

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1010

Short Title: Respiratory Care Practice Act.

(Public)

Sponsors: Representatives Tolson; Nye and Yongue.

Referred to: Health and Environment.

May 3, 1995

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 31.

"RESPIRATORY CARE PRACTICE ACT.

"§ 90-470. Short title.

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

"§ 90-471. 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.

"§ 90-472. Definitions.

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

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

- 1 (2) Council. – The North Carolina Respiratory Care Advisory Council.
2 (3) Holder. – An individual to whom a license has been granted by the
3 Council.
4 (4) Individual. – A human being.
5 (5) License. – A certificate, permit, or other evidence of a right or privilege
6 granted under this Article to practice respiratory care, which license
7 may contain specific endorsements limiting the holder's right or
8 privilege to practice respiratory care under this Article.
9 (6) License. – The status of a holder.
10 (7) Person. – An individual human being, corporation, partnership,
11 association, unit of government, or other legal entity.
12 (8) Physician. – A doctor of medicine duly licensed by the State of North
13 Carolina in accordance with Article 1 of this Chapter.
14 (9) Practice of respiratory care. – Respiratory care under medical direction
15 in accordance with the written or verbal order of a licensed physician.
16 'Practice of respiratory care' includes the acceptance, transcription,
17 interpretation, and implementation of a physician's written or verbal
18 order pertaining to the practice of respiratory care. 'Practice of
19 respiratory care' also includes diagnostic and therapeutic use of:
20 a. Medical gases, humidity, and aerosols including the maintenance
21 of associated apparatus, except for the purpose of anesthesia;
22 b. Pharmacologic agents related to respiratory care procedures,
23 including those agents necessary to perform hemodynamic
24 monitoring;
25 c. Mechanical or physiological ventilatory support;
26 d. Cardiopulmonary resuscitation and maintenance of natural
27 airways, the insertion and maintenance of artificial airways;
28 e. Specific diagnostic and testing techniques employed in the
29 medical management of patients for diagnosing, monitoring, and
30 treatment and research of cardiopulmonary abnormalities,
31 including the collection, measurement, analysis, and reporting of
32 ventilatory volumes, pressures, flow, specimens of blood,
33 respiratory gases, and respiratory secretions;
34 f. Pulmonary function testing and hemodynamic and other related
35 physiologic measurements of the cardiopulmonary system;
36 g. Hyperbaric oxygen therapy; and
37 h. Extracorporeal membrane oxygenation under the supervision of a
38 qualified physician.
39 (10) Practitioner. – A respiratory care practitioner.
40 (11) Respiratory care. – The treatment, management, diagnostic testing, and
41 care of patients with deficiencies and abnormalities associated with the
42 cardiopulmonary system. 'Respiratory care' includes inhalation therapy
43 and respiratory therapy.

1 (12) Respiratory care practitioner. – A person who has a license to engage in
2 the practice of respiratory care.

3 **"§ 90-473. North Carolina Respiratory Care Advisory Council; creation.**

4 (a) The North Carolina Respiratory Care Advisory Council of the Board is created.
5 The Council shall consist of seven members as follows:

6 (1) Four members shall be respiratory care practitioners.

7 (2) Two members shall be physicians licensed to practice in North Carolina.

8 (3) One member shall represent the public at large.

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

12 (c) The member of the Council appointed from the public at large shall be a citizen
13 of the United States and a resident of this State and shall not be: a practitioner; an agent
14 or employee of a person engaged in the profession of respiratory care; a health care
15 professional licensed under this Chapter or a person enrolled in a program to become
16 prepared to be a licensed health care professional; an agent or employee of a health care
17 institution, a health care insurer or a health care professional school; a member of any
18 allied health profession; a person enrolled in a program to become prepared to be a
19 member of an allied health profession; or a spouse of an individual who may not serve as
20 a public member of the Council.

21 (d) The members of the Council appointed as physicians shall be citizens of the
22 United States and residents of this State whose primary practice is pulmonology.

23 **"§ 90-474. Appointments and removal of Council members; terms and**
24 **compensation.**

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

26 (1) The Governor shall appoint the public member described in G.S. 90-
27 473(a)(3).

28 (2) The General Assembly, upon the recommendation of the Speaker of the
29 House of Representatives, shall appoint two of the respiratory care
30 practitioner members described in G.S. 90-473(a)(1) and one of the
31 physician members described in G.S. 90-473(a)(2) in accordance with
32 G.S. 120-121.

33 (3) The General Assembly, upon the recommendation of the President Pro
34 Tempore of the Senate, shall appoint two of the respiratory care
35 practitioner members described in G.S. 90-473(a)(1) and one of the
36 physician members described in G.S. 90-473(a)(2) in accordance with
37 G.S. 120-121.

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

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

42 (d) The Governor may remove members of the Council, after notice and an
43 opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct,

1 conviction of any felony, failure to meet the qualifications of this Article, or committing
2 any act prohibited by this Article.

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

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

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

12 **"§ 90-475. Election of officers; meetings of the Council.**

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

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

21 **"§ 90-476. Powers and duties of the Council.**

22 The Council shall:

- 23 (1) Determine the qualifications and fitness of applicants for licensure,
24 renewal of licensure, and reciprocal licensure.
- 25 (2) Establish and recommend for adoption by the Board any rules necessary
26 to conduct its business, carry out its duties, and administer this Article.
- 27 (3) Adopt and publish a code of ethics.
- 28 (4) Deny, issue, suspend, revoke, and renew licenses in accordance with
29 this Article.
- 30 (5) Conduct investigations, subpoena individuals and records, and do all
31 other things necessary and proper to discipline persons licensed under
32 this Article and to enforce this Article.
- 33 (6) Employ professional, clerical, investigative, or special personnel
34 necessary to carry out the provisions of this Article, and purchase or rent
35 office space, equipment, and supplies.
- 36 (7) Adopt a seal by which it shall authenticate its proceedings, official
37 records, and licenses.
- 38 (8) Conduct administrative hearings in accordance with Article 3 of Chapter
39 150B of the General Statutes.
- 40 (9) Establish certain reasonable fees as authorized by this Article for
41 applications for examination; initial, provisional, and renewal
42 registration; and other services provided by the Council.

- 1 (10) Submit an annual report to the Governor and to the General Assembly
2 of all the Council's official actions during the preceding year, together
3 with any recommendations and findings regarding improvements of the
4 practice of respiratory care.
- 5 (11) Publish and make available upon request the licensure standards
6 prescribed under this Article and all rules adopted pursuant to this
7 Article.
- 8 (12) Request and receive the assistance of State educational institutions or
9 other State agencies.
- 10 (13) Establish and approve continuing education requirements for persons
11 seeking licensure under this Article.

12 **"§ 90-477. Licensure requirements; examination.**

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

- 15 (1) Submit a completed application as required by the Council;
16 (2) Submit any fees required by the Council;
17 (3) Submit to the Council written evidence, verified by oath, that the
18 applicant has completed a respiratory care education program approved
19 by the Commission for Accreditation of Allied Health Educational
20 Programs; and
21 (4) Pass the entry-level examination given by the National Board for
22 Respiratory Care, Inc.

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

28 **"§ 90-478. Exemption from certain requirements.**

29 (a) The Council may issue a license to an applicant who has passed the entry-level
30 examination given by the National Board for Respiratory Care, Inc., as of October 1,
31 1995. An applicant applying for licensure under this subsection must submit his or her
32 application before October 1, 1997.

33 (b) Temporary License. – The Council may at any time grant a temporary license
34 to any applicant who, as of October 1, 1995, does not meet the qualifications of G.S. 90-
35 477, but who, as of October 1, 1995, through written evidence, verified by oath,
36 demonstrates that the applicant is performing the duties of a practitioner within the State.
37 This temporary license is valid until October 1, 1995, within which time the applicant
38 shall be required to complete the requirements of G.S. 90-477(a)(4). A license granted
39 under this subsection shall contain an endorsement indicating that the license is
40 temporary and state the date the license was granted and the date it expires.

41 **"§ 90-479. Licensure by reciprocity.**

42 The Council may grant, upon application and the payment of proper fees, a license to
43 a person who at the time of application holds a valid license, certificate, or registration as

1 a respiratory care practitioner issued by another state or any political territory or
2 jurisdiction acceptable to the Council if, in the Council's determination, the requirements
3 for that license, certificate, or registration are substantially the same as the requirements
4 for licensure under this Article.

5 **"§ 90-480. Provisional license.**

6 The Council may at any time grant a provisional license for a period not exceeding 12
7 months to any applicant who has successfully completed the education requirements
8 under G.S. 90-477(a)(3) and has made application to take the examination required under
9 G.S. 90-477(a)(4). A provisional license allows the individual to practice respiratory care
10 under the supervision of a practitioner and in accordance with rules adopted pursuant to
11 this Article. A license granted under this subsection shall contain an endorsement
12 indicating that the license is provisional and stating the terms and conditions of its use by
13 the holder and state the date the license was granted and the date it expires.

14 **"§ 90-481. Notification of applicant following evaluation of application.**

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

19 **"§ 90-482. License as property of the Council; display requirement; renewal;
20 inactive status.**

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

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

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

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

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

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

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

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

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

39 **"§ 90-483. Suspension, revocation, and refusal to renew a license.**

40 (a) The Council may deny or refuse to renew a license, may suspend or revoke a
41 license, or may impose probationary conditions on a holder or applicant if the holder or
42 applicant for licensure:

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

- a. Employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license, or the renewal of a license;
- b. Committing an act of malpractice, gross negligence, or incompetence in the practice of respiratory care;
- c. Practicing respiratory care without a license; or
- d. Engaging in health care practices that are determined to be hazardous to the health, safety, or welfare of the public.

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

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

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

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

"§ 90-484. Expenses; fees; administration.

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

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

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

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

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

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

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

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

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

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

4 **"§ 90-485. Requirement of license.**

5 After October 1, 1996, it shall be unlawful for any person who is not currently
6 licensed under this Article to:

- 7 (1) Engage in the practice of respiratory care.
- 8 (2) Use the title 'respiratory care practitioner'.
- 9 (3) Use the letters 'RCP', 'RTT', 'RT', or any facsimile or combination in
10 any words, letters, abbreviations, or insignia.
- 11 (4) Imply orally or in writing or indicate in any way that the person is a
12 respiratory care practitioner or is otherwise certified under this Article.
- 13 (5) Employ or solicit for employment unlicensed or uncertified persons to
14 practice respiratory care.

15 **"§ 90-486. Violation a misdemeanor.**

16 Any person who violates any provision of this Article shall be guilty of a Class 1
17 misdemeanor and, upon conviction, shall be fined or imprisoned, or both, in the
18 discretion of the court. Each act of unlawful practice shall constitute a distinct and
19 separate offense.

20 **"§ 90-487. Injunctions.**

21 The Council may make application to any appropriate court for an order enjoining
22 violations of this Article, and upon a showing by the Council that any person has violated
23 or is about to violate this Article, the court may grant an injunction, grant a restraining
24 order, or take other appropriate action.

25 **"§ 90-488. Persons and practices not affected.**

26 The requirements of this Article shall not apply to:

- 27 (1) A health care professional duly licensed in accordance with this Chapter
28 who is performing services within his or her authorized scope of
29 practice;
- 30 (2) A student or trainee, working under the direct supervision of a
31 practitioner while fulfilling an experience requirement or pursuing a
32 course of study to meet requirements for certification, in accordance
33 with rules adopted pursuant to this Article;
- 34 (3) A practitioner serving in the armed forces or the Public Health Service
35 of the United States or employed by the Veterans Administration when
36 performing duties associated with that service or employment;
- 37 (4) A person aiding in the practice of respiratory care, in accordance with
38 rules adopted pursuant to this Article, if the person works under the
39 direct supervision of a practitioner and performs only support activities
40 that do not require formal academic training.
- 41 (5) Employees or independent contractors of a hospital licensed under
42 Article 5 of Chapter 131E of the General Statutes.

43 **"§ 90-489. Third-party reimbursement.**

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

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

4 "(63) The North Carolina Respiratory Care Advisory Council as created by
5 Article 31 of Chapter 90 of the General Statutes."

6 Sec. 3. Severability. If any provision of this Article or the application thereof
7 to any person or circumstances is held invalid, the validity of the remainder of the act and
8 of the application of such provision to other persons and circumstances shall not be
9 affected.

10 Sec. 4. The initial appointments to the North Carolina Respiratory Care
11 Council, created in G.S. 90-473, as enacted in Section 1 of this act, shall be appointed no
12 later than October 1, 1995. Notwithstanding the provisions of G.S. 90-473(b), as enacted
13 in Section 1 of this act, the initial members of the North Carolina Respiratory Care
14 Council who are appointed pursuant to G.S. 90-473(a)(1) must be licensed under Article
15 31 of Chapter 90 of the General Statutes, as enacted in Section 1 of this act, no later than
16 June 30, 1996, and, until October 1, 2000, must have passed the entry-level examination
17 administered by the National Board for Respiratory Care, Inc. Notwithstanding the
18 provisions of G.S. 90-474(b), as enacted in Section 1 of this act, of the initial
19 appointments to the North Carolina Respiratory Care Council, two of the members
20 appointed by the General Assembly upon the recommendation of the Speaker of the
21 House of Representatives and one of the members appointed by the General Assembly
22 upon the recommendation of the President Pro Tempore of the Senate shall be appointed
23 for three-year terms; two of the members appointed by the General Assembly upon the
24 recommendation of the Speaker of the House of Representatives and one of the members
25 appointed by the General Assembly upon the recommendation of the President Pro
26 Tempore of the Senate shall be appointed for two-year terms; and the public member
27 appointed by the Governor shall be appointed for a one-year term. Within 30 days after
28 making these initial appointments, the President of the State Board of Medical Examiners
29 shall call the first meeting of the North Carolina Respiratory Care Council.

30 Sec. 5. This act is effective upon ratification.