

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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2

HOUSE BILL 488
Committee Substitute Favorable 6/7/93

Short Title: Respiratory Care Practice Act.

(Public)

Sponsors:

Referred to:

March 24, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE THE PRACTICE OF RESPIRATORY CARE.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 90 of the General Statutes is amended by adding a new
5 Article to read:

6 **"ARTICLE 28.**

7 **"RESPIRATORY CARE PRACTICE ACT.**

8 **"§ 90-405. Short title.**

9 This Article is the Respiratory Care Practice Act and may be cited by that name.

10 **"§ 90-406. Purpose.**

11 The General Assembly finds that the practice of respiratory care in the State of
12 North Carolina affects the public health, safety, and welfare. It is the purpose and intent
13 of this Article to protect the public from the unqualified practice of respiratory care and
14 from unprofessional conduct by persons licensed pursuant to this Article.

15 **"§ 90-407. Definitions.**

16 The following definitions apply in this Article, unless the context otherwise requires:

- 17 (1) Board. – The State Board of Respiratory Care.
18 (2) Physician. – A doctor of medicine duly licensed by the State of North
19 Carolina in accordance with Article 1 of this Chapter.
20 (3) Practice of respiratory care. – Respiratory care under medical direction
21 in accordance with the written or verbal order of a licensed physician.
22 The term includes the acceptance, transcription, interpretation, and
23 implementation of a physician's written or verbal order pertaining to

1 the practice of respiratory care. The term also includes diagnostic and
2 therapeutic use of:

- 3 a. Medical gases, humidity, and aerosols including the
4 maintenance of associated apparatus (except for the purpose of
5 anesthesia);
- 6 b. Pharmacologic agents related to respiratory care procedures.
7 This includes those agents necessary to perform hemodynamic
8 monitoring;
- 9 c. Mechanical or physiological ventilatory support;
- 10 d. Bronchial hygiene and related respiratory care procedures;
- 11 e. Cardiopulmonary resuscitation and maintenance of natural
12 airways, the insertion and maintenance of artificial airways;
- 13 f. Specific diagnostic and testing techniques employed in the
14 medical management of patients for diagnosing, monitoring,
15 treatment, and research of cardiopulmonary abnormalities,
16 including the collection, measurement, analysis, and reporting
17 of ventilatory volumes, pressures, flows, specimens of blood,
18 respiratory gases, and respiratory secretions;
- 19 g. Pulmonary function testing, hemodynamic and other related
20 physiologic measurements of the cardiopulmonary system;
- 21 h. Hyperbaric oxygen therapy; and
- 22 i. Extracorporeal membrane oxygenation under the supervision of
23 a qualified physician.

24 (4) Respiratory care. – The treatment, management, diagnostic testing, and
25 care of patients with deficiencies and abnormalities associated with the
26 cardiopulmonary system. The term includes inhalation therapy and
27 respiratory therapy.

28 (5) Respiratory care practitioner. – A person licensed under this Article to
29 practice respiratory care.

30 **"§ 90-408. State Board of Respiratory Care; creation.**

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

33 (1) One member shall be a respiratory care practitioner whose primary
34 practice is management of respiratory care services.

35 (2) One member shall be a respiratory care practitioner who is an educator
36 on the respiratory care technology faculty of a State community
37 college or university.

38 (3) One member shall be a respiratory care practitioner whose primary
39 practice is respiratory home care.

40 (4) One member shall be a respiratory care practitioner whose primary
41 practice is clinical respiratory care.

42 (5) One member shall be a physician whose primary practice is
43 pulmonology.

1 (6) One member shall be a physician whose primary practice is
2 anesthesiology.

3 (7) One member shall represent the public at large.

4 (b) Professional members of the Board shall be citizens of the United States and
5 residents of this State and shall also satisfy the following criteria:

6 (1) Respiratory care practitioner members shall have practiced respiratory
7 care for at least five years.

8 (2) Respiratory care practitioner members shall be licensed under this
9 Article, except the initial appointees shall be licensed under this
10 Article no later than June 30, 1994.

11 (c) The members of the Board appointed from the public at large shall be citizens
12 of the United States and residents of this State and shall not be any of the following:

13 (1) A respiratory care practitioner.

14 (2) An agent or employee of a person engaged in the profession of
15 respiratory care.

16 (3) A licensed health care professional or a person enrolled in a program
17 to become prepared to be a licensed health care professional.

18 (4) An agent or employee of a health care institution, a health care insurer,
19 or a health care professional school.

20 (5) A member of any allied health profession or a person enrolled in a
21 program to become prepared to be a member of an allied health
22 profession.

23 (6) The spouse of an individual who may not serve as a public member of
24 the Board.

25 **§ 90-409. Appointments and removal of Board members; terms and**
26 **compensation.**

27 (a) The members of the Board shall be appointed on or before October 1, 1993,
28 as follows:

29 (1) The Governor shall appoint the physician members described in G.S.
30 90-408(a)(5) and G.S. 90-408(a)(6) and the public member described
31 in G.S. 90-408(a)(7).

32 (2) The General Assembly upon the recommendation of the Speaker of the
33 House of Representatives shall appoint the professional members
34 described in G.S. 90-408(a)(1) and G.S. 90-408(a)(2) in accordance
35 with G.S. 120-121.

36 (3) The General Assembly upon the recommendation of the President Pro
37 Tempore of the Senate shall appoint the professional members
38 described in G.S. 90-408(a)(3) and G.S. 90-408(a)(4) in accordance
39 with G.S. 120-121.

40 (b) Of the members initially appointed, one of the physician members appointed
41 by the Governor, one of the professional members appointed by the General Assembly
42 upon the recommendation of the Speaker of the House of Representatives, and one of
43 the professional members appointed by the General Assembly upon the
44 recommendation of the President Pro Tempore of the Senate shall be appointed for

1 three-year terms; the public member appointed by the Governor, one of the professional
2 members appointed by the General Assembly upon the recommendation of the Speaker
3 of the House of Representatives, and one of the professional members appointed by the
4 General Assembly upon the recommendation of the President Pro Tempore of the
5 Senate shall be appointed for two-year terms; and one of the physician members
6 appointed by the Governor shall be appointed for a one-year term. After the initial
7 terms specified in this subsection, members of the Board shall take office on the first
8 day of July immediately following the expired term of that office and shall serve for a
9 term of three years and until their successors are appointed and qualified.

10 (c) No member shall serve on the Board for more than two consecutive terms.

11 (d) The Governor may remove members of the Board, after notice and
12 opportunity for hearing, for:

13 (1) Incompetence;

14 (2) Neglect of duty;

15 (3) Unprofessional conduct;

16 (4) Conviction of any felony;

17 (5) Failure to meet the qualifications of this Article; or

18 (6) Committing any act prohibited by this Article.

19 (e) Any vacancy shall be filled by the appointing authority originally filling that
20 position, except that any vacancy in appointments by the General Assembly shall be
21 filled in accordance with G.S. 120-122.

22 (f) Members of the Board shall receive no compensation for their services, but
23 shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5.

24 **"§ 90-410. Election of officers; meetings of Board.**

25 (a) Within 30 days after making appointments to the Board, the Governor shall
26 call the first meeting of the Board. The Board shall elect a chairman and a vice-
27 chairman who shall hold office according to rules adopted by the Board.

28 (b) The Board shall hold at least two regular meetings each year as provided by
29 rules adopted by the Board. The Board may hold additional meetings upon the call of
30 the chairman or any two Board members. A majority of the Board membership shall
31 constitute a quorum.

32 **"§ 90-411. Power and responsibility of Board.**

33 The Board shall:

34 (1) Determine the qualifications and fitness of applicants for licenses,
35 renewal of licenses, and reciprocal licenses;

36 (2) Adopt rules necessary to conduct its business, carry out its duties, and
37 administer this Article;

38 (3) Adopt and publish a code of ethics;

39 (4) Deny, issue, suspend, revoke, and renew licenses in accordance with
40 this Article;

41 (5) Conduct investigations, subpoena individuals and records, and do all
42 other things necessary and proper to discipline persons licensed under
43 this Article and to enforce this Article;

- 1 (6) Employ professional, clerical, investigative, or special personnel
2 necessary to carry out the provisions of this Article, and purchase or
3 rent office space, equipment, and supplies;
- 4 (7) Adopt a seal by which it shall authenticate its proceedings, official
5 records, and licenses;
- 6 (8) Conduct administrative hearings in accordance with Article 3 of
7 Chapter 150B of the General Statutes when a 'contested case' as
8 defined in G.S. 150B-2(2) arises under this Article;
- 9 (9) Establish reasonable fees as allowed by this Article for applications for
10 examination; initial, provisional, and renewal licenses; and other
11 services provided by the Board;
- 12 (10) Submit an annual report to the Governor and General Assembly of all
13 its official actions during the preceding year, together with any
14 recommendations and findings regarding improvements of the practice
15 of respiratory care;
- 16 (11) Publish and make available upon request the licensure standards
17 prescribed under this Article and all rules adopted by the Board;
- 18 (12) Request and receive the assistance of State educational institutions or
19 other State agencies; and
- 20 (13) Establish and approve continuing education requirements for persons
21 seeking licensure under this Article.

22 **"§ 90-412. License requirements.**

23 Each applicant for a license as a licensed respiratory care practitioner shall meet the
24 following requirements:

- 25 (1) Submit a completed application as required by the Board;
- 26 (2) Submit any fees required by the Board; and
- 27 (3) Submit to the Board written evidence, verified by oath, that the
28 applicant:
 - 29 a. Has completed a program designed to educate individuals as
30 respiratory care practitioners as accredited or recognized by the
31 Joint Review Committee for Respiratory Care Education; and
 - 32 b. Has passed an examination as defined by the Board.

33 **"§ 90-413. Notification of applicant following evaluation of application.**

34 After evaluation of the application and of any other evidence, the Board shall notify
35 each applicant that the application and evidence submitted are satisfactory and accepted,
36 or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the
37 rejection.

38 **"§ 90-414. Granting license by endorsement.**

39 The Board may grant, upon application and payment of proper fees, a license to a
40 person who at the time of application holds a valid license as a licensed respiratory care
41 practitioner issued by another state or any political territory or jurisdiction acceptable to
42 the Board if, in the Board's opinion, the requirements for that license are substantially
43 the same as the requirements of this Article.

44 **"§ 90-415. Provisional licenses.**

1 The Board may grant a provisional license for a period not exceeding 12 months to
2 any individual who has successfully completed the education requirements and has
3 made application to take the examination required under G.S. 90-412. A provisional
4 license shall allow the individual to practice as a respiratory care practitioner under the
5 supervision of a respiratory care practitioner licensed in this State and shall be valid
6 until revoked by the Board.

7 **"§ 90-416. Exemption from certain requirements.**

8 (a) The Board shall issue a respiratory care practitioner license to an applicant,
9 who, at the effective date of this Article, has passed the registered respiratory therapist
10 (RRT) examination administered by the National Board for Respiratory Care. An
11 applicant applying for licensure under this section must do so within 24 months of the
12 effective date of this Article.

13 (b) The Board shall issue a respiratory care practitioner license to an applicant,
14 who, at the effective date of this Article, has passed the certified respiratory therapy
15 technician (CRTT) examination administered by the National Board for Respiratory
16 Care. An applicant applying for licensure under this section must do so within 24
17 months of the effective date of this Article.

18 (c) The Board may issue a provisional respiratory care practitioner license to an
19 applicant, who at the time of the effective date of this Article does not meet the
20 qualifications of G.S. 90-416(a) or (b), but who, at the effective date of this Article, and
21 through written evidence verified by oath demonstrates that the applicant is currently
22 performing the duties of a respiratory care practitioner within the State of North
23 Carolina. The temporary permit will be valid for 24 months after the effective date of
24 this Article, within which time the applicant shall be required to complete the
25 requirements of G.S. 90-412(3)b.

26 **"§ 90-417. License as constituting property of Board; display requirement;**
27 **renewal; inactive status.**

28 (a) A license issued by the Board is the property of the Board and must be
29 surrendered to the Board on demand.

30 (b) The licensee shall display the license certificate in the manner prescribed by
31 the Board.

32 (c) The licensee shall inform the Board of any change of the licensee's address.

33 (d) The license shall be reissued by the Board annually upon payment of a
34 renewal fee if the licensee is not in violation of this Article at the time of application for
35 renewal and if the applicant fulfills current requirements of continuing education as
36 established by the Board.

37 (e) Each person licensed under this Article is responsible for renewing his license
38 before the expiration date. The Board shall notify a licensee of pending license
39 expiration at least 30 days in advance of the expiration date of the license.

40 (f) The Board may provide for the late renewal of a license upon the payment of
41 a late fee, but no late fee renewal may be granted more than five years after a license
42 expires.

43 (g) Under procedures and conditions established by the Board, a licensee may
44 request that his license be declared inactive. The licensee may apply for active status at

1 any time and upon meeting the conditions set by the Board shall be declared to have
2 active status.

3 **"§ 90-418. Suspension, revocation, and refusal to renew license.**

4 (a) The Board may deny or refuse to renew a license, may suspend or revoke a
5 license, or may impose probationary conditions on a license if the licensee or applicant
6 for licensure:

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

8 a. Employment of fraud, deceit, or misrepresentation in obtaining
9 or attempting to obtain a license or the renewal of a license;

10 b. Committing an act of malpractice, gross negligence, or
11 incompetence in the practice of respiratory care;

12 c. Practicing as a licensed respiratory care practitioner without a
13 current license;

14 d. Engaging in health care practices that are determined to be
15 hazardous to the health, safety, or welfare of the public;

16 (2) Was convicted of or entered a plea of guilty or **nolo contendere** to any
17 crime involving moral turpitude;

18 (3) Was adjudicated insane or incompetent, until proof of recovery from
19 the condition can be established;

20 (4) Engaged in any act or practice violative of any of the provisions of this
21 Article or any rule adopted by the Board, or aided, abetted, or assisted
22 any person in such a violation.

23 (b) Denial, refusal to renew, suspension, revocation, or imposition of
24 probationary conditions upon a license may be ordered by the Board after a hearing held
25 in accordance with Chapter 150B of the General Statutes and rules adopted by the
26 Board. An application may be made to the Board for reinstatement of a revoked license
27 if the revocation has been in effect for at least one year.

28 **"§ 90-419. Fees.**

29 The Board shall establish fees in accordance with Chapter 150B of the General
30 Statutes in amounts to cover the cost of services rendered for the following purposes:

31 (1) For an initial application, a fee not to exceed twenty-five dollars
32 (\$25.00);

33 (2) For examination or reexamination, a fee not to exceed one hundred
34 fifty dollars (\$150.00);

35 (3) For issuance of a license, a fee not to exceed one hundred dollars
36 (\$100.00);

37 (4) For the renewal of a license, a fee not to exceed fifty dollars (\$50.00);

38 (5) For the late renewal of a license, an additional late fee not to exceed
39 fifty dollars (\$50.00);

40 (6) For a provisional license, a fee not to exceed thirty-five dollars
41 (\$35.00);

42 (7) For copies of Board rules and licensure standards, charges not
43 exceeding the actual cost of printing and mailing.

44 **"§ 90-420. Requirement of license.**

1 After October 1, 1995, it shall be unlawful for any person who is not currently
2 licensed under this Article to do any of the following:

- 3 (1) Engage in the practice of respiratory care;
- 4 (2) Use the title 'respiratory care practitioner';
- 5 (3) Use the letters 'RCP' or any facsimile or combination in any words,
6 letters, abbreviations, or insignia;
- 7 (4) Imply orally or in writing or indicate in any way that the person is a
8 licensed respiratory care practitioner.

9 **"§ 90-421. Violation a misdemeanor.**

10 Any person who violates any provision of this Article shall be guilty of a
11 misdemeanor and, upon conviction, shall be fined or imprisoned, or both, in the
12 discretion of the court. Each act of unlawful practice shall constitute a distinct and
13 separate offense.

14 **"§ 90-422. Injunctions.**

15 The Board may make application to any appropriate court for an order enjoining
16 violations of this Article, and upon a showing by the Board that any person has violated
17 or is about to violate this Article, the court may grant an injunction, grant a restraining
18 order, or take other appropriate action.

19 **"§ 90-423. Persons and practices not affected.**

20 The requirements of this Article shall not apply to:

- 21 (1) A health care professional duly licensed in accordance with Chapter 90
22 of the General Statutes who is performing services within his or her
23 authorized scope of practice.
- 24 (2) A student or trainee, working under the direct supervision of a licensed
25 respiratory care practitioner while fulfilling an experience requirement
26 or pursuing a course of study to meet requirements for licensure, for a
27 limited period of time as determined by the Board;
- 28 (3) A respiratory care practitioner serving in the armed forces or the
29 Public Health Service of the United States or employed by the
30 Veterans Administration when performing duties associated with that
31 service or employment;
- 32 (4) A person aiding the practice of respiratory care if the person works
33 under the direct supervision of a licensed respiratory care practitioner
34 and performs only support activities that do not require formal
35 academic training.

36 **"§ 90-424. Third-party reimbursement.**

37 Nothing in this Article shall be construed to require direct third-party
38 reimbursements to persons licensed under this Article."

39 Sec. 2. G.S. 120-123 is amended by adding a new subdivision to read:

40 "(60) The North Carolina Board of Respiratory Care as created by Article 28
41 of Chapter 90 of the General Statutes."

42 Sec. 3. This act becomes effective October 1, 1993.