16.23.17.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department Respiratory Care Advisory Board
[11-29-97; 16.23.17.1 NMAC - Rn, 16 NMAC 23.17.1, 01-30-2003; A, 07-10-03]

16.23.17.2 SCOPE: The provisions in PART 17 of Chapter 23 apply to any person found to be in violation of the Respiratory Care Act, NMSA 1978, Section 61-12B-1 through 61-12B-16 or the Department’s Regulations governing the practice of respiratory care, 16.23 NMAC.
[11-29-97; 16.23.17.2 NMAC - Rn, 16 NMAC 23.17.2, 01-30-2003]

16.23.17.3 STATUTORY AUTHORITY: PART 17 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-1 through Section 61-12B-16 NMSA 1978 (1995 Repl. Pamp.) the Uniform Licensing Act, Section 61-1-1 through Section 61-1-33 NMSA 1978 (1996 Repl. Pamp.).
[11-29-97; 16.23.17.3 NMAC - Rn, 16 NMAC 23.17.3, 01-30-2003]

16.23.17.4 DURATION: Permanent.
[11-29-97; 16.23.17.4 NMAC - Rn, 16 NMAC 23.17.4, 01-30-2003]

16.23.17.5 EFFECTIVE DATE: November 29, 1997, unless a later date is cited at the end of a Section.
[11-29-97; 16.23.17.5 NMAC - Rn, 16 NMAC 23.17.5, 01-30-2003; A, 07-10-03]

16.23.17.6 OBJECTIVE: The objective of PART 17 of Chapter 23 is to set forth the grounds which subject the applicant to disciplinary action such as permit or license denial, suspension or revocation, or to any other penalty provided by the Uniform Licensing Act.
[11-29-97; 16.23.17.6 NMAC - Rn, 16 NMAC 23.17.6, 01-30-2003]

16.23.17.7 DEFINITIONS: For the purposes of this rule:
A. “Assault” means an action that places someone in fear of personal injury, such as a threat, accompanied by a physical manifestation to do bodily harm to someone.
B. “Battery” means carrying out bodily harm.
C. “Negligence” is the incompetent performance of an act, or the omission or failure to perform an act, the competent performance of which would be the acceptable and prevailing standard of the profession, and which would be considered reasonable and ordinary under the circumstance.
[11-29-97; 16.23.17.7 NMAC - Rn, 16 NMAC 23.17.7, 01-30-2003]

16.23.17.8 DISCIPLINARY GUIDELINES: In accordance with the provisions contained within the Uniform Licensing Act, the Department may take disciplinary action as provided in Section 61-1-3, if the Department, in consultation with the Board, determines that a respiratory care licensee or temporary permittee has violated the Respiratory Care Act or the Department’s Rules and Regulations governing respiratory care 16.23 NMAC. The Superintendent of the Department may refuse to issue or may suspend or revoke any permit or license for any cause listed below:
A. Making fraudulent representations to any respiratory care licensing board in any jurisdiction in the procurement of an initial or a renewal temporary permit or practitioner’s license.
B. Having had a temporary permit or practitioner’s license denied, suspended or revoked by a respiratory care board in another licensing jurisdiction for any cause listed in 16.23.17 NMAC (this rule). However, the disciplinary action imposed by the Department shall not exceed the length of time or severity of the action imposed by the other licensing jurisdiction.
C. Having been convicted of a crime, which substantially relates to the qualifications, functions or duties of a respiratory care practitioner. The record of conviction or the certified copy of the record of conviction shall be conclusive evidence of the conviction.
D. Engaging in the habitual or excessive use of alcohol or controlled substances.

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E. Using or being under the influence of alcohol, controlled substances, or drugs that impair judgment, while on duty in any facility of employment.

F. Obtaining, possessing, administering, or using any narcotic or controlled substance in violation of any Federal or State criminal law.

G. Being responsible for gross negligence in the performance and delivery of health care while engaged in the practice of respiratory care.

H. Violating any provision of the Respiratory Care Act or the rules and regulations governing respiratory care adopted by the Department, or aiding or abetting any other person in violating these laws.

I. Engaging in acts of unprofessional conduct such as, but not limited to, the following:
   1. Failing to maintain minimum acceptable and prevailing standards of respiratory care practice;
   2. Performing procedures and functions beyond which the respondent is individually competent to perform or which are outside the scope of accepted and responsible practice of respiratory care;
   3. Failing to respect and protect the legal and personal rights of the patient, including the right to informed consent and refusal of treatment;
   4. Intentionally or negligently causing physical or emotional injury to a patient;
   5. Assaulting or committing battery on a patient;
   6. Abandoning or neglecting a patient requiring immediate respiratory care without making reasonable arrangements for continuation of such care;
   7. Failing to maintain for each patient a record which accurately reflects the respiratory care treatment of the patient;
   8. Failing to take appropriate action to safeguard the patient’s welfare or to follow policies and procedures established by the respiratory care practitioner’s employer;
   9. Divulging confidential information regarding any patient or family unless disclosure is required for responsible performance of duty, or as required by law;
   10. Failing or refusing to provide health care to a patient for reasons of discrimination;
   11. Failing to protect the health, safety, and welfare of the patient by abiding by and practicing established policies of disease prevention;
   12. Failing to take appropriate action in the health care setting to protect a patient whose safety or welfare is at risk from incompetent health care practice including, but not limited, to reporting such practice to employment and licensing authorities;
   13. As a supervisor, failing to supervise persons under one’s direction or assigning the performance of functions governed by the Respiratory Care Act to persons who are untrained and unqualified to perform those functions;
   14. Removing narcotics, drugs, supplies, or equipment from any health care facility or other work place location without authorization;

J. Committing any fraudulent, dishonest, or unscrupulous act which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. Such acts shall include, but not be limited to:
   1. Engaging in fraud, misrepresentation, or deceit in writing the national licensing exam.
   2. Impersonating an examination candidate in order to write a certification or licensing examination for him or her.
   3. Impersonating another licensed practitioner.
   4. Practicing respiratory care without a current license.
   5. Permitting or allowing another person to use his or her license for any purpose.

GROSS NEGLIGENCE: In performing respiratory care functions, a temporary permittee or licensed practitioner is under the legal duty to possess and to apply the knowledge, skill, and care that is ordinarily possessed and exercised by other temporary permittees and licensed practitioners and required by the generally accepted standards of the profession. The failure to possess or to apply to a substantial degree such knowledge, skill, and care constitutes gross negligence.

A. Charges of gross negligence may be based upon a single act of gross negligence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate gross negligence.

B. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions so long as the conduct is of such a character that harm could have resulted to the patient or to the public.
from the act or omission or series of acts or omissions.

C. Proof of intent will not be necessary to establish gross negligence.

D. The following shall be deemed prime examples of activities which demonstrate that the temporary permittee or licensed practitioner has engaged in an act or acts of gross negligence. The Department, in consultation with the Board, shall not be limited to this list in determining whether an act or acts constitute gross negligence.

(1) Acting in a manner inconsistent with the care for the welfare, health, or safety of patients set forth by the facility in which the temporary permittee or licensed practitioner is employed.

(2) Performance or conduct that substantially departs from, or fails to conform to, the minimal reasonable standards of acceptable and prevailing practice of respiratory care.

(3) Failure to adhere to the facility’s quality assurance standards and risk management recommendations.

(4) Failure to maintain an appropriate standard of care.

(5) Failure to follow established policies and procedures.

(6) Performing procedures beyond the scope of one’s training and education.

(7) Attempting to treat too many patients simultaneously, resulting in harm to one or more patients.

[11-29-97; 16.23.17.9 NMAC - Rn, 16 NMAC 23.17.9, 01-30-2003]

16.23.17.11 REQUEST FOR REINSTATEMENT

A. One year from the date of the revocation of a temporary permit or practitioner license, the permittee or licensee may apply to the Superintendent of the Department for reinstatement, restoration, or modification of the terms of the judgment order.

B. The Superintendent, in consultation with the Board, shall have the discretion to accept or reject the application for reinstatement, restoration, or modification when it is deemed appropriate.

[11-29-97; 16.23.17.11 NMAC - Rn, 16 NMAC 23.17.11, 01-30-2003]

HISTORY OF 16.23.17 NMAC:
PRE-NMAC HISTORY: None

HISTORY OF REPEALED MATERIAL: [RESERVED]