



This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 267: Amend Respiratory Care Practice Act.-AB

2015-2016 General Assembly

Committee:	House Health, if favorable, Finance	Date:	March 25, 2015
Introduced by:	Reps. Goodman, Glazier, Blackwell	Prepared by:	Amy Jo Johnson
Analysis of:	PCS to First Edition H267-CSTK-2		Committee Counsel

SUMMARY: Article 38 of Chapter 90 regulates the practice of respiratory care and creates the North Carolina Respiratory Care Board (Board). The PCS to House Bill 267 makes a variety of changes to this Article.

BILL ANALYSIS:

Section 1 makes changes to the definition of "practice of respiratory care," "respiratory care practitioner," and "support activities." The practice of respiratory care is expanded to include not only the performance of diagnostic testing and therapeutic application of specified activities, but also the assessment of the activities. Added to the list of activities included in the practice of respiratory care is the "therapeutic effectiveness of medical equipment used in respiratory care treatment for an individual patient." The definition of "respiratory care practitioner" is changed to "an individual who has been licensed by the Board as a respiratory care practitioner." The definition of "support activities" has been amended to include "tasks that do not require formal academic training, including the delivery, setup, and routine maintenance and repair of respiratory care equipment as defined in rules adopted by the Board."

Section 2 of the PCS specifies that the power of the North Carolina Respiratory Care Board (Board) to conduct investigations, subpoena individuals and records, and otherwise take necessary actions to discipline its licensees, also includes the authority to designate one or more of its employees to issue and serve subpoenas and other papers on the Board's behalf.

Section 3 of the PCS makes several changes to G.S. 90-653 which outlines licensure requirements. A conforming change is made with regards to an application that is submitted for licensure. The application must include consent to the check of an applicant's criminal record and the use of fingerprints. This language was removed from G.S. 90-652 and inserted into G.S. 90-653. **Section 3** also specifies that an associate's degree is required from a program approved by the Commission for Accreditation for Respiratory Care (CoARC). An applicant must also submit to the Board written evidence, verified by oath, that the applicant has earned the advanced level credential awarded by the National Board for Respiratory Care. **Section 9** provides a deemed status with regards to the new educational requirements in **Section 3** of the PCS and allows a person licensed by the Board on October 1, 2016, who has passed the entry level exam administered by the National Board for Respiratory Care to be considered in compliance with the new requirements.

Under current law, G.S. 90-653(b) required the Board to give an entry level exam for applicants three times a year. **Section 3** eliminates this requirement.

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Section 4 makes amendments to the provisional license of respiratory care practitioners. The Board is able to grant a provisional license to any applicant who has completed all of the following new requirements:

- Successfully completed the minimal requirements of an associate's degree program in respiratory care approved by CoARC.
- Submitted written evidence to the Board, verified by oath, that the applicant has completed the minimal requirements for Basic Cardiac Life Support.
- Submitted written evidence to the Board, verified by oath, that the applicant has earned the entry level credential awarded by the National Board for Respiratory Care.

Provisional licenses are effective for up to one year. The PCS allows the license to be renewed annually but does not allow the provisional license to be in effect for more than a total of 5 years from the initial effective date of the provisional license.

Section 5 adds to the limitations the Board may place on a licensee – including assessment of a monetary penalty, costs, or both. The Board may take actions on a licensee or applicant if any of the following are true of the licensee or applicant:

- Employed fraud, deceit, bribery, or misrepresentation in (i) obtaining or attempting to obtain a license or (ii) obtaining or attempting to obtain the renewal of a license.
- Committed an act of malpractice, gross negligence, or incompetence in the practice of respiratory care.
- Practiced respiratory care without a license.
- Engaged in health care practices that are determined to be hazardous to public health, safety, or welfare.
- Was convicted of or entered a plea of guilty or nolo contendere to any crime involving moral turpitude.
- Has developed a physical or mental impairment that renders the licensee or applicant unfit to practice respiratory care with reasonable skill and competence and in a manner not harmful to the public. An adjudication of mental incompetency in a court of competent jurisdiction or a determination of mental incompetency by other lawful means shall be conclusive proof of unfitness to practice respiratory care until the licensee or applicant is subsequently adjudicated mentally competent.
- Has engaged in any act or practice that violates any of the provisions of this Article or any rule adopted pursuant to this Article, or aided, abetted, or assisted any person in such a violation.
- Has failed to respond within a reasonable period of time and in a reasonable manner, as determined by the Board, to inquiries from the Board concerning any matter affecting a license to practice respiratory care.
- Has developed an impairment caused by the licensee's or applicant's use of alcohol, drugs, or controlled substances, which interferes with the ability of the licensee or applicant to practice respiratory care with reasonable skill, competence, and in a manner not harmful to the public.
- Has practiced respiratory care outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.
- Has had a license for the practice of respiratory care in any other jurisdiction suspended or revoked or been disciplined by any licensing or certification board in any other jurisdiction

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for conduct that would subject the licensee or applicant to disciplinary action under this Article.

- Is a hazard to the public health by reason of having a serious communicable disease.

Section 5 also makes changes allowing the Board to deny an initial application for a license without a hearing if the applicant fails to submit a complete application showing the individual has met the education and entry level credential requirements. **Section 5** allows the Board to hear the evidence of witnesses that have appeared and to consider and dispose of the matter before it if a licensee or applicant fails to appear for a scheduled hearing and no continuance has been granted. The Board is allowed to reopen any case for good cause. **Section 5** also contains provisions granting immunity to the Board, its members and staff for exercising, in good faith, the powers and duties authorized by law. Any person acting in good faith without fraud or malice is also granted immunity for performing various specified acts.

Section 5 also contains provisions allowing a licensee to voluntarily relinquish his or her license.

Section 6 specifies that it is unlawful to hold oneself out to the public, advertise, or represent in any manner that an individual is authorized to practice respiratory care without a license.

Section 7 creates a new section creating immunity from civil liability for any person or entity acting in good faith, without malice or fraud, for reporting, investigating, assessing, monitoring, or providing a medical expert opinion to the Board regarding a violation of the Respiratory Care Act (Act) or from initiating or conducting proceedings, or testifying in those proceedings, on the ground that a person is violating the Act.

Section 8 adds to the list of individuals to whom the Act does not apply a person licensed as a respiratory care practitioner in another jurisdiction while providing respiratory care in a declared emergency in North Carolina, as a member of an organ harvesting team, or on board an ambulance transporting a patient in or out of North Carolina.

As referenced above, **Section 9** provides a deemed status with regards to the new educational requirements in **Section 3** of the PCS and allows a person licensed by the Board on October 1, 2016, who has passed the entry level exam administered by the National Board for Respiratory Care to be considered in compliance with the new requirements.

Section 10 repeals language dealing with temporary licenses.

EFFECTIVE DATE: Section 5 of this act becomes effective October 1, 2015. Sections 3 and 4 of this act become effective October 1, 2016. The remainder of the act is effective when it becomes law.