

Sixty-third  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1094**

Introduced by

Human Services 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, 43-42-03, 43-42-04, and 43-42-05 of  
2 the North Dakota Century Code, relating to respiratory care practitioners.

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

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

6 **43-42-01. Definitions.**

7 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 commission on accreditation of ~~allied health-~~  
11 ~~educational programs~~ respiratory care, or the commission's successor organization.
- 12 3. "Certification examination" means the entry level examination for respiratory therapists  
13 administered by the national board for respiratory care or its successor organization.
- 14 4. "Certified respiratory therapist" means a person licensed by the board to practice  
15 respiratory care under the direction or supervision of a physician or registered  
16 respiratory therapist.
- 17 5. "National board for respiratory care" means the body issuing credentials for the  
18 respiratory care profession, or the board's successor organization.
- 19 6. "Polysomnography" means the practice of attending, monitoring, and recording  
20 physiologic data during sleep for the purpose of identifying and assisting in the  
21 treatment of sleep-wake disorders.
- 22 7. "Registered polysomnographic technologist" means an individual licensed by the  
23 board to practice polysomnography under supervision as prescribed by the board by  
24 rule.

- 1       8. "Registered respiratory therapist" means a person licensed by the board to practice  
2       respiratory care.
- 3       9. "Registry examination" means the advanced level examination for respiratory  
4       therapists administered by the national board for respiratory care.
- 5       10. "Respiratory care" means the health specialty involving the treatment, management,  
6       control, and care of patients with deficiencies and abnormalities of the  
7       cardiorespiratory systems. Respiratory care is implemented on an order from a  
8       licensed physician, certified nurse practitioner, or physician's assistant and includes  
9       the use of medical gases, air and oxygen administering apparatuses, environmental  
10      control systems, humidification and aerosols, drugs and medications, apparatuses for  
11      cardiorespiratory support and control, postural drainage, chest percussion and  
12      vibration and breathing exercises, pulmonary rehabilitation, assistance with  
13      cardiopulmonary resuscitation, maintenance of natural and artificial airways, and  
14      insertion of artificial airways. The term also includes testing techniques to assist in  
15      diagnosis, monitoring, treatment, and research, including the measurement of  
16      cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of  
17      samples of arterial, capillary, and venous blood.
- 18      11. "Respiratory therapist" means a certified respiratory therapist or a registered  
19      respiratory therapist.
- 20      12. "Respiratory therapy" means respiratory care.
- 21      ~~13. "Temporary respiratory therapist" means any individual who has successfully-~~  
22      ~~completed a bona fide respiratory care training program and is licensed by the board-~~  
23      ~~to practice respiratory care under the supervision or direction of either a physician,-~~  
24      ~~certified respiratory therapist, or registered respiratory therapist.~~

25      **SECTION 2. AMENDMENT.** Section 43-42-03 of the North Dakota Century Code is  
26      amended and reenacted as follows:

27      **43-42-03. Respiratory therapist and polysomnographic technologist licensing - Fees.**

- 28      1. The board shall license as a registered respiratory therapist any applicant whom the  
29      board determines to be qualified to perform the duties of a registered respiratory  
30      therapist. In making this determination, the board shall require evidence that the  
31      applicant has successfully completed a bona fide respiratory care training program

and has passed the registry examination. The board shall establish fees not in excess of one hundred dollars for the issuance and renewal of a registered respiratory therapist license.

2. The board shall license as a certified respiratory therapist any applicant whom the board determines to be qualified to perform the duties of a certified respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the certification examination. The board shall establish fees not in excess of ~~seventy~~one hundred ninety dollars for the issuance and renewal of a certified respiratory therapist license.

~~3. The board shall license as a temporary respiratory therapist any applicant whom the board determines to be qualified to perform duties as a temporary respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program. The board shall establish fees not in excess of seventy dollars for the issuance of a temporary respiratory therapist license.~~

4. The board shall license as a registered polysomnographic technologist any applicant whom the board determines to be qualified to perform the duties of a registered polysomnographic technologist. In making this determination, the board shall require evidence that the applicant has complied with the rules adopted by the board under section 43-42-04.1. The board shall establish fees not in excess of ~~seventy~~one hundred ninety dollars for issuance and for renewal of a registered polysomnographic technologist license.

~~5.4.~~ The board may assess a late fee not in excess of twenty-five dollars for all license renewal applications that are postmarked after December thirty-first of the year prior to the year of renewal.

~~6.5.~~ The board shall refuse to license any applicant or shall suspend or revoke any license after proper notice and a hearing, if the applicant:

a. Is not qualified or competent to perform the duties of a registered respiratory therapist, a certified respiratory therapist, ~~a temporary respiratory therapist~~, or a registered polysomnographic technologist.

- 1           b. Has attempted to obtain or has obtained licensure under this chapter by fraud or  
2           material misrepresentation.
- 3           c. Has been found by the board to have been grossly negligent as a registered  
4           respiratory therapist, certified respiratory therapist, ~~temporary respiratory~~  
5           ~~therapist~~, or registered polysomnographic technologist.
- 6           d. Has engaged in conduct as a registered respiratory therapist, certified respiratory  
7           therapist, ~~temporary respiratory therapist~~, or registered polysomnographic  
8           technologist which is unethical, unprofessional, or detrimental to the health of the  
9           public.
- 10          e. Has failed to demonstrate satisfactory completion of such continuing courses of  
11          study in respiratory care as the board may require.
- 12          f. Has been convicted or adjudged guilty of an offense, as defined by section  
13          12.1-01-04, determined by the board to have a direct bearing upon that  
14          individual's ability to practice respiratory care and is not sufficiently rehabilitated  
15          as determined by the board in accordance with section 12.1-33-02.1.
- 16          g. Is habitually drunk or is addicted to the use of a controlled substance as defined  
17          in chapter 19-03.1.
- 18          h. Has been declared mentally incompetent by a court of competent jurisdiction,  
19          and who has not thereafter been lawfully declared competent.

20    7.6.   The board may impose a fee on any person subject to regulation under this chapter to  
21          reimburse the board for all or part of the costs of administrative actions resulting in  
22          disciplinary action, which are not reversed on appeal, including the amount paid by the  
23          board for services from the office of administrative hearings, attorney's fees, court  
24          costs, witness fees, staff time, and other expenses.

25    8.7.   Licenses issued under this chapter expire annually, but may be renewed upon  
26          application to the board and payment of the annual renewal fee established by the  
27          board. Licenses which have expired, been suspended, or been revoked may be  
28          renewed or reissued upon satisfaction of any conditions that may be established by  
29          the board, and after payment of a fee established by the board. ~~Temporary licenses~~  
30          ~~may not be renewed.~~

1     9.7.8. The board shall require as a condition of renewal and relicensure that the applicant  
2             demonstrate satisfactory completion of continuing courses of study in respiratory care.

3             **SECTION 3. AMENDMENT.** Section 43-42-04 of the North Dakota Century Code is  
4     amended and reenacted as follows:

5             **43-42-04. Respiratory care practice.**

6             The practice of respiratory care may be performed in hospitals, as ambulatory or in-home  
7     care, and in other settings where respiratory care is provided in accordance with a prescription  
8     of a licensed physician, certified nurse practitioner, or physician's assistant. In addition,  
9     respiratory care may be provided during the transportation of a patient, and under any  
10    circumstances in which an epidemic or public disaster necessitates respiratory care. A person  
11    may not practice, nor represent that the person is able to practice, as a registered respiratory  
12    therapist without being licensed as a registered respiratory therapist, or as a certified respiratory  
13    therapist without being licensed as a certified respiratory therapist, in accordance with this  
14    chapter.

15            **SECTION 4. AMENDMENT.** Section 43-42-05 of the North Dakota Century Code is  
16    amended and reenacted as follows:

17            **43-42-05. Application of chapter.**

- 18            1. This chapter does not prohibit a person enrolled in a bona fide respiratory care training  
19            program from performing those duties essential for completion of a student's clinical  
20            service; provided, that the duties are performed under the supervision or direction of a  
21            physician or registered respiratory therapist and the person is identified as a "student  
22            respiratory therapist".
- 23            2. ~~A graduate of a bona fide respiratory care training program, who has applied for~~  
24            ~~licensure under this chapter may practice respiratory care under the supervision or~~  
25            ~~direction of a physician or a registered or certified respiratory therapist; provided, that~~  
26            ~~the graduate holds a temporary respiratory therapist's license and is identified as a~~  
27            ~~"graduate respiratory therapist". An applicant shall take the entry level certification~~  
28            ~~examination within six months following eligibility. Failure to pass any examination that~~  
29            ~~is taken results in termination of the privileges provided under this subsection.~~
- 30            3. If examinations prepared by the national board for respiratory care are no longer  
31            available or become unacceptable to the board, the board may develop, approve, and

1           use examinations for the licensure of registered respiratory therapists and certified  
2           respiratory therapists.

3       4.3.   This chapter does not prevent a licensed and qualified member of another health care  
4           profession from performing any of the duties of a registered respiratory therapist or a  
5           certified respiratory therapist that are consistent with the accepted standards of that  
6           person's profession, provided the person is not represented as a registered respiratory  
7           therapist or certified respiratory therapist.

8       5.4.   This chapter does not prohibit self-care by a patient or the gratuitous care by a friend  
9           or member of the family who does not represent or hold out to be a registered or  
10          certified respiratory therapist.

11      6.5.   This chapter does not prohibit a respiratory therapist from performing advances in the  
12          art or techniques of respiratory care learned through formal or specialized training.

13      7.6.   This chapter does not prohibit an individual licensed or registered as a respiratory  
14          therapist in another state or country from providing respiratory care in an emergency in  
15          this state, providing respiratory care as a member of an organ harvesting team, or  
16          from providing respiratory care on board an ambulance as part of the ambulance  
17          treatment team.