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Bill Analysis

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Primary Sponsors: Reps. T. Young and John

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SUMMARY

- Recognizes and regulates the practice of advanced practice respiratory therapists, who are individuals that perform services – pursuant to a supervision agreement with a physician – for the diagnosis and treatment of cardiopulmonary diseases or conditions.
- Requires an advanced practice respiratory therapist to hold a license issued by the State Medical Board and establishes criminal penalties for violators.
- Allows the holder of an advanced practice respiratory therapist license to perform certain services authorized by the supervising physician, which may include ordering, prescribing, and administering drugs and medical devices.
- Coordinates the State Medical Board’s licensing and regulatory procedures for advanced practice respiratory therapists with those for respiratory therapists and other health care professionals also regulated by the Board.

TABLE OF CONTENTS

Practice of advanced practice respiratory therapists.....	2
Authorized services	2
Prescriptive authority	4
Other provisions related to prescribing	4
Orders for respiratory care; supervision and delegation	5
Telehealth services	5
Care during disasters or emergencies	5
Physician supervision	6
Supervision agreement.....	6
Quality assurance system	7
Supervising physician liability.....	7

Liability related to health care facilities	8
Unauthorized practice and criminal penalties	8
Eligibility for licensure.....	9
Application	10
Renewals	10
Failure to maintain certification or complete continuing education	11
Licensure fees.....	11
Discipline by the Medical Board	11
Against an advanced practice respiratory therapist	11
Discipline against a supervising physician.....	12
Other health professionals.....	12
Respiratory Care Advisory Council.....	12
Medical Board and Advisory Council liability	13
Rulemaking.....	13
Miscellaneous provisions.....	14
Interpretation of bill	14

DETAILED ANALYSIS

Practice of advanced practice respiratory therapists

H.B. 102 recognizes and regulates the practice of respiratory care as an advanced practice respiratory therapist, which means performing services delegated by a supervising physician in the diagnosis and treatment of patients with cardiopulmonary diseases or conditions, including prescribing, ordering, and administering drugs and medical devices.¹ The bill establishes a process by which an individual may obtain a license to practice as an advanced practice respiratory therapist through the State Medical Board and specifies the services a license holder may perform under the delegation of a supervising physician.

Authorized services

A holder of a license to practice as an advanced practice respiratory therapist is authorized to practice only under the supervision, control, and direction of a physician with whom the advanced practice respiratory therapist has entered into a supervision agreement as set forth in the bill. An advanced practice respiratory therapist must practice in accordance with the supervision agreement, as well as the policies of the health care facility in which the advanced practice respiratory therapist is practicing.²

¹ R.C. 4761.01(J).

² R.C. 4761.36(A); see also R.C. 4761.38(B).

The bill defines “health care facility” as hospitals, entities owned or controlled by hospitals, and medical practices that provide direct patient care.³ The Medical Board may, through rule, designate additional health care facilities where an advanced practice respiratory therapist may practice.⁴

Under the bill, a licensed advanced practice respiratory therapist may perform any of the following services authorized by a supervising physician if the services are part of the physician’s normal course of practice and expertise:

- Ordering diagnostic, therapeutic, and other medical services;
- Prescribing physical therapy or referring a patient for physical therapy;⁵
- Ordering occupational therapy or referring a patient for occupational therapy;
- If the advanced practice respiratory therapist has been granted physician-delegated prescriptive authority, ordering, prescribing, and administering drugs and medical devices;
- Any other services that are part of the supervising physician’s normal course of practice and expertise.⁶

The bill specifically prohibits a supervising physician from authorizing an advanced practice respiratory therapist to perform any service that is beyond the physician’s or therapist’s normal course of practice and expertise. It also limits the supervising physician’s authorization to services the physician is satisfied that the advanced practice respiratory therapist is capable of competently performing.⁷

In the case of an advanced practice respiratory therapist that performs services at a health care facility with an emergency department, the bill authorizes a supervising physician to, on occasion, send an advanced practice respiratory therapist to the emergency department to assess a patient. The supervising physician must be available to go to the emergency department to personally evaluate the patient.⁸

³ R.C. 4761.01(K).

⁴ R.C. 4761.36(B); see also R.C. 4761.39, authorizing an advanced practice respiratory therapist to practice in any health care facility within which the supervising physician has supervision, control, and direction of the advanced practice respiratory therapist.

⁵ R.C. 4755.48.

⁶ R.C. 4761.38(A).

⁷ R.C. 4761.39(C).

⁸ R.C. 4761.39(D).

Prescriptive authority

A licensed advanced practice respiratory therapist may exercise physician-delegated prescriptive authority, which includes prescribing drugs and therapeutic devices.⁹ In exercising this authority, an advanced practice respiratory therapist is subject to the following conditions or limitations:¹⁰

- The respiratory therapist may exercise prescriptive authority only to the extent that the supervising physician has granted that authority;
- The respiratory therapist must comply with all conditions the supervising physician places on the therapist's exercise of prescriptive authority (see below);
- The respiratory therapist is prohibited from prescribing a controlled substance for use outside of the health care facility in which the therapist practices;
- The respiratory therapist is prohibited from personally furnishing any drug;
- The respiratory therapist is prohibited from prescribing any drug in violation of state or federal law;
- The respiratory therapist is prohibited from furnishing sample drugs.¹¹

Regarding conditions that may be placed on physician-delegated prescriptive authority, any such conditions must be in writing. Possible conditions include:¹²

- Identifying specific classes of drugs and therapeutic devices that cannot be prescribed;
- Limitations on dosages and refills;
- Specifying circumstances under which referral to a physician is required;
- Responsibilities to be fulfilled by the supervising physician that are not otherwise specified in the supervision agreement.

Other provisions related to prescribing

The bill includes corresponding changes to Ohio's criminal drug laws and pharmacy laws related to the authority being granted to advanced practice respiratory therapists to possess, prescribe, furnish, administer, and sell drugs. Accordingly, advanced practice respiratory therapists are included in those provisions in the same manner as other prescribers.¹³

⁹ R.C. 4761.41 and 4761.44.

¹⁰ R.C. 4761.44; see also R.C. 3719.06(A)(4).

¹¹ R.C. 3719.81.

¹² R.C. 4761.45.

¹³ R.C. 2925.01, 2925.02, 2925.03, 2925.11, 2925.12, 2925.14, 2925.23, 2925.36, 2925.55, 2925.56, 3719.13, 4729.01, and 4729.51.

Orders for respiratory care; supervision and delegation

Under the bill, an advanced practice respiratory therapist may order respiratory care services and delegate the performance of those services, including the administration of drugs, to another respiratory care professional. Advanced practice respiratory therapists also may supervise respiratory care professionals.¹⁴

Further, the bill authorizes an advanced practice respiratory therapist to delegate performance of a task or the administration of a drug to any other person if certain conditions are met.¹⁵ These include the following:

- The advanced practice respiratory therapist must be physically present at the location where the task is performed or the drug administered;
- The advanced practice respiratory therapist, prior to delegating a task or the administration of a drug, must determine that the task or drug is appropriate for the patient and that the person to whom delegation is made may safely perform the task or administer the drug;
- With respect to drug administration, the advanced practice respiratory therapist must have been granted physician-delegated prescriptive authority and must be authorized to prescribe the drug, the drug cannot be a controlled substance, the drug cannot be administered intravenously, and the drug cannot be administered in a hospital inpatient care unit or emergency department or a freestanding emergency department or ambulatory surgical facility.

Telehealth services

The bill authorizes an advanced practice respiratory therapist to provide telehealth services. The bill maintains current law's authorization for respiratory care professionals to practice telehealth.¹⁶

Care during disasters or emergencies

The bill specifies that an advanced practice respiratory therapist is not prohibited from providing medical care in response to a disaster or emergency. In such a circumstance, the advanced practice respiratory therapist's supervising physician is not required to meet the supervision requirements established by the bill. Instead, the physician designated as the medical director of the disaster or emergency may supervise the advanced practice respiratory therapist.¹⁷

¹⁴ R.C. 4761.17.

¹⁵ R.C. 4761.381.

¹⁶ R.C. 4761.25 and 4743.09; see also R.C. 5164.95, regarding standards for Medicaid payments for telehealth services provided by advanced practice respiratory therapists.

¹⁷ R.C. 4761.35.

Physician supervision

The bill prohibits an advanced practice respiratory therapist from practicing without the supervision, control, and direction of a supervising physician who specializes in pulmonology, anesthesiology, critical care, or sleep medicine.¹⁸ However, before initiating supervision of an advanced practice respiratory therapist, a physician must enter into a supervision agreement with the respiratory therapist who will be supervised.¹⁹

Supervision agreement

Under the bill, a supervision agreement may not apply to more than one advanced practice respiratory therapist and only a physician specializing in pulmonology, anesthesiology, critical care, or sleep medicine may enter into the agreement. The agreement must specify that the physician agrees to supervise the advanced practice respiratory therapist and that the respiratory therapist agrees to practice under that physician's supervision.²⁰

The agreement also must include the following components:²¹

- Terms that require the advanced practice respiratory therapist to practice in accordance with the policies of the health care facility in which the respiratory therapist practices;
- Any limitations on the responsibilities to be fulfilled by the advanced practice respiratory therapist;
- The circumstances under which the advanced practice respiratory therapist is required to refer a patient to the supervising physician;
- If the supervising physician chooses to designate physicians to act as alternate supervising physicians, the names, business addresses, and business telephone numbers of the physicians who have agreed to act in that capacity.

Upon entering into a supervision agreement, the supervising physician and advanced practice respiratory therapist must each retain a copy of it in the physician's or respiratory therapist's records.²² If the Medical Board finds a failure to comply with this requirement, the Board may take disciplinary action, impose a civil penalty, or both. Alternatively, the Board may permit the individual to agree in writing to update their records and pay a civil penalty. Any civil penalty cannot exceed \$5,000.²³

¹⁸ R.C. 4761.33.

¹⁹ R.C. 4761.37.

²⁰ R.C. 4761.37(A).

²¹ R.C. 4761.37(B).

²² R.C. 4761.37(C).

²³ R.C. 4761.37(D)(2) and (4).

In supervising an advanced practice respiratory therapist, all of the following conditions must be met:²⁴

- The supervising physician must be continuously available for direct communication with the advanced practice respiratory therapist either by being (1) physically present at the location where the respiratory therapist practices or (2) readily available by some means of telecommunication and at a distance that allows the physician to assure proper patient care;
- The supervising physician must personally and actively review the advanced practice respiratory therapist's professional activities;
- The supervising physician must ensure that a quality assurance system is implemented and maintained;
- The supervising physician must regularly perform any other review of the advanced practice respiratory therapist as the physician considers necessary.

The bill specifies that a physician may enter into agreements with any number of advanced practice respiratory therapists, but limits the physician to supervising not more than five at any one time. It further provides that an advanced practice respiratory therapist may enter into agreements with any number of supervising physicians.²⁵

Quality assurance system

The bill requires supervising physicians to establish quality assurance systems. The systems must describe processes for all of the following:²⁶

- Routine review by the physician of selected patient records, including medical orders by an advanced practice respiratory therapist;
- Discussion of complex cases;
- Discussion of new and relevant medical developments;
- Performance of any quality assurance activities required in rules.

Supervising physician liability

The bill provides that an advanced practice respiratory therapist, when performing authorized services, acts as the agent of the supervising physician. The supervising physician is legally responsible and assumes legal liability for the services provided by the advanced practice

²⁴ R.C. 4761.39(A).

²⁵ R.C. 4761.39(B).

²⁶ R.C. 4761.39(F).

respiratory therapist. After a supervision agreement expires or is terminated, the supervising physician is no longer responsible or liable for services provided after that date.²⁷

Liability related to health care facilities

A health care facility that permits advanced practice respiratory therapists to practice within the facility must make reasonable efforts to explain to others working with an advanced practice respiratory therapist the scope of the advanced practice respiratory therapist's practice within the facility. The health care facility's credentialing body must provide, on request of an individual working with an advanced practice respiratory therapist, a copy of the facility's policies on the practice of advanced practice respiratory care in the facility, and a copy of each supervision agreement applicable to the advanced practice respiratory therapist.

Absent willful or wanton misconduct, an individual who follows the orders of an advanced practice respiratory therapist practicing in a health care facility is not subject to disciplinary action and is not liable in civil damages resulting from acts or omissions in the performance of any procedure, treatment, or other health care service if the individual reasonably believed that the advanced practice respiratory therapist was acting within the proper scope of practice or was relaying orders from a supervising physician.²⁸

Unauthorized practice and criminal penalties

The bill prohibits all of the following:

- A person holding themselves out as being able to function as an advanced practice respiratory therapist, or using any words or letters indicating or implying that the person is an advanced practice respiratory therapist, without a current, valid license to practice as an advanced practice respiratory therapist;²⁹
- A person practicing as an advanced practice respiratory therapist (1) without the supervision, control, and direction of a supervising physician who specializes in pulmonology, anesthesiology, critical care, or sleep medicine and (2) without having entered into a supervision agreement with a supervising physician;³⁰
- A supervising physician authorizing an advanced practice respiratory therapist to perform services that are not within the physician's normal course of practice and expertise or that are inconsistent with the supervision agreement, including the policies

²⁷ R.C. 4761.40(A); see also R.C. 4761.37(A).

²⁸ R.C. 4761.40(B).

²⁹ R.C. 4761.33(A); see R.C. 4761.33(I) regarding a limited exception for out-of-state licensed advanced practice respiratory therapists volunteering at charity events.

³⁰ R.C. 4761.33(B) and (C).

of the health care facility in which the physician and the advanced practice respiratory therapist are practicing;³¹

- An advanced practice respiratory therapist from performing general anesthesia, monitored anesthesia care, regional anesthesia, or neuraxial anesthesia;³²
- A person advertising to provide services as an advanced practice respiratory therapist, except for the purpose of seeking employment;³³
- An advanced practice respiratory therapist from failing to wear at all times when on duty a placard, plate, or other device identifying that person as an advanced practice respiratory therapist;³⁴
- An advanced practice respiratory therapist from prescribing controlled substances to be used by an individual outside of the health care facility in which the advanced practice respiratory therapist is practicing.³⁵

A violation of any of the above prohibitions is a first degree misdemeanor for the first offense and a fourth degree felony for subsequent offenses.³⁶

Eligibility for licensure

To be eligible for a license to practice as an advanced practice respiratory therapist, an individual must meet all of the following qualifications:

- Hold a Medical Board-issued license to practice as a respiratory care professional (at the nonadvanced level);
- Have successfully completed the requirements of a master's or doctoral educational program approved by the Board, which includes instruction in the following areas relative to cardiopulmonary disease: pathophysiology, symptomatology, differential diagnosis, disease management including through pharmacologic and nonpharmacologic interventions, health promotion, and disease prevention;
- Have passed an examination approved by the Board that tests the applicant's knowledge of certain topics related to respiratory therapy and cardiopulmonary disease;

³¹ R.C. 4761.33(D).

³² R.C. 4761.33(E).

³³ R.C. 4761.33(F).

³⁴ R.C. 4761.33(G).

³⁵ R.C. 4761.33(H).

³⁶ R.C. 4761.99.

- Hold an active qualification to practice advanced practice respiratory care from a Board-recognized organization.³⁷

Regarding the final point, an advanced practice respiratory therapist who fails to maintain the active qualification must notify the Board within 14 days of the qualification no longer being active.³⁸

Application

An individual seeking an initial license to practice as an advanced practice respiratory therapist must file a written application with the Medical Board on a form prescribed and supplied by the Board. The application must be accompanied by the initial license fee determined by the Board.³⁹

The bill requires the Medical Board to review each application submitted and not later than 60 days after receiving it, determine whether the applicant meets the requirements for licensure. If the requirements have been met, the Board shall issue a license to practice.⁴⁰

Renewals

A license to practice as an advanced practice respiratory therapist is valid for two years, unless earlier suspended or revoked. It may be renewed for additional two-year periods if the person seeking renewal applies with the Medical Board and pays the renewal fee to be determined by the Board. As a condition of renewal, an applicant must report criminal offenses that constitute grounds for refusing to issue a license since the last application for a license to practice as an advanced practice respiratory therapist.⁴¹

A renewal applicant also must:⁴²

- Certify to the Board that the applicant has maintained active qualification to practice advanced practice respiratory care from an organization recognized by the Board, including completing continuing education required to maintain the qualification;
- Comply with renewal eligibility requirements related to physician-delegated prescriptive authority, including at least 12 hours of continuing education in pharmacology.
- A license to practice that is not renewed on or before its expiration date is automatically suspended on its expiration date. Additionally, if an advanced practice respiratory therapist's license to practice as a respiratory care professional (at the nonadvanced

³⁷ R.C. 4761.30.

³⁸ R.C. 4761.301.

³⁹ R.C. 4761.30.

⁴⁰ R.C. 4761.31.

⁴¹ R.C. 4761.32(A).

⁴² R.C. 4761.32(B) and (C) and 4761.48.

level) is classified as inactive for any reason, the person's license to practice as an advanced practice respiratory therapist is automatically classified as inactive. If either license held by an advanced practice respiratory therapist is revoked or suspended, the other license is automatically revoked or suspended, as applicable.⁴³

Under the bill, existing law provisions relating to reinstatement and restoration of suspended licenses to practice as respiratory care professionals are applied to the new licensure of advanced practice respiratory therapists.⁴⁴

Failure to maintain certification or complete continuing education

If the Medical Board finds, through a random sample or through any other means, that an individual who certified maintenance of an active qualification or completion of continuing education in pharmacology required to renew, reinstate, or restore a license to practice did not complete the requisite maintenance or continuing education, the Board may do either of the following:⁴⁵

- Take disciplinary action, impose a civil penalty, or both;
- Permit the individual to agree in writing to comply with the requirement and pay a civil penalty.

Any such civil penalty cannot exceed \$5,000.

Licensure fees

The bill requires the Medical Board to determine initial license and renewal fees for advanced practice respiratory therapists. The fees cannot exceed \$175 for the initial fee and \$125 for biennial renewal.⁴⁶

Discipline by the Medical Board

Against an advanced practice respiratory therapist

The bill generally applies the existing reasons and process for discipline of respiratory care professionals to advanced practice respiratory therapists. It also adds the following causes for discipline:⁴⁷

1. Failure to comply with the laws governing respiratory care (R.C. Chapter 4761) or other laws administered by the Medical Board (R.C. Chapter 4731), or any rules of the Medical Board;

⁴³ R.C. 4761.32(E).

⁴⁴ R.C. 4761.06, 4761.061, and 4761.32(F).

⁴⁵ R.C. 4761.32(G).

⁴⁶ R.C. 4761.07(B)(5) and (6).

⁴⁷ R.C. 4761.09(B); see also R.C. 4761.37(D).

2. Violating or attempting to violating any provision of those laws or rules;
3. Failure to practice in accordance with a supervision agreement, including any policies of a health care facility where the supervising physician and advanced practice respiratory therapist are practicing;
4. Administering drugs for unauthorized purpose;
5. Conviction for violating state or federal laws regulating drugs and drug trafficking;
6. Willfully betraying a professional confidence;
7. Failure to use universal blood and bodily fluid precautions established in rules;
8. Having the individual's qualification to practice advanced practice respiratory care from a Board-recognized organization expire, lapse, or otherwise fail to be active.

Discipline against a supervising physician

The bill authorizes the Medical Board to take disciplinary action against a supervising physician who fails to maintain supervision of an advanced practice respiratory therapist in accordance with the bill's requirements. The Board may impose any of the forms of discipline that are available under existing law regarding the practice of physicians.⁴⁸

Other health professionals

The bill coordinates the Medical Board's licensing and regulatory procedures for advanced practice respiratory therapists with those for respiratory therapists and other health professionals also regulated by the Board. In doing so, the bill addresses all of the following topics: Board investigations,⁴⁹ employer reporting of misconduct,⁵⁰ treatment of impaired practitioners,⁵¹ notice of criminal prosecution,⁵² and mental illness adjudication.⁵³

Respiratory Care Advisory Council

Existing law requires the Medical Board to appoint a Respiratory Care Advisory Council to advise the Board on issues relating to the practice of respiratory care.⁵⁴ At present, the Council consists of seven members. The bill increases that number to nine, by requiring the Council to have a member who is an advanced practice respiratory therapist and another who is a physician serving as a supervising physician for an advanced practice respiratory therapist.

⁴⁸ R.C. 4731.22(B)(55); see also R.C. 4761.37(D)(1)(b).

⁴⁹ R.C. 4761.03.

⁵⁰ R.C. 4761.14.

⁵¹ R.C. 4731.251.

⁵² R.C. 4761.13.

⁵³ R.C. 4761.20.

⁵⁴ R.C. 4761.032.

Similar to current law, up to three nominations for the additional members made be made, respectively, by the Ohio Society for Respiratory Care and the Ohio State Medical Association.

Current law authorizes the Council to submit to the Board recommendations governing its regulation of respiratory care professionals, including recommendations related to the licensing and renewal processes and the practice of respiratory care. The bill extends these provisions to the licensure and practice of advanced practice respiratory therapists. The bill specifies that that the Council may review and make recommendations about the quality assurance systems that supervising physicians must establish. Also, the bill allows the Council to make recommendations on any issue the Board asks it to consider.

The bill authorizes the Board to permit Council meetings to include the use of interactive videoconferencing, teleconferencing, or both. Some of the conditions that must be met to do so include: the meeting location must be open and accessible to the public, any meeting-related materials available before the meeting must be sent to Council members, and each meeting location must have clear audio and video connections.

Medical Board and Advisory Council liability

So long as there is not fraud or bad faith, the bill provides immunity from damages resulting from acts, omissions, and other conduct related to official duties of the Medical Board, the Respiratory Care Advisory Council, and members, employees, and representatives of either. The state must provide and pay for such person's defense and any resulting judgment or settlement, so long as a request for defense is made in writing at a reasonable time before trial.⁵⁵

Rulemaking

The bill authorizes the Medical Board to adopt rules as necessary to govern the practice of advanced practice respiratory therapists and to administer and enforce the related statutes. The rules also may address the supervisory relationship between advanced practice respiratory therapists and physicians.⁵⁶

The bill further requires the Board to adopt rules governing physician-delegated prescriptive authority for advanced practice respiratory therapists. The rules must establish, at a minimum, requirements regarding the pharmacology courses that an advanced practice respiratory therapist must complete.⁵⁷

In adopting any rules under the bill, the Board must comply with the Administrative Procedure Act (R.C. Chapter 119).

⁵⁵ R.C. 4761.21

⁵⁶ R.C. 4761.033.

⁵⁷ R.C. 4761.43.

Miscellaneous provisions

The bill adds advanced practice respiratory therapists to various other provisions of Ohio law that apply to other types of health care providers. The provisions include:

1. Providing immunity to volunteer health care providers rendering care to indigent uninsured individuals;⁵⁸
2. Administration and distribution of drugs under a Director of Health-developed protocol during a declared public health emergency;⁵⁹
3. Patient requests for copies of medical records;⁶⁰
4. Providing immunity for health care providers donating, accepting, or dispensing drugs under the Drug Repository Program;⁶¹
5. Specifying that Ohio's emergency medical professionals law does not restrict the practice of advanced practice respiratory therapists;⁶²
6. The definition of "health care professional" for purposes of balance billing of Medicare beneficiaries;⁶³
7. Prosecutor notice to licensing boards regarding various offenses, including felonies and misdemeanors committed in the course of practice;⁶⁴
8. License suspension for prescribers who become addicted to controlled substances;⁶⁵
9. Unlicensed in-home health care provided to individuals with developmental disabilities when prescribed or otherwise directed by a licensed health care professional;⁶⁶ and
10. Continuing education extensions for active duty military.⁶⁷

Interpretation of bill

The bill provides that its provisions should not:⁶⁸

⁵⁸ R.C. 2305.234.

⁵⁹ R.C. 3701.048.

⁶⁰ R.C. 3701.74.

⁶¹ R.C. 3715.872.

⁶² R.C. 4765.51.

⁶³ R.C. 4769.01.

⁶⁴ R.C. 2929.42 (this change applies to respiratory care professionals as well).

⁶⁵ R.C. 3719.121.

⁶⁶ R.C. 5123.47.

⁶⁷ R.C. 5903.12.

⁶⁸ R.C. 4761.34.

- Be construed to affect or interfere with the performance or duties of medical personnel who are active-duty military or employed by the U.S. Veterans Administration;
- Prevent other persons from performing services an advanced practice respiratory therapist is authorized to perform if the services are in the person’s authorized scope of practice;
- Prohibit a physician from delegating to a nurse or other qualified person, so long as the delegatee does not hold themselves out as an advanced practice respiratory therapist;
- Be construed as authorizing an advanced practice respiratory therapist independently to order or direct the execution of procedures or techniques used by a registered nurse or licensed practical nurse, except to the extent an advanced practice respiratory therapist is authorized to do so by the therapist’s supervising physician.

HISTORY

Action	Date
Introduced	03-14-23
