

## CHAPTER 43-42 RESPIRATORY CARE PRACTITIONERS

### **43-42-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Board" means the state board of respiratory care.
2. "Bona fide respiratory care training program" means a program of respiratory care education which is accredited by the commission on accreditation of respiratory care, or the commission's successor organization.
3. "Certification examination" means the entry level examination for respiratory therapists administered by the national board for respiratory care or its successor organization.
4. "Certified respiratory therapist" means a person licensed by the board to practice respiratory care under the direction or supervision of a physician or registered respiratory therapist.
5. "National board for respiratory care" means the body issuing credentials for the respiratory care profession, or the board's successor organization.
6. "Polysomnography" means the practice of attending, monitoring, and recording physiologic data during sleep for the purpose of identifying and assisting in the treatment of sleep-wake disorders.
7. "Registered polysomnographic technologist" means an individual licensed by the board to practice polysomnography under supervision as prescribed by the board by rule.
8. "Registered respiratory therapist" means a person licensed by the board to practice respiratory care.
9. "Registry examination" means the advanced level examination for respiratory therapists administered by the national board for respiratory care.
10. "Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the cardiopulmonary systems. Respiratory care is implemented on an order from a licensed physician, certified nurse practitioner, or physician's assistant and includes the use of medical gases, air and oxygen administering apparatuses, environmental control systems, humidification and aerosols, drugs and medications, apparatuses for cardiorespiratory support and control, postural drainage, chest percussion and vibration and breathing exercises, pulmonary rehabilitation, assistance with cardiopulmonary resuscitation, maintenance of natural and artificial airways, and insertion of artificial airways. The term also includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of samples of arterial, capillary, and venous blood.
11. "Respiratory therapist" means a certified respiratory therapist or a registered respiratory therapist.
12. "Respiratory therapy" means respiratory care.

### **43-42-02. State board of respiratory care.**

1. The state board of respiratory care is responsible for the enforcement and administration of this chapter and for the adoption of any rules necessary to govern the practice of respiratory care in this state.
2. The board consists of seven members appointed by the governor. Four members must be respiratory therapists, chosen from a list of eight respiratory therapists supplied to the governor by the North Dakota society for respiratory care. One member must be a physician chosen from a list of two physicians supplied to the governor by the North Dakota medical association. The governor shall appoint one member to be a representative of the general public. One member must be a registered polysomnographic technologist chosen from a list of candidates recommended to the governor by the association of polysomnographic technologists. Members are appointed for terms of three years. Each member holds office until the member's

successor is duly appointed and qualified. A vacancy in the office of any member may be filled for the unexpired term only. No member may serve more than two successive complete terms.

3. The board shall annually select a chairman from among its members. The board shall meet at least twice each year and also shall meet upon the call of the chairman.

**43-42-03. Respiratory therapist and polysomnographic technologist licensing - Fees.**

1. The board shall license as a registered respiratory therapist any applicant whom the board determines to be qualified to perform the duties of a registered respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the registry examination. The board shall establish fees not in excess of one hundred dollars for the issuance and renewal of a registered respiratory therapist license.
2. The board shall license as a certified respiratory therapist any applicant whom the board determines to be qualified to perform the duties of a certified respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the certification examination. The board shall establish fees not in excess of ninety dollars for the issuance and renewal of a certified respiratory therapist license.
3. The board shall license as a registered polysomnographic technologist any applicant whom the board determines to be qualified to perform the duties of a registered polysomnographic technologist. In making this determination, the board shall require evidence that the applicant has complied with the rules adopted by the board under section 43-42-04.1. The board shall establish fees not in excess of ninety dollars for issuance and for renewal of a registered polysomnographic technologist license.
4. The board may assess a late fee not in excess of twenty-five dollars for all license renewal applications that are postmarked after December thirty-first of the year prior to the year of renewal.
5. The board shall refuse to license any applicant, shall suspend or revoke any license, or may fine, require additional education or appropriate treatment for any licensee, after proper notice and a hearing, if the applicant or licensee:
  - a. Is not qualified or competent to perform the duties of a registered respiratory therapist, a certified respiratory therapist, or a registered polysomnographic technologist.
  - b. Has attempted to obtain or has obtained licensure under this chapter by fraud or material misrepresentation.
  - c. Has been found by the board to have been grossly negligent as a registered respiratory therapist, certified respiratory therapist, or registered polysomnographic technologist.
  - d. Has engaged in conduct as a registered respiratory therapist, certified respiratory therapist, or registered polysomnographic technologist which is unethical, unprofessional, or detrimental to the health of the public.
  - e. Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.
  - f. Has been convicted or adjudged guilty of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care or polysomnography and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
  - g. Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.
  - h. Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.

6. The board may impose a fee on any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, which are not reversed on appeal, including the amount paid by the board for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.
7. Licenses issued under this chapter expire annually, but may be renewed upon application to the board and payment of the annual renewal fee established by the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board.
8. The board shall require as a condition of renewal and relicensure that the applicant demonstrate satisfactory completion of continuing courses of study in respiratory care.

#### **43-42-04. Respiratory care practice.**

The practice of respiratory care may be performed in hospitals, as ambulatory or in-home care, and in other settings where respiratory care is provided in accordance with a prescription of a licensed physician, certified nurse practitioner, or physician's assistant. In addition, respiratory care may be provided during the transportation of a patient, and under any circumstances in which an epidemic or public disaster necessitates respiratory care. A person may not practice, nor represent that the person is able to practice, as a registered respiratory therapist without being licensed as a registered respiratory therapist, or as a certified respiratory therapist without being licensed as a certified respiratory therapist, in accordance with this chapter.

#### **43-42-04.1. Polysomnography practice.**

1. After December 31, 2005, a person may not practice, nor represent that the person is able to practice, polysomnography unless licensed under this chapter as a registered polysomnographic technologist. A registered polysomnographic technologist may not practice respiratory care except as may be authorized by rules adopted by the board. A registered polysomnographic technologist is limited in practice to polysomnography within the scope of practice and limitations as provided by rules adopted by the board.
2. The board shall adopt rules regulating registered polysomnographic technologists and establishing the scope of practice of a registered polysomnographic technologist. The rules may include requirements for examination requirements for licensure, education requirements for licensure, continuing courses of study in polysomnography, and student practice.
3. This section does not prohibit a respiratory therapist from practicing respiratory care.

#### **43-42-05. Application of chapter.**

1. This chapter does not prohibit a person enrolled in a bona fide respiratory care training program from performing those duties essential for completion of a student's clinical service; provided, that the duties are performed under the supervision or direction of a physician or registered respiratory therapist and the person is identified as a "student respiratory therapist".
2. If examinations prepared by the national board for respiratory care are no longer available or become unacceptable to the board, the board may develop, approve, and use examinations for the licensure of registered respiratory therapists and certified respiratory therapists.
3. This chapter does not prevent a licensed and qualified member of another health care profession from performing any of the duties of a registered respiratory therapist, a certified respiratory therapist, or a registered polysomnographic technologist that are consistent with the accepted standards of that person's profession, provided the person is not represented as a registered respiratory therapist, certified respiratory therapist, or registered polysomnographic technologist.

4. This chapter does not prohibit self-care by a patient or the gratuitous care by a friend or member of the family who does not represent or hold out to be a registered or certified respiratory therapist.
5. This chapter does not prohibit a licensee under this chapter from performing advances in the art or techniques of the licensee's licensed profession learned through formal or specialized training.
6. This chapter does not prohibit an individual licensed or registered as a respiratory therapist in another state or country from providing respiratory care in an emergency in this state, providing respiratory care as a member of an organ harvesting team, or from providing respiratory care on board an ambulance as part of the ambulance treatment team.

**43-42-06. Reciprocity.**

An applicant for licensure under this chapter may be granted a license upon satisfactory proof to the board that the applicant is licensed to practice respiratory care under the laws of another state which impose substantially the same requirements as this chapter, and upon payment of the annual license fee.

**43-42-07. Penalty.**

Any person who practices polysomnography or respiratory care in violation of this chapter is guilty of an infraction.

**43-42-08. Criminal history record checks.**

The board may require any applicant or licensee under this chapter to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a criminal history record check are the responsibility of the applicant or licensee.