

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 15-0193.01 Christy Chase x2008

SENATE BILL 15-105

SENATE SPONSORSHIP

Martinez Humenik, Aguilar, Newell

HOUSE SPONSORSHIP

Primavera,

Senate Committees
Health & Human Services

House Committees
Health, Insurance, & Environment

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Sunset Process - Senate Health and Human Services

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
2nd Reading Unamended
March 20, 2015

SENATE
3rd Reading Unamended
February 19, 2015

SENATE
2nd Reading Unamended
February 18, 2015

Committee. The bill implements the recommendations contained in the department of regulatory agencies' sunset review and report on the "Respiratory Therapy Practice Act" (act) as follows:

- ! **Sections 1 and 2** of the bill continue the act and the regulation of respiratory therapists by the director of the division of professions and occupations for another 9 years, until September 1, 2024.
- ! **Section 3** authorizes the director to discipline a licensee who fails to timely respond to a complaint issued against the licensee.
- ! **Sections 3 and 4** authorize the director to order a licensee to undergo a physical or mental evaluation to determine the licensee's fitness to practice respiratory therapy and to suspend the license of a licensee who refuses to submit to an evaluation when ordered by the director.
- ! **Section 5** imposes a 2-year waiting period for obtaining a new license when a licensee's license is revoked or surrendered in lieu of discipline.
- ! **Section 6** removes the ability of the director to discipline a licensee merely because the licensee has a physical or mental disability that affects his or her practice and instead authorizes discipline only if the licensee fails to: Notify the director of a physical or mental illness or condition that affects his or her ability to practice; practice within the limitations imposed by the illness or condition; or practice within any restrictions agreed to in a confidential agreement entered into with the director.
- ! **Section 7** authorizes the director to enter into a confidential agreement with a licensee under which the licensee agrees to limit his or her practice based on the effect the licensee's physical or mental illness or condition has on his or her ability to practice with reasonable skill and safety to clients.
- ! **Section 8** eliminates the requirement that the director send letters of admonition via certified mail.
- ! **Sections 9 and 10** strike references to the National Board of Respiratory Care as the body that credentials respiratory therapists and instead grants the director the power to select the appropriate national credentialing body upon whose practice standards to base licensure in this state.
- ! **Sections 9 and 11** make technical changes to the act.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **repeal**

1 (46) (e); and **add** (55) (j) as follows:

2 **24-34-104. General assembly review of regulatory agencies**
3 **and functions for termination, continuation, or reestablishment.**

4 (46) The following agencies, functions, or both shall terminate on July
5 1, 2015:

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

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

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

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

16 **12-41.5-115. Repeal of article - termination of functions.**

17 (1) This article is repealed, effective ~~July 1, 2015~~ SEPTEMBER 1, 2024.
18 PRIOR TO THE REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES
19 SHALL REVIEW THE LICENSURE FUNCTIONS OF THE DIRECTOR PURSUANT TO
20 SECTION 24-34-104, C.R.S.

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

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

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

1 **12-41.5-109. Grounds for action - disciplinary proceedings.**

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

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

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

17 (III) HAS FAILED TO COMPLY WITH THE LIMITATIONS AGREED TO
18 UNDER A CONFIDENTIAL AGREEMENT ENTERED PURSUANT TO SECTION
19 12-41.5-109.7;

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

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

26 (s) HAS REFUSED TO SUBMIT TO A PHYSICAL OR MENTAL
27 EXAMINATION WHEN ORDERED BY THE DIRECTOR PURSUANT TO SECTION

1 12-41.5-109.5.

2 (5.5) (b) (II) The director or an administrative law judge ~~shall~~
3 ~~have the power to~~ MAY administer oaths, take affirmations of witnesses,
4 and issue subpoenas to compel the attendance of witnesses and the
5 production of all relevant papers, books, records, documentary evidence,
6 and materials in any hearing, investigation, accusation, or other matter
7 coming before the ~~board~~ DIRECTOR. The director may appoint an
8 administrative law judge pursuant to part 10 of article 30 of title 24,
9 C.R.S., to take evidence and to make findings and report them to the
10 director.

11 (III) Upon failure of any witness to comply with ~~such~~ A subpoena
12 or process, the district court of the county in which the subpoenaed
13 person or licensee resides or conducts business, upon application by the
14 ~~board or~~ director with notice to the subpoenaed person or licensee, may
15 issue to the person or licensee an order requiring that person or licensee
16 to appear before the director; to produce the relevant papers, books,
17 records, documentary evidence, or materials if so ordered; or to give
18 evidence touching the matter under investigation or in question. ~~Failure~~
19 IF THE PERSON OR LICENSEE FAILS to obey the order of the court, THE
20 COURT may ~~be punished by the court as a~~ HOLD THE PERSON OR LICENSEE
21 IN contempt of court.

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

27 (b) When THE DIRECTOR SENDS a letter of admonition ~~is sent by~~

1 ~~the director, by certified mail,~~ to a licensee, ~~such~~ THE LETTER MUST
2 ADVISE THE licensee ~~shall be advised~~ that he or she has the right to
3 request in writing, within twenty days after receipt of the letter, that THE
4 DIRECTOR INITIATE formal disciplinary proceedings ~~be initiated~~ to
5 adjudicate the propriety of the conduct upon which the letter of
6 admonition is based.

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

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

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

17 **12-41.5-109.5. Mental and physical examination of licensees.**

18 (1) (a) IF THE DIRECTOR HAS REASONABLE CAUSE TO BELIEVE THAT A
19 LICENSEE IS UNABLE TO PRACTICE WITH REASONABLE SKILL AND SAFETY
20 TO CLIENTS, THE DIRECTOR MAY ORDER THE LICENSEE TO SUBMIT TO A
21 MENTAL OR PHYSICAL EXAMINATION ADMINISTERED BY A PHYSICIAN OR
22 OTHER LICENSED HEALTH CARE PROFESSIONAL DESIGNATED BY THE
23 DIRECTOR.

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

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

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

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

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

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

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

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

1 REPORTS OF THE PHYSICIAN OR OTHER LICENSED HEALTH CARE
2 PROFESSIONAL DESIGNATED BY THE DIRECTOR.

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

7 **12-41.5-109.7. Confidential agreement to limit practice -**
8 **violation - grounds for discipline.** (1) IF A RESPIRATORY THERAPIST HAS
9 A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE
10 PERSON UNABLE TO PRACTICE RESPIRATORY THERAPY WITH REASONABLE
11 SKILL AND SAFETY TO CLIENTS, THE RESPIRATORY THERAPIST SHALL
12 NOTIFY THE DIRECTOR OF THE ILLNESS OR CONDITION IN A MANNER AND
13 WITHIN A PERIOD DETERMINED BY THE DIRECTOR. THE DIRECTOR MAY
14 REQUIRE THE RESPIRATORY THERAPIST TO SUBMIT TO AN EXAMINATION TO
15 EVALUATE THE EXTENT OF THE ILLNESS OR CONDITION AND ITS EFFECT ON
16 THE RESPIRATORY THERAPIST'S ABILITY TO PRACTICE RESPIRATORY
17 THERAPY WITH REASONABLE SKILL AND SAFETY TO CLIENTS.

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

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

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

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

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

17 **SECTION 5.** In Colorado Revised Statutes, 12-41.5-106, **amend**
18 (1), (2) (b), and (2) (c) as follows:

19 **12-41.5-106. License - reciprocity - effectiveness - fee.** (1) An
20 applicant for a license to practice respiratory therapy shall submit to the
21 director ~~written~~ evidence that he or she is credentialed ~~with the national~~
22 ~~board for respiratory care~~ BY A NATIONAL RESPIRATORY THERAPY
23 CREDENTIALING BODY, AS DETERMINED BY THE DIRECTOR, as a certified
24 or registered respiratory therapist and shall pay a fee as determined by the
25 director. The director shall ~~have~~ MAINTAIN on file the standards of
26 practice for examination and accreditation by the national ~~board for~~
27 ~~respiratory care~~ RESPIRATORY THERAPY CREDENTIALING BODY

1 DETERMINED BY THE DIRECTOR PURSUANT TO THIS SUBSECTION (1) and
2 ~~such~~ MAKE THE standards ~~shall be~~ available to the public.

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

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

11 (c) Functioning in the capacity of a respiratory therapist as of July
12 1, 2000, and has successfully passed, no later than July 1, 2001, the
13 certification or registration examination of ~~the national board for~~
14 ~~respiratory care~~ A NATIONAL RESPIRATORY THERAPY CREDENTIALING
15 BODY, AS DETERMINED BY THE DIRECTOR.

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

18 **12-41.5-110. Exceptions.** (2) This article does not prohibit:

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

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

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