

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 267  
PROPOSED COMMITTEE SUBSTITUTE H267-PCS30153-TK-2

Short Title: Amend Respiratory Care Practice Act.-AB

(Public)

Sponsors:

Referred to:

March 18, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING 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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1 exhibit abnormal characteristics, and the performance of diagnostic testing  
2 and therapeutic application or assessment of:

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

22 The term "practice of respiratory care" also means the  
23 interpretation and implementation of a physician's written or verbal  
24 order pertaining to the acts described in this subdivision.

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

40 **SECTION 2.** G.S. 90-652 reads as rewritten:

41 "**§ 90-652. Powers and duties of the Board.**

42 The Board shall have the power and duty to:

- 43 (1) Determine the qualifications and fitness of applicants for licensure, renewal  
44 of licensure, and reciprocal licensure. The Board shall, in its discretion,  
45 investigate the background of an applicant to determine the applicant's  
46 qualifications with due regard given to the applicant's competency, honesty,  
47 truthfulness, and integrity. The Department of Public Safety may provide a  
48 criminal record check to the Board for a person who has applied for a license  
49 through the Board. The Board shall provide to the Department of Public  
50 Safety, along with the request, the fingerprints of the ~~applicant,~~ applicant and  
51 any additional information required by the Department of ~~Public Safety, and~~

1 a form signed by the applicant consenting to the check of the criminal record  
 2 and to the use of the fingerprints and other identifying information required  
 3 by the State or national repositories. Public Safety. The applicant's  
 4 fingerprints shall be forwarded to the State Bureau of Investigation for a  
 5 search of the State's criminal history record file, and the State Bureau of  
 6 Investigation shall forward a set of the fingerprints to the Federal Bureau of  
 7 Investigation for a national criminal history check. The Board shall keep all  
 8 information pursuant to this subdivision privileged, in accordance with  
 9 applicable State law and federal guidelines, and the information shall be  
 10 confidential and shall not be a public record under Chapter 132 of the  
 11 General Statutes. The Board shall collect any fees required by the  
 12 Department of Public Safety and shall remit the fees to the Department of  
 13 Public Safety for expenses associated with conducting the criminal history  
 14 record check.

15 ...

- 16 (5) Conduct investigations, subpoena individuals and records, and do all other  
 17 things necessary and proper to discipline persons licensed under this Article  
 18 and to enforce this ~~Article~~. Article, including the designation of one or more  
 19 of its employees to issue and serve subpoenas and other papers on behalf of  
 20 the Board. Service under this subdivision is permitted in accordance with  
 21 any methods of service allowed by law.

22 ...."

23 **SECTION 3.** G.S. 90-653 reads as rewritten:

24 "**§ 90-653. Licensure requirements; examination.**

25 (a) Each applicant for licensure under this Article shall ~~meet the following~~  
 26 ~~requirements; do all of the following:~~

- 27 (1) Submit a completed application as required by the Board. Board, including a  
 28 form signed by the applicant consenting to the check of the applicant's  
 29 criminal record and to the use of the applicant's fingerprints and other  
 30 identifying information required by the State and national repositories.  
 31 (2) Submit any fees required by the Board.  
 32 (3) Submit to the Board written evidence, verified by oath, that the applicant has  
 33 successfully completed the minimal requirements of ~~a~~ an associate's degree  
 34 respiratory care education program as approved by the Commission for  
 35 Accreditation of Allied Health Educational Programs, or the Canadian  
 36 Council on Accreditation for Respiratory Therapy Education for Respiratory  
 37 Care (CoARC) or its successor by arranging for the applicant's respiratory  
 38 care education program to submit a verified transcript directly to the Board.  
 39 (4) Submit to the Board written evidence, verified by oath, that the applicant has  
 40 successfully completed the minimal requirements for Basic Cardiac Life  
 41 Support as recognized by the American Heart Association, the American  
 42 Red Cross, or the American Safety and Health Institute.  
 43 (5) ~~Pass the entry-level examination given by the National Board for~~  
 44 ~~Respiratory Care, Inc.~~ Submit to the Board written evidence, verified by oath,  
 45 that the applicant has earned the advanced level credential or its successor  
 46 awarded by the National Board for Respiratory Care, Inc.

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

1       (b1) When issuing a license, the Board shall state the terms and conditions of use of the  
2 license to the licensee."

3       **SECTION 4.** G.S. 90-656 reads as rewritten:

4       "**§ 90-656. Provisional license.**

5       (a) The Board may grant a provisional license ~~for a period not exceeding 12 months to~~  
6 ~~any applicant who has successfully done all of the following:~~

7           (1) Successfully completed the education requirements under G.S. 90-653(a)(3)  
8 and has made application to take the examination required under  
9 G.S. 90-653(a)(5).the minimal requirements of an associate's degree  
10 program in respiratory care currently approved by the Commission on  
11 Accreditation for Respiratory Care (CoARC) or its successor by arranging  
12 for the applicant's respiratory care education program to submit a verified  
13 transcript directly to the Board.

14           (2) Submitted to the Board written evidence, verified by oath, that the applicant  
15 has successfully completed the minimal requirements for Basic Cardiac Life  
16 Support as recognized by the American Heart Association, the American  
17 Red Cross, or the American Safety and Health Institute.

18           (3) Submitted to the Board written evidence, verified by oath, that the applicant  
19 has earned the entry-level credential or its successor awarded by the  
20 National Board for Respiratory Care, Inc.

21       (b) Each provisional license issued under this section shall be effective for a period of  
22 up to one year, and may be renewed annually subject to compliance with rules adopted by the  
23 Board, but shall not be in effect for a total period exceeding five years from the initial effective  
24 date of the provisional license. A provisional license allows the individual to practice  
25 respiratory care under the direct supervision of a respiratory care practitioner and in accordance  
26 with rules adopted pursuant to this Article. A license granted under this section shall contain an  
27 endorsement indicating that the license is provisional and stating the terms and conditions of its  
28 use by the licensee and shall state the date the license was granted and the date it expires."

29       **SECTION 5.** G.S. 90-659 reads as rewritten:

30       "**§ 90-659. Suspension, revocation, and refusal to renew a license.**

31       (a) The Board shall take the necessary actions to deny or refuse to ~~renew a~~  
32 ~~license, renew, suspend or revoke a license, or license;~~ to impose probationary conditions on a  
33 licensee or applicant if the license, including placing limitations on the practice of respiratory  
34 care; to reprimand a licensee or applicant; to assess a monetary penalty, costs, or both on a  
35 licensee or applicant; and to require a licensee or applicant to demonstrate satisfactory  
36 completion of treatment or educational programs, if any of the following are true of the licensee  
37 or applicant:

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

39           a. Employed fraud, deceit, bribery, or misrepresentation in (i) obtaining  
40 or attempting to obtain a ~~license or license~~ or (ii) obtaining or  
41 attempting to obtain the renewal of a ~~license~~ license.

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

44           c. Practiced respiratory care without a license.

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

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

49           (3) ~~Was adjudicated insane or incompetent, until proof of recovery from the~~  
50 ~~condition can be established.~~ Has developed a physical or mental impairment  
51 that renders the licensee or applicant unfit to practice respiratory care with

1 reasonable skill and competence and in a manner not harmful to the public.  
2 An adjudication of mental incompetency in a court of competent jurisdiction  
3 or a determination of mental incompetency by other lawful means shall be  
4 conclusive proof of unfitness to practice respiratory care until the licensee or  
5 applicant is subsequently adjudicated mentally competent.

6 (4) Engaged—Has engaged in any act or practice that violates any of the  
7 provisions of this Article or any rule adopted pursuant to this Article, or  
8 aided, abetted, or assisted any person in such a violation.

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

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

16 (7) Has practiced respiratory care outside the boundaries of demonstrated  
17 competence or the limitations of education, training, or supervised  
18 experience.

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

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

25 (b) ~~Denial,~~Except as provided in subsection (c) of this section, denial, refusal to renew,  
26 suspension, or revocation of a license, or imposition of probationary conditions upon a licensee  
27 may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter  
28 150B of the General Statutes and rules adopted pursuant to this Article. An application may be  
29 made to the Board for reinstatement of a revoked license if the revocation has been in effect for  
30 at least one year.

31 (c) The Board may deny an initial application for a license as a respiratory care  
32 practitioner without a hearing if the individual fails to submit a complete application which  
33 demonstrates that the applicant has met the education and entry-level credential requirements of  
34 G.S. 90-653.

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

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

42 (f) A person acting in good faith without fraud or malice shall be immune from civil  
43 liability for the following:

44 (1) Reporting, investigating, assessing, monitoring, or providing an expert  
45 medical opinion to the Board regarding the acts or omissions of a licensee or  
46 applicant that violate the provisions of subsection (a) of this section or any  
47 other provision of law relating to the fitness of a licensee or applicant to  
48 practice respiratory care.

49 (2) Initiating or conducting proceedings or an action against a licensee or  
50 applicant.

1           (3)   Testifying before the Board in good faith in any proceeding involving a  
2           violation of subsection (a) of this section or any other law relating to the  
3           fitness of an applicant or licensee to practice respiratory care.

4           (4)   Making a recommendation to the Board in the nature of peer review.

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

13           **SECTION 6.** G.S. 90-661 reads as rewritten:

14           **"§ 90-661. Requirement of license.**

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

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

18           (2)   Use the title "respiratory care practitioner".

19           (3)   Use the letters "RCP", "RTT", "RT", "RCP" or any facsimile or combination  
20           in any words, letters, abbreviations, or ~~insignia~~ insignia that indicate or  
21           imply the person is a licensed respiratory care practitioner.

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

24           (5)   Employ or solicit for employment unlicensed persons to practice respiratory  
25           care.

26           (6)   Advertise, hold out to the public, or represent in any manner that the  
27           individual is authorized to practice respiratory care in this State.

28           (b)   It shall be unlawful for any person to employ or solicit for employment unlicensed  
29           persons to practice respiratory care.

30           **SECTION 7.** Article 38 of Chapter 90 of the General Statutes is amended by  
31           adding a new section to read:

32           **"§ 90-663.1. Immunity from civil liability.**

33           (c)   Any person, partnership, firm, corporation, association, authority, or other entity  
34           acting in good faith without fraud or malice, including the Board, its staff, and its counsel shall  
35           be immune from civil liability for (i) reporting, investigating, assessing, monitoring, or  
36           providing an expert medical opinion to the Board regarding the acts or omissions of a person on  
37           the ground that the person is violating this Article, (ii) initiating or conducting proceedings  
38           against a person on the ground that the person is violating this Article. A person shall not be  
39           held liable in any civil proceeding for testifying before the Board in good faith and without  
40           fraud or malice in any proceeding commenced on the ground that the person is violating this  
41           Article."

42           **SECTION 8.** G.S. 90-664 reads as rewritten:

43           **"§ 90-664. Persons and practices not affected.**

44           The requirements of this Article shall not apply to:

45           (1)   Any person registered, certified, credentialed, or licensed to engage in  
46           another profession or occupation or any person working under the  
47           supervision of a person registered, certified, credentialed, or licensed to  
48           engage in another profession or occupation in this State who is performing  
49           work incidental to or within the practice of that profession or occupation and  
50           does not represent himself or herself as a respiratory care practitioner.

- 1           (2)    A student or trainee working under the direct supervision of a respiratory  
2           care practitioner while fulfilling an experience requirement or pursuing a  
3           course of study to meet requirements for licensure in accordance with rules  
4           adopted pursuant to this Article.
- 5           (3)    A respiratory care practitioner serving in the Armed Forces or the Public  
6           Health Service of the United States or employed by the Veterans  
7           Administration ~~when performing duties associated with that service or~~  
8           ~~employment~~ or other federal agency, to the extent permitted under federal  
9           law, so long as the individual limits services to those directly related to work  
10          with the employing federal agency.
- 11          (4)    A person who performs only support activities as defined in  
12          G.S. 90-648(13).
- 13          (5)    A person licensed as a respiratory care practitioner in another jurisdiction  
14          while providing respiratory care in a declared emergency in this State,  
15          providing respiratory care as a member of an organ harvesting team, or  
16          providing respiratory care onboard an ambulance as part of an ambulance  
17          transport team transporting a patient into or out of this State."

18           **SECTION 9.** Notwithstanding any other provision of law to the contrary, any  
19 person licensed by the North Carolina Respiratory Care Board on October 1, 2016, who has  
20 passed the entry-level examination administered by the National Board for Respiratory Care,  
21 Inc., shall be deemed to have complied with the requirements of subdivision G.S. 90-653(a)(5),  
22 as amended by this act.

23           **SECTION 10.** G.S. 90-654 and G.S. 90-660(b)(6) are repealed.

24           **SECTION 11.** Section 5 of this act becomes effective October 1, 2015. Sections 3  
25 and 4 of this act become effective October 1, 2016. The remainder of the act is effective when  
26 it becomes law.