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ARTICLE 5

SOUTH CAROLINA RESPIRATORY CARE PRACTICE ACT

§ 40-47-500. Short title.

This article is known and may be cited as the “South Carolina Respiratory Care Practice Act.”

§ 40-47-510. Definitions.

As used in this article:

- (1) "Board" means the Board of Medical Examiners of South Carolina.
- (2) "Committee" means the Respiratory Care Committee which is established by this article as an advisory committee responsible to the board.

(3) "Respiratory care or respiratory therapy" means the allied health profession or specialty which provides educational, therapeutic, or diagnostic procedures utilized in the prevention, detection, and management of deficiencies or abnormalities, or both, of the cardiopulmonary systems.

(4) "Practice of respiratory care" may include, but is not limited to, the administration of pharmacologic, diagnostic, and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a physician; transcription and implementation of written or verbal orders of a physician pertaining to the practice of respiratory care; observing and monitoring the signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing including determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics and implementation, based on observed abnormalities or appropriate reporting, referral, respiratory care protocols or changes in treatment pursuant to the written or verbal orders of a person licensed to practice medicine under the laws of this State; or the initiation of emergency procedures under the regulations of the board or as otherwise permitted in this article. The practice of respiratory care may be performed in a clinic, hospital, skilled nursing facility, private dwelling, or other place considered appropriate or necessary by the board in accordance with the written or verbal order of a physician and must be performed under a qualified medical director.

(5) "Respiratory care practitioner" means a respiratory therapist or a respiratory therapy technician licensed to practice respiratory therapy who is a graduate of a school for respiratory therapy approved by the American Medical Association or a successor accrediting authority recognized as such by the board.

(6) "Medical director" means a physician licensed to practice medicine in South Carolina who has special interest and knowledge in the diagnosis, treatment, and assessment of respiratory problems. The practice of respiratory care or respiratory therapy must occur under the supervision of a qualified medical director. In the home care of cardiopulmonary patients, the existence of qualified physician sponsorship must be submitted and documented to the committee and approved by the board.

§ 40-47-520. Licensing requirement.

Individuals practicing as respiratory therapists and respiratory therapy technicians employed to provide respiratory therapy procedures for inpatients, outpatients, and home patients must be licensed in accordance with this article.

§ 40-47-530. Persons not subject to provisions of this article.

(A) This article does not affect:

(1) a person employed to provide respiratory care by the United States government if the person provides respiratory care solely under the direction or control of the organization by which the person is employed;

(2) a person actively pursuing a course of study leading to a degree or certificate in respiratory therapy in a program accredited by the American Medical Association or a successor accrediting authority recognized as such by the board if the activities and services constitute a part of a supervised course of study and if the person is designated by a title which clearly indicates the status of student;

(3) an individual or other health care professional who is licensed by the State or who has proven competency in one or more of the functions included in the definition of the practice of respiratory care as long as the person does not represent himself as a respiratory care practitioner. As it relates to respiratory care, individuals exempt pursuant to this section must provide proof of formal training for these functions which includes an evaluation of competence through a mechanism that is determined by the board and the committee to be both valid and reliable. The clinical assessment of artificial pressure adjuncts to the respiratory system may not be performed by any other person without proof of formal training and exemption by the board.

(4) a respiratory therapy student, active and in good standing, who may be employed and works under the direct supervision of a respiratory care practitioner and practices to the person's level of proven clinical competency as certified by a program approved by the American Medical Association or a successor accrediting authority recognized as such by the board;

(5) employees of durable medical equipment companies delivering and setting up respiratory equipment in an individual's home, pursuant to a written prescription by a physician, except that any instructions to the patient regarding the clinical use of the equipment, any patient monitoring, patient assessment or other procedures designed to evaluate the effectiveness of the treatment must be performed by a licensed respiratory care practitioner or other individual who is exempt by statute or regulation.

(B) Nothing in this article is intended to limit, preclude, or otherwise interfere with the practice of other persons and health providers formally trained and licensed by the appropriate agencies of this State.

§ 40-47-540. Creation of, and membership of, Respiratory Care Committee.

There is created the Respiratory Care Committee as an advisory committee to the board which consists of nine members to be appointed by the board. Five of the members must be respiratory care practitioners with at least five years' experience each, one member must be a consumer, and three members must be physicians who are licensed to practice in South Carolina who have special interest and knowledge in the diagnosis, treatment, and assessment of respiratory problems. All of the respiratory care practitioners must be certified except for the first members of the committee, who must be certified as soon

after their appointment as possible. All organizations, groups, or interested individuals may submit recommendations to the board of at least two individuals for each position to be filled on the committee.

§ 40-47-550. Terms of committee members; appointment and removal; expenses.

The members shall serve for terms of four years and until their successors are appointed and qualify, except that initial terms of two practitioners, the consumer member, and one physician, are for two years. Vacancies must be filled in the manner of the original appointment for the unexpired portion of a term. The board, after notice and opportunity for hearing, may remove any member of the committee for neglect of duty, incompetence, revocation or suspension of certification, or other dishonorable conduct. Members of the committee shall receive mileage, subsistence, and per diem provided by law for members of state boards, commissions, and committees for each meeting attended. No member may serve more than one full four-year term consecutively, but he is eligible for reappointment two years from the date the full four-year term expires.

§ 40-47-560. Committee meetings; election of officers; recommendation, review, and approval of regulations.

The committee shall meet at least twice each year and at other times as its regulations provide. The quorum for meetings consists of five members with no more than three of these being respiratory care practitioners. At its initial meeting the committee shall elect from its membership a chairman, vice-chairman, and a secretary to serve for one-year terms. The committee may recommend regulations regarding respiratory care necessary to perform its duties which must be reviewed and approved by the board prior to adoption.

§ 40-47-570. Employment of additional staff by Director.

The Director of the Department of Labor, Licensing, and Regulation, pursuant to Section 40-73-15, may employ additional staff as necessary for the performance of its duties under this article.

§ 40-47-580. Requirement that board receive and account for monies and pay them to State Treasurer.

The board shall receive and account for all monies collected under the provision of this article and shall pay the monies to the State Treasurer for deposit in the state general fund.

§ 40-47-590. Responsibilities of committee; investigatory powers of board.

(A) The committee shall evaluate the qualifications and supervise the examinations of applicants for licensure and shall make appropriate recommendations to the board.

(B) The board may issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this article.

(C) The committee:

(1) shall recommend regulations to the board relating to professional conduct to carry out the policy of this article including, but not limited to, professional licensure and the establishment of ethical standards of practice for persons holding a license to practice respiratory care or respiratory therapy in this State;

(2) shall conduct hearings and keep records and minutes necessary to carry out its functions;

(3) shall provide notice of all hearings authorized under this article pursuant to the Administrative Procedures Act;

(4) shall determine the qualifications and make appropriate recommendations regarding the issuance of licenses to qualified respiratory care practitioners;

(5) shall recommend to the board whether to issue or renew licenses under those conditions prescribed in this article;

(6) may recommend continuing professional education to the board;

(7) shall keep a record of its proceedings and a register of all persons licensed. The register shall show the name of every registrant and the registrant's last known place of employment and residence. The board annually shall compile and make available a list of respiratory care practitioners authorized to practice in this State. Any interested person may obtain a copy of this list upon application to the board and payment of an amount fixed by the board;

(8) shall make an annual report to the board containing an account of duties performed, actions taken, and appropriate recommendations;

(9) shall hear all disciplinary cases and recommend findings of fact, conclusions, and sanctions to the board. The board shall conduct a final order hearing at which it makes a final decision.

§ 40-47-600. Requirements for certification of respiratory care practitioners.

An applicant for licensure as a respiratory care practitioner shall file a written application on forms provided by the board showing to the satisfaction of the committee and the board that the applicant has successfully passed the entry-level examination given by the National Board for Respiratory Care, Inc., or other examination or requirement as the committee may administer or approve.

§ 40-47-610. Licensure of practitioners of other states; educational and examination requirements.

(A) The board may license as a respiratory care practitioner, upon payment of the fee set by the board, an applicant who is a respiratory therapist or a respiratory therapy technician of another state, territory, or the District of Columbia, if the requirements were substantially equal to the requirements of this State as determined by the board;

(B) The committee initially shall waive the professional education and examination requirements and issue a license to any person who can demonstrate to the committee, through evidence verified under oath, that the person was employed as or actively performing the duties of a respiratory care practitioner in South Carolina in November and December of 1998; however, within three years of applying for initial licensure, the person must have complied with the educational and examination requirements provided for in Section 40-47-600. The applicants shall produce proof of high school graduation or the equivalent and shall apply within ninety days after public notification by the department.

§ 40-47-620. Issuance of license by board.

The board shall issue a license to any person who meets the requirements of this article upon payment of the license fee.

§ 40-47-625. Temporary licenses.

The board may issue a temporary license if all licensing requirements have been met.

§ 40-47-630. Grounds for disciplinary action; recommendations of committee as to disciplinary action; appeal.

(A) The committee may recommend to the board that it revoke, suspend, issue a public or private reprimand, or impose any other reasonable limitation or practice where the unprofessional, unethical, or illegal conduct of the respiratory care practitioner is likely to endanger the health, welfare, or safety of the public. This conduct includes a license:

- (1) using any false, fraudulent, or forged statement or engaging in any fraudulent, deceitful, or dishonest act in connection with any of the certifying requirements;
- (2) having an addiction to alcohol or drugs to such a degree as to render the licensee unfit to practice respiratory care;
- (3) having been convicted of the illegal or unauthorized practice of respiratory care;
- (4) knowingly performing an act which in any way assists an unlicensed person to practice respiratory care;

(5) having sustained any physical or mental disability which renders further practice by the licensee dangerous to the public;

(6) having violated the code of ethics or regulations as adopted by the committee and the board;

(7) guilty of engaging in any dishonorable, unethical, or unprofessional conduct that is likely to deceive or harm the public;

(8) guilty of the use of any false or fraudulent statement in any document connected with the practice of respiratory care;

(9) having intentionally violated or attempted to violate, directly or indirectly, or assisting in or abetting the violation or conspiring to violate any provisions of this article;

(10) guilty of the commission of any act, during the course of practice conducted pursuant to a license issued under this article, that constitutes fraud, dishonest dealing, illegality, incompetence, or gross negligence.

(B) The suspension, revocation, reprimand, or imposition of probationary conditions upon a respiratory care practitioner may be recommended by the committee to the board after a hearing is conducted in accordance with the Administrative Procedures Act. A transcribed record of the hearing must be made.

(C) A respiratory care practitioner aggrieved by a decision of the committee or board under this section may appeal the decision to an administrative law judge as provided under Article 5 of Chapter 23 of Title 1 on the record made before the committee or board.

§ 40-47-640. Renewal and reinstatement of licenses.

(A) Licenses issued under this article are subject to annual renewal and expire unless renewed in the manner prescribed by the regulations of the committee. The committee may recommend additional requirements for license renewal which provide evidence of continued competency. The board may provide for the late renewal of a license upon payment of a late fee.

(B) An inactive license is subject to expiration and may be renewed as provided in this section, but renewal does not entitle the respiratory care practitioner, while the license remains inactive, to engage in the certified activity of respiratory therapy. If a certificate suspended on disciplinary grounds is reinstated, the respiratory care practitioner, as a condition of reinstatement, shall pay the renewal fee and any applicable late fee.

§ 40-47-650. Fees.

The board and the committee shall prescribe fees in amounts recommended by the committee for:

- (1) initial licensure, not to exceed two hundred dollars;
- (2) renewal of license fee, not to exceed fifty dollars;
- (3) late renewal fee, not to exceed double renewal fee.

The fees must be set in such an amount as to reimburse the State to the extent feasible for the cost of the services rendered by the board.

§ 40-47-655. Limited license to practice respiratory care.

(A) Upon payment of a fee prescribed by the committee and approved by the board, the board may issue a limited license to practice respiratory care under the direct supervision of a licensed respiratory care practitioner to an applicant who presents written documentation, verified by oath, that the applicant is a graduate of or student of a respiratory care program approved by the American Medical Association or a successor accrediting authority recognized as such by the board. If a student, the applicant must be scheduled to graduate from this program within forty-five days of the date on which the limited license is to be issued.

(B) A limited license issued under this section is valid for a period of six months. Upon expiration of a limited license and payment of the fee prescribed by the committee and approved by the board, the board may renew the limited license once for a period of six months. A limited license must not be renewed more than twelve months from the date it was originally issued.

§ 40-47-660. Enforcement of article.

(A) It is unlawful for any person who is not licensed under this article to hold himself out as a respiratory care practitioner, respiratory therapist, or a respiratory therapy technician. A person who holds himself out or practices as a respiratory care practitioner without being licensed under this article, during a period of suspension, or after his certificate has been revoked by the board is guilty of a misdemeanor and, upon conviction, must be fined not more than three hundred dollars or imprisoned for not more than ninety days, or both.

(B) For the purpose of an investigation or proceeding under this article, the board or a person designated by it may administer oaths and affirmations, subpoena witnesses, take testimony, and require the production of documents or records which the board considers relevant to the inquiry. In the case of contumacy by, or refusal to obey a subpoena issued to a person, an administrative law judge as provided under Article 5 of Chapter 23 of Title 1, upon application by the board, may issue an order requiring the person to appear

before the board or the person designated by it, produce documentary evidence, and give other evidence concerning the matter under inquiry.

When the board has sufficient evidence that a person is violating any provisions of this article, it may, in addition to all other remedies, order the person to immediately desist and refrain from this conduct. The board may apply to an administrative law judge as provided under Article 5 of Chapter 23 of Title 1 for an injunction restraining the person from this conduct. An administrative law judge may issue a temporary injunction ex parte and upon notice and full hearing may issue any other order in the matter it considers proper. No bond may be required of the board by an administrative law judge as a condition to the issuance of any injunction or order contemplated by the provisions of this section.

(C) Every communication, whether oral or written, made by or on behalf of a person or firm to the board or any person designated by it to investigate or otherwise hear matters relating to the revocation, suspension, or other restriction on a license or other discipline of a licensee, whether by way of complaint or testimony, is privileged. No action or proceeding, civil or criminal, may lie against the person or firm for the communication except upon proof that the communication was made with malice.

(D) No provision of this article may be construed as prohibiting the respondent or his legal counsel from exercising the respondent's constitutional right of due process under the law nor prohibiting the respondent from normal access to the charges and evidence filed against him as a part of due process under the law.