

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1009 Session of
1993

INTRODUCED BY WILLIAMS, CARONE, MELIO, PESCI, KAISER, TIGUE,
COY, J. TAYLOR, JAMES, BELFANTI, JOSEPHS, D. W. SNYDER, BUNT,
KENNEY, KUKOVICH, MICOZZIE, THOMAS, CORRIGAN, COWELL,
MIHALICH, DeLUCA, OLASZ, WOGAN AND O'BRIEN, MARCH 29, 1993

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 27, 1993

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 the State Board of
6 Osteopathic Medicine and for penalties; and regulating the
7 practice of respiratory care practitioners.

8 The General Assembly finds and declares that the practice of
9 respiratory care in this Commonwealth affects the public health,
10 safety and welfare and is to be subject to regulation and
11 control in the public interest to protect the public from the
12 unauthorized and unqualified practice of respiratory care and
13 from unprofessional conduct by persons certified to practice
14 respiratory care.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Section 2 of the act of October 5, 1978
18 (P.L.1109, No.261), known as the Osteopathic Medical Practice
19 Act, is amended by adding definitions to read:

1 Section 2. Definitions.

2 The following words and phrases when used in this act shall
3 have, unless the context clearly indicates otherwise, the
4 meanings given to them in this section:

5 * * *

6 "BOARD-REGULATED PRACTITIONER." AN OSTEOPATHIC PHYSICIAN, <—
7 PHYSICIAN ASSISTANT, OR RESPIRATORY CARE PRACTITIONER OR AN
8 APPLICANT FOR A LICENSE OR CERTIFICATE ISSUED BY THE BOARD.

9 * * *

10 "Respiratory care." A health care specialty employing
11 evaluation, analysis, care and treatment of patients with
12 cardiopulmonary disorders and related diseases.

13 "Respiratory care practitioner." An individual who is
14 certified to practice respiratory care by the State Board of
15 OSTEOPATHIC Medicine. <—

16 * * *

17 Section 2. ~~Section~~ SECTIONS 2.1(a) AND 6.1 of the act, added <—
18 December 20, 1985 (P.L.398, No.108), ~~is~~ ARE amended to read: <—
19 Section 2.1. State Board of Osteopathic Medicine.

20 (a) The State Board of Osteopathic Medicine shall consist of
21 the Commissioner of Professional and Occupational Affairs[,] or
22 his designee; the Secretary of Health[,] or his designee[,] two
23 members appointed by the Governor[, with the advice and consent
24 of a majority of the members elected to the Senate,] who shall
25 be persons representing the public at large[,] one member
26 appointed by the Governor who shall be either a respiratory care
27 practitioner or a physician assistant; and [five] six members
28 appointed by the Governor[, with the advice and consent of a
29 majority of the members elected to the Senate,] who shall be
30 graduates of a legally incorporated and reputable college of

osteopathy and shall have been licensed to practice [osteopathy]
osteopathic medicine under the laws of this Commonwealth and
shall have been engaged in the practice of osteopathy in this
Commonwealth for a period of at least five years. All
professional and public members of the board shall be appointed
by the Governor with the advice and consent of a majority of the
members elected to the Senate. The Governor shall assure that
respiratory care practitioners and physician assistants are
~~approved~~ APPOINTED to four-year terms on a rotating basis so
that, of every two appointments to a four-year term, one is a
physician assistant and one is a respiratory care practitioner.

* * *

SECTION 6.1. REPORTING OF MULTIPLE Licensure OR CERTIFICATES.

ANY LICENSED OSTEOPATHIC PHYSICIAN OF THIS COMMONWEALTH WHO
IS ALSO LICENSED TO PRACTICE OSTEOPATHIC MEDICINE OR SURGERY IN
ANY OTHER STATE, TERRITORY OR COUNTRY OR ANY OTHER BOARD-
REGULATED PRACTITIONER LICENSED OR CERTIFIED TO PRACTICE IN ANY
OTHER STATE, TERRITORY OR COUNTRY SHALL REPORT THIS INFORMATION
TO THE BOARD ON THE BIENNIAL REGISTRATION APPLICATION. ANY
DISCIPLINARY ACTION TAKEN IN OTHER STATES SHALL BE REPORTED TO
THE BOARD ON THE BIENNIAL REGISTRATION APPLICATION OR WITHIN 90
DAYS OF FINAL DISPOSITION, WHICHEVER IS SOONER. MULTIPLE
Licensure SHALL BE NOTED BY THE BOARD ON THE OSTEOPATHIC
PHYSICIAN'S OR OTHER BOARD-REGULATED PRACTITIONER'S RECORD, AND
SUCH STATE, TERRITORY OR COUNTRY SHALL BE NOTIFIED BY THE BOARD
OF ANY DISCIPLINARY ACTIONS TAKEN AGAINST SAID OSTEOPATHIC
PHYSICIAN OR OTHER BOARD-REGULATED PRACTITIONER IN THIS
COMMONWEALTH.

Section 3. The act is amended by adding sections to read:

Section 10.1. Respiratory care practitioners.

1 (a) Certificate required.--Eighteen months after the
2 effective date of this section, it shall be unlawful for any
3 person to hold himself out to the public as a respiratory care
4 practitioner and to practice or offer to practice respiratory
5 care unless he holds a valid, current temporary permit or
6 certificate issued by the board.

7 (b) Use of title.--A respiratory care practitioner who holds
8 a valid, current temporary permit or certificate issued by the
9 board may use the title respiratory care practitioner or
10 respiratory care practitioner-certified, or an appropriate
11 abbreviation of that title, such as "R.C.P." or "R.C.P.-C."

12 (c) Regulations.--The board is authorized to promulgate
13 regulations to implement this section.

14 (d) Supervision and scope of practice.--A respiratory care
15 practitioner certified by the board may implement direct
16 respiratory care to an individual being treated by either a
17 licensed medical doctor or a licensed doctor of osteopathic
18 medicine, upon physician prescription or referral, or under
19 medical direction and approval consistent with standing orders
20 or protocols of an institution or health care facility. This
21 care may constitute indirect services, such as consultation or
22 evaluation of an individual, and also includes, but is not
23 limited to, the following services:

24 (1) Administration of medical gases.

25 (2) Humidity and aerosol therapy.

26 (3) Administration of aerosolized medications.

27 (4) Intermittent positive pressure breathing.

28 (5) Incentive spirometry.

29 (6) Bronchopulmonary hygiene.

30 (7) Management and maintenance of natural airways.

<—

1 (8) Maintenance and insertion of artificial airways.

2 (9) Cardiopulmonary rehabilitation.

3 (10) Management and maintenance of mechanical
4 ventilation.

5 (11) Measurement of ventilatory flows, volumes and
6 pressures.

7 (12) Analysis of ventilatory gases and blood gases.

8 (e) Exemptions.--This section shall not prevent or restrict
9 the practices, services or activities of:

10 (1) A person licensed or certified in this Commonwealth
11 to provide another health care service, including, but not
12 limited to, physicians, physical therapists, chiropractors,
13 nurses, dentists, physician assistants and podiatrists.

14 (2) A person rendering respiratory care services
15 pursuant to employment by a Federal agency.

16 (3) A person pursuing a course of study leading to a
17 degree or certificate in respiratory care in an accredited
18 educational program, if he is clearly designated as a
19 student, and provides care under supervision implemented
20 through that program.

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

23 (5) A person who, pursuant to lawful delegation by a
24 physician, delivers, installs, monitors or maintains a device
25 which enables an individual to self-administer respiratory
26 care.

27 (6) A PERSON QUALIFIED BY ACADEMIC AND CLINICAL
28 EDUCATION TO OPERATE EXTRACORPOREAL CIRCULATION EQUIPMENT IN
29 A MEDICAL OR SURGICAL SETTING WHICH REQUIRES SUPPORT TO OR
30 THE TEMPORARY REPLACEMENT OF A PATIENT'S CIRCULATORY OR

<—

1 RESPIRATORY FUNCTIONS.

2 (f) Referrals to State Board of Medicine.--Information or
3 allegations filed with the board against a respiratory care
4 practitioner certified by the State Board of Medicine shall be
5 referred to that board for appropriate action.

6 Section 10.2. Respiratory care practitioner certificates and
7 permits.

8 (a) General rule.--A respiratory care practitioner
9 certificate issued by the board empowers the holder to practice
10 respiratory care under the supervision of a licensed medical
11 doctor or a licensed doctor of osteopathic medicine. In a health
12 care facility, that supervision may consist of standing orders
13 or protocols approved by the institution, consistent with
14 acceptable and prevailing medical standards, which may include
15 services rendered directly to the patient in his home or other
16 residence.

17 (b) Temporary permits.--Twelve months after the effective
18 date of this section, the board shall issue temporary permits
19 for the practice of respiratory care to individuals who have
20 applied for certification from the board, and who meet any of
21 the following requirements:

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

24 (2) Enrollment in an accredited respiratory care
25 training program recognized by the board, if the individual
26 is expected to graduate within 30 days from the date of
27 application.

28 (3) Designation as a "Certified Respiratory Therapy
29 Technician" or a "Registered Respiratory Therapist" by a
30 nationally recognized credentialing agency approved by the

1 board.

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

5 (5) Holding certification, licensure or registration as
6 A respiratory care ~~practitioners~~ PRACTITIONER issued by <—
7 another state, the District of Columbia or a territory of the
8 United States, where the requirements for licensure,
9 registration or certification are substantially similar to
10 those required by the board.

11 (c) Duration and effect of temporary permits.--Temporary
12 permits shall be valid for 12 months and for such additional
13 period as the board may, in each case, specially determine;
14 except that a temporary permit shall expire if the holder fails
15 the examination. An appropriate fee for a temporary permit shall
16 be established by the board by regulation. If ~~they are~~ HE IS not <—
17 in violation of any other provision of this act, ~~holders of~~ <—
18 ~~temporary permits qualify~~ A HOLDER OF A TEMPORARY PERMIT <—
19 QUALIFIES for admission to the examination, and shall apply for
20 the next regularly scheduled certification examination
21 administered by the board. The board is authorized to promulgate
22 regulations to establish procedures for application, credentials
23 verification, examination and certification, together with
24 appropriate fees.

25 (d) Examination.--Pursuant to section 812.1 of the act of
26 April 9, 1929 (P.L.177, No.175), known as The Administrative
27 Code of 1929, the board shall contract for the development and
28 administration of an examination for the certification of
29 respiratory care practitioners. At least one administration of
30 this examination shall be given within 12 months of the

effective date of this section, and the examination shall
thereafter be given at least twice per year. An individual
qualifying for a temporary permit under subsection (b)(5) shall
be issued a certificate by the board without examination. An
individual qualifying for a temporary permit under subsection
(b)(3) shall be issued a certificate by the board without
examination if the individual passed an examination in order to
obtain designation as a "Certified Respiratory Therapy
Technician" or a "Registered Respiratory Therapist" and that
examination was comparable to the examination developed and
administered pursuant to this subsection.

(e) Biennial renewal.--A respiratory care practitioner
certificate shall be renewed biennially upon application on a
form prescribed by the board and upon payment of a renewal fee
adopted by the board by regulation.

Section 4. Section 11(c) of the act, amended December 20,
1985 (P.L.398, No.108), is amended to read:

Section 11. Penalty provisions.

* * *

(c) Board-imposed civil penalty.--In addition to any other
civil remedy or criminal penalty provided for in this act, the
board, by a vote of the majority of the maximum number of the
authorized membership of the board as provided by law, or by a
vote of the majority of the duly qualified and confirmed
membership or a minimum of [four] five members, whichever is
greater, may levy a civil penalty of up to \$1,000 on any current
licensee who violates any provision of this act or on any person
who practices osteopathic medicine without being properly
licensed to do so under this act. The board shall levy this
penalty only after affording the accused party the opportunity

1 for a hearing, as provided in Title 2 of the Pennsylvania
2 Consolidated Statutes (relating to administrative law and
3 procedure).

4 SECTION 5. SECTION 14 OF THE ACT IS AMENDED TO READ: <—

5 SECTION 14. TEMPORARY AND AUTOMATIC SUSPENSION.

6 (A) A LICENSE OR CERTIFICATE ISSUED UNDER THIS ACT MAY BE
7 TEMPORARILY SUSPENDED UNDER CIRCUMSTANCES AS DETERMINED BY THE
8 BOARD TO BE AN IMMEDIATE AND CLEAR DANGER TO THE PUBLIC HEALTH
9 AND SAFETY. THE BOARD SHALL ISSUE AN ORDER TO THAT EFFECT
10 WITHOUT A HEARING, BUT UPON DUE NOTICE, TO THE LICENSEE
11 CONCERNED AT HIS OR HER LAST KNOWN ADDRESS, WHICH SHALL INCLUDE
12 A WRITTEN STATEMENT OF ALL ALLEGATIONS AGAINST THE LICENSEE. THE
13 PROVISIONS OF SECTION 15(D) SHALL NOT APPLY TO TEMPORARY
14 SUSPENSION. THE BOARD SHALL THEREUPON COMMENCE FORMAL ACTION TO
15 SUSPEND, REVOKE OR RESTRICT THE LICENSE OR CERTIFICATE OF THE
16 PERSON CONCERNED AS OTHERWISE PROVIDED FOR IN THIS ACT. ALL
17 ACTIONS SHALL BE TAKEN PROMPTLY AND WITHOUT DELAY. WITHIN 30
18 DAYS FOLLOWING THE ISSUANCE OF AN ORDER TEMPORARILY SUSPENDING A
19 LICENSE OR CERTIFICATE, THE BOARD SHALL CONDUCT OR CAUSE TO BE
20 CONDUCTED, A PRELIMINARY HEARING TO DETERMINE THAT THERE IS A
21 PRIMA FACIE CASE SUPPORTING THE SUSPENSION. THE LICENSEE WHOSE
22 LICENSE OR CERTIFICATE HAS BEEN TEMPORARILY SUSPENDED MAY BE
23 PRESENT AT THE PRELIMINARY HEARING AND MAY BE REPRESENTED BY
24 COUNSEL, CROSS-EXAMINE WITNESSES, INSPECT PHYSICAL EVIDENCE,
25 CALL WITNESSES, OFFER EVIDENCE AND TESTIMONY AND MAKE A RECORD
26 OF THE PROCEEDINGS. IF IT IS DETERMINED THAT THERE IS NOT A
27 PRIMA FACIE CASE, THE SUSPENDED LICENSE OR CERTIFICATE SHALL BE
28 IMMEDIATELY RESTORED. THE TEMPORARY SUSPENSION SHALL REMAIN IN
29 EFFECT UNTIL VACATED BY THE BOARD, BUT IN NO EVENT LONGER THAN
30 180 DAYS.

1 (B) A LICENSE OR CERTIFICATE ISSUED UNDER THIS ACT SHALL
2 AUTOMATICALLY BE SUSPENDED UPON THE COMMITMENT TO AN INSTITUTION
3 OF A LICENSEE BECAUSE OF MENTAL INCOMPETENCY FROM ANY CAUSE UPON
4 FILING WITH THE BOARD A CERTIFIED COPY OF SUCH COMMITMENT,
5 CONVICTION OF A FELONY UNDER THE ACT OF APRIL 14, 1972 (P.L.233,
6 NO.64), KNOWN AS "THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND
7 COSMETIC ACT," OR CONVICTION OF AN OFFENSE UNDER THE LAWS OF
8 ANOTHER JURISDICTION, WHICH, IF COMMITTED IN PENNSYLVANIA, WOULD
9 BE A FELONY UNDER "THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND
10 COSMETIC ACT." AS USED IN THIS SECTION THE TERM "CONVICTION"
11 SHALL INCLUDE A JUDGMENT, AN ADMISSION OF GUILT OR A PLEA OF
12 NOLO CONTENDERE. AUTOMATIC SUSPENSION UNDER THIS SECTION SHALL
13 NOT BE STAYED PENDING ANY APPEAL OF A CONVICTION. RESTORATION OF
14 SUCH LICENSE OR CERTIFICATE SHALL BE MADE AS IN THE CASE OF
15 REVOCATION OR SUSPENSION OF LICENSE OR CERTIFICATE.

16 Section ~~5~~ 6. This act shall take effect in 180 days.

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