

**CHAPTER 829**

**S.B. No. 1007**

An Act relating to the certification and regulation of respiratory care practitioners; to the creation of a Respiratory Care Practitioners Advisory Board; and to the powers and duties of the Texas Board of Health and the Texas Department of Health; authorizing fees; and providing a penalty.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1. DEFINITIONS.** In this Act:

- (1) "Advisory board" means the Respiratory Care Practitioners Advisory Board.
- (2) "Board of health" means the Texas Board of Health.
- (3) "Department" means the Texas Department of Health.
- (4) "Respiratory care" means the treatment, management, control, diagnostic evaluation, and care of patients who have deficiencies and abnormalities associated with the cardiorespiratory system.

(5) "Respiratory care practitioner" means a person certified under this Act to practice respiratory care.

(6) "Respiratory care procedure" means respiratory care provided by the therapeutic and diagnostic use of medical gases, humidifiers, and aerosols, the administration of drugs and medications to the cardiorespiratory system, ventilatory assistance and ventilatory control, postural drainage, chest drainage, chest percussion or vibration, breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, maintenance of natural airways, and the insertion and maintenance of artificial airways. The term includes a technique employed to assist in diagnosis, monitoring, treatment, and research, including the measurement of ventilatory volumes, pressures and flows, the specimen collection of blood and other materials, pulmonary function testing, and hemodynamic and other related physiological forms of monitoring the cardiorespiratory system.

**SECTION 2. CREATION OF RESPIRATORY CARE PRACTITIONERS ADVISORY BOARD.** (a) The Respiratory Care Practitioners Advisory Board is created as an advisory board to the Texas Board of Health. The board of health shall appoint nine members who must have the following qualifications:

(1) three must be consumers;

(2) one must be a physician licensed in this state who is a qualified chest physician, as evidenced by membership in a professional association of chest physicians such as the American College of Chest Physicians;

(3) one must be a physician licensed in this state who is a qualified anesthesiologist, as evidenced by membership in a professional organization of anesthesiologists such as the American Society of Anesthesiologists;

(4) one must be a physician licensed in this state who is a qualified expert in thoracic medicine, as evidenced by membership in a professional organization of thoracic medicine practitioners such as the Texas Thoracic Society; and

(5) three must be persons certified under this Act who have engaged in the practice of respiratory care for a period of not less than five years immediately preceding their appointment to the advisory board.

(b) Members are appointed for staggered terms of six years, with three members' terms expiring January 1 of each even-numbered year. If a vacancy occurs on the advisory board, the board of health shall appoint a person having the appropriate qualifications to serve the unexpired part of the term.

(c) The advisory board may adopt rules for the conduct of its activities and shall elect a chairman from among its members. The advisory board shall meet at least once each calendar quarter and shall meet at other times at the call of the chairman as necessary to transact its business. The members may not receive compensation, but a member of the advisory board is entitled to receive the per diem and travel allowance authorized by the General Appropriations Act for state employees.

(d) The advisory board shall recommend for the consideration of the board of health rules to implement standards adopted under this Act.

(e) The advisory board shall recommend for the approval of the board of health examinations which may be required by rules adopted under this Act.

**SECTION 3. DUTIES OF TEXAS BOARD OF HEALTH.** (a) The board of health shall adopt rules establishing minimum standards for issuing, renewing, suspending, or revoking a temporary permit or a certificate issued under this Act.

(b) The board of health shall employ personnel as necessary to administer this Act.

(c) The board of health may issue a certificate to a person who is licensed or certified to practice respiratory care by another state, the District of Columbia, or a territory of the United States whose requirements for licensure or certification were at the date of the licensure or certification substantially equal to the requirements set forth in this Act.

(d) After consultation with the advisory board, the board of health by rule shall establish examination requirements for a certificate under this Act. The board of health may use the entry level examination prepared by the National Board for Respiratory Care or an equivalent examination.

(e) The board of health may adopt rules necessary to implement this Act.

(f) The board of health shall maintain a list of persons who hold certificates under this Act.

(g) The authority of the board of health to adopt rules relating to the certification, examining, or disciplining of persons under this Act may be exercised only if necessary to protect the public health by ensuring that only qualified persons practice respiratory care.

(h) The certification program shall be administered by the bureau of licensing and certification of the board of health.

**SECTION 4. PROHIBITED ACTS.** (a) A person may not represent himself or herself as able to practice respiratory care or represent himself or herself as a respiratory care practitioner unless the person holds a certificate or permit issued under this Act.

(b) A person who is not certified under this Act as a respiratory care practitioner or whose certification has been suspended or revoked may not use in connection with his or her practice the words "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," or the letters "R.C.P." or any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner. Such a person may not in any way, either orally, in writing, in print, or by sign, directly or by implication, represent himself or herself as a respiratory care practitioner.

(c) A person may not practice respiratory care other than under the direction of a qualified medical director or other physician licensed by the Texas State Board of Medical Examiners.

(d) An applicant for a certificate to practice respiratory care shall submit to the board of health written evidence, verified by oath, that the applicant:

(1) has completed an approved four-year high school course of study or the equivalent as determined by the appropriate educational agency; and

(2) has completed a respiratory care educational program approved by the board of health after the board of health has considered relevant information about the quality of the program, including accreditation of the program by a professional medical association, such as the Committee on Allied Health Education and Accreditation of the American Medical Association.

(e) A person who holds a certificate to practice respiratory care under this Act may use the title "respiratory care practitioner" and the abbreviation "R.C.P."

**SECTION 5. TEMPORARY PERMITS.** (a) On payment of a fee designated by the board of health, the board of health may issue a temporary permit to practice respiratory care to an applicant for a certificate pending compliance with the requirements for certification. An applicant for a temporary permit must present written evidence, verified by oath, that the applicant is currently practicing or has within the 12-month period immediately preceding the date of the application practiced respiratory care in another state, territory, or country and is licensed to practice respiratory care in that state, territory, or country or is a student in a respiratory care education program approved by the board of health who expects to graduate from the program within 30 days after the day on which the temporary permit is issued. A temporary permit issued under this subsection is valid for six months.

(b) On expiration of a temporary permit issued under Subsection (a) of this section and on payment of a fee designated by the board of health, the board of health may issue a permit to perform respiratory care for an additional period, not to exceed 12 months from the date of issuance of the original temporary permit, pending reexamination or compliance with this Act. Reapplication following the abandonment of an application does not entitle the applicant to a temporary permit.

**SECTION 6. APPLICATION PROCEDURES; FEES.** (a) Application for certificates shall be made to the department on a form and under rules prescribed by the board of health. A nonrefundable application fee determined by the board of health shall accompany the application. Applicants who meet the minimum standards adopted under Section 3 of this Act shall be issued a certificate by the department which is valid for one year.

(b) The board of health shall set fees for examinations, certificates, certificate renewals, certificate reinstatements, and temporary permits. The board shall set the fees in amounts that are reasonable to cover the costs of administering this Act without the use of additional general revenue funds.

**SECTION 7. RENEWAL OF CERTIFICATE.** (a) Except as otherwise provided by this section, a certificate shall be renewed annually. The board of health shall mail a notice of renewal not later than the 30th day before the expiration of the certificate to each person who holds a valid certificate. The certificate holder shall complete the notice of renewal and shall return it to the board of health with the designated renewal fee before the date of expiration.

(b) On receipt of the notice of renewal and payment of the renewal fee, the board of health shall verify the notice and shall issue to the certificate holder a certificate for the current renewal period. The renewal is valid for the period stated on the renewal certificate. The board of health shall establish continuing education requirements for the annual renewal of the certificate of not less than three nor more than 12 continuing education credits per year. The board of health shall adopt rules relating to the attainment of the continuing education requirements in hardship situations.

(c) A certificate holder who fails to renew the certificate within the time set by the board of health may reinstate the certificate on payment of the renewal fee and a reinstatement fee set by the board.

(d) A respiratory care practitioner who does not engage in the practice of respiratory care during the subsequent renewal period is not required to pay the renewal fee as long as that practitioner remains inactive. If the practitioner desires to resume the practice of respiratory care, the practitioner must notify the board of health and must satisfy the requirements of the board of health in addition to remitting the renewal fee for the current renewal period and the reinstatement fee.

**SECTION 8. DISPOSITION OF FUNDS.** All fees received by the department under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund and are appropriated to the department for the administration of this Act.

**SECTION 9. EXCEPTIONS.** This Act does not prohibit:

(1) the practice of respiratory care that is an integral part of the program of study by a student enrolled in a respiratory care education program approved by the board of health or the employment by a health care facility of a student enrolled in the clinical part of an approved respiratory care educational program to deliver limited respiratory care support services under the supervision of persons who hold certificates issued under this Act, if such a student does not perform an invasive procedure related to critical respiratory care, including therapeutic, diagnostic, or palliative procedures;

(2) the gratuitous care of the ill by a friend or member of the family or care provided in an emergency situation by a person who does not claim to be a respiratory care practitioner who holds a certificate issued under the provisions of this Act;

(3) a respiratory care practitioner from performing advances in the art and techniques of respiratory care, as defined by this Act, learned through formal or specialized training;

(4) the practice of respiratory care by health care personnel who have been formally trained in the care used and who are licensed under the practice Acts regulating their professions or who are acting under the delegated authority of a licensed physician;

(5) the practice of any legally qualified respiratory care practitioner employed by the United States government while in the discharge of official duties; or

(6) any person who is licensed, registered, or certified under another law of this state from engaging in the profession or occupation for which the person is licensed, registered, or certified.

**SECTION 10. PRACTICE OF MEDICINE PROHIBITED.** This Act does not permit the practice of medicine, as defined by the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), by a person issued a certificate or permit under this Act.

**SECTION 11. DISCIPLINARY ACTIONS.** (a) The board of health may take the following disciplinary actions for the violation of this Act or rules adopted under this Act:

(1) suspension, revocation, or nonrenewal of a certificate or permit; or

(2) probation of a person who holds a certificate or permit under conditions set by the board.

(b) The board of health shall take disciplinary action if it determines that a person who holds a certificate or permit:

(1) is guilty of fraud or deceit in procuring or attempting to procure a certificate or permit or the renewal of a certificate or permit to practice respiratory care;

(2) is unfit or incompetent by reason of negligence or other causes of incompetency;

(3) is addicted to or has improperly obtained, possessed, used, or distributed habit-forming drugs or narcotics or is habitually intemperate in the use of alcoholic beverages;

(4) is guilty of dishonest or unethical conduct as determined by the board;

(5) has practiced respiratory care after his certificate or permit has expired;

(6) has practiced respiratory care under cover of any certificate or permit illegally or fraudulently obtained or issued;

(7) has violated or aided or abetted others in violation of this Act; or

(8) has practiced respiratory care other than under the direction of a qualified medical director or other physician.

(c) The procedure by which the board of health takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the provisions for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

**SECTION 12. NONTRANSFERABILITY OF CERTIFICATE OR PERMIT.** A certificate or permit issued under this Act is not transferable.

**SECTION 13. PENALTY.** (a) A person commits an offense if the person intentionally or knowingly violates Section 4 of this Act.

(b) A person commits an offense if the person intentionally or knowingly:

(1) sells, fraudulently obtains, or furnishes any respiratory care diploma, certificate, permit, or record;

(2) practices respiratory care under a respiratory care diploma, certificate, permit, or record illegally or fraudulently obtained or issued;

(3) impersonates in any manner a respiratory care practitioner or uses the title "respiratory care practitioner," the letters "R.C.P.," or any other words, letters, signs, symbols, or devices to indicate that the person is a respiratory care practitioner in violation of this Act;

(4) practices respiratory care during the time that the person's certificate or permit is suspended, revoked, or expired;

(5) conducts a formal respiratory care education program for the preparation of respiratory care personnel unless the program is approved by the board of health;

(6) employs a person who does not hold a certificate or permit in the practice of respiratory care in the capacity of a respiratory care practitioner; or

(7) otherwise violates Section 4 or 10 of this Act.

(c) An offense under this section is a Class B misdemeanor.

**SECTION 14. TERMS OF INITIAL MEMBERS; INITIAL MEETING.** (a) The Texas Board of Health shall designate three initial members appointed to the Respiratory Care Practitioners Advisory Board to serve for terms expiring January 1, 1988, three initial members to serve for terms expiring January 1, 1990, and three initial members to serve for terms expiring January 1, 1992. The board of health shall make the initial appointments not later than January 1, 1986.

(b) The advisory board shall hold its initial meeting not later than January 31, 1986, in order to organize, begin work, and set future meeting dates.

**SECTION 15. TRANSITION.** On payment of a fee set by the board of health, the board of health shall issue without examination a certificate to practice respiratory care to an applicant who, on the effective date of this Act, has passed the Certified Respiratory Care Technician or Registered Respiratory Care Provider examinations administered by the National Board for Respiratory Care or its successor organization. An applicant who has not passed either of those examinations by the effective date of this Act but who, through written evidence verified by oath, demonstrates that the applicant is presently functioning in the capacity of a respiratory care practitioner is entitled to a temporary certificate to practice respiratory care until September 1, 1987.

**SECTION 16. EFFECTIVE DATE.** This Act takes effect September 1, 1985, except that Sections 6 and 14 take effect January 1, 1986, and Subsection (a) of Section 4 and Sections 5 and 13 take effect January 1, 1987.

**SECTION 17. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on May 9, 1985, by the following vote: Yeas 31, Nays 0; Senate concurred in House amendment on May 27, 1985, by the following vote: Yeas 31, Nays 0; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas; passed the House, with amendment, on May 25, 1985, by the following vote: Yeas 88, Nays 57, one present not voting; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas.

Approved: June 15, 1985

Effective: September 1, 1985, except for Sections 6 and 14, which are effective January 1, 1986, and Sections 4(a), 5 and 13, which are effective January 1, 1987.