

AN ACT

To amend sections 4745.01, 4761.02, 4761.03, and 4761.09 and to enact sections 4752.01 to 4752.09, 4752.11 to 4752.15, 4752.17 to 4752.19, and 4752.99 of the Revised Code to require home medical equipment services providers to be licensed by the Ohio Respiratory Care Board or to be nationally accredited and registered by the Board.

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

SECTION 1. That sections 4745.01, 4761.02, 4761.03, and 4761.09 be amended and sections 4752.01, 4752.02, 4752.03, 4752.04, 4752.05, 4752.06, 4752.07, 4752.08, 4752.09, 4752.11, 4752.12, 4752.13, 4752.14, 4752.15, 4752.17, 4752.18, 4752.19, and 4752.99 of the Revised Code be enacted to read as follows:

Sec. 4745.01. (A) "Standard renewal procedure," as used in Chapters 905., 907., 909., 911., 913., 915., 918., 921., 923., 927., 942., 943., 953., 1321., 3710., 3713., 3719., 3731., 3742., 3748., 3769., 3783., 3921., 3951., 4104., 4105., 4143., 4169., 4561., 4703., 4707., 4709., 4713., 4715., 4717., 4723., 4725., 4727., 4728., 4729., 4731., 4733., 4734., 4735., 4739., 4741., 4747., 4749., 4752., 4753., 4755., 4757., 4758., 4759., 4761., 4766., 4773., and 4775. of the Revised Code, means the license renewal procedures specified in this chapter.

(B) "Licensing agency," as used in this chapter, means any department, division, board, section of a board, or other state governmental unit subject to the standard renewal procedure, as defined in this section, and authorized by the Revised Code to issue a license to engage in a specific profession, occupation, or occupational activity, or to have charge of and operate certain specified equipment, machinery, or premises.

(C) "License," as used in this chapter, means a license, certificate, permit, card, or other authority issued or conferred by a licensing agency by authority of which the licensee has or claims the privilege to engage in the profession, occupation, or occupational activity, or to have control of and

operate certain specific equipment, machinery, or premises, over which the licensing agency has jurisdiction.

(D) "Licensee," as used in this chapter, means either the person to whom the license is issued or renewed by a licensing agency, or the person, partnership, or corporation at whose request the license is issued or renewed.

(E) "Renewal" and "renewed," as used in this chapter and in the chapters of the Revised Code specified in division (A) of this section, includes the continuing licensing procedure provided in Chapter 3748. of the Revised Code and rules adopted under it and in sections 1321.05 and 3921.33 of the Revised Code, and as applied to those continuing licenses any reference in this chapter to the date of expiration of any license shall be construed to mean the due date of the annual or other fee for the continuing license.

Sec. 4752.01. As used in this chapter:

(A) "Authorized health care professional" means a person authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery or otherwise authorized under Ohio law to prescribe the use of home medical equipment by a patient.

(B) "Home medical equipment" means equipment that can stand repeated use, is primarily and customarily used to serve a medical purpose, is not useful to a person in the absence of illness or injury, is appropriate for use in the home, and is one or more of the following:

(1) Life-sustaining equipment prescribed by an authorized health care professional that mechanically sustains, restores, or supplants a vital bodily function, such as breathing;

(2) Technologically sophisticated medical equipment prescribed by an authorized health care professional that requires individualized adjustment or regular maintenance by a home medical equipment services provider to maintain a patient's health care condition or the effectiveness of the equipment;

(3) An item specified by the Ohio respiratory care board in rules adopted under division (B) of section 4752.17 of the Revised Code.

(C) "Home medical equipment services" means the sale, delivery, installation, maintenance, replacement, or demonstration of home medical equipment.

(D) "Home medical equipment services provider" means a person engaged in offering home medical equipment services to the public.

(E) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

(F) "Sell or rent" means to transfer ownership or the right to use

property, whether in person or through an agent, employee, or other person, in return for compensation.

Sec. 4752.02. (A) Except as provided in division (B) of this section, no person shall provide home medical equipment services or claim to the public to be a home medical equipment services provider unless either of the following is the case:

(1) The person holds a valid license issued under this chapter;

(2) The person holds a valid certificate of registration issued under this chapter.

(B) Division (A) of this section does not apply to any of the following:

(1) A health care practitioner, as defined in section 4769.01 of the Revised Code, who does not sell or rent home medical equipment;

(2) A hospital that provides home medical equipment services only as an integral part of patient care and does not provide the services through a separate entity that has its own medicare or medicaid provider number;

(3) A manufacturer or wholesale distributor of home medical equipment that does not sell directly to the public;

(4) A hospice care program, as defined by section 3712.01 of the Revised Code, that does not sell or rent home medical equipment;

(5) A home, as defined by section 3721.01 of the Revised Code;

(6) A home health agency that is certified under Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1395, as a provider of home health services and does not sell or rent home medical equipment;

(7) An individual who holds a current, valid license issued under Chapter 4741. of the Revised Code to practice veterinary medicine;

(8) An individual who holds a current, valid license issued under Chapter 4779. of the Revised Code to practice orthotics, prosthetics, or pedorthics;

(9) A pharmacy licensed under Chapter 4729. of the Revised Code that either does not sell or rent home medical equipment or receives total payments of less than ten thousand dollars per year from selling or renting home medical equipment;

(10) A home dialysis equipment provider regulated by federal law.

Sec. 4752.03. (A) A person seeking to comply with division (A) of section 4752.02 of the Revised Code shall do either of the following:

(1) Apply for a license issued under this chapter;

(2) Apply for a certificate of registration issued under this chapter on the basis of being accredited by the joint commission on accreditation of healthcare organizations or another national accrediting body recognized by the Ohio respiratory care board, as specified in rules adopted under section

4752.17 of the Revised Code.

(B) A person intending to provide home medical equipment services from more than one facility shall apply for a separate license or certificate of registration for each facility.

Sec. 4752.04. A person seeking a license to provide home medical equipment services shall apply to the Ohio respiratory care board on a form the board shall prescribe and provide. The application must be accompanied by the license application fee established in rules adopted under section 4752.17 of the Revised Code and specify the name and location of the facility from which services will be provided.

Sec. 4752.05. (A) The Ohio respiratory care board shall issue a license to provide home medical equipment services to each applicant under section 4752.04 of the Revised Code that meets either of the following requirements:

(1) Meets the standards established by the board in rules adopted under section 4752.17 of the Revised Code;

(2) Is a pharmacy licensed under Chapter 4729. of the Revised Code that receives total payments of ten thousand dollars or more per year from selling or renting home medical equipment.

(B) During the period ending one year after the effective date of this section, an applicant that does not meet either of the requirements of division (A) of this section shall be granted a provisional license if for at least twelve months prior to the effective date of this section the applicant was engaged in the business of providing home medical equipment services. The provisional license expires one year following the date on which it is issued and is not subject to renewal under section 4752.06 of the Revised Code.

(C) The board may conduct a personal interview of an applicant, or an applicant's representative, to determine the applicant's qualifications for licensure.

(D) A license issued under division (A) of this section is valid from the day it is issued until the thirtieth day of June that immediately follows the date of issue. Thereafter a license is valid only if it is renewed in accordance with section 4752.06 of the Revised Code biennially on or before the thirtieth day of June.

(E) Any license issued under this section is valid only for the facility named in the application.

Sec. 4752.06. Except for a provisional license issued under section 4752.05 of the Revised Code, a license issued under this chapter shall be renewed by the Ohio respiratory care board if the license holder is in

compliance with the applicable requirements of this chapter.

An application for license renewal shall be accompanied by the renewal fee established in rules adopted under section 4752.17 of the Revised Code and documentation satisfactory to the board that the continuing education requirements of section 4752.07 of the Revised Code have been met. Renewals shall be made in accordance with the standard renewal procedure established under Chapter 4745. of the Revised Code.

Sec. 4752.07. The holder of a license issued under this chapter shall do all of the following:

(A) Maintain a physical facility and a medical equipment inventory;

(B) Establish equipment management and personnel policies;

(C) Provide life-sustaining home medical equipment, as described in division (B)(1) of section 4752.01 of the Revised Code, and related home medical equipment services twenty-four hours per day, seven days per week;

(D) Require persons in its employ or under its control who provide home medical equipment services to successfully complete continuing education programs in home medical equipment services that meet the standards established by rule adopted under section 4752.17 of the Revised Code and maintain records on participation in those programs;

(E) Maintain records on all individuals to whom it provides home medical equipment and services;

(F) Maintain liability insurance, including coverage for professional and products liability;

(G) Comply with all other requirements established by rule adopted under section 4752.17 of the Revised Code that apply to persons licensed under this chapter.

Sec. 4752.08. (A) The Ohio respiratory care board may inspect the operations and facility, subpoena the records, and compel testimony of employees of any home medical equipment services provider licensed under this chapter. Inspections shall be conducted as provided in rules adopted by the board under section 4752.17 of the Revised Code.

(B) The board shall employ investigators who shall, under the direction of the executive director of the board, investigate complaints and conduct inspections. Pursuant to an investigation or inspection, investigators may review and audit records during normal business hours at the place of business of the person being investigated. The board and its employees shall not disclose confidential information obtained during an investigation, except pursuant to a court order.

(C) The board shall send the provider a report of the results of an

inspection. If the board determines that the provider is not in compliance with any requirement of this chapter applicable to providers licensed under this chapter, the board may direct the provider to attain compliance. Failure of the provider to comply with the directive is grounds for action by the board under division (A)(1) of section 4752.09 of the Revised Code.

(D) A provider that disputes the results of an inspection may file an appeal with the board not later than ninety days after receiving the inspection report. The board shall review the inspection report and, at the request of the provider, conduct a new inspection.

Sec. 4752.09. (A) The Ohio respiratory care board may, in accordance with Chapter 119. of the Revised Code, suspend or revoke a license issued under this chapter or discipline a license holder by imposing a fine of not more than five thousand dollars or taking other disciplinary action on any of the following grounds:

(1) Violation of any provision of this chapter or an order or rule of the board, as those provisions, orders, or rules are applicable to persons licensed under this chapter;

(2) A plea of guilty to or a judicial finding of guilt of a felony or a misdemeanor that involves dishonesty or is directly related to the provision of home medical equipment services;

(3) Making a material misstatement in furnishing information to the board;

(4) Professional incompetence;

(5) Being guilty of negligence or gross misconduct in providing home medical equipment services;

(6) Aiding, assisting, or willfully permitting another person to violate any provision of this chapter or an order or rule of the board, as those provisions, orders, or rules are applicable to persons licensed under this chapter;

(7) Failing, within sixty days, to provide information in response to a written request by the board;

(8) Engaging in conduct likely to deceive, defraud, or harm the public;

(9) Denial, revocation, suspension, or restriction of a license to provide home medical equipment services, for any reason other than failure to renew, in another state or jurisdiction;

(10) Directly or indirectly giving to or receiving from any person a fee, commission, rebate, or other form of compensation for services not rendered;

(11) Knowingly making or filing false records, reports, or billings in the course of providing home medical equipment services, including false

records, reports, or billings prepared for or submitted to state and federal agencies or departments;

(12) Failing to comply with federal rules issued pursuant to the medicare program established under Title XVIII of the "Social Security Act," 49 Stat. 620(1935), 42 U.S.C. 1395, as amended, relating to operations, financial transactions, and general business practices of home medical services providers.

(B) The respiratory care board immediately may suspend a license without a hearing if it determines that there is evidence that the license holder is subject to actions under this section and that there is clear and convincing evidence that continued operation by the license holder presents an immediate and serious harm to the public. The president and executive director of the board shall make a preliminary determination and describe, by telephone conference or any other method of communication, the evidence on which they made their determination to the other members of the board. The board may by resolution designate another board member to act in place of the president of the board or another employee to act in the place of the executive director, in the event that the board president or executive director is unavailable or unable to act. On review of the evidence, the board may by a vote of not less than seven of its members, suspend a license without a prior hearing. The board may vote on the suspension by way of a telephone conference call.

Immediately following the decision to suspend a license under this division, the board shall issue a written order of suspension and cause it to be delivered in accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during the pendency of any appeal filed under section 119.12 of the Revised Code. If the license holder requests an adjudication hearing, the date set for the hearing shall be within fifteen days but not earlier than seven days after the license holder requests the hearing, unless another date is agreed to by the license holder and the board. The suspension shall remain in effect, unless reversed by the board, until a final adjudication order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudication order not later than ninety days after completion of the hearing. The board's failure to issue the order by that day shall cause the summary suspension to end, but shall not affect the validity of any subsequent final adjudication order.

Sec. 4752.11. (A) A person seeking a certificate of registration to provide home medical equipment services shall apply to the Ohio respiratory care board on a form the board shall prescribe and provide. The

application must be accompanied by the registration fee established in rules adopted under section 4752.17 of the Revised Code.

(B) The applicant shall specify in the application all of the following:

(1) The name of the facility from which services will be provided;

(2) The facility's address;

(3) The facility's telephone number;

(4) A person who may be contacted with regard to the facility;

(5) The name of the national accrediting body that issued the accreditation on which the application is based;

(6) The applicant's accreditation number and the expiration date of the accreditation;

(7) A telephone number that may be used twenty-four hours a day, seven days a week, to obtain information related to the facility's provision of home medical equipment services.

Sec. 4752.12. (A) The Ohio respiratory care board shall issue a certificate of registration to provide home medical equipment services to each applicant who submits a complete application under section 4752.11 of the Revised Code. For purposes of this division, an application is complete only if the board finds that the applicant holds accreditation from the joint commission on accreditation of healthcare organizations or another national accrediting body recognized by the board, as specified in rules adopted under section 4752.17 of the Revised Code.

(B) A certificate of registration issued under this section is valid from the day it is issued until the thirtieth day of June that immediately follows the date of issue. Thereafter, a certificate of registration is valid only if it is renewed in accordance with section 4752.13 of the Revised Code biennially on or before the thirtieth day of June.

(C) A certificate of registration issued under this section is valid only for the facility named in the application.

Sec. 4752.13. A certificate of registration issued under this chapter shall be renewed by the Ohio respiratory care board if the certificate holder is accredited by the joint commission on accreditation of healthcare organizations or another national accrediting body recognized by the board, as specified in rules adopted under section 4752.17 of the Revised Code.

An application for renewal of a certificate of registration shall be accompanied by the renewal fee established in rules adopted under section 4752.17 of the Revised Code. Renewals shall be made in accordance with the standard renewal procedure established under Chapter 4745. of the Revised Code.

Sec. 4752.14. The Ohio respiratory care board shall enter into a

cooperative agreement with each of the national accrediting bodies it recognizes in rules adopted under section 4752.17 of the Revised Code for purposes of issuing certificates of registration under this chapter. The board shall ensure that each cooperative agreement establishes or specifies standards or procedures regarding a complaint process, patient safety and care, and any other matter the board considers appropriate for home medical equipment services providers that receive certificates of registration under this chapter.

Sec. 4752.15. (A) The Ohio respiratory care board shall, in accordance with Chapter 119. of the Revised Code, suspend or revoke a certificate of registration issued under this chapter if it learns from any source that the accreditation on which the certificate of registration was issued has been revoked or suspended or is otherwise no longer valid.

(B) If the status of the accreditation on which a certificate of registration is issued under this chapter changes for any reason, the holder of the certificate shall notify the board. On receipt of the notice, the board shall take action under division (A) of this section, if appropriate.

Sec. 4752.17. (A) The Ohio respiratory care board shall adopt rules to implement and administer this chapter. The rules shall do all of the following:

(1) Specify items considered to be home medical equipment for purposes of divisions (B)(1) and (2) of section 4752.01 of the Revised Code;

(2) Establish procedures for issuance and renewal of licenses and certificates of registration under this chapter, including the duties that may be fulfilled by the board's executive director and other board employees;

(3) Specify the national accrediting bodies the board recognizes for purposes of issuing certificates of registration under this chapter;

(4) Establish standards an applicant must meet to be eligible to be granted a license under section 4752.05 of the Revised Code;

(5) Establish standards for personnel policies, equipment storage, equipment maintenance, and record keeping to be followed by home medical equipment services providers licensed under this chapter;

(6) Establish standards for continuing education programs in home medical equipment services for individuals who provide home medical equipment services while employed by or under the control of a home medical equipment services provider licensed under this chapter;

(7) Establish standards and procedures for inspection of home medical equipment providers licensed under this chapter and the facilities from which their home medical equipment services are provided and for appeal of inspection results;

(8) Establish fees for issuing and renewing licenses under this chapter, in an amount sufficient to meet the expenses the board incurs in administering the licensing program;

(9) Establish fees for conducting inspections of home medical equipment services providers licensed under this chapter, in an amount sufficient to meet the expenses the board incurs in administering the inspection program;

(10) Establish fees for issuing and renewing certificates of registration under this chapter, in an amount sufficient to meet the expenses the board incurs in administering the registration program;

(11) Establish any other standards, requirements, or procedures the board considers necessary for the implementation or administration of this chapter.

(B) The board may adopt rules specifying items that are considered home medical equipment for purposes of division (B)(3) of section 4752.01 of the Revised Code.

(C) Rules shall be adopted under this chapter in accordance with Chapter 119. of the Revised Code. Prior to adopting any rule, the board shall consult with representatives of any association of home medical equipment services providers that do business in this state.

Sec. 4752.18. All moneys the Ohio respiratory care board receives under this chapter, from any source, shall be deposited into the state treasury to the credit of the occupational licensing and regulatory fund created under section 4743.05 of the Revised Code.

Sec. 4752.19. (A) At the request of the Ohio respiratory care board, the attorney general may bring a civil action for appropriate relief, including a temporary restraining order, preliminary or permanent injunction, and civil penalties, in the court of common pleas of the county in which a violation has occurred, is occurring, or is threatening to occur against any person who has violated, is violating, or threatens to violate section 4752.02 of the Revised Code. In accordance with the Rules of Civil Procedure, the court of common pleas in which an action for injunction is filed has jurisdiction to grant, and shall grant, a temporary restraining order and preliminary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated, is violating, or threatens to violate section 4752.02 of the Revised Code. In an action for a civil penalty, the court may impose upon a person found to have violated section 4752.02 of the Revised Code a civil penalty of not less than five hundred and not more than two thousand five hundred dollars for each day of violation. Moneys resulting from civil penalties imposed under this section shall be deposited into the

state treasury to the credit of the occupational licensing and regulatory fund created under section 4743.05 of the Revised Code.

(B) The remedies provided in this section are in addition to remedies otherwise available under any federal or state law or ordinance of a municipal corporation.

Sec. 4752.99. Whoever violates division (A) of section 4752.02 of the Revised Code is guilty of a minor misdemeanor on the first offense. On the second offense, the person is guilty of a misdemeanor of the fourth degree. On each subsequent offense, the person is guilty of a misdemeanor of the first degree.

Sec. 4761.02. The governor, with the advice and consent of the senate, shall appoint the Ohio respiratory care board, consisting of ~~five~~ nine residents of this state. ~~Three~~ Five members of the board shall be respiratory care professionals who were engaged in or actively associated with the practice of respiratory care in this state for at least five years immediately preceding appointment. Two members shall be home medical equipment services providers with not less than five years of management experience in home medical equipment services prior to appointment. One member shall be a physician who has clinical training and experience in the management of pulmonary disease. One member shall represent the public.

After the term of a member of the board expires or becomes vacant, the Ohio state medical association may submit to the governor the names of nominees for the board position to be filled by a physician. The board of directors of the Ohio society for respiratory care, inc., may recommend to the governor at least three persons for each board position to be filled by a respiratory care professional. The American lung association of Ohio may submit to the governor the names of nominees for the board position to be filled by a person representing the public. The Ohio association of medical equipment services may submit to the governor the names of nominees for the two board positions to be filled by home medical equipment services providers. The governor shall consider these nominees in making the appointments.

~~Terms~~ Of the two additional members of the board to be appointed who are respiratory care professionals who were engaged in or actively associated with the practice of respiratory care in this state for at least five years immediately preceding appointment, one shall be appointed for a term ending the fourteenth day of March immediately following the date that is one year after the effective date of this amendment and one for a term ending on the fourteenth day of March immediately following the date that is two years after the effective date of this amendment. Of the initial two

home medical equipment services providers appointed to the board, one shall be appointed for a term ending the fourteenth day of March immediately following the date that is one year after the effective date of this amendment and one for a term ending the fourteenth day of March immediately following the date that is two years after the effective date of this amendment. Thereafter, terms of office shall be for three years, each term ending on the same day of the same month of the year as did the term which it succeeds. A member shall serve subsequent to the expiration of the member's term until a the member's successor is appointed and qualifies, or until a period of sixty days has elapsed, whichever occurs first. Each member, before entering upon the duties of office, shall subscribe to and file with the secretary of state the oath of office required under Section 7 of Article XV, Ohio Constitution. Vacancies shall be filled in the manner prescribed for the regular appointments to the board and shall be limited to the unexpired terms. Members of the board may be reappointed.

Annually, upon the qualification of the member or members appointed in that year, the Ohio respiratory care board shall organize and shall select from its members a president and secretary. A majority of the members of the board shall constitute a quorum to transact and vote on the business of the board.

Each member of the board shall receive an amount fixed pursuant to division (J) of section 124.15 of the Revised Code for each day actually employed in the discharge of the member's duties. In addition, each member shall receive actual and necessary expenses incurred in the performance of the member's official duties.

The board shall employ an executive director who shall be in the unclassified service of the state. The executive director shall assist the board in the administration and enforcement of this chapter and shall employ individuals as the board considers necessary to provide that assistance.

Sec. 4761.03. The Ohio respiratory care board shall regulate the practice of respiratory care in this state and the persons to whom the board issues licenses and limited permits and shall license and register home medical equipment services providers under Chapter 4752. of the Revised Code under this chapter. Rules adopted under this chapter that deal with the provision of respiratory care in a hospital, other than rules regulating the issuance of licenses or limited permits, shall be consistent with the conditions for participation under medicare, Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended, and with the respiratory care accreditation standards of the joint commission on accreditation of healthcare organizations or the American osteopathic

association.

The board shall:

(A) Adopt, and may rescind or amend, rules in accordance with Chapter 119. of the Revised Code to carry out the purposes of this chapter, including rules prescribing:

(1) The form and manner for filing applications for licensure and renewal, limited permits, and limited permit extensions under sections 4761.05 and 4761.06 of the Revised Code;

(2) The form, scoring, and scheduling of examinations and reexaminations for licensure and license renewal;

(3) Standards for the approval of educational programs required to qualify for licensure and continuing education programs required for license renewal;

(4) Continuing education courses and the number of hour requirements necessary for license renewal, in accordance with section 4761.06 of the Revised Code;

(5) Procedures for the issuance and renewal of licenses and limited permits, including the duties that may be fulfilled by the board's executive director and other board employees;

(6) Procedures for the denial, suspension, permanent revocation, refusal to renew, and reinstatement of licenses and limited permits, the conduct of hearings, and the imposition of fines for engaging in conduct that is grounds for such action and hearings under section 4761.09 of the Revised Code;

(7) Standards of ethical conduct for the practice of respiratory care;

(8) Conditions under which the license renewal fee and continuing education requirements may be waived at the request of a licensee who is not in active practice;

(9) The respiratory care tasks that may be performed by an individual practicing as a polysomnographic technologist pursuant to division (B)(3) of section 4761.10 of the Revised Code;

(10) Procedures for registering out-of-state respiratory care providers authorized to practice in this state under division (A)(4) of section 4761.11 of the Revised Code.

(B) Determine the sufficiency of an applicant's qualifications for admission to the licensing examination or a reexamination, and for the issuance or renewal of a license or limited permit;

(C) Determine the respiratory care educational programs that are acceptable for fulfilling the requirements of division (A) of section 4761.04 of the Revised Code;

(D) Schedule, administer, and score the licensing examination or any

reexamination for license renewal or reinstatement. The board shall administer the licensing examinations at least twice a year and notify applicants of the time and place of the examinations.

(E) Investigate complaints concerning alleged violations of section 4761.10 of the Revised Code or grounds for the suspension, permanent revocation, or refusal to issue licenses or limited permits under section 3123.47 or 4761.09 of the Revised Code. The board shall employ investigators who shall, under the direction of the executive director of the board, investigate complaints and make inspections and other inquiries as, in the judgment of the board, are appropriate to enforce sections 3123.41 to 3123.50, 4761.09, and 4761.10 of the Revised Code. Pursuant to an investigation and inspection, the investigators may review and audit records during normal business hours at the place of business of a licensee or person who is the subject of a complaint filed with the board or at any place where the records are kept.

Except when required by court order, the board and its employees shall not disclose confidential information obtained during an investigation or identifying information about any person who files a complaint with the board.

The board may hear testimony in matters relating to the duties imposed upon it and issue subpoenas pursuant to an investigation. The president and secretary of the board may administer oaths.

(F) Conduct hearings, keep records of its proceedings, and do all such other things as are necessary and proper to carry out and enforce the provisions of this chapter;

(G) Maintain, publish, and make available upon request, for a fee not to exceed the actual cost of printing and mailing:

(1) The requirements for the issuance of licenses and limited permits under this chapter and rules adopted by the board;

(2) A current register of every person licensed to practice respiratory care in this state, to include the addresses of the person's last known place of business and residence, the effective date and identification number of the license, the name and location of the institution that granted the person's degree or certificate of completion of respiratory care educational requirements, and the date the degree or certificate was issued;

(3) A list of the names and locations of the institutions that each year granted degrees or certificates of completion in respiratory care;

(4) After the administration of each examination, a list of persons who passed the examination.

(H) Submit to the governor and to the general assembly each year a

report of all of its official actions during the preceding year, together with any findings and recommendations with regard to the improvement of the profession of respiratory care;

(I) Administer and enforce Chapter 4752. of the Revised Code.

Sec. 4761.09. (A) The Ohio respiratory care board may refuse to issue or renew a license or a limited permit, may issue a reprimand, may suspend or permanently revoke a license or limited permit, or may place a license or limited permit holder on probation, on any of the following grounds:

(1) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for an offense involving moral turpitude or of a felony, in which case a certified copy of the court record shall be conclusive evidence of the matter;

(2) Violating any provision of this chapter or an order or rule of the board;

(3) Assisting another person in that person's violation of any provision of this chapter or an order or rule of the board;

(4) Obtaining a license or limited permit by means of fraud, false or misleading representation, or concealment of material facts or making any other material misrepresentation to the board;

(5) Being guilty of negligence or gross misconduct in the practice of respiratory care;

(6) Violating the standards of ethical conduct adopted by the board, in the practice of respiratory care;

(7) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(8) Using any dangerous drug, as defined in section 4729.01 of the Revised Code, or alcohol to the extent that the use impairs the ability to practice respiratory care at an acceptable level of competency;

(9) Practicing respiratory care while mentally incompetent;

(10) Accepting commissions, rebates, or other forms of remuneration for patient referrals;

(11) Practicing in an area of respiratory care for which the person is clearly untrained or incompetent or practicing in a manner that conflicts with section 4761.17 of the Revised Code;

(12) Employing, directing, or supervising a person who is not authorized to practice respiratory care under this chapter in the performance of respiratory care procedures;

(13) Misrepresenting educational attainments or authorized functions for the purpose of obtaining some benefit related to the practice of respiratory care;

(14) Assisting suicide as defined in section 3795.01 of the Revised Code.

Before the board may take any action under this section, other than issuance of a summary suspension order under division (C) of this section, the executive director of the board shall prepare and file written charges with the board. Disciplinary actions taken by the board under this section shall be taken pursuant to an adjudication under Chapter 119. of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by the board, shall constitute 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 the consent agreement shall be of no effect.

(B) If the board orders a license or limited permit holder placed on probation, the order shall be accompanied by a written statement of the conditions under which the person may be restored to practice.

The person may reapply to the board for original issuance of a license after one year following the date the license was denied.

A person may apply to the board for the reinstatement of a license or limited permit after one year following the date of suspension or refusal to renew. The board may accept or refuse the application for reinstatement and may require that the applicant pass a reexamination as a condition of eligibility for reinstatement.

(C) If the president and secretary of the board determine that there is clear and convincing evidence that a license or limited permit holder has committed an act that is grounds for board action under division (A) of this section and that continued practice by the license or permit holder presents a danger of immediate and serious harm to the public, the president and secretary may recommend that the board suspend the license or limited permit without a prior hearing. The president and secretary shall submit in writing to the board the allegations causing them to recommend the suspension.

On review of the allegations, the board, by a vote of not less than ~~four~~ seven of its members, may suspend a license or limited permit without a prior hearing. The board may review the allegations and vote on the suspension by a telephone conference call.

If the board votes to suspend a license or limited permit under this division, the board shall issue a written order of summary suspension to the license or limited permit holder in accordance with section 119.07 of the

Revised Code. If the license or limited permit holder requests a hearing by the board, the board shall conduct the hearing in accordance with Chapter 119. of the Revised Code. Notwithstanding section 119.12 of the Revised Code, a court of common pleas shall not grant a suspension of the board's order of summary suspension pending determination of an appeal filed under that section.

Any order of summary suspension issued under this division shall remain in effect until a final adjudication order issued by the board pursuant to division (A) of this section becomes effective. The board shall issue its final adjudication order regarding an order of summary suspension issued under this division not later than sixty days after completion of its hearing. Failure to issue the order within sixty days shall result in immediate dissolution of the suspension order, but shall not invalidate any subsequent, final adjudication order.

SECTION 2. That existing sections 4745.01, 4761.02, 4761.03, and 4761.09 of the Revised Code are hereby repealed.

SECTION 3. Not later than ninety days after the effective date of this act, the Governor with the advice and consent of the Senate shall make the additional appointments to the Ohio Respiratory Care Board under section 4761.02 of the Revised Code, as amended by this act.

SECTION 4. Section 4752.02 of the Revised Code shall take effect one year after the effective date of this act. Section 4761.09 of the Revised Code shall take effect ninety days after the effective date of this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____