



SENATE BILL NO. 2527

AN ACT TO REENACT AND AMEND SECTIONS 73-57-1, 73-57-3, 73-57-5, 73-57-7, 73-57-9, 73-57-11, 73-57-13, 73-57-15, 73-57-17, 73-57-21, 73-57-25, 73-57-27, 73-57-29, 73-57-31, 73-57-33, 73-57-35, 73-57-37 AND 73-57-39, MISSISSIPPI CODE OF 1972, WHICH IS THE MISSISSIPPI RESPIRATORY CARE PRACTICE ACT, TO REVISE DEFINITIONS, TO PROVIDE FOR APPOINTMENTS TO THE RESPIRATORY CARE ADVISORY COUNCIL, TO CLARIFY THE DUTIES OF THE STATE BOARD OF HEALTH, TO REFERENCE LICENSURE AND CREDENTIALING QUALIFICATIONS ESTABLISHED BY THE NATIONAL BOARD FOR RESPIRATORY CARE AND DELETE CERTAIN STATUTORY EDUCATIONAL QUALIFICATIONS AND CRITERIA FOR LICENSURE, TO PROVIDE FOR TEMPORARY PERMITS, TO CLARIFY PROFESSIONAL IDENTIFICATION, TO PROVIDE FOR LICENSE RENEWAL NOTICE, TO CLARIFY UNLICENSED PRACTICE; TO REPEAL SECTION 73-57-19, MISSISSIPPI CODE OF 1972, WHICH PROVIDES STATUTORY REQUIREMENTS FOR EXAMINATIONS FOR LICENSURE IN RESPIRATORY CARE; TO REPEAL SECTION 73-57-23, MISSISSIPPI CODE OF 1972, WHICH PROVIDES A GRANDFATHER PROVISION FOR LICENSURE IN RESPIRATORY CARE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 73-57-1, Mississippi Code of 1972, is reenacted as follows:

73-57-1. This chapter shall be known and may be cited as the "Mississippi Respiratory Care Practice Act."

**SECTION 2.** Section 73-57-3, Mississippi Code of 1972, is reenacted as follows:

73-57-3. In order to safeguard the public health, safety and welfare; to insure the highest degree of professional conduct on the part of respiratory care practitioners; and to insure the availability of high quality respiratory care services, it is the purpose of this chapter to provide for the regulation of persons offering respiratory care services to the public.

**SECTION 3.** Section 73-57-5, Mississippi Code of 1972, is amended as follows:

73-57-5. The following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Board" shall mean the Mississippi State Board of Health.

(b) "Council" shall mean the Respiratory Care Advisory Council.

(c) "License" shall mean the document of licensure issued by the board.

(d) "Respiratory care" shall mean the allied health profession responsible for the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system, pursuant to the orders of a physician licensed in the State of Mississippi.

(e) "Practice of respiratory care" shall include, but not be limited to: 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, pulmonary rehabilitative or diagnostic regimen prescribed by a physician; transcription and implementation of the written or verbal orders of a physician pertaining to the practice of respiratory care; observing and monitoring signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics; and implementation based on observed abnormalities, of appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a person authorized to practice medicine under the laws of the State of Mississippi; or the initiation of emergency procedures under the regulations of the board or as otherwise permitted in this chapter. The practice of respiratory care may be performed in any clinic, hospital, skilled

nursing facility, and private dwelling, or other place deemed appropriate or necessary by the board, in accordance with the prescription or verbal order of a physician \* \* \*.

(f) "Performance of respiratory care" means respiratory care in accordance with the prescription of a licensed physician and includes, but is not limited to, the diagnostic and therapeutic use of the following: administration of medical gases (except for the purpose of anesthesia), aerosols and humidification; environmental control mechanisms and hyperbaric therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; cardiopulmonary resuscitation; maintenance of the natural airway; insertion and maintenance of artificial airways; specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of pulmonary abnormalities, including measurements of ventilatory volumes, pressures, flows, collection of specimens of blood and blood gases, expired and inspired gas samples, respiratory secretions, and pulmonary function testing; and hemodynamic and other related physiologist measurements of the cardiopulmonary system.

(g) "Respiratory care practitioner" means:

(i) A person employed in the practice of respiratory care who has the knowledge and skill necessary to administer respiratory care as defined in subsections (e) and (f) of this section;

(ii) A person who is capable of serving as a resource to the physician in relation to the technical aspects of respiratory care as to safe and effective methods for administering respiratory care modalities;

(iii) A person who is able to function in situations of unsupervised patient contact requiring great individual judgment; and

(iv) A person capable of supervising, directing and teaching less skilled personnel in the provision of respiratory care services.

\* \* \*

(h) Respiratory care includes "inhalation therapy" and "respiratory therapy."

**SECTION 4.** Section 73-57-7, Mississippi Code of 1972, is amended as follows:

73-57-7. (1) There is established the Respiratory Care Advisory Council under the jurisdiction of the State Board of Health. The purpose of the council is to advise the State Board of Health on matters relative to the administration and interpretation of the provisions of this chapter. The council shall consist of nine (9) members, all citizens of the United States and residents of this state. There shall be one (1) public member, three (3) physician members consisting of a member of the American College of Chest Physicians, a member of the American Society of Anesthesiologists, and a member of the American Thoracic Society, and five (5) members \* \* \* engaged in the practice of respiratory care for a period of not less than five (5) years preceding their appointment to the council and who are members of the American Association for Respiratory Care and/or its state affiliate. At least one (1) member of the council who is engaged in the practice of respiratory care shall also be a licensed registered nurse.

(2) The State Board of Health shall appoint the members of the council for terms of four (4) years \* \* \*, with no member being appointed for more than three (3) consecutive terms and with the respiratory care practitioner members being licensed under the provisions of this chapter. Vacancies in the council shall be filled by appointment by the State Board of Health in like manner for the balance of the unexpired term and each member shall serve until his successor is appointed by the board in like manner for

the balance of an unexpired term and each member shall serve until his successor is appointed and qualified.

(3) Upon expiration of the term of a physician member, the state societies of the American College of Chest Physicians, American Society of Anesthesiologists or American Thoracic Society may each, as appropriate, submit to the State Board of Health a list of \* \* \* persons qualified to serve on the council replacing the expired term of their respective member. Upon expiration of the term of any respiratory care practitioner member, the state society of the American Association for Respiratory Care may submit to the State Board of Health a list of \* \* \* qualified to serve for each position vacated. Appointments may be made from these lists by the board and additional lists may be provided by the respective organizations if requested by the board.

(4) The State Board of Health shall remove any member from the council for neglect of any duty required by law or for incompetency or unethical or dishonorable conduct.

**SECTION 5.** Section 73-57-9, Mississippi Code of 1972, is reenacted as follows:

73-57-9. (1) The council shall meet at least twice each year and shall elect annually during odd numbered years, a chairman from its physician members and from its respiratory care members a vice chairman. In even numbered years, it shall elect from its respiratory care members a chairman and from its physician members a vice chairman. The council may convene at the request of the chairman or as the board may determine for such other meetings as may be deemed necessary to transact its business.

(2) A majority (five (5)) of the members of the council, including the chairman or vice chairman, constitute a quorum at any meeting and a majority of the required quorum is sufficient for the council to take action by vote.

**SECTION 6.** Section 73-57-11, Mississippi Code of 1972, is amended as follows:

73-57-11. The board, with the advice of the council, shall:

(a) Examine, license and renew the license of duly qualified applicants.

(b) Maintain an up-to-date list of every living person licensed to practice respiratory care under this chapter. The list shall show the licensee's last-known place of employment, last-known place of residence, and the date and number of his license/certificate.

\* \* \*

(c) Cause the prosecution of all persons violating this chapter and incur necessary expenses therefor.

(d) Keep a record of all proceedings of the board and such record shall be made available to the public for inspection during reasonable business hours.

(e) Conduct hearings upon charges for discipline of a licensee, or denial, revocation or suspension of a license.

(f) Maintain an up-to-date list of persons whose license has been suspended, revoked or denied. This list shall include the name(s), social security numbers, type and cause of sanction, date and penalty incurred, and the length of penalty. This list shall be available for public inspection during reasonable business hours. This list shall be supplied to similar boards in other states upon request.

**SECTION 7.** Section 73-57-13, Mississippi Code of 1972, is reenacted as follows:

73-57-13. The board, with the advice of the council, may:

(a) Adopt such rules and regulations not inconsistent with the law as may be necessary to carry into effect the provisions of this chapter. Rules and regulations shall be adopted in accordance with the Administrative Procedures Law of the State of Mississippi.

(b) Employ such personnel as necessary to perform the functions of the board.

(c) Establish licensure requirements and procedures as deemed appropriate.

(d) Secure the services of resource consultants as deemed necessary by the board. Resource consultants shall receive travel and other necessary expenses, consistent with state laws and policies, incurred while engaged in consultative service to the board.

(e) Enter into agreements or contracts, consistent with state law, with outside organizations for the purpose of developing, administering, grading and/or reporting the results of licensing examinations. Such groups shall be capable of meeting the standards of the National Commission for Health Certifying Agencies, or its equivalent. The licensing examinations shall be validated and nationally recognized as testing respiratory care competencies.

**SECTION 8.** Section 73-57-15, Mississippi Code of 1972, is reenacted as follows:

73-57-15. (1) A member of the council shall receive compensation at the daily rate authorized by law for similar boards within this state plus actual and necessary travel and other expenses incurred while engaged in the discharge of official duties in accordance with the standard travel regulations of the State of Mississippi.

(2) Members of the council shall enjoy the same rights of protection from personal liability as those enjoyed by other employees of the state for actions taken while acting under the provisions of this chapter and in the course of their duties.

**SECTION 9.** Section 73-57-17, Mississippi Code of 1972, is amended as follows:

73-57-17. (1) An applicant for a license to practice respiratory care shall submit to the board written evidence,

verified by oath, that the applicant holds a credential, conferred by the National Board of Respiratory Care, as a Certified Respiratory Technician (CRT) and/or as a Registered Respiratory Therapist (RRT), or their successor credentials, providing such credential has not been suspended or revoked, or at the time of application has not lapsed.

\* \* \*

(2) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

**SECTION 10.** Section 73-57-21, Mississippi Code of 1972, is amended as follows:

73-57-21. Upon payment of a fee, the board may issue a temporary permit to practice respiratory care for a period of six (6) months to an applicant for licensing \* \* \* who is a student in an \* \* \* approved respiratory care education program who expects to graduate within the next thirty (30) calendar days and who is eligible to sit for the CRT, RRT, or their successor examination. \* \* \*

**SECTION 11.** Section 73-57-25, Mississippi Code of 1972, is amended as follows:

73-57-25. \* \* \* A person holding a license to practice respiratory care in this state may use the title "licensed respiratory care practitioner" and the abbreviation "L.R.C.P.", "RCP" or "RCP-L".

\* \* \*

**SECTION 12.** Section 73-57-27, Mississippi Code of 1972, is amended as follows:

73-57-27. (1) A license shall be renewed biennially beginning with the first renewal term after the issuance of the license, except as herein provided. \* \* \* The board shall provide notice of renewal at least thirty (30) calendar days prior to expiration for renewal of license to every person to whom a

license was issued or renewed during the preceding renewal period. The notice of renewal shall indicate the renewal process and required fees required to be completed before the date of expiration.

(2) Upon receipt of the notice of renewal and the fee, the board shall verify its contents and shall issue the licensee a license for the current renewal period, which shall be valid for the period stated thereon. The board, with the advice of the council, shall establish continuing education requirements for biennial renewal of the license, which shall include proof of completion of at least fifteen (15) clock hours approved by the board for continuing education credit.

(3) A licensee who allows his license to lapse by failing to renew it may be reinstated by the board upon payment of the renewal fee and reinstatement fee provided that such request for reinstatement is made within two (2) years of the end of the renewal period.

(4) A respiratory care practitioner who does not engage in the practice of respiratory care during the succeeding renewal period is not required to pay the renewal fee as long as he remains inactive. If he desires to resume the practice of respiratory care, he shall notify the board of his intent and shall satisfy the current requirements of the board in addition to remitting the renewal fee for the current renewal period and the reinstatement fee. \* \* \*

(5) The board is authorized to establish fees for replacement and duplicate licenses.

**SECTION 13.** Section 73-57-29, Mississippi Code of 1972, is reenacted as follows:

73-57-29. All fees established by the board under this chapter shall be set in such an amount as is necessary to reimburse the state for the cost of services rendered, not to exceed a biennial sum of Two Hundred Fifty Dollars (\$250.00) to be

paid by any individual. Fees received by the board and monies collected under this chapter shall be deposited in the State Treasury to the credit of the Respiratory Care Fund. Expenses incurred in the performance of this chapter shall be paid in accordance with the accounting laws of the state.

**SECTION 14.** Section 73-57-31, Mississippi Code of 1972, is reenacted as follows:

73-57-31. (1) The board may revoke, suspend or refuse to renew any license or permit, or place on probation, or otherwise reprimand a licensee or permit holder, or deny a license to an applicant if it finds that person:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license or renewal of a license to practice respiratory care.

(b) Is unfit or incompetent by reason of negligence, habits or other causes of incompetency.

(c) Is habitually intemperate in the use of alcoholic beverages.

(d) Is addicted to, or has improperly obtained, possessed, used or distributed habit-forming drugs or narcotics.

(e) Is guilty of dishonest or unethical conduct.

(f) Has practiced respiratory care after his license or permit has expired or has been suspended.

(g) Has practiced respiratory care under cover of any permit or license illegally or fraudulently obtained or issued.

(h) Has violated or aided or abetted others in violation of any provision of this chapter.

(2) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license or permit of any licensee or permit holder for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license or permit for being out of compliance with an order for support, and the

procedure for the reissuance or reinstatement of a license or permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license or permit suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**SECTION 15.** Section 73-57-33, Mississippi Code of 1972, is amended as follows:

73-57-33. (1) Upon the filing of a written complaint with the board, charging a person with having committed any of the acts described in Section 73-57-31, the \* \* \* authorized employee of the board, shall make an investigation. If the board finds reasonable grounds for the complaint, a time and place for a hearing will be set, notice of which shall be served on the licensee, permit holder or applicant at least fifteen (15) calendar days prior thereto. The notice shall be by personal service or by certified or registered mail sent to the last-known address of the person.

(2) The board may petition the circuit court for the county within which the hearing is being held to issue subpoenas for the attendance of witnesses and the production of necessary evidence in any hearing before it. Upon request of the respondent or his counsel, the board shall petition the court to issue subpoenas in behalf of the respondent. The circuit court upon petition may issue such subpoenas as it deems necessary.

(3) At the hearing the board shall administer oaths as may be necessary for the proper conduct of the hearing. The accused shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his or her behalf and to cross-examine witnesses. All hearings before the board shall be conducted by the board, which shall not be bound by strict rules

of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be based upon sufficient legal evidence to sustain it. A final decision by the board shall include findings of fact and conclusions of law, separately stated, of which the accused shall receive a copy.

(4) If the board determined that probable cause and sufficient legal evidence exist to believe that an applicant does not possess the qualifications required by this chapter or that an accused has violated any of the provisions of Section 73-57-31 of this chapter, the board may refuse to issue a license to the applicant, or revoke, suspend or refuse to renew a license.

(5) The right to appeal from the action of the board in denying, revoking, suspending or refusing to renew any license issued by the board is hereby granted. Such appeal shall be to the circuit court of the county of the residence of the licensee on the record made, including a verbatim transcript of the testimony at the hearing. The appeal must be taken within thirty (30) days after notice of the action of the board in denying, revoking, suspending or refusing to renew the license. The appeal is perfected upon filing notice of the appeal, together with a bond in the sum of One Hundred Dollars (\$100.00), with two (2) sureties, conditioned that if the action of the board in denying, revoking, suspending or refusing to renew the license be affirmed by the circuit court, the licensee will pay the costs of the appeal and the action in the circuit court. Such bond shall be approved by the president of the board. Appeals may be had to the Supreme Court of the State of Mississippi as provided by law from any final action of the circuit court. Actions taken by the board in suspending a license or permit when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license or permit suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified

in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

**SECTION 16.** Section 73-57-35, Mississippi Code of 1972, is amended as follows:

73-57-35. (1) From and after July 1, 1992, no person shall practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed under this chapter, except as otherwise provided by this chapter.

(2) This chapter does not prohibit:

(a) The practice of respiratory care which is an integral part of the program of study by students enrolled in a respiratory care education program recognized by the Joint Review Committee for Respiratory Therapy Education and the American Medical Association Council on Allied Health Education or their successors. Students enrolled in respiratory therapy education programs shall be identified as "student-RCP" and shall only provide respiratory care under direct clinical supervision.

(b) Self-care by a patient, or gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner.

(c) Respiratory care services rendered in the course of an emergency.

(d) Persons in the military services or working in federal facilities shall be exempted from the provisions of this chapter when functioning in the course of their assigned duties.

(e) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formalized or specialized training.

(3) Nothing in this chapter is intended to limit, preclude or otherwise interfere with the practices of other persons and health providers licensed by appropriate agencies of the State of Mississippi.

(4) An individual who, by passing an examination which includes content in one or more of the functions included in this chapter, shall not be prohibited from performing such procedures for which he was tested, so long as the testing body offering the examination is certified by the National Commission for Health Certifying Agencies or its equivalent, and so long as the individual is a licensed health care provider in the State of Mississippi.

(5) Practitioners regulated under this chapter shall be covered under the state's "Good Samaritan Act."

**SECTION 17.** Section 73-57-37, Mississippi Code of 1972, is reenacted as follows:

73-57-37. Nothing in this chapter shall be construed to permit the practice of medicine.

**SECTION 18.** Section 73-57-39, Mississippi Code of 1972, is reenacted as follows:

73-57-39. (1) It is a misdemeanor for any person to:

(a) Sell, fraudulently obtain or furnish any respiratory care permit, license, record, or aid or abet therein.

(b) Practice respiratory care under cover of any respiratory care diploma, permit, license or record illegally or fraudulently obtained or issued.

(c) Practice respiratory care unless duly licensed to do so under the provisions of this chapter.

(d) Impersonate in any manner or pretend to be a respiratory care practitioner or use the title "licensed respiratory care practitioner," the letters "L.R.C.P." or any other words, letters, signs, symbols or devices to indicate the person using them is a licensed respiratory care practitioner, unless duly authorized by license or permit to perform under the provisions of this chapter.

(e) Practice respiratory care during the time his license or permit is suspended, revoked or expired.

(f) Fail to notify the board of the suspension, probation or revocation of any past or currently held licenses, required to practice respiratory care in this or any other jurisdiction.

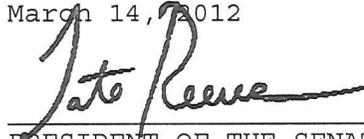
(g) Make false representations or impersonate or act as a proxy for another person or allow or aid any person to impersonate him in connection with any examination or application for licensing or request to be examined or licensed.

(h) Otherwise violate any provisions of this chapter.

(2) Such misdemeanor shall, upon conviction, be punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than six (6) months or by both fine and imprisonment for each offense.

**SECTION 19.** This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE SENATE  
March 14, 2012



\_\_\_\_\_  
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
April 4, 2012



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SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



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GOVERNOR

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