

No. 2008-45

AN ACT

HB 1804

Amending the act of December 20, 1985 (P.L.457, No.112), entitled "An act relating to the right to practice medicine and surgery and the right to practice medically related acts; reestablishing the State Board of Medical Education and Licensure as the State Board of Medicine and providing for its composition, powers and duties; providing for the issuance of licenses and certificates and the suspension and revocation of licenses and certificates; providing penalties; and making repeals," further providing for definitions and for the State Board of Medicine; providing for jointly promulgated regulations; and further providing for physician assistants, for respiratory care practitioners, for physicians assistants license and for respiratory care practitioner certificates and permits.

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

Section 1. The definitions of "board regulated practitioner" and "respiratory care practitioner" in section 2 of the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, amended or added July 2, 1993 (P.L.424, No.60) and December 10, 2001 (P.L.859, No.92), are amended to read:

Section 2. Definitions.

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

* * *

"Board regulated practitioner." A medical doctor, midwife, physician assistant, respiratory **[care practitioner] therapist**, certified athletic trainer or drugless therapist or an applicant for a license or certificate the board may issue.

* * *

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

* * *

Section 2. Section 3(a) and (b) of the act, amended June 11, 2008 (P.L.154, No.19), are amended to read:

Section 3. State Board of Medicine.

(a) Establishment.—The State Board of Medicine shall consist of the commissioner or his designee, the Secretary of Health or his designee, two members appointed by the Governor who shall be persons representing the public at large and seven members appointed by the Governor, six of whom shall be medical doctors with unrestricted licenses to practice medicine and surgery in this Commonwealth for five years immediately preceding their

appointment and one who shall be a nurse midwife, physician assistant, certified registered nurse practitioner, respiratory **[care practitioner] therapist**, certified athletic trainer or perfusionist licensed or certified under the laws of this Commonwealth. 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.

(b) Terms of office.—The term of each professional and public member of the board shall be four years or until his or her successor has been appointed and qualified, but not longer than six months beyond the four-year period. In the event that any of said members shall die or resign or otherwise become disqualified during his or her term, a successor shall be appointed in the same way and with the same qualifications and shall hold office for the unexpired term. No member shall be eligible for appointment to serve more than two consecutive terms. The Governor shall assure that nurse midwives, physician assistants, certified registered nurse practitioners, perfusionists and respiratory **[care practitioners] therapists** are appointed to four-year terms on a rotating basis so that, of every four appointments to a four-year term, one is a nurse midwife, one is a physician assistant, one is a certified registered nurse practitioner and one is a respiratory **[care practitioner] therapist**.

Section 3. The act is amended by adding a section to read:

Section 8.1. Jointly promulgated regulations.

The State Board of Medicine and the State Board of Osteopathic Medicine shall jointly promulgate regulations implementing sections 13.1 and 36.1, relating to the licensure and practice of respiratory therapists.

Section 4. Section 13 of the act is amended by adding subsections to read:

Section 13. Physician assistants.

(c.1) Except as limited by subsection (c.2), and in addition to existing authority, a physician assistant shall have authority to do all of the following, provided that the physician assistant is acting within the supervision and direction of the supervising physician:

(1) Order durable medical equipment.

(2) Issue oral orders to the extent permitted by a health care facility's bylaws, rules, regulations or administrative policies and guidelines.

(3) Order physical therapy and dietitian referrals.

(4) Order respiratory and occupational therapy referrals.

(5) Perform disability assessments for the program providing Temporary Assistance to Needy Families (TANF).

(6) Issue homebound schooling certifications.

(7) Perform and sign the initial assessment of methadone treatment evaluations in accordance with Federal and State law and regulations,

provided that any order for methadone treatment shall be made only by a physician.

(c.2) Nothing in this section shall be construed to:

(1) Supersede the authority of the Department of Health and the Department of Public Welfare to regulate the types of health care professionals who are eligible for medical staff membership or clinical privileges.

(2) Restrict the authority of a health care facility to determine the scope of practice and supervision or other oversight requirements for health care professionals practicing within the facility.

** * **

Section 5. Section 13.1 of the act, added July 2, 1993 (P.L.424, No.60), is amended to read:

Section 13.1. Respiratory [care practitioners] *therapists*.

[(a) Certificate required.—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) Use of title.—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.”]

(a) Qualifications.—An individual shall be eligible to apply for licensure as a respiratory therapist if that individual satisfies all of the following:

(1) Submits evidence satisfactory to the board, on forms approved by the board, that the applicant has met one or more of the following criteria:

(i) Has graduated from a respiratory care program approved by the Committee on Accreditation for Respiratory Care and passed the Certified Respiratory Therapist Examination as determined by the National Board for Respiratory Care.

(ii) Holds a valid license, certificate or registration as a respiratory therapist in another state, territory or the District of Columbia which has been issued based on requirements substantially similar to those required by the Commonwealth, including having successfully passed the entry level examination.

(2) Has paid a licensure fee as established by the board by regulation.

(3) Has proved to the satisfaction of the board that the individual is of good moral character and is not unfit or unable to practice as a respiratory therapist by reason of physical or mental impairment.

(a.1) License required.—It shall be unlawful for any individual to hold himself out to the public as a respiratory therapist or to practice or offer to practice respiratory therapy unless the individual holds a valid, current license issued by the board or the State Board of Osteopathic Medicine.

(a.2) Use of title.—It shall be unlawful for an individual to use the title of “licensed respiratory therapist” or to use the letters “LRT” or “RT” or to hold oneself out as a licensed respiratory therapist unless that individual is licensed to practice respiratory care as provided under this act or the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act.

(b) Licensure without examination.—For a period of two years following the effective date of this act, an individual shall be eligible to apply for licensure without examination if the individual meets the qualifications for licensure under subsection (a) and holds valid certification as a respiratory care practitioner as issued by the board or the State Board of Osteopathic Medicine.

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

(d) Supervision and scope of practice.—A respiratory [**care practitioner certified**] *therapist licensed* 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 *by a physician, certified registered nurse practitioner or physician assistant*, 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) Exemptions.—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) Referrals to State Board of Osteopathic Medicine.—Information or allegations filed with the board against a respiratory **[care practitioner certified] therapist licensed** by the State Board of Osteopathic Medicine shall be referred to that board for appropriate action.

Section 6. Section 36 of the act, amended December 9, 2002 (P.L.1344, No.160), is amended to read:

Section 36. Physician assistant license.

(a) General rule.—A physician assistant license empowers the holder to assist a medical doctor in the provision of medical care and services under the supervision and direction of that medical doctor as provided in this act.

(b) Requirements.—No physician assistant license may be issued to the applicant unless the requirements set forth by this act and such rules and regulations issued by the board are met, including requirements for the physician assistant training and educational programs which shall be formulated by the board in accordance with such national criteria as are established by national organizations or societies as the board may accept.

(c) Criteria.—The board shall grant physician assistant licenses to applicants who have fulfilled the following criteria:

(1) Satisfactory performance on the proficiency examination to the extent that a proficiency examination exists.

(2) Satisfactory completion of a certified program for the training and education of physician assistants.

(3) For candidates for initial licensure after January 1, 2004, obtainment of a baccalaureate or higher degree from a college or university and completion of not less than 60 clock hours of didactic instruction in pharmacology or other related courses as the board may approve by regulation.

(d) Biennial renewal.—A physician assistant license shall be subject to biennial renewal by the board. *As part of biennial renewal, a physician*

assistant shall complete continuing medical education as required by the National Commission on Certification of Physician Assistants.

(e) Description of manner of assistance.—The application shall include a written request from the applicant's supervising medical doctor who shall file with the board a description of the manner in which the physician assistant will assist the supervising medical doctor, which description shall be subject to the approval of the board.

(f) Professional liability.—

(1) A licensed physician assistant in this Commonwealth shall maintain a level of professional liability insurance coverage in the minimum amount of \$1,000,000 per occurrence or claims made. Failure to maintain insurance coverage as required shall subject the licensee to disciplinary proceedings. The board shall accept from physician assistants as satisfactory evidence of insurance coverage any of the following:

(i) self-insurance;

(ii) personally purchased liability insurance; or

(iii) professional liability insurance coverage provided by the physician assistant's employer or similar insurance coverage acceptable to the board.

(2) A license applicant shall provide proof that the applicant has obtained professional liability insurance in accordance with paragraph (1). It is sufficient if the applicant files with the application a copy of a letter from the applicant's professional liability insurance carrier indicating that the applicant will be covered against professional liability in the required amounts effective upon the issuance of the applicant's license to practice as a physician assistant in this Commonwealth. Upon issuance of the license, the licensee has 30 days to submit to the board the certificate of insurance or a copy of the policy declaration page.

Section 7. Section 36.1 of the act, amended or added July 2, 1993 (P.L.424, No.60) and July 2, 2004 (P.L.484, No.55), is amended to read:

Section 36.1. Respiratory [care practitioner certificates] *therapist licenses* and permits.

(a) General rule.—A respiratory [care practitioner certificate] *therapist license* 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) Temporary permits.—The board shall issue temporary permits for the practice of respiratory care to individuals who have applied for [certification] *licensure* 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 Therapist” 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.] *Recognition as a credentialed respiratory therapist as approved by the board.*

(c) Duration and effect of temporary permits.—Temporary permits shall be valid for a period of 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] *the temporary permit holder* 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] *licensure* examination administered by the board. The board is authorized to promulgate regulations to establish procedures for application, credentials verification, examination and [certification] *licensure*, together with appropriate fees.

(d) Examination.—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] *licensure* 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] *therapists*. 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) Biennial renewal.—A respiratory [care practitioner certificate] *therapist license* 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.

(f) Continuing education.—

(1) The board shall adopt, promulgate and enforce rules and regulations consistent with the provisions of this act establishing requirements of continuing education to be met by individuals holding **[certification] licensure** as respiratory **[care practitioners] therapists** under this act as a condition **[for certificate] of biennial license** renewal. The regulations shall include any fees necessary for the board to carry out its responsibilities under this section.

(2) Beginning with the **[license period designated by regulation, certificate] first biennial license renewal period following promulgation of regulations, license** holders shall be required to attend and complete **[20] 30** hours of mandatory continuing education during each two-year **[certificate] license** period. *At least one credit hour shall be in ethics, and one credit hour shall be in patient safety.*

(3) An individual applying for the first time for **[certification] licensure** in this Commonwealth shall be exempted from the continuing education requirement for the biennial renewal period **[following initial certification] in which licensure is obtained.**

(4) **[The board may waive all or a portion of the continuing education requirement for biennial renewal for a certificate holder who shows to the satisfaction of the board that he or she was unable to complete the requirements due to serious illness, military service or other demonstrated hardship. The request shall be made in writing, with appropriate documentation, and shall include a description of circumstances sufficient to show why the certificate holder is unable to comply with the continuing education requirement. Waiver requests shall be evaluated by the board on a case-by-case basis. The board shall send the certificate holder written notification of its approval or denial of a waiver request.]** *The board shall, by regulation, provide for the waiver of continuing education requirements in case of illness, hardship and armed services duties. A request for waiver shall be evaluated on a case-by-case basis.*

(5) A **[certificate holder] licensee** seeking to reinstate an inactive or lapsed **[certificate] license** shall show proof of compliance with the continuing education requirement for the preceding biennium.

(6) All courses, locations, instructors and providers shall be approved by the board. No credit shall be given for any course in office management *or practice building.*

[(7) The board shall initiate the promulgation of regulations to carry out the provisions of this section within one year of the effective date of this section.]

Section 8. (a) The State Board of Osteopathic Medicine and the State Board of Medicine shall jointly promulgate regulations to implement the

amendment or addition of sections 2, 3(a) and (b), 8.1, 13.1 and 36.1 of the act within 18 months of the effective date of this section.

(b) The State Board of Medicine, the Department of Public Welfare and the Department of Health shall promulgate regulations to implement the addition of section 13(c.1) and (c.2) of the act within 18 months of the effective date of this section.

Section 9. The following acts and parts of acts are repealed insofar as they are inconsistent with the addition of section 13(c.1) and (c.2) of the act:

(1) Section 9(a) of the act of October 10, 1975 (P.L.383, No.110), known as the Physical Therapy Practice Act.

(2) Section 14 of the act of June 15, 1982 (P.L.502, No.140), known as the Occupational Therapy Practice Act.

Section 10. This act shall take effect as follows:

- (1) This section shall take effect immediately.
- (2) Section 8 of this act shall take effect immediately.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED—The 4th day of July, A.D. 2008.

EDWARD G. RENDELL