

JAN 22 2010

A BILL FOR AN ACT

RELATING TO HEALTHCARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the practice of
2 respiratory care in Hawaii affects the public health, safety,
3 and welfare of people in the State. Accordingly, the practice
4 of respiratory care should be subject to regulation and control
5 in order to protect the public from the unqualified practice of
6 respiratory care and from unprofessional conduct by persons
7 licensed to practice respiratory care. According to the
8 American Association for Respiratory Care, Hawaii is one of only
9 two United States jurisdictions that does not regulate the
10 practice of respiratory care.

11 The legislature further finds that the practice of
12 respiratory care is a dynamic and changing science, the practice
13 of which continues to evolve with more sophisticated techniques
14 and clinical modalities in patient care.

15 The purpose of this Act is to regulate the practice of
16 respiratory care by establishing a state respiratory care board
17 and licensure requirements.



SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

RESPIRATORY THERAPISTS

§ -1 **Definitions.** For the purposes of this chapter:

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Licensed respiratory therapist" means a person:

- (1) Who engages in the practice of respiratory care and uses the title of licensed respiratory care therapist;
- (2) Who has been issued a license under this chapter; and
- (3) Whose license is in effect and not revoked, suspended, or encumbered.

"Practice of respiratory care" means providing assessment, therapy, management, rehabilitation, support services for diagnostic evaluation, education, and care of patients with deficiencies and abnormalities which affect the pulmonary system, including:



- 1 (1) Respiratory care services, including the
2 administration of pharmacological, diagnostic, and
3 therapeutic care related to respiratory care
4 procedures necessary for treatment, disease
5 prevention, rehabilitative, or diagnostic regimens
6 prescribed by a physician;
- 7 (2) Observation and monitoring of signs, symptoms,
8 reactions, and physical responses to respiratory care
9 treatment and diagnostic testing;
- 10 (3) Diagnostic or therapeutic use of:
 - 11 (A) Medical gases, excluding general anesthesia;
 - 12 (B) Aerosols, humidification, environmental control
13 systems, or biomedical therapy;
 - 14 (C) Pharmacological care related to respiratory care
15 procedures;
 - 16 (D) Mechanical or physiological ventilatory support,
17 including maintenance of natural airways and
18 insertion and maintenance of artificial airways;
 - 19 (E) Cardiopulmonary resuscitation; or
 - 20 (F) Respiratory protocol and evaluation or diagnostic
21 and testing techniques required for
22 implementation of respiratory care protocols; and



(4) The transcription and implementation of the written and verbal orders of a physician pertaining to the practice of respiratory care.

"Qualified medical direction" means ready access by a respiratory therapist to a licensed physician who has specialty training or experience in the management of acute and chronic respiratory disorders and who is responsible for the quality, safety, and appropriateness of the respiratory services provided by the respiratory therapist.

§ -2 **License required.** (a) Except as specifically provided in this chapter, no person shall engage in the practice of respiratory care or use the title "licensed respiratory therapist" or "respiratory therapist" without a valid license issued pursuant to this chapter.

(b) Any person who violates this section shall be subject to a fine of not more than \$1,000 for each separate offense. Each day of each violation shall constitute a separate offense. The director may initiate a civil action to impose or collect the fine imposed under this section in accordance with rules adopted by the director.

§ -3 **Physician supervision required.** No person shall practice respiratory care under this chapter except under the



1 direct order and qualified medical direction of a physician or
2 osteopathic physician licensed pursuant to chapter 453.

3 § -4 Powers and duties of the director. In addition to
4 any other powers and duties authorized by law, the director
5 shall have the power and duties to:

6 (1) Grant, deny, renew, refuse to renew, restore,
7 terminate, reinstate, condition, restrict, suspend, or
8 revoke a license issued pursuant to this chapter;

9 (2) Grant permission to a person to practice respiratory
10 care and to use the title of "licensed respiratory
11 therapist" or a description indicating that the person
12 is a licensed respiratory therapist in this State;

13 (3) Adopt, amend, or repeal rules pursuant to chapter 91
14 as the director finds necessary to carry out this
15 chapter;

16 (4) Administer, coordinate, and enforce this chapter;

17 (5) Prepare and administer examinations pursuant to the
18 requirements of this chapter;

19 (6) Establish the criteria for successful passage of an
20 examination administered pursuant to this chapter;

21 (7) Discipline a licensed respiratory therapist on grounds
22 specified by this chapter or chapter 436B, or for any



violation of rules adopted by the director pursuant to
this chapter;

(8) Refuse to license a person for failure to meet
licensing requirements of this chapter or for any
reason specified by this chapter as grounds to
discipline a respiratory therapist; and

(9) Appoint an advisory committee composed of practicing
respiratory therapists to assist with the
implementation of this chapter.

§ -5 **Fees; disposition.** (a) Upon issuance of a new
license and at each license renewal period, each respiratory
therapist shall pay a fee of \$ which shall be
deposited into the compliance resolution fund established
pursuant to section 26-9(o), Hawaii Revised Statutes.

(b) Fees paid pursuant to this chapter shall not be
refundable. Pursuant to section 26-9(1), the director shall
establish examination, reexamination, license, renewal,
restoration, penalty, and other fees relating to the
administration of this chapter by rule.

(c) Fees assessed pursuant to this chapter shall be used
to defray costs incurred by the department in implementing this
chapter.



§ -6 Exemptions. This chapter shall not apply to:

- (1) A person working within the scope of practice or duties of another licensed profession that overlaps with the practice of respiratory care; provided that the person does not purport to be a respiratory therapist;
- (2) A person enrolled as a student in an accredited respiratory therapy program where the performance of duties that are regulated by this chapter is an integral part of the student's program of study;
- (3) A person rendering services in the case of an emergency or in the domestic administration of family remedies; or
- (4) A person employed by a federal, state, or county government agency in a respiratory therapist position, but only in the course of carrying out the duties and responsibilities of government employment.

§ -7 Application for license as a respiratory therapist.

The department shall issue a license under this chapter to an applicant if the applicant provides satisfactory evidence to the department that the applicant meets the requirements for



1 licensure contained in this chapter and rules adopted by the
2 director and if the applicant:

3 (1) Has successfully completed a respiratory therapy
4 training program at an accredited educational
5 institution approved by the Committee on Accreditation
6 for Respiratory Care or its predecessor or successor
7 agencies;

8 (2) Has passed the Certified Respiratory Therapist
9 Examination of the National Board for Respiratory Care
10 within days of submitting an application; and

11 (3) Has paid all fees for licensure established by the
12 director.

13 § -8 **Licensure by endorsement.** The director may issue a
14 license by endorsement to an applicant who holds a current and
15 unencumbered license as a respiratory therapist in another
16 state; provided that the requirements for a license in that
17 state are deemed by the director to be equivalent to or higher
18 than the current requirements for licensure in this State.

19 § -9 **Renewal of license.** Licenses issued pursuant to
20 this chapter shall be valid for three years and shall be renewed
21 upon the payment of a renewal fee within sixty days before the
22 expiration of the license. Failure to renew a license shall



1 result in forfeiture of that license. Licenses that have been
2 forfeited may be restored within one year of the forfeiture date
3 upon payment of renewal and restoration fees. Failure to
4 restore a forfeited license within one year shall result in the
5 automatic termination of the license. A person whose license
6 has been terminated pursuant to this section shall be required
7 to reapply for a new license as a new applicant.

8 § -10 Grounds for refusal to renew, reinstate, or
9 restore a license and for revocation, suspension, denial, or
10 condition of a license. (a) In addition to any other acts or
11 conditions provided by law, the director may refuse to renew,
12 reinstate, or restore, and may deny, revoke, suspend, or
13 condition in any manner any license for any one or more of the
14 following acts or conditions on the part of a licensee or
15 license applicant:

16 (1) Failure to meet or to maintain the conditions and
17 requirements necessary to qualify for the granting of
18 a license;

19 (2) Engaging in false, fraudulent, or deceptive
20 advertising, or making untruthful or improbable
21 statements in advertising;



- (3) Engaging in the practice of respiratory care while impaired by alcohol, drugs, physical disability, or mental instability;
- (4) Procurement of a license to practice respiratory care through fraud, misrepresentation, or deceit;
- (5) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license to practice respiratory care;
- (6) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of respiratory care;
- (7) Engaging in conduct or practice contrary to recognized standards of ethics for the practice of respiratory care;
- (8) Violation of any condition or limitation imposed on a license to practice respiratory care by the director;
- (9) Engaging in the practice of respiratory care in a manner that causes injury to one or more members of the public;
- (10) Failure to comply with, observe, or adhere to any law in a manner that causes the director to determine that the applicant or holder is unfit to hold a license;



(11) Revocation or suspension of a license or other disciplinary action by any state or federal agency for any reason provided by the applicable licensing laws or by this section;

(12) Conviction or plea of nolo contendere to a crime directly related to the qualifications, functions, or duties of the practice of respiratory care;

(13) Failure to report in writing to the director any disciplinary decision issued against the licensee or applicant in another jurisdiction within thirty days of the disciplinary decision;

(14) Employment, whether gratuitously or for pay, of any person not licensed pursuant to this chapter to perform the functions or duties of the practice of respiratory care; or

(15) Violation of this chapter, chapter 463B, or any rule or order of the director.

(b) Any licensee or applicant who violates this section may also be fined not more than \$1,000 per violation, as established by the director by rule."

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:



1 "§26H-4 Repeal dates for newly enacted professional and
2 vocational regulatory programs. (a) Any professional or
3 vocational regulatory program enacted after January 1, 1994, and
4 listed in this section shall be repealed on December 31, 2008.

5 The auditor shall perform an evaluation of the program, pursuant
6 to section 26H-5, prior to its repeal date.

7 (b) Chapter (respiratory therapists) shall be repealed
8 on June 30, ."

9 SECTION 4. The department of commerce and consumer affairs
10 may employ necessary personnel without regard to chapter 76,
11 Hawaii Revised Statutes, to assist with the implementation and
12 continuing functions of this chapter.

13 SECTION 5. There is appropriated out of the compliance
14 resolution fund established pursuant to section 26-9(o), Hawaii
15 Revised Statutes, the sum of \$ or so much thereof as
16 may be necessary for fiscal year 2010-2011 to implement the
17 respiratory therapists licensure program.

18 The sum appropriated shall be expended by the department of
19 commerce and consumer affairs for the purposes of this Act.

20 SECTION 6. New statutory material is underscored.



S.B. NO. 2600

1 SECTION 7. This Act shall take effect on July 1, 2010.

2

INTRODUCED BY:

Russell H Baker

Arvid Yde

Norman Sakomfi

Per Alvarz

Will Eyo

John

Clarence V. Sisk

Michelle N. Sidani

Shianne Chun Oakland



Report Title:

Respiratory Therapists; Licensure; Appropriation

Description:

Creates licensing and regulatory standards for respiratory therapists.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

