

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B. 267
Mar 17, 2015
HOUSE PRINCIPAL CLERK

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HOUSE DRH20083-MGfqq-34 (02/10)

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

Sponsors: Representative Goodman.

Referred to:

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



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~~subdivision
25 and any act by which an individual holds out to the public or
26 represents in any manner that the individual is authorized to practice
27 respiratory care in this State.

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

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

44 **"§ 90-652. Powers and duties of the Board.**

45 The Board shall have the power and duty to:

- 46 (1) Determine the qualifications and fitness of applicants for licensure, renewal
47 of licensure, and reciprocal licensure. The Board shall, in its discretion,
48 investigate the background of an applicant to determine the applicant's
49 qualifications with due regard given to the applicant's competency, honesty,
50 truthfulness, and integrity. The Department of Public Safety may provide a
51 criminal record check to the Board for a person who has applied for a license

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

18 ...

19 (5) Conduct investigations, subpoena individuals and records, and do all other
 20 things necessary and proper to discipline persons licensed under this Article
 21 and to enforce this ~~Article.~~Article, including the following:

22 a. Investigate the activities of persons not licensed under this Article
 23 whom the Board has reasonable cause to believe are engaged in the
 24 practice of respiratory care.

25 b. Designate one or more of its employees to issue and serve subpoenas
 26 and other papers on behalf of the Board. Service under this
 27 subdivision is permitted in accordance with any methods of service
 28 allowed by law.

29"

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

31 "**§ 90-653. Licensure requirements; examination.**

32 (a) Each applicant for licensure under this Article shall ~~meet the following~~
 33 ~~requirements;~~do all of the following:

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

38 (2) Submit any fees required by the Board.

39 (3) Submit to the Board written evidence, verified by oath, that the applicant has
 40 successfully completed the minimal requirements of ~~a~~an associate's degree
 41 respiratory care education program as approved by the Commission for
 42 Accreditation of Allied Health Educational Programs, or the Canadian
 43 Council on Accreditation for Respiratory Therapy Education for Respiratory
 44 Care (CoARC) or its successor by arranging for the applicant's respiratory
 45 care education program to submit a verified transcript directly to the Board.

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

50 (5) ~~Pass the entry level examination given by the National Board for~~
 51 ~~Respiratory Care, Inc.~~Submit to the Board written evidence, verified by oath,

1 that the applicant has earned the advanced level credential or its successor
2 awarded by the National Board for Respiratory Care, Inc.

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

7 (b1) When issuing a license, the Board shall state the terms and conditions of use of the
8 license to the licensee."

9 **SECTION 4.** G.S. 90-656 reads as rewritten:

10 **"§ 90-656. Provisional license.**

11 (a) The Board may grant a provisional license for a period not exceeding 12 months to
12 any applicant who has successfully done all of the following:

13 (1) Successfully completed the education requirements under G.S. 90-653(a)(3)
14 and has made application to take the examination required under
15 G.S. 90-653(a)(5).the minimal requirements of an associate's degree
16 program in respiratory care currently approved by the Commission on
17 Accreditation for Respiratory Care (CoARC) or its successor by arranging
18 for the applicant's respiratory care education program to submit a verified
19 transcript directly to the Board.

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

24 (3) Submitted to the Board written evidence, verified by oath, that the applicant
25 has earned the entry level credential or its successor awarded by the National
26 Board for Respiratory Care, Inc.

27 (b) Each provisional license issued under this section shall be effective for a period of
28 up to one year, and may be renewed annually subject to compliance with rules adopted by the
29 Board, but shall not be in effect for a total period exceeding five years from the initial effective
30 date of the provisional license. A provisional license allows the individual to practice
31 respiratory care under the direct supervision of a respiratory care practitioner and in accordance
32 with rules adopted pursuant to this Article. A license granted under this section shall contain an
33 endorsement indicating that the license is provisional and stating the terms and conditions of its
34 use by the licensee and shall state the date the license was granted and the date it expires."

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

36 **"§ 90-659. Suspension, revocation, and refusal to renew a license.**

37 (a) The Board shall take the necessary actions to deny or refuse to renew a
38 license, renew, suspend or revoke a license, or license; to impose probationary conditions on a
39 licensee or applicant if the license, including placing limitations on the practice of respiratory
40 care; to reprimand a licensee or applicant; to assess a monetary penalty, costs, or both on a
41 licensee or applicant; and to require a licensee or applicant to demonstrate satisfactory
42 completion of treatment or educational programs, if any of the following are true of the licensee
43 or applicant:

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

45 a. Employed fraud, deceit, bribery, or misrepresentation in (i) obtaining
46 or attempting to obtain a license or license or (ii) obtaining or
47 attempting to obtain the renewal of a license.license.

48 b. Committed an act of malpractice, gross negligence, or incompetence
49 in the practice of respiratory care.

50 c. Practiced respiratory care without a license.

- 1 d. Engaged in health care practices that are determined to be hazardous
2 to public health, safety, or welfare.
- 3 (2) Was convicted of or entered a plea of guilty or nolo contendere to any crime
4 involving moral turpitude.
- 5 (3) ~~Was adjudicated insane or incompetent, until proof of recovery from the~~
6 ~~condition can be established.~~ Has developed a physical or mental impairment
7 that renders the licensee or applicant unfit to practice respiratory care with
8 reasonable skill and competence and in a manner not harmful to the public.
9 An adjudication of mental incompetency in a court of competent jurisdiction
10 or a determination of mental incompetency by other lawful means shall be
11 conclusive proof of unfitness to practice respiratory care until the licensee or
12 applicant is subsequently adjudicated mentally competent.
- 13 (4) ~~Engaged~~ Has engaged in any act or practice that violates any of the
14 provisions of this Article or any rule adopted pursuant to this Article, or
15 aided, abetted, or assisted any person in such a violation.
- 16 (5) Has failed to respond within a reasonable period of time and in a reasonable
17 manner, as determined by the Board, to inquiries from the Board concerning
18 any matter affecting a license to practice respiratory care.
- 19 (6) Has developed an impairment caused by the licensee's or applicant's use of
20 alcohol, drugs, or controlled substances, which interferes with the ability of
21 the licensee or applicant to practice respiratory care with reasonable skill,
22 competence, and in a manner not harmful to the public.
- 23 (7) Has practiced respiratory care outside the boundaries of demonstrated
24 competence or the limitations of education, training, or supervised
25 experience.
- 26 (8) Has had a license for the practice of respiratory care in any other jurisdiction
27 suspended or revoked or been disciplined by any licensing or certification
28 board in any other jurisdiction for conduct that would subject the licensee or
29 applicant to disciplinary action under this Article.
- 30 (9) Is a hazard to the public health by reason of having a serious communicable
31 disease.
- 32 (b) ~~Denial,~~ Except as provided in subsection (c) of this section, denial, refusal to renew,
33 suspension, or revocation of a license, or imposition of probationary conditions upon a licensee
34 may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter
35 150B of the General Statutes and rules adopted pursuant to this Article. An application may be
36 made to the Board for reinstatement of a revoked license if the revocation has been in effect for
37 at least one year.
- 38 (c) The Board may deny an initial application for a license as a respiratory care
39 practitioner without a hearing if the individual fails to submit a complete application which
40 demonstrates that the applicant has met the education and entry level credential requirements of
41 G.S. 90-653.
- 42 (d) If after notice is duly issued, a licensee or applicant fails to appear for a scheduled
43 hearing and no continuance has been granted, the Board may hear the evidence of witnesses
44 that have appeared, and the Board may proceed to consider the matter and dispose of the matter
45 on the basis of the evidence before the Board. For good cause, the Board may reopen any case
46 for further hearing.
- 47 (e) The Board and its members and staff shall not be held liable in any civil or criminal
48 proceeding for exercising, in good faith, the powers and duties authorized by law.
- 49 (f) A person acting in good faith without fraud or malice shall be immune from civil
50 liability for the following:

- 1 (1) Reporting, investigating, assessing, monitoring, or providing an expert
2 medical opinion to the Board regarding the acts or omissions of a licensee or
3 applicant that violate the provisions of subsection (a) of this section or any
4 other provision of law relating to the fitness of a licensee or applicant to
5 practice respiratory care.
- 6 (2) Initiating or conducting proceedings or an action against a licensee or
7 applicant.
- 8 (3) Testifying before the Board in good faith in any proceeding involving a
9 violation of subsection (a) of this section or any other law relating to the
10 fitness of an applicant or licensee to practice respiratory care.
- 11 (4) Making a recommendation to the Board in the nature of peer review.

12 (g) A licensee may, with the consent of the Board, voluntarily relinquish a license at
13 any time. The Board may delay or refuse the granting of its consent as it may deem necessary
14 in order to investigate any pending complaint, allegation, or issue regarding violation of any
15 provisions of this Article by the licensee. Notwithstanding any provision to the contrary, the
16 Board retains full jurisdiction to investigate alleged violations of this Article by any person
17 whose license is relinquished under this subsection and, upon proof of any violation of this
18 Article by any such person, the Board may take disciplinary action as authorized by this
19 section."

20 **SECTION 6.** G.S. 90-661 reads as rewritten:

21 "**§ 90-661. Requirement of license.**

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

- 24 (1) Engage in the practice of respiratory care.
- 25 (2) Use the title "respiratory care practitioner".
- 26 (3) Use the letters "~~RCP~~", "~~RTT~~", "~~RT~~", "RCP" or any facsimile or combination
27 in any words, letters, abbreviations, or ~~insignia~~-insignia that indicate or
28 imply the person is a licensed respiratory care practitioner.
- 29 (4) Imply orally or in writing or indicate in any way that the person is a
30 respiratory care practitioner or is otherwise licensed under this Article.
- 31 (5) Employ or solicit for employment unlicensed persons to practice respiratory
32 care.

33 (b) It shall be unlawful for any person to employ or solicit for employment unlicensed
34 persons to practice respiratory care.

35 (c) Any person, partnership, firm, corporation, association, authority, or other entity
36 acting in good faith without fraud or malice, including the Board, its staff, and its counsel shall
37 be immune from civil liability for (i) reporting, investigating, assessing, monitoring, or
38 providing an expert medical opinion to the Board regarding the acts or omissions of a person
39 who is not licensed by the Board on the ground that the person is violating subsection (a) of this
40 section or any other provision of law or (ii) initiating or conducting proceedings against a
41 person not licensed by the Board on the ground that the person is violating subsection (a) of
42 this section or any other provision of law, if a complaint is filed or action is taken in good faith
43 without fraud or malice. A person shall not be held liable in any civil proceeding for testifying
44 before the Board in good faith and without fraud or malice in any proceeding commenced on
45 the ground that the person is violating subsection (a) of this section or any other provision of
46 law."

47 **SECTION 7.** G.S. 90-664 reads as rewritten:

48 "**§ 90-664. Persons and practices not affected.**

49 The requirements of this Article shall not apply to:

- 50 (1) Any person registered, certified, credentialed, or licensed to engage in
51 another profession or occupation or any person working under the

1 supervision of a person registered, certified, credentialed, or licensed to
2 engage in another profession or occupation in this State who is performing
3 work incidental to or within the practice of that profession or occupation and
4 does not represent himself or herself as a respiratory care practitioner.

5 (2) A student or trainee working under the direct supervision of a respiratory
6 care practitioner while fulfilling an experience requirement or pursuing a
7 course of study to meet requirements for licensure in accordance with rules
8 adopted pursuant to this Article.

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

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

17 (5) A person licensed as a respiratory care practitioner in another jurisdiction
18 while providing respiratory care in a declared emergency in this State,
19 providing respiratory care as a member of an organ harvesting team, or
20 providing respiratory care on board an ambulance as part of an ambulance
21 transport team transporting a patient into or out of this State."

22 **SECTION 8.** Notwithstanding any other provision of law to the contrary, any
23 person licensed by the North Carolina Respiratory Care Board on October 1, 2016, who has
24 passed the entry-level examination administered by the National Board for Respiratory Care,
25 Inc., shall be deemed to have complied with the requirements of subdivision G.S. 90-653(a)(5),
26 as amended by this act.

27 **SECTION 9.** G.S. 90-654 and G.S. 90-660(b)(6) are repealed.

28 **SECTION 10.** This act becomes effective October 1, 2016, and applies to licenses
29 issued or renewed on or after that date.