

SHORT TITLE: Practice of respiratory care; creating Respiratory Care Advisory Committee within State Board of Medical Licensure and Supervision; providing for licensure; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 545

By: Hendrick of the Senate

and

Bastin of the House

AS INTRODUCED

An Act relating to the practice of respiratory care;
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 licensure by examination and
endorsement and stating requirements; providing for
provisional license; stating license fee; providing
for special provisional license; authorizing use of
certain title; 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. "Respiratory care procedures" include, but are not limited
to, the diagnostic and therapeutic use of the following:
 - a. administration of aerosols and humidification, and
medical gases, except for the purpose of anesthesia,
 - 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 cardiopulmonary 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; 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 protocol, or changes in treatment, pursuant to a prescription by a person authorized to practice medicine under the laws of this state; or the initiation of emergency procedures under the rules 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 in accordance with the prescription or verbal order of a physician, and shall be performed under a qualified medical director, as deemed appropriate or necessary by

the Board. The practice of respiratory care shall also include the terms "inhalation therapy" and "respiratory therapy";

4. "Qualified medical director" means a licensed physician who has special qualifications in the diagnosis and treatment of respiratory problems. The physician must be an active medical staff member of a health care facility licensed by the State Department of Health, and wherever possible should be qualified by special training or experience in the management of acute and chronic respiratory disorders. This physician should be competent 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 practitioner" means a person licensed by this state and employed in the practice of respiratory care;

6. "Respiratory therapist" means an individual who has graduated from a respiratory therapist program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or its successor organization; and

7. "Respiratory therapy technician" means an individual who has graduated from a respiratory therapy technician program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) 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. 1. 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 assist in

administering the provisions of this act. The Committee shall consist of nine (9) members, appointed as follows:

- a. one member shall be a physician appointed by the Board from its membership,
- b. one member shall be a physician appointed by the Board from a list of qualified individuals submitted by the Oklahoma State Medical Association and who is not a member of the Board,
- c. one member shall be a physician appointed by the State Board of Osteopathic Examiners from its membership,
- d. one member shall be a physician appointed by the State Board of Osteopathic Examiners from a list of qualified individuals submitted by the Oklahoma Osteopathic Association and who is not a member of the State Board of Osteopathic Examiners, and
- e. five members shall be licensed respiratory care practitioners appointed by the Board from a list of respiratory care practitioners submitted by the Oklahoma Society for Respiratory Care (OSRC).

2. Other than the physicians appointed from the membership of the State Board of Medical Licensure and Supervision and of the State Board of Osteopathic Examiners, the physician members shall meet the qualifications contained in paragraph 4 of Section 2 of this act.

3. The respiratory care practitioner members 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 this state, except for the members first appointed to the Committee. These initial members shall, at the time of appointment, be credentialed as a Certified Respiratory

Therapy Technician (CRTT) or a Registered Respiratory Therapist (RRT), conferred by the National Board for Respiratory Care (NBRC), or its successor organization, and all shall fulfill the requirements for licensure pursuant to this act.

B. Members of the Committee shall be appointed for terms of four (4) years. Provided, the terms of office of the members first appointed shall begin November 1, 1995, and shall continue for the following periods: two physicians and two respiratory care practitioners for a period of three (3) years; and two physicians and three respiratory care practitioners for a period of four (4) years. Upon the expiration of a member's term of office, the appointing authority for that member shall appoint a successor pursuant to the provisions of subsection C of this section. Vacancies on the Committee shall be filled in like manner for the balance of an unexpired term. No member shall serve more than three consecutive terms. Each member shall serve until a successor is appointed and qualified.

C. Upon expiration or vacancy of the term of a member, the respective nominating authority may, as appropriate, submit to the appointing Board a list of three persons qualified to serve on the Committee to fill the expired term of their respective member. Appointments may be made from these lists by the appointing Board, and additional lists may be provided by the respective organizations if requested by the State Board of Medical Licensure and Supervision.

D. The State Board of Medical Licensure and Supervision 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 chair and vice-chair from among its members. The Committee may convene at the request of the chair, 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 chair and vice-chair, 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 rules 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 the 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 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. Promulgate rules, consistent with the laws of this state, as may be necessary to enforce the provisions of this act. Rules shall be promulgated in accordance with Article I of the Administrative Procedures Act;

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

3. Establish license renewal 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 all actual and 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 or reporting the results of licensing examinations. Such groups shall be capable of providing an examination which:

- a. meets the standards of the National Commission for Health Certifying Agencies, or their equivalent,
- b. is able to be validated, and
- c. is nationally recognized as testing respiratory care competencies; and

6. Establish by rule license examination fees.

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. Members of the State Board of Medical Licensure and Supervision and members of the Respiratory Care Advisory Committee shall be reimbursed for all actual and necessary expenses incurred while engaged in the discharge of official duties pursuant to this act 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, in cooperation with the National Board for Respiratory Care (NBRC) as may be necessary or advisable, to provide for the examination of applicants or to facilitate verification of any applicant's claim that the applicant has successfully completed the examination for Certified Respiratory Therapy Technician (CRTT) or Registered Respiratory Therapist (RRT).

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 (NBRC) as a Certified Respiratory Therapy Technician (CRTT) or as a Registered Respiratory Therapist (RRT), provided 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:

A. 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 consenting licensed respiratory care practitioner or consenting licensed physician. A provisional license may be issued to a person licensed in another state, territory or country who does not qualify for a license by endorsement but has applied to take the license examination and otherwise meets the qualifications of the Board. 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. A provisional license may be issued also to a graduate of a respiratory care education program, approved by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or its successor organization, who has applied to take the license examination and otherwise meets the qualifications of the Board.

B. A currently enrolled student may receive a provisional license as set out by the rules of the Board.

C. Provisional licenses may be renewed at the discretion of the Board for additional six-month periods.

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:

A. The State Board of Medical Licensure and Supervision may issue a license to perform respiratory care, upon payment of a fee of Seventy-five Dollars (\$75.00), to persons who have qualified pursuant to Section 8 of this act.

B. Other applicants who have not passed the NBRC examinations 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 special provisional license to practice respiratory care under the supervision of a consenting licensed respiratory care practitioner or consenting licensed physician for a period of no longer than thirty-six (36) months from the effective date of this act. Such applicants must pass an entry level examination administered by the Board during the thirty-six-month period in order to be issued a license to practice respiratory care. The fee for a special provisional license shall be Seventy-five Dollars (\$75.00).

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 present 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. Except as otherwise provided in this act, a license shall be renewed biennially. 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 the 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. 1. A licensed respiratory care practitioner who does not intend to engage in the practice of respiratory care shall send a written notice to that effect to the Board and is not required to submit a notice of renewal and pay the renewal fee as long as the practitioner remains inactive. Upon desiring to resume the practice of respiratory care, the practitioner shall notify the Board in writing of this intent and shall satisfy the current requirements of the Board in addition to submitting a notice of renewal and remitting the renewal fee for the current renewal period and the reinstatement fee.

2. Rules of the Board shall provide for a specific period of time of continuous inactivity after which retesting is required.

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

F. The Board shall by rule prescribe continuing education requirements, not to exceed twelve (12) clock 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 any other 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, is hereby appropriated and shall be used to pay expenses incurred pursuant to this act.

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 place on probation, or otherwise reprimand a licensee 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 the license has expired or has been suspended;

7. Has practiced respiratory care under cover of any 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 of 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 a written complaint with the State Board of Medical Licensure and Supervision, charging a person with any of the acts described in Section 14 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 the respondent's counsel, the Board may issue subpoenas on behalf of the respondent.

C. Unless otherwise provided in this act, hearing procedures shall be conducted in accordance with, and a person who feels aggrieved by a decision of the Board may make an appeal pursuant to, Article II of the Administrative Procedures Act.

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 themselves to be a respiratory care practitioner unless 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 State Board of Medical Licensure and Supervision. Students enrolled in respiratory therapy education programs shall be identified as "student - RCP" and shall only provide respiratory care under clinical supervision;

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

3. Monitoring, installation or delivery of medical devices, gasses and equipment and the maintenance thereof by a nonlicensed person for the express purpose of self-care by a patient or gratuitous care by a friend or family member;

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

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

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

7. For purposes of continuing education, consulting, 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 persons working under the direct supervision of physicians. In addition, nothing in this act shall interfere with the practices of health care providers who are formally trained and licensed by appropriate agencies of this state.

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 the procedures for which they were tested. An individual who has demonstrated competency in one or more areas covered by this act may perform only those functions for which the individual is qualified by examination to perform. The standards of the National Commission

for Health Certifying Agencies shall serve to evaluate those examinations and examining organizations.

E. Practitioners regulated under this act shall be covered under the "Good Samaritan Act", Section 5 et seq. of Title 76 of the Oklahoma Statutes.

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 license, provisional 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 to perform under the provisions of this act;

5. Practice respiratory care during the time a 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 the person 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 being licensed under this act 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 November 1, 1995.

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