

CHAPTER 112

PROFESSIONS AND OCCUPATIONS

SENATE BILL 15-105

BY SENATOR(S) Martinez Humenik, Aguilar, Newell, Guzman, Todd;
also REPRESENTATIVE(S) Primavera, Esgar, Fields, Ginal, Melton, Pettersen, Ryden, Salazar, Williams, Young.

AN ACT

CONCERNING THE CONTINUATION OF THE REGULATION OF RESPIRATORY THERAPISTS BY THE DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS OF THE DEPARTMENT IN ITS SUNSET REVIEW OF AND REPORT ON THE PROFESSION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-34-104, **repeal** (46) (e); and **add** (55) (k) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (46) The following agencies, functions, or both shall terminate on July 1, 2015:

(e) ~~The licensing and regulation of respiratory therapists by the division of professions and occupations in the department of regulatory agencies in accordance with article 41.5 of title 12, C.R.S.;~~

(55) The following agencies, functions, or both, terminate on September 1, 2024:

(k) THE LICENSING AND REGULATION OF RESPIRATORY THERAPISTS BY THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES IN ACCORDANCE WITH ARTICLE 41.5 OF TITLE 12, C.R.S.

SECTION 2. In Colorado Revised Statutes, **amend** 12-41.5-115 as follows:

12-41.5-115. Repeal of article - termination of functions. (1) This article is repealed, effective ~~July 1, 2015~~ SEPTEMBER 1, 2024. PRIOR TO THE REPEAL, THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

DEPARTMENT OF REGULATORY AGENCIES SHALL REVIEW THE LICENSURE FUNCTIONS OF THE DIRECTOR PURSUANT TO SECTION 24-34-104, C.R.S.

~~(2) (a) The licensure functions of the director as set forth in this article are repealed, effective July 1, 2015:~~

~~(b) Prior to such repeal, such licensure functions shall be reviewed pursuant to section 24-34-104, C.R.S.:~~

SECTION 3. In Colorado Revised Statutes, 12-41.5-109, **amend** (2) introductory portion, (2) (i), (2) (p), (5.5) (b) (II), (5.5) (b) (III), (11) (a), (11) (b), and (17); and **add** (2) (r), (2) (s), and (18) as follows:

12-41.5-109. Grounds for action - disciplinary proceedings. (2) The director has the power to revoke, suspend, deny, or refuse to renew a license, place on probation a licensee, or issue a letter of admonition to a licensee in accordance with subsections (3), (4), (5), and (6) of this section upon proof that ~~such~~ THE person:

(i) (I) HAS FAILED TO NOTIFY THE DIRECTOR, AS REQUIRED BY SECTION 12-41.5-109.7, OF a physical or mental ~~disability that renders him or her unable to~~ CONDITION OR ILLNESS THAT AFFECTS THE LICENSEE'S ABILITY TO practice respiratory therapy with reasonable skill and safety ~~and~~ OR that may endanger the health or safety of persons under his or her care;

(II) HAS FAILED TO ACT WITHIN THE LIMITATIONS CREATED BY A PHYSICAL OR MENTAL CONDITION OR ILLNESS THAT RENDERS THE PERSON UNABLE TO PRACTICE RESPIRATORY THERAPY WITH REASONABLE SKILL AND SAFETY OR THAT MIGHT ENDANGER THE HEALTH OR SAFETY OF PERSONS UNDER HIS OR HER CARE; OR

(III) HAS FAILED TO COMPLY WITH THE LIMITATIONS AGREED TO UNDER A CONFIDENTIAL AGREEMENT ENTERED PURSUANT TO SECTION 12-41.5-109.7;

(p) Has failed to notify the director of the suspension, probation, or revocation of any of the person's past or currently held licenses, certificates, or registrations required to practice respiratory therapy in this or any other jurisdiction; ~~or~~

(r) HAS FAILED TO RESPOND IN A TIMELY MANNER TO A COMPLAINT ISSUED UNDER THIS ARTICLE; OR

(s) HAS REFUSED TO SUBMIT TO A PHYSICAL OR MENTAL EXAMINATION WHEN ORDERED BY THE DIRECTOR PURSUANT TO SECTION 12-41.5-109.5.

(5.5) (b) (II) The director or an administrative law judge ~~shall have the power to~~ MAY administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the ~~board~~ DIRECTOR. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director.

(III) Upon failure of any witness to comply with ~~such~~ A subpoena or process, the

district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the ~~board or~~ director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. ~~Failure~~ IF THE PERSON OR LICENSEE FAILS TO obey the order of the court, THE COURT may be ~~punished by the court as a~~ HOLD THE PERSON OR LICENSEE IN contempt of court.

(11) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, THE DIRECTOR MAY ISSUE AND SEND a letter of admonition ~~may be issued and sent, by certified mail,~~ to the licensee.

(b) When THE DIRECTOR SENDS a letter of admonition ~~is sent by the director, by certified mail;~~ to a licensee, ~~such~~ THE LETTER MUST ADVISE THE licensee ~~shall be advised~~ that he or she has the right to request in writing, within twenty days after receipt of the letter, that THE DIRECTOR INITIATE formal disciplinary proceedings ~~be initiated~~ to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(17) A person aggrieved by the final cease-and-desist order may seek judicial review of the ~~board's~~ DIRECTOR'S determination or of the ~~board's~~ DIRECTOR'S final order as provided in subsection (7) of this section.

(18) A RESPIRATORY THERAPIST WHOSE LICENSE IS REVOKED OR WHO SURRENDERS HIS OR HER LICENSE TO AVOID DISCIPLINE UNDER THIS SECTION IS NOT ELIGIBLE TO APPLY FOR A LICENSE UNDER THIS ARTICLE FOR TWO YEARS AFTER THE LICENSE IS REVOKED OR SURRENDERED.

SECTION 4. In Colorado Revised Statutes, **add** 12-41.5-109.5 and 12-41.5-109.7 as follows:

12-41.5-109.5. Mental and physical examination of licensees. (1) (a) IF THE DIRECTOR HAS REASONABLE CAUSE TO BELIEVE THAT A LICENSEE IS UNABLE TO PRACTICE WITH REASONABLE SKILL AND SAFETY TO CLIENTS, THE DIRECTOR MAY ORDER THE LICENSEE TO SUBMIT TO A MENTAL OR PHYSICAL EXAMINATION ADMINISTERED BY A PHYSICIAN OR OTHER LICENSED HEALTH CARE PROFESSIONAL DESIGNATED BY THE DIRECTOR.

(b) IF A LICENSEE REFUSES TO SUBMIT TO A MENTAL OR PHYSICAL EXAMINATION THAT HAS BEEN PROPERLY ORDERED BY THE DIRECTOR PURSUANT TO SUBSECTION (2) OF THIS SECTION, AND THE REFUSAL IS NOT DUE TO CIRCUMSTANCES BEYOND THE LICENSEE'S CONTROL:

(I) THE REFUSAL CONSTITUTES GROUNDS FOR DISCIPLINE PURSUANT TO SECTION 12-41.5-109 (2) (s); AND

(II) THE DIRECTOR MAY SUSPEND THE LICENSEE'S LICENSE IN ACCORDANCE WITH SECTION 12-41.5-109 UNTIL:

(A) THE LICENSEE SUBMITS TO THE EXAMINATION AND THE RESULTS OF THE EXAMINATION ARE KNOWN; AND

(B) THE DIRECTOR HAS MADE A DETERMINATION OF THE LICENSEE'S FITNESS TO PRACTICE.

(C) THE DIRECTOR SHALL PROCEED WITH AN ORDER FOR EXAMINATION AND DETERMINATION OF A LICENSEE'S FITNESS TO PRACTICE IN A TIMELY MANNER.

(2) IN AN ORDER TO A LICENSEE PURSUANT TO SUBSECTION (1) OF THIS SECTION TO UNDERGO A MENTAL OR PHYSICAL EXAMINATION, THE DIRECTOR SHALL INCLUDE THE BASIS OF THE DIRECTOR'S REASONABLE CAUSE TO BELIEVE THAT THE LICENSEE IS UNABLE TO PRACTICE WITH REASONABLE SKILL AND SAFETY. FOR PURPOSES OF ANY DISCIPLINARY PROCEEDING AUTHORIZED UNDER THIS ARTICLE, THE LICENSEE IS DEEMED TO HAVE WAIVED ALL OBJECTIONS TO THE ADMISSIBILITY OF THE EXAMINING PHYSICIAN'S TESTIMONY OR EXAMINATION REPORTS ON THE GROUND THAT THEY ARE PRIVILEGED COMMUNICATIONS.

(3) THE LICENSEE MAY SUBMIT TO THE DIRECTOR TESTIMONY OR EXAMINATION REPORTS FROM A PHYSICIAN OR OTHER LICENSED HEALTH CARE PROFESSIONAL CHOSEN BY THE LICENSEE AND PERTAINING TO ANY CONDITION THAT THE DIRECTOR HAS ALLEGED MIGHT PRECLUDE THE LICENSEE FROM PRACTICING WITH REASONABLE SKILL AND SAFETY. THE DIRECTOR MAY CONSIDER THE TESTIMONY OR EXAMINATION REPORTS IN CONJUNCTION WITH, BUT NOT IN LIEU OF, TESTIMONY AND EXAMINATION REPORTS OF THE PHYSICIAN OR OTHER LICENSED HEALTH CARE PROFESSIONAL DESIGNATED BY THE DIRECTOR.

(4) THE RESULTS OF A MENTAL OR PHYSICAL EXAMINATION ORDERED BY THE DIRECTOR MUST NOT BE USED AS EVIDENCE IN ANY PROCEEDING OTHER THAN ONE BEFORE THE DIRECTOR, ARE NOT PUBLIC RECORDS, AND MUST NOT BE MADE AVAILABLE TO THE PUBLIC.

12-41.5-109.7. Confidential agreement to limit practice - violation - grounds for discipline.

(1) IF A RESPIRATORY THERAPIST HAS A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE PERSON UNABLE TO PRACTICE RESPIRATORY THERAPY WITH REASONABLE SKILL AND SAFETY TO CLIENTS, THE RESPIRATORY THERAPIST SHALL NOTIFY THE DIRECTOR OF THE ILLNESS OR CONDITION IN A MANNER AND WITHIN A PERIOD DETERMINED BY THE DIRECTOR. THE DIRECTOR MAY REQUIRE THE RESPIRATORY THERAPIST TO SUBMIT TO AN EXAMINATION TO EVALUATE THE EXTENT OF THE ILLNESS OR CONDITION AND ITS EFFECT ON THE RESPIRATORY THERAPIST'S ABILITY TO PRACTICE RESPIRATORY THERAPY WITH REASONABLE SKILL AND SAFETY TO CLIENTS.

(2)(a) UPON DETERMINING THAT A RESPIRATORY THERAPIST WITH A PHYSICAL OR MENTAL ILLNESS OR CONDITION IS ABLE TO RENDER LIMITED SERVICES WITH REASONABLE SKILL AND SAFETY TO CLIENTS, THE DIRECTOR MAY ENTER INTO A CONFIDENTIAL AGREEMENT WITH THE RESPIRATORY THERAPIST IN WHICH THE RESPIRATORY THERAPIST AGREES TO LIMIT HIS OR HER PRACTICE BASED ON THE RESTRICTIONS IMPOSED BY THE ILLNESS OR CONDITION, AS DETERMINED BY THE DIRECTOR.

(b) AS PART OF THE AGREEMENT, THE RESPIRATORY THERAPIST IS SUBJECT TO PERIODIC REEVALUATION OR MONITORING AS DETERMINED APPROPRIATE BY THE DIRECTOR.

(c) THE PARTIES MAY MODIFY OR DISSOLVE THE AGREEMENT AS NECESSARY BASED ON THE RESULTS OF A REEVALUATION OR OF MONITORING.

(3) BY ENTERING INTO AN AGREEMENT WITH THE DIRECTOR PURSUANT TO THIS SECTION TO LIMIT HIS OR HER PRACTICE, A RESPIRATORY THERAPIST IS NOT ENGAGING IN ACTIVITIES THAT ARE GROUNDS FOR DISCIPLINE PURSUANT TO SECTION 12-41.5-109. THE AGREEMENT DOES NOT CONSTITUTE A RESTRICTION OR DISCIPLINE BY THE DIRECTOR. HOWEVER, IF THE RESPIRATORY THERAPIST FAILS TO COMPLY WITH THE TERMS OF THE AGREEMENT, THE FAILURE CONSTITUTES A PROHIBITED ACTIVITY PURSUANT TO SECTION 12-41.5-109 (2) (i), AND THE RESPIRATORY THERAPIST IS SUBJECT TO DISCIPLINE IN ACCORDANCE WITH SECTION 12-41.5-109.

(4) THIS SECTION DOES NOT APPLY TO A RESPIRATORY THERAPIST SUBJECT TO DISCIPLINE FOR PROHIBITED ACTIVITIES AS DESCRIBED IN SECTION 12-41.5-109 (2) (h).

SECTION 5. In Colorado Revised Statutes, 12-41.5-106, **amend** (1), (2) (b), and (2) (c) as follows:

12-41.5-106. License - reciprocity - effectiveness - fee. (1) An applicant for a license to practice respiratory therapy shall submit to the director ~~written~~ evidence that he or she is credentialed ~~with the national board for respiratory care~~ BY A NATIONAL RESPIRATORY THERAPY CREDENTIALING BODY, AS DETERMINED BY THE DIRECTOR, as a certified or registered respiratory therapist and shall pay a fee as determined by the director. The director shall ~~have~~ MAINTAIN on file the standards of practice for examination and accreditation by the national ~~board for respiratory care~~ RESPIRATORY THERAPY CREDENTIALING BODY DETERMINED BY THE DIRECTOR PURSUANT TO THIS SUBSECTION (1) and ~~such~~ MAKE THE standards ~~shall be~~ available to the public.

(2) The director shall issue a license to practice respiratory therapy to an applicant who otherwise meets the qualifications set forth in this article and who submits satisfactory proof and certifies under penalty of perjury that the applicant is either:

(b) Holding credentials conferred by ~~the national board for respiratory care~~ A NATIONAL RESPIRATORY THERAPY CREDENTIALING BODY, AS DETERMINED BY THE DIRECTOR, which credentials have not been suspended or revoked; or

(c) Functioning in the capacity of a respiratory therapist as of July 1, 2000, and has successfully passed, no later than July 1, 2001, the certification or registration examination of ~~the national board for respiratory care~~ A NATIONAL RESPIRATORY THERAPY CREDENTIALING BODY, AS DETERMINED BY THE DIRECTOR.

SECTION 6. In Colorado Revised Statutes, 12-41.5-110, **amend** (2) (g) as follows:

12-41.5-110. Exceptions. (2) This article does not prohibit:

(g) The practice of procedures that fall within the definition of respiratory therapy by certified pulmonary function technologists, registered pulmonary function technologists, registered polysomnographic technologists, or others who hold credentials from a nationally recognized organization as determined by the director; ~~including, but not limited to, the national board for respiratory care;~~ except that the scope of practice of a registered polysomnographic technologist ~~shall~~ **MUST** not exceed oxygen titration with pulse oximetry and noninvasive positive pressure ventilation titration;

SECTION 7. Effective date. This act takes effect July 1, 2015.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 16, 2015