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# A BILL FOR AN ACT

RELATING TO RESPIRATORY CARE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds and declares that the  
2 practice of respiratory care in the State affects the public  
3 health, safety, and welfare, and should be subject to regulation  
4 to protect the public from the unqualified practice of  
5 respiratory care and from unprofessional conduct by persons  
6 licensed to practice respiratory care. The legislature also  
7 recognizes the practice of respiratory care to be a dynamic and  
8 changing art and science, the practice of which continues to  
9 evolve with more sophisticated techniques and clinical  
10 modalities in patient care.

11           The purpose of this Act is to regulate the practice of  
12 respiratory care and to create a board of respiratory care.

13           SECTION 2. The Hawaii Revised Statutes is amended by  
14 adding a new chapter to be appropriately designated and to read  
15 as follows:

16   "CHAPTER

17   RESPIRATORY CARE

18           § -1 **Definitions.** As used in this chapter:



1 "Board" means the board of respiratory care.

2 "Continuing education" means educational activities  
3 primarily designed to keep respiratory care practitioners  
4 informed of developments in the respiratory care field or any  
5 special areas of practice engaged in by these persons.

6 "Direct supervision" means a situation where a licensed  
7 respiratory care practitioner or physician is immediately  
8 available for the purpose of communication, consultation, and  
9 assistance.

10 "Formal education" means a supervised, structured,  
11 educational activity that:

- 12 (1) Includes preclinical didactic and laboratory  
13 activities and clinical activities;
- 14 (2) Is approved by an accrediting agency recognized by the  
15 board; and
- 16 (3) Includes an evaluation of competence through a  
17 standardized testing mechanism determined by the board  
18 to be both valid and reliable.

19 "Physician supervision" means oversight under the authority  
20 and responsibility of a licensed physician to direct the  
21 performance of activities as established by policies,



1 procedures, and protocols for safe and appropriate delivery of  
2 services.

3 "Practice of respiratory care" means a collection of  
4 activities including assessment, diagnosis, intervention, and  
5 monitoring for patients requiring emergent and nonemergent  
6 respiratory intervention, including disaster preparedness and  
7 support, but is not limited to:

- 8 (1) Emergency actions to correct life-threatening  
9 respiratory events for patients of all ages;
- 10 (2) The initiation of emergency procedures and protocols  
11 under the board rules or as otherwise permitted in  
12 this chapter;
- 13 (3) The initiation and management of life-support  
14 ventilator equipment;
- 15 (4) The administration of pharmacological, diagnostic, and  
16 therapeutic agents related to respiratory care  
17 procedures necessary to implement a treatment, disease  
18 prevention, pulmonary rehabilitative, or diagnostic  
19 regimen prescribed by a physician;
- 20 (5) The transcription and implementation of the written,  
21 verbal, or telecommunicated orders of a physician  
22 pertaining to the practice of respiratory care;



1           (6) The observation and monitoring of signs and symptoms,  
2           general behavior, general physical response to  
3           respiratory care treatment, and diagnostic testing,  
4           including determination of whether the signs,  
5           symptoms, reactions, behavior, or general response  
6           exhibit abnormal characteristics;

7           (7) The implementation, based on observed abnormalities,  
8           appropriate reporting or referral of respiratory care  
9           protocols, or changes in treatment pursuant to the  
10          written, verbal, or telecommunicated orders by a  
11          physician; and

12          (8) The practice of respiratory care performed in any  
13          clinic, hospital, skilled nursing facility, private  
14          dwelling, or other place deemed appropriate or  
15          necessary by the board in accordance with the written,  
16          verbal, or telecommunicated order of a physician, and  
17          performed under physician supervision or orders.

18          "Protocol" means a written agreement of medical care plan  
19          delegating professional responsibilities to a person who is  
20          qualified by training, competency, experience, or licensure.

21          "Respiratory care education program" means a program of  
22          respiratory care education that is accredited by the Committee



1 on Accreditation for Respiratory Care, or their successor  
2 organizations.

3 "Respiratory care practitioner" means:

- 4 (1) A person duly licensed by the board;
- 5 (2) A person employed in the practice of respiratory care  
6 who has the knowledge and skill necessary to  
7 administer respiratory care;
- 8 (3) A person who is capable of serving as a resource to  
9 the physician and other health care providers in  
10 relation to the clinical and technical aspects of  
11 respiratory care and as to safe and effective methods  
12 for administering respiratory care modalities;
- 13 (4) A person who is able to function in situations of  
14 unsupervised patient contact requiring great  
15 individual judgment; and
- 16 (5) A person capable of supervising, directing, or  
17 teaching less skilled personnel in the provision of  
18 respiratory therapy services.

19 "Respiratory care services" include but are not limited to  
20 the following activities performed under physician supervision  
21 or under the order of a physician, and in accordance with  
22 protocols established by a hospital or the board:



- 1 (1) Assistance with cardiopulmonary resuscitation;
- 2 (2) Ventilatory support, including the maintenance and
- 3 management of life-support systems;
- 4 (3) Administration of medications to the cardiopulmonary
- 5 system;
- 6 (4) With specialized training acceptable to the board,
- 7 administration of medications by routes other than the
- 8 respiratory route under the direct supervision of a
- 9 physician;
- 10 (5) Therapeutic and diagnostic use of pressurized medical
- 11 gases and administration apparatus, and environmental
- 12 control systems, humidification and aerosols;
- 13 (6) Use of therapeutic modalities to augment secretion
- 14 management, lung inflation, bronchopulmonary drainage,
- 15 and monitor breathing exercises;
- 16 (7) Respiratory rehabilitation, pulmonary disease
- 17 education, and prevention;
- 18 (8) Maintenance of natural airways, including the
- 19 insertion and maintenance of artificial airways;
- 20 (9) Disease management services, procedures, and
- 21 consulting, including but not limited to asthma,



- 1 chronic obstructive pulmonary disease, and smoking
- 2 cessation;
- 3 (10) Assistance with bronchoscopy procedures for diagnostic
- 4 and therapeutic purposes;
- 5 (11) Invasive procedures, such as:
- 6 (A) Intravascular catheterization;
- 7 (B) Specimen collection and analysis;
- 8 (C) Blood for gas transport and acid base
- 9 determinations and indicators for metabolic
- 10 processes; and
- 11 (D) Sputum for diagnostic purposes;
- 12 (12) Pulmonary function testing and other related
- 13 physiological monitoring of the cardiopulmonary
- 14 systems;
- 15 (13) Hyperbaric oxygen therapy;
- 16 (14) Non-invasive metabolic monitoring;
- 17 (15) Capnography and hemodynamic monitoring and
- 18 interpretation;
- 19 (16) Sleep diagnostic studies; and
- 20 (17) Air or ground ambulance transport.
- 21 "Special training" means:



- 1 (1) A deliberate systematic educational activity in the
- 2 affective, psychomotor, and cognitive domains;
- 3 (2) Is intended to develop new proficiencies with an
- 4 application in mind; and
- 5 (3) Is presented with an attention to needs, objectives,
- 6 activities, and a defined means of evaluation.

7 **§ -2 Board of respiratory care.** (a) There is created  
8 the board of respiratory care to administer this chapter. The  
9 board shall be attached to the department of commerce and  
10 consumer affairs for administrative purposes. The board shall  
11 consist of seven members to be appointed by the governor  
12 pursuant to section 26-34 and whose terms shall be four years;  
13 provided that the governor may reduce the terms of those  
14 initially appointed so as to provide, as nearly as can be, for  
15 the expiration of an equal number of terms at intervals of one  
16 year for each board:

- 17 (1) One public member;
- 18 (2) One physician member recommended by the Hawaii Society  
19 for Respiratory Care;
- 20 (3) Four members engaged in the practice of respiratory  
21 care for a period of not less than one year  
22 immediately preceding appointment and recommended by





1 the state affiliate of the American Association for  
2 Respiratory Care; and

3 (4) One member who is a representative of a hospital or  
4 the home health care industry.

5 (b) The board shall meet at least once each year and shall  
6 elect a chairperson and vice chairperson from its physician  
7 member and from its respiratory care practitioner members. The  
8 board may convene at the request of the chairperson, or as  
9 determined by the board. A majority of the members of the  
10 board, including the chairperson or vice-chairperson, shall  
11 constitute a quorum at any meeting and a majority of the  
12 required quorum shall be sufficient for the board to take action  
13 by vote.

14 (c) Members shall serve without compensation but shall be  
15 reimbursed for expenses, including travel expenses, necessary  
16 for the performance of their duties.

17 (d) Members shall have the same rights of protection from  
18 personal liability as those enjoyed by other employees of the  
19 State for actions taken in the course of their duties under this  
20 chapter.

21 (e) The board may hire a qualified person without regard  
22 to chapters 76 and 89 who shall not be a member of the board to



1 serve as administrative secretary, and shall define the duties  
2 of the administrative secretary, in addition to those enumerated  
3 in this chapter.

4 § -3 Powers and duties of board. The board shall:

- 5 (1) Determine the qualifications and fitness of applicants  
6 for licensure, renewal of license temporary licenses,  
7 and reciprocal licenses to practice respiratory care;
- 8 (2) Examine, approve, issue, deny, revoke, suspend, and  
9 renew the licenses of duly qualified applicants to  
10 practice respiratory care;
- 11 (3) Establish standards of professional responsibility and  
12 practice for persons licensed by the board;
- 13 (4) Keep a record of all proceedings of the board, which  
14 shall be made available to the public for inspection  
15 during reasonable business hours;
- 16 (5) Conduct investigations, subpoena individuals, and  
17 records, and do all things necessary and proper to:
- 18 (A) Discipline persons licensed under this chapter;  
19 (B) Enforce this chapter; and  
20 (C) Conduct hearings upon charges calling for  
21 discipline of a licensee, denial, revocation, or  
22 suspension of a license;



- 1           (6) Adopt rules in accordance with chapter 91 necessary to  
2           carry out this chapter;
- 3           (7) Maintain a public record of persons licensed by the  
4           board;
- 5           (8) Enter into agreements or contracts, in accordance with  
6           law, with outside entities for the purpose of  
7           developing, administering, grading, and reporting the  
8           results of licensure examinations. These entities  
9           shall be capable of meeting the standards of the  
10          National Commission for Health Certifying Agencies or  
11          its equivalent or successor organization. The  
12          licensure examinations shall be validated and  
13          nationally recognized as testing respiratory care  
14          competencies; and
- 15          (9) Establish continuing education requirements for  
16          renewal of a license.

17          **§ -4 License; requirements.** (a) No person shall  
18 practice respiratory care or represent oneself to be a  
19 respiratory care practitioner unless the person is licensed  
20 under this chapter.



1 (b) An applicant for a license to practice respiratory  
2 care shall submit to the board written evidence, verified by  
3 oath, that the applicant:

- 4 (1) Is at least eighteen years of age;
- 5 (2) Has completed an approved four-year high school course  
6 of study, or the equivalent, as determined by the  
7 board of education;
- 8 (3) Has successfully completed an accredited respiratory  
9 care educational program as defined in this chapter;
- 10 (4) Has passed an examination, as defined in this chapter,  
11 which may be administered by the board or by a  
12 national agency approved by the board;
- 13 (5) Has paid the required fees; and
- 14 (6) Meets any other requirements established by the board.

15 (c) The board shall issue a license to an applicant who  
16 has successfully met the requirements in subsection (b). If an  
17 applicant fails to complete the requirements for licensure  
18 within days from the date of filing, the application shall  
19 be deemed to be abandoned.

20 (d) The board shall issue to the applicant a license to  
21 practice respiratory care by endorsement to:



1 (1) An applicant who is currently licensed or registered  
2 to practice respiratory care under the laws of another  
3 state, territory, or country if the qualifications of  
4 the applicant are deemed by the board to be equivalent  
5 to those required by this chapter; or

6 (2) An applicant holding credentials conferred by the  
7 National Board for Respiratory Care or its successor  
8 organization as a certified respiratory therapist or  
9 as a registered respiratory therapist; providing the  
10 credential has not been suspended or revoked.

11 (e) A license issued under this chapter shall be subject  
12 to biennial renewal.

13 **§ -5 Professional identification.** (a) No person who  
14 does not hold a license as a respiratory care practitioner or  
15 whose license has been suspended or revoked may do any of the  
16 following:

17 (1) Use in connection with the person's practice the words  
18 "respiratory care professional", "respiratory  
19 therapist", "respiratory care practitioner",  
20 "certified respiratory care practitioner", "licensed  
21 respiratory therapist" or "respiratory therapy  
22 technician"; or append the letters "R.C.P.", "R.R.T."



1 or "L.R.T." to one's name; or use any other words,  
2 letters, abbreviations, or insignia indicating or  
3 implying that the person is a respiratory care  
4 practitioner; or

5 (2) Directly, or by implication, represent in any way that  
6 the person is a respiratory care practitioner.

7 (b) A licensee shall show the person's license when  
8 requested.

9 § -6 License renewal. (a) A license shall be renewed  
10 except as hereafter provided. The board shall mail notices at  
11 least calendar days prior to expiration for renewal of  
12 licenses to every person to whom a license was issued or renewed  
13 during the preceding renewal period. The licensee shall  
14 complete the notice of renewal and return it to the board with  
15 the renewal fee before the date of expiration.

16 (b) Upon receipt of the notice of renewal and the fee, the  
17 board shall verify its contents and shall issue the licensee a  
18 license for the renewal period. The board shall establish  
19 continuing education requirements for biennial renewal of the  
20 license.

21 (c) A licensee who allows a license to lapse by failing to  
22 renew may be reinstated by the board upon payment of the renewal



1 fee and a reinstatement fee; provided that a request for  
2 reinstatement is made within days of the end of the  
3 renewal period.

4 (d) A licensee who does not engage in the practice of  
5 respiratory care during the succeeding renewal period is not  
6 required to pay the renewal fee as long that person remains  
7 inactive. If the person desires to resume the practice of  
8 respiratory care, the person shall notify the board of the  
9 person's intent, and shall demonstrate compliance with the  
10 specific period of time of continuous inactivity after which re-  
11 testing is required, in addition to remitting the current  
12 renewal fee and the reinstatement fee.

13 § -7 Fees and disposition of revenues. (a) The board  
14 shall adopt rules in accordance with chapter 91 to establish all  
15 fees, including but not limited to application fees, licensing  
16 fees, renewal fees, and reinstatement fees.

17 (b) Fees collected by the board and moneys collected under  
18 this chapter shall be deposited into the state treasury to the  
19 credit of the state general fund.

20 (c) Expenses incurred in the implementation of this  
21 chapter shall be paid within the appropriations made by the  
22 legislature.



1           §   -8 **Disciplinary criteria.** The board may revoke,  
2 suspend, or refuse to renew any license, place on probation,  
3 otherwise reprimand a licensee or temporary license holder, or  
4 deny a license to an applicant if the board finds that the  
5 person:

- 6           (1) Is guilty of fraud or deceit in procuring or  
7                 attempting to procure a license or renewal of a  
8                 license to practice respiratory care;
- 9           (2) Is unfit or incompetent by reason of negligence,  
10                habits, or other causes of incompetence;
- 11           (3) Is habitually intemperate in the use of alcoholic  
12                beverages;
- 13           (4) Is addicted to, or has improperly obtained, possessed,  
14                used, or distributed habit-forming drugs or narcotics;
- 15           (5) Is guilty of dishonest or unethical conduct;
- 16           (6) Has practiced respiratory care after the person's  
17                license has expired or has been suspended;
- 18           (7) Has practiced respiratory care under cover of any  
19                license illegally or fraudulently obtained or issued;
- 20           (8) Has violated or aided or abetted others in violation  
21                of this chapter; or





1 (9) Has been convicted of a felony that materially affects  
2 the person's ability to safely practice respiratory  
3 care.

4 § -9 Due process. (a) Upon filing of a written  
5 complaint with the board charging a person with any of the acts  
6 described in section -8, the administrative secretary or  
7 other authorized employee of the board shall make an  
8 investigation. If the board finds reasonable grounds for the  
9 complaint, a time and place for a hearing shall be set, notice  
10 of which shall be served on the licensee or applicant at least  
11 calendar days prior to the hearing. The notice shall be  
12 made by personal service or by certified mail sent to the last  
13 known address of the person.

14 (b) The board may petition the circuit court of the county  
15 within which the hearing is being held to issue subpoenas for  
16 the attendance of witnesses and the production of necessary  
17 evidence in any hearing before it. Upon request of the  
18 respondent or the respondent's counsel, the board shall petition  
19 the court to issue subpoenas on behalf of the respondent. The  
20 circuit court, upon petition, may issue any subpoenas that the  
21 court deems necessary.



1 (c) Unless otherwise provided in this chapter, hearing  
2 procedures shall be held in accordance with chapter 92. A  
3 person who is aggrieved by a decision of the board may file an  
4 appeal.

5 § -10 **Exceptions.** (a) This chapter does not prohibit:

- 6 (1) The practice of respiratory care that is an integral  
7 part of the program of study by students enrolled in  
8 an accredited respiratory care education program  
9 approved by the board. Students enrolled in  
10 respiratory care education programs shall be  
11 identified as "student RT" and shall only provide  
12 respiratory care under the direct supervision of an  
13 appropriate clinical instructor recognized by the  
14 education program;
- 15 (2) Self-care by a patient or gratuitous care by a friend  
16 or family member who does not represent or hold the  
17 person out to be a respiratory care practitioner;
- 18 (3) Respiratory care services rendered in the course of an  
19 emergency;
- 20 (4) Respiratory care administered in the course of  
21 assigned duties of persons in the military services;



1           (5) The delivery, set-up, monitoring, and maintenance of  
2           medical devices, gases, and equipment by an unlicensed  
3           person for the express purpose of self-care by a  
4           patient or gratuitous care by a friend or family  
5           member. Any patient monitoring, assessment, or other  
6           procedures designed to evaluate the effectiveness of  
7           prescribed respiratory care shall be performed by or  
8           pursuant to the delegation of a licensed respiratory  
9           care practitioner; or

10          (6) The respiratory care practitioner from performing  
11          advances in the art and techniques of respiratory care  
12          learned through formal or special training acceptable  
13          to the board.

14          (b) Nothing in this chapter is intended to limit,  
15          preclude, or otherwise interfere with the practice of other  
16          appropriately licensed persons from performing a respiratory  
17          care procedure that is within the scope of practice of that  
18          person.

19          (c) Individuals who have passed an examination that  
20          includes content in one or more of the functions included in  
21          this section shall not be prohibited from performing those  
22          procedures for which the individual has been tested; provided



1 that the testing body offering the examination is approved by  
2 the board.

3       § -11 **Practice of medicine prohibited.** Nothing in this  
4 chapter shall be construed to permit the practice of medicine.

5       § -12 **Offenses.** (a) It is a misdemeanor for any person  
6 to:

7       (1) Sell, fraudulently obtain or furnish any respiratory  
8 care license or record, or aid or abet in doing so;

9       (2) Practice respiratory care under cover of any  
10 respiratory care diploma, license, or record illegally  
11 or fraudulently obtained or issued;

12       (3) Practice respiratory care unless duly licensed to do  
13 so under this chapter;

14       (4) Improperly identify oneself in violation of section  
15 -5(a)(1);

16       (5) Practice respiratory care when the person's license is  
17 suspended, revoked, or expired;

18       (6) Fail to notify the board of the suspension, probation,  
19 or revocation of any past or current license required  
20 to practice respiratory care in this State or any  
21 other state;



1 (7) Knowingly employ an unlicensed person in the capacity  
2 of a respiratory care practitioner;

3 (8) Make false representations, impersonate, or act as a  
4 proxy for another individual or allow or aid any  
5 individual to impersonate the person in connection  
6 with any examination, application for licensing, or  
7 request to be examined or licensed; and

8 (9) Otherwise violate any provision of this chapter.

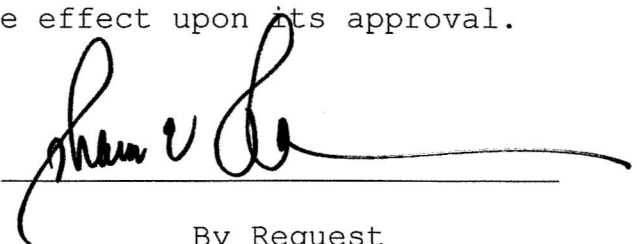
9 (b) A misdemeanor shall be punishable by a fine of not  
10 more than \$ or by imprisonment of not more than ,  
11 or by both fine and imprisonment for each offense."

12 SECTION 3. If any provision of this Act, or the  
13 application thereof to any person or circumstance is held  
14 invalid, the invalidity does not affect other provisions or  
15 applications of the Act, which can be given effect without the  
16 invalid provision or application, and to this end the provisions  
17 of this Act are severable.

18 SECTION 4. This Act shall take effect upon its approval.

19

INTRODUCED BY:



By Request  
JAN 28 2009



**Report Title:**

Establish Board of Respiratory Care; Regulation of Respiratory Care

**Description:**

Establishes licensing and regulatory requirements for practice of respiratory care. Establishes board of respiratory care in the department of commerce and consumer affairs, provides for disciplinary criteria, and penalties.

