

HOUSE BILL 424

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2001 Regular Session
(11r0080)

ENROLLED BILL

-- Environmental Matters/Economic and Environmental Affairs --

Introduced by **Chairman, Environmental Matters Committee (Departmental - Health and Mental Hygiene)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER 479

1 AN ACT concerning

2 **Respiratory Care Practitioners - Reporting Requirements, Practicing**
3 **Without a License, and Disciplinary Grounds, ~~and Rehabilitation~~**

4 FOR the purpose of requiring hospitals, *related institutions*, alternative health
5 systems, and employers to report certain employment actions and terminations
6 of employment of respiratory care practitioners; *providing certain exceptions to*
7 *the reporting requirement under certain circumstances; providing certain*
8 *procedures for reporting treatment of a respiratory care practitioner in an alcohol*
9 *and drug treatment program*; establishing an administrative fine for practicing
10 without a respiratory care practitioner license; establishing certain grounds for
11 discipline for respiratory care practitioners based on the filing of certified
12 dockets; ~~providing for respiratory care practitioners to participate in a~~
13 ~~rehabilitation program; authorizing the Board of Physician Quality Assurance to~~
14 ~~assess a fee to respiratory care practitioners for the utilization of the~~
15 ~~rehabilitation program~~; and generally relating to the licensure, and discipline,
16 ~~and rehabilitation~~ of respiratory care practitioners.

1 BY repealing and reenacting, without amendments,

2 Article - Health Occupations

3 Section 14-402

4 Annotated Code of Maryland

5 (2000 Replacement Volume)

6 BY repealing and reenacting, with amendments,

7 Article - Health Occupations

8 Section ~~14-402~~, 14-405(a), 14-5A-17, 14-5A-18, 14-5A-19, 14-5A-20,

9 14-5A-21, 14-5A-22, 14-5A-23, ~~14-5A-24, and 14-5A-25~~ and 14-5A-24

10 Annotated Code of Maryland

11 (2000 Replacement Volume)

12 BY adding to

13 Article - Health Occupations

14 Section 14-5A-18

15 Annotated Code of Maryland

16 (2000 Replacement Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Health Occupations**

20 14-402.

21 (a) In reviewing an application for licensure, certification, or registration or in
22 investigating an allegation brought against a licensed physician or any allied health
23 professional regulated by the Board under this title, the medical society or Faculty
24 committee may request the Board to direct, or the Board on its own initiative may
25 direct, the licensed physician or any allied health professional regulated by the Board
26 under this title to submit to an appropriate examination.

27 (b) In return for the privilege given by the State issuing a license,
28 certification, or registration, the licensed, certified, or registered individual is deemed
29 to have:

30 (1) Consented to submit to an examination under this section, if
31 requested by the Board in writing; and

32 (2) Waived any claim of privilege as to the testimony or examination
33 reports.

34 (c) The unreasonable failure or refusal of the licensed, certified, or registered
35 individual to submit to an examination is prima facie evidence of the licensed,
36 certified, or registered individual's inability to practice medicine or the respective

1 discipline competently, unless the Board finds that the failure or refusal was beyond
2 the control of the licensed, certified, or registered individual.

3 (d) The Board shall pay the costs of any examination made under this section.

4 (e) (1) (i) The Board shall assess each applicant for a license to practice
5 medicine or for renewal of a license to practice medicine a fee of not more than \$50 to
6 be set after the submission of a budget for the physician rehabilitation program and
7 peer review activities by the Faculty to the Board.

8 (ii) The fee is to be used to fund the physician rehabilitation
9 program and peer review activities of the Faculty, as approved by the Secretary.

10 (iii) The Board shall set a fee under this subsection in accordance
11 with the budget submitted by the Faculty.

12 (2) The Legislative Auditor shall every 2 years audit the accounts and
13 transactions of the Faculty for the physician rehabilitation program and peer review
14 activities as provided in § 2-1220 of the State Government Article.

15 ~~(F) (1) (i) THE BOARD SHALL ASSESS EACH APPLICANT FOR A LICENSE
16 TO PRACTICE AS A RESPIRATORY CARE PRACTITIONER OR FOR RENEWAL OF A
17 LICENSE TO PRACTICE AS A RESPIRATORY CARE PRACTITIONER A FEE SET BY THE
18 BOARD AFTER THE SUBMISSION OF A BUDGET FOR THE RESPIRATORY CARE
19 PRACTITIONER REHABILITATION PROGRAM BY THE FACULTY TO THE BOARD.~~

20 ~~(II) THE FEE IS TO BE USED TO FUND THE RESPIRATORY CARE
21 PRACTITIONER REHABILITATION PROGRAM ACTIVITIES OF THE FACULTY, AS
22 APPROVED BY THE SECRETARY.~~

23 ~~(III) THE BOARD SHALL SET A FEE UNDER THIS SUBSECTION IN
24 ACCORDANCE WITH THE BUDGET SUBMITTED BY THE FACULTY.~~

25 ~~(2) THE LEGISLATIVE AUDITOR SHALL EVERY 2 YEARS AUDIT THE
26 ACCOUNTS AND TRANSACTIONS OF THE FACULTY FOR THE RESPIRATORY CARE
27 PRACTITIONER REHABILITATION PROGRAM AS PROVIDED IN § 2-1220 OF THE STATE
28 GOVERNMENT ARTICLE.~~

29 14-405.

30 (a) Except as otherwise provided in the Administrative Procedure Act, before
31 the Board takes any action under § 14-404(a) of this subtitle or § 14-5A-17(A) of this
32 title, it shall give the individual against whom the action is contemplated an
33 opportunity for a hearing before a hearing officer.

34 14-5A-17.

35 (a) Subject to the hearing provisions of § 14-405 of this title, the Board may
36 deny a license or temporary license to any applicant, reprimand any licensee or holder
37 of a temporary license, place any licensee or holder of a temporary license on

1 probation, or suspend or revoke a license or temporary license if the applicant,
2 licensee, or holder:

3 (1) Fraudulently or deceptively obtains or attempts to obtain a license or
4 temporary license for the applicant, licensee, or holder or for another;

5 (2) Fraudulently or deceptively uses a license or temporary license;

6 (3) Is guilty of unprofessional or immoral conduct in the practice of
7 respiratory care;

8 (4) Is professionally, physically, or mentally incompetent;

9 (5) Abandons a patient;

10 (6) Is habitually intoxicated;

11 (7) Is addicted to or habitually abuses any narcotic or controlled
12 dangerous substance as defined in Article 27 of the Code;

13 (8) Provides professional services while:

14 (i) Under the influence of alcohol; or

15 (ii) Using any narcotic or controlled dangerous substance as
16 defined in Article 27 of the Code or any other drug that is in excess of therapeutic
17 amounts or without valid medical indication;

18 (9) Promotes the sale of services, drugs, devices, appliances, or goods to a
19 patient so as to exploit the patient for financial gain;

20 (10) Willfully makes or files a false report or record in the practice of
21 respiratory care;

22 (11) Willfully fails to file or record any report as required under law,
23 willfully impedes or obstructs the filing or recording of a report, or induces another to
24 fail to file or record a report;

25 (12) Breaches patient confidentiality;

26 (13) Pays or agrees to pay any sum or provide any form of remuneration
27 or material benefit to any person for bringing or referring a patient or accepts or
28 agrees to accept any sum or any form of remuneration or material benefit from an
29 individual for bringing or referring a patient;

30 (14) Knowingly makes a misrepresentation while practicing respiratory
31 care;

32 (15) Knowingly practices respiratory care with an unauthorized
33 individual or aids an unauthorized individual in the practice of respiratory care;

1 (16) Offers, undertakes, or agrees to cure or treat disease by a secret
2 method, treatment, or medicine;

3 (17) Is disciplined by a licensing or disciplinary authority or is convicted
4 or disciplined by a court of any state or country or is disciplined by any branch of the
5 United States uniformed services or the Veterans' Administration for an act that
6 would be grounds for disciplinary action under the Board's disciplinary statutes;

7 (18) Fails to meet appropriate standards for the delivery of respiratory
8 care performed in any inpatient or outpatient facility, office, hospital or related
9 institution, domiciliary care facility, patient's home, or any other location in this
10 State;

11 (19) Knowingly submits false statements to collect fees for which services
12 are not provided;

13 (20) (i) Has been subject to investigation or disciplinary action by a
14 licensing or disciplinary authority or by a court of any state or country for an act that
15 would be grounds for disciplinary action under the Board's disciplinary statutes; and

16 (ii) The licensed individual:

17 1. Surrendered the license issued by the state or country; or

18 2. Allowed the license issued by the state or country to expire
19 or lapse;

20 (21) Knowingly fails to report suspected child abuse in violation of § 5-704
21 of the Family Law Article;

22 (22) Sells, prescribes, gives away, or administers drugs for illegal or
23 illegitimate medical purposes;

24 (23) Practices or attempts to practice beyond the authorized scope of
25 practice;

26 (24) Is convicted of or pleads guilty or nolo contendere to a felony or to a
27 crime involving moral turpitude whether or not any appeal or other proceeding is
28 pending to have the conviction or plea set aside;

29 (25) Refuses, withholds from, denies, or discriminates against an
30 individual with regard to the provision of professional services for which the licensee
31 is licensed and qualified to render because the individual is HIV positive; or

32 (26) Practices or attempts to practice a respiratory care procedure or uses
33 or attempts to use respiratory care equipment if the applicant, licensee, or holder has
34 not received education and training in the performance of the procedure or the use of
35 the equipment.

1 (b) Except as otherwise provided in the Administrative Procedure Act, before
 2 the Board takes any action under 14-5A-17(A) OF this section, it shall give the
 3 individual against whom the action is contemplated an opportunity for a hearing
 4 before the Board in accordance with the hearing requirements of § 14-405 of this title.

5 (C) (1) ON THE FILING OF CERTIFIED DOCKET ENTRIES WITH THE BOARD
 6 BY THE OFFICE OF THE ATTORNEY GENERAL, THE BOARD SHALL ORDER THE
 7 SUSPENSION OF A LICENSE IF THE LICENSEE IS CONVICTED OF OR PLEADS GUILTY
 8 OR NOLO CONTENDERE WITH RESPECT TO A CRIME INVOLVING MORAL TURPITUDE,
 9 WHETHER OR NOT ANY APPEAL OR OTHER PROCEEDING IS PENDING TO HAVE THE
 10 CONVICTION OR PLEA SET ASIDE.

11 (2) AFTER COMPLETION OF THE APPELLATE PROCESS IF THE
 12 CONVICTION HAS NOT BEEN REVERSED OR THE PLEA HAS NOT BEEN SET ASIDE
 13 WITH RESPECT TO A CRIME INVOLVING MORAL TURPITUDE, THE BOARD SHALL
 14 ORDER THE REVOCATION OF A LICENSE ON THE CERTIFICATION BY THE OFFICE OF
 15 THE ATTORNEY GENERAL.

16 14-5A-18.

17 (a) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND ~~(C)(D)~~ OF THIS SECTION,
 18 HOSPITALS, RELATED INSTITUTIONS, ALTERNATIVE HEALTH SYSTEMS AS DEFINED
 19 IN § 14-501 OF THIS TITLE, AND EMPLOYERS SHALL FILE WITH THE BOARD A REPORT
 20 THAT THE HOSPITAL, RELATED INSTITUTION, ALTERNATIVE HEALTH SYSTEM, OR
 21 EMPLOYER ~~DENIED AN APPLICATION, OR~~ LIMITED, REDUCED, OTHERWISE
 22 CHANGED, OR TERMINATED ANY LICENSED RESPIRATORY CARE PRACTITIONER FOR
 23 ANY REASONS THAT MIGHT BE GROUNDS FOR DISCIPLINARY ACTION UNDER §
 24 14-5A-17 OF THIS SUBTITLE.

25 (B) A HOSPITAL, RELATED INSTITUTION, ALTERNATIVE HEALTH SYSTEM, OR
 26 EMPLOYER THAT HAS REASON TO KNOW THAT A LICENSED RESPIRATORY CARE
 27 PRACTITIONER HAS COMMITTED AN ACTION OR HAS A CONDITION THAT MIGHT BE
 28 GROUNDS FOR REPRIMAND OR PROBATION OF THE LICENSED RESPIRATORY CARE
 29 PRACTITIONER OR SUSPENSION OR REVOCATION OF THE LICENSE BECAUSE THE
 30 LICENSED RESPIRATORY CARE PRACTITIONER IS ALCOHOL IMPAIRED OR DRUG
 31 IMPAIRED IS NOT REQUIRED TO REPORT THE PRACTITIONER TO THE BOARD IF:

32 (I) THE HOSPITAL, RELATED INSTITUTION, ALTERNATIVE HEALTH
 33 SYSTEM, OR EMPLOYER KNOWS THAT THE LICENSED RESPIRATORY CARE
 34 PRACTITIONER IS:

35 (I) IN AN ALCOHOL OR DRUG TREATMENT PROGRAM THAT IS
 36 ACCREDITED BY THE JOINT COMMISSION ON THE ACCREDITATION OF HEALTH CARE
 37 ORGANIZATIONS OR IS CERTIFIED BY THE DEPARTMENT; OR

38 (II) UNDER THE CARE OF A HEALTH CARE PRACTITIONER WHO IS
 39 COMPETENT AND CAPABLE OF DEALING WITH ALCOHOLISM AND DRUG ABUSE;

40 (2) THE HOSPITAL, RELATED INSTITUTION, ALTERNATIVE HEALTH
 41 SYSTEM, OR EMPLOYER IS ABLE TO VERIFY THAT THE LICENSED RESPIRATORY

1 CARE PRACTITIONER REMAINS IN THE TREATMENT PROGRAM UNTIL DISCHARGE;

2 AND

3 (3) THE ACTION OR CONDITION OF THE LICENSED RESPIRATORY CARE
4 PRACTITIONER HAS NOT CAUSED INJURY TO ANY PERSON WHILE THE
5 PRACTITIONER IS PRACTICING AS A LICENSED RESPIRATORY CARE PRACTITIONER.

6 (C) (1) IF THE LICENSED RESPIRATORY CARE PRACTITIONER ENTERS, OR IS
7 CONSIDERING ENTERING, AN ALCOHOL OR DRUG TREATMENT PROGRAM THAT IS
8 ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTH CARE
9 ORGANIZATIONS OR THAT IS CERTIFIED BY THE DEPARTMENT, THE LICENSED
10 RESPIRATORY CARE PRACTITIONER SHALL NOTIFY THE HOSPITAL, RELATED
11 INSTITUTION, ALTERNATIVE HEALTH SYSTEM, OR EMPLOYER OF THE LICENSED
12 RESPIRATORY CARE PRACTITIONER'S DECISION TO ENTER THE TREATMENT
13 PROGRAM.

14 (2) IF THE LICENSED RESPIRATORY CARE PRACTITIONER FAILS TO
15 PROVIDE THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, AND
16 THE HOSPITAL, RELATED INSTITUTION, ALTERNATIVE HEALTH SYSTEM, OR
17 EMPLOYER LEARNS THAT THE LICENSED RESPIRATORY CARE PRACTITIONER HAS
18 ENTERED A TREATMENT PROGRAM, THE HOSPITAL, RELATED INSTITUTION,
19 ALTERNATIVE HEALTH SYSTEM, OR EMPLOYER SHALL REPORT TO THE BOARD THAT
20 THE LICENSED RESPIRATORY CARE PRACTITIONER HAS ENTERED A TREATMENT
21 PROGRAM AND HAS FAILED TO PROVIDE THE REQUIRED NOTICE.

22 (3) IF THE LICENSED RESPIRATORY CARE PRACTITIONER IS FOUND TO
23 BE NONCOMPLIANT WITH THE TREATMENT PROGRAM'S POLICIES AND PROCEDURES
24 WHILE IN THE TREATMENT PROGRAM, THE TREATMENT PROGRAM SHALL NOTIFY
25 THE HOSPITAL, RELATED INSTITUTION, ALTERNATIVE HEALTH SYSTEM, OR
26 EMPLOYER OF THE LICENSED RESPIRATORY CARE PRACTITIONER'S
27 NONCOMPLIANCE.

28 (4) ON RECEIPT OF THE NOTIFICATION REQUIRED UNDER PARAGRAPH
29 (3) OF THIS SUBSECTION, THE HOSPITAL, RELATED INSTITUTION, ALTERNATIVE
30 HEALTH SYSTEM, OR EMPLOYER OF THE LICENSED RESPIRATORY CARE
31 PRACTITIONER SHALL REPORT THE LICENSED RESPIRATORY CARE PRACTITIONER'S
32 NONCOMPLIANCE TO THE BOARD.

33 ~~(C)~~ (D) A PERSON IS NOT REQUIRED UNDER THIS SECTION TO MAKE ANY
34 REPORT THAT WOULD BE IN VIOLATION OF ANY FEDERAL OR STATE LAW, RULE, OR
35 REGULATION CONCERNING THE CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE
36 PATIENT RECORDS.

37 ~~(B)~~ ~~(D)~~ (E) THE HOSPITAL, RELATED INSTITUTION, ALTERNATIVE HEALTH
38 SYSTEM, OR EMPLOYER SHALL SUBMIT THE REPORT WITHIN 10 DAYS OF ANY ACTION
39 DESCRIBED IN THIS SECTION.

40 ~~(C)~~ ~~(E)~~ (F) A REPORT MADE UNDER THIS SECTION IS NOT SUBJECT TO
41 SUBPOENA OR DISCOVERY IN ANY CIVIL ACTION OTHER THAN A PROCEEDING
42 ARISING OUT OF A HEARING AND DECISION OF THE BOARD UNDER THIS TITLE.

1 [14-5A-18.] 14-5A-19.

2 On the application of an individual whose license has been revoked, the Board,
3 on the affirmative vote of a majority of its full authorized membership, may reinstate
4 a revoked license.

5 [14-5A-19.] 14-5A-20.

6 Except as otherwise provided in this subtitle, a person may not practice, attempt
7 to practice, or offer to practice respiratory care in this State unless licensed to practice
8 respiratory care by the Board.

9 [14-5A-20.] 14-5A-21.

10 (a) Unless authorized to practice respiratory care under this subtitle, a person
11 may not represent to the public by title, by description of services, methods, or
12 procedures, or otherwise, that the person is authorized to practice respiratory care in
13 this State.

14 (b) Unless authorized to practice respiratory care under this subtitle, a person
15 may not use the abbreviation "R.C.P." or any other words, letters, or symbols with the
16 intent to represent that the person practices respiratory care.

17 [14-5A-21.] 14-5A-22.

18 A person may not provide, attempt to provide, offer to provide, or represent that
19 the person provides respiratory care unless the respiratory care is provided by an
20 individual who is authorized to practice respiratory care under this subtitle.

21 [14-5A-22.] 14-5A-23.

22 (A) A person who violates any provision of this subtitle is guilty of a
23 misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or
24 imprisonment not exceeding 1 year or both.

25 (B) ANY PERSON WHO VIOLATES § 14-5A-21 OF THIS SUBTITLE IS SUBJECT TO
26 A CIVIL FINE OF NOT MORE THAN \$5,000 TO BE LEVIED BY THE BOARD.

27 (C) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS SECTION
28 INTO THE BOARD OF PHYSICIAN QUALITY ASSURANCE FUND.

29 [14-5A-23.] 14-5A-24.

30 This subtitle may be cited as the "Maryland Respiratory Care Practitioners Act".
31 [14-5A-24.] 14-5A-25.

32 Subject to the evaluation and reestablishment provisions of the Maryland
33 Program Evaluation Act, this subtitle and all rules and regulations adopted under
34 this subtitle shall terminate and be of no effect after July 1, 2006.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2001.