

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 614

7 S.P. 226

In Senate, February 19, 1985

8 Referred to the Committee on Business and Commerce and ordered
9 printed. Sent down for concurrence.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Bustin of Kennebec.

Cosponsored by Representative Gwadosky of Fairfield and Representative
11 Lebowitz of Bangor.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to License Respiratory Care
18 Practitioners.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 Sec. 1. 5 MRSA §12004, sub-§1, ¶A, sub-¶33-A is
23 enacted to read:

24 (33-A) Board of Respiratory Expenses 32 MRSA §9703
25 Care Practitioners Only

26 Sec. 2. 10 MRSA §8001, as amended by PL 1983, c.
27 746, §1 and c. 758, §1, is repealed and the following
28 enacted in its place:

29 §8001. Department; agencies within department

30 There is created and established the Department
31 of Business, Occupational and Professional Regula-
32 tion, in this chapter referred to as the "depart-
33 ment," to regulate financial institutions, insurance

1 companies, commercial sports, grantors of consumer
2 credit and to license and regulate professions and
3 occupations. The department shall be composed of the
4 following bureaus, boards and commissions:

5 Banking, Bureau of;

6 Consumer Credit Protection, Bureau of;

7 Insurance, Bureau of;

8 Athletic Commission, Maine;

9 Penobscot Bay and River Pilotage Commission;

10 Real Estate Commission;

11 Running Horse Racing Commission, State;

12 Arborist Examining Board;

13 Auctioneers Advisory Board;

14 Commercial Driver Education, Board of;

15 Electricians' Examining Board;

16 Foresters, State Board of Registration for Pro-
17 fessional;

18 Funeral Service, State Board of;

19 Geologists and Soil Scientists, State Board of
20 Certification for;

21 Hearing Aid Dealers and Fitters, Board of;

22 Manufactured Housing Board;

23 Occupational Therapy Practice, Board of;

24 Oil and Solid Fuel Board;

25 Physical Therapy, Board of Examiners in;

26 Plumbers' Examining Board;

1 Psychologists, State Board of Examiners of;
2 Respiratory Care Practitioners, Board of;
3 Social Worker Registration, State Board of;
4 Speech Pathology and Audiology, Board of Examin-
5 ers on; and
6 Substance Abuse Counselors, Board of Registration
7 of.

8 Sec. 3. 32 MRSA c. 97 is enacted to read:

9 CHAPTER 97

10 RESPIRATORY CARE PRACTITIONERS

11 §9701. Declaration of purpose

12 In order to safeguard the public health, safety
13 and welfare, to protect the public from incompetent
14 and unauthorized persons; to assure the highest de-
15 gree of professional conduct on the part of respira-
16 tory care practitioners; and to assure the availabil-
17 ity of respiratory care services of high quality to
18 persons in need of those services, it is the purpose
19 of this chapter to provide for the regulation of per-
20 sons offering respiratory care services.

21 §9702. Definitions

22 As used in this chapter, unless the context oth-
23 erwise indicates, the following terms have the fol-
24 lowing meanings.

25 1. Board. "Board" means the Board of Respirato-
26 ry Care Practitioners established under this chapter.

27 2. Commissioner. "Commissioner" means the Com-
28 missioner of Business, Occupational and Professional
29 Regulation.

30 3. Department. "Department" means the Depart-
31 ment of Business, Occupational and Professional Regu-
32 lation.

1 4. Person. "Person" means any individual, part-
2 nership, unincorporated organization or corporation.

3 5. Respiratory care. "Respiratory care" means
4 the therapy, management, rehabilitation, diagnostic
5 evaluation and care, administered on the order of a
6 physician or surgeon, of patients with deficiencies
7 and abnormalities affecting the cardiopulmonary system
8 and associated aspects of other bodily systems, in-
9 cluding, but not limited to, the following:

10 A. Direct and indirect pulmonary care services
11 that are of comfort, safe, aseptic, preventative
12 and restorative care to the patient;

13 B. Direct and indirect respiratory care services
14 including, but not limited to, the administration
15 of pharmacological, diagnostic and therapeutic
16 agents related to respiratory care procedures
17 necessary to implement a treatment, disease pre-
18 vention, pulmonary rehabilitative or diagnostic
19 regimen prescribed by a physician;

20 C. Observation and monitoring of signs and symp-
21 toms, general behavior, general physical response
22 to respiratory care treatment and diagnostic
23 testing, including determination of whether those
24 signs, symptoms, reactions, behavior or general
25 response exhibit abnormal characteristics;

26 D. Implementation based on observed abnormali-
27 ties, appropriate reporting, referral, respirato-
28 ry care protocols or changes in treatment, pursu-
29 ant to a prescription by a person authorized to
30 prescribe respiratory care or the initiation of
31 emergency procedures; and

32 E. Diagnostic and therapeutic use of the follow-
33 ing:

34 (1) Administration of medical gases, aero-
35 sols and humidification;

36 (2) Environmental control mechanisms and
37 baromedical therapy;

38 (3) Pharmacological agents related to res-
39 piratory care procedures;

1 (4) Mechanical or physiological ventilatory
2 support;

3 (5) Bronchopulmonary hygiene;

4 (6) Cardiopulmonary resuscitation;

5 (7) Maintenance of natural airways;

6 (8) Insertion and maintenance of artificial
7 airways;

8 (9) Specific diagnostic and testing tech-
9 niques employed in the medical management of
10 patients to assist in diagnosis, monitoring,
11 treatment and research of pulmonary abnor-
12 malities, including measurement of
13 ventilatory volumes, pressures and flows,
14 collection of specimens of blood and collec-
15 tion of specimens from the respiratory
16 tract;

17 (10) Analysis of blood gases and respirato-
18 ry secretions and pulmonary function test-
19 ing; and

20 (11) Hemodynamic and physiologic measure-
21 ment and monitoring of cardiac functions as
22 it relates to cardiopulmonary
23 pathophysiology.

24 "Respiratory care" includes the terms "respiratory
25 therapy" or "inhalation therapy."

26 6. Respiratory care practitioner. "Respiratory
27 care practitioner" means a person licensed to prac-
28 tice respiratory care under this chapter.

29 §9703. Board of respiratory care practitioners; es-
30 tablishment; compensation

31 1. Establishment and membership. There is es-
32 tablished within the Department of Business, Occupa-
33 tional and Professional Regulation, a Board of Respi-
34 ratory Care Practitioners. The board shall consist
35 of 5 members appointed by the Governor as follows:

1 A. One licensed physician knowledgeable about
2 respiratory care;

3 B. Three respiratory care practitioners who have
4 been engaged in the practice of respiratory care
5 for at least 2 years immediately preceding their
6 appointments and who shall be at all times hold-
7 ers of valid licenses for the practice of respi-
8 ratory care in the State, except for the members
9 of the first board, all of whom shall fulfill the
10 requirements for licensure of this chapter; and

11 C. One public member who is a resident of the
12 State, who does not hold a license to practice
13 respiratory care, and who has no direct or indi-
14 rect financial interest in the practice or deliv-
15 ery of respiratory care.

16 2. Terms of appointment. The Governor, within
17 60 days following the effective date of this chapter,
18 shall appoint 2 board members for a term of one year,
19 2 for a term of 2 years and one for a term of 3
20 years. Appointments made thereafter shall be for
21 3-year terms, but no person may be appointed to serve
22 more than 2 consecutive terms. Terms shall begin on
23 the first day of the calendar year and end on the
24 last day of the calendar year or until successors are
25 appointed, except for the first appointed members who
26 shall serve through the last calendar day of the year
27 in which they are appointed, before commencing the
28 terms prescribed by this section.

29 Any member of the board may be removed from office
30 for cause by the Governor. A member may not serve
31 more than 2 full successive terms, provided that, for
32 this purpose only, a period actually served which ex-
33 ceeds 1/2 of the 3-year term shall be deemed a full
34 term.

35 3. Meetings. The board shall meet during the
36 first month of each calendar year to select a chair-
37 man and for other purposes. At least one additional
38 meeting shall be held before the end of each calendar
39 year. Other meetings may be convened at the call of
40 the chairman or the written request of any 2 board
41 members. A majority of the members of the board
42 shall constitute a quorum for all purposes.

1 4. Compensation. Members of the board shall re-
2 ceive no compensation for their services, but shall
3 be entitled to expenses on the same basis as provided
4 for state employees.

5 §9704. Board of Respiratory Care Practitioners; pow-
6 ers and duties

7 1. Powers. The board shall administer and en-
8 force this chapter and evaluate the qualifications of
9 applicants for licensure. The board may issue sub-
10 poenas, examine witnesses, administer oaths and may
11 investigate or cause to be investigated any com-
12 plaints made to it or any cases of noncompliance with
13 or violation of this chapter.

14 2. Rules. The board may adopt, in accordance
15 with the Maine Administrative Procedure Act, Title 5,
16 chapter 375, rules relating to professional conduct
17 to carry out the policy of this chapter, including,
18 but not limited to, rules relating to professional
19 licensure and to the establishment of ethical stan-
20 dards of practice for persons holding a license to
21 practice respiratory care in this State.

22 3. Hearings. Hearings may be conducted by the
23 board to assist with investigations, to determine
24 whether grounds exist for suspension, revocation or
25 denial of a license, or as otherwise deemed necessary
26 to the fulfillment of its responsibilities under this
27 chapter. Hearings shall be conducted in accordance
28 with the Maine Administrative Procedure Act, Title 5,
29 chapter 375, subchapter IV, to the extent applicable.

30 4. Records. The board shall keep such records and
31 minutes as are necessary to the ordinary dispatch of
32 its functions.

33 5. Contracts. The board may enter into con-
34 tracts to carry out its responsibilities under this
35 chapter.

36 6. Reports. No later than August 1st of each
37 year, the board shall submit to the commissioner, for
38 the preceding fiscal year ending June 30th, its annu-
39 al report of its operations and financial position,
40 together with such comments and recommendations as
41 the commissioner deems essential.

1 §9705. Board of Respiratory Care Practitioners; ad-
2 ministrative provisions

3 1. Officers. The board shall appoint a secre-
4 tary and may appoint other officers as it deems nec-
5 essary.

6 2. Employees. With the advice of the board, the
7 commissioner may appoint, subject to the Personnel
8 Law, such employees as may be necessary to carry out
9 this chapter. Any person so employed shall be lo-
10 cated in the department and under the administrative
11 and supervisory direction of the commissioner.

12 3. Budget. The board shall submit to the com-
13 missioner its budgetary requirements in the same man-
14 ner as is provided in Title 5, section 1665.

15 §9706. License required

16 1. License required. No person may practice, or
17 hold himself out as authorized to practice, as a res-
18 piratory care practitioner in this State or use the
19 words "respiratory care practitioner" or other words
20 or letters to indicate that the person using the
21 words or letters is a licensed respiratory care prac-
22 titioner, unless he is licensed in accordance with
23 this chapter.

24 2. Individual license. Only an individual may
25 be licensed under this chapter.

26 §9707. Person and practices exempt

27 Nothing in this chapter may be construed as pre-
28 venting or restricting the practice, services or ac-
29 tivities of:

30 1. Licensed persons. Any person licensed in
31 this State by any other law from engaging in the pro-
32 fession or occupation for which he is licensed;

33 2. Students or trainees. Any person pursuing a
34 supervised course of study leading to a degree or
35 certificate as a respiratory care practitioner at an
36 educational institution accredited by the American
37 Medical Association's Committee on Allied Health Edu-

1 cational Accreditation, if the person is designated
2 by a title which clearly indicates his status as a
3 student or trainee;

4 3. Associates; reciprocity. Any person perform-
5 ing respiratory care services in the State, if these
6 services are performed for no more than 30 days in a
7 calendar year in association with a respiratory care
8 practitioner licensed under this chapter, if:

9 A. The person is licensed under the law of an-
10 other state which has licensure requirements
11 equivalent to the requirements of this chapter;
12 or

13 B. The person meets the requirements for certi-
14 fication as a respiratory therapist or a respira-
15 tory therapy technician established by the Joint
16 Review Committee for Respiratory Therapy Educa-
17 tion in collaboration with the American Medical
18 Association's Committee on Allied Health Educa-
19 tion and Accreditation;

20 4. Family members and friends. Family members or
21 friends who give gratuitous care to a patient and do
22 not hold themselves out as respiratory care practi-
23 tioners;

24 5. Self care. Patients who administer respira-
25 tory care to themselves; or

26 6. Emergency. Persons who administer respira-
27 ry care services in case of an emergency.

28 §9708. Reciprocity

29 A person who is a resident of the State and has
30 been licensed in another state as a respiratory care
31 practitioner may, upon payment of a fee as estab-
32 lished under section 9712, obtain a license as a res-
33 piratory care practitioner provided that the person
34 submits satisfactory evidence of licensure as a res-
35 piratory care practitioner in another state under
36 qualifications equivalent to those specified in this
37 chapter.

1 §9709. Temporary license; license requirements for
2 persons now working as respiratory care prac-
3 titioners

4 1. Temporary license. A temporary license may
5 be granted to a person who has completed the educa-
6 tion requirements of this chapter. This permit al-
7 lows the person to practice respiratory care in asso-
8 ciation with a licensed respiratory care practition-
9 er. This permit is valid until the person is issued
10 a license under section 9713 or until the results of
11 the national exam taken by the person are available
12 to the board. This limited permit may be renewed one
13 time if the person has failed the examination.

14 2. License requirements for persons now working
15 as respiratory care practitioners. A temporary li-
16 cence for an 18-month period may be granted to a per-
17 son who is presently working as a respiratory care
18 practitioner. In order to obtain a standard license,
19 by the end of the 18-month period the person must
20 have passed the certification or registry level exam-
21 ination given by the National Board for Respiratory
22 Care or passed the state examination as provided for
23 in section 9711.

24 §9710. Requirements for licensure

25 An applicant applying for a license as a respira-
26 tory care practitioner shall file a written applica-
27 tion provided by the board, showing to the satisfac-
28 tion of the board that he meets the following re-
29 quirements.

30 1. Residence. An applicant need not be a resi-
31 dent of this State.

32 2. Ethical practice. An applicant shall have
33 demonstrated ethical practice.

34 3. Education and examination. An applicant
35 shall present evidence satisfactory to the board of
36 having fulfilled one of the following requirements:

37 A. The applicant has passed either the certifi-
38 cation or registry level examination given by the
39 National Board of Respiratory Care;

1 B. The applicant has:

2 (1) Passed an examination as provided for
3 in section 9211; and

4 (2) Successfully completed the academic re-
5 quirements of an educational program for
6 respiratory therapists or respiratory
7 therapy technicians which is recognized by
8 the board and accredited by the Committee on
9 Allied Health Education and Accreditation of
10 the American Medical Association in collabora-
11 tion with the Joint Review Committee for
12 Respiratory Therapy Education; or

13 C. The applicant is presently credentialed by
14 the National Board for Respiratory Care as a cer-
15 tified respiratory therapy technician or a regis-
16 tered respiratory therapist.

17 §9711. Examination for licensure

18 1. Requirements; fees. Only a person satisfying
19 the requirements of section 9710, subsections 1 and
20 2, and subsection 3, paragraph B, subparagraph (2)
21 may apply for examination in such a manner as the
22 board shall prescribe. The application shall be ac-
23 companied by the nonrefundable fee prescribed by sec-
24 tion 9712. A person who fails an examination may ap-
25 ply for reexamination upon payment of the prescribed
26 fee.

27 2. Content. The written examination shall test
28 the applicant's knowledge of the basic and clinical
29 sciences relating to respiratory care, respiratory
30 care techniques and methods and such other subjects
31 as the board may require to determine the applicant's
32 fitness to practice. The board shall approve an ex-
33 amination for respiratory care practitioners and es-
34 tablish standards for an acceptable performance.

35 3. Time and place. Applicants for licensure
36 shall be examined at a time and place and under such
37 supervision as the board may require. Examinations
38 shall be given at least twice each year at such
39 places as the board may determine. The board shall
40 give reasonable public notice of these examinations
41 in accordance with its rules.

1 4. Scores; review. Applicants may obtain their
2 examination scores and may review their papers in ac-
3 cordance with rules as the board may establish.

4 §9712. Fees

5 1. Amount. Fees may be established by the board
6 in amounts which are reasonable and necessary for
7 their respective purposes. The fees may not exceed
8 the following amounts:

9 A. For an initial application, \$80;

10 B. For biennial renewal of a license, \$80; and

11 C. For a temporary license, \$25.

12 2. Disposal of fees. All fees received by the
13 board shall be paid to the Treasurer of State to be
14 used for carrying out this chapter. Any balance of
15 fees shall not lapse but shall be carried forward as
16 a continuing account to be expended for the same pur-
17 poses in the following fiscal years.

18 §9713. Issuance of license

19 The board shall issue a license to any person who
20 meets the requirements of this chapter upon payment
21 of the prescribed license fee.

22 §9714. Renewal of license

23 1. Biennial renewal. Any license issued under
24 this chapter shall be subject to biennial renewal and
25 shall expire, unless renewed in the manner prescribed
26 by the rules of the board, upon the payment of a re-
27 newal fee. Licenses may be renewed up to 30 days af-
28 ter the date of expiration upon payment of a late fee
29 of \$10 in addition to the renewal fee. Any person
30 who submits an application for renewal more than 30
31 days after the license renewal date shall be subject
32 to all requirements governing new applicants under
33 this chapter, except that the board may in its dis-
34 cretion, giving due consideration to the protection
35 of the public, waive examination if that renewal ap-
36 plication is made within 2 years from the date of
37 that expiration.

1 2. Inactive status. Upon request, the board
2 shall grant inactive status to a licensee who does
3 not practice or present himself as a respiratory
4 practitioner, and who maintains any continuing competency requirements established by the board.

6 3. Continue competency. Each license renewal
7 shall be accompanied with evidence of continuing
8 competencies.

9 §9715. Foreign trained applicants

10 Foreign trained respiratory care practitioners
11 shall satisfy the examination requirements of this
12 chapter. The board shall require foreign trained applicants to furnish proof of demonstrated ethical
13 practice and completion of educational requirements
14 equivalent to those contained in section 9710 before
15 taking the examination.

17 §9716. Investigations; refusal of license or renewal; disciplinary action

19 1. Complaints; investigations. The board shall
20 investigate or cause to be investigated a complaint
21 made on its own motion or on written complaint filed
22 with the board and all cases of noncompliance with or
23 violation of this chapter or of any rules adopted by
24 the board.

25 2. Disciplinary action; grounds. The board may
26 suspend or revoke a license pursuant to Title 5, section 1004. The board may refuse to issue or renew a
27 license or the Administrative Court may suspend, revoke or refuse to renew a license of any licensed
28 person. The following shall be grounds for an action
29 to modify, suspend, revoke or refuse to issue or
30 renew a license:
31
32

33 A. The practice of any fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of
34 the license issued;

37 B. Unprofessional conduct, including any gross
38 negligence, incompetency or misconduct in the
39 licensee's performance of the work of respiratory

1 care, or violation of any standard of profession-
2 al behavior which has been established by the
3 board;

4 C. Subject to the limitation of Title 5, chapter
5 341, conviction of a crime which involves dishon-
6 esty or false statement or which relates directly
7 to the practice for which the licensee is li-
8 censed or conviction of any crime for which im-
9 prisonment for one year or more may be imposed;
10 or

11 D. Any violation of this chapter or any rule
12 adopted by the board.

13 3. Criminal penalty. Any person who violates a
14 provision of this chapter or any lawful order or rule
15 adopted by the board is guilty of a Class E crime.

16 4. Injunction. The State may bring an action in
17 Superior Court to enjoin any person from violating
18 this chapter, regardless of whether proceedings have
19 been or may be instituted in the Administrative Court
20 or whether criminal proceedings have been or may be
21 instituted.

22 5. Application for reinstatement. An applica-
23 tion for reinstatement may be made to the board one
24 year from the date of revocation of a license. The
25 board may accept or reject the application and hold a
26 hearing to consider the reinstatement.

27 STATEMENT OF FACT

28 The practice of respiratory care in Maine over
29 the past 10 years has greatly changed and has become
30 increasingly sophisticated, dealing with critically
31 ill patients who require specialized care. In order
32 to assure the public safety, it is necessary to in-
33 sure a minimum level of competency of respiratory
34 care practitioners. In providing a licensure Act,
35 the State will be taking a most important step in as-
36 suring public safety.

37 Technical competence is assured through education
38 and testing requirements. Applicants can obtain li-
39 censure by 3 methods:

1. Completion of an American Medical Association accredited educational program, which must include classroom and clinical components to obtain accreditation, plus passage of a state licensing exam;

2. Passage of the National Board for Respiratory Care exam, which is not administered unless the applicant has completed an American Medical Association accredited educational program; or

3. Presentation of current credentials awarded by the National Board of Respiratory Care.

This chapter uses the term "respiratory care" to refer to medical treatments sometimes called "respiratory therapy" or "inhalation therapy" because the National Board for Respiratory Care and the American Medical Association are in the process of instituting that as standard terminology.

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