

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1280

Introduced by

Representatives Porter, Grande, Keiser

Senators Andrist, Brown, Kilzer

1 A BILL for an Act to create and enact a new section to chapter 43-42 of the North Dakota
2 Century Code, relating to licensure of polysomnographic technologists; to amend and reenact
3 section 43-42-01, subsection 2 of section 43-42-02, and section 43-42-03 of the North Dakota
4 Century Code, relating to licensure of registered polysomnographic technologists; to provide for
5 a legislative council study; to provide an effective date; to provide an expiration date; and to
6 declare an emergency.

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

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

10 **43-42-01. Definitions.** In this chapter, unless the context otherwise requires:

- 11 1. "Board" means the state board of respiratory care.
- 12 2. "Bona fide respiratory care training program" means a program of respiratory care
13 education which is accredited by the commission on accreditation of allied health
14 educational programs, or the commission's successor organization.
- 15 3. "Certification examination" means the entry level examination for respiratory
16 therapists administered by the national board for respiratory care.
- 17 4. "Certified respiratory therapist" means a person licensed by the board to practice
18 respiratory care under the direction or supervision of a physician or registered
19 respiratory therapist.
- 20 5. "National board for respiratory care" means the body issuing credentials for the
21 respiratory care profession, or the board's successor organization.
- 22 6. "Polysomnography" means the practice of attending, monitoring, and recording
23 physiologic data during sleep for the purpose of identifying and assisting in the
24 treatment of sleep-wake disorders.

1 7. "Registered polysomnographic technologist" means an individual licensed by the
2 board to practice polysomnography under supervision as prescribed by the board
3 by rule.

4 8. "Registered respiratory therapist" means a person licensed by the board to
5 practice respiratory care.

6 ~~7.~~ 9. "Registry examination" means the advanced level examination for respiratory
7 therapists administered by the national board for respiratory care.

8 ~~8.~~ 10. "Respiratory care" means the health specialty involving the treatment,
9 management, control, and care of patients with deficiencies and abnormalities of
10 the cardiorespiratory systems. Respiratory care is implemented on an order from
11 a licensed physician, and includes the use of medical gases, air and oxygen
12 administering apparatuses, environmental control systems, humidification and
13 aerosols, drugs and medications, apparatuses for cardiorespiratory support and
14 control, postural drainage, chest percussion and vibration and breathing exercises,
15 pulmonary rehabilitation, assistance with cardiopulmonary resuscitation,
16 maintenance of natural and artificial airways, and insertion of artificial airways.
17 The term also includes testing techniques to assist in diagnosis, monitoring,
18 treatment, and research, including the measurement of cardiorespiratory volumes,
19 pressures and flows, and the drawing and analyzing of samples of arterial,
20 capillary, and venous blood.

21 ~~9.~~ 11. "Respiratory therapist" means a certified respiratory therapist or a registered
22 respiratory therapist.

23 ~~10.~~ 12. "Respiratory therapy" means respiratory care.

24 ~~11.~~ 13. "Temporary respiratory therapist" means any individual who has successfully
25 completed a bona fide respiratory care training program and is licensed by the
26 board to practice respiratory care under the supervision or direction of either a
27 physician, certified respiratory therapist, or registered respiratory therapist.

28 **SECTION 2. AMENDMENT.** Subsection 2 of section 43-42-02 of the North Dakota
29 Century Code is amended and reenacted as follows:

30 2. The board consists of ~~seven~~ eight members appointed by the governor. Four
31 members must be respiratory therapists, chosen from a list of eight respiratory

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

11 **SECTION 3. AMENDMENT.** Subsection 2 of section 43-42-02 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 2. The board consists of seven members appointed by the governor. Four members
14 must be respiratory therapists, chosen from a list of eight respiratory therapists
15 supplied to the governor by the North Dakota society for respiratory care. One
16 member must be a physician chosen from a list of two physicians supplied to the
17 governor by the North Dakota medical association. The governor shall appoint ~~two~~
18 ~~members~~ one member to be ~~representatives~~ a representative of the general
19 public. One member must be a registered polysomnographic technologist chosen
20 from a list of candidates recommended to the governor by the association of
21 polysomnographic technologists. Members are appointed for terms of three years.
22 Each member holds office until the member's successor is duly appointed and
23 qualified. A vacancy in the office of any member may be filled for the unexpired
24 term only. No member may serve more than two successive complete terms.

25 **SECTION 4. 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 -**
28 **Fees.**

29 1. The board shall license as a registered respiratory therapist any applicant whom
30 the board determines to be qualified to perform the duties of a registered
31 respiratory therapist. In making this determination, the board shall require

- 1 evidence that the applicant has successfully completed a bona fide respiratory
2 care training program and has passed the registry examination. The board shall
3 establish fees not in excess of one hundred dollars for the issuance and renewal of
4 a registered respiratory therapist license.
- 5 2. The board shall license as a certified respiratory therapist any applicant whom the
6 board determines to be qualified to perform the duties of a certified respiratory
7 therapist. In making this determination, the board shall require evidence that the
8 applicant has successfully completed a bona fide respiratory care training program
9 and has passed the certification examination. The board shall establish fees not in
10 excess of seventy dollars for the issuance and renewal of a certified respiratory
11 therapist license.
- 12 3. The board shall license as a temporary respiratory therapist any applicant whom
13 the board determines to be qualified to perform duties as a temporary respiratory
14 therapist. In making this determination, the board shall require evidence that the
15 applicant has successfully completed a bona fide respiratory care training
16 program. The board shall establish fees not in excess of seventy dollars for the
17 issuance of a temporary respiratory therapist license.
- 18 4. The board shall license as a registered polysomnographic technologist any
19 applicant whom the board determines to be qualified to perform the duties of a
20 registered polysomnographic technologist. In making this determination, the board
21 shall require evidence that the applicant has complied with the rules adopted by
22 the board under section 5 of this Act. The board shall establish fees not in excess
23 of seventy dollars for issuance and for renewal of a registered polysomnographic
24 technologist license.
- 25 5. The board may assess a late fee not in excess of twenty-five dollars for all license
26 renewal applications that are postmarked after December thirty-first of the year
27 prior to the year of renewal.
- 28 ~~5-~~ 6. The board shall refuse to license any applicant or shall suspend or revoke any
29 license after proper notice and a hearing, if the applicant:

- 1 a. Is not qualified or competent to perform the duties of a registered respiratory
2 therapist, a certified respiratory therapist, ~~or~~ a temporary respiratory therapist,
3 or a registered polysomnographic technologist.
- 4 b. Has attempted to obtain or has obtained licensure under this chapter by fraud
5 or material misrepresentation.
- 6 c. Has been found by the board to have been grossly negligent as a registered
7 respiratory therapist, certified respiratory therapist, ~~or~~ a temporary respiratory
8 therapist, or registered polysomnographic technologist.
- 9 d. Has engaged in conduct as a registered respiratory therapist, certified
10 respiratory therapist, ~~or~~ a temporary respiratory therapist, or registered
11 polysomnographic technologist which is unethical, unprofessional, or
12 detrimental to the health of the public.
- 13 e. Has failed to demonstrate satisfactory completion of such continuing courses
14 of study in respiratory care as the board may require.
- 15 f. Has been convicted or adjudged guilty of an offense, as defined by section
16 12.1-01-04, determined by the board to have a direct bearing upon that
17 individual's ability to practice respiratory care and is not sufficiently
18 rehabilitated as determined by the board in accordance with section
19 12.1-33-02.1.
- 20 g. Is habitually drunk or is addicted to the use of a controlled substance as
21 defined in chapter 19-03.1.
- 22 h. Has been declared mentally incompetent by a court of competent jurisdiction,
23 and who has not thereafter been lawfully declared competent.
- 24 ~~6.~~ 7. The board may impose a fee on any person subject to regulation under this
25 chapter to reimburse the board for all or part of the costs of administrative actions
26 resulting in disciplinary action, which are not reversed on appeal, including the
27 amount paid by the board for services from the office of administrative hearings,
28 attorney's fees, court costs, witness fees, staff time, and other expenses.
- 29 ~~7.~~ 8. Licenses issued under this chapter expire annually, but may be renewed upon
30 application to the board and payment of the annual renewal fee established by the
31 board. Licenses which have expired, been suspended, or been revoked may be

1 renewed or reissued upon satisfaction of any conditions that may be established
2 by the board, and after payment of a fee established by the board. Temporary
3 licenses may not be renewed.

4 ~~8.~~ 9. The board shall require as a condition of renewal and relicensure that the applicant
5 demonstrate satisfactory completion of continuing courses of study in respiratory
6 care.

7 **SECTION 5.** A new section to chapter 43-42 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Polysomnography practice.**

- 10 1. After December 31, 2005, a person may not practice, nor represent that the person
11 is able to practice, polysomnography unless licensed under this chapter as a
12 registered polysomnographic technologist. A registered polysomnographic
13 technologist may not practice respiratory care except as may be authorized by
14 rules adopted by the board. A registered polysomnographic technologist is limited
15 in practice to polysomnography within the scope of practice and limitations as
16 provided by rules adopted by the board.
- 17 2. The board shall adopt rules regulating registered polysomnographic technologists
18 and establishing the scope of practice of a registered polysomnographic
19 technologist. The rules may include requirements for examination requirements
20 for licensure, education requirements for licensure, continuing courses of study in
21 polysomnography, and student practice.
- 22 3. This section does not prohibit a respiratory therapist from practicing respiratory
23 care.

24 **SECTION 6. ALLIED HEALTH PROFESSIONS BOARD - LEGISLATIVE COUNCIL**

25 **STUDY.** The legislative council shall consider studying, during the 2005-06 interim, the
26 feasibility and desirability of creating an allied health professions board to regulate the practice
27 of members of allied health professions. The study must include consideration of the feasibility
28 and desirability of a North Dakota allied health professions board entering joint professional
29 licensure agreements with neighboring states. The legislative council shall report its findings
30 and recommendations, together with any legislation required to implement the
31 recommendations, to the sixtieth legislative assembly.

1 **SECTION 7. EFFECTIVE DATE.** Section 3 of this Act becomes effective on
2 October 1, 2006.

3 **SECTION 8. EXPIRATION DATE.** Section 2 of this Act is effective through
4 September 30, 2006, and after that date is ineffective.

5 **SECTION 9. EMERGENCY.** Section 2 of this Act is declared to be an emergency
6 measure.