

TO BE RESCINDED

4761-1-01 **Public hearings on adoption, amendment, or rescission of rules:
methods of public notice.**

- (A) Except in the case of an emergency rule authorized under division (F) of section 119.03 of the Revised Code, prior to the proposed adoption, amendment or rescission of any rule by the Ohio respiratory care board, public notice thereof shall be given at least thirty days prior to the date set for the public hearing thereon, by publication of that notice in the register of Ohio internet site at www.registerofohio.state.oh.us. Such notice shall include a statement of the board's intention to consider adopting, amending, or rescinding a rule; a synopsis of the proposed rule, amendment, or rule to be rescinded or a general statement of the subject matter to which the proposed rule, amendment or rescission relates; a statement of the reason or purpose for adopting, amending, or rescinding the rule; and the date, time, and place of the public hearing on said proposed action.
- (B) The board may give whatever other notice it reasonably considers necessary including, but not limited to, the following:
- (1) The board shall post the notice of the public rules hearing on the board's internet site at www.respiratorycare.ohio.gov. The board may also post the full text of the proposed rules on its internet site.
 - (2) The board may maintain a mailing list of all persons who have made a prior written request to receive a copy of each public notice provided for in paragraph (A) of this rule, and copies of such notices shall be sent by regular mail or electronic mail to each person on the mailing list at least thirty days prior to the date set for the hearing. Upon request, the board shall also promptly send a copy of any notice provided for in paragraph (A) of this rule by regular mail or electronic mail to any person not appearing on its mailing list. The board may assess a reasonable fee, not to exceed the cost of copying and mailing, for notices sent to persons in accordance with this rule.
 - (3) Copies of the notice of the public rules hearing and the full text of the proposed rules shall be available at the board's offices at least thirty days prior to the date of the public rules hearing.
- (C) Prior to the effective date of a rule, amendment, or rescission, the board shall make a reasonable effort to inform those affected by the rule, amendment, or rescission. The method of notification may include posting the full text of the rule as adopted or amended on the board's internet site, publishing the rules in the board's electronic newsletter, and/or sending by regular mail or electronic mail a notice of the action to all persons whose name appears on the mailing list maintained by the board pursuant

to paragraph (B)(2) of this rule, or to any person or his attorney who provided evidence, oral testimony, and/or a written statement which were made part of the record of the public hearing held pursuant to section 119.03 of the Revised Code. The board may assess a reasonable fee, not to exceed the cost of copying and mailing, for notices sent to persons in accordance with this rule.

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Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4761.03
Rule Amplifies: 119.03
Prior Effective Dates: 07/14/2003, 08/15/2008, 01/13/2014

TO BE RESCINDED

4761-1-02 **Notice of board meetings.**

- (A) Any person or organization may ascertain the time and place of all regularly scheduled meetings of the Ohio respiratory care board, and the time, place, and purpose of all special meetings of the board by any one of the following methods:
- (1) Calling the board office by telephone during normal business hours. No collect calls will be accepted under any circumstances.
 - (2) Inquiring in person at the board office during normal business hours, Monday through Friday, excluding recognized state holidays.
 - (3) Providing the board with a written request by mail or electronic mail.
- (B) Any person or organization who makes written request for routine notification of all regularly scheduled and special meetings of the board by mail or by electronic mail shall be placed on a list. Notification will be made by one of the following methods:
- (1) Sending written notice, which must be sent by regular mail or electronic mail no later than four calendar days prior to the day of a regular meeting.
 - (2) Notice by telephone no later than twenty-four hours prior to a special meeting. Telephone notice shall be complete if a message has been left for the representative, or if, after reasonable effort, the board has been unable to provide such telephone notice.
- (C) A representative of a news media organization or of the business office of the Ohio society for respiratory care may obtain telephone or electronic mail notification of emergency board meetings by making written request to the board, including the name of the individual to be contacted, the individual's electronic mailing address, and a maximum of two telephone numbers where the individual can be reached. The board will maintain a list of all representatives who request telephone notice of emergency meeting. Telephone notice shall be complete if a message has been left for the representative or if, after a reasonable effort, the board has been unable to provide such telephone notice. It shall be the responsibility of the news media organization or the business office of the Ohio society for respiratory care to inform the board of any changes in telephone number or electronic mailing address.

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TO BE RESCINDED

4761-2-01 **Board organization.**

- (A) The board shall hold an annual meeting in April, at which time it shall elect a president and secretary, who shall serve one year.
- (B) The president shall preside at all meetings of the board. The president may appoint another board member to serve as vice-president to preside in the president's absence. In lieu of a hearing examiner for adjudication hearings, the president shall serve as the appointed hearing officer or the board may elect a hearing officer from among the other board members. The board may form committees as needed to fulfill its purpose under Chapter 4761. of the Revised Code and appoint qualified members.
- (C) The board shall hold regular meetings as often as necessary to carry out its duties. Meetings shall be held in the Vern Riffe center for government and the arts or in such other places as deemed reasonable by the board.
- (D) In the event of a vacancy, the board shall fill the office from among the members of the board at a regular or special meeting of the board.

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08/09/2010

TO BE RESCINDED

4761-2-02 **Personnel.**

The board shall:

- (A) Employ an executive director who shall be the chief administrative officer of the board. The executive director shall be in the unclassified service of the state and shall be responsible for the daily activities of the board's office staff. The executive director shall assist the board in the administration and enforcement of Chapter 4761. of the Revised Code. If the executive director is a licensee of the board, he/she shall not engage in active practice of respiratory care while employed in this position.
- (B) The executive director of the Ohio respiratory care board may, on behalf of the board, perform the following duties:
- (1) Approve and issue, by signature authority, subpoenas pursuant to an investigation.
 - (2) Approve and issue, by signature authority, "Opportunity for Hearing Notices" that have been reviewed, moved and approved by majority vote of a quorum of the board during an open business meeting and "Allegations and Opportunity for Hearing Notices" moved and approved by the board during a telephonic conference pursuant to division (C) of section 4761.09 of the Revised Code, for the purpose of considering a summary suspension of a license.
 - (3) Approve and issue, by signature authority, initial licenses under section 4761.04 of the Revised Code, limited permits under section 4761.05 of the Revised Code and non-resident registrations under division (A)(4) of section 4761.11 of the Revised Code. The executive director must follow the rules adopted by the board under rules 4761-4-01, 4761-5-01, 4761-5-04, 4761-5-05 and 4761-6-01 of the Administrative Code when determining an applicant's qualification for issuance of the authorization to practice. Any application containing information indicating that the applicant is not fit to be licensed shall be held and reviewed by the board's probable review committee. If authorized for release by the committee, the executive director may issue the appropriate authorization to practice. The probable review committee may defer any application directly to the full board.
- (C) Authorize the executive director to employ office staff and contract for services as necessary to carry out its responsibilities under Chapter 4761. of the Revised Code. The executive director may hire, discipline, or terminate board staff in accordance with the Ohio civil service employees association, AFSCME local 11, contract with the state of Ohio.

- (D) The executive director may manage the staff and board resources as required to meet the obligations, goals and objectives of the agency. The executive director must report on the status of the agency at each regular board meeting, including fiscal, licensing and personnel status. All expenditure shall be monitored and reported to the board at each regular board meeting. Capital expenditures in excess of five hundred dollars must be approved by the board.

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05/23/2005

TO BE RESCINDED

4761-2-05 **Personal information systems.**

(A) For the purpose of this rule and in accordance with Chapter 1347. of the Revised Code:

- (1) "Personal information" means any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person. Personal information shall not include, in accordance with division (A)(1)(e) of section 1347.04 of the Revised Code, personal information systems that are comprised of investigatory material compiled for law enforcement purposes by the board.
- (2) "System" means any collection or group of related records that are kept in an organized manner and that are maintained by a state or local agency, and from which personal information is retrieved by the name of the person or by some identifying number, symbol, or other identifier assigned to the person. "System" includes both records that are manually stored and records that are stored using electronic data processing equipment. "System" does not include published directories, reference materials or newsletters, or routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person.
- (3) "Maintains" means board ownership of, control over, responsibility for, or accountability for systems and includes, but is not limited to, the board depositing of information with a data processing center for storage, processing, or dissemination. The board "maintains" all systems of records that are required by law to be kept by the agency.

(B) The personal information system of the board shall be maintained in accordance with Chapter 1347. of the Revised Code.

(C) The board shall collect, maintain, and use only personal information that is necessary and relevant to the functions that the board is required or authorized to perform by statute or rule. Personal information shall be eliminated from the system when it is no longer necessary and relevant to those functions in accordance with the board record retention policy established pursuant to section 149.34 of the Revised Code.

(D) The board shall identify a privacy officer to be directly responsible for the personal information system of the board. The privacy officer shall develop procedures for purposes of monitoring the accuracy, relevance, timeliness, and completeness of the personal information in the system, and, in accordance with the procedures, maintain

the personal information in the system with the accuracy, relevance, timeliness, and completeness that is necessary to assure fairness in any determination made with respect to a person on the basis of the information.

- (E) The board shall take reasonable precautions to protect personal information in the system from unauthorized modification, destruction, use, or disclosure.
- (F) The board shall specify disciplinary measures to be applied to any employee who initiates or otherwise contributes to any disciplinary or other punitive action against any individual who brings to the attention of appropriate authorities, the press, or any member of the public, evidence of unauthorized use of information contained in the system.
- (G) The board shall provide for the right of persons who are the subject of personal information to be informed about the personal information of which the person is the subject and to permit the person or the person's legal representative to inspect the personal information of which the person is the subject, in accordance with section 1347.08 of the Revised Code, including:

If any person disputes the accuracy, relevance, timeliness, or completeness of personal information that pertains to the person and that is maintained by the board in a personal information system, that person may request the board to investigate the current status of the information. The board shall comply with section 1347.09 of the Revised Code when the board receives such a request.

- (H) The board shall not place personal information into an interconnected and combined system, unless the system contributes to the efficiency of the board or agencies using the system or organizations authorized to use the system in implementing programs which are required or authorized by law.
- (I) The board shall not use personal information placed into an interconnected and combined system by another state or local agency or organization, unless the personal information is necessary and relevant to the performance of a lawful function of the board.

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03/31/2014

TO BE RESCINDED

4761-4-02

Monitoring of Ohio respiratory care educational programs by the education committee of the Ohio respiratory care board.

- (A) Annually, each respiratory care educational program in Ohio shall submit proof of compliance with the accreditation standards developed by the commission on accreditation for respiratory care (CoARC) or their successor organization(s). At minimum, Ohio respiratory care programs shall provide the following:
- (1) A copy of the annual report submitted to CoARC.
 - (2) A copy of CoARC's response letter.
 - (3) A copy of any plan of corrective action for program deficiencies issued by CoARC in response to an official site visit or annual report.
- (B) Each respiratory care program in Ohio shall also annually submit a current letter of good standing issued by CoARC.
- (C) The board shall form an education committee consisting of at least two members from the board. The education committee shall be responsible for monitoring educational policy and issues affecting respiratory care educational programs in Ohio and reporting such matters to the board. The education committee shall also review documentation filed by Ohio respiratory care educational programs in accordance with paragraph (A) of this rule. The committee shall address any matters of concern with programs and annually file a compliance report with the board. If matters of concern are unresolved, the education committee may survey and investigate a respiratory care educational program. Survey and investigation findings shall be reported to the board. The board may contract independent expert services as needed to assist the education committee meets it responsibilities under this rule.

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08/15/2008, 03/31/2014

TO BE RESCINDED

4761-5-05

Non-resident practice of respiratory care.

- (A) In accordance with division (A)(4) of section 4761.11 of the Revised Code, a non-resident, as defined under paragraph (G) of rule 4761-3-01 of the Administrative Code, may practice respiratory care in the state of Ohio under the supervision of a licensed respiratory care professional for no more than thirty days in a year if one of the following conditions are met:
- (1) Qualifies for licensure in the state of Ohio, except for the passage of the examination as required under division (A)(3) of section 4761.04 of the Revised Code; or
 - (2) Holds a valid license issued by a state that has licensure requirements considered by the Ohio respiratory care board to be comparable to those of the state of Ohio and has not been issued a license in another state that has been revoked or is currently under suspension or probation.
- (B) Prior to practicing in Ohio, non-residents must complete a non-resident registration form and file this form with the Ohio respiratory care board. Registrants must submit any documentation necessary to support either of the qualifications mentioned in paragraph (A)(1) or (A)(2) of this rule. Qualified registrants will be mailed a letter of authorization to practice in the state of Ohio. This letter must be shown to any employer offering to provide respiratory care in the state of Ohio with whom the registrant is employed. Registrants that fail to support meeting the qualifications for this exemption will be refused authorization to practice in the state of Ohio.
- (C) Non-residents shall update the Ohio respiratory care board within five working days of any change in respiratory care employment in the state of Ohio or any change in residency status according to paragraph (G) of rule 4761-3-01 of the Administrative Code.
- (D) Any registrant found practicing respiratory care in the state of Ohio after permanent residency is established or for more than thirty days in a year will be subject to action under section 4761.09 of the Revised Code, unless the registrant holds a valid Ohio license or limited permit.

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Prior Effective Dates: 01/01/1994, 05/19/1997, 09/21/1998, 03/26/2001,
07/11/2003, 08/15/2008

TO BE RESCINDED

4761-5-07

Criminal records check.

- (A) In addition to the requirements established in rules 4761-5-04 and 4761-6-01 of the Administrative Code, all applicants for an initial license or limited permit to practice respiratory care in the state of Ohio shall submit to a criminal records check completed by the Ohio bureau of criminal identification and investigation in accordance with section 4761.051 of the Revised Code. The results of the criminal records check shall be received by the board prior to processing of an initial application for license or limited permit.
- (B) An applicant requesting a criminal records check shall provide the bureau of criminal identification and investigation with the applicant's name, address, and any other information required by the bureau of criminal identification and investigation for the purpose of completing the criminal background check. The applicant shall cause the results of the criminal background check to be forwarded to the "Ohio Respiratory Care Board at 77 South High Street, 16th Floor, Columbus, Ohio 43215."
- (C) In the request, the applicant shall ask the superintendent of the bureau of criminal identification and investigation to obtain a civilian criminal background check and a criminal background check from the federal bureau of investigation.
- (D) The Ohio respiratory care board will only accept the results of a criminal background check that is submitted to the board directly by the bureau of criminal identification and investigation in compliance with this rule.
- (E) A criminal background check will not be required if the applicant has caused a criminal background check results report to be filed with the board in accordance with the requirements of this rule within one year prior to the date of initial application. A new criminal background check will be required if the applicant's criminal background check results report on file with the board is greater than one year old based on the filing date of the results report with the board.

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Statutory Authority: 4761.03(A)(11)
Rule Amplifies: 4761.051
Prior Effective Dates: 08/15/2008

TO BE RESCINDED

4761-8-02

Licensees not in active practice.

- (A) A licensee shall be considered to be "inactive" upon written request to the board, signed by the holder of the license or the holder's legal guardian.
- (B) An inactive license may be reinstated to active status by meeting the requirements of paragraph (G) of rule 4761-8-01 of the Administrative Code.

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Statutory Authority: 4761.03
Rule Amplifies: 4761.03
Prior Effective Dates: 07/14/2003

TO BE RESCINDED

4761-11-01 **Filing of complaints.**

- (A) Any person may file a complaint with the board that a licensee, permit holder, or other person has committed any act that is grounds for disciplinary action under section 4761.09 of the Revised Code or any act that violates section 4761.10 of the Revised Code or of Ohio respiratory care board rules.
- (B) Upon receipt of a complaint, the investigator of the board shall send an acknowledgment letter to the complainant along with a request for any additional information, if deemed necessary.
- (C) Anonymous complaints may be investigated if the executive director with the advice and consent of a board designee believes an investigation is justified.
- (D) If the executive director of the board believes a complaint is justified, a report shall be filed with the board, who may draft an opportunity of hearing notice which shall be in accordance with Chapter 119. of the Revised Code.
- (E) If a complaint is determined to be unfounded, the executive director with the approval and consent of the board may close the investigation.

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Prior Effective Dates: 03/10/1990, 01/31/1992, 01/01/1996, 05/02/1996,
05/19/1997, 03/26/2001, 05/23/2005

TO BE RESCINDED

4761-11-02 **Administrative procedure for refusal to issue or renew a license or permit, deny, suspend, or revoke a certificate or license.**

Hearings held pursuant to proposed board action shall be in compliance with Chapter 119. of the Revised Code, including the following:

- (A) A notice, to be given to the individual by certified mail, of his/her right to a hearing on the proposed board action.
- (B) The notice shall include a reason or reasons for such proposed action, the law or rule allegedly violated, and a statement informing the individual of entitlement to a hearing, if requested, within thirty days of the time of mailing of the notice.
- (C) The notice shall inform the individual that he/she may appear in person, submit contentions in writing, or be represented by an attorney, and that the individual may present evidence and examine witnesses at the hearing.
- (D) In order to request a hearing under Chapter 119. of the Revised Code, a respondent or the respondent's representative must, in accordance with rule 4761-11-08 of the Administrative Code, file in writing a statement requesting such adjudication hearing within thirty days of the date of mailing of the board's notice of opportunity for hearing, or the date of personal service or final publication in a newspaper having general circulation in the respondent's county of residence. The date of mailing shall be the date appearing on the certified mail receipt.
- (E) A respondent or the respondent's representative properly filing a request for an adjudication hearing shall be entitled to such adjudication hearing within fifteen days but not sooner than seven days after such a request has been filed, unless both representatives agree otherwise or a continuance is granted pursuant to section 119.09 of the Revised Code and rule 4761-11-06 of the Administrative Code.

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07/11/2003

TO BE RESCINDED

4761-11-04 **Representation; appearance; communication; applicability.**

- (A) As used in Chapter 4761-11 of the Administrative Code, "respondent" shall be defined as the person who is requesting or has requested a hearing as provided in Chapter 119. of the Revised Code.
- (B) As used in Chapter 4761-11 of the Administrative Code, "hearing examiner" shall be defined as an attorney hearing examiner retained by the board to conduct hearings on its behalf.
- (C) As used in Chapter 4761-11 of the Administrative Code, "appointed hearing officer" shall be defined as a member of the board elected to conduct a hearing should the hearing be held before the board and not a hearing examiner.
- (D) The respondent may be self-represented or may be represented by an attorney admitted to the practice of law in Ohio. In the absence of an attorney, the respondent shall be deemed the representative of record for the purposes of Chapter 4761-11 of the Administrative Code. Any attorney shall be prepared to prove current law license at the time of the hearing.
- (E) The respondent is not required to personally appear at any hearing provided he/she has not been subpoenaed. The respondent may authorize an attorney to represent him/her in all matters of the hearing before the board.
- (F) The respondent or attorney representative may present positions, arguments, or contentions in writing rather than appear at any hearing provided that the respondent has not been subpoenaed.
- (G) The representative of record for the respondent shall enter appearances in writing.
- (H) The representative of record from the Ohio attorney generals office shall enter appearances in writing.
- (I) The person entering an appearance as representative will remain the representative of record until a written withdrawal is filed with the board.
- (J) Except as otherwise provided under Chapter 119. of the Revised Code, communications from the board, its appointed hearing officer, its hearing examiner, or representative from the Ohio attorney generals office shall be sent to the respondent's representative of record.
- (K) The members of the board shall base their decisions on any matter subject to hearing only on the evidence contained in the record. No information acquired by a member

of the board in any way other than by review of the evidence of the record shall be considered by such member in that member's decision on a matter subject to hearing. Any board member who participates in the probable review determination of will be recused from the adjudication hearing.

- (L) Except as otherwise provided under this chapter or by statute, no hearing examiner or member of the board shall initiate or consider ex parte communications concerning a pending or impending adjudicatory proceeding. Nothing contained herein, however, shall preclude the hearing examiner from nonsubstantative ex parte communications on procedural matters and matters affecting the efficient conduct of adjudicatory hearings.
- (M) The hearing examiner and members of the board shall disclose on the record the source and substance of any ex parte or attempted ex parte communications. That disclosure shall be made at an adjudicatory hearing or at a board meeting prior to deliberation on a pending or impending adjudicatory proceeding.
- (N) If any provision of the rules in this chapter is held invalid or if the application of any provision of the rules in this chapter to any person or circumstances is held invalid, the invalidity does not affect any other provision of the rules in this chapter, or the application of any other provision of the rules in this chapter, that can be given effect without the invalid provision or application, and, to this end, the provision of the rules in this chapter are hereby declared severable.

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TO BE RESCINDED

4761-11-05

Authority and duties of the board or hearing examiner.

- (A) Adjudication hearings shall be conducted before the board or a hearing examiner. Adjudication hearings held before the board shall be conducted under the direction of an appointed hearing officer elected from among its members.
- (B) All hearings are open to the public, but the appointed hearing officer or hearing examiner may close the hearing to the extent necessary to protect compelling interests and rights or to comply with statutory requirements. In the event a hearing is closed to the public, the appointed hearing officer or hearing examiner shall state the reasons therefore in the public record.
- (C) In its discretion, the appointed hearing officer or hearing examiner may admit sensitive or confidential evidence into the hearing record under seal.
- (D) The appointed hearing officer or hearing examiner shall conduct hearings in such a manner as to prevent unnecessary delay, maintain order, and ensure the development of a clear and adequate record.
- (E) The authority of the appointed hearing officer or hearing examiner shall include, but not be limited to, authority to:
- (1) Administer oaths and affirmations, which may also be done by a notary public;
 - (2) Order the issuance of subpoenas and subpoena duces tecum to require the attendance of witnesses at hearings and depositions and to require the production of evidence for hearings and depositions;
 - (3) Examine witnesses and direct witnesses to testify;
 - (4) Make rulings on the admissibility of evidence;
 - (5) Make rulings on procedural motions, whether such motions are oral or written;
 - (6) Prepare entries, findings, order, or reports and recommendations;
 - (7) Request preparation of entries, findings, or orders;
 - (8) Take such other actions as may be necessary to accomplish the purposes of paragraph (D) of this rule;
- (F) The authority of the appointed hearing officer or hearing examiner shall not include authority to:

- (1) Grant motions for dismissal of charges;
 - (2) Modify, compromise, or settle charges or allegations.
- (G) The hearing examiner shall have other powers, duties, and authority as are granted by statutes or rules.

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TO BE RESCINDED

4761-11-06 **Continuance of hearing.**

- (A) Except in matters of summary suspension under division (C) of section 4761.09 of the Revised Code, the appointed hearing officer, or the board through its hearing examiner, shall initially continue a hearing upon its own motion in order to more efficiently and effectively conduct its business unless the circumstances establish that a continuance would not serve the interest of justice.
- (B) The appointed hearing officer or the hearing examiner may continue a hearing upon the motion of a representative of record.
- (C) Hearings shall not be continued upon motion by a representative unless showing of reasonable cause and proper diligence is presented. Before granting any continuance, consideration shall be given to harm to the public which may result from delay in proceedings.
- (D) Upon proper motion, the hearing record may be held open to accept a deposition in lieu of oral testimony or a subpoenaed witness upon proper motion.
- (E) Continuances whenever possible shall be sought no later than seven days before a hearing. Failure to request a continuance prior to that time will be denied without special necessity.

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4761-11-07 **Filing.**

- (A) A document is "filed" when it is received and time stamped in the offices of the Ohio respiratory care board.
- (B) An original of any document required to be served by Chapter 4761-11 of the Administrative Code shall be filed with the Ohio respiratory care board not more than three days after service.
- (C) All filings shall be addressed to the board to the attention of the executive director. A copy of all filings must be provided to the assistant attorney general representing the board as set forth in rule 4761-11-08 of the Administrative Code.

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TO BE RESCINDED

4761-11-08 **Service.**

- (A) Except as otherwise provided in Chapter 119. of the Revised Code or Chapter 4761-11 of the Administrative Code, any document required by this chapter of the Administrative Code to be served by the respondent, respondent's counsel of record, assistant attorney general, or board representative may be served either personally or by first class mail service. Service is complete on the date it is received or on the date personal service of the document is made.
- (B) All motions and briefs shall contain the name, address, and telephone number of the person submitting the motion or brief and shall be appropriately captioned to indicate the name of the respondent.
- (C) A motion shall be considered by the board or its hearing examiner only if a certificate of service appears on it. Any signed statement is an acceptable certificate of service so long as it contains all of the following information:
- (1) Date of service;
 - (2) Method by which service was made;
 - (3) Address where service was made; and
 - (4) Name of the person or authority who was served.

Effective:

Five Year Review (FYR) Dates: 11/16/2018

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4761.03
Rule Amplifies: 4761.03, 119
Prior Effective Dates: 03/26/2001, 05/23/2005, 12/31/2016

TO BE RESCINDED

4761-11-09 **Computation and extension of time.**

- (A) The date of occurrence of the event causing time to run is not counted in the computation of any time limit under Chapter 4761-11 of the Administrative Code. The last day of the period is included in the computation of the time limit. If the last day of a period is not a regular business day, the time period runs through the end of the next regularly scheduled business day.
- (B) The appointed hearing officer or the hearing examiner may extend the time for filing or responding to motions and briefs.
- (1) Requests for extension of time shall be made in writing and filed as provided in rule 4761-11-07 of the Administrative Code prior to the expiration of any applicable time limit.
 - (2) Requests for extension of time shall be addressed to the attention of the appointed hearing officer or hearing examiner.
 - (3) Requests for extension of time shall be served as provided in rule 4761-11-09 of the Administrative Code.

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Prior Effective Dates: 03/26/2001, 05/23/2005, 12/31/2016

TO BE RESCINDED

4761-11-10 **Motions.**

- (A) Except as otherwise provided under Chapter 119. of the Revised Code or Chapter 4761-11 of the Administrative Code, all motions, unless made upon the record at the hearing, shall be made in writing. A written motion shall state with particularity the relief or order sought, shall be accompanied by a memorandum setting forth the grounds therefore, and shall be filed in compliance with rule 4761-11-07 of the Administrative Code. A proposed entry may accompany any motion. Except in cases of summary suspensions pursuant to division (C) of section 4761.09 of the Revised Code, all motions except those filed subsequent to the close of the hearing shall be made no later than fourteen days before the date of hearing unless express exception is granted by the appointed hearing officer or the hearing examiner or by this chapter.
- (B) All motions, together with supporting documentation, if any, shall be served as provided in rule 4761-11-08 of the Administrative Code.
- (C) Within ten days after service of a written prehearing motion, or such other time as is fixed by the appointed hearing officer or hearing examiner, a response to that motion may be filed. A movant may reply to a response only with the permission of the appointed hearing officer or hearing examiner.
- (D) Before ruling upon a written motion, the appointed hearing officer or hearing examiner shall consider all memoranda and supporting documents filed. The appointed hearing officer or hearing examiner shall enter a written ruling and shall issue copies to the representatives as identified under rule 4761-11-04 of the Administrative Code. The ruling on all oral motions made at hearing shall be included in the record except where the appointed hearing officer or hearing examiner elects to take the motion under advisement and issue a written ruling at a later time. The appointed hearing officer or hearing examiner shall include in each written ruling on a motion a short statement of the reasons therefore.
- (E) Except as otherwise provided in this chapter or Chapter 119. of the Revised Code, rulings on all motions filed subsequent to the issuance of the report and recommendation by the hearing examiner shall be rendered by the board or, if the board is not in session, by the appointed hearing officer acting on its behalf.

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Prior Effective Dates: 03/26/2001, 05/23/2005, 12/31/2016

TO BE RESCINDED

4761-11-11 **Transcripts.**

- (A) Duplicate transcripts of the stenographic record taken of hearings may be obtained directly from the court reporter at the requestor's expense prior to receipt of the original transcript by the board.
- (B) Upon request made to the board, a copy of original transcripts, if the transcript is on file at the board office, may be reviewed at the board offices or signed out for a period of forty-eight hours. Additional copies may be prepared at the requestor's expense.
- (C) Original transcripts, if the transcript is on file at the board office, shall not be removed from the board offices.

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Promulgated Under: 119.03
Statutory Authority: 4761.03
Rule Amplifies: 4761.03, 119
Prior Effective Dates: 03/26/2001, 08/09/2010

TO BE RESCINDED

4761-11-12 **Subpoenas for purposes of hearing.**

- (A) Upon written request of any party, the board through its executive director shall issue subpoenas for purposes of hearing to compel the attendance and testimony of witnesses and production of books, records and papers. Each subpoena shall indicate on whose behalf the witness is required to testify. Copies of such subpoenas shall be issued to the representatives as identified in rule 4761-11-04 of the Administrative Code.
- (B) For purposes of a hearing conducted under Chapter 119. of the Revised Code, subpoena requests shall specify the name and address of the individual to be served and the date and time at which they are to appear. With respect to the production of books, records and papers, such request may specify a date of compliance not more than seven days prior to hearing.
- (C) Except upon leave of the appointed hearing officer or hearing examiner, subpoena requests are to be filed with the board as provided in rule 4761-11-07 of the Administrative Code at least fourteen days in advance of the requested date of compliance in order to allow sufficient time for preparation and service of the subpoenas.
- (D) In the event that the number of subpoenas requested appears to be unreasonable, the appointed hearing officer or hearing examiner may require a showing of necessity therefore, and, in the absence of such showing, may limit the number of subpoenas. Absent such a limitation, subpoenas shall be issued within five days of request. Failure to issue subpoenas within this time may constitute sufficient grounds for the granting of a continuance.
- (E) After the hearing has commenced the appointed hearing officer or the hearing examiner may order the issuance of subpoenas to compel the attendance and testimony of witnesses and production of books, records and papers. Copies of such subpoenas shall be issued to the representatives as identified in rule 4761-11-04 of the Administrative Code.
- (F) Upon motion and for good cause, the appointed hearing officer or the hearing examiner may order any subpoena be quashed. Motions to quash shall be made in the manner provided in rules 4761-11-07 and 4761-11-08 of the Administrative Code, except that motions to quash shall be filed at least five days prior to the date of compliance. The non-moving party may file a response no later than four days after service of the motion to quash or at least one day prior to the date of compliance whichever is earlier. Unless a motion to quash has been granted, a witness shall attend the hearing

to which the witness was subpoenaed. The board shall make a reasonable attempt to contact any witness whose subpoena has been quashed.

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Promulgated Under: 119.03
Statutory Authority: 4761.03
Rule Amplifies: 4761.03(E)
Prior Effective Dates: 03/26/2001, 05/23/2005, 12/31/2016

TO BE RESCINDED

4761-11-13 **Mileage reimbursement and witness fees.**

Each witness shall receive the following fees:

- (A) Twelve dollars for each full day's attendance and six dollars for each half day's attendance at hearing or deposition. Each witness shall also receive fifty and one-half cents for each mile necessarily traveled to and from his place of residence to the place of giving testimony.
- (B) As used in paragraph (A) of this rule, a "full day's attendance" means a day on which a witness is required or requested to be present at a proceeding before and after twelve o'clock noon regardless of whether the witness actually testifies. A "half day's attendance" means a day on which a witness is required to be present at a proceeding either before or after twelve o'clock noon, but not both, regardless of whether the witness actually testifies.
- (C) A respondent may not subpoena him or herself.

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Date

Promulgated Under: 119.03
Statutory Authority: 4761.03
Rule Amplifies: 4761.03(F), 119.094
Prior Effective Dates: 03/26/2001, 08/09/2010

TO BE RESCINDED

4761-11-14 **Reports and recommendations.**

- (A) If the board uses a hearing examiner to hear a case, the hearing examiner shall submit a written report setting forth the proposed findings of fact and conclusions of law and recommendations of the action to be taken by the board within thirty days following the close of an adjudication hearing conducted pursuant to Chapter 119. of the Revised Code. The hearing shall not be considered closed until such time as the record is complete, as determined by the hearing examiner.
- (B) A copy of such written report shall be issued to the representatives of record as identified in rule 4761-11-04 of the Administrative Code. The copy issued to the respondent's representative of record shall be accompanied by notice of the date the report and recommendation is to be considered by the board.
- (C) The respondent's representative of record may, within ten days of his receipt of the hearing examiner's report and recommendation, file written objections to the report and recommendation. Only those objections filed in a timely manner shall be considered by the board before approving, modifying, or disapproving the hearing examiner's recommendation.
- (D) Upon written request, the board may grant extensions of the time within which to file objections. In the event that the full board is not in session, the appointed hearing officer may grant such extensions.
- (E) The board shall consider the hearing examiner's report and recommendation and any objections thereto at its next regularly scheduled meeting after the time for filing objections has passed. At that time, the board may order additional testimony to be taken or permit the introduction of further documentary evidence, or act upon the report and recommendation. For purposes of taking such additional testimony or documentary evidence, the board may remand to the hearing examiner.
- (F) Any motion to reopen the hearing record for purposes of introducing newly discovered material evidence which, with reasonable diligence could not have been discovered and produced at the hearing shall be made in the manner provided in rules 4761-11-07, 4761-11-08, and 4761-11-10 of the Administrative Code. Such motion to reopen shall be filed not later than ten days prior to the scheduled consideration by the board of the hearing examiner's report and recommendation and any objections thereto. If such motion is filed prior to the issuance of the hearing examiner's report and recommendation, the hearing examiner shall rule on the motion. If such motion is filed subsequent to the issuance of the hearing examiner's report and recommendation, the board shall rule upon the motion.

- (G) Without leave of the board, the respondent or any representative of record shall not be permitted to address the board at the time of consideration of the hearing examiner's report and recommendation. Any request for such leave shall be filed by motion no less than five days prior to the date the report and recommendation is to be considered by the board. No such leave shall be granted unless the opposing representative has been actually notified of the request and given opportunity to respond.
- (H) If a request to address the board is granted, the opposing representative may also address the board.

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Date

Promulgated Under: 119.03
Statutory Authority: 4761.03
Rule Amplifies: 4761.03(F), 119
Prior Effective Dates: 03/26/2001, 07/11/2003

TO BE RESCINDED

4761-11-15

Exchange of documents and witness lists.

- (A) Any representative of record may serve upon the opposing representative of record a written request for a list of both the names and addresses of witnesses and the documents intended to be introduced at hearing. Except in the case of summary suspensions, within seven days of the scheduled hearing the opposing representative shall supply such a list to the requesting representative. In cases of summary suspensions the exchange of lists of both witnesses and documents intended to be introduced at hearing shall be completed forthwith, but in no event less than three days prior to hearing.
- (B) Without good cause, failure to comply with paragraph (A) of this rule may result in exclusion from the hearing of such testimony or documents, upon motion of the representative to whom disclosure is refused.

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Promulgated Under: 119.03
Statutory Authority: 4761.03(A)(6)
Rule Amplifies: 119, 4761.03, 4761.03(A)(6)
Prior Effective Dates: 03/26/2001, 08/15/2008

TO BE RESCINDED

4761-11-16

Depositions and transcripts of prior testimony.

(A) Upon written motion of any representative of record, and upon service of that motion to all other representatives, the appointed hearing officer or the hearing examiner may order that the testimony of a prospective witness be taken by deposition under such conditions and terms as the appointed hearing officer or the hearing examiner shall set and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place if it appears probable that:

- (1) The prospective witness will be unavailable to attend or will be prevented from attending a hearing; and
- (2) The testimony of the prospective witness is material; and
- (3) The testimony of the prospective witness is necessary in order to prevent a failure of justice.

In the case of an expert witness, a showing of the unavailability of the expert shall not be necessary for the appointed hearing officer or hearing examiner's consideration of the motion of a representative to take a deposition.

(B) The representatives shall agree to the time and place for taking the deposition in lieu of live testimony. Depositions shall be conducted in the same county in which the hearing is conducted unless otherwise agreed to by the representatives. If the representatives are unable to agree, the appointed hearing officer or hearing examiner shall set the time or fix the place of deposition. At a deposition taken pursuant to this rule, representatives shall have the right, as at hearing, to fully examine witnesses. A deposition taken under this rule may be offered into evidence at hearing by either representative in lieu of the prospective witness' personal appearance. The cost of preparing a transcript of any testimony taken by deposition in lieu of live testimony which is offered as evidence at the hearing shall be borne by the party that requested the deposition. In the event of appeal, such costs shall be made a part of the cost of the hearing record.

(C) Any deposition or transcript of prior testimony of a witness may be used for the purpose of refreshing the recollection, contradicting the testimony or impeaching the credibility of that witness. If only a part of a deposition is offered into evidence by a representative, the opposing representative may offer any other part. Nothing in this paragraph shall be construed to permit the taking of depositions for purposes other than those set forth in paragraph (A) of this rule.

- (D) A transcript of testimony and exhibits from a prior proceeding may be introduced for any purpose if that prior proceeding forms the basis for the allegations. Upon offering part of a transcript or exhibit from a prior proceeding, the offering representative may be required by the opposing representative to present any other part of the offered item which should in fairness be considered contemporaneously with it.

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Statutory Authority: 4761.03
Rule Amplifies: 4761.03(F), 119
Prior Effective Dates: 03/26/2001

TO BE RESCINDED

4761-11-17 **Witnesses.**

- (A) All witnesses at any hearing before the board or its hearing examiner shall testify under oath or affirmation.
- (B) A witness may be accompanied and advised by legal counsel. Participation by counsel for a witness other than the respondent is limited to protection of that witness' rights, and that legal counsel may neither examine nor cross-examine any witnesses.
- (C) Should a witness refuse to answer a question ruled proper at a hearing or disobey a subpoena, the Ohio respiratory care board may institute contempt proceedings pursuant to section 119.09 of the Revised Code.
- (D) Neither board members nor the board's appointed hearing officer or hearing examiner, shall be a competent witness nor subject to deposition in any adjudication proceeding. Unless the testimony of a board member or hearing examiner is material to the factual allegations set forth in the notice of opportunity for hearing, board members or the hearing examiner shall not be competent witnesses nor subject to deposition in any adjudication proceeding. Evidence from other persons relating to the mental processes of the appointed hearing officer or the board's hearing examiner or board members shall not be admissible.
- (E) Any representative of record may move for a separation of witnesses. Expert witnesses shall not be separated.
- (F) Each representative of record at a hearing shall inform the board or hearing examiner prior to the commencement of a hearing of the identity of each potential witness for cause present in the hearing room. Failure to so identify potential witnesses at this time may be grounds for their later disqualification as witnesses.
- (G) No witnesses shall be permitted to testify as to the nature, extent, or propriety of disciplinary action to be taken by the Ohio respiratory care board. A witness may, in the discretion of the appointed hearing officer or the hearing examiner, testify as to an ultimate issue of fact.

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Statutory Authority: 4761.03
Rule Amplifies: 4761.03(F), 119
Prior Effective Dates: 03/26/2001, 12/31/2016

TO BE RESCINDED

4761-11-18 **Expert testimony.**

Any party who intends to utilize expert testimony at hearing must provide a written report by the expert to the opposing party which sets forth the opinions to which the expert will testify and the bases for such opinions. Such report must be served upon the opposing party no later than five days prior to the hearing date, unless waived by both parties. Failure to produce and serve the expert's report within the prescribed time shall result in the exclusion of that expert's testimony and report at hearing.

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Promulgated Under: 119.03
Statutory Authority: 4761.03
Rule Amplifies: 4761.03(F), 119, 4761-10-01
Prior Effective Dates: 03/26/2001

TO BE RESCINDED

4761-11-19

Exhibits.

All exhibits will be labeled in advance of the hearing. Each party will provide ten copies of all exhibits to the appointed hearing officer or hearing examiner in advance of the hearing. Failure to provide exhibits in accordance with this rule may result in their exclusion.

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Statutory Authority: 4761.03
Rule Amplifies: 4761.03(F), 119
Prior Effective Dates: 03/26/2001, 05/23/2005, 12/31/2016

TO BE RESCINDED

4761-12-02 **Renewal fees.**

(A) The following renewal fees apply:

(1) Respiratory care professional license fee, not to exceed one hundred dollars.

(2) Limited permit renewal:

(a) Limited permits issued in accordance with section 4761.05 (B)(1)(a) of the Revised Code, as a currently enrolled student or graduate of an accredited respiratory care educational program, not to exceed ten dollars.

(b) Limited permits issued in accordance with section 4761.05 (B)(1)(b) of the Revised Code, as a person employed as a provider of respiratory care in this state and employed as a provider of respiratory care in this state prior to March 14, 1989, not to exceed fifty dollars.

(B) A renewal penalty equal to one half the renewal fee will be assessed if the renewal application is not post marked by the renewal application deadline date provided for in paragraphs (B)(1) and (C)(1) of rule 4761-8-01 of the Administrative Code.

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Statutory Authority: 4761.03
Rule Amplifies: 4761.07
Prior Effective Dates: 07/11/2003

TO BE RESCINDED

4761-12-03

Replacement of license or certificate.

The respiratory care board may replace an identification card or certificate due to loss, theft, or destruction for the cost to print and mail this material. A certificate may also be reprinted due to name change, provided the original is returned to the board. A replacement fee will be required for an identification card, if issued, or a certificate issued in addition to those issued for initial application or renewal.

(A) A license card - six dollars;

(B) A license certificate - ten dollars.

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Statutory Authority: 4761.03
Rule Amplifies: 4761.08
Prior Effective Dates: 01/31/1992, 07/11/2003, 10/26/2009

TO BE RESCINDED

4761-13-01 **Definitions for accessing confidential personal information.**

- (A) "Access" as a noun means an opportunity to copy, view, or otherwise perceive whereas "access" as a verb means to copy, view, or otherwise perceive.
- (B) "Acquisition of a new computer system" means the purchase of a "computer system," as defined in this rule, that is not a computer system currently in place nor one for which the acquisition process has been initiated as of the effective date of the board rule addressing requirements in section 1347.15 of the Revised Code.
- (C) "Computer system" means a "system," as defined by section 1347.01 of the Revised Code, that stores, maintains, or retrieves personal information using electronic data processing equipment.
- (D) "Confidential personal information" (CPI) has the meaning as defined by division (A) (1) of section 1347.15 of the Revised Code and identified by rules promulgated by the agency in accordance with division (B)(3) of section 1347.15 of the Revised Code that reference the federal or state statutes or administrative rules that make personal information maintained by the board confidential.
- (E) "Employee of the board" means each employee of the board regardless of whether he/she holds an elected or appointed office or position within the board. "Employee of the board" is limited to the Ohio respiratory care board.
- (F) "Incidental contact" means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.
- (G) "Individual" means natural person or the natural person's authorized representative, legal counsel, legal custodian, or legal guardian.
- (H) "Information owner" means the individual appointed in accordance with division (A) of section 1347.05 of the Revised Code to be directly responsible for a system.
- (I) "Person" means natural person.
- (J) "Personal information" has the same meaning as defined in division (E) of section 1347.01 of the Revised Code.
- (K) "Personal information system" means a "system" that "maintains" "personal information" as those terms are defined in section 1347.01 of the Revised Code. "System" includes manual and computer systems.
- (L) "Research" means a methodical investigation into a subject.

- (M) "Routine" means common place, regular, habitual, or ordinary.
- (N) "Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person" as that phrase is used in division (F) of section 1347.01 of the Revised Code means personal information relating to the board's employees that is maintained by the board for administrative and human resource purposes.
- (O) "System" has the same meaning as defined by division (F) of section 1347.01 of the Revised Code.
- (P) "Upgrade" means a substantial redesign of an existing system for the purpose of providing a substantial amount of new application functionality, or application modifications that would involve substantial administrative or fiscal resources to implement, but would not include maintenance, minor updates and patches, or modifications that entail a limited addition of functionality due to changes in business or legal requirements.

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Statutory Authority: 1347.15(B)
Rule Amplifies: 1347.15(B)
Prior Effective Dates: 08/09/2010

TO BE RESCINDED

4761-13-02

Procedures for accessing confidential personal information.

For personal information systems, whether manual or computer systems, that contain confidential personal information, the board shall do the following:

- (A) Criteria for accessing confidential personal information. Personal information systems of the board are managed on a "need-to-know" basis whereby the information owner determines the level of access required for an employee of the board to fulfill his/her job duties. The determination of access to confidential personal information shall be approved by the employee's supervisor and the information owner prior to providing the employee with access to confidential personal information within a personal information system. The board shall establish procedures for determining a revision to an employee's access to confidential personal information upon a change to that employee's job duties including, but not limited to, transfer or termination. Whenever an employee's job duties no longer require access to confidential personal information in a personal information system, the employee's access to confidential personal information shall be removed.
- (B) Individual's request for a list of confidential personal information. Upon the signed written request of any individual for a list of confidential personal information about the individual maintained by the board, the board shall do all of the following:
- (1) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with the confidential personal information;
 - (2) Provide to the individual the list of confidential personal information that does not relate to an investigation about the individual or is otherwise not excluded from the scope of Chapter 1347. of the Revised Code; and
 - (3) If all information relates to an investigation about that individual, inform the individual that the board has no confidential personal information about the individual that is responsive to the individual's request.
- (C) Notice of invalid access.
- (1) Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the board shall notify the person whose information was invalidly accessed as soon as practical and to the extent known at the time. However, the board shall delay notification for a period of time necessary to ensure that the notification would not delay or impede an investigation or jeopardize homeland or national

security. Additionally, the board may delay the notification consistent with any measures necessary to determine the scope of the invalid access, including which individuals' confidential personal information invalidly was accessed, and to restore the reasonable integrity of the system.

"Investigation" as used in this paragraph means the investigation of the circumstances and involvement of an employee surrounding the invalid access of the confidential personal information. Once the board determines that notification would not delay or impede an investigation, the board shall disclose the access to confidential personal information made for an invalid reason to the person.

- (2) Notification provided by the board shall inform the person of the type of confidential personal information accessed and the date(s) of the invalid access.
 - (3) Notification may be made by any method reasonably designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.
- (D) Appointment of a data privacy point of contact. The board director shall designate an employee of the board to serve as the data privacy point of contact. The data privacy point of contact shall work with the chief privacy officer within the office of information technology to assist the board with both the implementation of privacy protections for the confidential personal information that the board maintains and compliance with section 1347.15 of the Revised Code and the rules adopted pursuant to the authority provided by that chapter.
- (E) Completion of a privacy impact assessment. The board director shall designate an employee of the board to serve as the data privacy point of contact who shall timely complete the privacy impact assessment form developed by the office of information technology.

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Statutory Authority: 1347.15(B)
Rule Amplifies: 1347.15(B)
Prior Effective Dates: 08/09/2010

TO BE RESCINDED

4761-13-03

Valid reasons for accessing confidential personal information.

Pursuant to the requirements of division (B)(2) of section 1347.15 of the Revised Code, this rule contains a list of valid reasons, directly related to the board's exercise of its powers or duties, for which only employees of the board may access confidential personal information (CPI) regardless of whether the personal information system is a manual system or computer system:

(A) Performing the following functions constitute valid reasons for authorized employees of the board to access confidential personal information:

- (1) Responding to a public records request;
- (2) Responding to a request from an individual for the list of CPI the agency maintains on that individual;
- (3) Administering a constitutional provision or duty;
- (4) Administering a statutory provision or duty;
- (5) Administering an administrative rule provision or duty;
- (6) Complying with any state or federal program requirements;
- (7) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;
- (8) Auditing purposes;
- (9) Licensure [or permit, eligibility, filing, etc.] processes;
- (10) Investigation or law enforcement purposes;
- (11) Administrative hearings;
- (12) Litigation, complying with an order of the court, or subpoena;
- (13) Human resource matters (e.g., hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approvals/issues);
- (14) Complying with an executive order or policy;

- (15) Complying with a board policy or a state administrative policy issued by the department of administrative services, the office of budget and management or other similar state agency; or
 - (16) Complying with a collective bargaining agreement provision.
- (B) To the extent that the general processes described in paragraph (A) of this rule do not cover the following circumstances, for the purpose of carrying out specific duties of the board, authorized employees would also have valid reasons for accessing CPI in these following circumstances:
- (1) Conducting investigations of persons licensed by the board, including the review of information collected on subjects, witnesses, or records associated with the investigation;
 - (2) Reporting administrative actions and disciplinary records, pursuant to state or federal law;
 - (3) Monitoring compliance of board administrative actions, including the review of all internal and external reports and data used to facilitate the monitoring process;
 - (4) Records maintenance processes, including filing, copying, scanning, and monitoring, or
 - (5) Complying with criminal background check requirements pursuant to section 4761.051 of the Revised Code.

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Rule Amplifies: 1347.15(B), 1347.15(C)
Prior Effective Dates: 08/09/2010

TO BE RESCINDED

4761-13-04 **Confidentiality statutes.**

The following federal statutes or regulations or state statutes and administrative rules make personal information maintained by the board confidential and identify the confidential personal information within the scope of rules promulgated by the board in accordance with section 1347.15 of the Revised Code:

- (A) Social security numbers: 5 U.S.C. 552a. as of 02/01/2010, unless the individual was told that the number would be disclosed.
- (B) "Bureau of Criminal Investigation and Information" criminal records check results: section 4776.04 of the Revised Code.
- (C) Confidential information obtained during an investigation: division (E) of section 4761.03 of the Revised Code.
- (D) Medical records: Health Insurance Portability and Accountability Act, 11 45, CFR 160, 42 USC 1320.
- (E) College and university transcripts received by the board: per Family Educational Rights and Privacy Act regulation 34 CFR Part 99 section 99.33 and 20 U.S.C. 1232g (b) (4)(B) of 01/05/2009.

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Statutory Authority: 1347.15(B)
Rule Amplifies: 1347.15(B)
Prior Effective Dates: 08/09/2010

TO BE RESCINDED

4761-13-05 Restricting and logging access to confidential personal information in computerized information systems.

For personal information systems that are computer systems and contain confidential personal information, the board shall do the following:

- (A) Access restrictions. Access to confidential personal information that is kept electronically shall require a password or other authentication measure.
- (B) Acquisition of a new computer system. When the board acquires a new computer system that stores, manages or contains confidential personal information, the board shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.
- (C) Upgrading existing computer systems. When the board modifies an existing computer system that stores, manages or contains confidential personal information, the board shall make a determination whether the modification constitutes an upgrade. Any upgrades to a computer system shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.
- (D) Logging requirements regarding confidential personal information in existing computer systems.
 - (1) The board shall require employees of the board who access confidential personal information within computer systems to maintain a log that records that access.
 - (2) Access to confidential information is not required to be entered into the log under the following circumstances:
 - (a) The employee of the board is accessing confidential personal information for official board purposes, including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (b) The employee of the board is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (c) The employee of the board comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(d) The employee of the board accesses confidential personal information about an individual based upon a request made under either of the following circumstances:

(i) The individual requests confidential personal information about himself/herself.

(ii) The individual makes a request that the board takes some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request.

(3) For purposes of this paragraph, the board may choose the form or forms of logging, whether in electronic or paper formats.

(E) Log management. The board shall issue a policy that specifies the following:

(1) Who shall maintain the log;

(2) What information shall be captured in the log;

(3) How the log is to be stored; and

(4) How long the information kept in the log is to be retained.

Nothing in this rule limits the board from requiring logging in any circumstance that it deems necessary.

Effective:

Five Year Review (FYR) Dates: 11/15/2018

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 1347.15(B)
Rule Amplifies: 1347.15(B)
Prior Effective Dates: 08/09/2010

TO BE RESCINDED

4761-14-01 **Accepting and storing hyperbaric technologist certifications.**

Pursuant to division (A)(12) of section 4761.03 of the Revised Code, the board is required to adopt rules prescribing the procedures for accepting and storing copies of hyperbaric technologist certifications filed with the board for purposes of acknowledging persons exempted under division (A)(11) of section 4761.11 of the Revised Code to administer hyperbaric oxygen. Accordingly, the following procedure shall be adopted:

- (A) Persons certified as a hyperbaric technologist by the national board of diving and hyperbaric medical technology, or its successor organization shall complete the hyperbaric technologist filing form (form rcb-051, approved 8/20/2014) available on the board's website www.respiratorycare.ohio.gov.
- (B) Persons filing the hyperbaric technologist filing form shall provide the following:
- (1) Name and residential address.
 - (2) If employed as a hyperbaric technologist, the name and address of employer.
 - (3) The expiration date and hyperbaric technologist certification number issued by the national board of diving and hyperbaric medical technology, or its successor organization.
 - (4) A copy of the certificate of certification issued the national board of diving and hyperbaric medical technology, or its successor organization.
 - (5) A non-refundable twenty dollar filing fee.
- (C) Upon receipt of the hyperbaric techologist filing form, the board shall review the form and enter the filer's information upon its license tracking system.
- (D) The hyperbaric technologist filing form shall be scanned and the imaged document shall be stored in the board's electronic filing system. The original form may be scheduled for destruction pursuant to the board's records retention schedule.
- (E) The board shall issue a letter to the filer acknowledging receipt and filing of the person's hyperbaric technologist certification.
- (F) Persons acknowledged by the board as a certified hyperbaric technologist shall notify the board within sixty days of a change in residential address, employment, or hyperbaric technologist certification status.

- (G) Persons certified as a hyperbaric technologist by the national board of diving and hyperbaric medical technology, or its successor organization, must maintain active certification to meet the definition of a certified hyperbaric technologist under division (G) of section 4761.01 of the Revised Code.

Effective:

Five Year Review (FYR) Dates: 11/16/2018

Certification

Date

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