

IN THE SENATE

SENATE BILL NO. 1016

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE RESPIRATORY CARE PRACTICE ACT; REPEALING CHAPTER 43, TI-
2 TLE 54, IDAHO CODE, RELATING TO THE RESPIRATORY CARE PRACTICE ACT; AND
3 AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 43, TITLE
4 54, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE INTENT,
5 TO DEFINE TERMS, TO ESTABLISH A LICENSURE BOARD, TO PROVIDE FOR POWERS
6 AND DUTIES OF THE LICENSURE BOARD, TO ESTABLISH A PERMIT REQUIREMENT,
7 TO PROVIDE FOR POLYSOMNOGRAPHY-RELATED RESPIRATORY CARE, TO ESTABLISH
8 REQUIREMENTS FOR LICENSURE, TO PROVIDE FOR ISSUANCE OF LICENSES AND
9 PERMITS, TO PROVIDE FOR LICENSE OR PERMIT EXPIRATION AND RENEWAL, TO
10 PROVIDE FOR LICENSE OR PERMIT SUSPENSION, REVOCATION, OR REFUSAL TO
11 RENEW, TO ESTABLISH EXEMPTIONS, TO PROVIDE CERTAIN PENALTIES FOR MIS-
12 REPRESENTATION, TO PROVIDE FOR PENALTIES, AND TO PROVIDE SEVERABILITY.
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Chapter 43, Title 54, Idaho Code, be, and the same is
16 hereby repealed.

17 SECTION 2. That Title 54, Idaho Code, be, and the same is hereby amended
18 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
19 ter 43, Title 54, Idaho Code, and to read as follows:

20 CHAPTER 43
21 RESPIRATORY CARE PRACTICE ACT

22 54-4301. SHORT TITLE. This act shall be known and may be cited as the
23 "Respiratory Care Practice Act."

24 54-4302. LEGISLATIVE INTENT. To promote the highest degree of profes-
25 sional conduct on the part of persons providing respiratory care to the pub-
26 lic and to assure the availability of respiratory care services of high qual-
27 ity to persons in need of such services, it is the intent of the legislature
28 to provide for the licensure and regulation of persons offering respiratory
29 care services to the public.

30 54-4303. DEFINITIONS. As used in this chapter:

- 31 (1) "Board" means the state board of medicine.
32 (2) "Certified respiratory therapist" or "CRT" means the professional
33 designation earned by a person who has successfully completed the entry
34 level examination required by the board.
35 (3) "Licensure board" means the licensure board established by this
36 chapter.
37 (4) "Polysomnographic technician" means a person who holds a permit and
38 meets requirements as set forth in section 54-4307, Idaho Code.

1 (5) "Polysomnographic technologist" means a person who holds a permit
2 and meets requirements as set forth in section 54-4307, Idaho Code.

3 (6) "Polysomnography" means the process of analysis, attended monitor-
4 ing, and recording of physiologic data during sleep and wakefulness to as-
5 sist in the assessment and diagnosis of sleep/wake disorders and other dis-
6 orders, syndromes, and dysfunctions that are sleep-related, manifest during
7 sleep, or disrupt normal sleep/wake cycles and activities.

8 (7) "Polysomnography-related respiratory care services" means the
9 limited practice of respiratory care in the provision of polysomnography
10 services.

11 (8) "Practice of respiratory care" means the provision of cardiopul-
12 monary care services as directed by a qualified health care practitioner li-
13 censed in the state, including but not limited to the diagnostic and thera-
14 peutic use of the following:

15 (a) Except for the purpose of anesthesia, administration of medical
16 gases, aerosols, and humidification;

17 (b) Environmental control mechanisms and hyperbaric therapy;

18 (c) Pharmacologic agents related to respiratory care procedures;

19 (d) Mechanical or physiological ventilatory support;

20 (e) Bronchopulmonary hygiene;

21 (f) Cardiopulmonary resuscitation;

22 (g) Maintenance of artificial airways;

23 (h) Specific diagnostic and testing techniques employed in the medi-
24 cal management of patients to assist in diagnosis, monitoring, treat-
25 ment, and research of pulmonary abnormalities, including measurement
26 of ventilatory volumes, pressures, and flows, collection of specimens
27 of blood and blood gases, expired and inspired gas samples, respiratory
28 secretions, and pulmonary functioning testing;

29 (i) Hemodynamic and other related physiologic measurements of the car-
30 diopulmonary system;

31 (j) Accepting and carrying out a practitioner's written, verbal, or
32 telephonic prescription or order specifically relating to respiratory
33 care in a hospital or other health care setting; and

34 (k) Functioning in situations of patient contact requiring individual
35 judgment in administering respiratory care under the general supervi-
36 sion of a qualified practitioner.

37 (9) "Registered respiratory therapist" or "RRT" means the professional
38 designation earned by a person who has successfully completed the written
39 registry and clinical simulation examinations administered by the national
40 board for respiratory care.

41 (10) "Respiratory care" means the treatment, management, diagnostic
42 testing, monitoring, and care of patients with deficiencies and abnormali-
43 ties associated with the cardiopulmonary system.

44 (11) "Respiratory care practitioner" means a person who has been issued
45 a license or permit by the board under the provisions of this chapter to prac-
46 tice respiratory care under the general supervision of a licensed physician
47 or other authorized licensed health care professional.

48 (12) "Sleep disorder center or laboratory" means a facility for sleep-
49 related disorders that provides polysomnography and is under the supervi-
50 sion of a physician or medical director licensed in the state of Idaho.

1 (13) "Written registry and clinical simulation examinations" means the
2 certification examinations administered by a board-approved national ac-
3 crediting organization.

4 54-4304. LICENSURE BOARD. (1) The licensure board shall consist of
5 five (5) members appointed by the board, including three (3) licensed res-
6 piratory therapists, one (1) licensed respiratory therapist who is also a
7 permitted polysomnographic technologist, and one (1) member of the public.
8 All members shall be residents of Idaho at the time of their appointments and
9 for their terms of service.

10 (2) In making appointments to the licensure board, the board shall give
11 consideration to recommendations made by the Idaho society for respiratory
12 care, the Idaho sleep professionals association, or other professional or-
13 ganizations or individuals.

14 (3) Licensure board members shall serve terms not to exceed three (3)
15 years. No person shall be appointed to serve more than two (2) terms. In the
16 event of death, resignation, or removal of any member before the expiration
17 of the term to which appointed, the vacancy shall be filled for the unexpired
18 portion of the term in the same manner as the original appointment.

19 (4) The board may, upon recommendation of the licensure board, or upon
20 its own motion, remove any member of the licensure board, for cause, prior to
21 the expiration of the member's term.

22 (5) The licensure board shall at least annually hold a meeting and elect
23 a chairperson who shall preside at meetings of the licensure board. In the
24 event the chairperson is not present at any licensure board meeting, the li-
25 censure board may by majority vote of the members present appoint a temporary
26 chairperson.

27 (6) A majority of the members of the licensure board shall constitute a
28 quorum. Other meetings may be convened at the call of the chairperson or the
29 written request of any two (2) licensure board members.

30 (7) Each member of the licensure board shall be compensated as provided
31 in section 59-509(h), Idaho Code.

32 54-4305. BOARD OF MEDICINE AND LICENSURE BOARD -- POWERS AND DUTIES --
33 FUNDS. (1) The board shall administer, coordinate, and enforce the provi-
34 sions of this chapter and, for that purpose, may hire such employees as may be
35 necessary. The licensure board shall make recommendations to, and consult
36 with, the board concerning qualification of applicants for licensure, is-
37 suance of licenses, revocation of licenses, and rules to be promulgated un-
38 der this chapter.

39 (2) The board may, upon recommendation of the licensure board, adopt
40 rules pursuant to chapter 52, title 67, Idaho Code, necessary to implement
41 the provisions of this chapter, including but not limited to rules relating
42 to professional licensure examination, the establishment of ethical stan-
43 dards of practice, disciplinary proceedings, and license suspension or re-
44 vocation for persons holding a license or permit to practice in this state
45 under the provisions of this chapter.

46 (3) The licensure board shall hold meetings, conduct hearings, and keep
47 records and minutes as are necessary to carry out its functions.

1 (4) All fees received under the provisions of this chapter shall be
2 deposited in the state treasury to the credit of the state board of medicine
3 fund created in section 54-1809, Idaho Code. All costs and expenses incurred
4 by the board and licensure board under the provisions of this chapter shall
5 be a charge against and paid from said fund for such purposes. The funds
6 collected pursuant to this chapter shall be immediately available for the
7 administration of this chapter. In no instance shall the state board of
8 medicine fund be obligated to pay any claims that, in aggregate with claims
9 already allowed, exceed the income to the state board of medicine fund that
10 has been derived from the application of this chapter. Moneys paid into the
11 state board of medicine fund pursuant to this chapter are hereby continu-
12 ously appropriated to the board for expenditure in the manner prescribed
13 in this chapter to defray the expenses of the board and licensure board in
14 carrying out and enforcing the provisions of this chapter.

15 54-4306. LICENSE OR PERMIT REQUIRED -- PROVISIONAL LICENSE OR PER-
16 MIT. (1) Except as otherwise provided in this chapter, it shall be un-
17 lawful for any person to practice or offer to practice respiratory care
18 or polysomnography-related respiratory care or for a person or entity to
19 represent a person to be a respiratory care or polysomnography-related res-
20 piratory care practitioner unless such person is licensed or holds a valid
21 permit under the provisions of this chapter or is exempt from the require-
22 ments of this chapter.

23 (2) The board may issue provisional licenses or permits to graduates
24 of approved respiratory care or polysomnography-related respiratory care
25 education programs seeking to qualify for licensure pursuant to this chap-
26 ter. Provisional licenses and permits shall be issued upon such terms and
27 conditions as the board may determine necessary to ensure safe and qualified
28 performance of respiratory care or polysomnography-related respiratory
29 care functions. The issuance of a provisional license or permit shall be as
30 set forth in this chapter and pursuant to board rule.

31 54-4307. POLYSOMNOGRAPHY-RELATED RESPIRATORY CARE. (1) Only persons
32 who are licensed as respiratory care practitioners or who are exempt from li-
33 censure pursuant to section 54-4312, Idaho Code, or who hold a permit issued
34 by the board under the provisions of this chapter may provide polysomnogra-
35 phy-related respiratory care services.

36 (2) An applicant for a permit to provide polysomnography-related res-
37 piratory care services must:

38 (a) Submit an application to the board on forms prescribed by the board
39 and pay the permit fee required under this chapter;

40 (b) Not have been convicted of an offense or disciplined by a licensing
41 body in a manner that bears, in the judgment of the board, a demonstra-
42 ble relationship to the provision of polysomnography-related respira-
43 tory care services;

44 (c) Be a high school graduate or have passed a general educational de-
45 velopment (GED) examination and earned a GED certificate; and

46 (d) Be currently certified in cardiopulmonary resuscitation.

47 (3) A polysomnographic technologist applicant must have successfully
48 completed the certification examination approved by the board.

1 (4) A polysomnographic technician applicant must have successfully
2 completed a polysomnography program of not less than one (1) year duration,
3 associated with a nationally accredited educational facility.

4 54-4308. REQUIREMENTS FOR LICENSURE. (1) A person who meets the re-
5 quirements for licensure under the provisions of this section and who is not
6 exempt from the requirements of this chapter pursuant to section 54-4312,
7 Idaho Code, shall apply to the licensure board for the issuance of a license.
8 The completed application shall be on a form provided by the board.

9 (2) The board shall issue a license to an applicant if the applicant
10 makes a satisfactory showing to the licensure board that he has:

11 (a) Not been convicted of a crime deemed relevant in accordance with
12 section 67-9411(1), Idaho Code;

13 (b) Not been subjected to disciplinary action in any state or territory
14 of the United States or in any foreign country arising from a showing of
15 gross negligence or intentional misconduct directly related to the pro-
16 vision of respiratory care; and

17 (c) Successfully received respiratory care credentialing by a board-
18 approved national accrediting organization.

19 54-4309. ISSUANCE OF LICENSE OR PERMIT. The board shall issue a li-
20 cense to any person who meets the requirements of this chapter upon payment
21 of the prescribed fees. The board may, in its discretion, by rule or reg-
22 ulation, provide for the proration of fees charged in conjunction with the
23 initial application by a person for a license if such license shall, upon
24 issuance, remain valid for less than one (1) full calendar year before the
25 required renewal date as provided for in section 54-4310, Idaho Code.

26 54-4310. LICENSE OR PERMIT EXPIRATION AND RENEWAL. (1) A license or
27 permit issued under the provisions of this chapter shall be subject to re-
28 newal every one (1) or two (2) years and shall expire unless renewed in the
29 manner prescribed by the rules of the licensure board upon payment of a re-
30 newal fee.

31 (2) Each individual applicant for renewal of an active license shall,
32 on or before the expiration of the license, submit satisfactory proof to the
33 licensing board of successful completion of no fewer than twelve (12) hours
34 of board-approved continuing education in addition to any other require-
35 ments for renewal.

36 (3) Upon application, the board shall grant inactive status to the
37 holder of a license who does not practice or provide respiratory care.

38 (4) The board shall establish the following fees relating to licensing,
39 which fees shall be established in an amount sufficient to defray all costs
40 necessary for the administration of this chapter:

41 (a) Initial license and examination fee;

42 (b) Renewal of license fee;

43 (c) Inactive license fee; and

44 (d) Provisional license or permit fee.

45 (5) No license that has been expired for more than twenty-four (24)
46 months may be renewed. The applicant shall comply with the requirements of
47 section 54-4308, Idaho Code, for obtaining an initial license.

1 54-4311. SUSPENSION AND REVOCATION OF LICENSE OR PERMIT -- REFUSAL TO
2 RENEW. (1) Subject to the provisions of chapter 52, title 67, Idaho Code, the
3 board may deny a license or permit or refuse to renew a license or permit, may
4 suspend or revoke a license or permit, or may impose probationary conditions
5 if the holder of a license or permit or applicant for a license or permit has
6 been found guilty of conduct that has endangered or is likely to endanger the
7 health, welfare, or safety of the public. Such conduct includes but is not
8 limited to:

9 (a) Obtaining a license or permit by means of fraud, misrepresentation,
10 or concealment of material facts;

11 (b) Violating any of the grounds for discipline set forth in the rules
12 established by the board;

13 (c) Being convicted of a crime that would have a direct and adverse
14 bearing on the licensee's or permit holder's ability to practice or per-
15 form respiratory care competently;

16 (d) The unauthorized practice of medicine;

17 (e) Violating any provision of this chapter or any of the rules and reg-
18 ulations promulgated by the board under the authority of this chapter;
19 or

20 (f) Being found mentally incompetent by a court of competent jurisdic-
21 tion or being found mentally incompetent or unfit by the board to pro-
22 vide respiratory care.

23 (2) A denial, refusal to renew, suspension, revocation, or imposition
24 of probationary conditions upon a license or permit may be ordered by the
25 board after a hearing in the manner provided by this chapter and the rules
26 adopted by the board.

27 54-4312. EXEMPTIONS. (1) Nothing in this chapter is to be construed as
28 preventing or restricting the performance of respiratory care or requiring
29 licensure or a permit pursuant to this chapter:

30 (a) Of any person authorized in this state under any other law who car-
31 ries out only those professional duties and functions for which such
32 person has been specifically trained and for which professional design-
33 nations are conferred;

34 (b) Of certified pulmonary function technologists and registered pul-
35 monary function technologists who carry out only those professional
36 duties and functions for which such persons have been specifically
37 trained and for which such professional designations are conferred;

38 (c) Of any person employed as a respiratory therapist by the government
39 of the United States or any agency thereof if such person practices or
40 provides respiratory care solely under the direction or control of the
41 organization by which such person is employed;

42 (d) Of any person actively pursuing in good faith a full-time super-
43 vised course of study leading to a degree or certificate in respiratory
44 care in an American medical association accredited or approved educa-
45 tional program, or the equivalent as determined by the board, where the
46 practice or provision of respiratory care by such person is supervised
47 by a respiratory care practitioner or by a licensed physician;

48 (e) Of any person performing respiratory care in the state for purposes
49 of continuing education, consulting, or training, if these services are

1 performed for no more than thirty (30) days in a calendar year in associ-
2 ation with a respiratory care practitioner licensed under this chapter
3 or in association with a licensed physician, if:

4 (i) The person is licensed as a respiratory care practitioner or
5 the equivalent, as determined by the board, in good standing in an-
6 other state or the District of Columbia or in a territory of the
7 United States; or

8 (ii) The person is a certified respiratory therapist or regis-
9 tered respiratory therapist; or

10 (f) Of any person who administers cardiopulmonary resuscitation in an
11 emergency situation.

12 (2) A person claiming an exemption under subsection (1) (c) or (1) (e) of
13 this section shall apply for a license or a permit as provided for in this
14 chapter in the event the facts upon which such claim for exemption is based
15 change or cease to exist eliminating the grounds for such claim for exemp-
16 tion. Such application shall be filed with the board as soon as possible af-
17 ter the loss of the claim to exemption but no later than thirty (30) calendar
18 days after the right to the exemption ceases. Such person may practice or
19 perform respiratory care after the loss of such exemption and prior to appli-
20 cation for or issuance by the board of a license or permit only under the di-
21 rect supervision of a respiratory care practitioner or a licensed physician.

22 (3) A person claiming exemption under the provisions of subsection
23 (1) (d) of this section shall cease to be eligible for such exemption if such
24 person ceases to actively pursue the required course of study for a period
25 of time in excess of one hundred twenty (120) consecutive calendar days and
26 immediately upon receipt of the degree or certificate for which such person
27 pursued the course of study.

28 (4) The burden of proving the existence of facts entitling a person to
29 an exemption under this section shall be upon the person claiming the exemp-
30 tion.

31 (5) The provisions of this chapter shall not prohibit hospitals from
32 employing individuals to provide respiratory care services who are exempt
33 from the licensing requirements of this chapter. The provisions of this
34 chapter shall not prohibit any hospital from training qualified personnel
35 to provide respiratory care if the trainee would be exempt under subsection
36 (1) (a) or (1) (d) of this section, provided that said training and respira-
37 tory care services are done under the supervision of a licensed physician or
38 a respiratory care practitioner.

39 54-4313. MISREPRESENTATION -- CONSUMER PROTECTION ACT. (1) The board
40 may bring any action in the district court for a temporary restraining order,
41 preliminary injunction, or permanent injunction against any person who vio-
42 lates the provisions of this chapter, who falsely holds himself out as a res-
43 piratory care practitioner, or who practices or provides respiratory care in
44 violation of this chapter.

45 (2) Any person who falsely holds himself out as a respiratory care prac-
46 titioner shall be guilty of using a method, act, or practice that is declared
47 to be unlawful as provided in chapter 6, title 48, Idaho Code.

1 54-4314. PENALTIES. Any person who violates any provision of this
2 chapter shall, upon conviction, be guilty of a misdemeanor.

3 54-4315. SEVERABILITY. The provisions of this chapter are hereby de-
4 clared to be severable and if any provision of this chapter or the applica-
5 tion of such provision to any person or circumstance is declared invalid for
6 any reason, such declaration shall not affect the validity of remaining por-
7 tions of this chapter.