

RESPIRATORY CARE AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley G. Last

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill amends the Respiratory Care Practices Act to clarify that the installation of durable medical equipment and instructions on its use does not require licensure under the act, and to change licensure requirements from permissive to mandatory beginning January 1, 2007.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ clarifies exemptions for licensure under the act;
- ▶ amends qualifications for licensure to reflect current entities that accredit respiratory care practitioners;
- ▶ requires licensure under the act beginning January 1, 2007;
- ▶ establishes that on or after January 1, 2007 it is unlawful conduct to practice as a respiratory care practitioner without a license under the act;
- ▶ establishes penalties for unlawful conduct; and
- ▶ makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 30 **58-57-2**, as last amended by Chapter 131, Laws of Utah 2003
- 31 **58-57-4**, as last amended by Chapter 313, Laws of Utah 1994
- 32 **58-57-5**, as enacted by Chapter 208, Laws of Utah 1990
- 33 **58-57-7**, as last amended by Chapter 141, Laws of Utah 1999
- 34 **58-57-10**, as enacted by Chapter 208, Laws of Utah 1990
- 35 **58-57-11**, as enacted by Chapter 208, Laws of Utah 1990
- 36 **58-57-12**, as enacted by Chapter 208, Laws of Utah 1990

37 ENACTS:

38 **58-57-14**, Utah Code Annotated 1953



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **58-57-2** is amended to read:

42 **58-57-2. Definitions.**

43 In addition to the definitions in Section 58-1-102, as used in this chapter:

44 (1) "Board" means the Respiratory Care Licensing Board created in Section 58-57-3.

45 (2) "Health care facility" means any facility or institution in which health care services
46 are performed or furnished and includes a hospital, clinic, or emergency care center.

47 ~~[(3) "Physician" means a person licensed to practice medicine under Title 58, Chapter~~
48 ~~67, Utah Medical Practice Act.]~~

49 ~~[(4)]~~ (3) "Practice of respiratory care":

50 (a) means the treatment, operation of equipment, management, diagnostic testing, and
51 care of any human disease, deficiency, pain, injury, or other physical condition associated with
52 the cardiopulmonary system under the qualified medical direction or supervision of a
53 ~~[physician]~~ practitioner who has training and knowledge in the diagnosis, treatment, and
54 assessment of respiratory problems~~[- "Practice of respiratory care"]~~;

55 (b) includes:

56 ~~[(a)]~~ (i) accepting and carrying out a ~~[licensed physician's]~~ practitioner's written,
57 verbal, or telephonic prescription or order specifically relating to respiratory care in a hospital

58 or other health care setting and includes consultation with licensed nurses, as appropriate;

59 ~~[(b)]~~ (ii) administering respiratory care during transportation of a patient and under
60 other circumstances where an emergency requires immediate respiratory care;

61 ~~[(c)]~~ (iii) serving as a resource to other health care professionals and hospital
62 administrators in relation to the technical aspects of, and the safe and effective methods for,
63 administering respiratory care;

64 ~~[(d)]~~ (iv) functioning in situations of patient contact requiring individual judgment in
65 administering respiratory care under the general supervision of a qualified ~~[physician]~~
66 practitioner; and

67 ~~[(e)]~~ (v) supervising, directing, or teaching personnel in the performance of respiratory
68 care modalities as part of a respiratory care education program~~[-];~~ and

69 (c) does not include a person who delivers, installs, or maintains respiratory related
70 durable medical equipment and who gives instructions regarding the use of that equipment as
71 long as that person does not perform clinical evaluation or treatment of the patient.

72 (4) "Practitioner" means an individual currently licensed, registered, or otherwise
73 authorized by the appropriate jurisdiction to prescribe and administer drugs and order
74 respiratory care in the course of professional practice.

75 (5) "Respiratory care practitioner" means any person licensed to practice respiratory
76 care under this chapter.

77 (6) "Respiratory related durable medical equipment" means:

78 (a) medical grade oxygen;

79 (b) equipment and supplies related to medical gases;

80 (c) apnea monitors;

81 (d) oximeters;

82 (e) noninvasive positive pressure generators, except those with back-up respiratory rate
83 or when used invasively;

84 (f) bilirubin lights;

85 (g) suctioning equipment;

86 (h) large volume nebulizers with compressors, except when used invasively in
87 conjunction with an artificial airway;
88 (i) medication nebulizers;
89 (j) enteral nutrition equipment; and
90 (k) other respiratory related equipment intended for use in the home as defined by the
91 division by rule.

92 (7) "Unlawful conduct" is defined in Sections 58-1-501 and 58-57-14.

93 ~~(6)~~ (8) "Unprofessional conduct" as defined in Section 58-1-501 and as may be
94 further defined by rule includes:

95 (a) acting contrary to the instructions of the ~~[physician]~~ practitioner responsible for
96 supervising the licensee;

97 (b) knowingly operating any respiratory care equipment that is unsafe or not in
98 compliance with standards of condition or operation consistent with the patient's safety;

99 (c) permitting any person to operate respiratory care equipment who is not competent
100 or not allowed to operate the equipment;

101 (d) revealing to any unauthorized person confidential or privileged information about a
102 patient;

103 (e) using any controlled substance, unless the controlled substance is prescribed by a
104 ~~[physician]~~ practitioner and used in accordance with the ~~[physician's]~~ practitioner's
105 instructions; and

106 (f) making any statement that is incorrect due to negligence, willfulness, or intent to
107 provide false information or entry on any patient record or other record that is used for payment
108 of respiratory care services.

109 Section 2. Section **58-57-4** is amended to read:

110 **58-57-4. Qualifications for a license.**

111 (1) The division shall issue a respiratory care practitioner license to an applicant who
112 meets the requirements specified in this section.

113 (2) An applicant seeking licensure as a respiratory care practitioner shall:

- 114 (a) submit an application on a form prescribed by the division;
- 115 (b) pay a fee as determined by the department pursuant to Section 63-38-3.2;
- 116 (c) show evidence of good moral character;
- 117 (d) possess a high school education or its equivalent, as determined by the division in
- 118 collaboration with the board;

119 (e) have completed a respiratory care practitioner educational program that is
120 ~~[approved by the board and is]~~ accredited by ~~[the American Medical Association]~~ a nationally
121 accredited organization acceptable to the division as defined by rule; and

122 (f) pass an examination approved by the division in collaboration with the board.

123 ~~[(3) An applicant who has completed a respiratory care practitioner education program~~
124 ~~approved by the board and accredited by the American Medical Association and who, in the~~
125 ~~opinion of the division and board, meets the requirements for licensure except for passing the~~
126 ~~examination, may practice under the direct supervision of a respiratory care practitioner with an~~
127 ~~interim permit. An interim permit is valid only until the applicant receives notice of the results~~
128 ~~of the examination.]~~

129 Section 3. Section **58-57-5** is amended to read:

130 **58-57-5. Licensure by endorsement.**

131 If an applicant has completed a respiratory care practitioner education program that is
132 approved by the board and accredited by ~~[the American Medical Association]~~ a nationally
133 accredited organization acceptable to the division, as defined by rule, the board may
134 recommend that the division issue a license without examination to any applicant currently
135 licensed by another state as a respiratory care practitioner or its equivalent, if the requirements
136 for licensing in that state are at least as stringent as the requirements under this chapter.

137 Section 4. Section **58-57-7** is amended to read:

138 **58-57-7. Exemptions from licensure.**

139 (1) For purposes of Subsection (2)(b), "qualified" means an individual who is a
140 registered polysomnographic technologist or a Diplomate certified by the American Board of
141 Sleep Medicine.

142 ~~[(1)]~~ (2) In addition to the exemptions from licensure in Section 58-1-307, the
143 following persons may engage in the practice of respiratory therapy subject to the stated
144 circumstances and limitations without being licensed under this chapter:

145 (a) any person who provides gratuitous care for a member of his immediate family
146 without representing himself as a licensed respiratory care practitioner;

147 (b) any person who is a licensed or qualified member of another health care profession,
148 if this practice is consistent with the accepted standards of the profession and if the person does
149 not represent himself as a respiratory care practitioner;

150 (c) any person who serves in the Armed Forces of the United States or any other
151 agency of the federal government and is engaged in the performance of his official duties; ~~[and]~~

152 (d) any person who acts under a certification issued pursuant to Title 26, Chapter 8a,
153 Utah Emergency Medical Services System Act, while providing emergency medical services[-];
154 and

155 (e) any person who delivers, installs, or maintains respiratory related durable medical
156 equipment and who gives instructions regarding the use of that equipment in accordance with
157 Subsections 58-57-2(3) and (6), except that this exemption does not include any clinical
158 evaluation or treatment of the patient;

159 (f) (i) any person who is working in a practitioner's office, acting under supervision;
160 and

161 (ii) for purposes of this Subsection (2)(f) and Subsection (g), "supervision" means one
162 of the following will be immediately available for consultation in person or by phone:

163 (A) a practitioner;

164 (B) a respiratory therapist;

165 (C) a Diplomate of the American Board of Sleep Medicine; or

166 (D) a registered polysomnographic technologist; and

167 (g) a polysomnographic technician or trainee, acting under supervision, as long as they
168 only administer the following in a sleep lab, sleep center, or sleep facility:

169 (i) oxygen titration; and

170 (ii) positive airway pressure that does not include mechanical ventilation.

171 ~~[(2)]~~ (3) Nothing in this chapter permits a respiratory care practitioner to engage in the
172 unauthorized practice of other health disciplines.

173 Section 5. Section **58-57-10** is amended to read:

174 **58-57-10. Use of title or designation.**

175 (1) Only a respiratory care practitioner may use the following titles or designations in
176 this state:

177 (a) respiratory care practitioner;

178 (b) respiratory ~~[care]~~ therapist; or

179 (c) respiratory ~~[care]~~ technician.

180 (2) Any person who violates this section is guilty of a class A misdemeanor.

181 Section 6. Section **58-57-11** is amended to read:

182 **58-57-11. Provision for current practitioners.**

183 ~~[(1)]~~ Any person who is ~~[practicing as a respiratory care practitioner under the~~
184 ~~supervision of a qualified physician as of July 1, 1990, shall receive a temporary license which~~
185 ~~is valid until August 31, 1991, if he: (a) submits an application on which the supervising~~
186 ~~physician certifies that the applicant is competent to practice as a respiratory care practitioner~~
187 ~~and pays the required fee; or (b) submits evidence of having successfully completed an~~
188 ~~education program approved by the division in collaboration with the board. (2) To obtain a~~
189 ~~permanent license, a person practicing as a respiratory care practitioner under the supervision~~
190 ~~of a qualified physician as of July 1, 1990, shall fulfill the requirements of Section 58-57-4~~
191 ~~before August 1, 1991.] engaged in the practice of respiratory care as defined in Section~~
192 58-57-2 and who is not licensed under this chapter as a respiratory care practitioner, shall by
193 January 1, 2007, obtain a license under this chapter unless exempt from licensure under the
194 provisions of Section 58-1-307 or 58-57-7.

195 Section 7. Section **58-57-12** is amended to read:

196 **58-57-12. Independent practice prohibited.**

197 A respiratory care practitioner may not:

198 (1) practice independently of a [~~physician~~] practitioner or of a health care facility while
199 under the supervision of a [~~physician~~] practitioner; or

200 (2) charge a fee for his services independently of a [~~physician~~] practitioner or health
201 care facility.

202 Section 8. Section **58-57-14** is enacted to read:

203 **58-57-14. Unlawful conduct -- Penalty.**

204 (1) Beginning January 1, 2007, "unlawful conduct" includes:

205 (a) using the following titles, names, or initials, if the user is not properly licensed
206 under this chapter:

207 (i) respiratory care practitioner;

208 (ii) respiratory therapist; and

209 (iii) respiratory technician; and

210 (b) using any other name, title, or initials that would cause a reasonable person to
211 believe the user is licensed under this chapter if the user is not properly licensed under this
212 chapter.

213 (2) Any person who violates the unlawful conduct provision specifically defined in
214 Subsection 58-1-501(1)(a) is guilty of a third degree felony.

215 (3) Any person who violates any of the unlawful conduct provisions specifically
216 defined in Subsections 58-1-501(1)(b) through (f) and Subsection (1) of this section is guilty of
217 a class A misdemeanor.

218 (4) After a proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures
219 Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the
220 division may assess administrative penalties for acts of unprofessional or unlawful conduct or
221 any other appropriate administrative action.