

1 SENATE BILL 231

2 45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO LICENSURE; CHANGING, EXPANDING AND CLARIFYING
12 LICENSING AND ADMINISTRATIVE PROVISIONS FOR RESPIRATORY CARE
13 PROVIDERS; ADDING GROUNDS FOR DISCIPLINARY ACTION; CHANGING
14 THE QUALIFICATIONS FOR BOARD MEMBERSHIP; CLARIFYING THE
15 MEANING OF "BOARD" IN THE IMPAIRED HEALTH CARE PROVIDER ACT;
16 AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 Section 1. Section 61-7-2 NMSA 1978 (being Laws 1976,
20 Chapter 3, Section 2, as amended) is amended to read:

21 "61-7-2. DEFINITION. -- As used in the Impaired Health
22 Care Provider Act, "board" means ~~[the boards]~~ a board or
23 department that ~~[license, register or certify]~~ licenses,
24 registers or certifies health care providers. "

25 Section 2. Section 61-12B-1 NMSA 1978 (being Laws 1984,

Chapter 103, Section 1) is amended to read:

"61-12B-1. SHORT TITLE. -- ~~[This act]~~ Chapter 61, Article 12B NMSA 1978 may be cited as the "Respiratory Care Act". "

Section 3. Section 61-12B-2 NMSA 1978 (being Laws 1984, Chapter 103, Section 2) is amended to read:

"61-12B-2. PURPOSE OF ACT. -- In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of respiratory care, it is necessary to provide laws and rules to govern the practice of respiratory care. The primary purpose of the Respiratory Care Act is to safeguard life and health and to promote the public welfare by licensing and regulating the practice of respiratory care in the state. "

Section 4. Section 61-12B-3 NMSA 1978 (being Laws 1984, Chapter 103, Section 3, as amended) is amended to read:

"61-12B-3. DEFINITIONS. -- As used in the Respiratory Care Act:

A. "board" means the advisory board of respiratory care practitioners;

B. "department" means the regulation and licensing department or that division of the department designated to administer the provisions of the Respiratory Care Act;

C. "respiratory care" means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation and care of

1 patients with deficiencies and abnormalities ~~[which]~~ that
2 affect the cardiopulmonary system and associated aspects of
3 other system functions, and the terms "respiratory therapy"
4 and "inhalation therapy" where such terms mean respiratory
5 care;

6 D. "practice of respiratory care" includes ~~[but is~~
7 ~~not limited to]~~:

8 (1) direct and indirect cardiopulmonary care
9 services that are of comfort, safe, aseptic, preventative and
10 restorative to the patient;

11 (2) cardiopulmonary care services, including
12 ~~[but not limited to]~~ the administration of pharmacological,
13 diagnostic and therapeutic agents related to cardiopulmonary
14 care necessary to implement treatment, disease prevention,
15 cardiopulmonary rehabilitation or a diagnostic regimen,
16 including paramedical therapy and baromedical therapy;

17 (3) specific diagnostic and testing
18 techniques employed in the medical management of patients to
19 assist in diagnosis, monitoring, treatment and research of
20 cardiopulmonary abnormalities, including ~~[but not limited to]~~
21 pulmonary function testing, hemodynamic and physiologic
22 monitoring of cardiac function and collection of arterial and
23 venous blood for analysis;

24 (4) observation, assessment and monitoring of
25 signs and symptoms, general behavior, general physical

1 response to cardiopulmonary care treatment and diagnostic
2 testing, including determination of whether such signs,
3 symptoms, reactions, behavior or general response exhibit
4 abnormal characteristics;

5 (5) implementation based on observed
6 abnormalities, appropriate reporting, referral, respiratory
7 care protocols or changes in treatment, pursuant to a
8 prescription by a physician authorized to practice medicine or
9 other person authorized by law to prescribe, or the initiation
10 of emergency procedures or as otherwise permitted in the
11 Respiratory Care Act;

12 (6) establishing and maintaining the natural
13 airways, insertion and maintenance of artificial airways,
14 bronchopulmonary hygiene and cardiopulmonary resuscitation,
15 along with cardiac and ventilatory life support ~~[diagnosis]~~
16 assessment and evaluation; and

17 (7) the practice ~~[of respiratory care]~~
18 performed in ~~[any]~~ a clinic, hospital, skilled nursing
19 facility, private dwelling or other place deemed appropriate
20 or necessary by the ~~[board]~~ department;

21 E. "expanded practice" means the practice of
22 respiratory care by a respiratory care practitioner who has
23 ~~[completed a recognized program of study]~~ been prepared
24 through a formal training program to function beyond the scope
25 of practice of respiratory care as defined by rule of the

1 department;

2 F. "respiratory care practitioner" means a person
3 who is licensed to practice respiratory care in New Mexico;
4 ~~[The respiratory care practitioner may transcribe and~~
5 ~~implement a physician's written and verbal orders pertaining~~
6 ~~to the practice of respiratory care and]~~

7 G. "respiratory care protocols" ~~[meaning]~~ means a
8 predetermined, written medical care plan, which can include
9 standing orders;

10 ~~[G.]~~ H. "respiratory therapy training program"
11 means ~~[a program accredited or recognized by the American~~
12 ~~medical association's committee on allied health education and~~
13 ~~accreditation in collaboration with the joint review committee~~
14 ~~for respiratory therapy education]~~ an education course of
15 study as defined by rule of the department; and

16 ~~[H.]~~ I. "superintendent" means the superintendent
17 of regulation and licensing. "

18 Section 5. Section 61-12B-4 NMSA 1978 (being Laws 1984,
19 Chapter 103, Section 4, as amended) is amended to read:

20 "61-12B-4. LICENSE REQUIRED-- EXCEPTIONS. --

21 A. No person shall practice respiratory care or
22 represent himself to be a respiratory care practitioner unless
23 he is licensed ~~[under]~~ pursuant to the provisions of the
24 Respiratory Care Act, except as otherwise provided by that
25 act.

1 B. A respiratory care practitioner may transcribe
2 and implement the written or verbal orders of a physician or
3 other person authorized by law to prescribe pertaining to the
4 practice of respiratory care and respiratory care protocols.

5 [~~B.~~] C. Nothing in the Respiratory Care Act is
6 intended to limit, preclude or otherwise interfere with:

7 (1) the practices of other persons and health
8 providers licensed by appropriate agencies of New Mexico;

9 (2) self-care by a patient; [~~or~~]

10 (3) gratuitous care by a friend or family
11 member who does not represent or hold himself out to be a
12 respiratory care practitioner; or

13 (4) respiratory care services rendered in
14 case of an emergency.

15 [~~C.~~] D. An individual who has demonstrated
16 competency in one or more areas covered by the Respiratory
17 Care Act may perform [~~only~~] those functions that he is
18 qualified by examination to perform; [~~so long as the testing~~
19 ~~body offering the examination is certified by the national~~
20 ~~commission for health certifying agencies~~] provided that the
21 examining body or testing entity is recognized nationally for
22 expertise in evaluating the competency of persons performing
23 those functions covered by that act or department rules. The
24 department shall establish by rule those certifying agencies
25 and testing entities that are acceptable to the department.

1 ~~[D-]~~ E. The Respiratory Care Act does not prohibit
2 qualified clinical laboratory personnel who work in facilities
3 licensed ~~[by]~~ pursuant to the provisions of the federal
4 Clinical Laboratories Improvement Act of 1967, as amended, or
5 accredited by the college of American pathologists or the
6 joint commission on accreditation of ~~[hospitals]~~ healthcare
7 organizations from performing recognized functions and duties
8 of medical laboratory personnel for which they are
9 appropriately trained and certified. "

10 Section 6. Section 61-12B-5 NMSA 1978 (being Laws 1984,
11 Chapter 103, Section 5, as amended) is amended to read:

12 "61-12B-5. ADVISORY BOARD CREATED. - -

13 A. The superintendent shall appoint an "advisory
14 board of respiratory care practitioners" consisting of five
15 members as follows:

16 (1) one physician licensed in New Mexico who
17 is knowledgeable in respiratory care;

18 (2) two respiratory care practitioners who are
19 residents of New Mexico, licensed by the department and in
20 good standing. At least one of the respiratory care
21 practitioners shall have been actively engaged in the practice
22 of respiratory care for at least five years immediately
23 preceding appointment or reappointment; and

24 (3) two public members who are residents of
25 New Mexico. ~~[The]~~ A public ~~[members]~~ member shall not have

1 been licensed as a respiratory care ~~[practitioners]~~
2 practitioner nor shall ~~[they]~~ he have any financial interest,
3 direct or indirect, in the occupation to be regulated.

4 B. ~~[Each]~~ A member shall serve no more than two
5 consecutive three-year terms.

6 C. ~~[The members]~~ A member of the board shall
7 receive per diem and mileage as provided for nonsalaried
8 public officers in the Per Diem and Mileage Act and shall
9 receive no other compensation, perquisite or allowance in
10 connection with the discharge of ~~[their]~~ his duties as a board
11 ~~[members. Three members, including at least one public~~
12 ~~member, constitute a quorum]~~ member.

13 D. ~~[Any]~~ A member failing ~~[after proper notice]~~ to
14 attend ~~[any]~~ three consecutive regular and properly noticed
15 meetings of the board without a reasonable excuse shall be
16 automatically removed from the board.

17 E. In the event of a vacancy, the board shall
18 immediately notify the superintendent of the vacancy. Within
19 ninety days of receiving notice of a vacancy, the
20 superintendent shall appoint a qualified person to fill the
21 remainder of the unexpired term.

22 F. A majority of the board members currently
23 serving constitutes a quorum of the board.

24 G. The board shall meet at least twice a year and
25 at such other times as it deems necessary.

1 H. The board shall annually elect officers as
2 deemed necessary to administer its duties."

3 Section 7. Section 61-12B-6 NMSA 1978 (being Laws 1984,
4 Chapter 103, Section 6, as amended) is amended to read:

5 "61-12B-6. DEPARTMENT--DUTIES AND POWERS. --

6 A. The department, in consultation with the board,
7 shall:

8 (1) evaluate the qualifications of applicants
9 and review ~~[any]~~ the required examination results of
10 applicants. ~~[and]~~ The department may recognize the entry level
11 examination written by the national board for respiratory care
12 ~~[inc.]~~ or ~~[any]~~ a successor board;

13 (2) ~~[collect and review data and statistics~~
14 ~~with respect to respiratory care, treatment, services or~~
15 ~~facilities for the purpose of granting, suspending or revoking~~
16 ~~respiratory care licenses]~~ promulgate rules as may be
17 necessary to implement the provisions of the Respiratory Care
18 Act;

19 (3) issue and renew licenses and temporary
20 permits to qualified applicants who meet the requirements of
21 the Respiratory Care Act; and

22 (4) administer, coordinate and enforce the
23 provisions of the Respiratory Care Act and investigate persons
24 engaging in practices that may violate the provisions of that
25 act ~~[and~~

1 ~~(5) adopt rules and regulations to allow the~~
2 ~~interstate transport of patients].~~

3 B. The department, in consultation with the board,
4 may:

5 (1) conduct ~~[any required]~~ examinations of
6 respiratory care practitioner applicants ~~[and]~~ as required by
7 rules of the department;

8 (2) reprimand, fine, deny, suspend or revoke
9 [temporary permits or licenses] a license or temporary permit
10 to practice respiratory care as provided in the Respiratory
11 Care Act in accordance with the provisions of the Uniform
12 Licensing Act;

13 (3) for the purpose of investigating
14 complaints against applicants and licensees, issue
15 investigative subpoenas prior to the issuance of a notice of
16 contemplated action as set forth in the Uniform Licensing Act;

17 (4) enforce and administer the provisions of
18 the Impaired Health Care Provider Act and promulgate rules
19 pursuant to that act;

20 (5) promulgate rules or disciplinary
21 guidelines relating to impaired practitioners;

22 (6) promulgate rules to allow the interstate
23 transport of patients; and

24 (7) promulgate rules to determine and
25 regulate the scope and qualifications for expanded practice

1 for respiratory care practitioners. "

2 Section 8. Section 61-12B-7 NMSA 1978 (being Laws 1984,
3 Chapter 103, Section 7, as amended) is amended to read:

4 "61-12B-7. LICENSING BY TRAINING AND EXAMINATION. -- ~~[A-~~
5 ~~Any]~~ A person desiring to become licensed as a respiratory
6 care practitioner shall make application to the department on
7 a written form and in such manner as the department
8 prescribes, pay all required application fees and certify and
9 furnish evidence to the department that the applicant:

10 ~~[(1)]~~ A. has successfully completed a training
11 program as defined in the Respiratory Care Act and set forth
12 by rules of the department;

13 ~~[(2)]~~ B. has passed an entry level examination, as
14 specified by rules ~~[and regulations]~~ of the department, for
15 respiratory care practitioners administered by the national
16 board ~~[of]~~ for respiratory care ~~[incorporated]~~ or ~~[any]~~ a
17 successor board;

18 ~~[(3)]~~ C. is of good moral character; and

19 ~~[(4)]~~ D. has successfully completed ~~[any]~~ other
20 training or education programs and passed ~~[any]~~ other
21 examinations as ~~[required]~~ set forth by rules ~~[and~~
22 ~~regulations]~~ of the department.

23 ~~[B.—The department, in consultation with the~~
24 ~~board, shall develop rules and regulations that describe the~~
25 ~~scope and qualifications for expanded practice roles of~~

1 ~~respiratory care practitioners.] "~~

2 Section 9. Section 61-12B-8 NMSA 1978 (being Laws 1984,
3 Chapter 103, Section 8, as amended) is amended to read:

4 "61-12B-8. LICENSING WITHOUT TRAINING AND
5 EXAMINATION. --The department shall waive the education and
6 examination requirements for ~~[applicants]~~ an applicant who
7 ~~[present]~~ presents proof ~~[of current licensure]~~ that he is
8 currently licensed in good standing in a ~~[state which]~~
9 jurisdiction that has standards for licensure that are at
10 least equal to those for licensure in New Mexico as required
11 by the Respiratory Care Act. "

12 Section 10. Section 61-12B-9 NMSA 1978 (being Laws 1984,
13 Chapter 103, Section 9, as amended) is amended to read:

14 "61-12B-9. OTHER LICENSING PROVISIONS. --

15 A. The department, in consultation with the board,
16 shall adopt rules ~~[and regulations]~~ for mandatory continuing
17 education requirements that shall be completed as a condition
18 for renewal of ~~[any]~~ a license issued pursuant to the
19 provisions of the Respiratory Care Act.

20 B. The department, in consultation with the board,
21 may adopt rules ~~[and regulations]~~ for issuance of temporary
22 permits ~~[for]~~ to students and graduates of approved training
23 programs to practice limited respiratory care under the direct
24 supervision of a licensed respiratory care practitioner or
25 physician. Rules ~~[and regulations]~~ shall be adopted defining

. 134316. 1

1 ~~[for the purposes of the Respiratory Care Act]~~ the terms
2 ~~["students"]~~ "student" and "direct supervision".

3 C. ~~[The]~~ A license issued by the department shall
4 describe the licensed person as a "respiratory care
5 practitioner licensed by the New Mexico regulation and
6 licensing department" ~~[and shall be displayed in the~~
7 ~~licensee's place of business]~~.

8 D. Unless licensed as a respiratory care
9 practitioner pursuant to the provisions of the Respiratory
10 Care Act, no person shall use the title "respiratory care
11 practitioner", the abbreviation "R. C. P. " or any other title or
12 abbreviation to indicate that the person is a licensed
13 respiratory care practitioner.

14 E. A copy of ~~[the]~~ a valid license or temporary
15 permit issued pursuant to the Respiratory Care Act shall be
16 ~~[displayed]~~ kept on file at the respiratory care
17 practitioner's or temporary permittee's place of employment.

18 F. ~~[Licenses, including initial licenses, shall be~~
19 ~~issued for a period of two years.]~~ A respiratory care
20 practitioner license shall expire on September 30, annually or
21 biennially, as provided by rules of the department. "

22 Section 11. Section 61-12B-10 NMSA 1978 (being Laws
23 1984, Chapter 103, Section 10) is amended to read:

24 "61-12B-10. LICENSURE--DATE REQUIRED. -- ~~[No person shall~~
25 ~~be required to be licensed as a respiratory care practitioner~~

1 ~~until October 1, 1984.]~~ The provisions of the Criminal
2 Offender Employment Act shall govern consideration of criminal
3 records required or permitted by the Respiratory Care Act."

4 Section 12. Section 61-12B-11 NMSA 1978 (being Laws
5 1984, Chapter 103, Section 11, as amended) is amended to read:

6 "61-12B-11. FEES. --

7 A. The superintendent, in consultation with the
8 board, shall by rule establish a schedule of reasonable fees
9 for licenses, temporary permits and renewal of licenses for
10 respiratory care practitioners.

11 B. The initial application fee shall be set in an
12 amount not to exceed one hundred fifty dollars (\$150).

13 C. A ~~[biennial]~~ license renewal fee shall be
14 established in an amount not to exceed one hundred fifty
15 dollars (\$150). "

16 Section 13. Section 61-12B-12 NMSA 1978 (being Laws
17 1984, Chapter 103, Section 12, as amended) is amended to read:

18 "61-12B-12. DENIAL, SUSPENSION, REVOCATION AND
19 REINSTATEMENT OF LICENSES. --

20 A. The superintendent ~~[may refuse to issue or may~~
21 ~~suspend or revoke any license]~~ in consultation with the board
22 and in accordance with the rules set forth by the department
23 and the procedures set forth in the Uniform Licensing Act may
24 take disciplinary action against a license or temporary permit
25 held or applied for pursuant to the Respiratory Care Act for

1 ~~[any of]~~ the following causes:

2 (1) fraud or deceit in the procurement of
3 ~~[any]~~ or attempt to procure a license ~~[under that]~~ or
4 temporary permit;

5 (2) imposition of any disciplinary action for
6 an act that would be grounds for disciplinary action by the
7 department pursuant to the Respiratory Care Act or as set
8 forth by rules of the department upon a person by an agency of
9 another ~~[state which]~~ jurisdiction that regulates respiratory
10 care ~~[but not to exceed the period or extent of such action]~~;

11 (3) conviction of a crime ~~[which]~~ that
12 substantially relates to the qualifications, functions or
13 duties of a respiratory care practitioner. The record of
14 conviction or a certified copy thereof shall be conclusive
15 evidence of the conviction;

16 (4) impersonating or acting as a proxy for an
17 applicant in ~~[any]~~ an examination given ~~[under that]~~ pursuant
18 to provisions of the Respiratory Care Act;

19 (5) habitual or excessive use of intoxicants
20 or drugs;

21 (6) gross negligence as defined by rules of
22 the department in the practice ~~[as a]~~ of respiratory care
23 ~~[practitioner]~~;

24 (7) violating ~~[any of the provisions]~~ a
25 provision of the Respiratory Care Act or ~~[any rules or]~~

1 ~~regulations]~~ a rule duly adopted ~~[under]~~ pursuant to that act
2 or aiding or abetting ~~[any]~~ a person to violate ~~[the~~
3 ~~provisions]~~ a provision of or ~~[any rules or regulations]~~ a
4 rule adopted ~~[under]~~ pursuant to that act;

5 (8) engaging in unprofessional conduct ~~[or]~~
6 as defined by rules set forth by the department;

7 (9) committing ~~[any]~~ a fraudulent, dishonest
8 or corrupt act ~~[which]~~ that is substantially related to the
9 qualifications, functions or duties of a respiratory care
10 practitioner;

11 (10) practicing respiratory care without a
12 valid license or temporary permit;

13 (11) aiding or abetting the practice of
14 respiratory care by a person who is not licensed or who has
15 not been issued a temporary permit by the department;

16 (12) conviction of a felony. The record of
17 conviction or a certified copy thereof shall be conclusive
18 evidence of the conviction;

19 (13) violating a provision of the Controlled
20 Substances Act;

21 (14) failing to furnish the department or its
22 investigators or representatives with information requested by
23 the department in the course of an official investigation;

24 (15) practicing beyond the scope of
25 respiratory care as defined in the Respiratory Care Act or as

1 set forth by rules of the department; or

2 (16) surrendering a license, certificate or
3 permit to practice respiratory care in another jurisdiction
4 while an investigation or disciplinary proceeding is pending
5 for an act or conduct that would constitute grounds for
6 disciplinary action under the Respiratory Care Act.

7 B. ~~[One year from the date of revocation of a~~
8 ~~license under the Respiratory Care Act, application may be~~
9 ~~made to the superintendent for reinstatement, restoration or~~
10 ~~modification of probation.]~~ The [superintendent] department,
11 in consultation with the board, ~~[shall have the discretion to~~
12 ~~accept or reject an application and may require an examination~~
13 ~~for such reinstatement, restoration or modification of~~
14 ~~probation when it is deemed appropriate.~~

15 C. ~~The department, in consultation with the board,~~
16 ~~shall write rules and regulations to establish guidelines for~~
17 ~~the reinstatement or restoration of a license suspended or~~
18 ~~revoked due to the abuse of intoxicants or drugs]~~ may impose
19 conditions on and promulgate rules relating to the
20 reapplication or reinstatement of applicants, licensees or
21 temporary permittees who have been subject to disciplinary
22 action by the department. "

23 Section 14. Section 61-12B-13 NMSA 1978 (being Laws
24 1984, Chapter 103, Section 13, as amended) is amended to read:

25 "61-12B-13. RESPIRATORY CARE FUND CREATED--DISPOSITION--

. 134316. 1

1 METHOD OF PAYMENT. - -

2 A. There is created in the state treasury the
3 "respiratory care fund".

4 B. All funds received by the superintendent and
5 money collected under the Respiratory Care Act shall be
6 deposited with the state treasurer. The state treasurer shall
7 place the money to the credit of the respiratory care fund.

8 C. All amounts paid into the respiratory care fund
9 shall be expended only pursuant to appropriation by the
10 legislature and in accordance with the budget approved by the
11 department of finance and administration and shall be used
12 only for the purposes of implementing the provisions of the
13 Respiratory Care Act. ~~[All money unused at the end of the~~
14 ~~fiscal year shall remain in the respiratory care fund for use~~
15 ~~in accordance with the provisions of the Respiratory Care~~
16 ~~Act.]~~ Any unexpended or unencumbered balance remaining at the
17 end of a fiscal year shall not revert to the general fund."

18 Section 15. Section 61-12B-15 NMSA 1978 (being Laws
19 1984, Chapter 103, Section 15) is amended to read:

20 "61-12B-15. ENFORCEMENT. - -

21 A. ~~[Violation of any]~~ A person who violates
22 a provision of the Respiratory Care Act is guilty of a
23 misdemeanor and shall be sentenced in accordance with the
24 provisions of Section 31-19-1 NMSA 1978.

25 B. The department may bring civil action in any

1 district court to enforce any of the provisions of the
2 Respiratory Care Act. "

3 Section 16. A new section of the Respiratory Care Act is
4 enacted to read:

5 "[NEW MATERIAL] SEVERABILITY. --If any part or application
6 of the Respiratory Care Act is held invalid, the remainder or
7 its application to other situations or persons shall not be
8 affected. "

9 Section 17. REPEAL. --Section 61-12B-14 NMSA 1978 (being
10 Laws 1984, Chapter 103, Section 14, as amended) is repealed.

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