

AN ACT

RELATING TO LICENSURE; AMENDING THE RESPIRATORY CARE ACT;
CHANGING THE NAME OF THE "ADVISORY BOARD OF NEW MEXICO
RESPIRATORY CARE PRACTITIONERS" TO "NEW MEXICO RESPIRATORY
CARE BOARD"; CHANGING, EXPANDING AND CLARIFYING LICENSING
AND ADMINISTRATIVE PROVISIONS; CHANGING THE STATUS OF THE
NEW MEXICO RESPIRATORY CARE BOARD; PROVIDING POWERS AND
DUTIES; ADDING GROUNDS FOR DISCIPLINARY ACTION; EXPANDING
DISCIPLINARY PROCEEDINGS; PROVIDING SEVERABILITY PROVISIONS.

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

Section 1. Section 61-12B-1 NMSA 1978 (being Laws
1984, Chapter 103, Section 1) is amended to read:

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

Section 2. 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 3. 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 New Mexico respiratory care board;

B. "respiratory care" means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation and care of patients with deficiencies and abnormalities which affect the cardiopulmonary system and associated aspects of other system functions, and the terms "respiratory therapy" and "inhalation therapy" where such terms mean respiratory care;

C. "practice of respiratory care" includes:

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

(2) cardiopulmonary care services, including the administration of pharmacological, diagnostic and therapeutic agents related to cardiopulmonary care necessary to implement treatment, disease prevention, cardiopulmonary rehabilitation or a diagnostic regimen, including paramedical therapy and baromedical therapy;

(3) specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of cardiopulmonary abnormalities, including pulmonary function testing, hemodynamic and physiologic monitoring of cardiac function and collection of arterial and venous blood for analysis;

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

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

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

(6) establishing and maintaining the natural airways, insertion and maintenance of artificial airways, bronchopulmonary hygiene and cardiopulmonary resuscitation, along with cardiac and ventilatory life support assessment and evaluation; and

(7) the practice of respiratory care performed in any clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate or necessary by the board;

D. "expanded practice" means the practice of respiratory care by a respiratory care practitioner who has been prepared through a formal training program to function beyond the scope of practice of respiratory care as defined by rule of the board;

E. "respiratory care practitioner" means a person who is licensed to practice respiratory care in New Mexico. The respiratory care practitioner may transcribe and implement written and verbal orders of a physician or other person authorized by law to prescribe pertaining to the practice of respiratory care;

F. "respiratory care protocols" means a predetermined, written medical care plan, which can include standing orders; and

G. "respiratory therapy training program" means a course of study defined by rule of the board."

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

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

A. No person shall practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed pursuant to provisions of the Respiratory Care Act, except as otherwise provided by that act.

B. Nothing in the Respiratory Care Act is intended to limit, preclude or otherwise interfere with the practices of other persons and health providers licensed by appropriate agencies of New Mexico, self-care by a patient or gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner or respiratory care services in case of an emergency.

C. An individual who has demonstrated competency in one or more areas covered by the Respiratory Care Act may perform only those functions that he is qualified by examination to perform; provided that the examining body or testing entity is recognized nationally for expertise in evaluating the competency of persons performing those functions covered by that act or board rules. The board shall establish by rule those certifying agencies and

testing entities that are acceptable to the board.

D. The Respiratory Care Act does not prohibit qualified clinical laboratory personnel who work in facilities licensed pursuant to provisions of the federal Clinical Laboratories Improvement Act of 1967, as amended, or accredited by the college of American pathologists or the joint commission on accreditation of health care organizations from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified."

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

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

A. The governor shall appoint a "New Mexico respiratory care board" consisting of five members as follows:

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

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

(3) two public members who are residents of New Mexico. The public members shall not have been licensed as respiratory care practitioners nor shall they have any financial interest, direct or indirect, in the occupation regulated.

B. Each member shall serve no more than two consecutive three-year terms.

C. The members of the board shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance in connection with the discharge of their duties as board members. Three members, including at least one public member, constitute a quorum. In the event that the board is not fully appointed, a majority of the board members currently serving shall constitute a quorum of the board.

D. Any member failing to attend any three consecutive regular and properly noticed meetings of the board without a reasonable excuse shall be automatically removed from the board.

E. A vacancy shall be filled by appointment by the governor for the remainder of the unexpired term.

F. The board shall meet at least twice a year and at such other time as it deems necessary. It shall conduct hearings and maintain records and meeting minutes as needed to carry out its functions.

G. The board shall annually elect officers as deemed necessary to administer its duties."

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

"61-12B-6. BOARD--DUTIES AND POWERS.--

A. The board shall:

(1) evaluate the qualifications of applicants and review any required examination results of

applicants and may recognize the entry level examination written by the national board for respiratory care, incorporated or any successor board;

(2) promulgate all rules as may be necessary to carry into effect the provisions of the Respiratory Care Act;

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

(4) administer, coordinate and enforce the provisions of the Respiratory Care Act and investigate persons engaging in practices that may violate the provisions of that act.

B. The board may:

(1) conduct examinations of respiratory care practitioner applicants as required by the board;

(2) reprimand, fine, deny, suspend or revoke temporary permits or licenses to practice respiratory care as provided in the Respiratory Care Act in accordance with the provisions of the Uniform Licensing Act;

(3) issue investigative subpoenas, prior to the issuance of a notice of contemplated action as set forth in Section 61-1-4 NMSA1978, for the purpose of investigating complaints against applicants and licenses;

(4) hire or contract with an attorney to give advice and counsel in regard to any matter connected with the duties of the board or to represent the board in any legal proceedings and to aid in the enforcement of the laws;

(5) enforce and administer the provisions

of the Impaired Health Care Provider Act and promulgate rules pursuant to that act;

(6) promulgate rules to regulate the expanded practice for respiratory care practitioners; and

(7) promulgate rules to allow the interstate transport of patients."

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

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

A. has successfully completed a training program as defined in the Respiratory Care Act and by rule of the board;

B. has passed an entry level examination for respiratory care practitioners as set forth by rule of the board;

C. is of good moral character; and

D. has successfully completed any other training or education programs as set forth by rule of the board."

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

"61-12B-8. LICENSING WITHOUT TRAINING AND EXAMINATION.--The board shall waive the education and examination requirements for applicants who present proof of

current licensure in good standing in a jurisdiction that has standards at least equal to those for licensure in New Mexico as required by the Respiratory Care Act."

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

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

A. The board shall adopt rules for mandatory continuing education requirements that shall be completed as a condition for renewal of a license issued pursuant to provisions of the Respiratory Care Act.

B. The board may adopt rules for issuance of temporary permits for students and graduates of approved training programs to practice limited respiratory care under the direct supervision of a licensed respiratory care practitioner or physician. Rules shall be adopted defining, for the purposes of the Respiratory Care Act, the terms "students" and "direct supervision".

C. The license issued by the board shall describe the licensed person as a "respiratory care practitioner licensed by the New Mexico respiratory care board".

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

E. A copy of the valid license or temporary permit issued pursuant to the Respiratory Care Act shall be kept on file at the respiratory care practitioner's or

temporary permittee's place of employment.

F. Respiratory care practitioner licenses shall expire on September 30, annually or biennially, as provided by rule of the board."

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

"61-12B-10. CRIMINAL OFFENDER CHARACTER EVALUATION.-- The provisions of the Criminal Offender Employment Act shall govern consideration of criminal records required or permitted by the Respiratory Care Act."

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

"61-12B-11. FEES.--The board shall, by rule, establish a schedule of reasonable fees for licenses, temporary permits and renewal of licenses for respiratory care practitioners.

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

C. A license renewal fee shall be established in an amount not to exceed one hundred fifty dollars (\$150)."

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

"61-12B-12. DISCIPLINARY PROCEEDINGS.--

A. In accordance with the procedures set forth in the Uniform Licensing Act and rules of the board, the board may take any disciplinary action as set forth in Section 61-1-3 NMSA 1978 against a person holding or applying for a license or temporary permit pursuant to the provisions of

the Respiratory Care Act for any of the following causes:

(1) fraud or deceit in the procurement of any license or temporary permit issued pursuant to provisions of the Respiratory Care Act;

(2) imposition of any disciplinary action upon a person by an agency of another jurisdiction that regulates respiratory care for any act that would be considered grounds for disciplinary action by the board pursuant to this section or as defined by rules of the board;

(3) conviction of a crime that substantially relates to the qualifications, functions or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction;

(4) impersonating or acting as a proxy for an applicant in any examination given pursuant to provisions of the Respiratory Care Act;

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

(6) gross negligence in the practice of respiratory care as defined by rule of the board;

(7) violating any of the provisions of the Respiratory Care Act or any rules duly adopted under that act or aiding or abetting any person to violate the provisions of or any rules adopted pursuant to that act;

(8) engaging in unprofessional conduct as defined by rule of the board;

(9) committing any fraudulent, dishonest or corrupt act which is substantially related to the

qualifications, functions or duties of a respiratory care practitioner;

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

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

(12) conviction of a felony, and the record of conviction or a certified copy shall be conclusive evidence of the conviction;

(13) violating any of the provisions of the Controlled Substances Act;

(14) failing to furnish the board, its investigators or representatives with information requested by the board in the course of an official investigation;

(15) practicing beyond the scope of respiratory care as defined in the Respiratory Care Act or by rule of the board; or

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

B. The board may impose conditions on the reapplication or reinstatement of applicants or licensees who have been subject to disciplinary action by the board.

C. The board may promulgate rules governing the reapplication and reinstatement of applicants and licensees who have been subject to disciplinary action."

1984, Chapter 103, Section 14, as amended) is amended to read:

"61-12B-14. SEVERABILITY.--If any part or application of the Respiratory Care Act is held invalid, the remainder or its application to other situations or persons shall not be affected."

Section 14. Section 61-12B-15 NMSA 1978 (being Laws 1984, Chapter 103, Section 15) is amended to read:

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

A. Violation of any provision of the Respiratory Care Act is a misdemeanor, and sentencing shall be in accordance with the provisions of Section 31-19-1 NMSA 1978.

B. The board may bring civil action in any district court to enforce any of the provisions of the Respiratory Care Act."
