Report of Preliminary Assessment for State Regulation (Licensure)
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 regulation of Respiratory Therapists was received by this Office on June 30, 2003. A public hearing was noticed for and convened on September 3, 2003 to take testimony and receive additional documentation. Approximately 15 people attended the public hearing, and several testified. A deadline of September 15, 2003 was established for submission of any additional written information, after which the record in this proceeding was closed. The Office received several letters after the hearing date and before the comment deadline.

The purpose of this proceeding was to evaluate and report on the appropriateness of professional regulation of Respiratory Therapists in the state 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 of Fact

Based on the record in this proceeding, the following facts are found:

1. An application for preliminary sunrise review assessment was submitted on June 30, 2003 by Charles Bangley, RRT of Rutland, Vermont, on behalf of the Vermont / New Hampshire Society for Respiratory Care.

2. There are approximately 150 respiratory therapists practicing in the State.

3. Respiratory therapists provide direct and indirect respiratory care services including, but not limited to, the administration of pharmacological, diagnostic and therapeutic agents necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen by a physician, physician's assistant, or nurse practitioner.

4. Respiratory therapists transcribe and implement the written or verbal orders of physicians, physician's assistants or nurse practitioners pertaining to the practice of respiratory care.

5. Respiratory therapists observe and monitor signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions or behavior exhibit abnormal characteristics.

6. Respiratory therapists implement report, referral and respiratory care protocols or changes in treatment based on observed abnormalities, pursuant to a prescription from a physician, physician's assistant, or nurse practitioner. Respiratory therapists may initiate emergency procedures.

7. Practitioners may work in clinics, hospitals, skilled nursing facilities, residences, or any other appropriate place in accordance with a prescription or verbal order from a physician, physician's assistant, or nurse practitioner.

8. Approximately 5%f practitioners are engaged in an independent practice, 5% are engaged in clinical practice and the rest are practicing in a hospital setting.

9. For national certification, respiratory therapists must complete an AAS or BS degree in respiratory care, including clinical experience. Educational programs in the immediate vicinity include Champlain College and New Hampshire Community College. Local hospitals offer clinical training and specific training for critical care.

10. Respiratory therapists are currently certified under a voluntary program administered by the National Board for Respiratory Care.

11. The qualifications and training for respiratory therapists in this state vary, as does the use of assistive personnel who may not be credentialed by the national organization. There are hospitals and home health care organizations in this state currently using non-credentialed personnel.

12. Respiratory therapists work with a variety of health care professionals as a critical component of the health care team to administer a respiratory care plan for patients.

13. A respiratory therapist has the responsibility for the initial evaluation of the respiratory condition of patients, and then must select the means of oxygen delivery, respiratory

medications and treatment modalities which will most benefit the patient.

14. Respiratory therapy patients may include those with lung disease, heart disease, and other conditions that impair their breathing. Therapists may be responsible for ensuring the breathing of patients receiving conscious sedation out of the operating room, and are often the first responders to patients under cardio-pulmonary arrest, which may include intubation of the trachea.

15. Respiratory therapists monitor blood gasses, which often requires them to draw patients' blood and assess their findings.

16. While respiratory therapists collaborate with a variety of health care professionals, their scope of practice is considerable and they cannot be deemed to always be under the direct supervision of a licensed professional (nurse, doctor). Respiratory therapists have significant specialized expertise which is relied upon by those other professionals in administering a complete health care plan.

17. Respiratory therapists are often called upon by nurses and other medical staff who have the skills to assess patients but not the technical expertise regarding respiratory care.

18. Respiratory therapists are often in close contact with the responsible physicians in administering care to their patients and must act within certain protocol. However, they commonly make critical decisions that are of a life and death nature, making respiratory care changes within that protocol and without the direct supervision of a licensed professional.

19. Improper respiratory care evaluation or treatment can lead to unnecessary pain and suffering, as well as significant health complications such as cardiac or central nervous system events, among other complications which may be the result of the many different inhaled medications a respiratory therapist uses.

20. Respiratory therapists may train patients or their family members regarding respiratory care in the home setting. That training may currently be performed by anyone, regardless of credentials.

21. Respiratory therapists working in the home care setting work without supervision.

22. In small, rural hospitals, especially those without pulmonary specialists and particularly on the overnight shifts, respiratory therapists receive limited supervision.

23. The population being served by respiratory therapists is particularly vulnerable, in that many are elderly or are infants. Additionally, patients on ventilators are unable to talk.

24. There is a shortage of qualified respiratory therapists in the state, which leads to out-of-state recruitment of practitioners.

25. When a respiratory therapist is hired from another state, the new employer does not typically perform a thorough background check. Former employers are reluctant to give any negative information about former employees. Other states with licensing do not typically provide information to Vermont employers because they only share information with other licensing entities.

26. The national certifying and credentialing agency will not provide information on its members to prospective employers.

27. Because Vermont does not regulate respiratory therapists, it has become an attractive state for those licensed in other states and who are seeking to avoid disciplinary action or other professional issues in another state.

28. The applicant provided an example of a respiratory therapist hired in this state who was found to have sexually harassed his co-workers here. Although not revealed by the employer's initial hiring process, it was later found that the individual had been disciplined for the same behavior in a previous state where he was employed and licensed.

29. Testimony at hearing indicated that an employer unknowingly hired an incompetent practitioner who had practice issues in another state.

30. Vermont is one of five states in the nation without respiratory therapist licensure and is the only New England state without such regulation. Most people in Vermont assume respiratory therapists are licensed by the State.

31. Licensure is supported by the following individuals and groups (not all individuals are listed here):

Harry Chen, MD	
Harvey Reich, MD	Rutland Regional Medical Center
Pat Tracy, RN	
Jill Lord, RN	Mt. Ascutney Hospital
Thomas Lang, RRT	
Gerald Davis, MD	UVM Medical School
M. Beatrice Grause, Pres.	Vt. Assoc. of Hospitals and Health Systems
Katherine Anderson, RN	Brattleboro Memorial Hospital
Susan Farrell, RN, Chair	Vermont Board of Nursing
Richard Wilcox, Pres.	NE Medical Dealers Equipment Association
American Lung Association	
Better Breathers Support Network.	

32. The applicant has obtained 110 respiratory care practitioner signatures in favor of a consensus statement to regulate respiratory therapists, with four in opposition. The applicant now has a verbal agreement with those four as well, in favor of licensure.

33. The office did receive a letter in opposition to regulation from Don Swartz, M.D., of the Department of Health's Division of Health Improvement, stating that the current system of accountability and supervision by employers is sufficient and regulation is not warranted.

34. The proponents are seeking increased recognition, legitimacy, public protection and elevation of the standards of the profession through licensure.

35. Many written submissions indicate that there is consensus among the profession in favor of licensure.

36. It is inevitable that the costs associated with regulation of the profession will be passed on to the professional in the from of licensing fees and will eventually be borne by the marketplace, resulting in increased health care costs to consumers. However, given that most respiratory care practitioners are already credentialed on the national level and engage in some continuing competency training, it is not expected that the costs to the professionals or to employers will significantly increase or have any significant impact on health care costs.

III. Conclusions

Pursuant to the above findings, the application for licensure of Respiratory Therapists by the Office of Professional Regulation does meet the statutory criteria and standards set forth in 26 V.S.A. § 3105 for the following reasons:

A. It has been demonstrated that the unlicensed practice of respiratory therapy can clearly harm or endanger the health, safety, or welfare of the public. Specific examples of harm have been provided with regard to both treatment of patients and hiring of practitioners. 26 V.S.A. § 3105(a)(1).

B. The potential for harm to the public is readily recognizable and is not remote and speculative. 26 V.S.A. § 3105 (a)(1).

C. Licensure will function to increase the benefit to the public and would not result in a negative benefit to cost ratio. 26 V.S.A. § 3105(a)(2).

D. The public is not currently adequately protected by other means, in the form of supervision by a licensed physician or nurse or oversight by hospitals or health care institutions. There is not sufficient institutional accountability in place to protect the public. 26 V.S.A. § 3105(a)(3). Physicians may issue standing orders and protocol for respiratory therapists, but the practitioner has significant discretion and unsupervised responsibility within these protocols. Employers do not have the tools necessary to sufficiently investigate the backgrounds of their employees, as compared to what a licensing agency can obtain from other licensing agencies.

E. The level of risk posed by unqualified or unlicensed respiratory therapists is significant and respiratory care is a critical and invasive treatment at times, posing a real and

unregulated danger to the public if performed by unprofessional or unqualified practitioners. 26 V.S.A. § 3105(a)(1).

F. Regulation would ensure proper and equal credentialing of all licensees, provide for continuing education in an evolving profession, and provide the accountability necessary to protect the public health, safety and welfare of the people of Vermont.

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 Therapy be regulated in the form of licensure by the Office of Professional Regulation because the application has met the standards and criteria set forth in 26 V.S.A. § 3105 and licensure would be in the best interest of the public.

Previously, this Office considered a request for regulation of respiratory therapists in this state. The recommendation at that time was not to regulate. Based on the 1999 application, the applicant had failed to show specific instances of harm and did not have a consensus among respiratory therapists. Further, the proposal had significant opposition from the medical equipment dealers, and it appeared then that the system of supervision and accountability among employers of respiratory therapists was adequate protection of the public. That application did not justify regulation.

However, this application has demonstrated a real threat to the public health, safety and welfare posed by unregulated practice of respiratory therapy. The institutional "supervision" of respiratory care is minimal and allows for significant professional discretion by respiratory therapists. Employers experience tremendous difficulty in obtaining information about prospective employees, information that is easily obtainable by a licensing agency. As one of only a handful of unlicensed states, Vermont patients are jeopardized by the attraction of problem practitioners from other states. Lastly, there is now broad support of regulation from a variety of sources.

The public cannot be adequately protected by other means (currently voluntary national certification) because the voluntary and national aspects of this certification is allowing unqualified individuals to place the public at risk as demonstrated above. Voluntary national certification is not a safeguard for employers seeking to hire respiratory therapists, nor is it an assurance to the public that all respiratory care practitioners in this state have achieved minimal qualifications and adhere to a single standard of care.

Accordingly, the Office of Professional Regulation recommends licensure for respiratory therapists in the State of Vermont.

Respectfully submitted this ____ day of _____, 2003.

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Jessica G. Porter
Director, Office of Professional Regulation

Signed: 11/4/03