

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1094
(Human Services Committee)
(At the request of the State Board of Respiratory Care)

AN ACT to amend and reenact sections 43-42-01, 43-42-03, 43-42-04, and 43-42-05 of the North Dakota Century Code, relating to respiratory care practitioners.

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~~respiratory care, 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 or its successor organization.
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.
9. "Registry examination" means the advanced level examination for respiratory therapists administered by the national board for respiratory care.
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, certified nurse practitioner, or physician's assistant 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.

11. "Respiratory therapist" means a certified respiratory therapist or a registered respiratory therapist.
12. "Respiratory therapy" means respiratory care.
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. 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~~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~~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.
 - 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, ~~temporary respiratory therapist~~, or registered polysomnographic technologist.
- d. Has engaged in conduct as a registered respiratory therapist, certified respiratory therapist, ~~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.

7-6. 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, 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.

8-7. 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.~~

9-8. 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 3. 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, certified nurse practitioner, or physician's assistant. In addition, respiratory care may be provided during the transportation of a patient, and under any circumstances in which an epidemic or public disaster necessitates respiratory care. A person may not practice, nor represent that the person is able to practice, as a registered respiratory therapist without being licensed as a registered respiratory therapist, or as a certified respiratory therapist without being licensed as a certified respiratory therapist, in accordance with this chapter.

SECTION 4. AMENDMENT. Section 43-42-05 of 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 therapist and the person is identified as a "student respiratory 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 therapist; provided, that the graduate holds a temporary respiratory therapist's license and is identified as a "graduate respiratory therapist". An applicant shall take the entry level certification 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 therapists and certified respiratory therapists.
- 4.3. 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 therapist or a certified respiratory therapist that are consistent with the accepted standards of that person's profession, provided the person is not represented as a registered respiratory therapist or certified respiratory therapist.
- 5.4. 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 out to be a registered or certified respiratory therapist.
- 6.5. This chapter does not prohibit a respiratory therapist from performing advances in the art or techniques of respiratory care learned through formal or specialized training.
- 7.6. This chapter does not prohibit an individual licensed or registered as a respiratory therapist in another state or country from providing respiratory care in an emergency in this state, providing respiratory care as a member of an organ harvesting team, or from providing respiratory care on board an ambulance as part of the ambulance treatment team.

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 Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1094.

House Vote: Yeas 84 Nays 5 Absent 5

Senate Vote: Yeas 46 Nays 1 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State