
WEST VIRGINIA CODE CHAPTER 30
ARTICLE 34

WV Legislature

§30-34-1. License required to practice.

In order to protect the life, health and safety of the public, any person practicing or offering to practice as a licensed, certified or registered respiratory therapist is required to submit evidence that he or she is qualified to practice, and is licensed as provided in this article. It is unlawful for any person not licensed under the provisions of this article to practice as a respiratory therapist in this state, to deliver any portion of the description of services or scope of practice, or to use any title, sign, card or device to indicate that he or she is a respiratory therapist. The provisions of this article are not intended to limit, preclude or otherwise interfere with the practice of other health care providers including those health care providers working in any setting and licensed by appropriate agencies or boards of the State of West Virginia whose practices and training may include elements of the same nature as the practice of a licensed, certified or registered respiratory therapist.

§30-34-2. Definitions.

- (a) "Board" means the West Virginia board for respiratory care;
- (b) "Formal training" means a supervised, structured educational activity that includes preclinical didactic and laboratory activities and clinical activities. The training must be approved by an accrediting agency recognized by the board. It shall include an evaluation of competence through standardized testing mechanisms that the board determines to be both valid and reliable;
- (c) "Graduate respiratory care therapist" means an individual who has graduated from a respiratory therapist educational program and is scheduled to take the next available examination administered by the state or a national organization approved by the board;
- (d) "Practice of respiratory care" means the practice of respiratory care, and any part of respiratory care, by persons licensed under the provisions of this article and is limited to that which has been learned through formal or special training including performance evaluation to evaluate competence. The practice of respiratory care may be performed in any clinic, hospital, skilled nursing facility, private dwelling or other place considered appropriate or necessary by the board in accordance with the prescription or verbal orders of a licensed physician or other legally authorized person with prescriptive authority, or under the direction of a qualified medical director. Practice of respiratory care includes, but is not limited to:
- (1) The administration of pharmacological, 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;
 - (2) Transcription and implementation of written or verbal orders of a physician or other legally authorized person with prescriptive authority, pertaining to the practice of respiratory care;
 - (3) Observing and monitoring 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;
 - (4) Based on observed abnormalities, appropriate reporting, referral or implementation of respiratory care protocols or changes in treatment pursuant to the written or verbal orders of a person with prescriptive authority under the laws of the State of West Virginia; or
 - (5) The initiation of emergency procedures under the rules of the board or as otherwise permitted in this article;
- (e) "Qualified medical director" means the medical director of any inpatient or outpatient respiratory care service, department or home care agency. The medical director shall be a

licensed physician who is knowledgeable in the diagnosis and treatment of respiratory problems. This physician shall be responsible for the quality, safety and appropriateness of the respiratory services provided and require that respiratory care be ordered by a physician, or other legally authorized person with prescriptive authority, who has medical responsibility for the patient. The medical director shall be readily accessible to the respiratory care practitioners and assure their competency;

(f) "Respiratory care" means the allied health profession responsible for the direct and indirect services in the treatment, management, diagnostic testing and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system, under a qualified medical director. Respiratory care includes inhalation therapy and respiratory therapy;

(g) "Respiratory care education program" means a course of study leading to eligibility for licensure, registry or certification in respiratory care and the program is approved by the board;

(h) "Respiratory therapist" means an individual who has successfully completed an accredited training program, and who has successfully completed a certification or registry examination for respiratory therapists administered by the state or a national organization approved by the board and who is licensed by the board as a licensed respiratory therapist;

(i) "Student respiratory care therapist" means an individual enrolled in a respiratory educational program and whose sponsoring educational institution assumes responsibility for the supervision of, and the services rendered by, the student respiratory care practitioner while he or she is functioning in a clinical training capacity.

§30-34-3. Board of respiratory care.

(a) There is hereby created the West Virginia board of respiratory care. The board shall consist of seven members, appointed by the Governor with the advice and consent of the Senate, and shall consist of one lay citizen member; one practicing physician member currently licensed in West Virginia with board certification, clinical training and experience in the management of pulmonary disease; and five members licensed under the provisions of this article and engaged in the practice of respiratory care for the five years immediately preceding their appointment. One of the respiratory practitioners appointed shall be employed full time in home respiratory care by a home medical equipment supplier. All appointees shall be citizens of the United States and residents of this state. The West Virginia society for respiratory care or its successor organization shall make recommendations to the Governor regarding individuals to be considered for initial and subsequent appointments.

(b) The members of the board shall each serve terms that commence on July 1, 1995. Of the initial appointments to the board, one physician and one respiratory care practitioner shall serve for two-year terms, one public member and two respiratory care practitioners shall serve for three-year terms, and two respiratory care practitioners shall serve for four-year terms. Thereafter, each appointment shall be for a four-year term commencing upon the expiration of the term of his or her previous term or of his or her predecessor's term. No member may be appointed for more than three consecutive terms. Vacancies shall be appointed in a like manner for the balance of an unexpired term.

(c) The West Virginia medical association, or other organizations if requested by the Governor, may submit the names of three physicians qualified to serve in that designated position on the board.

(d) The Governor may remove any member from the board for neglect of any duty required by law or for incompetence or unethical or dishonorable conduct.

§30-34-4. Organization and meetings of board; quorum; expenses.

(a) The board shall meet at least twice a year and elect annually a chairperson and a vice chairperson from its members. The board may hold other meetings during the year as the chairperson or board deem necessary to transact its business.

(b) A majority, including one officer, constitutes a quorum at any meeting, but a majority of the board is required to take action by vote. The board members shall receive travel and other necessary expenses actually incurred while engaged in board activities up to a maximum of \$200 per board meeting. All reimbursement of expenses shall be paid out of the board of respiratory care fund created by the provisions of this article.

§30-34-5. Board responsibilities.

The board shall:

- (a) Provide public notice to all state hospitals and to all persons currently practicing as respiratory care practitioners that a license shall be required to continue practicing as a respiratory care technician or respiratory therapist, after June 30, 1996;
- (b) Examine, license and renew the licenses of duly qualified applicants;
- (c) Maintain a current registry of persons licensed to practice respiratory care under this article which shall contain information on the licensee's place of employment, address, license number and the date of licensure;
- (d) Cause the prosecution of all persons violating this article, incurring any expenses necessary;
- (e) Keep a record of all proceedings of the board and make it available to the public for inspection during reasonable business hours;
- (f) Conduct hearings on charges that subject a licensee to disciplinary action and on the denial, revocation or suspension of a license;
- (g) Maintain an information registry of persons whose licenses have been suspended, revoked or denied. The information shall include the individual's name, social security number, type and cause of action, date of board action, type of penalty incurred and the length of penalty. This information shall be available for public inspection during reasonable business hours and supplied to similar boards in other states upon request;
- (h) Establish rules pursuant to the provisions of chapter twenty-nine-a of this code regarding relicensure and continuing education requirements. Continuing education requirements shall be established pursuant to a recognized continuing respiratory care education program such as, but not limited to, the program established by the American Association for Respiratory Care;
- (i) Maintain continuing education records; and
- (j) Approve the training, continuing education and competency evaluation methods for respiratory care practitioners to perform entry level and advanced procedures in the art and techniques of respiratory care.

§30-34-6. Powers of the board; fund.

(a) The board may:

(1) Adopt rules pursuant to article three, chapter twenty-nine-a of this code, as may be necessary to enable it to effect the provisions of this article;

(2) Employ such personnel as necessary to perform the functions of the board, including an administrative secretary, and pay all personnel from the board of respiratory care fund;

(3) Establish relicensure requirements, rules of probation for licensees, and other procedures as deemed appropriate;

(4) Secure the services of resource consultants, as deemed necessary by the board, who shall receive travel and other necessary expenses, consistent with state laws and policies, while engaged in consultative service to the board and who shall be reimbursed exclusively from the board of respiratory care fund;

(5) Fix appropriate and reasonable fees for mandatory licensure, which shall be no greater than \$200 for initial licensure or \$150 for annual license renewal. All fees shall be reviewed periodically and modified as necessary.

(b) The board shall designate one person to accept and deposit moneys paid to the board. The money so collected shall be deposited with the treasurer of the state and credited to an account to be known as the "board of respiratory care fund." Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending June 30, 1996, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. No part of the state's General Revenue Fund shall be expended to carry out the purposes of this article.

(c) The board may contract with other state boards or state agencies to share offices, personnel and other administrative functions as authorized under this article.

§30-34-6a. Rulemaking authority.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

- (1) Standards and requirements for licensure and permits to practice respiratory care;
 - (2) Procedures for examination and reexamination;
 - (3) Educational and experience requirements;
 - (4) Standards for approval of courses;
 - (5) Procedures for the issuance and renewal of licenses and temporary permits;
 - (6) Procedures which may be delegated to a student practicing under a temporary student permit;
 - (7) A fee schedule;
 - (8) Continuing education requirements for licensees;
 - (9) The procedure for denying, suspending, revoking, reinstating or limiting the practice of a licensee or permittee;
 - (10) Requirements for inactive or revoked licensees or temporary permits; and
 - (11) Any other rules necessary to effectuate the provisions of this article.
- (b) All rules in effect on the effective date of this section remain in effect until they are amended, repealed or replaced.

§30-34-7. Issuance of license; renewal of license; renewal fee; display of license.

(a) When the board finds that an applicant meets all of the requirements of this article for a license to engage in the practice of respiratory care, it shall forthwith issue to that person a license. Otherwise, the board shall deny the application. The application is to be submitted with a license fee of \$200. If any application is rejected, the board shall return the fee less any actual costs incurred in processing the application.

(b) Every licensee shall renew his or her license on or before January 1, of each year by payment of a fee established by the board which shall be no greater than \$150. Any license that is not so renewed shall automatically lapse. A license which has lapsed may be renewed within five years of its expiration date by meeting the requirements set forth by the board and payment of a fee equal to that established for the initial license. After the expiration of such five-year period, a license may be renewed only by complying with the provisions relating to the issuance of an original license.

(c) A person currently licensed to practice pursuant to this article may apply for an inactive status by providing written notice to the board and ceasing to engage in the practice of respiratory care in this state: Provided, That the inactive status is granted for no longer than five years. The board shall maintain a list of licensees on inactive status. Any person granted inactive status is not subject to the payment of any fees otherwise required by the board. Prior to engaging in the practice of respiratory care, the person shall submit to the board an application for the renewal of the license and payment of a renewal fee for the current year.

(d) The board may deny any application for renewal of a license for any reason which would justify the denial of an original application for a license as specified by provisions of this article.

(e) The board shall prescribe the form of licenses.

§30-34-8. Criteria for licensure.

(a) Upon payment of the proper fees, an applicant for a license to practice respiratory care shall submit to the board written evidence, verified by oath, that the applicant:

(1) Has completed an approved respiratory care educational program; and

(2) Passed a certification or registration examination, except where otherwise provided in this article. This examination may be administered by the state or by a national agency approved by the board. The board shall set the passing score for the examination.

(b) The board may also issue a license to practice respiratory care by endorsement to an applicant who is currently licensed to practice respiratory care under the laws of another state, territory or country if the qualifications of the applicant are considered by the board to be equivalent to, or greater than, those required in this state.

(c) The board may also issue a license to practice respiratory care by endorsement to respiratory therapists holding credentials conferred by the National Board for Respiratory Care, Inc., or its successor organizations, if the credentials have not been suspended or revoked. Applicants applying under the conditions of this section shall be required to certify under oath that their credentials have not been suspended or revoked.

(d) If an applicant fails to complete the requirements for licensure within ninety days from the date of filing, the application is considered to be abandoned.

§30-34-9. Temporary student permits.

(a) Subject to the provisions of subsection (d) of this section, the board may issue a temporary student permit to practice respiratory care for a period of up to six months to a student enrolled in a respiratory care educational program which is approved by the board if the student submits:

(1) A student work permit form signed by the program director and by a principal administrative official of the institution where the program is located;

(2) An official transcript indicating successful completion of a minimum of thirty semester hours or the quarter hour equivalent, eighteen of which must be specific to respiratory care core curriculum, and at least two hundred clinical hours;

(3) Documentation from the program director and by a principal administrative official of the institution where the program is located stating that the student has successfully completed didactic and clinical competency requirements equal to the first year curriculum and approved by the board; and

(4) A signed permit application form and an initial permit application fee as prescribed by rule.

(b) A student practicing under a temporary student permit may work only under the supervision of an employee of the same department with a minimum Licensed Respiratory Therapist Certified credential issued by the board and who is present on the premises and available to the student at all times.

(c) A student practicing under a temporary student permit may not use worked paid hours as a substitute for clinical rotations required by his or her respiratory care educational program.

(d) Upon expiration of the initial permit, the student may apply for one renewal permit for up to six additional months by providing documentation from the program director stating the student is actively enrolled in at least nine semester hours, and is making satisfactory progress in his or her respiratory care core curriculum and clinical rotations, and payment of a renewal fee as prescribed by rule.

(e) The board may promulgate emergency rules, pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code, to set forth those procedures which may be delegated to a student practicing under a temporary student permit and fees for issuance and renewal of temporary student permits. The board may not issue temporary student permits unless and until the rule authorized by this subsection is in effect.

§30-34-10. Prohibitions and penalties.

It shall be a misdemeanor for any person, including any corporation or association, to:

- (a) Sell or fraudulently obtain or furnish any respiratory care provider license or record or aid or abet therein;
- (b) Practice as a respiratory care provider under cover of any diploma, license or record illegally or fraudulently obtained or signed or issued or under fraudulent representation;
- (c) Practice as a respiratory care provider unless duly licensed to do so under the provisions of this article;
- (d) Use in connection with his or her name any designation tending to imply that he or she is licensed to practice as a respiratory care provider unless duly licensed so to practice under the provisions of this article;
- (e) Practice as a respiratory care provider during the time his or her license issued under the provisions of this article is suspended or revoked;
- (f) Conduct a respiratory care provider licensing program for the preparation of respiratory care provider unless such program has been accredited by the board; or
- (g) Otherwise violate any provisions of this article.

Upon conviction, each misdemeanor shall be punishable by a fine of not less than twenty-five nor more than \$250.

§30-34-11. Examination requirement; termination of temporary licenses.

(a) After the establishment of the board of respiratory care, a license shall be issued to applicants who, on the effective date of this article, have passed the National Board of Respiratory Care, Inc., entry-level or registry examinations, or their equivalent as approved by the board.

(b) Applicants who have not passed either of these national examinations or their equivalent and who, through written evidence verified by oath, demonstrate that they have been functioning for two years in the capacity of a respiratory care provider as defined by this article shall be issued a temporary license to practice respiratory care. A temporary license shall be valid until December 31, 1997. Persons holding a temporary license shall be issued a license to practice only after achieving a passing score on a licensure exam administered or approved by the board. After December 31, 1997, persons who have not passed either of these national examinations or their equivalent shall not be licensed to practice respiratory care until they have achieved a passing score on a licensure exam administered or approved by the board.

(c) Any person issued a license pursuant to this section shall be required to pay the license or renewal fees established in section seven of this article.

§30-34-12. Professional identification.

(a) A person holding a license to practice respiratory care as a respiratory therapist in this state who has successfully completed the entry level examination of the national board of respiratory care or any successor organization may use the title "licensed respiratory therapist certified" and the abbreviation "LRTC."

(b) A person holding a license to practice as a respiratory therapist in this state who has successfully completed the registry examination of the national board of respiratory care or any successor organization may use the title "licensed respiratory therapist registered" and the abbreviation "LRTR."

(c) The board may change the professional identification for its profession should the accepted reference to the providers of respiratory care be changed by the national board of respiratory care or its successor organization.

(d) A licensee shall either show his or her license or provide a copy thereof within twenty-four hours of a request from an employer or the board.

§30-34-13. Disciplinary criteria.

The board may revoke, suspend or refuse to renew any license, or place on probation, or otherwise reprimand a licensee or permit holder, or deny a license to an applicant if it finds that the person:

- (a) Is guilty of fraud or deceit in procuring or attempting to procure a license or renewal of a license to practice respiratory care;
- (b) Is unfit or incompetent by reason of negligence, habits or other causes of incompetence;
- (c) Is habitually intemperate in the use of alcoholic beverages;
- (d) Is addicted to or has improperly obtained, possessed, used or distributed habit-forming drugs or narcotics;
- (e) Is convicted of a felony that materially affects the person's ability to safely practice respiratory care;
- (f) Is guilty of dishonest or unethical conduct as determined by the board of respiratory care;
- (g) Has practiced respiratory care after his or her license or permit has expired, been suspended or revoked;
- (h) Has practiced respiratory care under cover of any permit or license illegally or fraudulently obtained or issued; or
- (i) Has violated or aided or abetted others in violation of any provision of this article.

§30-34-14. Due process procedure.

(a) Upon filing with the board a written complaint charging a person with being guilty of any of the acts described in section thirteen of this article, the administrative secretary or other authorized employee of the board shall provide a copy of the complaint or list of allegations to the person about whom the complaint was filed. That person will have twenty days thereafter to file a written response to the complaint. The board shall thereafter, if the allegations warrant, make an investigation. If the board finds reasonable grounds for the complaint, a time and place for a hearing shall be set, notice of which shall be served on the licensee, permit holder or applicant at least fifteen calendar days in advance of the hearing date. The notice shall be by personal service or by certified or registered mail sent to the last known address of the person.

(b) The board may petition the circuit court for the county within which the hearing is being held to issue subpoenas for the attendance of witnesses and the production of necessary evidence in any hearing before it. Upon request of the respondent or of his or her counsel, the board shall petition the court to issue subpoenas in behalf of the respondent. The circuit court upon petition may issue such subpoenas as it deems necessary.

(c) Unless otherwise provided in this article, hearing procedures shall be promulgated in accordance with, and a person who feels aggrieved by a decision of the board may take an appeal pursuant to, the administrative procedures in this state as provided in chapter twenty-nine-a of this code.

§30-34-15. Exceptions.

(a) A person may not practice respiratory care or represent himself or herself to be a respiratory care practitioner unless he or she is licensed under this article except as otherwise provided by this article.

(b) This article does not prohibit:

(1) The practice of respiratory care which is an integral part of the program of study by students enrolled in respiratory care education programs accredited by organizations approved by the board. Students enrolled in respiratory care education programs shall be identified as "student RCP" and may only provide respiratory care under clinical supervision;

(2) Self-care by a patient, or gratuitous care by a friend or family member who does not represent or hold himself or herself out to be a respiratory care practitioner;

(3) Respiratory care services rendered in the course of an emergency;

(4) Persons in the military services or working in federal facilities providing respiratory care services when functioning in the course of their assigned duties; or

(5) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formalized or specialized training approved by the board.

(c) Nothing in this article is intended to limit, preclude or otherwise interfere with the practices of other persons and health care providers licensed by appropriate agencies of the state.

(d) Nothing in this article prohibits home medical equipment dealers from delivering and instructing persons in the operation of home medical respiratory equipment, or from receiving requests for changes in equipment and settings from physicians or other authorized individuals.

(e) An individual who passes an examination or successfully completes training that includes content in one or more of the functions included in this article is not prohibited from performing those procedures for which he or she was tested, so long as the testing body offering the examination or training is approved by the board.

§30-34-16. Practice of medicine prohibited.

Nothing in this article may be construed to permit the practice of medicine.

WV Legislature

§30-34-17.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature