

Report on the

**Board of Respiratory Therapy
State of Alabama
Montgomery, Alabama**

October 1, 2018 through September 30, 2020

Filed: March 26, 2021



**Department of
Examiners of Public Accounts**

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Rachel Laurie Riddle, Chief Examiner



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Honorable Rachel Laurie Riddle
Chief Examiner of Public Accounts
Montgomery, Alabama 36130

Dear Madam:

An examination was conducted on the Board of Respiratory Therapy, Montgomery, Alabama, for the period October 1, 2018 through September 30, 2020. Under the authority of the *Code of Alabama 1975*, Section 41-5A-19, I hereby swear to and submit this report to you on the results of the examination.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Charles J Bass'.

Charles Bass
Examiner of Public Accounts

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Department of
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SUMMARY

**Board of Respiratory Therapy
October 1, 2018 through September 30, 2020**

The Board of Respiratory Therapy (the “Board”) licenses and regulates the practice of respiratory therapy in Alabama and operates under the authority of the *Code of Alabama 1975*, Sections 34-27B-1 through 34-27B-14.

This report presents the results of an examination of the Board and a review of the Board’s compliance with applicable laws and regulations of the State of Alabama. This examination was conducted in accordance with the requirements of the Department of Examiners of Public Accounts under the authority of the *Code of Alabama 1975*, Section 41-5A-12. Our examination was performed for the purpose of determining whether the public officers, agents, and employees of the Board properly and lawfully accounted for all money and other public assets or resources received, disbursed, or in the custody of the Board. Our examination included determining compliance by the Board with state laws and regulations that pertain to financial transactions; personnel; safeguarding of state-owned assets, property, and resources; information dissemination, processing, and retention; and official actions, rulemaking procedures, and meetings. As a part of our examination, we also reviewed internal control policies and procedures relating to the areas listed above. Our examination did not encompass managerial and operational matters, such as whether the Board accomplished its mission or its regulatory, enforcement, investigative, or other oversight activities in an efficient, fair, timely, or legal manner.

FINDINGS

The following instances of noncompliance with State laws and regulations and other matters were found during the examination as shown on the Schedule of State Legal Compliance and Other Findings and they are summarized below.

- ◆ 2020-001 Relates to the Board requiring applicants to submit background checks that are not authorized by statute.
- ◆ 2020-002 Relates to the Board not notifying the Secretary of State of Board member vacancies.
- ◆ 2020-003 Relates to the Board adopting emergency rules lasting longer than the 120 days allowed by the Administrative Procedures Act.

- ◆ 2020-004 Relates to the Board adopting an emergency rule for temporary licensure that conflicts with the Board's enabling statute.
- ◆ 2020-005 Relates to the Board adopting an emergency rule allowing a license lapsed for up to five year to be reinstated that conflicts with the Board's statute and Administrative Rule.
- ◆ 2020-006 Relates to the Board adopting an emergency rule allowing for a temporary reciprocal license that conflicts with the Board's statute.

EXIT CONFERENCE

Board members and the Executive Director were invited to an exit conference held on March 2, 2021. Individuals in attendance were Glenn R. Phippen II, Board member; Elizabeth Sheehan, Executive Director; and Beth Haisten, Assistant Director, along with Robin Hutcheson and Charles Bass from the Department of Examiners of Public Accounts.



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COMMENTS

**Board of Respiratory Therapy
October 1, 2018 through September 30, 2020**

The Board of Respiratory Therapy (the “Board”) operates under the authority of the *Code of Alabama 1975*, Sections 34-27B-1 through 34-27B-14. The Board licenses and regulates the practice of respiratory therapy in Alabama. These functions include reviewing applicants’ qualifications for examinations, issuing licenses to successful examinees, investigating complaints, and holding administrative hearings concerning noncompliance with the Board’s enabling statutes.

The Board consists of five members appointed by the Governor to four-year terms and no member can serve more than three consecutive full terms.

- Three respiratory therapists selected from a list of six names submitted by the Alabama Society for Respiratory Care who are registered or certified by the National Board for Respiratory Care or its successor organization.
- One chief executive officer of a hospital, who is selected from a list of names submitted by the Alabama Hospital Association.
- One physician, who is licensed to practice medicine in Alabama and who is a member of at least one of the following: the American Thoracic Society, the American College of Chest Physicians, the American Society of Anesthesiologists, or the American Academy of Pediatrics. The physician member must be selected from a list of two names submitted by the Medical Association of Alabama.

The Board has an interagency agreement with the Board of Examiners for Dietetic/Nutrition Practice to provide office space and administrative services.

The Board operates from Special Revenue Fund 1149 in the State Treasury. The Board’s operating funds are derived from fees collected by the Board in carrying out its statutory mission. The Board is subject to the State’s normal budget procedures and cannot expend funds without a legislative appropriation. The *Code of Alabama 1975*, Section 34-27B-6 requires “After the first three full fiscal years from May 17, 2004, and every three years thereafter, if a surplus of funds exist which is greater than two years operating expense, the surplus must be transferred to the State’s General Fund”. There were no transfers to the General Fund for the examination period.

The Board owned nonconsumable personal property consisting of office furniture. A comparison was done of nonconsumable personal property in the custody of the Board with property records maintained by the Property Inventory Division of the State Auditor's Office. No discrepancies were noted.

*Schedule of State Legal
Compliance and Other Findings*

Schedule of State Legal Compliance and Other Findings
For the Examination Period Ended September 30, 2020

Ref. No.	Finding/Noncompliance
2020-001	<p><u>Finding:</u> The Board is requiring applicants to submit a criminal background check with their applications for licensure. According to the Board’s statute, a criminal background check is not a requirement for obtaining a license.</p> <p>The <i>Code of Alabama 1975</i>, Section 34-27B-3, only requires applicants to be a citizen of the United States or legally present in the U. S.; at least 18 years old; high school graduate or equivalent; holds credentials as a registered respiratory therapist or a certified respiratory therapist granted by the National Board for Respiratory Care or its successor organization; and successfully pass an examination.</p> <p><u>Recommendation:</u> The Board should only require licensees to meet requirements that are authorized by statute.</p>
2020-002	<p><u>Finding:</u> The Board did not submit vacancy notices for two members whose terms expired August 5, 2020, as required by the <i>Code of Alabama 1975</i>, Section 36-14-17(d)(1). As a result, this could cause potential candidates not to receive sufficient notice and cause the Board not to receive input from all interested candidates to fill vacancies.</p> <p>The <i>Code of Alabama 1975</i>, Section 36-14-17(d)(1) states, “The chair of an existing board shall notify the Secretary of State by electronic means of a vacancy scheduled to occur on the board as a result of the expiration of a term at least 45 days before the vacancy occurs”.</p> <p><u>Recommendation:</u> The Board should notify the Secretary of State of vacancies scheduled to occur on the Board at least 45 days before the vacancy occurs.</p>

Schedule of State Legal Compliance and Other Findings
For the Examination Period Ended September 30, 2020

Ref. No.	Finding/Noncompliance
2020-003	<p><u>Finding:</u> The Board adopted Emergency Rules 798-X-5-.17ER and 798-X-5-.18ER, effective April 6, 2020. The rules state that they will remain in effect until the end of the COVID-19 Declaration of Emergency as determined by the Governor. The rules conflict with the Administrative Procedure Act, <i>Code of Alabama 1975</i>, Section 41-22-5(b)(1), regarding the length of time an emergency rule can remain in effect.</p> <p>According to the <i>Code of Alabama 1975</i>, Section 41-22-5(b)(1), emergency rules are only effective for a period of no longer than 120 days and shall not be renewable.</p> <p><u>Recommendation:</u> The Board should only adopt emergency rules that comply with the provisions of the Administrative Procedure Act.</p>
2020-004	<p><u>Finding:</u> The Board adopted Emergency Rule 798-X-5-.17ER to allow applicants to obtain a temporary license without paying a fee and without submitting proof of having applied for and awaiting the results of a competency examination. The rule conflicts with the <i>Code of Alabama 1975</i>, Section 34-27B-7.</p> <p>The <i>Code of Alabama 1975</i>, Section 34-27B-7 states, “(a) The board shall issue a respiratory therapist license to any person who <i>meets the qualifications</i> required by this chapter and <i>who pays the license fee established herein.</i>” “(d)(1) The board <i>may issue a six-month temporary license</i> as a respiratory therapist to persons who have graduated from a respiratory therapy educational program accredited by the Council on Allied Health Education Programs (CAHEP) in collaboration with the Committee on Accreditation for Respiratory Care (CoARC), or their successor organizations, <i>and who have applied for and are awaiting competency examination.</i>”</p> <p><u>Recommendation:</u> The Board should only issue temporary licenses in accordance with the Board’s enabling statute.</p>

Schedule of State Legal Compliance and Other Findings
For the Examination Period Ended September 30, 2020

Ref. No.	Finding/Noncompliance
2020-005	<p><u>Finding:</u> The Board adopted Emergency Rule 798-X-5-.17ER to allow individuals to reinstate a license that has not been renewed for a period up to five years. The rule conflicts with the <i>Code of Alabama 1975</i>, Section 34-27B-8 and Administrative Rule 798-X-5-.08(3) and (4).</p> <p>The <i>Code of Alabama 1975</i>, Section 34-27B-8, only allows the Board to reinstate a license that’s been revoked due to disciplinary actions.</p> <p><i>Administrative Rule</i> 798-X-5-.08(3) and (4) state, “The renewal of license shall be accomplished prior to expiration of the current license...failure to renew prior to the expiration of the current license will result in an additional late fee. Licenses may be renewed up to 60 days after expiration date. Respiratory therapists will not be permitted to work as respiratory therapist if their license has expired.”</p> <p><u>Recommendation:</u> The Board should only adopt emergency rules that do not conflict with its statute and administrative rules.</p>
2020-006	<p><u>Finding:</u> The Board adopted Emergency Rule 798-X-5-.17ER to allow out of state licensees to apply for a temporary reciprocal license. The Board does not have the statutory authority to issue temporary reciprocal licenses.</p> <p>The <i>Code of Alabama 1975</i>, Section 34-27B-7 states, “(d)(1) The board may issue a six-month temporary license as a respiratory therapist to persons who have graduated from a respiratory therapy educational program accredited by the Council on Allied Health Education Programs (CAHEP) in collaboration with the Committee on Accreditation for Respiratory Care (CoARC), or their successor organizations, and who have applied for and are awaiting competency examination.”</p> <p><u>Recommendation:</u> The Board should only adopt emergency rules that comply with the statute.</p>

***Schedule of Cash Receipts, Disbursements and Balances
For the Period October 1, 2018 through September 30, 2020***

	2019-2020	2018-2019
<u>Receipts</u>		
Respiratory License and Permit Fee	\$ 195,703.00	\$ 132,750.00
<u>Disbursements</u>		
Personnel Cost	18,200.00	
Employee Benefits	1,392.30	
Travel, In-State	4,596.55	3,496.20
Rentals and Leases	24,501.14	216.64
Utilities and Communication	5,081.38	1,759.69
Professional Services	96,140.09	116,964.22
Supplies, Materials, and Operating Expenses	8,816.56	3,697.70
Other Equipment Purchases	657.64	
Total	<u>159,385.66</u>	<u>126,134.45</u>
Excess of Receipts Over Disbursements	36,317.34	6,615.55
Cash Balances at Beginning of Year	<u>43,062.53</u>	<u>36,446.98</u>
Cash Balances at End of Year	79,379.87	43,062.53
Reserve for Unpaid Obligations	<u>(15,157.46)</u>	<u>(43,028.50)</u>
Available Cash Balances at Year-End	<u>\$ 64,222.41</u>	<u>\$ 34.03</u>

Board Members and Officials
October 1, 2018 through September 30, 2020

Board Members		Term Expires
Hon. Vernon Johnson	Chairman	2022
Hon. Ronda Hood	Member	2022
Hon. Ed Goodwin	Member	2022
Hon. William S. Roberts	Member	2020
Hon. William P. Salinski Jr., M.D.	Member	2020
Hon. Glenn R. Pippen, II	Member	2024
Hon. Erin Ozgun, M.D.	Member	2024
 <u>Officials</u>		
Elizabeth Sheehan	Executive Director 400 South Union St., Ste. 271 Montgomery, AL 36104 Phone: (334) 265-7125 www.asbrt.alabama.gov	
Cindy Edgar	Interim Director	September 2020
Paula McCaleb	Executive Director	January 2020