

**Fifty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1280  
(Representatives Porter, Grande, Keiser)  
(Senators Andrist, Brown, Kilzer)

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

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

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

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

1. "Board" means the state board of respiratory care.
2. "Bona fide respiratory care training program" means a program of respiratory care education which is accredited by the commission on accreditation of allied health educational programs, or the commission's successor organization.
3. "Certification examination" means the entry level examination for respiratory therapists administered by the national board for respiratory care.
4. "Certified respiratory therapist" means a person licensed by the board to practice respiratory care under the direction or supervision of a physician or registered respiratory therapist.
5. "National board for respiratory care" means the body issuing credentials for the respiratory care profession, or the board's successor organization.
6. "Polysomnography" means the practice of attending, monitoring, and recording physiologic data during sleep for the purpose of identifying and assisting in the treatment of sleep-wake disorders.
7. "Registered polysomnographic technologist" means an individual licensed by the board to practice polysomnography under supervision as prescribed by the board by rule.
8. "Registered respiratory therapist" means a person licensed by the board to practice respiratory care.
- ~~7.~~ 9. "Registry examination" means the advanced level examination for respiratory therapists administered by the national board for respiratory care.
- ~~8.~~ 10. "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, pulmonary rehabilitation, assistance with

cardiopulmonary resuscitation, maintenance of natural and artificial airways, and insertion 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: 11. "Respiratory therapist" means a certified respiratory therapist or a registered respiratory therapist.
- 40: 12. "Respiratory therapy" means respiratory care.
- 44: 13. "Temporary respiratory therapist" means any individual who 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 therapist, or registered respiratory therapist.

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

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

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

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

**SECTION 4. AMENDMENT.** Section 43-42-03 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The board shall license as a registered respiratory therapist any applicant whom the board determines to be qualified to perform the duties of a registered 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 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 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 5 of this Act. The board shall establish fees not in excess of seventy dollars for issuance and for renewal of a registered polysomnographic technologist license.
5. 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.
- 5- 6. 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, ~~or~~ a temporary respiratory therapist, or a registered polysomnographic technologist.
  - b. Has attempted to obtain or has obtained licensure under this chapter by fraud or material misrepresentation.
  - c. Has been found by the board to have been grossly negligent as a registered respiratory therapist, certified respiratory therapist, ~~or~~ a temporary respiratory therapist, or registered polysomnographic technologist.
  - d. Has engaged in conduct as a registered respiratory therapist, certified respiratory therapist, ~~or~~ a temporary respiratory therapist, or registered polysomnographic technologist which is unethical, unprofessional, or detrimental to the health of the public.
  - e. Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.
  - f. Has been convicted or adjudged guilty of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care and is not sufficiently rehabilitated as determined by the board in accordance with section 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.~~ 7. 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, which are not reversed on appeal, 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.
- ~~7.~~ 8. 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.
- ~~8.~~ 9. 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 5.** A new section to chapter 43-42 of the North Dakota Century Code is created and enacted as follows:

**Polysomnography practice.**

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

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

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

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

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

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

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1280 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:      Yeas        84            Nays        8            Absent      2

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:      Yeas        47            Nays        0            Absent      0

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State