

**SENATE BILL NO. 2162**

Introduced by

Industry, Business and Labor Committee

(At the request of the State Board of Respiratory Care)

1 A BILL for an Act to amend and reenact sections 43-42-01, 43-42-02, 43-42-03, 43-42-04,  
2 43-42-05, 43-42-06, and 43-42-07 and subsection 1 of section 43-46-01 of the North Dakota  
3 Century Code, relating to the practice of respiratory care; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 43-42-01 of the 1999 Supplement to the North  
6 Dakota Century Code is amended and reenacted as follows:

7 **43-42-01. Definitions.** In this chapter, unless the context otherwise requires:

- 8 1. "Board" means the state board of respiratory care.
- 9 2. "Bona fide respiratory care training program" means a program of respiratory care  
10 education which is accredited by the ~~committee~~ commission on accreditation of  
11 allied health educational programs, or the ~~committee's~~ commission's successor  
12 organization.
- 13 3. "Certification examination" means the entry level examination for respiratory  
14 ~~therapy technicians~~ therapists administered by the national board for respiratory  
15 care.
- 16 4. "Certified respiratory ~~care practitioner~~ therapist" means a person licensed by the  
17 board to practice respiratory care under the direction or supervision of a physician  
18 or registered respiratory ~~care practitioner~~ therapist.
- 19 5. "National board for respiratory care" means the body issuing credentials for the  
20 respiratory care profession, or the board's successor organization.
- 21 6. "Registered respiratory ~~care practitioner~~ therapist" means a person licensed by the  
22 board to practice respiratory care.
- 23 7. "Registry examination" means the advanced level examination for respiratory  
24 therapists administered by the national board for respiratory care.

8. "Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the cardiorespiratory systems. Respiratory care is implemented on an order from a licensed physician, and includes the use of medical gases, air and oxygen administering apparatuses, environmental control systems, humidification and aerosols, drugs and medications, apparatuses for cardiorespiratory support and control, postural drainage, chest percussion and vibration and breathing exercises, ~~respiratory~~ pulmonary rehabilitation, assistance with cardiopulmonary resuscitation, maintenance of natural and ~~mechanical~~ artificial airways, and insertion ~~and maintenance~~ of artificial airways. The term also includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of samples of arterial, capillary, and venous blood.

9. "Respiratory therapist" means a certified respiratory therapist or a registered respiratory therapist.

10. "Respiratory therapy" means respiratory care.

~~40.~~ 11. "Temporary respiratory care practitioner therapist" means any individual who is ~~enrolled in or~~ has successfully completed a bona fide respiratory care training program and is licensed by the board to practice respiratory care under the supervision or direction of either a physician, certified respiratory ~~care practitioner~~ therapist, or registered respiratory ~~care practitioner~~ therapist.

**SECTION 2. AMENDMENT.** Section 43-42-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**43-42-02. State board of respiratory care.**

1. The state board of respiratory care is responsible for the enforcement and administration of this chapter and for the adoption of any rules necessary to govern the practice of respiratory care in this state.
2. The board consists of seven members appointed by the governor. ~~Two~~ Four members must be ~~registered respiratory care practitioners and two members must be certified respiratory care practitioners~~ therapists, chosen from a list of ~~four~~ eight registered ~~respiratory care practitioners and four certified respiratory care~~

1 ~~practitioners~~ therapists supplied to the governor by the North Dakota society for  
2 respiratory care. One member must be a physician chosen from a list of two  
3 physicians supplied to the governor by the North Dakota medical association. The  
4 governor shall appoint two members to be representatives of the general public.  
5 Members are appointed for terms of three years. Each member holds office until  
6 the member's successor is duly appointed and qualified. A vacancy in the office of  
7 any member may be filled for the unexpired term only. No member may serve  
8 more than two successive complete terms.

9 3. The board shall annually select a chairman from among its members. The board  
10 shall meet at least twice each year and also shall meet upon the call of the  
11 chairman.

12 ~~4. The board shall consult with the North Dakota society for respiratory care before~~  
13 ~~adopting any rules.~~

14 **SECTION 3. AMENDMENT.** Section 43-42-03 of the 1999 Supplement to the North  
15 Dakota Century Code is amended and reenacted as follows:

16 **43-42-03. Respiratory ~~care-practitioner~~ therapist licensing - Fees.**

- 17 1. The board shall license as a registered respiratory ~~care-practitioner~~ therapist any  
18 applicant whom the board determines to be qualified to perform the duties of a  
19 registered respiratory ~~care-practitioner~~ therapist. In making this determination, the  
20 board shall require evidence that the applicant has successfully completed a bona  
21 fide respiratory care training program and has passed the registry examination.  
22 The board shall establish fees ~~not in excess of fifty dollars~~ for the issuance and  
23 renewal of a registered respiratory ~~care-practitioner~~ therapist license.
- 24 2. The board shall license as a certified respiratory ~~care-practitioner~~ therapist any  
25 applicant whom the board determines to be qualified to perform the duties of a  
26 certified respiratory ~~care-practitioner~~ therapist. In making this determination, the  
27 board shall require evidence that the applicant has successfully completed a bona  
28 fide respiratory care training program and has passed the certification examination.  
29 The board shall establish fees ~~not in excess of thirty five dollars~~ for the issuance  
30 and renewal of a certified respiratory ~~care-practitioner~~ therapist license.

- 1           3. The board shall license as a temporary respiratory ~~care practitioner~~ therapist any  
2           applicant whom the board determines to be qualified to perform duties as a  
3           temporary respiratory ~~care practitioner~~ therapist. In making this determination, the  
4           board shall require evidence that the applicant ~~is enrolled in or~~ has successfully  
5           completed a bona fide respiratory care training program. The board shall establish  
6           fees ~~not in excess of thirty five dollars~~ for the issuance and renewal of a temporary  
7           respiratory ~~care practitioner~~ therapist license.
- 8           4. The board may assess a late fee for all license renewal applications that are  
9           postmarked after December thirty-first of the year prior to the year of renewal.
- 10          5. The board shall refuse to license any applicant or shall suspend or revoke any  
11          license after proper notice and a hearing, if the applicant:
- 12           a. Is not qualified or competent to perform the duties of a registered respiratory  
13           ~~care practitioner~~ therapist, a certified respiratory ~~care practitioner~~ therapist, or  
14           a temporary respiratory ~~care practitioner~~ therapist.
- 15           b. Has attempted to obtain or has obtained licensure under this chapter by fraud  
16           or material misrepresentation.
- 17           c. Has been found ~~guilty~~ by the board ~~of gross negligence~~ to have been grossly  
18           negligent as a registered respiratory ~~care practitioner~~ therapist, certified  
19           respiratory ~~care practitioner~~ therapist, or a temporary respiratory ~~care~~  
20           ~~practitioner~~ therapist.
- 21           d. Has engaged in conduct as a registered respiratory ~~care practitioner~~  
22           therapist, certified respiratory ~~care practitioner~~ therapist, or a temporary  
23           respiratory ~~care practitioner~~ therapist which is unethical, unprofessional, or  
24           detrimental to the ~~benefit~~ health of the public.
- 25           e. Has failed to demonstrate satisfactory completion of such continuing courses  
26           of study in respiratory care as the board may require.
- 27           f. Has been convicted or adjudged guilty of an offense, as defined by section  
28           12.1-01-04, determined by the board to have a direct bearing upon that  
29           individual's ability to practice respiratory care and is not sufficiently  
30           rehabilitated as determined by the board in accordance with section  
31           12.1-33-02.1.

g. Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.

h. Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.

6. The board may impose a fee on any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, including the amount paid by the board for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.

5- 7. Licenses issued under this chapter expire annually, but may be renewed upon application to the board and payment of the annual renewal fee established by the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board. Temporary licenses may not be renewed.

6- 8. The board shall require as a condition of renewal and relicensure that the applicant demonstrate satisfactory completion of continuing courses of study in respiratory care.

**SECTION 4. AMENDMENT.** Section 43-42-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-42-04. Respiratory care practice.** The practice of respiratory care may be performed in hospitals, as ambulatory or in-home care, and in other settings where respiratory care is provided in accordance with a prescription of a licensed physician. In addition, respiratory care may be provided during the transportation of a patient, and under any circumstances where an epidemic or public disaster necessitates respiratory care. No person may practice, nor represent oneself as able to practice, as a registered respiratory ~~care practitioner~~ therapist without being licensed as a registered respiratory ~~care practitioner~~ therapist, or as a certified respiratory ~~care practitioner~~ therapist without being licensed as a certified respiratory ~~care practitioner~~ therapist, in accordance with this chapter.

**SECTION 5. AMENDMENT.** Section 43-42-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**43-42-05. Application of chapter.**

1. This chapter does not prohibit a person enrolled in a bona fide respiratory care training program from performing those duties essential for completion of a student's clinical service; provided, that the duties are performed under the supervision or direction of a physician or registered respiratory ~~care practitioner~~ therapist and the person is identified as a "student respiratory ~~care practitioner~~ therapist".
2. A graduate of a bona fide respiratory care training program, who has applied for licensure under this chapter may practice respiratory care under the supervision or direction of a physician or a registered or certified respiratory ~~care practitioner~~ therapist; provided, that the graduate holds a temporary respiratory ~~care practitioner's~~ therapist's license and is identified as a "graduate respiratory ~~care practitioner~~ therapist". An applicant shall take ~~one of the next three immediately available~~ entry level certification ~~examinations~~ examination within six months following eligibility. Failure to pass any examination that is taken results in termination of the privileges provided under this subsection.
3. If examinations prepared by the national board for respiratory care are no longer available or become unacceptable to the board, the board may develop, approve, and use examinations for the licensure of registered respiratory ~~care practitioners~~ therapists and certified respiratory ~~care practitioners~~ therapists.
4. This chapter does not prevent a licensed and qualified member of another health care profession from performing any of the duties of a registered respiratory ~~care practitioner~~ therapist or a certified respiratory ~~care practitioner~~ therapist that are consistent with the accepted standards of that person's profession, provided the person is not represented as a registered respiratory ~~care practitioner~~ therapist or certified respiratory ~~care practitioner~~ therapist.
5. This chapter does not prohibit self-care by a patient or the gratuitous care by a friend or member of the family who does not represent or hold oneself out to be a registered or certified respiratory ~~care practitioner~~ therapist.

6. This chapter does not prohibit a ~~registered or certified~~ respiratory care practitioner therapist from performing advances in the art or techniques of respiratory care learned through formal or specialized training.

**SECTION 6. AMENDMENT.** Section 43-42-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-42-06. Reciprocity.** An applicant for licensure under this chapter may be granted a license upon satisfactory proof to the board that the applicant is licensed to practice respiratory care under the laws of another state which impose substantially the same requirements as this chapter, and upon payment of the annual license fee.

**SECTION 7. AMENDMENT.** Section 43-42-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-42-07. Penalty.**

1. Any person who violates this chapter or any rules adopted under this chapter is guilty of an infraction.
2. In addition to the criminal penalties provided, the civil remedy of an injunction is available to restrain and enjoin any violations of this chapter, without proof of actual damages sustained by any person.

**SECTION 8. AMENDMENT.** Subsection 1 of section 43-46-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Board" means:
  - a. The board of registry in podiatry;
  - b. The state board of chiropractic examiners;
  - c. The state board of funeral service;
  - d. The North Dakota board of nursing;
  - e. The North Dakota state board of optometry;
  - f. The state board of pharmacy;
  - g. The state board of medical examiners;
  - h. The North Dakota board of massage;
  - i. The state examining committee for physical therapists;
  - j. The state board of dental examiners;
  - k. The state board of veterinary medical examiners;

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- 1                   l.    The North Dakota state board of psychologist examiners;
- 2                   m.    The board for licensing hearing aid dealers and fitters;
- 3                   n.    The North Dakota state board of examiners for nursing home administrators;
- 4                   o.    The state board of examiners of audiology and speech pathology;
- 5                   p.    The North Dakota board of athletic trainers;
- 6                   q.    The board of occupational therapy practice;
- 7                   r.    The North Dakota board of social work examiners;
- 8                   s.    The North Dakota ~~respiratory care examining~~ state board of respiratory care;
- 9                   t.    The board of dietetic practice;
- 10                  u.    The board of addiction counseling examiners; and
- 11                  v.    Any health care related board granted licensing authority by the legislative
- 12                   assembly after July 1, 1989.