

# CONSUMER'S GUIDE

## to the complaint process

### TO THE OHIO RESPIRATORY CARE BOARD

#### **INTRODUCTION**

This consumer's guide is designed to answer questions you might have as a patient, or health care consumer, as well as provide you with information on what the Ohio Respiratory Care Board can do for you. This guide will provide you with a step-by-step review of the complaint process. It is our hope that this information will encourage you to contact the Ohio Respiratory Care Board when you have legitimate concerns about a respiratory care provider.

Complaints from health care recipients, health care consumers, or health care co-workers are an important source of information about the competency of health care professionals and the quality of care they provide. Complaints also show the Ohio Respiratory Board members and staff that consumers are watching the actions the Board takes on behalf of the public.

#### **WHAT IS THE OHIO RESPIRATORY CARE BOARD AND WHAT DOES IT DO?**

The Ohio Respiratory Care Board is an agency of the state of Ohio, which was established in 1989 by an act of the Ohio Legislature. The Board's authority is found under Chapter 4761 of the Ohio Revised Code. The Board is charged with enforcing the laws and rules that regulate the practice of respiratory care in Ohio. The Board licenses Registered Respiratory Therapists (R.R.T.), Certified Respiratory Therapy Technicians (C.R.T.T.), Respiratory Therapy Technicians, working respiratory therapy students, and many other health care providers who provide respiratory care under any similar title. Those authorized to practice respiratory care by the Ohio Respiratory Care Board are referred to as "Licensees" or "Limited Permit Holders."

The Board also handles complaints about its licensees and limited permit holders and may directly discipline those providers who violate the public health and safety standards set by the legislature and the Board. Complaints which do not fall within the jurisdiction of the Board may be referred to other, more appropriate agencies.

#### **WHO ARE THE MEMBERS OF THE OHIO RESPIRATORY CARE BOARD?**

The Ohio Respiratory Care Board has five members: three are respiratory care providers licensed in the state of Ohio, one is a licensed physician who has clinical training and management in pulmonary diseases, and one is a public member. All members are appointed by the Governor with the advise and consent of the Ohio Senate and serve for a term of three years. The Board

meets for two days every other month. Meetings, including administrative hearings, are open to the public. You may obtain a list of meeting dates by calling the Board office at (614) 752-9218.

### **WHAT KIND OF COMPLAINTS ARE HANDLED BY THE BOARD?**

The Board can discipline its licensees and limited permit holders for violating the public health and safety standards set by the legislature and the Board. Any complaint concerning these standards may be jurisdictional and could be reviewed by the Board. These include:

- ◆ Conviction of an offense involving *moral turpitude* or of a *felony*
- ◆ Violating *any provision* of the laws regulating the practice of respiratory care or any rule or order of the board (i.e. failing to meeting the requirements for a license or permit, or failing to meet continuing education requirements)
- ◆ Obtaining a license or permit by means of *fraud, false or misleading representation, or concealment* of material facts
- ◆ Being guilty of *negligence* or *gross misconduct* in the practice of respiratory care
- ◆ Violating a standard of *ethical conduct* adopted by the board
- ◆ *Using any controlled substance or alcohol* to the extent use impairs the ability to practice respiratory care at an acceptable level of competency
- ◆ *Accepting commissions, rebates or other forms of remuneration* for patient referrals
- ◆ Practicing in an area of respiratory care for which the person is *clearly untrained* or *incompetent* or practicing *without a licensed physician's prescription* or supervision
- ◆ *Employing, directing or supervising* a person who is *not authorized* to practice respiratory care by this board
- ◆ *Misrepresenting educational attainments* or authorized functions for the purpose of obtaining some benefit related to the practice of respiratory care

Under certain conditions, the Board can also seek an injunction or restraining order to prevent unlawful conduct or practice.

## **WHAT KIND OF COMPLAINTS ARE NOT HANDLED BY THE OHIO RESPIRATORY CARE BOARD?**

The Ohio Respiratory Care Board cannot:

- ◆ discipline health care providers who are licensed by another state agency, such as a physician, nurse, or physical therapist or who are not licensed by the Ohio Respiratory Care Board
- ◆ get money back that you feel is owed to you
- ◆ handle disputes between you and a health care organization, which are unrelated to the practice of respiratory care
- ◆ intervene in employee/employer disputes
- ◆ resolve questions about insurance reimbursement

The Ohio Respiratory Care Board will answer any questions you may have about whether we can handle your complaint.

## **HOW DO I FILE A COMPLAINT?**

You may file a complaint with the Ohio Respiratory Care Board by mail or by telephone.

### **BY MAIL**

To send a complaint by mail you may use a complaint form designed by the board or you may send a letter to the Ohio Respiratory Care Board, 77 South High Street, 18th Floor, Columbus, Ohio 43266-0777.

Be sure to include the licensee's or permit holder's full name and the details of your complaint on the complaint form or in your letter to the Board. If possible, include the licensee's or permit holder's address. Although the board accepts anonymous complaints, the board encourages you to include your name, address, and telephone number in case we need to contact you for additional information.

If you choose to remain anonymous, you may; however, if the complaint is unclear or the investigator needs to contact you for more information, his or her inability to contact you make a thorough investigation difficult or impossible in some instances.

### **BY TELEPHONE**

Call the Ohio Respiratory Care Board office at (614) 752-9218 , between 8:00 A.M. and 5:00 P.M. Monday through Friday. If an investigator is unable to take your call, please leave your name and number and your call will be returned.

Even if you phone in your complaint, you may be asked to submit it in writing as well. Again, be sure to have the licensee or permit holder's full name and details of your complaint available when you call.

## **WHAT IS THE COMPLAINT PROCESS?**

Once received, you will receive an acknowledgment letter from the Board. Your complaint is then reviewed by the Executive Secretary of the Board and the Supervising Board Member (usually the Board Secretary) to determine if the Board has the legal authority (jurisdiction) to act in your case.

The Board's jurisdiction is defined by state laws regulating the practice of respiratory care. The Board, for example, would not have jurisdiction over a licensee from another state agency (i.e. a registered nurse) or over a complaint regarding a respiratory therapist who refused to treat you based upon your ability to pay for the service, because this action is not prohibited by the laws enforced by the Board. If a complaint is not within the Board's jurisdiction, you will receive a written explanation of why the board cannot act on your complaint.

Once jurisdiction is established, the Executive Secretary directs the Board's investigator to open a case. To maintain confidentiality and assure that each case brought to the Board's attention is properly investigated, each case is assigned a number. The Executive Secretary oversees the investigation and acts as an advisor on each case. On occasion, outside respiratory therapy experts are consulted.

Depending on the nature of the investigation, the Board's investigator may gather information from any of the following: you, the complainant; the patient, if other than the complainant, the licensee's or permit holder's colleagues, and other sources, such as police agencies, courts, and hospital records. *All information relating to Board investigations is required by law to be kept confidential.*

If evidence is sufficient, the case will be reviewed by the board's Secretary (one of the board members) who will prepare the case for hearing and draft formal charges. If approved by the board, the notice of formal charges, called an Opportunity for Hearing Notice, will be mailed to the complainant. All Opportunity for Hearing Notices are reviewed by the Ohio Attorney General's Office before being approved by the board.

## **WHAT IS THE DISCIPLINARY PROCESS?**

After the members of the board vote to issue an Opportunity for Hearing Notice to a licensee or permit holder, the notice is mailed by certified/return receipt mail to the individual. The hearing notice provides the individual with the opportunity to request a hearing. Such a request must be made within 30 days of the date of mailing of the notice. If requested, the hearing is scheduled. The hearing is generally conducted before the five board members of the Ohio Respiratory Care Board. On occasion, the board will hire an independent hearing examiner to conduct the hearing.

At any hearing, the licensee or permit holder may be represented by an attorney or other representation. The Ohio Respiratory Care Board is represented by the Office of the Ohio Attorney General. The hearing is similar to a civil trial, where in each side may present their case by presenting evidence and examining witnesses that appear for or against each side. In some cases, licensees and permit holders submit written arguments, instead of coming to a hearing.

After the hearing, the board meets to review the evidence and testimonies presented by both sides. Following consideration of all the evidence, the board writes an Order, which gives the board's decision regarding action against the licensee. This Order is voted on in public session. Once approved, the Order is prepared in its final form and mailed to the licensee or permit holder. The licensee or permit holder has the right to appeal an order of the Board to a Court of Common Pleas. A licensee or permit holder may file with the Court of Common Pleas for a stay order. A stay order from a court will prevent the disciplinary action from going into effect until a decision on the appeal is made.

### **WHAT TYPE OF DISCIPLINARY ACTION MAY BE TAKEN BY THE OHIO RESPIRATORY CARE BOARD?**

The Ohio Respiratory Care Board may dismiss a case if it feels that no violation has occurred or if evidence is insufficient.

However, if the Board decides that there has been a violation of law, it may choose one of the following actions:

- ◆ impose a *fine* between \$100.00 to \$500.00
- ◆ *reprimand* the licensee or permit holder
- ◆ place an individual's license or permit on *probation* with conditions listed to fully reinstate
- ◆ *Suspend* the individual's license or permit
- ◆ *Revoke* the individual's license or permit

Sometimes, if the Board believes a violation of law has happened, they will offer the individual an alternative resolution called a consent agreement, in lieu of holding a formal hearing. If the action is acceptable to both the license or permit holder and the board, no formal adjudicatory hearing is necessary.

In emergencies, the Ohio Respiratory Care Board has the authority to temporarily suspend a license or permit pending a hearing, if an individual poses a danger to the public. This is called summary suspension.

## **HOW CAN I FIND OUT IF A RESPIRATORY CARE PROVIDER HAS BEEN DISCIPLINED?**

You may call the Ohio Respiratory Care Board office at (614) 752-9218 between 8:00 a.m. and 5:00 p.m., Monday through Friday, to find out about disciplinary actions that have been taken. Information about formal disciplinary actions is available to the public; including much of the investigatory record. Cases under investigation are confidential and state law prohibits the Board from releasing this information.

## **CAN A RESPIRATORY THERAPIST SUE ME FOR MAKING A COMPLAINT?**

A respiratory care provider cannot successfully sue you simply because you file a complaint with the Ohio Respiratory Care Board, so long as the complaint is made in good faith.

*This consumer guide was adapted from the State Medical Board of Ohio's Consumer's Guide. Their booklet was adapted from the Center for Public Representation publication entitled A Consumer's Guide to the Medical Examining Board in Wisconsin, which was itself produced in cooperation with the American Association of Retired Persons.*

**OHIO RESPIRATORY CARE BOARD  
COMPLAINT FORM**

Docket Number \_\_\_\_\_  
Office Use Only

NAME OF COMPLAINTANT \_\_\_\_\_ DATE \_\_\_\_\_  
(Your Name)

ADDRESS OF COMPLAINTANT \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TELEPHONE Home: ( ) \_\_\_\_\_ Work: ( ) \_\_\_\_\_

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COMPLAINT AGAINST: \_\_\_\_\_

Address: \_\_\_\_\_ (Number and Street)  
\_\_\_\_\_ (City, State and Zip)

Telephone: Home: ( ) \_\_\_\_\_ Work: ( ) \_\_\_\_\_

Nature of Complaint:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date(s) of alledged offense(s) \_\_\_\_\_

Location of alledged offense(s) \_\_\_\_\_

What would you like the Ohio Respiratory Care Board to do about your complaint?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the Ohio Respiratory Care Board should find grounds for an Administrative Hearing, it may be necessary for you to appear as a witness under subpoena. Would you be willing to testify? [ ] yes [ ] no

Please return completed and signed complaint form to: Ohio Respiratory Care Board  
77 South High Street, 18th Floor  
Columbus, Ohio 43266-0777

\_\_\_\_\_  
Signature of Complainant  
(Person making the complaint)

\* You may attach separate sheets for any additional comments you wish to make.