

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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**HOUSE BILL 285**  
**Committee Substitute Favorable 3/27/13**

Short Title: Amend Respiratory Care Practice Act.

(Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED  
AN ACT TO AMEND THE RESPIRATORY CARE PRACTICE ACT.  
The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 90-648 reads as rewritten:

**"§ 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



1 exhibit abnormal characteristics, and the performance of diagnostic testing  
2 and therapeutic application or assessment of:

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

21 The term also means the interpretation and implementation of a  
22 physician's written or verbal order pertaining to the acts described in this  
23 ~~subdivision~~ subdivision and any act by which an individual holds himself or  
24 herself out to the public or represents in any manner that the individual is  
25 authorized to practice respiratory care in this State.

- 26 (11) Respiratory care. – As defined by the written order of a physician licensed  
27 under Article 1 of Chapter 90, the treatment, management, diagnostic  
28 testing, and care of patients with deficiencies and abnormalities associated  
29 with the cardiopulmonary system.  
30 (12) Respiratory care practitioner. – A person who has been licensed by the  
31 Board to engage in the practice of respiratory care.  
32 (13) Support activities. – ~~Procedures~~ Tasks that do not require formal academic  
33 training, including the delivery, setup, and maintenance of ~~apparatus~~. ~~The~~  
34 ~~term also includes giving instructions on the use, fitting, and application of~~  
35 ~~apparatus, but does not include therapeutic evaluation and assessment.~~ an  
36 apparatus and as defined in rules adopted by the Board. The term does not  
37 include evaluation or assessment of the therapeutic effectiveness of any  
38 respiratory treatment or apparatus for an individual patient."

39 **SECTION 2.** G.S. 90-648 reads as rewritten:

40 **"§ 90-648. Definitions.**

41 The following definitions apply in this Article:

- 42 ...  
43 (12) Respiratory care practitioner. – ~~A person who has been licensed by the~~  
44 ~~Board to engage in the practice of respiratory care~~ An individual licensed by  
45 the Board as a respiratory care practitioner.  
46 (12a) Respiratory therapist. — An individual licensed by the Board as a  
47 respiratory therapist who practices under the direct supervision of a licensed  
48 respiratory care practitioner."

49 **SECTION 3.** G.S. 90-652 reads as rewritten:

50 **"§ 90-652. Powers and duties of the Board.**

51 The Board shall have the power and duty to:

- 1 (1) Determine the qualifications and fitness of applicants for licensure, renewal  
2 of licensure, and reciprocal licensure. The Board shall, in its discretion,  
3 investigate the background of an applicant to determine the applicant's  
4 qualifications with due regard given to the applicant's competency, honesty,  
5 truthfulness, and integrity. The Department of Justice may provide a  
6 criminal record check to the Board for a person who has applied for a license  
7 through the Board. The Board shall provide to the Department of Justice,  
8 along with the request, the fingerprints of the ~~applicant, applicant and~~ any  
9 additional information required by the Department of Justice, ~~and a form~~  
10 ~~signed by the applicant consenting to the check of the criminal record and to~~  
11 ~~the use of the fingerprints and other identifying information required by the~~  
12 ~~State or national repositories.~~Justice. The applicant's fingerprints shall be  
13 forwarded to the State Bureau of Investigation for a search of the State's  
14 criminal history record file, and the State Bureau of Investigation shall  
15 forward a set of the fingerprints to the Federal Bureau of Investigation for a  
16 national criminal history check. The Board shall keep all information  
17 pursuant to this subdivision privileged, in accordance with applicable State  
18 law and federal guidelines, and the information shall be confidential and  
19 shall not be a public record under Chapter 132 of the General Statutes. The  
20 Board shall collect any fees required by the Department of Justice and shall  
21 remit the fees to the Department of Justice for expenses associated with  
22 conducting the criminal history record check.
- 23 (2) Establish and adopt rules necessary to conduct its business, carry out its  
24 duties, and administer this Article.
- 25 (3) Adopt and publish a code of ethics.
- 26 (4) Deny, issue, suspend, revoke, and renew licenses in accordance with this  
27 Article.
- 28 (5) Conduct investigations, subpoena individuals and records, and do all other  
29 things necessary and proper to discipline persons licensed under this Article  
30 and or investigate the activities of persons not licensed under this Article  
31 who the Board has reasonable cause to believe are engaged in the practice of  
32 respiratory care and do all other things necessary and proper to enforce this  
33 Article.
- 34 (5a) Designate one or more of its employees to issue and serve subpoenas and  
35 other papers on behalf of the Board. Service under this subdivision is  
36 permitted in accordance with any other methods of service allowed by law.
- 37 (6) Employ professional, clerical, investigative, or special personnel necessary  
38 to carry out the provisions of this Article and purchase or rent office space,  
39 equipment, and supplies.
- 40 (7) Adopt a seal by which it shall authenticate its proceedings, official records,  
41 and licenses.
- 42 (8) Conduct administrative hearings in accordance with Article 3A of Chapter  
43 150B of the General Statutes.
- 44 (9) Establish certain reasonable fees as authorized by this Article for  
45 applications for examination, licensure, ~~provisional licensure,~~ renewal of  
46 licensure, and other services provided by the Board.
- 47 (10) Submit an annual report to the North Carolina Medical Board, the North  
48 Carolina Hospital Association, the North Carolina Society of Respiratory  
49 Care, the Governor, and the General Assembly of all the Board's official  
50 actions during the preceding year, together with any recommendations and  
51 findings regarding improvements of the practice of respiratory care.

- 1 (11) Publish and make available upon request the licensure standards prescribed  
2 under this Article and all rules adopted pursuant to this Article.  
3 (12) Request and receive the assistance of State educational institutions or other  
4 State agencies.  
5 (13) Establish and approve continuing education requirements for persons  
6 seeking licensure under this Article."

7 **SECTION 4.** G.S. 90-653 reads as rewritten:

8 "**§ 90-653. Licensure requirements; examination.**

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

- 11 (1) Submit a completed application as required by the ~~Board.~~Board, including a  
12 form signed by the applicant consenting to the check of the applicant's  
13 criminal record and to the use of the applicant's fingerprints and other  
14 identifying information required by the State and national repositories.  
15 (2) Submit any fees required by the Board.

16 (b) In addition to the requirements set out in subsection (a) of this section, applicants  
17 for a respiratory therapist (RT) license shall also:

- 18 ~~(3) Submit to the Board written evidence, verified by oath,~~  
19 (1) Demonstrate that the applicant has successfully completed the minimal  
20 requirements of ~~a~~an associate degree respiratory care education program as  
21 currently approved by the Commission for Accreditation of Allied Health  
22 Educational Programs, or the Canadian Council on Accreditation for  
23 Respiratory Therapy Education on Accreditation for Respiratory Care  
24 (CoARC) or its successor by arranging for the applicant's respiratory care  
25 education program to submit a verified transcript directly to the Board.  
26 (2) Submit to the Board written evidence, verified by oath, that the applicant has  
27 successfully completed the minimal requirements for Basic Cardiac Life  
28 Support, as recognized by the American Heart Association, the American  
29 Red Cross, or the American Safety and Health Institute.  
30 (3) Submit to the Board written evidence, verified by oath, that the applicant has  
31 successfully passed the Certified Respiratory Therapist examination or its  
32 successor given by the National Board for Respiratory Care, Inc.  
33 ~~(4) Submit to the Board written evidence, verified by oath, that the applicant has~~  
34 ~~successfully completed the minimal requirements for Basic Cardiac Life~~  
35 ~~Support as recognized by the American Heart Association, the American~~  
36 ~~Red Cross, or the American Safety and Health Institute.~~

37 (c) In addition to the requirements set out in subsection (a) of this section, applicants  
38 for a respiratory care practitioner (RCP) license shall also:

- 39 (1) Demonstrate that the applicant has successfully completed the minimal  
40 requirements of a baccalaureate degree respiratory care education program  
41 approved by the Board or has completed an equivalent program approved by  
42 the Board by arranging for the applicant's program to submit a verified  
43 transcript directly to the Board.  
44 (2) Submit to the Board written evidence, verified by oath, that the applicant has  
45 successfully completed the minimal requirements for Advanced Cardiac Life  
46 Support, Pediatric Advanced Life Support, or Neonatal Resuscitation  
47 Program as recognized by the American Heart Association, the American  
48 Red Cross, the American Safety and Health Institute, or the American  
49 Academy of Pediatrics.

1           (3)     Submit to the Board written evidence, verified by oath, that the applicant has  
2           successfully passed the Registered Respiratory Therapist examination or its  
3           successor given by the National Board for Respiratory Care, Inc.

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

6           (d)     When granting a license, the Board shall state the terms and conditions of use of the  
7           license by the licensee.

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

12          **SECTION 5.** G.S. 90-654 and G.S. 90-656 are repealed.

13          **SECTION 6.** G.S. 90-659 reads as rewritten:

14          "**§ 90-659. Suspension, revocation, and refusal to renew a license.**

15          (a)     The Board shall take the necessary actions to deny or refuse to renew a license,  
16          suspend or revoke a license, or ~~to impose probationary conditions~~conditions, including placing  
17          limitations on the practice of respiratory care, reprimand, assessing monetary redress, or  
18          requiring satisfactory completion of treatment programs or educational programs, on a licensee  
19          or applicant if the licensee or applicant:

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

21                   a.     Employed fraud, deceit, or misrepresentation ~~in~~in (i) obtaining or  
22                   attempting to obtain a license~~license~~ or (ii) the renewal or  
23                   reinstatement of a license~~license~~ or (iii) obtaining money or anything  
24                   of value.

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

27                   c.     Practiced respiratory care without a license.

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

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

32               (3)     ~~Was adjudicated insane or incompetent, until proof of recovery from the~~  
33               ~~condition can be established.~~Has developed a physical or mental disability  
34               that renders the licensee or applicant unfit to practice respiratory care with  
35               reasonable skill and competence and in a manner not harmful to the public.  
36               An adjudication of mental incompetency in a court of competent jurisdiction  
37               or a determination of mental incompetency by other lawful means shall be  
38               conclusive proof of unfitness to practice respiratory care until the licensee or  
39               applicant is subsequently lawfully declared mentally competent.

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

43               (5)     Has failed to respond within a reasonable period of time and in a reasonable  
44               manner, as determined by the Board, to inquiries from the Board concerning  
45               any matter affecting a license to practice respiratory care.

46               (6)     Has developed an impairment caused by the licensee's or applicant's use of  
47               alcohol, drugs, or controlled substances, which interferes with the ability of  
48               the licensee or applicant to practice respiratory care with reasonable skill,  
49               competence, and in a manner not harmful to the public.

1           (7) Has practiced respiratory care outside the boundaries of demonstrated  
2           competence or the limitations of education, training, or supervised  
3           experience.

4           (8) Has had a license for the practice of respiratory care in any other jurisdiction  
5           suspended or revoked or been disciplined by any licensing or certification  
6           board in any other jurisdiction for conduct that would subject the licensee or  
7           applicant to disciplinary action under this Article.

8           (9) Is a hazard to the public health by reason of having a serious communicable  
9           disease.

10       (b) Except as provided in subsection (c) of this section, denial, ~~Denial,~~ refusal to renew,  
11 suspension, or revocation of a license, or imposition of probationary conditions upon a licensee  
12 may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter  
13 150B of the General Statutes and rules adopted pursuant to this Article. An application may be  
14 made to the Board for reinstatement of a revoked license if the revocation has been in effect for  
15 at least one year.

16       (c) The Board may deny an initial application for a license as a respiratory care  
17 practitioner without a hearing if the individual fails to submit a complete application which  
18 demonstrates that the applicant has met the education and testing requirements of G.S. 90-653.

19       (d) If after notice is duly issued, a licensee or applicant fails to appear for a scheduled  
20 hearing and no continuance has been granted, the Board may hear the evidence of witnesses  
21 that have appeared, and the Board may proceed to consider the matter and dispose of the matter  
22 on the basis of the evidence before the Board. For good cause, the Board may reopen any case  
23 for further hearing.

24       (e) The Board and its members and staff shall not be held liable in any civil or criminal  
25 proceeding for exercising, in good faith, the powers and duties authorized by law.

26       (f) A person, partnership, firm, corporation, association, authority, or other entity acting  
27 in good faith without fraud or malice shall be immune from civil liability for (i) reporting,  
28 investigating, assessing, monitoring, or providing an expert medical opinion to the Board  
29 regarding the acts or omissions of a licensee or applicant that violate the provisions of  
30 subsection (a) of this section or any other provision of law relating to the fitness of a licensee or  
31 applicant to practice respiratory care or (ii) initiating or conducting proceedings against a  
32 licensee or applicant if a complaint is filed or action is taken in good faith without fraud or  
33 malice. A person shall not be held liable in any civil proceeding for testifying before the Board  
34 in good faith and without fraud or malice in any proceeding involving a violation of subsection  
35 (a) of this section or any other law relating to the fitness of an applicant or licensee to practice  
36 respiratory care, or for making a recommendation to the Board in the nature of peer review, in  
37 good faith and without fraud and malice.

38       (g) A licensee may, with the consent of the Board, voluntarily relinquish a license at  
39 any time. The Board may delay or refuse the granting of its consent as it may deem necessary  
40 in order to investigate any pending complaint, allegation, or issue regarding violation of any  
41 provisions of this Article by the licensee. Notwithstanding any provision to the contrary, the  
42 Board retains full jurisdiction to investigate alleged violations of this Article by any person  
43 whose license is relinquished under this subsection and, upon proof of any violation of this  
44 Article by any such person, the Board may take disciplinary action as authorized by this  
45 section."

46       **SECTION 7.** G.S. 90-659(c) reads as rewritten:

47       "(c) The Board may deny an initial application for a license as a respiratory therapist or a  
48 respiratory care practitioner without a hearing if the individual fails to submit a complete  
49 application which demonstrates that the applicant has met the education and testing  
50 requirements of ~~G.S. 90-653.~~G.S. 90-653(b) or (c) respectively."

51       **SECTION 8.** G.S. 90-660(b)(6) is repealed.

1           **SECTION 9.** G.S. 90-661 reads as rewritten:

2   "**§ 90-661. Requirement of license.**

3       (a)   It shall be unlawful for any person who is not currently licensed under this Article  
4 to:

5           (1)   Engage in the practice of respiratory care.

6           (2)   Use in connection with his or her name the title "respiratory care  
7 practitioner" or "respiratory therapist" or the letters "RCP" or "RT" or any  
8 other words, letters, abbreviations, or insignia that indicate or imply that the  
9 person is a licensed respiratory care practitioner or a respiratory therapist.~~the  
10 title "respiratory care practitioner".~~

11          (3)   Use ~~the letters "RCP", "RTT", "RT", or any facsimile or combination in any  
12 words, letters, abbreviations, or insignia.~~

13          (4)   Imply orally or in writing or indicate in any way that the person is a  
14 respiratory care practitioner or is otherwise licensed under this Article.

15       (b)   It shall be unlawful for any person to

16       ~~(5)~~   Employ employ or solicit for employment unlicensed persons to practice  
17 respiratory care."

18           **SECTION 10.** G.S. 90-664 reads as rewritten:

19   "**§ 90-664. Persons and practices not affected.**

20       The requirements of this Article shall not apply to:

21           (1)   Any person registered, certified, credentialed, or licensed to engage in  
22 another profession or occupation or any person working under the  
23 supervision of a person registered, certified, credentialed, or licensed to  
24 engage in another profession or occupation in this State who is performing  
25 work incidental to or within the practice of that profession or occupation and  
26 does not represent himself or herself as a respiratory care practitioner.

27           (2)   A student or trainee working under the direct supervision of a respiratory  
28 care practitioner while fulfilling an experience requirement or pursuing a  
29 course of study to meet requirements for licensure in accordance with rules  
30 adopted pursuant to this Article.

31           (3)   A respiratory care practitioner serving in the Armed Forces or the Public  
32 Health Service of the United States or employed by the Veterans  
33 Administration ~~when performing duties associated with that service or  
34 employment~~or other federal agency, to the extent permitted under federal  
35 law, so long as the individual limits services to those directly related to work  
36 with the employing federal agency.

37           (4)   A person who performs only support activities as defined in  
38 G.S. 90-648(13).

39           (5)   A person licensed as a respiratory care practitioner in another jurisdiction  
40 while providing respiratory care in a declared emergency in this State,  
41 providing respiratory care as a member of an organ harvesting team, or  
42 providing respiratory care on board an ambulance as part of an ambulance  
43 transport team transporting a patient into or out of this State."

44           **SECTION 11.** G.S. 90-664 reads as rewritten:

45   "**§ 90-664. Persons and practices not affected.**

46       The requirements of this Article shall not apply to:

47           (1)   Any person registered, certified, credentialed, or licensed to engage in  
48 another profession or occupation or any person working under the  
49 supervision of a person registered, certified, credentialed, or licensed to  
50 engage in another profession or occupation in this State who is performing

- 1 work incidental to or within the practice of that profession or occupation and  
2 does not represent himself or herself as a respiratory care practitioner.
- 3 (2) A student or trainee working under the direct supervision of a respiratory  
4 care practitioner while fulfilling an experience requirement or pursuing a  
5 course of study to meet requirements for licensure in accordance with rules  
6 adopted pursuant to this Article.
- 7 (3) A respiratory care practitioner or respiratory therapist serving in the Armed  
8 Forces or the Public Health Service of the United States or employed by the  
9 Veterans Administration or other federal agency, to the extent permitted  
10 under federal law, so long as the individual limits services to those directly  
11 related to work with the employing federal agency.
- 12 (4) A person who performs only support activities as defined in  
13 G.S. 90-648(13).
- 14 (5) A person licensed as a respiratory care practitioner or respiratory therapist in  
15 another jurisdiction while providing respiratory care in a declared  
16 emergency in this State, providing respiratory care as a member of an organ  
17 harvesting team, or providing respiratory care on board an ambulance as part  
18 of an ambulance transport team transporting a patient into or out of this  
19 State."

20 **SECTION 12.** Any person licensed by the Board who has passed the Certified  
21 Respiratory Therapist examination given by the National Board for Respiratory Care, Inc., on  
22 the effective date of this act shall be deemed to have complied with the requirements of  
23 G.S. 90-653(b), as enacted in Section 4 of this act. Any person licensed as a respiratory care  
24 practitioner by the Board who has passed the Registered Respiratory Therapist examination  
25 given by the National Board for Respiratory Care, Inc., on the effective date of this act shall be  
26 deemed to have complied with the requirements of G.S. 90-653(c), as enacted in Section 4 of  
27 this act.

28 **SECTION 13.** Sections 2, 4, 7, and 11 of this act become effective January 1,  
29 2015. G.S. 90-659(a), as amended in Section 6 of this act, becomes effective October 1, 2013.  
30 G.S. 90-659(b), (c), (d), and (g), as amended in Section 6 of this act, become effective October  
31 1, 2013, and apply to applications filed, actions commenced, or action by the Board on or after  
32 that date. G.S. 90-659 (e) and (f), as amended in Section 6 of this act, are effective when they  
33 become law and apply to causes of action arising on or after that date. The remainder of this act  
34 is effective when it becomes law.