

AN ACT

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

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

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

"61-7-2. DEFINITION. --As used in the Impaired Health Care Provider Act, "board" means a board or department that licenses, registers or certifies health care providers. "

Section 2. 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 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 patients with deficiencies and abnormalities that 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;

D. "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 authorized to practice medicine 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 performed in a clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate or necessary by the department;

E. "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 department;

F. "respiratory care practitioner" means a person who is licensed to practice respiratory care in New Mexico;

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

H. "respiratory therapy training program" means an education course of study as defined by rule of the department; and

I. "superintendent" means the superintendent of

regulation and licensing. "

Section 5. 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 the provisions of the Respiratory Care Act, except as otherwise provided by that act.

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

C. Nothing in the Respiratory Care Act is intended to limit, preclude or otherwise interfere with:

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

(2) self-care by a patient;

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

(4) respiratory care services rendered in

case of an emergency.

D. An individual who has demonstrated competency in one or more areas covered by the Respiratory Care Act may perform 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 department rules. The department shall establish by rule those certifying agencies and testing entities that are acceptable to the department.

E. The Respiratory Care Act does not prohibit qualified clinical laboratory personnel who work in facilities licensed pursuant to the 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 healthcare organizations from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified."

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

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

A. The superintendent shall appoint an "advisory board of respiratory care practitioners" 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 department 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. A public member shall not have been licensed as a respiratory care practitioner nor shall he have any financial interest, direct or indirect, in the occupation to be regulated.

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

C. A member 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 his duties as a board member.

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

E. In the event of a vacancy, the board shall

immediately notify the superintendent of the vacancy.

Within ninety days of receiving notice of a vacancy, the superintendent shall appoint a qualified person to fill the remainder of the unexpired term.

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

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

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

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

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

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

(1) evaluate the qualifications of applicants and review the required examination results of applicants. The department may recognize the entry level examination written by the national board for respiratory care or a successor board;

(2) promulgate rules as may be necessary to implement 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 department, in consultation with the board, may:

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

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

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

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

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

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

(7) promulgate rules to determine and

regulate the scope and qualifications for expanded practice for respiratory care practitioners. "

Section 8. 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. -- A person desiring to become licensed as a respiratory care practitioner shall make application to the department on a written form and in such manner as the department prescribes, pay all required application fees and certify and furnish evidence to the department that the applicant:

A. has successfully completed a training program as defined in the Respiratory Care Act and set forth by rules of the department;

B. has passed an entry level examination, as specified by rules of the department, for respiratory care practitioners administered by the national board for respiratory care or a successor board;

C. is of good moral character; and

D. has successfully completed other training or education programs and passed other examinations as set forth by rules of the department. "

Section 9. 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 department shall waive the education and examination requirements for an applicant who presents proof that he is currently licensed in good standing in a jurisdiction that has standards for licensure that are at least equal to those for licensure in New Mexico as required by the Respiratory Care Act. "

Section 10. 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 department, in consultation with 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 the provisions of the Respiratory Care Act.

B. The department, in consultation with the board, may adopt rules for issuance of temporary permits to 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 the terms "student" and "direct supervision".

C. A license issued by the department shall describe the licensed person as a "respiratory care practitioner licensed by the New Mexico regulation and licensing department".

D. Unless licensed as a respiratory care practitioner pursuant to the 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 a 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. A respiratory care practitioner license shall expire on September 30, annually or biennially, as provided by rules of the department. "

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

"61-12B-10. LICENSURE--DATE REQUIRED. --The provisions of the Criminal Offender Employment Act shall govern consideration of criminal records required or permitted by the Respiratory Care Act. "

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

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

A. The superintendent, in consultation with 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 13. Section 61-12B-12 NMSA 1978 (being Laws 1984, Chapter 103, Section 12, as amended) is amended to read:

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

A. The superintendent in consultation with the board and in accordance with the rules set forth by the department and the procedures set forth in the Uniform Licensing Act may take disciplinary action against a license or temporary permit held or applied for pursuant to the Respiratory Care Act for the following causes:

(1) fraud or deceit in the procurement of or attempt to procure a license or temporary permit;

(2) imposition of any disciplinary action for an act that would be grounds for disciplinary action by the department pursuant to the Respiratory Care Act or as set forth by rules of the department upon a person by an agency of another jurisdiction that regulates respiratory care;

(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 an examination given pursuant to provisions of the Respiratory Care Act;

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

(6) gross negligence as defined by rules of the department in the practice of respiratory care;

(7) violating a provision of the Respiratory Care Act or a rule duly adopted pursuant to that act or aiding or abetting a person to violate a provision of or a rule adopted pursuant to that act;

(8) engaging in unprofessional conduct as defined by rules set forth by the department;

(9) committing a fraudulent, dishonest or corrupt act that 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 department;

(12) conviction of a felony. The record of

conviction or a certified copy thereof shall be conclusive evidence of the conviction;

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

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

(15) practicing beyond the scope of respiratory care as defined in the Respiratory Care Act or as set forth by rules of the department; or

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

B. The department, in consultation with the board, may impose conditions on and promulgate rules relating to the reapplication or reinstatement of applicants, licensees or temporary permittees who have been subject to disciplinary action by the department. "

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

"61-12B-13. RESPIRATORY CARE FUND CREATED--
DISPOSITION--METHOD OF PAYMENT.--

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

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

C. All amounts paid into the respiratory care fund shall be expended only pursuant to appropriation by the legislature and in accordance with the budget approved by the department of finance and administration and shall be used only for the purposes of implementing the provisions of the Respiratory Care Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund."

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

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

A. A person who violates a provision of the Respiratory Care Act is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

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

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

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

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