

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 528

Short Title: Regulate Respiratory Care.

(Public)

Sponsors: Representatives Nye; Bowen and Warren.

Referred to: Human Resources.

March 13, 1989

1

A BILL TO BE ENTITLED

2

AN ACT TO REGULATE THE PRACTICE OF RESPIRATORY CARE.

3

The General Assembly of North Carolina enacts:

4

Section 1. Chapter 90 of the General Statutes is amended by adding a new

5

Article to read:

6

**“ARTICLE 25.**

7

**“RESPIRATORY CARE PRACTICE ACT.**

8

**“§ 90-350. Short title.**

9

This Article shall be known as the ‘Respiratory Care Practice Act.’

10

**“§ 90-351. Purpose.**

11

The General Assembly finds that the practice of respiratory care in the State of North Carolina affects the public health, safety and welfare. 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 to practice or certified to assist in respiratory care.

12

**“§ 90-352. Definitions.**

13

In this Article, unless the context otherwise requires, the following definitions shall apply:

14

(1) ‘Board’ means the State Board of Respiratory Care.

15

(2) ‘Performance of respiratory care’ means respiratory care in accordance with the written or verbal order of a licensed physician and includes the diagnostic and therapeutic use of:

16

a. Administration of medical gases (except for the purpose of anesthesia);

17

18

19

20

21

22

23

24

- 1           b.    Aerosol and humidification;  
2           c.    Environmental control mechanisms and hyperbaric therapy;  
3           d.    Pharmacologic agents related to respiratory care procedures;  
4           e.    Mechanical or physiological ventilatory support;  
5           f.    Bronchopulmonary hygiene;  
6           g.    Cardiopulmonary resuscitation;  
7           h.    Maintenance of the natural airway;  
8           i.    Insertion and maintenance of artificial airways;  
9           j.    Specific diagnostic and testing techniques employed in the  
10          medical management of patients for diagnosing, monitoring,  
11          treatment, and research of cardiopulmonary abnormalities,  
12          including measurements, analysis, and reporting of ventilatory  
13          volumes, pressures, and flows, collection of specimens of blood  
14          and blood gases, expired and inspired gas samples, respiratory  
15          secretions, and pulmonary function testing, and hemodynamic  
16          and other related physiologic measurements of the  
17          cardiopulmonary system.
- 18          (3)   'Practice of respiratory care' includes:
- 19           a.    Therapeutic and diagnostic use of medical gases, humidity, and  
20           aerosols including the maintenance of associated apparatus;  
21           b.    Administration of drugs and medications to the  
22           cardiopulmonary system;  
23           c.    Provision of ventilatory assistance and ventilatory control;  
24           d.    Postural drainage, chest physiotherapy, breathing exercises and  
25           other respiratory rehabilitation procedures;  
26           e.    Cardiopulmonary resuscitation and maintenance of natural  
27           airways, the insertion and maintenance of artificial airways; and  
28           f.    The acceptance, transcription, interpretation, and  
29           implementation of a physician's written or verbal orders  
30           pertaining to the practice of respiratory care. It also includes  
31           testing techniques employed in respiratory care for diagnosing,  
32           monitoring, treatment and research. This shall be understood to  
33           include but not to be limited to measurement, analysis, and  
34           reporting of ventilatory volumes, pressures and flows, specimen  
35           collection of blood and other materials, pulmonary function  
36           testing, and hemodynamic and other related physiological  
37           monitoring of the cardiopulmonary system. The practice of  
38           respiratory care is not limited to the hospital setting.
- 39          (4)   'Respiratory care' means the allied health profession responsible for  
40          the treatment, management, diagnostic testing, control and care of  
41          patients with deficiencies and abnormalities associated with the  
42          cardiopulmonary system.
- 43          (5)   'Respiratory care practitioner'(RCP) means a person licensed under  
44          this Article to practice respiratory care.

- 1           (6) 'Respiratory care assistant'(RCA) means a person certified under this  
2 Article to assist a respiratory care practitioner.
- 3           (7) 'Respiratory care' includes 'inhalation therapy' and 'respiratory  
4 therapy.'
- 5           (8) 'Respiratory care program' means an academically based program  
6 designed to educate individuals as respiratory care practitioners, or a  
7 training program designed to prepare individuals as respiratory care  
8 assistants.

9 **"§ 90.353. State Board of Respiratory Care; creation.**

10       (a) There is created a State Board of Respiratory Care to administer the  
11 provisions of this Article. The Board shall consist of seven members who are citizens  
12 of the United States and residents of this State, appointed as follows:

- 13           (1) Two physician members consisting of one member of the North  
14 Carolina Thoracic Society and one member of the North Carolina  
15 Society of Anesthesiologists;
- 16           (2) Four respiratory care practitioners who are licensed under this Article  
17 and engaged in the practice of respiratory care for a period of not less  
18 than five years immediately preceding their appointment to the Board  
19 and who are members of the North Carolina Society for Respiratory  
20 Care, Inc.; and,
- 21           (3) One member of the general public.

22       (b) The Governor, with the advice of the North Carolina Society for Respiratory  
23 Care, Inc., shall appoint the members of the Board for terms of four years. The terms of  
24 office of the members first appointed shall begin when they are appointed and shall  
25 continue thereafter for the following periods: one physician and two respiratory care  
26 practitioners for a period of three years and one physician, one public member, and two  
27 respiratory care practitioners, for a period of four years. Upon the expiration of these  
28 terms, and all terms thereafter, the Governor shall appoint a successor for the member  
29 whose term expires for a term of four years, with no member being appointed for more  
30 than three consecutive terms and with the respiratory care practitioner members being  
31 licensed under the provisions of this Article. Vacancies in the Board shall be filled by  
32 appointment by the Governor in like manner for the balance of an unexpired term and  
33 each member shall serve until his successor is appointed and qualified.

34       (c) Upon expiration of the term of a physician member, the North Carolina  
35 Thoracic Society or the North Carolina Society of Anesthesiologists, as appropriate,  
36 may submit to the Governor a list of three persons qualified to serve on the Board to  
37 replace their respective member whose term has expired. Upon expiration of the term  
38 of any respiratory care practitioner member, the North Carolina Society for Respiratory  
39 Care, Inc., may submit to the Governor a list of three persons qualified to serve for each  
40 position vacated. Appointments may be made from these lists by the Governor and  
41 additional lists may be provided by the respective organizations if requested by the  
42 Governor.

43       (d) The Governor may remove any member from the Board for neglect of any  
44 duty required by law or for incompetency or unethical or dishonorable conduct.

1 **"§ 90-354. State Board of Respiratory Care; operating procedures.**

2 (a) The Board shall meet at least twice each year and shall elect annually a  
3 chairman, and vice-chairman from its members. The Board may convene at the request  
4 of the chairman or at any other time to transact its business.

5 (b) A majority of the members of the Board, including the chairman or vice-  
6 chairman, constitute a quorum at any meeting and a majority of the required quorum is  
7 sufficient for the Board to take action by vote.

8 (c) The Board may appoint and employ a qualified person who may not be a  
9 member of the Board to serve as administrative secretary to the Board, and define the  
10 duties of the administrative secretary, in addition to those enumerated in this Article.  
11 The administrative secretary shall meet the qualifications for the respiratory care  
12 practitioner member.

13 **"§ 90-355. State Board of Respiratory Care; duties and powers.**

14 (a) In the performance of its duties under this Article, the Board shall:

15 (1) Examine, license, or certify and renew the licenses or certifications of  
16 qualified applicants.

17 (2) Approve all respiratory care programs, and utilize respiratory care  
18 educator(s) in the review of all respiratory care educational and  
19 training programs.

20 (3) Establish fees within the maximum limitations as set forth in this  
21 Article.

22 (4) Maintain an up-to-date list of every living person licensed to practice  
23 respiratory care or certified as a respiratory care assistant under this  
24 Article. The list shall show each individual's last known place of  
25 employment, last known place of residence, and the date of and  
26 number of his/her license or certificate.

27 (5) Cause the prosecution of all persons violating this Article and incur  
28 necessary expenses therefor.

29 (6) Keep a record of all proceedings of the Board which shall be made  
30 available to the public for inspection during reasonable business hours.

31 (7) Conduct hearings on charges calling for discipline of a licensee, or the  
32 denial, revocation, or suspension of a license.

33 (8) Conduct hearings on charges calling for discipline of a certified  
34 assistant, or the denial, revocation, or suspension of a certificate.

35 (9) Maintain an up-to-date list of persons whose licenses or certificates  
36 have been suspended, revoked, or denied. This list shall include the  
37 name, social security number, type and cause of action, date and  
38 penalty incurred, and the length of the penalty imposed.

39 (b) In exercising its powers under this Article the Board may:

40 (1) Define the duties of a respiratory care assistant and further define the  
41 duties of a respiratory care practitioner.

42 (2) Adopt rules not inconsistent with the law necessary to carry out the  
43 provisions of this Article. Rules shall be adopted in accordance with  
44 Chapter 150B of the General Statutes.

- 1           (3) Employ personnel needed to perform the functions of the Board.
- 2           (4) Establish relicensure and recertification requirements and procedures.
- 3           (5) Secure the services of resource consultants. Resource consultants shall  
4 receive travel and other necessary expenses incurred while engaged in  
5 consultative service to the Board.
- 6           (6) Enter into agreements or contracts with outside organizations for the  
7 purpose of developing, administering, grading, and reporting the  
8 results of licensing and certification examinations. These groups shall  
9 be capable of meeting the standards of the National Commission for  
10 Health Certifying Agencies, or its equivalent. The licensing and  
11 certification examinations shall be validated and recognized as testing  
12 respiratory care competencies.

13 **"§ 90-356. Compensation of Board members.**

14       (a) Members of the Board shall receive per diem and allowances in accordance  
15 with G.S. 93B-5.

16       (b) Members of the Board shall enjoy the same rights of protection from personal  
17 liability as those enjoyed by other employees of the State for actions taken while acting  
18 pursuant to any provision of this Article in the course of their duties.

19 **"§ 90-357. Criteria for licensing.**

20       (a) An applicant for a license to practice respiratory care shall submit to the  
21 Board written evidence, verified by oath, that the applicant:

- 22           (1) Has completed an approved four-year high school course of study or  
23 its equivalent determined by the appropriate educational agency; and
- 24           (2) Has completed an academically based program designed to educate  
25 individuals as respiratory care practitioners as approved by the Board.  
26 The Board shall establish the standards for respiratory care practitioner  
27 programs. Respiratory care practitioner programs shall be approved as  
28 set forth in G.S. 90-355(2); and

29       (b) The applicant, except where otherwise defined in the Article, shall be  
30 required to pass an examination, whereupon the Board shall issue to the applicant a  
31 license to practice respiratory care; or

32       (c) The Board may issue a license to practice respiratory care by endorsement to:

- 33           (1) An applicant who is currently licensed to practice respiratory care  
34 under the laws of another state, territory, or country, if the  
35 qualifications of the applicant are deemed by the Board to be  
36 equivalent to those required in this State; or
- 37           (2) Applicants holding credentials with active status, conferred by the  
38 National Board for Respiratory Care (NBRC), as a Certified  
39 Respiratory Therapy Technician (CRTT) and/or as a Registered  
40 Respiratory Therapist (RRT), provided that the credential has not been  
41 suspended or revoked; and
- 42           (3) Applicants applying under this section shall be required to verify under  
43 oath that their credentials have not been suspended or revoked.

44 **"§ 90-358. Criteria for Certification.**

1       (a) An applicant for certification as a respiratory care assistant shall submit to the  
2 Board written evidence, verified by oath, that the applicant:

3           (1) Has completed an approved four-year high school course of study or  
4 its equivalent determined by the appropriate educational agency; and

5           (2) Has completed a training program for the respiratory care assistant as  
6 approved by the Board. The Board shall establish the standards for a  
7 respiratory care assistant program. Respiratory care assistant training  
8 programs shall be approved as set forth in G.S. 90-355(2).

9       (b) Except as otherwise provided in this Article, the applicant shall be required to  
10 pass an examination, whereupon the Board shall issue to the applicant a respiratory care  
11 assistant certificate.

12 **"§ 90-359. Examinations.**

13       (a) Examinations for licensure of the respiratory care practitioner and  
14 certification of the respiratory care assistant shall be conducted not less than two times a  
15 year and at places determined by the Board. Passing scores of examinations given  
16 under the provisions of this Article shall be established by the Board.

17       (b) An applicant applying for a license to practice or a certificate to assist in  
18 respiratory care shall pay an administrative fee of not more than one hundred dollars  
19 (\$100.00) to the Board. A fee of not more than two hundred dollars (\$200.00) shall be  
20 required for each examination. If an applicant fails to complete the requirements for  
21 licensing or certification within three years from the date of filing, the application is  
22 deemed abandoned.

23 **"§ 90-360. Temporary permits.**

24       Upon payment of a fee of not more than fifty dollars (\$50.00), the Board may issue a  
25 temporary permit to practice respiratory care for a period of six months to an applicant  
26 for licensing, pending compliance with the requirements for licensing, providing the  
27 applicant shows written evidence, verified by oath, that the applicant is currently  
28 practicing, or has complied with G.S. 90-358(a), or has within the last 12 months  
29 practiced respiratory care in another state, territory, or country and/or was licensed to  
30 practice respiratory care in that state. On expiration of the permit and on payment of a  
31 fee of not more than fifty dollars (\$50.00), the Board may issue a permit to practice  
32 respiratory care for an additional period not to exceed 12 months from the date of  
33 issuance of the original permit, pending reevaluation of compliance with this Article.  
34 Reapplication following abandonment of an application shall not entitle the applicant to  
35 a permit.

36 **"§ 90-361. Grandfather clause.**

37       (a) The Board shall issue a license to practice respiratory care to an applicant,  
38 who, at the time of the effective date of this Article, has passed the entry level (CRTT)  
39 or advanced practitioner (RRT) examinations administered by the National Board for  
40 Respiratory Care. An applicant applying for licensure under this section must do so  
41 within 24 months of the effective date of this Article.

42       (b) The Board shall issue a license to practice respiratory care to an applicant,  
43 who at the time of the effective date of this Article, and who, through written evidence,  
44 verified by oath, demonstrates that he/she is currently performing, within the State of

1 North Carolina, the duties of a respiratory care practitioner as defined by this Article,  
2 and has two or more years clinical experience in the performance of these duties. An  
3 applicant applying for licensure under this provision must do so within 12 months of the  
4 effective date of this Article.

5 (c) The Board shall issue a certificate to assist in respiratory care to an applicant,  
6 who at the time of the effective date of this Article does not meet the qualifications of  
7 G.S. 90-361(a) or (b), but, who, at the effective date of this Article, and through written  
8 evidence, verified by oath, demonstrates that he/she is currently performing the duties of  
9 a respiratory care assistant within the State of North Carolina. During the 24-month  
10 period following the effective date of this Article, the respiratory care assistant may  
11 apply for and take the respiratory care practitioner examination. After passing the  
12 examination, the assistant shall be granted a respiratory care practitioner license.

13 (d) All respiratory care programs in this State accredited by the Council on Allied  
14 Health Education Accreditation (CAHEA) at the effective date of this Article shall be  
15 issued a five-year Board approval. The program shall maintain its CAHEA  
16 accreditation during the five-year grandfather period in order to maintain Board  
17 approval.

18 **"§ 90-362. Professional identification.**

19 (a) A person holding a license to practice respiratory care in this State may use  
20 the title, 'licensed respiratory care practitioner' and the abbreviation, 'RCP'.

21 (b) A licensee shall show his license when requested.

22 (c) A person holding a respiratory care assistant certificate in this State may use  
23 the title, 'certified respiratory care assistant' and the abbreviation, 'RCA'.

24 (d) A certified assistant shall show his certificate when requested.

25 **"§ 90-363. Renewal of license or certification.**

26 (a) Except as provided in this section a license or certificate issued under the  
27 provisions of this Article shall be renewed annually. The Board shall mail notices at  
28 least 30 calendar days prior to expiration for renewal of licenses and certificates to  
29 every person to whom a license or certificate was issued or renewed during the  
30 preceding renewal period. The licensed or certified individuals shall complete the  
31 notice of renewal and return it to the Board with a renewal fee of not more than fifty  
32 dollars (\$50.00) before the date of expiration.

33 (b) Upon receipt of the notice of renewal and the fee, the Board shall verify its  
34 contents and shall issue the license or certificate, as appropriate, for the current renewal  
35 period which shall be valid for the period stated thereon. The Board may establish  
36 continuing education requirements for annual renewal of the license or certificate.

37 (c) A licensee or certified assistant who allows his license or certificate to expire  
38 by failing to renew it, may be reinstated by the Board upon payment of renewal fee and  
39 a reinstatement fee of not more than fifty dollars (\$50.00) provided that a request for  
40 reinstatement is made within 60 days of the end of the renewal period.

41 (d) A respiratory care practitioner or respiratory care assistant who does not  
42 provide respiratory care during the succeeding renewal period is not required to pay the  
43 renewal fee as long as he remains inactive in the provision of respiratory care. If he  
44 desires to resume respiratory care as a licensed RCP or a certified RCA, he shall notify

1 the Board of his intent and shall satisfy the current requirements of the Board in  
2 addition to remitting the renewal fee for the current renewal period and the  
3 reinstatement fee. Requirements of the Board shall include a specific period of time of  
4 continuous inactivity after which retesting is required.

5 (e) The Board may establish fees for replacement and duplicate licenses and  
6 certificates.

7 **"§ 90-364. Expenses payable from fees collected by Board.**

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

13 (b) All moneys and receipts shall be kept in a special fund by and for the use of  
14 the Board for the exclusive purpose of carrying out the provisions of this Article.

15 **"§ 90-365. Disciplinary criteria.**

16 The Board may revoke, suspend, or refuse to renew any license, certificate, or  
17 permit or place on probation, or otherwise reprimand a licensee, certified assistant, or  
18 permit holder or deny a license or certificate to an applicant if it finds that the person:

- 19 (1) Is guilty of fraud or deceit in procuring or attempting to procure a  
20 license or certificate, or renewal of a license to practice or certificate to  
21 assist in respiratory care;
- 22 (2) Is incompetent to practice respiratory care;
- 23 (3) Has been found to be negligent in the practice of respiratory care;
- 24 (4) Is habitually intemperate in the use of alcoholic beverages;
- 25 (5) Is addicted to, or has improperly obtained, possessed, used, or  
26 distributed habit-forming drugs or narcotics;
- 27 (6) Is guilty of dishonest or unethical conduct;
- 28 (7) Has practiced or assisted in respiratory care after his license,  
29 certificate, or permit has expired or has been suspended;
- 30 (8) Has practiced or assisted in respiratory care under cover of any permit,  
31 certificate, or license illegally or fraudulently obtained or issued;
- 32 (9) Has violated or aided or abetted others in violation of any provision of  
33 the Article.

34 **"§ 90-366. Due process procedures.**

35 (a) Upon filing of a written complaint with the Board, alleging that a person has  
36 committed any of the acts described in G.S. 90-365, the administrative secretary, or  
37 other authorized employee of the Board shall make an investigation. If the Board finds  
38 reasonable grounds for the complaint, a time and place for a hearing shall be set, notice  
39 of which shall be served on the licensee, certified assistant, permit holder, or applicant  
40 at least 15 calendar days prior to the hearing. The notice shall be by personal service or  
41 by certified mail sent to the last known address of the person.

42 (b) The Board may petition the Superior Court of the county within which the  
43 hearing is being held to issue subpoenas for the attendance of the witnesses and the  
44 production of necessary evidence in any hearing before it. Upon request of the

1 respondent or his counsel, the Board shall petition the court to issue subpoenas in behalf  
2 of the respondent. The Superior Court upon petition may issue any subpoenas it deems  
3 necessary.

4 (c) Unless otherwise provided in this Article, hearing procedures shall be  
5 promulgated in accordance with, and a person who feels aggrieved by a decision of the  
6 Board may take an appeal pursuant to, Chapter 150B of the General Statutes.

7 **"§ 90-367. Persons and practices not affected.**

8 (a) Except as otherwise provided in this Article, no person shall practice  
9 respiratory care or assist in respiratory care or represent himself to be a respiratory care  
10 practitioner or respiratory care assistant unless he is licensed or certified under this  
11 Article.

12 (b) This Article does not prohibit:

13 (1) The practice or assistance of respiratory care which is an integral part  
14 of the program of study by students enrolled in a respiratory care  
15 education program approved by the Board. Students enrolled in  
16 respiratory care practitioner programs shall be identified as 'student-  
17 RCP'and shall only provide respiratory care under supervision.  
18 Students enrolled in respiratory care assistant programs shall be  
19 identified as 'RCA-trainee' and train under the supervision of a  
20 licensed 'RCP' or a licensed physician.

21 (2) Self-care by a patient, or gratuitous care by a friend or family member  
22 who does not represent or hold himself out to be a respiratory care  
23 practitioner or respiratory care assistant.

24 (3) Respiratory care services rendered in the course of an emergency.

25 (4) Persons in the military services or working in federal facilities when  
26 functioning in the course of their assigned duties.

27 (5) The respiratory care practitioner from performing advances in the art  
28 and techniques of respiratory care learned through formalized or  
29 specialized training.

30 (c) Nothing in this Article is intended to limit, preclude, or otherwise interfere  
31 with the practices of other persons and health providers licensed by appropriate agencies  
32 of this State.

33 (d) An individual who has demonstrated his competency in one or more areas  
34 covered by the Article may perform only those functions that he is qualified by  
35 examination to perform. The standards of the National Commission for Health  
36 Certifying Agencies shall be the basis for evaluating those examinations and/or  
37 examining organizations.

38 **"§ 90-368. Practice of medicine prohibited.**

39 Nothing in this Article shall be construed to permit the practice of medicine.

40 **"§ 90-369. Penalties for violations.**

41 (a) It shall be a misdemeanor for any person to:

42 (1) Sell, fraudulently obtain, or furnish any respiratory care diploma,  
43 permit, certificate, license, or record, or aid or abet therein;

- 1           (2) Practice, or assist with, respiratory care under cover of any respiratory  
2 care diploma, permit, certificate, license, or record illegally or  
3 fraudulently obtained or issued;
- 4           (3) Practice respiratory care or assist with respiratory care unless duly  
5 licensed or certified to do so under this Article;
- 6           (4) Impersonate in any manner or pretend to be a respiratory care  
7 practitioner or respiratory care assistant, or use the title, 'licensed  
8 respiratory care practitioner,' the letters 'RCP', or the title 'certified  
9 respiratory care assistant,' the letters 'RCA', or any other words, letters,  
10 signs, symbols, or devices to indicate the person using them is a  
11 licensed respiratory care practitioner or certified respiratory care  
12 assistant, unless authorized by license, certificate, or permit under the  
13 provisions of this Article;
- 14           (5) Provide respiratory care during the time his license, certificate, or  
15 permit is suspended, revoked, or expired;
- 16           (6) Fail to notify the Board of the suspension, probation, or revocation of  
17 any past or currently held licenses, certifications, or permits required  
18 to provide respiratory care in this or any other jurisdiction;
- 19           (7) Knowingly employ unlicensed or uncertified individuals in the  
20 provision of respiratory care in the capacity of a respiratory care  
21 practitioner or respiratory care assistant;
- 22           (8) Make false representations or impersonate or act as a proxy for another  
23 person or allow or aid any person to impersonate him in connection  
24 with any examination or application for licensing, or certification, or  
25 request to be examined, certified, or licensed;
- 26           (9) Otherwise violate any provision of this Article.
- 27       (b) This misdemeanor shall be punishable by a fine of not more than one  
28 thousand dollars (\$1,000) or by imprisonment for not more than six months or by both  
29 fine and imprisonment for each offense."

30           Sec. 2. This act is effective upon ratification and applies to all practitioners  
31 and assistants licensed or certified on or after January 1, 1992.