Article 38.

Respiratory Care Practice Act.

§ 90-646. Short title.

This Article may be cited as the "Respiratory Care Practice Act". (2000-162, s. 1.)

§ 90-647. 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. (2000-162, s. 1.)

§ 90-648. Definitions.

The following definitions apply in this Article:

(1) 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.

(3) Direct supervision. – The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of services.

(4) Individual. – A human being.

(5) License. – A certificate issued by the Board recognizing the person named therein as having met the requirements to practice respiratory care as defined in this Article.

(6) Licensee. – A person who has been issued a license under this Article.

(7) Medical director. – An appointed physician who is licensed under Article 1 of this Chapter and a member of the entity's medical staff, and who is granted the authority and responsibility for assuring and establishing policies and procedures and that the provision of such is provided to the quality, safety, and appropriateness standards as recognized within the defined scope of practice for the entity.

(8) Person. – An individual, corporation, partnership, association, unit of government, or other legal entity.

(9) Physician. – A doctor of medicine licensed by the State of North Carolina in accordance with Article 1 of this Chapter.

(10) Practice of respiratory care. – As defined by the written order of a physician licensed under Article 1 of this Chapter, the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics, and the performance of diagnostic testing and therapeutic application of:

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

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

(11) Respiratory care. – As defined by the written order of a physician licensed under Article 1 of Chapter 90, the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.
(12) Respiratory care practitioner. – A person who has been licensed by the Board to engage in the practice of respiratory care.
(13) Support activities. – Procedures that do not require formal academic training, including the delivery, setup, and maintenance of apparatus. The term also includes giving instructions on the use, fitting, and application of apparatus, but does not include therapeutic evaluation and assessment. (2000-162, s. 1.)

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

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

(1) Two members shall be respiratory care practitioners.
(2) Four members shall be physicians licensed to practice in North Carolina, and whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.
(3) One member shall represent the North Carolina Hospital Association.
(4) One member shall represent the North Carolina Association of Medical Equipment Services.
(5) Two members shall represent the public at large.

(b) Members of the Board shall be citizens of the United States and residents of this State. The respiratory care practitioner members shall have practiced respiratory care for at least five years and shall be licensed under this Article. The public members shall not be: (i) a respiratory care practitioner, (ii) an agent or employee of a person engaged in the profession of respiratory care, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become a licensed health care professional, (iv) an agent or employee of a health care institution, a

health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Board. (2000-162, s. 1; 2003-384, s. 1.)

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

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

(1) The Governor shall appoint the public members described in G.S. 90-649(a)(5).

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(3) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(4) The North Carolina Medical Society shall appoint one of the physician members described in G.S. 90-649(a)(2).

(5) The Old North State Medical Society shall appoint one of the physician members described in G.S. 96-649(a)(2).

(6) The North Carolina Hospital Association shall appoint the member described in G.S. 90-649(a)(3).

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

(b) Members of the Board shall take office on the first day of November immediately following the expired term of that office and shall serve for a term of three years and until their successors are appointed and qualified. No member shall serve on the Board for more than two consecutive terms.

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

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

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

(f) Individual members shall be immune from civil liability arising from activities performed within the scope of their official duties. (2000-162, s. 1.)

§ 90-651. Election of officers; meetings of the Board.

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

(b) The Board shall hold at least two regular meetings each year as provided by rules adopted pursuant to this Article. The Board may hold additional meetings upon the call of the chair

or any two Board members. A majority of the Board membership shall constitute a quorum. (2000-162, s. 1.)

§ 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 State Bureau of Investigation 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 State Bureau of Investigation, along with the request, the fingerprints of the applicant, any additional information required by the State Bureau of Investigation, 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. The applicant's fingerprints shall be used by 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 State Bureau of Investigation and shall remit the fees to the State Bureau of Investigation for expenses associated with conducting the criminal history record check.

(2) Establish and adopt rules necessary to conduct its business, carry out its duties, and administer this Article.

(3) Adopt and publish a code of ethics.

(4) Deny, issue, suspend, revoke, and renew licenses in accordance with this Article.

(5) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(6) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article and purchase or rent office space, equipment, and supplies.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Establish certain reasonable fees as authorized by this Article for applications for examination, licensure, provisional licensure, renewal of licensure, and other services provided by the Board.

(10) Submit an annual report to the North Carolina Medical Board, the North Carolina Hospital Association, the North Carolina Society of Respiratory Care,

the Governor, and the General Assembly of all the Board's official actions during the preceding year, together with any recommendations and findings regarding improvements of the practice of respiratory care.

(11) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted pursuant to this Article.

(12) Request and receive the assistance of State educational institutions or other State agencies.

(13) Establish and approve continuing education requirements for persons seeking licensure under this Article. (2000-162, s. 1; 2003-384, s. 2; 2004-89, s. 1; 2014-100, s. 17.1(o); 2023-134, s. 19F.4(jjj).)

§ 90-653. Licensure requirements; examination.

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

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

(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 minimal requirements of a respiratory care education program as approved by the Commission for Accreditation of Allied Health Educational Programs, or the Canadian Council on Accreditation for Respiratory Therapy Education.

(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, or the American Safety and Health Institute.

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

(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. (2000-162, s. 1; 2003-384, s. 3.)

§ 90-654. Temporary license.

Upon application and payment of the required fees, the Board may grant a temporary license to a person who, at the time of application, submits notarized copies of the items required in G.S. 90-653(a)(3) through (a)(5) while awaiting official copies of the items from the issuing agency. The temporary license shall be valid for a period not to exceed 90 days from the date of application. (2000-162, s. 1; 2003-384, s. 4.)

§ 90-655. Licensure by reciprocity.

The Board may grant, upon application and the payment of proper fees, a license to a person who, at the time of application holds a valid license, certificate, or registration as a respiratory care practitioner issued by another state or a political territory or jurisdiction acceptable to the Board if, in the Board's determination, the requirements for that license, certificate, or registration are substantially the same as the requirements for licensure under this Article. (2000-162, s. 1.)

§ 90-656. Provisional license.

The Board may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed the education requirements under G.S. 90-653(a)(3) and has made application to take the examination required under G.S. 90-653(a)(5). A provisional license allows the individual to practice respiratory care under the direct supervision of a respiratory care practitioner and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires. (2000-162, s. 1; 2003-384, s. 5.)

§ 90-657. Notification of applicant following evaluation of application.

After evaluation of the application and of any other evidence required from the applicant by the Board, the Board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If the application and evidence is rejected, the notice shall state the reasons for the rejection. (2000-162, s. 1.)

§ 90-658. License as property of the Board; display requirement; renewal; inactive status.

(a) A license issued by the Board is the property of the Board and shall be surrendered by the licensee to the Board on demand.

(b) The licensee shall display the license in the manner prescribed by the Board.

(c) The licensee shall inform the Board of any change of the licensee's address.

(d) The license shall be renewed by the Board annually upon the payment of a renewal fee if, at the time of application for renewal, the applicant is not in violation of this Article and has fulfilled the current requirements regarding continuing education as established by rules adopted pursuant to this Article.

(e) The Board shall notify a licensee at least 30 days in advance of the expiration of his or her license. Each licensee is responsible for renewing his or her license before the expiration date. Licenses that are not renewed automatically lapse.

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

(g) In accordance with rules adopted pursuant to this Article, a licensee may request that his or her license be declared inactive and may thereafter apply for active status. (2000-162, s. 1.)

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

(a) The Board shall take the necessary actions to deny or refuse to renew a license, suspend or revoke a license, or to impose probationary conditions on a licensee or applicant if the licensee or applicant:

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

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

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

c. Practiced respiratory care without a license.

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

(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 licensee may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted pursuant to this Article. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year. (2000-162, s. 1.)

§ 90-660. Expenses; fees.

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

(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).

(3) For issuance of any license, a fee not to exceed one hundred fifty dollars ($150.00).

(4) For the renewal of any license, a fee not to exceed seventy-five dollars ($75.00).

(5) For the late renewal of any license, an additional late fee not to exceed seventy-five dollars ($75.00).

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

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

(8) For official verification of licensure status, a fee not to exceed twenty dollars ($20.00).

(9) For approval of continuing education programs, a fee not to exceed one hundred fifty dollars ($150.00). (2000-162, s. 1; 2001-455, s. 7; 2003-384, s. 6; 2007-418, s. 1.)

§ 90-661. Requirement of license.

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

(1) Engage in the practice of respiratory care.

(2) Use the title "respiratory care practitioner".

(3) Use the letters "RCP", "RTT", "RT", or any facsimile or combination in any words, letters, abbreviations, or insignia.
(4) Imply orally or in writing or indicate in any way that the person is a respiratory care practitioner or is otherwise licensed under this Article.
(5) Employ or solicit for employment unlicensed persons to practice respiratory care. (2000-162, s. 1; 2003-384, s. 7.)

§ 90-662. Violation a misdemeanor.

Any person who violates any provision of this Article shall be guilty of a Class 1 misdemeanor. (2000-162, s. 1.)

§ 90-663. Injunctions.

The Board may apply to the superior court for an order enjoining violations of this Article, and upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or restraining order or take other appropriate action. (2000-162, s. 1.)

§ 90-664. Persons and practices not affected.

The requirements of this Article shall not apply to:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State who is performing work incidental to or within the practice of that profession or occupation and does not represent himself or herself as a respiratory care practitioner.
(2) A student or trainee working under the direct supervision of a respiratory care practitioner while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure in accordance with rules adopted pursuant to this Article.
(3) A respiratory care practitioner serving in the Armed Forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment.
(4) A person who performs only support activities as defined in G.S. 90-648(13). (2000-162, s. 1; 2011-183, s. 67.)

§ 90-665. Third-party reimbursement.

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article. (2000-162, s. 1.)

§ 90-666. Civil penalties.

(a) Authority to Assess Civil Penalties. – In addition to taking any of the actions permitted under G.S. 90-659, the Board may assess a civil penalty not to exceed one thousand dollars ($1,000) for the violation of any section of this Article or any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.
(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
(3) Whether the violation was willful and malicious.
(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Article. The schedule shall indicate for each type of violation whether the violation can be corrected. Penalties shall be assessed for the first, second, and third violations of specified sections of this Article and for specified rules.

(d) Costs. – The Board may assess the costs of disciplinary actions against a person found to be in violation of this Article or rules adopted by the Board. (2003-384, s. 8.)

§§ 90-667 through 90-670. Reserved for future codification purposes.