

21 NCAC 61 .0309 SCHEDULE OF CIVIL PENALTIES

(a) The rules in this Subchapter establish the schedule of civil penalties set out in G.S. 90-666(a). The amounts stated are the presumptive amounts that may be modified in the discretion of the Board based upon factors set forth in G.S. 90-666(b).

(b) The presumptive civil penalty for the following violations is: 1st offense fifty dollars (\$50.00) (Warning), 2nd offense one hundred dollars (\$100.00), 3rd offense two hundred fifty dollars (\$250.00). Those violations that are first offense correctable are identified with the word "warning" appended to them. If the offense is not corrected within the 30 day time allotted, the presumptive civil penalty in parenthesis shall apply.

- (1) Failure to display an individual license upon request.
- (2) Failure to notify the Board in writing of each change of name, including any change in the name under which the licensee is providing respiratory care, or any change in the licensee's residence or business address, including mailing address, within 30 days of such change.

(c) The presumptive civil penalty for the following violations is: 1st offense one hundred dollars (\$100.00), 2nd offense two hundred fifty dollars (\$250.00), 3rd offense five hundred dollars (\$500.00).

- (1) Knowingly perpetuating an error of the Board.
- (2) Accepting and performing professional responsibilities which the licensee knows, or has reason to know, he/she is not competent to perform or delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason to know, that such person is not qualified by training, experience, or licensure to perform.
- (3) Failing to create and maintain respiratory care records documenting the assessment and treatment provided to each patient.
- (4) Using the title "Respiratory Care Practitioner", the letters "RCP, RTT, RT" or any facsimile or combination in any words, letters, abbreviations, or insignia or implying orally or in writing or indicating in any way that the person is a Respiratory Care Practitioner unless licensed by the Board.

(d) The presumptive civil penalty for the following violations is: 1st offense two hundred fifty dollars (\$250.00), 2nd offense five hundred dollars (\$500.00), 3rd offense one thousand dollars (\$1000.00).

- (1) Practicing respiratory care without a license.
- (2) Allowing unlicensed individuals under the person's supervision to practice respiratory care. Employ or solicit for employment unlicensed persons to practice respiratory care.
- (3) Altering a license, permit or authorization issued by the Board.
- (4) Procuring, attempting to procure, or renewing a license as provided by this part by bribery, by fraudulent misrepresentation.
- (5) Engaging in the delivery of respiratory care with a revoked, suspended, or inactive license.
- (6) Performing services which the practitioner is not licensed to perform or performing professional services which have not been duly ordered by a physician licensed pursuant to G.S. 90, Article 1 and which are not in accordance with protocols established by the hospital, other health care provider, or the Board.
- (7) Failing to properly make the disclosures required by 21 NCAC 61 .0308.
- (8) Engaging in any act or practice that is hazardous to public health, safety or welfare.
- (9) Committing an act of malpractice, gross negligence, or incompetence in the practice of respiratory care.
- (10) Discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services.
- (11) Circulating false, misleading, or deceptive advertising.
- (12) Willfully making or filing a false report or record, or willfully failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records include only those reports or records which require the signature of a respiratory care practitioner.
- (13) Filing a false continuing education documentation report or record.
- (14) Violating a lawful order of the board or aiding, abetting or assisting any person in a violation of a lawful order of the Board.

(e) The presumptive civil penalty for the following violations is: 1st offense one thousand dollars (\$1000.00), 2nd offense one thousand dollars (\$1000.00), 3rd offense one thousand dollars (\$1000.00).

- (1) Exercising influence on the patient for the financial gain of the licensee or a third party by promoting or selling services, goods, appliances, or drugs that are not medically indicated or necessary.
- (2) Making deceptive, untrue, or fraudulent representations in the delivery of respiratory care or employing a trick or scheme in the delivery of respiratory care.
- (3) Paying or receiving any commission or bonus, or any kickback, or rebate to or from, or engaging in any fee-splitting arrangement in any form whatsoever with, a person, organization, or agency, either directly or indirectly, for goods or services rendered to patients referred by or to providers of health care goods and services, including hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies.
- (4) Soliciting patients, either personally or through an agent, through the use of fraud, deception, or otherwise misleading statements or through the exercise of intimidation.
- (5) Exercising influence within a respiratory care relationship for the purpose of engaging a patient in sexual activity. A patient is presumed to be incapable of giving free, full, and informed consent to sexual activity with the patient's respiratory care practitioner.

*History Note: Authority G.S. 90-666;
Eff. April 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015.*