

Report of Preliminary Assessment for State Regulation
of
Respiratory Therapists

Office of Professional Regulation
November 1, 1999

Report of Preliminary Assessment for State Regulation of Respiratory Therapists

I. Introduction

Pursuant to 26 V.S.A. § 3105(d) and Part I of the Administrative Rules for procedure for Preliminary Sunrise Review Assessments by the Secretary of State's Office of Professional Regulation, the application for licensure of Respiratory Therapists was received by this Office on May 30, 1999. A public hearing was noticed for and convened at 1:00 P.M. on July 28, 1999 to take testimony and receive additional documentation. Approximately 25 people attended the public hearing, and twelve testified. A deadline of August 12, 1999 was established for submission of any additional written information, after which the record in this proceeding was closed.

The purpose of this proceeding was to evaluate and report on the appropriateness of professional regulation of Respiratory Therapists according to the statutory criteria provided by 26 V.S.A. § 3105(a), as required by 26 V.S.A. § 3105(d). That provision requires that:

§ 3105 Criteria and standards

(a) A profession or occupation shall be regulated by the state only when:

- (1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;
- (2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
- (3) the public cannot be effectively protected by other means.

II. Findings

1. An application for preliminary sunrise review assessment was submitted on May 30, 1999 by Jamie Fell, RRT, of Winooski, Vermont.
2. There are approximately 110 Respiratory Therapists practicing in the State. About 70% of those practice in a hospital setting and the remainder are with home care agencies.
3. Respiratory Therapists in the State of Vermont are a critical component of a health care team.
4. Respiratory Therapists must work under the direction of a licensed physician.

5. While there is a certain amount of autonomy and independent judgment involved in the practice of Respiratory Therapy in the form of “therapist driven protocols”, that autonomy is limited by the close interaction of the Respiratory Therapist with other health care professionals.

6. There are few practicing Respiratory Therapists in Vermont who have been trained “on the job” and who have not passed the National Board for Respiratory Care (NBRC) Exam or who do not possess the national organization credentials of either Certified Respiratory Therapist Trainee (CRTT) or Registered Respiratory Therapist (RRT).

7. Other states’ licensing laws use the NBRC requirements as their standards for licensure.

8. The instances of harm offered by the proponents of regulation are, for the most part, anecdotal, unverified and have occurred in other states. Very few specific instances were recounted of harm occurring in Vermont that would have been prevented by the proposed regulation.

9. Examples of licensure and discipline in other states show that relatively few complaints are made per number of licensees in other states, even those much larger than Vermont. Of those complaints, few result in disciplinary action.

10. One of the major concerns of the proponents of regulation is the lack of a system to check the credentials and history of a Respiratory Therapist when he or she seeks employment in Vermont.

11. The testimony indicates that employers may have an information problem in that they currently do not have a system for adequately screening Respiratory Therapist candidates in the hiring process.

12. The proponents are seeking increased recognition, legitimacy and elevation of the status of their profession through licensure.

13. Written submissions indicate that there is not unanimity among the profession in favor of licensure.

14. It is inevitable that the costs associated with regulation of the profession will be passed on to the professional and borne by the marketplace, resulting in increased health care costs to consumers.

III. Conclusions

Pursuant to the above findings, the application for regulation of Respiratory Therapists by the Office of Professional Regulation does not meet the statutory criteria and standards set forth in 26 V.S.A. § 3105 for the following reasons:

A. It has not been demonstrated that the unregulated practice of Respiratory Therapy can clearly harm or endanger the health, safety, or welfare of the public. 26 V.S.A. § 3105(a)(1).

B. While there is always the possibility of danger or harm in any profession, the potential for harm to the public in this instance is not readily recognizable and is remote and speculative. 26 V.S.A. § 3105 (a)(1).

C. There is no doubt that the public currently benefits from the fine, skilled work accomplished by Respiratory Therapists as health care professionals. However, licensure will not function to increase that benefit to the public and would result in a negative benefit to cost ratio. 26 V.S.A. § 3105(a)(2).

D. The public is currently protected by other means, in the form of supervision by a licensed physician and oversight by hospitals and other health care institutions. There is sufficient institutional accountability in place to protect the public. 26 V.S.A. § 3105(a)(3).

E. The danger of hiring Respiratory Therapists who have been disciplined in other states or fired from other jobs within the state can better be resolved by increasing the exchange of information among employers, rather than through a costly system of regulation. 26 V.S.A. § 3105(a)(3).

IV. Recommendation

In accordance with 26 V.S.A. § 3105(d), the Office of Professional Regulation recommends that, based upon the information provided by the applicant and gathered in the form of written and oral public comment, the profession of Respiratory Therapist remain unregulated by the Office of Professional Regulation because the application has not met the standards and criteria set forth in 26 V.S.A. § 3105 and regulation would not be in the best interest of the public at this time.

Respectfully submitted this 1st day of November, 1999

Thomas J. Lehner
Director, Office of Professional Regulation