

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 488

Short Title: Respiratory Care Practice Act.

(Public)

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Sponsors: Representatives Barnhill; Beall, Black, Bowen, D. Brown, Church, Colton, Cunningham, Dickson, Griffin, Hackney, Holt, James, Mercer, Morgan, Nye, Oldham, J. Preston, Rogers, Wilmoth, and Wright.

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Referred to: State Government.

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March 24, 1993

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A BILL TO BE ENTITLED

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AN ACT TO REGULATE THE PRACTICE OF RESPIRATORY CARE.

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The General Assembly of North Carolina enacts:

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

5

Article to read:

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**"ARTICLE 28.**

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**"RESPIRATORY CARE PRACTICE ACT.**

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**"§ 90-405. Short title.**

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This Article is the Respiratory Care Practice Act and may be cited by that name.

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**"§ 90-406. Purpose.**

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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 pursuant to this Article.

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**"§ 90-407. Definitions.**

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The following definitions apply in this Article, unless the context otherwise requires:

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(1) Board. – The State Board of Respiratory Care.

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(2) Practice of respiratory care. – Respiratory care under medical direction in accordance with the written or verbal order of a licensed physician.

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The term includes the acceptance, transcription, interpretation, and implementation of a physician's written or verbal order pertaining to

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1 the practice of respiratory care. The term also includes diagnostic and  
2 therapeutic use of:

- 3 a. Medical gases, humidity, and aerosols including the  
4 maintenance of associated apparatus (except for the purpose of  
5 anesthesia);  
6 b. Pharmacologic agents related to respiratory care procedures.  
7 This includes those agents necessary to perform hemodynamic  
8 monitoring;  
9 c. Mechanical or physiological ventilatory support;  
10 d. Postural drainage, chest percussion, breathing exercises, and  
11 related respiratory care procedures;  
12 e. Cardiopulmonary resuscitation and maintenance of natural  
13 airways, the insertion and maintenance of artificial airways;  
14 f. Specific diagnostic and testing techniques employed in the  
15 medical management of patients for diagnosing, monitoring,  
16 treatment, and research of cardiopulmonary abnormalities,  
17 including the collection, measurement, analysis, and reporting  
18 of ventilatory volumes, pressures, flows, specimens of blood,  
19 respiratory gases, and respiratory secretions;  
20 g. Pulmonary function testing, hemodynamic and other related  
21 physiologic measurements of the cardiopulmonary system;  
22 h. Hyperbaric oxygen therapy; and  
23 i. Extracorporeal membrane oxygenation.

24 (3) Respiratory care. – The treatment, management, diagnostic testing, and  
25 care of patients with deficiencies and abnormalities associated with the  
26 cardiopulmonary system. The term includes inhalation therapy and  
27 respiratory therapy.

28 (4) Respiratory care practitioner. – A person licensed under this Article to  
29 practice respiratory care.

30 **"§ 90-408. State Board of Respiratory Care; creation.**

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

33 (1) One member shall be a respiratory care practitioner whose primary  
34 practice is management of respiratory care services.

35 (2) One member shall be a respiratory care practitioner who is an educator  
36 on the respiratory care technology faculty of a State community  
37 college or university.

38 (3) One member shall be a respiratory care practitioner whose primary  
39 practice is respiratory home care.

40 (4) One member shall be a respiratory care practitioner whose primary  
41 practice is clinical respiratory care.

42 (5) One member shall be a physician whose primary practice is  
43 pulmonology.

1           (6) One member shall be a physician whose primary practice is  
2           anesthesiology.

3           (7) One member shall represent the public at large.

4       (b) Professional members of the Board shall be citizens of the United States and  
5 residents of this State and shall also satisfy the following criteria:

6           (1) Respiratory care practitioner members shall have practiced respiratory  
7           care for at least five years.

8           (2) Respiratory care practitioner members shall be licensed under this  
9           Article, except the initial appointees shall be licensed under this  
10          Article no later than June 31, 1994.

11          (3) Physician members shall be licensed by the State of North Carolina.

12       (c) The members of the Board appointed from the public at large shall be citizens  
13 of the United States and residents of this State and shall not be any of the following:

14           (1) A respiratory care practitioner.

15           (2) An agent or employee of a person engaged in the profession of  
16           respiratory care.

17           (3) A licensed health care professional or a person enrolled in a program  
18           to become prepared to be a licensed health care professional.

19           (4) An agent or employee of a health care institution, a health care insurer,  
20           or a health care professional school.

21           (5) A member of any allied health profession or a person enrolled in a  
22           program to become prepared to be a member of an allied health  
23           profession.

24           (6) The spouse of an individual who may not serve as a public member of  
25           the Board.

26 **"§ 90-409. Appointments and removal of Board members; terms and**  
27 **compensation.**

28       (a) The members of the Board shall be appointed on or before October 1, 1993,  
29 as follows:

30           (1) The Governor shall appoint the physician members described in G.S.  
31           90-408(a)(5) and G.S. 90-408(6) and the public member described in  
32           G.S. 90-408(a)(7).

33           (2) The General Assembly upon the recommendation of the Speaker of the  
34           House of Representatives shall appoint the professional members  
35           described in G.S. 90-408(a)(1) and G.S. 90-408(a)(2) in accordance  
36           with G.S. 120-121.

37           (3) The General Assembly upon the recommendation of the President Pro  
38           Tempore of the Senate shall appoint the professional members  
39           described in G.S. 90-408(a)(3) and G.S. 90-408(a)(4) in accordance  
40           with G.S. 120-121.

41       (b) Of the members initially appointed, one of the physician members appointed  
42 by the Governor, one of the professional members appointed by the General Assembly  
43 upon the recommendation of the Speaker of the House of Representatives, and one of  
44 the professional members appointed by the General Assembly upon the

1 recommendation of the President Pro Tempore of the Senate shall be appointed for  
2 three-year terms; the public member appointed by the Governor, one of the professional  
3 members appointed by the General Assembly upon the recommendation of the Speaker  
4 of the House of Representatives, and one of the professional members appointed by the  
5 General Assembly upon the recommendation of the President Pro Tempore of the  
6 Senate shall be appointed for two-year terms; and one of the physician members  
7 appointed by the Governor shall be appointed for a one-year term. After the initial  
8 terms specified in this subsection, members of the Board shall take office on the first  
9 day of July immediately following the expired term of that office and shall serve for a  
10 term of three years and until their successors are appointed and qualified.

11 (c) No member shall serve on the Board for more than two consecutive terms.

12 (d) The Governor may remove members of the Board, after notice and  
13 opportunity for hearing, for:

14 (1) Incompetence;

15 (2) Neglect of duty;

16 (3) Unprofessional conduct;

17 (4) Conviction of any felony;

18 (5) Failure to meet the qualifications of this Article; or

19 (6) Committing any act prohibited by this Article.

20 (e) Any vacancy shall be filled by the appointing authority originally filling that  
21 position, except that any vacancy in appointments by the General Assembly shall be  
22 filled in accordance with G.S. 120-122.

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

25 **"§ 90-410. Election of officers; meetings of Board.**

26 (a) Within 30 days after making appointments to the Board, the Governor shall  
27 call the first meeting of the Board. The Board shall elect a chairman and a vice-  
28 chairman who shall hold office according to rules adopted by the Board.

29 (b) The Board shall hold at least two regular meetings each year as provided by  
30 rules adopted by the Board. The Board may hold additional meetings upon the call of  
31 the chairman or any two Board members. A majority of the Board membership shall  
32 constitute a quorum.

33 **"§ 90-411. Power and responsibility of Board.**

34 The Board shall:

35 (1) Determine the qualifications and fitness of applicants for licenses,  
36 renewal of licenses, and reciprocal licenses;

37 (2) Adopt rules necessary to conduct its business, carry out its duties, and  
38 administer this Article;

39 (3) Adopt and publish a code of ethics;

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

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

- 1           (6) Employ professional, clerical, investigative, or special personnel  
2 necessary to carry out the provisions of this Article, and purchase or  
3 rent office space, equipment, and supplies;
- 4           (7) Adopt a seal by which it shall authenticate its proceedings, official  
5 records, and licenses;
- 6           (8) Conduct administrative hearings in accordance with Article 3 of  
7 Chapter 150B of the General Statutes when a 'contested case' as  
8 defined in G.S. 150B-2(2) arises under this Article;
- 9           (9) Establish reasonable fees as allowed by this Article for applications for  
10 examination; initial, provisional, and renewal licenses; and other  
11 services provided by the Board;
- 12           (10) Submit an annual report to the Governor and General Assembly of all  
13 its official actions during the preceding year, together with any  
14 recommendations and findings regarding improvements of the practice  
15 of respiratory care;
- 16           (11) Publish and make available upon request the licensure standards  
17 prescribed under this Article and all rules adopted by the Board;
- 18           (12) Request and receive the assistance of State educational institutions or  
19 other State agencies; and
- 20           (13) Establish and approve continuing education requirements for persons  
21 seeking licensure under this Article.

22 **"§ 90-412. License requirements.**

23 Each applicant for a license as a licensed respiratory care practitioner shall meet the  
24 following requirements:

- 25           (1) Submit a completed application as required by the Board;
- 26           (2) Submit any fees required by the Board; and
- 27           (3) Submit to the Board written evidence, verified by oath, that the  
28 applicant:
  - 29           a. Has completed a JRCRCE accredited or recognized program  
30 designed to educate individuals as respiratory care practitioners;  
31 and
  - 32           b. Has passed an examination as defined by the Board.

33 **"§ 90-413. Notification of applicant following evaluation of application.**

34 After evaluation of the application and of any other evidence, the Board shall notify  
35 each applicant that the application and evidence submitted are satisfactory and accepted,  
36 or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the  
37 rejection.

38 **"§ 90-414. Granting license by endorsement.**

39 The Board may grant, upon application and payment of proper fees, a license to a  
40 person who at the time of application holds a valid license as a licensed respiratory care  
41 practitioner issued by another state or any political territory or jurisdiction acceptable to  
42 the Board if, in the Board's opinion, the requirements for that license are substantially  
43 the same as the requirements of this Article.

44 **"§ 90-415. Provisional licenses.**

1       The Board may grant a provisional license for a period not exceeding 10 months to  
2 any individual who has successfully completed the education and clinical practice  
3 requirements and has made application to take the examination required under G.S. 90-  
4 412. A provisional license shall allow the individual to practice as a respiratory care  
5 practitioner under the supervision of a respiratory care practitioner licensed in this State  
6 and shall be valid until revoked by the Board.

7 **"§ 90-416. Exemption from certain requirements.**

8       (a) The Board shall issue a respiratory care practitioner license to an applicant,  
9 who, at the effective date of this Article, has passed the registered respiratory therapist  
10 (RRT) examinations administered by the National Board for Respiratory Care. An  
11 applicant applying for licensure under this section must do so within 24 months of the  
12 effective date of this Article.

13       (b) The Board shall issue a respiratory care practitioner license to an applicant,  
14 who, at the effective date of this Article, has passed the certified respiratory care  
15 technician (CRCT) examination administered by the National Board for Respiratory  
16 Care. An applicant applying for licensure under this section must do so within 24  
17 months of the effective date of this Article.

18       (c) The Board may issue a provisional respiratory care practitioner license to an  
19 applicant, who at the time of the effective date of this Article does not meet the  
20 qualifications of G.S. 90-416(a) or (b), but who, at the effective date of this Article, and  
21 through written evidence, verified by oath, demonstrates that the applicant is currently  
22 performing the duties of a respiratory care practitioner within the State of North  
23 Carolina. The temporary permit will be valid for 24 months after the effective date of  
24 this Article; within which time the applicant shall be required to complete the  
25 requirements of G.S. 90-412(3)b.

26 **"§ 90-417. License as constituting property of Board; display requirement;**  
27 **renewal; inactive status.**

28       (a) A license issued by the Board is the property of the Board and must be  
29 surrendered to the Board on demand.

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

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

33       (d) The license shall be reissued by the Board annually upon payment of a  
34 renewal fee if the licensee is not in violation of this Article at the time of application for  
35 renewal and if the applicant fulfills current requirements of continuing education as  
36 established by the Board.

37       (e) Each person licensed under this Article is responsible for renewing his license  
38 before the expiration date. The Board shall notify a licensee of pending license  
39 expiration at least 30 days in advance of the expiration date of the license.

40       (f) The Board may provide for the late renewal of a license upon the payment of  
41 a late fee, but no late fee renewal may be granted more than five years after a license  
42 expires.

43       (g) Under procedures and conditions established by the Board, a licensee may  
44 request that his license be declared inactive. The licensee may apply for active status at

1 any time and upon meeting the conditions set by the Board shall be declared to have  
2 active status.

3 **"§ 90-418. Suspension, revocation, and refusal to renew license.**

4 (a) The Board may deny or refuse to renew a license, may suspend or revoke a  
5 license, or may impose probationary conditions on a license if the licensee or applicant  
6 for licensure:

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

8 a. Employment of fraud, deceit, or misrepresentation in obtaining  
9 or attempting to obtain a license, or the renewal of a license;

10 b. Committing an act of malpractice, gross negligence, or  
11 incompetence in the practice of respiratory care;

12 c. Practicing as a licensed respiratory care practitioner without a  
13 current license;

14 d. Engaging in health care practices that are determined to be  
15 hazardous to the health, safety, or welfare of the public;

16 (2) Was convicted of or entered a plea of guilty or **nolo contendere** to any  
17 crime involving moral turpitude;

18 (3) Was adjudicated insane or incompetent, until proof of recovery from  
19 the condition can be established;

20 (4) Engaged in any act or practice violative of any of the provisions of this  
21 Article or any rule adopted by the Board, or aided, abetted, or assisted  
22 any person in such a violation.

23 (b) Denial, refusal to renew, suspension, revocation, or imposition of  
24 probationary conditions upon a license may be ordered by the Board after a hearing held  
25 in accordance with Chapter 150B of the General Statutes and rules adopted by the  
26 Board. An application may be made to the Board for reinstatement of a revoked license  
27 if the revocation has been in effect for at least one year.

28 **"§ 90-419. Fees.**

29 The Board shall establish fees in accordance with Chapter 150B of the General  
30 Statutes in amounts to cover the cost of services rendered for the following purposes:

31 (1) For an initial application, a fee not to exceed twenty-five dollars  
32 (\$25.00);

33 (2) For examination or reexamination, a fee not to exceed one hundred  
34 fifty dollars (\$150.00);

35 (3) For issuance of license, a fee not to exceed one hundred dollars  
36 (\$100.00);

37 (4) For the renewal of a license, a fee not to exceed fifty dollars (\$50.00);

38 (5) For the late renewal of a license, an additional late fee not to exceed  
39 fifty dollars (\$50.00);

40 (6) For a provisional license, a fee not to exceed thirty-five dollars  
41 (\$35.00);

42 (7) For copies of Board rules and licensure standards, charges not  
43 exceeding the actual cost of printing and mailing.

44 **"§ 90-420. Requirement of license.**

1 After October 1, 1995, it shall be unlawful for any person who is not currently  
2 licensed under this Article to do any of the following:

- 3 (1) Engage in the practice of respiratory care;
- 4 (2) Use the title 'respiratory care practitioner';
- 5 (3) Use the letters 'RCP' or any facsimile or combination in any words,  
6 letters, abbreviations, or insignia;
- 7 (4) Imply orally or in writing or indicate in any way that the person is a  
8 licensed respiratory care practitioner.

9 **"§ 90-421. Violation a misdemeanor.**

10 Any person who violates any provision of this Article shall be guilty of a  
11 misdemeanor and, upon conviction, shall be fined or imprisoned, or both, in the  
12 discretion of the court. Each act of unlawful practice shall constitute a distinct and  
13 separate offense.

14 **"§ 90-422. Injunctions.**

15 The Board may make application to any appropriate court for an order enjoining  
16 violations of this Article, and upon a showing by the Board that any person has violated  
17 or is about to violate this Article, the court may grant an injunction, grant a restraining  
18 order, or take other appropriate action.

19 **"§ 90-423. Persons and practices not affected.**

20 The requirements of this Article shall not apply to:

- 21 (1) A health care professional duly licensed in accordance with Chapter 90  
22 of the General Statutes;
- 23 (2) A student or trainee, working under the direct supervision of a licensed  
24 respiratory care practitioner while fulfilling an experience requirement  
25 or pursuing a course of study to meet requirements for licensure, for a  
26 limited period of time as determined by the Board;
- 27 (3) A respiratory care practitioner serving in the armed forces or the  
28 Public Health Service of the United States or employed by the  
29 Veterans Administration when performing duties associated with that  
30 service or employment;
- 31 (4) A person aiding the practice of respiratory care if the person works  
32 under the direct supervision of a licensed respiratory care practitioner  
33 and performs only support activities that do not require formal  
34 academic training.

35 **"§ 90-424. Third-party reimbursement.**

36 Nothing in this Article shall be construed to require direct third-party  
37 reimbursements to persons licensed under this Article."

38 Sec. 2. G.S. 120-123 is amended by adding a new subdivision to read:

39 "(60) The North Carolina Board of Respiratory Care as created by Article 28  
40 of Chapter 90 of the General Statutes."

41 Sec. 3. This act becomes effective October 1, 1993.