
COLORADO REVISED STATUTES

Title 12 **Professions and Occupations**

Article 41.5 **Respiratory Therapy Practice Act**

Effective July 1, 2006

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12-41.5-101. Short title.

This article shall be known and may be cited as the "Respiratory Therapy Practice Act".

12-41.5-102. Legislative declaration.

The general assembly hereby finds, determines, and declares that the practice of respiratory therapy in the state of Colorado affects the public health, safety, and welfare of its citizens and must be subject to regulation and control to protect the public from the unqualified practice of respiratory therapy and from unprofessional conduct. The general assembly further recognizes the practice of respiratory therapy to be a dynamic and changing art and science that is continually evolving to include new ideas and ever more sophisticated techniques in patient care.

12-41.5-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Director" means the director of the division of registrations in the department of regulatory agencies.

(2) "Division" means the division of registrations in the department of regulatory agencies created in section 24-34-102, C.R.S.

(3) "Licensee" means a respiratory therapist licensed pursuant to this article.

(4) "Medical director" means a licensed physician who holds such title in any inpatient or outpatient facility, department, or home care agency, and who is responsible for the quality, safety, and appropriateness of the respiratory therapy provided.

(5) "Respiratory therapist" means a person who is licensed to practice respiratory therapy pursuant to this article.

(6) "Respiratory therapy" means providing therapy, management, rehabilitation, support services for diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system under the overall direction of a medical director. Respiratory therapy includes the following:

(a) Direct and indirect pulmonary care services that are safe, aseptic, preventative, and restorative to the patient;

(b) The teaching or instruction of the techniques and skill of respiratory care whether or not in a formal educational setting;

(c) Direct and indirect respiratory care services including but not limited to the administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, and pulmonary rehabilitative or diagnostic regimen prescribed by a physician or advanced practice nurse;

(d) Observation and monitoring of signs, symptoms, reactions, general behavior, and general physical response to respiratory care treatment and diagnostic testing for:

(I) The determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics; or

(II) The implementation based on observed abnormalities of appropriate reporting, referral, or respiratory care protocols or changes in treatment regimen pursuant to a prescription by a physician or advanced practice nurse or the initiation of emergency procedures;

(e) The diagnostic and therapeutic use of the following in accordance with the prescription of a physician or advanced practice nurse: Administration of medical gases, exclusive of general anesthesia; aerosols; humidification; environmental control systems and biomedical therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; respiratory protocol and evaluation; cardiopulmonary resuscitation; maintenance of the natural airways; insertion and maintenance of artificial airways; diagnostic and testing techniques required for implementation of respiratory care protocols; collection of specimens from the respiratory tract; or analysis of blood gases and respiratory secretions and participation in cardiopulmonary research; and

(f) The transcription and implementation of the written and verbal orders of a physician pertaining to the practice of respiratory care.

12-41.5-104. Use of titles restricted.

A respiratory therapist, but no other person, may use the title "licensed respiratory therapist" or the letters "L.R.T."

12-41.5-105. Limitations on authority.

Nothing in this article shall be construed as authorizing a respiratory therapist to perform the practice of medicine, surgery, or any other form of healing except as authorized by the provisions of this article.

12-41.5-106. License - reciprocity - effectiveness - fee.

(1) An applicant for a license to practice respiratory therapy shall submit to the director written evidence that he or she is credentialed with the national board for respiratory care as a certified or registered respiratory therapist and shall pay a fee as determined by the director. The director shall have on file the standards of practice for examination and accreditation by the national board for respiratory care, and such standards shall be available to the public.

(2) The director shall issue a license to practice respiratory therapy to an applicant who otherwise meets the qualifications set forth in this article and who submits satisfactory proof and certifies under penalty of perjury that the applicant is either:

(a) Currently in possession of an unrestricted license in good standing to practice respiratory therapy under the laws of another state or territory of the United States or foreign country, if the qualifications of the applicant are deemed by the director to be substantially equivalent to those required by this state, and whether the applicant has ever had a disciplinary action taken in regard to the applicant's license to practice respiratory therapy in another state;

(b) Holding credentials conferred by the national board for respiratory care, which credentials have not been suspended or revoked; or

(c) Functioning in the capacity of a respiratory therapist as of July 1, 2000, and has successfully passed, no later than July 1, 2001, the certification or registration examination of the national board for respiratory care.

12-41.5-107. Renewal of license.

(1) At least sixty calendar days prior to the expiration of a license, the director shall notify the licensee of the pending expiration. The director shall make an expiration notice and a renewal form available to the licensee. Before the expiration date, the licensee shall complete the renewal form and return it to the division with the renewal fee.

(2) Upon receipt of the completed renewal form and the renewal fee, the director shall issue a license for the current renewal period pursuant to a schedule established by the director, and such renewal or reinstatement shall be granted pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of

registrations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(3) (Deleted by amendment, L. 2004, p. 1846, § 96, effective August 4, 2004.)

12-41.5-108. Fees.

All fees collected under this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S.

12-41.5-109. Grounds for action - disciplinary proceedings.

(1) The director may take disciplinary action against a licensee if the director finds that such person has represented himself or herself to be a licensed respiratory therapist after the expiration or suspension of his or her license.

(2) The director has the power to revoke, suspend, deny, or refuse to renew a license, place on probation a licensee, or issue a letter of admonition to a licensee in accordance with subsections (3), (4), (5), and (6) of this section upon proof that such person:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) (I) Has been convicted of or has entered and had accepted by a court a plea of guilty or nolo contendere to:

(A) A felony pursuant to section 18-1.3-401, C.R.S.; or

(B) Any crime as defined in title 18, C.R.S., that relates to such person's employment as a respiratory therapist.

(II) A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be prima facie evidence of such conviction. In conjunction with any disciplinary proceeding pertaining to this paragraph (b), the director shall be governed by section 24-5-101, C.R.S.

(c) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his or her care;

(d) Has had a license to practice respiratory therapy or any other health care occupation suspended, revoked, or otherwise subjected to discipline in any jurisdiction. A certified copy of the order of suspension, revocation, or discipline shall be prima facie evidence of such suspension, revocation, or discipline.

(e) Has violated this article or has aided or knowingly permitted any person to violate this article;

(f) Practiced respiratory therapy in a manner which failed to meet generally accepted standards for respiratory therapists;

(g) Has negligently or willfully violated any order or rule of the director pertaining to the practice or licensure of respiratory therapy;

(h) Is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 12-22-303 (7), or other drugs having similar effects; except that the director has the discretion not to discipline the license holder if he or she is participating in good faith in a program approved by the director designed to end such use or abuse;

(i) Has a physical or mental disability that renders him or her unable to practice respiratory therapy with reasonable skill and safety and that may endanger the health or safety of persons under his or her care;

(j) Has committed:

(I) A fraudulent insurance act as defined in section 10-1-128, C.R.S.;

(II) An abuse of health insurance, as set forth in section 18-13-119, C.R.S., or advertised through any medium that he or she will perform an act prohibited by section 18-13-119 (3), C.R.S.;

(k) Has engaged in any of the following activities or practices:

(I) Willful and repeated ordering and performance, without justification, of demonstrably unnecessary laboratory tests or studies;

(II) Administering treatment that is demonstrably unnecessary, without clinical justification;

(III) Failing to obtain consultations or perform referrals when failing to do so is inconsistent with the standard of care for the profession; or

(IV) Ordering or performing, without clinical justification, a service, procedure, or treatment that is contrary to recognized standards of the practice of respiratory therapy as interpreted by the director;

(l) Has practiced respiratory therapy without possessing a valid license issued by the director in accordance with this article and any rules adopted under this article;

(m) Has used in connection with his or her name any designation that implies that he or she is a certified, registered, or licensed respiratory therapist, unless the person is licensed pursuant to this article;

(n) Has practiced respiratory therapy as a licensed respiratory therapist during the time that his or her license was suspended, revoked, or expired;

(o) Has sold, fraudulently obtained, or furnished a license to practice as a licensed respiratory therapist, or has aided or abetted such activity;

(p) Has failed to notify the director of the suspension, probation, or revocation of any of the person's past or currently held licenses, certificates, or registrations required to practice respiratory therapy in this or any other jurisdiction; or

(q) Has knowingly employed any person who is not licensed in the practice of respiratory therapy in the capacity of a respiratory therapist.

(2.5) The director shall revoke, suspend, deny, or refuse to renew a license, place a licensee on probation, or issue a cease and desist order or letter of admonition to a licensee in accordance with subsections (3), (4), (5), and (6) of this section upon proof that the person:

(a) Has falsified or repeatedly made incorrect essential entries or repeatedly failed to make essential entries on patient records;

(b) Has practiced outside of or beyond the person's area of training, experience, or competence.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether such actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) A disciplinary proceeding may be commenced when the director has reasonable grounds to believe that a licensee has committed acts that may violate this section.

(5) Disciplinary proceedings shall be conducted pursuant to article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to such article by the director or by an administrative law judge, at the director's discretion. The director has the authority to exercise all powers and duties conferred by this article during such disciplinary proceedings.

(5.5) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin any person from committing any act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(b) (I) In accordance with the provisions of article 4 of title 24, C.R.S., and this article, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) The director or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director.

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(6) If the director finds the charges proved and orders that discipline be imposed, the director may require, as a condition of reinstatement, that the licensee take such therapy or courses of training or education as may be needed to correct any deficiency found.

(7) A final action of the director may be judicially reviewed by the court of appeals in accordance with section 24-4-106 (11), C.R.S., and judicial proceedings for the enforcement of an order of the director may be instituted in accordance with section 24-4-106, C.R.S.

(8) (a) The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) A person who in good faith makes a complaint or report or participates in an investigative or administrative proceeding pursuant to this article shall be immune from liability, civil or criminal, that otherwise might result from such participation.

(9) An employer of a respiratory therapist shall report to the director any disciplinary action taken against such therapist or the resignation of such therapist in lieu of disciplinary action for conduct that violates this article.

(10) (a) Investigations, examinations, hearings, meetings, and other proceedings of the director conducted pursuant to this section shall be exempt from any law that requires:

(I) Such proceedings to be conducted publicly; or

(II) The minutes or records of the director, with respect to action taken pursuant to this section, to be open to the public.

(b) Paragraph (a) of this subsection (10) shall not apply after the director has made a decision to proceed with a disciplinary action and has served by first-class mail a notice of formal complaint on the licensee.

(11) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(b) When a letter of admonition is sent by the director, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(11.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(12) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(13) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (13), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(14) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (14) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order issued. Personal service or mailing of an order or document pursuant to this subsection (14) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (14). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (14) does not appear at the hearing, the director may present evidence that notification

was properly sent or served upon such person pursuant to paragraph (b) of this subsection (14) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license, or has or is about to engage in acts or practices constituting violations of this article, a final cease and desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (14), of the final cease and desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(15) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with such person.

(16) If any person fails to comply with a final cease and desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(17) A person aggrieved by the final cease and desist order may seek judicial review of the board's determination or of the board's final order as provided in subsection (7) of this section.

12-41.5-110. Exceptions.

(1) Repealed.

(2) This article does not prohibit:

(a) (I) Any practice of respiratory therapy that is an integral part of a program of study by students enrolled in an accredited respiratory therapy program. Students enrolled in respiratory therapy education programs shall be identified as "student respiratory therapists" and shall only provide respiratory therapy under direct supervision of a respiratory therapist on the premises who is available for prompt consultation or treatment.

(II) The practice of respiratory therapy by pulmonary function technology students or polysomnographic technology students that is an integral part of a program of study that leads to certification or registration for their respective disciplines. Students enrolled in such programs shall be identified as "student pulmonary functions technologists" or "student polysomnographic technologists" and shall practice only under the direct supervision of a respiratory therapist or physician or under the supervision of an individual exempted from the provisions of this article pursuant to paragraph (g) of this subsection (2).

(III) The practice of respiratory therapy by polysomnographic technologists who are not registered by or do not hold credentials from a nationally recognized organization, but such polysomnographic technologists shall only practice under the supervision of a respiratory therapist, a physician, or an individual exempted from the provisions of this article pursuant to paragraph (g) of this subsection (2).

(b) Self-therapy by a patient or gratuitous therapy by a friend or family member who does not represent himself or herself to be a respiratory therapist;

(c) Any service provided during an emergency that may be included in the definition of the practice of respiratory therapy;

(d) Respiratory therapy services rendered in the course of assigned duties of persons serving in the military or persons working in federal facilities;

(e) Respiratory therapy services rendered in the course of assigned duties of persons delivering oxygen supplies, including the inspection and maintenance of associated apparatus by a person who does not represent himself or herself as a respiratory therapist;

(f) Any person registered, certified, or licensed in this state under this title from engaging in the practice for which such person is registered, certified, or licensed;

(g) The practice of procedures that fall within the definition of respiratory therapy by certified pulmonary function technologists, registered pulmonary function technologists, registered polysomnographic technologists, or others who hold credentials from a nationally recognized organization as determined by the director, including, but not limited to, the national board for respiratory care; except that the scope of practice of a registered polysomnographic technologist shall not exceed oxygen titration with pulse oximetry and noninvasive positive pressure ventilation titration;

(h) The instruction or training of persons to administer emergency oxygen during an aquatic emergency, when such instruction or training is provided by an individual who has been certified to conduct such instruction or training by a nationally recognized certifying agency; or

(i) The practice by an unlicensed person of procedures that fall within the definition of respiratory therapy but that do not require the unlicensed person to perform an assessment, to perform an invasive procedure as defined by the director, or to alter care beyond the scope of approved protocols, so long as the unlicensed person is under supervision as determined appropriate by the respiratory therapist and after such respiratory therapist has considered all of the following:

- (I) The health status and mental and physical stability of the individual receiving care;
- (II) The complexity of the procedures;
- (III) The training and competence of the unlicensed person;
- (IV) The proximity and availability of the respiratory therapist when the procedures are performed;
- (V) The degree of supervision required for the unlicensed person;
- (VI) The length and number of times that the procedure may be performed; and
- (VII) The predictability of the outcome of the procedure.

12-41.5-111. Practice of medicine prohibited.

Subject to section 12-36-106 (3) (m), nothing in this article shall be construed to permit the practice of medicine as defined in section 12-36-106.

12-41.5-112. Unauthorized practice - penalties.

(1) Repealed.

(2) A person who practices or offers or attempts to practice respiratory therapy without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

12-41.5-113. Rule-making authority.

The director shall promulgate such rules as are necessary or convenient for the administration of this article.

12-41.5-114. Severability.

If any provision of this article is held to be invalid, such invalidity shall not affect other provisions of this article that can be given effect without such invalid provision.

12-41.5-115. Repeal of article - termination of functions.

(1) This article is repealed, effective July 1, 2015.

(2) (a) The licensure functions of the director as set forth in this article are repealed, effective July 1, 2015.

(b) Prior to such repeal, such licensure functions shall be reviewed pursuant to section 24-34-104, C.R.S.