

**State of California  
Office of Administrative Law**

**In re:  
Respiratory Care Board**

**Regulatory Action:**

**Title 16, California Code of Regulations**

**Amend sections: 1399.365**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL Matter Number: 2025-1231-01**

**OAL Matter Type: Emergency (E)**

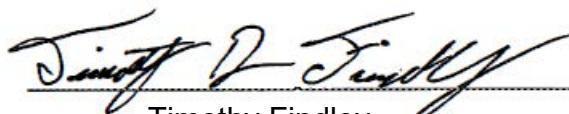
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This emergency action pursuant to Government Code section 11346.1 by the Respiratory Care Board of California amends the existing regulatory identification of basic respiratory tasks and services to specify that its provisions do not apply to licensed vocational nurses performing respiratory care tasks and services as provided by Business and Professions Code section 3765, subdivisions (i) and (j).

OAL approves this emergency action pursuant to Government Code sections 11346.1 and 11349.6.

This emergency action is effective on 1/12/2026 and will expire on 7/14/2026. The Certificate of Compliance for this action is due no later than 7/13/2026.

Date: January 12, 2026



Timothy Findley  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: Christine Molina, Executive  
Officer

Copy: Kathryn Pitt

## EMERGENCY

For use by Secretary of State only

|                  |                                 |                          |  |
|------------------|---------------------------------|--------------------------|--|
| OAL FILE NUMBERS | NOTICE FILE NUMBER<br><b>Z-</b> | REGULATORY ACTION NUMBER | EMERGENCY NUMBER<br><b>2025-1231-01E</b> |
|------------------|---------------------------------|--------------------------|--|

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**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

JAN 12 2026

1:45 pm

NM

OFFICE OF ADMIN. LAW  
2025 DEC 31 PM1:53

## NOTICE

## REGULATIONS

## AGENCY WITH RULEMAKING AUTHORITY

Respiratory Care Board of California

AGENCY FILE NUMBER (If any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

|   |  |                        |                               |
|---|--|------------------------|-------------------------------|
| 1. SUBJECT OF NOTICE  | TITLE(S)   | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
| 3. NOTICE TYPE<br><input type="checkbox"/> Notice re Proposed<br><input type="checkbox"/> Regulatory Action | 4. AGENCY CONTACT PERSON<br><input type="checkbox"/> Other   | TELEPHONE NUMBER       | FAX NUMBER (Optional)         |
| OAL USE<br>ONLY   | ACTION ON PROPOSED NOTICE<br><input type="checkbox"/> Approved as Submitted<br><input type="checkbox"/> Approved as Modified | NOTICE REGISTER NUMBER | PUBLICATION DATE              |
|   | <input type="checkbox"/> Disapproved/<br>Withdrawn   |                        |                               |

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

|   |   |   |   |
|---|---|---|---|
| 1a. SUBJECT OF REGULATION(S)<br><b>Basic Respiratory Tasks and Services</b>   | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)  |   |   |
| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)           |   |   |   |
| SECTION(S) AFFECTED<br>(List all section number(s)<br>individually. Attach<br>additional sheet if needed.)          | ADOPT<br><br>AMEND<br>1399.365  |   |   |
| TITLE(S)<br><b>16</b>   | REPEAL  |   |   |
| 3. TYPE OF FILING   |   |   |   |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)  | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)   | <input type="checkbox"/> File & Print                               | <input type="checkbox"/> Print Only   |
| <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))  | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)   | <input type="checkbox"/> Other (Specify) _____                      |   |

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## 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

|   |   |  |  |
|---|---|--|--|
| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100 )   |   |  |  |
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input checked="" type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> \$100 Changes Without Regulatory Effect | <input type="checkbox"/> Effective other (Specify) _____ |

|  |  |   |
|--|--|---|
| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY |  |   |
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)   | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input checked="" type="checkbox"/> Other (Specify) <b>Kimberly Kirchmeyer, Director, Department of Consumer Affairs</b>       | <i>Kimberly Kirchmeyer</i>                                   |   |

|  |                                    |                       |   |
|--|------------------------------------|-----------------------|---|
| 7. CONTACT PERSON<br><b>Kathryn Pitt</b> | TELEPHONE NUMBER<br>(916) 999-2203 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional)<br><b>kathryn.pitt@dca.ca.gov</b> |
|--|------------------------------------|-----------------------|---|

|  |  |
|--|--|
| 8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification. | For use by Office of Administrative Law (OAL) only |
|--|--|

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**ENDORSED APPROVED**

JAN 12 2026

Office of Administrative Law

|  |                           |
|--|---------------------------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE<br><i>Christine Molina</i>  | DATE<br><b>12/15/2025</b> |
| TYPED NAME AND TITLE OF SIGNATORY<br><b>Christine Molina, Executive Officer, California Respiratory Care Board</b> |                           |
| <i>1/12/2026<br/>TDF<br/>REQUEST<br/>PER AGENCY</i>  |                           |

## RESPIRATORY CARE BOARD OF CALIFORNIA

### ORDER OF ADOPTION

#### California Code of Regulations

#### Title 16. Professional and Vocational Regulations Division 13.6. Respiratory Care Board Article 6. Scope of Practice

Amend Section 1399.365 as follows:

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#### § 1399.365. Basic Respiratory Tasks and Services.

- (a) For purposes of this section, "assessment" means making an analysis or judgment and making recommendations concerning the management, diagnosis, treatment, or care of a patient or as a means to perform any task in regard to the care of a patient. Assessment as used in this section is beyond documenting observations, and gathering and reporting data to a licensed respiratory care practitioner, registered nurse, or physician.
- (b) For purposes of subdivision (a) of section 3702.5 of the B&P, basic respiratory tasks and services do not require a respiratory assessment and include the following:
  - (1) Patient data collection.
  - (2) Application and monitoring of a pulse oximeter.
  - (3) Medication administration by aerosol that does not require manipulation of an invasive or non-invasive mechanical ventilator.
  - (4) Heat moisture exchanger (HME) and oxygen tank replacement for patients who are using non-invasive mechanical ventilation.
  - (5) Hygiene care including replacement of tracheostomy ties and gauze and cleaning of the stoma sites.
  - (6) Use of a manual resuscitation device and other cardio-pulmonary resuscitation technical skills (basic life support level) in the event of an emergency.
  - (7) Documentation of care provided, which includes data retrieved from performing a breath count or transcribing data from an invasive or non-invasive ventilator interface.
  - (8) Observing and gathering data from chest auscultation, palpation, and percussion.
- (c) For purposes of subdivision (a) of section 3702.5 of the B&P, basic respiratory tasks and services do not include the following:
  - (1) Manipulation of an invasive or non-invasive ventilator.
  - (2) Assessment or evaluation of observed and gathered data from chest auscultation, palpation, and percussion.
  - (3) Pre-treatment or post-treatment assessment.
  - (4) Use of medical gas mixtures other than oxygen.
  - (5) Preoxygenation, or endotracheal or nasal suctioning.

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- (6) Initial setup, change out, or replacement of a breathing circuit or adjustment of oxygen liter flow or oxygen concentration.
- (7) Tracheal suctioning, cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula.

(d) This section does not apply to licensed vocational nurses performing respiratory care services identified by the Board while working in any of the exempt settings listed, and under the conditions specified, in subdivisions (i) and (j) of section 3765 of the B&P.

Note: Authority cited: Sections 3702.5 and 3722, Business and Professions Code. Reference: Sections 2860, 3701, 3702, 3702.5, 3702.7, 3703 and 3765, Business and Professions Code.

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