

# **Respiratory Therapy Licensure and “Sunset Laws”**

## **A Primer to Assist State Societies Faced with Repeal of State RT Licensure**

### **PURPOSE**

The objective of this document is to lay out some general steps state societies should take in preparation for the possibility that reauthorization of the state’s RT licensure will be challenged. In plain words: RT licensure could be repealed.

Your State legislature created RT licensure and your Governor signed it into law, so keep in mind that in order for it to be repealed, it will come down to the same process.

There are a number of proactive steps or opportunities your society can take to prevent action to de-license the RT profession in your state before it ever gets to the legislature. This primer is designed to help you sort those out.

### **BACKGROUND**

RTs are licensed in 49 states, DC, Puerto Rico and Guam. The “umbrella” under which RTs are licensed is roughly divided into thirds:

- Stand-alone **RT Licensure Boards** with appointed Board members meeting at specified times during the year.
- Under the auspices of the **State Board of Physicians or Medicine**. RT issues are addressed usually by a RT Advisory Committee or Council with appointed RTs who meet on a regular basis. Final approval of decisions rests with the full Board of Physicians or Medicine which more often than not simply concurs with the decisions of the RT Advisory Committee.
- Regulated under a **State Licensing or Regulatory Agency**. Some may have specific RT licensure committees or councils, but others do not. State agency staff assumes the responsibilities of issuing or renewing licenses, doing complaint investigations, etc.

### **GETTING STARTED – PREPARATION**

The key to successfully defeating any effort to repeal state RT licensure is preparation and communication. This is very important because not all RT licensure laws are the same. There are core provisions such as required RT education, NBRC exam, and general scope of practice, but there are also differences among states. Also, in your information-gathering stage it is

essential to find out if there will be a report that looks at many programs or professions and who will be responsible from the state to gather and write such a report.

### **Do you know when your RT licensure law “sunset”?**

Depending on the state this can be anywhere from 5-7 years. A “Sunset Law” is defined as: **“A statute that includes provision for automatic termination of a government program, agency, etc., at the end of a specified time period, unless it is reauthorized by the legislature.”**

Knowing when RT licensure is up for review and how the process unfolds gives you a timeframe for which to start preparations.

Check your actual RT licensure statute by looking towards the end of the statute. It **may** state the exact year the law expires or a more general “will expire in X years”. If you don’t know where to find it, AARC has a webpage for state licensure information, including links to your state licensing agency/board, which can link you to the RT licensure law.

[http://www.aarc.org/advocacy/state/licensure\\_matrix.html#matrix](http://www.aarc.org/advocacy/state/licensure_matrix.html#matrix)

**Observation:** Because a state agency oversees numerous professions and disciplines, they *tend* to be less invested in the RT profession. Moreover, state agencies might be under budget pressures to cut staff or simply find ways to shed workload levels. Recommending de-licensing of selective professions or disciplines under its purview can help meet the demands of a lower budget or fewer staff.

**Take Home Point:** State societies who have their RTs licensed by a state agency must be particularly focused on the “sunset” date for RT licensure. However, that does not mean those states that regulate RTs under a stand-alone Licensure Board or under the umbrella of the Medical or Physician’s Licensure Board are immune to possible de-licensing.

### **What if there is no reference to licensure in the law?**

Contact your State Licensure Board or Committee and ask the following **KEY** questions:

- Does the RT licensure law have a sunset date?
- What is the process for Sunset of a licensed profession in your state?
- Will there be a review/status report issued by the Board or Committee?
- If not, will another umbrella agency review and issue a report with recommendations, or will the process simply begin with a bill in the legislature?

Knowing how the Sunset process unfolds in your state sets the table for knowing how and to whom to communicate.

### Do you have or need an outside lobbyist?

Nearly half the state RT societies have a contract with an outside lobbyist or lobbying firm. Of course, each society may have contracted for different levels of service; however, if there ever would be a time to tap into the expertise of your lobbyist, the threat of de-licensing the profession would be the time.

Many state lobbyists presumably have an expertise in health. That also means they should be well acquainted with those legislators and their staff who sit on the health-related committees in your legislature. It would also be a safe assumption that any professional health lobbyists also have back channels to health-related state agency staff. In other words, they should have an excellent ability to gather “intel” on what’s going on and have the access to legislators that you as RTs might not have.

Does a State Society have to have an outside lobbyist? No. But the responsibilities of mounting an effective defense, from responding to a negative “Reports” recommendation to meeting with legislators if it gets to that stage, to rallying RTs, patients’ physicians and sparking the interest of the media will fall on the shoulders of the State Society leadership and engaged RT volunteers. These efforts most certainly can be done successfully but make no mistake much constant work will be involved.

For those states that do not have an outside lobbyist, if in all the intelligence gathering during your preparation stage you sense that RTs will be slated for de-licensing and you sense that despite all the efforts the state society has undertaken to take RTs off the de-licensing track you might consider hiring a lobbyist to address this one threat, this one issue. Lobbyists are often contracted to assist on a one-time issue. The State Advocacy resource *“Contracting the Services of an Outside Lobbyist”* can guide you as to what factors to take into consideration if you believe hiring a lobbyist is essential to helping make your case for licensure.

### **COMMUNICATION**

Having good lines of communication between the leadership of the state society and the Licensing Board, executive staff (state employees) and Board or Committee members is essential.

There should be standard communication between the President or President-elect of your society and the staff of your Licensure Board. It may be simply an introduction or an offer to “let me know if you need anything”. But keeping in touch with the regulators (and there is usually one person who is designated to oversee RT licensure issues, even if regulation is done by a state agency) maintains a good and less remote relationship.

Communication should also be undertaken with Licensure Board members, especially those who are RTs. Of course, there must be a self-imposed distance between those who are regulated as represented by the state society and those who do the regulating of the profession.

### **Developing a Strategy**

1. You know Sunset for RT licensure is coming up in a year (and you should know and be prepped a year out).
2. You know through communications with Agency or Board staff or RT Board members that
  - Either a Report making recommendations on numerous programs/professions will be written, or
  - A recommendation specifically on RT licensure will be made (forwarded to the Governor or the legislative committee with jurisdiction over professional licensing issues.)
3. The Society leadership should offer to provide input to the researchers who are doing the report. Be available to be interviewed and provide information on the profession. The goal is to take RTs off the potential “de-licensing” list before the report becomes final.
  - Find out the “rationale” that Sunset Reports have used to recommend RT de-licensing.
  - Use that rationale to provide them with information that refutes their contentions.

The following examples give you some idea of rationale that has been used to de-license RTs.

- **Other “private organizations” can be substituted that will regulate the RTs.** This means the authors think the NBRC credentials (e.g., CRT and RRT) can take the place of state licensure. The NBRC is swift in sending in a response unequivocally stating its voluntary credentials are no substitute. NBRC has no authority to investigate RTs nor has subpoena power.
- **RTs work in a highly organized and regulated environment.** Unstated meaning: all RTs work in the hospital setting which, of course, is not the case. RTs work in the patient’s home, physician offices, nursing homes, outpatient clinics, etc. These are less structured care sites.
- **RTs provide a limited set of services which will not cause undo harm to patients.** Rebuttal to that is to provide them with the NBRC Content Outline and Clinical Simulation Exam. Emphasize the fact that the breadth and depth of the RT profession is complex.
- **There have been few regulatory or disciplinary actions taken against RTs, thus regulation is unnecessary.** This is where good communication with the Board/Committee is important. Ask for a list of disciplinary actions they have taken against RTs over the last 5 years, including revoking licenses, issuing reprimands, putting RTs on probation, or reinstatement,

etc. This information should be publicly available. This type of information goes to the point that licensure is working. If a limited number of actions are taken, another point to make is licensure is working, keeping out those who should never have a license in the first place.

As a follow-up to regulatory or disciplinary actions noted above, reach out to the State Societies that border your state and ask if they can gather disciplinary data from their RT licensure boards. A key point to make is that without RT licensure a state becomes a magnet to those RTs in bordering states who may have lost their own state license or would not qualify for a state license. These individuals could easily come into the un-licensed state and offer themselves as respiratory therapists. (This doesn't even address the issue of individuals who aren't even RTs, but could now simply and legally call themselves RTs and be hired as such.)

There are a number of other arguments state reports have made but the above are the ones that must be strongly debunked.

### **Communicating with RT Members and the Public**

State societies' leaders or perhaps well-looped-in RTs may uncover the launch of a Sunset Review, a formal Sunset Report, or legislative efforts that would call for the de-licensing of the RT profession before AARC staff might hear of it. As noted above, with good communication with Licensure Board staff or RT Licensure Board members, societies should not be blindsided by a negative Sunset Report recommendation.

In order to present the best set of arguments and rebuttals, notify the AARC and NBRC as soon as possible. We will weigh in as organizations.

It is essential that Society leadership has a way to keep RTs across the state informed about what is happening, what the Society and AARC and NBRC are doing, and what they themselves can do. RTs who find out that their state license is in jeopardy become understandably panicky and want to know what is being "done" to stop this.

Your state society website should be the one place where members, non-members and the public can go to find out all the information: link to a Sunset Report if there is one; indicate where and when a public hearing will be held on the Report (there usually are public hearings); and post and link to the Society's, AARC's, and other organizations' statements of support.

Provide viewers with draft letters the RT can send in to a state agency or their legislators. Do similar template letters for pulmonary patients, physicians, and caregivers. Also give them instructions as to how to find the email addresses of their state legislators. The easier you can make it for them to send messages the more messages will be sent.

**Take Home Point:** Whoever is in charge of maintaining your website must understand that he/she may be called on to rapidly update the site.

### **AARC Email to AARC/State Society Members**

At the request of the Society President, the AARC will send out emails reaching that state's AARC members and alerting them to the impending de-licensing situation and what actions individual members should take. While there are some states that also maintain state membership outside of AARC membership, the issue still remains as to how you alert respiratory therapists who are not AARC members or hold only state society membership.

State Societies should have a rapid response network, tapping into key members who can in turn tap into other RTs who may or may not be members and may not know about the impending licensing situation.

### **Social Media**

Word can spread fast and often times it results in rumors and inaccurate information. Get out as much accurate information either on the Society's Facebook page and/or assigning someone to monitor blogs. The point would be to respond by directing readers back to your Society's webpage where the accurate information can be found.

### **Media**

Once you have organized and begun to execute your plan of action, rallied support and written responses, it would be time to reach out to local media be it online, print or television. One of the features of AARC's Capitol Connection Platform is a Media Guide <http://capwiz.com/aarc/dbq/media/> which lists state by state most all of the local media outlets. This function permits one to send messages or better yet a short press release to the media outlets of your choice. A local angle "Patient Safety in our Community Hospital threatened by proposed RT de-licensing" could catch the interest of the media especially in smaller outlets. Also, a quick way to visually showcase RTs in action and give a "face" to the words" is to send the link to the AARC's "Life and Breath" video which is on AARC's website at <http://www.aarc.org/careers/what-is-an-rt/life-breath-video/> and also can be found on YouTube.

### **This is a State Issue Not a National One**

As much as individual RTs from around the country and other state societies want to help or have the urge to "do something", this good intention could backfire. It is understood that de-

licensure of one state could lead to a domino effect, and we agree that in those terms it might be viewed as a national issue; **BUT**, this is a state issue. The individuals who make the final decision are either state agency employees or state legislators (most of whom have other part time jobs the remainder of the year). Presumably they all take pride in believing that they know what is best for the state or they only want to hear from the citizens of the state who would also know best what is right for them.

Outside input from RTs or state societies could easily be viewed as interference into purely state issues. Respiratory therapists from other states or another state society telling the legislators or state agency of another state that their policies are all wrong will at best be ignored and at worst can have negative results. As an example you might hear “How dare a RT from the Bronx or Miami, or the Maine Society for Respiratory Care tell us Oregon legislators what to do and what is best for our state.”

There is one more thing for RTs to know as residents of the state where de-licensing efforts are unfolding. There truly is no point in contacting your members of the U.S. Congress; that is, the two Senators and House of Representative Member. State lawmakers and federal lawmakers stay clear of each other’s “sandboxes.” Licensure is clearly a state-based issue. It’s absolutely okay to organize contacting state legislators but stay away from the feds.

## SUMMARY

Don’t be blindsided by efforts in your state to de-license RTs. Do your homework and know the “umbrella” under which RTs are licensed in your state. Most important, if licensure comes under the State Licensing or Regulatory Board, it is essential that you know your state’s statutory provisions and when “Sunset” laws kick in.

Ask questions and use the resources in this document to find answers. If deemed needed, consider hiring a health lobbyist who has the expertise to tap into resources that may not be available to you. Preparing at the outset and developing a strategy can save you a lot of headaches in the end.

Review some of the rationale that states have used to recommend de-licensure of RTs. Most states have used the same “evidence” to recommend RTs be de-licensed so the arguments that debunk this so called rationale are already written. The earlier you start thinking about and setting up your game plan the better.

Be sure to set up a good communication network. This can include leadership of the state society and members of the licensing board as well as state executive employees and Board or

Committee members. Make sure you have the right tools, including information on your webpage, to provide accurate and up-to-date information, avoiding rumors that may end up on social media. Developing template letters that your state's RTs can send to patients, physicians, caregivers and state legislators makes it easy for them to weigh in on the issue. Loop in the media sometime during the process. The AARC and NBRC can help, too. Most of all, remember this:

**STAY COOL**

**STAY CALM**

**HELP IS ABUNDANT**

**TOGETHER WE CAN FIGHT DE-LICENSURE**