

MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 226, L.D. 614)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 1554

8 S.P. 591

In Senate, May 17, 1985

9 Reported by Senator Danton of York from the Committee on Business
10 and Commerce and printed under Joint Rule 2. Original bill sponsored by
11 Senator Bustin of Kennebec. Cosponsored by Representative Gwadosky of
Fairfield and Representative Lebowitz of Bangor.

JOY J. O'BRIEN, Secretary of the Senate

12
13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FIVE
17

18 AN ACT to License Respiratory Care
19 Practitioners.
20

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

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

25 (33-A) Board of Respiratory \$35/Day 32 MRSA §9703
26 Care Practitioners

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28 746, §1 and c. 758, §1, is repealed and the following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

30 §8001. Department; agencies within department

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

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

6 Banking, Bureau of;

7 Consumer Credit Protection, Bureau of;

8 Insurance, Bureau of;

9 Athletic Commission, Maine;

10 Penobscot Bay and River Pilotage Commission;

11 Real Estate Commission;

12 Running Horse Racing Commission, State;

13 Arborist Examining Board;

14 Auctioneers Advisory Board;

15 Commercial Driver Education, Board of;

16 Electricians' Examining Board;

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

19 Funeral Service, State Board of;

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

22 Hearing Aid Dealers and Fitters, Board of;

23 Manufactured Housing Board;

24 Occupational Therapy Practice, Board of;

25 Oil and Solid Fuel Board;

26 Physical Therapy, Board of Examiners in;

27 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 F. Initial and follow-up instruction and patient
25 evaluation in a nonhospital setting for the diag-
26 nostic and therapeutic uses described in para-
27 graph E.

28 "Respiratory care" includes the terms "respiratory
29 therapy" or "inhalation therapy."

30 6. Respiratory care practitioner. "Respiratory
31 care practitioner" means a person licensed as a res-
32 piratory therapist or as a respiratory care techni-
33 cian under this chapter.

34 §9703. Board of respiratory care practitioners; es-
35 tablishment; compensation

1 1. Establishment and membership. There is es-
2 tablished within the Department of Business, Occupa-
3 tional and Professional Regulation, in accordance
4 with Title 5, section 12004, subsection 1, a Board of
5 Respiratory Care Practitioners. The board shall consist
6 of 5 members appointed by the Governor as fol-
7 lows:

8 A. Three respiratory care practitioners who have
9 been engaged in the practice of respiratory care
10 for at least 2 years immediately preceding their
11 appointments and who shall be at all times hold-
12 ers of valid licenses for the practice of respi-
13 ratory care in the State, except for the members
14 of the first board, each of whom shall fulfill
15 the requirements for licensure of this chapter;
16 and

17 B. Two public members who are residents of the
18 State, who do not hold a license to practice res-
19 piratory care, and who have no direct or indirect
20 financial interest in the practice or delivery of
21 respiratory care.

22 2. Terms of appointment. To the first board es-
23 tablished under this chapter, the Governor shall ap-
24 point 2 board members for a term of one year, 2 for a
25 term of 2 years and one for a term of 3 years. Ap-
26 pointments made thereafter shall be for 3-year terms,
27 but no person may be appointed to serve more than 3
28 consecutive terms, provided that, for this purpose
29 only, a period actually served which exceeds 1/2 of a
30 3-year term shall be deemed a full term. Any member
31 of the board may be removed from office for cause by
32 the Governor.

33 3. Meetings. The board shall meet at least once
34 a year to conduct its business and to elect a chair-
35 man. Additional meetings shall be held as necessary
36 to conduct the business of the board and may be con-
37 vened at the call of the chairman or a majority of
38 the board members. Three members of the board shall
39 constitute a quorum for all purposes.

40 4. Compensation. Members of the board shall re-
41 ceive compensation and expenses as provided in Title
42 5, section 12004, subsection 1, paragraph A.

1 §9704. Board of Respiratory Care Practitioners; pow-
2 ers and duties

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

10 2. Rules. The board may, in accordance with the
11 Maine Administrative Procedure Act, Title 5, chapter
12 375, adopt rules to carry out the policy of this
13 chapter, including, but not limited to, rules relat-
14 ing to professional licensure, professional conduct,
15 continuing education and to the establishment of eth-
16 ical standards of practice for persons holding a li-
17 cence to practice respiratory care in this State.

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

26 4. Records. The board shall keep such records
27 and minutes as are necessary to the ordinary dispatch
28 of its functions.

29 5. Contracts. The board may enter into con-
30 tracts to carry out its responsibilities under this
31 chapter.

32 6. Reports. No later than August 1st of each
33 year, the board shall submit to the commissioner, for
34 the preceding fiscal year, its annual report of its
35 operations, together with such comments and recommen-
36 dations as the commissioner deems essential.

37 7. Employees. With the advice of the board, the
38 commissioner may appoint, subject to the Personnel
39 Law, such employees as may be necessary to carry out
40 this chapter. Any person so employed shall be lo-

1 cated in the department and under the administrative
2 and supervisory direction of the commissioner.

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

6 §9705. License required

7 1. License required. After January 1, 1987, no
8 person may practice, or hold himself out as autho-
9 rized to practice, as a respiratory care practitioner
10 in this State or use the words "respiratory care
11 practitioner" or other words or letters to indicate
12 that the person is a licensed respiratory care prac-
13 titioner, unless he is licensed in accordance with
14 this chapter.

15 2. Individual license. Only an individual may
16 be licensed under this chapter.

17 3. Penalty; injunction. A person who violates
18 this section is guilty of a Class E crime.

19 The State may bring an action in Superior Court to
20 enjoin any person from violating this chapter, re-
21 gardless of whether proceedings have been or may be
22 instituted in the Administrative Court or whether
23 criminal proceedings have been or may be instituted.

24 §9706. Persons and practices exempt

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

28 1. Licensed persons. Any person licensed or
29 registered in this State by any other law from engag-
30 ing in the profession or occupation for which he is
31 licensed or registered;

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

1 by a title which clearly indicates his status as a
2 student or trainee;

3 3. Associates. Any person performing respirato-
4 ry care services in the State, if these services are
5 performed for no more than 30 days in a calendar year
6 and are rendered in association with a respiratory
7 care practitioner licensed under this chapter, if:

8 A. The associate is licensed under the law of
9 another state which has licensure requirements
10 equivalent to the requirements of this chapter;
11 or

12 B. The associate is certified as a respiratory
13 therapist or a respiratory therapy technician by
14 the Joint Review Committee for Respiratory
15 Therapy Education, in collaboration with the
16 American Medical Association's Committee on Al-
17 lied Health Education and Accreditation, and re-
18 sides in a nonlicensure state;

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

23 5. Self care. Persons who administer respirato-
24 ry care to themselves; or

25 6. Emergency. Persons who administer respirato-
26 ry assistance in case of an emergency.

27 §9707. Temporary license

28 A temporary license may be granted to a person
29 who has completed the education requirements of this
30 chapter. This license allows the holder to practice
31 respiratory care under the direct supervision of a
32 licensed respiratory care practitioner. This li-
33 cence shall be issued for a term of one year and may
34 not be renewed.

35 §9708. Requirements for licensure; levels of licen-
36 sure

1 An applicant applying for a license as a respira-
2 tory care practitioner shall file a written applica-
3 tion provided by the board, showing to the satisfac-
4 tion of the board that he meets the following re-
5 quirements.

6 1. Residence. An applicant need not be a resi-
7 dent of this State.

8 2. Ethical practice. An applicant shall exhibit
9 adherence to established ethical professional stan-
10 dards.

11 3. Education and qualifications. An applicant
12 shall present evidence satisfactory to the board
13 that:

14 A. For a license as a respiratory therapist:

15 (1) The applicant is presently credentialed
16 by the National Board for Respiratory Care
17 as a registered respiratory therapist; or

18 (2) The applicant:

19 (a) Is a graduate of an educational
20 program for respiratory therapists
21 which is recognized by the board and
22 accredited by the American Medical As-
23 sociation in collaboration with the
24 Joint Review Committee for Respiratory
25 Therapy Education; and

26 (b) Has passed an examination as pro-
27 vided for in section 9709; or

28 B. For a license as a respiratory care techni-
29 cian:

30 (1) The applicant is presently credentialed
31 by the National Board for Respiratory Care
32 as a certified respiratory therapy techni-
33 cian; or

34 (2) The applicant:

1 (a) Is a graduate of an educational
2 program for respiratory therapists or
3 respiratory care technicians which is
4 recognized by the board and accredited
5 by the American Medical Association in
6 collaboration with the Joint Review
7 Committee for Respiratory Therapy Edu-
8 cation; and

9 (b) Has passed an examination as pro-
10 vided for in section 9709.

11 §9709. Examination for licensure

12 1. Requirements. Only a person satisfying the
13 requirements of this chapter may apply for examina-
14 tion in such a manner as the board prescribes.

15 2. Content. Written examinations shall be de-
16 signed or adopted by the board and shall test the ap-
17 plicant's knowledge of the basic and clinical sci-
18 ences relating to respiratory care, respiratory care
19 techniques and methods and such other subjects as the
20 board may include to determine the applicant's fit-
21 ness to practice.

22 3. Time and place. Examinations shall be given
23 at least twice each year at such places as the board
24 determines. The board shall give reasonable public
25 notice of these examinations in accordance with its
26 rules.

27 §9710. Fees

28 1. Amount. Application and examination fees may
29 be established by the board in amounts which are rea-
30 sonable and necessary for their respective purposes.
31 License fees may not exceed the following amounts:

32 A. For an original respiratory care
33 practitioner's license, \$80;

34 B. For a renewal respiratory care practitioner's
35 license, \$40; and

36 C. For a temporary license, \$40.

1 2. Deposit of fees. All fees received by the
2 board shall be paid to the Treasurer of State to be
3 used for carrying out this chapter. Any balance of
4 fees shall not lapse, but shall be carried forward as
5 a continuing account to be expended for the same pur-
6 poses in the following fiscal years.

7 §9711. Issuance of license

8 The board shall issue a license to any person who
9 meets the requirements of this chapter upon payment
10 of the prescribed license fee.

11 §9712. Term of licenses

12 1. Annual renewal. Licenses shall expire annu-
13 ally on December 31st or on such other date as the
14 commissioner determines. Notice of expiration shall
15 be mailed to each licensee's last known address at
16 least 30 days in advance of the expiration of his li-
17 cence. The notice shall include any requests for in-
18 formation necessary for renewal.

19 Licenses may be renewed up to 90 days after the date
20 of expiration upon payment of a late fee of \$10 in
21 addition to the renewal fee. Any person who submits
22 an application for renewal more than 90 days after
23 the license renewal date shall be subject to all re-
24 quirements governing new applicants under this chap-
25 ter, except that the board may, giving due considera-
26 tion to the protection of the public, waive examina-
27 tion if that renewal application is made within 2
28 years from the date of that expiration.

29 2. Continuing education. Each license renewal
30 shall be accompanied by evidence of continuing educa-
31 tion or other requirements as determined by the
32 board.

33 §9713. Disciplinary actions

34 1. Complaints. The board may order an investi-
35 gation of a complaint on its own motion or on written
36 complaint filed with the board regarding noncompli-
37 ance with or violation of any section of this chapter
38 or of any rules adopted by the board.

1 2. Disciplinary actions; grounds. The board may
2 suspend or revoke a license pursuant to Title 5, sec-
3 tion 10004. The board may refuse to issue or renew
4 or the Administrative Court may revoke, suspend or
5 refuse to renew any license issued under this chapter
6 on any of the following grounds:

7 A. The practice of any fraud or deceit in ob-
8 taining a license under this chapter or in con-
9 nection with service rendered within the scope of
10 the license issued;

11 B. Unprofessional conduct. A licensee shall be
12 deemed to have engaged in unprofessional conduct
13 if he violates any standard of professional be-
14 havior which has been established in the practice
15 of respiratory care;

16 C. Subject to the limitations of Title 5, chap-
17 ter 341, conviction of a crime which involves
18 dishonesty or false statement or which relates
19 directly to the practice for which the licensee
20 is licensed or conviction of any crime for which
21 imprisonment for one year or more may be imposed;
22 or

23 D. Any violation of this chapter or rules
24 adopted by the board.

25 STATEMENT OF FACT

26 This new draft provides for licencing of respira-
27 tory care practitioners. The new draft establishes
28 licensing categories for respiratory therapists and
29 respiratory care technicians, the 2 levels now recog-
30 nized in the profession.

31 3565050885