

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 285
PROPOSED COMMITTEE SUBSTITUTE H285-PCS90021-RF-5

Short Title: Amend Respiratory Care Practice Act.

(Public)

Sponsors:

Referred to:

March 13, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE RESPIRATORY CARE PRACTICE ACT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 90-648 reads as rewritten:

5 **"§ 90-648. Definitions.**

6 The following definitions apply in this Article:

- 7 (1) Board. – The North Carolina Respiratory Care Board.
8 (2) Diagnostic testing. – Cardiopulmonary procedures and tests performed on
9 the written order of a physician licensed under Article 1 of this Chapter that
10 provide information to the physician to formulate a diagnosis of the patient's
11 condition. The tests and procedures may include pulmonary function testing,
12 electrocardiograph testing, cardiac stress testing, and sleep related testing.
13 (3) Direct supervision. – The authority and responsibility to direct the
14 performance of activities as established by policies and procedures for safe
15 and appropriate completion of services.
16 (4) Individual. – A human being.
17 (5) License. – A certificate issued by the Board recognizing the person named
18 therein as having met the requirements to practice respiratory care as defined
19 in this Article.
20 (6) Licensee. – A person who has been issued a license under this Article.
21 (7) Medical director. – An appointed physician who is licensed under Article 1
22 of this Chapter and a member of the entity's medical staff, and who is
23 granted the authority and responsibility for assuring and establishing policies
24 and procedures and that the provision of such is provided to the quality,
25 safety, and appropriateness standards as recognized within the defined scope
26 of practice for the entity.
27 (8) Person. – An individual, corporation, partnership, association, unit of
28 government, or other legal entity.
29 (9) Physician. – A doctor of medicine licensed by the State of North Carolina in
30 accordance with Article 1 of this Chapter.
31 (10) Practice of respiratory care. – As defined by the written order of a physician
32 licensed under Article 1 of this Chapter, the observing and monitoring of
33 signs and symptoms, general behavior, and general physical response to
34 respiratory care treatment and diagnostic testing, including the determination
35 of whether such signs, symptoms, reactions, behavior, or general response



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exhibit abnormal characteristics, and the performance of diagnostic testing and therapeutic application or assessment of:

- a. Medical gases, humidity, and aerosols including the maintenance of associated apparatus, except for the purpose of anesthesia.
- b. Pharmacologic agents related to respiratory care procedures, including those agents necessary to perform hemodynamic monitoring.
- c. Mechanical or physiological ventilatory support.
- d. Cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways under the direct supervision of a recognized medical director in a health care environment which identifies these services within the scope of practice by the facility's governing board.
- e. Hyperbaric oxygen therapy.
- f. New and innovative respiratory care and related support activities in appropriately identified environments and under the training and practice guidelines established by the American Association of Respiratory Care.
- g. The therapeutic effectiveness of an apparatus used in respiratory care treatment for an individual patient.

The term also means the interpretation and implementation of a physician's written or verbal order pertaining to the acts described in this ~~subdivision~~ subdivision and any act by which an individual holds himself or herself out to the public or represents in any manner that the individual is authorized to practice respiratory care in this State.

- (11) Respiratory care. – As defined by the written order of a physician licensed under Article 1 of Chapter 90, the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.
- (12) Respiratory care practitioner. – A person who has been licensed by the Board to engage in the practice of respiratory care.
- (13) Support activities. – ~~Procedures~~ Tasks that do not require formal academic training, including the delivery, setup, and maintenance of ~~apparatus~~. ~~The term also includes giving instructions on the use, fitting, and application of apparatus, but does not include therapeutic evaluation and assessment.~~ an apparatus and as defined in rules adopted by the Board. The term does not include evaluation or assessment of the therapeutic effectiveness of any respiratory treatment or apparatus for an individual patient."

SECTION 2. G.S. 90-648 reads as rewritten:

"§ 90-648. Definitions.

The following definitions apply in this Article:

- ...
- (12) Respiratory care practitioner. – ~~A person who has been licensed by the Board to engage in the practice of respiratory care~~ An individual licensed by the Board as a respiratory care practitioner.
- (12a) Respiratory therapist. — An individual licensed by the Board as a respiratory therapist who practices under the direct supervision of a licensed respiratory care practitioner."

SECTION 3. G.S. 90-652 reads as rewritten:

"§ 90-652. Powers and duties of the Board.

The Board shall have the power and duty to:

- 1 (1) Determine the qualifications and fitness of applicants for licensure, renewal
2 of licensure, and reciprocal licensure. The Board shall, in its discretion,
3 investigate the background of an applicant to determine the applicant's
4 qualifications with due regard given to the applicant's competency, honesty,
5 truthfulness, and integrity. The Department of Justice may provide a
6 criminal record check to the Board for a person who has applied for a license
7 through the Board. The Board shall provide to the Department of Justice,
8 along with the request, the fingerprints of the ~~applicant, applicant and~~ any
9 additional information required by the Department of Justice, ~~and a form~~
10 ~~signed by the applicant consenting to the check of the criminal record and to~~
11 ~~the use of the fingerprints and other identifying information required by the~~
12 ~~State or national repositories.~~Justice. The applicant's fingerprints shall be
13 forwarded to the State Bureau of Investigation for a search of the State's
14 criminal history record file, and the State Bureau of Investigation shall
15 forward a set of the fingerprints to the Federal Bureau of Investigation for a
16 national criminal history check. The Board shall keep all information
17 pursuant to this subdivision privileged, in accordance with applicable State
18 law and federal guidelines, and the information shall be confidential and
19 shall not be a public record under Chapter 132 of the General Statutes. The
20 Board shall collect any fees required by the Department of Justice and shall
21 remit the fees to the Department of Justice for expenses associated with
22 conducting the criminal history record check.
- 23 (2) Establish and adopt rules necessary to conduct its business, carry out its
24 duties, and administer this Article.
- 25 (3) Adopt and publish a code of ethics.
- 26 (4) Deny, issue, suspend, revoke, and renew licenses in accordance with this
27 Article.
- 28 (5) Conduct investigations, subpoena individuals and records, and do all other
29 things necessary and proper to discipline persons licensed under this Article
30 and or investigate the activities of persons not licensed under this Article
31 who the Board has reasonable cause to believe are engaged in the practice of
32 respiratory care and do all other things necessary and proper to enforce this
33 Article.
- 34 (5a) Designate one or more of its employees to issue and serve subpoenas and
35 other papers on behalf of the Board. Service under this subdivision is
36 permitted in accordance with any other methods of service allowed by law.
- 37 (6) Employ professional, clerical, investigative, or special personnel necessary
38 to carry out the provisions of this Article and purchase or rent office space,
39 equipment, and supplies.
- 40 (7) Adopt a seal by which it shall authenticate its proceedings, official records,
41 and licenses.
- 42 (8) Conduct administrative hearings in accordance with Article 3A of Chapter
43 150B of the General Statutes.
- 44 (9) Establish certain reasonable fees as authorized by this Article for
45 applications for examination, licensure, ~~provisional licensure,~~ renewal of
46 licensure, and other services provided by the Board.
- 47 (10) Submit an annual report to the North Carolina Medical Board, the North
48 Carolina Hospital Association, the North Carolina Society of Respiratory
49 Care, the Governor, and the General Assembly of all the Board's official
50 actions during the preceding year, together with any recommendations and
51 findings regarding improvements of the practice of respiratory care.

- 1 (11) Publish and make available upon request the licensure standards prescribed
2 under this Article and all rules adopted pursuant to this Article.
3 (12) Request and receive the assistance of State educational institutions or other
4 State agencies.
5 (13) Establish and approve continuing education requirements for persons
6 seeking licensure under this Article."

7 **SECTION 4.** G.S. 90-653 reads as rewritten:

8 "**§ 90-653. Licensure requirements; examination.**

9 (a) Each applicant for licensure under this Article ~~shall meet the following~~
10 ~~requirements; shall:~~

- 11 (1) Submit a completed application as required by the ~~Board.~~Board, including a
12 form signed by the applicant consenting to the check of the applicant's
13 criminal record and to the use of the applicant's fingerprints and other
14 identifying information required by the State and national repositories.
15 (2) Submit any fees required by the Board.

16 (b) In addition to the requirements set out in subsection (a) of this section, applicants
17 for a respiratory therapist (RT) license shall also:

- 18 ~~(3) Submit to the Board written evidence, verified by oath,~~
19 (1) Demonstrate that the applicant has successfully completed the minimal
20 requirements of ~~a~~an associate degree respiratory care education program as
21 currently approved by the Commission for Accreditation of Allied Health
22 Educational Programs, or the Canadian Council on Accreditation for
23 Respiratory Therapy Education on Accreditation for Respiratory Care
24 (CoARC) or its successor by arranging for the applicant's respiratory care
25 education program to submit a verified transcript directly to the Board.
26 (2) Submit to the Board written evidence, verified by oath, that the applicant has
27 successfully completed the minimal requirements for Basic Cardiac Life
28 Support, as recognized by the American Heart Association, the American
29 Red Cross, or the American Safety and Health Institute.
30 (3) Submit to the Board written evidence, verified by oath, that the applicant has
31 successfully passed the Certified Respiratory Therapist examination or its
32 successor given by the National Board for Respiratory Care, Inc.
33 ~~(4) Submit to the Board written evidence, verified by oath, that the applicant has~~
34 ~~successfully completed the minimal requirements for Basic Cardiac Life~~
35 ~~Support as recognized by the American Heart Association, the American~~
36 ~~Red Cross, or the American Safety and Health Institute.~~

37 (c) In addition to the requirements set out in subsection (a) of this section, applicants
38 for a respiratory care practitioner (RCP) license shall also:

- 39 (1) Demonstrate that the applicant has successfully completed the minimal
40 requirements of a baccalaureate degree respiratory care education program
41 approved by the Board or has completed an equivalent program approved by
42 the Board by arranging for the applicant's program to submit a verified
43 transcript directly to the Board.
44 (2) Submit to the Board written evidence, verified by oath, that the applicant has
45 successfully completed the minimal requirements for Advanced Cardiac Life
46 Support, Pediatric Advanced Life Support, or Neonatal Resuscitation
47 Program as recognized by the American Heart Association, the American
48 Red Cross, the American Safety and Health Institute, or the American
49 Academy of Pediatrics.

1 (3) Submit to the Board written evidence, verified by oath, that the applicant has
 2 successfully passed the Registered Respiratory Therapist examination or its
 3 successor given by the National Board for Respiratory Care, Inc.

4 ~~(5) Pass the entry level examination given by the National Board for~~
 5 ~~Respiratory Care, Inc.~~

6 (d) When granting a license, the Board shall state the terms and conditions of use of the
 7 license by the licensee.

8 ~~(b) At least three times each year, the Board shall cause the examination required in~~
 9 ~~subdivision (5) of subsection (a) of this section to be given to applicants at a time and place to~~
 10 ~~be announced by the Board. Any applicant who fails to pass the first examination may take~~
 11 ~~additional examinations in accordance with rules adopted pursuant to this Article."~~

12 **SECTION 5.** G.S. 90-654 and G.S. 90-656 are repealed.

13 **SECTION 6.** G.S. 90-659 reads as rewritten:

14 "**§ 90-659. Suspension, revocation, and refusal to renew a license.**

15 (a) The Board shall take the necessary actions to deny or refuse to renew a license,
 16 suspend or revoke a license, or ~~to impose probationary conditions~~conditions, including placing
 17 limitations on the practice of respiratory care, reprimand, assessing monetary redress, or
 18 requiring satisfactory completion of treatment programs or educational programs, on a licensee
 19 or applicant if the licensee or applicant:

20 (1) Has engaged in any of the following conduct:

21 a. Employed fraud, deceit, or misrepresentation ~~in~~in (i) obtaining or
 22 attempting to obtain a license~~license~~ or (ii) the renewal or
 23 reinstatement of a license~~license~~ or (iii) obtaining money or anything
 24 of value.

25 b. Committed an act of malpractice, gross negligence, or incompetence
 26 in the practice of respiratory care.

27 c. Practiced respiratory care without a license.

28 d. Engaged in health care practices that are determined to be hazardous
 29 to public health, safety, or welfare.

30 (2) Was convicted of or entered a plea of guilty or nolo contendere to any crime
 31 involving moral turpitude.

32 (3) ~~Was adjudicated insane or incompetent, until proof of recovery from the~~
 33 ~~condition can be established.~~Has developed a physical or mental disability
 34 that renders the licensee or applicant unfit to practice respiratory care with
 35 reasonable skill and competence and in a manner not harmful to the public.
 36 An adjudication of mental incompetency in a court of competent jurisdiction
 37 or a determination of mental incompetency by other lawful means shall be
 38 conclusive proof of unfitness to practice respiratory care until the licensee or
 39 applicant is subsequently lawfully declared mentally competent.

40 (4) ~~Engaged~~Has engaged in any act or practice that violates any of the
 41 provisions of this Article or any rule adopted pursuant to this Article, or
 42 aided, abetted, or assisted any person in such a violation.

43 (5) Has failed to respond within a reasonable period of time and in a reasonable
 44 manner, as determined by the Board, to inquiries from the Board concerning
 45 any matter affecting a license to practice respiratory care.

46 (6) Has developed an impairment caused by the licensee's or applicant's use of
 47 alcohol, drugs, or controlled substances, which interferes with the ability of
 48 the licensee or applicant to practice respiratory care with reasonable skill,
 49 competence, and in a manner not harmful to the public.

1 (7) Has practiced respiratory care outside the boundaries of demonstrated
2 competence or the limitations of education, training, or supervised
3 experience.

4 (8) Has had a license for the practice of respiratory care in any other jurisdiction
5 suspended or revoked or been disciplined by any licensing or certification
6 board in any other jurisdiction for conduct that would subject the licensee or
7 applicant to disciplinary action under this Article.

8 (9) Is a hazard to the public health by reason of having a serious communicable
9 disease.

10 (b) Except as provided in subsection (c) of this section, denial, ~~Denial,~~ refusal to renew,
11 suspension, or revocation of a license, or imposition of probationary conditions upon a licensee
12 may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter
13 150B of the General Statutes and rules adopted pursuant to this Article. An application may be
14 made to the Board for reinstatement of a revoked license if the revocation has been in effect for
15 at least one year.

16 (c) The Board may deny an initial application for a license as a respiratory care
17 practitioner without a hearing if the individual fails to submit a complete application which
18 demonstrates that the applicant has met the education and testing requirements of G.S. 90-653.

19 (d) If after notice is duly issued, a licensee or applicant fails to appear for a scheduled
20 hearing and no continuance has been granted, the Board may hear the evidence of witnesses
21 that have appeared, and the Board may proceed to consider the matter and dispose of the matter
22 on the basis of the evidence before the Board. For good cause, the Board may reopen any case
23 for further hearing.

24 (e) The Board and its members and staff shall not be held liable in any civil or criminal
25 proceeding for exercising, in good faith, the powers and duties authorized by law.

26 (f) A person, partnership, firm, corporation, association, authority, or other entity acting
27 in good faith without fraud or malice shall be immune from civil liability for (i) reporting,
28 investigating, assessing, monitoring, or providing an expert medical opinion to the Board
29 regarding the acts or omissions of a licensee or applicant that violate the provisions of
30 subsection (a) of this section or any other provision of law relating to the fitness of a licensee or
31 applicant to practice respiratory care or (ii) initiating or conducting proceedings against a
32 licensee or applicant if a complaint is filed or action is taken in good faith without fraud or
33 malice. A person shall not be held liable in any civil proceeding for testifying before the Board
34 in good faith and without fraud or malice in any proceeding involving a violation of subsection
35 (a) of this section or any other law relating to the fitness of an applicant or licensee to practice
36 respiratory care, or for making a recommendation to the Board in the nature of peer review, in
37 good faith and without fraud and malice.

38 (g) A licensee may, with the consent of the Board, voluntarily relinquish a license at
39 any time. The Board may delay or refuse the granting of its consent as it may deem necessary
40 in order to investigate any pending complaint, allegation, or issue regarding violation of any
41 provisions of this Article by the licensee. Notwithstanding any provision to the contrary, the
42 Board retains full jurisdiction to investigate alleged violations of this Article by any person
43 whose license is relinquished under this subsection and, upon proof of any violation of this
44 Article by any such person, the Board may take disciplinary action as authorized by this
45 section."

46 **SECTION 7.** G.S. 90-659(c) reads as rewritten:

47 "(c) The Board may deny an initial application for a license as a respiratory therapist or a
48 respiratory care practitioner without a hearing if the individual fails to submit a complete
49 application which demonstrates that the applicant has met the education and testing
50 requirements of ~~G.S. 90-653.~~G.S. 90-653(b) or (c) respectively."

51 **SECTION 8.** G.S. 90-660(b)(6) is repealed.

1 **SECTION 9.** G.S. 90-661 reads as rewritten:

2 "**§ 90-661. Requirement of license.**

3 (a) It shall be unlawful for any person who is not currently licensed under this Article
4 to:

5 (1) Engage in the practice of respiratory care.

6 (2) Use in connection with his or her name the title "respiratory care
7 practitioner" or "respiratory therapist" or the letters "RCP" or "RT" or any
8 other words, letters, abbreviations, or insignia that indicate or imply that the
9 person is a licensed respiratory care practitioner or a respiratory therapist.~~the~~
10 title "respiratory care practitioner".

11 (3) Use ~~the letters "RCP", "RTT", "RT", or any facsimile or combination in any~~
12 ~~words, letters, abbreviations, or insignia.~~

13 (4) Imply orally or in writing or indicate in any way that the person is a
14 respiratory care practitioner or is otherwise licensed under this Article.

15 (b) It shall be unlawful for any person to

16 ~~(5)~~ Employ employ or solicit for employment unlicensed persons to practice
17 respiratory care."

18 **SECTION 10.** G.S. 90-664 reads as rewritten:

19 "**§ 90-664. Persons and practices not affected.**

20 The requirements of this Article shall not apply to:

21 (1) Any person registered, certified, credentialed, or licensed to engage in
22 another profession or occupation or any person working under the
23 supervision of a person registered, certified, credentialed, or licensed to
24 engage in another profession or occupation in this State who is performing
25 work incidental to or within the practice of that profession or occupation and
26 does not represent himself or herself as a respiratory care practitioner.

27 (2) A student or trainee working under the direct supervision of a respiratory
28 care practitioner while fulfilling an experience requirement or pursuing a
29 course of study to meet requirements for licensure in accordance with rules
30 adopted pursuant to this Article.

31 (3) A respiratory care practitioner serving in the Armed Forces or the Public
32 Health Service of the United States or employed by the Veterans
33 Administration ~~when performing duties associated with that service or~~
34 ~~employment~~or other federal agency, to the extent permitted under federal
35 law, so long as the individual limits services to those directly related to work
36 with the employing federal agency.

37 (4) A person who performs only support activities as defined in
38 G.S. 90-648(13).

39 (5) A person licensed as a respiratory care practitioner in another jurisdiction
40 while providing respiratory care in a declared emergency in this State,
41 providing respiratory care as a member of an organ harvesting team, or
42 providing respiratory care on board an ambulance as part of an ambulance
43 transport team transporting a patient into or out of this State."

44 **SECTION 11.** G.S. 90-664 reads as rewritten:

45 "**§ 90-664. Persons and practices not affected.**

46 The requirements of this Article shall not apply to:

47 (1) Any person registered, certified, credentialed, or licensed to engage in
48 another profession or occupation or any person working under the
49 supervision of a person registered, certified, credentialed, or licensed to
50 engage in another profession or occupation in this State who is performing

- 1 work incidental to or within the practice of that profession or occupation and
2 does not represent himself or herself as a respiratory care practitioner.
- 3 (2) A student or trainee working under the direct supervision of a respiratory
4 care practitioner while fulfilling an experience requirement or pursuing a
5 course of study to meet requirements for licensure in accordance with rules
6 adopted pursuant to this Article.
- 7 (3) A respiratory care practitioner or respiratory therapist serving in the Armed
8 Forces or the Public Health Service of the United States or employed by the
9 Veterans Administration or other federal agency, to the extent permitted
10 under federal law, so long as the individual limits services to those directly
11 related to work with the employing federal agency.
- 12 (4) A person who performs only support activities as defined in
13 G.S. 90-648(13).
- 14 (5) A person licensed as a respiratory care practitioner or respiratory therapist in
15 another jurisdiction while providing respiratory care in a declared
16 emergency in this State, providing respiratory care as a member of an organ
17 harvesting team, or providing respiratory care on board an ambulance as part
18 of an ambulance transport team transporting a patient into or out of this
19 State."

20 **SECTION 12.** Any person licensed by the Board who has passed the Certified
21 Respiratory Therapist examination given by the National Board for Respiratory Care, Inc., on
22 the effective date of this act shall be deemed to have complied with the requirements of
23 G.S. 90-653(b), as enacted in Section 4 of this act. Any person licensed as a respiratory care
24 practitioner by the Board who has passed the Registered Respiratory Therapist examination
25 given by the National Board for Respiratory Care, Inc., on the effective date of this act shall be
26 deemed to have complied with the requirements of G.S. 90-653(c), as enacted in Section 4 of
27 this act.

28 **SECTION 13.** Sections 2, 4, 7, and 11 of this act become effective January 1,
29 2015. G.S. 90-659(a), as amended in Section 6 of this act, becomes effective October 1, 2013.
30 G.S. 90-659(b), (c), (d), and (g), as amended in Section 6 of this act, become effective October
31 1, 2013, and apply to applications filed, actions commenced, or action by the Board on or after
32 that date. G.S. 90-659 (e) and (f), as amended in Section 6 of this act, are effective when they
33 become law and apply to causes of action arising on or after that date. The remainder of this act
34 is effective when it becomes law.