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SESSION 2015

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HOUSE BILL 267
Committee Substitute Favorable 3/25/15
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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 Any person, partnership, firm, corporation, association, authority, or other entity acting in
34 good faith without fraud or malice, including the Board, its staff, and its counsel shall be
35 immune from civil liability for (i) reporting, investigating, assessing, monitoring, or providing
36 an expert medical opinion to the Board regarding the acts or omissions of a person on the
37 ground that the person is violating this Article, (ii) initiating or conducting proceedings against
38 a person on the ground that the person is violating this Article. A person shall not be held liable
39 in any civil proceeding for testifying before the Board in good faith and without fraud or malice
40 in any proceeding commenced on the ground that the person is violating this Article."

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

42 **"§ 90-664. Persons and practices not affected.**

43 The requirements of this Article shall not apply to:

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

50 (2) A student or trainee working under the direct supervision of a respiratory
51 care practitioner while fulfilling an experience requirement or pursuing a

1 course of study to meet requirements for licensure in accordance with rules
2 adopted pursuant to this Article.

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

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

11 (5) A person licensed as a respiratory care practitioner in another jurisdiction
12 while providing respiratory care in a declared emergency in this State,
13 providing respiratory care as a member of an organ harvesting team, or
14 providing respiratory care onboard an ambulance as part of an ambulance
15 transport team transporting a patient into or out of this State."

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

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

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