

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 316
Committee Substitute Favorable 4/27/23

Short Title: Respiratory Care Modernization Act. (Public)

Sponsors:

Referred to:

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. 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 condition. The tests and procedures may include pulmonary function testing, electrocardiograph testing, cardiac stress testing, and sleep related testing.



- 1 (3) Direct supervision. – The authority and responsibility to direct the
2 performance of activities as established by policies and procedures for safe
3 and appropriate completion of services.
- 4 (3a) Endorsement. – A designation issued by the Board recognizing the person
5 named on the endorsement as having met the requirements to perform
6 advanced respiratory care procedures as defined by rules adopted by the
7 Board.
- 8 (4) Individual. – A human being.
- 9 (4a) Invasive diagnostic and therapeutic procedure. – Any test or treatment that
10 uses instruments to cut, puncture, or otherwise enter the body.
- 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. It shall not
29 include (i) medical diagnosis; (ii) prescribing; (iii) interpretation of medical
30 diagnostic imaging studies; (iv) final interpretation of sleep studies or
31 pulmonary function tests; (v) surgery; (vi) delivery of anesthesia; and (vii)
32 ordering or performing diagnostic and therapeutic procedures that are more
33 than minimally invasive and have known complications that involve serious
34 injury and death, unless a physician is physically present to supervise the
35 advanced practice respiratory care therapist or the procedure is provided
36 pursuant to subdivision (10) of this section. The advanced respiratory care
37 practitioner may perform acts, tasks, or functions in any health care setting for
38 which the physician is responsible, and which are as follows:
- 39 a. Related to the care of persons with problems affecting the
40 cardiovascular and cardiopulmonary systems.
- 41 b. Delegated by a supervising physician.
- 42 c. Appropriate to the advanced respiratory care practitioner's education,
43 training, experience, and level of competence.
- 44 (10) Practice of respiratory care. – As defined by the written order of a physician
45 licensed under Article 1 of this ~~Chapter~~ Chapter for respiratory care
46 practitioners, the observing and monitoring of signs and symptoms, general
47 behavior, and general physical response to respiratory care treatment and
48 diagnostic testing, including the determination of whether such signs,
49 symptoms, reactions, behavior, or general response exhibit abnormal
50 characteristics, and the performance of diagnostic testing and therapeutic
51 application of:

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

17 The term also means the interpretation and implementation of a
 18 physician's written or verbal order pertaining to the acts described in
 19 this subdivision.

- 20 (11) Respiratory care. – As defined by the written order of a physician licensed
 21 under Article 1 of Chapter 90, the treatment, management, diagnostic testing,
 22 and care of patients with deficiencies and abnormalities associated with the
 23 cardiopulmonary system.
 24 (12) Respiratory care practitioner. – A person who has been licensed by the Board
 25 to engage in the practice of respiratory care.
 26 (12a) Serious injury. – An injury that creates a substantial risk of impairment of any
 27 bodily function that requires immediate medical attention or hospitalization.
 28 (12b) Supervising physician. – A physician with the competencies and authority to
 29 supervise advanced respiratory care practitioners.
 30 (13) Support activities. – ~~Procedures~~ Tasks that do not require formal academic
 31 training, including the delivery, setup, and routine maintenance and repair of
 32 ~~apparatus,~~ respiratory care equipment. The term also includes giving
 33 instructions on the use, fitting, and application of ~~apparatus,~~ respiratory care
 34 equipment but does not include therapeutic evaluation and
 35 ~~assessment.~~ assessment for an individual patient as defined in rules adopted by
 36 the Board.

37 **"§ 90-649. North Carolina Respiratory Care Board; creation.**

38 (a) The North Carolina Respiratory Care Board is created. The Board shall consist of 10
 39 members as follows:

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

50 **"§ 90-650. Appointments and removal of Board members; terms and compensation.**

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

- 1 ...
 2 (7) ~~The North Carolina Association of Atlantic Coast Medical Equipment~~
 3 ~~Services Association~~ shall appoint the member described in
 4 G.S. 90-649(a)(4).
 5 ...

6 **"§ 90-652. Powers and duties of the Board.**

7 The Board shall have the power and duty to:

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

- 30 ...
 31 (14) Establish and adopt rules defining the education and credential requirements
 32 for persons seeking endorsement under this Article.

33 **"§ 90-653. Licensure requirements; examination.**

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

- 36 (1) Submit a completed application as required by the Board. ~~Board, which shall~~
 37 include a form signed by the applicant consenting to the check of the
 38 applicant's criminal record and to the use of the applicant's fingerprints and
 39 other identifying information required by the State and national repositories.
 40 (2) Submit any fees required by the Board.
 41 (3) Submit to the Board written evidence, verified by oath, that the applicant has
 42 successfully completed the ~~minimal-entry-level degree~~ requirements of a
 43 respiratory care education program as approved by the Commission ~~for~~
 44 ~~Accreditation of Allied Health Educational Programs, or the Canadian~~
 45 ~~Council on Accreditation for Respiratory Therapy Education.~~ Care
 46 (CoARC) or its successor by arranging for the applicant's respiratory care
 47 education program to submit an official transcript confirming successful
 48 completion of the respiratory care education program directly to the Board.
 49 (4) Submit to the Board written evidence, verified by oath, that the applicant has
 50 successfully completed the minimal requirements for Basic Cardiac Life

Support as recognized by the American Heart Association, the American Red Cross, or the American Safety and Health Institute.

- (5) ~~Pass~~ Submit to the Board written evidence, verified by oath, that the entry-level applicant passed the examination requirements as defined by the rules adopted by the Board given by the National Board for Respiratory Care, Inc., or its successor, for entry-level respiratory care practitioners.

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

(c) Each applicant for an advanced respiratory care practitioner license under this Article shall do all of the following:

- (1) Submit a completed application as required by the Board, including 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.

- (3) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the postgraduate degree requirements of respiratory care education for the advanced practice respiratory therapist as approved by the Commission on Accreditation for Respiratory Care (CoARC) or its successor by arranging for the applicant's respiratory care education program to submit an official transcript confirming successful completion of the advanced respiratory care education program directly to the Board.

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

- (5) Submit to the Board written evidence, verified by oath, that the applicant passed the examination requirements as defined by Board rules pursuant to this Article given by the National Board for Respiratory Care, Inc., or its successor, for advanced-level respiratory care practitioners and defined by Board rules pursuant to this Article.

(d) When issuing a license, the Board shall state the terms and conditions of use of the license to the licensee.

...

"§ 90-660. Expenses; fees.

...

(b) All monies received by the Board pursuant to this Article shall be deposited in an account for the Board and shall be used for the administration and implementation of this Article. The Board 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 fifty dollars (\$50.00).

- ~~(2) For examination or reexamination, a fee not to exceed two hundred dollars (\$200.00).~~

...

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

...

"§ 90-661. Requirement of license.

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

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

11 ...
12 **§ 90-667. Confidentiality of Board investigative information.**

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

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

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

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

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

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

45 (f) The Board, its members, or its staff may release confidential information concerning
46 the denial, annulment, suspension, or revocation of a license to any other health care licensing
47 board in this State, other state, or country, or authorized Department of Health and Human
48 Services personnel who are charged with the enforcement or investigative responsibilities of
49 licensure. If the Board releases this confidential information, the Board shall notify and provide
50 a summary of the information to the licensee within 60 days after the information is transmitted.
51 The licensee may make a written request that the Board provide the licensee a copy of all

1 information transmitted within 30 days of receiving notice of the initial transmittance. The Board
2 shall not provide the information if the information relates to an ongoing criminal investigation
3 by any law enforcement agency or authorized Department of Health and Human Services
4 personnel with enforcement or investigative responsibilities.

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

10 **"§ 90-668. Limitations on advanced respiratory care practitioners.**

11 (a) Individuals who are licensed under this Article as advanced respiratory care
12 practitioners may use the title "advanced respiratory care practitioner." Individuals who hold
13 themselves out as advanced respiratory care practitioners without being licensed are in violation
14 of this Article.

15 (b) Individuals who are licensed under this Article as advanced respiratory care
16 practitioners may practice advanced respiratory care under the supervision of a physician
17 licensed under Article 1 of this Chapter and within the scope of rules adopted by the Board."

18 **SECTION 2.** The North Carolina Respiratory Care Board shall adopt rules to
19 implement and administer the provisions of this act no later than October 1, 2024.

20 **SECTION 3.** Section 1 of this act becomes effective on October 1, 2024. Except as
21 otherwise provided, this act is effective when it becomes law.