

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1340  
Committee Substitute Favorable 6/23/99

Short Title: Respiratory Care Practice Act.

(Public)

Sponsors:

Referred to:

April 26, 1999

A BILL TO BE ENTITLED  
AN ACT TO ESTABLISH THE RESPIRATORY CARE PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

**“ARTICLE 37.**  
**"RESPIRATORY CARE PRACTICE ACT.**

**"§ 90-646. Short title.**

This Article may be cited as the ‘Respiratory Care Practice Act’.

**"§ 90-647. Purpose.**

The General Assembly finds that the practice of respiratory care in the State of North Carolina affects the public health, safety, and welfare and that the mandatory licensure of persons who engage in respiratory care is necessary to ensure a minimum standard of competency. It is the purpose and intent of this Article to protect the public from the unqualified practice of respiratory care and from unprofessional conduct by persons licensed pursuant to this Article.

**"§ 90-648. Definitions.**

The following definitions apply in this Article:

- (1) Board. – The North Carolina Respiratory Care Board.

- 1           (2)   Diagnostic testing. – Cardiopulmonary procedures and tests performed  
2           on the written order of a physician licensed under Article 1 of this  
3           Chapter that provide information to the physician to formulate a  
4           diagnosis of the patient's condition. The tests and procedures may  
5           include pulmonary function testing, electrocardiograph testing, cardiac  
6           stress testing, and sleep related testing.
- 7           (3)   Direct supervision. – The authority and responsibility to direct the  
8           performance of activities as established by policies and procedures for  
9           safe and appropriate completion of services.
- 10          (4)   Individual. – A human being.
- 11          (5)   License. – A certificate issued by the Board recognizing the person  
12          named therein as having met the requirements to practice respiratory  
13          care as defined in this Article.
- 14          (6)   Licensee. – A person who has been issued a license under this Article.
- 15          (7)   Medical director. – An appointed physician who is licensed under  
16          Article 1 of this Chapter and a member of the entity's medical staff, and  
17          who is granted the authority and responsibility for assuring and  
18          establishing policies and procedures and that the provision of such is  
19          provided to the quality, safety, and appropriateness standards as  
20          recognized within the defined scope of practice for the entity.
- 21          (8)   Person. – An individual, corporation, partnership, association, unit of  
22          government, or other legal entity.
- 23          (9)   Physician. – A doctor of medicine licensed by the State of North  
24          Carolina in accordance with Article 1 of this Chapter.
- 25          (10) Practice of respiratory care. – As defined by the written order of a  
26          physician licensed under Article 1 of this Chapter, the observing and  
27          monitoring of signs and symptoms, general behavior, and general  
28          physical response to respiratory care treatment and diagnostic testing,  
29          including the determination of whether such signs, symptoms, reactions,  
30          behavior, or general response exhibit abnormal characteristics, and the  
31          performance of diagnostic testing and therapeutic application of:
- 32           a.    Medical gases, humidity, and aerosols including the maintenance  
33           of associated apparatus, except for the purpose of anesthesia.
- 34           b.    Pharmacologic agents related to respiratory care procedures,  
35           including those agents necessary to perform hemodynamic  
36           monitoring.
- 37           c.    Mechanical or physiological ventilatory support.
- 38           d.    Cardiopulmonary resuscitation and maintenance of natural  
39           airways, the insertion and maintenance of artificial airways under  
40           the direct supervision of a recognized medical director in a health  
41           care environment which identifies these services within the scope  
42           of practice by the facility's governing board.
- 43           e.    Hyperbaric oxygen therapy.

1           f. Nontraditional cardiopulmonary support techniques in  
2           appropriately identified environments and under the training and  
3           practice guidelines established by the appropriate professional  
4           associations.

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

8           (11) Respiratory care. – As defined by the written order of a physician  
9           licensed under Article 1 of Chapter 90, the treatment, management,  
10           diagnostic testing, and care of patients with deficiencies and  
11           abnormalities associated with the cardiopulmonary system.

12           (12) Respiratory care practitioner. – A person who has been licensed by the  
13           Board to engage in the practice of respiratory care.

14           (13) Support activities. – Procedures that do not require formal academic  
15           training, including the delivery, setup, and maintenance of apparatus.  
16           The term also includes giving instructions on the use, fitting, and  
17           application of apparatus, but does not include therapeutic evaluation and  
18           assessment.

19 **"§ 90-649. North Carolina Respiratory Care Board; creation.**

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

22           (1) Two members shall be respiratory care practitioners.

23           (2) Three members shall be physicians licensed to practice in North  
24           Carolina, and whose primary practice is Pulmonology, Anesthesiology,  
25           Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.

26           (3) One member shall represent the NCHA.

27           (4) One member shall represent the North Carolina Association of Medical  
28           Equipment Services.

29           (5) Two members shall represent the public at large.

30           (b) Members of the Board shall be citizens of the United States and residents of  
31 this State. The respiratory care practitioner members shall have practiced respiratory  
32 care for at least five years and shall be licensed under this Article. The public members  
33 shall not be: (i) a respiratory care practitioner, (ii) an agent or employee of a person  
34 engaged in the profession of respiratory care, (iii) a health care professional licensed  
35 under this Chapter or a person enrolled in a program to become a licensed health care  
36 professional, (iv) an agent or employee of a health care institution, a health care insurer,  
37 or a health care professional school, (v) a member of an allied health profession or a  
38 person enrolled in a program to become a member of an allied health profession, or (vi) a  
39 spouse of an individual who may not serve as a public member of the Board.

40 **"§ 90-650. Appointments and removal of Board members; terms and compensation.**

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

42           (1) The Governor shall appoint the public members described in G.S. 90-  
43           649(a)(5).

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

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

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

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

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

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

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

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

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

31          (f)    Individual members shall be immune from civil liability arising from activities  
32          performed within the scope of their official duties.

33          **"§ 90-651. Election of officers; meetings of the Board.**

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

38          (b)    The Board shall hold at least two regular meetings each year as provided by  
39          rules adopted pursuant to this Article. The Board may hold additional meetings upon the  
40          call of the chair or any two Board members. A majority of the Board membership shall  
41          constitute a quorum.

42          **"§ 90-652. Powers and duties of the Board.**

43          The Board shall have the power and duty to:

- 1           (1) Determine the qualifications and fitness of applicants for licensure,  
2           renewal of licensure, and reciprocal licensure.
- 3           (2) Establish and adopt rules necessary to conduct its business, carry out its  
4           duties, and administer this Article.
- 5           (3) Adopt and publish a code of ethics.
- 6           (4) Deny, issue, suspend, revoke, and renew licenses in accordance with  
7           this Article.
- 8           (5) Conduct investigations, subpoena individuals and records, and do all  
9           other things necessary and proper to discipline persons licensed under  
10           this Article and to enforce this Article.
- 11           (6) Employ professional, clerical, investigative, or special personnel  
12           necessary to carry out the provisions of this Article and purchase or rent  
13           office space, equipment, and supplies.
- 14           (7) Adopt a seal by which it shall authenticate its proceedings, official  
15           records, and licenses.
- 16           (8) Conduct administrative hearings in accordance with Article 3A of  
17           Chapter 150B of the General Statutes.
- 18           (9) Establish certain reasonable fees as authorized by this Article for  
19           applications for examination, licensure, provisional licensure, renewal  
20           of licensure, and other services provided by the Board.
- 21           (10) Submit an annual report to the North Carolina Medical Board, the North  
22           Carolina Hospital Association, the North Carolina Society of  
23           Respiratory Care, the Governor, and the General Assembly of all the  
24           Board's official actions during the preceding year, together with any  
25           recommendations and findings regarding improvements of the practice  
26           of respiratory care.
- 27           (11) Publish and make available upon request the licensure standards  
28           prescribed under this Article and all rules adopted pursuant to this  
29           Article.
- 30           (12) Request and receive the assistance of State educational institutions or  
31           other State agencies.
- 32           (13) Establish and approve continuing education requirements for persons  
33           seeking licensure under this Article.

34 **"§ 90-653. Licensure requirements; examination.**

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

- 37           (1) Submit a completed application as required by the Board.
- 38           (2) Submit any fees required by the Board.
- 39           (3) Submit to the Board written evidence, verified by oath, that the  
40           applicant has successfully completed the minimal requirements of a  
41           respiratory care education program as approved by the Commission for  
42           Accreditation of Allied Health Educational Programs.

1           (4) Submit to the Board written evidence, verified by oath, that the  
2           applicant has successfully completed the minimal requirements for  
3           Basic Cardiac Life Support as recognized by the American Heart  
4           Association.

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

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

12 **"§ 90-654. Exemption from certain requirements.**

13           (a) The Board may issue a license to an applicant who, as of October 1, 1999, has  
14           passed the entry-level examination given by the National Board for Respiratory Care, Inc.  
15           An applicant applying for licensure under this subsection shall submit his or her  
16           application to the Board before October 1, 2001.

17           (b) The Board may grant a temporary license to an applicant who, as of October 1,  
18           1999, does not meet the qualifications of G.S. 90-653 but, through written evidence  
19           verified by oath, demonstrates that he or she is performing the duties of a respiratory care  
20           practitioner within the State. The temporary license is valid until October 1, 2000, within  
21           which time the applicant shall be required to complete the requirements of G.S. 90-  
22           653(a)(5). A license granted under this subsection shall contain an endorsement  
23           indicating that the license is temporary and shall state the date the license was granted  
24           and the date it expires.

25 **"§ 90-655. Licensure by reciprocity.**

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

32 **"§ 90-656. Provisional license.**

33           The Board may grant a provisional license for a period not exceeding 12 months to  
34           any applicant who has successfully completed the education requirements under G.S. 90-  
35           653(a)(3) and has made application to take the examination required under G.S. 90-  
36           653(a)(5). A provisional license allows the individual to practice respiratory care under  
37           the supervision of a respiratory care practitioner and in accordance with rules adopted  
38           pursuant to this Article. A license granted under this section shall contain an  
39           endorsement indicating that the license is provisional and stating the terms and conditions  
40           of its use by the licensee and shall state the date the license was granted and the date it  
41           expires.

42 **"§ 90-657. Notification of applicant following evaluation of application.**

1 After evaluation of the application and of any other evidence required from the  
2 applicant by the Board, the Board shall notify each applicant that the application and  
3 evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If the  
4 application and evidence is rejected, the notice shall state the reasons for the rejection.

5 **"§ 90-658. License as property of the Board; display requirement; renewal; inactive**  
6 **status.**

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

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

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

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

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

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

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

24 **"§ 90-659. Suspension, revocation, and refusal to renew a license.**

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

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

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

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

33 c. Practiced respiratory care without a license.

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

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

38 (3) Was adjudicated insane or incompetent, until proof of recovery from the  
39 condition can be established.

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

1 (b) Denial, refusal to renew, suspension, or revocation of a license, or imposition  
2 of probationary conditions upon a licensee may be ordered by the Board after a hearing  
3 held in accordance with Article 3A of Chapter 150B of the General Statutes and rules  
4 adopted pursuant to this Article. An application may be made to the Board for  
5 reinstatement of a revoked license if the revocation has been in effect for at least one  
6 year.

7 **"§ 90-660. Expenses; fees.**

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

13 (b) All monies received by the Board pursuant to this Article shall be deposited in  
14 an account for the Board and shall be used for the administration and implementation of  
15 this Article. The Board shall establish fees in amounts to cover the cost of services  
16 rendered for the following purposes:

17 (1) For an initial application, a fee not to exceed twenty-five dollars  
18 (\$25.00).

19 (2) For examination or reexamination, a fee not to exceed one hundred fifty  
20 dollars (\$150.00).

21 (3) For issuance of any license, a fee not to exceed one hundred dollars  
22 (\$100.00).

23 (4) For the renewal of any license, a fee not to exceed fifty dollars (\$50.00).

24 (5) For the late renewal of any license, an additional late fee not to exceed  
25 fifty dollars (\$50.00).

26 (6) For a license with a provisional or temporary endorsement, a fee not to  
27 exceed thirty-five dollars (\$35.00).

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

30 **"§ 90-661. Requirement of license.**

31 After October 1, 2000, it shall be unlawful for any person who is not currently  
32 licensed under this Article to:

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

34 (2) Use the title 'respiratory care practitioner'.

35 (3) Use the letters 'RCP', 'RTT', 'RT', or any facsimile or combination in  
36 any words, letters, abbreviations, or insignia.

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

39 (5) Employ or solicit for employment unlicensed persons to practice  
40 respiratory care.

41 **"§ 90-662. Violation a misdemeanor.**

42 Any person who violates any provision of this Article shall be guilty of a Class 1  
43 misdemeanor.



1 **"§ 90-663. Injunctions.**

2 The Board may apply to the superior court for an order enjoining violations of this  
3 Article, and upon a showing by the Board that any person has violated or is about to  
4 violate this Article, the court may grant an injunction or restraining order or take other  
5 appropriate action.

6 **"§ 90-664. Persons and practices not affected.**

7 The requirements of this Article shall not apply to:

- 8 (1) Any person registered, certified, credentialed, or licensed to engage in  
9 another profession or occupation or any person working under the  
10 supervision of a person registered, certified, credentialed, or licensed to  
11 engage in another profession or occupation in this State who is  
12 performing work incidental to the practice of that profession or  
13 occupation and does not represent himself or herself as a respiratory  
14 care practitioner.
- 15 (2) A student or trainee working under the direct supervision of a  
16 respiratory care practitioner while fulfilling an experience requirement  
17 or pursuing a course of study to meet requirements for licensure in  
18 accordance with rules adopted pursuant to this Article.
- 19 (3) A respiratory care practitioner serving in the armed forces or the Public  
20 Health Service of the United States or employed by the Veterans  
21 Administration when performing duties associated with that service or  
22 employment.
- 23 (4) A person aiding in the practice of respiratory care, in accordance with  
24 rules adopted pursuant to this Article, if the person works under the  
25 direct supervision of a respiratory care practitioner or on the order of or  
26 under the direct supervision of a physician licensed under Article 1 of  
27 this Chapter and performs only support activities as defined in G.S. 90-  
28 648(12).

29 **"§ 90-665. Third-party reimbursement.**

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

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

33 "(70) The North Carolina Respiratory Care Board as created by Article 37 of  
34 Chapter 90 of the General Statutes."

35 Section 3. The initial appointments to the North Carolina Respiratory Care  
36 Board, created in G.S. 90-649, as enacted in Section 1 of this act, shall be appointed no  
37 later than October 1, 1999. Notwithstanding the provisions of G.S. 90-649(b), as enacted  
38 in Section 1 of this act, the initial members of the North Carolina Respiratory Care Board  
39 who are appointed pursuant to G.S. 90-649(a)(1) shall be licensed under Article 37 of  
40 Chapter 90 of the General Statutes, as enacted in Section 1 of this act, no later than June  
41 30, 2000, and, until October 1, 2004, must have passed the entry-level examination  
42 administered by the National Board for Respiratory Care, Inc. Notwithstanding the  
43 provisions of G.S. 90-650(b), as enacted in Section 1 of this act, of the initial

1 appointments to the North Carolina Respiratory Care Board, one of the members  
2 appointed by the General Assembly, upon the recommendation of the Speaker of the  
3 House of Representatives, and one of the members appointed by the General Assembly,  
4 upon the recommendation of the President Pro Tempore of the Senate, shall be appointed  
5 for three-year terms; one of the members appointed by the General Assembly, upon the  
6 recommendation of the Speaker of the House of Representatives, and one of the members  
7 appointed by the General Assembly, upon the recommendation of the President Pro  
8 Tempore of the Senate, shall be appointed for two-year terms; the public member  
9 appointed by the Governor shall be appointed for a one-year term; the physician member  
10 appointed by the North Carolina Medical Society shall be appointed for a one-year term;  
11 and the members appointed by the North Carolina Hospital Association and the North  
12 Carolina Association of Medical Equipment Services shall be appointed for one-year  
13 terms.

14           Section 4. This act is effective when it becomes law.