David Fogarty *Legislative Service Commission*

Sub. H.B. 505

123rd General Assembly
(As Reported by H. Health, Retirement & Aging)

Reps. Schuring, Van Vyven, Olman

BILL SUMMARY

- Grants qualified immunity for acts or omissions related to official duties to the Ohio Respiratory Care Board, current and former Board members, Board agents and employees, and persons the Board formally requests represent it.

- Permits the Board to share information it receives with government agencies investigating alleged professional misconduct and law enforcement agencies and other government agencies investigating or prosecuting alleged criminal offenses.

- Provides for the Board to employ an executive director rather than an executive secretary.

- Adds new grounds for disciplinary action against licensed respiratory care professionals and individuals holding a limited permit granted by the Board.

- Provides that revocation of a license or limited permit is permanent.

- Requires a prosecutor to report to the Board information regarding a criminal case in which a respiratory care professional or limited permit holder is named as a defendant.

- Requires an employer, in certain circumstances, to report to the Board if it disciplines or terminates the employment of a respiratory care professional or individual holding a limited permit.

- Grants qualified immunity to persons who report to the Board or testify in a Board hearing regarding matters of disciplinary action or the

qualifications, fitness, or character of a person licensed or holding a limited permit or applying for a license or limited permit.

- Provides that certain persons may practice as a polysomnographic technologist and perform certain respiratory care tasks without a license or limited permit.

- Reduces from 120 to 30 the number of days that a non-Ohioan may practice respiratory care without a license from the Board.

CONTENT AND OPERATION

Ohio Respiratory Care Board

(secs. 4761.02 and 4761.03)

The Ohio Respiratory Care Board is comprised of three respiratory care professionals engaged in or actively associated with the practice of respiratory care in Ohio for at least the preceding five years, one physician who has clinical training and experience in the management of pulmonary disease, and one member who represents the general public.[1] The Board is required to regulate the practice of respiratory care. The bill requires, in addition, that the Board regulate the persons to whom the Board issues licenses and temporary permits.

Existing law requires that the Board employ an executive secretary to assist it in administering the law governing the practice of respiratory care. The bill requires, instead, that the Board employ an executive director to fulfill that function. It also eliminates the requirement that the Board meet as a whole to determine administrative matters.

Qualified immunity of the Board and its representatives

(sec. 4761.16)

The bill provides that the Board, current and former Board members, agents of the Board, any person formally asked by the Board to be the Board's representative, and employees of the Board are not liable to any person for damages in a civil action as the result of any act, omission, proceeding, conduct, or

[1] *Respiratory care refers to services involving evaluation of cardiopulmonary function, treatment of cardiopulmonary impairment, assessment of treatment effectiveness, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.*

decision relating to the Board's official duties. This immunity does not apply if there is fraud or bad faith.

The state must provide and pay for the defense of a person who is eligible for qualified immunity under the bill and any resulting judgment, compromise, or settlement if all of the following are the case: (1) the person asks to be defended by the state against a claim or action arising out of any act, omission, proceeding, conduct, or decision relating to the person's official duties, (2) the request is made in writing at a reasonable time before trial, and (3) the person cooperates in good faith in the defense. The state may not pay any part of a claim or judgment for punitive or exemplary damages.

Information sharing

(sec. 4761.031)

The Board receives information in the course of its investigations concerning unauthorized practice of respiratory care and professional misconduct. The bill permits the Board to share that information, including patient records, with (1) other licensing boards and government agencies that are investigating alleged professional misconduct and (2) law enforcement agencies and other government agencies that are investigating or prosecuting alleged criminal offenses. A board or agency that receives information from the Ohio Respiratory Care Board must comply with the Board's confidentiality requirements, regardless of other Revised Code provisions or procedures of the receiving board or agency. The information is admissible as evidence in a criminal trial in accordance with the Rules of Evidence, but the court must require that appropriate measures be taken to ensure that confidentiality of identifying information is maintained, if that information was protected when in the Board's possession. Those measures include sealing the court records or deleting specific information from the records.

Professional misconduct

Grounds for discipline

(sec. 4761.09)

Current law provides that the Board may refuse to issue or renew a license or limited permit, may issue a reprimand, may suspend or revoke a license or limited permit, or may place a license or limited permit holder on probation for a number of reasons.[2] These reasons include violating any provision of the law

[2] *The Board may grant a limited permit, which authorizes the holder to provide respiratory care under the supervision of a respiratory care professional, to a person of*

governing the practice of respiratory care or an order or rule of the Board; obtaining a license or limited permit by means of fraud, false or misleading representation, or concealment of material facts; and using a controlled substance to the extent that the use impairs the competent practice of respiratory care. The bill expands the grounds for professional discipline to include all of the following:

- Assisting another person in that person's violation of the law governing the practice of respiratory care or an order or rule of the Board;
- Obtaining a license by making any material misrepresentation to the Board;
- Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;
- Using a dangerous drug to the extent that the use impairs the competent practice of respiratory care;[3]
- Practicing respiratory care while mentally incompetent.

<u>Disciplinary procedure and consent agreements</u>

(sec. 4761.09)

Current law provides that before the Board may take disciplinary action other than a summary suspension order, the Board's executive secretary must file written charges with the Board, which is required to conduct a hearing on the charges in accordance with the Administrative Procedure Act (Chapter 119. of the Revised Code). The bill provides that disciplinary actions taken by the Board must be taken pursuant to an adjudication under the Administrative Procedure Act, except that in lieu of an adjudication, the Board may enter into a consent agreement to resolve an alleged violation of one of the grounds for which a respiratory care professional may be disciplined. A consent agreement, when ratified by the Board, constitutes the findings and order of the Board with respect to the matter addressed in the agreement. If the Board refuses to ratify a consent

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good moral character who is enrolled in and is in good standing in a respiratory care educational program or, in certain circumstances, who was employed as a provider of respiratory care in Ohio before March 14, 1989 and is still employed as such.

[3] *Dangerous drugs are drugs that can be legally dispensed only on a prescription. Controlled substances are dangerous drugs that are scheduled based on their potential for abuse.*

agreement, the admissions and findings contained in the consent agreement are of no effect.

Duration of revocation

(sec. 4761.09)

One method of professional discipline available to the Board when a licensee or limited permit holder engages in certain conduct is revocation of the license or limited permit. But a person may apply to the Board for reinstatement of the license or limited permit after one year following the date of revocation. Under the bill, revocation is permanent and the opportunity for reinstatement is eliminated.

Reporting requirements of prosecutors

(sec. 4761.13)

The bill requires the prosecutor in any case against a respiratory care professional or an individual holding a limited permit to notify the Board of any of the following:

(1) A guilty plea to, or a conviction of, a felony, or court order dismissing a felony charge on technical or procedural grounds;

(2) A guilty plea to, or a conviction of, a misdemeanor committed in the course of practice, or a court order dismissing such a charge on technical or procedural grounds;

(3) A guilty plea, or a conviction of, a misdemeanor involving moral turpitude, or a court order dismissing such a charge on technical or procedural grounds.

The report must include the name and address of the licensee or permit holder, the nature of the offense, and the certified court documents in the action. The Board may prescribe a form for prosecutors to use when making the reports, and the form may be the same as that used by prosecutors to report similar conduct to other licensing boards under existing law.

Reporting requirements of employers

(sec. 4761.14)

Under the bill, an employer that disciplines or terminates the employment of a respiratory care professional or individual holding a limited permit because of

conduct that would be grounds for disciplinary action must report the action to the Board. The report must include the name of the licensee or permit holder and the reason the employer took the action. If an employer fails to report to the Board, the Board is authorized to seek a court order compelling the employer to submit the report.

Confidentiality of identifying information regarding complaints

(sec. 4761.03)

In investigating complaints regarding alleged violations of the law governing the practice of respiratory care, the Board is prohibited from disclosing confidential information regarding the investigation, except when required by a court order. The bill prohibits the Board, in addition, from disclosing identifying information about any person who files a complaint with the Board, unless disclosure is required by a court order.

Qualified immunity of persons reporting information to the Board

(sec. 4761.15)

The bill provides that a person who makes a report to the Board or testifies in an adjudication hearing regarding disciplinary action or the qualifications, fitness, or character of a licensee or limited permit holder or a person applying for a license or limited permit is immune from civil liability for any resulting damages. Immunity does not apply if the report or testimony was fraudulent or made in bad faith.

Exemptions from licensure

In general, existing law prohibits a person from offering or rendering respiratory care services or representing that the person is a respiratory care professional or has a similar title unless the person holds a license or limited permit issued by the Board. There are certain exceptions to this requirement. For example, certain services, such as measuring blood pressure and taking blood samples, may be performed in hospitals by persons who are not licensed by the Board, as long as they are supervised by a physician. In addition, physicians, nurses, and employees of a physician who work under the physician's direct supervision and do not hold themselves out as being engaged in the profession of respiratory care are exempt from licensure. The bill eliminates certain existing exemptions and creates a new one.

Polysomnographic technologists

(secs. 4761.03, 4761.10, and 4761.11)

The bill exempts from licensure all of the following: a polysomnographic technologist credentialed by an organization the Board recognizes, a trainee under the direct supervision of a credentialed polysomnographic technologist, and any individual the Board recognizes as being eligible to be credentialed as a polysomnographic technologist. Such persons may perform certain respiratory care tasks that the bill requires the Board to specify in rules. The exemption applies only if both of the following are the case:

(1) The tasks are performed in the diagnosis and therapeutic intervention of sleep-related breathing disorders and under the general supervision of a physician;

(2) The person performing the tasks does not represent that the person is engaged in the practice of respiratory care.

Non-Ohioans

(secs. 4761.03 and 4761.11)

Current law exempts from licensure non-Ohioans practicing or offering to practice respiratory care for 120 days or less under the supervision of a respiratory care professional licensed by the Board. The bill reduces the length of the exemption to 30 days in a year. The exemption applies if the person qualifies for licensure but has not taken the examination required by the Board or holds a license issued by another state that the Board determines has comparable licensure requirements to Ohio. The bill continues these requirements and also provides that the exemption applies only if the person registers with the Board and has not been issued a license in another state that has been revoked or is currently under suspension or on probation. Under the bill, the Board is required to adopt rules establishing procedures for registering out-of-state respiratory care providers authorized to practice in Ohio.

Emergency medical technicians and registered nurses

(sec. 4761.11)

Existing law exempts registered nurses and emergency medical technicians from licensure by the Board. The bill eliminates these specific exemptions but continues to exempt all health care professionals who are practicing within their scope of practice and do not represent that they are engaged in the practice of

respiratory care. "Health care professional," is not defined in the law governing respiratory care professionals so it is not clear who is covered by this provision.

Transporting patients

(sec. 4761.11)

The bill exempts from licensure by the Board a person who is engaged in the practice of respiratory care as an employee of a person or governmental entity located in another state and provides respiratory care services for less than 72 hours to patients being transported into, out of, and through Ohio.

Advertising and billing practices

(sec. 4761.11)

Current law provides that the law governing the practice of respiratory care is not to be construed to prevent a registered nurse, physician, association, corporation, partnership, or hospital from advertising, describing, or offering to provide respiratory care or billing for respiratory care when the services are provided by a person licensed by the Board or a physician or registered nurse practicing within the physician's or nurse's scope of practice. The bill provides that no person is prohibited from advertising, describing, or offering to provide respiratory care or billing for respiratory care when the services are provided by (1) a physician or other health care professional practicing within the physician's or other professional's scope of practice or (2) a person authorized to provide limited aspects of respiratory care or respiratory care tasks without being licensed by the Board. The bill also provides that no hospital is prohibited from advertising, describing, or offering to provide respiratory care, or billing for respiratory care when the services are provided by a person licensed by the Board or persons who may provide limited aspects of respiratory care or respiratory care tasks without being licensed.

Administering medication

(sec. 4761.11)

Current law provides that nothing in Ohio law governing the practice of respiratory care is to be construed as authorizing a respiratory care professional to practice medicine. The bill provides that a respiratory care professional may administer topical and intradermal medications for the purpose of producing localized decreased sensation as part of a procedure or task that is within the scope of practice of a respiratory care professional.

Injunctions

(sec. 4761.10)

Under existing law, if the Board finds that any person has engaged or is engaging in the unauthorized practice of respiratory care, professional misconduct, or other conduct prohibited by the Board, the Board may seek a court order restraining the conduct. The bill expressly permits the Board to seek such an order if any partnership, association, or corporation engages in such activity. Since the term "person" includes a partnership, association, or corporation for the purposes of the Revised Code; however, the amendment has no substantive effect.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	11-18-99	p.	1371
Reported, H. Health, Retirement & Aging	02-22-00	pp.	1629-1630

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