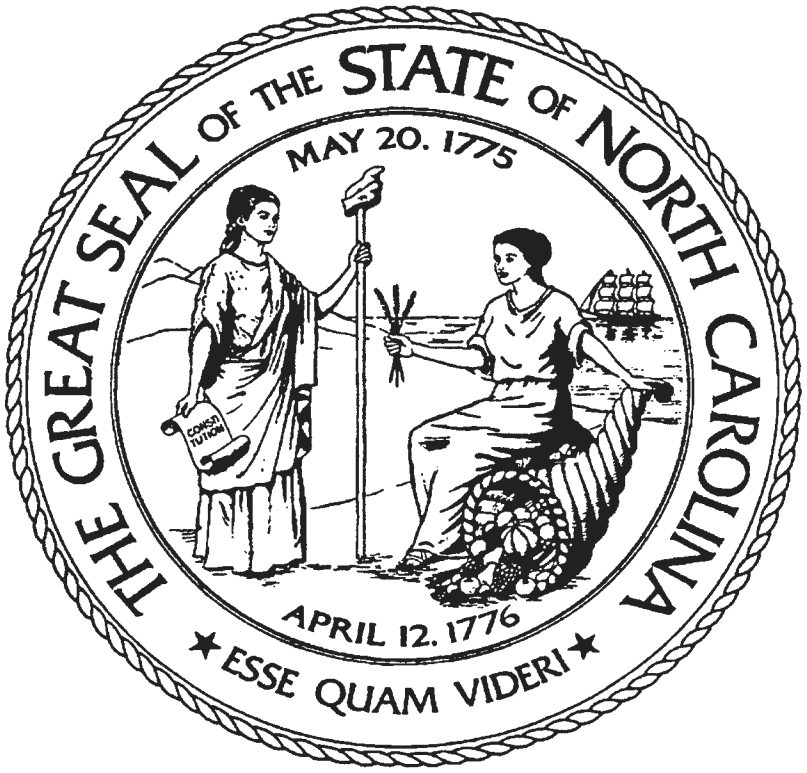

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
For

Respiratory Care Therapists

House Bill 1340

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

June 21, 1999

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of respiratory care therapists. This report constitutes both the preliminary and final assessment report.

Senator Brad Miller, Chairman

Prepared by:

Mary Shuping, Research Assistant

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
(1999-2000)

Senator Brad Miller, Chairman

Senator Fletcher Hartsell	Representative John Bridgeman
Senator R.L. Martin	Representative Jerry Dockham
Senator R.C. Soles, Jr.	Representative Verla Insko
Senator Allen Wellons	Representative Mickey Michaux

Staff: Mr. Linwood Jones, Counsel
Mrs. Mary Shuping, Research Assistant

PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.

2) Whether the profession possesses qualities that distinguish it from ordinary labor.

3) Whether practice of the profession requires specialized skill or training.

4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.

5) Whether the public can effectively be protected by other means.

6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues an assessment report on its findings and recommendations. The recommendation in the report is not binding on other committees considering the proposal.

RESPIRATORY CARE THERAPISTS

HOUSE BILL 1340

BACKGROUND*

Respiratory care is the treatment, management, diagnostic testing, and care of persons with deficiencies and abnormalities associated with the cardiopulmonary system. Respiratory care practitioners are trained to care for patients under the supervision of a physician. Respiratory care takes place in various settings, including home care, sub-acute care, and hospitals. Patients who receive respiratory care frequently include a disproportionately sicker population, and the respiratory care practitioners have responsibility for the control of life support procedures and equipment in critically ill patients.

Current Standards. The North Carolina Society for Respiratory Care (NCSRC) uses an established code of ethics adopted from its national affiliation with the American Association for Respiratory Care. The NCSRC promotes a voluntary certification and registration of respiratory care practitioners by the National Board of Respiratory Care. Approximately 1300 of the 2800 respiratory care practitioners in North Carolina are recognized by the Board. Approximately 800 members of NCSRC participate in continuing education programs.

Number of Respiratory Care Therapists in NC. Currently, there are approximately 2800 respiratory care practitioners in North Carolina.

Licensure in other states. Forty-six (46) states currently have a licensure or certification process for respiratory care practitioners, including all states bordering North Carolina.

---

* Source of Information: *Respiratory Care Questionnaire for the Legislative Committee on New Licensing Boards.* May 1999. A copy of the questionnaire is attached.

Need for licensure. Since respiratory care practitioners must make assessments of and interventions to critically ill patients and patients in emergency situations, inappropriate or inadequate responses may result in potentially life-threatening situations, or may significantly alter the quality of life for the patient. Absent regulation and minimal qualifications, a respiratory care practitioner without appropriate education, training, and competencies may be practicing in North Carolina. Additionally, respiratory care practitioners who have been denied licensure or whose license has been suspended or revoked in another state may practice respiratory care in this State.

HB 1340 Respiratory Care Practice Act

Who must be licensed. HB 1340 would require anyone who engages in the practice of respiratory care to be licensed. The "practice of respiratory care" includes monitoring the patient's response to respiratory care treatment and the performance of diagnostic testing and application of medical gases, humidity, or aerosols, pharmacologic agents related to respiratory care, ventilatory support, oxygen therapy, and CPR. All respiratory care practice is performed pursuant to a physician's orders.

Who is exempt from licensure. The following persons are exempt from licensure:

- Any health care practitioner who is licensed under Chapter 90 of the General Statutes (Medicine and Allied Occupations) and is practicing within his or her scope of practice.
- A student working under the supervision of a licensed respiratory care practitioner.
- A respiratory care practitioner serving in the military, the Public Health Service of the United States, or working in a federal facility.
- A person aiding in the practice of respiratory care who performs only support activities under the supervision of a respiratory care practitioner or a physician. "Support activities" include procedures that do not require formal training and include the delivery, setup, instructions for and maintenance of equipment.

"Grandfathering"/Reciprocity. The Board may:

- Issue a license to an applicant who, as of October 1, 1999, has passed the national entry-level exam. The applicant must apply before October 1, 2001.

- Grant a temporary license to an individual who does not meet the requirements for licensure as of October 1, 1999, but who demonstrates an ability to perform the duties of a respiratory care practitioner. The temporary license will be valid until October 1, 2000, at which time the applicant must have passed the national entry-level exam.

- Grant a license to a respiratory care practitioner who is licensed or certified in another jurisdiction if the requirements for licensure or certification are substantially the same as in North Carolina.

- Grant a provisional license to a person who has successfully completed the education requirements and has applied to take the examination. A provisional license is valid for 12 months.

Qualifications for licensure. To qualify for licensure as a respiratory care practitioner in North Carolina, an individual must meet all of the following requirements:

- Submit written evidence, verified by oath, that the applicant has successfully completed the minimum requirements in
  1. A respiratory care education program as approved by the Commission for Accreditation of Allied Health Educational Programs; and,
  2. Basic cardiac life support as recognized by the American Heart Association.

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

- Submit a completed application and required fees.

Fees. Fees established by the Board may not exceed the following amounts:

• Initial application	$25.00
• Examination or reexamination	$150.00
• Issuance of license	$100.00
• Renewal of license (annually)	$50.00
• Late renewal	$50.00
• Temporary or provisional license	$35.00

Respiratory Care Board.

Membership. The Board will consist of nine (bill references eight) members as follows:

- 2 respiratory care practitioners – 1 appointed by the President Pro Tempore of the Senate, and 1 appointed by the Speaker of the House.
- 3 physicians whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or Cardiothoracic Disorders – 1 appointed by the President Pro Tempore of the Senate, 1 appointed by the Speaker of the House, and 1 appointed by the NC Medical Society.
- 1 member of the NC Hospital Association, appointed by the Association.
- 1 member of the NC Association of Medical Equipment Services, appointed by the Association.
- 2 members of the public, appointed by the Governor.

Powers and Duties: The Board's powers and duties include the following:

- Determine the qualifications and fitness of applicants to be licensed as respiratory care practitioners.
- Conduct investigations, and issue subpoenas in connection with disciplinary proceedings.
- Issue, deny, suspend, revoke, and renew licenses.
- Establish and approve continuing education requirements.

FINDINGS AND RECOMMENDATIONS

Findings. The Legislative Committee on New Licensing Boards finds that the sponsors have met the six statutory criteria by which the Committee judges licensure proposals. Specifically, the Committee finds the following:

1) The unregulated practice of respiratory care can substantially endanger the public health, safety, or welfare, and the potential for such harm is recognizable and not remote or dependent upon tenuous argument.

2) The profession of respiratory care possesses qualities that distinguish it from ordinary labor.

3) The practice of respiratory care requires specialized skill or training.

4) A substantial majority of the public does not have the knowledge or experience to evaluate a respiratory care practitioner's competence.

5) The public cannot effectively be protected by other means.

6) Licensure would not have a substantial adverse economic impact upon consumers of the practitioner's good or services.

Recommendations. The Legislative Committee on New Licensing Boards recommends the licensing of respiratory care practitioners. This assessment report constitutes both the preliminary and final assessment report for the licensing of respiratory care therapists. The report is based on the proposed licensing of respiratory care as set out in House Bill 1340, the response to the Committee's questionnaire (attached), and testimony before the Committee on June 15, 1999.

RESPIRATORY CARE

- Questions For The Legislative Committee on New Licensing Boards

- Attachments
  - References on Respiratory Care Legislative and Costs
  - AARC Code of Ethics and Professional Conduct
  - Respiratory Care Educational Requirements

QUESTIONNAIRE FOR LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

1. **In what ways has the marketplace failed to regulated adequately the profession or occupation?**

North Carolina is but one of four states who fail to regulate respiratory care practitioners. All states bordering North Carolina currently regulate the practice of respiratory care. In the last three years, the states of Florida, Georgia, Tennessee, and Virginia have reported a number of respiratory care practitioners who have lost licenses in these states as residing in North Carolina. The potential for unlicensed and incompetent persons in regulated states to migrate to North Carolina seeking employment is significant. Additionally, the North Carolina Society for Respiratory Care (NCSRC) has reported to its Judicial Committee, three individuals falsely representing themselves as respiratory care practitioners. In each case, falsification of educational experience, and/or a national voluntary credential occurred. since all three were non-members of its Society, the NCSRC was unable to discipline these individuals. Four additional individuals have been reported to the NCSRC during the past two years who had license revoked in other states who had relocated to North Carolina.

2. **Have there been any complaints about the unregulated profession or occupation? Please give specific examples.**

As indicated in the previous question, there have been three formal complaints to the NCSRC. Additional concerns arise regarding an inability to seek disciplinary action should such similar incidents be encountered.

3. **In what ways has the public health, safety, or welfare sustained harm or is in imminent danger of harm because of the lack of state regulation? Please give specific examples.**

Respiratory care is a highly specialized allied health profession. Respiratory Care Practitioners are trained to care for patients under the supervision of a qualified physician in multiple clinical settings including home care, sub-acute care, and hospitals. The patients receiving their care frequently include a disportionately sicker population than is the case for most other allied health practitioners and the respiratory care practitioners have responsibility for the control of life support procedures and equipment in critically ill patients. Respiratory care practitioners also play an indispensable role in the coordination, assessment, and utilization of respiratory care services in these multiple environments. Such assessments and interventions are emergent, and although under the guidance and supervision of a qualified physician, these assessments and interactions may be performed without a physician physically present. These situations require respiratory care practitioners with the minimal training, experience, and competencies required for the public health, safety, and welfare for those patients receiving respiratory care.

Recent and pending litigation in North Carolina, involves health care providers who were using respiratory care practitioners who were informally trained without appropriate documentation of competencies. Invasive procedures were performed by these individuals which resulted in life altering complications and potential wrongful death. Since appropriate documentation of the skills and competencies of individuals providing these services was absent, the public can assume unqualified

practitioners were being employed. Licensure of respiratory care practitioners will reduce the use of unqualified personnel in performing these services.

4. **Is there potential for substantial harm or danger by the profession or occupation to the public health, safety, or welfare? How can this potential for substantial harm or danger be recognized?**

As defined in question number three, respiratory care practitioners make assessments and interventions to critically ill patients and those patients in emergency situations. Inappropriate or inadequate responses will result I n adverse patient conditions which may be potentially life threatening or significantly alter the quality of life for the patient. Without regulation and definition or minimal competencies, a respiratory care practitioner without appropriate education, training, and competencies may be providing these services in North Carolina.

Additionally respiratory care practitioners denied license or with suspension of licensed in another state, may practice respiratory care in North Carolina. There is no system to protect the public from practitioners considered unsafe in other states.

5. **Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process?**

North Carolina is one of but four states without a licensing or certification process for respiratory care practitioners. In each state regulating the practice of respiratory care, public safety, and welfare is the basis for regulation.

6. **What will be the economic advantage of licensing to the public?**

The economic advantage of licensing to the public will be respiratory care services provided by a minimally educated, trained, and competent respiratory care practitioner. Currently, such services may be provided by individuals without these minimal competencies. The health care consumer will more than likely pay equivalent cost for these services as for those services provided by a regulated practitioner.

Respiratory care practitioners assess respiratory care efforts and assist the physician, in the utilization control of these services. Minimally educated, trained, competent respiratory care practitioners have been documented to actually decrease health care cost through such utilization control. Examples of respiratory care practitioners reducing health care cost are provided in the attached, "Respiratory Care Licensure and Costs."

7. What will be the economic disadvantages of licensing to the public?

None. Rural hospitals, subacute care facilities, or home care providers using respiratory care practitioners who are informally trained will require less documentation to substantiate competency of its respiratory care practitioners than under the current method of self governance. Regulatory agencies, such as Health Care Finance Administration and the Joint Commission on Accreditation for Health Care Organizations recognizes the licensure of other health care providers as documentation of minimal competency. Healthcare employees using those professions without licensure, however are required to provide evidence of competency. This increases the cost of these employers through additional documentation requirements and increased risk management activities.

8. What will be the economics advantages of licensing to the practitioners?

Economic advantages of licensing respiratory care practitioners are based on supply and demand economics. North Carolina human resources for Respiratory Care Practitioners is as follows:

a.	Total number of RCP's in hospitals	2200
b.	Estimated number of RCP's in home care	300
c.	Estimated number of RCP's in sub-acute	100
d.	Others performing Respiratory Care (e.g. EMT, LPN, OJT)	400
e.	Estimated Total, Respiratory Care	3000

North Carolina currently has fourteen respiratory care educational programs in the community college system. Approximately 150 new respiratory care practitioners are graduated from these programs annually. This supply of new graduates exceeds the demand for respiratory care practitioners and will continue to do so as hospitals implement health care reform strategies.

9. What will be the economic disadvantages of licensing practitioners?

Respiratory care practitioners who are unable to meet the minimal licensing requirements may receive significant income reduction or have their jobs, as currently practiced, eliminated.

Health care consumers who may require respiratory care services will be assured these services are provided by individuals meeting minimal competency requirements.

10. Please give other potential benefits to the public of licensing that outweigh the potential harmful effects of licensure such as a decrease in the availability of practitioners and higher cost to the public.

As indicated in item number 8, a steady increase in the supply of practitioners over demand is expected. Increased additional cost to the public will be minimal for the services provided by a licensed respiratory care practitioner. Additional, supportive information, attached, identifies respiratory care control and utilization of services by a competent practitioner is an active means of reducing health care costs.

Health care is experiencing alternative sites for the delivery of health care. As the shift in care from the hospital, to the sub-acute care setting, and home environment occurs, less physicians contact with the patient and greater dependency upon alternate care givers will occur. Respiratory care is an integral component of such care and focuses on the ability of the respiratory care practitioner to assess and effectively communicate observations and outcomes of care to the physician. such a system promotes effective and efficient use of health care personnel in a changing health care system. Success of these changing systems will be dependent upon practitioner competency to perform these services.

11. Please detail the specific specialized skills or training that distinguish the occupation or profession from ordinary labor.

A. Respiratory Care Practitioners must successfully complete a Respiratory Care Education Program which is recognized by the American Medical Association and includes the following courses of instruction:

Basic Sciences
Biology
Chemistry
Cardiopulmonary Anatomy and Physiology
Computer Science
Human anatomy and Physiology
Mathematics
Microbiology
Pharmacology
Physics
Psychology
Cardiopulmonary Diseases
Pathology
Pediatrics and Perinatology
Respiratory Care Content Areas
- Emergency Airway Management

- Cardiopulmonary Resuscitation
- Cardiopulmonary diagnostics and Interpretation
- Patient Assessment
- Cardiopulmonary Monitoring and diagnostics
- Management of Mechanical Ventilation
- Ethics of Respiratory Care and Medical Care

Minimal Education requirements for Respiratory Care Practitioners are provided by attachment from the Respiratory Care Education Committee who reports to the American Medical Association.

B. Specific Skills of Respiratory Care Practitioner include:
- Insertion of Artificial Airways
- Insertion of Indwelling Arterial Lines
- Management of Life support Devices
- Provision of Cardiopulmonary Resuscitation
- Patient Monitoring and Assessment of Respiratory Care Outcome
- Administration of Specific Cardiopulmonary Medications as Prescribed by a Licensed Physician

12. What are other qualities of the profession or occupation that distinguish it from ordinary labor?

Although respiratory care practitioners perform services under the leadership and supervision of a physician, there is a relatively high degree of independent judgment required from the respiratory care practitioner. The practitioner deals with patients on a one-to-one basis and must quickly make decision if a complication arises. Occasionally, these decisions are life saving or life threatening. This is quite evident in the home care setting or the intensive care setting during the middle of the night, where a respiratory care practitioner may be totally alone with a patient, needing to take quick, decisive action without time for consultation with a physician. Failure to appropriately assess and respond to these identified situations may result in a life threatening complication. Such specialized skills, training, and somewhat independent decisions distinguish the respiratory care practitioner from ordinary labor.

13. Will licensing requirements cover all practicing members of the occupation or profession? If any practitioners are exempt, what is the rationale for the exemption?

Licensing will cover all practicing members of the respiratory care profession excepting 1) those rendering care in the course of assigned duties of persons in the military services or working in federal facilities, 2) a student in a respiratory care educational program, working under direct supervision of a practitioner while fulfilling requirements of the course of study, 3) a health care practitioner duly licensed in accordance with Chapter 90 General Statues and performing services authorized by his or her scope of practice, and 4) persons aiding in the practice of respiratory care who perform support

activities which do not require formal academic training, if these persons worked under the supervision of a practitioner or physician licensed under Article of Chapter 90 of the General Statues.

Rationale for these exemptions are 1) to allow cost effective support duties to be performed, such as equipment deliver, 2) facilitate training and experience for students of respiratory care, and 3) to be non-restrictive to licensed personnel currently exhibiting competencies in certain respiratory care services.

14. **What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?**

There are approximately 3000 respiratory care practitioners providing services in North Carolina. Such services are routinely provided to 35% of all patients admitted to a hospital, therefore each North Carolina resident is a potential user of respiratory care services. 35% of all patients admitted to a hospital, 60% of all emergency room patients eventually requiring hospital admission. A growing percentage of patients in the subacute care environment, and a major portion of patients in defined home care programs for chronic cardiopulmonary disorders are very likely to utilize services of the profession.

15. **What kind of knowledge or experience does the public need to evaluate the services offered by the practitioner?**

The public will require the equivalent knowledge and experience of a respiratory care practitioner, physician, or other duly licensed and knowledgeable health care provider to effectively evaluate the services offered by a respiratory care practitioner.

16. **Does the occupational group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimal quality of service?**

The North Carolina Society for Respiratory Care attempts to provide minimal quality of services through an internal communication network and use an established code of ethics adopted from its national affiliation with the American Association for Respiratory Care. The NCSRC promotes voluntary Certification and/or Registration of Respiratory Care Practitioners by the National Board for Respiratory Care. Approximately 1300 of the 2800 respiratory care practitioners in North Carolina are recognized by the National Board for Respiratory Care. The NCSRC has approximately 800 members participating in continuing educational programs for respiratory care. The Code of Ethics and Professional Conduct of the American Association for Respiratory Care is provided for review.