

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 316

Short Title: Respiratory Care Modernization Act. (Public)

Sponsors: Representatives Moss, Sasser, and Potts (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Health, if favorable, Judiciary 1, if favorable, Rules, Calendar, and Operations of the House

March 9, 2023

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE GENERAL STATUTES OF NORTH CAROLINA GOVERNING THE PRACTICE OF RESPIRATORY CARE TO BETTER REFLECT THE CHANGES IN EDUCATION, EXPERIENCE, AND PRACTICE OF THE PROFESSION IN ORDER TO ENHANCE THE HEALTH AND WELFARE OF NORTH CAROLINA CITIZENS.

Whereas, it is the intention of the North Carolina General Assembly to promote the health and welfare of the citizens of this State; and

Whereas, the COVID-19 pandemic has placed increasing demands on all health care professionals; and

Whereas, it is the intention of the North Carolina General Assembly that statutes governing the profession of respiratory care reflect current practices, improvements, and other developments that have occurred in the profession; and

Whereas, the current statutory language does not fully encompass current practices, improvements, and other developments; Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 38 of Chapter 90 of the General Statutes reads as rewritten:
"Article 38.

"Respiratory Care Practice Act.

...

"§ 90-648. Definitions.

The following definitions apply in this Article:

(1) Advanced respiratory care practitioner (ARCP). – A person licensed in this State who has gained additional specialized knowledge, skills, and experience through a postgraduate advanced practice respiratory therapy program of study as defined by the Board and is authorized to perform advanced respiratory therapy practices under the supervision of a physician licensed to practice medicine in accordance with Article 1 of this Chapter.

(1a) Advanced respiratory care procedures. – Procedures that require additional competency training in accordance with rules adopted by the Board.

~~(1b)~~ 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



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- 1 condition. The tests and procedures may include pulmonary function testing,
2 electrocardiograph testing, cardiac stress testing, and sleep related testing.
- 3 (3) Direct supervision. – The authority and responsibility to direct the
4 performance of activities as established by policies and procedures for safe
5 and appropriate completion of services.
- 6 (3a) Endorsement. – A designation issued by the Board recognizing the person
7 named on the endorsement as having met the requirements to perform
8 advanced respiratory care procedures as defined by rules adopted by the
9 Board.
- 10 (4) Individual. – A human being.
- 11 (5) License. – A certificate issued by the Board recognizing the person named
12 therein as having met the requirements to practice respiratory care as defined
13 in this ~~Article~~ Article as a respiratory care practitioner or advanced respiratory
14 care practitioner.
- 15 (6) Licensee. – A person who has been issued a license under this Article.
- 16 (7) Medical director. – An appointed physician who is licensed under Article 1 of
17 this Chapter and a member of the entity's medical staff, and who is granted
18 the authority and responsibility for assuring and establishing policies and
19 procedures and that the provision of such is provided to the quality, safety,
20 and appropriateness standards as recognized within the defined scope of
21 practice for the entity.
- 22 (8) Person. – An individual, corporation, partnership, association, unit of
23 government, or other legal entity.
- 24 (9) Physician. – ~~A doctor of medicine~~ An individual licensed to practice medicine
25 by the State of North Carolina in accordance with Article 1 of this Chapter.
- 26 (9a) Practice of advanced practice respiratory therapy. – The scope of practice as
27 determined by the supervising physician at the practice level in any health care
28 setting authorized by the supervising physician and the Board. The advanced
29 respiratory care practitioner may perform acts, tasks, or functions in any health
30 care setting for which the physician is responsible, as follows:
- 31 a. Related to the care of persons with problems affecting the
32 cardiovascular and cardiopulmonary systems.
- 33 b. Delegated by a supervising physician.
- 34 c. Appropriate to the advanced respiratory care practitioner's education,
35 training, experience, and level of competence.
- 36 d. Related to the prescribing, ordering, and administering of drugs,
37 medical care, and medical devices related to the cardiovascular and
38 cardiopulmonary systems within the limitations set forth by the
39 supervising physician and rules adopted by the Board.
- 40 (10) Practice of respiratory care. – As defined by the written order of a physician
41 licensed under Article 1 of this ~~Chapter~~, Chapter for respiratory care
42 practitioners, the observing and monitoring of signs and symptoms, general
43 behavior, and general physical response to respiratory care treatment and
44 diagnostic testing, including the determination of whether such signs,
45 symptoms, reactions, behavior, or general response exhibit abnormal
46 characteristics, and the performance of diagnostic testing and therapeutic
47 application of:
- 48 a. Medical gases, humidity, and aerosols including the ~~maintenance use~~
49 of associated apparatus, respiratory care equipment, except for the
50 purpose of anesthesia.

- 1 b. Pharmacologic agents related to respiratory care procedures, including
- 2 those agents necessary to perform hemodynamic monitoring.
- 3 c. Mechanical or physiological ventilatory support.
- 4 d. Cardiopulmonary resuscitation and maintenance of natural airways,
- 5 the insertion and maintenance of artificial airways under the direct
- 6 supervision of a recognized medical director in a health care
- 7 environment which identifies these services within the scope of
- 8 practice by the facility's governing board.
- 9 e. Hyperbaric oxygen therapy.
- 10 f. New and innovative respiratory care and related support activities in
- 11 appropriately identified environments and under the training and
- 12 practice guidelines established by the American Association of
- 13 Respiratory Care.

14 The term also means the interpretation and implementation of a

15 physician's written or verbal order pertaining to the acts described in

16 this subdivision.

17 (10a) Prescriptive and dispensing authorization. – The legal permission for the

18 supervising physician for the advanced respiratory care practitioner to

19 prescribe and deliver pharmacologic and nonpharmacologic agents to a patient

20 in compliance with rules adopted by the Board and applicable federal and

21 State laws, pursuant to Article 1 of this Chapter and in accordance with the

22 limitations set forth by the supervising physician and rules adopted by the

23 Board.

24 (11) Respiratory care. – As defined by the written order of a physician licensed

25 under Article 1 of Chapter 90, the treatment, management, diagnostic testing,

26 and care of patients with deficiencies and abnormalities associated with the

27 cardiopulmonary system.

28 (12) Respiratory care practitioner. – A person who has been licensed by the Board

29 to engage in the practice of respiratory care.

30 (12a) Supervising physician. – A physician with the competencies and authority to

31 supervise advanced respiratory care practitioners.

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.~~ respiratory care equipment. The term also includes giving

35 instructions on the use, fitting, and application of ~~apparatus,~~ respiratory care

36 equipment but does not include therapeutic evaluation and

37 ~~assessment.~~ assessment for an individual patient as defined in rules adopted by

38 the Board.

39 **"§ 90-649. North Carolina Respiratory Care Board; creation.**

40 (a) The North Carolina Respiratory Care Board is created. The Board shall consist of 10

41 members as follows:

- 42 (1) Two members shall be respiratory care practitioners.
- 43 (2) Four members shall be physicians licensed to practice in North Carolina, and
- 44 whose primary practice is Pulmonology, Anesthesiology, Critical Care
- 45 Medicine, or whose specialty is Cardiothoracic Disorders.
- 46 (3) One member shall represent the North Carolina Hospital Association.
- 47 (4) One ~~member~~ member, who is a resident of this State, shall represent the ~~North~~
- 48 ~~Carolina Association of Atlantic Coast Medical Equipment Services.~~ Services
- 49 Association.
- 50 (5) Two members shall represent the public at large.

51 ...

"§ 90-650. Appointments and removal of Board members; terms and compensation.

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

...

(7) The ~~North Carolina Association of Atlantic Coast Medical Equipment Services Association~~ shall appoint the member described in G.S. 90-649(a)(4).

...

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

The Board shall have the power and duty to:

(1) Determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure. The Board shall, in its discretion, investigate the background of an applicant to determine the applicant's qualifications with due regard given to the applicant's competency, honesty, truthfulness, and integrity. The Department of Public Safety may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Public Safety, along with the request, the fingerprints of the ~~applicant, applicant and~~ any additional information required by the Department of ~~Public Safety, and~~ a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. ~~Justice.~~ The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check.

...

(14) Establish and adopt rules defining the education and credential requirements for persons seeking endorsement under this Article.

"§ 90-652.1. Disasters and emergencies.

In the event of an occurrence which the Governor of the State of North Carolina has declared a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under Article 22 of Chapter 130A of the General Statutes, G.S. 160A-174(a), or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit professional services to the public consistent with this Article, including the practice of advanced practice respiratory therapy, respiratory care, and prescriptive and ordering authorization, as those terms are defined in this Article.

"§ 90-653. Licensure requirements; examination.

(a) Each applicant for ~~licensure a respiratory care practitioner license~~ under this Article shall ~~meet the following requirements: do all of the following:~~

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

(2) Submit any fees required by the Board.

- 1 (3) Submit to the Board written evidence, verified by oath, that the applicant has
2 successfully completed the ~~minimal-entry-level degree~~ requirements of a
3 respiratory care education program as approved by the Commission ~~for~~
4 ~~Accreditation of Allied Health Educational Programs, or the Canadian~~
5 ~~Council on~~ on Accreditation for Respiratory Therapy Education Care
6 (CoARC) or its successor by arranging for the applicant's respiratory care
7 education program to submit an official transcript confirming successful
8 completion of the respiratory care education program directly to the Board.
9 (4) Submit to the Board written evidence, verified by oath, that the applicant has
10 successfully completed the minimal requirements for Basic Cardiac Life
11 Support as recognized by the American Heart Association, the American Red
12 Cross, or the American Safety and Health Institute.
13 (5) ~~Pass~~ Submit to the Board written evidence, verified by oath, that the
14 entry-level applicant passed the examination requirements as defined by the
15 rules adopted by the Board given by the National Board for Respiratory Care,
16 Inc., or its successor, for entry-level respiratory care practitioners.
17 (b) ~~At least three times each year, the Board shall cause the examination required in~~
18 ~~subdivision (5) of subsection (a) of this section to be given to applicants at a time and place to be~~
19 ~~announced by the Board. Any applicant who fails to pass the first examination may take~~
20 ~~additional examinations in accordance with rules adopted pursuant to this Article.~~
21 (c) Each applicant for an advanced respiratory care practitioner license under this Article
22 shall do all of the following:
23 (1) Submit a completed application as required by the Board, including a form
24 signed by the applicant consenting to the check of the applicant's criminal
25 record and to the use of the applicant's fingerprints and other identifying
26 information required by the State and national repositories.
27 (2) Submit any fees required by the Board.
28 (3) Submit to the Board written evidence, verified by oath, that the applicant has
29 successfully completed the postgraduate degree requirements of respiratory
30 care education for the advanced practice respiratory therapist as approved by
31 the Commission on Accreditation for Respiratory Care (CoARC) or its
32 successor by arranging for the applicant's respiratory care education program
33 to submit an official transcript confirming successful completion of the
34 advanced respiratory care education program directly to the Board.
35 (4) Submit to the Board written evidence, verified by oath, that the applicant has
36 successfully completed the minimal requirements for Basic Cardiac Life
37 Support as recognized by the American Heart Association, the American Red
38 Cross, and the American Safety and Health Institute.
39 (5) Submit to the Board written evidence, verified by oath, that the applicant
40 passed the examination requirements as defined by Board rules pursuant to
41 this Article given by the National Board for Respiratory Care, Inc., or its
42 successor, for advanced-level respiratory care practitioners and defined by
43 Board rules pursuant to this Article.
44 (d) When issuing a license, the Board shall state the terms and conditions of use of the
45 license to the licensee.

46 ...
47 "**§ 90-660. Expenses; fees.**

- 48 ...
49 (b) All monies received by the Board pursuant to this Article shall be deposited in an
50 account for the Board and shall be used for the administration and implementation of this Article.

1 The Board shall establish fees in amounts to cover the cost of services rendered for the following
2 purposes:

- 3 (1) For an initial application, a fee not to exceed fifty dollars (\$50.00).
4 (2) ~~For examination or reexamination, a fee not to exceed two hundred dollars~~
5 ~~(\$200.00).~~

6 ...

- 7 (6) ~~For a license with a provisional or temporary endorsement, a fee not to exceed~~
8 ~~fifty dollars (\$50.00).~~

9 ...

10 **"§ 90-661. Requirement of license.**

11 It shall be unlawful for any person who is not currently licensed under this Article to:

- 12 (1) Engage in the practice of respiratory care.
13 (2) Use the title "respiratory care ~~practitioner~~-practitioner" or "advanced
14 respiratory care practitioner."
15 (3) Use the letters "RCP", "RTT", "RT", "ARCP", or any facsimile or
16 combination in any words, letters, abbreviations, or insignia.
17 (4) Imply orally or in writing or indicate in any way that the person is a respiratory
18 care ~~practitioner~~-practitioner, advanced respiratory care practitioner, or is
19 otherwise licensed under this Article.
20 (5) Employ or solicit for employment unlicensed persons to practice respiratory
21 care.

22 ...

23 **"§ 90-667. Confidentiality of Board investigative information.**

24 (a) All records, papers, investigative information, and other documents containing
25 information that the Board, its members, or its employees possess, gather, or receive as a result
26 of investigations, inquiries, assessments, or interviews conducted in connection with a licensing
27 complaint, appeal, assessment, potential impairment matter, or disciplinary matter shall not be
28 considered public records within the meaning of Chapter 132 of the General Statutes and are
29 privileged, confidential, not subject to discovery, subpoena, or any means of legal compulsion
30 for release to anyone other than the Board, its employees, or consultants involved in the
31 application for license, impairment assessment, or discipline of the licensee, except as provided
32 in subsection (b) of this section. For the purposes of this section, "investigative information"
33 means investigative files and reports, information relating to the identity and report of a physician
34 or other professional performing an expert review for the Board, and any of the Board's
35 investigative materials that are not admitted into evidence.

36 (b) The Board shall provide the licensee or applicant for license access to all information
37 in its possession that the Board intends to offer into evidence at the licensee's or applicant's
38 hearing. The Board shall not be required to produce (i) information subject to attorney-client
39 privilege or (ii) investigative information that the Board will not offer into evidence and is related
40 to advice, opinions, or recommendations of the Board's staff, consultants, or agents.

41 (c) Any licensee's notice of statement of charges, notice of hearing, and all information
42 contained in those documents shall be public records under Chapter 132 of the General Statutes.

43 (d) If the Board, its employees, or its agents possess investigative information indicating
44 a crime may have been committed, the Board may report the information to the appropriate law
45 enforcement agency or district attorney of the district in which the offense was committed. The
46 Board shall cooperate with and assist any law enforcement agency or district attorney conducting
47 a criminal investigation or prosecution of a licensee by providing relevant information. This
48 information shall be confidential under G.S. 132-1.4 and shall remain confidential after
49 disclosure to a law enforcement agency or district attorney.

50 (e) All licensees shall self-report to the Board any of the following within 30 days of their
51 arrest or indictment:

- 1 (1) Any felony or arrest or indictment.
- 2 (2) Any arrest for driving while impaired or driving under the influence.
- 3 (3) Any arrest or indictment for the possession, use, or sale of any controlled
- 4 substance.

5 (f) The Board, its members, or its staff may release confidential information concerning
6 the denial, annulment, suspension, or revocation of a license to any other health care licensing
7 board in this State, other state, or country, or authorized Department of Health and Human
8 Services personnel who are charged with the enforcement or investigative responsibilities of
9 licensure. If the Board releases this confidential information, the Board shall notify and provide
10 a summary of the information to the licensee within 60 days after the information is transmitted.
11 The licensee may make a written request that the Board provide the licensee a copy of all
12 information transmitted within 30 days of receiving notice of the initial transmittance. The Board
13 shall not provide the information if the information relates to an ongoing criminal investigation
14 by any law enforcement agency or authorized Department of Health and Human Services
15 personnel with enforcement or investigative responsibilities.

16 (g) Notwithstanding the provisions of this section, the Board shall withhold the identity
17 of a patient, including information relating to dates and places of treatment, or any other
18 information that would tend to identify the patient, in any proceeding, record of a hearing, and in
19 the notice of charges against any licensee, unless the patient or the patient's representative
20 expressly consents to the public disclosure."

21 **SECTION 1.(b)** G.S. 90-652 is amended by adding a new subdivision to read:

22 "(15) Appoint and maintain a subcommittee of the Board in accordance with
23 G.S. 90-8.2(c)."

24 **SECTION 1.(c)** Article 1 of Chapter 90 of the General Statutes is amended by adding
25 a new section to read:

26 **"§ 90-18.8. Limitations on advanced respiratory care practitioners.**

27 (a) Any advanced respiratory care practitioner who is licensed under the provisions of
28 G.S. 90-648(9a) to perform acts, tasks, and functions may use the title "advanced respiratory care
29 practitioner." Any other person who uses the title in any form or holds himself or herself out to
30 be an advanced respiratory care practitioner or to be so licensed shall be deemed to be in violation
31 of this Article and Article 38 of this Chapter.

32 (b) Advanced respiratory care practitioners are authorized to practice advanced
33 respiratory care, as defined in G.S. 90-648(9a), under the supervision of a physician under the
34 following conditions:

- 35 (1) The North Carolina Respiratory Care Board has adopted rules developed by a
36 subcommittee governing the approval of individual advanced respiratory care
37 practitioners to practice advanced respiratory care with the limitations the
38 Board determines to be in the best interest of patient health and safety.
- 39 (2) The supervising physician has assigned an identification number to the
40 advanced respiratory care practitioner which is shown on written prescriptions
41 written by the advanced respiratory care practitioner.

42 (c) Advanced respiratory care practitioners that have prescriptive and ordering
43 authorization, as defined in G.S. 90-648, may order medications, tests, and treatments under the
44 following conditions:

- 45 (1) The North Carolina Respiratory Care Board has adopted rules governing the
46 approval of individual advanced respiratory care practitioners to have
47 prescriptive and ordering authorization with the limitations the Board
48 determines to be in the best interest of patient health and safety.
- 49 (2) The advanced respiratory care practitioner has current approval from both
50 Boards.

1 (3) The supervising physician has provided to the advanced respiratory care
2 practitioner written instructions for prescribing, ordering, changing, or
3 substituting drugs, or ordering tests with provision for review of the order by
4 the physician within a reasonable time, as determined by the North Carolina
5 Respiratory Care Board, after the medication or tests are ordered.
6 Prescriptions shall include the physician's name and address.

7 (d) Any prescription written by an advanced respiratory care practitioner or order given
8 by an advanced respiratory care practitioner shall be deemed to have been authorized by the
9 physician as the supervisor of the advanced respiratory care practitioner, and that supervising
10 physician shall be responsible for authorizing that prescription or order.

11 (e) Any registered nurse or licensed practical nurse who receives an order from an
12 advanced respiratory care practitioner for medications, tests, or treatments is authorized to
13 perform that order in the same manner as if the order were received from a licensed physician."

14 **SECTION 1.(d)** G.S. 90-8.2 reads as rewritten:

15 "**§ 90-8.2. Appointment of subcommittees.**

16 ...

17 (c) The North Carolina Medical Board shall appoint and maintain a subcommittee of five
18 licensed physicians and two advanced respiratory care practitioners to develop rules to govern
19 the performance of medical acts by advanced respiratory care practitioners. Three physicians
20 shall be appointed by the Board, one physician member appointed from the Board, one physician
21 member appointed from the North Carolina Thoracic Society, and two advanced respiratory care
22 practitioners appointed by the North Carolina Respiratory Care Board. Rules recommended by
23 the subcommittee shall be adopted in accordance with Chapter 150B of the General Statutes by
24 both the North Carolina Medical Board and the North Carolina Respiratory Care Board and shall
25 not become effective until adopted by the North Carolina Respiratory Care Board."

26 **SECTION 2.** Section 1(a) of this act becomes effective on October 1, 2024. Sections
27 1(b), 1(c), and 1(d) of this act become effective October 1, 2023. The North Carolina Respiratory
28 Care Board shall make appointments to the subcommittee authorized in this act no later than
29 January 1, 2024. Notwithstanding G.S. 90-652(15) and G.S. 90-8.2(c), as enacted in Sections
30 1(b) and 1(d) of this act, the initial appointees to the subcommittee from the North Carolina
31 Respiratory Care Board shall be licensed health care providers currently serving on that Board
32 and two of those initial appointees shall be at-large appointees who are licensed respiratory care
33 practitioners. The subcommittee authorized in this act shall develop rules to implement the
34 provisions of this act in accordance with Chapter 150B of the General Statutes and the approval
35 of the North Carolina Medical Board and the North Carolina Respiratory Care Board.

36 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
37 law.