

No. 1993-59

## AN ACT

HB 1009

Amending the act of October 5, 1978 (P.L.1109, No.261), entitled "An act requiring the licensing of practitioners of osteopathic medicine and surgery; regulating their practice; providing for certain funds and penalties for violations and repeals," further providing for the State Board of Osteopathic Medicine and for penalties; and regulating the practice of respiratory care practitioners.

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

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

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

Section 2. Definitions.

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

\* \* \*

***"Board-regulated practitioner."*** *An osteopathic physician, physician assistant or respiratory care practitioner or an applicant for a license or certificate issued by the board.*

\* \* \*

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

***"Respiratory care practitioner."*** *An individual who is certified to practice respiratory care by the State Board of Osteopathic Medicine.*

\* \* \*

Section 2. Sections 2.1(a) and 6.1 of the act, added December 20, 1985 (P.L.398, No.108), are amended to read:

Section 2.1. State Board of Osteopathic Medicine.

(a) The State Board of Osteopathic Medicine shall consist of the Commissioner of Professional and Occupational Affairs[,], *or his designee*; the Secretary of Health[,], *or his designee*[,]; two members appointed by the Governor[, **with the advice and consent of a majority of the members elected to the Senate,**] who shall be persons representing the public at

large[.]; *one member appointed by the Governor who shall be either a respiratory care practitioner or a physician assistant; and [five] six members appointed by the Governor[, with the advice and consent of a majority of the members elected to the Senate,] who shall be 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 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.**

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

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

(c) *The board is authorized to promulgate regulations to implement this section.*

(d) *A respiratory care practitioner certified by the board may implement direct respiratory care to an individual being treated by either a licensed medical doctor or a licensed doctor of osteopathic medicine upon physician prescription or referral or under medical direction and approval consistent*

*with standing orders or protocols of an institution or health care facility. This care may constitute indirect services, such as consultation or evaluation of an individual, and also includes, but is not limited to, the following services:*

- (1) Administration of medical gases.*
- (2) Humidity and aerosol therapy.*
- (3) Administration of aerosolized medications.*
- (4) Intermittent positive pressure breathing.*
- (5) Incentive spirometry.*
- (6) Bronchopulmonary hygiene.*
- (7) Management and maintenance of natural airways.*
- (8) Maintenance and insertion of artificial airways.*
- (9) Cardiopulmonary rehabilitation.*
- (10) Management and maintenance of mechanical ventilation.*
- (11) Measurement of ventilatory flows, volumes and pressures.*
- (12) Analysis of ventilatory gases and blood gases.*

*(e) This section shall not prevent or restrict the practices, services or activities of:*

- (1) A person licensed or certified in this Commonwealth to provide another health care service, including, but not limited to, physicians, physical therapists, chiropractors, nurses, dentists, physician assistants and podiatrists.*
- (2) A person rendering respiratory care services pursuant to employment by a Federal agency.*
- (3) A person pursuing a course of study leading to a degree or certificate in respiratory care in an accredited educational program if he is clearly designated as a student and provides care under supervision implemented through that program.*
- (4) A person executing or conveying medical orders pursuant to lawful delegation by a physician.*
- (5) A person who, pursuant to lawful delegation by a physician, delivers, installs, monitors or maintains a device which enables an individual to self-administer respiratory care.*

*(6) A person qualified by academic and clinical education to operate extracorporeal circulation equipment in a medical or surgical setting which requires support to or the temporary replacement of a patient's circulatory or respiratory functions.*

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

*Section 10.2. Respiratory care practitioner certificates and permits.*

*(a) A respiratory care practitioner certificate issued by the board empowers the holder to practice respiratory care under the supervision of a licensed medical doctor or a licensed doctor of osteopathic medicine. In a health care facility, that supervision may consist of standing orders or*

*protocols approved by the institution consistent with acceptable and prevailing medical standards which may include services rendered directly to the patient in his home or other residence.*

*(b) Twelve months after the effective date of this section, the board shall issue temporary permits for the practice of respiratory care to individuals who have applied for certification from the board and who meet any of the following requirements:*

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

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

*(3) Designation as a "Certified Respiratory Therapy Technician" or a "Registered Respiratory Therapist" by a nationally recognized credentialing agency approved by the board.*

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

*(5) Holding certification, licensure or registration as a respiratory care practitioner issued by another state, the District of Columbia or a territory of the United States where the requirements for licensure, registration or certification are substantially similar to those required by the board.*

*(c) Temporary permits shall be valid for 12 months and for such additional period as the board may, in each case, specially determine, except that a temporary permit shall expire if the holder fails the examination. An appropriate fee for a temporary permit shall be established by the board by regulation. If he is not in violation of any other provision of this act, a holder of a temporary permit qualifies for admission to the examination and shall apply for the next regularly scheduled certification examination administered by the board. The board is authorized to promulgate regulations to establish procedures for application, credentials verification, examination and certification, together with appropriate fees.*

*(d) Pursuant to section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, the board shall contract for the development and administration of an examination for the certification of respiratory care practitioners. At least one administration of 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) 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 for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 5. Section 14 of the act, amended December 20, 1985 (P.L.398, No.108), is amended to read:

Section 14. Temporary and automatic suspension.

(a) A license *or certificate* issued under this act may be temporarily suspended under circumstances as determined by the board to be an immediate and clear danger to the public health and safety. The board shall issue an order to that effect without a hearing, but upon due notice, to the licensee concerned at his or her last known address, which shall include a written statement of all allegations against the licensee. The provisions of section 15(d) shall not apply to temporary suspension. The board shall thereupon commence formal action to suspend, revoke or restrict the license *or certificate* of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within 30 days following the issuance of an order temporarily suspending a license *or certificate*, the board shall conduct or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee whose license *or certificate* has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license *or certificate* shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board, but in no event longer than 180 days.

(b) A license *or certificate* issued under this act shall automatically be suspended upon the commitment to an institution of a licensee because of

mental incompetency from any cause upon filing with the board a certified copy of such commitment, conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or conviction of an offense under the laws of another jurisdiction, which, if committed in Pennsylvania, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act." As used in this section the term "conviction" shall include a judgment, an admission of guilt or a plea of nolo contendere. Automatic suspension under this section shall not be stayed pending any appeal of a conviction. Restoration of such license *or certificate* shall be made as in the case of revocation or suspension of license *or certificate*.

Section 6. This act shall take effect in 180 days.

APPROVED—The 2nd day of July, A.D. 1993.

MARK S. SINGEL  
ACTING GOVERNOR