

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 421

Short Title: Respiratory Care Practice Act/AB.

(Public)

Sponsors: Representatives Tolson, Aldridge (Cosponsors); and Smith.

Referred to: Rules, Calendar and Operation of the House.

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE RESPIRATORY CARE PRACTICE ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 33.

"Respiratory Care Practice Act.

"§ 90-512. Short title.

This Article may be cited as the 'Respiratory Care Practice Act'.

"§ 90-513. Purpose.

The General Assembly finds that the practice of respiratory care in the State of North Carolina affects the public health, safety, and welfare and that the mandatory licensure of persons who engage in respiratory care is necessary to ensure a minimum standard of competency. It is the purpose and intent of this Article to protect the public from the unqualified practice of respiratory care and from unprofessional conduct by persons licensed pursuant to this Article.

"§ 90-514. Definitions.

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

- (1) Board. – The North Carolina Medical Board as created by Article 1 of this Chapter.

- 1 (2) Council. – The North Carolina Respiratory Care Advisory Council.
2 (3) Direct supervision. – The authority and responsibility to direct the
3 performance of activities as established by policies and procedures for
4 safe and appropriate completion of services.
5 (4) Holder. – An individual to whom a license has been granted by the
6 Council.
7 (5) Individual. – A human being.
8 (6) License. – A certificate, permit, or other evidence of a right or privilege
9 granted under this Article to practice respiratory care, which license
10 may contain specific endorsements limiting the holder's right or
11 privilege to practice respiratory care under this Article.
12 (7) Medical direction. – The supervision of activities by an appointed
13 physician, licensed under Article 1, Chapter 90 of the General Statutes
14 and a member of the entity's medical staff, and who is granted the
15 authority and responsibility for assuring and establishing policies,
16 procedures, and that the provision of such is provided to the quality,
17 safety, and appropriateness standards as recognized within the defined
18 scope of practice for the entity.
19 (8) Person. – An individual human being, corporation, partnership,
20 association, unit of government, or other legal entity.
21 (9) Physician. – A doctor of medicine duly licensed by the State of North
22 Carolina in accordance with Article 1 of this Chapter.
23 (10) Practice of respiratory care. – The acceptance, transcription,
24 interpretation, and implementation of a physician's written or verbal
25 order pertaining to the practice of respiratory care. The term also means
26 the observing and monitoring of signs and symptoms, general behavior
27 and general physical response to respiratory care treatment and
28 diagnostic testing, including determination of whether such signs,
29 symptoms, reactions, behavior or general response exhibit abnormal
30 characteristics, and the performance of diagnostic testing and
31 therapeutic application of:
32 a. Medical gases, humidity, and aerosols including the maintenance
33 of associated apparatus, except for the purpose of anesthesia;
34 b. Pharmacologic agents related to respiratory care procedures,
35 including those agents necessary to perform hemodynamic
36 monitoring;
37 c. Mechanical or physiological ventilatory support;
38 d. Cardiopulmonary resuscitation and maintenance of natural
39 airways, the insertion and maintenance of artificial airways under
40 the direct supervision of a recognized medical director in a health
41 care environment which identifies these services within the scope
42 of practice by the facilities governing board;
43 e. Hyperbaric oxygen therapy; and

1 f. Extracorporeal membrane oxygenation in appropriately identified
2 environments and under the training and practice guidelines
3 established by the Extracorporeal Life Support Organization.

4 (11) Practitioner. – A respiratory care practitioner.

5 (12) Respiratory care. – The treatment, management, diagnostic testing, and
6 care of patients with deficiencies and abnormalities associated with the
7 cardiopulmonary system.

8 (13) Respiratory care practitioner. – A person who has a license to engage in
9 the practice of respiratory care.

10 (14) Support activities. – Procedures that do not require formal academic
11 training, including the delivery, setup, and maintenance of apparatus.
12 Support activities shall not include therapeutic evaluation and
13 assessment.

14 **"§ 90-515. North Carolina Respiratory Care Advisory Council; creation.**

15 (a) The North Carolina Respiratory Care Advisory Council of the Board is created.
16 The Council shall consist of eight members as follows:

17 (1) Two members shall be respiratory care practitioners.

18 (2) Three members shall be physicians licensed to practice in North
19 Carolina, and whose primary practice is Pulmonology, Anesthesiology,
20 Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.

21 (3) One member shall represent the North Carolina Hospital Association.

22 (4) One member shall represent the North Carolina Association of Medical
23 Equipment Services.

24 (5) One member shall represent the public at large.

25 (b) The members of the Council appointed as practitioners shall be citizens of the
26 United States and residents of this State, shall have practiced respiratory care for at least
27 five years, and shall be licensed under this Article.

28 (c) The member of the Council appointed from the public at large shall be a citizen
29 of the United States and a resident of this State and shall not be: a practitioner; an agent
30 or employee of a person engaged in the profession of respiratory care; a health care
31 professional licensed under this Chapter or a person enrolled in a program to become
32 prepared to be a licensed health care professional; an agent or employee of a health care
33 institution, a health care insurer, or a health care professional school; a member of any
34 allied health profession; a person enrolled in a program to become prepared to be a
35 member of an allied health profession; or a spouse of an individual who may not serve as
36 a public member of the Council.

37 (d) The members of the Council appointed as physicians shall be citizens of the
38 United States and residents of this State.

39 **"§ 90-516. Appointments and removal of Council members; terms and**
40 **compensation.**

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

42 (1) The Governor shall appoint the public member described in G.S. 90-
43 515(a)(5).

1 (2) The General Assembly, upon the recommendation of the Speaker of the
2 House of Representatives, shall appoint one of the respiratory care
3 practitioner members described in G.S. 90-515(a)(1) and one of the
4 physician members described in G.S. 90-515(a)(2) in accordance with
5 G.S. 120-121.

6 (3) The General Assembly, upon the recommendation of the President Pro
7 Tempore of the Senate, shall appoint one of the respiratory care
8 practitioner members described in G.S. 90-515(a)(1) and one of the
9 physician members described in G.S. 90-515(a)(2) in accordance with
10 G.S. 120-121.

11 (4) The North Carolina Medical Society shall appoint one of the physician
12 members described in G.S. 90-515(a)(2).

13 (5) The North Carolina Hospital Association shall appoint one of its
14 members as described in G.S. 90-515(a)(3).

15 (6) The North Carolina Association of Medical Equipment Services shall
16 appoint one of its members as described in G.S. 90-515(a)(4).

17 (b) Members of the Council shall take office on the first day of July immediately
18 following the expired term of that office and shall serve for a term of three years and until
19 their successors are appointed and qualified.

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

21 (d) The Governor may remove members of the Council, after notice and an
22 opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct,
23 conviction of any felony, failure to meet the qualifications of this Article, or committing
24 any act prohibited by this Article.

25 (e) Any vacancy shall be filled by the appointing authority originally filling that
26 position, except that any vacancy in appointments by the General Assembly shall be
27 filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the
28 remainder of the unexpired term and until their successors have been duly appointed and
29 qualified.

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

32 (g) Individual members shall be immune from civil liability arising from activities
33 performed within the scope of their official duties.

34 **"§ 90-517. Election of officers; meetings of the Council.**

35 (a) The Council shall elect a chair and a vice-chair who shall hold office according
36 to rules adopted pursuant to this Article, except that all officers shall be elected annually
37 by the Council for one-year terms and shall serve until their successors are elected and
38 qualified.

39 (b) The Council shall hold at least two regular meetings each year as provided by
40 rules adopted pursuant to this Article. The Council may hold additional meetings upon
41 the call of the chair or any two Council members. A majority of the Council membership
42 shall constitute a quorum.

43 **"§ 90-518. Powers and duties of the Council.**

1 The Council shall recommend to the North Carolina Medical Board those activities
2 necessary to:

- 3 (1) Determine the qualifications and fitness of applicants for licensure,
4 renewal of licensure, and reciprocal licensure.
- 5 (2) Establish and recommend for adoption by the Board any rules necessary
6 to conduct its business, carry out its duties, and administer this Article.
- 7 (3) Adopt and publish a code of ethics.
- 8 (4) Deny, issue, suspend, revoke, and renew licenses in accordance with
9 this Article.
- 10 (5) Conduct investigations, subpoena individuals and records, and do all
11 other things necessary and proper to discipline persons licensed under
12 this Article and to enforce this Article.
- 13 (6) Employ professional, clerical, investigative, or special personnel
14 necessary to carry out the provisions of this Article and purchase or rent
15 office space, equipment, and supplies.
- 16 (7) Adopt a seal by which it shall authenticate its proceedings, official
17 records, and licenses.
- 18 (8) Conduct administrative hearings in accordance with Article 3 of Chapter
19 150B of the General Statutes.
- 20 (9) Establish certain reasonable fees as authorized by this Article for
21 applications for examination; initial, provisional, and renewal
22 registration; and other services provided by the Council.
- 23 (10) Submit an annual report to the North Carolina Medical Board, the North
24 Carolina Hospital Association, the North Carolina Society of
25 Respiratory Care, the Governor, and the General Assembly of all the
26 Council's official actions during the preceding year, together with any
27 recommendations and findings regarding improvements of the practice
28 of respiratory care.
- 29 (11) Publish and make available upon request the licensure standards
30 prescribed under this Article and all rules adopted pursuant to this
31 Article.
- 32 (12) Request and receive the assistance of State educational institutions or
33 other State agencies.
- 34 (13) Establish and approve continuing education requirements for persons
35 seeking licensure under this Article.

36 **"§ 90-519. Licensure requirements; examination.**

37 (a) Each applicant for licensure under this Article shall meet the following
38 requirements:

- 39 (1) Submit a completed application as required by the Council;
- 40 (2) Submit any fees required by the Council;
- 41 (3) Submit to the Council written evidence, verified by oath, that the
42 applicant has successfully completed the minimal requirements of a

1 respiratory care education program as approved by the Commission for
2 Accreditation of Allied Health Educational Programs;

3 (4) Submit to the Council written evidence, verified by oath, that the
4 applicant has successfully completed the minimal requirements for
5 Basic Cardiac Life Support as recognized by the American Heart
6 Association; and

7 (5) Pass the entry-level examination given by the National Board for
8 Respiratory Care, Inc.

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

14 **"§ 90-520. Exemption from certain requirements.**

15 (a) The Council may issue a license to an applicant who has passed the entry-level
16 examination given by the National Board for Respiratory Care, Inc., as of October 1,
17 1997. An applicant applying for licensure under this subsection must submit his or her
18 application before October 1, 1999.

19 (b) Temporary License. – The Council may at any time grant a temporary license
20 to any applicant who, as of October 1, 1997, does not meet the qualifications of G.S. 90-
21 519, but who, as of October 1, 1997, through written evidence, verified by oath,
22 demonstrates that the applicant is performing the duties of a practitioner within the State.
23 This temporary license is valid until October 1, 1998, within which time the applicant
24 shall be required to complete the requirements of G.S. 90-519(a)(5). A license granted
25 under this subsection shall contain an endorsement indicating that the license is
26 temporary and state the date the license was granted and the date it expires.

27 **"§ 90-521. Licensure by reciprocity.**

28 The Council may grant, upon application and the payment of proper fees, a license to
29 a person who at the time of application holds a valid license, certificate, or registration as
30 a respiratory care practitioner issued by another state or any political territory or
31 jurisdiction acceptable to the Council if, in the Council's determination, the requirements
32 for that license, certificate, or registration are substantially the same as the requirements
33 for licensure under this Article.

34 **"§ 90-522. Provisional license.**

35 The Council may at any time grant a provisional license for a period not exceeding 12
36 months to any applicant who has successfully completed the education requirements
37 under G.S. 90-519(a)(3) and has made application to take the examination required under
38 G.S. 90-519(a)(5). A provisional license allows the individual to practice respiratory care
39 under the supervision of a practitioner and in accordance with rules adopted pursuant to
40 this Article. A license granted under this section shall contain an endorsement indicating
41 that the license is provisional and stating the terms and conditions of its use by the holder
42 and state the date the license was granted and the date it expires.

43 **"§ 90-523. Notification of applicant following evaluation of application.**

1 After evaluation of the application and of any other evidence required from the
2 applicant by the Council, the Council shall notify each applicant that the application and
3 evidence submitted are satisfactory and accepted, or unsatisfactory and rejected. If
4 rejected, the notice shall state the reasons for the rejection.

5 **"§ 90-524. License as property of the Council; display requirement; renewal;
6 inactive status.**

7 (a) A license issued by the Council is the property of the Council and must be
8 surrendered by the holder to the Council on demand.

9 (b) The holder shall display the license in the manner prescribed by the Council.

10 (c) The holder shall inform the Council of any change of the holder's address.

11 (d) The license shall be renewed by the Council annually upon the payment of a
12 renewal fee if, at the time of application for renewal, the applicant:

13 (1) Is not in violation of this Article, and

14 (2) Has fulfilled the current requirements regarding continuing education as
15 established by rules adopted pursuant to this Article.

16 (e) The Council shall notify a holder of a pending registration at least 30 days in
17 advance of the expiration of the registration. Each holder is responsible for renewing his
18 or her license before the expiration date. Licenses that are not renewed automatically
19 lapse.

20 (f) The Council may provide for the late renewal of an automatically lapsed
21 license upon the payment of a late fee. No late fee renewal may be granted more than
22 five years after a license expires.

23 (g) In accordance with rules adopted pursuant to this Article, a holder may request
24 that his or her license be declared inactive and may thereafter apply for active status.

25 **"§ 90-525. Suspension, revocation, and refusal to renew a license.**

26 (a) The Council may recommend to the Board to take the necessary actions to
27 deny or refuse to renew a license, suspend or revoke a license, or to impose probationary
28 conditions on a holder or applicant if the holder or applicant for licensure:

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

30 a. Employed fraud, deceit, or misrepresentation in obtaining or
31 attempting to obtain a license, or the renewal of a license;

32 b. Committed an act of malpractice, gross negligence, or
33 incompetence in the practice of respiratory care;

34 c. Practiced respiratory care without a license; or

35 d. Engaged in health care practices that are determined to be
36 hazardous to the health, safety, or welfare of the public.

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

39 (3) Was adjudicated insane or incompetent, until proof of recovery from the
40 condition can be established.

41 (4) Engaged in any act or practice that violates any of the provisions of this
42 Article or any rule adopted pursuant to this Article, or aided, abetted, or
43 assisted any person in such a violation.

1 (b) Denial, refusal to renew, suspension, or revocation of a license, or imposition
2 of probationary conditions upon a holder may be ordered by the Council after a hearing
3 held in accordance with Chapter 150B of the General Statutes and rules adopted pursuant
4 to this Article. An application may be made to the Council for reinstatement of a revoked
5 license, if the revocation has been in effect for at least one year.

6 **"§ 90-526. Expenses; fees; administration.**

7 (a) All salaries, compensation, and expenses incurred or allowed for the purpose
8 of carrying out the purposes of this Article shall be paid by the Council exclusively out of
9 the fees received by the Council as authorized by this Article, or funds received from
10 other sources. In no case shall any salary, expense, or other obligations of the Council be
11 charged against the State.

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

16 (1) For an initial application, a fee not to exceed twenty-five dollars
17 (\$25.00).

18 (2) For examination or reexamination, a fee not to exceed one hundred fifty
19 dollars (\$150.00).

20 (3) For issuance of any license, a fee not to exceed one hundred dollars
21 (\$100.00).

22 (4) For the renewal of any license, a fee not to exceed fifty dollars (\$50.00).

23 (5) For the late renewal of any license, an additional late fee not to exceed
24 fifty dollars (\$50.00).

25 (6) For a license with a provisional or temporary endorsement, a fee not to
26 exceed thirty-five dollars (\$35.00).

27 (7) For copies of rules adopted pursuant to this Article and licensure
28 standards, charges not exceeding the actual cost of printing and mailing.

29 (c) The Board shall provide clerical and other staff services required by the Board,
30 and, along with the Council, shall administer and enforce all provisions of this Article
31 and all rules adopted pursuant to this Article, subject to the direction of the Council.

32 **"§ 90-527. Requirement of license.**

33 After October 1, 1998, it shall be unlawful for any person who is not currently
34 licensed under this Article to:

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

36 (2) Use the title 'respiratory care practitioner'.

37 (3) Use the letters 'RCP', 'RTT', 'RT', or any facsimile or combination in
38 any words, letters, abbreviations, or insignia.

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

41 (5) Employ or solicit for employment unlicensed or uncertified persons to
42 practice respiratory care.

43 **"§ 90-528. Violation a misdemeanor.**

1 Any person who violates any provision of this Article shall be guilty of a Class 1
2 misdemeanor.

3 **"§ 90-529. Injunctions.**

4 The Council may apply to the superior court for an order enjoining violations of this
5 Article, and upon a showing by the Council that any person has violated or is about to
6 violate this Article, the court may grant an injunction, grant a restraining order, or take
7 other appropriate action.

8 **"§ 90-530. Persons and practices not affected.**

9 The requirements of this Article shall not apply to:

- 10 (1) A health care professional duly licensed in accordance with this Chapter
11 who is performing services within his or her authorized scope of
12 practice;
13 (2) A student or trainee, working under the direct supervision of a
14 practitioner while fulfilling an experience requirement or pursuing a
15 course of study to meet requirements for certification, in accordance
16 with rules adopted pursuant to this Article;
17 (3) A practitioner serving in the armed forces or the Public Health Service
18 of the United States or employed by the Veterans Administration when
19 performing duties associated with that service or employment; and
20 (4) A person aiding in the practice of respiratory care, in accordance with
21 rules adopted pursuant to this Article, if the person works under the
22 direct supervision of a practitioner or a physician licensed under Article
23 1 of Chapter 90 of the General Statutes, and performs only support
24 activities that do not require formal academic training.

25 **"§ 90-531. Third-party reimbursement.**

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

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

29 "(68) The North Carolina Respiratory Care Advisory Council as created by
30 Article 33 of Chapter 90 of the General Statutes."

31 Section 3. The initial appointments to the North Carolina Respiratory Care
32 Council, created in G.S. 90-515, as enacted in Section 1 of this act, shall be appointed no
33 later than October 1, 1997. Notwithstanding the provisions of G.S. 90-515(b), as enacted
34 in Section 1 of this act, the initial members of the North Carolina Respiratory Care
35 Council who are appointed pursuant to G.S. 90-515(a)(1) must be licensed under Article
36 31 of Chapter 90 of the General Statutes, as enacted in Section 1 of this act, no later than
37 June 30, 1998, and, until October 1, 2002, must have passed the entry-level examination
38 administered by the National Board for Respiratory Care, Inc. Notwithstanding the
39 provisions of G.S. 90-516(b), as enacted in Section 1 of this act, of the initial
40 appointments to the North Carolina Respiratory Care Council, one of the members
41 appointed by the General Assembly upon the recommendation of the Speaker of the
42 House of Representatives and one of the members appointed by the General Assembly
43 upon the recommendation of the President Pro Tempore of the Senate shall be appointed

1 for three-year terms; one of the members appointed by the General Assembly upon the
2 recommendation of the Speaker of the House of Representatives and one of the members
3 appointed by the General Assembly upon the recommendation of the President Pro
4 Tempore of the Senate shall be appointed for two-year terms; the public member
5 appointed by the Governor shall be appointed for a one-year term; the physician member
6 appointed by the North Carolina Medical Society shall be appointed for a one-year term;
7 and the member appointed by the North Carolina Hospital Association shall be appointed
8 for a one-year term. Within 30 days after making these initial appointments, the
9 President of the North Carolina Medical Board shall call the first meeting of the North
10 Carolina Respiratory Care Council.

11 Section 4. This act is effective when it becomes law.