

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 285

Short Title: Amend Respiratory Care Practice Act. (Public)

Sponsors: Representatives Tolson and Hollo (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Health and Human Services.

March 13, 2013

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

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

"§ 90-648. Definitions.

The following definitions apply in this Article:

- (1) Board. – The North Carolina Respiratory Care Board.
- (2) Diagnostic testing. – Cardiopulmonary procedures and tests performed on the written order of a physician licensed under Article 1 of this Chapter that provide information to the physician to formulate a diagnosis of the patient's condition. The tests and procedures may include pulmonary function testing, electrocardiograph testing, cardiac stress testing, and sleep related testing.
- (3) Direct supervision. – The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of services.
- (4) Individual. – A human being.
- (5) License. – A certificate issued by the Board recognizing the person named therein as having met the requirements to practice respiratory care as defined in this Article.
- (6) Licensee. – A person who has been issued a license under this Article.
- (7) Medical director. – An appointed physician who is licensed under Article 1 of this Chapter and a member of the entity's medical staff, and who is granted the authority and responsibility for assuring and establishing policies and procedures and that the provision of such is provided to the quality, safety, and appropriateness standards as recognized within the defined scope of practice for the entity.
- (8) Person. – An individual, corporation, partnership, association, unit of government, or other legal entity.
- (9) Physician. – A doctor of medicine licensed by the State of North Carolina in accordance with Article 1 of this Chapter.
- (10) Practice of respiratory care. – As defined by the written order of a physician licensed under Article 1 of this Chapter, the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination 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 of
4 associated apparatus, except for the purpose of anesthesia.
5 b. Pharmacologic agents related to respiratory care procedures,
6 including those agents necessary to perform hemodynamic
7 monitoring.
8 c. Mechanical or physiological ventilatory support.
9 d. Cardiopulmonary resuscitation and maintenance of natural airways,
10 the insertion and maintenance of artificial airways under the direct
11 supervision of a recognized medical director in a health care
12 environment which identifies these services within the scope of
13 practice by the facility's governing board.
14 e. Hyperbaric oxygen therapy.
15 f. New and innovative respiratory care and related support activities in
16 appropriately identified environments and under the training and
17 practice guidelines established by the American Association of
18 Respiratory Care.
19 g. The therapeutic effectiveness of an apparatus used in respiratory care
20 treatment for an individual patient.

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

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

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

40 **"§ 90-652. Powers and duties of the Board.**

41 The Board shall have the power and duty to:

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

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

- 13 (2) Establish and adopt rules necessary to conduct its business, carry out its
14 duties, and administer this Article.
- 15 (3) Adopt and publish a code of ethics.
- 16 (4) Deny, issue, suspend, revoke, and renew licenses in accordance with this
17 Article.
- 18 (5) Conduct investigations, subpoena individuals and records, and do all other
19 things necessary and proper to discipline persons licensed under this Article
20 ~~and or investigate the activities of persons not licensed under this Article~~
21 whom the Board believes to be engaged in the practice of respiratory care
22 and do all other things necessary and proper to enforce this Article.
- 23 (5a) Designate one or more of its employees to issue and serve subpoenas and
24 other papers on behalf of the Board. Service under this subdivision is
25 permitted in accordance with any other methods of service allowed by law.
- 26 (6) Employ professional, clerical, investigative, or special personnel necessary
27 to carry out the provisions of this Article and purchase or rent office space,
28 equipment, and supplies.
- 29 (7) Adopt a seal by which it shall authenticate its proceedings, official records,
30 and licenses.
- 31 (8) Conduct administrative hearings in accordance with Article 3A of Chapter
32 150B of the General Statutes.
- 33 (9) Establish certain reasonable fees as authorized by this Article for
34 applications for examination, licensure, ~~provisional licensure,~~ renewal of
35 licensure, and other services provided by the Board.
- 36 (10) Submit an annual report to the North Carolina Medical Board, the North
37 Carolina Hospital Association, the North Carolina Society of Respiratory
38 Care, the Governor, and the General Assembly of all the Board's official
39 actions during the preceding year, together with any recommendations and
40 findings regarding improvements of the practice of respiratory care.
- 41 (11) Publish and make available upon request the licensure standards prescribed
42 under this Article and all rules adopted pursuant to this Article.
- 43 (12) Request and receive the assistance of State educational institutions or other
44 State agencies.
- 45 (13) Establish and approve continuing education requirements for persons
46 seeking licensure under this Article."

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

48 **"§ 90-653. Licensure requirements; examination.**

49 (a) ~~Each applicant~~Applicants for licensure under this Article shall meet the following
50 requirements:

- 1 (1) Submit a completed application as required by the ~~Board~~Board, including a
2 form signed by the applicant consenting to the check of the applicant's
3 criminal record and to the use of the applicant's fingerprints and other
4 identifying information required by the State and national repositories.
- 5 (2) Submit any fees required by the Board.
- 6 (3) ~~Submit to the Board written evidence, verified by oath, For a respiratory~~
7 ~~therapist (RT) license, comply with each of the following:~~
- 8 a. Demonstrate that the applicant has successfully completed the
9 minimal requirements of a~~an~~ associate degree respiratory care
10 education program as~~currently~~ approved by the Commission for
11 ~~Accreditation of Allied Health Educational Programs, or the~~
12 ~~Canadian Council on Accreditation for Respiratory Therapy~~
13 ~~Education on Accreditation for Respiratory Care (CoARC) or its~~
14 successor, by arranging for the applicant's respiratory care education
15 program to submit a verified transcript directly to the Board.
- 16 b. Submit to the Board written evidence, verified by oath, that the
17 applicant has successfully completed the minimal requirements for
18 Basic Cardiac Life Support, as recognized by the American Heart
19 Association, the American Red Cross, or the American Safety and
20 Health Institute.
- 21 c. Submit to the Board written evidence, verified by oath, that the
22 applicant has successfully passed the Certified Respiratory Therapist
23 examination, or its successor, given by the National Board for
24 Respiratory Care, Inc.
- 25 A respiratory therapist license allows the individual to practice under the
26 direct supervision of a respiratory care practitioner licensed under this
27 Article in accordance with rules adopted by the Board. The Board shall state
28 the terms and conditions of use of the license by the licensee.
- 29 (4) ~~Submit to the Board written evidence, verified by oath, that the applicant has~~
30 ~~successfully completed the minimal requirements for Basic Cardiac Life~~
31 ~~Support as recognized by the American Heart Association, the American~~
32 ~~Red Cross, or the American Safety and Health Institute.~~For a respiratory
33 ~~care practitioner (RCP) license, comply with each of the following:~~
- 34 a. Demonstrate that the applicant has successfully completed the
35 minimal requirements of a baccalaureate degree respiratory care
36 education program approved by the Board or has completed an
37 equivalent program approved by the Board, by arranging for the
38 applicant's program to submit a verified transcript directly to the
39 Board.
- 40 b. Submit to the Board written evidence, verified by oath, that the
41 applicant has successfully completed the minimal requirements for
42 Advanced Cardiac Life Support, Pediatric Advanced Life Support, or
43 Neonatal Resuscitation Program as recognized by the American
44 Heart Association, the American Red Cross, the American Safety and
45 Health Institute, or the American Academy of Pediatrics.
- 46 c. Submit to the Board written evidence, verified by oath, that the
47 applicant has successfully passed the Registered Respiratory
48 Therapist examination, or its successor, given by the National Board
49 for Respiratory Care, Inc.
- 50 (5) ~~Pass the entry level examination given by the National Board for~~
51 ~~Respiratory Care, Inc.~~

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

5 **SECTION 4.** G.S. 90-654 and G.S. 90-656 are repealed.

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

7 **"§ 90-659. Suspension, revocation, and refusal to renew a license.**

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

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

- 14 a. Employed fraud, deceit, or misrepresentation ~~in~~in (i) obtaining or
15 attempting to obtain a license—license; or (ii) the renewal or
16 reinstatement of a license—license; or (iii) obtaining money or
17 anything of value.
18 b. Committed an act of malpractice, gross negligence, or incompetence
19 in the practice of respiratory care.
20 c. Practiced respiratory care without a license.
21 d. Engaged in health care practices that are determined to be hazardous
22 to public health, safety, or welfare.

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

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

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

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

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

43 (7) Has practiced respiratory care outside the boundaries of demonstrated
44 competence or the limitations of education, training, or supervised
45 experience.

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

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

1 (b) Denial, refusal to renew, suspension, or revocation of a license, or imposition of
2 probationary conditions upon a licensee may be ordered by the Board after a hearing held in
3 accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted pursuant
4 to this Article. However, the Board may deny, refuse to renew, suspend, or revoke a license
5 without a hearing if it receives verified information that an applicant does not meet any of the
6 requirements for licensure under G.S. 90-653(a). An application may be made to the Board for
7 reinstatement of a revoked license if the revocation has been in effect for at least one year.

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

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

15 (e) A person, partnership, firm, corporation, association, authority, or other entity acting
16 in good faith without fraud or malice shall be immune from civil liability for (i) reporting,
17 investigating, assessing, monitoring, or providing an expert medical opinion to the Board
18 regarding the acts or omissions of a licensee or applicant that violate the provisions of
19 subsection (a) of this section or any other provision of law relating to the fitness of a licensee or
20 applicant to practice respiratory care or (ii) initiating or conducting proceedings against a
21 licensee or applicant if a complaint is filed or action is taken in good faith without fraud or
22 malice. A person shall not be held liable in any civil proceeding for testifying before the Board
23 in good faith and without fraud or malice in any proceeding involving a violation of subsection
24 (a) of this section or any other law relating to the fitness of an applicant or licensee to practice
25 respiratory care, or for making a recommendation to the Board in the nature of peer review, in
26 good faith and without fraud and malice.

27 (f) A licensee may, with the consent of the Board, voluntarily relinquish a license at
28 any time. The Board may delay or refuse the granting of its consent as it may deem necessary
29 in order to investigate any pending complaint, allegation, or issue regarding violation of any
30 provisions of this Article by the licensee. Notwithstanding any provision to the contrary, the
31 Board retains full jurisdiction to investigate alleged violations of this Article by any person
32 whose license is relinquished under this subsection and, upon proof of any violation of this
33 Article by any such person, the Board may take disciplinary action as authorized by this
34 section.

35 (g) The Board may adopt rules as it deems reasonable and appropriate to interpret and
36 implement the provisions of this section."

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

38 **SECTION 7.** G.S. 90-661 reads as rewritten:

39 **"§ 90-661. Requirement of license.**

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

- 42 (1) Engage in the practice of respiratory care.
- 43 (2) Use the title "respiratory care practitioner".
- 44 (3) Use the letters "RCP", "RTT", "RT", or any facsimile or combination in any
45 words, letters, abbreviations, or insignia.
- 46 (4) Imply orally or in writing or indicate in any way that the person is a
47 respiratory care practitioner or is otherwise licensed under this Article.

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

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

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

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

The requirements of this Article shall not apply to:

- (1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State who is performing work incidental to or within the practice of that profession or occupation and does not represent himself or herself as a respiratory care practitioner.
- (2) A student or trainee working under the direct supervision of a respiratory care practitioner while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure in accordance with rules adopted pursuant to this Article.
- (3) A respiratory care practitioner serving in the Armed Forces or the Public Health Service of the United States or employed by the Veterans Administration ~~when performing duties associated with that service or employment or other federal agency, to the extent permitted under federal law, so long as the practitioner limits services to those directly related to work with the employing federal agency.~~
- (4) A person who performs only support activities as defined in ~~G.S. 90-648(13)~~ G.S. 90-648(13) and in accordance with rules adopted by the Board.
- (5) A person licensed as a respiratory care practitioner in another jurisdiction while providing respiratory care in a declared emergency in this State, providing respiratory care as a member of an organ harvesting team, or providing respiratory care on board an ambulance as part of an ambulance transport team transporting a patient into or out of this State.

SECTION 9. Any person licensed as a respiratory therapist under Article 38 of Chapter 90 of the General Statutes who has passed the Certified Respiratory Therapist examination given by the National Board for Respiratory Care, Inc., on the effective date of this act shall be deemed to have complied with the requirements of G.S. 90-653(a)(3), as enacted in Section 3 of this act. Any person licensed as a respiratory care practitioner under Article 38 of Chapter 90 of the General Statutes who has passed the Registered Respiratory Therapist examination given by the National Board for Respiratory Care, Inc., on the effective date of this act shall be deemed to have complied with the requirements of G.S. 90-653(a)(4), as enacted in Section 3 of this act.

SECTION 10. Section 3 of this act becomes effective January 1, 2015. The remainder of this act is effective when it becomes law.