

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 316
Mar 8, 2023
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH30141-NB-84

Short Title: Respiratory Care Modernization Act. (Public)

Sponsors: Representative Moss.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE THE GENERAL STATUTES OF NORTH CAROLINA GOVERNING
3 THE PRACTICE OF RESPIRATORY CARE TO BETTER REFLECT THE CHANGES IN
4 EDUCATION, EXPERIENCE, AND PRACTICE OF THE PROFESSION IN ORDER TO
5 ENHANCE THE HEALTH AND WELFARE OF NORTH CAROLINA CITIZENS.

6 Whereas, it is the intention of the North Carolina General Assembly to promote the
7 health and welfare of the citizens of this State; and

8 Whereas, the COVID-19 pandemic has placed increasing demands on all health care
9 professionals; and

10 Whereas, it is the intention of the North Carolina General Assembly that statutes
11 governing the profession of respiratory care reflect current practices, improvements, and other
12 developments that have occurred in the profession; and

13 Whereas, the current statutory language does not fully encompass current practices,
14 improvements, and other developments; Now, therefore,
15 The General Assembly of North Carolina enacts:

16 SECTION 1.(a) Article 38 of Chapter 90 of the General Statutes reads as rewritten:

17 "Article 38.

18 "Respiratory Care Practice Act.

19 ...

20 "§ 90-648. Definitions.

21 The following definitions apply in this Article:

22 (1) Advanced respiratory care practitioner (ARCP). – A person licensed in this
23 State who has gained additional specialized knowledge, skills, and experience
24 through a postgraduate advanced practice respiratory therapy program of
25 study as defined by the Board and is authorized to perform advanced
26 respiratory therapy practices under the supervision of a physician licensed to
27 practice medicine in accordance with Article 1 of this Chapter.

28 (1a) Advanced respiratory care procedures. – Procedures that require additional
29 competency training in accordance with rules adopted by the Board.

30 ~~(1b)~~ Board. – The North Carolina Respiratory Care Board.

31 (2) Diagnostic testing. – Cardiopulmonary procedures and tests performed on the
32 written order of a physician licensed under Article 1 of this Chapter that
33 provide information to the physician to formulate a diagnosis of the patient's
34 condition. The tests and procedures may include pulmonary function testing,
35 electrocardiograph testing, cardiac stress testing, and sleep related testing.



- 1 (3) Direct supervision. – The authority and responsibility to direct the
2 performance of activities as established by policies and procedures for safe
3 and appropriate completion of services.
- 4 (3a) Endorsement. – A designation issued by the Board recognizing the person
5 named on the endorsement as having met the requirements to perform
6 advanced respiratory care procedures as defined by rules adopted by the
7 Board.
- 8 (4) Individual. – A human being.
- 9 (5) License. – A certificate issued by the Board recognizing the person named
10 therein as having met the requirements to practice respiratory care as defined
11 in this ~~Article.~~Article as a respiratory care practitioner or advanced respiratory
12 care practitioner.
- 13 (6) Licensee. – A person who has been issued a license under this Article.
- 14 (7) Medical director. – An appointed physician who is licensed under Article 1 of
15 this Chapter and a member of the entity's medical staff, and who is granted
16 the authority and responsibility for assuring and establishing policies and
17 procedures and that the provision of such is provided to the quality, safety,
18 and appropriateness standards as recognized within the defined scope of
19 practice for the entity.
- 20 (8) Person. – An individual, corporation, partnership, association, unit of
21 government, or other legal entity.
- 22 (9) Physician. – ~~A doctor of medicine.~~ An individual licensed to practice medicine
23 by the State of North Carolina in accordance with Article 1 of this Chapter.
- 24 (9a) Practice of advanced practice respiratory therapy. – The scope of practice as
25 determined by the supervising physician at the practice level in any health care
26 setting authorized by the supervising physician and the Board. The advanced
27 respiratory care practitioner may perform acts, tasks, or functions in any health
28 care setting for which the physician is responsible, as follows:
- 29 a. Related to the care of persons with problems affecting the
30 cardiovascular and cardiopulmonary systems.
- 31 b. Delegated by a supervising physician.
- 32 c. Appropriate to the advanced respiratory care practitioner's education,
33 training, experience, and level of competence.
- 34 d. Related to the prescribing, ordering, and administering of drugs,
35 medical care, and medical devices related to the cardiovascular and
36 cardiopulmonary systems within the limitations set forth by the
37 supervising physician and rules adopted by the Board.
- 38 (10) Practice of respiratory care. – As defined by the written order of a physician
39 licensed under Article 1 of this ~~Chapter.~~Chapter for respiratory care
40 practitioners, the observing and monitoring of signs and symptoms, general
41 behavior, and general physical response to respiratory care treatment and
42 diagnostic testing, including the determination of whether such signs,
43 symptoms, reactions, behavior, or general response exhibit abnormal
44 characteristics, and the performance of diagnostic testing and therapeutic
45 application of:
- 46 a. Medical gases, humidity, and aerosols including the ~~maintenance-use~~
47 of associated ~~apparatus,~~ respiratory care equipment, except for the
48 purpose of anesthesia.
- 49 b. Pharmacologic agents related to respiratory care procedures, including
50 those agents necessary to perform hemodynamic monitoring.
- 51 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.

The term also means the interpretation and implementation of a physician's written or verbal order pertaining to the acts described in this subdivision.

(10a) Prescriptive and dispensing authorization. – The legal permission for the supervising physician for the advanced respiratory care practitioner to prescribe and deliver pharmacologic and nonpharmacologic agents to a patient in compliance with rules adopted by the Board and applicable federal and State laws, pursuant to Article 1 of this Chapter and in accordance with the limitations set forth by the supervising physician and rules adopted by the Board.

(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.

(12a) Supervising physician. – A physician with the competencies and authority to supervise advanced respiratory care practitioners.

(13) Support activities. – ~~Procedures–Tasks~~ that do not require formal academic training, including the delivery, setup, and routine maintenance and repair of apparatus. respiratory care equipment. The term also includes giving instructions on the use, fitting, and application of ~~apparatus, respiratory care equipment~~ but does not include therapeutic evaluation and ~~assessment.~~ assessment for an individual patient as defined in rules adopted by the Board.

"§ 90-649. North Carolina Respiratory Care Board; creation.

(a) The North Carolina Respiratory Care Board is created. The Board shall consist of 10 members as follows:

- (1) Two members shall be respiratory care practitioners.
- (2) Four members shall be physicians licensed to practice in North Carolina, and whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.
- (3) One member shall represent the North Carolina Hospital Association.
- (4) One ~~member~~ member, who is a resident of this State, shall represent the North Carolina Association of Atlantic Coast Medical Equipment Services. ~~Services Association.~~
- (5) Two members shall represent the public at large.

...

"§ 90-650. Appointments and removal of Board members; terms and compensation.

(a) The members of the Board shall be appointed as follows:

...

- 1 (7) ~~The North Carolina Association of Atlantic Coast Medical Equipment~~
 2 ~~Services Association~~ shall appoint the member described in
 3 G.S. 90-649(a)(4).
 4 ...

5 **"§ 90-652. Powers and duties of the Board.**

6 The Board shall have the power and duty to:

- 7 (1) Determine the qualifications and fitness of applicants for licensure, renewal
 8 of licensure, and reciprocal licensure. The Board shall, in its discretion,
 9 investigate the background of an applicant to determine the applicant's
 10 qualifications with due regard given to the applicant's competency, honesty,
 11 truthfulness, and integrity. The Department of Public Safety may provide a
 12 criminal record check to the Board for a person who has applied for a license
 13 through the Board. The Board shall provide to the Department of Public
 14 Safety, along with the request, the fingerprints of the ~~applicant,~~ applicant and
 15 any additional information required by the Department of Public Safety, and
 16 a form signed by the applicant consenting to the check of the criminal record
 17 and to the use of the fingerprints and other identifying information required
 18 by the State or national repositories. ~~Justice.~~ The applicant's fingerprints shall
 19 be forwarded to the State Bureau of Investigation for a search of the State's
 20 criminal history record file, and the State Bureau of Investigation shall
 21 forward a set of the fingerprints to the Federal Bureau of Investigation for a
 22 national criminal history check. The Board shall keep all information pursuant
 23 to this subdivision privileged, in accordance with applicable State law and
 24 federal guidelines, and the information shall be confidential and shall not be a
 25 public record under Chapter 132 of the General Statutes. The Board shall
 26 collect any fees required by the Department of Public Safety and shall remit
 27 the fees to the Department of Public Safety for expenses associated with
 28 conducting the criminal history record check.

- 29 ...
 30 (14) Establish and adopt rules defining the education and credential requirements
 31 for persons seeking endorsement under this Article.

32 **"§ 90-652.1. Disasters and emergencies.**

33 In the event of an occurrence which the Governor of the State of North Carolina has declared
 34 a state of emergency, or in the event of an occurrence for which a county or municipality has
 35 enacted an ordinance to deal with states of emergency under G.S. 166A-19.31, or to protect the
 36 public health, safety, or welfare of its citizens under Article 22 of Chapter 130A of the General
 37 Statutes, G.S. 160A-174(a), or G.S. 153A-121(a), as applicable, the Board may waive the
 38 requirements of this Article in order to permit professional services to the public consistent with
 39 this Article, including the practice of advanced practice respiratory therapy, respiratory care, and
 40 prescriptive and ordering authorization, as those terms are defined in this Article.

41 **"§ 90-653. Licensure requirements; examination.**

42 (a) Each applicant for ~~licensure~~ a respiratory care practitioner license under this Article
 43 ~~shall meet the following requirements:~~ do all of the following:

- 44 (1) Submit a completed application as required by the ~~Board.~~ Board, which shall
 45 include a form signed by the applicant consenting to the check of the
 46 applicant's criminal record and to the use of the applicant's fingerprints and
 47 other identifying information required by the State and national repositories.
 48 (2) Submit any fees required by the Board.
 49 (3) Submit to the Board written evidence, verified by oath, that the applicant has
 50 successfully completed the ~~minimal~~ entry-level degree requirements of a
 51 respiratory care education program as approved by the Commission for

~~Accreditation of Allied Health Educational Programs, or the Canadian Council on Accreditation for Respiratory Therapy Education Care (CoARC) or its successor by arranging for the applicant's respiratory care education program to submit an official transcript confirming successful completion of the respiratory care education program directly to the Board.~~

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

~~(5) Pass~~ Submit to the Board written evidence, verified by oath, that the ~~entry-level applicant passed the examination requirements as defined by the rules adopted by the Board given by the National Board for Respiratory Care, Inc., or its successor, for entry-level respiratory care practitioners.~~

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

(c) Each applicant for an advanced respiratory care practitioner license under this Article shall do all of the following:

(1) Submit a completed application as required by the Board, including a form signed by the applicant consenting to the check of the applicant's criminal record and to the use of the applicant's fingerprints and other identifying information required by the State and national repositories.

(2) Submit any fees required by the Board.

(3) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the postgraduate degree requirements of respiratory care education for the advanced practice respiratory therapist as approved by the Commission on Accreditation for Respiratory Care (CoARC) or its successor by arranging for the applicant's respiratory care education program to submit an official transcript confirming successful completion of the advanced respiratory care education program directly to the Board.

(4) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements for Basic Cardiac Life Support as recognized by the American Heart Association, the American Red Cross, and the American Safety and Health Institute.

(5) Submit to the Board written evidence, verified by oath, that the applicant passed the examination requirements as defined by Board rules pursuant to this Article given by the National Board for Respiratory Care, Inc., or its successor, for advanced-level respiratory care practitioners and defined by Board rules pursuant to this Article.

(d) When issuing a license, the Board shall state the terms and conditions of use of the license to the licensee.

...

"§ 90-660. Expenses; fees.

...

(b) All monies received by the Board pursuant to this Article shall be deposited in an account for the Board and shall be used for the administration and implementation of this Article. The Board shall establish fees in amounts to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed fifty dollars (\$50.00).

- 1 (2) For examination or reexamination, a fee not to exceed two hundred dollars
2 (\$200.00).
3 ...
4 (6) For a license with a provisional or temporary endorsement, a fee not to exceed
5 fifty dollars (\$50.00).
6 ...

7 **"§ 90-661. Requirement of license.**

8 It shall be unlawful for any person who is not currently licensed under this Article to:

- 9 (1) Engage in the practice of respiratory care.
10 (2) Use the title "respiratory care ~~practitioner~~-practitioner" or "advanced
11 respiratory care practitioner."
12 (3) Use the letters "RCP", "RTT", "RT", "ARCP", or any facsimile or
13 combination in any words, letters, abbreviations, or insignia.
14 (4) Imply orally or in writing or indicate in any way that the person is a respiratory
15 care ~~practitioner~~-practitioner, advanced respiratory care practitioner, or is
16 otherwise licensed under this Article.
17 (5) Employ or solicit for employment unlicensed persons to practice respiratory
18 care.
19 ...

20 **"§ 90-667. Confidentiality of Board investigative information.**

21 (a) All records, papers, investigative information, and other documents containing
22 information that the Board, its members, or its employees possess, gather, or receive as a result
23 of investigations, inquiries, assessments, or interviews conducted in connection with a licensing
24 complaint, appeal, assessment, potential impairment matter, or disciplinary matter shall not be
25 considered public records within the meaning of Chapter 132 of the General Statutes and are
26 privileged, confidential, not subject to discovery, subpoena, or any means of legal compulsion
27 for release to anyone other than the Board, its employees, or consultants involved in the
28 application for license, impairment assessment, or discipline of the licensee, except as provided
29 in subsection (b) of this section. For the purposes of this section, "investigative information"
30 means investigative files and reports, information relating to the identity and report of a physician
31 or other professional performing an expert review for the Board, and any of the Board's
32 investigative materials that are not admitted into evidence.

33 (b) The Board shall provide the licensee or applicant for license access to all information
34 in its possession that the Board intends to offer into evidence at the licensee's or applicant's
35 hearing. The Board shall not be required to produce (i) information subject to attorney-client
36 privilege or (ii) investigative information that the Board will not offer into evidence and is related
37 to advice, opinions, or recommendations of the Board's staff, consultants, or agents.

38 (c) Any licensee's notice of statement of charges, notice of hearing, and all information
39 contained in those documents shall be public records under Chapter 132 of the General Statutes.

40 (d) If the Board, its employees, or its agents possess investigative information indicating
41 a crime may have been committed, the Board may report the information to the appropriate law
42 enforcement agency or district attorney of the district in which the offense was committed. The
43 Board shall cooperate with and assist any law enforcement agency or district attorney conducting
44 a criminal investigation or prosecution of a licensee by providing relevant information. This
45 information shall be confidential under G.S. 132-1.4 and shall remain confidential after
46 disclosure to a law enforcement agency or district attorney.

47 (e) All licensees shall self-report to the Board any of the following within 30 days of their
48 arrest or indictment:

- 49 (1) Any felony or arrest or indictment.
50 (2) Any arrest for driving while impaired or driving under the influence.

1 (3) Any arrest or indictment for the possession, use, or sale of any controlled
2 substance.

3 (f) The Board, its members, or its staff may release confidential information concerning
4 the denial, annulment, suspension, or revocation of a license to any other health care licensing
5 board in this State, other state, or country, or authorized Department of Health and Human
6 Services personnel who are charged with the enforcement or investigative responsibilities of
7 licensure. If the Board releases this confidential information, the Board shall notify and provide
8 a summary of the information to the licensee within 60 days after the information is transmitted.
9 The licensee may make a written request that the Board provide the licensee a copy of all
10 information transmitted within 30 days of receiving notice of the initial transmittance. The Board
11 shall not provide the information if the information relates to an ongoing criminal investigation
12 by any law enforcement agency or authorized Department of Health and Human Services
13 personnel with enforcement or investigative responsibilities.

14 (g) Notwithstanding the provisions of this section, the Board shall withhold the identity
15 of a patient, including information relating to dates and places of treatment, or any other
16 information that would tend to identify the patient, in any proceeding, record of a hearing, and in
17 the notice of charges against any licensee, unless the patient or the patient's representative
18 expressly consents to the public disclosure."

19 **SECTION 1.(b)** G.S. 90-652 is amended by adding a new subdivision to read:

20 "(15) Appoint and maintain a subcommittee of the Board in accordance with
21 G.S. 90-8.2(c)."

22 **SECTION 1.(c)** Article 1 of Chapter 90 of the General Statutes is amended by adding
23 a new section to read:

24 "§ 90-18.8. Limitations on advanced respiratory care practitioners.

25 (a) Any advanced respiratory care practitioner who is licensed under the provisions of
26 G.S. 90-648(9a) to perform acts, tasks, and functions may use the title "advanced respiratory care
27 practitioner." Any other person who uses the title in any form or holds himself or herself out to
28 be an advanced respiratory care practitioner or to be so licensed shall be deemed to be in violation
29 of this Article and Article 38 of this Chapter.

30 (b) Advanced respiratory care practitioners are authorized to practice advanced
31 respiratory care, as defined in G.S. 90-648(9a), under the supervision of a physician under the
32 following conditions:

33 (1) The North Carolina Respiratory Care Board has adopted rules developed by a
34 subcommittee governing the approval of individual advanced respiratory care
35 practitioners to practice advanced respiratory care with the limitations the
36 Board determines to be in the best interest of patient health and safety.

37 (2) The supervising physician has assigned an identification number to the
38 advanced respiratory care practitioner which is shown on written prescriptions
39 written by the advanced respiratory care practitioner.

40 (c) Advanced respiratory care practitioners that have prescriptive and ordering
41 authorization, as defined in G.S. 90-648, may order medications, tests, and treatments under the
42 following conditions:

43 (1) The North Carolina Respiratory Care Board has adopted rules governing the
44 approval of individual advanced respiratory care practitioners to have
45 prescriptive and ordering authorization with the limitations the Board
46 determines to be in the best interest of patient health and safety.

47 (2) The advanced respiratory care practitioner has current approval from both
48 Boards.

49 (3) The supervising physician has provided to the advanced respiratory care
50 practitioner written instructions for prescribing, ordering, changing, or
51 substituting drugs, or ordering tests with provision for review of the order by

the physician within a reasonable time, as determined by the North Carolina Respiratory Care Board, after the medication or tests are ordered. Prescriptions shall include the physician's name and address.

(d) Any prescription written by an advanced respiratory care practitioner or order given by an advanced respiratory care practitioner shall be deemed to have been authorized by the physician as the supervisor of the advanced respiratory care practitioner, and that supervising physician shall be responsible for authorizing that prescription or order.

(e) Any registered nurse or licensed practical nurse who receives an order from an advanced respiratory care practitioner for medications, tests, or treatments is authorized to perform that order in the same manner as if the order were received from a licensed physician."

SECTION 1.(d) G.S. 90-8.2 reads as rewritten:

"§ 90-8.2. Appointment of subcommittees.

...

(c) The North Carolina Medical Board shall appoint and maintain a subcommittee of five licensed physicians and two advanced respiratory care practitioners to develop rules to govern the performance of medical acts by advanced respiratory care practitioners. Three physicians shall be appointed by the Board, one physician member appointed from the Board, one physician member appointed from the North Carolina Thoracic Society, and two advanced respiratory care practitioners appointed by the North Carolina Respiratory Care Board. Rules recommended by the subcommittee shall be adopted in accordance with Chapter 150B of the General Statutes by both the North Carolina Medical Board and the North Carolina Respiratory Care Board and shall not become effective until adopted by the North Carolina Respiratory Care Board."

SECTION 2. Section 1(a) of this act becomes effective on October 1, 2024. Sections 1(b), 1(c), and 1(d) of this act become effective October 1, 2023. The North Carolina Respiratory Care Board shall make appointments to the subcommittee authorized in this act no later than January 1, 2024. Notwithstanding G.S. 90-652(15) and G.S. 90-8.2(c), as enacted in Sections 1(b) and 1(d) of this act, the initial appointees to the subcommittee from the North Carolina Respiratory Care Board shall be licensed health care providers currently serving on that Board and two of those initial appointees shall be at-large appointees who are licensed respiratory care practitioners. The subcommittee authorized in this act shall develop rules to implement the provisions of this act in accordance with Chapter 150B of the General Statutes and the approval of the North Carolina Medical Board and the North Carolina Respiratory Care Board.

SECTION 3. Except as otherwise provided, this act is effective when it becomes law.