chair Brian Bloom, MD Adrian Velasquez, MD
Board Members Not Present:	Daniel Fisher, Respiratory Therapist Meaghan Kaplan, Consumer Adelline Ntatin, Nurse
Staff Present:	James Lavery, Bureau Director, BHPL Lauren Nelson, Deputy Bureau Director, BHPL Steven Joubert, Executive Director, Multi-Boards, BHPL Tracy Tam, Assistant Executive Director, Multi-Boards, BHPL Tracy Ottina, Board Counsel, BHPL Kayla Mikalauskis, Management Analyst, Multi-Boards, BHPL Matvei Arefev, Office Support Specialist, Multi-Boards, BHPL Danielle MacFarland Office Support Specialist, Multi-Boards, BHPL

I. Call to Order | Determination of Quorum | Notice of Electronic Recording

Mr. Jason Morin, Board Chair, called the General Session of the Board of Respiratory Care meeting to order at 1:03 p.m. Mr. Morin reminded board members the meeting was being recorded and asked for a roll call vote to determine quorum. Mr. William Beal: present, Dr. Brian Bloom: present, Mr. Jason Morin: present, Dr. Adrian Velasquez: present.

Absent: Daniel Fisher, Meaghan Kaplan, Adelline Ntatin

II. Conflict of Interest | Approval of Agenda

Discussion:
The General Session Agenda for January 16, 2025, were reviewed for approval.

Action:
Motion to approve the agenda was made by Mr. William Beal, seconded by Dr. Brian Bloom, and unanimously passed by roll call vote as follows: Mr. William Beal: yes, Dr. Brian Bloom: yes, Mr. Jason Morin: yes, Adrian Velasquez: yes.
Absent: Daniel Fisher, Meaghan Kaplan, Adelline Ntatin

Document: January 16, 2025, General Session Agenda

III. Approval of Minutes
The General Session Minutes for December 19, 2024, were reviewed for approval.

Discussion:
Dr. Brian Bloom stated there is a correction that is needed to be made in the wording of the December 19, 2024, General Session Minutes. Dr. Brian Bloom stated in section IV. the discussion regarding a woman providing education without physician supervision, the wording on document stated "division' of education, and should state "provision" of education.

Action:
Motion to approve the minutes as amended was made by Mr. William Beal, seconded by Dr. Brian Bloom, and unanimously passed by roll call vote as follows: Mr. William Beal: yes, Dr. Brian Bloom: yes, Mr. Jason Morin: yes, Adrian Velasquez: yes.
Absent: Daniel Fisher, Meaghan Kaplan, Adelline Ntatin

Document: December 19, 2024, General Session Minutes

IV. Follow-up Discussion on Telehealth Policy for the Board of Respiratory Care

Discussion:
Mr. Steven Joubert stated Ms. Tracy Ottina has been elected as new Board Counsel. Ms. Ottina stated she had amended the policy by removing the section on Mass General Law 32A regarding health insurance because it had nothing to do with the actual practice of Respiratory Care. Ms. Tracy Ottina stated that particular wording has been eliminated, so in the updated version of the guidance, it is more accurate. Mr. Jason Morin stated he did not see anything that looked problematic, except section four regarding Quality of Care. Mr. Jason Morin stated his question refers more to enforcement. Mr. Jason Morin stated the description was vague and would put the responsibility on the Provider to have some sort of document to a continuous evaluation program.

Ms. Tracy Ottina stated the wording was intentional because what is encompassed is the Healthcare Provider must continue to practice within the standard and that constantly evolves so it is less about creating confusion and more to allow the law to stay abreast of any changes without having to redo a policy on a constant basis.

Ms. Meaghan Kaplan entered the meeting at 1:08 pm.

Mr. Jason Morin stated the way he interprets this is the only way to be non-compliant would be to do nothing and as long as they are documenting some sort of continuous evaluation of this process, they would be in compliance with that provision. Ms. Tracy Ottina agreed with Mr. Jason Morin and stated sometimes it depends on the practice as well. Ms. Tracy Ottina stated in regard to enforcements, part of her role as Board Counsel, she assists the board with determining what additional information is needed to meet the burden of proof which is preponderance to the evidence and if the board sends that to prosecution.

Mr. Jason Morin stated his second question was pertaining to section III. Mr. Jason Morin stated we know that there are National Providers who do not have a physical presence in Massachusetts who are doing Telehealth. Mr. Jason Morin stated he fully agrees with having the in person however, when it comes to adoption, is an option such as a company who does not contract with Respiratory Therapists physically located in Massachusetts could just have referral arraignments with a local Provider? Ms. Tracy Ottina agreed with Mr. Jason Morin and stated that is the intent, if a patient would like to see a Provider in person and the Providers within that organization are located outside of Massachusetts, and have no Providers that are licensed in Massachusetts that are physically present, they can provide the patient with a list of numbers and organizations of Respiratory Therapist located in Massachusetts that the patient is free to contact for that in person appointment.

Dr. Brian Bloom asked if a patient declines Telehealth, is it up to the patient to find a Provider or is it up to the providing respiratory company? Ms. Tracy Ottina stated as a general rule it falls on the Provider to assist the patient with at least a list of providing Respiratory Therapist, it doesn't necessarily mean the Provider is responsible for ensuring the patient contacts the Providers. Dr. Brian Bloom asked if this would incur some additional cost to the patient? Ms. Tracy Ottina stated no. Dr. Brian Bloom stated he would hope that if a patient was contacted about setting up an appointment via Telehealth, and the patient declines, that it would be incumbent on the Practitioner to provide an inhouse live Respiratory Therapist to the patient, rather than not. Mr. Jason Morin stated the challenge with that is if there is a commercial payer that is not a state or federal program, their contracted network Providers are not always public so we can add some language that makes this clear. Ms. Tracy Ottina agreed with Mr. Jason Morin and stated there are so many important factors such as private insurance or trying to find a list of providers that is not public. Ms. Tracy Ottina stated she wants to be cautious that the board does not overstep into insurance law, or regulations the state has

in place. Dr. Brian Bloom reiterated an in-person option must be provided to patients who prefer face to face visits. Ms. Tracy Ottina stated it would be on a case-by-case basis, however as a Prosecutor she would look at this language and if a Practitioner was not following the Standard of Care that would be clear to her and would prosecute based on that.

Mr. William Beal presented a question to Dr. Brian Bloom and Dr. Adrian Valasquez. Mr. William Beal stated more and more often software companies are coming up with mask fitting programs and guidance from new patients. Mr. William Beal stated the DME's subscribe to this and how do they feel with software companies with little or no human interface and relates to patients and this law? Dr. Brian Bloom stated that he thinks software assisting patients for those that are able to use software is better than nothing at all which is the more common practice. Mr. William Beal asked how does this fall with the proposed regulations? Dr. Brian Bloom stated the current state of the art is a patient gets some equipment mailed to them and gets a link to a YouTube video. Dr. Brian Bloom stated if something like a mask leaking takes place, they will figure it out but has no issue with adding additional technology to what's currently offered. Ms. Tracy Ottina added as technology evolves and the standard of practice evolves with it, the language covers that because we look at the Standard of Care and what is current. Ms. Tracy Ottina stated she looks at where the Healthcare Professional is practicing, what is the standard of care, and if they are not meeting it because they are using protocols that are no longer used or have discontinued, they can be subject to discipline for substandard care.

Mr. William Beal asked if there is any benefit to taking this proposed policy and asking for input from a couple of Providers? Mr. Jason Morin stated he thinks they should post this for public comment before it is finalized because it would be good to get broader stakeholder review besides just from the Board of Respiratory Care. Ms. Tracy Ottina deferred to Deputy Bureau Director Ms. Lauren Nelson to discuss this further. Ms. Lauren Nelson stated Ms. Tracy Ottina would need to determine whether it would be ok to put it out to stakeholder comment before it is final because this is not something we typically do. Ms. Tracy Ottina stated she would reach out to Chief Board Counsel Ms. Heather Engman for what would be the most appropriate process and would follow up the board, so this matter is not delayed.

Mr. Jason Morin asked if this matter could not be posted for public comment, are board members allowed to circulate it within our professional circles for feedback? Ms. Tracy Ottina stated this discussion is part of the public session, so there is nothing in the regulations or open meeting law that prohibits the board from discussing this with your colleagues. Mr. Jason Morin stated he would share this with the American Association of Homecare, the Massachusetts Board of Respiratory Care and the Northern Essex Respiratory Care Program. Mr. William Beal stated he would reach out to the manufacturers because previous discussions with them have shown that they are starting to look into this on their own and their feedback would be helpful. Mr. Jason

Morin and Mr. William Beal stated they would send an email to Mr. Steven Joubert with organizations to share this discussion with.

V. Respiratory Care Limited License Clarification Memo

Discussion:

Mr. Steven Joubert stated the memo was outlined so the members of the public, licensees, and limited license holders know what the parameters are in obtaining a license, restrictions and when it is expired. Mr. Steven Joubert asked the board if they would like to add any specific language to the memo to clarify any questions that licensees, administrators, or the general public may have.

Mr. Jason Morin stated his biggest concern was Item C, "the licensee or applicant would be able to sit for licensure examination". Mr. Jason Morin stated the licensee or applicant would not be eligible to sit for licensure examination when they are applying for limited licensure and cannot do so until they have graduated. Mr. Jason Morin stated this would mean many people operating under a limited license now would no longer meet these criteria and would not be useful moving forward because once they have graduated and are eligible, there is only a short window where they are not licensed. Mr. Steven Joubert stated this language is from the regulations and it does tell them they can practice with the limited license but does expire once they have completed and successfully passed the exam. Mr. Jason Morin stated what needs to be discussed is the intent of this limited licensure. Mr. Jason Morin stated from his experience while he was in school, the first year of completion of the Respiratory program, students are applying and receiving these limited licenses, working the entire second year under direction of their supervisor or school, however the limited license is being used for some period of time. Mr. Jason Morin stated if the intent of this licensure is only for that brief period between graduation and certification, that is not how it is being used today and if changed, it will significantly impact the Respiratory Care world and access to Respiratory Therapists.

Dr. Brian Bloom asked Mr. Jason Morin for students to function as students, do they require a limited license? Mr. Jason Morin stated no, they all go through clinical internships that are independent of their work under the student license and the college does not monitor their work beyond ensuring what they are doing are skills that they have been thoroughly trained and tested in and have passed those sections of the curriculum. Dr. Brian Bloom asked Mr. Jason Morin if he thinks that was the intent from the legislature that created limited licenses? Mr. Jason Morin stated he does not know when this was created, but it goes way back beyond his time in school, however, he did take advantage of this when he was in Respiratory school where he was able to work for a full year and taught him a lot that he may not have learned only through the regular curriculum. Dr. Brian Bloom asked if the board currently are giving people licenses that do not meet the criteria? Mr. Jason Morin stated if item C is in the regulation today, then yes because nobody who after one year of Respiratory school is eligible to sit for licensure examination. Dr. Brian Bloom stated the discrepancy is the board is currently

giving out licenses in violation to this regulation. Mr. Steven Joubert stated we are approving these licenses for people who are enrolled in a program, have completed their clinical and are being supervised. Mr. Jason Morin stated based on what he has read and what he knows is this regulation probably made more sense when an associate's degree was not required to sit for examinations, so the process took a lot longer which is why the one-year period was needed. Mr. Jason Morin stated his suggestion would be to change the regulation or understand that if this regulation is enforced, the practice as of today is non-compliant.

Ms. Tracy Ottina stated in order to change a regulation there is process by law that needs to be followed. Mr. Jason Morin asked what do we do with the licensed Respiratory Therapist students that are not eligible as well as the next crop of students? Ms. Tracy Ottina stated she would like to speak the board's Chief Board Counsel, Deputy, and General Counsel to ensure that any direction provided is accurate and consistent. Mr. James Lavery stated he wanted to like to look at the legal and regulations side of this matter and is great that this is being bought to light in a specific way. Mr. James Lavery stated he is unaware of what the resolution of this is at this point but would like to ensure that everyone is interpreting this correctly. Mr. James Lavery stated we will revisit this next board meeting.

Mr. Jason Morin asked is there in any interpretation on what the word eligible means. Mr. Jason Morin stated in the regulation from the National Board of Respiratory Care and their requirement is that the applicant can be a graduate and have a minimum of an associate degree from a Respiratory Therapy education program supported or accredited by commission on accreditation of Respiratory Care. Mr. James Lavery stated he is not prepared to make that determination and this what we will be looking at. Mr. Jason Morin stated he will email Mr. Steven Joubert the link and language for reference.

Dr. Adrian Velasquez stated it appears that with this one-year lag, applicants tend to take the exam at the end of that year so that they do not have to report if they failed because if they take the exam in the first month and fail, then they have to report it. Mr. Jason Morin stated he does not have specific instances to reference, but he does question if these failures are being self-reported because they do not fully understand their obligation to self-report. Mr. Steven Joubert stated in regard to this, there has been a PowerPoint that has been drafted and sent to the commissioner's office for review to finalize any elements of it. Mr. Steven Joubert stated the intent of this is to reach out to schools to educate them on the regulations, limited licensure, expiration dates, and the graduate's responsibility to inform the board when they have failed exams. Ms. Tracy Ottina stated as an example, if a physician fails the United States Medical Licensing Examination, it is then put in a national data bank, and the Board of Medicine would receive that.

VI. Triage: N/A
Staff Assignments: N/A
Complaints: N/A

VII. Flex Session:

Mr. Steven Joubert asked who would be in attendance for the next board meeting? Dr. Brian Bloom and Mr. Jason Morin stated they would be unavailable. Dr. Adrian Valasquez stated he is not sure if he will be able to attend. Mr. Steven Joubert stated there may be an issue with quorum for that date and would circle back with the board for a new proposed date.

Mr. Steven Joubert stated up next is regulation updates for 261 CMR. Ms. Lauren Nelson introduced herself to the board and stated she would share a PowerPoint to explain some of the regulatory process. Ms. Lauren Nelson stated amendments to board regulations are considered when they are mandated by Legislation, Executive Order, Legal Action, or Emergency. Ms. Lauren Nelson stated as a side note, amendments may be considered when it has been more than two years since the last prior amendments were promulgated, and the need for proposed changes and justification to begin the amendment process have been specifically articulated. Ms. Lauren Nelson stated what this means is before you actually going through a regulation and inputting language that you want for amendments, there is a process. Ms. Lauren Nelson stated you have to say no legislation has come up, but times have changed, things have changed and because of this, conflict has been created. Ms. Lauren Nelson stated you need to innumerate this in such a way as to make it inevitable that the regulation must be changed. Ms. Lauren Nelson stated she does not want to dissuade the board on updating the regulations but wanted to educate the board on what it takes to do so. Ms. Lauren Nelson stated for clarity, once a regulation is open, and it is determined there is going to be an amendment to some regulation, then the opportunity to make multiple amendments to that same regulation will be available. Ms. Lauren Nelson stated that this process begins when the board decides to open up and amend these regulations, then for the Commissioner to decide. Dr. Brian Bloom asked if we need to get on the multi-year list that was formulated in September to have the Sub-Committee start to look at regulations that need to be fixed? Ms. Lauren Nelson stated the Sub-Committee would be the way to get on the list, to which Dr. Brian Bloom stated this is an issue because this is not our first time moving towards trying to form this Sub-Committee without being shot down directly. Mr. Steven Joubert stated we can determine a time and date where we can establish a Sub-Committee an hour before General Session or another day entirely. Ms. Lauren Nelson stated she could work with the Board Staff and then have the regulation sent back for any changes before making a proposal.

Dr. Brian Bloom asked what degree of collaboration is allowed between board members regarding open meetings? Ms. Tracy Ottina stated any type of collaboration that you engage in outside of the meeting is subject to public records. Dr. Brian Bloom stated that it would tremendously more efficient if the board could email each other back and forth regardless of if the information is discoverable. Mr. James Lavery stated it's not the issue of the information being discoverable, its whether or not it is allowable in open meeting law. Mr. James Lavery stated we need to confirm with the legal office

what can be done and lets makes this a priority to look at all the regulations in regard to what needs updating.

Mr. James Lavery and Ms. Lauren Nelson left the meeting at 2:14 pm

Mr. Steven Joubert asked the board if there was anything anyone would like to add for the next meeting? Mr. Jason Morin confirmed that everything discussed would be followed on next meeting. Mr. Jason Morin stated the next meeting is no longer scheduled for February 20, 2025, and Mr. Steven Joubert would follow up with future dates.

VI. Adjournment:

Action:
Motion to adjourn was made by Mr. William Beal: yes; seconded by Dr. Adrian Valasquez: yes, and unanimously passed by roll call vote as follows: Mr. William Beal: yes, Dr. Brian Bloom: yes, Mr. Jason Morin: yes, Adrian Velasquez: yes.

Absent: Daniel Fisher, Meaghan Kaplan, Adelline Ntatin

Let the record show that the meeting was adjourned at 2:18 p.m.

Respectfully Submitted:
The Board of Respiratory Care