

A Bill for an Act Relating to Healthcare.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the practice of respiratory care in Hawaii affects the public's health, safety, and welfare. Accordingly, the practice of respiratory care should be subject to regulation and control to protect the public from the unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care. According to the American Association for Respiratory Care, Hawaii is one of only two United States jurisdictions that does not regulate the practice of respiratory care.

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

The purpose of this Act is to establish licensure requirements for the practice of respiratory care.

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 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 for patients with deficiencies and abnormalities that affect the pulmonary system, including:

- (1) Respiratory care services, including the administration of pharmacological, diagnostic, and therapeutic care related to respiratory care procedures necessary for treatment, disease prevention, rehabilitative, or diagnostic regimens prescribed by a physician;
- (2) Observation and monitoring of signs, symptoms, reactions, and physical responses to respiratory care treatment and diagnostic testing;
- (3) Diagnostic or therapeutic use of:
 - (A) Medical gases, excluding general anesthesia;
 - (B) Aerosols, humidification, environmental control systems, or invasive and non-invasive modalities;
 - (C) Pharmacological care related to respiratory care procedures;
 - (D) Mechanical or physiological ventilatory support, including maintenance of natural airways and insertion and maintenance of artificial airways;

- (E) Cardiopulmonary resuscitation; and
 - (F) Respiratory protocol and evaluation or diagnostic and testing techniques required for implementation of respiratory care protocols; and
- (4) The transcription and implementation of the written, verbal, and telecommunicated 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 Respiratory therapist program. There is established a respiratory therapist program within the department to be administered by the director.

§ -3 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 collect the fine imposed under this section in accordance with rules adopted by the director.

§ -4 Physician supervision required. No person shall practice respiratory care under this chapter except under the direct order and qualified medical direction of a physician or osteopathic physician licensed pursuant to chapter 453.

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

- (1) Grant, deny, renew, refuse to renew, restore, terminate, reinstate, condition, restrict, suspend, or revoke a license issued pursuant to this chapter;
- (2) Grant permission to a person to practice respiratory care and to use the title of “licensed respiratory therapist” or a description indicating that the person is a licensed respiratory therapist in this State;
- (3) Adopt, amend, or repeal rules pursuant to chapter 91 as the director finds necessary to carry out this chapter;
- (4) Administer, coordinate, and enforce this chapter;
- (5) Prepare and administer examinations pursuant to the requirements of this chapter;
- (6) Establish the criteria for successful passage of an examination administered pursuant to this chapter;
- (7) Discipline a licensed respiratory therapist on grounds 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 the licensing requirements in 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.

§ -6 **Fees; disposition.** (a) Upon issuance of a new license and at each license renewal period, each respiratory therapist shall pay a fee of \$304 that shall be deposited into the compliance resolution fund established pursuant to section 26-9(o).

(b) Application fees paid pursuant to this chapter shall not be refundable. Pursuant to section 26-9(l), 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.

§ -7 **Exemptions.** This chapter is not intended to restrict the practice of other licensed or credentialed healthcare practitioners practicing within their own recognized scopes of practice and 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 working as, or training to become, a sleep technologist or person who is enrolled in a Commission on Accreditation of Allied Health Education Programs, Accredited Sleep Technologist Education Program, or a program approved by the American Association of Sleep Technologists to become a sleep technologist; provided that, as used in this paragraph, a "sleep technologist" is defined as a person trained in sleep technology and relevant aspects of sleep medicine, evaluation, and follow-up care of patients with sleep disorders;
- (3) 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;
- (4) A person employed by a durable medical equipment provider who engages in the delivery, assembly, setup, testing, and demonstration of oxygen and aerosol equipment upon the order of a physician; provided that no person providing those services shall be authorized to assess patients, develop care plans, instruct patients in taking treatment, or discuss the hazards, administration, or side effects of medication with patients;
- (5) A person rendering services in the case of an emergency or in the domestic administration of family remedies; or
- (6) 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.

§ -8 **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 licensure contained in this chapter and rules adopted by the director and if the applicant:

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

- (2) Has passed the Certified Respiratory Therapist Examination of the National Board for Respiratory Care, or its successor, within ninety days of submitting an application; and
- (3) Has paid all fees for licensure established by the director.

§ -9 **Licensure by endorsement.** The director may issue a license by endorsement to an applicant who holds a current and unencumbered license as a respiratory therapist in another state; provided that the requirements for a license in that state are deemed by the director to be equivalent to or higher than the current requirements for licensure in this State.

§ -10 **Renewal of license.** Licenses issued pursuant to this chapter shall be valid for three years and shall be renewed upon the payment of a renewal fee within sixty days before the expiration of the license. Failure to renew a license shall result in forfeiture of that license. Licenses that have been forfeited may be restored within one year of the forfeiture date upon payment of renewal and restoration fees. Failure to restore a forfeited license within one year shall result in the automatic termination of the license. A person whose license has been terminated pursuant to this section shall be required to reapply for a new license as a new applicant.

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

- (1) Failure to meet or to maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements in advertising;
- (3) Engaging in the practice of respiratory care while impaired by alcohol, drugs, physical disability, or mental instability;
- (4) Procuring 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) Engaging in professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of respiratory care;
- (7) Engaging in conduct or a practice contrary to recognized standards of ethics for the practice of respiratory care;
- (8) Violating 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) Failing 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) Having a license revoked or suspended or other disciplinary action by any state or federal agency for any reason that is provided by the applicable licensing laws or by this section;
- (12) Having been convicted or pleaded nolo contendere to a crime directly related to the qualifications, functions, or duties of the practice of respiratory care;

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- (13) Failing 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) Employing, whether gratuitously or for pay, any person not licensed pursuant to this chapter to perform the functions or duties of the practice of respiratory care; or
- (15) Violating this chapter, chapter 436B, 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:

“§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs. (a) Any professional or vocational regulatory program enacted after January 1, 1994, and listed in this section shall be repealed ~~[on December 31, 2008.] as specified in this section.~~ The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

(b) Chapter (respiratory therapists) shall be repealed on June 30, 2016.”

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

SECTION 5. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$137,000 or so much thereof as may be necessary for fiscal year 2011-2012 to implement the respiratory therapists licensure program.

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

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2011; provided that section -5 of section 2 of this Act shall take effect upon approval; and provided further that section 5 of this Act shall take effect on July 1, 2010.

(Approved June 28, 2010.)