Sub. H.B. 505
123rd General Assembly
(As Passed by the General Assembly)

Reps.  Schuring, Van Vyven, Olman, Schuler, Vesper

Sens.  Drake, Kearns, Spada, Hagan

Effective date:  October 27, 2000

ACT 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 certain Board representatives.

• Permits the Board to share information from its investigations with government agencies investigating alleged professional misconduct and law enforcement agencies and other government agencies investigating or prosecuting alleged criminal offenses.

• Adds to the reasons for which disciplinary action may be taken by the Board, including mental incompetence, abuse of dangerous drugs, and fraudulent or unprofessional conduct.

• Specifies that the Board's revocation of a license or limited permit to practice is permanent.

• Requires a prosecutor to report to the Board information regarding a criminal case in which a licensed 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 limited permit holder.

• Grants qualified immunity to persons who report to the Board or testify in a Board hearing.
• Permits a respiratory care professional to practice pursuant to the prescription or other order and under the supervision of a certified nurse practitioner or clinical nurse specialist.

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

• Specifies that only limited aspects of respiratory care may be performed in a hospital or nursing facility by an unlicensed person under the direction of a physician or delegation of a registered nurse.

• Reduces to 30 (from 120) the number of days a non-Ohioan may practice respiratory care without an Ohio license.

CONTENT AND OPERATION

Ohio Respiratory Care Board

(sec. 4761.03)

Continuing law requires the Ohio Respiratory Care Board to regulate the practice of respiratory care, which is 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. In addition to the duty to regulate the practice of respiratory care, the act expressly requires that the Board regulate the persons to whom the Board issues licenses and limited permits.

With respect to the manner in which the Board conducts its business, the act eliminates the requirement that the Board meet as a whole to determine administrative matters. Thus, under the act, all Board actions must be taken in accordance with the continuing requirement that a quorum consisting of a majority of the Board be present to transact and vote on any business.

Executive director

(sec. 4761.02)

Under the act, the title of the person serving as the Board's executive secretary is changed to "executive director." The act makes no changes in the executive director's duties, except for specifying that other individuals are employed as the Board considers necessary, rather than as the executive director considers necessary.
Qualified immunity of the Board and its representatives

(sec. 4761.16)

The act provides that the Board, current and former Board members, agents of the Board, any person formally asked by the Board to be its representative, and Board employees are not liable to any person for damages in a civil action as the result of any act, omission, proceeding, conduct, or decision related to the Board's official duties. This immunity from liability does not apply in the case of fraud or bad faith.

The state must provide and pay for the defense of a person who is eligible for qualified immunity under the act 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, (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 act prohibits the state from paying 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 act permits the Board to share that information, including patient records, with (1) other licensing boards and government agencies investigating alleged professional misconduct and (2) law enforcement agencies and other government agencies 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 any conflicting 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 appropriate measures to 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 court records or deleting specific information from the records.

Professional misconduct

Grounds for discipline

(sec. 4761.09)

Continuing 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. The reasons for which any of these actions may be taken include violating any provision of the law 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; conviction of a felony or an offense involving moral turpitude; and using a controlled substance to the extent that the use impairs the competent practice of respiratory care. The act expands the grounds for discipline by including 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;
- Practicing respiratory care while mentally incompetent.

In the case of a person who has committed an offense that is a felony or constitutes moral turpitude, the act provides that the Board may take action against the person not only on a conviction, as under prior law, but also on a plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction. The act provides that a certified copy of the court record is conclusive evidence of the matter.

**Consent agreements**

(SEC. 4761.09)

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1 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 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.

2 Dangerous drugs are drugs that can be legally dispensed only on a prescription. Controlled substances are dangerous drugs that are subject to additional restrictions due to their potential for abuse.
Continuing law requires the Board to comply with the Administrative Procedure Act (Revised Code Chapter 119.) when taking disciplinary actions. Under the act, in lieu of taking action through an adjudication, the Board may enter into a consent agreement to resolve an alleged violation. 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 agreement, the admissions and findings contained in it are of no effect.

**Duration of revocation**

(sec. 4761.09)

The act provides that when the Board revokes a license or limited permit, the revocation is permanent.

**Reporting by prosecutors**

(sec. 4761.13)

The act requires the prosecutor in any case against a respiratory care professional or an individual holding a limited permit to notify the Board of (1) a guilty plea to or conviction of a felony, a misdemeanor committed in the course of practice, or a misdemeanor involving moral turpitude, or (2) a court order dismissing such a charge on technical or procedural grounds. The report must include the name and address of the license or permit holder, the nature of the offense, and the certified court documents recording the judicial action taken. The Board may prescribe and provide a form for prosecutors to use when making the reports. The form may be the same as that used by prosecutors under continuing law to report similar conduct to other licensing boards.

**Reporting by employers**

(sec. 4761.14)

Under the act, 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 by the Board is required to report the action to the Board. The report must include the name of the license or permit holder and the reason the employer took the action. If an employer fails to make the report, the Board is authorized to seek a court order compelling the employer to submit the report.
Confidentiality regarding complaints

(sec. 4761.03)

Under continuing law, when the Board investigates complaints regarding alleged violations of the law governing the practice of respiratory care, it is prohibited from disclosing confidential information obtained during the investigation, except when required by a court order. The act extends the prohibition against disclosure to identifying information about any person who files a complaint with the Board.

Immunity for persons who report

(sec. 4761.15)

The act provides that a person who makes a report to the Board or testifies in an adjudication regarding disciplinary action or the qualifications, fitness, or character of a licensee or limited permit holder or an applicant 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.

Prescription and supervision requirements for respiratory care

(secs. 4761.01 and 4761.17)

Prior to the act, respiratory care could be performed only under a physician's prescription and supervision. The act permits a person to practice respiratory care under a physician's order issued in a form other than a prescription, as well as under the prescription or other order and supervision of a certified nurse practitioner or clinical nurse specialist. In the case of a nurse, the nurse must have entered into a standard care arrangement with a physician that allows the nurse to prescribe or order respiratory care services. The person practicing under the nurse is limited in the administration of prescription medication to those drugs the nurse is authorized to prescribe.

Exemptions from licensure

Polysomnographic technologists

(secs. 4761.03 and 4761.10(B)(3))

The act 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 act requires the Board to specify in rules. The tasks may be performed only in the diagnosis and therapeutic intervention of sleep-related breathing disorders and under the general supervision of a physician. The person performing the tasks must not represent that the person is engaged in the practice of respiratory care.

Non-Ohioans

(secs. 4761.03 and 4761.11(A)(4))

Continuing law exempts from licensure a non-Ohioan practicing or offering to practice respiratory care in Ohio for a limited number of days. Under prior law, the maximum length of time a person could practice under the exemption was 120 calendar days. The act sets the maximum at 30 days in a year and requires that each person register with the Board. Registration is to occur according to procedures the Board establishes through the adoption of rules. If a person holds a license from another state, the act specifies that the exemption applies only if the person's license has not been revoked, suspended, or placed on probation.

Transporting patients

(sec. 4761.11)

The act 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.

Unlicensed persons and licensed health professionals

Prior law specified that the requirement to be licensed by the Board did not apply to an unlicensed person who, in a hospital, performed limited aspects of respiratory care services. Examples of the services that could be performed included measuring blood pressure and taking blood samples; services that could not be performed included administering aerosol medication and maintaining patients on ventilators.

In addition to the exemption from licensure that applied to unlicensed persons who performed limited aspects of respiratory care in a hospital, prior law specified that the laws governing the practice of respiratory care did not prevent or restrict the practice, services, or activities of a registered nurse or any other licensed health professional. Under continuing law, the practice of nursing as a registered nurse includes "delegating nursing practice," and the Board of Nursing has adopted extensive rules governing the manner in which a registered nurse may delegate nursing tasks to trained but unlicensed persons.
As a result of questions asked by the Ohio Respiratory Care Board, the Attorney General advised the Board that a registered nurse who delegated nursing tasks to unlicensed persons under the laws governing the practice of nursing was not restricted to the delegation of those limited aspects of respiratory care services specified in the laws governing respiratory care, even if the delegated nursing task was also a respiratory care task. Further, the registered nurse's authority to delegate was not restricted by whether the task was delegated within or outside a hospital. (2000 Op. Att'y Gen. No. 2000-016.)

In two respects, the act modifies the statutes that were examined by the Attorney General. First, instead of specifying that the laws governing respiratory care do not prevent or restrict the practice, services, or activities of a registered nurse or other licensed health professional, the act provides that the regulation of respiratory care does not apply to any licensed health professional who provides respiratory care services that are included in the scope of practice established by the license held. The act does not include prior law's examples of the licensed health professionals to whom the exemption applies: physicians, registered nurses, and emergency medical technicians.

Second, as part of its modification of the exemption for licensed health professionals, the act separates the standards that apply to the authority of unlicensed persons to perform respiratory care tasks. This separation is based on the location at which the tasks are performed.

In the case of a hospital, the act continues the provisions of prior law with respect to the performance of limited aspects of respiratory care services, such as measuring blood pressure and taking blood samples but not administering aerosol medication or maintaining patients on ventilators. The act extends the same provisions to a nursing facility, which is identified as a facility that is certified for participation as such in the Medicare or Medicaid program. When acting under a registered nurse, the act specifies that the unlicensed person is subject to a registered nurse's "delegation" rather than "direction."

In the case of a facility, institution, or other setting that exists for a purpose substantially other than the provision of health care, the act provides that the continuing prohibition against the unlicensed practice of respiratory care does not apply to an unlicensed person if nursing tasks are delegated by a registered nurse as provided in the laws regulating the practice of nursing. The act specifies that the unlicensed person must demonstrate current competence in performing the tasks and the person must not be represented as being engaged in the practice of respiratory care.

*Administering medication during respiratory care*

(sec. 4761.11(D))
Continuing law provides that a respiratory care professional is not authorized to practice medicine. The act specifies that this provision does not prohibit a respiratory care professional from administering topical or 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(C))

Continuing law permits the Board to apply for a court order restraining a person from engaging in the unauthorized practice of respiratory care, professional misconduct, or other conduct prohibited by the Board. The act expressly provides that the Board's authority to seek such an order applies when the unlawful activity is committed by a partnership, association, or corporation. The provision has no substantive effect, however, since for purposes of the Revised Code the term "person" includes a partnership, association, or corporation.

**Advertising and billing practices**

(sec. 4761.11)

Prior law specified that the laws governing the practice of respiratory care do not prevent a registered nurse, physician, association, corporation, or partnership from advertising, describing, or offering to provide respiratory care or billing for respiratory care when the services are provided by a physician or registered nurse. The act expands this provision by applying it to respiratory care services rendered by any licensed health professional. Although the act eliminates the express application of the provision to an "association, corporation, or partnership," the elimination has no substantive effect since it continues to apply broadly to any "person."

Prior law specified that a hospital is not 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 unlicensed persons authorized to perform limited aspects of respiratory care or respiratory care services. The act expands this provision by applying it to (1) nursing facilities and (2) hospitals and nursing facilities in which respiratory care tasks are rendered by polysomnographic technologists.

**Corrective changes**

(secs. 4761.04, 4761.05, 4761.06, and 4761.07)

The act amends several sections of the Revised Code solely for purposes of correcting statutory cross-references and eliminating gender-specific and obsolete language. Similar corrective changes are included in other portions of the act.
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