

Regulations and other Acts

Gouvernement du Québec

O.C. 1125-2012, 28 November 2012

Professional Code
(chapter C-26)

Respiratory therapist — Practice of the profession of respiratory therapist in a partnership or joint-stock company

Regulation respecting the practice of the profession of respiratory therapist in a partnership or joint-stock company

WHEREAS, under paragraph *p* of section 94 of the Professional Code (chapter C-26), the board of directors of a professional order may, by regulation, authorize the members of the order to carry on their professional activities within a limited liability partnership or a joint stock company constituted for that purpose and, as appropriate, determine the applicable terms and conditions and restrictions;

WHEREAS, under paragraphs *g* and *h* of section 93 of the Professional Code, the board of directors of a professional order must, by regulation, impose on its members carrying on their professional activities within a partnership or company the obligation to furnish and maintain security, on behalf of the partnership or company, against liabilities of the partnership or company arising from fault in the practice of their profession and fix the conditions and procedure applicable to a declaration made to the order;

WHEREAS the board of directors of the Ordre professionnel des inhalothérapeutes du Québec made the Regulation respecting the practice of the profession of respiratory therapist in a partnership or joint stock company;

WHEREAS, under section 95.3 of the Professional Code, a draft of the Regulation was sent to every member of the Order at least 30 days before being made by the board of directors;

WHEREAS, pursuant to section 95 of the Professional Code and subject to sections 95.0.1 and 95.2 of the Code, every regulation made by the board of directors of a professional order under the Code or an Act constituting a

professional order must be transmitted to the Office des professions du Québec for examination and be submitted, with the recommendation of the Office, to the Government which may approve it with or without amendment;

WHEREAS, pursuant to the first paragraph of section 95.2 of the Professional Code, a regulation made by the board of directors of a professional order under paragraph *g* or *h* of section 93 must be transmitted for examination to the Office, which may approve it with or without amendment,

WHEREAS the first regulation made by the board of directors of a professional order under paragraph *p* of section 94 of the Code is submitted to the Government for approval;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft of the Regulation respecting the practice of the profession of respiratory therapist in a partnership or joint-stock company was published in Part 2 of the *Gazette officielle du Québec* of 4 April 2012 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS the Office approved the Regulation, except sections 1 to 6, paragraphs 2 to 8 of section 7, paragraph 2 of section 10 and Divisions IV and V;

WHEREAS the Office has examined the Regulation and submitted it to the Government with its recommendation;

WHEREAS it is expedient to approve sections 1 to 6, paragraphs 2 to 8 of section 7, paragraph 2 of section 10 and Divisions IV and V of the Regulation with amendments;

WHEREAS, therefore, on the recommendation of the Minister of Justice:

WHEREAS sections 1 to 6, paragraphs 2 to 8 of section 7, paragraph 2 of section 10 and Divisions IV and V of the Regulation respecting the practice of the profession of respiratory therapist in a partnership or joint-stock company, attached to this Order in Council, be approved.

JEAN ST-GELAIS,
Clerk of the Conseil exécutif

Regulation respecting the practice of the profession of respiratory therapist in a partnership or joint-stock company

Professional Code

(chapter C-26, ss. 93, pars. *g* and *h* and 94, par. *p*)

DIVISION I GENERAL

1. Respiratory therapists are authorized to carry on professional activities within a limited liability partnership or a joint-stock company within the meaning of Chapter VI.3 of the Professional Code (chapter C-26) subject to the terms, conditions and restrictions set out in this Regulation.

Respiratory therapists must ensure that the partnership or joint-stock company allows them to comply at all times with the provisions of the Professional Code and its regulations.

2. A respiratory therapist who becomes aware that a condition set out in this Regulation or in Chapter VI.3 of the Professional Code is no longer being complied with must, within 15 days, take the necessary measures to ensure compliance, failing which the respiratory therapist ceases to be authorized to practise within the partnership or joint-stock company.

3. A respiratory therapist who is struck off the roll for more than 3 months or whose permit has been revoked may not, during the period of the striking off or revocation, directly or indirectly hold any share in the partnership or joint-stock company.

The respiratory therapist may also not be a director, officer or enterprise representative of the partnership or joint-stock company during that period.

DIVISION II TERMS AND CONDITIONS OF PRACTICE

4. A respiratory therapist may practise within a partnership or a joint-stock company that holds itself out exclusively as a partnership or joint-stock company of respiratory therapists if

(1) more than 50% of the voting rights attached to the shares of the partnership or joint-stock company are held

(a) by at least 1 respiratory therapist;

(b) by a legal person, trust or any other enterprise whose voting rights attached to the shares or other rights are held entirely by at least 1 respiratory therapist; or

(c) in any combination by a person, trust or enterprise referred to in subparagraphs *a* and *b*;

(2) no manufacturer, wholesaler, vendor or representative of products associated with the practice of respiratory therapy, nor any majority shareholder of them, holds shares of the partnership or joint-stock company;

(3) a majority of the directors of the board of directors or, where applicable, the partners or the directors appointed by the partners are respiratory therapists who constitute the majority of the quorum of the board of directors or internal management board, as the case may be; and

(4) the chair of the board of directors of the joint-stock company or the person who performs similar duties within the limited liability partnership is a respiratory therapist who is a voting shareholder or a partner.

A respiratory therapist must ensure that the conditions set out in the first paragraph appear in the articles of constitution of the joint-stock company or are stipulated in the contract constituting the limited liability partnership and that it is also provided that the partnership or joint-stock company is constituted for the purpose of carrying on professional activities.

5. In cases other than those provided for in section 4, a respiratory therapist may practise within a partnership or a joint-stock company if

(1) more than 50% of the voting rights attached to the shares of the partnership or joint-stock company are held

(a) by professionals governed by the Professional Code;

(b) by a legal person, trust or any other enterprise whose voting rights attached to the shares or other rights are held entirely by professionals governed by the Professional Code; or

(c) in any combination by a person, trust or enterprise referred to in subparagraphs *a* and *b*;

(2) no manufacturer, wholesaler, vendor or representative of products associated with the practice of respiratory therapy, nor any majority shareholder of them, holds shares of the partnership or joint-stock company;

(3) a majority of the directors of the board of directors or, where applicable, the partners or the directors appointed by the partners are professionals governed by the Professional Code who constitute the majority of the quorum of the board of directors or internal management board, as the case may be; and

(4) the chair of the board of directors of the joint-stock company or the person who performs similar duties within the limited liability partnership is a professional governed by the Professional Code who is a voting shareholder or a partner.

A respiratory therapist must ensure that the conditions set out in the first paragraph appear in the articles of constitution of the joint-stock company or are stipulated in the contract constituting the limited liability partnership and that it is also provided that the partnership or joint-stock company is constituted for the purpose of the carrying on of professional activities.

6. The name of the partnership or joint-stock company must not be a numbered name.

7. A respiratory therapist who wishes to practise within a partnership or joint-stock company must first provide the secretary of the Ordre professionnel des inhalothérapeutes du Québec with

(1) a sworn declaration that meets the requirements of section 8, accompanied by the fees prescribed by the board of directors of the Order;

(2) a written attestation from the competent authority that the partnership or joint-stock company complies with the professional liability coverage requirements of Division III;

(3) in the case of a joint-stock company, a copy of the constituting instrument issued by the competent authority certifying the existence of the joint-stock company;

(4) where applicable, a certified true copy of the declaration required by the Act respecting the legal publicity of enterprises (chapter P-44.1) indicating that the general partnership has been continued as a limited liability partnership;

(5) written confirmation from the competent authority that the partnership or joint-stock company is registered in Québec;

(6) written confirmation that the partnership or joint-stock company maintains an establishment in Québec;

(7) irrevocable written authorization from the partnership or joint-stock company entitling a person, a committee, a disciplinary body or a tribunal referred to in section 192 of the Professional Code to require disclosure of and obtain any document referred to in section 15 from a person, or a copy of such a document; and

(8) a written attestation from the partnership or joint-stock company that its voting shareholders, its partners, directors and officers, and the members of its personnel who are not members of the Order are familiar with the Code of ethics of respiratory therapists of Québec (chapter C-26, r. 167).

8. The sworn declaration required by paragraph 1 of section 7 must be made on the form provided for that purpose by the Order and contain

(1) the respiratory therapist's name, member number, domicile address and status within the partnership or joint-stock company;

(2) the name of the partnership or joint-stock company and its business number assigned by the enterprise registrar;

(3) the legal form of the partnership or joint-stock company and the fact that the partnership or joint-stock company satisfies the conditions set out in section 4 or 5, as the case may be;

(4) the professional activities carried on by the respiratory therapist within the partnership or joint-stock company;

(5) in the case of a limited liability partnership, the address of its establishments in Québec, including the address of its principal establishment, the name of all partners and their domicile address, the percentage of shares they hold and an indication of their management functions, if any;

(6) in the case of a joint-stock company, the address of its head office and establishments in Québec, the name of all shareholders and their domicile address, the percentage of voting and non-voting shares they hold and an indication of their functions as director and officer, if any; and

(7) an attestation that the holding of shares and the rules governing the administration of the partnership or joint-stock company comply with the conditions set out in this Regulation.

9. Where 2 or more respiratory therapists practise within the same partnership or joint-stock company, a single declaration may be made by a representative of all the respiratory therapists in the partnership or joint-stock company.

The representative must be a respiratory therapist who is a partner, director, officer or shareholder of the partnership or joint-stock company.

The declaration by the representative is deemed to be the declaration of each of the respiratory therapists. Each respiratory therapist remains responsible for the accuracy of the information provided pursuant to section 8.

10. The respiratory therapist or representative must

(1) update and provide the declaration set out in paragraph 1 of section 7 before March 31 of each year; and

(2) inform the secretary of the Order without delay of any change in or cancellation of the coverage under Division III, of any cancellation of registration, dissolution, assignment of property, bankruptcy, voluntary or forced liquidation of the partnership or joint-stock company or any other cause likely to prevent the partnership or joint-stock company from pursuing its activities, as well as of any change in the information provided in the declaration set out in paragraph 1 of section 7 that may affect compliance with any condition set out in section 4 or 5, as the case may be.

DIVISION III
PROFESSIONAL LIABILITY COVERAGE

11. A respiratory therapist who practises within a partnership or joint-stock company must furnish and maintain for that partnership or joint-stock company, either by an insurance or suretyship contract or by participation in a group insurance contracted by the Order, security against professional liability that the partnership or joint-stock company may incur as the result of fault on the part of respiratory therapists committed while practising within the partnership or joint-stock company.

12. The security must include the following minimum conditions:

(1) an undertaking by the insurer or the surety to pay in lieu of the partnership or joint-stock company, over and above the amount of the security to be furnished by the respiratory therapist pursuant to the *Règlement sur l'assurance de la responsabilité professionnelle de l'Ordre professionnel des inhalothérapeutes du Québec* (chapter C-26, r. 165), or of any other coverage taken out by the respiratory therapist if it is greater, up to the amount of the security, any sum that the partnership or joint-stock company may be legally bound to pay to a third person on a claim filed during the coverage period and arising from fault on the part of the respiratory therapist committed while practising within the partnership or joint-stock company;

(2) an undertaking by the insurer or the surety to take up the cause of the partnership or joint-stock company and defend it in any action against it and to pay, in addition to the amounts covered by the security, all costs and

expenses of proceedings against the partnership or joint-stock company, including the costs of the inquiry and defence and the interest on the amount of the security;

(3) an undertaking by the insurer or surety that the security is at least \$1,000,000 per claim and for all claims filed against the partnership or joint-stock company during a 12-month coverage period;

(4) an undertaking by the insurer or surety to give 30 days' notice to the secretary of the Order prior to any cancellation of the insurance or suretyship contract or any amendment to the contract if the amendment affects a condition set out in this Regulation; and

(5) an undertaking by the insurer or surety to immediately notify the secretary of the Order if the insurance or suretyship contract is not renewed.

13. The suretyship contract must be with a bank, financial services cooperative, trust company or insurance company domiciled in Canada and having and maintaining sufficient property in Québec to meet the coverage under this Division.

The institution referred to in the first paragraph must undertake to provide the coverage in accordance with the conditions of this Division and waive the benefits of division and discussion.

DIVISION IV
ADDITIONAL INFORMATION

14. Where a general partnership is continued as a limited liability partnership, or a partnership or a joint-stock company is constituted, a respiratory therapist practising within the partnership or joint-stock company must send a notice to clients, on the date of the continuation or constitution of the partnership or joint-stock company, informing them of the nature and effects of the continuation or constitution, including as regards the respiratory therapist's professional liability and the liability of the partnership or joint-stock company.

15. The documents referred to in paragraph 7 of section 7 are the following:

(1) in the case of a limited liability partnership,

(a) the partnership agreement and any amendments;

(b) the registration declaration of the partnership and any update;

(c) a complete and up-to-date list of the principal officers of the partnership and their domicile addresses;

- (d) a complete and up-to-date register of partners; and
- (e) where applicable, a complete and up-to-date register of the directors of the partnership;
- (2) in the case of a joint-stock company,
 - (a) a complete and up-to-date register of the articles and by-laws of the joint-stock company;
 - (b) a complete and up-to-date register of the shares of the joint-stock company;
 - (c) a complete and up-to-date register of the shareholders of the joint-stock company;
 - (d) a complete and up-to-date register of the directors of the joint-stock company;
 - (e) any shareholders' agreement or voting agreement and any amendments;
 - (f) any agreement concerning the granting of share purchase options with voting rights or concerning any other right, even conditional, conferred on a person and allowing that person to be issued such shares;
 - (g) the registration declaration of the joint-stock company and any update; and
 - (h) a complete and up-to-date list of the principal officers of the joint-stock company and their domicile addresses.

DIVISION V **TRANSITIONAL AND FINAL**

16. A respiratory therapist practising within a partnership or joint-stock company constituted before the date of coming into force of this Regulation must comply with the requirements of this Regulation at the latest within one year after that date.

17. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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Gouvernement du Québec

O.C. 1126-2012, 28 November 2012

Professional Code
(chapter C-26)

Respiratory therapist **— Code of ethics of respiratory therapists of Québec** **— Amendment**

Regulation to amend the Code of ethics of respiratory therapists of Québec

WHEREAS, under section 87 of the Professional Code (chapter C-26), the board of directors of a professional order must make, by regulation, a code of ethics governing the general and special duties of the professional towards the public, clients and the profession, particularly the duty to discharge professional obligations with integrity;

WHEREAS the board of directors of the Ordre professionnel des inhalothérapeutes du Québec made the Regulation to amend the Code of ethics of respiratory therapists of Québec;

WHEREAS, under section 95.3 of the Professional Code, a draft of the Regulation was sent to every member of the Order at least 30 days before being made by the board of directors;

WHEREAS, pursuant to section 95 of the Professional Code and subject to sections 95.0.1 and 95.2, every regulation made by the board of directors of a professional order under the Code or an Act constituting a professional order must be transmitted to the Office des professions du Québec for examination and be submitted, with the recommendation of the Office, to the Government which may approve it with or without amendment;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft of the Regulation to amend the Code of ethics of respiratory therapists of Québec was published in Part 2 of the *Gazette officielle du Québec* of 4 April 2012 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS the Office has examined the Regulation and submitted it to the Government with its recommendation;

WHEREAS it is expedient to approve the Regulation with amendments;