

No. 2008-46

AN ACT

HB 2088

Amending the act of October 5, 1978 (P.L.1109, No.261), entitled "An act requiring the licensing of practitioners of osteopathic medicine and surgery; regulating their practice; providing for certain funds and penalties for violations and repeals," further providing for definitions, for the State Board of Osteopathic Medicine, for prohibition on practice without license, for physician assistants, for respiratory care practitioners, for respiratory care practitioner certificates and permits and for reasons for refusal, revocation or suspension of license; and providing for regulations.

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 October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, amended or added July 2, 1993 (P.L.418, No.59) and December 10, 2001 (P.L.863, No.93), are amended to read:

Section 2. Definitions.

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

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

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

Section 2. Section 2.1(a) of the act, amended June 11, 2008 (P.L.161, No.20), is amended to read:

Section 2.1. State Board of Osteopathic Medicine.

(a) The State Board of Osteopathic Medicine shall consist of the Commissioner of Professional and Occupational Affairs or his designee; the Secretary of Health or his designee; two members appointed by the Governor who shall be persons representing the public at large; one member appointed by the Governor who shall be a respiratory [**care practitioner**] *therapist*, a perfusionist, a physician assistant or a certified athletic trainer; and six members appointed by the Governor who shall be graduates of a legally incorporated and reputable college of osteopathic medicine and shall have been licensed to practice osteopathic medicine under the laws of this

Commonwealth and shall have been engaged in the practice of osteopathy in this Commonwealth for a period of at least five years. All professional and public members of the board shall be appointed by the Governor with the advice and consent of a majority of the members elected to the Senate. The Governor shall assure that respiratory **[care practitioners] therapists**, perfusionists, physician assistants and certified athletic trainers are appointed to four-year terms on a rotating basis.

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Section 3. Section 3 of the act, amended July 2, 2004 (P.L.486, No.56), is amended to read:

Section 3. Practice of osteopathic medicine and surgery without license prohibited.

(a) It shall be unlawful for any person to engage in the practice of osteopathic medicine and surgery, or pretend to a knowledge of any branch or branches of osteopathic medicine and surgery, or to hold himself out as a practitioner in osteopathic medicine and surgery, or to assume the title of Doctor of Osteopathic Medicine and Surgery or doctor of any specific disease, or to diagnose diseases or to treat diseases by the use of osteopathic medicine and surgery or by any other means, or to sign any birth or death certificate unless otherwise authorized by law, or to hold himself out as able to do so, unless he has received a certificate of licensure or permission from the board which license shall be recorded in the office of the board.

(b) Nothing in this act shall be construed to prohibit services and acts rendered by a qualified physician assistant, technician or other allied medical person if such services and acts are rendered under the supervision, direction or control of a licensed physician. It shall be unlawful for any person to practice as a physician assistant unless licensed and approved by the board. It shall also be unlawful for any physician assistant to render medical care and services except under the supervision and direction of the supervising physician. *A physician assistant may use the title physician assistant or an appropriate abbreviation for that title, such as "P.A.-C."*

Section 4. Section 10(f) of the act, amended July 2, 2004 (P.L.486, No.56), is amended and the section is amended by adding subsections to read:

Section 10. Licenses; exemptions; nonresident practitioners; graduate students; biennial registration and continuing medical education.

* * *

(f) The board shall grant licensure to physician assistants which licensure 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.* The board shall grant licensure to applicants who have fulfilled the following criteria:

(1) Satisfactory performance on a proficiency examination approved by the board.

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

(3) For candidates for initial licensure after January 1, 2005, obtainment of a baccalaureate or higher degree from a college or university and completion of not fewer than 60 clock hours of didactic instruction in pharmacology or other related courses as the board may approve by regulation.

In the event that completion of a formal training and educational program is a prerequisite to taking the proficiency examination, the board shall have the power, if it determines that the experience of the applicant is of such magnitude and scope so as to render further formal training and education nonessential to the applicant in assisting a physician in the provision of medical care and services, to waive the training and education requirements under this section.

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(g.2) (1) Except as limited by paragraph (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:

(i) Order durable medical equipment.

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

(iii) Order physical therapy and dietitian referrals.

(iv) Order respiratory and occupational therapy referrals.

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

(vi) Issue homebound schooling certifications.

(vii) Perform and sign the initial assessment of methadone treatment evaluations in accordance with Federal and State law, provided that any order for methadone treatment shall be made only by a physician.

(2) Nothing in this subsection shall be construed to:

(i) 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.

(ii) 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.

(g.3) 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.

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Section 5. Section 10.1 of the act, added July 2, 1993 (P.L.418, No.59), is amended to read:

Section 10.1. Respiratory [care practitioners] *therapists*.

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

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

(a) 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 entry level 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 this Commonwealth, including having successfully passed an examination.

(2) Has paid the 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) 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 care unless the individual holds a valid, current license issued by the board or the State Board of Medicine.

(a.2) It shall be unlawful for an individual to use the title of "licensed respiratory therapist" or to use the letters "L.R.T." or "R.T." 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 December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985.

(b) For a period of two years following the effective date of this subsection, an individual shall be eligible to apply for licensure without examination if the individual meets the qualifications for licensure under section 10.2 and holds valid certification as a respiratory care practitioner as issued by the board or the State Board of Medicine.

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

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

(1) A person licensed or certified in this Commonwealth to provide another health care service, including, but not limited to, physicians, physical therapists, chiropractors, nurses, dentists, physician assistants and podiatrists.

(2) A person rendering respiratory care services pursuant to employment by a Federal agency.

(3) A person pursuing a course of study leading to a degree or certificate in respiratory care in an accredited educational program if he is clearly designated as a student and provides care under supervision implemented through that program.

(4) A person executing or conveying medical orders pursuant to lawful delegation by a physician.

(5) A person who, pursuant to lawful delegation by a physician, delivers, installs, monitors or maintains a device which enables an individual to self-administer respiratory care.

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

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

Section 6. Section 10.2 of the act, amended or added July 2, 1993 (P.L.418, No.59) and July 2, 2004 (P.L.486, No.56), is amended to read:

Section 10.2. Respiratory **[care practitioner certificates] therapist licenses** and permits.

(a) 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) 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) Temporary permits shall be valid for 12 months and for such additional period as the board may, in each case, specially determine, except that a temporary permit shall expire if the holder fails the examination. An appropriate fee for a temporary permit shall be established by the board by regulation. If [he] *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) 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] *therapists*. [At least one administration of this examination shall be given within 12 months of the effective date of this section, and the] *The* examination shall [thereafter] be given at least twice per year. [An individual qualifying for a temporary permit under subsection (b)(5) shall be issued a certificate by the board without examination. An individual qualifying for a temporary permit under subsection (b)(3) shall be issued a certificate by the board without examination if the individual passed an examination in order to obtain designation as a “Certified Respiratory Therapy Technician” or a “Registered Respiratory Therapist” and that examination was comparable to the examination developed and administered pursuant to this subsection.]

(e) A respiratory [care practitioner certificate] *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) (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] 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 **first biennial license renewal period [designated by regulation, certificate] 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] licensure** 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 the individual 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 service 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 subsection.]

Section 7. Section 15(b) of the act, amended July 2, 2004 (P.L.486, No.56), is amended to read:

Section 15. Reasons for refusal, revocation or suspension of license.

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(b) The board shall have authority to refuse, revoke or suspend the license of a physician assistant **or respiratory therapist**, or the certification of a **[respiratory care practitioner or]** certified athletic trainer for any or all of the following reasons:

(1) Failing to demonstrate the qualification for licensure or certification contained in this act or regulations of the board.

(2) Making misleading, deceptive, untrue or fraudulent representations in his serving as a physician assistant; practicing fraud or deceit in obtaining a license to serve as a physician assistant; or making a false or deceptive biennial registration with the board.

(3) Conviction of a felony in this Commonwealth or any other state, territory or country. Conviction as used in this paragraph shall include a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere, or receiving probation without verdict, disposition in lieu of trial, or an Accelerated Rehabilitative Disposition in the disposition of felony charges.

(4) Having his license to serve as a physician assistant revoked or suspended or having other disciplinary action taken, or his application for licensure refused, revoked or suspended by the proper certifying authority of another state, territory or country.

(5) Being unable to serve as a physician assistant with reasonable skill and safety to the physician's patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(6) In enforcing paragraph (5), the board shall, upon probable cause, have authority to compel a physician assistant to submit to a mental or physical examination by physicians designated by it. Failure of a physician assistant to submit to such examination shall constitute an admission of the allegations against him unless the failure is due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A physician assistant affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent assistance of a physician in the physician's practice of medicine, with reasonable skill and safety to the physician's patients.

(7) Violating a lawful regulation promulgated by the board or violating a lawful order of the board, previously entered by the board in a disciplinary proceeding.

(8) Knowingly rendering medical care and services except under the supervision and direction of the supervising physician.

(9) Being guilty of immoral or unprofessional conduct shall include any departure from, or the failure to conform to, the standards of acceptable and prevailing practice for physician assistants, in which proceeding actual injury to a patient need not be established.

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Section 8. (a) The State Board of Osteopathic Medicine and the State Board of Medicine shall jointly promulgate regulations to implement the amendment of sections 2, 2.1(a), 10.1, 10.2 and 15(b) of the act within 18 months of the effective date of this section.

(b) The State Board of Osteopathic Medicine, the Department of Public Welfare and the Department of Health shall promulgate regulations to implement the addition of section 10(g.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 10(g.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