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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 2088** Session of  
2007

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INTRODUCED BY ADOLPH, YUDICHAK, BARRAR, KILLION, BRENNAN,  
CLYMER, GEORGE, HENNESSEY, W. KELLER, R. MILLER, MILNE,  
MOYER, MUNDY, MURT, MUSTIO, O'NEILL, PALLONE, PAYNE, PETRI,  
REICHLEY, ROSS, RUBLEY, SAYLOR, SEIP, SONNEY, J. TAYLOR AND  
WATSON, DECEMBER 11, 2007

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REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,  
DECEMBER 11, 2007

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AN ACT

1 Amending the act of October 5, 1978 (P.L.1109, No.261), entitled  
2 "An act requiring the licensing of practitioners of  
3 osteopathic medicine and surgery; regulating their practice;  
4 providing for certain funds and penalties for violations and  
5 repeals," further providing for definitions, for the State  
6 Board of Osteopathic Medicine, for respiratory care  
7 practitioners, for respiratory care practitioner certificates  
8 and permits and for reasons for refusal, revocation or  
9 suspension of license; and providing for regulations.

10 The General Assembly of the Commonwealth of Pennsylvania  
11 hereby enacts as follows:

12 Section 1. The definitions of "board-regulated practitioner"  
13 and "respiratory care practitioner" in section 2 of the act of  
14 October 5, 1978 (P.L.1109, No.261), known as the Osteopathic  
15 Medical Practice Act, amended or added July 2, 1993 (P.L.418,  
16 No.59) and December 10, 2001 (P.L.863, No.93), are amended to  
17 read:

18 Section 2. Definitions.

19 The following words and phrases when used in this act shall

1 have, unless the context clearly indicates otherwise, the  
2 meanings given to them in this section:

3 \* \* \*

4 "Board-regulated practitioner." An osteopathic physician,  
5 physician assistant, respiratory [care practitioner] therapist  
6 or certified athletic trainer or an applicant for a license or  
7 certificate issued by the board.

8 \* \* \*

9 "Respiratory [care practitioner] therapist." An individual  
10 who is [certified] licensed to practice respiratory care by the  
11 State Board of Osteopathic Medicine.

12 \* \* \*

13 Section 2. Section 2.1(a) of the act, amended December 10,  
14 2001 (P.L.863, No.93), is amended to read:

15 Section 2.1. State Board of Osteopathic Medicine.

16 (a) The State Board of Osteopathic Medicine shall consist of  
17 the Commissioner of Professional and Occupational Affairs or his  
18 designee; the Secretary of Health or his designee; two members  
19 appointed by the Governor who shall be persons representing the  
20 public at large; one member appointed by the Governor who shall  
21 be a respiratory [care practitioner] therapist, a physician  
22 assistant or a certified athletic trainer; and six members  
23 appointed by the Governor who shall be graduates of a legally  
24 incorporated and reputable college of osteopathy and shall have  
25 been licensed to practice osteopathic medicine under the laws of  
26 this Commonwealth and shall have been engaged in the practice of  
27 osteopathy in this Commonwealth for a period of at least five  
28 years. All professional and public members of the board shall be  
29 appointed by the Governor with the advice and consent of a  
30 majority of the members elected to the Senate. The Governor

1 shall assure that respiratory [care practitioners] therapists,  
2 physician assistants and certified athletic trainers on a  
3 rotating basis.

4 \* \* \*

5 Section 3. Section 10.1 of the act, added July 2, 1993  
6 (P.L.418, No.59), is amended to read:

7 Section 10.1. Respiratory [care practitioners] therapists.

8 [(a) Eighteen months after the effective date of this  
9 section, it shall be unlawful for any person to hold himself out  
10 to the public as a respiratory care practitioner and to practice  
11 or offer to practice respiratory care unless he holds a valid,  
12 current temporary permit or certificate issued by the board.

13 (b) A respiratory care practitioner who holds a valid,  
14 current temporary permit or certificate issued by the board may  
15 use the title respiratory care practitioner or respiratory care  
16 practitioner-certified or an appropriate abbreviation of that  
17 title, such as "R.C.P." or "R.C.P.-C."]

18 (a) An individual shall be eligible to apply for licensure  
19 as a respiratory therapist if that individual satisfies all of  
20 the following:

21 (1) Submits evidence satisfactory to the board, on forms  
22 approved by the board, that the applicant has met one or more  
23 of the following criteria:

24 (i) Has graduated from a respiratory care program  
25 approved by the Committee on Accreditation for  
26 Respiratory Care and passed the entry level examination  
27 as determined by the National Board for Respiratory Care.

28 (ii) Holds a valid license, certificate or  
29 registration as a respiratory therapist in another state,  
30 territory or the District of Columbia which has been

1 issued based on requirements substantially similar to  
2 those required by this Commonwealth, including having  
3 successfully passed an examination.

4 (2) Has paid the licensure fee as established by the  
5 board by regulation.

6 (3) Has proved to the satisfaction of the board that the  
7 individual is of good moral character and is not unfit or  
8 unable to practice as a respiratory therapist by reason of  
9 physical or mental impairment.

10 (a.1) It shall be unlawful for any individual to hold  
11 himself out to the public as a respiratory therapist or to  
12 practice or offer to practice respiratory care unless the  
13 individual holds a valid, current license issued by the board or  
14 the State Board of Medicine.

15 (a.2) It shall be unlawful for an individual to use the  
16 title of "licensed respiratory therapist" or to use the letters  
17 "L.R.T." or "R.T." or to hold oneself out as a licensed  
18 respiratory therapist unless that individual is licensed to  
19 practice respiratory care as provided under this act or the act  
20 of December 20, 1985 (P.L.457, No.112), known as the Medical  
21 Practice Act of 1985.

22 (b) For a period of two years following the effective date  
23 of this subsection, an individual shall be eligible to apply for  
24 licensure without examination if the individual meets the  
25 qualifications for licensure under section 10.2 and holds valid  
26 certification as a respiratory care practitioner as issued by  
27 the board or the State Board of Medicine.

28 (c) The board is authorized to promulgate regulations to  
29 implement this section.

30 (d) A respiratory [care practitioner certified] therapist

1 licensed by the board may implement direct respiratory care to  
2 an individual being treated by either a licensed medical doctor  
3 or a licensed doctor of osteopathic medicine upon physician  
4 prescription or referral or under medical direction and approval  
5 consistent with standing orders or protocols of an institution  
6 or health care facility. This care may constitute indirect  
7 services, such as consultation or evaluation of an individual,  
8 and also includes, but is not limited to, the following  
9 services:

- 10 (1) Administration of medical gases.
  - 11 (2) Humidity and aerosol therapy.
  - 12 (3) Administration of aerosolized medications.
  - 13 (4) Intermittent positive pressure breathing.
  - 14 (5) Incentive spirometry.
  - 15 (6) Bronchopulmonary hygiene.
  - 16 (7) Management and maintenance of natural airways.
  - 17 (8) Maintenance and insertion of artificial airways.
  - 18 (9) Cardiopulmonary rehabilitation.
  - 19 (10) Management and maintenance of mechanical  
20 ventilation.
  - 21 (11) Measurement of ventilatory flows, volumes and  
22 pressures.
  - 23 (12) Analysis of ventilatory gases and blood gases.
- 24 (e) This section shall not prevent or restrict the  
25 practices, services or activities of:
- 26 (1) A person licensed or certified in this Commonwealth  
27 to provide another health care service, including, but not  
28 limited to, physicians, physical therapists, chiropractors,  
29 nurses, dentists, physician assistants and podiatrists.
  - 30 (2) A person rendering respiratory care services

1       pursuant to employment by a Federal agency.

2           (3) A person pursuing a course of study leading to a  
3       degree or certificate in respiratory care in an accredited  
4       educational program if he is clearly designated as a student  
5       and provides care under supervision implemented through that  
6       program.

7           (4) A person executing or conveying medical orders  
8       pursuant to lawful delegation by a physician.

9           (5) A person who, pursuant to lawful delegation by a  
10      physician, delivers, installs, monitors or maintains a device  
11      which enables an individual to self-administer respiratory  
12      care.

13          (6) A person qualified by academic and clinical  
14      education to operate extracorporeal circulation equipment in  
15      a medical or surgical setting which requires support to or  
16      the temporary replacement of a patient's circulatory or  
17      respiratory functions.

18      (f) Information or allegations filed with the board against  
19      a respiratory [care practitioner certified] therapist licensed  
20      by the State Board of Medicine shall be referred to that board  
21      for appropriate action.

22      Section 4. Section 10.2 of the act, amended or added July 2,  
23      1993 (P.L.418, No.59) and July 2, 2004 (P.L.486, No.56), is  
24      amended to read:

25      Section 10.2. Respiratory [care practitioner certificates]  
26                      therapist licenses and permits.

27      (a) A respiratory [care practitioner certificate] therapist  
28      license issued by the board empowers the holder to practice  
29      respiratory care under the supervision of a licensed medical  
30      doctor or a licensed doctor of osteopathic medicine. In a health

1 care facility, that supervision may consist of standing orders  
2 or protocols approved by the institution consistent with  
3 acceptable and prevailing medical standards which may include  
4 services rendered directly to the patient in his home or other  
5 residence.

6 (b) The board shall issue temporary permits for the practice  
7 of respiratory care to individuals who have applied for  
8 [certification] licensure from the board and who meet any of the  
9 following requirements:

10 (1) Graduation from an accredited respiratory care  
11 training program recognized by the board.

12 (2) Enrollment in an accredited respiratory care  
13 training program recognized by the board if the individual is  
14 expected to graduate within 30 days from the date of  
15 application.

16 (3) [Designation as a "Certified Respiratory Therapist"  
17 or a "Registered Respiratory Therapist" by a nationally  
18 recognized credentialing agency approved by the board.

19 (4) Continuous provision of respiratory care services  
20 for a minimum of 12 months immediately preceding the  
21 effective date of this section.

22 (5) Holding certification, licensure or registration as  
23 a respiratory care practitioner issued by another state, the  
24 District of Columbia or a territory of the United States  
25 where the requirements for licensure, registration or  
26 certification are substantially similar to those required by  
27 the board.] Recognition as a credentialed respiratory  
28 therapist as approved by the board.

29 (c) Temporary permits shall be valid for 12 months and for  
30 such additional period as the board may, in each case, specially

1 determine, except that a temporary permit shall expire if the  
2 holder fails the examination. An appropriate fee for a temporary  
3 permit shall be established by the board by regulation. If [he]  
4 the temporary permit holder is not in violation of any other  
5 provision of this act, a holder of a temporary permit qualifies  
6 for admission to the examination and shall apply for the next  
7 regularly scheduled [certification] licensure examination  
8 administered by the board. The board is authorized to promulgate  
9 regulations to establish procedures for application, credentials  
10 verification, examination and [certification] licensure,  
11 together with appropriate fees.

12 (d) Pursuant to section 812.1 of the act of April 9, 1929  
13 (P.L.177, No.175), known as The Administrative Code of 1929, the  
14 board shall contract for the development and administration of  
15 an examination for the [certification] licensure of respiratory  
16 [care practitioners] therapists. [At least one administration of  
17 this examination shall be given within 12 months of the  
18 effective date of this section, and the] The examination shall  
19 [thereafter] be given at least twice per year. [An individual  
20 qualifying for a temporary permit under subsection (b)(5) shall  
21 be issued a certificate by the board without examination. An  
22 individual qualifying for a temporary permit under subsection  
23 (b)(3) shall be issued a certificate by the board without  
24 examination if the individual passed an examination in order to  
25 obtain designation as a "Certified Respiratory Therapy  
26 Technician" or a "Registered Respiratory Therapist" and that  
27 examination was comparable to the examination developed and  
28 administered pursuant to this subsection.]

29 (e) A respiratory [care practitioner certificate] therapist  
30 license shall be renewed biennially upon application on a form

1 prescribed by the board and upon payment of a renewal fee  
2 adopted by the board by regulation.

3 (f) (1) The board shall adopt, promulgate and enforce rules  
4 and regulations consistent with the provisions of this act  
5 establishing requirements of continuing education to be met  
6 by individuals holding [certification] licensure as  
7 respiratory [care practitioners] therapists under this act as  
8 a condition for [certificate] biennial license renewal. The  
9 regulations shall include any fees necessary for the board to  
10 carry out its responsibilities under this section.

11 (2) Beginning with the first biennial license renewal  
12 period [designated by regulation, certificate] following  
13 promulgation of regulations, license holders shall be  
14 required to attend and complete [20] 30 hours of mandatory  
15 continuing education during each two-year [certificate]  
16 licensure period. At least one credit hour shall be in  
17 ethics, and one credit hour shall be in patient safety.

18 (3) An individual applying for the first time for  
19 [certification] licensure in this Commonwealth shall be  
20 exempted from the continuing education requirement for the  
21 biennial renewal period [following initial certification] in  
22 which licensure is obtained.

23 (4) [The board may waive all or a portion of the  
24 continuing education requirement for biennial renewal for a  
25 certificate holder who shows to the satisfaction of the board  
26 that the individual was unable to complete the requirements  
27 due to serious illness, military service or other  
28 demonstrated hardship. The request shall be made in writing,  
29 with appropriate documentation, and shall include a  
30 description of circumstances sufficient to show why the

1 certificate holder is unable to comply with the continuing  
2 education requirement. Waiver requests shall be evaluated by  
3 the board on a case-by-case basis. The board shall send the  
4 certificate holder written notification of its approval or  
5 denial of a waiver request.] The board shall, by regulation,  
6 provide for the waiver of continuing education requirements  
7 in case of illness, hardship and armed service duties. A  
8 request for waiver shall be evaluated on a case-by-case  
9 basis.

10 (5) A [certificate holder] licensee seeking to reinstate  
11 an inactive or lapsed [certificate] license shall show proof  
12 of compliance with the continuing education requirement for  
13 the preceding biennium.

14 (6) All courses, locations, instructors and providers  
15 shall be approved by the board. No credit shall be given for  
16 any course in office management or practice building.

17 [(7) The board shall initiate the promulgation of  
18 regulations to carry out the provisions of this section  
19 within one year of the effective date of this subsection.]

20 Section 5. Section 15(b) of the act, amended July 2, 2004  
21 (P.L.486, No.56), is amended to read:

22 Section 15. Reasons for refusal, revocation or suspension of  
23 license.

24 \* \* \*

25 (b) The board shall have authority to refuse, revoke or  
26 suspend the license of a physician assistant or respiratory  
27 therapist, or the certification of a [respiratory care  
28 practitioner or] certified athletic trainer for any or all of  
29 the following reasons:

30 (1) Failing to demonstrate the qualification for

1 licensure or certification contained in this act or  
2 regulations of the board.

3 (2) Making misleading, deceptive, untrue or fraudulent  
4 representations in his serving as a physician assistant;  
5 practicing fraud or deceit in obtaining a license to serve as  
6 a physician assistant; or making a false or deceptive  
7 biennial registration with the board.

8 (3) Conviction of a felony in this Commonwealth or any  
9 other state, territory or country. Conviction as used in this  
10 paragraph shall include a finding or verdict of guilt, an  
11 admission of guilt or a plea of nolo contendere, or receiving  
12 probation without verdict, disposition in lieu of trial, or  
13 an Accelerated Rehabilitative Disposition in the disposition  
14 of felony charges.

15 (4) Having his license to serve as a physician assistant  
16 revoked or suspended or having other disciplinary action  
17 taken, or his application for licensure refused, revoked or  
18 suspended by the proper certifying authority of another  
19 state, territory or country.

20 (5) Being unable to serve as a physician assistant with  
21 reasonable skill and safety to the physician's patients by  
22 reason of illness, drunkenness, excessive use of drugs,  
23 narcotics, chemicals, or any other type of material, or as a  
24 result of any mental or physical condition.

25 (6) In enforcing paragraph (5), the board shall, upon  
26 probable cause, have authority to compel a physician  
27 assistant to submit to a mental or physical examination by  
28 physicians designated by it. Failure of a physician assistant  
29 to submit to such examination shall constitute an admission  
30 of the allegations against him unless the failure is due to

1 circumstances beyond his control, consequent upon which a  
2 default and final order may be entered without the taking of  
3 testimony or presentation of evidence. A physician assistant  
4 affected under this paragraph shall at reasonable intervals  
5 be afforded an opportunity to demonstrate that he can resume  
6 the competent assistance of a physician in the physician's  
7 practice of medicine, with reasonable skill and safety to the  
8 physician's patients.

9 (7) Violating a lawful regulation promulgated by the  
10 board or violating a lawful order of the board, previously  
11 entered by the board in a disciplinary proceeding.

12 (8) Knowingly rendering medical care and services except  
13 under the supervision and direction of the supervising  
14 physician.

15 (9) Being guilty of immoral or unprofessional conduct  
16 shall include any departure from, or the failure to conform  
17 to, the standards of acceptable and prevailing practice for  
18 physician assistants, in which proceeding actual injury to a  
19 patient need not be established.

20 \* \* \*

21 Section 6. The State Board of Osteopathic Medicine and the  
22 State Board of Medicine shall jointly promulgate regulations to  
23 implement the amendment of sections 2, 2.1(a), 10.1, 10.2 and  
24 15(b) of the act within 18 months of the effective date of this  
25 section.

26 Section 7. This act shall take effect as follows:

27 (1) This section shall take effect immediately.

28 (2) Section 6 of this act shall take effect immediately.

29 (3) The remainder of this act shall take effect in 60  
30 days.