

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2125
(Senators Burckhard, Anderson, Oban)
(Representatives D. Anderson, Dobervich, Karls)

AN ACT to create and enact a new subsection to section 43-26.1-10, a new subsection to section 43-26.1-13, and a new subsection to section 43-26.1-15 of the North Dakota Century Code, relating to the regulation of the practice of physical therapy; and to amend and reenact sections 43-26.1-01, 43-26.1-02, 43-26.1-03, 43-26.1-04, 43-26.1-05, 43-26.1-08, 43-26.1-11, and 43-26.1-14 of the North Dakota Century Code, relating to the board of physical therapy and physical therapy licensure; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-26.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-26.1-01. Definitions.

In this chapter, unless the context or ~~subject matter~~ otherwise requires:

1. "Board" means the North Dakota board of physical therapy.
2. "Competence" is the application of knowledge, skills, and behaviors required to function effectively, safely, ethically, and legally within the context of the patient's or client's environment.
3. "Continuing competence" is the lifelong process of maintaining and documenting competence through ongoing self-assessment, development, and implementation of a personal learning plan along with subsequent reassessment.
4. "Direct supervision" means the supervising physical therapist is physically present on the premises and immediately available for direction and supervision, has direct contact with the patient during each visit, and completes all components of care requiring skilled therapy services. Telehealth does not meet the requirement for direct supervision.
5. "Electronic communications" means the science and technology of communication over a distance by electronic transmission of impulses, including activities involving or using electronic communications to store, organize, send, retrieve, and convey information.
6. "Examination" means a national examination approved by the board for the licensure of a physical therapist or the licensure of a physical therapist assistant.
- ~~3-7.~~ "General supervision" means the supervising physical therapist is onsite and present where services are provided or is immediately available to the physical therapist assistant being supervised by means of electronic communications, maintains continual involvement in the appropriate aspects of patient care, and has primary responsibility for all patient care services rendered by a physical therapist assistant.
8. "Manual therapy" means the use of techniques such as mobilization or manipulation, manual lymphatic drainage, and manual traction on one or more regions of the body.
- 4-9. "Onsite supervision" means the supervising physical therapist is onsite and present in the department or facility where services are provided, is immediately available to the ~~person~~individual being supervised, and maintains continued involvement in appropriate

aspects of each treatment session in which a student physical therapist or a student physical therapist assistant or a physical therapy aide is involved in components of care.

- ~~5-10.~~ "Physical therapist" means ~~a person~~ an individual licensed under this chapter to practice physical therapy. The term "physiotherapist" is synonymous with "physical therapist" under this chapter.
- ~~6-11.~~ "Physical therapist assistant" means ~~a person who is~~ an individual licensed under this chapter and who assists the physical therapist in selected components of physical therapy intervention.
- ~~7-12.~~ "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist licensed under this chapter.
- ~~8-13.~~ "Physical therapy aide" means ~~a person~~ an individual trained under the direction of a physical therapist who performs designated and supervised routine tasks related to physical therapy.
- ~~9-14.~~ "Practice of physical therapy" means:
- a. Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement and mobility, and disabilities or other health and movement-related conditions ~~in order~~ to determine a diagnosis for physical therapy, prognosis, and plan of therapeutic intervention, and to assess the ongoing effects of intervention.
 - b. Alleviating impairments, functional limitations in movement and mobility, and disabilities by designing, implementing and modifying therapeutic interventions that may include, ~~but are not limited to,~~ therapeutic exercise; neuromuscular education; functional training related to positioning, movement, and mobility in self-care and in-home, community, or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective, and supportive devices and equipment related to positioning, movement, and mobility; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physiotherapy; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction.
 - c. Engaging as a physical therapist in reducing the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health, and wellness in populations of all ages.
 - d. Engaging as a physical therapist in administration, consultation, education, and research.
- ~~10-15.~~ "Restricted license" for a physical therapist or physical therapist assistant means a license on which the board places restrictions or conditions, or both, as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client to whom the licensee may provide services.
- ~~11-16.~~ "Telehealth" is the use of electronic communications to provide and deliver health-related information and health care services, including physical therapy related information and services, over any distance. Telehealth encompasses health care and health promotion activities, including education, advice, reminders, interventions, and the monitoring of interventions.
17. "Testing" means standard methods and techniques used to gather data about the patient.

SECTION 2. AMENDMENT. Section 43-26.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-26.1-02. Board of physical therapy - Members - Appointments - Vacancies.

1. The board of physical therapy shall administer this chapter. The board consists of three licensed physical therapists, ~~two~~one licensed ~~physicians~~physician, ~~one licensed physical therapist assistant, and a citizen who is not a health care professional~~two public members. The governor shall appoint the board members for a term of five years, staggered so the terms of no more than two members expire each year. ~~A person~~An individual may not serve more than two full consecutive terms. Terms begin on July first. Appointments to the board to fill a vacancy occurring for other than the expiration of a term may only be made for the remainder of the unexpired term.
2. Each physical therapist and physical therapist assistant appointed must have had at least three years of physical therapy experience in North Dakota immediately ~~prior to~~before appointment and must practice in North Dakota during the term. ~~Each~~The physician appointed must have practiced medicine at least three years in North Dakota immediately ~~prior to~~before appointment and must practice in North Dakota during the term. Each board member shall take and file with the secretary of state the oath of office prescribed for state officials before entering upon the discharge of the member's duties.
3. Each board member is entitled to mileage reimbursement as provided in section 54-06-09 and reimbursement for actual and necessary expenses in the amounts provided by law for state officers in section 44-08-04.

SECTION 3. AMENDMENT. Section 43-26.1-03 of the North Dakota Century Code is amended and reenacted as follows:

43-26.1-03. Powers of the board.

The board may:

1. Evaluate the qualifications of applicants for licensure.
2. Provide for the examination of physical therapists and physical therapist assistants and adopt passing scores for the examinations.
3. Issue licenses to persons who meet the requirements of this chapter.
4. Regulate the practice of physical therapy by interpreting and enforcing this chapter.
5. Adopt and revise rules consistent with this chapter.
6. Meet at least annually and ~~such~~ other times as deemed necessary. A majority of board members ~~shall constitute~~constitutes a quorum for the transaction of business.
7. Establish mechanisms for assessing the continuing professional competence of physical therapists and physical therapist assistants to engage in the practice of physical therapy.
8. Establish and collect fees for sustaining the necessary operation and expenses of the board.
9. Elect officers from its members necessary for the operations and obligations of the board. Terms of office ~~shall be~~are one year.
10. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, and board rules, policies, and procedures.
11. Maintain a current list of all ~~persons~~individuals regulated under this chapter. This contact information includes the ~~person's~~individual's name, current business address, business telephone number, electronic mail address, and board license number.

12. Provide information to the public regarding the complaint process.
13. Employ necessary personnel to carry out the administrative work of the board.
14. Enter into contracts for services necessary for enforcement of this chapter.
15. Report final disciplinary action taken against a licensee to a national disciplinary database recognized by the board or as required by law.
16. Review and investigate all complaints the board receives against licensees concerning violations of this chapter. The board shall keep all information relating to the receipt and investigation of the complaint confidential until the information is disclosed in the course of the investigation or any subsequent proceeding or until disclosure is required by law. However, patient records, including clinical records, files, any report or oral statement relating to diagnostic findings of a patient or treatment of a patient, any information from which a patient or the patient's family might be identified, or information received and records or reports kept by the board as a result of its investigation, are confidential.

SECTION 4. AMENDMENT. Section 43-26.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-26.1-04. Qualifications for licensure.

1. Before being approved for a license as a physical therapist or physical therapist assistant, an applicant shall:
 - a. ~~Be~~Must be of good moral character.
 - b. ~~Complete~~Shall complete the application process.
 - c. ~~Be~~Must be a graduate of a professional physical therapy~~therapist~~ or physical therapist ~~assistant~~ education program accredited by a national accreditation agency approved by the board.
 - d. ~~Pass~~Shall pass the examination approved by the board.
2. An applicant for a license as a physical therapist or a physical therapist assistant who has been educated outside of the United States shall:
 - a. ~~Be~~Must be of good moral character.
 - b. ~~Complete~~Shall complete the application process.
 - c. ~~Provide~~Shall provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of a physical therapist~~therapist~~ or physical therapist ~~assistant~~ educated in an accredited education program as determined by the board. For the purpose of this section, "substantially equivalent" means that an applicant for licensure educated outside of the United States shall~~must~~ have:
 - (1) Graduated from a physical therapist or physical therapist assistant education program that prepares the applicant to engage in the practice of physical therapy without restriction.
 - (2) Provided written proof that the applicant's school of physical therapy or physical therapy assistant education is recognized by its own ministry of education or other appropriate education agency.

- (3) Undergone a credentials evaluation as directed by the board ~~that determines that~~determining the candidate has met uniform criteria for educational requirements as further established by rule.
 - (4) Completed any additional education or clinical experience as required by the board.
 - d. ~~Pass~~Shall pass the board-approved English proficiency examinations if the applicant's native language is not English.
 - e. ~~Pass~~Shall pass the examination approved by the board.
 - f. Shall obtain a criminal background check as referenced in section 43-26.1-05.1 and required under article III of chapter 43-26.2.
3. Notwithstanding the provisions of subsection 2, if the applicant is educated outside of the United States and is a graduate of a professional physical ~~therapy~~therapist or physical therapist assistant educational program accredited by a national accrediting agency approved by the board, the board may waive the requirements in subdivision c of subsection 2.

SECTION 5. AMENDMENT. Section 43-26.1-05 of the North Dakota Century Code is amended and reenacted as follows:

43-26.1-05. Application and examination.

1. An applicant for licensure shall file a complete application as required by the board. The applicant shall include application fees as ~~prescribed~~provided in this chapter and under applicable rules.
2. The board shall provide examinations at times and places ~~it~~the board determines. The board shall determine the passing score.
3. An applicant for licensure as a physical therapist may take the examination after the application process has been completed. The examination ~~shall~~must test entry-level competence related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention, and consultation.
4. An applicant for licensure as a physical therapist assistant may take the examination after the application process has been completed. The examination ~~shall~~must test for requisite knowledge and skills in the technical application of physical therapy services.
5. An applicant for licensure who does not pass the examination on the first attempt may retake the examination ~~one additional time without reapplication for licensure within six months of the first failure. Before the board may approve an applicant for subsequent testing beyond two attempts, an applicant shall reapply for licensure and shall submit evidence satisfactory to the board of having successfully completed additional clinical training or coursework, or both, as the board determines, not to exceed six attempts. There is a limit of two attempts for scores below four hundred.~~
6. If the board determines that an applicant or examinee has engaged, or has attempted to engage, in conduct that subverts or undermines the integrity of the examination process, the board may disqualify the applicant or examinee from taking the examination.

SECTION 6. AMENDMENT. Section 43-26.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-26.1-08. License renewal - Changes.

A licensee shall renew the license annually pursuant to board rules. A licensee who fails to renew the license on or before the expiration date ~~shall~~may not practice as a physical therapist or physical

therapist assistant in this state, and may be subject to a late renewal fee. ~~Each~~A licensee is responsible for reportingshall report to the board a name change and other changes in ~~business and home address~~contact information within thirty days of the date of change.

SECTION 7. A new subsection to section 43-26.1-10 of the North Dakota Century Code is created and enacted as follows:

Forty dollars for the compact privilege.

SECTION 8. AMENDMENT. Section 43-26.1-11 of the North Dakota Century Code is amended and reenacted as follows:

43-26.1-11. Patient care management.

1. A physical therapist ~~is responsible for managing~~shall manage all aspects of each patient's physical therapy. A physical therapist shall provide:
 - a. Each patient's initial evaluation and documentation.
 - b. Periodic re-evaluation and documentation of each patient.
 - c. The documented discharge of the patient, including the response to therapeutic intervention at the time of discharge.
2. If the diagnostic process reveals findings ~~that are~~ outside the scope of a physical therapist's knowledge, experience, or expertise, a physical therapist shall ~~so~~ inform the patient or client and refer the patient or client to an appropriate practitioner.
3. A physical therapist shall assure the qualifications of ~~all a~~ physical therapist ~~assistants~~assistant and physical therapy ~~aides~~aide under the physical therapist's direction and supervision.
4. For each patient on each date of service, a physical therapist shall provide all of the therapeutic intervention that requires the expertise of a physical therapist and shall determine the use of physical therapist assistants ~~or physical therapy aides~~ that provide for the delivery of care that is safe, effective, and efficient.
 - a. A physical therapist assistant shall work under the supervision of a physical therapist. A physical therapist assistant may document care provided without the cosignature of the supervising physical therapist.
 - b. A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the direct supervision of a physical therapist. This supervision may extend to ~~offsite~~general supervision of the physical therapy aide only when the physical therapy aide is accompanying and working directly with a physical therapist assistant with a specific patient or when performing non-patient-related tasks.
5. A physical therapist's ~~or physical therapist assistant's~~ responsibility for patient care management ~~shall include~~includes accurate documentation and billing of the services provided.
6. The physical therapist shall communicate the overall plan of care with the patient or the patient's legally authorized representative.

SECTION 9. A new subsection to section 43-26.1-13 of the North Dakota Century Code is created and enacted as follows:

Attempting to engage in conduct that subverts or undermines the integrity of the examination or the examination process, including a violation of security and copyright provisions related to the national licensure examination; utilizing recalled or memorized examination questions from

or with any person; communicating or attempting to communicate with other examinees during the examination; or copying or sharing examination questions or portions of questions.

SECTION 10. AMENDMENT. Section 43-26.1-14 of the North Dakota Century Code is amended and reenacted as follows:

43-26.1-14. Lawful practice.

1. A physical therapist or physical therapist assistant licensed under this chapter is fully authorized to practice physical therapy ~~as defined herein~~. The board shall require each licensee to provide the board with evidence of competence regarding the various elements of manual therapy the licensee practices so that the board may determine satisfactory competency levels and requirements as provided under section 43-26.1-03.
2. A physical therapist or physical therapist assistant shall adhere to the standards of ethics of the physical therapy profession as established by rule.
3. A physical therapist may purchase, store, and administer topical medications, including aerosol medications as part of the practice of physical therapy ~~as defined herein~~, but ~~shall~~ may not dispense or sell any of the medications to patients. A physical therapist shall comply with any regulation adopted by the United States pharmacopoeia specifying protocols for storage of medications.

SECTION 11. A new subsection to section 43-26.1-15 of the North Dakota Century Code is created and enacted as follows:

A physical therapist who graduated from a doctor of physical therapy program may use the title "doctor of physical therapy". A physical therapist holding a doctor of physical therapy or other doctoral degree may not use the title "doctor" without clearly informing the public of the physical therapist's licensure as a physical therapist.

SECTION 12. APPLICATION. Notwithstanding section 2 of this Act, any member of the North Dakota board of physical therapy serving a term on the board when this Act becomes effective whose term does not expire on June 30, 2019, may serve the remainder of that member's term. For a board position expiring on June 30, 2019, and for the new positions to the board created by section 2 of this Act, the governor shall appoint individuals to fill those positions in accordance with section 2 of this Act, and the terms of those appointees may be staggered. To accomplish the staggering, the initial term of those appointees may be less than five years.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2125.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 86 Nays 0 Absent 8

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State