

ENGROSSED SENATE
BILL NO. 544

By: Hendrick, Hooper and
Leftwich of the Senate

and

Hamilton (Jeff), Maddox
(Jim), Vaughn (Ray) and
Dunlap of the House

An Act relating to respiratory care practices;
providing short title; defining terms; creating
Respiratory Care Advisory Committee within State
Board of Medical Licensure and Supervision;
providing for appointment, qualifications, terms of
office and removal of members; providing for
meetings, officers and quorum; requiring Board to
perform certain duties; authorizing Board to
perform certain duties; providing for compensation
and protection from personal liability for certain
actions; providing for examination, licensure and
fees; stating requirements; providing for
provisional license and fee; providing for renewal,
reinstatement, replacement and duplicate license
and fees; requiring certain continuing education;
providing for deposit and expenditure of fees;
providing for disciplinary actions under certain
stated conditions; stating procedures for
complaints and providing for notice, hearing,
issuance of subpoenas and payment of certain costs;
prohibiting and allowing certain acts; making
certain practitioners subject to Good Samaritan

Act; construing act; making certain acts
misdemeanors and providing penalties; allowing use
of certain designations; providing for
codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 2026 of Title 59, unless there
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Respiratory
Care Practice Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 2027 of Title 59, unless there
is created a duplication in numbering, reads as follows:

As used in this act:

1. "Board" means the State Board of Medical Licensure and
Supervision;
2. "Performance of respiratory care" means respiratory care in
accordance with the prescription of a licensed physician and
includes, but is not limited to, the diagnostic and therapeutic use
of the following:
 - a. administration of medical gases, except for the
purpose of anesthesia, aerosols and humidification,
 - b. environmental control mechanisms and hyperbaric
therapy,
 - c. physiological ventilatory support,
 - d. bronchopulmonary hygiene,
 - e. cardiopulmonary resuscitation,
 - f. maintenance of the natural airway,
 - g. insertion and maintenance of artificial airways,

- h. specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of pulmonary abnormalities, including measurements of ventilatory volumes, pressures and flows, collection of specimens of blood and blood gases, expired and inspired gas samples, respiratory secretions, and pulmonary function testing, and
- i. hemodynamic and other related physiologic measurements of the cardio-pulmonary system;

3. "Practice of respiratory care" shall include, but not be limited to, the direct and indirect respiratory care services, including but not limited to the administration of pharmacological, diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by orders of a physician pertaining to the practice of respiratory care; observing and monitoring signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics; and implementation based on observed abnormalities, of appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a person authorized to practice medicine under the laws of the State of Oklahoma; or the initiation of emergency procedures under the regulations of the Board or as otherwise permitted in this act. The practice of respiratory care may be performed in any clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate or necessary by the Board, in accordance with the prescription or verbal order of a physician, and shall be performed under a qualified medical director;

4. "Qualified medical director" means a licensed physician who has special qualifications, as set out in the rules of the Board, in the diagnosis and treatment of respiratory problems. The physician must be an active medical staff member of a licensed health care facility licensed by the State Department of Health, and wherever possible should be qualified by special training and/or experience in the management of acute and chronic respiratory disorders. This physician should be competent, as set out in the rules of the Board, to monitor and assess the quality, safety, and appropriateness of the respiratory care services being provided. The medical director should be accessible to and assure the competency of respiratory care practitioners as well as require that respiratory care be ordered by a physician who has medical responsibility for the patient;

5. "Respiratory care" means the allied health profession responsible for the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary systems under a qualified medical director. Such term shall include "inhalation therapy" and "respiratory therapy";

6. "Respiratory care practitioner" means:

- a. a person licensed by the state and employed in the practice of respiratory care who has the knowledge and skill necessary to administer respiratory care as defined in paragraph 3 of this section,
- b. a person who is capable of serving as a resource to the physician in relation to the technical aspects of respiratory care as to safe and effective methods for administering respiratory care modalities,
- c. a person who is able to function in situations of unsupervised patient contact requiring great individual judgment, and

- d. a person capable of supervising, directing or teaching less skilled personnel in the provision of respiratory care services;

7. "Respiratory therapist" means an individual who has graduated from a respiratory therapist program accredited by the Committee on Allied Health Education and Accreditation (CAHEA) or its successor organization; and

8. "Respiratory therapy technician" means an individual who has graduated from a respiratory therapy technician program accredited by the Committee on Allied Health Education and Accreditation (CAHEA) or its successor organization.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2028 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a Respiratory Care Advisory Committee within the State Board of Medical Licensure and Supervision, hereinafter referred to as the Committee, to administer the provisions of this act. The Committee shall consist of seven (7) members, who shall be citizens of the United States and residents of the state, and a designated member of the State Board of Medical Licensure and Supervision, who shall serve as an ex officio member without a vote. There shall be one public member, three physician members who meet the qualifications in paragraph 4 of Section 3 of this act, and three members who shall be licensed respiratory care practitioners at the time of their appointment. The persons appointed to the advisory committee who are required to be licensed under this act shall have been engaged in rendering respiratory care services to the public, teaching, or research in respiratory care for at least five (5) years immediately preceding their appointments. These members shall at all times be holders of valid licenses for the practice of respiratory care in Oklahoma, except for the members of the first committee, all of whom shall, at

the time of appointment, hold the designation of Certified Respiratory Therapy Technician conferred by the National Board for Respiratory Care and all of whom fulfill the requirements for licensure pursuant to this act.

B. The Governor shall appoint the members of the Committee for terms of four (4) years. The terms of office of the members first appointed shall begin when they are appointed and shall continue thereafter for the following periods: two physicians and one respiratory care practitioner for a period of three (3) years; and one physician, one public member, and two respiratory care practitioners for a period of four (4) years. Upon the expiration of such terms and all terms thereafter the Governor shall appoint a successor for the member serving a term of four (4) years, with no member being appointed for more than three consecutive terms and with the respiratory care practitioner members being licensed pursuant to the provisions of this act. Vacancies on the Committee shall be filled in like manner for the balance of an unexpired term and each member shall serve until a successor is appointed and qualified.

C. Upon expiration of the term of a physician member, the Oklahoma State Medical Association may, as appropriate, submit to the Governor a list of three persons qualified to serve on the Committee to fill the expired term of their respective member. Upon expiration of the term of any respiratory care practitioner member, the State Society of the American Association for Respiratory Care may submit to the Governor a list of three persons qualified to serve for each vacant position. Appointments may be made from these lists by the Governor and additional lists may be provided by the respective organizations if requested by the Governor.

D. The Governor may remove any member from the Committee for neglect of any duty required by law, for incompetency, or for unethical or dishonorable conduct.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2029 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Respiratory Care Advisory Committee shall meet at least twice each year and shall elect biennially during odd-numbered years a chairman and vice-chairman from among its members. The Committee may convene at the request of the chairman, or a majority of the Committee, or as the Committee may determine for such other meetings as may be deemed necessary to transact its business.

B. A majority of the members of the Committee, including the chairman or vice-chairman, shall constitute a quorum at any meeting and a majority of the required quorum shall be sufficient for the Committee to take action by vote.

C. The Committee shall advise the Board in developing policy and regulations pertaining to this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2030 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Board of Medical Licensure and Supervision shall:

1. Examine, license and renew the licenses of duly qualified applicants;

2. Maintain an up-to-date list of every person licensed to practice respiratory care under this act. The list shall show the licensee's last-known place of employment, last-known place of residence, and the date and number of his license;

3. Cause the prosecution of all persons violating this act and incur necessary expenses therefor;

4. Keep a record of all proceedings of the Board and make such record available to the public for inspection during reasonable business hours;

5. Conduct hearings or advise the Committee at Committee-conducted hearings upon charges calling for discipline of a licensee, or denial, revocation or suspension of a license; and

6. Share information on a case-by-case basis of any person whose license has been suspended, revoked or denied. This information shall include the name, social security number, type and cause of action, date and penalty incurred, and the length of penalty. This information shall be available for public inspection during reasonable business hours and shall be supplied to similar boards in other states upon request.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2031 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Board of Medical Licensure and Supervision may:

1. Adopt such rules and regulations consistent with the laws of this state as may be necessary to enforce the provisions of this act. Rules shall be adopted in accordance with the laws of the State of Oklahoma;

2. Employ such personnel as necessary to assist the Board in performing its function;

3. Establish relicensure requirements and procedures as deemed appropriate;

4. Secure the services of resource consultants as deemed necessary by the Board. Resource consultants shall be reimbursed for travel and other necessary expenses, incurred while engaged in consultative service to the Board, pursuant to the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes;

5. Enter into agreements or contracts, consistent with state law, with outside organizations for the purpose of developing, administering, grading and/or reporting the results of licensing examinations. Such groups shall be capable of providing an

examination which meets the standards of the National Commission for Health Certifying Agencies, or their equivalent, be validated, and nationally recognized as testing respiratory care competencies.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2032 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A member of the State Board of Medical Licensure and Supervision or the Respiratory Care Advisory Committee for each and every day it conducts business for the Board shall receive compensation at a daily rate commensurate with similar boards within this state plus actual and necessary travel and other expenses incurred while engaged in the discharge of official duties in accordance with the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

B. Members of the Board and Committee shall enjoy the same rights of protection from personal liability as those enjoyed by other employees of the state for actions taken while acting under the provisions of this act and in the course of their duties.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2033 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The applicant, except where otherwise defined in this act, shall be required to pass an examination, whereupon the State Board of Medical Licensure and Supervision may issue to the applicant a license to practice respiratory care. The Board is authorized to enter into such contracts with the National Board for Respiratory Care as may be necessary or advisable to provide for the examination of applicants or to facilitate verification of any applicant's claim that such applicant has successfully completed the Entry Level Examination and/or Advanced Examinations for Respiratory Care Practitioners.

B. The Board may issue a license to practice respiratory care by endorsement to:

1. An applicant who is currently licensed to practice respiratory care under the laws of another state, territory or country if the qualifications of the applicant are deemed by the Board to be equivalent to those required in this state;

2. Applicants holding credentials conferred by the National Board for Respiratory Care as a Certified Respiratory Therapy Technician (CRTT) and/or as a Registered Respiratory Therapist (RRT), providing such credentials have not been suspended or revoked; and

3. Applicants applying under the conditions of this section who certify under oath that their credentials have not been suspended or revoked.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2034 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Board of Medical Licensure and Supervision may issue, upon payment of a fee established by the Board, a provisional license to practice respiratory care for a period of six (6) months under supervision of a licensed respiratory care practitioner until the applicant meets the licensure requirements upon which a license may be issued, unless unprofessional conduct has recurred.

Provided, the applicant must show written evidence, verified by oath, that the applicant is currently practicing or has within the last six (6) months practiced respiratory care in another state, territory or country and was licensed to practice respiratory care in this state. Reapplication following abandonment of an application shall not entitle the applicant to an provisional license. A currently enrolled student in or a graduate of a respiratory care education program approved by CAHEA or its

successor organization may receive a provisional license as set out by the rules of the Board.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2035 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Board of Medical Licensure and Supervision may issue a license, upon payment of a fee of One Hundred Twenty-five Dollars (\$125.00), to perform respiratory care to an applicant, who, at the time of the effective date of this act, has passed the Entry Level or Advanced Practitioner examinations administered by the NBRC. Other applicants who have not passed the NBRC examinations at the time of the effective date of the act and who, through written evidence verified by oath, demonstrate as required by rules of the Board that they are presently functioning in the capacity of a respiratory care practitioner as defined by this act, may be given a provisional license to practice respiratory care under the supervision of a licensed respiratory care practitioner for a period of no longer than thirty-six (36) months from the effective date of this act. Such applicants must pass the licensure examination administered by the Board during the thirty-six-month period in order to be issued a license to practice respiratory care.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2036 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A person holding a license to practice respiratory care in this state may use the title "respiratory care practitioner" and the abbreviation "R.C.P.".

B. A licensee shall show this license when requested.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2037 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A license shall be renewed annually except as hereafter provided. The State Board of Medical Licensure and Supervision shall mail notices at least thirty (30) calendar days prior to expiration for renewal of licenses to every person to whom a license was issued or renewed during the preceding renewal period. The licensee shall complete the notice of renewal and return it to the Board with the renewal fee of Seventy-five Dollars (\$75.00) before the date of expiration.

B. Upon receipt of the notice of renewal and the fee, the Board shall verify its contents and shall issue the licensee a license for the current renewal period, which shall be valid for the period stated thereon.

C. A licensee who allows his license to lapse by failing to renew it may be reinstated by the Board upon payment of the renewal fee and reinstatement fee of One Hundred Dollars (\$100.00); provided, that such request for reinstatement is received within thirty (30) days of the end of the renewal period.

D. A respiratory care practitioner who does not engage in the practice of respiratory care during the succeeding renewal period is not required to pay the renewal fee as long as he remains inactive. If he desires to resume the practice of respiratory care, he shall notify the Board of his intent and shall satisfy the current requirements of the Board in addition to remitting the renewal fee for the current renewal period of the reinstatement fee. Requirements of the Board shall include a specific period of time of continuous inactivity after which retesting is required.

E. The Board is authorized to establish fees for replacement and duplicate licenses.

F. The Board shall by rule prescribe continuing education requirements, not to exceed twelve (12) hours biennially, as a condition for renewal of license. The program criteria with respect thereto shall be approved by the Board.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2038 of Title 59, unless there is created a duplication in numbering, reads as follows:

Fees received by the State Board of Medical Licensure and Supervision and monies collected pursuant to this act shall be deposited with the State Treasurer who shall place the same in the regular depository fund of the Board. Said deposit, less the ten percent (10%) gross fees paid into the General Revenue Fund, shall be used to pay expenses incurred pursuant to this act in accordance with the accounting laws of this state within the appropriations made thereof by the Oklahoma State Legislature.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2039 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Board of Medical Licensure and Supervision may revoke, suspend or refuse to renew any license or permit or place on probation, or otherwise reprimand a licensee or permit holder or deny a license to an applicant if it finds that the person:

1. Is guilty of fraud or deceit in procuring or attempting to procure a license or renewal of a license to practice respiratory care;
2. Is unfit or incompetent by reason of negligence, habits, or other causes of incompetency;
3. Is habitually intemperate in the use of alcoholic beverages;
4. Is addicted to, or has improperly obtained, possessed, used or distributed habit-forming drugs or narcotics;
5. Is guilty of dishonest or unethical conduct;
6. Has practiced respiratory care after his license or permit has expired or has been suspended;
7. Has practiced respiratory care under cover of any permit or license illegally or fraudulently obtained or issued;

8. Has violated or aided or abetted others in violation of any provision of this act;

9. Has been guilty of unprofessional conduct as defined by the rules established by the Board, or violating the code of ethics adopted and published by the Board; or

10. Is guilty of the unauthorized practice of medicine.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2040 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Upon filing of written complaint with the Secretary of the State Board of Medical Licensure and Supervision, charging a person with having been guilty of any of the acts described in Section 15 of this act, the authorized employee of the Board may make an investigation. If the Board finds reasonable grounds for the complaint, a time and place for a hearing shall be set, notice of which shall be served on the licensee, provisional license holder or applicant at least fifteen (15) calendar days prior thereto. The notice shall be by personal service or by certified or registered mail sent to the last known address of the person.

B. The Board or its designee may issue subpoenas for the attendance of witnesses and the production of necessary evidence on any investigation or hearing before it. Upon request of the respondent or his counsel, the Board may issue subpoenas on behalf of the respondent.

C. Unless otherwise provided in this act, hearing procedures shall be promulgated in accordance with, and a person who feels aggrieved by a decision of the Board may make an appeal pursuant to, the laws of the State of Oklahoma.

D. If found to be guilty as charged, the practitioner shall pay for all costs incurred by the Board.

E. The Board shall make public on a case-by-case basis the names and addresses of persons whose licenses or provisional

licenses have been denied, surrendered, revoked, suspended or who have been denied renewal of their licenses or provisional licenses, and persons who have been practicing respiratory care in violation of this act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2041 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. No person shall practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed under the Respiratory Care Practice Act, except as otherwise provided by this act.

B. This act does not prohibit:

1. The practice of respiratory care which is an integral part of the program of study by students enrolled in a respiratory care education program recognized by the Joint Review Committee for Respiratory Therapy Education and the American Medical Association Committee on Allied Health Education and Accreditation or their successors. Students enrolled in respiratory therapy education programs shall be identified as "student - RCP" and shall only provide respiratory care under direct clinical supervision;

2. Self-care by a patient, or gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner;

3. Respiratory care services rendered in the course of an emergency;

4. Persons in the military services or working in federal facilities from rendering respiratory care services when functioning in the course of their assigned duties;

5. The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formalized or specialized training; and

6. For purposes of continuing education, consulting, and/or training, any person performing respiratory care in the state, if these services are performed for no more than thirty (30) days in a calendar year in association with a respiratory care practitioner licensed under this act or in association with a licensed physician or surgeon, if:

- a. the person is licensed as a respiratory care practitioner or the equivalent, as determined by the State Board of Medical Licensure and Supervision, in good standing in another state or the District of Columbia, or
- b. the person is a Certified Respiratory Therapy Technician (CRTT) or Registered Respiratory Therapist (RRT).

C. Nothing in the Respiratory Care Practice Act is intended to limit, preclude or otherwise interfere with the practices of other persons and health providers licensed by appropriate agencies of the State of Oklahoma.

D. An individual who, by passing an examination which includes content in one or more of the functions included in this act, and who has passed an examination that meets the standards of the National Commission for Health Certifying Agencies (NCHCA) or an equivalent organization, shall not be prohibited from performing such procedures for which they were tested. An individual who has demonstrated his competency in one or more areas covered by this act may perform only such functions that he is qualified by examination to perform. The standards of the National Commission for Health Certifying Agencies shall serve to evaluate those examinations/examining organizations.

E. Practitioners regulated under this act shall be covered under the "Good Samaritan Act".

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2042 of Title 59, unless there is created a duplication in numbering, reads as follows:

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

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2043 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. It is a misdemeanor for any person to:

1. Sell, fraudulently obtain or furnish any respiratory care provisional license, license or record, or aid or abet therein;

2. Practice respiratory care under cover of any respiratory care diploma, provisional license, license or record illegally or fraudulently obtained or issued;

3. Practice respiratory care unless duly licensed to do so under the provisions of this act;

4. Impersonate in any manner or pretend to be a respiratory care practitioner or use the title "respiratory care practitioner" the letters "R.C.P.", or other words, letters, signs, symbols or devices to indicate the person using them is a licensed respiratory care practitioner, unless duly authorized by license or permit to perform under the provisions of this act;

5. Practice respiratory care during the time his license or provisional license is suspended, revoked or expired;

6. Fail to notify the State Board of Medical Licensure and Supervision of the suspension, probation, or revocation of any past or currently held licenses, certifications, or registrations required to practice respiratory care in this or any other jurisdiction;

7. Knowingly employ unlicensed persons in the practice of respiratory care in the capacity of a respiratory care practitioner;

8. Make false representations or impersonate or act as a proxy for another person or allow or aid any person or impersonate him in connection with any examination or application for licensing or request to be examined or licensed; or

9. Otherwise violate any provisions of this act.

B. Such misdemeanor shall be punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment for each offense.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2044 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Nothing contained in this act shall preclude a respiratory care practitioner, a respiratory therapist, or a respiratory therapy technician exempt from licensing under this section or a provisional license holder from using or displaying earned professional designations or credentials including, but not limited to, CRTT, RRT, CPFT and RPFT. However, a respiratory care practitioner may use and display the designation Respiratory Care Practitioner or RCP in conjunction with the use or display of any such other earned professional designation or credentials.

B. A provisional license holder shall not use or display the designation Respiratory Care Practitioner or RCP but may use or display any earned professional designations or credentials.

SECTION 20. This act shall become effective September 1, 1994.

Passed the Senate the 16th day of March, 1994.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1994.

Speaker

of the House of
Representatives